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state OF NEW HAMPSHIRE

SITE EVALUATION COMMITTEE

December 21, 2017 - 9:08 a.m. DAY 70
49 Donovan Street MORNING SESSION
Concord, New Hampshire

{Electronically filed with SEC 1-2-2018}

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

PRESENT FOR SUBCOMMITTEE/SITE EVALUATION COMMITTEE:
Chrmn. Martin P. Honigberg Public Utilities Comm.
(Presiding as Presiding Officer)

Cmsr. Kathryn M. Bailey	Public Utilities Comm.
Dir. Craig Wright, Designee	Dept. of Environ. Serv.
Christopher Way, Designee	Dept. of Resources & Economic Development
William Oldenburg, Designee	Dept. of Transportation
Patricia Weathersby	Public Member

ALSO PRESENT FOR THE SEC:

Michael J. Iacopino, Esq., Counsel to the SEC
Iryna Dore, Esq.
(Brennan, Lenehan, Iacopino & Hickey)

Pamela G. Monroe, SEC Administrator

(No Appearances Taken)

COURT REPORTER: Susan J. Robidas, NH LCR No. 44

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

2 (Hearing opened at 9:08 a.m.)

3 CHAIRMAN HONIGBERG: Good
4 morning, everyone. It's Day 70. And unless we
5 have problems, this will be the last day we hear
6 from witnesses in this proceeding.

7 We have Dr. Van de Poll back
8 to complete his testimony. He was sworn
9 earlier, so we don't need to redo that. And
10 what we are up for right now are questions
11 from the Applicant. Mr. Walker, whenever
12 you're ready.

13 CROSS-EXAMINATION

14 BY MR. WALKER:

15 Q. Good morning, Dr. Van de Poll.

16 A. Good morning, Mr. Walker.

17 Q. My name's Jeremy Walker. We've met before.
18 I'm counsel for the Applicant. And to remind
19 the Committee, your work in this matter was
20 limited to potential impacts of the proposed
21 project within the city of Concord; correct?

22 A. That is correct.

23 Q. And I want to walk you briefly through your
24 methodology. So, I understand from your

1 prefiled testimony you reviewed the report of
2 the wetlands assessment done by Normandeau
3 Associates for Concord; correct?

4 A. Yes.

5 Q. When you filed your original prefiled
6 testimony in December, 2016, prior to filing
7 that you had not gone out in the field and
8 done any field work; right?

9 A. That is correct.

10 Q. And you opined in that prefiled testimony,
11 prior to going out into the field, that
12 Normandeau had underestimated some of the
13 temporary and permanent impacts to the
14 wetlands within Concord; right?

15 A. That is correct.

16 Q. And you provided your spreadsheet in your
17 supplemental testimony that showed
18 approximately 38 areas where you feel there
19 were errors by Normandeau; right?

20 A. Yes.

21 MR. WALKER: Dawn, if you could
22 pull up Joint Muni 06363, please. And that's
23 the spreadsheet. Sorry, 006363.

24

1 BY MR. WALKER:

2 Q. And Dr. Van de Poll, do you have on your
3 screen, the spreadsheet?

4 A. I do.

5 Q. We've seen it before. We've talked about it
6 before this Committee. This is the
7 spreadsheet of the list of your areas where
8 you feel there were errors. And you created
9 this using your review of infrared aerial
10 photography from 2015; is that right?

11 A. I used both 2015 and 2010.

12 Q. Okay. And then what you did was you had the
13 aerial infrared photographs, and you compared
14 that to the wetland map submitted by
15 Normandeau, and then you reached your
16 conclusion as to where there were
17 differences; is that right?

18 A. That is correct.

19 Q. Now, the infrared aerial photographs that you
20 reviewed, they show essentially where certain
21 areas were wet on the one day that they were
22 taken; right?

23 A. Yeah, the flight time was April of 2010. DOT
24 released the infrared photographs in June of

1 2011. So there was a little bit of a
2 processing time. And what those infrared
3 photographs show are effectively areas where
4 the soils are cool, or I should say the cover
5 types are cool. And that is in an open area
6 such as a scrub-shrub emergent wetland,
7 generally shown in gray or dark if it's
8 water, black shades. As the soil temperature
9 increases, there's more of a pink coloration
10 to where, for example, if you're looking at a
11 pine tree, it's pretty bright red on that
12 infrared photograph.

13 Q. Now, as you explained to me at your technical
14 session, you would agree with me that a
15 review of infrared photographs, that's not an
16 adequate substitute for field delineations of
17 a wetlands; correct?

18 A. Absolutely.

19 Q. And the standard for a wetland delineation is
20 the U.S. Army Corps Wetland Delineation
21 Manual; is that right?

22 A. Plus the supplement.

23 Q. Plus the supplement. So it's the 1987 manual
24 plus the supplement?

1 A. Yeah, and that's 2012, Version 2.

2 Q. And field delineation is typically the
3 process that's used for delineating
4 boundaries pursuant to that manual.

5 A. That's correct.

6 Q. In fact, in your experience, you've never
7 been involved in wetlands permit process
8 where delineation is done by using just
9 infrared photographs; correct?

10 A. Correct.

11 Q. And you're aware that the delineations done
12 by Normandeau in this case were done in the
13 field; right?

14 A. Yes.

15 Q. So you're not suggesting in any way that the
16 infrared aerial photographs be used as a
17 substitute for delineation in the field.

18 A. Absolutely not.

19 Q. Now, at the tech session you explained that
20 the infrared photographs that you used have
21 an accuracy level of approximately 10 meters;
22 is that right?

23 A. Yeah, roughly. I mean, it depends on the
24 type of wetland resource. If it's the edge

1 of a pond, it could be less than a meter. If
2 it's a forested swamp with a softwood cover,
3 it could be as much as 10 meters. That's
4 correct.

5 Q. Which is approximately 30 feet, a little more
6 than 30 feet?

7 A. Yes.

8 Q. You then took those photos, and you compared
9 them to the wetlands maps that Normandeau
10 prepared, and you explained in your prefiled
11 testimony you looked at the proximate
12 differences between the photos and
13 Normandeau's wetland maps; right?

14 A. That is correct.

15 Q. But the infrared photographs had a different
16 scale than the Normandeau maps, and you had
17 to estimate sort of the difference in scale
18 and how those appeared in the photos versus
19 the maps; right?

20 A. The infrared photographs are adjustable
21 according to the viewer. So I can zoom in to
22 a much greater scale than the maps that I was
23 looking at that were provided by Normandeau.
24 Typically, when I map wetlands using

1 infrareads, I'll have it at a 1 to 1,000
2 scale. The maps that were provided were a
3 little bit smaller than that -- that is, the
4 maps from Normandeau.

5 Q. It's not perfect science; right?

6 A. It's not a perfect science. But it served
7 the purpose of flagging areas that looked
8 like they could potentially be inaccurately
9 mapped.

10 Q. You were aware that there were multiple site
11 visits that were done by the Army Corps to
12 field-check the delineations done by
13 Normandeau in this case?

14 A. I read that on the basis of testimony that
15 Lee Carbonneau provided.

16 Q. Did you also look in the wetlands report that
17 was provided by Normandeau where there are
18 indications as to which wetlands were
19 field-checked by Army Corps?

20 A. I did not see any details about exactly which
21 wetlands were checked. So I'd have to say in
22 the negative, I did not see those details.

23 Q. Okay. And I will represent to you and for
24 this Committee, on the wetlands applications,

1 plans and maps, there are a list of the
2 different wetlands in each map, and there is
3 an indication as to whether each wetland was
4 checked by the Army Corps. And I realize you
5 haven't seen that, but I'm making that
6 representation. I will also represent that
7 the Army Corps checked some of the wetlands
8 that were delineated in Concord. Are you
9 aware of that?

10 A. I am not aware of that. But I'm also not
11 aware of what method they used to check those
12 wetlands, and that was one of my specific
13 concerns. I do not believe that the Army
14 Corps goes out and does an independent review
15 using their own method to delineate the
16 wetland. So that is some cause for concern
17 if the science is not being adhered to.

18 Q. But you don't know how they checked in the
19 field.

20 A. No, I do not.

21 Q. Okay. I want to turn to the spreadsheet
22 that's on the screen, Dr. Van de Poll. I
23 realize it's small print here.

24 MR. WALKER: But Dawn, if you

1 could zoom in on Line 6 through 10, please, and
2 blow that up.

3 BY MR. WALKER:

4 Q. And I don't want to go through all of these,
5 Dr. Van de Poll, but I just want to provide
6 an example so we are sure as to what you're
7 showing here. And particularly if you look
8 at Lines 8 and 9, you see it deals with a
9 wetland that's been coded as CD42. Do you
10 see that?

11 A. Yes.

12 Q. And you note that -- and I realize we don't
13 have the headings here, but there are
14 additional temporary impacts of 2600 square
15 feet in Line 8. Do you see that?

16 A. Yes.

17 Q. And then on Line 9, also another 900 feet.
18 You see that?

19 A. Yes.

20 Q. So when you -- you base that on the
21 comparison of the infrared and the Normandeau
22 maps; right?

23 A. That's correct.

24 Q. And you're saying Normandeau missed 2600 and

1 900 square feet --

2 A. Yes.

3 Q. -- based on their wetland maps?

4 A. Yeah.

5 Q. Is it your position that the aerial
6 photographs are more accurate than a field
7 check done by Normandeau? I mean, at this
8 point you hadn't gone out in the field;
9 correct?

10 A. Right. And if you're trying to ascertain why
11 I'm standing by that data as firm, I believe
12 my prior testimony indicated that only field
13 checks will provide the verification of the
14 data that I estimated in the spreadsheet.

15 Q. Okay. And when I see, for instance,
16 900 square feet, we talked about the infrared
17 photographs and the fact that they are
18 accurate in some cases up to 30 feet,
19 10 meters. If you're off one dimension by 30
20 feet and another dimension by 30 feet, that's
21 about 900 square feet. I mean, it can make a
22 significant difference; correct?

23 A. If that is, as I mentioned before, a
24 softwood-dominated forest swamp, which a

1 pasture is not.

2 Q. Now, when you looked at the aerial
3 photographs -- you haven't provided any
4 copies of the photographs that you reviewed
5 for purposes of this; right?

6 A. They're available online, and I cited them in
7 my report.

8 Q. But you haven't provided the aerial
9 photographs and a comparison of what you saw
10 in those photographs versus what the wetlands
11 map shows by Normandeau; right?

12 A. No. That would involve quite a bit more of,
13 how shall I say, detail, and what I was not
14 necessarily authorized to do, nor would it
15 serve the purpose of checking the accuracy
16 since that had to be done in the field.

17 Q. But if you look at the 38 reported errors
18 that you have on this spreadsheet, you only
19 went out to 5 spots in the field; correct?

20 A. Six, actually.

21 Q. Okay. Six, that's right. And you went back
22 out.

23 A. Went back out.

24 Q. But for the other 32 or 33 of those, we're

1 left with what you provided in your
2 description of the aerial photographs; right?

3 A. Right, which is why I focused my June report
4 on just where I did the field delineation.

5 Q. But as far as the ones where you didn't go,
6 this Committee doesn't have the photographs
7 in front of them and any comparison with the
8 wetland maps to check to see what the
9 difference is.

10 A. No. All they have are the results of my
11 field survey, which seem to indicate that
12 five out of the six initial sites that I
13 thought were wrong were in fact wrong.

14 Q. I understand that. I'm talking about the
15 other ones that you have on your spreadsheet.
16 There's no way that this Committee or we can
17 look at your work to see how they line up and
18 match up; right?

19 A. That is correct.

20 Q. So we're essentially left, and this Committee
21 is left to take your word for it based on
22 your description from your review of the
23 aerial photographs.

24 A. And the technical data that I provided in the

1 June report.

2 Q. For the sites that you went to look at.

3 A. Absolutely. I mean, I believe, Mr. Walker,
4 that my purpose of doing the field work was
5 not to re-delineate all of the wetlands
6 Normandeau delineated, nor the ones that the
7 Army Corps checked, but to demonstrate that
8 there's a reasonable doubt about the accuracy
9 of the wetlands.

10 Q. I understand your point. I was asking about
11 the ones that you did not go out to, and
12 you've made that clear.

13 I want to talk about the field work. So
14 when you first went out, you went out in
15 March of 2017.

16 A. That's correct.

17 Q. That's not in the growing season in Concord;
18 is that right?

19 A. That is not the growing season.

20 Q. Is there a generally accepted --

21 A. May 1st.

22 Q. May 1st? Through what time?

23 A. I believe in Concord be October, I want to
24 say 24th, perhaps. I think it's the third or

1 fourth week of October.

2 Q. Considered to be the growing season?

3 A. Roughly.

4 Q. And preferably, that's when you would do your
5 field work for wetlands delineation.

6 A. Preferably.

7 Q. Now, in your --

8 MR. WALKER: Dawn, if you could
9 pull up Dr. Van de Poll's March prefiled
10 testimony, which is Joint Muni 142, 006365.

11 BY MR. WALKER:

12 Q. And this is the first page, Dr. Van de Poll,
13 of your March report. And you note that in
14 the field you used a Garmin 12XL handheld GPS
15 unit.

16 A. That's correct.

17 Q. And we've reviewed the manual for that. That
18 has an accuracy level of about 15 meters.
19 Does that sound right to you?

20 A. No, it does not.

21 Q. What's your understanding of the accuracy?

22 A. The precision is variable on the number of
23 satellites at any one time. The satellites
24 as viewable on the unit itself provides an

1 averaging precision function which records
2 the moving precision at the moment the point
3 is taken, which is what I recorded for my
4 data and from which I used the variable, I
5 believe it was 3.3 to 7.7 meters. This is,
6 of course, when I uploaded to the color
7 aerial photographs, checked on the basis of
8 known points that are visible on the
9 photograph. So that provides me with a
10 backup to what precision I was actually
11 getting on the handheld.

12 Q. And are you aware of the equipment that
13 Normandeau used when it did its work --

14 A. Yes.

15 Q. -- which had a submeter accuracy?

16 A. Yes.

17 Q. You would agree with that equipment being
18 more accurate than --

19 A. Much more accurate.

20 Q. Now, you also note in your report that you
21 went out to the field and you had the
22 Alteration of Terrain maps with you. I take
23 it you were using those maps in the field to
24 make the comparisons and determine where

1 Normandeau had delineated boundaries?

2 A. Yes.

3 Q. I'm curious why you had the AOT maps which
4 have a much larger scale, one inch to -- I'm
5 sorry -- a smaller scale -- no, one inch to
6 the 200 feet in the AOT maps. Why didn't you
7 bring the wetlands map which actually have a
8 much smaller scale at one inch equals
9 100 feet?

10 A. The resolution on the AOT maps was better.
11 There was actually a greater -- the
12 reproduction of the maps, short of having it
13 on a computer screen, appeared to be better
14 than the actual aerial photograph-based
15 wetland delineation maps, which I also used
16 as well, but not in March.

17 Q. Okay. But you'd agree with me that the
18 wetlands map have a much larger scale.

19 A. Yes.

20 Q. So when you were out there in the field, how
21 did you determine where Normandeau had
22 delineated the boundaries for the wetlands?
23 Did you see flagging out there?

24 A. There was no flagging visible on any of the

1 sites that I went to.

2 Q. These are rights-of-way that are maintained
3 and mowed at times; correct?

4 A. That is correct.

5 Q. And your conclusion was that four of the five
6 sites you visited had unmapped wetlands --

7 A. That's correct.

8 Q. -- that Normandeau didn't pick up.

9 So you went out in March. That was not
10 during the growing season. So you opted to
11 go back out in June of 2017 for one day;
12 right?

13 A. Right.

14 Q. June 14th?

15 A. Yes.

16 Q. So now you're in the growing season. And you
17 bring out the same equipment, the same Garmin
18 unit --

19 A. Yes.

20 Q. -- and AOT maps as well?

21 BY MR. WALKER:

22 Q. I don't want to look at all of the five
23 sites, but I want to look at a couple to be
24 sure I understand how you did this.

1 MR. WALKER: And Dawn, if you
2 could pull up -- let's look at the Sanborn Road
3 site, please.

4 BY MR. WALKER:

5 Q. And Page 3 of your March report --

6 MR. WALKER: Which is 6367, Dawn,
7 if you can see at the bottom, and if you can
8 blow that up, please.

9 BY MR. WALKER:

10 Q. It's talking about Sanborn Road. And you're
11 checking that site because you note that
12 there may be or there's a likelihood of a
13 direct wetland connection between two
14 different wetlands, CD 4 and 48?

15 A. That's correct.

16 Q. And I don't want to make this confusing.

17 MR. WALKER: But Dawn, if you
18 could pull up the wetlands map that shows those
19 two wetlands. You're going to have to blow up
20 that screen where you can see CD44 and CD48 in
21 green, Dawn. All right. Actually, if you go
22 back out, and a little to the left is CD48 and
23 all the way across. There you go.

24 BY MR. WALKER:

1 Q. So you see the green outline of the wetlands
2 CD48 on the left and CD44 on the right;
3 correct?

4 A. Yes.

5 Q. And you went out there suggesting that there
6 was a likelihood of a connection between
7 those two wetlands that was unmapped by
8 Normandeau; right?

9 A. That appeared to be the case.

10 Q. And your position was that it actually
11 extended to the proposed temporary
12 construction pad which you can see below,
13 313-291; right?

14 A. Yes.

15 Q. And so you determined in March that there was
16 a connection --

17 A. I determined there could be a connection
18 based on the March growing season -- non-
19 growing season assessment.

20 MR. WALKER: Dawn, if you could
21 go back to Dr. Van de Poll's report, and 6367,
22 please.

23 BY MR. WALKER:

24 Q. And the sentence that's the third sentence,

1 it says, "The edge of wet was determined to
2 extend from Sanborn Road through the proposed
3 temporary construction pad and pole removal
4 area, neither of which mapped for wetland
5 impacts." So at that point you're
6 determining that there was a connection.

7 A. That's correct.

8 Q. And Normandeau didn't map it --

9 A. That's correct.

10 Q. -- and therefore didn't correct for temporary
11 impact or any impact; right?

12 A. Right.

13 Q. So when you went back out there in June, and
14 I want to pull up your June report --

15 MR. WALKER: And that's Joint
16 Muni 309, Dawn, please. And it's actually Page
17 9 of that report. I don't think there's a Bates
18 Stamp.

19 MS. GAGNON: What page?

20 MR. WALKER: It's Joint Muni 309,
21 and it's Page 9 of the report --

22 BY MR. WALKER:

23 Q. So this paragraph that starts with, "In
24 sum..." you're dealing with Sanborn Road. Do

1 you have that, Dr. Van de Poll?

2 A. Yes, I do.

3 Q. And you note that while the wetland CD44 was
4 not accurately delineated in your opinion and
5 appears to extend to the north of where it
6 was mapped, it does not connect to CD48, nor
7 does it extend into the proposed temporary
8 pad area proposed for that particular pole.
9 And then you go on to say it appears that
10 there will be no further temporary or
11 permanent impacts to wetlands beyond what has
12 already been reported for 48; correct?

13 A. That's correct.

14 Q. So you've gone out in June and you corrected
15 your findings in March.

16 A. That's correct.

17 Q. So Normandeau had it right, as far as any
18 potential impact in that area.

19 A. In terms of impacts, yes.

20 Q. For all of the field work that you did,
21 whether it's in March or in June, you have
22 not provided maps or drawings showing where
23 you actually marked the boundaries of the
24 wetlands; right?

1 A. I was not hired to mark boundaries of
2 wetlands in the right-of-way.

3 Q. No, I understand you weren't out there
4 flagging boundaries or anything like that.

5 A. No. I thought that would be inappropriate.

6 Q. But you measured and you provided to this
7 Committee some measurement of square footage
8 of wetlands that you feel that Normandeau
9 missed.

10 A. Yes. Absolutely.

11 Q. But you have not provided to us or this
12 Committee your maps when you went out there
13 and show where, you know, where the
14 boundaries were so we can make a comparison.

15 A. I provided GPS data. That should be
16 sufficient to get people to the field. And I
17 described it very well, including the vernal
18 pool. If you want, or if the Committee would
19 like to see maps of where I went, I'd be
20 happy to provide them. I have them right
21 here, actually.

22 Q. Well, Dr. Van de Poll, I can pull up those
23 maps because you provided maps in your Joint
24 Muni 309 -- so, your June field report. And

1 we're talking about Sanborn Road, so let's
2 look at the map you provided.

3 MR. WALKER: Dawn, that's the
4 very last page of 309.

5 BY MR. WALKER:

6 Q. And you have provided what you call
7 "observation points," so where you collected
8 data; correct?

9 A. Yes.

10 Q. And this is the map that you provided for
11 Sanborn Road.

12 MR. WALKER: And if you could
13 zoom up a little bit where generally that
14 observation point is marked, Observation No. 7.

15 BY MR. WALKER:

16 Q. And you'll see that your point is marked with
17 that blue circle in the triangle; correct?

18 A. Correct.

19 Q. And the right-of-way is right in the
20 right-of-way. But based on the scale of this
21 map, I will represent to you that our
22 consultant could not determine exactly where
23 you were. Your mark here is the entire width
24 of the right-of-way. Do you know how wide

1 that right-of-way is there?

2 A. Yes.

3 Q. It's about 150 feet?

4 A. That's about right.

5 Q. So you would agree with me that, based on
6 this map you provided, it's not entirely
7 clear where that observation point is within
8 the right-of-way.

9 A. So, Mr. Walker, if I might, are you
10 attempting to illustrate or show that, A, I
11 don't know what I'm talking about relative to
12 wetland delineation, or, B, don't know where
13 these places are located, or, C, cannot
14 communicate the location of these unmapped
15 wetlands to the Committee?

16 Q. None of those three.

17 A. Okay. Just want to be clear.

18 Q. No, I am not, Dr. Van de Poll.

19 What I am saying is that, based on what
20 you provided to this Committee and what you
21 provided to us, and at this scale, we cannot
22 determine where that observation point is
23 within the right-of-way precisely or how you
24 determined the difference between where

1 Normandeau delineated its boundaries and
2 where you determined the boundaries to be.
3 Nothing that you provided shows that;
4 correct?

5 A. I disagree. You could use the observation
6 point which has a GPS lat/long attached to it
7 with six decimal places and go out in the
8 field and actually check to see if my
9 delineation was incorrect, which clearly the
10 counsel for the City of Concord invited Lee
11 Carbonneau to do, but it appears that
12 Normandeau chose not to check where I had
13 some issues based on the March report and did
14 not provide any substantive denial or
15 verification on their own that their wetlands
16 were correctly or incorrectly mapped.

17 Q. And let me ask you about that, Dr. Van de
18 Poll, because you did this field work in
19 June 14 of 2017 and you provided the map with
20 this observation point. And you provided
21 some field notes, which I presume you took on
22 the day you were out at the site; correct?

23 A. That's correct.

24 Q. Your report, your June report, was provided

1 to us on the evening of November 15, 2017.

2 Now, that's after the growing season;

3 correct?

4 A. The March report was provided to you in

5 April.

6 Q. No, I understand that. I'm talking about --

7 A. So why didn't Normandeau check those sites

8 that I had issues with during the growing

9 season in 2017?

10 Q. Dr. Van de Poll, this report which does

11 detail your conclusions in the growing season

12 was provided to us after the growing season;

13 correct?

14 A. That's correct.

15 Q. Yeah. Do you know who Elise Lawson is?

16 A. I do.

17 Q. And do you know who John Severance is?

18 A. I do.

19 Q. They're both certified wetlands scientist?

20 A. As far as I know.

21 Q. Are you aware that they were retained by

22 other municipalities in this case to look at

23 the wetland delineations done by Normandeau

24 and give their opinion?

1 A. I'm not aware of that.

2 Q. Okay. Including municipalities of Bethlehem
3 and Northumberland, I realize you're not
4 aware of it, but those reports are part of
5 this record. And I will represent to you
6 that they concluded in both of those reports
7 that the wetlands delineations done for those
8 municipalities were accurately delineated and
9 documented by Normandeau. You have not
10 reviewed those reports?

11 A. No, I have not.

12 Q. Dr. Van de Poll, I know you've reviewed the
13 March 1, 2017 DES decision with the four
14 permits, including the wetlands permit;
15 correct?

16 A. That's correct.

17 Q. And you are aware that Condition 12 of that
18 permit requires that, prior to construction,
19 the Applicant must ensure that all wetland
20 and surface water boundaries be clearly
21 marked in the field?

22 A. I'm aware of that condition.

23 Q. Now, during your testimony earlier in this
24 matter, you expressed some concern about

1 whether there will be sufficient monitoring
2 and enforcement of the Project to ensure
3 adequate restoration of any temporary wetland
4 impacts; is that right?

5 A. That's correct.

6 Q. But I want to go through just quickly a
7 couple of the conditions in the permit.

8 MR. WALKER: And Dawn, if you
9 could pull up Exhibit 75, please, and
10 particularly Page 4447.

11 BY MR. WALKER:

12 Q. I'll focus you on a couple of these, Dr. Van
13 de Poll, and I want to just ask you a few
14 questions on these.

15 Condition No. 2, you realize that all of
16 the work that is to be performed has to
17 follow the different plan notes sheets which
18 include BMPs, avoidance and minimization
19 measures; correct?

20 A. Correct.

21 Q. Have you reviewed those plan notes or plan
22 sheets?

23 A. Yes, I have.

24 Q. Okay.

1 MR. WALKER: Dawn, if you could
2 go to 44450, please.

3 BY MR. WALKER:

4 Q. And focusing on 36, you realize that a
5 certified wetlands scientist or a qualified
6 professional "shall" monitor the Project
7 during construction. You're aware of that?

8 A. Yes.

9 Q. And you're aware that the monitoring
10 requirements require them to report to DES
11 for at least the first three full growing
12 seasons?

13 A. Yes.

14 Q. And Condition 35 also requires that the
15 Applicant keep DES constantly apprised as to
16 who the monitor is who's responsible for the
17 Project. You're aware of that?

18 A. I'm very familiar with the standard protocols
19 attached to the conditions for a permit.

20 Q. Well, then I won't go through the rest of
21 them. I was going to go through the various
22 ones relating to the restoration requirements
23 for the Project, but it sounds like you're
24 familiar with all of those different

1 standards. And any failure to restore
2 temporary impacts, according to Condition 76,
3 would be a violation of RSA 482-A. You're
4 aware of that as well?

5 A. Yes.

6 Q. So, even with all of this, and even with the
7 Project knowing the exposure of this project,
8 you still feel that the DES will not be
9 sufficiently able to oversee and monitor the
10 restoration activities?

11 A. That is correct.

12 Q. One minute, please.

13 (Pause)

14 MR. WALKER: Thank you. We have
15 nothing further.

16 CHAIRMAN HONIGBERG: Members of
17 the Committee, who has questions for Dr. Van de
18 Poll? I see Mr. Wright's hand goes up fast.

19 QUESTIONS BY SUBCOMMITTEE MEMBERS AND SEC COUNSEL:

20 QUESTIONS BY DIR. WRIGHT:

21 Q. Good morning, Dr. Van de Poll.

22 A. Good morning, Mr. Wright.

23 Q. I think you just stated you don't feel like
24 DES has the ability to monitor this project.

1 Why do you feel that way?

2 A. I've been involved with DES-approved permits

3 for over 30 years. And one of the very

4 evident pieces of, how shall I say,

5 deliberation over mitigation project is the

6 concern of invasive species. As an example,

7 invasive species in theory are not to be

8 allowed to come into a mitigation site during

9 the period of that three-year monitoring, and

10 if they do, they're supposed to be removed

11 and provisions made so that they do not

12 revegetate a given wetland. Unfortunately,

13 as you all are well aware, invasive species

14 are a little more vigorous than that and tend

15 to come in prolifically on disturbed sites,

16 regardless of whether they're uplands or

17 wetlands. And I've seen many sites. I could

18 list many sites that have had invasive

19 species come in in mitigation areas that were

20 not essentially protected from that type of

21 non-native invasion. And DES was in fact

22 responsible for those permits. I've been

23 involved with many of them. And it's an

24 unfortunate situation.

1 I pointed out in my earlier prefiled
2 testimony that, for example, the Karner blue
3 butterfly mitigation area is based on a
4 biological opinion that says there will be no
5 substantial loss of Karner blue butterflies;
6 yet, we have a situation where none of the
7 other four listed species of lepidoptera are
8 being monitored or checked because they
9 haven't been surveyed in this mitigation
10 area. So here's another hole in the argument
11 of DES being thorough in their permitting and
12 monitoring requirements.

13 Q. So is the concern really with the monitoring
14 or the fact that there's no mitigation once
15 something has come in --

16 A. Both. Both, yeah, I mean, because my point
17 earlier -- and whereas Mr. Walker tended to
18 focus on the Sanborn Road, he neglected to
19 point out the other four sites that I did
20 field checks on and found unmapped wetlands.
21 So I did a little calculation in my report.
22 I state that there was 2830 square feet of
23 unmapped wetlands that are going to be
24 impacted by this project just on those five

1 sites. If that sort of percentage was
2 extrapolated to the remainder of the city of
3 Concord, there would be a considerable amount
4 of additional temporary impacts and
5 potentially permanent impacts, as I point out
6 for Turtle Pond, that are not only
7 unaccounted for, but are not factored into
8 the mitigation plan. And as the site
9 selection committee chair, I'm concerned that
10 the ARM fund is not going to get what they're
11 due. Admittedly \$3.3 million is a hefty
12 chunk of change --

13 Q. I don't want to -- I'm going to interrupt for
14 just a second.

15 So as I understand the certificate with
16 the proposed conditions from DES, there is a
17 condition that I believe states that if they
18 come across additional jurisdictional
19 wetlands, that they would have to go back to
20 DES and reapply for a new permit --

21 A. That is correct.

22 Q. -- and get the permit. And I assume that
23 could cover any additional mitigation.

24 A. That could if in fact they find a significant

1 amount of additional temporary or permitted
2 impacts.

3 CHAIRMAN HONIGBERG: Dr. Van de
4 Poll, I know you're eager to answer Mr. Wright's
5 questions, but please wait until he's done so
6 the transcript will be better, if you can do
7 that.

8 WITNESS VAN de POLL: Certainly.

9 BY MR. WRIGHT:

10 Q. I want to follow up a little bit on your
11 methodology.

12 You started with originally 38 areas,
13 and you ended up doing field work on -- I'm
14 confused. Is it five or six?

15 A. Six.

16 Q. Okay. But your report only identified five?

17 A. Five.

18 Q. Okay. How did you kind of narrow down from
19 the 38 to the 5 or 6 that you actually went
20 out to?

21 A. It was somewhat random, Mr. Wright. I looked
22 at areas that -- for example, the vernal
23 pool, I felt since that was the only
24 potential vernal pool in the corridor, that I

1 should check that site. And on the way to
2 the vernal pool, I found two other wetlands
3 that were unmapped. So it was somewhat
4 random in that sense.

5 Q. Somewhat random, and I assume some way you
6 could access them, assuming --

7 A. Yeah. I mean, access was not an issue.

8 Q. Let me just -- in your report, your June
9 report, Joint Muni 309, and I think you hit
10 on this already a little bit, but I know you
11 expressed concern when you were here the
12 first time and this time regarding the Turtle
13 Pond area and whether those impacts would
14 really be temporary or permanent. And I
15 think your concerns are related to the type
16 of soils that are in that area?

17 A. That is correct.

18 Q. Okay. There was work that was recently
19 completed out there.

20 A. Yes.

21 Q. Have you gone back and looked at that work?

22 A. I did look at that work, but only from the
23 roadside. I did not do any soil testing or
24 explorations of the deepwater marsh portion

1 of that site.

2 Q. So from the roadway you couldn't draw any
3 conclusion as to whether the impacts were
4 really temporary or permanent.

5 A. It looked like there was some obvious damage
6 to the surface vegetation. I could see some
7 tracking of surface water on the basis of the
8 mats that were used. But I could not
9 quantify the damage without doing further
10 work.

11 Q. Just give me one second.

12 (Pause)

13 Q. I think I'm all set. Thank you.

14 A. Thank you.

15 CHAIRMAN HONIGBERG: Mr. Way.

16 QUESTIONS BY MR. WAY:

17 Q. Good morning.

18 A. Good morning.

19 Q. One thing you just mentioned I was wondering
20 about. You said for the unmapped areas that
21 you discovered in several locations, that you
22 could extrapolate that to other areas as
23 well? How accurate is an extrapolation? I
24 mean, it's an extrapolation.

1 A. Right.

2 Q. But in your field, is that something that's
3 commonly done? Can you actually take
4 information from one wetlands area and then
5 make the suggestion that likely other wetland
6 areas will follow suit?

7 A. In my professional opinion, the fact that
8 there were wetlands that were missed, as well
9 as inaccurately mapped, gave me pause to
10 suspect that there were probably other sites
11 in the right-of-way along the entire route
12 that were perhaps in the same condition. But
13 absolutely I would not be able to confirm
14 that without doing the due diligence in the
15 field.

16 Q. All right. And then when we were talking
17 about some of the field work, another thing
18 that I heard, with me as a layperson in the
19 wetlands, is that when you go out, you didn't
20 see any flags.

21 A. That's correct.

22 Q. Is that common? Is that -- was that
23 expected?

24 A. No, that was not. Typically I've been

1 involved with many sites where I have been
2 asked to review existing delineations, and in
3 all cases I have found flagging in the field.
4 And I'm not absolutely certain, other than
5 the timing of their delineation work in 2015,
6 why I wasn't seeing any flags.

7 Q. Because I'm trying to understand that if you
8 were to go out again, and let's say you
9 started and you did your delineations, I'm
10 not sure how you do that without having flags
11 to show where you started and where you
12 stopped.

13 A. Right. So in terms of the way I mapped it on
14 the maps that attended the report, I looked
15 at the distance from known points -- for
16 example, the edge of Sanborn Road. I have
17 adequate equipment to be able to measure that
18 distance. And I also have reference points,
19 like the power pole that's off of Sanborn
20 Road, to see how far I was from that power
21 pole, which is measured. So, within a couple
22 of feet I can point to where the edge of wet
23 was that I determined in the field,
24 regardless of the accuracy of the GPS

1 handheld unit, which I admit is not suitable
2 for delineation purposes.

3 Q. Because what I'm trying to do is get a
4 sense -- for me, a flag would be essential.
5 But in your field work, your industry, do you
6 need the flags?

7 A. Absolutely, yeah.

8 Q. One thing you mentioned. You said you had
9 maps. Were those submitted to the Committee?
10 Or what are those maps you're talking about?

11 A. The maps that I submitted with the June
12 report, as you saw Mr. Miller [sic] before
13 pointed out, was a topographic base map with
14 the observation points. For my own field
15 purposes, I always refer to an aerial
16 photograph that provides a little bit more
17 detail, which I'm happy to share with the
18 Committee if it's of interest to the
19 Committee.

20 MR. WAY: Is that of interest to
21 the Committee?

22 CHAIRMAN HONIGBERG: Sounds like
23 it might be of interest to you.

24 MR. WAY: Well, it might be. I'm

1 looking over at Mr. Wright from DES. What's
2 your opinion?

3 MR. WRIGHT: I would think that
4 could be of interest.

5 MR. WAY: Let's make that
6 request.

7 A. Very well.

8 CHAIRMAN HONIGBERG: Ms. Pacik,
9 do you understand the request?

10 MS. PACIK: As long as Dr. Van de
11 Poll understands, I am confident we can get you
12 the information.

13 CHAIRMAN HONIGBERG: How long do
14 you think it would take to get that information?

15 WITNESS VAN de POLL: I have the
16 print maps right here. I can make this very
17 quick and easy.

18 CHAIRMAN HONIGBERG: Okay.

19 MS. PACIK: We can also provide
20 it electronically, I believe.

21 CHAIRMAN HONIGBERG: Yeah, I
22 think for purposes of this, it's going to need
23 to be marked, and it will need to be distributed
24 in the normal course.

1 Mr. Iacopino.

2 MR. IACOPINO: I was just going
3 to say, what are we going to call that exhibit
4 that he just handed to Ms. Monroe? How are we
5 going to mark it?

6 MS. PACIK: I think we may be up
7 to, I believe it will be Joint Muni Exhibit 352
8 [sic].

9 MR. WAY: Thank you. That was
10 easy.

11 BY MR. WAY:

12 Q. One last question, and I think we had talked
13 about this before, was the use of the
14 infrared technology. Just so I understand,
15 that's more in your industry like a starting
16 point --

17 A. Correct.

18 Q. -- or a quality checkpoint at the end?

19 A. Yeah, it is. The only exception to that is
20 in the situation of mapping entire towns,
21 wherein this is the best approximation, given
22 the limited resources for a town to hire
23 somebody such as myself to map the wetlands
24 in their town. And in that case the caveat

1 is always put on the map: These are
2 approximations that need to be field-checked.

3 Q. How much of an industry standard is it to use
4 infrared, or is it more the exception?

5 A. I think for large-scale mapping like that, it
6 is a standard. But for project-specific
7 mapping, it is not. It's like you said, an
8 indication, a first step.

9 Q. All right. Thank you.

10 A. Thank you.

11 CHAIRMAN HONIGBERG: Mr. Wright.

12 QUESTIONS BY DIR. WRIGHT:

13 Q. Sorry. Just another follow-up on another
14 area.

15 A. Certainly.

16 Q. You mentioned some concern about --
17 Mr. Walker mentioned the Army Corps had gone
18 out and field-verified some of the mapping.
19 You seem to express doubt in the ability of
20 Army Corps or just what methods -- you were
21 uncertain about what methods they were using?

22 A. Correct.

23 Q. So there was no documentation on the
24 methodology that they used --

1 A. That's correct.

2 Q. -- and that was a concern to you.

3 A. That's correct.

4 Q. Okay. Just one last area. The vernal pool
5 you identified, Mr. Walker also mentioned
6 that, as part of the DES certificate, they
7 need to flag wetland areas before
8 construction actually begins.

9 A. Correct.

10 Q. Is your concern because that vernal pool
11 doesn't show up on a map that it wouldn't be
12 flagged? Or would you expect it to be
13 flagged once they got out there and started
14 flagging areas before construction?

15 A. I would expect it to be flagged. But I would
16 also expect it to be factored into the vernal
17 pool mitigation measures which are very
18 significant and important, given that only
19 four vernal pools are noted in the entire
20 192 miles that are going to be permanently
21 impacted. And so being the only one in the
22 right-of-way in Concord, I was particularly
23 concerned about that.

24 Q. And there was no man-made features to this

1 vernal pool that you saw?

2 A. No. It's a naturally occurring vernal pool.

3 Q. Okay. Thank you.

4 CHAIRMAN HONIGBERG: Commissioner
5 Bailey.

6 QUESTIONS BY COMMISSIONER BAILEY:

7 Q. Good morning.

8 A. Good morning.

9 Q. In your original testimony you talk about the
10 impact on the Karner blue butterflies from
11 the lupine.

12 A. Yes.

13 Q. We got an e-mail on Monday saying that the
14 area identified the area impacted -- the
15 lupine area impacted by the Project was
16 miscalculated or something, and it was off by
17 a factor of three. And your testimony says
18 that the Applicants stated that over
19 60 percent of the wild lupine population upon
20 which the Karner blue depends will be
21 impacted by the construction efforts, and
22 it's acknowledged by the Applicant that these
23 unavoidable impacts will result in permanent
24 loss of an estimated 208 butterfly eggs.

1 If the lupine was off by three, are the
2 eggs off by three? Is it that simple? Or
3 how do you --

4 A. Yeah, that's a difficult ratio to estimate.
5 I think everybody concerned knows that the
6 208 eggs was an estimate, the best
7 guesstimate at that time. But finding Karner
8 blue butterfly eggs is not easy, so they
9 likely missed a bunch anyway. So the lupine
10 tends to be this sort of indicator plant for
11 the population extent based on that critical
12 attachment of the egg to the plant. Beyond
13 that, there are a number of other, what the
14 biologists, particularly Mike Amirault,
15 pointed to as secondary plants that are used
16 for nectar resources for the butterflies that
17 are equally as important. So therein lies
18 another concern: The focus was just on the
19 lupine and not at all on these other
20 secondary plants.

21 Q. Were you aware of that correction to the --

22 A. No, I was not aware of that correction.

23 Q. You also mentioned in your testimony that you
24 had, in your most recent testimony, that you

1 had experience in transplanting a lupine
2 patch.

3 A. Yes.

4 Q. How successful was that?

5 A. That was successful.

6 Q. So it can be done.

7 A. It can be done, absolutely. Yeah, this was
8 the Wal*Mart and Sam's Club in Concord.

9 Q. Okay. Do you have any recommendations for,
10 if we approve this, what kind of conditions
11 we could place on granting a certificate to
12 deal with this pretty big change?

13 A. Again, I think due diligence in the field is
14 required prior to finalizing any mitigation
15 plan. As much as they are required, and as
16 much as the conditions of the permit state
17 they are required, I haven't seen the
18 details, other than the avoidance and
19 minimization measures, of how they will
20 address these new findings as they go out
21 into the field and begin their construction.
22 And there's a lot that could be missed as a
23 result of that.

24 So, unfortunately, I don't have specific

1 recommendations without having actually done
2 the field work to see what impacts are going
3 to take place.

4 Q. Okay. Thank you.

5 CHAIRMAN HONIGBERG: Are there
6 other questions from members of the Committee?

7 [No verbal response]

8 CHAIRMAN HONIGBERG: Seeing none,
9 Ms. Pacik, do you have any redirect?

10 MS. PACIK: I do. Thank you.

11 REDIRECT EXAMINATION

12 BY MS. PACIK:

13 Q. Dr. Van de Poll, the last time you were here,
14 you were asked by Ms. Weathersby about soil
15 compaction and whether you were familiar with
16 studies showing that soil compaction can
17 actually result in permanent wetland impacts.

18 In terms of your own observations in the
19 field, have you been able to identify
20 permanent impacts resulting from soil
21 compaction?

22 A. I have.

23 Q. And can you explain that to the Committee,
24 please?

1 A. I provided some information in my prefiled
2 testimony about a site in Rindge along the
3 Eversource right-of-way where a new pole was
4 placed and mats were laid down in a
5 scrub-shrub wetland. I took pictures and
6 added those to the prefiled that indicated
7 some deep ruts in the -- along the access
8 road for that new power pole. And those ruts
9 are transmitting water on about a two- or
10 three-percent slope in a fashion that's very
11 different than the scrub-shrub swamp that was
12 there at one time. So that was my first and
13 most recent indication that there could be
14 some issues.

15 I've also been involved with a number of
16 different projects with deep peatland soils.
17 And one of the tenets of the dredge and fill
18 regulations under RSA 42-A, for example,
19 skidder ruts are actually considered dredges
20 of wetlands. Now, if we were to try and
21 identify how many skidder ruts are out there
22 in the field, I think we'd spend the rest of
23 our lives. It's unreasonable. But the point
24 being that in a number of sites that I've

1 worked at over the last 25 years or so, I've
2 noted that these types of impacts are in fact
3 not perhaps forever, forever, but a long,
4 long-term impact that do things like attract
5 wood frogs to lay eggs in skidder ruts, which
6 then overheat, dry out and kill the natal
7 population of that individual. Well, those
8 are the kind of concerns I had with the
9 Turtle Pond site. And I did a little bit
10 more research.

11 I think Ms. Weathersby asked me about
12 soil compaction studies last time. And the
13 one that was of particular interest was in
14 Ecological Engineering, Volume 39 from
15 February 2012, which was a three-year study
16 noted as "The Legacy of Pipeline Installation
17 on the Soil and Vegetation of Southeast
18 Wisconsin Wetlands," which studied the
19 impacts of a buried pipeline, not unlike
20 burying a transmission line, and how those
21 long-term impacts affected both the soil and
22 the vegetation along that pipeline route. So
23 that's one.

24 The federal government, or the U.S.

1 Forest Service, actually had wetland crossing
2 BMPs that advises people who are doing work
3 in wetlands to avoid soil compaction and
4 avoid the change in hydrology by
5 practicing -- following certain practices.
6 And so they're very attuned to that. And
7 then there's a very good study on soil
8 compaction of wetlands by Lucy Wang, Amber
9 Williams, and Amina Mohamed, that was part of
10 the Department of Resources -- Department of
11 Natural Resources, excuse me, in the midwest.
12 And that also summarized studies. That's
13 sort of a compendium of studies that looked
14 at soil compaction effects of a long
15 transmission line.

16 So there is a little bit out there to
17 take a look at. And that's my point here,
18 simply that I believe those temporary impacts
19 which have a dollar figure attached to them
20 are not necessarily temporary.

21 Q. In terms of Turtle Pond, there were some
22 questions you received about your recent
23 review of it. When you went out, I
24 understand that you -- actually, your boot

1 went down below the water even in winter
2 conditions; is that correct?

3 A. Yes, that's correct.

4 Q. Based on your professional experience, how
5 likely is it, in your opinion, that using
6 matting in the winter will be insufficient to
7 address the wetland impacts over by Turtle
8 Pond?

9 A. I don't believe that it will ever completely
10 freeze over.

11 Q. Okay. In terms of the Army Corps of
12 Engineers, have you worked with the Army
13 Corps of Engineers in the past on some of the
14 projects you've been involved with?

15 A. A number of times, yes.

16 Q. And based on your experience, what type of
17 review of wetlands do they perform? What's
18 the process that they use?

19 A. Depends on the project site and the amount of
20 impacts. And therein lies some of my
21 question before with Mr. Miller [sic] about
22 what the actual details were of their review.
23 But normally it's a walk-through. I don't
24 see data forms being filled out. I don't see

1 soil loggers going in. I don't see plant
2 calculations being done, unless it's a
3 research-based initiative on the Army Corps'
4 part. With all due respect, they're
5 excellent technicians. It's just that
6 they're not hired necessarily to redo a
7 delineation that they're checking in the
8 field. That's typically done by a third
9 party.

10 Q. And, for example, if a wetland was completely
11 missed, such as the one that you found on
12 Appleton Street, they're not going along the
13 entire corridor to see if areas were missed,
14 are they?

15 A. No, they are not.

16 Q. In terms of the original report that you did
17 December 30th, 2016, when you used infrared,
18 in addition to using infrared to identify
19 locations on the list you provided, did you
20 also have some firsthand familiarity with the
21 areas that you were looking at in Concord?

22 A. I did.

23 Q. And how was it that you were familiar with
24 some of those wetland areas?

1 A. The site off Portsmouth Street was the site
2 of a proposed development, and I was asked by
3 Sharon Environmental Consulting to do an
4 endangered species survey of that site. I
5 was out there, I believe it was October --
6 I'd have to look for that exact date -- and
7 walked that power line right-of-way for about
8 300 yards or so from Portsmouth Street.

9 Q. Okay. So you are familiar with some of the
10 areas in Concord.

11 A. That particular place, yes.

12 Q. Okay. And you were criticized for not
13 providing infrared photographs to either
14 apparently the Applicant or the Site
15 Evaluation Committee. In discovery, you did
16 provide information about where they could
17 locate the infrared photographs; is that
18 correct?

19 A. That's correct.

20 Q. And for individuals familiar with wetlands,
21 how hard is it to use the information you
22 provided to actually locate the photographs
23 that you were referencing?

24 A. It's very easy.

1 Q. Okay. And in terms of the GPS unit, Attorney
2 Walker had asked you about the one you used
3 versus the one that Normandeau used.
4 Apparently the one that Normandeau used was
5 more accurate; is that correct?

6 A. Yes.

7 Q. But in terms of wetlands that were completely
8 missed, the accuracy of a GPS wouldn't make a
9 difference in that situation, would it?

10 A. The accuracy -- it depends on the unit being
11 used.

12 Q. But, for example, Appleton Street, they never
13 went to, correct, to even delineate it?

14 A. I'm not aware of their procedure at that
15 location.

16 Q. Okay. But how comfortable are you that the
17 number that you put forth in your testimony
18 is accurate?

19 A. I feel very comfortable. I'll stand by those
20 numbers.

21 Q. Attorney Walker showed you Joint Muni 309,
22 which was your check in June on accuracy of
23 the wetlands. And the one he focused on was
24 Sanborn Road. Sanborn Road, you do agree

1 Normandeau appropriately delineated; correct?

2 A. Correction. And Mr. Walker pointed this out.
3 In that report, I noted that the delineation
4 was not quite correct but that there was no
5 further impact; in other words, the wetland,
6 CD44, went further to the north and west, but
7 it did not go into the area where the
8 transmission pole was going to be impacted.

9 Q. Okay. So there were some inaccuracies. But
10 in terms of impacts from the proposed
11 construction, you were okay with the amount
12 that they estimated?

13 A. Yeah, that is the same.

14 Q. Okay. But Attorney Walker did not reference
15 the other four locations that you looked at,
16 all of which you did find errors at; is that
17 correct?

18 A. Yes.

19 Q. Okay. And he also asked you a question about
20 the fact that this information was provided
21 in November. But you're aware that during
22 the cross-examination of Ms. Carbonneau, the
23 City of Concord actually notified her that
24 you had confirmed during the growing months

1 that they missed locations; is that right?

2 A. Yes.

3 Q. And it's your understanding that they had not
4 gone out at any point to check whether or not
5 those areas were missed?

6 A. As far as I know, no.

7 Q. Okay. And in terms of the DES requirements
8 that further wetland delineation occur during
9 the construction, if the construction occurs
10 during the winter months, how likely is it
11 that the individuals in the field will be
12 able to do that delineation and to assess
13 wetland impacts?

14 A. It's not very likely unless the conditions
15 are suitable and the technician is very good.

16 Q. Okay. So, in terms of that requirement, how
17 comfortable are you with having the Site
18 Evaluation Committee rely on that condition
19 in the DES permit?

20 A. I'm not very comfortable at all.

21 Q. In terms of transplanting lupine, you mention
22 you were successful for a Wal*Mart project.
23 The area that you transplanted the lupine in
24 for the Wal*Mart project, how does that

1 compare to the proposed mitigation parcel
2 being looked at by Northern Pass on Regional
3 Drive for this project?

4 A. It is suitable for supporting lupine, but it
5 will take a number of years for that
6 suitability to pay off. You can't very well
7 just plant a single lupine plant, or even
8 several, and expect them to be immediately
9 occupied by an expanding population that's
10 not behaviorally adapted to that site.

11 Q. And the Regional Drive site, you've been out
12 to that site; correct?

13 A. That is correct.

14 Q. And the condition of that site, it's fair to
15 say, would be rather sandy and needs some
16 rehabilitation work before lupine can grow
17 there?

18 MR. NEEDLEMAN: Mr. Chair, I'm
19 going to object. This is beyond the scope of
20 redirect at this point. This could have been
21 included.

22 CHAIRMAN HONIGBERG: Ms. Pacik.

23 MS. PACIK: The question relates
24 to the ability to regrow lupine. And I think to

1 the extent that Dr. Van de Poll explained that
2 it can be regrown, I think it's important for
3 the Committee to understand what conditions this
4 parcel has versus where he's worked previously.

5 CHAIRMAN HONIGBERG: Yeah, I
6 understand why you would want his testimony in.
7 But why is it appropriate redirect? What
8 questions were asked that you need to -- that
9 are appropriate follow-up on redirect?

10 MS. PACIK: I believe
11 Commissioner Bailey asked the question about
12 whether or not he's been able to regrow lupine
13 in the past successfully.

14 CHAIRMAN HONIGBERG: I don't
15 think that's exactly the question she asked.
16 But you're following up on Commissioner Bailey's
17 questions?

18 MS. PACIK: I am.

19 CHAIRMAN HONIGBERG: All right.
20 You may proceed.

21 BY MS. PACIK:

22 Q. Do you recall what I was asking you, Dr. Van
23 de Poll?

24 A. Yes. Again, I think this site is a suitable

1 site for lupine to grow. But it will take a
2 number of years before it can establish
3 because it requires a certain type of soil
4 condition and a certain type of soil age
5 where the microsia develop in the soil
6 sufficiently to provide the compatible plants
7 with lupine. Lupine doesn't grow by itself
8 in a sandy bank, for example. It takes a
9 while.

10 Q. Okay. Even though you didn't field-check
11 every single location on your list, how
12 confident are you that there are areas in
13 Concord that are more likely than not to have
14 been missed?

15 MR. NEEDLEMAN: Objection. This
16 is just expansive testimony at this point.

17 CHAIRMAN HONIGBERG: Ms. Pacik.

18 MS. PACIK: This is following up
19 on questions from the Site Evaluation Committee
20 about the fact that Dr. Van de Poll did not go
21 out and do a field check on every single
22 question. I think it was Director Way that had
23 asked that particular question.

24 CHAIRMAN HONIGBERG: And what's

1 your question again?

2 MS. PACIK: The question was,
3 even though Dr. Van de Poll did not go out and
4 field-check every area on the list, whether or
5 not he's comfortable that it's more likely than
6 not that other areas were missed.

7 CHAIRMAN HONIGBERG: Yeah, isn't
8 that exactly the same question that has already
9 been asked? I mean, I think we know the answer
10 to the question. I mean, is there any doubt
11 about what he's going to say? That question was
12 probably asked last time, too. Sustained.

13 MS. PACIK: Okay. That's fine.

14 BY MS. PACIK:

15 Q. Dr. Van de Poll, based on your field review,
16 do you have an estimate of how much more
17 extensive the wetland impacts in the city of
18 Concord are as a whole?

19 MR. NEEDLEMAN: Same objection.

20 CHAIRMAN HONIGBERG: Ms. Pacik, I
21 want to hear, "During the questioning, so-and-so
22 asked you X. What else do you need to tell us
23 regarding that issue?"

24 MS. PACIK: Okay. With that, I

1 do think that all of my questions are asked.
2 Let me just doublecheck my notes, please.

3 (Pause)

4 MS. PACIK: I think that's
5 everything. Thank you.

6 CHAIRMAN HONIGBERG: Thank you,
7 Dr. Van de Poll. We appreciate your testimony.

8 WITNESS VAN de POLL: Thank you
9 very much.

10 CHAIRMAN HONIGBERG: We have
11 another witness to get up and in position.
12 We'll go off the record and make that happen.

13 (WHEREUPON, RAYMOND LOBDELL was duly
14 sworn and cautioned by the Court
15 Reporter.)

16 DIRECT EXAMINATION

17 BY MS. MANZELLI:

18 Q. Thank you. Good morning, Mr. Lobdell.

19 A. Good morning.

20 Q. All right. I want to make sure you have your
21 prefiled testimony in front of you. So you
22 should have SPNF 63, which is your
23 December 30, 2016 prefiled testimony. That
24 includes three exhibits. Exhibit 1 is your

1 resume information; Exhibit 2 is the
2 supplement to the draft Environmental
3 Statement; and Exhibit 3 is the June 14, 2000
4 [sic] letter from the EPA. Do you have that
5 before you?

6 A. Yes.

7 Q. And do you also have SPNF 67, which is your
8 April 17th 2017 supplemental prefiled
9 testimony, which includes two exhibits:
10 Exhibit A are select pages from the Army
11 Corps Highway Methodology, and Exhibit B is
12 an example of the Normandeau Wetland
13 Functions and Values. Do you have that
14 before you?

15 A. Yes.

16 Q. Now I want to go over updates to your
17 testimony. You included in your testimony
18 information from the Department of Energy's
19 draft Environmental Impact Statement?

20 A. Correct.

21 Q. Now, I understand you have several updates to
22 your December 30th testimony, SPNF 63, as a
23 result of the Department of Energy publishing
24 the final Environmental Impact Statement as

1 opposed to the draft; is that correct?

2 A. Correct.

3 CHAIRMAN HONIGBERG: Off the
4 record.

5 (Discussion off the record.)

6 BY MS. MANZELLI:

7 Q. Do you see this image on your screen?

8 A. Yes.

9 Q. Okay. This is Applicant's Exhibit 205. Is
10 this the final Environmental Impact Statement
11 that I referenced?

12 A. Yes.

13 Q. So what I put on the screen is what I've
14 marked SPNF 271, which is a cheat sheet with
15 which we have attempted to document the
16 several updates to your testimony to make
17 this update a little bit easier.

18 Now, looking at the cheat sheet, I want
19 to walk through No. 3 as an example. If you
20 were to look at Page 5 of 17 of your
21 December 30, prefiled testimony, at Line 8
22 you said, "The Project calls for 95 acres of
23 wetland impact." Are you with me?

24 A. Yes.

1 Q. Okay. And now what you're doing is you're
2 updating to replace that "95" with "208,"
3 based on the final figures in the final
4 Environmental Impact Statement; correct?

5 A. Correct.

6 Q. And all of your updates that I'm showing here
7 on SPNF 271, all of them are the same. They
8 result from updating figures in the now
9 outdated draft Environmental Impact Statement
10 with the current final Environmental Impact
11 Statement; correct?

12 A. Correct.

13 Q. Have you had a chance to review this cheat
14 sheet, SPNF 271?

15 A. Yes, I have.

16 Q. And is this an accurate summary of all the
17 updates to your testimony?

18 A. Yeah.

19 MS. MANZELLI: So at this point,
20 Mr. Chairman, I'm happy to walk through all of
21 the individual updates if you or any party
22 wishes me to. But to keep things moving along,
23 I'm just as happy to simply file this exhibit
24 and leave it at that.

1 CHAIRMAN HONIGBERG: Yeah, I
2 don't think we need you to do that. Thank you.

3 MS. MANZELLI: Okay. Thank you.

4 BY MS. MANZELLI:

5 Q. Mr. Lobdell, with these updates, do you
6 hereby adopt and swear to your prefiled
7 testimony?

8 A. Yes.

9 Q. All right. I have a couple questions for
10 you. Going back to the final Environmental
11 Impact Statement, and the fact that since you
12 prepared your prefiled testimony the
13 Department of Energy has published its final
14 Environmental Impact Statement, Applicant's
15 205, does that final document versus the
16 draft document reach a different conclusion
17 with respect to what route would be the least
18 impacting route?

19 A. No, I believe the Alternative 4s, which are
20 the bury alternatives, are still the least
21 impacting.

22 Q. I want to talk with you about restoration and
23 replanting stakes. Now, just in terms of the
24 terminology, am I correct to understand that

1 a stake is a woody cutting that you put in
2 the ground to replant for purposes of
3 restoration, just so everybody knows what
4 we're talking about?

5 A. Yes.

6 Q. And are you familiar with the recommendation
7 from the USDA NRCS Engineering Field Handbook
8 for two- to three-foot spacing for live
9 stakes?

10 A. Yes.

11 Q. Are you aware that Ms. Carbonneau testified
12 at the hearing on June 20th of this year that
13 that recommendation does not apply to this
14 project?

15 A. Yes.

16 Q. And do you believe that this recommendation
17 applies to this project?

18 A. Well, it could in some circumstances. The
19 USDA's recommendation is when the vegetation
20 is pretty much absent to the site. And
21 because these dormant stakes have a tendency
22 to die, you put them in at a very high
23 density in hopes that 50 percent or more of
24 them survive.

1 Q. So are you saying that in some cases in this
2 project it could apply and in some cases it
3 may not apply?

4 A. Correct.

5 Q. And tell me specifically what would that
6 depend on?

7 A. Well, it would depend on the amount of
8 disturbance of the site. So if all
9 vegetation was killed or if the bulldozer,
10 excavator, that type of thing had stripped
11 the vegetation, particularly on a stream bank
12 or some sensitive area, then you need to
13 plant a higher concentration than if it was
14 just planting in existing vegetation.

15 Q. And you're aware that the Applicant calls for
16 planting densities of either 500 or 100 per
17 acre; correct?

18 A. Yes.

19 Q. So are you saying in certain circumstances a
20 planting density greater than 500 or 100
21 would be required?

22 A. Yes.

23 Q. And do you see anything in the Application or
24 anything from DES that accounts for the

1 possibility that a greater density might be
2 needed?

3 A. Well, it's very possible with the amount of
4 temporary impacts that are proposed, the mats
5 could be left to the point where the
6 vegetation all dies off, or there could be
7 disturbance on some of the stream crossings.

8 Q. But what I'm asking is -- you've looked at
9 the Application; right?

10 A. Correct.

11 Q. And you've seen the materials from DES,
12 including the March 1st recommendation to
13 approve the various DES permits?

14 A. Yes.

15 Q. Do you see anything in those documents that
16 acknowledges the possibility that a greater
17 planting density might be needed?

18 A. No.

19 Q. I want to talk with you -- I have a couple
20 questions about wetland functions and values.

21 Are you aware that Ms. Carbonneau
22 testified at the hearing on June 16th of this
23 year that, if you have a wetland and that
24 wetland is converted to a different type of

1 wetland, and that wetland is never, ever
2 going to go back to its original condition,
3 it is forever going to remain as that
4 different type of wetland, her testimony was
5 that that is a permanent change, yet not a
6 permanent wetland impact because the size of
7 the wetland would not change. Are you aware
8 of that testimony?

9 A. Yes.

10 Q. And do you agree with that?

11 A. No. I believe a change in the function of a
12 wetland is a permanent impact.

13 Q. And are you aware that Ms. Carbonneau
14 testified at the hearing on June 16th that
15 the primary purpose of performing a Functions
16 and Values Assessment in this case, that the
17 primary purpose in this case was not for
18 avoidance and not for minimization, but it
19 was for mitigation? Are you aware of that?

20 A. I'm aware of it, yes.

21 Q. And do you agree with that statement?

22 A. No. I believe that while functions and
23 values are required for Section 800 of the
24 mitigation in the wetland rules, it's also

1 required under 304.02, the so-called "20
2 Questions," Attachment A of the New Hampshire
3 Wetlands Application, where I believe it's
4 Question 17 asked for functions and values of
5 the total wetland.

6 Q. So, just to kind of go back to basics, the
7 legal requirements with respect to wetlands
8 are threefold: To avoid, to minimize and to
9 mitigate; correct?

10 A. Correct.

11 Q. And are you saying that the Functions and
12 Values Assessment is related to all three of
13 those legal requirements?

14 A. I believe it is, yes.

15 Q. I want to talk about EPA real quickly.

16 In your prefiled testimony you said that
17 others share your opinions. And you cited to
18 the Environmental Impact Statement from the
19 Department of Energy, and to the letter from
20 EPA from the summer of 2016; correct?

21 A. Correct.

22 Q. Since that time, has anyone else shared your
23 opinion?

24 A. The EPA has reinforced it in their second

1 letter, yes.

2 Q. And is this the letter you're referring to?

3 A. Yes.

4 Q. And I've marked that SPNF 268. This is a
5 September 26, 2017 letter on EPA letterhead.

6 And are you familiar with this letter?

7 A. Yes.

8 Q. What's the gist of this letter?

9 A. Well, basically they're saying that the
10 alternative is not the least impacting to
11 wetlands.

12 Q. Meaning the route that is under consideration
13 for this project, EPA feels it is not the
14 least impacting alternative?

15 A. Correct.

16 MS. MANZELLI: I have no further
17 questions for Mr. Lobdell. He is available.

18 CHAIRMAN HONIGBERG: Mr. Pappas.
19 Off the record while Mr.
20 Pappas is coming up.

21 (Discussion off the record.)

22 CHAIRMAN HONIGBERG: Whenever
23 you're ready, Mr. Pappas.

24 MR. PAPPAS: Thank you, Mr.

1 Chairman.

2 CROSS-EXAMINATION

3 BY MR. PAPPAS:

4 Q. Good morning, Mr. Lobdell. I'm tom Pappas.
5 I represent Counsel for the Public.

6 A. Good morning.

7 Q. Let me follow-up on something you just
8 testified about, and that was the live
9 staking. Do you recall that testimony?

10 A. Yeah.

11 Q. And you indicated that in certain areas you
12 believe there is going to be a need for
13 greater plant density than proposed by the
14 Applicants; is that right?

15 A. Yes.

16 Q. Do you have a suggested condition, should
17 this project get a permit, that would provide
18 for the greater density of planting that you
19 think might be necessary?

20 A. No, I think that the USDA standard that was
21 previously mentioned is the highest density
22 necessary, and then the density would vary
23 depending upon the site and the conditions.

24 Q. Do you -- okay. So let me ask you some

1 questions about how the Applicants calculated
2 wetlands.

3 Now, in your prefiled testimony you
4 indicated the Applicants state that there
5 will be 2.5 acres of permanent impacts and
6 139 acres of temporary impacts. Do you
7 recall that?

8 A. Yes.

9 Q. And the temporary impacts mostly relate to
10 either the access roads that will be built to
11 provide construction or the crane pads that
12 will be used to actually build structures.
13 Do you recall that?

14 A. Yes.

15 Q. Okay. And the Applicants only calculated the
16 amount of wetlands impacted by the Project by
17 only looking at wetlands within the
18 right-of-way boundaries; correct?

19 A. Correct.

20 Q. Now, do you agree that a wetland is a unified
21 system?

22 A. It can be, yes.

23 Q. Okay. And if a wetland extends outside the
24 right-of-way, does the entire -- do you think

1 the entire wetland should be evaluated for
2 potential impact as opposed to just the
3 wetland within the right-of-way boundary?

4 A. Yes.

5 Q. Let's go to an example. Is there something
6 on the screen in front of you, sir?

7 A. Yes.

8 Q. What's on the screen is Bates Stamp
9 Page 68115 from Applicant's Exhibit 201. And
10 I want to draw your attention to Parcels 9710
11 and 9709. And if you look, they're on the
12 right-hand side of this map. Do you see, for
13 instance, 9710 on the right-hand side, sort
14 of the top part?

15 A. Could that section be enlarged, please?

16 Q. Yeah.

17 (Pause)

18 Q. So now can you see 9710?

19 A. Yes.

20 Q. And do you see below it 9709?

21 A. Yes.

22 Q. And you see that the right-of-way goes
23 through those two parcels. Do you see that?

24 A. Yes.

1 Q. Or at least it goes through a little bit of
2 one of them. And then do you also see that
3 wetlands are indicated both within the
4 right-of-way that goes through those parcels,
5 as well as extending past the right-of-way on
6 both sides of the right-of-way?

7 A. Yes.

8 (Pause)

9 Q. Okay. Do you have something on the screen in
10 front of you?

11 A. Yes.

12 Q. This is Bates Stamp 67707 from Applicant's
13 Exhibit 200, which is the Alteration of
14 Terrain maps. And we see those same two
15 parcels if you look -- it's a little hard to
16 see, but it's 21033 and 21041. They're the
17 ones in the middle, okay. Can you see that?

18 A. Yeah.

19 Q. All right. So what we're seeing here is
20 those same parcels on the prior map. And you
21 can see the right-of-way and you can see the
22 crane pad and the access road from either
23 side of that crane pad in that wetland area.
24 Do you see that?

1 A. Correct.

2 Q. And we can see where it shows the yellow with
3 the dots that will indicate the use of
4 matting to work in that wetland area. Do you
5 understand that?

6 A. Yes.

7 Q. Okay. Now, there was testimony previously
8 that within the right-of-way, 5.3 acres of
9 wetland would be included, but the whole
10 wetland area is approximately 25 acres. I'll
11 represent to you that was Mr. Berglund's
12 testimony earlier in this proceeding. And
13 there's also been testimony, and you can see
14 from the map, that what will be done in this
15 right-of-way is, after the access roads are
16 built, they'll be removing an existing
17 transmission line, relocating that line and
18 then also constructing the Northern Pass
19 transmission line within this section of the
20 right-of-way. Do you understand that?

21 A. Yes.

22 Q. Now, is it your view that wetlands outside of
23 the right-of-way in this area, for instance,
24 will also be impacted in addition to any

1 impacts to wetlands within the right-of-way?

2 MR. NEEDLEMAN: Objection. This
3 is in the testimony, and it's just an expansion
4 of things that could have easily been there.

5 CHAIRMAN HONIGBERG: I'm kind of
6 assuming that Mr. Pappas is setting something
7 up.

8 MR. PAPPAS: I am, and the next
9 question is -- this is the setup for the next
10 question.

11 CHAIRMAN HONIGBERG: The next
12 question is the punch line.

13 MR. PAPPAS: You got it.

14 A. I cannot tell without -- from the information
15 provided whether there would be any impact to
16 this wetland beyond the right-of-way.

17 BY MR. PAPPAS:

18 Q. Okay. Let me ask you this question: Based
19 on your experience and knowledge and your
20 work on this project, do you have an estimate
21 or order of magnitude of the amount of
22 additional wetlands that would be impacted
23 beyond the right-of-way? 'Cause you
24 testified that you believe there will be

1 impacts beyond the right-of-way, and I want
2 to know whether you have an estimate or order
3 of magnitude of what those additional impacts
4 would be.

5 MR. NEEDLEMAN: Same objection.
6 This could have easily been included in the
7 testimony. And I also don't believe it's
8 relevant, separately.

9 CHAIRMAN HONIGBERG: Mr. Pappas.

10 MR. PAPPAS: Well, I think it's
11 certainly relevant. He testified, and other
12 witnesses testified, that the impacts will be
13 beyond the right-of-way. So in order for the
14 Committee to understand the full impacts to
15 wetlands, I think they need to find out what
16 this witness knows or believes to be those
17 impacts. And he testified that the impacts will
18 extend beyond the right-of-way, so I think it's
19 appropriate to ask him whether he has an
20 estimate of the amount.

21 CHAIRMAN HONIGBERG: And this was
22 not in his original testimony?

23 MR. PAPPAS: I don't believe he
24 quantified in his original testimony, and that's

1 what I'm asking him to do, if he can quantify.
2 My recollection is he testified that there will
3 be impacts, but I don't recall quantification.
4 So that's my question, whether he has quantified
5 it.

6 CHAIRMAN HONIGBERG: Overruled.
7 He can answer.

8 BY MR. PAPPAS:

9 Q. Do you recall the question?

10 A. Repeat the question, please.

11 Q. Sure. Based on your work in this case, your
12 experience and knowledge, do you have an
13 estimate or some order of magnitude for the
14 amount of additional wetland impacts beyond
15 impacts within the right-of-way?

16 A. No.

17 Q. Okay. Let me ask you just a few questions
18 about how the Applicants evaluated wetlands.

19 Now, on the screen in front of you is
20 Counsel for the Public's 665, which is a copy
21 of the Army Corps of Engineers Highway
22 Methodology Workbook. Do you see that?

23 A. Yes.

24 Q. You're familiar with this workbook; are you

1 not?

2 A. Yes.

3 Q. And the methodology used in this workbook is
4 used for permitting under various
5 environmental statutes; is that right?

6 A. Yes.

7 Q. And I believe you testified earlier that that
8 methodology is considered industry standard?

9 A. Yes.

10 Q. Yeah. And would you agree with me that the
11 Applicants used or claimed to use this
12 methodology in this workbook to evaluate the
13 wetlands within the right-of-way?

14 A. Yes.

15 Q. Now, in your prefiled testimony, you detailed
16 how you believe the Applicants misapplied the
17 methodology, so I don't need to walk you
18 through it because the Committee can read it
19 in your prefiled testimony.

20 A. The question is?

21 Q. I'm going to get there when I turn the page.
22 Trying to save a little time.

23 Let me just ask just a couple other
24 setup questions, if you will.

1 A. Sure.

2 Q. You also talked about the form, and you
3 attached it to your testimony that goes along
4 with this workbook; correct?

5 A. Correct.

6 Q. And you attached the form that the
7 Applicant's consultant, Normandeau, used. Do
8 you remember that?

9 A. Yes.

10 Q. Now, Normandeau's form didn't use two parts
11 of the Army Corps of Engineers' forms. Do
12 you recall that?

13 A. Well, I recall that what I focused on
14 primarily was the fact that there was not a
15 Rationale section for their determination of
16 what functions and values the wetlands had.

17 Q. Okay. Let me do this. What's on the screen
18 now is Counsel for the Public Exhibit 666.
19 Do you see that?

20 A. Yes.

21 Q. And this is the Wetlands Function and
22 Valuation Form that is part of the Army
23 Corps' methodology; correct?

24 A. Correct.

1 Q. And it has a section for Rationale. Do you
2 see that?

3 A. Yes.

4 Q. It also has a section for Comments. Do you
5 see that?

6 A. Correct.

7 Q. And it has the various functions and values,
8 and next to each function and value there's a
9 place for rationale and a place for comments;
10 correct?

11 A. Correct.

12 Q. Okay. What's on the screen now is Counsel
13 for the Public Exhibit 667, which is the form
14 that Normandeau Associates created for the
15 Northern Pass Project; correct?

16 A. Correct.

17 Q. And if you look at this form, they have a
18 listing of the functions and values, but they
19 don't have the two columns we just saw on the
20 Army Corps of Engineers form for rationale
21 and comments; correct?

22 A. Correct.

23 Q. Now, first let me ask you: Have you ever
24 seen in a project that you've been involved

1 with that used the Army Corps of Engineers
2 methodology, but did not use the Army Corps
3 of Engineers form, but instead used a form
4 similar to the Normandeau form?

5 A. Yes.

6 Q. You've seen other people --

7 A. Or, no forms at all.

8 Q. No forms at all?

9 A. Right.

10 Q. And have you seen people use -- well, let me
11 back up for a minute.

12 Have you seen people claim to follow the
13 Army Corps of Engineers methodology but not
14 use their form?

15 A. Yes. I do so myself.

16 Q. Okay. And when you do that, do you follow,
17 nonetheless, the methodology listed in the
18 Army Corps of Engineers handbook?

19 A. Yes, and I also place the rationales I use
20 for determining what functions are involved
21 with that wetland.

22 Q. So would I be correct in saying that whether
23 or not you use the Army Corps of Engineers
24 form, you address all of the items that we

1 saw on the form, such as rationale?

2 A. Right.

3 Q. Okay. Tell us briefly why it's important or
4 the purpose of having the Rationale column
5 and the Comments column, or at least
6 including that information in the valuation.

7 A. Well, it's important because the reason for
8 doing the entire assessment is to determine
9 the functions and values of the wetland
10 you're assessing. And without knowing what
11 those rationales are for determining whether
12 that function or value exists, it's difficult
13 to understand the true value.

14 Q. Okay. So, in the Normandeau evaluation they
15 determined that there was two percent of high
16 quality wetlands. Do you recall that?

17 A. Yes.

18 Q. Now, do you believe that the Applicant's, as
19 you describe, "misuse" of the Army Corps of
20 Engineers methodology resulted in rating too
21 few wetlands as "high quality" wetlands?

22 A. Well, the Corps methodology does not
23 recommend adding up all of the various
24 functions and values and putting a numerical

1 rating on it and coming up with a overall
2 numeric number for the wetland. And that's
3 what was done in this case, where I believe
4 they set up a point system where each
5 function that it had got one point, principal
6 functions got two points, and if a wetland
7 had 14 points, it was rated as "high
8 quality." And that, in my opinion, is a
9 misuse of the system because they don't --
10 the Corps does not recommend putting those
11 numbers on it to come up with a total number.

12 Q. And do you believe that by employing that
13 misuse of the system, it resulted in rating
14 too few wetlands as "high quality" wetlands?

15 A. Yes, I do, because a wetland can have just
16 one function that's very important and it has
17 high function in that value or in that
18 function. And so the wetland can be very
19 valuable, but it wouldn't show up under this
20 system as in their list of high quality
21 wetlands.

22 Q. Okay. Now, based on your experience,
23 knowledge and work in this case, do you have
24 any estimate or order of magnitude of the

1 amount of high quality wetlands that might be
2 present as opposed to the two percent?

3 A. Well, I've done a number of town-wide wetland
4 assessments, and I think the number will be
5 substantially higher. And if we look at the
6 Fish & Game's Wildlife Action Plan and the
7 wetlands shown in that, about 50 percent of
8 the wetlands ranked as having "high" value
9 habitat. So I think that we could -- I could
10 say professionally that I think that two or
11 three percent of the wetlands that ranked as
12 "high" value was very, very low.

13 Q. Do you have a range of what you would expect
14 to find for high quality wetlands?

15 A. No, I don't.

16 Q. But you think it's significantly higher than
17 two percent.

18 A. Certainly.

19 Q. Let me ask you a few questions about the
20 Applicant's testimony about temporary
21 impacts.

22 Now, the Applicant, as we indicated
23 earlier, estimated that 139 acres of wetlands
24 within the right-of-way would be temporarily

1 impacted. Do you recall that?

2 A. Yes.

3 Q. All right. Now, the Applicant's estimate is
4 not based on field work; correct? Didn't
5 they -- isn't the estimate based on county
6 soil surveys?

7 A. No. I believe the 139 acres you mentioned
8 was based on field delineation of the wetland
9 according to the Application. What was
10 estimated, I believe using the county soil
11 surveys, was the amount of very poorly
12 drained soils within that 139 acres.

13 Q. Thank you for that correction.

14 So, do you know when the county soil
15 surveys that the Applicant used, when the
16 data was collected for those?

17 A. Yes, it was probably in the '70s and '80s,
18 and probably went into the '90s.

19 Q. Okay. And do you believe that that data is
20 still as current enough today, or at least
21 current enough in 2015 to be relied upon as
22 the Applicant relied upon it?

23 A. I believe that at the scale and level it's
24 at, it's accurate. But the maps are produced

1 at 1 inch equals 2,000-foot scale, so that
2 the accuracy is not that great. And they
3 also cannot show small wetlands or small
4 hydric soil mapping units on those maps.

5 Q. Okay. Do you think that more data is
6 necessary in order to accurately provide that
7 estimate?

8 A. Yes.

9 Q. Give us an example of some additional data
10 that would be necessary.

11 A. Well, for example, in the public soil survey,
12 there's groupings of soils. So, particularly
13 in the rural areas and the mountainous areas,
14 the soils can be grouped and not separated
15 out. So there could be poorly drained
16 mineral soils grouped with very poorly
17 drained soils in the same mapping unit. So
18 you wouldn't be able to split out what's very
19 poorly drained and what's poorly drained.

20 From a more detailed standpoint, there
21 are site-specific soil surveys that are
22 required by AOT in their application process
23 that would, at a very high level of detail,
24 map out the poorly drained, very poorly

1 drained, and non-wetland soils on a
2 development site.

3 Q. Thank you.

4 Let me just ask you a few questions
5 about the Applicant's proposed restoration.
6 Now, would you agree that temporary impacts
7 to wetlands can last for a number of years?

8 A. They could, yes.

9 Q. Okay. And the Applicants, in their proposed
10 restoration, did not provide site-specific
11 restoration plans; is that correct?

12 A. Correct.

13 Q. And the Applicants also did not provide any
14 site-specific information on existing
15 conditions of the wetlands within the
16 right-of-way; is that right?

17 A. Not in each specific plan for each site, no.

18 Q. For instance, they didn't provide existing
19 elevations or existing soils or existing
20 hydrology; is that right?

21 A. Correct.

22 Q. Okay. Now, in your opinion, can
23 environmental monitors effectively monitor
24 the impact from construction without this

1 site-specific information?

2 A. Well, I'm not sure how you can tell a site
3 has been restored to the pre-existing
4 conditions if you don't know what the
5 conditions are before you start.

6 Q. So, in other words, in order for the
7 environmental monitors to determine if the
8 restorations were successful, they would need
9 to know what they looked like before.

10 A. Correct.

11 Q. Now, without this information on existing
12 conditions, could some restoration efforts
13 be, in fact, counterproductive?

14 A. It's possible.

15 Q. Could that then lead to permanent damage
16 rather than actually restoring?

17 A. Probably not. But it probably would not lead
18 to the wetland being restored to its
19 pre-existing condition or to its pre-existing
20 functions and values.

21 Q. All right. Let me ask you some questions on
22 a final topic. The Applicant proposes to
23 work on some wetlands when they are frozen.
24 Do you recall that?

1 A. Yes.

2 Q. And in your prefiled testimony, you expressed
3 concern that some areas of wetlands may be
4 frozen, while other areas are not frozen. Do
5 you recall that?

6 A. Yes.

7 Q. And you indicated that working in those
8 conditions could result in permanent damage
9 to wetlands. Do you recall that?

10 A. Yes.

11 Q. Based on your experience, is there a time of
12 year when there should be no work in wetlands
13 in order to avoid this condition where you
14 have a concern about part of the area is
15 frozen and part of the area is not frozen?

16 A. Well, I have observed the most impact to
17 wetlands during what we call mud season,
18 which is the time of the year when the frozen
19 ground is thawing, and it goes back from
20 frozen to thaw, frozen to thaw. But in terms
21 of putting a calendar date on it, I can't.
22 And it would probably vary dramatically from
23 Pittsburg to Deerfield.

24 Q. I suspect it would. But in your experience,

1 that's the time when you've seen the most
2 damage because of this condition we're
3 talking about?

4 A. Yes. Not just damage to wetlands, but also,
5 in general, erosion and sediment problems as
6 well.

7 Q. All right. Is it your opinion that if a
8 condition could be framed that would avoid
9 work in mud season in any particular area,
10 would you think that that would be an
11 appropriate condition to avoid the damage
12 that you've expressed concern about?

13 A. Yes.

14 Q. Thank you, Mr. Lobdell. I have no other
15 questions.

16 CHAIRMAN HONIGBERG: Let's take a
17 ten-minute break before we resume with the
18 intervenors.

19 (Recess taken at 10:52 a.m., and the
20 hearing resumed at 11:10 a.m.)

21 CHAIRMAN HONIGBERG: Ms. Menard,
22 whenever you're ready.

23 CROSS-EXAMINATION

24 BY MS. MENARD:

1 Q. Good morning, Mr. Lobdell. I'm Jeanne
2 Menard, representing the Deerfield Abutter
3 Group.

4 MS. MENARD: And I'm going to
5 ask, Gretchen, are you available to come forward
6 to run the ELMO?

7 BY MS. MENARD:

8 Q. So, to get started, Mr. Lobdell, in your
9 supplemental testimony you stated that
10 Eversource underestimated the number of all
11 high quality wetlands; correct?

12 A. Yes.

13 Q. If you would, this is a summary sheet from
14 Applicant's Exhibit 1. It's Page 138 from
15 Appendix 31. And I'll give you a range of
16 the Bates numbers. I don't have the exact
17 number, but it's in the range of 21207.

18 Just a quick example. This is a wetland
19 in Deerfield, DF 7. And if you quickly go
20 across to the primary functions and the other
21 values within this particular wetland, you
22 had explained and gone through in your
23 testimony how the ranking system -- 2 for
24 primary and 1 for other values, so 14 was the

1 number to achieve --

2 A. Yes.

3 Q. -- in order to obtain that "high" value
4 ranking. And you can see here the number of
5 this particular wetland would be far in
6 excess of 14. So this was incorrectly
7 labeled as not a "high quality" wetland.
8 Would you agree with that?

9 A. I'll take your word for it, yeah.

10 Q. So my question to you is: What's the
11 consequence, you know, from your project
12 impact analysis? Why does this matter, you
13 know, in terms of -- I got the sense from
14 your earlier conversation with Mr. Pappas
15 that you were concerned with a number of
16 wetlands not even being included for
17 valuation as opposed to not making correct
18 totals on those wetlands. Is that a fair
19 assessment?

20 A. No. I was -- my issue is with the functions
21 and values being done only on the wetlands
22 within the right-of-way and not including the
23 wetlands outside of the right-of-way, which
24 is critical in determining some of the

1 functions based on the rationales in the
2 Corps highway manual.

3 Q. So in this particular example, does it
4 matter -- why does it matter that the
5 functions and values are not properly
6 identified for any given wetland?

7 A. Well, I think with any wetland, if you can
8 determine that the wetland is a
9 high-functioning wetland, then the attempts
10 to avoid and minimize should be greater.

11 Q. Okay. Okay. Thank you.

12 So would you agree that the ranking of
13 the wetlands, along with the ranking of the
14 habitats, was used by the Applicants in order
15 to select appropriate mitigation parcels?

16 A. Well, one of the reasons for doing the
17 highway methodology under mitigation is to
18 try to assure that the mitigation actually
19 compensates as much as possible for the
20 functions and values that are lost by the
21 Project.

22 CHAIRMAN HONIGBERG: Off the
23 record.

24 (Discussion off the record)

1 BY MS. MENARD:

2 Q. So what I'm about to put up, and the next two
3 exhibits are just for illustrative purposes
4 to set up the ultimate question here --

5 MS. MENARD: If you'd flip that
6 over, Heather, so people know where this is
7 coming from.

8 BY MS. MENARD:

9 Q. This is a newsletter from Forward New
10 Hampshire that was sent out in July of 2017.
11 And as an abutter to the right-of-way, we
12 received this in the mail.

13 So, on the second page there is a
14 reference to the parcels that are being
15 selected as part of the mitigation package.
16 And you can see the two closest to Deerfield
17 from this particular selection. There's a
18 property in Pembroke that's 87 acres, and you
19 can see it has a highest ranking habitat.
20 And then there's a seven-acre parcel in
21 Concord similarly; the Pine Barrens has that
22 same ranking.

23 So, on the next exhibit, just from a
24 general overview, you can see Deerfield is

1 labeled in the middle there. And to the east
2 the right-of-way passes through this area.
3 The Deerfield Abutter -- I'll represent to
4 you the Deerfield Abutter block encompasses
5 close to 400 acres. And you can see from the
6 coloring in that general area, the highest
7 ranked habitat in New Hampshire, and it also
8 has the highest ranked habitat in the
9 biological region as identified by the
10 Wildlife Action Plan of 2015.

11 So my question is: If a wetland carries
12 a primary function for endangered species --
13 and you had used that as an example in your
14 supplemental testimony -- but if it's not
15 avoided and if there aren't any local
16 mitigation parcels nearby, would it be
17 reasonable to assume that the endangered
18 species would be affected over time, from a
19 population standpoint?

20 A. Well, I'm not a wildlife biologist, so I
21 can't answer that in detail. But I would say
22 that if a wetland impact is directly
23 impacting a function such as wildlife habitat
24 or an endangered species, then an attempt

1 should be made to mitigate, if not on site,
2 then within the watershed.

3 Q. And if they don't -- that's the attempts.
4 But if there aren't parcels that are secured
5 to provide that, you know, just do a
6 substitute for that resource, in effect,
7 would you expect there to be some long-term
8 impacts to the population?

9 A. Yes. If they were reducing the habitat of
10 the particular endangered species, yes.

11 MR. IACOPINO: Ms. Menard, does
12 that exhibit have a number assigned to it?

13 MS. MENARD: No. I felt it best
14 not to. And I'll take advisement here. The
15 Wildlife Action Plan maps are not intended to be
16 used in legal matters. And so --

17 MR. IACOPINO: It's up to you.

18 MS. MENARD: -- I didn't want to
19 be in violation of their -- it's stamped right
20 on here, "not intended for legal use." So I
21 wanted to just be general in identifying the
22 areas but not misuse the information.

23 MS. MANZELLI: If I may, it would
24 be helpful, as the sponsor of this witness, it

1 would be helpful if these documents could be
2 marked for the record.

3 MS. MENARD: I'm happy to --

4 MR. IACOPINO: Do you know what
5 your next numbers are?

6 MS. MENARD: -- identify this as
7 Deerfield Abutter Exhibit 171.

8 MS. BRADBURY: That would be 172,
9 Jeanne. 171 is used.

10 MS. MENARD: Thank you. 172.

11 MR. IACOPINO: Thank you.

12 MS. MANZELLI: And the prior
13 exhibit?

14 MR. IACOPINO: I thought the
15 prior one was from the Application, wasn't it?

16 MS. MENARD: No, this is a
17 newsletter, and this could be identified as 173,
18 Deerfield Abutter 173.

19 MR. IACOPINO: Thank you.

20 MS. MENARD: Thank you.

21 BY MS. MENARD:

22 Q. And last topic, Mr. Lobdell. Are you aware
23 that Eversource has made a \$3 million
24 commitment for purposes, in part, to support

1 scientific research, and specifically to
2 offer protection and educational programs
3 associated with endangered species?

4 A. No, I'm not aware.

5 Q. Okay. What we have here is Applicant
6 Exhibit 124. And these are minutes that were
7 posted. This was an August supplemental
8 submission over the summer, this information.

9 MS. MENARD: And if we could take
10 a look at the second page, Gretchen.

11 BY MS. MENARD:

12 Q. The Fish & Game is indicating that Eversource
13 is going to be working on a vegetative
14 management plan specifically focused on rare,
15 threatened and endangered species.

16 And lastly, Page 3 is the topic for you,
17 Mr. Lobdell. On their work with the
18 Vegetative Management Plan, they're seeking
19 to look to Massachusetts because of their
20 already well-established management plans.
21 Are you aware that in Massachusetts they have
22 a Massachusetts Endangered Species Act that
23 provides some regulatory teeth to their
24 management plans regarding habitats, wetland

1 habitats and upland habitats?

2 A. No. I do not work in Massachusetts.

3 Q. Okay. Thank you. That's all I have.

4 CHAIRMAN HONIGBERG: Ms. Draper.

5 CROSS-EXAMINATION

6 BY MS. DRAPER:

7 Q. Good morning. I'm Gretchen Draper, and I'm
8 part of the Pemigewasset River Local
9 Advisory Committee. And I have one question
10 about wetlands.

11 We've heard about wetlands that are
12 under a federal reserve program. Are you
13 familiar with that? There's one up in Stark,
14 I believe, and also one in Deerfield. They
15 have gone through to have them certified
16 under a federal program. And I was just --
17 my question, if you're not familiar -- you're
18 not. Okay. My question was whether or not a
19 federal program would have any significant
20 differences in identifying wetlands other
21 than what we do in the state of New
22 Hampshire.

23 A. Well, there is a federal definition for
24 wetlands, and New Hampshire uses that, as

1 most states do. So I assume it's a federal
2 program and they're using that same
3 definition.

4 Q. All right. Thank you.

5 CHAIRMAN HONIGBERG: Since no
6 other intervenor groups have questions -- wait.
7 I see Ms. Pastoriza's hand go up.

8 MS. PASTORIZA: I have just one
9 question.

10 CROSS-EXAMINATION

11 BY MS. PASTORIZA:

12 Q. So, inasmuch as you spoke to burial, were you
13 assuming that those burial routes under roads
14 were previously disturbed terrain?

15 A. I'm sorry. I'm having trouble understanding
16 the question.

17 Q. Inasmuch as you spoke to burial in your
18 testimony, the alternative of burial under
19 roads, were you assuming that those roads
20 were previously disturbed terrain?

21 A. Could you -- I'm sorry. I'm going to have to
22 put these on. I can't understand the
23 question.

24 (Pause in proceedings)

1 A. If you could repeat that again, I'd
2 appreciate it.

3 Q. Inasmuch as you spoke to burial under roads
4 as an alternative, were you assuming that
5 those roads were previously disturbed
6 terrain?

7 A. Not necessarily.

8 Q. So what was your assessment of the roads in
9 terms of degrees of disturbance?

10 A. I am not -- again, I'm not clear. Which
11 roads are we speaking of now?

12 Q. Any roads.

13 A. In the right-of-way?

14 Q. Yes.

15 A. Okay. I didn't assume any level of
16 disturbance of those roads. I was
17 treating -- the temporary impacts were all
18 treated the same in terms of existing
19 disturbance. The restoration would have to
20 be and is defined by state statute as
21 "restoring the wetland to the pre-existing
22 condition." So, whatever the condition is at
23 the time of the temporary impact, that would
24 be the condition that it would have to be

1 restored to.

2 Q. And your assessment of the impacts is
3 incomplete because it did not include the
4 surrounding wetlands that would also apply to
5 the burial route?

6 A. Well, yes. If there were impacts to wetlands
7 along the burial route, they would have to be
8 restored.

9 Q. And the shortfall of the study, in terms of
10 not including wetlands outside of the Project
11 boundary, that would also apply to the buried
12 route?

13 A. Yes, in terms of functions and values,
14 assessing functions and values, yes.

15 Q. Thanks.

16 CHAIRMAN HONIGBERG: Anyone else?
17 Mr. Walker.

18 CROSS-EXAMINATION

19 BY MR. WALKER:

20 Q. Good morning, Mr. Lobdell. We've met. My
21 name is Jeremy Walker, and I am counsel for
22 the Applicant. Just a few things today.

23 In reaching your conclusion and your
24 opinions in this matter, you did not do any

1 field work in this case; right?

2 A. I did not.

3 Q. You did not go out and question any of the
4 delineations of the boundaries by Normandeau
5 in this case?

6 A. No, I did not.

7 Q. And I take it from your prefiled testimony
8 that the gist of your opinion is that the
9 route proposed by the Applicant is not the
10 one with the least impact to wetlands;
11 correct?

12 A. Correct.

13 Q. And that's because it's not buried through
14 existing highway corridors through the route.

15 A. Correct.

16 Q. And earlier Ms. Manzelli asked you about the
17 final EIS issued in this case. And I take it
18 you reviewed that?

19 A. Yes.

20 Q. And you would agree with me that the
21 Department of Energy has found that the
22 alternative proposed by the Applicant in this
23 case is the Agency's preferred alternative;
24 correct?

1 A. Yes, but I'm not sure it's the least -- they
2 determined that it was the least impacting to
3 wetlands.

4 Q. Right. In fact, their analysis considers
5 practicability, correct, and feasibility?

6 A. Yes.

7 Q. You did not consider that in rendering your
8 opinion about burying this throughout the
9 entire corridor and under existing highway
10 corridors. You did not consider feasibility;
11 right?

12 A. Well, I did not consider the economics of it.
13 In terms of practicability, the technology
14 and logistics seem to be there to allow for
15 burial along the entire route.

16 Q. But you did not consider costs or
17 practicability or feasibility associated with
18 that.

19 A. I did not consider costs.

20 Q. And the DES wetland rules, which I'm sure
21 you're familiar with, relating to avoidance,
22 minimization and mitigation techniques
23 require that potential impacts have been
24 avoided to the maximum extent practicable;

1 right?

2 A. Correct.

3 Q. You've reviewed the DES's permit in this
4 case?

5 A. Yes.

6 MR. WALKER: And Dawn, if you
7 could pull up Exhibit 75, please, Applicant 75.
8 It's Bates 44453.

9 BY MR. WALKER:

10 Q. Mr. Lobdell, the highlighted section which
11 Dawn will blow up, you would agree with me
12 that the DES has determined that the
13 Applicant has provided evidence which
14 demonstrates that this proposal is the
15 alternative with the least adverse impact to
16 areas within its jurisdiction; correct?

17 A. Yes.

18 Q. And that's wetlands; correct?

19 A. Yes.

20 Q. Have you testified before this Committee
21 before?

22 A. Yes.

23 Q. And I'm correct that you have submitted
24 testimony to this Committee on a project

1 called the Granite Reliable Wind Project; is
2 that right?

3 A. Correct.

4 Q. And in that case you were engaged by the
5 developer of that project; right?

6 A. I was a subcontractor to the engineering firm
7 engaged by the developer.

8 Q. Now, that project -- and I reviewed the
9 docket in that case. That project included
10 33 wind turbines, each with a height of about
11 410 feet, along with a substation and a
12 5.8-mile-long transmission corridor; correct?

13 A. Correct.

14 Q. And the proposal was the transmission line
15 was above ground.

16 A. Yes.

17 Q. And you recall that above-ground corridor
18 traveled adjacent to an existing roadway,
19 Dummer Pond Road?

20 A. Yes.

21 Q. Do you recall in your testimony in that case
22 there was some discussion as to whether the
23 proposed project was the one that had the
24 least impact to wetlands on the site?

1 A. Correct.

2 MR. WALKER: And Dawn, if you
3 could pull up --

4 BY MR. WALKER:

5 Q. I've read through your prefiled testimony
6 before this Committee, and it is -- we have a
7 copy of that transcript. It's Applicant's
8 Exhibit 501.

9 MR. WALKER: And in particular I
10 want to focus, Dawn, on Page 141.

11 BY MR. WALKER:

12 Q. And Mr. Lobdell, for your benefit, if you
13 look at the middle of the page, and it
14 actually starts with the line No. 1 -- and
15 I'll give you a minute to refresh yourself
16 with that testimony.

17 (Witness reviews document.)

18 Q. Actually, you were asked a question about the
19 DES rules. And there was a question, "The
20 second item on this list, on DES rules, is
21 'the alternative proposed by the Application
22 is the one with the least impact to wetlands
23 and surface waters on site.'" And you were
24 asked, "Do you know how extensive an analysis

1 was done to evaluate that?"

2 And you responded, "No. But in the
3 findings of DES, they found that the
4 Application was sufficient to meet that
5 standard."

6 And your follow-up question is, "Do you
7 have any comment about the extent of support
8 to that point that was offered by the
9 Applicant to DES?"

10 And you answered that, Mr. Lobdell, and
11 said, "Well there are a number of avoidance
12 and minimization efforts as part of this
13 project. First of all, using the existing
14 roads as much as possible to reduce impacts."
15 And then it goes on, "As I said, citing [sic]
16 the turbines out of the wetland
17 areas, minimizing the new road impacts by,"
18 and if you could go to the next page, please,
19 "designing to the minimum standard, avoiding
20 going through a wetland whenever possible,
21 those types of things."

22 Now, in this case you did not recommend
23 that the transmission corridor be buried;
24 correct?

1 A. Correct.

2 Q. And the DES did not find that it had to be
3 buried; correct?

4 A. Correct.

5 Q. Seems that your testimony here is
6 inconsistent with your testimony in that
7 case; is that fair to say?

8 A. Well, the issue of burial, as I recall, never
9 came up in this process, and I wasn't even
10 aware. I'm not an engineer. I don't know
11 the technology involved in doing that. So it
12 never came up as an issue for me as an
13 option.

14 Q. And you didn't recommend burial in that case.

15 A. No.

16 MR. WALKER: Thank you. Nothing
17 further.

18 CHAIRMAN HONIGBERG: Members of
19 the Committee have questions? I see Mr.
20 Wright's hand go up.

21 QUESTIONS BY SUBCOMMITTEE MEMBERS AND SEC COUNSEL:

22 BY DIR. WRIGHT:

23 Q. Good morning, Mr. Lobdell.

24 A. Good morning.

1 Q. Could you help me clarify something you said.
2 It was regarding, I think during Mr. Pappas's
3 questioning, regarding the live stakes for
4 restoration. And you indicated that USDA had
5 some recommendation of spacing of two to
6 three feet. And then I heard what the
7 Applicant was proposing was either 100
8 plantings per acre or 500 plantings per acre.
9 Could you correlate those two for me. Is
10 there -- in other words, what does two or
11 three feet equal in terms of number of
12 plantings per acre? Do you have that
13 calculation in your mind?

14 A. I don't have a calculator with me.

15 Q. Okay. I was just trying to understand --

16 A. But it's much more dense.

17 Q. It's much more dense. That's what I figured.
18 I was just trying to get a ballpark figure,
19 if you knew.

20 A. Yeah.

21 Q. Okay. I guess I can figure that out later,
22 hopefully.

23 Couple other questions. You obviously
24 expressed a lot of concerns regarding some of

1 the methodologies used here in the
2 Application regarding, like, wetland impacts
3 beyond the right-of-way and wetlands ratings.
4 And we know DES issued its four sets of
5 conditions. Do you feel that DES erred or
6 made mistakes in issuing those conditions?
7 And if it calls for a legal conclusion, I
8 apologize. Do you think DES erred in terms
9 of its rules and regulations and statutes in
10 its final conditions?

11 A. Well, I disagree with their conclusions.
12 Whether it's a legal error or not I can't
13 say. But I certainly disagree with what
14 they --

15 Q. So from a technical standpoint, you disagree
16 with the findings.

17 A. Yes.

18 Q. Okay. And just one other area. You've
19 worked with DES and Fish & Game before, I
20 assume, on other construction projects in the
21 state?

22 A. Yes, I've done hundreds of wetlands
23 applications.

24 Q. Do you feel that DES and Fish & Game, and in

1 conjunction with environmental monitors, can
2 successfully monitor the construction and
3 restoration from this project if it were to
4 move forward?

5 A. I have a real -- some real concerns.

6 Q. And what's the basis of your concerns?

7 A. Well, my concerns are with regard to the
8 temporary impacts, the fact that there were
9 no site-specific restoration plans for over
10 800 individual restoration sites. So we
11 don't know what the existing topography,
12 elevation, other conditions, hydrology, all
13 of it is in these restoration areas. So the
14 monitors, who would actually have to act as
15 design people to actually design the
16 restoration and do the inventory necessary
17 prior to construction -- so it's a lot more
18 than monitoring that's being required.

19 Q. Are those things you're describing things
20 you've seen done in other projects, or is
21 this consistent with what you've seen in
22 other projects?

23 A. Yes, in most of the restorations I've been
24 involved in, there has to be a restoration

1 plan, not just a list of BMPs and plantings
2 and that type of thing. There actually has
3 to be a plan of what's there before the
4 restoration occurred. And if you don't know
5 what that is, then you have to estimate it
6 and the fact of many wetland violations. But
7 in this case it's not a violation. You are
8 able to go out and assess what the existing
9 conditions are.

10 Q. So if the Project were to move forward,
11 that's something you think we should consider
12 requiring, if we were to approve the Project,
13 is a filing of those restoration plans to DES
14 or somebody else?

15 A. Well, I think it should have been done by now
16 in order to assess, to truly assess the
17 impacts. My concern is with the 42 acres
18 that they say are very poorly drained,
19 organic soils, which can compress very easily
20 and are very sensitive and can be impacted,
21 and those impacts are very difficult to
22 restore, that I think has a great deal to do
23 with whether the Project is approvable with
24 the existing route.

1 Q. Okay. Thank you.

2 CHAIRMAN HONIGBERG: Commissioner
3 Bailey.

4 QUESTIONS BY COMMISSIONER BAILEY:

5 Q. Good morning.

6 A. Good morning.

7 Q. In your direct testimony filed in December of
8 2016, on Page 16 you talk about the fact that
9 the Presidential Permit also has to make
10 findings about wetlands and water resources
11 as part of their consideration in granting
12 the permit.

13 A. Correct.

14 Q. And they've since granted the permit. So do
15 you think -- does that indicate that the, I
16 think it's Department of Energy believes that
17 the impacts on wetlands have been
18 appropriately avoided, minimized or
19 mitigated?

20 A. No, I do not. The final Environmental Impact
21 Statement did not indicate that this proposal
22 was the least impacting alternative to
23 wetlands. In fact, in one of the appendixes,
24 when they were responding to some of the

1 EPA's concerns, they indicate that they were
2 not assessing the alternative routes, that
3 that was the job of -- their role was not
4 that, but that was the role of the New
5 Hampshire SEC. So they kind of avoided that
6 determination.

7 Q. But is the EIS different than the
8 Presidential Permit?

9 A. I did not review the permit itself. But the
10 EIS, I understand, is used by DOE to
11 determine whether a Presidential Permit will
12 be issued.

13 Q. Okay. Thank you.

14 CHAIRMAN HONIGBERG: Mr. Way.

15 MR. WAY: No, I'm all set.

16 CHAIRMAN HONIGBERG: Mr.

17 Iacopino.

18 MR. IACOPINO: Thank you.

19 QUESTIONS BY MR. IACOPINO:

20 Q. I just have two questions, Mr. Lobdell. On
21 Page 9 of Exhibit 67, which I believe is your
22 supplemental testimony, it's where in your
23 direct testimony you say that the ranking
24 system used by the Applicant for the

1 functions and values is not in accordance
2 with the Army Corps method. Does the Army
3 Corps method say you can't use a point
4 system, or does it say something different?
5 In other words, you said that it was in
6 violation, essentially, of what the Army
7 Corps requires. I'm trying to get a handle.
8 Does the Army Corps say that a point system
9 is not allowed?

10 A. Yes.

11 Q. Okay. And where does the Army Corps say
12 that? Is that in the highway manual?

13 A. It's in the manual itself. They also have a
14 table in there with a big X through it which
15 shows what they consider to be an incorrect
16 use of the system.

17 Q. Thank you.

18 CHAIRMAN HONIGBERG: Anything
19 else from the Committee?

20 [No verbal response]

21 CHAIRMAN HONIGBERG: Ms.
22 Manzelli, do you have any redirect?

23 MS. MANZELLI: Thank you. Just
24 to save time, I would like to reserve the right

1 to file that page from the manual, for the
2 record. I think I have it in my stack of
3 papers, but I'm not going to --

4 CHAIRMAN HONIGBERG: Didn't
5 someone put the manual up --

6 MR. IACOPINO: Yes. It's Counsel
7 for the Public Exhibit 600-something.

8 MS. MANZELLI: Thank you.

9 CHAIRMAN HONIGBERG: It might
10 even be Exhibit 666.

11 REDIRECT EXAMINATION

12 BY MS. MANZELLI:

13 Q. All right. During cross-examination,
14 Attorney Pappas asked you if you could
15 estimate, at least by order of magnitude, the
16 quantity of impacts that might occur to
17 wetlands located outside of the right-of-way.
18 You recall that?

19 A. Yes.

20 Q. And you testified that you could not make
21 such an estimate.

22 A. Correct.

23 Q. Why is that?

24 A. Well, I just don't have any information. I

1 mean, I'd have to do a site visit and look at
2 the wetland and analyze a lot of information
3 about it, and I just don't have that
4 information.

5 Q. And this isn't, you know, a personal
6 shortcoming of any sort. It's just that that
7 information isn't available in this
8 Application whatsoever; correct?

9 A. Not that I'm aware of.

10 Q. You were also asked about whether there was
11 any site-specific soil mapping that the
12 Applicants provided, and you mentioned that
13 the Alteration of Terrain requirements
14 require such site-specific soil mapping. Do
15 you recall that?

16 A. Yes.

17 Q. Now, isn't it true that the Applicants chose
18 in this case not to do that specific mapping
19 and, in fact, asked for and received a waiver
20 of that requirement?

21 A. Yes, that's my understanding.

22 Q. Mr. Pappas also asked you if in some
23 circumstances, because of the lack of
24 site-specific information, restoration could

1 actually be counterproductive, and you said
2 that was possible. Do you recall that?

3 A. Yeah.

4 Q. Now, he also asked about could it result in
5 permanent impacts. Do you recall that?

6 A. Yes.

7 Q. And you said that there might be a permanent
8 loss of functions and values; is that
9 correct?

10 A. Correct.

11 Q. Is a permanent loss of a function and value a
12 permanent wetland impact?

13 A. I believe it is, yes.

14 Q. You received a couple questions from the
15 Subcommittee and Attorney Pappas, and perhaps
16 others, about what conditions of approval
17 might satisfy your concerns or might be a
18 good idea. Now, do you believe that there is
19 any condition of approval that would make the
20 wetland application approvable?

21 A. You mean the proposed alternative?

22 Q. Yeah.

23 A. No.

24 Q. You received some questions from Ms. Menard

1 about endangered species, and in particular,
2 if a wetland had a function and value of
3 endangered species, how should that be
4 handled. And I believe what you said is,
5 well, you should definitely in the first
6 instance to do the wetlands mitigation at
7 that very wetland; and then, if you couldn't
8 do it at that very wetland, you should do it
9 at least within the watershed. Do you recall
10 that?

11 A. Yes.

12 Q. Now, my understanding is there are different
13 scales at which watersheds can be defined.
14 You know, at a large scale, you could say
15 something like the Connecticut River Valley;
16 right?

17 A. Correct.

18 Q. So at what scale watershed were you intending
19 to indicate?

20 A. Well, the immediate watershed. Obviously
21 it's more appropriate to do it as close to
22 the site as possible. So you could work out
23 from various orders of watershed and find the
24 most appropriate one. DES has a list of some

1 watersheds that they use, and those
2 watersheds break down what they -- how they
3 distribute the ARM funds. So there is a list
4 of what at that level to me would be the most
5 extreme.

6 Q. Thank you. Let's see here. Attorney Walker
7 asked you some questions about your work on
8 the Granite Reliable Project. Do you recall
9 those?

10 A. Yes.

11 Q. What are the primary differences between this
12 project and that project?

13 A. Well, this project is tenfold larger in terms
14 of wetland impacts. Also, in the Granite
15 Reliable Power Project there were more than
16 half of it was on existing, pre-existing
17 logging roads in a commercial forest. And
18 these logging roads are, well, better than
19 many town dirt roads, used by 18-wheelers and
20 that type of thing. So they're very
21 established roads. They needed permitting
22 because it was -- they were installed under a
23 Forestry Wetlands Permit. And when you
24 change use, you need to re-permit. So a lot

1 of the impacts were re-permitting culverts
2 and ditches and those kinds of things along
3 those roads.

4 Q. Now, I know you mentioned you're not an
5 engineer. But as far as you know, is it
6 possible to bury wind turbines and still have
7 them generate energy?

8 A. Not that I'm aware.

9 Q. Does this refresh your memory if, in response
10 to Mr. Wright's questions, I tell you that
11 about 4800 is the mathematical answer to live
12 stake planting of two to three feet per acre?

13 A. That sounds correct.

14 Q. You were asked some questions about the Army
15 Corps methodology as it relates to the use of
16 rationales and comments. And I understand
17 that you, like Normandeau, also do not use
18 the form straight out of the Army Corps
19 manual; is that correct?

20 A. Correct.

21 Q. Okay. Now, is that, in your experience,
22 common or uncommon for a certified wetlands
23 scientist to use --

24 A. I think it's fairly common.

1 Q. Now, just to be clear, although you do not
2 use the form, how often do you include
3 rationales and comments in the work product
4 you produce?

5 A. Always.

6 Q. Now, you were asked questions about the fact
7 that you did not perform any field work in
8 this case. And you were also asked questions
9 about when you were rendering your opinions,
10 what level of road disturbance you used as a
11 base assumption. Is it correct that you
12 relied -- the three things you relied on in
13 this case to render your opinions are: The
14 Northern Pass Application itself, and in
15 particular, the data associated with the
16 underground section; information from the TDI
17 Clean Link Project in Vermont, and the
18 Environmental Impact Statement?

19 A. Yes.

20 Q. And in all of those sources, you found
21 evidence that burial results in significantly
22 less wetland impacts; right?

23 A. Yes.

24 MS. MANZELLI: I have no further

1 questions. Thank you.

2 CHAIRMAN HONIGBERG: Thank you,
3 Mr. Lobdell. I think you can return to your
4 seat.

5 MR. JUDGE: Mr. Chairman.

6 CHAIRMAN HONIGBERG: Mr. Judge.

7 MR. JUDGE: I think I have
8 agreement from the groups ahead of Ms.
9 Kleindienst that she can take the stand now.

10 CHAIRMAN HONIGBERG: That's fine
11 with us.

12 Ms. Pacik?

13 MS. PACIK: Before I forget, the
14 exhibit that was provided by Dr. Van de Poll is
15 actually going to be Joint Muni 353. Thank you.

16 CHAIRMAN HONIGBERG: And I was
17 also informed that the manual we were talking
18 about, the Army Corps manual, is 665, Counsel
19 for the Public.

20 MR. IACOPINO: And Van de Poll is
21 not 352, it's 353?

22 MS. PACIK: Correct.

23 (Pause in proceedings)

24 CHAIRMAN HONIGBERG: Would you

1 swear the witness in, please.

2 (WHEREUPON, MICHELLE KLEINDIENST was
3 duly sworn and cautioned by the Court
4 Reporter.)

5 DIRECT EXAMINATION

6 BY MR. JUDGE:

7 Q. Ms. Kleindienst, can you state your name and
8 spell your last name for the record?

9 A. Michelle, Kleindienst, K-L-E-I-N-D-I-E-N-S-T.

10 Q. And what is your business address?

11 A. I represent McKenna's Purchase Unit Owners
12 Association. They are at 84 Branch Turnpike,
13 No. 150, Concord, New Hampshire, 03301.

14 Q. Did you file prefiled testimony in this
15 docket?

16 A. Yes, I did.

17 Q. Do you have it with you?

18 A. Yes, I do.

19 Q. If you look at the document I'm showing you,
20 it's Sheet 308 from 10/9/15, does that show
21 McKenna's Purchase?

22 A. Yes, it does.

23 Q. And McKenna's Purchase is the condominium
24 units that the cursor is tracing right now?

1 A. Correct.

2 Q. And the right-of-way is shown with
3 construction pads in yellow, access roads in
4 red, et cetera?

5 A. Yes.

6 Q. So the right-of-way is right along the edge
7 of McKenna's Purchase?

8 A. Yes.

9 Q. So are you a member of the intervenor group?

10 A. I am.

11 Q. Is that the Ashland to Concord Intervenor
12 Group?

13 A. Abutter Group, yes.

14 Q. Abutter Group. Thank you.

15 And if I show you the ShareFile, these
16 are three exhibits, Ashland to Concord
17 Abutter 5, 6 and 7. And I will represent to
18 you that 5 is your testimony and 7 is your
19 response to the data request and 6 is Mr.
20 Chalmers' Montana study.

21 In terms of 5 and 7, do you swear and
22 affirm that it's all true, your testimony?

23 A. Yes, but I would like to edit my testimony.

24 Q. So, subject to any corrections that you are

1 about to make, do you adopt that as your
2 testimony in our proceeding here?

3 A. Yes, I do.

4 Q. And I think you've indicated you do have
5 corrections to make?

6 A. Yes.

7 Q. Please tell the Committee what corrections
8 you'd like to make.

9 A. I need to amend our average sales price.
10 It's gone up to \$186,544, and in my testimony
11 I suggested that there would be a 30- to
12 50-percent reduction in sales prices due to
13 the Project going in. So at 30 percent that
14 would be \$55,963, and at 50 percent that
15 would be \$93,272.

16 Q. So I'm showing a page of Abutter 5, Ashland
17 to Concord, where you're making a change in
18 the range and the average.

19 A. Correct.

20 Q. Okay. Now, based upon the testimony you've
21 heard in this proceeding, the records you
22 reviewed, and particularly the prefiled
23 supplemental testimony of Mr. Chalmers, is
24 there any additional testimony that you wish

1 to offer regarding the cooperation of the
2 Applicant, economic loss and the absence of
3 final plans?

4 A. I'm sorry, Steve, could you repeat that?

5 Q. Yeah. I'm asking you if you want to talk
6 about the cooperation of the Applicant with
7 McKenna's Purchase, the economic loss or
8 consequences as described by Mr. Chalmers,
9 and the absence of final plans from the
10 Applicant.

11 A. I disagree with Chalmers' assessment of the
12 association. I disagree with his
13 methodology.

14 Q. Well, let me break those down into smaller
15 bites.

16 A. Okay.

17 Q. Let's talk about cooperation to begin with.

18 Did you allow representatives of the
19 Applicant to enter McKenna's Purchase?

20 A. Yes.

21 Q. Did representatives of the Applicant tour the
22 property with you in November 2016?

23 A. Yes.

24 Q. Was there any tours prior to that?

1 A. Yes.

2 Q. How many do you think?

3 MR. NEEDLEMAN: Mr. Chair, I'm
4 going to object. November 2016 and before
5 should have all been included in the testimony.

6 MR. JUDGE: Mr. Chalmers
7 testified on cross that he did not have an
8 opportunity to go to the property. I'm just
9 trying to establish that he had plenty of
10 opportunities to do it and he did not. And this
11 is an exhibit that was introduced by the
12 Applicant after I cross-examined Mr. Chalmers.

13 CHAIRMAN HONIGBERG: Overruled.
14 She can answer.

15 A. Could you repeat the question?

16 BY MR. JUDGE:

17 Q. Well, the question was whether there were
18 other tours of the property by the Applicant
19 prior to November of 2016.

20 A. Yes. We first started meeting with them back
21 in 2011.

22 Q. Did Mr. Chalmers request a visit to the
23 property prior to filing his initial
24 testimony?

1 A. No.

2 Q. Did McKenna request a view by the SEC?

3 A. Yes.

4 Q. And did that happen?

5 A. Yes.

6 Q. Did Mr. Chalmers request a site visit after
7 he filed his initial testimony?

8 A. He requested one, and it was denied.

9 Q. It was denied. Okay.

10 This is Exhibit 198 that the Applicant
11 introduced in Mr. Chalmers' testimony. And
12 this document is a request from Tom Getz,
13 counsel for the Applicant, for a somewhat
14 related issue. And the answer he got from me
15 is, as you understand, "I do not give you
16 permission to enter the property"; is that
17 correct?

18 A. That's correct.

19 Q. Did McKenna's Purchase exist in Mr. Chalmers'
20 initial testimony?

21 A. No.

22 Q. Did you file testimony to bring this to the
23 SEC's attention?

24 A. Yes.

1 Q. I'm showing you Exhibit 154. This is a
2 document that was introduced by the
3 Applicant, a summary of outreach from
4 McKenna's Purchase Unit Owners Association.
5 And I want to focus on November 18, 2016.
6 And do you see here it says "meeting to
7 discuss proposed project route and possible
8 alternatives"? Do you see that?

9 A. Yes, I do.

10 Q. And can you read the handwriting that's on
11 the side there?

12 A. "Meeting with Steven Judge. Nothing was
13 promised."

14 Q. Nothing was promised; is that right?

15 A. Nothing promised. Yes.

16 Q. There was some conversation with the
17 construction panel about moving a pole. Do
18 you remember that?

19 A. I believe so.

20 Q. And the pole we're talking about is right
21 where the cursor is. It's C189-51. The
22 request was to move it over into property
23 that's labeled 8174. Do you remember that?

24 A. Yes, I do.

1 Q. I'm showing you a document dated August 25,
2 2017 from McLane, counsel for the Applicant,
3 to Ms. Monroe. And I want to go down to the
4 second page. And do you see where it says
5 the following items agreed to at the final
6 hearings did not result to changes to the
7 plan sheets?

8 A. Yes.

9 Q. Can you read Paragraph 2 for the record? And
10 do it slowly, please.

11 A. "Applicants agree to evaluate relocation of
12 structures C189-51 near McKenna's Purchase,
13 to the south of its current location, to an
14 abutting parcel of land, Tax Map Parcel
15 111H-4-22. If McKenna's Purchase's can
16 obtain permission from the abutting
17 landowner, the Project is likely to be able
18 to relocate the structure as requested.
19 Sheet 609 of updated wetland permit plans."

20 Q. Do you have a relationship with the owner of
21 that property?

22 A. No.

23 Q. Do you even know who the owner is of that
24 property?

1 A. No.

2 Q. Does McKenna's Purchase's have a right-of-way
3 across that property?

4 A. No.

5 Q. In the negotiation -- or in obtaining
6 permission, would you expect that that would
7 cause McKenna's Purchase to contribute
8 something? Why would that property owner let
9 McKenna's Purchase use -- put the pole on
10 their property without some value being given
11 by McKenna's Purchase?

12 A. I would suspect they would want something in
13 return.

14 Q. I discussed with Mr. Chalmers, and this is
15 Document 8712 -- you said 84 Branch Turnpike
16 is the address for McKenna's Purchase?

17 A. Yes, it is.

18 Q. This is the only document in the Application
19 relating to the value of McKenna's Purchase.
20 Do you see where the cursor is here under
21 Assessed Value?

22 A. Zero.

23 Q. Zero. What is the value of, the total value
24 of McKenna's?

1 A. It's \$27 million.

2 Q. Were you here when Mr. DeWan was asked about
3 the photographs that he took at McKenna's?
4 That's another question I wanted to ask you.

5 You allowed people from the Applicant to
6 come on the property and take photographs;
7 right?

8 A. Yes.

9 Q. And we've seen those photographs in this
10 proceeding.

11 A. Yes.

12 Q. And do you remember Mr. DeWan saying that
13 when he took those photographs, that he
14 didn't use them at all in reaching his
15 opinion about aesthetics effect?

16 A. Yes.

17 Q. Do you remember Mr. DeWan, my asking him
18 whether a transmission corridor running along
19 the side of a condominium would have a
20 negative effect, and he refused to answer
21 that question? He just acknowledged there
22 would be an effect, but he wouldn't
23 characterize it?

24 A. Yes.

1 Q. Do you think there would be an effect?

2 A. Yes, a large effect.

3 Q. Let's talk about economic consequences for a
4 moment.

5 You were here when Mr. Chalmers
6 testified that he decided when he did his
7 original analysis here that he would not
8 address condominium projects. Do you
9 remember that?

10 A. Yeah, he considers us a non-residential
11 property.

12 Q. Is it fair to say he didn't consider you at
13 all?

14 A. He didn't.

15 Q. There is an acknowledgment by the Applicant
16 that some property will be -- will have
17 economic consequences. Do you remember the
18 testimony about that?

19 A. I'm not certain.

20 Q. The property has to be encumbered by the
21 right-of-way easement, it has to be a
22 single-family home, and it has to have more
23 visibility than it did before.

24 A. Oh, that was the criteria that was given to

1 him.

2 Q. Right. That's criteria that he created that
3 the Applicant adopted.

4 A. Okay.

5 Q. And is the McKenna's Purchase -- does that
6 contain single-family homes?

7 A. Yes, it does.

8 Q. Single-family homes or condominiums?

9 A. Townhomes.

10 Q. Townhomes. What distinction do you draw
11 between a condominium that's worth \$186,000
12 on average and a single-family home?

13 A. It's just a difference in ownership, a
14 different way to own your home.

15 Q. Now, in terms of the requirement that the
16 property -- that the building be within a
17 100 feet of the right-of-way, is it fair to
18 say that both Mr. Chalmers and Mr. DeWan
19 moved McKenna's Purchase away from the
20 right-of-way?

21 A. Yes.

22 Q. Mr. Chalmers did that by taking measurements
23 from the front door of the unit.

24 A. Yes.

1 Q. Now, he had plenty of opportunity to ask to
2 come onto the property before he filed his
3 testimony; isn't that correct?

4 A. Yes, he did.

5 Q. So he could have taken measurements from the
6 back of the buildings.

7 A. Yes. And all the other single-family homes,
8 they took it from the nearest point of the
9 house to the road.

10 Q. We also had testimony from him and from
11 several people, I think, that one of the
12 properties at McKenna's Purchase actually
13 might be on the right-of-way.

14 A. In one case it does go through an
15 individual's deck.

16 Q. So even if he stayed on the right-of-way and
17 he didn't go on McKenna's Purchase, he could
18 have measured the distance from that building
19 to the edge of the right-of-way, which would
20 have been negative two feet; is that correct?

21 A. Yes.

22 Q. Mr. DeWan put the measurements in his
23 testimony, and he ultimately testified that
24 he was doing measurements from where he was

1 taking the photograph, not from -- it was
2 from the photograph to the structure of the
3 transmission line, not from to the edge of
4 the right-of-way.

5 A. Correct.

6 Q. Again, he said that his calculations
7 didn't -- had no effect whatsoever on his
8 opinion, as far as McKenna's Purchase.

9 A. Pointed out the boundary markers that we had.
10 We had those installed in 2011 at the time.
11 And he took his picture from the driveway,
12 from the roadway.

13 Q. Right. And so, just to remind the Committee,
14 when we took a view of the property, the
15 poles with the red tops on them, that was the
16 edge of the right-of-way?

17 A. Yes. We had an engineer do a study of the
18 western side of the ROW.

19 Q. How many properties are within 100 feet of
20 the edge of the right-of-way at McKenna?

21 A. Fifty units.

22 Q. Now, in talking about economic consequences,
23 do you agree with Mr. Chalmers that the only
24 way to actually calculate that is to have a

1 sale and to compare that sale with a
2 comparable sale, with a property that does
3 not have a high-voltage transmission line?

4 A. Yes.

5 Q. Did Mr. Chalmers find properties that did not
6 have a high-voltage transmission line?

7 A. No, he did not. He just looked at McKenna's
8 Purchase. He didn't use any other
9 associations as comparisons or to get a
10 baseline.

11 Q. Let's talk about exactly what the Applicant
12 is planning to do.

13 Mr. Chalmers agreed with me that it
14 would be better to have the exact
15 identification of where the structures are
16 going. Do you agree with that?

17 A. Yes.

18 Q. So I'm showing you two documents. One is
19 Exhibit 200, which was submitted recently
20 August 15, 2017, and the other we looked at
21 already, Sheet 308. As you look at these
22 documents and you can see where the poles are
23 and where the construction pads are and where
24 the access roads are, do you know where any

1 of these things are actually going to be?

2 A. No, I don't.

3 Q. Is it your understanding that the towers that
4 are shown on here or the poles, that they
5 have construction -- that they have footings,
6 foundations?

7 A. Yes, they all -- yes.

8 Q. Different towers have different foundations?

9 A. Yes.

10 Q. Do you know what towers are going to be in
11 this right-of-way by McKenna?

12 A. Well, I know what towers, but I don't know
13 where they're going to be positioned exactly.

14 Q. Are you sure you know which towers, what kind
15 of towers?

16 A. Well, no, I don't because they changed the
17 configuration at Loudon Road. They went from
18 a lattice-work tower on the corner of Loudon
19 Road to a monopole tower, which will increase
20 the heights. So I believe the height at
21 McKenna will be increased, but I don't know
22 what to.

23 Q. Were you here when I asked Mr. Bowes on
24 Day 11 for a plan that specifically shows

1 exactly what is going to be cleared and when
2 it's going to be cleared?

3 A. Yes.

4 Q. Have you received such a plan?

5 A. No.

6 Q. Now, looking at this document that we have
7 up, I do want to point out that in the
8 original document there is a green area which
9 shows clearing where I'm putting the cursor
10 right there. Do you see that?

11 A. Yes.

12 Q. And in the more recent document, that
13 clearing is not there; is that correct?

14 A. That's correct. And while I appreciate that
15 they're leaving that thin buffer, it's only
16 about a 40-foot-tall buffer. So it's not
17 going to make much of a difference when we
18 start having 100-plus-foot poles.

19 Q. Were you here when Mr. Bowes testified that
20 there's no comprehensive schedule yet
21 developed, that that's something that PAR is
22 going to do?

23 A. Yes.

24 Q. Have you seen a comprehensive schedule --

1 A. No.

2 Q. -- for McKenna?

3 The documents that we've been using in
4 this proceeding say, to a large extent, exact
5 structure heights and placement are subject
6 to change based on detailed designs. Is that
7 your understanding?

8 A. Yes.

9 Q. Do you know what the fall zones are going to
10 be for whatever structures come into this
11 area?

12 A. No.

13 Q. In terms of Mr. Chalmers' methodology, I
14 think you started to describe -- can you
15 think of any reason why you would not value a
16 condominium and you would value a
17 single-family home?

18 A. I don't know why he would do that. There's
19 more people that would be affected at a
20 condominium complex than would be affected at
21 a single-family home. It's the most highly,
22 densely populated area I believe along the
23 entire route.

24 Q. Is there anything else that you'd like to add

1 at this point?

2 A. No.

3 Q. What is the effect going to be on McKenna?

4 A. Oh, I thought we already covered that. I
5 feel it will be a 30- to 50-percent loss in
6 property values. We could lose our FHA
7 approval if our rent ratios become too large.
8 McKenna's a very quiet and -- it's an
9 exemplary condominium property. And once
10 this goes through, it's going to have a
11 devastating effect on the association.

12 Q. And let me be clear for the record. You do
13 not live in McKenna's; is that right?

14 A. No, I don't.

15 Q. You're the manager of the property?

16 A. Yes, I am.

17 Q. And yet you care about the people --

18 A. Deeply.

19 Q. You talked about the FHA. Let me just
20 explore that for a moment.

21 Is it fair to say that many of the units
22 in McKenna are purchased using FHA loans?

23 MR. NEEDLEMAN: Objection, Mr.
24 Chair. We're expanding testimony now.

1 CHAIRMAN HONIGBERG: Mr. Judge.

2 MR. JUDGE: Mr. Chalmers

3 testified that these properties are worth zero.

4 And I think he also testified that there will be
5 no economic consequence.

6 CHAIRMAN HONIGBERG: Sustained.

7 A. Yes. I'd say probably --

8 CHAIRMAN HONIGBERG: Wait. The
9 objection is sustained. Mr. Judge should be
10 moving on to a new question.

11 WITNESS KLEINDIENST: Oh, I'm
12 sorry.

13 MR. JUDGE: Mr. Judge has no more
14 questions.

15 CHAIRMAN HONIGBERG: Thank you,
16 Mr. Judge.

17 Mr. Pappas.

18 MR. JUDGE: Actually, I want to
19 say thank you to the Committee for allowing me
20 to be ill on Tuesday and thank you to those who
21 let Ms. Kleindienst go first.

22 WITNESS KLEINDIENST: Yes, thank
23 you.

24 CHAIRMAN HONIGBERG: Off the

1 record.

2 (Discussion off the record)

3 CROSS-EXAMINATION

4 BY MR. PAPPAS:

5 Q. Good afternoon, Ms. Kleindienst. I'm Tom
6 Pappas. I represent Counsel for the Public.

7 Am I correct there are 148 townhouses in
8 McKenna's Purchase?

9 A. Yes.

10 Q. And 26 buildings?

11 A. Yes.

12 Q. Okay. Do you have something on the screen in
13 front of you?

14 A. Yes.

15 Q. What's on the screen in front of you is a
16 page from Counsel for the Public's Exhibit
17 655. And this is a map done by Holden
18 Engineering. Do you see that?

19 A. Yes.

20 Q. And am I correct that at the bottom of the
21 map is the right-of-way?

22 A. Correct.

23 Q. And then you see a row of buildings that abut
24 the right-of-way; is that correct?

1 A. Correct.

2 Q. And am I correct that those ten buildings
3 abut the right-of-way, if you count ten
4 buildings of units?

5 A. Yes.

6 Q. And then there are ten other buildings
7 immediately further from the right-of-way;
8 correct?

9 A. Yes.

10 Q. Would I be correct in saying that those ten
11 additional buildings are a few hundred feet
12 from the right-of-way?

13 A. I would say so, yes.

14 Q. All right. Then you see there are six other
15 buildings on the other side of a drive, and
16 those are further away from the right-of-way;
17 correct?

18 A. Yes.

19 Q. Now, is it -- am I correct in saying that
20 currently there are two existing transmission
21 lines in the right-of-way that abuts
22 McKenna's Purchase? Correct?

23 A. Yes.

24 Q. What's on the screen now is Bates Stamp 14628

1 from Counsel for the Public's Exhibit 655.
2 And this actually comes from Mr. Chalmers'
3 testimony. And if you see it, it says
4 "Existing Right-of-Way Configuration." Do
5 you see that?

6 A. Yup.

7 Q. And I have indicated on there the height of
8 the existing poles, a distribution line of
9 40 feet, an existing transmission line of
10 55 feet, and then an existing transmission
11 line of 70 feet. Do you see that?

12 A. Yes.

13 Q. Okay. What's on the screen now is Bates
14 Stamp 14630 from the same exhibit. And this
15 also comes from Mr. Chalmers' prefiled
16 testimony, and it indicates the right-of-way
17 configuration as part of the Northern Pass
18 Project. And you can see there, there will
19 be three lines, and there will be taller
20 poles ranging anywhere from 75 to 90 feet.
21 Do you see that?

22 A. Yes.

23 Q. So would you agree with me that currently
24 most of the units do not have a clear view of

1 the current existing transmission line; is
2 that correct?

3 A. That's correct.

4 Q. They're screened by things like trees and
5 shrubs and so forth?

6 A. Yes.

7 Q. What's on the screen now is Bates Stamp 14632
8 from Counsel for the Public's Exhibit 655.
9 This is a picture of existing conditions
10 taken by Mr. DeWan. Do you recognize that?

11 A. Yes.

12 Q. And it was taken in April of 2015. Do you
13 see that?

14 A. Yes.

15 Q. And he was standing in the roadway in front
16 of these two units when he took it?

17 A. Yes, he was.

18 Q. And would you agree with me that what can be
19 seen is just the top of an existing
20 transmission pole?

21 A. Yes.

22 Q. And would you agree with me that that is not
23 a clear view of the transmission tower?

24 A. Yes.

1 Q. Okay. What's on the screen now is Bates
2 Stamp 14633 from Exhibit 655. And this is
3 Mr. DeWan's photo simulation standing from
4 the same spot as the prior photo; correct?

5 A. Yes.

6 Q. And you can see here much more of a
7 transmission line structure in the middle.
8 Do you see that?

9 A. Yes.

10 Q. And you can see to the right above the unit a
11 pretty clear view of a transmission line;
12 correct? The tower?

13 A. Clearly visible, yes.

14 Q. And you can see the conductors passing in
15 front?

16 A. Yes.

17 Q. So would you agree with me that this shows a
18 clear view of the transmission structures
19 from this vantage point?

20 A. Yes.

21 Q. So there's a difference between the existing
22 conditions where there was a partial, not
23 very clear view, to a condition where there
24 is a clear view; correct?

1 A. Yes.

2 Q. Okay. Would you also agree with me that,
3 given the additional height of the towers,
4 that visibility of them is possible from more
5 vantage points than the existing conditions?

6 A. Yes.

7 MR. NEEDLEMAN: Mr. Chair, I'm
8 going to object. This is all material that was
9 in the record long ago and could have been
10 included in Ms. Kleindienst's testimony. And I
11 don't see anything that is happening here other
12 than expanding on this.

13 CHAIRMAN HONIGBERG: Mr. Pappas.

14 MR. PAPPAS: I'm about a minute,
15 couple minutes away from my point to my
16 questioning. This is just setup, and I'm trying
17 to go through it quickly.

18 CHAIRMAN HONIGBERG: We were just
19 wondering up here what it is that we haven't
20 already seen and heard about this and Ms.
21 Kleindienst knows what we've seen and heard. If
22 there's a question on this stuff, I would
23 encourage you to get to it.

24 MR. PAPPAS: Okay. Well, let

1 me -- I'll get to it right now.

2 BY MR. PAPPAS:

3 Q. What's on the screen now is the cover page of
4 Mr. Chalmers' prefiled testimony dated
5 October 16, 2015, which we marked as Counsel
6 for the Public 654. And what's shown now is
7 Page 12 of that prefiled testimony in which
8 Mr. Chalmers testified, quote, "Based on our
9 research, those properties that could
10 potentially be affected are homes very close
11 to the right-of-way that did not have a clear
12 visibility of the existing line, but will
13 have a clear visibility of the existing line
14 or the new Northern Pass line after it is
15 built," close quote. Do you see that?

16 A. Yes.

17 Q. Okay. Having looked at the
18 existing-conditions photo and the photo
19 simulation that we just reviewed, would you
20 agree with me that, first, for those ten
21 buildings that abut the right-of-way, those
22 are very close to the right-of-way?

23 A. Yes.

24 Q. Would you agree with me, also, for those ten

1 buildings, currently they do not have a clear
2 visibility of the existing transmission line?

3 A. Yes.

4 Q. And would you also agree with me that, if the
5 Project is built, from those ten buildings
6 they will have a clear visibility of the
7 relocated line, as well as the Northern Pass
8 towers?

9 A. Yes.

10 Q. Now, we looked at the map that showed the ten
11 buildings immediately behind the ten
12 buildings that abut the right-of-way. Do you
13 recall that?

14 A. Yes.

15 Q. Do you have the same view with respect to
16 those ten buildings of the three items I just
17 went through?

18 A. It will be changed once the new line goes in.
19 The will have a clear view.

20 Q. And currently they don't have a clear view?

21 A. Currently they don't have a view.

22 Q. And you indicated those were within a couple
23 hundred feet of the right-of-way?

24 A. Yes.

1 MR. NEEDLEMAN: Mr. Chair, same
2 objection. Seems like we're going over old
3 material that could have all been included.

4 CHAIRMAN HONIGBERG: And we're
5 also really going over material that's not --
6 there's no real factual dispute about the
7 relationship of the property to McKenna's
8 Purchase. And her testimony is about that
9 proximity and its effect, in her opinion.

10 MR. PAPPAS: Agreed. But what
11 I'm trying to -- she had testified in her
12 prefiled in terms of why she thinks that there
13 will be decrease in property value, and I'm just
14 trying to correlate that with what Mr. Chalmers
15 said. And that's the point of this.

16 CHAIRMAN HONIGBERG: She
17 disagrees with Mr. Chalmers. That's how it
18 correlates.

19 MR. PAPPAS: No, I'm trying to
20 correlate in terms of using Mr. Chalmers'
21 testimony as a basis to see if that's a basis
22 for her opinion. That's what I'm trying to do.
23 And I just did it.

24 CHAIRMAN HONIGBERG: Okay. And I

1 think we would all stipulate that Mr. Chalmers'
2 opinion is not the basis for Ms. Kleindienst's
3 opinion.

4 MR. PAPPAS: Well, not
5 necessarily his opinion, but the methodology,
6 the three criteria --

7 CHAIRMAN HONIGBERG: She
8 disagrees with his methodology, too.

9 MR. PAPPAS: Well, let me be more
10 precise. The three criteria in his testimony is
11 what I just walked her through to see if she --
12 using that criteria, if that supports her
13 position. That's what --

14 CHAIRMAN HONIGBERG: All right.

15 MR. PAPPAS: And with that, I
16 have no other questions.

17 CHAIRMAN HONIGBERG: Ms. Pacik.

18 MS. PACIK: Could we get the
19 ELMO, please?

20 CROSS-EXAMINATION

21 BY MS. PACIK:

22 Q. Good afternoon. Danielle Pacik from the City
23 of Concord.

24 I have in front of you on the screen,

1 and we're going to just blow this up a little
2 bit, it is Sheet 308 from the Alteration of
3 Terrain plans from August 18, 2017. And the
4 quality isn't great, so I do apologize. But
5 on this plan, where there's an arrow -- are
6 you familiar with this plan?

7 A. Yes.

8 Q. Okay. This is the revised plan which shows
9 the area where there will be vegetative
10 clearing. And on the revised plan where the
11 arrow is, there's a small location of green
12 which shows, according to Northern Pass, the
13 only area of vegetative clearing. Are you
14 familiar with that?

15 A. I see it.

16 Q. And based on your knowledge of the edge of
17 the right-of-way at McKenna's Purchase, the
18 area that's circled near Brenda Court, there
19 is a construction pad. Do you see that next
20 to the arrow on the right?

21 A. Yes.

22 Q. And the edge of the right-of-way, you've
23 marked a pole, is that correct, in that
24 location that we saw during the site visit?

1 A. We didn't actually see that one. That one's
2 right abutting that end unit's deck.

3 Q. Okay. And the construction pad where it's
4 being shown on this map, does it make any
5 sense that they would be able to accomplish
6 construction in that location without having
7 vegetative clearing in that area?

8 A. I don't see how they could do it.

9 CHAIRMAN HONIGBERG: Wait, wait,
10 Ms. Kleindienst --

11 MR. NEEDLEMAN: I'm going to
12 object on the basis that I don't think she's an
13 expert and can testify about these issues.

14 CHAIRMAN HONIGBERG: Ms. Pacik,
15 this is just someone's lay opinion about what
16 they can do there.

17 MS. PACIK: No, it's on the map,
18 based on where she knows the edge of the
19 right-of-way and the distance shown to the
20 construction pad, based on her familiarity with,
21 you know, boots-on-the-ground knowledge of the
22 area --

23 CHAIRMAN HONIGBERG: Sustained.

24 MS. PACIK: -- and where the

1 trees are --

2 CHAIRMAN HONIGBERG: Sustained.

3 MS. PACIK: -- and what her
4 opinion is.

5 CHAIRMAN HONIGBERG: Sustained.

6 A. I think it would have to all be cleared --

7 CHAIRMAN HONIGBERG: Wait, wait
8 wait. It's now Ms. Pacik's turn to either make
9 some other statement or ask another question
10 because the objection was sustained.

11 MS. PACIK: Okay. I guess I can
12 just lay a foundation a little bit better if
13 that's necessary, in terms of Ms. Kleindienst's
14 knowledge of where the trees are in proximity to
15 the right-of-way.

16 CHAIRMAN HONIGBERG: Your
17 question is about whether someone can do
18 construction in that area without doing
19 clearing. We have no basis to believe that Ms.
20 Kleindienst is capable of rendering such an
21 opinion -- or I'm sorry, let me put it a
22 different way -- qualified to render such an
23 opinion. And it appears to be well beyond the
24 scope of what she offered in direct testimony.

1 MS. PACIK: Maybe I need to just
2 clarify the basis of this question. But where
3 the edge of the right-of-way is, the trees --
4 let me think about this for just one second.

5 BY MS. PACIK:

6 Q. Ms. Kleindienst, the location that's being
7 shown on the Alteration of Train map where
8 there's the edge of the construction pad
9 which is in the black circle, based on your
10 knowledge of the area, is there vegetation in
11 that area?

12 MR. NEEDLEMAN: Objection.
13 Again, this speaks to the accuracy of the maps
14 and the feasibility of construction in relation
15 to the accuracy of the maps. And for the same
16 reason, she's not qualified to testify to this.

17 CHAIRMAN HONIGBERG: Well, that
18 specific question was only looking at that
19 boundary; is there vegetation within that
20 boundary. She may or may not know the answer to
21 that question, but it doesn't go beyond that.

22 Is there vegetation within the
23 boundary, as Ms. Pacik just outlined it?

24 WITNESS KLEINDIENST: Yes.

1 MS. PACIK: That's all I have
2 then. Thank you.

3 CHAIRMAN HONIGBERG: Ms. Menard.

4 CROSS-EXAMINATION

5 BY MS. MENARD:

6 Q. Good afternoon. Jeanne Menard, here,
7 representing Deerfield Abutters. I just have
8 one question for you.

9 In an afternoon session of a
10 cross-examination of Mr. Chalmers on
11 April 13th, Attorney Judge was having a
12 discussion with Mr. Chalmers regarding
13 economic impact and the guaranty buyout
14 program where property owners who are going
15 to sell their property could qualify. Are
16 you familiar with that program?

17 A. I'm sorry. What program?

18 Q. It's called the Loan Guaranty Program. Not
19 necessary that you remember the details of
20 the program. I'm just putting it in context
21 of the question that Mr. Chalmers was asked
22 by Mr. Judge.

23 Mr. Chalmers recognized the fact that
24 McKenna's Purchase wouldn't qualify for the

1 program, given the nature of it being a condo
2 association. And Mr. Quinlan -- excuse me.
3 This is a conversation of Mr. Judge and Mr.
4 Quinlan regarding Mr. Chalmers' criteria for
5 this buyout program.

6 And Mr. Quinlan responds on Line 20,
7 Page 173, "This program does not apply, but
8 we had made significant design enhancements
9 in and around the McKenna's Purchase area to
10 mitigate impacts."

11 Did the methods that Mr. Quinlan
12 described to reduce visual impacts of the
13 Project mitigate your concerns about property
14 value impacts?

15 A. No.

16 MS. MENARD: Thank you. That's
17 all I have.

18 CHAIRMAN HONIGBERG: Did I miss
19 any intervenor groups who had questions for Ms.
20 Kleindienst?

21 [No verbal response]

22 CHAIRMAN HONIGBERG: Questions
23 from the Committee?

24 Oh, I'm sorry. Mr. Walker,

1 you may have questions.

2 MR. WALKER: Just a few.

3 CHAIRMAN HONIGBERG: I'm sure
4 it's just a few. I'm confident of that.

5 CROSS-EXAMINATION

6 BY MR. WALKER:

7 Q. Good morning, Ms. Kleindienst. Am I saying
8 your name correctly?

9 A. Yes, you are.

10 Q. All right.

11 A. One of a very few.

12 Q. Just a few questions. You've been involved
13 with McKenna's Purchase for how many years?

14 A. Ten. 2008.

15 Q. So you're familiar with the different
16 communications between the Project and
17 McKenna's Purchase?

18 A. Yes.

19 Q. I want to bring up Applicant's Exhibit 154,
20 Ms. Kleindienst. And this is something
21 that's already been introduced. I'm not sure
22 if you've seen this. This is a summary of
23 the different communications between the
24 Project and McKenna. Have you seen this?

1 A. Yes.

2 Q. I want to focus on the correspondence
3 briefly, and particularly the letter that was
4 sent to you on April 18, 2014.

5 MR. WALKER: And Dawn, if you
6 could bring that up, please. That's Exhibit
7 484, Applicant's Exhibit 484.

8 Q. Have you had a chance to take a quick look at
9 that, and do you remember this letter, Ms.
10 Kleindienst?

11 A. Yes. And I sent a follow-up letter to it.

12 Q. So this was a letter -- and just for the
13 Committee's perspective, this is a letter
14 that the Project sent to you acknowledging
15 concerns that were raised by McKenna with
16 regard to the Project and noting that they
17 wanted to consider those concerns and meet
18 with the McKenna's Purchase to discuss
19 alternatives; correct?

20 A. Yes.

21 Q. And ultimately there was another letter sent
22 to McKenna's because you refused to have a
23 meeting shortly thereafter; is that right?

24 A. No, we asked for specific plans.

1 Q. Before you met.

2 A. Before we met.

3 Q. I see.

4 A. The directors specifically requested. And
5 this letter actually came up because of an
6 open meeting at the Grappone Center. There
7 was no conversation with me.

8 MR. WALKER: Dawn, if you could
9 pull up Applicant's Exhibit 485, please.

10 BY MR. WALKER:

11 Q. Do you recall this letter, Ms. Kleindienst?

12 A. Yes.

13 Q. So in this letter you'll note that the
14 Project is enclosing the plans of the
15 proposed alternatives to what was already
16 proposed; is that right?

17 A. I'm sorry. Could you repeat that?

18 Q. Yeah, that was a bad question.

19 So, in this letter the Project is asking
20 again for a meeting. And in the bottom
21 paragraph they state, again, that we want to
22 meet with you to go over what we consider
23 proposed alternatives, meaning what the
24 Project considers proposed alternatives;

1 right?

2 A. And the directors wanted final plans.

3 Q. And with this letter, with a copy of this
4 letter, the final plans were submitted -- or
5 proposed plans were submitted to make changes
6 to what had been proposed; is that right?

7 A. Yes.

8 MR. WALKER: Okay. And Dawn, if
9 you could go to the next -- or the first
10 drawing, please, attached to that letter.

11 BY MR. WALKER:

12 Q. And this is the existing right-of-way that
13 abuts McKenna's; correct?

14 A. Yes.

15 Q. And there are three lines that go through
16 that corridor?

17 A. Yes.

18 Q. And those three lines have been there since
19 you've been at McKenna's; correct?

20 A. Yes.

21 MR. WALKER: And if you could go
22 to the last drawing, Dawn, which is the proposed
23 alternative.

24 BY MR. WALKER:

1 Q. And in this proposal, the Project had
2 represented that it could relocate the berm
3 closer to McKenna's; correct?

4 A. Yes.

5 Q. And that would allow for lowering the heights
6 of the other towers; is that right?

7 A. I'm sorry?

8 Q. By moving the berm, they could also reduce
9 the height of the other structures?

10 A. I don't know about that.

11 Q. Well, I'll represent to you that that is
12 actually explained in the letter to you dated
13 April 18. They discuss that by "moving the
14 berm, we can lower the structure height."

15 A. Yes.

16 Q. But it was not a meeting after you received
17 these plans in May 2014; correct?

18 A. Correct.

19 Q. Why did you not agree to meet with the
20 Project at that time?

21 A. If you go down and look at the bottom of
22 this, it says it's a preliminary design and
23 subject to change.

24 Q. This was something being proposed that they

1 wanted to discuss with McKenna's Purchase;
2 right?

3 A. Yes. And we had asked for a final plan, and
4 they never came back with one.

5 Q. Well, there was a meeting again in November
6 of 2016. We talked -- Mr. Judge asked you
7 about that meeting earlier.

8 A. Oh, we walked the property with a few
9 representatives, yes.

10 Q. And were there proposals discussed with you
11 as to the design and potential alterations
12 that could be made?

13 A. There was a discussion. We never received
14 anything in writing.

15 Q. Did I hear you say that -- you made some
16 changes to your supplemental or your prefiled
17 testimony. And I think I heard you explain
18 that since you filed your prefiled testimony,
19 the average sale price of a McKenna's unit
20 has gone up?

21 A. Yes.

22 Q. And that's during the pendency of the
23 Application before this proceeding?

24 A. Yes.

1 Q. Thank you.

2 A. Thank you.

3 CHAIRMAN HONIGBERG: Now

4 Commissioner Bailey.

5 QUESTIONS BY SUBCOMMITTEE MEMBERS AND SEC COUNSEL:

6 BY COMMISSIONER BAILEY:

7 Q. Following up on Mr. Walker's question about
8 the sale price, are buyers aware that
9 Northern Pass is going to go through there
10 possibly?

11 A. Some are. A lot of people don't pay
12 attention to that. People just think that
13 it's going to go in an existing right-of-way,
14 and I just don't think they realize the
15 magnitude of the change from a transmission
16 line for the North Country to a high-voltage
17 distribution line to the south. I don't
18 think they realize that the poles are going
19 to be that much larger.

20 Q. Are the buyers people from out of state?

21 A. They're from the area.

22 Q. Oh, okay. When were the buildings
23 constructed?

24 A. They were built in the late '80s, early '90s.

1 Q. Do you understand why the developer built the
2 buildings so close to the edge of the
3 right-of-way?

4 A. I have no idea. I would have thought that
5 the city, you know, inspector would have made
6 sure that didn't happen because the
7 right-of-way was issued back in the 1950s to
8 illuminate the North Country.

9 Q. Isn't that usually something, though, that
10 somebody who's going to build condominiums
11 would look at?

12 A. Yes, as should the building inspector for the
13 City of Concord. I mean, the plans were
14 submitted, so...

15 Q. Okay. That's all I have. Thanks.

16 CHAIRMAN HONIGBERG: Ms.
17 Weathersby.

18 MS. WEATHERSBY: I have no
19 questions.

20 CHAIRMAN HONIGBERG: Mr. Way.

21 QUESTIONS BY MR. WAY:

22 Q. Good afternoon, now. In your prefiled
23 testimony I was reading about the FHA
24 funding. And I think that was talked about

1 earlier. Tell me again why you think that
2 that might be in jeopardy.

3 A. It may be because of our rental percentage.
4 If you go over a certain percentage in
5 rentals, then you wouldn't be FHA-approved.
6 You have certain points that you have to meet
7 for FHA approval.

8 Q. What's the percentage?

9 A. It's 50 percent. But what I'm afraid of is
10 people, if they lose quite a bit of their
11 property value, they may choose to rent and
12 leave the property because they won't want to
13 be living next to the right-of-way, or they
14 may walk away from their property, which
15 would create a lot of bankruptcies or
16 properties just abandoned.

17 Q. And have you had any communications with FHA,
18 V.A. or any of the other lenders about this
19 potential or --

20 A. No.

21 Q. -- your concerns?

22 A. No, I just go by their specifications on
23 their requirements.

24 Q. We heard from the City of Concord about some

1 of the development along Loudon Road and in
2 that area. And I'm trying to get a sense how
3 that's impacted your facility, McKenna's
4 Purchase. How has that impacted sales?

5 A. It really hasn't impacted sales so far. But,
6 you know, they don't have -- I don't know
7 what's going to happen when they start doing
8 everything at the Loudon Road turn. There's
9 quite a turn there that goes from Loudon Road
10 to McKenna's, and it's a difficult thing to
11 maneuver. They went from the lattice-work
12 tower to the monopole. So I'm afraid that
13 our poles are going to be higher than what
14 has already been presented to you -- to us.

15 Q. But in terms of the buildout of Loudon Road,
16 has any of the prospects coming to your
17 location, have they listed that as a concern
18 or --

19 A. No.

20 Q. All right. Thank you.

21 A. Thank you.

22 CHAIRMAN HONIGBERG: Mr.
23 Oldenburg.

24 QUESTIONS BY MR. OLDENBURG:

1 Q. Good morning. Question about the berm that's
2 in the right-of-way.

3 When McKenna's was built, did McKenna's
4 build the berm, or did Eversource, the
5 electric company, build the berm?

6 A. No, I believe that was put in by KeySpan or
7 Key -- yeah, KeySpan. It's the natural gas.
8 There's a natural gas line distribution line
9 that runs the entire length of the
10 right-of-way. And they put that in. And we
11 also put the pines. We planted -- the
12 association did. This was before my time.
13 But the association put in the pines to keep
14 the noise from Home Depot, Shaw's, et cetera.
15 Shaw's also put in a berm behind their
16 property when they built the property so that
17 it would keep us buffered from all of the
18 noise from those stores.

19 Q. So the berm was sort of created so that the
20 plantings could go on top of it to increase
21 the height of the barrier or --

22 A. We did it for both visual and noise.

23 Q. So if the berm is relocated, there's going to
24 be an additional strip of potential trees or

1 vegetation that would have to be cleared
2 specifically to build the berm on. Is that
3 your understanding or --

4 A. Yeah. All that vegetation that we walked
5 through when we did the site, it would all
6 have to be cleared so they could do their
7 temporary construction pads. And the berm
8 itself, if it was moved, there would be trees
9 on top of the berm that would have to be
10 taken down.

11 Q. So if this goes forward, are you for or
12 against relocating the berm?

13 A. It depends upon what they plan on doing. If
14 they relocate the berm, then we're going to
15 lose all the vegetation that's on that berm.
16 And, you know, if saplings are put in its
17 place, it's not going to do much for visual
18 or sound, so... yeah.

19 Q. All right.

20 MR. OLDENBURG: That's all I
21 have.

22 CHAIRMAN HONIGBERG: Ms.
23 Weathersby.

24 QUESTIONS BY MS. WEATHERSBY:

1 Q. Good afternoon. Is there a difference in the
2 sales price of the units that abut the
3 right-of-way compared to the ones that do not
4 abut the right-of-way?

5 A. Not so far. I did have the one unit that I
6 mentioned in my prefiled testimony that I had
7 people walk away because of Northern Pass,
8 and it was one of the lowest selling units
9 within the association. It was a hardship
10 situation, so...

11 Q. Okay. Thank you.

12 CHAIRMAN HONIGBERG: Mr.
13 Iacopino.

14 QUESTIONS BY MR. IACOPINO:

15 Q. First question is: Does McKenna's Purchase
16 have any Joint Use Agreements with the
17 easement holder?

18 A. Yes, we do.

19 Q. And what are those for?

20 A. They're for our retention ponds.

21 Q. Okay.

22 A. You could see them outlined in white on all
23 of the --

24 Q. And I also noted on the site visit there was

1 an area where there was a bunch of trailers
2 and boats, things like that kept. Is that
3 part of a Joint Use Agreement as well?

4 A. No. We just use that as a parking area.
5 It's never been a problem.

6 Q. And my question is about your interaction
7 with the Applicant requiring the Applicant to
8 provide you with a final plan. Did you not
9 want to have input into what the final plan
10 might be?

11 A. We had met with them numerous times. And
12 every time they would come, they would say,
13 "We think we can do this." "We may possibly
14 be able to do that, but we don't know." And
15 that's why the directors took that stand.
16 When you have a decision or when -- they gave
17 us, like, three or four plans. But they
18 could never say, "Yes, we could do this." We
19 had picked the plan we thought would be most
20 advantageous for the association. But once
21 again, it came with a caveat of "We may or
22 may not be able to do this."

23 Q. But you knew they were going to have to go
24 through a process like this and the Site

1 Committee might change their plans --

2 A. Yeah.

3 Q. -- or might put conditions on their plans.

4 A. Yes.

5 MR. IACOPINO: No further
6 questions.

7 CHAIRMAN HONIGBERG: Anything
8 else from the Committee?

9 [No verbal response]

10 CHAIRMAN HONIGBERG: Mr. Judge,
11 do you have any redirect?

12 MR. JUDGE: One question.

13 REDIRECT EXAMINATION

14 BY MR. JUDGE:

15 Q. Ms. Kleindienst, and I'm probably not
16 pronouncing that correctly -- Michelle.

17 A. You can call me Michelle, yeah.

18 Q. You were questioned by Mr. Walker about
19 Exhibit 154. That's the list that the
20 Applicant made of contact with McKenna's
21 Purchase. And I just want to draw your
22 attention to the entry on that item for
23 November 18th, 2016. Do you recall that,
24 next to the typed thing, what's written is

1 "nothing promised"?

2 A. Yes.

3 MR. JUDGE: Thank you. Nothing
4 further.

5 CHAIRMAN HONIGBERG: Thank you,
6 Ms. Kleindienst. You can return to your seat.

7 We're going to be breaking for
8 lunch, and we'll return at about quarter to
9 two.

10 (Whereupon the Day 70 Morning
11 Session was adjourned at 12:44
12 p.m., with the Day 71 Afternoon hearing
13 to resume after lunch recess.)
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C E R T I F I C A T E

I, Susan J. Robidas, a Licensed
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