

1                                    STATE OF CONNECTICUT  
2                                    CONNECTICUT SITING COUNCIL

3  
4                                    Docket No. 509

5                                    Application from Homeland Towers, LLC and New  
6 Cingular Wireless PCS, LLC d/b/a AT&T for a Certificate  
7 of Environmental Compatibility and Public Need for the  
8                                    Construction, Maintenance, and Operation of a  
9 Telecommunications Facility Located at 1837 Ponus Ridge  
10                                    Road, New Canaan, Connecticut

11  
12                                    Remote Council Meeting (Teleconference), on  
13 Thursday, July 14, 2022, beginning at 2 p.m.

14  
15                                    H e l d   B e f o r e :

16                                    ROBERT SILVESTRI, Member and Presiding Officer  
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1   **A p p e a r a n c e s :**

2           **Council Members:**

3           **ROBERT SILVESTRI,**  
4           **The Hearing Officer**

5  
6           **QUAT NGUYEN,**  
7           **PURA Designee**

8  
9           **MARK QUINLAN**

10          **KENNETH COLLETTE**

11          **DANIEL LYNCH**

12          **LOUANNE COOLEY**

13  
14   **Council Staff:**

15          **MELANIE BACHMAN, ESQ.,**  
16          **Executive Director and Staff Attorney**

17  
18          **ROBERT MERCIER,**  
19          **Siting Analyst**

20  
21          **LISA FONTAINE,**  
22          **Fiscal Administrative Officer**

1   **A p p e a r a n c e s:(cont'd)**

2   **For Homeland Towers, LLC (Applicant):**

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5       **Stamford, Connecticut 06901**

6           **By: LUCIA CHIOCCHIO, ESQ.**

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10   **For CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS:**

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18   **For JUSTIN NISHIOKA:**

19       **JUSTIN NISHIOKA (pro se)**

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1    **A p p e a r a n c e s:(cont'd)**

2    **For MARK AND JAMIE BUSCHMANN, TRUSTEES:**

3           **MORIARTY, PAETZOLD & SHERWOOD**

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1 (Begin: 2 p.m.)

2  
3 THE HEARING OFFICER: Good afternoon, everyone. Is my  
4 audio coming through okay?

5 Thank you very much.

6 This continued remote evidentiary hearing  
7 session is called to order this Thursday, July 14,  
8 2022, at 2 p.m. My name is Robert Silvestri,  
9 Member and Presiding Officer of the Connecticut  
10 Siting Council.

11 And again if you haven't done so already, I  
12 ask that everyone please mute their computer  
13 audio/or telephone at this time.

14 Now a copy of the prepared agenda is  
15 available on the Council's Docket Number 509  
16 webpage along with the record of this matter, the  
17 public hearing notice, instructions for public  
18 access to this remote public hearing, and the  
19 Council's citizens guide to Siting Council  
20 procedures.

21 Other members of the Council are Mr. Nguyen,  
22 Mrs. Cooley, Mr. Quinlan, Mr. Collette and  
23 Mr. Lynch.

24 And members of the staff are Executive  
25 Director Melanie Bachman, Staff Analyst Robert

1 Mercier, and Fiscal Administrative Officer Lisa  
2 Fontaine.

3 This evidentiary session is a continuation of  
4 the public hearing that was held on June 28, 2022.  
5 It is held pursuant to the provisions of Title 16  
6 of the Connecticut General Statutes and of the  
7 Uniform Administrative Procedure Act upon an  
8 application from Homeland Towers, LLC, and New  
9 Cingular Wireless PCS, LLC, doing business as  
10 AT&T, for a certificate of environmental  
11 compatibility and public need for the  
12 construction, maintenance and operation of a  
13 telecommunications facility located at 1837 Ponus  
14 Ridge Road in New Canaan, Connecticut.

15 A verbatim transcript will be made of this  
16 hearing and deposited with the New Canaan Town  
17 Clerk's office and the Stamford City Clerk's  
18 office for the convenience of the public.

19 And the Council will take a 10 to 15-minute  
20 break somewhere at a convenient juncture around  
21 3:30 p.m.

22 Now on July 6, 2022, Jamie Buschmann,  
23 Trustee; Mark Buschmann, Trustee; and Mark  
24 Buschmann submitted a motion to strike limited  
25 appearance statements, or in the alternative,

1 motion to compel appearance for cross-examination  
2 and request to reply and present oral argument on  
3 Council's staff's recommended disposition of the  
4 motion.

5 Attorney Bachman may wish to comment?

6 MS. BACHMAN: Thank you, Mr. Silvestri.

7 JMB moves to strike the statements made by  
8 the Town of New Canaan's First Selectman,  
9 Community Emergency Response Team Emergency  
10 Director, Deputy Chief of Police and Fire Chief,  
11 known as the Town Speakers during the 6:30 p.m.  
12 public comment session of the public hearing that  
13 was held on June 28th.

14 In the alternative, JMB moves the Council to  
15 compel the appearance of Town Speakers at this  
16 evidentiary hearing and subject them to  
17 cross-examination under oath.

18 Also, JMB requests to file a reply and  
19 present oral argument on Council's staff's  
20 response to its motion.

21 On July 11th Applicants filed a response  
22 indicating JMB's motion seeks to strike public  
23 comment offered in accordance with Council rules  
24 and procedures, and misinterprets the definition  
25 of public need under the Public Utility

1 Environmental Standards Act. The cited statutory  
2 and regulatory authority in the Applicant's  
3 response is dispositive.

4 Additionally, the citizen's guide to Siting  
5 Council procedures, which is in the record of this  
6 proceeding, under Section 3C states, quote,  
7 limited appearance statements are made by  
8 residents and other persons who would like to  
9 express their comments and concerns about the  
10 proposed cell tower site by providing an oral  
11 statement during the public comment session of the  
12 hearing, or by submitting a written statement to  
13 the Council before, during or after the hearing.

14 They may not ask questions of the Applicant,  
15 parties and interveners, or the Council.

16 The 6:30 p.m. public comment session of the  
17 hearing is reserved for oral limited appearance.

18 As to the motion to strike, General Statutes  
19 Section 16-50n states, any person may make a  
20 limited appearance at a hearing held pursuant to  
21 General Statutes Section 16-50m.

22 Section 16-50m requires at least one session  
23 of the public hearing be held after 6:30 for the  
24 convenience of the general public.

25 Section 4-177c of the Uniform Administrative

1 Procedure Act states, persons not named as parties  
2 and interveners may, in the discretion of the  
3 presiding officer, be given an opportunity to  
4 present oral or written statements.

5 Neither the Town nor the other two persons  
6 who submitted oral limited appearance statements  
7 during the 6:30 public comment session are parties  
8 and interveners to this proceeding.

9 Staff recommends this motion to strike be  
10 denied.

11 As to the alternative motion to compel, under  
12 General Statutes Section 16-50n persons making  
13 limited appearance statements are not subject to  
14 cross-examination, and do not have the right to  
15 cross-examine parties and interveners.

16 Under regulations of the Connecticut state  
17 agencies, Section 16-50j-28, Subsection E, if the  
18 Council proposes to consider a limited appearance  
19 statement as evidence the Council shall give all  
20 parties and interveners an opportunity to  
21 cross-examine the person who made the statement.

22 The limited appearance statements of the Town  
23 Speakers cannot be used as evidence in this  
24 proceeding, certainly not evidence of public need  
25 for the proposed facility, because under General

1 Statutes Section 16-50p, public need for personal  
2 wireless services is presumed, and the Council is  
3 limited to consideration of a specific need for  
4 any proposed facility to be used to provide such  
5 services to the public.

6 The definition of public need is specific to  
7 personal wireless services. It does not include  
8 town communication services.

9 Staff recommends the motion to compel also be  
10 denied.

11 And finally, as to the request to reply and  
12 provide oral argument to Council staff's  
13 recommended disposition of the motion, regulation  
14 of Connecticut state agencies, Section 16-50j-22  
15 allows parties and interveners to file written  
16 motions not less than ten days before a hearing.  
17 It also requires parties and interveners to file  
18 written responses to a motion not less than seven  
19 days before a hearing.

20 The Council takes action on motions during  
21 the hearing.

22 JMB requests to file a written response and  
23 provide oral argument on Council staff's  
24 recommended disposition of its motion. The  
25 Council is not a party or intervener to this

1 proceeding; it's the judge, and JMB will have an  
2 opportunity to file a written response to the  
3 Council's disposition of its motion in its  
4 posthearing brief.

5 Therefore, staff recommends the request to  
6 reply and provide oral argument also be denied.

7 Thank you.

8 THE HEARING OFFICER: Thank you, Attorney Bachman.

9 Is there a motion?

10 MR. COLLETTE: Just a point of order?

11 Are we trying to address all three of the  
12 requests, slash, motions in one, one action?

13 THE HEARING OFFICER: I'm going to defer to Attorney  
14 Bachman on that, and I'll give you my opinion  
15 after that.

16 Attorney Bachman?

17 MS. BACHMAN: Thank you, Mr. Silvestri.

18 Given that it was a three-part motion, we did  
19 take up all three parts together, Mr. Collette.

20 MR. COLLETTE: Okay. Then I move to deny the motion to  
21 strike, deny the motion to compel, and deny the  
22 request for additional argument and written  
23 statements.

24 THE HEARING OFFICER: To reply?

25 MR. COLLETTE: Correct.

1 THE HEARING OFFICER: Thank you, Mr. Collette.

2 Is there a second?

3 MS. COOLEY: Mr. Silvestri, I will second

4 Mr. Collette's motion.

5 THE HEARING OFFICER: Thank you, Mrs. Cooley.

6 So we do have a motion by Mr. Collette and a  
7 second by Mrs. Cooley to deny the strike, the  
8 compel and the reply.

9 And I'd like to move to discussion starting  
10 with Mr. Nguyen. Any discussion, Mr. Nguyen?

11 MR. NGUYEN: I have no discussion. Thank you.

12 THE HEARING OFFICER: Thank you, Mr. Nguyen.

13 Mrs. Cooley, Any discussion?

14 MS. COOLEY: Thank you. I have no discussion.

15 THE HEARING OFFICER: Thank you, also.

16 I'm not sure if Mr. Quinlan is with us,  
17 because there's a couple iPhones that I see.

18 So I'll ask Mr. Quinlan, do you have any  
19 discussion?

20  
21 (No response.)

22  
23 THE HEARING OFFICER: Okay. Hearing none, I'll move to  
24 Mr. Collette.

25 Any discussion, Mr. Collette?

1 MR. COLLETTE: No discussion. Thank you.

2 THE HEARING OFFICER: Thank you also.

3 Mr. Lynch, any discussion?

4 MR. LYNCH: I have no discussion.

5 THE HEARING OFFICER: And I have no discussion either.

6 So I'll now call for the vote.

7 Mr. Nguyen, how do you vote?

8 MR. NGUYEN: Vote to deny. Thank you.

9 THE HEARING OFFICER: Thank you.

10 Mrs. Cooley?

11 MS. COOLEY: Just to be clear, I'm voting to approve  
12 the motion to deny. Thank you.

13 THE HEARING OFFICER: Understood. And I want to go  
14 back to Mr. Nguyen.

15 Mr. Nguyen, can you clarify your vote for me  
16 please?

17 MR. NGUYEN: Sure. I am voting to deny the requests.  
18 Is that --

19 THE HEARING OFFICER: So in other words, you're voting  
20 to approve the motion that was made by  
21 Mr. Collette and seconded by Mrs. Cooley, to deny  
22 what we've received from the party?

23 MR. NGUYEN: That's correct.

24 THE HEARING OFFICER: Very good. Thank you.

25 Mr. Collette, how do you vote?

1 MR. COLLETTE: Vote to approve.

2 THE HEARING OFFICER: Thank you.

3 Mr. Lynch?

4 MR. LYNCH: Vote to deny the trifecta.

5 THE HEARING OFFICER: Understood. And I also vote to  
6 approve the motion to deny. So we have five  
7 unanimous votes in that case.

8 And the motion before us to strike, to compel  
9 and the reply have all been denied. And I thank  
10 you.

11 Moving on, I'd like to call your attention to  
12 the items that are shown on the hearing program  
13 that are marked as Roman numeral 1C, and it's  
14 items 60 and 61 that the Council has  
15 administratively noticed.

16 Does any party or intervener have an  
17 objection to the additional items that the Council  
18 has administratively noticed? And Attorney  
19 Chiocchio, or Attorney Motel?

20 MS. CHIOCCHIO: This is Attorney Chiocchio.

21 No objection.

22 THE HEARING OFFICER: Thank you.

23 Attorney Baldwin?

24 MR. BALDWIN: No objection, Mr. Silvestri.

25 THE HEARING OFFICER: Thank you.

1 Attorney Sherwood?

2 MR. SHERWOOD: No objection. Thank you.

3 THE HEARING OFFICER: Thank You.

4 And Justin Nishioka -- if I pronounced that  
5 correctly?

6 JUSTIN NISHIOKA: You did. No objections.

7 THE HEARING OFFICER: Thank you also.

8 All right. Thereby, the two items are  
9 effectively administrative noticed, and I thank  
10 you.

11 Now in accordance with the Council's June 29,  
12 2022, continued evidentiary hearing memo we will  
13 commence with the appearance of the Applicants  
14 Homeland Towers, LLC, and AT&T, to verify the new  
15 exhibit that is marked as Roman numeral 2, item  
16 B11 on the hearing program.

17 And Attorney Chiocchio, could you please  
18 begin by identifying the new exhibit filed in the  
19 matter and verifying the exhibit by the  
20 appropriate sworn witness, or witnesses?

21 MS. CHIOCCHIO: Thank you, Presiding Officer.

22 So the Applicant's Exhibit Number 11, as  
23 identified is late-filed exhibits by the Applicant  
24 in response to a request for information from the  
25 Siting Council dated July 7, 2022.

1 I will ask the following witnesses to verify  
2 this exhibit; Ray Vergati, Harry Carey, Robert  
3 Burns, Dean Gustafson, Brian Gaudet and Martin  
4 Lavin. That would be the witnesses that are here.

5 If you wouldn't mind coming up to the camera?

6 And I'll ask each to answer each question  
7 individually and identify themselves for the  
8 record.

9 R A Y M O N D V E R G A T I,

10 H A R R Y C A R E Y,

11 R O B E R T B U R N S,

12 D E A N G U S T A F S O N,

13 B R I A N G A U D E T,

14 M A R T I N L A V I N,

15 recalled as witnesses, having been previously  
16 duly sworn, were examined and testified  
17 under oath as follows:

18  
19 MS. CHIOCCHIO: Did you prepare or assist in the  
20 preparation of the exhibit as so identified?

21 THE WITNESS (Lavin): Martin Lavin, yes.

22 THE WITNESS (Vergati): Ray Vergati, Homeland Towers;  
23 yes.

24 THE WITNES (Carey): Harry Carey, AT&T; yes.

25 THE WITNESS (Burns): Robert Burns, All Points

1 technologies; yes.

2 THE WITNESS (Gustafson): Dean Gustafson, All Points  
3 Technology; yes.

4 THE WITNESS (Gaudet): Brian Gaudet, All Points  
5 Technology; yes.

6 MS. CHIOCCHIO: Do you have any corrections or  
7 clarifications to the information contained in the  
8 exhibit?

9 THE WITNESS (Lavin): Martin Lavin, no.

10 THE WITNESS (Vergati): Ray Vergati, no.

11 THE WITNESS (Carey): Harry Carey, no.

12 THE WITNESS (Burns): Robert Burns, no.

13 THE WITNESS (Gustafson): Dean Gustafson, no.

14 THE WITNESS (Gaudet): Brian Gaudet, no.

15 MS. CHIOCCHIO: Is the information contained in the  
16 exhibit true and accurate to the best of your  
17 knowledge and belief?

18 THE WITNESS (Lavin): Martin Lavin, yes.

19 THE WITNESS (Vergati): Ray Vergati, yes.

20 THE WITNESS (Carey): Harry Carey, yes.

21 THE WITNESS (Burns): Robert Burns, yes.

22 THE WITNESS (Gustafson): Dean Gustafson, yes.

23 THE WITNESS (Gaudet): Brian Gaudet, yes.

24 MS. CHIOCCHIO: And do you adopt this information as  
25 your testimony in this proceeding?

1 THE WITNESS (Lavin): Martin Lavin, yes.

2 THE WITNESS (Vergati): Ray Vergati, yes.

3 THE WITNES (Carey): Harry Carey, yes.

4 THE WITNESS (Burns): Robert Burns, yes.

5 THE WITNESS (Gustafson): Dean Gustafson, yes.

6 THE WITNESS (Gaudet): Brian Gaudet, yes.

7 MS. CHIOCCHIO: Thank you. We'd ask that the Council  
8 except the Applicant's exhibit.

9 THE HEARING OFFICER: Thank you, Attorney Chiocchio.

10 Does any party or intervenor object to the  
11 admission of the Applicant's new exhibit?

12 And I'll start with Attorney Baldwin.

13 MR. BALDWIN: No objection.

14 THE HEARING OFFICER: Thank you, Attorney Baldwin.

15 Attorney Sherwood?

16 MR. SHERWOOD: No objection, Mr. Silvestri.

17 THE HEARING OFFICER: Thank you also.

18 Justin Nishioka?

19 JUSTIN NISHIOKA: No objection.

20 THE HEARING OFFICER: Thank you also. The exhibits are  
21 hereby admitted, and I thank you.

22 We will continue with cross-examination of  
23 the Applicants by the Council. We'll start with  
24 Mr. Mercier and he'll be followed by Mr. Nguyen.

25 Mr. Mercier, please?

1 MR. MERCIER: Thank you. I'd like to begin with the  
2 Applicant's new exhibit marked as Exhibit 11 on  
3 the hearing program. I'm simply going to go  
4 through several questions, and ask a few  
5 questions -- responses, that is, and ask a few  
6 questions.

7 So I'll start with number two, and this had  
8 to do with the stormwater design. And the answer  
9 was a ten-year storm -- I believe this might be  
10 for Mr. Burns.

11 And with a ten-year storm, do you know the  
12 rainfall rate over a 24-hour period with what,  
13 what that design is. I guess, was it --

14 THE WITNESS (Burns): Robert Burns, all -- I'm sorry.

15 MR. MERCIER: Go ahead, yeah.

16 THE WITNESS (Burns): Robert Burns, All Points  
17 technologies. I do not have that on hand, but I  
18 certainly can get it and get that to you.

19 MR. MERCIER: Okay. And just typically those are over  
20 a 24-hour period. Is that correct?

21 That's how they're designed?

22 THE WITNESS (Burns): Yes, that's correct.

23 MR. MERCIER: Okay. Thank you.

24 Yeah, I think I'm going to move to site plan  
25 SP-2 attached to this document. I think that's

1 really down on PDF page 84, if you're using the  
2 website link.

3 Now since we're talking a little bit about  
4 drainage, I just wanted you to clarify a couple of  
5 points from the last hearing that we talked about.

6 THE WITNESS (Burns): Okay.

7 MR. MERCIER: For the overall stormwater design, is  
8 there any redirection of water that would lead to  
9 concentrated flows, you know, such as it's, you  
10 know, it's coming off the slope at the top, and it  
11 looks like it's going overland slope on the curve.  
12 And then it comes down. There's a swale and it  
13 directs water into these little drainage basins.

14 So would there be concentrated flows based on  
15 your design here?

16 THE WITNESS (Burns): At the outflow? No. The reason  
17 that we've done three outfalls, there -- well, we  
18 have the one at the bottom of the swale, four --  
19 was to spread that flow out as much as possible  
20 and try to direct it as to where it's going today.

21 There should be no point discharge.

22 MR. MERCIER: Okay. And again, up at the top around  
23 that curve?

24 THE WITNESS (Burns): Yeah?

25 MR. MERCIER: How is the road? The slope there, how is

1 the drainage coming down? Is the road tilted to  
2 the left on this picture, or the right?

3 THE WITNESS (Burns): The road will be sloped to -- to  
4 the swale side, which is the, I guess, the inside  
5 of the curb, the swale side of the -- of the curb  
6 of the -- of the roadway, drive -- driveway.

7 MR. MERCIER: Okay. So coming out of the access gate  
8 coming down, that inside curb, that's an actual  
9 swale there. That's not a graded --

10 THE WITNESS (Burns): Yeah. Yes, it's -- it's a toe of  
11 slope that's creating it. That's a bit of a fill  
12 section. So where the slope comes down and meets  
13 the existing grade, it's going to -- it creates a  
14 swale through there.

15 And then we'll follow that along and  
16 eventually make it through the grass -- I'm sorry,  
17 not grass, the riprap swale that's being designed  
18 further down.

19 MR. MERCIER: Okay. Now based on this design, how  
20 would the post-construction stormwater flows, you  
21 know, be protective of the water quality from the  
22 adjacent reservoir, you know, across the street,  
23 across Ponus Ridge Road?

24 I mean, is there any concern of any type of  
25 erosion issue, or sand, or anything getting down

1 to Ponus Ridge Road from your design?

2 THE WITNESS (Burns): No. I -- I think that the easy  
3 answer is no. The drainage is coming over land.  
4 Again, it will go to the riprap swale which will  
5 slow it down and allow for some infiltration into  
6 a series of stone check dams, which will do the  
7 same. And then it will flow into a basin, a  
8 culvert and then into the stilling basins.

9 So the idea of being -- giving it as much  
10 time as possible to infiltrate, and then in  
11 addition spread that flow out so it continues to  
12 do what it currently does today.

13 MR. MERCIER: I believe you stated that this particular  
14 ten-year storm design was based on town criteria.

15 Is that correct?

16 THE WITNESS (Burns): Yeah, the 10-year -- the design  
17 of the pipes, the sizing of the pipes, the  
18 10-year/24-hour storm is based on the Connecticut  
19 guidelines for -- the Connecticut drainage manual,  
20 which if I'm not mistaken, in New Britain, the  
21 Town of New Britain requirements are reflective of  
22 that.

23 MR. MERCIER: The Town of New Canaan, you mean. Right?

24 THE WITNESS (Burns): Yes. I'm sorry. New Canaan,  
25 yes. I apologize.

1 MR. MERCIER: Would it be possible to actually increase  
2 the volume of the stilling basins? Or make them  
3 slightly larger just to overcompensate for any  
4 type of a larger storm event? Or not?

5 THE WITNESS (Burns): I think the -- the second  
6 stilling basin going up the hill, the answer to  
7 that is -- is yes, because there's more -- a  
8 little more room there. That first stilling basin  
9 is in an area that if we increase it any more, it  
10 would be probably too close to the road.

11 So I'm answering your question, yes and no,  
12 but I think that that middle one definitely could,  
13 and we can also look at the outlet from that first  
14 basin -- but that really doesn't get that much  
15 water in that first basin.

16 MR. MERCIER: Okay. I was actually going to ask about  
17 that first basin.

18 You know, it is a minimal amount of length of  
19 driveway it's collecting from, however you know  
20 any water that's discharged there and also from  
21 the paved driveway -- you know it will flow down,  
22 flow into Ponus Ridge Road.

23 I just want to know whether the current  
24 characteristics of Ponus Ridge Road, if anybody  
25 looked at it in relation to drainage? Is there a

1 crown on the road? Is there any kind of ditch?  
2 Is there any kind of sewer system? Do you have  
3 any information regarding that?

4 **THE WITNESS (Burns):** I don't. I -- I believe there's  
5 a crown on the road, but I -- offhand I don't know  
6 what the stormwater system is in, in that road.

7 I believe it's a bit of a country road, if  
8 you will. So I'm not sure if there are basins or  
9 stormwater, where they are. It's definitely  
10 something we can look at and get back to you on.

11 **MR. MERCIER:** Okay. Part of the question would be, you  
12 know, again any type of overflow shooting across  
13 the street to the other side of the road, either  
14 creating an icing condition or any kind of  
15 concentrated flow at some kind of collection  
16 point.

17 I guess that's what I'm asking for, you know,  
18 what are the characteristics there that would be a  
19 benefit or a detriment to anything proposed?

20 **THE WITNESS (Burns):** Yeah, I'd have to look into  
21 what -- how Ponus Ridge is drained, but I will say  
22 the drainage for this, the reason there's three  
23 crossings, if you will, with stilling basins,  
24 they're not taking that big of a drainage area.

25 So the idea being, let's pick it up, pick up

1 the water as soon as possible. So the -- so there  
2 is no concentrated flows, and that it flows  
3 overland again similar to what it does today down  
4 onto -- into Ponus Road.

5 MR. MERCIER: With the proposed stormwater control  
6 system you have here, would that be an improvement  
7 to drainage, you know, as it goes down to Ponus  
8 Ridge Road?

9 Meaning, is there going to be more retention  
10 over existing conditions? Or is it supposed to be  
11 equal?

12 THE WITNESS (Burns): Yeah, that -- that is a tough,  
13 tough -- I can't commit to better, but the idea is  
14 to be equal.

15 MR. MERCIER: Okay. Thank you. The other question I  
16 had, we talked about site testing, you know, to  
17 determine subsurface conditions. And I believe it  
18 was stated that, you know, any geotech testing  
19 would be performed prior to site construction, but  
20 it hasn't been done yet because you don't really  
21 know the exact design.

22 So what is the actual purpose of the on-site  
23 geotechnical testing?

24 THE WITNESS (Burns): So typically the geotechnical  
25 investigation for a telecommunications project is

1 to drill at the tower location a relatively deep  
2 hole so that that information combined with the  
3 loading of the tower can be sent to the tower and  
4 tower foundation designer to design the  
5 foundation.

6 In addition, typically they'll do two or  
7 three probes which are about ten foot -- I'll call  
8 them borings -- ten-foot holes within the compound  
9 area just to see if any rock is encountered, or --  
10 or groundwater is encountered within the compound  
11 area.

12 And in addition on this site I'll probably be  
13 requesting -- no, not probably. I will be  
14 requesting some information in the area of the  
15 stilling basins as well just to see what we're  
16 dealing with in terms of infiltration, and any  
17 ability to possibly turn one of these into a rain  
18 garden -- so having the soils to support  
19 plantings.

20 **MR. MERCIER:** Can you describe how it is conducted, the  
21 geotech testing is conducted? You know, you just  
22 told me where you would do it, but also, you know,  
23 at what point if this tower is approved, when  
24 would that occur and what type of equipment you  
25 would use?

1 THE WITNESS (Burns): So at what point? You know, I  
2 can't submit D and M drawings until we have a  
3 tower and tower foundation design. So assuming we  
4 get through this phase, the geotech will be  
5 ordered next because the tower has to be designed  
6 and the foundation has to be designed as part of  
7 the approval process through the Siting Council.

8 As far as what kind of machinery you're going  
9 to use, they'll probably -- more than likely go up  
10 there with a ATV rig, which is pretty similar to  
11 what it sounds like. It's a bit of an oversized  
12 ATV fitted with -- with a drill rig.

13 And mainly because they'll have to get up in  
14 the woods up here -- and they'll do the drilling  
15 that way.

16 MR. MERCIER: Okay. For the ATV rig and the drilling  
17 locations would there be any kind of a tree  
18 clearing required, or brush clearing just to get  
19 it up there?

20 THE WITNESS (Burns): There could be. I would say  
21 it's -- it's really unknown until the geotech  
22 walks the site, but the idea of him bringing in  
23 the ATV rig is to limit that as much as possible.

24 MR. MERCIER: Also at the previous hearing it was  
25 stated that, you know, blasting wasn't

1           anticipated.

2           You know, at what point would blasting be  
3           required? Like, who makes a determination that we  
4           need to do blasting?

5   **THE WITNESS (Burns):** So first, I -- I believe the  
6           response to the interrogatory is -- is for --  
7           blasting is not preferred. The preferred method  
8           of construction here on this site is to remove the  
9           rock mechanically.

10           Who makes that determination is, initially  
11           the geotech engineer in his report will determine  
12           what type of rock we're dealing with. But once  
13           again, we won't know the extent of it until the  
14           contractor goes out and starts excavating out  
15           here.

16           At that point a combination of the geotech  
17           report combined with the contractor will make a  
18           determination whether blasting is required, but  
19           the idea is to limit that. That is sort of last  
20           resort -- not sort of. It is last resort.

21   **MR. MERCIER:** Okay. Thank you.

22   **THE WITNESS (Burns):** You're welcome.

23   **MR. MERCIER:** I'm going to switch now to response  
24           number four on this Exhibit Number 11. And this  
25           had to do with photo logs for the photos that were

1           previously submitted.

2           And I'm just going to go through, like,  
3           basically one or two photos if -- bear with  
4           me here -- photo number 44.

5   **THE WITNESS (Burns):** Yeah?

6   **MR. MERCIER:** Just looking at this photograph, would  
7           this be considered a seasonal view or a year-round  
8           view based on your assessment?

9   **THE WITNESS (Gaudet):** Yeah, this would be considered  
10           year-round. You know, primarily -- if you zoom  
11           in, having the capability to zoom in, you can see  
12           that the balloon is -- is fully above the top of  
13           the branches there minimally, but it is above.

14           So it would be -- I would consider it  
15           year-round in the sense that you would probably be  
16           able to see the top three, four feet of the -- of  
17           the branching.

18   **MR. MERCIER:** Okay. Thank you.

19   **THE WITNESS (Gaudet):** These balloons are about three  
20           to four-foot diameter.

21   **MR. MERCIER:** Got it. Thank you.

22           The same question for number 67?

23   **THE WITNESS (Gaudet):** This one, this could be -- this  
24           is a tougher one. I would say this would be  
25           considered seasonal.

1           Mainly you have these deciduous trees in the  
2 foreground here. You can see it's, you know, the  
3 branching, some of them curled down. You can see  
4 some immediate branches in front of the balloon  
5 sort of in the, I'll call it the foreground here.

6           I would tend to think that from this static  
7 location, with all the leaves on it would be very  
8 difficult to -- to pinpoint the tower.

9 MR. MERCIER: Okay. Thank you.

10           During your, you know, development of your  
11 visual assessment you have your year-round view  
12 that's usually marked in yellow, and then there's  
13 the orange for the seasonal.

14 THE WITNESS (Gaudet): Uh-huh?

15 MR. MERCIER: For seasonal view characterizations, you  
16 know, how many months of the year would be  
17 considered a seasonal, you know, during leaf-off  
18 conditions --

19 THE WITNESS (Gaudet): Yeah, we typically --

20 MR. MERCIER: -- for this?

21 THE WITNESS (Gaudet): You know, I mean, each year it  
22 sort of depends when the leaves come back on the  
23 trees fully, but I would say you're probably  
24 looking leaf-off situation would be November to,  
25 I'll call it, beginning of May.

1 MR. MERCIER: Okay. Thank you. In the area around the  
2 tower -- I'm not sure if you did this or anybody  
3 else. Did anybody take any measurements of the  
4 tree heights, you know, in the area around the  
5 tower? Now is it a canopy, like, 65 feet, 85?

6 Any height on that?

7 THE WITNESS (Gaudet): No formal measurements, but I  
8 can tell you that the tree height in this area  
9 visually is probably in that, that 50 to 70-foot  
10 range depending on the type of tree.

11 MR. MERCIER: Move to question five now. This response  
12 had two photographs of the recently constructed  
13 tree tower on Soundview Lane in New Canaan. And  
14 looking at the fencing in both, is this a  
15 decorative type of stockade fence that was  
16 installed? It's not like a normal plain stockade.

17 Is that correct?

18 THE WITNESS (Vergati): This is Ray Vergati, Homeland  
19 Towers. The fence at 182 Sound View Lane was a  
20 solid stockade wood fence. Not your typical  
21 fence. So I guess you could call it, say,  
22 decorative.

23 MR. MERCIER: Okay. So in the slats -- I really can't  
24 see that well. There's fence. It looks slatted.  
25 So behind it there's another layer of wood. So

1           it's not "see-through," I guess, is the term I'm  
2           looking for. It's solid wood when you look at it.

3 THE WITNESS (Vergati): Yes. It's solid. It is not  
4           see-through.

5 MR. MERCIER: Okay. I can't tell by the photo, but  
6           does any of the ground equipment installed for  
7           AT&T here, does it extend above the height of the  
8           fence?

9 THE WITNESS (Vergati): I believe AT&T's WIC, the  
10          walk-in cabinet, I want to say the height of that  
11          is roughly eleven feet. The fence is eight, so I  
12          believe the WIC extends approximately three feet  
13          above the fence line.

14 MR. MERCIER: Okay. Thank you. For photo one that's  
15          the tree tower with leaf on. I see that there's  
16          camouflage socks on the antenna.

17                    Is that correct?

18 THE WITNESS (Vergati): That's correct. You're looking  
19          at AT&T's antennas. On an 81-foot RAD center they  
20          are covered in a camouflage sock, all the panel  
21          antennas.

22 MR. MERCIER: So for this particular -- at the top of  
23          the tower the branches don't really extend beyond  
24          the antennas. And some were removed to meet the  
25          height of the antennas, so you put socks on them.

1           Is that right? Is that a fair assessment?

2   **THE WITNESS (Vergati):** That's correct. This  
3           particular tree pole was conical shaped. So it  
4           had shorter branches at the top. I think  
5           extending a length of six to eight feet. And then  
6           I believe at the bottom maybe tapering it down to  
7           12 or 14 feet in length.

8           But again, the goal, as I testified at the  
9           previous hearing is to keep everything concealed  
10          as best we can within the branches.

11          It's very important to Homeland.

12   **MR. MERCIER:** Okay. So for photo two, were antennas  
13          installed at that time, you take it?

14          It looks like a winter scene.

15   **THE WITNESS (Vergati):** I don't believe the antennas  
16          were installed in that particular photo when there  
17          was snow on the ground.

18          That was probably a January photo of 2022.

19   **MR. MERCIER:** Okay. Thank you. For the proposed site  
20          here on Ponus Ridge Road, is it possible to use  
21          the same type of stockade fencing instead of the  
22          chain link?

23   **THE WITNESS (Vergati):** Yes. We would have no issue in  
24          doing a solid stockade fence to mirror what was  
25          done on the Soundview Lane site.

1 MR. MERCIER: Okay. Let's see here. I'm going to move  
2 to number seven, the question -- the response to  
3 number seven. And this was response to CEQ  
4 comments, and I'm actually going to ask about the  
5 access drive component of that response.

6 And the first sentence states, the Applicant  
7 is in the process of assessing other opportunities  
8 to reduce site disturbance. I just want to know  
9 if anybody on the team has any elaboration onto  
10 what that means?

11 Is there ongoing redesign as we speak? Or is  
12 what you submitted in this submittal the current  
13 design?

14 THE WITNESS (Vergati): So the -- the plan that was  
15 submitted as part of this was a redesign. During  
16 the past hearing we talked about rotating the  
17 compounds 90 degrees, and we were able to do so.

18 We also slid an additional, I think it's 41  
19 feet to the northwest which brings it further away  
20 from the neighbor. And -- and that's what we were  
21 talking about in the redesign there.

22 MR. MERCIER: Okay. Besides the potential rain garden,  
23 there's no other -- currently there's no other  
24 redesign going on. Is that correct?

25 THE WITNESS (Vergati): As of right now? No.

1 MR. MERCIER: Okay. And the second part of the  
2 response had to do with edge forest. This might  
3 be for Mr. Gustafson.

4 Basically it says, the entire site consists  
5 of edge forest habitat. Please elaborate as to  
6 what you mean by, edge forest habitat?

7 THE WITNESS (Gustafson): Sure. Dean Gustafson, All  
8 Points.

9 So the -- the forest habitat on the subject  
10 property is classified as all edge forest, and  
11 that's because there's either development or  
12 non-forested habitat within 300 feet of the  
13 subject parcel.

14 So per the definition of core, what core  
15 forest and -- and edge forest habitats for  
16 Connecticut Department of Energy and Environmental  
17 protection, you know, the entire forest patch on  
18 this site would be considered edge forest type  
19 habitat.

20 MR. MERCIER: Did you have the opportunity to look at  
21 adjacent parcels to determine if there's any core  
22 forest that could be affected if this site was  
23 developed?

24 THE WITNESS (Gustafson): So the -- the habitat  
25 surrounding this particular property is surrounded

1 by either non-forested habitat or residential  
2 development, which has resulted in, you know,  
3 significant perforations into what was probably  
4 historically a core forest habitat.

5 So any of the forest surrounding this  
6 facility would not be considered a core forest.  
7 It would all be considered edge forest habitat  
8 because of the amount of residential development  
9 and the non -- non-forested habitat, primarily the  
10 reservoir.

11 MR. MERCIER: Okay. Thank you. While we're on the  
12 subject of forests, I'm not sure if you have any  
13 information regarding class one and class-two  
14 watershed land. So I'll just pose the question  
15 and see if you could elaborate.

16 THE WITNESS (Gustafson): Uh --

17 MR. MERCIER: (Unintelligible) -- oh, yeah. Go ahead.

18 THE WITNESS (Gustafson): Oh, sorry to interrupt. So  
19 core, you know, class one or two watershed land,  
20 the overriding factor of being able to be  
21 classified as class one or two, is it has to be  
22 owned by a water company.

23 So because the subject property is privately  
24 held, it would not be classified as class one or  
25 two land.

1 MR. MERCIER: What do these designations indicate?

2 Like, class one, there's class two? Is it just a  
3 different level of protection? Or forest quality?

4 Do you have any information on that?

5 THE WITNESS (Gustafson): Yeah, so generally speaking,  
6 yeah, class one is considered, you know, of  
7 greater value, or with respect to watershed, water  
8 company watershed land. It's based mainly on its  
9 proximity to the reservoir, and also any water  
10 features that directly feed the reservoir.

11 There are other considerations that go into  
12 whether it's class one or two, but those are  
13 the -- the general criteria to distinguish the  
14 two. Class two is, generally it's -- it's all  
15 water company land, but it's -- it's generally  
16 more distant from the actual reservoir feature, or  
17 wetland watercourse features that directly feed  
18 that reservoir.

19 MR. MERCIER: Now what entity determines whether the  
20 land is class one or two, you know, if it's owned  
21 by the water company?

22 Does the water company do that, or is there  
23 like a certain type of -- does it always have to  
24 be class one or two? Or can it be some other  
25 designation?

1 THE WITNESS (Gustafson): I mean, that's a great  
2 question. It goes a little bit beyond my area of  
3 expertise, but what I understand is that the --  
4 the water company makes that designation. There  
5 may be some coordination with the Connecticut  
6 Department of Public Health on, you know, those  
7 mapping standards, but I believe the water company  
8 itself makes that determination.

9 There's set criteria in the statute with  
10 respect to how those features are defined, but I  
11 think at the end of the day, the water company is  
12 the -- the agency that makes that determination  
13 between what they consider class one and class  
14 two.

15 MR. MERCIER: If this parcel was owned by the water  
16 company, would it be classified as class one or  
17 two? Or do you know that?

18 THE WITNESS (Gustafson): Yeah. So if we're going down  
19 this hypothetical discussion, if this was owned by  
20 the water company then I think because of the  
21 proximity to Laurel Reservoir and the wetland  
22 system, certainly areas within one or two hundred  
23 feet of -- of those edges would be class one.

24 So a significant portion of the subject  
25 property would be probably class one, but there

1           would probably also be class-two land on this  
2           parcel.

3   **MR. MERCIER:** Now as a class one or two land -- I mean,  
4           water, do the water companies have restrictions on  
5           developing that land? Yeah -- do the water  
6           companies have restrictions for developing that  
7           land?

8   **THE WITNESS (Gustafson):** So this, like I indicated  
9           earlier, this is a little bit beyond my area of  
10          expertise, and I think it becomes more of a legal  
11          question than anything else.

12                 So I do believe that there are restrictions  
13           for private development, commercial development on  
14           class one or two land. There is a process in  
15           place through the Connecticut Department of Public  
16           Health to -- to try to seek the ability to, to  
17           construct in those -- but those, the ability to do  
18           that is -- is extremely difficult, at least in my  
19           experience.

20                 And it's a long, you know, permit process  
21           that's required.

22   **MR. MERCIER:** Okay. Now if a property is located in a  
23           watershed area, you know, but it's not owned by a  
24           water company, and so therefore it's not class one  
25           or two land, would a water quality authority such

1 as a water company or the Department of Public  
2 Health be able to restrict development on the  
3 parcel?

4 THE WITNESS (Gustafson): Yeah, I -- I cannot. I  
5 cannot answer that question.

6 MR. MERCIER: I'm going to move onto response number  
7 eight. This had to do with a potential alternate  
8 site on the property, you know, the feasibility of  
9 constructing one.

10 Mr. Burns, in the response what area on  
11 the -- I'm looking at the site plan SP-2. What  
12 area of the lower hillside, I'll call it, was  
13 examined as a potential site?

14 THE WITNESS (Burns): So once again, Robert Burns from  
15 All Points technologies.

16 Mr. Mercer, I believe when we spoke you were  
17 asking about the area where the second stilling  
18 basin is, the -- the second one going up the hill.  
19 And that's the area we looked at.

20 This, just the side slopes are so extreme  
21 that the size of the retaining wall would be  
22 significant, and you're building on a two-to-one  
23 hillside.

24 MR. MERCIER: Okay. I think when I was talking I was  
25 trying to get to the point that, you know,

1 anywhere next to that stone wall all the way up.

2 So I guess I'll ask, how about near the stone  
3 wall where the first stilling basin is? It's a  
4 little more gradual grade, I guess, in the area of  
5 contour 360, you know, the original contour, that  
6 is -- not the revised.

7 THE WITNESS (Burns): I'm sorry. When you say, first  
8 stilling basin, that's going up the hill?

9 MR. MERCIER: Going up the driveway on the left, yes,  
10 but next to the stone wall.

11 THE WITNESS (Burns): And that's actually --

12 MR. MERCIER: You know, if I was looking at photos  
13 nine, ten and eleven in attachment one to this,  
14 this late file, you know, it looks a relatively  
15 moderate to low slope, a slight pitch.

16 So what's the feasibility of constructing  
17 one, a site there?

18 THE WITNESS (Burns): So if you look at the contours on  
19 SP-2, there it's actually steeper in that area  
20 than it is for the second stilling basin.

21 So it would be --

22 MR. MERCIER: Okay. It might be easier if -- let's  
23 look at photos number nine and ten of this. I  
24 don't know if you have those.

25 Basically right off the driveway right next

1 to the stone wall, could you put a site there on  
2 the north side of that stone wall?

3 THE WITNESS (Burns): Again, without a significant  
4 retaining wall, this site would be very difficult  
5 to build.

6 And it's actually easier at the second  
7 location, whereas the first, if you notice in this  
8 picture, it -- once it goes over the wall it kind  
9 of -- I don't know what the word is. It gets not  
10 as steep and that's why I looked there, that, and  
11 that you had mentioned it at the last meeting.

12 So I think this location, if you look at  
13 those contours, it's even more difficult for them.

14 And you're right at the property line at that  
15 point, too.

16 MR. MERCIER: You know, I'm looking at photo nine. I  
17 don't know if you see this exhibit, but I mean, it  
18 looks pretty level. And so if you can look at it  
19 and maybe we could -- if you have it, and maybe we  
20 could talk about this one more time?

21 THE WITNESS (Burns): Okay. I'm looking at it. I have  
22 it right here.

23 MR. MERCIER: Okay. You know, I see the stone wall and  
24 right beyond there, it looks kind of like a little  
25 level area. Don't you agree that's kind of a flat

1 terrain --

2 THE WITNESS (Burns): It is a little --

3 MR. MERCIER: -- compared to what's to the right?

4 THE WITNESS (Burns): Yes, I would agree. It's a  
5 little flatter, and I would -- but -- but the size  
6 of the compound, you have to remember, is not the  
7 size of the driveway. It's significant.

8 So even when I looked at putting it where  
9 that second stilling basin is, half the compound I  
10 had to put within the area where we're currently  
11 showing the driveway. So it's not exactly where  
12 that stilling basin is.

13 So in this case that would probably be the  
14 same, but we would be, you know, again, it's --  
15 it's more difficult. It's -- it's harder to build  
16 than where we're going currently.

17 And it would need significant retaining walls  
18 right on the property line, right on the street  
19 line. And those walls would probably be taller,  
20 and the tower would be significantly taller as  
21 well.

22 MR. MERCIER: Yeah. I'm just looking at  
23 constructability. So when you're saying  
24 significant retaining walls, so what are you  
25 talking here?

1 THE WITNESS (Burns): We're probably talking --

2 MR. MERCIER: Three, four feet?

3 THE WITNESS (Burns): No, you're probably talking a  
4 hundred and 50-foot long -- as I'm just throwing  
5 that out there -- anywhere from probably 8 to, I  
6 would say maybe 15 feet in some areas.

7 It may not go as high as 15, but we'll be  
8 approaching it.

9 MR. MERCIER: Are you considering, you know, is this a  
10 rectangular type of compound?

11 Or something square?

12 THE WITNESS (Burns): More rectangular, running  
13 along -- I would think we would run along the --  
14 the plane of the driveway, if you will, in that  
15 direction. That would be the long way of the  
16 rectangle. And I -- I do think you'd have a  
17 significant retaining wall there.

18 Again, I'm doing this just looking at the  
19 plan here. I haven't laid anything out in that  
20 area.

21 MR. MERCIER: Have you constructed sites on slopes such  
22 as this?

23 THE WITNESS (Burns): Well, I've been doing this almost  
24 40 years. So I would probably say the answer is  
25 yes.

1 MR. MERCIER: Okay. You know, environmentally, I guess  
2 this might be for Mr. Gustafson. Would there be  
3 an advantage to putting a site down lower by the  
4 driveway, rather than putting it up near the top  
5 of this small ridge?

6 You know, would there less tree clearing, the  
7 least runoff, things of that nature?

8 THE WITNESS (Gustafson): From that perspective there  
9 could be some benefit. I think you also need to  
10 weigh that, you know, the -- that activity, you  
11 know, which is going to be, you know, some  
12 significant earthwork to try to fit that compound  
13 into that hill slope. And with the grading and  
14 everything else it puts, you know, a significant  
15 amount of earthwork in closer proximity to the  
16 edge of Laurel Reservoir.

17 So I think it's -- it's somewhat of a  
18 balance, but overall, you know, if you could  
19 situate a tower there and not -- kind of, consider  
20 some of those other impacts and visual impacts, et  
21 cetera, as far as like an overall limit of  
22 disturbance, you know, there would be -- there  
23 would be a reduction for sure.

24 MR. MERCIER: Okay. I think I will move on to another  
25 topic for Mr. Lavin. I just had some follow-up

1           questions regarding the application attachment  
2           four, and some of the submittals in there.

3   **THE WITNESS (Lavin):** Martin Lavin for AT&T.

4   **MR. MERCIER:** Okay. Sorry -- I lost my place here.

5           Looking at the terrain map in attachment  
6           four, you know, it had the nice color map with all  
7           the different elevations highlighted in different  
8           colors.

9           For this proposed site what terrain feature  
10          is blocking the signal from reaching -- such as,  
11          you know, the northern part of West Road. Is it  
12          that small little hillside, or a little hilltop  
13          near Laurel -- is that Lost District Road?

14   **THE WITNESS (Lavin):** Understand the --

15   **MR. MERCIER:** (Unintelligible) plot doesn't -- yeah.

16          Go ahead.

17   **THE WITNESS (Lavin):** Radio frequency analysis report,  
18          the terrain -- oh, yes.

19          And you're asking about which direction?

20   **MR. MERCIER:** It would be kind of northeast along the  
21          northern portion of West Road. This site doesn't  
22          really reach over there, this particular site for  
23          700 megahertz.

24          And up by Lost District Road there's, like, a  
25          little pond at the intersection there. I'm trying

1 to figure out what feature is blocking that, the  
2 coverage from reaching that area.

3 THE WITNESS (Lavin): Yes, there's significant terrain  
4 where -- there isn't a name on there. Just  
5 straight northeast of our proposed location  
6 there's a peak in yellow there that's higher, much  
7 higher than the site. There's another one on  
8 Pequot Lane there.

9 And in general there's rugged terrain over  
10 that area, and it generally blocks coverage from  
11 going very far in that direction.

12 MR. MERCIER: Okay. So the site is too low to reach  
13 over these terrain features.

14 And does it reach out to State Highway 124?  
15 Or is that covered by another site?

16 That's eastward again.

17 THE WITNESS (Lavin): State Highway 124. I mean, just  
18 the before and after. There's also -- it's  
19 blocked, and a lot of that lost coverage is on the  
20 backside of those hills. It's shadowed.

21 They're not necessarily -- just because  
22 they're on the -- if they were on the west side of  
23 the hill they would be covered, but they're on the  
24 backside, so they lose that coverage.

25 West Road, there's a fair amount in that

1 direction but it doesn't pick all the -- under the  
2 label that says, State Highway 124, on the -- on  
3 the coverage plots, the terrain goes back up on  
4 the other side.

5 We pick up a lot around Apple Tree Lane  
6 and -- and West Road there, but not an awful lot  
7 up to State Highway 124, which like many roads,  
8 it's unfortunately down in a little -- in a low  
9 area.

10 MR. MERCIER: You know, looking at that terrain plot  
11 that you have, would it be better to locate a  
12 facility up near that little knoll we just talked  
13 about, in Lost District Road, up in that area to  
14 reach up, up towards State Highway 124, and West  
15 Road --

16 THE WITNESS (Lavin): Um --

17 MR. MERCIER: (Unintelligible) -- tucked down below.

18 So I was just curious why, why this site was  
19 selected given the challenges there.

20 THE WITNESS (Lavin): Yeah, it comes down, I believe,  
21 more to Mr. Vergati's area of what's available to  
22 us, and all the other factors from that angle that  
23 go in.

24 I mean, on a purely terrain basis, setting  
25 aside every other aspect of this, the higher

1 the -- the ground elevation the better for us in  
2 that area, but it's -- it all gets back to the  
3 availability of a site that's lease-able, and so  
4 forth to be available to us.

5 MR. MERCIER: Right. You know, looking at the 700  
6 frequency plot and the 1900 frequency plot, that  
7 that plot was -- 19 was provided in the  
8 interrogatory response. But it disappears like a  
9 lot of coverage is over the reservoir, but just  
10 it's not usable for anybody.

11 So is this site suitable for AT&T? You know,  
12 I know you're proposing it, but is it just the  
13 point that there's no other sites available to get  
14 any kind of coverage up here?

15 THE WITNESS (Lavin): I mean, are we -- I -- I could  
16 certainly pick a higher spot. Mr. Vergati could  
17 speak more directly to the availability. In any  
18 site in the general vicinity of the reservoir,  
19 that they're only going to have quite a lot of  
20 coverage over the reservoir itself. That's kind  
21 of inevitable in this particular area.

22 It's just wide open and there's really  
23 nothing in the way of the signals, but we don't,  
24 that I'm aware of, have any other location that  
25 has moved through all of the gating factors we

1           have to go through to -- to get to the Siting  
2           Council portion of our site development.

3 MR. MERCIER:   Okay.   Thank you.

4           I have no other questions.

5 THE HEARING OFFICER:   Thank you, Mr. Mercier.

6           I did want to go back to a couple things,  
7           Mr. Mercier, that you brought up -- a couple of  
8           them with Mr. Burns.

9           Mr. Burns, if I jotted this down correctly, I  
10          think Mr. Mercier was looking for some type of  
11          quantification on that ten-year rainfall, and also  
12          some type of characteristics for potential  
13          overflow across the road.

14          Is that something, first of all, that I got  
15          correct?   And secondly, is it something you could  
16          provide today?   Or would that have to come in at  
17          another point?

18 THE WITNESS (Burns):   The two points that, what I  
19          picked up -- and you know, maybe I was mistaken,  
20          is the rainfall intensity.   And the second one  
21          was, what is currently in Ponus Ridge Road for --  
22          for drainage now?   Is it crowned?   Is it curbed?  
23          Are there other basins?

24          I think that the Ponus Ridge Road one, I need  
25          to get back to you on because I either have to

1 review photos or take a trip out there.

2 And the rainfall intensity, I could -- I  
3 could probably get for you, but I've got to make a  
4 call to my office.

5 THE HEARING OFFICER: Okay. So it will be homework  
6 assignments at this point?

7 THE WITNESS (Burns): Yes.

8 MR. LYNCH: Excuse me. Mr. Silvestri?

9 THE HEARING OFFICER: Yes, Mr. Lynch?

10 MR. LYNCH: I'm going to have to step away for about 10  
11 or 15 minutes. So I'm just letting you know so  
12 you can, you know, keep on going.

13 But I'll be back.

14 THE HEARING OFFICER: Understood. Thank you, Mr Lynch.  
15 Okay. The other one I had for Mr. Mercier  
16 actually.

17 In your discussions going back to the photo  
18 number nine with Mr. Burns, did you need more  
19 specific information as to whether a site could be  
20 constructed there, Mr. Mercier?

21 MR. MERCIER: Yes, I believe the answer was that the  
22 site in the locations such as that of photo nine  
23 would just be construction; a little more  
24 destructive with retaining walls and nature like  
25 that.

1 THE HEARING OFFICER: Okay. Then the other question --

2 MR. MERCIER: I guess that was the answer.

3 THE HEARING OFFICER: The other question I have for  
4 you, Mr. Mercier. When you're talking about the  
5 RF part of it, it came up on the availability of  
6 the other site that you had in question.

7 Do you need information from Mr. Vergati?

8 MR. MERCIER: No, I do not.

9 THE HEARING OFFICER: Very good. Okay. Thank you.

10 That's all the things I had for followup at this  
11 point. Thank you, Mr. Mercier.

12 Now continue with cross-examination by  
13 Mr. Nguyen, and he'll be followed by Mrs. Cooley.

14 Mr. Nguyen?

15 MR. NGUYEN: Thank you, Mr. Silvestri. Good afternoon,  
16 everyone. Just a couple.

17 The record indicates that the distance from  
18 the proposed tower site to the eastern property  
19 boundary is about 110 feet. Is that correct?

20 THE WITNESS (Burns): Robert Burns, All Points  
21 technologies.

22 Yes, from the previous design prior to us  
23 rotating the compound and moving it, it was 110  
24 feet. The new design has it at 153.

25 A VOICE: 150.

1 MR. NGUYEN: So to the extent that --

2 THE WITNESS (Burns): Sorry to interrupt, sir. That's  
3 from the compound to the property line.

4 MR. NGUYEN: I'm asking about it from the tower to the  
5 property line.

6 THE WITNESS (Burns): Yeah, so the tower -- I don't  
7 have it to the proper -- I have it to the house at  
8 359 Dans Highway.

9 The tower was at 365. With the new design  
10 it's at 406 now.

11 MR. NGUYEN: So regardless of the distance there, has  
12 the yield point been included in the design?

13 THE WITNESS (Burns): So at this point with us moving  
14 the tower, the yield point is no longer needed.

15 MR. NGUYEN: Thank you for clarifying that.

16 THE WITNESS (Burns): You're welcome.

17 MR. NGUYEN: At the last hearing one of the  
18 councilmembers asked the company to follow up with  
19 any of the land owners that did not respond  
20 initially to the site that meet the coverage  
21 objectives.

22 So would anyone provide us an update on that?

23 THE WITNESS (Vergati): This is Ray Vergati, Homeland  
24 Towers. Yes, that was a homework assignment. We  
25 had RF look at 24 properties in the alternate site

1 analysis; 10 were rejected from an RF perspective.

2 Homeland Towers sent out follow-up certified  
3 mailing letters to 14 of the remaining properties,  
4 and we will wait for any type of responses from  
5 those landowners.

6 MR. NGUYEN: Okay. That's all I have, Mr. Silvestri.

7 Thank you.

8 THE HEARING OFFICER: Thank you, Mr. Nguyen.

9 Now I'll continue with cross-examination by  
10 Mrs. Cooley to be followed by Mr. Collette.

11 Mrs. Cooley?

12 MS. COOLEY: Thank you, Mr. Silvestri and good  
13 afternoon, everyone. Many of my questions have  
14 already been asked and answered. And I appreciate  
15 Mr. Mercier talking about the geotech issues. I  
16 have several questions about that.

17 One question that I still have is, at what  
18 point after doing a geotech analysis would you  
19 have to change the design at all?

20 Would that be an outcome that you would ever  
21 foresee? Or would you have to go to some of those  
22 more invasive things like blasting, but you would  
23 still keep the same design?

24 Is there any outcome from that geotech  
25 analysis that would make the road or the design

1 non-tenable?

2 THE WITNESS (Burns): For the record, Robert Burns, All  
3 Points Technology.

4 So the geotech design would allow us to  
5 design the tower and the tower foundation  
6 initially. That's -- that's part of it.

7 MS. COOLEY: Uh-huh.

8 THE WITNESS (Burns): Most of that foundation is under  
9 ground, so the tower location itself would not  
10 change.

11 As far as the areas where there's potential  
12 for rain gardens, that would be the areas I would  
13 look at changing because at that point I'd have  
14 soil characteristics. So it would change during  
15 the D and M submission -- prior to the D and M  
16 submission.

17 MS. COOLEY: Okay. Thank you for that.

18 I appreciate that.

19 THE WITNESS (Burns): You're welcome.

20 MS. COOLEY: Okay. And then one other question, too,  
21 that had come up from reading some of the  
22 materials that one of the intervenors had  
23 submitted had to do with the impact of the tower  
24 on migratory birds. And much of the analysis in  
25 that had to do with lighting as a problem.

1           And I just wanted to clarify that there are  
2           no lights associated with the compound, or with  
3           the tower?

4   **THE WITNESS (Burns):** The tower itself will require no  
5           lighting. The compound itself --

6   **MS. COOLEY:** Okay. Were there --

7   **THE WITNESS (Burns):** Each carrier has a light that  
8           their operations guy will use if he has to come  
9           out during an emergency. They are either on a  
10          timer, a manual timer or they're motion  
11          detected -- but for the most part the preference  
12          is to put them on a timer so that while he's there  
13          he can use it. And then obviously it will go off  
14          after that.

15          And they're all, for the most part, lower  
16          than the fence.

17   **MS. COOLEY:** Okay. Very good. And how often would  
18          those maintenance people be out there, and would  
19          you anticipate they would need lighting to do  
20          their work? Or would they be out during the  
21          daytime mostly?

22   **THE WITNESS (Burns):** If they were out -- well, they  
23          would be out during the daytime for regular  
24          maintenance.

25   **MS. COOLEY:** Uh-huh.

1 THE WITNESS (Burns): Kind of emergency maintenance  
2 that's unknown.

3 MS. COOLEY: (Unintelligible) -- right.

4 THE WITNESS (Burns): That's the only reason they would  
5 probably need the lighting. And even -- even  
6 regular maintenance. In maintenance, you're  
7 looking at maybe once every two months.

8 A lot of what they do they do remotely.

9 MS. COOLEY: Okay. All right. Very good. And just to  
10 clarify as well, in the letter from the CEQ and  
11 also from DPH, they both mentioned quite a few  
12 considerations that they would like to see  
13 incorporated into an approval, should this be  
14 approved.

15 And I believe that when I've looked at your  
16 materials, all of those were acceptable. Is that  
17 also accurate with regard to --

18 THE WITNESS (Burns): Yeah, so --

19 MS. COOLEY: Yeah.

20 THE WITNESS (Burns): They had a whole list of notes.  
21 They wanted us to have drawings for personnel to  
22 come on site and inspect, and be to included in  
23 pre-cons and whatnot.

24 And yes, they were all acceptable.

25 MS. COOLEY: Okay. And including timing of when tree

1 removal would occur to be less disruptive to  
2 potential wildlife that would use the site?

3 THE WITNESS (Burns): Yes. That was -- that was agreed  
4 upon as well.

5 MS. COOLEY: Okay. Very good.

6 I think the only other question I had to do  
7 was regarding potential flow onto the road. And  
8 until we get that information about the crowning  
9 of the road and any potential drainage, storm  
10 drainage or other drainage that occurs there,  
11 we'll have to wait and see on that. So I look  
12 forward to hearing more about that.

13 And I think that really covers all the  
14 questions that I had that weren't already asked or  
15 answered. So thank you.

16 THE HEARING OFFICER: Thank you, Mrs. Cooley.

17 We'll now continue with cross-examination by  
18 Mr. Collette to be followed by Mr. Lynch.

19 Mr. Collette?

20 MR. COLLETTE: Thank you, Mr. Silvestri. I just really  
21 have one, sort of, line of questioning that I want  
22 to follow up on. It was actually some of the  
23 initial questions asked by Mr. Silvestri where he  
24 was asking how the site would be constructed.

25 And I don't want to speak for him, but the

1 way I was thinking, you know -- he, what he was  
2 trying to get at is, what are the plans for  
3 phasing construction at this site, given the steep  
4 slopes and given the proximity to Laurel  
5 Reservoir?

6 THE WITNESS (Burns): Once again, Robert Burns, All  
7 Points technologies.

8 The means and methods of constructing the  
9 site will ultimately be on the contractor, but any  
10 restrictions we put on him in phasing will be part  
11 of the D and M process. So, if we only want him  
12 to open up so much property at once there will be  
13 restrictions on, obviously, when he can cut the  
14 trees down -- depending on the bats, I think.

15 And so there will be -- there will be some  
16 restrictions he's going to have to have in terms  
17 of the slopes out here, but understand also that  
18 this is, in the grand scheme of things, a  
19 relatively quick construction. And you know, I  
20 think most of that will be outlined in the D and M  
21 drawings.

22 We haven't really looked at it in terms of  
23 phasing as of yet.

24 MR. COLLETTE: I just want to point out -- I mean, you  
25 know, page 17 of the application itself, you know,

1 it talks generally about the importance of  
2 phasing, you know, additional protection measures  
3 such as phasing of erosion controls, soil  
4 stabilization techniques.

5 I mean, the plans themselves don't yet have  
6 any general description of the appropriate phasing  
7 here. Is that correct?

8 THE WITNESS (Burns): That's correct. The erosion  
9 control measures, well -- while not, you know,  
10 there's no notes, erosion control notes, et  
11 cetera, on the drawings as of yet, but there  
12 are -- there are erosion control measures shown on  
13 here.

14 In terms of phasing the construction at this  
15 point? No, that hasn't been shown on here as of  
16 yet.

17 MR. COLLETTE: I mean, does All Points, prior to the D  
18 and M plan process, have any, you know, plans?

19 Or does Homeland Towers have any plans to  
20 describe in a little bit greater detail what the  
21 appropriate phasing would be as opposed to leaving  
22 this developed -- to be developed by the  
23 contractor?

24 THE WITNESS (Burns): The answer to that is, yes. D  
25 and M drawings are essentially construction

1 documents without the electrical design and the  
2 grounding design.

3 So in that D and M set, if we feel that  
4 there's areas that need to be phased in or -- or  
5 constructed in a certain sequence, there will  
6 definitely be a sequence of construction as part  
7 of the drawing set.

8 So at that point we can lay out a map for the  
9 contractor in terms of what he's going to do when.

10 MR. COLLETTE: Those are my only questions. Thank you.

11 THE HEARING OFFICER: Thank you, Mr. Collette.

12 Mr. Burns, I take it that there's nothing  
13 that you could provide at this time to the  
14 question posed by Mr. Collette, and that that's  
15 entirely a D and M issue, should the project be  
16 approved?

17 THE WITNESS (Burns): At this point, the drawings do  
18 not have a sequence of construction on them. That  
19 is typically during the D and M submission.

20 So at this point there really isn't any  
21 phasing or sort of a roadmap on here in terms of  
22 steps that the contractor is going to take in what  
23 order to build the site.

24 THE HEARING OFFICER: Okay. No. Thank you for that  
25 response.

1 I'd like to continue cross-examination with  
2 Mr. Lynch. I do see that his monitor is back,  
3 although I don't see him physically at this point.

4 So I'll call out, Mr. Lynch, are you back  
5 with us?

6  
7 (No response.)  
8

9 **THE HEARING OFFICER:** All right. In the interim, let  
10 me pose my questions and then we can get back to  
11 Mr. Lynch.

12 I think it was Mr. Burns, you were talking  
13 about the geotech report with Mr. Mercier. Is  
14 there anything that could come out of the geotech  
15 report that would curtail the construction of a  
16 cell tower at this site?

17 **THE WITNESS (Burns):** I'm struggling here, because I  
18 can't think of one offhand. Maybe if they found  
19 groundwater by some reason at a high level, that  
20 could have some significant impact on the  
21 construction itself, but I'm not sure enough to  
22 derail the entire construction.

23 And being that we're on a hillside, I don't  
24 feel that they're going to find groundwater at a  
25 fairly shallow depth. Even if they encounter

1           ledge out there that's -- that's significant, they  
2           can design a foundation and pin it to the ledge if  
3           it's -- if it, you know, if it's extensive enough.

4           So I guess the short answer is, no.

5   **THE HEARING OFFICER:** Okay. Thank you for your  
6           response.

7           I'd like to turn now to the June 24, 2022,  
8           submittal. And I'm not sure who the questions  
9           would be directed to, but I'll start with drawing  
10          CP-1.

11          The question I have -- it's still not clear  
12          to me where the municipality would locate its  
13          equipment, generator and fuel source within the  
14          compound. Could you explain that one to me?

15   **THE WITNESS (Burns):** Yes, sir. If you give me a  
16          second to get to the drawing?

17   **THE HEARING OFFICER:** Sure.

18   **THE WITNESS (Burns):** Okay. So this is under the  
19          previous design, prior to us rotating it and --  
20          and moving it, but it's similar to what's  
21          happening now.

22          If you look at CP-1, there's a dashed -- and  
23          it's kind of tough to see on here, but there is a  
24          dashed box with a label that says, proposed  
25          municipal equipment area, 10 by 20, with backup

1 generator. It's just shown as a space.

2 It's on the right side of the compound, if  
3 you're looking at the sheet, it runs along the --  
4 parallel to where, what we're showing as AT&T's  
5 ice bridge.

6 And since that time I've actually moved AT&T  
7 over to the other corner, but the original  
8 submission had them back over here.

9 THE HEARING OFFICER: I think I got you. Thank you.

10 THE WITNESS (Burns): You're welcome.

11 THE HEARING OFFICER: All right. If you go now to  
12 drawing C-1, that drawing depicts the -- how  
13 should we say that? The typical evergreen tree  
14 planting for areas that are around the compound.

15 Can this typical evergreen, or perhaps other  
16 types of trees be used in some of the graded areas  
17 in SP-2 to replace trees that would be removed?

18 THE WITNESS (Burns): Yes, whether they would be  
19 evergreen and use this particular detail, or  
20 whether I needed to provide a shrub detail, a  
21 planting, that's a different story. But the short  
22 answer is, yes, they can plant on the hillside.

23 THE HEARING OFFICER: Great. Thank you. And then if  
24 you turn to drawing C-4, this drawing still  
25 depicts a diesel generator.

1           The question I have, would the dimensions of  
2 a propane-driven generator be similar?

3           Also, how would the generator pad differ for  
4 a propane generator?

5 **THE WITNESS (Burns):** So dimensions first. The -- the  
6 width and length would be the same. The height  
7 would be different because you wouldn't need that  
8 54-gallon fuel tank underneath. If you look at  
9 the detail, it shows it there. So it would be  
10 slightly shorter.

11           Right now, we're showing a nine-foot by  
12 seven-foot concrete pad, which is rather large for  
13 this size generator -- but we're keeping the same  
14 pad on there for the propane generator.

15           So it would not change.

16 **THE HEARING OFFICER:** Thank you. And with that  
17 drawing, would the SPI petrol pipe and sleeve  
18 still be required with a propane generator?

19 **THE WITNESS (Burns):** No, and in addition, that --  
20 that -- I'm trying to remember what they call it.

21           The trench around the -- the pad would no  
22 longer be required either.

23 **THE HEARING OFFICER:** Okay. Thank you.

24 **THE WITNESS (Burns):** Containment trench, that's it.

25 **THE HEARING OFFICER:** Yeah, understood.

1 All right. Now, I'd like to move to the July  
2 7th supplemental submission. And this goes for  
3 the response to question number nine. And it  
4 notes that the 90 degree rotation of the site, of  
5 the compound would require review and approval  
6 from the site owner.

7 My question, was the site owner consulted?  
8 And if so, what was the response?

9 THE WITNESS (Vergati): Ray Vergati, Homeland Towers.

10 Yes, we -- we provided the site owner an  
11 overlay depicting the original design of the  
12 compound and tower location. And then we shifted  
13 it 43 feet over to the northwest and rotated the  
14 compound 90 degrees.

15 But to answer your question, the owner of the  
16 property sees the benefits of doing this redesign,  
17 and they are agreeable to it.

18 THE HEARING OFFICER: Very good. Thank you,  
19 Mr. Vergati.

20 And I don't know if this one is for Mr. Burns  
21 or not, but I want to go back to drawing SP-1 and  
22 the July 7th supplemental submission.

23 And my question, Mr. Burns, is a vehicle  
24 turnaround needed toward the entrance to the  
25 compound? Or would that be provided within the

1 compound?

2 THE WITNESS (Burns): No, the idea is that it would be  
3 outside the compound. You'd be able to pull up,  
4 park.

5 They -- they don't really drive into the  
6 compound unless they have to, mainly because the  
7 idea is we're going to fill this compound with  
8 other carriers. So he's going to park outside and  
9 then be able to turn around there.

10 If he needed to get inside, he could. It  
11 would be a pretty tough squeeze there, but he  
12 could do it -- but the idea is he would park  
13 outside and turn around.

14 THE HEARING OFFICER: And there's enough room in that  
15 drawing to have a vehicle turn around?

16 THE WITNESS (Burns): Yes, sir. Because if you notice  
17 there's -- there's a space on the -- on the gate  
18 side as well as on the utility side. So it's kind  
19 of on both sides of the compound. So he can pull  
20 in and back around the fence and go.

21 THE HEARING OFFICER: No, just needed to check.

22 Thank you.

23 THE WITNESS (Burns): You're welcome.

24 THE HEARING OFFICER: My next one is for Mr. Lavin.

25 THE WITNESS (Lavin): Martin Lavin for AT&T.

1 THE HEARING OFFICER: Thank you, Mr. Lavin.

2 In the terrain profiles that were provided in  
3 attachment four -- and the ones I'm looking at are  
4 for 982 Oenoke Road, 40 Dans Highway, and 40 River  
5 Wind Road. And these are also the ones in color  
6 with blue, green and -- call it brown, if you  
7 will, or gray.

8 What determines the angle for the line of  
9 sight from the tower at 106 feet AGL?

10 Or if I state that another way, the proposed  
11 tower antenna are pointing at something. What are  
12 they pointing at?

13 THE WITNESS (Lavin): There they're pointing in every  
14 direction. This is one specific profile from each  
15 of the alternate sites. The end point is about  
16 halfway between the proposed site and Lost  
17 District Drive on Ponus Ridge Road.

18 THE HEARING OFFICER: So the black line that has a line  
19 of sight that's there, would there be other lines  
20 of sight that would be above or below what's  
21 presented? Or that's just the only direction that  
22 it would come on this particular chart?

23 THE WITNESS (Lavin): For each particular profile that  
24 is the path that a signal would follow from the  
25 site to a subscriber of the right end of that

1           profile.

2   **THE HEARING OFFICER:**   Okay.   And that would be fixed in  
3           the case for 982 Oenoke and 40 Dans Highway, 40  
4           River Run Road.   Correct?

5   **THE WITNESS (Lavin):**   Yes, uh-huh.

6   **THE HEARING OFFICER:**   Okay.   Thank you.

7           And Mr. Lavin, my last one might be for you.  
8           If not, then we could find the appropriate person.  
9           Over the weekend I was reading about Rogers  
10          Communications in Canada, that they had a massive  
11          system outage; that they pointed to router  
12          malfunctions.

13          With AT&T's systems are routers located at a  
14          central location that somehow connect to the  
15          individual towers?   Or do you have routers that  
16          are within the compound itself?   Or both?

17   **THE WITNESS (Lavin):**   Offhand, I do not know -- and I  
18          don't think anyone here does.   We can find out.

19   **THE HEARING OFFICER:**   I didn't think I was going to  
20          come up with a question to stump you on that one,  
21          but if you read about it the communication outage  
22          with Rogers was pretty significant, which is why I  
23          wanted to bring it up and see if there's anything  
24          that actually would apply to any systems that are  
25          in Connecticut.



1 THE HEARING OFFICER: Very good. Thank you,  
2 Mr. Mercier.

3 Mr. Nguyen, Anything additional?

4 MR. NGUYEN: No addition. Thank you.

5 THE HEARING OFFICER: Thank you.

6 Mrs. Cooley?

7 MS. COOLEY: I have no further questions. Thank you.

8 THE HEARING OFFICER: Very good. Thank you.

9 Now Mr. Collette, you're all set, and thank  
10 you.

11 MR. COLLETTE: Thank you very much. I just actually  
12 had a question about the landscape screening  
13 proposed for the compound. As Mr. Silvestri  
14 indicates, that one plan indicates a more natural  
15 evergreen, but then on the detail sheets it's  
16 shown that arborvitae are proposed.

17 In looking at the views from 183 Sound View,  
18 it appears that a more natural evergreen screen  
19 was used for that compound, and I wondered if that  
20 was something that could potentially be done for  
21 this site knowing, you know, some arborvitae at  
22 least are prone to deer consuming them and making  
23 them look very unnatural.

24 I was just wondering if that was a  
25 possibility?

1 THE WITNESS (Burns): Robert Burns, All Points  
2 technologies.

3 Yes, that definitely the tree types can be  
4 looked at, and we're well aware of what the deer  
5 do to arborvitae. So yes, a different type of  
6 tree can be put in there.

7 MR. COLLETTE: Thank you.

8 THE WITNESS (Burns): In addition, Mr. Silvester, if  
9 I -- Mr. Silvestri, if I may? I want to just  
10 follow up on a line of questioning with  
11 Mr. Mercier about the lower potential compound  
12 location.

13 I just wanted to put an end point on that,  
14 that the tower would be in the neighborhood of 50  
15 feet lower than where it is now. So it would  
16 require it to be 50 feet taller than what we're  
17 currently showing.

18 THE HEARING OFFICER: Mr. Burns, this was in the  
19 location of either the first or second basin, if  
20 you will?

21 THE WITNESS (Burns): Yeah, the -- the line of  
22 discussion about the first basin location.

23 THE HEARING OFFICER: Very good. Thank you.

24 Thank you for the followup.

25 THE WITNESS (Burns): Thank you.

1 THE HEARING OFFICER: And I saw Mr. Lynch there for a  
2 moment, and then he disappeared. So here's what  
3 I'd like to do. We're pretty close to 3:30. Why  
4 don't we take a break, come back at 3:40?

5 Hopefully Mr. Lynch will be back to join us  
6 for his questions, and we'll wrap up our  
7 cross-examination with the Council with him and  
8 then continue on with cross-examination by  
9 Verizon. And then we'll go back to the  
10 Buschmanns.

11 So let's take a quick break and come back  
12 here at 3:40. Thank you.

13  
14 (Pause: 3:28 p.m to 3:40 p.m.)

15  
16 THE HEARING OFFICER: All right. Ladies and gentlemen,  
17 I do have 3:40.

18 I just want to make sure that Mr. Dixon, our  
19 Court Reporter is with us?

20 THE REPORTER: Yes, I am with you.

21 THE HEARING OFFICER: Very good. Thank you, sir.

22 Okay. As mentioned before we took the break,  
23 I did want to see if Mr. Lynch had rejoined us for  
24 an opportunity for cross examination.

25 Mr. Lynch, are you back with us?

1 MR. LYNCH: I am, Mr. Silvestri, but I don't know for  
2 how long. And so I'm going to pass on  
3 cross-examination.

4 THE HEARING OFFICER: Actually, Mr. Lynch, you're up  
5 now if you'd like to fire away?

6 MR. LYNCH: I'll pass.

7 THE HEARING OFFICER: Very good. Thank you, sir.

8 MR. LYNCH: I could be gone at any minute.

9 THE HEARING OFFICER: All right. I appreciate that,  
10 Mr. Lynch. Thank you.

11 All right. I'd like to continue  
12 cross-examination of the applicants at this time  
13 by Verizon Wireless.

14 And Attorney Baldwin, please?

15 MR. BALDWIN: Thank you, Mr. Silvestri.

16 Just one question. I wanted to put a bit of  
17 a finer point on one of Mr. Burns' last comments.

18 Mr. Burns, you mentioned that the ground  
19 elevation at the alternative location down near  
20 the bottom of the driveway was 50 feet lower than  
21 at the proposed tower site. Is that correct?

22 I think you're on mute, Mr. Burns.

23 THE WITNESS (Burns): Am I good?

24 MR. BALDWIN: Yeah, I can hear you now.

25 THE WITNESS (Burns): I was just looking at the

1 contours down there. There they're around 350,  
2 355. And where we currently are it's around 399  
3 and a half, 400. So it's about a 50-foot  
4 difference.

5 MR. BALDWIN: Okay. And then you said -- I think you  
6 said that it would require a height of a tower to  
7 be 50 feet taller than the one that's currently  
8 proposed. Right?

9 THE WITNESS (Burns): Correct.

10 MR. BALDWIN: And that, and that height difference was  
11 simply to match the same overall antenna height  
12 that AT&T has proposed at the proposed location  
13 for the tower. Correct?

14 THE WITNESS (Burns): Correct.

15 MR. BALDWIN: Okay. Thank you.

16 Thank you, Mr. Silvestri.

17 THE HEARING OFFICER: Thank you, Attorney Baldwin.

18 We'll now continue with cross-examination of  
19 the Applicants by the Buschmanns, and Attorney  
20 Sherwood, please?

21 MR. SHERWOOD: Thank you, Mr. Silvestri.

22 I'd like to start with some questions about  
23 the tree inventory and tree survey table.

24 Would that be Mr. Burns?

25 THE WITNESS (Burns): I'll take the -- I'll take the

1 question. The surveyor did the -- the tree table,  
2 but yes, I'll take the question.

3 MR. SHERWOOD: Good afternoon, Mr. Burns. The tree  
4 inventory is attachment three at page 7. The tree  
5 survey table is attachment four, page 6. It's  
6 EX-2.

7 So you did not conduct the tree survey?

8 THE WITNESS (Burns): No, the site was surveyed by a  
9 professional land surveyor whose stamp is on those  
10 drawings, and he did the tree survey as well.

11 MR. SHERWOOD: Were all the trees on the site located  
12 and identified?

13 THE WITNESS (Burns): All trees within the limits of  
14 the survey that are six inches, at six inches DBH  
15 and greater were located.

16 MR. SHERWOOD: If you take a look at EX-1, which is the  
17 site survey?

18 THE WITNESS (Burns): Yes.

19 MR. SHERWOOD: It looks to me like in the area of the  
20 existing residence there, there appears to be a  
21 scalloped line showing a wooded area -- but it  
22 doesn't appear, with the exception of a few trees  
23 to the south of the driveway, that the trees have  
24 been identified in that area?

25 THE WITNESS (Burns): That's correct. That was not

1 part of the survey limits.

2 MR. SHERWOOD: And if you look to the north along the  
3 limits of the wetlands and the triangular piece  
4 that heads northeast, it doesn't appear that any  
5 trees were identified there either.

6 THE WITNESS (Burns): Correct, outside the survey  
7 limits.

8 MR. SHERWOOD: But what exactly are the survey limits?

9 THE WITNESS (Burns): The survey limits are within  
10 where the construction will be taking place.

11 MR. SHERWOOD: Well, you're not constructing anything  
12 along Ponus Ridge. Correct?

13 THE WITNESS (Burns): That's correct.

14 MR. SHERWOOD: But you're showing trees along the  
15 entire length of the road there?

16 THE WITNESS (Burns): Yes, he went -- he was a little  
17 overzealous there. There were some questions as  
18 to the, originally when we did this, as to the  
19 exact alignment of the access drive.

20 So to be on the safe side we increased the  
21 survey limits down to Ponus Ridge road in that  
22 area.

23 MR. SHERWOOD: Was any attempt -- or has any attempt  
24 been made to identify the individual species of  
25 the trees on the site as a part -- in contrast to

1           just the generic name?

2   **THE WITNESS (Burns):** No.

3   **MR. SHERWOOD:** And has any attempt been made to  
4           identify the 24 trees on the chart that are not  
5           identified by any name?

6   **THE WITNESS (Burns):** I'm not sure I understand the  
7           question, sir.

8   **MR. SHERWOOD:** Well, if you look at the survey -- it  
9           should be X-2 -- there are 24 trees which are not  
10          identified by any name, generic or otherwise.

11                 Has any attempt been made, any further  
12                 attempt been made to identify those?

13   **THE WITNESS (Burns):** No, sir. The instructions to the  
14          surveyor were size only, not tree type. That's  
15          what's required.

16   **MR. SHERWOOD:** Has anyone on your team been concerned  
17          with respect to the identity of the trees with  
18          respect to their importance for the listed, the  
19          three listed species of bats which are in the  
20          vicinity of this property?

21                 In other words, the bat -- according to the  
22          Connecticut Department of Energy and Environmental  
23          Protection, and the U.S. Fish and Wildlife  
24          Service, the bats favor certain types of trees for  
25          roosting. So the type of trees on the property

1 would make a difference.

2 Has anybody on the team been concerned with  
3 respect to that?

4 THE WITNESS (Burns): Maybe Dean can answer that?

5 THE WITNESS (Gustafson): Yeah. Dean Gustafson, from  
6 All Points. We did some general characterizations  
7 of both the wetland and upland habitat on the  
8 property.

9 For the uplands which are encumbered by the  
10 survey limits in the tree survey, you know, it's a  
11 relatively closed canopy mature forest dominated  
12 by red, white and black oaks and sugar maple.

13 All of those tree species have the potential  
14 to provide roosting habitat for the bat species.  
15 And we have adhered to the NDDB requirements as  
16 well as recommendations by CEQ to impose a  
17 tree-clearing restriction, to avoid any tree  
18 clearing during the active roost period for the  
19 bad species From November 1st to March 30th to  
20 avoid any adverse effect to those species.

21 There's still significant tree canopy that  
22 will be remaining on the subject parcel, as well  
23 as surrounding habitat post development. So we  
24 feel it will not be an adverse effect to those  
25 listed bat species, the little brown bat and red

1           bat with those protective measures.

2   MR. SHERWOOD:   Mr. Gustafson, did you actually do --  
3           did you go on the site and inventory or survey the  
4           tress on site to look for roosting sites?  Or did  
5           you just take a general -- were you just on a  
6           general site visit?

7   THE WITNESS (Gustafson):  It was a general habitat  
8           characterization visit.  There it wasn't specific  
9           for looking for possible roosting sites for bats.

10  MR. SHERWOOD:  Thank you.

11           Mr. Burns, the trees are numbered in the tree  
12           survey table and they're also numbered on the site  
13           survey, but they're not numbered on the site plan.

14           That's correct?

15  THE WITNESS (Burns):  One second, please?

16  MR. SHERWOOD:  I guess I should say, they're not  
17           numbered on any of the three revisions of the  
18           site --

19  THE WITNESS (Burns):  No, I -- I removed them from  
20           SP -- that's correct.  I removed them from SP-2  
21           just to -- there's so much going on, on this  
22           drawing, that it just kind of cluttered it up.  So  
23           yes, they're not shown on any of the site plans.

24  MR. SHERWOOD:  And the site plan was drawn using the  
25           survey as the base map?

1 THE WITNESS (Burns): Yes, sir.

2 MR. SHERWOOD: Is that correct?

3 THE WITNESS (Burns): Yes, sir.

4 MR. SHERWOOD: How did you determine the number of  
5 trees to be removed in the various versions of the  
6 site plan?

7 THE WITNESS (Burns): If the trees were impacted by any  
8 of the grading or earthwork activities, they were  
9 slated to be removed.

10 MR. SHERWOOD: How did you determine the number?

11 THE WITNESS (Burns): I counted them.

12 MR. SHERWOOD: Well, we looked at the drawings that you  
13 submitted on June 24th, SP-2, which is the fifth  
14 sheet -- or the fifth page of that submission.  
15 And you show 94 trees to be removed, and we count  
16 105 trees.

17 And in the July 7th submission you have the  
18 modification where the power compound is termed.  
19 In sheet SP-2, in that version you show 93 trees  
20 to be removed, and we count 111 trees.

21 THE WITNESS (Burns): Yes, sir. So the surveyor was a  
22 little overzealous and went out and picked up  
23 trees less than six inches. So if you notice on  
24 the tree table there are four-inch trees shown.  
25 Those were not counted.

1           And I believe he also had a couple stumps he  
2           picked up, and counted them as trees.

3 MR. SHERWOOD:   So what trees didn't you count?   Were  
4           they trees that were --

5 THE WITNESS (Burns):   Any tree --

6 MR. SHERWOOD:   -- four inches --

7 THE WITNESS (Burns):   Yes.

8 MR. SHERWOOD:   Four inches in diameter or less?

9 THE WITNESS (Burns):   Anything that's less than six  
10          inches, and anything he has listed as a stump.

11 MR. SHERWOOD:   Now you've also not shown all of the  
12          trees which are identified on the site survey on  
13          the site plan.   Correct?

14 THE WITNESS (Burns):   No.

15                 All the trees should be there.

16 MR. SHERWOOD:   But if you take a look at EX-1 --

17 THE WITNESS (Burns):   Yeah.

18 MR. SHERWOOD:   -- which is page 6 of the attachment  
19          four to the application?

20 THE WITNESS (Burns):   Yes, I'm aware.

21 MR. SHERWOOD:   Right?   That's the survey.   Right?

22 THE WITNESS (Burns):   Yes, sir.

23 MR. SHERWOOD:   And a couple of sheets later there is --

24 THE WITNESS (Burns):   SP-2.

25 MR. SHERWOOD:   -- there's a partial, partial site plan

1           which is SP-2.

2                   That's sheet eight of attachment four?

3   **THE WITNESS (Burns):** Yes, sir.

4   **MR. SHERWOOD:** And to explain what I mean, if you take  
5           a look at the area between the site driveway, the  
6           paved driveway on Ponus Ridge and the stone wall  
7           which is -- it looks to be 30, 40 feet to the  
8           north of the entrance there, to the north of the  
9           paved driveway.

10 **THE WITNESS (Burns):** Yes.

11 **MR. SHERWOOD:** If you look at EX-1, the site survey,  
12           the site survey shows almost twice -- well,  
13           actually it shows more than twice as many trees in  
14           that area as SP-2 does.

15           You can see that there -- if you look at EX-1  
16           you can see along the asphalt drive there's five  
17           trees. Then you go up a little and there's a  
18           couple more. And those are not shown on your  
19           SP-2.

20 **THE WITNESS (Burns):** I have to look at it. The  
21           drawing -- the background is the survey. I -- I'm  
22           not -- without getting on the computer and looking  
23           at it, I can't give you an honest answer on that.

24           I can get back to you on it, though.

25 **MR. SHERWOOD:** So what we're interested in -- or what

1 I'm interested in is whether you removed -- I  
2 understand that you didn't count a tree to be  
3 removed if it was less than six inches.

4 Is that what you said?

5 THE WITNESS (Burns): Yes, sir.

6 MR. SHERWOOD: But my second question is, did you  
7 modify the site survey to eliminate trees when you  
8 did the partial sight plans?

9 THE WITNESS (Burns): Not knowingly, no.

10 MR. SHERWOOD: Did you take -- with respect to the  
11 trees along the edge of the limits of disturbance,  
12 Mr. Burns, did you take into account the size of  
13 the tree when determining whether or not they  
14 would have to be removed?

15 THE WITNESS (Burns): Yes.

16 MR. SHERWOOD: Because trees of different sizes require  
17 different protection zones. Correct?

18 THE WITNESS (Burns): That's correct.

19 MR. SHERWOOD: And so the size of the tree along the  
20 edge of disturbance, that would make a difference  
21 in determining whether or not you could save the  
22 tree. Right?

23 THE WITNESS (Burns): That's correct.

24 MR. SHERWOOD: And how did you calculate the  
25 appropriate protection zone?

1 THE WITNESS (Burns): The protect -- right now, it's  
2 shown as a symbol, the -- the detail for this. I  
3 don't think we show the tree protection detail on  
4 these drawings -- oh, yes, we do. It's along the  
5 drip line of the -- of the particular tree.

6 MR. SHERWOOD: I take it you're familiar with the tree  
7 protection requirements in the 2002 Connecticut  
8 guidelines for soil erosion and sediment control?

9 THE WITNESS (Burns): Yes.

10 MR. SHERWOOD: There's a table in the guidelines which  
11 is -- it's figure TP-2, and it's at page 5-1-6.

12 And it indicates that the tree protection  
13 zone is the diameter -- 20 times the diameter at  
14 breast height; that that would be the appropriate  
15 tree protection zone.

16 So a twelve-inch tree would have a protection  
17 zone diameter of ten feet and -- I'm sorry, 20  
18 feet and a six-inch tree would have a protection  
19 zone diameter of ten feet under those guidelines.

20 Are those the guidelines that you used?

21 MS. CHIOCCHIO: Mr. Silvestri, I'm objecting to that  
22 question. We don't have that guideline in front  
23 of us for Mr. Burns to answer that question.

24 MR. SHERWOOD: That's the Siting Council Administrative  
25 Notice List Number 36 --

1 THE HEARING OFFICER: Yeah, both -- both attorneys, I'd  
2 like to go back to that at another point if we  
3 can. I mean, we're probably going to have a  
4 continuation on this one. So it would be great to  
5 have that document in front to provide the answer.

6 And also, while it's fresh in my head, to try  
7 to get the clarification that Attorney Sherwood  
8 just brought up on EX-1 and SP-1 regarding the  
9 trees over six inches.

10 So I think we could take that up when we do  
11 reconvene at our next hearing, and I think that  
12 would be appropriate.

13 MR. SHERWOOD: Thank you, Mr. Silvestri.

14 Mr. Burns, with respect to the slopes on this  
15 property you indicate -- or on the partial site  
16 plan you indicate what the grades are, but you  
17 only refer to the grades of the compound itself.  
18 Right? The pre and post-construction grades?

19 THE WITNESS (Burns): I'm not sure I follow the  
20 question.

21 MR. SHERWOOD: Well you don't provide the grades --

22 THE WITNESS (Burns): (Unintelligible) --

23 MR. NGUYEN: You don't provide the grades of the access  
24 road leading from Ponus Ridge Road. Right?

25 THE WITNESS (Burns): No, all the grades are on here,

1 the access road, the compound, the side slopes.

2 MR. SHERWOOD: On SP --

3 THE WITNESS (Burns): SP-2. Yes, sir.

4 MR. SHERWOOD: Okay.

5 Can we look at the July 7th version?

6 THE WITNESS (Burns): Yes. I'm looking at that right  
7 now.

8 MR. SHERWOOD: And if we look at the box in the lower  
9 right-hand corner, site areas and volumes of  
10 earthwork?

11 THE WITNESS (Burns): Yeah, the earthwork has not been  
12 updated on this drawing -- oh, yes it has. I'm  
13 sorry. Yes, this drawing, the earthwork has been  
14 updated.

15 MR. SHERWOOD: So the compound area slopes bearing  
16 between 6 and 15 percent, that includes the access  
17 road?

18 THE WITNESS (Burns): No, that -- for that, that's what  
19 the existing compound area is and what the  
20 proposed compound area is. As far as --

21 MR. SHERWOOD: But where is the -- where is the data  
22 for the slope of the hillside --

23 THE WITNESS (Burns): It's not provided.

24 MR. SHERWOOD: -- where the access road is going up,  
25 and then the grade of the access road?

1 THE WITNESS (Burns): It's not provided, because there  
2 is no set grades there -- but the steepest part of  
3 this site is probably two to one.

4 MR. SHERWOOD: That would be the hill behind the access  
5 road on the way up?

6 THE WITNESS (Burns): The existing -- the proposed  
7 grades off either side of the compound -- I'm  
8 sorry, the access drive are all two to -- proposed  
9 two to one, whether it's a cut or a fill.

10 So as you go up the hill --

11 MR. SHERWOOD: The grade --

12 THE WITNESS (Burns): Uh-huh. Go ahead.

13 MR. SHERWOOD: So the grades from the access road to  
14 Ponus Ridge Road are two to one?

15 THE WITNESS (Burns): No, side slopes are two to one.  
16 The access drive has a different slope to it. The  
17 initial paved part, I believe is -- it's about  
18 approaching 19 percent, and then it runs 8 percent  
19 to the compound.

20 MR. SHERWOOD: Right. But what I'm asking about is  
21 you've got the water running down. You've got the  
22 water from the site running down into a swale, and  
23 then the swale transports the water underneath the  
24 access road into three stilling basins. Correct?

25 THE WITNESS (Burns): Yes.

1 MR. SHERWOOD: And if any water comes out of those  
2 three basins headed towards Ponus Ridge Road, it's  
3 going to be descending a two-to-one slope.

4 Isn't that correct?

5 THE WITNESS (Burns): It's going to be descending at  
6 whatever slope the existing ground is, and most of  
7 that area is approaching two to one, if not two to  
8 one.

9 MR. SHERWOOD: Where does the water from the site go  
10 now?

11 THE WITNESS (Burns): The same place it's going out of  
12 post construction, to Ponus Ridge Road.

13 MR. SHERWOOD: So none of the water draining from this  
14 site ends up in the wetlands to the north?

15 THE WITNESS (Burns): There will be an area of the  
16 access drive as you come up around the curve that  
17 currently drains towards the wetland that will  
18 continue that way.

19 MR. SHERWOOD: And are you proposing any type of  
20 treatment or detention in that area?

21 THE WITNESS (Burns): As far as treatment goes, the  
22 slope itself will have an erosion control blanket  
23 with a series of compost filter socks as well as  
24 that the toe of slope will be silt fence. And  
25 I'll probably propose a silt fence backed with

1 straw bales.

2 MR. SHERWOOD: During construction?

3 THE WITNESS (Burns): During construction, correct,  
4 until --

5 MR. SHERWOOD: How about post-construction.

6 THE WITNESS (Burns): That, by then the grass will be  
7 established; then no, there won't be any need.

8 MR. SHERWOOD: So you're proposing to grass the slopes?

9 THE WITNESS (Burns): Yes, sir. Unless -- unless we  
10 come out of this and propose any kind of  
11 landscaping plantings there, but for now it's  
12 being shown as just turf.

13 MR. SHERWOOD: So post, post development the water is  
14 going to be sheet flowing onto Ponus Ridge Road.

15 Is that correct?

16 THE WITNESS (Burns): Post construction once it goes  
17 through the riprap swale, the check dams, the  
18 catch basin, the pipes and the stilling basin, it  
19 will flow down the remainder of the hill.

20 It will either infiltrate as part of the  
21 stilling basin, or it will flow over the side  
22 slowly of the stilling basin and go down the hill  
23 to Ponus Ridge Road.

24 MR. SHERWOOD: You don't have any way to evaluate the  
25 infiltration capabilities of the stilling basin

1           without knowing more about the nature of the soils  
2           here. Right?

3   **THE WITNESS (Burns):** That's correct. That's why we're  
4           going to do --

5   **MR. SHERWOOD:** So -- go ahead. I didn't mean to  
6           interrupt.

7   **THE WITNESS (Burns):** I'm sorry. That's why it's  
8           important when we do our geotech investigation for  
9           them to look in those areas as well.

10   **MR. SHERWOOD:** But wouldn't it make sense to do that  
11           before you design the drainage structures?

12   **THE WITNESS (Burns):** The drainage structures will be  
13           designed and submitted as part of the D and M  
14           plan.

15   **MR. SHERWOOD:** Well, the stilling basins are drainage  
16           structures. Right?

17   **THE WITNESS (Burns):** They are drainage. They could be  
18           considered, yeah, drainage structures, yes.

19   **MR. SHERWOOD:** And the swale, whether it's a  
20           drainage -- whether it's considered a structure or  
21           not, you're also anticipating that there will be  
22           infiltration in this swale that you're going to  
23           construct on the east side of the access road.

24                   Right?

25   **THE WITNESS (Burns):** I'm hoping for infiltration. The

1           idea being why I'm showing all this as riprap at  
2           this point is, sort of, worst-case scenario.

3 MR. SHERWOOD:   So if it's all riprap then there is no  
4           infiltration.

5 THE WITNESS (Burns):   Then the system will act like the  
6           system is designed for.

7 MR. SHERWOOD:   In other words, you designed the system  
8           for no infiltration?

9 THE WITNESS (Burns):   Yes, I think that's going to be  
10          our initial approach until we have the geotech  
11          results, yes.

12 MR. SHERWOOD:   So the water reaches the -- well,  
13          assuming that there's no infiltration, then the  
14          full ten-year storm volume is going to reach the  
15          stilling basins, and they're going to act as  
16          detention basins to slow the water down before it  
17          sheets out of them.   Is that the design?

18 THE WITNESS (Burns):   They will be one of many devices  
19          here used to slow the water down, yes.

20 MR. SHERWOOD:   Well, what are the other devices?

21 THE WITNESS (Burns):   The riprap swale, the -- the  
22          stone check dams, the catch basins with two-foot  
23          sumps in them will all act to slow the water down.

24 MR. SHERWOOD:   Did you do a drainage study before  
25          preparing this site plan?

1 THE WITNESS (Burns): We have done comps.

2 We haven't done a formal study yet.

3 MR. SHERWOOD: You've testified at the commencement of  
4 the public hearing and also earlier today that the  
5 design is a ten-year storm design.

6 Is that correct?

7 THE WITNESS (Burns): The pipes will be sized for  
8 10-year/24-hour storm.

9 MR. SHERWOOD: And you also testified that at the  
10 commencement of the public hearing that you  
11 discussed the design with town staff, and that  
12 they were okay with the design?

13 THE WITNESS (Burns): I believe what I said is we had a  
14 conference call with town staff. They were okay  
15 with the concept. They have not reviewed this  
16 yet, but they have seen a sketch and this came out  
17 of that call, yes.

18 But they -- I don't want to -- this, I don't  
19 want to be misinterpreted that the Town has  
20 reviewed this drainage design yet.

21 They have given us their opinions and we have  
22 followed it as closely as possible.

23 MR. SHERWOOD: If you take a look at our item one in  
24 our supplemental administrative notice of  
25 July 12th, you will find the New Canaan drainage

1 certification policy. And that policy requires --  
2 I'll read you what it says.

3 It says, quote, sheet flow rates and runoff  
4 volumes shall be determined by using the rational  
5 method, time of concentration method, the catheter  
6 method, or the unit hydrograph method and a  
7 minimum 25-year/24-hour design storm.

8 So you haven't designed this, the drainage  
9 for this site in accordance with that  
10 specification. Right?

11 THE WITNESS (Burns): At this point the drainage design  
12 has not been formalized. As part of our  
13 submission to the Town it will require us to  
14 submit a drainage -- drainage report, a design  
15 report, and calculations in order for us to pull a  
16 building permit.

17 And we will follow the guidance.

18 MR. SHERWOOD: So that's not something that we should  
19 be concerned about here?

20 THE WITNESS (Burns): I'm not -- I don't know how I can  
21 answer that question.

22 MR. SHERWOOD: Well, would the design storm for the  
23 facility, could the design storm for the facility  
24 have an impact on the volume and rate of runoff,  
25 and its affect on the on-site wetlands and

1 watercourse and the reservoir, which is 70 feet  
2 across the road?

3 THE WITNESS (Burns): The stormwater design will be  
4 designed in accordance with town requirements and  
5 will be submitted, submitted as part of the CD  
6 package for a building permit.

7 MR. SHERWOOD: So is your answer, no, whether it's a  
8 ten-year, designed for a ten-year storm, or a  
9 hundred-year storm, that wouldn't make any  
10 difference with respect to environmental impact?

11 THE WITNESS (Burns): I believe what I'm saying is that  
12 the stormwater will be designed in accordance with  
13 the requirements.

14 Whether it's an environmental impact, I  
15 believe if we designed it in accordance with the  
16 requirements, then the answer would be, no,  
17 according to the Town.

18 MR. SHERWOOD: But its not designed in that way now?

19 THE WITNESS (Burns): It's currently not designed --  
20 it's currently -- the pipe sizes could be -- have  
21 to be enlarged. They're shown as twelve-inch  
22 pipes. They may have to go to 15 or 18, but  
23 there's plenty of elevation and room for us to do  
24 that.

25 MR. SHERWOOD: Now I'd like to talk a little bit about

1           the areas of disturbance.

2   **THE WITNESS (Burns):**   Okay.

3   **MR. SHERWOOD:**   I take it as a general design parameter  
4           you try to minimize the area of disturbance?

5   **THE WITNESS (Burns):**   Yes.

6   **MR. SHERWOOD:**   And that's particularly true in areas of  
7           steeper slopes?

8   **THE WITNESS (Burns):**   Well, I think it's true on the  
9           whole site, but I'll -- I'll go yes on that.

10   **MR. SHERWOOD:**   And the reason for that is presumably  
11           because disturbed areas and the removal of  
12           vegetation can result in exposed soil, which is  
13           much more susceptible to erosion.   Right?

14   **THE WITNESS (Burns):**   Yes, if not designed -- if  
15           erosion controls aren't designed properly.

16   **MR. SHERWOOD:**   And a steeper slope, the more  
17           susceptible the soils are to it.   Right?

18   **THE WITNESS (Burns):**   Correct.

19   **MR. SHERWOOD:**   So here we've got -- on this site we've  
20           got steep slopes, a very large area of disturbance  
21           even with the modified plan we calculate the area  
22           to be about two thirds of an acre.   Right?

23   **THE WITNESS (Burns):**   37,000 square feet.   So, yeah.

24   **MR. SHERWOOD:**   So better than two thirds.   And then we  
25           have significant areas of cut and fill along the

1           proposed access road. Right?

2   **THE WITNESS (Burns):** Correct.

3   **MR. SHERWOOD:** If retaining walls were employed  
4           wouldn't the area of disturbance be significantly  
5           less?

6   **THE WITNESS (Burns):** The answer to that is, yes, but  
7           it would be very difficult to build -- but yes, it  
8           could limit the --

9   **MR. SHERWOOD:** Because you would reduce the area of  
10          disturbance. You wouldn't have to remove the  
11          vegetation. You wouldn't have to worry about  
12          stabilization?

13   **THE WITNESS (Burns):** That's -- yes, correct.

14   **MR. SHERWOOD:** And at the commencement of the public  
15          hearing on the 28th of June you were asked about,  
16          I believe, it was a Department of Public Health  
17          recommendation request.

18                 And you responded, as far as the proposed  
19          planning, that's something that's going to be  
20          looked at -- this is on disturbed areas -- but as  
21          far as further reducing the amount of trees to be  
22          removed we've already looked at it once, and I'm  
23          not sure it can be reduced by any more significant  
24          number without some serious retaining walls, or  
25          something along those lines.

1           And then at the commencement of the public  
2 hearing in response, I think, to Mr. Mercier's  
3 question about whether a compound could be placed  
4 where the second stilling basin is on the site  
5 plan now -- you respond -- he asked if it was  
6 possible?

7           And you said, certainly it's constructable.  
8 I mean, we may need some retaining walls due to  
9 the fact of, you know, what little room we have,  
10 but it could be constructable, yes.

11           So in both of those cases retaining walls  
12 would be a design alternative. Right?

13 THE WITNESS (Burns): Yes.

14 MR. SHERWOOD: And why is constructing a retaining wall  
15 difficult?

16 THE WITNESS (Burns): Well, it depends on where it's  
17 being constructed. If it's being constructed on a  
18 significant slope then it becomes a construction  
19 issue. It's not -- I'm not saying it can't be  
20 done. It's just more difficult.

21 MR. SHERWOOD: Isn't it the case that without a  
22 geotechnical study you don't really have any idea  
23 what you're going to find below the surface all  
24 along the area of the proposed access drive?

25 THE WITNESS (Burns): Yeah, I would say that's

1 accurate. I mean, we've walked it. We've seen  
2 some ledge outcroppings and whatnot out there, but  
3 until a geotech is done we don't have a full  
4 knowledge of what's going on. I'll -- I'd say yes  
5 to that.

6 MR. SHERWOOD: And if it turns out to be all rock, you  
7 would have to blast it whether you slope it or  
8 whether you put a retaining wall. No?

9 THE WITNESS (Burns): If it turns out to be rock that  
10 is not be -- not able to be removed by mechanical  
11 methods, then blasting may be required.

12 What it could also do is that large cut slope  
13 could be significantly reduced if there's  
14 significant rock -- if there's a rockface there,  
15 which would -- which would bring the limit of  
16 disturbance down and some of the tree clearing in  
17 that area.

18 MR. SHERWOOD: In other words, effectively a natural  
19 retaining wall?

20 THE WITNESS (Burns): Exactly.

21 MR. SHERWOOD: So why in the Applicant's supplemental  
22 submission in response to the Siting Council's  
23 questions in answer A8 -- which is a response to  
24 the question whether or not a compound could be  
25 put where that second stilling basin is; the

1 answer is, in addition -- quote, in addition, the  
2 entire facility would be constructed on an  
3 existing steep slope which would require a  
4 retaining wall of a hundred feet in length, and  
5 approximately ten feet in height.

6 This retaining wall would be very difficult  
7 to construct and result in a great deal of  
8 disturbance on the hillside.

9 So why are they difficult to construct?

10 THE WITNESS (Burns): Because you're -- you're putting  
11 your machinery on a two-to-one slope, and it  
12 becomes difficult to, and probably takes longer.

13 Again, I'm not saying it can't be done. It's  
14 just a more difficult construction.

15 MR. SHERWOOD: Earlier today there were some questions  
16 with respect to class-one watershed land and  
17 class-two watershed land. Do you recall that?

18 THE WITNESS (Burns): I think my colleague was the one  
19 who responded to that.

20 THE WITNESS (Gustafson): Yeah. Dean Gustafson, yes.

21 MR. SHERWOOD: And are you aware that the parcel which  
22 is the site of the proposed tower was, in fact,  
23 owned by the Stamford Water Company before being  
24 conveyed to the current owner's predecessor?

25 THE WITNESS (Gustafson): Yes, I'm aware of that fact.

1 MR. SHERWOOD: These are questions for Mr. Burns.

2 Mr. Burns, Joseph Welsh, the Natural  
3 Resources Manager of Aquarion wrote the Siting  
4 Council a letter commenting on the applications  
5 dated May 18, 2022. Have you seen that letter?

6 THE WITNESS (Burns): If I have I don't recall it, sir.

7 MR. SHERWOOD: I'm going to be reading a couple of  
8 excerpts from the letter. I'd like to know  
9 whether or not you agree with these conclusions.

10 MS. CHIOCCHIO: Mr. Silvestri, that -- that letter is  
11 not part of the record at this point as an  
12 exhibit.

13 THE HEARING OFFICER: I believe you're correct on that.  
14 I just want to double check with Attorney Bachman?

15 MR. SHERWOOD: Mr. Silvestri, this is  
16 cross-examination. I'm not offering the exhibit.  
17 I'm asking Mr. Burns to comment on the exhibit,  
18 number one.

19 And number two, we did offer it as an  
20 exhibit -- although it hasn't been verified yet.

21 Thank you.

22 THE HEARING OFFICER: Well, that could be part of it,  
23 too.

24 Attorney Bachman?

25 MS. BACHMAN: Thank you, Mr. Silvestri.

1           The letter that Attorney Sherwood is  
2 referring to is actually a written limited  
3 appearance statement. Aquarion is not a party or  
4 intervener and they're not a witness for JMB.

5           So it's an administrative notice item on  
6 JMB's list, but it's certainly not an exhibit.  
7 And if Mr. Burns doesn't have a copy of it right  
8 now, Attorney Sherwood could read it to him and he  
9 can comment to the extent possible with the  
10 understanding that it's a public comment letter,  
11 and the author of that letter will not be  
12 available for cross-examination.

13 **THE HEARING OFFICER:** Thank you, Attorney Bachman.

14           Attorney Sherwood and Attorney Chiocchio, I'm  
15 going to allow to some extent for Attorney  
16 Sherwood to pose the question -- but again we  
17 might have to pull that back.

18           But if we could phrase it properly, let's see  
19 where we could go.

20 **MR. LYNCH:** Mr. Silvestri?

21 **THE HEARING OFFICER:** Yes, Mr. Lynch?

22 **MR. LYNCH:** Before you start there, I'm going to have  
23 to leave in a couple minutes.

24           The new designers of our office are coming in  
25 to take measurements. So the office is closing

1 down. So I just want to let you know I will be  
2 leaving.

3 THE HEARING OFFICER: Very good. Thank you, Mr. Lynch.

4 Attorney Sherwood, please continue, as I  
5 mentioned with some guidelines.

6 MR. SHERWOOD: Thank you, Mr. Silvestri.

7 Mr. Burns, would you agree with the  
8 statement, quote, the proposed facility is  
9 up-gradient of the reservoir on a site with steep  
10 slopes and shallow soils. Any activity from the  
11 development of this property or land uses that  
12 occur will negatively impact water quality of the  
13 nearby wetlands, watercourse and drainage which  
14 enters the public drinking water supply reservoir?

15 THE WITNESS (Burns): No.

16 For starters, I don't know if they're shallow  
17 soils out here. I don't have the topo of the  
18 Aquarion property across the street, so I'm  
19 unclear as to whether it's steep all the way to  
20 the reservoir.

21 And I believe the idea of them hiring me to  
22 design this is so that that doesn't occur.

23 MR. SHERWOOD: Well, without the geotechnical study and  
24 without the information on the topography of the  
25 Aquarion land across the street can you design it

1           so that that does not occur?

2   **THE WITNESS (Burns):** Without the geotech --

3   **MR. SHERWOOD:** And without the --

4   **THE WITNESS (Burns):** Without the geotech --

5   **MR. SHERWOOD:** -- without the information and the  
6           topography across the street, the two?

7   **THE WITNESS (Burns):** I think the topography across the  
8           street, it can be designed without.

9           Without the geotech, the site cannot be  
10          designed, no.

11   **MR. SHERWOOD:** So you can't testify today whether the  
12          construction of the tower will negatively impact  
13          the wetlands or the reservoir?

14   **THE WITNESS (Burns):** No. I'm telling you I'm going to  
15          design it so it doesn't.

16   **MR. SHERWOOD:** But as we see it today on SP-2 revised  
17          to 7/7/'22 --

18   **THE WITNESS (Burns):** My design on SP-2, yes.

19   **MR. SHERWOOD:** Your testimony is that that will not  
20          negatively impact water quality in the wetland,  
21          watercourse or in the reservoir --

22   **THE WITNESS (Burns):** I'm saying that --

23   **MR. SHERWOOD:** Even without the geotechnical study?

24   **THE WITNESS (Burns):** No, I'm saying without a D and M  
25          plan, a set of CDs, a geotechnical investigation,

1 a tower foundation design, a tower design, none of  
2 this site can be built at the point.

3 So you're asking me make an assumption based  
4 on plans that are not (unintelligible) --

5 MR. SHERWOOD: My question isn't whether it can be  
6 built. My question is whether you can testify to  
7 the Siting Council --

8 THE WITNESS (Burns): No, I cannot.

9 MR. SHERWOOD: Whether it will have an adverse  
10 impact --

11 THE WITNESS (Burns): No.

12 MR. SHERWOOD: -- on the water quality of the reservoir  
13 or wetland?

14 MS. CHIOCCHIO: Mister Silvestri, I think we need to --

15 MR. SHERWOOD: (Unintelligible.)

16 THE HEARING OFFICER: Gentleman, I want to hold there  
17 for a second, because I'm getting an awful lot of  
18 interference and I'm not sure where it's coming  
19 from.

20 What I would suggest is, first of all, let's  
21 get a question and then an answer where we don't  
22 have to jump over everybody.

23 And again, I couldn't quite hear responses.  
24 I couldn't quite hear questions. Maybe we could  
25 start this over again, but what I'm hearing from

1 Mr. Burns is that he still needs to look at  
2 geotechnical information to design properly -- if  
3 I heard that correctly.

4 But again, let's try to eliminate some of the  
5 background noise and give everybody a chance to  
6 ask a question and then respond accordingly.

7 So let's start again.

8 MR. SHERWOOD: Thank you, Mr. Silvestri.

9 Mr. Burns, would you agree with  
10 Mr. Silvestri's statement.

11 THE WITNESS (Burns): That this site -- first,  
12 Mr. Silvestri, I apologize.

13 Secondly, this site, the site design cannot  
14 be completed without a geotechnical investigation.

15 Yes, I agree with Mr. Silvestri.

16 MR. SHERWOOD: And can you make a determination today  
17 without a geotechnical study that the design which  
18 we're looking at on SP-2 revised to July 7, 2022,  
19 will not negatively impact the water quality of  
20 the reservoir or the wetlands, or the watercourse?

21 THE WITNESS (Burns): Based on my experience -- and  
22 I've been doing this a long time, designed many,  
23 many, many sites -- the site, the final D and M  
24 drawings and CDs will be such that it will not  
25 affect the water quality of the reservoir.

1 MR. SHERWOOD: So you do not agree with Mr. Welsh's  
2 statement?

3 THE WITNESS (Burns): Mr. Welsh was -- oh, the letter  
4 writer.

5 MR. SHERWOOD: Yeah.

6 THE WITNESS (Burns): No, I don't.

7 MR. SHERWOOD: He continues, quote, while the Applicant  
8 seems to acknowledge the sensitivity of the site  
9 with multiple stormwater management controls shown  
10 in the plans, the removal of vegetation and  
11 alterations to the site will degrade stormwater  
12 quality which will impact reservoir water quality.

13 Do you agree with that statement?

14 THE WITNESS (Burns): No. I think that the measures  
15 we're putting in place will treat the water  
16 quality.

17 MR. SHERWOOD: And what measures are those?

18 THE WITNESS (Burns): Again, riprap swale, stone check  
19 dams, catch basins with two-foot sumps, and  
20 stilling basins at the outlet.

21 MR. SHERWOOD: And which of those --

22 THE WITNESS (Burns): All of the --

23 MR. SHERWOOD: -- are useful for treating stormwater,  
24 for improving stormwater quality?

25 THE WITNESS (Burns): All of the above.

1 MR. SHERWOOD: Post construction?

2 THE WITNESS (Burns): Yes, sir.

3 MR. SHERWOOD: Thank you, Mr. Burns.

4 I have some questions for Mr. Gustafson now.

5 Good afternoon, Mr. Gustafson.

6 THE WITNESS (Gustafson): Good afternoon, Attorney

7 Sherwood.

8 MR. SHERWOOD: A number of documents in the application

9 package include that there is no potential for

10 negative environmental impact on this site. The

11 narrative that page 17 says, quote, no direct

12 impacts to any wetlands or watercourses are

13 anticipated.

14 Page 18, the narrative says, quote, the

15 facility will be constructed in compliance with

16 applicable regulations and guidelines. The best

17 practices will be followed to ensure that the

18 construction of the proposed facility will not

19 have a significant adverse environmental impact.

20 The environmental assessment statement, which

21 is attachment five at page 2 includes, both no

22 wetlands or inland waterways will be impacted by

23 the proposed facility.

24 And the biological assessment, which is

25 attachment nine at page 27 includes, quote, this

1 activity is not expected to have any impact on the  
2 environment.

3 Now do you share in these conclusions,  
4 Mr. Gustafson?

5 THE WITNESS (Gustafson): Yes.

6 MR. SHERWOOD: And how confident are you in these  
7 conclusions?

8 THE WITNESS (Gustafson): I'm -- I am confident in  
9 those conclusions.

10 MR. SHERWOOD: So you're reasonably certain that the  
11 construction of the site and the operation of this  
12 site will have no adverse environmental impact?

13 THE WITNESS (Gustafson): Well, as -- yes. With the --  
14 some of the responses that you've heard Mr. Burns  
15 provide with respect to additional design measures  
16 through the D and M, phase once the Geotech  
17 investigation is performed, and the design is  
18 refined, and a appropriate phasing plan for the  
19 erosion and sedimentation control plan is  
20 implemented.

21 And as part of that, the -- an appropriate  
22 level of monitoring, third-party monitoring of  
23 those features and erosion controls as part of  
24 that process.

25 With the implementation of all those control

1           measures I -- I do believe the facility can be  
2           properly constructed without any adverse effect.

3   MR. SHERWOOD:   How about as the application stands now  
4           in front of the Siting Council?

5   THE WITNESS (Gustafson):   Excuse me.   I -- can you just  
6           repeat that question?   I didn't get it all.

7   MR. SHERWOOD:   Well, we have -- I just read you four  
8           statements, and one of which I believe it is in a  
9           document you're responsible for, to the effect  
10          that, All Points concludes that there will be no  
11          adverse environmental impact as a result of the  
12          construction and operation of the site.

13                 And none of the statements are conditioned,  
14          but when I asked you whether you're reasonably  
15          confident in those conclusions you conditioned  
16          those conclusions on additional materials which  
17          are not going to be present before the Siting  
18          Council when it makes its decision whether or not  
19          to approve this application.   Correct?   All of  
20          which bear on environmental impact?

21   THE WITNESS (Gustafson):   Yeah, that -- that is  
22          correct, and -- and I can understand from that  
23          possible perspective the somewhat disconnect.

24                 But having been involved in these type of  
25          applications on numerous occasions in front of the

1 Council, you know, we understand that this is, you  
2 know, one step in a multistep process.

3 And so maybe some of the inferences are --  
4 were inherently, you know, made on our part and  
5 not expanded upon in the document and, you know,  
6 that may be a result of some of the confusion.

7 But we understand that this is step one, and  
8 should the Council approve it, then we will go  
9 through a much more refined and a detailed design  
10 phase of the project. And at that point all of  
11 the appropriate level of details for some of the  
12 additional protection measures for constructing of  
13 this facility to avoid any type of adverse  
14 environmental effect, those details will be  
15 provided at that stage.

16 So when we look at it collectively as that  
17 process, we do feel that the project will not have  
18 a likely adverse effect on, you know, resources,  
19 you know, particularly wetland resources, wildlife  
20 resources.

21 If you just take a narrow view of the plan as  
22 it currently stands, yes, there I would agree that  
23 there is still some refinement that's needed to  
24 provide those assurances to the Council.

25 But the -- we understand that if the Council

1 approves it at this stage, that doesn't mean they  
2 can start building it the next day. It has to go  
3 through an entire -- another more detailed design  
4 phase.

5 MR. SHERWOOD: Well, Mr. Gustafson, you -- you  
6 understand that the Council's job with respect to  
7 this application is to weigh the public need,  
8 essentially to weigh the public need against the  
9 potential for environmental -- adverse  
10 environmental impact?

11 THE WITNESS (Gustafson): I am aware of that, yes.

12 MR. SHERWOOD: So Homeland is asking the Council to  
13 make that determination based on the application  
14 materials before the Council, if they find the  
15 votes. Correct?

16 THE WITNESS (Gustafson): Correct.

17 MR. SHERWOOD: And if the drainage study and the  
18 geotechnical study, and the erosion and  
19 sedimentation control plan, and the other items  
20 you mentioned are not available to the Council,  
21 doesn't that impede the Council from making a  
22 reasoned decision?

23 THE WITNESS (Gustafson): I think that's up for the  
24 Council to make that determination.

25 MR. SHERWOOD: But your testimony is that, that based

1 on the existing record, based on the documents in  
2 the record you cannot testify that there will be  
3 no adverse environmental impact if built as  
4 currently shown?

5 THE WITNESS (Gustafson): So I think I've already  
6 answered this question to a certain degree, you  
7 know. The way that the facility is currently  
8 designed, you know, with the understanding that  
9 additional details need to be put to the plan to  
10 ensure that there's no adverse environmental  
11 effect, but as it's currently designed we feel  
12 that with incorporation of that next step there  
13 will be no adverse environmental effect.

14 MR. SHERWOOD: Mr. Gustafson, All Points has been  
15 involved in projects where unanticipated problems  
16 have arisen. Correct?

17 THE WITNESS (Gustafson): Yes.

18 MR. SHERWOOD: And one of the sites that All Points was  
19 involved in was mentioned at the commencement of  
20 the public hearing, and that's the Ridgefield  
21 site. It was Homeland Towers Docket 445.

22 Did you work on that?

23 THE WITNESS (Gustafson): Yes, I did.

24 MR. SHERWOOD: And if you look at the record for Docket  
25 445 there is a report that you made to the

1 Council. Apparently there was a blowout of the  
2 sedimentation erosion controls at that site?

3 THE WITNESS (Gustafson): Yes, that is correct. That  
4 was after a significant storm event that exceeded  
5 a hundred-year storm event.

6 MR. SHERWOOD: And although you -- although All Points  
7 did the plans and the environmental assessment and  
8 the D and M plan, there was still erosion control  
9 failure which impacted wetlands. Correct?

10 THE WITNESS (Gustafson): That's correct. There was a  
11 release of sediment there that resulted in a minor  
12 impact to the receiving wetland system.

13 MR. SHERWOOD: And All Points was also involved in the  
14 Sprague solar farm. Correct? That's petition  
15 1178.

16 THE WITNESS (Gustafson): That's correct.

17 MR. SHERWOOD: And All Points did the environmental  
18 assessment and reached the conclusion of no  
19 adverse environmental impact, and that site was  
20 ultimately approved by the siting Council.

21 Correct?

22 THE WITNESS (Gustafson): Correct.

23 MR. SHERWOOD: And that's another example of where  
24 unanticipated problems arose during the  
25 construction of the project which caused some

1           fairly significant adverse impacts to wetlands and  
2           watercourses.  Is that correct?

3   **THE WITNESS (Gustafson):**  That's correct.

4   **MR. SHERWOOD:**  Would you agree that in evaluating the  
5           risks of adverse environmental impact it's  
6           necessary to consider the value and sensitivity of  
7           the resource, of the receiving resource?

8   **THE WITNESS (Gustafson):**  I do agree with that  
9           statement.

10   **MR. SHERWOOD:**  So the more valuable and sensitive the  
11           resource, the greater the precautions that are  
12           warranted.  Correct?

13   **THE WITNESS (Gustafson):**  I agree with that.

14   **MR. SHERWOOD:**  And in Ridgefield the receiving end of  
15           the erosion were wetlands.  And in Sprague they  
16           were farm ponds and wetlands and a river, but none  
17           of them involved a drinking water reservoir.

18                   Correct?

19   **THE WITNESS (Gustafson):**  I don't believe so.

20   **MR. SHERWOOD:**  Or any environmental resource  
21           approaching the environmental value of a drinking  
22           water reservoir.  Is that correct?

23   **THE WITNESS (Gustafson):**  I don't believe those  
24           projects were associated with drinking water  
25           reservoirs.  So that's correct.

1 MR. SHERWOOD: Thank you, Mr. Gustafson.

2 THE WITNESS (Gustafson): You're welcome.

3 MR. SHERWOOD: I have some questions about the wetlands  
4 inspection that's attachment number six.

5 And this was performed by, according to the  
6 inspection report, by Matt Gustafson who's not on  
7 our witness list.

8 I take it he's not with us today?

9 THE WITNESS (Gustafson): That's correct. That work  
10 was done under my direction.

11 MR. SHERWOOD: At page 6 of the wetlands inspection it  
12 says, quote, this report is provided as a brief  
13 summary of findings from APT's wetlands  
14 investigation of the referenced study area that  
15 consists of proposed development activities in  
16 areas generally within 200 feet.

17 If applicable APT is available to provide a  
18 more comprehensive wetland impact analysis upon  
19 receiving site plans depicted in these proposed  
20 development activities and survey location of  
21 identified wetlands and watercourse resources.

22 Has APT performed a more intensive wetlands  
23 analysis?

24 THE WITNESS (Gustafson): We -- we have, and some of  
25 that analysis, although there isn't a standalone

1 report, was provided through response to  
2 interrogatories from Buschmann party dated  
3 June 21, 2022. It's listed as Exhibit 7 in the  
4 hearing program, I believe.

5 MR. SHERWOOD: But no formal report was prepared?

6 THE WITNESS (Gustafson): No, that's correct.

7 MR. SHERWOOD: Would you take a look at the site  
8 survey, please, which is EX-1, attachment four?

9 I think it's page 8.

10 THE WITNESS (Gustafson): Yeah, I have it before me.

11 MR. SHERWOOD: There the wetlands area is located along  
12 the northerly boundary to the site.

13 Am I correct in that observation?

14 THE WITNESS (Gustafson): Yes, that's correct.

15 MR. SHERWOOD: And would you agree that the wetlands  
16 and watercourse area there on 1837 Ponus Ridge and  
17 the adjoining property, that that wetlands area is  
18 larger than 5,000 square feet?

19 THE WITNESS (Gustafson): I -- I would -- I don't know  
20 the exact size of that, but rough scaling it up, I  
21 would agree with that statement.

22 MR. SHERWOOD: Right. It's a 40-scale map.

23 Why weren't the entire on-site wetlands  
24 flagged?

25 THE WITNESS (Gustafson): The -- the normal course of

1           our level of investigation for telecommunication  
2           facilities in -- is to provide an assessment, an  
3           evaluation and delineation of wetland resources  
4           generally within 200 feet of the limit of  
5           disturbance. And that generally informs our study  
6           area if we're doing a wetland investigation.

7   MR. SHERWOOD: Have these wetlands -- do you know  
8           whether these wetland flags were geo-located and  
9           surveyed?

10 THE WITNESS (Gustafson): Yes, they were, and as noted  
11           on the exhibit you noted, EX-1.

12 MR. SHERWOOD: Oh, I must have missed that.

13 THE WITNESS (Gustafson): Yeah, they're wet --

14 MR. SHERWOOD: (Unintelligible) --

15 THE WITNESS (Gustafson): Sorry. Yeah, sorry about  
16           that. There -- yeah, the wetland flag numbers are  
17           noted on that survey.

18 MR. SHERWOOD: Yes, I see the flag numbers, but your  
19           testimony is that they were surveyed?

20 THE WITNESS (Gustafson): Yes. Yeah, I mean, they  
21           were -- they were provided on this, this stamped  
22           and signed survey plan. So they were -- as far as  
23           I understand, they were -- they were surveyed by  
24           Northeast Tower Surveying, Incorporated.

25 MR. SHERWOOD: Were you with -- is Matt your brother?

1                   Your son?

2   **THE WITNESS (Gustafson):** Matthew is my son.

3   **MR. SHERWOOD:** Were you with him when he flagged the  
4                   wetlands?

5   **THE WITNESS (Gustafson):** I was not, no.

6   **MR. SHERWOOD:** Was an assessment of wetlands functions  
7                   and values performed for this wetland and  
8                   watercourse?

9   **THE WITNESS (Gustafson):** No, a formal function of  
10                  value assessment was not performed.

11   **MR. SHERWOOD:** And was a soils report prepared?

12   **THE WITNESS (Burns):** The soils report is  
13                  essentially the -- our wetland inspection report  
14                  provides, I guess, what you would term as a soil  
15                  report.

16   **MR. SHERWOOD:** And would you -- if you take a look at  
17                  the wetlands inspection report, which is  
18                  attachment six, would you guide us to where that  
19                  is included, please?

20   **THE WITNESS (Gustafson):** It would be -- so we have a  
21                  field form that's attached to the report.

22   **MR. SHERWOOD:** Page 1 of 2? Or page 2 of 2?

23   **THE WITNESS (Gustafson):** It would be on the second  
24                  page, and there's a notation in there as far as an  
25                  assessment of soil conditions in comparison to a

1 published soil survey by the Natural Resource  
2 Conservation Service, NRCS.

3 And we found that the NRCS mapping for this  
4 property is generally consistent with field  
5 conditions observed during our inspection.

6 MR. SHERWOOD: You're talking about the fourth line  
7 down, our field identified soils consistent with  
8 NRCS map soils, and the "S" box is checked.

9 THE WITNESS (Gustafson): That is correct, yes.

10 MR. SHERWOOD: Right. But there's nothing else on the  
11 page that talks about the soils. Correct?

12 THE WITNESS (Gustafson): That's correct.

13 MR. SHERWOOD: And there's no soil types in here.  
14 Correct?

15 THE WITNESS (Gustafson): There's no notations of the  
16 specific soil types. That is correct.

17 MR. SHERWOOD: And you've got a list of dominant plants  
18 here.

19 Was that provided by the wetlands scientist?

20 THE WITNESS (Gustafson): It was, yes.

21 MR. SHERWOOD: And Japanese stiltgrass, that's not an  
22 invasive?

23 THE WITNESS (Gustafson): Yeah, so that was -- that was  
24 an error. The -- the asterisk, that was a typo  
25 error. That asterisk came off of that item.

1           So Japanese stiltgrass is a recognized  
2           invasive plant by the Connecticut Invasive Species  
3           Council.

4   MR. SHERWOOD:   And spice bush is on that list also.

5           Isn't it?

6   THE WITNESS (Gustafson):   No, spice bush is a native  
7           species.

8   MR. SHERWOOD:   It's not on the list?

9   THE WITNESS (Gustafson):   No, it is not an invasive  
10          species.   It's native.

11   MR. SHERWOOD:   Mr. Gustafson, the application narrative  
12          at page 26 says that -- or observes that the  
13          property isn't within 50 feet of a wetland.   So  
14          the project would not constitute a regulated  
15          activity under local wetlands regulation.

16                 And then the wetlands inspection report, the  
17          one we were just looking at indicates on the first  
18          page -- it says, municipal upland review area;  
19          wetlands, a hundred feet; watercourses a hundred  
20          feet.   Then there's an asterisk; upland review  
21          area is expanded to a hundred feet for properties  
22          located within public water supply watersheds.

23                 So is your testimony that the construction of  
24          this proposed tower would not be a regulated  
25          activity under the New Canaan wetlands

1 regulations?

2 THE WITNESS (Gustafson): So the -- I think just the  
3 distinction between the two references, I think  
4 the application is in error. The 50-foot is their  
5 standard upland review area. I don't think there  
6 was recognition at that -- when that document was  
7 drafted, that they noticed that there was a  
8 distinction for changing of the upland review area  
9 if you're within a public water supply watershed.  
10 So our wetland report accurately reflects that.

11 You know, with this application under the  
12 jurisdiction of the Connecticut Siting Council  
13 which supersedes local jurisdiction, including  
14 inland wetlands, there would be no need for a  
15 local inland wetland permit.

16 If this were a private development it appears  
17 that the project wouldn't be considered a  
18 regulated activity because all the activities are  
19 beyond a hundred feet of the wetland resource, but  
20 their regulations also -- if you re-drill through  
21 their, what they consider, regulated activities,  
22 the commission also has some ability to extend  
23 their review area beyond the stated upland review  
24 area based on certain site conditions.

25 So I can't make a statement whether they

1 would consider it a regulated activity or not.

2 MR. SHERWOOD: Well, the application narrative in the  
3 wetlands inspection report was produced by the  
4 Applicant, and the inland wetlands and watercourse  
5 regulations were part of the Applicant's bulk  
6 filing.

7 And I understand that the Siting Council --  
8 or that the New Canaan inland wetlands and  
9 watercourse agency doesn't have jurisdiction on  
10 the application -- but there are several  
11 statements that this activity isn't a regulated  
12 activity.

13 If you look at Section 2.1 of the New Canaan  
14 inland wetlands and watercourse regulations  
15 there's a list of definitions, and number 33  
16 defines regulated activity.

17 And I quote -- furthermore, any clearing,  
18 grubbing, filling, grading, paving, excavating,  
19 constructing, depositing or removing of material  
20 and discharging of stormwater of the land within  
21 the following upland review areas is a regulated  
22 activity.

23 And there's a list at 33, from A to H.

24 And F says, areas where the total area to be  
25 disturbed by any activity is cumulatively more

1 than one half acre. Right? And we meet that  
2 because we're at about a two thirds acre.

3 And continuing, quote, and any disturbed area  
4 is upgrade from a wetlands or watercourse larger  
5 than 5,000 square feet situated at least in part  
6 on the same property and/or properties immediately  
7 adjacent thereto.

8 So this would be a regulated activity under  
9 the New Canaan regulations. Correct?

10 THE WITNESS (Gustafson): It appears so based on your  
11 reading of the regulations.

12 MR. SHERWOOD: Does your reading differ?

13 THE WITNESS (Gustafson): I have not provided an  
14 evaluation whether I would -- whether this, this  
15 activity would conceptually be considered a  
16 regulated activity. So I can't make a statement  
17 one way or the other.

18 MR. SHERWOOD: Thank you, Mr. Gustafson.

19 I have some questions about the visibility  
20 analysis. That's Mr. Gaudet?

21 THE WITNESS (Gaudet): Yes, sir. Ready when you are.

22 MR. SHERWOOD: Good afternoon, Mr. Gaudet.

23 THE WITNESS (Gaudet): Good afternoon.

24 MR. SHERWOOD: In the Applicant's response to the first  
25 set of the Council's interrogatories, question 29,

1 the Council asked, are there sections of the  
2 Centennial Watershed State Forest in the area of  
3 Laurel Reservoir revised in the viewshed analysis  
4 map, application attachment eight, to show the  
5 boundaries of the state forest?

6 What is the expected view of the proposed  
7 tower from the state Forest?

8 And the answer, answer 29 is, there are  
9 sections of the Centennial Watershed State Forest  
10 located primarily south and west of Laurel  
11 Reservoir. No views of the proposed tower are  
12 predicted from the Centennial Watershed State  
13 Forest properties. See the revised water -- the  
14 viewshed analysis map included in attachment five.

15 Then you provide -- I assume you're  
16 responsible for that response?

17 THE WITNESS (Gaudet): Yes, sir.

18 MR. SHERWOOD: And then in attachment five to your  
19 responses to the interrogatories, you have a map.

20 And there are some areas identified as  
21 Centennial Watershed State Forest, but they don't  
22 include those areas, don't include any land around  
23 the reservoir, and they don't include the islands  
24 in those. Is that correct?

25 THE WITNESS (Gaudet): It appears to be correct, yes.

1 MR. SHERWOOD: And as I'm looking at your viewshed  
2 analysis map, it looks like there is year-round --  
3 essentially year-round visibility from all of the  
4 reservoir, and seasonal visibility from  
5 essentially all of the shore of the reservoir.

6 Is that correct?

7 THE WITNESS (Gaudet): Yeah -- so yes. Primarily over  
8 the reservoir there's approximately 195 acres of  
9 visibility. I want to say it's about 98 percent  
10 of the year-round visibility in the study areas  
11 over the reservoir.

12 And yes, the shores along the reservoir would  
13 mostly be seasonal visibility.

14 MR. SHERWOOD: I'm looking at attachment eight at page  
15 9, and that's generally consistent with what you  
16 say, approximately 98.5 percent of predicted  
17 year-round visibility is estimated for over the  
18 open water in the reservoir to the west and  
19 southwest of the site. Areas of obstructed  
20 visibility are predicted to occur at the limits of  
21 predicted year-round visibility along the  
22 shoreline of the reservoir and within  
23 approximately a third of a mile of sight on land.

24 Then you say, predicted year-round visibility  
25 of the proposed facility is estimated to include

1 approximately 198 acres, 195 of which are for over  
2 the open water in the reservoir.

3 Predicted seasonal visibility is estimated to  
4 include an additional 80 plus-or-minus acres with  
5 21 acres occurring in forested areas immediately  
6 surrounding the reservoir.

7 We, the JMB party submitted a map which the  
8 Connecticut Department of Energy and Environmental  
9 Protection provided us with. This is  
10 administrative -- Buschmann's Administrative  
11 Notice List Number 26. And it shows that the  
12 Centennial Watershed State Forest encircles the  
13 reservoir.

14 Have you seen that map, Mr. Gaudet?

15 THE WITNESS (Gaudet): I have, but not recently. So if  
16 you can give me a minute to pull that up?

17 MR. SHERWOOD: If you're looking for it on the site,  
18 it's our Exhibit 3.

19 So if you go to the Buschmann party's, and go  
20 to the exhibits, Exhibit 3 -- I'm sorry, it's  
21 Exhibit 4, the managed -- natural resource  
22 management agreement is Exhibit 3.

23 The map is Exhibit 4.

24 THE WITNESS (Gaudet): Thank you. Just give me one  
25 second. I'm just scrolling down to it right now.

1           Okay.

2   MR. SHERWOOD:   So the state forest encircles the  
3           reservoir and includes the reservoir?

4   THE WITNESS (Gaudet):   The legend doesn't seem  
5           extensive on this.   My interpretation, and which  
6           would -- would be in kind with the dataset that we  
7           pulled through GIS, as you see on the viewshed  
8           analysis.

9           On the -- the exhibit you're referencing, the  
10          class -- what they call class-one Aquarion Water  
11          Company, I would interpret that to be Aquarion  
12          Water Company owned property and not class two,  
13          which would be CT DEEP, which would be the  
14          Centennial Watershed State Forest.

15   MR. SHERWOOD:   Right.   Well, if you look -- that's why  
16          we offered the natural resource management  
17          agreement, because the purpose of the Centennial  
18          Watershed State Forest was to -- it arose as an  
19          agreement among the Nature Conservancy, the State  
20          of Connecticut and Aquarion.   And the purpose of  
21          the state forest is to protect these watershed  
22          lands.

23          But at any rate, you didn't inquire.   You  
24          didn't make any inquiry of the Department of  
25          Energy and Environmental Protection with respect

1 to location of state forest. Is that correct?

2 THE WITNESS (Gaudet): I'm sorry.

3 Can you repeat that question?

4 MR. SHERWOOD: You didn't make any direct inquiry of  
5 the Department of Energy and Environmental  
6 Protection with respect to the location of the  
7 state forest?

8 THE WITNESS (Gaudet): I'm not sure I follow the  
9 question.

10 MR. SHERWOOD: Well, we think it's quite simple. We  
11 think that the state forest, based on Exhibits 3  
12 and 4, we think that the state forest encompasses  
13 the reservoir and the land surrounding the  
14 reservoir.

15 And you indicate that there are no views of  
16 the tower from the Centennial Watershed State  
17 Forest. And we think that all of the views, or  
18 almost all of the views of the tower are from the  
19 Centennial Watershed State Forest. We -- we  
20 inquired of the Department of Energy and  
21 Environmental Protection with respect to the  
22 boundaries.

23 My question is, did you inquire directly of  
24 the Department of Energy and Environmental  
25 Protection with respect to --

1 THE WITNESS (Gaudet): I did not, no.

2 MR. SHERWOOD: Thank you.

3 I have some more questions for Mr. Gustafson.

4 I'm looking at the U.S. Fish and Wildlife  
5 Service compliance, or compliance report which is  
6 attachment nine. And I'm looking at page 9 of the  
7 42-page exhibit -- or attachment.

8 Who was responsible for the preparation of  
9 this report, Mr. Gustafson?

10 THE WITNESS (Gustafson): Can you just clarify what --  
11 which report, what the title of that report is?

12 MR. SHERWOOD: Yes, it's a letter from the United  
13 States Department of the Interior, Fish and  
14 Wildlife Service, dated January 6, 2022; subject,  
15 consistency letter for Homeland Towers, New  
16 Canaan, northwest project; indicating that any  
17 take of the northern long-eared bat that may occur  
18 as a result of the action is not prohibited under  
19 ESA, Section 4d, the rule adopted for the species,  
20 at 50 CFR 17.40(o), and its addressed to Deborah  
21 Gustafson.

22 THE WITNESS (Gustafson): Yes. Yeah, I'm -- I'm  
23 responsible for that document.

24 MR. SHERWOOD: Who is Deborah Gustafson?

25 THE WITNESS (Gustafson): She is our environmental

1 department's administrative assistant.

2 MR. SHERWOOD: And who was responsible for the  
3 preparation of the questionnaire which starts --  
4 the iPad questionnaire which starts at page 17 of  
5 Exhibit 9 -- or attachment nine? I'm sorry.

6 THE WITNESS (Gustafson): I provided the information to  
7 be inputted into that document. It was actually  
8 submitted by -- by Deborah Gustafson, but I  
9 provided the information for her to submit it.

10 MR. SHERWOOD: And were any field assessments or  
11 investigations done in connection with the  
12 preparation of this report?

13 THE WITNESS (Gustafson): No, there were no specific  
14 surveys or -- or investigations for northern  
15 long-eared bat.

16 MR. SHERWOOD: Were any done for any wildlife or plant  
17 species?

18 THE WITNESS (Gustafson): No.

19 MR. SHERWOOD: And you also have a Natural Diversity  
20 Database letter which is at page 40, and that  
21 indicates, or tells you that certain listed  
22 species occur in the area of the site.

23 Is that correct?

24 THE WITNESS (Gustafson): That's correct.

25 MR. SHERWOOD: But it also concludes, consultations

1 with the NDDDB should not be substituted for  
2 on-site surveys required for environmental  
3 assessments. Correct?

4 THE WITNESS (Gustafson): That's correct. That's  
5 standard language in every NDDDB letter.

6 MR. SHERWOOD: Right, but that wouldn't diminish the  
7 import of what they're saying. Correct?

8 THE WITNESS (Gustafson): No.

9 MR. SHERWOOD: Now I also have some questions about the  
10 supplemental submission dated June 21st, the  
11 Applicant's supplemental submission.

12 And I want to direct you, Mr. Gustafson, I  
13 guess, specifically to the first page towards the  
14 bottom. It says, supplemental information  
15 regarding the Department of Public Health, June 1,  
16 2022, comments.

17 THE WITNESS (Gustafson): Okay.

18 MR. SHERWOOD: And if you look at the top of the second  
19 page it says, sedimentation and erosion control.

20 And it's -- and your response says, your  
21 response to the DPH's comments with respect to  
22 sedimentation and erosion control say,  
23 sedimentation and erosion controls for the  
24 construction of the proposed facility will be  
25 designed, installed and maintained in accordance

1 with the 2002 Connecticut guidelines for soil  
2 erosion and sediment control.

3 As detailed in the wetland inspection report  
4 included in the application attachment nine, the  
5 proposed facility will not alter existing surface  
6 or subsurface water flow.

7 I can't find a wetlands inspection report in  
8 attachment nine. The wetlands inspection report I  
9 have is attachment six, and pages 5 through 10, we  
10 just discussed that.

11 **THE WITNESS (Gustafson):** Yeah, that I -- I'm going to  
12 have to take a closer look to see what the proper  
13 reference is to that statement, because I don't  
14 know if it's -- if the attachment number is  
15 misreferenced, or they should have referenced  
16 another attachment. So I'll need to get back to  
17 you on that point.

18 **MR. SHERWOOD:** Thank you, Mr. Gustafson.

19 Mr. Silvestri, do you want me to continue?  
20 It's five o'clock. Or do you want to --

21 **THE HEARING OFFICER:** I appreciate it, Attorney  
22 Sherwood. I'd like to hold here at this point.  
23 The Applicant obviously owes you a couple things  
24 that we mentioned earlier, about the EX-1, SP-1  
25 protection zone on the trees -- and now we've got

1 the reference six-nine, or whatever it may be.

2 They also owe us a couple things that I  
3 mentioned before, so I'd like to stop here and  
4 then continue when we have our next hearing on  
5 this one.

6 But thanks for bringing that up. I didn't  
7 have to interrupt you.

8 MR. SHERWOOD: It's difficult to stop me once I get  
9 started.

10 THE HEARING OFFICER: I hear you, sir.

11 Okay. The Council announces that it will  
12 continue the evidentiary session of this public  
13 hearing on Tuesday August 16, 2022, at 2 p.m., via  
14 Zoom remote conferencing.

15 A copy of the agenda for the continued remote  
16 evidentiary hearing session will be available on  
17 the Council's Docket Number 509 webpage, along  
18 with a record of this matter, the public hearing  
19 notice, instructions for public access to the  
20 remote evidentiary hearing session, and the  
21 Council's citizens guide to Siting Council  
22 procedures.

23 And please note that anyone who has not  
24 become a party or intervener but who desires to  
25 make his or her views known to the Council may

1 file written statements with the Council until the  
2 record closes.

3 Copies of the transcript of this hearing will  
4 be filed in the New Canaan Town Clerk's office and  
5 the Stamford City Clerk's office.

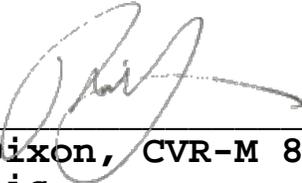
6 And I hereby declare this hearing adjourned.  
7 I thank everyone for your participation.

8 And be careful out there. Thank you.

9  
10 (End: 5:01 p.m.)  
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CERTIFICATE

I hereby certify that the foregoing 135 pages are a complete and accurate computer-aided transcription of my original verbatim notes taken of the remote teleconference meeting in Re: APPLICATION FROM HOMELAND TOWERS, LLC AND NEW CINGULAR WIRELESS PCS, LLC d/b/a AT&T FOR A CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF A TELECOMMUNICATIONS FACILITY LOCATED AT 1837 PONUS RIDGE ROAD, NEW CANAAN, CONNECTICUT, which was held before ROBERT SILVESTRI, Member and Presiding Officer, on July 14, 2022.



Robert G. Dixon, CVR-M 857  
Notary Public  
My Commission Expires: 6/30/2025

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