

1 STATE OF CONNECTICUT
2 CONNECTICUT SITING COUNCIL

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4
5 Docket No. 509

6 Homeland Towers, LLC and New Cingular Wireless
7 PCS, LLC d/b/a AT&T application for a Certificate
8 of Environmental Compatibility and Public Need for
9 the construction, maintenance, and operation of a
10 telecommunications facility located at
11 1837 Ponus Ridge Road, New Canaan, Connecticut.

12
13 VIA ZOOM AND TELECONFERENCE

14
15 Continued Public Hearing held on Tuesday,
16 August 16, 2022, beginning at 2 p.m.,
17 via remote access.

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20 H e l d B e f o r e:

21 JOHN MORISSETTE, Presiding Officer

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23
24
25 Reporter: Lisa L. Warner, CSR #061

1 **A p p e a r a n c e s :**

2
3 **Council Members:**

4 **BRIAN GOLEMBIEWSKI, Designee for**
5 **Commissioner Katie Dykes, Department of**
6 **Energy and Environmental Protection**

7 **QUAT NGUYEN, Designee for Chairman Marissa**
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21 **For Applicants, Homeland Towers, LLC and New**
22 **Cingular Wireless PCS, LLC (AT&T):**

23 **CUDDY & FEDER LLP**
24 **445 Hamilton Avenue, 14th Floor**
25 **White Plains, New York 10601**
 BY: LUCIA CHIOCCHIO, ESQ.

26 **For Intervenor, Cellco Partnership d/b/a**
27 **Verizon Wireless:**

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31 **BY: KENNETH C. BALDWIN, ESQ.**

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

2
3 **For Grouped Parties and CEPA Intervenor,**
4 **Jamie Buschmann, Trustee, Mark Buschmann,**
 Trustee and Mark Buschmann:

5 **MORIARTY, PAETZOLD & SHERWOOD**
6 **2230 Main Street, P.O. Box 1420**
 Glastonbury, Connecticut 06033-6620
7 **BY: DAVID F. SHERWOOD, ESQ.**

8 **Party and CEPA Intervenor, New Canaan**
9 **Neighbors:**

10 **JUSTIN NISHIOKA**
 60 Squires Lane
11 **New Canaan, Connecticut 06840**

12
13 **Zoom co-host: Aaron Demarest**

14
15 ****All participants were present via remote access.**

1 MR. MORISSETTE: This continued remote
2 evidentiary hearing session is called to order
3 this Tuesday, August 16, 2022, at 2 p.m. My name
4 is John Morissette, member and presiding officer
5 of the Connecticut Siting Council. If you haven't
6 done so already, I ask that everyone please mute
7 their computer audio and/or telephones now. A
8 copy of the prepared agenda is available on the
9 Council's Docket No. 509 webpage, along with the
10 record of this matter, the public hearing notice,
11 instructions for public access to this remote
12 public hearing, and the Council's Citizens Guide
13 to Siting Council Procedures.

14 Other members of the Council are Mr.
15 Silvestri, Mr. Nguyen, Mrs. Cooley, Mr. Quinlan,
16 Mr. Golembiewski, Mr. Lynch, Executive Director
17 Melanie Bachman, staff analyst Robert Mercier, and
18 Fiscal Administrative Officer Lisa Fontaine.

19 This evidentiary session is a
20 continuation of the public hearing held on June
21 28, 2022 and July 14, 2022. It is held pursuant
22 to the provisions of Title 16 of the Connecticut
23 General Statutes and of the Uniform Administrative
24 Procedure Act upon an application from Homeland
25 Towers, LLC and New Cingular Wireless PCS, LLC

1 doing business as AT&T for a Certificate of
2 Environmental Compatibility and Public Need for
3 the construction, maintenance, and operation of a
4 telecommunications facility located at 1837 Ponus
5 Ridge Road in New Canaan, Connecticut.

6 A verbatim transcript will be made of
7 this hearing and deposited with the New Canaan
8 Town Clerk's Office and the Stamford City Clerk's
9 Office for the convenience of the public.

10 The Council will take a 10 to 15 minute
11 break at a convenient juncture around 3:30 p.m.

12 We'll now continue with the appearance
13 of the applicant. In accordance with the
14 Council's July 15, 2022 continued evidentiary
15 hearing memo, we will commence with the appearance
16 of the applicants, Homeland Towers, LLC and AT&T,
17 to verify the new exhibits marked as Roman Numeral
18 II, Items B-12 through 14 on the hearing program.

19 Attorney Chiocchio or Motel, please
20 begin by identifying the new exhibits you have
21 filed in this matter and verifying the exhibits by
22 the appropriate sworn witnesses.

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

24 H A R R Y C A R E Y,

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

1 M I C H A E L L I B E R T I N E,
2 D E A N G U S T A F S O N,
3 B R I A N G A U D E T,
4 M A R T I N L A V I N,
5 E R I C F I N E,

6 having been previously duly sworn, continued
7 to testify on their oaths as follows:

8 DIRECT EXAMINATION

9 MS. CHIOCCHIO: Thank you, Mr.
10 Morissette. So the new exhibits include the
11 Applicants' Late-File exhibits submitted on August
12 8, 2022; the Applicants' response to the New
13 Canaan Neighbors' Interrogatory No. 14, dated
14 August 8, 2022; and the Applicants' supplemental
15 submission, dated August 8, 2022.

16 I'll ask the witnesses, Mr. Vergati,
17 Mr. Carey, Mr. Burns, Mr. Gustafson, Mr. Gaudet
18 and Mr. Lavin, to verify these exhibits. Did you
19 prepare or assist in the preparation of the
20 exhibits as identified?

21 THE WITNESS (Lavin): Martin Lavin.
22 Yes.

23 THE WITNESS (Vergati): Ray Vergati.
24 Yes.

25 THE WITNESS (Carey): Harry Carey.

1 Yes.

2 THE WITNESS (Burns): Robert Burns.

3 Yes.

4 THE WITNESS (Gustafson): Dean
5 Gustafson. Yes.

6 THE WITNESS (Gaudet): Brian Gaudet.

7 Yes.

8 MS. CHIOCCHIO: Do you have any
9 corrections or updates to the information
10 contained in those exhibits?

11 THE WITNESS (Lavin): Martin Lavin.

12 No.

13 THE WITNESS (Vergati): Ray Vergati.

14 No.

15 THE WITNESS (Carey): Harry Carey. No.

16 THE WITNESS (Burns): Robert Burns.

17 No.

18 THE WITNESS (Gustafson): Dean
19 Gustafson. No.

20 THE WITNESS (Gaudet): Brian Gaudet.

21 No.

22 MS. CHIOCCHIO: Is the information
23 contained in the exhibits as identified true and
24 accurate to the best of your belief and knowledge?

25 THE WITNESS (Lavin): Martin Lavin.

1 Yes.

2 THE WITNESS (Vergati): Ray Vergati.

3 Yes.

4 THE WITNESS (Carey): Harry Carey.

5 Yes.

6 THE WITNESS (Burns): Robert Burns.

7 Yes.

8 THE WITNESS (Gustafson): Dean

9 Gustafson. Yes.

10 THE WITNESS (Gaudet): Brian Gaudet.

11 Yes.

12 MS. CHIOCCHIO: And do you adopt these
13 exhibits as your testimony in this proceeding?

14 THE WITNESS (Lavin): Martin Lavin.

15 Yes.

16 THE WITNESS (Vergati): Ray Vergati.

17 Yes.

18 THE WITNESS (Carey): Harry Carey.

19 Yes.

20 THE WITNESS (Burns): Robert Burns.

21 Yes.

22 THE WITNESS (Gustafson): Dean

23 Gustafson. Yes.

24 THE WITNESS (Gaudet): Brian Gaudet.

25 Yes.

1 MS. CHIOCCHIO: Thank you. Thank you,
2 Mr. Morissette. We ask the Council to accept the
3 Applicants' exhibits.

4 MR. MORISSETTE: Thank you, Attorney
5 Chiocchio.

6 Does any party or intervenor object to
7 the admission of the applicants' new exhibits?

8 Attorney Baldwin.

9 MR. BALDWIN: No objection, Mr.
10 Morissette.

11 MR. MORISSETTE: Thank you, Attorney
12 Baldwin.

13 Attorney Sherwood.

14 MR. SHERWOOD: No objection, Mr.
15 Morissette.

16 MR. MORISSETTE: Thank you, Attorney
17 Sherwood.

18 Justin Nishioka.

19 MR. NISHIOKA: No objection.

20 MR. MORISSETTE: Thank you. I
21 apologize for the mispronunciation.

22 MR. NISHIOKA: Sure.

23 MR. MORISSETTE: The exhibits are
24 hereby admitted.

25 (Applicants' Exhibits II-B-12 through

1 II-B-14: Received in evidence - described in
2 index.)

3 MR. MORISSETTE: We'll continue with
4 cross-examination of the applicant by the Grouped
5 Parties and CEPA Intervenor, the Buschmanns, by
6 Attorney Sherwood. Attorney Sherwood.

7 CROSS-EXAMINATION

8 MR. SHERWOOD: Thank you, Mr.
9 Morissette. I'd like to start by referring to the
10 wetlands inspection report which is attachment 6
11 to the application. I believe that's Mr.
12 Gustafson.

13 THE WITNESS (Gustafson): Yes. Good
14 afternoon.

15 MR. SHERWOOD: Good afternoon, Mr.
16 Gustafson. On the 14th we started to discuss
17 this, and I asked you whether you had
18 characterized the soils on the site and you said
19 that the characterization you had done was
20 included in this report; is that correct?

21 THE WITNESS (Gustafson): That's
22 correct. We referenced the data as mapped by the
23 Natural Resource Conservation Service mapping,
24 soil mapping.

25 MR. SHERWOOD: Right. So that's on

1 page 2. It says, "Are field identified soils
2 consistent with NRCS mapped soils?" And you've
3 checked the box that says "yes."

4 THE WITNESS (Gustafson): That's
5 correct.

6 MR. SHERWOOD: And in the applicants'
7 response to the Siting Council's prehearing
8 interrogatories, Answer 25, you refer to, the
9 applicants' refer to a phase 1B archeological
10 survey and the State Historic Preservation
11 officer's, essentially, letter accepting the
12 survey. And in the State Historic Preservation
13 officer's letter he says, "Soil profiles are
14 identified as Charlton and Chatfield complex,
15 characterized as very deep, low sloping,
16 well-drained soils." Would you agree with that
17 characterization, Mr. Gustafson?

18 THE WITNESS (Gustafson): Yes, I
19 believe that's an accurate characterization of the
20 upland soils on this subject parcel.

21 MR. SHERWOOD: And in the phase 1B
22 archeological report, apparently, the investigator
23 apparently dug 12 shovel tests looking for
24 archeologic remains to a depth of, it looks like a
25 depth of 19.3 inches, and 9 of the 12 shovel tests

1 had to be terminated due to large immovable rocks.
2 So based on that, it would seem that the soils are
3 relatively shallow to bedrock; would you agree to
4 that?

5 THE WITNESS (Gustafson): I don't since
6 I didn't perform those shovel tests, and there is
7 no indication that they found refusal on bedrock,
8 it could have just been large boulders. I'm not
9 sure that it's an accurate representation.

10 Certainly based on the characterization of the
11 soils out there, there are some shallow to bedrock
12 soils in the site. So some of those test pits
13 could have found refusal on bedrock. It's unclear
14 based on their characterization in that report.

15 MR. SHERWOOD: So we would need a
16 geotechnical study in order to determine that?

17 THE WITNESS (Gustafson): That's
18 correct, that would be the most accurate way to
19 determine depth to bedrock on this property.

20 MR. SHERWOOD: Mr. Gustafson, would you
21 agree that Charlton and Chatfield soils are to be
22 characterized as highly erodible soils in
23 Fairfield County?

24 THE WITNESS (Gustafson): Yes, yes,
25 that's how they're characterized.

1 MR. SHERWOOD: And that they encompass
2 the majority of the site, would you agree with
3 that?

4 THE WITNESS (Gustafson): I do agree
5 with that.

6 MR. SHERWOOD: Thank you. I'd like to
7 continue with some questions about the Department
8 of Public Health letter, dated June 1, 2022. If
9 you can refer to that. On June 28th at page 130
10 of the transcript, Mr. Gustafson, you testified,
11 quote, "Sure. As far as what, you know, Homeland
12 could accommodate, I think overall between the
13 state agency comments from DPH and CEQ, the
14 proposed facility, we can accommodate the majority
15 of those recommendations and provide a facility
16 that would avoid any significant resource impacts
17 either during or after construction..."

18 What recommendations in the DPH letter
19 do you think you cannot accommodate?

20 THE WITNESS (Gustafson): At least from
21 my perspective, I don't see any reason why we
22 can't accommodate their requests. As we've
23 indicated through the materials filed with this
24 application, the protection measures that we're
25 proposing to put in place for this facility,

1 particularly during construction, are consistent
2 with recommendations from Department of Public
3 Health contained within this docket as well as
4 consistent with previous dockets of projects that
5 have occurred within public water supply
6 watersheds.

7 MR. SHERWOOD: And your testimony is
8 that you can accommodate all of the
9 recommendations in the Department of Health
10 letter?

11 THE WITNESS (Gustafson): So I would
12 defer to Mr. Vergati with respect to whether the
13 applicant can accommodate all of them.

14 MR. SHERWOOD: Mr. Vergati, would you
15 be kind enough to indicate whether or not Homeland
16 is prepared to do that?

17 THE WITNESS (Gustafson): Yeah, I think
18 it would be appropriate for Mr. Vergati to respond
19 to that question since he's the representative of
20 the applicant.

21 MR. SHERWOOD: Mr. Vergati, is he with
22 us today?

23 THE WITNESS (Vergati): Ray Vergati,
24 Homeland Towers. In regards to the June 1st
25 letter from DPH, I think there were 12 items or

1 recommendations from the DPH. I'd have to
2 obviously read it in a little more detail to see
3 what as the applicant Homeland could adhere to. I
4 see one item here about the recommendation of
5 using a shared propane generator. That is
6 something that Homeland does not get into. That's
7 a carrier decision with Verizon and AT&T to have
8 their own generators for back-up power. I don't
9 see anything that is earth shattering in a sense
10 as far as not being able to adhere to, but I'd
11 like to look it over a little closer as far as the
12 recommendations.

13 MR. SHERWOOD: Would you do that,
14 please, and we'll come back to you, Mr. Vergati?

15 THE WITNESS (Vergati): Absolutely.

16 MR. SHERWOOD: Before you do, before
17 you go though, why can't all of the companies with
18 antennas on the tower share a generator, why is
19 that?

20 THE WITNESS (Vergati): I'll let the
21 carriers speak for their own network needs, but
22 it's been our experience that the carriers are
23 responsible for their own equipment, be it their
24 antennas, their ground equipment, their
25 generators. They don't typically cross-mingle or

1 cross-connect. And we've also found it's rather
2 wise to have multiple back-up generations. When
3 you have one single shared source of back-up, you
4 have a single source of failure, meaning if that
5 generator goes out everybody goes out. So I think
6 it makes good business sense, argument in the
7 sense that each carrier and the town in this case
8 having their own individual back-up supply is a
9 prudent decision.

10 MR. SHERWOOD: So it's basically a
11 business decision, would that be a fair statement?

12 THE WITNESS (Vergati): No, absolutely
13 not. I think it's a public safety decision.
14 These carriers, you know, these networks save
15 lives, and these networks are used by public
16 safety. And as I mentioned earlier, you get away
17 from a single point of failure when you have one
18 single source of back-up generation. It's not a
19 cost savings or a money or business decision.
20 It's a network decision.

21 MR. SHERWOOD: Okay. Thank you.
22 Recommendation No. 1, this is for Mr. Gustafson or
23 I guess Mr. Burns, recommendation No. 1, it's
24 recommended that the number of trees removed is
25 minimized and other vegetation is planted wherever

1 possible. Has a planting plan been done to show
2 what will be planted on the areas that are cleared
3 or to be cleared?

4 THE WITNESS (Gustafson): No, that has
5 not been developed. We anticipate developing that
6 planting plan should the Council approve this
7 application during the development and management
8 plan, and at that point we'll have the data from
9 the geotechnical investigation so we'll understand
10 the depth to bedrock for those soils to determine
11 what's appropriate for planting in those various
12 zones depending on the soil characteristics.

13 MR. SHERWOOD: So you can't determine
14 at this point what plantings would be appropriate;
15 is that correct?

16 THE WITNESS (Gustafson): That's
17 correct. I mean, we are planning on proposing
18 plantings. And it's just a matter of
19 understanding the soil characteristics to
20 determine what species would work best and survive
21 best in those conditions post-development.

22 MR. SHERWOOD: Recommendation No. 3,
23 the proposed access road will increase the amount
24 of impermeability on the parcel and increase the
25 risk of runoff. Measures should be taken to

1 increase infiltration near the road such as a rain
2 guard. Are there any measures shown on the
3 current site plan which allow for infiltration?

4 That may be for Mr. Burns.

5 THE WITNESS (Burns): Good afternoon.
6 Robert Burns, All Points Technologies. The
7 drainage system as it's designed, yes, there will
8 be opportunities for infiltration, but when we
9 finalized the drainage computations recently we've
10 been able to match runoff pre and post-development
11 for the 2 year, 10 year, 25 year and the 100 year
12 storm. So the amount of runoff coming off this
13 parcel will be exactly the same post-construction.
14 And any infiltration will only improve that
15 situation.

16 MR. SHERWOOD: But you haven't provided
17 us with those calculations, you've done them but
18 you haven't provided it, correct?

19 THE WITNESS (Burns): A full drainage
20 report will be submitted as part of the
21 development and management submission.

22 MR. SHERWOOD: But you're not planning
23 on submitting that now?

24 THE WITNESS (Burns): We will submit it
25 as part of the D&M submission, correct.

1 MR. SHERWOOD: What measures on the
2 current site plan allow for infiltration?

3 THE WITNESS (Burns): So for
4 infiltration the riprap swales with the stone
5 check dams will allow if soils permit as well as
6 the riprap stilling basins which will hold the
7 water for a period of time will allow for
8 infiltration if soils permit.

9 MR. SHERWOOD: But again, we don't know
10 whether soils permit without a geotechnical --

11 THE WITNESS (Burns): That's correct.
12 That's why it's important to note that we're
13 matching the runoff pre and post-development. So
14 any infiltration will just be an improvement to
15 the situation in terms of runoff.

16 MR. SHERWOOD: No. 7, recommendation
17 No. 7 in the letter, servicing of machinery should
18 be completed outside the public water supply
19 watershed. What machinery would be serviced on
20 the site?

21 THE WITNESS (Burns): There should be
22 no machinery serviced on the site. If he brings
23 any construction equipment in that needs to be
24 serviced, he needs to take it off site. I'm
25 sorry, when I say "he," I mean the contractor

1 needs to take it off site.

2 MR. SHERWOOD: So during construction
3 there would be no servicing at all of machinery?

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

5 MR. SHERWOOD: What about the
6 generators, do they require servicing?

7 THE WITNESS (Burns): Occasionally they
8 they require some servicing. Those obviously will
9 have to be done on site. They need to be
10 exercised once a week, which is done remotely, but
11 if any of the telecommunication, radio equipment
12 or the generator needs to be serviced, obviously
13 that will have to be done on site.

14 MR. SHERWOOD: So you're not going to
15 be able to comply with recommendation No. 7?

16 THE WITNESS (Burns): As far as the
17 permanent equipment that will be there, it will be
18 serviced on site. Any construction equipment will
19 be serviced off site.

20 MR. SHERWOOD: With respect to
21 recommendation No. 9, fuel and other hazardous
22 materials should not be stored within the public
23 water supply watershed. What fuel and hazardous
24 materials would be stored on site, can you tell
25 us?

1 THE WITNESS (Burns): There's no fuels
2 that will be stored on site. The generators will
3 be by propane, so if that's considered a fuel, it
4 will be a liquid gas propane. But other than
5 that, there will be no diesel stored on site, no
6 gasoline stored on site, no oil stored on site.
7 So that one we will be able to adhere to.

8 MR. SHERWOOD: Recommendation No. 12,
9 Aquarion Water Company personnel should be allowed
10 to periodically inspect this project to ensure
11 that drinking water quality is not being adversely
12 impacted.

13 THE WITNESS (Burns): I'm going to let
14 Mr. Vergati answer this.

15 THE WITNESS (Vergati): Ray Vergati,
16 Homeland Towers. In response to your question or
17 the recommendation of Item No. 12, I've had
18 conversations with Aquarion on this matter. We
19 have no issue in periodically allowing them to
20 check in on the site to make sure it is staying
21 within the bounds of its approvals.

22 And getting back to your original
23 question as far as me, Homeland Towers, the
24 applicant having any issues with these 12 items
25 from the June 1st memo, I think my team has

1 already spoken on a number of them, and in
2 reviewing them I see no issues in adhering as best
3 we can to these 12 items.

4 MR. SHERWOOD: So you're not going to
5 adhere to No. 4 which is shared use of one propane
6 generator?

7 THE WITNESS (Vergati): That's correct.

8 MR. SHERWOOD: And you're going to be
9 servicing what you're calling the permanent
10 equipment on site. So apart from those two, you
11 think you can comply with these?

12 THE WITNESS (Vergati): I believe so.
13 And I think in response to Question 7, I want to
14 differentiate between servicing machinery, which
15 is what question or recommendation 7 states,
16 versus servicing the equipment. There will be no
17 servicing of machinery on the subject parcel, only
18 the carrier equipment obviously.

19 MR. SHERWOOD: Again, with reference to
20 recommendation No. 12, in your response to the
21 Siting Council's June 28, 2022 hearing request,
22 response A7, you say, quote, with respect to DPH
23 comment 12 regarding Aquarion's periodic
24 inspection, Homeland confirmed that Aquarion
25 personnel can access the site for one site visit

1 during construction and one site visit when the
2 project is complete. This access is strictly
3 limited to Aquarion personnel only. So you've
4 modified that position?

5 THE WITNESS (Vergati): We can work
6 with Aquarion how many visits they'd like to do.
7 We've had some trespassing issues on the property.
8 It was a conversation I've had with the underlying
9 landlord on who steps on that property from a
10 liability perspective. What I'm telling you and
11 the Council is we have no issue in working closely
12 with Aquarion to ensure that they can visit the
13 property both post and preconstruction. It's not
14 an open invitation for them to go there at any
15 time. It's an open pipeline that I'll have with
16 Aquarion should this project be approved and they
17 wish to take a look at it we will make
18 accommodations for that.

19 MR. SHERWOOD: Thank you, Mr. Vergati.

20 THE WITNESS (Vergati): Thank you.

21 MR. SHERWOOD: I have some questions
22 about Homeland's supplemental submission and
23 response to the Council's June 14th hearing
24 request. I guess this is for Mr. Burns. It deals
25 with stormwater.

1 THE WITNESS (Burns): Yes, sir. Robert
2 Burns, All Points Technologies.

3 MR. SHERWOOD: Mr. Burns, on Question 2
4 the Council asked for information on the existing
5 stormwater management features on Ponus Ridge
6 Road. And you respond that they are very limited.
7 There are, apparently there's a catch basin at the
8 intersection of Ponus Ridge and Dans Highway, and
9 the majority of runoff discharge is directly into
10 adjacent areas on either side of the road.

11 There's a small swale which runs along the north
12 side and discharges into an existing culvert. So
13 the catch basin at Dans Highway and Ponus Ridge
14 picks up water. Where does that water go?

15 THE WITNESS (Burns): Hang on, let me
16 get my bearings. It goes away from the site to
17 the east.

18 MR. SHERWOOD: Away from the site to
19 the east you said?

20 THE WITNESS (Burns): Yes, sir.

21 MR. SHERWOOD: So it goes in the Dans
22 Highway direction?

23 THE WITNESS (Burns): Well, I believe
24 it goes, continues down Ponus Ridge Road, so I
25 guess that's really southeast.

1 MR. SHERWOOD: Southeast.

2 THE WITNESS (Burns): But it doesn't
3 come in our direction. It goes the opposite way.

4 MR. SHERWOOD: So would it be fair to
5 say that the site drains onto Ponus Ridge Road?

6 THE WITNESS (Burns): The majority of
7 the site, yes, there is an existing drainage swale
8 along Ponus Ridge on our side that runs to that
9 existing culvert, but it's not very large. But
10 the majority of the road will run -- the majority
11 of the runoff will run where it runs today
12 currently onto Ponus Ridge Road.

13 MR. SHERWOOD: And the Ponus Ridge Road
14 stormwater goes into the reservoir, correct, lower
15 reservoir?

16 THE WITNESS (Burns): It probably
17 eventually makes its way there or, yes, I would
18 say it eventually makes its way there.

19 MR. SHERWOOD: And are you familiar
20 with the New Canaan town prohibition on draining
21 water onto public roadways?

22 THE WITNESS (Burns): I'm not.

23 MR. SHERWOOD: So you haven't looked
24 into that and that issue has been not been raised
25 by the town?

1 THE WITNESS (Burns): No, because this
2 is a Siting Council jurisdiction.

3 MR. SHERWOOD: So in your judgment, an
4 ordinance prohibiting that would not be an
5 impediment to the development?

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

7 MR. SHERWOOD: If we look at Answer 3,
8 clarification on the number of trees to be removed
9 on sheet SP-2, you indicate that the updated
10 survey has removed all of the existing trees that
11 were surveyed less than 6 inches diameter at
12 breast height. The updated survey is the June
13 24th version?

14 THE WITNESS (Burns): The updated
15 survey is, I believe it's the June 24th, yes. And
16 what had happened was the background to our site
17 plans had the updated survey but the old tree
18 chart was still in the set. And then when they
19 updated it, they pulled the 4-inch trees off and
20 renumbered everything. So there was some
21 confusion, so I recounted them all myself and
22 there are 103 trees to be removed. Four of them
23 are dead, but they'll still be removed.

24 MR. SHERWOOD: We have one survey and
25 one tree survey, correct?

1 THE WITNESS (Burns): Yes, sir, but
2 it's been revised a couple times.

3 MR. SHERWOOD: And we don't have those
4 copies?

5 THE WITNESS (Burns): I believe you do.
6 In the last set we sent I had updated the surveys,
7 but we certainly can get them to you. All he did
8 was update them to pull the 4-inch trees off.

9 MR. SHERWOOD: I'm not talking about
10 the site plan. In the first submission in
11 attachment 4 you submitted a tree survey which is
12 basically a table indicating, numbered indicating
13 the type of trees and the size of the trees on the
14 site, and then a survey which showed no
15 development, it just showed existing conditions,
16 correct?

17 THE WITNESS (Burns): Yes, sir.

18 MR. SHERWOOD: And you say that both of
19 those have been revised since the initial
20 submission?

21 THE WITNESS (Burns): Yeah, I believe
22 so, yes, sir. The only reason I'm hesitating is
23 because I don't remember when they got put into
24 the updated set.

25 MR. SHERWOOD: Because I've only

1 seen -- I mean, I've seen revised site plans, but
2 I haven't seen any revised survey or tree survey.
3 And what's puzzling to me is that if the site plan
4 has been revised to remove the trees under 6
5 inches, how is it that the number of trees that
6 are to be removed has increased instead of
7 decreased? In other words, if the trees under 6
8 inches have been eliminated from the base map for
9 the site plan, presumably there are fewer trees
10 shown on the map, but we've gone from 94 trees on
11 the 624 plan to now 103 trees.

12 THE WITNESS (Burns): So -- and I'll
13 try and explain this as best I can. So when the
14 surveyor updated his survey, the plant, his
15 existing conditions, not the chart, he pulled all
16 the 4-inch trees off. Unfortunately, he
17 renumbered all the trees too. And what happened
18 was, the original count for the removal of trees
19 used the old table that still had 4-inch trees on
20 it. So, in other words, if tree 25 according to
21 the new survey had to be removed, then tree 25
22 under the old chart was a 4-inch tree, it was
23 disregarded. But what he did was what the
24 surveyor did was renumber them all. So now tree
25 25 is a different tree. So I've recounted all the

1 trees. It's 103 trees to be removed. Like I
2 said, four of them are dead, but they're still
3 under the count of 103 trees.

4 MR. SHERWOOD: And that would be with
5 respect to the plan that was submitted on June
6 24th?

7 THE WITNESS (Burns): Yes, sir.

8 MR. SHERWOOD: In Question 4 and Answer
9 4, the Council asks for a construction sequencing
10 phasing erosion sedimentation stormwater control
11 site stabilization measures and any other measures
12 necessary to prevent runoff from impacting Ponus
13 Ridge Road and the lower reservoir, construction
14 phasing plan. And you submitted that as
15 attachment 1, correct?

16 THE WITNESS (Burns): Yes, sir.

17 MR. SHERWOOD: And in your response you
18 say, preliminary sequence of construction
19 activities based on engineering judgment and best
20 management practices can be found on the suggested
21 construction sequence document, including
22 attachment 1, additional details regarding erosion
23 sedimentation stormwater controls is provided as
24 part of the D&M plan should the application be
25 approved, but you don't have any type of soils

1 analysis or geotechnical study. And then you say,
2 quote, it is important to note that the contractor
3 selected for the project, should it be approved,
4 may elect to alter the sequencing based on
5 existing site activities, weather conditions and
6 construction schedule.

7 So you think it's appropriate to allow
8 a contractor to modify your construction schedule?

9 THE WITNESS (Burns): With my approval,
10 yes. It's done all the time.

11 MR. SHERWOOD: With a site next to a
12 public water supply reservoir with highly erodible
13 soils and endangered species on the property?

14 THE WITNESS (Burns): Yes, sir.

15 MR. SHERWOOD: My next question is, I
16 guess it's for both you and Mr. Gustafson, if you
17 compare attachment 1, which is your construction
18 sequence, and sheet EN-1 which is part of the
19 updated drawings which were submitted on June
20 24th, it appears that none of the measures in
21 EN-1, that's the environmental note sheet, are
22 incorporated into the suggested construction
23 sequence.

24 THE WITNESS (Burns): Yes, sir. The
25 construction sequence is typically provided with

1 the erosion control drawings and documents.

2 MR. SHERWOOD: Right. Well, you've
3 provided a suggested construction sequence, right,
4 that's attachment 1?

5 THE WITNESS (Burns): Yes, sir.

6 MR. SHERWOOD: And none of the measures
7 in the environmental notes are included or
8 incorporated into the suggested construction
9 sequence. Is that an oversight or do you not
10 intend to combine them?

11 THE WITNESS (Burns): No, they are
12 meant to be done in sequence with each other.

13 MR. SHERWOOD: Well --

14 THE WITNESS (Gustafson): Attorney
15 Sherwood, if I could interject here. So as
16 Mr. Burns had noted that those would be
17 incorporated into the final erosion control plan
18 set, they'll be part of the D&M plan. At that
19 point the construction sequence would get folded
20 into those plan sheets which would be all part and
21 parcel that also includes the EN-1 notes. So at
22 the D&M phase all of the various additional plan
23 sheets to be incorporated into the combined
24 project plan set so they would all be incorporated
25 at that point in time.

1 MR. SHERWOOD: So it's important in
2 attachment 1 in the suggested construction
3 sequence to contact the owner to schedule a
4 preconstruction meeting and to notify the owner 48
5 hours prior to demolition, construction or
6 regulated activity, but we can leave till later
7 notification of Aquarion at least three business
8 days prior to the preconstruction meeting, we
9 could leave out Aquarion Water Company personnel
10 shall be allowed to periodically inspect the
11 project during construction, in other words, those
12 aren't the same type of requirement? Why leave
13 those out?

14 THE WITNESS (Burns): The
15 preconstruction meeting is held with the owner,
16 the owner's rep, general contractor, designated
17 subcontractors, the person or persons responsible
18 for implementation, operating, monitoring and
19 maintenance of the erosion and sedimentation
20 control measures. And certainly Aquarion, since
21 they will be monitored, is part of that.

22 MR. SHERWOOD: Right. So why not
23 include that in the construction sequence?

24 THE WITNESS (Burns): It's not --

25 MR. SHERWOOD: In other words -- just

1 let me finish my question. You've got two
2 parallel tracks here. You've got your suggested
3 construction sequence, which doesn't provide for
4 notice to Aquarion, which doesn't provide for
5 periodic sweeps for wildlife in the construction
6 zone every morning, which doesn't provide for
7 daily inspections of sedimentation erosion
8 controls, which doesn't contain any prohibition on
9 refueling machinery, which doesn't provide for the
10 establishment of an impervious pad with secondary
11 containment for fueling machinery and equipment on
12 the site, which doesn't limit tree clearing to
13 November 1st through March 30th, which doesn't
14 prohibit the use of herbicides and pesticides.

15 THE WITNESS (Burns): So first of
16 all --

17 MR. SHERWOOD: Aren't all those part of
18 the construction sequence?

19 THE WITNESS (Burns): No, some of those
20 are actually, what's the word I'm looking for,
21 instructions to the contractor. The construction
22 sequence is the order that I think they should go
23 in in constructing it. The other thing is these
24 will be included in the drawings the same way the
25 environmental notes will be included in the

1 drawings. So they have to adhere to everything
2 within the set of drawings, not just the, well,
3 we're just going to do the sequence and we're not
4 going to pay attention to the environmental notes.

5 MR. SHERWOOD: If tree clearing -- go
6 ahead.

7 THE WITNESS (Burns): I'm finished.

8 MR. SHERWOOD: If tree clearing occurs
9 between November 1st and March 30th, how are you
10 going to stabilize the site after clearing?
11 That's outside of the growing season, isn't it?

12 THE WITNESS (Burns): Yes, which is why
13 they will put in the erosion control measures and
14 they could button it up for the winter if they go
15 into winter construction, but there are mechanisms
16 for stabilizing during that period as well.

17 MR. SHERWOOD: But none of those are
18 appropriate to include in the suggested
19 construction sequence?

20 THE WITNESS (Burns): They will be part
21 of the D&M set when submitted and the contractor
22 will have to adhere to everything that's within
23 that D&M set, whether it's in the sequence or on a
24 note sheet.

25 MR. SHERWOOD: If we look at Question 5

1 and Response 5, "Clarification of the statement
2 'Wetland Inspection Report included in Application
3 Attachment 9' provided on page 2 of the
4 applicants' supplemental submission, dated June
5 21st," your response is that the reference should
6 have been to attachment 6 of the application which
7 is the Wetlands Inspection Report, but that the
8 Wetlands Inspection Report does not speak to
9 surface or subsurface water runoff or waterflow.
10 And then you say, "Nevertheless, the stormwater
11 management system as currently proposed maintains
12 the existing local drainage basin flow patterns to
13 the greatest extent possible in order to avoid
14 post-construction drainage pattern changes."

15 Presumably you can't say that the
16 proposed facility will not alter existing surface
17 or subsurface water flow?

18 THE WITNESS (Burns): Sorry, I don't
19 understand.

20 MR. SHERWOOD: Well, in the
21 supplemental submission dated June 21st it says,
22 as detailed in the Wetlands Inspection Report, the
23 proposed facility will not alter existing surface
24 or subsurface water flow. Is that the case?

25 THE WITNESS (Burns): Yes, it will not

1 alter the surface drainage patterns, correct, and
2 the pre and post-construction runoff will be the
3 same, same quantity and same pattern.

4 MR. SHERWOOD: But you don't know
5 anything about the subsurface water flow, correct?

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

7 MR. SHERWOOD: So you can't make that
8 statement?

9 THE WITNESS (Burns): No, we can't make
10 that statement.

11 MR. SHERWOOD: Thank you, Mr. Burns. I
12 have a question for Mr. Gaudet.

13 THE WITNESS (Gaudet): Good afternoon.

14 MR. SHERWOOD: Good afternoon, Mr.
15 Gaudet. In the applicants' supplemental
16 submission dated August 8th it deals with two
17 items, visibility from Centennial Watershed State
18 Forest and then a separate section on stormwater
19 measures. And I just want to be clear on your
20 opinion with respect to visibility. So I'm
21 looking at attachment 5 to the applicants'
22 responses to the Connecticut Siting Council
23 interrogatories, Set One, the watershed analysis
24 map.

25 THE WITNESS (Gaudet): Yes.

1 MR. SHERWOOD: Do you have that?

2 THE WITNESS (Gaudet): I do, yes.

3 MR. SHERWOOD: This is the last version
4 of this map, right, the viewshed analysis map?

5 THE WITNESS (Gaudet): That's correct,
6 that's the one that included the GIS Centennial
7 Watershed DEEP Layer.

8 MR. SHERWOOD: And the yellow on this
9 map represents year-round visibility?

10 THE WITNESS (Gaudet): That's correct.

11 MR. SHERWOOD: And the brown on the map
12 represents seasonal visibility?

13 THE WITNESS (Gaudet): Yes,
14 orange-brown, yes.

15 MR. SHERWOOD: Orange-brown. And that
16 continues to be your opinion?

17 THE WITNESS (Gaudet): That these would
18 be the limits of visibility?

19 MR. SHERWOOD: Yes.

20 THE WITNESS (Gaudet): Yes.

21 MR. SHERWOOD: Okay. Thank you. I
22 have some questions about the Stormwater Measures
23 section in this supplemental submission. I don't
24 know who is responsible for those.

25 THE WITNESS (Burns): Robert Burns, All

1 Points.

2 MR. SHERWOOD: Mr. Burns, in the
3 response or in the statement you say, "Indeed,
4 experience has demonstrated that these protection
5 measures," your E&S protection measures, "are
6 effective in mitigating potential impacts to
7 sensitive species, wetland and watershed
8 properties. APT has designed and been involved in
9 monitoring and inspecting over 25 wireless
10 telecommunication facilities that were issued
11 certificates by the Siting Council over the last
12 approximately ten years, including Dockets 449
13 Redding, 455 Southington, and 473 Easton, all of
14 which are located within a watershed protection
15 area."

16 None of these three sites are located
17 anywhere near a drinking water supply reservoir,
18 correct?

19 THE WITNESS (Burns): This wasn't me.

20 MR. SHERWOOD: Redding, which is Docket
21 No. 449, is approximately two miles from the
22 Saugatuck Reservoir, 3.84 miles from the Hemlock
23 Reservoir, and 3.92 miles from the Easton
24 Reservoir. Southington Docket 455 is not in a
25 watershed protection area at all. And Easton,

1 Docket No. 473, is more than a mile away from the
2 Hemlock Reservoir to the west and more than a mile
3 away from the Easton Reservoir to the east. So
4 none of those three sites really compares to this
5 site which is 70 feet away from Laurel Reservoir.
6 Wouldn't that be a fair statement?

7 THE WITNESS (Burns): Dean, Mr.
8 Gustafson, could you weigh in on this?

9 THE WITNESS (Gustafson): Yeah, I mean,
10 Attorney Sherwood, I agree that, you know, those
11 dockets, you know, they do provide similarities to
12 this one in that they are located with a public
13 water supply watershed, but you correctly point
14 out that there is a distinction for this
15 application due to its proximity to Laurel
16 Reservoir.

17 MR. SHERWOOD: And Southington is not
18 in a watershed, in a public supply watershed. And
19 then you say with respect to Petition 1178, which
20 is the Sprague solar facility, quote, The release
21 of sediment for the Petition 1178 solar project
22 was a similar situation where a strong storm
23 caused the release. No significant release of
24 sediment occurred in the wetland.

25 And I'm looking at a letter from Joseph

1 Theroux who was the Spraugue wetlands enforcement
2 officer. This is correspondence which is included
3 in the D&M plan section of the docket on the
4 website. And according to Mr. Theroux he says,
5 quote, There have been three or four significant
6 discharges of stormwater transported sediment
7 which I have directly observed into adjacent
8 properties, several intermittent watercourses and
9 recently two farm ponds and the Little River.
10 These discharges have occurred from only 1 to
11 2-inch storm events. Is he mistaken, Mr.
12 Gustafson?

13 THE WITNESS (Gustafson): So those
14 storm events could have been in that range of 1 to
15 2 inches, but those storm events were high
16 intensity where that amount of rain fell over a
17 short period of time.

18 MR. SHERWOOD: And you don't think that
19 the release of sediment was significant?

20 THE WITNESS (Gustafson): With respect
21 to that project, the area of impact was fairly
22 isolated and was remediated fairly quickly. So
23 based on those conditions, you know, I wouldn't
24 consider them a significant release of sediment
25 that would have impacted any of those receptors,

1 either wetlands or the farm pond.

2 MR. SHERWOOD: He said, he continues on
3 page 2, It was reported to me that oil sheen was
4 observed by neighbors in stormwater discharges and
5 construction equipment was directly observed
6 leaking oil. Allegedly a tarp was strung beneath
7 particular pieces of equipment to catch the oil
8 and yet it was still being use for grading. Did
9 you observe that?

10 THE WITNESS (Gustafson): I don't have
11 any recollection of that occurrence.

12 MR. SHERWOOD: So generally you believe
13 you would stick to your characterization that the
14 sedimentation erosion control problem in Sprague
15 was caused by a strong storm and that there was no
16 significant release of sediment to the wetlands or
17 the watercourse?

18 THE WITNESS (Gustafson): Yes, I'll
19 stick by my statement.

20 MR. SHERWOOD: Thank you. I have a
21 question about the applicants' supplemental
22 submission and response to the Council's June 28th
23 hearing request, specifically A7 which deals with
24 visibility.

25 THE WITNESS (Gaudet): All right. I've

1 got that in front of me.

2 MR. SHERWOOD: It says "Visibility, The
3 proposed facility is designed as a monopine tower
4 in a location with interspersed stands of
5 conifers." I looked in the tree survey, which I
6 now understand has been revised, and it shows only
7 three conifers which are numbers 208, 226 and 229,
8 all three of them are hemlocks and all three are
9 shown as being removed. Where are the stands of
10 conifers that this monopine is going to be placed
11 within?

12 THE WITNESS (Gaudet): Yeah, so the
13 reference to location here does not mean
14 specifically the host parcel. So generally in the
15 vicinity of the proposed monopine you can find
16 interspersed stands of conifers.

17 MR. SHERWOOD: But not on the property?

18 THE WITNESS (Gaudet): I have not
19 studied the tree survey at length so I can't speak
20 to that.

21 MR. SHERWOOD: Well, if you take a look
22 at the photographs that have been submitted,
23 presumably you've seen those and you've been on
24 the property, there's no conifers on the property
25 other than these three hemlocks which are going to

1 be cut down.

2 THE WITNESS (Gaudet): I don't recall.
3 I have not been on the property in about a year.

4 MR. SHERWOOD: The New Canaan zoning
5 regulations, this is Section 7.8.G.13, which deal
6 with telecommunications towers, and they are
7 recommendations because they don't have
8 jurisdiction, but they are recommendations
9 nevertheless say, quote, For equipment shelters
10 associated with telecommunications facilities, the
11 presence of wireless communication equipment shall
12 be concealed within buildings that resemble sheds
13 and other building types found in New Canaan.

14 And the Planning and Zoning Commission
15 submitted comments to the Siting Council, dated
16 July 12, 2022, and asked that you contemplate
17 using a structure to enclose the equipment. The
18 structure should resemble a residential accessory
19 structure, for example, a barn. Will Homeland
20 agree to comply with that request?

21 THE WITNESS (Vergati): This is Ray
22 Vergati, Homeland Towers. That was a
23 recommendation from the town. They've recommended
24 that on previous application sets Homeland has put
25 before for towers in New Canaan. No, we don't

1 feel it's inappropriate to have a structure on
2 this particular property given the lack of what we
3 feel are any viewsheds from surrounding homes or
4 from surrounding roads.

5 MR. SHERWOOD: So you will not agree to
6 that?

7 THE WITNESS (Vergati): Correct. We
8 feel the best measure for screening in this case
9 will be a solid stockade wood fence, same height
10 that we did over on Soundview Lane, as well as
11 mature hemlock trees, I believe we've shown for
12 landscaping around the compound itself. And I've
13 had, you know, conversations with some abutters.
14 We are not against simply just screening on the
15 compound itself, but if it's appropriate and it
16 makes sense any off site screening could be a
17 possibility as well. But in reference to a common
18 building structure, it's overkill and we don't see
19 the need for it and we would not look to construct
20 that.

21 MR. SHERWOOD: So you would disagree
22 with the Planning and Zoning Commission?

23 THE WITNESS (Vergati): I would
24 disagree with -- yes, I respectfully disagree with
25 the recommendation having a common building that's

1 going to have roof lines and so forth. We don't
2 feel it's appropriate for this particular setting
3 where the site is situated on the subject parcel
4 that has lack of views from residential roads and
5 really primarily from residential homes as well.
6 We feel it's better to do screening both on the
7 subject parcel with mature hemlocks and possibly
8 some off site screening.

9 MR. SHERWOOD: Thank you. And then my
10 last question on this set of responses deals with
11 the invasive species control plan which is at the
12 end of the response to Question 7. And your
13 response says, "To address possible colonization
14 by invasive plant species during construction, an
15 invasive species control plan has been added to
16 the environmental notes - resources protection
17 measures provided on Sheet N-1 of the updated site
18 plans."

19 I can't find that on the environmental
20 note sheet. Is it there and I'm missing it or has
21 it not been added?

22 THE WITNESS (Gustafson): I believe
23 it's been added, but I can double check during the
24 break.

25 MR. SHERWOOD: Thank you. There's only

1 one version of EN-1, right, the June 24th version?

2 MS. CHIOCCHIO: That's correct, yes.

3 MR. SHERWOOD: And then in your
4 response, in Homeland's response to the Siting
5 Council's prehearing interrogatories, Set One,
6 Question 9, "Would any blasting be required to
7 develop the site? How would bedrock be removed?"
8 You respond, "Homeland does not anticipate the
9 need for blasting to construct the proposed
10 facility." Does that continue to be your
11 position?

12 THE WITNESS (Vergati): This is Ray
13 Vergati, Homeland Towers. We'll make that final
14 assessment assuming an approval on the D&M. We
15 will conduct a geotech on the premises and
16 determine the soils and bedrock depth both on the
17 road that's proposed as well as the foundation for
18 the tower and the compound area. At that point
19 we'll be able to make a true determination if
20 blasting is needed or not needed.

21 MR. SHERWOOD: Well, for Mr. Burns,
22 first of all, isn't that the case that the
23 environment impact or the potential environmental
24 impact could vary significantly depending on
25 whether or not blasting is required?

1 THE WITNESS (Vergati): I'll have
2 Mr. Burns answer that question.

3 THE WITNESS (Burns): Mr. Sherwood,
4 could you repeat the question and maybe clarify it
5 a little bit?

6 MR. SHERWOOD: Sure. Is it not the
7 case that the determination of whether or not
8 blasting would be required in the construction of
9 the site could significantly affect the potential
10 for adverse environmental impact to the wetlands
11 and the reservoir?

12 THE WITNESS (Burns): As far as
13 blasting is concerned, it's not the preferred
14 method, but if done properly, I don't necessarily
15 agree with that statement. I don't think it will
16 affect the wetlands or the reservoir if it's done
17 appropriately and done per jurisdictional
18 regulations.

19 MR. SHERWOOD: It doesn't have a
20 significant effect on the design of the site? We
21 discussed this on the 14th. If the nature of the
22 ground under the access road is rock, whether it's
23 bedrock or large rocks, the construction of that
24 access drive is going to be different than if it's
25 all soil, and that's going to make a significant

1 difference not only in the site plan but in the
2 accompanying sedimentation erosion control plans.
3 Isn't that the case?

4 THE WITNESS (Burns): The construction
5 methods will be different, but the ultimate
6 product will be the same. Maybe I'm not
7 understanding what you're asking.

8 MR. SHERWOOD: The limits of clearing
9 won't differ?

10 THE WITNESS (Burns): No. Well, let me
11 back up. If they find the rock is suitable in the
12 areas where there's large cut embankments that
13 they could go steeper, it would actually decrease
14 the limit of disturbance and decrease the amount
15 of tree removal. But we won't know that until we
16 get into the rock. So I don't see it increasing
17 the limit of disturbance. I actually think that
18 with the right type of rock we can decrease the
19 limit of disturbance.

20 MR. SHERWOOD: But we can't determine
21 that at this point.

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

23 MR. SHERWOOD: And you're not, I assume
24 you read the Council on Environmental Quality's
25 supplemental comments dated August 9th, you're not

1 concerned about acid drainage from exposed
2 bedrock?

3 THE WITNESS (Burns): Dean, could you
4 comment on that, please?

5 THE WITNESS (Gustafson): So with --
6 again, Dean Gustafson. With respect to the
7 concern about the acid rock drainage, we've taken
8 a look at the geologic map of Connecticut, and
9 bedrock that underlies the site is mapped as Trap
10 Falls Formation and granite gneiss. That
11 particular bedrock formation includes quartzite,
12 schist and gneiss, and it has the potential to
13 include pyrite minerals. And why pyrite minerals
14 are important with respect to this potential
15 concern is that pyrite minerals can contain
16 sulfide minerals, particularly iron sulfide, FeS₂.
17 And the potential for those pyrite minerals and
18 the sulfide minerals represents a potential for
19 acid rock drainage, you know, which it is a
20 natural process but it can be exacerbated when the
21 rock is crushed and used for fill or other
22 purposes to expose the freshly crushed rock to
23 precipitation. And if the bedrock contains these
24 iron sulfide minerals, there's a potential for
25 acid rock drainage coming off of this crushed

1 material.

2 So the geotechnical investigation will
3 include testing of the mineralogy and chemistry of
4 the bedrock material. And as part of that, an
5 evaluation will be performed with respect to
6 potential for acid rock drainage concern. And if
7 through that testing the bedrock is found to
8 contain high levels of pyrite and sulfide
9 minerals, the recommendation would be not to
10 include those materials in the fill and that they
11 would need to be hauled off site. So that
12 assessment would be performed during the
13 geotechnical investigation.

14 MR. SHERWOOD: Well, at this point we
15 don't know.

16 THE WITNESS (Gustafson): The only
17 thing we know is that based on the bedrock mapping
18 of the site in the surrounding area that there is
19 a potential for acid rock drainage to be a concern
20 and that it would be properly evaluated, assessed
21 and recommendations would come out of the
22 geotechnical investigation on whether any crushed
23 rock material from on site, whether it could be
24 reused or if it should be removed from the site to
25 avoid this issue.

1 MR. SHERWOOD: Thank you, Mr.
2 Gustafson. I have one final question which I
3 think is for Mr. Burns.

4 THE WITNESS (Burns): Yes, sir.

5 MR. SHERWOOD: In the Connecticut
6 Siting Council Application Guide for Community
7 Antenna Television and Telecommunication
8 Facilities DEEP on page 5 of 11 at Section D4 it
9 says, and this is a discussion or this is a list
10 of what should be submitted to accompany an
11 application, it says, quote, "Where relevant, a
12 terrain profile showing the proposed facility and
13 access road with existing and proposed grades."
14 Would you be willing to submit a profile showing
15 the access road and the compound?

16 THE WITNESS (Burns): Yeah, it's
17 already done. Yes, we can submit that. And as
18 far as the terrain profile, you're looking at a
19 grading plan there which shows all the proposed
20 and existing grading as well.

21 MR. SHERWOOD: Right, but that's a
22 plan, not a profile, right?

23 THE WITNESS (Burns): That is a plan,
24 not a profile, correct.

25 MR. SHERWOOD: And so you will submit

1 the profile?

2 THE WITNESS (Burns): Yes, I'll submit
3 the profile.

4 MR. SHERWOOD: Thank you, Mr. Burns.
5 Mr. Morissette, I've done my -- I've
6 completed my cross-examination. Thank you.

7 MR. MORISSETTE: Thank you, Attorney
8 Sherwood. We'll now continue with
9 cross-examination of the applicant by the New
10 Canaan Neighbors, Justin Nishioka. Justin.

11 MR. NISHIOKA: Thank you, Mr.
12 Morissette. Good afternoon.

13 MR. MORISSETTE: Good afternoon.

14 MR. NISHIOKA: Mr. Vergati, I have a
15 quote for you, and I'd like you to let me know if
16 you agree with it. I'll give Mr. Vergati a moment
17 to sit down. Good afternoon, Mr. Vergati. So
18 it's a quote from the 2004 Connecticut Stormwater
19 Quality Manual. And it says, quote, Streams,
20 brooks and rivers that are classified by DEEP as
21 Class A, parenthesis, fishable, swimmable and
22 potential drinking water, parenthesis, as well as
23 their tributary, watercourses and wetlands are
24 high quality resources that warrant a high degree
25 of protection, unquote.

1 Mr. Vergati, do you agree with this
2 statement?

3 THE WITNESS (Vergati): If that's a
4 statement that you're reading from that, I would
5 tend to agree that there is some areas that may be
6 more sensitive than others.

7 MR. NISHIOKA: But Mr. Vergati,
8 specifically to my question, do you agree that
9 these are high quality resources that warrant the
10 highest degree of protection?

11 THE WITNESS (Vergati): I can't comment
12 on that. I'm not a biologist or an environmental
13 person.

14 MR. NISHIOKA: Okay. So are you saying
15 that you don't necessarily agree with that comment
16 from the 2004 Connecticut Stormwater Quality
17 Manual?

18 THE WITNESS (Vergati): I'm not saying
19 that I agree or disagree with that comment from
20 the stormwater management.

21 MR. NISHIOKA: So if I were to say then
22 that high quality resources such as the Laurel
23 Reservoir warrant a high degree of protection,
24 what would you say to that, Mr. Vergati?

25 THE WITNESS (Vergati): Again, I'm not

1 environmental. It's not my background. I'm real
2 estate. Common sense would tell you though as a
3 reservoir that has drinkable water the utmost
4 importance should be paid attention when designing
5 any site, be it commercial or residential.

6 MR. NISHIOKA: Great. Thank you, Mr.
7 Vergati.

8 Mr. Gustafson, I think Mr. Vergati
9 referred to you as the person who to ask this
10 question: Would you agree with that statement?

11 THE WITNESS (Gustafson): Yes.
12 Considering the site's location and close
13 proximity to the Laurel Reservoir or public
14 drinking water supply watershed, I would agree
15 that that would be characterized as a high quality
16 resource.

17 MR. NISHIOKA: And do you agree that it
18 requires a high degree of protection?

19 THE WITNESS (Gustafson): Yes, I do
20 agree.

21 MR. NISHIOKA: Great. Thank you, Mr.
22 Gustafson.

23 Mr. Vergati, so if you have two
24 potential cell facility options which are similar
25 in all respects, one option is adjacent to a Class

1 1 watershed and one option is not, isn't the
2 option that is not adjacent to the Class 1
3 watershed the preferred option?

4 MS. CHIOCCHIO: Mr. Morissette, I'm
5 objecting to that question. We're not dealing in
6 hypotheticals here. We would like questions about
7 our proposal.

8 MR. NISHIOKA: Mr. Morissette, this
9 goes directly to the General Statute 16-50p(a)(3),
10 which says that the Council should not issue a
11 certificate unless the applicant shows a basis of
12 public need, but it also goes directly to
13 16-50p(a)(3)(B) which specifically says that the
14 Council should not issue a certificate
15 specifically concerning water purity and that
16 that's to be a consideration for the Council when
17 it's considering an application.

18 MR. MORISSETTE: Yes. Thank you. Go
19 ahead, Attorney Chiocchio.

20 MS. CHIOCCHIO: There's no alternative
21 here. There's a question about an alternative.
22 This is our proposal. We're not dealing with
23 hypotheticals or a hypothetical alternative.

24 MR. MORISSETTE: Thank you, Attorney
25 Chiocchio.

1 Attorney Bachman, would you like to
2 comment on the situation?

3 MS. BACHMAN: Thank you, Mr.
4 Morissette. Mr. Nishioka is correct that under
5 our statutory criteria we are to analyze any
6 impacts to water purity, but certainly I would
7 limit any questions regarding water purity to the
8 proposal that's part of the application or any
9 alternatives that may be available and have been
10 presented by the applicant. Thank you.

11 MR. MORISSETTE: Thank you, Attorney
12 Bachman. So Mr. Nishioka, so please continue with
13 your questioning but limit it to the site that is
14 on the docket here today, please. Thank you.

15 MR. NISHIOKA: So Mr. Vergati, so if we
16 have two, say, different options, we have this
17 site and we have another, say, telecommunications
18 option that will not impact the Class 1 watershed,
19 let's say, don't you think that the option that
20 will not impact the Class 1 watershed and has no
21 opportunity to impact the Class 1 watershed is the
22 preferred option?

23 THE WITNESS (Vergati): I'm going to
24 respond by saying that if you're talking a
25 hypothetical, I can't answer that. You know, you

1 can make the statement or I can make the
2 statement, okay, let's move the telecommunication
3 site 20 miles away from a drinkable reservoir.
4 Well, it doesn't work from a network perspective.
5 These sites are very fine tuned to work for public
6 safety and for the carrier's network. It's a
7 balancing act that goes in, in selection of these
8 sites with interested landlords. We have to have
9 a site that has the least visual impacts to an
10 area. And we look for the perfect site. You're
11 asking me hypothetical questions. If you had a
12 specific site, Mr. Nishioka, I would ask you to
13 put forward, if you feel there's another
14 appropriate site with an address and an interested
15 landlord with lesser of a visual impact, maybe
16 further away from the reservoir, I would ask you
17 to put it forward. We'd certainly take a look at
18 any particular options that may come forward
19 during this process --

20 MS. CHIOCCHIO: That hasn't already
21 been --

22 THE WITNESS (Vergati): That hasn't
23 already been obviously reviewed by Homeland Towers
24 and the RF engineers.

25 MR. NISHIOKA: And just to let the

1 record reflect that Attorney Chiocchio made a
2 comment there too.

3 Thank you, Mr. Vergati, that certainly
4 helps. Let's move on to something that I think
5 that you'll feel more comfortable with. It's not
6 a hypothetical. It's the Aquarion public comment.
7 And I recognize the instructions given by Attorney
8 Bachman previously on this. So if you could pull
9 that up, I just have a few questions on that
10 public comment letter. So if you look at the
11 Aquarion letter, the public comment, at the very
12 upper left-hand corner there's a letterhead. Mr.
13 Vergati, is that Aquarion Water Company's
14 letterhead?

15 THE WITNESS (Vergati): I believe it's
16 Aquarion's letterhead.

17 MR. NISHIOKA: In the upper right-hand
18 corner there is an address and a website. Are
19 those Aquarion Water Company's address and
20 website?

21 THE WITNESS (Vergati): I'm assuming
22 that's their website and address if it's on their
23 letterhead. I know their address when I've met
24 with them in person to be in downtown Bridgeport.
25 This is an eastern Connecticut address. But this

1 is most likely, it's listing their environmental
2 center. The operations maybe is in Bridgeport
3 where I've been.

4 MR. NISHIOKA: Thank you for that
5 clarification. What about the date on which this
6 public comment letter was written, May 18, 2022,
7 do you have any reason to believe that that wasn't
8 the date that Mr. Welsh drafted or submitted this
9 letter?

10 THE WITNESS (Vergati): I have no
11 reason to believe that is not the date that it was
12 drafted.

13 MR. NISHIOKA: And then below that you
14 have Attorney Bachman as well as the Siting
15 Council's address. Does that look accurate to you
16 as well?

17 THE WITNESS (Vergati): It does.

18 MR. NISHIOKA: And then below that we
19 have the docket number, we have the title of these
20 proceedings. Does that look accurate to you as
21 well?

22 THE WITNESS (Vergati): It looks like a
23 letter that came from Aquarion.

24 MR. NISHIOKA: Thank you. That's what
25 I was getting at. So in that first bulk paragraph

1 just below where it says Dear Ms. Bachman and
2 members of the Siting Council, it says, quote,
3 Aquarion Water Company source protection staff has
4 received notification and received the plans for
5 this tower which is situated on source water
6 watershed lands, unquote. Is that an accurate
7 statement, Mr. Vergati?

8 MS. CHIOCCHIO: Mr. Morissette, I want
9 to object. Mr. Vergati cannot verify the contents
10 of this letter. He's not the author of the
11 letter --

12 MR. MORISSETTE: Mr. Nishioka, hold on
13 a second here. Please complete what you were
14 saying, Attorney Chiocchio.

15 MS. CHIOCCHIO: We don't have Mr. Welsh
16 here as a witness to verify the contents of this
17 letter so --

18 MR. MORISSETTE: Thank you, Attorney
19 Chiocchio. I'd like to say please get to your
20 point here on this letter. We've all established
21 that it's from Aquarion Water Company. Please get
22 to where you want to go with your line of
23 questioning associated with this, please.

24 MR. NISHIOKA: Certainly, Mr.
25 Morissette. So I want to see if you agree, Mr.

1 Vergati, with the first three sentences of that
2 paragraph. And again, I'll read it again just so
3 you can hear it again. Quote, Aquarion Water
4 Company source protection staff has received
5 notification and reviewed the plans for this tower
6 which is situated on source watershed lands.
7 These are also known as Class 1 and Class 2 lands.
8 This site is located directly across from the
9 Laurel Reservoir, an important public drinking
10 water supply that serves over 120,000 customers in
11 the lower Fairfield County. Do you agree with
12 that statement or do you have any reason to
13 believe that that statement is not true, Mr.
14 Vergati?

15 THE WITNESS (Vergati): I have no
16 reason to believe it is not true.

17 MR. NISHIOKA: Thank you, Mr. Vergati.

18 Mr. Burns, I have some questions when
19 you have a chance. So I'd like to ask some
20 questions about the most recent site drawings that
21 were submitted. So you stated at the first
22 hearing, quote, At the toe of slope there will
23 also be either filter socks or silt fence,
24 unquote. So is the toe of slope aptly named, is
25 it located at what would be the bottom of a hill?

1 THE WITNESS (Burns): At the bottom of
2 the proposed grading, yes, sir. Where the
3 proposed grading meets the existing grading that's
4 the toe of slope or at least that's what I meant
5 by toe of slope.

6 MR. NISHIOKA: Okay. So the existing
7 grading, how far down that hill does the existing
8 grading go, Mr. Morissette -- I'm sorry,
9 Mr. Burns?

10 THE WITNESS (Burns): How far down the
11 hill does the existing grading go?

12 MR. NISHIOKA: So really what I'm
13 trying to get to, Mr. Burns, is -- I'm sorry, what
14 I'm trying to get to is I'm just trying to
15 understand what you mean by toe of slope. So
16 you're saying it's on the existing grading. Is
17 that on the --

18 THE WITNESS (Burns): Let me explain it
19 this way. If you have a fill slope, right, you're
20 filling and your side is coming down at a
21 two-to-one slope, it's where it meets existing
22 grade. In other words, it's the limit of
23 disturbance.

24 MR. NISHIOKA: Got it. Isn't typically
25 the toe of slope considered actually at the toe of

1 slope, so typically wouldn't the toe of slope be
2 located at the very bottom of wherever the slope
3 ends, so usually, say, at the bottom of a hill?

4 THE WITNESS (Burns): No. I would say
5 that -- let me rephrase what I had said. Proposed
6 toe of slope. But the toe of slope meant from an
7 engineering perspective where the proposed grade
8 meets the existing grade in a fill section.

9 MR. NISHIOKA: Okay. So that might
10 explain some of my confusion here. I Googled it,
11 and it said the baseline section of a soil mass
12 from which the slope arises. So when you are
13 referring to the toe of slope, you're not
14 referring to this baseline section from which this
15 slope is going up; is that correct?

16 THE WITNESS (Burns): Correct. I'm
17 referring to the proposed alteration of the
18 existing grades, if you will.

19 MR. NISHIOKA: And so right at the toe
20 of slope there's a silt fence. Is that like a
21 geotech style silt fence right there at the end?

22 THE WITNESS (Burns): Yeah, it's a
23 geotech style fabric. They tow it in about 6
24 inches into the ground and they stake it. And for
25 the toe of slope we may even back it up with straw

1 hay bales as well.

2 MR. NISHIOKA: And how far -- sorry, go
3 ahead.

4 THE WITNESS (Burns): We're going to
5 put silt fence in.

6 MR. NISHIOKA: So when I'm reading the
7 2002 Connecticut guidelines for soil erosion and
8 sediment control, when they refer to a toe of
9 slope, are they referring to what you are saying
10 is a toe of slope which is actually on the
11 downgradient of the slope or are they referring to
12 what is commonly understood as the bottom of a
13 hill?

14 THE WITNESS (Burns): I don't have that
15 in front of me. I've been doing this almost 40
16 years, and I've always said toe of slope being the
17 proposed bottom of a fill slope. That was what I
18 was taught back in college in nineteen eighty --
19 (muffled voice) --

20 (Laughter.)

21 MR. NISHIOKA: So the 2002 Connecticut
22 guidelines for soil erosion and sediment control
23 says to locate silt fences, quote, 5 to 10 feet
24 downgradient from the toe of slope generally on
25 the contour with maintenance and sediment removal

1 requirements in mind. So looking at your updated
2 drawings, wouldn't you agree that this isn't quite
3 what would be commonly understood as the toe of
4 slope and that you would not be aligning with this
5 recommendation?

6 THE WITNESS (Burns): I have to be
7 honest, I don't understand the question. The silt
8 fence will be at the bottom of the fill slope
9 where it's appropriate. I'm not sure, we must be
10 disconnecting here somewhere because I don't
11 understand the question.

12 MR. NISHIOKA: Well, it's entirely
13 possible that I am asking an inelegant question,
14 so let me try to clarify. So let's just go
15 through the principles of what the silt fence and
16 the filter sock does. So theoretically it filters
17 out sediment and then the water will continue
18 into --

19 THE WITNESS (Burns): Correct.

20 MR. NISHIOKA: -- another place and
21 that's the idea, right?

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

23 MR. NISHIOKA: Thank you. And so I'm
24 looking at the map and I'm seeing the filter sock
25 and the silt fence and then I'm seeing lots of

1 little lines which indicate that there is quite a
2 bit more additional slope following that area of
3 disturbance; isn't that correct?

4 THE WITNESS (Burns): There's existing
5 slope outside our limit of disturbance, yes.
6 Those are contours.

7 MR. NISHIOKA: And those contours
8 continue down to what most reference materials
9 will refer to as the toe of slope which is the
10 very bottom of a hill just to put it in simple
11 terms; isn't that right?

12 THE WITNESS (Burns): The bottom of the
13 slope. Look, maybe I can clarify it this way:
14 The silt fence that we're proposing here will be
15 shown at the bottom of the proposed fill grading
16 slope. It will not be further down the road
17 towards the hill towards Ponus Ridge Road.

18 MR. NISHIOKA: And it also won't be
19 down into the wetlands and that tributary wetland
20 stream, right, is that correct?

21 THE WITNESS (Burns): That's definitely
22 correct. We don't want to be anywhere near the
23 wetlands.

24 MR. NISHIOKA: And so if the 2002
25 guidelines understands toe of slope to mean the

1 bottom of a hill, you cannot align this site
2 drawing or this parcel or this construction with
3 the recommendation that 5 to 10 feet downgradient
4 from the toe of slope the silt fence will be
5 placed; isn't that correct?

6 THE WITNESS (Burns): If I put silt
7 fence at the bottom of the existing slope, it will
8 serve zero purpose because the erosion will have
9 already occurred up where we are doing the
10 improvements. The silt fence needs to be put in
11 as close to the proposed improvements as possible
12 so it does its job and picks up the sediment. The
13 idea is we want to pick up the sediment until the
14 turf establishes on that hillside which by the way
15 an erosion control blanket is also being put on
16 that hillside. The idea is to control the amount
17 of erosion until we've stabilized and established
18 the vegetation on that hillside. And the filter
19 socks, the same sort of thing, although we use it
20 on the cut hillside at like I think they're 10
21 foot intervals to catch any water on that hillside
22 as well.

23 MR. NISHIOKA: And I appreciate that
24 clarification but really what I'm trying to figure
25 out here is whether or not this proposed site will

1 align with what the recommendation is in these
2 guidelines.

3 THE WITNESS (Burns): It will.

4 MR. NISHIOKA: Very specifically, can
5 you align this site with that recommendation that
6 5 to 10 feet downgradient from the toe of slope
7 silt fences are supposed to be located?

8 THE WITNESS (Burns): Yes.

9 THE WITNESS (Gustafson): And if I
10 could interject. Dean Gustafson. If you look at
11 the 2002 Erosion Control Manual, in particular,
12 I'll point you to a figure that's labeled GSF-3,
13 toe of slope installations with wing walls, it's
14 on page 5-11-38 of that document, it graphically
15 depicts the erosion control measures installed 5
16 to 10 feet from the toe of the slope of the
17 proposed fill slope, not the entire parcel or
18 project area.

19 MR. NISHIOKA: Thank you, Mr.
20 Gustafson. I will look at those later. Thank
21 you.

22 So I have a question about the proposed
23 access road. I reviewed the July transcript, and
24 there was a discussion between Mr. Silvestri and
25 Mr. Burns, and I'm still a little confused as to

1 where exactly on this site trucks intend on
2 turning around. Can you just point me to where
3 exactly trucks are supposed to turn around?

4 THE WITNESS (Burns): So to clarify
5 your question, are we talking construction
6 vehicles or vehicles that the operations members
7 will bring once the site is built and online?

8 MR. NISHIOKA: Thank you for that
9 clarification. Let's say both.

10 THE WITNESS (Burns): Okay. So for
11 construction they'll be able to turn around at the
12 top because they'll be putting the fence in at the
13 very last so they'll be able to use that room up
14 there to turn around. Once construction is
15 complete and the fence is in place, there is areas
16 on either side, although it's probably tough to
17 see on this 11 by 17, there's areas on the
18 northeast side and the, I guess that's southwest
19 side for parking and turning around, and the
20 operations guys mostly drive a pickup truck so
21 there's plenty of room for them to turn around.

22 MR. NISHIOKA: And that's true during
23 winter as well when there's snow on the ground?

24 THE WITNESS (Burns): Yes.

25 MR. NISHIOKA: All right. So I have

1 another quote, Mr. Burns. It's from the 2004
2 Stormwater Quality Manual, and it states that,
3 quote, Roads and highways typically generate high
4 stormwater pollutant loads due to vehicle traffic
5 and winter deicing activities. Will the applicant
6 be using salt to deice and clear snow from the
7 access road?

8 THE WITNESS (Burns): No.

9 MR. NISHIOKA: What will be used to
10 clear the snow?

11 THE WITNESS (Burns): I imagine sand.

12 MR. NISHIOKA: And I'm sorry, do you
13 think that sand will be capable of deicing that
14 road capably enough to ensure that vehicles such
15 as, for instance, first responder vehicles can
16 safely get up that access road?

17 THE WITNESS (Burns): Yes.

18 MR. NISHIOKA: Thank you. So most
19 mitigation practices of stormwater runoff provide
20 some treatment benefit but do not adequately
21 address all of the water quality impacts
22 associated with roads. Would you agree with that,
23 Mr. Burns?

24 THE WITNESS (Burns): With roads, yes.

25 MR. NISHIOKA: And you stated before

1 that this site is adjacent to the Class 1 drinking
2 water reservoir and tributary stream directly
3 feeding the Laurel reservoir; is that right?

4 THE WITNESS (Burns): I don't believe I
5 stated that, but one of my colleagues has.

6 MR. NISHIOKA: I'm sorry, my apologies,
7 I put words in your mouth. I think you're right,
8 that was Mr. Vergati. But I think we agree that
9 it's across the street, right?

10 THE WITNESS (Burns): We agree.

11 MR. NISHIOKA: And so you admit that
12 there is a major drinking water supply across the
13 street from this compound; isn't that right?

14 THE WITNESS (Burns): Yes.

15 MR. NISHIOKA: And I think that earlier
16 you've testified that the water will do what it
17 does now which is ultimately flow off the road and
18 over the embankment down into the reservoir. So
19 basically the water is just doing exactly what
20 you're claiming it does right now, isn't that
21 right?

22 THE WITNESS (Burns): Correct, yes.

23 MR. NISHIOKA: And part of this
24 compound is a steep access road; is that right?

25 THE WITNESS (Burns): Yes.

1 MR. NISHIOKA: It's about 19 percent at
2 certain portions; is that correct?

3 THE WITNESS (Burns): Yeah, the first
4 portion is around that, yes. Up to the compound
5 it goes down to, I think it's around 8 percent.

6 MR. NISHIOKA: Great. Thank you. So
7 the slopes then from the stilling basins from
8 there will be about two to one; is that correct?

9 THE WITNESS (Burns): From the stilling
10 basins down the hill, yes, it varies, the existing
11 grade varies, but two to one is probably a pretty
12 good average.

13 MR. NISHIOKA: And that's the absolute
14 maximum slope allowable in the 2002 guidelines of
15 soil erosion; isn't that right?

16 THE WITNESS (Burns): For proposed
17 slopes I believe so, yes.

18 MR. NISHIOKA: So would you agree that
19 this project is teetering right on the nice edge,
20 right at the very max of what the guidelines will
21 allow in this regard?

22 THE WITNESS (Burns): I don't know if
23 I'd use "on a nice edge." We are adhering to the
24 guidelines.

25 MR. NISHIOKA: And the greater the

1 slope of the land being developed, the greater the
2 potential threat of damage to the adjacent
3 wetlands and watercourses from erosion and
4 sedimentation; isn't that right?

5 THE WITNESS (Burns): If not
6 constructed and treated properly, that could be
7 the case, but I feel the design we have and will
8 have that will not be the case.

9 MR. NISHIOKA: And isn't it true that
10 challenging steep sloped parcels with rock ledge
11 like the one in this matter pose a greater
12 potential threat of damage to the watershed from
13 erosion and sedimentation than, say, other
14 compounds that are located further away from a
15 drinking water reservoir?

16 THE WITNESS (Burns): With the same
17 topography? Are you asking me if I built a house
18 up the street on a flat site whether that would be
19 the same or I built a house on this site if the
20 issues would be the same? It all depends on the
21 underlying conditions.

22 MR. NISHIOKA: Okay. So maybe let me
23 take a step back here. So the New Canaan
24 Neighbors, we submitted administrative notice item
25 in the public record 26 where Mr. Vergati said to

1 the public works director, Tiger Mann, quote, We
2 are challenged with the steep slopes and existing
3 ledge on the parcel, unquote.

4 Do you think Mr. Vergati was accurate
5 when he said that?

6 THE WITNESS (Burns): Are you asking me
7 if there's steep slopes and ledge out here? There
8 absolutely is.

9 MR. NISHIOKA: And would you say that
10 it's accurate to say that you're challenged by
11 those steep slopes and ledge?

12 THE WITNESS (Burns): This design is a
13 challenge, but I think it's done properly and will
14 work. Every design I do is a challenge. They all
15 have different challenges depending on existing
16 conditions and actually what's being proposed. So
17 is this site more challenging than a different
18 site? It could be, but the other site could be
19 challenging for different reasons.

20 MR. NISHIOKA: Thank you for clarifying
21 that, Mr. Burns. So I guess that brings me to my
22 next question that wouldn't siting the cell
23 compound next to the existing driveway or next to
24 Ponus Ridge Road take out some of this erosion
25 sedimentation challenge and risk that this parcel

1 presents?

2 THE WITNESS (Burns): Yes, but then it
3 would raise other challenges.

4 MR. NISHIOKA: What are those other
5 challenges, Mr. Burns?

6 THE WITNESS: Well, he's talking about,
7 what was the pole now, 110, we're going down,
8 we're probably going up to 150 foot pole, 70 feet
9 off the roadway with the 10 to 15 foot retaining
10 wall sitting on a steep slope. It can be done,
11 but you're talking challenges there as well. So,
12 I mean, it's six of one, half a dozen of the
13 other.

14 MR. NISHIOKA: What about putting the
15 macrocell on an already existing building or, say,
16 a flagpole on the driveway, wouldn't that remove
17 all the risk or challenge when it comes to erosion
18 and sedimentation?

19 THE WITNESS (Burns): Mr. Nishioka, I
20 was hired to design a tower site on this site. I
21 have no opinion on whether it was done at a
22 different site on a rooftop or a parking lot, a
23 flat site. My charge is to design a site on this
24 parcel.

25 MR. MORISSETTE: I'm going to interrupt

1 here for a second, Mr. Nishioka. I think it's
2 time for us to take a quick break. We will return
3 back here at 3:45. And actually the line of
4 questioning concerning small cells probably should
5 be directed to somebody else within the panel. So
6 when we come back we will continue with
7 cross-examination.

8 We do have one homework assignment that
9 needs to be looked at during the break. I believe
10 it relates to the invasive species outline on
11 drawing sheet EN-1, dated June 21st, that Mr.
12 Gustafson was going to look at to ensure whether
13 it was called out or not.

14 So with that, we will break until 3:45,
15 and then we'll continue with cross-examination.
16 Thank you, everyone.

17 MR. NISHIOKA: Thank you.

18 (Whereupon, a recess was taken from
19 3:35 p.m. until 3:45 p.m.)

20 MR. MORISSETTE: Thank you, everyone.
21 We will continue with cross-examination by Mr.
22 Nishioka. Please continue, Mr. Nishioka.

23 MR. NISHIOKA: Thank you, Mr.
24 Morissette.

25 Mr. Vergati, in the materials provided

1 to the public for the town meeting in January of
2 this year, nothing in those materials references
3 mitigation measures to protect the reservoir. Was
4 the reservoir considered an important factor to
5 discuss with the town?

6 THE WITNESS (Vergati): Ray Vergati,
7 Homeland Towers. In the design of the site we are
8 cognizant of the proximity of the reservoir. I
9 think our experts on the environmental side have
10 spoken to the design and any mitigation for the
11 site itself. I don't know specifically if you're
12 asking me if the reservoir itself was considered
13 during that time frame, but we designed it with
14 the best standards we can right now.

15 MR. NISHIOKA: Was the close proximity
16 of this site perceived as a negative factor when
17 considering locations in New Canaan?

18 THE WITNESS (Vergati): No, I don't
19 think it was perceived as a negative site. As a
20 matter of fact, Aquarion back in 2015 had
21 entertained a tower on the parcel itself strictly
22 for public safety, and that tower was a mere 100
23 feet from the reservoir itself and even closer to
24 a wetland stream and that was an 80-foot public
25 safety tower back in 2015. It was met with major

1 opposition from the North Stamford Homeowners
2 Association.

3 So to answer your question, it's a
4 balancing act. As I've said before, we try to
5 pick sites that have an interested landlord,
6 constructible, has to work for the carriers
7 network, public safety network, least visual
8 impact. So we think we have a great site here.
9 We think we have lack of homes in the area and we
10 think it's a great site.

11 MR. NISHIOKA: So you mentioned a
12 public safety tower on Aquarion land. Wasn't that
13 proposed tower downgradient from this reservoir?

14 THE WITNESS (Vergati): It was about 90
15 feet lower in elevation I believe it was proposed
16 at roughly 310-foot ground elevation and we're at
17 I believe right around 395.

18 MR. NISHIOKA: And water typically
19 doesn't go uphill, does it?

20 THE WITNESS (Vergati): I don't believe
21 in physics, so no, I don't believe it goes uphill.
22 That's not to say that -- excuse me, that's not to
23 say that something can't leach from that public
24 safety tower that's downgradient from the
25 reservoir where something cannot leach underground

1 and go into a reservoir. Again, I'm not a
2 biologist, I'm not an environmental person. I'm a
3 real estate person. So I'm not going to opine so
4 much on those, but what I'm stating is that we
5 look at a number of certain characteristics of
6 sites and feel we have a great site here.

7 MR. NISHIOKA: Earlier you stated that
8 you tend to do site visits periodically and that
9 carriers will go to service equipment every couple
10 months; is that right?

11 THE WITNESS (Vergati): Yeah, each
12 carrier has their own technician, either Verizon
13 or AT&T or T-Mobile and so forth, and they
14 typically visit sites once every few months.

15 MR. NISHIOKA: So if there was damage
16 being imparted to the Class 1 drinking water
17 source or to the adjacent tributary stream on the
18 parcel say through erosion and sedimentation,
19 heavy metals, turbidity from sand, how would you
20 know that the watershed is being damaged during
21 those periodic site visits?

22 THE WITNESS (Vergati): I think we'd
23 have to rely on the measures we put in place with
24 the design. These are unmanned facilities. You
25 know, you can make the same argument, a house

1 across the street from the reservoir with a septic
2 system, that homeowner goes away for six months,
3 that septic overflows and leaches, who's watching
4 that, who's monitoring that. So I can play the
5 game all day long what if. What I can tell you is
6 that we design these sites and try to minimize and
7 mitigate any issues.

8 MR. NISHIOKA: So I think what you're
9 saying is that you wouldn't know if there was harm
10 being imparted upon the reservoir; is that an
11 accurate statement?

12 THE WITNESS (Vergati): What type of
13 harm are you speaking about?

14 MR. NISHIOKA: Say through erosion and
15 sedimentation.

16 THE WITNESS (Vergati): I know during
17 the pre and post construction this site will be
18 monitored obviously until the seeding and
19 landscaping matures and takes effect and does what
20 it is supposed to do. Beyond that, no. I mean,
21 we would keep an open dialogue. I've had
22 conversations with Aquarion already. If they wish
23 to visit the parcel and look at the site after the
24 site is constructed, we have no issue with that.

25 MR. NISHIOKA: And that's great, but

1 you wouldn't know whether or not there was erosion
2 and sedimentation leaching into the water supply.
3 Is that what you're saying? I'm just trying to
4 get a clear response here.

5 THE WITNESS (Vergati): These are
6 unmanned facilities. No one is there on a daily
7 basis, just like a homeowner that leaves their
8 house for six months, no one would know that that
9 septic is leaching into a reservoir or drinking
10 water.

11 MR. NISHIOKA: I think I have some
12 clarity. Thank you, Mr. Vergati.

13 Mr. Burns.

14 THE WITNESS (Burns): Robert Burns,
15 All-Points.

16 MR. NISHIOKA: Mr. Burns, isn't it true
17 that the erosion rate for a cleared acre of land
18 is 250 times greater than that of a wooded parcel?

19 THE WITNESS (Burns): Specifically
20 those numbers I would have to research, but I
21 would make this statement that a cleared parcel
22 and a wooded parcel with the same topography, the
23 cleared parcel would have -- a cleared parcel with
24 no ground vegetation would have more -- would be
25 more susceptible to erosion than a non-cleared

1 parcel.

2 MR. NISHIOKA: Okay. And haven't the
3 steep slopes on this parcel in their natural
4 vegetated state achieve a certain state of
5 stability, not subject to excessive erosion -- and
6 I'm sorry, yes, not subject to excessive erosion.

7 THE WITNESS (Burns): Yeah, that's
8 true. I'll say yes to that.

9 MR. NISHIOKA: And so if vegetation is
10 removed, the potential for erosion increases;
11 would you agree with that?

12 THE WITNESS (Burns): During
13 construction until new vegetation is established
14 which is why we put up silt fence and straw bales
15 and filter socks to prevent that from happening.
16 We seed it as soon as it's possible to seed it.
17 So during construction without erosion controls
18 would have more erosion than exists today, yes.

19 MR. NISHIOKA: Okay. Thank you. So
20 I'm going to quote the 2002 guidelines for soil
21 erosion and sediment control. It says, quote,
22 "When sites are developed and the natural
23 vegetation is removed, the potential for erosion
24 increases dramatically, unquote. So if I'm
25 hearing you correctly, you would agree with that

1 statement?

2 THE WITNESS (Burns): I would agree
3 with that statement during construction. And I
4 would -- I'm sorry, without erosion control
5 measures.

6 MR. NISHIOKA: And --

7 THE WITNESS (Burns): We're putting
8 blankets down, we're putting silt fence down,
9 we're putting filter socks down. So that's why we
10 do that to prevent that from happening.

11 MR. NISHIOKA: So don't the stilling
12 basins that you have on your site plans, don't
13 they concentrate the water, the stormwater runoff
14 into a single point; is that right?

15 THE WITNESS (Burns): Don't they
16 concentrate the water into a single point? The
17 water empties into the stilling basin and it sits
18 for a period of time before it either infiltrates
19 into the ground or slowly overtops and runs down
20 the existing topography. I don't know if that
21 answers your question, but I'm not sure what the
22 question is, to be honest.

23 MR. NISHIOKA: No, you answered it.
24 Thank you. And won't there be fill used to even
25 out the slopes here on this parcel?

1 THE WITNESS (Burns): Yes, there's fill
2 used, and the hope is that we are excavating more
3 than we're filling so that we can use some of the
4 material that we're excavating out as the fill
5 material if it's suitable and meets spec.

6 MR. NISHIOKA: And shouldn't fill never
7 be subjected to, say, a concentrated overland flow
8 like you're describing?

9 THE WITNESS (Burns): No. We're
10 putting the fill down, we're putting a blanket
11 down and we're seeding it. If it rains, it's
12 going to go down the slope but the silt fence and
13 the erosion control blanket is there to mitigate
14 that.

15 MR. NISHIOKA: Okay. All right. So
16 the 2002 Connecticut guidelines for soil erosion
17 it states, quote, Filled slopes should not be
18 subjected to concentrated overland flow, unquote.
19 So are you disagreeing with this statement?

20 THE WITNESS (Burns): I'm
21 not disagreeing -- well, it doesn't pertain here,
22 so I'm not sure why I'm answering that. There are
23 no concentrated slopes on the fill slope, on the
24 large fill slope here. There's no culvert. The
25 culverts are all further down in the cut slope.

1 So I'm not sure what the question -- whether I
2 agree or disagree with that is pertinent.

3 MR. NISHIOKA: Okay. So here, let me
4 just, I guess let me back up. So is there fill
5 downhill following the stilling basin?

6 THE WITNESS (Burns): There might be a
7 little where we may berm up on that side, but it's
8 not anything significant.

9 MR. NISHIOKA: Okay. So in the
10 previous hearing, Mr. Burns, you said, quote,
11 Those are stilling basins that we're carving into
12 the side of the --

13 THE WITNESS (Burns): Hillside,
14 correct.

15 MR. NISHIOKA: There might be some fill
16 on the extreme downhill side of it.

17 THE WITNESS (Burns): That's true, yes,
18 minimal, minimal, yes.

19 MR. NISHIOKA: And then I think we
20 talked about this before, but the greater the
21 slope, the greater the erosion, right?

22 THE WITNESS (Burns): The greater
23 potential for erosion.

24 MR. NISHIOKA: And so with the access
25 road, basically less access road means less

1 erosion potential; would you agree with that?

2 THE WITNESS (Burns): Less access road
3 means less erosion potential. There would be less
4 disturbance, so yes, I would agree with that.

5 MR. NISHIOKA: All right. And I want
6 to talk about these tubes that go under Ponus Road
7 that if you are looking at the tributary stream
8 there are these tubes that go directly under Ponus
9 Ridge Road. So are those tubes there constructed
10 to take water from the tributary stream to the
11 reservoir?

12 THE WITNESS (Burns): Are we talking
13 about the cross culvert in the -- where the hell
14 is north on here -- in the northwest, sort of
15 northwest corner of the property, is that what
16 you're talking about because I'm not sure what you
17 mean by tubes.

18 MR. NISHIOKA: Okay. So yes, it would
19 be directly under Ponus Ridge Road.

20 THE WITNESS (Burns): Right.

21 MR. NISHIOKA: And --

22 THE WITNESS (Burns): There's only one,
23 there's a cross culvert, correct, is that what
24 you're talking about?

25 MR. NISHIOKA: And I apologize, I'm not

1 quite sure what a cross culvert is. Can you just
2 briefly define what a cross culvert is?

3 THE WITNESS (Burns): It's basically
4 pipes carrying runoff from one side of the road to
5 the other.

6 MR. NISHIOKA: Yes. Thank you. So
7 this would be a cross culvert; is that right?

8 THE WITNESS (Burns): Yes. So yes, the
9 answer is yes.

10 MR. NISHIOKA: And basically the water
11 that is taken through that cross culvert flows
12 directly, or I won't say directly, it flows into
13 the Class 1 watershed and basically there's a
14 steep down slope and then it goes right into the
15 Laurel Reservoir; is that right?

16 THE WITNESS (Burns): I'm not exactly
17 sure where they outlet, but I do know they cross
18 Ponus Ridge onto Aquarion's property. I'm not
19 exactly sure where they outlet specifically on
20 their parcel.

21 MR. NISHIOKA: Okay. And so isn't sand
22 typically a concern for tubes of this type because
23 oftentimes sand can cause clogging, and if it
24 clogs then that allows excess sediment to be
25 carried into the reservoir?

1 THE WITNESS (Burns): So most towns
2 have a maintenance program because they sand and
3 salt their roadways, so they have to come out
4 periodically and vac out their existing catch
5 basins and any cross culverts as a point of
6 regular maintenance. My feeling is that we're far
7 enough away from Ponus Ridge Road that they won't
8 see any of the sand from any type of plowing
9 activities considering the limited amount of
10 times, you know, this access drive will be plowed
11 and the proximity to Ponus Ridge, well, the
12 proximity to those, to that cross culvert. I
13 almost said "tubes."

14 MR. NISHIOKA: Okay. So wouldn't you
15 agree that every winter there's going to be snow,
16 there's going to be ice, and sand is going to be
17 used on this access road to deice the access road.
18 Is that an accurate statement?

19 THE WITNESS (Burns): Yes.

20 MR. NISHIOKA: And that's going to
21 occur forever into the future, right?

22 THE WITNESS (Burns): During the
23 winter, of course, yes.

24 MR. NISHIOKA: Right. So over time,
25 and I would imagine the sand over time can build

1 up and ultimately wash itself down into this
2 tributary stream area into these pipes and
3 potentially clog them; would you agree with that?

4 THE WITNESS (Burns): No. The access
5 drive as designed slopes into the riprap swale.
6 From that swale through the check dams, which some
7 of that settlement can occur, it flows into a
8 catch basin that has a 2-foot sump in it. That
9 sump is put there to help with settlement of sand
10 and suspended solids. Those basins will have to
11 be vacced out on a periodic basis, similar to what
12 is done maintenance wise in the town, but I do not
13 believe the sand will make it through that system
14 all the way down to the existing cross culverts.

15 MR. NISHIOKA: Sorry, give me one
16 second. I just lost my place.

17 THE WITNESS (Burns): Sure.

18 MR. NISHIOKA: So you said the plowing
19 will be done into basically the inside of the
20 road; is that right?

21 THE WITNESS (Burns): The plowing will
22 be done --

23 MR. NISHIOKA: When you're saying that
24 the snow will be plowed, you said you're not
25 plowing down the hill, you're basically plowing

1 into the hill; is that what you're saying?

2 THE WITNESS (Burns): No, I'm saying
3 once they plow it then they come back and sand it
4 typically. Now, I'm not a snowplow contractor,
5 but I think I've seen it done enough. And any
6 kind of washing of that sand into the adjacent
7 areas to the sides of the access driveway will
8 flow into the swale and then ultimately make it
9 into the basins, into the sumps, et cetera, et
10 cetera.

11 MR. NISHIOKA: Okay. So regarding that
12 plowing, so basically what you're saying is the
13 snow -- so, okay. So after -- I'm sorry, I'm easy
14 to confuse.

15 So the sand will first be put down and
16 then the plowing will occur or will the plowing
17 first occur and then the sanding will occur?

18 THE WITNESS (Burns): Just like if you
19 had your driveway plowed at home, they'll plow it
20 first and if they have to put any type of deicer,
21 which I'm considering the sand to be a deicer in
22 this case, it goes down after you've cleared the
23 surface. Because putting it on the snow and then
24 plowing the snow really doesn't do much.

25 MR. NISHIOKA: Okay. The 2004

1 Stormwater Quality Manual, it says, quote, Waste
2 snow accumulated from plowing activities can be a
3 source of contaminants and sediment to surface
4 waters if not properly located, unquote. Would
5 you agree with this statement?

6 THE WITNESS (Burns): Yeah, depending
7 on what you're plowing. If you're plowing, you
8 know, a Stop & Shop parking lot then yeah. This
9 access drive, which is going to have extremely
10 limited vehicle traffic on it once it's
11 constructed, I think the chances for that are
12 significantly less.

13 MR. NISHIOKA: And isn't it true that
14 storm drainage systems such as catch basins and
15 swales should never be a place for this snow, this
16 plowed snow?

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

18 MR. NISHIOKA: And isn't it -- I'm
19 sorry, were you saying something?

20 THE WITNESS (Burns): No.

21 MR. NISHIOKA: And isn't it also true
22 that snow should never be plowed, I think we
23 talked about this earlier, on the banks of the
24 streams on the areas that are down slope towards
25 the water, right?

1 THE WITNESS (Burns): We try and do
2 that as little as possible, yes. Again, I'm not a
3 plowing contractor so --

4 MR. NISHIOKA: So I think that we
5 agree. So the 2004 Connecticut Stormwater Quality
6 Manual says, quote, Waste snow piles should be
7 located in upland areas only and should not be
8 located in the following locations, storm drainage
9 catch basins, storm drainage swales, stream or
10 river banks that slope toward the water, within
11 100 feet of private drinking water supply wells,
12 or in public drinking water supply watershed
13 areas, unquote. So will the applicant will able
14 to abide by these guidelines?

15 THE WITNESS (Burns): I believe so.
16 I'd have to look at it. The plowing would be done
17 such that it would be put in a spot as least
18 obtrusive as possible. But again, I'm not a
19 plowing contractor, but I'd like to look at that
20 before I answer that question.

21 MR. NISHIOKA: Okay. So you're saying
22 that it will be plowed somewhere if it's not in
23 any of those places. Just based on your
24 understanding of the site map, where on the site
25 map would that place be that you're plowing to

1 that doesn't fit any of those descriptions?

2 THE WITNESS (Burns): To be honest, I'm
3 not sure. I think they may plow it. They're not
4 going to make it all the way to the top. I mean,
5 we could show some snow pile areas on here, some
6 storage areas. I do think that with the limited
7 amount of time it's going to be plowed, I don't
8 think it's going to be a huge amount of snow, but
9 I would recommend that they pile the snow more up
10 towards the top near the compound.

11 MR. NISHIOKA: That would still be
12 either in a public drinking water supply
13 watershed; isn't that right?

14 THE WITNESS (Burns): I believe so,
15 yes.

16 MR. NISHIOKA: And that would still
17 either be on a slope that slopes downward towards
18 the river or the inside of the road which is a
19 swale; isn't that correct?

20 THE WITNESS (Burns): Yes.

21 MR. NISHIOKA: So can you say here
22 today that you can abide by that 2004 Connecticut
23 stormwater guideline?

24 THE WITNESS (Burns): Again, I need to
25 look at it because that's just one statement in

1 that book, and I would rather go through and look
2 at it myself before I answer that question. So
3 I'm not going to answer that right now.

4 MR. NISHIOKA: Okay. So I'm going to
5 skip a bunch of these questions then on that and
6 try to appreciate the fact that you'll get back to
7 us on that. Sorry, let me just see where I can
8 continue.

9 Okay. So are you aware of any natural
10 swales or depressions that would be sufficient on
11 the site to cause any infiltration?

12 THE WITNESS (Burns): No. I mean, the
13 only natural swale I know of is further down
14 adjacent to Ponus Ridge Road that leads to the
15 underground existing culverts. I'm not aware of
16 any swales offhand.

17 MR. NISHIOKA: And are any swales or
18 infiltration basins being constructed in this
19 project?

20 THE WITNESS (Burns): Yeah, we're
21 constructing a riprap swale with stone check dams
22 and the stilling basins could be considered
23 infiltration, but again, we don't know what the
24 soils are there, so we've sized it such that the
25 pre and post-runoff will be the same, and again,

1 any infiltration we get will just be a bonus.

2 MR. NISHIOKA: In the 2004 Connecticut
3 Stormwater Manual it says, quote, Swales and
4 infiltration basins cannot be used in steep
5 terrain, unquote. Would you agree with that
6 statement?

7 THE WITNESS (Burns): Yes.

8 MR. NISHIOKA: So wouldn't the terrain
9 make those mitigation devices that you just
10 described infeasible?

11 THE WITNESS (Burns): If you're going
12 to use them for infiltration, yes. I still think
13 they will provide some infiltration, but again,
14 we've designed this so that without infiltration
15 the stormwater runoff or up to 100-year storm is
16 the exact same pre and post-construction.

17 MR. NISHIOKA: Right. And you've
18 already described that as flowing into the
19 tributary and into the reservoir, correct?

20 THE WITNESS (Burns): Yes.

21 MR. NISHIOKA: And what down slope
22 analyses were performed for water runoff outside
23 of the parcel?

24 THE WITNESS (Burns): None.

25 MR. NISHIOKA: Isn't that recommended

1 by the 2002 Connecticut guidelines for soil
2 erosion and sediment control where it says, quote,
3 Evaluate the environmental conditions in areas
4 down slope and up slope from the construction
5 project, unquote.

6 THE WITNESS (Burns): So we did
7 computations based on the overall site. So it is
8 how much water leaves the property down slope,
9 hits that property line down slope, and will leave
10 the property and then eventually either cross the
11 street or do what it does today.

12 MR. NISHIOKA: Do you see that as a
13 concern?

14 THE WITNESS (Burns): No.

15 MR. NISHIOKA: The 2002 Connecticut
16 guidelines it specifically says, quote, Down slope
17 wetlands and watercourses, especially those
18 containing drinking water reservoirs which will
19 receive runoff from the site are concerns,
20 unquote. So, do you believe that your thoughts
21 align with that statement?

22 THE WITNESS (Burns): Yes.

23 MR. NISHIOKA: How so?

24 THE WITNESS (Burns): Well, I think
25 it's a concern. I think the design was put

1 together to mitigate the concern, so I don't have
2 a concern.

3 MR. NISHIOKA: Okay. And phosphorus
4 removal from stormwater is an important factor in
5 protecting the downstream Class 1 watershed; isn't
6 that right?

7 THE WITNESS (Burns): Dean, do you want
8 to weigh in on this one?

9 THE WITNESS (Gustafson): That's
10 correct, phosphorus can have an effect on water
11 quality.

12 MR. NISHIOKA: And I'm not sure if Mr.
13 Gustafson or Mr. Burns, who's the best person to
14 answer this, but aren't stormwater ponds and other
15 infiltration practices best at removing phosphorus
16 from stormwater?

17 THE WITNESS (Burns): Dean.

18 THE WITNESS (Gustafson): I'm sorry, I
19 didn't catch the last bit of your question, if you
20 could please repeat it.

21 MR. NISHIOKA: Sure. Certainly. Well,
22 there's a chart. Here, I'll back up a little bit.
23 There's a chart in the 2004 Connecticut Stormwater
24 Quality Manual and it says that infiltration
25 basins provide high phosphorus removal and so do

1 wet ponds and detention ponds. Would you agree
2 with that?

3 THE WITNESS (Gustafson): I would, yes.

4 MR. NISHIOKA: And are those methods
5 going to be used here, Mr. Gustafson?

6 THE WITNESS (Gustafson): No. But
7 we're not talking about a facility that's going to
8 generate excess nutrients, including phosphorus.
9 You're dealing with a facility that's unmanned
10 with very minimal traffic generation and there's
11 no on site occupation of the facility that could
12 generate excess phosphorus.

13 MR. NISHIOKA: Okay. Mr. Burns, so
14 back to these detention ponds which we can't have
15 on the site which has been testified to just now,
16 you mentioned that the design of the facility is
17 made to act basically like a retention pond or
18 something similar. You stated, quote, It's
19 difficult for us to put any kind of retention pond
20 or anything similar to that out here so this
21 design is kind of pieced together to do that,
22 unquote.

23 So how would you say this design is
24 pieced together to accomplish what a retention
25 pond would normally accomplish?

1 THE WITNESS (Burns): So a retention
2 pond would take the water from some stormwater
3 system. If it's a parking lot, they have catch
4 basins, they'll collect somewhere and will flow
5 into, one, into one detention basin. I don't have
6 the ability to design that out here. So in
7 putting two, three stilling basins in, some
8 swales, check dams and sumps in the catch basins,
9 I was able to do the same thing in terms of
10 detention.

11 MR. NISHIOKA: Have you been successful
12 in this piecemeal approach before in capturing
13 water runoff?

14 THE WITNESS (Burns): Yes.

15 MR. NISHIOKA: Isn't it true that the
16 piecemeal approach may not adequately solve -- I'm
17 sorry, let me rephrase that.

18 Isn't it true that this kind of
19 piecemeal approach is not as good at solving
20 downstream impacts, like it may solve the local
21 drainage problems, but wouldn't you say it's
22 unlikely to address downstream impacts to the
23 Laurel Reservoir?

24 THE WITNESS (Burns): So if you're
25 asking me if this system is going to correct areas

1 or any construction off site, no. This site, this
2 was designed to handle the construction
3 improvements from this facility.

4 MR. NISHIOKA: Okay. And would you
5 agree then also that these drainage systems
6 proposed here could actually increase downstream
7 flooding?

8 THE WITNESS (Burns): No.

9 MR. NISHIOKA: The 2004 Connecticut
10 Stormwater Quality Manual says, quote, The
11 piecemeal approach may adequately solve localized
12 drainage problems but seldom addresses downstream
13 impacts. The dynamic interactions between
14 upstream drainage improvements may actually
15 increase downstream flooding. So are you saying
16 you don't agree with that statement?

17 THE WITNESS (Burns): I'm saying that
18 statement and what we're doing here may have
19 nothing to do with each other. You need to define
20 for me what they're talking about a piecemeal
21 approach and when that definition should include a
22 riprap swale with stone check dams and three
23 stilling basins for a drainage area such as this.
24 I consider the whole thing, I probably misspoke
25 when I called it piecemeal. This is a drainage

1 system meant to detain the water so that pre and
2 post-conditions for runoff are the same. So no, I
3 don't agree with that.

4 MR. NISHIOKA: If we were to put the
5 macrocell on already existing infrastructure, say
6 in the driveway on a pole or on an existing
7 chimney, if there is one, would there be any
8 downstream impacts to, say, the Laurel Reservoir
9 for a facility like that?

10 MS. CHIOCCHIO: Mr. Morissette, once
11 again, we're talking about speculative options
12 here. We need to focus on the project.

13 MR. MORISSETTE: Yes, please, Mr.
14 Nishioka, please keep your questions related to
15 the specific site at hand here. Thank you.

16 MR. NISHIOKA: Okay. All right. So we
17 have here challenging steep slopes and ledge, a
18 drinking water reservoir across the street, a
19 stream feeding the reservoir on the parcel, three
20 listed species. Your plan is to conform this
21 difficult site to fit a large tower into it to fit
22 the propagation desires that you have here. Would
23 you say that's an accurate statement?

24 THE WITNESS (Burns): My plan is to
25 design an access driveway and compound for a tower

1 site on 1837 Ponus Ridge Road as directed by my
2 client, Homeland Towers.

3 MR. NISHIOKA: Isn't it better to
4 conform a cell facility to a site rather than try
5 to conform and manipulate a site in such a way
6 that it meets the interests of the desired
7 facility?

8 THE WITNESS (Burns): I think it
9 depends on the site. I think if you were to put a
10 house on this site, the limit of disturbance would
11 be even more than what's being shown here. And if
12 I'm not mistaken, it's zoned for residential.

13 MR. NISHIOKA: Okay. So let me know if
14 you agree with this. The 2002 Connecticut
15 guidelines for soil erosion, it suggests that you,
16 quote, start by selecting a site that is suitable
17 for a specific proposed activity. Sites with
18 resource limitations should be developed in
19 conformance with the capacity of the site to
20 support such development rather than by attempting
21 to modify a site to conform to a proposed
22 activity, unquote.

23 So are you saying that you disagree
24 with this statement from the 2002 Connecticut
25 guidelines?

1 THE WITNESS (Burns): I'm saying --

2 MS. CHIOCCHIO: Mr. Morissette, these
3 statements from the guidelines and the design
4 manual taken out of context, we could go on all
5 day about this.

6 MR. MORISSETTE: Yes, I agree. Please
7 continue. I'm sorry I interrupted you.

8 MS. CHIOCCHIO: That's all I have to
9 say. Thank you.

10 MR. MORISSETTE: Okay. Let's move on.
11 We're going back to the guidelines time and time
12 again trying to get the witnesses to where I don't
13 know. So please continue and try to get to your
14 point. Thank you.

15 MR. NISHIOKA: I'll move on, Mr.
16 Morissette.

17 MR. MORISSETTE: Thank you.

18 MR. NISHIOKA: So when we're
19 considering two sites, say --

20 MS. CHIOCCHIO: Once again, we're not
21 considering two sites in this application. It's
22 one site.

23 MR. NISHIOKA: Well, okay. So what I'm
24 going to discuss is earlier in these proceedings
25 it was stated that there were comparable sites

1 that the applicant has constructed that would make
2 it familiar with constructing a site on a steeply
3 terrained ledgy parcel. So I wanted to ask some
4 questions in regards to that statement.

5 MS. CHIOCCHIO: Okay.

6 THE WITNESS (Burns): Okay.

7 MR. MORISSETTE: Please continue.

8 MR. NISHIOKA: So let me -- I guess
9 I'll rephrase it. In terms of those comparable
10 sites, would you say that two sites can be
11 considered comparable if they have the same amount
12 of trees being removed and, say, the same amount
13 of cut?

14 THE WITNESS (Burns): Let me answer it
15 this way, Mr. Nishioka. I've been doing this
16 almost 40 years. I've put up hundreds of cell
17 sites. I can't remember two that are exactly the
18 same. Each one of them comes with its own issues,
19 if you will, design challenges sometimes, but we
20 make it work. So if you're asking me have I seen
21 a site exactly like this one that I've designed
22 exactly like this one that's going to work exactly
23 like I'm saying here, the answer to that is no.

24 MR. NISHIOKA: And my apologies, that's
25 not quite what I was asking so I guess I'll try to

1 take this in a different direction. Would 20
2 percent more trees be considered significant
3 enough to say that a project is more difficult
4 than another project?

5 THE WITNESS (Burns): Not necessarily
6 because we could be dealing with electric issues.
7 Eversource may not be able to feed a line up to
8 the site. Fiber may be two miles away that we
9 have to bring in. You're asking me to compare
10 apples and oranges and I can't do it.

11 MR. NISHIOKA: Okay. Let's try to say
12 that these are apples and apples. Let's make a
13 big jump. How about twice as many trees. If one
14 site has 100 trees and another site has 200 trees,
15 would those still be considered similar?

16 MS. CHIOCCHIO: Mr. Morissette, we can
17 do this all day with what ifs and speculation back
18 and forth. The answer is not going to change. We
19 can't do a comparison of sites and specific issues
20 for each site.

21 MR. MORISSETTE: Yes, Mr. Nishioka,
22 you're getting into a lot of hypotheticals here in
23 trying to compare other sites that are nonexistent
24 to this site here. I'm not really following where
25 you're trying to go with this. We're giving you a

1 lot of latitude. But if you could get to your
2 point and ask the question that's relevant to this
3 site, I would appreciate it. Thank you.

4 MR. NISHIOKA: Okay. Let me move on.
5 So where I'm going is, so there was -- and this is
6 actually for Mr. Vergati. So Mr. Vergati, I'd
7 like to talk to you a bit about the discussions
8 you had with the residents of 168 Lost District
9 Road. Wasn't a public safety antenna solution
10 provided by those residents?

11 THE WITNESS (Vergati): I believe there
12 was discussion between the town and I believe it
13 was Don Carmel of 168 potentially hosting a public
14 safety antenna on their property.

15 MR. NISHIOKA: Do you happen to know
16 why that offer was declined?

17 THE WITNESS (Vergati): I recall there
18 was correspondence that Mr. Carmel quote-unquote
19 did not want an 11-story tower on the property and
20 to cut to the chase, that particular site was too
21 far north and was ruled out by the RF engineer.

22 MR. NISHIOKA: Okay. So that site is
23 about 2,500 feet from this proposed location. Is
24 that considered very far?

25 THE WITNESS (Vergati): I'm not an RF

1 engineer. All I can tell you is that the radio
2 frequency engineer, Martin Lavin for AT&T,
3 reviewed that site and he rejected it.

4 MR. NISHIOKA: Is Mr. --

5 THE WITNESS (Vergati): My guess would
6 be it is too far north to an existing tower in
7 Scott's Corner, New York that provides coverage
8 that bleeds in just over the border. So I can't
9 speak specifically for the RF engineer, but it was
10 reviewed and it was rejected. And that's number
11 24 on my alternate site analysis.

12 MR. NISHIOKA: Right. And I'm asking
13 specifically about just a public safety antenna
14 there. So I guess I'll save this question for,
15 you said it was Mr. Lavin who did the analysis?

16 THE WITNESS (Vergati): Mr. Martin
17 Lavin is the RF engineer for AT&T.

18 MR. NISHIOKA: Mr. Lavin. Is Mr. Lavin
19 here today?

20 THE WITNESS (Vergati): Yes, he is.

21 MR. NISHIOKA: Mr. Lavin?

22 THE WITNESS (Lavin): Martin Lavin on
23 behalf of AT&T.

24 MR. NISHIOKA: Mr. Lavin, I
25 mispronounced your name earlier so I apologize for

1 that. So isn't this location at 168 Lost District
2 approximately 685 feet above sea level?

3 THE WITNESS (Lavin): I know I analyzed
4 it. Offhand, I don't know the site elevation. It
5 might be in the alternate site analysis, 450 feet
6 above mean sea level.

7 MR. NISHIOKA: Okay. Let me know if
8 you would agree with this: So presently on that
9 site there is already a public safety antenna.
10 And Mr. Carmel states that it can reach repeaters
11 at Mount Beacon, in midtown Manhattan and all the
12 way up to North Adams, Massachusetts. Is that
13 consistent with what your findings were for that
14 location?

15 THE WITNESS (Lavin): I believe this
16 would be a question for Mr. Fine.

17 MR. NISHIOKA: Oh, sorry. Okay, let's
18 ask that of Mr. Fine.

19 THE WITNESS (Fine): Sorry. So in
20 regards to this site, I have no knowledge of the
21 site at all. I have no idea what kind of, you
22 know, radio frequency propagation he's talking
23 about in regards to being able to talk to those
24 locations. I'm going to make a guess that this
25 gentleman may be a ham radio operator and does

1 some kind of amateur radio operation off of his
2 house. But we haven't looked at it. We've done
3 no analysis of it from a public safety, from the
4 Town of New Canaan's public safety radio
5 perspective.

6 MR. NISHIOKA: So no one -- Mr. Fine,
7 so no one from the town ever presented or
8 requested of you to do an analysis of this
9 location for public safety antenna analysis?

10 THE WITNESS (Fine): Not to date, no.

11 MR. NISHIOKA: What about anyone from
12 the applicant, so did Homeland ever ask you to do
13 an analysis?

14 THE WITNESS (Fine): Homeland did not
15 ask us to do an analysis at that location. We
16 are, you know, for lack of better terms, kind of
17 riding on the coattails of the carriers, meaning
18 if the carriers can successfully construct the
19 tower, get it approved for construction at the
20 proposed facility, that the town is going to reap
21 the benefit of it as well. You know, and this is
22 an agreement that was worked out between Homeland
23 Towers and the Town of New Canaan. So the town
24 hasn't actively gone out -- hasn't been actively
25 seeking an alternative location on their own

1 because we have a site up on a private residence
2 on Oenoke Ridge now. The town's desire is to get
3 it off of Oenoke Ridge if another site becomes
4 viable, and this site is a good fit for that. The
5 proposed site is a good fit for that.

6 MR. NISHIOKA: But you can't attest
7 whether or not today whether 168 Lost District is
8 a good site for that?

9 THE WITNESS (Fine): I can't. It would
10 take analysis on our part. I would have to have
11 the specific site coordinates, ground elevation
12 and all and look at what the benefit, if any
13 benefit, or detraction is of that site over the
14 proposed site.

15 MR. NISHIOKA: Mr. Gustafson, on the
16 same issue --

17 THE WITNESS (Fine): Can I interrupt
18 for one second, please?

19 MR. NISHIOKA: Oh sure.

20 THE WITNESS (Fine): Sorry. I just
21 want to let everybody know I have a drop dead of
22 right now. So if there's any questions that you
23 need me for, either it's going to have to come to
24 me in writing for a response or if there's another
25 hearing I'll be available. But I have a drop dead

1 time right now, so I have to sign off and just
2 want to let you know that.

3 MR. NISHIOKA: Thank you, Mr. Fine. We
4 can certainly save any questions for you at the
5 next hearing.

6 Mr. Gustafson, that site at 168 Lost
7 District, which is about 2,500 feet north of the
8 proposed site here on Ponus, that's outside of the
9 DEEP listed protection area for those three
10 species; isn't that correct?

11 MS. CHIOCCHIO: Mr. Morissette, I think
12 any questions about the site are irrelevant.
13 We've already established that it doesn't work for
14 AT&T, so it's not a viable alternative to what
15 we've proposed.

16 MR. NISHIOKA: Mr. Morissette, that
17 wasn't the testimony provided by the applicant.
18 The applicant, Mr. Fine, testified that no
19 analysis had been performed. Furthermore, this
20 was a site that was listed in the application
21 materials as a location that was considered.

22 MR. MORISSETTE: Please continue --

23 MS. CHIOCCHIO: The town is not the
24 applicant. The applicant is Homeland and AT&T.
25 The site has to work for AT&T for their coverage

1 needs. The public need that we are demonstrating
2 is AT&T's need.

3 MR. NISHIOKA: That's --

4 MR. MORISSETTE: So with that, please
5 keep your questions associated with Homeland and
6 AT&T as it relates to the alternative site.

7 MR. NISHIOKA: Mr. Gustafson, isn't
8 this entirely outside of the DEEP listed protected
9 area where three listed species are known to live?

10 THE WITNESS (Gustafson): I have not
11 evaluated that alternate property that you're
12 referencing so I cannot answer that question.

13 MR. NISHIOKA: Okay. Thank you, Mr.
14 Gustafson.

15 Mr. Vergati, I should have asked you
16 this at the outset. Did you ever communicate to
17 the town that this was a potential site for a
18 public safety antenna?

19 THE WITNESS (Vergati): I believe the
20 town had mentioned this site to me. Keep in mind
21 this project is twofold. Public safety, critical
22 public safety for the Town of New Canaan, as well
23 as serving the carriers. The only thing I can say
24 the site was looked at by the RF engineer for AT&T
25 and it was rejected. It's over 3,000 feet away

1 from our existing site. It's less than a mile
2 from the existing site, Pound Ridge Scott's
3 Corner. It does not work for AT&T's network as
4 stated in my alternate site analysis.

5 MR. NISHIOKA: So the public safety
6 antenna is presently at a site at 982 Oenoke and
7 it will be there for a minimum of six more years;
8 isn't that correct?

9 THE WITNESS (Vergati): You'll have to
10 direct those questions to Mr. Fine who just
11 dropped off, and I believe, Mr. Fine, Eric Fine
12 had previously testified on that particular site
13 that's located on the barn that went through a
14 recent purchase with a new homeowner, there is an
15 agreement in place, but I'm not sure of the terms.
16 They're saying six years. I think the homeowner
17 has the right, from what I've been told, to
18 potentially ask the town to remove that antenna at
19 any given point in time.

20 MR. NISHIOKA: Okay.

21 MR. MORISSETTE: Mr. Nishioka, let me
22 interrupt you. The Siting Council does not have
23 jurisdiction over public safety equipment. I
24 don't know where your line of questioning is
25 going, but we have no authority over that.

1 MR. NISHIOKA: Yes. Thank you, Mr.
2 Morissette, for clarifying that. The public
3 safety is a matter by which will determine whether
4 or not this facility has a need. So this all goes
5 to that public need for the facility.

6 MS. CHIOCCHIO: I disagree. The public
7 need, as stated in the statutes, is the wireless
8 carriers' need for a facility and not the town's
9 public safety needs.

10 MR. MORISSETTE: I will agree with
11 that. And please continue and move on off the
12 public safety issue, Mr. Nishioka.

13 MR. NISHIOKA: Certainly, Mr.
14 Morissette.

15 MR. MORISSETTE: Thank you.

16 MR. NISHIOKA: Sure. Let's discuss
17 well water a bit. I only have a couple questions
18 for this. And I think probably the best person to
19 ask is Mr. Gustafson. Isn't it true that the
20 rainfall and snow melt from this construction has
21 the potential to contaminate private wells?

22 THE WITNESS (Gustafson): I don't -- I
23 think the question you're asking requires
24 expertise beyond mine.

25 MR. NISHIOKA: I can appreciate that.

1 THE WITNESS (Gustafson): You're
2 looking at possibly a hydrogeologist do it,
3 evaluate possible groundwater impacts.

4 MR. NISHIOKA: I can appreciate what
5 you're saying. So basically, suffice to say, the
6 applicant is not in a position where it can make
7 any statements as to the impacts that this site
8 will potentially have on wells, say, within 200
9 feet of this site; is that accurate?

10 THE WITNESS (Gustafson): I mean,
11 there's a lot of factors that come into play if
12 you're trying to evaluate possible impacts to
13 groundwater and surrounding wells that could be
14 associated with the facility or construction of
15 the facility. If it requires blasting, then there
16 will probably be a need for doing some surveys in
17 the surrounding properties, make sure none of
18 those wells or structures are affected by any
19 blasting activities, but I will say that the
20 facility is designed in accordance with, and as
21 you had referenced in your questioning, in
22 accordance with guidelines from Connecticut DEEP
23 with respect to erosion sedimentation controls and
24 project phasing and stormwater management
25 treatment. And so those design elements do help

1 protect any type of resource impacts, including
2 groundwater.

3 MR. NISHIOKA: Mr. Gustafson, earlier
4 you testified that this is not water company land.
5 And I just want to know what you're basing that
6 on.

7 THE WITNESS (Gustafson): I'm sorry, I
8 lost the last part of your question, if you could
9 please repeat it.

10 MR. NISHIOKA: So earlier in these
11 proceedings you testified that this, I believe
12 Mr. Sherwood was asking you about whether or not
13 these would qualify as Class 1 or Class 2
14 watersheds under the applicable water protection
15 statutes, I believe it's 22a-32, and you stated
16 these are not water company lands. I just wanted
17 to know what you're basing that off of, what
18 information, what evidence, what on the docket?

19 THE WITNESS (Gustafson): So this is a
20 privately-owned parcel. It's not owned by
21 Aquarion or any other water company. And by
22 reference to the state statutes that you just
23 made, a land can only be considered Class 1 or 2
24 first and foremost if it's owned by a water
25 company.

1 MR. NISHIOKA: So the intervenors have
2 been precluded from knowing who the members are of
3 the 1837, LLC, but are you testifying here that
4 you know who those members are and that you know
5 that they're not water company members?

6 THE WITNESS (Gustafson): So I don't --

7 MS. CHIOCCHIO: I'm going to object to
8 that question. We've already had a decision on
9 this through the motions that were decided on by
10 the Siting Council.

11 MR. MORISSETTE: We've already dealt
12 with this issue, so let's move on.

13 MS. CHIOCCHIO: We've established it's
14 a privately held parcel.

15 MR. NISHIOKA: So again, the proper
16 forum we were told was this hearing for asking
17 questions as to who the owners are of this parcel.
18 If indeed that the owner is a water company, then
19 there would be certain regulations that would come
20 into play. Again, we were precluded from getting
21 that information. But if it was indeed a water
22 company, certain permits would be required of this
23 parcel and those permits would have a pretty
24 dramatic impact on these proceedings. So I think
25 it's certainly relevant to the discussion here

1 today to certainly at least confirm whether or not
2 those persons within the water company or within
3 the LLC are a water company, otherwise we don't
4 know whether or not these important water
5 protection regulations under 22a-32 apply to the
6 circumstances here, because if they do, then this
7 situation changes quite a bit because a permit
8 would be required of the applicant from the
9 Department of Public Health. So that's why this
10 line of questioning, I think, is important that we
11 just make sure that this is not water company
12 land.

13 MR. MORISSETTE: Thank you, Mr.
14 Nishioka.

15 Attorney Chiocchio, do you have any
16 further comments on this matter?

17 MS. CHIOCCHIO: I do. I disagree.
18 We've established that this property is privately
19 held. It's not owned by a water company,
20 therefore it's not classified as a Class 1
21 watershed. No permits are required. There's no
22 need to go any further. The Council already
23 decided on the motion with respect to the specific
24 members of the LLC.

25 MR. MORISSETTE: Thank you, Attorney

1 Chiocchio.

2 Attorney Bachman, do you have any
3 comments on this matter?

4 MS. BACHMAN: Thank you, Mr.
5 Morissette. Attorney Chiocchio is correct, we did
6 in fact deem any ownership members in the LLC to
7 be irrelevant to the Council's decision-making
8 criteria. In fact, we shall not take into account
9 an applicant's interest in any parcel as part of
10 our analysis. And so I would agree with Attorney
11 Chiocchio we've already addressed the issue in a
12 motion. It can be brought up again in a
13 post-hearing brief, but for now, Mr. Morissette, I
14 suggest we move on to relevant matters. Thank
15 you.

16 MR. MORISSETTE: Thank you, Attorney
17 Bachman. Therefore, Mr. Nishioka, we're going to
18 move on, if you would, please.

19 MR. NISHIOKA: Yes, certainly. Thank
20 you.

21 So the New Canaan Neighbors, Mr.
22 Gustafson, we issued an interrogatory to the
23 applicant and it was Interrogatory 10, and we
24 asked whether or not a permit was necessary for
25 this General Statutes 22a-32, and the applicant

1 responded that no regulated activity shall be
2 conducted upon any wetland without a permit.

3 And then you testified in the last
4 hearing you said, quote, I have not provided an
5 evaluation whether this activity would
6 conceptually be considered a regulated activity,
7 unquote. If you don't mind just kind of
8 describing that discrepancy to me.

9 THE WITNESS (Gustafson): Yeah. So
10 you're mixing jurisdictions here. My response to
11 the interrogatory which relates to that state
12 statute that would be with respect to any
13 activities directly in wetlands or watercourses
14 would be considered regulated activity. The
15 second response was associated with speculation
16 whether the Town of New Canaan's inland wetland
17 commission would consider this project a regulated
18 activity. They regulate an upland review area and
19 as well as they also have discretion to regulate
20 activities outside of their upland review area, if
21 they deem so.

22 So with respect to the interrogatory
23 response, since there's no direct wetland impacts,
24 there's no impacts to watercourses or wetlands, it
25 wouldn't be considered a regulated activity by

1 state statute. There is no upland review area in
2 the state statute. From the local jurisdiction
3 standpoint, it's up to the discretion of the
4 inland wetland commission whether they would
5 consider this a regulated activity. We don't have
6 any activities within 100 feet of wetlands or
7 watercourses, so by that measure it wouldn't be
8 considered regulated activity, but they do have
9 some discretion to regulate activities beyond the
10 upland review area.

11 MR. NISHIOKA: So I was taking the
12 Connecticut General Statutes 22a-38, sub 13, and
13 it says, quote, that a -- I'm sorry, not quote.
14 I'm going to paraphrase because this is fairly
15 long. But it says that a regulated activity in
16 this context includes stream tributaries within a
17 half mile of a drinking water supply downstream.
18 Is that also your understanding of a regulated
19 activity? That's also on the applicants' bulk
20 filing and the technical report as well.

21 THE WITNESS (Gustafson): So that is
22 correct, but you're still dealing directly with
23 the resource, not any activities in proximity to
24 that resource. So at the end of the day the
25 Siting Council's jurisdiction supercedes any local

1 jurisdiction, including inland wetlands. So the
2 Council has the authority to evaluate the
3 project's impacts to wetland and watercourse
4 resources.

5 MR. NISHIOKA: And I appreciate that.
6 What I'm going to ask you is basically do you
7 think that that regulation is indicative of a
8 water protection measure that the state believes
9 is necessary to protect, say, a resource by saying
10 that you cannot, that you are required to have a
11 permit within a half mile of a stream feeding a
12 reservoir?

13 THE WITNESS (Gustafson): So it's not a
14 restrictive, there's no restrictions in the state
15 statute to prevent that activity. It's just a
16 regulated activity. So it should be reviewed by
17 the applicable agency to determine the project's
18 possible effects and assess whether they are
19 significant or not and if there is mitigation that
20 should be required as part of that. But the state
21 statute also doesn't restrict you from filling in
22 wetlands or watercourses. It is considered a
23 regulated activity. So you would require a permit
24 by the applicable agency in order to conduct that
25 regulated activity.

1 MR. NISHIOKA: Thank you. Mr. Vergati,
2 I just have a few questions here about some of the
3 contracts that are associated with this property.

4 THE WITNESS (Vergati): Go ahead.

5 MR. NISHIOKA: So there are several
6 contracts that are attached to the property at
7 1837 Ponus Ridge Road; isn't that correct?

8 THE WITNESS (Vergati): Homeland Towers
9 has a ground lease with 1837, LLC. Homeland also
10 has an agreement with the Town of New Canaan to
11 place public safety equipment on this facility.
12 Homeland Towers has an agreement with AT&T to
13 place their antenna on this facility. And
14 Homeland has an agreement in place with Verizon to
15 place their equipment on this facility.

16 MR. NISHIOKA: Isn't there also a lease
17 between the Town of New Canaan and 1837, LLC?

18 THE WITNESS (Vergati): I don't know if
19 there's a direct lease. I believe there's some
20 type of addendum that they may have. This was
21 such a critical site for the town for public
22 safety. The town worked out some assurances I
23 believe with 1837 that in the event Homeland
24 Towers ever abandoned the site for whatever reason
25 that the town had assurances with 1837 that the

1 tower would remain so the town could continue to
2 operate their public safety network.

3 MR. NISHIOKA: Thank you. I think you
4 just answered my next couple of questions. And in
5 that lease between the town and the 1837, LLC, it
6 states that there's a \$10,000 option and a
7 \$15,000 -- or sorry, a \$50,000 exercise payment as
8 well; isn't that right?

9 THE WITNESS (Vergati): I cannot
10 comment on that agreement. I was not involved in
11 the signing or direct negotiation. That was
12 between the town, the town's attorney and the
13 1837. I did have some limited exposure to it, but
14 I cannot speak to the specifics of any monetary
15 contractual issues as it relates. And I don't
16 even know if an agreement, a lease agreement, as
17 you're calling it. It may just be a letter of
18 intent or addendum, but if you have a copy of it
19 and you're calling it lease agreement, it very
20 well could be.

21 MR. NISHIOKA: I apologize, that was
22 the wrong term. I believe it's defined as an
23 option agreement. So I'm sorry, so you're
24 testifying that you don't know about this, but
25 isn't the --

1 THE WITNESS (Vergati): I'm not
2 testifying that I don't know about it. I don't
3 have that agreement in front of me. I can't speak
4 to specifics. I know there was some type of
5 agreement between the town and 1837, LLC as a
6 backstop specifically in the event Homeland Towers
7 were to abandon this site, and I believe Homeland
8 even had language in our option and ground lease
9 with 1837 that the Town of New Canaan would have
10 first right of refusal to take over the site for a
11 dollar. But I can't speak to the specifics of
12 what the town has signed with 1837, LLC.

13 MR. MORISSETTE: Mr. Nishioka, that's a
14 private agreement between the town and 1837, LLC
15 that we have no jurisdiction over and Homeland is
16 not a party to that agreement, so you can't expect
17 the witness to testify to something he's not a
18 party to. So please move on.

19 MR. NISHIOKA: Just respectfully, Mr.
20 Morissette, Connecticut General Statute 16-50k(b)
21 states that, quote, A certificate may be
22 transferred subject to the approval of the Council
23 to a person who agrees to comply with the terms,
24 limitations and conditions contained therein. The
25 Council shall not approve any such transfer if it

1 finds that such transfer was contemplated at or
2 prior to the time the certificate was issued and
3 such facts were not adequately disclosed during
4 the certification proceeding.

5 So what I'm arguing here or what the
6 line of questioning is going to is that the
7 applicant is required to provide this information
8 because the town or this option agreement signed
9 by the town is a successor in interest that this
10 Siting Council has authority and kind of the
11 mandate to review and to determine whether or not
12 that interest is adequately disclosed in these
13 proceedings. So that's the basis for this line of
14 questioning, if I may continue.

15 MR. MORISSETTE: Thank you for that
16 clarification. I will ask Attorney Bachman to
17 provide an opinion on that matter. It sounds like
18 a legal issue to me. Attorney Bachman.

19 MS. BACHMAN: Thank you, Mr.
20 Morissette. Under 16-50k(b), there needs to be a
21 certificate that could be transferred, and at
22 present the record of this matter represents that
23 there is an agreement between Homeland Towers and
24 the owner of the parcel. Any agreement between
25 the town and the owner of the parcel or any

1 agreement related to public safety equipment
2 necessary for the town is not jurisdictional to
3 this Council. Homeland Towers and AT&T are the
4 applicants for a certificate. If they receive a
5 certificate and they seek to transfer it in the
6 future, they may ask the Council for permission to
7 do so and that is within the discretion of the
8 Council. Thank you.

9 MR. MORISSETTE: Thank you, Attorney
10 Bachman, for that clarification.

11 Mr. Nishioka, I'll ask you to please
12 move on. Thank you.

13 MR. NISHIOKA: Thank you, Mr.
14 Morissette.

15 Mr. Vergati.

16 THE WITNESS (Vergati): Yes.

17 MR. NISHIOKA: Did the Town of New
18 Canaan provide support letters or, I'm sorry, did
19 you provide the Town of New Canaan support letters
20 that was modeled after similar safety tower
21 projects?

22 THE WITNESS (Vergati): Absolutely. In
23 my correspondence with the town I provided
24 templates of what other towns have written in
25 support for public safety, asking the Town of New

1 Canaan if they wished to use those letters as
2 templates feel free to do so. So to answer your
3 question, absolutely.

4 MR. NISHIOKA: And just to be clear, do
5 you have any experience as a first responder, Mr.
6 Vergati?

7 THE WITNESS (Vergati): I do not.

8 MR. NISHIOKA: Was the template that
9 you chose chosen because the narrative fit kind of
10 what you felt was best for the public safety
11 aspect of this application?

12 THE WITNESS (Vergati): Absolutely not.
13 Public safety is safety. First responders, they
14 make their own decisions when it comes to saving
15 lives, and the police chief, the fire chief, the
16 ambulance folks they've been crying for this
17 public safety network in this section of town for
18 years, and they're behind this project 110
19 percent. So when they write support letters, they
20 had an interest obviously for public safety and
21 protecting residents. So the letters provided to
22 them, I'm not particularly sure which sites.
23 There's many times when we have towns, public
24 safety folks that will write a support letter for
25 the first responders. Whatever is shared with the

1 town is certainly public information and simple as
2 that.

3 MR. NISHIOKA: So the New Canaan
4 Neighbors, we administratively noticed a record
5 that was correspondence between the Town of New
6 Canaan and myself, and the Town of New Canaan in
7 its response to our public records act request
8 stated that in the past ten years or I think it
9 was ten years that there was not one first
10 responder report in one statement that stated that
11 cell service specifically was an issue in terms of
12 responding to a call. Are you aware of that
13 document that was submitted?

14 THE WITNESS (Vergati): I'm not aware
15 of that, and I think Mr. Fine from Norcom has
16 testified the need for the public safety in this
17 section of town. And I think if you have a
18 question relating to public safety, you can
19 certainly reach out to your first selectman,
20 Mr. Moynihan, or any of the officials that run the
21 fire, ambulance and police and hear it directly
22 from them. From what I've been told, there's been
23 issues and instances where first responders were
24 not able to either receive or get a phone call
25 out, and that's a bad thing obviously.

1 MR. NISHIOKA: I would just like to
2 object to that statement that he's been in
3 communication, that Mr. Vergati has been in
4 communication with first responders. They are not
5 available for cross-examination. And we have
6 already discussed this in these proceedings that
7 because they're not an applicant that that's
8 purely public comment and that Mr. Vergati's
9 hearsay testimony is not appropriate in these
10 proceedings.

11 THE WITNESS (Vergati): Well, then I
12 would just direct the Council or anyone else to
13 the support letters that were provided by the town
14 that are part of this record, and I would also
15 look to review Mr. Fine's comments on the need for
16 public safety in this area and for the town.

17 MR. NISHIOKA: I think certainly the
18 next several questions based on that response
19 would probably be best suited for Mr. Fine. So,
20 Mr. Morissette, this may be a good point to stop.

21 MR. MORISSETTE: Very good. Thank you,
22 Mr. Nishioka. Mr. Fine will not be, we will not
23 be cross-examining the applicant at the next
24 hearing, so this is your last bite of the apple.
25 We will be doing the parties at the next

1 proceeding so we will finish up with the applicant
2 today.

3 MR. NISHIOKA: In that case, Mr.
4 Morissette, I have quite a few more questions that
5 I'd like to direct towards the witnesses. If
6 you're saying this is the last opportunity that I
7 have to question witnesses, I have quite a few
8 more that I'd like to present.

9 MR. MORISSETTE: Very good. Please
10 continue then.

11 MR. NISHIOKA: And just for some
12 clarification, since Mr. Fine isn't available to
13 testify here today, will I have an opportunity to
14 cross-examine him at all at the next proceeding?

15 MR. MORISSETTE: I'm going to ask
16 Attorney Bachman to provide guidance in this
17 matter. We are trying to wrap up the applicants'
18 cross-examination today, so therefore they would
19 not be available -- they'll be available but not
20 for cross-examination.

21 Attorney Bachman, do you have any
22 opinion on this matter?

23 MS. BACHMAN: Thank you, Mr.
24 Morissette, I do. Unfortunately, we didn't know
25 that Mr. Fine wouldn't be available after 4:30

1 this afternoon. What I might suggest is that to
2 allow Mr. Nishioka to continue with his
3 cross-examination of the applicant of the
4 witnesses that are available today. And if there
5 are any relevant questions for Mr. Fine that don't
6 relate to any relationships between and agreements
7 with the town, I want to just make sure that we're
8 clear the jurisdiction of the Council does not
9 extend to the public safety equipment. Mr. Fine,
10 as a witness as a courtesy, described the type of
11 equipment and what it would look like on the
12 proposed tower by Homeland Towers and AT&T. So if
13 I could recommend we continue with
14 cross-examination and try and finish Mr.
15 Nishioka's cross-examination of the applicants, I
16 would limit cross of the applicants at the next
17 hearing to any questions that are relevant for
18 Mr. Fine. Thank you.

19 MR. MORISSETTE: Thank you, Attorney
20 Bachman, for your guidance.

21 Mr. Nishioka, is that acceptable to
22 you?

23 MR. NISHIOKA: Certainly for Mr. Fine,
24 but I have quite a few more questions for the rest
25 of the witnesses who are available here today.

1 MR. MORISSETTE: Very good. Please
2 continue.

3 MR. NISHIOKA: Mr. Vergati, the Town of
4 New Canaan's planning code says that the town's
5 preference is to install small cells instead of
6 macrocell towers such as the one that Homeland is
7 proposing here today; isn't that correct?

8 THE WITNESS (Vergati): I can't speak
9 to exactly what it says. I can't say yes or no.

10 MR. NISHIOKA: So we've noticed these
11 planning regulations and I believe they were
12 noticed by the applicant here in the technical
13 report. And at 7.8 they say, quote, For new
14 towers New Canaan expresses its preference that
15 the number of towers be minimized, especially
16 visually prominent ground mounting towers. New
17 Canaan express its preference for wireless
18 communication facilities in the following order
19 slash hierarchy. One, small cell or other similar
20 telecommunication facilities on existing utility
21 distribution poles. Two, totally enclosed within
22 an existing structure such as a steeple, chimney
23 or similar. Three, externally mounted on the wall
24 of an existing structure.

25 This proposed site and this proposed

1 telecommunications facility does not meet those
2 town preferences; isn't that correct?

3 THE WITNESS (Vergati): I can tell you
4 that there are no existing structures in the area
5 that would afford the required height for the
6 carriers' networks to work. Regarding small
7 cells, the town, I believe, looked into this years
8 ago, the feasibility of small cells and just found
9 it wasn't feasible, but I can certainly have the
10 RF engineer, Mr. Lavin, speak to the small cells
11 if that's where your line of questioning is going.

12 MR. NISHIOKA: No, that's not where
13 it's going, but we will stay away from small cells
14 for the purposes until the next hearing, but what
15 I do want to talk about are the town preferences.
16 The town zoning regulations are the only
17 indication of town preferences that have been
18 filed by the applicant; isn't that correct?

19 THE WITNESS (Vergati): I believe we
20 may have included in our application part of their
21 code that lists preferences.

22 MR. NISHIOKA: And the monopine
23 structure is part of the town's, quote, not
24 preferred, unquote, communication facilities;
25 isn't that correct?

1 THE WITNESS (Vergati): I wouldn't say
2 that at all. In my discussions with the town,
3 going back to 2016 when Homeland was awarded an
4 RFP by the town to basically partner with the town
5 and solve the coverage gaps and public safety
6 issues, there was a lot of talk about tower
7 heights and tower designs and what the town
8 preferred, and my discussions with many officials
9 over the years was that a monopine structure 110
10 feet and below was a preferred macrosite design.

11 MR. NISHIOKA: And I'd just like to
12 object to Mr. Vergati's testimony. The town isn't
13 available for cross-examination, but I'll
14 continue.

15 The RFP that this tower is based on
16 specifically stated the town's preference to,
17 quote, design infrastructure within the town's
18 aesthetic preferences and to, again, quote,
19 minimize the use and proliferation of conventional
20 wireless towers whenever feasible; isn't that
21 correct?

22 THE WITNESS (Vergati): If you're
23 stating that, I don't have it in front of me, but
24 if you say so I would generally agree with that.

25 MR. NISHIOKA: And as the selected

1 contractor and consultant for the town, did you
2 attempt to construct the facilities in accordance
3 with those town preferences?

4 THE WITNESS (Vergati): I will tell you
5 that we have, yes, to answer your question, we
6 have more of a handshake agreement with the town
7 that we would keep our structures as best we could
8 110 feet below stealthed in some fashion we feel
9 the monopine pole in this case was appropriate and
10 hence that's what we are proposing.

11 MR. NISHIOKA: But that's not what the
12 town preferences were as we just previously
13 discussed, right, the town preferences were cited
14 in the zoning regulations that first requested
15 small cells then externally mounted either macro
16 small cells on structures and then externally
17 mounted on walls of existing structures; isn't
18 that right?

19 THE WITNESS (Vergati): So if you're
20 stating that that's their preference, I'm not
21 going to argue with you about that, but when those
22 preferences are not available or appropriate, you
23 have to have a macro tower site. And in this
24 particular case we have a 110-foot monopine of
25 stealth design to support carriers and public

1 safety.

2 MR. NISHIOKA: And when you say it
3 wasn't available, there is a structure on this
4 property; isn't that correct?

5 THE WITNESS (Vergati): There is a
6 one-story home on this particular property.

7 MR. NISHIOKA: Putting a macrocell on
8 that property would have been in alignment with
9 those town preferences; isn't that correct?

10 THE WITNESS (Vergati): I'm not an RF
11 engineer, but I would basically say that the
12 rooftop of an existing home that's one story will
13 not work for the carriers. But if you'd like an
14 RF engineer to confirm that, Mr. Lavin will
15 certainly state that.

16 MR. NISHIOKA: Certainly. Thank you.
17 You referenced a wireless study. You've done that
18 a couple times now in these proceedings. And it
19 says, quote, The town had a study back -- I'm
20 sorry, you said, quote, The town had a study back
21 in, I think, 2012 or 2014 looking at a wireless
22 study. We also know that the town's preference
23 and then -- I'm sorry, let me rephrase that. I
24 was going to put this in such a way that would
25 have been very confusing.

1 Let me just talk about those
2 preferences in that study just briefly or let me
3 ask you about those preference in that study.
4 Isn't it true that the study showed that town
5 residents wanted better service without intrusive
6 tall towers?

7 THE WITNESS (Vergati): I believe the
8 town did a pole and there was an overwhelming vote
9 to have additional sites in town. I can't speak
10 to the aesthetics that you're talking about.

11 MR. NISHIOKA: Okay. So the New Canaan
12 neighbors we administratively noticed the cell
13 study, and it says, quote, sorry, it says -- I'm
14 going to paraphrase because there's a lot here --
15 that the residents want, quote, better service
16 without intrusive cell towers, unquote. Is that
17 not your understanding of what the study said?

18 THE WITNESS (Vergati): No, I would
19 tend to agree with that, and I would take it one
20 step further and I would state that I think our
21 record that we've submitted speaks that this
22 particular site has a relatively shorter tower in
23 the tower world being only 110 feet and disguised
24 as a monopine fits with that. We're not proposing
25 a standard 180-foot, 175-foot monopole. We are

1 being sensitive to the viewsheds. We think we're
2 in an area that has a lack of residential homes
3 and that this tower will blend in very well.

4 MR. NISHIOKA: Okay. Well, the study
5 also says that, quote, that macrocells -- I'm
6 sorry, I'll paraphrase again. This is quite
7 long -- that macrocells, quote, detract from the
8 environment of communities they aim to serve,
9 unquote. Do you agree with that statement, Mr.
10 Vergati?

11 THE WITNESS (Vergati): Can you repeat
12 that?

13 MR. NISHIOKA: Sure. It says regarding
14 macrocells that they, quote, detract from the
15 environment of the communities they aim to serve,
16 unquote.

17 THE WITNESS (Vergati): I think that's
18 an opinion. I can't say yes or no. Everybody has
19 an opinion about a tower. Homeland just
20 constructed a stealth monopine on the east side of
21 New Canaan and we're very proud of it. It blends
22 beautifully. People may say it's a welcome
23 structure to the community because of public
24 safety and coverage. Others may say I can see a
25 pine branch and I don't like it. So everybody has

1 an opinion on this obviously.

2 MR. NISHIOKA: Well, the town certainly
3 does have an opinion. I'm going to continue with
4 the town's opinions on this. So would you
5 disagree with the study's claim that hilly terrain
6 west of Oenoke Ridge Road creates numerous
7 shadowing gaps in the valleys of the western
8 portion of New Canaan?

9 THE WITNESS (Vergati): I can't speak
10 to coverage. You know, I will tell you that there
11 are terrain issues that the RF engineers were
12 challenged with not only in New Canaan but in many
13 towns throughout Connecticut. If you have a
14 specific question on coverage and how it affects
15 the terrain and how it affects coverage, I would
16 reserve those for Mr. Lavin.

17 MR. NISHIOKA: Will do. Let me just
18 ask you then about another preference that was
19 noted by the town. It says that the residents in
20 New Canaan want telecommunications facilities on
21 public land in northern New Canaan, and that was
22 the 2012 phone survey results. Did the applicant
23 try to align with that preference, the town
24 preference?

25 THE WITNESS (Vergati): We absolutely

1 did. If you're talking about Aquarion being
2 quasi-public, we certainly tried to work with
3 Aquarion to site a facility on their property. We
4 went so far as to try to site a tower within a
5 right-of-way that the town obviously has rights
6 to, per se. When there is no municipal property
7 or public property that is available, in this case
8 there was not, we had to turn to private
9 properties.

10 MR. NISHIOKA: Wouldn't the potential
11 for putting small cells or macrocells on telephone
12 poles in the public right-of-way, wouldn't that
13 have aligned with the town's preferences stated in
14 these studies and in the zoning regulations?

15 THE WITNESS (Vergati): That's a
16 question for Mr. Lavin. He'll be happy to answer
17 it.

18 MR. NISHIOKA: Is Mr. Lavin --

19 MR. MORISSETTE: Excuse me, Mr.
20 Nishioka. We're getting late in the afternoon
21 here. How much more time do you think you'll
22 need?

23 MR. NISHIOKA: Let me see here.

24 MR. MORISSETTE: I would like to wrap
25 it up by 5:50, if we could.

1 MR. NISHIOKA: I think it's very
2 unlikely that I will wrap it up, unfortunately, by
3 5:50. I thought this questioning would go quite a
4 bit faster, but it did not. So if I had to
5 estimate, I would say I have maybe another hour
6 and a half of questioning.

7 MR. MORISSETTE: Hour and a half.
8 Okay. Very good. Okay. Please continue till
9 5:30, and then we're going to call it a day.
10 Thank you.

11 MR. NISHIOKA: Certainly. Sorry, let
12 me go right back to the place I was. So I'm going
13 skip past these questions for Mr. Lavin unless
14 he's still -- is he still here?

15 THE WITNESS (Vergati): He is, yes.

16 MS. CHIOCCHIO: He's here.

17 MR. NISHIOKA: So Mr. Lavin -- sorry, I
18 keep mispronouncing your name -- I just asked Mr.
19 Vergati isn't it true that the desired approach of
20 the town is for small cells or macrocells on
21 utility poles within the public right-of-way,
22 wouldn't you say that that is the town's
23 preference?

24 MS. CHIOCCHIO: Mr. Morissette, I think
25 we established what the town's preferences are

1 with respect to siting of the facilities. I think
2 we need to move on. Plus, Mr. Lavin is an RF
3 engineer. He can talk to the ability of small
4 calls to cover the gap, not the town's
5 preferences.

6 MR. NISHIOKA: I agree --

7 MR. MORISSETTE: Thank you. Please
8 continue.

9 MR. NISHIOKA: I agree. I think that
10 Mr. Vergati is probably the best person to answer
11 that question.

12 MS. CHIOCCHIO: Well, I think we need
13 to move on. We've established what the town
14 preferences are.

15 MR. MORISSETTE: Yes, I think we
16 clearly have, so let's move on.

17 MR. NISHIOKA: So Mr. Lavin, this tower
18 will not be 5G capable in the sense that it won't
19 be able to accommodate the millimeter wave
20 spectrum; isn't that right?

21 THE WITNESS (Lavin): The tower itself
22 is perfectly capable of accommodating those
23 antennas. As originally configured on launch it
24 won't have those antennas, but there's no reason
25 it couldn't.

1 MR. NISHIOKA: Okay. Let me move
2 forward here then. It doesn't presently have the
3 capability of the 5G millimeter wave spectrum;
4 isn't that correct?

5 THE WITNESS (Lavin): As presently
6 proposed, yes.

7 MR. NISHIOKA: Isn't it true that to
8 meet rapidly increasing demand for wireless
9 services and prepare our national infrastructure
10 for 5G millimeter wave, providers must deploy
11 infrastructure at significantly more locations
12 using new small cell facilities?

13 THE WITNESS (Lavin): In the case of
14 New Canaan, no. It's not, as a matter of closing
15 the coverage gap, it's not a densely populated
16 area. It is not a place that's crying out for
17 millimeter wave. It's crying out for coverage,
18 and that's what the macrocell tower we proposed
19 does.

20 MR. NISHIOKA: I'd like to refer you to
21 something that was administratively noticed by the
22 council. It's called the FCC fact sheet. In the
23 very first sentence it says, quote, To meet
24 rapidly increasing demand for wireless services
25 and prepare our national infrastructure for 5G,

1 providers must deploy infrastructure at
2 significantly more locations using new small cell
3 facilities.

4 Is the Siting Council wrong in relying
5 on this FCC recommendation?

6 THE WITNESS (Lavin): In the case of
7 New Canaan, yes. These small cells on telephone
8 poles and things of that nature is for high
9 density areas. In Connecticut you'd be thinking
10 Bridgeport, Hartford and places like that, New
11 Haven and so forth. In the case of New Canaan,
12 no. The way to bring this in as quickly as
13 possible is to build the tower we're proposing.

14 MR. NISHIOKA: Okay. And that same
15 fact sheet says, quote, The deployment of small
16 cell systems to support -- and let me back up a
17 bit in that quote. So the FCC fact sheet
18 recommends that providers move away from
19 macrocells and encourage, quote, the deployment of
20 small cell systems to support increased usage and
21 capacity. Would you agree with that statement?

22 THE WITNESS (Lavin): Where it is
23 appropriate, that's exactly what AT&T is doing
24 right now. I think we have over 200 small cells
25 in the state right now. They're just not

1 appropriate to this area.

2 MR. NISHIOKA: Isn't it true that the
3 FCC states in the same fact sheet that there is an
4 urgent need to remove -- I'm sorry, let me skip
5 that question. I think that that would actually
6 probably be better for Mr. Fine.

7 Mr. Lavin, isn't that same fact sheet
8 that was noticed by the Council, it's basically an
9 argument for why more small cell facilities should
10 be deployed, but it says, quote, to your point of
11 what you were just saying, it says, quote, that
12 small cells should be deployed in places
13 including, quote, rural and suburban communities
14 that otherwise would be on the wrong side of the
15 digital divide, unquote.

16 So do you disagree with that statement
17 that rural and suburban communities should be --
18 should have small cells available for them?

19 MS. CHIOCCHIO: Mr. Morissette, can we
20 move on from this? I think Mr. Lavin explained
21 small cells and how they apply and how carriers
22 deploy them.

23 MR. NISHIOKA: Mr. Morissette, Mr.
24 Lavin just testified that this area is unsuitable
25 for this type of facility, yet the FCC fact sheet

1 very specifically says that rural and suburban
2 communities are appropriate for this type of
3 facility, and so I think it's important for the
4 applicant to be able to say whether or not it will
5 align with these materials that have been noticed
6 by the Council.

7 MS. CHIOCCHIO: That's a general
8 statement by the Federal Communications
9 Commission. It doesn't apply to this application.

10 MR. MORISSETTE: Mr. Lavin has already
11 spoken to what AT&T's position is related to small
12 cells and the deployment of small cells by AT&T.
13 That's on the record and we'll let that stand. So
14 therefore if you could move on, that would be
15 good. Thank you.

16 MR. NISHIOKA: Has the applicant
17 considered a flag pole installation on the
18 existing driveway of 1837 Ponus Ridge Road?

19 THE WITNESS (Lavin): A flag pole
20 solution for AT&T's network, they are on their way
21 out. The size and scope of the antennas we need
22 does not lend itself to that. We would need at
23 least three 10-foot levels in a flag enclosure, a
24 flag pole. Verizon can speak to their own needs,
25 which I'm guessing are similar. Suddenly our

1 10-foot section of the pole becomes 30 feet,
2 Verizon becomes 20 or 30 feet and the pole gets a
3 whole lot bigger.

4 MR. NISHIOKA: Mr. Gustafson --

5 MR. MORISSETTE: Mr. Nishioka, I'm
6 going to interrupt you at this point. It sounds
7 like you're shifting gears. I believe this would
8 be an appropriate time to end for the day. Is
9 that correct?

10 MR. NISHIOKA: We certainly can, Mr.
11 Morissette, if that's your preference. I
12 certainly do have quite a few more questions, and
13 I can certainly continue at the next hearing, if
14 that's what you would prefer.

15 MR. MORISSETTE: We're going to end for
16 today, and thank you for your cross-examination.
17 We do have one housecleaning item to take care of.
18 I think Mr. Gustafson was going to look at the
19 drawing sheet EN-1 for the invasive species
20 call-out on the 6/21 drawings. Do we have an
21 answer to that?

22 THE WITNESS (Gustafson): Yes, we do,
23 Mr. Morissette. So we have internally drafted the
24 invasive species control plan, but it was
25 inadvertently left off on some of our Late-File

1 submissions, so we will correct that and provide
2 that as a Late-File after the close of this
3 hearing.

4 To try to answer Attorney Sherwood's
5 question, at this point in time I would make
6 reference to Docket No. 499. We submitted an
7 invasive species control plan that's very similar
8 in nature to what we're going to be proposing on
9 this project. So if he's interested in seeing
10 what that will look like now, I would point him in
11 that direction, but we will follow up with a
12 Late-File. Thank you.

13 MR. MORISSETTE: Thank you, Mr.
14 Gustafson. All right. So thank you, everyone.
15 So the Council announces that it will continue the
16 evidentiary session of this public hearing on
17 Thursday, September 8, 2022 at 2 p.m. via Zoom
18 remote conferencing. A copy of the agenda for the
19 continued remote evidentiary hearing session will
20 be available on the Council's Docket No. 509
21 webpage, along with the record of this matter, the
22 public hearing notice, instructions for public
23 access to this remote evidentiary hearing session,
24 and the Council's Citizens Guide to Siting Council
25 Procedures.

1 Please note that anyone who has not
2 become a party or intervenor but who desires to
3 make his or her views known to the Council, may
4 file written statements with the Council until the
5 record closes.

6 Copies of the transcript of this
7 hearing will be filed in the New Canaan Town
8 Clerk's Office and the Stamford City Clerk's
9 Office.

10 I hereby declare this hearing
11 adjourned. Thank you, everyone, for participating
12 and have a great evening. Thank you.

13 (Whereupon, the hearing adjourned at
14 5:27 p.m.)

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1 CERTIFICATE FOR REMOTE HEARING

2
3
4 I hereby certify that the foregoing 150 pages
5 are a complete and accurate computer-aided
6 transcription of my original stenotype notes taken
7 before the CONNECTICUT SITING COUNCIL of the
8 CONTINUED REMOTE PUBLIC HEARING IN RE: DOCKET NO.
9 509, HOMELAND TOWERS, LLC AND NEW CINGULAR
10 WIRELESS PCS, LLC d/b/a AT&T APPLICATION FOR A
11 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND
12 PUBLIC NEED FOR THE CONSTRUCTION, MAINTENANCE, AND
13 OPERATION OF A TELECOMMUNICATIONS FACILITY LOCATED
14 AT 1837 PONUS RIDGE ROAD, NEW CANAAN, CONNECTICUT,
15 which was held before JOHN MORISSETTE, PRESIDING
16 OFFICER, on August 16, 2022.

17 

18 -----
19 Lisa L. Warner, CSR 061
20 Court Reporter
21 Notary Public
22 My commission expires:
23 May 31, 2023
24
25

I N D E X

WITNESSES: (Previously sworn)

RAYMOND VERGATI
HARRY CAREY
ROBERT BURNS
MICHAEL LIBERTINE
DEAN GUSTAFSON
BRIAN GAUDET
MARTIN LAVIN
ERIC FINE

EXAMINERS:	PAGE
Ms. Chiocchio (Direct)	6
Mr. Sherwood (Start of Cross)	10
Mr. Nishioka	52

APPLICANTS' EXHIBITS
(Received in evidence)

EXHIBIT	DESCRIPTION	PAGE
II-B-12	Applicants' Late-Filed Exhibits, submitted August 8, 2022	9
II-B-13	Applicants' responses to New Canaan Neighbors' interrogatory No. 14, dated August 8, 2022	9
II-B-14	Applicants' supplemental submission, dated August 8, 2022	9