

In The Matter Of:
STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Petition No. 1312
May 14, 2019

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STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Petition No. 1312

Candlewood Solar LLC Declaratory Ruling that no
Certificate of Environmental Compatibility and
Public Need is required for the proposed
construction, maintenance and operation of a 20
megawatt AC (26.5 megawatt DC) solar photovoltaic
electric generating facility located on a 163 acre
parcel at 197 Candlewood Mountain Road and
associated electrical interconnection to
Eversource Energy's Rocky River Substation on Kent
Road in New Milford, Connecticut.

COURT-ORDERED REMAND REGARDING VISIBILITY.

Continued Public Hearing held at the
Connecticut Siting Council, Ten Franklin Square,
New Britain, Connecticut, Tuesday, May 14, 2019,
beginning at 1 p.m.

H e l d B e f o r e :

ROBERT SILVESTRI, Presiding Officer

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

2

3 Council Members:

4 ROBERT J. HANNON,
5 Designee for Commissioner Katie Dykes,
6 Department of Energy and
7 Environmental Protection

8

9 LARRY P. LEVESQUE, ESQ.,
10 Designee for John W. Betkoski, III,
11 Chairman, the Public Utilities
12 Regulatory Authority

13

14 EDWARD EDELSON

15 MICHAEL HARDER

16 DANIEL P. LYNCH, JR.

17

18 Council Staff:

19 MELANIE BACHMAN, ESQ.
20 Executive Director and
21 Staff Attorney

22

23 CHRISTINA M. WALSH
24 Siting Analyst

25

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

2

3 For the Petitioner:

4 MICHAUD LAW GROUP LLC

5 515 Centerpoint Drive

6 Suite 502

7 Middletown, Connecticut 06457

8 BY: PAUL R. MICHAUD, ESQ.

9

10 For the Town of New Milford and Rescue

11 Candlewood Mountain:

12 CRAMER & ANDERSON LLP

13 30 Main Street

14 Suite 204

15 Danbury, Connecticut 06810

16 BY: DANIEL E. CASAGRANDE, ESQ.

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1 MR. SILVESTRI: Good afternoon, ladies
2 and gentlemen. This hearing is called to order
3 this Tuesday, May 14, 2019, at 1 p.m. My name is
4 Robert Silvestri, member and presiding officer of
5 the Connecticut Siting Council.

6 This evidentiary hearing is being held
7 as a result of a Connecticut Superior Court order,
8 dated March 5, 2019, remanding the administrative
9 appeals in the Candlewood Solar LLC Petition No.
10 1312 to the Connecticut Siting Council to clarify
11 whether the December 21, 2017 Findings of Fact and
12 Opinion of the Council on visibility agree with
13 the evidentiary record. This hearing is
14 specifically limited to the remand order regarding
15 visibility.

16 It is held pursuant to the provisions
17 of Title 16 of the Connecticut General Statutes
18 and of the Uniform Administrative Procedure Act.
19 On March 7, 2019, the Council developed a
20 deliberate schedule to provide all persons an
21 opportunity to participate in the proceeding.
22 Please be advised that the deadline for the
23 submission of responses to prehearing
24 interrogatories, prefiled testimony and exhibits
25 was Tuesday May 7, 2019. The Council does not

1 allow the submission of additional exhibits or
2 direct testimony during the hearing. This will be
3 the only hearing held on this limited matter.

4 A verbatim transcript will be made of
5 this hearing and deposited at the New Milford,
6 Brookfield and New Fairfield Town Clerk's Offices
7 for the convenience of the public.

8 I wish to call your attention to those
9 items shown on the hearing program marked as Roman
10 numeral I-D, Items 102-107.

11 Does any party or intervenor have an
12 objection to the additional items that the Council
13 has administratively noticed?

14 MR. MICHAUD: No.

15 MR. CASAGRANDE: No.

16 MR. SILVESTRI: Hearing none,
17 accordingly, the Council hereby administratively
18 notices these items. Thank you.

19 (Items I-D 102-107: Administratively
20 noticed.)

21 MR. SILVESTRI: We will proceed in
22 accordance with the prepared agenda, copies of
23 which are available next to the door if you do not
24 have one.

25 We will proceed with the appearance of

1 Candlewood Solar LLC.

2 Attorney Bachman, can you please begin
3 by swearing in the witnesses?

4 J A M E S W A L K E R,
5 P A T R I C I A F O S T E R,
6 R O B E R T B U K O W S K I,

7 called as witnesses, being first duly sworn
8 by Ms. Bachman, were examined and testified
9 on their oaths as follows:

10 MS. BACHMAN: Thank you.

11 MR. SILVESTRI: Attorney Michaud,
12 please begin by verifying the exhibits you have
13 filed in this matter and verifying the exhibit by
14 the appropriate sworn witness.

15 MR. MICHAUD: Thank you. Candlewood
16 Solar LLC has one exhibit for identification
17 purposes, and is consistent with Roman numeral
18 II-B in the hearing program. It is Exhibit 21,
19 which is Candlewood Solar LLC's responses to the
20 Connecticut Siting Council's interrogatories for
21 court-ordered remand regarding visibility and
22 attachments dated May 2, 2019. I would like to
23 submit Exhibit 21 for identification and
24 verification now.

25

1 DIRECT EXAMINATION

2 MR. MICHAUD: So I'm going to direct my
3 questions to each of you going from my right down
4 the line here. So Mr. Bukowski, did you prepare
5 or cause to be prepared Exhibit 21?

6 THE WITNESS (Bukowski): Yes.

7 MR. MICHAUD: Do you have any edits,
8 corrections, changes or clarifications to Exhibit
9 21 at this time?

10 THE WITNESS (Bukowski): Yes, I do have
11 a clarification.

12 MR. MICHAUD: Please go ahead.

13 THE WITNESS (Bukowski): I'd like to
14 clarify a response to Exhibit 21, Interrogatory
15 6b., which is Finding of Fact No. 112. I'd like
16 to clarify the distance between the limit of work
17 and the fence line. The limit of work is where
18 trees will be cleared up to which is 50 feet away
19 from the abutting residential property lines on
20 the western side of the site which are the
21 residences along Candlewood Mountain Road. The
22 fence line is further than 50 feet away from these
23 property lines, and the solar array is further
24 than the fence line from these property lines. A
25 figure depicted these distances from the western

1 property line to the limit of work and fence line
2 was included in Exhibit 21.

3 MR. MICHAUD: Thank you, Mr. Bukowski.

4 Next witness, Ms. Foster, did you
5 prepare or cause to be prepared Exhibit 21?

6 THE WITNESS (Foster): Yes.

7 MR. MICHAUD: And do you have any
8 edits, corrections, changes, updates or
9 clarifications to Exhibit 21 at this time?

10 THE WITNESS (Foster): I do. I have
11 two clarifications.

12 MR. MICHAUD: Go ahead.

13 THE WITNESS (Foster): The first
14 clarification to Exhibit 21 is to interrogatory --

15 MR. LYNCH: Use the mic. I can't hear
16 you.

17 THE WITNESS (Foster): The first
18 clarification is to Exhibit 21, Interrogatory 6f.
19 I am clarifying what the PILOT agreement is and
20 how it impacts the design of the facility. The
21 PILOT agreement is a contractual agreement between
22 Candlewood Solar and the Town of New Milford. The
23 PILOT agreement was included in attachment C of
24 the environmental assessment which was filed with
25 the petition in June of 2017. Specifically

1 section 12B addresses the zoning change required
2 by the town.

3 Section 12B of the PILOT agreement
4 reads, "The company consents to the voluntary
5 termination of the Major Planned Residential
6 Development District (MPRDD) that presently
7 applies to the property and application of the
8 R-80 zone to the property in its entirety in place
9 of the MPRDD, and the company agrees to execute
10 any documents reasonably requested by the New
11 Milford Zoning Commission to accomplish this
12 result."

13 I would also like to clarify to Exhibit
14 21, interrogatory 6g, Finding of Fact 224, and
15 Interrogatory 7, Finding of Fact 218. I would
16 like to clarify the terminology to the word
17 "visibility" in 6g and "shielding" in 7. 6g
18 refers to visibility to the west along Candlelight
19 Farms Airport and Fox Run. Interrogatory 7 refers
20 to shielding. Shielding does not necessarily mean
21 not visible. Shielding refers to limiting or
22 obscuring a view.

23 MR. MICHAUD: Does that conclude your
24 clarification?

25 THE WITNESS (Foster): It does.

1 MR. MICHAUD: Thank you.

2 THE WITNESS (Foster): Thank you.

3 MR. MICHAUD: And Mr. Walker, did you
4 prepare or cause to be prepared Exhibit 21?

5 THE WITNESS (Walker): Yes, I did.

6 MR. MICHAUD: And do you have any
7 edits, corrections, changes or clarifications at
8 this time?

9 THE WITNESS (Walker): No, I do not.

10 MR. MICHAUD: Thank you. And I'm going
11 to ask Mr. Bukowski, do you adopt Exhibit 21, as
12 clarified, today as your testimony?

13 THE WITNESS (Bukowski): Yes.

14 MR. MICHAUD: Same question for
15 Ms. Foster. Do you adopt this testimony, as
16 clarified, as your testimony today?

17 THE WITNESS (Foster): I do.

18 MR. MICHAUD: And Mr. Walker, do you
19 adopt this testimony as your testimony today?

20 THE WITNESS (Walker): I do.

21 MR. MICHAUD: Thank you. Candlewood
22 Solar LLC requests to submit Exhibit 21 as a full
23 exhibit on the record at this time.

24 MR. SILVESTRI: Does any party or
25 intervenor object to the admission of Candlewood

1 Solar LLC's new exhibit?

2 (No response.)

3 MR. SILVESTRI: Hearing none, the
4 exhibit is admitted.

5 (Petitioner's Exhibit II-B-21:
6 Received in evidence - described in index.)

7 MR. MICHAUD: Thank you.

8 MR. SILVESTRI: We'll begin with
9 cross-examination of Candlewood Solar by staff,
10 Ms. Walsh.

11 CROSS-EXAMINATION

12 MS. WALSH: Thank you. Good afternoon.
13 In your exhibit in response to Interrogatory
14 Number 2, you provided attachment B which is a
15 visibility analysis. Was this analysis based on
16 the originally proposed project and Petition 1312
17 or the approved project?

18 MR. MICHAUD: Could you repeat the
19 interrogatory number, please?

20 MS. WALSH: Response to Interrogatory
21 Number 2.

22 THE WITNESS (Bukowski): It was based
23 on the original.

24 MS. WALSH: And not the revised
25 approved configuration?

1 THE WITNESS (Bukowski): Correct.

2 MS. WALSH: And could you explain
3 briefly any differences that would be the results?

4 THE WITNESS (Bukowski): The main
5 differences were on the eastern side of the site
6 where during the process of approval there was a
7 cryptic vernal pool that was identified, so the
8 reconfigured array was basically pulled further
9 from that cryptic vernal pool to stay away from
10 that area.

11 MS. WALSH: Okay. So no material
12 differences from any other location besides the
13 eastern side?

14 THE WITNESS (Bukowski): Correct.

15 MS. WALSH: Okay. In responses to
16 Council interrogatories throughout you stated that
17 the proposed limits of work are being revised to
18 provide a minimum vegetative buffer of 50 feet
19 between the property line and the limit of work
20 for the majority of the array perimeter. Can you
21 elaborate on that?

22 THE WITNESS (Bukowski): Yes. So the
23 distance from the surrounding property lines or
24 the abutting property lines will be 50 feet to the
25 tree clearing line, and then further away from the

1 property lines will be the fence line and then the
2 solar array.

3 MS. WALSH: So that 50 foot buffer is
4 expected to be around the whole perimeter of the
5 property or the western side?

6 THE WITNESS (Bukowski): The whole
7 property, correct. And that will maintain
8 existing vegetation.

9 THE WITNESS (Foster): So I'd just like
10 to add two things to that. In the PILOT agreement
11 in Schedule B, Number 3, Candlewood Solar will
12 take out a surety construction bond in the amount
13 of \$100,000. And specifically as stated in Number
14 3 of Schedule B, the surety bond will be in effect
15 until one year after the commercial operation
16 date. This surety bond will cover the performance
17 and cost of any additional landscaping required to
18 be installed by the developer to address adverse
19 visual impacts attributable to construction,
20 installation and operation of the facility beyond
21 impact presented to the Town and the Connecticut
22 Siting Council by developer as determined by the
23 Connecticut Siting Council with input from
24 relevant town departments. Additionally, as
25 included in the conservation restriction figure,

1 part of the conservation restriction area is to
2 the north, northwest and to the east side, so that
3 area will be permanently conserved in its natural
4 state.

5 MR. CASAGRANDE: Mr. Chairman, I'm
6 going to object to that response and move to
7 strike as nonresponsive to the question. Also, it
8 lacks foundation. There is no conservation
9 restriction in this record.

10 MR. SILVESTRI: Attorney Casagrande,
11 I'm going to overrule at this point. I believe it
12 does pertain to landscaping and the visibility
13 aspect, and we'll move on from here.

14 MR. CASAGRANDE: Thank you.

15 MR. SILVESTRI: Thank you, sir.

16 MS. WALSH: And in mentioning the PILOT
17 agreement, is this agreement still valid?

18 MR. CASAGRANDE: Objection. It calls
19 for a legal conclusion.

20 MR. MICHAUD: We can answer that
21 question, your Honor. We are willing to answer
22 that question.

23 MR. SILVESTRI: Attorney Michaud, I'd
24 like you to respond to the objection, please.

25 MR. CASAGRANDE: Same objection. He's

1 not a sworn witness. He's not testifying.

2 MR. MICHAUD: Our witness panel is
3 prepared to answer that question even though
4 they're not attorneys.

5 MR. CASAGRANDE: Same objection.

6 MR. SILVESTRI: Ms. Walsh, could you
7 repeat that question again?

8 MS. WALSH: Is the PILOT agreement
9 still valid?

10 MR. MICHAUD: I don't think she's
11 asking to interpret the contract. I think the
12 question is whether it's valid or not. So there's
13 not a legal interpretation here.

14 MR. CASAGRANDE: I think that's a
15 distinction without a difference, Mr. Chairman.
16 They're asking for the witness' opinion on the
17 validity, i.e., legal propriety of this PILOT
18 agreement. That's an improper question.

19 MR. SILVESTRI: Attorney Casagrande,
20 the way I'm interpreting it, again, it pertains to
21 the visibility aspect of it because we just
22 discussed before where the PILOT agreement does
23 go. I think Mr. Walker could easily answer that
24 question as a yes or no, and then we could move
25 on.

1 THE WITNESS (Walker): The PILOT
2 agreement was signed between the town and the
3 Candlewood Solar, and it's in effect and still in
4 effect.

5 MR. SILVESTRI: Thank you. Continue.

6 MS. WALSH: In reference to the
7 response to Council Interrogatory Number 9, for
8 the purposes of zoning, would the solar facility
9 be considered a building with a maximum height of
10 35 feet?

11 THE WITNESS (Foster): I do not know
12 how the New Milford zoning regulations define
13 building. The maximum height of the solar panel
14 at a 12 degree tilt angle is 7 feet.

15 MS. WALSH: Okay. And just in response
16 to that question, you used the zoning regulations
17 which list the building height of 35 feet for all
18 setbacks from each of the sides?

19 MR. CASAGRANDE: I'm sorry, I couldn't
20 hear. I'm sorry, Mr. Chairman.

21 MR. SILVESTRI: Can you repeat that,
22 please?

23 MS. WALSH: In response to the
24 Interrogatory Number 9 question, Candlewood Solar
25 used the zoning regulations for the Town of New

1 Milford which lists the maximum building height of
2 35 feet. Is that correct?

3 THE WITNESS (Bukowski): We did include
4 Section 20-10 of New Milford zoning regulations
5 which includes a maximum building height of 35
6 feet in the R-80 district.

7 MS. WALSH: What is the distance
8 between the property line at 185 Candlewood
9 Mountain Road and the project limits of work?

10 THE WITNESS (Bukowski): It's hard to
11 scale off this figure, but it should be 50 feet.

12 MS. WALSH: Just in referring to Figure
13 1 in your responses, there's a black line that
14 shows the distance of the residence at 185
15 Candlewood Mountain Road to the limits of work.
16 So are you saying that between the property line
17 and that limits of work line is 50 feet?

18 THE WITNESS (Bukowski): It looks like
19 it's less than that from the scale. But again, as
20 we were saying before, the limit of work is going
21 to be adjusted so that it's 50 feet off of all
22 these property lines.

23 MS. WALSH: Is the project access road
24 an existing road?

25 THE WITNESS (Bukowski): Well, I would

1 call it an old car path more than an actual road.
2 Historically it has been used to access the fields
3 up at the top of the parcel.

4 MS. WALSH: What is the orientation of
5 the residential structures along Candlewood
6 Mountain Road compared to the solar project? What
7 direction does the front of each of these
8 residential structures face?

9 THE WITNESS (Bukowski): The fronts
10 face away from the solar array.

11 MS. WALSH: I have a list of locations,
12 and I'm going to ask you for an approximate
13 elevation for each of them.

14 195 Candlewood Mountain Road.

15 THE WITNESS (Bukowski): The survey
16 information we have shows an elevation of about
17 712 at Candlewood Mountain Road.

18 MS. WALSH: At 195 Candlewood Mountain
19 Road or just --

20 THE WITNESS (Bukowski): At the access
21 road.

22 MS. WALSH: Would you be able to give
23 an approximation of the elevation at 185
24 Candlewood Mountain Road?

25 MR. CASAGRANDE: I just ask for

1 clarification. When counsel says at 185
2 Candlewood Mountain Road, you mean like where the
3 house is?

4 MS. WALSH: The property. If it's a
5 range, then a range could be provided.

6 MR. CASAGRANDE: Thank you.

7 MR. SILVESTRI: Thank you, counselor.

8 THE WITNESS (Bukowski): I would say at
9 Candlewood Mountain Road the elevation should be
10 fairly similar, maybe a little bit lower. The
11 road does slope a little bit down from there.

12 MS. WALSH: At Candlelight Farms Inn?

13 THE WITNESS (Bukowski): It should be
14 fairly close as well.

15 MS. WALSH: Within do you have a range?

16 THE WITNESS (Bukowski): It's hard to
17 tell without surveying.

18 MS. WALSH: And Candlelight Farms
19 Airport?

20 THE WITNESS (Bukowski): That's quite a
21 bit lower.

22 MS. WALSH: Are you aware of any
23 binding executed contracts or restrictive
24 covenants that grant another person a private
25 right to a view or a vista across the solar

1 project parcels?

2 THE WITNESS (Foster): No.

3 THE WITNESS (Walker): What was the
4 question? I'm sorry.

5 MS. WALSH: Are you aware of any
6 binding executed contracts or restrictive
7 covenants that grants another person a private
8 right to a view across -- or a vista across the
9 solar project parcels?

10 THE WITNESS (Walker): I'm not aware of
11 that.

12 MS. WALSH: Is the April 12, 2018 FAA
13 no hazard determination letter based on the
14 revised project design or the one that was
15 approved by the Council or the original design?

16 THE WITNESS (Bukowski): I believe it
17 was the one approved by the Council.

18 MS. WALSH: Referencing the response to
19 Council Interrogatory 6a, part E, is the glare
20 analysis provided based on the revised project
21 design that was approved?

22 THE WITNESS (Bukowski): I believe so,
23 yes.

24 MS. WALSH: And was that glare analysis
25 conducted for Candlelight Farms Airport?

1 THE WITNESS (Bukowski): Yes.

2 MS. WALSH: In response to Council
3 Interrogatory Number 6, you state, "Where a lack
4 of screening is a concern, additional vegetative
5 screening may be installed to further minimize
6 visual impacts on abutting residential
7 properties." What areas are being considered for
8 additional vegetative screening?

9 THE WITNESS (Walker): We still need to
10 finish our analysis but any -- where Fox Run is
11 and Candlelight is, it looks like there might be
12 some visibility there, so that might be it. Our
13 other visibility results have shown no other
14 visibility, but if we find out that there is,
15 we'll also address that with the town. So we
16 haven't settled on that, but that's what we're
17 thinking right now.

18 MS. WALSH: And do you have any idea of
19 the type of vegetative screening that would be
20 installed?

21 THE WITNESS (Walker): I don't. We
22 haven't had someone evaluate that yet or --

23 THE WITNESS (Foster): We anticipate
24 using evergreens.

25 MS. WALSH: Evergreens?

1 THE WITNESS (Foster): Yes.

2 MS. WALSH: Okay. The response to
3 Council Interrogatory 6, section B, which was for
4 Finding of Fact Number 112, discusses the 350 foot
5 distance of the nearest residential structure,
6 which is the guest house at 183 Candlewood
7 Mountain Road from the project fence and 280 feet
8 from the limits of work to the guest house. Is
9 this measurement prior to the revision for the 50
10 foot buffer, or is that including the 50 foot
11 buffer already?

12 THE WITNESS (Bukowski): This includes
13 the 50 foot buffer.

14 MS. WALSH: Okay.

15 THE WITNESS (Bukowski): I'm sorry, it
16 does not include that 50 feet.

17 MS. WALSH: Okay. So to include the 50
18 foot buffer, do you simply take those two numbers,
19 350 feet and 280 feet, and add 50 feet to it, or
20 is it more complicated than that?

21 THE WITNESS (Bukowski): 50 feet to the
22 limit of work, but the fence line will vary
23 somewhat within that.

24 MS. WALSH: Okay.

25 MR. SILVESTRI: I'm actually confused

1 on that. If you have 350 feet, what happens with
2 the 50 foot buffer?

3 THE WITNESS (Bukowski): So the
4 approved design had the limit of work coinciding
5 with the property line, and what we're working
6 towards now is pushing that back, so there will be
7 a 50 foot offset to the limit of work. So instead
8 of the limit of work being at the property line,
9 it's now going to be 50 feet inside the property
10 line.

11 MR. HANNON: 15 or 50?

12 THE WITNESS (Bukowski): 50, five zero.

13 MR. HANNON: I thought you said 15.

14 MR. SILVESTRI: So 350 goes to 400?

15 THE WITNESS (Bukowski): No.

16 MR. SILVESTRI: That's where I'm
17 confused.

18 THE WITNESS (Foster): So the limit of
19 work will increase from 280 feet to 330 feet, and
20 the fence line will be greater than 330 feet.

21 MR. SILVESTRI: Then where does the 350
22 fall into play?

23 THE WITNESS (Foster): That was the old
24 design or the approved design the fence line to
25 the guest house.

1 MR. SILVESTRI: Okay.

2 MS. WALSH: So the fence line in that
3 area could stay at 350 feet, but the limits of
4 work are increasing?

5 THE WITNESS (Bukowski): Yes, the fence
6 line will likely change somewhat too.

7 MS. WALSH: Will change.

8 THE WITNESS (Walker): Just to clarify,
9 the limits of work is the area for clearing, and
10 that's the minimum distance between the cleared
11 area and the boundary. The fence line is further
12 away from the limits of work, so it's a greater
13 distance from the boundary. And then the array is
14 further away from that as a greater distance from
15 the boundary, just to be clear.

16 MS. WALSH: In response to Council
17 Interrogatory 6d, which relates to Findings of
18 Fact Number 219, while the proposed limits of work
19 are being revised based on the approved
20 configuration, are landscape plantings included in
21 that?

22 THE WITNESS (Bukowski): Plantings
23 haven't been specified as far as where they're
24 going to be yet.

25 MS. WALSH: And for Interrogatory 6e,

1 which is related to Finding of Fact 221, while
2 Candlewood is working with First Light to finalize
3 interconnection design, just looking at the
4 Finding of Fact as it was, is 221 accurate based
5 on the approved configuration?

6 THE WITNESS (Bukowski): As far as
7 visibility, we don't foresee any change.

8 MS. WALSH: Okay.

9 MR. SILVESTRI: I need to interrupt you
10 for a second and go back to the limit of work
11 aspect of it. Could you define limit of work?

12 THE WITNESS (Bukowski): Define limit
13 of work?

14 MR. SILVESTRI: Please.

15 THE WITNESS (Bukowski): Limit of work
16 is basically the same thing as the tree clearing
17 line. So all the trees will be cleared up to the
18 limit of work, and then between the limit of work
19 and the property line will stay as it is naturally
20 right now.

21 MR. SILVESTRI: So limit of work is not
22 the fence line; is that correct?

23 THE WITNESS (Bukowski): Correct. The
24 fence line is inside or further from the property
25 line than the limit of work.

1 MR. SILVESTRI: And limit of work is
2 not the beginning of where the solar panels are?

3 THE WITNESS (Bukowski): Correct. The
4 solar panels are even further from the fence line.
5 So it goes property line, limit of work, fence
6 line, solar array.

7 MR. SILVESTRI: Thank you. Ms. Walsh.

8 MS. WALSH: Thank you. In reference to
9 the response to Council Interrogatory Number 7,
10 which is related to Finding of Fact 218, the
11 question was answered in the context of the
12 revised project layout. Is the response referring
13 to the future revised configuration due to the
14 future revised stormwater plan?

15 THE WITNESS (Bukowski): Yes.

16 MS. WALSH: Can you characterize how
17 the shading analysis would change based on the
18 revised layout that was approved by the Council?

19 THE WITNESS (Bukowski): The shading
20 analysis hasn't been rerun. That would have to be
21 performed by Candlewood Solar.

22 MS. WALSH: Could you provide any kind
23 of characterization of how you would anticipate
24 the shading analysis changing based on the
25 approved configuration?

1 THE WITNESS (Bukowski): It's a little
2 bit hard to say because of the 50 foot offset.
3 The array itself is being redesigned, so the
4 design is going to have to account for some
5 shading loss.

6 MR. SILVESTRI: I need to interject on
7 that one too. In your response under attachment
8 D, the shading drawing that you had was E-101, if
9 I remember correctly, and that was the original
10 submittal that we had with the application. So if
11 I heard correctly, there is not a revision based
12 on what was approved by the Council for that
13 shading drawing?

14 THE WITNESS (Bukowski): No, the
15 shading analysis will have to be rerun based on
16 the updated design which would include that 50
17 foot offset.

18 MR. SILVESTRI: The updated design that
19 the Council approved, or the updated design that
20 you're working on?

21 THE WITNESS (Bukowski): The updated
22 design that we're working on.

23 MR. SILVESTRI: So the shading aspect
24 of it that was approved, is that in here?

25 THE WITNESS (Bukowski): Yes, I believe

1 that's the exhibit. Sorry, it looks like what we
2 submitted was based on the original design which
3 was submitted with the EA, and then that was
4 subsequently revised to stay away from that
5 cryptic vernal pool. So we would have to check on
6 that analysis.

7 MR. SILVESTRI: Continue. I might have
8 another one, but continue for now. Thank you.

9 MS. WALSH: Okay. Based on that
10 analysis, what is meant by shading extents which
11 is pointed to with an arrow on the map?

12 THE WITNESS (Bukowski): My
13 understanding is that at certain times of day
14 those areas would experience shading from the
15 surrounding trees that would be left in place.

16 THE WITNESS (Walker): So the engineers
17 pick a certain time of day and a certain season,
18 and they pick four of them throughout the year.
19 And I don't remember exactly what it is. But
20 their analysis then tries to look at particular
21 examples and pick that as the extent. I could
22 tell you what the -- I could ask the engineers to
23 say what days and times that that shading analysis
24 applied to.

25 MS. WALSH: There is a note in the

1 corner that specifies dates and times. But just
2 based on the shading extents, which looks like the
3 kind of orange diagonal line area, is this map
4 showing that any vegetation within that shading
5 extent area may provide shading on the solar
6 panels that are shown in this original design?

7 THE WITNESS (Walker): Yes. So the
8 shading on the edge of the solar panels, that
9 means during those times there will be shading of
10 the panels at those times. So other times there
11 will not be shading.

12 MS. WALSH: From?

13 THE WITNESS (Walker): From the trees.

14 MS. WALSH: From trees that are
15 anywhere within this shading extent area?

16 THE WITNESS (Walker): From the trees
17 that are there and expected to be part of the
18 design. So no change in the -- the engineers are
19 looking at the tree line, and then are determining
20 from that tree line on those days as to where the
21 shading will take place. On other days in the
22 summer there won't be shading there. I'm not
23 sure. I may not be getting to your question. I'm
24 sorry.

25 MS. WALSH: I was just trying to

1 understand what shading extents means. As you can
2 see from this plan, the shading extents looks
3 likes it extends onto adjacent properties; is that
4 true?

5 THE WITNESS (Walker): Oh, yes, that's
6 from the existing trees.

7 MS. WALSH: Existing trees on adjacent
8 properties?

9 THE WITNESS (Walker): Well, I'm not
10 the engineer that did the analysis, but whatever
11 existing trees are there, that's the extent of
12 shading from those trees.

13 MS. WALSH: So would existing trees on
14 adjacent properties potentially shade the solar
15 array?

16 THE WITNESS (Walker): I don't know the
17 answer to that without asking the engineers.
18 Regardless, the trees are there, and that's the
19 shading.

20 MS. WALSH: Have you reviewed the
21 photos that were included with the town's prefile
22 testimony submitted and done by Milone & MacBroom?

23 THE WITNESS (Foster): We have reviewed
24 them.

25 MS. WALSH: Okay. Thank you. So

1 included are photos with captions. And I'm
2 wondering if you would be able to generally say
3 whether you agree with the captions. Several
4 refer to property lines and potential locations of
5 installations. Would you agree with the captions
6 that are written with the photographs?

7 THE WITNESS (Foster): So the 11 by 17
8 figure that is included with the Milone & McBroom
9 prefile testimony I'm having a very difficult time
10 identifying where these photos were taken.

11 MS. WALSH: Are you referring to the
12 map entitled Visual Assessment Analysis Photo
13 Locations Map?

14 THE WITNESS (Foster): Correct.

15 MS. WALSH: Okay. I'm assuming the
16 arrows with the circles are the photo of locations
17 that say, for example, B1 and B2 on the south
18 side?

19 MR. CASAGRANDE: Sorry. Is there a
20 question pending?

21 MS. WALSH: I was asking for a general
22 characterization from the witnesses' knowledge
23 whether the captions next to the photos were
24 correct.

25 THE WITNESS (Foster): So with respect

1 to where I believe photo B1 and photo B2 were
2 taken, they are south of the array on Mr. Dunham's
3 property, and I have not been on Mr. Dunham's
4 property.

5 MS. WALSH: Correct. So you are unable
6 to --

7 THE WITNESS (Foster): I'm unable.

8 MS. WALSH: -- the captions and --

9 THE WITNESS (Foster): Correct.

10 MS. WALSH: Okay. That's fine. I have
11 no further questions. Thank you.

12 MR. SILVESTRI: Thank you, Ms. Walsh.
13 We'll continue with Mr. Hannon.

14 MR. HANNON: Thank you. I just have a
15 couple just for clarification purposes. And I'm
16 hoping I don't run into an objection on this. But
17 based on my understanding of what the applicant's
18 position is, you still feel as though the PILOT
19 agreement is in place and that number 3 is a
20 landscaping surety performance bond in a minimum
21 amount of \$100,000, and that if additional work
22 needed to be done on the site within I think it's
23 three years after operation, then there is money
24 available for the town to pull that money.
25 Correct?

1 THE WITNESS (Walker): That's correct.
2 And we have proposed the bond. We're in the
3 process of preparing the bond.

4 MR. HANNON: And then the other
5 question going back to the 50 foot buffer. So the
6 original plans pretty much showed the clearing up
7 to the property line, probably the southern and
8 maybe the southwestern portion of the property.
9 It didn't go all the way up because of some of the
10 wetlands there and some of the steep slopes going
11 further up. So right now the proposal is around
12 the entire property for the solar project, at
13 least in the southern side and the western side,
14 the plan is to maintain an existing 50 foot
15 natural buffer in that area?

16 THE WITNESS (Bukowski): Yes.

17 MR. HANNON: Okay. That's all I have
18 on this.

19 MR. SILVESTRI: Thank you, Mr. Hannon.
20 Mr. Harder.

21 MR. HARDER: Thank you, Mr. Chairman.
22 I have a couple questions. I think it's generally
23 on the same issue of the 50 foot buffer.
24 Interrogatory Number 6, in your response to
25 Interrogatory Number 6, it references the Town of

1 New Milford Zoning Commission comments and
2 recommendations, one of which was to require a 100
3 foot landscape buffer along Candlewood Mountain
4 Road and common property boundaries with
5 single-family homes. But it has been discussed
6 here today included in the responses to those
7 interrogatories it looks like there's going to be
8 a 50 foot buffer. And my question is, has the
9 Town of New Milford, are they no longer requiring
10 or requesting a 100 foot buffer?

11 THE WITNESS (Foster): I don't know if
12 they are still requesting a 100 foot buffer. In
13 reviewing the zoning regulations of the Town of
14 New Milford, the 100 foot buffer applies to
15 specific zones and districts. The project site,
16 the parcel, is not located within those zones or
17 districts which is referenced in the zoning
18 regulation either as it is currently zoned as
19 major -- as the major planned residential
20 development district or under the R-80 which is
21 what the town is requesting is that the parcel be
22 rezoned as.

23 MR. HARDER: So it seems like what
24 we're expected to do is read between the lines.
25 On the one hand, the zoning commission asks for a

1 100 foot buffer, and then they are part of a
2 process that's changing the zoning of the property
3 to R-80 which has a front setback anyway of 50
4 side, 40, rear 50, and so it sounds like we're to
5 assume that they are okay with the 50 foot buffer.
6 I guess I don't know the answer. It seemed like
7 they would have known what their zoning
8 requirement was to begin with when they asked for
9 the 100 foot buffer, and I'm wondering if they are
10 in the position now to say the 50 foot is okay,
11 but it sounds like you can't answer that.

12 I guess that's all the questions I
13 have. Thank you.

14 MR. SILVESTRI: Thank you, Mr. Harder.
15 Mr. Edelson.

16 MR. EDELSON: I have no further
17 questions.

18 MR. SILVESTRI: Thank you. Mr.
19 Levesque.

20 MR. LEVESQUE: No additional questions.
21 They've already been passed.

22 MR. SILVESTRI: Thank you. And Mr.
23 Lynch.

24 MR. LYNCH: I did have a question on
25 the limit of work, but you've already answered

1 that for the Chairman.

2 I do have a curiosity question that's
3 on Interrogatory Number 5. It says you were
4 approached by a local forester who asked to take
5 the wood. So there's no remuneration anywhere
6 here, they don't pay you, you don't pay them to
7 remove the wood?

8 THE WITNESS (Walker): Well, we've
9 actually had several, more than one, local
10 forester come to us, and we haven't gotten to that
11 point of what the cost is to remove it or what the
12 benefit is to remove it except that we did agree
13 in the PILOT agreement to make sure that we did
14 our best to hire local contractors, and that's
15 just part of it.

16 MR. LYNCH: Thank you. No questions,
17 Mr. Chairman.

18 MR. SILVESTRI: Thank you, Mr. Lynch.
19 I have few for you.

20 Mr. Harder.

21 MR. HARDER: Sorry. Yes. Thank you.
22 I remembered my other question.

23 MR. SILVESTRI: Go ahead.

24 MR. HARDER: You discussed the
25 provision of vegetative screenings on various

1 areas, if the natural vegetation wasn't
2 sufficient, you would agree to put in vegetative
3 screening. Could you describe what that would
4 consist of? And I guess the main point I'm
5 getting at is, at what distances would that be
6 expected to be effective?

7 I'm thinking of, if you're looking from
8 Candlewood Mountain Road, for example, to the
9 extent that there's any part of the solar array
10 areas that would be visible from the road, you
11 know, would arborvitae be sufficient?

12 But also my understanding is that some
13 of the other parties own properties that rise up
14 in elevation, so it wouldn't be the same issue as
15 if they were standing on Candlewood Mountain Road,
16 but if they were on a part of their property
17 that's an elevation that may be equal to or high
18 enough, anyway, where they could see the arrays.
19 Are you talking about providing screening for
20 those situations, what may be, you know, a
21 distance from Candlewood Mountain Road but at a
22 higher up elevation so that they could see it, see
23 the array from that area?

24 THE WITNESS (Walker): We haven't done
25 an analysis of that. We don't know how much

1 screening there is. But let's just say one of the
2 neighbors on Candlewood Mountain Road cleared
3 their property and was up on the edge, and there
4 is a concern about visibility, then we would
5 consider as part of our agreement with the town
6 and the PILOT to add additional screening. We've
7 already discussed that internally, and that's what
8 we will do. We're seeking to be good neighbors is
9 the bottom line. We don't have any permission to
10 go on the neighbors' properties, so we have not
11 been able to evaluate it.

12 MR. HARDER: But you're committing to
13 establishing or planting trees or whatever. I'm
14 wondering how tall would the trees have to be to
15 screen the property that someone owns where
16 they're at a higher elevation, so that the typical
17 situation you think of arborvitaes, 6 to 8 foot
18 arborvitaes, would be meaningless in that
19 situation.

20 THE WITNESS (Walker): I'm not sure
21 what neighbors are above Candlewood Mountain. So
22 all the neighbors that I'm thinking of are
23 significantly below Candlewood Mountain.

24 MR. HARDER: All parts of their
25 property?

1 THE WITNESS (Walker): Well, parts of
2 their property are still below where the array is.
3 But if the array can be seen from their property,
4 it's on the edge of their property and you sit
5 down and talk with them and you put up a
6 screening. We will do that.

7 MR. HARDER: Thank you. Thank you, Mr.
8 Chairman.

9 MR. SILVESTRI: Thank you, Mr. Harder.

10 If you could look at Finding of Fact
11 Number 218 from the Council. It states in part,
12 and I'll quote, "The solar array would also be
13 shielded in all directions by tree buffers." But
14 in turning to the March 5, 2019 court order, the
15 bottom of page 2 comments on the tree buffers
16 stating, and I'll quote also, "The testimony in
17 this court on January 9, 2019 indicates that the
18 foregoing statement is incorrect due to the
19 intended tree removal by Candlewood Solar LLC."

20 Could you explain the apparent
21 difference between finding of fact 218 and that
22 statement on the court order?

23 THE WITNESS (Foster): So as I
24 mentioned previously, Finding of Fact 218 in
25 Exhibit 21, Interrogatory 7, referenced the word

1 "shielded."

2 MR. SILVESTRI: Actually, I'm going
3 back to the original finding of fact, not the
4 interrogatory response.

5 THE WITNESS (Foster): Okay. Could you
6 please provide the reference in the court order
7 again?

8 MR. SILVESTRI: It's on page 2 towards
9 the bottom. It begins, "The testimony in this
10 court on January 9, 2019 indicates." Did you find
11 that part?

12 THE WITNESS (Foster): Yes, I did.
13 Thank you. So I believe Exhibit B that's being
14 referred to there is the environmental assessment,
15 and specifically it's talking about View Point
16 Number 3, Candlewood Farms on page 27 of the EA.
17 So here the existing trees, the reference to the
18 existing trees is with respect to existing trees
19 on and/or off the project property would provide a
20 visual buffer from the solar array.

21 MR. SILVESTRI: Just to clarify, you
22 can see what I'm struggling with that that finding
23 of fact has "shielded in all directions by tree
24 buffers," but somehow in the court it's "intended
25 tree removal by Candlewood," and that's where they

1 had that the comment is incorrect. That's what
2 I'm struggling with.

3 THE WITNESS (Foster): All right.
4 Okay. So my understanding is that at that
5 proceeding it was understood that the limit of
6 works were going up to the property line, and that
7 currently is not accurate. There will be the 50
8 foot buffer or setback from the property line to
9 the limit of work.

10 MR. SILVESTRI: Let me see if I could
11 keep going on this one with additional questions I
12 have for you. If you could turn to attachment D,
13 the shading exhibit we talked about, E-101. Let
14 me ask some questions on this that might clarify
15 some of the things. Do you have that in front of
16 you?

17 THE WITNESS (Foster): I have
18 attachment D in front of me.

19 MR. SILVESTRI: If you look at the
20 upper left of the drawing, there's the reference
21 shading extents tip or typical, and it points to a
22 crosshatched area. Does the crosshatched area
23 represent trees?

24 THE WITNESS (Walker): I'm not the
25 engineer that did it, but it generally does not

1 represent trees. It represents shading from the
2 height of nearby trees. So if a nearby tree is 70
3 foot high, then that represents the shading from a
4 70 foot tree that's nearby.

5 MR. SILVESTRI: And the trees could be
6 anywhere there?

7 THE WITNESS (Walker): Could be
8 anywhere there or off that shaded area.

9 MR. SILVESTRI: Okay. Staying with
10 that, within that crosshatched area there's a
11 dotted line, and it's labeled on the other side,
12 it says limits of tree clearing typical. My
13 understanding is that any trees from that dotted
14 line to the proposed panel of arrays would be
15 removed; is that correct?

16 THE WITNESS (Walker): This says it's
17 the tree clearing area?

18 MR. SILVESTRI: It says limits of tree
19 clearing on the top right dotted line.

20 THE WITNESS (Walker): That's correct.

21 MR. SILVESTRI: So anything that would
22 be towards the panels in either direction those
23 trees would be removed?

24 THE WITNESS (Walker): Between the
25 panels and that line the trees will be removed.

1 MR. SILVESTRI: Got you. Okay. With
2 those trees removed, do you have any idea how much
3 shading would be left?

4 THE WITNESS (Walker): So this shading
5 shows the net result of the nearby trees. So this
6 assumes that trees have been removed in that area.

7 MR. SILVESTRI: This drawing does?

8 THE WITNESS (Walker): Yes.

9 MR. SILVESTRI: All right. But the
10 shading does not necessarily apply to screening;
11 is that correct?

12 THE WITNESS (Walker): If we installed
13 screening hedges you mean or --

14 MR. SILVESTRI: No, just as is with the
15 shading diagram, it doesn't necessarily mean that
16 there's screening along that whole crosshatched
17 area?

18 THE WITNESS (Walker): It means that
19 there are trees of a sufficient height during this
20 time frame, February 21st, and so on and so forth,
21 that will cause shading because of their height
22 and the branches, and if they're evergreens the
23 pine needles, those kinds of things.

24 MR. SILVESTRI: But again, not
25 necessarily screening?

1 THE WITNESS (Walker): It's not a
2 screening analysis, that's correct.

3 MR. SILVESTRI: Let me have you turn
4 then to Milone & MacBroom's submittal, in
5 particular, their drawing number 5 of 6. They
6 have listed existing conditions and what they
7 depict as proposed conditions occurring from, I
8 believe, it's Cross Section D. So in their
9 existing conditions there's trees on the hill, if
10 you will, and proposed conditions is a direct line
11 of sight to where the proposed solar panels would
12 be. Essentially, do you agree that this would be
13 representative of post-construction?

14 THE WITNESS (Walker): I don't know if
15 this includes the 50 foot buffer. I would have to
16 ask one of our engineers. I'm sorry.

17 MR. SILVESTRI: So in your opinion it
18 may or may not?

19 THE WITNESS (Walker): That's correct.

20 THE WITNESS (Foster): The figure, the
21 Cross Section D, 5 of 5 in the Milone & MacBroom
22 testimony, it shows clearing up to the property
23 line, so it does not include the currently
24 proposed 50 foot buffer.

25 MR. SILVESTRI: Okay. That's all the

1 questions I have for you at this point. I just
2 want to make sure that Council members and staff
3 are still okay.

4 MS. WALSH: Yes.

5 MR. SILVESTRI: All right. We'll move
6 on then. Attorney Casagrande.

7 CROSS-EXAMINATION

8 MR. CASAGRANDE: My questions will be
9 directed to the panel, and you can determine which
10 would be the appropriate person to respond.

11 MR. LYNCH: Could you speak into the
12 mic? I can't hear you over here.

13 MR. CASAGRANDE: Yes, sir. I'm sorry.
14 I said my questions will be referred to the panel,
15 and obviously they can determine which person
16 would be appropriate to respond.

17 MR. SILVESTRI: Fair enough.

18 MR. CASAGRANDE: Thank you. The latest
19 set of site plans that you submitted to this
20 Council were the December 19, 2018 Wood site plans
21 and drawings for construction, correct?

22 THE WITNESS (Bukowski): Yes, the plans
23 submitted with the D&M plan.

24 MR. CASAGRANDE: Right. Nothing since
25 then?

1 THE WITNESS (Bukowski): Correct.

2 MR. CASAGRANDE: And you would agree
3 that based on those available site plans, the Wood
4 site plans, the array is as close as 75 feet from
5 the boundaries of the properties along Candlewood
6 Mountain Road, true?

7 THE WITNESS (Bukowski): I can't recall
8 those dimensions.

9 MR. CASAGRANDE: And you also agree
10 that there are drainage improvements which are
11 proposed in between the area of the array and the
12 property boundaries, as proposed in those plans.
13 Correct?

14 THE WITNESS (Bukowski): Yes.

15 MR. CASAGRANDE: And those drainage
16 improvements, at least as proposed in those plans,
17 would require clearing?

18 THE WITNESS (Bukowski): Yes.

19 MR. CASAGRANDE: And at least as of the
20 time of the Siting Council's decision to approve
21 your project in December of 2017, you proposed no
22 landscape buffer around the array, correct?

23 THE WITNESS (Bukowski): Well, I think
24 the language was still in the PILOT agreement, but
25 there was nothing shown on the plans.

1 MR. CASAGRANDE: That's not my
2 question. Do you propose nothing to the Siting
3 Council in terms of landscaped buffers around the
4 array?

5 THE WITNESS (Bukowski): I don't
6 believe we did.

7 MR. CASAGRANDE: In fact, Finding of
8 Fact Number 219 says, does it not, "Candlewood
9 Solar does not propose landscape plantings around
10 the solar facility"?

11 THE WITNESS (Bukowski): That's what it
12 says, yes.

13 MR. CASAGRANDE: And that was a true
14 statement as far as your position was at that
15 time, right?

16 THE WITNESS (Bukowski): Yes.

17 MR. CASAGRANDE: All right. Now,
18 Council and the members of the Council asked you
19 several questions about your responses to the
20 interrogatories which for the record is Candlewood
21 Solar Exhibit 21. If you go to your response to
22 Interrogatory 3, you're referring to what is
23 Figure 1 in that response. And that Figure 1 is
24 based on the Wood plans that were dated as of
25 December, correct?

1 THE WITNESS (Bukowski): Yes, that's
2 right.

3 MR. CASAGRANDE: Okay. In fact, Figure
4 1 is in fact -- was in fact prepared by Wood; was
5 it not?

6 THE WITNESS (Bukowski): It was.

7 MR. CASAGRANDE: And as Figure 1 shows,
8 and as you admit in your response, "Along the
9 western boundary," i.e., the boundary with the
10 properties along Candlewood Mountain Road, "the
11 limit of work line corresponds to the facility
12 property line." Right?

13 THE WITNESS (Bukowski): Yes, at some
14 locations on the west --

15 MR. CASAGRANDE: Well, almost all of
16 them, right?

17 THE WITNESS (Bukowski): Based on this
18 figure, yes.

19 MR. CASAGRANDE: In fact, you proposed
20 up to 3,000 feet of clearing along the western
21 boundary of the property line as of December of
22 last year, just a few months ago. Right?

23 THE WITNESS (Bukowski): Yes.

24 MR. CASAGRANDE: And that means you're
25 proposing tree clearing and clearing of whatever

1 the vegetation is in there, again, as of December
2 2018, the latest set of plans we have along 3,000
3 feet of the common boundary. Correct?

4 THE WITNESS (Bukowski): Anywhere where
5 the limit of work line matches the property line,
6 yes.

7 MR. CASAGRANDE: Which is around 3,000
8 feet, right?

9 THE WITNESS (Bukowski): I don't have
10 that number.

11 MR. CASAGRANDE: Do you have any reason
12 to disagree with it?

13 THE WITNESS (Bukowski): It looks about
14 right. I could try to scale it but --

15 MR. CASAGRANDE: So, as you said, you
16 have submitted no site plan to this Council after
17 the Wood plan of December 2018, correct?

18 THE WITNESS (Bukowski): Correct.

19 MR. CASAGRANDE: You didn't submit a
20 revised site plan when you proposed your D&M plan
21 earlier this year, correct?

22 THE WITNESS (Bukowski): Yes.

23 MR. CASAGRANDE: And you haven't
24 submitted a site plan in preparation for this
25 hearing, correct?

1 THE WITNESS (Bukowski): Right.

2 MR. CASAGRANDE: And you would agree
3 with me, would you not, that the Wood plans or the
4 current proposed plans are based on GIS data.
5 Correct?

6 THE WITNESS (Bukowski): No.

7 MR. CASAGRANDE: You would agree with
8 me that they're not site specific and topography
9 surveys, correct?

10 THE WITNESS (Bukowski): No, they are
11 based on topography surveys.

12 MR. CASAGRANDE: So have you read
13 Mr. McDermott's prefile testimony?

14 THE WITNESS (Bukowski): Yes.

15 MR. CASAGRANDE: And you see he says
16 that this is not based on site specific
17 topographic surveys, you understand he said that?

18 THE WITNESS (Bukowski): We
19 performed -- yes, we did perform a topographic
20 survey of the site.

21 MR. CASAGRANDE: And where is that?

22 THE WITNESS (Bukowski): It's
23 referenced in the base plans. We hired a
24 subcontractor, Robert Green Associates.

25 MR. CASAGRANDE: Okay. But is it here,

1 is it before this Council?

2 THE WITNESS (Foster): It's included in
3 the environmental assessment.

4 MR. CASAGRANDE: Okay. But the plans
5 that Wood prepared as of December 2018 were not
6 based on -- do you disagree with me that they're
7 not based on a site specific topographical survey?

8 THE WITNESS (Bukowski): They are based
9 on a site specific topographical survey.

10 MR. CASAGRANDE: Would you agree with
11 me that there are inherent inaccuracies in relying
12 on GIS data to show topographical and other
13 configurations on the property?

14 THE WITNESS (Bukowski): Sometimes.

15 MR. CASAGRANDE: If I could invite your
16 attention to your response to Interrogatory 3, you
17 say that the plans are being revised to address,
18 quote, comments related to stormwater management.
19 Do you see that?

20 THE WITNESS (Bukowski): Yes.

21 MR. CASAGRANDE: And that's a
22 reference, is it not, to the fact that DEEP
23 rejected your general permit registration --

24 MR. MICHAUD: I'm going to object to
25 that question.

1 MR. SILVESTRI: Counselor, we're not
2 talking stormwater, per se. If you're going to
3 the visibility part of it, then that's fine.

4 MR. CASAGRANDE: If I may have some
5 leeway, Mr. Chairman? I do intend to tie that
6 connection in because of revisions to the
7 stormwater management plans may well result, and
8 Mr. McDermott will testify, that may well result
9 in a change to the buffers and the screening. So
10 I think it's relevant.

11 MR. SILVESTRI: I'll grant you a little
12 leeway, but let's keep it small and continue.

13 MR. CASAGRANDE: Okay. So DEEP
14 rejected those plans on March 13th, correct?

15 THE WITNESS (Bukowski): I don't recall
16 the date.

17 MR. CASAGRANDE: But it sounds right,
18 right?

19 THE WITNESS (Bukowski): (Nodding head
20 in the affirmative.)

21 MR. CASAGRANDE: That's two months ago,
22 right?

23 THE WITNESS (Bukowski): (Nodding head
24 in the affirmative.)

25 THE COURT REPORTER: That was a yes?

1 THE WITNESS (Bukowski): Yes.

2 THE COURT REPORTER: Thank you.

3 MR. CASAGRANDE: And in those two
4 months you have not submitted to this Council any
5 revised plans, correct?

6 THE WITNESS (Bukowski): Correct.

7 MR. CASAGRANDE: And you say that the
8 revised plans will propose a 50 foot setback from
9 the property line to the limit of work, correct?

10 THE WITNESS (Bukowski): Yes.

11 MR. CASAGRANDE: And you say in your
12 response to Interrogatory 6.a.b. regarding
13 Findings of Fact 30 you say, quote, natural
14 screening will be left in place, closed quote,
15 except where, quote, lack of screening is a
16 concern, closed quote. Do you see that?

17 THE WITNESS (Bukowski): Yes.

18 MR. CASAGRANDE: And I think you
19 testified in response to questions from the staff
20 and the Council that you have not yet completed an
21 evaluation of the density or the quality of the
22 existing vegetation on the site, right?

23 THE WITNESS (Bukowski): That's right.

24 MR. CASAGRANDE: When is that going to
25 happen?

1 THE WITNESS (Bukowski): We don't have
2 an exact date yet.

3 MR. CASAGRANDE: Why wouldn't you think
4 it would be appropriate to have that study
5 prepared and submitted to this Council to aid it
6 in terms of --

7 MR. MICHAUD: I'm going to object to
8 that question. He's badgering the witness.

9 MR. CASAGRANDE: May I finish?

10 MR. MICHAUD: No. I object to it.
11 He's badgering the witness.

12 MR. SILVESTRI: Counselor, I believe
13 the trend of where that's going is they need to
14 satisfy another department, in this case DEEP,
15 before they would come back to us with anything
16 that's revised. I believe that's the trend, and
17 I'd like to continue from there.

18 MR. CASAGRANDE: Thank you,
19 Mr. Chairman.

20 You testified that you have not yet
21 determined whether the density or quality of the
22 existing vegetation is sufficient to provide
23 screening from the adjacent properties, fair
24 statement?

25 THE WITNESS (Bukowski): Yes.

1 MR. CASAGRANDE: And when do you intend
2 to make that determination?

3 THE WITNESS (Walker): Could I just ask
4 a question? What do you mean by "adjacent
5 properties"? From which part of the adjacent
6 properties, in other words, that the adjacent
7 property owners will give us permission to have
8 our subcontractors go on the properties and make
9 an evaluation? I'm uncertain as to what you're
10 asking.

11 MR. CASAGRANDE: Well, we're not
12 talking about the adjacent properties on
13 Candlewood Mountain Road being required to provide
14 the buffer; are we, sir?

15 THE WITNESS (Walker): No, I'm just
16 trying to understand your question. I don't
17 understand your question. Could you be more
18 specific so I can understand your question?

19 MR. CASAGRANDE: I'll try.

20 THE WITNESS (Walker): Thank you so
21 much.

22 MR. CASAGRANDE: My question is, have
23 you yet conducted a valuation of the sufficiency
24 of the vegetation on your side of the property
25 line to provide screening from any part of the

1 adjacent properties, have you done that yet?

2 THE WITNESS (Foster): No.

3 THE WITNESS (Walker): I guess the
4 answer is no.

5 MR. CASAGRANDE: Why not?

6 THE WITNESS (Walker): As was stated,
7 we are going through a complete redesign, and when
8 we complete that redesign, then we'll be able to
9 do another analysis.

10 MR. CASAGRANDE: And are you proposing
11 to have this hearing adjourned so that when you
12 complete that redesign we can come back and the
13 town --

14 THE WITNESS (Walker): No.

15 MR. CASAGRANDE: Let me just finish the
16 question -- so that the town and Rescue Candlewood
17 Mountain, my clients, will then have an
18 opportunity to review that redesign before the
19 Council makes its findings on visibility and
20 buffer?

21 THE WITNESS (Walker): The redesign
22 will be greater buffering and better or less
23 visibility than the existing -- than what was
24 already proposed.

25 MR. CASAGRANDE: And I'm sure you

1 intend to make that happen. But my question is,
2 do you propose coming back here with that redesign
3 so that the Council and my clients can review that
4 determination?

5 MR. MICHAUD: I'm going to object to
6 this question. It's outside the scope of the
7 court remand.

8 MR. MICHAUD: I think it's precisely
9 relevant to the court remand.

10 MR. SILVESTRI: Let me reiterate that
11 the remand on the court goes back to what was
12 approved by the Council back in December, and we
13 need to stay within those parameters.

14 MR. CASAGRANDE: Correct. Could I have
15 the question read back, please?

16 (Record read by the court reporter.)

17 MR. CASAGRANDE: And I just, Mr.
18 Chairman, respectfully my position would be that
19 the answer to that question is relevant because
20 it's our position that unless the Council can
21 evaluate the redesign to see whether in fact it is
22 true that the buffer, redesigned buffer will be
23 adequate or what it is because the court basically
24 said I don't know what the buffer is going to be,
25 I'm not sure how the Council can make a

1 determination on the adequacy of the buffer.

2 MR. SILVESTRI: I appreciate your
3 comments, counselor. What I'm looking at is, is
4 what the court is asking us to do specifically
5 going back to identifying the findings of fact
6 that were written down, the numbers that are
7 there, the broad statement of visibility that was
8 also presented in the opinion, and I really want
9 to stay in that aspect of it. When we go into
10 what could happen in the future, a lot of things
11 could happen in the future, and there could be a
12 revision of the D&M plan coming back depending on
13 what the applicant does down the road, but I need
14 to stay within what was asked by the court.

15 MR. CASAGRANDE: Fair enough. Thank
16 you.

17 MR. SILVESTRI: Thank you, sir.

18 MR. CASAGRANDE: You propose a 50 foot
19 buffer because you point to the PILOT agreement
20 with the town and you say that you're planning on
21 having the zoning commission of the town return
22 the property to an R-80 single family residential
23 district zone, correct?

24 THE WITNESS (Walker): Correct. As
25 part of the PILOT agreement, the town insisted

1 that the property no longer be a multi-family high
2 density residential property or that the property
3 owners after decommissioning could revise the use
4 of that property for some high density use. So
5 they required that it be made low density which
6 the property owners weren't keen on because they
7 had hoped to redevelop it, but they, as part of
8 the PILOT agreement, they agreed to R-80, that's
9 correct.

10 MR. CASAGRANDE: And that's going to
11 happen 20 years from the project --

12 THE WITNESS (Walker): What's going to
13 happen in 20 years?

14 MR. CASAGRANDE: The -- withdrawn.

15 For 20 years this property, your
16 property, Candlewood Solar's property, is going to
17 be used for a power generation plant, correct?

18 THE WITNESS (Walker): For a solar PV
19 project, and we agreed that we would immediately,
20 as soon as we get the project approved, change it
21 to R-80, and that's what we agreed to.

22 MR. CASAGRANDE: But the changing of
23 the zone to R-80 is not going to have any effect
24 on the fact that this is going to be used as an
25 industrial power plant for 20 years, correct? I

1 think you can answer that yes or no.

2 THE WITNESS (Walker): I take issue
3 that's an industrial power plant but --

4 THE WITNESS (Foster): It will be used
5 for a renewable energy facility.

6 MR. CASAGRANDE: Correct but --

7 THE WITNESS (Walker): I assume people
8 in New Milford have solar PV on their house, on
9 their roofs and in their yards, and I don't know
10 if they consider that industrial.

11 MR. CASAGRANDE: I'll move to strike
12 that response.

13 MR. SILVESTRI: I'm not sure where
14 we're going, counselor, on the visibility part
15 when we're talking industrial solar.

16 MR. CASAGRANDE: Because it goes
17 directly to what they're proposing to this Council
18 as the buffer.

19 THE WITNESS (Foster): Well, there is
20 no stacks. There is no plume associated, no
21 visible plume, which is what you would see from a
22 natural gas, coal, oil-fired power generation
23 facility. The maximum height of these solar
24 panels is 7 feet at a 12 degree tilt.

25 MR. CASAGRANDE: That's not my

1 question. My question is, do you not agree that
2 this is an industrial use of the property?

3 THE WITNESS (Walker): I do not agree.
4 Neither do I agree that if it's on -- if solar PV
5 is on a residential property or on a school or on
6 a parking lot that that's an industrial use.

7 MR. CASAGRANDE: So clearly we can all
8 agree that a solar array on a house is not an
9 industrial use, we can agree on that; correct?

10 MR. MICHAUD: I'm going to have to
11 object --

12 MR. SILVESTRI: Counselor, I'm still
13 not sure where we're going. I'd rather go back to
14 visibility as opposed to trying to speculate what
15 we have on a house or how a solar farm might
16 differ from a bona fide fossil fuel power plant.
17 I'm confused there, and I'd like to try to change
18 the pattern to why don't you stay with what we
19 need for the visibility aspect.

20 MR. CASAGRANDE: Let me try it this
21 way, Mr. Chairman. Thank you.

22 You rely on the zoning regulations
23 which say that for residential uses, abutting
24 other residential uses, there should be a 50 foot
25 buffer, that's the whole premise of your proposal

1 for a 50 foot buffer; is it not?

2 THE WITNESS (Foster): The 50 foot
3 buffer is based on the zoning of the parcel.

4 MR. CASAGRANDE: Right. So the answer
5 to my question is yes, right? I'll move on.

6 You also agree that the regulations
7 call for a 100 foot buffer when an industrial use
8 abuts a residentially zoned parcel like these are?

9 THE WITNESS (Foster): No, I do not.

10 MR. CASAGRANDE: You don't agree with
11 that?

12 THE WITNESS (Foster): I do not agree
13 with that.

14 MR. CASAGRANDE: Okay.

15 THE WITNESS (Foster): May I read,
16 please, that section of the zoning regulation?

17 MR. CASAGRANDE: You've answered my
18 question. Please.

19 THE WITNESS (Foster): Okay.

20 MR. CASAGRANDE: You would also agree
21 with me, and I'm referring now to town Exhibit 5
22 which is the zoning commission's September 11,
23 2017 letter of recommendation to this Council,
24 that in that letter the zoning commission
25 recommended a 100 foot buffer; isn't that true?

1 THE WITNESS (Foster): Correct, they
2 recommended a 100 foot buffer.

3 MR. CASAGRANDE: Because the purpose of
4 that was because under their zoning regulations
5 they deemed this to be an industrial use and
6 therefore in order to protect the character of the
7 abutting residential uses --

8 MR. MICHAUD: I object to the question.

9 MR. CASAGRANDE: Can I be allowed to
10 finish the question?

11 MR. SILVESTRI: Why don't you finish,
12 and then I'm going to chime in.

13 MR. CASAGRANDE: I'm sorry, can I
14 have -- I lost my train of thought.

15 MR. SILVESTRI: I lost mine too. What
16 I want to get at before we go backwards or
17 forwards is to keep in mind that the Siting
18 Council does have precedent over local zoning.

19 MR. CASAGRANDE: No question,
20 Mr. Chairman. I understand that.

21 MR. SILVESTRI: So while the questions
22 could come up in relation to what the local towns
23 and municipalities might recommend, it's not
24 necessarily a driving force, per se.

25 MR. CASAGRANDE: Understood.

1 Understood. And again, I'm simply responding to
2 what Candlewood Solar is saying in its
3 interrogatories which is it is offering as its
4 prefile testimony which is its rationale for
5 proposing the 50 foot buffer, and that's what I'm
6 trying to challenge on cross-examination.

7 Is it not true that the zoning
8 commission felt that its regulations, if they were
9 applicable, would require a 100 foot buffer?

10 THE WITNESS (Foster): What is in the
11 September 2017 letter is a 100 foot buffer
12 recommendation?

13 MR. CASAGRANDE: Correct. And just to
14 button this up, you don't agree with me that a
15 power generation plant is an industrial use?

16 THE WITNESS (Walker): I don't agree
17 that a solar PV array that operates during the
18 daylight hours that's on residential homes, that's
19 on schools, that's in parking lots is an
20 industrial use. It's not an industrial site,
21 period.

22 MR. CASAGRANDE: So your testimony is
23 that a 20 megawatt power generation plant that
24 will require clearing of 60 some odd acres of
25 forest to generate commercial electricity into the

1 grid is not an industrial use, is that your
2 testimony?

3 THE WITNESS (Walker): I'm absolutely
4 saying that. And if we were clearing the site for
5 a Walmart and putting solar panels on top of the
6 Walmart, I would say that that's not an industrial
7 site. Walmarts are putting solar panels on every
8 single building, no matter how big they are, no
9 matter how big their warehouses are, and they're
10 not considered industrial sites.

11 MR. CASAGRANDE: You've read
12 Mr. McDermott's prefile testimony where he refers
13 to the Office of Management and Budget's North
14 American Industry Classification System, surely
15 you're familiar with that?

16 MR. SILVESTRI: Counselor --

17 MR. CASAGRANDE: Yes or no.

18 THE WITNESS (Walker): I am not
19 familiar with that. I'm sorry.

20 MR. CASAGRANDE: Okay. So you don't
21 know whether that document is recognized as
22 authoritative by industry professionals on what
23 constitutes an industrial --

24 THE WITNESS (Walker): I don't --

25 MR. CASAGRANDE: Can I finish the

1 question, please?

2 THE WITNESS (Walker): I'm sorry, I
3 thought were you finished. Go ahead.

4 MR. CASAGRANDE: Therefore, sir, you do
5 not know whether or not that document is
6 recognized as authoritative by industry
7 professionals in defining what constitutes
8 industrial uses in the United States?

9 MR. MICHAUD: Objection. This is way
10 off visibility.

11 MR. SILVESTRI: Counselor, your point,
12 I think we discussed already that regardless on
13 how we're looking at it from an industrial
14 standpoint, residential standpoint, commercial
15 standpoint, the town had recommended certain
16 guidelines for buffer systems. The Siting Council
17 does preempt in different instances. And I think
18 we could agree on all those principles. I'm not
19 sure what an SIC code is actually going do tell
20 you one way or another that's going to change
21 that. So I'd really like to move on before we
22 beat the dead horse.

23 MR. CASAGRANDE: I'll move on,
24 Mr. Chairman. I'm just trying to test the
25 witness' credibility when the suggest that the 100

1 foot buffer should not apply here because in their
2 view this is not an industrial use. That's all
3 I'm trying to say.

4 MR. SILVESTRI: I appreciate what you
5 were trying to get at before when you asked the
6 question, okay, where did the 50 foot buffer come
7 from. Did you get an answer from that? I think
8 you did. And if you did, I think we can move on.

9 MR. CASAGRANDE: In your response to
10 the interrogatory, and I'm referring to
11 Interrogatory 6.a.b., you state that the 50 foot
12 buffer will be provided for the majority of the
13 array perimeter. And you may have clarified this
14 on direct, if you have I apologize, but what areas
15 are you proposing where there will not be a 50
16 foot buffer, and why?

17 THE WITNESS (Bukowski): We're
18 proposing 50 feet.

19 MR. CASAGRANDE: Okay. Am I also
20 correct that you did not consider the visual
21 impacts, the visibility, from the portions of the
22 properties on Candlewood Mountain Road that might
23 reasonably be able to be subdivided, as
24 Mr. McDermott points out in his prefile testimony?

25 THE WITNESS (Bukowski): We didn't

1 perform any visual assessments from those
2 properties.

3 MR. CASAGRANDE: Would you agree with
4 me that even a 50 foot setback will require
5 revisions to the stormwater management plan?

6 MR. MICHAUD: Objection.

7 MR. SILVESTRI: I'd rather keep it on
8 visibility, counselor.

9 MR. CASAGRANDE: And Mr. Chairman, I'm
10 trying to keep it on visibility, because my point
11 is that if the stormwater management drainage
12 improvements have to be moved inward as a result
13 of this buffer, it is, I believe, and the
14 witnesses can answer, that that may require
15 reconfiguration of the arrays, and that may affect
16 the entire viability of the project if it involves
17 a reduction of the arrays.

18 MR. SILVESTRI: Could you rephrase your
19 question?

20 MR. CASAGRANDE: Yes.

21 Would you not agree that a 50 foot
22 setback will require moving the drainage
23 improvements inward farther toward the solar array
24 than they are now proposed under the existing
25 plans?

1 THE WITNESS (Bukowski): Yes.

2 MR. CASAGRANDE: And that that might
3 require reconfiguration of the solar arrays to be
4 moved even farther inward, might?

5 THE WITNESS (Bukowski): Yes.

6 MR. CASAGRANDE: And if a 100 foot
7 buffer were required, that would require moving
8 the drainage system even farther inward, correct?

9 MR. MICHAUD: Objection. Calls for
10 speculation.

11 MR. SILVESTRI: That is speculation. I
12 think we're on the 50 foot at this point.

13 MR. CASAGRANDE: Well, in your
14 professional opinion, if a 100 foot buffer were
15 required, might that require a reconfiguration of
16 the solar arrays even more so than in a 50 foot
17 buffer?

18 THE WITNESS (Bukowski): Yes.

19 MR. CASAGRANDE: I'd like to direct
20 your attention to your response to Interrogatory 9
21 in Exhibit 21. The Council asked you in that
22 interrogatory -- withdrawn. The Council
23 referenced the September 26, 2017 evidentiary
24 hearing before the Council and specifically asked
25 about this issue of whether Candlewood Solar had

1 looked at the zoning commission's recommendation
2 for a 100 foot buffer.

3 And the interrogatory says that
4 Candlewood Solar was asked if it would be able to
5 accommodate such a recommendation, and Candlewood
6 Solar replied, "We have not looked at that to
7 date."

8 And the interrogatory says, "Please
9 provide an updated response." Do you see that?
10 I'm just asking --

11 THE WITNESS (Walker): What's your
12 question?

13 MR. CASAGRANDE: I just asked if you
14 agree that that's what you were asked, to provide
15 an updated response.

16 THE WITNESS (Walker): If you are
17 reading exactly, yes.

18 MR. CASAGRANDE: I was trying to read
19 it exactly.

20 THE WITNESS (Walker): Okay, great.
21 Great job.

22 MR. SILVESTRI: Counselor, which
23 interrogatory?

24 MR. CASAGRANDE: Interrogatory 9.

25 MR. SILVESTRI: Thank you.

1 MR. CASAGRANDE: So have you done that?
2 Have you looked at 100 foot buffer to see if your
3 project would accommodate such a recommendation;
4 yes or no?

5 THE WITNESS (Walker): We are in the
6 process of redesigning the system for a 50 foot
7 buffer and to meet the Siting Council -- excuse
8 me, DEEP requirements for stormwater. That's
9 where all our resources are going right now.

10 MR. CASAGRANDE: So the answer to the
11 question is no, you have not looked at 100 foot
12 buffer?

13 THE WITNESS (Walker): We have not
14 looked at 100 foot.

15 MR. CASAGRANDE: Would you agree with
16 me that without submitting to the Council the
17 revised plans that you say you're working on, a
18 complete assessment of the visual impacts on
19 surrounding properties cannot be made at this
20 point?

21 THE WITNESS (Walker): No, I disagree
22 with your wording and trying to pigeonhole an
23 answer from that. We have provided visibility,
24 and we have defined what that visibility included
25 from the other design. We have told that we're

1 revising it and giving an extra buffer, a 50 foot
2 buffer. We have said that if there is visibility,
3 we will put evergreens or a hedge or whatever. So
4 that's the answer.

5 MR. CASAGRANDE: But you haven't
6 submitted the revised plans that would show what
7 that --

8 THE WITNESS (Walker): Because we are
9 going through the stormwater, and we'll do that
10 first. Once we get that, then we'll know what
11 visibility we'll have. But it will be better, it
12 will be better from a visibility standpoint.
13 There will be less visibility, and that's clear
14 and obvious, I think.

15 MR. CASAGRANDE: In your opinion?

16 THE WITNESS (Walker): And why wouldn't
17 it be in anyone's --

18 MR. CASAGRANDE: Would you not agree
19 that without a set of revised plans showing your
20 assessment that this Council and the town and RCM
21 are not going to be able to take a look at that to
22 determine whether your representations, and I'm
23 not questioning your good faith and your
24 representations, I'm just saying without the
25 revised actual plans, site specific topographical

1 plans showing the 50 foot buffer, showing the
2 effect on the array, showing the effect on the
3 project, and showing exactly what the visibility
4 and buffer will be, the Council can't make that
5 determination?

6 THE WITNESS (Walker): I don't know
7 what determination you're trying to --

8 MR. SILVESTRI: If I can interject,
9 counselor. The way the process is going to work
10 is they would have to get their revised plans
11 based on what happened with the D&M decision the
12 other day and come back to us to look at that, and
13 no construction could take place until that,
14 again, is approved.

15 MR. CASAGRANDE: I appreciate that,
16 Mr. Chairman. Thank you.

17 And one other question. You mentioned
18 a conservation restriction in your testimony.
19 There is no conservation restriction that has been
20 put into place on this property as of this point,
21 correct?

22 MR. SILVESTRI: I believe that's beyond
23 the scope.

24 MR. CASAGRANDE: They testified to it
25 on direct, Mr. Chairman. They opened the door.

1 THE WITNESS (Foster): The incidental
2 take from it or the final determination from
3 Natural Diversity Data Base requires the 100 acre
4 conservation restriction.

5 MR. CASAGRANDE: Okay, but that's not
6 my question. Have you imposed and worked with a
7 land trust or any other body to impose the
8 conservation restriction?

9 THE WITNESS (Walker): What do you mean
10 by "impose"?

11 MR. CASAGRANDE: That's a good point.
12 That's a fair objection. Is there a conservation
13 restriction that is in the draft stage or has been
14 signed or finalized with any land trust to protect
15 any portion of this property as of today?

16 MR. MICHAUD: I have to object. It's
17 not visibility.

18 MR. SILVESTRI: I didn't even quite
19 understand the question myself as to what you
20 might be getting at, counselor.

21 MR. CASAGRANDE: Is there an existing
22 signed conservation restriction with any land
23 trust for this property?

24 THE WITNESS (Walker): There will not
25 be a signed agreement until the project is

1 approved.

2 MR. CASAGRANDE: And have you been in
3 negotiations with --

4 THE WITNESS (Walker): The land
5 owners --

6 MR. CASAGRANDE: May I finish the
7 question?

8 THE WITNESS (Walker): The land owners
9 have been in negotiation.

10 MR. CASAGRANDE: Mr. Chairman, I think
11 I'm entitled to ask the question.

12 MR. SILVESTRI: Yes. Please state the
13 question and --

14 MR. CASAGRANDE: Have you been in
15 negotiations with any land trust that was willing
16 to accept such a conservation restriction?

17 THE WITNESS (Walker): The land owners
18 have been in negotiations with several land
19 trusts, and they have informed me, although I
20 don't have direct experience with it, that they
21 have worked out arrangements for such a transfer.

22 MR. CASAGRANDE: Okay. But none has
23 been signed?

24 THE WITNESS (Walker): And none will be
25 signed until the project is approved.

1 MR. CASAGRANDE: Thank you. I have no
2 further questions.

3 MR. SILVESTRI: Thank you. At this
4 time, ladies and gentlemen, let's take about a ten
5 minute break, if you will, to stretch or do what
6 we need to do. When we come back we'll have
7 appearance by the parties, the Town of New Milford
8 and Rescue Candlewood Mountain.

9 MR. DUNHAM: Are you going to give me
10 an opportunity to cross? Carl Dunham.

11 MS. BACHMAN: I'm sorry, Mr. Dunham,
12 you're a witness in this proceeding.

13 MR. DUNHAM: Well, that may be, but I'm
14 also a party in the case before the court.

15 MS. BACHMAN: This is not the court,
16 Mr. Dunham. This is the administrative agency,
17 and you are a witness for a party, and you're
18 represented by Mr. Casagrande.

19 MR. DUNHAM: All right.

20 MR. SILVESTRI: We'll take ten minutes.
21 Thank you very much.

22 (Whereupon, the witnesses were excused
23 and a recess was taken from 2:41 p.m. until 2:54
24 p.m.)

25

1 MR. SILVESTRI: Ladies and gentlemen,
2 I'd like to call the meeting back to order. We
3 will now proceed with the appearances of the
4 parties, the Town of New Milford and Rescue
5 Candlewood Mountain.

6 Attorney Bachman, could you please
7 begin by swearing in the parties' witnesses?

8 C A R L M. D U N H A M, J R.,
9 M A T T H E W J. S A N F O R D,
10 V I N C E N T C. M c D E R M O T T,

11 called as witnesses, being first duly sworn
12 by Ms. Bachman, were examined and testified
13 on their oaths as follows:

14 MS. BACHMAN: Thank you.

15 MR. SILVESTRI: Attorney Casagrande,
16 could you please begin by verifying the exhibits
17 each party has filed in this matter and verifying
18 the exhibits by the appropriate sworn witness?

19 MR. CASAGRANDE: Yes. Thank you,
20 Mr. Chairman. As you know, I'm here jointly
21 representing the town and Rescue Candlewood
22 Mountain. Pursuant to my discussion with Attorney
23 Bachman, would it be appropriate if I just
24 introduce all of the exhibits for both parties at
25 this time?

1 MR. SILVESTRI: Yes, absolutely.

2 MR. CASAGRANDE: So for the town, the
3 exhibits which we would like to offer today, are
4 Town Exhibits Number 9 and 10. Number 9 is the
5 Town of New Milford's responses to the Council's
6 interrogatories dated May 1, 2019; and also the
7 Town of New Milford's prefiled testimony of
8 Mr. McDermott and Mr. Sanford and attachments.

9 DIRECT EXAMINATION

10 MR. CASAGRANDE: So I will ask Mr.
11 McDermott and Mr. Sanford, did you prepare or aid
12 in the preparation of both those exhibits that I
13 just referenced?

14 THE WITNESS (Sanford): Yes.

15 THE WITNESS (McDermott): Yes, we did.

16 MR. CASAGRANDE: And your prefile
17 testimony, which is Exhibit 10, did you prepare
18 certain attachments that you propose as exhibits?

19 THE WITNESS (Sanford): Yes.

20 THE WITNESS (McDermott): Yes, we did.

21 MR. LYNCH: Is that microphone on?

22 THE WITNESS (McDermott): Yes, we did.

23 Sorry.

24 MR. LYNCH: Thank you.

25 MR. CASAGRANDE: Do you have any edits

1 or clarifications or additions that you'd like to
2 make to either of those documents today?

3 THE WITNESS (Sanford): No, I do not.

4 THE WITNESS (McDermott): No, I do not.

5 MR. CASAGRANDE: And with that,
6 Mr. Chairman, I'd offer those exhibits for the
7 town into evidence.

8 MR. SILVESTRI: Does any party or
9 intervenor object to the admission of those
10 exhibits?

11 MR. MICHAUD: No.

12 MR. SILVESTRI: Thank you. Those
13 exhibits are admitted.

14 (Town of New Milford Exhibits III-B-9
15 and III-B-10: Received in evidence - described in
16 index.)

17 MR. SILVESTRI: Please continue.

18 MR. CASAGRANDE: And then for Rescue
19 Candlewood Mountain the exhibits that we'd like to
20 introduce are Rescue Exhibits 11 and 12, which for
21 the record are Rescue's responses to the Council's
22 interrogatories regarding this visibility hearing,
23 dated May 1, 2019; and Rescue Mountain's prefile
24 testimony of Mr. Dunham.

25 First, as to Exhibit 11, Mr. McDermott

1 and Mr. Sanford, did you aid or prepare in -- aid
2 in the preparation of Exhibit 11 for Rescue
3 Candlewood?

4 THE WITNESS (McDermott): We did.

5 MR. CASAGRANDE: And that was in your
6 capacity as a consultant for the town?

7 THE WITNESS (McDermott): That is
8 correct.

9 MR. CASAGRANDE: And do you have any
10 additions or clarifications to that?

11 THE WITNESS (McDermott): We do not.

12 MR. CASAGRANDE: And Mr. Dunham, did
13 you prepare your prefile testimony, which is
14 Exhibit 12, dated May 6, 2019.

15 THE WITNESS (Dunham): Yes, I did.

16 MR. CASAGRANDE: Did that testimony
17 attach certain photographs?

18 THE WITNESS (Dunham): Yes.

19 MR. CASAGRANDE: And before the hearing
20 today did you submit to Attorney Bachman clearer
21 copies of those same photographs to aid the
22 Council?

23 THE WITNESS (Dunham): Yes, I did.

24 MR. CASAGRANDE: You didn't submit any
25 additional photographs, just clearer copies of

1 what you had already submitted, correct?

2 THE WITNESS (Dunham): That is correct.

3 MR. CASAGRANDE: Do you have any
4 additions or clarifications that you'd like to
5 offer to your prefile testimony?

6 THE WITNESS (Dunham): No.

7 MR. CASAGRANDE: With that, I'd offer
8 Rescue Exhibits 11 and 12.

9 MR. SILVESTRI: Does any party or
10 intervenor object to the admission of those
11 exhibits?

12 MR. MICHAUD: No.

13 MR. SILVESTRI: Thank you. Those
14 exhibits are admitted.

15 (Rescue Candlewood Mountain's Exhibits
16 V-B-11 and V-B-12: Received in evidence -
17 described in index.)

18 MR. SILVESTRI: We'll begin our
19 cross-examination with Ms. Walsh.

20 CROSS-EXAMINATION

21 MS. WALSH: Thank you. What is the
22 approximate height of the tree canopy in the
23 vicinity of the solar project site?

24 THE WITNESS (Sanford): Outside of the
25 actual property line the tree canopy ranges

1 anywhere from 80 to 100 feet, so outside of the
2 solar array property line. Again, we were not
3 allowed to actually be on their property, so 80 to
4 100 feet outside of the property line of the solar
5 array.

6 MS. WALSH: You provided a visual
7 assessment. In light of the project developer's
8 statement about a 50 foot buffer between the
9 property line and the limit of work, would that
10 change your visual assessment?

11 MR. CASAGRANDE: I'm sorry. Would what
12 change the visual --

13 MS. WALSH: Would the visual assessment
14 that was provided by Milone & MacBroom change in
15 light of a potential future 50 foot buffer being
16 provided?

17 THE WITNESS (McDermott): I will
18 attempt to answer, but I need to give you for
19 clarity our assessment was based on the Wood
20 December 2018 plans which have been before the
21 Council previously. That was part of the D&M. So
22 that was the basis for all of the graphics that we
23 have provided thus far. On a representation that
24 there will be a 50 foot buffer, we could only
25 speculate, and I will allow my colleague to

1 comment as to what this means. We don't know that
2 answer because we have no plans in front of us to
3 say at a given point or points when you move
4 drainage inward how much additional regrading may
5 be required and so on. So we really don't know
6 that answer definitively. And it would be a
7 function not of the canopy trees but of the
8 understory.

9 To make ourselves clear as to the
10 distinction, I'll allow Matt, my colleague here,
11 Mr. Sanford, to describe that because that's where
12 his expertise is.

13 THE WITNESS (Sanford): So how we
14 define an understory and we define an overstory in
15 a forested area, the overstory are trees that are
16 greater than 20 foot in height and could be all
17 the way up to 100 feet in height. An understory
18 in an environment is defined as trees and shrubs
19 that are under 20 feet in height. So from the
20 ground level up to 20 feet is what we define as an
21 understory. For more layman's terms, we also
22 define them, you know, the area that you can
23 actually see with your eyes when you're standing
24 up is the understory through a forest environment.
25 And so that's how we define an understory.

1 We also when we describe understories
2 is we give them a density, whether it's low
3 density, moderate density or high density, meaning
4 the thickness of the understory that you're seeing
5 at eye level through a particular area. And so
6 obviously if you have a low density, you have an
7 area that has very few herbaceous plants, very few
8 shrubs, very few small trees, and that means a
9 reduced amount of leaf matter that actually can
10 block a view, whether it's a coniferous tree or
11 whether it's a deciduous tree. In a moderate
12 density understory you have a moderate amount of
13 leaves and vegetation, whether it's herbaceous or
14 woody, that blocks or changes your view of a
15 particular area as you look through it. And
16 obviously the last one in a high density
17 environment where you have an understory is when
18 you have a very thick understory that has a lot of
19 vegetation, whether it's herbaceous, woody or
20 small trees, that change your view as you look
21 through it.

22 MR. SILVESTRI: Mr. Sanford, one
23 clarification. You mentioned understory,
24 overstory. Mr. McDermott mentioned canopy. Where
25 does canopy fit in?

1 THE WITNESS (Sanford): So the canopy
2 is the actual upper-most portion of your forest
3 environment, so that canopy is typically within
4 the overstory. So the canopy is the top of the
5 trees, the canopy of the forest, okay. An
6 understory can also provide a canopy depending on
7 where you are within the forest environment, so a
8 canopy can actually be in two locations within a
9 zone. So canopy is a more general term to
10 describe a canopy within the forest, but the terms
11 that we should use here for purposes of this
12 discussion is overstory versus understory.

13 MR. SILVESTRI: Thank you.

14 MS. WALSH: In the town's prefile
15 testimony you discuss diseased birch trees
16 immediately bordering the open fields. Are these
17 trees on the Candlewood Solar property or on Mr.
18 Dunham's property?

19 THE WITNESS (Sanford): Sure. The
20 trees that we reference are considered the Betula
21 genera which is the birch trees. We have several
22 different birch trees in the State of Connecticut,
23 black birch, grey birch, white birch and yellow
24 birch. The trees, in particular, that we are
25 referencing in this particular site are black

1 birch and gray birch trees that commonly occur
2 among the southern property line. And there are
3 three fungal diseases that actually affect the
4 trees in this location. They call it conk rot and
5 polypore rot. The trees that we looked at with
6 that were on the properties abutting the solar
7 site. We could only look at those particular
8 areas, and those trees exhibited indications of
9 that rot. You can infer that that rot, which is
10 easily spread in a forest environment to the other
11 trees in the area, so that's how we determined the
12 fungal rot in our abutting property areas that we
13 looked at.

14 MS. WALSH: So you're assuming that it
15 also extends onto the project property?

16 THE WITNESS (Sanford): From the
17 distance that we could actually see from standing
18 on the properties, the abutting properties, you
19 could actually see fallen trees along the edge of
20 the solar property that would indicate, that would
21 typically indicate that that rot does exist in
22 those trees.

23 MS. WALSH: Also on that town's prefile
24 testimony when you discuss the gray and black
25 birch you mentioned edge habitat. What is the

1 definition of edge habitat?

2 THE WITNESS (Sanford): Sure. The way
3 we define edge habitat is those locations -- and I
4 think the best way to consider it is when you have
5 a field that goes immediately to a forest edge.
6 The edge in between the field and the transition
7 to the forest becomes the edge habitat, the edge
8 effect. In that particular area in some cases,
9 depending on what level of management was
10 performed on a particular property, historically
11 defines what the density of that edge habitat
12 would be. So that's how we describe edge habitat.

13 MS. WALSH: And is that the same as
14 edge forest?

15 THE WITNESS (Sanford): Edge habitat
16 would not be the same as edge forest.

17 MS. WALSH: Okay. Page 4 of the town's
18 prefile testimony references the undeveloped
19 portion of the Dunham property to the south and
20 states, "The property has high development
21 potential in the underlying residential zone."
22 Are there current plans pending with the town for
23 development of the property?

24 THE WITNESS (McDermott): Not that we
25 are aware of.

1 MS. WALSH: Page 5 of the prefile
2 testimony references the development potential in
3 the underlying residential zone of 195 Candlewood
4 Mountain Road. Are there plans pending with the
5 town for development of that property?

6 THE WITNESS (McDermott): The answer is
7 the same, no.

8 MS. WALSH: Page 6 of the prefile
9 testimony refers to the North American Industrial
10 Classification System. Are you familiar --

11 THE WITNESS (McDermott): Yes, I am
12 familiar.

13 MS. WALSH: Are you familiar with the
14 Standard Land Use Classification Manual of
15 Connecticut?

16 THE WITNESS (McDermott): I am, not as
17 recent as the classification that is cited here.

18 MS. WALSH: Would you agree that solar
19 generation facilities are classified by SLUCM as
20 utilities that are within the commercial land use
21 category?

22 THE WITNESS (McDermott): SLUCM meaning
23 Standard Land Use Connecticut?

24 MS. WALSH: Yes.

25 THE WITNESS (McDermott): Yes, I would.

1 And they're similar, but the current in the
2 planning world that we live in, the OMB
3 classification is what's being used more
4 prevalently today.

5 MS. WALSH: Okay. In both the Rescue
6 Candlewood Mountain responses to
7 interrogatories -- well, let's start with the
8 responses to interrogatories. There are a number
9 of photographs that were provided in response to
10 Exhibit 1. Who took those photographs?

11 THE WITNESS (McDermott): You're
12 referring to Candlewood Mountain's --

13 MS. WALSH: Rescue.

14 THE WITNESS (McDermott): Candlewood
15 Mountain and the ones that had been taken for
16 early discussions and resubmitted?

17 MS. WALSH: They were provided in
18 response to Council Interrogatory Number 1 to
19 Rescue Candlewood Mountain, and they were from the
20 superior court record and identified as exhibit
21 numbers.

22 THE WITNESS (Dunham): Yes, I took the
23 photographs.

24 MS. WALSH: All of the photographs
25 provided?

1 THE WITNESS (Dunham): I'm not sure
2 which category you're looking at.

3 MR. CASAGRANDE: When you say
4 "provided," you mean the May 1, 2019 response by
5 Rescue to the Council's Set One Interrogatories
6 where we attached the copies of the photos that
7 had been admitted as trial exhibits?

8 MS. WALSH: That's correct.

9 THE WITNESS (Dunham): I took some of
10 them.

11 MS. WALSH: Some of them. Are you
12 aware of who took the remaining?

13 THE WITNESS (Dunham): Yes, I believe
14 Lisa Ostrove took some of them. The pictures that
15 were around 175 that were referenced there were
16 taken by Lisa Ostrove. I took the pictures that
17 reference 195 Candlewood Mountain Road, the top of
18 the hill, which is south of the project, and the
19 ones along the road.

20 MS. WALSH: And in response to
21 Interrogatory Number 2, there was a photo location
22 map that was provided which it's entitled location
23 of photo exhibits.

24 MR. SILVESTRI: To clarify, that's
25 under tab H.

1 THE WITNESS (McDermott): Can you
2 repeat what you're referring to because there were
3 two illustrations? If you're referring to the
4 image that we have propped up here identified in
5 the Milone & MacBroom Exhibit A, we took those,
6 Milone & MacBroom took those. If you're referring
7 to the one that showed Mr. Dunham's photos, we
8 prepared the illustration of location only.

9 MS. WALSH: Okay. I'm referring to the
10 response to interrogatories which show Mr. Dunham
11 and other residents' photos.

12 THE WITNESS (McDermott): Okay. So
13 that would be --

14 MS. WALSH: Not the map that you have
15 displayed, but the one that was behind Tab H of
16 the responses to interrogatories.

17 THE WITNESS (McDermott): Oh, I'm
18 sorry. Milone & MacBroom prepared that map based
19 on the location of the photos identified by Mr.
20 Dunham and Ms. Ostrove. That's all we did.

21 MS. WALSH: Okay. And just to kind of
22 go through this map and get a better understanding
23 and whoever could respond to this.

24 THE WITNESS (McDermott): Okay.

25 MS. WALSH: Are the squiggly S-shaped

1 lines the locations of the photos, the photo
2 taker?

3 THE WITNESS (McDermott): No. The
4 letters where it says Exhibit 23 or EX 22 or EX 23
5 was the photo position.

6 MS. WALSH: Position, okay.

7 THE WITNESS (McDermott): And what you
8 are looking at with the squiggly lines is what
9 that photograph is viewing.

10 MS. WALSH: Okay. So, for example, if
11 you look at where it says EX 23 at the southern
12 portion of the map --

13 THE WITNESS (McDermott): Yes.

14 MS. WALSH: -- EX 23 is where the
15 person was standing, and each line is the general
16 direction of the photograph location, and the
17 S-shaped squiggly line is what the photo is of?

18 THE WITNESS (McDermott): That's
19 approximately correct. If I recall without
20 looking at that file that Mr. Dunham has, those
21 were a series of three photos taken from the same
22 point in an attempt to give you a panorama and 1,
23 2, 3, and so that's how that was established. The
24 others are similar. Ms. Ostrove's were more
25 particular, and so we were able to identify those,

1 but essentially you have the gist.

2 MS. WALSH: Okay. And you agree with
3 that, Mr. Dunham, where you took these photos is
4 where it references Exhibit 23, for example?

5 THE WITNESS (Dunham): Yes.

6 MS. WALSH: And, for example, some of
7 the photos included in the prehearing
8 interrogatory responses don't seem to be shown on
9 the map. Are there some locations of photos that
10 were not included here? For example, we have
11 behind Tab E there are about 16 photos, but then
12 if you look in that correspondence to Exhibit 20,
13 if you look at the map where it says Exhibit 20,
14 it looks like there are four lines.

15 THE WITNESS (McDermott): It was not
16 our intention or our assignment to identify every
17 specific location as to something that couldn't
18 really be identified well. And so given the photo
19 file, we attempted to identify where those
20 positions were. And we may have missed some but
21 that was not --

22 MR. CASAGRANDE: If I may,
23 Mr. Chairman, just to clarify? As we understood
24 the interrogatory, you were asking to have us
25 submit the copies of the photographs that were

1 submitted as Exhibits 5, 7, 9a to d, 14, 20, 22
2 and 23 in the trial court, and I believe that's
3 what we asked Milone & MacBroom to drill down on
4 those photo locations, if that helps.

5 MS. WALSH: Right.

6 MR. SILVESTRI: Thank you, counselor.

7 MS. WALSH: And then just based on what
8 you're telling me and the S-shaped lines are what
9 the photo is of, it looks like most of the photos
10 are of the neighboring properties and not of the
11 solar property in general?

12 THE WITNESS (Dunham): The photos from
13 the top of the hill, which is Exhibit 23, that is
14 clearly looking at the existing open fields. And
15 the areas that are wooded there are all going to
16 be denoted as part of the project. So that is at
17 the solar project looking to the north from my
18 property which is near the lookout point tower
19 which is shown on the USGS map.

20 MS. WALSH: Right. But, for example,
21 where it says Exhibit 9, it looks like it was
22 taken from across the street across Candlewood
23 Mountain Road and taken of 195 Candlewood Mountain
24 Road.

25 THE WITNESS (Dunham): That's correct.

1 MS. WALSH: Okay. I have no further
2 questions.

3 MR. SILVESTRI: Thank you, Ms. Walsh.

4 MS. WALSH: Thank you.

5 MR. SILVESTRI: I do have a follow-up
6 based on that location of photo exhibits, possibly
7 to Mr. McDermott. If you look at the very bottom
8 right, could you explain that legend next to the
9 north arrow?

10 THE WITNESS (McDermott): That is a bar
11 scale.

12 MR. SILVESTRI: Of what?

13 THE WITNESS (McDermott): Of the scale
14 of this map. So if you were to take a ruler and
15 measure off whatever increment you want, that
16 would be indicative of the dimension in terms of
17 horizontal dimension.

18 MR. SILVESTRI: As opposed to having
19 the legend that goes straight across?

20 THE WITNESS (McDermott): Yes, it's the
21 same thing. It's just a fancier version of it.
22 That's all.

23 MR. SILVESTRI: Thanks for that
24 clarification.

25 We'll continue with Council Member

1 Hannon.

2 MR. HANNON: Thank you, Mr. Chairman.

3 The first set of questions I have are
4 regarding the Town of New Milford's objections and
5 responses to Connecticut Siting Council, dated May
6 1, 2019. The land that is proposed for the
7 development of the solar project is zoned MPRDD,
8 correct?

9 THE WITNESS (McDermott): At the
10 present time that is the zoning.

11 MR. HANNON: Height of proposed
12 residential buildings range from 35 feet for
13 single-family detached dwellings to 50 feet for
14 multi-family dwellings in this zone, correct?

15 THE WITNESS (McDermott): That is
16 correct.

17 MR. HANNON: Buffer areas within the
18 MPRDD zone. The commission may require along the
19 perimeter of the development a front, side and
20 rear yard buffer having a minimum width of 60
21 feet; does that sound about right?

22 THE WITNESS (McDermott): It's been a
23 while since I worked on that project, but that
24 does sound about right.

25 MR. HANNON: And then the zoning

1 regulations, I believe, Section 117-040, also
2 state that provided that no buffer shall be
3 required for a front, side or rear yard if the
4 commission determines that the existing topography
5 or landscaping provide natural screening. Does
6 that sound about right?

7 THE WITNESS (McDermott): Again, it's
8 been a while since I worked with that regulation,
9 but that does sound right. If I might add to
10 that? That particular zone was a site specific
11 zone as a floating zone that the regulation and
12 dimension were created around a planned community
13 development. It was really an anomaly for all of
14 the zoning. And so all of the dimensions and so
15 on that were adopted that you're seeing were based
16 on a concept plan that the zoning commission and
17 the applicant backed their way into to hold that
18 developer to those standards. Now, that developer
19 collapsed, and therefore the commission had those
20 regulations in place. It's very unusual. I
21 think, Mr. Hannon, as you know as a planner, that
22 happens. And so it was a floating zone concept
23 that had a master plan attached to it, and
24 therefore the regulations to memorialize what the
25 commission was looking at adopted those standards

1 for that specific site.

2 MR. HANNON: Theoretically, somebody
3 else could come into town in a different location
4 and apply for the floating zone change with
5 their --

6 THE WITNESS (McDermott): That is
7 correct. If they met those other criteria in that
8 regulation, someone could apply to establish a
9 different MPRDD if they could find a location
10 suitable and approval.

11 MR. HANNON: The next question I have
12 is I'm looking at the zone regulations, and I need
13 a definition of a term that's in there. And this
14 is regarding the purpose of having buffer areas.
15 I understand providing privacy from noise, I
16 understand providing privacy from headlight glare,
17 but how do you define visual intrusion?

18 THE WITNESS (McDermott): I don't know.

19 MR. HANNON: This is one of the three
20 legs that requires a buffered area so --

21 THE WITNESS (McDermott): Not being on
22 the zoning commission, how they -- I know how they
23 have interpreted it in the past, but generally
24 it's a much smaller site. But visual intrusion
25 has been pretty solid screening so that nobody is

1 looking at the adjoining property or whatever they
2 are trying to screen.

3 MR. HANNON: Let me throw this out as a
4 hypothetical because I know this has happened.
5 You have a neighbor that wants to put up a
6 stockade fence. Right now there's a border
7 dispute between the two property owners. And the
8 person putting up the stockade fence, they get
9 their permit to put it up from the town 6 inches
10 on their property, so it's not an issue, but they
11 paint the side of the fence facing their neighbor
12 some God awful color. Is that visual intrusion?

13 THE WITNESS (McDermott): Color is in
14 the eye of the beholder in the State of
15 Connecticut unless it's in a historic district,
16 and even there it's questionable, so I think
17 you're out of luck.

18 MR. HANNON: That's fine. Then there
19 are comments about visibility on the solar project
20 from the airport and Fox Run. I'm not sure where
21 Fox Run is. Can you explain where Fox Run is
22 located?

23 THE WITNESS (McDermott): I'm going to
24 allow someone else to because that was beyond our
25 purview.

1 MR. HANNON: I'm just curious as to
2 about where it's located.

3 THE WITNESS (Dunham): It doesn't show
4 on the map but I'll show you approximately --

5 MR. HANNON: No, that's fine. That's
6 all I'm asking for.

7 THE WITNESS (Dunham): This is Hubbell
8 Mountain Road, and it comes up here and Fox Run is
9 right about here.

10 MR. HANNON: Okay. And then where is
11 the airport in relationship to that?

12 THE WITNESS (Dunham): This is the
13 airport.

14 MR. HANNON: Okay. Thank you.

15 THE WITNESS (McDermott): So if I can
16 clarify for the record because you can't see arm
17 waving on the record. It would be to the west of
18 Candlewood, the airport, which would be westerly
19 of the inn and further west of Candlewood Mountain
20 Road.

21 MR. HANNON: At the airport is there a
22 60 foot landscape buffer?

23 THE WITNESS (Dunham): Actually there
24 is a buffer that's to the west. When we built the
25 airport, we provided 100 feet. On this side

1 there's a road, and there's a 100 foot buffer.

2 You can see it right there.

3 MR. HANNON: 100 foot in length or 100
4 foot deep?

5 THE WITNESS (Dunham): 100 foot deep.
6 And it runs maybe, oh, probably 3,000 feet.

7 MR. HANNON: Okay. But it's just on
8 the west side of the airport, correct?

9 THE WITNESS (Dunham): Yes, where there
10 are houses.

11 MR. HANNON: Thank you. The zoning
12 commission had a recommendation of a 100 foot
13 buffer area based on Section 130-040 1d. Correct?

14 THE WITNESS (McDermott): Correct.

15 MR. HANNON: So this is dealing with
16 specific industrial and business zones in the
17 zoning regulations, correct?

18 THE WITNESS (McDermott): That is
19 correct.

20 MR. HANNON: And the MPRDD is not
21 included in that zoning?

22 THE WITNESS (McDermott): That is also
23 correct.

24 MR. HANNON: The property that is being
25 proposed is in excess of 5 acres, so that was

1 another aspect of the buffer requirements?

2 THE WITNESS (McDermott): Yes.

3 MR. HANNON: And then my understanding
4 is, based on the third leg of that, it's also
5 where that area in excess of 5 acres abuts a
6 residential zone where dwellings, the
7 single-family, multi-family dwellings are
8 currently located less than 150 feet to the
9 adjoining property line. And my understanding is
10 all of the residential properties exceed that 150
11 foot separation distance, correct?

12 THE WITNESS (McDermott): The
13 residential structures may.

14 MR. HANNON: That's how I'm reading the
15 regulation.

16 THE WITNESS (McDermott): However, the
17 commission in its interpretation that gave us
18 guidance, the zoning commission's guidance, is
19 that the regulation is silent on the question of
20 the nature of the use of the property that is a
21 solar farm, and that, hence, if you go back to the
22 classification system that was questioned was the
23 logic behind identifying the classification system
24 as being an industrial use in a residential area.

25 MR. HANNON: But that's not what the

1 regulations say.

2 THE WITNESS (McDermott): You're
3 absolutely right.

4 MR. HANNON: An industrially zoned or
5 business zoned parcel in excess of 5 acres abuts a
6 residential zone where single-family or
7 multiple-family dwellings are currently located
8 less than 150 feet to the adjoining property line,
9 the required minimum buffer shall be the 100 feet.

10 THE WITNESS (McDermott): Again, we're
11 relying, because we are not the zoning commission,
12 we are relying on the interpretation of the zoning
13 enforcement officer and how that -- if solar were
14 a permitted use in this location by them and
15 regulated by them, and granted it is not, that
16 would be the standard that they would apply to
17 this particular use. And I can't answer it,
18 Mr. Hannon, any more clearly than that because
19 that's the guidance that the commission's
20 interpretation has been.

21 MR. HANNON: But I think we could both
22 agree that there are some type of activities that
23 can go on at the local level which the local
24 authorities are preempted.

25 THE WITNESS (McDermott): I'm not

1 disputed that at all, and that is the case here.

2 MR. HANNON: One other question on
3 this. So if the Siting Council was of the opinion
4 that a vegetated buffer wasn't required because it
5 believed that given the existing topography and
6 natural buffered areas, would this opinion be
7 considered consistent with the buffer requirements
8 that's in the zoning regulations? Because the
9 zoning commission has that authority also, so it
10 would be consistent with what the zoning
11 commission could say. I'm not saying they would,
12 but could say.

13 THE WITNESS (McDermott): Could you --
14 I missed the -- say it again, please, if you don't
15 mind.

16 MR. HANNON: If the Siting Council did
17 not require a vegetated buffer --

18 THE WITNESS (McDermott): If the Siting
19 Council did not require a vegetated buffer.

20 MR. HANNON: Right. Because it
21 believed that given the existing topography and
22 natural buffered area, so they weren't going to
23 require a landscaped area, could this opinion be
24 considered consistent with the requirements the
25 zoning commission could theoretically make on

1 projects also?

2 THE WITNESS (McDermott): I'm not sure
3 how to answer that, but I can -- are you referring
4 to the section of the zoning regulations where
5 it's "At the commission's sole discretion, where
6 the existing topography," is that where you're
7 quoting from?

8 MR. HANNON: Yes. I mean it's
9 consistent with what the town can do?

10 THE WITNESS (McDermott): Yes,
11 understood.

12 MR. HANNON: And that's all I'm getting
13 at. So it could be considered that it is
14 consistent with an authority that the town also
15 has?

16 THE WITNESS (McDermott): I believe
17 that would be consistent, but part of that would
18 be the evaluation of the adequacy density --

19 MR. HANNON: Understood.

20 THE WITNESS (McDermott): -- of that
21 screen.

22 MR. HANNON: I'm not arguing that.

23 THE WITNESS (McDermott): Right.

24 MR. HANNON: Going into the prefilled
25 written testimony of yourself and Mr. Sanford. On

1 page 3 I just want to get a clarification. On
2 question 3.0, existing and proposed conditions,
3 you start off the answer -- Section 3.0, I'm
4 sorry -- "At present, there are four single-family
5 homes on the east side." Is that 195, 185, 183
6 and 175 Candlewood?

7 THE WITNESS (McDermott): 175, 183, 185
8 and 195.

9 MR. HANNON: Okay. So that does not
10 include Mr. Dunham's property that is located
11 south of the proposed project?

12 THE WITNESS (McDermott): It does not.
13 That would be identified on that as now or
14 formerly Dunham Candlewood Mountain.

15 MR. HANNON: Okay. That's fine. Thank
16 you.

17 Some of the questions I have I know
18 that there have been some comments from the
19 Chairman about not looking at potential growth or
20 possible growth but in trying to deal with some of
21 your responses here. You talk about the property
22 having high development. This is on page 4, I'm
23 sorry, the second question on that page. You talk
24 about given the size, vistas, access and
25 topography, the property has high development

1 potential in the underlying residential zone which
2 is R-60.

3 THE WITNESS (McDermott): Correct.

4 MR. HANNON: This is all dealing with
5 that undeveloped site, I believe, because it's not
6 the 195 yet?

7 THE WITNESS (McDermott): It would be
8 the undeveloped hillside of Dunham.

9 MR. HANNON: So where would the vistas
10 be, the scenery, what direction would that be?

11 THE WITNESS (McDermott): There
12 actually would be three different vistas or
13 potential on that side. If you want to
14 distinguish between views and vistas, there is a
15 very long view to the west toward the airport and
16 well beyond and to the northwest looking up into
17 probably New York State. The vista from that
18 property, the short vista would be to the north
19 and slightly to the northwest to the location
20 where the solar arrays are proposed.

21 MR. HANNON: I guess my question is,
22 looking at the north, because of the elevations in
23 that area, are you going to have much --

24 THE WITNESS (McDermott): May I point
25 to the graphic?

1 MR. HANNON: Absolutely.

2 THE WITNESS (McDermott): Referring to
3 the visual assessment analysis photo image, the
4 property that we're referring to is located in the
5 central part, and it's identified as now or
6 formerly Dunham Candlewood Mountain. If one were
7 to look toward the northwest, west, slightly to
8 the southwest, there's a very long view. If one
9 were standing right here immediately to the south
10 of the proposed solar array, you are looking
11 through to the central part or the southerly most
12 section of the solar arrays outlined in the red
13 line right in here. So there is a vista there.

14 On the back side of the property where
15 it begins to get steep, it's very elevated, and
16 there is a through the vegetation view down to the
17 lake, a limited view down to Candlewood Lake.

18 So from a visibility point of view, to
19 reiterate, long views off the property, highly
20 developable. This area is at the same elevation
21 where you're seeing photo image B1 and B2 because
22 that's essentially the same elevation as Mr.
23 Dunham's property.

24 I have another graphic here that I may
25 be able to -- I can give you the precise

1 elevation, if you wanted, but they're essentially
2 the same elevation.

3 MR. HANNON: No. I just wanted to get
4 a clarification in terms of what you were talking
5 about for the views. That was the goal of the
6 question. Thank you.

7 THE WITNESS (McDermott): Okay.

8 MR. HANNON: Following up with a
9 comment that was mentioned earlier, a little bit
10 of a discussion about the fungal diseases of some
11 of the trees. This is on that southern property.
12 I don't know if you can give sort of an estimate,
13 but, I mean, what would you envision as happening
14 in that area with the existing trees? And as some
15 of those birch trees are dying, are they going to
16 be replaced by something else?

17 THE WITNESS (Sanford): In the area to
18 the south that is off of the solar array property,
19 the diseased or fungused trees, if I had to give a
20 percentage, would probably be in the range of
21 anywhere from 25, 30 percent of the black birch
22 and gray birch that are in those areas. As they
23 die off, again, depending on the amount of light
24 that comes down through the overstory into the
25 understory would dictate what type of vegetation

1 would eventually take over. So typically there is
2 a native seed source in the underlying soils, but
3 typically because there's a shade habitat, shade
4 environment there, that seed source can't
5 germinate and actually grow. And so depending on
6 how much of those trees die and how quickly they
7 die would affect what would actually come up
8 through those areas.

9 MR. HANNON: Would you anticipate
10 invasives coming in or not?

11 THE WITNESS (Sanford): Yeah, you could
12 certainly anticipate invasives such as multiflora
13 rose, Japanese barberry, as well as autumn olive.
14 Those are the typical invasives that you find
15 along the edges and that often what happens is in
16 those areas that do become devoid of canopy cover
17 because that's what provides the shade, it allows
18 more sunlight to penetrate, and those seeds that
19 get deposited from those invasive species tend to
20 colonize those areas.

21 MR. HANNON: Thank you. One of the
22 questions I had, it was on sort of some of Mr.
23 Dunham's responses, but you may also be able to
24 deal with this. This parcel is roughly about 37
25 acres, it's a little bit more than 37 acres. But

1 if, for example, I know you talk about it being
2 developed for residential, but if that were the
3 case, the zoning regulations are talking about 15
4 percent minimum for open space. So my question
5 would be that if this were developed
6 residentially, where would you anticipate the open
7 space or conservation easement area to be located?

8 THE WITNESS (McDermott): Again,
9 speculative, and Mr. Dunham may be able to answer
10 that better than I, but looking at it from a
11 design perspective, that would probably be down
12 lower where the slopes are steeper and less
13 developable. And so therefore the upper part of
14 the site is where it would be more conducive to
15 home site development. When I'm saying density,
16 37 acres at 15 percent knocked off, and there are
17 probably a few wetlands up on the backside of this
18 thing, you're not talking many homes.

19 MR. HANNON: Understood.

20 THE WITNESS (McDermott): You're
21 talking several fine homes, I would expect, given
22 the location on top of that hill.

23 MR. HANNON: Thank you. On page 6
24 under Number 4, maintaining natural tree buffers.
25 I'm surprised at the question because I didn't

1 read anything in any of the documents where the
2 town was recommending maintaining a natural tree
3 buffer. I mean, it sounds like everything that
4 was being proposed was they wanted a landscape
5 buffer, not natural buffer. So this just seems to
6 me to be a little bit at odds as to what the
7 dialogue has been.

8 THE WITNESS (McDermott): The dialogue
9 we've had with zoning staff is, depending on the
10 density of a natural tree buffer, would be the
11 concern. But to think that ringing it with
12 arborvitae or something like that in some
13 locations may be appropriate -- not arborvitae, by
14 the way, that's deer food. So it's nonspecific,
15 but they do want a buffer, but a natural tree
16 buffer given the proper density can be considered,
17 but it would have to be on a case-by-case basis as
18 to what would occur.

19 MR. HANNON: And I was just asking
20 because that didn't seem to come out in the
21 reading. It was more looking for a landscape
22 buffer.

23 Just out of curiosity, I don't know if
24 you can come up with a rough estimate on this, but
25 again looking at that southern property, if there

1 was some type of a buffer that needed to be run
2 along the southern property line of the solar
3 project, rough idea what that might run?

4 THE WITNESS (McDermott): Cost?

5 MR. HANNON: Yes.

6 THE WITNESS (McDermott): No clue, not
7 without doing it in the nature of the buffer. If
8 I were recommending a buffer, it would be a mixed
9 type of thing. It would be variable. It is not a
10 screen necessarily, although there would be
11 elements of those plant materials in there that
12 would grow and protect at eye level and slightly
13 above eye level.

14 MR. HANNON: These questions are more,
15 I think, for Mr. Dunham based on the documents
16 that he submitted, prefile testimony, I do have
17 some questions on that. On the second question
18 I'd just like to get a clarification on something
19 that you said in that answer. On the fourth line
20 you said that this residential parcel is very
21 important or it's an important portion of your
22 property. Why? I'm just trying to get a
23 clarification as to your answer.

24 THE WITNESS (Dunham): Well, you know,
25 it's interesting. It's the highest point in that

1 area. This is where they located the tower that
2 you see in the picture and also on the USGS map.
3 So this has been a location that has perfect
4 views, and that's why I took the pictures that I
5 accompanied with this. Those are pictures that
6 were taken, the originals back in the forties, of
7 the view that you could see there. I'll grant you
8 they don't always come out too good in
9 reproducing, but I brought them along just in case
10 there was any question. These were from our photo
11 files that we have. And I know it was in the
12 early forties. My father bought the property
13 around 1941, and I born in '43.

14 So that is an extremely beautiful
15 location. It oversees the whole campus and it is
16 prime. Views are important today, especially when
17 they're distant views that overlook the lake,
18 overlook the region. As I said in my testimony,
19 you could look to Danbury and beyond, and
20 basically you could look almost 360 degrees.
21 Looking to the north, the ridge was there if you
22 went back. Every other area was open for views.

23 MR. HANNON: I'm not sure if anybody
24 can answer this definitively, but I'm just
25 curious. My understanding of reading some of the

1 original documents that came in, a lot of this
2 land had been farmed for a while, but it's been
3 out of agriculture use for quite sometime. Does
4 anybody have any idea about how long that's been?

5 THE WITNESS (Dunham): That's not true.
6 I've lived on the property all my life. The
7 general area was three farms. Some of it was in
8 pasture, some of it was in hay fields, a lot of it
9 was turning to scrub. And what I've done since
10 19 -- middle seventies is I've improved all the
11 fields, taken the rocks out, and I hay them, I
12 pasture them. So it is an active farm, and it has
13 been for the last 30, 40 years.

14 MR. HANNON: But I thought there was
15 something in the application that came in that was
16 talking about some of the area is more second
17 growth, and I was just curious as to when that
18 property was taken out of agricultural use. I
19 mean, it could have been 60, 70 years ago. I'm
20 not sure.

21 THE WITNESS (Dunham): You know, it's
22 interesting, if you go through the property you'll
23 see a lot of stone walls. And the entire property
24 was pretty much cut off in the turn of the century
25 for cord wood, and those stone walls were

1 reminiscent of when the fields used to be there.
2 You can go into some of the areas now that have a
3 good story of trees that have grown up since then.
4 A lot of the areas were scrub and those areas I
5 cleaned up. So any fields that were small from
6 the standpoint of the height of the trees and
7 stuff, what I did is I essentially cleared them
8 and took the rocks out so they could be used
9 better for agriculture.

10 MR. HANNON: Thank you. I mean, I was
11 curious as to why the pictures were there for the
12 lookout tower because when I first saw that, to me
13 it looked like it was a fire tower.

14 THE WITNESS (Dunham): That's what it
15 was. Actually, there had been a fire tower in
16 Kent, and it had to be removed. So my dad bought
17 it and relocated it on the location. That's
18 exactly what it was. It was a lookout tower.

19 MR. HANNON: Okay.

20 THE WITNESS (Dunham): But it was put
21 there because of the wonderful view and the
22 ability to look at the surrounding area.

23 MR. HANNON: I want to talk a little
24 bit about 195 Candlewood Mountain Road. You had
25 made some comments about how it has two additional

1 beautiful sites for homes in the rear. I'm
2 assuming, though, that nothing has been applied
3 for with the town, it's still just a 9.13 acre
4 single-family house on that site?

5 THE WITNESS (Dunham): That's accurate,
6 except I have a layout that I had set up which in
7 the future I might be doing.

8 MR. HANNON: In looking at map C-104,
9 and I don't know if you have access to that, but
10 anyway, just looking at some of the topography, it
11 looks as though that area going east of where the
12 -- when you get to that area east of where the
13 property opens up --

14 THE WITNESS (McDermott): Are you
15 referring to C-104?

16 MR. HANNON: Yes.

17 THE WITNESS (McDermott): C-104 does
18 not show much of 195.

19 MR. HANNON: Well, it depends which one
20 you're looking at because does that have the topo?
21 Because I'm looking more along the lines of the
22 southern property line.

23 THE WITNESS (McDermott): Oh, the
24 southerly property line.

25 MR. HANNON: Yes. Once you get above

1 where the property extends up to the north. The
2 only reason I'm asking that is because --

3 THE WITNESS (McDermott): May I?

4 MR. SILVESTRI: Please.

5 THE WITNESS (McDermott): Let's point
6 so we're on the same page.

7 MR. HANNON: This area right in here.

8 THE WITNESS (McDermott): What
9 Mr. Hannon is referring to is the southerly
10 boundary line of 195.

11 MR. HANNON: Correct. And in looking
12 at that, it looks as though just based on the
13 topography it's roughly about a 20 percent slope.

14 THE WITNESS (Dunham): You have to
15 point out to me what you're speaking of.

16 THE WITNESS (McDermott): Over here
17 (indicating).

18 MR. HANNON: C-104 has the best
19 dimensions in terms of what I'm looking at just
20 for topo. It roughly calculates out to about a 20
21 percent slope.

22 THE WITNESS (Dunham): Yes. Whatever
23 that turns out is accurate. This doesn't show all
24 the topo of the parcel.

25 MR. HANNON: I fully understand. And

1 it may be much flatter out there. I'm just
2 looking for potential access to the site. That
3 may create a little bit of a problem because,
4 again, once you start going above a 10 percent
5 grade for driveways, they have to be paved in
6 town, so some of the development costs associated
7 with trying to put in a two-lot subdivision, just
8 it may be rather extensive because of what needs
9 to be done to prepare the property for
10 development. That's all.

11 THE WITNESS (Dunham): Sir, I don't
12 believe it's a problem. In fact, I have a map
13 showing the contours of the property where I have
14 it laid out for three lots.

15 MR. HANNON: Okay.

16 THE WITNESS (Dunham): So the access
17 goes right here.

18 MR. HANNON: Understood. I'm just
19 talking about once you get to the property where
20 it opens up, because your house is down on the
21 northern half of that property, so I'm assuming
22 that in order to get a roadway in, it's got to go
23 along the southern boundary line?

24 THE WITNESS (Dunham): It would go
25 along the southern boundary to here and then turn.

1 MR. HANNON: Okay. And I believe that
2 site is 9.13 acres?

3 THE WITNESS (Dunham): That's correct.

4 MR. HANNON: So, as you said, if you
5 got it for three lots you're proposing to come in
6 with, then that's roughly almost 1.4 acres of open
7 space that's required by the town?

8 THE WITNESS (Dunham): Yeah, I'm --

9 MR. HANNON: So I'm just trying to get
10 an idea of if there's some future development,
11 utilizing the property where it may be less
12 difficult to develop, if some of that is going to
13 be left in a natural state which also creates more
14 of a natural buffer between your property and the
15 proposed solar project. That's all I'm trying to
16 check out.

17 THE WITNESS (Dunham): I understand.

18 MR. HANNON: That's why I'm going with
19 it so --

20 THE WITNESS (McDermott): I think your
21 analysis is generally correct. The development
22 part, the potential where onsite sewage disposal
23 and the like would have to occur would be on the
24 flatter area and the houses will be up on top of
25 the hill coming backwards, and the road would have

1 to come in from the south and turn -- or driveway,
2 common driveway -- come in and turn slightly to
3 the north.

4 THE WITNESS (Dunham): Northeast.

5 THE WITNESS (McDermott): Yes, the
6 northeast is correct where more development
7 potential is. So the answer is -- could you get a
8 couple lots out of it, the answer is yes. Where
9 they would be, I don't know.

10 MR. HANNON: Yeah. Because I know that
11 it's also noted on the plans that there's existing
12 ledge and rock outcrops in that area.

13 THE WITNESS (McDermott): And those are
14 generally, the ledge and outcrop are generally in
15 the southeastern corner.

16 MR. HANNON: Okay. Thank you. And
17 then I'm not sure that this has been totally
18 fleshed out in terms of visibility, but again, I
19 want to get it at least on the record. I believe
20 you also own property that is north and northwest
21 of the site because I believe you said you own
22 about 600 acres in the area. So the property that
23 is to the north and northwest you also own that
24 large piece?

25 THE WITNESS (Dunham): To the north of

1 where this project is, on that side of Candlewood
2 Mountain Road I own 100 acres, and it abuts the
3 project. It's southern boundary is this project.
4 It's the northern boundary of the solar project.

5 MR. HANNON: Okay. Because in looking
6 at the soils map that was provided, it looks as
7 though a lot of that area is either wetland or 15
8 to 45 percent slopes. So from a development
9 perspective, again, that looks as though it would
10 be a very difficult area to develop up closer to
11 the solar project. And I'm not saying that that's
12 the same as you get closer to Candlewood Mountain
13 Road, but at least up in that area where you've
14 got a pretty large wetland area delineated here,
15 there's some other stream crossings, I believe,
16 and then just very steep topography. So again,
17 that would be an area that would be difficult to
18 develop, and all I'm getting at, again, is like my
19 last comment was it just seems as though you would
20 be able to maintain more of a natural buffer in
21 that area.

22 THE WITNESS (McDermott): We did not
23 address as part of our assignment from the town.
24 We were only looking at the four residential
25 properties on Candlewood Mountain Road as

1 described previously by the court. We did not
2 opine on the development potential north of the
3 site.

4 MR. HANNON: I was just looking at that
5 because it's residential. What I didn't look at
6 is the industrial on the east side of the property
7 so --

8 THE WITNESS (Dunham): If I might
9 comment on that? Where the solar panels are
10 indicated to be on the abutting property as they
11 go north, those are the areas where it's not
12 steep. Where it gets steep they don't put the
13 panels because it's too steep. So at that same
14 level my property continues to the north, and
15 that's where you would put something where it
16 isn't so steep, but the problem is then you'd be
17 looking right at the solar panels.

18 MR. HANNON: Because I thought the
19 higher elevations where the panels would be on,
20 the south side of the high point, in that area.
21 So even if you were developing that piece of
22 property topography wise, it looked as though a
23 lot of the panels are going to be out of site
24 because of the natural topography.

25 THE WITNESS (Dunham): No, because it's

1 very similar to what's on the south end. The
2 grades of the property that is most developable is
3 right on the same contour level as where they are
4 putting the panels because that's where it's
5 easier grade. As you go east, it climbs and it's
6 very severe, and that's why they're not putting
7 panels there, and that's why I would not develop
8 there.

9 MR. HANNON: But looking at map C-105,
10 I mean, it looks as though the elevation is
11 somewhere around -- I guess there's a corner area
12 that goes up to about maybe elevation on 912, but
13 yet due north you're seeing property elevations go
14 930, 940. So I'm just saying from that
15 perspective you've got a mound out there where
16 you're not going to see because the panels are on
17 the back side of that slope.

18 THE WITNESS (Dunham): Well, if you
19 look at the contour map that is the location site,
20 you can see how the contours run north-south on
21 levels, and it climbs to the east. And if you
22 look at the contour map, you can see that the
23 center parcel is pretty nice.

24 MR. HANNON: Well, the topography is
25 somewhat limited what I have. I'm just going by

1 what's --

2 THE WITNESS (Dunham): It's condensed
3 too.

4 MR. HANNON: I'm just looking at the
5 topos there. And again, to me it's also a way of
6 possibly helping to maintain sort of a natural
7 buffer.

8 THE WITNESS (Dunham): There may be an
9 opportunity to do that, but my point is that at
10 the level that the panels are at, that's where you
11 want to build because that's the best part of the
12 property. As you go to the west, it's wet. As
13 you go to the east, it's steep.

14 MR. HANNON: And then one final
15 question. On page 2 there was a question will the
16 solar array be visible from the airport. Your
17 response was yes. And then the last line is the
18 properties are the same elevation. My
19 understanding is in that area across from the
20 solar panels, the solar panels are roughly about
21 800 foot elevation; the airport is 675.

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

23 MR. HANNON: So I'm not sure where the
24 line comes from the properties are at the same
25 elevation. It looks like there's about 125 foot

1 difference between where the solar panels start
2 and the elevation of the airport.

3 THE WITNESS (Dunham): Are you
4 referring to my answers in the last two or three
5 questions, visibility?

6 MR. HANNON: Second to the last
7 question.

8 THE WITNESS (Dunham): Okay, good.
9 That is what you have to understand is my property
10 abuts where the runway is. I have a heliport
11 there and I have where we do weddings. That
12 elevation is exactly the same as the airport which
13 they've conceded and acknowledged that from the
14 airport you would see these panels. So it's no
15 different.

16 MR. HANNON: The way that I read this
17 was that you're making a statement that the
18 airport property and the solar panel property were
19 the same elevation.

20 THE WITNESS (Dunham): No. I'm sorry.

21 MR. HANNON: That's how I read this.
22 So that's why I'm trying to get a clarification.

23 THE WITNESS (Dunham): I'm glad you did
24 that because what I'm speaking of is the response
25 that they have in Finding of Fact 224 indicates

1 that the solar array will be visible from the
2 airport. The property that they're talking about
3 in that finding of fact is exactly at the same
4 elevation as my property which is right next to
5 the airport.

6 MR. HANNON: That is not how I took
7 that answer to be.

8 THE WITNESS (Dunham): I'm sorry.

9 MR. HANNON: That's why I asked.

10 THE WITNESS (Dunham): I appreciate
11 that.

12 MR. HANNON: I'm okay.

13 MR. SILVESTRI: Thank you, Mr. Hannon.
14 We'll move on to Mr. Harder.

15 MR. HARDER: I have no questions.

16 Thank you.

17 MR. SILVESTRI: Thank you, Mr. Harder.
18 Mr. Edelson.

19 MR. EDELSON: So to Mr. Sanford. In
20 response to Ms. Walsh's question about the
21 difference between edge habitat and edge forest,
22 you said they're different. Can you say what do
23 you see as the difference in response to what she
24 was asking?

25 THE WITNESS (Sanford): Edge habitat

1 is, again, when we talk about what edge habitat is
2 it's the transition between going from a meadow
3 environment to a forest environment. And
4 typically in that edge habitat you can have a
5 variety of different species that are in that
6 particular location. They can vary from
7 herbaceous to shrubs to trees. When you get to an
8 edge forest, that is describing the edge of the
9 forest, just the immediate edge of the forest, and
10 it's not describing the edge habitat zone.

11 MR. EDELSON: But they're contiguous?

12 THE WITNESS (Sanford): They would be
13 contiguous, yes.

14 MR. EDELSON: And so what you would see
15 from one side or the other would be basically the
16 same, just the foreground switches with
17 background. We're talking about visibility. And
18 I think you were making a distinction, and I'm
19 trying to understand if there really is a
20 distinction that's going to affect visibility and
21 I'm not seeing it so far.

22 THE WITNESS (Sanford): In terms of the
23 edge habitat versus the edge forest in terms of
24 visibility, that would all depend on the density
25 of the vegetation that's there, but from a general

1 standpoint, if you look from either side,
2 depending on that density it should be the same
3 from either side. But you'd have to establish the
4 density first as part of that whether it's a
5 visual screen.

6 MR. EDELSON: So what we're looking at
7 is a structure that's approximately 7 feet off the
8 ground. So I think this was your point before
9 about really the understory is really what affects
10 visibility more than the canopy. If I had a bunch
11 of trees that are up there at 80 feet and I have a
12 beautiful canopy, that's not going to really
13 affect one way or another what I can see through
14 the forest compared to if I had a lot of
15 understory, which we see this time of year, you
16 know. I live in a condo. I see my neighbors only
17 in the winter. In the summer they're gone because
18 the understory comes back.

19 So with the understory, isn't that what
20 the applicant is basically saying, they are
21 willing to supplement that with plantings to make
22 sure that if the understory was removed, as when
23 we remove the 50 feet of buffer, they're basically
24 going to artificially or man-made create the
25 understory that would basically stop or not --

1 would affect the visibility, would block the
2 visibility?

3 THE WITNESS (McDermott): I think in
4 principle your statement, Mr. Edelson, is correct.
5 What we don't know is how that would be
6 implemented and who the arbiter of its adequacy
7 will be, and that is one of the concerns that we
8 have given you in our testimony.

9 MR. EDELSON: Right.

10 THE WITNESS (McDermott): We agree that
11 it could be, but we don't know.

12 MR. EDELSON: Okay. I think we'd all
13 agree that should be the objective of doing those
14 plantings?

15 THE WITNESS (McDermott): That would be
16 the approach.

17 THE WITNESS (Sanford): One other
18 clarification that I think is the right time to --
19 as part of this question is to understand what the
20 existing understory is on both the south and west
21 sides of the property. In my photo logs you will
22 notice that there's a series of photos there that
23 show you views from the abutting properties into
24 the actual solar property locations. And if you
25 scan through the photos, you'll notice that the

1 understory and what was described at the beginning
2 of my presentation in terms of eye height, you
3 will notice that there is very little understory
4 in the existing wooded areas on both the west as
5 well as on the south side of the property. And so
6 just maintaining and/or leaving a buffer there
7 without some type of supplemental plantings will
8 not get you that visual screening that I think
9 that folks are talking about here.

10 MR. EDELSON: Although, I think you
11 responded to Mr. Hannon to say if you leave it
12 natural invasives will come in., And from what I
13 can see, they do a pretty good job of creating a
14 lot of understory very quickly. We might not like
15 it, but it does create a lot of understory
16 quickly.

17 THE WITNESS (Sanford): So again, when
18 we describe these environments here, when we were
19 talking about the birch trees, the birch trees are
20 located along the southern part of the property.
21 They are also intermixed with other hardwood trees
22 in those areas. Along the western side of the
23 property it's entirely sugar maple and red maple,
24 so it does not have the disease such as the fungus
25 that actually affects those trees. So those

1 trees, in fact, will remain, and in those areas
2 you have a very low density of understory, and you
3 have a high overstory.

4 MR. EDELSON: Which would apply the
5 plantings become more important in that area as a
6 supplement.

7 THE WITNESS (McDermott): So that goes
8 to the response that I gave to Mr. Hannon is that
9 you can't do a total generalization. You really
10 need to do this in reaction to a specific proposal
11 where the activity is going to be and how it will
12 then appear. And you can't do that here.

13 MR. EDELSON: So I'd like to go back to
14 what I thought was a simple question that
15 Ms. Walsh asked, and I didn't think we got the
16 answer. If the only thing that changes between
17 what we had as evidence for the finding of fact,
18 the visibility analysis that was done then to now,
19 the difference being this 50 foot buffer, if
20 that's the only thing that changes, based on your
21 experience and your professionalism, how would
22 that change the visibility analysis that the
23 applicant has proposed?

24 THE WITNESS (McDermott): It would push
25 the units back. But if the understory is thin

1 they're virtually going to be -- they'll be quite
2 similar in visibility, just a little farther away.

3 MR. EDELSON: And adding to that, and I
4 think somewhat I'm getting confused by some of the
5 numbers because we've been sitting here for three
6 hours, but I'm seeing from a property line,
7 appearing from a property line the solar panels
8 are at least 350 feet away, right, that's what I
9 think we heard before that the project is 350 away
10 from the property line?

11 THE WITNESS (McDermott): No, that's
12 not correct.

13 MR. EDELSON: I thought I had that --

14 THE WITNESS (McDermott): If we can, we
15 have some cross sections that we presented in our
16 testimony that might help you and help everyone
17 understand.

18 MR. EDELSON: But I think that's what
19 we heard earlier this afternoon, 350 feet, we have
20 the property line, the 50 foot buffer, within that
21 was a fence, and then from the property line 350
22 feet.

23 THE WITNESS (McDermott): I don't think
24 that was correct. I don't think that was correct.

25 MR. SILVESTRI: I don't remember the

1 exact measurements on that. But you have the
2 property line, as I understand it, you have the
3 area at which the tree clearing would have been
4 performed --

5 MR. EDELSON: Right.

6 MR. SILVESTRI: -- then you have a
7 fence, and then you have your panels. I believe
8 that's the staging as to the way it goes.

9 THE WITNESS (Dunham): But it's not 350
10 feet. The 350 feet that you referenced goes from
11 the house, not from the property line.

12 MR. SILVESTRI: I got it. This goes
13 back to the 350 foot distance of the nearest
14 residence structure which is the guest house at
15 183 Candlewood Mountain Road.

16 MR. EDELSON: Okay. I stand corrected.
17 Because again, we're talking about visibility that
18 would affect residences. And we've got an up
19 gradient, and I'm basically seeing, at least in my
20 looking at the geometry as I'm looking up a hill,
21 it's going to be very hard to see these panels
22 whether or not I have the 50 foot buffer or I
23 don't.

24 THE WITNESS (McDermott): I believe the
25 site that was being referenced by the applicant is

1 Watson and at 183. I think that's correct.
2 That's the house or the property that has the
3 guest house or studio sitting up a little higher
4 on the hill in what we have identified as cross
5 section D. And what happens there is it goes down
6 and then it goes up slightly. Okay. So they're
7 elevated. So in the cross section that we've
8 shown in sheet 5 of 6, carrying it through and
9 admittedly the 50 foot would be different. So
10 this is based on the plan that you had approved.

11 MR. EDELSON: Right. I'm looking for
12 the difference.

13 THE WITNESS (McDermott): What would
14 happen here is that you're coming down. They have
15 drainage structures, swales, detention, whatever,
16 as now proposed, and then the grading associated
17 with that takes it to the property line. So you
18 can see. So what would happen on this image --

19 MR. EDELSON: And just to be clear, Mr.
20 McDermott, those trees represent what Mr. Sanford
21 was saying before, 80 to 100 foot trees?

22 THE WITNESS (McDermott): Yes. And
23 we're not showing much understory.

24 MR. EDELSON: Correct.

25 THE WITNESS (McDermott): And so the

1 difference here would be, you would move it over
2 less than -- because we have a graduated scale
3 here. The property line on this scale shows at
4 about station 2 plus 75. It would move over to
5 about this point here. And so you'd pick up maybe
6 on this illustration an inch, an inch and a
7 quarter more of vegetation proportionally, and
8 that's what you'd get.

9 And so if this continues at this same
10 level, you would still be looking at a cleared
11 area and the panels would be, because it's sloped,
12 would be above that cleared area. So there would
13 be more vegetation, natural vegetation or
14 supplemented vegetation for 50 feet. You'll see
15 the same sort of thing just 50 foot farther apart
16 at the minimum.

17 MR. EDELSON: I see myself as a very
18 small person or a small figure on that diagram,
19 and I'm not going to be seeing over that swale, if
20 you will.

21 THE WITNESS (McDermott): You're going
22 to be seeing above --

23 MR. EDELSON: Those are your
24 representation of the panels on the right there?

25 THE WITNESS (McDermott): And if I can

1 make an analogy of it, and I think you would be
2 familiar with it having been in Southbury, it is
3 akin to what happens when the quarry in Southbury
4 expands, you don't necessarily see the rocks, you
5 see the difference in the quality of the
6 visibility toward that end. Do you see what I'm
7 saying? You're seeing a difference. What you're
8 seeing now is through, and you're seeing
9 continuation. You will now see the construction
10 of that drainage and moving inward. In
11 representation, these panels -- this was a
12 clearing to the property line. These panels were
13 75 feet from the property line, so now the panels,
14 if it were the same image pushed in, you'll see
15 the panels 25 foot away to some extent.

16 MR. EDELSON: But again, when we look
17 at visibility and the visibility analysis that was
18 done, it's not just for a few properties, we do it
19 for the whole area to try to take into account --

20 THE WITNESS (McDermott): Understood.

21 MR. EDELSON: -- if you will, the whole
22 community.

23 THE WITNESS (McDermott): Sure.

24 MR. EDELSON: And so I think what you
25 said before I want to just clarify which is as we

1 look from the airport and we have Fox Run and the
2 other locations, the change of the 50 foot buffer
3 would be fairly minimal from that type of
4 analysis?

5 THE WITNESS (McDermott): It would be
6 different, but we were looking at very site
7 specific of those four houses.

8 MR. EDELSON: But your position or your
9 professional opinion at this point would be the
10 way those -- we have the before and after
11 pictures, if you will, existing conditions plan,
12 that would be very hard to see a difference in
13 those pictures?

14 THE WITNESS (McDermott): It would be
15 very hard to see that difference from Candlewood
16 Mountain, Candlewood Airport, for example.

17 MR. CASAGRANDE: Mr. Chairman, could I
18 just to clarify for the record? The visibility
19 issue that came up --

20 MR. LYNCH: Mr. McDermott -- I don't
21 mean to --

22 MR. CASAGRANDE: -- did you identify
23 the chart that you were referencing here, where it
24 is in the record?

25 THE WITNESS (McDermott): This is in

1 prefile testimony in appendix -- I'm sorry, it
2 would be in attachment C to the Milone & MacBroom
3 prefile testimony, and it would refer to this
4 particular graphic, sheet 5 of 6.

5 MR. LYNCH: That's what I wanted for
6 the record. Thank you very much, Mr. McDermott.

7 MR. SILVESTRI: Attorney Casagrande.

8 MR. CASAGRANDE: I'm sorry. I just
9 want to make clear that when Judge Cohn decided to
10 remand to the Council the issue of visibility,
11 visibility came up because it was one of my
12 alleged grounds for having my clients aggrieved,
13 in other words, I had to allege and prove to the
14 court that Mr. Dunham was aggrieved, that
15 Mrs. Ostrove was aggrieved, and therefore the
16 organization Rescue of which they're members is
17 also aggrieved. And in order to do that -- and
18 this is where I wanted to clarify what Mr. Edelson
19 said -- that demands a specific inquiry into the
20 visibility from those properties. In other words,
21 so I don't want to leave the impression that just
22 because the Council thinks that maybe the overall
23 visibility all over, you know, may be minimal,
24 let's say --

25 MR. EDELSON: Unchanged.

1 MR. CASAGRANDE: -- it's very
2 important, I think, for purposes of your
3 clarification on the remand to focus on the
4 visibility from the specific properties because
5 that goes to the issue of aggrievement, and that's
6 why we asked Milone & MacBroom to focus on the
7 specific properties.

8 MR. SILVESTRI: This is why you did the
9 four properties, correct?

10 MR. CASAGRANDE: The four, yes.

11 MR. MICHAUD: Mr. Chairman, may I
12 respond to that?

13 MR. SILVESTRI: I think the reason for
14 the remand was Judge Cohn saw some inconsistency
15 in the record, and he asked that we go back here
16 and fix those inconsistencies and, again, those
17 findings of fact. I think that was -- I know that
18 was the reason why we're here, I believe.

19 MR. CASAGRANDE: I don't disagree with
20 that.

21 MR. SILVESTRI: Thank you. And I think
22 Mr. Edelson is trying to get a handle on what he's
23 seen with these exhibits as well.

24 MR. CASAGRANDE: Right.

25 MR. EDELSON: I'm glad you said that

1 because I guess that's the question. How would
2 you characterize what is the inconsistency between
3 what was the evidence presented to us versus I
4 guess our -- I've lost the words -- but in our
5 opinion?

6 MR. MICHAUD: Findings of fact.

7 MR. EDELSON: What do you see is the
8 inconsistency that needs to be addressed?

9 MR. CASAGRANDE: Well, I think
10 what Judge -- and counsel will correct me if he
11 thinks I'm wrong -- but I think what Judge Cohn
12 was focusing on was that finding of fact where it
13 said it would be shielded in all directions. And
14 in the course of the testimony what became a bone
15 of contention was the conditions map, which is
16 part of our prefile testimony because Attorney
17 Bachman had asked us to submit that, the
18 conditions map that was submitted to the court and
19 to the Council, in fact, show clearing up to the
20 property line all along the southern and western
21 boundaries, and I think that's what Judge Cohn
22 focused on, how can that be if the finding of fact
23 says it's going to be shielded by this buffer. I
24 think that's part of what he was getting at.

25 MR. MICHAUD: True, yes.

1 MR. EDELSON: I'm just wondering if
2 there's a definitional question because I think
3 the applicant defined shielded versus visibility.
4 At least in my experience here, we sort of have
5 this it's either you can see it or you can't see
6 it. That's the way I understood visibility. And
7 a lot of times that's seasonal, you can see it in
8 the winter, but you can't see it in the summer.
9 There was a definition of shielding which
10 basically was more of a spectrum, if you will, it
11 wasn't either yes or no. It says it's obstructed.
12 Well, obstructed to me still means I can see it.
13 I just can't see it as clearly.

14 Now, I'm wondering if what we have here
15 is the judge trying to get a better understanding
16 of what do we mean by shielded versus visibility.
17 I mean, a layperson could say well shielded is the
18 same as it's not viewable, but that's not the
19 definition that was given before, and as far as I
20 understand nobody objected to that. As far as I
21 remember, nobody objected to that. So are we
22 really talking about I can see it or I can't see
23 it, is that your --

24 MR. CASAGRANDE: That's our --

25 MR. EDELSON: Is that your contention

1 is that they were saying -- the applicant was
2 saying you won't be able to see it at all, or what
3 I heard earlier today is that they're saying there
4 will be efforts to obstruct it?

5 MR. CASAGRANDE: I don't think Judge
6 Cohn honed in on the difference between visibility
7 and shielding. I don't think the parties really
8 addressed that with him at the hearing. But our
9 position would be he wants to know will it be
10 visible even if it's partially shielded.

11 MR. SILVESTRI: Mr. Edelson, my read on
12 the court order was visibility. There was nothing
13 in there on shielding. And that's what we're
14 looking at is how does the finding of fact compare
15 to what we know on visibility.

16 MR. EDELSON: Thank you, Mr. Chairman,
17 but the visibility analysis we had didn't say it
18 would not be visible from all of those spots. In
19 fact, it said some would be visible, some visible
20 seasonally. So that's why I'm trying to
21 understand what are we -- I'm trying to understand
22 what we're trying to clarify, I guess.

23 MR. SILVESTRI: And I have to go back
24 to the specific findings of fact that were
25 referenced by the court as well as in the opinion

1 there's a paragraph on visibility. And basically
2 through these proceedings it's a question of does
3 the finding of fact number 30, say, still hold
4 true. I think that would be the best way to sum
5 it up.

6 MR. EDELSON: Yes. And I guess I was
7 asking here which finding of fact do they feel are
8 they saying no longer holds true. And I'm not
9 hearing a specific -- I mean, I'm looking at the
10 findings of fact under visibility, and I've seen
11 one called out to say that's not true or that
12 doesn't hold. Maybe I missed it, but that's what
13 I'm struggling with.

14 THE WITNESS (Dunham): If you look at
15 218, this is your statement, it would be shielded
16 in all directions by tree buffers, and that's not
17 accurate.

18 MR. SILVESTRI: Well, this is what the
19 court had mentioned as one of the issues that they
20 wanted us to look at, and that's something I had
21 brought up myself earlier in the proceedings. But
22 to try to make the point again to Mr. Edelson,
23 that's kind of what they're looking at.

24 Do you have anything else, sir?

25 MR. MICHAUD: Yeah, the judge, if I

1 remember correctly, please correct me, two of the
2 findings of fact that he had trouble with was
3 Number 224 and 218, shielded versus visibility,
4 because one says it's shielded. What does that
5 really mean? And that's why we attempted in our
6 predirect to define what we thought shielded was.

7 MR. SILVESTRI: Thank you.

8 Mr. Edelson.

9 MR. EDELSON: I think I've done enough
10 damage.

11 (Laughter.)

12 MR. SILVESTRI: Thank you, Mr. Edelson.

13 Mr. Levesque.

14 MR. LEVESQUE: Mr. Dunham, did you just
15 testify that you owned a heliport business nearby?

16 THE WITNESS (Dunham): Yes, I do.

17 MR. LEVESQUE: Do you think the
18 approval and operation of a solar panel business
19 nearby will significantly harm that heliport
20 business?

21 THE WITNESS (Dunham): Not only the
22 heliport business, I have access and use of the
23 airport on this property, and it clearly will hurt
24 that property because if you go to use the
25 airport, you have the same problem.

1 And one thing I'd like to point out to
2 you is that the glare analysis that everybody
3 keeps referring to is nothing more than the FAA's
4 straight in approach. It does not have anything
5 to do with the traffic pattern that's utilized by
6 aircraft, and that's why I've continually said
7 this is going to be a problem because the traffic
8 pattern goes right over the solar panels, and
9 that's the real problem.

10 MR. LEVESQUE: Did you submit expert
11 testimony about that?

12 THE WITNESS (Dunham): I kept on saying
13 that, but what happens is all you have to do is
14 look at the information that's in the record with
15 respect to the determination by the FAA. It's
16 part of the record. Let me see if I can find it.

17 MR. CASAGRANDE: I may be able to help
18 clarify that too.

19 THE WITNESS (Dunham): It's page 5 of 8
20 in the record that they've submitted from the FAA.
21 Can you find that?

22 MR. CASAGRANDE: I don't have the FAA
23 report.

24 THE WITNESS (Dunham): It's part of the
25 record. It's part of what was submitted.

1 MR. CASAGRANDE: Right. I just don't
2 have it here. But I do know, and this was in Mr.
3 Dunham's brief to the superior court on
4 aggrievement. What we relied on was -- and I
5 think the Council took administrative notice --
6 there were several studies that the FAA did
7 involving these kinds of non -- I forget what the
8 word is -- not the bigger national international
9 airports but the smaller I think they're called
10 feeder airports or nonfeeder airports, and the
11 study that we relied on, again, to show
12 aggrievement was a study conducted by the FAA
13 which showed that pilots reported that glare from
14 solar arrays near these small airports was a real
15 danger, and that was the proof that we relied on.
16 It was before this Council.

17 THE WITNESS (Dunham): What's before
18 this Council is the FAA determination of no
19 hazard. If you look at page 5 of 8, it speaks
20 about -- I'll just read it for the record.
21 Aeronautical study disclosed that the proposals
22 would have no effect on existing proposed arrival,
23 departure or en route instrument flight, minimum
24 flight altitude. They have no reference to
25 traffic patterns.

1 MR. LEVESQUE: Thank you, Mr. Dunham.

2 THE WITNESS (Dunham): And that's the
3 problem.

4 MR. LEVESQUE: That's all the questions
5 I have.

6 THE WITNESS (Dunham): Thank you.

7 MR. SILVESTRI: I was actually going to
8 look up the FAA, but I want to move on to
9 Mr. Lynch. Just as an aside before you go, what
10 you had mentioned, Attorney Casagrande, I believe
11 was in your brief, not in the court record.

12 MR. CASAGRANDE: Sorry, Mr. Chairman.

13 MR. SILVESTRI: I believe what you had
14 mentioned about the FAA was in your brief.

15 MR. CASAGRANDE: That's right. Well,
16 it was in Mr. Dunham's brief.

17 MS. BACHMAN: For the court.

18 MR. CASAGRANDE: For the court which
19 cited to this record which included a document
20 that you administratively noticed from the FAA.

21 MS. BACHMAN: Administrative Notice
22 Item Number 17, United States Federal Aviation
23 Administration, Evaluation of Glare as a Hazard
24 for General Aviation Pilots on Final Approach.

25 MR. CASAGRANDE: Correct.

1 MS. BACHMAN: Item Number 18, United
2 States Federal Aviation Administration, Technical
3 Guidance for Evaluating Selected Solar
4 Technologies on Airports.

5 And finally, Item Number 19, United
6 States Federal Aviation Administration, Interim
7 Policy, FAA Review of Solar Energy System Projects
8 on Federally Obligated Airports, inclusive of the
9 Solar Glare Hazard Analysis Tool.

10 MR. CASAGRANDE: I believe the one that
11 was cited, the document that was cited in Mr.
12 Dunham's brief, I believe it was 17. That was the
13 specific study that we referenced in our brief to
14 the trial court.

15 MS. BACHMAN: The 2015 study?

16 MR. CASAGRANDE: I believe so. I don't
17 have the brief with me, but it's there.

18 MS. BACHMAN: I checked it. That's the
19 right one.

20 MR. CASAGRANDE: Okay.

21 MR. SILVESTRI: Mr. Lynch.

22 MR. LYNCH: Mr. Chairman, the visual
23 questions I had all concerned the development
24 other than the actual solar area itself.
25 Mr. Hannon did a great job putting forth those

1 questions, and Mr. McDermott answered them for me.
2 So thank you, no more questions.

3 MR. SILVESTRI: I just want to check if
4 any Council member or staff has any other
5 questions before we move on?

6 (No response.)

7 MR. SILVESTRI: We'll move on.
8 Attorney Michaud, you're up.

9 MR. MICHAUD: Thank you. I just have a
10 couple questions.

11 CROSS-EXAMINATION

12 MR. MICHAUD: Let's take a look at this
13 chart here. I believe in questions from
14 Mr. Edelson you indicated that you could see the
15 solar panel from down below because of the missing
16 understory?

17 MR. SILVESTRI: Attorney Michaud, could
18 you move your microphone over?

19 MR. MICHAUD: Yes.

20 MR. SILVESTRI: Thank you.

21 MR. MICHAUD: Am I correct that you
22 testified that in your opinion you can see the
23 solar panel even with the setback?

24 THE WITNESS (McDermott): I think what
25 we were referring to is construction in general

1 and the overall construction. I might add that,
2 and when Mr. Edelson was saying where is the
3 discrepancy, we were very surprised that the
4 discussion had been with the panels themselves and
5 not the overall construction that came to the
6 property line in this location. That's what is
7 part of visibility. It's not only the panels, but
8 it is also drainage swales and other activities
9 that occur between the property line or in this
10 case 50 foot into the property line further into
11 the property. So the question of the panels is
12 one thing, but it's also the question of the
13 change from forest to these other ancillary
14 facilities associated with the construction of the
15 solar farm.

16 MR. MICHAUD: So you're saying you can
17 see the swales?

18 THE WITNESS (McDermott): You'll see
19 the swales.

20 MR. MICHAUD: I thought I heard you say
21 you could see the solar panels.

22 THE WITNESS (McDermott): Not in this
23 particular section but in other sections I can
24 point out. In Sections A and B you will clearly
25 see the solar panels from the abutting property.

1 That would be from in Section A where this is the
2 vegetation you will see those solar panels
3 clearly.

4 MR. LYNCH: Again, Mr. McDermott,
5 you're referring to a visual chart in a written
6 record.

7 THE WITNESS (McDermott): Okay. I'm
8 referring to in Attachment C, sheet 2 of 6, sheet
9 3 of 6. 1 of 6 is the plan. 2 of 6 and 3 of 6
10 you will clearly see the solar panels even without
11 changing or adding to vegetation, even with the 50
12 foot or the 100 foot you will -- maybe not -- it
13 will be lesser. You will see the solar panels.

14 MR. MICHAUD: So Mr. McDermott, my
15 question for you is did Milone & MacBroom conduct
16 a visibility analysis to come to this conclusion?

17 THE WITNESS (McDermott): What we did
18 was by observing from the ground the nature of the
19 vegetation presented here in the testimony as to
20 the nature of the vegetation, description of the
21 vegetation, and what you can see in a horizontal
22 or in a viewshed.

23 MR. MICHAUD: So you observed, but you
24 didn't conduct a formal visibility analysis?

25 THE WITNESS (McDermott): I don't know

1 the difference from what we did and a formal
2 visibility analysis.

3 MR. MICHAUD: That first chart that you
4 had, could you put that chart up that showed the
5 solar array?

6 MR. SILVESTRI: For the record this is?

7 THE WITNESS (McDermott): This would be
8 attachment A.

9 MR. MICHAUD: Thank you. So referring
10 to your --

11 THE WITNESS (McDermott): To the
12 prefile testimony.

13 MR. SILVESTRI: Thank you.

14 MR. MICHAUD: So referring to your
15 prefile testimony dated May 6th, the Q and A on
16 page 7, in a Q and A you indicate that -- and I'll
17 just read it. It says, "In the case along the
18 southerly border where solar arrays are proposed
19 to be located in an open field, an evergreen
20 buffer could be installed to block direct
21 visibility of the panels from the property N/F
22 Dunham." Can you point out here where you'd
23 recommend an evergreen buffer?

24 THE WITNESS (McDermott): That would be
25 in the vicinity from the easterly edge or near the

1 easterly edge of the solar array, following the
2 southerly border of the solar array, and turning
3 the corner in a northwesterly direction in the
4 solar array.

5 MR. MICHAUD: So this corner right
6 here?

7 THE WITNESS (McDermott): It would be
8 along that southerly border where it would get
9 thinned out -- it is already very thin -- and at a
10 similar elevation.

11 MR. MICHAUD: What understory would you
12 recommend if you were asked to propose an
13 understory?

14 THE WITNESS (McDermott): I'd have to
15 think about the appropriate vegetation. We have
16 not identified specific plant material that would
17 be appropriate there.

18 MR. SILVESTRI: Mr. McDermott, the area
19 that you just pointed out is in the vicinity of B1
20 and B2; is that correct?

21 THE WITNESS (McDermott): That's
22 correct.

23 MR. SILVESTRI: Thank you.

24 MR. MICHAUD: Thank you. Those are my
25 questions.

1 MR. SILVESTRI: Thank you very much.

2 Ladies and gentlemen, before closing
3 the evidentiary record of this matter specifically
4 limited to the remand order to clarify whether the
5 Council's December 21, 2017 Findings of Fact and
6 Opinion on visibility agree with the evidentiary
7 record, the Siting Council announces that proposed
8 findings of fact may be filed with the Council by
9 any party or intervenor no later than May 30,
10 2019. The submission of proposed findings of fact
11 are not required by this Council, rather we leave
12 it to the choice of the parties. However, no new
13 information, no new evidence, and no argument will
14 be considered by the Council.

15 I hereby declare this hearing
16 adjourned. I thank you very much for your
17 participation. And drive safely.

18 MR. CASAGRANDE: Mr. Chairman, just a
19 point of clarification. Are you saying no briefs
20 can be filed, just proposed findings of fact?

21 MR. SILVESTRI: That is correct. We're
22 adjourned. Thank you.

23 (Whereupon, the witnesses were excused,
24 and the above proceedings were adjourned at 4:32
25 p.m.)

1 CERTIFICATE

2
3 I hereby certify that the foregoing 155 pages
4 are a complete and accurate computer-aided
5 transcription of my original stenotype notes taken
6 of the Council Meeting in Re: Petition No. 1312,
7 Candlewood Solar LLC Declaratory Ruling that no
8 Certificate of Environmental Compatibility and
9 Public Need is required for the proposed
10 construction, maintenance and operation of a 20
11 megawatt AC (26.5 megawatt DC) solar photovoltaic
12 electric generating facility located on a 163 acre
13 parcel at 197 Candlewood Mountain Road and
14 associated electrical interconnection to
15 Eversource Energy's Rocky River Substation on Kent
16 Road in New Milford, Connecticut. COURT-ORDERED
17 REMAND REGARDING VISIBILITY, which was held before
18 ROBERT SILVESTRI, Presiding Officer, at the
19 Connecticut Siting Council, Ten Franklin Square,
20 New Britain, Connecticut, on May 14, 2019.
21
22
23
24
25



Lisa L. Warner, CSR 061
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