

In The Matter Of:
STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Petition No. 1313
October 10, 2017

BCT Reporting LLC
PO Box 1774
Bristol, CT 06010
860.302.1876

1 STATE OF CONNECTICUT
2 CONNECTICUT SITING COUNCIL

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4 Petition No. 1313

5 DWW Solar II, LLC petition for a declaratory
6 ruling that no Certificate of Environmental
7 Compatibility and Public Need is required for the
8 proposed construction, maintenance and operation
9 of a 26.4 megawatt AC solar photovoltaic electric
10 generating facility on approximately 289 acres
11 comprised of 5 separate and abutting
12 privately-owned parcels located generally west of
13 Hopmeadow Street, north and south of Hoskins Road,
14 and north and east of County Road, and associated
15 electrical interconnection to Eversource Energy's
16 North Simsbury Substation west of Hopmeadow Street
17 in Simsbury, Connecticut.

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19 Continued Hearing held at the Public
20 Utilities Regulatory Authority, 10 Franklin
21 Square, New Britain, Connecticut, on October 10,
22 2017, beginning at 10:59 a.m.

23
24 H e l d B e f o r e :

25 ROBERT STEIN, Chairman

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

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 Council Members:

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 SENATOR JAMES J. MURPHY, JR.,

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 Vice Chairman

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 MICHAEL HARDER

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 DR. MICHAEL W. KLEMENS

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 DANIEL P. LYNCH

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 ROBERT SILVESTRI

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 Council Staff:

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 MELANIE BACHMAN, ESQ.

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 Executive Director and

14

 Staff Attorney

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 ROBERT MERCIER

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 Siting Analyst

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 For the Applicant:

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 PULLMAN & COMLEY, LLC

21

 90 State House Square

22

 Hartford, Connecticut 06103-3702

23

 BY: LEE D. HOFFMAN, ESQ.

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25

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

2

3 For the Town of Simsbury:

4 UPDIKE, KELLY & SPELLACY, P.C.

5 One Century Tower

6 265 Church Street

7 New Haven, Connecticut 06510

8 BY: JESSE A. LANGER, ESQ.

9

10 For the Department of Energy and

11 Environmental Protection:

12 DEPARTMENT OF ENERGY AND ENVIRONMENTAL

13 PROTECTION

14 Bureau of Energy Technology Policy

15 10 Franklin Square

16 New Britain, Connecticut 06051

17 BY: KIRSTEN S.P. RIGNEY, ESQ.

18

19 For Abutting Property Owners, Flammini, et

20 al and Christine Kilbourn-Jones:

21 ALTER & PEARSON, LLC

22 701 Hebron Avenue

23 P.O. Box 1530

24 Glastonbury, Connecticut 06033

25 BY: ALAN M. KOSLOFF, ESQ.

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

2

3 **For the Department of Agriculture:**

4 **CONNECTICUT DEPARTMENT OF AGRICULTURE**

5 **450 Columbus Boulevard**

6 **Hartford, Connecticut 06103**

7 **BY: JASON BOWSA**

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1 THE CHAIRMAN: Good morning, ladies and
2 gentlemen. I'd like to call to order this meeting
3 of the Connecticut Siting Council today, Tuesday,
4 October 10, 2017, at 11 a.m. My name is Robin
5 Stein. I'm chairman of the Connecticut Siting
6 Council.

7 This evidentiary session is a
8 continuation of a public hearing held on September
9 12, 2017, at Eno Memorial Hall Auditorium in
10 Simsbury. It is held pursuant to the provisions
11 of Title 16 of the Connecticut General Statutes
12 and of the Uniform Administrative Procedure Act
13 upon a petition from DWW Solar II, LLC for a
14 declaratory ruling that no Certificate of
15 Environmental Compatibility and Public Need is
16 required for the proposed construction,
17 maintenance and operation of a 26.4 megawatt AC
18 solar photovoltaic electric generating facility on
19 approximately 289 acres comprised of five separate
20 and abutting privately-owned parcels located
21 generally west of Hopmeadow Street, north and
22 south of Hoskins Road, and north and east of
23 County Road, and associated electrical
24 interconnection to Eversource Energy's North
25 Simsbury Substation west of Hopmeadow Street in

1 Simsbury Connecticut. This petition was received
2 by the Council on June 29, 2017.

3 A verbatim transcript will be made of
4 this hearing and deposited with the Simsbury and
5 Granby Town Clerks' Offices for the convenience of
6 the public.

7 We will proceed in accordance with the
8 prepared agenda, copies of which are available
9 near the door.

10 Please note at 2 p.m., following our
11 lunch break, we will continue with the appearance
12 of the party Flammini et al, to be followed by the
13 appearance of the town's witness, Chad Frost.

14 We have a request from Christine
15 Kilbourn-Jones to become a party in this
16 proceeding. The request was made on October 2nd.

17 Attorney Bachman may wish to comment.

18 MS. BACHMAN: Thank you, Mr. Chairman.
19 Staff recommends the party request be granted and
20 that Ms. Kilbourn-Jones be grouped with the
21 existing abutting property owners that are
22 represented by the same lawyer and have generally
23 the same interests.

24 SENATOR MURPHY: So moved,
25 Mr. Chairman.

1 DR. KLEMENS: Second.

2 THE CHAIRMAN: Discussion?

3 (No response.)

4 THE CHAIRMAN: All those in favor,
5 signify by saying aye.

6 THE COUNCIL: Aye.

7 THE CHAIRMAN: Opposed? Abstention?

8 (No response.)

9 THE CHAIRMAN: The motion carries.
10 The second one is a request from DWW
11 Solar II, LLC for a motion to compel responses to
12 interrogatories proffered to Flammini et al, the
13 abutters, dated October 4, 2017.

14 Attorney Bachman again may wish to
15 comment.

16 MS. BACHMAN: Thank you, Mr. Chairman.
17 Given that the abutting property owners'
18 appearance will occur this afternoon at 2 p.m.,
19 the staff recommends that we pass this motion for
20 now, and then take it up again at the conclusion
21 of the abutting property owners' appearance this
22 afternoon.

23 THE CHAIRMAN: Okay. So we'll do that.

24 I wish to call your attention to those
25 items shown on the hearing program marked as Roman

1 numerals I.D., Items 1 through 120.

2 Does the petitioner or any party or
3 intervenor have any objection to the addition of
4 item numbers 20, 62, 63 and 111 that the Council
5 has administratively noticed?

6 (No response.)

7 THE CHAIRMAN: Hearing and seeing none,
8 we will administratively notice those documents.

9 We will now continue with the
10 appearance of the petitioner. And we'll start
11 with Mr. Mercier who has some additional
12 questions.

13 MR. HOFFMAN: Mr. Chairman.

14 THE CHAIRMAN: Oh, I'm sorry. I jumped
15 a little bit ahead. We are continuing with the
16 appearance of the petitioner, but I understand you
17 have two new witnesses to be sworn.

18 MR. HOFFMAN: Actually we only have one
19 new witness, Mr. Chairman, but we also have two
20 new exhibits that are responses to
21 interrogatories, and a recently-filed revised
22 visual simulation. So I don't know if you would
23 like to take the interrogatories and the revised
24 visual simulation first, and then have another
25 witness sworn in. Or actually, since Mr. Henry

1 helped with the preparation of the interrogatory
2 responses, it might be best to have him sworn in
3 first.

4 THE CHAIRMAN: Why don't you have him
5 sworn in first.

6 MS. BACHMAN: Attorney Hoffman, is Mr.
7 Markham here? I don't believe he was at the last
8 hearing.

9 MR. HOFFMAN: He will not be here
10 today. We have sufficient witnesses to answer
11 anything that Mr. Markham might do. Mr. Markham
12 did not prepare responses to any of the
13 interrogatories. He was only here to address
14 certain questions. And we believe that between
15 Paul and Adam, we have sufficient coverage for Mr.
16 Markham's areas of expertise.

17 MS. BACHMAN: Okay. Thank you.

18 THE CHAIRMAN: So please rise.

19 MS. BACHMAN: Just you, Mr. Henry.

20 A D A M T. H E N R Y,

21 called as a witness, being first duly sworn
22 by Ms. Bachman, was examined and testified on
23 his oath as follows:

24

25

1 C L A U D E C O T E ,
2 J E F F R E Y G R Y B O W S K I ,
3 A I L E E N K E N N E Y ,
4 S U S A N M O B E R G ,
5 P A U L V I T A L I A N O ,
6 J E F F R E Y P E T E R S O N ,
7 G O R D O N P E R K I N S ,

8 called as witnesses, being previously duly
9 sworn, testified further on their oaths as
10 follows:

11 MS. BACHMAN: Thank you.

12 THE CHAIRMAN: Now we'll continue by
13 verifying the new exhibits you filed.

14 MR. HOFFMAN: Correct.

15 DIRECT EXAMINATION

16 MR. HOFFMAN: What I would do is, I
17 would ask every member of the witness panel if
18 they prepared or caused to be prepared the
19 interrogatory responses labeled in II-B-8. And
20 I'll start with Mr. Peterson.

21 THE WITNESS (Peterson): Yes.

22 MR. HOFFMAN: Mr. Vitaliano?

23 THE WITNESS (Vitaliano): Yes.

24 MR. HOFFMAN: Ms. Moberg?

25 THE WITNESS (Moberg): Yes.

1 MR. HOFFMAN: Ms. Kenney?

2 THE WITNESS (Kenney): Yes.

3 MR. HOFFMAN: Mr. Grybowski?

4 THE WITNESS (Grybowski): Yes.

5 MR. HOFFMAN: Mr. Cote?

6 THE WITNESS (Cote): Yes.

7 MR. HOFFMAN: Mr. Henry?

8 THE WITNESS (Henry): Yes.

9 MR. HOFFMAN: And Mr. Perkins?

10 THE WITNESS (Perkins): Yes.

11 MR. HOFFMAN: In addition, Mr. Perkins,
12 did you prepare the item that is labeled II-B-9,
13 which is a revised visual simulation?

14 THE WITNESS (Perkins): Yes.

15 MR. HOFFMAN: And are all of these
16 documents true and accurate to the best of your
17 knowledge and belief?

18 Mr. Peterson?

19 THE WITNESS (Peterson): Yes.

20 MR. HOFFMAN: Mr. Vitaliano?

21 THE WITNESS (Vitaliano): Yes.

22 MR. HOFFMAN: Ms. Moberg?

23 THE WITNESS (Moberg): Yes.

24 MR. HOFFMAN: Ms. Kenney?

25 THE WITNESS (Kenney): Yes.

1 MR. HOFFMAN: Mr. Grybowski?

2 THE WITNESS (Grybowski): Yes.

3 MR. HOFFMAN: Mr. Cote?

4 THE WITNESS (Cote): Yes.

5 MR. HOFFMAN: Mr. Henry?

6 THE WITNESS (Henry): Yes.

7 MR. HOFFMAN: Mr. Perkins?

8 THE WITNESS (Perkins): Yes.

9 MR. HOFFMAN: I'd ask that they be
10 placed in evidence as full exhibits.

11 THE CHAIRMAN: Do any of the parties or
12 intervenors have any objection?

13 MR. LANGER: No objection from the
14 town.

15 THE CHAIRMAN: Hearing and seeing none,
16 these will be admitted.

17 (Applicant's Exhibits II-B-8 and
18 II-B-9: Received in evidence - described in
19 index.)

20 THE CHAIRMAN: Now Mr. Mercier.

21 MR. MERCIER: Thank you.

22 CROSS-EXAMINATION

23 MR. MERCIER: I just have a few
24 follow-up questions based on all this material
25 here.

1 Regarding the Council Set II
2 interrogatories in Response 65, it was stated that
3 the contractual obligation by Deepwater was 26.4
4 megawatts. If the project was designed so there
5 was less than that amount, is there a type of
6 financial penalty, or is their contract voided?
7 What's the consequence of that?

8 THE WITNESS (Grybowski): I just want
9 to review what we said previously.

10 MR. MERCIER: Sure.

11 THE WITNESS (Grybowski): My
12 understanding of our contract is it has a few
13 impacts on the project to the extent that we
14 aren't able to build our full capacity that's
15 contracted. One is we obviously would receive
16 less revenue. And depending on the size that
17 we're ultimately allowed or able to build, it may
18 no longer make the project financially feasible to
19 build. The project has been designed at this
20 size. The finances are dependent on this size
21 project because that is the size project that
22 produces enough energy and therefore enough
23 revenue to justify the construction of the project
24 itself. So it is questionable whether we would be
25 able to proceed with a smaller project.

1 It obviously has contractual
2 implications beyond that. We have an obligation
3 to the counterparties because we did make bids,
4 binding bids, to the three states that issued this
5 RFP, and we now have contracts with three separate
6 utilities, essentially identical contracts, where
7 we have pledged to construct and deliver that
8 amount of capacity. So we would potentially be at
9 risk of default under that agreement. And how
10 that might play out legally, I don't think I'd be
11 in the position to answer today, but we certainly
12 would be in violation of those contracts.

13 MR. MERCIER: Thank you. When you
14 initially designed the project before you went
15 before the town, what was the output at that time?
16 I know you reduced it based on resident concerns.
17 Do you have just a rough estimate of what it was
18 initially?

19 THE WITNESS (Grybowski): I'll let
20 Ms. Kenney answer part of it, but I'll begin. The
21 project has always been 26 megawatts to be
22 delivered to that point of interconnection there
23 in Simsbury. But I think she can give the context
24 of when we first showed the town the layout, what
25 we showed them in that initial set of maps was

1 essentially the full buildout; that is, if we put
2 solar panels everywhere we could put them, this is
3 essentially what it would look like. And the
4 point of that was, we didn't know from the town's
5 perspective where the hot spots were, you know,
6 where the problems areas really were. So we were
7 trying to flush out from the community what their
8 feedback was if we put them here versus put them
9 there.

10 So we showed them essentially all the
11 options. And that's what led us, after we got
12 feedback from that session, it allowed us to take
13 into consideration the fact that certain
14 neighborhoods were maybe impacted more than
15 others. And that's when we started to pare down
16 the project prior to submission to the Siting
17 Council. So we were essentially looking for
18 feedback as to the biggest layout before we got to
19 the Council so that by the time we got here, we
20 had essentially a narrowed buildout that actually
21 allowed us to get to the 26 megawatts but also,
22 you know, had gone through a few rounds of
23 feedback from the community.

24 And Ms. Kenney may have something to
25 add to that, but that was our philosophy.

1 THE CHAIRMAN: We just have one
2 follow-up question.

3 SENATOR MURPHY: You probably recall,
4 so my question is, how large was the project
5 before you began the pare down?

6 THE WITNESS (Grybowski): I'm turning
7 to Ms. Kenney whether she has a way of quantifying
8 that.

9 THE WITNESS (Kenney): So in Section
10 5.3 of the petition, there's a discussion of the
11 responses to the individual residents' concerns.
12 And the acreage of size that was reduced was 18.2
13 acres of the project was reduced from that maximum
14 buildout.

15 SENATOR MURPHY: And energy wise, how
16 much was it reduced?

17 THE WITNESS (Kenney): We don't have
18 that number prepared, but we can certainly pull it
19 together.

20 SENATOR MURPHY: No, that's okay.
21 Thank you.

22 THE WITNESS (Kenney): It was several
23 megawatts more than it is now. We left room to
24 try to find the best fit of a project.

25 SENATOR MURPHY: I understand. Thank

1 you very much.

2 MR. MERCIER: Thank you. Regarding the
3 interconnection agreement -- you just mentioned
4 the interconnection -- and on page 11 of the
5 petition, it mentioned your discussions with
6 Eversource to finalize that agreement and possibly
7 would occur in September. So has the agreement
8 been finalized, the interconnection agreement?

9 THE WITNESS (Grybowski): No. We are
10 in a process with Eversource to go through the --
11 going through the study process with Eversource.

12 And Aileen, do you have any updated
13 information?

14 THE WITNESS (Kenney): There was a site
15 walk on site last week, and so they're just
16 working through some of the logistics of the study
17 process. So it has been delayed versus the
18 schedule that was in the petition, but we would
19 expect it in the coming months. We know of no
20 issues with it.

21 MR. MERCIER: Okay. So under that
22 agreement, that's when the final route to get from
23 the facility to the substation will be determined,
24 the interconnection line?

25 THE WITNESS (Kenney): Between the

1 alternatives that are presented in the petition,
2 yes.

3 THE CHAIRMAN: Mr. Harder has a
4 follow-up.

5 MR. HARDER: Actually on the previous
6 issue. I'm curious. You started out -- well, let
7 me ask this question: When did you reach the
8 agreement, the contract, on the 26.4 megawatts?
9 Was that prior to your discussions with the public
10 in laying out the maximum buildout possibility?

11 THE WITNESS (Grybowski): Yes, it was.
12 The contract with the utilities was finalized
13 about ten months ago. It was early in 2017, very,
14 very early in 2017.

15 MR. HARDER: What was that based on
16 then? I mean, if you really didn't know how far
17 you might go in paring the project down from that
18 maximum, you know, however you termed it, the
19 maximum buildout possibility, and also you didn't
20 know how the process would go before the Siting
21 Council, how did you pick that number?

22 THE WITNESS (Grybowski): Well, that's
23 part of what we do is take a look at property and
24 take into consideration as many of the conflicting
25 factors as we can, and we come up with a project

1 size that we believe is buildable. The site, the
2 property that we're talking about, the 289 acres,
3 could fit much more than 26 megawatts of solar
4 panels. You could build a project that's
5 significantly larger than that. But we went
6 through a balance of what is a reasonable
7 assumption to make, and what we would
8 realistically be able to build, compared that to
9 what we thought the optimal interconnection size
10 on that particular substation would be that
11 wouldn't cause major upgrades to the project's
12 account, and then frankly we made a judgment about
13 what size project was likely to be competitive in
14 that solicitation.

15 So it was a combination of those
16 factors, what is competitive, what can we
17 interconnect, and what's a good conservative
18 amount on what size project you could build on
19 that site. It could have more panels than we
20 proposed.

21 MR. HARDER: So you're at a point now
22 where any further reductions could be fatal, or at
23 least could result in significant consequences to
24 you, to the project?

25 THE WITNESS (Grybowski): I think

1 that's fair to say. We have pared the project
2 back significantly. We left ourselves a lot of
3 room, I'd call it contingency, in terms of panel
4 buildout. But we've also gone through a
5 multi-month process dating back to the early part
6 of this calendar year engaging with the town and
7 abutters and people in the community. And, as you
8 can see through the record, we've pulled back
9 panels from many, many locations. And now we're
10 at sort of the core of the project in terms of
11 what we need to build.

12 Now, there's obviously always some
13 shifting that can happen, things can move, and
14 perhaps we've made assumptions around limits,
15 limiting factors that constrain our build. And I
16 think you can see that in one of our interrogatory
17 responses we, frankly, in response to some
18 suggestions that we took from the last hearing,
19 placed some panels in locations that we previously
20 decided not to place them because we thought that
21 the town's buffer, the town setback on wetlands,
22 was something we wanted to stay out of. But if we
23 go into that setback while still complying with
24 the state setback, we were able to locate some
25 panels in those locations, and we moved some from

1 the Hoskins Road property to get them away from
2 that property more.

3 So there's obviously some -- there are
4 some choices that we've made in location. And
5 obviously we can continue to engage with folks
6 about those choices about one location versus
7 another location. We don't have much ability to
8 reduce size.

9 MR. HARDER: Thank you.

10 THE CHAIRMAN: Dr. Klemens.

11 DR. KLEMENS: Would it be fair to state
12 that the majority of these adjustments were done
13 in response to neighbor concern concerning the
14 proximity of residences, of buffering residences
15 from the solar farm?

16 THE WITNESS (Grybowski): Yes, I think
17 it's fair to say. In my view, almost all of the
18 changes have been in direct response to concerns
19 raised by people in the community, whether it's
20 abutters, neighbors, folks in the town. That was
21 the point of the effort that we went through to
22 have those conversations before we submitted
23 something to the Council. And obviously the
24 complication is that folks who have opinions about
25 the project are not uniform in their opinion. So

1 there are people who we try to interpret what
2 we're hearing from the community, and different
3 neighbors may have different opinions of what
4 they'd like to see.

5 And so part of what we, by necessity,
6 have to do is make some choices and do our best to
7 address as many concerns as we can, and that
8 obviously means moving the puzzle pieces around.
9 And you don't always -- we're not able to resolve
10 every issue to everyone's satisfaction, but our
11 attempt was to try to resolve as many of those
12 concerns as we could.

13 DR. KLEMENS: So how much adjustment or
14 changes actually caused, as a result of
15 environmental species, ecosystem issues --

16 THE CHAIRMAN: Excuse me, Dr. Klemens.
17 You're going to get a chance.

18 DR. KLEMENS: All right.

19 THE CHAIRMAN: I'm trying to keep to
20 some extent -- so you'll get a chance to ask that
21 question.

22 DR. KLEMENS: Okay.

23 THE CHAIRMAN: Thank you.

24 MR. MERCIER: Just to address some of
25 the concerns raised by the public during the

1 September 12th hearing. Once the power is
2 generated at the facility and transferred to the
3 substation, where is that power going to be
4 utilized? Is it going to be in the regional area
5 or shipped to out-of-state locations?

6 THE WITNESS (Grybowski): It will be
7 consumed at the closest load. So that means the
8 energy will be used at the first source of demand
9 for that energy, which will be very locally. That
10 energy will be -- I think it's important to
11 distinguish between the physical flow of the
12 energy and the contractual ownership of that
13 energy, and this tends to get confusing. But
14 contractually the utilities in Massachusetts are
15 paying for the energy, but that doesn't mean that
16 the energy flows to Massachusetts. Because as
17 long as a project is interconnected on the New
18 England grid, a utility, like a utility in
19 Massachusetts, can contract for that through that
20 RFP process. So while those utilities in
21 Massachusetts are paying for that energy, that
22 power will be used very, very locally, quite close
23 to the substation.

24 MR. MERCIER: Thank you. There was a
25 comment regarding dust control during construction

1 to keep dust down from blowing around to the
2 adjacent properties. And I believe I read in one
3 of the responses that the petitioner -- the
4 contractor would use water to suppress dust.
5 Would that water be obtained off on-site water
6 resources, or is that shipped in by truck?

7 THE WITNESS (Grybowski): Let me defer
8 to one of my colleagues.

9 THE WITNESS (Vitaliano): We would
10 expect that water would be shipped in.

11 MR. MERCIER: Thank you. Going back to
12 the discussion we had about security fencing
13 around the perimeter of the site. And it was
14 discussed about a 7-foot chain-link fence and a
15 new standard to provide security so the fence had
16 to be close to the ground to provide adequate
17 security. Would a 6-inch wildlife gap from the
18 bottom of the fence down to the ground, would that
19 compromise security at the substation? Could it
20 be designed that way so that small animals can get
21 into the field areas?

22 THE WITNESS (Kenney): Yes. So I
23 actually have an update on that. And we can
24 accommodate a wildlife gap in the bottom of the
25 security fence. It would be 6 inches but, you

1 know, we'll look at the appropriate size. We have
2 to make it, of course, in accordance with the
3 safety code, the electric safety code, but it is
4 something that has been achieved on other solar
5 projects. So we can accommodate something at
6 least to 6 inches, we believe.

7 MR. MERCIER: Thank you. To follow up
8 on the topic of Deepwater's offer to the
9 Department of Agriculture to provide a land use
10 easement at the end of the project's life, did
11 that offer include all five parcels?

12 THE WITNESS (Grybowski): Yes, it
13 included any parcel that we're using, so it's the
14 entire project.

15 MR. MERCIER: Was the town included on
16 that discussion?

17 THE WITNESS (Grybowski): Not formally.
18 I think we had -- certainly we are open to having
19 that conversation with the town. From our
20 perspective, we were really looking at the
21 principle of a conservation easement, and we're
22 not terribly concerned about which party, which
23 governmental entity might be the grantee of some
24 type of easement. And whether a conservation
25 easement or agricultural conservation easement is

1 involved is something we're happy to speak about,
2 but I think philosophically the concept of an
3 easement for preserving longer term the rights of
4 the property is something we're very open to.

5 MR. MERCIER: Thank you. That's all I
6 have.

7 THE CHAIRMAN: Okay. We'll now go to
8 the Council members who didn't get a chance last
9 time.

10 Dr. Klemens.

11 DR. KLEMENS: Thank you, Mr. Chairman.

12 My questions are primarily focused on
13 environmental compliance. I'll ask the question
14 again. How much of the redesign that you did is
15 the result of newly-reported environmental
16 concerns versus the concerns of neighbors for
17 buffering?

18 THE WITNESS (Grybowski): I'll look to
19 my colleague.

20 THE WITNESS (Moberg): I can answer
21 that question for you. So early on in this
22 process when we first started looking at this
23 site, we did a desktop review of
24 publicly-available information through the GIS.
25 We consulted with the CT DEEP Natural Diversity

1 Database program and got a listing of rare,
2 threatened and endangered species. We then at
3 that point we started sort of formulating, well,
4 what can we do with this site if we tried to
5 observe, you know, required 100-foot setbacks
6 from the upland review area from the edge of the
7 wetlands that were mapped in the GIS, a number of
8 different factors like that. So we early on
9 developed this concept of what could the project
10 look like while we're trying to avoid everything
11 that is sensitive in terms of the environment.

12 So as the project advanced, we did
13 further on-site surveys. So a number of those
14 surveys are detailed in our petition that was
15 filed back in June. We've continued to do surveys
16 because our consultation with NDDB is ongoing.
17 But, generally speaking, we have, I think, in
18 some -- some might view it as it's been a happy
19 coincidence for us that the species that we did
20 identify are outside of the limits of our project.
21 So the upshot of what I'm saying is that we have
22 not needed to revise the project in order to avoid
23 sensitive environmental resources. So that has
24 allowed us the opportunity to go through these
25 negotiations with the town and the abutting

1 property owners.

2 DR. KLEMENS: Thank you for that.
3 There will be some additional questions that I'm
4 going to ask you about the sufficiency of the
5 environmental resources.

6 THE WITNESS (Moberg): Okay.

7 DR. KLEMENS: My first question is that
8 the CEQ, the Council on Environmental Quality,
9 states that breeding bird data were collected.
10 Mr. Logan states that breeding bird -- Mr. Logan
11 who is a consultant for the intervenor, the
12 intervening party, states that breeding bird data
13 were insufficient.

14 Can you comment for the record on
15 whether your studies were sufficiently robust in
16 both effort and duration, temporal duration, to
17 determine areas of the site utilized for grassland
18 bird breeding?

19 THE WITNESS (Moberg): I'd like to
20 defer this question to Mr. Peterson who actually
21 conducted the surveys.

22 THE WITNESS (Peterson): Yes, Dr.
23 Klemens. We believe that our grassland bird
24 surveys were adequate. We conducted them in May
25 and in June, and much of what we conclude is based

1 on activities that were occurring within the
2 agricultural fields. We surveyed the perimeters
3 using both ocular and call-back techniques. The
4 habitat out there simply is not suitable for
5 species like Grasshopper Sparrow or Savannah
6 Sparrow.

7 The large fields to the north during
8 that period were covered with frost blankets. The
9 large field to the north of Hoskins Road was being
10 converted from a hill and furrow agricultural
11 arrangement to, you know, just being completely
12 tilled and regraded for tobacco. And the field
13 south of Hoskins Road was in quite tall annual rye
14 that was subsequently sprayed and plowed in.

15 In terms of birds, there are also some
16 species of state concern that were not grassland
17 bird species, such as Brown Thrasher. We surveyed
18 those areas around the perimeter of the field
19 where there could be occupancy and did not
20 encounter that species.

21 DR. KLEMENS: This is very helpful.
22 Thank you. So would you say that grassland birds
23 remain the major avian species of concern on the
24 site, or not?

25 THE WITNESS (Peterson): I would say

1 no. And that's based on the current management,
2 you know, as a farm. It is managed, or was being
3 managed intensively, with techniques that would
4 detract from their usage.

5 DR. KLEMENS: Again, going back to the
6 CEQ letter, they point out that there's a lack of
7 detailed spatial analysis of wildlife resources on
8 the site. And I've noted that while your
9 submittal is data rich, there's not a lot of
10 synthesis. And the one way that may be helpful is
11 to create a map that delineates critical areas of
12 habitat for all NDDDB species. And while it may be
13 helpful to use one map for each species, a
14 cumulative map is also needed to demonstrate if
15 there are clusters of species of conservation
16 concern. Can this be addressed?

17 THE WITNESS (Peterson): I would say
18 yes, as determined necessary. I might need some
19 clarification on that.

20 THE WITNESS (Moberg): Just to, I
21 guess, elaborate on that. That's a request that
22 we haven't received from NDDDB directly through our
23 consultations with that program, and that's in
24 large part the reason why we haven't undertaken --

25 DR. KLEMENS: But I understand you

1 would be willing to undertake this analysis?

2 THE WITNESS (Kenney): Yes.

3 THE WITNESS (Moberg): Absolutely.

4 DR. KLEMENS: Thank you. Following up
5 on this, Mr. Logan, on page 4 of the report --
6 which I imagine you've read Mr. Logan's report --
7 suggested your proposed conservation strategies
8 for wood and box turtles are rendered ineffective
9 because you have no detailed information as to
10 what portions of the site these species utilize.
11 Could you respond to this statement?

12 THE WITNESS (Peterson): Yes. First,
13 I'd like to begin that there are no records held
14 by NDDB for those species actually occurring on
15 the site. And, you know, most of the activity
16 that is proposed is within agricultural areas that
17 are, you know, certainly not suitable for
18 long-term occupancy. We did not conduct specific
19 surveys for them. However, during our surveys for
20 listed plant species, particularly some of the
21 Desmodium Glabellum and Starry Campion, we walked
22 areas that would be suitable, such as the power
23 line right-of-way, the Eversource right-of-way,
24 and sewer easements that go through the woods and
25 are thickly vegetative.

1 The effort required to survey some of
2 these areas is difficult because of the thick
3 cover. In some areas we've got stands of, what's
4 that, Japanese stiltgrass and other vegetation
5 that could easily conceal, you know, a specimen.
6 By simply avoiding some of these suitable areas
7 and silt fencing them off and maintaining safety
8 protocols, making sure that the contractor has
9 turtle training and that silt fence isolates these
10 potentially suitable habitats from the work zones
11 and access roads, we felt that that would be
12 adequate protection.

13 DR. KLEMENS: So what you're saying is
14 you believe that's adequate protection?

15 THE WITNESS (Peterson): Yes.

16 DR. KLEMENS: Thank you.

17 Okay. Both CEQ and Mr. Logan point to
18 the disruption that fencing the site will cause
19 for wildlife. And I think you've already
20 addressed this. But basically you are going to
21 have a 6-inch gap now to allow passage of turtles,
22 hognose snakes, small wildlife?

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

25 DR. KLEMENS: So these questions are

1 moot. So we can go beyond that.

2 Have you had a chance to look at MCA
3 Tech Paper 11, the Farmington Valley Biodiversity
4 Project, that was administratively noticed by the
5 Council? And this study designates this
6 particular area as a conservation area connection.
7 Therefore, the connectivity between Simsbury's
8 primary and secondary conservation areas really
9 appears to be the primary ecological function of
10 this landscape, according to the study.

11 So can you reiterate how the solar farm
12 project will be compatible with these goals of
13 maintaining landscape connectivity to the site?
14 We're not just talking about the small, we're
15 talking about area-sensitive carnivores such as
16 Bobcat, et cetera. How will you maintain --
17 because it appears in that study that this is the
18 function of this landscape, connectivity.

19 How are you going to, beyond these 6
20 inches, which is a great first step, what else can
21 you do to enhance connectivity on the site?

22 THE WITNESS (Moberg): I'll just start
23 with a brief intro, and then pass it off to Jeff
24 who did, again, most of the wildlife survey work,
25 if not all of it.

1 So in our petition we included a map
2 that I think was confusing to some people, and we
3 did answer an interrogatory on that recently
4 regarding wildlife corridors through the site. So
5 I think there's been some amount of confusion
6 regarding how much of the site is going to be
7 fenced off, and are these fences going to create a
8 barricade to the passage of larger wildlife
9 through this sort of general landscape area, as
10 you're describing.

11 And we want to make it clear, and my
12 intention in developing this particular figure was
13 to make it clear, that the project isn't going to
14 obstruct or place major obstructions in terms of
15 wildlife migration through the site. So, in
16 essence, the fence is just around the panel areas,
17 and there will be breaks in between those clusters
18 of panel arrays. So our feeling was that there
19 are not significant obstructions being placed by
20 this project to deter wildlife from getting from
21 one sort of natural area like a wetland system,
22 Munnisunk Brook, for instance, to the north of the
23 site, down to Saxton Brook to the east of the
24 site.

25 So there will likely be a change to

1 their migration patterns through those areas as a
2 result of these fences, but there won't be a
3 complete obstruction. So I think that's a little
4 bit of a, you know, a misinterpretation.

5 DR. KLEMENS: I'm going to go back to
6 stuff that I actually wasn't going to ask. But
7 let's go to Exhibit I, Figure A5, that shows the
8 wildlife corridors. I mean, if you look at the
9 very top of that map --

10 THE WITNESS (Moberg): Right.

11 DR. KLEMENS: -- it shows this huge
12 circular area. Isn't that de facto documentation
13 that wildlife are being excluded from the parcel?
14 I mean, you have all these arrows going around
15 this big area. Isn't wildlife excluded? And
16 also, what species do you really expect is going
17 to respond to these linear configurations you have
18 illustrated?

19 THE WITNESS (Moberg): We had just been
20 thinking generally in terms of larger wildlife
21 like deer, black bear, and coyotes. So during the
22 two public meetings that we held, a number of
23 residents brought to our attention that there is a
24 lot of these particular species in the area.

25 So, yes, we would -- the project would

1 exclude those species from areas that are
2 primarily are agricultural at this time, but not
3 from areas that are primarily woodland at this
4 time. So where these species might currently
5 travel from one location to another along the edge
6 of the field, or at the tree line, they would
7 still be able to do that under the proposed
8 conditions.

9 DR. KLEMENS: But all state-listed
10 species, which are the ones that we really have
11 most concern over, are those all going to be able
12 to traverse through the site, is the porosity for
13 those species ensured, wood turtles, box turtles,
14 all the insects, plants, which actually do
15 disperse also, are all those species that we're
16 concerned about -- of course, birds fly -- but are
17 all the species that we are concerned about
18 actually going to be able to move through the area
19 of solar panels?

20 THE WITNESS (Moberg): I would say yes
21 that they will be, but maybe Jeff --

22 THE WITNESS (Peterson): Larger animals
23 would be excluded, like bear and deer.

24 DR. KLEMENS: But those are not NDDB
25 state-listed species. And I'm asking you, are the

1 state-listed species all going to be able to
2 traverse this site with the 6-inch gap under the
3 fence, are they all going to be able to continue
4 to move through the site if they wish? We don't
5 even know if they're doing it now, but it's not
6 precluded. Are they?

7 THE WITNESS (Peterson): I'm trying to
8 think of a species that would be precluded, and I
9 might need some help, Dr. Klemens.

10 DR. KLEMENS: Well, I haven't been able
11 to think of one.

12 THE WITNESS (Peterson): I'm trying,
13 but I don't think so.

14 DR. KLEMENS: So basically you have
15 achieved the goal of ecological porosity in this
16 interconnected conservation area by the redesign
17 of the fence lifting at 6 inches off the ground?

18 THE WITNESS (Peterson): Right.

19 DR. KLEMENS: Thank you.

20 Let's move to the wetlands. The
21 various wetlands you looked at and identified as
22 potential vernal pool all had fish populations in
23 them?

24 THE WITNESS (Peterson): Yes.

25 DR. KLEMENS: This would indicate that

1 these rarely dry up completely?

2 THE WITNESS (Peterson): That's
3 correct.

4 DR. KLEMENS: Would you say that, apart
5 from containing fish, the hydrology of these
6 wetlands is not conducive to maintaining
7 populations of vernal pool species?

8 THE WITNESS (Peterson): For two of
9 them I would say that, Dr. Klemens, because there
10 are actually impoundments, instream impoundments
11 that are passed through. Two of the ponds are
12 actually excavated down to the groundwater, and
13 they maintain permanent water. But eliminating
14 the fish species, I don't know what would preclude
15 vernal pool species from breeding in them. Maybe
16 I'm missing the question.

17 DR. KLEMENS: No. You say that the
18 fish eliminate the vernal pool function. And I'm
19 also asking you, isn't the hydrology also not
20 conducive?

21 THE WITNESS (Peterson): Well, they are
22 permanent ponds.

23 DR. KLEMENS: And are vernal pools
24 generally permanent?

25 THE WITNESS (Peterson): Generally not.

1 DR. KLEMENS: So let's go to one of the
2 wetlands, farm pond 4. You had a small number.
3 You had, I think, six wood frog eggs.

4 THE WITNESS (Peterson): Wood frog
5 eggs, yes.

6 DR. KLEMENS: Do you anticipate that
7 these eggs and larva would survive the fish
8 predation and reach maturity?

9 THE WITNESS (Peterson): I didn't
10 expect that, no.

11 DR. KLEMENS: Would you consider farm
12 pond 4, therefore, an ecological sink for those
13 wood frogs?

14 THE WITNESS (Peterson): Potentially,
15 yes.

16 DR. KLEMENS: So where do these wood
17 frogs come from? Have you determined where on or
18 off site these wood frogs are breeding? In short,
19 where is the source population that these few wood
20 frogs in farm pond 4 originate from?

21 THE WITNESS (Peterson): I'm assuming
22 they're off of the property. I did walk the
23 stream and the wetlands looking for any sort of a
24 pool, and I could not find one. I know that they
25 must be able to travel 500 feet or more in order

1 to reach a pool. But that was a concern, and
2 that's why we, of course, we reported what we
3 found. Again, I was out there in August. The
4 pond was full, you know, even after this dry
5 period.

6 DR. KLEMENS: Did you look in early
7 spring for where those wood frogs might have come
8 from, where the source population is, and you were
9 unable to find it?

10 THE WITNESS (Peterson): I was unable
11 to locate it on that property. I did not travel
12 off the property. You know, in the Eversource
13 right-of-way off of our property in the center of
14 the project there's quite a large swamp marsh in
15 there that may contain some pools. I did not hear
16 calls from those areas. You know, if you travel
17 along the valley along Munnisunk Brook, they're
18 just -- it's quite strongly sloping terrain down
19 to the stream's edge. I did not find the source
20 of these populations, Dr. Klemens.

21 DR. KLEMENS: Well, that sort of
22 precludes my next question was you had found them.
23 I was going to ask you to put the rings around it
24 and see if any of the critical terrestrial habitat
25 was actually impacted by the development. But if

1 you can't find the source population, I imagine we
2 can't do that. Can we?

3 THE WITNESS (Peterson): Not with the
4 information I was able to get.

5 DR. KLEMENS: Thank you.

6 Exhibit J has a variety of email and
7 written correspondence. And I tried to go through
8 it, and it's very difficult to go through email
9 chains and try to see where it all ends. But what
10 is unclear from all this correspondence to me is
11 whether the petitioner plans to identify
12 population of state-listed plants as part of the
13 site development process, or was that all
14 accomplished this year?

15 THE WITNESS (Moberg): I'll just say
16 that our intention in compiling all that
17 correspondence was to show that we had had lengthy
18 correspondence with NDDB, and that it was still
19 ongoing. So as of about a month ago, we got a
20 call back from Dawn McKay asking us to submit an
21 updated conservation measures plan similar to the
22 one that was in that appendix, and we're in the
23 process of doing that right now. So we had hoped
24 to have done it prior to this hearing, but it's
25 still in draft form at this time.

1 DR. KLEMENS: But back to my question.
2 Is it the intent to do additional field survey
3 work on this site for state-listed species
4 basically after the conclusion of this process?
5 Is that your intent or not?

6 THE WITNESS (Moberg): Well, Jeff
7 probably should answer this more fully. But since
8 we filed in June, we have conducted a number of
9 surveys over the summertime, and that's the
10 information that's going into the updated
11 conservation measures memo.

12 So I don't know if, Jeff, do you want
13 to --

14 THE WITNESS (Peterson): And we will be
15 submitting new Element Occurrence Forms for what
16 we did locate.

17 DR. KLEMENS: This year?

18 THE WITNESS (Peterson): This year.

19 DR. KLEMENS: And, again, I'll ask it
20 again for the third time because I'm trying to get
21 it.

22 THE WITNESS (Peterson): I know.

23 DR. KLEMENS: Is there going to be
24 additional work, and there's the potential that
25 additional locations are going to be found? And I

1 guess my question is, if that is the case, how is
2 that going to be addressed, in the D&M plan, or
3 how will you address subsequent discoveries of any
4 rare plants which appear to be the outstanding
5 issues?

6 THE WITNESS (Peterson): I think, Dr.
7 Klemens, we're going to submit our findings and
8 see if they satisfy the NDDB in terms of the level
9 of effort that we provided in locating these
10 plants. And if they require additional surveys, I
11 think we would be held to that.

12 DR. KLEMENS: But how does that
13 affect -- what I'm trying to do is I'm trying to
14 understand, if we approve this in some way, shape,
15 or form, and you subsequently uncover new
16 information, how do you redesign this project to
17 accommodate that information? That's what I'm
18 getting at with this.

19 THE WITNESS (Moberg): Sure.

20 THE WITNESS (Kenney): I can answer it.
21 So I think that we believe that all the studies
22 that we need to do have been done, but we still
23 need to finish off that process. If something
24 additional is identified that would require a
25 shift in layout, we would have to shift the layout

1 before the D&M plan.

2 DR. KLEMENS: Thank you. Both CEQ and
3 REMA focused on the lack of survey effort on the
4 forested portion of this site. Would it be
5 possible for the continuation of this hearing you
6 provide additional narrative and photo
7 documentation that more completely characterizes
8 the forested area, including its size, age,
9 composition, and the species of conservation
10 concern which are anticipated to use this area?

11 THE WITNESS (Grybowski): Yes.

12 THE WITNESS (Moberg): Yes.

13 DR. KLEMENS: And lastly, can you give
14 the Council information as whether this forest is
15 part of a larger recognized forest block, or is it
16 a forest fragment? And that is part of what I'm
17 asking for next time.

18 THE WITNESS (Grybowski): We will
19 provide that.

20 MR. HOFFMAN: Just a point of order,
21 Mr. Chairman. Would that be best served through
22 an interrogatory through the Siting Council?
23 We'll obviously provide it, but providing those
24 documents, would that be -- I can't believe I'm
25 requesting this, but nevertheless here I am -- a

1 third set of interrogatories with those few things
2 that Dr. Klemens has asked for, is that the most
3 expedient way to get that done?

4 THE CHAIRMAN: Yes.

5 MR. HOFFMAN: Great.

6 DR. KLEMENS: I was hoping you would
7 accomplish that. I have it all written out, and
8 I'll pass it onto the analyst, and he'll get the
9 interrogatory so that it will be very clear and
10 unambiguous.

11 MR. HOFFMAN: That would be perfect
12 rather than trying to rely off the record. I find
13 that's better.

14 DR. KLEMENS: Thank you. I have no
15 further questions, Mr. Chairman.

16 THE CHAIRMAN: Thank you. I'm not a
17 hundred percent sure, but I think all the Council
18 members got a chance for their first round last
19 time.

20 MR. SILVESTRI: I did not.

21 THE CHAIRMAN: Okay. I wasn't sure.

22 We'll go to Mr. Silvestri.

23 MR. SILVESTRI: Thank you,
24 Mr. Chairman. I'd like to invest some time
25 reviewing the proposed placement and layout of the

1 panels. In your response earlier to Mr. Mercier,
2 did I hear that more megawatts could be obtained
3 on the existing acreage?

4 THE WITNESS (Grybowski): Yes, sir,
5 that is correct.

6 MR. SILVESTRI: But you don't have the
7 ability to reduce the size, so you could go one
8 way but not the other way?

9 THE WITNESS (Grybowski): We have not
10 used all available land for solar panels. We are
11 essentially at the size of the project that would
12 allow us to comply with our contract.

13 MR. SILVESTRI: Okay. The panels are
14 proposed to be installed at a 25-degree tilt. Is
15 that correct?

16 THE WITNESS (Grybowski): Aileen.

17 THE WITNESS (Kenney): Yes. I believe
18 that's what we said in our petition.

19 MR. SILVESTRI: And in reference to
20 your response to Council Interrogatory Number 78,
21 are you proposing to use a racking system similar
22 to the G3-X or Max-Span systems?

23 THE WITNESS (Kenney): Similar, yes.

24 MR. SILVESTRI: But nothing has been
25 decided at this point?

1 THE WITNESS (Kenney): The final
2 racking system has not been selected.

3 MR. SILVESTRI: How about panels, do
4 you have a supplier of choice?

5 THE WITNESS (Kenney): No, there hasn't
6 been a final panel selection made. There's a
7 number of different suppliers who can provide
8 similar output panels.

9 MR. SILVESTRI: My understanding on the
10 panels is that they are -- no matter who you get
11 them from, they're roughly the same size measuring
12 about, say, 80 inches by 40 inches. Would that be
13 about correct?

14 THE WITNESS (Kenney): I think that's
15 correct.

16 MR. SILVESTRI: Using whatever racking
17 system that you have, would the panels be
18 installed in a portrait fashion or a landscape
19 fashion, landscape being sideways, and portrait
20 being up and down?

21 THE WITNESS (Moberg): The
22 configuration that we used was a portrait
23 configuration, so the racks support two 17-panel
24 strings.

25 MR. SILVESTRI: That was a follow-up

1 question. So portrait you'd have them two panels
2 high?

3 THE WITNESS (Moberg): Right, one on
4 top of each other, or above each other.

5 MR. SILVESTRI: In the application it's
6 noted that the bottom edge of the panels will be
7 installed about 3 feet above grade. Why is that,
8 why 3 feet?

9 THE WITNESS (Moberg): That 3-foot area
10 allows for maintenance of the ground cover below
11 the panels without fear of the ground cover, the
12 racking, the whole system, without needing to be
13 concerned with damaging the panels, but also that
14 gap was left to allow some light to hit the ground
15 cover. We've had a lot of discussion about making
16 sure that enough light penetrates to support the
17 vegetation. Additionally, that gap is allowed for
18 snow to build up at the lower end of the panel
19 during the wintertime. So snow hits the panel, it
20 slides off, and it piles up at that low end. So 3
21 feet is the allowance that's being made at this
22 time for that.

23 MR. SILVESTRI: And when you say
24 "maintenance," what do you mean specifically?

25 THE WITNESS (Moberg): Well, there will

1 be routine maintenance that will need to occur to
2 vegetation, so we're proposing a vegetative ground
3 cover that will need to be mowed at least once a
4 year to exclude woody vegetation from taking hold
5 within the panel arrays. And the system itself
6 will, you know, need periodic maintenance and
7 inspection. So having these gaps between the
8 ground and the equipment allows for greater
9 visibility during that inspection time frame and
10 easier maintenance, should that be necessary.

11 MR. SILVESTRI: Now, you're
12 anticipating that the rows of panels will be
13 approximately 13 feet apart. Is that correct?

14 THE WITNESS (Moberg): Yes,
15 approximately.

16 THE WITNESS (Kenney): That's our
17 design assumption.

18 THE WITNESS (Moberg): Right.

19 MR. SILVESTRI: How is that measured?
20 Is it measured from the plane of one row to the
21 plane of the other row?

22 THE WITNESS (Moberg): Yes,
23 perpendicular here to perpendicular here. So it's
24 intended to allow pickup trucks and other small
25 vehicles to get through for the construction of

1 the facility and for the maintenance and
2 inspection activities.

3 MR. SILVESTRI: Now, those access
4 roads, if I could call them that, they're going to
5 connect to the perimeter road that's about 20 feet
6 all around. Is that correct?

7 THE WITNESS (Moberg): Yes.

8 MR. SILVESTRI: So the question I have
9 is on that 13 feet. If you look at access for a
10 pickup truck -- actually let me start with a
11 Hummer. If you take the mirrors off a Hummer,
12 you're about 7.2 feet wide. All right. Mirrors
13 are going to make it a little bit bigger. If you
14 go with a common Detroit pickup, a van, an SUV,
15 you're looking at about 6.7 feet wide. And then
16 if you go back and look at an ATV, you're about 4
17 feet wide. So when I'm looking at that part of
18 it, I probably could provide access using a pickup
19 truck and not need the 13 feet. Why do you need
20 the 13 feet?

21 THE WITNESS (Moberg): If the panels
22 were spaced closer together, we would also have a
23 concern of shading, so from one row of panels
24 shading the bottom part of the next row of panels.

25 MR. SILVESTRI: Okay. Let me get to my

1 next point then. If you're going two panels high
2 at 3 feet off the ground, if you look at the
3 hypotenuse of a right triangle, the hypotenuse,
4 actually a 25-degree angle, when you look at the
5 opposite side and calculate for your two panels
6 high, add the 3 feet in, the height of the panels
7 would come to about 8.6 feet, not 10.

8 So when I look at that and the need of
9 the spacing, it almost seems to me that things
10 could actually be brought closer together, still
11 provide access, still provide relief from shading,
12 or really make a smaller footprint overall on this
13 project. Would you agree with me on that?

14 THE WITNESS (Kenney): I think when you
15 say it like that, it drives towards the conclusion
16 that it -- but I think that these are based off of
17 what are the standard practices for the
18 installation of the projects that we're relying
19 on. So Claude can likely speak to it a little bit
20 more.

21 THE WITNESS (Cote): For a lot of the
22 routine maintenance you do use some of the smaller
23 vehicles. Again, there's inverters on the site.
24 To the extent that you have to service an inverter
25 or move a transformer, or do something like that,

1 you're not going to do that in the width of a
2 normal pickup truck. You're going to have to have
3 either a trailer-based or a carrier system, or a
4 Lull, or something like that. So if over the
5 course of the life of the project you can assume
6 some of the transformers or inverters will have to
7 be repaired, replaced, or refurbished in some
8 fashion, so you really need that access.

9 The other thing that's common is lots
10 of times for the first responders, if they're
11 going to be going onto the site for a medical
12 emergency, or anything like that, they have
13 rescues, and those sorts of vehicles constricting
14 them. 13 to 15 is the general industry standard
15 that you're using on a good size facility for
16 those purposes. So it's not the normal day-to-day
17 routine maintenance, but some of those excursions
18 or outside events that may occur, you really want
19 access anywhere you can get, you know, for that
20 type of distance.

21 MR. SILVESTRI: If I'm not mistaken,
22 your inverters and transformers are located more
23 at the 20-foot ring around, if you will.

24 THE WITNESS (Cote): The goal is to
25 keep them as much to the 20 foot as possible.

1 That way you can take in a flatbed, that type of
2 thing, to pull them out. But to the extent that
3 you have any of those other things, keeping that
4 type of distance is a very good thing at that
5 point in time.

6 But to the point that you raised in
7 your question is for weekly inspection or weekly
8 maintenance you don't necessarily need the full 13
9 feet. That's, you know, more outside of that, but
10 it's still a very good practice to have that.

11 MR. SILVESTRI: Again, my point is
12 looking at the calculations. As I stated, I
13 thought things could be shrunk down and reduce the
14 overall footprint of the site.

15 Let me move on. On page 6 of the
16 application there's discussion that capacity
17 resources that clear FCA, the forward capacity
18 auction, are by definition needed for reliability.
19 Have you participated in any forward capacity
20 auction?

21 THE WITNESS (Grybowski): We have not.
22 I don't believe that we're eligible to do that
23 until we have a completed interconnection
24 agreement.

25 MR. SILVESTRI: What happens if you

1 don't clear the auction?

2 THE WITNESS (Grybowski): We still will
3 continue selling the energy to three utilities in
4 Massachusetts.

5 MR. SILVESTRI: So the FCA would give
6 you additional benefits, shall we say?

7 THE WITNESS (Grybowski): My
8 recollection of the contract is that there are
9 offsetting -- that the contract offsets those
10 revenues with the utility, but I would have to
11 verify that with the contract. I don't recall
12 specifically that section. We have with the
13 utilities essentially an agreement to sell them
14 all our output. In addition, we will participate
15 in the capacity auction through ISO New England.
16 Low marginal cost resources like wind and solar
17 tend to clear those auctions very regularly. So
18 we would very much expect to clear that, but it is
19 not a requirement under our contract that we clear
20 it. I do believe it's a requirement that we
21 participate in the auction.

22 MR. SILVESTRI: Thank you. Let me stay
23 with the application on page 8. The proposed
24 project will encompass approximately 156 acres on
25 a 289-acre parcel. You talk about other sites

1 being investigated on page 8. And I'm curious as
2 to why Griswold was even considered seeing that
3 the size of that is only 25 acres.

4 THE WITNESS (Grybowski): Well, we have
5 for several years been investigating sites in the
6 general region here in Connecticut, across the
7 state line in Massachusetts, and also in Rhode
8 Island with the intent of securing sites to bid
9 into a variety of RFPs that the utilities in the
10 states in the region have had. Some of those RFPs
11 have requirements of minimum project size, like
12 the one that we participated in for the Simsbury
13 project where the project had to be at least 20
14 megawatts to participate in that RFP.

15 So projects smaller than that could not
16 participate. But often those RFPs, and in this
17 case the tristate RFP that is the subject here for
18 this project, allowed developers to bid with
19 multiple parcels that were not connected. So even
20 though you might have a small -- you could have a
21 number of smaller parcels that collectively get
22 you above the minimum cap. So we've looked at
23 many different parcels larger than this one and
24 smaller than this one.

25 MR. SILVESTRI: So was the thought,

1 because you have Litchfield and Killingly also
2 listed there, was the original thought that you
3 might be able to combine Griswold and the other
4 two and still get your 20-plus megawatts?

5 THE WITNESS (Grybowski): That was a
6 consideration, yes. Those projects generally tend
7 to be less economic because there are
8 inefficiencies that you have when you are
9 combining multiple parcels that you don't get when
10 you have one large parcel. It is, from a cost of
11 energy perspective, it is almost always better to
12 go to scale.

13 MR. SILVESTRI: But you weren't going
14 to fit 20-plus megawatts on 25 acres?

15 THE WITNESS (Grybowski): No, sir, we
16 were not.

17 MR. SILVESTRI: Let me go to page 13 of
18 the application. That comments that the proposed
19 project will provide peaking resources when the
20 New England grid has its greatest need. Can you
21 elaborate on what you mean by "peaking"?

22 THE WITNESS (Grybowski): Yes.
23 Renewable resources have production profiles, and
24 by that I mean that they tend to produce their
25 energy according to a time of day and time of

1 night fairly consistently over a long period of
2 time. So over a 20 or a longer year period you
3 can predict fairly well how much energy you will
4 get in any hour of the day. So that's a profile
5 for a long period of time.

6 Resources, renewable resources that are
7 using natural events, like the wind or the sun,
8 tend to fit different profiles. Solar, for
9 obvious reasons, tends to produce most of its
10 energy in the middle of the day. It tends to
11 produce its energy at 11, 12 o'clock, 1 o'clock,
12 and through the afternoon. And as we get to
13 evening and dusk starts to approach, the resource
14 begins to reduce in its production.

15 The grid itself has a profile as well.
16 Energy demand has a profile in this region. There
17 tends to be little demand at 3 o'clock in the
18 morning, and there tends to be more demand during
19 daylight hours. And in general there are a few
20 peaks of that demand. One peak is early in the
21 morning. People wake up at 7, 8 o'clock in the
22 morning, there's a little peak, and then the
23 demand reduces a bit, and then in the afternoon
24 the demand in the electric grid tends to ramp up
25 as well.

1 And so solar is coincident with that
2 afternoon peak. That is, it is producing most of
3 its energy in those afternoon hours when the
4 electric grid is using a lot of energy, as opposed
5 to the obvious point that the solar project is not
6 producing energy in the middle of the night when
7 demand is very low. So it's a fairly, in a sense,
8 obvious conclusion to reach, but it is a benefit
9 to the electric grid, to the stability and
10 reliability of the electric grid, to have
11 resources whose production is matching the demand.

12 MR. SILVESTRI: So when you say provide
13 peaking resources, you're not talking about being
14 a peak load unit, you're talking about running
15 during what ISO considers its peak hours?

16 THE WITNESS (Grybowski): Yes. The
17 solar project's production is coincident with the
18 peak demand on the system.

19 MR. SILVESTRI: Okay. You mentioned
20 the word "stabilize," and that kind of leads to my
21 next question. In Exhibit D, the public
22 information session, there's a letter dated May 1,
23 2017, and it's labeled as quote/unquote sample,
24 but it states that the proposed project will help
25 stabilize Connecticut's electric grid. Could you

1 elaborate on what you mean by "stabilize"?

2 THE WITNESS (Grybowski): Could I --
3 I'd like to take a look at what you're referring
4 to.

5 MR. SILVESTRI: Sure. Exhibit D.

6 THE WITNESS (Grybowski): Okay. One
7 moment, please.

8 Yes, that is a reference to another
9 characteristic of in this case small scale utility
10 solar or distributed solar. Electric resources
11 that are distributed in a variety of locations
12 around the grid, particularly close to major
13 substations where there is the need for
14 electricity, tend to increase the reliability of
15 the grid, and that is one of the major benefits of
16 renewables that are distributed across the grid.
17 The grid is no longer in that case reliant on
18 several really large power plants that are only
19 located in particular locations. It is now
20 balanced, the grid is balanced, between those
21 large central stations and a variety of smaller
22 electric generating units that are spread around
23 the grid.

24 And that phenomenon, or that trend in
25 the energy business, has the general benefit of

1 increasing the reliability of the grid overall.
2 You are injecting energy from a variety of
3 locations, including, most particularly, at
4 outlying substations. And so, in general, these
5 distributed resources being located close to load
6 of these medium to large-size substations, as we
7 have here in Simsbury, are a positive development
8 for grid stability.

9 MR. SILVESTRI: So I still question
10 that word "stability." Cloudy days, rainy days,
11 snowy days, you're not going to produce anything.
12 So where is the stability?

13 THE WITNESS (Grybowski): So that is, I
14 think, in our business you have to take a very
15 long-term view of each of these characteristics.
16 So over the long-term view you will have a
17 production from this solar project that follows a
18 pretty predictable production profile, and over a
19 long term that substation will be receiving a fair
20 amount, a significant amount, of carbon-free
21 electricity that it had not been receiving prior
22 to the project.

23 MR. SILVESTRI: I'll still differ on
24 that with you. But let's move on.

25 THE WITNESS (Grybowski): Fair enough.

1 MR. SILVESTRI: Let me go to page 14.
2 There's the comment about the 40,000 megawatt
3 hours being generated from the project. And I'll
4 wait until you get to that page.

5 THE WITNESS (Grybowski): Okay.

6 MR. SILVESTRI: Over the expected
7 25-year or so life of the project, the efficiency
8 of the panels and the system is going to degrade.
9 Where do you see that 40,000 megawatt hour number
10 going, say, in 5, 10, or 20 years out?

11 THE WITNESS (Grybowski): That is an
12 average over the --

13 MR. SILVESTRI: The life of the --

14 THE WITNESS (Grybowski): Over the life
15 of the project, yes.

16 MR. SILVESTRI: Okay. Let me stay on
17 page 14. You also have the proposed project
18 compares the CO2 reduction to taking 2,661 cars
19 off the road on an annual basis. And obviously
20 we're not going to take any vehicles off the road
21 with this project, but you mention reducing CO2
22 from the fossil fuel electricity generating units.
23 In my opinion, you're going to get more from
24 natural gas. Oil and coal really aren't running
25 anymore in the region.

1 Do you have any idea how much natural
2 gas would the CO2 reduction be equivalent to?

3 THE WITNESS (Grybowski): I don't, but
4 I can provide a few bits of information.
5 Generally speaking, natural gas produces about
6 overall about 50 percent of the carbon emissions
7 of coal. Coal and oil are among the most carbon
8 intensive fuels that we have. It is very hard for
9 us to predict which resources will come offline in
10 the grid on the basis of any particular project.
11 But it is true that the first resources to come
12 offline are very likely to be coal and oil because
13 they are the highest cost resources now. Some of
14 the older gas plants, the single-cycle plants, may
15 come offline because they are older as well, but
16 the general phenomenon that we're seeing -- and
17 this happens partly through that capacity auction
18 that you mentioned previously -- that older
19 resources also have to compete in those capacity
20 markets. They generally bid in those auctions on
21 the basis of their marginal operating cost, and so
22 there is a marginal cost for every facility to
23 operate every type of power plant.

24 Coal plants, for instance, oil plants,
25 have fairly high marginal costs. It takes quite a

1 few human beings to operate those facilities.
2 They require quite a bit of maintenance. And so
3 those plants tend to bid in those auctions taking
4 into account those marginal costs for
5 participation.

6 Renewables are the flip of that.
7 Renewables have very low marginal costs. We have
8 very, very low marginal operating costs because we
9 don't have to buy fuel, and we have, generally
10 speaking, quite new projects that don't require
11 much maintenance costs. So in those capacity
12 auctions generally what has been happening -- and
13 I'm not referring to any particular auction -- but
14 the longer-term trend what's been happening in the
15 region is those higher marginal cost resources are
16 finding it hard to compete against the lower
17 marginal cost renewables. And so those higher
18 marginal cost resources are producing less often,
19 less frequently than they were, and the lower
20 cost, lower marginal cost resources like
21 renewables are participating more and producing
22 more energy.

23 So it's hard to predict precisely what
24 might happen in any particular auction with
25 respect to any particular project, but I think it

1 is very -- we're very certain that as a general
2 matter this project, like others of its kind, have
3 the impact of bringing offline more fossil
4 generation and therefore bringing offline more
5 carbon emissions.

6 MR. SILVESTRI: Again, fossil
7 generation includes natural gas?

8 THE WITNESS (Grybowski): Yes, sir, it
9 does. And you're very right, it may be natural
10 gas the next time.

11 MR. SILVESTRI: Let me move onto a
12 different topic. And I only have a few more
13 questions for you left. There's been discussion
14 on the barns that are on the properties. And I
15 believe the last that I saw was that two barns
16 would stay, numbers 4 and 5, but the other three,
17 1, 2, 3, would go. Is that still the plan right
18 now?

19 THE WITNESS (Kenney): That's still the
20 plan that we have. We're still in consultation
21 with the SHPO.

22 MR. SILVESTRI: And why would 1, 2 and
23 3 go, if you will?

24 THE WITNESS (Kenney): So the location
25 of those barns is they are within the interior of

1 the project, and we would need to remove two of
2 them to facilitate putting project facilities in
3 those locations. We did consult with the local
4 fire department, and we looked at the condition of
5 the barns, and I think that there's also some
6 concern about trespassing and the potential for
7 fire or vandalism. They're all in certain states
8 of disrepair. So our ask to the State Historic
9 Preservation Office was that we remove the three
10 interior, and then we maintain the two that are
11 visible from Hoskins Road that I think are
12 important to the residents.

13 MR. SILVESTRI: When you mention
14 condition, was a structural inspection, evaluation
15 actually conducted on those barns?

16 THE WITNESS (Kenney): It was just a
17 visual inspection.

18 MR. SILVESTRI: Did you go inside?

19 THE WITNESS (Kenney): I did not go
20 inside. I visually -- I looked in but --

21 MR. SILVESTRI: Because the reason --

22 THE WITNESS (Kenney): You can still
23 use -- I mean, I think that they, you know, at
24 least one of them was used for tobacco this fall,
25 so, I mean, I think that there's -- they're not

1 all, you know, they're not ready to fall down. A
2 couple of them are in worse shape than others
3 but --

4 MR. SILVESTRI: There's always a marked
5 difference between the exterior and the interior
6 of the sheds because the exterior was actually
7 movable, you know, different panels would come up,
8 slide over, wherever it may be, to try to
9 accommodate air flow going through there. The
10 interior was constructed a lot different, which is
11 why I had asked the question about if an analysis
12 was done.

13 THE WITNESS (Kenney): We haven't done
14 an analysis on them yet. We based that request on
15 the location that we need for the project
16 facilities and the consultation with the town.

17 MR. SILVESTRI: I want to go back to a
18 question that Mr. Mercier had asked about the
19 distribution system at Eversource. And I'm
20 looking at the 23-kilovolt system that Eversource
21 has and the 26 megawatts that you're looking to
22 produce. And at first glance, it almost seems
23 like the 26 megawatts would actually overwhelm the
24 23 kilovolts. What provisions, or have provisions
25 been ironed out, so something would come into

1 effect, you'd go up, you'd go down in voltage, to
2 not overburden that system?

3 THE WITNESS (Grybowski): That is the
4 very nature, that's the precise nature of the
5 conversations that are ongoing with Eversource.
6 There is a local distribution system there at that
7 substation. There is obviously also larger
8 transmission coming into that substation. And
9 there is, we believe, based on the analysis that
10 we've done, that the project could interconnect
11 with either system. And the nature of our
12 conversations with Eversource are to get their
13 input. At the end of the day it's Eversource's
14 decision about which part of their system they
15 will allow us to interconnect with.

16 MR. SILVESTRI: So those discussions
17 are still going on?

18 THE WITNESS (Grybowski): Yes, sir.
19 The study is being conducted by Eversource now.

20 MR. SILVESTRI: Thank you. If I could
21 turn your attention to Interrogatory Number 14
22 from the Siting Council? On the bottom of the
23 response it has "Using these panels, the project
24 is expected to operate at an annual efficiency of
25 14.6 percent."

1 My question for you, does that include
2 the 4.6 reduction in gross energy output from
3 soiling of the panels, and a 4.2 percent reduction
4 from shading?

5 THE WITNESS (Grybowski): The short
6 answer is yes, sir. That is net. I stand to be
7 corrected here. Although, one question first.
8 Which set of interrogatories? We're having
9 trouble finding that.

10 MR. SILVESTRI: The first set, Number
11 14, page 4 of the responses.

12 THE WITNESS (Kenney): I'm sorry. Can
13 you just ask the question again?

14 THE WITNESS (Grybowski): Is it net of
15 losses.

16 THE WITNESS (Kenney): I believe it is
17 net of losses. We would have calculated it that
18 way, our engineers.

19 MR. SILVESTRI: Okay. So it does take
20 --

21 THE WITNESS (Grybowski): Certainly the
22 number of megawatt hours that you referred to
23 previously, that overall annual number would be
24 net of all losses, whether it's soiling, insects,
25 shading, there are a variety of losses that could

1 calculate it, inefficiency of the electrical
2 system. There are a number of categories of
3 losses that take you from the gross generation at
4 the panel to the final net delivered amount of
5 energy which is that number that you referenced
6 previously.

7 MR. SILVESTRI: Now, the racking system
8 for the panels are going to be driven posts. Is
9 that correct?

10 THE WITNESS (Moberg): We've been
11 looking so far at driven posts, but a screw pile
12 would accomplish the same sort of thing for us.

13 MR. SILVESTRI: I think the screw pile
14 would be a lot less noisy.

15 THE WITNESS (Moberg): Perhaps.

16 MR. SILVESTRI: So the concern with the
17 driving, I still envision whatever sheet piling,
18 whatever that would go into the ground, the noise
19 over a period of time could be grating. And I
20 look at the driving the piles and say, you know,
21 if you're going to build this between 7 and 5, I
22 wouldn't do the driving of the piles until kids
23 got off to school, and before everybody had their
24 dinner, if you will, coming home. So probably
25 something to keep in mind going forward.

1 If I could then have you turn your
2 attention to Set II of the interrogatories. And
3 I'm looking on page 9 in the response to
4 Interrogatory Number 84. On answer (b), as in
5 "bravo" it has, "The wells are located on private
6 property, and are owned by various property
7 owners. As such, the testing contemplated by this
8 interrogatory would be unduly burdensome to both
9 the homeowners in question and to the project."

10 Could you explain how that would be
11 unduly burdensome to the project? Let me put it
12 in context for you. Many years ago when I had
13 hair, I was a director of an analytical
14 laboratory. And one of the projects that came up
15 was approximately a 3-mile street, quarter acre
16 housing, all wells, and there was going to be some
17 blasting in the area. And we actually went out
18 before and after and did sampling of the well
19 water. So I'm trying to put my experience
20 together with why this is unduly burdensome.

21 THE WITNESS (Grybowski): I think the
22 easiest way to think about that, Mr. Silvestri, is
23 that those private wells may have any number of
24 issues with respect to the water quality, which
25 may or may not be related to some other

1 neighboring property. And we don't believe that
2 it's within the obligation of this property owner
3 to investigate the wells and water quality of a
4 neighbor. And that gets us into someone else's
5 property, and we're not -- we don't believe
6 there's any obligation for that based on what we
7 know about our property.

8 MR. SILVESTRI: The last question I
9 have for you goes to pesticides and herbicides
10 that may have been applied through usage of the
11 fields. No testing has been performed, if I'm
12 correct, by you folks at this point. Is that
13 right?

14 THE WITNESS (Grybowski): I'm sorry.
15 Could you repeat the question?

16 MR. SILVESTRI: Yes. Soils on the
17 fields in the project footprint possibly had
18 pesticides or herbicides applied through the
19 course of its usage. Have you done any testing to
20 see if there's any residuals?

21 THE WITNESS (Grybowski): We have not.

22 THE WITNESS (Kenney): We have not done
23 testing on the agricultural fields.

24 MR. SILVESTRI: Any reason why?

25 THE WITNESS (Kenney): We haven't

1 identified that the need for that testing would be
2 necessary, or required.

3 MR. HOFFMAN: I think Mr. Henry can
4 explain why.

5 THE WITNESS (Henry): Sure. So the
6 type of property that this project is contemplated
7 on is not regulated by any requirements to do any
8 testing for those constituents, and therefore we
9 have not felt the need to do any testing.

10 MR. SILVESTRI: Mr. Chairman, I think
11 I'm all set. Thank you.

12 THE CHAIRMAN: Do you have a follow-up?

13 DR. KLEMENS: Yes, I do. Part of that
14 property in question, it's in tobacco
15 production -- has been in tobacco production.
16 Correct?

17 THE WITNESS (Kenney): Correct.

18 DR. KLEMENS: Are you aware of the
19 practice that is quite prevalent to the south
20 which created a problem in Meadowood of dipping
21 the poles -- the poles that shade the tobacco, it
22 was common practice, are you aware of this, for
23 many years to dip the bases in chlordane?

24 THE WITNESS (Kenney): I would defer to
25 Mr. Henry.

1 DR. KLEMENS: My question is, are you
2 aware of that?

3 THE WITNESS (Henry): Generally aware
4 that was a practice that was used.

5 DR. KLEMENS: So you're not concerned
6 that there could be a checkerboard pattern of
7 chlordanes hot spots in some of these fields that
8 you're going to be developing?

9 THE WITNESS (Henry): It's certainly
10 possible. However, I don't think it impacts the
11 nature of the project. Chlordane is generally
12 pretty immobile when it comes into soil. It binds
13 to the carbon matter. It binds to the clay. It
14 doesn't really move anywhere. So development of
15 the property would be managing the soils in
16 conjunction with the soil and erosion control
17 plan. No soils are contemplated to be removed
18 from the site, so the presence or absence of those
19 materials in the soil would not impact the
20 project.

21 DR. KLEMENS: As you have a plan to
22 control erosion in stormwater, you anticipate that
23 soils could be moving around the site?

24 THE WITNESS (Henry): Correct.

25 DR. KLEMENS: And how would you protect

1 those if, for argument's sake, there was chlordane
2 in these soils? How can you ensure that the
3 chlordane is not going to enter the wetland, the
4 groundwater?

5 THE WITNESS (Henry): So as part of the
6 development and management plan, I understand
7 there's going to be a stormwater pollution
8 prevention plan that will be enacted, and that
9 will mitigate any potential risks of those
10 materials impacting those receptors.

11 DR. KLEMENS: So rather than actually
12 studying the site and knowing what the risks are
13 now, we're to rely on the D&M plan to mitigate
14 those risks. Is that your professional opinion?

15 THE WITNESS (Henry): Yes, it is,
16 because I don't think this property would, based
17 on this plan, would be any different than if it
18 were to be used for another type of development.
19 In fact, this is probably less impactful since
20 currently there is really no soil erosion control
21 that's going on at the site. This project will
22 certainly stabilize the site, will provide a soil
23 erosion control plan, provide a stormwater
24 prevention, pollution prevention plan, and that
25 will certainly mitigate any of those impacts.

1 DR. KLEMENS: What happens when you
2 screw or pound the posts into the ground?

3 THE WITNESS (Henry): Well, typically
4 these materials, if they're present, are typically
5 in the upper 6 inches, foot of soil. Penetrations
6 into that will displace the soil laterally. It's
7 not going to push that soil down into the ground.
8 So the soil wouldn't move really too far from
9 where it currently is.

10 DR. KLEMENS: But it could be actually
11 brought up closer to the surface. Would it be
12 airborne? Could it be more mobile if the soil is
13 exposed? Could you end up with wind dispersing
14 potentially chlordane-laced sand or soil?

15 THE WITNESS (Henry): If proper dust
16 control measures were not undertaken, which I
17 understand will be part of the stormwater
18 pollution prevention plan.

19 DR. KLEMENS: No further questions.

20 THE CHAIRMAN: I think that's
21 actually -- it's an interesting discussion we just
22 had, and it may be more apropos, I'm not sure even
23 related to this petition, but something that maybe
24 policymakers and the Department of Agriculture and
25 DEEP might consider as to why there seems -- there

1 may or may not be less stringent controls on
2 agricultural lands as there may be on others.

3 But I want to get to my questions
4 unless you've got a real --

5 MR. HARDER: I have follow-up on this
6 issue. I can ask the question later.

7 THE CHAIRMAN: Well, go ahead.

8 MR. HARDER: I guess I'm a little
9 flabbergasted that your position is that -- first
10 of all, back on your response to Interrogatory 84
11 that testing would be a burden to the project. I
12 agree, you're not responsible for contamination
13 that may be present in the wells now or may be
14 discovered in the future that was the result of
15 past activities. But if the activities you're
16 going to undertake exacerbate a problem, or do
17 something to create another problem, you might be
18 responsible, it seems to me.

19 And to take the position that -- I
20 mean, this is a big project and a lot of
21 homeowners nearby, most, if not all of them, many
22 of them, on wells. It's not a small item to think
23 about testing wells. But to say that testing
24 would be a burden to them, I don't know how that
25 would be a burden to them, or would be a burden to

1 the project. I mean, it kind of comes with the
2 territory. It's a big project. You have to
3 provide assurances to people that problems aren't
4 going to be created, and it's not unusual as, Mr.
5 Henry, I'm sure you know, to do pre and post
6 sampling. Whether or not you're responsible for
7 what might be found pre the project, it's
8 understood, but there might be contamination
9 present in wells before a project. I'm not sure
10 how you think that that's going to provide comfort
11 to anyone.

12 The other point related to that is --
13 THE WITNESS (Grybowski): May I respond
14 or --

15 THE CHAIRMAN: Go ahead, finish.

16 MR. HARDER: Mr. Henry, as I think you
17 mentioned earlier, also in your October 3rd
18 responses, Exhibit D to the responses, you
19 indicate that contamination would have long since
20 leaked to groundwater, potentially migrating to
21 receptors. Well, if you're not doing any
22 sampling, you don't know what level that might be
23 at, and, as you said, most pesticides that absorb
24 the soil particles become immobile and don't
25 leach. Well, that may be true for most.

1 I'm sure you're aware of EDB and the
2 problem that's been created around tobacco fields
3 in Connecticut, hundreds, probably thousands of
4 residential wells being contaminated by EDB and
5 perhaps other things. Maybe the EDB was immobile
6 with regard to the soil particles, but it wasn't
7 immobile with regard to the site. In some way EDB
8 went from the site to all these wells.

9 So I guess I wonder why you wouldn't
10 want to provide more assurance. Again, I'm not
11 saying that you would be responsible for past
12 problems. But why wouldn't you want to provide
13 more assurance and provide some of that testing,
14 and because there may be some new activities like
15 trenching, you know, drilling? I don't have the
16 same concern about pushing contamination into the
17 ground from installing piles and that kind of
18 thing. But from those activities that may not
19 have been present in some of the areas where
20 contamination was more prevalent, why wouldn't you
21 provide more assurance instead of just saying,
22 well, we're not required to under some other
23 program, so we don't think it's necessary? It
24 just doesn't give me a lot of comfort.

25 THE WITNESS (Grybowski): I think the

1 short answer is because there's no demonstration
2 that testing bears any relevance to what we've
3 proposed here. We've heard from Mr. Henry, his
4 expert opinion, that the activities that we
5 have -- that we propose to do will not have an
6 impact on groundwater. And so there's no link
7 between our activities and local wells that would
8 necessitate us doing testing on local wells. If
9 we were proposing something that we believe and
10 that our experts were advising may impact local
11 groundwater, then we would be looking at other
12 analyses and perhaps testing. But simply to
13 provide comfort that has no basis in the science
14 behind what we believe will occur is unduly
15 burdensome to this project.

16 There is existing activity on these
17 fields. There's tilling. The soil is being
18 turned up, up and down. It has been for quite a
19 number of years. And those are activities that
20 may or may not have affected groundwater, but our
21 activities are far less impactful on that land
22 than anything that has happened over the prior
23 decades. So simply to do a large testing regime
24 to provide comfort to folks when that testing
25 regime bears no relevance to the action that we

1 propose we think is unreasonable.

2 THE CHAIRMAN: Thank you. A few
3 questions. I want to just briefly review your
4 site search. You said you looked at the sites,
5 and you have parameters of what you use in order
6 to determine viable sites in Connecticut,
7 Massachusetts and Rhode Island. Is that correct?

8 THE WITNESS (Grybowski): Yes, sir. We
9 did identify sites throughout all three states and
10 evaluated a number of them.

11 THE CHAIRMAN: Now, does the structure
12 of the RFP limit you to looking for projects in
13 just those three states, or could you go to, say,
14 New York, New Hampshire, Maine?

15 THE WITNESS (Grybowski): The projects
16 had to be located in New England.

17 THE CHAIRMAN: In New England.

18 THE WITNESS (Grybowski): Yes, sir.

19 THE CHAIRMAN: New York in or out or
20 New England?

21 THE WITNESS (Grybowski): Out. As a
22 Red Sox fan, for sure outside.

23 THE CHAIRMAN: Bad weekend, wasn't it?

24 THE WITNESS (Grybowski): Yes, sir, it
25 was.

1 THE CHAIRMAN: Depending on your point
2 of view.

3 SENATOR MURPHY: His team never got
4 close.

5 THE CHAIRMAN: Well, I could just sit
6 back and watch. It didn't go well in football
7 either, but we won't get into that.

8 Did you limit your search to just
9 projects relating to solar, that you couldn't look
10 into wind, or biomass, or something else?

11 THE WITNESS (Grybowski): The RFP did
12 not make that limitation, but we did make that
13 commercial limitation internally that we were only
14 interested in pursuing solar projects.

15 THE CHAIRMAN: Despite your name?

16 THE WITNESS (Grybowski): Ironically,
17 yes, sir.

18 THE CHAIRMAN: Is there a reason for
19 that?

20 THE WITNESS (Grybowski): Yes, because
21 we believe that the most competitive projects for
22 this RFP fall into two categories: Solar projects
23 located in the Southern New England area, and
24 on-shore wind projects that would be located in
25 Northern New England, principally in Northern

1 Maine. And we're not in the business of building
2 on-shore wind farms, particularly in Northern
3 Maine, which is a very competitive market that we
4 have no particular expertise in, in that state.
5 So that left us with solar located in Southern New
6 England.

7 THE CHAIRMAN: Okay. One more thing
8 related to that. I think it was the Department of
9 Agriculture who mentioned that, so I ask you, did
10 you look into brownfield sites, gravel, gravel
11 mines, locating these on right-of-ways, and why
12 were those not -- or why were they rejected?

13 THE WITNESS (Grybowski): We have been
14 searching high and low for those types of
15 locations. Unfortunately, they are few and far
16 between. There are a very limited number of those
17 types of locations in Southern New England. And
18 those that exist tend not to be very large, which
19 means you're talking about a smaller project. And
20 smaller projects in the solar world are generally
21 not competitive, or less competitive. Solar
22 becomes a more competitive resource as you get to
23 a larger scale that requires acreage.

24 We also, the two other limiting
25 factors, or several other limiting factors, even

1 if you find a good-sized industrial site, a gravel
2 pit, for instance, it may not be near a substation
3 or a transmission line, which would then
4 disadvantage that location again. Being further
5 away from a substation increases a project's costs
6 because you need to build a new connection to the
7 closest substation.

8 Finally, there's the tricky matter of
9 having a property owner who's actually willing to
10 sell or lease to you. And simply identifying the
11 location that is perfect in every regard, it's a
12 big site, it is environmentally safe to build, and
13 has little impacts, it's close to a substation,
14 the property owner has no obligation to do
15 business with the developer. And in many cases we
16 have found property owners simply not interested
17 in selling because they have an ongoing business
18 that they'd like to maintain, or they have designs
19 of building residential properties, or building
20 some other kind of commercial property on their
21 site.

22 So while it is uncontroversial in
23 principle to say that solar ought to be built on
24 these industrial sites, like gravel pits, our
25 region could never accomplish our even now modest

1 goals at building renewable energy and reducing
2 our carbon emissions if we only built solar on
3 those types of facilities.

4 THE CHAIRMAN: Okay. You just led
5 right into my next question. Could you just
6 concisely explain why we even care about reducing
7 our carbon footprint? Maybe I've lost that in
8 looking at every detail about why this -- so why
9 are we interested in reducing CO2? There is a
10 pretty good analysis, a brief one, in the letter
11 from DEEP on this, although I do object to at one
12 point labeling it as Governor Malloy's program. I
13 thought it was a state program. And since we know
14 when a new team gets into, whether it's the
15 Governor's mansion or the White House, you look at
16 anything that has some former individual's name on
17 it, and that put a big bull's eye.

18 Anyway, so just briefly, because I
19 think maybe we lose a little track of why we're
20 even doing this. We could probably with 30 acres
21 we could build a very nice fossil fuel plant and
22 deliver a lot more energy.

23 THE WITNESS (Grybowski): You're right,
24 sir. In some regards building a new fossil plant
25 can be easier than siting a larger renewable

1 energy project ironically. The states in New
2 England and Connecticut included have goals to
3 reduce carbon emissions, and those goals are
4 driven by a number of policy factors. Clearly,
5 one that isn't mentioned as often as it ought to
6 be is that fossil fuel generation has a certain
7 footprint of air emissions. Those air emissions,
8 other than the carbon, include things that
9 increase cases of asthma, lead to premature
10 deaths. There are real public health detriments
11 to generation of fossil fueled electricity. Solar
12 reduces that generation, and therefore improves
13 air quality and public health.

14 In addition, there's the broader issue
15 of the impact of carbon emissions on climate
16 change. And it is not a controversial statement
17 in the scientific community that carbon emissions
18 are the leading factor, the leading cause, driving
19 climate change, which has impacts on the State of
20 Connecticut and the Town of Simsbury. It's
21 changing our climate. It's making our weather
22 more extreme. It's increasing torrential
23 downpours, and on the same hand increasing drought
24 at other times of the year. And it has -- those
25 carbon emissions and climate change are having a

1 detrimental impact on the State of Connecticut and
2 the Town of Simsbury today. And so renewable
3 generation is one of the key pillars of our
4 region's goal to reduce carbon emissions. There
5 are electric benefits too as well, but I'll --

6 THE CHAIRMAN: Okay. That's fine.

7 THE WITNESS (Grybowski): Thank you,
8 sir.

9 THE CHAIRMAN: In response to
10 Council's, I guess, Interrogatory Number 15
11 relating to energy storage, I believe you
12 responded -- the question was, are you considering
13 that, and you said not at this time. So I'm
14 wondering how far into the future "not at this
15 time" extends given what we've been hearing, and
16 we know that in other places they're beginning to
17 use energy storage in conjunction with renewables?

18 THE WITNESS (Grybowski): Yes. As a
19 company, Deepwater very firmly believes that
20 energy storage will play a very significant role
21 in the development of the next generation of
22 resources, energy resources. We are now thinking
23 of the role that energy storage will play in our
24 future projects. The current RFP that we won with
25 our Simsbury bid did not particularly value

1 storage as a component of the project, so we did
2 not bid storage with this Simsbury project.

3 But that is principally a policy issue
4 that we expect the region -- and electric
5 utilities and grid operators throughout the
6 country will increasingly ask developers and
7 generators to include storage systems with their
8 renewables. So I do believe that, and I'm certain
9 that we will see more and more energy storage
10 paired with renewable resources like wind and
11 solar. We were not able to do it for this
12 proposal, but it is something that I'm sure that
13 in future projects we will be contemplating very
14 strongly.

15 THE CHAIRMAN: So I can understand
16 using the present tense. But what I'm grappling
17 with, if yours is a 20-year project, or you'll be
18 online presumably for 20 years, do you really
19 think that energy storage within that period of
20 time will not become price efficiency, et cetera,
21 et cetera, et cetera, feasible, and therefore my
22 question, are you prohibited from employing it at
23 some future date either because you don't have the
24 space for it, you won't be able to connect,
25 Eversource doesn't want you to, despite what they

1 may say, or the terms of the original agreement?

2 THE WITNESS (Grybowski): Well, there
3 are a few ways to answer that, Mr. Chairman. The
4 most immediate issue is that our contract with the
5 utilities does not value the storage component.
6 So we would need to do an economic analysis that
7 would allow a payback on a storage element. That
8 is the first hurdle.

9 Had we bid this project differently and
10 had the RFP been structured differently to
11 incentivize the use of storage, we very well may
12 have included storage, but it simply didn't do
13 that. I do think that you will see in the future
14 storage included in projects, but I'm very
15 hesitant to predict that I may include something
16 in a project that's before a Siting Council that I
17 have not proposed to the Siting Council. So I
18 understand that there are limitations on changes
19 that we can make to the project based on our
20 application and our permits, and we certainly
21 would not contemplate doing anything that was out
22 of compliance with any of those approvals.

23 THE CHAIRMAN: So that gets to my, I
24 guess, a related question. So in the case of some
25 event that when the grid goes down, your panels

1 work fine, but you're not -- you can't produce any
2 -- or can you produce electricity for anywhere,
3 anybody?

4 THE WITNESS (Grybowski): We very well
5 may be able to, depending on which elements of the
6 grid are working and which elements of the grid
7 are not working, and that would be an instruction.
8 We would follow whatever instruction we receive
9 from the local grid operator, which is ISO New
10 England, the independent system operator here in
11 New England. It's their job to determine which
12 resource, and by resource meaning power plants,
13 which need to operate, and which should not
14 operate given any particular event that occurs.

15 So between ISO New England and
16 Eversource, they would tell us whether we ought to
17 produce power or not. It very well may be the
18 case that even though some elements of the grid
19 are not working, our solar project could work, and
20 we could supply energy to that node of the grid,
21 that substation. And that is, frankly, one of the
22 responses to Mr. Silvestri -- I should have
23 thought of this hypothetical earlier -- about
24 system reliability that when you have resources
25 that are distributed across the grid at a variety

1 of substations, some part of the grid may go down,
2 but another part of the grid may still be
3 operating. And it's not just a substation now.
4 Now it's a substation paired with a power plant.

5 So although transmission lines may be
6 affected, preventing energy to flow to that local
7 substation, it very well may be that Eversource
8 finds it beneficial for the solar farm to produce
9 energy to supply that local substation and supply
10 electricity to the local neighborhood.

11 THE CHAIRMAN: But it's not in a true
12 sense a microgrid that could operate independent.
13 For example, if we had -- and we're talking
14 about -- I mean, we've just been seeing them in
15 the last month, so it's not a hypothetical
16 anymore.

17 THE WITNESS (Grybowski): It is not a
18 true microgrid, sir, no.

19 THE CHAIRMAN: Is there a way that you
20 could serve, say, a local hospital or something?

21 THE WITNESS (Grybowski): No, sir, no,
22 not that specifically. And that is the microgrid
23 trend that I expect will also be happening.

24 THE CHAIRMAN: I just think it's a very
25 disappointing response, but I'm not targeting you.

1 I'm targeting whoever came up with the RFP and
2 also foresee this tremendous potential for making
3 Connecticut in this case a much more resilient
4 state by allowing this.

5 Okay. You mentioned -- I'm talking now
6 about mitigation strategies for various issues
7 that people have raised, and you've mentioned a
8 number of them such as, you know, making some
9 adjustments to where the solar array will be, and
10 for various reasons also a proposal -- I believe
11 it's to the State Department of Agriculture --
12 relating to an easement that would keep the
13 property in agricultural use when you cease to
14 operate your solar facility.

15 Have you thought about any other types
16 of mitigation that you might utilize that would
17 make -- because part of our job is to balance a
18 lot of issues and then in some areas if there are
19 mitigation tools that would make the balance
20 easier in one way or the other. So have you
21 thought of anything else?

22 THE WITNESS (Grybowski): So I can
23 begin the list, and I'll look to some of my
24 colleagues to supplement.

25 THE CHAIRMAN: And if it's too long a

1 list to spend time, you can submit it as a
2 follow-up. But if you can do it concisely.

3 THE WITNESS (Grybowski): I'll do my
4 best.

5 Visual screening is one important
6 mitigation element. We've proposed both
7 vegetative screening and what I would call a
8 decorative fence, or a fence screen, in a variety
9 of locations around the perimeter of the project.
10 Those are not measures that are necessary for the
11 operation of the solar project. Those are
12 proposals on our part to attempt to address some
13 of the concerns from the local community. So we
14 are fairly agnostic about visual screening and
15 within the context of what we believe is feasible
16 and financially doable. So that is one area of
17 mitigation.

18 Retention of the barns is another
19 issue. Stepping back from the process with the
20 State Historic Preservation Office, keeping that
21 issue separately, we were also considering whether
22 the barns were a local resource that people like
23 to see. And frankly some people told me they
24 didn't like them, and many people said they did
25 like them. So retaining those two barns near the

1 road was -- has no utility to our project at all,
2 none of the barns have utility to our project. We
3 would just assume not have them because they are a
4 potential safety risk and a maintenance cost to
5 the project, but retaining the two barns near the
6 road was another mitigation issue.

7 We also talked about walking trails
8 through the project. The walking trails, again,
9 have no utility to the project. But some folks in
10 the community valued the ability to walk through
11 the farm, the site. I note that apparently a lot
12 of people walk through that site now without any
13 approval from the property owner. But we were
14 willing to put some walking paths on the site to
15 allow people to continue to walk.

16 We've also talked about some pollinator
17 habitat. And my ability to talk about a
18 pollinator habitat is limited to what I just said,
19 so I won't go any further than that. But my
20 colleagues can answer that issue as well. That's
21 what comes off the top of my head.

22 THE WITNESS (Kenney): I think you hit
23 on most of them, Jeff. I think we have been open
24 and committed to open dialogue with the community
25 about what they would see as benefits. And so we

1 do remain open. We see it as a great opportunity
2 for learning, science, for the ability to teach
3 about renewable energy, and we like to work with
4 the schools on that. But I think Jeff hit on the
5 major points.

6 THE WITNESS (Grybowski): And the final
7 word on that, Mr. Chairman, is these are all ideas
8 that we've had, and we welcome the input of the
9 Council because we have no magic formula on what
10 set of mitigation is the best set of mitigation.
11 We have the criteria of it needs to be practical
12 and workable and financially feasible for us to do
13 it.

14 THE CHAIRMAN: Thank you. I'll just
15 throw out one more, which maybe I'll throw out
16 when the town is up, on the barns. It seems like
17 there's some history there relating to both the
18 tobacco industry and tobacco farming, as well as
19 possibly Martin Luther King having worked there.
20 It may be a small interpretive type of exhibit in
21 one of those barns. There are several historic
22 entities, I believe, in the town. I'm surprised
23 they haven't done that before, but it's never too
24 late. So I throw that out.

25 THE WITNESS (Grybowski): We're open to

1 that.

2 THE CHAIRMAN: I have two quick
3 questions. One, we've heard proposals from the
4 current administration in Washington relating to a
5 concern that some countries -- I may be using the
6 wrong term -- have been dumping solar panels in
7 the states, and therefore a possibility -- again,
8 I'm probably using the wrong term -- of increasing
9 tariffs, or whatever it is. Have you looked into
10 that, and is that concerning?

11 THE WITNESS (Grybowski): We have
12 looked -- we obviously are watching that very
13 closely, as is the rest of the solar industry. We
14 benefit for this project being -- should approvals
15 go forward, being fairly close to the stage where
16 we would begin negotiating and contracting with
17 firms to supply the solar. So it's our belief
18 that we're still within the window of securing
19 solar panels that are within the budget that we
20 have for the project. I think longer term this is
21 a concerning issue to the extent that new tariffs
22 are imposed that are very onerous. So it's
23 something we're watching for our future projects
24 for sure.

25 THE CHAIRMAN: Okay. Last thing

1 relates to your carbon debt analysis that you
2 provided.

3 THE WITNESS (Grybowski): Yes, sir.

4 THE WITNESS (Moberg): Yes.

5 THE CHAIRMAN: It's in the back of your
6 thing. It's in there.

7 THE WITNESS (Moberg): Right, exactly.

8 THE CHAIRMAN: Do you want to talk
9 about it?

10 THE WITNESS (Moberg): I do, yes.

11 THE CHAIRMAN: You specifically
12 mentioned that you excluded CO2 emissions that are
13 related to the manufacturing of the panels and
14 land clearing. Could you look at that again and
15 incorporate those? It may be very minuscule, but
16 I know in another application they were included,
17 so I think just to be fair. Because obviously
18 when you manufacture these things, it does have
19 some impact, and when you clear the land and
20 prepare it. And so, if that's possible, that
21 would be good.

22 Also, you prepared an as of -- I call
23 it sort of in gross terms, as-of-right development
24 under existing zoning?

25 THE WITNESS (Moberg): Yes.

1 identify for the record the witnesses and then
2 have them take the oath.

3 MR. KOSLOFF: Yes. On the left is
4 Mr. George Logan. He is called as our expert.
5 All the others are homeowners. They are not
6 experts. Ms. Shlansky, Ed Wrobel, Linda Lough,
7 Chris Kilbourn-Jones, and Mike Flammini. We have
8 a few other such witnesses. They should be on
9 their way. If they are not, we will try to deal
10 with that in view of their nonappearance. But at
11 this point I'm still hopeful that we will get
12 appearances from all of them except one who I know
13 could not make it, and that's Rob Perissi. He was
14 called away. He will not be here. And so for the
15 record, I would ask that his prefiled testimony be
16 taken as public comment only since he will not be
17 subjected to cross-examination. Other than that,
18 these witnesses are prepared to go forward.

19 THE CHAIRMAN: Mr. Hoffman.

20 MR. HOFFMAN: Mr. Stein, Chairman
21 Stein, we took these witnesses out of order. The
22 Siting Council made an accommodation. My motion
23 to compel could not be heard because we had to
24 take these witnesses out of order. We were told
25 that there would be nine witnesses here today. At

1 a minimum, I would ask that you not only strike
2 the testimony of any witness who isn't here for
3 cross-examination, but you strike them as parties
4 at this stage of the game. There are rules for
5 these proceedings. The rules are clear.
6 Everyone -- and thus far it appears as
7 though Attorney Kosloff does not believe that he
8 has to abide by those rules.

9 THE CHAIRMAN: Okay. Just give me a
10 second here.

11 MR. HOFFMAN: Certainly.

12 (Pause.)

13 THE CHAIRMAN: Okay. Just in response,
14 what we're going to do is we're going to accept
15 their prefiled just for whatever it's worth as
16 public comment, and leave it at that.

17 MR. HOFFMAN: Understood, Mr. Chairman.

18 THE CHAIRMAN: And those who are here,
19 would you please rise to take the oath?

20

21

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23

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25

1 G E O R G E L O G A N ,
2 L I S A B E T H S H L A N S K Y ,
3 E D W A R D W R O B E L ,
4 M I C H A E L F L A M M I N I ,
5 L I N D A L O U G H ,
6 C H R I S K I L B O U R N - J O N E S ,

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 THE CHAIRMAN: Okay. Attorney Kosloff,
12 would you begin by verifying the exhibits you
13 filed and having the witnesses verify?

14 MR. KOSLOFF: Yes. My witnesses each
15 have copies of their prepared testimony. I
16 haven't compared what they are holding with what
17 we filed, but I can confirm that they are
18 identical. That would include George Logan's two
19 exhibits, his curriculum vitae, as well as his
20 report. So I would like to take Mr. Logan first,
21 if you don't mind.

22 DIRECT EXAMINATION

23 MR. KOSLOFF: Mr. Logan, you have
24 examined the prefile testimony and the two
25 exhibits that I filed on your behalf?

1 THE WITNESS (Logan): Yes, I have.

2 MR. KOSLOFF: Is the information
3 therein contained true to the best of your
4 knowledge and belief?

5 THE WITNESS (Logan): Yes, it is.

6 MR. KOSLOFF: Now, asking the remaining
7 witnesses, each of you have before you copies of
8 your prefiled testimony which is identical to the
9 filings that I made on your behalf. You've read
10 them, you've signed them. Do you acknowledge that
11 the statements therein contained are true to the
12 best of your knowledge and belief?

13 THE WITNESS (Shlansky): Yes.

14 THE WITNESS (Wrobel): Yes.

15 THE WITNESS (Flammini): Yes.

16 THE WITNESS (Lough): Yes.

17 THE WITNESS (Kilbourn-Jones): Yes.

18 MR. KOSLOFF: I will offer the prefile
19 testimony of each and every one of these
20 individual witnesses.

21 SENATOR MURPHY: Is that another one of
22 your clients that just came in right there?

23 MR. KOSLOFF: Yes.

24 SENATOR MURPHY: He might as well do it
25 now rather than later.

1 THE CHAIRMAN: All right. Then --

2 MR. KOSLOFF: Let me conclude this. I
3 will offer the prefile testimony of the witnesses
4 that you just swore in, as well as Mr. George
5 Logan's reports and his prefile testimony.

6 THE CHAIRMAN: But my question is, is
7 there an additional witness that appeared that was
8 not sworn in?

9 MR. KOSLOFF: Yes. And I'd like to
10 attend to that now.

11 THE CHAIRMAN: So first we'll swear him
12 in.

13 MR. KOSLOFF: Okay.

14 J O H N M A R C K T E L L,

15 called as a witness, being first duly sworn
16 by Ms. Bachman, testified on his oath as
17 follows:

18 MS. BACHMAN: Thank you.

19 DIRECT EXAMINATION

20 MR. KOSLOFF: Following onto the
21 previous questions, Mr. Marcktell, you have in
22 your hand a copy of the prefile testimony that I
23 filed on your behalf. Would you take a moment to
24 examine it to make sure that it is what I said it
25 is?

1 THE WITNESS (Marcktell): Yes, it is.

2 MR. KOSLOFF: Do you solemnly affirm
3 that the statements therein contained are true and
4 accurate to the best of your knowledge and belief?

5 THE WITNESS (Marcktell): Yes.

6 MR. KOSLOFF: I'm now offering the
7 testimony and the reports of Mr. Logan in
8 evidence, subject to the rights of
9 cross-examination by the Council and the parties.

10 THE CHAIRMAN: Does the applicant or
11 any party or intervenor object to the admission of
12 these exhibits?

13 MR. LANGER: No objection.

14 MR. HOFFMAN: Other than as already
15 noted for the two witnesses who are not here, no.

16 MR. LANGER: No objection from the
17 town.

18 THE CHAIRMAN: No objection. Okay.
19 The exhibits are admitted.

20 (Abutting Property Owners' Exhibits
21 III-B-1 through III-B-6: Received in evidence -
22 described in index.)

23 THE CHAIRMAN: We'll now begin
24 cross-examination. Mr. Mercier.

25 MR. MERCIER: Thank you.

1 CROSS-EXAMINATION

2 MR. MERCIER: Ms. Kilbourn-Jones, in
3 your prefile testimony I saw that you stated that
4 your house -- your residence will be surrounded on
5 three sides by solar panels.

6 THE WITNESS (Kilbourn-Jones): Correct.

7 MR. MERCIER: However, when I was
8 looking at the plans in the petition, it just
9 showed it on two sides, the side, you know, behind
10 your home --

11 THE WITNESS (Kilbourn-Jones): And on
12 the other side.

13 MR. MERCIER: -- and to the east.

14 THE WITNESS (Kilbourn-Jones): East and
15 west.

16 MR. MERCIER: There is revised plans to
17 the petition. That's what I was going to ask,
18 what plan you were referring to, because in the
19 petition it does show that due south and due east,
20 so I just wanted you to be aware of that.

21 THE WITNESS (Kilbourn-Jones):
22 Unfortunately, I was not aware of that.

23 MR. MERCIER: Are you also aware that
24 the petitioner is considering redesigning the
25 south field area where your residence is so

1 there's no solar panels behind your house?

2 THE WITNESS (Kilbourn-Jones): No.

3 MR. MERCIER: If that redesign is
4 suitable for them, then there would just be solar
5 panels to the west of your home -- excuse me, east
6 of your home.

7 THE WITNESS (Kilbourn-Jones): East.

8 MR. MERCIER: Yes. Thank you.

9 Mr. Logan, I just have one question for
10 you. On page 14 of your report --

11 THE WITNESS (Logan): Sure. Hold on a
12 second.

13 MR. MERCIER: Excuse me. It's on page
14 11. It's footnote 14. It essentially states that
15 the site is considered a very important migratory
16 flyway for avians. I want to make sure you're
17 referring to the actual site itself.

18 THE WITNESS (Logan): Yes. The note
19 basically says that, because of the proximity to
20 the Farmington River, the site itself is within an
21 important flyway.

22 MR. MERCIER: It's within a -- okay.
23 Understood. It's an important flyway, but the
24 site itself is not deemed very important by DEEP
25 or the Audubon Society, or someone else of that

1 nature that studies these things?

2 THE WITNESS (Logan): I have not
3 particularly looked at those sources to see if
4 it's considered important by DEEP, or others.
5 It's just from my own experience, and knowing that
6 the Farmington River Corridor Biodiversity Study
7 that was done, I know it was an important
8 corridor. And so any areas adjacent to it would
9 also be included in that as being also an
10 important flyway. So there's a lot of migratory
11 birds that fly through the area, both in the
12 spring and in the fall, which includes the site.

13 MR. MERCIER: Thank you for that
14 clarification. I think I read that note wrong.

15 THE WITNESS (Logan): I might have
16 written it wrong. Sorry.

17 MR. MERCIER: Have you reviewed the
18 Department of Environmental Protection's critical
19 habitat listings online or --

20 THE WITNESS (Logan): Yes, I'm aware
21 that they are associated with the Farmington
22 River.

23 MR. MERCIER: Is this particular
24 property listed as a critical habitat?

25 THE WITNESS (Logan): No, it isn't.

1 MR. MERCIER: I have no other questions
2 at this time.

3 THE CHAIRMAN: We'll now continue with
4 questions from the Council.

5 Dr. Klemens.

6 DR. KLEMENS: Thank you, Mr. Chairman.

7 Mr. Logan, on page 2 of your report you
8 state that the site is within a landscape that is
9 a "hot bed of listed species." What published
10 authority do you have to support this contention?

11 THE WITNESS (Logan): There have been
12 several letters by the Connecticut DEEP that have
13 been submitted into the record, responses from the
14 Natural Diversity Database, and they list numerous
15 species, both vertebrate and invertebrate, that
16 they believe are associated with the site. So in
17 my personal experience, when we query the NDDB, we
18 might get one or two, possibly three species, in
19 response to something in our site if we know that
20 we're within the estimated habitats that are
21 nearby. The fact that you have numerous, more
22 than a dozen, close to 20, tells me that this is
23 indeed a hot bed for listed species.

24 DR. KLEMENS: Is the site substantially
25 different in its biota from the other contiguous

1 areas that have been subdivided and developed and
2 are zoned for commercial or industrial
3 development?

4 THE WITNESS (Logan): Let me see if I
5 can understand the question. Under its existing
6 condition, meaning the agricultural use, the
7 forested areas, is it different from -- maybe you
8 should repeat the question so that I can
9 understand it.

10 DR. KLEMENS: I'll ask the question
11 again.

12 THE WITNESS (Logan): Sure.

13 DR. KLEMENS: Is the site substantially
14 different in its biota from that that occurred in
15 other contiguous areas that have been subdivided
16 and developed for areas of the parcel that are
17 zoned for commercial and industrial development?

18 THE WITNESS (Logan): Under its
19 existing condition? So do you mean comparison of
20 the site --

21 DR. KLEMENS: Let me try to simplify
22 this. Is this site any different biologically
23 than the surrounding sites that have been
24 developed and are continuing to be developed under
25 the town zoning, houses all around, Meadowood

1 they've just finally begun construction? The
2 question is, is this land substantially different
3 than the land that over the last two decades -- or
4 three decades, has been turned into residential
5 subdivisions?

6 THE WITNESS (Logan): In order to
7 answer that accurately, I would have had to look
8 at the past land use a little more carefully than
9 I have. What I know is that this area has been in
10 agriculture. The surrounding areas have also been
11 in agriculture, and a mosaic of a variety of
12 forested areas and riparian areas, et cetera.
13 What commends this property perhaps more in my
14 mind than those surrounding areas that have been
15 developed over time is its association with these
16 three riparian areas with perennial streams.

17 MR. LYNCH: Mr. Logan, is your
18 microphone on?

19 THE WITNESS (Logan): It has a little
20 green light, so I think it's on. I've been
21 accused of being soft spoken, so I'll try to get a
22 little closer here.

23 DR. KLEMENS: But those riparian areas
24 actually extend off the site through the
25 residential neighborhoods?

1 THE WITNESS (Logan): One, in
2 particular, possibly two, have their headwaters at
3 the site or adjacent to the site. So yes, there
4 are developed areas on possibly part of their
5 watershed, but not entirely.

6 DR. KLEMENS: Okay. The Council
7 administratively noticed the Farmington River
8 Biodiversity Project that you referred to. On
9 pages 40 to 43, it describes this as an
10 interconservation area connection. Isn't that
11 classification a result of the relative absence of
12 species of conservation concern when compared to
13 the primary and secondary conservation areas that
14 it connects to within the Town of Simsbury?

15 THE WITNESS (Logan): That perhaps is
16 true, since you were also part of the biodiversity
17 study, so you know it very well. But again, I
18 fall back to the fact that the Connecticut DEEP
19 thought it prudent to notify the petitioner of the
20 potential for numerous listed species on the site.

21 DR. KLEMENS: Do you contend that the
22 studies and analyses that you are requesting,
23 including in-depth studies of nonlisted species,
24 are standard requirements for any solar facility
25 being constructed on unforested land?

1 THE WITNESS (Logan): Yes. I think
2 that we're not going to take an exception to the
3 type of petition that comes before this Council,
4 or, for that matter, for any true ecological study
5 that's trying to ascertain whether there are going
6 to be impacts upon ecology and species. I would
7 always contend, as you probably know from having
8 experience with me from before, that when you're
9 looking for a particular listed species, you're
10 not just targeting that species, but you're
11 looking for the whole suite. So if you're looking
12 for an avian, so the Savannah Sparrow, Grasshopper
13 Sparrow, you're going to look at the entire
14 avifauna on the site of which possibly the
15 Savannah Sparrow or the Grasshopper Sparrow will
16 show up.

17 If you look at when NDDB suggests, if
18 not recommends highly, that a biologist that is
19 qualified to look at a particular species, they're
20 not looking for just a targeted study, they're
21 looking for all of the avians that were seen
22 during the surveys that were done using proper
23 protocol.

24 So my experience is, as you probably
25 know, I have and are involved in solar projects of

1 this type, I tell my clients, we're not just
2 looking for Vesper Sparrow, we're looking for all
3 the avifauna so that we can do the proper protocol
4 at the proper time of the year, and then we list
5 all the avifauna that we see.

6 DR. KLEMENS: Sir, we do need to know a
7 lot biologically about these solar sites beyond
8 NDDB species. You're saying we need a lot more
9 data?

10 THE WITNESS (Logan): Absolutely, yes.

11 DR. KLEMENS: You stated that you
12 reviewed the CSC web site for documents relative
13 to this petition?

14 THE WITNESS (Logan): Yes.

15 DR. KLEMENS: In the course of visiting
16 our web site, did you have an opportunity to
17 re-review Solar Petitions 1294 and 1295, which
18 have also been administratively noticed by the
19 CSC?

20 THE WITNESS (Logan): I haven't, no,
21 not specifically.

22 DR. KLEMENS: But you're aware of those
23 petitions; are you not?

24 THE WITNESS (Logan): I believe so,
25 yes, but --

1 DR. KLEMENS: Didn't your firm conduct
2 a biological analysis on Petition 1294?

3 THE WITNESS (Logan): Could you remind
4 me which town that was?

5 DR. KLEMENS: East Windsor.

6 THE WITNESS (Logan): Yes.

7 DR. KLEMENS: And wasn't your
8 justification for not conducting any biological
9 analyses on Petition 1295 that you also conducted
10 in East Windsor was that there were no NDDB hits
11 on the parcel? That was what the justification
12 was; was it not?

13 THE WITNESS (Logan): So there were two
14 sites. The one that you're talking about, I
15 think, was the southern one, which was in a sand
16 and gravel pit. And I probably said that we
17 didn't need anymore because it --

18 DR. KLEMENS: Excuse me. Speak up,
19 please.

20 THE WITNESS (Logan): Yes. Now that
21 it's coming back to me, you're correct. The
22 northern piece, which was the other docket, the
23 NORCAP, as I recall, had Ketch Brook going
24 through. We had wood turtle, and we had the
25 possibly for a Red-headed Woodpecker. I looked at

1 those sites more carefully.

2 On the southern site, which was the
3 woodscape, if you will, of the sand and gravel
4 operation, that was ongoing. And since there were
5 also no direct hits, no overlaps with any
6 estimated areas, that was what I said that --

7 DR. KLEMENS: So you did no biological
8 reconnaissance on that site because there were no
9 NDDB hits?

10 THE WITNESS (Logan): I did
11 reconnaissance, but not to the extent that I did
12 on the northern one.

13 DR. KLEMENS: It wasn't reflected in
14 the record, Mr. Logan.

15 As a consultant that represents both
16 industry, developers, and in this particular
17 matter intervenors, isn't it of paramount
18 importance to one's credibility as a witness that
19 a consistent approach and evidentiary standard be
20 employed from site to site as it pertains to
21 whether or not NDDB species are the sole species
22 of concern? I mean, why do we have different
23 petitions but different requirements, Mr. Logan?

24 THE WITNESS (Logan): Dr. Klemens, I
25 don't agree with what you're saying. I think

1 you're, again, jumping to conclusions. I remember
2 very, very distinctly, as I just mentioned, that I
3 did a reconnaissance study for avifauna on the
4 southern portion of that site that you just talked
5 about.

6 DR. KLEMENS: I suggest you go back and
7 look at the record, Mr. Logan.

8 THE WITNESS (Logan): I suggest that
9 you should refer to me, as the one who actually
10 wrote and studied and walked that site, as having
11 a little better experience than you do in this
12 matter, sir.

13 DR. KLEMENS: Mr. Logan, the Council
14 makes decisions on what is in the record and what
15 is presented.

16 THE WITNESS (Logan): But why are you
17 comparing one not utility scale project of 1 to 2
18 megawatts with something that's 26 point
19 something?

20 DR. KLEMENS: I'm comparing it merely
21 for a consistent approach to dealing with these
22 faunal issues across the board. Consistency and
23 evidence is important.

24 THE WITNESS (Logan): That is fair
25 then, and so we're all learning as we go.

1 DR. KLEMENS: Isn't it correct that in
2 your report critiquing the work done on Petition
3 1313, which is the instant petition, many of the
4 species what you discuss in your report are not
5 NDDB listed species?

6 THE WITNESS (Logan): Yes.

7 DR. KLEMENS: That's correct?

8 THE WITNESS (Logan): That is correct.

9 DR. KLEMENS: On page 6, Footnote 8,
10 you describe, and I quote, a large site where you
11 documented additional listed species. Where is
12 this site located, and how large is it?

13 THE WITNESS (Logan): Footnote 8?

14 DR. KLEMENS: In your report. Page 6
15 of your report, or letter report.

16 THE WITNESS (Logan): I am not sure
17 that I am in the liberty to tell you which site
18 that is, because that has not appeared before the
19 Siting Council.

20 DR. KLEMENS: Thank you. What
21 additional listed species do you anticipate may be
22 found on these parcels that have not been reported
23 by the applicant or the NDDB?

24 THE WITNESS (Logan): It's hard to say.
25 I have not been on the site. A lot of this review

1 that I've done is what we call a desktop level
2 review reconnaissance based on the best available
3 information, my general understanding of the area,
4 having done some things in the general vicinity.

5 I mentioned here the Ribbon Snake is a
6 possibility. I believe that that's probably,
7 based on the fact that there are three riparian
8 areas with suitable habitat, that that would
9 potentially be one of the additional species that
10 could be found that was not listed in the NDDB
11 list.

12 DR. KLEMENS: On page 7, Footnote No.
13 9, you report a "lake effect" phenomenon caused by
14 polarized panel surfaces affecting avian
15 resources. Until I read this, I thought the lake
16 effect had to do with snow.

17 Can you provide a scientific peer
18 review study that documents this effect?

19 THE WITNESS (Logan): Not at this
20 moment, but I could, if given enough time. I
21 reviewed a bunch of things, both through JSTOR,
22 for instance, and online, other things, and that's
23 where I came up with this lake effect. I know
24 it's controversial. I know that the industry is
25 making strides to ameliorate that effect, but it

1 is real, and I've experienced it in my own --

2 DR. KLEMENS: I'm very interested in
3 getting actually some peer review. A lot of the
4 footnotes I'm going to go through, I'm trying to
5 understand the lack of -- I want peer review,
6 scientific papers, that actually demonstrate and
7 support what you're saying.

8 THE WITNESS (Logan): So Footnote No.
9 10 --

10 DR. KLEMENS: Well, I'm not there.

11 THE WITNESS (Logan): Okay.

12 DR. KLEMENS: I'm the one asking the
13 questions; you're the one answering the questions.

14 THE WITNESS (Logan): That is what I
15 was trying to do.

16 DR. KLEMENS: Okay. As grassland birds
17 appear to be a major conservation concern on the
18 site, would this so-called lake effect affect
19 them?

20 THE WITNESS (Logan): No.

21 DR. KLEMENS: It wouldn't affect them?

22 THE WITNESS (Logan): No, because
23 they're not associated with aquatic systems.

24 DR. KLEMENS: So you're saying
25 grassland birds don't land on lakes like ducks and

1 geese?

2 THE WITNESS (Logan): No, they don't.

3 DR. KLEMENS: So what birds of concern
4 on the site would be affected by this so-called
5 lake effect?

6 THE WITNESS (Logan): There's three
7 ponds which are resources, there are marshes, et
8 cetera. So whatever birds would be water birds,
9 you know, wading birds, your Green Herons, that
10 kind of --

11 DR. KLEMENS: Any of the NDDB species
12 affected?

13 THE WITNESS (Logan): Not that I think
14 so at this point, no.

15 DR. KLEMENS: Okay. On page 7,
16 Footnote No. 11, you provide a justification for a
17 400-foot buffer around forested areas to prevent
18 colonization of vile-smelling invasive plant
19 species.

20 I've got several problems with this
21 recommendation. The first that it appears to be
22 based on a personal communication from someone who
23 unfortunately is deceased. Is there any published
24 report on this recommendation?

25 THE WITNESS (Logan): So, first of all,

1 I know that this is probably something I should
2 have spelled a little better. The minimum 400
3 buffer undisturbed that I'm talking about here
4 came out of the Highway Methodology, which is the
5 Wetland Functional Value Assessment, which they
6 asked the question what are the land uses within
7 400 feet. Then this one seems to have the same
8 number. And the idea here is not that you need
9 400 feet for this site, but there are occasions
10 where you will need 400 feet for protection of
11 certain habitat. So I'm not saying 400 is the
12 number for this particular site. I'm saying that
13 larger buffers than 100 feet, which is the
14 argument in Section 1.5 of my report, could be
15 considered depending on the sensitivity and the
16 functionality of the resource.

17 DR. KLEMENS: Well, that's
18 fundamentally different than what you stated in
19 the footnote, because the footnote leads one to
20 think that you're recommending these 400-foot
21 buffers, and so now you're saying you want larger
22 than 100-foot buffers that's prudent. So
23 basically this is fundamentally very different
24 than what you said.

25 THE WITNESS (Logan): It was an

1 unfortunate example.

2 DR. KLEMENS: Again, we have to operate
3 on what you submit so --

4 THE WITNESS (Logan): I understand.
5 And my apologies.

6 DR. KLEMENS: So was the 400-foot
7 buffer recommendation contained in "The Trap Rock
8 Ridges of Connecticut," principally authored by
9 Ms. Sharp?

10 THE WITNESS (Logan): Yes.

11 DR. KLEMENS: It was in that
12 publication?

13 THE WITNESS (Logan): My understanding
14 is that this was a personal communication that my
15 coauthor and collaborator in this, Ms. Sigrun
16 Gadwa, had with her personal friend, and mine,
17 Penny Sharp.

18 DR. KLEMENS: Now, this unpublished
19 recommendation appears to have its genesis on trap
20 rock ridge systems in Berlin and Middletown,
21 Connecticut. And I know this was one of the
22 questions that was asked in an interrogatory which
23 was not answered. Can you identify the trap rock
24 areas on this site, how much acreage of the site
25 is trap rock?

1 THE WITNESS (Logan): Well, as I said,
2 this was an unfortunate example. It was not --

3 DR. KLEMENS: I asked you a direct
4 question. It's in an interrogatory.

5 THE WITNESS (Logan): Okay. The answer
6 is there are no trap rock ridges.

7 DR. KLEMENS: Thank you. If the CSC
8 were to require a 400-foot buffer surrounding the
9 forested area on site, assuming it was to be
10 preserved, what would that look like in terms of
11 acreage and percentage of the overall site?

12 THE WITNESS (Logan): Very different.

13 DR. KLEMENS: Very different. But you
14 can't obviously provide me -- you'd have to go
15 back and figure that out?

16 THE WITNESS (Logan): I would have to
17 figure that out.

18 DR. KLEMENS: And I don't know what the
19 mechanism is to find these things, because we seem
20 to have trouble getting interrogatories answered.

21 Okay. On page 8 of your report you
22 cite two studies, Footnotes 12 and 13, as evidence
23 of impacts to avian species by industrial solar
24 fields. Is Footnote No. 12, Kagan, et al, a peer
25 reviewed scientific publication or an in-house

1 white paper?

2 THE WITNESS (Logan): That's a very
3 good question. I think if you ask the people that
4 put this together, they would say that it's
5 probably an in-house white paper.

6 DR. KLEMENS: Thank you. Is Footnote
7 No. 13, Walston, et al, a peer reviewed study, is
8 that a scientific journal or --

9 THE WITNESS (Logan): Yes.

10 DR. KLEMENS: It is. It's peer
11 reviewed?

12 THE WITNESS (Logan): I believe so.

13 DR. KLEMENS: So specifically, are the
14 grassland avian suite that are of conservation
15 concern on this site among those species described
16 as adversely impacted in either Kagan or Walston?

17 THE WITNESS (Logan): I'm not sure
18 about that. I would have to look back. But
19 knowing where these studies were done, I would say
20 the potential for overlap of the species is
21 limited.

22 DR. KLEMENS: So you footnoted things,
23 but you're really not sure whether they apply or
24 not?

25 THE WITNESS (Logan): The studies were

1 done in the western portion of the United States.
2 They were not done on the eastern --

3 DR. KLEMENS: So they may not be
4 relevant then?

5 THE WITNESS (Logan): They might not be
6 relevant except for the ecological principal.

7 DR. KLEMENS: Thank you. Your
8 discussion concerning Harrison et al is important
9 because it underscores actually the lack of
10 information concerning impacts of solar fields to
11 avian resources. While it's relatively easy to
12 cast doubt on the environmental work done by VHB
13 on behalf of the petitioner, the more challenging
14 task faced by the CSC is discerning how to
15 mitigate and address these issues. What can you
16 offer us here in terms of constructive steps to
17 address these alleged deficiencies?

18 THE WITNESS (Logan): That's a good
19 question, Dr. Klemens. You know, I've searched
20 high and low to find peer reviewed information on
21 what the effects, or not, of solar panels are.
22 And that's interesting to me because I have
23 several of these projects that are in the works
24 that will be coming before the Siting Council. So
25 I'm trying to stay credible and do my job whether

1 on one side of the fence, if you will, or the
2 other.

3 I've seen some studies that were done
4 in the U.K. that, as you see later on in the
5 report, suggests that there's microclimate effects
6 based on the fact that solar panels do produce
7 shade and change the microclimate. But that's
8 something that we're still in the process of
9 finding out.

10 What would the Siting Council
11 potentially do? They could potentially ask for
12 monitoring, substantial kind of monitoring of
13 potential effects to various suites of species as
14 these projects come into production so that we
15 have information from our state from this region
16 on what the potential effects could be, or are,
17 from solar panels of this scale.

18 DR. KLEMENS: You weren't here in the
19 morning when I was cross-examining Mr. Peterson
20 and his colleagues from VHB. Were you?

21 THE WITNESS (Logan): No, I was not.

22 DR. KLEMENS: Because the same question
23 was really asked about the concept of
24 post-approval conditions on fauna. I mean, I
25 understand the utility of basically studying

1 what's going on -- we have a lack of
2 information -- but we're faced here with an
3 approval of a layout.

4 So do you believe it's prudent to
5 condition some of these approvals, if that's the
6 way we go, on basically studies after the approval
7 has been granted? How does that work in your
8 mind?

9 THE WITNESS (Logan): It's probably a
10 tenuous kind of a situation. From a scientific
11 point of view, you like to have the information
12 before you actually go out and do it, but if you
13 don't have some of these larger scales in place,
14 then what are you studying.

15 DR. KLEMENS: Because we're faced with
16 a regulatory decision --

17 THE WITNESS (Logan): That's true.

18 DR. KLEMENS: -- not a science
19 decision, a regulatory decision informed by
20 science.

21 THE WITNESS (Logan): (Nodding head in
22 the affirmative.)

23 DR. KLEMENS: This morning you would
24 have heard that they actually are proposing to
25 elevate the fences surrounding the property by 6

1 inches to allow the passage of wildlife.

2 THE WITNESS (Logan): Uh-huh.

3 DR. KLEMENS: So, based on that new
4 information that came in cross-examination this
5 morning, do you feel that that is adequate to
6 mitigate the fragmentation effects on wood
7 turtles, box turtles, hognose snakes, terrestrial
8 invertebrates, and the like?

9 THE WITNESS (Logan): Probably for the
10 smaller critters, obviously, yes, that can manage
11 to get under the 6 inches. But, as you and I
12 know, box turtles are quite often a little higher
13 than that, and so wood turtles can also be --

14 DR. KLEMENS: What would your ideal --
15 balancing the concept of having security here of
16 the facility, what would the optimal minimal
17 height of that fence be?

18 THE WITNESS (Logan): About a foot.

19 DR. KLEMENS: A foot.

20 THE WITNESS (Logan): About, something
21 more than 6 inches, and something less than a
22 foot.

23 DR. KLEMENS: And that would apply --
24 or maybe would a variable standard work too where
25 you could have 6 inches and then maybe 2 feet, a

1 foot or something?

2 THE WITNESS (Logan): That could
3 possibly work depending on the geometry of the
4 particular fence that we're looking at if they're
5 funneling species to a particular area versus not.

6 DR. KLEMENS: If you were using this
7 funneling technique, what would the optimal --
8 let's say we had 6 inches and then we went to a
9 2-foot area where it was a foot high, or one foot
10 area that was a foot high, how spatially
11 separated, in your experience, should that be in a
12 linear separation, not unlike how often you break
13 a silt fence to allow passage of wildlife?

14 THE WITNESS (Logan): Probably more
15 than 100 feet and less than 300.

16 DR. KLEMENS: More than 100, but less
17 than 300?

18 THE WITNESS (Logan): Yes.

19 DR. KLEMENS: And that would equally
20 apply also not just to the chain-link fence, but
21 to the decorative wooden fence they're proposing,
22 that also needs to be constructed in this manner
23 too?

24 THE WITNESS (Logan): Yes. The other
25 thing that could be considered is, if I may -- and

1 this is something that's just coming to mind -- if
2 security is an issue, and so we don't want a big
3 gap that someone could crawl in or expand to get
4 in and damage, what you could potentially do is
5 set up a system that allows the target species to
6 get in in a big gap, but there's a secondary fence
7 behind, and then it's going to either push them to
8 the left or to the right to get around. So
9 there's still a barrier for someone who would try
10 to crawl in, so there could be a separation of
11 another foot. Obviously, I'm talking more about
12 herpetofauna here. I'm not talking about the
13 larger passive species which is not as much as my
14 concern as the smaller species.

15 DR. KLEMENS: My concern is certainly
16 the state-listed species, and that's where we have
17 to focus.

18 Okay. On pages 11 to 15 of your report
19 there's a very detailed discussion of agricultural
20 weeds and their seeds. The author of this section
21 of the report is Sigrun Gadwa?

22 THE WITNESS (Logan): Yes, indeed.

23 DR. KLEMENS: And will Ms. Gadwa be
24 presented as a witness to the Council so her
25 testimony can be cross-examined by the council,

1 the petitioner, or other parties?

2 THE WITNESS (Logan): That has not been
3 discussed with my client at this point.

4 MR. KOSLOFF: Mr. Klemens, this is
5 actually -- if I may, this is actually George's
6 report. However, if the Council feels that it
7 needs to examine one of the members of his staff,
8 we can probably make her available.

9 DR. KLEMENS: Thank you. I think we're
10 going to ask some questions, and if George Logan
11 cannot respond to them, then maybe we'll have to
12 ask Ms. Gadwa to come in.

13 MR. KOSLOFF: Okay.

14 DR. KLEMENS: Let me see if we can get
15 through it without that.

16 MR. KOSLOFF: All right. Understand,
17 we have a limited budget. I know that probably
18 doesn't count for much, but if this is important
19 to the Council, we'll have to do what we can.

20 DR. KLEMENS: Thank you, attorney.

21 Are the weeds and seeds that are
22 discussed, any of them state-listed species?

23 THE WITNESS (Logan): No.

24 DR. KLEMENS: Are some of these weeds
25 and seeds nonnative and invasive species?

1 THE WITNESS (Logan): The ones that
2 were discussed in here, no. It mostly focused on
3 the native species that are your common
4 agricultural weeds with large seeds and prolific
5 seed producers.

6 DR. KLEMENS: When you make a comment,
7 what do you actually mean by a "balanced field
8 edge system"? Isn't the field edge a transitional
9 habitat that would be expected to evolve over time
10 unless regularly disturbed?

11 THE WITNESS (Logan): That is correct.
12 So it's the regular disturbance that creates the
13 habitat that allows some of these weed species to
14 grow which have, again, a prolific seed source.

15 DR. KLEMENS: So the frequency of
16 disturbance is what creates the balance?

17 THE WITNESS (Logan): Yes.

18 DR. KLEMENS: And is your contention
19 that this balance will be upset by the petition?

20 THE WITNESS (Logan): It will be
21 eliminated.

22 DR. KLEMENS: Eliminated.

23 Now, aren't some of the weeds that
24 we're talking about present on Petitions 1294 and
25 1295?

1 THE WITNESS (Logan): Most likely, yes.

2 DR. KLEMENS: Your concluding statement
3 that there exists alternatives to the extent,
4 configuration, and layout that would have a lesser
5 impact on the site, at least to me is a circular
6 argument. You state that these could only be
7 formulated after all of the issues, surveys, and
8 inventories discussed herein have been researched.

9 Therefore, might it be a bit more
10 truthful to state that less impactful alternatives
11 may exist? I mean, how are you so certain that
12 there is a better alternative to protect -- I
13 mean, short of not doing this, you hold out the
14 specter of better alternatives, but I don't see
15 how, absent data, you can be certain. And
16 wouldn't that statement be, at best, speculative?

17 THE WITNESS (Logan): Let me see if I
18 can understand this. So I'm in a precarious
19 place, or at least I am as a reviewer, where I'm
20 looking at some gaps in surveys and trying to
21 guess whether some of these listed species are
22 there or not based on what has been put in, and
23 then, on the other hand, understanding some of the
24 information that they've already put in leads me
25 to conclusions that there will be significant

1 impacts. For instance, the foray into some of
2 these forested areas, particularly in areas that
3 likely would winterize like the riparians --

4 DR. KLEMENS: We understand that there
5 are going to be impacts, and we're looking at
6 balancing.

7 THE WITNESS (Logan): Correct.

8 DR. KLEMENS: But what I want to get at
9 is the certainty that you had in that statement
10 that there were alternatives in design of this
11 project that had fewer impacts. And all I'm
12 asking you to say is isn't that somewhat
13 speculative that maybe may exist rather than do
14 exist?

15 THE WITNESS (Logan): It is probably a
16 combination of both. Because, like I said, I know
17 certain things for sure, and I could come up and
18 say in my professional opinion, based on what I
19 know, these are the alternatives. But then
20 there's all these question marks on the other side
21 based on the gaps in the surveys which I'm just
22 guessing. So you're right, that part is
23 speculative; the other one is not.

24 DR. KLEMENS: And it's unfortunate you
25 weren't here this morning because Mr. Peterson, I

1 asked him questions about the suitability of these
2 parcels for grassland birds -- and I'm not going
3 to paraphrase what he said. He gave a
4 field-by-field description of the conditions now
5 that render these fields less than optimal for
6 those birds.

7 What do you believe are the species,
8 the NDDDB species, that are most likely to be
9 impacted significantly by the current
10 configuration of this project, bearing in mind
11 that I hope you have the most recent one because
12 there have been redesigns?

13 THE WITNESS (Logan): I am not sure
14 that I do. I did take a quick look this morning
15 at the docket. I didn't see anything new. Maybe
16 I missed something.

17 DR. KLEMENS: What are the species we
18 should be at this Council most concerned about,
19 the ones that were most likely -- we heard
20 testimony this morning that the breeding birds,
21 the grassland birds, the habitat is rather poor
22 for grassland birds in this current condition. We
23 had testimony this morning about wood and box
24 turtles and their usage of the site.

25 THE WITNESS (Logan): Well, I don't

1 think there's been any new information
2 regarding -- or maybe I'll stand corrected -- on
3 additional surveys for listed species, on wood
4 turtles, on box turtles, on moths, on the
5 grassland birds. It's still the same information.
6 So I'm not aware of any new information that has
7 been put into the record.

8 DR. KLEMENS: I can't speak to what
9 you've seen and what you've not seen, but the
10 cross-examination, many of these issues were
11 teased out in much greater detail.

12 THE WITNESS (Logan): Sure.

13 DR. KLEMENS: And it would have been
14 helpful had you heard some of it, because maybe I
15 could have asked your response to it.

16 THE WITNESS (Logan): It's possible,
17 yes.

18 DR. KLEMENS: But maybe if you come
19 back, or if there's something, you can read the
20 transcript, and have comments on that.

21 But anyway, what species -- I'm going
22 to conclude because other colleagues would like to
23 have a chance to cross-examine. With all these
24 species you've said, what are the species we at
25 the Council should be most concerned about that

1 you feel are at greatest risk by the plan that is
2 before you?

3 THE WITNESS (Logan): Yes, I will tell
4 you. Eastern Box Turtle, Brown Thrasher, Savannah
5 Sparrow, Eastern Hognose Snake, Wood Turtle, the
6 two moths, the Spinose Flower Moth, and the
7 Scribbled Sallow Moth. And those are the ones.

8 DR. KLEMENS: And I know that one thing
9 you did miss this morning, they had done surveys
10 which I guess are not in the record yet, they did
11 thrasher surveys.

12 All right. I have no further
13 questions, Mr. Chairman. Thank you.

14 THE CHAIRMAN: Thank you.

15 Mr. Harder?

16 MR. HARDER: No questions. Thank you.

17 THE CHAIRMAN: Mr. Lynch?

18 MR. LYNCH: Excuse me, Mr. Logan. Just
19 one follow-up question to Dr. Klemens. Did I hear
20 you correctly that if you varied the fence from 6
21 inches to 1 foot along the perimeter, that that
22 would allow some species to go under the 1 foot?

23 THE WITNESS (Logan): Yes.

24 MR. LYNCH: Now my question, which is
25 really for the applicant, is if you have that 1

1 foot area, and if the kids in Simsbury are
2 anything like the kids in my neighborhood, they
3 see a 1-foot crawl space, and they see an
4 attractive nuisance like solar panels, they're
5 going to go and investigate.

6 So, like you said, it's probably
7 more -- I see Mr. Hoffman. He'll get to me later
8 on. But do you think that would be something that
9 young kids in the neighborhood may decide they can
10 get under if we raise that to 1 foot?

11 THE WITNESS (Logan): I was a kid too,
12 and I would probably say, um, yeah, 50 percent
13 chance, yes. But the issue here is I don't even
14 know if it's going to be practical because, even
15 if you do that, the issue is that the species are
16 going through. So now they get trapped within the
17 solar array. So if they want to get to the other
18 side, if that's what they're doing, maybe they're
19 not, maybe they're just foraging, it's possible
20 that you've just brought them in and now you've
21 trapped them. So I have a concern as to whether
22 it's practical to have any of that happening.
23 It's maybe more practical to look at the site and
24 see if there are more reasonable corridors through
25 the site that can be used for species to get

1 across instead of having the total enclosure.

2 MR. LYNCH: Thank you, Mr. Logan.

3 No more questions, Mr. Chairman.

4 THE CHAIRMAN: Senator Murphy?

5 SENATOR MURPHY: Thanks, Mr. Chairman.

6 I had a question on these affidavits on
7 it's really the part of Mr. Flammini and the last
8 one here, Mr. Perissi. You indicate that there's
9 a safety and a health problem with the grammar
10 school. I don't care who answers it. What made
11 you put that in as a bullet in your affidavit?

12 THE WITNESS (Flammini): So I'm
13 Mr. Flammini. Mr. Perissi isn't here, so I can't
14 speak for him. I'll speak for myself.

15 SENATOR MURPHY: You're the only two
16 that did it. That's why I'm addressing you.

17 THE WITNESS (Flammini): So I live at 3
18 Kilbourn Farms, which is just across the street
19 from the elementary school. My three children
20 went there. And so it's used, obviously, Monday
21 through Friday. Recess, kids are outside running
22 around. It's also used on the weekends now pretty
23 extensively for soccer games, softball games. And
24 it's my opinion that, to the conversation these
25 two gentlemen just had, if presented with an

1 opportunity to leave the schoolyard and crawl
2 under the fence, then that's something small
3 children will in some way take advantage of.

4 I'm also concerned about the time
5 period -- and I don't know how long it will take
6 them to build this -- but over that period of time
7 along Hoskins Drive is a very common walking path
8 to get to the elementary school in the morning, or
9 a bike path as well. And my concern is that
10 Hoskins Road was not designed for any kind of
11 major construction, trucks, machines, whatever, to
12 be moving up and down. And so my concern is that
13 during the morning hours, or in the late afternoon
14 hours, that those are very common to have children
15 in and around there. So that's the nature of my
16 comment in my affidavit.

17 SENATOR MURPHY: Okay. I thank you for
18 that, because I interpreted the statement, as I
19 read it, to mean that there was some danger that
20 emanated from the transmission line, the hook-up,
21 or --

22 THE WITNESS (Flammini): No. I have no
23 evidence of that.

24 SENATOR MURPHY: So basically you're
25 talking about the facility would be an attractive

1 nuisance to the children?

2 THE WITNESS (Flammini): Yes.

3 SENATOR MURPHY: Okay. Thank you very
4 much. I appreciate it.

5 That's all I have, Mr. Chairman.

6 THE CHAIRMAN: Mr. Silvestri.

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

9 Mr. Logan, just a follow-up from your
10 discussion with Dr. Klemens. You mentioned maybe
11 a concept of a fence within a fence that I guess
12 the first fence would have some type of room above
13 ground that whatever could crawl under, and then
14 the other fence would divert them somewhere. How
15 would that be different from just having a fence
16 that goes to the ground because that would divert
17 them someplace else?

18 THE WITNESS (Logan): Having a fence
19 that goes to the ground, yes, of course, they
20 would be diverted somewhere else. The question is
21 whether or not, as some of these species come out
22 onto the fields and they're looking for foraging
23 areas or they're looking to cross between one
24 preferred habitat to another, now they find
25 themselves having to spend a lot of energy to see

1 if they can get around. Because as they move
2 through the landscape under those conditions,
3 possibly following a fence, instead of having a
4 direct line, they put themselves in harms way for
5 predation. So the potential for them to be
6 predated by opportunistic predators is much
7 higher. So the quicker they can get through to
8 get to the other side, the better.

9 So that's why I question in my mind --
10 and again, this is something that's evolving in my
11 own mind based on what you heard me say earlier on
12 some of the other projects that I'm dealing with,
13 as to whether it's a practical solution, or
14 whether it's better to stay at the 6 inch and to
15 have a larger, wider corridor that goes across the
16 site at a couple of locations to facilitate
17 passage from one riparian area to another riparian
18 area, one woodland habitat to another woodland
19 habitat. And so you don't have that isolation and
20 fragmentation.

21 MR. SILVESTRI: My concern, if I call
22 it the fence within a fence, is that something
23 goes in, a predator comes in as well, and the
24 first thing is trapped and really has no way to
25 get out. So that's why I kind of wanted to ask a

1 couple of questions on that one. But thank you.

2 THE WITNESS (Logan): Okay. You're
3 welcome.

4 MR. SILVESTRI: Thank you, Mr.
5 Chairman.

6 THE CHAIRMAN: Mr. Mercier.

7 MR. MERCIER: Just a follow-up to Mr.
8 Flammini. You just mentioned there was some type
9 of walkway or bike lane along Hoskins Road. Is
10 that a dedicated lane that's separate from the
11 road, or is that one of those white striped things
12 in the road?

13 THE WITNESS (Flammini): There's a
14 sidewalk, and there's no dedicated bike path on
15 the road.

16 MR. MERCIER: So it's a sidewalk
17 separated from the road?

18 THE WITNESS (Flammini): Yes.

19 THE WITNESS (Lough): There is from
20 County.

21 MR. MERCIER: Mr. Logan, this is a
22 quick follow-up regarding the Grasshopper Sparrow
23 and the Savannah Sparrow. Now, are those
24 grassland birds?

25 THE WITNESS (Logan): They both are,

1 yes.

2 MR. MERCIER: Is there a certain
3 acreage they would need to properly nest? Is
4 there any type of a habitat requirement?

5 THE WITNESS (Logan): Sure. The
6 Grasshopper Sparrow needs about ten times that of
7 a Savannah Sparrow, and the Savannah Sparrow
8 starts having valuable habitat at about 4 to 5
9 acres.

10 MR. MERCIER: Okay. I bring that up
11 just because the south solar field that's south of
12 Hoskins Road, this is the Kilbourn-Jones property.
13 There's a set aside where there is no solar panels
14 over by the school, and right now there's no
15 really use for that. And through some questions
16 from the Council to the petitioner, that area
17 could be probably enlarged by another acre or two,
18 so a total of about 6 acres potentially, looking
19 at rough estimates on this map. Do you believe
20 that it's a viable habitat to support one of those
21 two bird species?

22 THE WITNESS (Logan): I think for the
23 Savannah Sparrow, if it's managed for that, that's
24 probably at the edge of being a sufficient
25 habitat.

1 MR. MERCIER: Thank you. No other
2 questions.

3 THE WITNESS (Flammini): Mr. Mercier,
4 can I add one point to my answer to you, because I
5 think it's relevant?

6 MR. MERCIER: Sure.

7 THE WITNESS (Flammini): So you did a
8 site tour, I believe, so you're generally familiar
9 with the area. But if you're heading on Hoskins
10 west toward Squadron Line School, and if you're
11 coming from anywhere from the other side of the
12 fork where County Road is, the only way to get
13 over to the elementary school is, as you
14 mentioned, one of these white painted crosswalks
15 that has no crossing guard in the mornings or the
16 afternoons. So the children are left to
17 themselves to cross. And that's the only place to
18 cross from Hoskins over to the school. And so
19 when I think about the danger associated with the
20 construction of this, it's all that foot traffic
21 and bike traffic moving across the street because
22 you have to, to get over to the schoolyard, that's
23 a real concern to me.

24 MR. MERCIER: Just to clarify, that was
25 over by the barns at the intersection there?

1 THE WITNESS (Flammini): No. Once you
2 already make the split heading further west.

3 MR. MERCIER: West, okay.

4 THE WITNESS (Flammini): And you're
5 heading toward the elementary school. The only
6 way to get from the large wooden picket fence,
7 which abuts my property, over to the elementary
8 school is you have to cross the street at one
9 location. It never has a crossing guard.

10 MR. MERCIER: Thank you for that.

11 MR. KOSLOFF: Mr. Chairman, I've been
12 alerted to the fact that Ms. Shlansky needs to
13 leave at about 3 o'clock because she has some
14 important appointments to make. I'm asking
15 whether she may be, if there are no questions to
16 be directed to her, whether she may be excused?

17 THE CHAIRMAN: She can, although you
18 haven't heard my questions yet. But the answer
19 is, yeah, sure. I mean, I had a ticket for the
20 Magic Flute at Lincoln Center this evening, and I
21 had to give it away. So I'm not quite as
22 sympathetic as I might otherwise be. But, sure,
23 if somebody has to leave, and you have others that
24 --

25 MR. KOSLOFF: Lis, what is the reason

1 you need to leave?

2 THE WITNESS (Shlansky): I'm a
3 physician.

4 THE CHAIRMAN: And the only other thing
5 is, I don't know if the petitioner is going to
6 have questions of her. You have people coming in
7 late, and you have people leaving. I mean, I
8 don't --

9 MR. HOFFMAN: I also believe that Mrs.
10 Nigro walked in, and she has testimony proffered.
11 But I can handle Dr. Shlansky, the questions that
12 I have for her, inside of 120 seconds, Mr.
13 Chairman.

14 MR. KOSLOFF: Mr. Chairman, I was just
15 asking why Ms. Shlansky has to leave. She's a
16 physician. Could you finish what you were saying?

17 THE WITNESS (Shlansky): I have a shift
18 that I have to get to. That's fine.

19 MR. KOSLOFF: That's the reason.

20 THE CHAIRMAN: Obviously more than
21 mine.

22 MR. KOSLOFF: I don't minimize
23 attention to the arts. My wife is an opera
24 conductor.

25 THE CHAIRMAN: Okay. All right.

1 Attorney Hoffman, do you want to ask
2 your question now specifically?

3 MR. HOFFMAN: Certainly.

4 Dr. Shlansky, is your home served by
5 private well water, or are you on town water?

6 THE WITNESS (Shlansky): I'm on town
7 water.

8 MR. HOFFMAN: Thank you. Less than 120
9 seconds.

10 MR. KOSLOFF: That's great.

11 THE CHAIRMAN: Attorney Langer?

12 MR. LANGER: The town has no questions
13 of that witness.

14 MS. RIGNEY: And DEEP has no questions
15 for the witness either.

16 MR. BOWSA: Agriculture has no
17 questions for the witness.

18 THE CHAIRMAN: Okay. You can leave.
19 My question, and I don't even know who
20 specifically to ask this, but I just want to know,
21 because I've seen it, and I'm not sure whether it
22 was just from the town or from one of you people,
23 but is one of the concerns that this proposed
24 solar project is contrary to the historic
25 character of the neighborhood? And if somebody

1 says yes, then I'm going to have a follow-up.

2 THE WITNESS (Flammini): I'll take
3 that, sure. Yes.

4 THE CHAIRMAN: I'm a little bit
5 confused because of how you define "historic."
6 Because one area, which is where the proposed
7 project is, that is mostly agriculture, but most
8 of the surrounding area are subdivisions,
9 properties that are subdivided. So what exactly
10 is the historic character?

11 THE WITNESS (Flammini): So I wouldn't
12 use the word "historic." I don't think it was in
13 my testimony.

14 THE CHAIRMAN: No, I didn't say what,
15 but you raised your hand.

16 THE WITNESS (Flammini): I would frame
17 it more as a quality of life issue. The
18 integration of residential areas with the farmland
19 with the school have meant everything to those of
20 us who live in the neighborhood. And now to
21 change that changes this, we think, permanently,
22 and it's simply not in the character of the town
23 that we moved to and live in.

24 THE CHAIRMAN: Okay. Another speaker?

25 THE WITNESS (Wrobel): Yes. I'm Ed

1 Wrobel. I own one of the two historic homes on
2 the street, so I did use that terminology, and I
3 do have a concern. I'm at 100 Hoskins Road. It
4 was one of the homes built by Noah Hoskins who the
5 street is named after. That was all farm. That
6 was Noah Hoskins' farm. So the historic nature is
7 visual, right, I mean, that's part of our history.
8 Our house is historic. People come to our house
9 to view it. We're having the Historical Society
10 come to raise funds. People come see the house.
11 And what they'll see is our property, and what
12 they'll see is an industrial scope, you know,
13 solar power generating facility. So that is a
14 concern. I think that it takes away from the
15 historic quality in that area.

16 THE CHAIRMAN: Okay.

17 MR. KOSLOFF: I believe

18 Ms. Kilbourn-Jones also has a comment in response
19 to your question.

20 THE WITNESS (Kilbourn-Jones): I live
21 in the other historical home, which is the
22 original Hoskins home. And this whole area,
23 whether or not people -- you know, maybe it's not
24 a designated historical house; however, they are
25 the two oldest, the Wrobel's house and mine, are

1 the two oldest in the whole neighborhood.
2 Mr. Hoskins owned all of the property around
3 there, hence, Hoskins Road and Hoskins Station, et
4 cetera.

5 Not only that, I think also the fact
6 that Martin Luther King worked on this property --
7 I don't know exactly which one -- when they were
8 growing tobacco. I'm sure that they would be
9 aghast at the commercial idea of solar energy -- a
10 solar energy farm, let's put it that way.

11 THE CHAIRMAN: Okay. Then let me ask
12 one more follow-up. I think you're aware, at
13 least, and you can correct me if it's incorrect,
14 that most of the property, subject property for
15 this so-called solar farm, is zoned R40, which, if
16 I am correct, means residential 40,000 square feet
17 a lot, or roughly an acre, and there's another
18 piece that's zoned industrial. If this project is
19 not approved -- this is now a hypothetical -- but
20 I'm talking about under your existing zoning,
21 presumably some, if you want to call a commercial
22 or residential developer, could subdivide the
23 property, just as somebody in the past subdivided
24 the property where most you of you live. Is that
25 a concern of people?

1 What I'm trying to get is, is the
2 interest in saving the land agricultural, because
3 that obviously has a historical or cultural -- and
4 we'll hear from the Department of Agriculture
5 presumably about how critical that is for
6 whatever, the health and welfare of the State of
7 Connecticut -- or you just don't want a
8 subdivision, which I'm not sure how that preserves
9 most of the things that you say you want preserved
10 is going to really contribute?

11 So I'm trying to understand when you
12 say whether it's quality of life, historical or
13 cultural, what it is you really want to see
14 preserved, and then we'll try to figure out how
15 that balances out with everything.

16 THE WITNESS (Shlansky): Could I please
17 respond to that? I think the difference is, yes,
18 it's zoned that way for our town, but if that were
19 to move forward, it would need to go through town
20 zoning to get approval. So that's the difference
21 is that our town doesn't have much of a say in
22 what moves forward. You are the folks that
23 actually will pass this or not pass this. But the
24 ability to have any input when things happen in
25 our town, we actually have the capacity to have

1 some say and to have a voice. And that's part of
2 the reason why we've become a party is to have a
3 voice, to come forward and say, you know, this is
4 our town, this is where we live, we're worried
5 about our water, we're worried about the other
6 things that happen. That's what we're concerned
7 about. That's what I'm specifically concerned
8 about.

9 THE CHAIRMAN: Well, I would just
10 answer, one of the reasons we're here is to
11 listen. So it's not as if -- I think that says a
12 little bit in answer to your concern. We're not
13 the local zoning authority.

14 SENATOR MURPHY: This lady over here.

15 THE CHAIRMAN: Yes.

16 THE WITNESS (Lough): To address that
17 same question, I for one moved to the area with
18 the understanding that most of this property was
19 zoned for one-acre homes. And so I bought with
20 that knowledge. If I had known it could be so
21 easily transferred by this entity to a utility
22 scale solar farm, I never would have bought my
23 home there. So regardless of the historical
24 aspects, it was important for me to know what
25 could go in that property if it was not farmed.

1 And I very much believe that some day, if I ever
2 sell my home and there's a utility next to my
3 home, it's going to very much decrease my property
4 value. And that's a problem.

5 THE CHAIRMAN: Okay. I think that ends
6 cross-exam by the Council.

7 The petitioner?

8 MR. HOFFMAN: Mr. Chairman, if I may?
9 I don't think that the Siting Council has any
10 cross-examination, but I do believe that Laura
11 Nigro walked in.

12 MR. KOSLOFF: We're going to take care
13 of that in a minute.

14 MR. HOFFMAN: But before we go through
15 everything else, we should get her sworn in and
16 just make sure that the Council doesn't have any
17 questions for her as well so that her testimony
18 can have evidentiary weight.

19 MR. KOSLOFF: I was just about to take
20 care of that, but Chairman Stein was still
21 speaking.

22 THE CHAIRMAN: No, I'm finished.

23 MR. KOSLOFF: Now I can say that
24 Attorney Laura Nigro, one of the parties, is now
25 here. She has her prepared testimony. I would

1 like her sworn in and made available for
2 cross-examination. At the same time, I would
3 appreciate it if Dr. Shlansky may be excused.

4 THE CHAIRMAN: Yes.

5 MR. KOSLOFF: Thank you.

6 (Lisabeth Shlansky was excused.)

7 MR. KOSLOFF: Ms. Nigro, can you please
8 take Lis's seat? Here's your testimony.

9 Ms. Nigro is available to be sworn in.

10 L A U R A N I G R O,

11 called as a witness, being first duly sworn
12 by Ms. Bachman, was examined and testified on
13 her oath as follows:

14 MS. BACHMAN: Thank you.

15 DIRECT EXAMINATION

16 MR. KOSLOFF: Attorney Nigro, you have
17 in front of you the prepared testimony which you
18 prepared and signed. Is that correct?

19 THE WITNESS (Nigro): Correct.

20 MR. KOSLOFF: And I can represent to
21 the Council that it's identical to the prepared
22 testimony that was proffered to the Council on her
23 behalf.

24 Are the statements therein contained
25 true to the best of your knowledge and belief?

1 THE WITNESS (Nigro): Yes.

2 MR. KOSLOFF: I offer her for
3 cross-examination.

4 THE CHAIRMAN: Are there any objections
5 to having the testimony submitted?

6 MR. HOFFMAN: None.

7 MR. LANGER: None from the town.

8 THE CHAIRMAN: If not, the testimony is
9 submitted.

10 I guess we'll just go and see if there
11 are any specific questions that haven't been asked
12 by others.

13 Mr. Mercier?

14 MR. MERCIER: I have no questions.

15 THE CHAIRMAN: Dr. Klemens?

16 DR. KLEMENS: One question.

17 CROSS-EXAMINATION

18 DR. KLEMENS: Which of the vernal
19 pools -- what vernal pools are you referring to
20 specifically that will be affected by this
21 project?

22 THE WITNESS (Nigro): In my letter my
23 concern is for all of them. I am -- am I speaking
24 too softly? It won't be the first time I'm
25 accused of that.

1 I, based on the evidence that was
2 presented by the town, was quite alarmed. It's
3 information that I did not know. I certainly
4 didn't know it when I purchased my property, and I
5 am learning it through this process, but I find it
6 alarming I think that if there is a question about
7 disturbance of the contaminants within the vernal
8 pools, within the streams, within the water table,
9 within the aquifer, within our wells that sit on
10 and around. I do not have a private well, I am on
11 town, but for the community at large there are
12 many private wells that sit in and around those
13 noncontiguous properties.

14 And it's alarming to me. It's alarming
15 to me because I don't fully understand, and I
16 don't know, as we sit here, that any of us fully
17 understand what the implications could be in the
18 future, and that to me is enough to warrant
19 raising some serious questions and assure that we
20 have a standard that's going to ensure the safety
21 of the entire community. That's what I was
22 referring to.

23 DR. KLEMENS: Are there any specific
24 contaminants that you're concerned about?

25 THE WITNESS (Nigro): All that were

1 listed in the expert report. I'm referring to the
2 expert reports that were submitted by the town.

3 DR. KLEMENS: Thank you. No further
4 questions.

5 THE CHAIRMAN: Mr. Harder?

6 MR. HARDER: No questions. Thank you.

7 THE CHAIRMAN: Mr. Lynch?

8 MR. LYNCH: No questions.

9 SENATOR MURPHY: No questions, Mr.
10 Chairman.

11 THE CHAIRMAN: Mr. Silvestri?

12 MR. SILVESTRI: Thank you,
13 Mr. Chairman.

14 Just one clarification. In your
15 testimony you mentioned you're concerned about the
16 lack of a proper contingency plan?

17 THE WITNESS (Nigro): Yes.

18 MR. SILVESTRI: Could you explain what
19 you mean by contingency plan?

20 THE WITNESS (Nigro): Yes. When I
21 think of the issues that have been raised,
22 referencing maybe just the one that I just raised
23 just a moment ago, I think of where it's
24 delineated inside of the submitted plan as to what
25 the contingency plan would be to handle any issues

1 that might occur. I don't see any.

2 Now, I'm the first to say that I'm not
3 an expert, and I'm sure Attorney Hoffman would be
4 happy to call that out. But as a citizen and as a
5 resident and reading those reports which are
6 startling and alarming, that there should be
7 extensive contingency plans, yet I don't see it.
8 I don't see that the testing was done. I don't
9 see that they thought the testing was needed. So
10 where are the contingency plans if there are
11 issues?

12 When I sat at the last meeting at --
13 the first meeting that we had, the first hearing
14 that was done, I believe a question was raised
15 about animals and animals within the walls that
16 end up within the walls of the facility, and I
17 think one of the responses was there shouldn't be
18 any. There is no contingency plan for those
19 animals. Now we're talking about what those
20 contingency plans should look like or might look
21 like.

22 So at what point? Is it something that
23 should be addressed at the point of submitting
24 versus having to address it either via these
25 discussions or -- and if I'm using the wrong

1 words, I'll apologize -- the planning phase of the
2 project if it was to get approved? So that is
3 what I'm raising in my letter.

4 Does that answer your question?

5 MR. SILVESTRI: Yes, it does. Thank
6 you.

7 THE WITNESS (Nigro): Thank You.
8 Chairman Stein?

9 THE CHAIRMAN: Attorney Hoffman, do you
10 want cross-examination?

11 MR. HOFFMAN: Yes, please.

12 THE WITNESS (Nigro): Chairman Stein, I
13 want to ask if it's possible if I could respond to
14 the question that you had about the farmland?

15 THE CHAIRMAN: Can you make it concise?
16 Because we're trying to move this, and you came in
17 late. I know you have a big group, but really,
18 you know, we all play by sort of the same rules
19 and fairness. So make it quick.

20 THE WITNESS (Nigro): Yes. I
21 apologize. I just wanted to state that I did do
22 some research, and our small community-based group
23 did look at how we could make sure that that
24 farmland was protected into the future. We do
25 have hypotheticals about what ifs, if this project

1 wasn't to go forward. This is a what if. There
2 is a state bond that can be applied for that
3 petition to purchase that land in order to keep it
4 and maintain it as farmland so it can keep the
5 historical effects that we're talking about within
6 these documents. It is my intent by the grace of
7 God we have the opportunity to be able to pursue
8 that to in fact find those funds and preserve that
9 farmland. Thank you.

10 THE CHAIRMAN: Okay.

11 MR. HOFFMAN: I am reminded as I'm
12 sitting here and getting together my notes that
13 Pete Townshend famously remarked that you never
14 want to go after Jimi Hendrix played, and I'm
15 sitting here next to Dr. Klemens, but I'll try to
16 do my best.

17 Mr. Wrobel, you talked about the
18 historic nature of the town and your house. Is
19 your house registered with the National Register
20 of Historic Places?

21 THE WITNESS (Wrobel): No, it's not.

22 MR. HOFFMAN: And are you being served
23 by a private water well?

24 THE WITNESS (Wrobel): I am.

25 MR. HOFFMAN: And have you ever had

1 that well tested?

2 THE WITNESS (Wrobel): When we
3 purchased the house.

4 MR. HOFFMAN: Since then?

5 THE WITNESS (Wrobel): Not since then.

6 MR. HOFFMAN: Do you recall what the
7 results were?

8 THE WITNESS (Wrobel): Precisely, no,
9 but sufficient to get a mortgage.

10 MR. HOFFMAN: Fair enough. Fair
11 enough.

12 Mr. Flammini, same question to you.
13 Are you served by public water, or do you have a
14 private well?

15 THE WITNESS (Flammini): Town.

16 MR. HOFFMAN: Town water.

17 And you had a colloquy earlier with
18 Senator Murphy where you talked about kids
19 potentially finding the site to be an attractive
20 nuisance. Do you recall that?

21 THE WITNESS (Flammini): Of course.

22 MR. HOFFMAN: Are the tobacco barns
23 nearby the site an attractive nuisance?

24 THE WITNESS (Flammini): They are not
25 in my immediate neighborhood, so I can't speak to

1 that.

2 MR. HOFFMAN: Fair enough.

3 Ms., is it, Law? Lough?

4 THE WITNESS (Lough): Lough.

5 MR. HOFFMAN: Lough. I apologize. Are
6 you served by public water or a private well?

7 THE WITNESS (Lough): Public water.

8 MR. HOFFMAN: Thank you.

9 And Mr. Perissi is not here.

10 I also note that we have testimony from
11 Mr. Zhang who is also not here. Is that correct,
12 Attorney Kosloff?

13 MR. KOSLOFF: Correct.

14 MR. HOFFMAN: Okay. So I just think
15 that becomes public comment as well.

16 MR. KOSLOFF: That is correct.

17 MR. HOFFMAN: Fantastic.

18 Mr. Marckett?

19 THE WITNESS (Marckett): Yes.

20 MR. HOFFMAN: You have a private well,
21 correct?

22 THE WITNESS (Marckett): Yes, we have
23 an artesian well.

24 MR. HOFFMAN: Have you ever had that
25 water tested?

1 THE WITNESS (Marckettell): Yes.

2 MR. HOFFMAN: When did you have that
3 tested?

4 THE WITNESS (Marckettell): Three times
5 in the last six years.

6 MR. HOFFMAN: And what were the results
7 of that?

8 THE WITNESS (Marckettell): It was
9 satisfactory results.

10 MR. HOFFMAN: Okay. Great.

11 THE WITNESS (Marckettell): But, you
12 know, going forward is a concern.

13 MR. HOFFMAN: Understood.

14 Ms. Kilbourn-Jones?

15 THE WITNESS (Kilbourn-Jones): Yes.

16 MR. HOFFMAN: Have you seen the
17 petitioner's response to the Siting Council's
18 Interrogatory 67 that shows a revised plan?

19 THE WITNESS (Kilbourn-Jones): No, I
20 have not.

21 MR. HOFFMAN: Is your home registered
22 on the National Historic --

23 THE WITNESS (Kilbourn-Jones): No, it
24 is not.

25 MS. HOFFMAN: Okay. And you're on well

1 water. Correct?

2 THE WITNESS (Kilbourn-Jones): Correct.

3 MR. HOFFMAN: Have you had it tested?

4 THE WITNESS (Kilbourn-Jones): Ages
5 ago, yes, my father did -- or actually we did, and
6 it was satisfactory at the time, but I --

7 MR. HOFFMAN: Thank you.

8 I think that all my questions remain
9 for you, Mr. Logan.

10 THE WITNESS (Logan): Yes, sir.

11 MR. HOFFMAN: And, in fairness, you
12 probably have an advanced copy of my questions.
13 Have you seen the petitioner's interrogatories
14 directed to Flammini et al, dated September 26,
15 2017?

16 THE WITNESS (Logan): I did, and I
17 thought I had it with me, and now I can't find it.
18 So it probably was left on my desk. Yes.

19 MR. HOFFMAN: That's okay. Dr. Klemens
20 asked half the questions I was going to ask you,
21 so we'll try and get through this as quick as we
22 can.

23 THE WITNESS (Logan): Sure.

24 MR. HOFFMAN: How much time did you
25 spend preparing your report?

1 THE WITNESS (Logan): More than I
2 billed, so probably about ten hours.

3 MR. HOFFMAN: Okay. Good for you. And
4 how much of that time was spent writing the
5 report?

6 THE WITNESS (Logan): That's the
7 writing of the report.

8 MR. HOFFMAN: So how much was spent in
9 research and analysis?

10 THE WITNESS (Logan): Probably another
11 five, six hours.

12 MR. HOFFMAN: How much time did you
13 spend visiting the site?

14 THE WITNESS (Logan): Zero.

15 MR. HOFFMAN: And how much time did you
16 spend watching the drone flights that were made
17 available?

18 THE WITNESS (Logan): I saw that they
19 were on the web site, but I didn't have time to
20 look at those.

21 MR. HOFFMAN: Okay. On page 2 of your
22 report you talk about the impacts to three Class A
23 perennial water courses. Do you see where I'm
24 talking about?

25 THE WITNESS (Logan): Page 2, yes.

1 MR. HOFFMAN: Okay. Great. What are
2 the impacts to those water courses of the current
3 land use on the property?

4 THE WITNESS (Logan): Well, that is a
5 very good question. I thought that the petitioner
6 would be the one answering it, and not me, because
7 it could be part of the baseline that you had
8 provided to this Council.

9 MR. HOFFMAN: So you don't know?

10 THE WITNESS (Logan): I don't know.

11 MR. HOFFMAN: Okay. You wrote your
12 report on September 8th, right?

13 THE WITNESS (Logan): Yes.

14 MR. HOFFMAN: Okay. And you
15 referenced, you make reference to some August 29,
16 2017 comments from the Council on Environmental
17 Quality that you found germane. Correct?

18 THE WITNESS (Logan): Correct.

19 MR. HOFFMAN: Have you reviewed the
20 September 11, 2017 letter authored by Linda Brunza
21 of Connecticut DEEP and filed in this petition?

22 THE WITNESS (Logan): I think I browsed
23 through it this morning. As I said, I looked -- I
24 said to myself maybe I should look and see if
25 there's anything else.

1 MR. HOFFMAN: So have you read it, sir,
2 or haven't you?

3 THE WITNESS (Logan): I have.

4 MR. HOFFMAN: Okay. Did those comments
5 have any impact on your report?

6 THE WITNESS (Logan): No. It's their
7 opinion versus mine.

8 MR. HOFFMAN: They're the agency with
9 cognizance in Connecticut over aquifer protection.
10 Correct?

11 THE WITNESS (Logan): Yes, but I --

12 MR. HOFFMAN: And the agency of
13 cognizance for endangered and listed species.
14 Correct?

15 THE WITNESS (Logan): That is correct.

16 MR. HOFFMAN: And the agency of
17 cognizance for stormwater management and erosion
18 control. Correct?

19 THE WITNESS (Logan): All of that is
20 correct.

21 MR. HOFFMAN: And yet their comments
22 had no bearing whatsoever on your report?

23 THE WITNESS (Logan): We can agree to
24 disagree.

25 MR. HOFFMAN: Are you saying that you

1 know better than the DEEP on these issues?

2 THE WITNESS (Logan): Do you want a
3 real answer for this?

4 MR. HOFFMAN: Absolutely, sir.

5 THE WITNESS (Logan): Okay. DEEP is
6 kind of in an issue with the time that they have
7 to review these things. And I find very often
8 that the folks that are in the field that are
9 actually doing a lot of the work, such as myself,
10 who are trying to stay abreast of the literature
11 and advances in our field sometimes have a little
12 different view. They're looking to acquire their
13 expertise within a regulatory framework. I
14 sometimes am outside of that looking at the
15 science.

16 So I have experience that will tell me
17 that there are certain things that are proposed on
18 the site that have risk factors associated to
19 them. So risk to me is important to look at. And
20 it's important for a large-scale project like this
21 to minimize risk to the environment to extent
22 possible, and I've cited several examples of that
23 in my report.

24 MR. HOFFMAN: So where DEEP's comments
25 contradict your report, who's wrong, you or DEEP?

1 THE WITNESS (Logan): It's up for you
2 and the Council to ultimately discuss.

3 MR. HOFFMAN: Well, what do you think?

4 THE WITNESS (Logan): I'm offering my
5 opinion.

6 MR. HOFFMAN: So, you said that you had
7 a copy of our September 26th interrogatories.
8 Correct?

9 THE WITNESS (Logan): Yes, I did.

10 MR. HOFFMAN: How long did you spend
11 reviewing them?

12 THE WITNESS (Logan): Probably about an
13 hour and a half.

14 MR. HOFFMAN: Fantastic. Then these
15 should be easy. Right?

16 THE WITNESS (Logan): Maybe.

17 MR. HOFFMAN: So looking at page 5 of
18 your report --

19 THE WITNESS (Logan): Yes, sir.

20 MR. HOFFMAN: Actually I take that
21 back. Dr. Klemens took care of that.

22 Oh, yes, actually on page 5. I
23 apologize. I've got to skip around a little bit
24 because Dr. Klemens did such a thorough job.

25 But on page 5 you talk about the

1 presence or absence of larval host plants for two
2 moths?

3 THE WITNESS (Logan): Yes.

4 MR. HOFFMAN: Do you have supporting
5 peer review documentation for the statement that
6 such determinations as been made by the petitioner
7 -- and I'm quoting here -- should not replace
8 specific field surveys during the flight times of
9 these species?

10 THE WITNESS (Logan): So here's the
11 quick answer for that. So what I would do, and if
12 I was the petitioner's expert and I was looking
13 to -- we're talking about these particular two
14 moths, I think, here --

15 MR. HOFFMAN: Sir, I just asked if you
16 had peer review journals for that statement.

17 THE WITNESS (Logan): Yes, I have.

18 MR. HOFFMAN: Okay. What are they?

19 THE WITNESS (Logan): I don't have them
20 here with me, some of Wagner's -- Dr. Wagner's
21 documentation, some of the ones that were
22 referenced by the petitioner themselves, looking
23 to see if they were properly cited, et cetera. So
24 I'll stop at that.

25 MR. HOFFMAN: Okay. Now, Dr. Klemens

1 touched a little bit on Footnote 8, and I've got
2 to admit, I was a little bit confused by that back
3 and forth. So what can you tell us about the
4 ecological inventory on the large site with
5 several documented species that you encountered?

6 THE WITNESS (Logan): Well, I can
7 generally speak to the fact that, as was done in
8 this particular case, you folks, your experts
9 petitioned or queried the Connecticut Natural
10 Diversity Database and got a list back. And so we
11 got a list back that included several species.
12 Then as we started doing our inventories on the
13 site, some of them general, and some of them
14 specific, we encountered two additional species.
15 And sometimes you have to have a robust ecological
16 inventory of the various groups of animals in
17 order to be able to say that you've done a good
18 enough job to make sure that there are no other
19 listed species. So we found Ribbon Snake and we
20 found Box Turtle, and those were not documented.

21 MR. HOFFMAN: And do you have this
22 inventory?

23 THE WITNESS (Logan): Yes, we're in the
24 process actually.

25 MR. HOFFMAN: And will you submit it as

1 part of this petition?

2 THE WITNESS (Logan): No, I won't.

3 MR. HOFFMAN: Why not?

4 THE WITNESS (Logan): Because this is
5 part of proprietary information. It has not been
6 released to the Siting Council as of yet. When it
7 does, you'll be able to see it.

8 MR. HOFFMAN: But, sir, you rely on it
9 to make allegations in your report.

10 THE WITNESS (Logan): I'm giving it as
11 an example.

12 MR. HOFFMAN: But it's an example that
13 I can't cross-examine because I don't have a copy
14 of it.

15 THE WITNESS (Logan): Well, I can tell
16 you that in my experience that is often the case.

17 MR. HOFFMAN: Well, in my experience
18 it's often the case that I get to cross-examine
19 evidence that's entered into a hearing.

20 THE WITNESS (Logan): I understand, and
21 that's why you're the lawyer and I'm not.

22 MR. HOFFMAN: So I'm going to move to
23 page 7 of your report.

24 THE WITNESS (Logan): Yes, sir.

25 MR. HOFFMAN: You mentioned the

1 recreation and scientific enjoyment of the fauna.
2 How much recreation is currently taking place at
3 the site?

4 THE WITNESS (Logan): Well, that's
5 another question that I thought the petitioner
6 should be answering and not myself.

7 MR. HOFFMAN: But you're the one who
8 brought it up. So how much?

9 THE WITNESS (Logan): Well, it's part
10 of the baseline. If your guys here had done a
11 functional value analysis of the wetlands and
12 their environs, they would have come up with some
13 kind of a functional assessment of the aesthetic
14 value of some of the resources.

15 THE CHAIRMAN: Mr. Logan, he's asking
16 you the question. You just say you have the
17 answer or you don't. That's the point of this.
18 It's not to say somebody else should. The
19 question is being asked of you. It would really
20 be helpful to the Council if you could answer the
21 question.

22 THE WITNESS (Logan): Okay. So here's
23 the answer. These areas are surrounded by several
24 open space areas, and I think I've listed what
25 they are. And so I can imagine that people on

1 occasion will go through those areas and for the
2 the enjoyment of fauna, flora and the aesthetics
3 around them. So to the extent that this project
4 is infringing upon the uses of those open space
5 areas, therefore the aesthetic and recreational
6 value of these open space areas and the
7 surroundings will be diminished. Is that fair?

8 MR. HOFFMAN: Do you have any data to
9 back that up?

10 THE WITNESS (Logan): No, I have common
11 sense.

12 MR. HOFFMAN: Okay. On page 9 of your
13 report you say, and I quote, Grassland fields
14 shown on the proposed plans are not of sufficient
15 size, configuration or location to accommodate the
16 habitat requirements of these listed species based
17 on scientific literature.

18 THE WITNESS (Logan): Uh-huh.

19 MR. HOFFMAN: Please provide the
20 citations to that peer reviewed scientific
21 literature.

22 THE WITNESS (Logan): If you give me
23 enough time, I will certainly be able to do that.

24 MR. HOFFMAN: Sir, I gave you enough
25 time. I gave your counsel enough time. I gave

1 you since September 26th.

2 THE WITNESS (Logan): I was not
3 directed to do that.

4 MR. KOSLOFF: If I may, do you have
5 that data in your possession?

6 THE WITNESS (Logan): Not right here,
7 but in my library.

8 MR. KOSLOFF: You do have it?

9 THE WITNESS (Logan): Absolutely. I
10 have a whole library on it.

11 MR. KOSLOFF: We'll provide it as an
12 after-filed exhibit, if that is what the Council
13 desires.

14 THE CHAIRMAN: I guess we have no
15 choice.

16 MR. KOSLOFF: We'll call it
17 Late-Filed -- do we want to give it a number or --

18 MR. HOFFMAN: Well, why don't we wait
19 because, when we're done here, I'm going to
20 re-bring up my motion to compel. And so maybe it
21 will just be simpler to respond to the
22 interrogatories.

23 MR. KOSLOFF: I don't know what that
24 means.

25 MR. HOFFMAN: We have a pending motion

1 to compel, Attorney Kosloff, which hasn't been
2 decided by the Council. The Council said they
3 would hold that motion in abeyance until this
4 cross-examination was completed.

5 MR. KOSLOFF: Right. So far you have
6 asked my witness to provide peer review data on --
7 how would you characterize it?

8 THE WITNESS (Logan): The grassland
9 species and the size habitat of -- size
10 requirements.

11 MR. KOSLOFF: We are prepared to do
12 that. If you want to take it as a Late-File,
13 that's fine with us, and we will submit it before
14 when?

15 THE WITNESS (Logan): Early next week.

16 MR. KOSLOFF: Sometime early next week.
17 That is my offer in response to his question.

18 THE CHAIRMAN: For now we will accept
19 that.

20 MR. HOFFMAN: On page 9 of the REMA
21 report you talk about increased mortality amounts.

22 THE WITNESS (Logan): Uh-huh.

23 MR. HOFFMAN: What do you anticipate
24 numerically those increased mortality amounts will
25 be now that the fence is being raised -- or being

1 discussed to be raised to 6 inches?

2 THE WITNESS (Logan): Obviously, it
3 will be less for some of the species that can make
4 it through and are not going to be stranded in the
5 fence, but I have not been asked to give numerical
6 quantitative estimates of species.

7 MR. HOFFMAN: Actually, Interrogatory
8 11 asked you to do that.

9 THE WITNESS (Logan): And I was not
10 asked to provide that answer.

11 MR. HOFFMAN: Very good.

12 The top of page 10, bottom of page 9,
13 are any of the soils at the project site
14 classified as potentially highly erodible lands?

15 THE WITNESS (Logan): Yes.

16 MR. HOFFMAN: Okay. What are the
17 anticipated increases in soil erosion for the
18 totality of the project as compared with the
19 current agricultural activities taking place at
20 the site?

21 THE WITNESS (Logan): I can give you a
22 qualitative answer, but I cannot give you a
23 quantitative answer.

24 MR. HOFFMAN: What would it take to
25 give me a quantitative answer?

1 THE WITNESS (Logan): I would have to
2 run the revised Universal Soil Loss Equation.

3 MR. HOFFMAN: Thank you.

4 Have you observed any areas on the
5 property that we're talking about here today where
6 accelerated soil erosion may have occurred?

7 THE WITNESS (Logan): I can't really
8 speak to that because I've not been to the
9 property.

10 MR. HOFFMAN: Okay. On page 10 of the
11 report you talk about pesticide mobilization.

12 THE WITNESS (Logan): Uh-huh.

13 MR. HOFFMAN: How is the pesticide
14 mobilization going to differ between the project
15 that's being proposed and the current agricultural
16 activities at the site?

17 THE WITNESS (Logan): That's a good
18 question. Again, that's something that the
19 petitioner should have provided. And maybe they
20 have. I heard something, or someone, maybe a
21 party provided. The idea is that to the extent
22 that grading is happening -- so if you're just
23 impacting the topsoil layer on flat or gentle
24 land, mobilization is probably not an issue. But
25 to the extent that you are doing work where you're

1 disturbing both the topsoil and some of the
2 subsoil layers on areas that are steeper -- and
3 I've described those in my report -- and then the
4 risk of mobilization of said pesticides and
5 herbicide residues goes up substantially.

6 MR. HOFFMAN: Can you calculate that?

7 THE WITNESS (Logan): No, I probably
8 could not. My expertise is not in that area. I'm
9 not a licensed environmental professional. But as
10 a scientist, I could give you some general
11 understanding.

12 MR. HOFFMAN: What's the current impact
13 of pesticide and fertilizer residue on the
14 waterways near the project site, including
15 Munnisunk and Saxton Brook?

16 THE WITNESS (Logan): That I do not
17 know. That would be something that the petitioner
18 would have put into the record as part of their
19 baseline studies.

20 MR. HOFFMAN: Page 10 you also talk
21 about open space considerations.

22 THE WITNESS (Logan): Uh-huh.

23 MR. HOFFMAN: Can you tell me what the
24 peer reviewed materials and the reports that you
25 relied upon for the assertion that, quote,

1 Ecological integrity and wildlife utilization of
2 these parcels would be substantially diminished by
3 the proposal?

4 THE WITNESS (Logan): You know,
5 sometimes you don't really have to put any peer
6 review studies into the record. You can just
7 speak as a professional that has expertise in
8 ecology.

9 MR. HOFFMAN: So is this one of those
10 times?

11 THE WITNESS (Logan): And this is one
12 of those times.

13 MR. HOFFMAN: You talk about weed and
14 seed and other natural resources. Work on a
15 hypothetical with me. If the property gets sold
16 and the new landowner does nothing on the
17 property, nothing at all, so they're no longer
18 doing agricultural production, how would that
19 situation impact the various natural resources
20 that are discussed in the REMA report?

21 THE WITNESS (Logan): Well, I'm making
22 the assumption that the farmer is a good farmer,
23 and therefore he's using conservation practices,
24 which means the environment, surrounding
25 environment, the riparian areas, forested areas,

1 et cetera, are not being unduly impacted. So if
2 you did nothing, probably the difference would be
3 fairly small, because I would expect that there's
4 good farming practices that are being practiced.

5 MR. HOFFMAN: That didn't answer my
6 question, but I'll move on.

7 The current operator at the site, the
8 folks who are farming it right now, what steps did
9 they need to take to reduce impact to various
10 listed species and natural resources that are
11 discussed in your report?

12 THE WITNESS (Logan): And maybe they're
13 already doing some of that. I don't know exactly
14 what the practices are, and I don't know what
15 their rotation is of the various fields. Farmers
16 do that all the time. They will abandon and
17 rotate and won't annex one part of the property
18 one year or the other. So it's hard to know
19 without really interviewing them and finding out
20 exactly what their practices are and what
21 conservation practices they might be using.

22 MR. HOFFMAN: Have you read the
23 Simsbury 2007 plan of conservation and
24 development?

25 THE WITNESS (Logan): No.

1 MR. HOFFMAN: Do you know that there
2 are questions related to that plan in the
3 interrogatories?

4 THE WITNESS (Logan): Yes, I did see
5 it. And then I saw that you had some links to
6 some places to go, but I did not spend time to do
7 that.

8 MR. HOFFMAN: Have you taken a look at
9 the as-of-right concept plan that Chairman Stein
10 talked about earlier that was contained as Exhibit
11 D in our interrogatories?

12 THE WITNESS (Logan): Was that an R40
13 kind of subdivision, or something along those
14 lines?

15 MR. HOFFMAN: R40 and industrial, yes.

16 THE WITNESS (Logan): Yes, I think I
17 remember just glancing at it. Yes.

18 MR. HOFFMAN: If that plan were to be
19 enacted and built, as designed, what would the
20 impacts be to the area in terms of the areas of
21 study that you addressed in the REMA report,
22 species, wetlands, et cetera?

23 THE WITNESS (Logan): That's a very
24 difficult question to answer because under that
25 particular case, as someone said here before, that

1 particular subdivision plan will go before the
2 town for review by their various land use
3 commissions. And also that could include someone
4 coming in, as some of my clients often do, and
5 say, you know, we're not going to go with an R40,
6 we're going to go for a conservation subdivision,
7 and we're going to go to 20,000 square feet per
8 lot, and we're going to dedicate 50 percent of
9 this entire site into open space and manage it.

10 MR. HOFFMAN: But that's not my
11 question. You're right, all those things could
12 happen. But my question was, if that plan
13 happens, what happens to the natural resources at
14 the site?

15 THE WITNESS (Logan): If the plan?

16 MR. HOFFMAN: Yes.

17 THE WITNESS (Logan): I have no idea,
18 because it's just a bunch of lines on a plan.
19 There's a lot more to a plan than just, you know,
20 here's a lot, and there's a lot. You have to look
21 at all kinds of things. And so what would happen
22 is, if I was doing it, I would come in, I would
23 review the resources, inventory the resources, the
24 team would come together and say, you know, we
25 should give a bigger buffer to this area, and

1 maybe we don't need it here, and maybe we consider
2 these practices here and not there, and so on. So
3 it would be something that would not be exactly a
4 cookie cutter thing, like you see on that thing
5 that you showed me.

6 MR. HOFFMAN: Kind of like what's going
7 on with this petition where we're making changes?

8 THE WITNESS (Logan): My apology for
9 that. More are needed.

10 MR. HOFFMAN: What's the amount of
11 water, gallons per day, or gallons per month, or
12 gallons per year, that's needed to support the
13 crop production that's currently taking place?

14 THE WITNESS (Logan): I have no clue.
15 Again, I'd have to review the -- interview the
16 farmer.

17 MR. HOFFMAN: What's the impact of
18 fertilizer and pesticides to the flora and fauna
19 that are currently present at the site?

20 THE WITNESS (Logan): Again, as I
21 stated previously --

22 MR. KOSLOFF: I'm just going to object.
23 Can you qualify and be more specific? You mean
24 pesticides that are already present, or pesticides
25 that might be added in addition to those that are

1 present?

2 MR. HOFFMAN: Let's make it two
3 questions. Thank you, Attorney Kosloff.

4 So the current pesticides that are
5 present, what's the impact to the flora and fauna?

6 THE WITNESS (Logan): I do not know,
7 because I don't know how much is used, what
8 practices they used. They might be using
9 integrated pest management practices that I'm not
10 aware of.

11 MR. HOFFMAN: And would your answer be
12 the same on a go-forward basis?

13 THE WITNESS (Logan): Yes.

14 MR. HOFFMAN: Who assisted you in
15 preparing the report?

16 THE WITNESS (Logan): Ms. Sigrun Gadwa.

17 MR. HOFFMAN: I have nothing further.

18 THE CHAIRMAN: Thank you.

19 THE WITNESS (Logan): Thank you,
20 Mr. Hoffman.

21 THE CHAIRMAN: Okay. I guess we're
22 going to take up the motion.

23 MR. HOFFMAN: Well, other parties may
24 have --

25 THE CHAIRMAN: We've got a lot of --

1 we're not going to get through everything today.
2 I think we ought to take up the motion to compel.

3 MR. HOFFMAN: Certainly. Thank you.

4 THE CHAIRMAN: Does the staff attorney
5 want to comment?

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

7 Attorney Hoffman, now that you've had
8 the opportunity to cross-examine Mr. Logan
9 partially on some of the issues related to your
10 interrogatories, do you still plan to maintain
11 that motion to compel?

12 MR. HOFFMAN: Absolutely.

13 MS. BACHMAN: Attorney Kosloff, do you
14 have a response?

15 MR. KOSLOFF: We filed our response,
16 and I think our response is pretty clear. But we
17 are now on the other side of providing the
18 petitioner with an opportunity to cross-examine
19 Mr. Logan, including the questions that he felt he
20 was not given answers to as part of our
21 interrogatory responses. I fail to see how the
22 petitioner is prejudiced. Even if we were
23 incorrect on the law, and I don't think we are, I
24 fail to see how the petitioner is prejudiced at
25 this point having exhausted his questions,

1 including those that pertained to his
2 interrogatories.

3 So if he wants to claim prejudice, what
4 is that prejudice, and do we have to bring Mr.
5 Logan back, for example, to answer further
6 questions? We don't want to have to do that
7 because we're on a limited budget. We could do
8 that, but, frankly, at this point, beyond the
9 Late-File exhibit, you know, I don't see what more
10 we need to do in order to respond to his concern
11 about unfair surprise and prejudice. I don't
12 think he is unfairly surprised because he had our
13 report since early September, and I don't think
14 he's prejudiced because he's now exhausted himself
15 asking questions.

16 THE CHAIRMAN: I mean --

17 MR. LYNCH: Mr. Chairman, did we accept
18 a Late-File from Mr. Logan?

19 THE CHAIRMAN: Yes, we did.

20 MR. LYNCH: Then Mr. Hoffman has the
21 right to cross-examine him, does he not, so he has
22 to come back.

23 MR. KOSLOFF: Mr. Chairman, he did not
24 make any -- well, if you're speaking about a
25 Late-Filed exhibit that we've offered, yes, I

1 would absolutely concede to the extent that if the
2 petitioner has questions about that Late-File,
3 certainly he would be entitled to cross-examine,
4 if that's the way we go. But that's not what's on
5 the table at this point in terms of the motion to
6 compel. But we would readily concede that we
7 would bring him back, if we had to.

8 MR. HOFFMAN: But, if I may, Mr. Lynch
9 raises an excellent point, which is there is going
10 to be one Late-File. Mr. Logan will, if
11 necessary, need to come back. And there have been
12 several of my interrogatories that Mr. Logan has
13 been unable to answer, as we sit here today. And
14 no one has objected to the propriety of the
15 interrogatories other than to say that Mr. Logan
16 is not a party, which is clearly not the case.
17 Therefore, I would re-request that Mr. Logan
18 answer the interrogatories that were proffered on
19 September 26th in a timely fashion and, if
20 necessary, we can bring him back for
21 cross-examination.

22 MR. KOSLOFF: Mr. Logan has testified
23 as to certain of those questions that he has no
24 idea what the answers are. That is an
25 interrogatory response. We can't beat it out of

1 him.

2 THE CHAIRMAN: I understand we can't.
3 That's not our job.

4 MR. KOSLOFF: Right.

5 THE CHAIRMAN: Although, the fact that
6 he didn't answer the interrogatories in a timely
7 way has added, I don't know how many minutes,
8 unnecessary minutes, to this, and we still in a
9 lot of cases don't even have exact answers. I
10 mean, these were based on a report that Mr. Logan
11 prepared for your client. And it's still a
12 mystery to me because, according to his testimony,
13 he was not authorized to answer some of the
14 questions, and I don't know how -- I think you
15 said that, your client said don't spend the time,
16 whatever it was, to come up with a metrics -- he
17 did say that, excuse me, in case you have any
18 doubts about my memory, which at times even I
19 question.

20 So, you know, that whole sort of back
21 and forth, which I don't understand. I've been
22 here for a while. I've never quite heard that. I
23 mean, if an intervenor or a party decides to hire
24 an expert, and their attorney knows that we have a
25 process, and interrogatories and cross-examination

1 are part of it, I'm a little perplexed as to why
2 this is not going more smoothly.

3 I would tend to -- and I don't make a
4 motion -- to suggest that we move to compel and
5 just get these things, interrogatories done, so we
6 don't waste more time. And if there's a need,
7 most of them you can probably do in your, what,
8 you usually spend an hour and a half, maybe 43
9 minutes instead. I don't know. But I'll leave it
10 to the counsel. If you feel that it's not
11 necessary, we can deny it, and then still get the
12 stuff Late-Filed.

13 MR. KOSLOFF: I do want to cooperate
14 with the Council. So I'd like to ask Mr. Logan
15 whether he's in a position to give any answers to
16 the interrogatory requests that he hasn't already
17 testified to.

18 THE WITNESS (Logan): Today?

19 MR. KOSLOFF: Today.

20 THE WITNESS (Logan): I'd have to have
21 a copy of the --

22 MR. KOSLOFF: All right. So we don't
23 know sitting here whether he can offer --

24 THE CHAIRMAN: I know. That's why it
25 seemed to me that the easiest thing would be to

1 just -- compel means just go through the list and
2 come up with, you know, responses.

3 SENATOR MURPHY: How about if Attorney
4 Hoffman, you refile, you know, it would just be a
5 few questions that you'd be asking at this point,
6 you can zero in, and that would be it?

7 MR. KOSLOFF: We would accept that.

8 SENATOR MURPHY: And they would answer
9 those interrogatories.

10 MR. KOSLOFF: We would definitely
11 accept that so as to kind of hone in on what it is
12 that Mr. Hoffman feels was not answered.

13 THE CHAIRMAN: We want to be both fair
14 and efficient.

15 MR. KOSLOFF: We understand.

16 THE CHAIRMAN: Attorney Hoffman.

17 MR. HOFFMAN: I have no aversion to
18 resubmitting a more limited set of interrogatories
19 subject, of course, to the fact that --

20 SENATOR MURPHY: I'm only asking you to
21 limit it as to what you need because you got some
22 of it already.

23 MR. HOFFMAN: Senator Murphy, I fully
24 understand, yes. But subject to a right of
25 cross-examination on those answers and a fulsome

1 response being received, because there's been no
2 timely filed objection to those interrogatories.

3 MR. KOSLOFF: We'll make him available.

4 THE CHAIRMAN: Okay.

5 MR. KOSLOFF: We'll make him available
6 as long as we have a limited set of
7 interrogatories, as well as he can be
8 cross-examined on the Late-Filed exhibit.

9 SENATOR MURPHY: And the understanding
10 is he's going to be available for
11 cross-examination, if necessary.

12 MR. KOSLOFF: Let me ask this question,
13 Mr. Logan. Are you available November the 2nd?

14 THE WITNESS (Logan): What day is that?

15 MS. BACHMAN: It's a Thursday.

16 THE WITNESS (Logan): I'm not sure. I
17 find myself in an extremely busy period as we're
18 winding down the season. So I would say 80
19 percent chance, but I would have to get back to
20 you.

21 MR. KOSLOFF: Well, why don't we take
22 it in baby steps.

23 THE CHAIRMAN: That's what I was about
24 to suggest. First, I'm going to ask an attorney
25 who is much better at this procedurally.

1 MS. BACHMAN: Thank you, Mr. Chairman.
2 I think it would be in everyone's best interest at
3 this point that the motion to compel be granted,
4 subject to Attorney Hoffman submitting the
5 questions that remain to be answered. And whether
6 or not Mr. Logan can appear on the 2nd, we'll just
7 have to take that up at that time.

8 MR. KOSLOFF: And, Mr. Logan, I will
9 tell you, will, to the best of his ability,
10 respond to those questions, and they will be filed
11 appropriately with the Council as well. So we can
12 all agree to do that. Whether Mr. Logan is
13 available on the 2nd, or not, remains to be seen.

14 THE CHAIRMAN: Okay. The Chair will
15 entertain a motion.

16 MR. LYNCH: So moved.

17 DR. KLEMENS: Second.

18 THE CHAIRMAN: Motion and second.

19 Any discussion?

20 (No response.)

21 THE CHAIRMAN: All those in favor,
22 signify by saying aye.

23 THE COUNCIL: Aye.

24 THE CHAIRMAN: Opposed? Abstention?

25 (No response.)

1 THE CHAIRMAN: Motion carries. Thank
2 you.

3 Okay. We'll now go to the
4 cross-examination by the Department of Agriculture
5 of the abutters.

6 MR. BOWSA: I'm sorry, Mr. Chairman.
7 This is on the abutters?

8 THE CHAIRMAN: Yes, sir.

9 MR. BOWSA: We have no cross.

10 THE CHAIRMAN: Okay.

11 We'll go to the town. Town, do you
12 have any questions of the abutters?

13 MR. LANGER: No questions on cross.
14 Thank you.

15 MS. BACHMAN: Attorney Rigney sent me
16 an email before she left that she has no questions
17 for this panel either. Thank you.

18 THE CHAIRMAN: Now we'll move to the
19 appearance of the town. Mr. Chad Frost?

20 MR. LANGER: Yes.

21 THE CHAIRMAN: So abutters, you can try
22 to find seats in the back.

23 MR. KOSLOFF: Are my witnesses excused?

24 THE CHAIRMAN: You're excused.

25 MR. KOSLOFF: Thank you, Mr. Chairman.

1 THE CHAIRMAN: Unless you file anything
2 else, then you're going to have to come back.

3 (Witnesses excused.)

4 MR. LANGER: Almost ready. Thank you
5 for your patience.

6 (Pause.)

7 MR. LANGER: Thank you.

8 THE CHAIRMAN: Thank you. Present your
9 witness, and we'll swear him in.

10 MR. LANGER: Sure. Good afternoon.
11 Jesse Langer on behalf of the Town of Simsbury.
12 And sitting to my right is Chad Frost who is a
13 principal of Kent & Frost, LLC.

14 C H A D F R O S T ,

15 called as a witness, being first duly sworn
16 by Ms. Bachman, was examined and testified on
17 his oath as follows:

18 MR. LANGER: If I may, I'd like to have
19 some of the exhibits that are referenced under
20 Section VI of the hearing program, particularly as
21 they relate to Mr. Frost, offered as exhibits for
22 identification, and that would be particularly
23 Exhibit B.2.d, and then also B.4. So that would
24 be prefiled testimony, and then also the Town of
25 Simsbury's responses to Deepwater Wind's

1 interrogatories with attachments.

2 DIRECT EXAMINATION

3 MR. LANGER: Mr. Frost, did you prepare
4 or supervise in the preparation of Exhibit B.2 and
5 Exhibit B.4?

6 THE WITNESS (Frost): Yes.

7 MR. LANGER: Do you have any additions,
8 clarifications, or modifications to those
9 exhibits?

10 THE WITNESS (Frost): No.

11 MR. LANGER: Are they true and accurate
12 to the best of your knowledge?

13 THE WITNESS (Frost): Yes.

14 MR. LANGER: Do you adopt that
15 information contained in those exhibits as your
16 testimony here today?

17 THE WITNESS (Frost): Yes.

18 MR. LANGER: And I would ask that those
19 exhibits, as they relate to Mr. Frost, be entered
20 as full exhibits, please?

21 THE CHAIRMAN: Is there any objection
22 from any party or intervenor?

23 MR. HOFFMAN: No objection, sir.

24 MR. BOWSA: No objection.

25 MR. KOSLOFF: No objection.

1 THE CHAIRMAN: They're admitted.

2 (Town of Simsbury's Exhibits VI-B-2d
3 and VI-B-4: Received in evidence - described in
4 index.)

5 MR. LANGER: I submit Mr. Frost for
6 cross-examination.

7 THE CHAIRMAN: Mr. Mercier.

8 CROSS-EXAMINATION

9 MR. MERCIER: Mr. Frost, could you just
10 state what your appearance is before us? Are you
11 a landscape architect?

12 THE WITNESS (Frost): I'm a landscape
13 architect, yes.

14 MR. MERCIER: Now, in your work in
15 conjunction with the town for potential aesthetic
16 designs to mitigate some of the views from certain
17 areas?

18 THE WITNESS (Frost): Correct.

19 MR. MERCIER: Now, just regarding the
20 large site plan, I'm just going to focus in on the
21 Hoskins Road area on the north side of Hoskins
22 Road there's the barns, and on the south side
23 right now is an open agricultural field. If you
24 just please state what the town's position or what
25 you're recommending to the town for aesthetic

1 mitigation around we'll just start with the area
2 of the two barns, the north side?

3 THE WITNESS (Frost): Yes. So we were
4 contacted by the town and asked to review the
5 petitioner's design and what they had proposed
6 from a screen mitigation standpoint. So I went up
7 to the town. I did have some familiarity with the
8 town. I used to work up in Avon for a landscape
9 architecture firm up there in the past, and I've
10 done projects in Simsbury dating back to probably
11 about 20 years ago.

12 So I went up and took a ride with
13 Mr. Rabbitt, the planning director, around the
14 town. We went to look at the properties. We went
15 through some of the planning documentation
16 available in the town, and then also just took in
17 the general character of the town.

18 I then went back to my office and went
19 through all the data -- we were given a CD of all
20 the documentation that had been filed -- and tried
21 to ascertain what the petitioner was suggesting to
22 help screen the proposed solar fields. And I find
23 it not in context at all with Simsbury and what
24 Simsbury is about.

25 And so we then kind of verbally gave

1 that back to Jamie. We had some discussions, and
2 then he asked us to come up with what we had
3 proposed for screening that we thought would be
4 contextually sensitive to the area, and so that's
5 what we did.

6 MR. MERCIER: I'm just asking what is
7 the proposal for north of Hoskins Road by the
8 town?

9 THE WITNESS (Frost): That was a long
10 answer. So it's basically just a vegetated berm.

11 MR. MERCIER: How high would the berm
12 be?

13 THE WITNESS (Frost): We expect it to
14 be, on average, about 10 feet. I think it should
15 undulate. It shouldn't just be one consistent
16 berm with really even sides. It should have some
17 naturalistic characteristics to it.

18 MR. MERCIER: So 7 to 10 feet you're
19 talking?

20 THE WITNESS (Frost): I'd say maybe 8
21 to 12, right, so you're averaging about 10.

22 MR. MERCIER: Okay, 8 to 12 feet?

23 THE WITNESS (Frost): Yes.

24 MR. MERCIER: And how far back from the
25 road would you have to build the berm? I'm

1 talking about the north side of Hoskins here.

2 THE WITNESS (Frost): Right. In our --
3 the way we had it set up as part of that was to
4 have a short, long shoulder adjacent to the road,
5 then have a row of street trees. Behind that row
6 of street trees would be a split-rail fence that
7 is open and see through, and then have the space
8 where the berm is. We estimated the berm to take
9 up, you know, somewhere in the neighborhood of 30
10 to 50 feet of area.

11 MR. MERCIER: Okay.

12 THE WITNESS (Frost): Along that north
13 end, particularly, I think it actually could fit
14 quite nicely. There's already a natural
15 topography going up from Hoskins Road, and where
16 you have the two barns currently there that it
17 could fill in that viewshed.

18 MR. MERCIER: Would the berms block the
19 view of the barns?

20 THE WITNESS (Frost): No.

21 MR. MERCIER: Is the berm in front of
22 the barns or behind them?

23 THE WITNESS (Frost): It would be
24 almost between the barns, almost in line with the
25 barns, yes, kind of connecting the two.

1 MR. MERCIER: Okay. So then the barns
2 would anchor the visual mitigation, I'll call it,
3 on either side?

4 THE WITNESS (Frost): Correct. And we
5 were anticipating that split-rail fence could tie
6 into the ends of the barns, so it does provide
7 that sense of character that the fence belongs
8 there, as opposed to being an anomaly.

9 MR. MERCIER: Now, for the south side
10 area of Hoskins, I guess in the -- what are you
11 proposing, say, between Mrs. Kilbourn-Jones'
12 property at 85 all the way up to the opening
13 where --

14 THE WITNESS (Frost): Correct. Very
15 similar thing. Our concern there was that the
16 natural topography actually drops from the road,
17 and then starts to rise back up in the back of the
18 property where the solar panels could be located.

19 So, in addition to the street trees,
20 the split-rail fence and the berm, we also added
21 in some sporadic evergreen trees to help mitigate
22 that.

23 MR. MERCIER: So the berm would also be
24 8 to 12 feet?

25 THE WITNESS (Frost): Yes.

1 MR. MERCIER: And again, that would be
2 set 30 to 50 feet off the road?

3 THE WITNESS (Frost): Approximately,
4 yes.

5 MR. MERCIER: That's where the outer
6 edge of the berm would start?

7 THE WITNESS (Frost): We'd expect the
8 outer edge of the berm to start about 20 feet off
9 the edge of the road.

10 MR. MERCIER: So that means it could
11 have about 30 feet --

12 THE WITNESS (Frost): Yes. Which would
13 be 50 feet of that 100-foot buffer.

14 MR. MERCIER: Did you look at the field
15 area where the agricultural field is in relation
16 to the edge of the road, what that distance is
17 where it's actively used?

18 THE WITNESS (Frost): I have. When I
19 was out there, it was a little bit difficult to
20 ascertain where exactly they plow to currently,
21 but I would say they probably hay to within 30
22 feet or so.

23 MR. MERCIER: Okay. So 30 feet.

24 THE WITNESS (Frost): Yes.

25 MR. MERCIER: It may be narrower in

1 other places?

2 THE WITNESS (Frost): It could be.

3 MR. MERCIER: So I think in one of the
4 town responses they stated that the berm would not
5 affect the active agricultural land, the responses
6 that I submitted to them. So I guess what you're
7 stating is the base of the berm would extend onto
8 currently active agricultural land?

9 THE WITNESS (Frost): Well, I guess
10 without a detailed design on that south side, I
11 couldn't be for sure, but it's possible. On the
12 north side I wouldn't expect it because of the --

13 MR. MERCIER: I'm just talking about
14 the south side.

15 THE WITNESS (Frost): Correct.

16 MR. MERCIER: Okay.

17 THE WITNESS (Frost): It's possible.

18 MR. MERCIER: Well, yeah, if the berm
19 is set back from the road 20 to 30 feet, and the
20 base is 30 feet, so yeah, it would extend?

21 THE WITNESS (Frost): It's possible,
22 yes. We weren't really looking at that. We were
23 really looking at the setback between the road and
24 where their perimeter security fence was.

25 MR. MERCIER: What are you proposing

1 along the area west of 84 Hoskins Road -- excuse
2 me, 85 Hoskins Road --

3 THE WITNESS (Frost): Right.

4 MR. MERCIER: -- that goes up to the
5 Squadron School fence?

6 THE WITNESS (Frost): I would say we
7 were continuing -- at the time that we did these,
8 we were envisioning that the berm would continue
9 on the other side, and you turn the corner a
10 little bit to hide it. Now that it sounds like
11 the panels might possibly be relocated, you know,
12 as -- I don't know what exhibit that is -- we did
13 include a plan view that shows our berm as it
14 comes around.

15 MR. MERCIER: So now that the project
16 is now potentially going to be moved away from the
17 south side of 85 Hoskins, do you anticipate the
18 need of a berm there in the town's view or your
19 professional opinion?

20 THE WITNESS (Frost): My professional
21 view is -- and the reason that we were
22 recommending the berm, in particular, is that the
23 colorful aesthetic, as was referenced by some of
24 the neighbors here before, what I find important
25 about this particular area is that agricultural

1 view. And so what I think the berm allows us to
2 do, instead of a vertical fence, is allow to trick
3 the eye a little bit to pretend like that hay
4 field is existing further back, allows the eye to
5 carry back. So I would say as long as we can
6 either use the berm, or a field in front of it,
7 then yes, I think there's a way to mitigate the
8 view on the west side of 85.

9 MR. MERCIER: Well, it's just going to
10 be a field now, there will be no visibility from
11 that area.

12 THE WITNESS (Frost): Depending on
13 where you look from, I think. The further west
14 you go on Hoskins, past the school, you could see
15 behind it potentially.

16 MR. MERCIER: So because you're trying
17 to maintain the agricultural flair of that area
18 through these berms?

19 THE WITNESS (Frost): Correct.

20 MR. MERCIER: And a split-rail fence?

21 THE WITNESS (Frost): Correct.

22 MR. MERCIER: But, I mean, a little bit
23 farther down the road there's already been
24 testimony that there's basically a stockade fence,
25 and there's a chain-link fence at the Squadron

1 School. So, I mean, that's not really the
2 character of the neighborhood. I guess the
3 character of the neighborhood is, what, mixed use
4 suburban with a chain-link and stockade?

5 THE WITNESS (Frost): I would
6 definitely say the character surrounding this
7 300-acre parcel is definitely residential. I
8 think what makes this area special is that
9 agricultural use. And so the more that the
10 project and that character can coexist, I think
11 the better it can possibly be.

12 MR. MERCIER: So, again, the function
13 of the berm is to make it look like a grassland.
14 Is that what you stated?

15 THE WITNESS (Frost): Yes.

16 MR. MERCIER: So are you recommending
17 any type of mowing schedule, or this going to be
18 just a maintained lawn?

19 THE WITNESS (Frost): No, it would not
20 be a maintained lawn. It would be similar to what
21 they're recommending in other places, an annual
22 mowing just to keep the woodies down so that you
23 can have tall fescues, you can have native
24 pollinators, things like that on it. It is used
25 similarly throughout town as a screening

1 treatment.

2 MR. MERCIER: The berms?

3 THE WITNESS (Frost): Yes.

4 MR. MERCIER: From 8 to 12 feet
5 throughout town?

6 THE WITNESS (Frost): I don't know
7 exactly how high they are in other places, but
8 yes, I would say by driving by them, I would guess
9 they're in that 10-foot average range.

10 MR. MERCIER: So the purpose would be
11 just maybe screen a parking lot, or something, in
12 those applications most likely?

13 THE WITNESS (Frost): It screens full
14 buildings too.

15 MR. MERCIER: Full buildings?

16 THE WITNESS (Frost): Yes.

17 MR. MERCIER: Taller than 12 feet
18 potentially?

19 THE WITNESS (Frost): Yes. But due to
20 placements of berms, heights of berms, and
21 placements of buildings, it is possible.

22 MR. MERCIER: Given that these are
23 relatively low in height, I think the testimony is
24 8 to 10 feet off the ground.

25 THE WITNESS (Frost): Yes.

1 MR. MERCIER: So to be consistent then,
2 a smaller berm with some vegetation planted on top
3 would probably mimic what you just spoke about of
4 a berm to screen a building?

5 THE WITNESS (Frost): I would say
6 dependent on site-specific areas, yes. On the
7 north side, I think you can probably go a little
8 bit smaller, again, because you have natural
9 topography working with you. On the south side, I
10 feel that natural topography dropping away. And
11 then as the hill comes back, as you get towards
12 the woodlands, that's where it's a little bit
13 harder to screen.

14 MR. MERCIER: I guess I was just
15 asking, the intent of the berm is to screen the
16 thing entirely?

17 THE WITNESS (Frost): Yes -- well,
18 mostly. I still think there will be places where
19 you'll get a glimpse.

20 MR. MERCIER: But in other applications
21 the town -- it's not to do that. It's just to --
22 you can't screen a building, per se, that's where
23 the other applications are, because the building
24 is higher than 10 to 12 feet?

25 THE WITNESS (Frost): Right. I would

1 just say there are places in town where they have
2 successfully screened buildings with those berms.
3 Is it going to be a hundred percent all the time?
4 Absolutely not.

5 MR. MERCIER: All right. Thank you. I
6 have no other questions.

7 THE CHAIRMAN: Thank you.

8 Vice Chairman, Senator Murphy.

9 SENATOR MURPHY: A couple of questions.
10 The last paragraph of your report it's expressing
11 your opinion and indicating that these changes
12 would add a significant cost?

13 THE WITNESS (Frost): Yes.

14 SENATOR MURPHY: Can you tell us a
15 ballpark figure on the cost?

16 THE WITNESS (Frost): Sure. So we've
17 not done a detailed cost estimate of the whole
18 thing, because I don't think that the plans
19 suffice at this point. What I looked at was the
20 most expensive thing that I can imagine is the
21 earth moving, and the earth moving is already
22 happening on the site. By their proposal, they
23 have a net removal of over 37,000 cubic yards of
24 soil coming off the project. I think this was an
25 excellent opportunity to not have to haul that

1 material off site, use it in the berm, and leave
2 it there.

3 And then also I have a disagreement
4 with them in how they're building the access
5 roads. I think the topsoil should be stripped
6 first, and I think then the topsoil could be used
7 to case on top of that excess cut material.

8 So I think the berm is essentially paid
9 for, if you will, by the earth work already there.
10 The grassland planting is already in the proposal.
11 A split-rail fence is pennies compared to a
12 10-foot high steel and vinyl fence. And some
13 street trees are a pretty insignificant cost.

14 So that was my opinion. And I think
15 it's, at least from this perspective with this
16 amount of detail, it's at least a wash, if not a
17 cost benefit to the town.

18 SENATOR MURPHY: So in coming to this
19 conclusion, using the earth that's being removed
20 there, is a significant factor?

21 THE WITNESS (Frost): Yes.

22 SENATOR MURPHY: I find your testimony
23 interesting in a sense from just listening to you.
24 Who worked with you on doing this?

25 THE WITNESS (Frost): Who worked with

1 me on doing this?

2 SENATOR MURPHY: Yes. Because you
3 answered most of the questions "we" instead of
4 "I."

5 THE WITNESS (Frost): I don't know.
6 Well, the only person that authored this report in
7 my office was me. I guess I'm used to
8 collectively speaking as "we" from my office
9 perspective. And then from the town the only
10 person I had any interaction with was Mr. Rabbitt.

11 SENATOR MURPHY: With Jamie?

12 THE WITNESS (Frost): Yes.

13 SENATOR MURPHY: I think I'll leave it
14 at that, Mr. Chairman.

15 THE CHAIRMAN: Okay. Dr. Klemens?

16 DR. KLEMENS: I just have a couple of
17 questions.

18 I see the berm is going to be totally
19 on the property owned by the petitioner. Correct?

20 THE WITNESS (Frost): I would imagine
21 so, yes.

22 DR. KLEMENS: There's no way to
23 integrate some of the other rights-of-way into it?

24 THE WITNESS (Frost): Without having
25 the detailed survey, I don't know. I would

1 imagine that there could be the possibility to
2 work together.

3 DR. KLEMENS: There's generalized shade
4 trees and assorted evergreens. Is your intent to
5 use only native species, or are you going to be
6 using ornamentals and nonnative species?

7 THE WITNESS (Frost): We normally
8 prefer to go native as much as we possibly can.
9 And I would think from a street tree perspective,
10 there's definitely plenty of natives available
11 that we could use, the grasslands as well, and
12 then the evergreen trees it should be a variety of
13 native. I couldn't think of why we would want to
14 bring in an ornamental.

15 DR. KLEMENS: I couldn't either, but I
16 just want to clarify.

17 Now, the earth is coming from the site,
18 and we had testimony this morning discussing what
19 is in the constituency of the earth on the site.

20 THE WITNESS (Frost): Correct.

21 DR. KLEMENS: Is there anything in your
22 plan to test the quality of what's coming off the
23 site? Because before we had discussion. We were
24 concerned about -- at least I was concerned about
25 potential chlordane herbicide pesticides in the

1 agricultural soils. As a matter of fact, it was
2 kind of interesting we talked earlier about
3 brownfields. I kind of think agricultural fields
4 are like brownfields in many cases.

5 So you're going to take this off, move
6 a large mound of it out really right to the
7 interface of the edge of the property where the
8 public is, where there's interface.

9 How are you going to -- what protocols
10 do we have to ensure that this earth is
11 sufficiently clean to allow it to be brought
12 forward off the property and piled up basically
13 where everybody walks? I mean, it's bringing the
14 stuff right out to the front of the property. So
15 how do you intend to address that?

16 THE WITNESS (Frost): Well, I would say
17 my first and short response is that I think it's
18 the petitioner's responsibility to know if that
19 soil is safe to put there to begin with. And so
20 that's definitely not my job. So I think that the
21 testing needs to be there to ensure that that is a
22 proper placement for the soil. What I would say,
23 if it's not, and it can't be placed there, the
24 expense to haul it away is going to be very
25 astronomical.

1 I am not a licensed environmental
2 professional. In my role, in my professional
3 role, I do hire them to work for me. I have two
4 working for me right now on different projects in
5 the state. My concern here from, again, my
6 limited amount of understanding from hiring people
7 to do the work is that I have some concern about
8 what is in that top layer of soil, what pesticides
9 and herbicides might still reside. It needs to be
10 tested and fully understood.

11 I also have concerns of what's
12 underlaying that, and if there's anymore potential
13 bury spots from past farming where they might have
14 disposed of stuff underground, that I don't know
15 if that's true, then fully understood. So I'd be
16 concerned about if we found any of those, you
17 know, transporting or moving that anywhere on site
18 it shouldn't be touched until we fully understand.

19 DR. KLEMENS: Building a hill or a berm
20 that could be as much as 12 feet high, how do you
21 construct something and make sure it doesn't wash
22 away? Do you start off with rocks or something at
23 the base, or is it just totally a pile of soil?

24 THE WITNESS (Frost): Generally it's a
25 pile of soil. It's just like any other earth work

1 project that we really do where, depending on the
2 machinery on site, how they're planning to move it
3 around, from excavators to bulldozers, it needs to
4 be done in lifts so that it can be compacted as it
5 goes up.

6 DR. KLEMENS: So you're going to
7 compact it so it stays?

8 THE WITNESS (Frost): Yes.

9 DR. KLEMENS: We've had a lot of
10 discussion about wildlife movement.

11 THE WITNESS (Frost): Yes.

12 DR. KLEMENS: What is the slope of that
13 berm going to be? Because there's a certain
14 slope, you need to have a slope that actually
15 they're talking about getting wildlife into the
16 property.

17 THE WITNESS (Frost): Yes.

18 DR. KLEMENS: I don't want these berms
19 to become an obstacle for all these NDDB species
20 we've been talking about to actually crawl over
21 the berm. Are you aware what the optimal slope is
22 for a mountable curb like a Cape Cod curb?

23 THE WITNESS (Frost): This would exceed
24 -- what we had drawn exceeded the mountable -- the
25 slope of a Cape Cod curb, and we did not factor in

1 any NDDDB species crossing the road to go from one
2 berm to the other berm.

3 DR. KLEMENS: So the question is,
4 you're creating it, it's a slope greater than --
5 is it a 2-to-1 slope?

6 THE WITNESS (Frost): We had it drawn
7 at a 3-to-1 slope, and that's definitely, given
8 the horizontal available land, I think that could
9 be modified.

10 DR. KLEMENS: To 4-to-1, which is
11 considered to be the optimal for wildlife to
12 mount?

13 THE WITNESS (Frost): Sure. Yes.

14 DR. KLEMENS: Will these berms affect
15 the flow of water?

16 THE WITNESS (Frost): Yes.

17 DR. KLEMENS: And how is that going to
18 be addressed? How are you going to maintain the
19 hydrology and not end up with big pools behind
20 these berms? How are we going to manage that?

21 THE WITNESS (Frost): Well, the whole
22 system would have to be engineered to make sure
23 you know where it's going and how it's going to
24 get there, if you need to have leak-offs,
25 depending on how it's going to be done. Where we

1 put them, again, directly adjacent to the road, in
2 some instances on the north side, I would say that
3 it's probably better to not have all that runoff
4 coming from the north side down onto the road. It
5 allows it to -- even though it's a pretty large
6 berm, it would be a sediment trap, and it would
7 allow it to filter all that and, you know, before
8 it leaves the site.

9 On the south side, all we'd be doing is
10 basically causing a trap south of the road, if you
11 will, before the water drains onto the --

12 DR. KLEMENS: But are you not concerned
13 potentially of the water flooding the road, ice in
14 the winter? I mean, what I'm trying to understand
15 is, you have a natural topography here. You're
16 placing basically a hill, a large hill.

17 THE WITNESS (Frost): Yes.

18 DR. KLEMENS: How are we going to make
19 sure we keep natural hydrology moving, we also
20 don't create hazards such as water pooling on the
21 road, freezing in the winter --

22 THE WITNESS (Frost): Correct.

23 DR. KLEMENS: -- how do we make it so
24 --

25 THE WITNESS (Frost): You still have to

1 have the drainage swale to either side of the road
2 that, you know, should exist currently, and any
3 natural water flow as it come across has to be
4 dealt with is the best I would say. And we did
5 not do detailed grading plans. We were just
6 suggesting that this is the right methodology.

7 DR. KLEMENS: It's a conceptual --

8 THE WITNESS (Frost): A conceptual
9 plan.

10 DR. KLEMENS: But have you actually
11 installed -- I mean, you've talked about, I guess,
12 more urban areas in Simsbury. Have you had any
13 experience installing a berm or raise such as this
14 in basically a rural landscape?

15 THE WITNESS (Frost): Yes. I mean,
16 we've done it in different developments. We've
17 done it for some, like small commercial -- or not
18 commercial, but institutional clients, like small
19 colleges, and things like that.

20 DR. KLEMENS: So you believe that these
21 issues that are raised, these technical issues,
22 are all resolvable in properly executed plans?

23 THE WITNESS (Frost): I definitely
24 think so.

25 DR. KLEMENS: Thank you. I have no

1 further questions, Mr. Chairman.

2 THE CHAIRMAN: Thank you.

3 Mr. Harder?

4 MR. HARDER: No questions.

5 THE CHAIRMAN: Mr. Lynch?

6 MR. LYNCH: Just one question,
7 Mr. Frost. In answer to Dr. Klemens and other
8 questions, you've designed berms before for other
9 areas, and where Dr. Klemens is interested in, the
10 animals species that may be there?

11 THE WITNESS (Frost): Yes.

12 MR. LYNCH: I'm more interested in the
13 human species, basically any type of off-road
14 vehicle, dirt bikes, ATVs, you know, BMX bikes,
15 that may out in the rural area find this very
16 attractive to go up and down.

17 Now, my question really is, have you
18 encountered this before; and if you have, what
19 have you done to prevent it?

20 THE WITNESS (Frost): I have not
21 encountered it along a roadside where we've done
22 it for screening. I'd say the only place I've
23 really ever encountered especially ATV type use is
24 out in a more remote area, either a new
25 subdivision being built and you have the holes dug

1 and there's nobody around, but not along the
2 roadside.

3 MR. LYNCH: But wouldn't you consider
4 this a remote area, and being Simsbury and Avon
5 and out in the country, I'm sure there's a lot of
6 ATVs and off-track dirt bikes, if you do encounter
7 this, what would you suggest to the town or to the
8 client that they do to prevent it?

9 THE WITNESS (Frost): Good question. I
10 mean, we subscribe to the more eyes, more ears,
11 better results theory. So we do a lot of trail
12 planning also. And the more people you have out
13 there and the more visible it is, the less problem
14 you have. And I just believe that along Hoskins
15 Road, especially, although it's not a main super
16 busy road, there's a lot of people that travel up
17 and down that road every day, enough to make so
18 that if a middle school kid is out on his ATV,
19 he's not going to have enough time without
20 somebody going by and seeing him to have enough
21 fun to make it worth their while. Otherwise, it
22 would be -- my other recommendation, if it truly
23 became a problem, would just be a planting to
24 plant it out in a way so that it deterred people
25 from really going in there.

1 MR. LYNCH: And I don't always want to
2 say it's kids, because there's a lot of adults out
3 there on bikes.

4 THE WITNESS (Frost): Sure. Sure.

5 MR. LYNCH: That's all, Mr. Chairman.

6 THE CHAIRMAN: Thank you.

7 Mr. Silvestri.

8 MR. SILVESTRI: Thank you. I just
9 wanted to follow up on that. I wasn't thinking
10 about ATVs. I was actually thinking about snow
11 sledding. Have you run across anything like that,
12 that happens in the berms that you've constructed?

13 THE WITNESS (Frost): Not on a 12-foot
14 high berm. I mean, it's just not worth it. You
15 know, at a golf course, sure; a neighborhood hill,
16 yes; but 12-foot up where you end on the road,
17 I've never seen it.

18 MR. SILVESTRI: The other question I
19 had. You talked about using these for commercial
20 areas, parking lots, I heard you say small
21 colleges before. On the off chance that the land
22 which is zoned for R40 gets built as a
23 subdivision, do you envision having berms set up
24 to screen the subdivision?

25 THE WITNESS (Frost): I would envision

1 that if the land was to be built according to its
2 current zone, that it would have sufficient
3 setbacks, buffers, and requirements placed on it
4 by the zoning, which are in their zoning
5 documentation, to make it so that it's not
6 blatantly visible from the street. So I would --
7 whether it's a berm, I think berms have been done
8 in Simsbury before, so I could see that as a
9 possibility. There is actually, I believe, a
10 couple neighborhoods that we drove through that
11 had those berms and landscape buffers in the front
12 so that it was an old farm that had been
13 redeveloped, and you don't see the whole
14 neighborhood from the street.

15 MR. SILVESTRI: Thank you.

16 Thank you, Mr. Chairman.

17 THE CHAIRMAN: Thank you.

18 MR. MERCIER: One quick question, Mr.
19 Chairman.

20 THE CHAIRMAN: Yes.

21 MR. MERCIER: I did locate the photos
22 here of your simulations. I just want to make the
23 note that I didn't really see -- the barns aren't
24 really visible due to all your extensive planting
25 and things. So was that really the intent?

1 Because there was quite a bit of discussion on
2 saving the barns for viewing, you know, looking at
3 your layout.

4 THE WITNESS (Frost): Yes.

5 MR. MERCIER: One of them, the west
6 barn, is pretty much totally obscured.

7 THE WITNESS (Frost): Well, so what we
8 did in that visualization was to use the
9 photograph that was provided by the applicant.

10 MR. MERCIER: I understand. I'm just
11 bringing that comment up in your simulation.

12 THE WITNESS (Frost): So from this
13 particular vantage point, yes, the street trees,
14 that last two street trees obstruct the view of
15 the barn. As you drive by the barn, the barn
16 is fully visible.

17 MR. MERCIER: I meant the west barn and
18 looking at your berm design.

19 THE WITNESS (Frost): This is the west
20 barn which is not visible in the original
21 photograph.

22 MR. MERCIER: All right. Thank you.

23 THE CHAIRMAN: Dr. Klemens.

24 DR. KLEMENS: One thing that's just
25 come to mind looking at these pictures. Have you

1 considered the potential actually for -- some of
2 these berms are pretty big and pretty long --
3 could they have any value for -- and they're going
4 to be managed as grassland, a large part. Is
5 there any chance that these could be incorporated
6 into the management plan for grassland nesting
7 birds?

8 THE WITNESS (Frost): If they reach
9 sufficient size, I think it would be great.

10 DR. KLEMENS: What's the total size of
11 the grassland you're going to be proposed to
12 create there?

13 THE WITNESS (Frost): I don't know. I
14 mean --

15 DR. KLEMENS: Just looking at it,
16 that's an interesting potential, the grassland.

17 THE WITNESS (Frost): Based on what I
18 heard before of the 4 to 6 acres, I don't know if
19 that's -- my guess is that's probably not quite
20 that large just because -- it's the existing
21 frontage that exists currently in the proposed
22 project.

23 DR. KLEMENS: But if you took the berm
24 and incorporated it into some other contiguous
25 portions of the site, you could end up with some

1 grassland nesting areas that would make 6 to 8
2 acres in total?

3 THE WITNESS (Frost): Sure.

4 DR. KLEMENS: Potentially you're
5 talking about being creative on conservation.

6 THE WITNESS (Frost): Yes.

7 DR. KLEMENS: Mr. Logan was talking
8 about that.

9 THE WITNESS (Frost): I think that
10 would be a win/win.

11 DR. KLEMENS: You could actually do
12 double duty with those berms.

13 THE WITNESS (Frost): (Nodding head in
14 the affirmative.)

15 DR. KLEMENS: Thank you.

16 THE CHAIRMAN: Attorney Hoffman.

17 MR. HOFFMAN: Is it acceptable if I sit
18 over here?

19 THE CHAIRMAN: Of course, yes.

20 MR. HOFFMAN: At some point, not to
21 betray my hand, but at some point I'm going to ask
22 you to take a look at Viewpoint 39 from Exhibit G
23 of the petition, so you might just want to get
24 that out ahead of time.

25 Good afternoon, Mr. Frost.

1 THE WITNESS (Frost): Good afternoon.

2 MR. HOFFMAN: I've got a bunch of
3 questions. I guess I'll start off easy. Have you
4 ever done landscape architecture -- looking at
5 your CV, have you ever done landscape architecture
6 for any renewable energy projects?

7 THE WITNESS (Frost): No.

8 MR. HOFFMAN: Any energy projects?

9 THE WITNESS (Frost): No.

10 MR. HOFFMAN: Any industrial projects?
11 I know you've done some commercial, but any
12 industrial projects?

13 THE WITNESS (Frost): My short answer
14 would be no.

15 MR. HOFFMAN: Okay. You talked on the
16 first page of your report about accompanying
17 Mr. Rabbitt on a tour of the project area. What
18 did that tour encompass?

19 THE WITNESS (Frost): We rode around in
20 his vehicle, and we basically toured, I think, a
21 very similar path that the Council did by going
22 around on the different roads and visiting the
23 different viewpoints that had been identified in
24 the petition.

25 MR. HOFFMAN: Okay.

1 THE WITNESS (Frost): And just looking
2 at it, taking some photographs, discussing my
3 thoughts.

4 MR. HOFFMAN: Okay. And you talk about
5 the architectural vernacular of the Town of
6 Simsbury?

7 THE WITNESS (Frost): Yes.

8 MR. HOFFMAN: Is it your contention
9 that the Siting Council is bound to follow the
10 architectural vernacular of every town in which a
11 project is situated?

12 THE WITNESS (Frost): I don't know what
13 they're bound to do. I think it's a wise thing to
14 build developments that match the character of the
15 town you're in because that is, in essence, what
16 we all are here for.

17 MR. HOFFMAN: Okay. And how many 8 to
18 12-foot high berms are part of the vernacular of
19 Simsbury?

20 THE WITNESS (Frost): A handful.

21 MR. HOFFMAN: A handful?

22 THE WITNESS (Frost): Yes, it would be
23 my -- yes.

24 MR. HOFFMAN: So let's talk about those
25 berms.

1 THE WITNESS (Frost): Okay.

2 MR. HOFFMAN: And this is where I'm
3 going to get into real trouble because there's
4 math, and I went to law school. But be that as it
5 be, how long in total are we talking about for
6 these berms length wise? There's a height,
7 there's a width, but there's also a length.
8 What's the run of the berm?

9 THE WITNESS (Frost): Without putting a
10 scale on it, I wouldn't know, but I would say in
11 the several -- in the couple hundred feet range is
12 my guess.

13 MR. HOFFMAN: So you have a couple
14 hundred feet by an average of 10 feet, and then
15 there's a width component, and it's kind of shaped
16 like a trapezoid, I'd imagine, where it goes up,
17 and you can't have a knife edge, and then it comes
18 back down. Right?

19 THE WITNESS (Frost): Yes.

20 MR. HOFFMAN: So roughly how many cubic
21 feet are we talking about for soil?

22 THE WITNESS (Frost): I don't know. We
23 did not do the calculation.

24 MR. HOFFMAN: And there was talk about
25 how wide this thing is going to be. So bear with

1 me here. Assume that -- obviously it won't be
2 perfect, right, but there's going to be, call it,
3 a 6-foot flat top, if you will, obviously it will
4 be a little bit undulating, but again, it can't be
5 that knife edge. So assuming a 6-foot high kind
6 of flattish top.

7 On a 3-to-1 slope, how long does it
8 take you on the horizontal axis to get a 3-to-1
9 slope up to a maximum height? And the maximum
10 height is going to be 12 feet for one of these
11 things. So what's the maximum width going to be?

12 MR. LANGER: Can you do that math?

13 THE WITNESS (Frost): I don't know. I
14 would say we drew it to some scale but --

15 MR. HOFFMAN: Well, because what I come
16 up with is it would take you 36 feet of horizontal
17 run to get to the top, then you've got 6 feet on
18 the 3-to-1 slope.

19 THE WITNESS (Frost): Correct.

20 MR. HOFFMAN: And then you've got the
21 36 feet on the back.

22 THE WITNESS (Frost): Correct.

23 MR. HOFFMAN: That comes out to 78
24 feet.

25 THE WITNESS (Frost): Yes, at the worst

1 case scenario, yes.

2 MR. HOFFMAN: Right. But that's a
3 3-to-1 slope.

4 THE WITNESS (Frost): Yes.

5 MR. HOFFMAN: Can you mow a 3-to-1
6 slope?

7 THE WITNESS (Frost): Yes.

8 MR. HOFFMAN: Is it recommended to
9 power mow a 3-to-1 slope? Isn't that pretty
10 steep?

11 THE WITNESS (Frost): It's fairly
12 steep, but it's definitely mowable.

13 MR. HOFFMAN: Okay. And you were
14 talking to Dr. Klemens about how a 4-to-1 slope
15 would be better. Right?

16 THE WITNESS (Frost): Well, it could be
17 done, and I'd say it could be done in places,
18 right.

19 MR. HOFFMAN: How wide is that 4-to-1
20 slope going to be?

21 THE WITNESS (Frost): It could be
22 wider, it could be narrower, if you don't go all
23 the way up to the full height.

24 MR. HOFFMAN: But maximum you're
25 talking, again, if you do 12 feet, right, it would

1 be roughly 40 feet, and then 6 feet, and then --

2 THE WITNESS (Frost): Sure, yes, if
3 you're starting from zero on both sides.

4 MR. HOFFMAN: Okay. So that's a lot
5 wider than 30 to 50 feet?

6 THE WITNESS (Frost): Yes, it is.

7 MR. HOFFMAN: So what does -- and I
8 don't know if you were here, but certainly in the
9 petition we talk about the quality of the soils.
10 How would you describe the quality of the soils
11 that are at the site?

12 THE WITNESS (Frost): I have no idea.

13 MR. HOFFMAN: Others have described
14 them as droughty, sandy farm soils. Do you have
15 any reason to doubt that?

16 THE WITNESS (Frost): No.

17 MR. HOFFMAN: So assuming that that's
18 the case, how easy is it to build a berm of 8 to
19 12 feet high?

20 THE WITNESS (Frost): Well, I'd say
21 that there's areas out there that are holding
22 about the approximate slope now with the existing
23 soil, so I think it's --

24 MR. HOFFMAN: That are 8 to 12 feet
25 high?

1 THE WITNESS (Frost): There's hills
2 that are 30 to 40 feet high of sloping topography
3 out there.

4 MR. HOFFMAN: They're a lot wider than
5 what you're talking about here. Right?

6 THE WITNESS (Frost): By percentage of
7 slope, I don't know.

8 MR. HOFFMAN: So what would be the
9 change in net runoff for stormwater purposes as a
10 result of berming up over 100 feet?

11 THE WITNESS (Frost): I don't know.

12 MR. HOFFMAN: What about the stormwater
13 pollution plan, do flow patterns change?

14 THE WITNESS (Frost): Potentially. I
15 think they can be addressed.

16 MR. HOFFMAN: How?

17 THE WITNESS (Frost): Well, I think, as
18 part of the overall plan, if a berm is integrated
19 into the overall grading plan, then it's
20 definitely manageable to determine where that
21 flow, if it's going to change, where it might
22 change, or how to deal with it in a responsible
23 manner.

24 MR. HOFFMAN: Could you take a look at
25 Viewpoint 39 for a minute?

1 THE WITNESS (Frost): Yes.

2 MR. LANGER: I've got to find it.

3 MR. HOFFMAN: Attorney Langer, it's
4 Exhibit G, figure -- well, the viewpoints are kind
5 of in numeric order, and I'm looking at the before
6 viewpoint, not the after.

7 MR. LANGER: Okay.

8 MR. HOFFMAN: You'll know you're there
9 when you see a barn on the right-hand side and a
10 truck in the middle of the picture.

11 So the berm is going to start, what,
12 behind that truck, kind of where just laterally in
13 towards the project, kind of where the bush is, if
14 you will, in the left third of the project, right,
15 that's where the berm starts-ish?

16 THE WITNESS (Frost): I would imagine
17 it's closer to the road. If you look there, the
18 road is already berming up a good --

19 MR. HOFFMAN: Yeah, right there the
20 road does berm up a bit. Okay.

21 THE WITNESS (Frost): Right. So that's
22 5 feet of the berm.

23 MR. HOFFMAN: Okay. And then the shade
24 tree goes -- the shade trees go in front of the
25 berm. Right?

1 THE WITNESS (Frost): Correct.

2 MR. HOFFMAN: So they go in front of
3 the truck?

4 THE WITNESS (Frost): Correct.

5 MR. HOFFMAN: What do we do about the
6 power lines?

7 THE WITNESS (Frost): They're behind
8 the power lines --

9 MR. HOFFMAN: How far though?

10 THE WITNESS (Frost): -- the trees. We
11 are showing that the truck itself would be behind
12 it. Without, again, the detailed survey, I can't
13 tell you if it's 10 feet, 15 feet, 5 feet. But
14 again, I think that's totally something that can
15 be dealt with in detailed plans.

16 MR. HOFFMAN: Show me where in your
17 report you've got the power lines on here, because
18 I can't see it on the drawing.

19 THE WITNESS (Frost): We don't have
20 them in the drawing.

21 MR. HOFFMAN: Okay. So we have to get
22 the trees behind the power lines with enough
23 clearance so that we meet Eversource requirements
24 for tree limbs on power lines. Right?

25 THE WITNESS (Frost): I don't think

1 there are any requirements.

2 MR. HOFFMAN: Trust me, I spent three
3 months of my life helping to develop those
4 requirements. They're there.

5 THE WITNESS (Frost): Okay.

6 MR. HOFFMAN: So we've got to set the
7 trees back, and then we're doing the split-rail
8 fence, and then we're doing the berm. And the
9 berm is anywhere from 78 feet to maybe 102 feet
10 into the project. Do I have that right now?

11 THE WITNESS (Frost): Possibly.

12 MR. HOFFMAN: Okay. I apologize. I
13 lost my place.

14 And you're a landscape architect, so
15 talk to me about growing plantings on berms. How
16 difficult is that? Is that the same as growing on
17 a flat ground?

18 THE WITNESS (Frost): Not quite.

19 MR. HOFFMAN: Not quite. Describe the
20 difference.

21 THE WITNESS (Frost): Well, you
22 obviously have the soil runoff, you know, the
23 water runs off a little bit quicker, so you want
24 to have it perk into the soil a little bit better.
25 It tends to be a little bit drier soil because

1 it's a hillside and not a flat ground.

2 MR. HOFFMAN: Okay. So it's going to
3 be more difficult to grow plantings on the berm?

4 THE WITNESS (Frost): I don't think so.

5 MR. HOFFMAN: Well, you just said it's
6 going to dry out quicker.

7 THE WITNESS (Frost): It dries out
8 quicker. If you use a tall fescue mix, like has
9 been proposed, and I think it's something that
10 would be suitable to grow.

11 MR. HOFFMAN: And you say in your
12 report that the proposed split-rail fence is
13 significantly less expensive, it will be 75
14 percent less than the proposed 10-foot vinyl
15 fence. And you also say that the cost of the
16 above recommendations are not out of line with the
17 scope and scale of the proposed project. I grant
18 you, the split-rail fence is a lot cheaper than
19 the fence that we've proposed. But what's your
20 basis for the first sentence in page 3 of 3, first
21 sentence, first full paragraph, page 3 of 3 of
22 your report where you say, "It's my opinion that
23 the cost of the above recommendations are not out
24 of line with the scope and scale of the proposed
25 budget and should not be used as rationale for

1 relief"?

2 THE WITNESS (Frost): That for a very
3 significantly sized project that this small amount
4 of area that has a big impact to the community is
5 in line.

6 MR. HOFFMAN: But you don't know what
7 the cost of it's going to be. Do you?

8 THE WITNESS (Frost): I think it's
9 approximately very similar to what you're
10 proposing.

11 MR. HOFFMAN: Great. What's the basis
12 for that thinking?

13 THE WITNESS (Frost): Just my own
14 experience.

15 MR. HOFFMAN: You've built a 12-foot
16 high berm that's 100 feet long on sandy soils in
17 Simsbury?

18 THE WITNESS (Frost): No. I haven't
19 built a 10-foot high vinyl fence in Simsbury
20 either. I'm just using my experience on what both
21 could cost if you're already hauling the material
22 that it would not be, in my opinion, a significant
23 additional cost versus trucking the material off
24 site.

25 MR. HOFFMAN: Well, where in the

1 petition do you see that we're going to truck off
2 any soil?

3 THE WITNESS (Frost): Well, there was a
4 cut of 37,000 cubic yards without any placement of
5 it on site.

6 MR. HOFFMAN: But there's no where that
7 says that it's going to leave the site either. It
8 just says that there's a cut. Correct?

9 THE WITNESS (Frost): Well, if there's
10 a cut fill that's not balanced, it's either an
11 import or an export.

12 MR. HOFFMAN: I'm not arguing that
13 point. And maybe we do have to berm, but I'm just
14 daunted by a 12-foot high berm.

15 What's the cost of the vinyl fence?

16 THE WITNESS (Frost): According to your
17 petition, I believe it was 107 or \$110 a foot,
18 which I think is low.

19 MR. HOFFMAN: Great. And so what do
20 you think that is for the run of the project?

21 THE WITNESS (Frost): I don't know.

22 MR. HOFFMAN: Okay. So you don't know
23 what the fence is going to cost for the project,
24 and you don't have any cost data for your plan,
25 but you think that the costs are even?

1 THE WITNESS (Frost): Well, what I did
2 was look at a per linear price. If you're already
3 moving the soil, and it needs to be picked up and
4 moved from A to B, that cost is moot without
5 getting into very detailed plans. If we're
6 proposing a fence that's significantly less money
7 than the fence proposed, then there's a savings.
8 I believe that, yes, there's a tiny bit amount of
9 additional seeding needed for the grass because
10 you have a longer mound to cover than a flat
11 ground. And the street trees are somewhere there
12 in the wash. When you get down to a linear foot
13 price, you're saving 75 percent on a lineal foot
14 of fencing. When you're spreading out your trees
15 30 feet on center, 50 feet on center, for street
16 trees, I think it's close.

17 MR. HOFFMAN: There's a lot going on in
18 this petition as it relates to agriculture, as I'm
19 sure you're aware. Are you aware of the different
20 layers of soil that are involved here, substrata
21 A, substrata B, and the agricultural significance
22 of each?

23 THE WITNESS (Frost): No.

24 MR. HOFFMAN: Do you have any idea what
25 the impact would be of moving the soil around to

1 make the berm on future agricultural uses of the
2 property?

3 THE WITNESS (Frost): Depending on how
4 you're moving it. I mean, if you're having to
5 haul it off site, you're already moving it from
6 where you're taking it to an edge to remove.

7 MR. HOFFMAN: Granted. But I'm talking
8 about this.

9 THE WITNESS (Frost): Yes.

10 MR. HOFFMAN: Are you aware of what the
11 agricultural impacts would be of your proposed
12 plan?

13 THE WITNESS (Frost): The short answer
14 would be no.

15 MR. HOFFMAN: I have nothing further.
16 Thanks.

17 THE CHAIRMAN: Department of
18 Agriculture, do you have any --

19 MR. BOWSA: No questions for this
20 witness at this time.

21 THE CHAIRMAN: Attorney Kosloff?

22 MR. KOSLOFF: No questions.

23 THE CHAIRMAN: I'm told we either have
24 the option of going till midnight, at which time
25 we still won't finish, or we will now announce

1 that we'll continue this evidentiary hearing at
2 the same place here in New Britain Thursday,
3 November 2, 2017 at 11 a.m. in the bigger hearing
4 room.

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

10 I also want to remind you that the
11 interrogatories you promised next week, the
12 responses, so I hold you to that.

13 MR. KOSLOFF: Yes.

14 THE CHAIRMAN: Copies of the transcript
15 of this hearing will be filed in the Simsbury and
16 Granby Town Clerks' offices.

17 I hereby declare this portion of the
18 hearing closed. We'll adjourn. Thank you all for
19 your participation.

20 (Whereupon, the witness was excused and
21 the hearing adjourned at 4:32 p.m.)

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CERTIFICATE

I hereby certify that the foregoing 240 pages are a complete and accurate computer-aided transcription of my original stenotype notes taken of the Continued Hearing in Re: PETITION NO. 1313, DWW SOLAR II, LLC PETITION FOR A DECLARATORY RULING THAT NO CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED IS REQUIRED FOR THE PROPOSED CONSTRUCTION, MAINTENANCE AND OPERATION OF A 26.4 MEGAWATT AC SOLAR PHOTOVOLTAIC ELECTRIC GENERATING FACILITY ON APPROXIMATELY 289 ACRES COMPRISED OF 5 SEPARATE AND ABUTTING PRIVATELY-OWNED PARCELS LOCATED GENERALLY WEST OF HOPMEADOW STREET, NORTH AND SOUTH OF HOSKINS ROAD, AND NORTH AND EAST OF COUNTY ROAD, AND ASSOCIATED ELECTRICAL INTERCONNECTION TO EVERSOURCE ENERGY'S NORTH SIMSBURY SUBSTATION WEST OF HOPMEADOW STREET IN SIMSBURY, CONNECTICUT, which was held before ROBERT STEIN, Chairman, at 10 Franklin Square, New Britain, Connecticut, on October 10, 2017.



Lisa L. Warner, L.S.R., 061
Court Reporter

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