

In The Matter Of:
STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Petition No. 1313
November 2, 2017

BCT Reporting LLC
PO Box 1774
Bristol, CT 06010
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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 November 2,
22 2017, beginning at 11:01 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:

4

 ROBERT HANNON

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 DR. MICHAEL W. KLEMENS

6

 LARRY P. LEVESQUE, ESQ.

7

 DANIEL P. LYNCH

8

 ROBERT SILVESTRI

9

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 Council Staff:

11

 MELANIE BACHMAN, ESQ.

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 Executive Director and

13

 Staff Attorney

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15

 ROBERT MERCIER

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 Siting Analyst

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 For the Applicant:

19

 PULLMAN & COMLEY, LLC

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 90 State House Square

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 Hartford, Connecticut 06103-3702

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 BY: LEE D. HOFFMAN, ESQ.

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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 ROBERT M. DeCRESCENZO, ESQ.

10

11 For the Department of Agriculture:

12 CONNECTICUT DEPARTMENT OF AGRICULTURE

13 450 Columbus Boulevard

14 Hartford, Connecticut 06103

15 BY: JASON BOWSZA

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17 Present for the Abutting Property Owners:

18 LAURA NIGRO

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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 on Petition 1313
4 today, Thursday, November 2, 2017, at 11 a.m. My
5 name is Robin Stein. I'm Chairman of the
6 Connecticut Siting Council.

7 This evidentiary hearing is a
8 continuation of a public hearing held on September
9 12, 2017 in the Eno Memorial Hall Auditorium in
10 Simsbury and on October 10, 2017 in New Britain.
11 It is held pursuant to the provisions of Title 16
12 of the Connecticut General Statutes and of the
13 Uniform Administrative Procedure Act upon a
14 petition from DWW Solar II, LLC for a declaratory
15 ruling and no Certificate of Environmental
16 Compatibility and Public Need is required for the
17 proposed construction, maintenance and operation
18 of a 26.4 megawatt AC solar photovoltaic electric
19 generating facility on approximately 289 acres
20 comprised of 5 separate and abutting
21 privately-owned parcels located generally west of
22 Hopmeadow Street, north and south of Hoskins Road,
23 and north and east of County Road, and associated
24 electrical interconnection to Eversource Energy's
25 North Simsbury Substation west of Hopmeadow Street

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

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

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

10 And first we have DWW Solar II, LLC
11 request for an additional administrative notice
12 item, dated October 26, 2017.

13 Our Executive Director and Staff
14 Attorney, Attorney Bachman, may wish to comment.

15 MS. BACHMAN: Thank you, Mr. Chairman.
16 The petitioner has requested administrative notice
17 be taken of the Council's declaratory ruling in
18 Petition Number 1104, and staff recommends that
19 request be granted.

20 THE CHAIRMAN: Can I get a motion?

21 MR. SILVESTRI: So moved.

22 DR. KLEMENS: Second.

23 THE CHAIRMAN: Motion and second.

24 Any discussion?

25 (No response.)

1 THE CHAIRMAN: All those in favor,
2 signify by saying aye.

3 THE COUNCIL: Aye.

4 THE CHAIRMAN: Opposed? Abstention?

5 (No response.)

6 THE CHAIRMAN: Motion carries.

7 Item two, DWW Solar II, LLC has filed a
8 motion to compel interrogatory responses from the
9 Department of Agriculture and to make Commissioner
10 Steven K. Reviczky available for
11 cross-examination, or in the alternative, to
12 compel the Department of Agriculture to respond to
13 Interrogatories 37 and 38 from DWW Solar II, LLC,
14 dated October 19, 2017.

15 Attorney Bachman may wish to comment.

16 MS. BACHMAN: Thank you, Mr. Chairman.
17 The motion was filed last night to compel the
18 responses to interrogatories from the Department
19 of Agriculture, or in the alternative, to have the
20 commissioner available here today for
21 cross-examination. However, under Connecticut
22 General Statute Section 4-13a, the appearance of
23 an assistant on a subpoena of a state officer,
24 although this is not a subpoenaed situation,
25 certainly the commissioner has the authority to

1 designate an assistant, or a staff member,
2 particularly Chief of Staff Bowsza, to respond to
3 any questions that may be propounded upon to the
4 Department of Agriculture by any of the parties
5 and the Council in this matter, and therefore
6 staff recommends that the motion be denied.

7 DR. KLEMENS: So moved.

8 MR. SILVESTRI: Second.

9 THE CHAIRMAN: Any further discussion?

10 (No response.)

11 THE CHAIRMAN: All those in favor,
12 signify by saying aye.

13 MR. LEVESQUE: Aye.

14 DR. KLEMENS: Aye.

15 MR. SILVESTRI: Aye.

16 MR. HANNON: Aye.

17 THE CHAIRMAN: Opposed? Abstention?

18 MR. LYNCH: Opposed.

19 THE CHAIRMAN: The motion carries.

20 We'll now proceed with the appearance
21 of the party, Department of Agriculture. And
22 we'll begin by swearing in the party's witnesses.
23 Please stand.

24

25

1 J A S O N B O W S Z A,
2 K I P E N K O L E S I N S K A S,
3 S T E P H E N A N D E R S O N,

4 called as witnesses, being first duly sworn
5 by Ms. Bachman, were examined and testified
6 on their oaths as follows:

7 MS. BACHMAN: Thank you.

8 THE CHAIRMAN: And I guess all three of
9 you have submitted exhibits under the hearing
10 program Roman Numeral III-B-1 through 7 for
11 identification purposes.

12 Is there any objection to making these
13 exhibits for identification purposes only at this
14 time?

15 (No response.)

16 THE CHAIRMAN: Hearing and seeing none,
17 so I'll just go through the process for admission
18 of these, and I guess all three can answer.

19 Did you prepare or assist in the
20 preparation of Exhibits B-1 through 7?

21 THE WITNESS (Bowsza): Yes, sir.

22 THE WITNESS (Kolesinskas): Yes.

23 THE WITNESS (Anderson): Yes.

24 THE CHAIRMAN: Do you have any
25 additions, clarifications, deletions or

1 modifications to these documents?

2 THE WITNESS (Bowsza): No, sir.

3 THE WITNESS (Kolesinskas): No, sir.

4 THE WITNESS (Anderson): No.

5 THE CHAIRMAN: Are these exhibits true
6 and accurate to the best of your knowledge?

7 THE WITNESS (Bowsza): Yes, sir.

8 THE WITNESS (Kolesinskas): Yes.

9 THE WITNESS (Anderson): Yes.

10 THE CHAIRMAN: Do you offer these
11 exhibits as your testimony here today?

12 THE WITNESS (Bowsza): We do.

13 THE WITNESS (Kolesinskas): Yes.

14 THE WITNESS (Anderson): Yes.

15 THE CHAIRMAN: And do you offer them as
16 full exhibits?

17 THE WITNESS (Bowsza): Yes, sir.

18 THE WITNESS (Kolesinskas): Yes, sir.

19 THE WITNESS (Anderson): Yes.

20 THE CHAIRMAN: Thank you.

21 Does any party or intervenor object to
22 the admission of these exhibits?

23 MR. HOFFMAN: No objection.

24 THE CHAIRMAN: Hearing and seeing none,
25 these exhibits are admitted.

1 (Connecticut Department of Agriculture
2 Exhibits III-B-1 through III-B-7: Received in
3 evidence - described in index.)

4 THE CHAIRMAN: Okay. We'll now begin
5 with cross-examination first by staff,
6 Mr. Mercier.

7 THE WITNESS (Bowsza): Mr. Chairman,
8 before we move onto that, in the Council's items
9 for administrative notice there is an update that
10 the Department would ask that the Council take
11 notice of, Number 89, the State of Connecticut
12 State Vegetation Management Task Force has been
13 updated since this list was first compiled. We
14 ask that the Council take notice of the updated
15 version.

16 THE CHAIRMAN: Yes, we'll add that to
17 the record. Thank you.

18 THE WITNESS (Bowsza): Thank you.

19 CROSS-EXAMINATION

20 MR. MERCIER: Thank you. I just have a
21 couple questions on the prefiled testimony related
22 to Number 48. It has to do with the Farmlink
23 program that was referenced. And that was
24 described as matching landowners with farmers so
25 they could use property to farm obviously. Is

1 there a minimum acreage required to enter the
2 Farmlink program?

3 THE WITNESS (Kolesinskas): No, there
4 is not.

5 MR. MERCIER: Do you know if this
6 collection of properties that's part of this
7 project were part of the Farmlink program?

8 THE WITNESS (Kolesinskas): No, they
9 are not.

10 MR. MERCIER: I just have a general
11 question regarding the difference between prime
12 agricultural soil and soils of statewide
13 significance. Now, generally would crops grow
14 better, would there be a better yield on prime
15 soil as compared to statewide important soil, or
16 is it all dependent on how much fertilizer and
17 other things they add to the soil?

18 THE WITNESS (Kolesinskas): It depends
19 on what the crop and management would be, and
20 though typically prime farmland soils have the
21 physical and chemical characteristics and spatial
22 relationship to the landscape that they're able to
23 produce high yields of most common agricultural
24 crops with less inputs and less potential
25 environmental damage than statewide important

1 soils.

2 MR. MERCIER: That's all I have for
3 questions right now. Thank you.

4 THE CHAIRMAN: Okay. We'll now go with
5 questions by Council members.

6 Mr. Silvestri.

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

9 Just a few questions for you. Are you
10 aware of farmlands within the state that have been
11 abandoned?

12 THE WITNESS (Kolesinskas): I guess it
13 depends on what you mean by "abandoned."

14 MR. SILVESTRI: The quote/unquote
15 farmland would still be there, it hasn't been used
16 in years, it's there as an open space, but it's no
17 longer farmed.

18 THE WITNESS (Kolesinskas): Right.
19 There are many reasons why there is farmland
20 that's not actively used. It could be being held
21 for speculation for development. It could be
22 because of estate planning issues within a family.
23 There's a variety of reasons. But yes, there is
24 agricultural land out there that currently is not
25 being used for production.

1 MR. SILVESTRI: The reason I'm asking,
2 if I remember correctly, if you leave a forested
3 area untouched so it still remains a forested
4 area, it will have the potential for maybe some
5 species succession, but it still stays as a
6 forest. So the question I was trying to get to
7 is, if the farmland is no longer used such that
8 it's abandoned, what would happen to the soils,
9 would they still lose viability after a period of
10 time?

11 THE WITNESS (Kolesinskas): Because
12 where we are in Connecticut, we're between more of
13 northern forest ecosystems and Mid-Atlantic
14 ecosystems, which are typically forested, that
15 basically everything wants to convert back to
16 forestland unless there's some management of some
17 sort. And though, of course, people have been
18 farming in Connecticut for over 350 years, and
19 Native Americans from a historical perspective
20 have farmed for over a thousand years here. But
21 typically without management of some sort of fire
22 or human manipulation, they would go back to some
23 sort of forest or brush or other kinds of woody
24 vegetation in most cases with small areas from
25 natural disturbance that may be grassy. So

1 flooding or natural fire events, you could get
2 some grassland areas.

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

5 THE CHAIRMAN: Dr. Klemens.

6 DR. KLEMENS: I just have two
7 questions. Are you aware of any agricultural
8 lands that also could be considered brownfields
9 because of the past land use pesticide, chlordane
10 applications?

11 THE WITNESS (Kolesinskas): Yes. And
12 again, depending on why they are brownfields,
13 typically in a number of urban areas, you know,
14 certainly one that comes to mind is portions of
15 the Urban Oaks property, the former Urban Oaks in
16 New Britain that are used for agriculture that
17 were brownfields and a number of urban and
18 community gardens were brownfield sites, and
19 typically they've taken various steps to make sure
20 that there's minimal risk.

21 DR. KLEMENS: But you don't consider
22 this particular area to have any brownfield
23 characteristics because of the past use of
24 pesticides and herbicides?

25 THE WITNESS (Kolesinskas): No. Again,

1 I don't have any data or information of
2 specifically what levels there might be to know
3 what particular threat that there might be on
4 these parcels, and though there are lots of former
5 tobacco land that are currently used for
6 agricultural production.

7 DR. KLEMENS: Thank you.

8 And I have only one other question
9 dealing with Interrogatory Number 9. The response
10 you basically didn't answer about the grasslands
11 because your position, I think, reading, is that
12 this is not a grassland. But you said something
13 that I'd like you to clarify, that it's going to
14 be "dominated by impervious surfaces." Could you
15 elaborate on what you're considering to be the
16 impervious surfaces that are dominating the
17 landscape?

18 THE WITNESS (Kolesinskas): Yes. I
19 would consider the solar panels to be impervious
20 surface.

21 DR. KLEMENS: Even though, despite the
22 fact that they're elevated and the soil underneath
23 you're considering them to be impervious?

24 THE WITNESS (Kolesinskas): I would
25 consider them to be impervious surface, such as a

1 roof of a house or a shed would be considered
2 impervious surface.

3 DR. KLEMENS: But a roof of a house or
4 a shed is built upon a foundation which excludes
5 water. What I'm asking you is, these things are
6 elevated on posts and there is some accessibility,
7 so could you just sort of work with me on this?

8 THE WITNESS (Kolesinskas): Yes.

9 DR. KLEMENS: Help me understand why
10 you consider it analogous to a house.

11 THE WITNESS (Kolesinskas): Right.
12 Well, again, because of a roof that's not pervious
13 and it's changing the hydrologic flow, so it's
14 coming off the drip edge just like it may come off
15 the roof of the house, and so it's not directly
16 falling onto the landscape, it's changing the
17 hydrology. There are certainly other structures
18 of sheds like what we would call a run-in shed
19 that may be used for animals or equipment that may
20 not have a foundation either, but for purposes of
21 agricultural easements and of I would say even as
22 far as you're really looking at runoff
23 calculations, you need to consider that as a level
24 of imperviousness.

25 DR. KLEMENS: This is my final

1 question. Is it your position that the perviosity
2 of the soils below the panels, they have no
3 pervious value to absorb runoff, is it totally
4 devoid, or are they partially compromised?

5 THE WITNESS (Kolesinskas): I would say
6 that they're partially comprised. And again, the
7 other thing is too that it's also not a natural
8 soil landscape. There will be manipulation, there
9 will be grading, there will be compaction, which
10 also influences the ability of the soil to
11 infiltrate and percolate water down through the
12 soil. So I would say it's certainly been -- it
13 will be modified, but it's certainly not totally
14 impervious in most cases underneath the panels.

15 DR. KLEMENS: Thank you. No further
16 questions, Mr. Chairman.

17 THE CHAIRMAN: Mr. Levesque?

18 MR. LEVESQUE: Yes. In your filed
19 testimony on page 12, your Question 42, I can just
20 read the sentence for you, page 12, 42. You
21 commented on the "Metal posts could corrode and
22 leach contaminants into the soil." Do you want to
23 elaborate on that?

24 THE WITNESS (Kolesinskas): Well, at
25 this point in time I don't believe that they have

1 decided upon exactly what kind of structure or
2 material and what the origin is of what will be
3 used for supporting the panels. So it's really
4 hard to know, and though there is in soils, there
5 is typically some corrosion risk to metal. So
6 again, depending on what they are, how they're
7 treated, what the source of the metal posts were,
8 if it is indeed a metal post versus a concrete,
9 that needs to be in consideration. Because the
10 soil will, without management, it will continue to
11 acidify.

12 MR. LEVESQUE: So maybe your commentary
13 sort of -- might be most likely refer to the steel
14 posts which are most common?

15 THE WITNESS (Kolesinskas): Right.
16 Untreated steel posts is, I guess, one of the
17 things that's being considered for as a support.

18 MR. LEVESQUE: And the reinforced like
19 concrete ones would leach less?

20 THE WITNESS (Kolesinskas): Well, they
21 wouldn't be treated with galvanization or other
22 material. They may break down over time. It's
23 certainly possible if the soils continue to
24 acidify, but there are other soil chemical
25 mechanisms that go on with concrete in soils

1 versus metal.

2 MR. LEVESQUE: How about is there any
3 new developments that could be less harmful to the
4 soil like other man-made products, including like
5 composites?

6 THE WITNESS (Kolesinskas): I would say
7 that's outside of my area of expertise of what
8 other materials might be available to them.

9 MR. LEVESQUE: Okay. Thank you very
10 much.

11 THE CHAIRMAN: Mr. Hannon?

12 MR. HANNON: Thank you, Mr. Chairman.
13 I do have a few questions.

14 Based on the department's responses to
15 Connecticut Siting Council interrogatories, Set
16 One, dated October 3rd, also going back to
17 Interrogatory Number 9, can agricultural fields
18 that are managed as grassland for 20 to 25 years
19 be restored for crop production.

20 And, for the record, I just want to
21 make sure that when you're saying no, you're using
22 a formal definition of grasslands where I think
23 maybe the applicant is using a generic definition.
24 Is that correct?

25 THE WITNESS (Kolesinskas): Is that a

1 question for me or for the applicant? For me?

2 MR. HANNON: No, it's for you.

3 THE WITNESS (Kolesinskas): Right. So
4 if you were to look from an aerial image down onto
5 this, you would not recognize that as grasslands.
6 It's not being put forward as a proposal for
7 grasslands. If you were to use any of the federal
8 or state definitions of land use, land cover, it
9 would not be grasslands, it would be another
10 category.

11 So to me this is an industrial array
12 that will have some vegetation. It will take
13 specific management to be able to have a grass
14 component to it and whether or not over 25 years
15 that vegetation, what component of it is grass,
16 whether or not you would consider that there's
17 even grass there, or whether it's other kinds of
18 forbs and woody species. So they want to have
19 vegetation there to stabilize the soil and for
20 other reasons, but we object to having it be
21 called grasslands.

22 MR. HANNON: So you're talking about
23 that from a technical perspective?

24 THE WITNESS (Kolesinskas): Correct.

25 MR. HANNON: The applicant may be just

1 using that as a generic term?

2 THE WITNESS (Kolesinskas): Right, a
3 generic term, which is quite common to use generic
4 terms.

5 MR. HANNON: Thank you. In
6 Interrogatory Number 10, it's talking about the
7 use of agriculture, herbicides and pesticides. I
8 guess part of the question I have is I think
9 somewhere in -- it may have been in your prefile
10 testimony -- but you were talking about if these
11 agricultural uses are done sort of according to
12 rule and best management practices, they really
13 shouldn't be a problem. I just want to see if
14 that is in fact sort of your position on the use
15 of the herbicides and pesticides?

16 THE WITNESS (Kolesinskas): Right. So
17 the use of herbicides and pesticides, and again
18 depending on what the kind of agriculture that may
19 be on a site over the life span as agriculture and
20 the technology continues to evolve, it may use
21 pesticides, it may use herbicides, it may use
22 fertilizers. They may be organic, they may be
23 inorganic. But again, if they're used at the rate
24 that they're -- the right kind of chemical and
25 fertilizer and pesticide used the right way by a

1 trained applicator and used as part of an
2 integrated crop management system, integrated pest
3 management system, it should be fine. It's part
4 of an agricultural ecosystem.

5 MR. HANNON: Interrogatory Number 12
6 dealing with properties close to streams and
7 wetlands. In general, would you say that because
8 of the amount of farmland that is being reduced in
9 the State of Connecticut, and with some of the
10 industries that tend to produce some of the
11 fertilizers, for example, some of the chicken
12 farms where you have the use of liquid manure
13 spread on property, are you finding that there is
14 more of a problem dealing with nutrient loads on
15 local farms?

16 THE WITNESS (Kolesinskas): I would say
17 that it depends on where you are in the state and,
18 you know, the particular field and soil landscape.
19 I mean, there are certainly watersheds over in the
20 eastern part of the state which have had a large
21 amount of poultry manure supplied over time and
22 cow manure where they have very high soil
23 phosphorus levels and the USDA Natural Resources
24 Conservation Service, DEEP Conservation Districts
25 are working with the agricultural community to use

1 best management practices to minimize risk and
2 improve water quality.

3 MR. HANNON: I just have a general
4 question along those lines. If a farm area is no
5 longer active, but yet over the years they had
6 applied maybe excess fertilizers, things of that
7 nature, would that still continue to be a problem
8 for quite some time? And you get the heavy rains.
9 Is that going to create problems in the local
10 wetlands and watercourses?

11 THE WITNESS (Kolesinskas): Well,
12 again, if you're asking in a general way.

13 MR. HANNON: In a general way.

14 THE WITNESS (Kolesinskas): In a
15 general way that some nutrients are more
16 susceptible to leaching, and some of them are held
17 more tightly to the soil. For instance phosphorus
18 is held pretty tightly to the soil and is not as
19 prone to leaching unless it's at very high levels,
20 while nitrogen and potassium tend to leach over
21 time. And again, depending on the vegetation and
22 how it's managed, some plant communities are able
23 to take that up and utilize it. And even within
24 natural systems there is a nutrient cycle where
25 nutrients will continue, some of them will leach,

1 some of them will be recycled.

2 MR. HANNON: In Interrogatory 19, page
3 14, you provided some approximate areas associated
4 with certain activities associated with this
5 proposed solar project. I went back and played
6 around with some numbers, and I'm having some
7 difficulty with the numbers you provided. So I
8 want to get a better understanding of where or how
9 you came up with these numbers because the numbers
10 I came up with are significantly lower.

11 THE WITNESS (Kolesinskas): Sure.
12 Well, first, if you start with --

13 MR. HANNON: Let me interrupt you for a
14 second. The two, in particular, I'm looking at
15 are the over 4.5 miles of roads, and the
16 installation of over 9,600 posts. Those are the
17 two, in particular, I'm interested in.

18 THE WITNESS (Kolesinskas): Right. So,
19 the over 4.5 miles of roads, conduit trenching,
20 walking paths and fences. So again, if you again
21 look at if indeed what's being proposed is a
22 20-foot wide road and a walking path and
23 disturbance that's associated with putting those
24 in, and then conduit trenching, some of which may
25 or may not be associated with the roads, that

1 comes up. If you take that linear calculation and
2 then the width and calculate it, I came up with
3 actually 16.36 acres. So a road and trenching and
4 all those things, you know, you need to have
5 places to put the soil along both sides, you're
6 bringing in equipment. So there's a larger area
7 of disturbance than just the road base itself. So
8 I used a calculation of a 30-foot width. So
9 that's as it specifically relates to that.

10 Some of those other things actually
11 came out of reports by the applicant such as the
12 grading. And there's actually a discrepancy in
13 one report. The applicant says that there's 9 to
14 10 acres of grading. Another place it says
15 there's 14.2 acres of grading. I went with the 9
16 to 10.

17 As far as the posts, again, I think
18 that's actually very low. I think they're
19 mistaken of what they submitted there. And
20 because there is going to be soil disturbance
21 associated with that and equipment used for
22 pounding them in and taking them out, I'd say
23 that's at the lower of the 5 to 6 acres. If
24 you're talking about an array of 8 feet by 13 feet
25 is the information that I got, which to me

1 calculates to 416 posts per acre. Over 100 acres,
2 that's actually more like, you know, over 40,000
3 posts, not what they had. But I went with what
4 they had in there when they responded to our
5 interrogatories.

6 And then again with the pads, again, a
7 pad doesn't just happen. There's construction
8 equipment that needs to maneuver around it and
9 soil material that needs to be taken and moved
10 elsewhere, the same with the grading. So that's
11 where some of those figures come from.

12 MR. HANNON: Okay. I just wanted to
13 make sure --

14 THE WITNESS (Kolesinskis): Sure.
15 That's a very good question.

16 MR. HANNON: -- because some of those
17 numbers did not include some of those areas that
18 you were including in your calculation. I just
19 wanted to make sure I understood what your
20 rationale was on that.

21 For the record, I would like to say
22 that I did, in fact, go back and I read the
23 transcript from the last meeting, which I missed,
24 which is where this next question comes from. It
25 was on page 378. Mr. Frost made a comment saying

1 that the applicant was proposing like a net
2 removal of over 37,000 cubic yards of soil coming
3 off the project.

4 So in your professional opinion, what
5 would you think about taking 37,000 cubic yards of
6 material off of a site like this and sending it
7 off site, and what kind of impact would that have
8 as it relates to possibly restoring the property
9 at the end of this project?

10 THE WITNESS (Kolesinskas): I mean, my
11 preference on any site is to use existing soil
12 resources that are there and not take them off
13 site, particularly if there is the intent that
14 it's used either to restore for agriculture or for
15 other uses is to keep the soil on site. So rather
16 than bring in soil, and again, reducing the amount
17 of soil being excavated and moved is always
18 preference from a soil health and landscape
19 integrity standpoint.

20 MR. HANNON: Okay. Then following up
21 on that on page 383, there was a dialogue between
22 Dr. Klemens and Mr. Frost, and it was talking
23 about building a hill, or the berm possibly, as
24 much as 12 feet high. And the witness' response
25 was, "Generally it's a pile of soil. It's just

1 like any other earth work project that we really
2 do where, depending on the machinery on site, how
3 they're planning to move it around, from
4 excavators to bulldozers, it needs to be done in
5 lifts so that it can be compacted as it goes up."

6 So, for example, with some of the
7 things I believe I've read in here, if you're
8 taking some of the prime ag soils off of the site
9 and using them to install this berm where you're
10 now going in, you're compacting the soil as it's
11 put in, what impact would that have on the ag
12 soils, assuming there was some of the prime ag
13 soils that were being utilized for the berm
14 material?

15 THE WITNESS (Kolesinskas): Right. I
16 was here when that discussion was taking place.
17 Not a fan of the berm concept for a variety of
18 reasons, one of which is of taking the soil
19 material from the graded sites, which I guess is
20 what was proposed in using to construct the berm.

21 So again, the soil resources that make
22 them prime and important farmland are not just the
23 topsoil, it's the soil from the surface down,
24 basically the upper two meters of the soil in
25 place over its spatial extent is what makes it

1 prime or statewide important. So taking that and
2 moving every time you take soil, disturb it and
3 move it, you have the potential of -- well,
4 obviously the soil where it came from is no longer
5 considered the same soil. So just by taking
6 the -- grading the soil off of there, if it was a
7 prime farmland area, it would no longer be
8 considered prime farmland if that soil material is
9 taken off. Then taking it into a berm, compacting
10 it, you would be destroying the structure which
11 are the peds, how the soil pieces are held
12 together. So if you're a gardener and you take a
13 good scoop and it looks like crumbs, that's the
14 soil structure how it's held together. So by
15 compacting it, which you would need to do to have
16 a berm of that size and height that's stable,
17 you're actually destroying the soil structure as
18 well as the biological community in the soil. So
19 to take that, and then if that berm were to come
20 down and restore that would make it harder to make
21 the soils back in the restored area usable again
22 after having it be in a compacted berm for 25
23 years.

24 MR. HANNON: Just to follow up on that,
25 one more question. Assuming if the berm

1 elevations were 12 feet and you go to a 4 to 1
2 slope, so you're talking roughly about a width at
3 the base of the berm of about 96 feet. My guess
4 is that would encroach into some of the property,
5 and you could thereby be covering some of the
6 existing prime ag soils. What impact would that
7 have on the existing prime ag soils that would now
8 be covered by the berm?

9 THE WITNESS (Kolesinskis): So that was
10 another one of the concerns about the berm and
11 again depending on where they're located, if they
12 are indeed part of the berm being placed on the
13 agricultural field on the undisturbed prime or
14 statewide important soils is that by covering them
15 with heavy soil material, it would compact them,
16 and it would destroy the soil biology there as
17 well. So it would, after those berms would come
18 off, any of original soil that was underneath that
19 pile would be compacted and would also need to be
20 attempted to restore.

21 MR. HANNON: I have no further
22 questions.

23 THE CHAIRMAN: Mr. Lynch.

24 MR. LYNCH: Dr. Klemens mentioned
25 brownfields in his questioning. Throughout all

1 our solar panel hearings we've heard brownfields
2 being offered up as alternatives to the
3 agricultural land. And my question really is,
4 does the Department of Agriculture know of any
5 brownfields that are large enough to support the
6 needs of a solar project, a major solar project,
7 and for the sake of discussion, let's just say 20
8 megawatts or above? Do you know of any
9 brownfields that would fit that?

10 THE WITNESS (Kolesinskas): Yes --
11 well, a couple of responses to that. Certainly
12 there are brownfields because many of our
13 brownfields are in our urban/suburban areas that
14 they're typically on flat ground that could very
15 well have good exposure and they're of all sizes.
16 And it depends on what your -- you know, there's a
17 wide range of what might fall into the brownfields
18 categories. And DEEP and EPA actually have lists
19 of brownfield sites in Connecticut.

20 MR. LYNCH: That was another part I was
21 going to follow up with. A lot of them are in
22 urban areas which would have buildings or
23 structures around them that would probably
24 prohibit a good access to getting a good exposure
25 to the sun, southern exposure, southwest exposure,

1 whatever they're looking at. Wouldn't that also
2 be kind of a problem for brownfields?

3 THE WITNESS (Kolesinskas): Well,
4 again, I think what we were saying is more than
5 brownfields, of other disturbed landscape, such as
6 a gravel pit. And though there are certainly
7 plenty of brownfields that do not have buildings
8 on them and though why not take the buildings
9 down. Let's be open to the possibility. It's
10 always better to use a disturbed site than use a
11 greenfield. Only as a last resort should we use a
12 greenfield. So I suppose you could say well why
13 not use a wetland area, well, because those have
14 other functions and values.

15 So we're saying that agricultural land
16 is a finite resource, particularly prime and
17 important farmland soils, so only as a last resort
18 should they be used, and there are plenty of
19 alternate sites, and what's the appropriate scale
20 in Connecticut given our density and that every
21 greenfield site is expected to have so many
22 ecosystem functions and values.

23 THE CHAIRMAN: Dr. Klemens I believe
24 has a follow-up.

25 DR. KLEMENS: I just have a couple

1 related. Firstly, I meant to say earlier that I
2 did not attend the public hearing at the opening
3 of this in Simsbury, but I have read the
4 transcript of the evidentiary and the public
5 comment session, so I am prepared to vote on this.

6 I have a follow-up to this. And I'm
7 glad that the gravel pit came up because I
8 repeatedly have seen suggestions from the
9 Department of Agriculture to place these things in
10 gravel pits. But are you aware, sir, that gravel
11 pits have some very, very unique ecological
12 attributes, and there's an entire guild of state
13 listed species that inhabit gravel pits, and to
14 some people they're considered to be very, very
15 important habitats?

16 THE WITNESS (Kolesinskas): Yes, I am
17 aware of that, and I agree with that statement.
18 So I think that every site needs to have a
19 thorough environmental review and evaluation for
20 not only its specific site, but where it is on the
21 landscape with a broader level. So it
22 certainly -- and though it is a disturbed site,
23 and some of them, again, particularly if it's been
24 abandoned for many years, that it may have more
25 ecosystem functions and values than something

1 that's very recently out of sand and gravel. So
2 right, it shouldn't be taken is that every site is
3 suitable.

4 DR. KLEMENS: Could you elaborate
5 because I remember reading somewhere that these
6 particular farmlands in what we call the Central
7 Connecticut lowland have very, very special
8 attributes for agriculture when compared to
9 agricultural soils in the rest of the state.
10 Could you sort of elaborate on that for the
11 record, please?

12 THE WITNESS (Kolesinskas): Yes. So
13 the US Department of Agriculture, Forest Service
14 and EPA all have some sort of large-scale
15 hierarchal ecological mapping system, and they all
16 recognize the Connecticut value as having unique
17 importance. US Department of Agriculture
18 specifically has the major land resource areas of
19 the United States, and so that recognizes areas
20 that have unique soils, climatic conditions, and
21 certain kinds of agriculture that they're best
22 suited for, and it recognizes the Connecticut
23 lowland major land resource 145 as being very,
24 very important and very different.

25 So as an example is part of the reason

1 why the Connecticut Valley had such a robust
2 tobacco industry is because the Connecticut
3 lowlands with their unique soil and landscape
4 position have excellent soils and a longer growing
5 season than the rest of the state, a more humid
6 growing season, so it has unique kind of
7 suitability for specialty crops such as tobacco
8 and, as you know, has some very unique ecological
9 communities as well.

10 DR. KLEMENS: Thank you.

11 THE CHAIRMAN: Mr. Lynch.

12 MR. LYNCH: The other day we went over
13 some questions regarding your appearance here
14 before us. And I'm not going to rehash those
15 questions because in the process our Chairman had
16 much better follow-up questions than I had
17 original questions, so I'm going to leave that to
18 him.

19 THE CHAIRMAN: Objection from the
20 Chair. Mr. Lynch had very good questions. He
21 just stole a few from mine.

22 MR. LYNCH: I'll give them back to you.
23 That's all, Mr. Chairman.

24 THE CHAIRMAN: Okay. I guess now is
25 the Chairman with his -- I have some questions.

1 In your, I guess, written testimony,
2 August 30, 2017, Item 6 on page 4, you talk about
3 "other mitigation measures," and you use the term
4 "could have been proposed." You say, "For
5 example, consideration could have been given to
6 the purchase of development rights/conservation
7 easements on farmland in the community, paying to
8 restore farmland in the area or some other
9 farmland mitigation proposal."

10 Are you aware of any farmland
11 mitigation proposals made by the applicant?

12 THE WITNESS (Kolesinskas): As far as a
13 mitigation proposal, I'm not aware of anything. I
14 don't know whether Jason or Steve have any
15 response.

16 THE WITNESS (Bowsza): I'm sorry.
17 Could you phrase that question a different way?

18 THE CHAIRMAN: Can I help you with your
19 memory because this is dated September 5, 2017,
20 DWW Solar II, LLC response to the Department of
21 Agriculture's interrogatories.

22 THE WITNESS (Kolesinskas): Okay.

23 THE CHAIRMAN: And there happens to be
24 a -- I think on page 2, Question 4, the response
25 to Question 4. So I would suggest that you take a

1 look at that, and maybe that will refresh your
2 memory of what was proposed by the applicant.

3 And then the second question, once
4 you've found that, will relate to your --

5 THE WITNESS (Bowsza): So, I'm sorry.
6 I'll let you finish and then I'll respond.

7 THE CHAIRMAN: Go ahead.

8 THE WITNESS (Bowsza): So as I read
9 that question and the response, that indicates
10 that the petitioner had agreed to work with the
11 department to find some sort of a middle ground,
12 so to speak. We had asked on September 27th for
13 that response in writing. We received it in
14 writing yesterday. So it is there, but we haven't
15 had a chance to review it.

16 THE CHAIRMAN: So, in other words, the
17 last sentence in that, "The department declined
18 petitioner's offer of encumbrance of future
19 development rights at the project site."

20 THE WITNESS (Bowsza): Conversations
21 have happened subsequently after the submission of
22 these interrogatory responses.

23 THE CHAIRMAN: Okay. I guess until we
24 know the result, which we won't know since we're
25 going to be closing the hearing, but at least what

1 you said is important information, because that's
2 certainly something -- okay.

3 Another question I'm a little -- well,
4 help me to understand this. Again, from your
5 written testimony of August 30th, also on that
6 page 4, I guess it's part of Item 4, you talk
7 about the fact that the proposal by the applicant
8 as far as restoration lacks sufficient detail or
9 commitment on how and when this would be done.
10 And I assume that's still your position?

11 THE WITNESS (Kolesinskas): Yes, it is.
12 I think to really -- if the intent is to restore
13 the site for some kind of agricultural activity,
14 that there needs to be more detail as far as
15 baseline information up front, as well as
16 monitoring and stewardship throughout the life of
17 the project, as well as a more thorough
18 decommissioning plan that has more detail as far
19 as how the site would be treated in the
20 decommissioning process, as well as sufficient
21 funds that are available no matter what happens
22 with the project or the company so that there
23 would be money available to do the
24 decommissioning. So there's not sufficient detail
25 at this time.

1 THE CHAIRMAN: Okay. At this time. So
2 my follow-up question is, if everything that you
3 just explained were done, could these soils be
4 restored after the life of whatever it is, 20/25
5 years?

6 THE WITNESS (Kolesinskas): Again, it
7 would depend on what happens as how the project is
8 laid out and built and whether there is
9 consideration for -- more consideration for the
10 final use of the project as for agricultural
11 activities.

12 THE CHAIRMAN: You're really not quite
13 answering. You're trying your best not to answer
14 the question.

15 THE WITNESS (Kolesinskas): Well, ask
16 me again, please.

17 THE CHAIRMAN: If all the things you
18 mentioned, the benchmarking, the monitoring, the
19 proper -- all decommissioning, money set aside,
20 all these things were done with the goal of
21 restoring the property to some form of
22 agricultural use, is that feasible?

23 THE WITNESS (Kolesinskas): If --

24 THE CHAIRMAN: If you can try, yes and
25 no is not a bad answer.

1 THE WITNESS (Kolesinskas): Well,
2 right. In resource restoration there is no yes or
3 no answer. So would they take every
4 recommendation and every consideration in mind
5 that the Department of Agriculture proposed, yes,
6 it would have some agricultural utility. On
7 exactly what kinds of agriculture and crops might
8 be suitable would remain to be seen, but yes, it
9 could be restored to the point where it could have
10 some agricultural utility.

11 The major point is for 25 to 40 years
12 that there would not be agricultural activity, it
13 would be lost from the state, it would be lost
14 from the agricultural community to use. That's
15 the real issue. Yes, if everything was done
16 correctly, including how it's laid out, yes, it
17 could be used for some kinds of agriculture.

18 THE CHAIRMAN: I don't know how to ask
19 this question, but are we really in danger in the
20 next 25 years of, I don't know what, famine,
21 prices going sky high, because we're losing
22 agricultural property? I mean what --

23 THE WITNESS (Kolesinskas): It's death
24 by a thousand cuts. Connecticut from '82 to '97
25 was one of the states that lost the most

1 agricultural land so as we're heading into more
2 development. And so we've at times lost as much
3 as 8,000 or 9,000 acres per year from development.
4 It's averaged over 4,000.

5 Again, within two hours of Connecticut
6 there's over 30 million people. We're in the
7 heart of the marketplace. As a major part of
8 sustainability, it's important to change the food
9 system and grow food closer to where people live,
10 particularly fresh fruits and vegetables, and as
11 well as helping to manage waste. As all the other
12 ecosystem functions, we want to have agricultural
13 land. So it's important for many, many reasons.
14 And again, do I feel comfortable having my food
15 come from China? No. So it's a food security
16 reason as well. There are many reasons why we
17 want agriculture as part of our landscape.

18 THE CHAIRMAN: Okay. Thank you. I
19 might have actually a follow-up question. It was
20 a question I was going to ask, and what you just
21 said is a perfect lead in. A publication, which I
22 have been provided as part of the record, called
23 Farming on the Edge. Are you familiar with that?

24 THE WITNESS (Kolesinskas): Correct,
25 yes.

1 THE CHAIRMAN: And if I read it
2 correctly, it says sprawling development is
3 considered one of the major threats to America's
4 best farmland. Would you agree with that?

5 THE WITNESS (Kolesinskas): That is
6 still true. It's certainly slowed down in some
7 parts of the country from the recession and though
8 it's certainly back on the move.

9 THE CHAIRMAN: And would you agree that
10 this sprawling development is largely a result of
11 residential, commercial, industrial developments?

12 THE WITNESS (Kolesinskas): If you look
13 at it across the country, yes, it's urbanization.
14 It's all forms. It depends on where you are in
15 the country whether it's residential or whether
16 it's like out west, it's what they call
17 development of ranchettes or farmettes so that it
18 fractures the landscape so much that it no longer
19 is capable of being ranched. And again, you bring
20 up a very good point as well is that from
21 another -- the other threat, of course, is climate
22 change, that there are going to be huge parts of
23 the country which will not be suitable for
24 agriculture, certain kinds of agriculture, and
25 we'll be very fortunate here in the northeast to

1 have a climate that's suitable for people and for
2 many kinds of agriculture. So that's another
3 reason why we're very concerned about sprawl.

4 And the new Farming on the Edge, which
5 is going to be called State of America's Farmland,
6 which is a project that I'm working on, will give
7 us some opportunity to look at scenarios such as
8 impacts of urbanization and impacts of climate
9 change on our food production capacity, as well as
10 other ecosystem functions like habitat.

11 THE CHAIRMAN: Now, getting back to
12 where I started with this question and now
13 becoming more specific, are you aware either from
14 site visit or just looking at the maps of the
15 properties adjacent to the subject property and
16 the development that's occurred over the years on
17 these properties?

18 THE WITNESS (Kolesinskas): Yes.

19 THE CHAIRMAN: Okay. Because I think
20 there was a question which was asked, which was
21 posed about what would be the impact or the
22 reaction to Department of Agriculture if this
23 property were not to be used for solar, for some
24 reason this project did not go forward, but
25 eventually given what we see surrounding what

1 developed in this case also under the zoning
2 because, if I'm correct, the present zoning is
3 R40, which I think is one-acre residential, and
4 part of it is industrial. So is this a concern of
5 the Department of Agriculture as to what happens
6 just under local zoning and back to the property
7 owners, you know, for whatever reason like to
8 develop their property for other uses than
9 agriculture?

10 THE WITNESS (Kolesinskas): Well, I
11 think there's a concern statewide and nationwide
12 about certain areas not doing a good job of land
13 use planning. And I don't think we do a good job
14 of land use planning at any level in the state.
15 There are some communities that are doing a better
16 job than others, and that we need to have the full
17 range of options again using conservation
18 easements, purchasing conservation easements from
19 landowners, doing transfer of density, transfer of
20 development rights, of using cluster and
21 conservation subdivisions. So we would hope that
22 any large property that's in a community in a town
23 in Connecticut would be using more of those tools.

24 And the Town of Simsbury has worked
25 with conservation organizations, to the Natural

1 Resources Conservation Service, DEEP, land trusts
2 to project farmland, so it is something that they
3 have participated in and are aware of some of
4 these tools.

5 THE CHAIRMAN: Okay. Would the
6 Department of Agriculture, and if the question is
7 too hypothetical, then have you in the past
8 appeared before local zoning or planning
9 commissions in specific when there is an
10 application to convert farmlands into other uses
11 the way you are before us?

12 THE WITNESS (Bowsza): So the
13 department for the last several years has been
14 working closely with municipalities in what's
15 called the Community Farms Program, which is a
16 derivative of our Farmland Preservation Program
17 for smaller parcels of property. We've done
18 projects in many towns in the state and worked
19 with local ag commissions and local land use
20 boards to encourage the preservation of
21 agricultural lands and keep them farming instead
22 of something else.

23 THE WITNESS (Kolesinskas): And just to
24 follow up on that. As well as providing guidance
25 for municipal and planning officials, there's the

1 Planning for Agriculture Guide, the Conservation
2 Options Guide, of providing speakers to local
3 commissions and boards, of really trying to have a
4 proactive approach and provide people with the
5 relevant facts and tools and working with the
6 regional planning agencies to help people make
7 better land use decisions, because we're not doing
8 a very good job of making good land use decisions
9 at the local level.

10 THE CHAIRMAN: I guess I don't want to
11 prolong that. But here you're here in a very
12 specific role, which is somewhat when the Siting
13 Council in at least my years and other years were
14 not used to a state agency appearing, particularly
15 when another state agency has proposed a plan for
16 renewable energy. So I'm just wondering have you
17 really gone to the actual zoning meetings when
18 agricultural land is -- there's a proposal
19 specifically to use existing zoning and build say
20 a residential subdivision?

21 THE WITNESS (Kolesinskas): Well, we
22 certainly have talked with when there are large
23 parcels of agricultural land with a high component
24 of prime farmland that are important to an
25 agriculture community try to work with the

1 landowners, and if it's private individuals,
2 families, as well as the community, to make sure
3 that they're aware that there are other tools
4 available to them such as the state's purchase of
5 development rights program, the DEEP open space
6 program, land trust, to try to encourage them that
7 there are other alternatives or that if a
8 development takes place that it tries to protect
9 some of the farmland resources, and those
10 specifically as it relates to the Siting Council
11 is that to make sure that the natural resources as
12 far as the prime and important farmland soils and
13 agriculture has a voice and is adequately
14 considered in deliberations by the Siting Council.

15 THE WITNESS (Bowsza): We've also
16 engaged with municipalities through the issuance
17 of advisory opinions from the commissioner, which
18 are specified in the powers of the commissioner in
19 Chapter 22 of the General Statutes.

20 THE WITNESS (Kolesinskas): Right. And
21 also if there is our state -- I'm not sure if
22 that's part of that, Jason, or separate, if there
23 is, state funds expended and it impacts more than
24 40 acres, which I would say is too high, that it
25 is supposed to be reviewed by the commissioner's

1 office.

2 THE CHAIRMAN: Well, I believe you've
3 always had a voice, at least in our deliberations.
4 You have not utilized it the way you're utilizing
5 it today by actually, you know, making an
6 appearance. So it's somewhat unusual.

7 I just have, I guess, a last question,
8 and this is just aware. Are you aware -- this is,
9 I guess, written testimony from the Department of
10 Energy and Environmental Protection dated
11 September 11, 2017, the paragraph on the first
12 page related to renewable energy. I'm not going
13 to ask you anything specific about it. But are
14 you aware that there is a rationale for this
15 program?

16 THE WITNESS (Kolesinskas): There is a
17 rationale for the program and though that there is
18 no criteria that relates to impacts on prime and
19 important farmland and agricultural impacts. I
20 actually was part of the team that reviewed all of
21 the RFPs because of my expertise and though there
22 is no criteria for their decisionmaking right now
23 that includes that until, of course, now with the
24 new legislation that I think that's one of the
25 things that they're looking for is to have

1 criteria that would relate to prime farmland and
2 impact on agriculture.

3 THE CHAIRMAN: Well, that's
4 unfortunate. I don't know how to ask you a
5 question, but it really puts the Siting Council in
6 a very difficult position that we're actually
7 being asked to -- we're a regulatory agency, but
8 we're being asked to be placed in a policymaking,
9 almost, role between the legislation and the RFP
10 relating to the importance of renewable and then
11 what we're hearing. So I guess I don't really
12 know how to frame that as a question but --

13 Any follow-up?

14 THE CHAIRMAN: Dr. Klemens.

15 DR. KLEMENS: Thank you, Mr. Chairman.
16 You actually teed up some very important
17 discussion. This land is owned by a development
18 company, correct? Is that a yes?

19 THE WITNESS (Kolesinskas): That's my
20 understanding.

21 DR. KLEMENS: And you've looked, as the
22 Chairman said, at the maps surrounding this
23 farmland and seen the fate of other farmland,
24 what's happened to it. Correct?

25 THE WITNESS (Kolesinskas): Correct.

1 DR. KLEMENS: So indulge me here. I'm
2 a turtle biologist, so 25 years doesn't frighten
3 me for animals that live a century. Let's look at
4 this 25-year span that this land may be a solar
5 project put on it. Would you not agree that if
6 that land, if the applicant would follow your
7 recommendations to ensure that the soil integrity
8 and utility for agriculture is maintained, might
9 not this proposal, in fact, be giving another
10 quarter century for people to do something else
11 with this land, either for farmland, or for any
12 other activity, to conserve it as opposed to
13 developing it? In fact, isn't it in a way buying
14 time for this parcel for maybe it to have a
15 different fate than the surrounding agricultural
16 parcels that have been developed? There's a lot
17 of ifs here, if they follow the protocols --
18 doesn't this buy much-needed time to maybe chart a
19 different course for the future of these lands
20 other than what they're zoned for which is
21 residential development or commercial development?
22 Can you see that as a potential, sir?

23 THE WITNESS (Kolesinskas): Yes. So
24 again, lots of hypotheticals and ifs there. And
25 though, I guess, as one of those, you could

1 envision that there is a -- and again, as the town
2 is going through a new process for a new plan of
3 conservation and development, of the parcel being
4 developed in a way where there is a cluster of
5 residential and/or industrial where a significant
6 portion is permanently protected with a
7 conservation easement and that there has not been
8 manipulation of vegetation and agricultural soils.
9 So I think that would be very -- you'd have to
10 weigh those two scenarios to see which one is a
11 better outcome, not only for the variety of
12 agricultural uses that might be able to happen
13 over 25 years and what that would do to keeping
14 the viability of agricultural economy and its
15 ability to provide those other ecosystems services
16 versus waiting for 25 years to get those ecosystem
17 services.

18 DR. KLEMENS: But certainly that would
19 be preferable to seeing the site get developed for
20 houses in five years in the conventional zoning --

21 THE WITNESS (Kolesinskas): Right.

22 DR. KLEMENS: -- built out to the
23 conventional zoning that the Town of Simsbury has
24 placed on those parcels?

25 THE WITNESS (Kolesinskas): I would say

1 two things, that one is that because the owner is
2 a developer and it hasn't been developed in
3 residential, you know, is the market demand
4 actually there, and is this an alternative for
5 them to get some money. And though with your
6 scenario is, if I knew within five years it was
7 going to be developed in single lot developments
8 in single-acre lots versus in 25 years being if it
9 was properly developed and managed, have it
10 available, yes, I would choose the second scenario
11 of having it be available if it was going to be
12 protected in 25 years to be able to use for
13 agriculture or other kinds of ecosystems.

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

16 THE CHAIRMAN: You are aware that under
17 the Siting Council's process, if, and I put the
18 "if" in large letters, if the Siting Council were
19 to approve the project as proposed through the
20 conditions of approval in the D&M plan, which I
21 hope you're aware of our process, all these
22 protocols and all these ifs could be required.
23 Whereas, there's no way that the Siting Council
24 can require that the town either change the zoning
25 because the town is also a property owner and make

1 your wish for a cluster development which does
2 also include roads, heavy equipment, parking
3 areas, even if it's clustered, and all of the
4 things that don't make it necessarily helpful for
5 agriculture. But that is a possibility, but I
6 want to -- but I got a little long winded. But we
7 do have a process which can codify some of these
8 same things that we've been talking about in this
9 specific area if, and I use the word if, this
10 project were to move forward.

11 Mr. Lynch.

12 MR. LYNCH: I just want to get a
13 clarification from the discussion with the
14 Chairman and Dr. Klemens that you're actually
15 going into the towns and encouraging them to use a
16 variety of considerations for their agricultural
17 use. And I applaud you for that. But my question
18 really is, have you gone to any local towns or
19 planning and zonings and actually objected to the
20 use that they were planning, whether, you know,
21 residential development or commercial development,
22 in any way?

23 THE WITNESS (Bowsza): I don't believe
24 we have.

25 MR. LYNCH: But you are here?

1 THE WITNESS (Bowsza): Yes.

2 MR. LYNCH: Now, my last question comes
3 to, you mentioned in your -- and I didn't get the
4 exact number -- but you said over the last few
5 decades or so Connecticut has lost a lot of
6 agricultural land, farmland?

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

9 MR. LYNCH: Now, does that farmland
10 include dairy farms, horse farms, or other
11 nonagricultural farm use in that?

12 THE WITNESS (Kolesinskas): Well, I
13 would say if you use the definition, the
14 Connecticut definition of agriculture, which is
15 quite broad, so all forms of agriculture.

16 MR. LYNCH: Thank you. I just wanted
17 to get a clarification.

18 Thank you, Mr. Chairman.

19 THE CHAIRMAN: Mr. Mercier.

20 MR. MERCIER: I just have a quick
21 follow-up. I believe you said earlier that the
22 real issue here was the loss of these five parcels
23 for agricultural use, that's the real issue before
24 the department. Is that correct?

25 THE WITNESS (Kolesinskas): Right. The

1 primary issue with any of these large-scale
2 projects that are on prime and important farmland
3 soils is the loss of them from the possible use
4 for agriculture over the life span of 25 to 40
5 years, whatever is being proposed.

6 MR. MERCIER: I believe previously you
7 mentioned you had some outreach efforts to local
8 municipalities about smart growth, how to preserve
9 agricultural land and also allow development. Now
10 prior to the submission of this project to the
11 Council, did the department ever approach Simsbury
12 about these five parcels about conserving them?

13 THE WITNESS (Bowsza): So the town of
14 Simsbury doesn't own the parcels. We have worked
15 with the developer in the past, and we've
16 approached him on a number of projects to get
17 those parcels into the farmland preservation
18 program, and we have worked with them to do that.

19 MR. MERCIER: These five parcels here?

20 THE WITNESS (Bowsza): No, with the
21 other parcels owned by the developer.

22 MR. MERCIER: Okay. I'm just talking
23 about these parcels. So this was never identified
24 to the town through any of your programs this is a
25 very sensitive property, we would like to retain

1 that, these five parcels?

2 THE WITNESS (Bowsza): So I'm not sure
3 that we would be reaching out to the town in that
4 case. We'd be reaching out to the property owner.

5 MR. MERCIER: Okay. Maybe I
6 misunderstood what your municipal outreach was.

7 THE WITNESS (Kolesinskas): And though
8 the Town of Simsbury and the Simsbury Land Trust
9 have participated in a number of land protection
10 programs in the state, and that information has
11 always been provided that there is dollars from
12 the Department of Agriculture and the State
13 Farmland Preservation Program. They've taken
14 advantage of the DEEP open space program, but they
15 have not worked with a landowner to encourage them
16 to apply to the Farmland Preservation Program as
17 far as I know.

18 MR. MERCIER: So the municipal
19 outreach, this has to do with funding or something
20 of that nature at the town level, it doesn't have
21 to do with picking out particular parcels and
22 saying these are very important?

23 THE WITNESS (Bowsza): So to elaborate,
24 I suppose, on my previous answer about what the
25 outreach that the agency does with municipalities

1 is -- and it was a general response, not specific
2 to these parcels or the Town of Simsbury -- but we
3 will work with local communities, local towns
4 around the state and their ag commissions to help
5 them identify and to help them steward and to help
6 them plan for the best uses of agricultural lands
7 in their communities, whether that be through our
8 Community Farms Program or through the municipal
9 guide that we have generated or through a litany
10 of workshops that we put on. It was a general
11 response about our activities around the state,
12 not specific to this case.

13 MR. MERCIER: Okay. That question
14 really, when you say "identify," so I'm really
15 asking were these ever identified that these were
16 important lands. That's my only question.

17 THE WITNESS (Kolesinskas): Identified
18 in the broader sense through, again, outreach not
19 only to Simsbury working with some of the partner
20 organizations that they were made aware of the
21 Department of Agriculture, the importance of
22 farmland in the Connecticut Valley, and they
23 actually used that as part of their submission for
24 successful grants to USDA and to DEEP the fact
25 that these are critical farmlands, and also the

1 department has provided information and works with
2 Capital Region Council of Governments and actually
3 CCM, which was one of the sponsors of the
4 municipal guide planning for agriculture. So
5 there's been plenty of information out there of
6 how valuable and finite these resources are here
7 in the Connecticut Valley.

8 MR. MERCIER: Thank you very much.

9 THE CHAIRMAN: Dr. Klemens, one more?

10 DR. KLEMENS: One more very quick
11 question. I've watched over the last five to ten
12 years in Windsor the conversion of huge amounts of
13 farmland for the FedEx distribution center, for
14 the Amazon distribution. What is the Department
15 of Agriculture, have they been involved in those
16 proceedings to protect that farmland?

17 THE WITNESS (Kolesinskas): Well, first
18 of all, I think that's, right, just terrible land
19 use planning in the Town of Windsor. It's
20 shameful of what they've done to the natural
21 resources in the Town of Windsor, particularly as
22 relates to that portion of town of how valuable
23 those landscapes and soil resources are. They
24 have specifically worked with a couple of the farm
25 families with some successful applications for the

1 program, and other ones that at this point in time
2 have not been successful.

3 So they've done outreach to the
4 municipality, they've done outreach to some
5 landowners in the community, and though because
6 it, again, part of it depends on the elected
7 officials and the planning officials that are
8 there of whether they're willing to participate as
9 well as the landowners.

10 DR. KLEMENS: I understand that. But
11 what I'm really trying to get at is a simple yes
12 or no answer, I guess, is basically there's a lot
13 of land that was lost there. Did the Department
14 of Agriculture intervene or do as they have done
15 here with a level of effort and energy to protect
16 that farmland?

17 THE WITNESS (Bowsza): In that case the
18 process in this case would have been different.
19 We wouldn't have had the opportunity to be here in
20 front of you all. And in those cases, to my
21 knowledge, we weren't approached by either the
22 property owner or the town.

23 DR. KLEMENS: So you're here today
24 because there's actually a process for you to do
25 it, as opposed to all the other agricultural land

1 that has been lost, you feel here you've got the
2 ability to enter into this process and you feel
3 powerless -- I'm putting words in your mouth -- to
4 do it at all these local activities?

5 THE WITNESS (Bowsza): If in the case
6 of the Amazon development in Windsor or the FedEx
7 development, which I think is in South Windsor, if
8 either of those property owners prior to
9 construction had approached the department and
10 inquired about our farmland preservation program,
11 or if we had been aware that those were the
12 parcels that were under consideration, we have on
13 occasion done outreach. We certainly would have
14 been very open to those conversations because, as
15 Kip has done a pretty good job of pointing out,
16 those are some of the best soils we have, and
17 they're now covered.

18 DR. KLEMENS: I understand.

19 Thank you, Mr. Chairman.

20 THE CHAIRMAN: Mr. Hannon.

21 MR. HANNON: Just one follow-up
22 question, and it really relates to like cluster
23 development. And I understand typically with
24 municipalities, when they're talking about cluster
25 development, you're trying to limit the area

1 that's developed, cut down on road size, things of
2 that nature. But I guess my question is, you're
3 talking about conservation easements to preserve
4 the farmland, but is that at the expense of
5 forestland?

6 THE WITNESS (Kolesinskas): No, it
7 doesn't have to be. It certainly could be both.
8 The Department of Agriculture's Farmland
9 Preservation Program, certainly it can include
10 forestland as well, and that's also true of the
11 DEEP and the USDA NRCS conservation programs.
12 There are ways to structure to have the forestland
13 protected as well as agricultural land.

14 MR. HANNON: I guess I'm looking at it
15 a little differently. If the push is to try to
16 protect the farmland, you're trying to push a
17 developer out of the farmland and basically the
18 land that's left is the forestland. So I don't
19 know if you can necessarily have it both ways. So
20 that's why I raise the question.

21 THE WITNESS (Kolesinskas): Again, you
22 look at each individual site and you look at the
23 scale of the project. So again, Connecticut is
24 only about 12 percent agricultural land, and only
25 about 7 percent of that is actually in land that's

1 in production in fields. So there's a
2 considerable woodland portion. So there's
3 certainly -- the majority of the state is actually
4 developed in urban, suburban or in forest. So as
5 areas are needed for development for renewable
6 energy, as well as for residential/industrial, we
7 need to consider those other landscapes as well,
8 and not just agricultural land because it's
9 easiest and cheapest to build on.

10 THE CHAIRMAN: Thank you.

11 We're now going to go to the petitioner
12 for cross-examination.

13 MR. HOFFMAN: Good afternoon. First,
14 by way of apology, I'm going to go a little bit
15 out of order so that we can build on questions
16 that the Council brought up. And I suppose I
17 should fess up to the fact that I am a resident of
18 the Town of Windsor.

19 THE WITNESS (Bowsza): Are you on their
20 land use board?

21 MR. HOFFMAN: I am not. I'm actually
22 on the brownfield redevelopment board.

23 In any event, Mr. Bowsza, let's go back
24 to the questions from the Chairman. You testified
25 that you had asked for a written proposal from the

1 petitioner on September 27th. Can you tell me
2 what happened on October 2nd?

3 THE WITNESS (Bowsza): I don't have a
4 record of that.

5 MR. HOFFMAN: Okay. Let me refresh
6 your recollection. Did the Department of
7 Agriculture host a meeting with the petitioner at
8 its offices?

9 THE WITNESS (Bowsza): Yes, we did.

10 MR. HOFFMAN: And did that happen on
11 October 2nd?

12 THE WITNESS (Bowsza): You have me on
13 the spot. I'll take you at your word that it did.

14 MR. HOFFMAN: And at that meeting --

15 THE WITNESS (Bowsza): I was in that
16 meeting. I can't confirm offhand that it happened
17 on October 2nd, but we sat down in the
18 commissioner's conference room.

19 MR. HOFFMAN: Fair enough. And it was
20 after you sent the email on September 27th?

21 THE WITNESS (Bowsza): I believe it
22 was, but again, I don't have my calendar in front
23 of me.

24 MR. HOFFMAN: And at that meeting the
25 petitioner offered the Department of Agriculture

1 the development rights again. Correct?

2 THE WITNESS (Bowsza): At that meeting
3 a number of proposals were discussed, but there
4 was no conclusion to that. There were a number of
5 options that were discussed at that meeting.

6 MR. HOFFMAN: Was one of those options
7 that the petitioner offered the Department of
8 Agriculture the development rights of this
9 property after the useful life of the project or
10 after 35 years, whichever came later?

11 THE WITNESS (Bowsza): That was
12 discussed, but it hadn't gone through any of the
13 processes that we need to go through for the
14 Farmland Preservation Program which requires a
15 relatively robust application process involving
16 boundary surveys, appraisals, configurations,
17 negotiations. None of that stuff is something
18 that can be done over the course of a cup of
19 coffee at a conference room table.

20 MR. HOFFMAN: Fair enough. But the
21 Farmland Preservation Program, as I understand it,
22 requires the department to do an appraisal of the
23 properties. Right?

24 THE WITNESS (Bowsza): It does.

25 MR. HOFFMAN: And then that

1 appraisal --

2 THE WITNESS (Bowsza): It actually
3 requires two appraisals.

4 MR. HOFFMAN: Appraisals, right. And
5 it requires an appraisal to be done for the
6 property as it is. Correct?

7 THE WITNESS (Bowsza): Yes.

8 MR. HOFFMAN: And then the property as
9 it would be if the development rights were taken
10 away from it. Correct?

11 THE WITNESS (Bowsza): Yes.

12 MR. HOFFMAN: And then the delta
13 between those two values is what's used to
14 determine the appropriate payment under the
15 conservation program for the development rights.
16 Correct?

17 THE WITNESS (Bowsza): And it's not
18 necessarily just the delta between those two.
19 It's a comparison between the two appraisals. So
20 the two appraisals that are done, because there's
21 two, give you a high and a low and a range, then
22 is established by which you can negotiate.

23 MR. HOFFMAN: Fair enough. Did the
24 petitioner ever ask for any money in exchange for
25 those development rights?

1 THE WITNESS (Bowsza): I don't recall.

2 MR. HOFFMAN: In the email that you
3 received yesterday, did the petitioner
4 specifically state that it is not asking for
5 payment?

6 THE WITNESS (Bowsza): It specifically
7 states something about payment, but give me just
8 one second. (Pause.)

9 Number 6 in the proposal says that DWW
10 will not charge the department for the easement,
11 nor for the preparation of the documents to effect
12 the filing of the easement.

13 MR. HOFFMAN: Thank you.

14 THE WITNESS (Bowsza): In that
15 proposal.

16 MR. HOFFMAN: Thank you.

17 And the methodology for the -- sticking
18 with the preservation program for a second -- the
19 methodology would be an agricultural conservation
20 easement. Right?

21 THE WITNESS (Bowsza): That's typically
22 what we use.

23 MR. HOFFMAN: And so I've got in front
24 of me Conservation Options for Connecticut
25 Farmland, which your colleague, at a minimum, has

1 jointly authored, and I believe the entire
2 department has. I'm just not going to pronounce
3 his name correctly, so I apologize.

4 THE WITNESS (Bowsza): Fair enough.

5 MR. HOFFMAN: But I'm looking at page 1
6 of that document, and it says, and I'm quoting,
7 "In Connecticut the most common farmland
8 protection tool is the agricultural conservation
9 easement." Does that sound right, not the direct
10 quote, but is that a fair statement that the most
11 common tool --

12 THE WITNESS (Kolesinskas): For
13 agricultural land, not to be confused with other
14 easements on other kinds of landscapes.

15 MR. HOFFMAN: Absolutely. Very fair.

16 Okay. So then reading the next
17 paragraph on page 1, it says, "A conservation
18 easement is a deed restriction or deed covenant
19 that landowners voluntarily place on part or all
20 of their land. The easement limits development in
21 order to protect the land's natural resources. An
22 agricultural conservation easement is specifically
23 designed for agricultural land."

24 So it limits development, do I have
25 that right, that's what the agricultural easement

1 is designed to do?

2 THE WITNESS (Kolesinskas): Yes. It's
3 extinguishing the right to develop it for
4 nonagricultural uses and also to protect the soil
5 resource.

6 MR. HOFFMAN: Okay. Does it require
7 agriculture when that easement is put in place?

8 THE WITNESS (Kolesinskas): No, it does
9 not.

10 MR. HOFFMAN: Okay.

11 THE WITNESS (Kolesinskas): And though
12 the soil resource is protected because we know
13 that land goes through transitions between
14 generations.

15 MR. HOFFMAN: Right. But it could not
16 be farmed for a while and not be violative of that
17 protective easement. Correct?

18 THE WITNESS (Kolesinskas): Correct.

19 MR. HOFFMAN: If I remember correctly,
20 the department has a farmland restoration program
21 as well?

22 THE WITNESS (Bowsza): We do.

23 MR. HOFFMAN: How does that work?

24 THE WITNESS (Bowsza): It's a bond
25 funded program that is used to bring former

1 agricultural land, usually overgrown lands, back
2 into agricultural production. So when you have a
3 field that's gone fallow and there's earth -- a
4 field that hasn't been used in a while and there's
5 overgrowth, we'll use that bond funding to help
6 the producer to bring more of that parcel back
7 into active use.

8 MR. HOFFMAN: Has that program been
9 successful?

10 THE WITNESS (Bowsza): We like to think
11 so, yes.

12 MR. HOFFMAN: I'd like to agree with
13 you. In fact, I turn your attention to the
14 document that you noticed in your administrative
15 notice as A-10, which is the United States
16 Department of Agriculture, NASS, 2012 Census of
17 Agriculture, 2014.

18 Do you see that on the hearing program?
19 It's on page 14.

20 THE WITNESS (Bowsza): Yes.

21 MR. HOFFMAN: So if I heard
22 Mr. Kolesinskas?

23 THE WITNESS (Kolesinskas):
24 Kolesinskas.

25 MR. HOFFMAN: Kolesinskas. I knew I

1 would get it wrong, and I do apologize.

2 THE WITNESS (Kolesinskas): That's
3 fine.

4 MR. HOFFMAN: Mr. Kolesinskas, you
5 testified, I think I heard, that you testified
6 that from 1982 to 1997 Connecticut lost a vast
7 amount of agricultural land?

8 THE WITNESS (Kolesinskas): That is
9 correct.

10 MR. HOFFMAN: That census from 2010 --
11 from 2014. Excuse me

12 THE WITNESS (Bowsza): 2012.

13 MR. HOFFMAN: Well, yes, but it was
14 published in 2014, because it takes the Federal
15 Government two years to get the data out. Right?
16 In fact, that's why we don't have a 2017 census.

17 THE WITNESS (Bowsza): The 2017 census
18 is in the field.

19 MR. HOFFMAN: Right. Exactly correct.
20 So the 2012 census published in 2014, has data
21 from 2002 for Connecticut agriculture, 2007 and
22 2012. Correct?

23 THE WITNESS (Kolesinskas): Correct.

24 MR. HOFFMAN: What was the increase
25 between 2002 and 2007?

1 THE WITNESS (Kolesinskas): I don't
2 recall and though the census there are changes to
3 every census as far as what land is included in
4 the outreach that goes on. So it's important to
5 look at, if you're looking at ag census, of what
6 exactly is included and what is not included to be
7 able to look at what increases and decreases there
8 are as far as number of farms and agricultural
9 land.

10 MR. HOFFMAN: But that statement would
11 apply equally to the date range that you send it
12 from, '82 to '97. Correct?

13 THE WITNESS (Kolesinskas): The date
14 that I'm using is not using the ag census. It's
15 using the National Resources Inventory, which is
16 done by USDA, which is a statistical sample of
17 roughly 100-acre plots across the United States
18 where the land use land cover is evaluated and
19 then statistically shown of what the changes are
20 of different land use categories. So I was not
21 using ag census for that; I was using the National
22 Resources Inventory. So different methodologies
23 give you different results, and it takes someone
24 with expertise to understand what the differences
25 are and why.

1 MR. HOFFMAN: Going back to the census
2 that you included as one of your administrative
3 notice items, the total acreage in Connecticut for
4 agricultural land from 2002 to 2007, did it
5 increase or decrease?

6 THE WITNESS (Kolesinskas): I don't
7 recall whether that in that time period of what
8 the difference is.

9 MR. HOFFMAN: But you have no reason to
10 doubt the numbers in that census, do you?

11 THE WITNESS (Kolesinskas): I do, yes.

12 MR. HOFFMAN: You doubt --

13 THE WITNESS (Kolesinskas): Yes, I do.
14 If you read the census, there is a plus or minus
15 figure. And again, it's important to know why
16 it's at -- what the figures are, and why there may
17 be an increase or decrease, and it's also
18 important to look at the individual county data,
19 and it is self-reported as well. So there's
20 variability to it, but it gives you an overall
21 trend.

22 MR. HOFFMAN: And what was the overall
23 trend from 2007 to 2012 for agricultural land in
24 Connecticut?

25 THE WITNESS (Kolesinskas): I don't

1 have it in front of me, so I'm not prepared to
2 answer that at this moment.

3 MR. HOFFMAN: Okay. Going to the
4 development rights purchase program, when was the
5 last time the department used that program to
6 purchase development rights of agricultural land?

7 THE WITNESS (Bowsza): I don't think
8 it's been a month since we've used it.

9 THE WITNESS (Kolesinskas): They're
10 working on projects continually.

11 THE WITNESS (Bowsza): We have more
12 than 70 active applicants at various phases within
13 our process.

14 MR. HOFFMAN: Fantastic. Have you ever
15 used that process during the pendency of a zoning
16 hearing for agricultural property?

17 THE WITNESS (Bowsza): I don't know the
18 answer to that.

19 MR. HOFFMAN: And I do apologize, I'm
20 skipping around a little bit, but the Chairman hit
21 a lot of my --

22 THE WITNESS (Bowsza): So just to
23 further elaborate on that, the farmland
24 preservation unit consists of -- I'm not in that
25 unit, so I'm not intimately familiar with what

1 their day-to-day or even what their usual
2 processes are. I'm familiar with some of the --
3 I'm familiar with the process in terms of the
4 approval process or the review process and where
5 certain numbers of projects are. So I can't speak
6 to what they do on a day-to-day.

7 MR. HOFFMAN: All right. Let me go
8 back a little bit to your testimony regarding
9 brownfield properties. How many brownfield
10 properties are there in the State of Connecticut
11 that are over 100 acres in size?

12 THE WITNESS (Kolesinskas): I do not
13 know that, but there is a database of brownfields.
14 And if you look, which is listed in there as a
15 reference, the report from the Council on
16 Environmental Quality, it talk a little bit about
17 that, about brownfields.

18 MR. HOFFMAN: I'm familiar. I actually
19 sit on the state's brownfields task force too.

20 THE WITNESS (Kolesinskas): Right.

21 MR. HOFFMAN: Can you identify a single
22 brownfield available for development that exceeds
23 100 acres?

24 THE WITNESS (Kolesinskas): That's not
25 the business that I'm in, identifying that --

1 looking at the database of brownfields. And
2 though I would say that there's no reason why that
3 100 acres should be a minimum as relates to using
4 them for renewable energy.

5 MR. HOFFMAN: What sort of integrated
6 crop management plan is currently being used at
7 the site? You talk about the importance of
8 integrated crop management. So what's currently
9 being used?

10 THE WITNESS (Kolesinskas): I don't
11 know. That information has never been provided to
12 us of who the farmer is that's leasing it and what
13 their management system is.

14 MR. HOFFMAN: We have electric
15 utilities and gas utilities in the State of
16 Connecticut that need to run power lines and gas
17 pipelines respectively. Do those activities ever
18 happen over prime agricultural land?

19 THE WITNESS (Kolesinskas): They do.

20 MR. HOFFMAN: And what's the
21 department's attitude towards that?

22 THE WITNESS (Kolesinskas): Well --

23 THE WITNESS (Bowsza): Generally don't
24 love it.

25 THE WITNESS (Kolesinskas): Part of it

1 depends on is it actually purchased, or is it
2 actually an easement, and that there have been
3 times whereas particularly under this process of
4 doing some upgrades and renovations where the
5 Department of Agriculture has worked with
6 utilities to try to minimize the impact and to act
7 as an advocate for the farmer to make sure that
8 the soils are adequately protected and that the
9 agricultural activities are appropriate.

10 MR. HOFFMAN: So you work with the
11 utilities to come up with a scope of work and a
12 plan, correct? You're nodding your head --

13 THE WITNESS (Kolesinskas): I don't
14 know exactly of how they --

15 THE WITNESS (Bowsza): We have done
16 that, yes.

17 MR. HOFFMAN: Do you have anything
18 written down that would document how this happens?

19 THE WITNESS (Bowsza): We have
20 staff who -- following up on a conversation you
21 and I had about this, we have staff who are
22 working on that as we speak. It's been several
23 years since that has been something that we've
24 engaged in, and in the process, to be totally
25 honest, we have moved, so we are trying to get the

1 information that you requested about how that has
2 worked in the past.

3 MR. HOFFMAN: I apologize. I'm just
4 trying to shorten things a bit, Mr. Chairman.

5 THE CHAIRMAN: I appreciate it.

6 MR. HOFFMAN: I was a little bit
7 confused by the response to Interrogatories 15 and
8 16, but I just want to make sure that I understand
9 them.

10 THE WITNESS (Bowsza): I'm sorry, which
11 set of interrogatories?

12 MR. HOFFMAN: That is a fair point. It
13 is our first set of interrogatories.

14 THE WITNESS (Bowsza): To us?

15 MR. HOFFMAN: Yes. Oh, no, I
16 apologize, it's the Siting Council set of
17 interrogatories.

18 THE WITNESS (Bowsza): Siting Council
19 to agriculture?

20 MR. HOFFMAN: Yes, sir. It talks about
21 disturbance associated with construction
22 activities and availability for agricultural
23 lands. And I just want to summarize the answer,
24 if I can. Is it the department's contention that
25 once you put enough buildings down on a piece of

1 property, it no longer becomes prime agricultural
2 land?

3 THE WITNESS (Bowsza): I'm sorry. Can
4 I just ask you to redirect us to the appropriate
5 interrogatory?

6 MR. HOFFMAN: Sure. It's your --

7 THE WITNESS (Bowsza): I have the right
8 document. I just don't know the number.

9 MR. HOFFMAN: 15 and 16.

10 THE WITNESS (Bowsza): I apologize.

11 THE WITNESS (Kolesinskas): So what was
12 the question again?

13 MR. HOFFMAN: So if you put buildings
14 down, nonagricultural buildings -- let's ignore
15 farms and milking dens and whatever else -- if you
16 put buildings down on prime agricultural land,
17 does it no longer become prime agricultural land,
18 at least for as long as that building is on it?

19 THE WITNESS (Kolesinskas): So part of
20 the criteria for the prime farmland, statewide
21 important, locally important, unique is that that
22 it needs to be available for agriculture and that
23 the soils need to be in a condition that's
24 suitable for agriculture. So a residential,
25 high-density residential where the soils are

1 disturbed and that the land is not available for
2 agriculture would no longer be considered prime
3 farmland or statewide or one of those other
4 categories, that is correct.

5 MR. HOFFMAN: Okay. Shifting gears a
6 little bit to Interrogatory 20, which is on page
7 15, you cite to an article by Professor Emeritus
8 Dr. Tom Fenton. How would you describe that
9 article?

10 THE WITNESS (Kolesinskis): I would say
11 that it's a white paper specifically as related to
12 impacts of trenching.

13 MR. HOFFMAN: It was on the web site of
14 the Bakken Pipeline Resistance Coalition.
15 Correct?

16 THE WITNESS (Kolesinskis): It very
17 well could be, but it's also in several other
18 places. That's not the only place that it's
19 referenced if you Google it.

20 MR. HOFFMAN: Well, I just went to the
21 web site that you gave.

22 THE WITNESS (Kolesinskis): Yes.

23 MR. HOFFMAN: And the web site that you
24 gave is the web site for the Bakken Pipeline
25 Resistance Coalition.

1 THE WITNESS (Kolesinskas): That could
2 very well be.

3 MR. HOFFMAN: How long is the paper?

4 THE WITNESS (Kolesinskas): I have it
5 right here, if you really want me to tell you how
6 many pages it is. As I said, it's really a white
7 paper. It's two pages. So I think it's easy for
8 people to understand some of the impacts, somebody
9 that's not a soil scientist.

10 MR. HOFFMAN: And it deals with
11 large-scale oil pipelines and that kind of thing?

12 THE WITNESS (Kolesinskas): It relates
13 to pipeline construction. The principles are the
14 same, whether it's a trench for an underground
15 utility to a house versus a pipeline construction.
16 It's the same principles because they're
17 soil-based principles.

18 MR. HOFFMAN: Was it peer reviewed, do
19 you know?

20 THE WITNESS (Kolesinskas): I think
21 that's irrelevant that it was peer reviewed. I
22 don't know if it was peer reviewed. As I said,
23 it's written by a professor emeritus that is an
24 expert in his field.

25 MR. HOFFMAN: Does it cite to any

1 scholarly works, or any works of any kind, any
2 footnotes, any places to find more information on
3 that paper?

4 THE WITNESS (Kolesinskas): It doesn't.
5 And though I also included another paper from Penn
6 State about soil compaction which has some other
7 references, and I did bring a paper with me that
8 was a nice summation of assessment of soil
9 disturbance on farmland from New Jersey
10 Agricultural Development Committee that has pages
11 and pages --

12 MR. HOFFMAN: We're only talking about
13 this paper right now.

14 THE WITNESS (Kolesinskas): Yes. Okay.
15 Sure.

16 MR. HOFFMAN: Because that's the basis
17 for your answer to 20.

18 THE WITNESS (Kolesinskas): No, it's
19 not. The basis of my answer is on my expertise in
20 soils.

21 MR. HOFFMAN: So you used to work for
22 the Department of Agriculture. Correct?

23 THE WITNESS (Kolesinskas): That is
24 correct.

25 THE WITNESS (Bowsza): For the United

1 States Department of Agriculture.

2 THE WITNESS (Kolesinskas): US

3 Department of Agriculture --

4 MR. HOFFMAN: Yes. I apologize, USDA.

5 THE WITNESS (Kolesinskas): -- for 35
6 years.

7 MR. HOFFMAN: Now turning to our
8 interrogatories, your response to Interrogatory
9 Number 2, where we talk about food security -- or
10 you talk about food security. You talk about the
11 USDA's Household Food Security Measure and the
12 fact that 12.3 percent of Connecticut residents
13 are food insecure and 6.4 percent are very food
14 insecure. How does the USDA define food security?

15 THE WITNESS (Kolesinskas): There are
16 different aspects to food security, and that is
17 not my field of expertise is food security as
18 relates to is defined here of food insecurity, of
19 having adequate food and nutritional food. So
20 there are different aspects to food security.
21 That's one component of it is whether or not they
22 have food and the quality of the food.

23 MR. HOFFMAN: Would you agree with me
24 that the USDA defines food security as consisting
25 of two elements, the ready availability of

1 nutritionally adequate and safe foods, and the
2 assured ability to acquire such foods without
3 having to resort to socially unacceptable means to
4 accomplish that, such as stealing, scavenging, et
5 cetera?

6 THE WITNESS (Kolesinskas): That's a
7 component of it, but the broader concept of food
8 security also would include a supply over the long
9 term as well.

10 MR. HOFFMAN: But you're not talking
11 about that with the USDA Food Security Measure;
12 you're talking about how the USDA defines food
13 security.

14 THE WITNESS (Kolesinskas): That's
15 referencing a very specific piece of it as relates
16 to that interrogatory as far as the question of
17 how much Connecticut food and some additional
18 information about food access in Connecticut.
19 It's not -- if you would like to have a debate
20 about food security in this country, that's a
21 different question to ask.

22 MR. HOFFMAN: How does the farming of
23 tobacco relate to food security in Connecticut?

24 THE WITNESS (Kolesinskas): It doesn't.
25 And though that typically tobacco is grown on

1 soils that have broad utility for a wide variety
2 of agricultural crops, and there are hundreds of
3 acres of former tobacco land that are currently
4 growing food crops in Connecticut, as well as
5 other agricultural products.

6 THE WITNESS (Bowsza): And also
7 previous use of agricultural lands doesn't
8 necessarily dictate future use of agricultural
9 lands.

10 MR. HOFFMAN: We'll get back to that in
11 a second, Mr. Bowsza.

12 Your responses to our interrogatories,
13 24 through 26, if I'm reading these correctly,
14 just as a broad statement, does the Department of
15 Agriculture have the inherent ability to control
16 the use of agricultural land unless that land is
17 put into a Department of Agriculture program such
18 as the Farm Restoration Program or the Farm
19 Preservation Program?

20 THE WITNESS (Bowsza): Do we have an
21 inherent ability to control -- I'm sorry, can you
22 say that again?

23 MR. HOFFMAN: Yes. Do you have the
24 inherent ability to control the use of
25 agricultural land that isn't in one of your

1 agricultural programs? Can you tell a farmer no
2 don't do that practice; can you tell a farmer no
3 don't sell that property?

4 THE WITNESS (Bowsza): In a prohibitive
5 way, no.

6 MR. HOFFMAN: So going back to your
7 comments, page 1 to 2 of the department's
8 comments, you talk about that there's a goal of
9 permanently protecting farmland. Did you ever try
10 to make a purchase of the development rights or
11 anything else of this property to permanently
12 protect it?

13 THE WITNESS (Bowsza): We're going to
14 be on this document for a while?

15 MR. HOFFMAN: No. I've got one more
16 question. Did you ever try to purchase the
17 development rights of this property?

18 THE WITNESS (Bowsza): Not to my
19 knowledge.

20 THE WITNESS (Kolesinskas): And though,
21 as was mentioned before, there has been outreach
22 to this landowner about their portfolio of
23 properties and of putting in an application for
24 them to enter into a purchase of development
25 rights, and there have been several properties

1 that they did apply to and were successful.

2 THE WITNESS (Bowsza): We have worked
3 with them to preserve properties in the past. We
4 might have applications currently in process with
5 this developer in surrounding communities, but I
6 don't know that we have with this particular
7 parcel.

8 MR. HOFFMAN: And is the department
9 willing to gamble that this parcel will remain
10 undeveloped for the next 25 years if this project
11 doesn't go forward?

12 THE WITNESS (Bowsza): So the only
13 proposal that is on the table is whether or not
14 there will be a solar development on this
15 property. We don't want to see a solar
16 development on this type of prime farmland.
17 Whether or not anything else is a possibility at
18 some point is speculative. It's not a real
19 possibility at this point.

20 MR. HOFFMAN: Well, what would happen
21 if a Dunkin Donuts went in on this property?

22 THE WITNESS (Bowsza): We would -- so
23 since Commissioner Reviczky took office in 2011,
24 he's been consistent about the agency's position
25 in terms of our work towards preserving prime

1 farmland. We don't encourage development of prime
2 farmland.

3 MR. HOFFMAN: You didn't answer my
4 question, but I'll let it slide. I have nothing
5 further.

6 THE CHAIRMAN: Thank you.
7 Town of Simsbury?

8 MR. LANGER: Good afternoon. I just
9 have a few questions. Jesse Langer, and I
10 represent the Town of Simsbury in this matter.

11 Mr. Kolesinskas.

12 THE WITNESS (Kolesinskas):
13 Kolesinskas, yes.

14 MR. LANGER: I apologize. You've
15 reviewed the petition and other filings by the
16 petitioner in this matter. Correct?

17 THE WITNESS (Kolesinskas): Correct.

18 MR. LANGER: Did you come across any
19 information relating to the operations on this
20 property historically?

21 THE WITNESS (Kolesinskas):
22 Historically, though there was a couple of the
23 filed documents do relate to the historic land use
24 of the property, correct.

25 MR. LANGER: Was there anything

1 specific about the operations?

2 THE WITNESS (Kolesinskas): The
3 operations, there was basically as relates to the
4 tobacco barns and the former tobacco production,
5 and of course there's some information in the
6 Phase I report that was filed that also had some
7 information about materials --

8 MR. LANGER: Was there any information
9 -- I'm sorry.

10 THE WITNESS (Kolesinskas): --
11 materials that were found on site.

12 MR. LANGER: Was there any information
13 that would, to your satisfaction, explain whether
14 pesticides were used in the right way, as you
15 testified earlier this morning?

16 THE WITNESS (Kolesinskas): No.
17 There's no information about, I don't believe, as
18 far as past management techniques on the property,
19 as I said, other than information of some of the
20 containers and other information that was found on
21 the property, as well as the fact that there had
22 been some homes nearby that had wells that were
23 contaminated.

24 MR. LANGER: Thank you.

25 You testified regarding your position

1 concerning the use of earthen berms as a potential
2 screening measure for the project. Correct?

3 THE WITNESS (Kolesinskas):
4 Specifically as related to earthen berms that
5 would use soils from on the parcel.

6 MR. LANGER: So if the earthen berms
7 did not consist of active agricultural soils,
8 would you have a problem with that?

9 THE WITNESS (Kolesinskas): If they
10 didn't impact the prime or statewide important
11 soils and they weren't using soils that were on
12 site, I would not have a problem with it.

13 MR. LANGER: Just for example, on the
14 south side of Hoskins, the town has offered
15 through Mr. Frost a proposal that earthen berm
16 which would include some of the compacted soils
17 fairly close to the road that hasn't necessarily
18 been cultivated. If that area is used for the
19 purposes of an earthen berm to screen, should the
20 project be approved, would that be objectionable
21 to you?

22 THE WITNESS (Kolesinskas): So that's
23 using excavating soils from a portion of the site
24 to use as the berm?

25 MR. LANGER: Correct.

1 THE WITNESS (Kolesinskas): I guess I
2 would have to see what it looks like because,
3 again, it's not only of the disturbance to the
4 soils, but also is it going to create a hydrologic
5 condition that would change water flow paths on
6 the property, perhaps causing erosion or puddling
7 on a field, or something like that. So I would
8 have to see a specific proposal.

9 MR. LANGER: So conceptually, assuming
10 those issues are addressed to your satisfaction,
11 that's something that you wouldn't necessarily
12 find objectionable?

13 THE WITNESS (Kolesinskas): If it
14 didn't impact the soils on the site, if it didn't
15 grade the soils, didn't use the soils on the site,
16 didn't create a water problem on the site, I would
17 say that would be something that I would find
18 feasible.

19 MR. LANGER: Okay. Thank you. I have
20 no further questions.

21 THE CHAIRMAN: Thank you.

22 The abutting property owners grouped,
23 Flammini and Kilbourn-Jones?

24 MS. NIGRO: Mr. Chairman, my name is
25 Laura Nigro. We are not represented by counsel

1 today, and I just have one question. I'm asking
2 it as myself as an abutter.

3 THE CHAIRMAN: You can sit down and ask
4 it, if you want.

5 MS. NIGRO: I also wanted to make the
6 Council aware that I am an attorney, but I do not
7 practice environmental law in any way, so I'm
8 truly asking these questions as a resident.

9 I just have one question, and I will
10 also not pronounce your name correctly,
11 Mr. Kolesinskas.

12 THE WITNESS (Kolesinskas): That's all
13 right. Thank you.

14 MS. NIGRO: I believe you stated that
15 you were part of the RFP process. Correct?

16 THE WITNESS (Kolesinskas): I was part
17 of a group that had a chance to review the
18 potential projects that they came in under the
19 three-state RFP, as well as a broader RFP.

20 MS. NIGRO: And were you looking at
21 that through the purview of the projects for the
22 State of Connecticut?

23 THE WITNESS (Kolesinskas): Correct.

24 MS. NIGRO: At any point, had you
25 expressed concern about the use of these prime

1 farmlands for the State of Connecticut selection?

2 THE WITNESS (Kolesinskas): Correct.

3 MS. NIGRO: So this process would not
4 be the first time that you were expressing your
5 concerns about the use of this prime farmland?

6 THE WITNESS (Kolesinskas): That is
7 correct.

8 MS. NIGRO: No further questions.

9 THE CHAIRMAN: I'm told that unless
10 you're dying to sit here and watch us for the
11 remainder of the afternoon, we've completed the
12 cross-examination of the Department of
13 Agriculture. As you wish.

14 THE WITNESS (Bowsza): We appreciate
15 your time. Thank you.

16 THE WITNESS (Kolesinskas): Thank you
17 for your time.

18 THE CHAIRMAN: Thank you.

19 We're going to break for lunch shortly.
20 But the town, once they leave, at least you can
21 get set up so we can get to work promptly after
22 our lunch break.

23 (Witnesses excused.)

24 THE CHAIRMAN: We're going to break for
25 lunch. You can hopefully get all set up, if we

1 want to keep this moving. So we'll break for
2 lunch until 1:45.

3 MR. LANGER: Sounds good. We'll be
4 ready to go.

5 THE CHAIRMAN: Enjoy the wonders of New
6 Britain's restaurants.

7 (Whereupon, the witnesses were excused,
8 and a recess for lunch was taken at 12:56 p.m.)

9
10 AFTERNOON SESSION

11 1:49 P.M.

12 THE CHAIRMAN: Good afternoon. I would
13 like to call to order this meeting of the
14 Connecticut Siting Council.

15 Town of Simsbury. We'll start by
16 swearing in the witnesses by Attorney Bachman.

17 For those witnesses, would you please
18 rise for the swearing in?

19 R O B E R T J. C A R R ,

20 L I S A L. H E A V N E R ,

21 J A M E S D. R A B B I T T ,

22 M A R G U E R I T E C A R N E L L ,

23 called as witnesses, being first duly sworn

24 by Ms. Bachman, were examined and testified

25 on their oaths as follows:

1 MS. BACHMAN: Thank you.

2 THE CHAIRMAN: Attorney Langer, do you
3 have exhibits?

4 MR. LANGER: I do. I apologize,
5 Mr. Chairman. I'm just about ready.

6 Okay. So at this time I'd like to
7 offer nine exhibits for identification. And what
8 I'll do to try to move this along as quickly as
9 possible is I'll go through each exhibit and then
10 ask the appropriate witness to respond. Okay?

11 DIRECT EXAMINATION

12 MR. LANGER: So the first exhibit is
13 the Town of Simsbury's request for party status,
14 which is listed in the program as Exhibit IV-B-1.
15 And I would ask the first selectwoman if you
16 prepared or supervised in the preparation of this
17 exhibit?

18 THE WITNESS (Heavner): I did.

19 MR. LANGER: And do you have any
20 additions, clarifications or modifications to this
21 exhibit?

22 THE WITNESS (Heavner): I do not.

23 MR. LANGER: And is the exhibit true
24 and accurate to the best of your knowledge?

25 THE WITNESS (Heavner): To the best of

1 my knowledge.

2 MR. LANGER: And do you adopt the
3 information contained in that exhibit as your
4 testimony here today?

5 THE WITNESS (Heavner): I do.

6 MR. LANGER: The next exhibit is --

7 THE CHAIRMAN: Excuse me, but we just
8 have a hearing problem. You can answer your
9 attorney, but we also have to hear you. Thank
10 you.

11 MR. LANGER: Would you like me to go
12 through that again?

13 THE CHAIRMAN: That's okay.

14 MR. LANGER: The next exhibit is
15 IV-B-2, which is the prefile testimony. I'm going
16 to again go through the various witnesses.

17 So First Selectwoman Heavner, did you
18 prepare or supervise in the preparation of Exhibit
19 B-2?

20 THE WITNESS (Heavner): I did, yes.

21 MR. LANGER: And Mr. Carr, did you
22 prepare or supervision in the preparation of
23 Exhibit B-2?

24 THE WITNESS (Carr): Yes, I did.

25 MR. LANGER: And Mr. Rabbitt?

1 THE WITNESS (Rabbitt): Yes, I did.

2 MR. LANGER: And Ms. Carnell?

3 THE WITNESS (Carnell): Yes, I did.

4 MR. LANGER: And do you have any
5 additions, clarifications or modifications to
6 Exhibit B-2, which is the prefile testimony?

7 THE WITNESS (Heavner): I do not.

8 MR. LANGER: Mr. Carr?

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

10 MR. LANGER: Mr. Rabbitt?

11 THE WITNESS (Rabbitt): No, I do not.

12 MR. LANGER: Ms. Carnell?

13 THE WITNESS (Carnell): I do not.

14 MR. LANGER: And is this exhibit true
15 and accurate to the best of your knowledge?

16 THE WITNESS (Heavner): Yes.

17 THE WITNESS (Carr): Yes.

18 THE WITNESS (Rabbitt): Yes.

19 THE WITNESS (Carnell): Yes.

20 MR. LANGER: And do you adopt this
21 information contained in Exhibit B-2 as your
22 testimony here today?

23 THE WITNESS (Heavner): I do.

24 THE WITNESS (Carr): I do.

25 THE WITNESS (Rabbitt): I do.

1 THE WITNESS (Carnell): I do.

2 MR. LANGER: And the next exhibit is
3 Exhibit IV-B-3, which is the prefile testimony of
4 Mr. Rabbitt.

5 And did you prepare or supervise in the
6 preparation of this exhibit?

7 THE WITNESS (Rabbitt): I did.

8 MR. LANGER: And do you have any
9 additions, clarifications or modifications to this
10 exhibit?

11 THE WITNESS (Rabbitt): I do not.

12 MR. LANGER: And is it true and
13 accurate to the best of your knowledge?

14 THE WITNESS (Rabbitt): Yes.

15 MR. LANGER: And do you adopt the
16 information contained in that exhibit as your
17 testimony here today?

18 THE WITNESS (Rabbitt): Yes.

19 MR. LANGER: The next exhibit would be
20 the responses to the petitioner's interrogatories,
21 dated October 3, 2017. And I'm going to ask the
22 entire panel to answer the following questions:

23 Did you prepare or supervise in the
24 preparation of this exhibit?

25 THE WITNESS (Heavner): Yes.

1 THE WITNESS (Carr): Yes.

2 THE WITNESS (Rabbitt): Yes.

3 THE WITNESS (Carnell): Yes.

4 MR. LANGER: And do you have any
5 additions, clarifications or modifications to this
6 exhibit?

7 THE WITNESS (Heavner): I do not.

8 THE WITNESS (Carr): No.

9 THE WITNESS (Rabbitt): No.

10 THE WITNESS (Carnell): No.

11 MR. LANGER: And do you adopt the
12 information contained in this exhibit as your
13 testimony here today?

14 THE WITNESS (Heavner): Yes.

15 THE WITNESS (Carr): Yes.

16 THE WITNESS (Rabbitt): Yes.

17 THE WITNESS (Carnell): Yes.

18 MR. LANGER: And the same for Exhibit
19 IV-B-5, which is the town's responses to the
20 Connecticut Siting Council's interrogatories,
21 dated October 3, 2017. Did you prepare or
22 supervise in the preparation of this exhibit?

23 THE WITNESS (Heavner): Yes.

24 THE WITNESS (Carr): Yes.

25 THE WITNESS (Rabbitt): Yes.

1 THE WITNESS (Carnell): Yes.

2 MR. LANGER: And do you have any
3 additions, clarifications or modifications to this
4 exhibit?

5 THE WITNESS (Heavner): No.

6 THE WITNESS (Carr): No.

7 THE WITNESS (Rabbitt): No.

8 THE WITNESS (Carnell): Yes.

9 MR. LANGER: And is the exhibit true
10 and accurate to the best of your knowledge?

11 THE WITNESS (Heavner): Yes.

12 THE WITNESS (Carr): Yes.

13 THE WITNESS (Rabbitt): Yes.

14 THE WITNESS (Carnell): Yes.

15 MR. LANGER: And do you adopt the
16 information contained in this exhibit as your
17 testimony here today?

18 THE WITNESS (Heavner): Yes.

19 THE WITNESS (Carr): Yes.

20 THE WITNESS (Rabbitt): Yes.

21 THE WITNESS (Carnell): Yes.

22 MR. LANGER: So the next is an addendum
23 to the Council's interrogatories, specifically No.
24 A6f-2, which is also dated October 3, 2017. And
25 I'm going to direct that to First Selectwoman

1 Heavner and Mr. Rabbitt. Did you prepare or
2 supervise in the preparation of this exhibit?

3 THE WITNESS (Heavner): Yes.

4 THE WITNESS (Rabbitt): Yes.

5 MR. LANGER: And do you have any
6 additions, clarifications or modifications to that
7 exhibit?

8 THE WITNESS (Heavner): I do not.

9 THE WITNESS (Rabbitt): No.

10 MR. LANGER: And is the exhibit true
11 and accurate to the best of your knowledge?

12 THE WITNESS (Heavner): Yes.

13 THE WITNESS (Rabbitt): Yes.

14 MR. LANGER: And do you adopt the
15 information contained in that exhibit as your
16 testimony here today?

17 THE WITNESS (Heavner): Yes.

18 THE WITNESS (Rabbitt): Yes.

19 MR. LANGER: Moving along, we have a
20 supplemental disclosure to the petitioner's
21 interrogatories, dated October 5, 2017. I'm going
22 to direct that to Mr. Carr. Did you prepare or
23 supervise in the preparation of that exhibit?

24 THE WITNESS (Carr): Yes, I did.

25 MR. LANGER: And do you have any

1 additions, clarifications or modifications to make
2 to that exhibit?

3 THE WITNESS (Carr): Yes, I do. One of
4 the documents that we received after submission of
5 the letter was a copy of a manifest from the DEEP
6 that arrived about two weeks ago. The document
7 refers to one of the wastes that were disposed on
8 site, hazardous wastes that were shipped off site,
9 1,966 gallons of corrosive and chromium waste. As
10 it turns out, this particular document indicates
11 that the manifest was listed on the Culbro Hall
12 Farm property in error. The origination generator
13 was Precision Metals out of Progress Drive in
14 Manchester, Connecticut.

15 MR. LANGER: And with that
16 clarification, is Exhibit IV-B-7 true and accurate
17 to the best of your knowledge?

18 THE WITNESS (Carr): Yes, it is.

19 MR. LANGER: And do you adopt that
20 information contained in this exhibit as your
21 testimony here today?

22 THE WITNESS (Carr): Yes, I do.

23 MR. LANGER: Thank you.

24 Exhibit IV-B-8 is another supplemental
25 disclosure to the petitioner's interrogatories,

1 dated October 6, 2017, concerning correspondence
2 with SHPO.

3 I'm going to direct this to First
4 Selectwoman Heavner. Did you prepare or supervise
5 in the preparation of this exhibit?

6 THE WITNESS (Heavner): Yes.

7 MR. LANGER: And do you have any
8 additions, clarifications or modifications to this
9 exhibit?

10 THE WITNESS (Heavner): No.

11 MR. LANGER: And is it true and
12 accurate to the best of your knowledge?

13 THE WITNESS (Heavner): Yes.

14 MR. LANGER: And do you adopt the
15 information contained in that exhibit as your
16 testimony here today?

17 THE WITNESS (Heavner): Yes.

18 MR. LANGER: Last one, which is IV-B-9,
19 the response to the petitioner's interrogatories,
20 Set No. Two, dated October 26, 2017. And I will
21 address this to the panel. Did you prepare or
22 supervise in the preparation of this exhibit?

23 THE WITNESS (Heavner): Yes.

24 THE WITNESS (Carr): Yes.

25 THE WITNESS (Rabbitt): Yes.

1 THE WITNESS (Carnell): Yes.

2 MR. LANGER: And do you have any
3 additions, clarifications or modifications to make
4 to this exhibit?

5 THE WITNESS (Heavner): No.

6 THE WITNESS (Carr): No.

7 THE WITNESS (Rabbitt): No.

8 THE WITNESS (Carnell): No.

9 MR. LANGER: And is this exhibit IV-B-9
10 true and accurate to the best of your knowledge?

11 THE WITNESS (Heavner): Yes.

12 THE WITNESS (Carr): Yes.

13 THE WITNESS (Rabbitt): Yes.

14 THE WITNESS (Carnell): Yes.

15 MR. LANGER: And do you adopt the
16 information contained in this exhibit as your
17 testimony here today?

18 THE WITNESS (Heavner): Yes.

19 THE WITNESS (Carr): Yes.

20 THE WITNESS (Rabbitt): Yes.

21 THE WITNESS (Carnell): Yes.

22 MR. LANGER: Thank you. And with that,
23 I would ask that these documents be -- oh, I do
24 have one other document. We have here blown up
25 essentially the site plans that were included in

1 the petition for purposes of just ease of use and
2 to give a sense of the scale of the project. And
3 we would ask that that, which is essentially a
4 blow-up with a few modifications to it, be also
5 included as an exhibit here today?

6 THE CHAIRMAN: I'm going to ask
7 Attorney Bachman how we handle an exhibit which
8 obviously can't be copied. And I don't really
9 find from this distance that it's particularly
10 useful.

11 MR. LANGER: We can certainly move it
12 closer. It was just for purposes of being able to
13 see what the project looks like, in total, without
14 having to turn page by page.

15 THE CHAIRMAN: Go ahead.

16 MS. BACHMAN: Thank you, Mr. Chairman.
17 As we all recall from Docket 470, we did have a
18 gentleman who drew a graph on poster-sized paper.
19 We took a picture of it and included it in the
20 evidentiary record, subject to no objections from
21 any of the other parties or intervenors.

22 MR. LANGER: I would just add that it
23 can certainly come off of the board and be rolled
24 up, if necessary.

25 THE CHAIRMAN: I assume, Attorney

1 Hoffman, you're not -- are there any objections?

2 MR. HOFFMAN: It's not clear what
3 modifications have been made. I can see here that
4 this is drawing C-3.2 at the top. I can see at
5 the very bottom it's drawing C-3.5. But to the
6 extent that there have been modifications made --
7 and we've seen this board before, and there's been
8 no attempt to convey what this board contains or
9 anything else to the Council, but yet the town
10 brought it in a month ago. You know, if they want
11 to use this board in today's hearing for
12 demonstrative purposes, absolutely no objection,
13 but including it as part of the record without
14 having a chance to -- unless all the
15 modifications -- if the modifications get
16 described, we might not have a problem with it,
17 but I can't tell what's been done.

18 MR. LANGER: Sure. Perhaps Mr. Rabbitt
19 could just explain briefly what is different about
20 this particular blow-up than when it was
21 presented.

22 THE WITNESS (Rabbitt): With regards to
23 the information shown on there, if you see, there
24 are some red, what would appear to be boxes or
25 rectangles, those depict the houses surrounding

1 the project. So you see those. Those were added
2 to the plans as red marker drawings to those taken
3 from information we have.

4 We also have a depiction to scale of a
5 football field from end zone to end zone that
6 potentially gives you the ability to look at the
7 scale of the project and some relationship to a
8 football field, which is somewhat common to most
9 people's knowledge with regards to scale. Those
10 are the two primary differences between the
11 submission information contained in the petition
12 and what's on those boards.

13 MR. HOFFMAN: If I may, Mr. Rabbitt --

14 THE WITNESS (Rabbitt): The tobacco
15 sheds are also highlighted in green, but those are
16 from information contained on the maps.

17 MR. HOFFMAN: Are these homes traced
18 from information on the maps, or is that your
19 estimation of where the homes are?

20 THE WITNESS (Rabbitt): That is a very
21 close approximation. They're not done to an A2
22 survey standard.

23 THE WITNESS (Heavner): If you don't
24 mind, we believe that they were traced, and they
25 were traced by Mr. Glidden who's sitting in the

1 front row over there.

2 THE WITNESS (Rabbitt): Again, they
3 were not prepared to an A2 standard as survey
4 data. They are based on relative information and
5 are for discussion purposes to show the
6 relationship between the development and the
7 houses in the neighborhood.

8 THE CHAIRMAN: Well, we'll accept it
9 for what it's worth.

10 MR. LANGER: Thank you, Mr. Chairman.
11 And with that, I would ask that the exhibits be
12 introduced as full exhibits here today.

13 THE CHAIRMAN: With that, I guess
14 qualifying, does any party or intervenor object to
15 the admission of the exhibits?

16 MR. HOFFMAN: No objection.

17 MR. BOWSA: No objection.

18 THE CHAIRMAN: Seeing none, the
19 exhibits are admitted.

20 (Town of Simsbury's Exhibits IV-B-1
21 through IV-B-10: Received in evidence - described
22 in index.)

23 THE CHAIRMAN: We'll now begin with
24 cross-examination by staff.

25 MR. MERCIER: Thank you.

1 CROSS-EXAMINATION

2 MR. MERCIER: Most of my questions were
3 answered in the various interrogatory responses.

4 One question I do have has to do with
5 this morning's discussion regarding an offer by
6 Deepwater to the Department of Agriculture to
7 basically develop a restriction on the property
8 once the term of the project is over. And I just
9 wanted to know what the town's position was, that
10 they were not included on those discussions, how
11 they felt about development of this property being
12 controlled by those two entities?

13 THE WITNESS (Heavner): I was not
14 included in those discussions. I'm not aware that
15 there's an actual offer in writing. I believe
16 there were discussions based on the testimony. If
17 there is an offer, I'd be very interested in
18 seeing it. The town has a long history of
19 preserving agricultural lands. A third of our
20 land is preserved as open space. We've preserved
21 a lot of farmlands with conservation easements
22 that were discussed. We rent town-owned land to
23 farmers for organic farming. So it is a top
24 priority for the town. But we have not had that
25 discussion at the board level, and it would be a

1 board of selectman decision.

2 MR. MERCIER: Okay. I'm just curious
3 because I know in your plan of conservation and
4 development you have other ideas for the
5 properties, and I just wanted to make sure you
6 have an opportunity to comment.

7 THE WITNESS (Heavner): No. We
8 appreciate that. I'd be happy to bring that back
9 to our board.

10 MR. MERCIER: Thank you. I have no
11 other questions.

12 THE CHAIRMAN: We'll now go to
13 questions from Council members.

14 Mr. Silvestri.

15 MR. SILVESTRI: Thank you,
16 Mr. Chairman.

17 Good afternoon. I have a couple
18 questions that I want to pose based on the
19 Council's interrogatories to the town. The first
20 one I'd like to start with is Interrogatory Number
21 2 in the response. I'll give you a second to look
22 at that.

23 Actually while you're looking, I want
24 to read what the response was. It says that
25 "According to planning department files, there is

1 no record of an approved development by any of the
2 town's land use boards on any of the five subject
3 parcels."

4 The question that I have for you, were
5 there any proposals for development that were
6 denied?

7 THE WITNESS (Rabbitt): With regard to
8 that question, I am not aware of any applications
9 on that property that went before a land use board
10 either to be approved or to be denied.

11 MR. SILVESTRI: Thank you. The next
12 one I had references Council's Interrogatory
13 Number 9, and the response on that included
14 Attachment J.

15 The question I have for you. Is the
16 soccer field next to Squadron Line School
17 exclusively used by the school, or is it also used
18 by the town soccer programs?

19 THE WITNESS (Rabbitt): With regard to
20 the utilization, it is there as a school facility,
21 but it's also utilized by the community. There is
22 a formal soccer field there. There is a baseball
23 field or diamond, as well as actively mowed turf
24 fields for utilization by the community and the
25 school. Recess is held there, as well as sports

1 activities, both school based and community based.

2 MR. SILVESTRI: For town-based
3 activities, people from the town coming in to
4 using the fields, where is parking located?

5 THE WITNESS (Rabbitt): Squadron Line
6 School.

7 MR. SILVESTRI: So it would be south of
8 the school, if I remember correctly?

9 THE WITNESS (Rabbitt): South. So you
10 have County Road, you have the athletic fields,
11 you have a forested area, and then Squadron Line
12 School is buffered through a wood line to the
13 south of those athletic fields.

14 MR. SILVESTRI: And no parking on any
15 of the streets that are in the area?

16 THE WITNESS (Rabbitt): No marked
17 parking on any of the streets.

18 MR. SILVESTRI: Thank you.

19 Thank you, Mr. Chairman.

20 THE CHAIRMAN: Dr. Klemens?

21 DR. KLEMENS: I just have one question
22 or sort of a multi-part question. Your town
23 participated in the seven-town Farmington Valley
24 Biodiversity Study with the Farmington River
25 Watershed Alliance?

1 THE WITNESS (Rabbitt): Correct.

2 DR. KLEMENS: And you're aware of that
3 map which was also just recently in one of the
4 petitioner's interrogatories that map was attached
5 to their most recent response to Siting Council
6 third set of interrogatories?

7 THE WITNESS (Rabbitt): I have some
8 familiarity with that map.

9 DR. KLEMENS: And you know that within
10 that map that this area is called an
11 interconnection area between other conservation
12 areas?

13 THE WITNESS (Rabbitt): That is my
14 recollection.

15 DR. KLEMENS: So this area is zoned for
16 commercial and for residential use. Correct?

17 THE WITNESS (Rabbitt): The five
18 parcels total approximately 289 acres. The south
19 side of Hoskins Road is zoned R-40, which would
20 allow residential development. The immediate
21 north side of Hoskins Road is zoned industrial.
22 That's approximately 70 acres of industrially
23 zoned land. That's in the I-1 zone in the
24 community, which would allow light industrial, as
25 well as commercial office space along with the

1 accessory uses associated with those. North of
2 that site, or the northern portion of these five
3 parcels, are zoned R-40.

4 DR. KLEMENS: So if we're talking about
5 a conservation interconnection zone to allow
6 wildlife biodiversity to move between two more
7 important areas to the east and west, as shown on
8 the map, the proposed development build-out under
9 your zoning, do you feel that that is conducive to
10 the maintenance of that interconnected values that
11 are spoken to in the biodiversity project?

12 THE WITNESS (Rabbitt): Again, without
13 a specific site plan before us, I'll try to answer
14 that question to the best of my ability.

15 Associated with these five parcels to
16 the east is a project called Dorset Crossing.
17 It's a multi-use facility with assisted living,
18 multi-family apartment, as well as office and
19 ambulatory care. Just to the west of that site is
20 town-owned open space, as well as a corridor that
21 bisects the northern portion of this project and
22 the southern portion.

23 So there is an existing corridor that
24 potentially will not be significantly impacted as
25 a corridor east to west through the site. And

1 then you have a large tract of land in the farm
2 field which is over 100 acres. Depending on the
3 developability of that and how those individual
4 sites are laid out, we don't have a proposal for a
5 one million square foot Amazon distribution
6 center. If that's what we were contemplating,
7 that could be very disruptive to a corridor. But
8 given the nature of a development and the ability
9 to move east to west, north to south, some of
10 those migratory patterns could continue, but they
11 may continue in a different pattern.

12 DR. KLEMENS: Well, as plants and
13 animals don't readily adopt to changes such as
14 that, as I understand, and the real value of a
15 conservation interconnected area is that the
16 entire area stays as a zone that these activities
17 can occur, the current proposal of solar panels
18 surrounded -- and we've heard the discussion of a
19 fence that's going to be raised to allow many of
20 these small species to move through the site,
21 wouldn't you think that that would be more
22 conducive to maintaining the conservation
23 interconnectedness between the east to west than
24 what could be developed potentially under your
25 existing zoning?

1 THE WITNESS (Rabbitt): You could make
2 that assumption. Again, without -- we have a --
3 you know, zoning, if it's industrial for 70 acres,
4 that could end up being ten 7-acre tracts of land
5 with 100,000 square foot building on each. If the
6 land was subdivided, we have provisions contained
7 within our subdivision regulations that allow the
8 the commission to take up to 20 percent of open
9 space. And under Connecticut state statute a
10 planning commission can dictate exactly where that
11 20 percent comes from.

12 So we have the opportunity under the
13 subdivision proposal or scenario to perhaps better
14 protect those corridors. We are sitting somewhat
15 on the bench watching this process, trying to
16 influence you as a board as the decisionmakers to
17 look at these corridors and look at the
18 developability of this project and whether there
19 can be any changes that will help go to your point
20 of maintaining that east-west corridor. Because,
21 again, if you look at that biodiversity study,
22 that's the primary link, if you look at the two
23 regions they were connecting was the east-west
24 link, not a north-south link.

25 DR. KLEMENS: Correct. The point I'm

1 trying to make is you can certainly say that it
2 might look like this and it might look like that.
3 And we all know in planning that the smaller the
4 unit is, the less one is able to actually
5 reassemble it back into a porous sort of corridor
6 or connectivity. So I'll ask the question again.
7 The current plan that calls for basically putting
8 solar panels, having the fence raised, not
9 obstructing any of those connections, wouldn't you
10 see that from a biological perspective as
11 preferable to even well thought out series of
12 subdivisions and factories or light
13 commercial/industrial?

14 THE WITNESS (Rabbitt): I would tend to
15 agree with that because, again, you're leaving a
16 nonimpervious surface available. You're not
17 introducing pavement, you're not introducing
18 curbs, you're not introducing catch basins,
19 you're not introducing lighting that would be
20 associated with a traditional development. So I
21 would tend to agree with your conclusions.

22 DR. KLEMENS: And wouldn't the solar
23 field, as I asked the Department of Agriculture
24 this morning, wouldn't it actually give -- well, I
25 understand they've offered an easement, but

1 leaving that aside, wouldn't actually deferring
2 the future of this land for 25 years give the town
3 and other interests a chance to really think about
4 where this is going to go? Because right now
5 under your zoning it's houses, light industrial.
6 You put the solar -- I'm just asking you this --
7 you put a solar field on there for 25 years and
8 leave the easement off the table for the moment.
9 Doesn't that give you as a planner some sense that
10 you've got a window to really think about the
11 future of this property in a different way than is
12 currently zoned?

13 THE WITNESS (Rabbitt): I think we'll
14 say land banking this property for a 25-year
15 period gives the community an opportunity to
16 relook at this. The town just undertook an update
17 to their plan of conservation and development
18 which became effective yesterday. In that
19 contemplation of that plan, it still looks at this
20 area as an industrial area, a portion of that 70
21 acres, but again looked at there are still
22 preservation discussions within the POCD.

23 So again, having a stay for 25 years
24 would be potentially optimal versus a development
25 of a large-scale manufacturing facility on the

1 entire 70 acres at this point. As Mrs. Heavner
2 testified this evening, it appears the town would
3 be very interested in discussions about the future
4 disposition of this property with regards to
5 future development with an easement or a grant was
6 given to the town so that the town in the end
7 would have control over the final disposition of
8 the property after the useful life of this parcel
9 as a solar project.

10 DR. KLEMENS: Let's move to south --

11 THE WITNESS (Heavner): Can I add to
12 that?

13 DR. KLEMENS: Sure.

14 THE WITNESS (Heavner): First of all,
15 thank you for the question. Our conservation
16 commission made precisely that point to you, I
17 think, in their testimony that's attached to our
18 exhibits that they felt it was a slightly better
19 project if it was done right.

20 From our perspective, I just want to
21 make sure the Council knows, we don't hate solar.
22 We have actually been very aggressive in pursuing
23 solar. So this is not about solar. Our primary
24 concern is the safety of our residents, the water,
25 soil, environment and public health and safety.

1 That's what we're all about. That's what we're
2 always all about. And second, to provide
3 information to you to ensure that the project, if
4 approved, fits to our community in terms of size,
5 aesthetics, preservation of historical value.

6 So those are the main concepts. And
7 then the long-term impact of this project. Again,
8 very pleased to hear about Deepwater Wind's offer
9 to Ag, very appreciative of that offer, and also
10 that the decommissioning is done properly because
11 we think it could be beefed up quite a bit, and as
12 represented not only by DEEP but by our Clean
13 Energy Task Force and other members and our
14 finance committee. So those are our primary
15 concerns.

16 But I do want to make the Council know
17 and everyone know we don't hate solar. We've
18 pursued it in multiple manners. It's really
19 about, is this project safe.

20 THE CHAIRMAN: Just to follow up. Your
21 first point on safety, I think you mentioned, I
22 think we have in the record correspondence from
23 both police and fire, which if I read it
24 correctly, do not seem to have any safety or
25 security problem with this project. So I'm

1 wondering --

2 THE WITNESS (Heavner): I was talking
3 about environmental, air, water, soil and health
4 of our neighbors. So I'm not as knowledgeable as
5 you on the technical requirements of this, but
6 from our perspective of the town, what we think
7 about, as the chief-elected official of the Town
8 of Simsbury, is the safety of the area, are we
9 preserving the environmental safety of the area,
10 the health of the air, water, of the safety. It's
11 always our top priority. Any municipal official
12 will tell you that.

13 THE CHAIRMAN: We'll get into the issue
14 of tobacco later and how that's contributed to
15 that. But go ahead.

16 DR. KLEMENS: There's been a request
17 that the solar field south of Hoskins Road be
18 eliminated or reconfigured. Can someone explain
19 what is special about that area, please, for the
20 record?

21 THE WITNESS (Heavner): Sure, I'll
22 start, and then I'll turn it over to Jamie because
23 Jamie can speak to the POCD. But from our
24 perspective, I have two members of the board of
25 selectman here with us, but all members of the

1 board of selectman have been literally door
2 knocking the area, asking our residents what do
3 you care about, and not only in the area but in
4 the whole Town of Simsbury. And one of the
5 primary things we care about for those of you who
6 had the opportunity to come to Simsbury, it's a
7 very beautiful town. Money Magazine listed us as
8 the top ten beautiful towns in America. So we
9 take great pride in how our community looks, and
10 that includes viewsheds into various communities.
11 As you drive up that area on Hoskins, part of the
12 gateway to that community is the beautiful open
13 space on the left. It's important to us not only
14 as a gateway but because it's juxtaposed next to a
15 historic home, Ms. Kilbourn's home, which the
16 community cares very much about. People know Ms.
17 Kilbourn. People have known the farmers who have
18 lived there.

19 This is the largest project the Town of
20 Simsbury has ever seen in our history, and we've
21 been around since the 1600s, so it's natural, I
22 hope, that the Council can understand why we might
23 have concerns about this. This is huge. This
24 town has spent years planning regulations, design
25 review cuts, to making sure that whatever comes in

1 is a good fit for our community. We're pretty
2 open to things, but it needs to look good, and it
3 needs to be safe.

4 So I'll open it up to Jamie to add to
5 that, and possibly Marguerite.

6 THE WITNESS (Rabbitt): With regards to
7 we'll say traditional development outside of the
8 Siting Council, the town has a long-standing
9 practice with regards to regulatory control.
10 They've had zoning in town since 1933. They've
11 had planning commission in town since 1941. Just
12 as a matter of principle, Hartford was the first
13 planning board in the entire country in 1907. So
14 Simsbury didn't follow Hartford in the whole
15 national movement with regards to regulatory
16 control and planning over time. Simsbury has
17 worked for over 75 years on that regulatory side.
18 It's difficult when we don't have those tools in
19 our toolbox now.

20 Hoskins Road is identified in our POCD
21 from 2007 that references in the 2007 plan are
22 carried through to the recently-adopted plan in
23 2017. The specific references to those historic
24 and significant places, such as 85 Hoskins Road,
25 100 Hoskins Road, and then put those into some

1 context of Hoskins Station, which was a rail
2 station associated with the railroad. The Hoskins
3 family was the first family to develop in this
4 area. There's reasons it's named Hoskins Road.
5 And it's based on the Hoskins family who actually
6 had a train stop named after them, there's a
7 geographic location, and that long-standing place
8 in the community.

9 The south side of Hoskins Road is
10 probably the most topographically challenged with
11 regards to buffering or screening. It sits below
12 Hoskins Road in elevation, so any earthen berm or
13 landscaping challenges that site. So I think
14 there were some suggestions early on in
15 discussions both by the Council, as well as the
16 petitioner, that there may be opportunities, as
17 well as the Council staff, about perhaps moving
18 into areas on the northern side of the project in
19 order to protect some of the resources on the
20 southern side, resources both from an
21 architectural standpoint, community character
22 standpoint, as well as protecting that acreage
23 that's in agricultural productivity now.

24 DR. KLEMENS: The first --

25 THE WITNESS (Rabbitt): I do have

1 someone that, if I misspoke, or we need to have
2 Marguery from the historic commission --

3 DR. KLEMENS: I think I'm actually
4 interested in trying to get shorter answers so we
5 can finish the hearing today. I'd appreciate it.

6 I have one question. You used the word
7 development, as being the largest development that
8 Simsbury has seen. And I'm struggling -- and
9 maybe you can help me here. Is it a development,
10 or is it a land use? Because what I see from a
11 long view, this is something with a 25-year, maybe
12 30-year shelf life, almost like a crop and
13 afterwards gone, the land is there. So to me it's
14 not really -- I don't see it as development as
15 bricks and mortar and roads. I see it as an
16 extended land use, much like, you know, a
17 Christmas tree farm which may take 15 years to
18 harvest. Could you tell me something that would
19 dissuade me of that briefly?

20 THE WITNESS (Heavner): I wouldn't say
21 that I necessarily disagree with you on that, but
22 it is big, and it is going to be, you know, shiny
23 glass tops and metal poles, 10,000 metal poles
24 into it. So it is just a big project. We've
25 never seen anything like that. Very few have seen

1 anything this size in the State of Connecticut. I
2 think there's only one other that may be slightly
3 bigger. This is a huge, huge project. And so
4 we're just asking that it be done thoughtfully and
5 carefully. And Deepwater Wind has told us that
6 they would like to be good community partners, and
7 we're asking them to do that.

8 DR. KLEMENS: And I don't dispute
9 anything you've said. I'm just trying to, from a
10 planning perspective and long-term tying up the
11 land and changing it, trying to basically
12 distinguish this from what potentially could occur
13 there under your zoning. And the fact that, you
14 know, we've heard discussions that some of this
15 might be, if done correctly and sensitively,
16 reversible after 25 or 30 years. And I'm just
17 trying to draw that distinction because we keep on
18 calling this a development, but I think it's a
19 type of land use that has a longer horizon than
20 what we're generally used to seeing in
21 agriculture, but it's a land use that is not a
22 permanent change. But I'm sympathetic to the fact
23 that it's big and challenging.

24 THE WITNESS (Rabbitt): I would
25 categorize it in kind of two aspects that it is a

1 change in land use, but it's also a development.
2 And to that fact, for the next 25 years, or
3 perhaps longer if new technology becomes available
4 or efficiency increases, that it is a development.
5 It cannot be used for anything else during its 25
6 year -- or if we use the term 25-year life span.
7 It is a development. It is a power plant for 25
8 years.

9 The Hartford was a development for
10 approximately 30 years. That building is gone
11 now. So all developments can be viewed as
12 temporary in nature that don't have definitive
13 life spans of 100 or 200 years. I would agree
14 with the fact that houses have a much longer life
15 span, and we see that with 85 Hoskins and 100
16 Hoskins that have been there for close to 200
17 years, where the solar farm you have potentially
18 the opportunity to redevelop the site in some
19 other manner, which goes to a lot of the testimony
20 you've heard today, as well as the information
21 contained in the petition is what happens in year
22 26. I think that's a question that is harder to
23 answer. We know what happens in year zero to year
24 25. It's a power plant. But it's not a field
25 anymore, it's not an active agriculture.

1 So again, I think it's easier to
2 convert this proposal to some other productive use
3 at the end of 25 years than it would be a 200-lot
4 subdivision because that 200-lot subdivision will
5 be here for 200 or 300 years, or longer.

6 DR. KLEMENS: That's the extent of my
7 questions. Thank you very much.

8 THE CHAIRMAN: Mr. Levesque?

9 MR. LEVESQUE: I don't have any
10 questions for them.

11 THE CHAIRMAN: Mr. Hannon?

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

13 Just a general question to the town,
14 and I don't really care who answers it. What does
15 the town want to see done with this property? I
16 mean, I'm hearing that maybe it can be preserved
17 for agricultural use, but the zoning, current
18 zoning on the property, doesn't indicate that the
19 town is really looking at keeping this as
20 agricultural use. So what does the town really
21 want to see on this property?

22 THE WITNESS (Rabbitt): Lisa, I'll try
23 and answer that. As you're familiar, in
24 Connecticut we're driven by property tax to
25 generate revenue. So any plan of conservation and

1 development that's adopted by a town has to factor
2 that in. You have to look at what land is readily
3 developable to generate revenue for a community.
4 This land is so positioned, or a portion of it,
5 that the POCD contemplated developing a portion of
6 that. It's very difficult in Connecticut to zone
7 land 100 acre agriculture. I'm sure if you owned
8 a farm and I told you you can only have one lot on
9 100 acres, you would potentially file a takings
10 claim, or something to that stance, even though
11 the attorneys in the room would say that you
12 haven't lost all economic value of the land, but
13 it has been substantially been depreciated.

14 So we can't zone a 289 acre
15 agriculture. So in most instances, our choices
16 are residential with some density or
17 nonresidential. The community in the POCD
18 contemplated a balance. That balance was 70 acres
19 of industrial and the rest in residential. But
20 within our land use control, such as subdivision
21 and zoning, we got 289 acres, if it was
22 subdivided, we have the ability to take 58.7 acres
23 of that land and dedicate it open space, and that
24 could be fee simple dedication to the community,
25 and that community gets to dictate where that land

1 occurs. So there was a balance in the development
2 side.

3 I've worked in a lot of communities
4 over my 30-year span, and I'm not aware of any
5 that had the opportunity to take a large farm and
6 zone it to stay that farm. It's very difficult in
7 Connecticut under our current land use statutes to
8 do that. Again, the POC contemplates a portion of
9 this property being developed as nonresidential
10 and the subsequent balance of that to be developed
11 residentially, but we have provisions that not all
12 of it would become structure. If we can replace
13 tax revenue over time, there are other
14 opportunities available to us, but as Lisa has
15 said, today, as well as it appears Deepwater may
16 be contemplating that they would be willing to
17 find an end use that may not be a full development
18 of this parcel under the current POCD or current
19 zoning, but I think the town needs to be involved
20 in that conversation.

21 THE WITNESS (Heavner): Can I add to
22 that?

23 THE CHAIRMAN: If you can make a
24 shorter answer than your esteemed planner, that
25 would be appreciated.

1 THE WITNESS (Heavner): I don't know
2 that I can, but I will try. When you ask what the
3 town wants, and we want what we always want, we
4 want something that is safe that fits within the
5 character of the town. We are open to this --
6 when we talk to our residents, what they'll say is
7 this is five pounds of potatoes in a two-pound
8 bag. So the fit is not right. Our primary
9 concern is the gaps in data and information that
10 Mr. Carr has presented in terms of safety for air,
11 water, soil and public health. After that it's
12 does it fit. That's what we always ask. We were
13 one of the first towns in the State of Connecticut
14 to adopt form-based code, which says we don't care
15 as much about what it is but how it looks, and
16 that's super important to the Town of Simsbury.
17 And right now we don't think we're there at all.

18 MR. HANNON: To follow up on that.
19 Part of the conversation earlier today between the
20 applicant's attorney and Department of
21 Agriculture, you heard that there is a dialogue --
22 it may not have gotten very far, but there at
23 least has been a dialogue in that there may be a
24 way to preserve this land at the end of this
25 project, assuming it goes forward. So based on

1 the comments I'm hearing from you now, it appears
2 as though the town would be opposed to be saving
3 this property as agricultural land?

4 THE WITNESS (Heavner): No --

5 MR. HANNON: If the issue is tax
6 revenue, as was stated, I'm wondering then if the
7 applicant got the project and at the end of the
8 project turned that land over to the Department of
9 Agriculture so it stayed in agricultural use, what
10 would the town's position be on that?

11 THE WITNESS (Heavner): So I can't
12 speak for the whole town because we are a board of
13 selectman form of government, and so it requires a
14 vote by the board of selectmen. But I can tell
15 you we have preserved a third of our land as open
16 space. That is a top priority for the citizens of
17 the Town of Simsbury. We've done a survey. Our
18 residents are very interested in preserving it.
19 We haven't seen an offer, but we would certainly
20 be willing to entertain it. It is something we
21 have done in the past, and we would absolutely
22 consider that.

23 MR. HANNON: The reason I'm asking is
24 it just sounds as though that position sort of
25 contradicts that you have to look at tax revenue.

1 I understand towns have to look at tax revenue,
2 but at the same time the town has plans where this
3 property could theoretically be zoned some for
4 light industrial, the 70 acres, the balance of it
5 is R-40, which I'm assuming is one-acre lots?

6 THE WITNESS (Heavner): Yes.

7 MR. HANNON: So with that being the
8 case, I'm not seeing where the town has really
9 done a whole lot to try to preserve this as
10 agriculture, but yet there may still be a way of
11 preserving it as agriculture. I just want to make
12 sure that that's not in opposition to what the
13 town is also looking for. Because I understand
14 where you may be able to save like 57 acres of
15 this through conservation easements, or things of
16 that nature, or in lieu of fee, however, but that
17 still means a lot of it would be developed
18 residential and industrial. So --

19 THE WITNESS (Heavner): I can't tell
20 you the answer to that because you raised the
21 exact dilemma that municipalities across the state
22 of Connecticut are facing unfortunately. I know
23 you're not a policy board, but this is something
24 that has hit very hard with me and with all
25 municipalities. The State of Connecticut

1 over-relies on the property tax to fund municipal
2 services. That creates the exact dilemma you're
3 describing. Without an alternate growing revenue,
4 it's grow or die. There's no question the
5 municipalities -- that's a terrible public policy.
6 We've been advocating at the state to get that
7 changed. It is one of the worst in the country,
8 this over-reliance.

9 That said, preservation of open space
10 is a huge priority to the citizens of Simsbury.
11 We have demonstrated that priority over and over
12 again. When Hartford talks about 15 percent of
13 their land is not taxable, well 33 percent of our
14 land is not because we value that so much. We
15 have initiated conservation efforts, and that's
16 something that we value. That said, we are faced
17 with this crazy, crazy tax scheme out there that
18 is outrageous. We were threatened with losing \$6
19 million from the state. Thankfully that didn't
20 happen, but we expect that to rear its ugly head.
21 So as we go forward, there will be a balancing
22 act. I can tell you that the citizens of Simsbury
23 are very committed to open space. They
24 demonstrate that time and time again. They
25 demonstrate it in surveys that we conduct to our

1 citizens.

2 So I would be very interested in seeing
3 the offer made -- I have seen none -- and bringing
4 it back to our boards for discussion. The way we
5 do things in Simsbury is by consensus, by
6 consulting with multiple boards, including the
7 board of finance, conservation, open space. All
8 these would weigh into this. It's a constant
9 balancing act. But for us, again, it goes back to
10 our primary message, is this safe, does it fit,
11 and are we taking care of the long-term problems.

12 MR. HANNON: And I don't know if you
13 can answer this, or you want to, but given a
14 choice, if the applicant were willing to do
15 something with the land after the useful life of
16 this project, assuming it goes forward, would your
17 preference be the land go to the town or the land
18 go to the Department of Agriculture?

19 THE WITNESS (Heavner): My preference
20 would be it go to the town unencumbered and let
21 the town decide. They may decide they want to
22 continue with solar panels in the future,
23 depending on what the technology develops. They
24 may decide they want to return it to agriculture
25 depending on the state of agriculture in the State

1 of Connecticut. They may consider another board,
2 depending on what happens with the state, if it
3 does collapse financially, we came very close to
4 the brink this year, they may need it for some
5 other purpose. So we would prefer it go to the
6 town and let the residents of Simsbury decide what
7 to do with it. I can tell you that we have
8 preserved a third of our land as open space, and
9 that is a top, top priority for our residents. I
10 can't tell you specifically because it has to go
11 through a fairly extensive process of evaluation.

12 THE WITNESS (Rabbitt): Really quick to
13 answer Mr. Hannon's question. The references I
14 made with regards to zoning were really specific
15 to the POCD, the 2007 plan, and 2007 plan and
16 really points out the conflict that Lisa tried to
17 point out that we have a POCD. We're mandated by
18 the state to come up with a future land use plan.
19 That is a requirement of state statute. And when
20 we contemplate that, we put things in certain
21 categories, and that results in what is called the
22 comprehensive plan. POCD is not the comprehensive
23 plan for the town. The zoning regulations are.
24 The zoning regulations need to reflect the POCD,
25 and this cohesiveness between the two documents is

1 at this point industrial and residential. It
2 doesn't override other objectives contained in the
3 2007 and 2007 POCD that highlights the spirit of
4 preservation, as Lisa mentioned. We have over 30
5 percent open space and protected lands in the Town
6 of Simsbury, and that has been a tremendous effort
7 over time.

8 And to follow up to Lisa, as the
9 planning director, I think the town is best
10 positioned to have the discussions with the
11 applicant on the future disposition of the
12 property. To make a decision that takes something
13 out of the development's band forever is a very
14 difficult decision to make without input from the
15 municipality.

16 MR. HANNON: Understood. Most of the
17 balance of my questions really focus on the
18 zoning. So I've got a number of questions. The
19 first chunk of them are really a simple answer.
20 But I want to focus primarily on the two parcels
21 north of Hoskins Road directly -- so these are the
22 two, I believe, that are zoned the I-1. So the
23 current zoning for those lots is I-1. Correct?

24 THE WITNESS (Rabbitt): Correct.

25 MR. HANNON: What's the front yard

1 setback area in that zone?

2 THE WITNESS (Rabbitt): I believe it's
3 50 feet.

4 MR. HANNON: And just based on what I'm
5 seeing as far as some roadways leading into that
6 property, those parcels -- I'm just going to refer
7 to them as lots 3 and 4 -- would frontage for that
8 property be along Hoskins, so thus you're talking
9 about like a 50 foot yard setback in that area?

10 THE WITNESS (Rabbitt): Correct. But
11 also any nonresidential development goes to the
12 design review board, which brings in the design
13 guidelines.

14 MR. HANNON: We'll get to that in a
15 little bit. The allowed height of the structures
16 in the I-1 zone?

17 THE WITNESS (Rabbitt): I believe it's
18 35 feet.

19 MR. HANNON: 40, according to the
20 zoning regs.

21 So now did the town hire Mr. Frost to
22 develop the potential aesthetic design to help
23 mitigate some of the views associated with the
24 project?

25 THE WITNESS (Rabbitt): Yes.

1 MR. HANNON: And when coming up with a
2 proposed screening plan for the solar project, did
3 you in particular participate in the conversions
4 that led to the contextually sensitive plan? I'm
5 not sure what that means, but I'll ask anyway.

6 THE WITNESS (Rabbitt): I'll try to
7 answer you.

8 MR. HANNON: And that's on page 368 of
9 the transcript.

10 THE WITNESS (Rabbitt): I was directly
11 involved in the retention of Chad Frost from Kent
12 & Frost out of Mystic, Connecticut. We did have
13 discussions, as well as I was the one who brought
14 him through the community for a two to three hour
15 drive to discuss the vernacular and context of
16 both the immediate area associated with
17 development, as well as the rest of the community.
18 And we did work on trying to find something that
19 was context sensitive to the community with
20 regards to rolling, meandering topography,
21 landscaping or what we would call kind of
22 noninvasive hedge rows associated with country
23 roads, and it's somewhat hard to do that, but we
24 have other fabric in the community associated with
25 -- you know, Main Street has the most gorgeous

1 street trees probably within all over Connecticut,
2 and perhaps the only one that can come close to
3 that is Nantucket with regards to looking at the
4 fabric of the community and the organization of a
5 street tree and street canopy with the town. So
6 we pulled some of that in.

7 With regards to the testimony at the
8 last hearing with regards to the 12-foot berm and
9 6 feet at the top, I have photo representations of
10 other options with regards to doing a meandering
11 berm that starts at 4 feet to 6 feet, back to 4,
12 up to 8. You can plant it with red fescue, and
13 you still can do the street trees. You can still
14 do a split-rail fence which is similar vernacular
15 that's contained in the community. The vernacular
16 of a 10-foot pole vinyl fence does not exist in
17 the Town of Simsbury. But there are options
18 available to us that could get that footprint that
19 was described in excess of 100 feet between the 40
20 and 60 foot realm.

21 MR. HANNON: Now, in terms of one of
22 the comments that Mr. Frost kept referring to
23 saying "we," are you included in that "we"
24 reference?

25 THE WITNESS (Rabbitt): I would believe

1 so.

2 MR. HANNON: And the town supports an
3 average berm height of roughly the 10 feet. I
4 guess it's ranging anywhere from 8 to 12, as Mr.
5 Frost proposed?

6 THE WITNESS (Rabbitt): As the director
7 and planner, I would be comfortable with anything
8 between 4 and 8 in a meandering manner. And if
9 the Council would, I have representative photos of
10 an installation in another community. And
11 Simsbury, for most aspects, they have used
12 hardened earthen berms with evergreens which
13 create a different type of aesthetic that may not
14 be germane to the discussion here. We've done
15 very well at hiding large developments like super
16 Stop and Shops and 3,000 cars in a parking lot at
17 The Hartford, but this is a little bit different
18 than that.

19 MR. HANNON: So is a 40-foot high
20 building.

21 THE WITNESS (Rabbitt): So is a 40-foot
22 high building. But we also effectively screened
23 3,000 parking spaces with a 6-foot berm and
24 evergreen plantings.

25 MR. HANNON: I don't think that's all

1 that impossible to do. I know places that have
2 done it.

3 THE WITNESS (Rabbitt): Correct.

4 MR. HANNON: Part of the reason why I'm
5 asking about the height of the berm is because, if
6 you're looking at a 3 to 1 slope or 4 to 1 slope,
7 you're talking about a massive structure. A
8 12-foot high berm in a 3 to 1 slope, you're
9 talking 72 feet.

10 THE WITNESS (Rabbitt): At a minimum.

11 MR. HANNON: 4 to 1, you're talking 96.
12 You're right, that is the minimum. So that's why
13 I'm kind of concerned about some of these numbers
14 that are being thrown out. And as you heard some
15 of the other questions I had earlier today about
16 what that might do with some of the prime ag soils
17 because you may now be putting a berm on prime ag
18 soils.

19 THE WITNESS (Rabbitt): One thing I
20 will point out, Mr. Hannon, is that if we
21 incorporated something between -- if we looked at
22 4, you know, that's 12 feet and 12 feet. You do
23 not put a 6 foot road on top of a berm. 30 years
24 of experience, that's not what you do. It is not
25 a pyramid structure, but it peaks out at the

1 height of 4, 6 or 8, and you do it in a meandering
2 rolling type of topography that allows gentle
3 slopes. But if you look at this site, the
4 northern side of Hoskins Road for the majority of
5 their frontage has no agricultural use or tilled
6 productive land within 100 and in some instances
7 150 feet of Hoskins Road. This berm would be
8 placed between the existing edge of pavement and
9 any historic use of the northern field. On the
10 southern side of Hoskins Road there's a 10 to 20
11 foot nonagricultural area, as well as a hardened
12 10 to 12 foot wide agricultural road that shows up
13 year after year in aerial photos. So that has
14 already been compacted and another portion of that
15 has not been utilized for agriculture in decades.
16 So I'm comfort as a planner that if I was doing a
17 residential development or industrial style
18 development, that's where and how I would do it.

19 MR. HANNON: On page 77 of 122 of the
20 zoning regulations, number 11, landscape buffer in
21 nonresidential zones adjacent to residential
22 zones. And here you've got north of Hoskins,
23 south of Hoskins. I know that there are some
24 properties that do abut parcels 3 and 4 that are
25 north, but are you also including the property

1 that is south of Hoskins also as one of -- like a
2 residential property that you would need that type
3 of a buffer on? I understand the residential
4 properties that directly abut the northern section
5 of that, but I just want to know if you also
6 consider that one residential unit on the south
7 side of Hoskins as also playing in with that
8 industrial zone?

9 THE WITNESS (Rabbitt): No. 85
10 Hoskins?

11 MR. HANNON: I'm not positive of the
12 street number.

13 THE WITNESS (Rabbitt): People say it's
14 the isolated piece.

15 MR. HANNON: Yes.

16 THE WITNESS (Rabbitt): It's a U-shaped
17 piece surrounded by field, which is being proposed
18 for solar. Again, you have the opportunity there
19 to scale an earthen berm and with evergreen
20 planing or fescue grasses to make that blend in a
21 little bit more than the hard structure of a
22 10-foot tall vinyl fence.

23 MR. HANNON: The reason I'm asking is
24 because where a nonresidential zone abuts a
25 residential zone, the commission may -- it doesn't

1 say it shall -- but it may require a dense
2 landscape buffer sufficient to screen any
3 detrimental effect upon abutting, existing or
4 future residences. Do you agree with that?

5 THE WITNESS (Rabbitt): Correct.

6 MR. HANNON: On page 84, page 172 of
7 the zoning regulations, number 4, special
8 requirements. In addition to height area and yard
9 requirements in the I-1 zone, strict industrial
10 zone, the commission may require a dense planting
11 screening 35 feet in width or 7 feet high or both.
12 Correct?

13 THE WITNESS (Rabbitt): Correct.

14 MR. HANNON: So given the fact that the
15 town has some regulations in place theoretically
16 to deal with 40-foot high structures, and you're
17 talking about a dense planting screening, which I
18 fully understand what that is, I guess my question
19 is why wouldn't a dense planting screening similar
20 to what you have in the zoning regulations suffice
21 for a project that is about 10 feet high?

22 THE WITNESS (Rabbitt): It could and,
23 again, one of the discussions -- and it probably
24 is represented best in our design guidelines on
25 page 17. And I can make copies available for all

1 of the members.

2 MR. HANNON: It's online.

3 THE WITNESS (Rabbitt): -- that the
4 higher you go, and the more dense you go, you lose
5 that horizon view. So we use the terminology
6 sometimes -- it's not very technical -- careful
7 what you wish for, because if you build it thick
8 enough and tall enough, you end up being in a
9 canyon effect. So there is a balance between not
10 seeing it at all and then also changing when the
11 sun rises and the sun sets in association with
12 your house, because if you planted a white pine or
13 a thick grove of pines associated with the house,
14 within 30 years they're going to be 30 or 40 feet
15 tall, and that may not be the desired effect. So
16 there's a balance there.

17 What we have to react to right now is
18 the 10-foot tall vinyl fence, and I think there's
19 something between that and a 40-foot tall grove of
20 white pines. And again, we're potentially
21 imposing this on a landowner who perhaps, given
22 the choice, would not want to be in a canyon
23 effect. So we're looking to balance that between
24 the 10-foot vinyl fence and something we'll say
25 softer.

1 MR. HANNON: So then theoretically the
2 dense planting screening that you identified in
3 the zoning regulations, that may be a viable
4 option to a 10-foot fence or a 12-foot high berm?

5 THE WITNESS (Rabbitt): Correct.

6 MR. HANNON: I think that's the balance
7 of my questions. Thank you.

8 THE CHAIRMAN: Thank you. I guess I
9 have a few. I'm still trying to get my arms
10 around comments by the first selectwoman, which I
11 totally agree with, the tax structure, the
12 pressures that are on municipalities, particularly
13 in Connecticut, and the present conditions, and
14 inability of the state to structurally grapple
15 with the problems. So hopefully that won't go on
16 forever.

17 THE WITNESS (Heavner): From your lips
18 to God's ears.

19 THE CHAIRMAN: I know forever is
20 relative like everything else.

21 But if this -- I'm not going to use the
22 word "power plant." I'll let your planner use
23 that. But if you want to use that, that's fine
24 too. I have a little power plant on my route now
25 that I didn't know it was a power plant, but I

1 guess I do now.

2 If this solar project, power plant,
3 whatever you want to call it, were developed,
4 would the town expect to get property taxes from
5 it, or will that be exempt?

6 THE WITNESS (Heavner): We would expect
7 to get property taxes from it, yes.

8 THE CHAIRMAN: Would you expect it
9 to -- we've already heard from police and fire, at
10 least what I've seen that they do not feel, one,
11 it would be a safety problem, as they define it;
12 and two, would require additional costs as far as
13 equipment and personnel.

14 What about schools?

15 THE WITNESS (Heavner): No, I agree
16 with that, low impact on service development.

17 THE CHAIRMAN: So my question is again
18 trying to get my arms around what it is you want,
19 wouldn't that be worth considering, a project that
20 has low impact on your community, is there
21 presumably for 25 years, provides property taxes,
22 and during that time you and the State of
23 Connecticut could hopefully figure out a better
24 way to develop property and taxes, and doesn't
25 that sound like some reason, or maybe it doesn't?

1 THE WITNESS (Heavner): Like I said, we
2 actually are very supportive of solar. We passed
3 a resolution the 100 CT solar from our board of
4 selectmen we're putting solar on the Department of
5 Public Works, on our Department of Recreation
6 area, we just put it on the high school. We
7 actually applied for community solar on a closed
8 landfill, and it was unfavorably reviewed by DEEP
9 ironically. So we're not against solar.

10 And in terms of what we want, we think
11 Deepwater needs to meet the air and water
12 standards, as required under the petition, what we
13 presented from Mr. Carr makes us at least think
14 that it hasn't been done yet to our satisfaction.
15 And we want to be able to answer the question is
16 this safe, is this safe for health, is it safe for
17 the environment, is it safe for air, water and
18 soil, and then after that does it fit.

19 So if you got rid of the southern side
20 of Hoskins, if you buffered it appropriately in
21 the other areas, if you made it a little bit
22 smaller. Some of the Council members have
23 questioned Deepwater Wind appropriately, can you
24 make this smaller and still generate the power you
25 need. If you do a decommissioning plan that is a

1 little bit more realistic than what's presented,
2 the town could be satisfied. The devil is in the
3 detail, and we'd want to see that. We want to
4 make sure that the concerns of the abutters are
5 addressed appropriately. Some of them have
6 legitimate concerns. A few of them just want one
7 or two trees planted on their own yard. For
8 heaven's sakes, that's not a big ask. In fact, I
9 don't think any of our asks are that big. They're
10 reasonable and they're not insurmountable, but
11 you've got to meet the air and water standards
12 under the petition. We don't think they have.

13 And there are a lot of data gaps and
14 information that raise concerns to us. I can't
15 answer to my residents is this safe. I don't know
16 that anyone can. We're just asking for the
17 information. We're not saying we won't work with
18 them. I've told Jeff, I've told Aileen that we
19 will work with them, but as presented, it's not
20 acceptable to the town. We would like to see the
21 southern side of Hoskins totally eliminated, we
22 would like to see buffering increased.

23 THE CHAIRMAN: Okay. You said it two,
24 three times.

25 THE WITNESS (Heavner): I'm going to

1 say it seven.

2 THE WITNESS (Rabbitt): Just quickly.
3 One of the key components, and I touched upon it
4 before, is we don't have the final site plan
5 before us, nor do you. And if I compare a project
6 that I believe they're involved in in Foster,
7 Rhode Island, their landscaping are little pine
8 trees, maybe two to three feet tall. I would say
9 that's unacceptable for a landscaping buffer. We
10 don't have that level of detail yet. We don't
11 know what the final plan looks like. We're
12 entrusting you to make good decisions to require
13 them to do the right thing.

14 THE WITNESS (Heavner): And I would
15 just add the historical nature of the area. I
16 don't know if you've had a chance to watch the
17 video of the Martin Luther King that the high
18 school students put together. But this is not
19 made up. This is real. This is something we take
20 great pride in. I would hope Deepwater Wind would
21 take great pride in this. This is about the
22 history of our nation. Dr. Martin Luther King
23 came to the area. This area was significant in
24 the civil rights movement. It was significant to
25 him. And it's because of these very tobacco

1 fields. For heaven's sakes, help us preserve the
2 legacy of that. We'll work with you. We'll work
3 with Deepwater Wind.

4 Marguerite can speak to some of the
5 historical nature of the area and why we care
6 about it, and why I think it can be worked with,
7 but you do need to address our -- I don't mean to
8 tell you what to do, but we feel it needs to be
9 addressed because this is not made up.

10 THE CHAIRMAN: Okay. I have a question
11 on historic's, so let me ask the questions,
12 please.

13 THE WITNESS (Heavner): Sure.

14 THE CHAIRMAN: So you've talked about
15 the historic character. And roughly can someone
16 tell me when the tobacco agriculture more or less
17 first started on these fields?

18 THE WITNESS (Carnell): It started in
19 Simsbury in the mid 19th Century. There was a
20 small amount of tobacco, say around 1850, but by
21 1870 there was a significant amount of tobacco
22 being grown in Simsbury.

23 THE CHAIRMAN: And was it also grown on
24 properties that surround this particular property?

25 THE WITNESS (Carnell): Yes.

1 THE CHAIRMAN: So there has been
2 historic character because I know that's one of
3 the points that has evolved; is that not correct?

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

6 THE CHAIRMAN: And is there anything in
7 your zoning regulations, as opposed to your plan
8 of development, that specifically -- we've heard
9 about maintaining the 20 percent open space -- but
10 that preserves the historic character?

11 THE WITNESS (Carnell): Yes, there is
12 actually. And both the 2007 and the new POCD
13 referenced the tobacco barns on Hoskins and a
14 certain dormitory that was used to house minority
15 workers who worked in the tobacco fields. Those
16 are listed as special character places in the
17 POCDs, both of them.

18 THE CHAIRMAN: Okay. That wasn't quite
19 my question.

20 THE WITNESS (Rabbitt): To answer your
21 question with regard specific to zoning, the
22 zoning regulations.

23 THE CHAIRMAN: Right.

24 THE WITNESS (Rabbitt): Again, we look
25 at that, and most of the uses and industrial

1 aspect or noncommercial aspect, some of the larger
2 more intense uses are by special exception. Those
3 special exceptions have discussions with regards
4 to harmonizing with the neighborhood, harmonizing
5 with the character of their community. So if
6 there was a development, we would have that
7 development attempt to replicate -- if you
8 couldn't keep or maintain the honor, respect and
9 replace, we've had discussions with developers
10 before in areas that there are tobacco sheds to
11 design their structures to replicate the
12 architecture or roof size density and bulk of an
13 tobacco shed.

14 THE CHAIRMAN: Okay. Getting
15 specifically to tobacco sheds, I understand
16 previously there were more than there are, there
17 are, what, five left. Is that correct?

18 THE WITNESS (Rabbitt): On this site,
19 yes.

20 THE CHAIRMAN: If it can be answered
21 quickly; if not, don't even bother.

22 THE WITNESS (Rabbitt): I will try.

23 THE CHAIRMAN: If someone wants -- the
24 property owner wants to demolish one of them, they
25 have to get a demolition permit. Is that correct?

1 THE WITNESS (Rabbitt): Correct.

2 THE CHAIRMAN: Can the town block the
3 demolition of a historic structure such as a
4 tobacco barn?

5 THE WITNESS (Rabbitt): It depends
6 whether they're registered or not, but in most
7 instances these tobacco sheds are not listed with
8 SHPO or with the national program. They're just
9 deemed historic by the community as part of its
10 fabric, but they are not in a protected class.

11 THE WITNESS (Carnell): It depends on
12 the funding sources that are used for the
13 demolition. These tobacco sheds are not formally
14 listed on the national register, but they are
15 considered eligible. And so in terms of the SHPO,
16 they are subject to the same protections for state
17 funds and federal funds.

18 THE WITNESS (Rabbitt): Also, our
19 demolition process has a delay feature in it, so
20 it's not apply on Friday, tear it down over the
21 weekend. So there is potential opportunities for
22 the community, as well as the state, to influence
23 the final decision.

24 THE CHAIRMAN: Right. Influence but
25 you can't block it unless it -- it's not on any

1 historic registry?

2 THE WITNESS (Rabbitt): If it's not on,
3 it is extremely difficult to block.

4 THE CHAIRMAN: Has any attempt ever
5 been made to place these structures or fields or
6 the combination on historic registry because we
7 kept hearing from you and the neighbors about how
8 important it is, and I'm not denying that, but I
9 am questioning what have you done other than come
10 to the Siting Council and say now that somebody
11 wants to do something please preserve it?

12 THE WITNESS (Carnell): Well, we --

13 THE CHAIRMAN: There's a green button.
14 If it turns green, you should be okay.

15 THE WITNESS (Carnell): I'm sorry.
16 Could you please rephrase the question, or please
17 repeat the question?

18 THE CHAIRMAN: What have you done, if
19 anything? And if the answer is you haven't done
20 anything yet, that's all I really want, or you
21 have, to actually preserve let's just talk about
22 the barns or the sheds, whatever they are.

23 THE WITNESS (Carnell): Right. They
24 have been identified in a 2013 historic resource
25 inventory by the town. A recommendation has been

1 made to the town for a thematic nomination for
2 agricultural buildings in Simsbury or possibly
3 tobacco related agricultural buildings within the
4 town. So that recommendation has just come to the
5 town in 2013. And I know that there is interest
6 in pursuing it. Typically buildings are not
7 listed on the national register often until there
8 is some threat because it takes time, resources,
9 and also the consent of the owner to be listed on
10 the national register.

11 THE CHAIRMAN: Okay. Has the town
12 considered turning one or more, maybe just one,
13 into a type of interpretive museum or something, I
14 mean, to give it some value other than a building,
15 which according to the police and fire, are in
16 danger of being vandalized or burnt to the ground?

17 THE WITNESS (Rabbitt): In some aspects
18 early on we had discussions about the future use
19 of those buildings, and that's something the town
20 would be willing to discuss further with DWW.

21 THE CHAIRMAN: Because I believe they
22 have offered to save two of them.

23 THE WITNESS (Rabbitt): Correct, the
24 two immediately north of Hoskins Road.

25 THE CHAIRMAN: And I'm just going to

1 say -- well, the question will be, do you totally
2 disagree with what I'm about to say, but I have
3 sort of an issue. To me I don't deny at all the
4 historic character of tobacco farms, but I am --
5 well, here's the question. When did the surgeon
6 general first notice that tobacco was dangerous to
7 your health? If you don't know, you don't have to
8 answer. But what I'm trying to say, tobacco has a
9 very mixed -- I mean, it's historic, yes, but
10 people are still suffering from it.

11 And we've also heard, I think, from
12 your own experts that if not this property --
13 well, probably this property soils have been very
14 badly impacted by tobacco farming. So again, I'm
15 having -- a historic thing, an interpretive
16 museum, and I would think it would be fascinating,
17 and again you can tell me I'm crazy, if one, you
18 had something recognizing the important individual
19 who may have -- whether he was in that particular
20 one or worked on the farm -- the history of the
21 tobacco farming, and also the good and bad and the
22 ugly. That I think would be fascinating. But I'm
23 perplexed that you're saying in 2013 you started
24 this process, and you're waiting for some threat
25 like we're posing right now to really galvanize

1 and do something, and that's just not right.

2 THE WITNESS (Rabbitt): I think,
3 Mr. Stein, the difficulty is, is that all of those
4 programs that are available to us at the state and
5 national level require cooperation from the
6 landowner, and in this instance we have a
7 landowner who isn't actively participating in
8 agriculture other than leasing the land. They are
9 a development corporation. And it is perhaps not
10 in their interest or in their pro forma to
11 preserve structures that may jeopardize the future
12 development or build-out of their property.

13 I would take your discussion on tobacco
14 akin to a southern plantation which has a certain
15 nomenclature associated with that, but in some
16 aspects we have gone to great lengths to preserve
17 that plantation structure. And if you've ever
18 been to South Carolina or North Carolina or
19 Virginia, you may have gone on a tour. You're not
20 celebrating perhaps what they grew or what they
21 did, it's a fabric of our history, but it does
22 take the cooperation of the community as well as
23 the landowner. It appears in testimony that DWW
24 has kind of stated that they would be willing to
25 do something in an interpretive manner.

1 THE CHAIRMAN: Okay. Apparently I've
2 opened up a can of something. I think we have
3 some follow-up questions. I'll start with Mr.
4 Silvestri.

5 MR. SILVESTRI: Really, really quick
6 question, and again this goes back to the answer
7 to the Council Interrogatory 6, and particularly
8 your response on 6E. It notes that the barns in
9 the north fields are not visible from the public
10 right-of-way.

11 THE WITNESS (Rabbitt): Correct.

12 MR. SILVESTRI: And my kind of question
13 with the discussion that was going on, was there
14 any thought about trying to remove these and
15 relocate them, rebuild them someplace else, and
16 then kind of go into the history, the museum type
17 of situation?

18 THE WITNESS (Rabbitt): Again, I don't
19 want to say I'm an architectural geek, but I'm not
20 an architect and have not evaluated the structural
21 integrity of the tobacco barns, but tobacco barns
22 aren't traditional to the respect of what you call
23 a barn that are these beautiful chestnut post and
24 beam structures. They are utilitarian in purpose.
25 They were designed almost in a temporary manner to

1 dry tobacco. They don't have concrete slabs.
2 They're usually held together with cable ties and
3 stays, and they're not mortise and tenon and
4 purlins and beautiful post and beam structures.
5 So they are not easily moved. And that is my
6 understanding. So again, there may be an
7 opportunity for that, or perhaps repurposing the
8 material from those structures, but they're not
9 that traditional Amish New England type barn
10 raising that occurred in the 17th, 18th Century
11 that you pull the pegs out and reassemble.

12 MR. SILVESTRI: My viewpoint has always
13 been a little different in that I've seen a lot of
14 interior of these. I just think they're
15 beautiful, but that's my opinion.

16 THE WITNESS (Heavner): So do we. We
17 agree a hundred percent.

18 THE WITNESS (Carnell): Just to add to
19 that in terms of the historic value, once you move
20 the structure or start to dismantle it and place
21 it somewhere else, you do affect its integrity.
22 And in terms of whether it would be eligible for
23 the national register if it is moved, generally
24 not.

25 DR. KLEMENS: Well, I've been grappling

1 with some of the same questions the Chairman has
2 been asking. And I read what the town put in.
3 First, were you successful in getting the grant
4 you applied for? It was something -- you were
5 asking for a grant that was due on the 8th of
6 October you were going to be told whether you
7 receive funding.

8 THE WITNESS (Carnell): That was SHPO
9 who was applying for the grant, not the town.

10 DR. KLEMENS: Did they get the grant?

11 THE WITNESS (Carnell): I have not
12 heard.

13 DR. KLEMENS: I mean, I'm kind of
14 puzzled by this too. I read your submission.
15 It's really very moving. I mean, you state that
16 Dr. Martin Luther King worked in these fields. He
17 came up from Morehouse College, worked here. He
18 was called to the ministry in large part from what
19 he saw in Simsbury. And this is -- I'm
20 paraphrasing your own testimony -- and in fact was
21 inspired by working in Simsbury which was a
22 nonsegregated community to inspire some of his
23 future work. This is pretty impressive.

24 So I also ask what else have you done
25 to celebrate this? You come here with these

1 barns, but this is the first I've heard of it.
2 This is something that I have quite a bit of
3 interest in. It seems to be a very well kept
4 secret until now. Maybe you could -- and I'm
5 puzzled that this is so incredibly seminal to the
6 history of this country. Why haven't you done
7 more to secure this incredible legacy that you're
8 giving to us here in your letters and testimony?

9 THE WITNESS (Heavner): So I'll start
10 by answering and then go to Marguerite. This
11 really came to the town's attention and the
12 nation's attention through the work of our
13 Simsbury High School students who did research on
14 it. It really wasn't very well known. It then
15 hit national news. It was in the New York Times,
16 CBS, NPR, and this was about 2013 that this
17 happened. So it really rose to the attention.
18 This was not an area, as Marguerite has testified,
19 the history of minorities in Connecticut has been
20 underserved in terms of its research and what we
21 know about it.

22 So it came to our attention. Since
23 it's come to our attention, the town, mostly
24 through the Simsbury Free Library and the Simsbury
25 Historical Society working with members of the

1 public, have raised money for a memorial for Dr.
2 Martin Luther King that is anticipated being put
3 at the Simsbury Historical Society. We have since
4 done every year Martin Luther King memorial
5 programs. Some have received national attention.
6 They're almost always on the Connecticut news
7 statewide for this project.

8 We are looking into all sorts of things
9 there. It does take a little bit of time. I will
10 say reaching out to SHPO, who's now taken an
11 interest in it, as you saw their application, we
12 just got that a few days ago. It's just now
13 reaching -- I guess I would say to you and to
14 Deepwater Wind why on earth would we not all be
15 behind preserving this? We have not viewed it as
16 something we need to save because who would ruin
17 this legacy? Who would do that? We'd all work
18 together to preserve it. This is not just a great
19 man in America's history, but in the history of
20 the universe. It's an asset that has not been at
21 risk. Our land use boards work very well
22 together. Our whole community works well to
23 preserve this. We care about this. We still
24 worship in the church that Dr. Martin Luther King
25 worshiped in.

1 DR. KLEMENS: Let's talk about the
2 specifics of this project and what they propose,
3 what they could do differently to protect that
4 legacy, albeit I recognize those may not be the
5 very barns, but let's say for argument's sake
6 those are the ones that you want to designate.
7 What could they do differently that could actually
8 preserve that legacy for Simsbury, the state and
9 the nation?

10 THE WITNESS (Heavner): I appreciate
11 the question. I'm going to let Marguerite handle
12 that because she's given it a lot of thought, and
13 her commission.

14 THE WITNESS (Carnell): Representing
15 the historic district commission, we would prefer
16 to see all five of the barns saved and preserved
17 for posterity, not just left in place, but
18 actually preserved, new roofs put on it, and
19 either kept for future use, potentially using one
20 of the barns for an interpretive process, or
21 finding other uses for the barns, but keeping the
22 barns intact, all five of them.

23 DR. KLEMENS: So possibly adaptively
24 reusing them, but leaving them in their historical
25 context, not moving them?

1 THE WITNESS (Carnell): Exactly, Yes.

2 DR. KLEMENS: And how do you see this
3 project impeding that specifically?

4 THE WITNESS (Carnell): Well, as I
5 understand it right now, at least two of the barns
6 are slated for demolition.

7 DR. KLEMENS: Which of the two barns
8 are we talking about? You have to forgive me, I'm
9 buried in so much paper with this project, it's
10 hard to keep it straight.

11 THE WITNESS (Rabbitt): The three barns
12 on the northern most parcel were slated for
13 demolition, and I believe there is a commitment,
14 or at least there's been discussion of a
15 commitment, from the petitioner to save the
16 southern two barns. One that is very
17 traditionally a drying shed for tobacco, and the
18 other that falls more along the maintenance or
19 accessory type use to the farming and agricultural
20 activity.

21 DR. KLEMENS: So if we were to say for
22 argument's sake preserve all five of these barns,
23 how much land around those barns would need to be
24 set aside contextually for the barn to sit in, or
25 could these barns be surrounded by solar fields,

1 or would you find that a violation of the
2 historical context? That's a historical question.

3 THE WITNESS (Carnell): Well, if we
4 were going to list these barns on the National
5 Registry for Historic Places, ideally there would
6 be no solar panels around them whatsoever. So
7 that's one question. But in terms of actually
8 saving them, which is my first priority to see
9 them actually left standing, I would be happy with
10 that. But in terms of keeping some historical
11 value in terms of the town, I think we would need
12 to study really how much land we would want. But
13 again, I'm here primarily to save the five today.

14 DR. KLEMENS: Here's my final question,
15 I promise. If we said the barns have to be saved,
16 and they were surrounded by solar panels for the
17 moment for the next 25 years, in the
18 decommissioning we could figure out how much land
19 you need around that. Correct?

20 THE WITNESS (Heavner): (Nodding head
21 in the affirmative.)

22 THE WITNESS (Rabbitt): You could make
23 that assumption, yes.

24 DR. KLEMENS: So for the immediate next
25 25 years it would satisfy your concerns to have

1 all of these barns saved and warehoused as well as
2 the land, which I feel is being warehoused for 25
3 years too?

4 THE WITNESS (Rabbitt): I think that
5 statement would be correct.

6 DR. KLEMENS: Thank you.

7 THE WITNESS (Rabbitt): The issue is,
8 is what will be the structural integrity of them
9 over 25 years if they're just left in place versus
10 maintaining --

11 DR. KLEMENS: Understood. That could
12 be part of it. But basically what I'm trying to
13 understand is the barns are protected, and I mean
14 protected also for the integrity for the duration
15 of the project, then we haven't lost anything
16 historical in terms of moving them or demolishing
17 them?

18 THE WITNESS (Carnell): In terms of the
19 barns, yes. There's also the issue of the two
20 historic houses.

21 DR. KLEMENS: I'm not going there.
22 Thank you.

23 THE CHAIRMAN: Mr. Hannon.

24 MR. HANNON: I have a question for the
25 first selectwoman. I did hear your comment, and I

1 would like an explanation as to why you think the
2 project has not met air and water standards?

3 THE WITNESS (Heavner): I would refer
4 you to Mr. Carr.

5 THE WITNESS (Carr): Yes. Thank you.
6 I was brought in from the town to take a look at
7 the environmental due diligence that was
8 conducted, specifically the Phase I report. And
9 in our review, we had found that it didn't meet
10 the standards required that we would normally look
11 at to determine whether or not there are
12 environmental impacts with the property. First of
13 all, as you saw in my letter, it didn't meet the
14 state standards. And in addition to that, it's my
15 opinion that also doesn't meet the ASTM standards
16 that the Phase I report purportedly says that it
17 does meet.

18 So in our review, so we went out and
19 took a look at some of the files at DEEP that were
20 missed, and based on that, we found significant
21 activity related to the tobacco use of the site
22 and pesticide removal and hazardous wastes that
23 were generated at the site and excavated from the
24 site, as well as DEEP correspondence relating to
25 their opinion in a 1994 memo that the

1 environmental status of the property was -- they
2 couldn't opine that it's clean, that in their
3 opinion not enough was done, not enough site
4 investigation. And in our opinion, in looking at
5 that, that's been the case. There's been no soil
6 and water testing as part of the site assessment
7 process on the property even though they did find
8 recognized environmental conditions on the
9 property, some drums in some other areas.

10 In addition, there were several
11 important areas that were missed, some disposal
12 areas on what we saw evidence of parcel one.
13 Right behind one of the tobacco sheds there is an
14 area that's on one of the maps that was submitted
15 to DEEP when they were looking for these buried
16 pesticide areas.

17 Additionally, the pesticides, even
18 those that were disposed on the Hall property off
19 the project site had been used on the property,
20 used and mixed in bulk, and they were stored in
21 buildings on the site. So those weren't
22 investigated either. So at some point they were
23 used in some substantial quantity.

24 So based on that, not enough
25 information has been collected or evaluated to

1 make a proper determination that there's going to
2 be no impact from the proposed development.

3 Along with the environmental issue,
4 it's a significant construction project. There's
5 58,000 cubic yards of soil being moved. There is
6 over 10,000 piles or augers being driven. If you
7 go through -- you know, for example, going through
8 these areas of soil that are heavily contaminated,
9 drawing down into the water table, or you puncture
10 one of these buried disposal sites, farm dumps.
11 Just not enough has been done to prepare a
12 reasonable soil management plan. I know the
13 petitioner has offered to make sure those things
14 haven't happened, because they haven't -- what are
15 you preparing a plan for.

16 So that's been our testimony -- my
17 testimony in this case. And again, I can answer
18 any specific questions on that.

19 MR. HANNON: It sounds like your
20 comments are directly to water. What about air?
21 Because there was a general comment it didn't meet
22 air or water standards.

23 THE WITNESS (Carr): Well, the issue
24 with air standards on this case is primarily
25 during construction, not during when you're

1 disturbing these soils and digging these areas up.
2 Again, the areas that I had mentioned, these
3 environmental areas of concern, the recognized
4 environmental conditions, if they get disturbed
5 along with the soil tracking, if they are not
6 properly managed, can cause dust in the air and
7 travel, depending on wind directions, for quite a
8 distance. So it's not something that can't be
9 managed, but it's something that some more
10 information for our comfort that they understand
11 what the issues are on the site to manage against.

12 MR. HANNON: Okay. I just couldn't let
13 that comment go without a response. Thank you.

14 THE CHAIRMAN: Mr. Mercier.

15 MR. MERCIER: Yes. I have a question
16 on a different topic. It has to do with during
17 the municipal consultation process with Deepwater.
18 Did the town request the 20 foot wide perimeter
19 access roads around all of the solar field areas?

20 THE WITNESS (Rabbitt): No.

21 MR. MERCIER: Thank you.

22 THE CHAIRMAN: Thank you. We'll now go
23 to the petitioner.

24 MR. HOFFMAN: Thank you, Mr. Chairman.

25 Good afternoon. Since we stopped on

1 the air issue, Mr. Carr, let's start there.
2 What's being done to manage dust control and
3 dispersion of dust in air for the current
4 agricultural operations on the site?

5 THE WITNESS (Carr): I'm not aware of
6 any that are being done, but we have been asked to
7 look into that.

8 MR. HOFFMAN: And did the petitioner
9 agree to use water as a dust suppression mechanism
10 when it's doing construction?

11 THE WITNESS (Carr): I believe so, yes.

12 MR. HOFFMAN: Thanks. We know that
13 three barns on the site are not visible to the
14 public. Correct?

15 THE WITNESS (Carnell): Correct.

16 MR. HOFFMAN: So how will we do an
17 interpretive exhibit for those three barns on
18 private property?

19 THE WITNESS (Carnell): The town is not
20 asking for an interpretive exhibit in those three
21 barns that are not visible.

22 MR. HOFFMAN: Are you familiar with
23 Northwest Park in Windsor?

24 THE WITNESS (Carnell): No.

25 MR. HOFFMAN: Are you familiar with the

1 historic tobacco museum that already exists in the
2 Town of Windsor?

3 THE WITNESS (Carnell): I am aware that
4 it exists.

5 MR. HOFFMAN: Great. Can you point me
6 to any documentation that the town possesses that
7 Dr. Martin Luther King used any of these five
8 barns?

9 THE WITNESS (Carnell): I think
10 research is really about to be underway, if and
11 when SHPO gets the grant.

12 MR. HOFFMAN: So today you don't have
13 that information?

14 THE WITNESS (Carnell): We do not have
15 information that links Dr. Martin Luther King to
16 these particular barns on this particular
17 property. We do know that other minority workers
18 did.

19 MR. HOFFMAN: Did Dr. King sleep in the
20 Morehouse dormitory when he was in Simsbury?

21 THE WITNESS (Carnell): We assume that
22 he did.

23 MR. HOFFMAN: Did the fire department
24 burn down the Morehouse Dormitory?

25 THE WITNESS (Carnell): Indeed they

1 did.

2 MR. HOFFMAN: And what was the town's
3 historical review prior to the fire department
4 being permitted to burn that dormitory down?

5 THE WITNESS (Carnell): My
6 understanding is that dormitory was built in the
7 1940s. The dormitory was burnt down in the 1980s,
8 so that building was under 50 years of age and at
9 that point would not have been considered historic
10 per National Park Service standards.

11 THE WITNESS (Rabbitt): If I may, the
12 Town of Simsbury did not burn down that dormitory.

13 MR. HOFFMAN: No. I said the fire
14 department.

15 THE WITNESS (Rabbitt): Fire district
16 separate from the town.

17 MR. HOFFMAN: Ms. Heavner, you've
18 stated that a higher level of review is needed of
19 this petition. Now, when you said that it was
20 August, now that it's November and we've been
21 through several days of hearings over the course
22 of several months and have several feet of paper
23 between us, has the Council engaged in a
24 comprehensive review of our petition?

25 THE WITNESS (Heavner): Would you like

1 to object, Jesse?

2 MR. LANGER: I would certainly object
3 to the extent that this is an unabashed attempt to
4 pit the town against the Siting Council. That's
5 my objection.

6 MR. HOFFMAN: There's no legal basis
7 for that objection.

8 THE CHAIRMAN: We always
9 appreciate conflict.

10 MR. LANGER: It's argumentative. How
11 about that?

12 THE WITNESS (Heavner): I'm happy to
13 answer though.

14 THE CHAIRMAN: You don't have to
15 answer.

16 MR. LANGER: It's up to you.

17 THE WITNESS (Heavner): I would say
18 that I agree with Jesse, that's really an
19 inappropriate question. And I'm sorry to see you
20 going down that line of questioning. But what I
21 will say is I'm here as an evidentiary witness,
22 and it's not my job, or quite frankly yours, to
23 sit in judgement of Siting Council members. They
24 serve as civil servants, public servants for the
25 State of Connecticut, and I respect their role in

1 the process. The town's job, my job, is to
2 articulate to the Siting Council the town's
3 concerns and to provide the Siting Council with
4 information they may need or find helpful in their
5 deliberations so they may come to a decision of
6 this petition.

7 THE WITNESS (Rabbitt): If I may just
8 quickly expand upon that. We're typically used to
9 reviewing site plans at a more final, formative
10 development stage that we don't have final grading
11 plans. We don't have final development plans. We
12 don't even know what type of solar panels can
13 ultimately be used. We don't know the methodology
14 associated with the posts that's going to go in.

15 THE CHAIRMAN: Excuse me. You were
16 doing fine.

17 THE WITNESS (Rabbitt): Okay.

18 THE CHAIRMAN: We have a process, and
19 the process includes taking action on what's been
20 presented. And we can either deny, we can
21 approve, we can set conditions. And if, and I
22 highlight the "I" and the "F," we were to approve
23 it, there is a follow-up D&M plan which has all
24 the details that you're asking about. So we have
25 a process, and we don't need to go through that

1 again.

2 MR. HOFFMAN: Let's talk about the land
3 preservation for a minute. There's 289 acres for
4 this site. The petitioner in its petition is
5 requesting to develop 156 of those acres. Please
6 check my math, but as I look at it, that's 133
7 acres of open space. Would you agree with that?

8 THE WITNESS (Rabbitt): That appears to
9 be the math.

10 MR. HOFFMAN: Is that greater than or
11 less than the 58 acres that the town can preserve
12 as of right under its zoning regs?

13 THE WITNESS (Rabbitt): Is that land
14 that you mentioned to ever be developed, or
15 dedicated open space, or just land not developed
16 now?

17 MR. HOFFMAN: It will be land not
18 developed now pursuant to this petition.

19 THE WITNESS (Rabbitt): Under the
20 scenario of the planning commission of dedication,
21 that would be permanently protected open space, so
22 57 and change. In your analysis you're not
23 permanently protecting that land.

24 MR. HOFFMAN: No, but we're protecting
25 it for as long as the project exists under this

1 petition.

2 THE WITNESS (Rabbitt): Under your site
3 plan you can make that assumption, but again, it
4 wasn't the land that the town would choose under
5 their normal regulatory process.

6 MR. HOFFMAN: I want to turn to the
7 supplemental Zuvic Carr report, Mr. Carr, if I
8 could? I think that's October 5th. So I just
9 want to understand what transpired here. So you
10 looked into the town records, and there was an
11 indication that DEEP did water testing in the area
12 of the project site primarily for pesticides.
13 Right?

14 THE WITNESS (Carr): Yes. Correct.

15 MR. HOFFMAN: Can you describe what was
16 in the town's records that you reviewed related to
17 well testing?

18 THE WITNESS (Carr): There were some
19 results back from the eighties -- I think it's in
20 the letter -- regarding some of the properties and
21 those water quality results from those wells.

22 MR. HOFFMAN: Was there anything later
23 than the eighties in those files?

24 THE WITNESS (Carr): No, nothing that
25 we had reviewed, no.

1 MR. HOFFMAN: Didn't it strike you as
2 odd that the DEEP would find evidence of
3 contamination of drinking water wells and not have
4 follow-up?

5 THE WITNESS (Carr): No, it didn't
6 strike us as odd. Our focus was to determine the
7 status of the wells, if there was any
8 contamination, and other relevant documents
9 related to the environmental status of the
10 property. So we didn't do any follow-up.

11 MR. HOFFMAN: You're a licensed
12 environmental professional in the State of
13 Connecticut, correct, Mr. Carr?

14 THE WITNESS (Carr): Yes, I am.

15 MR. HOFFMAN: So you're fairly familiar
16 with the state's remediation programs. Is that
17 safe to say?

18 THE WITNESS (Carr): Yes.

19 MR. HOFFMAN: So if DEEP was aware of
20 potential drinking water contamination, wouldn't
21 DEEP act to clean up those disposal areas or to
22 order somebody to do so?

23 THE WITNESS (Carr): They would
24 normally make an order if there was someone they
25 could issue an order against. On a site like

1 this, for example, you know, with Culbro in this
2 case, if it's an individual homeowner with a
3 problem or a heating oil tank issue, it's more
4 ambiguous on what they would order. They usually
5 don't order anything at that point. And I believe
6 there used to be funding to provide filters and
7 treatment to water treatment systems, but that has
8 since gone away some years ago.

9 MR. HOFFMAN: Fair enough. And I agree
10 with your take on the residential, but right now
11 we're talking about businesses. Did DEEP issue
12 such an order here against Culbro?

13 THE WITNESS (Carr): My understanding
14 is they did.

15 MR. HOFFMAN: They did or did not?

16 THE WITNESS (Carr): They did.

17 MR. HOFFMAN: And was that order
18 subsequently revoked?

19 THE WITNESS (Carr): It's our
20 understanding, again, I did not look into the
21 specifics of the order itself, but it may have
22 been, yes, it may have been revoked from some of
23 the documents we've seen.

24 MR. HOFFMAN: It's just an extra copy
25 of our revised Interrogatory 84.

1 MR. LANGER: So I'm going to object to
2 the introduction of the revised Interrogatory 84
3 and the 240 or so pages attached to it. The
4 petitioner had nearly a month to perform this due
5 diligence and produce this information. And to
6 leave it until now, the day of the hearing -- I
7 received the email at 8:30 in the morning -- is
8 poor form and really trial by ambush. It's after
9 the file deadline of October 26th, and it's also
10 after the Council has finished its
11 cross-examination.

12 So how can the Siting Council, as well
13 as the other participants, review again the nearly
14 240 pages of documents and the substance of the
15 revised response and address it intelligently here
16 today? The only conclusion that the town can draw
17 is that Deepwater Wind is extremely concerned
18 about the deficiencies of its petition and thus
19 has to resort to these antics.

20 Further, the 240 pages of documents to
21 me is an admission that the petition, the Phase I,
22 is deficient. And so the Council shouldn't
23 countenance this conduct, particularly after
24 counsel for Deepwater Wind has lectured and taken
25 the abutters to task for not following the rules.

1 So to me it seems the height of hypocrisy. And so
2 we request that this information be precluded, and
3 that Deepwater Wind not be able to testify as to
4 its contents, but that the attempt to introduce
5 this information, the 240 pages of documents,
6 should be noted for the record. That's the town's
7 position.

8 MR. HOFFMAN: If I may respond?

9 THE CHAIRMAN: Sure.

10 MR. HOFFMAN: There's two salient
11 issues here. One, we were unaware of the contents
12 of these documents until we went into the file
13 room, until our professionals went into the file
14 room yesterday and the day before. Obviously, if
15 we had known about it sooner, we would have
16 provided it sooner. It's not the height of
17 hypocrisy to provide these documents to the Siting
18 Council. The petitioner has a duty to correct an
19 incorrect interrogatory, number one. And number
20 two, since the Siting Council is routinely denying
21 the petitioner's insistence on the following of
22 rules, it is now, in my opinion, the height of
23 hypocrisy that the petitioner is going to get held
24 to a higher standard than others are being held
25 to.

1 MR. LANGER: My response to that is
2 that the petitioner was aware of this information
3 going back to Mr. Carr's report October 5th. So
4 to wait until the last minute, literally the
5 eleventh hour, to produce information and not
6 allow the town and its counsel and its expert to
7 be able to review the documents, and it should not
8 be countenance. It's their burden. They should
9 have known this information. The fact that they
10 weren't able to get it in before October 26 is on
11 them, and it shouldn't be on us or the Council to
12 have to deal with it.

13 THE CHAIRMAN: Well, first of all, we
14 have not completed our evidentiary portion of the
15 hearing. I wish we had. I would like to before
16 nightfall, but maybe we won't. So if I understand
17 this correctly, and I will allow after I probably
18 finish totally bungling the legalities of this,
19 I'll let Attorney Bachman correct me, but I
20 believe that this two-page summary is probably
21 pretty adequate, and that it's not necessary for
22 people to read all maybe it's 238 pages of tests
23 of wells. And since we're prepared to stay here
24 as late as we have to, there will be ample time to
25 cross-examine the applicant on that. I don't know

1 why you feel the word "hypocrisy" is necessary,
2 but if that's the way lawyers like to do, it's
3 between them.

4 So Attorney Bachman, is there anything?

5 MS. BACHMAN: I have nothing to add,
6 Mr. Chairman. You did a great job. Thank you.

7 MR. LANGER: If I could just respond
8 for the record? I don't know how my witness
9 should be required to respond to questions even
10 though we have a two-page summary presumably it's
11 going to be based on the 240 pages accompanying
12 it. And there's no way that he should have to
13 respond to this sort of inquiry, which I'm
14 assuming is the reason that we've been given these
15 documents. And the lead-up regarding the water
16 testing to have to sort of address it on the fly,
17 he should have the opportunity to review the
18 material and to be able to respond appropriately
19 to the extent that the Council is going to allow
20 these documents into or onto the record over our
21 objection.

22 MR. HOFFMAN: Mr. Stein, if I may? I
23 think Mr. Langer is correct. I will not address
24 in my cross any questions relating to -- I will
25 withdraw my cross as to the materials contained in

1 the revised response to Interrogatory 84 and limit
2 it only to Mr. Carr's report.

3 THE CHAIRMAN: Okay. That's fine. And
4 I will say, I think both the applicant and the
5 town had the opportunity to discover this
6 information. It wasn't just available to the
7 petitioner as far as I know. But I think with
8 that said, and certainly Mr. Carr, if you don't
9 feel you have the information, no one is required
10 to answer questions here. So please continue.

11 MR. HOFFMAN: So let's shift gears
12 slightly to the Transfer Act, Mr. Carr. There's
13 some debate in your various documents about
14 whether or not the Transfer Act applies to this
15 particular property. Correct?

16 THE WITNESS (Carr): Which parcels are
17 we talking about here?

18 MR. HOFFMAN: Well, let's just --

19 THE WITNESS (Carr): The project site?

20 MR. HOFFMAN: Yes, the entire project
21 site. We have maintained that the Transfer Act
22 does not apply to this site, but you have
23 suggested that it is possible that it does. Is
24 that fair?

25 THE WITNESS (Carr): That was my

1 position in the October 5th letter, yes.

2 MR. HOFFMAN: So let's assume that
3 we're both right. Okay. We'll take it both ways,
4 if you will. Okay. Let's assume that first our
5 read of the Transfer Act is correct, and that the
6 Transfer Act doesn't apply because the project
7 site is not an establishment. What are the
8 testing requirements under the Connecticut
9 remedial statutes for the acquisition of a
10 property that isn't in the Transfer Act?

11 THE WITNESS (Carr): Well, the purpose
12 of the Phase I is to identify --

13 MR. HOFFMAN: No. I'm asking for
14 regulatory requirements, not ASTM.

15 THE WITNESS (Carr): Well, that's kind
16 of a legal question. I would defer that. But it
17 depends on the parties and what the requirements
18 are of the Council and the hearing and what you're
19 asking to provide, if that's considered a
20 regulation, and providing the environmental due
21 diligence that may be required.

22 MR. HOFFMAN: Okay. Now let's assume
23 that it is a Transfer Act site. You're more
24 familiar with that because then it's covered by
25 Title 22a of the general statutes. Right?

1 THE WITNESS (Carr): 134 under.

2 MR. HOFFMAN: Exactly correct, 22a-134,
3 that's the Transfer Act. So let's assume that it
4 is a Transfer Act site. The first thing you do is
5 you have a Transfer Act site after the transfer is
6 you file the appropriate forms, perhaps an
7 environmental condition assessment form, and some
8 filing fees to the DEEP. Correct?

9 THE WITNESS (Carr): Yes, there's
10 usually a, before that there's a site assessment
11 process that has to happen, Phase I generally
12 followed by a Phase II that tries to identify
13 whether or not you have releases on the site to
14 identify the proper form filing.

15 MR. HOFFMAN: But if you don't have any
16 of that data, you can still file a Form III under
17 the Transfer Act. Correct?

18 THE WITNESS (Carr): You can, yes.

19 MR. HOFFMAN: And then if you don't
20 have any of that data and you file a Form III, how
21 long do you have to complete the testing and the
22 conceptual site model?

23 THE WITNESS (Carr): I don't have the
24 schedule in front of me, but it might be two
25 years, a two-year period to do the investigation.

1 MR. HOFFMAN: Correct. I think that
2 too. And then how long do you have before you
3 begin remediation after the transfer happens under
4 the Transfer Act?

5 THE WITNESS (Carr): I'm not sure about
6 the beginning of remediation, but I think the end
7 of remediation is eight years.

8 MR. HOFFMAN: The end of the
9 remediation is eight years?

10 THE WITNESS (Carr): After the form
11 filing.

12 MR. HOFFMAN: Would you agree with me
13 that the beginning of remediation is three years,
14 subject to check?

15 THE WITNESS (Carr): I'd have to check,
16 but it's not unreasonable to think that.

17 MR. HOFFMAN: So let's talk about that
18 soil management plan that you discussed at the
19 end. How would that be different from what the
20 Siting Council normally requires for soil and
21 erosion control for a particular site?

22 THE WITNESS (Carr): Well, first of
23 all, in preparing soil management plans, and I've
24 prepared probably dozens of them for all kinds of
25 projects, you need to understand what's going on

1 on the property, what the environmental issues
2 are, what the type of contaminants are, the
3 concentrations of the contaminants that you have
4 on the property, if you have any of particular
5 interest, or what we call hot spots, areas of
6 significant contamination that can be addressed
7 separate from the construction for proper handling
8 and disposal so the spread and migration
9 inadvertently through the construction activities
10 doesn't occur. So you need to have a good
11 understanding of the environmental status of the
12 property, as well as the proposed activity.

13 MR. HOFFMAN: How does that differ from
14 what DEEP is requiring as of September 8th as it
15 relates to the development of solar projects on
16 agricultural land?

17 THE WITNESS (Carr): I'm not aware of
18 what they're proposing for what their requirements
19 are, but the issue with the soil, and just a
20 general sense, a soil management plan has to
21 address those, you know, what I just discussed,
22 the environmental issues on the property.

23 MR. HOFFMAN: But you're not familiar
24 with what the DEEP is requiring as of September
25 8th with such developments?

1 THE WITNESS (Carr): No.

2 MR. HOFFMAN: Just to make life easy,
3 I'm going to hand you -- I'll hand it to your
4 counsel actually -- this is just an extra copy of
5 petitioner's responses to the abutters'
6 interrogatories, dated October 26th. Can you flip
7 to the map on page 6?

8 THE WITNESS (Carr): Yes, I'm on it.

9 MR. HOFFMAN: All right. So as I look
10 at this map, it's got a moniker on it. It's a
11 Fuss & O'Neill map, and it's related to, I assume,
12 the Culbro contamination. I think this is
13 actually a map that you copied and the town
14 included as one of its exhibits to one of our
15 interrogatory responses previously.

16 THE WITNESS (Carr): It looks familiar.

17 MR. HOFFMAN: Do you see where -- and I
18 have to take my glasses off to do this. I
19 apologize -- but do you see where it says disposal
20 area kind of in the top third of the page?

21 THE WITNESS (Carr): Yes, I do.

22 MR. HOFFMAN: Is that disposal area
23 inside or outside the proposed project site?

24 THE WITNESS (Carr): This particular
25 disposal area is outside the project site, as I

1 indicated in my October 5th letter.

2 MR. HOFFMAN: It just wasn't clear
3 because the writing was a little bit different, so
4 we tried to get that clarified.

5 Unfortunately, Mr. Hannon stole a good
6 third of my cross. So with that, I thank you for
7 your time.

8 THE CHAIRMAN: Thank you.

9 We now have abutting property owners --
10 Sorry. Department of Agriculture, do you have any
11 questions for the town?

12 MR. BOWSZA: We do not.

13 THE CHAIRMAN: Thank you.

14 Abutting property owners?

15 MS. NIGRO: Good morning. Mr. Carr, I
16 just have a question, and I don't know if you know
17 the answer to this. But are you familiar with the
18 Department of Energy and Environmental Protection
19 General Guidance on Development of Former
20 Agricultural Properties?

21 THE WITNESS (Carr): Yes, I am.

22 MS. NIGRO: And this is new information
23 for me. As I said, I don't practice environmental
24 law. But in reading this and understanding this,
25 how do you think this might impact this particular

1 project, if at all?

2 THE WITNESS (Carr): Well, this is,
3 that guidance that you cited, was meant
4 specifically for development of residential
5 properties. And we've certainly used it on some
6 of our sites at my firm. So let's take an orchard
7 that's going to be developed. So what the
8 guidance requires you to do is to take a look at
9 the past use of the site, what pesticides and
10 herbicides might have been used, and then prepare
11 a plan to mitigate the effect on that on the
12 residential development. So a lot of things that
13 you can do are mixing of soil from the clean and
14 the dirty, you can certainly look at treating some
15 of these hot spots if they are certainly higher
16 areas. So it starts with the baseline of testing
17 and then preparing a plan around that.

18 MS. NIGRO: So it's somewhat similar to
19 some of the things that you raised in your paper,
20 both positions that you raised?

21 THE WITNESS (Carr): Yes. And it
22 doesn't get into the details that you would for a
23 commercial property. It's kind of like a lighter
24 version, if you will.

25 MS. NIGRO: So the construction, I

1 think you testified a moment ago that there were
2 some things that were being done in the
3 construction of this facility that might impact
4 water quality. What are some of those things?

5 THE WITNESS (Carr): Well, first of
6 all, it's a major construction project. There's
7 about 58,000 cubic yards, thereabouts, of soil
8 that's going to be moved around on the site.
9 There's a net of 30 some thousand cubic yards,
10 37,000 cubic yards, I believe, that we hauled off
11 site. So what's the disposition of those soils.
12 The soil that's being moved around, where will
13 that end up? Will that end up near watercourses?
14 Some of the pesticides we're talking about, even
15 if you just accept the petitioner's conceptual
16 site model that it's only residual soil and not
17 these other disposal areas or mixing areas, are
18 there copper and lead which are toxic to aquatic
19 species. So you'd want to make sure that those
20 things are managed and make sure they don't get
21 into the water bodies on the property.

22 MS. NIGRO: And I believe that there is
23 testimony in the interrogatories that talk about
24 the pile driving into the soil and that it could
25 potentially hit the water table. Is that correct?

1 THE WITNESS (Carr): That is correct.
2 The bigger issue for me, although that's an issue,
3 is going through areas of soil that are in the
4 shallow horizon and then drilling them down, like
5 an auger or pile driving and then moving them, and
6 creating preferential pathways to the water table.
7 It shortens the distance from contaminants moving
8 around.

9 Secondly is if you go through one of
10 these buried farm dumps or in the areas where
11 there's more pesticide, you know, it's near an old
12 mixing area where it's highly concentrated, it can
13 travel that way as well, and you're creating, if
14 you go through a container of pesticide, it can
15 certainly cause a spill and a release.

16 MS. NIGRO: So the testing that is
17 suggested, in what way is that, in your
18 professional opinion, a prudent thing to do? Why
19 is that a prudent thing to do?

20 THE WITNESS (Carr): Can you repeat the
21 question? I'm sorry. I didn't catch your first
22 part.

23 MS. NIGRO: The testing that is
24 suggested on the lands, why is that --

25 THE WITNESS (Carr): By me.

1 MS. NIGRO: Why is that a prudent
2 thing?

3 THE WITNESS (Carr): It's a prudent
4 thing because the issue is if you're going into a
5 site blind, not knowing whether a release has
6 occurred, there's a standard that in the
7 environmental profession we're required to follow,
8 and this is why it's a phased process. So first
9 of all, you're looking at all the available
10 records, regulatory records, land use records,
11 historical records. Once you have all that
12 information and you've done the proper due
13 diligence of Phase I, then you're identifying
14 recognized environmental conditions or areas of
15 concern. Then you do the testing. The soil and
16 groundwater testing is very important because you
17 cannot determine whether a release occurred unless
18 you take and analyze samples. That cannot
19 happen -- you cannot make that determination.

20 Then from there, once you've identified
21 areas that if they had releases, let's say around
22 a maintenance shed that stored the pesticides and
23 you find out that there's fairly high levels of
24 the pesticide, then you can decide to take a
25 removal action, excavation and disposal, without a

1 worry of having that spread around during
2 construction activities. So it limits the
3 exposure of folks in the neighborhood and, you
4 know, to the air and water frankly.

5 MS. NIGRO: First Selectman Heavner,
6 you had said that, and I believe several times,
7 that your top priority is the safety and welfare
8 of your citizens. I'm one of them. I appreciate
9 that position. I do appreciate your stewardship.
10 From your perspective, do you believe that you
11 have enough information to qualify that some of
12 the things that Mr. Carr has just stated will not
13 impact water quality?

14 THE WITNESS (Heavner): It is the
15 town's position that the environmental review is
16 insufficient at this time.

17 MS. NIGRO: Mr. Carr, we talked a
18 moment ago about not just water quality but air
19 quality, and I believe there was some reference to
20 dust. And I believe in the interrogatories that
21 Deepwater Wind had responded to suggested that the
22 dust created was no different than that for
23 farming. I would love your opinion, professional
24 opinion, on whether or not the activities of pile
25 driving, I think many, posts into the ground, does

1 that differ from tilling the topsoil for farming?

2 THE WITNESS (Carr): Well, it does
3 differ, yes, I would agree with that. And also
4 the scale of construction. You're working in
5 areas on the site that are outside just the normal
6 fields of cultivation, number one, the scope is a
7 lot bigger, and you're moving and distributing a
8 lot more soil. You do have a significant quantity
9 of soil being removed rather than just turning it
10 over. So yes, I would qualify that as being
11 significantly different.

12 MS. NIGRO: In your professional
13 opinion, does the petitioner's current plan
14 address the potential concerns with air quality
15 sufficiently?

16 THE WITNESS (Carr): Not in my opinion,
17 no.

18 MS. NIGRO: I have a question for
19 Ms. Carnell. You had testified -- I want to use
20 your words properly -- that something can be not
21 formally listed on the National Registry but could
22 be considered a historical property. Did I
23 understand you correctly?

24 THE WITNESS (Carnell): Yes, I'll be
25 happy to clarify that. The National Park Service

1 and the Connecticut SHPO will give equal
2 protection consideration to properties that are
3 considered eligible for the National Register, as
4 well as properties that are actually listed on the
5 National Register of Historic Places.

6 MS. NIGRO: So when you take a look at
7 someone like Ms. Kilbourn's home -- and I
8 apologize that I don't have the exact address of
9 that -- I believe it was referenced by Ms. Heavner
10 as a historical property. Would you agree with
11 that statement?

12 THE WITNESS (Carnell): I don't know
13 the number of her property, but from reviewing the
14 materials, I know that 85 and 100 Hoskins Road are
15 both considered potentially eligible for the
16 National Register.

17 MS. NIGRO: Thank you. And that was
18 going to be my next question because I think the
19 other home is owned by the Wrobels, who are also a
20 party to this action, and it's the sister house to
21 Ms. Kilbourn's home. They look almost identical.

22 So even though it's not on the National
23 Registry, would you consider those two homes
24 historical?

25 THE WITNESS (Carnell): If you're

1 referring to 85 and 100 Hoskins Road, yes.

2 MS. NIGRO: I am. Thank you.

3 Ms. Heavner, there was a question --
4 First Selectwoman Heavner, there was a question
5 that was raised about the town's propensity for
6 residential construction because they are solely
7 driven by a desire for tax generation, but then
8 you testified that the town has a significant
9 interest in preservation of open space, and in
10 fact I believe you said about a third of the
11 town's land is open space. Is that correct?

12 THE WITNESS (Heavner): Yes.

13 MS. NIGRO: And the town also has an
14 interest in preservation of farms. Correct?

15 THE WITNESS (Heavner): Absolutely.

16 MS. NIGRO: So if we talked -- we've
17 heard many questions and testimony about other
18 fates, I believe were the words that were used,
19 other fates for this land, one fate for this land
20 is it continues to be farmed agriculturally?

21 THE WITNESS (Heavner): Absolutely.

22 MS. NIGRO: And does the town have a
23 negative disposition towards this land continuing
24 to be farmed agriculturally?

25 THE WITNESS (Heavner): We do not. In

1 fact, it's currently part of some of the parcels
2 that take advantage of the 490 tax program and
3 receive lesser taxes than other organizations,
4 residences or businesses. We support that.

5 MS. NIGRO: And that's currently today?

6 THE WITNESS (Heavner): Correct.

7 MS. NIGRO: Are you aware of the State
8 of Connecticut's bond that permits the purchase of
9 farmland in order to maintain it as continued
10 farmland?

11 THE WITNESS (Heavner): Not
12 specifically, but I am aware of various
13 agricultural opportunities.

14 MS. NIGRO: Thank you.

15 Mr. Rabbitt, I have a question
16 regarding zoning. There was some testimony about
17 farm zoning. And am I correct in understanding
18 that there is no specific zone for farming?

19 THE WITNESS (Rabbitt): Correct, it is
20 not a specific district.

21 MS. NIGRO: So that something can be
22 zoned residential and be farmland?

23 THE WITNESS (Rabbitt): Correct.

24 MS. NIGRO: And something can be zoned
25 light industrial and be farmland?

1 THE WITNESS (Rabbitt): Correct.

2 MS. NIGRO: And in fact, the parcels,
3 the five noncontiguous parcels that we're talking
4 about today, are currently actively farmed.
5 Correct?

6 THE WITNESS (Rabbitt): I am not
7 knowledgeable of every particular parcel and every
8 acreage associated with that parcel that are in
9 productive farmland.

10 MS. NIGRO: Let me ask it a different
11 way. Could the five noncontiguous parcels of land
12 be farmed if they were desired to be farmed?

13 THE WITNESS (Rabbitt): They could
14 continue to be farmed.

15 MS. NIGRO: Under the current zoning.
16 Correct?

17 THE WITNESS (Rabbitt): Correct.
18 Someone could also build an industrial styled
19 agricultural production facility on that land
20 also.

21 MS. NIGRO: So, Mr. Rabbitt, is that
22 one of the potential uses of that land?

23 THE WITNESS (Rabbitt): Large-scale
24 agricultural production in a building? It could
25 be.

1 MS. NIGRO: There's no proposal,
2 though, on the table that you've seen for building
3 of an industrial facility?

4 THE WITNESS (Rabbitt): No. I have
5 testified this evening that we are not aware, nor
6 have we approved, or has anybody applied for any
7 development of this site other than solar.

8 MS. NIGRO: Including residential?

9 THE WITNESS (Rabbitt): Correct.

10 MS. NIGRO: Do you have any knowledge
11 about the marketplace's propensity to utilize that
12 land for residential?

13 THE WITNESS (Rabbitt): That would be
14 hypothetical.

15 MS. NIGRO: Correct. Thank you.

16 I don't have any other questions.

17 Thank you.

18 THE CHAIRMAN: Thank you.

19 MR. HOFFMAN: Mr. Stein, if I may, Ms.
20 Nigro brought up a couple of issues. If I may be
21 permitted, I have four questions limited solely to
22 questions and answers that Ms. Nigro opened up?

23 THE CHAIRMAN: These are to the town
24 or --

25 MR. HOFFMAN: Yes, sir.

1 THE CHAIRMAN: I'd rather not because
2 then we --

3 MR. HOFFMAN: Very well.

4 THE CHAIRMAN: In the briefs after you
5 can handle that, I guess.

6 We're going to take a ten-minute break
7 so that the petitioner can come for one last time.

8 MR. LANGER: I would just ask if I
9 could ask one question on redirect?

10 THE CHAIRMAN: No. Otherwise, if I
11 said, then everybody is going to get a shot --

12 MR. LANGER: Okay. Very well. Thank
13 you.

14 (Whereupon, the witnesses were excused
15 and a recess was taken from 3:56 p.m. until 4:08
16 p.m.)

17 THE CHAIRMAN: Okay. We'll now resume
18 the hearing.

19 Attorney Hoffman, do you have any new
20 witnesses?

21 MR. HOFFMAN: We have no new witnesses,
22 but we have three new exhibits for identification.

23 THE CHAIRMAN: Okay.

24 MR. HOFFMAN: They are Items Number
25 II-B-10, 11 and 12. Ten is the petitioner's

1 responses to Council's interrogatories, Series
2 III, dated October 26, 2017; petitioner's
3 responses to abutters' interrogatories, dated also
4 October 26, 2017; and petitioner's amended
5 response to Council Interrogatory Number 84, dated
6 November 2nd.

7 THE CHAIRMAN: Okay. We'll add that
8 into the record -- I'm told we have to verify
9 them.

10 MR. HOFFMAN: I figured that you would.

11 C L A U D E C O T E,
12 J E F F R E Y G R Y B O W S K I,
13 A I L E E N K E N N E Y,
14 S U S A N M O B E R G,
15 G O R D O N P E R K I N S,
16 J E F F R E Y P E T E R S O N,
17 P A U L V I T A L I A N O,
18 A D A M T. H E N R Y,

19 called as witnesses, being previously duly
20 sworn, testified further on their oaths as
21 follows:

22 DIRECT EXAMINATION

23 MR. HOFFMAN: Let me take the easy one
24 first.

25 Mr. Henry, did you prepare or cause to

1 be prepared the petitioner's amended response to
2 Council Interrogatory Number 84?

3 THE WITNESS (Henry): Yes, I did.

4 MR. HOFFMAN: And is it true and
5 correct to your information and belief?

6 THE WITNESS (Henry): Yes, it is.

7 MR. HOFFMAN: Do you have any changes
8 to that amended interrogatory?

9 THE WITNESS (Henry): No.

10 MR. HOFFMAN: And do you submit it as
11 testimony here today?

12 THE WITNESS (Henry): Yes.

13 MR. HOFFMAN: Now for the entire panel,
14 starting with Mr. Perkins and going all the way
15 down, did you prepare or cause to be prepared Item
16 Number 10 and Item Number 11, which are responses
17 to the Council's interrogatories and to the
18 abutters' interrogatories?

19 Mr. Perkins?

20 THE WITNESS (Perkins): Yes.

21 MR. HOFFMAN: Mr. Cote?

22 THE WITNESS (Cote): Yes.

23 MR. HOFFMAN: Ms. Moberg?

24 THE WITNESS (Moberg): Yes.

25 MR. HOFFMAN: Ms. Kenney?

1 THE WITNESS (Kenney): Yes.

2 MR. HOFFMAN: Mr. Grybowski?

3 THE WITNESS (Grybowski): Yes.

4 MR. HOFFMAN: Mr. Henry?

5 THE WITNESS (Henry): Yes.

6 MR. HOFFMAN: Mr. Peterson?

7 THE WITNESS (Peterson): Yes.

8 MR. HOFFMAN: Mr. Vitaliano?

9 THE WITNESS (Vitaliano): Yes.

10 MR. HOFFMAN: And is that true and

11 correct to the best of your knowledge?

12 Mr. Perkins?

13 THE WITNESS (Perkins): Yes.

14 MR. HOFFMAN: Mr. Cote?

15 THE WITNESS (Cote): Yes.

16 MR. HOFFMAN: Ms. Moberg?

17 THE WITNESS (Moberg): Yes.

18 MR. HOFFMAN: Ms. Kenney?

19 THE WITNESS (Kenney): Yes.

20 MR. HOFFMAN: Mr. Grybowski?

21 THE WITNESS (Grybowski): Yes.

22 MR. HOFFMAN: Mr. Henry?

23 THE WITNESS (Henry): Yes.

24 MR. HOFFMAN: Mr. Peterson?

25 THE WITNESS (Peterson): Yes.

1 MR. HOFFMAN: Mr. Vitaliano?

2 THE WITNESS (Vitaliano): Yes.

3 MR. HOFFMAN: And do you have any edits
4 to them today?

5 Mr. Vitaliano?

6 THE WITNESS (Vitaliano): No.

7 MR. HOFFMAN: Mr. Peterson?

8 THE WITNESS (Peterson): No.

9 MR. HOFFMAN: Mr. Henry?

10 THE WITNESS (Henry): No.

11 MR. HOFFMAN: Mr. Grybowski?

12 THE WITNESS (Grybowski): No.

13 MR. HOFFMAN: Ms. Kenney?

14 THE WITNESS (Kenney): No.

15 MR. HOFFMAN: Ms. Moberg?

16 THE WITNESS (Moberg): No.

17 MR. HOFFMAN: Mr. Cote?

18 THE WITNESS (Cote): No.

19 MR. HOFFMAN: Mr. Perkins?

20 THE WITNESS (Perkins): No.

21 MR. HOFFMAN: And do you adopt those as
22 your testimony here today?

23 Mr. Perkins?

24 THE WITNESS (Perkins): Yes.

25 MR. HOFFMAN: Mr. Cote?

1 THE WITNESS (Cote): Yes.

2 MR. HOFFMAN: Ms. Moberg?

3 THE WITNESS (Moberg): Yes.

4 MR. HOFFMAN: Ms. Kenney?

5 THE WITNESS (Kenney): Yes.

6 MR. HOFFMAN: Mr. Grybowski?

7 THE WITNESS (Grybowski): Yes.

8 MR. HOFFMAN: Mr. Henry?

9 THE WITNESS (Henry): No -- yes.

10 MR. HOFFMAN: Mr. Peterson?

11 THE WITNESS (Peterson): Yes.

12 MR. HOFFMAN: Mr. Vitaliano?

13 THE WITNESS (Vitaliano): Yes.

14 MR. HOFFMAN: I submit those three
15 exhibits as evidence here today.

16 THE CHAIRMAN: Any objection to the
17 admission of the exhibits?

18 MR. LANGER: Just as to the third,
19 which I articulated earlier, and so on the same
20 basis.

21 And I guess just as an additional, I
22 guess, point of order. To the extent that the
23 Council is going to admit the amended response and
24 the accompanying documents into evidence today,
25 how are we going to deal with that? Is that

1 something that we're going to have a continued
2 hearing on for us to be able to address those
3 documents because they were introduced today and
4 we haven't had any time to absorb them?

5 THE CHAIRMAN: The quick answer is no
6 we're not having a new hearing. But I'll ask
7 Attorney Bachman to respond.

8 MS. BACHMAN: Attorney Langer, just as
9 the Chairman described earlier today, the
10 amendment is to Interrogatory Number 84. It's a
11 two-page just variation of what was already
12 submitted, and the other 238 pages are just
13 supporting materials. So I don't think we're
14 going to change the ruling on the objection.
15 We're going to let those in for what they're
16 worth. And certainly you can ask questions about
17 them.

18 MR. LANGER: And I can respect that
19 that's going to be the Council's ruling. But how
20 am I to be able to ask questions without having
21 been able to review the 238 documents? That's the
22 problem. And I haven't been able to confer with
23 my witnesses, my experts, on that. And so it
24 would also be unfair, I think, to the town if the
25 witness panel for the petitioner is able to

1 discuss the documents substantively when we're not
2 even in a position to be able to ask the questions
3 that we feel would be appropriate after a review.

4 MS. BACHMAN: Certainly the documents
5 that are attached to the response are public
6 record, and they have been available for about
7 four years, according to some of those statements
8 that are in the document from DEEP. And if it's
9 supporting material, I think the real crux of the
10 matter here is the response, the amended response
11 to the interrogatory question, which is, again,
12 two pages.

13 MR. LANGER: Okay. I've articulated my
14 objection. So I'll leave it at that.

15 MS. NIGRO: Attorney Bachman may I --

16 THE CHAIRMAN: You have to speak up.

17 MS. BACHMAN: Come on up.

18 MS. NIGRO: I as well just received
19 these. And it was my intention to ask questions
20 of Deepwater Wind. I will tell you, this is not
21 material that would ever come across my path to be
22 able to understand and interpret, and to do that
23 on the fly would be an extraordinarily difficult
24 thing for me to do, even the two pages.

25 And given the fact that the individual

1 homeowners are without counsel today for reasons
2 that the Council is aware of, it is an extreme
3 burden to be able to absorb this. I'd like to
4 place my objection on the record of moving forward
5 without adequate time for review.

6 THE CHAIRMAN: We're going to allow it
7 for what it's worth. It has been a burden on the
8 Council that your attorney and also your expert
9 have taken up a lot of time. I don't know what is
10 their problem. But we're doing the best we can.
11 We can't have a separate schedule for everybody.

12 MS. NIGRO: Then I would ask if the
13 Council will please take a short recess so that I
14 could read these documents?

15 THE CHAIRMAN: We just took it.

16 (Pause.)

17 THE CHAIRMAN: Okay. We'll take
18 another ten-minute recess to give you time to read
19 the two pages, and then we're going to continue.

20 MS. NIGRO: Thank you.

21 (Whereupon, a recess was taken from
22 4:16 p.m. until 4:26 p.m.)

23 THE CHAIRMAN: Okay. We'll get
24 started.

25 MS. NIGRO: Mr. Chairman, I would like

1 to renew my objection. I have had an opportunity,
2 and I appreciate the Council's allowing me the ten
3 minutes to read the two pages. And I would like
4 to point the Council to the second page which
5 speaks to Exhibit 2. Exhibit 2 specifically
6 references the recent test data that's available
7 and for the private wells that were tested. And
8 although it says a, quote, vast majority of the
9 residents that were tested have not been affected,
10 I would interpret that to mean that some are.

11 Looking at Exhibit 2, I point the
12 Council's direction that this is over two and a
13 half inches of documents that would indicate which
14 wells were contaminated. For me to review this
15 and understand it in order to ask logical
16 questions is an impossibility. I'm renewing my
17 objection.

18 MS. BACHMAN: Thank you, Ms. Nigro.
19 The petitioner clearly could answer any questions
20 that you would have on Exhibit 2. Certainly
21 because they've done the research and compiled the
22 exhibit, which really is an amendment to an
23 interrogatory that was asked early on by the
24 Council. And upon further review, they wanted to
25 amend the interrogatory response. That's

1 perfectly acceptable in our process.

2 And yes, unfortunately, it did get
3 submitted this morning, and it has been on that
4 table all day. Earlier today we did take up the
5 question of whether or not the 8-foot exhibit that
6 no one had an opportunity to review or analyze
7 into the record for the town. Certainly we
8 endeavor to conduct these proceedings fairly, and
9 we have to balance our statutory deadlines and
10 time constraints with our hearing schedule and the
11 availability of witnesses and lawyers. And I
12 think we've done the best that we can with the
13 time that we have to accommodate people and allow
14 them to appear at certain times.

15 So at this point we certainly have
16 noted both your objection and the Town of
17 Simsbury's objection. However, I think we just,
18 as the Chairman had stated earlier, take the
19 exhibit in for what it's worth, and certainly
20 after you have had the opportunity and ask the
21 questions and acquire the information that you can
22 get from the petitioner today, you can certainly
23 include any further concerns or issues you have
24 with the information in your post-hearing brief.

25 MS. NIGRO: Is there any opportunity

1 to -- Attorney Bachman, I apologize, I just don't
2 understand or know. Is there any opportunity to
3 be able to present rebuttal evidence in the action
4 to this similarly past today?

5 MS. BACHMAN: No. We are not holding
6 another hearing on the matter.

7 MS. NIGRO: So that's where the
8 material harm really comes in, the inability to be
9 able to react and provide rebuttal evidence other
10 than to rely on the petitioner's interpretation of
11 the documents. I just wanted to make my objection
12 on the record. Thank you.

13 MS. BACHMAN: Thank you. And I would
14 just add that Attorney Hoffman also allowed that
15 exhibit of the town to be entered into the record
16 without having the appropriate time and analysis,
17 although it has also been in the room all day.

18 MS. LANGER: Attorney Bachman, thank
19 you. And I want to thank the Council for the time
20 to review the documents. Just for the record, not
21 to belabor the point, just even with the ten
22 minutes, the town would just reiterate its
23 objection and, you know, the basis of prejudice
24 with respect to being able to address the
25 documents.

1 And I guess I would just reiterate my
2 earlier request to at least keep the hearing open
3 at least just for the purpose of responding with
4 potentially rebuttal evidence to the submission
5 that was made today.

6 THE CHAIRMAN: I don't know what you
7 mean by keeping it open. If you mean keeping it
8 open until sometime tonight, we may still be here
9 tonight, glad to do that -- maybe not glad. But
10 as far as continuing to another time, I'm going to
11 deny your request.

12 MR. LANGER: Okay. Duly noted. Thank
13 you.

14 THE CHAIRMAN: So your objections are
15 duly noted, and we will take in this material for
16 what it's worth.

17 (Petitioner's Exhibit II-B-10 through
18 II-B-12: Received in evidence - described in
19 index.)

20 THE CHAIRMAN: And we'll now, I'm going
21 to ask the Department of Agriculture, do you have
22 any cross-examination?

23 MR. BOWSA: No, sir, we do not.

24 THE CHAIRMAN: Thank you very much.

25 We'll now go to the Town of Simsbury.

1 MR. LANGER: Thank you, Mr. Chairman.

2 CROSS-EXAMINATION

3 MR. LANGER: Mr. Henry, we haven't met.
4 My name is Jesse Langer. I represent the town in
5 these proceedings. I'm going to ask you a few
6 questions.

7 The groundwater located beneath the
8 majority of the site is classified as GA.
9 Correct?

10 THE WITNESS (Henry): Correct.

11 MR. LANGER: A GA classification means
12 existing or potential public or private supply of
13 water which is suitable for drinking without
14 treatment. Correct?

15 THE WITNESS (Henry): Correct.

16 MR. LANGER: And page 19 of the Phase I
17 in the petition indicates that precipitation at
18 the project site is expected to infiltrate
19 permeable ground surfaces or runoff to nearby
20 streams and ponds. Correct?

21 THE WITNESS (Henry): Correct.

22 MR. LANGER: And pages 20 and 24 of the
23 Phase I identify -- you can, if you'd like to
24 refer to it -- identify a 55-gallon metal drum in
25 the eastern portion of Parcel 3 of the site with

1 unknown contents which appear to be bulging at the
2 top. Correct?

3 THE WITNESS (Henry): Correct.

4 MR. LANGER: And information pertaining
5 to the contents of that 55-gallon metal drum would
6 be pertinent to whether the project meets DEEP's
7 water standards. Correct?

8 THE WITNESS (Henry): I don't know.

9 MR. LANGER: Why don't you know?

10 THE WITNESS (Henry): I don't know the
11 contents of the drum, or even if there were
12 contents of the drum. It was observed to be
13 bulging. I don't know whether there was anything
14 in the drum.

15 MR. LANGER: But if there was something
16 in that drum, wouldn't it be pertinent to know the
17 contents of that drum in order to determine
18 whether the project site would meet the water
19 standards of DEEP?

20 THE WITNESS (Henry): No, I don't
21 believe so. The drum was not observed to be
22 leaking. If the contents in the drum were
23 hazardous, they were contained and not indicative
24 of a release to the environment.

25 MR. LANGER: So wouldn't it be relevant

1 or pertinent to know if the contents of the drums
2 consisted of contaminants?

3 THE WITNESS (Henry): Relevant, I
4 guess, to what goal? To understanding whether it
5 would be defined as a recognized environmental
6 condition under the Phase I ASTM report that we've
7 prepared or to some other goal?

8 MR. LANGER: Well, we can start with
9 that. In performing your Phase I, would it be
10 pertinent to you as a LEP, a licensed
11 environmental professional, to know what the
12 contents of that drum are and whether they
13 contained contaminants?

14 THE WITNESS (Henry): Yes.

15 MR. LANGER: And whether or not the
16 contents of that drum had been released, would
17 that be pertinent to --

18 THE WITNESS (Henry): It would be
19 pertinent to the goal of the Phase I to identify
20 whether a material release had occurred to the
21 environment, yes.

22 MR. LANGER: And further, whether the
23 contents of that drum were already in the ground?

24 THE WITNESS (Henry): Would it be
25 relevant to determining whether it rose to the

1 definition of a REC, an R-E-C, or another --

2 MR. LANGER: Yes. In performing your
3 Phase I.

4 THE WITNESS (Henry): Correct. So we
5 observed the drum. We observed it to be bulging.
6 We did not observe a material release to the
7 environment.

8 MR. LANGER: Right. But would it be
9 pertinent in your assessment --

10 THE WITNESS (Henry): If we had
11 observed evidence of a release, yes, that would be
12 pertinent.

13 MR. LANGER: But putting aside the
14 release, wouldn't you as an LEP in performing your
15 Phase I assessment want to know whether the
16 contents of that drum were already in the ground?

17 THE WITNESS (Henry): Sure. And in the
18 course of performing the Phase I, we reviewed
19 files that would be pertinent to determine whether
20 a spill had been reported at the site. None such
21 were found related to that drum.

22 MR. LANGER: And so the answer is yes,
23 it would be pertinent?

24 MR. HOFFMAN: Objection. The answer is
25 what Mr. Henry said it was.

1 MR. LANGER: I just want to make sure I
2 understand that was your response.

3 THE WITNESS (Henry): Sure. I said
4 pursuant to determining that, we completed the
5 Phase I.

6 MR. LANGER: Now, pages 20 and 24 of
7 the Phase I also identify discarded empty drums on
8 Parcels 1 and 3 of the project site. Correct?

9 THE WITNESS (Henry): Correct.

10 MR. LANGER: Information pertaining to
11 the contents of those discarded empty drums would
12 be pertinent to whether the proposed project meets
13 DEEP's water standards. Correct?

14 THE WITNESS (Henry): They were empty
15 at the time that we observed them.

16 MR. LANGER: Okay. But that's not --
17 you're not answering my question. I'm asking you
18 whether it would be pertinent to determining
19 whether the proposed -- information --

20 I'll ask it again. Information
21 pertaining to the contents of those discarded
22 drums, okay, the contents would be pertinent to
23 whether the proposed project met DEEP's water
24 standards. Correct?

25 THE WITNESS (Henry): Can you rephrase

1 the question? I guess I'm not sure what you're
2 getting at. So we observed the drums. They were
3 empty. We don't know what they previously
4 contained. Is that what you're trying to --

5 MR. LANGER: That's my point. Wouldn't
6 it be pertinent to you in performing your Phase I
7 to know what the contents --

8 THE WITNESS (Henry): If we had that
9 information, yes.

10 MR. LANGER: And any information
11 concerning the contents of those discarded empty
12 drums is not included in Phase I. Correct?

13 THE WITNESS (Henry): Correct.

14 MR. LANGER: Information pertaining to
15 whether the contents of those discarded empty
16 drums were released on the site would also be
17 pertinent to whether the project would meet the
18 DEEP's water standards. Correct?

19 THE WITNESS (Henry): So we did not
20 observe evidence of a release, nor were the
21 records reviewed as part of the Phase I to
22 indicate that --

23 MR. LANGER: That's not my question
24 though. My question is whether information
25 pertaining to the contents -- information

1 pertaining to whether the contents of those
2 discarded empty drums were released on the site
3 would be pertinent to whether --

4 THE WITNESS (Henry): If such
5 information existed, yes, it would be pertinent.

6 MR. LANGER: And you didn't determine
7 whether releases occurred from the discarded empty
8 drums located on the project site. Correct?

9 THE WITNESS (Henry): No.

10 MR. LANGER: You identified a
11 significant data gap concerning current and past
12 usage of the site, as well as facility operation
13 at the site. Correct?

14 THE WITNESS (Henry): Correct.

15 MR. LANGER: And that information would
16 be pertinent to determining whether the proposed
17 project meets DEEP's water standards. Correct?

18 THE WITNESS (Henry): No, I don't think
19 it would because we infer what the current past
20 historical operations were at the site and
21 identified them as an REC. So in that respect, I
22 don't think that would be a data gap to determine
23 whether it met water quality standards.

24 MR. LANGER: Just so I'm clear, in
25 performing your Phase I assessment, as opposed to

1 having the actual data, you're willing to make an
2 inference instead?

3 THE WITNESS (Henry): Well, oftentimes
4 we conduct Phase I's in the absence of data. We
5 follow the ASTM requirements for collecting
6 ascertainable data, practically reviewable
7 records, and then determine, based on our
8 professional opinion, if it meets the definition
9 of a recognized environmental condition.

10 MR. LANGER: Pages 12 and 21 of the
11 Phase I indicate that eight monitoring wells on
12 Parcel 5 at the site suggest previous
13 environmental investigations conducted at this
14 parcel. Correct?

15 THE WITNESS (Henry): (Nodding head in
16 the affirmative.)

17 MR. LANGER: And Parcel 5 is a portion
18 of the proposed project south of Hoskins Road.
19 Correct?

20 THE WITNESS (Henry): Correct.

21 MR. LANGER: And based on the presence
22 of those monitoring wells, groundwater samples
23 from Parcel 5 were collected and analyzed
24 previously. Correct?

25 THE WITNESS (Henry): I'm not aware of

1 that, no.

2 MR. LANGER: You're not aware of any --
3 okay. So I guess this goes to your point. So on
4 page 12 and 21 of the Phase I state that no
5 information concerning the prior investigations
6 was provided to or reviewed by GZA. Correct?

7 THE WITNESS (Henry): Correct.

8 MR. LANGER: And so that information
9 would be pertinent to determining whether the
10 proposed project meets DEEP's water standards.
11 Correct?

12 THE WITNESS (Henry): It might be, yes.

13 MR. LANGER: And GZA -- well, let me
14 just -- were you the one who performed most of the
15 due diligence in preparing the Phase I?

16 THE WITNESS (Henry): I reviewed it.

17 MR. LANGER: Now, so GZA did not find
18 any information regarding the purpose of the
19 monitoring wells or groundwater quality data from
20 the wells. Correct?

21 THE WITNESS (Henry): Correct.

22 MR. LANGER: And in preparing the Phase
23 I, GZA did not conduct a review of the Connecticut
24 DEEP records located at the state library.
25 Correct?

1 THE WITNESS (Henry): Correct. They
2 were not practically reviewable.

3 MR. LANGER: What did you say?

4 THE WITNESS (Henry): I said they were
5 not practically reviewable.

6 MR. LANGER: What does that mean?

7 THE WITNESS (Henry): So under ASTM,
8 files that are not practically reviewable are
9 those that aren't reviewable -- a review of them
10 is not feasible without an extraordinary analysis
11 of irrelevant data, so those would be files that
12 are site specific.

13 MR. LANGER: And that's a determination
14 that you made?

15 THE WITNESS (Henry): Correct.

16 MR. LANGER: Now, you've reviewed the
17 reports submitted by Zuvic and Carr, dated October
18 5, 2017. Correct?

19 THE WITNESS (Henry): Yes, I have.

20 MR. LANGER: The Zuvic Carr report
21 referred to documents found from the DEEP
22 records -- of DEEP records at DEEP's record file
23 room. Correct?

24 THE WITNESS (Henry): Correct.

25 MR. LANGER: And those documents were

1 included in the town's responses to DWW
2 interrogatories. Correct?

3 THE WITNESS (Henry): Correct.

4 MR. LANGER: And I think you had
5 referenced ASTM. So is the ASTM standard what GZA
6 used in preparing the Phase I?

7 THE WITNESS (Henry): Correct.

8 MR. LANGER: And specifically is
9 1527-13?

10 THE WITNESS (Henry): Correct.

11 MR. LANGER: Now, if you would, please,
12 refer to page 10 of the executive summary of the
13 EDR report, which I believe is in Appendix D of
14 Phase I?

15 THE WITNESS (Henry): I don't have
16 that.

17 MR. LANGER: You don't have that. Your
18 Council might have it.

19 Attorney Hoffman, I have a copy, if you
20 want me to --

21 MR. HOFFMAN: I think we have it.

22 MR. LANGER: It's up to you.

23 MR. HOFFMAN: If you have it, you can
24 give it to him.

25 MR. LANGER: All right. Let me show it

1 to your Council first. This is the actual page of
2 EDR-4.

3 MR. HOFFMAN: Okay.

4 MR. LANGER: So just to confirm,
5 you're now looking at a copy of page 10 of the
6 executive summary of the EDR report contained in
7 Appendix D of the Phase I. Do you recognize that
8 document?

9 THE WITNESS (Henry): Yes.

10 MR. LANGER: And as far as you know, it
11 is in fact page 10 of Appendix D of the Phase I?

12 THE WITNESS (Henry): Yes.

13 MR. LANGER: And that page refers to
14 two sites. Correct?

15 THE WITNESS (Henry): Yes.

16 MR. LANGER: And that would be Culbro
17 and Culbro Tobacco Farm. Correct?

18 THE WITNESS (Henry): Correct.

19 MR. LANGER: And those two sites are
20 considered what is commonly referred to as orphan
21 sites in the industry in that they're sites that
22 aren't supported by sufficient information.
23 Correct?

24 THE WITNESS (Henry): Correct.

25 MR. LANGER: And under the ASTM

1 standard, which is my understanding what you used
2 in performing the Phase I, GZA is required to
3 perform some follow-up of DEEP file review if a
4 property, or an adjoining property, is listed in a
5 standard environmental database such as page 10.
6 Correct?

7 THE WITNESS (Henry): Correct.

8 MR. LANGER: So at that time when you
9 performed the Phase I and you came across this
10 document and those two sites were listed in the
11 standard environmental database, then GZA was to
12 perform some follow-up DEEP review in order to
13 meet the ASTM standard. Correct?

14 THE WITNESS (Henry): When you say
15 "follow-up," we identified Culbro as an occupant
16 of the site historically and requested records
17 from DEEP on it, so there was no follow-up
18 subsequent to our initial file review that we
19 conducted at DEEP. It was based on a review of
20 the EDR results and our other historical research.

21 MR. LANGER: Just so I understand, when
22 you came across these two sites, you made a call
23 to DEEP?

24 THE WITNESS (Henry): No, they were on
25 the original file review that we conducted at

1 DEEP. So we identified several property names, so
2 to speak, to request files. And so these orphan
3 sites, and Culbro I would certainly put in the
4 category of inadequate address information.
5 That's really what it states at the top here
6 because, as you know, Culbro owned many properties
7 throughout Simsbury. So to the extent possible,
8 we reviewed records that were returned to us from
9 DEEP, but I would say that these records certainly
10 fall under the category of not practically
11 reviewable under ASTM.

12 MR. LANGER: So the information
13 disclosed by the town in reference to Zuvic Carr's
14 October 5, 2017 report, those documents were
15 records located in DEEP's public file room.
16 Correct?

17 THE WITNESS (Henry): Correct.

18 MR. LANGER: And those documents
19 pertained to the Culbro and Culbro Tobacco Farm
20 sites listed on page 10 of the EDR summary.
21 Correct?

22 THE WITNESS (Henry): Correct, they do.
23 And I'll go back to the ASTM standard, which we
24 typically perform, and not practically reviewable.
25 Because Culbro owns so many sites, the records

1 that get returned aren't site specific. So they
2 could deal with properties, you know, that Culbro
3 owns all over the place. In fact, some of the
4 records dealt with properties they owned in East
5 Granby. So as part of Phase I, you have to decide
6 what's relevant and what's not. And so these
7 records, because they were outside the site
8 parcel, were deemed not to be relevant to the site
9 project.

10 MR. LANGER: And so you made that
11 determination, again, practically reviewable is
12 the term?

13 THE WITNESS (Henry): Correct.

14 MR. LANGER: And Culbro, with a
15 reference to Hall Farm and County Road, is also
16 referenced in the Connecticut DEEP's list of
17 contaminated or potentially contaminated sites.
18 Correct?

19 THE WITNESS (Henry): Are you referring
20 again to page 10 here?

21 MR. LANGER: No, I'm not. I'm actually
22 referring to information available on DEEP's web
23 site.

24 THE WITNESS (Henry): Okay.

25 MR. LANGER: So would that be a yes?

1 Let me put it to you this way: Are you
2 familiar with the fact that Culbro, with a
3 reference to Hall Farm and County Road, is
4 referenced on Connecticut DEEP's list of
5 contaminated or potentially contaminated sites?

6 THE WITNESS (Henry): Sure, because
7 that's where EDR gets its information. So the
8 fact that orphan is listed here under Culbro and
9 Culbro Tobacco Farm Number 4 as a CPCS site, we
10 were aware of it.

11 MR. LANGER: So the information cited
12 in Zuvic Carr's October 5th report and disclosed
13 by the town would be pertinent information as to
14 whether the proposed project meets DEEP's water
15 standards. Correct?

16 THE WITNESS (Henry): Well, no. As I
17 stated, we deemed that information was relative to
18 the area outside of the project site.

19 MR. LANGER: So it's your professional
20 opinion that all of the information that was
21 presented by Zuvic Carr falls outside the project
22 site?

23 THE WITNESS (Henry): Can you be more
24 specific? Are you saying all of the information
25 presented?

1 MR. LANGER: Yes, all of the
2 information. I'll ask the question again.

3 The information cited in Zuvic Carr's
4 October 5th report and disclosed by the town would
5 be pertinent to the determination of whether the
6 proposed project meets DEEP's water standards.
7 Correct?

8 THE WITNESS (Henry): So the
9 information I think that you're referring to is
10 historical information regarding pesticide
11 disposal on a portion of the Culbro Farm that's
12 outside the project site. I believe Zuvic Carr
13 also identified on the Connecticut Leachate
14 Wastewater Map a wetland on or near Parcel 5 that
15 was historically contaminated with a pesticide.
16 So these were historical issues. And the use of
17 the site historically for tobacco farming was
18 identified in our Phase I as an REC. But as far
19 as whether the project -- whether it has bearing
20 on whether the project meets the water quality
21 standards, I don't believe it does. It's
22 historical information.

23 MR. LANGER: So then it's your opinion
24 that that information, all of the information
25 provided by Zuvic Carr, is not pertinent?

1 THE WITNESS (Henry): No, I wouldn't
2 say all of it. I would say some of it wasn't.

3 MR. LANGER: And can you identify for
4 me which documentation in the Zuvic Carr report
5 you would deem to be pertinent to whether the
6 proposed project meets DEEP's water protection
7 standards?

8 THE WITNESS (Henry): I don't think
9 that was the goal of the Zuvic Carr report to
10 present information regarding whether the project
11 met water quality standards, but the information
12 that was provided certainly was useful in a
13 historical context to understand the site and the
14 surrounding area.

15 MR. LANGER: I don't know that -- I
16 mean, you can interpret the goal of the Zuvic Carr
17 report. That's your prerogative. But what I want
18 to know is whether there was any information in
19 that report that you would deem to be pertinent to
20 the determination as to whether the proposed
21 project meets DEEP's water standards?

22 THE WITNESS (Henry): No.

23 MR. LANGER: So all of it would not be
24 pertinent?

25 THE WITNESS (Henry): I can't think of

1 a piece of data in that report that I would
2 exclusively say is relevant to the current
3 condition of the property and the development plan
4 because it's all historical.

5 MR. LANGER: The Phase I also noted
6 that hazardous waste manifests from 2009 and 2011
7 were not available for review. Correct?

8 THE WITNESS (Henry): Correct.

9 MR. LANGER: And the information in
10 those manifests would be pertinent to the
11 determination of whether the proposed project
12 meets DEEP's water standards. Correct?

13 THE WITNESS (Henry): If such
14 information were available, I don't know whether
15 it would be relevant to evaluating the Connecticut
16 water quality standards. The manifest database is
17 just documents of shipments of various materials.

18 MR. LANGER: And perhaps the types of
19 materials, wouldn't that be pertinent?

20 THE WITNESS (Henry): Not necessarily.
21 Just the mere presence of a manifest does not bear
22 on a -- has no relationship to water quality
23 standards.

24 MR. LANGER: So you don't think that
25 those manifests would be pertinent?

1 THE WITNESS (Henry): It's pertinent to
2 the goal of determining whether the site is an
3 establishment, but not pertinent to identifying
4 recognized environmental conditions which was the
5 goal of our Phase I.

6 MR. LANGER: And then just so I'm
7 clear, and not pertinent to whether the project
8 meets DEEP's water standards?

9 THE WITNESS (Henry): No.

10 MR. LANGER: On October 3, 2017 you
11 submitted a memo to Attorney Hoffman concerning
12 the project. Correct?

13 THE WITNESS (Henry): Yes.

14 MR. LANGER: Do you have that in front
15 of you?

16 THE WITNESS (Henry): I do.

17 MR. LANGER: And so the report
18 discussed the potential for pesticide residues
19 located at the site -- or the potential, I should
20 say, of pesticide residues located at the site to
21 impact nearby wells or the aquifer. Correct? I'm
22 referring to the first paragraph. I think it's
23 the second sentence.

24 THE WITNESS (Henry): Yes, correct.
25 Yes, our Phase I identified the potential for

1 residual pesticides to be present in the soil near
2 groundwater.

3 MR. LANGER: And you used the term
4 "residues" which implies a small amount. Correct?

5 THE WITNESS (Henry): No, I would use
6 that to indicate historical.

7 MR. LANGER: So it could be -- so then
8 what you're saying is that even though -- it could
9 be a significant amount, but it's historical, so
10 residue could mean a significant amount or a small
11 amount?

12 THE WITNESS (Henry): I don't think I
13 was implying one thing or the other. Residue is
14 something left over, so I guess in the context of
15 your question, it would be a small amount left
16 over from something historical.

17 MR. LANGER: Right. So then you meant
18 small amount?

19 THE WITNESS (Henry): Okay. Correct.
20 Sure.

21 MR. LANGER: And so what concentrations
22 of pesticides did you mean when you were using the
23 term "residue"?

24 THE WITNESS (Henry): None
25 specifically.

1 MR. LANGER: So then did you quantify
2 an amount?

3 THE WITNESS (Henry): We did not. In
4 our experience testing agricultural, former
5 agricultural properties, even current agricultural
6 properties in Connecticut, typically what we find
7 are a fraction of what was historically thought to
8 be there.

9 MR. LANGER: Okay. And so that's just
10 based on your experience?

11 THE WITNESS (Henry): Correct.

12 MR. LANGER: But you don't know for
13 certain on this particular property?

14 THE WITNESS (Henry): No. Correct.

15 MR. LANGER: What was that?

16 THE WITNESS (Henry): Correct. No, I
17 don't.

18 MR. LANGER: The October 3rd -- your
19 report, the October 3rd report, just for the
20 record, also indicated that "any leachable soil
21 contaminants, if present, would have long since
22 leached to groundwater and potentially migrated to
23 receptors if present"?

24 THE WITNESS (Henry): Correct.

25 MR. LANGER: And GZA, including

1 yourself, did not perform a site visit as part of
2 preparing that October 3rd report. Correct?

3 THE WITNESS (Henry): I conducted a
4 site visit, correct.

5 MR. LANGER: In preparing that report?

6 THE WITNESS (Henry): Yes.

7 MR. LANGER: I must have read the memo
8 wrong.

9 THE WITNESS (Henry): It's based on
10 information from the Phase I assessment which
11 included a site visit.

12 MR. LANGER: Okay. So that was based
13 on a historical site visit, it wasn't based on --
14 you didn't do a separate site visit in preparing
15 this report?

16 THE WITNESS (Henry): I did do a site
17 visit.

18 MR. LANGER: In the Report Review
19 Limitations it says, "GZA has not performed a site
20 visit as part of the preparation of this report."

21 THE WITNESS (Henry): Ah, that's what
22 the confusion is. Okay. Because I recall going
23 out to the site and driving around and acquainting
24 myself with the site in preparation for this. So
25 these are standard Report Review Limitations that

1 we attach to a document such as this. They don't
2 specifically pertain to the absence of a site
3 visit.

4 MR. LANGER: Okay. Do you reference in
5 your memo, in the substance of your memo, that you
6 visited the site?

7 THE WITNESS (Henry): I do not.

8 MR. LANGER: In preparing the October
9 3, 2017 report, did you review any of the
10 documents cited in the Zuvic Carr -- I'm sorry.
11 You did not review any of the documents cited in
12 Zuvic Carr's October 5th memo. Correct?

13 THE WITNESS (Henry): Just a minute.
14 So some of the documents reviewed in that memo
15 were documents that we reviewed as part of the
16 Phase I.

17 MR. LANGER: Okay. So there were
18 documents -- just so I'm clear, there are
19 documents in the Zuvic Carr report that you
20 reviewed?

21 THE WITNESS (Henry): Correct.

22 MR. LANGER: Previously?

23 THE WITNESS (Henry): Correct.

24 MR. LANGER: Were those documents
25 included in the Phase I report?

1 THE WITNESS (Henry): Yes.

2 MR. LANGER: Do you know which
3 documents overlap the two reports?

4 THE WITNESS (Henry): Mainly looking at
5 the hazardous waste manifest that we discussed in
6 this report.

7 MR. LANGER: Okay. Fair enough. Did
8 you review a preliminary report, Pesticide
9 Disposal Area of Culbro Corporation, dated April
10 1986 in preparing the October 3, 2017 report?

11 THE WITNESS (Henry): No.

12 MR. LANGER: In preparing the October
13 3, 2017 report, did you review a letter from James
14 Ray of Connecticut DEEP to Maurice Hamel of Fuss &
15 O'Neill on the proposed remediation of pesticide
16 areas of Culbro Corporation, dated November 21,
17 1986?

18 THE WITNESS (Henry): No.

19 MR. LANGER: Did you review the Hall
20 Farm disposal site pesticide disposal site
21 remediation, Culbro Tobacco Farm, Number 2, dated
22 March 1992?

23 THE WITNESS (Henry): No.

24 MR. LANGER: Did you review the
25 appendix M -- you can see where I'm going.

1 THE WITNESS (Henry): Yes. I would
2 say none of those. I'll save --

3 MR. LANGER: Did you review
4 the Appendix M?

5 THE WITNESS (Henry): -- you a little
6 bit of time.

7 MR. LANGER: So none of those?

8 THE WITNESS (Henry): None of those,
9 correct.

10 MR. LANGER: Thank you. I appreciate
11 that.

12 And the October 3, 2017 memo states
13 that GZA did not complete any independent testing
14 of the soils located at the site. Correct?

15 THE WITNESS (Henry): Correct.

16 MR. LANGER: And so you cannot
17 determine whether a release of contaminants
18 occurred on the project site without collecting
19 soil and water samples. Correct?

20 THE WITNESS (Henry): Well, no. We
21 made observations that would be indicative of
22 determining whether a release to the environment
23 occurred. So in that respect we can determine
24 whether a release occurred based on observations.

25 MR. LANGER: So just so I'm clear,

1 you're saying that you can determine whether a
2 release occurred without testing the soil?

3 THE WITNESS (Henry): Yes.

4 MR. LANGER: You don't know whether any
5 contaminants existing -- you don't know whether
6 there are any contaminants existing in the soil as
7 we sit here today, do you?

8 THE WITNESS (Henry): I don't have
9 analytical data indicating the presence of
10 contaminants in the soil today, correct.

11 MR. LANGER: And so you don't know
12 whether any contaminants in the soil meet or
13 exceed DEEP's water standards. Correct?

14 THE WITNESS (Henry): I do not.

15 MR. LANGER: And so it's possible that
16 there are contaminants in the soil which may
17 exceed DEEP's water protection standards.
18 Correct?

19 THE WITNESS (Henry): Correct.

20 MR. LANGER: And so the only way to
21 really know whether there are contaminants in the
22 soil and whether those contaminants, if they
23 exist, exceed DEEP's water protection standards
24 would be to perform a Phase II and conduct soil
25 and water testing. Correct?

1 THE WITNESS (Henry): Correct.

2 MR. LANGER: Your October 3rd memo does
3 not address the potential for buried pesticides
4 and other materials on the site. Correct?

5 THE WITNESS (Henry): Correct.

6 MR. LANGER: And your memo does not
7 address -- the October 3rd memo for the record --
8 does not address on site and identified RECs in
9 the Phase I ESA such as the drums. Correct?

10 THE WITNESS (Henry): We did not
11 identify those as RECs. You're referring to the
12 empty drums that we observed?

13 MR. LANGER: Right.

14 THE WITNESS (Henry): Correct.

15 MR. LANGER: Or any other drums that
16 you observed on the site?

17 THE WITNESS (Henry): Correct. They
18 didn't meet the definition of an REC.

19 MR. LANGER: In your professional
20 opinion?

21 THE WITNESS (Henry): Correct.

22 MR. LANGER: And the October 3rd memo
23 does not address the former use of pesticide
24 storage areas, such as buildings or otherwise, on
25 the Hall Farm or the Hoskins Road parcels.

1 Correct?

2 THE WITNESS (Henry): We didn't
3 identify any.

4 MR. LANGER: Do you have a copy of --
5 well, you may not. I'll ask you the question, and
6 then if you need it, you can look at it.
7 According to Deepwater's response to Number 4 of
8 the first set of interrogatories by the abutters,
9 Deepwater expects to puncture the site with
10 approximately 10,000 piles or piers. Correct?

11 THE WITNESS (Henry): I don't have it
12 in front of me, but I think --

13 MR. LANGER: If you'd like to -- I
14 thought I would try the question without, but you
15 could --

16 MR. HOFFMAN: I think someone else can
17 answer that.

18 MR. LANGER: Sure, if someone else
19 wants to answer it.

20 THE WITNESS (Kenney): We can confirm
21 that the plan is to drive approximately 10,000
22 piles.

23 MR. LANGER: Thank you. And
24 according -- and perhaps I'll refer to you, Ms.
25 Kenney. According to Deepwater Wind's response to

1 Number 21 of the Siting Council's first set of
2 interrogatories, each of those approximate 10,000
3 piles or piers will be drilled 12 to 14 feet into
4 the ground, correct? And that's Number 21 of the
5 Council's first set of interrogatories?

6 THE WITNESS (Kenney): I can go off of
7 memory and say that that's correct.

8 MR. LANGER: Feel free to take a look.

9 THE WITNESS (Kenney): It's correct.

10 MR. LANGER: Okay. Thank you.

11 So Mr. Henry, based on the fact --
12 well, given what Zuvic Carr has uncovered about
13 the project site, the information that's included,
14 you know, on the record, would you agree that soil
15 and water testing is required in light of the fact
16 that there will be 10,000 12 to 14 foot holes
17 excavated on the project site?

18 THE WITNESS (Henry): So let me answer
19 that in two parts. So the information that you're
20 referring to that is uncovered in the Zuvic Carr
21 report is related to a pesticide disposal area
22 that's outside the project area. It doesn't have
23 bearing, from my opinion, on the project site.

24 And then I guess from the second point
25 of view, so as indicated in my October 3rd letter,

1 we find these pesticide residues typically in the
2 shallow soils. Driving piles is going to be
3 displace these shallow soils horizontally. There
4 is not, that I can see, any potential for them to
5 drive soils downward. So no, to answer your
6 question, I don't see that's a concern.

7 MR. LANGER: And maybe perhaps to you
8 as well, Ms. Kenney, or another member of the
9 panel. In response to DWW's or Deepwater Wind's
10 response to Number 56 of the Council's first set
11 of interrogatories, it's expected that the project
12 will disturb 58,000, almost 59,000 cubic yards of
13 soil, correct, it's 58,700?

14 THE WITNESS (Kenney): Yes.

15 MR. LANGER: Thank you.

16 Mr. Henry, that's a significant amount
17 of soil disturbance. Correct?

18 THE WITNESS (Henry): Yes.

19 MR. LANGER: Roughly how many truck
20 loads of soil is that?

21 THE WITNESS (Henry): I don't know, I
22 can't do the math, but that soil disturbance is a
23 one-time event, and I think that if it's properly
24 managed as the plan is to do, that, you know, that
25 disturbance won't increase the exposure to

1 whatever residual pesticides may be present at the
2 site. And I would just like to compare that to
3 the annual disturbance of soils, the shallow soils
4 throughout the site on at least an annual basis
5 with tilling.

6 MR. LANGER: Right. But you're not --
7 withdrawn. Thank you.

8 So it's your opinion, and just so I'm
9 clear, that given the fact that there's going to
10 be a disturbance of nearly 59,000 cubic yards of
11 soil and 10,000 holes or foot holes -- 12 to 14
12 foot holes excavated at the project, that it's
13 unnecessary to perform any water or soil testing
14 on the site to ensure what the subsurface
15 environmental conditions are?

16 THE WITNESS (Henry): That's correct.

17 MR. LANGER: Okay.

18 THE WITNESS (Henry): And the reason I
19 believe that is because knowing what the
20 conditions are wouldn't change how you would
21 manage and mitigate those conditions, and I
22 believe that the project is going to mitigate
23 those conditions.

24 MR. LANGER: So what you're saying,
25 just so I'm clear, is that you can go into a soil

1 and management plan, or any sort of management
2 plan, construction plan, blind, it doesn't matter?

3 THE WITNESS (Henry): It's not blind,
4 but it's not going to change your mitigation plan.
5 I think it would change the mitigation plan
6 depending on your development. So if this were
7 going to be a residential development and you were
8 going to have potential exposures long term, then
9 you certainly would want to get a better
10 understanding of that. But based on the
11 development of the project, based on the controls
12 that they'll have in place, I don't think having
13 any further understanding of what the potential
14 concentrations of pesticides might be would change
15 how you would address those concerns.

16 MR. LANGER: Could there not be a large
17 deposit of contaminants, you know, based on prior
18 usage or not, that's in the ground, and that could
19 have an impact on nearby waterways, and you just
20 don't know?

21 THE WITNESS (Henry): So if they're in
22 the ground already, I guess I would ask you why
23 aren't they having a potential impact on the
24 waterways. There's nothing that's going to be
25 done that would change that.

1 MR. LANGER: So then your -- all right.
2 I think I have my answer. Thank you.

3 I am looking at the petitioner's
4 response to Number 11 of the town's
5 interrogatories, which reads, "Why has DWW not
6 identified areas of concern that may exist on the
7 project site?"

8 Now, Mr. Henry, GZA assisted in the
9 preparation of the responses to the town's
10 interrogatories. Correct?

11 THE WITNESS (Henry): Correct.

12 MR. LANGER: And so as a licensed
13 environmental professional, you know what areas of
14 concern means in the context of environmental
15 remediation. Correct?

16 THE WITNESS (Henry): Correct. Yes.

17 MR. LANGER: And the response to
18 Interrogatory Number 11 states that it isn't --
19 and I'm paraphrasing -- DWW's job to identify what
20 I'll say are AOCs, areas of concern, on the
21 project site. Correct?

22 THE WITNESS (Henry): Correct.

23 MR. LANGER: It says DWW states that
24 it's not its role to identify areas of concern?

25 THE WITNESS (Henry): Correct.

1 MR. LANGER: And you were retained,
2 GZA, I should say, GZA was retained to perform an
3 environmental assessment in connection with the
4 proposed project. Right?

5 THE WITNESS (Henry): Correct.

6 MR. LANGER: And you in fact prepared
7 the Phase I. Correct?

8 THE WITNESS (Henry): Correct.

9 MR. LANGER: And you're participating,
10 obviously, in this administrative proceeding on
11 behalf of Deepwater Wind. Correct?

12 THE WITNESS (Henry): Correct.

13 MR. LANGER: And so, if asked, GZA
14 could opine as to whether there are any areas of
15 concern on the proposed project. Correct?

16 THE WITNESS (Henry): Yes.

17 MR. LANGER: And you, being GZA, would
18 be doing that as an agent of Deepwater Wind.
19 Correct?

20 MR. HOFFMAN: Objection. I don't know
21 that the witness is qualified to come up with
22 opinions on agency law.

23 MR. LANGER: Fair enough.

24 As a consultant for Deepwater Wind?

25 THE WITNESS (Henry): So would I be

1 competent to identify areas of concern?

2 MR. LANGER: I'll ask the question
3 again.

4 So GZA would opine as to whether any
5 areas of concerns exist on the project site on
6 behalf of DWW as its consultant. Correct?

7 THE WITNESS (Henry): Correct.

8 MR. LANGER: Looking at Interrogatory
9 Number 12, next page, the interrogatory reads,
10 "The Phase I identified a significant data gap
11 concerning current and past project site usage, as
12 well as facility operations. Please provide the
13 missing information as it is essential to
14 determining whether the project site constitutes
15 an establishment under the Connecticut Transfer
16 Act."

17 Do you see that?

18 THE WITNESS (Henry): Yes, I do.

19 MR. LANGER: And the last sentence of
20 the response says, "Moreover, DWW states that as a
21 matter of law, the Connecticut Transfer Act
22 imposes strict liability on the property owner,
23 not the purchaser of the property, for failure to
24 correctly determine establishment status under the
25 Connecticut Transfer Act." Do you see that? It's

1 the last sentence.

2 THE WITNESS (Henry): Yes, I see it.

3 MR. LANGER: So regardless of who might
4 be legally responsible for the remediation of a
5 property deemed an establishment under the
6 Connecticut Transfer Act, whether the proposed
7 site in fact contains any hazardous waste may
8 impact whether it meets DEEP's water standards.
9 Correct?

10 THE WITNESS (Henry): Yes.

11 MR. LANGER: And so, in other words,
12 you're focused, as an LEP, you're focused on
13 examining whether the proposal complied with
14 DEEP's water standards as you understand them.
15 Right?

16 THE WITNESS (Henry): Can you repeat
17 the question?

18 MR. LANGER: So, in other words, you're
19 focusing on examining whether the project would
20 comply with DEEP's water standards as you
21 understand them. Correct?

22 THE WITNESS (Henry): You're asking me
23 if that's --

24 MR. LANGER: You're not focused on
25 legal liability, you're just focused on whether

1 the project would meet the water standards?

2 THE WITNESS (Henry): Well, no. So the
3 purpose of the Phase I was twofold: It was to
4 identify recognized environmental conditions, and
5 then as a standard of care in Connecticut it's to
6 provide an opinion on whether we believe the site
7 is an establishment. So in respect to regulatory
8 requirements, if you're referring to that opinion,
9 that's what Phase I provided.

10 MR. LANGER: Right.

11 THE WITNESS (Henry): But it did not
12 provide an opinion on whether the site or the
13 project meets Connecticut water quality standards.

14 MR. LANGER: Okay. So the Phase I does
15 not address the water quality standards of DEEP?

16 THE WITNESS (Henry): When you say
17 "address" them, acknowledge them? I mean, we
18 identified groundwater quality classification in
19 the Phase I report, but it's not the purpose of a
20 Phase I report to evaluate those water quality
21 standards, as you mentioned before, the purpose of
22 conducting groundwater testing.

23 MR. LANGER: Now, just so I can refresh
24 my recollection, you testified earlier that
25 information pertaining to -- did you say that the

1 information pertaining to the monitoring wells on
2 Parcel 5 would be pertinent to determining whether
3 the project meets DEEP's water protection
4 standards?

5 THE WITNESS (Henry): Well, it wouldn't
6 be pertinent, and I don't remember how I answered,
7 so I don't want to contradict myself. I don't
8 think it would be pertinent to determining whether
9 the project met the water quality standards. It
10 would be pertinent to determine whether the parcel
11 meets the water quality standards.

12 MR. LANGER: Okay. That's a better way
13 of putting it actually. Thank you.

14 So referring to Number 22 of town's
15 interrogatories, the question reads, "Deepwater
16 Wind has not provided any documentation or history
17 concerning any public or private drinking water
18 wells in the general area of the project site.
19 Some of these wells are classified as GAA
20 classified groundwater sources. Please provide
21 further information and data on the wells. Also
22 provide information on any public water supply
23 wells in the vicinity of the development."

24 Do you see that?

25 THE WITNESS (Henry): I do.

1 MR. LANGER: Thank you. So the
2 response was an objection as to relevancy. So
3 given what you just said about the info pertaining
4 to monitoring wells as it relates to whether the
5 property meets DEEP's water protection standards,
6 wouldn't it be important to have additional
7 information regarding those nearby drinking wells?

8 THE WITNESS (Henry): Well, that's a
9 great question. And, in fact, I guess that was
10 the subject of a revised interrogatory that we
11 submitted. Information is available regarding
12 those neighboring drinking water wells, and
13 indicates that they are actually unaffected.

14 MR. LANGER: So, right. And that's the
15 information that was provided this morning at
16 8:30?

17 THE WITNESS (Henry): Correct.

18 MR. LANGER: So I'm going to shift
19 course here. My understanding is that someone on
20 behalf of Deepwater Wind had conversations with
21 one or more abutting property owners concerning
22 the project. Is that fair to say?

23 THE WITNESS (Kenney): Yes.

24 MR. LANGER: And was that you,
25 Ms. Kenney?

1 THE WITNESS (Kenney): It was me, and
2 with other members of the project team.

3 MR. LANGER: And could you just name
4 those members, please?

5 THE WITNESS (Kenney): The other
6 members of the project team?

7 MR. LANGER: Correct.

8 THE WITNESS (Kenney): Gordon Perkins
9 attended some of those meetings with me.

10 MR. LANGER: And with how many abutters
11 did you and Mr. Perkins have conversations?

12 THE WITNESS (Kenney): So the team met
13 with numbers of abutters -- it's all submitted
14 with the petition -- at the open house meetings.
15 There were two of them prior to submission of the
16 petition. In addition to that, I went out to the
17 general area at least two to three times, and
18 Gordon joined me on one of the days, and we met
19 with about a dozen or so residents of the
20 neighboring streets, neighboring community.

21 MR. LANGER: And it's my understanding
22 that Deepwater Wind hasn't entered into any
23 agreements concerning screening, or anything like
24 that, with any of the abutters. Correct?

25 THE WITNESS (Kenney): We haven't been

1 requested to have any agreements directly with
2 abutters.

3 MR. LANGER: Did you offer to enter
4 into any agreements concerning the screening with
5 any of the abutters?

6 THE WITNESS (Kenney): We didn't
7 proactively offer. I did have one of the abutters
8 ask me if we would be open to that, and I
9 responded that yes we would, but it would be
10 something we would have to look at in a broader
11 context. My comment to him was that I would want
12 to ensure that if we were to provide screening
13 vegetation on his property that he wanted it in
14 lieu of some of the screening against the fence.
15 I said we'd be open to that provided that it
16 wouldn't increase any impacts for a neighboring
17 property. So that would be an assessment that we
18 would have to undertake.

19 MR. LANGER: And when you say "fence,"
20 you're referring to the 10 foot vinyl fence?

21 THE WITNESS (Kenney): No, this is
22 actually on Berkshire Way where there's fencing.
23 It's in an area where there was chain-link fence
24 proposed. And at the request of the residents of
25 Berkshire Way, we agreed to, even though there are

1 some distance with forested vegetation, we agreed
2 to screen the chain-link fence additionally so
3 that in the leaf-off conditions they wouldn't be
4 able to see the panels, instead they would see
5 more greenery.

6 MR. LANGER: And maybe -- I suppose
7 this is probably for you as well, Ms. Kenney. If
8 you could turn to page 52 of the petition?

9 THE WITNESS (Kenney): Yes.

10 MR. LANGER: Are you there?

11 THE WITNESS (Kenney): I'm there.

12 MR. LANGER: Thank you. I'm going to
13 direct your attention to the portion of your
14 visual mitigation. It's the first, you know,
15 bullet point. And it's the sentence that starts
16 with "The need," "The need for, and extent of,
17 such plantings will be decided on a case-by-case
18 basis once the project is operational."

19 Do you see that?

20 THE WITNESS (Kenney): I do.

21 MR. LANGER: And so this statement
22 takes into account the visibility assessment
23 performed by EDR. Correct?

24 THE WITNESS (Kenney): Correct.

25 MR. LANGER: And the following sentence

1 then says, "If significant views exist from a
2 residential property, DWW Solar will determine the
3 appropriate size and density of plantings in order
4 to minimize project visibility."

5 Do you see that?

6 THE WITNESS (Kenney): I do.

7 MR. LANGER: So it doesn't appear that
8 Deepwater Wind is committed to providing screening
9 for the abutters to the project. Correct?

10 THE WITNESS (Kenney): I don't agree
11 with that. We are committed to providing
12 screening, and we can point you to the location in
13 the petition where we have described that
14 commitment.

15 MR. LANGER: But don't you have to
16 first make the determination at your discretion as
17 to whether there are significant views?

18 THE WITNESS (Perkins): If I can just
19 add for Aileen here. The reason we put that
20 statement in is because the existing vegetative
21 buffer between residents is in varying degrees of
22 density and thickness. The idea behind spot
23 mitigation where visibility occurs after the plant
24 is operational is simply to make sure that there's
25 not mitigation activities in places where it's not

1 necessary. And so by identifying views after the
2 project is installed during leaf-off conditions,
3 it is possible to mitigate specifically those
4 views and significantly reduce the number of
5 plantings required.

6 MR. LANGER: You said "leaf-off
7 conditions"?

8 THE WITNESS (Perkins): That's correct,
9 yes.

10 MR. LANGER: Okay.

11 THE WITNESS (Kenney): And just so that
12 we're clear, there isn't a figure that is
13 presented as -- in Figure 5, there's Figure 5 of
14 Appendix Exhibit G, there is the viewpoint
15 location and the potential mitigation. And so
16 what we do there is we describe our concept of
17 whether it would be fence and/or planting
18 mitigation, or only planting mitigation. So it
19 goes through the sensitive areas. And that's the
20 commitment that, at a minimum, that we're
21 committed to for the project.

22 MR. LANGER: But it's still based on
23 your determination that there's a need?

24 THE WITNESS (Kenney): No. This is our
25 commitment. I think the commitment in the text

1 in -- we're committing that there will be
2 mitigation in those areas.

3 MR. LANGER: Okay.

4 THE WITNESS (Kenney): The specifics of
5 that mitigation we plan to deal with during the
6 D&M plan, but also we plan to go back out after
7 the project is constructed and do what Gordon just
8 described as spot mitigation.

9 MR. LANGER: Okay. And perhaps for
10 you, Mr. Perkins, and maybe this goes to your
11 statement you just made, you know, page 9 of
12 Exhibit G, which is your visibility analysis, you
13 have a statement that says, "It should be noted
14 that field work was completed during leaf-on
15 conditions. And where deciduous vegetation can be
16 an effective screen during the growing season,
17 during the winter months this effectiveness may be
18 reduced in some locations."

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

20 MR. LANGER: And so that statement
21 would pertain to the leaf-off conditions as it
22 applies to the vegetation in and around the
23 project site. Correct?

24 THE WITNESS (Perkins): In areas where
25 the vegetative buffer is fairly thin, it can be

1 expected that marginal visibility increase can
2 occur during leaf-off conditions. So in terms of
3 spot mitigation, it makes the most sense to
4 identify those areas during leaf-off.

5 MR. LANGER: And just so I'm clear, to
6 date Deepwater Wind, or the petitioner, hasn't
7 asked you to perform a leaf-off assessment.
8 Correct?

9 THE WITNESS (Perkins): That is
10 correct, yes. So there's sort of two sides to
11 that. Number one, the field work that we
12 completed happened to be during leaf-on
13 conditions. And during leaf-off conditions, it
14 can be perceived as less scenically appealing,
15 should I say, the aesthetics tend to decrease in
16 terms of rating existing conditions. And so
17 there's arguments to both sides, but we felt that
18 the summer views were more important due to the
19 fact that things turn brown in the wintertime, and
20 the scenic value is perceived as slightly less
21 than it would be during the growing season.

22 MR. LANGER: And, in your opinion, how
23 long of a time period do leaf-off conditions
24 persist?

25 THE WITNESS (Perkins): That's a really

1 good question. I don't know in this particular
2 area, but I would assume that we're probably fully
3 leaf out in May, and it seems that nothing has
4 fallen off the trees quite yet, so I would say mid
5 November.

6 MR. LANGER: So that's approximately --
7 at least six months?

8 THE WITNESS (Perkins): Yes, I think
9 that's fair.

10 MR. LANGER: Are you from New England?

11 THE WITNESS (Perkins): I just moved
12 back to upstate New York, but I was originally
13 from Rhode Island, yes.

14 MR. LANGER: And just so I'm clear, the
15 petitioner was the successful bidder to the New
16 England Clean Energy RFP. Correct?

17 THE WITNESS (Kenney): Correct.

18 MR. LANGER: And that occurred in
19 October of 2016?

20 THE WITNESS (Kenney): Correct.

21 MR. LANGER: And how long has the
22 petitioner been, I guess, developing the project
23 prior to October 2016?

24 THE WITNESS (Kenney): So the project
25 was conceived in late 2015, and our first meeting

1 with the town was in March of 2016.

2 MR. LANGER: And so during that time
3 period, even through October of 2016 and forward,
4 there were leaf-off conditions. Right?

5 THE WITNESS (Kenney): Certainly.

6 MR. LANGER: And so EDR could have been
7 directed to perform a leaf-off visibility
8 assessment. Correct?

9 THE WITNESS (Kenney): So typically
10 until we know if our project is awarded, which
11 occurred in October, we wouldn't typically engage
12 a consultant to conduct a visibility assessment.
13 So that's the plain answer to why we ended up --
14 so when we determined that we got the award, we
15 engaged a team of consultants. And by the time
16 that the team was engaged, the growth had begun.
17 We were very open about the leaf-on conditions in
18 the visibility assessment for that reason, and
19 instructed EDR to ensure that that was accounted
20 for in any development of potential mitigation or
21 screening.

22 THE WITNESS (Perkins): To add to that,
23 I would argue that the results of the visual
24 analysis would not have changed had it been
25 conducted during leaf-off conditions.

1 MR. LANGER: So the results would have
2 been exactly the same?

3 THE WITNESS (Perkins): Yes.

4 MR. LANGER: And how do you arrive at
5 that conclusion?

6 THE WITNESS (Perkins): Well, we
7 determined where there are buffers, vegetative
8 buffers that exist right now that will remain
9 intact. In some of those areas the understory is
10 so dense that while the possibility of views of
11 the panels may increase incrementally, they will
12 be broken up by understory vegetation that will be
13 trunks, vines, whatever else, where that buffer is
14 very dense. Where it's not dense, we've said in
15 the visual analysis that mitigation, you know,
16 will be put in place to alleviate views of the
17 project or to screen views of the project.

18 MR. LANGER: But to be completely
19 certain obviously the best approach would be to
20 perform a leaf-off assessment. Right?

21 THE WITNESS (Perkins): I disagree. We
22 can make fair assumptions on what the visibility
23 will be without vegetation based on experience
24 with other projects, based on, you know, we've
25 done buffer analysis for several projects, you

1 know, at hundreds of different locations for power
2 lines and things of that nature, much larger
3 projects, and have determined that, you know, we
4 can make fair assumptions about where the buffer
5 will be thin, where views could potentially
6 increase more during leaf-off, and those
7 assumptions are included in the visual analysis.

8 MR. LANGER: So --

9 THE CHAIRMAN: Excuse me. Maybe I
10 missed -- I didn't hear correctly. Did you also
11 not say that once the project is built, you would
12 also continue to evaluate visibility and where,
13 you know, actual views you would mitigate?

14 THE WITNESS (Perkins): Exactly. And
15 the figure that Aileen directed us to earlier,
16 Figure 6 in the Exhibit G, that identifies areas
17 where the buffer -- where the existing vegetative
18 buffer is in fact thin enough that it could
19 warrant visitation after the project is
20 constructed to identify those areas where it's
21 deficient.

22 MR. LANGER: And so the assumptions
23 that you're talking about that you're able to make
24 based upon your experience with other projects,
25 including larger projects, have you gone back to

1 essentially, you know, proof your assumptions to
2 see whether or not the visibility is similar?

3 THE WITNESS (Perkins): Yes.

4 MR. LANGER: So you have documentation
5 to that effect?

6 THE WITNESS (Perkins): I wouldn't
7 necessarily say documentation, just field
8 experience. And I have gone back to revisit
9 projects after they're constructed. We don't have
10 any formal photo documentation, but that is
11 actually in the works at the moment.

12 MR. LANGER: And when were you retained
13 by Deepwater Wind?

14 THE WITNESS (Perkins): That's a very
15 good question. It will be about a week after our
16 first field visit, so let me check it out. May,
17 May of 2017.

18 MR. LANGER: Okay. Thank you.

19 THE WITNESS (Perkins): I should
20 correct, late May.

21 MR. LANGER: Fair enough. Thank you.

22 So Deepwater Wind has reviewed the
23 town's plan of conservation and development.
24 Correct? That's perhaps you, Ms. Kenney.

25 THE WITNESS (Kenney): Yes, we have.

1 MR. LANGER: Have you reviewed both the
2 2007 and 2017 POCDs?

3 THE WITNESS (Kenney): I have reviewed
4 the 2007 in more depth than the 2017.

5 MR. LANGER: Fair enough. And so then
6 you, Deepwater Wind, you're aware that one of the
7 town's objectives is to preserve, enhance and
8 promote its historical character. Correct?

9 THE WITNESS (Kenney): Yes.

10 MR. LANGER: And Deepwater Wind is
11 familiar with the historical nature of the project
12 area and immediate adjacent areas, at least as
13 stated in the POCD?

14 THE WITNESS (Kenney): I'm familiar
15 with the POCD.

16 MR. LANGER: And so Deepwater Wind is
17 also then familiar with the scenic pastoral nature
18 of the project area, at least as stated in the
19 POCD. Correct?

20 THE WITNESS (Kenney): Not
21 specifically, but I did review that document.

22 MR. LANGER: Okay. There's a
23 reference --

24 THE WITNESS (Kenney): Not the specific
25 reference to this area.

1 MR. LANGER: There is a reference to
2 Halls Farm area on page 39 of the 2007 POCD. Does
3 that ring a bell or --

4 THE WITNESS (Kenney): Not
5 specifically.

6 MR. LANGER: And do you recall there
7 being an expressed reference to the preservation
8 of agricultural land and Public Act 490 in the
9 2007 POCD?

10 THE WITNESS (Kenney): I do. I
11 actually reviewed that in some depth and confirmed
12 that the parcels that we're looking at were not
13 parcels that were identified specifically for
14 agricultural preservation.

15 MR. LANGER: So say that one more time.

16 THE WITNESS (Kenney): The parcels
17 that -- Sue.

18 THE WITNESS (Moberg): So I think what
19 we're trying to say is that the subject site for
20 this project was not identified in the POCD as a
21 specific parcel targeted for preservation.

22 THE WITNESS (Kenney): I think what it
23 says on page 42 of our petition is that the
24 project site is not listed as an agricultural
25 resource that is to be preserved according to this

1 section of the POCD.

2 MR. LANGER: But the property is
3 enjoying the 490 benefits as far as you now
4 understand, the tax break?

5 THE WITNESS (Kenney): Yes.

6 MR. LANGER: And it's my understanding
7 that Deepwater Wind retained Heritage Consultants
8 LLC to perform a Phase IA?

9 THE WITNESS (Kenney): Yes.

10 MR. LANGER: And that's Exhibit M to
11 the petition?

12 THE WITNESS (Kenney): I'll trust you
13 that it's Exhibit M. It's in there.

14 MR. LANGER: Thanks. Now, Deepwater
15 Wind didn't make any of the project personnel
16 listed, I think on page 3 of the Phase IA,
17 available for examination. Correct?

18 THE WITNESS (Kenney): Can you point me
19 to the specific section that you're referencing?

20 MR. LANGER: It's page 3.

21 THE WITNESS (Kenney): Can you repeat
22 the question, please?

23 MR. LANGER: I'd be happy to. So I
24 believe on page 3 of the Phase IA, which is
25 Exhibit M to the petition, there is a subsection

1 called "Project Personnel." Do you see that?

2 THE WITNESS (Kenney): Yes.

3 MR. LANGER: And are those the
4 individuals that were involved in the preparation
5 of the Phase IA?

6 THE WITNESS (Kenney): Those are the
7 individuals that -- so we contracted with Heritage
8 Consulting. They used their personnel, and those
9 are the personnel who participated in the report.

10 MR. LANGER: Correct. And they're not
11 here available for cross-examination. Correct?

12 THE WITNESS (Kenney): No. Correct,
13 they are not.

14 MR. LANGER: Thank you.

15 And on page 2 of the Phase IA, Heritage
16 Consultants recommended that the five tobacco
17 sheds located within the project area be avoided
18 during construction. Correct?

19 THE WITNESS (Kenney): Can you just
20 point me to that specific reference for time sake?

21 MR. LANGER: Sure. Page 2. Do you see
22 where it says "Project Results and Management
23 Recommendations Overview"?

24 THE WITNESS (Kenney): Yes.

25 MR. LANGER: Go down to the next

1 paragraph where it says "The five tobacco sheds,"
2 and then you go down to the last sentence, "It is
3 recommended that they be avoided during
4 construction."

5 THE WITNESS (Kenney): Yes. It says,
6 "It is recommended that they be avoided during
7 construction. If that is not feasible, it is
8 recommended that a plan for mitigation of these
9 buildings is devised in consultation with the
10 Connecticut State Historic Preservation Office."

11 MR. LANGER: Right. And so is
12 Deepwater Wind currently engaged in consultation
13 with SHPO?

14 THE WITNESS (Kenney): Yes.

15 MR. LANGER: There are no documents in
16 the record related to that engagement other than
17 what's in the Exhibit M. Correct?

18 THE WITNESS (Kenney): We filed the
19 Phase IB report --

20 MR. LANGER: Yes.

21 THE WITNESS (Kenney): -- as an
22 attachment to an interrogatory.

23 MR. LANGER: That's a fair point.
24 Other than the Phase IB, the only other
25 information regarding a consultation with SHPO

1 would be there's some correspondence that is also
2 included in Exhibit M. Is that fair to say?

3 THE WITNESS (Kenney): To date that's
4 the official correspondence and official reports
5 for the record.

6 MR. LANGER: I'm going to try to move
7 on. So going back to page 2 of the Phase IA,
8 Heritage Consultants determined that there are
9 four historic properties within close proximity of
10 the project. Correct?

11 THE WITNESS (Kenney): Correct.

12 MR. LANGER: And Heritage Consultants
13 determined that two of them, which there's been
14 some discussion, 85 and 100 Hoskins Road would be
15 visually impacted by the proposed project,
16 correct, so two of the four?

17 THE WITNESS (Kenney): I just need to
18 read that.

19 MR. LANGER: Sure. Actually --

20 THE WITNESS (Kenney): Excuse me. I'm
21 sorry. I didn't see where they determined it
22 would be an adverse effect.

23 MR. LANGER: Actually, I should
24 probably -- if you go to page 32 and 33 on this --

25 THE WITNESS (Kenney): All right. Just

1 to be clear, that statement is not in page 2 or 3.

2 MR. LANGER: That's a fair point. It's
3 32 and 33. Do you see 85 Hoskins Road and 100
4 Hoskins Road?

5 THE WITNESS (Kenney): Yes.

6 MR. LANGER: Okay. And so Heritage
7 Consultants recommended that those two properties
8 have vegetative screening so as not to be
9 intrusive into the viewsheds of 85 and 100 Hoskins
10 Road. Correct?

11 THE WITNESS (Kenney): What they say --
12 I think it's really important to have the correct
13 words for this discussion. So they say, "It is
14 recommended that additional vegetative screening
15 be added along the -- in this portion of the study
16 area to help ensure that the adverse visual
17 effects to this historic resource are minimized."
18 That's what they say for 85 Hoskins.

19 And for 100 Hoskins they say, "To
20 minimize an adverse visual effect on the setting
21 of the house at 100 Hoskins Road, it is
22 recommended that additional vegetative screening
23 be put in place along the edge of the study area
24 on the south side of Hoskins Road line." So that
25 leads us to the map that I referenced before where

1 we added additional screening in those locations.

2 MR. LANGER: Right. Just so that I'm
3 clear, Deepwater Wind has committed to making sure
4 that sufficient vegetative screening is in place
5 for those two properties?

6 THE WITNESS (Kenney): Yes. Now, as I
7 think we have proposed in an interrogatory
8 response, is to amend the layout around 85 Hoskins
9 to minimize the panel placement around that house.
10 So when I referenced the attachment, that would
11 obviously be updated to be appropriate for the
12 revised layout, should that be the layout that is
13 approved.

14 MR. LANGER: I now would like to turn
15 your attention to the Phase IB, which was
16 submitted in response to the town's
17 interrogatories.

18 THE WITNESS (Kenney): Okay. That's a
19 different binder, so just give us a second.

20 MR. LANGER: Sure. Are you all set?

21 THE WITNESS (Kenney): I'm all set,
22 yes.

23 MR. LANGER: So I am looking on page 20
24 where it says "History of the Study Area." Do you
25 see that, about two-thirds of the way up the page,

1 on page 20?

2 THE WITNESS (Kenney): Yes.

3 MR. LANGER: And the second sentence
4 says, "The south area has the clearest direct
5 connection to known historic use."

6 And it goes on to say -- edge next to
7 the road is a typical house containing --

8 THE COURT REPORTER: Could you speak up
9 a little bit?

10 MR. LANGER: Oh, I'm sorry. My
11 apologies.

12 Do you see that?

13 THE WITNESS (Kenney): Yes.

14 MR. LANGER: Okay.

15 THE CHAIRMAN: Excuse me. We're going
16 to have to break for 15 minutes. The garage
17 closes technically at 6:30, but they want us out
18 by 6. There's a surface lot, which I guess we'll
19 just park in. So you'll have to move your cars
20 unless you want to spend all night. And it's
21 possible the way the attorney is going that we'll
22 be here all night anyways.

23 MR. LANGER: My apologies, Chairman.
24 I'm just trying to go through everything.

25 THE CHAIRMAN: I'm not criticizing you.

1 I'm just stating facts. That's what my wife says.
2 Sometimes facts are -- well, anyway, you've got
3 roughly 15 or 20 minutes.

4 (Whereupon, a recess was taken from
5 5:45 p.m. until 6:07 p.m.)

6 THE CHAIRMAN: Okay. Attorney Langer,
7 would you like to continue?

8 MR. LANGER: Yes, please. I will
9 endeavor to finish as quickly as possible.

10 THE CHAIRMAN: Dinner is on you so --

11 MR. LANGER: This is probably a
12 question for VHB, but I'll obviously leave it to
13 you to decide. The Phase IB determined that the
14 areas initially identified in the Phase IA as
15 potentially archeologically significant are not.
16 If that's the case, then the petitioner could grub
17 those areas. Correct?

18 THE WITNESS (Moberg): The areas that
19 were surveyed by Heritage based upon their
20 findings were determined to not be significant, to
21 have significant artifacts. So, in essence, yes,
22 we could.

23 MR. LANGER: Okay.

24 THE WITNESS (Moberg): Correct.

25 MR. LANGER: Has the petitioner

1 received any correspondence from SHPO about
2 grubbing at the project site since the Phase IB
3 was completed?

4 THE WITNESS (Kenney): No.

5 THE WITNESS (Moberg): No.

6 MR. LANGER: Have there been any
7 discussions with SHPO about the prospect of
8 grubbing now that the Phase IB has been completed?

9 THE WITNESS (Moberg): So the idea of
10 grubbing or not grubbing was a strategy we offered
11 to avoid impacting areas. So where we knew that
12 we didn't need to remove stumps, and that would be
13 one of the most significant types of activities
14 that could impact potentially culturally
15 significant areas, we felt like this is an easy
16 thing to just say we're not going to do it. So
17 that's really the only discussion. It was a
18 verbal discussion held at our meeting with the
19 SHPO at their office back in -- when was that?
20 May. It was in May.

21 THE WITNESS (Kenney): But we haven't
22 changed our position on that. So we haven't
23 broached the subject of grubbing with them again
24 because we made the commitment not to grub, and we
25 haven't changed our position on that.

1 MR. LANGER: Understood. Thank you.

2 So it's my understanding I think -- I
3 don't know if it was in the petition or
4 interrogatory responses -- that Deepwater Wind has
5 executed a PPA with three Massachusetts utilities.
6 Is that correct?

7 THE WITNESS (Grybowski): It's four.

8 MR. LANGER: Four?

9 THE WITNESS (Grybowski): Four.

10 MR. LANGER: Is it four separate PPAs,
11 or one global PPA?

12 THE WITNESS (Grybowski): Four separate
13 PPAs.

14 MR. LANGER: And the PPA, would that
15 follow the template PPA that was made available to
16 all New England Clean Energy RFP bidders?

17 THE WITNESS (Grybowski): That template
18 PPA that was made available to bidders was the
19 basis of a negotiation that ensued between, in
20 this case, Deepwater and those four utilities. So
21 changes were made to that PPA prior to final
22 agreement between the two parties.

23 MR. LANGER: And were those changes
24 specific to the petitioner's proposal?

25 THE WITNESS (Grybowski): Yes.

1 MR. LANGER: And is it your
2 understanding that the PPA has a section that
3 deals with capacity deficiency?

4 THE WITNESS (Grybowski): It does, yes.

5 MR. LANGER: And is the section on
6 capacity deficiency the same as the template PPA?

7 THE WITNESS (Grybowski): I don't
8 recall.

9 MR. LANGER: Is it your understanding,
10 in essence -- I'm paraphrasing. Okay -- that the
11 capacity deficiency section in your PPAs
12 essentially says that the seller can still sell
13 its power, you being the seller, or the RECs,
14 whatever the case may be, even if the output is
15 less than the nameplate capacity if you, the
16 seller, meet certain requirements?

17 THE WITNESS (Grybowski): I'm not sure
18 I would agree with that. To describe that
19 provision generally to the extent there's a
20 capacity deficiency which essentially means that
21 we, as the developer, only build an amount of
22 capacity that's less than the expected capacity
23 that the utilities expect to see pursuant to the
24 contract, that we are subject to certain financial
25 penalties.

1 MR. LANGER: Let's see if I can get
2 more specific. Excuse me one moment.

3 I have a template PPA that was on the
4 web site from the New England Clean Energy RFP,
5 and I'd like to present it to your counsel, if I
6 may?

7 MR. HOFFMAN: I'm kind of wondering,
8 before you do that, what the relevance of this is,
9 Mr. Langer.

10 MR. LANGER: The relevance has to do
11 with the size of the project and what flexibility
12 that the petitioner may have in reducing that
13 size, given the concerns raised by the town, as
14 you know, as it's been well publicized,
15 specifically the southern portion of the project.
16 I think it's very relevant.

17 THE CHAIRMAN: Okay. Let's go.

18 MR. LANGER: Thanks.

19 So I would direct your attention to
20 Section 3.3(b). It's on page 17. If you could
21 just take a moment and take a look at Subsection
22 (b) there called "Capacity Deficiency."

23 THE WITNESS (Grybowski): Okay. I read
24 that section.

25 MR. LANGER: Is that section, as it

1 appears in this template, the same provision that
2 exists in Deepwater Wind's PPAs?

3 THE WITNESS (Grybowski): I don't know.
4 I couldn't answer that question.

5 MR. LANGER: But it's your
6 understanding that there is a capacity deficiency
7 provision in Deepwater Wind's PPAs?

8 THE WITNESS (Grybowski): Yes, there
9 is. That concept is there.

10 MR. LANGER: That concept is there.

11 And so under this provision it says,
12 and I'm reading it verbatim, "To the extent that
13 seller has constructed the facility in accordance
14 with good utility practice, and met all other
15 requirements for the commercial operation date
16 under Section 3.4(b) of this agreement, but a
17 capacity deficiency exists on the commercial
18 operation date as permitted by Section 3.4(b),
19 then on the commercial operation date, the
20 contract maximum amount" -- and there is that kind
21 of -- that concept is in the PPAs that Deepwater
22 Wind has executed, correct, "contract maximum
23 amount"?

24 THE WITNESS (Grybowski): I believe so.
25 That's my recollection.

1 MR. LANGER: -- "shall be automatically
2 and permanently reduced commensurate with the
3 capacity deficiency, which reduced contract
4 maximum amount shall be stated in a notice from
5 buyer to seller, which shall be binding."

6 So that, in trying to reduce it to
7 layman's terms, basically says that if you, the
8 seller, don't necessarily meet the nameplate
9 capacity, you could still sell power to the buyer
10 so long as you meet the requirements in 3.4(b).
11 Is that fair?

12 THE WITNESS (Grybowski): Well, in
13 fairness, I would have to read this entire
14 document to understand how this particular
15 capacity deficiency flows through the rest of this
16 agreement, which I've never seen before.

17 MR. LANGER: Okay. So you've never
18 seen the template?

19 THE WITNESS (Grybowski): I don't know
20 what this is.

21 MR. LANGER: You've never seen the
22 template PPA?

23 THE WITNESS (Grybowski): I saw a
24 template PPA with respect to our submissions to
25 the tristate RFP. I don't know what this is.

1 MR. LANGER: All right. Well, I'll
2 represent to you that I printed this copy off of
3 the web site that has the template on it.

4 So, be that as it may, I'll move
5 forward to 3.4(b), and I'll move this along
6 quickly. The definition of capacity deficiency is
7 an output of at least 90 percent of the proposed
8 nameplate capacity, and not more than 10 megawatts
9 less than the proposed nameplate capacity.

10 So basically so long as you, the
11 seller, have an output of at least 90 percent of
12 the proposed nameplate capacity, then you won't be
13 penalized under the contract, it will just mean
14 that the amount that you're able to sell will be
15 reduced to the amount of the deficiency?

16 THE WITNESS (Grybowski): I think my
17 answer to that question would be no.

18 MR. LANGER: So you --

19 THE WITNESS (Grybowski): You're asking
20 me to apply my current project to this document
21 that doesn't apply to my project, so my answer is
22 no.

23 MR. LANGER: All right. So let me ask
24 you this: What is the nameplate capacity of the
25 total of your PPAs?

1 THE WITNESS (Grybowski): It's 26.4
2 megawatts.

3 MR. LANGER: Megawatts?

4 THE WITNESS (Grybowski): Yes.

5 MR. LANGER: Megawatts AC, right? So,
6 okay. So 90 percent of 26.4 megawatts, through my
7 math, is 23.76 megawatts. Does that sound about
8 right?

9 THE WITNESS (Grybowski): I'll take
10 your word on the math.

11 MR. LANGER: And so if we're applying
12 the definition of capacity deficiency, 10 percent
13 of 26.4 megawatts is 2.64. Does that sound right?

14 THE WITNESS (Grybowski): Ten percent
15 of 26.4 is 2.64, correct.

16 MR. LANGER: I'm a lawyer. Math is
17 tough.

18 THE WITNESS (Grybowski): As far as I
19 can tell, the math is correct.

20 MR. LANGER: Very good. So the 2.64
21 is -- okay, strike that.

22 So according to Deepwater Wind's
23 response to Number 66 of the Council's
24 interrogatories, the second set -- if you have
25 that.

1 THE WITNESS (Grybowski): All right.
2 The second set?

3 MR. LANGER: Second set. Number 66.

4 THE WITNESS (Grybowski): Which
5 interrogatory number was that?

6 MR. LANGER: It's Number 66.

7 THE WITNESS (Grybowski): Okay. I'm
8 reading that. I see it.

9 MR. LANGER: Thank you. So the
10 question is, "What is the output of the south
11 solar field south of Hoskins Road, as proposed?"
12 And it's your understanding that's essentially
13 Parcel 5?

14 THE WITNESS (Grybowski): That's my
15 understanding, yes.

16 MR. LANGER: Okay. Thank you.

17 And the response says, "The output of
18 the solar field located south of Hoskins Road, as
19 proposed, is estimated to be 2.4 megawatts AC."
20 Is that what it says?

21 THE WITNESS (Grybowski): It does say
22 that.

23 MR. LANGER: And so 2.4 megawatts AC is
24 less than 2.64 megawatts AC. Right?

25 THE WITNESS (Grybowski): I can agree

1 to that.

2 MR. LANGER: Thank you. And so that is
3 less than 10 percent of the overall nameplate
4 capacity of your proposed project. Correct?

5 THE WITNESS (Grybowski): 2.4 is less
6 than 10 percent of our proposed nameplate
7 capacity, correct.

8 MR. LANGER: Thank you. So if the 2.4
9 megawatts proposed to be located on Parcel 5 are
10 removed from the equation, then Deepwater Wind
11 could still meet its contract obligations per 3.3
12 and 3.4 of its PPAs. Correct?

13 THE WITNESS (Grybowski): No, that's
14 not correct.

15 MR. LANGER: And why isn't it correct?

16 THE WITNESS (Grybowski): Well, first
17 of all, this is not our PPA. Secondly, I think
18 it's important to understand the distinction
19 between our contractual obligations to deliver
20 something and the financial feasibility of the
21 project.

22 MR. LANGER: I'm just asking you about
23 your contractual obligations.

24 THE WITNESS (Grybowski): Yeah, that's
25 right.

1 MR. LANGER: We can talk about the
2 financial. But from a contractual standpoint,
3 assuming that your PPAs have a section regarding
4 capacity deficiency, which are identical to these,
5 then under the numbers that we just ran, Deepwater
6 Wind, from a contractual perspective, would not be
7 in violation of its obligations. Correct?

8 THE WITNESS (Grybowski): Assuming all
9 of your hypotheticals, then yes.

10 MR. LANGER: Do you have any reason to
11 believe that the provisions in your PPAs, again,
12 specific to 3.3(b) and 3.4(b) regarding capacity
13 deficiency, are different from those in the
14 template?

15 THE WITNESS (Grybowski): As I said,
16 Mr. Langer, I don't recall the specific provisions
17 of capacity deficiency under our existing PPAs.

18 MR. LANGER: Does anyone on the panel
19 have familiarity with the PPAs?

20 THE WITNESS (Kenney): Jeff is the only
21 one on the panel who has familiarity with the PPA.

22 MR. LANGER: I see.

23 THE WITNESS (Grybowski): So,
24 Mr. Langer, as I was beginning to answer, even
25 under this hypothetical you'll see that under

1 capacity deficiency the project, quote, "shall be
2 automatically and permanently reduced" --

3 MR. LANGER: Correct.

4 THE WITNESS (Grybowski): --
5 "commensurate with the capacity deficiency."

6 MR. LANGER: Right.

7 THE WITNESS (Grybowski): That's not a
8 good thing for a project. That is, in your
9 example, potentially fatal for a project. So it
10 is permanently reducing a project that was bid at
11 a certain size and financially assumed to be built
12 at that size.

13 MR. LANGER: Are you --

14 THE WITNESS (Grybowski): And then
15 reducing the size of that project significantly
16 changes the economics of the project. So it's not
17 simply a matter of deciding to accept the capacity
18 deficiency and moving on with the project.

19 MR. LANGER: That's a fair point.

20 THE WITNESS (Grybowski): It is a more
21 complicated analysis obviously.

22 MR. LANGER: That's a fair point. But
23 what I want to determine first is that as a
24 contractual matter it could be done and you would
25 still have a PPA?

1 THE WITNESS (Grybowski): I've
2 answered. I think I will give you the same answer
3 I gave you a few minutes ago.

4 MR. LANGER: So are you representing
5 here on the record that if your project is reduced
6 by 10 percent, or some number from -- we'll say 10
7 percent to start with. No, withdrawn.

8 If the project nameplate capacity is
9 reduced by 2.4 megawatts, are you representing
10 here on the record that the project would be no
11 longer financially feasible?

12 THE WITNESS (Grybowski): I think it
13 would put the project in serious jeopardy of
14 financial feasibility.

15 MR. LANGER: I don't know what that
16 means.

17 THE WITNESS (Grybowski): Frankly, I've
18 not considered reducing the project by 10 percent.
19 So I would have to take into consideration all the
20 other factors at the table that are impacting the
21 project at the time and make a decision whether
22 the project is still feasible.

23 MR. LANGER: Okay. So in I think it
24 was your second set of interrogatory responses to
25 the Council, the petitioner proposed a

1 redistribution of some of the capacity in the
2 southern parcel to points north. Is that correct?

3 THE WITNESS (Kenney): Yes.

4 THE WITNESS (Grybowski): Ms. Kenney is
5 probably better suited.

6 MR. LANGER: That's fine.

7 And do you, Ms. Kenney, have any sense
8 of the amount of megawatts that would be
9 redistributed from the southern part to the
10 northern part?

11 THE WITNESS (Kenney): I do, but let me
12 just, if you give me a moment?

13 MR. LANGER: Please.

14 THE WITNESS (Kenney): So I need to
15 correct myself. I don't have that number
16 available in the interrogatory response, and I
17 don't recall it.

18 MR. LANGER: Okay. Is it fair to say
19 that the -- it appears from just eyeballing it
20 that you're redistributing close to 50 percent of
21 the southern part to points north. Is that fair?

22 THE WITNESS (Kenney): I believe it was
23 less than 50 percent.

24 MR. LANGER: So if you were to
25 redistribute say 40 percent of the southern part

1 to points north, then you're talking about having
2 potentially 96 percent of your nameplate capacity.
3 If you have 96 percent of your nameplate capacity
4 in play, would that make the project financially
5 unfeasible?

6 THE WITNESS (Grybowski): You're going
7 to have to repeat that question for me.

8 MR. LANGER: Sure.

9 THE WITNESS (Grybowski): There was a
10 fair bit amount there.

11 MR. LANGER: Sure. So in looking at
12 the proposal made by the petitioner to
13 redistribute some of the southern portion --
14 southern array in response to concerns from the
15 town, right, because we all know that the southern
16 part is the most sensitive area from the town's
17 perspective. And so it looks like say 40 percent
18 of that southern array is going to be
19 redistributed to points north. Okay?

20 THE WITNESS (Grybowski): I think
21 that's generally true, yes. I can't speak to
22 whether it's specifically 40 percent, but some
23 amount was redistributed to other parcels, yes.

24 MR. LANGER: So let's just say it's
25 approximately 40 percent. And so that would mean

1 that you would have essentially 94, 95 percent of
2 your nameplate capacity in effect in the northern
3 part of the project. Correct?

4 THE WITNESS (Grybowski): In fairness,
5 I don't know the answer to that question.

6 MR. LANGER: Okay. Well, let me put it
7 to you this way: If you had 94 and 95 percent of
8 your nameplate capacity, would that render your
9 project financially unfeasible?

10 THE WITNESS (Grybowski): It may.
11 Again, that's not an analysis I've specifically
12 done, but we've made a number of mitigation
13 concessions in the course of this proceeding, and
14 the collective effect of those has been to
15 increasingly make this project more burdened by
16 mitigation efforts, more burdened by screening,
17 reduction in project size. So every cut counts.
18 And a 4 or 5 or a 6 percent reduction in the
19 lifetime production of this facility is a very
20 significant one, and would make me reevaluate the
21 feasibility of the project.

22 MR. LANGER: Would that be a
23 calculation that you'd be willing to make and
24 perhaps respond in some form or fashion in a late
25 filing? And I pose that --

1 THE CHAIRMAN: Excuse me, sir. Number
2 one, I think you've gotten the best answer you're
3 going to get; and number two, there will be no
4 late filings. We've told you this is it.

5 MR. LANGER: Okay. Then I withdraw my
6 proposal there.

7 THE WITNESS (Kenney): May I offer
8 something?

9 MR. LANGER: Sure.

10 THE WITNESS (Kenney): So during the
11 stakeholder outreach process before submission of
12 the petition, we went through a process whereby we
13 responded to concerns. And there's a figure
14 that's attached to the petition in Exhibit B that
15 identifies those areas collectively that reduce
16 the acreage of the project by 18.2 acres.
17 Certainly if the priority of the town is to remove
18 development from the portions south of Hoskins
19 Road, we could, you know, move back into some
20 areas that were removed based on residents'
21 concerns if it would please the Council for us to
22 do that.

23 So I think that that would be -- during
24 the hearings we did offer that up in discussion
25 with the town, and the verbal answer we got was

1 that they'd prefer us to not have revised that
2 18.2 acre concession that we made in response to
3 that outreach. But certainly that's something
4 that we felt was directly responsive at the time,
5 if that's something that we had done that we could
6 revisit.

7 MR. LANGER: Okay. And I guess just as
8 a quick follow-up -- I'm nearly done -- is it's my
9 understanding you haven't made a determination as
10 to what type of panels the project would use. Is
11 that correct?

12 THE WITNESS (Grybowski): That's
13 correct.

14 MR. LANGER: And is it fair to say that
15 some panels are more efficient than others, types
16 of panels?

17 THE WITNESS (Grybowski): Generally,
18 yes, sure.

19 MR. LANGER: Is it fair to say that
20 panels that are less efficient will tend to
21 require more space, more panels to meet whatever
22 the nameplate capacity is?

23 THE WITNESS (Grybowski): As a general
24 matter, the lower wattage and efficiency of a
25 panel will produce less energy, so you may need

1 more panels to get to the same project size, same
2 energy output.

3 MR. LANGER: And so if Deepwater Wind
4 were to select panels that are slightly more
5 efficient than the assumptions that were made in
6 the interrogatory responses regarding efficiency,
7 would it be possible to reduce somewhat the
8 footprint of the overall project?

9 THE WITNESS (Grybowski): We've chosen
10 in our project 340 watt panels, which we believe
11 are the best commercially available panels for
12 this kind of project. I'm not aware of a panel
13 that would allow us to increase the efficiency.

14 MR. LANGER: Just so I'm clear, you're
15 not aware of any panel technologies used for
16 utility-scale projects that have higher efficiency
17 ratings than the ones that you're looking at?

18 THE WITNESS (Grybowski): That would be
19 suitable for this project.

20 MR. LANGER: What does that mean?

21 THE WITNESS (Cote): If I could
22 interject something for a moment?

23 MR. LANGER: Please.

24 THE WITNESS (Cote): When you do design
25 on panels, you design on certain panel types and

1 standards, availability, reliability, price,
2 performance through time. In essence, the mid
3 300s, 360s, are pretty much what you're seeing at
4 the moment. Some of the ones have greater
5 efficiencies and are demonstrated to be reliable
6 in the field.

7 And the other thing is, is that your
8 panels, your output of your panels, your
9 stringing, and everything, when they go from the
10 combiner to the recombiner and into your
11 inverters, are all mated to each other. So if you
12 change your design concept on the panels, for
13 example, then all of a sudden you're changing
14 everything else. Upstream you're dealing with
15 probably -- or potentially, not probably --
16 potentially a different set of inverters. So it's
17 not a little widget that you plug in in a vacuum.
18 It's integrated into the system itself. And then
19 ultimately the inverters, when they go in, how
20 you're handling the transformer when you're going
21 to step it up in the substation is again related
22 to your design.

23 So, in essence, doing something as
24 major as that downstream is going to affect all
25 those design decisions that are made upstream.

1 And some of those are very long lead time as well
2 could change the course dramatically on a project.
3 So those are sort of the decision, my point being
4 it's not made in a vacuum and integrated into your
5 system.

6 MR. LANGER: Okay. I have no further
7 questions. Thank you.

8 THE CHAIRMAN: Thank you. Now I'll ask
9 for the cross-examination by the combined, the
10 abutters.

11 MS. NIGRO: Mr. Henry, I wanted to ask
12 some follow-up questions to your earlier
13 testimony.

14 THE CHAIRMAN: Excuse me. Could you
15 try to speak up, even with that it's --

16 THE COURT REPORTER: I'd appreciate it.

17 THE CHAIRMAN: We have a stenographer,
18 plus a bunch of -- at least one senior member who
19 at this late hour is a little bit hard of hearing.

20 MS. NIGRO: Duly noted.

21 I believe you testified earlier, Mr.
22 Henry, that the pesticides are, if there were any,
23 are in shallow soil. Is that correct?

24 THE WITNESS (Henry): Typically.

25 MS. NIGRO: And when you say

1 "typically," what does what mean?

2 THE WITNESS (Henry): In my experience,
3 the testing that we've done at the former
4 agricultural parcels throughout Connecticut that's
5 where we usually find them.

6 MS. NIGRO: And in your prior history
7 of testing, did you have sites that had potential
8 contamination wells?

9 THE WITNESS (Henry): Yes.

10 MS. NIGRO: And in those particular
11 sites, would you agree that contamination could be
12 deeper than in the topsoil?

13 THE WITNESS (Henry): When you say
14 "potential contaminated wells," so you mean
15 potential receptors, or actually wells that were
16 contaminated? And when you say "wells," do you
17 mean drinking water wells or monitoring wells?

18 MS. NIGRO: No. Wells similar to the
19 wells that were found on the Culbro property, so
20 they would be wells with repository contaminants.

21 THE WITNESS (Henry): No.

22 MS. NIGRO: You have not had a history
23 of that?

24 THE WITNESS (Henry): No. We've
25 identified receptors, wells that were in proximity

1 to former agricultural fields, but in testing
2 those wells we have not found contaminants in them
3 in my personal experience.

4 MS. NIGRO: Okay. Great. Thank you.

5 In your professional opinion, can you
6 tell me if driving pilings could take contaminants
7 in the topsoil and bring them into the lower
8 levels?

9 THE WITNESS (Henry): I don't think so.
10 I mean, typically when you drive piles, it's a
11 vertical motion. The shallow soils are displaced
12 horizontally. I mean, there's, you know, maybe a
13 few inches of the footprint that gets displaced
14 vertically and then horizontally, but you have to
15 make room in the soil column for a pile. So it's
16 displacing the soil, and the easiest route of
17 displacement is horizontally, not vertically.

18 MS. NIGRO: But is it possible to drive
19 them deeper?

20 THE WITNESS (Henry): Again, it's
21 theoretically possible, but from a physics point
22 of view and an engineering point of view, I don't
23 think it's likely.

24 MS. NIGRO: So theoretically if it was
25 possible and there were high water tables, would

1 it theoretically be possible that they could be
2 put into the water table?

3 THE WITNESS (Henry): Sure. But let me
4 also qualify that by saying that the pesticides
5 that we typically find in the shallow soils are
6 insoluble, and they have -- any soluble portion
7 of them typically has long since been removed
8 through infiltration of rainwater, and those
9 residual pesticides are not typically leachable,
10 so their contact with the groundwater table
11 wouldn't necessarily increase their ability to
12 mobilize.

13 MS. NIGRO: Excuse me one second. My
14 pen has decided that it's too late and no longer
15 wants to function.

16 You heard Mr. Carr's testimony. You've
17 been here all day, correct, Mr. Henry?

18 THE WITNESS (Henry): I haven't been
19 here all day, but I did hear Mr. Carr's testimony.

20 MS. NIGRO: Thank you. He testified
21 that there was a possibility of piercing an
22 unknown contained well. Did you hear his
23 testimony on that?

24 THE WITNESS (Henry): Piercing an
25 uncontained well?

1 MS. NIGRO: With the pile driving, if
2 I'm using the correct words. Did you hear his
3 testimony on that?

4 THE WITNESS (Henry): I guess I'm not
5 familiar with what you're referring to. There are
6 no wells on the site.

7 MS. NIGRO: If there was contamination
8 that existed.

9 THE WITNESS (Henry): So contamination.
10 So similar to my previous answer, that
11 contamination that's been there has been open to
12 infiltration and near surface has been disturbed
13 regularly by tilling. And so driving a pile --

14 MS. NIGRO: I'm going to reask that
15 question.

16 THE WITNESS (Henry): -- into that soil
17 horizon wouldn't change the mobilization of
18 those --

19 MS. NIGRO: I believe what he testified
20 to -- I'm going to reask the question because I
21 don't believe that that was the question --
22 response to the question that I intended to ask.

23 THE WITNESS (Henry): Okay.

24 MS. NIGRO: And mostly that's me
25 struggling to comprehend your language. So I'm

1 going to try again.

2 THE WITNESS (Henry): That's fine.

3 MS. NIGRO: What I believe I heard
4 Mr. Carr testify to is that the pile drivings
5 could potentially pierce perhaps wells that are
6 existing with contaminants in them, not water
7 wells, but wells that have disposable contaminants
8 within them. That's what I believe I heard him
9 testify to. Did you hear that testimony?

10 THE WITNESS (Henry): So I guess I
11 still am confused. So I guess maybe the wrong
12 terminology. So there's some monitoring wells on
13 the southern portion of the site. Those are
14 vertical wells, and they'd be abandoned in place.

15 MS. NIGRO: What are the monitoring
16 wells for?

17 THE WITNESS (Henry): I don't know.

18 MS. NIGRO: When you did your, I
19 believe you called it Phase I. Correct?

20 THE WITNESS (Henry): Correct.

21 MS. NIGRO: What did you do to discover
22 what the monitoring wells were used for?

23 THE WITNESS (Henry): We reviewed
24 records at the Department of Environmental
25 Protection.

1 MS. NIGRO: Did you do anything else?

2 THE WITNESS (Henry): We reviewed
3 historical records at the state library.

4 MS. NIGRO: Did you talk to the
5 landowner?

6 THE WITNESS (Henry): We did. We
7 interviewed him.

8 MS. NIGRO: And what did he say?

9 THE WITNESS (Henry): Well, initially
10 at the Phase I we didn't get a response from him.
11 Subsequently to that, he did answer questions, and
12 he was unaware of any previous environmental
13 investigations at the site.

14 MS. NIGRO: Can you explain to me how a
15 monitoring well is installed?

16 THE WITNESS (Henry): It's installed
17 using a drill rig.

18 MS. NIGRO: So it's a pretty big deal?

19 THE WITNESS (Henry): Well, I mean, I
20 guess it's all relative. We do it every day.

21 MS. NIGRO: What is the material that
22 the wells are made out of?

23 THE WITNESS (Henry): Metal. Well, the
24 casings that you can see above grade is metal.
25 The wells themselves are typically PVC plastic.

1 MS. NIGRO: And how long has the
2 current property owner owned the property?

3 THE WITNESS (Henry): I believe since
4 2013.

5 THE WITNESS (Kenney): About that.

6 THE WITNESS (Henry): I think so, 2013.

7 MS. NIGRO: And if the current property
8 owner had these wells installed when they had
9 their ownership, they would know about them. Do
10 you agree with that?

11 THE WITNESS (Henry): Yeah, I would
12 think that's a fair statement.

13 MS. NIGRO: You testified, I believe I
14 wrote this down correctly, but correct me if I've
15 got it wrong, that knowing the testing result
16 would not change the mitigation plan?

17 THE WITNESS (Henry): Correct.

18 MS. NIGRO: Can you please help me
19 understand that? Why would it not change the
20 mitigation plan?

21 THE WITNESS (Henry): Well, so the
22 point -- I mean, the soil there would not be
23 handled any differently. The development and
24 management plan will include soil and erosion
25 control, the dust control. There's no material

1 that's going to be moved off site. The material
2 that's excess on the site is going to stay on
3 site. So as long as you can manage the management
4 of the soil on site and mitigate stormwater
5 erosion and control, then there's nothing else
6 that would be necessary to construct the project.

7 MS. NIGRO: So if in the hypothetical
8 that we were talking about earlier existed where
9 there was contaminants deeper than in the surface,
10 would testing be important to know in order to
11 make contingency within your mitigation plan?

12 THE WITNESS: Well, no. So if there
13 were contaminants deeper than they have been there
14 for some time, and would have leached into the
15 groundwater, traveled and affected the neighboring
16 wells, and all the test data that we've reviewed
17 in the DEEP files indicate that the testing that
18 was done at the neighboring wells largely they're
19 unaffected.

20 MS. NIGRO: But that wasn't my
21 question. My question was, hypothetically, in the
22 hypothetical scenario that we talked about a
23 little bit earlier, if there were contaminants --
24 we don't know if there are. You'll agree with me
25 on that, right, deeper?

1 THE WITNESS (Henry): Correct. Right.

2 MS. NIGRO: And if they did exist,
3 would testing give you knowledge that would better
4 able someone, like Deepwater Wind, to include
5 certain plans or mitigating actions for the
6 proposed site?

7 THE WITNESS (Cote): Let me see if I
8 can help you out here. I'm Claude Cote. I
9 actually used to be a deputy director for Rhode
10 Island DEM. And one of the things, I guess -- and
11 Adam is a licensed site professional, so correct
12 me if I veer off this -- one of the things that I
13 think that we're losing focus with is what was
14 done, why it was done, and where does it take you
15 to. And what happens is, is that when you have a
16 site, be it as a government regulator or
17 professional for a solar developer, you have to
18 make a determination whether or not there is the
19 appearance of any issue, any risks associated with
20 historic contamination, releases, evidence
21 thereof.

22 ASTM is a consensus group of society of
23 engineers that pretty much grappled with this
24 problem mostly in the late 70s and earlier 80s.
25 And they came out with a series of consensus

1 standards that led to what people refer to
2 commonly as Phase I and Phase II studies. And
3 what happens is, is that you could have all the
4 hypotheticals so you can go and spend enormous
5 amounts of money digging holes and testing soil
6 and water all over the place, but the question is
7 how to do it efficiently, when and how, and doing
8 it to the society's standards so that everybody
9 basically does it to the same playing field. And,
10 in essence, the judgment of a bunch of
11 environmental engineers is what set the boundaries
12 on that. And that's basically what is in evidence
13 here is the Phase I study.

14 The way the ASTM standards are set up
15 is you do a Phase I assessment. And whether or
16 not you come out at the end of the day with an
17 environmental concern or REC, or whatever it is,
18 that's sort of a screening tool. And if you do
19 get that, then it takes you to the next place
20 where there was an observed release in this
21 particular place because there was an oil drum
22 spilled on the ground. The records of the
23 environmental agency show XYZ. Any of those
24 things that would cite one of those issues would
25 lead you through the screening methodology to do a

1 Phase II assessment.

2 The Phase I in this particular case --
3 and GZA did it, so I won't speak for them -- but
4 pretty much concluded that, based on what there
5 was, you didn't breach the screen, nor did it take
6 you to round two of it. So while one may
7 postulate what may or may not happen, this has
8 been agricultural for decades, who knows, but
9 based on the standards that are generally used by
10 environmental professionals, this is the
11 methodology that is done to assess a site. And if
12 you fail the screen in the first one, it takes you
13 to round two, and that's really not what happened
14 here.

15 So that on a macro basis is where we
16 sit. And I guess I'd ask Adam to fill in the gaps
17 because I'm sure I left a few in there.

18 THE WITNESS (Henry): No. I would just
19 add to that that really the goal of doing testing
20 ultimately is to protect human health and the
21 environment. And with our understanding of the
22 property and the development plans, there is no
23 testing results that would change our approach to
24 managing the site during development.

25 MS. NIGRO: Thank you.

1 Mr. Cote?

2 THE WITNESS (Cote): Yes.

3 MS. NIGRO: Mr. Cote, you would agree
4 with me, although I haven't had the luxury of
5 reviewing these in great detail, you will agree
6 with me that some of the wells do show some trace
7 contaminants. Would you agree with that?

8 THE WITNESS (Cote): I have only
9 scanned those quickly, but yes, some of those show
10 trace contaminants. But, in essence, I don't know
11 the specific locations, nor do I know what the
12 upstream potential corresponding sources are. So
13 how that would fit into a Phase I assessment, I
14 have not gone through the methodology, and
15 actually I normally rely on people like Adam to do
16 that for me.

17 MS. NIGRO: Well, I find that
18 interesting because to me you're saying two
19 things. You're saying, one, we've scratched the
20 surface and we did the minimum that we need to do
21 in order to ensure that we meet the Phase I, yet
22 there is evidence that there, in fact, is
23 contaminants, but let's ignore that for a second.
24 That's essentially what you're saying.

25 So what I'm asking you is, if you have

1 trace contaminants that are showing up in the
2 wells and it's existent within these documents,
3 and we're going to do a project of this magnitude,
4 massive magnitude with pile driving of 10,000
5 posts into the ground of soil that we know
6 potentially hypothetically can contain
7 contaminants, would it not be prudent to move to
8 Phase II and do the proper testing to understand
9 how it might lead into the mitigation plan?

10 THE WITNESS (Cote): I would suggest
11 that the American Society of Testing engineers
12 would disagree with your assessment that doing the
13 minimum. They've spent an enormous amount of time
14 and resources to come up with what a Phase I
15 assessment is, and it wasn't designed to be the
16 minimum.

17 I think I've used the terminology
18 screening tool. It's supposed to be a reasonable
19 and appropriate tool by which you gauge sites. If
20 you test well water, as I have, thousands and
21 thousands of samples on private drinking water
22 wells across the state of Rhode Island when we're
23 doing our groundwater standards in the early to
24 mid 80s, you'll find that virtually at the time I
25 want to say it's probably 80 percent of all

1 private residential wells have some sign of
2 contamination in them. Where it's from, how it
3 got there, how historic it is, you know, basically
4 the questions you asked. Some of the wells were
5 actually owned by people who were bottled water
6 supply companies, and some of them even had
7 contaminants in them.

8 So the presence of some level of
9 contamination at extremely low levels in wells is
10 more common than it is not in my experience. So
11 it wouldn't take you to a screening methodology by
12 which you do an ASTM Phase II assessment. You do
13 an ASTM Phase II if a Phase I took you to that
14 place, not based on extraneous results that show
15 small contamination.

16 So I wasn't being dismissive of the
17 fact that the wells are contaminated. I don't
18 consider the ASTM standard to be minimalistic.
19 And I guess that's my answer.

20 THE WITNESS (Henry): And I know you
21 haven't had a chance to review all of that data in
22 detail -- in as much detail as you'd like, but
23 just let me summarize it that it includes probably
24 over 60 wells that were tested in the 1990s, and
25 as recently as 2012, and of those 60 wells, I

1 believe there were only five that had
2 concentrations of a single contaminant that was
3 below drinking water action levels, mind you, but
4 yet they were still put on filters. And this is a
5 contaminant that was very soluble that was used
6 historically at tobacco fields. It's very
7 soluble. It travels. It doesn't stay in soil.
8 I've never tested soil in former agricultural
9 parcels and found it. It hasn't been used for
10 several decades. And so we wouldn't expect a
11 source to still be there. So disturbance of those
12 soils we would not expect to result in
13 mobilization of that contaminant.

14 MS. NIGRO: By my very rudimentary and
15 quick count, it's more like 17, but assuming that
16 I have looked at them in my brief time that I had
17 with them. But we'll leave it at that.

18 What would be the impetus or what would
19 be the -- retract that question.

20 Why wouldn't we test? Why wouldn't we
21 do it? What would prevent us from -- or Deepwater
22 Wind from testing?

23 THE WITNESS (Henry): There's just
24 simply no need to have more understanding of what
25 the site contains to develop their plan. In fact,

1 their plan includes stabilization of the site to a
2 degree that's not currently existing.

3 MS. NIGRO: That's a very political
4 answer. My question is really much more simpler
5 than that. If enough question was raised, enough
6 concern by the citizens that live in and around
7 the area and Deepwater Wind wanting to be good
8 community members, as they have stated in so many
9 instances, and the town raising enough concerns
10 about the potential for contaminants, what would
11 hinder Deepwater Wind from testing?

12 THE WITNESS (Grybowski): Testing what?
13 I just want to be clear.

14 MS. NIGRO: The water.

15 THE WITNESS (Grybowski): Which wells?

16 MS. NIGRO: The wells that are adjacent
17 to the property, as well as potentially the
18 aquifer.

19 THE WITNESS (Grybowski): The wells
20 adjacent, you mean private property owner wells?

21 MS. NIGRO: Correct.

22 THE WITNESS (Grybowski): My
23 understanding is that DEEP has tested them
24 extensively over the years.

25 MS. NIGRO: But would you agree that

1 there would be a benefit to having both a baseline
2 and then a post, if the project was approved and
3 the pile drivings have occurred, some testing
4 that's done post to ensure that no contamination
5 has occurred?

6 THE WITNESS (Grybowski): We would
7 agree to testing the adjoining properties pre and
8 post-construction, sure.

9 MS. NIGRO: And how about the water
10 that is impacted in the aquifer, would that be
11 something that Deepwater Wind would be agreeable
12 to testing?

13 THE WITNESS (Grybowski): I don't
14 understand that question.

15 MS. NIGRO: There is an aquifer on the
16 property. Is that correct?

17 THE WITNESS (Henry): It's the same
18 water that would be in the drinking water wells.

19 MS. NIGRO: Okay. So it would be one
20 in the same. You're now educating me. Thank you.

21 I would like to take a look at the
22 two-page summary. I don't know who the best
23 person is to address this.

24 THE WITNESS (Kenney): Which two-page
25 summary?

1 MS. NIGRO: The two-page summary on the
2 November 2, 2017 modified interrogatory.

3 MR. HOFFMAN: That would be Mr. Henry.

4 MS. NIGRO: Thank you.

5 MR. HOFFMAN: And just for the record,
6 only Section B was modified. Section A and C in
7 that two pages have been unchanged.

8 MS. NIGRO: I'm aware of that. Thank
9 you.

10 I just have one question on this. On
11 the second page in subsection (b), the third
12 paragraph, or the last paragraph of that
13 subsection (b) in the very last sentence it says,
14 "For those residences that were affected, the DEEP
15 provided homeowners with water filtration
16 systems." Do you see that?

17 THE WITNESS (Henry): Uh-huh.

18 MS. NIGRO: Are you aware that DEEP has
19 discontinued providing those filters?

20 THE WITNESS (Henry): I am. And based
21 on the test results, the pre, or the raw water
22 coming into those systems, was below action
23 levels.

24 MS. NIGRO: And do you have any
25 documentation that supports that it's due to

1 action levels and not anything else?

2 THE WITNESS (Henry): I believe it's
3 because of funding.

4 MS. NIGRO: Correct. Thank you.

5 I would like to ask you some questions
6 on the GZA report. Mr. Henry, that would be you.
7 Correct?

8 THE WITNESS (Henry): That's me.

9 MS. NIGRO: Lucky you.

10 Again, I'm going to ask in the second
11 paragraph, the last sentence where you say,
12 "potential for residual pesticides to be present
13 in soil and/or groundwater as a result of current
14 or historical site use," we'll agree that there's
15 the potential for residual pesticides. Correct?

16 THE WITNESS (Henry): So you're looking
17 at the Phase I? I just want to make sure I'm
18 reading the same --

19 MS. NIGRO: October 3, 2017.

20 THE WITNESS (Henry): Oh, so this is
21 the supplemental letter. Okay.

22 MS. NIGRO: My apologies.

23 THE WITNESS (Henry): I'm sorry. Your
24 question again?

25 MS. NIGRO: The second paragraph, the

1 last sentence, it talks about residual pesticides?

2 THE WITNESS (Henry): Yes.

3 MS. NIGRO: And I believe you testified
4 earlier that I think we can agree that there's the
5 potential for residual pesticides based on the
6 historical history of the land?

7 THE WITNESS (Henry): Uh-huh.

8 MS. NIGRO: And I just want to make
9 sure I understand your position. You believe that
10 none of the actions that will be taken in a
11 project of this magnitude and the way that it's
12 currently proposed will create a disturbance of
13 soil?

14 THE WITNESS (Henry): No. The project
15 will certainly disturb some soil, but that
16 disturbance will be managed through dust control,
17 soil and erosion control, stockpiling, regrading.
18 So from a site direct exposure standpoint, I think
19 all that will be addressed in the development and
20 management plan adequately.

21 MS. NIGRO: The disturbance of soil, do
22 you believe that it's the equivalent of farming?

23 THE WITNESS (Henry): I believe it's
24 actually probably initially I don't know the
25 extent of the tilling that goes on now, or the

1 depth of it, but the site is certainly actively
2 farmed. The soil is disturbed there on at least
3 an annual basis. And to add to that, there's no
4 erosion control, no dust control.

5 In this project the soil disturbance
6 will be a temporary issue. It will be managed
7 with dust control, soil and erosion controls, and
8 then after that the site will be stabilized with
9 planting, which will actually reduce the potential
10 for any of the soil to mobilize.

11 MS. NIGRO: So you have no knowledge of
12 the depth of soil tilling that currently goes on
13 on the property site?

14 THE WITNESS (Henry): I don't.

15 THE WITNESS (Peterson): I think
16 generally the tilled depth is about 9 inches, 9 to
17 12 inches.

18 MS. NIGRO: Thank you. And the pilings
19 will be driven 12 to 14, correct?

20 THE WITNESS (Peterson): Feet.

21 THE WITNESS (Kenney): Feet.

22 MS. NIGRO: I would like to look at the
23 last page. I believe you stated that you did do a
24 site visit, and that these were -- and I'm going
25 to use your words -- standard report limitations

1 that were included?

2 THE WITNESS (Henry): Uh-huh.

3 MS. NIGRO: So I'd like to ask you, is
4 number 4 a standard report limitation, or does it
5 apply to this docket?

6 THE WITNESS (Henry): Standard.

7 MS. NIGRO: So did you perform any
8 independent testing or analysis to determine the
9 presence or concentration of asbestos, hazardous
10 materials, petroleum products in the site building
11 or the environment?

12 THE WITNESS (Henry): We did not.

13 MS. NIGRO: I'd like to call your
14 attention to number 6. Is that also a standard
15 report limitation?

16 THE WITNESS (Henry): Yes.

17 MS. NIGRO: Did you in preparation of
18 this report, except as noted within the text of
19 the report, do any quantitative laboratory testing
20 which was performed by GZA as part of this review,
21 where such analyses has been conducted by others,
22 GZA has relied upon the data provided, and has not
23 conducted an independent evaluation of the
24 reliability of this data?

25 THE WITNESS (Henry): Yes, that's

1 correct.

2 MS. NIGRO: So you did not do any
3 independent testing. Correct?

4 THE WITNESS (Henry): No, but we
5 reviewed the results of testing by others.

6 MS. NIGRO: Okay. But you did not
7 conduct -- oh, so you didn't do independent
8 testing, but you conducted an analysis of other
9 people's evaluation?

10 THE WITNESS (Henry): Sure, the
11 drinking water well test results.

12 MS. NIGRO: Okay. And number 7, again,
13 is it a standard report limitation?

14 THE WITNESS (Henry): Yes.

15 MS. NIGRO: All right. It should be
16 noted that variations in the types and
17 concentrations of contaminants and variations in
18 their flow paths may occur due to seasonal water
19 table fluctuations, past disposal practices, the
20 passage of time, and other factors. Should
21 additional chemical data become available in the
22 future, this data can be reviewed and the
23 conclusions and recommendations herein modified
24 accordingly. Would you agree with that statement?

25 THE WITNESS (Henry): I would.

1 MS. NIGRO: In the context of this
2 paper?

3 THE WITNESS (Henry): Yes, I would. In
4 fact, it sort of encapsulates what we've been
5 talking about. So it's our opinion that chemical
6 data at the site would not affect our conclusions.

7 MS. NIGRO: How do you get that from
8 this, from number 7?

9 THE WITNESS (Henry): So this is a
10 standard limitation. And the last sentence,
11 "should additional chemical data become
12 available," that data can be reviewed by GZA. So
13 it's our opinion during the process of this we
14 reviewed data by others. And based on the context
15 of the site, as I've said previously, in the
16 context of the site development project, we don't
17 feel that site specific data would change the
18 mitigation approach.

19 MS. NIGRO: Nowhere in number 7 do I
20 see anything that talks about --

21 THE WITNESS (Henry): No, but it talks
22 about the ability to do that.

23 MS. NIGRO: The ability to modify what
24 your analysis might be if more data becomes
25 available to you?

1 THE WITNESS (Henry): Sure. And it
2 says subsequent to this October 3rd letter we
3 subsequently found some significant data regarding
4 testing of the off site wells, and so that
5 limitation sort of allows us to review that data
6 and modify our conclusions, if necessary.

7 MS. NIGRO: Similarly, if you were to
8 have testing that shows significant contaminants,
9 it would also modify what your opinion is as well.
10 Correct?

11 THE WITNESS (Henry): Well, again, in
12 what context? Significant contaminants --

13 MS. NIGRO: Just hypothetically if you
14 were to have testing that was done and it showed
15 post-installation that there was -- I'll finish my
16 question -- significant contaminants, number 7
17 might come in and you might modify whatever your
18 recommendations would be. Is that correct?

19 THE WITNESS (Henry): We certainly
20 might, but again in the context of how you're
21 asking the question, significant. So is two
22 greater than one, or is ten more significant than
23 one?

24 MS. NIGRO: Well, keeping that on a
25 much more simpler level, if you were to find

1 material new information that was significant in
2 some way, positive or negative, that number 7
3 would have been -- come into play?

4 THE WITNESS (Henry): It allows us to
5 do that, yes, correct.

6 MS. NIGRO: So would you agree with me
7 then your opinions that are in this October 3rd
8 letter are qualified by number 4, number 6 and
9 number 7?

10 THE WITNESS (Henry): Yes.

11 MS. NIGRO: Thank you.

12 I have a question on Deepwater Wind's
13 responses to the Siting Council's second set of
14 interrogatories, dated October 3, 2017. I don't
15 know who the best person is.

16 THE WITNESS (Kenney): Why don't you
17 ask the question, and then we can put it to the
18 right person.

19 MS. NIGRO: I appreciate that. I have
20 a question about Question 84, and that is the
21 modified question. Is that correct?

22 THE WITNESS (Kenney): That's the one
23 where the amendments were submitted this morning.

24 MS. NIGRO: My question does not impact
25 the modified.

1 THE WITNESS (Kenney): I think it's
2 still going to be Adam, Mr. Henry.

3 THE WITNESS (Henry): Go ahead and ask.

4 MS. NIGRO: We're going to become good
5 friends.

6 Okay. Actually I don't think I want to
7 ask Mr. Henry this question. I think I want to
8 ask Deepwater Wind this question. So I'll ask it,
9 and then you can tell me your opinion.

10 In Question (a) the response was, "It
11 does not appear likely that any potential
12 pesticide residues located on the project site
13 would impact nearby wells or the aquifers." Add
14 my question is whether that opinion, that response
15 to subsection (a) is solely based on GZA's report?

16 THE WITNESS (Kenney): So at the start
17 of that response A84(a), it states that based on
18 the findings in that report, which is the October
19 3rd report prepared by Mr. Henry, by GZA.

20 MS. NIGRO: Thank you.

21 In that same set of interrogatories,
22 Question Number 83, as well as Deepwater Wind's
23 responses to Connecticut Siting Council's first
24 set of interrogatories, if you don't mind pulling
25 that up too?

1 THE WITNESS (Kenney): Which number?

2 MS. NIGRO: Number 59.

3 THE WITNESS (Kenney): Okay.

4 MS. NIGRO: Thank you. It says "Posts
5 will be driven into the soil using Vermeer PD10s
6 or similar solar pile driving equipment." Is that
7 still accurate?

8 THE WITNESS (Kenney): Yes.

9 MS. NIGRO: How many pile drivers will
10 be operated at any one given time, maximum?

11 THE WITNESS (Kenney): Unknown at this
12 time.

13 MS. NIGRO: When would something like
14 that be known?

15 THE WITNESS (Kenney): As we proceed
16 further in the construction planning.

17 MS. NIGRO: And what would influence
18 the decision on how many pile drivers would be in
19 operation at any given time?

20 THE WITNESS (Kenney): It would be
21 construction logistics, you know, in terms of the
22 time and sequencing of construction. We're not
23 certain that there would be more than one, but we
24 have committed to operate in full compliance with
25 the local construction noise ordinance or state

1 noise ordinance.

2 MS. NIGRO: Okay. And now turning to
3 Deepwater Wind's responses to the second set of
4 Connecticut Siting Council's second set of
5 interrogatories, Question Number 83, which talks
6 at length at about vibrations and gives responses
7 to how those vibrations might or might not impact
8 sediments in wells that are adjacent to the
9 property. And my question for whomever would like
10 to answer it is whether or not you could answer
11 this question if you don't know if one, two,
12 three, four, five, or however many pile drivers
13 will be operating, and does multiple pile drivers
14 operating at the same time change the answer to
15 this question?

16 THE WITNESS (Kenney): In the event
17 that we had more than one pile driver operating at
18 the same time, they wouldn't be proximate to one
19 another. We would have them in different
20 locations within the site. So I'll just start
21 with that, and I'll let Ms. Moberg respond
22 regarding the vibration analysis which VHB
23 prepared.

24 THE WITNESS (Moberg): Okay. So this
25 vibration analysis references several studies that

1 were prepared by essentially the transportation
2 authority, so FTA is the Federal Transportation
3 Authority. Caltrans is the Connecticut Department
4 of Transportation -- California Department of
5 Transportation. Sorry.

6 And so basically what they found is for
7 vibrations related to typical like highway and
8 bridge construction, which is like a completely
9 different greater order of magnitude than the type
10 of construction that will occur on this project,
11 that they found that there were not excessive
12 vibrations transmitted through the soil as a
13 result of pile driving activities that damaged --
14 that had the potential to damage structures like
15 buildings and foundations of other -- bridges and
16 whatnot.

17 So I think what we're saying here --
18 and I feel quite comfortable about this -- is that
19 the distance of these activities on this project,
20 pile driving activities and the relatively minor
21 magnitude of the actual activities that will be
22 occurring, is very, very unlikely to affect wells
23 that will be at a minimum at least 142 feet away.
24 So the closest residence -- and we have this in
25 one of our other interrogatory responses -- the

1 closest residence is over 140 feet away from the
2 closest panel at that location. So it's quite a
3 bit more than the 25 feet that those agencies
4 determined was a safe threshold.

5 MS. NIGRO: Does the study speak to
6 multiple pile drivers being operated at the same
7 time?

8 THE WITNESS (Moberg): I didn't review
9 the studies personally.

10 MS. NIGRO: So you don't know the
11 answer to that question?

12 THE WITNESS (Moberg): That's correct.

13 MS. NIGRO: Yet, you feel confident
14 that there will be no impact?

15 THE WITNESS (Moberg): I feel confident
16 that the studies that were reviewed by one of my
17 colleagues who is a vibration specialist who
18 prepared this response for me, with me, that he
19 did review them, and that he was comfortable with
20 these findings.

21 MS. NIGRO: But with no knowledge of
22 how many pile drivers will be used at any given
23 time at the same time?

24 THE WITNESS (Moberg): Right.

25 MS. NIGRO: Okay. Thank you.

1 THE WITNESS (Kenney): And to be clear,
2 I'm not saying we will have more than one pile
3 driver going at the same time. I mean, it's just
4 an option that we would maintain and we would --
5 we would maintain that option.

6 MS. NIGRO: I'd like to turn your
7 attention to interrogatory responses served upon
8 you by Flammini, et al, dated October 26, 2017,
9 specifically to Question Number 14.

10 THE WITNESS (Kenney): Yes.

11 MS. NIGRO: I believe in your
12 response -- although you objected -- you did
13 respond, stating that you do not believe that
14 16-50p applies because it's not an application for
15 a certificate. Correct?

16 THE WITNESS (Grybowski): That is what
17 it says, yes.

18 MS. NIGRO: I just wondered if you
19 could help me understand why you believe that
20 16-50p would not apply in anything other than a
21 certificate?

22 MR. HOFFMAN: I'll take this one
23 because it's the basis for the objection, Ms.
24 Nigro. 16-50p specifically refers to applications
25 for certificates. This is a petition for a

1 declaratory ruling. There was a long, drawn out
2 argument fostered by both the Department of Energy
3 and Environmental Protection and the Department of
4 Agriculture as to whether or not this was a
5 petition proceeding or properly a certificate
6 proceeding. Since it is not a certificate
7 proceeding, not all of the requirements of a
8 certificate, including, among other things, a
9 public benefit analysis, that would be required
10 under 16p is done. That's what the objection
11 basically says, and we stand by that.

12 MS. NIGRO: All right. But would you
13 agree with me that in the Council's decision
14 regarding the Department of Ag's motion that they
15 held that the Council has a broader jurisdiction
16 and purview and can look at other statutes?

17 MR. HOFFMAN: I'm not going to opine on
18 what the Council can or cannot do. The Council is
19 right there with capable legal representation and
20 several members who know their business.

21 MS. NIGRO: I'm not sure I know what to
22 do with that.

23 THE CHAIRMAN: We're not here to really
24 answer --

25 MS. NIGRO: Any questions?

1 THE CHAIRMAN: We're here to be
2 educated.

3 MS. NIGRO: Thank you.

4 So then let me ask it this way: If one
5 was to assume that the Council had a broader
6 purview and that they could look at other statutes
7 and that 16-50p did apply, given that in Section 4
8 of your petition you speak to the fact that this
9 project might satisfy a public need, would you not
10 agree that it would make sense for you to justify
11 what the public need is for this project?

12 MR. HOFFMAN: No. Section 4 talks
13 about benefits, not about public need, and we've
14 already objected to this question in writing, and
15 I'm going to object to it orally now.

16 MS. NIGRO: So what are the benefits of
17 this project?

18 MR. HOFFMAN: They're in Section 4.

19 MS. NIGRO: You won't reiterate them
20 for me for the record?

21 MR. HOFFMAN: I'm trying to save time
22 here. They're in Section 4 of the petition.

23 THE CHAIRMAN: And I also think the
24 Department of Environmental Protection also stated
25 the objectives of this. So if things are already

1 in the record, it's not necessary to rehash.

2 MS. NIGRO: Thank you, sir. I don't
3 have any further questions.

4 THE CHAIRMAN: Thank you.

5 Now cross-examination by Council staff,
6 and then the Council.

7 MR. MERCIER: Thank you. Just to
8 clarify two questions, Interrogatories Number 101,
9 the Council's interrogatories -- the responses to
10 the Council's interrogatories, Set III, excuse me.
11 Number 101 has to do with a 20-foot wide access
12 roads. I initially asked the town whether the
13 town required those roads. They said no. But I
14 guess the question I really want to ask is I
15 assume the first responders are a different
16 entity, and they're the ones that asked for the
17 road, is that correct, perimeter roads around all
18 the solar fields?

19 THE WITNESS (Kenney): So I think what
20 happened here is we had proposed the perimeter
21 road, and we went to the first responders, and
22 they were pleased with it.

23 MR. MERCIER: Okay.

24 THE WITNESS (Kenney): So therefore,
25 before we would make any change to it, we would

1 circle back. I think that's the accurate way to
2 describe the status of that.

3 MR. MERCIER: Okay. So it is possible
4 maybe to, like some other similar projects listed
5 on these administrative notice items, to do a
6 single internal road without perimeter roads and
7 potentially extend some of the solar panel roads
8 east or west?

9 THE WITNESS (Kenney): We can certainly
10 look into that. It is possible.

11 MR. MERCIER: The only reason I'm
12 asking that is just because I saw through your
13 shrinking of the project, that number you gave, 18
14 acres or so, based on community concerns, you did
15 a good job buffering all the neighbors, you know,
16 just looking at this, except one area was Howard
17 Street there's three properties that abut the
18 project line and the clearing is right up to the
19 property line. And according to the existing map
20 there, it's a thin tree line that you're going to
21 take out, very thin. I just wanted to know if you
22 could retain that, something you could look at at
23 a later stage?

24 THE WITNESS (Kenney): Can you clarify?
25 Is it Howard Street or Knollwood Circle?

1 MR. MERCIER: Excuse me, I can't read
2 that. It's Howard Street --

3 THE WITNESS (Kenney): At the corner
4 there between Howard and --

5 MR. MERCIER: Yeah, just above the
6 number on the --

7 THE WITNESS (Kenney): Oh, that's a
8 shadow.

9 MR. MERCIER: -- on the left side.

10 THE WITNESS (Kenney): Okay. We can
11 certainly --

12 MR. MERCIER: To retain those existing
13 vegetation there.

14 THE WITNESS (Kenney): Uh-huh.
15 Certainly we can review the 20-foot perimeter
16 road.

17 MR. MERCIER: Thank you.

18 THE WITNESS (Grybowski): If I can just
19 add a little bit there? We're very much open to
20 looking at that 20-foot road. I think we want to
21 make sure that we have the right safety and access
22 issues, and it may not be an either/or. It may be
23 that in some locations a perimeter road is more
24 necessary than in other locations, and I think
25 perhaps the northern-most parcel needs a bit more

1 access than other parcels. But we'll take a good
2 hard look at that and look for ways to get rid of
3 the 20-foot perimeter road to the extent we can
4 and think it's a safe thing to do.

5 MR. MERCIER: Thank you very much. I
6 have no other questions.

7 THE CHAIRMAN: Okay. We'll now go to
8 questions from the Council.

9 Mr. Silvestri.

10 MR. SILVESTRI: Thank you,
11 Mr. Chairman. I didn't want to interrupt Attorney
12 Langer with his last line of questioning, so I was
13 waiting now, and I figure I could add my questions
14 to what he referred to as size in what I'll call
15 watts. The first question I have for you, with
16 the revised project layout map that was submitted
17 along with the second set of interrogatories back
18 to the Council on October 3rd, roughly how many
19 panels do you think are left on the south side of
20 Hoskins?

21 THE WITNESS (Kenney): We would have to
22 do some analysis for that. We don't have that
23 number handy.

24 MR. SILVESTRI: Okay. No idea, 1,000,
25 2,000?

1 THE WITNESS (Kenney): If you give --
2 let us, if you give us a minute or so -- we'd be
3 guessing.

4 MR. SILVESTRI: Okay. Let me tell you
5 where I'm heading. I'm not looking to reduce your
6 output. All right. You're looking at 26.4. What
7 I'm looking at, again, as I referred back in the
8 last hearing with footprint, I'm looking at
9 wattage of the panels. You're proposing 340. I
10 know there's commercially available panels out
11 there in the 375 or so range. I've seen them at
12 400 being advertised as well. If we look at
13 either of the two and you were to take the 340 and
14 move to 375, you'd probably save something like
15 10,000 panels. And if we were to go to the
16 extreme then you're looking at 400 watt, you'd be
17 saving about 16,500 based on my calculation.

18 So I'm kind of looking at that and
19 saying, all right, how many panels would be on the
20 south side, could you switch somewhere along the
21 line to something a little bit bigger in wattage
22 and save that footprint and maybe some other
23 footprints that are there.

24 But the related part is we heard from
25 another proposal that people were going to

1 voluntarily switch from a 300 or so, 340 or so
2 panel, to 400 again to reduce the footprint, and
3 they said they were going to do it without
4 changing the inverter. So I'm curious as to what
5 your comments would be to try to move up the
6 wattage to shrink down the number of panels?

7 THE WITNESS (Cote): You obviously
8 heard my answer before, so I won't reiterate it.
9 They're designed to each other. I have seen panel
10 switch-outs where you've gone up, either a
11 different manufacturer or upped the wattage, and
12 then you had an incapacity between the inverters
13 and the panels themselves. What ends up happening
14 is a resonance frequency has occurred or did occur
15 at this particular facility, and it kept blowing
16 transformers like there was no tomorrow.
17 Ultimately what ended up happening is, is they
18 went to a full utility scale K-grade transformer
19 to fix it, and even after that, the site still had
20 a bunch of problems at the interconnect point
21 because the harmonics that were being thrown from
22 the site were messing up the off-taker in the
23 utility.

24 So what had started out as a good idea
25 for more panels and more power or efficiency or

1 whatever, ended up being an operational problem
2 and nightmare for a couple of years that cost ten
3 times whatever the benefits were to the design
4 engineer up front. So I'm a firm believer in
5 making sure that everything is properly matched.

6 So if one were to switch to a 375 or a
7 400, then basically I would strongly advocate that
8 you take a very, very close look at what is going
9 on and make sure that everything from a design
10 standpoint, which is usually chosen like through
11 an IEEE type of design, matches each other because
12 you end up with some quirky little thing that has
13 not happened and is done on an ad hoc basis.

14 THE WITNESS (Grybowski): I wanted to
15 supplement the answer perhaps, Mr. Silvestri. I
16 also heard that there are some developers talking
17 about 400 watt panels. I'm not aware -- and I've
18 done a little bit of work in the last few days
19 since I've heard that suggestion. I'm not aware
20 of a utility grade 400 watt panel that's available
21 today for a large-scale quality first tier solar
22 manufacturer. So that's my first point. I think
23 that to the extent someone perhaps is talking
24 about a 400 watt panel for a utility grade first
25 tier manufacturer, they're probably hoping,

1 they're probably projecting forward that perhaps
2 by the time they're going into construction that
3 may be available. That's my supposition because
4 I'm not aware of a 400 watt panel from a tier one
5 supplier.

6 The second point is if such a panel
7 were available, we would have bid a larger project
8 into the tristate RFP. We did not start off by
9 thinking that we could bid -- that we wanted to
10 bid a 26 megawatt project. We had a footprint
11 that we thought was a viable footprint, and we
12 used the largest size panel that we could put on
13 that that was commercially available. If we
14 thought that it was commercially feasible to use a
15 larger panel, a larger wattage, we would have bid
16 not 26 megawatts into that RFP, but 40 or 50 or
17 something more. So there would have been no
18 commercial reason for us to go to a lower wattage
19 panel and restrict the output of our facility.

20 MR. SILVESTRI: Then if I heard
21 correctly before, again, in response to one of
22 Attorney Langer's questions, that it's feasible,
23 in your opinion, to remove the panels that are
24 south of Hoskins, but it would be at the expense
25 of whatever reductions you had earlier on in the

1 program. Did I hear that correctly?

2 THE WITNESS (Kenney): I don't think
3 it's -- you know, it wouldn't be the same. You
4 know, we reduced, I believe, more area, but we
5 would have to revisit those reductions. We had a
6 number of areas where we cut the facilities back
7 in direct response to stakeholder comments that
8 were received, but we could revisit that.

9 MR. SILVESTRI: And if you would
10 refresh my memory because of the tons of paper
11 that we do have, that the comments that you're
12 willing to cut back on the other ones, was it more
13 to get more of a buffer there or more of a
14 screening, that was the move?

15 THE WITNESS (Kenney): There were
16 different concerns. So the residents on Berkshire
17 Way asked us to push back to preserve some of
18 their views, so we were able to do that. They
19 have a wooded area. At the end of Howard Street
20 we had panels proposed, and it's an elevation, so
21 it would be quite a visual impact. So we
22 determined that that would be an area where we
23 wouldn't propose panels. And then there was a
24 number of other areas where we made similar
25 changes. At the corner of Howard and Centerwood,

1 we pulled back for screening, you know, it was
2 really to pull back from the neighborhoods all
3 around. And then south of Hoskins we actually
4 shifted the project back from the road to address
5 visual concerns. And as I believe you're all
6 aware, in an interrogatory response we further
7 reduced the number of panels south of Hoskins.

8 THE WITNESS (Grybowski): And as
9 Ms. Kenney said, we're very happy to revisit some
10 of those choices because as I said to Mr. Mercier
11 in prior testimony, this is about choices, and we
12 tried to do our best with some of these choices.
13 I'd say that following the first public hearing
14 that we had in Simsbury, I rode around these
15 neighborhoods with our teams to look at the areas
16 that seemed to be most sensitive, and we eyeballed
17 many of these and based on the comments that we
18 received directly from neighbors. And in many
19 cases we made the decision on the spot, yeah,
20 these panels are going to be too close to that
21 neighborhood, to those homes, so we pulled back.
22 Those were made in direct response to the comments
23 that we received directly from homeowners, and
24 when we went to eyeball them ourselves, in many
25 cases we agreed and hence the reconfigured layout.

1 Having said that, there's no magic to this as
2 well, and there could be yet another iteration of
3 this that we're very open to considering.

4 MR. SILVESTRI: One other follow-up.
5 And I don't want to steal what Dr. Klemens and I
6 were talking about before, but it kind of adds to
7 the conversation that we're having right now. On
8 one of the maps -- and you can actually see it
9 better on your posting that's there -- just above
10 Attorney Hoffman, there's that triangular area
11 that's open, and we're trying to figure out why
12 that's open.

13 MR. HOFFMAN: Mr. Silvestri, you're
14 referring to this?

15 MR. SILVESTRI: That is correct, sir.

16 THE WITNESS (Moberg): So I can answer
17 that one, at least as long as it doesn't get too,
18 too detailed. But based on our stormwater
19 analysis, that area is essentially like a closed
20 depression, like a bathtub, with a large area
21 draining to it. So we modeled the amount of time
22 that it will take for the water to infiltrate.
23 And based on that analysis, Deepwater opted not to
24 put panels in that location because I think the
25 feeling was there wasn't a tolerance for the

1 amount of standing water, also concerns relative
2 to being able to ensure the facility with
3 equipment in an area that has ponding. So --

4 MR. SILVESTRI: Thank you. Again, I
5 couldn't find it, and I saw a blank area, and I'm
6 saying, okay, why can't we move from here to
7 there, and you answered that question. Thank you.

8 I'm all set, Mr. Chairman.

9 THE CHAIRMAN: Dr. Klemens?

10 DR. KLEMENS: That segues into some of
11 my questions. You know, it's interesting. It's
12 always this back and forth. You move to make the
13 residents happy; the towns come in to protect
14 their gateway. And something has to give if
15 you're going to maintain the output that you want.

16 You've said that you can't do, for
17 various reasons you've sort of rejected the
18 concept of higher wattage panels that would reduce
19 the footprint. So I guess I want to have for the
20 record, is it feasible to remove everything south
21 of Hoskins and put it back adjacent to the
22 neighborhoods? It's a policy decision in a sense.
23 I mean, do you make the town happy for their
24 gateway, or do you impact a group of neighbors? I
25 just want to know if it's feasible to take

1 everything out south of Hoskins?

2 THE WITNESS (Kenney): A very
3 simplified answer --

4 DR. KLEMENS: I want simple.

5 THE WITNESS (Kenney): -- I believe the
6 answer would be yes.

7 DR. KLEMENS: Thank you. That's what I
8 want, nice simple answers. Thank you.

9 This area that you have that Mr.
10 Silvestri was talking about, and let's look at
11 your drawing C-3.3, is that stormwater area put
12 there because of the natural topography is lending
13 itself, or has that just been designated as a
14 place to put a basin?

15 THE WITNESS (Moberg): The natural
16 topography lends itself to that.

17 DR. KLEMENS: Okay.

18 THE WITNESS (Moberg): I'm just
19 flipping here. I think if you look at C-4.3, that
20 plan shows the existing topography, and there is
21 some grading shown on that plan sheet. Basically
22 the intent of the grading is just to sort of
23 smooth the ground surface. But since the filing
24 date in June, we've concluded that that's
25 basically unnecessary grading and --

1 DR. KLEMENS: Okay.

2 THE WITNESS (Moberg): -- we're
3 planning to scale that back.

4 DR. KLEMENS: Thank you. So that
5 basically is following the natural -- that's
6 placed there because of topography?

7 THE WITNESS (Moberg): Right.

8 DR. KLEMENS: Let's go to the barns.
9 We heard discussion about the barns. Now I'm
10 looking here at the same C-3.3, and I notice that
11 two of the barns slated for demolition are
12 actually the 100 foot wetland setback, one in
13 wetland number 2 and one in wetland number 4.
14 What value is there in removing those barns when
15 the town has indicated they'd like to see them
16 protected? What value to the project is removing
17 those two barns? And that's the first question.

18 THE WITNESS (Kenney): So subsequent to
19 the submission of the petition, we have been
20 consulting with the SHPO, and we've determined
21 that the barn furthest east on drawing C-3.3 is a
22 barn, it's pretty much encased by woods right now.
23 They surround it. And that's a barn that we're
24 planning to not remove.

25 DR. KLEMENS: Okay.

1 THE WITNESS (Kenney): The barn that is
2 in the 100 foot wetland, the proposal to remove
3 that was for shading purposes because it would
4 result in shade. And we had discussed that with
5 the SHPO, and we're working through that
6 consultation now.

7 DR. KLEMENS: I'm looking at this. How
8 much shading? I mean, that barn is separated by a
9 perimeter road and everything. How much shading
10 is that really an issue in that particular one?

11 And then it also raises the next set of
12 questions, what plan do you have to demolish
13 something like that within a wetland regulated
14 setback area?

15 THE WITNESS (Moberg): So the soil
16 erosion and sediment control plan sheets -- so
17 we'd be looking at sheet C-5.3 -- shows the
18 proposed erosion controls around those barns. So
19 those would need to be modified if the barn
20 stayed. And, in fact, I think discussions with
21 the SHPO are, you know, because that's still
22 outstanding, this will ultimately, the soil
23 erosion and sediment control plans will need to be
24 modified for the D&M plan, if for no other reason,
25 they would need to be sort of flushed out more.

1 DR. KLEMENS: But the question is the
2 shading. What shading is that on the wetland?

3 THE WITNESS (Kenney): Our initial --
4 you know, there would be some shading from it.
5 That was our initial reason that we said, okay,
6 we'll try to remove it, but also based on
7 consultation with the fire department. There was
8 another barn that was in the middle that burnt
9 down. And when we put the petition in, we felt
10 like that that would be an appropriate barn to
11 be -- those two would be appropriate for removal
12 since they're internal to the project area,
13 they're not visible from the public, and there has
14 been a historic risk associated with fire, and it
15 is so close to the panels. So that's the reason,
16 that as well as the shading. In between those two
17 barns there is a foundation, or actually the burnt
18 timbers remain there.

19 So there's a number of factors that
20 went into that. And primarily from the project's
21 point of view, they are internal, they're not
22 visible, they're in various states of disrepair,
23 and they pose a risk for fire.

24 DR. KLEMENS: But those issues could be
25 addressed. We've had this whole discussion of

1 this is a 25 year project, a 25 year land use, at
2 which point the land is going to potentially go
3 back to some entity, or even to agriculture. So
4 it's not -- these barns are part of the landscape.
5 I think you've heard from the town. How difficult
6 would it be -- I understand the one you have to
7 demolish that's right next to your stormwater
8 basin. But how difficult would it be, given that
9 these are really in the wetland areas surrounded
10 by trees, to just maintain these as this is
11 something the town really has asked for?

12 THE WITNESS (Grybowski): The short
13 answer, Mr. Klemens, is none of the barns have any
14 value to the project, so that's probably the most
15 direct answer to your question.

16 DR. KLEMENS: Correct.

17 THE WITNESS (Grybowski): The utility
18 of the barns to the project, they have no utility
19 to the project. So our preference from a blank
20 slate would be to remove all the barns because,
21 from our perspective, from the project's
22 perspective, they're nothing but a cost, a cost to
23 maintain, it's a safety concern. So we start from
24 that perspective.

25 We understand that the barns have

1 historic value, and we recognize that historic
2 value. And so our initial assessment is let's
3 preserve the most historic, those that we believe
4 have the most historic content because they're the
5 most visible. To the extent the Council believes
6 that this barn that you've spoken of directly is
7 also of concern and of value, it is very feasible
8 for us to keep that barn and maintain it. It adds
9 a cost to the project, and it is just one of those
10 choices that we're making collectively about what
11 the project can and can't bear. But it certainly
12 is something we can say yes we'll maintain that
13 barn.

14 DR. KLEMENS: There are two barns I'm
15 talking about, two different ones, wetland 2 and
16 wetland 4.

17 THE WITNESS (Kenney): So there's three
18 in the northern area of the site and two off of
19 Hoskins Road. So of the three in the northern
20 area of the site, he's talking about keeping two
21 of them.

22 THE WITNESS (Grybowski): The same
23 answer.

24 THE WITNESS (Kenney): The same answer.

25 THE WITNESS (Grybowski): My answer

1 applies to both.

2 DR. KLEMENS: Okay. So we could
3 potentially, if the Council thought that these,
4 based on the testimony, that this was worthy of
5 protecting these other two that are in these
6 wetland buffers, it's doable?

7 THE WITNESS (Grybowski): It is. It
8 has a cost to the project.

9 DR. KLEMENS: Everything has a cost.

10 THE WITNESS (Grybowski): Yes, sir.

11 DR. KLEMENS: Except the Council. We
12 just sit here.

13 THE WITNESS (Grybowski): That may have
14 a personal cost.

15 DR. KLEMENS: Yes, a personal cost,
16 yes.

17 The other thing is, I was very pleased
18 to hear you, Mr. Grybowski, offer to actually test
19 the neighbors' wells, because I've all along have
20 said to myself it would make sense not only for
21 the neighbors, but for you that you'd have a
22 baseline. And I only say that is that -- and it's
23 too bad the representative of the neighbors isn't
24 here -- is obviously this Council would not --
25 people can let you on their property, but if they

1 obstruct you and say no we're not letting you,
2 we're not going to, at least I don't believe it's
3 reasonable, to hold you to that standard. You can
4 offer it, and those neighbors that are willing to
5 avail themselves of that offer, but I just want to
6 be clearly understood that I don't believe we
7 could order you to go onto private property if
8 they're unwilling. So it's a great benefit, I
9 believe, that you've offered, and I thank you for
10 that.

11 But I also want the neighbors in the
12 town here to realize that we can't order you to go
13 on private property, and we're not going to hold
14 you to that. I don't believe we would hold you --
15 we couldn't hold you to that standard. And I
16 thank you for making that offer.

17 And that concludes my -- I would still
18 love to see you consider this 400 watt panel,
19 because I think that a lot of problems would go
20 away with that. But I'll leave that for other
21 people more technically in tune than me to pursue
22 that. Thank you very much.

23 THE CHAIRMAN: Mr. Levesque.

24 MR. LEVESQUE: Yes. I'll have to ask
25 you a question, Ms. Kenney, instead of making my

1 commentary. Do you think it would be fair to
2 expand the project like in the northern big
3 section of the property after you already told the
4 neighbors that it was limited to your revision?

5 THE WITNESS (Kenney): It would not be
6 my preference to do that. I think that the
7 project as laid out with the revisions south of
8 Hoskins Road is very responsive, and it would
9 be -- you know, a lot of thought and time and
10 effort with individual landowners and with folks
11 attending public sessions and providing
12 constructive feedback went into the thought and
13 the areas that were revised for resident concerns,
14 so it wouldn't be my preference at all to do that.

15 MR. LEVESQUE: And if you expanded it,
16 they wouldn't have an opportunity to be heard on
17 it?

18 THE WITNESS (Kenney): I think it would
19 be contrary to the stakeholder process.

20 MR. LEVESQUE: Mr. Henry, what was the
21 date that you visited the property?

22 THE WITNESS (Henry): That's a good
23 question. I would have to go back into my
24 calendar. I believe it was early October. It was
25 around the time that I prepared this letter, the

1 October 3rd letter.

2 MR. LEVESQUE: But then you signed that
3 report, you certified that you didn't inspect the
4 property?

5 THE WITNESS (Henry): Well, those are
6 just standard limitations that we attach to any
7 report such as this. So those aren't specific to
8 this particular letter. But I did visit the
9 property.

10 MR. LEVESQUE: And you testified you
11 drove by the property?

12 THE WITNESS (Henry): I drove by the
13 property. I walked around the perimeter of the
14 property. I viewed the property. I viewed the
15 barns on Hoskins Road.

16 MR. LEVESQUE: Okay. Thank you.

17 THE CHAIRMAN: Go ahead.

18 DR. KLEMENS: One question. So I'm
19 understanding that basically your preference is
20 not to move everything from south of Hoskins, it's
21 to keep what you've negotiated with the neighbors
22 and to rely on the mitigation that you're
23 proposing to satisfy the town's concerns about
24 their gateway?

25 THE WITNESS (Grybowski): Yes.

1 DR. KLEMENS: Okay. Thank you.

2 THE CHAIRMAN: Mr. Hannon.

3 At this point I really don't care
4 because it's dark and I have an hour and a half
5 drive no matter what time we leave, so it's fine.

6 MR. HANNON: I just have three, and
7 actually two of them are related to the original
8 submittal, Question Number 61 --

9 THE COURT REPORTER: Mr. Hannon, I'm
10 having a little trouble hearing you.

11 MR. HANNON: Sorry. Is this better?

12 THE COURT REPORTER: Thank you. I
13 appreciate it.

14 Based on the August 28, 2017, your
15 responses to Connecticut Siting Council
16 interrogatories, first one, Question Number 61,
17 two items there kind of caught me by surprise.
18 One is ice would be removed by a pressure washer.
19 Please explain what's the water source?

20 THE WITNESS (Cote): Basically it's
21 very rare that you remove ice with a pressure
22 washer because the panels generally are black in
23 color, so it comes off by itself, and you don't
24 want to spend the manpower. That is in there too
25 as a placeholder to keep it. When you do go out

1 to either clean your panels or to de-ice, or
2 whatever it may be, you use a small utility
3 tractor or pickup truck and you put a 250 gallon
4 tote on the trailer in the back of a pickup truck,
5 and you use that to do your washing with.

6 MR. HANNON: Okay. And then the
7 follow-up on that, I'm not sure I know what a
8 snowblower mounted on a skid loader is. Can you
9 please explain?

10 THE WITNESS (Cote): Yes. Basically a
11 skid loader is like a Bobcat. So it's a small
12 like tractor type thing. Generally speaking, it
13 can be skid-steer with four big solid rubber
14 wheels, or it's the newer versions of them have
15 got the high track on it, similar to a bulldozer
16 made out of rubber. In the front, instead of
17 having the bucket for loading and unloading, or
18 forklifts or whatever, they make various devices
19 that you can use, and one is basically off the
20 hydraulics of the skid-steer itself there is a 4
21 or 4-and-a-half foot wide twin auger snowblower.
22 So it's just basically a snowblower like your
23 driveway only on steroids.

24 MR. HANNON: And my last question is,
25 is it possible to maybe look a little further into

1 some of these higher wattage panels? And I don't
2 know if you're going to come up with a good
3 answer, a bad answer or what, but is there a way
4 to possibly take some additional looks at that, so
5 that if this does go forward, that may be a
6 solution that works to a number of people's favor?

7 THE WITNESS (Grybowski): I will pledge
8 to look further into that issue. I will be
9 honest, I don't believe that we'll be able to find
10 one but --

11 MR. HANNON: That's fine. I'm just
12 asking you take a look at it and do some homework
13 on it.

14 THE WITNESS (Grybowski): We'll do it
15 again. I'll pledge to do that.

16 MR. HANNON: I'm done.

17 THE CHAIRMAN: On the question of the
18 barns, should you be able to save whatever the
19 number is, has the town offered to participate --
20 and I say this in a material way -- in either the
21 maintenance or providing the access or setting up
22 interpretive anything? Because I have to admit,
23 I'm one of these people that when we try to broker
24 an agreement, I like both parties to put their
25 money where their mouth is. I just wonder has the

1 town offered to participate in --

2 THE WITNESS (Kenney): So we haven't
3 had any discussions with the town on that specific
4 topic. We have had discussions with the State
5 Historic Preservation Office. And the general
6 standard is for a situation like this is to do
7 what's called mothball them, which is make them
8 closed and not accessible to anybody. Right now
9 you can just walk into them, and there's -- you
10 know, so limit access, mothball them, and then
11 just let them be, and that's the standard that the
12 SHPO has relayed to us for the barns. You know, I
13 think that any sort of -- anything beyond that
14 would be something that it would have to be a
15 collaboration. It would have to come from outside
16 funding.

17 THE CHAIRMAN: And then I guess my
18 final question, and I'm getting back again to the
19 complexity of making changes to the, for example,
20 the size or the wattage of the panels, and how
21 that would impact up the line or down the line all
22 the way to the inverters, transformers, et cetera,
23 et cetera.

24 So my question is, let's assume that
25 this were to be approved, were to be constructed,

1 and then say in -- and this is for 20 years -- say
2 in 10 years -- I think it's going to be closer to
3 5 -- but technology has advanced so much, whether
4 it's the size of panels, or I think everybody
5 knows my favorite one is resiliency and battery
6 storage, are you going to be so locked in that new
7 technologies -- I mean within reason -- and I'm
8 talking also with the costs going down, so from a
9 cost standpoint, it's going to be sort of
10 obsolete, or will there be an ability to at some
11 point in time, when it makes sense to take
12 advantage of technologies, which presumably might
13 have benefits both to you and to the tristate area
14 because I think some of these improvements can
15 help the tristate area as well as the town?

16 THE WITNESS (Grybowski): The short
17 answer to that, Mr. Chairman, is that is possible.
18 It is subject to negotiation with the utilities
19 with whom we have a contract. And certainly there
20 have been projects in this region and other parts
21 of the country where developers and utilities have
22 renegotiated their contracts to take advantage of
23 advances in technology. So I can't speak to what
24 the utilities -- our counterparty utilities might
25 be willing to do, but it is not an unheard of

1 occurrence.

2 THE CHAIRMAN: Okay. You would have to
3 take the lead. I don't expect the utilities to
4 take the lead. Maybe Massachusetts, I don't know.

5 THE WITNESS (Grybowski): I don't
6 believe they're more enlightened than utilities
7 elsewhere.

8 MR. HOFFMAN: Experience with Wind
9 Colebrook South would suggest the utilities in
10 Connecticut would not take the lead.

11 THE CHAIRMAN: I was going to just ask
12 the question, have you considered to reduce --
13 really reduce the footprint, put a couple wind
14 turbines on it. Don't answer that. I mean,
15 afterall it's in your name so --

16 Okay. Before closing this hearing, the
17 Connecticut Siting Council announces that briefs
18 and proposed findings of fact may be filed with
19 the Council by any of the parties or intervenors
20 no later than December 2, 2017. The submission of
21 briefs or proposed findings of fact are not
22 required by the Council, rather we leave it to the
23 choice of the parties and intervenors.

24 Anyone who has not become a party or
25 intervenor, but who desires to make his or her

1 views known to the Council, may file written
2 statements with the Council within 30 days of
3 today's date.

4 The Council will issue draft findings
5 of fact, and thereafter the parties and
6 intervenors may identify errors or inconsistencies
7 between the Council's draft findings of fact and
8 the record; however, no new information, no new
9 evidence, no argument and no reply briefs without
10 our permission, will be considered by the Council.

11 Copies of the transcript of this
12 hearing will be filed at the Simsbury and Granby
13 Town Clerk's Offices.

14 And I want to thank our stenographer
15 for her usual excellent job.

16 And I hereby declare this hearing
17 adjourned.

18 I would like to take two seconds just
19 to mention somebody. I don't know whether he
20 actually was born here or lived here, but he
21 certainly spent some time in New Britain, and he's
22 now the most valuable player in the world. Nice
23 for a change to have something in Connecticut that
24 we can really be proud of. Thank you all for your
25 participation.

1 (Whereupon, the witnesses were excused,
2 and the above proceedings were adjourned at 7:58
3 p.m.)

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CERTIFICATE

I hereby certify that the foregoing 362 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 November 2, 2017.



Lisa L. Warner, L.S.R., 061
Court Reporter

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25 The Chairman

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3 PETITIONER'S EXHIBITS

4 (Received in evidence.)

5 EXHIBIT DESCRIPTION PAGE

6 II-B-10 DWW Solar II, LLC's responses to
7 Council interrogatories, Set III, with
8 attachments, dated October 26, 2017 6309 II-B-11 DWW Solar II, LLC's responses to
10 Flammini, et al interrogatories, Set I,
11 dated October 26, 2017 63012 II-B-12 DWW Solar II, LLC's amended response
13 to Council interrogatory No. 84 and
14 attachments, dated November 2, 2017 630

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16 DEPARTMENT OF AGRICULTURE'S EXHIBITS

17 (Received in evidence)

18 EXHIBIT DESCRIPTION PAGE

19 III-B-1 DOAg's Notice of Intent to be
20 a party, dated August 1, 2017 42521 III-B-2 DOAg's comments from Steven K.
22 Reviczky, Commissioner, dated
23 August 30, 2017 42524 III-B-3 DOAg's prefiled testimony of
25 Kipen Kolesinskas, dated 9/5/17 425

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3 EXHIBIT DESCRIPTION PAGE

4 III-B-4 DOAg's responses to Council

5 interrogatories, Set I, dated

6 October 3, 2017 425

7 III-B-5 DOAg's responses to DWW Solar,

8 II, LLC's interrogatories, Set I,

9 dated October 6, 2017 425

10 III-B-6 DOAg's amended responses to

11 DWW Solar II, LLC's interrogatory

12 1 and 36, dated October 19, 2017 425

13 III-B-7 DOAg's responses to DWW Solar

14 II, LLC's interrogatories, Set Two,

15 dated October 26, 2017 425

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17 TOWN OF SIMSBURY'S EXHIBITS

18 (Received in evidence)

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20 IV-B-1 Town of Simsbury's request for

21 party status, dated July 6, 2017 522

22 IV-B-2 Town of Simsbury's prefiled

23 testimony with attachments, dated

24 September 5, 2017 522

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6		Simsbury Historic district Commission	
7	c.	Robert J. Carr, PE, LEP, Zuvic, Carr	
8		and Associates, Inc.	
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10	IV-B-3	Town of Simsbury's prefiled testimony	
11		of James D. Rabbitt,	
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16	IV-B-5	Town of Simsbury's responses to Council	
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20		interrogatory response to No. A6f-2, dated	
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22	IV-B-7	Town of Simsbury's supplemental	
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3 EXHIBIT DESCRIPTION PAGE

4 IV-B-8 Town of Simsbury's supplemental

5 disclosure to DWW Solar II, LLC's

6 interrogatories concerning State Historic

7 Preservation Office correspondence,

8 dated October 6, 2017 522

9 IV-B-9 Town of Simsbury's responses to

10 DWW Solar II, LLC's interrogatories,

11 Set Two, dated October 26, 2017 522

12 IV-B-10 Map 522

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