

**In The Matter Of:**  
*STATE OF CONNECTICUT*  
*CONNECTICUT SITING COUNCIL*

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*Petition No. 1313*  
*November 2, 2017*

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*Bristol, CT 06010*  
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**STATE OF CONNECTICUT**

## CONNECTICUT SITING COUNCIL

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.

## Continued Hearing held at the Public

Utilities Regulatory Authority, 10 Franklin Square, New Britain, Connecticut, on November 2, 2017, beginning at 11:01 a.m.

## H e l d      B e f o r e:

**ROBERT STEIN, Chairman**

1       A p p e a r a n c e s :

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3       C o u n c i l   M e m b e r s :

4                    ROBERT HANNON

5                    DR. MICHAEL W. KLEMENS

6                    LARRY P. LEVESQUE, ESQ.

7                    DANIEL P. LYNCH

8                    ROBERT SILVESTRI

9

10        C o u n c i l   S t a f f :

11                    MELANIE BACHMAN, ESQ.

12                    Executive Director and

13                    Staff Attorney

14

15                    ROBERT MERCIER

16                    Siting Analyst

17

18        F o r   t h e   A p p l i c a n t :

19                    PULLMAN & COMLEY, LLC

20                    90 State House Square

21                    Hartford, Connecticut 06103-3702

22                    BY: LEE D. HOFFMAN, ESQ.

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24

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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

16

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.

THE WITNESS (Bowsza): Thank you.

19 | CROSS-EXAMINATION

20 MR. MERCIER: Thank you. I just have a  
21 couple questions on the prefilled 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 profile  
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 (Kolesinskas): 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 (Kolesinskas): 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 hierachal 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 rachettes or farmettes so that it  
18 fractures the landscape so much that it no longer  
19 is capable of being rached. 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 (Kolesinskas): 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 (Kolesinskas): 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 (Kolesinskas): 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. BOWSZA: 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 curbings, 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?

13 THE WITNESS (Rabbit): 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.

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 Wrobel's, 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. BOWSZA: 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 mange 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.

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## 1 CERTIFICATE

2 I hereby certify that the foregoing 362 pages  
3 are a complete and accurate computer-aided  
4 transcription of my original stenotype notes taken  
5 of the Continued Hearing in Re: PETITION NO.  
6 1313, DWW SOLAR II, LLC PETITION FOR A DECLARATORY  
7 RULING THAT NO CERTIFICATE OF ENVIRONMENTAL  
8 COMPATIBILITY AND PUBLIC NEED IS REQUIRED FOR THE  
9 PROPOSED CONSTRUCTION, MAINTENANCE AND OPERATION  
10 OF A 26.4 MEGAWATT AC SOLAR PHOTOVOLTAIC ELECTRIC  
11 GENERATING FACILITY ON APPROXIMATELY 289 ACRES  
12 COMPRISED OF 5 SEPARATE AND ABUTTING  
13 PRIVATELY-OWNED PARCELS LOCATED GENERALLY WEST OF  
14 HOPMEADOW STREET, NORTH AND SOUTH OF HOSKINS ROAD,  
15 AND NORTH AND EAST OF COUNTY ROAD, AND ASSOCIATED  
16 ELECTRICAL INTERCONNECTION TO EVERSOURCE ENERGY'S  
17 NORTH SIMSBURY SUBSTATION WEST OF HOPMEADOW STREET  
18 IN SIMSBURY, CONNECTICUT, which was held before  
19 ROBERT STEIN, Chairman, at 10 Franklin Square, New  
20 Britain, Connecticut, on November 2, 2017.

21  
22 *Lisa Warner*  
23

-----

24 Lisa L. Warner, L.S.R., 061

25 Court Reporter

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4                   JASON BOWSZA

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10                  Mr. Levesque

11                  Mr. Hannon

12                  Mr. Lynch

13                  The Chairman

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15                  Mr. Langer

16                  Ms. Nigro

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18                  MARGUERITE CARNELL

19                  ROBERT J. CARR

20                  JAMES RABBITT

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4           Dr. Klemens

5           Mr. Hannon

6           The Chairman

7           Mr. Hoffman

8           Ms. Nigro

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10           CLAUDE COTE

11           SUSAN MOBERG

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13           JEFFREY GRYBOWSKI

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20           Mr. Mercier

21           Mr. Silvestri

22           Dr. Klemens

23           Mr. Levesque

24           Mr. Hannon

25           The Chairman

1       I n d e x   (Cont'd):

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3                    PETITIONER'S EXHIBITS

4                    (Received in evidence.)

5   EXHIBIT	6   DESCRIPTION	7   PAGE
8   II-B-10	9   DWW Solar II, LLC's responses to 10      Council interrogatories, Set III, with 11      attachments, dated October 26, 2017	12      630
13   II-B-11	14      DWW Solar II, LLC's responses to 15      Flammini, et al interrogatories, Set I, 16      dated October 26, 2017	17      630
18   II-B-12	19      DWW Solar II, LLC's amended response 20      to Council interrogatory No. 84 and 21      attachments, dated November 2, 2017	22      630

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16                    DEPARTMENT OF AGRICULTURE'S EXHIBITS

17                    (Received in evidence)

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21   III-B-1	22      DOAg's Notice of Intent to be 23      a party, dated August 1, 2017	24      425
25   III-B-2	26      DOAg's comments from Steven K. Reviczky, Commissioner, dated 27      August 30, 2017	28      425
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10	III-B-6	DOAg's amended responses to DWW Solar II, LLC's interrogatory 1 and 36, dated October 19, 2017	425
13	III-B-7	DOAg's responses to DWW Solar II, LLC's interrogatories, Set Two, dated October 26, 2017	425
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20	IV-B-1	Town of Simsbury's request for party status, dated July 6, 2017	522
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9	d. Chad Frost, Kent & Frost, LLC	
10	IV-B-3 Town of Simsbury's prefilled testimony 11 of James D. Rabbitt, 12 dated October 2, 2017	522
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19	IV-B-6 Town of Simsbury's addendum to Council 20 interrogatory response to No. A6f-2, dated 21 October 3, 2017	522
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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
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