

Exhibit CS-BW-93

*Transcript of 08.18.15 Hearing
in PUC Docket No. 8454*

STATE OF VERMONT
PUBLIC SERVICE BOARD

DOCKET NUMBER 8454

PETITION OF APPLE HILL SOLAR LLC FOR A
CERTIFICATE OF PUBLIC GOOD, PURSUANT TO
30 V.S.A. SECTION 248, AUTHORIZING THE
INSTALLATION AND OPERATION OF A 2.0 MW SOLAR
ELECTRIC GENERATION FACILITY TO BE LOCATED
AT 1133 WILLOW ROAD IN BENNINGTON, VERMONT

August 18, 2015
2:30 p.m.

112 State Street
Montpelier, Vermont

Technical Hearing held before the Vermont
Public Service Board, at the Third Floor Hearing Room,
People's United Bank Building, 112 State Street,
Montpelier, Vermont, on August 18, 2015, beginning at 2:30
p.m.

P R E S E N T

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STAFF: David Watts, Utilities Engineer

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1 MR. TOUSLEY: I'll go ahead and go on
2 the record and deal with the motion that's before me.
3 Good afternoon. I'm Mike Tousley. With me is Dave
4 Watts, also the Board's staff. I'm serving as the
5 Hearing Officer for the Public Service Board in this
6 matter, which is a petition of Apple Hill Solar, LLC
7 for a Certificate of Public Good pursuant to 30
8 V.S.A. Section 248, authorizing the installation and
9 operation of a 2 megawatt solar electric generation
10 facility at 1133 Willow Road, Bennington, Vermont.
11 The Board Docket Number is 8454 for this case.

12 We are together today in the Board
13 hearing room in Montpelier to conduct a technical
14 hearing.

15 First I would like to take appearances.
16 So if you can state your name and affiliation with
17 this matter, then I'll summarize the off-the-record
18 discussion we just concluded.

19 MS. ELIAS: Jeanne Elias for the
20 Department of Public Service. And with me are the
21 Department's engineer, Allan St. Peter, and the
22 Department's aesthetic consultant, Jean Vissering.

23 MR. EINHORN: Don Einhorn for the
24 Natural Resources Agency.

25 MS. HARRIS: Libby Harris who -- I'm

1 representing myself pro se. And Rick Carroll who is
2 my witness, and Annette Smith who is my consultant.

3 MS. COLLIER: Briana Collier with
4 Witten, Woolmington, Campbell & Bernal for the Town
5 of Bennington.

6 MR. MELONE: Michael Melone for Apple
7 Hill Solar. With me today I have Brad Wilson who is
8 the project manager for Apple Hill Solar. We have
9 Mark Kane from S.E. Group who is our aesthetics
10 consultant. And Scott Michael Mapes is one of our
11 environmental consultants.

12 MR. TOUSLEY: Okay. We did have a
13 brief discussion off the record prior to coming on
14 the record at which we discussed the motion materials
15 I have in front of me which were delivered yesterday
16 and today.

17 There is a preemptive discussion from
18 Apple Hill Solar dated yesterday that was delivered
19 by E-mail yesterday as well as the motion of the Town
20 of Bennington which was delivered by E-mail
21 yesterday. And Apple Hill Solar's supplementary
22 memorandum in opposition to that intervention which
23 was delivered by E-mail today. I know by E-mail
24 because generally speaking filings only occur with
25 the Board when they are done in paper form, but given

1 the timing and nature of this and our being together
2 today, I'm going to rely upon these.

3 It's my understanding that all the
4 parties have copies of these materials. I think they
5 are relatively comprehensive, but I would like to
6 hear from the parties, all the parties, as to their
7 responses to the motion by Bennington to intervene as
8 a matter of right in this proceeding as a
9 municipality. And I think what I would like to do
10 with that is I don't want to hear a regurgitation of
11 what's in the written materials. So this isn't an
12 appellate argument, counsel. This is just if there
13 are key points that you would like me to remember as
14 I go upstairs and consider the motion, I would like
15 those reiterated.

16 I'm very interested in what the
17 Department and Ms. Harris think about this as well.
18 I know what the town of Bennington and Apple Hill
19 Solar's positions are. So Ms. Elias, are you
20 prepared to talk to this?

21 MS. ELIAS: Yes, as I said in our
22 off-the-record discussion, I didn't have a great deal
23 of time to consider it nor to do research or write a
24 legal response. The Department's ultimate position
25 is that we believe the Town should be granted

1 intervener status based on the fact that the Board
2 always has the discretion to grant intervention.
3 It's -- I don't think it is necessary to put a lot of
4 thought into whether it's permissive intervention or
5 intervention of right at this point in time, because
6 the Town's motion seeks only to brief the matters
7 after the hearing. There would be in the
8 Department's view no prejudice to the Petitioner or
9 to any party to have their briefing. There won't be
10 any delay, and that's as far as our argument goes,
11 and I think that obviates the need to look into the
12 specific legal points made about whether Act 56
13 applies to this proceeding, about whether
14 intervention is procedural, about whether other
15 Vermont statutes are in conflict.

16 MR. TOUSLEY: I understand. Thank you.
17 Mr. Einhorn, I didn't refer to you. I didn't know if
18 you had an opinion.

19 MR. EINHORN: The Agency takes no
20 position.

21 MR. TOUSLEY: Ms. Harris, do you have a
22 position in this matter?

23 MS. HARRIS: I can only speak as a
24 citizen, not legally.

25 MR. TOUSLEY: Certainly. Certainly.

1 MS. HARRIS: I'm actually delighted
2 that the Town will seek to intervene, because I feel
3 that my intervener status was granted for circumspect
4 issues, and now that the Town is looking at larger
5 issues and how it will impact the entire Town of
6 Bennington rather than just my personal perspective,
7 I welcome the Town very much.

8 MR. TOUSLEY: Thank you. Okay. I
9 think now, Ms. Collier, I think I would like you to
10 provide me with a brief summary of your motion.

11 MS. COLLIER: Absolutely. We do
12 believe that the Town should be granted party status
13 as a matter of right. And in the Board's discretion
14 to always grant -- always be able to grant
15 intervention party status, we would like for the Town
16 to -- for -- I'm sorry -- for the Board to recognize
17 the Town as well.

18 This is a very public area with a
19 highway interchange. There is a lot of visibility, a
20 lot of impact to the Town as a whole. The public
21 interest of the Town, and we would like to be a part
22 of the proceedings going forward.

23 As you mentioned, you don't want
24 regurgitation, but we do believe that the statutes
25 and the case law supports our position, and we hope

1 the Town will grant us party status today.

2 MR. TOUSLEY: Do you have -- what I'm
3 looking at on page four of the brief it indicates
4 this alternative request is based on the Town's
5 substantial interest in the potential aesthetics,
6 visual and environmental impacts on the project.

7 Can I understand from that that those
8 are the substantial interests of the Town?

9 MS. COLLIER: They are, and I would ask
10 to include safety as well in that list.

11 MR. TOUSLEY: So the Board or the Town
12 is seeking intervention in four, and will want to
13 address four of the criterion in -- under the 248;
14 aesthetics -- well three -- aesthetics, being visual
15 view; environmental criterion broadly, and public
16 health and safety concerns.

17 MS. COLLIER: Yes.

18 MR. TOUSLEY: So three. And you've
19 indicated -- you indicated during the -- and the
20 motion indicates that you don't -- you're not seeking
21 to alter the schedule or the proceeding. You simply
22 wish -- the Town wishes the opportunity to comment
23 first on the draft Proposal for Decision, and
24 otherwise provide comment on the remainder of the
25 process.

1 MS. COLLIER: Correct. If there is an
2 opportunity to provide a brief going forward, we
3 would like to have the opportunity to do that.

4 MR. TOUSLEY: That would be part of the
5 process.

6 MS. COLLIER: And if the Town is
7 willing to consider our input today, you know, we
8 would be happy to think about questions we might want
9 to pose. But otherwise, you know, as I said before
10 in our off-the-record discussion, we are really
11 mostly here to listen and gather the evidence.

12 MR. TOUSLEY: Very well. Thank you.
13 Mr. Melone?

14 MR. MELONE: Sure. And I'll try to
15 keep it brief. I first contacted the Town in October
16 of 2013, which is almost two years ago, so timing is
17 obviously a little bit suspect here. The Town seems
18 to be relying on the argument for intervention as of
19 right pursuant to the recently enacted Section 28 of
20 Act 56. That particular provision doesn't exist in a
21 bubble. You have to take into account 1 V.S.A.
22 214(b)(4), which among other things prohibits
23 amendments to laws which retroactively affect
24 proceedings.

25 There is also a Supreme Court case that

1 -- in re: Times versus Seasons from 2011, where the
2 Vermont Supreme Court said that a permit applicant
3 gains a vested right in the governing laws and
4 regulations in existence when a complete permit
5 application is filed.

6 So I think that -- the Petitioner --

7 MR. TOUSLEY: So is it your position
8 that altering that, that allowing the intervention of
9 the Town impacts the substantive rights of Apple Hill
10 Solar?

11 MR. MELONE: It would certainly affect
12 the procedural nature of this Docket to have another
13 party.

14 MR. TOUSLEY: Recognizing that they
15 don't seek to change that.

16 MR. MELONE: To seek to change --

17 MR. TOUSLEY: The schedule.

18 MR. MELONE: -- the schedule, correct.
19 But to have another brief adds to the -- just amount
20 of work that all of the parties not just the
21 Petitioner has to respond to.

22 MR. TOUSLEY: Okay.

23 MR. MELONE: I think if you're going to
24 allow them to intervene, it has to be under the Board
25 Rule 2.209 as if they were any other member of the

1 public like you did when Ms. Harris filed her motion
2 to intervene. And I think just based on timing, I
3 don't think it should be allowed.

4 MR. TOUSLEY: Thank you. Okay.

5 MS. ELIAS: I just wanted to add that
6 the Department would not object to the Town having
7 the right to cross examine at today's hearing which
8 was among the comments that the Town's counsel made,
9 if granted intervener status.

10 MR. TOUSLEY: Okay.

11 MS. ELIAS: They take the case as they
12 find it and they would be entitled to cross
13 examination of witnesses.

14 MR. TOUSLEY: And I would -- okay. We
15 will see where we go with it. It's now five minutes
16 to 3. I think I want to take a break until 15
17 minutes after the hour, and then we will start back
18 up. I want to encourage you all to work together on
19 a schedule in that time period. And when we get
20 back, we will start off the record and talk about
21 that schedule, and then come back on the record, and
22 with the remainder of the prehearing organization
23 that I deferred in our earlier discussion off the
24 record. And then we will get on the record with the
25 hearing itself.

1 Are there any questions?

2 MS. ELIAS: None for the Department.

3 MR. EINHORN: No.

4 MS. HARRIS: No.

5 MR. MELONE: No.

6 MS. COLLIER: No.

7 MR. TOUSLEY: Great. Thank you. We
8 are in recess.

9 (Recess was taken.)

10 MR. TOUSLEY: This is Mike Tousley. We
11 are back on the record again, I'm prepared to rule.
12 My ruling echoes the comments of the Department.
13 Having only just received the motion and written
14 responses I have not been afforded the opportunity to
15 address the law related to Section 248(a)(4)(F) as
16 discussed in those papers. However, it is important
17 that I do make a ruling now before we begin today's
18 technical hearing.

19 Therefore, I will rely upon my
20 authority to permissively grant the Town of
21 Bennington party status based on a substantial
22 interest in aesthetics, the environmental criterion
23 and public health and safety. I would also note that
24 the Board is a quasi-judicial body, which means that
25 it isn't a court, but is instead a policy-making

1 organ of the government. The enactment of
2 248(a)(4)(F) is a reflection of legislature's public
3 policy concern that municipalities play a role in
4 siting decisions the Board makes under Section 248.

5 As Bennington has stated, it does not
6 seek to alter the schedule by its intervention.
7 Therefore, its intervention is permissively granted
8 taking the case as it is pursuant to Board Rule
9 2.209, limited to aesthetics, environmental and
10 public health and safety criterion.

11 Are there any questions? Sir?

12 MR. MELONE: I have a question
13 regarding the scope. If they are taking the Docket
14 as is, the way that issues are normally handled are
15 through prefiled testimony not through briefing. And
16 public health and safety has not been an issue in
17 this Docket. So I request that the scope of their
18 intervention be limited to aesthetics and
19 environmental.

20 MR. TOUSLEY: Well it's an issue that
21 the Board has to consider. It may not have been an
22 issue of controversy thus far between the parties.
23 But it has been -- it is an issue recognizing that
24 the Town of Bennington taking the case as it is will
25 have no opportunity to present new evidence of its

1 own.

2 MR. MELONE: Okay.

3 MR. TOUSLEY: Does that make sense?

4 MR. MELONE: That makes sense.

5 MR. TOUSLEY: Do you understand, Ms.

6 Collier?

7 MS. COLLIER: Yes.

8 MR. TOUSLEY: Are there any other

9 questions?

10 MS. ELIAS: No.

11 MR. TOUSLEY: Okay. Thanks. Having
12 made that ruling, I'm going to go back off the record
13 again and talk about the stuff that I usually talk
14 about before I come on -- before I come on the
15 record.

16 (A discussion was held off the record.)

17 MR. TOUSLEY: I think what we are going
18 to do now is go on the record. And there are -- we
19 are going to start off I think first with resolving
20 the issue -- the motion of Apple Hill to exclude the
21 testimony of Richard Carroll. And in order to do
22 that, I think what I would like to do is ask Mr.
23 Melone to voir dire the witness as to the reliability
24 and relevancy of his testimony in the areas of
25 aesthetics, wind and noise, which I believe are the

1 areas that you've sought that he provide testimony,
2 prefiled testimony to, and which you argue he's not
3 an expert in. Is there any question?

4 (No response.)

5 MR. TOUSLEY: Once we conclude that, I
6 will probably take a short break while I -- here, we
7 can take a break, take a little recess, and then we
8 will come back on the record, and we will begin with
9 Mr. Kane so that Ms. Vissering doesn't have to spend
10 too much time here. And then we will go, if there is
11 no objection, and then we will go to Mr. Wilson, Mr.
12 Mapes, and then potentially Mr. Carroll, depending
13 upon how I rule with regard to the motion of Apple
14 Hill.

15 Is there any question?

16 (No response.)

17 MR. TOUSLEY: Okay. Let's go ahead and
18 go back on the record again. We just had a -- had a
19 discussion off the record about -- actually let's go
20 back off the record.

21 (A discussion was held off the record.)

22 MR. TOUSLEY: Now we are back on the
23 record. We just had a discussion of several matters
24 including schedule, and I'll start with that first
25 because it's immediately in front of me. The parties

1 have agreed upon the following schedule. September
2 10 would be briefs, September 17 reply briefs, and on
3 September 25 the Petitioner will provide -- will file
4 a draft Proposal for Decision with the Board.

5 Now we are going to go ahead and begin
6 the technical hearing with a -- addressing of Apple
7 Hill Solar motion to exclude the testimony of Richard
8 Carroll. To facilitate that, I'm going to ask that
9 Mr. Carroll come to the stand.

10 Good afternoon, Mr. Carroll.

11 MR. CARROLL: Good afternoon.

1 RICHARD CARROLL

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 MR. TOUSLEY: Could you state your name
6 for the record?

7 THE WITNESS: My name is Richard
8 Carroll.

9 MR. TOUSLEY: And spell your last name.

10 THE WITNESS: C-A-R-R-O-L-L.

11 MR. TOUSLEY: Thank you. And where do
12 you live?

13 THE WITNESS: I live at 150 Apple Hill
14 Road in Bennington.

15 MR. TOUSLEY: Where are you employed?

16 THE WITNESS: I'm self employed.

17 MR. TOUSLEY: As what?

18 THE WITNESS: Contractor.

19 MR. TOUSLEY: What do you contract for?

20 THE WITNESS: Building homes,
21 additions, remodeling.

22 MR. TOUSLEY: In the Bennington area?

23 THE WITNESS: In the Bennington area.

24 MR. TOUSLEY: Now Mr. Melone, I'm going
25 to ask that you -- he's your witness to voir dire

1 related to your motion.

2 VOIR DIRE EXAMINATION

3 BY MR. MELONE:

4 Q. Sure. Good afternoon, Mr. Carroll. How are
5 you doing?

6 A. Hi.

7 Q. You mentioned that you're self employed. How
8 long have you been self employed? Prior to self
9 employment, were there any other jobs that you held for a
10 company or otherwise?

11 A. I have been self employed for 32 years or so.
12 And before that, I worked -- actually I started a
13 redemption center in Bennington.

14 Q. Based on your responses in the discovery
15 questions to Ms. Harris, it didn't appear that you held
16 any specialized degrees, whether it be in wind, or noise
17 or aesthetics. Can you please confirm that that's the
18 case?

19 A. I do not hold any specialized degrees.

20 Q. And can you please state your formal education
21 starting with high school?

22 A. I graduated from high school. 1975.

23 Q. And you did not attend college or any graduate
24 programs?

25 A. No.

1 Q. In several of the responses to discovery
2 questions when asked about specific scientific theories
3 that you were relying on in forming the basis of your
4 testimony regarding wind, aesthetics and noise, you
5 mentioned your experience living in the neighborhood.

6 Am I to understand that there are no
7 scientific theories behind your answers in the discovery
8 questions?

9 A. No. It's based on factual things that
10 happened in Apple Hill.

11 Q. I'm going to specifically reference discovery
12 question 58 which is a question regarding wind speeds
13 around the project. And the question is, are there
14 currently any measurable differences between the wind
15 speeds at the Vermont Welcome Center and at Mrs. Harris's
16 house, Ms. Harris's house?

17 A. That's where a wind study should have been
18 done.

19 Q. So is your answer you don't know?

20 A. No. Not unless a wind study is done would you
21 know that.

22 Q. A lot of the responses to the discovery
23 questions indicate that there is an existing buffer of
24 trees that are protecting Ms. Harris's home from wind and
25 from noise. Can you please explain how this buffer works?

1 A. The wind in that particular area comes from
2 the Welcoming Center which is from the west. And it goes
3 up through Apple Hill.

4 Q. As an expert in wind, have you performed any
5 studies, wind studies, specifically for the project area?

6 A. I haven't performed any wind studies. No.

7 Q. And what about noise studies?

8 A. Yes. Noise studies.

9 Q. And can you explain the noise study that you
10 conducted?

11 A. We conducted decibel studies from Libby
12 Harris's house.

13 Q. And using what instrument?

14 A. It was Libby's iPad.

15 Q. And you did this together?

16 A. Together on her upper deck.

17 Q. Mr. Carroll, this morning you were quoted in
18 the Bennington Banner regarding the Bennington select
19 board meeting that occurred last Thursday, August 13, in
20 which you were in attendance. And there was specific
21 mention to a certain exhibit that's been filed in this
22 Docket which indicates vegetative screening. One slide
23 shows vegetative screening, one slide shows no screening.

24 The only simulation shown during that select
25 meeting was one showing no vegetative screening. You're

1 quoted as saying you showed the only simulation you were
2 provided. Was it you who provided that slide to the Town
3 of Bennington select board?

4 A. That was the only simulation that I received
5 to present to anybody.

6 Q. And who did you receive that simulation from?

7 A. Libby Harris.

8 Q. Have you read the testimony in this Docket?

9 A. I have read all the testimony that was
10 provided me.

11 Q. And as part of the testimony that was provided
12 to you by Ms. Harris, did it include the supplemental
13 prefiled testimony of Mark Kane which is our aesthetics
14 expert?

15 A. No.

16 Q. So the one slide that was shown at the
17 Bennington Town Board meeting was taken from that
18 supplemental testimony of Mark Kane. Is that the only
19 simulation that you saw from that supplemental testimony?

20 A. Yes.

21 Q. And as an expert witness in this case do you
22 think it would be necessary to read the entirety of the
23 testimony provided in this case?

24 A. It was never provided to me.

25 Q. I'm going to refer back to the discovery

1 questions provided to Ms. Harris which you prepared.
2 Question number 71 in particular. You state that the
3 noise level has increased 10 fold since the Welcome Center
4 opened up.

5 We asked you to provide some data in support
6 of such statement, but nothing was provided. Can you
7 provide some basis or some explanation as to how that
8 noise has increased by 10 fold?

9 A. Well 10 fold is a figure of speech. It's
10 increased greatly because once the Welcoming Center was
11 completed, that's where cars and trucks leave from. And
12 when they leave and they go north, that's where they
13 accelerate up the steep hill. So the noise at that --
14 generated from the trucks increased dramatically.

15 Also when trucks come down and they want to
16 stop at the Welcoming Center, is where they use their jake
17 brakes, and noise is increased.

18 Q. And your expertise in -- going back to wind
19 for a moment, is your expertise in wind it's developed
20 from your experience as a contractor?

21 A. A builder, right. Yes.

22 Q. And have you done building outside of
23 Bennington?

24 A. Manchester.

25 Q. Manchester. So is your knowledge of wind

1 based on your experience in Bennington and Manchester?

2 A. Based primarily on Apple Hill.

3 Q. Apple Hill. Is it the same for wind or noise
4 rather?

5 A. Yes.

6 Q. And do you have any professional experience in
7 measuring characteristics of sound and noise? Other than
8 the experiment with --

9 A. No.

10 Q. And what about any professional experience in
11 measuring the effects of wind?

12 A. Personally, no. I do clearly understand the
13 effects of wind at Apple Hill.

14 MR. MELONE: No further questions.

15 MR. TOUSLEY: I have a few, Mr.
16 Carroll. How long have you lived in Apple Hill?

17 THE WITNESS: I have been there 20
18 years.

19 MR. TOUSLEY: Okay. How many
20 properties have been clear-cut since you lived there?

21 THE WITNESS: Just the property on the
22 side of me.

23 MR. TOUSLEY: Okay. So there was that
24 one property.

25 THE WITNESS: Right.

1 MR. TOUSLEY: What did you observe?

2 THE WITNESS: When the property next to
3 me was clear-cut? When it was clear-cut the winds
4 came within months after that, and just took out my
5 tall pine trees.

6 MR. TOUSLEY: Have you observed that
7 effect -- have you observed any other clear-cut
8 anywhere else?

9 THE WITNESS: The effect of clear-cut?

10 MR. TOUSLEY: Yes.

11 THE WITNESS: Sure. Yes.

12 MR. TOUSLEY: Where?

13 THE WITNESS: I have in the west end
14 where I work. I take care of 400 acres. It wasn't
15 clear-cut, but it was logged.

16 MR. TOUSLEY: Okay. And how long have
17 you worked there?

18 THE WITNESS: I built the house in the
19 west end 10 years ago.

20 MR. TOUSLEY: How many acres of
21 clear-cut have you observed there?

22 THE WITNESS: Logging was done on
23 probably five, I'm guessing.

24 MR. TOUSLEY: So when you talk about
25 logging, is that like everything goes out or just

1 some logs -- some trees go out?

2 THE WITNESS: A lot of trees come out,
3 but it's not stripped and clear-cut.

4 MR. TOUSLEY: How far is the west end
5 from Apple Hill?

6 THE WITNESS: Oh, it's on the other
7 side of Town. Probably five miles.

8 MR. TOUSLEY: Okay. But in Bennington.

9 THE WITNESS: In Bennington.

10 MR. TOUSLEY: Okay. What was the tool
11 that you used on Ms. Harris's iPad to determine the
12 sound decibel levels on her porch?

13 THE WITNESS: It was an app.

14 MR. TOUSLEY: Do you know which one?

15 THE WITNESS: No. No. That's
16 something that Libby did.

17 MR. TOUSLEY: Okay. Did you -- okay.
18 In your testimony you talk about your experience --
19 about your experience with aesthetics, and that that
20 makes you -- precisely what is your experience that
21 makes you an aesthetics expert?

22 THE WITNESS: Well I set a lot of
23 homes. I've set a lot of sites. I've done clearing
24 in Apple Hill. I've cleared --

25 MR. TOUSLEY: When you say you set a

1 lot of homes, you've set a lot of sites, what does
2 that mean?

3 THE WITNESS: It means I'll go into a
4 wooded area and selectively cut whatever is designed
5 to build a house. And what you do is you leave
6 trees, and you position the house, and you set it,
7 and in Apple Hill was -- the first one I did in Apple
8 Hill was mine.

9 MR. TOUSLEY: So when you talk about
10 that aesthetics expertise, is it your notion that
11 that experience has shown you what kind of trees and
12 shrubs and stuff to leave and what kind can go?

13 THE WITNESS: Right. And what looks
14 nice, what fits in, how the driveway fits in, how the
15 garage.

16 MR. TOUSLEY: Based on what -- over
17 what period of time have you engaged in that activity
18 such that you developed that experience?

19 THE WITNESS: I have been doing that
20 experience for 20 years.

21 MR. TOUSLEY: Okay. So you have 20
22 years of experience of setting homes.

23 THE WITNESS: Right.

24 MR. TOUSLEY: How many homes did you
25 do?

1 THE WITNESS: Probably a dozen maybe.

2 MR. TOUSLEY: Okay. Questions in light
3 of my questions, Mr. Melone?

4 MR. MELONE: No.

5 MR. TOUSLEY: Do any of the other
6 parties have any more questions for Mr. Carroll with
7 regard to his testimony?

8 MS. ELIAS: No.

9 MR. EINHORN: No.

10 MS. COLLIER: No.

11 MS. HARRIS: I do.

12 MR. TOUSLEY: Okay.

13 EXAMINATION

14 BY MS. HARRIS:

15 Q. When VELCO Electric came through the community
16 and clear-cut all of the trees, were you part of the
17 process of rectifying that?

18 A. I was involved with many people to replant and
19 look at what we could do to minimize the wind effect and
20 the aesthetics of it.

21 Q. And how -- how -- how different was the wind
22 patterns before and after they clear-cut through the
23 community?

24 A. Well when it was clear-cut, and they literally
25 clear-cut it, it was stripped. And when you have an --

1 it's a 250-foot swath that goes right through Apple Hill.
2 Once they did that, you could visually see and feel,
3 especially when people walk their dogs and their pets, and
4 you could visually see the snow in the wintertime just
5 hold right to the ground. And everybody felt that.

6 So over years, we negotiated and put in \$5,000
7 worth of trees to try to minimize that. But the other
8 thing is is it grows in. I mean it's never going to be
9 like it was. But plants and trees, we planted some apple
10 trees to buffer the wind. And that's how we -- that's how
11 we fixed it.

12 MR. TOUSLEY: When did that occur, Mr.
13 Carroll?

14 THE WITNESS: That was five years ago.
15 I'm guessing four or five years ago.

16 MR. TOUSLEY: Okay. And you said it
17 was VELCO came through and they did a 250-foot wide
18 swath through the community.

19 THE WITNESS: Yes. In different -- you
20 know, plus or minus.

21 MR. TOUSLEY: How far from the site of
22 the proposed project was that?

23 THE WITNESS: 2,000 feet. I'm going to
24 guess.

25 MR. TOUSLEY: So very proximate, within

1 a couple miles.

2 THE WITNESS: Oh, yeah. Yeah.

3 MR. TOUSLEY: Okay. Are there other
4 questions for Mr. Carroll?

5 (No response.)

6 MR. TOUSLEY: Okay. You may stand down
7 for now, sir.

8 THE WITNESS: Thank you.

9 MR. TOUSLEY: Thank you. And I think
10 what I would like to do now is provide Mr. Melone
11 with an opportunity to briefly summarize his motion,
12 and for any other party to respond to it briefly.

13 MR. MELONE: I think it sets an
14 incredibly dangerous precedent to allow Mr. Carroll
15 as an expert witness on any of these topics, whether
16 it be wind, aesthetics or noise. He's got no formal
17 education in these areas of expertise.

18 MR. TOUSLEY: Is formal education
19 required, sir?

20 MR. MELONE: No. Formal education is
21 only one of several factors to consider.

22 MR. TOUSLEY: Okay. So as he called it
23 his empirical experience is a factor that can be
24 considered --

25 MR. MELONE: His experience --

1 MR. TOUSLEY: -- in determining whether
2 or not he's an expert.

3 MR. MELONE: No. I don't think that
4 knowledge of a specific area would make one person an
5 expert in a field.

6 MR. TOUSLEY: Okay.

7 MR. MELONE: So the precedent, it's
8 concerning.

9 MR. TOUSLEY: Is his testimony reliable
10 and relevant?

11 MR. MELONE: Reliability I think is an
12 issue given what occurred this past Thursday at the
13 Bennington select board where one of several slides
14 that are included in Mark Kane's testimony was used
15 to the exclusion of others. Specifically there is
16 two.

17 MR. TOUSLEY: I understand. So your
18 argument is that he's only going to tell us what he
19 wants to tell us and not everything.

20 MR. MELONE: And I think there was a
21 misrepresentation on his part at that meeting --

22 MR. TOUSLEY: Okay.

23 MR. MELONE: -- saying that we were
24 unwilling to --

25 MR. TOUSLEY: So his credibility is an

1 issue for you.

2 MR. MELONE: Correct. And also he
3 hasn't read the testimony. And I think that's very
4 telling that an expert would go on the record and
5 saying something like that.

6 MR. TOUSLEY: Okay. Ms. Harris?

7 MS. HARRIS: Let me talk to the second
8 issue first, which is the lack of proper information.
9 For weeks and weeks I was trying to get files, and I
10 repeatedly asked Jeanne Elias and Susan Hudson to
11 forward me the complete structure of files. The only
12 time I got that was when I got intervener status to
13 begin with, and Susan Hudson forwarded me all of the
14 filings together.

15 So the second testimony of Mark Kane I
16 didn't have, only belatedly got one -- that one
17 simulation at the end. And so I take responsibility
18 for not having everything that Mr. Carroll needed,
19 but frankly I found it daunting and overwhelming to
20 try to get everything in one place so that I would
21 know what was what.

22 It's really, really difficult when
23 you're not used to these circumstances to wrap your
24 mind around everything and try to behave in an
25 educated, intelligent way. So that talks to the

1 difficulty in getting files, and Mr. Carroll not
2 being properly prepared for the -- and only showed
3 the one simulation to the select board.

4 The other part, which I would like to
5 talk to, is this insistence on the 88 questions that
6 you sent for discovery, mostly had to do with what
7 degrees do you have, what organizations are you with,
8 what honors have you been given, what scientific
9 theory do you base this, what scientific theory do
10 you base that. And I maintain that 25 years of
11 experience -- 25 years ago Mr. Carroll was looking to
12 buy the very land that you bought to build Chelsea
13 Solar and walked every single foot of that land and
14 knows it inside out. He's been a resident of our
15 neighborhood for 20 years, has worked as a contractor
16 in our neighborhood, has corrected situations on his
17 own land, and through the clear-cutting of VELCO in
18 helping the community to restore itself. And during
19 several major wind storms, he has helped residents of
20 Apple Hill to restore their property as best as they
21 could be.

22 So I think reliable and relevant and
23 experience counts as much as any holding of any
24 degree. And I ask you do you need a degree in
25 meteorology to know that it's raining outside?

1 MR. TOUSLEY: Do any of the other
2 parties have comments?

3 MS. ELIAS: None from the Department.

4 MR. EINHORN: No.

5 MS. COLLIER: No.

6 MR. TOUSLEY: I'm prepared to rule.
7 I'm going to deny your motion broadly, but limit Mr.
8 Carroll's testimony to those areas within which I
9 believe he does have some expertise as defined by
10 Rule 702 of the Vermont Rules of Evidence. That is
11 his experience with wind and its impact at the Apple
12 Hill area, noise, and its impact at the Apple Hill
13 area, and the value and use of trees and other
14 vegetative matter in siting properties at the Apple
15 Hill area when setting new development in that area.

16 That being said, your ability to opine
17 on other areas beyond those is foreclosed. You can't
18 talk about other stuff. The parties understand my
19 ruling?

20 MS. HARRIS: Yes.

21 MS. COLLIER: Yes.

22 MR. TOUSLEY: Mr. Melone?

23 MR. MELONE: Your Honor, I guess I am
24 going to have an opportunity to cross examine the
25 witness.

1 MR. TOUSLEY: Yes, you will.

2 MR. MELONE: Okay.

3 MR. TOUSLEY: So in developing the
4 questions related to Mr. Carroll, they should be
5 limited to just those things, that is his experience,
6 which does not include whatever it was you did with
7 your iPad because there was no bases that was
8 provided for the scientific value of that. That was
9 one where you had some numbers. You didn't say what
10 those numbers came from. He doesn't know. So he
11 really can't talk to that, because that's not part of
12 his experience other than knowing that you did that.
13 Okay?

14 MS. HARRIS: He didn't -- may I answer?
15 He didn't know the name of the app that I downloaded.

16 MR. TOUSLEY: And he didn't know what
17 it's for. He didn't know its scientific value and
18 purpose. He didn't know how it's otherwise used,
19 whether it's appropriate to use it in the setting
20 that you used it in. It's not a scientific study,
21 and he has no basis and background in doing that kind
22 of measurement which he said himself. He's never
23 done that before.

24 So he can talk about what he's seen and
25 observed and heard at Apple Hill with regard to the

1 setting of properties from an aesthetic perspective,
2 with regard to noise and with regard to wind when
3 there have been clear-cutting, things that have
4 occurred at Apple Hill. Because those fit within his
5 acknowledged experience.

6 MS. HARRIS: One more question about
7 wind. I provided Mr. Carroll with a NOAA study on
8 wind which came from the national center where the
9 wind experts there helped me through their Web site
10 to establish the three areas of thunderstorm, wind,
11 high wind in the Bennington area over the last 20
12 years. And I have those records which I handed over
13 to Mr. Carroll who studied them. So will he be able
14 to use --

15 MR. TOUSLEY: No. They are not within
16 his experience as he stated it.

17 MS. HARRIS: Okay.

18 MR. TOUSLEY: His experience is
19 practical and personal to that site. He has shown no
20 background by which he can appreciate or understand
21 -- that makes him an expert. He can have a lay
22 understanding of those things, and he might have
23 understood what they said. I'm not saying he's dumb
24 or anything but he's not an -- an expert would
25 appreciate those in a different way having done other

1 studies themselves. So inasmuch as his testimony is
2 expert --

3 MS. HARRIS: Okay.

4 MR. TOUSLEY: -- which he can only talk
5 about expert stuff, he's not here as a lay witness
6 because by your intervention you had to use expert
7 witnesses. He can't talk about that. If you want to
8 submit that as a piece of evidence separately, it
9 will be considered as such. But he can't talk to it.
10 Do you understand?

11 MS. HARRIS: Yes. I thought my
12 interpretation of expert was experiential as well as
13 a degree.

14 MR. TOUSLEY: That's absolutely right.
15 And what we have seen is that Mr. Carroll does not
16 have, as you've said, he does not have a degree in
17 any of those things.

18 MS. HARRIS: Okay.

19 MR. TOUSLEY: It's his experience that
20 is essential to you as an expert. His ability to
21 interpret a scientific document isn't part of his
22 experience and background.

23 MS. HARRIS: Okay. Thank you. I
24 understand better.

25 MR. TOUSLEY: Okay. Do the other

1 parties understand the ruling?

2 MR. MELONE: Yes.

3 MS. ELIAS: Yes.

4 MR. EINHORN: Yes.

5 MR. TOUSLEY: With that, I think does
6 anybody need a break? We have been here for -- why
7 don't we take 10 minutes and come back at 25 minutes
8 before the hour.

9 (Recess was taken.)

10 MR. TOUSLEY: My boss reminded me when
11 I was upstairs that quite often we as Hearing
12 Officers and the Board likes to push through to
13 finish things not recognizing that it's after the
14 regular business day. Is Ms. Vissering still around
15 or did she have to take off?

16 MS. ELIAS: She had to take off.

17 MR. TOUSLEY: She had to take off.

18 Okay. I just wanted to make sure that I'm thinking
19 -- we will probably be done around 6. Is there any
20 reason why the parties might or might not be able to
21 do that? No comments. Okay. I guess that means
22 you're good.

23 MS. HARRIS: I would prefer to continue
24 this.

25 MR. TOUSLEY: That's what I thought.

1 MS. HARRIS: It's so hot, and my cats
2 will be dead when I get home. So I have a three-
3 hour drive home.

4 MR. TOUSLEY: You have a basement?

5 MS. HARRIS: Yes, I do.

6 MR. TOUSLEY: Okay. Let's go ahead and
7 get started then. We will start off with --

8 MS. ELIAS: No need to take them out of
9 order now from my perspective.

10 MR. TOUSLEY: Unless Mr. Kane really
11 wants to go first. Are there any witness issues with
12 time?

13 MR. MELONE: No.

14 MR. TOUSLEY: No. Okay. Then we will
15 go ahead and take whatever order you want to present
16 them in, Mr. Melone.

17 MR. MELONE: I think we will start --

18 MR. TOUSLEY: Actually I wanted Dori
19 Barton's testimony first.

20 MR. MELONE: Start with Dori and then
21 Mr. Kane.

22 MS. HARRIS: Mr. Tousley, by my saying
23 I would like a continuance, I meant that I would
24 prefer to continue this at another time so that we
25 could end at an hour when -- so are you going to go

1 to 6 or --

2 MR. TOUSLEY: That's where we are going
3 right now, yes, unless you can't do that. You would
4 have to be here tomorrow morning at 9 o'clock.
5 Everybody would have to be here tomorrow morning at 9
6 o'clock.

7 MS. HARRIS: Okay. May I make a phone
8 call?

9 MR. TOUSLEY: Sure.

10 MS. HARRIS: Thank you.

11 (Pause).

12 MR. TOUSLEY: All right. Let's go
13 ahead and get started. Up first will be Mr. Melone
14 wanted to enter into evidence the testimony -- the
15 prefiled testimony of Dori Barton. You may proceed.

16 MR. MELONE: I would like to move for
17 the admission of the prefiled testimony of Dori
18 Barton dated as of February 23, 2015, consisting of
19 five pages, and the prefiled supplemental testimony
20 of Dori Barton dated as of June 29, 2015 consisting
21 of six pages. And including all the attached
22 exhibits thereto which are exhibits AHS-MK-1 through
23 7. I'm sorry. Which are exhibits AHS-DB-1 through
24 DB-3.

25 And in support of that testimony I have

1 submitted an affidavit of Dori Barton dated as of
2 July 30, 2015 attesting to the truth and accuracy of
3 the aforementioned testimony.

4 MR. TOUSLEY: Is there any objection?

5 MR. EINHORN: No.

6 MS. ELIAS: No.

7 MS. HARRIS: No.

8 MR. TOUSLEY: Very well, the testimony
9 -- prefiled testimony and exhibits of Dori Barton are
10 admitted into evidence.

11 (Exhibits marked AHS-DB-1 through 3 were
12 admitted into the record.)

13 (The Prefiled Testimony of Dori Barton
14 was admitted into the record.)
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1 MR. MELONE: I would like to call Mr.

2 Kane.

3 MR. TOUSLEY: Very well. You may

4 proceed.

5 MR. KANE: Have to be sworn in.

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1 MARK KANE

2 Having been duly sworn, testified
3 as follows:

4 MR. TOUSLEY: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. MELONE:

7 Q. Can you state your full name for the record?

8 A. Mark D. Kane.

9 Q. And your occupation?

10 A. I'm Director of Community Planning and Design
11 for the firm of SE Group based in Burlington, Vermont.

12 Q. And do you have in front of you two sets of
13 prefiled testimony, the first dated March 3, 2015,
14 consisting of 7 pages --

15 A. I believe in the actual packet from Kim there
16 is no prefiled testimony, so I'm assuming that's somewhere
17 else, but I do have a copy of it. Yes.

18 Q. And the second supplemental testimony dated
19 June 12, 2015 consisting of five pages? Sorry. That
20 would be June 29.

21 A. Yes. June 29. Yes, I do.

22 Q. As well as exhibits AHS-MK-1 through 7.

23 A. This is missing 7.

24 MR. TOUSLEY: On the list it only has
25 up to 6.

1 MR. MELONE: Yup. Sorry. One through
2 six.

3 THE WITNESS: Yup.

4 BY MR. MELONE:

5 Q. And then with respect to your supplemental
6 testimony exhibits AHS-SUP-MK-1 and MK-2.

7 A. Those are all marked as part of Exhibit AHS-
8 SUP-1 MK-1.

9 Q. Correct.

10 A. Yeah. I have that.

11 Q. Were all the aforementioned prefiled testimony
12 and supplemental testimony and exhibits prepared by you or
13 under your direct supervision?

14 A. They were.

15 Q. Are there any corrections to that testimony or
16 to the exhibits at this time?

17 A. No. There are not.

18 Q. And are they true and accurate to the best of
19 your knowledge and belief?

20 A. Yes, they are.

21 MR. MELONE: I would like to move for
22 the admission of the prefiled testimony of Mr. Kane
23 including all of the exhibits thereto which are
24 exhibits AHS-MK-1 through 6. And exhibits AHS SUP-2
25 MK-1 and MK-2.

1 MR. TOUSLEY: Is there any objection?

2 MS. ELIAS: None from the Department.

3 MR. EINHORN: No.

4 MS. COLLIER: No.

5 MR. TOUSLEY: Very well. The prefiled
6 testimony and supplemental prefiled testimony and
7 exhibits of Mr. Kane are entered into evidence.

8 (Exhibits marked AHS-MK-1 through 6 and
9 AHS-SUP1-MK-1 and AHS-SUP2-MK-2 were admitted
10 into the record.)

11 (The Prefiled Testimony of Mark Kane was
12 admitted into the record.)

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1 MR. MELONE: I have some additional
2 questions for Mr. Kane.

3 MR. TOUSLEY: Okay.

4 BY MR. MELONE:

5 Q. Mr. Kane, a question that has come up
6 repeatedly in this Docket as of late is whether or not
7 your aesthetics analysis contemplated in this Docket
8 included the cumulative effects of both the Apple Hill
9 project and the Chelsea Solar project. For the record can
10 you please state whether your aesthetic analysis in this
11 Docket includes the cumulative impacts aesthetically of
12 both projects?

13 A. It does.

14 Q. Mr. Kane, the Bennington select board met this
15 past Thursday, as we discussed earlier today, to determine
16 whether or not to intervene in this Docket. A video of
17 those proceedings was made available on YouTube. Have you
18 seen this video?

19 A. I have.

20 Q. And in this video what did you see related to
21 your exhibits?

22 A. From the review of the video it appeared that
23 one of the figures, I think it was figure 6-A from my
24 supplemental prefiled testimony, was presented in front of
25 the Bennington select board as a characterization of the

1 potential visibility of the project from the Bennington
2 Welcome Center perspective.

3 Q. And was that the only exhibit that was
4 prepared with respect to that viewpoint?

5 A. Absolutely not. In addition to that viewpoint
6 which was provided in response to questions raised by the
7 Department of Public Service about whether or not our
8 analysis had -- our model -- our computer model that was
9 part of our analysis had considered both the Chelsea
10 project and the Apple Hill project, that exhibit was
11 presented that showed a red dashed line indicating the
12 location of the Chelsea project in relationship to the
13 Apple Hill project.

14 And that illustration also did not show any of
15 the existing ambient vegetation that exists south of the
16 property within the state right of way and along the
17 southern boundary of the property. And it was only
18 provided for clarification of the fact that the modeling
19 and the analysis that was used included both projects.

20 Also submitted with that supplemental
21 testimony was an additional figure, figure 6, that
22 actually illustrated the same view using the same model
23 and including the presence of the ambient vegetation that
24 exists along that southern boundary intervening between
25 the Welcome Center and the project site. And if you

1 examine closely the difference between those two figures
2 what you will see is that the visibility of the project is
3 significantly diminished by virtue of the presence of that
4 existing vegetation that will remain.

5 I would also just add for clarification, and
6 this was included in my supplemental prefiled testimony,
7 that all of the simulations that were prepared by me and
8 under my direction did not include any of the landscape
9 mitigation elements that were proposed ultimately. So
10 those characterizations of the potential visibility were
11 in my mind, in my opinion, worst case scenarios in the
12 absence of any mitigation.

13 Q. Can you think of any reason why the Bennington
14 select board would have only been provided with those
15 worst case scenario simulations?

16 MR. TOUSLEY: I'm not going to allow
17 that, that calls for speculation. So --

18 BY MR. MELONE:

19 Q. Did the Petitioner modify the screening plan
20 at all after discussions with the Department's aesthetic
21 expert following the project's public site visit?

22 A. Yes. As a result of the public site visit
23 there were a number of questions raised by the
24 Department's expert witness related to the mitigation
25 proposed. Originally the mitigation that was proposed in

1 my January filing was -- called for the addition of
2 supplemental landscaping along the northern and southern
3 portions of the property to be installed post construction
4 once the clearing of the property had been completed. And
5 the rationale behind that was that once the clearing of
6 the property was complete, we would have a better idea of
7 potential visibility into the site from off-site vantage
8 points.

9 In conversation and interaction with the
10 Department, there was a desire to add some additional
11 areas of mitigation in addition to modifying the fence
12 line to provide a little bit more natural vegetation
13 particularly in the southwest corner of the property,
14 where the property line sort of juts away from the state
15 right of way. And as a result of that interaction we
16 modified our landscape plan and site plans, for that
17 matter, to accommodate that proposed change.

18 We also in -- excuse me, in the supplemental
19 filing that was completed in June, provided additional
20 details about the nature and composition of the landscape
21 mitigation and clarified its, you know, the species
22 composition, installed heights, and provided a lot more
23 definition as to what was being proposed.

24 Q. How do those changes discussed with the
25 Department or that resulted from the discussions with the

1 Department contribute to the overall effectiveness in your
2 opinion of the Petitioner's screening plan?

3 A. The original approach as I had made --
4 asserted in my original testimony, I felt that the off-
5 site visibility of the project was already fairly minimal
6 except for some small areas by virtue of the retained
7 vegetation that's going to exist right within the state
8 right of way. There is no clearing proposed for the
9 project outside the limits of the project south of it.
10 And there are hundreds of feet of land area in that area
11 to provide -- be maintained as vegetation.

12 That being said, in conference, in
13 consideration of the Department's position, we did do
14 additional landscape mitigation that we think will further
15 benefit the off-site -- minimization of off-site impacts
16 from the project, and add to the effectiveness of the
17 overall siting of the project in terms of its potential
18 impacts on those who are looking at it from off site.

19 MR. MELONE: No further questions.

20 MR. TOUSLEY: Ms. Harris, do you have
21 cross examination?

22 MS. HARRIS: I do.

23 CROSS EXAMINATION

24 BY MS. HARRIS:

25 Q. Please point to the exhibit in the record

1 showing the most recent simulations for the Apple Hill and
2 Chelsea Solar projects showing both built out aside from
3 figure 6 from your second prefiled testimony.

4 A. Okay. I would direct you to Exhibit AHS-MK-2,
5 and point to you figures 6 through 10, which constitute --
6 constitute simulations from various vantage points in the
7 vicinity of the Apple Hill project, including locations
8 along the Route 7 corridor and the Route 279 corridor.
9 Those simulations --

10 Q. I'm sorry. I don't have that. Would you
11 provide --

12 A. This is the original report that we prepared.

13 Q. I have no knowledge of that report.

14 MR. TOUSLEY: Okay, well ma'am, we had
15 the opportunity beforehand to talk about -- you had
16 his list of exhibits. And I asked you all do you all
17 have copies. And you didn't say you didn't.

18 MS. HARRIS: The exhibits are listed
19 AHS-MK-3 and so on. But the file names are
20 different. So I don't know how to find the things.

21 MR. TOUSLEY: Do you have an exhibit?
22 Which one is this?

23 THE WITNESS: AHS-MK-2.

24 MR. TOUSLEY: AHS-MK-2?

25 THE WITNESS: Dated February of 2015.

1 MS. HARRIS: No.

2 MR. TOUSLEY: Did you have Mr. Melone's
3 list of the exhibits he intended to bring into
4 evidence?

5 MS. HARRIS: I was given them when the
6 hearing started.

7 MR. TOUSLEY: And I asked you did you
8 have all the documents that were on here. Did you
9 hear me?

10 MS. HARRIS: I'm frankly overwhelmed.

11 MR. TOUSLEY: Okay. What is it that
12 you're thinking about now? What are you trying to
13 do?

14 MS. COLLIER: It's not in the binder.

15 MS. SMITH: I think it is.

16 MR. TOUSLEY: Would you like to be
17 provided with a copy of that document now?

18 MS. HARRIS: Yes, sir. May I have a
19 second to look at this?

20 MR. TOUSLEY: Sure.

21 MS. ELIAS: Off the record.

22 (A discussion was held off the record.)

23 MR. TOUSLEY: You may proceed, ma'am.

24 MS. HARRIS: Thank you.

25 BY MS. HARRIS:

1 Q. So what I'm asking is for you to point in the
2 exhibit in this record, showing the most recent
3 simulations for the Apple Hill and Chelsea Solar projects
4 showing both built out aside from figure 6 of your second
5 prefiled testimony.

6 A. Okay. So again referring to AHS-MK-2 which
7 was our original -- my original report filed in February
8 of 2015 that accompanied my prefiled testimony.

9 Q. Okay.

10 A. In that figure -- in that report there are a
11 series of figures beginning with figure 6 through 10 which
12 represent 3-D model views of the project. And I'll
13 clarify that in a moment, from various vantage points in
14 and around the properties. That 3-D model that was used
15 to generate those simulations consisted of both Chelsea
16 Hill project and the Apple Hill project.

17 This was the basis of a question by the
18 Department subsequent to the filing clarifying whether or
19 not we had done so. And in my response to that question
20 from the Department of Public Service, we prepared the
21 figure 6 supplemental that you're referring to originally,
22 that had indicated again in a red dashed line the location
23 of the Chelsea project relative to the Apple Hill project.

24 So throughout my testimony we considered -- I
25 considered both projects in terms of the potential for

1 off-site visibility and prepared simulations to document
2 the conditions of off-site visibility again in the absence
3 of any mitigation that was subsequently proposed.

4 Q. Okay. Thank you. Can you please point to the
5 simulation in the record that shows what the project would
6 look like traveling north on Route 7 from the on-ramp so
7 that the project would be on the right?

8 A. I would again refer you to AHS-MK-2. Figure
9 9. Which is a view from the Route 7 northbound on-ramp.
10 As you'll note on the figure there is a little dot that
11 indicates VP. On the upper right-hand corner context map.
12 That is the location from which that simulation was taken.

13 Q. Okay. Can you please point to the simulation
14 that shows what the project would look like traveling
15 south on Route 7 after the Shaftsbury exit as one is
16 approaching Bennington?

17 A. Because in this particular Docket, because of
18 the location of the Apple Hill project on the southern
19 part of the overall property, I did not prepare a
20 simulation from that particular vantage point. However,
21 in the Chelsea Hill Docket there was a series of
22 photographs taken from that location that you're
23 referencing, approximately that location.

24 Chelsea, as you may recall the Chelsea Hill --
25 sorry, the Chelsea project is north of the Apple Hill

1 project and more proximate to the Route 7 northbound
2 corridor.

3 Q. Yes.

4 A. Apple Hill being southern of it, south of
5 that, was not -- I did not do a simulation from that
6 vantage point because if you -- I should probably refer to
7 figure one in my original report. If you look at that
8 figure what you'll see -- I'm sorry -- figure 2 would be
9 better. Along the northbound edge of the property, figure
10 one and figure 2, along the north and western edge of the
11 overall property this is going beyond just the Apple Hill
12 section, there is substantial vegetation along the Route 7
13 corridor.

14 So it would not be possible in my opinion to
15 see the Apple Hill project as you approached Bennington
16 from the north until -- it wouldn't be possible as long as
17 you're looking southward.

18 Q. So you have not done a simulation of the
19 cumulative impact of both projects from that Route 7 south
20 location?

21 A. There was no need to do a cumulative impact of
22 the Route 7 south location having concluded in the Chelsea
23 project that there was no visibility of it from the north.
24 So if the Chelsea project wasn't visible, my opinion was
25 that it wasn't possible to do the Apple Hill project.

1 Q. Okay. Thank you. How many visual vantage
2 points are there during that circular entrance to the
3 Welcome Center for visitors coming in from the south?

4 A. As my report mentioned, there are a number of
5 locations along Route 7 northbound 279 corridor which I
6 have documented in my report from which the project may be
7 visible. You can't necessarily quantify the exact number
8 of vantage points, because as has been testified to in my
9 report and testimony, there is a car-oriented view shed
10 primarily. So an observer within this view shed would
11 likely be -- more likely be other than the rest area which
12 has been evaluated separately, would more likely be moving
13 through that vantage point. And the duration of
14 visibility from within the view shed is relatively small
15 given the mobility of observers within it.

16 So there is no specific number of viewpoints,
17 it has been denoted, and one of the reasons that I had
18 concluded that this project created an adverse impact
19 under the Quechee test is because it did have potential
20 visibility outside of its limits within that
21 transportation environment associated with the Route 7 and
22 279 corridor.

23 Q. Okay. Please see the file number marking
24 exhibit part 1, part 2, part 3, see page four, figure
25 four, view F. Looking north from Orchard Road towards the

1 project site. Do you see that?

2 A. I don't have the PDF file names on here, so
3 I'm going to have to -- do you know if that was my
4 original report or -- was that even Apple Hill?

5 Q. It says stand-alone PDF. It has eight figures
6 with 3-D perspectives.

7 A. I don't have that in front of me.

8 Q. February 2015.

9 A. Okay. Well the February 2015 filing that's
10 been submitted into evidence from my report contains 10
11 figures. And vantage point F, just to be clear, is
12 located on Orchard Road.

13 Q. Yes.

14 A. And the corresponding simulation of that view
15 is figure 10 dated February 10 -- February, 2015. In
16 AHS-MK-2.

17 Q. In your second supplementary testimony of
18 June, 2015, why are there two figure 6s?

19 A. As I believe I testified to a few moments ago,
20 when asked by the Department of Public Service as part of
21 a discovery process to clarify whether or not our
22 simulations -- my simulations incorporated both the
23 Chelsea and Apple Hill project, in my -- in that discovery
24 -- in that supplemental testimony I state that we prepared
25 figure 6 to show without vegetation the location of the

1 Chelsea project in relationship to the Apple Hill project
2 as well as the interconnection from GMP. That was all
3 contained within that one figure.

4 Again, no ambient vegetation, no existing
5 vegetation was considered. The other corresponding figure
6 that was included in that supplemental testimony added
7 back in, turned back on, the existing vegetative layers so
8 that we could characterize both the location of this
9 project in relationship with Chelsea Hill and the power
10 line extension that was originally discussed during
11 Chelsea -- the Chelsea project as well as the effect of
12 existing vegetation on ameliorating the views.

13 Q. Are you aware that both are labeled figure 6
14 as if there is no distinction?

15 A. Yeah. I believe there is a different title on
16 them, so there may be a typographical error, 6, 6-A. But
17 the information on each of those two representations is
18 different.

19 Q. I hope that the Public Service Board can
20 appreciate how lame I sound because it is so difficult for
21 a private citizen to wrap a mind around these massive
22 filings and the different, you know, as you professionals
23 can understand it, it's so difficult for me to wrap my
24 mind around it. And I'm sorry to be taking up time. But
25 I just, you know --

1 MR. TOUSLEY: I understand, ma'am. Do
2 you have additional questions for Mr. Kane?

3 MS. HARRIS: Thank you.

4 BY MS. HARRIS:

5 Q. Okay. Will the screening provide any buffer
6 from wind or traffic noise?

7 A. The intention of the screening that we
8 provided, just to clarify, the supplemental filing
9 included a landscape plan with a keyed landscape list of
10 species identifying quantities and sizes, initial sizes.
11 The intention of that mitigation was directed towards
12 visual -- off-site visual impacts not necessarily to have
13 an effect on noise or wind.

14 MR. TOUSLEY: Mr. Kane, are you
15 qualified to answer that question?

16 THE WITNESS: I don't know the ambient
17 wind levels enough to know whether or not there is A,
18 an issue; and B, whether or not this would ameliorate
19 that issue.

20 MR. TOUSLEY: Understood.

21 BY MS. HARRIS:

22 Q. Can you please describe all the screening that
23 will take place for both projects combined, what is the
24 screening plan to the western side of the project? Please
25 point to the page in the record that describes this

1 screening plan.

2 A. Okay. So I don't have the Chelsea filing in
3 front of me. So I'm not going to be able to talk to it in
4 general terms. I can talk in general terms.

5 Start with Apple Hill. There were two areas
6 that we had identified. And this is AHS-SUP-1-MK-2 is
7 probably the best place to look at that. There was a
8 figure called figure 2, and figure 2-A which is the --
9 basically it says -- labeled site plan, but it includes
10 the landscape mitigation proposed.

11 And in that figure you will note along the
12 western edge extending southward and then wrapping around
13 the southern boundary of the property and extending
14 eastward across the entire 2/3 of the frontage of the
15 project to the state right of way is a proposed mitigation
16 planting area. In addition, along the northern property
17 boundary extending the entire length of the northern
18 property boundary is an additional landscape mitigation
19 planting area.

20 Thirdly, there is -- and you have to go to the
21 second figure because we kind of ran out of room on this
22 one, there is some additional supplemental plantings
23 placed within the state right of way. And we have worked
24 with the Vermont -- State of Vermont to verify that they
25 would be acceptable to that, and they have agreed that

1 that's acceptable, mature -- of pine trees essentially to
2 further enhance the potential screening of the project
3 from off site.

4 So all in, between the northern property and
5 the southern property boundary and the supplemental pines
6 that are located along the -- in the state right of way,
7 outside the project, off site mitigation, if you will, we
8 are approaching over almost 600 shrubs and trees that are
9 being proposed as part of the mitigation, which from my
10 experience on solar projects is almost a factor of two
11 beyond what has normally been done.

12 Q. You -- in your filings you talk about after
13 completion further mitigation that will be decided. So
14 how will that be decided then?

15 A. Well that's a very good question because one
16 of the things that we have included in our -- my
17 testimony, I've included in my testimony is this
18 mitigation plan is shown basically as a reference, and
19 identifying these areas as areas of potential mitigation.
20 I would still assert that a post-clearing review of the
21 property be done so that we as part of the, you know,
22 landscape architectural consulting team and aesthetic
23 consulting team can look at the property from those
24 off-site vantage points that we clearly identified in my
25 testimony to ascertain whether or not some of that

1 mitigative landscaping could be shifted around to more
2 optimize its potential to screen the property.

3 And I still think and hope that that actually
4 would be a very reasonable thing to do. With nearly 600
5 individual trees and shrubs, there is ample scale of the
6 pallet of material to work with from my perspective to
7 place strategically. And as the simulation showed in the
8 original January filing there were very few areas from off
9 site where there was sort of open -- potentially open
10 views.

11 And I would hope that we would prioritize the
12 installation of the landscaping to maximize the screening
13 in those -- from those vantage points.

14 Q. Well since my property is on the northern
15 boundary of where you're going to be doing proposed
16 mitigation later on, and we had discussed before the
17 after, and how do I become part of that process to ensure
18 that there will be mitigations that will help screen a 14-
19 foot road that's going to go over the north end boundary?

20 A. As I understand it you actually about the
21 Chelsea project; is that correct?

22 Q. Yes.

23 A. Okay. So this is sort of switching docket a
24 little bit here, but the strategy -- the landscape
25 mitigation strategy we proposed in Chelsea is consistent

1 in character to what we are proposing here. And I think
2 by virtue of you being actually part of the process,
3 you're already embedded in this. But you know, the
4 presumption would be that the Board would file a condition
5 that would say post construction, review the clearing.
6 The aesthetic consultant would then finalize a mitigation
7 plan based upon the input of the Department, perhaps the
8 neighbors, and the Petitioner to come up with something
9 that is reasonable and achieves the stated goal of
10 ameliorating and minimizing the impact, the quantity and
11 species composition and, you know, orientation of the
12 plantings that are depicted in the figures are there to
13 help us understand if there is a reasonable solution, and
14 I believe there is, and also to provide some sideboards
15 for what that might look like so that the Petitioner's not
16 saddled with a hundred thousand dollars of additional
17 mitigation by virtue of, you know, going through this
18 process.

19 I think both at Apple Hill, and I'll opine as
20 to Chelsea as well, what is being provided in terms of the
21 quantities and composition of species and locations of
22 where we have identified they're potentially effective is
23 will upon completion of this project if it's approved
24 result in a better condition relative to the off-site
25 impact than otherwise would be seen.

1 Q. So it would be the Public Service Board itself
2 that would determine the completion of that? At the end?

3 A. Well I can't speak on behalf of the Board.
4 But I have concluded in my testimony that this additional
5 mitigation is appropriate. It's mitigation. It's now
6 part of the record as being part of the -- part of what
7 the Petitioner is required to do.

8 If upon, you know, the construction of the
9 project and the clearing of the project and the
10 establishment of where the priorities for landscaping are
11 needed is determine that some things can be shifted around
12 and other things can be shifted around and the net effect
13 of that is still maintaining the integrity.

14 MR. TOUSLEY: Maybe we can wait -- Mr.
15 Wilson, did you participate in the shaping of the DPS
16 MOU?

17 MR. WILSON: Yes, I did.

18 MR. TOUSLEY: Okay. Because the terms
19 of the post-construction site visit and mitigation
20 are addressed in the DPS MOU. And he might be able
21 to better address that than Mr. Kane.

22 MS. HARRIS: Okay good. Thank you.

23 BY MS. HARRIS:

24 Q. Do you know what is the budget for the
25 screening?

1 A. We haven't done the formal cost estimate, but
2 based upon my experience this is approaching 70 thousand
3 dollars. At least. Just Apple Hill, by the way. If you
4 add Chelsea, you're well over a hundred.

5 Q. What is the screening plan for the eastern
6 side of the project?

7 A. There is no -- there isn't -- as the site plan
8 again AHS-SUP-MK-2 shows, now there is no proposed
9 mitigation along the eastern edge. The area -- the land
10 to the west -- to the east of that are presently wooded
11 and very densely forested, so there is no potential for
12 off-site impacts.

13 Q. What is the screening plan for the northern
14 portion of the project? Please point to the page and in
15 the record that describes the screening plan.

16 A. Okay. So I would again bring your attention
17 to AHS-SUP-MK-2 figure 2, which shows a landscape, a
18 proposed mitigation plan along that northern edge
19 extending the entire length of it.

20 In addition, that landscaping is described --
21 there is a plant list, a key associated with that on that
22 same figure, and that is described in my supplemental
23 prefiled testimony.

24 Q. So does it involve leaving any of the trees?
25 You talk about on the borderline, but it's not clear to me

1 which part of the trees on that northern section of Apple
2 Hill will possibly be left to help buffer.

3 A. Okay. So that's a good question for
4 clarification. So as my testimony mentions, there is
5 clearing in the property. This is -- there is a large
6 amount of clearing on the property. But along that
7 boundary line where trees are off site, off property,
8 clearly those cannot be cleared. Those are off the
9 property. They are not under the control of the
10 Petitioner. So if there is a large tree that happens to
11 be a foot north of the property line that tree is staying.

12 In addition, the Petitioner has indicated that
13 they would be looking at those trees that are straddling
14 the line and try to find ways, if it's possible, to sort
15 of keep the ones that can stay, because a tree is not a
16 tree is not a tree. There are some that are not going to
17 get into a height that would propose a fall hazard risk to
18 the solar project which is one of the concerns that has
19 been raised.

20 And in addition to that, there are areas along
21 that edge that are lots of scrub and secondary growth and
22 secessional species, and to the degree some of those can
23 stay, I think that would be an evaluation of on-the-ground
24 construction.

25 In addition, as I mentioned, we are proposing

1 a significant amount of mitigation there. So our hope
2 would be that as a real detailed understanding of the
3 composition of that frontage or that boundary is
4 understood from a plant perspective, there may be areas
5 where nature has taken over, and it's going to do fine for
6 mitigation, we wouldn't need to add anything. I would
7 presume there would be some other areas where trees along
8 the boundary on the Petitioner's side of the boundary
9 would have to come down, and it's in those areas here we
10 would prioritize doing landscape mitigation to minimize
11 the off-site impacts.

12 Q. Does it concern you that clearing the trees to
13 the south might result in weakening the existing trees and
14 cause them to fall over in high winds?

15 A. That is a concern. And I think one of the
16 things we would want to look at in the clearing process is
17 where those trees are relative to the boundary. If there
18 is some that can stay, then maybe they can stay.

19 It also depends on the species that we are
20 dealing with. Some trees will withstand wind better than
21 others. And we don't have a detailed nor would it be
22 appropriate to do a detailed inventory now because it's a
23 very complex effort, a detailed inventory of every single
24 tree along the boundary. But as the clearing were -- if
25 the clearing were to commence, looking at that -- at those

1 species along the boundary, trying to find ways to
2 minimize clearing, if possible, and prioritizing areas,
3 for example, if the tree is a fall hazard and it's on the
4 Petitioner's property, and that may come out, that would
5 probably likely come out. Because it wouldn't be
6 something that would be able to coexist with the solar
7 project.

8 Again in that area we want to prioritize the
9 installation of new material that is going to be more
10 capable of addressing the conditions on the ground.

11 MR. TOUSLEY: I want to make sure I
12 understand your answer. I think what you said was
13 that the project here is about trees falling down
14 because they might fall on the project.

15 THE WITNESS: That's true.

16 MR. TOUSLEY: Okay.

17 BY MS. HARRIS:

18 Q. Are there any elevation drawings showing the
19 plantings?

20 A. We have not prepared any detailed simulations
21 of those plantings at this point. No.

22 Q. So what concerns me as an abutter to both is
23 that, you know, what level of comfort can I have that
24 there will be left the tall trees that are still there on
25 that northern end to help buffer noise and wind?

1 A. Well as I said, I think within the limits of
2 the project area, there is nothing that I can say that
3 would guarantee any of those trees could remain, because
4 again that's going to depend on the conditions on the
5 ground. The Petitioner has proposed to clear the limits
6 within the property. However, along the shared property
7 line where those trees straddle the boundary line there is
8 going to be some -- I was thinking, you know,
9 consideration of those trees and where they can remain
10 they will -- they could remain.

11 On your property, that is obviously not going
12 to be affected. And you know, this again is getting
13 outside of the realm of Apple Hill at this point, but it
14 applies to this project's relationship, to all its
15 boundaries in general, there are substantial vegetated
16 areas outside the limits of this property. The homes
17 north of Chelsea, the location of the properties adjacent
18 to Apple Hill are not 10 feet from the property line, they
19 are substantial distance, 365, 700 feet away. And in
20 those intervening distances, there are trees that are
21 outside the Petitioner's property, that property the
22 Petitioner will control and cannot be cleared and will not
23 be cleared.

24 So to the degree you're looking from your home
25 or any neighboring home on this property, out through

1 trees, I would presume that a good majority of those ones
2 in the foreground are yours, and this project would have
3 no effect on those at all.

4 Q. Is there a cap on the amount of money to be
5 spent on screening?

6 A. That's not something I've evaluated, so you
7 would have to ask somebody else that question.

8 Q. Okay. Do you think it's reasonable for the
9 public to want to understand the aesthetic impacts of
10 these projects and their cumulative impact?

11 A. Yes. And I believe that -- I believe that my
12 report and the work that I have done to ascertain and
13 characterize and present the proposed mitigation for this
14 project is a significant effort to document the potential
15 impact of this project on the neighbors and the
16 surrounding public.

17 And as I mentioned at the beginning of my
18 testimony today, I concluded that the project does result
19 in adverse impact, and that means something to me. And
20 it's important to recognize that this isn't a matter of
21 just sort of not doing an analysis to come to a
22 conclusion. In so concluding that this project is
23 adverse, I had substantive conversations with my client
24 about what we could do to address those issues. And that
25 is -- subsequently got them on the hook for a very robust

1 and expensive mitigation plan.

2 Q. One last question. If the Bennington
3 community determines that the screening is inadequate,
4 what further mitigation could be done to reduce the visual
5 impact of the project?

6 A. Well I think this goes into a real fundamental
7 question as to whether or not the purpose of mitigative
8 screening is to completely obliterate the potential
9 visibility of a project. And I can think of no other land
10 use in the State of Vermont that I'm aware of, and as
11 Vermont Director for the Northern New England Chapter of
12 the American Planning Association and on the Vermont
13 Planning Association Executive Board I get a chance to see
14 a lot of projects. I can think of no other land use in
15 the State of Vermont which actually requires a project to
16 be completely invisible to its neighbors or surroundings.

17 This project has done an incredible job of
18 trying to understand its relationship to both important
19 off-site public vantage points as well as close neighbors.
20 And has proposed an, as I mentioned several times, a very
21 robust and expensive mitigation plan to rectify and deal
22 with those impacts. It is not without impact. I have not
23 stated it's without impact, nor will it be without impact,
24 but that is not the bar under which the Quechee process
25 evaluates, in my opinion, evaluates the outcome of the

1 project.

2 Q. So am I belaboring the point to ask you could
3 further mitigation be done?

4 A. I had -- I don't believe there is anything
5 that could be done that would completely render this
6 project invisible from everybody. If that's what you're
7 looking for.

8 MS. HARRIS: Okay. Thank you. That's
9 it. Again I'm sorry for my ingenuous --

10 MR. TOUSLEY: That's okay. You're
11 asking the questions. I understand. Are there any
12 further questions for Mr. Kane?

13 MS. COLLIER: I have a few, if I may.

14 MR. TOUSLEY: Sure.

15 CROSS EXAMINATION

16 BY MS. COLLIER:

17 Q. Concerning figure 2. And I'm sorry this isn't
18 separated from --

19 A. AHS-MK-2 I think.

20 Q. I believe, so the plant species for landscape
21 mitigation.

22 A. Yes.

23 Q. So I've got a 2-A and a 2 on opposite sides of
24 this page. And if you wouldn't mind just walking me
25 through this a little bit, or you can point me in the

1 record towards testimony or some other source that further
2 explains what I'm looking at here.

3 So I see the project fence, and there is the
4 proposed mitigation planting. What is the purpose of the
5 cleared area past the project fence?

6 A. So -- and I think Mr. Wilson may be able to
7 provide more light on this limits of clearing, but the
8 limits of clearing in general are to prevent shading of
9 the actual project from trees to the south of it. And as
10 you can imagine, orientation towards the south is an
11 important consideration in siting a solar project. So on
12 this particular site there is a necessity to clear some of
13 the southern area to allow for minimization of shade.

14 Q. Okay. And the very light dotted lines that
15 are inside that area in between the limits of clearing and
16 the project fence, are those for some sort of path or
17 roadway?

18 A. No. There is -- those dashed lines are
19 actually contour lines in connection with the grades of
20 the property.

21 Q. And with these simulations, do any of them
22 depict glare off the solar array, particularly from the
23 roadways?

24 A. Again, the purpose of these simulations was to
25 show the location of the project relative to off-site

1 visibility. But I would call your attention to my
2 prefiled testimony and report, and in that report is an
3 attachment which includes the modeling analysis that we
4 completed for solar glare hazard.

5 Q. So this is part of the aesthetics analysis
6 report AHS-MK-2?

7 A. That is correct. And in that model -- in that
8 report we used a computer model that helps to evaluate the
9 potential off-site glare of a project related to its
10 surroundings. And we applied that model to this site in
11 the absence of any vegetation, which I think is an
12 important note. We did not include any vegetation in
13 terms of the off-site impacts of the potential for glare.

14 The results of that analysis were essentially
15 that there was very little issue related to glare hazard.

16 Q. Okay. And looking at your plant species key
17 here. You're designating just white pine for trees.
18 That's the only species?

19 A. No. Well technically yes. But the -- one of
20 the things that the plant list includes there is --
21 actually white cedar is included on there. And depending
22 on the form it can take, that gets to tree height fairly
23 rather readily and would have a year-round screening
24 effect.

25 Just to clarify that too, I think one of the

1 things to recognize and remember is the maximum height of
2 the panels on this project are 12 feet high. So the
3 mitigation that's been proposed includes a variety of
4 native shrubs and trees, and a lot of those shrubs left to
5 go to naturalized form, which would be the intention here,
6 can easily get to 12 to 15 feet in height.

7 Q. And that's at full tilt?

8 A. Full maturity, yeah.

9 Q. Well the panels if they are -- will they move?

10 A. No. They do not move. They are fixed-
11 oriented solar cell and maximally 12 feet high.

12 Q. So if I understand correctly, there is this
13 limits of clearing line, and so you have some designated
14 pointers to existing vegetation to remain, which I
15 understand that is the state-owned land. It's below the
16 tax parcel boundary. So the area to the west of that
17 limit of clearing line that's inside the tax parcel
18 boundary, that will also be vegetation to remain and not
19 cleared?

20 A. So yes. So just to clarify. So we are
21 talking about the southern boundary of the property that's
22 in yellow.

23 Q. Yes.

24 A. There is a wedge of land that is along the
25 southwest corner of the property. That will not be

1 cleared following the construction of either the Chelsea
2 or Apple Hill projects. Both that area of retained
3 vegetation in that southwest corner straddling both the
4 state land and this property will not be cleared.

5 Q. Okay. And I noticed in the discovery
6 responses that there was an answer about Vermont Trans
7 getting back to you all about planting on the state land,
8 and I see on figure 2-A there is the pointer, proposed
9 supplemental mitigation planting on state lands to screen
10 view from Visitor Center.

11 So is this a result of a response that you did
12 receive from VTrans?

13 A. No. This came about again as a result of some
14 interactions with the Department. They felt based upon
15 some final review of the property and project that sort of
16 more foreground landscape mitigation, i.e., within the
17 state right of way may be effective. I respectfully did
18 not concur with the necessity of it, but in consultation
19 with the Petitioner agreed that it certainly wouldn't hurt
20 to add it.

21 And as is noted on that plan and is mentioned
22 in my supplemental testimony, you know, it is off-site
23 mitigation, it is outside of the control of the Petitioner
24 directly, and if for some reason the VTrans felt they
25 needed to cut one of those trees down, there will be very

1 little recourse that the Petitioner could do because it's
2 not on the property. But in combination with what we have
3 intrinsically proposed, I think it's certainly going to be
4 more effective.

5 Q. So what is the current status of the
6 correspondence between you and VTrans about planting off
7 site?

8 A. Yeah. I think that would be a question that
9 would best be directed to Brad, because he's been involved
10 with those day-to-day consultations or week to week.

11 Q. Okay. Those are all my questions. Thank you.

12 MR. TOUSLEY: Do any of the parties
13 have other questions?

14 MR. EINHORN: No.

15 MS. ELIAS: No.

16 MR. TOUSLEY: Is there any redirect?

17 MR. MELONE: No.

18 MR. TOUSLEY: Mr. Kane, you may stand
19 down.

20 MR. WATTS: I have a couple questions.

21 MR. TOUSLEY: Sorry.

22 MR. WATTS: Looking at your -- I'm
23 looking at figure 9 --

24 THE WITNESS: Yes.

25 MR. WATTS: -- in your prefiled. Does

1 that depict a Green Mountain Power line that will be
2 built along Willow Road?

3 THE WITNESS: Oh no, it does not. This
4 vantage point was done before that finalized, the
5 location of that line. So this figure does not
6 present that, those interconnection line.

7 MR. WATTS: Do you have any information
8 on what trees Green Mountain Power will cut along--

9 THE WITNESS: It's my understanding as
10 is depicted in my supplemental testimony that for
11 Chelsea, it's confusing, but in the supplemental
12 filing I did for Chelsea there was a discussion about
13 the proposed route. And much of the route takes
14 advantage of existing Willow Road right of way, so I
15 think within the limits of the right of way there is
16 not a clearing that needs to be done to accommodate
17 the interconnection point. There is -- most of it is
18 actually open at this point because it's actually --
19 you can drive right up to the site -- to the Apple
20 Hill site.

21 MR. WATTS: In your opinion will the
22 GMP line be visible?

23 THE WITNESS: Not from that vantage
24 point. I don't believe so. Obviously there is some
25 potential visibility from the points south along the

1 Route 7 northbound ramp perhaps where it's more
2 proximal, proximate to potential, but that 279 shot
3 that you're referencing figure 9 from is far enough
4 away, and I think the poles would be set against the
5 significantly mature vegetation that exists to the
6 east. So if visible, I don't believe they would have
7 much of a potential for impact.

8 MR. WATTS: Okay. Are you familiar
9 with the MOU with the Department of Public Service?

10 THE WITNESS: No, I'm not.

11 MR. WATTS: Well do you have a copy of
12 it? Do you have a copy?

13 THE WITNESS: I do not.

14 MR. MELONE: Can I hand him a copy?

15 MR. WATTS: Yes.

16 THE WITNESS: I do.

17 MR. WATTS: I'm looking at 5E.

18 THE WITNESS: Okay.

19 MR. WATTS: Based on your knowledge of
20 the views, does that have any value as far as for
21 aesthetic improvement?

22 THE WITNESS: Based upon my review of
23 the project and the consideration of the vegetation
24 that's to remain, I don't believe it will be cost
25 effective or valuable from an aesthetic perspective,

1 I should say, to bury the line. The form that this
2 interconnection pole would take regardless of whether
3 it's visible is something very consistent with what
4 everybody sees everywhere else in terms of the
5 surrounding area. These are 38 to 42-foot tall
6 wooden cross-armed poles that are going to basically
7 be set against large vegetation that exists, and
8 whether or not the tips and tops of them are usually
9 visible, I don't think would create an undue adverse
10 impact.

11 MR. WATTS: Now the -- I wanted to look
12 at number 6 with you.

13 THE WITNESS: We are still on the MOU?

14 MR. WATTS: Yes, I'm sorry. Yes, still
15 on the MOU. On number 6 it has an -- it calls for a
16 post-construction site visit. I'm assuming based on
17 between talking about Chelsea and Apple Hill you
18 probably think that your opinion might be that they
19 should do them together?

20 THE WITNESS: If the construction
21 sequencing allows, ideally that would make a lot of
22 sense.

23 MR. WATTS: Now that has a cap on,
24 during that site visit, that we include additional
25 mitigation as warranted. It has a cap of \$5,000 on

1 it. Do you think that's reasonable for the Board to
2 --

3 THE WITNESS: I think in this case, you
4 know, given that this is an above and beyond what's
5 been actually included in our mitigation plan, and as
6 I mentioned this is, you know, if you take those
7 costs associated with mitigation plan and you run
8 them through a cost analysis, what you'd find is
9 something on the order of 20,000, \$25,000 in trees,
10 and \$30,000 in shrubs. You know, the additional
11 \$5,000 may be adequate. I am -- based on my site
12 visits to the area and my review of the project and
13 property, I think what we will find at the end of the
14 day is that a large part of those two boundaries
15 which are being proposed for mitigation don't really
16 need it. And that those landscape mitigation assets
17 that would be -- which are basically being required
18 as part of our mitigation plan could be deployed
19 elsewhere to further bolster their effectiveness.

20 So I think the five thousand dollar
21 additional amount is put in there to provide a fail
22 safe in case there is a particular area that may
23 benefit from some additional mitigation. And I think
24 it is reasonable.

25 MR. WATTS: Okay. Thank you.

1 MR. TOUSLEY: Questions in light of
2 those questions and answers? Question?

3 MS. ELIAS: Yeah.

4 CROSS EXAMINATION

5 BY MS. ELIAS:

6 Q. I just -- I'm not sure if you're familiar with
7 all the details, but I want to go back to the last -- the
8 first question that Mr. Watts asked you about paragraph 5E
9 in the MOU.

10 A. Yes.

11 Q. And specifically call your attention to -- I'm
12 not sure you're reading this correctly, and I want to
13 clarify this for the record. But just take a look at that
14 paragraph and tell me if you see anything in there that
15 requires undergrounding. Because I think that was in your
16 answer to Mr. Watts.

17 A. Yeah.

18 Q. Just take a moment.

19 A. Excuse me. Yes, you're right to clarify.
20 That's ground mounted.

21 Q. Right. So let me ask you this. If this
22 paragraph in the MOU refers to ground-mounted equipment as
23 opposed to pole-mounted equipment, which I have outside
24 information that it was intended to do so, is it -- do you
25 have an opinion on whether ground-mounting equipment might

1 minimize visibility of project equipment that pole
2 mounting that same equipment would not?

3 A. Yes. I think in this particular case given
4 the distances between potential observers in the project,
5 I mean all of the vantage points that I have been talking
6 about in the report are five to, you know, 1,200 to more
7 feet away. You know, even the Welcome Center is 1,200
8 feet away approximately, a thousand to 1,200 feet away.

9 I don't think the difference between -- the
10 visual difference between a pole-mounted and a ground-
11 mounted supportive structures would make a difference in
12 terms of the aesthetic outcome. Particularly given the
13 fact that there is a significant amount of intervening
14 existing vegetation that is not going to be disturbed
15 between those potential observers and the components that
16 are in question.

17 Q. Okay. Thank you.

18 MR. TOUSLEY: Other questions from the
19 parties?

20 MR. EINHORN: No.

21 MR. TOUSLEY: Any redirect?

22 MR. MELONE: No.

23 MR. TOUSLEY: Now Mr. Kane may step
24 down.

25 THE WITNESS: Thank you.

1 MR. TOUSLEY: Mr. Wilson?

2 MR. WILSON: Sure.

3 MR. TOUSLEY: Good evening, Mr. Wilson.

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1 BRADLEY WILSON

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: Yes, I do.

5 MR. TOUSLEY: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. MELONE:

8 Q. Can you please state your full name for the
9 record, Mr. Wilson?

10 A. Bradley John Wilson.

11 Q. And your occupation?

12 A. I'm a project developer for Apple Hill Solar,
13 LLC.

14 Q. And do you have in front of you your prefiled
15 testimony dated March 3, 2015 consisting of 22 pages as
16 well as Petitioner's exhibits AHS-ECOS-1 through 10?

17 A. Yes, I do.

18 Q. And were those prepared by you or under your
19 direct supervision?

20 A. Yes, they were.

21 Q. Were there any corrections to that testimony
22 or to the attached exhibits at this time?

23 A. No.

24 Q. Are they true and accurate to the best of your
25 knowledge and belief?

1 A. Yes.

2 Q. Do you have in front of you Petitioner's
3 discovery responses to ANR's and the Department's first
4 round of discovery each dated May 20, 2015?

5 A. No, I don't have the discovery responses.

6 (Handing document.)

7 A. Yes, now I have those documents.

8 Q. And lastly do you have in front of you the two
9 Memorandums of Understanding that were entered into
10 between the Petitioner and ANR and the Petitioner and the
11 Department, each of which were dated June 29, 2015?

12 A. Yes, I do.

13 Q. And were those MOUs and those discovery
14 responses prepared by you or entered into with your
15 supervision?

16 A. Yes, they were.

17 Q. Are there any corrections or clarifications
18 with respect to those discovery responses or the MOUs at
19 this time?

20 A. No.

21 Q. And are they true and accurate to the best of
22 your knowledge and belief?

23 A. Yes, they are.

24 MR. MELONE: I would like to move for
25 the admission of the prefiled testimony of Brad

1 Wilson including all of the attached exhibits
2 thereto, which are exhibits AHS-ECOS-1 through 10,
3 as well as the admission of the Petitioner's
4 discovery responses to ANR and the Department, and
5 the two Memorandums of Understanding in each case
6 including all exhibits attached thereto.

7 MR. TOUSLEY: Is there any objection?

8 MS. ELIAS: None from the Department.

9 MR. EINHORN: No.

10 MS. HARRIS: I would like to ask that
11 these exhibits -- all of these exhibits have an
12 additional tab which shows exactly what file, there
13 is something of a description on the right, but the
14 way I access them is through a file name.

15 MR. TOUSLEY: So you're not objecting
16 to the exhibit itself.

17 MS. HARRIS: Right.

18 MR. TOUSLEY: So you do not have paper
19 copies with the sticker on it?

20 MS. SMITH: Right.

21 MS. HARRIS: Right.

22 MR. TOUSLEY: So is there a particular
23 document that you're concerned about knowing which
24 one it is?

25 MS. HARRIS: No. It's all of them

1 because I can't refer to them.

2 MR. TOUSLEY: Do you have the petition
3 of the Petitioner? Okay, it's included in there.

4 MS. HARRIS: But this has supplemental
5 filings and it's beyond me --

6 MR. TOUSLEY: You have Mr. Wilson's
7 testimony. The only ones -- which ones are
8 supplemental that you're referring to?

9 MS. HARRIS: There is the supplemental
10 Mark Kane.

11 MR. TOUSLEY: No. This is Mr. Wilson's
12 though, not Mr. Kane's.

13 MS. HARRIS: Okay. So okay, I'm okay
14 with this.

15 MR. TOUSLEY: Okay. And I hear no
16 objection. The prefiled testimony of Mr. Wilson, the
17 exhibits attached thereto as well as the discovery
18 responses from the Department -- to the Department
19 and to the Agency as well as the Memorandum of
20 Understanding with the Department and the Agency are
21 entered into evidence. You may proceed.

22 (Exhibits marked AHS-ECOS-1 through 10,
23 AHS-MOU-DEPT, AHS-MOU-ANR, AHS-DIS-ANR and
24 AHS-DIS-DEPT were admitted into the record.)

25 (The Prefiled Testimony of Brad Wilson

1 was admitted into the record.)
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1 BY MR. MELONE:

2 Q. Mr. Wilson, Mr. Kane just testified as to the
3 maximum height of the panels being 12 feet. And Mr.
4 Kane's not as intimately familiar with the equipment as
5 you are.

6 Can you please for the record state what the
7 maximum height of the panels would be?

8 A. Sure. It may seem like a small difference,
9 but the maximum height of the panels is 9 to 10 feet
10 depending on the ground conditions.

11 MR. MELONE: I don't have any further
12 questions.

13 MR. TOUSLEY: All right. Ms. Harris,
14 do you have cross examination questions for Mr.
15 Wilson?

16 MS. HARRIS: Yes.

17 MR. TOUSLEY: You may proceed.

18 CROSS EXAMINATION

19 BY MS. HARRIS:

20 Q. Do you plan to clear, prepare and construct
21 and decommission Apple Hill solar using only Willow Road?

22 A. Yes.

23 Q. Do you plan to clear, prepare and construct
24 and decommission Chelsea Solar using only Willow Road?

25 MR. TOUSLEY: That's irrelevant to this

1 proceeding. You don't need to answer the question.

2 Next question.

3 BY MS. HARRIS:

4 Q. Do you plan to interconnect Apple Hill Solar
5 with the new GMP power line being extended more than a
6 mile along Willow Road to serve the project?

7 A. The Apple Hill project will interconnect to
8 the GMP grid that you described.

9 Q. Did you make a presentation to the Bennington
10 select board about this project?

11 A. No.

12 Q. Did you make a presentation to the Bennington
13 planning commission about this project?

14 A. No.

15 Q. What is the current ambient or background
16 noise level in the Apple Hill neighborhood in the vicinity
17 of my home?

18 A. I have no idea.

19 Q. Please point to the noise study in this
20 Docket.

21 A. There is no noise study in this Docket.

22 Q. Is there a reason you did not submit a noise
23 study in this Docket?

24 A. Yes. One was never requested by any of the
25 intervening parties.

1 Q. Did I not ask for a noise -- for the noise
2 levels several times from you?

3 A. Not as a member -- not as an intervening party
4 in this Docket. You did have an opportunity to serve us
5 with discovery in this Docket and did not do so.

6 Q. Am I allowed to ask that now, sir?

7 MR. TOUSLEY: What's the question?

8 MS. HARRIS: The question is, why has
9 no noise study been provided by Apple Hill Solar.

10 MR. TOUSLEY: I think he already
11 answered that, didn't he?

12 BY MS. HARRIS:

13 Q. All right. Do you understand that traffic
14 noise is a big issue for neighbors?

15 A. I really can't speak to what is a big issue
16 for neighbors.

17 Q. What have you done to address the concern
18 about increasing traffic noise by cutting the extensive
19 forest that is buffering the noise now?

20 MR. MELONE: I'm going to object to
21 that question. It assumes facts that aren't in the
22 record.

23 MR. TOUSLEY: Could I hear the question
24 again, ma'am?

25 MS. HARRIS: What have you done to

1 address the concerns about increasing traffic noise
2 by cutting the extensive forest that is buffering the
3 noise now?

4 MR. TOUSLEY: Could you --

5 MR. MELONE: It's assuming -- the
6 question is assuming the trees that are there are
7 providing any sort of buffer, and there is nothing on
8 the record that indicates that.

9 MR. TOUSLEY: Well that isn't the
10 question though. You may ask the question.

11 Overruled.

12 BY MS. HARRIS:

13 Q. What have you done to address the concerns
14 about increasing traffic noise by cutting the extensive
15 forest that is buffering the noise now?

16 A. Let me think about that question for just a
17 moment. Well I'll start by repeating something in my
18 previous response, that we didn't receive anything from
19 any of the intervening parties on this Docket regarding
20 traffic noise. We received no questions about it. Mr.
21 Carroll's testimony was the first time we had ever seen
22 anything formal from you filed in the Docket regarding
23 noise, regarding traffic noise. It is an issue that we
24 have considered.

25 It's no secret that we evaluated it in the

1 Chelsea Docket. And as it relates to Apple Hill, I really
2 don't know how appropriate it is to translate things
3 directly, but I think our conclusions would be the same,
4 you know, if we had been requested in this Docket to
5 provide that information. Referencing that noise study
6 that was submitted under the Chelsea Docket, it concludes
7 that there would be no undue adverse impact related from
8 the clearing of trees for this project to any of the
9 neighbors in the Apple Hill neighborhood. Therefore,
10 although we have taken steps to address visual mitigation,
11 we haven't taken any specific steps to address noise that
12 is crossing our property but is not being generated by us.
13 And also no parties have requested that we make any such
14 mitigative measures.

15 Q. Do you believe that the trees are not
16 buffering the traffic noise of the neighbors?

17 A. Well I'll point out that I'm not a noise
18 expert myself. I believe based upon the results of the
19 study that's referenced in the Chelsea Docket that the --
20 any noise buffering benefit that may be provided is
21 minimal.

22 Q. Please see this noise study prepared by the
23 expert you used in the Chelsea Solar project, Rincon's
24 Chris Bursback from California Flat Solar Project.

25 MR. MELONE: I'm going to object.

1 That's not part of the record in this proceeding.

2 MR. TOUSLEY: What are you trying to
3 do, ma'am?

4 MS. HARRIS: It was provided -- I'm
5 sorry, it was provided in the discovery responses.

6 MR. MELONE: That was in the other
7 Docket.

8 MS. HARRIS: And this is a cross
9 exhibit to that.

10 MR. TOUSLEY: So what do you have
11 exactly?

12 MS. HARRIS: It is --

13 MR. TOUSLEY: You have the noise study
14 that was done in Chelsea Solar?

15 MS. HARRIS: No. It's a noise study
16 that was done by the same person of the same company
17 that did the simulated noise study for Chelsea Solar.

18 MR. TOUSLEY: So why is it relevant to
19 this proceeding?

20 MS. HARRIS: Because this has -- the
21 same person was hired to do actual monitoring in
22 depth versus simulated modeling.

23 MR. TOUSLEY: Okay. So why is that
24 relevant to this proceeding?

25 MS. HARRIS: It's relevant to this

1 proceeding because I firmly believe that we have
2 asked for noise monitoring and that this actual noise
3 monitoring is and can be easily done, and that what
4 ECOS has provided is only assimilated noise study
5 that is not -- doesn't have any bearing on actuality.
6 And we live in a real world, and it's actual noise.

7 MR. TOUSLEY: Okay. Has there been a
8 noise study submitted in this Docket?

9 MS. HARRIS: No.

10 MR. TOUSLEY: Okay. Has this document
11 been submitted in this Docket?

12 MS. HARRIS: It was submitted in
13 response to discovery when they asked what documents
14 I might use.

15 MR. TOUSLEY: Was it provided to the
16 Petitioner?

17 MS. HARRIS: Yes.

18 MR. TOUSLEY: Okay. So the Petitioner
19 has that document from your understanding?

20 MS. HARRIS: Yes.

21 MR. MELONE: No.

22 MS. HARRIS: It was at the end of his
23 questions. He asked what documents are we going to
24 use.

25 MR. TOUSLEY: Okay. Was that document

1 then provided to the Petitioner?

2 MS. HARRIS: There was a link to the
3 document.

4 MR. TOUSLEY: Okay. I'm going to grant
5 -- I'm going to -- the objection stands. You may ask
6 the petition -- you may ask Mr. Wilson -- you've
7 already asked him why didn't he do a study. You can
8 ask him why didn't you do a study that did actuals.
9 Ask him -- you can ask him that latter question, but
10 that document has no relevance to this proceeding.

11 MS. HARRIS: Okay.

12 BY MS. HARRIS:

13 Q. So have you done any study that's provided
14 actuals?

15 A. I'm going to take what you mean by provided
16 actuals --

17 Q. Actual monitoring.

18 A. As I understand it, when performing a study
19 to, you know, describe what the effects of an action could
20 be, you could do as you're saying, which is to take
21 measurements of the existing conditions in the field, or
22 you can estimate what those existing conditions are based
23 upon publicly available information.

24 Now I'm certain that field work is definitely
25 more costly from a dollars and time perspective. When it

1 comes to -- and no, we haven't done any monitoring on
2 site. When it comes to simulating what the effect of an
3 action might be though, that's where you can use the, you
4 know, actual numbers or estimated numbers as a starting
5 point. But the modeling of what the effect will be,
6 that's a model. And that's a model whether or not you're
7 starting with estimated baseline numbers or actually
8 measured baseline numbers.

9 In this case, you're asking about what could
10 the increase in noise decibels mean if the trees on the
11 project property are removed. And that decibel increase
12 is something that is modeled no matter whether or not
13 you're starting with an estimated existing condition or a
14 measured existing condition. And I believe -- and again
15 I'm not a noise expert, but I believe that the resulting
16 decibel increase would be approximately the same whether
17 or not you're starting with an estimated existing
18 condition of 60 decibels or a measured existing condition
19 of 70 decibels.

20 Q. Has Apple Hill Solar conducted a wind study to
21 ensure that the removal of 15 acres of trees will not
22 cause further hazardous consequences to the Apple Hill
23 community?

24 A. Would you be able to define wind study please?

25 Q. Forensic meteorologist study?

1 A. We have not performed a forensic meteorologist
2 study.

3 Q. Why did you choose not to conduct a wind study
4 specific to Apple Hill to provide evidence that cutting
5 the trees will not result in increased damage to the
6 neighborhood uphill that is benefiting from the forest
7 that is buffering the wind?

8 A. Sure. My answer will be similar to the answer
9 regarding the noise study. No parties in this Docket
10 formally requested us to perform such a study, and there
11 appear to be no 248 criteria related to the project's
12 ability to buffer the natural phenomenon of wind that just
13 happens to be crossing over our property on to another
14 property. Such studies have not been included in other
15 solar dockets. So it definitely didn't exist as one of
16 these things that you just do automatically.

17 We didn't receive any such requests from the
18 Department, from ANR or from you.

19 Q. If Apple Hill Solar cuts the forest, and wind
20 damage occurs, will Apple Hill Solar agree to investigate
21 whether removing the forest contributed to the cause?

22 A. I'm going to preface this by saying it's
23 always our intent to be an excellent neighbor when we have
24 a solar project, and we have a number of them in various
25 locations, and we feel our track record stands very well.

1 But I think what you're asking is that if the clearing
2 occurs and anyone in the Apple Hill neighborhood has a
3 tree fall over as a result of a wind event, that we
4 somehow be liable to put costs into investigating that.

5 Your own expert's testimony currently states
6 that any time a wind -- that the wind events in Apple Hill
7 are already so fierce that trees come down fairly
8 regularly, so that's a current condition that's already
9 happening that -- and it's not something that we would
10 really be comfortable obligating ourselves to be tied to a
11 condition of this project at this time.

12 Q. Well since you're stating that your every
13 intention is to be neighborly, how -- I don't know how to
14 word this, what consideration are you offering the very
15 neighbors you want to be neighborly with?

16 A. Right.

17 MR. TOUSLEY: I'm going to cut you
18 short on this line of questioning, ma'am. It doesn't
19 specifically relate to criterion that the Board
20 considers other than the performance of the developer
21 as a good neighbor. And I think he's answered that
22 question.

23 MS. HARRIS: Okay.

24 MR. TOUSLEY: But specifically the
25 notion of wind damages and the sort of nuisance

1 damages that you're referring to, are not within the
2 normal criterion that the Board assesses --

3 MS. HARRIS: All right.

4 MR. TOUSLEY: -- or can take any action
5 on.

6 MS. HARRIS: Okay. Thank you.

7 BY MS. HARRIS:

8 Q. At the public meeting May 20, 2014 in Sudbury
9 were you asked by residents why you chose the site?

10 A. That's been a long time ago. I imagine it
11 came up. I don't remember the specific questions that
12 were asked of me at that meeting.

13 Q. If you need your memory refreshed, may I read
14 you the transcript of the public meeting?

15 Sudbury residents: Why the site?

16 Brad Wilson: It's open, clear hayfield. If
17 we were proposing to do a project where we had to
18 clear-cut 15 acres of native forest, we wouldn't even be
19 in front of you tonight. We wouldn't even have gotten
20 that far. That would just not be allowed. So it has to
21 be clear and open.

22 Were you considering the Apple Hill and
23 Chelsea Solar projects at the time you made that
24 statement?

25 A. I don't believe so. I was there to speak

1 about Sudbury.

2 Q. And so how can you -- can you please explain
3 why you state that a solar project site had to be clear
4 and open, yet you are pursuing cutting more than 15 acres
5 of native forest?

6 A. I was speaking about the Sudbury site.

7 Q. Mr. Kane made a lot of promises about how much
8 money ECOS Energy will be spending on mitigation. What
9 assurances do we have that ECOS Energy will follow through
10 with the plans?

11 A. Because those plans will be a condition of the
12 Certificate of Public Good, if issued by the PSB.

13 Q. What recourse do we have if your mitigation
14 plans are inadequate?

15 A. I would have no ability to advise you on that
16 topic. It sounds like a question for your attorney.

17 Q. I am the attorney, though. God help me.

18 Do forests have any value in mitigating
19 climate change? If yes, explain.

20 MR. MELONE: I'm going to object to the
21 question. I don't see how it's relevant to the scope
22 of her intervention.

23 MR. TOUSLEY: Why do you want to ask
24 this question, ma'am?

25 MS. HARRIS: Well I'm interested in

1 asking what is the carbon sequestration value of 27
2 acres of trees. The 27 acres of trees are giving off
3 clean energy in themselves.

4 MR. TOUSLEY: I think you can ask this
5 -- you can ask Mr. Wilson whether the cutting of the
6 15 acres at Apple Hill whether carbon sequestration
7 by those trees was considered.

8 MS. HARRIS: Okay. Thank you very much
9 for helping me.

10 BY MS. HARRIS:

11 Q. So in the cutting of 15 acres of trees on
12 Apple Hill was carbon sequestration considered?

13 A. Yes, it was.

14 Q. And how?

15 A. There is a 248 criteria that specifically
16 relates to greenhouse gas impacts. And as a developer we
17 want to make sure we have addressed all 248 criteria
18 before coming before the Board. And so that was
19 considered. The very brief answer is that you're correct,
20 existing trees do provide a benefit not only in the amount
21 of carbon dioxide equivalent that they absorb annually but
22 also the amount of carbon dioxide equivalent that they
23 store. That's a real benefit.

24 The project also has a carbon dioxide
25 equivalent benefit in that the energy it produces does not

1 generate any carbon dioxide, and the energy it produces
2 offsets a certain amount of electricity that is generated
3 using fossil fuels. And in a very brief analysis, the
4 amount of carbon dioxide equivalent offset by the
5 electricity generated by the project far, far, far out
6 strips the carbon dioxide equivalent benefits of the
7 existing trees.

8 Q. How many years will it take for the loss of
9 the carbon sequestration benefits of cutting 15 acres of
10 trees to be repaid by the solar project?

11 A. You know, this is honestly getting a little
12 bit outside the scope my expertise. It's something we
13 took a look at, and based upon publicly available
14 information from, you know, Vermont state departments, our
15 estimate is around three and-a-half years.

16 Q. That's it.

17 MR. TOUSLEY: Are there other questions
18 that the parties have for Mr. Wilson?

19 MS. ELIAS: No.

20 MR. EINHORN: No.

21 CROSS EXAMINATION

22 BY MS. COLLIER:

23 Q. Could I just ask if you wouldn't mind -- on my
24 earlier questions to Mr. Kane he referred to you possibly
25 knowing in more detail answers. Would you have anything

1 to add to what he said?

2 A. You'll have to refresh my memory. On the top
3 of my head I can --

4 Q. I was just asking about I guess the VTrans
5 communications, and if the proposed supplemental
6 mitigation plantings, what the status of that
7 correspondence was. And you know, if -- that's something
8 that -- I'm also interested to hear if that's something
9 that is already factored into the budget that you have for
10 the screening. Or --

11 A. Sure. Absolutely. I can answer that. That's
12 correct. That after the Apple Hill public site visit and
13 public hearing, the Department approached us about the
14 idea that could we possibly use lands that don't belong to
15 us that are owned by Vermont Department of Transportation
16 to plant some additional screening vegetation.

17 In response to that, we kind of took a dual
18 path. Number one, we put a stipulation in the
19 Department's MOU that we would make all good faith effort
20 to pursue such a plan with VTrans. And if VTrans is
21 amenable would implement that plan with the knowledge that
22 we have no ability whatsoever to compel VTrans to agree to
23 anything like that.

24 We did approach VTrans and had some lengthy
25 conversations with them. They ran the issue past their

1 legal department, and they did come back and say yes, we
2 would be open to that with a few little caveats. So I
3 think to answer another part to your question really
4 quickly before I move on, the figures included in Mark's
5 supplemental and his descriptions of the landscaping plan
6 as a whole including its budgetary numbers do account for
7 the landscape mitigation being shown in the Route 7 right
8 of way in his supplemental figures.

9 So right now, it is part of the plan to put
10 those in. VTrans wanted us to be very well aware and
11 wanted to make sure this gets on the record that although
12 they would be allowing us to make a one-time planting in
13 the right of way, they can offer no assurances that they
14 will not have a need at some point in the future to remove
15 those trees for their own purposes. And they wanted to
16 make very certain that there were no conditions upon our
17 project that depended upon the perpetual existence of
18 those trees basically, yup, we can work out a deal where
19 you can come on and put some trees in our right of way,
20 but we can't guarantee we will be able to keep them there
21 in perpetuity. We may have a need to remove them for
22 VTrans' maintenance purposes or maybe construction
23 purposes or any reason.

24 And so the way it stands is that we are -- our
25 plan currently shows a one-time planting of trees in that

1 area. And we are -- it's part of what we proposed. And
2 it's in the stipulation with the Department, and it's
3 something we have gotten a green light on from VTrans.

4 Q. Okay. I have one follow-up question. And it
5 is along the same lines as my existing vegetation to
6 remain question which is, is the area in which you are
7 proposing to include off-site mitigation limited to this
8 small patch on the south boundary, or does it wrap around
9 the -- the tax parcel boundary, the yellow dotted line
10 here, can it come up, not just this limited area to the
11 south, but also around to the west side?

12 A. I understand your question. The current
13 proposal only includes what's shown in Mark Kane's figure
14 there. That was the area of concern when the Department
15 and their aesthetic witness, aesthetics witness approached
16 us about this idea.

17 Q. But that is not true of the existing
18 vegetation to remain, that the areas of existing
19 vegetation to remain does include the western side here
20 where the Apple Hill project meets the Chelsea project
21 line?

22 A. Could I ask you exactly which figure you're
23 referring to? I'll pull it up in front of me.

24 Q. Sure. This is 2-A, and I believe it's AHS-
25 SUP-MK-2.

1 A. Okay. Just a moment. All right. I've got
2 that figure open in front of me. Let's see if you can get
3 me on the page there --

4 Q. Sure. So do you want me to just rephrase it?

5 A. Yeah. If you maybe just rephrase a little
6 bit. Now that I've got it in front of me I can follow
7 along.

8 Q. There is pointers to existing regular
9 vegetation to remain, and they are on the south boundary
10 there.

11 A. Correct. That's on VTrans' property there
12 where those pointers are, are pointing.

13 Q. So I wanted to confirm with you that existing
14 vegetation to remain is not limited to just where those
15 pointers are pointing but will also wrap around the
16 southwest and west edge of the project?

17 A. Oh, I see. Yes. You're correct in that
18 understanding.

19 Q. Okay. Thank you.

20 A. Yes. My testimony -- my prefiled testimony
21 and accompanying exhibits clearly defines the limits of
22 clearing for the project as well as the Chelsea project.
23 And any areas not within those limits will be vegetation
24 to remain.

25 Q. Could you please point me to the exhibits that

1 you're referring to in your prefiled testimony?

2 A. Sure. The exhibit would be AHS-ECOS-4.

3 That's our site plan document.

4 Q. Thank you.

5 A. It's also very clear on the figure we were
6 looking at of Mr. Kane's, you were looking at figure 2-A.
7 If you went back to the previous page figure 2, this
8 document also very clearly shows the limits of clearing
9 for the Apple Hill site footprint. It's denoted by a
10 black dashed line. Anything outside of that black dashed
11 line is not planned to be cleared for this project.

12 Q. Okay. Thank you.

13 A. Yeah.

14 MS. COLLIER: That's all.

15 MR. TOUSLEY: Are there other questions
16 on cross from the parties?

17 (No response.)

18 MR. TOUSLEY: Okay. We have a couple
19 questions.

20 THE WITNESS: Absolutely.

21 MR. WATTS: I want to go to the MOU
22 with the Department of Public Service.

23 THE WITNESS: Certainly.

24 MR. WATTS: And again I want to talk
25 about 5E.

1 THE WITNESS: Absolutely.

2 MR. WATTS: And right at the end it
3 says that again you're talking about taking the pole-
4 mounted equipment and putting them on a pad-mount
5 positions.

6 THE WITNESS: Yes. Could I clarify
7 that just a little bit?

8 MR. WATTS: Sure.

9 THE WITNESS: This particular item in
10 the Department's MOU relates to the three poles only
11 that comprise the project's interconnection. These
12 are three poles that sit within the project boundary
13 on the project property, and they define the
14 interconnection of the project. I believe the latest
15 design from GMP one pole has a set of utility
16 metering equipment, one pole has a set of recloser
17 breaker equipment, and one pole has a physical
18 disconnect and also serves as the riser pole because
19 from there, the cabling goes underground and then on
20 to the center of the solar project.

21 After the public site visit, the
22 Department's representative and the Department's
23 aesthetic witness were there, they did approach us
24 about the idea of for those three poles, is it
25 possible to do some or all of that equipment pad

1 mounted or on the ground rather than up on poles.

2 And we said we would investigate that with GMP.

3 That's how this stipulation in the MOU came about.

4 There is some similarities here towards
5 the earlier question about VTrans. Since this MOU
6 was filed, we have approached GMP about the idea.
7 They have gotten back to us about the idea. Going to
8 pad mount for this interconnection is a significant
9 increase in the project costs. However, we have
10 elected to instruct GMP to move forward with that
11 plan, to move two of those poles down to ground-
12 mounted equipment, because the Department had
13 indicated on behalf of, you know, that they were
14 concerned about the visual appearance of those poles.
15 And we wanted to be as accommodating as possible.

16 So the current plan and I'm willing to
17 put this on the record, and GMP has this as well, is
18 that instead of three interconnection poles at the
19 Apple Hill interconnection, we will be going to a one
20 pole and then the rest pad-mounted scenario.

21 MR. WATTS: All right. Thank you.

22 MR. TOUSLEY: You talked a little bit
23 about on the noise study -- on the non noise study
24 that was done in this case.

25 THE WITNESS: Yes.

1 MR. TOUSLEY: I know that there was a
2 noise study that was conducted in Chelsea Solar.

3 THE WITNESS: That's correct.

4 MR. TOUSLEY: Noise is an issue that
5 the Board cares about even if the other parties don't
6 care about it.

7 THE WITNESS: Certainly.

8 MR. TOUSLEY: Based on your assessment
9 of the Chelsea Solar noise study, did you see -- was
10 there an impact from noise that it pointed to from
11 the operation of Chelsea?

12 THE WITNESS: When you say from the
13 operation of Chelsea, are you speaking to the
14 operation of the equipment that comprises the Chelsea
15 project?

16 MR. TOUSLEY: Yes.

17 THE WITNESS: Okay. No. There did not
18 seem to be an adverse impact from the operation of
19 the solar equipment. And there is also in testimony
20 between the Department -- in the Apple Hill Docket
21 related to noise generated by project equipment, and
22 we conclude and also describe our methodology that
23 noise generated by the solar project equipment is not
24 an adverse impact, will not be a concern to the
25 neighbors, and will be essentially the same decibel

1 level as ambient environmental noise by the time that
2 noise has traveled far enough to cross our project
3 property boundary.

4 MR. TOUSLEY: So that testimony made
5 that conclusion in the absence of a noise study.

6 THE WITNESS: That's correct. The
7 reason for that is that the analysis necessary to
8 make that determination is very straightforward.
9 There is a calculation called the inverse square
10 calculation. It's commonly used to evaluate how much
11 a noise source drops in decibels as it travels a
12 certain amount of feet away from its source. We have
13 the specs on the amount of decibels that the
14 equipment at the center of the project creates,
15 that's the only equipment at the project that would
16 create any noise whatsoever. And then we applied the
17 inverse square calculation to those values along with
18 the distance to property boundaries and determined
19 that by the time that sounds gets to the property
20 boundaries, it's again distinguishable from ambient
21 environmental noise.

22 MR. TOUSLEY: Does that testimony
23 that's in the record already related to that
24 conclusion also address the potential although -- the
25 potential for increased noise due to loss of trees?

1 THE WITNESS: No. Well let me -- you
2 might be asking two different questions. The
3 analysis using the inverse square calculation assumed
4 a wide open field. It does not assume that there is
5 any trees helping buffer that noise as it travels.
6 Is that what you're getting to?

7 MR. TOUSLEY: So it's your conclusion
8 because it's an open area that absence or presence of
9 trees is irrelevant to the final conclusion that the
10 equipment of the project will remain below the
11 Bennington and international standards.

12 THE WITNESS: I think I understand what
13 you're saying. Yes. The inverse square calculation
14 was performed assuming no trees whatsoever, and our
15 results were that the noise was not an adverse
16 impact. Therefore, any existence of any trees was
17 not even considered because the wide open field
18 scenario gave a no adverse impact result. I hope I'm
19 answering the question you're asking.

20 MR. TOUSLEY: Yes, you're answering
21 part of it, but as I recall in the Chelsea study it
22 addressed -- the expert opined as to the impact of
23 tree loss on sound.

24 THE WITNESS: That's correct.

25 MR. TOUSLEY: And that it was in, you

1 know, the two to five decibel level. Was that
2 considered in Apple Hill?

3 THE WITNESS: It wasn't. Because the
4 noise study in Chelsea that you're referring to was
5 solely focused on the analysis of road noise and --
6 generated on Route 7 and traveling across our
7 property, it looked at two scenarios. One where the
8 current --

9 MR. TOUSLEY: Trees and without trees.

10 THE WITNESS: With and without trees.

11 MR. TOUSLEY: Right. I'm familiar with
12 that. I guess -- but was there a determination that
13 because of the conclusions in the Chelsea study that
14 further study wasn't required at Apple Hill because
15 of the minimal impact that tree loss had as noted in
16 the Chelsea study?

17 THE WITNESS: That is definitely
18 correct. Yes.

19 MR. TOUSLEY: Okay. Okay. Those are
20 all the questions. Questions in light of the Board's
21 questions and answers? Is there any redirect?

22 MR. MELONE: Yes.

23 REDIRECT EXAMINATION

24 BY MR. MELONE:

25 Q. Ms. Harris asked you some questions about the

1 Petitioner's interaction with the Bennington select board
2 and the Bennington planning department. As part of the
3 248 petition process did Apple Hill Solar contact the Town
4 of Bennington?

5 A. Yes.

6 Q. And when was that?

7 A. I believe the first contact was October 2013.

8 Q. Can you describe some of the subsequent
9 interactions with the Town of Bennington and its citizens
10 on a formal basis?

11 A. Sure. On a formal basis, the Town of
12 Bennington received copies of the project's 45-day notice.
13 I believe there were a couple different addresses at the
14 Town that received that. Accordingly, they also received
15 a full copy of the project's 248 petition and all the
16 company exhibits when that was filed. Is that what you're
17 asking me?

18 Q. At any time did the Bennington select board or
19 the Bennington planning department invite the Petitioner
20 to come speak regarding the project?

21 A. No. We have never received any contact or
22 questions from the Town of Bennington.

23 Q. Mrs. Harris or Ms. Harris had asked you a few
24 things about the buffering effects of the trees. Were you
25 at the site visit for Apple Hill?

1 A. Yes, I was.

2 Q. And did Ms. Harris describe the existing wind
3 conditions at her house?

4 A. Not at the site visit for Apple Hill. I
5 believe that conversation took place at the site visit for
6 Chelsea.

7 Q. And at the site visit for Chelsea how did she
8 describe the existing wind conditions at her house?

9 A. I believe the term was like living in a wind
10 tunnel.

11 Q. And as part of the 248 process in this Docket
12 or in Chelsea Docket, did you -- did the Petitioner ever
13 have any consultations or interactions with wind experts?

14 A. Yes. As a result of informal conversations
15 between Ms. Harris and I, prior to her involvement as an
16 intervener, we did reach out to investigate what it would
17 take to perform the wind analysis that she was interested
18 in.

19 Q. And did those wind experts that you contacted,
20 did they have any sort of opinion as to this type of
21 project or this type of study that you would be asking
22 them to perform?

23 A. Yes. Almost uniformly, the anemometry
24 consultants that we requested in giving us a cost and time
25 frame to perform such modeling had comments essentially to

1 the effect of for such a small piece of property, and the
2 results are probably going to be in the negative that
3 there is very little buffering effect. However, they
4 caveat on that to say, you know, we are more than happy to
5 charge you for a formal analysis.

6 Q. I don't have any further questions.

7 MR. TOUSLEY: Any of the other parties
8 have any questions -- any further questions for Mr.
9 Wilson?

10 MR. EINHORN: No.

11 MS. ELIAS: No.

12 MS. HARRIS: I have one question. When
13 we were here for the Chelsea hearing, you allowed me
14 to get into the record a noise study -- an
15 alternative noise study that we had found which was
16 totally different from the study that Mr. Wilson had
17 simulated. It was the Federal Highway
18 Transportation, and that was in the record. So is
19 there anyway for me to in this Docket offer that, the
20 whole study, to you now again to show --

21 MR. TOUSLEY: So it sounds like what
22 you want to do is you want to offer into evidence the
23 Federal Highway Administration Building Standard
24 Noise Study information that you provided in Chelsea.
25 And you want to offer it into evidence here as well;

1 is that correct?

2 MS. HARRIS: Yes.

3 MR. TOUSLEY: Is there any objection?

4 MR. MELONE: I think it's already in
5 this Docket through the testimony of Mr. Carroll
6 attached as an exhibit.

7 MR. TOUSLEY: Is it attached as an
8 exhibit to his testimony?

9 MS. HARRIS: It is.

10 MR. TOUSLEY: Yes, it can; and yes, it
11 will be. As long as it's not objected to.

12 MR. MELONE: I guess let's clarify.
13 Can we clarify again the scope of his testimony? I
14 want to make sure that that particular exhibit makes
15 sense in light of restrictions on his --

16 MR. TOUSLEY: I think that she can
17 offer it outside of -- it would not fit within the
18 area of expertise of her expert witness. However,
19 she can offer it separately just as she did in
20 Chelsea Solar.

21 MR. MELONE: I think if we are going to
22 allow it into evidence in this Docket, I need to be
23 able to cross examine somebody on the substance of
24 what's in it.

25 MS. HARRIS: Well Mr. Tousley --

1 MR. TOUSLEY: Just a second.

2 MS. HARRIS: Sorry.

3 MR. TOUSLEY: What do you mean the
4 substance? It did not occur -- in Chelsea it was
5 offered as -- okay. You can do that. I don't think
6 you need Mr. Carroll to do it. I think she can offer
7 it, she can discuss where it came from. And then you
8 can make an objection if you think that's
9 insufficient, and I would rule on that objection.

10 MR. MELONE: Okay.

11 MR. TOUSLEY: Okay. Mr. Mapes. Mr.
12 Wilson, you may stand down. Thank you.

13 THE WITNESS: Thank you.

14 MR. TOUSLEY: As I understand it, there
15 are no cross examination questions for Mr. Mapes.

16 MS. ELIAS: None from the Department.

17 MR. EINHORN: Correct.

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1 SCOTT MICHAEL MAPES

2 Having been duly sworn, testified
3 as follows:

4 THE WITNESS: I do.

5 MR. TOUSLEY: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. MELONE:

8 Q. Can you please state your full name for the
9 record?

10 A. Scott Michael Mapes.

11 Q. And your occupation?

12 A. I'm a Professional Engineer and a licensed
13 attorney.

14 Q. And do you have in front of you your prefiled
15 testimony dated March 3, 2015 consisting of 15 pages as
16 well as Petitioner's Exhibits AHS-SMM-1 through 6?

17 A. Yes, I do.

18 Q. And were those prepared by you or under your
19 direct supervision?

20 A. Yes. They were.

21 Q. Are there any corrections to that testimony or
22 to the attached exhibits at this time?

23 A. No.

24 Q. And are they true and accurate to the best of
25 your knowledge and belief?

1 A. Yes.

2 MR. MELONE: I would like to move for
3 the admission of the prefiled testimony of Scott
4 Michael Mapes including all the attached exhibits
5 thereto which is Exhibits AHS-SMM-1 through 6.

6 MR. TOUSLEY: Any objection?

7 MS. ELIAS: No.

8 MR. EINHORN: No.

9 MS. HARRIS: No.

10 MR. TOUSLEY: That was a negative from
11 Ms. Harris.

12 MS. COLLIER: No.

13 MR. TOUSLEY: Very well, the prefiled
14 testimony of Scott Michael Mapes and exhibits --
15 Exhibit AHS-SMM-1 through 6 are admitted into
16 evidence.

17 (Exhibits marked AHS-SMM-1 through 6
18 were admitted into the record.)

19 (The Prefiled Testimony of Scott Michael
20 Mapes was admitted into the record.)

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1 MR. TOUSLEY: Do you wish to elicit any
2 direct testimony?

3 MR. MELONE: No.

4 MR. TOUSLEY: Mr. Mapes, you may sit
5 down.

6 Now Ms. Harris, we are up to your
7 opportunity to provide Mr. Carroll's testimony into
8 the record as well as do any direct examination you
9 would like to of Mr. Carroll, limited to the scope of
10 his expert testimony as I described it earlier.

11 Mr. Carroll, if you could take the
12 chair please. You're reminded you're still under
13 oath.

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1 RICHARD CARROLL

2 Having been previously duly sworn,
3 testified as follows:

4 MR. TOUSLEY: Do you need a hand doing
5 this, ma'am?

6 DIRECT EXAMINATION

7 BY MS. HARRIS:

8 Q. Mr. Carroll, do you have any corrections to
9 your original testimony?

10 A. I do.

11 Q. So I would like to -- I would like to submit
12 his prefiled testimony and his corrections to his
13 testimony.

14 MR. TOUSLEY: Please. He needs to talk
15 about what those corrections are so the parties are
16 aware of what they are.

17 THE WITNESS: I have it here. I'll
18 just go down through and read them off, and that's
19 the way you do it?

20 MR. TOUSLEY: That works.

21 THE WITNESS: Answer five, page 3, line
22 3, I would like to -- I would like to remove the word
23 some. Answer 6 page 3 --

24 MR. MELONE: Can we just -- I want to
25 make sure that we are doing this correctly. Answer

1 five page 3.

2 THE WITNESS: I would like to take the
3 word some --

4 MR. MELONE: You want to add the word
5 some?

6 THE WITNESS: Yes. Not all. Answer 6,
7 page 3, line 11, I would like to change the 10,
8 approximately 10 years ago to 7 acres for clear-cut.
9 I had that backwards.

10 Answer 6, page 3, line 12, the same
11 thing. 7 not 10.

12 Answer 10, page four, line 22, I would
13 like to remove that sentence.

14 Answer 10, page five, line 3, clear-cut
15 7 acres not 10.

16 Answer 10, page five, line 9, remove
17 the sentence "in my experience on the 400 acre
18 parcel."

19 Answer 12, page 6, line 5, on clear-cut
20 swath plus or minus 200 feet. I want to add "plus or
21 minus."

22 Answer 14, page 6, line 22, remove the
23 word 10 fold and replace it with "noticeably."

24 Answer 14, page 7, line two, remove the
25 words "when the bypass was completed," and insert

1 "since the Welcome Center has been completed."

2 Answer 20, page 8, line five, remove
3 "in Bennington the police were called."

4 Answer 20, page 8, line 10, remove
5 "they are 30 foot tall and above" and replace with
6 "they range in height to 30 feet."

7 Answer 21, page 8, line 18, remove the
8 phrase "Apple Hill."

9 Answer 23, page 7, line 6, add "but not
10 all."

11 Answer 24, page 9, line 11, add "just
12 one simulated photo without vegetation but with power
13 lines."

14 Answer 32, page 12, line 6, remove
15 "higher" and insert "had." And that's it.

16 MS. HARRIS: So the prefiled testimony
17 of Mr. Carroll you already have, I believe.

18 MR. TOUSLEY: We will submit the list
19 of corrections as an exhibit, as a separate exhibit,
20 so this will be exhibit Harris-1.

21 MS. HARRIS: LH-1 is my signed notary.
22 LH-2 --

23 MR. TOUSLEY: Let me just ask the
24 question. Mr. Carroll, with those corrections is
25 your prefiled testimony true to the best of your

1 knowledge and ability?

2 THE WITNESS: Yes.

3 MR. TOUSLEY: Very well. So --

4 MS. HARRIS: So I would like to offer
5 as exhibits -- Exhibit LH-RC-1 Resume of Richard
6 Carroll. And the wind data and the noise data I
7 would like to exhibit -- I would like to make exhibit
8 separately and my own. And four and five which is
9 Highway Traffic Noise Barrier Design Handbook and the
10 photographs, the actual photographs and videos that I
11 took of the Welcome Center and monument.

12 MR. TOUSLEY: Okay. The other parties
13 have an opportunity to examine these exhibits?

14 MS. HARRIS: They were part of -- they
15 were part of Mr. Carroll's prefiled testimony.

16 MR. TOUSLEY: Very well.

17 MS. HARRIS: Which we are now
18 separating out.

19 MR. TOUSLEY: I understand. So right
20 now you have your first exhibit which was the
21 affidavit. You have the second exhibit which was the
22 list of corrections of Mr. Carroll's prefiled
23 testimony. What's LH-3?

24 MS. HARRIS: LH-2 was my wind data, so
25 maybe that had this, that you have already as part to

1 be separated out. And then LH-RC-3 was the noise
2 data. And am I allowed to offer that separately as
3 my own? The app that I had for the actual noise
4 representation at my house?

5 MR. TOUSLEY: You can offer it.
6 Whether it will be admitted is another question.

7 MS. HARRIS: Okay. Then may I offer
8 that?

9 MR. TOUSLEY: What is it?

10 MS. HARRIS: I put an app on my phone,
11 which is called Decibel Tenth dB. And it's an app
12 that measures the noise level at any time of day or
13 night at a site.

14 MR. TOUSLEY: Do you have a document
15 that describes its technical features?

16 MS. HARRIS: Not with me. But it's
17 readily available.

18 MR. TOUSLEY: Then I'm not going to
19 admit it.

20 MS. HARRIS: Okay. Then I would like
21 to exhibit -- I would like to put as an exhibit the
22 FHWA Highway Traffic Noise Barrier Design Handbook.

23 MR. TOUSLEY: Okay. So let's get back
24 -- you have LH-1 which is the affidavit, LH-2 which
25 is the correction of Mr. Carroll's testimony. What's

1 3?

2 MS. SMITH: They were already labeled.

3 MR. TOUSLEY: They were already labeled
4 as something different. Okay.

5 MS. HARRIS: So exhibit LH-RC-1 is Mr.
6 Carroll's resume.

7 MR. TOUSLEY: Oh, okay.

8 MS. HARRIS: Exhibit LH-RC-2 is the
9 wind data study from NOAA. The exhibit -- the noise
10 data I can't offer. So exhibit LH-RC-4 is the W-H --
11 FHWA Highway Traffic Noise Barrier Design Handbook.
12 And the exhibit LH-RC-5 is the photographs and
13 videos. They were all part of Mr. Carroll's prefiled
14 testimony except now I'm separating them out as my
15 own except for his resume.

16 MR. MELONE: So the only one I object
17 to is the FHA Guide Book. Again because I guess I
18 need to better understand -- I have several questions
19 about that Guide Book and the data that it's based
20 on. Most of the questions already went out to Ms.
21 Harris through discovery, but I didn't get responses,
22 so I'm just wondering who I'm going to have on the
23 stand that I can cross examine with respect to that
24 data.

25 MR. TOUSLEY: I'm going to overrule

1 your objection and accept that document and give it
2 the weight that is appropriate.

3 Having heard that, what I have now
4 marked are -- the 7 exhibits of Ms. Harris are
5 entered into evidence. There were 6 exhibits. So
6 LH-1, LH-2, LH-4, LH-5, LH-6 and LH-7 at least as I
7 have marked.

8 (Exhibits marked LH-RC-1 through 2 and 4
9 through 7 were admitted into the record.)

10 (The Prefiled Testimony of Richard
11 Carroll was admitted into the record.)

1 MR. TOUSLEY: Ms. Harris, you have
2 questions on direct that are within the scope that
3 you would like to ask Mr. Carroll and you really
4 don't want to necessarily -- you don't need it to be
5 repetitive of previous testimony that he's provided.

6 MS. HARRIS: No. I'll just open him up
7 to --

8 MR. TOUSLEY: Cross examination.

9 MS. HARRIS: -- cross examination.

10 MR. TOUSLEY: Very well. And the
11 prefiled has been entered in evidence as corrected.

12 CROSS EXAMINATION

13 BY MR. MELONE:

14 Q. Mr. Carroll, you've gone on the record in
15 saying that --

16 MR. TOUSLEY: Let me just limit this
17 for a second. There are questions and answers on the
18 record related to his quality and expertise. I would
19 ask that you not repeat any of those same questions
20 and answers -- same questions to yield the same
21 answers.

22 BY MR. MELONE:

23 Q. My question was you stated that you haven't
24 read the entirety of the testimony, and I think you just
25 corrected your prefiled testimony to reflect that.

1 A. Right.

2 Q. Having not read the entire testimony,
3 including certain aspects of our mitigation plan, do you
4 feel -- are there any other changes that you want to make
5 to your prefiled testimony?

6 A. No. I've read this, this whole testimony, my
7 prefiled testimony.

8 Q. Let me rephrase the question. Have you read
9 all of Mark Kane's testimony as to aesthetics?

10 A. No.

11 Q. So in your prefiled testimony you make some
12 conclusions based on our aesthetic plan, are all of those
13 conclusions still accurate?

14 A. No. They are confusing. There was -- I mean
15 when I tried to find the photograph of the power lines and
16 the one that I presented to the town board, there was some
17 things in there that were a little confusing. And I can't
18 say exactly what it was. It was a little confusing
19 because I just don't get that information from you or from
20 the Board.

21 Q. So not having received or not having read the
22 Petitioner's aesthetic plans, do you feel that you are
23 qualified to give an opinion as an expert on the aesthetic
24 effect of this project?

25 A. From what I was given. Yes. From what I

1 have. Yes.

2 Q. And you acknowledge that what you have been
3 given is not the whole picture as to the mitigation plan
4 of the Petitioner?

5 A. That's right.

6 Q. In your testimony you mentioned in the answer
7 to question 10, A-10, it's without a question, that the
8 effects of the winds will increase. Are there -- is there
9 any scientific evidence to support that conclusion?

10 A. It's just -- there is nothing scientific about
11 it. I've walked that property. And it's just -- it's
12 natural is what's going to happen when you take out 27
13 acres.

14 Q. Is it your opinion that the trees that are in
15 question in this Docket are providing a wind buffer?

16 A. Yes.

17 Q. And in your testimony you've -- and this is in
18 answer 10, you state that trees that are growing there
19 now, the taller trees aren't used to the winds being
20 higher, and they will knock over trees. That is what
21 happened on my 21 acres of land when they clear-cut 10
22 acres on the other side of me. To get a better
23 understanding of what you mean by that, are you saying
24 that neighboring trees are going to be coming down because
25 of the clear-cut?

1 A. If you clear-cut 27 acres, and the wind comes
2 through, any trees that are forward of that 21 acres have
3 the potential to fall. That's what happened on my 21
4 acres.

5 Q. And so there is an existing tree line that
6 kind of follows Route 7 from the south and along the
7 western border.

8 A. Right.

9 Q. There is no trees that are currently buffering
10 that perimeter, those trees that are just on the line of
11 the perimeter. How do you explain those trees being able
12 to stand when there is no buffer?

13 A. There is probably all new growth. I mean that
14 those trees right there grew in the wind. And what I'm
15 talking about is if you take 27 acres out away, anything
16 that's in front of those has a potential to fall. They
17 are not used to the wind. The trees you're talking about
18 are.

19 Q. And while you were on the stand earlier you
20 mentioned that part of the issue of this neighborhood are
21 winds coming in from the west; is that correct?

22 A. In regards to what?

23 Q. In regards to the current effects being felt
24 by Ms. Harris at her house.

25 A. They do. They come from the west. Southwest.

1 Q. Do you understand that in this Docket none of
2 the trees to the west of Ms. Harris's property are
3 proposed to be cut?

4 A. Well the wind comes from there, it also comes
5 from the Welcoming Center which is southwest. I think
6 that's what I had there.

7 Q. In your testimony you mentioned the
8 clear-cutting that was done by VELCO, I believe.

9 A. Yes.

10 Q. What year was that?

11 A. I think that was 2011.

12 Q. And did -- was VELCO required to do any
13 mitigation on that site because of the clear-cutting?

14 A. They did.

15 Q. And do you understand or do you know what the
16 cost of that mitigation was to VELCO?

17 A. I believe it was 5,000.

18 Q. And do you understand the scope or the expense
19 of the Petitioner in this Docket is spending on
20 mitigation?

21 A. No, I don't. I've never received that
22 information.

23 Q. Okay. As part of your testimony which was
24 actually just corrected, you mentioned that the completion
25 of the Welcome Center resulted in an increase in noise. I

1 think you changed it from 10 fold to something else. I'm
2 trying to get a better understanding of how you reached
3 that conclusion.

4 At any time did you actually measure the noise
5 either before or after the construction of the Welcome
6 Center?

7 A. After it was completed how do I know the sound
8 increased?

9 Q. Did you measure the noise at the Welcome
10 Center or near the Welcome Center prior to construction?

11 A. I didn't measure it at all. I could hear
12 traffic going up and down.

13 Q. Okay. And did you measure it after
14 construction at all?

15 A. No. I could hear the increase.

16 Q. In general, would you describe the Apple Hill
17 neighborhood as being quiet or noisy or somewhere in
18 between?

19 A. The Apple Hill right now is somewhere in
20 between. And obviously we are concerned about the
21 increase in noise.

22 Q. And what about the wind in the neighborhood,
23 Ms. Harris has often described fierce winds or living in a
24 wind tunnel; is that accurate?

25 A. It's windy at her house. She is definitely

1 right now the most exposed along with a number of other
2 people there. And the only thing that buffers her
3 property at this point when the winds come from the
4 Welcoming Center is that 27 acres.

5 MR. MELONE: I don't have any further
6 questions.

7 MR. TOUSLEY: Is there any other
8 parties that have questions on cross?

9 MS. ELIAS: No.

10 MR. EINHORN: No.

11 MS. COLLIER: I don't have any.

12 MS. HARRIS: May I?

13 MR. TOUSLEY: Is there any redirect?
14 Do you have redirect?

15 MS. HARRIS: Yes.

16 MR. TOUSLEY: They would be based on
17 questions that would be asked in cross. They can't
18 be new.

19 MS. HARRIS: Yes. Thank you.

20 REDIRECT EXAMINATION

21 BY MS. HARRIS:

22 Q. So you say you didn't actually scientifically
23 measure the difference in the winds before and after the
24 Welcome Center was put up. But you -- so are you saying
25 that you're basing your expert testimony on your

1 experience of witnessing day-to-day the changes?

2 A. I'm basing that experience on what I feel when
3 I walk Willow Road. It's a path that is used by a lot of
4 people, especially me, when we walk our dogs. And when
5 the wind comes up over from the Welcoming Center that's
6 where you visually see the snow just drives right through
7 there. And the first thing that it hits is the 27 acres.

8 One of the things in the past 20 years when
9 you walk through there in the wintertime and the winds are
10 there, you kind of hurry through that area until you get
11 into the wooded area we are talking about clear-cutting.
12 That's my experience with that for 18 years.

13 Q. So to summarize, would you say that the
14 testimony you've offered is reliable and relevant in an
15 experiential way to honor your status as an expert?

16 A. Yes.

17 MS. HARRIS: That's all I have.

18 MR. TOUSLEY: Any other cross?

19 Questions for Mr. Carroll?

20 (No response.)

21 MR. TOUSLEY: Mr. Carroll, you may
22 stand down. Thank you.

23 THE WITNESS: Thank you much.

24 MR. TOUSLEY: Do we have any other
25 evidence to seek admission of?

1 (No response.)

2 MR. TOUSLEY: Great. I have been
3 looking for where I wrote down the schedule, and I
4 can't find it. If someone could help me refresh my
5 recollection. I knew it was in September. When are
6 the briefs due?

7 MS. HARRIS: The tenth.

8 MR. TOUSLEY: September tenth and
9 rebuttal briefs?

10 MS. ELIAS: 17th.

11 MS. HARRIS: 17th.

12 MR. TOUSLEY: And Proposal for Decision
13 was September 25; was that correct?

14 MR. WILSON: Yes.

15 MR. TOUSLEY: This has been a long
16 afternoon. I appreciate everybody's efforts and
17 patience throughout the process.

18 Do we have any other business to take
19 up before closing? I see a lot of heads shaking
20 negative uniformly from the parties.

21 MS. HARRIS: No.

22 MR. TOUSLEY: I'll say that for the
23 record.

24 MS. ELIAS: No.

25 MR. TOUSLEY: Therefore this hearing is

1 adjourned. Thank you very much.

2 (Whereupon, the proceeding was
3 adjourned at 6:55 p.m.)
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C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Technical Hearing re: Docket Number 8454 at the Third Floor Hearing Room, People's United Bank Building, 112 State Street, Montpelier, Vermont, on August 18, 2015, beginning at 2:30 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 140 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 21st day of August, 2015.

A rectangular box containing a handwritten signature in cursive script that reads "Kim U. Sears". The signature is written in dark ink on a light-colored background.

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