

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

CASE NO. 19-2659-NMP

PETITION OF BRADFORD SOLAR, LLC, FOR A  
CERTIFICATE OF PUBLIC GOOD, PURSUANT TO  
30 V.S.A. SECTIONS 248 AND 8010, AND  
COMMISSION RULE 5.100, AUTHORIZING THE  
INSTALLATION AND OPERATION OF A 500 KW  
SOLAR ELECTRIC GENERATION FACILITY IN  
BRADFORD, VERMONT --

June 26, 2020  
10:30 a.m.

---

Via GTM

Evidentiary Hearing held before the  
Vermont Public Utility Commission, via GoToMeeting, on  
June 26, 2020, beginning at 10:30 a.m.

P R E S E N T

HEARING OFFICERS: Andrew Flagg, Environmental Analyst  
Jake Marren, Staff Attorney

STAFF: Ann Bishop, Operations Director

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Also present:

Kevin Geiger

Marcey Carver

Ben Oxender

Phillip Foy, Esq.

Chad Nichols

Michael Buscher

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1 MR. FLAGG: Let's go on the record,  
2 please. This is an evidentiary hearing for Case No.  
3 19-2659-NMP, petition of Bradford Solar LLC for a  
4 Certificate of Public Good pursuant to 30 V.S.A.  
5 Sections 248 and 8010, commission Rule 5.100,  
6 authorizing the installation and operation of a 500-  
7 kilowatt solar electric generation facility in  
8 Bradford, Vermont.

9 My name is Andrew Flagg. I'm an  
10 environmental analyst for the Public Utility  
11 Commission. The commission has appointed me to be  
12 co-hearing officer for this proceeding along with  
13 commission staff attorney Jake Marren. Also with us  
14 today is Ann Bishop, operations director with the  
15 commission, who will be running our web-based  
16 platform.

17 This hearing will focus on issues  
18 concerning the project's potential impacts to orderly  
19 development and aesthetics pursuant to 30 V.S.A.  
20 Sections 248(b)(1) and (b)(5) respectively. If a  
21 party or participant intends on recording the hearing  
22 via video or audio, please indicate this when you  
23 provide your name for the court reporter.

24 We will start by taking appearances.  
25 So if you could please state your name and your

1 affiliation with this matter for the record.

2 Department?

3 MS. BENNETT: My name is Erin Bennett.  
4 I'm special counsel with the Department of Public  
5 Service, and with me is Ben Oxender, landscape  
6 architect with Trudell Consulting Engineers; and I  
7 have Jim Porter, director of public advocacy with the  
8 Department.

9 MR. FLAGG: Thank you. Town of  
10 Bradford.

11 MS. DINGLEDINE: This is Brooke  
12 Dingleline, and I'm representing the Town of Bradford  
13 planning commission and select board. And with me is  
14 the planning commission chair, Marcey Carver.

15 MR. FLAGG: Thank you. Two  
16 Rivers-Ottawaquechee Regional Commission?

17 MR. GEIGER: Good morning. This is  
18 Kevin Geiger. I am the Senior Planner for the Two  
19 Rivers-Ottawaquechee Regional Commission representing  
20 the regional commission today.

21 MR. FLAGG: Thank you. And Agency of  
22 Agriculture, Food and Markets?

23 MS. STONE: Good morning. This is  
24 Alison Milbury Stone of the Vermont Attorney  
25 General's office, on behalf of the Agency of

1 Agriculture, Food and Markets.

2 MR. FLAGG: Natural Resources Board?

3 MR. MEENAN: Evan Meenan, Associate  
4 General Counsel.

5 MR. FLAGG: And Bradford Solar.

6 MR. IARRAPINO: This is Anthony  
7 Iarrapino of Wilschek Iarrapino Law Office on behalf  
8 of Bradford Solar. I'm joined today here by Phillip  
9 Foy, the General Counsel of Bradford Solar as well as  
10 Mr. Nichols and Mr. Buscher, our witnesses for this  
11 proceeding.

12 MR. FLAGG: Thank you. Okay. So I  
13 note that the other party in the case, the Agency of  
14 Natural Resources, is not present at the hearing.  
15 Before going on the record we discussed what will  
16 happen at this remote hearing including a process for  
17 witnesses, their testimony and exhibits, and the  
18 order of cross examination.

19 Due to the COVID-19 pandemic, the  
20 commission is limiting in-person contact. As a  
21 result, the parties have agreed to conduct this  
22 hearing remotely. I would like to take a moment to  
23 confirm that all of the parties have consented to  
24 having a remote hearing. If anyone no longer  
25 consents to conducting this hearing remotely, you

1 must speak up now.

2 Are there any objections to conducting  
3 this hearing remotely? Department?

4 MS. BENNETT: No objection.

5 MR. FLAGG: Thank you. Town of  
6 Bradford?

7 MS. DINGLEDINE: No objection.

8 MR. FLAGG: Two Rivers-Ottawaquechee  
9 Regional Commission?

10 MR. GEIGER: No objection.

11 MR. FLAGG: Agency of Agriculture, Food  
12 and Markets?

13 MS. STONE: No objection.

14 MR. FLAGG: Natural Resources Board?

15 MR. MEENAN: No objections. And thank  
16 you for asking.

17 MR. FLAGG: And Bradford Solar.

18 MR. IARRAPINO: No objection.

19 MR. FLAGG: Okay. Hearing no  
20 objections, let's talk logistics. We are using the  
21 web-based platform GoToMeeting. During this hearing  
22 we will be using some special hearing procedures  
23 uniquely related to using a web-based platform. I  
24 will read them now for the benefit of the parties and  
25 to ensure that we have them on the record.

1 Parties may raise objections to these  
2 procedures either now or at any point during the  
3 hearing. In addition to formal objections, parties  
4 may also raise concerns at any time if the platform  
5 is not performing as expected or if you're having  
6 difficulty. We expect that this hearing will proceed  
7 more slowly than usual, and we may need to stop along  
8 the way to resolve technical issues as we are able.  
9 We also recognize that because we are all in remote  
10 locations, such as in our homes, there may be  
11 unexpected interruptions at those locations.  
12 Hopefully my two barking dogs won't get in the way.

13 Representatives in this case should  
14 keep their cameras on during the entire hearing. It  
15 is very helpful for us to see you, particularly when  
16 you are raising objections or questioning witnesses.  
17 Witnesses should leave their cameras off until they  
18 are testifying, at which time they should turn them  
19 on. Even with your own camera turned off, you will  
20 still be able to see everyone who has their cameras  
21 turned on. Commission staff may choose whether to  
22 leave their cameras on or off. My preference is that  
23 people who are not actively participating in the  
24 proceeding leave their cameras off so that the  
25 pictures of participants will be larger.

1 Commission staff will not mute anyone's  
2 microphone, whether a party, a participant or a  
3 member of the public. This means that you should  
4 keep yourself on mute unless you are speaking. That  
5 way we can minimize background noises which can be  
6 very disruptive.

7 Each time you begin talking, please  
8 identify yourself by name for the court reporter. If  
9 your Internet connection cuts out, please try to  
10 rejoin the GoToMeeting or call into the hearing using  
11 the GoToMeeting telephone number that was provided in  
12 the hearing notice. If the audio or video from the  
13 hearing is cut out, let me know when you are able to  
14 rejoin, and I will summarize what happened, and we  
15 will revisit any questions in which an objection may  
16 have been allowed, including any admission of an  
17 exhibit.

18 If you are unable to call in or rejoin,  
19 notify the platform manager immediately via email, or  
20 the clerk's office via email or phone, and we will  
21 pause the hearing until the issue is resolved. If it  
22 cannot be resolved, we will reschedule the hearing.

23 Similarly, if at any point any of you  
24 becomes aware of another party, participant, member  
25 of the public having trouble accessing the video or

1 audio feeds of this remote hearing, please let us  
2 know immediately. We will pause the hearing until  
3 the issue is resolved. If it cannot be resolved, we  
4 will reschedule the hearing.

5 It's very important that we avoid  
6 talking over one another. Of course, if you have an  
7 objection you must raise it at the moment the  
8 objection arises. That type of interruption is  
9 allowed and required. When objections or issues are  
10 raised, Mr. Marren will ask each representative one  
11 by one whether they have a response.

12 We will go in the following order:  
13 Department, Agency of Natural Resources -- excuse me  
14 -- they are not participating. Department, Town of  
15 Bradford, Two Rivers-Ottawaquechee Regional  
16 Commission, Bradford Solar. I'm unclear whether or  
17 not -- if the Agency of Agriculture, Food and Markets  
18 is going to be making comments, so we can call if you  
19 do.

20 MS. STONE: Okay. Thank you.

21 MR. FLAGG: All right. Very good.  
22 Please wait until Mr. Marren calls on you to respond,  
23 and answer verbally so we have your response on the  
24 record. If you are asking questions of witnesses, we  
25 will make you the presenter in GoToMeeting. You

1 should share cross exhibits on your screen by  
2 clicking the share screen icon. Please verbally  
3 identify the cross exhibit you're showing to the  
4 court reporter. For example, clearly state I am  
5 showing Bradford Solar Cross 1.

6 When you are done with the exhibit,  
7 please click stop sharing screen. Whenever you are  
8 sharing your screen, I advise you to close out of any  
9 unnecessary application such as email to avoid  
10 notifications being visible to others in the hearing.

11 Does anyone have any questions or  
12 concerns about those procedures? Department? Any  
13 concerns? Does the Department have any concerns  
14 about the procedures that I just read?

15 MS. BENNETT: No concerns. Thank you.

16 MR. FLAGG: Thank you. And Town of  
17 Bradford, do you have any concerns --

18 MS. DINGLELINE: No.

19 MR. FLAGG: -- about these procedures?

20 MS. DINGLELINE: No. Thank you. I  
21 have no concerns.

22 MR. FLAGG: Thank you. And Two Rivers-  
23 Ottauquechee, do you have any concerns about the  
24 procedures?

25 MR. GEIGER: No, Andrew. But I wasn't

1 clear if I should use my video on the entire time or  
2 just when I'm participating in some way.

3 MR. FLAGG: I think it would be good,  
4 since you're a party to the case, that you remain  
5 active.

6 MR. GEIGER: Okay.

7 MR. FLAGG: You can be on. And the  
8 Agency of Agriculture, Food and Markets?

9 MS. STONE: No concerns. Thank you.

10 MR. FLAGG: Thank you. And Bradford  
11 Solar, do you have any concerns?

12 MR. IARRAPINO: No. Thank you, Mr.  
13 Hearing Officer.

14 MR. FLAGG: Okay. With that covered,  
15 Mr. Marren will now begin the substantive portion of  
16 the hearing.

17 MR. MARREN: All right. One other  
18 procedural thing before we start. If any party or  
19 participant or member of the public who is watching  
20 this hearing right now is recording this hearing,  
21 either through audio or visual, please let us know  
22 now. If we were in open stream right now, people  
23 would see that they are being filmed, and we think  
24 they deserve the same courtesy to know that they are  
25 being recorded right now. So if anyone is recording

1 please say so now.

2 (No response.)

3 MR. MARREN: Okay. I assume that is  
4 not happening. We do have a transcript going.

5 MS. CARVER: I'm recording.

6 MR. MARREN: Okay. Thank you, Ms.  
7 Dingleline. Ms. Dingleline is recording. Okay.

8 THE COURT REPORTER: I believe that was  
9 Ms. Carver speaking.

10 MS. CARVER: Yes.

11 MR. MARREN: Thank you. Okay.

12 MR. FLAGG: At this time our first  
13 witness of the day is Chad Nichols. Mr. Iarrapino,  
14 if you would introduce the witness, please.

15 MR. IARRAPINO: Bradford Solar, the  
16 Petitioner, would like to call Chad Nichols to the  
17 stand. Chad, that means you need to please turn on  
18 your camera; right?

19 MR. NICHOLS: I believe camera and  
20 audio are on. Can everyone hear and see me?

21 MR. MARREN: Yes, sir.

22 MR. NICHOLS: Great. Hello.

23 MR. MARREN: Mr. Flagg.

24 MR. FLAGG: Good morning, Mr. Nichols.  
25 Please raise your right hand.

1 CHAD NICHOLS

2 Having been duly sworn, testified  
3 as follows:

4 THE WITNESS: I do.

5 MR. FLAGG: Thank you.

6 DIRECT EXAMINATION

7 BY MR. IARRAPINO:

8 Q. Good morning, Mr. Nichols. Will you please  
9 state your name for the record?

10 A. Chad Nichols.

11 Q. And what is your position with the Petitioner?

12 A. I work for Encore Renewable Energy. We are  
13 hired by Bradford Solar to develop a solar array on their  
14 property.

15 Q. Very good. And are you the Mr. Chad Nichols  
16 that prepared the prefiled testimony and exhibits listed  
17 under your name on the document Exhibit Joint 1 consisting  
18 of several sets of prefiled and rebuttal testimony and  
19 accompanying exhibits?

20 A. I am.

21 Q. And is it your testimony that those exhibits  
22 are true and accurate to the best of your knowledge?

23 A. It is.

24 MR. IARRAPINO: I would like to at this  
25 time move the admission of the prefiled testimony and

1 exhibits listed under Mr. Nichols' name on the table  
2 that is part of Exhibit Joint 1.

3 MR. MARREN: All right. Are there any  
4 objections? I'll start with the Department.

5 MS. BENNETT: No objection from the  
6 Department. Thank you.

7 MR. MARREN: Town of Bradford?

8 MS. DINGLELINE: Yes. I have two  
9 objections. The first would be to the rebuttal/  
10 surrebuttal prefiled testimony of Mr. Nichols that  
11 was dated April 10 and revised two days ago. And  
12 also the offer letter that's Exhibit BS-CDN-12. And  
13 our settlement negotiations which are precluded from  
14 being entered into evidence in order to encourage  
15 people to be open and available to try to resolve  
16 those issues. So it's kind of shocking that this  
17 would have been put into evidence since I don't even  
18 know what it's relevant to.

19 I think that it does not relate to  
20 orderly development. This has to do with whether  
21 somebody's going to pay the equivalent of a  
22 single-family home sewage bill for the year. So  
23 unless it has some germane ability to in any way shed  
24 light on whether orderly development in the Town  
25 would or wouldn't be taking place, I think it's

1 irrelevant. But it certainly is objectionable under  
2 Rule 408 as negotiations and discussions that should  
3 never be revealed.

4 MR. MARREN: Thank you for explaining  
5 the basis of your objection on the letter. Are you  
6 objecting to portions of the rebuttal/surrebuttal  
7 testimony that refer to that letter? Is that what  
8 you find objectionable about the testimony?

9 MS. DINGLELINE: Yeah. I think that's  
10 basically the content of the surrebuttal/rebuttal.

11 MR. MARREN: Okay. Then I'll ask for a  
12 response from Mr. Iarrapino.

13 MR. IARRAPINO: Thank you, Mr. Hearing  
14 Officer Marren. Give me one minute.

15 MS. DINGLELINE: And while Anthony's --

16 MR. IARRAPINO: No. I'm ready to meet  
17 the objection now. So I think this raises a question  
18 of what is relevant to orderly development of the  
19 region. The Town has certainly testified and  
20 complained that development of this lot for renewable  
21 energy, which would not diminish the available sewer  
22 capacity in the commercial district, but also would  
23 not result in the Town earning any water and sewer  
24 fees from development of this lot, the Town has  
25 complained of that. And if that is relevant, the

1 door has been opened to the extent to which the  
2 project is going to be able to mitigate the alleged  
3 impact by virtue of the Town not being able to  
4 collect water and sewer fees.

5 So certainly the Town has -- if that is  
6 relevant, which we would say is questionable, we  
7 haven't previously objected, we are meeting the  
8 evidence where we find it. We do not agree that it  
9 is a compromise negotiation. It has been introduced  
10 as part of the project, as the commission may well be  
11 aware of. Projects often evolve, and the commission  
12 has encouraged petitioners to work with  
13 municipalities once a petition is filed, obviously  
14 prior to a petition being filed, although we did not  
15 have extensive comments or any comments as far as I  
16 can tell during the 45-day period.

17 So the Petitioner represents that this  
18 offer is still on the table as part of the project.

19 MS. BISHOP: Excuse me, Mr. Hearing  
20 Officer. We have a note that a member of the  
21 planning commission has been having difficulty  
22 entering the meeting trying to listen, so could we  
23 pause the meeting while we try and address those  
24 issues?

25 MR. MARREN: Thank you, Ms. Bishop.

1 Yes, we will take a brief break here while we wait  
2 for that. I'm going to use that time to dig up Rule  
3 408. So thank you.

4 MS. BISHOP: Ms. Carver, are you able  
5 to -- can you unmute yourself please?

6 (Recess was taken.)

7 MR. MARREN: Mr. Iarrapino, had you  
8 concluded your remarks responding to the objection?

9 MR. IARRAPINO: I had, Mr. Marren.

10 MR. MARREN: Okay. Does the Department  
11 or any other party have comments on the objection?

12 MS. DINGLELINE: If no one else does,  
13 Brooke Dingleline, I do.

14 MR. MARREN: All right. I've struggled  
15 with this issue even before the hearing because we  
16 did notice in discovery there were some letters that  
17 looked like settlement offers that had been exchanged  
18 and that were filed in ePUC.

19 And my understanding of Rule 4.08 --  
20 not Rule 4.08. Excuse me. Rule 408 is that it's  
21 really a relevancy issue. Just become someone's  
22 willing to offer a certain amount of money or to do  
23 something just because they want to avoid expensive  
24 litigation or they want to avoid an adverse outcome  
25 of the litigation, doesn't mean that they admit that

1 they owe a certain amount of money or that a certain  
2 action is due to another party.

3 But given that this letter -- this  
4 letter is a letter from Bradford Solar to the Town.  
5 And it's being offered by Bradford Solar basically as  
6 part of the project. It's part of their, you know,  
7 their proposal just like they offer to plant trees,  
8 they could have offered to create a special benefit  
9 fund for the Town as part of their proposal.

10 I'm going to allow this. It's really  
11 -- my decision here is based on the reason why it's  
12 being offered. If we had been offering settlement  
13 letters for the purpose of proving that one party  
14 concedes that they owe a certain amount of money or  
15 for proving that the project will have a certain  
16 amount of damages, I don't think that would be  
17 appropriate. But it seems that in this case, this is  
18 a mitigating step that the Petitioner is offering,  
19 and as part of their proposal.

20 And so while I definitely understand  
21 Ms. Dingleline's citation to Rule 408, because the  
22 Rules of Evidence are, you know, relaxed in our  
23 proceedings, and we do want to encourage petitioners  
24 to change their projects or their proposals in  
25 response to concerns raised by parties, we are going

1 to allow this in.

2 MS. DINGLEDINE: May I just respond?

3 This is Brooke Dingledine.

4 MR. MARREN: You may.

5 MS. DINGLEDINE: I understand and I  
6 appreciate the hearing officer's position on it. But  
7 I do want to clear one thing up on the record. And  
8 that is this notion that there was a complaint about  
9 that or some demand by the Town that the sewer  
10 allocation be paid is false. And I challenge  
11 somebody to point it out in the record to me. Now  
12 that may have nothing to do with your objection,  
13 because you may allow them to put this in anyways in  
14 mitigation, and I understand that. But I do not want  
15 it to be assumed now somehow that this information  
16 was requested, required, or even in any way  
17 proactively thought by the Town, because that is  
18 incorrect to what I have been told. And I have not  
19 seen it anywhere. Thank you.

20 MR. MARREN: Thank you, Ms. Dingledine.

21 Are there any -- so we resolved the Town's objection  
22 to the rebuttal/surrebuttal prefiled testimony of  
23 Chad Nichols and also to Exhibit BS-CDN-12.

24 Are there any other objections to any  
25 other of Mr. Nichols' prefiled testimonies or

1 exhibits?

2 MS. DINGLEDINE: This is Brooke  
3 Dingledine.

4 MR. MARREN: Yes.

5 MS. DINGLEDINE: I don't know if it's  
6 an objection. I just wanted to be sure because we  
7 were trying to figure out all the exhibits yesterday  
8 with the new numbers. But the decommissioning plan  
9 that's Exhibit BS-CDN-8, was that just a one-page  
10 document with like a paragraph on it? That was all  
11 that it was? Or was there like something that went  
12 with that page?

13 MR. MARREN: We will turn to Mr.  
14 Iarrapino. Has she described the document correctly?

15 MR. IARRAPINO: Please give me a  
16 moment, Mr. Hearing Officer, to look at our exhibits.

17 MS. DINGLEDINE: It's number 8,  
18 Anthony.

19 MR. IARRAPINO: Thank you, Ms.  
20 Dingledine. So it was not one of the exhibits that  
21 were corrected, right? You're referring to the  
22 original exhibit?

23 MS. DINGLEDINE: It doesn't show a  
24 correction or anything.

25 MR. IARRAPINO: Right.

1 MS. DINGLELINE: I mean the thing was  
2 it looked like Roman Numeral 1 and 2, and then I  
3 wasn't sure if there was more to it.

4 MR. IARRAPINO: May I have a moment to  
5 confer with my clients, Mr. Hearing Officer?

6 MR. MARREN: Of course.

7 MR. IARRAPINO: Yes. The exhibit as  
8 filed is correct. As the commission may know,  
9 decommissioning -- we believe the exhibit meets the  
10 minimal requirements of the decommissioning rule for  
11 net metering projects.

12 MR. MARREN: Thank you. All right. So  
13 we have established that we do have the correct  
14 document uploaded in ePUC, and that's marked and  
15 reflected correctly on Joint 1.

16 Ms. Dingleline, do you have any other  
17 objections to Mr. Nichols' prefiled testimonies or  
18 exhibits?

19 MS. DINGLELINE: No thank you.

20 MR. MARREN: Okay. Then they are  
21 admitted as marked on Joint 1 subject to the proviso  
22 to the extent there is any inconsistent use of dots  
23 or hyphens in the markings and numbering of the  
24 exhibits, we understand that those inconsistencies  
25 are immaterial.

1 (The Prefiled Testimony of Chad Nichols  
2 was admitted into the record.)

3  
4 Prefiled Testimony of Chad Nichols

5 <http://epuc.vermont.gov/?q=downloadfile/360286/142816>

6 Revised

7 <http://epuc.vermont.gov/?q=downloadfile/415388/142816>

8 First Supp. Prefiled Testimony of Chad Nichols

9 <http://epuc.vermont.gov/?q=downloadfile/371374/142816>

10 Revised

11 <http://epuc.vermont.gov/?q=downloadfile/415392/142816>

12 Second Supp. Prefiled Testimony of Chad Nichols

13 <http://epuc.vermont.gov/?q=downloadfile/375649/142816>

14 Revised

15 <http://epuc.vermont.gov/?q=downloadfile/415396/142816>

16 Third Supp. Prefiled Testimony of Chad Nichols

17 <http://epuc.vermont.gov/?q=downloadfile/379342/142816>

18 Revised

19 <http://epuc.vermont.gov/?q=downloadfile/415400/142816>

20 Rebuttal/Surrebuttal Prefiled Testimony of Chad Nichols

21 <http://epuc.vermont.gov/?q=downloadfile/406156/142816>

22 Revised

23 <http://epuc.vermont.gov/?q=downloadfile/415404/142816>

24

25

1 (Exhibits marked BS-CDN-1 through  
2 BS-CDN-5, 5.2, 6 through 17 were admitted into the  
3 record.)

4  
5 Exhibit BS-CDN-1

6 <http://epuc.vermont.gov/?q=downloadfile/360287/142816>

7 Exhibit BS-CDN-2

8 <http://epuc.vermont.gov/?q=downloadfile/360288/142816>

9 Revised

10 <http://epuc.vermont.gov/?q=downloadfile/415412/142816>

11 Exhibit BS-CDN-3

12 <http://epuc.vermont.gov/?q=downloadfile/360289/142816>

13 Exhibit BS-CDN-4

14 <http://epuc.vermont.gov/?q=downloadfile/360290/142816>

15 Exhibit BS-CDN-5

16 <http://epuc.vermont.gov/?q=downloadfile/360291/142816>

17 Revised

18 <http://epuc.vermont.gov/?q=downloadfile/415416/142816>

19 Exhibit BS-CDN-5.2

20 <http://epuc.vermont.gov/?q=downloadfile/360292/142816>

21 Revised

22 <http://epuc.vermont.gov/?q=downloadfile/415420/142816>

23 Exhibit BS-CDN-6

24 <http://epuc.vermont.gov/?q=downloadfile/360293/142816>

25 Revised

<http://epuc.vermont.gov/?q=downloadfile/415424/142816>

1  
2 Exhibit BS-CDN-7  
3 <http://epuc.vermont.gov/?q=downloadfile/360294/142816>  
4 Exhibit BS-CDN-8  
5 <http://epuc.vermont.gov/?q=downloadfile/360295/142816>  
6 Exhibit BS-CDN-9  
7 <http://epuc.vermont.gov/?q=downloadfile/360296/142816>  
8 Revised  
9 <http://epuc.vermont.gov/?q=downloadfile/415428/142816>  
10 Exhibit BS-CDN-10  
11 <http://epuc.vermont.gov/?q=downloadfile/371375/142816>  
12 Revised  
13 <http://epuc.vermont.gov/?q=downloadfile/415432/142816>  
14 Exhibit BS-CDN-11  
15 <http://epuc.vermont.gov/?q=downloadfile/379343/142816>  
16 Revised  
17 <http://epuc.vermont.gov/?q=downloadfile/415436/142816>  
18 Exhibit BS-CDN-12  
19 <http://epuc.vermont.gov/?q=downloadfile/406157/142816>  
20 Revised  
21 <http://epuc.vermont.gov/?q=downloadfile/415440/142816>  
22 Exhibit BS-CDN-13  
23 <http://epuc.vermont.gov/?q=downloadfile/398958/142816>  
24 Revised  
25 <http://epuc.vermont.gov/?q=downloadfile/415445/142816>

1 Exhibit BS-CDN-14  
2 <http://epuc.vermont.gov/?q=downloadfile/398959/142816>  
3 Revised  
4 <http://epuc.vermont.gov/?q=downloadfile/415449/142816>  
5 Exhibit BS-CDN-15  
6 <http://epuc.vermont.gov/?q=downloadfile/398960/142816>  
7 Revised  
8 <http://epuc.vermont.gov/?q=downloadfile/415454/142816>  
9 Exhibit BS-CDN-16  
10 <http://epuc.vermont.gov/?q=downloadfile/398961/142816>  
11 Revised  
12 <http://epuc.vermont.gov/?q=downloadfile/415458/142816>  
13 Exhibit BS-CDN-17  
14 <http://epuc.vermont.gov/?q=downloadfile/398962/142816>  
15 Revised  
16 <http://epuc.vermont.gov/?q=downloadfile/415462/142816>

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1 MR. MARREN: And so with that, Ms.  
2 Dingledine, I'm going to ask the platform manager to  
3 make you the presenter. And you may begin your cross  
4 examination.

5 CROSS EXAMINATION

6 BY MS. DINGLEDINE:

7 Q. Mr. Nichols, there you are. Hi.

8 A. Hi.

9 Q. My name is Brooke Dingledine. And I represent  
10 the Town of Bradford. How are you today?

11 A. Good. How are you?

12 Q. I'm fine. Thank you. Just I have some  
13 questions for you, and I'll try to move very quickly  
14 through these issues. One of the things that I got a  
15 little bit confused about, and I was wondering if you  
16 could explain and clarify, is with regard to Route 5 and  
17 Route 25 and the status that they are in terms of, you  
18 know, scenic corridors, or they have special designation.

19 There seem to be inconsistency in the  
20 materials about that issue, and whether or not because of  
21 those statuses and because of the closeness and proximity  
22 to the actual roads and that they are visible. Could you  
23 explain whether or not, A, you think it's an adverse or  
24 undue adverse, and with specific reference to the status  
25 of those roads or scenic corridors.

1           A.       Yes. This is Chad Nichols. Regarding any  
2 aesthetic, I'll defer to our expert there. But I'm not  
3 aware of nor is it my understanding that we were aware of  
4 at the time of filing any special designation for that  
5 corridor. So we would view the standard aesthetic rules  
6 for this parcel in place.

7           Q.       Okay. So all right. Let me ask it to you  
8 this way. In your -- let me make sure I'm calling it the  
9 right thing.

10                   In your prefiled testimony dated June 28, 1990  
11 -- I mean 2019, on page 10 of that document, you indicated  
12 that the project will not cause adverse impacts on public  
13 roadways or on other types of municipal or state services  
14 or infrastructure.

15                   And then the reason why I got confused was  
16 when I was reading the aesthetic review it said the  
17 complete opposite on page 6 of the report. The other  
18 expert -- or the expert, Mr. Boyle or Buscher; Buscher.  
19 He said that "the area near the project includes a variety  
20 of land uses, many of which are commercial or industrial,  
21 the use would generally be limited to locations south of  
22 the project including unobstructed views from Vermont 25  
23 -- I'm sorry -- Vermont Route 25. Route 25 is an  
24 important entrance into Bradford. As a result of  
25 visibility from Route 25, including views from Saddleback

1 Road and adjacent properties, the project could be  
2 considered to have an adverse impact to the aesthetics or  
3 natural and scenic beauty."

4 So would you defer to his opinion since he has  
5 more expertise in that area versus your testimony?

6 A. I believe that was corrected. I'll have to  
7 defer to Mr. Iarrapino. The typo that you're referring to  
8 in my testimony.

9 Q. Oh, did I not catch that? Okay. So let me  
10 just cut to the chase.

11 In other words, you do believe there is an  
12 adverse impact in terms of the viewing public who travels  
13 Route 25, Route 5, in terms of when they can see and/or  
14 are adversely impacted by the view shed if this project  
15 were going to go in that location; correct?

16 A. If you could just give me one moment, I've got  
17 my testimony here to the page that you're referring to,  
18 before I respond. Yeah, I believe the correction was that  
19 it was not an undue impact, and yes, I defer to complement  
20 that with Mr. Buscher's report.

21 Q. Okay. Let me just go over it again with you.  
22 So in your opinion, the first step of the Quechee analysis  
23 there is an undue -- I mean -- I'm sorry. Strike that.  
24 Let me start over.

25 Under the Quechee analysis with regard to the

1 viewing of the site from Route 25 and 5, you do believe  
2 that the first step of Quechee there is an adverse impact;  
3 correct?

4 A. My understanding is that the aesthetic report,  
5 and therefore if the project as a whole is undue impact on  
6 the aesthetics from any vantage point, that that's taken  
7 as a whole via multiple characteristics, categories and  
8 requirements. I'm not familiar with the specific line in  
9 my testimony that you're asking about.

10 Q. All right. Let me ask you this. So in terms  
11 of the Petitioner's application, they are relying on Mr.  
12 Buscher's testimony with regard to aesthetics in the  
13 Quechee analysis; is that fair to say?

14 A. Yes. That's fair to say.

15 Q. Okay. Then I'll move on. Thank you. So now  
16 I'm looking at your August 12 supplemental prefiled  
17 testimony which is listed as first supplemental on the  
18 stipulated exhibit. And I wanted to ask you about  
19 question 8, where the question is that you stated there  
20 were no above-ground historic sites that would be  
21 impacted, the testimony provides no basis for the  
22 Petitioner's personal knowledge regarding above-ground  
23 historic sites.

24 And that was asking you to provide some of  
25 that information. Do you remember providing more about

1 that?

2 A. I do not. Could you restate the question?

3 Q. Well --

4 A. I didn't totally follow what you were asking  
5 me.

6 Q. Yeah. What I was trying to understand is what  
7 is the basis of information or expertise that was used in  
8 determining that there were no above-ground historic sites  
9 that needed protection? Because I'm unclear as to who is  
10 the expert in that area and what information they were  
11 looking at.

12 In the August first supplemental prefiled  
13 testimony that you put in, your answer to number 8 was  
14 "Petitioner reviewed public and available data bases and  
15 consulted with the Department of Historic Preservation  
16 regarding its conclusion." And then you confirmed it.

17 So I was wondering if you folks had your own  
18 expert or you were just working in conjunction with the  
19 Department in terms of coming to those conclusions.

20 A. Let me, if I could, just have a minute to pull  
21 that up. I apologize. I wasn't expecting to discuss the  
22 historical. But the -- the typical process is, yes, we  
23 work with available resources and consult with the  
24 Department on those findings. And my understanding, and I  
25 need to confirm that there was no objection, that that was

1 confirmed, that there were no standing historical  
2 structures you're referring to.

3 Q. Thank you. One other question from that  
4 filing, and it was question number 8. Your answer -- it  
5 was talking again about -- the question was "describe the  
6 land upon which Bradford Solar proposes to install the  
7 project."

8 And the last sentence of your answer says,  
9 "The site is visible from Waits River Road and possibly  
10 from U.S. Route 2."

11 Do you agree with me that it definitely is  
12 visible and significantly so from Route 5? U.S. Route 5?

13 MR. IARRAPINO: I'm going to object.

14 Excuse me. I'm going to object to that as a compound  
15 question. The first part of the question was about  
16 visibility. The second question was a value judgment  
17 about the view shed. Can I have it rephrased,  
18 please?

19 BY MS. DINGLEDINE:

20 Q. Is it accurate to say that possibly it's  
21 visible? Is that an accurate statement?

22 A. I'm sorry. You mentioned Route 2, and it  
23 confused me. The project sits near the corner of 25 and  
24 5.

25 Q. I'm sorry if I said 2. I meant 5. Route 5.

1 Can you see the solar array project site from Route 5?

2 That's my question.

3 A. My understanding is very minimal, if any, from  
4 Route 5.

5 Q. And if your aesthetics expert, Mr. Buscher,  
6 disagrees with you, should we defer to him on that?

7 A. I'm not saying there is no visibility, but we  
8 can definitely consult with him on that.

9 Q. Okay. I was really just trying to get it  
10 clear, because he had a difference of opinion on the other  
11 route. So let me -- one other issue that I wanted to ask  
12 you about from that same testimony was question 31  
13 regarding development affecting public investments. And  
14 it indicated that that criteria is conditionally waived  
15 pursuant to PUC rule. And then you said, "However, the  
16 project does not involve the surrounding area outside of  
17 the limited impacts associated with transportation  
18 identified herein that may occur during the temporary  
19 construction period. There are no public investments  
20 located in the area that would be impacted by the  
21 project."

22 Wouldn't you agree with me that the whole  
23 sewer system that has been constructed, and that  
24 infrastructure at great capital investment, would be a  
25 public investment in that area because it actually serves

1 all of those lots, and that was the whole idea that the  
2 Town wanted to drive retail to that area. We had to have  
3 it as a gateway, so they wanted to invest in the  
4 infrastructure of the sewage system?

5 MR. IARRAPINO: I'm sorry. Could you  
6 clarify which date testimony? You said question  
7 number 31 on which date? I apologize.

8 THE WITNESS: I'm trying to answer  
9 while finding exactly what you're talking about.  
10 Thank you.

11 BY MS. DINGLEDINE:

12 Q. This is -- did I switch back? This is June  
13 28, 2019. I'm sorry. I skipped back to the prefiled  
14 testimony. I really apologize. I didn't realize I did  
15 that.

16 MR. IARRAPINO: So number 31, you're  
17 saying, Ms. Dingledine?

18 MS. DINGLEDINE: I don't know what 31  
19 is. Oh, question 31. I'm sorry. I thought we were  
20 still talking about the exhibit. Yes. Development  
21 affecting public investments. Question 31.

22 BY MS. DINGLEDINE:

23 Q. Wouldn't you agree with me that the sewer  
24 plant infrastructure is a public investment that serves  
25 this area?

1 MR. IARRAPINO: I'm going to have to  
2 object to the question on relevance grounds. She is  
3 asking his testimony about a criterion that's been  
4 conditionally waived. Can we connect it to the  
5 subject matter of today's hearing?

6 MS. DINGLELINE: It does relate to the  
7 position of the Town in terms of their planning and  
8 their investment in public infrastructure, public  
9 investments. I understand this waiver, but you have  
10 testified, the witness has testified that there are  
11 no public investments.

12 We are meeting the evidence that you  
13 put in because this affects the other criteria on  
14 orderly development. And to leave a factual --  
15 misrepresentation of fact in here, at least we  
16 believe it to be so, because there is a heck of a lot  
17 of money from the public that's been invested in this  
18 infrastructure, we think that that should not be  
19 allowed to stand in the evidence.

20 MR. IARRAPINO: I believe that the  
21 question, if you look at the structure of the  
22 testimony and where the question arises, the question  
23 was being asked and answered in the context of the  
24 PUC's traditional analysis which also goes out of Act  
25 250 on development affecting public investment, which

1 is a waived criteria.

2 So perhaps -- perhaps the question  
3 could be rephrased with reference to testimony on  
4 orderly development of the region.

5 MS. DINGLELINE: It's just --

6 MR. MARREN: I'll jump in here.

7 Bradford Solar's point is well taken. This hearing  
8 is limited to the issues of orderly development and  
9 aesthetics. Ms. Dingleline, I think we can get at  
10 this very same information working within that  
11 framework by asking Mr. Nichols is the project  
12 located near the public sewer. And that then when --  
13 using his answer you're free to brief that his  
14 testimony is not accurate, if you believe it's not to  
15 be so.

16 But we don't need to have a debate  
17 about public investments right now when we can just  
18 stick to the facts, and then you can argue the  
19 significance of the fact in your brief.

20 MS. DINGLELINE: Very good. I  
21 appreciate that. Thank you, Mr. Marren.

22 Let me just double check that I got  
23 everything. That's fine. That's all I have. Thank  
24 you.

25 MR. MARREN: Okay. That concludes the

1 Town's cross examination of Mr. Nichols. We will  
2 start with Mr. Flagg, if you would like to ask your  
3 questions. And then we will see if any other party  
4 has questions, and then we will go back to Mr.  
5 Iarrapino for redirect. So --

6 MR. FLAGG: Okay. Thank you. Waiting  
7 to be able to present my -- or share my screen.

8 But in the meantime, Mr. Nichols, can  
9 you please turn to page 9 of your prefiled testimony.

10 MS. BISHOP: Mr. Flagg, you are now the  
11 presenter.

12 MR. FLAGG: Thank you.

13 MR. IARRAPINO: I'm sorry, Mr. Hearing  
14 Officer, are you referring to the 6/28/19?

15 MR. FLAGG: June 28, 2019. Let me know  
16 when you're there.

17 MR. IARRAPINO: Thank you, sir.

18 THE WITNESS: Yes, this is Chad  
19 Nichols. I'm viewing page 9 of my original prefiled  
20 testimony.

21 MR. FLAGG: Thank you. I just wanted  
22 to clarify that for the purpose of providing an  
23 answer to question 18, you state, "The Bradford town  
24 plan, parentheses, quote, town plan, close quote,  
25 parentheses, adopted January 28, 2016, and the Two

1 Rivers-Ottawaquechee Regional Energy Plan,  
2 parentheses, quote, regional plan, close parentheses,  
3 adopted July 26, 2017, both generally support local  
4 and renewable energy production;" is that correct?

5 THE WITNESS: That is correct. That's  
6 my response. Yes.

7 MR. FLAGG: Thank you. So I don't mean  
8 to be picky, but isn't the plan that you have defined  
9 as the regional plan and provided excerpts from in  
10 your Exhibit BS-CDN-4 actually called the Regional  
11 Energy Implementation Plan; is that correct?

12 THE WITNESS: I would need a minute to  
13 confirm that. Are you planning to present -- if  
14 you're just referring to what the official title of  
15 that plan is, it may take me a minute to find that.  
16 If you were planning on showing me, I would agree to  
17 that typo if the word was omitted.

18 MR. FLAGG: Okay. Let me go to --

19 THE WITNESS: Not to make it  
20 complicated. I just think that may be faster.

21 MR. FLAGG: Oh. Let's see. Can you  
22 see my screen? Are you able to see my screen, Mr.  
23 Nichols?

24 THE WITNESS: I do not yet.

25 MR. MARREN: You're not sharing your

1 screen, Andy.

2 MR. FLAGG: Okay. How about now?

3 THE WITNESS: Yes. I can see your  
4 screen.

5 MR. FLAGG: So the question again was  
6 if this exhibit and the plan name is actually  
7 Regional Energy Implementation Plan; is that correct?

8 THE WITNESS: Yes. That appears to be  
9 the case.

10 MR. FLAGG: So on page 10 of your  
11 prefiled testimony filed June 28, 2019, and  
12 apparently using the same definition of quote,  
13 regional plan, unquote, you used in answering  
14 question 18, you cite several applicable sections of  
15 both the regional and town plans and state, "Both  
16 specifically the regional plan states its two overall  
17 goals to goal A, meet 25 percent of remaining energy  
18 need from renewables by 2025, 40 percent by 2035 and  
19 90 percent by 2050. Meet end use sector goal 67  
20 percent renewable electric by 2025. And also  
21 increase the amount of renewable energy generated in  
22 the Two Rivers-Ottawaquechee regional region, regional  
23 commission region to 163 megawatts by 2050."

24 Then you state, "In addition to the  
25 goals set out by the regional plan, the Bradford town

1 plan has a goal of, quote, the Town of Bradford  
2 supports responsibly sited and developed renewable  
3 energy projects within its boundaries."

4 And then you cite Exhibit BS-CDN-4; is  
5 that correct?

6 THE WITNESS: That is correct, my  
7 response.

8 MR. FLAGG: So looking at page 43.  
9 Sorry. It would be on page 43. Is this the place in  
10 this exhibit that you are citing to that says the  
11 Town of Bradford supports reasonably sited and  
12 developed renewable energy projects within its  
13 boundaries?

14 THE WITNESS: Give me one minute to  
15 confirm. Yes. I do believe that's what we were  
16 referring to.

17 MR. FLAGG: Okay. I just wondered if  
18 you agree that this isn't a goal of the town plan. I  
19 mean I can't find the word goal anywhere in this  
20 exhibit even.

21 So would you admit that this isn't a  
22 goal of the town plan?

23 THE WITNESS: This is Chad Nichols.  
24 I'm just thinking for a minute. It's a bit of a --  
25 the question of sort of the purpose of the town plan

1 that may state this Town supports X. If it's the  
2 word goal that you're potentially struggling with, I  
3 guess we could have that conversation. But if during  
4 our due course of development we review a town plan  
5 that has a sentence such as the one we are reviewing  
6 here, we would consider that something that the Town  
7 is striving for. So I can see how the word goal  
8 would be used. But I do take your point about the  
9 word support versus goal if that's the answer.

10 MR. FLAGG: Okay. I mean I've also  
11 looked in the town plan. I can pull that up. But I  
12 think that's sufficient. You know, the goals are  
13 listed -- of the town plan are listed in a different  
14 section, and outside of the page limits that were  
15 provided in this exhibit. So --

16 THE WITNESS: I understand.

17 MR. FLAGG: Also on page 10 of your  
18 prefiled testimony of June 28, 2019, are you  
19 referring to that same -- the same source document,  
20 the Regional Energy Implementation Plan that you  
21 defined as quote, regional plan, unquote, when you  
22 state that, quote, no land conservation measure in  
23 the applicable Town or regional plan aims to prevent  
24 development in the area where the project is proposed  
25 which is zoned, quote, lower plain commercial under

1 the town plan, end of quote.

2 THE WITNESS: I don't recall a specific  
3 section that would -- that could tie to this summary.  
4 I think part of our testimony is to summarize the  
5 documents available. So this represents our findings  
6 in the available plans at the time.

7 MR. FLAGG: Okay. I'm just asking  
8 because it seems like there was a -- you defined the  
9 regional plan as being this energy implementation  
10 plan, and I'm wondering if that is the source of the  
11 statement that you've made with respect to land  
12 conservation measures.

13 THE WITNESS: As far as I'm aware,  
14 those are the documents we used to summarize. Yes.  
15 Just to clarify, I hear your point on the title by  
16 using regional plan and town plan. It's just done  
17 for simplicity when repeating multiple times. So  
18 regional plan would be that same document, and those  
19 are both used to generate our responses.

20 MR. FLAGG: Okay. Thank you. So are  
21 you aware that the Town has other designs in mind for  
22 the project site such as for the location of another  
23 type of commercial building development?

24 THE WITNESS: Am I -- no, I'm not aware  
25 of that.

1 MR. FLAGG: Okay. Has Bradford Solar  
2 considered the possibility of mounting a similarly-  
3 sized system on a new commercial roof space  
4 specifically designed for solar orientation at the  
5 current location?

6 MR. IARRAPINO: With all due respect,  
7 Mr. Hearing Officer, I'm going to object to the  
8 relevance of this question. I don't know that other  
9 potential projects are the appropriate subject of  
10 orderly development inquiry.

11 MR. MARREN: I'm going to hop on here.  
12 Certainly we recognize that, you know, the Vermont  
13 Supreme Court doesn't require -- at least in the  
14 context of the aesthetics analysis -- that we assess  
15 hypothetical projects that aren't under consideration  
16 on alternative, you know, plots of land that the  
17 Petitioner doesn't control. But certainly during 248  
18 proceedings we often contemplate different layouts on  
19 the subject project.

20 So, you know, for example, we were  
21 considering pushing the project back 50 feet, that  
22 would be in bounds. All we are asking here is did  
23 you consider elevating it, you know, two stories and  
24 putting it on top of a larger building. And I think  
25 a yes or no is really all we need here.

1 MR. IARRAPINO: I'm sorry, Mr. Hearing  
2 Officer Marren. I'm going to have to continue to  
3 maintain my objection for the record because the  
4 question calls for speculation. Not about moving the  
5 project site within the type of project that's  
6 contemplated by the petition. It assumes that there  
7 is another -- that the private landowner is willing  
8 to erect another building that then subsequently a  
9 roof-mounted project could be placed on.

10 There is no evidence in the record that  
11 the private landowner is willing to contemplate such  
12 phased development, and this question, I think, is at  
13 a level of speculation that goes beyond the kind of  
14 things that the commission can control. The  
15 commission cannot order a private landowner to first  
16 erect a building before a net metering project would  
17 be allowed on the roof of said building, assuming  
18 that the person who builds the building also wants to  
19 erect a roof-mounted project.

20 MR. MARREN: And we are certainly not  
21 considering ordering the landowner to do so. All we  
22 are wondering is whether they considered doing so.  
23 That's all.

24 MR. IARRAPINO: And again, I would just  
25 -- I'll leave it at this. I object to the relevance

1 of the question.

2 MR. MARREN: The objection is noted,  
3 and Mr. Nichols, could you answer our question? Do  
4 you know whether there was a building planned?

5 THE WITNESS: I do not know if there  
6 was a building planned for this lot.

7 MR. MARREN: Perfect. That's all we  
8 need. Thank you.

9 MR. IARRAPINO: Thank you.

10 MR. FLAGG: I have no further  
11 questions.

12 MR. MARREN: You have no further  
13 questions, Andy?

14 MR. FLAGG: No.

15 MR. MARREN: All right. Do any of the  
16 -- does the Department have any questions or follow  
17 up at this point?

18 MS. BENNETT: Nothing from the  
19 Department. Thank you.

20 MR. MARREN: I'm not going to call on  
21 the other state agencies. I assume they are not  
22 doing this. So pipe up if you are. Otherwise, I  
23 would like to turn it over to Mr. Iarrapino for  
24 redirect.

25 MR. IARRAPINO: Thank you, Mr. Hearing

1 Officer Marren. Would it be possible for us to just  
2 confer briefly as we might have been able to do if we  
3 were all in the hearing room together?

4 MR. MARREN: Absolutely. We can take a  
5 short break.

6 MR. IARRAPINO: Yeah. I think we just  
7 need five minutes or less.

8 MR. MARREN: Okay. We will take five  
9 minutes.

10 MR. IARRAPINO: Okay. Thank you.

11 MS. DINGLEDINE: Mr. Marren, can I  
12 object to that? Testimony from witnesses at a  
13 hearing is not a take home exam, and they are not  
14 entitled to go talk with counsel when they are in the  
15 middle of testifying. And I would object to that. I  
16 don't think it's appropriate.

17 MR. IARRAPINO: I think it's standard  
18 commission practice.

19 MR. MARREN: Well I've certainly seen  
20 witnesses confer with counsel even in the middle of  
21 questioning. So I don't see a problem with it.

22 Our goal here is to get accurate and  
23 correct answers and not, you know, if there is a  
24 correction that Mr. Iarrapino needs to prompt his  
25 witness to make or something like that, we appreciate

1 that. So --

2 MS. DINGLEDINE: That's what redirect  
3 is for. He doesn't get to go out -- because you're  
4 right -- this is about clarifying and getting out the  
5 truth. We don't want what the lawyer's going to say  
6 in response or how he's going to correct what the  
7 witness has to say. We want to hear what the witness  
8 has to say.

9 MR. IARRAPINO: All I'm able to do is  
10 when we go back on the record, or I guess we are  
11 still on the record, is ask the witness questions.  
12 The witness has to answer the questions truthfully  
13 and honestly. He's still under oath. And with all  
14 due respect, because I know Ms. Dingledine is a very  
15 experienced litigator in the state of Vermont, and I  
16 have also had this opportunity in the civil courts,  
17 not just in the commission.

18 MR. MARREN: We will take a five-  
19 minute break right now. Your objection is noted,  
20 counsel. Thank you.

21 MR. IARRAPINO: Thank you.

22 MS. DINGLEDINE: Thank you.

23 (Recess was taken.)

24 MR. MARREN: Okay. We will go back on  
25 the record now. Mr. Iarrapino? Please continue.

1 Redirect.

2 MR. IARRAPINO: Thank you for the  
3 break, Mr. Marren. We are going to waive redirect  
4 and allow Mr. Nichols to step down.

5 MR. MARREN: All right. Thank you.  
6 You are excused, Mr. Nichols.

7 THE WITNESS: Thank you.

8 MR. MARREN: I believe our next witness  
9 is Mr. Buscher.

10 MR. IARRAPINO: That's correct. Sorry.  
11 That's Ms. Dingledine's prerogative.

12 MR. BUSCHER: Hello. This is Michael  
13 Buscher.

14 MR. MARREN: I'll just ask you to  
15 introduce -- thank you. I needed -- that was the  
16 universe telling me to slow down.

17 So Mr. Flagg is going to swear in the  
18 witness first before we begin anything.

19 MR. FLAGG: Good afternoon, Mr.  
20 Buscher. Please raise your right-hand.

21

22

23

24

25

1 MICHAEL BUSCHER

2 Having been duly sworn, testified  
3 as follows:

4 THE WITNESS: I do.

5 MR. MARREN: All right.

6 MS. DINGLEDINE: I don't need any  
7 documents, but thank you.

8 MR. MARREN: Okay.

9 CROSS EXAMINATION

10 BY MS. DINGLEDINE:

11 Q. Just tell me how to pronounce your name. Is  
12 it Mr. Buscher?

13 A. Busher.

14 Q. Busher. All right.

15 A. Nice to be here.

16 Q. So I was reading your aesthetics review, and  
17 let me ask you a question. You went through sort of the  
18 Quechee analysis and described the methodology. And at  
19 the very end you indicated that additionally the Public  
20 Utility Commission considered overall societal benefits of  
21 a project after they go through that Quechee analysis.  
22 That's on page 3 of your report which is Exhibit 5.  
23 BS-CDN-5.

24 So it says, "Our analysis, however, does not  
25 end with the results of the Quechee test. Instead, our

1 assessment of whether a particular project will have an  
2 undue adverse impact on aesthetics and scenic or natural  
3 beauty is significantly informed by overall societal  
4 benefits of the project." And then you go in -- you agree  
5 with me that that is an additional step beyond the  
6 traditional Act 250 Quechee test?

7 A. Yes. That's a quote from the Public Utilities  
8 Commission.

9 Q. So let me ask you this. In terms of the way  
10 that you then as an expert analyze the aesthetic -- the  
11 undue adverse impact and aesthetics, do you come to an  
12 independent analysis going through the Quechee test to  
13 find, in the first instance if it's adverse, secondarily  
14 if it's undue adverse? Do you go through that analysis,  
15 and then, if and only if, you find it's undue, then you  
16 apply the additional inquiry about societal benefits?

17 A. I don't feel it's my place to apply that  
18 criteria. I think that's reserved for the planning  
19 utilities commission. So we do not use that criteria in  
20 our evaluation.

21 Q. Oh, okay. Thank you. That's very helpful.  
22 Can you tell me about Route 25 particularly, and also  
23 Route 5 in terms of the impact to the viewing public as  
24 they would be traveling those roads by automobile?

25 A. I guess I would refer to my review. We talk

1 about describe the visibility from both of the roads on  
2 page 5, and we have included photographs.

3 For a short section on Route 25 as you are  
4 coming -- approaching the intersection with 25 or in the  
5 other direction as you leave the intersection with Route  
6 5, on Route 25 there is a short section in which there  
7 will be unobstructed views to the project. It's  
8 relatively between -- once you approach, there is an auto  
9 parts store just east of the project, and there is a  
10 single-family home that's currently vacant that's just --  
11 actually I'm going to reverse that.

12 That vacant residence is east of the project,  
13 and the auto parts store is west of the project, when  
14 you're approaching the facilities when you first get  
15 visibility. As our report said, when we conducted field  
16 investigation we did not -- we did not identify visibility  
17 from Route 5 of the area where the project would be  
18 visible.

19 I'm not saying that there is no visibility,  
20 but we did not observe it during the conditions at hand,  
21 and there is some variable conditions that you have when  
22 addressing visibility such as leaf on/leaf off. The  
23 property to the east of the project site has lots of  
24 vehicles that are moving constantly. But we did not  
25 observe any visibility from Route 5.

1 Q. Can I ask you about the tree planting, the  
2 landscaping plan? As I read through I got this notion of  
3 oh, we want to break up the view. But what I was  
4 wondering is breaking up the view still leaves a lot of a  
5 large solar array visible. And so what I'm wondering is  
6 -- and I know that the Town is extremely unsatisfied with  
7 the landscaping plan.

8 Can you talk to why this -- a few trees here  
9 and there to quote, break up the view, is better than a  
10 robust buffer that's maybe more expensive for the  
11 applicant, but seems like it would be much more reasonable  
12 in terms of cleansing the impact of --

13 MR. IARRAPINO: I'm going to object.

14 Mr. Hearing Officer, I'm going to object to this  
15 question. There is a lot of characterizing of the  
16 evidence, value judgments implicit in the question.  
17 This seems like testimony from Ms. Dingleline about  
18 the Town's point of view rather than the substance of  
19 Mr. Buscher's report.

20 MR. MARREN: I mean I think to the  
21 extent -- let's try to rephrase it.

22 MS. DINGLELINE: I'll rephrase it.  
23 Thank you. Okay. Let me try again.

24 BY MS. DINGLELINE:

25 Q. So the plan calls for how many trees to be

1 planted to mitigate the view from the Route 25 area?

2 A. If I recall correctly, landscape mitigation  
3 plan specifies 50/30, a mix of 50/30 deciduous trees and  
4 shrubs and evergreen.

5 Q. And is that a reasonable mitigation, or is  
6 there a better mitigation that would be reasonable?

7 A. I obviously feel it's reasonable because I  
8 drafted the plan. I was not -- it was my own personal  
9 feeling or what I felt would be a reasonable way to help  
10 soften the views towards this project.

11 Q. So the goal is to soften it as opposed to  
12 screen it?

13 A. Complement it. Yes. For instance, if you  
14 look in the city, you have street trees. The street trees  
15 aren't meant to block the views of the surrounding  
16 development. It's meant to complement the streetscape.

17 Q. Well that's -- yes. That's true. So would  
18 you propose the same kind of sporadic breaking up the view  
19 mitigation in a city where there are buildings and  
20 sidewalks that you would in terms of what you're doing  
21 here?

22 A. Given the specific situation, yes. We might  
23 propose this.

24 Q. Have you encountered a situation like project  
25 at hand where you have proposed a more robust tree buffer

1 that actually concealed or truly screened the site from  
2 the surrounding areas and the traveling public?

3 A. We have worked with different projects that  
4 provide a different level of screening. Yes.

5 Q. In terms of mitigation of adverse impacts --  
6 well let me back up for a minute.

7 Okay. I want to talk to you about what you  
8 have on page 20 of your report. Or actually it starts on  
9 19, about shocking and offensive. Can you tell me what --  
10 what factors -- I mean when you figure out if something is  
11 shocking and offensive, as an aesthetics expert, what do  
12 you consider in terms of deciding if there is an adverse  
13 impact and a shocking and offensive?

14 A. Well shocking and offensive is not related to  
15 adverse. It's related to evaluating undue adversity.

16 Q. Let me rephrase, Mr. Buscher. Because what I  
17 meant was, you know, once you have an adverse impact, you  
18 go then to decide if that adverse impact is shocking and  
19 offensive. How do you do that?

20 A. It's not a prescribed formula. You need to  
21 look at a project on an individual basis. For instance, a  
22 wind turbine on top of Mt. Mansfield would obviously  
23 provoke some emotions from people. So you look at the  
24 scenic integrity, the scenic quality as a first component.  
25 Is it a designated scenic component? What type of

1 designation does it have? Does it have regional  
2 significance? Does it have national significance? Does  
3 it have state significance? That's one component of it.

4           You look at the context surrounding it. So is  
5 this in a highly natural setting? Are there other built-  
6 in components nearby? What's the character of the  
7 components nearby? How would that impact the appearance  
8 of the project from those who are viewing it?

9           Another thing that you look at is type of  
10 project. Is this something entirely unique and not  
11 something typically seen in the landscape where it's being  
12 proposed? That's an example. There is more components  
13 that we would look at for shocking and offensive.

14           Q.       So would you agree with me that the three-  
15 part test to determine undue adverse impact under Quechee  
16 analysis are independent tests, each of which have to be  
17 answered individually?

18           A.       Each of the three questions of the second part  
19 of Quechee need to be answered individually. That's not  
20 to say that components from each of the other parts don't  
21 have any impact on each of those three separate pieces.

22           Q.       Well I would like to explore that with you.  
23 Because if you're determining if something is shocking and  
24 offensive, you would agree with me that it's the response  
25 or reaction of a reasonable person; correct?

1 A. Yes.

2 Q. Not an owner of the property or something like  
3 that; right?

4 A. An uninterested citizen.

5 Q. Okay. And so the determination of shocking  
6 and offensive is based on a subjective response to some  
7 degree. Is it pleasing or not. Does it shock the  
8 conscience, right?

9 A. I would disagree as to the characterization if  
10 it's pleasing or not. I think it's clear that shocking  
11 and offensive is a much more severe reaction than whether  
12 it's pleasing or not.

13 Q. Okay. And so what I'm trying to get at is  
14 what it looks like is what it looks like. Right?

15 A. I would have to have context to answer that  
16 question.

17 Q. I'm sorry?

18 A. I would need context. I don't think that's a  
19 question you can answer without understanding the context  
20 or the character, the surroundings. There is several  
21 different components in which you need to evaluate a  
22 project.

23 Q. All right. So on page 20 of your testimony,  
24 you think it's legitimate to incorporate the mitigation  
25 portion of Quechee into shocking and offensive? To have

1 that information?

2 A. Yes, I do.

3 Q. To have that information about mitigation as  
4 to informing whether it's shocking or offensive?

5 A. Yes, I do.

6 Q. All right. Thank you. Mr. Marren, let me  
7 just consult with my client just for a sec to see if she  
8 has any other questions. Thank you.

9 MR. MARREN: Absolutely.

10 (Pause).

11 MS. DINGLEDINE: I'm ready again.

12 BY MS. DINGLEDINE:

13 Q. Did you analyze the view of the project from  
14 Interstate 91 or the assisted living facility nearby?

15 A. Yes, I evaluated it.

16 Q. Can you tell us specifically from those  
17 locations what you discerned?

18 A. At the time of the field investigation, I did  
19 not identify any visibility from either of those  
20 locations. We use view shed mapping. View shed mapping  
21 did indicate some very limited visibility from Interstate  
22 91.

23 On review of that, it's fairly distant. We  
24 did not identify any views. As we note in our report that  
25 there are limitations to the data used in GIS view shed

1 mapping which tends to overestimate visibility on the  
2 maps. Which is why we say that field investigation is  
3 necessary to follow up.

4           So we did not identify visibility from the  
5 interstate. We also did not identify visibility from the  
6 retirement community at the time when the initial field  
7 investigation was done. If you look at the maps you can  
8 see our tracks in which we were -- we visited the area.  
9 You can also review the panoramic photographs on viewpoint  
10 1. It shows no visibility of the senior living facility  
11 from the project site specifically from viewpoint 1.

12           During the return visit, when we attended the  
13 PUC site visit, I had the opportunity to again visit the  
14 senior living community. My feeling was there may have  
15 also been some additional trimming of vegetation on the  
16 slope, and I did identify some visibility of the project.  
17 However, visibility would be very limited specifically  
18 from the ground elevation where we observed -- where I was  
19 making my observations from. And that's largely due  
20 because the auto parts store will substantially screen the  
21 views from the retirement facility into the project site,  
22 and other surrounding vegetation will also screen  
23 visibility.

24           Q.       Let me just ask you a couple other questions  
25 about mitigation, if you don't mind. The only buffering

1 tree used to break up the impact of the adverse view  
2 impact is -- it's only on that one side. Why is there not  
3 any screening or plantings for any other of the three  
4 sides of this property which I understand it's very flat  
5 and can be seen from many different vantage points?

6 A. Well again, as you quoted from my report, I  
7 noted that the majority of visibility will be from south  
8 of the project. That's where the main exposure of the  
9 project is. From east of the project most visibility will  
10 be from the participating landowner's own parcel. And he  
11 did not direct me to screen his own parcel from the  
12 project.

13 As noted, there is vehicles, vegetation,  
14 buildings, that screen the project from locations further  
15 east, including Route 5. Again, there is a storage  
16 facility; compatible use, wouldn't require screening.  
17 Again, the auto parts store has an industrial character to  
18 the east. And I would state that I would not feel it  
19 necessary to screen those compatible uses. From the north  
20 there actually is fairly significant screening of the  
21 project, including natural vegetation along the fence line  
22 as well as a significant amount of landscaping that's been  
23 installed by the Hannaford project.

24 So my assessment of the project were there was  
25 not landscape mitigation needed on the three sides which

1 is why it was proposed solely on the south side of the  
2 project.

3 Q. Thank you. Would your -- now are you the  
4 proponent -- did you have anything to do with the  
5 decommissioning plan?

6 A. I did not.

7 Q. Okay. Are there any aesthetic concerns about  
8 decommissioning these projects in 30 years that you would  
9 want to take a look at and determine whether at that stage  
10 of the construction or deconstruction, there are any  
11 issues that you as an aesthetic expert have and would want  
12 to suggest for reasonable mitigation at that stage of the  
13 actual project?

14 A. My understanding is that at decommissioning  
15 the project is removed, and, you know, any minor amounts  
16 of soil that's been displaced from the project would also  
17 be replaced. So my understanding is that it would have a  
18 fairly similar appearance as from before the project was  
19 installed. So I would not have any specific concerns.

20 Q. Okay. Thank you. That's all I have. I  
21 appreciate your testimony.

22 A. Thank you.

23 MR. MARREN: All right. Mr. Flagg, we  
24 can move over to you. I note -- and I'm reading some  
25 of your questions. You may refer to some of the

1 commission exhibits, so maybe we should talk about  
2 those before we begin your questions so that you can  
3 refer to them.

4 MR. FLAGG: I'm actually --

5 MR. MARREN: Or do you not plan on  
6 referring to them at this time?

7 MR. FLAGG: I'm not planning on  
8 referring to that, Commission 1.

9 MR. MARREN: What about the  
10 Petitioner's February 14 responses to the hearing  
11 officer information requests?

12 MR. FLAGG: That's Commission 1. And I  
13 am not planning on asking the question about that.

14 MR. MARREN: I'm sorry. The version  
15 I'm looking at mentions Commission 2. Maybe that  
16 question fell by the wayside.

17 Anyway, I'll let you proceed, and if we  
18 need to introduce any exhibits before we ask  
19 questions, we will do it at that time.

20 MR. FLAGG: Okay.

21 MR. MARREN: Yeah.

22 MR. FLAGG: I would like to share my  
23 screen here first.

24 Mr. Buscher, on page 5 of your  
25 aesthetic review, you discuss various potential

1 vantage points of the project leading to the west on  
2 Route 25. And as prepared and discussed you point to  
3 2 through 14 as having the highest potential for  
4 visibility; is that correct?

5 MR. MARREN: Mr. Flagg, just so you're  
6 aware, we are not seeing your screen right now, in  
7 case you are meant to be referencing --

8 MR. FLAGG: I understand.

9 MR. MARREN: Sorry.

10 THE WITNESS: So if you're referring to  
11 the second paragraph, I state that viewpoints 2  
12 through 14 document locations with the highest  
13 potential for visibility. Yes.

14 MR. FLAGG: Okay. Thank you. So I'm  
15 going to pull up this viewpoint 2 from the aesthetic  
16 memo. And that's on the screen now. Can you see  
17 that?

18 THE WITNESS: Yes.

19 MR. FLAGG: And so in your opinion will  
20 the project site be visible from a vehicle  
21 approaching the site from the west along Route 25?

22 THE WITNESS: At viewpoint 2 is where I  
23 note that views of the project, project components,  
24 not just the project site, but project components  
25 will begin to become visible. So right near where

1 the NAPA Auto Parts store sign is, you'll begin to  
2 see the tops of the panels at this location. Most of  
3 the project would be screened.

4 MR. FLAGG: So the viewpoint 2 that I'm  
5 looking at, I can look right past the NAPA Auto Parts  
6 and see the field where the project would go; is that  
7 correct?

8 THE WITNESS: You can see the front end  
9 of that field. Yes.

10 MR. FLAGG: Okay. Thank you. So I  
11 would like to look at the cross sections that were --

12 MR. MARREN: Mr. Flagg, may I ask one  
13 clarifying question of Mr. Buscher?

14 MR. FLAGG: Sure.

15 MR. MARREN: Mr. Buscher, I know that  
16 the project is set back from Route 25 about a hundred  
17 feet; correct?

18 THE WITNESS: Correct.

19 MR. MARREN: Looking at the image that  
20 Mr. Flagg has on his screen, about how far back from  
21 Route 25 is a hundred feet? Is it before the NAPA  
22 Auto Parts sign? Between the auto parts sign and the  
23 road? Give us a sense of where is the front line of  
24 the panels in that image we are looking at.

25 THE WITNESS: So that's something I am

1 to provide. It will come out about as far as where  
2 that right arrow is, bottom right arrow.

3 MR. MARREN: Thank you. That clarifies  
4 what I need to know. Okay. Great. Sorry to  
5 interrupt, Mr. Flagg.

6 MR. FLAGG: Thank you. So now this is  
7 looking at the cross section and aerial of the site  
8 showing the proposed aesthetic mitigation. And to  
9 Mr. Marren's question, you can see that there are at  
10 least, you know, 1, 2, 3, 4, 5, 6, 7; looks like 7  
11 rows of panels that stick out past the line of where  
12 the auto parts store is. Would you agree?

13 THE WITNESS: There is approximately 7  
14 rows of panels that would be, I would consider, south  
15 of the front facade of the auto parts building.

16 MR. FLAGG: Okay. And are there in  
17 this depiction, 13 rows of panels? Or am I not  
18 counting correctly? Let's see. 7, 8, 9, 10, 11  
19 maybe 13 or 14?

20 THE WITNESS: Yes, I believe it's 14.

21 MR. FLAGG: 14. 14 rows. So  
22 approximately half of the array is sticking out past  
23 the line of the auto parts store? And that may be  
24 what? 50 to 75 feet of the project that sticks out  
25 on that western side; is that correct?

1 THE WITNESS: I would have to make a  
2 measurement to understand the exact length of it, but  
3 there is a portion of the project that sticks out  
4 beyond the auto parts store. Correct.

5 MR. FLAGG: Okay. And there is no  
6 mitigation -- aesthetic mitigation proposed for the  
7 western side of the project; is that correct?

8 THE WITNESS: Well if you refer back to  
9 that image that you were showing, there is land form  
10 that will be screening a good portion of that from --  
11 depending on where your look.

12 (Telephone ringing).

13 THE WITNESS: I apologize. I'm at my  
14 office, and I have no way to control the ringers on  
15 my phones. Let me see if I can turn this down.  
16 Okay. Sorry about that.

17 So as you can see, the land form blocks  
18 the entire west facade of the auto parts store from  
19 this view. So --

20 MR. FLAGG: I don't see that. But I,  
21 you know, I see I'm traveling on the road, and I can  
22 see a good part of that western side of the field  
23 there from whatever vantage point. I would assume  
24 you're either in an automobile or probably a sporty  
25 one, or standing -- that was a joke -- or -- because

1 it looks lower to me.

2 THE WITNESS: I'm standing. I'm up a  
3 little bit higher than a typical observer from a  
4 sedan. I might be a little bit lower than an SUV.

5 Anyways, my point was you can't see the  
6 actual wall of the building of the auto parts store.  
7 You can only see the roof.

8 MR. FLAGG: Oh, I see. Yes. Looking  
9 in towards that direction, yeah. But I'm speaking  
10 toward -- to the point that, you know, those seven  
11 rows of panels that are -- that we just looked at  
12 that seem to protrude past the edge of that roof.  
13 Towards Route 25.

14 THE WITNESS: Some of the tops of those  
15 panels would be visible. That's correct. That's  
16 what I assumed.

17 MR. FLAGG: Okay. Thank you. And so  
18 could additional aesthetic mitigation be added on the  
19 western side of the project to soften the views of  
20 the project from the west?

21 THE WITNESS: Yes. It could happen.

22 MR. FLAGG: Okay. Thank you. I have  
23 no further questions. I'm going to unshare my  
24 screen.

25 MR. MARREN: All right. We will turn



1 more towards the views directly south. There is a few  
2 residential properties that will have views. And there is  
3 a road that's coming out, Saddleback Road that comes out,  
4 and when you're exiting the road on to Route 25 you'll be  
5 directed at the project.

6 So the mitigation was largely in response to  
7 those components of the surrounding area.

8 Q. Very good. Thank you. Anticipated and  
9 answered my follow-up question. That's all I have.

10 MR. MARREN: Excellent. Is there  
11 anything else that people need to ask of Mr. Buscher?

12 (No response).

13 MR. MARREN: If not, okay. Thank you,  
14 Mr. Buscher. You're excused.

15 THE WITNESS: Thank you.

16 MR. MARREN: At this time I guess we  
17 will wrap up the Petitioner's witnesses. I  
18 understand that Mr. Upton was not necessary for him  
19 to attend our hearing today. But we do have some of  
20 his exhibits that we need to -- his testimony and  
21 exhibits that we need to admit.

22 So I'm referring again to Exhibit Joint  
23 1. There are four documents listed for witness Tim  
24 Upton; his prefiled testimony and three exhibits.  
25 One slight correction to Joint 1. The ePUC number

1 given for Mr. Upton's prefiled testimony should read  
2 360347-12, the 2 is the new number. 4816. So  
3 subject to that correction, we would like to, you  
4 know, we are going to admit the prefiled testimony  
5 and exhibits of Mr. Upton unless there are any  
6 objections at this time.

7 (No response).

8 MR. MARREN: Hearing none, Mr. Upton's  
9 prefiled testimony and exhibits are admitted.

10 (The Prefiled Testimony of Tim Upton was  
11 admitted into the record.)

12  
13 Prefiled Testimony of Tim Upton

14 <http://epuc.vermont.gov/?q=downloadfile/360347/142816>

15 (Exhibits marked BS-TU-1 through 3 were  
16 admitted into the record.)

17  
18 Exhibit BS-TU-1

19 <http://epuc.vermont.gov/?q=downloadfile/360351/142816>

20 Exhibit BS-TU-2

21 <http://epuc.vermont.gov/?q=downloadfile/360352/142816>

22 Exhibit BS-TU-3

23 <http://epuc.vermont.gov/?q=downloadfile/360353/142816>

1 MR. MARREN: Okay. It's 12:45. Is now  
2 a good time -- and we are also going to switch gears  
3 and move on to the Department's witness and then on  
4 to the Town and the regional planning commission.

5 Is now a logical time to take a short  
6 break for lunch? People agree?

7 Mr. Iarrapino, your point about time is  
8 well taken. We are moving a little slower than we  
9 might normally do than if we were live. I propose  
10 that we get back here at 12:15. That's half an hour.  
11 Is that enough time? If people need more time,  
12 please tell me. But --

13 MR. IARRAPINO: Did you mean to say  
14 1:15?

15 MR. MARREN: Thank you. I want to use  
16 the time machine so we can get some of the time we  
17 have lost this morning back. I guess we will go with  
18 the 1:15. That's okay?

19 (No response).

20 MR. MARREN: Okay. We will meet back  
21 at 1:15 after, and we will begin with the  
22 Department's witnesses. Thank you.

23 (Recess was taken.)

24 MR. MARREN: All right. It looks like  
25 everyone is here, so we can go back on the record. I

1 hope everyone had a good lunch break.

2 I guess at this time, we will call Mr.  
3 Oxender, and Mr. Flagg can swear him in, and then Ms.  
4 Bennett, if you would go through the steps of moving  
5 his testimony, that would be much appreciated. Thank  
6 you.

7 MS. BENNETT: Sure. So the Department  
8 calls Ben Oxender.

9 MR. FLAGG: Good afternoon, Mr.  
10 Oxender. Please raise your right-hand.

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1 BENJAMIN OXENDER

2 Having been duly sworn, testified  
3 as follows:

4 THE WITNESS: I do.

5 MR. FLAGG: Thank you.

6 DIRECT EXAMINATION

7 BY MS. BENNETT:

8 Q. Mr. Oxender, can you please state your full  
9 name and position for the record?

10 A. Gladly. My name is Benjamin Oxender. I'm a  
11 landscape architect for Trudell Consulting Engineers.

12 Q. Did you submit testimony and an aesthetic and  
13 orderly development report in this proceeding?

14 A. Yes, I did.

15 Q. Do you have any changes to your testimony or  
16 report at this time that you would wish to share?

17 A. No, I do not.

18 MS. BENNETT: Okay. So the Department  
19 moves to admit the three documents found on exhibit  
20 Joint 1. They are the only three documents on that  
21 list. And they are -- I'll pull them up and name  
22 them.

23 The Direct Prefiled Testimony of  
24 Benjamin Oxender from March 6, 2020. DPS Exhibit-1  
25 from March 6, 2020. And the Department's comments

1 from August 15, 2019.

2 MR. MARREN: Are there any objections  
3 to the admission of those documents?

4 MR. IARRAPINO: None from the  
5 Petitioner.

6 MS. DINGLELINE: From the Town, I do  
7 have an objection to the last section or page of the  
8 aesthetic assessment which is page 12. It has these  
9 additional conclusions that have nothing to do with  
10 determining whether or not there is undue adverse  
11 impacts. It's irrelevant and --

12 MR. MARREN: Let's pull this document  
13 and so we can look and see what we are talking about  
14 here. Give me one moment. I can find the document.

15 And then, Ms. Bishop, if you want to  
16 make me the presenter, I can share my screen.

17 MS. BISHOP: You are now the presenter,  
18 Mr. Marren.

19 MR. MARREN: Thank you. Okay. So what  
20 page do I need to go to, Ms. Dingleline?

21 MS. DINGLELINE: It's the very last  
22 page. 12.

23 MR. MARREN: Okay. Additional  
24 conclusions?

25 MS. DINGLELINE: Yes. It's really just

1 that last paragraph of that section. The very last  
2 page of the document it talks about the good faith  
3 offer from the Petitioner that should be reconsidered  
4 by the Town. The funds could be used for additional  
5 screening, and additional screening might help  
6 alleviate some visibility concerns.

7 I mean I don't know what this is about.  
8 But it's sort of like a mediator kind of suggestion  
9 that really is not an expert opinion of whether or  
10 not, as proposed, the project does or does not pass  
11 the Quechee analysis.

12 MR. MARREN: Okay. A response from the  
13 Department?

14 MS. BENNETT: I'm just -- I'm re-  
15 reading the language.

16 MR. MARREN: Take your time.

17 MS. BENNETT: So the Department doesn't  
18 have any issue with striking the last paragraph on  
19 that page.

20 MR. MARREN: All right. Based on the  
21 Department's willingness to strike the contested  
22 language, the objection is sustained and the last  
23 paragraph of Exhibit DPS-1 which is the aesthetic  
24 assessment is stricken. Subject to that change --

25 MR. IARRAPINO: Excuse me, Mr. Hearing

1 Officer. I was not afforded an opportunity to --

2 MR. MARREN: Apologies.

3 MR. IARRAPINO: -- weigh in on the  
4 objection. Mr. Oxender is an aesthetics -- an  
5 aesthetics expert. And the sentence that his -- his  
6 opinion on additional screening on the west side of  
7 the project may help alleviate some visibility  
8 concerns the Town has expressed, I don't see that as  
9 irrelevant to the subject of this report. I don't  
10 interpret that sentence to say that the screening is  
11 required. It only says, which I think is true and  
12 supported by the record, that the funds could be used  
13 for that purpose and that the Town has expressed  
14 visibility concerns. I don't see why that's  
15 necessarily irrelevant.

16 MR. MARREN: I had one question. Mr.  
17 Iarrapino, is the Petitioner still holding out that  
18 offer that's referenced in the report?

19 MR. IARRAPINO: I believe this is the  
20 subject of the objection that you overruled  
21 previously in admitting the challenged testimony. So  
22 yes.

23 MR. MARREN: It's the same -- the  
24 challenged testimony, I remember we are talking about  
25 the \$3,500 related to the sewer. But this is an

1 additional offer that is also still on the table as  
2 part of the project?

3 MR. IARRAPINO: Right. The offer --  
4 can you give me one second to confer with my clients.  
5 I don't want to make a misrepresentation on the  
6 record.

7 MR. MARREN: Sure.

8 MR. IARRAPINO: I don't believe it is  
9 the same. Let me just -- thank you, see if I can  
10 confirm that with my clients. Hold on.

11 MR. MARREN: Okay.

12 MR. IARRAPINO: Just bear with us. The  
13 limitation of technology of trying to conduct -- to  
14 confirm this detail over text is a little difficult.  
15 We are just going to jump on the phone really  
16 briefly.

17 MR. MARREN: Okay.

18 MR. IARRAPINO: Thank you.

19 MR. MARREN: Understood. Sorry. My  
20 microphone was off.

21 (Pause).

22 MR. FLAGG: If it helps the Petitioner,  
23 the other offer letter was dated April 10, 2020, and  
24 this is referring to a different offer from November  
25 12th of 2019.

1 MR. MARREN: I don't think Mr.  
2 Iarrapino can hear us right now, Andy so --

3 MR. FLAGG: Oh.

4 MR. IARRAPINO: I apologize to the  
5 group for the delay. And I apologize also, Hearing  
6 Officer Flagg was correct. It is a different -- it  
7 is a different offer, and the Petitioner has  
8 withdrawn -- withdraws all of my comments with regard  
9 to the objection and has no -- takes no issue with  
10 the Hearing Officer's ruling.

11 MR. MARREN: Okay. Then --

12 MS. DINGLELINE: Can I just speak for  
13 one moment? This is Brooke Dingleline. I just want  
14 to put on the record that when somebody withdraws a  
15 piece of evidence and agrees and stipulates when  
16 someone else makes an objection, you don't -- the  
17 Petitioner doesn't get veto power or doesn't get to  
18 argue about that.

19 If DPS agreed to withdraw the  
20 testimony, it should have been withdrawn, and the  
21 Petitioner has no say in it. And I want that on the  
22 record. But we got there anyway. Thank you.

23 MR. MARREN: All right. With that, I  
24 think that it is Ms. Dingleline's turn to cross  
25 examine the witness. So --

1 MS. DINGLELINE: Sorry. I've lost the  
2 number. Trying to find Mr. Oxender. Is he on the  
3 screen?

4 MS. BENNETT: He is.

5 CROSS EXAMINATION

6 BY MS. DINGLELINE:

7 Q. Oh, there he is. Okay. Hi, Mr. Oxender. How  
8 are you?

9 A. All right. Good afternoon.

10 Q. I just have a couple questions about your  
11 aesthetics report. Let's see. I had a question about the  
12 first paragraph on page 4 of your report, the last  
13 sentence.

14 Well let me back up. It says, "There are a  
15 significant number of structures, objects and vegetation  
16 which obscure or eliminate views of the property from U.S.  
17 Route 5," and then it says, "Likewise, Interstate 91  
18 access ramps and other roads have no view of the project  
19 due to intervening land form and vegetation."

20 I was wondering how did you determine that?  
21 Did you do that through some kind of modeling or looking  
22 at mapping? Or did you actually do boots on the ground or  
23 drive the route to observe it yourself?

24 A. Yeah. The latter. I drove all around the  
25 site. I noted there that the location's visibility -- the

1 sentence before you read along Waits River Road,  
2 Saddleback Road and Plateau Acres Road as well as Route 5.  
3 So that was a result of me going to the site and the  
4 surrounding site.

5 Q. Thank you. And then you say, "The parcel is  
6 privately owned and access to the site is limited, but the  
7 project is not located on any identified conserved open  
8 space by the Town or regional commission and would not  
9 have an impact on open space in the area."

10 What do you mean -- exactly do you mean by  
11 wouldn't have an impact on open space?

12 A. What I mean by that is that the development of  
13 the parcel would not take away from any identified open  
14 space by either the Town or the regional planning  
15 commission.

16 Q. So because this big field is sort of confined  
17 by other buildings or development, it's not considered  
18 open space at that stage?

19 A. It's not identified by any entity that it is  
20 considered open space within the Town of Bradford.

21 Q. Then the next page, there was another term  
22 that was used. I'm not sure what the definition was, but  
23 at the very bottom paragraph on page 5 of your report. It  
24 says, "The project is proposed to be in an already  
25 developed area of the Town with existing commercial

1 buildings and uses on both sides of the project. The  
2 project will require no new curb cuts along Waits River  
3 Road, and access to the site will be through an existing  
4 35-foot easement through the adjacent lot to the east.  
5 The project will not have a negative impact on wild  
6 lands."

7 What do you mean by that?

8 A. Give me just a moment. That is reference to  
9 the town plan in which -- give me just a moment. I'll  
10 find the exact location of that. Okay. So on page 43 of  
11 the town plan under the Solar Energy chapter, I'm simply  
12 pulling from the language of this document. The sentence  
13 that I'm referring to is, "Solar arrays do not need to be  
14 located on the high ground, and are therefore less  
15 visually prominent. In addition, these facilities can be  
16 located in already developed areas requiring fewer access  
17 roads, requiring less infrastructure, and reducing adverse  
18 impacts on wild lands." I took that to mean --

19 Q. You were using the terminology --

20 A. Exactly.

21 Q. I'll restate it for Kim. So the wild lands  
22 terminology is that standard that you extracted from the  
23 town plan to say that that was not being violated;  
24 correct?

25 A. Correct.

1 Q. Or there was no negative impact to wild lands  
2 using the terminology directly from the plan; correct?

3 A. Correct.

4 Q. Okay. Thank you. Now when -- so the Bradford  
5 town plan, if you turn to page 6 of your report, you talk  
6 some about the solar energy and community standards for  
7 siting. And it seems like you get to the -- to a  
8 conclusion that the language is ambiguous. And because  
9 it's ambiguous, it doesn't actually constitute a clear,  
10 written, community standard.

11 So what is your definition of ambiguous  
12 language?

13 A. Well, for example, there is -- in the  
14 paragraph under, "Siting," it says, "All renewable energy  
15 projects must evaluate and address the proposed site's  
16 aesthetic impact on the surrounding landscape. Good sites  
17 have one or more of the following, and poor sites have one  
18 or more of the following." I'm skipping down there a  
19 little bit. But there is no definition as to how having  
20 qualities of a poor site would determine whether or not it  
21 was a well-sited or poorly-sited project.

22 Q. Is that kind of a standard list, not enough  
23 info? Is that kind of what you're getting at?

24 A. Well the way I read it is that they list  
25 qualities of good sites, and then they list qualities of

1 poor sites, but don't have any -- there are no  
2 ramifications for having sites of poor quality versus  
3 those of good quality.

4 Q. Is it your opinion that the landscaping  
5 mitigation plan in the area between the road and the array  
6 is satisfactory and adequate to reasonably mitigate the  
7 effects of this project?

8 A. Yes.

9 Q. And so the -- so the notion that -- that like  
10 more planting could be purchased and installed, do you  
11 think that that would be appropriate and reasonable to  
12 make a more robust buffer of trees so that it is less  
13 visible to the traveling public when they come through the  
14 gateway area of the Town?

15 MR. IARRAPINO: Objection, Mr. Hearing  
16 Officer. The witness has already been asked if he  
17 believes the mitigation is satisfactory, and he's  
18 answered that question. I'm not sure why this is a  
19 different question. If it's satisfactory, it's  
20 satisfactory.

21 MS. DINGLEDINE: I'll re-ask the  
22 question a different way.

23 BY MS. DINGLEDINE:

24 Q. So apparently the landscape plan, in your  
25 opinion, is not final or finalized; correct?

1           A.       I don't understand the question.

2           Q.       Well you had said when you were talking about  
3 the funds and reconsideration by the Town of working with  
4 the Petitioner that you indicated --

5                   MR. IARRAPINO:  Objection.  Objection.  
6           The Town has moved that -- what I believe she is  
7 referring to -- be stricken from the record, and so  
8 why is this an appropriate subject of inquiry if the  
9 Town has moved it be stricken from the record on  
10 relevance grounds?  You can't have it both ways.

11                   MS. DINGLELINE:  Because I'm asking --  
12 well because I'm asking him a specific question.  He  
13 said in here the Petitioner has expressed a  
14 willingness to work with interested parties in order  
15 to finalize the landscape plan.  So I've seen that  
16 information, and I want to ask the gentleman, is the  
17 plan not finalized?  If it's finalized, why are we  
18 giving an opinion on it?  Is there more to be done?

19                   MS. BENNETT:  Are you referring to --  
20 I'm going to ask are you referring to page -- where  
21 are you referring to in here now, Brooke?

22                   MS. DINGLELINE:  I'm asking him a  
23 question.  It comes from the source material in that  
24 last paragraph where, you know, the objectionable  
25 information was.

1                   But I'm trying to understand. Is it  
2 done, or are they supposed to do more, in your  
3 opinion, to finalize it?

4                   MS. BENNETT: But I'm going to uphold  
5 the same objection because that is stricken.

6                   MS. DINGLELINE: Yeah, and I'm not  
7 trying to reintroduce the piece of paper. I'm asking  
8 him a question. Is this landscape plan finalized?

9                   MS. BENNETT: You're asking him a  
10 question based on stricken language.

11                   MS. DINGLELINE: All right.

12                   MR. MARREN: I think we can -- excuse  
13 me. Thank you. I think we can ask this question  
14 without reference to the objectionable language. I  
15 think we just need to ask Mr. Oxender, do you think  
16 more could be done for mitigating aesthetic impact at  
17 the project. I think that's the question, and I  
18 think he can answer that. We can do so without  
19 reference to any settlement offers or anything like  
20 that.

21                   MS. DINGLELINE: I wasn't referring to  
22 that.

23 BY MS. DINGLELINE:

24 Q. Answer the question, please.

25 A. So I believe that the mitigation -- planting

1 mitigation efforts that have been proposed are adequate  
2 for the site. What I was referring to in the document --  
3 portion of the document that has been stricken was during  
4 discovery, we asked the question of the Petitioners if  
5 they would be willing to work with the Town or work with  
6 the adjacent landowners to place the proposed vegetation  
7 exactly around a determined location along the front,  
8 along the southern portion of the project, to make its  
9 screening most affected -- effective for mitigating views  
10 from the Town. So that was all that was in reference to.

11 And their response was that they would be  
12 willing -- their response during -- I believe it was  
13 during discovery, was that they would be willing to work  
14 with the Town and adjacent landowners to place the  
15 vegetation that they have proposed as part of the  
16 mitigation plan in the most effective spot for screening.  
17 And that was all that was in reference to.

18 Q. Okay. That was not my question. So I move to  
19 strike the answer as non-responsive. I said -- the  
20 question was what the hearing officer expressed.

21 Could more be done for the mitigation  
22 landscaping? That was the question.

23 A. Yes. More plants could be added.

24 Q. And they would be considered reasonable  
25 mitigation?

1           A.       What's being proposed is reasonable  
2 mitigation.

3           Q.       Right.  But what I'm getting at is this would  
4 not be something extraordinary.  This would be something a  
5 reasonable company would do.  Fair to say?

6           A.       I think what has been submitted as part of the  
7 petition is reasonable.

8           Q.       That's not the question.  The question is if  
9 more could be done, would more be reasonable in terms of  
10 the mitigation to help alleviate the adverse impact from  
11 this project?

12                   MR. IARRAPINO:  I'm going to object to  
13 the relevance of the question.  If he's testified  
14 that the screening is adequate mitigation under the  
15 commission's standards, which I believe the clear  
16 testimony has supported by the report, I don't  
17 understand the relevance of the question into the  
18 PUC's inquiry.

19                   MS. DINGLEDINE:  Because there are many  
20 different things that can be reasonable.  So it's for  
21 the commission to decide based on what people's  
22 opinions are.  And so I want to know his opinion, if  
23 more can be done, is that something that is -- that  
24 would be reasonable or extraordinary and overkill?  
25 Which is it?

1 MR. IARRAPINO: In that case, why would  
2 the response about the Petitioner's willingness to do  
3 more be stricken from the record?

4 MS. DINGLELINE: I won't object if  
5 you'll let him answer the question. I will not  
6 object to him testifying to their willingness.

7 MR. IARRAPINO: Fair compromise, if  
8 that works for the hearing officers.

9 MR. MARREN: It absolutely does.

10 MR. IARRAPINO: And the Department's  
11 attorney.

12 THE WITNESS: So the question once  
13 again?

14 BY MS. DINGLELINE:

15 Q. Yeah. I'm just wondering so if more could be  
16 done, would it be unreasonable or overkill, extraordinary,  
17 to have them do that, or would it be in the category of,  
18 yeah, that's reasonable mitigation to do more than what  
19 they have proposed?

20 A. I think that would be more than what is  
21 expected in this case. I think that what they have  
22 proposed is adequate for mitigating the project.

23 Q. Yeah, but it's an either/or. Is it  
24 extraordinary or is it reasonable to ask them to do -- to  
25 have them do that extra that you're contemplating?

1           A.       I think it's unreasonable to ask the  
2           Petitioner to add more than they're already adequate.

3           Q.       Okay. Thank you. And one last question.  
4           Would they be willing to do the more even if it's beyond  
5           what would be reasonable?

6           A.       I'm sorry. I can't speak for the Petitioner.

7           Q.       Oh, okay. All right. We'll take Mr.  
8           Iarrapino's response to that, or we will stipulate to it.  
9           Thank you. That's all I have.

10           MR. MARREN: All right. Mr. Flagg, do  
11           you have any questions?

12           MR. FLAGG: No, I don't.

13           MR. MARREN: All right. Ms. Bennett,  
14           any redirect?

15           MS. BENNETT: None from the Department.  
16           Thank you.

17           MR. MARREN: Thank you. Are there  
18           other parties that have anything else before we  
19           excuse Mr. Oxender? No. Okay. Thank you, Mr.  
20           Oxender.

21           THE WITNESS: Very welcome. Thank you.

22           MR. MARREN: All right. We are on to  
23           the last parties. We have two parties left.

24           We have -- we will go with the Town of  
25           Bradford next. Ms. Dingleline, can you call your

1 witness, please?

2 MS. DINGLEDINE: Yes. I would like to  
3 call Marcey Carver to the stand. She's here in the  
4 room with me. She is using my mic still.

5 So I would move to admit the prefiled  
6 testimony of Marcey Carver which was submitted March  
7 6th of 2020 into evidence, along with Exhibit BPC-1,  
8 which is the entirety of the Bradford town plan.  
9 Exhibit -- oh wait. This is already in; isn't it?  
10 Am I doing this for no reason?

11 MR. MARREN: Well we haven't actually  
12 admitted all of Ms. Carver's exhibits and testimony,  
13 although I do note we did take judicial notice of the  
14 Bradford Town Plan already. So we've got that. But  
15 still we could admit the evidence because I know it's  
16 prefiled. But we do need to hear if anyone has any  
17 objections, so we will go through the motions.

18 MS. DINGLEDINE: Exhibit 1, 2 and 3 in  
19 for the exhibits. As well as the prefiled.

20 MR. IARRAPINO: Do I understand  
21 correctly then that 4 is being withdrawn?

22 MS. DINGLEDINE: Oh, I thought we were  
23 going to argue about 4. I'm sorry. And 4.

24 MR. IARRAPINO: Yeah. Okay.

25 MR. MARREN: Okay. So I believe where

1 we are at now is the Town as moved the admission of  
2 Ms. Carver's testimony as well as her four exhibits.  
3 Do I hear any objections?

4 MR. IARRAPINO: I object to -- this is  
5 on behalf of the Petitioner. I object to the  
6 introduction of 4 in its entirety. The Petitioner  
7 believes that if some portions of the exhibit were  
8 stricken, it could be admitted into the record.

9 MR. MARREN: Okay. Let's look at this  
10 document. Can you say that --

11 MS. DINGLELINE: Mr. Marren.

12 MR. MARREN: Can you state the basis  
13 for the objection? First of all, I'm pulling it up  
14 so I understand.

15 MR. IARRAPINO: Might I try to aid us  
16 by asking that I be allowed to share my screen so I  
17 can show highlighted portions of the document that we  
18 believe should be stricken?

19 MR. MARREN: Absolutely. That's fine.

20 MS. DINGLELINE: Can I just say one  
21 thing before he does that? It might speed things up.  
22 I thought that I understood earlier on in the  
23 beginning that you were putting into evidence the  
24 Hearing Officers' questions to the parties and their  
25 responses. Is that not correct?

1 MR. MARREN: We were referring to -- we  
2 haven't actually gone through the formal steps of  
3 doing that, but we do intend to admit the  
4 Petitioner's response to the Hearing Officers'  
5 questions which was dated 2/14; is that correct,  
6 Andy?

7 MR. FLAGG: That's correct.

8 MR. MARREN: Yeah. So I think this is  
9 a different document.

10 MS. DINGLELINE: Yeah. But it's still  
11 -- it was the Hearing Officers' questions to the Town  
12 of Bradford, so it was the same type of document. It  
13 was information that the hearing officer asked for.

14 MR. MARREN: Yes. But it's a different  
15 document, so here we are. Let's listen to the  
16 objection and see what's what.

17 MR. IARRAPINO: Thank you, Mr. Hearing  
18 Officer. So I would say from a big picture  
19 standpoint, just to understand the timing of the  
20 objection, this -- these questions were given on 7th  
21 of February. And subsequently, Ms. Carver did file  
22 prefiled testimony.

23 Generally speaking, I believe it's the  
24 practice in the commission to treat Hearing Officer  
25 questions to the parties as being in the nature of

1           discovery, and that when parties want substantive  
2           responses to the Hearing Officer, unless as in the  
3           case of the Two Rivers' affidavit, the hearing  
4           officer requested they be entered as sworn, you know,  
5           the equivalent of sworn testimony. When the party  
6           subsequently files prefiled testimony, if they want  
7           -- if they are signaling an intention to the  
8           commission to have those earlier responses in the  
9           record, that they do so by incorporating it into the  
10          prefiled testimony.

11                         Now this has been marked as Exhibit  
12          BPC-4. But in fact, it was not submitted as an  
13          exhibit to the prefiled testimony for Ms. Carver a  
14          month later. I don't want to belabor this procedural  
15          point because we are willing to let it go. I'm only  
16          explaining why this was not -- these objections were  
17          not the subject of an earlier written motion, because  
18          unlike the Two Rivers' commission, which never put in  
19          any prefiled and left us guessing as to what they  
20          were doing in terms of what they wanted in evidence,  
21          the Town did put in prefiled, and it did put in  
22          exhibits.

23                         So now that we see the Town's intention  
24          to put this in, we don't have an objection to the  
25          bulk of it. But we do have an objection of the

1 highlighted portion on page 2. I'll just step  
2 through our objections. This highlighted portion, we  
3 believe, suffers from the same vested rights issues  
4 that were affirmed by the commission or were ordered  
5 stricken by the commission in its order of yesterday.  
6 And so we would ask, for the same reason as the  
7 references in the prefiled testimony, to the after-  
8 enacted zoning bylaw were stricken, that this -- that  
9 this highlighted portion also be stricken.

10 MR. MARREN: All right. And response,  
11 Ms. Dingleline?

12 MS. DINGLELINE: For the same reason as  
13 the other thing, which was the other ruling which is  
14 Rule 403 which I will read to you, "Although  
15 relevant, evidence may be excluded if the probative  
16 value is substantially outweighed by the danger of  
17 unfair prejudice, confusion of the issues, or  
18 misleading the jury or by considerations of undue  
19 delay, waste of time, or needless presentation of  
20 cumulative evidence."

21 So when you go through the annotations,  
22 there is not a single Vermont case for pages and  
23 pages in here on the issue of prejudice that is not  
24 state versus somebody. I think after four pages or  
25 five pages, there is one or two civil cases, but they

1 were the jury. It's potential prejudice, you know,  
2 misinforming the jury, confusing them.

3 Now we are dealing with professional  
4 judges here who have particular expertise. And I  
5 think it would be shocking if you kept something out  
6 of evidence because you think you're going to be  
7 prejudiced and confused by information about it -- a  
8 different zoning ordinance that is clearly being  
9 offered for the purpose of showing the credibility of  
10 the planning document that's in place.

11 And let me tell you, this is the  
12 opposite of what happened in Chelsea Solar, because  
13 it was argued that the Town was arbitrary and  
14 capricious in the way that it implemented its -- well  
15 its, you know, ordinance -- that it was -- sorry,  
16 their ordinance.

17 So the argument was well they have this  
18 document, but then they let all these things happen  
19 in this district even though it's not supposed to,  
20 and they have allowed solar arrays to be there. And  
21 now they are not going to do it here.

22 So the only purpose to this is -- it's  
23 not even that big a deal -- but the point to this  
24 evidence about the zoning has to do with the fact  
25 that it provides information that Marcey Carver is

1 talking about and that is part of the process that  
2 she is explaining in terms of the orderly development  
3 of that Town.

4 And her recommendation as, on behalf of  
5 the planning commission, and she is also here to tell  
6 you the recommendation, which is the same of the  
7 select board, is important. It's about create --  
8 it's about build it and they will come. Field of  
9 Dreams; right? They built the infrastructure, so  
10 that they could have this part of town be a certain  
11 thing. And that thing was to attract people and have  
12 commerce and retail. So all we are trying to do is  
13 show that they have been consistent, the opposite of  
14 arbitrary and capricious, in their planning process.  
15 And when they ultimately continued to do the other  
16 piece of the ordinance that was promulgated under the  
17 town plan that you are actually looking at, it is  
18 consistent and it shows a continual orderly  
19 development action by this Town that is legitimate,  
20 reliable and credible.

21 That's all. We are not trying to get  
22 in the actual language of it in terms of, oh, do they  
23 comply or don't they comply. We're not trying to  
24 play a shell game of standards. That's all.

25 MR. MARREN: Thank you.

1 MR. IARRAPINO: If I may respond, Mr.  
2 Marren. Maybe I'll reserve my response until you  
3 finish, sir.

4 MR. MARREN: Yeah. I mean I'm going to  
5 -- here's my rationale. I think this is very much  
6 like the motion that we dealt with before hearing.  
7 The way that I see this case, Ms. Dingleline, is that  
8 the commission's case law is very clear that the  
9 commission views projects using the planning  
10 documents that were enacted at the time the petition  
11 is filed.

12 The reason I cited rule 403 in my  
13 previous ruling was I think that it creates an  
14 impression in the record if we have references to  
15 newly adopted things that the commission by its own  
16 case law doesn't consider, as a basis for whatever,  
17 you know, recommendation the Town has offered, I  
18 think that it would be much better if it's crystal  
19 clear in the record that the commission's decision is  
20 based on the documents that were in effect at the  
21 time of the petition.

22 And so just weighing these two  
23 concerns, I think the better thing is to not have  
24 these in. Because even for the limited purposes that  
25 you're offering it, it gives the impression or could

1 give a reviewing court the impression, that the  
2 commission considered documents that it, by its own  
3 case law, doesn't consider.

4 And so I just want to make that very  
5 clear for both -- you know, when I make a  
6 recommendation to the commission, that they shouldn't  
7 look at those things, and I think the best way to do  
8 that is to keep it out.

9 So, Andy, do you have any other points  
10 to add on this, do you think?

11 MR. FLAGG: No. I'm fine. Thank you.

12 MR. MARREN: Okay. So I think that for  
13 the same reasons stated in the order that we issued  
14 yesterday, the highlighted language is objectionable,  
15 and will be stricken.

16 MS. DINGLELINE: May I make -- ask you  
17 to reconsider? Because all of the yellow is not  
18 about the new zoning ordinance. The page number 3  
19 item number 4 says, "The zoning bylaw in effect at  
20 the time of the application for the solar array was  
21 from 2005. In this document there are numerous  
22 references," blah-blah-blah. So please --

23 MR. MARREN: I apologize, Ms.  
24 Dingleline. I was speaking about the highlighted  
25 language that's in front of us on the screen. Is

1 there more highlighted language, Mr. Iarrapino?

2 MR. IARRAPINO: There is. I'm stepping  
3 through my objections one by one.

4 MR. MARREN: Okay. So --

5 MR. IARRAPINO: Page by page.

6 MR. MARREN: Just limited to this  
7 highlighted language. Am I incorrect? There is  
8 nothing that's referring to currently in effect  
9 bylaws, is there? When it says the bylaw was done,  
10 that's talking about the newly adopted bylaw?

11 MR. IARRAPINO: That's correct, Mr.  
12 Hearing Officer.

13 MR. MARREN: Okay.

14 MS. DINGLELINE: I'm sorry.

15 MR. IARRAPINO: Brooke, I did send a  
16 copy of this by email so you also --

17 MS. DINGLELINE: Yeah. I'm looking at  
18 it. Thank you.

19 MR. IARRAPINO: Thank you. Okay. I'll  
20 move on. So now turning to the highlighted language  
21 on page 3 under number 4. The Hearing Officer's  
22 question is very clearly aimed at two different  
23 statutory provisions that afford towns the authority  
24 to adopt freestanding bylaws and ordinances on  
25 screening of solar projects. So we have no problem

1 with that question. We -- undeniably that is  
2 relevant.

3 The first paragraph of the answer is  
4 the zoning bylaw in effect at the time of the  
5 application for the solar array was from 2005. So  
6 everything that follows that paragraph is not  
7 responding to bylaws that qualify under either of the  
8 statutory provisions in the question.

9 And even though I do recognize that the  
10 commission has pointed out in the commission's order  
11 on the motion to strike, does look at zoning in  
12 general as advisory, and even though I agree that  
13 this particular zoning bylaw was in effect at the  
14 time that the project was requested, I don't think  
15 testimony about screening in existing bylaws should  
16 be treated as advisory by the commission where the  
17 legislature has specifically afforded municipalities  
18 authority to deal with screening of solar projects,  
19 and this Town has not exercised its authority.

20 So my objections, to summarize, are  
21 both the response is not relevant to the question --  
22 the answer is non responsive to the Hearing Officer's  
23 question. And any discussion of screening in the  
24 bylaw in effect at the time of the application that  
25 is not compliant with the statutory provisions is

1           legally irrelevant.

2                       MR. MARREN: Ms. Dingleline?

3                       MS. DINGLELINE: Just one second, if I  
4           can have a moment.

5                       MR. MARREN: Mr. Iarrapino, can you  
6           scroll back up to keep that highlight?

7                       MR. IARRAPINO: I'm sorry. I should  
8           have two copies. One for the group and -- if anyone  
9           would like me to scroll further, please let me know.

10                      MS. DINGLELINE: Okay. Thank you. My  
11           response is if Mr. Iarrapino thinks that this bylaw  
12           was enacted improperly, he can go to court and  
13           challenge it. Just making some, you know, just  
14           dictating some notion that this was not done legally  
15           or it's illegal or something, the question was asked  
16           about which process, and then it says please provide  
17           a recommendation on how to apply such a bylaw or  
18           ordinance to this project.

19                      And that's what Ms. Carver provided.  
20           She pointed out sections of the ordinance that she  
21           thought were important to apply. And in terms of the  
22           legal status of a bylaw, there is a statute of  
23           limitations, and guess what? If you don't upend that  
24           and appeal it in the requisite statutory time frame,  
25           it's the law. Doesn't matter if you did it right or

1 wrong, it's the law.

2 So I don't think it's appropriate to  
3 make an objection, you know, just making some  
4 declaration that somebody thinks something wasn't  
5 enacted properly, because you're going to have to  
6 prove that. And I think it's responsive to the  
7 question. While it didn't respond to all of the  
8 question, the information should be considered  
9 because it is certainly their recommendation. And  
10 isn't that what this is all about?

11 It's disturbing that when a lay board  
12 with a small municipality does not have \$50,000 to  
13 drop on a case like this, or even \$20,000, or even  
14 \$10,000, and so they have done their best. They are  
15 hard working people, and it's really just  
16 disappointing that somebody who wants to do a project  
17 in Town is going to tell them that their  
18 recommendation is illegal and it shouldn't be  
19 considered. It should be.

20 So, you know, and this is about a  
21 recommendation of the planning commission and the  
22 select board. And, you know, every time -- I am told  
23 so many times in this arena, oh, we loosen the rules,  
24 and even though the rules apply, we decide when they  
25 don't, and you decide when they do.

1                   So this is not in the spirit of  
2 municipalities having either due consideration of  
3 their plans or substantial deference of their plans  
4 or due consideration of their opinions and  
5 recommendations. And that's all we are asking, and I  
6 don't know why this is being held to some high  
7 evidentiary standard.

8                   MR. MARREN: I think I'm going to allow  
9 this testimony to stay in, Mr. Iarrapino, and my  
10 reasoning is that this collection of municipal bylaws  
11 I think taken together does have some relevance to  
12 the overall scheme of development in the area which  
13 is relevant to the commission's consideration of  
14 orderly development generally. And so I think that  
15 it's, you know, it meets the relevance test, and it's  
16 okay. So we are going to allow that.

17                   MR. IARRAPINO: All right. I would  
18 just point out to Ms. Dingleline's point, it's a  
19 little bit of grandstanding, but commission rule  
20 2.201 on pro se appearances, which I realize --

21                   MR. MARREN: Mr. Iarrapino, I don't  
22 think we need to get in a big fight about this.

23                   MR. IARRAPINO: Okay.

24                   MR. MARREN: I think the legal issue  
25 that you raised about -- there is a statute that

1 talks about municipal screening ordinances. I think  
2 you can argue in your brief about the legal  
3 significance of these cited ordinances, you know.  
4 But I think that's a legal issue and it doesn't --  
5 just on this pure relevance basis, we are going to  
6 let this in, okay? And I think you should brief the  
7 significance and the amount of advisory  
8 persuasiveness that these ordinances should have on  
9 the commission. Okay?

10 MR. IARRAPINO: Thank you for the  
11 guidance, Mr. Hearing Officer. I appreciate the  
12 decision.

13 I will turn -- I believe there might be  
14 one other. The only other issue because this exhibit  
15 was just filed yesterday, Ms. Carver does testify  
16 extensively in her prefiled testimony about excerpts  
17 from the town plan that are responsive to the Hearing  
18 Officer's question. And I haven't had the time since  
19 this was filed yesterday to compare her prefiled  
20 testimony side by side with this to see if there is  
21 any inconsistencies or what.

22 But she had an opportunity to file  
23 prefiled testimony. There is literally 10 or more  
24 pages of prefiled about what she purports are  
25 specific land conservation measures and policies in

1 the plan. And I would just move this -- that the  
2 information in the prefiled stand for the testimony  
3 of the Town on this question rather than us have to  
4 look at pages and pages of excerpts. It's redundant  
5 in the record. And it's needless. And, you know,  
6 results in potential waste of time. And we would  
7 move it be excluded as unnecessarily redundant for  
8 the record.

9 MS. DINGLELINE: I don't have response.

10 MR. MARREN: You don't have a response?

11 MS. DINGLELINE: Go ahead and rule. I  
12 don't want to spend any more time. Thank you. And I  
13 didn't meant that in a discourteous way. I'm really  
14 trying to help get this finished.

15 MR. MARREN: Mr. Iarrapino, would you  
16 just scroll up a little bit so I can get a sense of  
17 what this is?

18 MS. DINGLELINE: Mr. Marren, I'll just  
19 stipulate to eliminating number 8. It's all based on  
20 the -- to the extent it's based on the 2016 town  
21 plan. That is not -- wait. I beg your pardon. I  
22 beg your pardon.

23 Yeah. This is the town plan that's  
24 applicable to this. I got confused thinking it was  
25 the zoning ordinance. So all the language is in the

1 other document. I don't know that it matters. Just  
2 rule on it.

3 MR. MARREN: Well I mean if you're  
4 stipulating to the striking of this, I don't have to  
5 rule on it or really make a decision. So I would  
6 appreciate if you're clear. Are you stipulating to  
7 striking it or not?

8 MS. DINGLEEDINE: I am not. I was  
9 confused and thought it was the bylaw, not the town  
10 plan. But it is a -- the town plan, and it's the  
11 applicable town plan, so I don't know other than it  
12 being duplicative or something, I think it's probably  
13 -- I don't have a great interest one way or the  
14 other. Whatever you want to decide on it.

15 MR. MARREN: Mr. Iarrapino, would you  
16 just scroll down? If all of this is is quoting  
17 sections of the town plan which is already in  
18 evidence, then you have plenty of, you know, fodder  
19 to put in your briefs about this.

20 What I want to know is there anything  
21 in here that represents the opinion of the Town? Is  
22 there anything in here that is the opinion of the  
23 Town that isn't found in the town plan? That's what  
24 I'm trying to see.

25 MR. IARRAPINO: You know what, Mr.

1 Hearing Officer? Ms. Dingledine has been very  
2 courteous on this issue, and I regret that we have  
3 spent as much time on it.

4 I will just withdraw the objection.

5 MR. MARREN: Thank you. Okay. So does  
6 that deal with all of the issues with Exhibit BPC-4?

7 MR. IARRAPINO: Yes. Only -- can we  
8 just make sure that it's clear for the record that  
9 the planning commission will refile the exhibit with  
10 the highlighted material that was shown on page 2  
11 stricken from the exhibit? After the hearing?

12 MR. MARREN: Will you be able to do  
13 that, Ms. Dingledine?

14 MS. DINGLEDINE: Sure thing.

15 MR. MARREN: Thank you very much. All  
16 right. So subject to all of what's happened before,  
17 which I think the net effect of it is that Exhibit  
18 BPC-4 will be filed in revised form with one  
19 paragraph from page 8 stricken, the prefiled  
20 testimony of Marcey Carver and the 4 exhibits are  
21 admitted.

22 MS. DINGLEDINE: Thank you.

23 (The Prefiled Testimony of Marcey Carver  
24 was admitted into the record.)

25

1 Direct Prefiled Testimony

2 <http://epuc.vermont.gov/?q=downloadfile/401641/142816>

3 (Exhibits marked BPC-1 through 4 were  
4 admitted into the record.)

5  
6 Exhibit BPC-1

7 <http://epuc.vermont.gov/?q=downloadfile/401645/142816>

8 Exhibit BPC-2

9 <http://epuc.vermont.gov/?q=downloadfile/401649/142816>

10 Exhibit BPC-3

11 <http://epuc.vermont.gov/?q=downloadfile/401654/142816>

12 Exhibit BPC-4

13 [http://epuc.vermont.gov/?q=downloadfile/\[-\]/142816](http://epuc.vermont.gov/?q=downloadfile/[-]/142816)

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1 MR. IARRAPINO: Excuse me, Mr. Hearing  
2 Officer, just to clarify for the record you just said  
3 page 8. And I believe the ruling pertained to page  
4 2.

5 MR. MARREN: Oh, page 2. Thank you for  
6 correcting me.

7 MR. IARRAPINO: You're welcome.

8 MS. DINGLELINE: Then my witness is  
9 available for cross.

10 MR. IARRAPINO: In the interest of time  
11 as the hearing has proceeded, the Petitioner is  
12 willing to waive cross of Ms. Carver.

13 MR. MARREN: Okay. Thank you. Do you  
14 have any questions? Your microphone is off.

15 MR. FLAGG: Sorry. Yes, I do, but I  
16 would like to swear her in first, please.

17 MR. MARREN: Of course.

18 MR. FLAGG: Good afternoon, Ms. Carver.  
19 Please raise your right hand.

20 If Mr. Iarrapino can stop sharing his  
21 screen, I think that would help.

22 MR. IARRAPINO: I'm sorry.

23 MR. MARREN: Andy, do you need to share  
24 any documents?

25 MR. FLAGG: Yes.

1 MR. IARRAPINO: I'm sorry. I need help  
2 being reminded how to stop sharing the screen. Here  
3 we go.

4 MR. FLAGG: I think you've done it.

5 MR. MARREN: Thank you.

6 MR. FLAGG: Okay. So there you go.  
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1 MARCEY CARVER,

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

4 THE WITNESS: I do.

5 MR. FLAGG: Thank you. Please turn to  
6 page 4 of your prefiled testimony, and let me know  
7 when you're there.

8 THE WITNESS: I'm there.

9 MR. FLAGG: So in the second paragraph  
10 you discuss why Route 25 is considered a scenic  
11 vista; is that correct?

12 THE WITNESS: Yes. Yes.

13 MR. FLAGG: Yes. Okay. And then on  
14 page 5, does the paragraph beginning with the words,  
15 "such a vista," relate to the vista from Route 25  
16 headed east from Route 91 towards the project or some  
17 other vista?

18 On page 5 you start -- there is the  
19 second paragraph. It says, "Such a vista is severely  
20 negatively impacted." And I'm not sure which vista  
21 you're speaking about.

22 THE WITNESS: I am referring to the  
23 vista that goes along in front of the proposed lower  
24 array on Route 25.

25 MR. FLAGG: Okay. Okay. Thank you.

1 So please, if you could turn to page 7 of your  
2 prefiled testimony, please. And let me know when  
3 you're there.

4 THE WITNESS: I'm there.

5 MR. FLAGG: So in answer 11, you state  
6 that quote: The fact that the solar project can be  
7 seen from so many residences and businesses, and is  
8 directly visible as you exit the interstate and head  
9 east on Route 25, will have a tremendously negative  
10 impact on the vibrancy and desirability of the Town  
11 for both consumers and residents of the Town.

12 THE WITNESS: Yes.

13 MR. FLAGG: So I'm wondering, do you  
14 have an estimate of how many residences and  
15 businesses can see the project and how whatever that  
16 number was estimated?

17 THE WITNESS: In my answer to your  
18 questions I had identified the properties that were  
19 visible. Let me see if I can find that. I'm not  
20 sure I can put my hands exactly on it, but there are  
21 probably a dozen or more properties.

22 MR. IARRAPINO: Objection. I'm going  
23 to move to strike the answer. I don't believe that  
24 Ms. Carver has been qualified as an expert in view  
25 shed analysis, and I don't believe that the

1 methodology for her opinion offered in A-11 has been  
2 established through proper foundation.

3 MS. DINGLELINE: I'm not sure. Am I  
4 supposed to --

5 MR. MARREN: So there is --  
6 qualifications to, you know, for Ms. Carver to render  
7 sort of an opinion about view shed analysis. But the  
8 other foundational question, I mean so Mr. Flagg, I  
9 think what Mr. Iarrapino is getting at, I think we  
10 just need to ask Ms. Carver, you know, did she go to  
11 the site and did she, you know, assess what  
12 properties she could see from the site, or ask how  
13 she would arrive at quantifying a number of  
14 properties that can see the project. And then Mr.  
15 Iarrapino, I'm not recalling on the objection, but  
16 help me understand why a layperson can't, you know,  
17 look around from a position they are and say I think  
18 that this is visible from the following houses or  
19 businesses, you know.

20 MR. IARRAPINO: Well that foundation  
21 hasn't been laid. I was anticipating that the  
22 foundation would be inadequate under the science of  
23 observing what is visible in the sense of aesthetic  
24 analysis, which is a field of art under the  
25 commission's juris prudence. I admit that a

1 layperson can perceive things, but I don't have any  
2 foundation, and I would want foundation from every  
3 single residence that's being cited.

4 And so we can go through that. And  
5 then I can say more about whether it's susceptible of  
6 perception by a layperson or whether it requires  
7 expert analysis. And I think it's important, because  
8 we do have two experts in -- who have been qualified,  
9 and who have testified on the record to reach a  
10 different conclusion, so I think there is a  
11 reliability question here.

12 MR. FLAGG: I would just add that it's  
13 my understanding that Ms. Carver is the chair of the  
14 Bradford planning commission. And as a planning  
15 exercise, planning commission, I believe is going to  
16 be addressing aesthetic issues on a regular basis.  
17 And she may be in a position, as the chair of the  
18 Bradford planning commission, to expound upon her  
19 opinion that was rendered in her prefiled testimony  
20 without objection.

21 MR. MARREN: Let's try to ask some more  
22 questions about what -- how Ms. Carver has, you know,  
23 assessed the aesthetic effect of the project. And  
24 then Mr. Iarrapino, if you want to reraise this  
25 objection, we can talk about it. But I've got to

1 think the planning commission is supposed to give us  
2 their opinions about these things, and we want to  
3 hear it.

4 So let's -- Andy, let's try to ask Ms.  
5 Carver first. Ms. Carver, have you been to the  
6 project site?

7 THE WITNESS: I have been to the  
8 project site, and I've driven by it probably  
9 thousands of times.

10 MR. MARREN: Okay.

11 THE WITNESS: Over 40 years.

12 MR. MARREN: So it's safe to say you're  
13 very familiar with the project site and the  
14 surrounding area.

15 THE WITNESS: I am, down to the parcel  
16 level.

17 MR. MARREN: Okay. Andy, let's try and  
18 ask your question again and see if we can get a  
19 response.

20 MR. FLAGG: Okay. You've stated in  
21 your testimony in answer 11 that the solar project  
22 can be seen from many residences and businesses. And  
23 I'm just wondering, I guess, then how you came to  
24 that conclusion.

25 THE WITNESS: I came to that conclusion

1 both in observation on the ground as well as  
2 conversations with, in particular, one of the  
3 executive -- one of the directors of the assisted  
4 living unit up on Plateau Acres, who expressed that  
5 the solar array would be in the direct view of the  
6 common area of that assisted living building.

7 There are parcels around it that can  
8 clearly see the field. The auto repair store,  
9 Hannaford's, Pierson's Home and Farm Stand, two  
10 houses next to Pierson's on Route 5 that can see it.  
11 And there are houses in the -- on Saddleback Road  
12 that can see it.

13 MR. FLAGG: Thank you.

14 MR. IARRAPINO: I would like to move to  
15 strike the portion of the answer that refers to  
16 conversation with the person who runs the assisted  
17 living facility. That is classic hearsay. And the  
18 commission has recognized with respect to non-expert  
19 testimony, that hearsay is excludable.

20 MR. MARREN: Ms. Carver, so you know,  
21 the commission usually needs the witness to have  
22 personal knowledge of the things that they are  
23 testifying about. So the reason that Mr. Iarrapino  
24 objected to a portion of your testimony is because  
25 you're taking someone else's word for it, that it's

1 visible from the property.

2 Do you have any basis in your own  
3 knowledge, either through visiting the area or from  
4 observing from the project site, a line of sight to a  
5 certain project, do you have any basis of your own  
6 knowledge to know that that project is visible from  
7 the parcel that you mentioned there?

8 THE WITNESS: Yes, I do know that. We  
9 did a site plan review of that particular facility a  
10 couple of years ago, and I walked up to that property  
11 on many of my -- many walks around town. And I can  
12 observe from the field by the house, by the assisted  
13 living, the solar array field.

14 MR. MARREN: Okay. Just to make clear,  
15 Mr. Iarrapino's objection was sustained. We are not  
16 going to take the hearsay testimony, but I think we  
17 have an alternative testimony that addresses the  
18 topic. So --

19 MR. IARRAPINO: Thank you, Mr. Hearing  
20 Officer.

21 MR. FLAGG: Thank you. So Ms. Carver,  
22 if the solar project was screened on the western side  
23 so that the view of the project was reduced from  
24 Route 25, would that lessen the Town's concerns for  
25 the potential impact of the project on aesthetics

1 pursuant to (b) (5) criteria, or does the Town have  
2 additional aesthetic concerns?

3 THE WITNESS: That would lessen the  
4 concerns, but the Town continues to have concerns on  
5 the southern side as well as the northern side of the  
6 property. The eastern side faces on to the owner of  
7 the solar array, and that would be his concern rather  
8 than the Town's, because it's not as visible from  
9 Route 5 farther east.

10 MR. FLAGG: Thank you. Can you please  
11 turn to page 24 of your prefiled testimony and let me  
12 know when you're there.

13 THE WITNESS: I'm there.

14 MR. FLAGG: Okay. So in answer 20 you  
15 discuss the planning commission's support for the  
16 select board's decision to reject an offer of payment  
17 by the Petitioner. And then three sentences from the  
18 bottom make the point that the quote: The sewer was  
19 extended so that commercial businesses would be able  
20 to locate in Bradford, unquote.

21 If the project -- the solar project was  
22 built on this parcel, aren't there other parcels  
23 served by the water and sewer line where development  
24 of the lower plain commercial district could be  
25 accomplished?

1 THE WITNESS: The Town of Bradford is  
2 somewhat limited in the ability to develop -- to  
3 allow for development in the lower plain commercial  
4 due to the manner in which Two Rivers views our  
5 Town's area for primary retail.

6 In addition, the opportunity to develop  
7 property is subject to owners of the properties  
8 obviously. And in particular, there has been  
9 interest in that particular parcel by an abutter and  
10 another potential developer for commercial-related  
11 opportunities.

12 It's in an ideal location for  
13 commercial development as there is close proximity to  
14 the interstate as well as being surrounded by other  
15 commercial and retail activities. So it's an ideal  
16 spot for such an enterprise. And it has only  
17 recently been available because the owner of the  
18 property only recently acquired a significant amount  
19 of road frontage that's part of the property  
20 purchased from the state who gave up part -- sold  
21 part of the property they owned. They deemed they no  
22 longer needed it. So it very recently within the  
23 last couple years became very viable as a commercial  
24 entity.

25 MR. FLAGG: Thank you.

1 MR. IARRAPINO: I'm trying to keep it  
2 to a minimum here, but that entire answer was  
3 non-responsive to the question. I believe the court  
4 reporter needs to read it back, but it's Hearing  
5 Officer Flagg's question. I believe your question,  
6 sir, was are there other parcels. Everything that --  
7 I didn't hear an answer to that question, and  
8 everything else was answer to a different question.

9 MR. FLAGG: Well I can rephrase the  
10 question or ask it again. I think it's -- it should  
11 be fairly straight forward.

12 If the solar project was built on the  
13 parcel that is where it's being proposed, aren't  
14 there other parcels served by the water and sewer  
15 line where development of the lower plain commercial  
16 district could occur?

17 THE WITNESS: Yes. There are other  
18 parcels here by the sewer that are currently  
19 undeveloped that could have commercial activity on  
20 them.

21 MR. FLAGG: Thank you. So could you  
22 please turn to page 31 in question and answer 27,  
23 please. Let me know when you're there.

24 THE WITNESS: I'm here.

25 MR. FLAGG: So in the question and

1 answer there is mention of the Town's study entitled  
2 "Pathways to a Vital Economic Center," that you filed  
3 as Exhibit BPC-3; is that correct?

4 THE WITNESS: Yes.

5 MR. FLAGG: From reviewing the plan, I  
6 read on the cover of that document that the report  
7 was funded by a municipality planning grant from the  
8 State of Vermont Department of Housing and Community  
9 Development and the Town of Bradford; is that  
10 correct?

11 THE WITNESS: Yes. It is.

12 MR. FLAGG: Did the Town have the  
13 support of the regional planning commission when it  
14 applied for the planning grant to do this study and  
15 otherwise share the results of the study with the  
16 regional planning commission?

17 THE WITNESS: Yes. It did. And they  
18 did have access to the copy of the entire report.

19 MR. FLAGG: Thank you. I would like to  
20 share my screen, if that's possible, Ms. Bishop. I  
21 guess maybe I can do that already. No. There we go.

22 MS. BISHOP: You are the presenter, Mr.  
23 Flagg.

24 MR. FLAGG: Thank you. So on page 62  
25 of the regional plan, there is a policy that's

1 numbered 3 that I've highlighted here that says, "Any  
2 development planned for interchange development must  
3 be constructed to," and then in B it states, "The  
4 most appropriate land uses as determined through a  
5 locally-sponsored planning process involving affected  
6 landowners, municipalities, and the regional  
7 commission."

8           Considering this language in the  
9 regional plan, was the "Pathways to the Vital  
10 Economic Center Study" conducted in part to satisfy  
11 this requirement in the regional plan?

12           THE WITNESS: Whenever we do any plan  
13 such as the "Pathways to the Vital Economic Center,"  
14 we talk with Two Rivers to both get their advice and  
15 their support on what we are doing. So if we were  
16 doing something that wasn't in support, they would  
17 not have offered support. I think you might better  
18 ask Kevin Geiger specifically about that.

19           MR. FLAGG: Thank you. In light of the  
20 Town's planning process in the lower commercial plain  
21 district, can you very briefly describe any history  
22 of development on this -- the particular parcel where  
23 the solar project is being proposed?

24           THE WITNESS: What I understand about  
25 this parcel is that it had an active leach field on

1           it for at least some of the businesses that the owner  
2           has. And when he decided to have a solar array, he  
3           hooked up -- I believe he -- it was the emphasis to  
4           hook on to the sewer for one or two of the businesses  
5           that are to the east of the solar field.

6                       And he also was able to purchase a lot  
7           that goes along Route 25 that's now part of that  
8           parcel that he acquired from the State of Vermont  
9           when the State of Vermont determined that they did  
10          not need to continue to own that parcel.

11                      And so my understanding was the auto  
12          store next door has had an interest in that parcel.  
13          But before the owner purchased the road frontage and  
14          gave up the leach field in the back, it was not  
15          particularly viable as a commercial location.

16                      MR. FLAGG: Okay. Thank you. No  
17          further questions.

18                      MR. MARREN: All right. Does -- do any  
19          of the parties, including Bradford Solar and the  
20          Department, have any follow up to Mr. Flagg's  
21          questions?

22                      (No response).

23                      MR. IARRAPINO: No.

24                      MS. BENNETT: Nothing from the  
25          Department. Thank you.

1 MS. DINGLELINE: No.

2 MR. MARREN: Thank you then. Ms.  
3 Dingleline, would you like to do any redirect?

4 MS. DINGLELINE: Very briefly. Thank  
5 you.

6 REDIRECT EXAMINATION

7 BY MS. DINGLELINE:

8 Q. Ms. -- Marcey, how long have you been a  
9 planning commission member?

10 A. I have been a planning commission member for  
11 close to 10 years.

12 Q. And how long have you been chair?

13 A. For probably four years. About four years.

14 Q. So one of the concerns that you have been  
15 expressing and that we saw in your testimony has to do  
16 with this being a vital economic area. Could you tell us  
17 what your background and experience and education is, for  
18 having some expertise, knowledge of financial, business  
19 issues, that sort of thing?

20 A. Well as I stated in my prefilled testimony, I  
21 believe, I have an MBA and also a master's in accountancy.  
22 I've also worked in many places in Vermont, and when I  
23 moved to Vermont I got involved in several businesses; at  
24 a construction company. I worked in real estate for close  
25 to 20 years. I had a retail shop. And I have

1 multi-family -- two multi-family apartment buildings,  
2 small ones, in Bradford and Newbury.

3           So I have had a fair amount of experience both  
4 in financial analysis from a business person's standpoint  
5 as well as having actual boots-on-the-ground type  
6 experience with owning these and understanding what makes  
7 them successful; what doesn't make them successful.

8           Q.       And so through this 10 years of being in the  
9 planning commission as well as your experience, knowledge,  
10 background and education, do you feel confident and  
11 comfortable that the analyses that you have performed in  
12 coming to certain conclusions and recommendations, you  
13 have shared that with the planning commission?

14           A.       The way that I work as chair of the planning  
15 commission, and when I have been on the planning  
16 commission, is to view it as a team effort, not an  
17 individual person's effort. And so we take great effort  
18 in building consensus among ourselves as well as the Town.

19                 We also work with Two Rivers often. We don't  
20 always agree as Kevin Geiger can testify to. But we have  
21 worked very closely in the last five or six years to try  
22 and get more in sync between these two entities and to  
23 help further the vibrancy of the Town. And that's part of  
24 what the Pathways report was about. It was building on  
25 our town plan.

1           We worked with Kevin Geiger to develop the  
2 town plan. We also worked with other aspects of the  
3 zoning and, in fact, a former member of Two Rivers was  
4 actually the person that was the lead on the Pathways  
5 report.

6           So we really -- we have a diverse group of  
7 people on the planning commission and the select board who  
8 come from all different aspects of the community with one  
9 goal in mind, to make it a more -- a great place to live  
10 and to prosper and to raise your children.

11          Q.       So you are here representing the  
12 recommendation of the planning commission as well as the  
13 select board; correct?

14          A.       Yes.

15          Q.       And what is that recommendation?

16          A.       The recommendation is to deny the solar array  
17 in that particular location.

18                   MR. IARRAPINO: Objection. I'm trying  
19 hard here to lay back, but this is redirect. There  
20 have been -- this is a prefiled case. There have  
21 been many rounds of testimony, opportunity for  
22 prefiled, supplemental prefiled and rebuttal. This  
23 is -- how is this in the scope of the Hearing  
24 Officer's question? This is like you're putting on  
25 the witness afresh in a live case, and that's not the

1 purpose of redirect at this late hour in the  
2 afternoon.

3 MS. DINGLELINE: And Anthony, you were  
4 the one who objected to a whole paragraph that had  
5 information that talked about the financial impact of  
6 this on the community. You impugned my witness's  
7 credibility as a non expert. And it was completely  
8 responsive to what took place not just within the  
9 questioning of the witness but in the objections and  
10 the further questions that you folks had.

11 So not trying to be duplicative. I'm  
12 not trying to get secret stuff in. I'm trying to  
13 make sure that the PUC is very clear in terms of what  
14 the communication and representation of the  
15 recommendation was as well as the credentials of the  
16 witness, because you were the one who challenged  
17 that.

18 MR. IARRAPINO: I believe the record  
19 will reflect that the challenge was to her expertise  
20 as an aesthetics expert, and that we did not  
21 challenge her testimony. In fact, it was just  
22 admitted about the financial impact of the project.  
23 So I'm not sure why you need bolstering on  
24 information that's not been challenged and that's  
25 already the subject of extensive prefiled.

1 MR. MARREN: I'll note that the  
2 testimony that really seemed to draw the objection  
3 was when Ms. Dingledine -- when you asked the witness  
4 to basically recount the Town's general position in  
5 this case, which I think is very clear from its  
6 prefiled testimony, and so we don't need to rehash  
7 that.

8 The bolstering the witness's  
9 credibility, I was sitting back and allowing it too  
10 because there was a question about the expertise of  
11 the witness. But it was -- Mr. Iarrapino was correct  
12 that it was about her ability to assess the aesthetic  
13 impact of the project. So if we could move this  
14 along, I think, you know, keeping within the scope of  
15 Mr. Flagg's questions and anything that came up as a  
16 result of them, would be helpful so -- please  
17 continue.

18 MS. DINGLEDINE: There is a period at  
19 the end of my sentence. I was done.

20 MR. MARREN: Oh. Then there is no  
21 disagreements left at this point.

22 Is there anything else that we need  
23 from Ms. Carver at this point, or are we ready to  
24 excuse her? I believe we are. Thank you, Ms.  
25 Carver.

1 THE WITNESS: Thank you.

2 MR. MARREN: All right. Mr. Geiger, we  
3 arrived at the end. So because you are your own  
4 representative, Mr. Flagg's going to swear you in,  
5 and then I will ask a few questions to help you move  
6 in your testimony and exhibits -- or your exhibits.  
7 Okay.

8 THE WITNESS: Okay.

9 MR. MARREN: So Mr. Flagg.

10 MR. FLAGG: Good afternoon, Mr. Geiger.  
11 Please raise your right hand. You did that.

12

13

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1 KEVIN GEIGER

2 Having been duly sworn, testified  
3 as follows:

4 THE WITNESS: I do.

5 MR. MARREN: All right. Good  
6 afternoon, sir. For the record, would you please  
7 state your full name and your position?

8 THE WITNESS: My name is Kevin Welch  
9 Geiger. I'm the Senior Planner with the Two  
10 Rivers-Ottawaquechee Regional Commission.

11 MR. MARREN: Thank you. Mr. Geiger, did  
12 you prepare or oversee the preparation of comments  
13 that were filed by the Two Rivers-Ottawaquechee  
14 Regional Planning Commission and filed in ePUC on  
15 June 26, 2019?

16 THE WITNESS: Yes.

17 MR. MARREN: Were you responsible or  
18 did you oversee the preparation of questions that  
19 were filed by the Two Rivers-Ottawaquechee Regional  
20 Commission on December 23, 2019?

21 THE WITNESS: Yes.

22 MR. MARREN: Did you prepare or oversee  
23 the preparation of responses to the commission's  
24 order of January 23, 2020 that was entitled,  
25 "Bradford Solar PUC letter 2," and filed in ePUC on

1 February 2, 2020?

2 THE WITNESS: I believe it was filed on  
3 February 7.

4 MR. MARREN: February 7. That's  
5 correct. I apologize. I'm sorry.

6 THE WITNESS: Yes, I did.

7 MR. MARREN: And also did you prepare  
8 an affidavit on behalf of the Two Rivers-Ottawaquechee  
9 Regional Planning Commission in response to an order  
10 from the Public Utility Commission on March 17th that  
11 was filed on March 30th, 2020 that was titled, "TRORC  
12 Response to PUC 3/17 Questions on Bradford Solar"?

13 THE WITNESS: I did.

14 MR. MARREN: Are those documents true  
15 and accurate to the best of your knowledge?

16 THE WITNESS: They are.

17 MR. MARREN: All right. Does anyone  
18 object to the commission -- would you like to move  
19 the admission of those documents, Mr. Geiger?

20 THE WITNESS: I would. Now I  
21 understand that the Petitioner would like to strike  
22 or get rid of some of the parts of those because they  
23 relate to the plan that is about to be adopted versus  
24 the previous plan. And I'm perfectly fine with that  
25 happening.

1 MR. MARREN: Okay. Well so are there  
2 any objections to admitting those documents?

3 MR. IARRAPINO: I hate to --

4 THE WITNESS: My question would be how  
5 to do that once we get to that.

6 MR. MARREN: Yeah.

7 MR. IARRAPINO: I hate to keep doing  
8 this, but as the Hearing Officers understand, I do  
9 have obligation on behalf of my client to object,  
10 make objections noted for the record. And --

11 MR. MARREN: Absolutely.

12 MR. IARRAPINO: And the questions  
13 document is just what it purports to be. It's  
14 questions that Bradford Solar, excuse me, that TRORC  
15 put to Bradford Solar. It's not in the -- it's in  
16 the nature of the discovery that was served. Doesn't  
17 even include the responses. And it's not in the  
18 nature of -- in the form or the nature of information  
19 that's typically received in evidence.

20 THE WITNESS: So can I ask a question?

21 MR. MARREN: Yes, of course.

22 THE WITNESS: So Attorney Iarrapino,  
23 are you referring to our December questions there?

24 MR. IARRAPINO: Yes.

25 THE WITNESS: Okay. And I'm perfectly

1 fine taking that one out of wherever things go. Our  
2 main concern would be our letter of February 7 and  
3 our responses of March 30 as redacted -- as we need  
4 to redact them to get rid of the talking about the  
5 plan to be.

6 MR. IARRAPINO: And those are without  
7 objection from the Petitioner.

8 THE WITNESS: Okay. So then my  
9 question is, since they are already sent in, how does  
10 one -- do you just -- do we give you the same thing  
11 with a strike though or how --

12 MR. MARREN: If you could file a new  
13 copy with the strike through, that would be very,  
14 very helpful, and I would appreciate it.

15 THE WITNESS: And just leave the date  
16 in the past.

17 MR. MARREN: It's going to be shown as  
18 filed on a new date, but to the extent the document  
19 has new dates on it, leave those in there.

20 THE WITNESS: Either way. Okay  
21 wonderful. Perfectly fine. Yup.

22 MR. MARREN: All right. So I want to  
23 sort of get to the net effect of this is that it  
24 sounds like we are not admitting the second document  
25 that I discussed, the TRORC questions by Kevin Geiger

1 filed on December 23. That document has been  
2 withdrawn. We are not moving that. We are not  
3 admitting that.

4 The TRORC comments and the response by  
5 Kevin Geiger of January 23 and the letter of March  
6 30th, those are coming in, but we are going to  
7 receive revised versions of which documents, Mr.  
8 Geiger?

9 THE WITNESS: The February 7th letter.  
10 And the March 30th response.

11 MR. MARREN: And we are going to  
12 receive revised versions. And those revised versions  
13 are what will be admitted.

14 THE WITNESS: Correct.

15 MR. MARREN: Everyone is in agreement  
16 on this? Mr. Iarrapino, is that a satisfactory  
17 resolution?

18 MR. IARRAPINO: Yes. Thank you, Mr.  
19 Hearing Officer.

20 MR. MARREN: Okay. Great. So with  
21 that awkward dance out of the way, I guess I will let  
22 Mr. Iarrapino begin his cross examination.

23 MR. IARRAPINO: Thank you.

24 CROSS EXAMINATION

25 BY MR. IARRAPINO:

1 Q. Good morning -- good afternoon, Mr. Geiger.  
2 Nice to see you again, however virtually.

3 I am looking at your affidavit --

4 A. Okay.

5 Q. -- of March 30th. And in that you've provided  
6 a sworn response to the question 5-E. Did the TRORC --  
7 I'm sorry. I can share this.

8 MR. MARREN: That would be very  
9 helpful. Thank you.

10 MR. IARRAPINO: Thank you.

11 BY MR. IARRAPINO:

12 Q. If you look at the Hearing Officer's question,  
13 did the TRORC contribute to or provide support to the  
14 Pathways to a Vital Economic Center Study conducted by  
15 DuBois & King for the Town? If so, please describe this  
16 contribution or support.

17 Do you see your answer there?

18 A. Not that I can recall it says. Yes.

19 Q. Yeah. Did you hear Ms. Carver's testimony of  
20 a few moments ago regarding -- in response to Mr. Flagg's  
21 question?

22 A. I did. Yeah.

23 Q. And if there is apparently a conflict, would  
24 there be somebody else at Two Rivers who could speak to  
25 participation?

1           A.       That is quite possible.  It's also possible  
2           that that person doesn't even work for us anymore because  
3           we have had some staff changeovers, and so personally,  
4           from my point of view, I don't recall doing any particular  
5           thing in there back and forth regarding that study.

6           Q.       Okay.  And so you weren't involved with that,  
7           that's your testimony?

8           A.       Yeah.  As far as I can recall.

9           Q.       Okay.  And then do you know would it be fair  
10          to say then that you don't know whether all of the  
11          affected landowners in the district were involved in that  
12          study?

13          A.       I don't know directly.  I would, you know, I  
14          have heard of the process, and I could talk about that.  
15          But that's kind of me hearing about something.

16          Q.       So you don't know directly.  What is it that  
17          you've heard?

18          A.       So Chris Sargent, who was one of the authors  
19          of that study, was our previous staff.  And so we worked  
20          with Chris a lot.  And so after the study, and when I was  
21          working on this, I would talk with Chris about that study.  
22          And they did a good amount of process, but I'm not sure  
23          exactly what DuBois & King, the authors, did.

24          Q.       So to be clear then, your testimony is that  
25          you do not know that all the affected landowners in the

1 district were a part of that study?

2 A. Correct. I cannot affirmatively state that.

3 Q. Okay. Very good. Isn't it true that Vermont  
4 statute requires formal public and notice -- notice and  
5 comment prior to the adoption of regional plans?

6 A. Oh, yes.

7 Q. And would you agree that formal public notice  
8 and common opportunities arising prior to the adoption of  
9 a local planning document serve the purpose of alerting  
10 affected landowners to potential changes in regulation  
11 that could affect their property rights?

12 A. Yes.

13 Q. Is it fair to say then that a locally  
14 sponsored planning process aimed at determining, the  
15 quote, most appropriate land uses for a given area, is it  
16 fair to say that it should include formal notice and  
17 comment opportunities allowing affected landowners to be  
18 heard prior to the land use policies taking effect?

19 A. Hmm, that's a good question. As a matter of  
20 law, no. As a matter of perhaps general planning  
21 practice, we run into that a lot, and we don't typically  
22 say yes to that. Because there is a lot of different  
23 people involved. Typically what we do in our practice,  
24 it's been a long time, is we allow plenty of public notice  
25 about such things. But we don't send every landowner a

1 postcard or anything.

2 Q. Well that's not -- is sending every landowner  
3 a postcard a requirement of formal public notice and  
4 comment under the statute, for example?

5 A. No. No. It's just you put a hearing notice  
6 out. But a document like that there is no, you know, it's  
7 not a town plan. It's not a bylaw. There is no you have  
8 to put a hearing notice out requirement.

9 Q. I see. Okay. Turning to your affidavit again  
10 at question 5-F, you were asked; would the Pathways to a  
11 Vital Economic Center Study qualify as meeting the intent  
12 of the general interchange policy number 3 on page 62 of  
13 the TRORC regional plan that states: Any development  
14 planned for interchange development must be constructed to  
15 promote the most appropriate land uses determined through  
16 a locally sponsored planning process involving affected  
17 landowners, municipalities, and regional commission.

18 A. Yes.

19 Q. And you replied yes to that question; right?

20 A. Yes.

21 Q. Okay. But you previously testified that you  
22 have no knowledge of the regional planning commission's  
23 participation in that state -- in the Pathways document;  
24 correct?

25 A. Correct.

1 Q. And you've also testified that you don't know  
2 that all the affected landowners were involved in that  
3 study; is that correct?

4 A. That's correct. Yes.

5 MR. IARRAPINO: Okay. I'm going to  
6 move to strike the response on page 5-F for lack of  
7 sufficient facts and data to support the opinion that  
8 the Pathways document qualifies under the regional  
9 plan language that was cited. There is nothing in  
10 the plan, in that document itself, that shows the  
11 involvement in the regional planning commission or  
12 confirms that the affected landowners are involved.  
13 Plainly, the language of the regional plan says that  
14 the locally sponsored planning process should involve  
15 affected landowners and municipalities and the  
16 regional commission, and there is no record  
17 established by Mr. Geiger for sufficient basis in the  
18 evidence of that opinion.

19 THE WITNESS: You're muted, Mr. Marren.

20 MR. MARREN: Mr. Geiger, as a  
21 representative for the TRORC, do you have a response  
22 to that -- to the motion or the objection?

23 THE WITNESS: I would. I guess. There  
24 is a difference between stating that nobody was  
25 involved, the landowners weren't involved, and that I

1 can't tell you that the landowners weren't involved.  
2 So to me those are two different things.

3 It would be highly improbable that the  
4 landowners weren't involved in some way, shape or  
5 form and that there wasn't a good amount of public  
6 notice and process in that.

7 So to conjecture that that didn't  
8 happen, I can't say that it did happen, but I can't  
9 say it didn't happen either. And I can't say that we  
10 weren't involved at all. I can just say that I  
11 wasn't involved to the best of my recollection.

12 So there is certainly the possibility  
13 that both of those things happened. But I can't tell  
14 you that right now.

15 So I don't know, you know, does one go  
16 find some evidence about that? Or how do we get off  
17 the time on that one?

18 MR. MARREN: I'm rereading this  
19 paragraph right now. Give me a second, please.

20 THE WITNESS: Yes. I can tell you that  
21 from our point of view when we would look at the  
22 regional plan if the Town were to come to us with  
23 that report and say here, this is the thing we want  
24 you to look at because you said that, you know, it's  
25 locally supported planning process, yada yada, we

1 would go yup. That's that thing.

2 Now -- but I also don't -- I don't know  
3 when that report became final offhand. Oh, it was  
4 before the petition.

5 MR. MARREN: Mr. Iarrapino, I would  
6 like to reserve this objection for after briefing. I  
7 would like a little bit more time to think about  
8 this. Also, specifically I mean does Bradford Solar  
9 have any reason to believe that there wasn't notice  
10 provided to landowners?

11 MR. IARRAPINO: It's -- that is not --  
12 that is not our burden to carry. He's been asked the  
13 question to offer his opinion as a representative of  
14 the planning commission. He's testified -- there is  
15 an "and" sentence here. A locally sponsored planning  
16 process involving all three groups of entities  
17 involved. And he has testified he cannot testify and  
18 confirm the extent of those. And I don't think there  
19 is a sufficient basis to admit his opinion. We don't  
20 have to prove the negative. He has to prove the  
21 affirmative.

22 MR. MARREN: This feels like a pretty  
23 important point here. And so out of an abundance of  
24 caution, I'm going to ask the parties to brief this  
25 topic in their post-hearing briefs. I'm going to

1 take the objection under advisement. I'll rule on it  
2 when we render a Proposal for Decision.

3 THE WITNESS: Okay.

4 MR. IARRAPINO: Thank you, Mr. Hearing  
5 Officer.

6 BY MR. IARRAPINO:

7 Q. Can you now turn, let me try going to response  
8 7 here. You have testified permitting this development  
9 would jeopardize prime commercial land in many locations  
10 in the region designated for more intensive land use.  
11 Such areas make up just 2 percent of the land in the  
12 region and are a scarce and important resource.

13 A. Correct.

14 Q. Approximately how many acres does that 2  
15 percent represent?

16 A. The entire 2 percent. So, you know, most of  
17 which is built, but the entire 2 percent in the regional  
18 area would be -- I have to do this math in my head.  
19 Because the region's roughly 800,000 acres. So 1 percent  
20 is 8,000 acres. So that is 16,000 acres; right? Is my  
21 math going okay for people there? Does that make sense?

22 Q. I'm willing to accept the answer.

23 A. But a lot of that is downtown Bradford and  
24 places.

25 Q. Right. But would it be fair to say then were

1 you -- you were counting the lower plain in even though  
2 the type of development that the -- even though the Town  
3 has admitted the type of development that it would like to  
4 see requires a change to the regional plan?

5 A. The type of development that it would have  
6 there, yes. Right now just to kind of draw you a mental  
7 picture of that right now, we have an interchange area  
8 that goes down. And then we have a village area to the  
9 north of 25/5 intersection. But that commercial area on  
10 5/25 right now is actually rural in the regional plan  
11 currently.

12 Q. Okay. So just to clarify, your testimony is  
13 that you would have included the lower plain in your 2  
14 percent estimate; is that correct?

15 A. Actually under -- no. It's not in that right  
16 now because all rural lands are outside of that. So it's  
17 only what we have in what we call the regional growth  
18 areas. So it's only actual villages, hamlets, downtowns,  
19 and town centers. Those areas. So that 2 percent is not.

20 But that's, again, that amount of acreage is  
21 so small that it doesn't budge a percent one way or  
22 another.

23 Q. Sure. Then thinking about this 16,000 acres,  
24 some of which is built, some which isn't yet built, and as  
25 you've just testified that land base could grow as the

1 Town -- as the regional plan is amended.

2 What percentage of the 2 percent or the 16,000  
3 acres would the 3 acre project site occupy?

4 A. Oh, then I would have to do some more math and  
5 kind of go 16,000 divided by whatever is obviously --

6 Q. Do you have a calculator with you?

7 A. I do.

8 Q. Could you please provide that calculation and  
9 your methodology for it?

10 A. Sure. So if we say, first off, let me just do  
11 the 800,000. Make sure I get my math right. Times .02 is  
12 16,000 acres. Yes. And then we will do clear. Divided  
13 by 16,000 equals -- that's .01875 percent.

14 Q. .01875 percent?

15 A. Yeah. So slightly less than 2 hundredths of a  
16 percent.

17 Q. Give me a second, please.

18 A. It's .0001875. So move the decimal point w  
19 points for the percentage, so it's .01875 percent.

20 Q. Perfect. Thank you very much. I don't have  
21 any further questions for Mr. Geiger.

22 MR. MARREN: All right, Mr. Flagg?

23 MR. FLAGG: Do you want share your  
24 screen, please, Mr. Iarrapino?

25 MR. IARRAPINO: Ms. Bishop is going to

1 have to help me with that, just take me off  
2 presenting.

3 MR. FLAGG: There we go. Okay. Mr.  
4 Geiger, can you state please what the relationship is  
5 between the Regional Energy Implementation Plan and  
6 the Two Rivers-Ottawaquechee Regional Plan? And  
7 provide some details about the purposes and  
8 distinctions between the two plans.

9 THE WITNESS: It is not obvious to the  
10 casual observer how that works. But the Two Rivers  
11 -- the current, not the proposed, but the current  
12 Regional Energy Implementation Plan it's merely an  
13 Appendix to the regional plan. It is one in the same  
14 document. It's just stuck on.

15 MR. FLAGG: Okay. So it would be fair  
16 to say it's part of it. And what's the purpose of --

17 THE WITNESS: Yes.

18 MR. FLAGG: And what's the purpose of  
19 the Regional Energy Implementation Plan?

20 THE WITNESS: The purpose of it is to  
21 address the statutory requirements around energy, but  
22 also to address the standards around enhanced energy  
23 compliance, that if the regional plan meets, then we  
24 get granted substantial deference and that was  
25 granted.

1 MR. FLAGG: I see. Okay. So in the  
2 2017 regional plan it talks about what the purposes  
3 of the plan are in the Introduction section.

4 THE WITNESS: Of the regional plan or  
5 the energy --

6 MR. FLAGG: Yeah. In the regional  
7 plan. The whole regional plan.

8 THE WITNESS: Yeah.

9 MR. FLAGG: In this context can you  
10 describe how in the last few years leading up to the  
11 applicant's petition filed on June 28, 2019, that Two  
12 Rivers-Ottawaquechee Regional Commission worked with  
13 the Town to support its efforts?

14 THE WITNESS: On?

15 MR. FLAGG: With respect to orderly  
16 development.

17 THE WITNESS: Oh, yeah. Well we did  
18 work on the town plan, which I didn't work on so much  
19 there. But then I worked later on the zoning. And  
20 that zoning was probably, I don't know when exactly  
21 it got adopted, but it was near that petition time  
22 there. But that had been a couple years in the  
23 making, to largely deal with the slight disjunct  
24 between their 2005 zoning and the latest iteration of  
25 their town plan.

1                   And most of that -- there is some stuff  
2 up by the village, but most of that centered around  
3 what we call the lower plain area there, and trying  
4 to -- from our point of view, our regional plan still  
5 does not go south of 25 as much as the Town would  
6 like in terms of proposed or intensive development.  
7 And also, north of 25 what we did is we took that D&K  
8 study and brought it in. And in the draft zoning and  
9 said, which has now been adopted, and said basically  
10 okay, kind of stop doing what you have been doing,  
11 which has been largely, you know, flatish stuff, set  
12 back from the road kind of standardish strip  
13 development type things when you look at it over a  
14 period of time, and start doing more what the D&K  
15 study did which is you're going to pull development  
16 to the road.

17                   MR. IARRAPINO: I need to object. I  
18 believe the witness is testifying about what the  
19 planning commission has done in regard to zoning that  
20 is after enacted, after the petition, and we have  
21 already had an order of the commission that  
22 information about the effect of the subsequent zoning  
23 is irrelevant to this matter under the vested rights  
24 doctrine.

25                   MR. FLAGG: Yeah. My question was

1 about -- to the work that you did prior to the filing  
2 of the petition. So anything that came after that is  
3 --

4 THE WITNESS: Oh.

5 MR. FLAGG: I'm just looking for that,  
6 you know, whatever you did, you know, just generally  
7 speaking, how does the regional planning commission  
8 support the Town's, you know, planning efforts during  
9 the time prior to the submittal of this petition.

10 THE WITNESS: I guess I thought I was  
11 answering that because maybe you mean support -- I  
12 mean I was working on it for years prior to the  
13 adoption and prior to the petition. So in all that  
14 time I'm working on it, but there is no adopted  
15 document. Right? And so --

16 MR. FLAGG: Okay. That's --

17 THE WITNESS: We are kind of striking  
18 that part from the record and what did we do that  
19 actually had a final date prior to the petition? Is  
20 that what we are talking about?

21 MR. FLAGG: Well I'm -- you just kind  
22 of painted a picture that the planning process, which  
23 is a part of my next thread, I guess, planning  
24 process between the region and the Town is something  
25 that's continuous. Is that true?

1 THE WITNESS: Yes.

2 MR. FLAGG: Or is it just, you know, it  
3 stops once things happen?

4 THE WITNESS: Oh no. I mean we have  
5 been in discussions with the Town. For example, the  
6 regional plan, the current proposed regional plan has  
7 been in the works for the last two and-a-half years.  
8 And one of the issues there has been around what are  
9 we doing on the lower plain, and on the west side of  
10 the road, east side of the road. How far? How tall?  
11 You name it.

12 So those things are just all -- while  
13 eventually things do lock and we get a plan adopted  
14 or a zoning adopted, it is a near continuous  
15 discussion. Yeah.

16 MR. FLAGG: Okay. Thank you. So I'm  
17 going to ask you to look at the regional plan,  
18 please. And so I've pulled up -- I think this is --

19 THE WITNESS: Yes.

20 MR. FLAGG: -- the highlighted.

21 THE WITNESS: Page 64.

22 MR. FLAGG: Page 64. And so I'm  
23 wondering if the policy that's supporting compact  
24 development such as in this highlighted area it says,  
25 "Creating a compact core."

1 THE WITNESS: Yes.

2 MR. FLAGG: And then if we go back to  
3 one page there is a -- another looks like a policy  
4 for in-fill.

5 THE WITNESS: Yes.

6 MR. FLAGG: Are those essentially land  
7 conservation methods, you know, compact development  
8 and in-fill used as design principles and standards  
9 in the interchange zone?

10 THE WITNESS: I don't know if I would  
11 call it land conservation efforts just because that  
12 area that we are talking about, you know, is not a  
13 conservation-type area from our point of view.  
14 Because, you know, it's so built in many ways. But  
15 what we are trying to do is we are trying to keep  
16 dense stuff in one area and less dense stuff in the  
17 other area. I would note that both of those policies  
18 are shoulds.

19 MR. FLAGG: Yes.

20 THE WITNESS: So there is an important  
21 distinction when we say it should. We don't mean  
22 shall. But we are providing direction.

23 MR. FLAGG: So that just kind of is a  
24 segue to this number 3 on the previous page that  
25 talks about any development planned for interchange

1 development must be constructed to. And A says,  
2 "Complement the design principles and standards  
3 reflected in the plan."

4 THE WITNESS: That's correct.

5 MR. FLAGG: Is that correct?

6 THE WITNESS: Yes. That's a must.

7 MR. FLAGG: So those other things there  
8 that I began to talk about, the clustering and the  
9 in-fill, those policies are, you know, articulated  
10 here as a must.

11 THE WITNESS: That is an often  
12 confusing thing when I am dealing with towns about  
13 that or when I'm writing those things. But to me,  
14 that is not, my professional opinion, is that does  
15 not create a mandatory standard. If something else  
16 were in the plan and says must and here you say must,  
17 then you're must all the way through. But if we say  
18 you must, should do something, then we don't actually  
19 create a mandatory standard.

20 MR. FLAGG: Okay. Are policies  
21 normally must statements, or are they should  
22 statements?

23 THE WITNESS: For the most part they  
24 are written as shoulds, or you know, encourage or  
25 consider, that type of thing. But we have spent a

1 lot of time, especially in the last couple years,  
2 making sure that when we mean shall we say shall or  
3 must, and when we mean, you know, we wish you would,  
4 and so we are providing a direction but not a  
5 requirement, then we say should or, you know, those  
6 type of things.

7 MR. FLAGG: Okay. So in A when it says  
8 "Complement the design principles and standards  
9 reflected in this plan."

10 THE WITNESS: Yes.

11 MR. FLAGG: What does -- what is that  
12 referring to specifically?

13 THE WITNESS: So -- that is kind of  
14 pointing out there is, you know, that we are not  
15 going to reiterate all of those. That there are, you  
16 know, umpteen things throughout in the plan, and that  
17 they must -- if they say out there, we are not saying  
18 here again, but if it says out there, you know, you  
19 must incorporate a transit stop into a grocery store,  
20 then we mean that over here in the interchange area.

21 MR. FLAGG: Okay. Very good. I don't  
22 have any more questions.

23 MR. MARREN: I have one follow-up  
24 question for you, Mr. Geiger. Mr. Marren. Thank  
25 you. Looking at the text that Mr. Flagg still has

1 the screen, I'm looking at B.

2 THE WITNESS: Yes.

3 MR. MARREN: What would be the regional  
4 planning commission's position if a local locality  
5 had not gone through this exercise? If they had not  
6 determined appropriate land uses. Does that mean no  
7 development can happen in an interchange area, or  
8 does it mean basically that this B doesn't apply?

9 THE WITNESS: So that would mean more  
10 that the regional stuff would kind of, from our point  
11 of view, and it would only be applicable in, you  
12 know, non-local permitting, that the regional plan  
13 would be the controlling force, because they have  
14 kind of left it vacuumed on their end.

15 But if they have taken the time and  
16 effort to do something, then --

17 MR. MARREN: So what would be the  
18 regional standards that would be -- that we would be  
19 looking at in the event there is no locally-  
20 determined or locally-sponsored planning process  
21 involving yada yada yada? What would be taking its  
22 place?

23 THE WITNESS: Right. And so we would  
24 be looking back -- actually back on the page 64 there  
25 that Mr. Flagg had, where we actually have stuff by

1 interchange. And so this part that's in yellow here,  
2 you know, development should be directed to the east  
3 in and around 5/25.

4 Making -- basically doing what we call  
5 in-fill dealing with the land between and behind  
6 existing development and building that core out. And  
7 here I should note, you know, there is statutory  
8 definitions of what development is. Here our reading  
9 of this would be by development we mean buildings,  
10 not just, you know, a parking lot or --

11 MR. MARREN: So that's my next question  
12 is would the regional planning commission consider  
13 the solar array to be in-fill?

14 THE WITNESS: No.

15 MR. MARREN: Can you explain why not?

16 THE WITNESS: It would be like saying a  
17 parking lot's in-fill. Yeah. It's something that's  
18 not grass there, but it's not a building. You're  
19 trying to densify things, and you know, create  
20 buildings and places where people live and work and  
21 that type of stuff.

22 MR. MARREN: Okay. I have no more  
23 questions. Andy, or Mr. Flagg, excuse me, pardon my  
24 informality. Mr. Flagg, did you have any more  
25 questions?

1 MR. FLAGG: No, I don't.

2 THE WITNESS: So that -- do I kind of  
3 get to ask a question myself?

4 MR. MARREN: You do have the  
5 opportunity to conduct a little redirect here. Was  
6 there anything that as a result of our questions or  
7 Mr. Iarrapino's questions, now after having a moment  
8 to collect your thoughts, that you feel like you  
9 could clarify or explain a little better?

10 This isn't an opportunity to present  
11 brand new testimony.

12 THE WITNESS: No.

13 MR. MARREN: That is --

14 THE WITNESS: I want to go back to when  
15 we were all doing math there a minute ago, and my  
16 response in the affidavit which I think may be  
17 response 7 or something. And I will pull it up on my  
18 screen just so I can see what I'm doing here.

19 MS. BISHOP: Would you like to be the  
20 presenter, Mr. Geiger?

21 THE WITNESS: Sure. And then everybody  
22 could see that. Okay. Share. So can you all see  
23 this part here? Can you all see on my screen, I  
24 guess?

25 MR. MARREN: Yes.

1 THE WITNESS: And so this part here --  
2 so in response to question 7. We were talking about,  
3 you know, the very small bit of -- amount of land.  
4 And this exactly -- this is the issue that comes up a  
5 lot when you deal with zoning is somebody might say,  
6 well yeah. I'm just making one little store out in  
7 Tunbridge. How can that be the end of the world for  
8 the region because it's just one little store?

9 And the answer is, because that's --  
10 whatever process we go through that allows that thing  
11 in that land use area, allows that thing everywhere  
12 in that land use area. So, you know, if we can do  
13 that thing here, we can do it everywhere. And so you  
14 really have to multiply it by everywhere you can do  
15 it to get the full answer as to the impact of the  
16 decision.

17 And so that's why even though to say  
18 that is .001875 of the region, the impact of the  
19 decision does not apply to that piece of land. The  
20 impact applies to 16,000 acres. And, in fact, it  
21 applies to even more than that.

22 But -- and so that is our concern here.  
23 Our concern here isn't that this is the last piece of  
24 land that's commercially available at Bradford or  
25 elsewhere. Our concern and our response here is

1 around that if orderly development consists of  
2 putting ground-mounted solar on basically what we  
3 would consider prime commercial land with sewer and  
4 water, that's flat, in or near downtown core, then  
5 that can happen everywhere. And we just -- we will  
6 stop arguing about that because we are just like, oh,  
7 yeah, that was deemed orderly development.

8 And so there is a lot of land out there  
9 in that bailiwick that does not have right now a  
10 local or a regional standard that says, and by the  
11 way, we don't mean that particular thing. And that's  
12 what this response was getting at.

13 So I just wanted to raise that issue.  
14 Yes, it is a small piece of land, but it is an import  
15 across a lot of land. That's it.

16 MR. MARREN: All right. Thank you.

17 THE WITNESS: I can unshare or maybe  
18 somebody can unshare me.

19 MR. MARREN: Does anyone else have any  
20 other questions for Mr. Geiger at this time? No?

21 MR. IARRAPINO: Can I just ask a couple  
22 of brief ones?

23 MR. MARREN: Please do.

24 MR. IARRAPINO: Okay.

25 RECROSS EXAMINATION

1 BY MR. IARRAPINO:

2 Q. Mr. Geiger, you were talking about the  
3 precedential effect potentially.

4 A. Yes.

5 Q. Are you a solar developer, sir?

6 A. No.

7 Q. Do you understand the full economics of what  
8 it takes to develop a solar site?

9 A. No. Why would I?

10 Q. Okay. Very good.

11 MS. DINGLELINE: I'm going to object.  
12 Objection. I couldn't get my button pushed quick  
13 enough, so I guess I would move to object and strike  
14 the answer. How is that relevant?

15 MR. IARRAPINO: Well it's relevant  
16 because he's making a prediction about the likely  
17 build out of solar in other locations in the region.  
18 But he doesn't have the qualifications to say for  
19 sure that building solar in all of those locations  
20 actually makes economic sense from a solar  
21 development standpoint.

22 THE WITNESS: Well that was not what I  
23 said though. What I said was if we deem that this is  
24 orderly development, then we deem orderly development  
25 to be taking place on all those areas with ground-

1 mounted solar. Whether or not it makes sense for  
2 people to do it economically, you know, whether or  
3 not it makes sense to do all sorts of things  
4 economically is not a land use planner's thing so  
5 much. It's will you allow a store or won't you allow  
6 a store.

7 I don't build stores either. I can  
8 tell you we have issued, I think, now seven preferred  
9 site letters in the region for solar development, and  
10 we are very pro-solar development. There is a lot of  
11 stuff going on that we have absolutely no issue with.

12 MR. IARRAPINO: That's fine. But you  
13 don't have the basis to say that just because the  
14 door is opened, that it will actually occur, because  
15 you don't have the knowledge to say that it will  
16 occur because you're not a solar developer.

17 MS. DINGLEEDINE: Objection. Objection.  
18 He didn't say that. And so why is he being asked --

19 THE WITNESS: Wait a minute. Can other  
20 people object? Or am I the only person who can't  
21 object?

22 MS. DINGLEEDINE: I'm sorry.

23 MR. MARREN: I think at this point I  
24 don't think anyone is making any real headway here.  
25 I think the testimony stands, and it speaks for

1           itself.

2                           MR. IARRAPINO: Very good. I'll let it  
3 go. Thank you, Mr. Marren.

4                           THE WITNESS: I think attorney  
5 Iarrapino well understands what precedence can do,  
6 whether or not they may be theoretical in their  
7 future operation.

8 BY MR. IARRAPINO:

9           Q.       So if a Tractor Supply store can be put here,  
10 which is what the Town apparently desires, do you think  
11 the Tractor Supply store is going to go in every location  
12 on the 16,000 acres we were talking about? Does that  
13 precedence --

14           A.       No.

15           Q.       -- guarantee that a Tractor Supply store will  
16 be permanent in all of those locations?

17           A.       No. But it would basically be okay with our  
18 regional policy. It would be a lot of Tractor Supply  
19 stores. But --

20           Q.       Your regional policy in your current plan?

21           A.       That particular spot in our current plan is  
22 rural, and so actually there is no commercial there.

23           Q.       Okay. Thank you. I have nothing further.

24                           MR. MARREN: Okay. Thank you, Mr.  
25 Geiger. You're excused.

1 THE WITNESS: You're welcome. Thank  
2 you all.

3 MR. MARREN: That concludes, I believe,  
4 the witness portion. I have a few odds and ends  
5 related to commission exhibits that I just want to  
6 tick off while we are on the record.

7 Mr. Flagg, did we settle on what  
8 numbers we were giving the comment letters from the  
9 agencies and from the February filing responses from  
10 the Petitioner?

11 MR. FLAGG: Yes. Yes, we did.

12 MR. MARREN: For my benefit, can you  
13 remind me of what numbers we were planning on  
14 identifying those documents?

15 MR. FLAGG: Commission 1 is Bradford  
16 Solar's answers to Hearing Officer questions February  
17 14, 2020. Commission 2 is the DHP letter.  
18 Commission 3 is AAFM comments. Commission 4 are NRB  
19 comments. And Commission 5 are ANR comments.

20 MR. MARREN: Hopefully -- is that  
21 description adequate for everyone? Are you familiar  
22 with the documents we are referring to? Mr.  
23 Iarrapino?

24 MR. IARRAPINO: Yes. Will they be  
25 re-uploaded to ePUC?

1 MR. MARREN: No. We are just telling  
2 -- giving the parties notice that they will be  
3 included in the evidentiary record, and you know, to  
4 the extent we need to make findings based -- about  
5 the proposed conditions that were discussed in those  
6 filings, we may reference those documents in our  
7 proposal for decision.

8 MR. IARRAPINO: Thank you very much.

9 MR. MARREN: All right. If there is no  
10 objection then the 5 commission exhibits numbered 1  
11 through 5 are admitted.

12 (Exhibits marked Commission 1 through 5  
13 were admitted into the record.)

14  
15 Commission 1

16 [http://epuc.vermont.gov/?q=downloadfile/\[-\]/142816](http://epuc.vermont.gov/?q=downloadfile/[-]/142816)

17 Commission 2

18 [http://epuc.vermont.gov/?q=downloadfile/\[-\]/142816](http://epuc.vermont.gov/?q=downloadfile/[-]/142816)

19 Commission 3

20 [http://epuc.vermont.gov/?q=downloadfile/\[-\]/142816](http://epuc.vermont.gov/?q=downloadfile/[-]/142816)

21 Commission 4

22 [http://epuc.vermont.gov/?q=downloadfile/\[-\]/142816](http://epuc.vermont.gov/?q=downloadfile/[-]/142816)

23 Commission 5

24 [http://epuc.vermont.gov/?q=downloadfile/\[-\]/142816](http://epuc.vermont.gov/?q=downloadfile/[-]/142816)

25

1 MR. MARREN: Mr. Flagg, is there  
2 anything else that we need to get into the record at  
3 this point?

4 MR. FLAGG: I am not aware of anything  
5 else.

6 MR. MARREN: Are the parties satisfied  
7 that they have everything that they would like in the  
8 record included at this time? Mr. Iarrapino?

9 MR. IARRAPINO: The Petitioner is.  
10 Thank you.

11 MR. MARREN: Ms. Dingleline?

12 MS. DINGLELINE: The Town is all set.  
13 But actually I did have one question.

14 I didn't keep track of it when it was  
15 going on, maybe it's my fault. But I think that  
16 Anthony had an affidavit from the gentleman that did  
17 not come today. I don't know that that was actually  
18 entered. So I just thought I would give a friendly  
19 reminder.

20 Did I miss that, or did you not admit  
21 it?

22 MR. IARRAPINO: No. We didn't -- Mr.  
23 Upton, is that what you're referring to, Ms.  
24 Dingleline?

25 MR. MARREN: We did admit the testimony

1 of Mr. Upton. I believe an affidavit was provided,  
2 but if not, if Mr. Iarrapino can provide an  
3 affidavit.

4 MR. IARRAPINO: I believe it's in ePUC.  
5 But we don't admit the affidavits, right?

6 MR. MARREN: That's correct. Yeah.  
7 The affidavits come in with the application actually  
8 in the original because we don't always have  
9 hearings. So I think that we are all set on that  
10 end.

11 MS. DINGLELINE: Just did you not want  
12 him to forget anything. Okay. Thanks.

13 MR. IARRAPINO: Thank you, Ms.  
14 Dingleline.

15 MR. MARREN: Ms. Bennett, you got  
16 everything for the Department that you believe should  
17 be in the record?

18 MS. BENNETT: Yes. Thank you.

19 MR. MARREN: Okay. My understanding is  
20 that the parties have agreed to a briefing schedule.

21 MR. IARRAPINO: That's correct, Mr.  
22 Hearing Officer.

23 MR. MARREN: And there is nothing -- we  
24 don't need to discuss that at all?

25 MR. IARRAPINO: No. However, it is a

1 fairly aggressive briefing schedule. It would be  
2 helpful to know if the court reporter believes the  
3 transcript could be available by Wednesday, for  
4 example.

5 (A discussion was held off the record.)

6 MS. DINGLEDINE: I'm sorry. I don't  
7 know what the dates are for the other. Do we know  
8 what the dates are?

9 MR. IARRAPINO: I believe the first  
10 brief is due on the 10th of July. And the second  
11 brief, based on the commission order as extended, is  
12 -- bear with me while I get a calendar here. I  
13 believe it is the last business day of July which is  
14 July 31st.

15 I can just also represent I've  
16 conferred with my clients that they are willing to  
17 pay for the expedited. I'm sorry, Ms. Sears, working  
18 over the weekend. We are willing to pay expedited  
19 given the briefing schedule.

20 MR. MARREN: Thank you, Ms. Sears.  
21 Okay.

22 Are there any other issues we need to  
23 discuss before we adjourn today's hearing?

24 (No response.)

25 MR. MARREN: No. Well I appreciate

1 everyone's time today. And I appreciate the  
2 professional demeanor that people have displayed  
3 throughout this hearing. And I will look forward to  
4 receiving the briefs.

5 Mr. Flagg, do you have anything else?

6 MR. FLAGG: No. Thank you very much.

7 MR. MARREN: Thank you, Mr. Flagg. We  
8 are adjourned.

9 (Whereupon, the proceeding was  
10 adjourned at 3:38 p.m.)

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C E R T I F I C A T E

1  
2  
3 I, Kim U. Sears, do hereby certify that I  
4 recorded by stenographic means the Evidentiary Hearing re:  
5 Case No. 19-2659-NMP, via GoToMeeting, on June 26, 2020,  
6 beginning at 10:30 a.m.

7 I further certify that the foregoing  
8 testimony was taken by me stenographically and thereafter  
9 reduced to typewriting and the foregoing 165 pages are a  
10 transcript of the stenograph notes taken by me of the  
11 evidence and the proceedings to the best of my ability.

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

15 Dated at Williston, Vermont, this 29th day  
16 of June, 2020.

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19  Kim U. Sears  
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