

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re THOMAS MELONE,
(Thomas Melone, Respondent)

PRB File No. 120-2025

February 20, 2026

RESPONDENT’S ANSWER TO THE PETITION FOR MISCONDUCT

Respondent THOMAS MELONE (“Respondent”) hereby answers the Petition for Misconduct (the “Complaint” or “Misconduct Petition”) filed by Michael Hanley against Respondent on September 26, 2025. Numbered paragraphs in the “Paragraph by Paragraph Answer to the Misconduct Petition” section below follow the numbering of the Complaint. This Answer is filed under protest, and Respondent does not waive any rights by filing this Answer.

INTRODUCTION

1. The Misconduct Petition is a blatant violation of Respondent’s First, Fifth and Fourteenth Amendment rights.

2. The bar disciplinary machinery is being used to retaliate against Respondent for his various litigation involving one of Vermont’s legal elite—Attorney Merrill Bent, who is the chair of the Judicial Conduct Board and frequent legal counsel to the Town of Bennington, Vermont (the “Town”).

3. Shortly after Respondent publicly disclosed governmental malfeasance of the Town and Ms. Bent’s firm’s potential role in it during a First Amendment-protected filing in an ongoing adversarial proceeding, Attorney Merrill Bent filed a bar disciplinary complaint against Respondent, putting the bar disciplinary machinery in action in order to retaliate against Respondent and to chill the exercise of his First Amendment rights.

4. The First Amendment to the U.S. Constitution states that “Congress shall make no law ... abridging the freedom of speech, ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” The provisions of the First Amendment

were made applicable to the State of Vermont by virtue of adoption of the Fourteenth Amendment. The First Amendment does not contain any watered-down language applicable to attorneys.

5. Any state effort to single out such speech and right to petition for sanction is a content-based and viewpoint-based speech restriction and is subject to the strictest of First Amendment scrutiny. *Iancu v. Brunetti*, 139 S. Ct. 2294 (2019); *Matal v. Tam*, 137 S. Ct. 1744 (2017). Such speech and petition restrictions will survive First Amendment scrutiny only if the government can demonstrate that the restriction serves a compelling state interest in a narrowly tailored manner.

6. The First Amendment analysis does not change simply because the speech restriction is imposed on a lawyer. Speech and the right to petition is not subject to decreased constitutional protection simply because it is spoken by a lawyer in a setting “related to the practice of law.” The Supreme Court held in *Nat’l Inst. of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018), that the First Amendment protects “professional speech” just as fully as speech by nonprofessionals.

7. Misconduct Petition’s “evidence” for the disciplinary charges against Respondent consists almost entirely of filings in Respondent’s litigation activity, which is immunized by the *Noerr—Pennington* doctrine. The remainder of the evidence consists of comments filed with a Vermont Legislative committee regarding a bill under consideration by said committee, or communications with elected government officials, also immunized by *Noerr-Pennington*.

8. The *Noerr-Pennington* doctrine has been extended to “all petitioning activity,” including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000)). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted); see *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972)

(“Misrepresentations, condoned in the political arena, are not immunized when used in the adjudicatory process.”); *cf. Hartman v. Great Seneca Fin. Corp.*, 569 F.3d 606, 616 (6th Cir. 2009) (“[T]he Petition Clause protects legitimate petitioning but not sham petitions, baseless litigation, or petitions containing ‘intentional and reckless falsehoods,’” (quoting *McDonald v. Smith*, 472 U.S. 479, 484, 105 S. Ct. 2787 (1985))).

9. The *Noerr—Pennington* doctrine “safeguards the First Amendment ‘right to petition the government for a redress of grievances,’ U.S. Const. amend. I, by immunizing citizens from the liability that may attend the exercise of that right.” *Waugh Chapel S., LLC v. United Food & Com. Workers Union Loc. 27*, 728 F.3d 354, 362 (4th Cir. 2013).

10. Because *Noerr—Pennington* extends to all departments of the government, all of Respondent’s statements are protected. *Cal. Motor Transp. Co.*, 404 U.S. at 510-11 (“Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.”).

11. None of Respondent’s litigation activity is “sham litigation.” The Misconduct Petition does not (because it could not) assert that Respondent’s litigation activity is “sham litigation.”

12. None of Respondent’s litigation activity is both “objectively baseless” and “intended to cause harm to [anyone] ‘through the use of the governmental process.’”

13. Michael Hanley’s malice and ill-motives are demonstrated by the fact that Michael Hanley lacked probable cause to bring any of the charges. *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024). The lack of probable cause is demonstrated in Exhibit 1 to the Respondent’s Motion to Stay filed on February 18, 2026, in this case, which is fully incorporated here by reference (the “Stay Motion”). The lack of probable cause is overwhelmingly demonstrated with the Misconduct Petition’s lead count—Count I—which as described herein and in the Motion to Stay is supported by mounds of evidence showing the Town’s municipal plan expired, there was an active cover-up to hide that fact, and that, *inter alia*, official records were unlawfully altered in furtherance of the cover-up, all to obtain federal funds and other benefits that could not be obtained

without a valid municipal plan in place.

THE FACTS

14. Respondent is a Vermont-licensed attorney. Respondent is also a licensed attorney in the States of California, Connecticut, Florida, Massachusetts, New Jersey, New York and Pennsylvania. Respondent has never had a disciplinary complaint filed against him in any of those jurisdictions. Respondent was first admitted to the bar in 1983 in New Jersey.

15. In his capacity as an attorney at all relevant times, Respondent does not represent any third parties. Respondent only represents his own interests.

16. Respondent is a frequent advocate for solar energy, a frequent advocate for challenging state energy policies, and, as a result thereof, a frequent litigant. Respondent is also a developer, operator and owner of small solar energy facilities. Two of those small solar facilities that Respondent has sought to develop are located on a 27-acre parcel of land in Bennington, Vermont, which have been in litigation for the past 13 years and still counting.

17. Those two 2-megawatt solar facilities generated opposition from the Town and various residents of Bennington. In 2018, Respondent and the Town entered into a settlement agreement in which the Town agreed not to oppose either project. Various residents of Bennington continued their opposition to the projects, who were successful in having the Vermont Public Utility Commission (“PUC”) ultimately deny (after having once granted) a certificate of public good (or “CPG”) needed to build a solar facility. Those denials were without prejudice and on January 25, 2023, Respondent refiled its application for one of the projects (which is PUC docket 23-0249), and in 2024 re-filed the application with the PUC for the second project (which is PUC docket 24-3517).

18. To Respondent’s surprise, Attorney Merrill Bent (asserting that she was representing the Town) filed opposition to those petitions for a CPG to build those projects.

19. Respondent filed suit against the Town in federal court in the District of Vermont, case 2:23-cv-0645-gwc, alleging, *inter alia*, a claim for breach of the Town’s obligation under the 2018 settlement agreement not to oppose the projects.

20. In 2025, Respondent filed suit against the Town in State court for alleged open meeting law violations regarding the alleged hiring of Merrill Bent and what Respondent alleged were her unauthorized actions in the PUC against the solar projects that the Town agreed in 2018 not to oppose.

21. In a filing on January 10, 2025, with the PUC (which filing constitutes the entirety of the Misconduct Petition's evidence to support Count I of the disciplinary charges), Respondent exposed governmental malfeasance of the Town related to the expiration of the Town Plan. In a subsequent filing with the PUC on January 29, 2025, (which filing relates to Count VI), Respondent disclosed that then Bennington Town Manager, Stuart Hurd, implicated an attorney in the alleged cover-up involving the expiration of the Bennington Town Plan, where Stuart Hurd states: "We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying." Respondent alleges that the alleged legal opinion was from Merrill Bent's law firm.¹

22. Respondent then brought suit against the Town in federal court in the District of Vermont (case 2:25-cv-00469-wks) to declare that the Bennington Town Plan had expired in October 2023. Relatively contemporaneously with that suit, Respondent filed an appeal and a suit in Vermont Superior Court challenging the Town's actions and agreement with a private developer regarding a redevelopment project generally known as the "Benn High" project.

23. Attorney Merrill Bent claimed to be representing the Town in all of those lawsuits.

24. Vermont regulates the conduct of Vermont-licensed lawyers by means of its Rules of Professional Conduct (the "Rules").

25. Many of the Rules regulate speech and the right to petition. Many of the Rules are vague. The consequences of being considered to have violated the Rules can bring severe punishment, such as disbarment. All of the Rules challenged in the Misconduct Petition attempt

¹ Merrill Bent's law partner Attorney John Stasny's recent filing in this PRB case against Respondent strongly implied that the "legal opinion" was in fact given by Merrill Bent or someone in her firm. *See* Stasny motion at 7 at 7 ("Attorney Bent's law firm, Woolmington, Campbell, Bent & Stasny, P.C. provides general legal services to the Town, and is listed as the Town's law firm year after year as an exception to the Town's Purchasing Policy.")

to regulate Respondent's exercise of his First Amendment rights. All of the Rules challenged herein impose content-based and viewpoint-based discrimination against disfavored speech. None of those challenged rules are supported by a compelling State interest. Nor are any of those challenged Rules narrowly tailored. All of the Rules challenged herein are vague.

26. In May 2025, while the various lawsuits noted above were pending, Carolyn Anderson and Michael Hanley claim that Ms. Anderson appointed Michael Hanley as disciplinary counsel to investigate pursuing charges against the Respondent in response to Merrill Bent's complaint. Permanent Disciplinary Counsel, Attorney Jon Alexander, recused himself because he reports directly to Merrill Bent as Chair of the Judicial Conduct Board.

27. Ms. Anderson's LinkedIn page states that she is Chief Compliance Officer and Associate General Counsel at Green Mountain Power Corporation ("GMP"). GMP and Respondent have been involved in multiple adversarial litigation and there is active threatened litigation as well.

28. Mr. Hanley, a long-time former member and former Chair of the PRB (who was succeeded by Ms. Anderson in 2022), represents solar developers that are competitors to Respondent, and who stand to potentially benefit from harm to Respondent caused by Mr. Hanley. As a result, even if Michael Hanley was validly appointed (which he was not), his appointment and his acceptance of the appointment violates Respondent's constitutional due process rights and Professional Responsibility Board Policy 22.

29. In Vermont, the attorney disciplinary process is governed by the Vermont Supreme Court's Administrative Order ("A.O.") No. 9, which established the PRB and the Professional Responsibility Program. Under A.O. No. 9, disciplinary counsel investigates a complaint and after such investigation cannot proceed to file formal charges without first obtaining a finding of probable cause from one of ten hearing panels.

30. In August 2025, in response to the complaint filed by Merrill Bent, Michael Hanley filed a motion for probable cause determination with PRB Hearing Panel #2. The Respondent received no prior notice of the presentment of an application for probable cause. The Respondent

is not permitted to participate in the process determining whether there exists probable cause. There is no memorandum or opinion issued by the probable cause hearing panel. There is no transcript of the proceedings of the probable cause hearing panel.

31. Mr. Hanley's motion for probable cause finding was based upon a three-page affidavit and a two-page memorandum. Mr. Hanley engaged in judicial deception of Hearing Panel #2, and as a result, received a probable cause determination in September 2025.

32. There was no probable cause for bringing any of the eight charges that Michael Hanley presented to Hearing Panel #2.

33. Later that month, Michael Hanley filed the Complaint against Respondent, charging eight counts, all of which were based on Respondent's First Amendment petitioning activity and exercise of his First Amendment rights to free speech. All of those counts are based solely on documents Respondent filed with, or sent to, a governmental entity. Count VIII seeks Respondent's disbarment.

34. Respondent contends that these PRB proceedings were initiated by Ms. Bent and Mr. Hanley with, and are animated by, a retaliatory, harassing, or other illegitimate motive. Both the circumstances under which this proceeding was initiated and the lack of merit in the counts of the Misconduct Petition support the Respondent's claim of retaliatory, harassing, or other illegitimate motive.

No Probable Cause Exists Or Existed To Support Any Count. Hanley Engaged In Judicial Deception To Obtain A Finding Of Probable Cause.

35. Mr. Hanley did not have probable cause for each of the charges and engaged in misconduct and judicial deception in order to obtain the finding of probable cause. "Judicial deception' consists of either 'deliberate omission or affirmative misrepresentation.'" *Scanlon v. Cty. of L.A.*, 92 F.4th 781, 799 (9th Cir. 2024) (internal citations omitted). "By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw and denude the probable cause requirement of all real meaning." *Id.* (internal quotations and citations omitted). "Even otherwise true observations made misleading by the omission of facts that are not

themselves material may result in an affidavit that, considered as a whole, is materially misleading.” *Id.*

36. Mr. Hanley engaged in professional misconduct by misrepresenting the facts and the law to the probable cause hearing panel by his statements and his omissions. In doing so he further violated Respondent’s Fifth and Fourteenth Amendment due process rights.²

37. Mr. Hanley’s judicial deception and violation of the Rules began with his purported definition of what constitutes “probable cause.” For his purported definition he cited a case from Maryland. But the leading case on the definition of probable cause comes from the Vermont Supreme Court, which Mr. Hanley knows or should have known. Probable cause is examined on a count-by-count basis. *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024).

38. The term “probable cause” has been stated by the Vermont Supreme Court “to refer to ‘a state of facts and circumstances as would lead a careful and conscientious man to believe’ that a violation had taken place.” *Diamond v. Vickrey*, 134 Vt. 585, 590 (1976) (internal citations omitted.) Mr. Hanley did not inform the probable cause hearing panel of the true “state of facts and circumstances.” Mr. Hanley was not a “careful and conscientious man” in performing his investigation or in his presentation to the probable cause hearing panel.

39. Mr. Hanley’s affidavit in support of his motion for a probable cause finding similarly is chock full of deliberate omissions and/or affirmative misrepresentations. Mr. Hanley’s affidavit consists of eleven numbered paragraphs. Only one paragraph—paragraph 11—contains

² *Scanlon v. Cty. of L.A.*, 92 F.4th 781, 799 (9th Cir. 2024):

“Judicial deception” consists of either “deliberate omission or affirmative misrepresentation.” *Id.* at 801 n.3. A statement can also be misleading if, although technically true, it has been so wrenched from its context that the judicial officer will not comprehend how it fits into the larger puzzle. For example, a statement uttered jokingly or sarcastically will be understood by those present one way but, when reproduced on the written page and read out of context, the statement may be understood to mean the opposite of what was said. In such a case, “the officer [has] omitted facts required to prevent technically true statements in the affidavit from being misleading.” *Ewing v. City of Stockton*, 588 F.3d 1218, 1224 (9th Cir. 2009). Even otherwise true observations made misleading by the omission of facts that are not themselves material may result in an affidavit that, considered as a whole, is materially misleading. “[B]y reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw . . . [and] denude the probable cause requirement of all real meaning.” *Liston v. Cnty. of Riverside*, 120 F.3d 965, 973 (9th Cir. 1997) (internal quotation marks and citations omitted).

anything vaguely resembling allegations of facts. But none set “forth a factual basis for the charges.” A.O. 9, Rule 13C. Paragraph 11 only states Mr. Hanley’s expectations: “I expect to prove by clear and convincing evidence that on multiple occasions over a period of years the Respondent Thomas Melone violated rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d)³ of the Vermont Rules of Professional Conduct by ...”

40. Mr. Hanley’s statement of his expectations is then followed by lettered subparagraphs that at best could be characterized as a disconnected jumble or mash-up at listing the reasons for his expectations. His jumbling, however, makes it impossible for any neutral hearing panel or magistrate to unjumble what facts purportedly support what charges. Because probable cause is examined on a count-by-count basis, *Chiaverini v. City of Napoleon*, 602 U.S. 556 (2024), Mr. Hanley’s jumble prevents any count-by-count analysis by a neutral hearing panel or magistrate. That, in turn, renders his affidavit on its face deliberately misleading and invalid, thus denuding the probable cause requirement of all real meaning.

³ 3.1 (Meritorious Claims and Contentions) “A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.”

3.3(a)(1) (Candor Toward the Tribunal) “(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.”

3.5(d) (Impartiality and Decorum of the Tribunal) “A lawyer shall not:.... (d) engage in undignified or discourteous conduct which is degrading or disrupting to a tribunal.”

4.2 (Communication with Person Represented by Counsel) “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

4.3 (Dealing with Unrepresented Person) “In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.”

4.4(a) (Respect for Rights of Third Persons) “(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.”

4.5 (Threatening Criminal Prosecution) “A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.”

8.4(d) (Misconduct) “It is professional misconduct for a lawyer to: (d) engage in conduct that is prejudicial to the administration of justice.”

41. Mr. Hanley’s misrepresentations and omissions continue with his failure to attach any actual evidence, *i.e.*, documents, for a neutral hearing panel or magistrate. Mr. Hanley’s charges are based only on documents. Yet he fails to attach a single one to his affidavit. That failure makes it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley’s characterization of his asserted expectations, denuding the probable cause requirement of all real meaning. What remains is simply a regurgitation of allegations by Mr. Hanley without the presentation of any evidence.

42. Mr. Hanley also failed to disclose that his “evidence” for the disciplinary charges against Respondent consists almost entirely of filings in Respondent’s litigation activity, which is immunized by the *Noerr—Pennington* doctrine.

43. Mr. Hanley’s misrepresentations and omissions continue in paragraph 11a. Paragraph 11a does not accurately reflect what was stated and is deliberately misleading. Mr. Hanley’s Count I alleges that the January 10 Comments, *see* **Exhibit 9**, contained “false statements of law and fact” and that such statements allegedly resulted in multiple Rule violations as set forth in Count I. In order prove a claimed violation of Vermont Rule 3.3(a)(1), Mr. Hanley must prove with clear and convincing evidence with respect to each statement that (1) the identified statement was *in fact* false, (2) Respondent knew the statement was in fact false,⁴ and (3) the statement was made by Respondent in “representing a client in the proceedings of a tribunal.” Rule 3.3 Comment [1]. His alleged violation of Rule 3.5(d) is derivative of the alleged Rule 3.3(a)(1) violation. The basis on which he claims certain (still not specifically identified) statements were false is based solely on the fact that Respondent “never filed a complaint in any court alleging RICO violations by the Town of Bennington,” which ties into his statement that in his view civil RICO does not at all apply to the Town and its officials. In other words, he has no evidence at all, nor did he ask to

⁴ Vt. RPC 1.0(f) (“‘Knowingly,’ ‘known,’ or ‘knows’ denotes actual knowledge of the fact in question.”)

see Respondent’s evidence during Mr. Hanley’s alleged investigation. Said another way, Michael Hanley is alleging that Respondent’s statements regarding the Town’s malfeasance are untrue based solely on the fact that Respondent never filed a lawsuit based on such activities.

44. There was only one filing related to paragraph 11a’s embellished characterization. That occurred on January 10, 2025, *see* **Exhibit 9**. The deliberately inaccurate use of the plural of filing in Mr. Hanley’s memorandum to the probable cause hearing panel manipulates the inferences that he is pushing the probable cause hearing panel to draw. *Second*, as clearly stated in that January 10 filing, Respondent stated that the members of the Select Board (other than two) were engaged in “multi-faceted conspiracy to cover up” *the expiration of the Town Plan*.⁵ No allegations against any specific person or the Town were made with respect to the “forgery,” “counterfeiting,” filing of “false certifications to the state and federal government in violation of criminal statutes” or “false statement with the [Public Utility] Commission.”⁶ Only the “cover-up” of the expiration of the Town Plan was specifically alleged against the members of the Select Board (other than two).

45. But even if they were made, Mr. Hanley had access to all the information available from Respondent that establishes that the Town Plan expired,⁷ and that no valid Town Plan meant forgery and counterfeiting when official documents are altered, which they were as shown in *RESPONDENT’S REPLY TO MR. HANLEY’S OBJECTION TO RESPONDENT’S MOTION TO REVISE* filed January 12, 2026, in this case (the “Reply”).⁸ All of this information Mr. Hanley deliberately failed to disclose to the probable cause hearing panel thus denuding the probable cause

⁵ *See*, **Exh. 9**, para. 6 (“cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect.”)

⁶ *See* **Exh. 9**, para. 7 (“The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A. §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A. §2002 and 32 V.S.A. §631(a)(9).”) *See also id.* (“The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.”)

⁷ The nuts and bolts of the expiration of the Town Plan are laid out in the complaint filed in *PLH Vineyard Sky LLC v. Town of Bennington*, 2:25-cv-469 (D. Vt. Filed May 2, 2025), *see* **Exhibit 1 to the Stay Motion**.

⁸ Available at: <https://www.vermontjudiciary.org/media/19783>.

requirement of all real meaning and violating Respondent’s constitutional due process rights.

46. To illustrate (as noted in the Reply), the cover page of the Town Plan (which is a public record and official document) was twice altered to include false information as to the re-adoption of the Town Plan. This alteration of a public document was publicized on the Town’s website on or around October 2, 2024. The image below on the left is the cover page of the Town Plan on the Town website as it was publicized before October 2, 2024. The image on the right is the altered document.

Bennington Town Plan



Adopted: October 6, 2015

Prepared by the
Bennington Planning Commission
Approved by the Planning Commission, June 1, 2015

Assistance provided by the Bennington County Regional Commission
Funded in part by the Vermont Agency of Commerce and Community Development

Bennington Town Plan



Adopted: October 6, 2015
Amended and Re-adopted: January 22, 2018
Amended: May 23, 2022
Amended: June 24, 2024

Assistance provided by the Bennington County Regional Commission
Funded in part by the Vermont Agency of Commerce and Community Development

47. The altered document in addition to being published on the Town’s official website, was also uploaded to the Vermont Department of Housing and Community Development (“**DHCD**”) on October 2, 2024, apparently by Dan Monks, the current Town Manager, although Mr. Monk’s deposition would provide more information on that. As such, the altered document also can be found as of today’s date on the official DHCD website.⁹

⁹

https://outside.vermont.gov/agency/ACCD/bylaws/Bylaws%20and%20Plans%20Approved/Forms/Group%20by%20Municipality.aspx?_gl=1*1g1c6qv*_ga*MTQzMTIxMTk2MC4xNzMzMjQzNzI5*_ga_V9WQH77KLW*cZ3NjAwNDgwNTQkbzExNyRnMCR0MTc2MDA0ODA1OSRqNTUkbDAkaDA.

48. In addition to uploading an allegedly false and altered document to a State official document repository, on the “DHCD Municipal Plan and Bylaw Intake” form, on October 2, 2024, Mr. Monks also stated that the date of the adoption of the plan was January 22, 2018. Separately, Mr. Monks on July 16, 2024, on a different “DHCD Municipal Plan and Bylaw Intake” form had indicated that the adoption date was June 24, 2024. As of the date hereof, the DHCD website still lists the date of adoption of the Town Plan as June 24, 2024, even though when one clicks on the link it brings you to the altered version of the Town Plan showing an adoption date of January 22, 2018. An expired Town Plan means that all of those statements were false.

49. During the meet and confer conference on January 30, 2026, in PRB case 120-2025, Respondent asked Mr. Hanley how he could justify bringing and maintaining the charge in Count I in light of the overwhelming evidence in the Reply, all of which was available to him prior to filing the Misconduct Petition. His answer was straightforward. He expressed that it was his opinion that civil RICO only applies to “mobsters,” and in his view the officials in the Town of Bennington are not “mobsters.” Mr. Hanley’s position is in some sense consistent with his assertions in his motion to quash subpoenas filed in PRB case 120-2025¹⁰ that evidence of “forgery,” “counterfeiting,” “false certifications” and violations of RICO are irrelevant (although the evidence provided in the Reply is far more than what would be needed to bring to a civil jury the question of whether “forgery,” “counterfeiting,” “false certifications” occurred). While Respondent appreciates Mr. Hanley’s candor on that issue during the meet and confer, that candor was owed to the probable cause hearing panel. His duty of candor and full disclosure also required him to inform the probable cause hearing panel that his opinion that neither a municipality nor any of its officials could be held liable under RICO is baseless in the Second Circuit, whose opinions are controlling law in this case on the issue. *See, Gingras v. Think Fin., Inc.*, 922 F.3d 112, 124-25 (2d Cir. 2019). Likewise, Mr. Hanley’s duty of candor and full disclosure required him to

¹⁰ *See*, Mr. Hanley’s MOTION TO QUASH SUBPOENAS ISSUED BY THOMAS MELONE TO JAMES SULLIVAN, JEANETTE JENKINS, SHANNON BARSOTTI AND DAN MONKS dated December 16, 2025, at 6-7.

inform the probable cause hearing panel that stating that a party is preparing a *civil* RICO complaint is not a threat to report criminal violations as the Second Circuit has held. *Revson v. Cinque & Cinque*, 221 F.3d 71, 81 (2d Cir. 2000). In recently denying a municipal police chief's motion to dismiss a RICO claim against him, a New York federal judge reiterated that the Second Circuit has found that some courts' holdings that a municipality and its officials could not form the *means rea* needed for RICO was "not persuasive" ... "particularly given that private corporations are routinely held liable for damages under RICO." *Winnie v. Sinagra*, No. 1:24-cv-00940 (BKS/PJE), 2025 U.S. Dist. LEXIS 159289 (N.D.N.Y. Aug. 18, 2025), *16 quoting *Gingas*. Mr. Hanley's failure to disclose the controlling precedent was misconduct, judicial deception and violates Respondent's constitutional due process rights.¹¹ Paragraph 11a of Mr. Hanley's affidavit is *at best* grossly misleading. Regardless, his failure to inform the probable cause hearing panel of the whole story and applicable law is judicial deception. The effects of Mr. Hanley's judicial deception are still being felt by Respondent. Mr. Hanley has no evidence to support his targeting of Respondent's speech and petitioning activity and thus never had probable cause or any reasonable chance of a positive outcome.

50. Paragraph 11b fares no better. In paragraph 11b states: "Threatening to disclose purported criminal conduct by two other opponents if they did not support his companies' applications for Certificates of Public Good." Paragraph 11b another clear case of judicial deception. Mr. Hanley attaches no evidence to his affidavit. Paragraph 11b is simply a regurgitation of his allegations. No threat of criminal prosecution was made in any communications with ML or DG. And Mr. Hanley did not (and could not) point to any particular communication that threatened to present criminal charges. There is a single communication from

¹¹ As to the mention of RICO, the January 10 filing says Respondent was finalizing a *civil* complaint against the Town and others (including unidentified "Does") that would include *various civil claims*, including breach of contract, declaratory and injunctive relief related to the Town Plan, civil rights violations and a civil RICO count. But the Respondent did not state what defendants would be charged in which Count. In other words, as to the Town, the two claims that were certain to be directed to the Town were the breach of contract and the declaration that the Town Plan expired. The breach of contract was based, *inter alia*, on what the Respondent alleged were unauthorized acts of Merrill Bent. There is no threat against any person Mr. Hanley can point to.

Respondent, *see* Misconduct Pet. ¶55, that occurred while Respondent and ML/DG were in the Misconduct Petition’s words “opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good.” Misconduct Pet. ¶50. In the May 3, 2024, email, Respondent said “I do want you to be aware that we will be asking about it in your depositions.” Misconduct Pet. ¶52. No criminal charges were threatened there. And Respondent had a conversation thereafter with Attorney Jon Cohen (who represents ML/DG) confirming that no threat of any type of prosecution was made or intended and that the information concerning ML/DG’s activities would be used only to impute their character as witnesses in the CPG proceeding. The communications thereafter occurred when neither ML/DG were a party to any civil proceeding involving Respondent. Mr. Hanley failed to disclose that information, all of which was available to him. Additionally, Mr. Hanley failed to disclose to the probable cause hearing panel that at the time Respondent made the alleged communications, threatening to present criminal charges was not even possible because the statute of limitations had expired.

51. Paragraph 11b does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story that would include the contrary evidence that Respondent provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley’s characterization of his asserted expectations, denuding the probable cause requirement of all real meaning. Mr. Hanley has no evidence to support his targeting of Respondent’s speech and thus never had probable cause or any reasonable chance of a positive outcome.

52. Paragraph 11c states: “Commencing site preparation for at least one of the proposed facilities in Bennington without a Certificate of Public Good from the Public Utility Commission.”

Mr. Hanley attaches no evidence to his affidavit. Paragraph 11c is simply a regurgitation of his allegations. Paragraph 11c does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story that would include the contrary evidence that Respondent provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

53. Paragraph 11c and 11d (both relate to Count III) targets speech, expressive conduct and petitioning activity as well, but this time it is Respondent's witness testimony regarding proposed clearing of land in Bennington for agricultural uses, witness testimony that is fully protected by the First Amendment. The mere fact that PUC commissioners that initiated the investigation made the comment that referred to Respondent's testimony regarding agricultural uses of the property in question as "not credible," does not make the Respondent's testimony false. After all, pleas to "the same body that approved the charges[] tend to go about as one might expect." *SEC v. Jarkesy*, 144 S. Ct. 2117, 2142 (2024) (Gorsuch, J., concurring). Mr. Hanley's claim that Respondent made "false" statements of fact and law (which he fails to identify), is based solely on a comment made in a PUC order that referred to Respondent's testimony regarding agricultural uses of the property in question as "not credible." But that comment is not evidence. It is hearsay, was not a factual finding, and regardless Respondent's testimony at issue is fully protected by the first Amendment. In other words, Mr. Hanley has no evidence to support his targeting of Respondent's speech and thus never had probable cause or any reasonable chance of a positive outcome.

54. Paragraph 11c and 11d do not tell the whole story that would include the contrary evidence that Respondent provided. Those failures (as well as Mr. Hanley's failure to associate

facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

55. Paragraph 11e states: "Attempting to have an *ex parte* communication with the Chair of the Public Utilities Commission." Paragraph 11e does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. None of the alleged rules which are "3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, and 8.4(d)" relate to *ex parte* communications. Nor does it tell the whole story that would include the contrary evidence that Respondent provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

56. Paragraph 11e (Count IV) targets Respondent's free speech to a legislative committee commenting on testimony of Edward McNamara, who is chair of the PUC. Mr. McNamara's testimony was not a judicial function but an administrative one. Respondent's copying Mr. McNamara on the communication does not transform Mr. McNamara's role regarding that testimony into an *ex parte* communication in a separate proceeding. Mr. Hanley has no evidence to support his targeting of Respondent's speech and thus never had probable cause or any reasonable chance of a positive outcome.

57. Paragraph 11f states: "Bringing legal proceedings when there was no basis in law of for those proceedings." Paragraph 11f does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Paragraph 11f does not

tell the whole story that would include the contrary evidence that Respondent provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

58. Paragraph 11f (Count V) targets Respondent's free speech and right to petition. As such it is fully protected by the First Amendment. Respondent had good faith arguments in support of the filings in the Environmental Division as well as expert testimony regarding the potential adverse environmental impacts of the Benn High project. Respondent appealed to the Environmental Division and then to the Vermont Supreme Court because an important jurisdictional question was at stake and one left open by the Vermont Supreme Court's opinion in *Gould v. Town of Monkton*, 2016 VT 84, which is are there some claims against a municipality that a person is "left without a remedy," *id.* at ¶12, under Vermont law. *See also, id.* at ¶13 ("First, the record does not show that landowner has no remedy in the Environmental Division. Landowner did not appeal the denial of his permit application and challenge the validity of the statute in the context of that appeal. Second, he did not actually bring a declaratory judgment action in the Environmental Division, so his presumptions about what the Environmental Division would do are merely speculative. They do not support his claim that he has no forum to challenge Monkton's compliance with 24 V.S.A. ch. 117.") What that language from *Monkton* meant to Respondent is that a litigant needs to first go to the Environmental Division (or else risk losing the claim for failure to first go to the Environmental Division) and see what the Environmental Division does, then appeal that to the Vermont Supreme Court, and then file as Respondent did, a suit in the Superior Court, Civil Division, because the Environmental Division has no guidance on transferring cases between divisions, even though that guidance is supposed to exist. In other words, the substantive claims against the Town and the project were valid, but where complete

relief could be obtained was unclear, and Respondent did not want to be on the receiving end of a Vermont Supreme Court opinion (as in *Monkton*) that said that you can't say that you had no ability to get relief in the Environmental Division because you didn't go there first. And because there is only one Superior Court, *see* 4 V.S.A. Ch. 3, 4 V.S.A. § 30, and "[t]he Supreme Court shall promulgate rules, subject to review by the Legislative Committee on Judicial Rules under 12 V.S.A. chapter 1, that establish criteria for the transfer of cases between divisions," it is only the absence of rules that were supposed to be in effect that enables Count V. And the Superior Court *did have* jurisdiction over the controversy. Mr. Hanley has no evidence to support his targeting of Respondent's speech and petitioning activity and thus never had probable cause or any reasonable chance of a positive outcome.

59. Paragraph 11g (Count VI) states: "Threatening to sue the Complainant when she made a privileged, confidential complaint to the Professional Responsibility Program." Paragraph 11g does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story that would include the contrary evidence that Respondent provided. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

60. Paragraph 11g (Count VI) targets Respondent's free speech and is based upon "Rule 12 of The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement." In other words, Paragraph 11g (Count VI) is based upon the baseless proposition that Rule 12 of The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement represents a rule that constitutes the law in the Vermont. An ABA Model Rule has no legal effect, and that model rule has not been adopted in Vermont. Mr. Hanley has no evidence to support his targeting of

Respondent's speech and thus never had probable cause or any reasonable chance of a positive outcome.

61. Paragraph 11h (also related to Count VI) states: "Disclosing the Complainant's confidential complaint to the Complainant's client and its officers and agents." Paragraph 11h does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

62. Paragraph 11i (related to Count VI) states: "Directly communicating with and threatening to sue the Complainant's client and its officers and agents on account of the Complainant's privileged, confidential complaint to the Professional Responsibility Program." Paragraph 11i does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

63. Paragraph 11i (Count VII) targets Respondent's free speech and is baseless too. Paragraph 11i (Count VII) charges Respondent with communicating with elected officials. But simply communicating with elected officials is not the charged violation. Rather the charged violation of Rule 4.2 is that Respondent's "communications were not limited to Town officials

who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint." That charge makes no sense at all. Rule 4.2 provides that "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer *in the matter.*" First, there is no client. Second, the "matter" in Count VII as presented by Mr. Hanley is "Ms. Bent's complaint to the Professional Responsibility Program." But if Ms. Bent were representing the Town in connection with "Ms. Bent's complaint to the Professional Responsibility Program," that would mean that the Town knew about the complaint and was the client behind the complaint. But that contradicts Ms. Bent's position that she filed the complaint solely on behalf of herself. Mr. Hanley has no evidence to support his targeting of Respondent's speech and thus never had probable cause or any reasonable chance of a positive outcome

64. Paragraph 11j (related to Count VIII) states: "Engaging in a persistent and deliberate violations of the Rules." Paragraph 11j does not set forth a *factual* basis for any of the charges. It does not reference any legal proceeding nor does it reference any facts. Nor does it tell the whole story. In fact, it does not explain at all the basis for how Respondent's protected exercise of his First Amendment rights was prejudicial to the administration of justice. Those failures (as well as his failure to associate facts and law with specific alleged violations) make it impossible for any neutral hearing panel or magistrate to make an independent determination of whether there are facts that support each count and what facts support each individual count. That failure also makes it impossible for any neutral hearing panel or magistrate to make an independent determination of the basis for Mr. Hanley's characterization of his asserted expectations, denuding the probable cause requirement of all real meaning.

65. Paragraph 11j (Count VIII) targets Respondent's protected free speech and petitioning activity. It is based upon Rule 8.4(d), which is patently unconstitutionally vague. The phrase "prejudicial to the administration of justice" is undefined and vague. "[V]ague[] and ambigu[ous]" provisions "are not appropriate as ethics standards." *In re Supreme Court Advisory*

Comm. on Prof'l Ethics Opinion No. 697, 188 N.J. 549, 911 A.2d 51, 59 (N.J. 2006). “If attorneys’ violations of ethical rules are to have implications for litigation, as well as their own disciplinary status, the standards against which their conduct is to be measured should be consistent and clear.” *Miano v. AC & R Adver., Inc.*, 148 F.R.D. 68, 83 (S.D.N.Y. 1993) (emphasis added). Likewise, in *O’Brien v. Superior Court*, 105 Conn. App. 774, 794, 939 A.2d 1223 & n.22 (2008), the court observed that “[a]cademic commentators have identified a serious problem in the open textured provisions of rule 8.4(4). . . . ‘[Subsection 4] rais[ing] the specter of a disciplinary authority creating new offenses by common law, and perhaps harassing an unpopular lawyer through selective enforcement.’” (quoting 2 G. Hazard & W. Hodes, at § 65.6). And that is exactly what is occurring here— Hanley and the PRB harassing an unpopular lawyer.

66. On top of the judicial deception of Mr. Hanley of the probable cause hearing panel, Mr. Hanley also failed to disclose that the *Noerr-Pennington* doctrine extends to “all petitioning activity,” including “concerted efforts incident to litigation, such as pre-litigation threat letters and settlement offers.” *Singh v. NYCTL 2009-A Tr.*, 683 F. App’x 76, 77 (2d Cir. 2017) (quoting *Primetime 24 Joint Venture v. Nat’l Broad., Co.*, 219 F.3d 92, 100 (2d Cir. 2000). Excepted from the doctrine, however, is “sham litigation” that is both “objectively baseless” and “intended to cause harm to the defendant ‘through the use of the governmental process.’” *T.F.T.F. Cap. Corp. v. Marcus Dairy, Inc.*, 312 F.3d 90, 93 (2d Cir. 2002) (quotation marks, brackets, emphasis, and citation omitted). None of Respondent’s litigation activity is sham litigation. And tellingly, the Misconduct Petition makes no allegation (nor could they in good faith) that any of the Respondent’s litigation activity that is targeted by the Misconduct Petition constitutes “sham litigation.” Application of the *Noerr-Pennington* doctrine here, lays bare that there is and never was probable cause to bring any of the charges in the Misconduct Petition.

PARAGRAPH-BY-PARAGRAPH ANSWER TO THE MISCONDUCT PETITION

1. Thomas Melone is a lawyer. **Response: This is admitted.**
2. Thomas Melone has been a lawyer for more than 40 years. **Response: This is admitted.**
3. Thomas Melone is licensed to practice law in Vermont. **Response: This is admitted.**
4. Thomas Melone is also licensed to practice law in California, New York, New Jersey, Massachusetts, Pennsylvania, Florida and Connecticut. **Response: This is admitted.**

5. Thomas Melone is the sole owner of at least 85 business organizations. **Response: This is admitted.**
6. Many, or most, of Thomas Melone's business organizations are involved in some manner in renewable energy. **Response: This is admitted.**
7. Business organizations owned by Thomas Melone are organized under the laws of, at least, Vermont, Connecticut, Indiana, Massachusetts, Minnesota and Delaware. **Response: Admitted that Respondent is the sole owner of PLH Vineyard Sky, LLC ("PLH"), which is a limited liability company organized in the State of Florida. The allegation is otherwise denied.**
8. Thomas Melone is the sole owner of PLH Vineyard Sky, LLC ("PLH"), a Florida business organization. **Response: Admitted that Respondent is the sole owner of PLH Vineyard Sky LLC, which is a limited liability company organized in the State of Florida ("PLH"). The allegation is otherwise denied.**
9. Thomas Melone is the sole owner of Vineyard Sky Allco, Ltd. ("Vineyard Sky"), a Florida business organization. **Response: Admitted that Respondent is the sole owner of VINEYARD SKY ALLCO LIMITED LLC, which is a limited liability company organized in the State of Florida ("Vineyard Sky"). The allegation is otherwise denied.**
10. Vineyard Sky is the sole owner of Allco Finance, Ltd. ("Allco"), a Florida business organization. **Response: Admitted that Vineyard Sky is the sole owner of Allco Finance Limited Inc., which is a corporation organized in the State of Florida ("Allco"). The allegation is otherwise denied.**
11. Allco is the sole owner of Apple Hill Solar, LLC ("Apple Hill"), a Vermont business organization. **Response: Admitted that Allco is the sole owner of Apple Hill Solar, LLC, which is a which is a limited liability company organized in the State of Vermont ("Apple Hill"). The allegation is otherwise denied.**
12. Allco is the sole owner of Chelsea Solar, LLC ("Chelsea"), a Vermont business organization. **Response: Admitted that Allco is the sole owner of Chelsea Solar, LLC, which is a which is a limited liability company organized in the State of Vermont ("Chelsea"). The allegation is otherwise denied.**
13. Thomas Melone controls and manages PLH, Vineyard Sky, Allco, Apple Hill and Chelsea. **Response: This is admitted.**
14. For more than a decade, Thomas Melone, PLH, Vineyard Sky, Allco, Apple Hill and Chelsea have been involved in efforts to develop solar-electric energy generation facilities on adjacent parcels on Willow Road (Chelsea) and Apple Hill Road (Apple Hill) in Bennington. **Response: This is admitted except that the Chelsea and Apple Hill projects are proposed to be on the same parcel, not adjacent parcels.**
15. In 2013 and 2014, Apple Hill and Chelsea entered into two Standard Offer Contracts.

Response: This is admitted, and the 2013 Standard offer contract that was *approved by the PUC* specifically described the Green Mountain Power Company ("GMP") interconnection plan that *clearly and unambiguously* stated that a "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. *See EXHIBIT 1* ("Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. *These would be shared with Apple Hill* if constructed.") (Emphasis added.)

16. Standard Offer Contracts exist pursuant to 30 V.S.A. § 8005(a) a part of Vermont's Sustainably Priced Energy Enterprise Development (SPEED) Program. 30 V.S.A. §§ 8001, 8005, 8005a.

Response: Paragraph 16 of the Petition sets forth a legal conclusion to which no answer is necessary and Respondent leaves Mr. Hanley to his proof. The allegation is, except as

aforesaid, DENIED.

17. The Vermont Legislature created the SPEED Program to promote the rapid deployment of small renewable generation. 30 V.S.A. § 8005(a). **Response: DENIED.**
18. Under the SPEED Program, Vermont distribution utilities, the companies that own and maintain the wires, poles and transformers that deliver electricity from the transmission grid to homes and businesses, must buy renewable power from an eligible renewable electric energy generator at a specified price for a specified period of time.

Response: This is admitted in part. Vermont law and Federal law require certain entities to purchase the electric output from certain electric generating facilities, known as qualifying facilities under regulations of the Federal Energy Regulatory Commission, at avoided costs. The allegation is, except as aforesaid, DENIED.

19. To be eligible for the SPEED program, a project's proposed "plant capacity" cannot exceed 2.2 megawatts. 30 V.S.A. § 8005a(b).

Response: DENIED. The 2.2MW cap violates the Federal Power Act and the Public Utility Regulatory Policies Act. This issue is currently before the Second Circuit in *Allco Finance Limited v. Roisman*, 24-3331 (2d Cir. Argued September 3, 2025).

20. The 2.2 megawatt limits serves the Legislature's goal of providing support and incentives for renewable energy plants of small and moderate size distributed across the state's electric grid. 3 V.S.A. § 8001(a)(7).

Response: DENIED. The 2.2 MW cap (aside from being pre-empted by federal law), does not serve any legitimate purpose. In ISO-New England, all distribution connected generating facilities under 5.0MWs are considered "load reducers," which is why GMP builds its solar facilities at 4.99MWs. A 4.99MW limit would serve a legitimate purpose, but a 2.2MW limit does not. Former Representative Tony Klein noted that the 2.2MW limit was adopted because at one point a wind turbine manufacturer in Vermont, Northern Power Systems, made a turbine at a 2.1-2.2MW size.

21. 30 V.S.A. § 248 mandates that a project with a Standard Offer Contract must have a Certificate of Public Good (sometimes called a CPG) from the Public Utility Commission (sometimes called the PUC) before beginning site preparation, before constructing a generation facility and before selling electricity.

Response: This is admitted in part. 30 V.S.A. § 248 mandates that generally an electric generation project must have a CPG prior to beginning site preparation for the construction of an electric generation facility. But the extent to which section 248 is enforceable is open to question after the Third Circuit's decision in *Transource Pennsylvania, LLC v. Defrank*, No. 24-1045, 2025 U.S. App. LEXIS 22972 (3rd Cir. September 5, 2025) holding that in certain circumstances a State's permitting regime for electric facilities is preempted by federal law. As relevant here, in a 2019 Order changing the rules at the end of the game, the PUC held that the Chelsea Solar project satisfied *all* of Vermont's requirements for CPG, but nevertheless denied the Chelsea CPG based upon a newly invented Vermont-only "single-plant" rule designed to aggregate the Chelsea and Apple Hill Solar projects into one 4MW solar project, thus purportedly exceeding the 2.2MW eligibility cap for solar QFs under the Standard Offer program. Under *Transource*, that PUC refusal to issue the CPG would be invalid because the reason the PUC gave for the denial would be pre-empted by federal law. A knock-on effect of that invalidation under *Transource* would be that the PUC's order regarding "site

preparation” would be invalid as well. In other words, if under *Transource* the CPG should have been issued for the Chelsea Solar project, then Chelsea would have been entitled to engage in the purported “site preparation” at issue in PUC docket 20-1611. The allegation is, except as aforesaid, DENIED.

22. Chelsea applied for a Certificate of Public Good. **Response: This is admitted.**

23. The Public Utility Commission denied Chelsea's petition.

Response: This is admitted to the extent the allegation refers to the CPG application in either PUC docket No. 8302 or PUC docket 17-5024. As noted in the responses to paragraphs 19 and 21, if the Second Circuit invalidates the 2.2MW cap, then under *Transource*, the PUC’s denial of the CPG for the Chelsea Solar project in 2019 would be unlawful and would be subject to being overturned under a rule 60 motion. Likewise, the fine and order in PUC case 20-1611 would be subject to being overturned under a rule 60 motion. The allegation is except as aforesaid, DENIED.

24. In 2021, the Vermont Supreme Court affirmed the Public Utility Commission's denial of Chelsea's petition for a Certificate of Public Good. In re Petition of Chelsea Solar LLC, 2021 VT 27. (“We affirm the PUC's determination that the Willow Road and Apple Hill (*sic*) Facilities are a single plant under 30 V.S.A. § 8002(14)(14)(*sic*) (2014)...”)

Response: This is admitted to the extent the allegation refers to the CPG application in PUC docket 17-5024, otherwise DENIED.

25. Apple Hill applied for the statutorily required Certificate of Public Good by filing a petition with the Public Utility Commission...

Response: This is admitted in part. Apple Hill has applied for a CPG on two occasions, once in docket no. 8454 and once in case no. 24-3517. 30 V.S.A. § 248 mandates that generally an electric generation project must have a CPG prior to beginning site preparation for the construction of an electric generation facility. And the extent to which section 248 is enforceable is open to question after the Third Circuit’s decision in *Transource Pennsylvania, LLC v. Defrank*, No. 24-1045, 2025 U.S. App. LEXIS 22972 (3rd Cir. September 5, 2025) holding that in certain circumstances a State’s permitting regime for electric facilities is preempted by federal law. The allegation is, except as aforesaid, DENIED.

26. The Town of Bennington and neighbors of the Apple Hill facility intervened in the proceedings in the Public Utility Commission.

Response: This is admitted to the extent that the allegation refers to PUC docket 8454, in which the Town and one former adjoining landowner, Libby Harris intervened. The allegation is, except as aforesaid, DENIED.

27. The Town of Bennington opposed Apple Hill's petition on the grounds that it violated the Town Plan. **Response: DENIED.**

28. Sometime later, the Town Selectboard changed its position and voted “not to oppose Apple Hill...” In re Peition (*sic*) of Apple Hill Solar LLC, 2019 VT 64, ¶6.

Response: It is admitted that at one point, the Selectboard voted “not to oppose Apple Hill.” The allegation is, except as aforesaid, DENIED.

29. In 2018, the Public Utility Commission granted Apple Hill's petition for a Certificate of Public Good. **Response: This is admitted.**
30. Apple Hill's neighbors appealed the Public Utility Commission's grant of the Certificate of Public Good for Apple Hill to the Vermont Supreme Court.

Response: This is admitted to the extent that the allegation refers to PUC docket 8454, and one former adjoining landowner, Libby Harris. The allegation is, except as aforesaid, DENIED.

31. In 2019, the Vermont Supreme Court reversed in part and remanded for further proceedings. Among other things, the Court found that:
The selectboard's decision not to oppose the project as violating the Town Plan, on which the PUC heavily relied, does not necessarily mean anything. A decision not to oppose a project or assert that it violates the Town Plan does not mean the project comports with the Plan, or even that the Town has concluded that the project comports with the Plan. In fact, as the PUC recognized, the Town repeatedly emphasized in its response to petitioner's post-technical hearing brief and proposed findings that "[t]he Town has taken no position on the project overall compliance with the Town Plan." The Town could have any number of reasons for choosing not to oppose the project on these grounds, including conservation of its time and resources. That decision in no way supported the PUC's conclusion that the Town took the position that the project complied with the Town Plan.
In re Apple Hill Solar LLC, 2019 VT 64, ¶30. **Response: This is admitted.**
32. After the remand, the Public Utility Commission denied Apple Hill's request for a Certificate of Public Good. **Response: This is admitted.**
33. Apple Hill appealed. **Response: This is admitted.**
34. In 2021, the Vermont Supreme Court reversed and remanded to the Public Utility Commission. In re Apple Hill Solar LLC, 2021 VT 69. **Response: This is admitted.**
35. On remand, the Public Utility Commission again denied Apple Hill's petition for a Certificate of Public Good. **Response: This is admitted.**
36. Apple Hill appealed again. **Response: This is admitted.**
37. In 2023, the Vermont Supreme Court unanimously affirmed the decision of the Public Utility Commission. In re Petition of Apple Hill Solar LLC, 2023 VT 57, 311 A.3d 117, *motion for reargument denied*, Dec. 12, 2023, *motion to stay mandate denied*, Dec. 19, 2023. **Response: This is admitted.**
38. In 2024, Apple Hill filed a new petition for a Certificate of Public Good in the Public Utility Commission. **Response: This is admitted.**
39. At present, that petition is still pending. **Response: This is admitted.**
40. Apple Hill's most recent petition is opposed by the Public Service Department, which has moved to dismiss on the grounds of collateral estoppel.

Response: This is admitted in part. Yes the Public Service Department (“PSD”) filed a

motion to dismiss the petition on the grounds of collateral estoppel which motion has been denied. With that motion having been denied, the PSD has not stated in a filing with the PUC case what their substantive position on the petition is. The allegation is, except as aforesaid, DENIED.

41. As of the filing this *Petition For Misconduct*, neither Apple Hill nor Chelsea have a Certificate of Public Good. **Response: This is admitted subject to the qualifications stated in the responses to paragraphs 19, 21 and 23.**
42. Thomas Melone, and his son, Michael Melone, also a lawyer and also licensed to practice in Vermont, have represented Thomas Melone's companies in a large number of legal proceedings in Vermont. **Response: DENIED.**
43. Thomas Melone has appeared on behalf of his various business organization on many occasions in the Civil and Environmental Divisions of the Vermont Superior Court, the Public Utilities Commission, the Vermont Supreme Court and the United States District Court for the District of Vermont. **Response: This is DENIED.**
44. In addition, Thomas Melone has represented his companies in appeals from the United States District Court for the District of Vermont to the United States Court of Appeals for the Second Circuit and in a *Petition for Writ of Certiorari* from the Vermont Supreme Court to the United States Supreme Court. **Response: This is admitted.**
45. In addition to serving as an attorney for his various Vermont business organizations, Thomas Melone has testified under oath as a witness in proceedings in the Public Utility Commission.

Response: It is admitted that Respondent has testified under oath as a witness in PUC proceedings. It is DENIED that Respondent had a client in any of those proceedings because as sole owner and president he was acting *pro se* and not representing a client under the rules of professional conduct, and at least in the case of the Vermont PUC, it has specifically so held that Respondent is acting *pro se*. The allegation is, except as aforesaid, DENIED.

46. ML and DG were opponents to at least one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good.

Response: It is admitted that a corporate entity owned or controlled by Maru Leon and/or David Griffin and possibly other individuals or trusts called Down to Earth Golf Course Development, Inc. objected to "one of the applications by at least one of the companies owned and controlled by Thomas Melone for a Certificate of Public Good." The allegation is, except as aforesaid, DENIED.

47. At some point before May 3, 2024, ML and DG filed under the Bankruptcy Act for protection from their creditors.

Response: It is admitted that ML and DG filed a petition for bankruptcy on October 1, 2013, which was docketed as case no. 13-10693, see EXHIBIT 2, and the discharge was entered on April 11, 2018, resulting in a statute of limitations period being April 11, 2023, 18 U.S.C. § 3282, MORE THAN ONE YEAR PRIOR TO MAY 3, 2024. The allegation is, except as aforesaid, DENIED.

48. In an email to ML and DG dated May 3, 2024, Thomas Melone said that he had discovered "property [that] does not seem to have been declared on Schedule A to the

bankruptcy petition."

Response: It is admitted that in an email dated May 3, 2024 to ML and DG that Respondent attached a copy of a deed for property in Port St. Lucie Florida and stated: "This information came in after we filed the first round of requests but I do want you to be aware that we will be asking about it in your depositions. This property does not seem to have been declared on Schedule A to the bankruptcy petition." See EXHIBIT 3. The allegation is, except as aforesaid, DENIED.

49. In a bankruptcy case, Schedule A/B is the document where bankrupts list all real and all personal property. Schedule A focuses on real estate, while Schedule B covers everything else, including personal belongings and financial assets. **Response: This is admitted.**
50. Thomas Melone attached to his May 3, 2024 email a copy of a deed that conveyed real property in Florida from DG to a Florida limited liability company. **Response: This is admitted. See EXHIBIT 3.**
51. In the May 3, 2024 email, Thomas Melone said "I do want you to be aware that we will be asking about it in your depositions."

Response: It is admitted that in an email dated May 3, 2024 to ML and DG that Respondent attached a copy of a deed for property in Port St. Lucie Florida and stated: "This information came in after we filed the first round of requests but I do want you to be aware that we will be asking about it in your depositions. This property does not seem to have been declared on Schedule A to the bankruptcy petition." See EXHIBIT 3. No threat of criminal prosecution was made, and as stated above, the discharge was entered on April 11, 2018, resulting in a statute of limitations period being April 11, 2023, 18 U.S.C. § 3282, MORE THAN ONE YEAR PRIOR TO THE MAY 3, 2024 EMAIL (establishing that the only use Mr. Melone intended to use the information for was impeachment of their credibility, which is exactly what Mr. Melone stated to the attorney that called Mr. Melone on behalf of ML/DG). In other words, the statute of limitations on the failure to disclose the Port St. Lucie transactions expired and no criminal prosecution could be had in any event, which Respondent was aware of.

52. ML and DG withdrew from the proceedings in the Public Utility Commission.

Response: It is admitted that a corporate entity owned or controlled by Maru Leon and/or David Griffin and/or possibly other individuals or trusts called Down to Earth Golf Course Development Inc. filed a notice of withdrawal from "the proceedings" in PUC case no. 23-0249 on May 10, 2024. The allegation is, except as aforesaid, DENIED.

53. Nonetheless, in an email dated November 20, 2024 to ML and DG, Mr. Melone said:

I assume you have still been following the Chelsea solar case. And I understand that you were in attendance at the Planning Commission meeting that looked at the recent plan for Apple Hill solar. As you know, in your filing withdrawing from the Chelsea case you listed various reasons for withdrawing, most of which were not very nice. The Town is repeating those reasons in their filings.... As you also likely know, we requested the PUC to approve deposition subpoenas for you and the PUC denied that. We are appealing that decision to the Vermont Superior Court. I think the only way that the

various lingering issues from your involvement can be removed is if you send letters to the PUC, the Planning Commission and the Select Board supporting both projects. This way the other parties would stop trying to get you involved, and would eliminate any need for us to depose the two of you. Please let me know if you are willing to do that.

Response: This is admitted that Respondent sent the email dated November 20, 2024. Respondent denies whatever the use of the word “nonetheless” is intended to convey. Respondent also admits that the November 20, 2024, email clearly states that by sending letters “supporting both projects,” it “would eliminate any need for us to depose the two of you.”

54. ML and DG did not "send letters to the PUC, the Planning Commission and the Select Board supporting both projects." **Response: This is admitted.**
55. On January 12, 2025, Thomas Melone filed "Further Comments" in the proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good accusing ML and DG of "defrauding the federal government" and defrauding ML and DG's creditors.

Response: It is admitted that Respondent filed in a *different* PUC docket in which neither ML nor DG nor any entity owned or controlled by them was ever involved, i.e., in PUC docket no. 24-3517, the document attached (without exhibits) as EXHIBIT 4 hereto on January 12, 2025, which stated:

And then there is the Mount Anthony Country Club where the Commission stated that “the whole facility would be prominently visible from the golf course.” Id. at 37. The purported “evidence” on which that conclusion was based was simply fabricated. It was made up by the core opponents. And when Mount Anthony Country Club sought to repeat that made up claim in case 23-0249, the petitioner sought to depose the purported “owners” of the Mount Anthony Country Club—Maru Leon and David Griffin. But Leon and Griffin knew that if they were deposed the jig was up and their credibility as witnesses would be shattered. So in order to evade a deposition, Leon and Griffin withdrew from case 23-0249 but only after filing a long-winded tirade reciting false reasons why they were withdrawing. Then in subsequent filings, both DPS and the Town regurgitated those false premises for why Leon and Griffin withdrew. And then likewise, the Commission backed the hearing officer’s backing the home team by imposing stringent limitations on petitioner’s rights to discovery and due process. But Leon and Griffin still appear to be using the other core opponents and the Select Board as puppets to perpetuate the false claims regarding aesthetics from the golf course.

A. So why did Leon and Griffin really drop out?

Leon and Griffin knew their credibility would be shattered if they had to sit for a deposition. As described in filings in case 23-0249, Leon and Griffin operate an entity called Down to Earth Golf Course Development, Inc. (“DTE”), the business registrant for the Mount Anthony Country Club. That information, however, seemed to directly contradict the information set forth in the Leon/Griffin Bankruptcy Petition. See, Exhibit 1 hereto. It also appeared that Leon and Griffin claimed that they caused the transfer of the golf course, Bennington parcel ID 43504401, to something called the Griffin Family Qualified Domestic Trust. But the Town’s Grand List in 2015 listed

the owner as DTE. In any case, Leon and Griffin refused to identify the interests of the beneficiaries of the Griffin Family Qualified Domestic Trust. And in SCHEDULE B - PERSONAL PROPERTY to the petition for bankruptcy filed by David Griffin and Maria E. Leon on October 1, 2013, in the Bankruptcy Court for the District of Vermont, David Griffin and Maria E. Leon stated that the fair market value of their interest in the Griffin Family Qualified Domestic Trust was only \$1.00.

*While all of those unexplained events themselves would likely impair their credibility for truthfulness when fully fleshed out, the big bomb came in the form of two land transactions in Florida. Those two land transactions, the deeds for which are attached hereto as **Exhibits 2 and 3**, clearly show that the “owners” of the Mount Anthony Country Club defrauded the Bankruptcy Court and their creditors. Neither the ownership of those real estate properties, nor the sales or proceeds, were disclosed to either the Bankruptcy Court or their creditors either in the original schedules to the petition or in the amended schedules filed on June 3, 2016. Leon and Griffin received their discharge on April 11, 2018, without disclosing those transactions and assets. If Leon and Griffin had no problem with defrauding the federal government through the Bankruptcy Court or creditors, the filing false testimony with the Commission would seem like a walk in the park. And that false testimony served the purposes of the core opponents of the projects and was in large part used as the basis for the Commission to deny the CPG in docket 8454. That explains why Leon and Griffin dropped out of case 23-0249. In other words, they knew their credibility for truthfulness would be shattered, and it would be revealed that what they were saying would be unreliable.*

No threat of criminal prosecution was made against ML or DG. Neither ML nor DG were parties to case 24-3517 and as a result, neither ML nor DG were recipients of the January 12, 2025 filing with the PUC. And as stated above, the discharge was entered on April 11, 2018, resulting in a statute of limitations period being April 11, 2023, 18 U.S.C. § 3282. Thus, the statute of limitations on the failure to disclose the Port St. Lucie transactions expired and no criminal prosecution could be had in any event. The allegation is, except as aforesaid, DENIED.

56. On August 30, 2024, in In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, 2024 VT 58, the Vermont Supreme Court affirmed the Public Utilities Commission's imposition of a \$5,000 fine on various business organizations owned and controlled by Thomas Melone.

Response: This is admitted. While the petitioners’ applications to build solar electric generation facilities on a 27-acre parcel in Bennington, Vermont, were pending before the PUC, the petitioners sought to use the parcel for farming. A member of the public complained to the PUC that the petitioners’ clearing of the parcel for its farming activities would constitute “site preparation” for the construction of an electric generation facility without a certificate of public good, and thus would violate 30 V.S.A. § 248(a)(2). The PUC then *sua sponte* opened up an investigation in which it was the complainant, the prosecutor, the judge and the jury. While the petitioners disputed the charges, pleas to “the same body that approved the charges[] tend to go about as one might expect.” *SEC v. Jarkesy*, 144 S. Ct. 2117, 2142 (2024) (Gorsuch, J., concurring). And they did. While the investigation against petitioners initially donned a cloak of purported “environmental protection”, in the end, even the PUC was not willing to hold that noxious weeds and plants that can be purchased at Home Depot were entitled to environmental protection. But the PUC issued a penalty despite conceding that there was no threat of environmental damage. The PUC claimed there was “harm to the regulatory process”, a concept not in any statute

or any administrative law book.

This case involved whether the PUC has the authority to enjoin and/or penalize farming and other activities of a landowner on land that is also a proposed site for an electric generation facility seeking a certificate of public good under 30 V.S.A. §248, and if it does, the scope of that authority. The PUC's unheralded action against Respondent was to Respondent's knowledge, the first and still only time the PUC issued an injunction against a person that is not a regulated utility. The PUC's action also required it to ignore 50 years of contrary precedent in Vermont regarding what constitutes site preparation for a generating facility. Specifically, the PUC's approach for the past fifty years has been framed by an opinion of the Vermont Attorney General issued shortly after §248 and Act 250 were enacted, as explained in *Petition of Beaver Wood Energy*, 2011 Vt. PUC LEXIS 169 (April 1, 2011) ("*Beaver Wood II*") at *17-18, PC-222:

the Vermont Attorney General issued an opinion addressing the issue of what project components should be included as part of an electric generation facility subject to Section 248 jurisdiction, and thus not subject to Act 250 jurisdiction. The Attorney General concluded:

where a proposed improvement bears a reasonable relationship and can be considered to be part of an electric transmission or generation facility, having in mind the broad meaning to be ascribed to the word 'facility,' it is my opinion the exemption applies and no Act 250 permit can be required prior to construction.

By way of example, the Attorney General's opinion states that "a separate Act No. 250 permit is not required for the construction of impoundments, roads, rail spurs and lagoons in connection with electric generation and transmission facilities." []

This Board has followed the Attorney General's guidance and applied the "reasonable relationship" standard in determining whether a site improvement is part of an electric facility subject to Section 248 jurisdiction. However, as the Department correctly observes, the "reasonably related to" language is sufficiently vague that it can arguably support both sides of the issue before us. Therefore, it is important to recognize that the standard does not simply ask whether the site improvement in question is reasonably related to the generation facility. It also requires, in the words of the Attorney General, that the improvement "can be considered to be part of an electric generation or transmission facility," recognizing the broad meaning of "facility."

In *Beaver Wood II*, an applicant applied for a CPG for approval of a biomass energy facility and wood-pellet manufacturing facility. The applicant asserted that "its proposed wood-pellet manufacturing facilities are reasonably related to, and are a part of, its proposed electrical generation facilities." *Id.* at *6. The applicant "acknowledge[d] that the electric generation facilities could be constructed without the accompanying wood-pellet facilities, but [asserted] the wood-pellet and electric generation facilities are engineered to function as one unit, with the wood-pellet facility using waste heat and steam from the electrical unit, and the electrical unit using waste (i.e., bark) from the wood-pellet facility as fuel ... and that therefore the wood-pellet facility's 'relationship to the electrical facility is the sole reason for its existence.'" *Id.* at *6-7. The PUC held that it did not have jurisdiction over the wood-pellet facility:

the fact that co-locating the wood-pellet facility with the electric

generation facility makes the overall use of the fuel more efficient does not make the pellet plant a part of the generation facility. Such synergistic sharing of inputs to the generation process, while potentially beneficial for society as well as for the financial interests of project developers, does not somehow convert the manufacturing process into an electric generation process.

Where an activity was a precursor to an electric generation facility, the PUC explained that it had jurisdiction when the activity had *no other purpose* except the construction of an electric generation facility. Thus, “temporary wind-measurement towers ... were precursors to, and essential for the construction of, the wind generating facility, *and had no other purpose.*” *Id.* at 29 (emphasis added). Similarly, in *Petition of Monument Farms Three Gen, LLC*, Docket No. 7592, 2010 Vt. PUC LEXIS 332 (October 22, 2010), the PUC stated that the petitioner could proceed with construction of a component of an electric facility—a digester—based on the applicant's “representation that the digester had agricultural purposes apart from its use in the electric generation facility,” even though the express purpose was to commence construction of the electric facility. *See, Petition of Beaver Wood Energy*, 2010 Vt. PUC LEXIS 565, *14 (December 9, 2010) (“*Beaver Wood I*”). But in all cases, the PUC agreed that §248 did not provide jurisdiction over farming activities. *Beaver Wood II*, fn. 22 (“the legislature did not perceive a need to include a farming exemption from Section 248 because it did not intend Section 248 review to extend to the farming operations themselves).

57. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that even though the Public Utility Commission had issued a Temporary Restraining Order prohibiting site-preparation "developer continued to conduct site clearing activities the following day until the sheriff arrived and ordered all work to cease."

Response: It is admitted that the Vermont Supreme Court opinion contains that quoted language, however that language is inaccurate. In other words, it does not reflect the facts.

At the end of the PUC hearing on June 26, 2020, Chairman Roisman stated that the PUC would be issuing a temporary restraining order. A temporary restraining order is not effective unless and until it complies with V.C.R.P. 65,¹² which requires, *inter alia*, a statement of the reasons therefor. In any case, Mr. Melone told Chris Little of Ecos Energy LLC to tell Robert Kobelia, who was the forester (i.e., person doing the site work) to cease all tree-clearing activity once a written order was issued that in fact did restrain Mr. Kobelia’s work because until it was in writing Respondent had no ability to predict what the scope of the injunction might be. Mr. Little had thought he had subscribed to case 20-1611-INV in ePUC so that he would be informed of the issuance of the order. Mr. Melone was asleep at the time the order was issued in ePUC during the night of June 26, 2020 (which under the PUC’s rules was technically not actually issued until the following business day, which was Monday, June 29, 2020). In other words, under the PUC’s ePUC rules and VCRP 65, the effective date of the order was not until June 29, 2020. Said another way, under the PUC’s rules the injunction was not considered served until June 29, 2020. Apparently, Mr. Little’s subscription request did not take effect so he was not made aware of the issuance of

¹²V.R.C.P. 65(d) clearly states: “(d) Form and Scope of Restraining Order or Injunction. -- Every restraining order and every order granting a preliminary or permanent injunction shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.”

the temporary restraining order until after 1pm EDT on June 27, 2020. Chris Little of Ecos Energy LLC communicated the issuance of the temporary restraining order to Mr. Kobelia at around 1:30pm EDT on June 27, 2020, and asked him to cease all activity. According to Mr. Kobelia, shortly thereafter a member of the Bennington police served on Mr. Kobelia a copy of the temporary restraining order. According to Mr. Kobelia he told the officer that he would move his machine out of the work area after he finished his soda which he did five minutes later. Mr. Kobelia then serviced his machine and then smoothed holes in the unpaved access road that could be a safety hazard for those that might legally or illegally walk on the property to the blacktop portion of Willow Road.

At the December 4, 2020 hearing in PUC case 20-1611, in response to a question from PUC Commissioner Cheney, Robert Kobelia was very specific about what he was doing on the morning of Saturday, June 27, 2020. The PUC issued the TRO at 10:30pm the night before, which was not considered served until June 29, 2020. Kobelia stated that what he started doing (but was not completed by the time he was told to stop), was to create a place to park one or two vehicles. He stated that the area contained “lots of invasives, very, very thick honeysuckle, autumn olive, and multiflora rose. It's a jungle.” Tr. 49:3-5. “[M]y job on that Saturday was the first day I had to not do silt fence installation, but was to actually make a place to park one or two vehicles.” Tr. 49:8-11. Robert Kobelia, was very specific about the area where he was attempting to make two parking spaces. “So there’s some ash right at the very beginning that were maybe four- to eight-inch diameter trees that were dead. Incidentally, a large component of the trees are ash. Bennington was just notified that emerald ash borer is found in Bennington, so those, all those ash will be dead in three years if they’re not already on their way. So that’s, that’s where I was clearing.” Tr. 49:13-20. Robert Kobelia reiterated that the work done on June 27, 2020, was clearing dead trees. *See*, Tr. 63:9-25, 64:1-6:

Q. ... the 100-by-250 clearing area, which we’ve identified on the exhibit, most of that was cleared before the hearing on the 26th; is that correct?

A. That is correct. I purposefully left those six-inch dead ash until a day when I had the bulldozer working perfectly, and that was the morning I was there working on those.

Q. Okay. So that’s the, those are the only things that you actually cleared from the area on Saturday, June 27th; is that correct?

A. That is, that is correct. And I wasn’t looking to excavate. That would be a further job. First, we took the little stuff when I first started. Then we took a few of these bigger trees. To get rid of all of the stumps, it would require a further use of an excavator that just would do it so quickly and then a final back-grading to be able to use it for agricultural use. So we were in step two.

Q. Okay, great. And you had said that you looked up what the white arrowleaf aster looked like, correct, so you’d be able to identify it if you saw it?

A. That is correct.

In other words, Mr. Kobelia removed some dead trees before the TRO was served.

58. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that "the PUC also found developer's claims that site preparation was done solely for unrelated farming purposes to be not credible given that developer knew that it did not have a Certificate of Public Good, that it was required to have one, that it needed to clear trees for site preparation, and that clearing had already been denied by the PUC." **Response: It is admitted that the Vermont Supreme Court opinion contains that**

language, however that language gives a misimpression of what actually occurred and does not accurately reflect the testimony or the facts. The “not credible” reference is from the PUC June 26, 2020, TRO order. See EXHIBIT 5. Specifically that TRO order stated:

The petitioner's activities constitute site preparation without a CPG in violation of 30 V.S.A. § 248(a)(2). The petitioner's claim in his affidavit that his activities are solely for farming purposes is not credible. The Vermont Agency of Agriculture, Food and Markets defines a farm as land that is "devoted primarily to farming." The petitioner testified in this proceeding that, although the sheep may end up being used for some farming purposes, he was putting the sheep in this location "primarily" to serve the proposed solar projects. This does not qualify as farming. Further, the petitioner testified that the clearing activities are a prerequisite to building the solar projects that have not received CPGs.

That statement in the TRO order was also referenced in the PUC’s order of April 1, 2021. The affidavit and testimony that is referenced is attached as EXHIBITS 6 and 7. Respondent’s testimony was not only credible, but it was accurate. The PUC relied on a single thin reed of what it called evidence that the clearing was “explicitly linked” to a plan to construct electric generation facilities. The purported “explicitly linked” evidence is based solely on Respondent’s answer on cross-examination to a physics question involving the Pauli Exclusion Principle posed by ANR’s Attorney Einhorn. Attorney Einhorn’s question asked no more than whether Respondent agreed with the Pauli Exclusion Principle that no two objects can occupy the same space at the same time. Of course, Respondent agreed that no two objects can occupy the same space at the same time. Thus, a solar module cannot be placed where a tree exists, nor could a house, a barn, a garage or crops. Nor could livestock graze on land occupied entirely by trees. But it is on that physics colloquy that the PUC’s orders entirely rest. The actual testimony is as follows:

Q. [Einhorn] And would you agree with me that, if the area wasn’t cleared at all, you could not build the Apple Hill project, correct?

A. [Witness] If there were trees there, yeah, we couldn’t, we obviously could not put solar modules where trees were.

Q. [Einhorn] Right. So the clearing is necessary to build the project?

A. [Witness] Well, a cleared area is necessary to build the project.

Q. [Einhorn] The Apple Hill project location that’s proposed requires that trees be cleared before the Apple Hill solar facility can be constructed, correct?

A. [Witness] Not as we amended it, no.

Q. [Einhorn] *I’m not talking about when, how, why they’re cleared.* I’m simply saying, You would agree with me that, before you can build a solar project where you want to build one for the Apple Hill facility, trees will need to be cleared?

A. [Witness] I would agree that, if trees were there, they would have to be cleared; that’s right.

(emphasis added).

Attorney Einhorn’s statement that he does not care *why* the trees are being cleared

reaffirms that all he was asking for related to the physics question of whether two objects can occupy the same space at the same time. But that does not answer the question of whether the sitework was *for the construction of* an electric generation facility as opposed to *for an agricultural use*. Attorney Einhorn conceded that he did not care that the clearing was being done for the purpose of an agricultural use.

Clearing for the proposed agricultural use would be quantitatively and qualitatively different and double the cost, showing that the clearing is for an agricultural use and not for the construction of an electric generation facility. Attorney Einhorn asked about the difference in the type of clearing that needs to be done for an agricultural use versus a solar use:

Q. [Einhorn] ... the activities that are being conducted right now seems to involve removing stumps as well.

A. [Witness] That's correct, yeah, and that's one difference between clearing for agricultural use and clearing for the solar use.

Q. [Einhorn] Okay. So the removal of stumps was not contemplated for the solar use?

A. [Witness] I think, in general, only if they were in the way of the posts.

Q. [Einhorn] Yeah, that was, that was my recollection as well.

Notably, Attorney Einhorn's last question was actually a statement agreeing with Respondent that clearing for an agricultural use is in fact *much different* than clearing for a solar use. And the testimony is clear that the clearing was planned was *for an agricultural use*. Respondent explained that "the site preparation for the farming use is more expensive and more involved than clearing and site preparation for a solar project. For example, in the case of a solar project, tree stumps do not need to be removed unless they end up being in the way of a post for the support racking of the modules. Clearing for PLH's farming use, however, requires that all the stumps be removed, which can more than double the cost of clearing." Thus, the only linkage is that the sitework is linked to the planned agricultural uses, and the PUC's conclusion to the contrary had no actual evidentiary basis. The PUC's conclusion is based upon speculation, which is what tends to happen when a single body acts as prosecutor, judge, and jury.

The PUC's conclusion regarding the primary purpose of the agricultural uses was wrong too. As explained in Respondent's *uncontradicted* testimony, the PUC's assertion the sheep would be placed at the Bennington site primarily to serve the non-existent, contingent solar projects was wrong and wholly without any evidentiary support. Respondent's testimony at the December 2020 hearing, *see* EXHIBIT 8, proves that the PUC's conclusion is wrong.

ROISMAN: It sounds like the sheep that you're proposing here is primarily sheep to be used to graze at solar projects and that it, maybe you want to use this area as a, as a way station for sheep that you would be transporting around to sites that have solar projects already built and

that need sheep to graze there. Is that a fair characterization?

[emphasis added]

[Respondent]: ... that's the primary aspect. ... the plan that the sheep farmer has given to us, I think, does contemplate also the wool being sold as a commodity, and some of the, and I guess some of the sheep as well would be sold. I guess, to the extent that there are new sheep that are born and that are more than we need, then she has that in the business plan, too, as far as a revenue stream. So, I mean, so it really would be while we're getting into the business because of all the solar farms that we operate in the northeast. The business plan does also contemplate the normal sheep operations and income of selling the wool and selling some of, of the sheep, you know, if it's more than we need in terms of sheep there.

The PUC Chair's question refers to "solar projects" and specifically "already built", not the proposed Chelsea and Apple Hill solar projects. That is a crucial difference. Respondent's further testimony re-emphasized that point:

while the impetus for getting into the farming business was to maintain solar projects owned by Allico and third parties, the farming business will also engage in and realize revenue from the more typical livestock farm revenue streams. The potential use of the sheep to graze at the site in Bennington is an incidental benefit of the overall sheep business, it by no means is the "primary" purpose as concluded by the PUC.

The PUC's contrary conclusion is based upon surmise and speculation. No testimony backs up or provides support for the PUC's conclusion. The only thing the record is "replete with" is that the sitework is for agricultural uses, like the one Vineyard Sky Farms engages in in Connecticut, and not for site preparation for the construction of a solar facility. The Respondent's testimony further elaborated on that fact:

the primary aspect of PLH *getting into the business of sheep farming* was "to graze at solar projects" throughout the Northeast. At no time did I state (as Finding #5 claims) that "[t]he sheep grazing is being done 'primarily' to control vegetative growth at the petitioner's planned solar projects at the site." But even if the sheep grazing was being done primarily to control vegetative growth of what is now a non-existent solar array, the activities on the Parcels still include the raising, feeding, and management of sheep which is still farming.

...the grazing at the Bennington site is not dependent at all on a solar facility being on the site one day. The raising, feeding, and management of the sheep is a completely separate business and farming activity, and would commence prior to any solar project being on the site and would

continue whether or not a solar project is ever built. PLH would be operating a farming business that would not depend at all, much less primarily on the prospect of a solar facility on the Bennington site. It would make no business sense to commence a farming business that was dependent upon the existence of two solar projects that the PUC has denied CPGs for.

PLH would be engaging in farming and the property would be considered a farm both before and after any solar facility that might be placed in service. The hoped-for solar projects at the site (which the Commission has denied CPGs for both) would be a small portion of the solar projects that would be serviced by the sheep, which would include both Allco-related projects and third-party projects (in New York, Vermont, Massachusetts and Connecticut).

As explained above, the claimed “admissions” were non-existent. The PUC’s foundational conclusion that creating an agricultural use for the management and raising of sheep then and planting hemp and building hemp storage buildings then was merely a ruse so the sheep could primarily serve *non-existent* solar projects, which still do not exist today, was without evidentiary foundation. Moreover, even if the PUC’s conclusion were correct, the sitework would still be for an agricultural use, and the sheep and hemp business would still constitute farming. Moreover, the part of the land that Kobelia actually had cleared was not the proposed location of solar modules.

59. In In re Investigation Pursuant to 30 V.S.A. Sec. 30 & 209, the Vermont Supreme Court said that "the PUC concluded that developer's failure to comply with its regulatory obligations harm the credibility and integrity of the process, resulting in harm to the statutory scheme and potential harm to public safety and welfare, the environment, and utility customers."

Response: It is admitted that the Vermont Supreme Court opinion contains that quoted language, however that language does not reflect the facts. Respondent did comply with all regulatory obligations, there was no harm to the credibility and integrity of the process. There was no harm to the statutory scheme and there never was potential harm to public safety and welfare, the environment, and/or utility customers.

60. After an unsuccessful *Petition for Writ of Certiorari* to the United States Supreme Court, at least one of the business organizations owned and controlled by Thomas Melone paid the \$5,000 fine.

Response: This is admitted. The petitioners filed the petition for certiorari on the issue of the petitioners not receiving a trial by jury, which petitioners would be entitled to under the Seventh Amendment to the United States Constitution. The Vermont Supreme Court, in somewhat of a first, held that the Vermont Constitution’s guarantee of a trial by jury is less protective than the Seventh Amendment.

61. On January 10, 2025, in proceedings in the Public Utility Commission regarding Apple Hill's application for a Certificate of Public Good, Thomas Melone said that all but two members of the Town of Bennington Select Board were in engaged in an active "cover-up conspiracy" and committed acts of "forgery," engaged in "counterfeiting," filed

"false certifications to the state and federal government in violation of criminal statutes" and filed at least one "false statement with the [Public Utility] Commission."

Response: DENIED. Respondent admits that he filed comments on January 10, 2025, with the PUC (which are attached hereto as EXHIBIT 9) but the Petition's allegation does not accurately reflect what was stated, therefore the allegation is denied. As clearly stated in Exhibit 9, Respondent stated that the members of the Select Board other than two were engaged in "multi-faceted conspiracy to cover up" the *expiration of the Town Plan*. No allegations against any specific person or the Town were made with respect to the "forgery," engaged in "counterfeiting," filing of "false certifications to the state and federal government in violation of criminal statutes" or "false statement with the [Public Utility] Commission."

62. Thomas Melone told the Public Utility Commission that he was "finalizing" a complaint to be filed in the United States District Court for the District of Vermont against the Town of Bennington for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c).

Response: Respondent admits that he filed comments on January 10, 2025, see EXHIBIT 9, with the PUC stating that he was finalizing a civil complaint against the Town and others (including unidentified does) that would include *various* civil claims, including breach of contract, declaratory and injunctive relief related to the Town Plan, civil rights violations and a civil RICO count. But the Respondent did not state what defendants would be charged in which Court. In other words, as to the Town, the two claims that were certain to be directed to the Town were the breach of contract and the declaration that the Town Plan expired. The allegation in the Complaint twists what was actually said in an attempt to align with Michael Hanley's chosen narrative. The allegation is except as aforesaid DENIED.

63. A RICO complaint must describe "predicate acts," specific criminal offenses, that, when committed as part of a pattern, can be the basis for civil actions. "Predicate acts" are the building blocks of a RICO claim and must be linked to a criminal "enterprise" to constitute a RICO violation. **Response: DENIED.**
64. Mr. Melone never filed a complaint alleging "RICO" violations by the Town of Bennington in any court. **Response: This is admitted.**
65. On January 29, 2025, Thomas Melone alleged to the Public Utility Commission, but not to the Professional Responsibility Program, that "attorney Bent's representation [of the Town of Bennington] would be a violation of multiple rules of the Vermont and New York attorney Rules of Professional Conduct."

Response: It is admitted that the filing dated January 29, 2025, contains that language, however that language is incomplete and creates a misimpression. The filing, attached as EXHIBIT 10, states:

“unless the Town stipulates that the Town Plan expired on October 6, 2023, Merrill Bent is a key witness and as such is disqualified from representing the Town under Vermont Rules of Professional Conduct 3.7 Attorney Merrill Bent can no longer advise the Select Board on issues related to the Town Plan. She has been implicated by Stu Hurd (see Exhibit 1) and at a minimum would be a key witness which prevents her representing the Select Board. As a result, under both the Vermont and New York Rule of Professional Conduct 3.7, she is prohibited from representing the

Select Board. . . . Attorney Merrill Bent can also no longer advise the members of the Select Board for another reason. On January 13, 2025, in a secret executive session meeting held after the scheduling conference in this case, Merrill Bent imposed a gag order on the members of the Select Board, instructing them not say anything about the Town Plan. Right off the bat, Bent’s advising all individual seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist.Likewise, Merrill Bent issued a written opinion dated September 4, 2024, which targeted Select Board member Nancy White. Nancy White has constantly questioned the issue of the expiration of the Town Plan. Nancy White contacted the State of Vermont directly regarding a specific grant. Merrill Bent, presumably at the urging of the majority of the Select Board issued a written opinion targeting White, stating that Nancy White’s “outreach [to the State] exceeded the authority of any single member of the Bennington Selectboard.” Bent’s opinion was a patently unconstitutional use of government funds to chill Nancy White’s First Amendment rights. Some would say that Nancy White had a *duty* to follow her conscience and check with the State on the issues which concerned her. Substantively, Nancy White clearly had a valid basis for that contact, and a valid basis to query whether “the proper federal and or state guidelines have not been followed.” Among other things, of course, without a valid Town Plan, applying for the grant was impermissible.”

The allegation is, except as aforesaid, DENIED.

66. On March 24, 2025, Thomas Melone sent an email to the members of the House Committee on Energy and Digital Infrastructure (*sic*) and the Senate Committee on Natural Resources and Energy. **Response: This is admitted.**
67. In his March 24, 2025 email, Thomas Melone criticized Public Utility Commission Chair Ed McNamara as well as the Public Utility Commission. **Response: This is admitted.**
68. In the March 24, 2025 email, Mr. Melone asserted that the Public Utility Commission had "weaponized and expanded" and "applied *retroactively*" [emphasis in original] what he described as the "single-plant rule" in order to deny a Certificate of Public Good to Chelsea. **Response: This is admitted.**
69. Thomas Melone went on to say that the Public Utility Commission had made a "demonstrably *false claim*" [emphasis in original] with respect to Apple Hill and Chelsea. **Response: This is admitted.**
70. He asserted that "[w]hat appears to matter to the PUC is political connections." **Response: This is admitted.**
71. He asserted that "when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them..." **Response: This is admitted.**
72. He then said: "The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation." **Response: This is admitted.**
73. He then told the Legislative committees:

The PUC continues to up the ante in the weaponization of the single

plant rule. And Allico will continue to respond with more litigation challenges to the PUC. I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Response: This is admitted.

74. On the same day, Thomas Melone sent a copy of his March 24, 2025 email to Public Utility Commission Chair Ed McNamara.

Response: It is admitted that the legislative email was *copied* to Edward McNamara on the email, who is a Vermont licensed attorney. The legislative email is attached as EXHIBIT 11.

75. Thomas Melone did not send a copy of his March 24, 2025 email to any of the other parties in the proceedings involving Apple Hill's applications for a Certificate of Public Good.

Response: It is admitted that the Legislative email did not also include direct recipients besides legislators and Mr. McNamara. However, Mr. Melone does not know if and to whom any of the recipients of that email may have forwarded it to. Mr. Melone also forwarded to the legislative email to various members of Renewable Energy Vermont on March 24, 2025, and he received one reply. See EXHIBIT 12. Others are afraid to challenge the PUC for exactly the reason that the PUC or others (in this case the others being Mr. Hanley and the PRB) will retaliate against anyone that speaks out. Based upon heavily-redacted documents provided by the PUC, see EXHIBIT 13, Mr. McNamara caused the legislative email to be forwarded to one or more recipients on March 24, 2025. It was also forwarded on March 25, 2025, and April 14, 2025. Mr. McNamara also caused the legislative email to be filed in PUC cases 23-0249 and 24-3517 on April 21, 2025.

In that connection, Rule 2.09(B) of the Vermont Code of Judicial Conduct states:

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision *promptly* to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(Emphasis added).

What does promptly mean? In various other circumstances, it has been said to mean "as rapidly as possible," see *Mongeon Bay Props. v. Mallets Bay Homeowner's Assn.*, 2016 VT 64, P66, or "immediately," see *Vt. Journalism Trust v. Vt. Dep't of Pub. Safety*, 2024 Vt. Super. LEXIS 271, 2024 LX 81495, *10 (Vt. Super. 2024).

"[P]romptly" means "in a prompt manner; at once; immediately, quickly." *Cook v. State*, 928 N.W.2d 128, 2019 Iowa App. LEXIS 180, 2019 WL 719163, at *4 n.6 (Iowa Ct. App. Feb. 20, 2019) (quoting Promptly, Webster's Third New Int'l Dictionary 1816 (unabr. ed. 2002)).

There is no explanation as of now as to why, if Mr. McNamara believed the receipt of the legislative email was in fact an *ex parte* communication, why he waited until April 21, 2025, to file it, which would not meet the "promptly" requirement of Rule 2.09(B) of the Vermont

Code of Judicial Conduct.

The Case log entries on the PUC's ePUC website shows the entries listed on EXHIBIT 14 from March 24, 2025 to April 21, 2025 for PUC case 24-3517. The Case log entries on the PUC's ePUC website shows the entries listed on EXHIBIT 15 from March 24, 2025 to April 21, 2025 for PUC case 23-0249. As shown on both those case logs, nothing related to the substance of the legislative email occurred between March 24, 2025 to April 21, 2025. Thus regardless of any other factor, the legislative was not an ex parte communication because it was timely provided to all participants (which were only government entities) in those PUC cases no later than April 21, 2025. "A written communication to a judicial officer with a copy sent timely to opposing parties or their lawyers is not ex parte." *Restatement (Third) of the Law Governing Lawyers* (the "Restatement") 113, Comment c.¹³

76. On April 21, 2025, the Clerk of the Public Utility Commission issued a memorandum seeking comments on whether Mr. Melone's March 24, 2025 email violated the PUC's rule against ex parte communications. **Response: This is admitted.**
77. Thomas Melone asserted that the Commission's ex parte rule violated his First Amendment rights.

Response: This is admitted to the extent that the allegation is asserting that Respondent asserted that the application of the Commission's ex parte rule to Respondent's copying the email to the Vermont legislative committees to Edward McNamara violated Respondent's First Amendment rights. The allegation is, except as aforesaid, DENIED.

78. On June 17, 2025, the Public Utility Commission ruled that Thomas Melone had violated the PUC's prohibition against ex parte communications with the Commission but declined to impose sanctions.

Response: This is admitted in part and denied in part. Hearing officers, not the Public Utility Commission, issued the June 17, 2025 ruling. The PUC rule of procedure related to ex parte communications is different than the VRPC. The allegation is, except as aforesaid, DENIED.

79. On January 28, 2025, the Bennington Select Board authorized the Town of Bennington to enter into a contract with Hale Resources, LLC regarding the development of the former Bennington High School. **Response: This is admitted.**
80. On February 25, 2025, Thomas Melone, knowing that the redevelopment of the former high school was a priority for the Town, and while acting as counsel for one of his business organizations, PLH, appealed Bennington's decision to enter into a contract with the developer to the Environmental Division of the Vermont Superior Court. **Response: DENIED.**
81. On February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction in that

¹³ The "Introductory Reporter's Note—2009 Amendments" to the VRPC states that "[t]he Vermont Rules of Professional Conduct are amended to incorporate comprehensive and significant changes to the American Bar Association's Model Rules of Professional Conduct that were adopted by the ABA House of Delegates in 2001-2003." The Introductory Reporter's Note states that "the American Law Institute's Restatement of the Law Governing Lawyers, a comprehensive statement and analysis of the entire legal framework governing the legal profession and the practice of law that can serve as a guide to understanding and application of the principles underlying the Model Rules."

the appeal did not involve the granting or denial of a permit allowing land development to occur, a prerequisite for subject matter jurisdiction under 24 V.S.A. § 4471.

Response: It is admitted that on February 27, 2025, the Town of Bennington moved to dismiss the appeal asserting that the Environmental Division lacked subject matter jurisdiction. The allegation is, except as aforesaid, DENIED.

82. On February 28, 2025 the Environmental Division issued an entry order stating: "the court believes it lacks subject matter jurisdiction over this appeal and is prepared to dismiss the appeal sua sponte," but gave PLH until March 3, 2025 to file a response to the Bennington's *Motion to Dismiss*. **Response: This is admitted.**
83. PLH filed at least one pleading opposing the Bennington's *Motion to Dismiss* for lack of subject matter jurisdiction. **Response: This is admitted.**
84. On March 6, 2025, the Environmental Division dismissed PLH's appeal on the grounds that the court lacked subject matter jurisdiction. **Response: This is admitted.**
85. At the time Thomas Malone (*sic*) caused PLH to appeal to the Environmental Division, Thomas Melone knew, or should have known, that the Environmental Division lacked subject matter jurisdiction. **Response: DENIED.**
86. Thomas Malone (*sic*) caused PLH to appeal the Environmental Division's dismissal of PLH's appeal to the Vermont Supreme Court. **Response: This is admitted.**
87. Thomas Malone (*sic*) caused PLH to file suit against the Town of Bennington in the Vermont Superior Court, Civil Division, Chittenden Unit, alleging that Bennington's contract with the Bennington High developer was "municipal waste." **Response: This is admitted.**
88. Thomas Melone and Michael Melone told agents and employees of the Town Bennington that PLH would withdraw the appeal from the dismissal of its action in the Environmental Division, withdraw the allegation of "municipal waste," and would not oppose the Bennington High project if the Town of Bennington withdrew its opposition to Apple Hill's petition for a Certificate of Public Good. **Response: DENIED.**
89. In March 2025, the Professional Responsibility Program received a written complaint from a Vermont attorney, Merrill Bent. **Response: This is admitted.**
90. Ms. Bent alleged that both Thomas Melone and Michael Melone had, on multiple occasions, violated the Vermont Rules of Professional Conduct.

Response: Respondent admits that he received from Andrew Strauss a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself, Respondent otherwise DENIES the allegation. Respondent also notes that Mr. Hanley's reference to, and disclosure of, a complaint against Michael Melone is a blatant violation of the confidentiality requirements of A.O. 9, Rule 16.

91. Ms. Bent said she had learned of the violations of the Rules while representing the Town of Bennington in (a) its opposition to Apple Hill's and Chelsea's applications for Certificates of Public Good and (b) efforts to develop the former Bennington High School.

Response: Respondent admits that he received from Andrew Strauss a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself, Respondent otherwise DENIES the allegation.

92. In her complaint, Ms. Bent said she acted pursuant to her obligations under Rule 8.3 of the Vermont Rules of Professional Conduct.

Response: Respondent admits that he received from Andrew Strauss a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself, Respondent otherwise DENIES the allegation.

93. Rule 8.3(a) mandates a report to the Professional Responsibility Program when a lawyer "knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

Response: Paragraph 93 of the Petition sets forth a legal conclusion to which no answer is necessary and Respondent leaves Mr. Hanley to his proof. Respondent admits that he received from Andrew Strauss a written complaint from a Vermont attorney, Merrill Bent, which is part of the record and speaks for itself. Regardless, Rule 8.3(a) is a government mandate compelling speech. The First Amendment prohibits the government from compelling speech. Additionally, Rule 8.3(a) does not serve a compelling governmental interest. Even if Rule 8.3(a) served a compelling governmental interest, it is not narrowly tailored and is not the least restrictive means of targeting speech while also serving a stated compelling governmental interest. It thus violates Plaintiff's First Amendment rights. In addition, Rule 8.3(a)'s key terms—including the terms "a substantial question," and "fitness as a lawyer in other respects" are not well defined in either Rule 8.3(a) or the accompanying commentary, further establishing that Rule 8.3 is not narrowly tailored. In addition, as a result of that lack of clarity, a lawyer is unable to discern in advance precisely what speech is compelled by Rule 8.3(a) and enforcement officials are granted too much discretion to decide for themselves when to initiate misconduct proceedings against an attorney for the failure to speak or otherwise penalizing an attorney for failure to speak. For that reason, Rule 8.3(a) also violates the Fifth Amendment to the United States Constitution. The allegation is, except as aforesaid, DENIED.

94. Screening Counsel Andrew R. Strauss reviewed Ms. Bent's report and informed Thomas Melone:

In my judgment, the conduct which is the subject of the complaint appears to constitute misconduct that may require disciplinary sanctions. Therefore, pursuant to Rule 12.C of Administrative Order 9 [of the Vermont Supreme Court], I am referring the complaint to Disciplinary Counsel Jon T. Alexander.

Response: Respondent admits that Screening Counsel Andrew R. Strauss sent Respondent a communication with the quoted language. That communication, which is part of the record, and speaks for itself. Respondent also admits that Andrew Strauss' referral to disciplinary counsel was limited to rule 4.2 and 3.1, See EXHIBIT 16 (which states "I am referring these complaints to you for these reasons: 1. The complaint appears to make out a violation of Rule 4.2 by Thomas Melone, who knowingly sent emails directly to Attorney Bent's client. Attorney Melone claims he is not representing a client, but even so, I think Rule 4.2 would still apply. See <https://vtbarcounsel.wordpress.com/2022/09/29/aba-opinion-concludes-that-the-no-contact-rule-applies-to-self-represented-lawyers-should-vermont-amend-its-rule/>. 2. The complaint also appears to make out a violation of Rule 3.1, in that Attorney Bent is claiming that the Melones brought a frivolous lawsuit for the sole purpose of influencing a separate litigation. Attorney Bent makes other claims of Rule violations, but I find the ones above are the most clear.") Respondent otherwise DENIES the allegation.

95. On April 23, 2025, Thomas Melone wrote a letter to Screening Counsel Strauss, and said "Attorney Bent's allegations are actionable defamation." Thomas Moore (*sic*) went on to say "the allegations in the complaint are not only meritless, but actionable defamation per se." **Response: This is admitted.**
96. Thomas Melone then said "Bent's accusation is also actionable as a claim for false light." **Response: This is admitted.**
97. Thomas Melone told Screening Counsel Strauss that he had heard that a paralegal who had been employed by Ms. Bent's firm had been "verbally accosted by "[Merrill Bent]." (Brackets in original.) **Response: DENIED.**
98. Thomas Melone's statements suggested or implied that Ms. Bent had treated at least one employee of her law firm improperly. **Response: DENIED.**
99. Thomas Melone then told screening counsel Strauss "I do not have direct information as to which of the four partners [in Ms. Bent's firm] was accused of abusive behaviors (*sic*)." **Response: This is admitted.**
100. Thomas Melone did not tell Mr. Strauss why he had included the allegation that Ms. Bent had "verbally accosted" a female employee.

Response: Respondent admits that he sent the referenced letter April 23, 2025, to Screening Counsel Andrew R. Strauss and that Screening Counsel Andrew R. Strauss did not ask any questions regarding the contents of the letter, which letter is part of the record and speaks for itself. Respondent denies the allegation that Respondent alleged that "Ms. Bent had 'verbally accosted' a female employee." As Petition paragraph 99 states Respondent specifically stated that he did not have direct information as to which of the four partners in Ms. Bent's law firm was accused of the abusive behavior. Respondent otherwise DENIES the allegation.

101. In his April 23, 2025 letter, Thomas Melone told Screening Counsel Strauss that Vermont Rule of Professional Conduct 3.7 "prohibited [Ms. Bent] from representing the Bennington Select Board."

Response: Respondent admits that he sent the referenced letter April 23, 2025, to Screening Counsel Andrew R. Strauss, which letter is part of the record and speaks for itself. Respondent otherwise DENIES the allegation.

102. Thomas Melone has never filed a complaint against Ms. Bent with the Professional Responsibility Program.

Response: DENIED. While not reporting those alleged violations would not be a violation of Rule 8.3 in Respondent's view (even if Rule 8.3(a) were constitutional, which it is not), the April 23, 2025 letter itself is sufficient to report those violations. The PRB has, to Respondent's knowledge, ignored those reported violations.

103. On April 23, 2025, at a time when Ms. Bent represented the Town of Bennington, and Thomas Melone knew that Ms. Bent represented the Town of Bennington, Thomas Melone sent the following email to Ms. Bent and various elected officials and employees of the Town:

Attached you will find the response that I submitted to the Professional Responsibility Board in response to the ethics complaint against me. I am now finalizing the defamation suit which I expect will be able to be filed next week. See excerpt attached as well.

Response: Admitted that Respondent sent the referenced email to various elected officials and employees of the Town. Respondent does not have sufficient information to

conclude (or know) that Ms. Bent represented the Town of Bennington. Open Meeting law violation complaints were filed challenging whether Ms. Bent was properly engaged by the Select Board to represent the Town of Bennington. Respondent does not have sufficient information to conclude (or to know) that Ms. Bent represented other elected officials. Respondent otherwise DENIES the allegation.

104. Thomas Melone attached not only his April 23, 2025 letter to Screening Counsel Strauss, but also included what he called an "excerpt" from a "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights." **Response: This is admitted.**
105. Thomas Melone was the author of the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights." **Response: This is admitted.**
106. The "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" listed both Ms. Bent and the Town of Bennington as defendants. **Response: This is admitted.**
107. Thomas Melone told the recipients of the email that he would file the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" in the United States District Court for the District of Vermont. **Response: DENIED.**
108. The "excerpt" from the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" also stated:
Respondent alleges that Bent filed the PRB Complaint on behalf of the Town of Bennington.
Response: This is admitted.
109. The "excerpt" from Thomas Melone's "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights" does not disclose how he came to the conclusion that Ms. Bent filed her complaint "on behalf of the Town of Bennington."

Response: Admitted that Respondent sent the referenced email to various elected officials and employees of the Town, Respondent otherwise DENIES the allegation.

110. At the time Thomas Melone sent the "Complaint for Defamation, Injurious Falsehood in Violation of Civil Rights," no official, agent or employee of the Town of Bennington, other than Ms. Bent, was aware that Ms. Bent had filed a confidential complaint with the Professional Responsibility Program. **Response: DENIED.**
111. When asked by Ms. Bent to stop communicating with officials, agents and employees of the Town of Bennington, Thomas Melone refused to do so.

Response: Admitted that Respondent asserted that he has the right under the First Amendment to the United States Constitution to contact government officials of the Town of Bennington. Respondent otherwise DENIES the allegation.

112. In emails to Mr. Bent, Thomas Melone asserted that he had the right to communicate with Bennington officials and employees because of the First Amendment right to petition the government for the redress of grievances.

Response: Admitted that Respondent asserted that he has the right under the First Amendment to the United States Constitution to contact government officials of the Town of Bennington. Respondent otherwise DENIES the allegation.

113. On multiple dates in 2025, Thomas Melone sent additional emails to Bennington officials and employees.

Response: It is admitted that Respondent sent other emails in 2025 to contact government officials of the Town of Bennington. Respondent otherwise DENIES the allegation.

PETITION PARAGRAPHS 114, 116, 118, 120, 122, 124, 126 AND 131 ARE DENIED OR ADMITTED TO THE SAME EXTENT AS THE REFERENCED PARAGRAPHS ARE SO DENIED OR ADMITTED ABOVE.

PETITION PARAGRAPHS 115, 117, 119, 121, 123, 125, 127, 128, 129, 130, 132, 133 AND 134 ARE DENIED.

RESPONDENT DENIES THE LEGAL CLAIMS MADE BY THE PETITION IN COUNTS I TO VIII.

RESPONDENT DENIES THE CONCLUSIONS MADE BY THE PETITION.

COUNT I

115. Thomas Melone's claims in filings in the Public Utility Commission that officials and agents of the Town of Bennington were engaged in a "cover-up conspiracy," committed acts of "forgery" and "counterfeiting," filed "false certifications to the state and federal government in violation of criminal statutes," and filed "false statements with the [Public Utility] Commission" and Thomas Melone's claim that the Town and its officials and employees were liable to him or his business organization for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962(c) violated:

a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;

Response: DENIED.

b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of law and fact;

Response: DENIED

c) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies' applications for Certificates of Public Good; and

Response: DENIED.

d) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Response: DENIED.

COUNT II

117. In his communications with ML and DG, Thomas Melone violated:

a) Rule 4.5 by threatening to present criminal charges in order to obtain advantage in a civil manner, his companies applications for Certificate of Public Goods; and

Response: DENIED.

b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

Response: DENIED

COUNT III

119. In his company's site preparation without a Certificate of Public Good and his "not credible" testimony in the Public Utility Commission, Thomas Melone violated:

a) Rule 3.5(d) in that it was undignified or discourteous conduct which was degrading or disrupting to a tribunal;

Response: DENIED

b) Rule 4.3 in that it showed a lack of candor toward a tribunal, the Public Utility Commission, in that Thomas Melone's statements were false statements of fact and law; and

Response: DENIED

c) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice

Response: DENIED

COUNT IV

121. Thomas Melone's March 24, 2025 email to Public Utility Commission Chair Ed McNamara violated:

a) Rule 3.5(b)(1) in that it was an ex parte communication with a person acting in a judicial or quasi-judicial capacity;

Response: DENIED

b) Rule 8.4(d) in that it was conduct prejudicial to the administration of justice.

Response: DENIED

COUNT V

123. In the manner and means Thomas Melone used in his opposition to the Bennington High Project, Thomas Melone violated:

a) Rule 3.1 in that Thomas Melone brought or caused to be brought a legal proceeding in the Environmental Division when there was no basis in law to assert that it had subject matter jurisdiction over the matter;

Response: DENIED

b) Rule 3.3(a)(1) in that Thomas Melone demonstrated a lack of candor to both the Environmental Division and the Vermont Supreme Court by making false statements of law regarding the subject matter jurisdiction of the Environmental Division;

Response: DENIED

c) Rule 4.4(a) in that Thomas Melone used means and methods that had no substantial purpose other than to delay or burden a third person, the Bennington High developer; and

Response: DENIED

d) Rule 8.4(d) in that Thomas Melone's conduct was conduct prejudicial to the administration of justice.

Response: DENIED

COUNT VI

125. Thomas Melone's claim to Screening Counsel Straus that Ms. Bent had verbally accosted an employee of her law firm, his threats to sue Ms. Bent for defamation per se, his disclosure of Ms. Bent's complaint to officials, agents and employees of the Town of Bennington and his claim in the Public Utility Commission that Ms. Bent violated the Rules of Professional Conduct violated:

a) Rule 3.3(a)(1) in that he showed a lack of candor toward the Professional Responsibility Program by making a false statements of law, specifically that Ms. Bent was liable for defamation per se, when he knew or should have known that Rule 12 of The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement provides that communications to the Program, hearing committees or disciplinary counsel relating to lawyer misconduct are absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness; and

Response: DENIED

b) Rule 4.4(a) in that they showed disrespect for Ms. Bent's rights and he used means that had no substantial purpose other than to embarrass, delay, or burden Ms. Bent; and

Response: DENIED

c) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness, Ms. Bent.

Response: DENIED

COUNT VII

127. Thomas Melone knew or should have known that Administrative Order 9 expressly provides that proceedings in the Professional Responsibility Board are confidential until such time as a Hearing Panel makes a finding of probable cause.

Response: DENIED

128. Thomas Melone knew or should have known that Rule 4.2 bars a lawyer from communicating with a person represented by counsel.

Response: DENIED.

129. While Rule 4.2 generally protects represented government entities from unconsented contacts by opposing counsel, there is an important exception to that "no contact" rule arising from the constitutional right to petition the

government and the derivative public policy of ensuring a citizen's right of access to government decision makers. As a result, Rule 4.2 permits a lawyer representing a private party in a controversy with the government to communicate about the matter with government officials who have the authority to take or to recommend action in that matter, provided that the sole purpose of the lawyer's communication is to address a policy issue, including settling the controversy.

Response: DENIED

130. Thomas Melone's communications with officials and employees of the Town of Bennington violated:

a) Rule 4.2 in that Thomas Melone's communications were not limited to Town officials who had authority to take or to recommend action in connection with Ms. Bent's complaint to the Professional Responsibility Program, as there was no Town official who had authority to take or recommend action in connection with Ms. Bent's complaint; and

Response: DENIED

b) Rule 8.4(d) in that he engaged in conduct prejudicial to the administration of justice by attempting to harass or intimidate a complaining witness in proceeding before the Professional Responsibility Program, Ms. Bent.

Response: DENIED

COUNT VIII

132. Over course of many years in a variety of forums, including but not limited to the Vermont Public Utility Commission, the Vermont Superior Court, the Vermont Supreme Court and the United States Court of Appeals, Thomas Melone persistently and deliberately violated the Rules of Professional Conduct and persistently induced his son, Michael Melone, to violate the Rules of Professional Conduct.

Response: DENIED

133. The Vermont Supreme Court stated in In Re James Weston Wright, 131 Vt. 473 (1973), that when there is a "consistent pattern ... emerging from a series of several transactions, it seems clear that what might be in a single instance only poor judgment sans evil intent or direct motive becomes a condemnable course of conduct amounting to ethical unfitness "

Response: DENIED. Also the actual unedited quoted language is:

“With the consistent pattern of benefits to himself and family emerging from a series of several transactions, it seems clear that what might be in a single instance only poor judgment sans evil intent or direct motive becomes a condemnable course of conduct amounting to ethical unfitness for clients' trust.”

134. This Petition of Misconduct show (*sic*) a consistent pattern emerging from several events of intentional misconduct that was prejudicial to the administration of justice in violation of Rule 8.4(d).

Response: DENIED

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

As stated in the INTRODUCTION section of this Answer, all counts are barred by the *Noerr-Pennington* doctrine, by qualified or absolute immunity, and by the First, Fifth and Eighth Amendments to the United States Constitution and the corresponding provisions of the Vermont Constitution

SECOND AFFIRMATIVE DEFENSE

Michael Hanley lacks legal authority to investigate, present or pursue the Misconduct Petition.

THIRD AFFIRMATIVE DEFENSE

The Petition engages in unlawful selective enforcement, as is evidenced, for example, (1) by the failure of the PRB to pursue Respondent's claims against Ms. Bent once they were presented to Screening Counsel, (2) by the failure of the PRB to pursue claims against every attorney that has lost a case based upon lack of subject matter jurisdiction, (3) by the failure to pursue claims against every attorney that is alleged to have made an ex parte communication, and (4) by the PRB's failure to pursue a claim against Mr. Hanley for violating A.O. 9, Rule 16 by his allegation in paragraph 90 of the Complaint.

FOURTH AFFIRMATIVE DEFENSE

The Petition constitutes (i) retaliation for Respondent's exercise of his First Amendment rights, (ii) retaliation for the public disclosure of governmental malfeasance and Merrill Bent's firm's potential role in it, (iii) a violation of Respondent's civil and constitutional rights under Federal and Vermont constitutions and law, and a violation of 42 U.S.C. §1983.

FIFTH AFFIRMATIVE DEFENSE

The Petition is an unlawful SLAPP complaint in violation of 12 V.S.A. § 1041.

SIXTH AFFIRMATIVE DEFENSE

The truth is an affirmative defense to Count I and Count III and Count VI and Count VIII.

SEVENTH AFFIRMATIVE DEFENSE

Merrill Bent was never properly appointed in an open meeting to represent the Town of Bennington.

EIGHTH AFFIRMATIVE DEFENSE

Vermont Rule 8.5 bars the claims in the Petition.

NINTH AFFIRMATIVE DEFENSE

Count III, IV and VIII are barred by the double jeopardy clause of the Federal and Vermont Constitutions.

TENTH AFFIRMATIVE DEFENSE

The Misconduct Petition fails to state a claim upon which relief can be granted.

ELEVENTH AFFIRMATIVE DEFENSE

Counts I, III, IV, V and VIII are barred by estoppel.

TWELVTH AFFIRMATIVE DEFENSE

Count VI is barred because ABA Model Rule 12 is not an enforcement standard.

THIRTEENTH AFFIRMATIVE DEFENSE

Rules 3.1, 3.3(a)(1), 3.5(d), 4.2, 4.3, 4.4(a), 4.5, 8.3(a) and 8.4(d) are unconstitutional and violate Plaintiff's rights under the First, Fifth and Fourteenth Amendments and the corresponding rights under the Vermont Constitution and the Common Benefits Clause of the Vermont Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

Respondent is entitled to a jury trial.

FIFTHTEENTH AFFIRMATIVE DEFENSE

The composition of the Hearing Panel violates Respondent's Fifth and Fourteenth Amendment rights.

SIXTEENTH AFFIRMATIVE DEFENSE

The basis for the Misconduct Petition violates Respondent's rights under the Common Benefits Clause of the Vermont Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

The current Hearing Panel has violated Respondent's constitutional due process rights by violating Rules 2.07 and 2.09 of the Vermont Rules of Judicial Conduct.

EIGHTEENTH AFFIRMATIVE DEFENSE

Carolyn Anderson has violated Respondent's constitutional due process rights by engaging in ex parte communications with Michael Hanley and the hearing panel and by taking any action in this case because of the conflict of interest that she has from her association as legal counsel of Green Mountain Power Company and the various litigation and threatened litigation between Respondent and GMP.

EIGHTEENTH AFFIRMATIVE DEFENSE

The A.O. 9 process is arbitrary.

NINETEENTH AFFIRMATIVE DEFENSE

The charges in the Misconduct Petition are arbitrary and violate Respondent's constitutional due process rights

TWENTIETH AFFIRMATIVE DEFENSE

The limitations on discovery in A.O. 9 violate Respondent's right to due process.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The volunteer nature of the hearing panels violates Respondent's right to due process.

TWENTY-SECOND AFFIRMATIVE DEFENSE

The presence of a non-lawyer on the hearing panel violates Respondent's constitutional right to due process

TWENTY-THIRD AFFIRMATIVE DEFENSE

The composition of lawyers in active private practice on the hearing panel violates Respondent's constitutional right to due process

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Michael Hanley engaged in judicial deception of the probable cause hearing panel violating Respondent's due process rights.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

There was no probable cause to file the charges contained in the Misconduct Petition.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The Respondent's inability to participate in the process determining whether there exists probable cause violates Respondent's rights to due process.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

If Michael Hanley was validly appointed, his appointment violates Respondent's constitutional due process rights and Professional Responsibility Board Policy 22 because Michael Hanley represents solar developers that are competitors to Respondent, who stand to potentially benefit from harm to Plaintiff caused by Mr. Hanley.

Respondent reserves his rights to amend this Answer and Affirmative Defenses to assert additional affirmative defenses on the completion of his investigation and discovery herein.

EXHIBIT 1

**VEPP INC.
ECOS ENERGY, LLC**

BENNINGTON SOLAR PROJECT

**VERMONT SPEED STANDARD OFFER
PURCHASE POWER AGREEMENT**

Standard Contract for Qualifying SPEED Resources
Revised May 25, 2013

Dockets 7873 & 7874 – Attachment II

VERMONT SPEED STANDARD OFFER
PURCHASE POWER AGREEMENT

This Vermont SPEED Standard Offer Purchase Power Agreement is made between Ecos Energy, LLC ("Producer") and VEPP Inc. ("Facilitator"), a Vermont nonprofit corporation.

RECITALS

WHEREAS, Producer desires to produce and sell Electricity and Other Products Related to Electric Generation in accordance with the Vermont Standard Offer Program, as authorized in 30 V.S.A. 8001 et. seq., ("Statute") and

WHEREAS, Facilitator is the duly appointed SPEED Facilitator under 30 V.S.A. Chapter 89; and

WHEREAS, Producer and Facilitator (collectively "the Parties") desire to enter into this Agreement to provide for the purchase and sale of Electricity and Other Products Related to Electric Generation provided by Producer's electric generating facility described in Attachment A hereto ("the Project") pursuant to and subject to the Statute.

NOW, THEREFORE, the Parties agree as follows:

1. DEFINED TERMS

Capitalized terms used in this Agreement shall have the following meanings.

- a. Board means the Vermont Public Service Board.
- b. Commercially Reasonable Efforts means efforts that are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and that do not require the performing Party to expend any funds or assume liabilities other than expenditures and liabilities that are reasonable in nature and amount in the context of the transaction, activity or undertaking contemplated by this Agreement.
- c. Delivered, in the context of Electricity, means delivered to the interconnection point and successfully injected into the Distribution System, and Deliver has the corresponding meaning.
- d. Distribution System means the system connected to the ISO-NE-Controlled Grid for distributing Electricity at voltages of 50 kV or less, which is owned and operated by

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the Interconnecting Utility, and includes any structures, equipment or other things used for that purpose.

- e. Electricity means electric energy, measured in kWh.
- f. Force Majeure means any act, event, cause or condition that (i) prevents a Party from performing its obligations, and (ii) is beyond the affected Party's reasonable control, except that no act, event, cause or condition shall be considered to be an event of Force Majeure:
 - (1) if and to the extent the Party seeking to invoke Force Majeure has caused or contributed to the applicable act, event, cause or condition by its act, fault or negligence or has failed to use Commercially Reasonable Efforts to prevent or remedy such act, event, cause, or condition and, so far as possible and within a reasonable time period, remove it (except in the case of strikes, lockouts and other labor disturbances, the settlement of which shall be wholly within the discretion of the party involved);
 - (2) if the act, event, cause or condition involves a failure or delay on the party of the Interconnecting Utility or its agents to complete network or system upgrades or otherwise perform responsibilities under an Interconnection Agreement, and such failure or delay is attributable to a change in specifications of the interconnection point or the Project by the Producer;
 - (3) if the act, event, cause or condition is the result of a violation of law or the terms of any regulatory approval by the Party seeking to invoke Force Majeure; or
 - (4) if the act, event, cause or condition was caused by a lack of funds or other financial cause.
- g. Good Engineering and Operating Practices means any of the practices, methods and activities adopted by a significant portion of the North America electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities that, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator of Electricity in light of the facts known at the time the decision was made, reasonably could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and laws and regulations.
- h. ISO-NE means the Independent System Operator-New England, or its successor.
- i. ISO-NE Administered Markets has the meaning given to it by the ISO-NE Market Rules.
- j. ISO-NE Controlled Grid has the meaning given to it by the ISO-NE Market Rules.

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- k. **Interconnecting Utility** means the electric utility with which Producer enters into the Interconnection Agreement.
- l. **Interconnection Agreement** means the agreement or agreements entered into between the Interconnecting Utility and Producer with respect to the connection of the Project to the Distribution System.
- m. **Interconnection Costs** mean all costs which are payable by Producer with respect to the interconnection of the Facility to the Distribution System.
- n. **Meter** means a meter owned by or under the control of the Interconnecting Utility that measures and records the quantity of Electricity which passes through it.
- o. **Other Products Related to Electric Generation** means any transferable commodity, in addition to Electricity, that is directly attributable to the generation of electricity from the plant. For purposes of this definition, Other Products Related to Electric Generation does not include (1) tradeable renewable energy credits, as defined in 30 V.S.A. § 8002(8), directly attributable to plants using methane from agricultural operations; (2) ancillary heat associated with engine exhaust, combined heat and power systems, or biomass systems; or (3) tax credits associated with power production.
- p. **Regulatory Approval** means the receipt of any federal, state or local permit, license or other assent of any governmental body, where such assent is required for lawful construction and/or operation of the Project.
- q. **Secured Lender** means the lender(s) under a Security Agreement.
- r. **Security Agreement** means an agreement or instrument, including a deed or trust or similar instrument securing bonds or debentures, or other evidences of indebtedness, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Producer's interest granted by the Producer that is security for any indebtedness, liability or obligation of the Producer, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.
- s. **Site Control** means proof of dominion over real property to the extent necessary to construct the project in accordance with the description set forth on Attachment A. Site control may be established by: (1) fee simple title to such real property; or (2) a legally enforceable written leasehold interest in such real property for at least the duration of the contract term; or (3) a legally enforceable written option with all terms stipulated, unconditionally exercisable by Producer, to purchase or lease such real property; or (4) a duly executed contract for the purchase or lease of such real property.

- t. Station Service means the Electricity used at the Project for excitation, on-site maintenance, and operation of auxiliary and other facilities that are essential to the operation of the Project.

2. EFFECTIVE DATE

This Agreement shall become effective upon its execution by Facilitator, and is of no force and effect whatsoever until that time.

3. DELIVERY OF ELECTRICITY AND TRANSFER OF OTHER PRODUCTS RELATED TO ELECTRIC GENERATION

Producer hereby unconditionally sells, transfers and assigns to Facilitator all of its right, title and interest in the Electricity and Other Products Related to Electric Generation. Producer shall deliver Electricity at the delivery point specified in the Interconnection Agreement. If requested by Facilitator, Producer shall use Commercially Reasonable Efforts to obtain, register, certify or deliver the Other Products Related to Electric Generation or any evidence of the Facilitator's right, title and interest thereto to Facilitator, to the ISO-NE Administered Markets or other markets, or as Facilitator reasonably may direct otherwise. Facilitator shall retain all right, title, and interest in all Other Products Related to Electric Generation in trust for all Vermont Distribution Utilities that are subject to prorated allocations under the Statute. Facilitator shall be entitled, unilaterally and without the consent of Producer, to deal with Other Products Related to Electric Generation in any manner it determines and consistent with the Statute, regardless of whether any consideration is separately stated as being received or paid for by Facilitator.

4. SITE CONTROL

Producer warrants that it has the Site Control required for the Project, pursuant to the documentation set forth in attachment B hereto.

5. INTERCONNECTION APPLICATION

Producer warrants that its interconnection application (or for projects with capacities of 150 kW or less, Appendix A (Technical Specifications)) with the interconnecting utility is complete, pursuant to the documentation set forth in attachment C hereto. Producer shall pay all required interconnection fees or deposits necessary within the timeframes established by Rule 5.500 in order to remain in the interconnecting utility's queue. Any requests for extensions within Rule 5.500 must be noticed to the SPEED Facilitator and approved by the Board.

6. QUALIFYING FACILITY

Producer warrants that the Project is a qualifying small power production facility under 16 U.S.C. § 796(17)(C) and 18 C.F.R. part 292, pursuant to the documentation set forth in attachment D hereto and that the project does not use fossil fuels for generation.

7. MILESTONES

- a. Within one year of the date of this Agreement, Producer shall file a complete Section 248 application with the Public Service Board, unless the project is a hydroelectric facility that requires a license from the Federal Energy Regulatory Commission. If the project is a hydroelectric facility, Producer shall file an annual update with the Board, Department of Public Service, and Facilitator regarding the status of the project’s application before the Federal Energy Regulatory Commission.
- b. If the Project is a wind project with a capacity greater than 100 KW, a biomass project, landfill gas project, or a hydroelectric project, within three years of the date of this Agreement, the Project shall achieve Commissioning as defined by 30 V.S.A. § 8002(11).
- c. If the Project is a solar project of any size or a wind project with a capacity of 100 KW or less, within 24 months of the date of this Agreement, the Project shall achieve Commissioning as defined by 30 V.S.A. § 8002(11).

8. FAILURE TO ACHIEVE MILESTONES

Should Producer fail to meet any of the milestones set forth in paragraph 7 above, this Agreement shall be null and void and of no further force and effect, absent an order of the Board to the contrary. The pursuit of such an order shall be Producer's sole remedy in this regard. Facilitator shall notify Producer and the Board of such failure and of the termination of this Agreement. Facilitator shall have no authority to grant extensions relative to any provisions of this Agreement, including the milestones herein.

9. ADMINISTRATIVE FEE AND DEPOSIT

At the time of initial submission of this Agreement signed by Producer to Facilitator, Producer shall tender to Facilitator a \$200, non-refundable administrative fee and a refundable contract deposit of \$15 per kW of installed capacity. If the project is commissioned within the applicable milestone date set forth in this contract, 100% of the contract deposit will be refunded; if Producer voluntarily withdraws from the standard-offer program within the first year, the entire contract deposit is returned; otherwise, Producer is entitled to a refund of a portion of the contract deposit according to the schedule below:

Project Type	Withdrawal before end of second year	Withdrawal before end of third year
Wind ≤ 100 KW or Solar	50%	N/A
Biomass, landfill, hydroelectric, Wind ≥ 100 KW	75%	50%
Farm Methane	N/A	N/A

10. RATES AND TERM

Beginning with Commissioning, Facilitator shall pay Producer in accordance with the rate schedule and for the term set forth in Attachment F hereto.

11. PROJECT LOCATION, DESIGN, CONSTRUCTION AND OPERATION

Producer shall construct the Project at the location and in a manner substantially consistent with the description set forth in Attachment A. Producer shall utilize Commercially Reasonable Efforts in the design, construction and operation of the Project in accordance with Good Engineering and Operating Practices, the terms and conditions of any certificate of public good and any other Regulatory Approvals issued relative to the Project, and shall be solely responsible for all costs, expenses, liabilities and other obligations associated with the Project. All operations and deliveries shall be subject to the rules and regulations of the ISO-NE bulk power system in effect during the Term of this Agreement, and Producer shall be responsible for payment of any costs, sanctions or charges assessed by ISO-NE arising from actions or inactions of Producer.

12. PROVISION OF PROJECT COSTS

Producer shall provide the costs of developing the Project to Facilitator in a form as prescribed by the Facilitator. Project costs, with sufficient protections to shield identifying characteristics, will be made publicly available to assist in future price determinations by the Board pursuant to 30 V.S.A. § 8005a(f). Facilitator shall seek to treat as exempt from disclosure information related to the development of the Project to the extent that such information constitutes trade secrets under 1 V.S.A. § 317(c)(9), unless otherwise directed by the Board.

13. INTERCONNECTION

Producer shall be solely responsible for the negotiation, delivery and execution of the Interconnection Agreement, along with the payment of all costs and the execution of all responsibilities arising under that Agreement. Producer shall deliver to Facilitator a copy of the executed Interconnection Agreement within five business days of its execution. At such time as the Interconnection Agreement is executed, it shall be deemed part of this Agreement and a copy shall be appended as Attachment E to this Agreement. Facilitator shall be named as a named insured under any policies of insurance required under the Interconnection Agreement.

14. EXCLUSIVITY

During the Term of this Agreement, Producer shall not enter into any other agreement for the sale or other conveyance of any portion of the Electricity or any Other Products Related to Electric Generation that is the subject of sale under this Agreement. Producer acknowledges that, by entering into this Agreement, Producer is waiving any and all rights to seek an alternative power sales arrangement, including but not limited to an arrangement through Board Rules 4.100, 4.300 and 5.100, at any time throughout the term set forth in this Agreement. Absent an order of the Board to the contrary, this waiver shall extend throughout the full term

contemplated under this Agreement, even if this Agreement is terminated early for any reason by default, for cause or otherwise. In the event of a default by Facilitator, the Board's review under this paragraph shall begin with the rebuttable presumption that Producer should be relieved of the waiver contained in this paragraph.

15. STATION SERVICE

Station service, if any is provided by the Interconnecting Utility, shall be priced only in accordance with any applicable tariff, special contract, order or other means approved by the Board.

16. PAYMENT TO PRODUCER

Facilitator shall pay or cause to be paid to Producer amounts calculated in accordance with Attachment F within 45 days of the end of each billing period during which Electricity and Other Products Related to Electric Generation were provided by Producer. Facilitator shall have no authority whatsoever to make payments to producer for Electricity or Other Products Related to Electric Generation that are not Delivered. As a matter of administrative convenience, Facilitator may wait to send payments to Producer until the total amount due to Producer, net of any set offs, exceeds \$100.00.

17. METERING REQUIREMENTS

Producer shall be responsible for meeting such metering requirements as may be established by Facilitator or by regulatory requirement, all at Producer's expense. The testing of metering equipment shall be at the discretion of Facilitator; provided, however, that Facilitator shall cause such testing to be performed not less than once every five years during the Term of this Agreement if the Project exceeds 100 kw in size. Any Vermont distribution utility may request additional verification at any time, but all costs shall be borne by the requesting utility should the metering prove to be accurate within 2%.

18. SETTLEMENT REQUIREMENTS

Producer shall cooperate with Facilitator as necessary to meet rules related to settlement of Project generation. This may include, among other actions, registering generation assets with ISO-NE.

19. EVENTS OF DEFAULT AND TERMINATION EVENT

Under this agreement, an event of default includes, but is not limited to of any of the following:

- a. Any breach of the terms of this agreement.
- b. Producer fails to deliver any Electricity from the Project for a period of twelve consecutive months at any time after Commissioning.

- c. Producer ceases to hold any Regulatory Approval after commissioning, the failure or cessation of which results in a lack of legal right on the part of Producer to continue to operate the Project.
- d. Any information provided by Producer relative to this Agreement or any information, representations or warranties set out in this Agreement is not true or correct in any material respect when given, or Producer commits any act of fraud in relation to this Agreement or any regulatory proceeding relating to the Project.
- e. By agreement, decree, judgment or order of a court, Producer agrees to be treated as and/or is adjudicated bankrupt or insolvent, or real or personal property of the Project is sequestered or subject to the appointment of any third party and such agreement, decree, judgment, order of appointment continues in effect unrevoked, undischarged and unstayed for a period of thirty (30) days after the entry or implementation thereof.
- f. Producer utilizes electricity, or any source of fuel other than the fuel type specified in attachment A, for the generation of electricity.
- g. Producer fails or ceases to comply with Good Engineering and Operating Practices.
- h. Producer fails to receive and maintain certification as a SPEED Resource, as defined in 30 V.S.A. § 8002 or fails to comply with applicable statutory requirements or Board Rules or Board Orders.

20. CURE PERIOD AND TERMINATION OF AGREEMENT

- a. Remedies of Facilitator. Within five business days after learning of an event of default, Facilitator shall send a written notice to Producer and the Board specifying the default and allowing a cure period of 30 days from the date of notice to Producer and the Board, unless a shorter period is ordered by the Board. If the default is not cured within the cure period, Facilitator shall send a notice of termination to Producer and the Board to take effect ten business days after the notice is sent, absent an order of the Board to the contrary.
- b. Remedies of Producer. Within five business days after learning of an event of default, Producer shall send a written notice to Facilitator and the Board specifying the default and allowing a cure period of 30 days from the date of the notice to Facilitator and the Board, unless a shorter period is ordered by the Board. If the default is not cured within the cure period, Producer shall send a notice of termination to Facilitator and the Board to take effect ten business days after the notice is sent, absent an order of the Board to the contrary.

21. EFFECT OF TERMINATION OR EXPIRATION

Termination of this Agreement, whether by expiration or otherwise, shall not affect or prejudice any rights or obligations of either Party, including those relating to amounts payable under this Agreement up to and including the time of any termination.

22. FORCE MAJEURE

In the event of Force Majeure, act event, cause, or condition, Facilitator shall suspend the obligations of Producer under this Agreement for a period of up to sixty days. Any further suspension or remedy for a Force Majeure event shall only be in accordance with an order of the Board. The Party seeking to invoke this Force Majeure provision shall provide prompt notification of such Force Majeure act, event, cause or condition to the other Party and the Board.

23. SECURED LENDER RIGHTS

- a. Producer shall have the right, at its cost, to enter into one or more Security Agreements upon such terms as it desires, provided that:
 - (i) in the case of a deed of trust, syndication agreement or similar instrument by which the trustee or syndication agent holds security on behalf of, or for the benefit of, other lenders, only the trustee or agent shall be entitled to exercise the rights and remedies under the Security Agreement as the Secured Lender on behalf of the lenders;
 - (ii) Facilitator shall have no liability whatsoever under any Security Agreement for the payment of the principal sum secured or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Secured Lender shall not be entitled to seek any damages against the Facilitator for any or all of the same; and
 - (iii) all rights acquired by a Secured Lender under any Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein.
- b. While a Security Agreement remains outstanding, and provided that Facilitator has received from Producer prior written notice of the name and address of the Secured Lender, Facilitator shall provide a copy of any written notice of default or termination to the Secured Lender at such time that such notice is sent to Producer. Subject to the provisions of this Agreement, a Secured Lender may enforce any Security Agreement and acquire Producer's interest in the Project in any lawful way, subject to (1) receipt of any required Regulatory Approvals, (2) the honoring of all obligations of Producer under this Agreement, and (3) payment of all of Facilitator's costs and expenses (including attorney fees) incurred with respect to the acquisition and any related events.

- c. Facilitator, upon request of Producer, shall enter into a reasonable acknowledgement and agreement, in such form as Facilitator may determine, with Producer and any Secured Lender for the purpose of implementing the Security Agreement protection provisions contained in this Agreement.

24. INDEMNIFICATION OF FACILITATOR

Facilitator shall not be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use of any property or claims of customers or contractors of the Producer for any such damages. Producer may seek review by the Board of any decision made by Facilitator that materially impacts Producer. Producer shall indemnify, defend and hold Facilitator, the State of Vermont, the Vermont Distribution Utilities, any transmission service providers and their respective directors, officers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "Indemnitees") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses, interest accrued thereon (including the costs and expense of, and interest accrued on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable attorney fees and reasonable disbursements in connection therewith), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of the design, construction or operation of the Project or the generation and delivery of Electricity and Other Products Related to Electric Generation therefrom or any occurrence or event relating thereto, or any occurrence or event on Producer's side of the interconnection point, or a breach by Producer of any of its representations, warranties, obligations or covenants contained in this Agreement.

25. JOINT AND SEVERAL LIABILITY

If Producer is not a single legal entity, then all such entities comprising Producer shall be jointly and severally liable to Facilitator for all representations, warranties, obligations, covenants, and liabilities of Producer under this Agreement.

26. RECORD RETENTION

Producer and Facilitator each shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. Without limiting the generality of the foregoing, Producer shall keep all records and other documents that may be necessary to establish, substantiate or maintain any claim or title of Facilitator to any Other Products Related to Electric Generation. All such records and other documents shall be maintained as required by law, but for no less than seven (7) years after the creation of the record or data. Producer shall provide or cause to be provided to Facilitator reasonable access to the relevant and appropriate financial and operating records and data kept by it or on its behalf relating to this Agreement reasonably required for Facilitator to comply with its obligations, or to

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verify billings, or to verify information provided in accordance with this Agreement or relating to compliance by Producer with this Agreement.

27. PROJECT INSPECTION

Facilitator shall have the right to inspect the Project during normal business hours during the term of this Agreement, upon at least five business days' notice to Producer.

28. NOTICES

- a. Unless otherwise stated, all notices pertaining to this Agreement shall be in writing and shall be transmitted, by the Party giving notice, via electronic mail, or if such method is unavailable, via facsimile, first-class mail, courier or hand delivery, and addressed to the other Party as follows:

If to Producer:

Ecos Energy, LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

If to Facilitator:

VEPP Inc.
P.O. Box 1938
1965 Depot Street
Manchester Center, VT 05255

- b. Notice transmitted or delivered as provided above shall be deemed to have been given and received on the day it is transmitted (if by electronic mail or facsimile) or delivered (if by courier or hand delivery), provided such notice is transmitted or delivered on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. If a notice is transmitted or delivered after 5:00 p.m. local time or such day is not a business day, then such notice shall be deemed to have been given and received on the next business day. Either Party, by written notice to the other, may change its contact person, electronic mail address, facsimile number or postal address to which notices are to be sent.

29. PUBLIC RECORD REQUESTS

Producer acknowledges that Facilitator's records are subject to Vermont's Access to Public Records law, 1 V.S.A. § 315 et seq. (Public Records Law). To the extent that Facilitator may receive requests under the Public Records Law for information provided by Producer to Facilitator, Facilitator shall notify Producer of the request not later than the next business day after the request is received.

30. AMENDMENT TO THE CONTRACT IN THE PUBLIC INTEREST

This contract may be amended, without the consent of the parties, by order of the Board, provided: (1) such amendment does not result in any reduction in the Project's economic value to Producer; (2) such amendment will not adversely affect Producer's ability to meet the Project's financial obligations; (3) such amendment will not impose additional operational or other economic costs on Producer without full compensation; (4) the amendment results in a benefit to ratepayers; and (5) the parties are given notice and an opportunity to be heard by the Board.

31. OTHER AMENDMENTS TO THE CONTRACT

When authorized by the Public Service Board, the Facilitator may amend Attachment A of this Agreement. Otherwise, except as provided in Section 30, above, the Facilitator may not amend the Agreement.

32. BUSINESS RELATIONSHIP

The relationship between the Facilitator and Producer is that between independent contractors, and nothing in this Agreement shall create or be deemed to create a relationship of partnership, joint venture, fiduciary, principal and agent or any other relationship between the Parties.

33. BINDING AGREEMENT

Except as set out otherwise in this Agreement, this Agreement shall not confer upon any person or entity, except the Parties and permitted assigns, any rights, interests, obligations or remedies under this Agreement.

34. ASSIGNMENT

Producer may assign its rights and duties under this Agreement to the fullest extent allowed by the Statute, and any assignee of Producer shall give Facilitator written notice of the assignment within thirty days of the date of the assignment. Nothing in this provision shall be deemed to alter Producer's responsibility or obligations to obtain any and all Regulatory Approvals that may be required in conjunction with a transfer of all or part of any legal interest in the Project. Facilitator may not assign its rights and duties under this Agreement absent consent of the Board.

35. FACILITATOR SETOFF RIGHTS

In addition to its other rights of setoff under this Agreement or otherwise arising in law or equity, Facilitator may set off any amounts owed to it by Producer against any monies owed by Facilitator to Producer.

36. FACILITATOR FEE

Pursuant to the Board's Order of 7/8/11 in Docket 7533, Producer shall be required to pay a monthly Facilitator Fee as authorized by the Board. The Facilitator Fee shall be billed on the first day of the month after the Project begins generating electricity and shall continue to be billed for the term of this Agreement.

37. TIME OF ESSENCE

Time is of the essence in the performance of the Parties' respective obligations under this Agreement.

38. FURTHER ASSURANCES

Each Party, from time to time on written request of the other Party, shall perform further acts, including execution of documents, as may reasonably be required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or Regulatory Approvals pertaining to the Project.

39. MISCELLANEOUS

a. Headings

The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

b. Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement.

c. Waiver, Amendment

Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby and approved in writing by the Board. No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall it constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

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d. Board Jurisdiction

The Board shall have jurisdiction to resolve disputes arising under or in connection with this Agreement, to the fullest extent allowed by law.

IN WITNESS WHEREOF, Producer and Facilitator have executed this instrument on the respective dates set forth below.

Ecos Energy, LLC (PRODUCER)

By: [Signature]
Duly authorized agent
Dated: 6/17/13

Witness: [Signature]

VEPP Inc., acting as SPEED Facilitator

By: [Signature]
John R. Spencer, Executive Director
Dated: 6-20-2013

Witness: [Signature]

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Attachment A
Description of Facility

The proposed Bennington Solar Project will be a 2 MW AC solar photovoltaic generation facility to be located at 1033 Willow Road on the northerly portion of a 27 acre parcel in Bennington, Vermont. The interconnecting utility is Green Mountain Power Corporation.

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Attachment B
Documentation of Site Control

The proposed Bennington Solar Project will be located at 1033 Willow Road, in the Town of Bennington, County of Bennington, and State of Vermont. GPS Coordinates are 42.9091, - 73.2065. Assessor Parcel Number is 29503100. Documentation of Site Control is established by Purchase and Sale Agreement dated April 26, 2013 and executed by and between Jonathan D. Ward and Michelle M. Ward as Seller and Ecos Energy, LLC as Purchaser.

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Attachment C
Documentation of Complete Interconnection Application

From: "Rainville, Ryan" <Ryan.Rainville@greenmountainpower.com>
Date: June 8, 2013, 9:03:00 AM EDT
To: 'Tim Young' <tim.young@ecosrenewable.com>
Cc: "Humphrey, Melinda" <Melinda.Humphrey@greenmountainpower.com>, "Jockell, John" <John.Jockell@greenmountainpower.com>, John Spencer <jspencer@veppi.org>
Subject: Chelsea, Apple Hill, Sudbury Solar Applications Complete

Tim,
May 30th GMP received 5.500 applications for the following projects listed in queue order:

1. Chelsea Solar (Formerly Bennington Solar), Standard Offer, connecting to Mill Street MS50 circuit
2. Apple Hill Solar, No PPA or Standard Offer, connecting to Mill Street MS50 circuit
3. Sudbury Solar, Standard Offer, connecting to Leicester LJ13 circuit

I updated the project application folders with the one-lines received June 7th that show ground banks to provide effective grounding. GMP may ask for the ground bank to be resized once its impact is evaluated in the System Impact Study (SIS). I've reviewed the information for all three projects and accepted the applications as complete.

GMP completed the attached fast track screens for each of the projects. None of the projects were able to fast track and each would require a System Impact Study and Facilities study. The typical estimates, subject to true-up are \$25,000 per System Impact Study and \$8,000 per facilities study, however, these projects may cost more to review.

There are several system impacts that concern GMP for each of the 3 proposed interconnections. Not all of them are captured in the Fast Track Screens, and more may be identified in the SIS. GMP typically only rejects applications if the submittal information is incomplete, not if the proposed interconnection location requires significant system upgrades. We want to be as open as possible though that even prior to initiating the SIS, we believe there are required changes that will significantly impact the viability of the projects.

Per Rule 5.500 I would recommend contacting Melinda Humphrey (CCd) to schedule and hold a scoping meeting in the next 10 business days to review the fast track criteria and discuss the scope of SIS. A few of the system impacts that will be discussed:

1. Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. These would be shared with Apple Hill if constructed. The reconductoring may not be enough to mitigate voltage flicker on the feeder that would be caused by the fluctuations in PV output. Sudbury Solar is connecting to a station with one transmission feed and light load compared to the proposed generation. This project may

Dockets 7873 & 7874 -- Attachment II

require hot line reconductoring of the transmission feeder to mitigate voltage flicker. This is likely expensive but I have not needed to estimate similar work for any past proposed project to know for sure.

2. Each of the projects would cause reverse power flow through the circuit regulators. The LJ13 should only require a setting change. The MS50 has older model regulators in an ironclad gear dissimilar to all other stations and may require significant engineering review and replacement of both the regulators and controls.
3. Each of the projects require effective grounding because their rated output exceeds 1/3 the minimum load available at upstream single pole sectionalizing devices. The associated ground banks will desensitize GMP's feeder ground fault coordination. A rule of thumb is that ground sources contributing more than 10% of the ground fault current available from the Utility source at the point of interconnection will have serious impacts on coordination. Although the ground banks won't be modeled until the SIS, based on the rated current of the PV plants we are already expecting them to exceed the 10% threshold. The reconductoring may not be enough to fix this issue, particularly for the projects on MS50.
4. The rated current of the PV plants (individually 92 Amps) exceeds the maximum load current GMP presently serves at each of these feeder locations. For LJ13 this may be solved by replacing one set of fuses with an electronic recloser. For MS50, it would require a complete redesign of the feeder protection. Presently, there are 6 sectionalizing points between the sub breaker and the points of interconnection, with fuses ranging between 15T and 100T. Only 100T will support 2MW of generation and none will support 4MW. The generation exceeds available load by such high amounts in some locations that load rejection overvoltage is a concern and may only be solvable with delayed direct transfer trip.
5. Inverter based generation often has the economic advantage of avoiding direct transfer trip schemes because the inverters have active anti-islanding. For all these projects, fiber or radio based direct transfer trip to each sectionalizing device may be required because of the other system impacts mentioned. The MS50 circuit has an automated feeder backup system that GMP has employed on very few distribution circuits. The associated sectionalizing equipment cannot receive an external trip signal and may be difficult or impossible to include within GMP's traditional direct transfer trip designs.

Ryan Rainville

*Electrical Engineer, Distributed Generation
Green Mountain Power
Office: (802) 747-5331*

Dockets 7873 & 7874 – Attachment II

Attachment D
Qualifying Facility Certification

From: <efiling@ferc.gov>
Date: Fri, May 17, 2013 at 1:03 PM
Subject: FERC Acceptance for Filing in QF13-437-000
To: thomas.melone@gmail.com, efilingacceptance@ferc.gov

Acceptance for Filing

The FERC Office of the Secretary has accepted the following electronic submission for filing (Acceptance for filing does not constitute approval of any application or self-certifying notice):

-Accession No.: 201305175073
-Docket(s) No.: QF13-437-000
-Filed By: Bennington Solar LLC
-Signed By: Thomas Melone
-Filing Type: Qualifying Facility Application or PURPA Energy Utility Filing
-Filing Desc: Form 556 of Bennington Solar LLC under QF13-437.
-Submission Date/Time: 5/17/2013 7:35:11 AM
-Filed Date: 5/17/2013 8:30:00 AM

Your submission is now part of the record for the above Docket(s) and available in FERC's eLibrary system at:

http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130517-5073

If you would like to receive e-mail notification when additional documents are added to the above docket(s), you can eSubscribe by docket at:

<https://ferconline.ferc.gov/eSubscription.aspx>

There may be a 10 minute delay before the document appears in eLibrary.

Thank you again for using the FERC Electronic Filing System. If you need to contact us for any reason:

E-Mail: efiling@ferc.gov <mailto:efiling@ferc.gov> (do not send filings to this address)
Voice Mail: [202-502-8258](tel:202-502-8258).

Dockets 7873 & 7874 – Attachment II

Attachment E
Interconnection Agreement

(The Interconnection Agreement with the Interconnecting Utility must be filed within five business days of its execution.)

Dockets 7873 & 7874 – Attachment II

Attachment F
Rate Schedule and Term

VEPP Inc. and Ecos Energy, LLC

Governing Orders:

Electricity and Other Products Related to Electric Generation delivered pursuant to this Agreement shall be priced at the rate listed below in accordance with the provisions of this Agreement Paragraph 8, “Rates and Terms,” Paragraph 3, “Delivery of Electricity and Transfer of Other Products related to Electric Generation,” and the provisions of the Vermont Public Service Board’s orders in Docket No. 7523, “Order Re Initial Standard Offer Price Determinations for SPEED Resources,” dated September 15, 2009, Docket No. 7533 “Order Establishing a Standard Offer Program for Qualifying SPEED Resources,” dated September 30, 2009, as revised, and “Establishment of Price for Standard Offer under the Sustainably Priced Energy Enterprise Development Program,” dated January 15, 2010, Docket No. 7780 “Investigation into the Review of Standard Offer Prices under the Sustainably Priced Energy Enterprise Development Program,” dated January 23, 2012, and Docket Nos. 7873 & 7874 “Programmatic Changes to the Standard Offer Program” and “Investigation into the Establishment of Standard Offer Prices under the Sustainably Priced Energy Enterprise Development Program,” dated March 1, 2013. Terms defined in the Agreement are used herein with their defined meanings.

Rate Schedule:

VEPP Inc., the SPEED Facilitator, will purchase the Producer’s Electricity and Other Products Related to Electric Generation from the Facilities described in Attachment A at the following rate:

Solar – 13.40 cents/kWh

Term of Agreement:

This Agreement shall become effective upon execution by the Producer and the SPEED Facilitator. The SPEED Facilitator shall file an executed original of this Agreement with the Vermont Public Service Board. This Agreement shall remain in effect for a period ending twenty five (25) years after the date “Electricity” is first “Delivered” to the “Distribution System.”

EXHIBIT 2

**U.S. Bankruptcy Court
District of Vermont (Rutland)
Bankruptcy Petition #: 13-10693**

Assigned to: Judge Colleen A. Brown
Chapter 7
Voluntary
Asset

Date filed: 10/01/2013
Date terminated: 04/26/2018
Debtor discharged: 04/11/2018
Joint debtor discharged: 04/11/2018
341 meeting: 01/06/2014
Deadline for objecting to discharge: 01/31/2014

Debtor disposition: Standard Discharge
Joint debtor disposition: Standard Discharge

Debtor

David L Griffin

1 Bank Street
Bennington, VT 05201
BENNINGTON-VT
SSN / ITIN: xxx-xx-1207

**fdba President Down to Earth Golf Course
Construction, Inc.**

**dba Down to Earth Land Development dba Mt.
Anthony Golf & Tennis**

represented by **Heather Z Cooper**

Facey Goss & McPhee PC
PO Box 578
Rutland, VT 05702-0578
802-773-3300
Fax : 802-775-1581
Email: hcooper@fgmvt.com

John R. Canney, III

PO Box 6626
Rutland, VT 05702-6626
(802) 773-3325
Fax : (802) 773-3399
Email: AttyCanney@aol.com
TERMINATED: 06/02/2017

Joint Debtor

Maria E. Leon

1 Bank Street
Bennington, VT 05201
BENNINGTON-VT
SSN / ITIN: xxx-xx-0016

represented by **Heather Z Cooper**
(See above for address)

John R. Canney, III

(See above for address)
TERMINATED: 06/02/2017

Trustee

Raymond J Obuchowski, Trustee

PO Box 60
Bethel, VT 05032-0060
(802) 234-6244
TERMINATED: 10/01/2013

represented by **Douglas J. Wolinsky**

PO Box 1489
Burlington, VT 05402-1489
(802) 864-0880
Fax : (802) 864-0328
Email: trustee@ppeclaw.com

Trustee

Douglas J. Wolinsky

PO Box 1489
Burlington, VT 05402-1489
(802) 864-0880

Keith A. Roberts

Darby Kolter & Roberts, LLP
89 South Main Street

U.S. Trustee
U S Trustee
Office of the United States Trustee
Leo O'Brien Federal Building
11A Clinton Ave., Room 620
Albany, NY 12207-2190
(518) 434-4553

represented by **Kevin Purcell**
Office of the US Trustee
74 Chapel St. Suite 200
Albany, NY 12207
(518) 434-4553
Fax : (518) 434-4459

Lisa M. Penpraze
Office of the United States Trustee
Leo O'Brien Federal Building
11A Clinton Ave., Room 620
Albany, NY 12207
518-434-4553
Fax : 518-434-4459
Email: lisa.penpraze@usdoj.gov

Filing Date	#	Docket Text
10/01/2013	1 (85 pgs)	Chapter 7 Voluntary Petition. Fee Amount \$306. Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon. (Canney, John) (Entered: 10/01/2013)
10/01/2013	2 (2 pgs)	Certificate of Credit Counseling Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon. (Canney, John) (Entered: 10/01/2013)
10/01/2013		Receipt of Chapter 7 Voluntary Petition(13-10693) [misc,1027u] (306.00) Filing Fee (re: Doc # 1). Receipt number 1562670, Fee amount \$ 306.00. (U.S. Treasury) (Entered: 10/01/2013)
10/01/2013	3 (9 pgs; 2 docs)	Debtor's Pay Advices with Cover Sheet Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 10/01/2013)
10/01/2013		Meeting of Creditors. Section 341(a) meeting to be held on 10/28/2013 at 11:30 AM at Location 5: U.S. Trustee Meeting Room, Rutland. Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts is 12/27/2013. (Wennberg, Nancy USBC-VT) (Entered: 10/01/2013)
10/01/2013	4 (1 pg)	Trustee's Rejection of Appointment. Filed by Raymond J Obuchowski, Trustee. (Obuchowski, Trustee, Raymond) (Entered: 10/01/2013)
10/02/2013		Meeting of Creditors. Section 341(a) meeting to be held on 12/2/2013 at 12:30 PM at Location 5: U.S. Trustee Meeting Room, Rutland. Deadline to Object to Debtor's Discharge or to Challenge Dischargeability of Certain Debts is 1/31/2014. (Wennberg, Nancy USBC-VT) (Entered: 10/02/2013)
10/04/2013	5 (5 pgs)	Notice of Bankruptcy Case, Meeting of Creditors, & Deadlines with Certificate of Notice by Bankruptcy Noticing Center Re: Meeting of Creditors. Notice Date 10/04/2013. (Admin.) (Entered: 10/05/2013)
10/08/2013	6 (65 pgs; 5 docs)	Motion for Relief from Stay Regarding Fairview St., Town of Bennington - Book 450, Page 154. Fee Amount \$176. Filed by Elizabeth A. Glynn of Ryan Smith & Carbine, Ltd on behalf of People's United Bank. Hearing scheduled for 11/19/2013 at 10:00 AM at 3: U.S. Bankruptcy Court, USPO Bldg, Rutland and the following VT Interactive Technologies sites: Bennington, Montpelier, White River Junction and Williston. Objections due by 10/22/2013. (Attachments: # 1 Notice of Motion Under Default

		Procedure # 2 Waiver of the 30-day limit under Section 362(e) # 3 Proposed Order Granting Relief from Stay # 4 Certificate of Service) (Glynn, Elizabeth). (Entered: 10/08/2013)
10/08/2013		Receipt of Motion for Relief from Stay(13-10693) [motion,mrlfsty] (176.00) Filing Fee (re: Doc # 6). Receipt number 1565360, Fee amount \$ 176.00. (U.S. Treasury) (Entered: 10/08/2013)
10/10/2013	7 (62 pgs; 5 docs)	Motion for Relief from Stay Regarding real property at 88 Monument Avenue, Bennington, Vermont. Fee Amount \$176. Filed by Elizabeth A. Glynn of Ryan Smith & Carbine, Ltd on behalf of People's United Bank. Hearing scheduled for 11/19/2013 at 10:00 AM at 3: U.S. Bankruptcy Court, USPO Bldg, Rutland and the following VT Interactive Technologies sites: Bennington, Montpelier, White River Junction and Williston. Objections due by 10/28/2013. (Attachments: # 1 Proposed Order # 2 Notice of Motion under Default # 3 Waiver of the 30-day limit under Section 362(e) # 4 Certificate of Service) (Glynn, Elizabeth) (Entered: 10/10/2013)
10/10/2013		Receipt of Motion for Relief from Stay(13-10693) [motion,mrlfsty] (176.00) Filing Fee (re: Doc # 7). Receipt number 1566700, Fee amount \$ 176.00. (U.S. Treasury) (Entered: 10/10/2013)
10/14/2013	8 (1 pg)	Creditor Request for Notices Filed by Gilbert Barnett Weisman of Becket & Lee LLP on behalf of American Express Bank FSB. (Weisman, Gilbert) (Entered: 10/14/2013)
10/14/2013	9 (61 pgs; 2 docs)	Stipulation <i>Order for Relief from Stay</i> By People's United Bank and Between David L. Griffin and Maria E. Leon by John R. Canney, III and Douglas J. Wolinsky Filed by Elizabeth A. Glynn of Ryan Smith & Carbine, Ltd on behalf of People's United Bank Re: Auto-docket of credit card. (Attachments: # 1 Certificate of Service) (Glynn, Elizabeth) (Entered: 10/14/2013)
10/14/2013		Trustee's Consent Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky Re: 9 Stipulation. (Wolinsky, Douglas) (Entered: 10/14/2013)
10/15/2013		Consent Filed by John R. Canney III on behalf of John R Canney III Re: 9 Stipulation. (Canney, John) (Entered: 10/15/2013)
10/16/2013	10 (4 pgs)	Stipulated Order for Relief from Stay Re: Fairview Street 58.93 acres of land Town of Bennington Re: 9 Stipulation. (Wennberg, Nancy USBC-VT) Modified on 10/16/2013 (Wennberg, Nancy USBC-VT). (Entered: 10/16/2013)
10/18/2013	11 (5 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 10 Order. Notice Date 10/18/2013. (Admin.) (Entered: 10/19/2013)
10/29/2013	12 (1 pg)	Order Granting Motion for Relief From Stay Regarding real property at 88 Monument Avenue, Bennington, Vermont (Related Doc # 7). (Wennberg, Nancy USBC-VT) (Entered: 10/29/2013)
10/31/2013	13 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 12 Order on Motion for Relief From Stay. Notice Date 10/31/2013. (Admin.) (Entered: 11/01/2013)
11/22/2013	14 (2 pgs; 2 docs)	Form 23 - Financial Management Course Certificate Filed by John R. Canney III on behalf of David L Griffin. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 11/22/2013)
11/22/2013	15 (2 pgs; 2 docs)	Form 23 - Financial Management Course Certificate Filed by John R. Canney III on behalf of Maria E. Leon. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 11/22/2013)
11/26/2013	16 (8 pgs; 4 docs)	Trustee's Application to Employ Primmer Piper Eggleston & Cramer PC as Attorneys for the Estate Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky.

		(Attachments: # 1 Affidavit # 2 Certificate of Service # 3 Proposed Order) (Wolinsky, Douglas) (Entered: 11/26/2013)
12/04/2013		Statement Adjourning Meeting of Creditors. Section 341(a) Meeting of Creditors Continued to 1/6/2014 at 12:30 PM at 5: U.S. Trustee Meeting Room, Rutland. Debtor appeared. Joint Debtor appeared. (Wolinsky, Douglas) (Entered: 12/04/2013)
12/05/2013		<i>Consent by the United States Trustee to the form and content of the proposed order granting the Trustee's Application to Employ Primmer Piper Eggleston & Cramer PC as Attorneys for the Estate Filed by Douglas J. Wolinsky, Esq., Chapter 7 Trustee</i> Filed by Kevin Purcell of Office of the US Trustee on behalf of U S Trustee Re: 16 Application to Employ. (Purcell, Kevin) (Entered: 12/05/2013)
12/05/2013	17 (1 pg)	Order Granting Trustee's Application to Employ Primmer Piper Eggleston & Cramer PC as Attorneys for the Estate (Related Doc # 16). (Wennberg, Nancy USBC-VT) (Entered: 12/05/2013)
12/07/2013	18 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 17 Order on Application to Employ. Notice Date 12/07/2013. (Admin.) (Entered: 12/08/2013)
12/11/2013	19 (39 pgs; 6 docs)	Stipulated Motion for Relief from Stay Regarding 3 Maryland Avenue, Armonk, New York. Payment Not Due at this Time: Motion Stipulated. Fee Amount \$176. Filed by Grant C. Rees of Lobe, Fortin & Rees, PLC on behalf of Bank of American, N.A.. Hearing scheduled for 1/28/2014 at 10:00 AM at 2: U.S. Bankruptcy Court, Fed Bldg, Burlington. Objections due by 12/27/2013. (Attachments: # 1 Waiver of the 30-day limit under Section 362(e) # 2 Notice of Motion under Default # 3 Proposed Order # 4 Certificate of Service # 5 Exhibit Loan documents) (Rees, Grant) (Entered: 12/11/2013)
12/23/2013		Notice of Appearance and Request for Notice by Heather Z Cooper Filed by Heather Z Cooper of Kenlan Schwiebert Facey & Goss PC on behalf of JP Morgan Chase, NA. (Cooper, Heather) (Entered: 12/23/2013)
12/30/2013	20 (6 pgs; 4 docs)	Trustee's Application to Employ Mark Boyland as Realtor Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky. (Attachments: # 1 Affidavit of Mark Boyland # 2 Certificate of Service # 3 Proposed Order) (Wolinsky, Douglas) (Entered: 12/30/2013)
01/02/2014	21 (2 pgs)	Order Granting Motion for Relief From Stay Regarding 3 Maryland Avenue, Armonk, New York (Related Doc # 19). (Wennberg, Nancy USBC-VT) (Entered: 01/02/2014)
01/04/2014	22 (3 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 21 Order on Motion for Relief From Stay. Notice Date 01/04/2014. (Admin.) (Entered: 01/05/2014)
01/06/2014		<i>Consent by the United States Trustee to the form and content of the proposed order granting the Trustee's Application to Employ Mark Boyland as Realtor for the Estate, filed by Douglas J. Wolinsky, Esq., Chapter 7 Trustee</i> Filed by Kevin Purcell of Office of the US Trustee on behalf of U S Trustee Re: 20 Application to Employ. (Purcell, Kevin) (Entered: 01/06/2014)
01/07/2014	23 (1 pg)	Order Authorizing Trustee to Employ Mark Boyland Real Estate Broker (Related Doc # 20). (Wennberg, Nancy USBC-VT) (Entered: 01/07/2014)
01/09/2014	24 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 23 Order on Application to Employ. Notice Date 01/09/2014. (Admin.) (Entered: 01/10/2014)
03/13/2014	25 (71 pgs; 9 docs)	Adversary case 14-01007. <i>Complaint to Determine Nature, Extent and Validity of Lien.</i> by JP Morgan Chase Bank, N.A. against David L Griffin, Maria E. Leon, Small Business Administration, The Westchester Bank, N.A., US Mortgage Corporation, Douglas J. Wolinsky Esq.. Fee Amount \$293. (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8)

		Nature of Suit: 21 (Validity, priority or extent of lien or other interest in property), 91 (Declaratory judgment) (Cooper, Heather) (Entered: 03/13/2014)
06/09/2014		Trustee's Notice of Assets & Request for Notice to Creditors <i>To File Proofs of Claims</i> Filed by Douglas J. Wolinsky. (Wolinsky, Douglas) (Entered: 06/09/2014)
06/09/2014	26 (1 pg)	File Claims Deadline Set. Proofs of Claims due by 9/9/2014. Government Proof of Claim due by 9/9/2014. (Wennberg, Nancy USBC-VT) (Entered: 06/09/2014)
06/11/2014	27 (4 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 26 Notice to File Claims. Notice Date 06/11/2014. (Admin.) (Entered: 06/12/2014)
06/17/2014	28 (63 pgs; 9 docs)	Motion for Relief from Stay Regarding 224 Chestnut Ridge Road, Mt. Kisco, New York. Fee Amount \$176. Filed by Heather Z Cooper of Kenlan Schwiebert Facey & Goss PC on behalf of JP Morgan Chase, NA. Hearing scheduled for 7/11/2014 at 10:00 AM at 3: U.S. Bankruptcy Court, USPO Bldg, Rutland and the following VT Interactive Technologies sites: Brattleboro, Montpelier, White River Junction and Williston. Objections due by 7/8/2014. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Notice of Motion # 8 Certificate of Service) (Cooper, Heather) (Entered: 06/17/2014)
06/17/2014		Receipt of Motion for Relief from Stay(13-10693) [motion,mrlfsty] (176.00) Filing Fee (re: Doc # 28). Receipt number 1662949, Fee amount \$ 176.00. (U.S. Treasury) (Entered: 06/17/2014)
06/18/2014		Consent Filed by John R. Canney III on behalf of John R Canney III Re: 28 Motion for Relief from Stay. (Canney, John) (Entered: 06/18/2014)
07/10/2014	29 (1 pg)	Proposed Order <i>Granting Relief from Stay</i> . Filed by Heather Z Cooper of Kenlan Schwiebert Facey & Goss PC on behalf of JP Morgan Chase, NA Re: 28 Motion for Relief from Stay. (Cooper, Heather) (Entered: 07/10/2014)
07/10/2014	30 (1 pg)	Order Granting Motion for Relief From Stay re: 224 Chestnut Ridge Road, Mt. Kisco, New York (Related Doc # 28). (Wennberg, Nancy USBC-VT) (Entered: 07/10/2014)
07/12/2014	31 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 30 Order on Motion for Relief From Stay. Notice Date 07/12/2014. (Admin.) (Entered: 07/13/2014)
07/30/2014		Adversary Proceeding 5:14-ap-1007 Closed. (Ford, Kathleen USBC-VT) (Entered: 07/30/2014)
01/14/2016		Notice of Appearance and Request for Notice by Donald Hayes Filed by Donald Hayes of Lobe, Fortin, Rees and Cykon, PLC on behalf of Bank of American, N.A.. (Hayes, Donald) (Entered: 01/14/2016)
04/19/2016		Notice of Appearance and Request for Notice by Andrew S Cannella Filed by Andrew S Cannella of Bendett & McHugh PC on behalf of Wells Fargo Bank, N.A.. (Cannella, Andrew) (Entered: 04/19/2016)
06/03/2016	32 (20 pgs; 2 docs)	Debtor's Amended Schedules and Amended Matrix. Fee Amount \$30. Filed by John R. Canney III on behalf of David L Griffin, Maria E. Leon Re: 1 Chapter 7 Voluntary Petition. (Attachments: # 1 Certificate of Service) (Canney, John) (Entered: 06/03/2016)
06/03/2016		Receipt of Amended Schedules/Amended Matrix(13-10693) [misc,amdsch] (30.00) Filing Fee (re: Doc # 32). Receipt number 1871946, Fee amount \$ 30.00. (U.S. Treasury) (Entered: 06/03/2016)
02/09/2017	33 (9 pgs; 3 docs)	Trustee's Notice of Intent to Use, Sell or Lease Various Assets Filed by Douglas J. Wolinsky. Hearing scheduled for 4/12/2017 at 11:00 AM at 2: U.S. Bankruptcy Court,

		Fed Bldg, Burlington. Objections due by 3/2/2017. (Attachments: # 1 Proposed Order # 2 Certificate of Service) (Wolinsky, Douglas) (Entered: 02/09/2017)
03/28/2017	34 (2 pgs)	Proposed Order (<i>Revised</i>) Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky Re: 33 Notice of Intent to Sell/Lease/Abandon. (Wolinsky, Douglas) (Entered: 03/28/2017)
03/28/2017	35 (2 pgs)	Order Approving Sale of Non-Exempt Equity in Various Assets Re: 33 Notice of Intent to Sell/Lease/Abandon. (Howe, Emerson-USBCVT) (Entered: 03/28/2017)
03/30/2017	36 (3 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 35 Order. Notice Date 03/30/2017. (Admin.) (Entered: 03/31/2017)
06/01/2017	37 (2 pgs)	Notice of <i>Substitution of Counsel and Order</i> . Filed by Heather Z Cooper of Facey Goss & McPhee PC on behalf of David L Griffin. (Cooper, Heather) (Entered: 06/01/2017)
06/01/2017	38 (2 pgs)	Notice of <i>Substitution of Counsel and Order</i> . Filed by Heather Z Cooper of Facey Goss & McPhee PC on behalf of Maria E. Leon. (Cooper, Heather) (Entered: 06/01/2017)
06/02/2017	39 (2 pgs)	Notice of Substitution of Counsel and Order Re: 37 Notice (Generic), 38 Notice (Generic). (Howe, Emerson-USBCVT) (Entered: 06/02/2017)
06/04/2017	40 (4 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 39 Order. Notice Date 06/04/2017. (Admin.) (Entered: 06/05/2017)
06/20/2017	41 (1 pg)	Notice of Change of Address Filed by Heather Z Cooper of Facey Goss & McPhee PC on behalf of David L Griffin, Maria E. Leon. (Cooper, Heather) (Entered: 06/20/2017)
09/25/2017	42 (39 pgs; 4 docs)	Chapter 7 Trustee Final Report and Proposed Distribution and Application for Compensation, and Application for Compensation of Professionals filed on behalf of Trustee Douglas J. Wolinsky, Esq for Primmer Piper Eggleston & Cramer, PC, Attorney, Period: 11/26/2013 to 9/25/2017, Fees: \$1,495.00, Expenses: \$, for Douglas J. Wolinsky, Trustee Chapter 7, Period: 10/1/2013 to 9/25/2017, Fees: \$1,000.00, Expenses: \$235.88. The United States Trustee has reviewed the Chapter 7 Trustees Final Report, Application for Compensation and Application(s) of Compensation of Professionals. Filed by Lisa M. Penpraze. (Attachments: # 1 Trustee's Application for Compensation and Expenses # 2 Attorney for Trustee Application for Compensation # 3 Proposed Order) (Penpraze, Lisa) (Entered: 09/25/2017)
09/26/2017	43 (11 pgs; 2 docs)	Notice of Filing of Final Account of Trustee, and Notice of Hearing on Application for Commission Filed by Douglas J. Wolinsky on behalf of Douglas J. Wolinsky Re: 42 Chapter 7 Trustee's Final Rpt/Acct-Asset(TFR). Hearing scheduled for 11/1/2017 at 10:00 AM at 2: U.S. Bankruptcy Court, Fed Bldg, Burlington. Objections due by 10/11/2017. (Attachments: # 1 Certificate of Service) (Wolinsky, Douglas) (Entered: 09/26/2017)
10/12/2017	44 (2 pgs)	Order Granting Trustee's Final Report and Distribution (Related Doc # 42) for Douglas J. Wolinsky, Fees awarded: \$1000, Expenses awarded: \$235.88, Granting Trustee's Final Report and Distribution (Related Doc # 42) for Primmer Piper Eggleston & Cramer, PC, Fees awarded: \$1495.00, Expenses awarded: \$0.00. (Howe, Emerson-USBCVT) (Entered: 10/12/2017)
10/14/2017	45 (3 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 44 Order Approving Trustee's Final Report and Distribution. Notice Date 10/14/2017. (Admin.) (Entered: 10/15/2017)
02/05/2018	46 (1 pg)	Unclaimed Funds for Claim #3, John Deere Landscapes. Receipt number 48731. Amount \$34.06. (Howe, Emerson-USBCVT) (Entered: 02/05/2018)
02/05/2018	47 (1 pg)	Unclaimed Funds for Claim #8, Matrix Turf Solutions. Receipt number 48731. Amount \$21.36. (Howe, Emerson-USBCVT) (Entered: 02/05/2018)

02/05/2018	48 (1 pg)	Unclaimed Funds for Claim #9, Custom Golf Materials, Inc. Receipt number 48731. Amount 23.01. (Howe, Emerson-USBCVT) (Entered: 02/05/2018)
04/09/2018	49 (18 pgs)	Chapter 7 Trustees Final Account and Distribution Report, Certification that the Estate has been Fully Administered and Application to be Discharged filed on behalf of Trustee Douglas Wolinsky. The United States Trustee has reviewed the Chapter 7 Trustees Final Account, Certification that the Estate has been Fully Administered and Application of the Trustee to be Discharged. The United States Trustee does not object to the relief requested. Filed by U S Trustee. (Penpraze, Lisa) (Entered: 04/09/2018)
04/11/2018	50 (2 pgs)	Order Discharging Debtor David L Griffin and Joint Debtor Maria E. Leon. (LeClair, Sharrah-USBCVT) (Entered: 04/11/2018)
04/11/2018		Meeting Closed. Filed by Douglas J. Wolinsky Re: Meeting of Creditors. (Wolinsky, Douglas) (Entered: 04/11/2018)
04/13/2018	51 (5 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 50 Order Discharging Debtor. Notice Date 04/13/2018. (Admin.) (Entered: 04/14/2018)
04/26/2018	52 (1 pg)	Final Decree - Bankruptcy Case Closed. (LeClair, Sharrah-USBCVT) (Entered: 04/26/2018)
04/28/2018	53 (2 pgs)	Certificate of Notice by Bankruptcy Noticing Center Re: 52 Final Decree - Bankruptcy Case Closed. Notice Date 04/28/2018. (Admin.) (Entered: 04/29/2018)
05/17/2018		Trustee Fees Disbursed on 5/17/2018. TR-4 Voucher # 022. Amount Paid \$60.00. (Rachek, Catherine USBC-VT) (Entered: 05/17/2018)

PACER Service Center			
Transaction Receipt			
02/11/2024 13:05:38			
PACER Login:	thomas.melone	Client Code:	
Description:	Docket Report	Search Criteria:	13-10693 Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included
Billable Pages:	7	Cost:	0.70

EXHIBIT 3

From: **Thomas Melone** <thomas.melone@gmail.com>
Date: Fri, May 3, 2024 at 6:28 PM
Subject: 23-0249 Port St Lucie Deed
To: Maru Leon <maru@mtanthonycc.com>, <dgriffin@tiftschools.com>,
<dgriffin@mtanthonycc.com>

Hello David & Maru,

This information came in after we filed the first round of requests but I do want you to be aware that we will be asking about it in your depositions. This property does not seem to have been declared on Schedule A to the bankruptcy petition.

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
[157 Church St., 19th floor](#)
[New Haven, CT 06510](#)

(212) 681-1120
(801) 858-8818 (fax)

This e-mail communication is confidential and is intended only for the individual(s) or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this e-mail in error by replying to the e-mail or by telephoning (212) 681-1120. Please then delete the e-mail and any copies of it. Thank you

Prepared by, record & return to:
Karen Rae Hyche
PRESTIGE TITLE AGENCY, INC.
736 Colorado Ave. Ste. A
Stuart FL 34994
772-283-5590

Property Appraisers Parcel ID#:
3420-741-0253-000/3

THIS WARRANTY DEED, Made the 22 day of January, 2016 by

DAVID L. GRIFFIN

hereinafter called the Grantor, to **RED BOAT, LLC, a Florida limited liability company**

whose post office address is **757 SE 17th St. Ste. 443, Fort Lauderdale FL 33316**
hereinafter called the Grantee.

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, situate in St. Lucie County, State of Florida, viz:

Lot 4, Block 3247, FIRST REPLAT OF PORT ST. LUCIE SECTION 48, a subdivision according to the plat thereof recorded at Plat Book 26, Page 23, in the Public Records of St. Lucie County, Florida.

SUBJECT TO restrictions, reservations, easements & conditions of record; all governmental zoning.

Subject property is vacant, unimproved land and does not constitute the homestead of the grantor nor is it contiguous thereto.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the Grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Jason P. Morrissey
Witness Signature (as to first grantor)
Print name: JASON P. MORRISSEY

Abigail W. Chisoux
Witness Signature (as to first grantor)
Print name: Abigail W. Chisoux

David L. Griffin
Grantor Signature
David L. Griffin

180 Country Club Road
Post Office Address
Bennington VT 05201

STATE OF VERMONT)
COUNTY OF Bennington

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **DAVID L. GRIFFIN** known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, and an oath was not taken. (Check one): Said person(s) is/are personally known to me. Said person(s) provided the following type of identification: VT Drivers License # 82576398

SEAL
MY COMMISSION EXPIRES 2/10/19

Witness my hand and official seal in the County and State last aforesaid this 22 day of January, 2016.

Richard Shepard
Notary Signature
Print name: Richard Shepard



EXHIBIT 4

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC, pursuant)
to 30 V.S.A. § 248, for a certificate of public)
good authorizing the installation and)
operation of a 2.0 MW solar electric)
generation facility located off Willow Road)
in Bennington, Vermont)

Docket No. 24-3517-PET

**APPLE HILL SOLAR LLC'S FURTHER COMMENTS ON THE DEPARTMENT OF
PUBLIC SERVICE'S MOTION TO STAY**

“*It's not a lie if you believe it,*” said Bennington Town Manager Stu Hurd after being accused of lying about the existence of the Bennington Town Plan. Apple Hill Solar LLC (“AHS”) files these further comments on the Motion to Stay of the Department of Public Service (“DPS”) and the comments of the Town of Bennington. AHS will be prepared to further supplement them at the scheduling conference set for January 13, 2025.

A. The Town of Bennington's Comments.

On January 9, 2025, the Bennington Select Board *and* the Bennington Planning Commission filed joint comments in this case (the “Joint Comments”). The Joint Comments assert in postcard fashion that “[b]efore this matter proceeds, the PUC should require that the Petitioner demonstrate why its application is not precluded under jurisprudential finality doctrines.” Joint Comments at 2. The Joint Comments have it backwards. Estoppel (whatever version the Joint Comments might be referring to) is an *affirmative defense*, and as such the burden is on the party raising it to show that it applies. There is nothing that prevents the Town from actually doing the work and filing a motion raising that issue. Of course, the Town's participating in this case at all is a breach of the settlement agreement between AHS and the Town as stated in AHS's preliminary comments.

The second issue raised by the Joint Comments involves the appeal of the standard offer contract extension decision to the Vermont Supreme Court. As explained in AHS's preliminary comments, that appeal has nothing to do with the petition under section 248 because AHS is

submitting the petition as a merchant generator.

The third point made by the Joint Comments is its request that DPS do the Town’s dirty work and hire experts “regarding orderly development and aesthetics.” Maybe that home team type approach will work here. *After all*, the Town picked up the baton for a core group of opponents to the AHS and Chelsea Solar projects—the Mount Anthony Country Club, Lara Block, Diane Leazer and Rick Carroll, who were like peas in pod. And now the Town is asking DPS to pick up the baton on behalf of the Mount Anthony Country Club, Block, Leazer and Carroll.

But if DPS does agree to do the Town’s and the others’ dirty work, it would reinforce the notion that when it comes to the climate and the environment, DPS is “All hat, No cattle,” and is simply a hired-gun for local opponents. That would be especially so in light of two recent notable developments—one of the reddest States—Montana—holding Montanans have a constitutional right to “a clean and healthful environment and environmental life support system includes a stable climate system.” *Held v. Montana*, 2024 MT 312, ¶30, and the average global temperature for 2024 exceeding the 1.5°C mark, a key target in the Paris Agreement to limit global warming.

B. DPS’s Motion For A Stay.

AHS’s preliminary comments (as supplemented by the above discussion) explain why none of the three reasons enunciated by DPS justify a stay. In addition, the Commission has already ruled that the AHS’s project presented in this case is different. It did that in its order of May 7, 2020, when it denied AHS’s motion to amend the petition in docket 8454. In denying that amendment the Commission stated: “Further, even if we had jurisdiction over this matter, the Petitioner’s request to amend the Petition is untimely because the request came after the case had been appealed and remanded with a limited scope. The Petitioner’s motion to amend asks us to look at a *different project with new exhibits* that were not entered into evidence before our Final Order or the remand order.” *Petition of Apple Hill Solar LLC*, Order Adopting Proposal For Decision On Remand And Denying Petition, Docket 8454 (May 7, 2020) at 24 (emphasis added). *Id.* at 25 (“the Commission requires that new projects be filed as new projects.”)

And as noted in AHS’s preliminary comments, the Commission relied heavily on the

“black box” rhetoric. *Id.* at 29 (“The proposal for decision on remand correctly finds that the Facility's ‘black box’ appearance in a heavily forested area would not be consistent with the requirement to maintain the rural character of the area.”) And now as stated in AHS’s preliminary comments, the rhetorical “black-box” is gone.

Additionally, the project in docket 8454 was not reviewed using the solar screening ordinance because it did not exist. *Id.* at 30 (“There was no municipal solar screening ordinance adopted pursuant to Section 248(b)(1)(B) by Bennington that was reviewed as part of this case.”) But section 248(b)(1)(B) does apply now requiring solar projects to be treated equally as other projects in the Town.

And then there is the Mount Anthony Country Club where the Commission stated that “the whole facility would be prominently visible from the golf course.” *Id.* at 37. The purported “evidence” on which that conclusion was based was simply fabricated. It was made up by the core opponents. And when Mount Anthony Country Club sought to repeat that made up claim in case 23-0249, the petitioner sought to depose the purported “owners” of the Mount Anthony Country Club—Maru Leon and David Griffin. But Leon and Griffin knew that if they were deposed the jig was up and their credibility as witnesses would be shattered. So in order to evade a deposition, Leon and Griffin withdrew from case 23-0249 but only after filing a long-winded tirade reciting false reasons why they were withdrawing. Then in subsequent filings, both DPS and the Town regurgitated those false premises for why Leon and Griffin withdrew. And then likewise, the Commission backed the hearing officer’s backing the home team by imposing stringent limitations on petitioner’s rights to discovery and due process. But Leon and Griffin still appear to be using the other core opponents and the Select Board as puppets to perpetuate the false claims regarding aesthetics from the golf course.

C. So why did Leon and Griffin really drop out?

Leon and Griffin knew their credibility would be shattered if they had to sit for a deposition. As described in filings in case 23-0249, Leon and Griffin operate an entity called Down to Earth Golf Course Development, Inc. (“DTE”), the business registrant for the Mount Anthony Country

Club. That information, however, seemed to directly contradict the information set forth in the Leon/Griffin Bankruptcy Petition. See, **Exhibit 1** hereto. It also appeared that Leon and Griffin claimed that they caused the transfer of the golf course, Bennington parcel ID 43504401, to something called the Griffin Family Qualified Domestic Trust. But the Town's Grand List in 2015 listed the owner as DTE. In any case, Leon and Griffin refused to identify the interests of the beneficiaries of the Griffin Family Qualified Domestic Trust. And in SCHEDULE B - PERSONAL PROPERTY to the petition for bankruptcy filed by David Griffin and Maria E. Leon on October 1, 2013, in the Bankruptcy Court for the District of Vermont, David Griffin and Maria E. Leon stated that the fair market value of *their* interest in the Griffin Family Qualified Domestic Trust was only \$1.00.

While all of those unexplained events themselves would likely impair their credibility for truthfulness when fully fleshed out, the big bomb came in the form of two land transactions in Florida. Those two land transactions, the deeds for which are attached hereto as **Exhibits 2 and 3**, clearly show that the "owners" of the Mount Anthony Country Club defrauded the Bankruptcy Court and their creditors. Neither the ownership of those real estate properties, nor the sales or proceeds, were disclosed to either the Bankruptcy Court or their creditors either in the original schedules to the petition or in the amended schedules filed on June 3, 2016. Leon and Griffin received their discharge on April 11, 2018, without disclosing those transactions and assets.

If Leon and Griffin had no problem with defrauding the federal government through the Bankruptcy Court or creditors, the filing false testimony with the Commission would seem like a walk in the park. And that false testimony served the purposes of the core opponents of the projects and was in large part used as the basis for the Commission to deny the CPG in docket 8454. That explains why Leon and Griffin dropped out of case 23-0249. In other words, they knew their credibility for truthfulness would be shattered, and it would be revealed that what they were saying would be unreliable.

D. The Bennington Whistleblowers and The Two Honest Select Board Members.

Pursuant to 24 V.S.A. §4387, the 2015 Bennington Town Plan was set to expire on October

6, 2023. The town plan adoption process is laid out in 24 V.S.A. §4302, and §§4381-4387 and is formidable (due to an intervening change in the requirements of the statute) and will often take years to accomplish. Section 4387(b)(1)(A) mandates that the planning commission “engage in community outreach and involvement in updating the plan”. As the time to begin the process to head off an October 6, 2023, expiration date of the 2015 Town Plan was fast approaching, the Town was actively involved in litigation with Allco and affiliates over the proposed Chelsea Solar project and the AHS project.

Fearing that Allco would insert itself into the now more onerous planning process with respect to any newly proposed Town Plan, certain Select Board and Planning Commission members (together with the town manager and town planner) hatched a scheme to buy more time, hoping that Allco would have given up by the extended schedule.

The way in which the Town attempted to do that was to claim that the 2015 Town Plan had actually been *re-adopted* in 2018 when the Town passed the Energy Amendment, such that the Town Plan would not expire in 2023 but in 2026. The obvious issue with that scheme (besides getting caught) is that the town plan adoption process in 24 V.S.A. §4302, and §§4381-4387 cannot be circumvented and nothing that was required of the Town to *re-adopt* the Town Plan was actually accomplished in 2018.

Among other things, 24 V.S.A. §4387(a) requires that re-adoption take place in accordance with 24 V.S.A. §4385 which requires public notice and two hearings as a condition precedent to duly adopting a new town plan or re-adopting an old one. The Planning Commission never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Planning Commission never voted on a re-adoption of the Town Plan. The Select Board never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Select Board never voted on a re-adoption of the Town Plan. And, of course, the requirement under §4387(b)(1)(A) that the planning commission “engage in community outreach and involvement in updating the plan” was never done because that is exactly what the players were seeking to avoid when they came up with the lie regarding the Town Plan. All that was ever done by the Town of

Bennington on January 22, 2018, was pass an amendment to the Town Plan (i.e., the Energy Amendment), which was a process that was hijacked by the core opponents of the Chelsea and AHS projects.

Moreover, 24 V.S.A. §4387(b) requires the Planning Commission to take the following actions if it were adopting a Town Plan (none of which occurred):

- (A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;
- (B) engage in community outreach and involvement in updating the plan;
- (C) consider consistency with the goals established in section 4302 of this title;
- (D) address the required plan elements under section 4382 of this title;
- (E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;
- (F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and
- (G) establish a program and schedule for implementing the plan.

No matter what the Energy Amendment might say, all that was accomplished by the Select Board was an adoption of the *Energy Amendment*.

And documentation provided by whistleblowers proves beyond a shadow of a doubt that the 2018 exercise of adopting the *Energy Amendment* was an *amendment only* and not a *readoption*. *One* such document (there are many, many others) is shown below:

Dan Monks

From: Dan Monks
Sent: Wednesday, January 24, 2018 3:49 PM
To: Jim Sullivan (jsullivan@bcrcvt.org)
Subject: Amended Town Plan
Attachments: 2018 Bennington Energy Plan - final.pdf

Hello Jim:

Please see attached amended Energy Section of the Bennington Town Plan. In accordance with 24 VSA Section 4385(c), the Town of Bennington is providing the Bennington County Regional Commission with a copy of the newly adopted amended Energy Section (Chapter 8) of the Bennington Town Plan.

In addition, the Town of Bennington requests approval by BCRC of the amended Town Plan under the provisions of 24 VSA Section 4350.

Finally, the Town of Bennington requests that BCRC determine that the amended Town Plan meets the energy planning standards (24 VSA Section 4352) of Act 174 of 2016.

Please confirm that you have received this e-mail and the attached Town Plan. Also, please Let me know when the required public hearings for approval of the Town Plan under Section 4350 and Act 174 are scheduled.

Thanks,

Dan

Daniel Monks
 Assistant Town Manager
 & Planning Director
 Town of Bennington
 802-447-9708
dmonks@benningtonvt.org

Please note that this email message, along with any response or reply, may be considered public record, and thus, may be subject to disclosure under the Vermont Public Records Law.

That only an *amendment* occurred is reinforced by, *inter alia*, the public notices sent out in advance of the January 8, 2018 and January 22, 2018 Select Board hearings on the Energy Amendment (the “SB Energy Amendment Hearings”), the transcripts of the SB Energy Amendment Hearings, the minutes of the SB Energy Amendment Hearings, the Agendas for the SB Energy Amendment Hearings, the public notice sent out in advance of the Planning Commission meeting discussing the Energy Amendment (the “PC Energy Amendment Hearing”), the minutes for the PC Energy Amendment Hearing, the Agenda for the PC Energy Amendment Hearing, the November 9, 2017, Memorandum from the Planning Commission to the Select Board submitting the Energy Amendment for approval and the Certificate of Energy Compliance issued by the Bennington County Regional Commission on January 22, 2018.

Contrary to the Select Board's big lie, the Energy Amendment did not extend the expiration date of the 2015 Town Plan, because *amendments* to town plans are incapable of extending expiration dates. See 24 V.S.A. §4385(c): "An amendment to a plan *does not affect or extend the plan's expiration date.*"

Of course, the problem with any big lie is that usually more lies are required to cover it up. And that was the case here. Thus, in seeking and receiving federal and state grants, the players needed to keep telling more lies and violating more laws. But cracks in the scheme started to develop after the election of two new Select Board members who questioned the validity of the story the other players were telling regarding the Town Plan. Whistleblowers then felt more comfortable coming forward.

E. AHS Is Entitled To Discovery If The Commission Entertains A Stay.

Even if the Commission were to entertain a stay (which it should not), AHS should be entitled to engage in discovery of, and depose, the Select Board and Planning Commission members, the town manager and the town planner, because what has come to light casts doubt on the purported justification for a stay as well as the continuing validity of the decision in docket 8454 and the credibility of the evidence on which it was based. And long before the time the Vermont Supreme Court issued its final decision in the 8454 case, the Town's active conspiracy was well underway, hiding vital information from the Court as well as the Commission.

Dated: January 12, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC

By: /s/ Thomas Melone

Thomas Melone

Apple Hill Solar LLC

157 Church Street, 19th Floor

New Haven, CT 06510

Thomas.Melone@AllcoUS.com

212-681-1120

EXHIBIT 1

United States Bankruptcy Court District of Vermont		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): Griffin, David L.		Name of Joint Debtor (Spouse) (Last, First, Middle): Leon, Maria E.
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): fdba President Down to Earth Golf Course Construction, Inc.; dba Down to Earth Land Development dba Mt. Anthony Golf & Tennis		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): None
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 1207		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): 0016
Street Address of Debtor (No. and Street, City, and State) 88 Monument Avenue Bennington, VT		Street Address of Joint Debtor (No. and Street, City, and State) 88 Monument Avenue Bennington, VT
ZIP CODE 05201		ZIP CODE 05201
County of Residence or of the Principal Place of Business: Bennington		County of Residence or of the Principal Place of Business: Bennington
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
ZIP CODE		ZIP CODE
Location of Principal Assets of Business Debtor (if different from street address above):		ZIP CODE
Type of Debtor (Form of Organization) (Check one box) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other N.A.	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
Chapter 15 Debtors Country of debtor's center of main interests: _____ Each country in which a foreign proceeding by, regarding, or against debtor is pending: _____	Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code)	Nature of Debts (Check one box) <input checked="" type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. §101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.
Filing Fee (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A. <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.		Chapter 11 Debtors Check one box: <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101(51D) <input type="checkbox"/> Debtor is not a small business as defined in 11 U.S.C. § 101(51D) Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,490,925 (<i>amount subject to adjustment on 4/01/16 and every three years thereafter</i>). ----- Check all applicable boxes <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
Statistical/Administrative Information <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.		THIS SPACE IS FOR COURT USE ONLY
Estimated Number of Creditors <input type="checkbox"/> 1-49 <input checked="" type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> Over 100,000		
Estimated Assets <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		
Estimated Liabilities <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input type="checkbox"/> \$500,001 to \$1 million <input checked="" type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion		

Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): David L. Griffin & Maria E. Leon	
All Prior Bankruptcy Cases Filed Within Last 8 Years (If more than two, attach additional sheet)			
Location Where Filed: NONE	Case Number:	Date Filed:	
Location Where Filed: N.A.	Case Number:	Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: NONE	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<p style="text-align: center;">Exhibit A</p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>	<p style="text-align: center;">Exhibit B</p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. § 342(b).</p> <p>X <u>/s/ John R Canney III</u> <u>October 1, 2013</u> Signature of Attorney for Debtor(s) Date</p>		
Exhibit C			
Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?			
<input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.			
<input checked="" type="checkbox"/> No.			
Exhibit D			
(To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.)			
<input checked="" type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition.			
If this is a joint petition:			
<input checked="" type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
Information Regarding the Debtor - Venue (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Certification by a Debtor Who Resides as a Tenant of Residential Property (Check all applicable boxes)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____ (Name of landlord that obtained judgment)			
_____ (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			
<input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(1)).			

Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s):
David L. Griffin & Maria E. Leon

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. § 342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ David L. Griffin
Signature of Debtor

X /s/ Maria E. Leon
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

October 1, 2013
Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only **one** box.)

I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. § 1515 of title 11 are attached.

Pursuant to 11 U.S.C. § 1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

(Date)

Signature of Attorney*

X /s/ John R Canney III
Signature of Attorney for Debtor(s)

JOHN R CANNEY III 000403131
Printed Name of Attorney for Debtor(s)

Firm Name

P.O. Box 6626
Address

Rutland, VT 05702

(802) 773-3325
Telephone Number

October 1, 2013
Date

*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Signature of Non-Attorney Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, (2) I prepared this document for compensation, and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. § 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security Number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X _____

Date

Signature of bankruptcy petition preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.

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B1 D (Official Form 1, Exhibit D) (12/09)

UNITED STATES BANKRUPTCY COURT
District of Vermont

In re David L. Griffin & Maria E. Leon Case No.
Debtor(s) (if known)

EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH CREDIT COUNSELING REQUIREMENT

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

[X] 1. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.

[] 2. Within the 180 days before the filing of my bankruptcy case, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.

3. I certify that I requested credit counseling services from an approved agency but was unable to obtain the services during the seven days from the time I made my request, and the following exigent circumstances merit a temporary waiver of the credit counseling requirement so I can file my bankruptcy case now. [Summarize exigent circumstances here.]

If your certification is satisfactory to the court, you must still obtain the credit counseling briefing within the first 30 days after you file your bankruptcy petition and promptly file a certificate from the agency that provided the counseling, together with a copy of any debt management plan developed through the agency. Failure to fulfill these requirements may result in dismissal of your case. Any extension of the 30-day deadline can be granted only for cause and is limited to a maximum of 15 days. Your case may also be dismissed if the court is not satisfied with your reasons for filing your bankruptcy case without first receiving a credit counseling briefing.

- 4. I am not required to receive a credit counseling briefing because of: [Check the applicable statement.] [Must be accompanied by a motion for determination by the court.]
 - Incapacity. (Defined in 11 U.S.C. § 109(h)(4) as impaired by reason of mental illness or mental deficiency so as to be incapable of realizing and making rational decisions with respect to financial responsibilities.);
 - Disability. (Defined in 11 U.S.C. § 109(h)(4) as physically impaired to the extent of being unable, after reasonable effort, to participate in a credit counseling briefing in person, by telephone, or through the Internet.);
 - Active military duty in a military combat zone.

5. The United States trustee or bankruptcy administrator has determined that the credit counseling requirement of 11 U.S.C. § 109(h) does not apply in this district.

I certify under penalty of perjury that the information provided above is true and correct.

Signature of Debtor: _____ /s/ David L. Griffin
DAVID L. GRIFFIN

Date: October 1, 2013

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B1 D (Official Form 1, Exhibit D) (12/09)

**UNITED STATES BANKRUPTCY COURT
District of Vermont**

In re David L. Griffin & Maria E. Leon Case No. _____
Debtor(s) (if known)

**EXHIBIT D - INDIVIDUAL DEBTOR'S STATEMENT OF COMPLIANCE WITH
CREDIT COUNSELING REQUIREMENT**

Warning: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

Every individual debtor must file this Exhibit D. If a joint petition is filed, each spouse must complete and file a separate Exhibit D. Check one of the five statements below and attach any documents as directed.

1. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, and I have a certificate from the agency describing the services provided to me. *Attach a copy of the certificate and a copy of any debt repayment plan developed through the agency.*

2. Within the 180 days **before the filing of my bankruptcy case**, I received a briefing from a credit counseling agency approved by the United States trustee or bankruptcy administrator that outlined the opportunities for available credit counseling and assisted me in performing a related budget analysis, but I do not have a certificate from the agency describing the services provided to me. *You must file a copy of a certificate from the agency describing the services provided to you and a copy of any debt repayment plan developed through the agency no later than 14 days after your bankruptcy case is filed.*

B6 Cover (Form 6 Cover) (12/07)

FORM 6. SCHEDULES

Summary of Schedules

Statistical Summary of Certain Liabilities and Related Data (28 U.S.C. § 159)

Schedule A - Real Property

Schedule B - Personal Property

Schedule C - Property Claimed as Exempt

Schedule D - Creditors Holding Secured Claims

Schedule E - Creditors Holding Unsecured Priority Claims

Schedule F - Creditors Holding Unsecured Nonpriority Claims

Schedule G - Executory Contracts and Unexpired Leases

Schedule H - Codebtors

Schedule I - Current Income of Individual Debtor(s)

Schedule J - Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim."

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
3 Maryland Avenue	Tenancy by the Entirety	H	350,000.00	Exceeds Value
3 Maryland Avenue Armont, NY				
224 Chestnut Ridge Rd (Bedford)	Tenancy by the Entirety	J	2,048,951.00	Exceeds Value
224 Chestnut Ridge Rd Mount Kisco, NY 10549				

Total > 2,398,951.00

(Report also on Summary of Schedules.)

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See. 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		Cash	J	100.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		88 Monument Avenue Bennington, VT 05201		
		Checking Account	J	200.00
		The Bank of Bennington 155 North Street Bennington, VT 05201		
		Checking Account	W	200.00
		The Bank of Bennington 155 North Street Bennington, VT 05201		
		Savings Account	W	50.00
		The Bank of Bennington 155 North Street Bennington, VT 05201		
		Savings Account	W	114.76
		Heritage Family Credit Union 206 Pleasant Street Bennington, VT 05201		

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (If known)

SCHEDULE B - PERSONAL PROPERTY
 (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.		Household Goods/Furnishings 88 Monument Avenue Bennington, VT 05201	J	2,300.00
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Clothing 88 Monument Avenue Bennington, VT 05201	J	200.00
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.		IRA The Wealth Advisor Group LTD 125 Mason St Greenwich, CT 06830	W	94,131.18
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.		Interest in trust (Griffin Family Qualified Domestic Trust)	J	1.00

In re David L. Griffin & Maria E. Leon Debtor Case No. _____ (If known)

SCHEDULE B - PERSONAL PROPERTY
 (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
		88 Monument Bennington, VT 05201		
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlement to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owing debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate or a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights of setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. §101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.		2006 Toyota Land Cruiser 88 Monument Avenue Bennington, VT 05201	H	13,025.00
		2006 Subaru B9 Tribeca	W	11,400.00

In re David L. Griffin & Maria E. Leon Debtor Case No. _____ (If known)

SCHEDULE B - PERSONAL PROPERTY
 (Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
26. Boats, motors, and accessories. 27. Aircraft and accessories. 28. Office equipment, furnishings, and supplies. 29. Machinery, fixtures, equipment, and supplies used in business. 30. Inventory.	X X X X X	88 Monument Avenue Bennington, VT 05201		
31. Animals.		1 dog	J	0.00
32. Crops - growing or harvested. Give particulars. 33. Farming equipment and implements. 34. Farm supplies, chemicals, and feed. 35. Other personal property of any kind not already listed. Itemize.	X X X X	88 Monument Avenue Bennington, VT 05201		
0 continuation sheets attached Total				\$ 121,721.94

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

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In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
 (Check one box)

- 11 U.S.C. § 522(b)(2) Check if debtor claims a homestead exemption that exceeds \$155,675*.
 11 U.S.C. § 522(b)(3)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Cash	(Wife)11 U.S.C. 522(d)(5)	100.00	100.00
Checking Account	(Wife)11 U.S.C. 522(d)(5)	200.00	200.00
Checking Account	(Wife)11 U.S.C. 522(d)(5)	200.00	200.00
Household Goods/Furnishings	(Wife)11 U.S.C. 522(d)(3)	2,300.00	2,300.00
Clothing	(Wife)11 U.S.C. 522(d)(3)	200.00	200.00
2006 Toyota Land Cruiser	(Husb)11 U.S.C. 522(d)(2) (Husb)11 U.S.C. 522(d)(5)	3,450.00 9,575.00	13,025.00
2006 Subaru B9 Tribeca	(Wife)11 U.S.C. 522(d)(2) (Wife)11 U.S.C. 522(d)(5)	3,450.00 2,841.54	11,400.00
IRA	(Wife)11 U.S.C. 522(d)(12)	94,131.18	94,131.18
Interest in trust (Griffin Family Qualified Domestic Trust)	(Wife)11 U.S.C. 522(d)(5)	1.00	1.00
Savings Account	(Wife)11 U.S.C. 522(d)(5)	50.00	50.00
Savings Account	(Wife)11 U.S.C. 522(d)(5)	114.76	114.76

*Amount subject to adjustment on 4/01/16 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

B6D (Official Form 6D) (12/07)

In re David L. Griffin & Maria E. Leon, Debtor Case No. _____ (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 222 Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	W	Lien: Vehicle Loan VALUE \$ 11,400.00				5,108.46	0.00
ACCOUNT NO. 9587 Chase 3415 Vision Drive Columbus, OH 43219	H	Lien: Second Mortgage 224 Chestnut Ridge Road, Mount Kisco, NY Mortgage not recorded VALUE \$ 2,048,951.00				347,240.60	0.00
ACCOUNT NO. 1860683372 Chase Home Finance PO Box 24696 Columbus, OH 43224-4696	J	Lien: First Mortgage 224 Chestnut Ridge Mortgage not recorded VALUE \$ 2,048,951.00				1,365,537.80	0.00
Subtotal (Total of this page)						\$ 717,886.86	\$ 0.00
Total (Use only on last page)						\$	\$

2 continuation sheets attached

(Report also on Summary of Schedules) (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

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B6D (Official Form 6D) (12/07) – Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 0000 Corbally Gartland & Rappleyea LLP PO Box 9547 Portland, ME 04112	H	Down to Earth Golf Construction Inc TD Bank NA VALUE \$ 0.00				38,233.80	38,233.80
ACCOUNT NO. 0000 Corbally, Gartland & Rappleyea LLP 35 Market Street Poughkeepsie, NY 12601		TD Bank NA v. Down to Earth Golf Construction, Inc., and David L. Griffin VALUE \$ 0.00				Notice Only	Notice Only
ACCOUNT NO. 11-004673-1 Rosicki, Rosicki & Assoc 51 E Bethpage Rd Plainview, NY 11803	H	Lien: First Mortgage 224 Chestnut Ridge Rd, Mount Kisco, NY Chase Acct # 1860683372 Mortgage not recorded VALUE \$ 2,048,951.00				1,733,055.25	0.00
ACCOUNT NO. 1361274926 TD Bank PO Box 3002 Phoenixville, PA 19460	H	Lien: Second Mortgage 3 Maryland Ave, Armont, NY VALUE \$ 350,000.00				63,890.96	0.00
ACCOUNT NO. 0000 TD Bank NA PO Box 9547 Portland, ME 04112		VALUE \$ 0.00				38,233.80	38,233.80

Sheet no. 1 of 2 continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (s) (Total(s) of this page)	\$ 873,413.81	\$
Total(s) (Use only on last page)	\$	\$

(Report also on Summary of Schedules) (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

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B6D (Official Form 6D) (12/07) – Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See Instructions Above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 0000 Town of North Castle 17 Bedford Road Town Hall Annex Armonk, NY 10504	J	Lien: Property Taxes 3 Maryland Avenue VALUE \$ 350,000.00				3,807.93	0.00
ACCOUNT NO. 0000 Wells Fargo PO Box 10335 Des Moines, IA 50306-0335	H	Lien: First Mortgage 3 Maryland Avenue, Armont, NY VALUE \$ 350,000.00				352,000.00	2,000.00
ACCOUNT NO. 0000 Westchester Bank 2100 Central Park Avenue Yonkers, NY	J	Lien: First Mortgage Bedford Mortgage not recorded VALUE \$ 2,048,951.00				500,000.00	0.00
ACCOUNT NO. 0000 Zwicker & Assoc PC 120 Allens Creek Rd Rochester, NY 14618	H	American Express Bank FSB VALUE \$ 0.00				24,500.91	24,500.91
ACCOUNT NO.							
		VALUE \$					

Sheet no. 2 of 2 continuation sheets attached to Schedule of Creditors Holding Secured Claims

Subtotal (s) (Total(s) of this page)	\$ 880,308.84	\$ 26,500.91
Total(s) (Use only on last page)	\$ 4,471,609.51	\$ 102,968.51

(Report also on Summary of Schedules) (If applicable, report also on Statistical Summary of Certain Liabilities and Related Data.)

B6E (Official Form 6E) (04/13)

David L. Griffin & Maria E. Leon

In re _____, Debtor Case No. _____ (if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed.R.Bankr.P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic Support Obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$12,475* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

B6E (Official Form 6E) (04/13) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
Debtor (if known)

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$6,150* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,775* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

Claims for Death or Personal Injury While Debtor Was Intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

B6F (Official Form 6F) (12/07)

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	
ACCOUNT NO. 0000 Agrim Advanced Tech PO Box 532076 Atlanta, GA 30353-2076	H	Down to Earth Golf Course				8,375.64	
ACCOUNT NO. 0000 Alan G. Cruse, Inc. Landscape & Golf Course Mat 460 Horseneck Road Fairfield, NJ 07004	H	Down To Earth				3,693.70	
ACCOUNT NO. XXXXXXXXX901007 American Express PO Box 2672 Faribault, MN 55021-9672	H	Consideration: Credit card debt				5,644.33	
ACCOUNT NO. 12151822 ARSI 555 St Charles Dr, Sui 100 Thousand Oaks, CA 91360-3983	H	Consideration: Credit card debt American Express Ref # 1007				6,887.74	
13 continuation sheets attached						Subtotal	\$ 24,601.41
						Total	\$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the Statistical
 Summary of Certain Liabilities and Related Data.)

B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 811909225 Associated Credit Svcs, Inc PO Box 5171 Westborough, MA 01581-5171	H	Consideration: Credit card debt TD Bank, N.A. Michael Manieri (employee) Down to Earth Golf				866.27
ACCOUNT NO. 811908029 Associated Credit Svcs, Inc PO Box 5171 Westborough, MA 01581-5171	H	Consideration: Credit card debt TD Bank, N.A. Francisco Javier Franco (employee) Down to Earth Golf				399.96
ACCOUNT NO. 991747647 AT&T Mobility PO Box 6463 Carol Stream, IL 60197-6463	H	Down to Earth Golf Course				174.17
ACCOUNT NO. 2425963 Better Pool Service, Inc. 1 Lupi Plaza Mahopac, NY 10541	H					1,142.93
ACCOUNT NO. 1144561 Bliss Pest Protection PO Box 600425 Jacksonville, FL 32260-0425	H	Previous Acct # 60328567				66.57

Sheet no. 1 of 13 continuation sheets attached
 to Schedule of Creditors Holding Unsecured
 Nonpriority Claims

Subtotal > \$ 2,649.90
 Total > \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 21540 Bond Auto PO Box 687 Barre, VT 05641	H	Down to Earth Golf Course				2,997.83
ACCOUNT NO. 0050-1845235 Burke Heat 475 Commerce Street Hawthorne, NY 10532	H					Notice Only
ACCOUNT NO. 41100 Callaway Golf PO Box 9002 Carlsbad, CA 92018	H	Down to Earth Golf Course				2,086.95
ACCOUNT NO. 0000 Capital Stack 2715 Coney Isl Ave 2nd Fl Brooklyn, NY 11235	H	Down to Earth Golf Course Development, Inc. Mt Anthony Country Club				Notice Only
ACCOUNT NO. 5477532318690018 Carson Smithfield PO Box 31032 Tampa, FL 33631-3032	H	Consideration: Credit card debt Advanta Bank Corp Down to Earth Golf Course				39,265.52
Subtotal						\$ 44,350.30
Total						\$

Sheet no. 2 of 13 continuation sheets attached
 to Schedule of Creditors Holding Unsecured
 Nonpriority Claims

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 94707 Cleveland Golf/Srixon PO Box 7270 Newport Beach, CA 92658	H	Down to Earth Golf Course				6,553.60
ACCOUNT NO. 100842 Cobra/Puma Golf 10 Lyberty Way Westford, MA 01886	H	Down to Earth Golf Course				2,604.28
ACCOUNT NO. 0000 Corbally Gartland & Rappleyea Bardavon Bldg 35 Market Street Poughkeepsie, NY 12601-3285	H	TD Bank, N.A. Down to Earth Golf				Notice Only
ACCOUNT NO. C100125 Custom Branded Sportswear 7007 College Blvd Sui 700 Overland Park, KS 66211	H	Down to Earth Golf Course				3,600.98
ACCOUNT NO. 0000 E Coast Mines & Mat Corps Route 2 Lewis Road E Quogue, NY 11942	H	Down to Earth Construction				3,617.56

Sheet no. 3 of 13 continuation sheets attached Subtotal > \$ 16,376.42
 to Schedule of Creditors Holding Unsecured Total > \$
 Nonpriority Claims

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 56722457 EOS CCA PO Box 5012 Norwell, MA 02061-5012	H	AT&T Mobility				114.56
ACCOUNT NO. MJ70007677005 Forster & Garbus LLP PO Box 9030 Commack, NY 11725-9030	H	American Express Bank, FSB Acct # XXXXXXXXXXXX1007				5,644.33
ACCOUNT NO. 01007 GC Svcs LP 6330 Gulfton Houston, TX 77081	H	Consideration: Credit card debt American Express				6,467.98
ACCOUNT NO. 57-7316-3090-0005-0 JAF Station PO Box 1702 New York, NY 10116-1702	H	conEdison 280 Chestnut Ridge Road				2,237.70
ACCOUNT NO. 57-7422-1222-0003-2 JAF Station PO Box 1702 New York, NY 10116-1702	H	conEdison				214.90

Sheet no. 4 of 13 continuation sheets attached Subtotal > \$ 14,679.47
 to Schedule of Creditors Holding Unsecured Total > \$
 Nonpriority Claims

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 John Deere Landscapes 1060 Windward Ridge Pkwy Sui 170 Alpharetta, GA 30005	H	Down to Earth Golf Course				16,700.00
ACCOUNT NO. 0000 Jonathan M. Cohen Esq PO Box 4558 Bennington, VT 05201	J	People's United Bank v. David L. Griffin et al. Docket No. 403-11-12 Bnev				Notice Only
ACCOUNT NO. 0000 Landmark Studio W 184 S8425 Challenger Dr Muskego, WI 53150	H	Down to Earth Golf Course				2,724.07
ACCOUNT NO. 0000 M & M Business Ent 4 Grove Roaed Bedford, NY 10506	H	Snow Plowing 224 Chestnut & 1 Maryland				590.56
ACCOUNT NO. 0000 Marshall M Stern PC 17 Cardiff Court Huntington, NY 11746	H	Down to Earth Golf Construction Custom Golf Materials Inc				15,090.44

Sheet no. 5 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims
 Subtotal \$ 35,105.07
 Total \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Marshall M Stern PC 17 Cardiff Ct Huntington, NY 11746	H	Down to Earth Golf Course Construction, Inc.				4,522.22
ACCOUNT NO. 10-MOUNTAIN Matrix Turf Solutions 6551 Pottery Road Warners, NY 13164	H	Down to Earth Golf Course				9,481.27
ACCOUNT NO. 000 Murray S Lubitz 245 Main St White Plain, NY 10601	H	Down to Earth Golf Course Construction, Inc.				7,149.47
ACCOUNT NO. 5M5VQU NCO Financial Syst, Inc 507 Prudential Road Horsham, PA 19044	H	Down to Earth Golf Course TD Bank, N.A. Acct # 7920486557OD				1,731.36
ACCOUNT NO. PQ0469 NCO Financial Syst, Inc 7595 Montevideo Rd, Sui 110 Jessup, MD 20794	H	Consideration: Credit card debt American Express Acct # XXXXXXXXXXXX01007 CID036532307011USD				5,644.33

Sheet no. 6 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims
 Subtotal ▶ \$ 28,528.65
 Total ▶ \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. LL9039 NCO Financial Syst, Inc. 507 Prudential Road Horsham, PA 19044		Consideration: Credit card debt American Express Acct XXXXXXXXXXX94005 Regarding CID036532307011USD				24,198.91
ACCOUNT NO. XXXXXXXXXXXXXXX0312 Northstar Location Svcs, LLC Attn Financial Svcs Dept 4285 Genesee St Cheektowaga, NY 14225-1943	H	Consideration: Credit card debt TD Bank, N.A.				15,396.99
ACCOUNT NO. 0000 NY State Dept of Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	H	Down to Earth Golf Course Construction, Inc.				495.48
ACCOUNT NO. 0000 NY State Dept Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	H	Down to Earth Golf Course Construction, Inc.				1,441.99
ACCOUNT NO. 0000 NY State Dept Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	H	Down to Earth Golf Course Construction, Inc.				7,924.71

Sheet no. 7 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims
 Subtotal ▶ \$ 49,458.08
 Total ▶ \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 NY State Dept Tax & Fin Bankruptcy Section PO Box 5300 Albany, NY 12205-0300	H	Down to Earth Golf Course Construction, Inc.				1,613.80
ACCOUNT NO. 1582984-00001 People's United Bank PO Box 205 Brattleboro, VT 05302-0205	J	88 Monument Avenue				494,506.29
ACCOUNT NO. 101383983-00001 Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205	J	Fairview Street				127,376.26
ACCOUNT NO. 1645900-10 Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205	H	Down to Earth Golf Course				69,953.08
ACCOUNT NO. 1645919-10 Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205	H	Down to Earth Golf Course				182,698.79

Sheet no. 8 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims
 Subtotal ▶ \$ 876,148.22
 Total ▶ \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 61269 Peoples United Equip Fin Co PO Box 443 Brattleboro, VT 05302-0443	H	Down to Earth Golf Course Const, Inc				51,702.00
ACCOUNT NO. LL1726 Prince-Parker & Assoc, Inc 8625 Crown Crescent Court PO Box 747690 Charlotte, NC 28247-4690		AT&T Mobility Acct # 991747647				Notice Only
ACCOUNT NO. 002588085-015073745 RMS 4836 Brecksville Road PO Box 539 Richfield, OH 44286	J	Chubb & Son Inc Ref # 001255777803000				620.00
ACCOUNT NO. 0000 Ryan, Smith & Carbine Ltd 98 Merchants Row PO Box 310 Rutland, VT 05702-0310		People's United Bank v. David L. Griffin et al. Docket No. 403-11-12 Bncv				Notice Only
ACCOUNT NO. 3020 Sammarco 173 Oak Street New Rochelle, NY 10801	H	Down to Earth Landscaping				6,384.27

Sheet no. 9 of 13 continuation sheets attached Subtotal > \$ 58,706.27
 to Schedule of Creditors Holding Unsecured Total > \$
 Nonpriority Claims

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Saratoga Sod 1670 Route 4 Stillwater, NY 12170	H	Down to Earth Golf Course				16,238.89
ACCOUNT NO. 044438 / 155425 Suburban Propane PO Box 1138 Bennington, VT 05201	H	Down to Earth Golf Course				3,230.72
ACCOUNT NO. 15961070 Sunrise Credit Svcs, Inc PO Box 9100 Farmingdale, NY 11735-9100	H	Burke Fuel & Heat Acct # 1845235				1,070.90
ACCOUNT NO. 17306941 Sunrise Credit Svcs, Inc. PO Box 9100 Farmingdale, NY 11735-9100	H	Verizon Acct # 9142733521037693				174.47
ACCOUNT NO. 39412277 SW Credit Systems, LP 4120 Int Pkwy, Sui 1100 Carrollton, TX 75007-1958	H	AT&T Mobility Acct # 991747647 Down to Earth Golf Course				135.18

Sheet no. 10 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims
 Subtotal \$ 20,850.16
 Total \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)

B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. XXXX-XXXX-XXXX TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372	3590	Consideration: Credit card debt Robert Maldonado (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. XXXX-XXXX-XXXX TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372	3333	Consideration: Credit card debt Jose Luis Franco (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. XXXX-XXXX-XXXX TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372	3432	Consideration: Credit card debt Aramando Gonzalez (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. XXXX-XXXX-XXXX TD Card Services PO Box 2580 Cherry Hill, NJ 08034-0372	3382	Consideration: Credit card debt Jose Luis Barajas (employee) Down to Earth Golf				Notice Only
ACCOUNT NO. 0000 Ted & Louise Price 40992 Ashton Club Drive Lake Wales, FL 33859	H	Golf course				1,555,000.00

Sheet no. 11 of 13 continuation sheets attached Subtotal > \$ 1,555,000.00
 to Schedule of Creditors Holding Unsecured Total > \$
 Nonpriority Claims

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Turf Links 29 Gilmore Drive Sutton, MA 01590	H	Down to Earth Golf Course				3,494.68
ACCOUNT NO. 50525013 US Foods PO Box 642554 Pittsburgh, PA 15264-2554	H	Down to Earth Golf Course				5,677.01
ACCOUNT NO. 0000 Vozza & Huguenot F. Frank Vozza 2435 Eastchester Road Bronx, NY 10469	H	Joe Carchi v. Creative Living Development, Inc., Navajo Fields Inc. and Down to Earth Golf Course Construction, Inc. Index 68250/12				Notice Only
ACCOUNT NO. 0157798307 Wells Fargo Home Mtg PO Box 14547 Des Moines, IA 50306-4547	H	1 Bank Street				279,726.29
ACCOUNT NO. 0000 Wide Lending Group 3580 Wilshire Blvd Unit 160 Los Angeles, CA 90010	H	Down to Earth Golf Course				Notice Only

Sheet no. 12 of 13 continuation sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims
 Subtotal ▶ \$ 288,897.98
 Total ▶ \$

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

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B6F (Official Form 6F) (12/07) - Cont.

In re David L. Griffin & Maria E. Leon, Case No. _____
 Debtor (If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	CODEBTOR HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF,	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 0000 Wide Merchant Group, Inc. 1810 E Sahara Ave #100 Las Vegas, NV 89104	H	Down to Earth Golf Course				Notice Only
ACCOUNT NO. 0000 Yellowstone Capital LLC 160 Pearl St New York, NY 10005	H	Down to Earth Golf Development, Inc.				Notice Only
ACCOUNT NO.						
ACCOUNT NO.						
ACCOUNT NO.						

Sheet no. 13 of 13 continuation sheets attached Subtotal ▶ \$ 0.00
 to Schedule of Creditors Holding Unsecured Total ▶ \$ 3,015,351.93
 Nonpriority Claims

(Use only on last page of the completed Schedule F.)
 (Report also on Summary of Schedules and, if applicable, on the
 Statistical Summary of Certain Liabilities and Related Data.)

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (if known)

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT.	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT.

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In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Chase 3415 Vision Drive Columbus, OH 43219
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Chase Home Finance PO Box 24696 Columbus, OH 43224-4696
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	Rosicki, Rosicki & Assoc 51 E Bethpage Rd Plainview, NY 11803
Griffin Family Qualified Domestic Trust 88 Monument Avenue Bennington, VT 05201	People's United Bank PO Box 205 Brattleboro, VT 05302-0205
Down to Earth Golf Course Development, Inc 180 Country Club Drive Bennington, VT 05201	Capital Stack 2715 Coney Isl Ave 2nd Fl Brooklyn, NY 11235
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Wide Lending Group 3580 Wilshire Blvd Unit 160 Los Angeles, CA 90010

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (if known)

SCHEDULE H - CODEBTORS
 (Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Wide Merchant Group, Inc. 1810 E Sahara Ave #100 Las Vegas, NV 89104
Down to Earth Golf Development, Inc. 180 Country Club Drive Bennington, VT 05201	Yellowstone Capital LLC 160 Pearl Street New York, NY 10005
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Agrium Advanced Tech PO Box 532076 Atlanta, GA 30353-2076
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Bond Auto PO Box 687 Barre, VT 05641
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Callaway Golf PO Box 9002 Carlsbad, CA 92018
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Cleveland Golf/Srixon PO Box 7270 Newport Beach, CA 92658
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Cobra/Puma Golf 10 Lyberty Way Westford, MA 01886
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Custom Branded Sportswear 7007 College Blvd Sui 700 Overland Park, KS 66211
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	John Deere Landscapes 1060 Windward Ridge Pkwy Sui 170 Alpharetta, GA 30005

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In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (if known)

SCHEDULE H - CODEBTORS
 (Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Landmark Studio W 184 S8425 Challenger Dr Muskego, WI 53150
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Matrix Turf Solutions 6551 Pottery Road Warners, NY 13164
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Saratoga Sod 1670 Route 4 Stillwater, NY 12170
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Suburban Propane PO Box 1138 Bennington, VT 05201
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Turf Links 29 Gilmore Drive Sutton, MA 01590
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	US Foods PO Box 642554 Pittsburgh, PA 15264-2554
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Ted & Louise Price 40992 Ashton Club Drive Lake Wales, FL 33859
Down to Earth Golf Course 180 Country Club Drive Bennington, VT 05201	Peoples United Bank PO Box 205 Brattleboro, VT 05302-0205

B6I (Official Form 6I) (12/07)

In re David L. Griffin & Maria E. Leon Case _____
 Debtor (if known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): son, daughter	AGE(S): 14, 11
Employment:	DEBTOR	SPOUSE
Occupation	Self-employed	Self-employed
Name of Employer		
How long employed	6 Years	6 Years
Address of Employer		

INCOME: (Estimate of average or projected monthly income at time case filed)	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	\$ 4,333.33	\$ 550.00
2. Estimated monthly overtime	\$ 0.00	\$ 0.00
3. SUBTOTAL	\$ 4,333.33	\$ 550.00
4. LESS PAYROLL DEDUCTIONS		
a. Payroll taxes and social security	\$ 331.50	\$ 85.02
b. Insurance	\$ 0.00	\$ 0.00
c. Union Dues	\$ 0.00	\$ 0.00
d. Other (Specify: _____)	\$ 0.00	\$ 0.00
5. SUBTOTAL OF PAYROLL DEDUCTIONS	\$ 331.50	\$ 85.02
6. TOTAL NET MONTHLY TAKE HOME PAY	\$ 4,001.83	\$ 464.98
7. Regular income from operation of business or profession or farm (Attach detailed statement)	\$ 0.00	\$ 0.00
8. Income from real property	\$ 0.00	\$ 0.00
9. Interest and dividends	\$ 0.00	\$ 0.00
10. Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above.	\$ 0.00	\$ 0.00
11. Social security or other government assistance (Specify) _____	\$ 0.00	\$ 0.00
12. Pension or retirement income	\$ 0.00	\$ 0.00
13. Other monthly income (Specify) _____	\$ 0.00	\$ 0.00
14. SUBTOTAL OF LINES 7 THROUGH 13	\$ 0.00	\$ 0.00
15. AVERAGE MONTHLY INCOME (Add amounts shown on Lines 6 and 14)	\$ 4,001.83	\$ 464.98
16. COMBINED AVERAGE MONTHLY INCOME (Combine column totals from line 15)	\$ 4,466.81	

(Report also on Summary of Schedules and, if applicable, on Statistical Summary of Certain Liabilities and Related Data)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

None

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor (if known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made biweekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)	\$	500.00
a. Are real estate taxes included? Yes _____ No <input checked="" type="checkbox"/>		
b. Is property insurance included? Yes _____ No <input checked="" type="checkbox"/>		
2. Utilities: a. Electricity and heating fuel	\$	500.00
b. Water and sewer	\$	0.00
c. Telephone	\$	100.00
d. Other <u>Cable</u>	\$	100.00
3. Home maintenance (repairs and upkeep)	\$	0.00
4. Food	\$	500.00
5. Clothing	\$	200.00
6. Laundry and dry cleaning	\$	20.00
7. Medical and dental expenses	\$	100.00
8. Transportation (not including car payments)	\$	500.00
9. Recreation, clubs and entertainment, newspapers, magazines, etc.	\$	0.00
10. Charitable contributions	\$	75.00
11. Insurance (not deducted from wages or included in home mortgage payments)		
a. Homeowner's or renter's	\$	200.00
b. Life	\$	0.00
c. Health	\$	0.00
d. Auto	\$	100.00
e. Other _____	\$	0.00
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) _____	\$	1,100.00
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)		
a. Auto	\$	416.66
b. Other _____	\$	0.00
c. Other _____	\$	0.00
14. Alimony, maintenance, and support paid to others	\$	0.00
15. Payments for support of additional dependents not living at your home	\$	0.00
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	0.00
17. Other _____	\$	0.00
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data)	\$	4,411.66
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: <u>None</u>		
20. STATEMENT OF MONTHLY NET INCOME		
a. Average monthly income from Line 15 of Schedule I (Includes spouse income of \$464.98. See Schedule I)	\$	4,466.81
b. Average monthly expenses from Line 18 above	\$	4,411.66
c. Monthly net income (a. minus b.) (Net includes Debtor/Spouse combined Amounts)	\$	55.15

B6 Summary (Official Form 6 - Summary) (12/07)

United States Bankruptcy Court
 District of Vermont

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor

Chapter 7

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

AMOUNTS SCHEDULED

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	YES	1	\$2,398,951.00		
B - Personal Property	YES	4	\$121,721.94		
C - Property Claimed as exempt	YES	1			
D - Creditors Holding Secured Claims	YES	3		\$4,471,609.51	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	YES	2		\$0.00	
F - Creditors Holding Unsecured Nonpriority Claims	YES	14		\$3,015,351.93	
G - Executory Contracts and Unexpired Leases	YES	1			
H - Codebtors	YES	3			
I - Current Income of Individual Debtor(s)	YES	1			\$4,466.81
J - Current Expenditures of Individual Debtors(s)	YES	1			\$4,411.66
TOTAL		31	\$2,520,672.94	\$7,486,961.44	

In re David L. Griffin & Maria E. Leon Case No. _____
 Debtor
 Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$ 0.00
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$ 0.00
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$ 0.00
Student Loan Obligations (from Schedule F)	\$ 0.00
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$ 0.00
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$ 0.00
TOTAL	\$ 0.00

State the Following:

Average Income (from Schedule I, Line 16)	\$ 4,466.81
Average Expenses (from Schedule J, Line 18)	\$ 4,411.66
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	\$ 4,333.33

State the Following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column	\$ 102,968.51
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$ 0.00
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column	\$ 0.00
4. Total from Schedule F	\$ 3,015,351.93
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)	\$ 3,118,320.44

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David L. Griffin & Maria E. Leon

In re _____ Case No. _____
Debtor _____ (If known) _____

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 33 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date October 1, 2013 Signature: /s/ David L. Griffin
Debtor

Date October 1, 2013 Signature: /s/ Maria E. Leon
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, _____ Social Security No. _____
of Bankruptcy Petition Preparer _____ (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address _____

X _____ Date _____
Signature of Bankruptcy Petition Preparer

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets (total shown on summary page plus 1), and that they are true and correct to the best of my knowledge, information, and belief.

Date _____ Signature: _____

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

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In Re David L. Griffin & Maria E. Leon Case No. _____
 (if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. If the answer to an applicable question is "None," mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

2013(db)40000.00

2012(dh)22009.00 Joint filing

2011(dh)16937.00 Joint Filing

2013(jdb)

2012(jdb)

2011(jdb)

2. Income other than from employment or operation of business

None



State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the two years immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None



Complete a. or b., as appropriate, and c.

a. Individual or joint debtor(s) with primarily consumer debts: List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within 90 days immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	09/11/13	\$416.66	\$5,108.46
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	08/11/13	\$416.66	\$5,108.46
Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	07/11/13	\$416.66	\$5,108.46

None *b. Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within 90 days immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$6,225*. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

*Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after date of adjustment.

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

c. All debtors: List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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4. Suits and administrative proceedings, executions, garnishments and attachments

None *a.* List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
TD Bank, N.A. vs. Down to Earth Golf Construction, Inc. and David Griffin Index No. 50253/2012	Complaint	Supreme Court of the State of NY County of Westchester	

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CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
Joe Carchi vs. Creative Living Development, Inc., Navajo Fields Inc. and Down to Earth Golf Course Construction, Inc. Index #68250/12	Notice of Motion for Default and Inquest	Supreme Court of the State of NY County of Westchester	
People's United Bank, Successor in Interest by Merger to Chittenden Trust Company dba Chittenden Mortgage Svcs. and d/b/a Chittenden Bank vs. David L. Griffin; et al. Docket No. 459-12-12 Bncv	Judgment Notice of Foreclosure Sale	State of VT Superior Court Bennington Unit Civil Division	
People's United Bank, Successor in Interest By Merger to Chittenden Trust Company dba Chittenden Mortgage Svcs. and d/b/a Chittenden Bank vs. David L. Griffin; et al. Docket No. 403-11-12 Bncv	Judgment	State of VT Superior Court Bennington Unit Civil Division	

B7 (Official Form 7) (04/13) 5

CAPTION OF SUIT AND CASE NUMBER NATURE OF PROCEEDING COURT OR AGENCY AND LOCATION STATUS OR DISPOSITION

People's United Equipment Finance Corp.
 vs.
 Down to Earth Golf Course Construction, Inc.;
 and David Griffin
 Case No.
 2:13-cv-84

Writ of Replevin

United States District Court
 District of VT

TD Bank N.A.
 v.
 Down to Earth Golf Construction, Inc., and David L. Griffin
 Index No.
 50253-2012

Default Judgment

Supreme Court
 State of New York
 IAS Part Westchester County

John Deere Landscapes et al
 v.
 Down to Earth Golf Course Development, Inc.
 d/b/a Mt. Anthony Development and David Griffin
 Docket No.
 268-7-12 Bncv

Stipulation of Settlement

VT Superior Court
 Civil Division
 Bennington Unit

None b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED DATE OF SEIZURE DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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6. Assignments and Receiverships

None a. Describe any assignment of property for the benefit of creditors made within 120 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. Gifts

None List all gifts or charitable contributions made within one year immediately preceding the commencement of this case, except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. Losses

None List all losses from fire, theft, other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES, AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within one year immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
John R Canney III P.O. Box 6626 Rutland, VT 05702	09/13/13	\$2,500.00 Attorney Fee \$306.00 Filing Fee

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within two years immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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b. List all property transferred by the debtor within ten years immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

None

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
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11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within 90 days preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None



If the debtor has moved within the three years immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

None



If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within eight years immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Sites

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None



a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

None

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

None

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

None

a. If the debtor is an individual, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was self-employed in a trade, profession, or other activity either full- or part-time within six years immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within the six years immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the six years immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
Down to Earth Land Development dba Mt. Anthony Golf & Tennis	20-5979905	180 Country Club Drive Bennington, VT 05201	Golf course	2007 - Present

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

None



NAME

ADDRESS

[Questions 19 - 25 are not applicable to this case]

* * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date October 1, 2013

Signature of Debtor

/s/ David L. Griffin

DAVID L. GRIFFIN

Date October 1, 2013

Signature of Joint Debtor

/s/ Maria E. Leon

MARIA E. LEON

0 continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and required under 11U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110 setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social Security No. (Required by 11 U.S.C. § 110(c).)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address

Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. §156.

UNITED STATES BANKRUPTCY COURT
District of Vermont

David L. Griffin & Maria E. Leon

In re _____, Debtor, Case No. _____ Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

PART A - Debts secured by property of the estate. (Part A must be fully completed for EACH debt which is secured by property of the estate. Attach additional pages if necessary.)

Property No. 1	
Creditor's Name: Wells Fargo	Describe Property Securing Debt: 3 Maryland Avenue
Property will be (check one): <input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. §522(f)). Property is (check one): <input type="checkbox"/> Claimed as exempt <input checked="" type="checkbox"/> Not claimed as exempt	

Property No. 2 (if necessary)	
Creditor's Name: TD Bank PO Box 3002 Phoenixville, PA 19460	Describe Property Securing Debt: 3 Maryland Avenue
Property will be (check one): <input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. §522(f)). Property is (check one): <input type="checkbox"/> Claimed as exempt <input checked="" type="checkbox"/> Not claimed as exempt	

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PART B - Personal property subject to unexpired leases. (All three columns of Part B must be completed for Each unexpired lease. Attach additional pages if necessary.)

Property No. 1	NO Leased Property	
Lessor's Name:	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. §365(p)(2): <input type="checkbox"/> YES <input type="checkbox"/> NO

Property No. 2 (if necessary)		
Lessor's Name:	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. §365(p)(2): <input type="checkbox"/> YES <input type="checkbox"/> NO

Property No. 3 (if necessary)		
Lessor's Name:	Describe Leased Property:	Lease will be Assumed pursuant to 11 U.S.C. §365(p)(2): <input type="checkbox"/> YES <input type="checkbox"/> NO

3 continuation sheets attached (if any)

I declare under penalty of perjury that the above indicates my intention as to any property of my Estate securing debt and/or personal property subject to an unexpired lease.

Date: October 1, 2013 /s/ David L. Griffin
Signature of Debtor

/s/ Maria E. Leon
Signature of Joint Debtor

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
(Continuation Sheet)

PART A - Continuation

Property No: 3	
Creditor's Name: Bennington Subaru 527 N Bennington Rd Bennington, VT 05201	Describe Property Securing Debt: 2006 Subaru B9 Tribeca
Property will be (check one): <input type="checkbox"/> Surrendered <input checked="" type="checkbox"/> Retained If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input checked="" type="checkbox"/> Other. Explain retain, keep current (for example, avoid lien using 11 U.S.C.§522(f)). Property is (check one): <input checked="" type="checkbox"/> Claimed as exempt <input type="checkbox"/> Not claimed as exempt	

Property No: 4	
Creditor's Name: Westchester Bank 2100 Central Park Avenue Yonkers, NY	Describe Property Securing Debt: 224 Chestnut Ridge Rd (Bedford)
Property will be (check one): <input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained If retaining the property, I intend to (check at least one): <input type="checkbox"/> Redeem the property <input type="checkbox"/> Reaffirm the debt <input type="checkbox"/> Other. Explain (for example, avoid lien using 11 U.S.C.§522(f)). Property is (check one): <input type="checkbox"/> Claimed as exempt <input checked="" type="checkbox"/> Not claimed as exempt	

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
(Continuation Sheet)

PART A - Continuation

Property No: 5	
Creditor's Name: Rosicki, Rosicki & Assoc PC 51 East Bethpage Road Plainview, NY 11803	Describe Property Securing Debt: 224 Chestnut Ridge Rd (Bedford)
<p>Property will be (check one):</p> <p><input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained</p> <p>If retaining the property, I intend to (check at least one):</p> <p><input type="checkbox"/> Redeem the property</p> <p><input type="checkbox"/> Reaffirm the debt</p> <p><input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C.§522(f)).</p> <p>Property is (check one):</p> <p><input type="checkbox"/> Claimed as exempt <input checked="" type="checkbox"/> Not claimed as exempt</p>	

Property No: 6	
Creditor's Name: Chase 3415 Vision Drive Columbus, OH 43219	Describe Property Securing Debt: 224 Chestnut Ridge Rd (Bedford)
<p>Property will be (check one):</p> <p><input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained</p> <p>If retaining the property, I intend to (check at least one):</p> <p><input type="checkbox"/> Redeem the property</p> <p><input type="checkbox"/> Reaffirm the debt</p> <p><input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C.§522(f)).</p> <p>Property is (check one):</p> <p><input type="checkbox"/> Claimed as exempt <input checked="" type="checkbox"/> Not claimed as exempt</p>	

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION
(Continuation Sheet)

PART A - Continuation

Property No: 7	
Creditor's Name: Chase Home Finance PO Box 24696 Columbus, OH 43224-4696	Describe Property Securing Debt: 224 Chestnut Ridge Rd (Bedford)
<p>Property will be (check one):</p> <p><input checked="" type="checkbox"/> Surrendered <input type="checkbox"/> Retained</p> <p>If retaining the property, I intend to (check at least one):</p> <p><input type="checkbox"/> Redeem the property</p> <p><input type="checkbox"/> Reaffirm the debt</p> <p><input type="checkbox"/> Other. Explain _____ (for example, avoid lien using 11 U.S.C. §522(f)).</p> <p>Property is (check one):</p> <p><input type="checkbox"/> Claimed as exempt <input checked="" type="checkbox"/> Not claimed as exempt</p>	

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B 201B (Form 201B) (12/09)

United States Bankruptcy Court District of Vermont

In re David L. Griffin & Maria E. Leon Case No. _____
Debtor (If known)

CERTIFICATION OF NOTICE TO CONSUMER DEBTOR(S) UNDER § 342(b) OF THE BANKRUPTCY CODE

Certification of [Non-Attorney] Bankruptcy Petition Preparer

I, the [non-attorney] bankruptcy petition preparer signing the debtor's petition, hereby certify that I delivered to the debtor the attached notice, as required by § 342(b) of the Bankruptcy Code

Printed name and title, if any, of Bankruptcy Petition Preparer
Address:

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.)
(Required by 11 U.S.C. § 110.)

Signature of Bankruptcy Petition Preparer or officer, Principal, responsible person, or partner whose Social Security number is provided above.

Certification of the Debtor

I, (We), the debtor(s), affirm that I (we) have received and read the attached notice, as required by § 342(b) of the Bankruptcy Code

David L. Griffin & Maria E. Leon x /s/ David L. Griffin October 1, 2013
Printed Names(s) of Debtor(s) Signature of Debtor Date

Case No. (if known) _____ x /s/ Maria E. Leon October 1, 2013
Signature of Joint Debtor, (if any) Date

Instructions: Attach a copy of Form B 201A, Notice to Consumer Debtor(s) Under § 342(b) of the Bankruptcy Code.

Use this form to certify that the debtor has received the notice required by 11 U.S.C. § 342(b) **only** if the certification has **NOT** been made on the Voluntary Petition, Official Form B1. Exhibit B on page 2 of Form B1 contains a certification by the debtor's attorney that the attorney has given the notice to the debtor. The Declarations made by debtors and bankruptcy petition preparers on page 3 of Form B1 also include this certification.

Internal Revenue Service
Centralized Insolvency Operation
P.O. Box 21126
Philadelphia, PA 19114

U S Trustee
74 Chapel St Ste 200
Albany, NY 12207

Agrium Advanced Tech
PO Box 532076
Atlanta, GA 30353-2076

Alan G. Cruse, Inc.
Landscape & Golf Course Mat
460 Horseneck Road
Fairfield, NJ 07004

American Express
PO Box 2672
Faribault, MN 55021-9672

ARSI
555 St Charles Dr, Sui 100
Thousand Oaks, CA 91360-3983

Associated Credit Svcs, Inc
PO Box 5171
Westborough, MA 01581-5171

Associated Credit Svcs, Inc
PO Box 5171
Westborough, MA 01581-5171

AT&T Mobility
PO Box 6463
Carol Stream, IL 60197-6463

Bennington Subaru
527 N Bennington Rd
Bennington, VT 05201

Better Pool Service, Inc.
1 Lupi Plaza
Mahopac, NY 10541

Bliss Pest Protection
PO Box 600425
Jacksonville, FL 32260-0425

Bond Auto
PO Box 687
Barre, VT 05641

Burke Heat
475 Commerce Street
Hawthorne, NY 10532

Callaway Golf
PO Box 9002
Carlsbad, CA 92018

Capital Stack
2715 Coney Isl Ave 2nd Fl
Brooklyn, NY 11235

Carson Smithfield
PO Box 31032
Tampa, FL 33631-3032

Chase
3415 Vision Drive
Columbus, OH 43219

Chase Home Finance
PO Box 24696
Columbus, OH 43224-4696

Cleveland Golf/Srixon
PO Box 7270
Newport Beach, CA 92658

Cobra/Puma Golf
10 Lyberty Way
Westford, MA 01886

Corbally Gartland & Rappleyea
Bardavon Bldg
35 Market Street
Poughkeepsie, NY 12601-3285

Corbally Gartland & Rappleyea LLP
PO Box 9547
Portland, ME 04112

Corbally, Gartland & Rappleyea LLP
35 Market Street
Poughkeepsie, NY 12601

Custom Branded Sportswear
7007 College Blvd Sui 700
Overland Park, KS 66211

Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Course
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Bennington, VT 05201

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Down to Earth Golf Course
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Course Development, Inc
180 Country Club Drive
Bennington, VT 05201

Down to Earth Golf Development, Inc.
180 Country Club Drive
Bennington, VT 05201

E Coast Mines & Mat Corps
Route 2 Lewis Road
E Quogue, NY 11942

EOS CCA
PO Box 5012
Norwell, MA 02061-5012

Forster & Garbus LLP
PO Box 9030
Commack, NY 11725-9030

GC Svcs LP
6330 Gulfton
Houston, TX 77081

Griffin Family Qualified Domestic Trust
88 Monument Avenue
Bennington, VT 05201

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Bennington, VT 05201

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Bennington, VT 05201

JAF Station
PO Box 1702
New York, NY 10116-1702

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PO Box 1702
New York, NY 10116-1702

John Deere Landscapes
1060 Windward Ridge Pkwy Sui 170
Alpharetta, GA 30005

Jonathan M. Cohen Esq
PO Box 4558
Bennington, VT 05201

Landmark Studio
W 184 S8425 Challenger Dr
Muskego, WI 53150

M & M Business Ent
4 Grove Road
Bedford, NY 10506

Marshall M Stern PC
17 Cardiff Court
Huntington, NY 11746

Marshall M Stern PC
17 Cardiff Ct
Huntington, NY 11746

Matrix Turf Solutions
6551 Pottery Road
Warners, NY 13164

Murray S Lubitz
245 Main St
White Plain, NY 10601

NCO Financial Syst, Inc
507 Prudential Road
Horsham, PA 19044

NCO Financial Syst, Inc
7595 Montevideo Rd, Sui 110
Jessup, MD 20794

NCO Financial Syst, Inc.
507 Prudential Road
Horsham, PA 19044

Northstar Location Svcs, LLC
Attn Financial Svcs Dept
4285 Genesee St
Cheektowaga, NY 14225-1943

NY State Dept of Tax & Fin
Bankruptcy Section
PO Box 5300
Albany, NY 12205-0300

NY State Dept Tax & Fin
Bankruptcy Section
PO Box 5300
Albany, NY 12205-0300

NY State Dept Tax & Fin
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Albany, NY 12205-0300

NY State Dept Tax & Fin
Bankruptcy Section
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Albany, NY 12205-0300

People's United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Bank
PO Box 205
Brattleboro, VT 05302-0205

Peoples United Equip Fin Co
PO Box 443
Brattleboro, VT 05302-0443

Prince-Parker & Assoc, Inc
8625 Crown Crescent Court
PO Box 747690
Charlotte, NC 28247-4690

RMS
4836 Brecksville Road
PO Box 539
Richfield, OH 44286

Rosicki, Rosicki & Assoc
51 E Bethpage Rd
Plainview, NY 11803

Ryan, Smith & Carbine Ltd
98 Merchants Row
PO Box 310
Rutland, VT 05702-0310

Sammarco
173 Oak Street
New Rochelle, NY 10801

Saratoga Sod
1670 Route 4
Stillwater, NY 12170

Suburban Propane
PO Box 1138
Bennington, VT 05201

Sunrise Credit Svcs, Inc
PO Box 9100
Farmingdale, NY 11735-9100

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PO Box 9100
Farmingdale, NY 11735-9100

SW Credit Systems, LP
4120 Int Pkwy, Sui 1100
Carrollton, TX 75007-1958

TD Bank
PO Box 3002
Phoenixville, PA 19460

TD Bank NA
PO Box 9547
Portland, ME 04112

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

TD Card Services
PO Box 2580
Cherry Hill, NJ 08034-0372

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PO Box 2580
Cherry Hill, NJ 08034-0372

Ted & Louise Price
40992 Ashton Club Drive
Lake Wales, FL 33859

Town of North Castle
17 Bedford Road
Town Hall Annex
Armonk, NY 10504

Turf Links
29 Gilmore Drive
Sutton, MA 01590

US Foods
PO Box 642554
Pittsburgh, PA 15264-2554

Vozza & Huguenot
F. Frank Vozza
2435 Eastchester Road
Bronx, NY 10469

Wells Fargo
PO Box 10335
Des Moines, IA 50306-0335

Wells Fargo Home Mtg
PO Box 14547
Des Moines, IA 50306-4547

Westchester Bank
2100 Central Park Avenue
Yonkers, NY

Wide Lending Group
3580 Wilshire Blvd Unit 160
Los Angeles, CA 90010

Wide Merchant Group, Inc.
1810 E Sahara Ave #100
Las Vegas, NV 89104

Yellowstone Capital LLC
160 Pearl St
New York, NY 10005

Zwicker & Assoc PC
120 Allens Creek Rd
Rochester, NY 14618

UNITED STATES BANKRUPTCY COURT

District of Vermont

In re:

David L. Griffin & Maria E. Leon Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

UNITED STATES BANKRUPTCY COURT

District of Vermont

In re:

David L. Griffin & Maria E. Leon Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

UNITED STATES BANKRUPTCY COURT

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INSERT NAME OF FORM HERE

UNITED STATES BANKRUPTCY COURT

District of Vermont

In re:

David L. Griffin & Maria E. Leon

Case No.
Chapter 7

Debtor(s)

INSERT NAME OF FORM HERE

DISCLOSURE OF COMPENSATION -- Rule 2016 (b)

1. Pursuant to 11 U.S.C. §329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-names debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is \$2,500.00 .

2. The source of the compensation paid, or to be paid to me was the debtor.

3. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

/s/John R Canney III

Date October 1, 2013

Signature _____

John R Canney III, Bar

No.

B203
12/94

United States Bankruptcy Court District of Vermont

In re **David L. Griffin & Maria E. Leon**

Case No. _____

Chapter 7

Debtor(s)

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above-named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept \$ 2,500.00

Prior to the filing of this statement I have received \$ 2,500.00

Balance Due \$ 0.00

2. The source of compensation paid to me was:

Debtor Other (specify)

3. The source of compensation to be paid to me is:

Debtor Other (specify)

4. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

I have agreed to share the above-disclosed compensation with a other person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
- b. Preparation and filing of any petition, schedules, statements of affairs and plan which may be required;
- c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;

6. By agreement with the debtor(s), the above-disclosed fee does not include the following services:

Any services past the 341 Hearing are at the hourly rate of \$275.00.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in the bankruptcy proceeding.

October 1, 2013
Date

/s/ John R Canney III
Signature of Attorney

Name of law firm

In re David L. Griffin & Maria E. Leon
 Debtor(s)

Case Number: _____
 (If known)

According to the information required to be entered on this statement (check one box as directed in Part I, III, or VI of this statement):

The presumption arises.
 The presumption does not arise.
 The presumption is temporarily inapplicable.

CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME AND MEANS-TEST CALCULATION

In addition to Schedules I and J, this statement must be completed by every individual chapter 7 debtor. If none of the exclusions in Part I applies, joint debtors may complete one statement only. If any of the exclusions in Part I applies, joint debtors should complete separate statements if they believe this is required by §707(b)(2)(C).

Part I. MILITARY AND NON-CONSUMER DEBTORS

1A	<p>Disabled Veterans. If you are a disabled veteran described in the Declaration in this Part IA, (1) check the box at the beginning of the Declaration, (2) check the box for “The presumption does not arise” at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of Disabled Veteran. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. §901(1)).</p>
1B	<p>Non-consumer Debtors. If your debts are not primarily consumer debts, check the box below and complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Declaration of non-consumer debts. By checking this box, I declare that my debts are not primarily consumer debts.</p>
1C	<p>Reservists and National Guard Members; active duty or homeland defense activity. Members of a reserve component of the Armed Forces and members of the National Guard who were called to active duty (as defined in 10 U.S.C. § 101(d)(1)) after September 11, 2001, for a period of at least 90 days, or who have performed homeland defense activity (as defined in 32 U.S.C. § 901(1)) for a period of at least 90 days, are excluded from all forms of means testing during the time of active duty or homeland defense activity and for 540 days thereafter (the “exclusion period”). If you qualify for this temporary exclusion, (1) check the appropriate boxes and complete any required information in the Declaration of Reservists and National Guard Members below, (2) check the box for “The presumption is temporarily inapplicable” at the top of this statement, and (3) complete the verification in Part VIII. During your exclusion period you are not required to complete the balance of this form, but you must complete the form no later than 14 days after the date on which your exclusion period ends, unless the time for filing a motion raising the means test presumption expires in your case before your exclusion period ends.</p> <p><input type="checkbox"/> Declaration of Reservists and National Guard Members. By checking this box and making the appropriate entries below, I declare that I am eligible for a temporary exclusion from means testing because, as a member of a reserve component of the Armed Forces or the National Guard</p> <p style="margin-left: 40px;">a. <input type="checkbox"/> I was called to active duty after September 11, 2001, for a period of at least 90 days and</p> <p style="margin-left: 80px;"><input type="checkbox"/> I remain on active duty /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I was released from active duty on _____, which is less than 540 days before this bankruptcy case was filed;</p> <p style="margin-left: 40px;">OR</p> <p style="margin-left: 40px;">b. <input type="checkbox"/> I am performing homeland defense activity for a period of at least 90 days /or/</p> <p style="margin-left: 80px;"><input type="checkbox"/> I performed homeland defense activity for a period of at least 90 days, terminating on _____, which is less than 540 days before this bankruptcy case was filed.</p>

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Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.

- a. **Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.**
- b. **Married, not filing jointly, with declaration of separate households.** By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code."
Complete only Column A ("Debtor's Income") for Lines 3-11.
- c. **Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.**
- d. **Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.**

All figures must reflect average monthly income received from all sources, derived during the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If the amount of monthly income varied during the six months, you must divide the six-month total by six, and enter the result on the appropriate line.

**Column A
Debtor's
Income**

**Column B
Spouse's
Income**

3 **Gross wages, salary, tips, bonuses, overtime, commissions.** \$ 4,333.33 \$ N.A.

4 **Income from the operation of a business, profession or farm.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 4. If you operate more than one business, profession or farm, enter aggregate numbers and provide details on an attachment. Do not enter a number less than zero. **Do not include any part of the business expenses entered on Line b as a deduction in Part V.**

a.	Gross receipts	\$	0.00	
b.	Ordinary and necessary business expenses	\$	0.00	
c.	Business income		Subtract Line b from Line a	\$ 0.00 \$ N.A.

5 **Rent and other real property income.** Subtract Line b from Line a and enter the difference in the appropriate column(s) of Line 5. Do not enter a number less than zero. **Do not include any part of the operating expenses entered on Line b as a deduction in Part V.**

a.	Gross receipts	\$	0.00	
b.	Ordinary and necessary operating expenses	\$	0.00	
c.	Rent and other real property income		Subtract Line b from Line a	\$ 0.00 \$ N.A.

6 **Interest, dividends and royalties.** \$ 0.00 \$ N.A.

7 **Pension and retirement income.** \$ 0.00 \$ N.A.

8 **Any amounts paid by another person or entity, on a regular basis, for the household expenses of the debtor or the debtor's dependents, including child support paid for that purpose.** Do not include alimony or separate maintenance payments or amounts paid by your spouse if Column B is completed. Each regular payment should be reported in only one column; if a payment is listed in Column A, do not report that payment in Column B. \$ 0.00 \$ N.A.

9 **Unemployment compensation.** Enter the amount in the appropriate column(s) of Line 9. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:

Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ 0.00	Spouse \$ N.A.		\$ 0.00	\$ N.A.
---	----------------	----------------	--	---------	---------

10	<p>Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Do not include alimony or separate maintenance payments paid by your spouse if Column B is completed, but include all other payments of alimony or separate maintenance. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;"></td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%; text-align: right;">0.00</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> <td>0.00</td> </tr> </table> <p>Total and enter on Line 10</p>	a.		\$	0.00	b.		\$	0.00	\$ 0.00	\$ N.A.
a.		\$	0.00								
b.		\$	0.00								
11	<p>Subtotal of Current Monthly Income for § 707(b)(7). Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).</p>	\$ 4,333.33	\$ N.A.								
12	<p>Total Current Monthly Income for § 707(b)(7). If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.</p>	\$	4,333.33								
Part III. APPLICATION OF § 707(b)(7) EXCLUSION											
13	<p>Annualized Current Monthly Income for § 707(b)(7). Multiply the amount from Line 12 by the number 12 and enter the result.</p>		\$1,999.96								
14	<p>Applicable median family income. Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p> <p>a. Enter debtor's state of residence: <u>Vermont</u> b. Enter debtor's household size: <u>4</u></p>		\$5,750.00								
15	<p>Application of Section 707(b)(7). Check the applicable box and proceed as directed.</p> <p><input checked="" type="checkbox"/> The amount on Line 13 is less than or equal to the amount on Line 14. Check the "The presumption does not arise" box at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII.</p> <p><input type="checkbox"/> The amount on Line 13 is more than the amount on Line 14. Complete the remaining parts of this statement.</p>										

Complete Parts IV, V, VI and VII of this statement only if required. (See Line 15).

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)															
16	<p>Enter the amount from Line 12.</p>		\$ N.A.												
17	<p>Marital adjustment. If you checked the box at Line 2.c, enter on Line 17 the total of any income listed in Line 11, Column B that was NOT paid on a regular basis for the household expenses of the debtor or the debtor's dependents. Specify in the lines below the basis for excluding the Column B income (such as payment of the spouse's tax liability or the spouse's support of persons other than the debtor or the debtor's dependents) and the amount of income devoted to each purpose. If necessary, list additional adjustments on a separate page. If you did not check box at Line 2.c, enter zero.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 75%;"></td> <td style="width: 10%; text-align: right;">\$</td> <td style="width: 10%;"></td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> <td></td> </tr> <tr> <td>c.</td> <td></td> <td>\$</td> <td></td> </tr> </table> <p>Total and enter on Line 17.</p>		a.		\$		b.		\$		c.		\$		\$ N.A.
a.		\$													
b.		\$													
c.		\$													
18	<p>Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.</p>		\$ N.A.												

Part V. CALCULATION OF DEDUCTIONS FROM INCOME

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19A	<p>National Standards: food, clothing and other items. Enter in Line 19A the “Total” amount from IRS National Standards for Food, Clothing and Other Items for the applicable number of persons. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable number of person is the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$ N.A.																						
19B	<p>National Standards: health care. Enter in Line a1 below the amount from IRS National Standards for Out-of-Pocket Health Care for persons under 65 years of age, and in Line a2 the IRS National Standards for Out-of-Pocket Health Care for persons 65 years of age or older. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) Enter in Line b1 the applicable number of persons who are under 65 years of age, and enter in Line b2 the applicable number of persons who are 65 years of age or older. (The applicable number of persons in each age category is the number in that category that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.) Multiply line a1 by Line b1 to obtain a total amount for persons under 65, and enter the result in Line c1. Multiply Line a2 by Line b2 to obtain a total amount for persons 65 and older, and enter the result in Line c2. Add Lines c1 and c2 to obtain a total health care amount, and enter the result in Line 19B.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th colspan="2" style="text-align: left;">Persons under 65 years of age</th> <th colspan="2" style="text-align: left;">Persons 65 years of age or older</th> </tr> </thead> <tbody> <tr> <td style="width:5%;">a1.</td> <td style="width:75%;">Allowance per person</td> <td style="width:10%; text-align: center;">N.A.</td> <td style="width:10%;">a2.</td> <td style="width:75%;">Allowance per person</td> <td style="text-align: center;">N.A.</td> </tr> <tr> <td>b1.</td> <td>Number of persons</td> <td style="text-align: center;">N.A.</td> <td>b2.</td> <td>Number of persons</td> <td></td> </tr> <tr> <td>c1.</td> <td>Subtotal</td> <td style="text-align: center;">N.A.</td> <td>c2.</td> <td>Subtotal</td> <td style="text-align: center;">N.A.</td> </tr> </tbody> </table>	Persons under 65 years of age		Persons 65 years of age or older		a1.	Allowance per person	N.A.	a2.	Allowance per person	N.A.	b1.	Number of persons	N.A.	b2.	Number of persons		c1.	Subtotal	N.A.	c2.	Subtotal	N.A.	\$ N.A.
Persons under 65 years of age		Persons 65 years of age or older																						
a1.	Allowance per person	N.A.	a2.	Allowance per person	N.A.																			
b1.	Number of persons	N.A.	b2.	Number of persons																				
c1.	Subtotal	N.A.	c2.	Subtotal	N.A.																			
20A	<p>Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) The applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support.</p>	\$ N.A.																						
20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court) (the applicable family size consists of the number that would currently be allowed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tbody> <tr> <td style="width:5%;">a.</td> <td style="width:75%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:10%; text-align: right;">\$</td> <td style="width:10%; text-align: center;">N.A.</td> </tr> <tr> <td>b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td style="text-align: right;">\$</td> <td style="text-align: center;">N.A.</td> </tr> <tr> <td>c.</td> <td>Net mortgage/rental expense</td> <td></td> <td style="text-align: center;">Subtract Line b from Line a</td> </tr> </tbody> </table>	a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	N.A.	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	N.A.	c.	Net mortgage/rental expense		Subtract Line b from Line a	\$ N.A.										
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	N.A.																					
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	N.A.																					
c.	Net mortgage/rental expense		Subtract Line b from Line a																					
21	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	\$ N.A.																						

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22A	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8.</p> <p><input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>If you checked 0, enter on Line 22A the "Public Transportation" amount from IRS Local Standards: Transportation. If you checked 1 or 2 or more, enter on Line 22A the "Operating Costs" amount from IRS Local Standards: Transportation for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (These amounts are available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$ N.A.												
22B	<p>Local Standards: transportation; additional public transportation expense. If you pay the operating expenses for a vehicle and also use public transportation, and you contend that you are entitled to an additional deduction for your public transportation expenses, enter on Line 22B the "Public Transportation" amount from IRS Local Standards: Transportation. (This amount is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$ N.A.												
23	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)</p> <p><input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs</td> <td style="width:10%; text-align:right;">\$</td> <td style="width:25%; text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td style="text-align:right;">\$</td> <td style="text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td></td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	N.A.	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	N.A.	c.	Net ownership/lease expense for Vehicle 1		Subtract Line b from Line a.	\$ N.A.
a.	IRS Transportation Standards, Ownership Costs	\$	N.A.											
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	N.A.											
c.	Net ownership/lease expense for Vehicle 1		Subtract Line b from Line a.											
24	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the "Ownership Costs" for "One Car" from the IRS Local Standards: Transportation (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p> <table border="1" style="width:100%; border-collapse: collapse; margin-top: 10px;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">IRS Transportation Standards, Ownership Costs</td> <td style="width:10%; text-align:right;">\$</td> <td style="width:25%; text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td> <td style="text-align:right;">\$</td> <td style="text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td></td> <td style="text-align:right;">Subtract Line b from Line a.</td> </tr> </table>	a.	IRS Transportation Standards, Ownership Costs	\$	N.A.	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	N.A.	c.	Net ownership/lease expense for Vehicle 2		Subtract Line b from Line a.	\$ N.A.
a.	IRS Transportation Standards, Ownership Costs	\$	N.A.											
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	N.A.											
c.	Net ownership/lease expense for Vehicle 2		Subtract Line b from Line a.											
25	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$ N.A.												
26	<p>Other Necessary Expenses: involuntary deductions for employment. Enter the total average monthly payroll deductions that are required for your employment, such as retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as voluntary 401(k) contributions.</p>	\$ N.A.												
27	<p>Other Necessary Expenses: life insurance. Enter total average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</p>	\$ N.A.												
28	<p>Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to the order of a court or administrative agency, such as spousal or child support payments. Do not include payments on past due obligations included in Line 44.</p>	\$ N.A.												

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29	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total average monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$	N.A.
30	Other Necessary Expenses: childcare. Enter the total average monthly amount that you actually expend on childcare—such as baby-sitting, day care, nursery and preschool. Do not include other educational payments.	\$	N.A.
31	Other Necessary Expenses: health care. Enter the total average monthly amount that you actually expend on health care that is required for the health and welfare of yourself or your dependents, that is not reimbursed by insurance or paid by a health savings account, and that is in excess of the amount entered in Line 19B. Do not include payments for health insurance or health savings accounts listed in Line 34.	\$	N.A.
32	Other Necessary Expenses: telecommunication services. Enter the total average monthly amount that you actually pay for telecommunication services other than your basic home telephone and cell phone service—such as pagers, call waiting, caller id, special long distance, or internet service—to the extent necessary for your health and welfare or that of your dependents. Do not include any amount previously deducted.	\$	N.A.
33	Total Expenses Allowed under IRS Standards. Enter the total of Lines 19 through 32	\$	N.A.

Subpart B: Additional Living Expense Deductions
Note: Do not include any expenses that you have listed in Lines 19-32.

34	Health Insurance, Disability Insurance and Health Savings Account Expenses. List the monthly expenses in the categories set out in lines a-c below that are reasonably necessary for yourself, your spouse, or your dependents.	<table border="1"> <tr> <td>a.</td> <td>Health Insurance</td> <td>\$</td> <td>N.A.</td> </tr> <tr> <td>b.</td> <td>Disability Insurance</td> <td>\$</td> <td>N.A.</td> </tr> <tr> <td>c.</td> <td>Health Savings Account</td> <td>\$</td> <td>N.A.</td> </tr> </table>		a.	Health Insurance	\$	N.A.	b.	Disability Insurance	\$	N.A.	c.	Health Savings Account	\$	N.A.
	a.	Health Insurance	\$	N.A.											
b.	Disability Insurance	\$	N.A.												
c.	Health Savings Account	\$	N.A.												
Total and enter on Line 34.		\$	N.A.												
If you do not actually expend this total amount, state your actual average expenditures in the space below: \$ <u> N.A. </u>															
35	Continued contributions to the care of household or family members. Enter the total average actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.	\$	N.A.												
36	Protection against family violence. Enter the total average reasonably necessary monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law. The nature of these expenses is required to be kept confidential by the court.	\$	N.A.												
37	Home energy costs Enter the total average monthly amount, in excess of the allowance specified by IRS Local Standards for Housing and Utilities that you actually expend for home energy costs. You must provide your case trustee with documentation of your actual expenses, and you must demonstrate that the additional amount claimed is reasonable and necessary.	\$	N.A.												
38	Education expenses for dependent children less than 18. Enter the total average monthly expenses that you actually incur, not to exceed \$156.25* per child, for attendance at a private or public elementary or secondary school by your dependent children less than 18 years of age. You must provide your case trustee with documentation of your actual expenses and you must explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.	\$	N.A.												

*Amount subject to adjustment on 4/01/16, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

39	Additional food and clothing expense. Enter the total average monthly amount by which your food and clothing expenses exceed the combined allowances for food and clothing (apparel and services) in the IRS National Standards, not to exceed 5% of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must demonstrate that the additional amount claimed is reasonable and necessary.	\$	N.A.
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170 (c)(1)-(2)	\$	N.A.
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40.	\$	N.A.

Subpart C: Deductions for Debt Payment

42	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of creditor, identify the property securing the debt, state the Average Monthly Payment, and check whether the payment includes taxes or insurance. The Average Monthly Payment is the total of all amounts scheduled as contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. If necessary, list additional entries on a separate page. Enter the total Average Monthly payments on Line 42.					
	Name of Creditor	Property Securing the Debt	Average Monthly Payment	Does payment include taxes or insurance?		
	a.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no		
	b.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no		
	c.		\$	<input type="checkbox"/> yes <input type="checkbox"/> no		
			Total: Add Line a, b and c		\$	N.A.

43	Other payments on secured claims. If any of the debts listed in Line 42 are secured by your primary residence, a motor vehicle, or other property necessary for your support or the support of your dependents, you may include in your deduction 1/60th of any amount (the "cure amount") that you must pay the creditor in addition to the payments listed in Line 42, in order to maintain possession of the property. The cure amount would include any sums in default that must be paid in order to avoid repossession or foreclosure. List and total any such amounts in the following chart. If necessary, list additional entries on a separate page.					
	Name of Creditor	Property Securing the Debt	1/60th of the Cure Amount			
	a.		\$			
	b.		\$			
	c.		\$			
					\$	N.A.

44	Payments on prepetition priority claims. Enter the total amount, divided by 60, of all priority claims, such as priority tax, child support and alimony claims, for which you were liable at the time of your bankruptcy filing. Do not include current obligations, such as those set out in Line 28.	\$	N.A.
----	--	----	------

45	<p>Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:60%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width:10%;">\$</td> <td style="width:25%; text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td style="text-align:center;">x</td> <td style="text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td>Total: Multiply Lines a and b</td> <td style="text-align:right;">\$ N.A.</td> </tr> </table>	a.	Projected average monthly Chapter 13 plan payment.	\$	N.A.	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	N.A.	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$ N.A.		\$ N.A.								
a.	Projected average monthly Chapter 13 plan payment.	\$	N.A.																				
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	N.A.																				
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$ N.A.																				
46	Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.	\$	N.A.																				
Subpart D: Total Deductions from Income																							
47	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.	\$	N.A.																				
Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION																							
48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$	N.A.																				
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$	N.A.																				
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result.	\$	N.A.																				
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$	N.A.																				
52	<p>Initial presumption determination. Check the applicable box and proceed as directed.</p> <p><input checked="" type="checkbox"/> The amount on Line 51 is less than \$7,475*. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount set forth on Line 51 is more than \$12,475*. Check the “Presumption arises” box at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.</p> <p><input type="checkbox"/> The amount on Line 51 is at least \$7,475*, but not more than \$12,475*. Complete the remainder of Part VI (Lines 53 through 55).</p>																						
53	Enter the amount of your total non-priority unsecured debt	\$	N.A.																				
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result.	\$	N.A.																				
55	<p>Secondary presumption determination. Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for “The presumption does not arise” at the top of page 1 of this statement, and complete the verification in Part VIII.</p> <p><input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for “The presumption arises” at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.</p>																						
Part VII: ADDITIONAL EXPENSE CLAIMS																							
56	<p>Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:65%;">Expense Description</th> <th style="width:10%;"></th> <th style="width:20%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td style="text-align:center;">a.</td> <td></td> <td>\$</td> <td style="text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">b.</td> <td></td> <td>\$</td> <td style="text-align:right;">N.A.</td> </tr> <tr> <td style="text-align:center;">c.</td> <td></td> <td>\$</td> <td style="text-align:right;">N.A.</td> </tr> <tr> <td colspan="3" style="text-align:right;">Total: Add Lines a, b and c</td> <td style="text-align:right;">N.A.</td> </tr> </tbody> </table>				Expense Description		Monthly Amount	a.		\$	N.A.	b.		\$	N.A.	c.		\$	N.A.	Total: Add Lines a, b and c			N.A.
	Expense Description		Monthly Amount																				
a.		\$	N.A.																				
b.		\$	N.A.																				
c.		\$	N.A.																				
Total: Add Lines a, b and c			N.A.																				

*Amounts are subject to adjustment on 4/1/2016, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Part VIII: VERIFICATION

I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

Date: October 1, 2013 Signature: /s/ David L. Griffin
(Debtor)

Date: October 1, 2013 Signature: /s/ Maria E. Leon
(Joint Debtor, if any)

57

Form 22 Continuation Sheet

Income Month 1			Income Month 2		
Gross wages, salary, tips...	4,333.33	2,383.33	Gross wages, salary, tips...	4,333.33	2,383.33
Income from business...	0.00	0.00	Income from business...	0.00	0.00
Rents and real property income...	0.00	0.00	Rents and real property income...	0.00	0.00
Interest, dividends...	0.00	0.00	Interest, dividends...	0.00	0.00
Pension, retirement...	0.00	0.00	Pension, retirement...	0.00	0.00
Contributions to HH Exp...	0.00	0.00	Contributions to HH Exp...	0.00	0.00
Unemployment...	0.00	0.00	Unemployment...	0.00	0.00
Other Income...	0.00	0.00	Other Income...	0.00	0.00
Income Month 3			Income Month 4		
Gross wages, salary, tips...	4,333.33	2,383.33	Gross wages, salary, tips...	4,333.33	2,383.33
Income from business...	0.00	0.00	Income from business...	0.00	0.00
Rents and real property income...	0.00	0.00	Rents and real property income...	0.00	0.00
Interest, dividends...	0.00	0.00	Interest, dividends...	0.00	0.00
Pension, retirement...	0.00	0.00	Pension, retirement...	0.00	0.00
Contributions to HH Exp...	0.00	0.00	Contributions to HH Exp...	0.00	0.00
Unemployment...	0.00	0.00	Unemployment...	0.00	0.00
Other Income...	0.00	0.00	Other Income...	0.00	0.00
Income Month 5			Income Month 6		
Gross wages, salary, tips...	4,333.33	2,383.33	Gross wages, salary, tips...	4,333.33	2,383.33
Income from business...	0.00	0.00	Income from business...	0.00	0.00
Rents and real property income...	0.00	0.00	Rents and real property income...	0.00	0.00
Interest, dividends...	0.00	0.00	Interest, dividends...	0.00	0.00
Pension, retirement...	0.00	0.00	Pension, retirement...	0.00	0.00
Contributions to HH Exp...	0.00	0.00	Contributions to HH Exp...	0.00	0.00
Unemployment...	0.00	0.00	Unemployment...	0.00	0.00
Other Income...	0.00	0.00	Other Income...	0.00	0.00

Additional Items as Designated, if any

--

Remarks

--



EXHIBIT 2



9-23-26

91-11-020672

THIS INSTRUMENT PREPARED BY:
NED M. SHANDLOFF, Corporate Counsel
General Development Corporation
2601 S. Bayshore Drive
Miami, Florida 33133

TRUSTEE'S DEED WITH THIRD PARTY WARRANTY

Reserved for use by Clerk of Court

1145272

A8001554

739500

Property Appraiser's Parcel ID # [REDACTED]
Grantee(s) S.S. # [REDACTED]

THIS DEED, made this **4TH** day of **SEPTEMBER**, 19 **91**, by **NCNB NATIONAL BANK OF FLORIDA**, a national banking association, duly organized and existing by virtue of the laws of the United States, as Trustee Under Trust No. **06-01-009-6081954** whose post office address is 400 N. Ashley Drive, 6th Floor, Tampa, FL 33602, hereinafter called the Grantor, to

DAVID L. GRIFFIN

whose post office address is: 600
PO BOX 719
HARRISON, NY 10528
Total \$ 50.40
Deputy Clerk

91 NOV 12 P2:52
1145272
FILED AND RECORDED
DOUGLAS DIXON CLERK
ST LUCIE COUNTY, FL

WITNESSETH: That the Grantor, for and in consideration of the sum of ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells and conveys unto the Grantee, all of Grantor's right, title and interest in that certain real property situate in **ST. LUCIE** County, Florida, more particularly described as follows:

LOT 5, BLOCK 3247 IN FIRST REPLAT OF PORT ST. LUCIE SECTION 48, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 26, PAGE 23, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anyway appertaining. TO HAVE AND TO HOLD the same in fee simple forever.

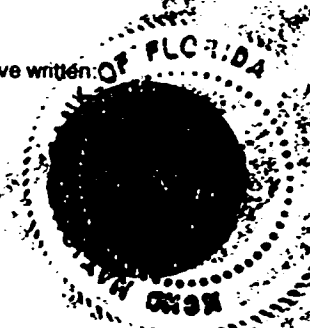
In consideration of the foregoing, **GENERAL DEVELOPMENT CORPORATION**, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession Under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida, hereinafter called GDC, joins in the execution of this document to fully warrant the title to said land and fully defend the same against the lawful claims of all persons whomsoever, as fully and completely as though it were the Grantor hereunder and were executing a warranty deed with full common law covenants.

SUBJECT TO: The lien for property taxes for the year of conveyance; oil, gas and mineral reservations of record, if any; easements, covenants and restrictions of public record common to the neighborhood; Property Owner's Association, if any; special assessments or taxing districts, if any; impact fees, if any; applicable zoning and ordinances; and the right of surface access to the property for the purpose of completing land development work within the area surrounding the property (including the right to remove any soil deposited by General Development Corporation) up to the time a building permit has been issued for the construction of a structure upon the property.

IN WITNESS WHEREOF, Grantor and GDC have hereunto set their hands and seals the day and year first above written:

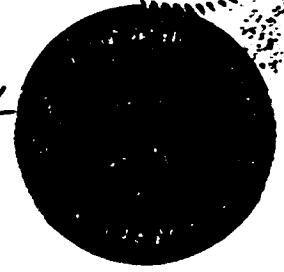
Signed, sealed and delivered in the presence of:
Ann Marie Williams
ANN MARIE WILLIAMS
Jeanne Milke
JEANNE MILKE

NCNB NATIONAL BANK OF FLORIDA, As Trustee under Trust No. **06-01-009-6081954**
BY: Gregory T. Sardzinski
GREGORY T. SARZINSKI



Signed, sealed and delivered in the presence of:
Ramonita Rivero
RAMONITA RIVERO
Cheryll Cameron
CHERYLL CAMERON

GENERAL DEVELOPMENT CORPORATION, as Debtor in Possession under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida
BY: Jean Massett
DEED OFFICER: JEAN MASSETT



STATE OF FLORIDA, COUNTY OF HILLSBOROUGH) ss:

The foregoing instrument was acknowledged before me by **GREGORY T. SARZINSKI** on this **4TH** day of **SEPTEMBER**, 19 **91**, as the **V.P.** Trust Officer of **NCNB NATIONAL BANK OF FLORIDA**, a national banking association, duly organized and existing by virtue of the laws of the United States, on behalf of said national banking association, as Trustee, under Trust No. **06-01-009-6081954**

RETURN TO:
FIRST AMERICAN TITLE CO.
COURT HOUSE BOX

Richard Reich
NOTARY PUBLIC RICHARD REICH
State of Florida at Large

STATE OF FLORIDA, COUNTY OF DADE) ss:

The foregoing instrument was acknowledged before me by **JEAN MASSETT**, on this **5** day of **SEPTEMBER**, 19 **91**, as the Deeding Officer of **GENERAL DEVELOPMENT CORPORATION**, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida, on behalf of the corporation.

Jean Massett
NOTARY PUBLIC JEAN MASSETT
State of Florida at Large
NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXPIRES OCT. 7, 1998
BONDED THRU NOTARY PUBLIC UNDERWRITERS

0763 PAGE 0696

Prepared by, record & return to:
Karen Rae Hyche
PRESTIGE TITLE AGENCY, INC.
736 Colorado Ave. Ste. A
Stuart FL 34994
772-283-5590

Property Appraisers Parcel ID#:
3420-741-0254-000/0

THIS WARRANTY DEED, Made the 22 day of January, 2016 by

DAVID L. GRIFFIN

hereinafter called the Grantor, to **RED BOAT, LLC, a Florida limited liability company**

whose post office address is **757 SE 17th St. Ste. 443, Fort Lauderdale FL 33316**
hereinafter called the Grantee.

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, situate in St. Lucie County, State of Florida, viz:

Lot 5, Block 3247, FIRST REPLAT OF PORT ST. LUCIE SECTION 48, a subdivision according to the plat thereof recorded at Plat Book 26, Page 23, in the Public Records of St. Lucie County, Florida.

SUBJECT TO restrictions, reservations, easements & conditions of record; all governmental zoning.

Subject property is vacant, unimproved land and does not constitute the homestead of the grantor nor is it contiguous thereto.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the Grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Jason P. Morrissey
Witness Signature (as to first grantor)

Print name: JASON P. MORRISSEY

Abigail W. Chaloux
Witness Signature (as to first grantor)

Print name: Abigail W. Chaloux

David L. Griffin
Grantor Signature

David L. Griffin

180 Country Club Rd., Bennington, VT 05201
Post Office Address

STATE OF VERMONT)
COUNTY OF Bennington

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **DAVID L. GRIFFIN** known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, and an oath was not taken. (Check one):
Said person(s) is/are personally known to me. Said person(s) provided the following type of identification: Vermont Drivers License 82576398

SEAL
MY COMMISSION EXPIRES: 2/10/2019

Witness my hand and official seal in the County and State last aforesaid this 22 day of January, 2016.

Nichole Shepard
Notary Signature
Print name: Nichole Shepard

EXHIBIT 3

9-23-91

91-11-02280175

THIS INSTRUMENT PREPARED BY:
NED M. SHANDLOFF, Corporate Counsel
General Development Corporation
2601 S. Bayshore Drive
Miami, Florida 33133

TRUSTEE'S DEED WITH THIRD PARTY WARRANTY

Reserved for use by Clerk of Court
1145271

A8001553

639500

Property Appraiser's Parcel I.D. #
Grantee(s) S.S. # (s) **008-43-1207**

THIS DEED, made this **4TH** day of **SEPTEMBER**, 19 **91**, by **NCNB NATIONAL BANK OF FLORIDA**, a national banking association, duly organized and existing by virtue of the laws of the United States, as Trustee Under Trust No. **06-01-009-6081954** whose post office address is 400 N. Ashley Drive, 6th Floor, Tampa, FL 33602, hereinafter called the Grantor, to

DAVID L. GRIFFIN

Pay Fee \$ Levy
whose post office address is: \$ 38.40 **PO BOX 719**
Int. Tax \$ 2.00 **HARRISON, NY 10528**
Total \$ 44.40 Deputy Clerk

91 NOV 12 P2:52
1145271 AM
FILED AND RECORDED
DOUGLAS DIXON CLERY
ST. LUCIE COUNTY, FL

hereinafter called the Grantee.

WITNESSETH: That the Grantor, for and in consideration of the sum of ten dollars and other good and valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells and conveys unto the Grantee, all of Grantor's right, title and interest in that certain real property situate in **ST. LUCIE** County, Florida, more particularly described as follows:
LOT 4, BLOCK 3247 IN FIRST REPLAT OF PORT ST. LUCIE SECTION 48, A SUBDIVISION ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 26, PAGE 23, OF THE PUBLIC RECORDS OF ST. LUCIE COUNTY, FLORIDA.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.
TO HAVE AND TO HOLD the same in fee simple forever.

In consideration of the foregoing, **GENERAL DEVELOPMENT CORPORATION**, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession Under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida, hereinafter called GDC, joins in the execution of this document to fully warrant the title to said land and fully defend the same against the lawful claims of all persons whomsoever, as fully and completely as though it were the Grantor hereunder and were executing a warranty deed with full common law covenants.

SUBJECT TO: The lien for property taxes for the year of conveyance; oil, gas and mineral reservations of record, if any; easements, covenants and restrictions of public record common to the neighborhood; Property Owner's Association, if any; special assessments or taxing districts, if any; impact fees, if any; applicable zoning and ordinances; and the right of surface access to the property for the purpose of completing land development work within the area surrounding the property (including the right to remove any soil deposited by General Development Corporation) up to the time a building permit has been issued for the construction of a structure upon the property.

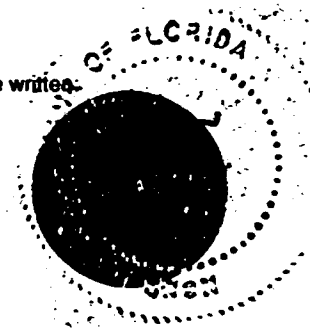
IN WITNESS WHEREOF, Grantor and GDC have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

Amy Marie Williams
Jamie Williams
AMY MARIE WILLIAMS
JEANNE MIKEY

NCNB NATIONAL BANK OF FLORIDA, As Trustee under Trust No. **06-01-009-6081954**

BY: *Gregory T. Sardzinski*
GREGORY T. SARDZINSKI

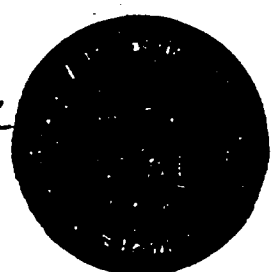


Signed, Sealed and delivered in the presence of:

Ramonita Rivero
Cheyl Cameron
RAMONITA RIVERO
CERYLL CAMERON

GENERAL DEVELOPMENT CORPORATION, as Debtor in Possession under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida

BY: *Jean Massett*
DEED OFFICER: JEAN MASSETT



STATE OF FLORIDA, COUNTY OF HILLSBOROUGH) ss:

The foregoing instrument was acknowledged before me by **GREGORY T. SARDZINSKI** on this **4TH** day of **SEPTEMBER**, 19 **91**, as the **V.P. &** Trust Officer of **NCNB NATIONAL BANK OF FLORIDA**, a national banking association, duly organized and existing by virtue of the laws of the United States, on behalf of said national banking association, as Trustee under Trust No. **06-01-009-6081954**

RETURN TO:
FIRST AMERICAN TITLE CO.
COURT HOUSE BOX

STATE OF FLORIDA, COUNTY OF DADE) ss:

The foregoing instrument was acknowledged before me by **JEAN MASSETT** on this **4TH** day of **SEPTEMBER**, 19 **91**, as the Deeding Officer of **GENERAL DEVELOPMENT CORPORATION**, a Delaware corporation authorized to do business in the State of Florida, as Debtor in Possession under U.S. Bankruptcy Court Case No. 90-12231-BKC-AJC, in and for the Southern District of Florida, on behalf of the corporation.

Richard J. Reich
NOTARY PUBLIC
State of Florida at Large
NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES: **OCT. 7, 1994.**
Jean Massett
NOTARY PUBLIC
State of Florida at Large
NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXP. **JAN. 14, 1996.**
BONDED THROUGH GENERAL INS. CO.

0763 PAGE 0695

Prepared by, record & return to:
Karen Rae Hyche
PRESTIGE TITLE AGENCY, INC.
736 Colorado Ave. Ste. A
Stuart FL 34994
772-283-5590

Property Appraisers Parcel ID#:
3420-741-0253-000/3

THIS WARRANTY DEED, Made the 22 day of January, 2016 by

DAVID L. GRIFFIN

hereinafter called the Grantor, to **RED BOAT, LLC, a Florida limited liability company**

whose post office address is **757 SE 17th St. Ste. 443, Fort Lauderdale FL 33316**
hereinafter called the Grantee.

(Wherever used herein the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth, That the Grantor, for and in consideration of the sum of \$10.00 and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee all that certain land, situate in St. Lucie County, State of Florida, viz:

Lot 4, Block 3247, FIRST REPLAT OF PORT ST. LUCIE SECTION 48, a subdivision according to the plat thereof recorded at Plat Book 26, Page 23, in the Public Records of St. Lucie County, Florida.

SUBJECT TO restrictions, reservations, easements & conditions of record; all governmental zoning.

Subject property is vacant, unimproved land and does not constitute the homestead of the grantor nor is it contiguous thereto.

Together, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the Grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple; that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2015.

In Witness Whereof, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Jason P. Morrissey
Witness Signature (as to first grantor)
Print name: JASON P. MORRISSEY

Abigail W. Chisoux
Witness Signature (as to first grantor)
Print name: ABIGAIL W. CHISOUX

David L. Griffin
Grantor Signature
David L. Griffin

180 Country Club Road
Post Office Address
Bennington VT 05201

STATE OF VERMONT)
COUNTY OF Bennington

I hereby Certify that on this day, before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared **DAVID L. GRIFFIN** known to me to be the person(s) described in and who executed the foregoing instrument, who acknowledged before me that he/she/they executed the same, and an oath was not taken. (Check one): Said person(s) is/are personally known to me. Said person(s) provided the following type of identification: VT Drivers License # 82576398

SEAL
MY COMMISSION EXPIRES 2/10/19

Witness my hand and official seal in the County and State last aforesaid this 22 day of January, 2016.

Richard Shepard
Notary Signature
Print name: Richard Shepard



EXHIBIT 5

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-1611-INV

Investigation pursuant to 30 V.S.A. §§ 30 and 209 into whether the petitioner initiated site preparation at Apple Hill in Bennington, Vermont, for electric generation in violation of 30 V.S.A. § 248(a)(2)	
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Order entered: 06/26/2020

**ORDER GRANTING TEMPORARY RESTRAINING ORDER AND
NOTICE OF PRELIMINARY INJUNCTION HEARING**

I. INTRODUCTION

In this order, pursuant to 30 V.S.A. §§ 8, 10, 30, 203, 209, and 248(a)(2), and Commission Rule 2.406, the Vermont Public Utility Commission (“Commission”) issues a temporary restraining order against Allco Renewable Energy Limited, PLH Apple Hill Solar LLC, and PLH Chelsea Solar LLC, and its affiliates, subsidiaries, and contractors (collectively, “Allco” or “petitioner”) from any further tree clearing on any of the property for the proposed projects identified in any Certificate of Public Good (“CPG”) applications and any property identified in those applications as intended to be part of the projects, including any amendments to those applications that have been approved by the Commission, in the Apple Hill area in Bennington, Vermont (“the Apple Hill site”).

II. BACKGROUND

On June 19, 2020, public comments were filed by Annette Smith of Vermonters for a Clean Environment alleging that tree clearing was occurring on Apple Hill on the sites of two proposed 2.0 MW solar electric generation facilities. Ms. Smith also alleged that the area of Apple Hill set aside for rare, threatened, and endangered species was being disturbed by the tree-clearing activity.

Also on June 19, 2020, Thomas Melone of Allco, PLH Apple Hill Solar LLC, and Chelsea Solar LLC filed a response to Ms. Smith’s comments. Mr. Melone states that:

It is my understanding that at approximately 12:45 P.M. on June 16, 2020, the Apple Hill site was visited by Vermont Environmental Enforcement Officer Patrick

Lowkes at the request of Don Einhorn. While [the Vermont Agency of Natural Resources (“ANR”)] can certainly make its own comments, Officer Lowkes’ inspection confirmed that NO [rare, threatened, or endangered species] area was being disturbed and that the [rare, threatened, or endangered species] area was cordoned off to prevent intrusion.¹

On June 23, 2020, ANR filed preliminary comments in response to Ms. Smith’s public comments. ANR stated that it “has confirmed that site clearing activity is occurring on the 27-acre parcel on which the Apple Hill and Willow Road solar projects are proposed to be constructed.”²

ANR stated that the tree-clearing activity raises two concerns. The first concern is that the petitioner is conducting site preparation without a CPG. The second concern is that the site clearing has not been reviewed to ensure that it does not have an undue adverse effect on the environment.

Specifically, ANR is concerned that the site clearing presents a substantial and immediate harm to “very rare” and “rare” plants at the site. ANR believes that a cease-and-desist order may be necessary to prevent irreparable harm to the plants. ANR stated that it would file more comprehensive comments on Friday, June 26, 2020.

On June 24, 2020, the Vermont Department of Public Service (“Department”) also filed comments stating:

In this case, based on the Agency of Natural Resources Environmental Enforcement Officer’s initial findings regarding the site clearing activity, cause appears to exist meriting further investigation into whether petitioner initiated preparing the Apple Hill site for electric generation in violation of 30 V.S.A. § 248(a)(2).³

Also on June 24, 2020, the Apple Hill Homeowners Association, Libby Harris, and the Mount Anthony Country Club (collectively, the “Intervenors”) filed comments in response to Ms. Smith’s public comments. The Intervenors assert that: (1) the standard-offer contracts for the two proposed facilities on Apple Hill were procured by fraud and should be voided by the Commission, and (2) the petitioner has engaged in site preparation in violation of 30 V.S.A.

¹ Email from Thomas Melone to the PUC Clerk, at 7:07 P.M. on June 19, 2020.

² ANR Comments at 2.

³ Department Comments at 2.

§ 248 and the Commission should declare the petitions for those facilities to be withdrawn or abandoned.

On June 25, 2020, ANR filed additional comments with supporting affidavits and exhibits and requested that the Commission issue a temporary restraining order pursuant to Commission Rule 2.406.

Also on June 25, 2020, Allco filed comments with supporting affidavits and exhibits and requested that the Commission deny the request for a temporary restraining order.

On June 26, 2020, the Commission held an evidentiary hearing to hear argument and admit evidence. The hearing addressed whether a temporary restraining order should or should not be issued to stop Allco from conducting site preparation in violation of Section 248(a)(2) and to prevent Allco's ongoing site clearing from having an undue adverse effect on "rare" and "very rare" plants on the 27-acre Apple Hill site.

III. FINDINGS

At the evidentiary hearing on June 26, 2020, the Commission admitted those exhibits listed in the transcript from that proceeding, including Commission Exhibit 1, ANR Exhibits 1-9, PLH Exhibits 1 and 2 and their attachments, and Intervenor Exhibit 1. That list of exhibits and the transcript of that proceeding will be available in ePUC shortly. Based on the exhibits admitted in the record and the testimony provided in today's hearing (not all of which can be cited, given the timing of this proceeding), the Commission makes the following findings.

1. On June 16, 2020, the Apple Hill site was visited by Vermont Environmental Enforcement Officer Patrick Lowkes, who observed that site-clearing activity was occurring on Apple Hill on the 27-acre parcel on which the Apple Hill and Willow Road solar facilities are proposed to be constructed. Thomas Melone email of June 19, 2020; preliminary comments by the Vermont Agency of Natural Resources ("ANR").

2. Allco's forester has carved out a truck turnaround spot at the end of Willow Road on the Apple Hill site and cleared a path around the site to install soil-erosion fencing. This work has cleared approximately 3 of the 27 acres. Allco's forester anticipates completing all the site-clearing work, including clearing approximately 26 of the 27 acres, by mid-September 2020. Kobelie Testimony of June 26, 2020.

3. Allco had previously surveyed the site for rare, threatened, and endangered plants and located both rare and very rare species, most recently updated in 2018. Some of the very rare plants were relocated to conservation areas set aside on the 27-acre site. These conservation areas were marked by Allco and enclosed with soil-erosion fencing. The rare plants were not relocated. Popp testimony of June 26, 2020 and ANR Exhibits.

4. There are several areas outside the conservation areas where the rare plant species are located. These would be harmed by the proposed site-clearing activities. Popp testimony of June 26, 2020 and ANR Exhibits.

5. Although Allco states that it is clearing the site to allow for grazing sheep and growing hemp, those activities would not begin until the 2021 growing season. Melone Affidavit and Melone Testimony of June 26, 2020.

6. The petitioner still plans to build a combined 4.0 MW of solar generation at this site.

7. The sheep grazing is being done “primarily” to control vegetative growth at the petitioner’s planned solar projects at the site. Melone Testimony of June 26, 2020.

IV. DISCUSSION

The petitioner’s activities constitute site preparation without a CPG in violation of 30 V.S.A. § 248(a)(2). The petitioner’s claim in his affidavit that his activities are solely for farming purposes is not credible. The Vermont Agency of Agriculture, Food and Markets defines a farm as land that is “devoted *primarily* to farming.”⁴ The petitioner testified in this proceeding that, although the sheep may end up being used for some farming purposes, he was putting the sheep in this location “primarily” to serve the proposed solar projects. This does not qualify as farming. Further, the petitioner testified that the clearing activities are a prerequisite to building the solar projects that have not received CPGs. This violates 30 V.S.A. § 248(a)(2).

A substantial immediate and irreparable injury is all that is required under Commission Rule 2.406 to warrant the issuance of a temporary restraining order. However, all of the factors that apply to a preliminary injunction also weigh in favor of granting preliminary relief here.

⁴ Vermont Agency of Agriculture, Food and Markets, *Farm Definitions and Determinations*, <https://agriculture.vermont.gov/water-quality/regulations/farm-definitions-and-determinations>.

The Vermont Supreme Court has held that four factors must be considered in determining whether to grant a preliminary injunction: “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.”⁵

First, for the reasons noted in detail below, ANR and the Intervenors have established a threat of irreparable harm. In fact, they have established a substantial immediate and irreparable injury.

Second, the record demonstrates that there is little, if any, harm to the petitioner from being enjoined at this time. The only possible harm to the petitioner is a delay in his site-clearing activities, if he is ultimately allowed to undertake those activities. But there would not appear to be even a delay here, as the petitioner testified that he is unlikely to do any sheep farming or hemp growing in 2020. Further, even if there were a delay, other courts have held that when the “anticipated revenues from the logging” are “delay[ed]” due to an injunction, the harm is “at most the time value of the profit component of that revenue, a value which no one has bothered to quantify and which probably is trivial.”⁶ The same could be said here.

Third, regarding the likelihood of success on the merits, we find that 30 V.S.A. § 248(a)(2) precludes the petitioner from site-clearing activities while he is still pursuing CPGs and has certainly not received them. As explained above, Vermont law explicitly prohibits site preparation for electric generation without a CPG, and the petitioner admits that he continues to seek to place electric generation at this site.

Fourth, the public interest favors a preliminary injunction here. As other courts have noted, there is a “well-established public interest in preserving nature and avoiding irreparable environmental injury.”⁷ Further, “once those acres are logged, the work and recreational opportunities that would otherwise be available on that land are irreparably lost.”⁸ Additionally, as counsel for ANR noted in oral argument, the petitioner’s activities challenge the integrity of the Section 248 permitting process. The Commission issued an order on May 7, 2020, explicitly

⁵ *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 19, 205 Vt. 586, 596, 178 A.3d 313, 319 (2017).

⁶ *Cronin v. U.S. Dep’t of Agric.*, 919 F.2d 439, 445 (7th Cir. 1990).

⁷ *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) (quotation omitted); *see also*, e.g., *F.T.C. v. Staples, Inc.*, 970 F. Supp. 1066, 1091 (D.D.C. 1997) (finding a public interest in “the need to preserve meaningful relief” throughout all stages of the litigation).

⁸ *Id.* at 1137.

denying the petitioner's request to amend a pending application for a certificate of public good.⁹ Although the petitioner seeks reconsideration of that order, that order remains binding on the petitioner unless and until the Commission grants his request for reconsideration. Yet, the petitioner has gone ahead with making the very same permanent changes to the landscape that we told him he could not make when we denied his amendment request. As ANR correctly notes, this is an affront to the Section 248 permitting process. It creates a significant risk that undue adverse effects to the environment will occur before the Commission has had a chance to review the proposed project. This does not comply with the applicable statutes or serve the public interest.

Substantial Immediate and Irreparable Harm Under Commission Rule 2.406

The Vermont Supreme Court has recognized that preliminary relief is appropriate to avoid "irreparable damage during the pendency of the action" where "the injunction is required to preserve [the] status quo."¹⁰ A temporary restraining order or preliminary injunction "preserves the status quo."¹¹ This type of relief is particularly appropriate to prevent actions that "cannot be undone through monetary remedies."¹² The Vermont Supreme Court has thus denied preliminary relief when the challenged action "can be 'undone.'"¹³ On the other hand, when there is no way to undo something at a later time, a stay is necessary to avoid irreparable harm.

Here, substantial immediate and irreparable harm exists for at least two reasons. First, the proposed clearing of more than 20 acres of trees constitutes substantial immediate and irreparable harm. Second, the proposed site activity threatens one very rare and will negatively impact one rare plant species that have been documented to exist at this site.

The proposed tree clearing constitutes substantial immediate and irreparable harm because once those trees are cut, they cannot be restored. Thus, courts routinely hold that the logging of trees constitutes irreparable harm: "The logging of mature trees, if indeed incorrect in law, cannot be remedied easily if at all. Neither the planting of new seedlings nor the paying of

⁹ Docket 8454, Order of 5/7/2020 at 23-25.

¹⁰ *State v. Glens Falls Ins. Co.*, 134 Vt. 443, 450, 365 A.2d 243, 247 (1976).

¹¹ *Bank of New York Co. v. Ne. Bancorp, Inc.*, 9 F.3d 1065, 1067 (2d Cir. 1993).

¹² *Cate v. Oldham*, 707 F.2d 1176, 1189 (11th Cir. 1983).

¹³ *Taylor v. Town of Cabot*, 2017 VT 92, ¶ 42, 205 Vt. 586, 606, 178 A.3d 313, 326.

money damages can normally remedy such damage.”¹⁴ Consequently, the logging of trees “is irreparable for the purposes of the preliminary injunction analysis.”¹⁵

As for harm to rare plant species, ANR has established that rare species are found in areas on the site that are currently slated for clearing. In particular, at least three locations contain nimblewill muhly. Yet the petitioner’s forester stated that he plans to avoid only two locations on these 27 acres. This means that at least one location of nimblewill muhly will likely be destroyed if the clearing goes forward. Further, one of ANR’s witnesses testified that plants often move to new locations. The petitioner’s forester admitted that he is relying on a 2018 survey and that, although he and others visited the site in 2020 to look at the flagging that is currently in place, that visit did not include walking the 27 acres to look for new locations of rare plants. It is therefore likely that rare plants will be destroyed if this area is cleared. This constitutes substantial immediate and irreparable harm.

V. ORDER

Based on the foregoing, the Commission, pursuant to Board Rule 2.406, issues the following temporary restraining order and notice of hearing:

1. Allco and its affiliates and contractors shall immediately cease all tree clearing on the Apple Hill site;
2. Allco shall be prepared to show cause during this investigation why the tree-clearing activity shall not be considered site preparation as defined in Title 30; and
3. Allco shall cooperate fully with the Commission in its further investigation of this matter.
4. Pursuant to 30 V.S.A. §§ 8, 10, 203, and 209, and Commission Rule 2.406, an evidentiary hearing on whether to grant a preliminary injunction will be held by videoconference before the Public Utility Commission on July 9, 2020, at 9:30 A.M. This hearing will address whether the restraining order should be lifted and whether Allco’s tree-clearing activities were


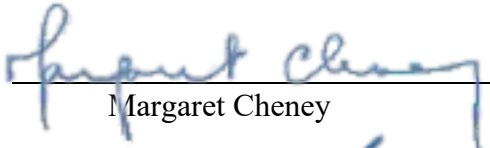
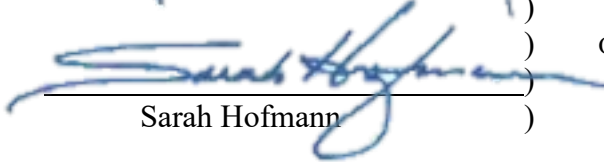
¹⁴ *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 764 (9th Cir. 2014).

¹⁵ *Id.*; see also, e.g., *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (holding that the logging of trees “satisfies the ‘likelihood of irreparable injury’ requirement”); *Cronin v. U.S. Dep’t of Agric.*, 919 F.2d 439, 445 (7th Cir. 1990) (holding that “trees cut down this fall will not have grown back to their present height” during the lifetime of most of the plaintiffs).

site-clearing operations without a certificate of public good in violation of 30 V.S.A. § 248(a)(2). A pre-meeting to address videoconferencing procedures will take place before the hearing at 9:15 A.M. The evidentiary hearing will be held remotely using a web-based online platform, GoToMeeting.¹⁶ Participants and members of the public may access the hearing online at <https://global.gotomeeting.com/join/134692885>, or call in using the following information: Phone number: +1 (646) 749-3112; access code: 276-668-837. Participants may wish to download the GoToMeeting software application in advance of the hearing at <https://global.gotomeeting.com/install/134692885>. Guidance on how to join the meeting and system requirements may be found at <https://www.gotomeeting.com/meeting/online-meeting-support>.


¹⁶ Pursuant to V.R.C.P. 43.1(c)(5), because of the COVID-19 pandemic, the Commission is waiving the 28-day requirement for notice of video hearings contained in V.R.C.P. 43.1(c)(3). Any party that objects to the evidentiary hearing being held remotely shall file its objection by July 2, 2020.

Dated at Montpelier, Vermont, this 26th day of June, 2020.

 _____)) PUBLIC UTILITY)) COMMISSION) OF VERMONT
Anthony Z. Roisman)	
_____)	
 _____)) COMMISSION)) OF VERMONT
Margaret Cheney)	
_____)	
 _____)) OF VERMONT
Sarah Hofmann)	

OFFICE OF THE CLERK

Filed: June 26, 2020

Attest: 
Acting Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 20-1611-INV - SERVICE LIST

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sarah.aceves@vermont.gov

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Department of Public
Service)

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(for Town of
Bennington)

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lblock@sover.net

(for Apple Hill
Homeowners Assoc)

L. Brooke Dingledine, Esq.
Valsangiacomo, Detora & McQuesten, P.C.
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lbrooke@vdmlaw.com

(for Apple Hill
Homeowners Assoc)
(for Libby Harris)(for
Mt. Anthony Country
Club)

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of Natural Resources)

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khayden@pfclaw.com

(for Chelsea Solar LLC)
(for Apple Hill Solar
LLC)

Maru Leon
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maru@mtanthonycc.com

(for Mt. Anthony
Country Club)

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(for Apple Hill Solar
LLC)

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thomas.melone@gmail.com

(for Chelsea Solar LLC)
(for Apple Hill Solar
LLC)

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james.porter@vermont.gov

(for Vermont
Department of Public
Service)

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Vermont Attorney General's Office
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EXHIBIT 6

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Investigation pursuant to 30 V.S.A. §§ 30 and) Case No. 20-1611-INV
209 into whether the petitioner initiated site)
preparation at Apple Hill in Bennington,)
Vermont, for electric generation in violation)
of 30 V.S.A. § 248(a)(2)

AFFIRMATION OF THOMAS MELONE
IN OPPOSITION TO ANR’S REQUEST FOR A TEMPORARY RESTRAINING ORDER

I, Thomas M. Melone, hereby declare and affirm under penalty of perjury:

1. I am the President of Allco Renewable Energy Limited (“Allco”). I represent PLH Vineyard Sky LLC, Apple Hill Solar LLC and Chelsea Solar LLC in the above-captioned matter. The facts set forth herein are based on my personal knowledge and if called as a witness I could competently testify thereto. This declaration is being provided in opposition to the Agency of Natural Resources request for a temporary restraining order.

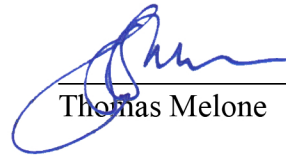
2. I am an attorney in good standing licensed to practice law in the states of New Jersey and New York for approximately thirty-six years. I am also an attorney in good standing licensed to practice law in the states of Massachusetts, Florida, Connecticut, Pennsylvania and Vermont. I have extensive experience as outside counsel in tax, energy and finance, including seven years practicing law with Cravath, Swaine & Moore in New York. I am currently a member of the litigation committee of the Board of Advisors of the Institute for Policy Integrity at New York University School of Law. I received my Juris Doctor with high honors from Rutgers Law School - Newark in 1983, my Master of Laws (LLM in taxation) from New York University School of Law in 1989 and my Certified Public Accountant certificate in 1980.

3. The site clearing activities (the “Clearing Activity”) underway at the parcels located in Bennington Vermont, one of which is proposed to be the location of solar facilities described in docket 8454 and case 17-5024, have nothing to do with those proposed solar facilities.

4. The Clearing Activity is being undertaken solely for the purpose of enabling the landowner, PLH Vineyard Sky LLC, to engage in agricultural activities related to sheep farming and hemp growing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: June 25, 2020



Thomas Melone

EXHIBIT 7

1 STATE OF VERMONT
2 PUBLIC UTILITY COMMISSION

3 CASE NUMBER 20-1611-INV
4

5 INVESTIGATION PURSUANT TO 30 V.S.A. SECTIONS 30
6 AND 209 INTO WHETHER THE PETITIONER INITIATED SITE
7 PREPARATION AT APPLE HILL IN BENNINGTON, VERMONT,
8 FOR ELECTRIC GENERATION IN VIOLATION OF 30 V.S.A.
9 SECTION 248(a) (2)

10 June 26, 2020
11 8:30 a.m.

12 -----
13 112 State Street
14 Montpelier, Vermont

15 Evidentiary Hearing held before the Vermont
16 Public Utility Commission via GoToMeeting video
17 conference on June 26, 2020, beginning at 8:30 a.m.

18 P R E S E N T
19

20 Commissioners: Anthony Z. Roisman, Chairman
21 Margaret Cheney
22 Sarah Hofmann

23 Staff: Steph Hoffman, Staff Attorney
24 Kyle Landis-Marinello, General Counsel
25 Michael E. Tousley, Staff Attorney

26 CAPITOL COURT REPORTERS, INC.
27 P.O. BOX 329
28 BURLINGTON, VERMONT 05402-0329
29 (802/800) 863-6067

30 Email: info@capitolcourtreporters.com

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16 BY: L. BROOKE DINGLEDINE, ESQUIRE

17 Annette Smith, Vermonters for a Clean Environment

18 Veronica Ung-Kono, PUC

19 Lora Block, Intervenor

20 Libby Harris, Intervenor

21 Maru Leon, Intervenor

22 Joseph Schoenig, Intervenor

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1 CHAIRMAN ROISMAN: Good morning. This is an
2 Evidentiary Hearing in Case Number 20-1611-INV, which
3 is an investigation pursuant to 30 V.S.A. Sections 30
4 and 209 into whether the Petitioner initiated site
5 preparation at Apple Hill in Bennington, Vermont, for
6 electric generation in violation of 30 V.S.A. Section
7 248(a)(2). My name is Anthony Roisman. I am the chair
8 of the Vermont Public Utility Commission, and with me
9 are my fellow commissioners, Margaret Cheney and Sarah
10 Hofmann. In addition, also with me are Kyle
11 Landis-Marinello, our general counsel, and Mike
12 Tousley, a staff attorney. Stephanie Hoffman of the
13 Commission staff is serving as the GoToMeeting platform
14 manager for the hearing.

15 I appreciate the flexibility and responsiveness
16 you have all shown by being here for this emergency
17 hearing to address whether site clearing being
18 conducted on Apple Hill in Bennington, Vermont,
19 violates Section 248(a)(2) of Title 30 and whether a
20 temporary restraining order under Commission Rule 2.406
21 is necessary to avoid harm.

22 This case is not about the merits of the proposed
23 Willow Road or Apple Hill solar facilities. We are
24 here because the Commission has jurisdiction over any
25 company that may be engaging in preparation of a site

1 for an electric generation facility. We're here to see
2 if the tree clearing occurring on Apple Hill is site
3 preparation under 30 V.S.A. 248(a)(2) and, if so,
4 whether we should restrain further site preparation by
5 issuance of a temporary restraining order. We also
6 need to determine if further proceedings are
7 appropriate in this investigation pursuant to 30 V.S.A.
8 Sections 30 and 209.

9 If a party or a participant intends to record the
10 hearing via video or audio, please indicate this when
11 you provide your name to the court reporter. We
12 realize feelings about these two projects are strong on
13 all sides, and we appreciate the intense interest and
14 effort by all parties to make their cases persuasively.
15 However, ad hominem attacks and similar lines of
16 argument are not appropriate and will not be tolerated.
17 The purpose of this proceeding is to receive facts and
18 legal arguments.

19 We'll start with participants' appearances, and
20 I'll start with asking each party to indicate who their
21 representative is for the purpose of this hearing,
22 whether they support or oppose the granting of a TRO,
23 and whether they will be presenting evidence and, if
24 so, in what form. We'll start with the Department of
25 Public Service.

1 MS. ACEVES: Good morning. My name is Sarah
2 Aceves representing the Department of Public Service
3 today regarding a temporary restraining order. The
4 Department does not oppose such a restraining order.

5 CHAIRMAN ROISMAN: Does the Department
6 support?

7 MS. ACEVES: We are not prepared to say
8 whether or not we support a temporary restraining order
9 at this time. We have reviewed all of the filings.
10 However, we still have reservations as to whether the
11 criteria for a temporary restraining order has been met
12 and would be prepared to weigh in on that in a
13 briefing.

14 CHAIRMAN ROISMAN: Okay. The Agency of
15 Natural Resources?

16 MR. EINHORN: Good morning. This is Don
17 Einhorn. I apologize. I don't have video. I am
18 representing the Agency. We filed yesterday a
19 memorandum along with two affidavits with the company
20 exhibits. One affidavit is from Robert Lowkes, and he
21 is available and, I understand, on the phone
22 participating. I would ask that he be allowed to go
23 first, if at all possible, because he does have prior
24 plans for today. And then our other witness who also
25 we filed an affidavit for was, is Bob Popp, and he is

1 available as well.

2 CHAIRMAN ROISMAN: Okay. Thank you.
3 Intervenors of Apple Hill Homeowners Association? Ms.
4 Block, I see you've turned on your microphone, but I'm
5 not hearing anything.

6 MS. BLOCK: Well, I didn't say anything yet,
7 because I thought our attorney, Brooke Dingledine, was
8 about to speak, but she is muted. So I am here as an
9 intervenor to listen.

10 CHAIRMAN ROISMAN: Okay. Will you have a
11 representative who will speak for the Apple Hill
12 Homeowners Association on this, in this hearing today?

13 MS. BLOCK: Yes. That is Brooke Dingledine,
14 who I see her photo on the screen, but her mic is
15 muted, and she will be speaking for the Apple Hill
16 Association.

17 CHAIRMAN ROISMAN: All right. Ms.
18 Dingledine, could you please enter your appearance?
19 Apparently, she does not hear us. Ms. Block, could you
20 give her a call and let her know that, for whatever
21 reason, she doesn't appear to be hearing us.

22 MS. BLOCK: Sure, yeah. I will try to
23 contact her. Yes, I will. I will mute myself while
24 I'm trying to call her.

25 CHAIRMAN ROISMAN: Okay. Thank you, Ms.

1 Block. Any other parties other than the petitioner who
2 are on this call who are participating today? Okay.
3 The petitioner, Mr. Melone?

4 MS. STONE: Sorry. This is Alison Stone from
5 the Agency of Agriculture. I was having trouble
6 unmuting here.

7 CHAIRMAN ROISMAN: Oh, okay. Sorry.

8 MS. STONE: Good morning. The Agency is not
9 taking a position at this time, but I'm here to, I'm
10 here representing them, and we will not be requesting
11 or taking a position on the TRO at this time.

12 CHAIRMAN ROISMAN: Will you be participating
13 in the hearing in any way, Ms. Stone, by examining
14 witnesses or making legal arguments?

15 MS. STONE: No, I will not.

16 CHAIRMAN ROISMAN: Thank you. All right.
17 Ms. Dingleline, I see that your phone seems to be on.
18 Can you hear us?

19 MS. DINGLELINE: I don't know if you folks
20 can hear me, but I can't hear anything.

21 CHAIRMAN ROISMAN: We can hear you.

22 MS. DINGLELINE: So perhaps I will leave the
23 meeting and sign back in. I don't know why I can't
24 hear anything.

25 CHAIRMAN ROISMAN: Okay. We'll wait a moment

1 for Ms. Dingledine. Mr. Melone, I'm going to put you
2 on hold for a moment. We'll see if we can get her back
3 on the line. And, Ms. Steph Hoffman, is there anything
4 that you can do at the platform to see if there's a
5 problem as to why Ms. Dingledine would not be hearing
6 us?

7 MS. HOFFMAN: I can't see anything on my end,
8 but I will reach out to her and see if I can
9 troubleshoot with her computer if she can't hear us
10 still. Here she is.

11 CHAIRMAN ROISMAN: All right. Ms. Dingledine,
12 can you hear us now?

13 MS. DINGLEDINE: Yes, I can. Thank you.

14 CHAIRMAN ROISMAN: All right. Thank you.

15 MS. DINGLEDINE: I'm sorry.

16 CHAIRMAN ROISMAN: Okay. Well, we're all new
17 to this technology. It's a different world. Before
18 Mr. Melone, I'll ask you now if you will enter an
19 appearance and indicate whether you are the
20 representative who will be speaking for the Apple Hill
21 Homeowners Association and Libby Harris. Ms.
22 Dingledine, you're muted.

23 MS. DINGLEDINE: I beg your pardon. I did
24 not hear you. I think I need to leave my mic on, I
25 believe, because, when I'm turning it to mute, I'm not

1 hearing anything for some reason.

2 CHAIRMAN ROISMAN: Okay. You can also use a
3 telephone. You can use the telephone line. We've
4 sometimes had people who were, they were visually
5 online, but they spoke through the telephone. But it's
6 okay if you leave your speaker on. There doesn't seem
7 to be any background noise there.

8 So my question is, Are you going to be the
9 representative who will be speaking for the Apple Hill
10 Homeowners Association and Libby Harris?

11 MS. DINGLELINE: Yes, and also the Mount
12 Anthony Country Club.

13 CHAIRMAN ROISMAN: Okay. And are you
14 supporting or opposing the TRO?

15 MS. DINGLELINE: We are supporting the TRO.
16 And, if I could just add some information briefly --

17 CHAIRMAN ROISMAN: No, not at this point, Ms.
18 Dingleline.

19 MS. DINGLELINE: Okay.

20 CHAIRMAN ROISMAN: But will you be offering
21 any witnesses?

22 MS. DINGLELINE: This morning I filed an
23 affidavit of Joseph Schoenig. It's a very brief
24 affidavit relating to activity, site activity on the
25 Lot Number 1 that's part of the Apple Hill project, but

1 it's in the residential development.

2 CHAIRMAN ROISMAN: All right. And will he be
3 appearing as a witness today, or are you going to offer
4 his affidavit without him appearing?

5 MS. DINGLELINE: I will offer an affidavit.
6 If there is a desire to cross-examine, I may be able to
7 arrange that.

8 CHAIRMAN ROISMAN: Okay, all right. We'll
9 wait until that time comes and, and deal with it at
10 that time. All right. Now, Mr. Melone, after
11 postponing you on behalf the Petitioner.

12 MR. MELONE: Thank you, Mr. Chairman. Good
13 morning, commissioners and others. My name is Tom
14 Melone. I'm representing the landowner, Vineyard Sky
15 or PLH Vineyard Sky, LLC; Apple Hill Solar, LLC; and
16 Chelsea Solar, LLC. We oppose the issuance of a
17 temporary restraining order. Last night we filed
18 affidavits from myself and from Bob Kobelia, the
19 contractor that is actually doing the clearing. I am
20 obviously available for cross-examination, and I'm
21 expecting Mr. Kobelia to join at some point as well if
22 anyone wants to cross-examine him.

23 CHAIRMAN ROISMAN: Okay, thank you. All
24 right. Now, are there any members of -- well, first of
25 all, I see that some people are here who are part of

1 government agencies. Mr. Coster, Mr. Porter, would you
2 please identify yourselves for the record?

3 MR. PORTER: Yes. Jim Porter with the
4 Department of Public Service.

5 CHAIRMAN ROISMAN: All right. Mr. Coster?

6 MR. COSTER: This is Billy Coster with the
7 Agency of Natural Resources. I'm just going to monitor
8 this briefly. Then I'll have to step off at 9:00.
9 Thank you.

10 CHAIRMAN ROISMAN: Okay. And Ms. Ung-Kono?

11 MS. UNG-KONO: Veronica Ung-Kono, intern at
12 the Public Utility Commission, and I will also be
13 hopping off at 9:00. I'm just monitoring this briefly.
14 Thank you.

15 CHAIRMAN ROISMAN: Okay. And, Ms. Harris,
16 would you identify yourself for the record, please?
17 Ms. Harris, can you hear us?

18 MS. HARRIS: Yes. I'm sorry. This is Libby
19 Harris.

20 CHAIRMAN ROISMAN: Okay, thank you. And Ms.
21 Maru?

22 MS. LEON: Hi. This is Maru Leon.

23 CHAIRMAN ROISMAN: Okay. And Ms. Smith?

24 MS. SMITH: This is Annette Smith, and I am
25 video-recording this for the public.

1 CHAIRMAN ROISMAN: All right. Thank you.

2 MS. HARRIS: Okay. Mr. Tousley?

3 CHAIRMAN ROISMAN: I'm sorry.

4 MS. HARRIS: This is Libby Harris. I just
5 want to let you know that Joe Schoenig is here with me,
6 and I will have to leave for a meeting shortly, but he
7 will stay through the whole hearing.

8 CHAIRMAN ROISMAN: Okay, all right. Thank
9 you. Thank you, Ms. Harris. Okay. I think we've
10 gotten everyone. The court reporter, I'm not going to
11 have you identify yourself, but thank you again for
12 being with us.

13 And, as you know, everything is different since
14 the COVID-19 pandemic, and the Commission is limiting
15 in-person contact, and, as a result, the parties have
16 agreed to conduct this hearing remotely. I'd like to
17 take a moment to confirm that all parties have
18 consented to having a remote hearing. If anyone no
19 longer consents to conducting this hearing remotely,
20 they must speak up now.

21 We're using the web-based platform GoToMeeting,
22 and this hearing will use some special procedures
23 uniquely related to a web-based platform. Those
24 procedures were discussed with the parties prior to the
25 start of this hearing and are available on the

1 Commission's website under the COVID-19 changes link,
2 and they are being added to the record of this case,
3 those guidelines, as Commission Exhibit Number 1 so the
4 record is clear on what the guidance was. If anybody
5 has any objection to that, please speak up now.

6 (Exhibit marked Commission Exhibit 1 was
7 admitted into the record.)
8 <https://puc.vermont.gov/about-us/changes-public-utility>
9 [-commissions-operations-due-covid-19-pandemic](https://puc.vermont.gov/about-us/changes-public-utility)

10

11 Finally, as we discussed in our procedural order
12 yesterday, the hearing will begin by the parties each
13 making a brief, five-minute opening statement and
14 presenting evidence, including any affidavits or live
15 testimony. This will be followed by cross-examination
16 of any witnesses by the parties and the Commission,
17 redirect examination, and closing arguments of no more
18 than ten minutes by each of the parties.

19 Given the fact that the Department has indicated
20 that it will, at this time, not take a position either
21 for or against the issuance of a TRO, I would propose
22 that the Department's time occur after the presentation
23 of those who support the TRO and just before the
24 presentation of the parties who oppose the TRO. Does
25 the Department have any problem with that process?

1 MS. ACEVES: No. I think that makes sense.
2 Thank you.

3 CHAIRMAN ROISMAN: Okay. Then, I think we'll
4 start, and, Mr. Einhorn, I think we can start with the
5 Agency of Natural Resources, both because you are the
6 party that has moved for the TRO and also, as you
7 requested, if you would like to begin with your first
8 witness, Mr. Lowkes, to accommodate his schedule, I
9 think that will help. So, Mr. Einhorn, the, the
10 platform is yours, and I believe that Ms. Hoffman has
11 explained to you how you can become a presenter so
12 that, if you have exhibits that you wish us to see, you
13 can put them on the screen.

14 MR. EINHORN: Thank you, Chairman Roisman. I
15 guess, with regard to that, we did, the Agency, file a
16 memorandum yesterday, two affidavits and exhibits
17 accompanying the affidavits. So, in that regard, is
18 that something I need to share, or they are in, filed
19 in ePUC, so I'm not sure.

20 CHAIRMAN ROISMAN: I don't think you need to
21 share them on the screen, unless someone wants to ask a
22 question about them and feels that it's important for
23 them to be seen, but I do think you need to decide
24 whether you wish to offer them in evidence, and, if so,
25 this would be the time to do that, and then the parties

1 will have an opportunity to express their view as to
2 whether they should be admitted into evidence.

3 MR. EINHORN: Yes, absolutely, the Agency
4 does ask that they be moved into evidence, and I have
5 both witnesses here who are available to testify in
6 that regard. And, you know, as far as just a quick
7 overview of the Agency's position, Mr. Chairman, you're
8 correct. The Agency does support a temporary
9 restraining order.

10 I think there are essentially two issues here to
11 deal with in this matter. The first issue is certainly
12 the overarching issue, and that is, Is there site
13 preparation or site clearing in violation of the
14 prohibition contained in Section 248(a)(2)? The Agency
15 believes that there is. I think the evidence presented
16 both from the Agency and from Petitioner itself
17 indicates that there is site clearing taking place. So
18 the question is, Is that in violation of the
19 prohibition?

20 The second issue is, What is the harm? What is
21 the harm of the clearing that's taking place? And I
22 think there are really two parts to that. If this is
23 determined to be site preparation without a certificate
24 of public good, then the degree of harm will, will
25 naturally be factored into what an ultimate penalty is.

1 The other issue, which is, I guess, a little more
2 urgent at this point in time, is, Is there a need for a
3 temporary restraining order?

4 As Mr. Melone pointed out in his filing last
5 night, the Agency, in, in our memorandum yesterday, did
6 not get into the four elements or factors of a
7 temporary restraining order. My main objective
8 yesterday was to get, in a very timely manner, the
9 facts and our observations in evidence before the
10 Commission and all the parties so they could examine
11 those.

12 I'm certainly prepared to discuss how those facts
13 then fall into the four factors that are analyzed as to
14 whether or not a temporary restraining order is
15 appropriate. My preference is I can do that at the
16 end. That would take a little bit more time. I can
17 also address at the end in closing the argument set
18 forth by the Petitioner as to why this isn't site
19 preparation. I think the three cases cited, Beaverwood
20 Energy, Monument Farms, Georgia Mountain, are clearly
21 distinguishable and frankly have nothing to do with
22 what's going on here in, in this case.

23 CHAIRMAN ROISMAN: So, Mr. Einhorn.

24 MR. EINHORN: Yes.

25 CHAIRMAN ROISMAN: I think it is appropriate

1 for you to hold that for the argument at the end.

2 MR. EINHORN: Great. So, with that, I again
3 move the, the two affidavits and accompanying exhibits,
4 and I would offer our witnesses for cross-examination,
5 the first being Mr. Lowkes.

6 CHAIRMAN ROISMAN: All right. First, let's
7 see if any party objects to the admission of those
8 documents. Ms. Dingledine?

9 MS. DINGLEDINE: No objection.

10 CHAIRMAN ROISMAN: Okay. Ms. Aceves?

11 MS. ACEVES: No objection.

12 CHAIRMAN ROISMAN: Mr. Melone?

13 MR. MELONE: No objection.

14 CHAIRMAN ROISMAN: Okay. Then those
15 documents will be admitted. Mr. Einhorn, for purposes
16 of the record, can you identify each document and give
17 it an exhibit number so that it will be clear in the
18 record which document is ANR Exhibit 1 and ANR Exhibit
19 2, etc.?

20 MR. EINHORN: Okay, sure. I would then
21 designate the affidavit of Patrick Lowkes dated June
22 24, 2020 consisting of two pages to be ANR Exhibit 1,
23 and the four photos that accompany that affidavit,
24 which are identified as Exhibits A through D in that
25 affidavit, I would designate them as ANR Exhibits 2, 3,

1 4, and 5. And then the second affidavit filed by the
2 Agency is the affidavit of Robert Popp, also of June
3 24, and that I would designate as ANR Exhibit 6, and
4 that had three exhibits attached to it identified as A,
5 B and C, and I would designate those as ANR Exhibits 7,
6 8, and 9.

7 (Exhibits marked ANR 1 through 9 were admitted
8 into the record.)

9 <https://epuc.vermont.gov/?q=downloadfile/415891/150086>
10 <https://epuc.vermont.gov/?q=downloadfile/415892/150086>
11 <https://epuc.vermont.gov/?q=downloadfile/415893/150086>
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1 CHAIRMAN ROISMAN: Okay. Thank you, Mr.
2 Einhorn. Mr. Einhorn, we're going to go through this
3 just as if we were sitting in the hearing room. So you
4 may now call your first witness, and Commissioner
5 Cheney will swear the witness in.

6 MR. EINHORN: Thank you. I call Patrick
7 Lowkes.

8 PATRICK LOWKES,
9 Having been duly sworn to tell the truth,
10 testifies as follows:

11 COMMISSIONER CHENEY: And will we be seeing
12 Mr. Lowkes on camera?

13 MR. EINHORN: I believe he is calling in by
14 phone.

15 COMMISSIONER CHENEY: All right.

16 CHAIRMAN ROISMAN: Okay, Mr. Einhorn.

17 DIRECT EXAMINATION BY MR. EINHORN

18 Q. Thank you. Mr. Lowkes, would you state, spell
19 your name, and identify your position with the Agency?

20 A. Yes. Patrick Lowkes, L-O-W-K-E-S. I am an
21 enforcement officer with the Vermont Department of
22 Environmental Conservation.

23 Q. And on June 24th did you sign a two-page
24 affidavit?

25 A. I did.

1 Q. And is the information contained in that affidavit
2 true and accurate?

3 A. It is.

4 Q. And the four photographs that accompany that
5 affidavit, were they taken by you?

6 A. They were.

7 Q. And do they accurately depict what you observed at
8 that time?

9 A. I believe they do.

10 MR. EINHORN: Okay. Mr. Lowkes is available
11 for questioning.

12 CHAIRMAN ROISMAN: Okay. Ms. Dingledine, do
13 you have any questions for Mr. Lowkes?

14 MS. DINGLELINE: Yes, yes. Thank you.

15 CROSS-EXAMINATION BY MS. DINGLELINE

16 Q. Mr. Lowkes, this is brook Dingledine. I had a
17 question for you. Were you able to determine when you
18 were on the site where the rare species were relative
19 to the pictures and the viewing of the property that
20 you engaged in?

21 A. Thank you, Ms. Dingledine. I was charged with
22 visiting the site to determine whether site activity
23 had commenced, land clearing, so on and so forth. I am
24 not a botanist. I was not asked to identify, locate,
25 or assess their location for clearing of said rare

1 and/or threatened species.

2 Q. And, in terms of what you observed when you were
3 on the site, we saw some pictures that looked like a
4 dirt road had been created. Is that a fair assessment
5 that it looked like a road, roads that were cleared?

6 A. At the end of Willow Lane, Road -- I don't
7 remember which it is. At the end of Willow Lane, it
8 appeared as though a turnaround area or a log landing,
9 if you will, had been cleared, and beyond that it
10 appeared as though a swath of cleared land along the
11 property line had been established.

12 CHAIRMAN ROISMAN: Mr. Lowkes, for clarity,
13 Mr. Lowkes, for clarity, could you identify which of
14 the photographs you're talking about when you're
15 describing an area that looked like it might be a
16 logging area, a log landing area, and an area that
17 looked like it was a more general clearing?

18 MR. LOWKES: I, I need to open up that email.
19 Bear with me for a second.

20 CHAIRMAN ROISMAN: Sure.

21 MR. LOWKES: I have Exhibit, Exhibit B
22 depicts the, the log landing area, the cleared area at
23 the end of Willow, Willow Lane, Willow Road.

24 CHAIRMAN ROISMAN: Okay. And, Mr. Einhorn,
25 if I remember correctly, that's what's been marked as

1 ANR Exhibit 3?

2 MR. EINHORN: That is correct, Mr. Chairman.

3 Thank you.

4 CHAIRMAN ROISMAN: Okay. Thank you, Mr.

5 Lowkes. Go ahead, Ms. Dingledine.

6 BY MS. DINGLEDINE:

7 Q. Thank you. And, Mr. Lowkes, as I view ANR's
8 Exhibit Number 3, that photograph, can you describe
9 what I'm looking at in terms of it looks like there are
10 things sticking out of the dirt on the ground? Can you
11 identify what those squiggly things are? Are those
12 roots of trees or sticks or --

13 A. Of course, I had to mute my computer, because I
14 have a clock with birds that chirp on the hour. I
15 apologize for that. Exhibit, Exhibits A through D, you
16 had referenced 3. Can I assume that's Exhibit C?

17 Q. B, like boy.

18 A. B, like boy?

19 Q. Right. The one you were just discussing and
20 talking about.

21 A. I believe those are, are sticks or tree roots, if
22 that's what you're asking.

23 Q. So is it fair to say that, not only soils have
24 been excavated on site, but it also appears that trees
25 have been removed, pushed down and bulldozed over?

1 A. Having not been to the site prior to this day, I,
2 I'm not sure if trees had been cut down in that
3 location or if, if that's native soil, if fill had been
4 brought in. I didn't inquire about that. I don't know
5 the answer.

6 Q. Okay. In terms of all the areas that you saw, are
7 your conclusions that trees were removed, however that
8 might have happened, in terms of what you saw and
9 observed as the remaining area, or -- go ahead.

10 A. Again, I, I was not there to assess the, the
11 degree of, of land clearing or tree removal. I was
12 charged with determining whether any site activity had,
13 had begun. I can't speak to whether this area that
14 we're looking at had trees or other vegetation prior to
15 my site visit, and the same would go for areas along
16 the property line as depicted in, in my other exhibits.
17 I can't say what vegetation was there prior to my site
18 visit.

19 Q. So your conclusion after visiting the site and
20 observing it is that there was physical action on the
21 land and site preparation was commenced; is that
22 correct?

23 A. I would agree with that statement, yes.

24 Q. And would that be on both areas, on the Apple Hill
25 site and the Chelsea Solar site, or the Willow Road

1 it's known as now?

2 A. I only visited, I believe this would be the Willow
3 Road area, this log landing, if you will, and the
4 property line extending from this log landing by not
5 more than 200 meters would be my estimate is how far I
6 walked from this log landing. At that point, I had
7 established or had determined that site activity had
8 begun.

9 MS. DINGLELINE: Thank you very much. That's
10 all I have.

11 CHAIRMAN ROISMAN: Ms. Aceves, do you have
12 any questions for this witness?

13 THE WITNESS: You're welcome.

14 MS. ACEVES: Not at this time. Thank you.

15 CHAIRMAN ROISMAN: Okay. Mr. Melone?

16 MR. MELONE: Thank you, Mr. Chairman.

17 CROSS-EXAMINATION BY MR. MELONE

18 Q. Good morning, Officer Lowkes. So I just want to
19 confirm that you were not asked to identify any
20 conservation areas or RTE areas; is that correct?

21 A. That is correct.

22 Q. And could you look at your Exhibit A?

23 CHAIRMAN ROISMAN: Mr. Melone, I believe
24 that's ANR Exhibit 1.

25 MR. MELONE: Okay. Sorry about that, Mr.

1 Chair.

2 CHAIRMAN ROISMAN: No, that's okay.

3 BY MR. MELONE:

4 Q. Now, let me know when you have that available.

5 A. I have Exhibit A loaded on my screen, correct.

6 Q. Okay. So, on the left side about halfway up,
7 there is a yellow or an orange silt fence, you see, or
8 an orange fence. Do you see that?

9 A. I do.

10 Q. And then to the right of that there is orange
11 tape. Do you see that?

12 A. I do.

13 Q. So did you ask Robert Kobelia what is behind the
14 orange tape or why that area was set off from what he
15 was clearing?

16 A. I did not ask Mr. Kobelia what the orange tape was
17 for. However, Mr. Kobelia did explain that he was
18 clearing along the property line and that two things
19 were being installed, silt fencing as well as perimeter
20 tape. He identified the orange tape as perimeter tape.

21 Q. And, when you were there, did he show you a map at
22 all?

23 A. He did.

24 Q. And did he say or did he point on that map to
25 where he was told the conservation areas were?

1 A. I don't recall him identifying conservation areas.
2 When we looked at the map together, he located where
3 his truck was parked or the, the log landing, the first
4 exhibit we looked at, as well as our location at the
5 time along the property line.

6 Q. Okay. Do you remember if anything on the map
7 indicated where conservation areas were?

8 A. I remember conservation areas being located on the
9 map. I did not inquire about their location relative
10 to our location at the, at that time.

11 Q. Okay. And, when you saw the map, you did not go
12 and actually locate the conservation areas that were on
13 the map; is that correct?

14 A. That is correct.

15 Q. And about how long were you at the site?

16 A. I was at the site for less than, approximately 15
17 minutes.

18 MR. MELONE: Okay, all right. Thank you,
19 Officer Lowkes. No further questions.

20 MR. LOWKES: You're welcome.

21 CHAIRMAN ROISMAN: Okay. Ms. Hofmann,
22 Commissioner Hofmann, do you have any questions for
23 this witness?

24 COMMISSIONER HOFMANN: I do not. Thank you,
25 Mr. Chairman.

1 CHAIRMAN ROISMAN: Commissioner Cheney, do
2 you have any questions for this witness?

3 COMMISSIONER CHENEY: Not now, thank you.

4 CHAIRMAN ROISMAN: Mr. Landis-Marinello, do
5 you have any questions for this witness?

6 MR. LANDIS-MARINELLO: No, I don't.

7 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, do you
8 have any redirect examination for Mr. Lowkes?

9 MR. EINHORN: I do. Thank you.

10 REDIRECT EXAMINATION BY MR. EINHORN

11 Q. Mr. Lowkes, I believe it was Ms. Dingledine had
12 asked you a question something along the lines of, Did
13 you look at the Apple Hill site portion or the Chelsea,
14 also known as Willow Road, site portion, and you said
15 you looked at the Willow Road area. By saying you
16 looked at the Willow Road area, are you referring to
17 the 27-acre parcel that essentially begins at the end
18 of Willow Road?

19 A. That is correct.

20 MR. EINHORN: Thank you. That's all I have.

21 CHAIRMAN ROISMAN: All right. Mr. Lowkes,
22 you're excused. Thank you for your testimony. Mr.
23 Einhorn, do you have another witness?

24 MR. EINHORN: I do. Thank you. The Agency
25 calls Bob Popp.

1 CHAIRMAN ROISMAN: All right. As soon as Mr.
2 Popp comes on, we will have Commissioner Cheney swear
3 him in. He's not live at the moment. There he is.
4 Okay. Commissioner Cheney. Commissioner Cheney,
5 you're muted. Commissioner Cheney, you're still muted.
6 Commissioner Cheney, we're not hearing anything.
7 Commissioner Hofmann, would you be available to swear
8 in the witness, please?

9 COMMISSIONER HOFMANN: I would, if I could
10 only remember the words after all these years.

11 CHAIRMAN ROISMAN: You're asking him to tell
12 us the truth.

13 COMMISSIONER HOFMANN: Yes, I was just going
14 to say, Do you swear or affirm to tell the truth, Mr.
15 Popp?

16 COMMISSIONER CHENEY: Oh, can you hear me
17 now? All right. I'll give you the full question. Do
18 you swear or affirm under penalty of perjury that the
19 testimony you are about to give will be the truth, the
20 whole truth, and nothing but the truth?

21 MR. POPP: I do.

22 COMMISSIONER CHENEY: Thank you and my
23 apologies for the technical difficulties.

24 CHAIRMAN ROISMAN: We're all, we're all
25 getting used to this. Mr. Einhorn?

1 ROBERT POPP,

2 Having been duly sworn to tell the truth,

3 testifies as follows:

4 DIRECT EXAMINATION BY MR. EINHORN

5 Q. Thank you, Mr. Chairman. Mr. Popp, would you
6 please identify yourself, spell your name, and indicate
7 your position with the Agency?

8 A. My name is Robert Popp, and I'm the botanist for
9 the Fish and Wildlife Department, and I keep track of
10 all the rare and endangered plants throughout the
11 state.

12 Q. Did you sign a four-page affidavit on June 24 in
13 connection with this matter?

14 A. I did.

15 Q. And is your affidavit true and accurate?

16 A. It is.

17 Q. And you included three exhibits with your
18 affidavit; is that correct?

19 A. That is correct.

20 Q. And, just for the record, those, those are now in
21 evidence as ANR 7, 8, and 9. And, Mr. Popp, are you
22 familiar with those three exhibits?

23 A. I am.

24 MR. EINHORN: Thank you. The Witness is
25 available for questioning.

1 CHAIRMAN ROISMAN: Ms. Dingledine, do you
2 have any questions for this witness?

3 MS. DINGLELINE: No, I do not. Thank you.

4 CHAIRMAN ROISMAN: Okay. Ms. Aceves, do you
5 have any questions for this witness?

6 MS. ACEVES: I do not. Thank you.

7 CHAIRMAN ROISMAN: Mr. Melone, do you have
8 any questions for this witness?

9 MR. MELONE: Good morning, Mr. Chairman.
10 Yes, I do.

11 CROSS-EXAMINATION BY MR. MELONE

12 Q. Good morning, Mr. Popp. What are the, the rare
13 species which you're concerned about on this site?

14 A. There are two of them present on the site, the
15 arrow-leaved aster and the Muhly grass. So, yeah,
16 that's one of the common names of it.

17 Q. And the white arrow-leaved aster, that's still
18 classified as S1 in Vermont; is that correct?

19 A. That is correct.

20 Q. Now, can you explain, in the case of the white
21 arrow-leaved aster, what that really means in terms of
22 the plant's viability or as a species?

23 A. Well, the ranking S1 is the rarest rank in the
24 state. All the native plants in the state are ranked
25 S1 through S5, S1 being very rare, S5 being ubiquitous,

1 common everywhere. The arrow-leaved aster is presently
2 known from only three populations in the state, all of
3 them in Bennington County. So it is, it's considered
4 to be quite rare and limited in the state.

5 Typically, S1 designates plants with five or fewer
6 populations in the state, and then S2 would be between
7 5 and 20 populations in the state, and then it
8 increases accordingly to the S ranks, which we don't
9 need to go into. So it means -- yeah, I'll stop there,
10 unless you have further questions.

11 Q. Okay. And, and how, how do you define a
12 population for that purpose?

13 A. Generally, a population is, consists of a group of
14 plants that we use approximately one kilometer
15 distance. So, if the plants are, you know, within a
16 few, like, hundred yards or something, that would be
17 one population, but, if there's a separation distance
18 of one kilometer or there's a major fragmenting
19 feature, such as Super 7 would be a major fragmenting
20 feature, because it would be hard for the plants to
21 jump across that. But it's, that's, yeah, it's, it's
22 subjective, and it's, yeah, that's the rule of thumb
23 that we follow.

24 Q. Okay. So how many populations are there in the
25 state?

1 A. We're aware of three, three populations.

2 Q. And one would be on this site; is that correct?

3 A. That is correct.

4 Q. One would be west of this site in the area of what
5 are generally known as the Battle Creek, Warner, and
6 Stark Solar projects; is that correct?

7 A. Yes, I know of it on the Warner site.

8 Q. And so on the Warner site the rail line that
9 separates the, or that divides the property on each
10 side, that would not be considered something that would
11 fragment the, a population, correct?

12 A. Correct.

13 Q. And where is the third site?

14 A. The third site is at the south end of Bennington.
15 It's a, it's on the edge. It's south of the cemetery.
16 I don't know specifically the name of the cemetery.
17 And it's a property that's owned by, it's like a
18 conservation organization that was there, like a
19 nursery. Yeah. I'm not sure if they're even still
20 there anymore.

21 Q. Okay. Now, does the Agency of Natural Resources
22 make any affirmative efforts to go out and scan for,
23 for populations of these plants?

24 A. I have not done a dedicated search for it. We've
25 known of the population in the cemetery for quite some

1 time, and, when I would visit that periodically to
2 monitor it, I would search in the general area, but,
3 yeah, just, I didn't just wander around everywhere
4 looking for it.

5 Q. And is there any way for an ordinary landowner to
6 know that they have any kind of rare plants on their
7 site?

8 MS. DINGLEDINE: I'm going to object to that
9 as irrelevant. This is Brooke Dingledine, for the
10 record.

11 CHAIRMAN ROISMAN: We'll overrule the
12 objection. You can answer the question, Mr. Popp.

13 MR. POPP: Okay, thank you. I'm sorry.
14 Would a normal person know they had it on their
15 property? Not unless, I mean, unless they could
16 identify it themselves or somebody who is skilled in,
17 you know, botanical identification could, would show it
18 to them, a consultant or myself or whatever, and we go
19 onto private property and, and do that on occasion.

20 BY MR. MELONE:

21 Q. And, when you do that on private property, is that
22 at the request of the landowner?

23 A. Sometimes, or sometimes, you know, like, if it's
24 adjacent to a known site, we may specifically ask if we
25 could go on their property and look for a particular

1 plant. So it could go either way.

2 Q. So does ANR have anything, say, posted on its
3 website that asks people in Vermont to report the
4 identification of listed species and showing them a
5 picture of what they look like and when they would be
6 likely to appear?

7 A. We have some information on our website, fact
8 sheets, what have you, and I, I'm pretty sure that it's
9 mentioned that, if you think you have one of these
10 plants, to let us know. But, yeah, it's, it's a mixed
11 bag. We, we, there is just one of me for the whole
12 state. So, if everybody started sending me photos of
13 plants to identify, that's all I would be doing.

14 Q. Right. So, if I wanted, if I owned some property
15 in Vermont and I saw a flower, you know, that I hadn't
16 seen all year, it sounds like there's no easy way for
17 me to go to ANR's website and kind of match the picture
18 to something.

19 A. There is a website where you can do that. It's
20 run by the New England Wildflower Society, or now
21 called the Native Plant Trust, and it's for all of New
22 England, and it's very, very good, and it's very
23 user-friendly, and we send people to that, and I always
24 provide links to that when I get requests for plants.
25 I'll identify it, and I'll say, you know, go to this

1 website, and there's lots of photos, and there's lots
2 of identification information, and it also gives
3 conservation status in all six New England states.

4 Q. So is it fair to say that you actually have no
5 idea as to whether or not there are just three
6 populations in Vermont or whether there are many more
7 of the white arrow-leaved aster?

8 MR. EINHORN: I'm going to object to this.
9 I'm not sure of the relevancy of this. The Petitioners
10 in Apple Hill, Chelsea, and Willow Road have
11 consultants working for them who have filed evidence in
12 the record of those cases confirming that we're dealing
13 with an S1 very rare species here. So I think we can
14 move past that.

15 CHAIRMAN ROISMAN: Mr. Melone, can you give
16 us some idea of what your motivation is here with this
17 line of questioning?

18 MR. MELONE: Yes, yes, I will, Mr. Chairman.
19 Earlier, Attorney Einhorn mentioned the harm that's
20 being, you know, potentially being done and the, the
21 rareness or lack thereof of the plants, and the, the
22 ability to verify if and how rare they, in fact, are,
23 not whether they're just listed based on a rule of
24 thumb, goes directly to, to the harm, and that's why,
25 in my view, it's very relevant.

1 CHAIRMAN ROISMAN: All right. I'll allow
2 this for a little bit, Mr. Melone.

3 MR. MELONE: Okay, thank you, Mr. Chairman.

4 BY MR. MELONE:

5 Q. So, Mr. Popp, again, is it fair to say that you
6 actually have no idea how many populations there are of
7 these plants in the state of Vermont?

8 A. That's not true at all. We have a, a very good
9 idea of the status and distribution of the rare plants
10 in the state. To say that we know of 100 percent of
11 all the populations of the rare plants is, is, you
12 know, just unfair, because we're, there's always places
13 where we haven't looked. Plants move around. So
14 there's always the potential for new populations. This
15 plant is known only from the Town of Bennington, and I
16 doubt very much it's much more widespread than that.
17 To say that it's, you know, more common, I find that
18 very, very unlikely.

19 Q. Okay. Now, you're also aware that part of the
20 population of white arrow-leaved asters near the Warner
21 solar site includes the rail corridor; is that correct?

22 A. Yes, it does.

23 Q. And is it fair to say that there are thousands of
24 white arrow-leaved aster plants located in the rail
25 corridor?

1 A. We've never received a complete account from the
2 consultant that was hired. I think it came up to maybe
3 a few hundred plants. I was out there with the
4 consultant. We did not do a complete count. I think
5 it's fair to say there's a few hundred. To say
6 thousands, I doubt that.

7 Q. But, now that you know or since you've known about
8 where that location is, have you gone out there on your
9 own to check to see how many plants are out there?

10 A. The Warner site, I was out there just once with
11 the consultant from working on the project, and we did
12 not count them that day. He was supposed to do that
13 and provide us a number, which we have not yet received
14 to my knowledge.

15 Q. Okay. And, to your knowledge, for the white
16 arrow-leaved asters in the rail corridor, has the
17 Agency of Natural Resources done anything to try to
18 protect them?

19 CHAIRMAN ROISMAN: Mr. Melone, this does seem
20 to be getting a little off the point. What's the
21 linkage between what is happening at a different site
22 and the question that's in front of us today?

23 MR. MELONE: Well, the linkage, Mr. Chairman,
24 is that ANR's claiming harm for potential destruction
25 of these plants when, basically, they've known that

1 there is a huge population of these plants on the rail
2 corridor and have taken no action to stop the railway
3 from destroying them, which the railway, in fact, does.

4 CHAIRMAN ROISMAN: Are you going to offer
5 some evidence on that?

6 MR. MELONE: If we get to the point of the
7 question of harm, we will.

8 MR. EINHORN: Yeah, again, I'm going to
9 object to this line of questioning. If Mr. Melone
10 wants to ask the Witness about how the activities that
11 have been observed have the potential to harm the
12 asters at this site, I think that's fine and that's
13 fair game. The, the discussion about asters at other
14 sites are, are irrelevant.

15 This is a 248 proceeding before the Commission.
16 The Commission has jurisdiction over these plants at
17 this site by virtue of the regulatory regime, namely
18 Section 248(b)(5), and I think that's what we're here
19 to review and discuss. I'd prefer that the questioning
20 be focused on the asters that are present at the site
21 in question.

22 CHAIRMAN ROISMAN: Mr. Melone, I tend to
23 think that Mr. Einhorn has a point. If you have one or
24 two more questions about this, I think we'd allow it.
25 Otherwise, I think we're sort of getting down a rabbit

1 hole.

2 MR. MELONE: Okay. I'll just ask two more
3 questions then.

4 BY MR. MELONE:

5 Q. Mr. Popp, for the population that includes this
6 site, what harm do you think there is to the white
7 arrow-leaved aster and the other S2 plant if the, if
8 the areas that were designated as conservation areas
9 are left intact?

10 A. I'm sorry. So what harm would there be if, if
11 those areas were left intact but the rest of the site
12 were to be cleared; is that what you're asking?

13 Q. Yes.

14 A. Okay. Assuming all the plants have been
15 transplanted, and I know the developer contracted with
16 Arrowwood Environmental to move the plants, then, if
17 the conservation areas are retained, then those, then
18 those plants would be protected, then, yeah, I'm
19 assuming that would be acceptable. I'd have to go back
20 and make sure they've all been moved. I can't recall,
21 because they got moved over a period of three years, as
22 I recall. Some were moved in 2014, some in 2017, 2018.
23 So it's kind of a convoluted, you know, transplantation
24 plan, but, if they were moved, then it would be, it
25 wouldn't be any harm to the plants.

1 Q. Okay. Thank you, Mr. Popp. That ends my
2 questions.

3 A. There was a monitoring plan that was established
4 with the conservation area, and I'm assuming that would
5 be followed. So the plants were watered, and then they
6 would be monitored for a period of years and weeded, if
7 need be, etc. So that would all, I'm assuming that
8 would all occur.

9 MR. MELONE: I have no further questions, Mr.
10 Chairman, for this witness.

11 CHAIRMAN ROISMAN: Okay. Commissioner
12 Hofmann, do you have any questions for this witness?

13 COMMISSIONER HOFMANN: I do not. Thank you.

14 CHAIRMAN ROISMAN: Commissioner Cheney?

15 COMMISSIONER CHENEY: Yes. When you said
16 that the maintenance would occur, to put that in
17 context, do you mean that the maintenance would occur
18 if a certificate of public good were granted and that
19 were a condition in the CPG?

20 MR. POPP: I'm sorry. I'm not sure I
21 followed the question. You're talking about
22 maintenance in the, in the conservation area?

23 COMMISSIONER CHENEY: Yeah. You mentioned
24 that they would be watered, potentially weeded, etc.

25 MR. POPP: Right.

1 COMMISSIONER CHENEY: Would that occur only
2 under certain circumstances, for example, if that were
3 required in a condition of a certificate of public
4 good?

5 MR. POPP: Well, if there were a CPG issued,
6 then that would be required, yes. Outside of that, I'm
7 not sure what, you know, what agreement there is to, to
8 maintain that conservation area. I'm not sure. Does
9 that answer your question?

10 COMMISSIONER CHENEY: Yes, thank you.

11 MR. POPP: There's, typically, when we reach,
12 like, an MOA within an, you know, such an agreement as
13 this, there's a transplantation and monitoring plan
14 that gets incorporated into the CPG as a condition. So
15 that's what I was referring to. If there's no CPG, I
16 don't know what the status of that monitoring plan
17 would be.

18 CHAIRMAN ROISMAN: Mr. Landis-Marinello, do
19 you, do you have any questions for this witness?

20 MR. LANDIS-MARINELLO: Yes, one question. So
21 in Paragraph 10 of your affidavit, you say you have not
22 been informed of any measures being taken to avoid rare
23 plants at the Willow Road parcel in connection with the
24 site clearing that is taking place. What do those
25 measures normally look like?

1 MR. POPP: Well, we would want -- I mean,
2 typically, if an area is being developed and it has
3 rare plants on it that are going to be protected or
4 avoided, we would want the area certainly flagged,
5 maybe silt barriers put up around it, just so they're
6 not inadvertently destroyed during the, the
7 ground-disturbing activities, the bulldozing that we
8 saw in the photos, and, to my knowledge, there was no
9 such flagging established on the site, and I couldn't
10 see any in the photos. So that's what we would want to
11 see at a minimum.

12 CHAIRMAN ROISMAN: Anything else, Mr.
13 Landis-Marinello? Mr. Popp, one question related to
14 this topic. When there is a conservation area like the
15 ones that apparently exist at the, at the Willow Road
16 site, is there usually also a buffer zone the way you
17 would do with a wetland, or is it just sort of right up
18 to the edge of where the endangered plant is located
19 that you must protect?

20 MR. POPP: Typically, there, there is a
21 buffer zone. So we would, when the plants get moved,
22 we would leave at least 10 or 20 feet around it,
23 because, as you know, plants, plants do move, they can
24 expand, and it also gives some, you know, some, just a
25 little bit of buffer between any ground-disturbing

1 activities, just so there's not any inadvertently,
2 inadvertent disturbance to the conservation area.

3 CHAIRMAN ROISMAN: Okay, thank you. Mr.
4 Einhorn, do you have any redirect for this witness?

5 MR. EINHORN: I do. Thank you, Mr. Chairman.

6 REDIRECT EXAMINATION BY MR. EINHORN

7 Q. Mr. Popp, with your affidavit you had included a
8 Rare Plant Monitoring Report from 2018, which was
9 Exhibit C in your affidavit, and in, in this matter
10 it's been marked as ANR Exhibit 9. Do you have that
11 2018 Rare Plant Monitoring Report handy?

12 A. I, I can open it up in a second. Okay.

13 Q. If you could, turn to Page 3 in that, please.

14 A. Yeah.

15 Q. And on Page 3 there is a figure, essentially a map
16 of the Apple Hill project site, that shows the location
17 of the rare plant conservation area, and it shows the
18 location of both the S1 very rare and the S2 rare
19 plants within the area that was to be cleared for Apple
20 Hill; is that correct?

21 A. It is.

22 Q. And is it also correct that the S2 plant, the
23 nimblewill, is not all transplanted to the conservation
24 area? In fact, there are plants that exist in four
25 locations throughout the area to be cleared; is that

1 correct?

2 A. It's correct they're not, they have not all been
3 moved, nor have all the aster plants been moved.
4 There's some in the lower left quadrant that are still
5 extant, still on site, because there was no activity
6 planned for there.

7 Q. Right. But the, the nimblewill that has not been
8 moved, and there's a discussion on that on Page 2 just
9 above, is within the area to be cleared, but it's not
10 within the conservation area, correct?

11 A. That is correct. You're referring to one, there's
12 like a cluster at Site D, for instance?

13 Q. Yes. And there's Site A, Site B, and Site C as
14 well where my understanding based on the description,
15 the language on Page 2, is that plants were left in
16 place at those areas as well.

17 A. Right. Some plants, I believe, were transplanted,
18 and some remained.

19 Q. So, to the earlier question that you had that, if
20 the two rare plant conservation areas were to be, that
21 were established, were to not be cleared, that would
22 still not protect all of the plants that exist on the
23 site at this time, correct?

24 A. It seems it would not protect all the Muhly grass
25 plants; that is correct, that they were not all moved.

1 That was an oversight on my part, because it looks like
2 some plants were moved from Sites A, B, and C, but not
3 all of them, and in Site D no plants were removed. So
4 it is correct. They would be impacted.

5 Q. And so then, in order to avoid that impact, not
6 only would the designated conservation area need to be
7 effectively barriered off with a buffer as, as you
8 explained to Chairman Roisman, but that the same
9 approach should be done for areas A, B, C and D where
10 the S2 plants remain?

11 A. That is correct. I mean, what we ideally want to
12 see is have a consultant go out there and mark where
13 the plants are, and then we would act accordingly, flag
14 those areas off or potentially move those plants to the
15 conservation area.

16 Q. And, to your knowledge, has that been done?

17 A. I'm not aware of any such activity.

18 MR. EINHORN: Thank you. I don't have any
19 further questions.

20 CHAIRMAN ROISMAN: Okay. Are there any
21 additional questions from any party based upon any of
22 the redirect? Ms. Dingleline?

23 MS. DINGLELINE: Thank you, Mr. Roisman. I
24 do have a question or two.

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CROSS-EXAMINATION BY MS. DINGLEDINE

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Q. Mr. Popp, the questions that you got from Mr. Melone about the rarity of these species, apparently, Mr. Melone has claimed that you can just order these species from some nursery and they can bring them on in and you can plant, replant these species. Is that a correct statement for either the S1 or the S2 species that are a subject of this MOU and that are supposed to be protected?

A. I have not personally looked into that. I, I would not be surprised if you could get the American Aster plant through a nursery. Many of Vermont's rare and endangered plants are available through nurseries. We don't know the provenance of those. They're generally from big nurseries out in the Midwest or down south somewhere, so the genetics are completely different than our plants. So we don't encourage people to plant those out in the wild or introduce them into native populations.

Q. So that doesn't have any impact on the ranking and the legal protection of these species once they are determined to exist, correct?

A. That is correct.

Q. And the other question I had had to do with you were talking about the monitoring plan, and there's a

1 responsibility to notify you as things are progressing,
2 and, and then you stated you assume that would occur.
3 Has it occurred to date?

4 A. We've received a 2018 and a 2019 monitoring plan,
5 monitoring report from Arrowwood Environmental.

6 Q. What, what month of those years do you typically
7 get that?

8 A. When did we receive them? Generally, I mean, I, I
9 don't know. We generally get them in the winter,
10 because that's typically when folks write reports,
11 because they're out doing field work in the summer.
12 So, usually, by January we're supposed to get them.

13 Q. Okay. So, so are you saying, like, January of
14 2020 you would have gotten the '19 report?

15 A. Yes.

16 Q. Okay.

17 A. On or around then.

18 Q. Okay. And there's been no interim reporting to
19 you to notify ANR that any activity was happening on or
20 near the rare species mapping areas, correct?

21 A. That is correct. We have not heard that from any
22 consultants or people doing the monitoring.

23 Q. So you have not had the opportunity to review or
24 consult with anyone regarding any construction or site
25 commencement activities out at the site; fair to say?

1 A. Correct.

2 Q. So you cannot, as you sit here, testify to any
3 measures that were taken to try to buffer or protect
4 the areas at issue, correct?

5 A. Correct.

6 MS. DINGLELINE: Thank you. That's all I
7 have.

8 CHAIRMAN ROISMAN: Ms. Aceves, any additional
9 questions just based upon the redirect?

10 MS. ACEVES: Not at this time. Thank you.

11 CHAIRMAN ROISMAN: Mr. Melone, any additional
12 questions?

13 MR. MELONE: Yes, Mr. Chairman.

14 RE-CROSS-EXAMINATION BY MR. MELONE

15 Q. Mr. Popp, in one of your answers to Attorney
16 Einhorn, you had noted that not all the Muhly grass
17 plants were transplanted. If a landowner in Vermont
18 had Muhly grass on their land and planned to dig
19 everything up to plant crops, is there any restriction
20 on doing that in the State of Vermont?

21 MS. DINGLELINE: I'm going to object, Your
22 Honor.

23 MR. EINHORN: I'm going to object to that as
24 well. Again, we're dealing with an investigation as to
25 whether site preparation without a certificate of

1 public good is taking place here, and that, that
2 prohibition doesn't apply to any landowner in Vermont.

3 MS. DINGLELINE: Mr. Roisman, if I can just
4 add, I'm also getting very concerned about the time. I
5 need to be in another PUC hearing in a half an hour.
6 So I really would like to cross-examine Mr. Melone to
7 hear from him.

8 CHAIRMAN ROISMAN: Ms. Dingleline, we've done
9 all we can to accommodate your conflict. I don't know
10 that we can do anything beyond that. The question that
11 Mr. Melone has asked of Mr. Popp was objected to. The
12 commissioners are going to go offline now, and we're
13 going to consult on that question. We'll come back on.

14 COMMISSIONER HOFMANN: Tony, you're muted.

15 CHAIRMAN ROISMAN: Okay. I was just saying
16 we're going offline.

17 (A discussion was held off the record.)

18 CHAIRMAN ROISMAN: Okay. We're back. We're
19 going to overrule the objection, but, Mr. Melone, we'd
20 like to not have this go on for many more questions,
21 couple more questions along this line.

22 MR. MELONE: Thank you, Mr. Chairman. I will
23 restrict the questioning to a few questions.

24 BY MR. MELONE:

25 Q. So, Mr. Popp, getting back to the question, if a

1 landowner in Vermont had Muhly grass on their site or
2 on their land and they wanted to plant crops on the
3 land and the consequence of that would be to, to
4 basically destroy all the Muhly grass, is there
5 anything in Vermont that prevents that?

6 A. The taking of the grass would be prohibited only
7 if, say, a project went through Act 250 or Section 248.
8 So, barring the need to get such a permit, then that
9 activity would not be restricted to a farm.

10 Q. And, and the same would apply to the white
11 arrow-leaved aster, correct? If there are white
12 arrow-leaved aster on a person's land and they were
13 going to plant crops on the land and the consequence of
14 that would be the destruction of the white arrow-leaved
15 aster? Okay.

16 A. Yeah.

17 MR. MELONE: Thank you. I have no other
18 questions, Mr. Chairman.

19 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, I'm
20 going to give you one last shot, and then we're going
21 to be done with this witness. Is there anything that
22 you feel that you need to ask him?

23 MR. EINHORN: There is not. Thank you.

24 CHAIRMAN ROISMAN: Okay, all right.

25 MS. DINGLELINE: Mr. Roisman, will you

1 dismiss him to ask a question? It's Brooke Dingleline.

2 CHAIRMAN ROISMAN: Ms. Dingleline, you're the
3 one who wants us to move this along. I'm trying to do
4 that.

5 MS. DINGLELINE: I know, Your Honor, but, if
6 I could just ask --

7 COMMISSIONER HOFMANN: And, Mr. Chairman, I
8 believe Mr. Tousley has a question.

9 CHAIRMAN ROISMAN: Yes, I'm going to get to
10 the Commission's questions last. All right, Ms.
11 Dingleline, one question.

12 RE-CROSS EXAMINATION BY MS. DINGLELINE:

13 Q. Yeah. So your testimony just now about whether or
14 not it's under anyone's jurisdiction, you said Act 250
15 and Section 248, and this property right now is, in
16 fact, submitted to act, to Section 248 to seek CPGs,
17 and so the what you testified to a moment ago is that,
18 if the property is not seeking a CPG or Act 250, it's
19 not under your jurisdiction, but, in fact, the land at
20 issue for Chelsea and Apple Hill solar sites are under
21 your jurisdiction, because they are seeking a CPG,
22 correct?

23 A. That is correct.

24 MS. DINGLELINE: Thank you.

25 CHAIRMAN ROISMAN: Now, Mr. Tousley, you had

1 a question for Mr. Popp?

2 MR. TOUSLEY: Yes. Thank you, Mr. Chairman.
3 Good morning, Mr. Popp. There's been a lot of
4 discussion of the conservation areas and the, the prior
5 moving of plants. Did you participate in that whole
6 process that's, you know, that began back in 2014?

7 MR. POPP: I, I did not participate directly.
8 I reviewed the management plan and the transplantation
9 plan that Arrowwood submitted and worked with them to
10 modify that.

11 MR. TOUSLEY: Okay. Are you aware if -- you
12 know, in this case, both the, the petitions for both or
13 for Chelsea, Willow Road, and Apple Hill have all been
14 denied by the Commission, and are those conservation
15 areas binding upon the landowner in the absence of CPGs
16 related to those proposed projects?

17 MR. POPP: I don't think I can answer that.
18 That sounds like a legal question. So I don't know.
19 I'm sorry.

20 MR. TOUSLEY: Okay, okay. Were they
21 developed in response to the requests for CPGs?

22 MR. POPP: Yes, absolutely.

23 MR. TOUSLEY: Are you otherwise aware if
24 those areas are binding upon the landowner?

25 MR. POPP: Again, I'm not sure outside of a

1 CPG what, what legal authority there would be.

2 MR. TOUSLEY: Okay, thank you.

3 CHAIRMAN ROISMAN: Okay. Unless someone has
4 something that's really pressing, I think we should
5 excuse this witness. Hearing no objection, Mr. Popp,
6 thank you very much. We appreciate your attendance.
7 Mr. Einhorn, do you have any further witnesses?

8 MR. EINHORN: I do not. Thank you.

9 CHAIRMAN ROISMAN: Okay. Ms. Dingleline, do
10 you have any witnesses?

11 MS. DINGLELINE: Your Honor, if I may move
12 the admission of the affidavit of Joseph Schoenig into
13 the record.

14 CHAIRMAN ROISMAN: Okay, all right. Ms.
15 Aceves, do you have any objection to that affidavit
16 being received in evidence?

17 MS. ACEVES: No objection.

18 CHAIRMAN ROISMAN: Mr. Melone?

19 MR. MELONE: No objection.

20 CHAIRMAN ROISMAN: Okay. It's received in
21 evidence. We'll mark it as -- how you do you want to
22 designate it, Ms. Dingleline?

23 MS. DINGLELINE: Intervenors Exhibit 1.

24

25

1 (Exhibit marked Intervenors 1 was admitted
2 into the record.)

3 <https://epuc.vermont.gov/?q=downloadfile/415963/150086>

4 CHAIRMAN ROISMAN: Okay, that will work.
5 Anything, anything else, Ms. Dingledine?

6 MS. DINGLELINE: May I make the opening
7 statement? I'll do it really quick. I won't take five
8 minutes.

9 CHAIRMAN ROISMAN: Sure.

10 MS. DINGLELINE: Thank you. We would not
11 only support the request for a TRO or a preliminary
12 injunction, but we would like to ensure and request
13 that the TRO and/or preliminary injunction that issues
14 in this case, if it does, that it applies to both
15 Chelsea Solar and Apple Hill project sites, including
16 Lot Number 1 that Mr. Melone has first designated that
17 there would be buffer trees on.

18 He's off in court in Chittenden County trying to
19 figure out if he has the rights to do that now many
20 years after he proposed it, and also about the road
21 that he wants to use through the Apple Hill solar
22 development that is an easement and a private road and
23 is not allowed to be used for commercial purposes.

24 So, because of the level of bad faith, ill will,
25 and bad motive here -- interestingly, Mr. Melone has

1 not even responded to, other than claiming, I get to do
2 agriculture, and you can't stop me, he hasn't even
3 responded to the questioning of, you know, why did he
4 do this?

5 And it's clear from his 11th and 59-minute hour
6 attempt before the oral argument in Apple Hill solar.
7 At 4:29 the day before the oral argument, he tried to
8 amend and tried to make an amendment that said, I'm
9 going, I'm not going to plant the trees on Lot 1 to
10 screen the view from Libby Harris's house. Instead,
11 I'm going to build a spite building. And we have a
12 spite, we have an unnecessary building statute in
13 Vermont that does not allow him to do this. And so --

14 CHAIRMAN ROISMAN: Ms. Dingleline, it sounds
15 like you're raising an objection about something that's
16 not the subject of this particular proceeding. You're
17 referring to a number of facts that, as far as I know,
18 are not part of this particular proceeding. I suggest
19 that, if those are issues that you believe the
20 Commission needs to address, then you follow the normal
21 procedure, ask us to open an investigation into any
22 matter that you think we have jurisdiction over, but
23 that this proceeding is related to this very narrow
24 question, whether or not there should be a TRO issued
25 with regard to the proposed clearing of this site by

1 what Mr. Melone has described as the intent to have a
2 sheep farm and a hemp farm on this location.

3 MS. DINGLEDINE: That's right.

4 CHAIRMAN ROISMAN: Those other matters are
5 not currently in front of us. So I know you're short
6 on time. I would suggest that you stay focused on
7 those items that we are going to be addressing shortly.

8 MS. DINGLEDINE: Okay. Before -- did I take
9 it off? Before I, I finish what I wanted to say, I do
10 want to address the issue of me being double-booked by
11 the Public Utility Commission. Are you aware that my
12 other hearing is a Public Utility Commission hearing in
13 Bradford Solar? And, you know, I don't know why you
14 folks double-booked me, but you act like it's my fault
15 that I have some other folly to go to when it's --

16 CHAIRMAN ROISMAN: Not at all. Ms.
17 Dingledine, you brought this to our attention. You
18 asked us to move this hearing to 9:00 o'clock. We
19 moved it to 8:30. If you thought that we should cancel
20 this hearing or that we should cancel the other
21 hearing, you had an opportunity to ask us to do that.
22 We didn't double-book you. You will note, we note that
23 you entered the other case only last Friday. And so,
24 if you thought that this hearing shouldn't proceed, we
25 did exactly -- we did more than you asked us to do. So

1 I'm sorry, but I don't feel that, that we are at fault
2 if the hearing is taking longer than what you had
3 thought it was going to take.

4 MS. DINGLELINE: I asked for, I asked for
5 more time. You gave -- you shorted me an hour on the
6 other end, on the other case. You didn't give me what
7 I asked for there. I just, I just find this
8 outrageous. And I'm sorry. It needs to be on the
9 record. It's an objection. I didn't cancel the
10 hearing because we need them not to cut the trees.
11 That's the problem. That's why this is so important.

12 So I will move on, and I would like you to look at
13 the affidavit of Joseph Schoenig. It, it details the
14 fact that Kobelia was up there, and there have been
15 surveyors, there have been all sorts of people, and
16 Kobelia told Joseph Schoenig that they're going to cut
17 down the, that he was there as well hired for three
18 areas, the Chelsea solar, the Apple Hill solar and then
19 the orchard, the apple orchard that is Lot 1. So this
20 is three different things happening, not only two, and
21 we are asking that the TRO extend to the entire project
22 sites.

23 They are not allowed to do any site preparation.
24 Therefore, they can't instead put a building that's 160
25 feet long and 30 feet high and 16 feet deep to block my

1 client's view instead of putting the trees. The trees
2 are part of his application, and he's obligated to put
3 them in, and he can't do anything until he gets a CPG,
4 including putting up a building and a hemp farm instead
5 of the buffer trees that he was going to be planting.

6 That's what we are asking for. Please extend it
7 to make sure it covers Lot 1, and, also, if the TRO
8 issues, we would like it to issue to Kobelia and any
9 other contractors so that we don't have any concerns
10 about any miscommunications if somebody goes and cuts a
11 bunch of trees because they didn't get the message.
12 Thank you very much.

13 CHAIRMAN ROISMAN: Okay. And anything
14 further in the way of evidence, Ms. Dingleline, beyond
15 what you've already put in the record?

16 MS. DINGLELINE: Not at this time, but I
17 would reserve the right, if there are any further
18 proceedings, to provide -- we have photographs that
19 pertain to the affidavit. There just wasn't time to
20 put the information together in this short timeframe.
21 So we're happy to continue to engage, thank you, but I
22 have nothing further.

23 CHAIRMAN ROISMAN: Okay, Ms. Aceves, does the
24 Department have anything to offer in the way of
25 evidence at this point?

1 MS. ACEVES: We do not. Thank you.

2 CHAIRMAN ROISMAN: Okay. Mr. Melone?

3 MR. MELONE: Thank you, Mr. Chairman. I'd
4 like to move for the admission of the affidavit, my
5 affidavit that was filed last night. We're going to
6 designate that as PLH Exhibit 1. And the affidavit of
7 Kobelia, we're going to designate that as Exhibit 2.
8 They each have the nine attached photos as Exhibit 2-1,
9 2-2, etc.

10 CHAIRMAN ROISMAN: Okay. Ms. Aceves, any
11 objection to the admission of those documents?

12 MS. ACEVES: No objection.

13 CHAIRMAN ROISMAN: Mr. Einhorn?

14 MR. EINHORN: I have no objection.

15 CHAIRMAN ROISMAN: Ms. Dingleline?

16 MS. DINGLELINE: No objection.

17 CHAIRMAN ROISMAN: Okay. They will be
18 admitted.

19 (Exhibits marked PLH 1 and 2 were admitted into
20 the record.)

21 <https://epuc.vermont.gov/?q=downloadfile/415953/150086>

22 <https://epuc.vermont.gov/?q=downloadfile/415954/150086>

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1 CHAIRMAN ROISMAN: Mr. Melone, who are you
2 calling as your first witness?

3 MR. MELONE: Mr. Chairman, the only one
4 that's available right now is me. I just sent a text
5 to see if Mr. Kobelia is available to join us, but I
6 certainly am available right now if anyone wants to ask
7 me questions.

8 CHAIRMAN ROISMAN: All right. Commissioner
9 Cheney, will you swear in Mr. Melone?

10 THOMAS MELONE,
11 Having been duly sworn to tell the truth,
12 testifies as follows:

13 CHAIRMAN ROISMAN: Mr. Melone, do you have
14 anything preliminarily that you need to do, like
15 verifying that the affidavit is yours or anything to
16 that nature?

17 MR. MELONE: Well, I can verify that the
18 affidavit that was filed as PLH Exhibit 1 is mine, it's
19 true and accurate, and I'm available for any questions
20 on it.

21 CHAIRMAN ROISMAN: Okay. Ms. Dingledine, do
22 you have any questions for Mr. Melone?

23 MS. DINGLEDINE: Thank you, Your Honor. I
24 do.

25

1 CROSS-EXAMINATION BY MS. DINGLEEDINE

2 Q. Mr. Melone, your current proposal for Apple Hill
3 Solar includes buffer trees to be planted on Lot 1 that
4 is part of the residential development known as Apple
5 Hill, correct?

6 A. That's, that's not correct. We amended the
7 proposal, and those are no longer in it, right?

8 Q. Well, we had a conversation a couple weeks ago
9 wherein I called you to verify that, even though the
10 PUC had denied your request to amend your petition as
11 you tried to on the day before the oral argument. Do
12 you remember saying to me, well -- I said, "Why are you
13 doing this?", and you said, "Well, they don't want
14 trees planted. So they're going to get a nice, big
15 building".

16 Do you remember saying words just like that or to
17 that effect in our telephone conversation when I
18 verified you were still going to plant hemp and put the
19 building up?

20 A. No. That is categorically untrue.

21 Q. Okay. Would you agree with me that the building
22 that you are proposing for up there is designed to
23 completely screen the view of Libby Harris from her
24 home?

25 A. That's not true. The entire plan has nothing to

1 do with the neighbors. It's purely to make productive
2 use of the property for an agricultural use.

3 MS. DINGLEDINE: I don't have anything
4 further, Mr. Roisman.

5 CHAIRMAN ROISMAN: Thank you, Ms. Dingledine.
6 Mr. Einhorn?

7 MR. EINHORN: I don't have any questions.
8 Thank you.

9 CHAIRMAN ROISMAN: Commissioner Hofmann?

10 COMMISSIONER HOFMANN: Thank you. Mr.
11 Melone, I'm a tad confused. Are you now saying this
12 area, this place you have the CPG for, is now just for
13 your sheep and hemp, or are you continuing to pursue
14 your solar project?

15 MR. MELONE: We are still continuing to
16 pursue the petitions for a CPG.

17 COMMISSIONER HOFMANN: Thank you. I have
18 nothing further.

19 CHAIRMAN ROISMAN: Commissioner Cheney?

20 COMMISSIONER CHENEY: Yes. I'm looking at
21 Page 6 of your testimony where you say the landowner's
22 activities would serve the purpose of and are done for
23 the purpose of using the land for productive use
24 unrelated to the purpose of constructing an electric
25 generation facility.

1 How do the purposes that you mentioned in the
2 beginning, which I assume were agriculture, hemp
3 growing, sheep farming, etc., not overlap or make it
4 impossible to also construct an electric generation
5 facility or vice versa?

6 MR. MELONE: Well, I guess, the first thing
7 is that, for the next year, two, three years, the land,
8 if we didn't put it to use for an agricultural use,
9 would potentially be unused. In terms of the question
10 of compatibility, certainly, sheep farming is, in fact,
11 compatible with, with the solar project. Hemp is
12 potentially. Depending upon what the row spacing is,
13 we certainly can put hemp around the facility. And,
14 certainly, on Lot Number 1, which is not subject to any
15 CPG, that's completely unconstrained by, by a Section
16 248 proceeding.

17 COMMISSIONER CHENEY: Please continue.

18 MR. MELONE: Yeah. But, but what our basic
19 point is is that, right now, we have let the property
20 sit for no purpose or for no productive use. Now hemp
21 is a viable crop, and, certainly, in the interim and
22 even, you know, continuing if there is a solar facility
23 up there, we would still intend to either have a
24 combination of hemp where we can and/or sheep that
25 would coexist with any potential solar facility that

1 would be there.

2 COMMISSIONER CHENEY: So you are going into
3 the sheep-farming business?

4 MR. MELONE: We have enough -- yeah, I guess,
5 the answer to that question is "yes", because we have,
6 like I think we said in the amendment, we have a
7 sufficient body of solar projects in the northeast
8 where it makes sense for us to own the sheep. I mean,
9 we actually own sheep already in California for solar
10 projects there. We've owned sheep there for probably
11 three or four years. So it's not new to us in terms
12 of, you know, owning and using sheep for solar, which
13 is what we intend to do here.

14 And, in terms of hemp, it basically just became a
15 viable crop in 2018 when, when it was legalized across
16 the country.

17 COMMISSIONER CHENEY: Would the activities
18 that were necessary for sheep farming and hemp growing
19 coincide with the activities necessary to build a solar
20 site in this case, the clearing of trees?

21 MR. MELONE: Well, I mean, certainly, if you
22 have a piece of property that has trees on it, you're
23 not going to be able to grow hemp or put sheep there,
24 unless the trees are cleared. Same thing with a solar
25 facility. If there are trees on the site, you need to

1 clear the trees to put solar.

2 COMMISSIONER CHENEY: That's all I have.

3 CHAIRMAN ROISMAN: Mr. Landis-Marinello, do
4 you have any questions for Mr. Melone?

5 MR. LANDIS-MARINELLO: How much clearing
6 would happen if it continues?

7 MR. MELONE: I'm going to have to check.
8 There is a plan which we gave to, to Kobelia.
9 Basically, Lot Number 1, all 5.63 acres would be
10 cleared there. That's not subject to the CPG petition.
11 And at the -- I mean, I think most of the other parcel
12 would end up being cleared, but not all of it yet.

13 CHAIRMAN ROISMAN: Commissioner Hofmann?

14 COMMISSIONER HOFMANN: Little bit of a
15 follow-up on that, Mr. Melone. Is the clearing
16 continuing while we're having this, since you have
17 gotten notice of this hearing?

18 MR. MELONE: Yes, it is, Commissioner
19 Hofmann.

20 CHAIRMAN ROISMAN: Mr. Landis-Marinello,
21 anything else?

22 MR. LANDIS-MARINELLO: Yes. I'm just trying
23 to remember some of the history with the underlying CPG
24 cases. I believe there is an amendment that lessened
25 the amount of tree clearing that would occur. If you

1 go forward with the plan you have now, would it be more
2 than the amount of clearing than was agreed to in the
3 last amendment in that project?

4 MR. MELONE: As of now for the Chelsea solar
5 petition, it would not be any more. As for the Apple
6 Hill solar project, that's reflected in the amendment
7 we filed in March, and that does clear the entire site
8 or what would have been the entire site of that
9 project.

10 MR. LANDIS-MARINELLO: But that amendment
11 wasn't approved or allowed, correct?

12 MR. MELONE: Well, I think we have a, a legal
13 disagreement on whether there is, there is the
14 discretion to allow or approve the amendment, and we
15 briefed that issue.

16 MR. LANDIS-MARINELLO: And so I'm just trying
17 to figure out. Is it your position that there could be
18 an agreement with parties to only clear, say, ten acres
19 in order to do the CPG project, but then you could
20 additionally clear another ten acres for sheep farming
21 at that same site?

22 MR. MELONE: Well, we aren't asking for that.
23 We're not in that position, because we filed the
24 amendment to the CPG application, and it indicated back
25 in March that we now were, or that the site would, in

1 fact, be cleared by the time any solar facility might
2 be approved or, or considered.

3 MR. LANDIS-MARINELLO: And I guess I'm
4 asking, Is that hypothetical that that's your position
5 that you can do that?

6 MR. MELONE: Well, yeah, our position is that
7 we can amend the CPG application at any time, yeah,
8 certainly before there's a final order, and that's what
9 we did.

10 MR. LANDIS-MARINELLO: But I guess what I'm
11 getting at is it sounds to me like your position here
12 is you don't need our approval for that amendment,
13 because you're arguing that the sheep farming is
14 outside our jurisdiction. Is that correct?

15 MR. MELONE: Well, the amendment was not
16 seeking approval for, for the clearing. I mean, the
17 agricultural activities are completely independent. So
18 the amendment was just to reflect the fact that now the
19 solar project would have to be evaluated based on the
20 agricultural use that was going to be put into place.

21 MR. LANDIS-MARINELLO: I don't have anything
22 more.

23 CHAIRMAN ROISMAN: Okay. Mr. Tousley?

24 MR. TOUSLEY: I don't have anything. Thank
25 you, Mr. Chairman.

1 CHAIRMAN ROISMAN: Mr. Melone, the, the two
2 sites here, that is, the sites identified in the CPG
3 applications, are the subject of standard offer
4 contracts, correct?

5 MR. MELONE: That's correct, Mr. Chairman.

6 CHAIRMAN ROISMAN: And, pursuant to those,
7 you had obligations to be diligent about pursuing
8 getting the CPGs and getting the projects built,
9 correct?

10 MR. MELONE: Correct.

11 CHAIRMAN ROISMAN: Can you tell me, what
12 steps have you taken to effectuate the completion of
13 those projects in terms of ordering equipment or any
14 other activities that you've engaged in so that, if and
15 when you get a CPG, the projects are ready to start
16 construction?

17 MR. MELONE: Well, at, I think it was,
18 probably 2018, maybe, when the Apple Hill solar CPG was
19 granted that we ordered the solar modules for that
20 site. Those have since been redeployed to other sites.
21 In terms of equipment, we ordered the inverters or the
22 inverter for one of the projects probably in 2016,
23 which is in the process of now being redeployed to, to
24 another site, finally. We have paid for the upgrades
25 for Green Mountain Power for the line extension to the

1 extent of \$850,000. Those are the ones that come to
2 mind.

3 We certainly have always diligently pursued trying
4 to get a solar project on there, but we've also learned
5 from our experiences in Massachusetts in particular
6 about how solar can coexist with agricultural
7 activities, and we have some projects planned for
8 there, specifically with solar and agricultural
9 activities at the same time.

10 CHAIRMAN ROISMAN: And I take it it is still
11 your intent, if you are able to succeed in the various
12 legal proceedings that you're engaged in, to put the
13 two solar projects on these sites that you've applied
14 for and for which CPGs have been sought from the
15 Commission, correct?

16 MR. MELONE: Correct.

17 CHAIRMAN ROISMAN: And, tell me, what have
18 you done, other than starting the site preparation for
19 the sheep farm and the hemp, what have you done to
20 prepare for that operation?

21 MR. MELONE: Well, in terms of the sheep
22 farm, we have an arrangement with, with a woman named
23 Ashley Bridge. I think we mentioned that in the
24 amendment. The plan was for her to basically be the
25 one that maintains the sheep on the site, brings the

1 sheep from there when we need them to our other solar
2 sites in Connecticut, Vermont, and Massachusetts.

3 And then, in terms of hemp, I have a good friend
4 of mine who is a significant investor in a hemp company
5 in New York, and we've agreed to work with them to
6 provide the seeds and, and the growing expertise, and
7 we have already filed our application with AAFM for
8 hemp farming, and, just so we, you know, address any
9 possible issue, we've, we've sought permission or a
10 license to grow on the entire site.

11 CHAIRMAN ROISMAN: And these arrangements
12 that you have with the woman who would be tending the
13 sheep and with the, the hemp company, do you have
14 binding contracts?

15 MR. MELONE: We haven't -- yeah. No, we
16 don't have any binding contracts yet. When we were --
17 at the beginning of the pandemic, once everything was
18 put on hold, we decided that we needed to see what the
19 actual timing would be for our ability to clear the
20 site and have it ready and for, buy the sheep on our
21 behalf. Same thing with hemp, I mean, we were close.
22 But, you know, we don't have any binding contracts
23 right now.

24 CHAIRMAN ROISMAN: And on your current
25 schedule -- excuse me. Based upon what you currently

1 are anticipating, what is the soonest, if there were no
2 TRO issued, what is the soonest that you could have the
3 site cleared under your current plans and have sheep on
4 the site and hemp seeds planted?

5 MR. MELONE: Well, we had initially planned
6 to bring the sheep in in September, but the pandemic
7 has set that, you know, clearly set that back. So I
8 don't have an exact timeframe for you. We would, we
9 would try to get them -- well, for the hemp, clearly,
10 we had intended to be ready for the next growing
11 season. So, as soon as we're, we have the ability to
12 start growing, that's when we would do that. I would
13 anticipate that would be next year. In terms of how
14 soon the site could be cleared, that, I'd have to get
15 an answer from, from Bob Kobelia on.

16 CHAIRMAN ROISMAN: Okay. So is it, is it
17 fair to say that, if logging didn't continue at this
18 time, and/or you would not automatically fail to meet
19 some built-in deadline that you have for either the
20 sheep or the hemp, but that those are things that look
21 like they're more likely to happen starting in 2021, in
22 the case of the hemp when the growing season starts,
23 and the sheep -- I'm sorry. I don't know enough about
24 sheep to know when you can start grazing sheep, if you
25 could do it in the middle of the winter or not. But is

1 that, is that fair; we're talking 2021, not 2020?

2 MR. MELONE: Well, I think it's likely we're
3 talking 2021 for the actual implementation, but
4 everything takes a little longer now to order
5 equipment, to get stuff built. We're not going to
6 order, order equipment or sheep, unless we know for
7 sure we have a place to put them. And this is clearly
8 the best time of year. This is clearly the best time
9 of year in Vermont to clear the trees.

10 I mean, it's got pushed back. It could be in the
11 winter, which would be more expensive for us. It would
12 be more difficult. So I, I think there's clear harm to
13 us if there's any delay, any further delay at this
14 point, and it takes a long time to get people to
15 actually do this work now.

16 CHAIRMAN ROISMAN: So I take it that your,
17 your logger is not recommending that you do your
18 logging in the winter when the ground is frozen and
19 when it's easier to bring the large equipment in
20 without worrying about mud and all that other stuff,
21 but that he prefers to when the ground might be more
22 soft and more difficult to traverse. Is that fair that
23 he's not telling you that?

24 MR. MELONE: I'll have to let him answer that
25 question. He has never told me that one way or the

1 other. I mean, but, from prior experience of clearing
2 solar sites, it seems to me the winter is the most
3 difficult time to remove the, the stumps and the roots
4 and actually get, get the soil prepared for
5 agricultural use, and that's the difference.

6 There's a lot more to do to get the soil prepared
7 for agricultural use as opposed just to build the farm,
8 solar facility, because for a solar facility you could
9 leave stumps in, you can cut them to the ground,
10 because you've got to put your posts in. For an
11 agricultural use you can't do that. You've got to get
12 the soil ready for, for the planting.

13 CHAIRMAN ROISMAN: Okay, all right. And --

14 MS. DINGLELINE: Mr. Roisman, I'm so sorry to
15 interrupt. I have to go to the other hearing, and I
16 just have two things to tell you and to ask Mr. Melone.
17 Would I be able to interrupt?

18 CHAIRMAN ROISMAN: Yes, Ms. Dingleline.

19 MS. DINGLELINE: Thank you, Mr. Roisman.

20 FURTHER EXAMINATION BY MS. DINGLELINE

21 Q. Mr. Melone, you previously testified when I talked
22 with you a moment ago that you aren't going to plant
23 trees on the northern side of Lot Number 1, and I'm
24 confused. And you call, you call Lot Number 1 the
25 orchard lot, because there's an apple orchard on it,

1 correct, right?

2 A. Correct.

3 Q. Okay.

4 A. Right.

5 Q. Now, Mr. Roisman, I would like to admit the
6 amendment that Mr. Melone was talking about with you a
7 moment ago that he brought in the day before the oral
8 argument. I would like to submit it to you, because in
9 the Page Number 3 of the amendment itself that Mr.
10 Melone wrote in Paragraph 6, it states, "No additional
11 plantings on the north side of the orchard lot are
12 needed for visual screening and are removed from the
13 plans", because he's building the big hemp building
14 instead. Number, Paragraph Number 7, talks about the
15 sheep houses at the south are expected to be painted in
16 vivid colors and would distract from any potential view
17 of the project.

18 Mr. Melone, my question is, Were you mistaken a
19 little while ago when you said, Oh, there aren't any
20 trees to be planted on the north side of Lot 1 to
21 screen Ms. Harris's view?

22 A. No. I think what you read clearly says that there
23 are no trees planned for that area.

24 Q. Fine. But you had planned them, and now you are
25 saying, if you got your amendment, you were not going

1 to be planting the trees, which is part of your plan,
2 because you're putting the building there instead,
3 correct?

4 A. I view our plan as the plan as amended, that --

5 Q. So, even though the PUC has denied your amendment,
6 you're doing it anyway?

7 A. Well, I don't understand your question. I mean --

8 Q. Okay. So you, you came in the day before oral
9 argument and said, I'm going to amend my plan, and I'm
10 not going to plant trees to, to screen Libby Harris's
11 view. We're not going to need that anymore, because
12 I'm putting this huge building up, right?

13 A. The amendment reflects what work is planned to be
14 done for the agricultural use.

15 Q. Okay. Well, and then you had Mark Kane's
16 testimony on Page 4 of 32 pages of his fourth
17 supplemental prefiled direct testimony. Question
18 Number 6, was, "Is the project visible from any
19 neighboring residences?" And the answer of Mr. Kane
20 was, "No, the project is not visible from any
21 neighboring residences. The project was already fully
22 screened by existing natural vegetation and the
23 supplemental landscape mitigation plan on the north
24 side of the orchard lot, as explained in my third
25 supplemental testimony. The addition of the new

1 storage facility for a hemp-growing operation serves to
2 reinforce my original conclusion, i.e. that the project
3 will not be visible from any residences". Here's the
4 important part. "And it", meaning the new building,
5 "It obviates the need for any supplemental plantings on
6 the north side of the orchard lot and, two, using any
7 black panels for the project".

8 Would you agree with me that, instead of planting
9 trees that you were going to to buffer and screen Ms.
10 Harris's view, you've decided on your own to remove
11 that from your plan, because that's what you and Mark
12 Kane are saying you're doing, because you're going to
13 actually build a hemp building, right?

14 A. I think the amendment's clear. We described what
15 we were going to do, and you accurately read what Mark
16 Kane says. I don't understand what the question is.

17 Q. So, instead of the trees that you planned to put
18 there and you told the PUC you would be planting on the
19 north side of the orchard lot, which is known as Lot
20 Number 1 which is near the boundary line of your
21 abutting property to Libby Harris, your plan said you
22 were going to put a row of trees there, and, instead,
23 you're building a building, and that's what this
24 testimony of Mark Kane says, and it's what your
25 pleading that you signed under Rule 11 as a lawyer in

1 Vermont, correct?

2 A. Yes, that's what it says, that the trees are no
3 longer needed, and they were taken off the plan.

4 Q. Yeah, but did the PUC say you could take them off
5 the plan and build the building instead?

6 A. The PUC --

7 Q. They denied your amendment application, correct?

8 A. Again, we have a legal dispute as to whether the
9 amendment is valid when it's defined. I think this is
10 way outside this proceeding.

11 MS. DINGLELINE: I'll leave it there, Your
12 Honor, but I would like to admit or have the PUC take
13 judicial notice of this document. I'll be happy to
14 mark it as Intervenors Exhibit Number 2. I would like
15 to put this whole packet in so that you can see for
16 yourself all the plans, all the pictures showing the
17 huge building in front of Libby's view of the beautiful
18 monument and her lovely landscape view, and I will,
19 I'll leave it there. You would admit that --

20 CHAIRMAN ROISMAN: Mr. Melone, do you have
21 any objection to having --

22 MR. MELONE: No, I have no objection. I
23 think, as long as the entire amendment is admitted, I'm
24 fine with that.

25 CHAIRMAN ROISMAN: Okay. Ms. Aceves, any

1 objection?

2 MS. DINGLELINE: Your Honor, just one last
3 question of Mr. Melone.

4 CHAIRMAN ROISMAN: Wait. Let's, just a
5 moment. Let's finish deciding whether this is being
6 admitted, Ms. Dingleline.

7 MS. DINGLELINE: Oh, I beg your pardon. I'm
8 so sorry.

9 CHAIRMAN ROISMAN: Ms. Aceves, any objection
10 to admitting this document?

11 MS. ACEVES: No, no objection.

12 CHAIRMAN ROISMAN: Mr. Einhorn?

13 MR. EINHORN: No objection.

14 CHAIRMAN ROISMAN: Okay. It will be admitted
15 as Intervenors Exhibit 2 now, Ms. Dingleline.

16 (Exhibit marked Intervenors 2 was admitted into
17 the record.)

18 <https://epuc.vermont.gov/?q=downloadfile/416526/150086>

19

20 BY MS. DINGLELINE:

21 Q. Thank you. Just one last question, Mr. Melone.
22 So me reading your amendment and Mark Kane's testimony,
23 does that jog your memory at all and give you any
24 different recollection of the phone call that I had
25 with you a couple weeks ago wherein you said, "They

1 don't want trees, so they're going to get a nice, big
2 building", or words to that effect? Does that jog your
3 memory that that was not categorically false when I
4 stated that, that it actually is true?

5 A. It is not true. I never said that.

6 MS. DINGLEDINE: I'll leave it there, Your
7 Honor. Thank you. And I will have to leave. Thank
8 you.

9 (Ms. Dingledine leaves the hearing.)

10 CHAIRMAN ROISMAN: Okay. Thank you, Ms.
11 Dingledine. Mr. Melone, I think we were, we were
12 discussing the, the sheep and the hemp and preparations
13 for that and the timing of that. What is the, what is
14 the plan that you have with regard to the size of the
15 operation that you're proposing now if you were to get
16 the CPGs approved for the two sites? Would you have to
17 cut back on the amount of the hemp, and would you have
18 to cut back on the number of sheep that would be at the
19 site, or would it still be the, the amount of hemp and
20 sheep that a fully cleared site would accommodate?

21 MR. MELONE: We would not have to cut back on
22 the hemp that we indicated in the amendment that we'd
23 be planting, because that's on the adjacent lot. We
24 would, we would not have to cut back on the sheep,
25 because there would still be plenty of room within the

1 rows and on the property for 30 or 40 sheep to live on
2 that site. So the, you know, as far as we can tell at
3 the moment, that we wouldn't have to cut back on it.

4 You know, the solar project, if it ever gets
5 approved, in fact, would, you know, continually shrink
6 as module efficiency improves. I think the last, last
7 iteration of one of the, of the, the solar projects --
8 I can't remember if it was Chelsea or Apple Hill --
9 they assumed a solar wattage module or a wattage of a
10 solar module in the high 300s. Now, you know, we're
11 looking at getting modules that are rated 460 watts.
12 Next year it will be, say, 10 percent greater than
13 that. So that, just by definition, is going to shrink
14 the size of what's occupied by the solar modules,
15 providing more room for the sheep.

16 So, at this point in time, I don't see any, any
17 cause to have us to have to reduce the size of either
18 the sheep operation or the hemp operation that's
19 described in the amendment if one or both of the CPGs
20 were approved.

21 CHAIRMAN ROISMAN: All right. And you said
22 something about the, about the clearing for the hemp.
23 Are, did I understand you to say that the only area
24 that you're clearing for the hemp is the area that's
25 not part of the land that the CPG is proposing to use?

1 MR. MELONE: That's what's described in the
2 amendment, the hemp, but we have applied for a license
3 to grow hemp on the rest of the site, because it may
4 be, depending on the way the pandemic goes, that, you
5 know, we just can't get a person in there to establish
6 the sheep when we want to, in which case then we would
7 plant hemp across the entire property.

8 CHAIRMAN ROISMAN: But, currently, you know,
9 as you know, litigation is always a snapshot. This is,
10 it's this moment in time. At this moment in time, your
11 plans for hemp include clearing an area that is not
12 part of the area on which you're proposing a, a, to
13 construct a solar project, correct?

14 MR. MELONE: Well, that's what was described
15 in the amendment. I mean, our current plan, you know,
16 from a business perspective, we have to have the
17 ability to decide whether, because of delays in getting
18 the sheep farm up and running, maybe we plant hemp
19 there for a year. But it depends on how, how the facts
20 and conditions evolve over the next few months, which
21 we don't know, but we're going to do either what we've
22 said in the amendment, or, if we have the option, or
23 we're, we're retaining the option, because we applied
24 for the greater license, to do hemp on the entire site,
25 because that may be an easier thing to do during the

1 pandemic.

2 CHAIRMAN ROISMAN: And you testified a few
3 moments ago, you were talking about, I think, 30 or 40
4 sheep. Is that the number of sheep that you're
5 proposing at this time is, is what you want to have
6 once you've got the land cleared?

7 MR. MELONE: Yes, that's right.

8 CHAIRMAN ROISMAN: And for how long does the
9 land have to sit and regrow grass for the land to be
10 usable for sheep after the forest, after the clearing
11 has been done?

12 MR. MELONE: Well, that, I don't know. I
13 mean, that's why we've been assuming that we would
14 clear in the summer and plant the grass now, and then
15 that would allow the option to bring in the sheep when
16 we can, and it would also allow for us to, you know, if
17 we can't bring the sheep in right away, to plant hemp
18 for, for the next year.

19 CHAIRMAN ROISMAN: But, when I asked you
20 earlier about how long the clearing was going to take,
21 you said that you, you really needed your logger to
22 testify to that, that that's not knowledge that you
23 have. Is that true?

24 MR. MELONE: That's true. So I don't know if
25 it can, you know, it's done in two weeks, I mean, four

1 weeks. I mean, I don't think it would be any more than
2 six weeks from now, and that all works out fine,
3 because I think there's time to then grow grass before
4 it gets too cold in Vermont.

5 CHAIRMAN ROISMAN: Okay.

6 MR. LANDIS-MARINELLO: Chairman Roisman, I'm
7 sorry to interrupt. I just want to make sure that
8 we're aware of the time, that the court reporter may
9 need a break as we've been going more than two hours.

10 CHAIRMAN ROISMAN: Yeah, I'm almost finished
11 here, and I was hoping to finish with Mr. Melone before
12 we took a break, Mr. Landis-Marinello. Mr. Melone.

13 MR. MELONE: Yes.

14 CHAIRMAN ROISMAN: I have not seen on our
15 screen that your logger has, pardon the pun, logged in.

16 MR. MELONE: Okay. Let me see. Bob, are you
17 there? I mean, I got a text that says he was
18 supposedly on the call, but muted.

19 CHAIRMAN ROISMAN: Okay. Well, I'm not
20 seeing him here.

21 MR. MELONE: Yeah, I don't see him either.

22 MR. EINHORN: Mr. Chairman, if you're
23 finished, I do have -- this is Don Einhorn. I'm sorry.
24 I do have some questions for Mr. Melone based on the
25 Commission's questions at the appropriate time at your

1 discretion.

2 CHAIRMAN ROISMAN: All right. Well, why
3 don't we take a break now for 15 minutes? Mr. Melone,
4 see if you can find your logger, because I'm concerned
5 that there's testimony that can only come from him that
6 seems relevant to the issues that are in front of us,
7 and it would be good to have him, even if it's only on
8 the phone so that, first of all, we can't admit his
9 exhibit if anyone wants to cross-examine him and he's
10 not available, and, secondly, I think it would help
11 fill out the record. That would give us a little break
12 here.

13 So we're going to break until 10:55, and you all
14 can either just mute and turn off your cameras, or you
15 can log out and then log back on again using the same
16 link that you used to log on before. We're in
17 adjournment until 10:55. Thank you.

18 (A recess was taken from 10:38 a.m. to 11:20 a.m.)

19 CHAIRMAN ROISMAN: We are now going to move
20 to Mr. Einhorn, who is the attorney for the Agency of
21 Natural Resources who had some questions for Mr. Melone
22 based on the questions that I had asked him and the
23 answers that he gave to those. So, Mr. Einhorn --

24 MR. KOBELIA: I'll just sit off to the side.

25 CHAIRMAN ROISMAN: Okay, all right. You'll

1 be called on, you'll be sworn in as a witness, and
2 you'll be answering questions from all of the parties.
3 Thank you. Thanks for your patience.

4 MR. KOBELIA: Whenever you're ready.

5 CHAIRMAN ROISMAN: Okay. Mr. Einhorn?

6 CROSS-EXAMINATION BY MR. EINHORN

7 Q. Thank you, Mr. Chairman. Good morning, Mr.
8 Melone.

9 A. Good morning, Attorney Einhorn.

10 Q. I have a few questions for you in follow-up to
11 some of the question-and-answer you had with the
12 Commission. So you are familiar with the amendment
13 that you filed on March 23rd for Apple Hill, which, at
14 this point, has been admitted into evidence as
15 Intervenor Exhibit 2, correct?

16 A. Correct, yes.

17 Q. And you, you, in fact, you signed that filing,
18 correct?

19 A. Correct.

20 Q. And Chris, Chris Little, or Christopher Little, is
21 your project manager for that project, correct?

22 A. Correct, yes.

23 Q. And that filing included prefiled testimony from
24 him?

25 A. That's right.

1 Q. And in his prefiled testimony he represented that
2 the, the hemp growing, the intent was to register with
3 Ag. for hemp growing for the 2021 season; is that
4 correct?

5 A. That's right.

6 Q. And so, as I understand it, in that regard it
7 sounds like your plans haven't changed as far as
8 accelerating that. If anything, it might even be
9 pushed out further?

10 A. Well, no, that hasn't been pushed out. I mean, we
11 have filed the application with AAFM. So there is, you
12 know, there's really no intention for it to go past
13 that season. I mean, that, that's why we're trying to
14 get the site ready now.

15 Q. Understood. But there's no intention to grow hemp
16 in 2020?

17 A. Right now, no. I mean, you know, the opportunity
18 arose, which I don't, I don't see it arising at this
19 time we would do it, but right now there's no intention
20 to do that. It doesn't mean to say, if we could do it,
21 you know, we, in fact, might, but it's --

22 Q. But that wasn't the plan with the amendment that
23 was filed, correct?

24 A. That's right.

25 Q. And you're presently asking the Commission to

1 reconsider that amendment, correct?

2 A. Yes.

3 Q. In, in that amendment there was a revised site
4 plan sponsored by your engineer, Ian Jewkes, and, and
5 that site plan was actually attached to Mr. Popp's
6 testimony and referred to in, in his, or attached to
7 his affidavit and referred to, and that's what has been
8 marked as ANR-7. Are you familiar with that plan?

9 A. Yes.

10 Q. And that shows the area to be cleared for the
11 sheep-grazing activities in, in the arrow, Apple Hill
12 solar facility location, correct?

13 A. That's correct.

14 Q. And part of the amendment at that time was a
15 statement in the document you filed, and I believe in
16 Mr. Little's testimony, that said, for purposes of the
17 CPG application for Apple Hill, there's no longer the
18 need to clear trees, correct?

19 A. That's right.

20 Q. And, and that's because you were contemplating
21 clearing the trees for the sheep grazing?

22 A. Correct.

23 Q. And so would you agree with me that that means
24 that the area that needed to be cleared for the Apple
25 Hill project will have been cleared for the sheep

1 grazing?

2 A. Yes.

3 Q. And would you agree with me that, if the area
4 wasn't cleared at all, you could not build the Apple
5 Hill project, correct?

6 A. If there were trees there, yeah, we couldn't, we
7 obviously could not put solar modules where trees were.

8 Q. Right. So the clearing is necessary to build the
9 project?

10 A. Well, a cleared area is necessary to build the
11 project.

12 Q. The Apple Hill project location that's proposed
13 requires that trees be cleared before the Apple Hill
14 solar facility can be constructed, correct?

15 A. Not as we amended it, no.

16 Q. I'm not talking about when, how, why they're
17 cleared. I'm simply saying, You would agree with me
18 that, before you can build a solar project where you
19 want to build one for the Apple Hill facility, trees
20 will need to be cleared?

21 A. I would agree that, if trees were there, they
22 would have to be cleared; that's right.

23 Q. Are trees there today?

24 A. A lot of trees are there today. That's, yes.

25 Q. And those would need to be cleared before the

1 facility can be built?

2 A. Those would need to be cleared before the facility
3 is built, correct.

4 Q. Okay. Your March 23rd amendment mentioned nothing
5 about changing the Apple Hill project plan to reflect
6 that stumps will have been removed in addition to the
7 trees being cleared, but, as I understand, your
8 response to Chairman Roisman is that your plan right
9 now, the activities that are being conducted right now
10 seems to involve removing stumps as well.

11 A. That's correct, yeah, and that's one difference
12 between clearing for agricultural use and clearing for
13 the solar use.

14 Q. Okay. So the removal of stumps was not
15 contemplated for the solar use?

16 A. I think, in general, only if they were in the way
17 of the posts.

18 Q. Yeah, that was, that was my recollection as well.
19 Again, the sheep clearing site plan, we'll call it,
20 that was included with that amendment, it shows the
21 area to be cleared, it shows an area where buildings
22 would be constructed on the southern end of the parcel,
23 correct?

24 A. Correct, yes.

25 Q. It does not show any rare plant conservation area,

1 does it?

2 A. No.

3 Q. And it does not show the location of where plants
4 that exist within what's depicted as the array area,
5 correct?

6 A. That's correct.

7 MR. EINHORN: Okay. I don't have any further
8 questions.

9 CHAIRMAN ROISMAN: Okay. Commissioner
10 Hofmann?

11 COMMISSIONER HOFMANN: I have no further
12 questions. Thank you.

13 CHAIRMAN ROISMAN: Commission Cheney?

14 COMMISSIONER CHENEY: No further questions.

15 CHAIRMAN ROISMAN: Ms. Aceves?

16 MS. ACEVES: No questions. Thank you.

17 CHAIRMAN ROISMAN: Mr. Landis-Marinello?

18 MR. LANDIS-MARINELLO: Nothing, thanks.

19 CHAIRMAN ROISMAN: Mr. Tousley?

20 MR. TOUSLEY: I have no further questions.
21 Thank you.

22 CHAIRMAN ROISMAN: Well, Mr. Melone, we're
23 now in a place where you can do redirect of yourself.
24 I want to give you that opportunity, but we can do it
25 without the Q-and-A aspects of it.

1 MR. MELONE: Okay.

2 CHAIRMAN ROISMAN: Is there anything that you
3 would like to add to your testimony?

4 MR. MELONE: I think there are only two short
5 points that I would make clearer is just what I covered
6 with Attorney Einhorn was that it is more expensive to
7 do the agricultural use clearing. You have to remove
8 the stumps. You have to make the ground ready to do
9 it. So, if, you know, that's something we'd need to do
10 now to get ready for next year.

11 And, you know, I just wanted to emphasize the
12 point that came up before that we already own sheep.
13 We are already in the sheep business in the state of
14 California. So it's not something that we invented
15 because of the Bennington projects. I mean, we use
16 sheep to clear or to, or to mow the grass wherever we
17 can, because that's the right thing to do, and now
18 we're just taking one step further so that, now that we
19 have a whole bunch of projects in the northeast, we
20 have to put the sheep somewhere, and this is the place
21 we're planning to put it, because we own the land, and,
22 right now, there's no prospect of anything else going
23 there for the next couple of years, at least, and it
24 can coexist with a solar farm if one eventually is put
25 there. That's all, Mr. Chairman.

1 CHAIRMAN ROISMAN: Okay. Mr. Melone, just
2 one question about that last point that you made. It
3 sounds as though the purpose of these sheep -- I mean,
4 as you know, a typical sheep farmer raises sheep for
5 one of two purposes, to shear the sheep and sell the
6 wool or to harvest the sheep and sell the meat.

7 MR. MELONE: Yeah.

8 CHAIRMAN ROISMAN: It sounds like the sheep
9 that you're proposing here is primarily sheep to be
10 used to graze at solar projects and that it, maybe you
11 want to use this area as a, as a way station for sheep
12 that you would be transporting around to sites that
13 have solar projects already built and that need sheep
14 to graze there. Is that a fair characterization?

15 MR. MELONE: Yeah, I think that's, that's the
16 primary aspect. Let me just see. I mean, I think it,
17 the, the plan that the sheep farmer has given to us, I
18 think, does contemplate also the wool being sold as a
19 commodity, and some of the, and I guess some of the
20 sheep as well would be sold. I guess, to the extent
21 that there are new sheep that are born and that are
22 more than we need, then she has that in the business
23 plan, too, as far as a revenue stream.

24 So, I mean, so it really would be while we're
25 getting into the business because of all the solar

1 farms that we operate in the northeast. The business
2 plan does also contemplate the normal sheep operations
3 and income of selling the wool and selling some of, of
4 the sheep, you know, if it's more than we need in terms
5 of sheep there.

6 CHAIRMAN ROISMAN: Okay, all right. Well,
7 Mr. Melone, you're excused as a witness. You now can
8 go back to being an attorney, and, if you would, you
9 can call your next witness.

10 MR. MELONE: Thank you, Mr. Chairman. Robert
11 Kobelia, I'd like to confirm that you're on, Bob.

12 MR. KOBELIA: I am on the phone, somewhat
13 hampered because I don't have hands-free ability. I
14 have to hold the phone to my ear to get a strong enough
15 audio, but I can make this work. There's no more echo.

16 MR. MELONE: Okay, great. So I just want to
17 ask you a couple of preliminary questions.

18 COMMISSIONER CHENEY: Well, I'm going to
19 start first by swearing Mr. Kobelia in. Hello, Mr.
20 Kobelia, thanks for going to all the trouble to get on.

21 MR. KOBELIA: Good morning.

22 COMMISSIONER CHENEY: Good morning. And I'm
23 Margaret Cheney. I'm one of the three commissioners,
24 and I'm going to swear you in, as I have all the other
25 witnesses today. So I will ask you to answer this

1 question. Do you swear or affirm under penalty of
2 perjury that the testimony you are about to give will
3 be the truth, the whole truth, and nothing but the
4 truth?

5 MR. KOBELIA: I do.

6 COMMISSIONER CHENEY: Thank you very much.

7 CHAIRMAN ROISMAN: Okay, Mr. Melone.

8 MR. MELONE: Thank you Mr. Chairman.

9 ROBERT KOBELIA,

10 Having been duly sworn to tell the truth,
11 testifies as follows:

12 DIRECT EXAMINATION BY MR. MELONE

13 Q. Bob, we submitted your affidavit to the
14 Commission. We've marked it as PLH Exhibit 2, and all
15 the photos, 1 to 9 as 2-1, 2-2, etc. Can you confirm
16 that your affidavit is true and accurate?

17 A. I can, and I do.

18 Q. Thank you. And did you take the photos that were
19 attached to your affidavit?

20 A. I did, with the very same phone I'm speaking on.

21 Q. And do those photos, or are those photos an
22 accurate representation of the, of the image that's
23 depicted there in each photo?

24 A. The music was nice, but it stomped on you. Could
25 you repeat the question?

1 Q. Okay, sorry. Is the image in each of those photos
2 an accurate representation of what, what the site
3 represents?

4 A. I believe so.

5 Q. Okay.

6 A. I tried not to bias anything and show an accurate
7 representation of what I've done heretofore.

8 MR. MELONE: Okay, all right. I'll turn him
9 over for cross-examination, Mr. Chairman.

10 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, do you
11 have any questions for this witness?

12 MR. EINHORN: I do, thank you, Mr. Chairman.
13 I have just a few questions.

14 CROSS-EXAMINATION BY MR. EINHORN

15 Q. Hi, Mr. Kobelia, can you hear me?

16 A. I can hear you, and good morning to you.

17 Q. Great. Good morning to you as well. It's a
18 beautiful day, at least up here in northern Vermont.

19 I, I read over your affidavit that was filed last
20 night. I just have a few questions concerning what's
21 contained in there.

22 A. Of course.

23 Q. The first being you indicate that, when Officer
24 Lowkes visited the site on June 16th, you showed him a
25 map, and you indicated the map, I believe, was prepared

1 by Krebs & Lansing, but can you provide any further
2 detail on that map, in other words, to identify it more
3 specifically? Was it, was it called something? Did it
4 have a date? That sort of information.

5 A. Sure. It's a working field map that I have on a
6 8.5-by-11 sheet that I can put into my pocket, and I
7 was using this particular map to identify where I was
8 along the boundary perimeter, as the first task for me
9 was to identify those lines subject to what Krebs &
10 Lansing had showed me the other day. They used an
11 orange-and-blue flagging, and there were some areas
12 flagged there, specifically the FTEs (sic.) that we
13 walked together and flagged blue and orange for a safe
14 zone so that we wouldn't enter any of those. Where I,
15 where I met the officer was within a hundred yards of
16 one of those sites.

17 So the map I had was a working, that I put field
18 notes on, and the master map is identified as CD-001.
19 It's a clearing plan. That was what I had for my
20 notes. I do know that there is a .pdf now that, if I
21 was there, I could hand you that. But the .pdf shows
22 things perhaps a little more clear, just because of
23 what they are, but it clearly had the sites identified
24 for the rare and endangered, and mine has more
25 information on it as potential berm sites.

1 So, again, you can get too much information on a
2 map for many people. I know how to read them. That's
3 what I do for a living. But for my working map that's
4 what I showed them. So it could have been a little
5 cluttered.

6 Q. So this what you're calling your working map, that
7 has a label somewhere on it that is CD-001 clearing
8 plan?

9 A. Yes, sir. It's a Krebs & Lansing prepared. The
10 clearing plan that I have -- my glasses are bifocals,
11 so pretty small print. The clearing, it does say a
12 draft, but my understanding is it hasn't been modified
13 much. The .pdf that, if I had shown him that one, is
14 dated recent after our meeting. Well, they're all
15 2000. I just don't know when the master. You know,
16 they say "draft", the ones I have. Looking at the one
17 that's in play now is, of course, what they've decided
18 finally about the time that I had my written contract
19 with PLH.

20 Q. So, again, this, this draft clearing plan, CD-001
21 that you showed Officer Lowkes, does it have a date on
22 it?

23 A. Yes, sir.

24 Q. And what is that date?

25 A. It is stamped "draft". Does say proposed area for

1 ag. use, and the one I photocopied, I believe it was
2 February 12th, but it could have been May 12th. I'm
3 sorry. I cannot read the first digit. It's definitely
4 a 12/2020, but I cannot make out the numbers. It's
5 really small print.

6 Q. Okay, I understand. And you, in your affidavit,
7 you talk about two conservation areas. Are they shown
8 on that map?

9 A. They are. The map that I showed him, I installed
10 them myself, and those two areas have, the big one, FTE
11 Number 2, starts at the edge of Willow Road and is the
12 northeast corner of the bigger parcel. It has
13 three-foot-high orange plastic fencing around the
14 entirety. Really difficult to not see that. And what
15 Krebs & Lansing surveyors showed me on a walk was their
16 flagged line, which was at least an average about five
17 feet west of the line.

18 When I -- I'm sorry. Depends which. There's
19 always a buffer of about five feet. It depends which
20 angle you're coming. But that lot's rectangular, and
21 it was clearly identified, and that's what I tried to
22 pass that information where it was. It was pretty
23 close to where you park your car.

24 And the other lot is in the northeast corner of
25 the Apple Hill site, and it contained a butternut tree

1 with canker, dying, but it's there, and it's about 50
2 feet by 50 feet. That, the purpose of all of those is
3 that, and my photos as well, they're very easy to find.
4 I had, first step, placed my -- I walked the line.
5 Then we built the silt fence and put up the barrier
6 ribbon thereon. So they're like triple-protected right
7 now for visibility. No excuse for anybody not to find
8 them.

9 Q. Wait. Let me just back up a few steps so I
10 understand you. You made reference to, I think you
11 said, FTE Number 2.

12 A. Yes, sir.

13 Q. Okay. Is, that's what you're calling the, that is
14 what you're calling one of the conservation areas?

15 A. Yes, sir.

16 Q. Okay. And that is in the southeast corner near
17 the term, the end of Willow Road, or is that in the
18 northeast corner?

19 A. Number 2 is in the southeast corner, and it's, for
20 quick dimensions, roughly 150 feet north to south and
21 about 350 feet east to west.

22 Q. Okay. And the one you described as just, just a
23 few minutes ago, 50 feet by 50 feet in the northeast
24 corner by the butternut tree with a canker --

25 A. Yes, sir.

1 Q. -- is FTE Number 3; is that what that's called?

2 A. That is correct.

3 Q. Okay. Is there --

4 A. The latest -- yeah, I'm sorry. The .pdf that I
5 have now, that's very clear, and they're clearly
6 labeled Plant Conservation Area Number 3 --

7 Q. Okay.

8 A. -- and Number 2. it may beg the question, Where's
9 Number 1? But that's on state land off the site of
10 this project.

11 Q. Okay. You read my mind. That's what I was --
12 okay. And I think by FTE maybe my understanding is
13 we're, we're talking these are typically called RTE
14 plants.

15 A. Oh, that's, maybe, maybe the audio's not good.
16 I'm sorry for that. R, as in Robert; T, as in Tom; E,
17 as in Edward.

18 Q. Got it, great. And you said you, you sketched
19 these on the map yourself based on what, based on the
20 flagging you observed in the field or based on some
21 other map that you, you're looking at?

22 A. Combination of the two. I've been on the site
23 multiple times, once with Krebs & Lansing, and I
24 visually, physically paced those distances. I
25 subsequently obtained the working maps and, being used

1 to recycling, I don't throw away my old paperwork. I
2 just add to it, and that's how I had the map in my
3 pocket.

4 MR. EINHORN: Okay. I think, and just one
5 moment, Mr. Kobelia. I'll get back to you in a moment.
6 Mr. Chairman, I think it would be helpful if these maps
7 that we're discussing in, including, I guess, this
8 newer one that shows areas were somehow submitted in
9 this case so the parties could look at them.

10 CHAIRMAN ROISMAN: First of all, does anyone
11 have any objection to admitting the maps as exhibits?
12 Mr. Melone?

13 MR. MELONE: I have no objection. I don't
14 have the maps with me. So I have to figure out what
15 maps they are, but I don't have any objection.

16 CHAIRMAN ROISMAN: Okay. Ms. Aceves?

17 MS. ACEVES: No, no objection.

18 CHAIRMAN ROISMAN: Okay. So they'll be
19 admitted, and then we'll deal with the logistics. Mr.
20 Einhorn, do you have these maps, or is it only Mr.
21 Kobelia who has the maps?

22 MR. EINHORN: Yeah, I don't. I'm not
23 familiar with these based on how they were described as
24 being, how they're described. I'm not familiar with
25 them.

1 CHAIRMAN ROISMAN: All right. And, Mr.
2 Kobelia, I think we've been talking about two maps.
3 Are they both 8.5-by-11, or is one much larger than
4 that?

5 MR. KOBELIA: They could be as big as Krebs &
6 Lansing prepared them at their site. I'm using a .pdf
7 that I printed out on an 8.5-by-11, and it is the one
8 dated that -- because it's a .pdf, the clarity's great.
9 It is dated 5/21/2020, and the sketch was drawn by JBC
10 of Krebs & Lansing. So that's the best perimeter map
11 out there for this.

12 I have a second map that had a location of
13 proposed berms made out of wood chips to additionally
14 help control erosion on the site. So that's a, you
15 know, we keep taking the same base map and using it for
16 different purposes, and the berm construction is part
17 of my charge.

18 CHAIRMAN ROISMAN: But it seems to me that
19 the maps that, that, and correct me if I'm wrong, Mr.
20 Einhorn, the maps that you're interested in are this
21 .pdf map that Mr. Kobelia just talked about and the map
22 that was shown to the representative of ANR who was on
23 the site, which is a different map than the .pdf map.
24 Is that correct, Mr. Kobelia?

25 MR. KOBELIA: They all use the same basis.

1 You know, the, the boundaries are the boundaries. It's
2 the interesting features that are being highlighted
3 that can be talked about and, and placed. On my map I
4 have three different interesting things on there. So
5 it's a bit muddy. It's easier, if you're talking about
6 RTEs, just to have those identified. So mine had
7 everything on it, contour lines and, and staging areas
8 and, and quite a bit. It's a busy map.

9 CHAIRMAN ROISMAN: Mr. Einhorn, which is it,
10 or which ones are, are they that you would like to have
11 admitted?

12 MR. EINHORN: The CD-001 clearing plan, which
13 has a date of potentially February 12th 2020. It's a
14 proposed area for ag. use. It seems it's what Mr.
15 Kobelia described it as. And the .pdf, which he
16 described as being dated after the meeting, with a date
17 of 5/21/2020.

18 CHAIRMAN ROISMAN: Okay. Mr. Melone, what,
19 what mechanisms do you have by which those might get
20 filed in ePUC very quickly?

21 MR. MELONE: Well, I'm assuming I can find
22 the .pdfs or obtain the .pdfs that don't have Bob's
23 notes or, or whatever else he's put on them, if that's
24 acceptable. Or, if Attorney Einhorn wants what Bob has
25 in his possession, Bob would have to scan them in, and

1 then he could send them to us, and we could admit them
2 into evidence.

3 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, do you
4 want the ones that have Mr. Kobelia's notes on them,
5 the one that was shown to the ANR representative, or is
6 the .pdf one adequate?

7 MR. EINHORN: I think, for the second one,
8 it's the .pdf one if that's easier. The first one, I
9 guess I'm, I'm trying to ascertain the documentation of
10 the existence of the RTE areas, and, as I understood
11 it, the map, the working map, is the only one that
12 shows that, because Mr. Kobelia indicates that he
13 sketched those in.

14 CHAIRMAN ROISMAN: And, Mr. Kobelia, is Mr.
15 Einhorn correct that the only one of these maps that
16 will show the RTE areas is the one that you put your
17 own notes on?

18 MR. KOBELIA: I doubt that that's accurate.
19 I've got, must be, eight different maps to my right.
20 I'm sitting in my car at the Albany Airport, and, if
21 you give me pause, I'll rifle through those and see if
22 there's others besides the, the May 21st draft, which
23 clearly has them on. I know there were other sitings
24 thereon. So while -- may I put the phone down and look
25 at those?

1 MR. EINHORN: Maybe I can cut to the chase
2 here. I think it would be beneficial to have whichever
3 one it is you're actually using to inform your
4 activities in a way that they're conducted to avoid
5 these RTE areas that you are calling Numbers 2 and
6 Number 3.

7 MR. KOBELIA: Well, I'm looking right at the
8 draft that was carried by Krebs & Lansing's field crew
9 at the time they walked me around the property and did
10 their flagging. Not having a copy of that map that was
11 roughly four feet by three feet, we laid it on the
12 ground, and I took a photo, with this phone, of it.
13 Albeit it's got grass around the border and a little
14 crinkled as it's not a perfect, flat surface, but it's
15 legible, not as legible as the one that I just referred
16 to, but it, it was a photocopy that I used on my phone.
17 So I could send that to you posthaste, but I'd have to
18 hang up the line to do it. I think I --

19 CHAIRMAN ROISMAN: I don't think we need to
20 see it at the moment. If it's something that you can
21 make a photocopy of and send directly to Mr. Melone,
22 then he can file it in the appropriate way with us.

23 MR. KOBELIA: Sure.

24 CHAIRMAN ROISMAN: Mr. Einhorn, would that be
25 satisfactory?

1 MR. EINHORN: Yes, that's fine.

2 CHAIRMAN ROISMAN: Okay. Let's do that. All
3 right. Go on, Mr. Einhorn.

4 BY MR. EINHORN:

5 Q. Oh, thank you. Mr. Kobelia, you, in Paragraph
6 Number 5 of your affidavit, you indicate that the
7 bright orange fence was installed by Krebs & Lansing to
8 identify the conservation areas?

9 A. I thought they had. Somebody did, but it was way
10 before my time. That fencing's been there for several
11 years, and my new work was definitely put up by theirs.
12 I was following their blue-and-orange flagging. But
13 the original orange plastic fence, I don't know who was
14 the party that put that up.

15 Q. And that's the fence you're referring to as being
16 installed by Krebs & Lansing?

17 A. Yeah. I, I don't have firsthand knowledge of it.
18 I have secondhand knowledge that that's who did it.

19 Q. Okay.

20 A. So, you know, so we could be splitting hairs, but
21 somebody that knew where it was to go put it in.

22 Q. Okay. I'm looking at what you've identified and
23 attached to your exhibit as Photo Number 3. It says --

24 A. Okay.

25 Q. -- looking north. Do you have that?

1 A. I have my notes that I accompanied every one of
2 those. You could help me out to be sure we're on the
3 same one, because I identified them as screenshots, and
4 what I saw for the submittal, the first screenshot of
5 my pictures was Number 7, and they went to Number 20.
6 Any chance you can see a screenshot down in the bottom
7 left corner?

8 Q. No, there is, there is not, but I can, I can tell
9 you how it's described in your affidavit.

10 A. Sure. Yes, sir.

11 Q. It says, "Looking north along the westerly
12 boundary of RTE Number 2", which, as I understand it,
13 is the southeastern one, "a small buffer was left
14 between the RTE and the silt fence", and I see your
15 silt fence.

16 A. Yes, sir.

17 Q. I see the orange flagging tape pinned to trees, it
18 looks like, above the silt fence, and then I see some
19 orange barrier or snow fence beyond that. Do you know
20 the size of the buffer?

21 A. Yes, I do. It varies as the buffer went
22 tree-to-tree, and so does my silt fence and the barrier
23 ribbon. By convenience, the barrier ribbon, we want
24 everybody to see it, and it was typically sometimes
25 wrapped around some existing vegetation that might be

1 two or three, four inches in diameter and then stapled
2 to the tree for extra support. So it's more of a
3 zigzagged line that's running, on average, four to five
4 feet apart.

5 There may be a later picture that shows my German
6 shepherd black dog in the foreground with a lot of
7 green vegetation and that older fence in the
8 background, and that's probably ten feet apart at that
9 spot. So, when Krebs put that flagging up, there's, we
10 casually tried to always make sure it was on the side
11 of extra buffer. That area is covered with some nasty
12 vegetation like multiflora rose, autumn olive,
13 hawthorn, and there's some places that are so thick it
14 will tear a man to pieces. So the bulldozer does a
15 nice job on it.

16 But the flagging went where the guys could go
17 without bleeding to death, and it's a little easier to
18 work now that -- that's the purpose of that initial
19 walk-through with the dozer was to be able to make it
20 so a man could get through it and be reasonably
21 straight with putting the fence up.

22 Q. I understand. So, at its narrowest width, what
23 would you say that that buffer is?

24 A. I'd say that the buffer, there could even be a
25 couple of trees that we had mutual ribbon, barrier

1 ribbon, and silt fence on it, because it could have
2 been the only tree that was perfect for that job. The
3 buffer itself, there's two types of buffers, as I see
4 it.

5 These individual planting sites had clearly been
6 staked and are out in the middle of this thing much
7 like a checkerboard, and there is none of that near the
8 outside perimeter. So I was not the one that laid it
9 out initially. So it just appeared as if this barrier
10 ribbon may have already incorporated all of the rare
11 and endangered planting sites, and nothing was closer
12 than 50 to 100 feet of this line so that, whatever the
13 agreement was at the time of install, it, it appeared
14 as if there was never any of that vegetation, special
15 plots with tomato stakes marking the corners anywheres
16 near the line.

17 So, as a minimum, I'm probably always three to
18 five feet away from that existing plastic fence, and,
19 just like when we run boundary lines in woodlots, you
20 know, we always used to use the length of an axe
21 handle. I think that's what you'd find was run here as
22 a minimum.

23 Q. Okay, great. Thank you. The, the orange flagging
24 that was put up and the silt fence, do you know if
25 that's been inspected by a botanist since it went in?

1 A. I don't control the site schedule of who comes and
2 goes to the site. I've only been there a short period
3 of time and, in my duration of time on site, had very,
4 very few visitors. The land is posted, and I did see
5 someone approach from the Apple Hill apple orchard way
6 and disappear when I was in there, but I don't think it
7 was Bigfoot. I just think it was somebody seeing what
8 I was doing, but they didn't identify themselves. I
9 don't think it was a botanist.

10 Q. What I'm asking you is, As you are talking today,
11 can you affirmatively say that the silt fence and the
12 flagging has been inspected by a botanist?

13 A. I'm a forester. I know my trees. If I can't
14 climb it, I may not know it. So I know what I've seen,
15 and I'm a forester, and I don't believe that area was
16 threatened in any shape, manner, but I am not a
17 botanist, and I saw no botanist come, and they didn't
18 check in with me about it. So that I, I would say I
19 have no privy to know.

20 Q. Okay, all right. That's helpful. Thank you. For
21 the purposes of the clearing work that you are planning
22 to do, as I understand it, you're, you're intending to
23 clear the site in five-acre chunks, more or less; is
24 that accurate?

25 A. I think that's fair to say. And the reason for

1 that is to have ability to get some vegetation growing
2 on the site. As I mentioned, we just pretty much got
3 there, and this didn't happen on day one, but we
4 haven't done much yet, except install the silt fence
5 and barrier ribbon and make a place to turn around. In
6 that timeframe, I have brought over from my own farm
7 fifteen five-foot hay bales for use to help stabilize
8 the ground, as there's some ground disturbance, and my
9 intent is not to have too big of an area get to what
10 would be a stumped needing restoration. I'm going to
11 look to keep up with that process.

12 So, yeah, we have a five-acre proposal that
13 doesn't meet working as I proposed it, and, and I, I
14 would tend to keep up with the work.

15 Q. Okay. So, with regard to the clearing that, that
16 you're intending to do, what is your understanding of,
17 of these two RTE areas, Number 2 and Number 3, with
18 regard to your clearing activities? What will happen,
19 or what will --

20 A. My, yeah, my understanding is that we will not
21 have any entry with any equipment. We've got the small
22 buffer to even keep farther back than working right up
23 to the boundary line, but and no trees would be felled
24 into that same working area. So I'm not looking to
25 have trees dropped or any entry by machinery. Au

1 naturel is a good thing. So these would basically be
2 as the same today as they would have been ten years
3 from now or vice versa. Whatever Mother Nature does is
4 her business.

5 Q. Now, is your, is your clearing operation, and I'm
6 not interested in what's been referred to as the
7 orchard lot, which is kind of a little bit to the north
8 and it has apple trees, right?

9 A. Right.

10 Q. I'm interested in, in this other lot that's, you
11 know, currently wooded and you're foresting.

12 A. Sure.

13 Q. Are those activities limited to, you know, what I
14 would describe generally as the eastern, southern leg
15 of, of that parcel, which is, the entire parcel is 27
16 acres, as I understand it, or are you also going to be
17 clearing in the west, in other words, the entire
18 27-acre parcel?

19 A. Just for clarification, those 3 parcels total
20 27-and-change acres. So, if you take out the apple
21 orchard that's about 5.7, it leaves roughly 21 acres,
22 and my charge is, and that 21 acres includes the FTE.
23 So we may be looking at 20 acres of land being
24 protected for erosion control. The silt fence goes all
25 around the eastern, southern, and western perimeter.

1 Boundary ribbon does go all the way to the north end,
2 just so that someone walking in the woods would know
3 that they're entering that. But my charge is to clear
4 as much as they ask me to do in the time that I'm
5 there.

6 So, originally, there's lots of stone walls. 200
7 years ago, there was probably sheep on this land, and
8 not that many years ago even out away from the apple
9 orchard there were apple trees throughout this lot.
10 So, if you imagine a two-tiered stand, there's some
11 apple trees that just got overgrown over the last 50
12 years, and there's, there's a mixture on a lot of this
13 property of, of that. Terrible underbrush of
14 honeysuckle, invasives, autumn olive and that.

15 Q. Mr. Kobelia, I don't want to interrupt you, but
16 this has been a long proceeding at this point.

17 A. Sure.

18 Q. All I'm simply asking is, Is the plan to clear
19 that entire parcel exclusive of these two RTE areas
20 you've identified and exclusive of the orchard lot?

21 A. At the end of the process, it would be.

22 Q. So my question for you is, Are you aware of
23 another RTE plant conservation area in the southwest
24 portion of the property as you head toward the ramp for
25 Route 7 and, I believe, it's 279 there?

1 A. The map I have shows RTE 1 as being identified on
2 that land between PLH's property and the highway. So I
3 assume it's in the state right-of-way jurisdiction. It
4 doesn't fall on this site. So there would be no entry
5 into it. If it's mismarked, then it's mismarked, but
6 on my map it clearly shows it off the property, and the
7 2 and 3 are the only ones that are on the PLH property.

8 Q. Okay. So I just have a couple more questions for
9 you. We'll shift back to the area that we were just
10 discussing with the RTE 3 being in the northeast
11 corner, RTE 2 being in the southeast corner and much
12 larger.

13 Are you aware of any other RTE areas north of RTE
14 2 and west of RTE 3 in between Willow Road and the
15 orchard lot's southern terminus?

16 A. Prior to my visitation, I was on site in the
17 wintertime before the leaves came out, and there was a
18 large volume of miscellaneous ribbons and markings that
19 could confuse anyone, and I asked the question, and
20 that's why Krebs & Lansing came out and specifically
21 laid out this plots that they said were no-go zones,
22 and we no go there. I'm not aware of any official site
23 anywheres else on this parcel.

24 Q. So there are no other sites on the parcel that
25 you've been told to avoid?

1 A. That is correct. And a lot of this old ribbon
2 that's been on site for multiple years has been taken
3 down just to get rid of the confusion.

4 Q. Do you know who took it down?

5 A. Krebs & Lansing, as they were doing their work,
6 were taking down any confusing ribbons in the time that
7 they were doing that marking. But, because there was
8 other ribbon elsewhere, I'm not privy to know, and I'm
9 not privy to know if they were legitimate sites in the
10 first place. Someone, a third-party, could put it in
11 just to be a stinker.

12 Q. Yeah, I understand.

13 A. Yeah.

14 Q. Do you recall what the color of that ribbon was
15 that you were --

16 A. Sure.

17 Q. Okay.

18 A. Sure. In the northeast corner, Number 3, that was
19 kind of odd. It almost looked like the yellow strap
20 that you'd use to bind a load of lumber on a trailer.
21 And, when I saw that, I had put some additional caution
22 ribbon around it. I have caution ribbon labeled as
23 such. So I put that up myself. I had seen caution
24 ribbon in many places on, on this lot, and some of that
25 has subsequently been picked up and pulled.

1 I'll give you an example. Where you parked your
2 car on Willow Road there was an old trail that went
3 right through the, the Area 2 near the western
4 boundary, and it went all the way to the apple orchard
5 vis-a-vis an old farm road, hiking trail, and there was
6 danger boundary ribbon on both sides of that, and I was
7 informed by Krebs that that didn't, that was not
8 identified as anything that's rare and endangered.
9 It's the old farm trail. So that's gone.

10 Q. And what do you -- that specific ribbon, do you
11 recall what color it was?

12 A. Oh, sure. It was approximately 2.5 inch wide.
13 Comes in rolls with the big words "caution", and there
14 was even some staking there, and some of that's on the
15 hedgerow now.

16 Q. Okay. And so, where that was removed, you're
17 planning to clear that area?

18 A. Oh, sure. It would be like taking all the land
19 north of the RTE and saying, yeah, if that's no-go,
20 then take away four or five acres.

21 Q. All right. Thank you very much, Mr. Kobelia. I
22 don't have any further questions.

23 A. Sure.

24 CHAIRMAN ROISMAN: Ms. Aceves, do you have
25 any questions for this witness?

1 MS. ACEVES: I do not. Thank you.

2 CHAIRMAN ROISMAN: Commissioner Hofmann, any
3 questions?

4 COMMISSIONER HOFMANN: Thank you. I just
5 have a couple. Mr. Kobelia, you actually indicated in
6 your testimony that you had been out in the winter.
7 Was that in the earlier this year of 2020?

8 MR. KOBELIA: Yes, ma'am. I've been on the
9 site a couple times, just because I've done other work
10 for the folks, Tom Melone, and one of his people asked
11 me to take a look at it and let me know what I thought
12 about it for clearing issues, and, certainly, you can
13 tell a lot more walking a property without the
14 vegetation. So my recollection is that I was skiing on
15 what little snow we had this winter, and I went there
16 before I flew to Florida on March 13th. So not sure
17 what day it was I was up there, but, yes, I was up
18 there probably early March.

19 COMMISSIONER HOFMANN: Okay. And then your
20 affidavit says that you then walked the site with Krebs
21 & Lansing, and I wondered if that was the same trip or
22 that was a subsequent trip to the property.

23 MR. KOBELIA: Oh, that was a different day,
24 for sure, and I came back from Florida by car the first
25 day or two of May and quarantined and that sort of

1 thing, but, when Krebs had their appointment, I was
2 asked if I could accompany them. We maintained good
3 social distancing and exchanged the map that they had,
4 but we walked the whole boundary line.

5 COMMISSIONER HOFMANN: And, by that time, had
6 the new marked-off flagging been done, or was that done
7 after that visit?

8 MR. KOBELIA: Oh, that was the very same day.
9 We met there early. We walked all the area, and, as we
10 walked, they were putting up their ribbons. They had a
11 two-man crew, and they were using the proper surveying
12 equipment to identify the corners and pins and to make
13 life easy of putting up ribbon on the right location.

14 It was my understanding they were going to also
15 survey the easterly boundary of the 5.7-acre apple lot
16 at the very same time, but there was no need for me to
17 see the finished product until they got done. So I was
18 with them for a couple hours, but they may have taken a
19 good part of the day to do their project.

20 COMMISSIONER HOFMANN: And then were they
21 taking down -- you talked about these ribbons that just
22 were confusing. Were they taking those down as you
23 walked along?

24 MR. KOBELIA: Oh, absolutely, yeah. And, at
25 that time, I'll give you an example. There's a painted

1 hiking trail with ribbon on it. It's red, kind of runs
2 through the northerly part of the 21-acre lot, and it's
3 obviously someone that did it there for convenience for
4 hiking, and there was associated ribbon with that. I
5 mean, there was -- I asked them if it meant anything,
6 and they said that doesn't mean anything to the rare
7 and endangered sites.

8 COMMISSIONER HOFMANN: And, Mr. Kobelia, you
9 said you're at the Albany Airport now, but when was the
10 last time you were at the site at 1033 Willow Road or
11 the Apple Hill Road site?

12 MR. KOBELIA: Yesterday.

13 COMMISSIONER HOFMANN: Okay. And how much of
14 that property has been cleared, or, of the area you are
15 clearing, how much has been accomplished?

16 MR. KOBELIA: I have, at this time, basically
17 created a access much like a fire lane on the east
18 north of the RTE 2 and on the southern boundary and
19 westerly boundary so that we could carry silt fence to
20 all the portions that needed it. And so that's all in,
21 and that whole area, a lot of it is slated to have a
22 wood chip berm. So, at the same time, I had, it's not
23 perfectly smooth yet. It needs to be back-bladed, but
24 it's roughed in.

25 COMMISSIONER HOFMANN: So can you give a

1 percentage?

2 MR. KOBELIA: That's about 3 acres, when I go
3 that perimeter, and 20 to 30 feet across. So there's
4 about 3 acres and a small area created to put some wood
5 and stumps, which, over time, we could use much more
6 space than that, for sure. But, as of this moment, I
7 didn't accomplish a lot this week. I don't like
8 working when it's 90.

9 COMMISSIONER HOFMANN: I don't blame you. Do
10 you have a crew working there when you're away?
11 Because you said you were at the Albany Airport.

12 MR. KOBELIA: Yes, ma'am, but I don't have --
13 I just put my grandson on a plane at 8:00 o'clock, and
14 I've been online since 8:30, except for the times I had
15 to try to call in again.

16 COMMISSIONER HOFMANN: Yes, and I understand
17 that, but do you have a crew that's working there, at
18 the Willow Road site and the Apple Hill sites, do you
19 have a crew working there while you are not there?

20 MR. KOBELIA: Right now, I'm doing most of
21 the work that requires my guidance. That doesn't mean
22 later in the project I'll have manpower far exceeding
23 me, but, right now, in a typical day I may have a
24 helper with me, but right now I put him on the plane.

25 COMMISSIONER HOFMANN: I understand. Thank

1 you very much.

2 MR. KOBELIA: Sure.

3 CHAIRMAN ROISMAN: Commissioner Cheney?

4 COMMISSIONER CHENEY: Yes, this is Margaret
5 Cheney again, and I just have a question following up
6 on what you just told Commissioner Hofmann that you had
7 created an access to carry the silt fence. Is that
8 what we see in two photos that also show your German
9 shepherd? Is that the -- if you can remember those
10 photos, they were the north line of RTE Number 2. Is
11 that the same as what you just described?

12 MR. KOBELIA: Yeah. It would have been
13 extremely difficult to carry the fence with the stakes
14 on it through the vegetation. It's just way too thick.

15 COMMISSIONER CHENEY: So those -- go ahead.

16 MR. KOBELIA: Oh, that, it, there's, like,
17 multiple steps. The more you travel on it, the more
18 the root systems get taken out, and, if there was small
19 vegetation, they came out easy and pushed to the side.
20 All of that would be chipped. There wasn't anything
21 that was pushed out and away that -- you know, as work
22 is in progress, we chip it, use some of the chips for
23 the silt fence, for the berm.

24 COMMISSIONER CHENEY: And I'm just trying to
25 make sure that what I'm looking at in the photos is

1 what you just described as the --

2 MR. KOBELIA: Oh, yeah. Maybe the best
3 picture, that, that line with the dog, the land goes
4 up, and then it goes down. So, if you were at the
5 picture, that's the northwest corner of FTE 2 (sic.),
6 it makes a 90-degree turn and then runs due east. So I
7 tried to identify these as directions, and you can see,
8 basically, that's the whole length of the thing, up the
9 hill to a couple of dead ash, and the closer picture
10 was of the dead ash up close with the corner, the
11 northeast corner, in the distance. So I tried to piece
12 it as if you would walk and have a string of photos.

13 COMMISSIONER CHENEY: That's great. Thank
14 you. I thought that's what it might be. And that's
15 the only question I have. Thank you.

16 MR. KOBELIA: You bet.

17 CHAIRMAN ROISMAN: Mr. Landis-Marinello, do
18 you have any questions for Mr. Kobelia?

19 MR. LANDIS-MARINELLO: Yes, I had just a
20 couple. So, if you include the orchard parcel, then is
21 my math right that the plan is to clear about 26 of
22 these 27 acres?

23 MR. KOBELIA: I think that's accurate.

24 MR. LANDIS-MARINELLO: And that's a clear-cut
25 that's going to be happening?

1 MR. KOBELIA: My instructions were to have
2 the sun hit the ground and get rid of all the stumps.
3 I don't believe we've had a complete understanding of
4 how to treat the hedgerows. For example, there's a
5 nice hedgerow between the apple orchard and the north
6 corner. Might have been Chelsea. And, if they need to
7 go, they'll go, but we might have trouble stumping that
8 because of a 200-year-old stone wall.

9 MR. LANDIS-MARINELLO: And so, for this 26
10 acres that are going to be cleared, have you or anyone
11 at Krebs & Lansing, at any point in 2020, walked that
12 area to look for RTE?

13 MR. KOBELIA: I've walked it. I know some of
14 the plants, but I'm not a botanist. So no one's asked
15 me to take them for an excursion.

16 MR. LANDIS-MARINELLO: And just one more
17 question. Has Mr. Melone or anyone else made you aware
18 of the Commission's May 7th 2020 order that denied the
19 amendment to his projects with the amendment being what
20 formed the basis for this plan for clearing?

21 MR. KOBELIA: I have nothing in writing, and
22 I can only go by what I was told that what we were
23 doing was perfectly fine. So, you know, I didn't do a
24 title search to, up-to-date to see if there was
25 anything pending that would affect my ability.

1 On the other hand, in my contractual agreement,
2 and they've agreed to do it, is that they include me as
3 an additional insured because of the folks have been
4 continually suing them all the time. I'm not that dumb
5 that I want to do any work and not be hung out to dry.
6 So, you know, I guess you know what I just said. I'm
7 covered by Ecos, PLH.

8 MR. LANDIS-MARINELLO: Okay, thanks.

9 MR. KOBELIA: Sure.

10 CHAIRMAN ROISMAN: Mr. Tousley, any
11 questions?

12 MR. TOUSLEY: Yeah, just, just one to sort of
13 summarize some of the other questions folks have asked,
14 answers you've given. I'm looking for a percentage. I
15 think what you've said is that, of the 26 acres,
16 approximately 3 have been clear-cut, which would make
17 somewhere around 10, 12 percent completed. Is that, is
18 that a good understanding of what's out there?

19 MR. KOBELIA: If you said I did it with a
20 bulldozer, not a chainsaw, correct. The trees have
21 been pushed down, haven't been utilized yet, but we've
22 not even started chainsaw. So, you know, basically,
23 the path for much like a forest access road. It's just
24 the vegetation has been stripped off, and water bars,
25 where necessary, have been put in.

1 MR. TOUSLEY: Okay.

2 MR. KOBELIA: Albeit the ground isn't
3 particularly steep. There's hardly any steep there.
4 There's no running water, no snow to melt right now.
5 Probably, the site sits on gravel. So it's very dry.
6 From an environmental standpoint, it's a perfect time
7 to be doing the work. It's bone dry, no mud.

8 MR. TOUSLEY: So 10 to 12 percent is probably
9 a high number in terms of how much you've done, and, if
10 you were to estimate what percentage is complete, what
11 percentage is left to do of your project, what would be
12 the percentage complete now?

13 MR. KOBELIA: Well, none of its complete,
14 because part of my job is stumping and reseeding. So I
15 can't do any of that until you get to steps A and B
16 first. So it's work in progress.

17 MR. TOUSLEY: Okay. Let's say the whole
18 project with all, with everything you've got to do,
19 stumping and reseeding and everything.

20 MR. KOBELIA: Yeah.

21 MR. TOUSLEY: How much of it is -- are you,
22 like, at the 1 to 2 percent? Are you at the 10
23 percent? How far along are you?

24 MR. KOBELIA: I'm 100 percent done with
25 boundary work and silt fence. So that I think of it as

1 segments to get the tasks completed. So the
2 environmental part, boundary lines and that, that's all
3 done. So we're basically just starting, and maybe 10
4 percent of actual putting a blade to the ground is
5 accurate. But job closure is at the very end, and it
6 will be, as portions get secured and I'm able to put
7 them to sleep, I'm never going to have anything more
8 than five acres at a time. So they'll be, between now
9 and, let's say, mid-September, it would be normally an
10 orderly process to clear and reseed and have the whole
11 acreage finished by mid-September.

12 MR. TOUSLEY: Okay, thank you.

13 MR. KOBELIA: Sure.

14 CHAIRMAN ROISMAN: I just had one question
15 for you, Mr. Kobelia. What's the date your contract
16 was signed?

17 MR. KOBELIA: Could you hold on a minute? I
18 have it with me.

19 CHAIRMAN ROISMAN: Sure.

20 MR. KOBELIA: And I will get to that date. I
21 know I brought it for a reason. Entered as of June 8.

22 CHAIRMAN ROISMAN: This is 2020, I assume.

23 MR. KOBELIA: Oh, yes, sir, yeah.

24 CHAIRMAN ROISMAN: Okay, all right. And is
25 there a time provision in the contract? In other

1 words, you, in order to fulfill the contract, you have
2 to complete your work by, and there's some date in
3 there or not?

4 MR. KOBELIA: This contract does not have a
5 termination date. It also doesn't have any penalty to
6 me if it's not done by that date that's not stated.
7 But we've had a verbal agreement that our goal was to
8 not get there and sit on it, and with the idea of
9 having vegetation established before the fall growing
10 season. And, if you ask alfalfa and, you know, and the
11 hay that I have, it's beautiful hay and the normal
12 grasses that you'd have around my farm, that will be a
13 good start. It will get a good start. They can put on
14 other things next season.

15 But I'm looking at using a combination of rye, the
16 quick rye that we call winter wheat, and that comes up
17 very fast. I might throw some buckwheat out there.
18 But the whole idea is to have a quick catch for erosion
19 control. And then we've had it wicked dry down here.
20 Probably, you have too. So, if I was trying to seed
21 right now, it wouldn't establish, but I want -- I've
22 got my hay on site right now to use as needed, and we
23 are starting to get a few thunderstorms in the
24 afternoon, and, as you know, that will all help.

25 CHAIRMAN ROISMAN: And how soon -- let's

1 assume that, that your schedule is as you've outlined
2 it and that you actually are able to finish the project
3 and get your seeding done by, say, mid-September. How
4 soon after that would it be feasible for sheep to be
5 grazing without destroying all the seeding work that
6 you will have done?

7 MR. KOBELIA: Well, if you can make me have
8 an analogy, that's what the Cattle Wars were all about
9 out west.

10 CHAIRMAN ROISMAN: I know, out west, I know
11 what they were about, yes.

12 MR. KOBELIA: Yeah. And, and, you know, the,
13 the longer you can let a site establish itself, the
14 better, and it doesn't take a lot of greenery for a
15 sheep to mow it down, and cattle aren't the same. So
16 they could be there eating the weed brush, and they
17 would. You know, I won't get every root out of the
18 ground. So there will be sprouts that are natural
19 vegetation. If I did nothing, there will be weeds
20 growing right behind me. Hopefully, it's not poison
21 ivy. But it's a, it's not the same as if it was a cow.

22 So I think you understand. There's, there will be
23 something immediately there, even the 1st of August, on
24 areas that I've treated. Whether it's the kind of
25 vegetation I'd prefer to see grown at the same time,

1 it, it would be good. But they're not looking at
2 having 24/7 for all year long pasturing on this thing.
3 They're going to be rotating, and that's a good thing.
4 Just like BLM does out west, they rotate it through.

5 CHAIRMAN ROISMAN: Okay, all right. Mr.
6 Einhorn, do you have any additional questions based on
7 the Commission's questions? If not, I'll turn it back
8 to Mr. Melone for any redirect.

9 MR. EINHORN: I do not have any additional
10 questions. Thank you.

11 CHAIRMAN ROISMAN: Okay. Mr. Melone, do you
12 have any redirect for this witness?

13 MR. MELONE: Yes, Mr. Chairman. I just want
14 to focus on one of the, one of the questions that Bob
15 was being asked about RTE Conservation Area 1.

16 REDIRECT EXAMINATION BY MR. MELONE

17 Q. Now, Bob, on the map or the plan that you have,
18 RTE Conservation Area 1 is outside of the area to be
19 cleared, correct?

20 A. Yes, sir. It's southwest by maybe a hundred feet
21 or more.

22 Q. And, going north along Route 7 on that plan,
23 there's also a significant amount of area that is also
24 scheduled not to be cleared; is that correct?

25 A. Precisely.

1 Q. And, along the northern boundary, if we turn right
2 and go north, there's also a significant amount that's
3 not to be cleared; is that correct?

4 A. That is correct.

5 MR. MELONE: Okay, thank you. That's all I
6 have.

7 CHAIRMAN ROISMAN: All right. Well, Mr.
8 Kobelia, we're going to free you from the Albany
9 Airport parking lot, which I know you'll be glad to be
10 able to do.

11 MR. KOBELIA: It's a good thing I have
12 E-ZPass Plus. No lunch for me.

13 CHAIRMAN ROISMAN: I hope you have a safe
14 drive back home. Thank you for your testimony this
15 morning, now this afternoon.

16 MR. KOBELIA: Well, thank you for allowing me
17 to do it the way we did. I was combobulated a little
18 bit on how I was going to make it work. So appreciate
19 your time.

20 CHAIRMAN ROISMAN: Well, and yours too.
21 Thank you.

22 MR. KOBELIA: Okay. Goodbye.

23 CHAIRMAN ROISMAN: Does any party have any
24 other evidence that we need to hear today? And, if
25 not, we can go to closing. No?

1 MR. MELONE: None from me.

2 CHAIRMAN ROISMAN: Okay, all right. Mr.
3 Einhorn, as the proponent, you can go first.

4 MR. EINHORN: Thank you, Chairman Roisman.

5 MS. ACEVES: Mr. Chairman, I'm sorry to
6 interrupt. Would I be able to go first, just because I
7 do have to leave in five minutes?

8 CHAIRMAN ROISMAN: Sure.

9 MS. ACEVES: I just had one quick thing to
10 say regarding the TRO, and I appreciate all the
11 evidence presented to assist the Department in taking a
12 position, and so I just wanted to say that, despite the
13 procedural issues that were raised by Mr. Melone in his
14 filing, the Department is in support of a TRO based on
15 what Mr. Popp, as well as Mr. Kobelia, said in their
16 affidavits and their testimony.

17 Both have raised concerns that the Department is,
18 is in agreement with regarding whether there have been
19 rare plants harmed by the clearing that could merit
20 further investigation. Between that and Mr. Melone's
21 assertions that the agricultural schedule is somewhat
22 flexible, we'd support a TRO to allow ANR to further
23 investigate the issue. So I wanted to just have our
24 position on the record there.

25 That said, the Department does have concerns

1 regarding the Commission's jurisdiction over the Willow
2 Road parcel in particular given that the, as we said in
3 our filing, the, the June 2019 Willow Road order is
4 currently on appeal with the Vermont Supreme Court, and
5 that, that concern is based on the Commission's October
6 2017 order in Docket 8302, where the Commission stated
7 it lacked jurisdiction over certain subject matter on
8 appeal.

9 That could be temporary if the, if the Supreme
10 Court remands the case, but I did want to just say that
11 that remains an issue for the Department. And, unless
12 you have any questions for me, I will need to drop off
13 at this time, and Mr. Porter has agreed to represent
14 the Department in my absence.

15 CHAIRMAN ROISMAN: Well, you have a good
16 second chair, Ms. Aceves.

17 MS. ACEVES: Okay. Thank you very much.

18 CHAIRMAN ROISMAN: Thank you. Okay. Mr.
19 Einhorn?

20 MR. EINHORN: Thank you, Chairman Roisman. I
21 just want to express the Agency's appreciation to the
22 Commission for taking this up on such short notice and
23 devoting, obviously, a lot of, a lot of staff time and
24 effort into this, as everybody is here. So that's
25 greatly appreciated.

1 I think, based on the evidence that has been
2 admitted and the testimony that I've heard today, there
3 certainly are grounds for a TRO. You know, the first
4 factor is, Is there a threat of irreparable harm? That
5 factor is met. As Mr. Popp has testified, the clearing
6 activities would destroy these plants, both the very
7 rare and rare plants, if they were to take place, those
8 activities, in the area where the plants are. Based on
9 Mr. Kobelia's testimony --

10 CHAIRMAN ROISMAN: Mr. Einhorn, let me
11 interrupt you while you're on that point so that I get
12 clear on this. Does the Agency believe that there are
13 protective measures that could be taken, but you don't
14 feel have yet been taken, that would protect those
15 endangered species and allow the clearing of everything
16 other than those protected areas to occur without
17 danger to endangered species?

18 MR. EINHORN: Yes, I believe so, and,
19 unfortunately, my client, primary client here, our
20 botanist, isn't here to consult with, but I've worked
21 with him on many cases, and I think there would be a
22 number of steps that would need to be taken. I think,
23 first and foremost, is a botanist, qualified botanist,
24 should go to the site and look and see what is there
25 now.

1 As Mr. Popp testified, plants do move around. As
2 we know from the records in these cases and the
3 exhibit, at least the 2018 monitoring report, which is
4 ANR-9, many plants have been relocated, but some plants
5 have been left in place. I'll get to that in a moment.

6 So I think, first and foremost, is a botanist
7 should go and assess what's out there today. Then,
8 based on what's out there today, either plants need to
9 be moved to the conservation areas to make sure that
10 they're secured and protected if, if that type of
11 activity would be appropriate as far as moving them.
12 But, if there are other plants that aren't accounted
13 for right now, and I'll get to this in a moment,
14 because there are, then those areas would need to be
15 off limits for clearing.

16 So I think we need to, one, establish what's there
17 now; two, take measures to protect what's there now,
18 and, with those things in place, then I think there
19 would be the ability to conduct clearing outside of
20 those areas.

21 CHAIRMAN ROISMAN: And can you give us any
22 estimate? Assuming that the, that the Agency were,
23 were able to start next Monday, how long would it take
24 to get from where we are now to where you say the
25 Agency might be comfortable in terms of endangered

1 species with site clearing?

2 MR. EINHORN: Well, I don't know. I mean,
3 these aren't listed, so they're not threatened or
4 endangered, but they're rare and very rare. My
5 understanding is, in these situations in 248, the
6 Petitioner has the burden of production and persuasion,
7 and so we typically have the Petitioner demonstrate
8 that they're avoiding impacts, which means first
9 they've got to see what's there.

10 We could probably accompany the Petitioner's
11 botanist to look. It's not a huge site. We already
12 know from past monitoring activities and surveys where
13 plants are, but, frankly, I don't know how long that
14 would take. And then it's a matter of, Can plants be
15 protected in place? Can plants be moved? If they can
16 be protected in place, I think it's pretty simple to
17 just designate that area, take some GPS points, and
18 fence it off, like what sounds like is happening to
19 what Mr. Kobelia described as RTE Areas 2 and 3.

20 I don't know how long that will take, but I think
21 it's a matter of days and weeks rather than months.
22 And so, as I understand it right now, there are areas
23 that Mr. Kobelia is going to stay away from or has been
24 directed to stay away from. It's unclear whether
25 they've been secured in a manner that's acceptable to a

1 botanist, but what is also clear is that the 2018
2 monitoring report, which is ANR-9, on Page 3 contains a
3 map that shows the location of the Muhly grass along
4 what Mr. Kobelia described as the old farm road, which
5 runs from kind of the end of Willow Road northerly
6 across the Apple Hill site and to the hedgerow south of
7 the apple orchard.

8 Those plants exist in place and are labeled in
9 that exhibit as Site A, Site B, and Site C. So he has
10 indicated that, not only are there no protective
11 measures being taken, but that the flagging that was
12 there was actually, that he observed, was actually
13 removed, and he described that flagging as caution
14 tape, and, if you look further in on in that exhibit,
15 on page -- where was I? Don't have the page off the
16 top of my head, but there are photos of the, the plants
17 that were transplanted into plots in that same exhibit,
18 and the Muhly plants, some of which were transplanted,
19 are depicted on Page 12 of that exhibit in the
20 conservation area with yellow caution tape around that
21 area. So there are plants out there that were never
22 moved that are not being protected right now based on
23 what I heard today.

24 The same goes for the conservation area in the
25 southwest, which is more on the Willow Road, formerly

1 known as Chelsea site. The sheep farm plan that is ANR
2 Exhibit 7 shows in the southwest portion of the
3 property a demarcation or barrier fence, which is the
4 actual conservation area that was designated in
5 connection with the Chelsea or Willow Road project.

6 And so I've not seen any plans. I know Mr.
7 Melone, in his redirect, alluded to the fact that
8 there, that the clearing was not going to go all the
9 way to the edge of the property or the edge of the
10 VTrans right-of-way there, but I have not seen anything
11 that says that that area is off limits or that shows
12 that area being protected, and, apparently, Krebs &
13 Lansing hasn't staked that out, according to what I
14 heard from Mr. Kobelia.

15 So there is a, there is a threat of harm. The
16 harm is irreparable, because the plants would be
17 destroyed. That harm, it outweighs the potential to
18 harm to the other parties. This would not be a very
19 long process, I think, to sort this all out. The
20 landowner is not planning to do hemp growing until 2021
21 at the earliest. They can wait to clear this land.
22 Meanwhile, the threat to the plants is high right now.

23 A likelihood of success on the merits, there is a
24 resource, namely rare plants, that are protected by the
25 248 process. The standard in 248 is no undue adverse

1 impact. There's a reason for not commencing site
2 preparations before obtaining a CPG, and one of those
3 reasons is to be able to assess the potential for
4 impacts and take measures to avoid, minimize, and
5 mitigate those impacts if they're necessary to lessen
6 the impacts from undue to simply adverse. Given the
7 history of this, given all the documentation from the
8 developer's consultants and what we know here, I think
9 it's very likely that we would have success,
10 ultimately, if these plants were harmed.

11 And, finally, the fourth factor is, Is the
12 injunctive relief in the public interest? It is, one,
13 because this is a protected resource under 248, but,
14 beyond that, what we're talking about here is the
15 integrity of the Section 248 process, and it's very
16 clear that, as Mr. Melone said, he can't build the
17 Apple Hill solar facility without clearing trees. What
18 the reason for clearing them is or the timing of
19 clearing them is really irrelevant, because it is
20 necessary to construct the project, and the project is
21 still being pursued.

22 And that goes as well for the Willow Road, or
23 formerly Chelsea project, based on what I've heard
24 today and based on the, on the circumstances. There is
25 a Green Mountain Power line that's been run to

1 interconnect these projects at substantial expense
2 from, from the developer. So I would, based on the
3 history, based on the circumstances, and based on those
4 factors, think that the developer will continue to
5 pursue solar projects here.

6 So the integrity of the 248 process, I think,
7 requires that the 248 requirements, including a
8 restriction on site preparation in advance of a CPG, be
9 adhered to.

10 CHAIRMAN ROISMAN: Mr. Einhorn, I have one
11 other question for you.

12 MR. EINHORN: Yes.

13 CHAIRMAN ROISMAN: I understand the Agency's
14 position with regard to the rare species, and you've
15 indicated that you think there are things -- you're not
16 sure exactly what they are yet and how long they would
17 take -- but there are things that could be done such
18 that the site could be cleared and the endangered
19 species or the rare species could be protected.

20 My question is, Assuming all of that's done, does
21 the Agency believe that a TRO should be issued in this
22 case because this is site preparation occurring without
23 a CPG? Are you taking a position on that issue?

24 MR. EINHORN: Yes, because, frankly, as I
25 understand the law, the 248 CPG process is what gives

1 the Commission jurisdiction over the natural
2 environment and these very rare and rare plants for
3 which no independent agency jurisdiction, vis-a-vis the
4 Threatened and Endangered Species Act, applies.

5 CHAIRMAN ROISMAN: Okay, thank you. Mr.
6 Porter, I had one question for you. I would have asked
7 it of Ms. Aceves, and I forgot. Are you available to
8 answer? All of a sudden, you've gone into paused. I
9 didn't mean to startle you. Mr. Porter? All right.
10 Well, Mr. Melone, if his answer provokes you to want to
11 have another 30 seconds or minute once he comes back on
12 and I ask his question, I'll give it to you, but why
13 don't you do your closing now, if you will? Thank you.

14 MR. MELONE: Okay. Thank you, Mr. Chairman
15 and the commissioners. What I've heard today is that
16 ANR's position is that, because of things it doesn't
17 know, a TRO should issue and that they're putting on
18 the landowner the evidentiary burden to prove that a
19 TRO should not issue, but that's not the way the law
20 works.

21 If ANR wants to send their botanist to our site,
22 we'll let them spend as much time on our site as they
23 want. They can inspect the areas that are marked off
24 as the RTE areas 1, 2, and 3 and look for whatever
25 plants they think exist there. But you'll see when you

1 get the clearing plan that, from, that Bob Kobelia has
2 in his hand, that only 20 of the 27 acres of what would
3 be the site where the solar facilities would be is
4 actually scheduled to be cleared, and what's not
5 scheduled to be cleared is the area along the western
6 edge of what would be the Chelsea solar site. What's
7 not scheduled to be cleared is RTE Area 1, 2, and 3.
8 What's not schedule to be cleared is the area north of
9 what would be the Chelsea solar site.

10 So we, we don't have the obligation to prove that
11 a TRO shouldn't issue. The initial burden is on ANR to
12 come up with the facts. They have not done that. They
13 have not met any of the factors here. If they want to
14 come and show or get, gather the evidence, we're fine
15 to let them come to the site and do so. But on this,
16 the larger issue, the clearing here has nothing to do
17 with an electric facility. This is a plan to put the
18 property in productive use for agricultural purposes,
19 and on that score the Commission does not have any
20 jurisdiction. So that's the initial threshold
21 question.

22 ANR has not introduced any evidence that shows
23 that this is for an electric facility. All they're
24 doing is saying, Well, if this somehow benefits,
25 potentially, in the future, makes it easier to install

1 a facility, then that means it's site preparation, but
2 that's not what the statute says. That's not what the
3 Commission precedent says.

4 There's no protection in Vermont for rare plants.
5 This may be rare in Vermont, but it's not unlike the
6 palm tree that's probably rare in Vermont too, but
7 there are plenty of palm trees available in the United
8 States. Plenty of these white arrow-leaved asters are
9 available in the United States as well. And, in terms
10 of ANR's focus on the 248(b) process and how this sort
11 of ties into an ultimate determination of undue adverse
12 effect on the natural environment, (b)(5) requires a
13 balancing test.

14 So, if ANR was correct that somehow what is solely
15 an agricultural activity could still be subject to
16 248(b)(5), then, not only would they have to prove that
17 there is an undue adverse effect on the natural
18 environment, which they have not introduced any
19 evidence of, because we have protected the three RTE
20 areas, and (b)(5) also requires a balancing test
21 based on the potential benefits in terms of greenhouse
22 gases of a CPG, and, of course, a CPG is not even
23 issued here.

24 So, at the end of the day, I don't think they've
25 met their burden. They haven't met any of the four

1 factors. All it is based on what they say they
2 don't know. We'll give them an opportunity to find out
3 what they want to know, but it's not up to us to have
4 our people go out there and then prove to them certain
5 things. We'll, we'll provide the plan that will show
6 what's being protected, and, beyond that, it really is
7 up to ANR to come out and then come back to the
8 Commission and, and try to make its case, as opposed to
9 doing what it's doing now and just saying that, based
10 on what they don't know, they think a TRO should issue.
11 That's all I have, Mr. Chairman.

12 CHAIRMAN ROISMAN: Okay. Commissioner
13 Hofmann, Commissioner Cheney, or Mr. Landis-Marinello,
14 did you have any questions you wanted to put to Mr.
15 Melone on his closing argument?

16 COMMISSIONER HOFMANN: I do not.

17 MR. PORTER: Mr. Chairman?

18 CHAIRMAN ROISMAN: Yes.

19 MR. PORTER: This is Jim Porter. I just
20 wanted to apologize. I was on two different hearings
21 on two devices and had some difficulties. I can answer
22 your question -- I heard half of it -- if it's still
23 relevant or not. But I apologize. I was gone for a
24 minute.

25 CHAIRMAN ROISMAN: I like to think that any

1 question I wanted to ask was relevant. That may be
2 subject to debate. But the question I wanted to ask
3 you was pretty much the same question I asked Mr.
4 Einhorn. There's sort of two separate issues here that
5 relate to the TRO. One is the endangered or rare
6 plants and whether or not they are, there's imminent
7 risk of damage to them, and the other is the question
8 of whether or not we have a situation in which site
9 preparation is being done before a CPG has been issued
10 for an electricity facility.

11 My question is, What is the Department's position
12 on each of those issues? I know Ms. Aceves said that
13 the Department is supportive of a TRO issuing, but I
14 wasn't clear, and I should have asked her, on which
15 grounds, or is it on both?

16 MR. PORTER: Yes, sir. Certainly, the
17 Department is supportive of a TRO as it relates to the
18 rare plants and whether they're going to be protected,
19 as has been discussed. As to a TRO and in reference to
20 site clearing for a CPG, I think that's a little more
21 complicated, and I think I request -- I do think that
22 some further investigation of what's going on down
23 there is probably necessary before the Department can
24 opine as to whether we think it is site clearing under
25 248. But, clearly, we support the TRO in reference to

1 the plants and having that issue worked out.

2 CHAIRMAN ROISMAN: Okay, all right. Thank
3 you. We're going to, we're going to adjourn for just a
4 few minutes, and the commissioners are going to
5 consult, and we will be back, not at so long that those
6 of you who feel like lunch is an important part of your
7 day will feel that you've been cheated out of one, but
8 I imagine it's about five or ten minutes, and we'll be
9 right back with you.

10 (A recess was taken from 12:55 p.m. to 1:20 p.m.)

11 CHAIRMAN ROISMAN: All right. We've decided
12 to issue a TRO today. We will issue an order to
13 explain our reasoning later today. We will schedule a
14 hearing in the near future for an injunction hearing to
15 determine whether or not the TRO should be turned into
16 a permanent injunction and, if so, what the scope of it
17 will be. But, at this moment in time, we are convinced
18 that there is sufficient evidence from this record to
19 justify the issuance of a TRO, and we will explain the
20 basis for our position in an order that will come out
21 later today, quite likely after the normal 4:30 closing
22 time of the Commission, but before midnight.

23 We thank all of you for your time, your attention,
24 your contributions today, and all the effort that
25 everyone's put into this, and particularly to our court

1 reporter. It's always a great benefit to us that you
2 guys are so reliable. Thank you very much. This
3 hearing is concluded. Thank you.

4

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6 (Whereupon at 1:21 p.m. the hearing was adjourned.)

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EXHIBIT 8

1 STATE OF VERMONT
2 PUBLIC UTILITY COMMISSION

3 CASE NUMBER 20-1611-INV
4

5 INVESTIGATION PURSUANT TO 30 V.S.A.
6 SECTIONS 30 AND 209 INTO WHETHER THE
7 PETITIONER INITIATED SITE PREPARATION AT
8 APPLE HILL IN BENNINGTON, VERMONT, FOR
9 ELECTRIC GENERATION IN VIOLATION OF
10 30 V.S.A. SECTION 248(a)(2)

11 December 4, 2020
12 9:30 a.m.
13 -----

14 Preliminary Injunction Hearing held before the
15 Vermont Public Utility Commission via GoToMeeting video
16 conference on December 4, 2020, beginning at 9:30 a.m.

17 P R E S E N T

18 Commissioners: Anthony Z. Roisman, Chairman
19 Margaret Cheney
Sarah Hofmann

20 Staff: Michael E. Tousley, Staff Attorney
21 Kyle Landis-Marinello, General Counsel
Ann Bishop, Operations Director

22
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A P P E A R A N C E S

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VALSANGIACOMO, DETORA & McQUESTEN, PC
Appearing for Apple Hill Homeowners Association
PO Box 625
Barre, VT 05641

BY: L. BROOKE DINGLEDINE, ESQUIRE

1 CHAIRMAN ROISMAN: Good morning. This is an
2 Evidentiary Hearing in Case Number 20-1611-INV, which
3 is the investigation pursuant to 30 V.S.A. Sections 30
4 and 209 into whether the petitioner initiated site
5 preparation at Apple Hill in Bennington, Vermont, in
6 violation of 30 V.S.A. Section 248(a)(2). My name is
7 Anthony Roisman. I'm the Chair of the Vermont Public
8 Utility Commission, and with me for the moment is
9 fellow Commissioner Sarah Hofmann, and shortly we
10 should be joined either by phone or video or both by
11 Commissioner Margaret Cheney.

12 One of the little glitches in this kind of remote
13 situation is sometimes not everyone has connections.
14 Think of it as the equivalent of your getting caught in
15 a snowstorm on your way driving to Montpelier for a
16 live hearing. And I'm sure that Commissioner Cheney
17 will be joining us shortly. Also with me today are
18 Kyle Landis-Marinello, our general counsel, and Mike
19 Tousley, a staff attorney assigned to this particular
20 case. Ann Bishop, the Commissions's Operations
21 Director, is serving as the GoToMeeting platform
22 manager for this hearing.

23 Attending this hearing are also some other staff
24 people and members of the public, and, if you click on
25 your screen, the "view everyone", you will see the

1 names of all of those people. We don't normally
2 introduce people who are not parties or witnesses, and
3 so you can see them there on your screen if you're
4 interested to know who may be listening in to this
5 meeting.

6 This case is not about the proposed Willow Road or
7 Apple Hill solar facilities for which we have already
8 issued final orders, both of which are being challenged
9 by the petitioner. We're here because, on Friday, June
10 26th 2020 at about 1:30, the Commission announced that
11 it was issuing a temporary restraining order against
12 Allco Renewable Energy Limited; its affiliates, which
13 include Chelsea Solar, LLC; Apple Hill Solar, LLC; and
14 PLH, LLC, collectively being referred to here as the
15 developer and the developer's subsidiaries and
16 contractors.

17 The TRO prohibited any further tree clearing on
18 any of the property for the proposed projects on Apple
19 Hill in Bennington, Vermont, identified in any
20 certificate of public good applications and approved
21 amendments. This includes the sites of the proposed
22 Chelsea, Apple Hill, and Willow Road solar electric
23 generation facilities, including any property
24 identified in the applications for those facilities as
25 being part of the proposed project. A written order

1 issued that same day.

2 The TRO was issued based on our jurisdiction over
3 the preparation of sites proposed for the development
4 of an electric generation facility by the developer, in
5 this case, the two proposed solar projects that the
6 developer has, has testified it intends to seek
7 authority to construct and operate, despite our prior
8 denials of CPGs.

9 This Friday we need to determine whether the
10 Commission should issue further injunctive relief in
11 the form of a continued preliminary injunction or a
12 permanent injunction, and, if so, the scope of that
13 relief. The hearing will also address whether the
14 developer's site work to date constitutes site clearing
15 activities without a certificate of public good in
16 violation of 30 V.S.A. Section 248(a)(2).

17 And I see Commissioner Cheney has resolved, for
18 the moment at least, the technological problems.
19 Welcome, Commissioner Cheney.

20 We also need to otherwise determine if further
21 proceedings are appropriate in this investigation
22 pursuant to 30 V.S.A. Sections 30 and 209. If a party
23 or participant intends on recording the hearing via
24 video or audio, please indicate this when you provide
25 your name for the court reporter. We'll now take

1 appearances, starting with the Department.

2 ATTORNEY ACEVES: Good morning. Sarah Aceves
3 representing the Department of Public service.

4 CHAIRMAN ROISMAN: And the developer?

5 ATTORNEY MELONE: Good morning, Mr. Chairman
6 and Commissioners. Tom Melone for Allco Renewable
7 Energy, PLH, Chelsea Solar, and Apple Hill Solar.

8 CHAIRMAN ROISMAN: Okay. Mr. Melone, I see
9 that Michael Melone is also on the phone. Are you
10 intending to have him put you on the witness stand and,
11 and control the, the direction of cross-examination of
12 your testimony, or is he here merely as an observer?

13 ATTORNEY MELONE: He's here, he is here as an
14 observer.

15 CHAIRMAN ROISMAN: Okay, all right. Thank
16 you. The Agency of Natural Resources?

17 ATTORNEY EINHORN: Don Einhorn for the Agency
18 of Natural Resources.

19 CHAIRMAN ROISMAN: And for the Intervenors?

20 ATTORNEY DINGLEDINE: Brook Dingledine, Your
21 Honor, for Mount Anthony Country Club, Apple Hill
22 Homeowners Association, and Libby Harris.

23 CHAIRMAN ROISMAN: All right. I think what
24 we ought to do at this point before we get into the
25 procedures for a remote hearing that I'll run over, and

1 I know you all have discussed with Mr. Tousley
2 previously, is the question of exhibits. Have you all
3 reached a stipulation among yourselves as to the
4 admissibility of the various exhibits and testimony of
5 witnesses that have been proposed by all the parties?
6 We'll start with you, Ms. Aceves.

7 ATTORNEY ACEVES: It's my understanding the
8 parties haven't stipulated to the admittance of any
9 exhibits, but the Department does not oppose or object
10 to the admittance of anything that's been filed to
11 date.

12 CHAIRMAN ROISMAN: Okay. Mr. Melone?

13 ATTORNEY MELONE: We do not object to
14 anything that's been filed to date.

15 CHAIRMAN ROISMAN: Okay. Mr. Einhorn?

16 ATTORNEY EINHORN: With two very limited
17 exceptions, the Agency does not object to anything
18 that's been filed to date. Those exceptions are I saw
19 on my screen a, a in-box from ePUC that some additional
20 exhibits were filed this morning. I've not seen those.
21 I don't know who filed those. But, with regard to the
22 testimony that was filed by the developer yesterday
23 afternoon, our limited objection is to Mr. McClammer's
24 testimony, Footnotes 7 and 8 and all of his testimony
25 related to those two footnotes.

1 The reason for that is there's some sort of a
2 study or a report for which a link was supposedly
3 provided. The link does not work. We're not familiar
4 with that study or report. We haven't seen it, and,
5 and, therefore, we object to it being in the record.

6 CHAIRMAN ROISMAN: Mr. Einhorn, if, sometime
7 in the next 30 minutes, Mr. McClammer or Mr. Melone are
8 able to fix the link such that you can see the study,
9 will you still object, because you will not have had an
10 opportunity to study the study, or will that solve your
11 concern?

12 ATTORNEY EINHORN: I, I, we, we, I think that
13 will resolve our concern. That said, we will not
14 obviously have an opportunity to study the study, but,
15 you know, I think, in reality, it's not even relevant
16 to today's proceeding.

17 CHAIRMAN ROISMAN: Okay, all right. Mr.
18 Melone, are you and Mr. McClammer able to fix the
19 problem that Mr. Einhorn has identified with the link
20 to the study referenced in Mr. McClammer's testimony
21 that does not appear to be operational?

22 ATTORNEY MELONE: Yes, we can do that. And
23 I'd also say that what we filed this morning is Mr.
24 Popp's testimony that he gave in the Warner solar
25 proceeding, plus, plus exhibits. That was the other

1 item that, that Mr. Einhorn was, was referencing.

2 CHAIRMAN ROISMAN: All right. And, Mr.
3 Melone, are you intending to offer those in evidence
4 or, at this time, or are you intending to use them for
5 purposes of cross-examination of Mr. Popp or both?

6 ATTORNEY MELONE: Both. We would like them
7 to be admitted into evidence, and we intend to do so
8 when we cross-examine Mr. Popp.

9 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, I can
10 confirm, because I have looked at the exhibits, that
11 they are, in fact, documents all that were filed in
12 19-0516, and they are, as Mr. Melone described them,
13 related to Mr. Popp's testimony in that proceeding.
14 Assuming that that representation is correct, do you
15 still object to their admission?

16 ATTORNEY EINHORN: No, we do not object, and
17 we certainly would support admission of those into the
18 record. So the only outstanding objection is with
19 regard to the link.

20 CHAIRMAN ROISMAN: Great. Okay, thank you.
21 Ms. Dingleline?

22 ATTORNEY DINGLELINE: Yes, Your Honor. Thank
23 you. Intervenors would like to object to the add, to
24 the providing of evidence yesterday and today in
25 violation of the order of the PUC. We think it's not

1 only -- we think it's very disrespectful of the other
2 parties. I have not even looked at these documents
3 that were filed this morning. I tried to review what
4 happened yesterday. I want to make an objection to the
5 process that, that the petitioner is going through.
6 Now, in terms of the substance of those documents, I
7 haven't looked at them, but they seem to pertain to the
8 ANR rare species issues, which are not the issue that
9 my clients really have standing on, but we wanted to
10 make that point.

11 However, there is one objection to the materials
12 that were sent in yesterday that I wish to make, and I
13 can either, I guess, share the screen, or I can just
14 refer to it. It refers, it's regarding Mr. Melone's
15 prefiled testimony on Page 5, Lines 12 through 14. It
16 states, "On June 24th 2020, the PUC opened an
17 investigation on its own motion in response to a
18 complaint filed in Docket 8454 by anti-renewable energy
19 activist Annette Smith, who has spearheaded the
20 opposition to the two Bennington solar projects".

21 We would seek to have that statement stricken from
22 the record. We do not think it has any evidentiary
23 support, and we believe that it violates the cautionary
24 warning that the Chair had given Mr. Melone and the
25 other parties at the last hearing in terms of ad

1 hominem attacks on the character or motivations of
2 other parties or people, and we would like to have that
3 removed from the record, and that's Page 5, Lines 12.

4 CHAIRMAN ROISMAN: Mr. Melone, do you have a
5 response to what Ms. Dingledine has just stated?

6 ATTORNEY MELONE: Yes, Mr. Chairman. I don't
7 think it's a personal attack on anyone. It doesn't
8 impugn her character. It's just a, in my view, a
9 statement of fact. If they have facts that contradict
10 that, then they can bring them forward, but the facts
11 that we have, for example, is that, at least for the
12 better part of a couple of years, every, every filing
13 by opponents was posted in an envelope from Annette
14 Smith, and, you know, I, I think the, the facts speak
15 for themselves. If they want to put Annette Smith on
16 the stand to say that's not true, I'm fine with that.

17 I'm sorry, Mr. Chairman. I can't hear you.

18 CHAIRMAN ROISMAN: Is the statement that
19 appears in the testimony that Ms. Dingledine has
20 identified directly relevant -- I'm going to turn off
21 my camera. Can you hear me now?

22 ATTORNEY MELONE: Yes, I can hear you now.

23 CHAIRMAN ROISMAN: And can you hear me?

24 ATTORNEY MELONE: Yes, Mr. Chairman, I can
25 hear you.

1 CHAIRMAN ROISMAN: Okay, all right. I'm
2 going to keep my camera off. I think that will
3 facilitate your hearing me. You don't need to see me
4 anyway.

5 Mr. Melone, my question was, Is this testimony
6 that Ms. Dingledine has identified directly relevant to
7 any issue that you're making in this case at this
8 point?

9 ATTORNEY MELONE: It's not relevant to an
10 issue I'm going to raise today, but it certainly is
11 relevant to the origins of the investigation, which in
12 the briefs we filed with the Supreme Court already,
13 have identified that the investigation was not properly
14 according to the statute, and this, this provides the
15 background on why, why it was opened and how it was
16 opened.

17 CHAIRMAN ROISMAN: All right. And, but do I
18 understand correctly you've made that point already to
19 the Supreme Court in your filings with them?

20 ATTORNEY MELONE: That's correct. And this
21 statement is, is, or what's in this testimony, it's, if
22 it's not identical, it's fairly close to what's already
23 been before the court.

24 CHAIRMAN ROISMAN: So, if we granted Ms.
25 Dingledine's request that it be excluded from this

1 hearing, it would not in any way impede your ability to
2 make the arguments you wish to make to us on the issues
3 in front of us; is that correct?

4 ATTORNEY MELONE: Well, no. We're providing
5 the factual testimony here that this is -- so the
6 argument that we had made was, in fact, just that
7 argument. Now we are, we are putting this, what we
8 view as a fact, into the testimony to support the
9 argument.

10 CHAIRMAN ROISMAN: And, Ms. Dingledine, just
11 so we're clear, if the testimony remains in, are you
12 prepared to cross-examine Mr. Melone on the basis for
13 the statement that he made, or is it not the basis for
14 the statement that he made, but the tone or the
15 language used to make it that is objectionable?

16 ATTORNEY DINGLELINE: It is the substance of
17 the representations with regard to labeling Ms. Smith
18 in terms of being an anti-renewable individual, and the
19 tone, tone is irrelevant, but this is information that
20 unfortunately Mr. Melone wants to make facts by just
21 repeating the same thing over and over. And we have a
22 similar problem, and I'll get to another, to my second
23 objection in a minute, but, when you rule on this, but
24 this is duplicative, if, if you want to go with the
25 rules of evidence.

1 There is information in the record, the actual
2 complaint which was filed and put on the public comment
3 portion of the website. We know that's the facts, the
4 actual document. The best evidence rule should rule
5 here in terms of we don't need -- this is not evidence.
6 If Mr. Melone has some opinion about someone's
7 activities and he wants to call her names, well, that's
8 not, this isn't the forum for that. This is about
9 facts.

10 If he wants to testify and say there was a
11 complaint filed by Annette Smith on this date, we have
12 that in the record, but that would be fine, but to try
13 to continually use this fake news way of providing
14 information by just saying the same fake news over and
15 over, you just keep calling somebody by a name, and we
16 have that problem with Lot Number 1, and it should not
17 be allowed. There is no evidence to support this.

18 Now, in terms of cross-examining Mr. Melone on
19 this, I am not prepared to cross-examine him on this
20 today after this was filed yesterday afternoon. That
21 is unfair. It is inappropriate. So, if this is
22 allowed into evidence, then I would like an opportunity
23 to cross-examine him at another time.

24 CHAIRMAN ROISMAN: All right. The Commission
25 is going to consider this objection, but, Ms.

1 Dingledine, it will facilitate the process of the
2 hearing if you would make your other objections so that
3 we can rule on all the objections at one time, please.

4 ATTORNEY DINGLEDINE: Certainly. Thank you,
5 Your Honor. So, at the status conference for the TRO
6 before the TRO hearing, I asked that Mr. Melone be,
7 stop calling Lot Number 1, which is the five-acre lot
8 that's north of the Von Nostrum's land, I asked that he
9 stop calling that the Orchard Lot. The reason why I
10 ask that he stop doing is that Libby Harris's lot is
11 actually named the Orchard Lot. That is in her deeds.
12 It is in all the permitting, Act 250, wastewater,
13 subdivision, everything. That is how that lot is
14 identified. And Mr. Melone kept calling it, quote,
15 "the orchard lot".

16 Yes, there was a remnant orchard on it that is
17 part of the landscaping plan, and additional trees will
18 be added to that lot. He refused to stop calling it
19 that, but then actually has since started calling it
20 "the horticultural lot", because he plans on building
21 that massive, unnecessary spite structure of, you know,
22 massive proportions, instead of planting his trees, and
23 he now seems that he doesn't even care that you've
24 denied his amendment to the petition.

25 So the reason, apparently, why he's now trying to

1 call it the horticultural lot and using this fake news
2 name over and over --

3 CHAIRMAN ROISMAN: Ms. Dingleline, I'm going
4 to ask you. I think "fake news" is the kind of
5 language that you were objecting to in Mr. Melone's
6 filing. It has taken on a character statement that is
7 considered fairly pejorative. I would appreciate it if
8 you would stop using that term. I understand you think
9 that what Mr. Melone is doing is not correct, but I
10 would appreciate it if you would speak to it more
11 directly. Thank you.

12 ATTORNEY DINGLELINE: Okay. So the use of
13 the term "horticultural lot" is as a result of the case
14 that Mr. Melone brought to seek permission in
15 Chittenden Superior Court to use Lot Number 1 as part
16 of the solar project, and he was told, You can't do
17 that. The covenants don't allow it. And the judge
18 dismissed him on the pleadings. So the reason why he's
19 now trying to call it the horticultural lot is he's
20 trying to claim that hemp is a horticultural activity,
21 and there is an exception, if you want to have a
22 greenhouse along your primary residence, you can have a
23 horticultural greenhouse, and so he's now trying to
24 characterize this as a horticultural lot. We would
25 like --

1 CHAIRMAN ROISMAN: Ms. Dingledine, can you
2 tell me, what is the objection to the admissibility of
3 his calling it whatever he chooses to call it that we
4 need to rule on? We don't need to get into why you
5 think it shouldn't be able to be used in the way he
6 wants to use it. What's the objection, and which part
7 of the objection --

8 ATTORNEY DINGLEDINE: The objection is, the
9 objection is any time he uses the terminology
10 "horticultural lot", that should be stricken, and the
11 terminology "Lot Number 1", which is on his deeds for
12 PLH, LLC, that is the property they own. That is the
13 property where they, where they were supposed to put
14 the landscaping, and we would like the lot to be called
15 Lot Number 1 to avoid confusion. We believe this is an
16 intentional mechanism to try to confuse the record, and
17 we would like the actual name of the lot that is in Mr.
18 Melone's deeds that PLH, LLC took the property as
19 ownership, we want it called number lot, Lot Number 1,
20 which is the identifying name of it in the homeowners
21 association residential subdivision on all deeds and
22 permits.

23 CHAIRMAN ROISMAN: All right. What's your --
24 do you have any additional objections to admissibility
25 of any other exhibits or testimony?

1 ATTORNEY DINGLELINE: No, no. Thank you,
2 Your Honor.

3 CHAIRMAN ROISMAN: All right. At this point,
4 the Commissioners will mute their microphones, and we
5 will consult, and we'll come back shortly.

6 ATTORNEY DINGLELINE: Oh, Your Honor, but I
7 do want to point out, if I might, that it pertains, not
8 just to his prefiled testimony, but all the exhibits.
9 He has maps, et cetera, that also do not identify that
10 property correctly.

11 CHAIRMAN ROISMAN: I understand. Thank you.

12 ATTORNEY DINGLELINE: Thank you.

13 (A recess was taken from 9:57 a.m. to 9:58 a.m.)

14 CHAIRMAN ROISMAN: We are back. Are all the
15 representatives of the parties back? I see Mr. Melone,
16 Ms. Dingleline, Mr. Einhorn, Ms. Aceves. Okay. So
17 we've considered your objections, Ms. Dingleline. With
18 regard to the late-filed documents from the applicant,
19 as you pointed out, they relate to an issue that is not
20 directly relevant to your client, and Mr. Einhorn has
21 indicated, now that he knows what those documents were
22 that were filed this morning, that he did not object to
23 them being admitted.

24 Mr. Melone, I think, given that all those
25 documents were created months ago, I don't think it was

1 the best practice to file them the morning of the
2 hearing, and it would have been preferable if you had
3 filed them earlier, given that they relate directly to
4 an issue that obviously you knew was going to come up,
5 but we will allow them in the record.

6 With regard to Ms. Dingledine's concern about the
7 language that you've used in your prefiled direct
8 testimony related to Ms. Annette Smith, we think it's
9 very inappropriate. We have before admonished parties
10 that referring to other parties in any kind of an ad
11 hominem way is not acceptable practice in front of the
12 Commission. I understand that you have strong feelings
13 about this, but we feel that it is preferable that you
14 express them in a more, a more appropriate manner.

15 That said, it does not, in our opinion, have
16 anything directly to do with the decision we're going
17 to reach today. We're going to leave it in the record,
18 but, Mr. Melone, if you can control your passion in
19 future filings, that would be much appreciated.

20 ATTORNEY MELONE: Understood.

21 CHAIRMAN ROISMAN: And, finally, with regard
22 to Ms. Dingledine's objection to the characterization
23 of what is Lot 1 as the horticultural lot, the
24 Commission is not going to be misled. It understands
25 exactly what the lot is, and we don't think that the

1 characterization of it by you in your testimony is in
2 any way going to distort the record, and so that
3 objection is overruled. So all of the testimony and
4 exhibits that have been offered will be admitted with
5 the caveats that we will give them the weight that they
6 are entitled to when we reach our final decision. Ms.
7 Dingleline, I see your light is on.

8 ATTORNEY DINGLELINE: Thank you, Mr. Roisman.
9 There's just one, one matter that I would just ask in
10 terms of -- well, I'll wait until the evidence is being
11 submitted, if there's different opportunities to
12 object. Never mind. Sorry.

13 CHAIRMAN ROISMAN: Okay, all right.

14 ATTORNEY EINHORN: Mr. Chairman, with regard
15 to the admission of all of the prefiled testimony and
16 exhibits, that's still being, coming into the record,
17 that's still with the caveat on fixing the link.

18 CHAIRMAN ROISMAN: Oh, okay. You have not
19 yet received from Mr. Melone or Mr. McClammer a
20 clarified version of that link?

21 ATTORNEY EINHORN: Let me see. I have -- I
22 have not. Oh, oh, I see. He's attached, he's emailed
23 me some tables, I guess, that is a, appears to be a
24 two-page document, "Summary of Vermont Organic Farms".
25 I'm assuming that's what that link was to.

1 CHAIRMAN ROISMAN: All right. Is that
2 correct, Mr. Melone? So he now actually has the
3 document that the link, if it had worked, would have
4 taken him to?

5 ATTORNEY MELONE: That's correct, Mr.
6 Chairman.

7 CHAIRMAN ROISMAN: Mr. Einhorn, does that
8 take care of your concern?

9 ATTORNEY EINHORN: It, it does. Thank you.

10 CHAIRMAN ROISMAN: Okay, all right. Thank
11 you. All right. Well, that was fun. We'll now move
12 on to discussing the procedure for a remote, web-based
13 hearing. I know you went over these with Mr. Tousley
14 before. As you know, we're limiting our personal
15 contact, essentially none, and you all have agreed to
16 this being a hearing conducted remotely. I want to
17 confirm that all the parties are agreeable to this
18 being a remote hearing and, if any party now objects to
19 this being done as a remote hearing, as we famously
20 say, speak now or forever hold your peace. Anybody?
21 Hearing no objection, we will proceed.

22 So, for the logistics of this hearing today, we'll
23 be using these special hearing procedures, and I'm
24 going to read them briefly, although I think you've
25 been over these, and, actually, I think all of you have

1 already been in at least one of our remote evidentiary
2 hearings.

3 You can raise objections to these procedures
4 either now or at any point during the hearing. In
5 addition to formal objections, you may also raise
6 concerns at any time if the platform is not performing
7 as expected for you or having difficulties. We expect
8 that this hearing will proceed more slowly, and we may
9 need to stop along the way to resolve technical issues,
10 as we have already done. We'll also recognize that,
11 because we're all in remote locations, there may be
12 unexpected interruptions at these locations. All cats,
13 dogs, and children are welcome to attend the hearing
14 until such time as they disrupt the process.

15 The representatives in this case should keep their
16 cameras on during the entire hearing. Witnesses should
17 leave their cameras off until they are testifying, at
18 which time they should turn them on. Even with your
19 camera turned off, you'll still be able to see
20 everyone, and you will be able to hear everyone.
21 Commission staff may choose whether to leave their
22 cameras on or off. My preference is that people who
23 are not actively participating in the proceeding leave
24 their cameras off so that the pictures of active
25 participants are larger.

1 Just for your benefit, at the top of your screen
2 where it says "view everyone", one of the options
3 that's available to you is to click the active cameras.
4 That will then turn the screen in front of you into
5 showing only those people who have their cameras on.
6 You can also pick who's talking, which will then create
7 the largest picture. You may wish to do that, for
8 instance, when a witness is being testified, is
9 testifying, and you can show everyone, or you can hide
10 everyone. Those options are available to you. We do
11 not control them, and I leave it up to you as to which
12 of those you want to do.

13 Commission staff will not mute anyone's
14 microphone, whether a party, a participant, or a member
15 of the public. This means that you should keep
16 yourself on mute unless you are speaking. That way, we
17 can minimize background noises, which can be very
18 disruptive. Each time you begin talking, please
19 identify yourself by name for the court reporter.

20 If your internet connection cuts out, please try
21 to rejoin the GoToMeeting or call in to the hearing
22 using the GoToMeeting telephone number that was
23 provided. If the audio or video from the hearing has
24 cut out, let me know when you're able to join, and I
25 will summarize what happened, and we will revisit any

1 questions on which an objection may have been allowed,
2 including any admission of an exhibit. If you're not
3 able to call in or rejoin, notify the platform manager
4 immediately via email or the clerk's office immediately
5 via email or phone, and we'll pause the hearing until
6 the issue is resolved. If we cannot resolve an issue
7 that prevents a party from participating in the
8 proceeding, we will reschedule the proceeding.

9 Similarly, if, at any point, any of you become
10 aware of another party, participant, or member of the
11 public having trouble accessing the video or the audio
12 feeds of this remote hearing, please let us know
13 immediately. We will pause the hearing until the issue
14 is resolved. If it cannot be resolved, we will
15 reschedule the hearing.

16 It's very important that we avoid talking over one
17 another. Of course, if you have an objection, then you
18 must raise it at the moment the objection arises. That
19 type of interruption is allowed and required. When
20 objections are issued or raised, I'll ask each
21 representative one by one whether they have a response.
22 We'll go in the following order: essentially, the
23 party who raises the objection and then, after that,
24 the parties in the order in which you entered your
25 appearances, the Department and Mr. Melone and Mr.

1 Einhorn and, finally, Ms. Dingledine.

2 When you are asking questions of witnesses, we
3 will make you the presenter in GoToMeeting. That will
4 allow you to put on your screen if you have any
5 exhibits that you want to ask the witness about so the
6 witness and all of us can see exactly where your
7 question is directed. You should share cross exhibits
8 on your screen by clicking the "share screen" icon.
9 Please verbally identify the cross exhibit you are
10 showing for the court reporter. For example, clearly
11 say, "I am showing Department Cross-1", If that is the
12 exhibit. When you're done with the exhibit, please
13 click "stop sharing screen". Whenever you are sharing
14 your screen, I advise you to close out any, out of any
15 unnecessary applications, such as email, to avoid
16 notifications being visible to others in the hearing.

17 Does anyone have any questions or concerns about
18 these procedures? All right. So the substantive
19 portion of the hearing, we'll begin by the parties each
20 making a brief, five-minute opening statement, and then
21 each party in order, starting with Mr. Melone, followed
22 by Mr. Einhorn, then Ms. Aceves. Does the Department
23 intend to offer any direct testimony in this
24 proceeding?

25 ATTORNEY ACEVES: No, we will not be offering

1 any direct testimony.

2 CHAIRMAN ROISMAN: Okay. And then Ms.
3 Dingledine, and each witness will then be followed by
4 cross-examination by the parties and the Commission
5 with redirect examination and then closing arguments,
6 and, although Mr. Tousley said five minutes, we're
7 going to be generous and give you each ten minutes to
8 do your, to do your closing arguments.

9 Mr. Melone, when you are the witness, if redirect
10 is needed, you should -- you've indicated that Mr.
11 Michael Melone will not be leading you through
12 redirect. So you will be basically speaking it as a,
13 as a soliloquy. We remind you that, when that happens,
14 as in all redirect, all of your statements must relate
15 directly to statements, issues that have been raised by
16 the cross-examination, and, in prior experience, I've
17 noticed that you're not inclined to speak extensively,
18 so we expect that you'll follow that practice when and
19 if you do redirect of your own testimony.

20 ATTORNEY MELONE: I will, Mr. Chairman.

21 CHAIRMAN ROISMAN: Thank you. At the time of
22 the closing arguments, we would like you to indicate
23 whether you believe any further process is needed
24 before the Commission decides to issue a permanent
25 injunction. As you know, technically, by operation of

1 the rules, we are already in a preliminary injunction.
2 The TRO, by statute, has expired, and it has been
3 converted, by statute, into a preliminary injunction.

4 So the question that will be in front of us is
5 whether to continue or to dissolve the preliminary
6 injunction but also whether or not to issue or deny a
7 permanent injunction. So one of the questions we'd
8 like you to answer during your ten minutes is whether
9 you believe we have enough record to decide the
10 permanent injunction question or whether you believe we
11 need more record before we can reach that decision.

12 Also, we'll want post-hearing briefs, and, at the
13 end of the hearing, we'll ask you all to indicate to us
14 a schedule. It may follow the usual practice. The
15 opening briefs will be simultaneous. The reply briefs
16 will be simultaneous. In those post-hearing briefs, we
17 would like you to address one question, along with
18 whatever else you wish to brief, which is, to the
19 extent that you wish to address it in detail, the
20 difference, if any, in the criteria that would be
21 applicable to a continuation of a preliminary
22 injunction, what criteria we would have to decide, and
23 what criteria we would have to decide if we were to
24 issue a permanent injunction. That one legal issue,
25 along with whatever issues you wish to address, would

1 be included in your post-hearing briefs.

2 And, unless there's any other preliminary matter,
3 I think we're ready to begin the evidentiary portion of
4 the hearing. Anybody have any preliminary matter
5 before we start with the --

6 COMMISSIONER HOFMANN: Mr. Chair, I would
7 just want to note to Mr. Einhorn, I don't think you're
8 aware that your microphone is not on mute.

9 ATTORNEY EINHORN: Oh, I'm sorry. Thank you.

10 CHAIRMAN ROISMAN: Although we should point
11 out you're in a very silent place, Mr. Einhorn, because
12 we never heard anything either.

13 We will take a break around 11:00 o'clock of about
14 ten minutes. If, for any reason during the course of
15 the hearing, any party believes they need a break,
16 please speak up, but our current plan is we'll break
17 for about ten minutes around 11:00 o'clock, and, if the
18 hearing is still going on, we would break at 12:30,
19 take an hour lunch break, and come back at 1:30. All
20 those times are flexible. We're not going to stop
21 someone's testimony at exactly 11:00 o'clock if it's
22 the middle of either direct or cross.

23 All right. Mr. Melone, you may call your first
24 witness.

25 ATTORNEY MELONE: Thank you, Mr. Chairman.

1 Bob Kobelia, are you on the line?

2 ATTORNEY EINHORN: Excuse me, Mr. Chairman.
3 Did, did we still want to do openings, or are we --

4 CHAIRMAN ROISMAN: Oh, I'm sorry. Yes. No,
5 no. Sorry, my fault. Thank you, Mr. Einhorn. Yes,
6 Mr. Melone, you have a five-minute opening. I'm sorry
7 for that.

8 ATTORNEY MELONE: Okay. Thank you, Mr.
9 Chairman. Good morning, Mr. Chairman and Commissioners
10 and other parties. Although this is a little bit off
11 topic, I first want to thank the Commission personally
12 for the organization yesterday in the Otter Creek Solar
13 1 case. I hope that that's in the past and eventually
14 we can resolve all the differences that are
15 outstanding.

16 Now, getting to this case, the basic issue here is
17 that we have begun a farm business. It's already
18 started in Connecticut. It's part of the operation
19 that's intended to include the Bennington land, and
20 our, our clearing activities are not for the purpose of
21 building or for site preparation or electric generation
22 facilities, they're there for farming purposes.

23 Now, the way I understand the posture of this case
24 now, the Agency has withdrawn any, any claim to wanting
25 some type of injunction on the, on the five-acre lot,

1 which, at one point, was going to be the site in our
2 plan for new trees. So the only thing that's left
3 here, again, as I understand the Agency's position, is
4 the, the fate of two plant species that have not been
5 transplanted already to conservation areas on the site,
6 because, as Mr. Kobelia's testimony shows, the clearing
7 plan that we, that we gave to him does not, does not do
8 anything to those conservation areas, and, as Mr.
9 Popp's testimony that he filed in this case shows and
10 attached, where he attached one of the plant reports
11 from Apple Hill, a very limited amount of aster plants
12 that are in the clearing area that were not
13 transplanted.

14 So, in our view, even if, even if the Agency had
15 or the Commission had some jurisdiction to stop the
16 clearing of those for farming purposes, we think, at
17 the end of the day, whatever final action, if there's a
18 continuation of an injunction of some sort, it really
19 needs to be limited just to those narrow areas and that
20 it would go away if, if those plants, or whatever the
21 threshold that the Agency ceases to object, if those
22 plants were transplanted as well. So we think the
23 injunction should not be continued. It should be
24 dissolved. Thank you, Mr. Chairman.

25 CHAIRMAN ROISMAN: Thank you, Mr. Melone.

1 Mr. Einhorn?

2 ATTORNEY EINHORN: Thank you, Mr. Chairman.
3 Today's proceeding really, when you boil it down, it's
4 a simple exercise. Has site clearing occurred, or is
5 it about to occur for an energy generation project?
6 Will there be irreparable harm as a result, or perhaps
7 has there already been irreparable harm? Yes, I think
8 there will certainly be irreparable harm as a result,
9 if not already, in that there are a significant number
10 of rare plants throughout this site, and including in
11 the areas to be cleared and perhaps even in the area
12 already cleared. This was established in June, for the
13 most part, and there's nothing new today.

14 There have been a number of filings by the
15 developer. I should say nothing new in the other
16 direction. What's been filing, what's been filed more
17 recently certainly supports those two issues that we
18 addressed in June in the fact that there is clearing
19 going on, that there is irreparable harm or certainly
20 the threat of irreparable harm.

21 Most of the filings yesterday offer paths that
22 lead to nowhere, and, and, quite frankly, would
23 distract from really the core purpose of today's
24 hearing. A lot of what I saw in these filings talked
25 about, you know, the 248 proceeding and the 248

1 standard of review.

2 That's not what we're engaged in here. This isn't
3 a 248 project review to determine if there's an undue
4 adverse impact. This is a hearing to determine if
5 there is irreparable harm. It's a totally different
6 standard. It's a totally different legal issue. This
7 is not about Agency guidance documents on RTE plants,
8 as again was set forth in some of these filings from
9 yesterday, because, as those documents clearly
10 indicate, those are for purposes of reviewing a
11 project's impact under Section 248, which, again, we're
12 not doing that today.

13 And this is also not about the Agency's plant
14 classifications. There's, there's a lot of effort, I
15 guess, on the developer's part, for lack of a better
16 term, to basically try to say that these plants really
17 aren't rare. That essentially is moot. I mean, the
18 underlying records in 8302, 8454, and 17-5024, Willow
19 Road, are replete with the developer's own expert
20 witnesses identifying these plants as very rare and
21 rare.

22 I think the argument, again, which really isn't
23 relevant, can be boiled down to the Agency should try,
24 should be required to prove a negative, that is, we
25 have to prove that these plants don't exist anywhere

1 else but the three known sites in the state, of which
2 this is one of those. So that, that type of an
3 argument just doesn't carry the day.

4 So, in the end, is there site clearing? Is there
5 the threat of irreparable harm? Yes, there is. Then a
6 preliminary injunction should issue. This was already
7 established, for the most part, in June. I think
8 today's exercise will just reinforce that and perhaps
9 put some, fill in some of the ambiguity that perhaps
10 existed after June's hearing with greater detail, which
11 demonstrates those facts. Thank you.

12 CHAIRMAN ROISMAN: Thank you, Mr. Einhorn.
13 Ms. Dingleline?

14 ATTORNEY DINGLELINE: Thank you, Mr. Roisman.
15 The interests of the Intervenors obviously have to do
16 with the screening that was proposed as part of the
17 project in order to get over the aesthetics analysis to
18 prove that the adverse impact would not be undue. That
19 is -- so the project has been proposed as for the Van
20 Nostrum lands, which are 26.8 acres, and also part of
21 the project site is 5.5 acres, which is Lot Number 1,
22 which is a residential lot in the Apple Hill Homeowners
23 Residential Subdivision.

24 So now we see with the latest filing of prefiled
25 testimony by Mr. Melone he is explicitly claiming that

1 Lot Number 1 is not part of the project site. It's a
2 rather, it is an unsupported position. There is not a
3 single case or any precedent provided that would
4 suggest that the landscaping portion of a project site
5 is not part of the project site.

6 It is an irrational position, but I suppose,
7 because Mr. Melone is making this argument, the PUC
8 will have to make a determination as to what
9 encompasses the project site or site or property that
10 is under the PUC's jurisdiction, because the applicant
11 has put it before you, submitted the lands to your
12 jurisdiction, and part and parcel of that project is
13 the screening that has been indicated would go in, in
14 addition to the orchard trees remaining on the lot.

15 So Mr. Melone wants to now plant hemp there and a
16 massive structure. You've said that he can't do that.
17 Now he's trying to claim it's not part of the project
18 site, because the court, Chittenden Superior's, told
19 him, You can't do this on this site, because it's part
20 of a residential subdivision that doesn't allow the
21 solar array project to be here. So, so now he's trying
22 to argue it's not part of the site.

23 So, I guess, part and parcel of the decision that
24 has to be made is to explicitly state that the 5.5
25 acres, which is Lot Number 1 which Mr. Melone is

1 calling the horticultural lot or parcel, is, in fact,
2 part of the project site and it, and it is part of the
3 lands that cannot be prepared before a CPG issues.

4 Now, the interesting part about Lot Number 1 is he
5 wants to go do something else, not the project. He
6 wants to cut the trees, which he's proposing for
7 screening, and plant something different. That is not
8 the application before you. You have denied him that
9 amendment to the application, and I guess that puts you
10 in a position of, we would suggest, that, if Mr. Melone
11 decides to cut the trees, then obviously he will fail
12 on the aesthetics analysis in terms of the screening
13 that was proposed. It will result in an undue adverse
14 impact if he's not going to do that.

15 So, whether you void his contract; whether you
16 say, You're denied, because you are not doing your
17 screening that you proposed, and that's part of the,
18 the project that you have put before us, you're not
19 going to get your permit, put him on notice, if he cuts
20 down those trees, he has stopped going forward with the
21 plan that he's submitted.

22 So we would ask that the injunction cover that
23 area and that he be given a warning that, if he
24 violates it, that he will fail on that criteria or the
25 contract will be void, because it will be a material

1 misrepresentation of fact in the project proposal that
2 they are incapable of doing if they cut the trees and
3 that a spite structure of massive proportions is not
4 allowed in place of the screening of 700-some-odd
5 trees. Thank you.

6 CHAIRMAN ROISMAN: Thank you, Ms. Dingledine.
7 Ms. Aceves?

8 ATTORNEY ACEVES: Thank you. Very briefly,
9 we would agree with the assertions made by Mr. Einhorn
10 and will be addressing more specifically whether the
11 criteria for injunctive relief has been met in this
12 case. That said, the Department, as we've said in our
13 previous filings, we remain very concerned about the
14 policy implications and potential abuse of the Section
15 248 process that this case has represented, and it's
16 possible that, should an injunction of some sort not
17 continue, that abuse may be realized, which could
18 potentially open the door for future petitioners to
19 thwart the requirements of Section 248 and, more
20 specifically, Section 248(A)(2)(a) which prohibits site
21 clearing without a certificate of public good. So
22 that's all we want to say at this point in time, and I
23 look forward to hearing more. Thank you.

24 CHAIRMAN ROISMAN: Thank you, Ms. Aceves.
25 And now, Mr. Melone, you may call your first witness.

1 ATTORNEY MELONE: Okay. Thank you, Mr.
2 Chairman. Bob Kobelia, are you on the line?

3 MR. KOBELIA: I am online, and I'll turn on
4 my camera.

5 COMMISSIONER CHENEY: Good morning, Mr.
6 Kobelia. I'll start by swearing you in.

7 ROBERT KOBELIA,
8 duly sworn to tell the truth, testifies as follows:

9 DIRECT EXAMINATION BY ATTORNEY MELONE

10 Q. So can you confirm that the testimony that's been
11 filed in this case under your name is still accurate?

12 A. It's perfectly accurate.

13 CHAIRMAN ROISMAN: Mr. Melone, does, have you
14 set an exhibit number? If so, would you refer to it
15 just at this point for the benefit of the court
16 reporter by the exhibit number?

17 ATTORNEY MELONE: Mr. Chairman, I apologize.
18 I don't know where we had left off on the exhibit
19 numbers from, from the last one, so we didn't assign it
20 a specific exhibit number.

21 CHAIRMAN ROISMAN: All right. Is he ready
22 for cross-examination, Mr. Melone?

23 ATTORNEY MELONE: Yes, he's ready for
24 cross-examination.

25 CHAIRMAN ROISMAN: All right. Mr. Einhorn,

1 do you have any questions for Mr. Kobelia?

2 ATTORNEY EINHORN: Thank you. I do not have
3 any questions.

4 CHAIRMAN ROISMAN: All right. Ms.
5 Dingledine, do you have any questions for Mr. Kobelia?

6 ATTORNEY DINGLEDINE: Yes, Mr. Roisman, if I
7 could just ask a few questions, this is Brooke
8 Dingledine.

9 CROSS-EXAMINATION BY ATTORNEY DINGLEDINE

10 Q. Mr. Kobelia, you attended and testified at the
11 temporary restraining order hearing prior in this
12 matter; is that right?

13 A. I did that on the Friday of the hearing. I was
14 remote at the time. This format's way better. I was
15 on a cell phone at the Albany, New York, airport, and
16 the service I had there was intermittent. We had some
17 issues, and I did lose my signal at the time the
18 hearing took a break. It was before any decisions were
19 rendered. I didn't hear anything after that. I tried
20 to connect again and lost it, so I drove back to
21 Vermont at that time.

22 Q. So you were aware that the Commission was making a
23 decision whether or not to stop any site preparation
24 work that you were performing, correct, when you were
25 present and testifying during that hearing?

1 A. There, at the time, I think a lot of the testimony
2 had taken place. Mine had. And a decision hadn't been
3 made as for what action was going to be taken.

4 Q. Right. But you knew that the hearing was about
5 issuing an order to tell you to stop work, correct?

6 A. That may not have been the only issue they would
7 have deliberated on, but I knew that could be one of
8 the decisions.

9 Q. Okay. Yet you undertook to engage in more work
10 the following day on Saturday without checking with Mr.
11 Melone in terms of what the outcome of the hearing was;
12 is that right?

13 A. I need to word this properly. As soon as a
14 decision was going to be made that would affect my
15 ability to work, I would work going forth. The weather
16 is, had prior been our biggest obstacle, and that next
17 day, the Saturday, was a very good day to be able to do
18 some activities, and so, unless I heard otherwise, I
19 was going to be on site carrying on with my work.

20 Q. Did you discuss -- well, let me ask you this. You
21 didn't answer my question. Could you answer my
22 question? Did you undertake to contact Mr. Melone
23 after you left the hearing before you started work the
24 next day to check in with him as to what decision the
25 PUC had made, yes or no? Did you check with him or

1 not?

2 A. I did not reach out.

3 Q. Did he reach out to you before you began work on
4 Saturday?

5 A. I did not hear any message from Tom Melone.

6 Q. Did you check your email?

7 A. I checked email, and I was looking for a written
8 decision. It's not my nature to know how long a
9 deliberation would take. So, being on the front line,
10 if I'm not notified, I'm not notified.

11 Q. And were you, did you have any discussions with
12 Mr. Melone on Friday in terms of getting in touch with
13 one another to know what the outcome of the hearing
14 was?

15 A. As I said, any information I had discussed with
16 Mr. Melone on the day of the hearing was just that, it
17 was preliminary. I met him, and then I lost my signal.

18 Q. So he never undertook to call you after you
19 dropped off of the hearing to tell you that a temporary
20 restraining order had issued and you were not to do any
21 work on the site before you began on Saturday; is that
22 correct?

23 A. I don't know if he wanted to. I can tell you that
24 I didn't --

25 Q. Did you hear from, Mr. Kobelia, did you hear from

1 Mr. Melone in any way, shape, or form between the time
2 when you left the hearing and when you began site work
3 on Saturday, yes or no? Did you hear from him?

4 A. The answer is, no, I did not. Nothing was --

5 Q. Thank you. And what time, what time did you start
6 your work on Saturday morning?

7 A. I'm an early riser. I think I left the house at
8 6:00 o'clock and was on site at about 7:00 in the
9 morning.

10 Q. And you began at that time?

11 A. Once the machine's warmed up, yes. You know,
12 there's a protocol when you run a machine.

13 Q. Yeah, okay, thank you. But what time was the
14 sheriff's service on you or notification that there was
15 an order prohibiting you from continuing work?

16 A. The sheriffs arrived while I was eating lunch. My
17 recollection is somewhere around 1:00 o'clock, and I
18 was eating my lunch. Two cars rolled up, and they
19 served me papers, at which time I stopped.

20 Q. Okay. When you say you stopped, did any more
21 construction work of any sort take place after you were
22 handed that paper by the police or sheriffs?

23 A. On the subject property, the only thing that would
24 have happened is I had a temporary plastic gate that I
25 would have pulled across to keep unwanted traffic off

1 the property, but, as far as machinery, I, I put the
2 machine in a good spot to move it away if I had to, and
3 that was the end of it.

4 Q. Did you have any contact with Tom Melone before
5 the sheriffs handed you that paper on Saturday?

6 A. To be honest with you, Ms. Dingledine, I have had
7 very little conversation with Tom Melone in my whole
8 life and certainly not that day. I, I've done work for
9 him and his company, but we're not in the chain of
10 command that I would normally be speaking to him.

11 Q. Who would you normally speak with, if not Mr.
12 Melone?

13 A. I would normally contact Chris Little, who is one
14 of his folks that work for the company.

15 Q. Did anyone with the company, Chris Little or any
16 other person, tell you between the time the hearing,
17 you left the hearing and the time that you commenced
18 work or got that order from the sheriffs, anybody, did
19 you have any conversations with anybody in any format
20 who, of your --

21 A. Yes. To help you out, yes.

22 Q. Who is that?

23 A. And I did have a conversation with Chris, and it
24 was to discuss the matter. At the time I spoke with
25 him, there had been no decision.

1 Q. What time was that?

2 A. It was after I left the meeting. I believe I was
3 in transit between Albany and Bennington, so --

4 Q. Okay.

5 A. I, at that time, we said, Well, I guess we'll wait
6 and see what transpires with the results of the
7 hearing. Knowing that it was a Friday night, I had no
8 idea how long, if the, if the group would be working
9 all night long or wait until Monday to make a decision.
10 It's not my decision to make.

11 Q. Were you advised by Mr. Little or anyone else that
12 there had been a verbal order that had issued from the
13 PUC and that they were going to follow it up with
14 something in writing?

15 A. The word "verbal", at the time of my discussions,
16 didn't come out. We were looking for a decision in any
17 way, shape, or form. At the time of my conversation,
18 that word was of a -- your cease and desist would not
19 have been given at that time.

20 ATTORNEY DINGLEDINE: Okay. That's all I
21 have. Thank you, Your Honor.

22 CHAIRMAN ROISMAN: Ms. Aceves, do you have
23 any questions for Mr. Kobelia?

24 ATTORNEY ACEVES: I do not. Thank you.

25 CHAIRMAN ROISMAN: Commissioner Hofmann, any

1 questions for Mr. Kobelia?

2 COMMISSIONER HOFMANN: I just have one
3 clarifying question, Mr. Kobelia. I may have missed
4 kind of the timeframe. Did you talk to Mr. Little on
5 Friday afternoon or evening?

6 MR. KOBELIA: The time I -- the hearing was
7 in the morning when I was in Albany, New York, and I
8 was speaking to him as I went through Troy, Troy, New
9 York, back to Vermont. So it was at the time of a
10 recess had happened in that hearing, and he and I were
11 speaking as I was driving the car, which would have
12 been early midday. After the -- I, I had no direct
13 communication at night or in the, in the early morning
14 hours. I obviously went home, had dinner with my wife,
15 and went to bed.

16 COMMISSIONER HOFMANN: Okay. Then, after the
17 early morning hours then between the, when you got to
18 the site at 7:00 and you said the sheriff probably came
19 around 1:00, did you talk to Mr. Little or anyone from
20 the company during that time? I think you answered
21 this for Ms. Dingleline, but I'm not sure.

22 MR. KOBELIA: Yeah. When I was on site, you
23 understand I have a cell phone, and the bulldozer
24 shakes, and you don't hear it ringing. I had it on my
25 person in my Carhartt jacket, but I did not feel it

1 vibrate, and I was operating the machine. So after
2 7:00 in the morning when I got going, I didn't stop
3 except to have a, a lunch break. At the time I took
4 the lunch break, I didn't have any message on my phone.

5 I looked at my phone while I was eating my
6 sandwich and having a, my lunch, and there was an email
7 at that point saying that I should stop, that they had
8 been served papers and I should stop, and, almost on
9 cue, I looked up from my phone, and in front of me were
10 two sheriffs driving up, or Bennington's finest,
11 driving up Willow Road to my location.

12 So I asked them. I said -- I know these guys. I
13 know the police force here in my town, and they said
14 they had these papers and that I needed to stop, and I
15 said, "Well, that's fine". They said they'd been
16 outside at the end of the blacktop road of Willow. The
17 part I'm on was pretty low-maintenance, because nobody
18 lives there. So, apparently, they stopped where the
19 blacktop had, were awaiting legal counsel, as they
20 described to me, because there was questions on whether
21 it was valid papers, because they couldn't see a
22 signature. Now, I won't get into the technical reason
23 why the Bennington Police waited until then, but they
24 were waiting until they had legal counsel advise them
25 to serve me the papers.

1 COMMISSIONER HOFMANN: Okay. And, when you
2 indicated you got a message, was it a text or an email;
3 do you remember?

4 MR. KOBELIA: I believe that it was a text
5 message from Chris Little, and, at that time, as I just
6 said, I, I looked up from my text message while I was
7 eating my lunch, and I saw the cruisers come. You
8 could, you could see them a couple hundred yards out
9 before they got to my site. It's a dead end.

10 COMMISSIONER HOFMANN: What the did message
11 from Mr. Little say?

12 MR. KOBELIA: It was short. It said, "Bob,
13 we've been served the papers to cease and desist, so
14 cease and desist immediately". Well, that's what I
15 got. Albeit he did send me those papers or that
16 information, I didn't get it until just before the
17 police arrived. I have no idea when he got his
18 notification, but that's when I got the message. And
19 it's the same as the police didn't roll their cruisers
20 until they had legal authority to do that, and, as I
21 mentioned, it had something to do with the signature on
22 the papers that they couldn't statutorily serve it as
23 it was blocked out or here. They couldn't tell who
24 signed the papers, so they weren't sure if they were
25 fraudulent.

1 COMMISSIONER HOFMANN: Okay. Thank you, Mr.
2 Kobelia.

3 MR. KOBELIA: You're welcome.

4 CHAIRMAN ROISMAN: Commissioner Cheney, do
5 you have any questions for Mr. Kobelia?

6 COMMISSIONER CHENEY: Yes, I do. Thanks.
7 Between the, around 7:00 when you arrived and around
8 1:00 when you took your lunch break, can you describe
9 the nature of the work that you did?

10 MR. KOBELIA: Sure. The paper prefiling kind
11 of describes it, but do you have a copy of that in
12 front of you or the supplemental map?

13 CHAIRMAN ROISMAN: Yes, I did read that, and,
14 if that's the extent of it, then you don't need to go
15 further.

16 MR. KOBELIA: Well, I can be more -- I can
17 clarify things real well. If you look at the map and
18 where Willow Road intersects with this parcel of land,
19 that's, basically, the town road stops there, and the
20 rare and endangered section has a three- or four-foot
21 high orange protective fencing all the way around it
22 and right at that all four sides.

23 So where I was operating was west of that fence
24 line, and it's an area that I had used before. It's
25 fairly level. It's an ideal place to clear if you need

1 to park a vehicle, and, right now, most of this land
2 had been in a pioneer stage of reversion to forest. So
3 it had forest cover, lots of invasives, very, very
4 thick honeysuckle, autumn olive, and multiflora rose.
5 It's a jungle.

6 So, to be able to have a place to park, I had
7 initially made a small opening there when I first
8 started to install silt fence, and then my job on that
9 Saturday was the first day I had to not do silt fence
10 installation, but was to actually make a place to park
11 one or two vehicles if we were going to proceed with
12 the project.

13 So there's some ash right at the very beginning
14 that were maybe four- to eight-inch diameter trees that
15 were dead. Incidentally, a large component of the
16 trees are ash. Bennington was just notified that
17 emerald ash borer is found in Bennington, so those, all
18 those ash will be dead in three years if they're not
19 already on their way.

20 So that's, that's where I was clearing was that
21 roughly shaped like a football field, 100 feet by 250,
22 and it's still not cleared. I was going after the easy
23 to push out, honeysuckle and backblading a few bigger
24 trees, but anything real large still is standing,
25 because we were going to use the excavator to do the

1 proper clearing of those stumps.

2 CHAIRMAN ROISMAN: Mr. Melone, it will really
3 be helpful now if you will assign an exhibit number to
4 the document that Mr. Kobelia was just referring to,
5 which I believe is a document that has the title site,
6 "A Map of Site Work Performed", and it was filed a
7 couple of days ago. Can you just confirm, first of
8 all, with Mr. Kobelia that that's the map that he was
9 referring to and that the markings on there, sort of
10 the red hash line, show where clearing has taken place
11 and that what he is talking about, the clearing that he
12 had done in response to Commissioner Cheney's question,
13 his area that's identified is roughly 100 by 250 feet
14 and marked on the lower center of that map?

15 ATTORNEY MELONE: Yes, I can. So this is
16 Exhibit AH-RK-2 called "Map of Site Work Performed".
17 It's submitted with his testimony. So, Bob, can you
18 confirm that the map that was submitted with your
19 testimony and, well, the portion of the map that that
20 shows, that hatched area of 100 by 250 clearing, is the
21 specific area you were just talking about?

22 (Exhibit AH-RK-2 was shown to the Witness.)

23

24 <https://epsb.vermont.gov/?q=downloadfile/441501/150086>

25

1 MR. KOBELIA: I can confirm that that's the
2 correct map.

3 ATTORNEY MELONE: Thank you.

4 CHAIRMAN ROISMAN: Okay. Thanks. Thank you,
5 Mr. Melone.

6 COMMISSIONER CHENEY: You're muted.

7 MR. KOBELIA: I was speaking to the Chairman.

8 CHAIRMAN ROISMAN: Talking to me?

9 COMMISSIONER CHENEY: Sorry about that.

10 CHAIRMAN ROISMAN: I'm so rarely muted. If
11 you ask my friends and family, they'll tell you that.
12 Before we go back to you, Mr. Melone, for any redirect,
13 does any party have any follow-up questions for Mr.
14 Kobelia in response to the answers given to the
15 questions asked by Commissioners Hofmann or Cheney?

16 ATTORNEY EINHORN: I do, Mr. Chairman.

17 CHAIRMAN ROISMAN: Okay. Go ahead, Mr.
18 Einhorn.

19 CROSS-EXAMINATION BY ATTORNEY EINHORN

20 Q. Thank you. Mr. Kobelia, I just want to briefly
21 ask you about the area we just discussed that you
22 described as the 100-by-250-foot area that you worked
23 on on that Saturday in June after the TRO hearing. You
24 described clearing out brush, essentially, right,
25 multiflora rose, et cetera, and some trees and, and

1 backblading. Was it your understanding that there were
2 no rare plants in that area that you were to avoid?

3 A. To properly answer the question, my understanding
4 was is that the areas that had been identified for the
5 rare and endangered had been properly marked out on
6 site. It didn't mean that there couldn't have been a
7 plant on this, but the difference in forest type was
8 totally different. This was a full forest cover, and
9 my impression was is that these rare and endangered
10 need an open canopy and that's why they were in those
11 sections. The part of this lot that's on the easterly
12 side is a much younger forested stand, early
13 succession.

14 Q. I understand, Mr. Kobelia. I don't want to
15 interrupt you, but we spent a lot of time last time,
16 and we're hoping to spend not as much time today. As
17 you said in June, you're not a botanist, right?

18 A. I'm a professional consulting forester. I am not
19 a botanist.

20 Q. Thank you. And you would not recognize the plants
21 that are, that are at issue in this proceeding, the
22 rare plants?

23 A. I didn't say that I wouldn't. I, I have a, a -- I
24 pulled up the information on what they look like. I
25 did not see them. I did look for them, though.

1 Q. Okay. And so, again, you, your understanding here
2 is the three areas that are shown on your Exhibit RK-2,
3 which is the map of the clearing that has been
4 performed, those are the only three areas that you're
5 to avoid with regard to rare plants on this site?

6 A. That's correct. It doesn't mean I wouldn't have
7 worked around anything I found if I did see it ahead of
8 time, and I routinely do that. If it's a plant that I
9 know I'm looking for, I do my best to make sure. Even
10 if it's in my own yard here in Bennington, I would keep
11 an eye out for it.

12 Q. Yeah, I understand, but we're talking about this
13 site, not your own yard. You were not instructed to
14 look for any plants in the areas that you were charged
15 with clearing, were you?

16 A. I'm sorry, Mr. Einhorn. You, you cut out halfway
17 through.

18 Q. Oh, I'm sorry. The areas that you were hired to
19 clear, which is essentially the green area on your
20 exhibit, you were not instructed to look for or avoid
21 herbaceous plants or these rare plants in those areas
22 in the course of your work; that was not within your
23 scope, correct?

24 A. I wasn't, it wasn't worded that way, but I'll,
25 I'll accept what you said. It wasn't in my purview. I

1 was -- can I add one critical sentence, though, to your
2 comment? Is that it had been five years since the
3 issue of rare and endangered was raised and that some
4 examinations had been taken place to inspect the entire
5 property at the proper time of year. So it's not like
6 this was day one. It was, the way it was represented
7 to me is that there's been five years' worth of prior
8 opportunity to look for rare and endangered plants on
9 the entire tract. So that's why I still was looking on
10 my own, but I did not find any.

11 Q. But my question was, That was not within your
12 scope of work, your contract, correct?

13 A. I think I need to have you re, requestion, restate
14 the question. I've, I may have gotten off track.

15 Q. Yeah. You were hired to clear this property,
16 excluding what you've identified as three RTE areas,
17 correct?

18 A. That's correct.

19 Q. And, in your scope of work for clearing that
20 property, you were not told to look for or avoid rare
21 plants outside of those three areas, correct?

22 A. I wouldn't say it that way. I was, if I
23 personally know what it looks like, I would have
24 avoided it. I did not detect those. They did not put
25 that as my charge, but, as a fellow human being, I

1 don't like to run over anything that is a rare and
2 endangered plant.

3 Q. Okay, I understand. So you, you were not told to
4 look? If you did look, it was your own personal
5 interest or judgment or whatever we want to call it
6 that you were doing?

7 A. It's the right thing to do, sure.

8 ATTORNEY EINHORN: Yeah, I understand. Thank
9 you.

10 COMMISSIONER HOFMANN: Well, let me follow up
11 a little bit with Mr. Einhorn and Mr. Kobelia. So did
12 you get off your tractor, Mr. Kobelia, and then walk
13 those areas? Because you indicated you were, you were
14 vibrating, the vibration from the bulldozer made it so
15 you couldn't even feel that you had gotten a message
16 earlier. So did you get down and walk that land, based
17 on what you just told Mr. Einhorn?

18 MR. KOBELIA: That's the best way to do it is
19 to inspect the ground before you start doing any work.
20 You do the best you can to look around. Honeysuckle is
21 very thick. You could look and see, but I, there were
22 some openings. Every place I could go, I preflighted
23 it. You want to know where there's boulders and
24 dangerous things that could damage the machine, so I
25 basically crossed and traversed that area, 100 by 250

1 feet, before I started doing the work. That's one of
2 the things you do when the machine's warming up.

3 CHAIRMAN ROISMAN: Anybody else, Ms.
4 Dingledine, Ms. Aceves, before Mr. Melone has a chance
5 for redirect?

6 ATTORNEY DINGLEDINE: Yes, Your Honor. I'd
7 like to ask some questions. It's Brooke Dingledine.

8 CHAIRMAN ROISMAN: All right, Ms. Dingledine.
9 I see we're at 11:08. We had hoped to take a break at
10 11:00. Will this -- if you think you're going to take
11 more than a couple of minutes, maybe we should take our
12 break now. If not, you can go ahead and finish asking
13 your questions.

14 ATTORNEY DINGLEDINE: I'm, it's not going to
15 be terribly lengthy, but I would really appreciate a
16 break right now myself.

17 CHAIRMAN ROISMAN: Okay, all right. Good,
18 all right. So it's, it's 11:08, and we'll break until
19 11:20, and we'll come back then.

20 (A recess was taken from 11:08 a.m. to 11:20 a.m.)

21 CHAIRMAN ROISMAN: Okay. Everybody back?
22 Mr. Kobelia, I see you've hydrated. That's good.
23 Okay. Just before we go to you, Ms. Dingledine, we,
24 during the break, we talked a little bit about
25 scheduling, and it, it looks as like, as we thought,

1 that, because we're remote, it's going a little longer
2 than anybody had anticipated. Would anybody have a
3 problem, and I'm particularly directing this to the
4 court reporter, if we cut the lunch time down to 45
5 minutes instead of an hour? Please speak up if that's
6 a problem for anybody, including the court reporter.

7 THE REPORTER: This is the court reporter,
8 and that is certainly fine with me.

9 CHAIRMAN ROISMAN: Okay, all right. We don't
10 want to keep you from getting the break we know you
11 need, but if 45 minutes works, when we break for lunch
12 around 12:30, we will break for just 45 minutes. Ms.
13 Dingledine, it's your -- you're up.

14 RE-CROSS-EXAMINATION BY ATTORNEY DINGLEDINE

15 Q. Thank you, Your Honor. Mr. Kobelia, could you
16 look at your phone and tell us the time that the text
17 was sent to you by Mr. Little on June 27th?

18 A. It was right about the, within a few seconds of
19 the police, so it must have been 1:00-ish.

20 Q. That he actually sent the message to you?

21 A. I, I, as I said, I was eating lunch. I looked at
22 my phone, and it was roughly 1:00 o'clock that I was
23 eating and I looked at the phone. The text may have
24 come sooner than that. It's just that's when I read
25 it, so --

1 Q. All right. Could you please look at your phone
2 and tell us the time that the text message was sent to
3 you by Mr. Little?

4 A. I could do that, but we're going way back in time,
5 June. I've had lots of correspondence with him in the
6 meantime on multiple other topics, so I have no idea
7 how long it would take me to find that text message.

8 CHAIRMAN ROISMAN: Ms. Dingledine, would it
9 be acceptable if Mr. Kobelia provides that information
10 either through his testimony or provides it to Mr.
11 Melone and he shares it with us? Would the answer to
12 the question trigger some further questions from you,
13 or is it just that you're interested in knowing that
14 particular time?

15 ATTORNEY DINGLELINE: I'm interested in
16 knowing that particular time and the specific content
17 of what he was told, so I would appreciate production
18 of screenshots of the, of any texts or emails during
19 that time period between the 26th and the 27th in terms
20 of communication with Mr. Kobelia by his employers.

21 CHAIRMAN ROISMAN: Mr. Melone, are you
22 agreeable to providing what Ms. Dingledine has asked
23 for, which is a screenshot of any communications that
24 Mr. Kobelia received between the time that he stopped
25 being part of our TRO hearing and the time that he

1 stopped doing work at the site?

2 ATTORNEY MELONE: I have no objection.

3 CHAIRMAN ROISMAN: Okay. Do you think that's
4 something that you could provide either later today or
5 certainly by Monday morning?

6 MR. KOBELIA: Yes. Tomorrow is muzzleloader
7 opening day and a lot of sitting, so I can go through
8 my Smartphone while I'm on my deer watch.

9 CHAIRMAN ROISMAN: Okay, all right. That,
10 that sounds like a good plan. All right. Go ahead,
11 Ms. Dingleline, with any other questions for Mr.
12 Kobelia.

13 ATTORNEY DINGLELINE: Yes, and I wanted to be
14 able to share the Melone map of site work performed, so
15 can I get permission to share?

16 CHAIRMAN ROISMAN: Yes, we can make you the
17 presenter. You're now the presenter, Ms. Dingleline.
18 That was a nice picture.

19 ATTORNEY DINGLELINE: Picked the wrong one.
20 Sorry.

21 CHAIRMAN ROISMAN: I like the other picture
22 really well. All right. And, Ms. Dingleline, for the
23 record, please identify it by its exhibit number. I
24 believe it's RK-2. Is that correct, Mr. Melone?

25 ATTORNEY MELONE: Yes, that's correct, Mr.

1 Chairman.

2 BY ATTORNEY DINGLEDINE:

3 Q. Okay. RK-2 by the petitioner. Mr. Kobelia, I
4 wanted you to look at RK-2, if you would, and describe
5 for us, this perimeter area that's slashed, when was
6 that clearing done datewise, around this whole
7 perimeter area that you have marked out?

8 A. Yeah. You're looking at a couple-of-week
9 timeframe from when I was contracted to do that project
10 until all of the silt fence was installed, and imagine
11 that perimeter boundary as being a fire break, the
12 trail that I made. There's always been one on this
13 piece of agricultural land. It's just that the old
14 apple trees long since had overtopped with forest. So
15 that represents all of that perimeter, which would be
16 property benefiting by having silt fence installed
17 along the boundary line. It's the lowest points.

18 Q. So, in terms of this, you basically created a
19 corridor around the property by clearing how wide a
20 strip, exactly?

21 A. The bulldozer blade is a little more than eight
22 feet. I believe it's eight feet, eight inches. So
23 I've used a number called ten feet, and there's, to
24 access that for, as I indicated in my testimony, we had
25 an ATV with a little utility trailer in it, and we

1 towed the, the three-foot-high silt fence, which has
2 stakes. They weigh quite a bit. And the total
3 perimeter distance was 3,500 feet or thereabouts. So
4 it's a lot of rolls of that. So, by having it
5 short-hauled to the wherever we were installing it, it
6 was helpful. But the dozer was used to make a level
7 trail so you wouldn't flip the four-wheeler.

8 Q. Okay. So it's fair to say then that the clearing
9 activity that you were engaged in on the site preceded
10 the hearing by several weeks; is that right?

11 A. Oh, easily, yeah. All of that, including some of
12 the work in the hatched area that's the 100-by-250, all
13 of that had been completed long before the hearing,
14 and, and, in fact, it was a good week before, as I had
15 scheduled some planned maintenance on the bulldozer.
16 So the dozer wasn't even available until the repair
17 work was done.

18 Q. Have you also been hired to clear the property up
19 on Lot 1 that's north where the old apple orchard is?

20 A. Yes, ma'am.

21 ATTORNEY DINGLEDINE: Okay. Thank you very
22 much. That's all I have. Thank you, Your Honor.

23 MR. KOBELIA: You're welcome.

24 CHAIRMAN ROISMAN: Mr. Landis-Marinello, did
25 you have a question or two?

1 MR. LANDIS-MARINELLO: I, I think that last
2 question might have clarified it. Mr. Kobelia, the,
3 the two exhibits, RK-1 has this 5.7 acre Lot 1 or
4 orchard lot or horticultural use area marked for
5 clearing, and RK-2 does not have that marked for
6 clearing, but it sounds like the plan is still to clear
7 the entirety of that 5.7 acres.

8 MR. KOBELIA: Is that a question of me?

9 MR. LANDIS-MARINELLO: Yes. Yeah. Can you
10 just clarify?

11 MR. KOBELIA: My understanding is that the
12 apples trees, and, upon inspection, I tried to pick
13 some apples at the beautiful time of harvest, and they
14 were a pathetic bunch of apples. They, there's -- the
15 deer would have had a hard time finding apples to eat.
16 So those trees are way past good use, filled full of
17 other brush because of lack of maintenance, so --

18 ATTORNEY DINGLEDINE: Objection, Your Honor.
19 This is irrelevant testimony, nonresponsive to the
20 question.

21 CHAIRMAN ROISMAN: Mr. Kobelia, just, if you
22 would, just answer Mr. Landis-Marinello's question.

23 MR. KOBELIA: Yes, sir. My understanding is
24 is that that would be cleared.

25 MR. LANDIS-MARINELLO: All right. Thanks.

1 MR. KOBELIA: Sure.

2 CHAIRMAN ROISMAN: Okay. Unless anybody else
3 has a question based upon the answers given to the last
4 cross, we're ready, Mr. Melone, for any redirect
5 testimony you have for Mr. Kobelia.

6 ATTORNEY MELONE: Thank you, Mr. Chairman.

7 REDIRECT EXAMINATION BY ATTORNEY MELONE

8 Q. Bob, just two simple or two short questions. So
9 you just said that the 100-by-250 clearing area, which
10 we've identified on the exhibit, most of that was
11 cleared before the hearing on the 26th; is that
12 correct?

13 A. That is correct. I purposefully left those
14 six-inch dead ash until a day when I had the bulldozer
15 working perfectly, and that was the morning I was there
16 working on those.

17 Q. Okay. So that's the, those are the only things
18 that you actually cleared from the area on Saturday,
19 June 27th; is that correct?

20 A. That is, that is correct. And I wasn't looking to
21 excavate. That would be a further job. First, we took
22 the little stuff when I first started. Then we took a
23 few of these bigger trees. To get rid of all of the
24 stumps, it would require a further use of an excavator
25 that just would do it so quickly and then a final

1 back-grading to be able to use it for agricultural use.

2 So we were in step two.

3 Q. Okay, great. And you had said that you looked up
4 what the white arrowleaf aster looked like, correct, so
5 you'd be able to identify it if you saw it?

6 A. That is correct.

7 Q. And you also said that you did a what you called a
8 preflight, which is a walk-through or a walk inspection
9 of the entire 100-by-250-foot area; is that correct?

10 ATTORNEY DINGLELINE: Objection, Your Honor.
11 These are leading questions, and this is the
12 proponent's witness. They should not be suggesting the
13 answer to him on a yes-or-no basis.

14 CHAIRMAN ROISMAN: Ms. Dingleline, we've
15 usually been pretty generous about leading questions,
16 but, Mr. Melone, if you can do a little less leading,
17 that would be helpful.

18 BY ATTORNEY MELONE:

19 Q. Okay. So, Bob, did you do a, an inspection of the
20 100-to-250-foot area before you cleared it?

21 A. I did.

22 Q. And did you see any white arrowleaf asters when
23 you did that inspection?

24 A. I did not find any.

25 ATTORNEY MELONE: No further questions, Mr.

1 Chairman.

2 CHAIRMAN ROISMAN: I have just one question
3 to clarify. Mr. Kobelia, in your response just now to
4 Mr. Melone, you seemed to indicate that the only work
5 that you did on the 100-by-250-foot area starting
6 Saturday morning of the Saturday following the TRO
7 hearing was to take down some ash trees that were on
8 the property, not to do any other work. Is that
9 correct? Did I understand your answer correctly?

10 MR. KOBELIA: Not exactly. Let me clarify
11 what I did that morning. When I first started a couple
12 of weeks earlier, I had penetrated the area with the
13 bulldozer and just left the debris, say, for example, a
14 honeysuckle bush that might be ten feet high, big root
15 ball on the bottom. I just pushed those off out of my
16 way. So that material, according to my charge, would
17 have been perfect material to come back and chip and
18 use for biomass for these berms that were part of my
19 charge to build.

20 So that's material that I just pushed off to the
21 side, approximately 100 feet. At the end of that 100
22 feet, there's a natural drop-off, and that's where I
23 pushed all of that biomass. So the big stuff standing,
24 yes, they were the smaller ash and trees of that
25 nature, but the brush, the honeysuckle and autumn

1 olive, those invasives, I had also pushed, and I needed
2 to get those out of the way too.

3 CHAIRMAN ROISMAN: All right. I'm sorry, Mr.
4 Kobelia, but I'm not sure that I got an answer to my
5 question, and I'm interested here now in a time period.

6 MR. KOBELIA: Yes.

7 CHAIRMAN ROISMAN: What, what work did you
8 actually do on Saturday morning before you got the stop
9 order from the sheriff and the message from Mr. Little?

10 MR. KOBELIA: I didn't want to give the
11 impression that, when I arrived in the morning, this
12 100-by-250 was only 6-inch trees. I had already moved
13 out the brush into, just, just pushed them out. I
14 hadn't pushed it back. So that's what my purpose was
15 was to clear the site so you could pull in there with a
16 pickup truck and turn around. So, until that time that
17 Saturday morning, you could not do that. So I pushed
18 the debris that had been exhumed a couple of weeks
19 earlier out of the way, plus the new 6-inch trees.

20 CHAIRMAN ROISMAN: Okay, all right. That, I
21 just wanted to make sure I understood that. And when
22 did you do this site examination? Did you do it on
23 Saturday morning, or had you done it several weeks
24 before, before you did the major bulldozing activity on
25 the 100-to-250-foot square, rectangle?

1 MR. KOBELIA: Well, that's a very good
2 question. I actually did it a couple of times.
3 Sometimes, when the, when I first got on site, I
4 intentionally looked, as I was the one that took charge
5 and put the flagging up heavily before we did the silt
6 fence. So I had plenty of field time on this property
7 to examine the entirety. I traversed most of the land
8 in my activities. So that would have been -- some of
9 it even happened the day that I was there. I just
10 quick looked around, because there had been some
11 disturbance, and perhaps you might see something better
12 after some of the honeysuckle was gone, but I didn't, I
13 didn't detect any. So it was more than one time that I
14 actually looked at the area.

15 CHAIRMAN ROISMAN: All right. Thank you. If
16 no one else has any questions in light of any of the
17 last questions and answers that were given by Mr.
18 Kobelia, we can discharge Mr. Kobelia as a witness.
19 Anybody else have any questions? Mr. Kobelia, thank
20 you very much.

21 MR. KOBELIA: Thank you very much. You folks
22 have a nice day.

23 CHAIRMAN ROISMAN: Thank you. Mr. Melone?

24 ATTORNEY MELONE: Thank you, Mr. Chairman.
25 Jim McClammer, are you there? I see you, Jim.

1 MR. MCCLAMMER: I'm here, and I guess I can
2 see myself and hear myself, so hopefully you can hear
3 me and see me as well.

4 ATTORNEY MELONE: We can. Yes, we can.

5 COMMISSIONER CHENEY: We can. Good morning,
6 Mr. McClammer. I'm going to swear you in.

7 JIM MCCLAMMER,
8 duly sworn to tell the truth, testifies as follows:

9 DIRECT EXAMINATION BY ATTORNEY MELONE

10 Q. Thank you, Jim. Can you affirm that the testimony
11 that was submitted under your name yesterday with three
12 exhibits, Exhibit AH-JM-1, 2, and 3, is true and
13 accurate?

14 A. Yes. That was prepared by me, and it is accurate.

15 ATTORNEY MELONE: Thank you. Mr. Chairman,
16 the Witness is available for cross-examination.

17 CHAIRMAN ROISMAN: Okay. Mr. Einhorn?

18 CROSS-EXAMINATION BY ATTORNEY EINHORN

19 Q. Thank you. Hello, Mr. McClammer. It's been a
20 while. Nice to see you again.

21 A. Yeah, thank you. Good to see you.

22 Q. Did you, were you present and, and listening and
23 able to hear Mr. Kobelia's testimony just a few minutes
24 ago?

25 A. Yes, I had. I've been following the proceedings

1 since they opened.

2 Q. You're familiar with the white arrowleaf aster,
3 correct?

4 A. Very much so.

5 Q. Yeah. Would you agree with me that the white
6 arrowleaf aster, as it occurs in Vermont, is not easily
7 identifiable at the species level until it flowers?

8 A. That's an accurate statement.

9 Q. And when does that species flower in Vermont,
10 typically?

11 A. Later in September.

12 Q. And that's what you experienced at your visits to
13 the Warner solar project, which is not very far from
14 the site that we're talking about today, correct?

15 A. That's absolutely correct, and that's only about
16 3,000 feet away, and I would also add I've seen it on
17 the Apple Hill project site and the Stark project site
18 as well.

19 Q. And okay, thank you. Your March 22nd visit to the
20 Apple Hill site which occurred this year, was that
21 visit before or after the flagging was removed from the
22 nimblewill along the old logging road otherwise
23 referred to by apple, by Arrowwood as the Nimblewill
24 Sites A and B?

25 A. I, I'm going to be rather frank about my purpose

1 of my visit was actually to identify whether or not
2 there were any wetlands on or in the vicinity of the
3 project, but I did, out of curiosity, walk across the
4 site, and I observed the conservation areas that have
5 been referred to in the previous testimony that were
6 surrounded by orange silt fence. I also noticed a
7 couple of areas on the site that had flagging around
8 it, but I didn't pay particular attention to what may
9 have been there.

10 ATTORNEY EINHORN: Okay, thank you. Let me
11 see. Would I be able to share my screen, please?

12 CHAIRMAN ROISMAN: Yes, you can be made the
13 presenter. You're now presenter, Mr. Einhorn.

14 ATTORNEY EINHORN: Okay, thank you. Let's
15 see if I get it right. Can everyone see my screen
16 there?

17 CHAIRMAN ROISMAN: Yes.

18 MR. McCLAMMER: I can.

19 (The prefiled testimony of Mr. McClammer was
20 shown to the Witness.)

21

22 <https://epsb.vermont.gov/?q=downloadfile/441570/150086>

23

24

25

1 BY ATTORNEY EINHORN:

2 Q. Okay, great. Thank you. So, in, in the testimony
3 that you filed in this matter yesterday, you make
4 reference to an MOU between the Agency and the Apple
5 Hill project developer; do you remember that?

6 A. Yes.

7 Q. And I think it's on Page 4 on Line 12. You
8 identify it as the June 29, 2015 MOU, and then you talk
9 about, further down on Line 16, that the conditions
10 have been complied with. Do you see that?

11 A. Yes.

12 Q. Are, are you aware that the 2015 MOU that you
13 reference has been superseded?

14 A. No.

15 Q. Okay. Let me see. Okay. Can you see my screen
16 now?

17 A. Yes.

18 Q. Okay. For the record, what I'm showing Mr.
19 McClammer is a Memorandum of Understanding dated
20 February 22, 2018 from the Apple Hill project Case
21 8454. We can call that, I guess, for purposes here is
22 as ANR-Cross-1.

23 (Exhibit ANR-Cross-1 was shown to the Witness.)

24

25

1 A. Okay.

2 Q. If we scroll down, Mr. McClammer, I have Page 2,
3 Paragraph 2. Do you see that?

4 A. Yes.

5 Q. Could you read that into the record for me,
6 please, the entire Paragraph 2? It's only four lines

7 A. Sure. "The parties agree that the 2015 MOU, which
8 was entered as Exhibit AHS-MOU-ANR on August 18, 2015
9 in this docket, is hereby withdrawn. The terms and
10 conditions of the 2015 MOU are superseded by the terms
11 and conditions of this MOU. The parties agree that the
12 2015 MOU is no further, is of no further force or
13 effect and the Commission should not consider or rely
14 on it."

15 Q. Okay, thank you. Now, in your testimony that we
16 just talked about, you had that line, I think it was,
17 16 that said that all MOU conditions have been complied
18 with. I take it you were referring to the 2015 MOU
19 when, in that statement, correct?

20 A. I believe that's correct, yes.

21 Q. Okay. I'd like to show you a different paragraph
22 in ANR-Cross-1, which is the 2018 MOU. Okay. This is
23 Paragraph Number 15 on Page 10 of ANR-Cross-1, and
24 could you read that paragraph into the record for me,
25 please?

1 A. Paragraph 15?

2 Q. Yes. Thank you.

3 A. It says, "Petitioner shall perform an updated RTE
4 plant survey if project site preparation or
5 construction does not commence by April 30th 2019. In
6 that case, site preparation or construction shall not
7 take place until the Vermont Fish and Wildlife
8 Department has reviewed the updated RTE plant survey
9 and determined that there are no undue adverse impacts
10 to RTE plants or approved appropriate avoidance or
11 mitigation measures."

12 Q. Okay. Thank you. Now, you said, when you were at
13 the Apple Hill site in March, the purpose was more to
14 look for wetlands, not to do an RTE plant survey,
15 correct?

16 A. That's correct.

17 Q. And --

18 A. Not a good time of the year to find RTE plants.

19 Q. Yeah. I'm sorry, and I interrupted you. I was
20 just going to ask you, You wouldn't look for them at
21 that time of the year, anyway?

22 A. We're on the same page, yes.

23 Q. Okay. And, in between March and the time Mr.
24 Kobelia started clearing the site in June, did you
25 revisit the site to look for RTE plants?

1 A. I did not.

2 Q. To your knowledge, did anyone?

3 A. Not to my knowledge.

4 Q. Okay. I'll take you back to your testimony, and
5 we're, now we're on Page 4 still, and on Line 18 and 19
6 you say that all of the aster plants -- and you're
7 referring to the white arrowleaf aster here, correct --

8 A. Correct.

9 Q. -- within the area of the proposed solar facility
10 were transplanted.

11 CHAIRMAN ROISMAN: Excuse me, Mr. Einhorn.

12 ATTORNEY EINHORN: Yes.

13 CHAIRMAN ROISMAN: That appears to be Page 3
14 of Mr. McClammer's testimony. I just want to make sure
15 that we're looking at the same thing. It may be the
16 way my computer printed it.

17 ATTORNEY EINHORN: No. I'm, I'm sorry. My
18 fault. It's, it's Page 3, but it's .pdf Page 4.

19 CHAIRMAN ROISMAN: Okay, all right.

20 ATTORNEY EINHORN: My apologies.

21 CHAIRMAN ROISMAN: All right. Go ahead. I'm
22 sorry.

23 BY ATTORNEY EINHORN:

24 Q. That's okay. And, and, and so, just so I
25 understand, Mr. McClammer is saying that all of the

1 aster plants within the proposed solar facility were
2 transplanted to the conservation areas by the end of
3 2018. Would you agree with me, Mr. McClammer, that
4 not, that other asters existed after the end of 2018 on
5 the Apple Hill site, the 27-acre site, in areas other
6 than the area of the proposed solar facility footprint
7 or the three RTE plant areas?

8 A. Could you repeat that, Mr. Einhorn, the last part
9 of that question?

10 Q. Sure. I'm sorry. Maybe I can approach it from
11 another angle that might make more sense. If we accept
12 what you have said here as true, would you agree with
13 me that asters existed in other areas within that
14 27-acre Apple Hill parcel, excluding the RTE
15 conservation areas, that were not transplanted?

16 A. I think I, I'd agree with that statement and to
17 paraphrase it or rephrase it, I would say there were
18 asters outside the proposed solar project area and that
19 were not within the conservation areas, not
20 transplanted, that were still there.

21 Q. Okay. Yeah, great. And we were, just a little
22 while ago with Mr. Kobelia, looking at his Exhibit RK-2
23 that showed the areas where he has cleared so far, and
24 now I have that on the screen, and, just to orient you,
25 the area in the southeast corner of the Apple Hill

1 parcel is one of the rare plant conservation areas,
2 correct?

3 (Exhibit AH-RK-2 was shown to the Witness.)

4

5 <https://epsb.vermont.gov/?q=downloadfile/441501/150086>

6

7 A. Correct.

8 Q. And just contiguous with that and to the west of
9 it is the area that he was talking about as the
10 100-foot-by-250-foot area that he cleared, which sounds
11 like to me both prior to, and then he did some work
12 after the hearing in, in June. Is that your
13 understanding of what that is there?

14 A. That's correct.

15 Q. Yeah. So that area has been cleared. I'm going
16 to show you. This is ANR Exhibit 14 to Mr. Popp's
17 testimony, and this is a report from Arrowwood
18 Environmental. It is the 2019 monitoring report for
19 the Apple Hill site, and I'm showing you Figure 1 on
20 Page 3 of that report. Do you see that?

21 (Exhibit ANR-14 was shown to the Witness.)

22

23 <https://epsb.vermont.gov/?q=downloadfile/440866/150086>

24

25

1 A. Yes, sir.

2 Q. And do you see the red outline, RTE conservation
3 area?

4 A. Yes.

5 Q. And just contiguous to that area and to the west
6 of it are three polygons. Do you see those blue
7 polygons?

8 A. Yes.

9 Q. And I'll scroll down a little bit more. Those
10 signify the presence of white arrowleaf asters,
11 correct?

12 A. That's correct.

13 Q. And those were not transplanted, correct?

14 A. That's correct.

15 Q. And those are in the area that was, that was
16 described by Mr. Kobelia and is shown on his Exhibit
17 RK-2 as an area that has been cleared at this time,
18 correct?

19 A. That's accurate. That's correct.

20 Q. Let me take you back to your testimony, and we'll
21 go, and I'm going to try to get the page numbering
22 right this time, which should put us on, I think, Page
23 5. Okay, yes. Page 5, Question and Answer 7, it talks
24 about the --

25 CHAIRMAN ROISMAN: Mr. Einhorn, I believe

1 that's Page 6.

2 ATTORNEY EINHORN: I'm sorry. Yes. See, I
3 went -- yeah. Struggling with the .pdf versus
4 pagination. Thank you for correcting me.

5 BY ATTORNEY EINHORN:

6 Q. So Question and Answer 7 on Lines 15 through 17,
7 you make a statement that, "The aster is not very rare
8 on or near the Warner project site, nor in the
9 Bennington area, where it is known from three
10 localities". Do you see that statement?

11 A. Yes.

12 Q. You, you would agree with me that the
13 classification and ranking of plants as to their rarity
14 in Vermont is based on the number of known populations
15 in the state, not the number of plants at a particular
16 population, correct?

17 A. Generally correct. I, you know, it becomes then
18 -- I literally have to parse the words as, What do you
19 mean by population? And, if you look closely at my
20 testimony, these are occurrences, and, in my mind and
21 based upon sort of the biological interpretations of
22 populations, the plants that are here on the Apple Hill
23 site are part of the same population that occur, occurs
24 on the Warner and, you know, Stark projects --

25 Q. So --

1 A. -- on the fact of, you know, it's the known
2 occurrences as opposed to populations.

3 Q. Okay. Let's explore that a little bit. I don't
4 want to speak for Mr. Popp, but I believe his position
5 and the Agency's position are these are two different
6 populations, and there's one other known, two
7 different, meaning the Warner site and the Apple Hill
8 site, and there's another known population, I think,
9 just near Bennington in Pownal, which gives us three
10 known in the state.

11 If we agree with you and say the Warner and Apple
12 Hill occurrences are, in fact, one population or
13 occurrence, if we want to use the word, that would
14 effectively mean that there are only two known
15 occurrences or populations in Vermont, would it not?

16 A. I think that would be accurate, yes.

17 Q. And, again, the state ranking is --

18 A. Just a caveat there. I'm sorry, Mr. Einhorn, but
19 I just want to say that I don't honestly know the
20 Pownal population or occurrence, whether or not there
21 actually have been identified accurately as the white
22 arrowleaf aster.

23 Q. Okay. And I appreciate that, and let's just, for
24 hypothetical, let's say that they are and they have
25 been.

1 A. Sure.

2 Q. That would leave us with two populations or
3 occurrences in, in the state that we know of, and that
4 is, in fact --

5 A. Two populations, yes.

6 Q. -- and that is, in fact, what the ranking is based
7 on, not the number of individuals at a given occurrence
8 per population, correct?

9 A. That's correct.

10 Q. Okay. Let's scroll down a little bit more. I'm
11 going to really try hard to get this one right. So
12 Page 7, Question and Answer 8, this is kind of what we
13 just talked about, the known populations or
14 occurrences. You say the use of five or fewer
15 locations is arbitrary.

16 Do you agree that this methodology that the Agency
17 uses for classifying the plants is based on the
18 Heritage methodology?

19 A. I would say that that's generally correct, yes.

20 Q. And, and the Heritage methodology, which is
21 coordinated throughout the US as well as, I believe,
22 parts of Canada and Central America, by, by nature,
23 sir, is used by Heritage programs throughout the
24 country; is that correct?

25 A. That's correct.

1 Q. Would you also agree with me that the white
2 arrowleaf aster is considered by Flora Conservanda as
3 being rare in the New England states?

4 A. I can't specifically state that I know that.

5 Q. Are you aware of any occurrences or populations of
6 white arrowleaf aster anywhere in New England other
7 than Vermont?

8 A. I am not, with the caveat that I really haven't
9 searched for them either.

10 Q. I understand. I appreciate that. Would you agree
11 with me that the white arrowleaf aster is part of
12 Vermont's natural environment?

13 A. That is a question I have to be clear in
14 answering. It's, in my mind, it's part of the natural
15 environment, but it is probably not as part of the
16 natural environment as the 248 section classifies the
17 natural environment. I mean, in my mind the natural
18 environment would include the coronavirus, but I don't
19 think that under 248 you want to include coronavirus
20 under 248 criteria.

21 Q. Yeah. No. I understand. I appreciate that, and
22 I wasn't asking you in the sense of is it, is it a
23 legal definition or does it meet a definition of the
24 statute, but more that it's a, it's a species that is
25 occurring naturally in Vermont?

1 A. Yeah. I mean, you, doing NEPA work -- that's
2 Environmental Policy Act stuff -- it's certainly a
3 component of the natural environment and not so much a
4 component of the human environment.

5 Q. Right. Like some introduced horticultural species
6 perhaps would be? Did I -- I'm sorry. I didn't hear
7 your response.

8 A. Pardon?

9 Q. I'm sorry. I didn't hear your response.

10 A. Oh, my response? Yeah, maybe I wasn't clear on
11 what your question was.

12 Q. Oh, I'm sorry.

13 A. Can you repeat it?

14 Q. Yeah. I said, as you said, that it would be --
15 you referred to your NEPA work and it would be
16 considered as part of the natural environment, and I
17 said I guess my question would be, you know, as opposed
18 to, say, some exotic horticulturally introduced species
19 would not be considered a part of the natural
20 environment?

21 A. My own opinion, I think horticultural varieties or
22 whatever else are also part of our natural environment
23 and how I conceive the definition of the natural
24 environment outside of the Section 248.

25 Q. Okay. Would the nimblewill plant that exists at

1 the Apple Hill site also be considered part of the
2 natural environment of Vermont?

3 A. Again, in a broad sense, I consider the nimblewill
4 plant to be part of the natural environment in Vermont
5 and elsewhere.

6 ATTORNEY EINHORN: Thank you, Mr. McClammer.
7 I don't have any further questions.

8 CHAIRMAN ROISMAN: Mr. Einhorn, do you want
9 to introduce Cross-1 as an exhibit in the case or not?

10 ATTORNEY EINHORN: I, I don't need to. I
11 mean, Mr. McClammer read, read that into the record,
12 but, you know, let's, let's why not? Let's, let's do
13 it. I mean, it came out of one of the proceedings. So
14 let's move it in, sure.

15 CHAIRMAN ROISMAN: Okay. Just identify it
16 for the record and by name, and then it will be Cross
17 Exhibit 1, and then we'll see if anyone objects to it.

18 ATTORNEY EINHORN: Okay. I need to find it.
19 Here it is. It is the, it is the First Amended
20 Memorandum of Understanding between Apple Hill Solar
21 and the Agency dated February 22nd 2018 from Case 8454.

22 CHAIRMAN ROISMAN: Okay, all right. Does
23 anyone object to the admission of this exhibit? Mr.
24 Melone?

25 ATTORNEY MELONE: No objection, Mr. Chairman.

1 CHAIRMAN ROISMAN: Ms. Dingleline?

2 ATTORNEY DINGLELINE: No objection.

3 CHAIRMAN ROISMAN: Ms. Aceves?

4 ATTORNEY ACEVES: No objection.

5 CHAIRMAN ROISMAN: Very well, it will be
6 admitted. Thank you, Mr. Einhorn.

7 ATTORNEY EINHORN: Thank you. I guess I
8 don't need to share anymore. I think I know how to do
9 this. Okay.

10 CHAIRMAN ROISMAN: Good. All right. Ms.
11 Dingleline, do you have any questions for Mr.
12 McClammer?

13 ATTORNEY DINGLELINE: No, thank you, Your
14 Honor.

15 CHAIRMAN ROISMAN: Okay. Ms. Aceves, do you
16 have any questions for Mr. McClammer?

17 ATTORNEY ACEVES: I do not. Thank you.

18 CHAIRMAN ROISMAN: Okay. Commissioner
19 Hofmann, did you have any questions for Mr. McClammer?

20 COMMISSIONER HOFMANN: I don't. Thank you.

21 CHAIRMAN ROISMAN: Commissioner Cheney, do
22 you have any questions for Mr. McClammer?

23 COMMISSIONER CHENEY: No, I don't. Thank
24 you.

25 CHAIRMAN ROISMAN: Mr. Landis-Marinello, did

1 you have any questions for Mr. McClammer?

2 MR. LANDIS-MARINELLO: I just had one, and I
3 think Attorney Einhorn asked similar questions, but, in
4 terms of ANR's classification of RTE, do you view that
5 system as rational?

6 MR. McCLAMMER: Could you, Mr. Landis, could
7 you repeat that, please, so I can make sure I
8 understand it?

9 MR. LANDIS-MARINELLO: Do you think that
10 ANR's classification system for RTE is rational?

11 MR. McCLAMMER: I pause on the word
12 "rational". It's pragmatic. It serves some purpose.
13 But is it definitive in determining whether or not a
14 species may have very limited distribution? That, I
15 wouldn't agree with. So I'm not sure if that answers
16 your question or not. You could maybe ask it in a
17 different manner. Yeah.

18 MR. LANDIS-MARINELLO: Yeah. I'll ask the
19 reverse. Would you call that system irrational?

20 MR. McCLAMMER: No, I wouldn't call it
21 irrational. It certainly is, it's a technique that's
22 been applied to try to get a handle on distribution of
23 certain species or taxa. It's not always just species.

24 MR. LANDIS-MARINELLO: Okay, thanks.

25 CHAIRMAN ROISMAN: Okay. Anybody have any

1 questions based on the answer that Mr. Landis-Marinello
2 just heard from Mr. McClammer? Okay. Mr. Melone, do
3 you have any redirect for Mr. McClammer?

4 ATTORNEY MELONE: Yes, Mr. Chairman, just a
5 couple of questions.

6 REDIRECT EXAMINATION BY ATTORNEY MELONE

7 Q. So, Mr. McClammer, Attorney Einhorn asked you
8 about the identification or the ability to identify the
9 aster at the species level, say, outside of the
10 flowering period. So, to an ordinary observer, not a
11 botanist, who would have familiarized themselves with
12 what asters look like, before it flowered would it just
13 potentially look like another aster, they just couldn't
14 identify what type of aster it is?

15 A. Mr. Melone, you're breaking up a little bit, and
16 so I would ask you to repeat it so I can give you an
17 accurate response.

18 Q. Okay. So, when someone tries to identify the
19 aster, we know that the exact type of aster cannot be
20 identified until it flowers, correct?

21 A. Yes, that's an accurate statement.

22 Q. So what would -- before it flowers, would it look
23 like some other type asters?

24 A. Yes, it could be confused with several other aster
25 species.

1 Q. So, if someone like Mr. Kobelia familiarized
2 himself with what asters look like, he would still be
3 able to identify what an aster is, he just couldn't
4 tell whether it was this particular aster; is that
5 correct?

6 ATTORNEY EINHORN: Object to the form.

7 ATTORNEY DINGLEDINE: Objection, objection.

8 ATTORNEY EINHORN: I mean, it's so
9 hypothetical. Mr. Kobelia testified in June that he
10 knows what trees look like, but he doesn't know what
11 herbaceous plants look like, and, just because he
12 looked at a photo of an aster, which probably was in
13 flower, I, I just don't -- he's not a person that's
14 qualified to be looking for this species on any site
15 for that matter, let alone the one he's clearing, and I
16 don't think we need to spend much time exploring this,
17 because I don't -- you know, I could get into a whole
18 bunch of recross and stuff, and I don't think we need
19 to go there.

20 CHAIRMAN ROISMAN: Ms. Dingleline?

21 ATTORNEY DINGLEDINE: Yeah, I would also
22 object. I don't think that the Witness is competent to
23 testify as to the matters that he's been asked about.
24 He does not have any factual basis, and there has been
25 no establishment of any basis to admit this kind of

1 evidence from this particular witness about another
2 witness.

3 CHAIRMAN ROISMAN: Mr. Melone, what's your
4 response?

5 ATTORNEY MELONE: Well, Attorney Einhorn had
6 raised the issue, because we just heard Bob Kobelia say
7 that he familiarized himself with the asters, that he
8 went out and looked around the entire site, actually,
9 not only in the cleared area, for asters outside the
10 conservation area and didn't hear any, and, but
11 Attorney Einhorn then asked Mr. McClammer here to
12 confirm that you couldn't identify it at the species
13 level until it flowers which, which is, to me, a
14 lead-in to say that, well, no one -- when Bob Kobelia
15 did his inspection, it wasn't in September. But my
16 point is is that these asters, while you can't identify
17 a white arrowleaf aster before it flowers, you can
18 identify asters in general, and --

19 CHAIRMAN ROISMAN: All right. And, and, Mr.
20 Melone, I think, I don't think that the objection would
21 go to your asking that question of Mr. McClammer. I
22 think the focus of the objection was asking Mr.
23 McClammer to offer an opinion as to Mr. Kobelia's
24 capability. If you want to reframe the question to ask
25 Mr. McClammer what you just said, which is, Would a

1 person be able to identify an aster plant, if not this
2 particular species, during a period when they weren't
3 flowering, I don't think that Mr. Einhorn or Ms.
4 Dingledine would object to your asking him that
5 question.

6 ATTORNEY MELONE: Sure, I can rephrase it
7 that way.

8 BY ATTORNEY MELONE:

9 Q. So, Mr. McClammer, would it be possible for an
10 ordinary person, nonbotanist, who familiarized
11 themselves with what asters look like to identify an
12 aster before the flowering period?

13 A. Well, I'd give sort of a technical answer to that
14 question. When we use the word "aster", it's a
15 vernacular term for what can be applied to several
16 different genera of aster, you know, aster-like, like
17 plants, and so there are several genera that look very
18 similar and are very difficult to even distinguish one
19 genus from another without having flowering material.

20 But, once you have the flowering material and you
21 become acquainted with those genera and species in a
22 certain area, you could probably, you know, distinguish
23 them based upon morphological characteristics of the
24 leaves, particularly, but it's not easy, unless you
25 have some prior experience in being able to look at the

1 technical characters so you know whether or not that
2 particular genus and species may be in that area. It
3 sounds like an oblique answer, but I wanted to be as
4 precise as I can.

5 Q. Thank you for that.

6 A. If it goes to Mr. Kobelia, I might add I was
7 impressed by his testimony and his knowledge of plants
8 and biology out there, but --

9 ATTORNEY DINGLEDINE: Objection, Your Honor.
10 This is nonresponsive. The Witness has not been asked
11 such a question, and I move to strike the testimony.

12 CHAIRMAN ROISMAN: Mr. McClammer, just wait
13 for Mr. Melone to ask you a particular question.

14 MR. McCLAMMER: Yes, Mr. Chairman.

15 CHAIRMAN ROISMAN: All right, thank you. Mr.
16 Melone.

17 BY ATTORNEY MELONE:

18 Q. So, Mr. McClammer, before the white arrowleaf
19 aster plant would flower in September, what would it
20 look like in, in June?

21 A. Based upon my experience with that species, it
22 would be still rather diminutive. It may well be
23 obscured by foliage of other plants, such as the
24 buckthorn or the honeysuckle on a site, and it would be
25 hard to even find it, as, not only my previous

1 testimony has alluded to, but from my experience of
2 trying to find this species on these other solar sites
3 that I've actually looked at, and it's also Arrowwood's
4 experience that, indeed, in their reports they assert
5 that, you know, hey, once the leaves fall on things
6 such a honeysuckle, they're able to see it. So the
7 bottom line is it's difficult to find and identify this
8 species.

9 Q. Okay. Next question, you went over with Attorney
10 Einhorn the 2015 MOU and 2018 MOU. If the provisions
11 of the 2018 MOU relating to conservation of the RTE
12 plants on the site are identical to those in the 2015
13 MOU, would your testimony still stand that the
14 conditions of the MOU have been satisfied?

15 A. The problem is I don't know what the conditions in
16 the amended or super, or the most recent MOU are, but
17 that's, I guess, is my answer to that. If I was more
18 familiar with the more recent MOU, I could answer it
19 more accurately.

20 Q. Right. Well, I'd like to save everybody the
21 trouble of you reading the 2018 MOU to discover only
22 that the provisions are, in fact, identical. So my
23 question is, If the 2018 provisions on conservation of
24 the RTE are identical to those in the 2015 MOU, would
25 your testimony still stand that, that those provisions

1 were satisfied?

2 A. Absolutely.

3 Q. Okay. And Attorney Einhorn directed your
4 attention to one section in the 2018 MOU that related
5 to a resurvey for RTE that states, if clearing or if
6 site preparation hasn't started by April 30th 2019,
7 then a resurvey would need to be done, but, in fact, if
8 site preparation, if, for example, Mr. Kobelia had,
9 when Apple Hill Solar did have a CPG, started clearing
10 before that date, then is it your opinion that no
11 resurvey would be needed?

12 A. That's an accurate interpretation of the 2018 MOU.

13 ATTORNEY MELONE: No further questions, Mr.
14 Chairman.

15 CHAIRMAN ROISMAN: Anybody have any
16 additional cross in response to the answers to the
17 redirect? Ms. Dingleline?

18 ATTORNEY DINGLELINE: Mr. Roisman, I could
19 not make out the last question and answer. There was
20 some disruption that I was hearing with Mr. Melone. So
21 I'm not quite sure that I understood the last question
22 and answer.

23 CHAIRMAN ROISMAN: All right. Can the court
24 reporter read back the last question and answer,
25 please?

1 (Question and answer read by the reporter.)

2 CHAIRMAN ROISMAN: Thank you. Ms.
3 Dingledine? Okay, all right. Well, Mr. McClammer, I
4 think you can be excused at this point. Thank you for
5 your testimony.

6 MR. McCLAMMER: Thank you, Mr. Chairman.

7 CHAIRMAN ROISMAN: Mr. Melone, who is next?

8 ATTORNEY MELONE: I guess it's me. I'm next.

9 COMMISSIONER CHENEY: All right. Then I'll
10 start by swearing you in as a witness, Mr. Melone.

11 THOMAS MELONE,
12 duly sworn to tell the truth, testifies as follows:

13 CHAIRMAN ROISMAN: All right. And, Mr.
14 Melone, you are going -- you could find it an awkward
15 position that's, technically, you are not only the
16 witness, but the lawyer questioning the witness. We'll
17 see how that works out if the problem arises. For the
18 moment, we'll just simply let you verify if your
19 prefiled direct testimony is still true and accurate to
20 the best of your personal knowledge, if that is true.

21 ATTORNEY MELONE: Yes, the, the testimony I
22 submitted on December 3rd in this docket, plus the two
23 exhibits, is true and correct and accurate as of today.

24 CHAIRMAN ROISMAN: All right, okay. Mr.
25 Einhorn, do you have any questions for Mr. Melone?

1 ATTORNEY EINHORN: I do not. Thank you.

2 CHAIRMAN ROISMAN: Okay. Ms. Dingledine, do
3 you have questions for Mr. Melone?

4 ATTORNEY DINGLEEDINE: Thank you.

5 CHAIRMAN ROISMAN: Ms. Dingledine, before I
6 start, we're almost at when we were going take a lunch
7 break, and the question is, Do you think that it would
8 take more than ten minutes to examine Mr. Melone? If
9 so, we might decide to take our lunch break now, rather
10 than break up your cross.

11 ATTORNEY DINGLEEDINE: Yes, I think I am going
12 to be more than ten minutes.

13 CHAIRMAN ROISMAN: Okay. Well, let's adjourn
14 now at 12:21, and we will reconvene again at 1:06,
15 unless I screwed up my math. Okay. See everybody at
16 1:06. Have a good lunch.

17 (A recess was taken from 12:21 p.m. to 1:06 p.m.)

18 CHAIRMAN ROISMAN: Okay. I think we're all
19 back. Ms. Dingledine, I believe we were ready for you
20 to cross-examine Mr. Melone. Mr. Melone, remember
21 you're still under oath.

22 ATTORNEY MELONE: Thank you, Mr. Chairman.

23 CROSS-EXAMINATION BY ATTORNEY DINGLEEDINE

24 Q. Thank you, Your Honor. Good morning, Mr. Melone,
25 or I guess it's afternoon, Mr. Melone.

1 A. Good afternoon.

2 Q. Who is the petitioner in the Chelsea Solar project
3 proposal?

4 A. The petitioner in Docket 8302 and 17-5024 is
5 Chelsea Solar, LLC.

6 Q. Is that the only party in interest, from your
7 perspective, that has any rights or obligations under
8 that proposed application for a petition?

9 A. I'm sorry. Can you --

10 Q. Is Chelsea Solar the only entity that has any
11 interest, position, or standing with regard to the
12 petition for the present Chelsea Solar project
13 proposal?

14 A. It's the only party in those dockets that's made
15 an appearance, as I recall.

16 Q. What's, well, what about the landowner?

17 A. The landowner, I don't think the landowner has
18 made an appearance in that docket.

19 Q. Okay. So in the, in the, either of the Chelsea
20 Solar dockets, is there any party in interest other
21 than Chelsea Solar, LLC, from your perspective as the
22 petitioner or related to the petitioner?

23 A. Can you define "party in interest"?

24 Q. They have standing to be involved.

25 A. Again, what do you mean by standing?

1 Q. Okay. You know what? Let's move on. Does
2 Chelsea Solar, LLC have a certificate of public good at
3 this moment in time?

4 A. No, it does not.

5 Q. Have they ever had a certificate of public good in
6 either of the dockets related to the Chelsea Solar
7 petitions or applications?

8 A. No, they have not.

9 Q. Does Apple Hill Solar, LLC have, is that the other
10 proposal that you have for the Bennington property that
11 is at issue, the Apple Hill Solar project?

12 A. That's correct.

13 Q. And is the petitioner in that case Apple Hill
14 Solar, LLC?

15 A. That's correct.

16 Q. And does Apple Hill Solar, LLC have a certificate
17 of public good right now?

18 A. No, it does not.

19 Q. Okay. During any of the time that Mr. Kobelia did
20 any work for you prior to the temporary restraining
21 order hearing at the end of June, did you, did Apple
22 Hill Solar or Chelsea Solar, LLCs, either of them, have
23 a certificate of public good while any of the work done
24 by Mr. Kobelia was performed?

25 A. Yes. Mr. Kobelia performed work in April 2019 in

1 Apple Hill Solar or for the Apple Hill Solar project
2 and, and commenced site preparation there by, by
3 removing some trees.

4 Q. In April of 2019?

5 A. April 2019. He actually started, I believe, on
6 April 16th 2019.

7 Q. And that was on which project site?

8 A. Apple, Apple Hill Solar.

9 Q. So he did not testify, either in his prefiled
10 testimony or on cross-examination, about any activities
11 prior to a few weeks before the TRO hearing. So is it
12 your under-oath testimony that you did engage him the
13 prior year in April of 2019 to do site preparation?

14 A. Yes, I did, yes. At the time, Apple Hill Solar
15 had a CPG.

16 ATTORNEY DINGLELINE: May I share my screen,
17 Mr. Roisman? Oops, I got it.

18 CHAIRMAN ROISMAN: Yes. You'll be made the
19 presenter, and then you can share your screen. You're
20 now the presenter, Ms. Dingleline.

21 ATTORNEY DINGLELINE: Great, thank you so
22 much.

23 BY ATTORNEY DINGLELINE:

24 Q. Mr. Melone, I'm showing the site clearing map that
25 Mr. Kobelia testified to. I believe it's TR-2 as the

1 exhibit number.

2 A. That's correct, yeah.

3 Q. Could you describe for us what portion of the site
4 was cleared in April of 2019 by Mr. Kobelia?

5 A. I don't know exactly where he commenced clearing,
6 but we certainly could get that information from him.

7 Q. Okay. But is it your testimony that the majority
8 or at least the area here, the 100-by-200-foot section,
9 that definitely was done in 2020; is that right?

10 A. That's my understanding, yes.

11 Q. Okay. Thank you very much. Now, Mr. Melone, who
12 owns Chelsea Solar, LLC?

13 A. Chelsea Solar, LLC is owned by Allco Finance
14 Limited.

15 Q. And who owns Allco Finance Limited?

16 A. Allco Finance Limited is owned by Allco Finance
17 Limited, LLC, which is, in turn, owned by me.

18 Q. I'm sorry. I couldn't hear you. Say it again?

19 A. Allco Finance Limited is owned by Allco Finance
20 Limited, LLC, which, in turn, is owned by me.

21 Q. So you own and control, you're the only owner,
22 ultimately, or person in control of Chelsea Solar, LLC,
23 fair to say?

24 A. Yes.

25 Q. Who is Apple Hill Solar, LLC owned by?

- 1 A. The same parties, Apple Hill Finance Limited.
- 2 Q. So Apple Hill Solar, LLC is owned by Allco Finance
3 Limited?
- 4 A. Correct.
- 5 Q. Okay. And Allco Finance Limited is owned by Allco
6 Finance --
- 7 A. Limited, LLC.
- 8 Q. -- Limited, LLC?
- 9 A. Correct.
- 10 Q. And you are the owner of Allco Finance Limited,
11 LLC?
- 12 A. Correct.
- 13 Q. So you are the sole owner and person in control of
14 Apple Hill Solar, LLC, correct?
- 15 A. Indirectly.
- 16 Q. You own and control it, correct?
- 17 A. I own the entity that ultimately controls it.
- 18 Q. Is there any other party who controls or owns any
19 portion of Chelsea Solar, LLC?
- 20 A. No.
- 21 Q. What about Apple Hill Solar, LLC; anyone else
22 other than Thomas Melone who ultimately is the owner?
- 23 A. No.
- 24 Q. Okay. What about PLH, LLC?
- 25 A. I'm the sole member and owner of that company.

1 Q. So you, you are the sole owner in control of that
2 entity as well?

3 A. Correct.

4 Q. And PLH Vineyard Sky, LLC, same question, who is
5 the owner?

6 A. Oh, well, actually, PLH, LLC is PLH Vineyard Sky,
7 LLC. The name was changed, and it was, the state of
8 organization was transferred from Indiana to Florida.

9 Q. Oh, okay. So, so it's the same -- it's a name
10 change, same entity?

11 A. Same entity, just different, just, yeah, different
12 name, different state of incorporation or organization.

13 Q. Okay. And then Allco Renewable Energy Limited is
14 owned by?

15 A. Allco Finance Limited, LLC, which I'm the sole
16 owner of.

17 Q. Okay. And, lastly, Ecos Energy, LLC, who is the
18 owner of that?

19 A. Allco --

20 Q. Beg your pardon?

21 A. Allco Renewable Energy Limited.

22 Q. And Allco Renewable Energy Limited is owned by?

23 A. Allco Finance Limited, LLC.

24 Q. LLC? And then so you are the owner of every
25 single one of those entities, correct?

1 A. Indirectly, that's correct.

2 Q. But, but the sole owner, however indirectly it
3 might be, correct?

4 A. That's correct.

5 Q. Okay. Thank you very much for going through that.
6 I appreciate it. Another document that I just wanted
7 to very, oh, so briefly, ask you about if I may be the
8 presenter just for a moment, please.

9 MS. BISHOP: Ms. Dingleline, you're still the
10 presenter. So, to share your screen, you can, if you
11 move your mouse, you'll see some circles on the bottom
12 of your screen, and one is for your microphone, and one
13 is for the camera, and the one right next to it is
14 screen. If you click on that, you will share your
15 screen.

16 ATTORNEY DINGLELINE: Oh, thank you very
17 much.

18 CHAIRMAN ROISMAN: Just for the benefit of
19 the reporter, that was Ann Bishop, who is our Director
20 of Operations and is also acting as the manager of this
21 remote proceeding.

22 (Intervenors Exhibit 4 was shown to the Witness.)

23

24 <https://epsb.vermont.gov/?q=downloadfile/416534/150086>

25

1 BY ATTORNEY DINGLEDINE:

2 Q. Mr. Melone, what I'm showing you is -- I'm sorry.
3 Let me go back to the top -- is Intervenors Exhibit
4 Number 4, which could you identify this document for
5 us, please?

6 A. It looks like a settlement agreement that was
7 signed with the Town of Bennington.

8 Q. Okay. And I'm going to skip all the way down to
9 the bottom of it and just ask you, do you recognize the
10 signatures on this document?

11 A. Yes.

12 Q. It's Michael Melone, Esquire, for Chelsea and for
13 Apple Hill Solar?

14 A. Correct.

15 Q. And also for PLH and all of the other entities
16 here, it's Michael Melone who signed it?

17 A. Correct.

18 Q. Okay. Was Michael Melone authorized on behalf of
19 all of these entities to enter into this settlement
20 agreement and undertake the responsibility for
21 obligations under it on behalf of each of these
22 entities?

23 A. Yes.

24 Q. And so am I correct then in assuming that
25 Paragraph 7, which indicates that the following, quote,

1 "PLH agrees not to develop 557 Apple Hill Road,
2 Bennington, Vermont (the "Apple Orchard"), in
3 parentheses in quotes, into any other use other than
4 its existing use for the life of the Apple Hill and
5 Chelsea projects. For the avoidance of doubt, neither
6 PLH nor the Developer shall have any obligation to
7 maintain the current condition of the Apple Orchard.
8 This provision is not intended to and does not waive
9 any legal obligations that may exist or the rights of
10 any non-parties to this agreement".

11 Do you agree that the document in Paragraph 7 says
12 as I read it?

13 A. I agree that those are the words that are there.

14 Q. Okay. And was Michael Melone, Esquire, authorized
15 to bind all of the entities, the solar array entities
16 and all of these other LLCs, et cetera, was he
17 authorized to bind them to that provision, yes or no?

18 A. I think that's been asked and answered.

19 Q. Could you please answer?

20 ATTORNEY MELONE: I object to reanswering the
21 same question.

22 CHAIRMAN ROISMAN: Mr. Melone, it will move
23 it along if you just tell her yes or no.

24 ATTORNEY MELONE: Yes, he was.

25

1 BY ATTORNEY DINGLELINE:

2 Q. Okay. And you would agree with me, would you not,
3 that now altering these proposed sites to engage in a
4 different use, i.e. in agriculture or horticulture,
5 would, in fact, be a change of use?

6 ATTORNEY MELONE: I have to object to this
7 line of questioning, because I think -- I don't see how
8 this is relevant to the issue before the Commission
9 that deals with the aster plants, and the Agency has
10 already stated that it has no interest in this other
11 five-acre parcel for purposes of this injunction.

12 CHAIRMAN ROISMAN: Ms. Dingleline, your
13 response?

14 ATTORNEY DINGLELINE: My response is that
15 this is a document that was actually submitted,
16 promises that were made, and representations that were
17 submitted to the Public Utility Commission and
18 precipitated the withdrawal of the Town of Bennington.
19 There was a representation made that the area under
20 consideration here, the Apple Hill Road location, would
21 not be developed into any other use, and that is
22 exactly what is proposed, and so the question becomes,
23 Is this or is this not a misrepresentation in terms of
24 what is now happening on the site?

25 CHAIRMAN ROISMAN: Ms. Dingleline, within the

1 scope of the jurisdiction of the Commission, which I
2 think is what Mr. Melone is raising, what is it that
3 you think we can or should be doing if what you just
4 said is correct, that there is a violation or a
5 proposed violation of an agreement that was entered
6 into between Mr. Melone's companies and the Town of
7 Bennington?

8 ATTORNEY DINGLEDINE: It goes to two things,
9 Your Honor. It goes to the, to the material
10 representations that were made with regard to the
11 actual pending applications, but it also goes to a more
12 important matter, and that is to the credibility of the
13 Witness in terms of how they are proceeding, what
14 promises that they're making, and I think that that's a
15 very important issue in terms of assessing the
16 credibility of the testimony that you're hearing from
17 Mr. Melone.

18 This is more information that was presented to the
19 Public Utility Commission, and while it's a private
20 agreement with the Town, it certainly bears on and
21 relates to the use of this property and what promises
22 have been made with regard to actual, actually whether
23 the Town was or was not involved in this. They chose
24 to withdraw based on a series of promises. This is one
25 of them. And now that party is no longer a part of

1 this because of this agreement, and that is significant
2 in terms of the process and the procedure that's going
3 on right now. We need to know what is the, what is the
4 representation for these projects, what promises were
5 made, what representations exist? This is one of them
6 that's relevant to what they're doing on the site.

7 CHAIRMAN ROISMAN: All right. We're going to
8 --

9 ATTORNEY MELONE: Mr. Chairman, could I just
10 say one other thing?

11 CHAIRMAN ROISMAN: Yes.

12 ATTORNEY MELONE: The, the agreement is with
13 the Town of Bennington. Bennington has been well aware
14 of our proposed agricultural uses since we proposed
15 them. They have been copied on ePUC. Their attorneys
16 have been copied on all filings in the Supreme Court.
17 They have not come to us and said they have any issue.
18 So I think, aside from this being irrelevant to this
19 proceeding, Ms. Dingleline has no right to speak for
20 the Town in this proceeding either.

21 CHAIRMAN ROISMAN: All right. We're going to
22 temporarily step away, and Commissioners Cheney and
23 Hofmann and I will discuss this offline, and then we
24 will come back and let you know our response. So, if
25 everybody will just hold on, we're --

1 (A recess was taken from 1:24 p.m. to 1:34 p.m.)

2 CHAIRMAN ROISMAN: Okay. We're back. If
3 those of you who are parties, would activate your
4 cameras. Ms. Dingleline?

5 ATTORNEY DINGLELINE: Sorry, Your Honor. I
6 was trying to find the right button.

7 CHAIRMAN ROISMAN: All right. Well, welcome
8 to the new age, Ms. Dingleline. Okay. We're going to
9 overrule the objection, but, Ms. Dingleline, we're
10 going to give you a very short leash. We are not
11 convinced that this is a significant issue that needs a
12 lot of development. The document that you're referring
13 to has been received in evidence, so we have it in
14 front of us. We'll let you explore this for just a
15 little tiny bit, okay?

16 ATTORNEY DINGLELINE: Actually, Mr. Roisman,
17 I didn't have much else to ask on it. I just wanted
18 Mr. Melone to answer my pending question.

19 CHAIRMAN ROISMAN: Okay. Will the court
20 reporter read back the pending question, please?

21 (Question read by the reporter:

22 "Q. Okay. And you would agree with me,
23 would you not, that now altering these proposed
24 sites to engage in a different use, i.e. in
25 agriculture or horticulture, would, in fact, be a

1 change of use?")

2 CHAIRMAN ROISMAN: Mr. Melone?

3 ATTORNEY MELONE: Yeah. My answer is "no".

4 BY ATTORNEY DINGLEDINE:

5 Q. Mr. Melone, how is it that using property for
6 agricultural or horticultural purposes would not be a
7 different or change in use from a solar array project?

8 A. Oh, I thought you were talking about the five
9 point, the five-acre parcel, because I believe that's
10 all that provision addresses. The 27-acre parcel is
11 not covered by that provision that you referenced. So
12 I guess I'm not clear on what you're actually asking
13 then.

14 Q. I'm sorry, Mr. Melone. I'm having trouble hearing
15 you a little bit, but I'm not clear. Could you repeat?
16 I didn't understand.

17 A. Well, you asked about a solar use. So I, I
18 thought you were talking about the 5-acre parcel, not
19 the 27-acre parcel.

20 Q. Well, why don't we talk about that then, and we'll
21 come back to this issue? You are taking the position
22 in your latest prefiled testimony that the, that Lot
23 Number 1 of the Apple Hill Homeowners Residential
24 Development, which you call the horticultural use
25 parcel, you are taking the position that is not, that

1 it is not part of the proposed site of an electric
2 generation facility; is that correct?

3 A. That's correct.

4 Q. Okay. And you also take the position in that
5 testimony that the horticultural use parcel, Lot Number
6 1, is not the proposed site for the two solar projects.
7 Do you have any legal authority in Vermont or from any
8 jurisdiction whatsoever that suggests that landscaping
9 planning that screens a solar array project is not
10 considered part of the project or reasonably related to
11 the project?

12 A. I, I testified as to the facts, that there is no
13 solar electric generation facility planned for that
14 parcel.

15 Q. You would agree with me that the landscaping plan
16 that is provided in the exhibits that are already in
17 evidence from your aesthetics experts indicate that the
18 landscaping plan is for the purposes of satisfying the
19 mitigation prong of the Quechee Analysis with regard to
20 aesthetics in terms of buffering or screening the
21 project from the northern residential properties,
22 correct?

23 A. I don't agree with the statement as to Quechee. I
24 do agree that the trees that were once proposed there
25 at the northern end of that parcel, which, in fact, is

1 already cleared -- there's nothing that would need to
2 be cleared to put in those trees -- was there to
3 further mitigate the potential view of, of the, at
4 least one of the projects.

5 Q. Well, you're saying that you don't think it's part
6 of the Quechee Analysis. Then why did your expert put
7 it in the laundry list of items that should be
8 considered with regard to whether there was reasonable
9 mitigation or not on that prong of the Quechee
10 Analysis?

11 A. My understanding is that the expert reviews the
12 facts. What we, what we asked them to do was to, to
13 create a project that would be invisible, and those
14 trees would certainly make at least the Chelsea Solar
15 project invisible. The Apple Hill solar project has
16 been invisible from that viewpoint anyway, just because
17 of the slope of the land.

18 Q. So are you suggesting that that's not part of any
19 mitigation plan in terms of the Quechee Analysis in
20 that the PUC should disregard your landscaping plan in
21 terms of whether or not reasonable mitigation has been
22 employed in this matter?

23 A. I don't follow the question, because it was
24 submitted. The CPG was denied. It's not back at the
25 PUC for any determination.

1 Q. Mr. Melone, should the PUC consider the
2 landscaping plan as part of your project proposals, or
3 is that no longer going to happen? That row of trees
4 in front of Libby Harris's house up in the northern
5 boundary area of Lot Number 1 that you call the
6 horticultural lot, is that, are those trees going in
7 there or not?

8 A. No. We made that clear in March of 2020.

9 Q. And you're aware that the PUC denied your
10 amendment or request for amendment to your petitions
11 that said you were going to not plant those trees and
12 put up a massive barn, hemp-drying structure, correct?

13 A. I agree that that was what was stated by the PUC.
14 We have a different legal view of what the rule says,
15 and I think the PUC is in the process of trying to
16 amend that rule to have it more align with the
17 interpretation that was in the Apple Hill order.

18 Q. So, Mr. Melone, as you sit here today, your
19 current proposal is not to put all those trees in for
20 the screening for the northern properties and to build
21 a massive hemp-drying barn instead; is that what you
22 are planning on doing as you sit here today? Tell us
23 under oath, yes or no.

24 A. The amendment is, is clear that we deleted the,
25 the trees, and I don't necessarily agree with the

1 characterization that you're giving to the structures
2 that would be on the property.

3 Q. How long is the hemp-drying barn?

4 A. What?

5 Q. What are the dimensions of the hemp-drying barn
6 that you plan on erecting in the location where those
7 buffer trees were supposed to be planted?

8 A. Oh, I don't recall that. I believe that would be
9 in the amendment.

10 Q. So 160 feet long, does that sound wrong to you or
11 right?

12 A. Again, I'd have to look at the amendment.

13 Q. Okay. Well, I would say my characterization of a
14 160-foot-long barn, 30 feet height and 16 feet deep, is
15 a massive structure. If you disagree with that
16 characterization, I'm sorry, but that's what I'm going
17 to call it.

18 So are you going to put that hemp barn with
19 whatever your dimensions are that you have provided
20 with your amendment, not even a motion to amend, you're
21 just going to go do that, right? You're not going to
22 plant the trees, and you're going to put up this barn
23 instead, correct?

24 A. We're going to -- the plan is to do what is in the
25 amendment, not the trees, and to put up whatever

1 structure is shown in the amendment.

2 CHAIRMAN ROISMAN: Let me ask a question here
3 just so I'm clear. Mr. Melone, is it, am I
4 understanding correctly that the initial plan before
5 you filed the amendment was to add some trees on the
6 north side of the Lot 1 that would further screen the
7 view from homes that were north of there if a solar
8 project was built; is that correct? Do I understand
9 that correct?

10 ATTORNEY MELONE: That's correct.

11 CHAIRMAN ROISMAN: And did that plan include,
12 as part of the screening effect, keeping what trees
13 were already on Lot 1 on Lot 1?

14 ATTORNEY MELONE: I don't, I don't know. I
15 don't, I don't recall if that was the case, but I don't
16 know what the, what the expert determined.

17 CHAIRMAN ROISMAN: And are any of the trees
18 that were there, say, two years ago that nature hasn't
19 caused to fall down, are any of the trees that were on
20 Lot 1 now no longer on Lot 1 because of work that Mr.
21 Kobelia did?

22 ATTORNEY MELONE: No. My understanding is,
23 no, that Mr. Kobelia hadn't gotten to Lot 1 yet.

24 CHAIRMAN ROISMAN: Okay. So, except for your
25 intent not to put trees, new trees, on Lot 1 and except

1 for whatever nature may have done, Lot 1 is as it was
2 two years ago or three years ago, correct?

3 ATTORNEY MELONE: That's my understanding. I
4 haven't visited it, but that's my understanding.

5 CHAIRMAN ROISMAN: Okay, all right. Thank
6 you. Thank you, Ms. Dingledine. Sorry to interrupt.

7 BY ATTORNEY DINGLEDINE:

8 Q. All right. So now we know that you are taking the
9 position that Lot 1 is not part of the project site,
10 correct?

11 A. That no electric generation facility is part
12 that's planned to go on.

13 Q. Are you familiar, are you familiar with the
14 reasonably related doctrine?

15 A. I think you'd have to explain it to me.

16 Q. Well, then, obviously, the answer is, No, you're
17 not familiar with it. Thank you.

18 So do you have any legal precedent whatsoever that
19 suggests that, if you are, if you are building,
20 planting a buffer for a landscape screening for a
21 project, that that is not part of the site, project
22 site, or it is not reasonably related to the project
23 site, do you have any legal precedent whatsoever to
24 establish that?

25 A. The only precedent that I have is the statute

1 itself at this time.

2 CHAIRMAN ROISMAN: Excuse me. Ms.
3 Dingledine, I had just a question of clarification for
4 you. The questions that you're asking Mr. Melone, now
5 that he's a witness and under oath that are asking for
6 legal opinion, are you acknowledging that Mr. Melone is
7 an expert witness on legal issues and that we should
8 treat his opinions as the opinions of a legal expert?

9 ATTORNEY DINGLEDINE: No. I'm simply looking
10 for some basis to take the -- I don't think this is a
11 factual position. I think this is some opinion of
12 someone. I don't think he's a legal expert, nor is
13 this, this is an ultimate issue, nor would an expert be
14 able to opine and provide you with this. I'm trying to
15 understand where this witness, in terms of presenting
16 this application, ignoring your orders that they're not
17 allowed to amend it, where is he coming from? That's
18 what I'm trying to understand.

19 And it's about credibility. It's about you're
20 taking a position here based on what? That's what I'm
21 trying to get at. No, he's not an expert. He's the
22 petitioner, and I think that we're entitled to look
23 into what, what the petitioner is doing right now. I
24 don't understand it.

25 CHAIRMAN ROISMAN: What I'm having problems

1 with, Ms. Dingleline, is Mr. Melone is going to have to
2 submit a legal brief. You'll submit a legal brief. We
3 will decide the legal questions based upon what's in
4 the legal brief. If Mr. Melone's statements today on
5 what he might include or not include in his legal brief
6 are not expert opinion, I'm not sure what their
7 probative value is or what we gain by having you ask
8 him and him answering that question, outside of the
9 fact that there will be briefs filed on this. If
10 there's something that I'm missing, please let me know.
11 Otherwise, I'm not sure that I see the relevance of
12 asking him what legal standard or what legal precedent
13 he has to support a position. We'll find that out soon
14 enough.

15 ATTORNEY DINGLELINE: Mr. Roisman, this is
16 the problem. I don't even know what we're here
17 discussing. I have no idea what this petition is, nor
18 do you, because the gentleman has indicated that the
19 amendment that you denied to him is, is what we're
20 sitting here talking about, and I don't know what to do
21 with that, because it's not.

22 Just because he says Lot Number 1 isn't part of
23 the project site is preposterous. So I'm trying to
24 determine, What kind of credibility does this guy have
25 that he's saying this kind of information? I've never

1 heard of such a thing in my 25 years practicing, and
2 this goes back to 1971. The Attorney General in the
3 State of Vermont has issued an opinion about project
4 sites and reasonably related doctrine, and there is a
5 2019 case on it in Section 248. So I just don't
6 understand what we're doing, and it puts us at a
7 disadvantage to try to present evidence when we don't
8 even know what the project is.

9 CHAIRMAN ROISMAN: Ms. Dingleline, the
10 problem I'm having, you're referring to evidence, but
11 we're really talking about legal precedent, and legal
12 precedent is usually presented in briefs and oral
13 argument, of course.

14 ATTORNEY DINGLELINE: I do appreciate that,
15 Your Honor, I really do, but I'm really at a loss to
16 understand what it is that is going on here, because,
17 without knowing what the actual project that's proposed
18 is, he's telling you it's something different than what
19 is in front of you and what you have accepted. So I
20 honestly am looking for some guidance.

21 I get what you're saying, this is all going to
22 come out in legal arguments, but I think that you're
23 entitled to know why somebody comes in here and says,
24 The thing I gave you isn't what I'm doing. You told me
25 I couldn't do -- you know, I don't want to do "X". You

1 told me I couldn't do "Y", but I'm still not going to
2 do "X". So I think it's incumbent on Mr. Melone right
3 now to say if he's proceeding under his petition that
4 was submitted that has been accepted without this
5 latest amendment or not. Because, if he's not going to
6 prosecute that application, then I don't know what
7 we're doing here.

8 CHAIRMAN ROISMAN: Why don't you ask him that
9 question, Ms. Dingledine?

10 BY ATTORNEY DINGLEDINE:

11 Q. Very good, I will. Mr. Melone, what project are
12 we here to discuss? What is your plan, and what you
13 are asking for permission from the PUC to give you a
14 CPG for? Does it include or does it not include
15 landscape plantings on Lot Number 1, as has been
16 depicted by your experts, their testimony, and the
17 exhibits?

18 A. All I can say is that in this proceeding, like
19 Attorney Einhorn said in the beginning, we're not
20 talking about the 248 approval process. We're talking
21 about alleged irreparable harm to rare plants that
22 would occur from the clearing we intend to do.

23 Now, we've made it clear in the amendment, whether
24 it's accepted now or not, as to what is going to occur
25 or what our plan is to occur for the farming

1 activities. Obviously, those have some impact on the,
2 on the petition that is now at the Supreme Court.

3 Q. Could you answer my question, please? What is the
4 petition pending before the PUC? What are you asking
5 permission for? Does it or does it not include
6 landscaping planting that has been specified for Lot
7 Number 1 and the preservation of the apple orchard
8 trees that reside on that lot?

9 A. Okay. First of all, there's nothing pending
10 before the PUC in terms of the Apple Hill project.
11 That's at the Supreme Court. Second of all, the, the
12 plan, like we said before the amendment, did include
13 the row of trees. You asked that, and I answered it.
14 It's shown on the plan. The amendment eliminates that.
15 The PUC didn't want to accept the amendment, but that
16 doesn't mean -- well, I don't know what that means, you
17 know, at this point in terms of the, the petition.

18 Obviously, if we go ahead with the farming
19 activities, which we think we're entitled to do, then,
20 if the petition, you know, comes back to the PUC, then,
21 at that point in time, the record will be corrected to
22 reflect the real facts on the ground as they exist at
23 that time.

24 ATTORNEY DINGLELINE: Mr. Roisman, could you
25 ask the Witness to answer the question, please?

1 CHAIRMAN ROISMAN: Ms. Dingledine, I think he
2 did answer the question. He indicated that there is an
3 application pending with the Commission that includes
4 the trees, that he believes that he's entitled to alter
5 the site irrespective of that application existing in
6 order to put in the agricultural purposes that he
7 wishes to put in.

8 He acknowledges that we've not allowed him to
9 amend his application to include that, and he's
10 indicated that, if we were to allow him to go ahead and
11 pursue the agricultural purposes, in other words, lift
12 the injunction and not make it a permanent injunction,
13 that, if and when the Supreme Court were to return the
14 Apple Hill case to us, that is, overturn our
15 determination denying the CPG, that the project would
16 then have to be changed to reflect the real world,
17 which would be a world in which there was a sheep farm
18 and a hemp farm and a hemp building.

19 I think he answered all of that. I mean, I don't
20 know what more he could have answered to your question
21 other than what he did, but if, if there's something
22 you thought he should have answered that wasn't
23 included in that, please pursue it.

24 BY ATTORNEY DINGLEDINE:

25 Q. Thank you. I'll move on, Your Honor. Mr. Melone,

1 you have brought up and wrote all sorts of briefs to
2 the Public Utility Commission about site control, and,
3 in fact, you took issue with the awarding of certain
4 contracts to NextEra, for example, claiming that they
5 didn't have site control over different projects.

6 So my question to you is, Do you have site control
7 on Lot Number 1 such that you have the rights to
8 incorporate Lot Number 1 for the purposes of planting
9 screening for the solar array projects?

10 A. Yes.

11 Q. So do you acknowledge that Judge Helen Toor has
12 already made a, a decision on summary judgment in your
13 case that you, where you sued Libby Harris and the
14 Homeowners Association? Are you, do you remember that
15 she has granted summary judgment against you and said
16 that you don't have any right to maintain any kind of
17 solar facility or plantings for a solar facility on Lot
18 Number 1?

19 A. I would have to go back and look at the opinion.
20 I know that some of the rulings went against us and
21 went against the defendants.

22 Q. Well, I can read it to you, but let's cut to the
23 chase here. How is it that, if the Superior Court, on
24 a declaratory ruling, has made a determination which is
25 likely to be upheld when you appeal that to the Supreme

1 Court, how is it that you think that you have the right
2 to do plantings for this solar array or, for example,
3 to have your access way through that area, which was
4 another count that you brought, in light of the fact
5 that the court has said, no, you don't have the right,
6 doesn't that go to the issue of site control?

7 A. I don't think it goes to the issue of site
8 control. PLH owns the property, but I think what
9 you're really saying is that the Commission should have
10 accepted the amendment, because the Superior Court, you
11 were saying, said that those trees can't be there,
12 right? I mean, isn't that --

13 Q. The Superior Court said you're not -- the Superior
14 Court said you didn't have, Russet Drive doesn't exist.
15 They said that you couldn't use Lot Number 1 to access
16 the solar array and that you couldn't plant any of the
17 screening or use that lot for any what they deemed to
18 be a commercial purpose, which was the solar array.

19 So how is it that you think you can come to the
20 PUC now after having a court decision against you that
21 says you don't have site control, meaning you don't
22 have the right to incorporate this lot into anything to
23 do with this commercial project? We have a Superior
24 Court judge who said its commercial, and you can't do
25 it. How is it that you can present this now to the PUC

1 after getting your declaratory ruling, yet somehow you
2 think you have site control?

3 A. Well, again, site control is different, but, you
4 know, I think what you're saying is that, well, we
5 removed those trees. So I'm not sure what the
6 complaint is. You're saying that the, the Superior
7 Court said we couldn't put the trees there. We filed
8 an amendment to remove the trees. So I just don't
9 understand what the point is.

10 Q. The point is you don't have site control, because
11 you don't have the right to do anything on that
12 property related to the solar array, right?

13 A. No. Again, you know, I, you know, I disagree with
14 what the meaning of site control is. We own the
15 property, or PLH owns the property.

16 Q. Yeah, but you can't do what you want to do on the
17 property because of the restrictive covenants. That is
18 what the court looked at and said they run with the
19 land and you can't do what you want to do, correct?

20 A. Well, what we want to do with the property is not
21 have the trees there.

22 Q. What you wanted to do with the property was to use
23 it for screening and buffering purposes so that the
24 properties that were residential to the north would not
25 see the solar array, correct? That was the purpose of

1 it. That's what your, all of the documents say from
2 your experts --

3 A. But, again --

4 Q. -- mitigation under Quechee, right?

5 A. But, again, we have --

6 Q. Yes or no? Please answer yes or no.

7 A. To what? What was the question?

8 ATTORNEY DINGLEDINE: Could the reporter read
9 the question back, please?

10 (Question read by the reporter:

11 "Q. What you wanted to do with the property
12 was to use it for screening and buffering purposes
13 so that the properties that were residential to
14 the north would not see the solar array, correct?
15 That was the purpose of it. That's what your, all
16 the documents say from your experts.")

17 ATTORNEY MELONE: All right. So I will say,
18 again, that, like I said in the petition, the row of
19 trees that was planted or proposed to be planted on the
20 north end was to block the view of the home, the single
21 home that's to the north of it, and but we have now
22 filed the amendment to remove that, so --

23 BY ATTORNEY DINGLEDINE:

24 Q. Mr. Melone, let me just clarify. I think you're
25 incorrect in what you just testified to. You said the

1 single home north, which you're referring to the Harris
2 property. That is incorrect. I would draw your
3 attention to all of your experts' information about
4 this screening and buffering. It's for, primarily for
5 Ms. Harris, but there are other residential properties
6 to the north, correct?

7 A. There are other residential properties to the
8 north beyond that one particular house, but I don't
9 think they can see over the trees.

10 Q. And but, regardless of that, your experts
11 testified that this screening was for the benefit of
12 the residential properties, plural, to the north of the
13 site, yes or no?

14 A. I'd have to go back and look to see specifically
15 what these trees were planted for. I don't think that
16 those trees do anything --

17 ATTORNEY DINGLELINE: Objection. Move to
18 strike as unresponsive.

19 CHAIRMAN ROISMAN: All right. We're going to
20 adjourn this for a few moments and talk among
21 ourselves. This seems to be getting far removed from
22 the narrow question we're having to ask, which is,
23 Should we stop site clearing at this project? So I'm
24 going to, we're going to consult among ourselves, and
25 we will get back to you after we have finished

1 consulting.

2 ATTORNEY DINGLEEDINE: Mr. Roisman?

3 CHAIRMAN ROISMAN: Yes.

4 ATTORNEY DINGLEEDINE: I'm almost done. I
5 have one other exhibit with a very quick question, and
6 then I'll be done, just so that you know.

7 CHAIRMAN ROISMAN: All right. Well, why
8 don't you proceed with that one question?

9 BY ATTORNEY DINGLEEDINE:

10 Q. Thank you. Mr. Melone, we put in Intervenors
11 Exhibit Number 10, the hemp registration document that
12 you got late summer, and my question is, When was that
13 applied for? What was the date?

14 A. I'm pretty sure that was June 26th. I think
15 that's what I testified to.

16 COMMISSIONER HOFMANN: I'm sorry. I didn't
17 hear that, Mr. Melone. Did you say you applied for it
18 on June 26th?

19 ATTORNEY MELONE: I think so, right.

20 BY ATTORNEY DINGLEEDINE:

21 Q. Thank you. That actually is consistent with what
22 the Ag. Department told me. It got approved in three
23 days, because it's merely a registration system where
24 the boxes have to be checked. Is that your
25 understanding as well?

1 A. Well, actually, we, on this registration system,
2 we had no idea how long they would take to approve it,
3 particularly given, given the pandemic.

4 ATTORNEY DINGLELINE: Yeah, but it turned
5 right around. Okay, great. That's all I have. Thank
6 you.

7 CHAIRMAN ROISMAN: All right. Just to
8 clarify on that last question, on Page 14 of Mr.
9 Melone's direct testimony at Lines 12 to 15, he states
10 that the application was filed on June the 26th and
11 that it was issued on June 29th. So that's the
12 specific reference.

13 Okay. Mr. Einhorn, I can't remember now. Did we
14 offer you the opportunity to cross-examine Mr. Melone,
15 and, if not, would you like to do so? Mr. Einhorn?

16 ATTORNEY EINHORN: Oh, I'm sorry. I clicked
17 the wrong --

18 CHAIRMAN ROISMAN: I thought maybe my
19 question had done something that caused you to want to
20 leave.

21 ATTORNEY EINHORN: No, but something else
22 may. But I, I was asked, thank you, and I do not need
23 to. I said I did not have any cross-examination, and
24 that's still my position. I would reserve perhaps some
25 follow-up after the Commission asks questions, but I do

1 not have any cross.

2 CHAIRMAN ROISMAN: Okay. And, Ms. Aceves,
3 did you have any questions for Mr. Melone?

4 ATTORNEY ACEVES: The Department has no cross
5 at this time.

6 CHAIRMAN ROISMAN: And, Commissioner Hofmann,
7 do you have any questions for Mr. Melone?

8 COMMISSIONER HOFMANN: I don't have any
9 questions. Thank you.

10 CHAIRMAN ROISMAN: And, Commissioner Cheney,
11 do you have any questions for Mr. Melone?

12 COMMISSIONER CHENEY: Just to complete the
13 circle on the hemp registration, which was received on,
14 if it was three days later, on June 29th, when does
15 that provision expire? I believe there's also an
16 expiration date.

17 ATTORNEY MELONE: My understanding it's only
18 for the calendar year. So that would be 2020, and we
19 have to reregister, which we plan to do for 2021.

20 COMMISSIONER CHENEY: Thank you.

21 CHAIRMAN ROISMAN: Okay. Does, Mr.
22 Landis-Marinello, do you have any questions for Mr.
23 Melone?

24 MR. LANDIS-MARINELLO: I do have just a
25 couple. Mr. Melone, I'm just trying to figure out on

1 Page 6 of your testimony, your most recent testimony,
2 you quote the testimony from the previous hearing, and
3 then you go on to say that this was not, the sheep
4 farming is not primarily for solar projects, but I'm
5 just struggling a little with reconciling that.
6 Because the, the previous testimony the Chair had
7 asked, quote, "It sounds like the sheep that you're
8 proposing here is primarily sheep to be used to graze
9 at solar projects", end quote, and it goes on from
10 there and ends with, "Is that a fair characterization?"
11 And your first sentence was, "Yeah, I think that's,
12 that's the primary aspect", end quote.

13 And then you did go on to explain there were other
14 things that you planned to do with the sheep, but I'm
15 just trying to get clarity. Are you saying that you
16 misspoke when you gave that response before?

17 ATTORNEY MELONE: No, I'm not saying that I
18 misspoke before. I don't think that that's what this,
19 this says. I mean, somehow, that, that question and
20 answer got turned around to something else, because the
21 actual factual finding says sheep grazing is being done
22 primarily approved at the petitioner planned solar
23 projects at the site, i.e. the Bennington site. That
24 was the factual finding.

25 MR. LANDIS-MARINELLO: So your dispute is

1 with where the sheep are controlling the vegetative
2 growth? Was that part of the factual finding? Is that
3 what you're saying, because they're going to be used at
4 other solar sites as well?

5 ATTORNEY MELONE: Yes, that's right. Right,
6 they will be used at other solar sites as well, and,
7 while I said there they, the primary motivation for
8 getting into the business was the fact that we
9 basically have this captive, you know, I guess, a
10 captive revenue stream, because we have to maintain all
11 these sites anyway, throughout Vermont, Connecticut,
12 and Massachusetts.

13 So, from a business standpoint, we're going to
14 start a farming business, but you know that at least
15 part of the revenue stream is, is, in a way, fixed.
16 You know that you're going to get the revenue from
17 certain aspects of the business, which is grazing, at
18 least at your own solar project sites, and likely other
19 solar project sites, in addition to the management and
20 selling of sheep and wool and things like that.

21 MR. LANDIS-MARINELLO: Okay. I think I, I
22 think I understand the clarification now, and I just
23 have one other question. This is on Page 12 of your
24 most recent testimony. At the very end of your, the
25 bottom of that page, the end of Question 6, you have a

1 statement about there. It says, quote, "There is
2 simply no standard for ordinary people to understand
3 what is permissible and what is not", and then it goes
4 on from there, and I just wanted to ask you if you're
5 aware of our process for a declaratory judgment that we
6 have at the Commission and if that was considered in
7 this as you were trying to determine whether you could
8 do this tree clearing or not.

9 ATTORNEY MELONE: I am, you know, so I, I am
10 aware that there is the possibility to seek that, but,
11 you know, at least my position is that, you know, there
12 should be clearer standards that landowners can look up
13 and say, All right, this is what the rules say. This
14 is what we can or can't do. And I think it's, it's
15 particularly applicable here, because the, the facts
16 that I had discussed prior to that immediate testimony
17 in that same question, I mean, the, the one case that
18 the PUC ruled on, there actually was construction of
19 part of an electric generation facility, specifically
20 for some tax treatment, as I recall, to take advantage
21 of a grant program that, that was the 1603 Grant
22 Program under the Internal Revenue Code.

23 So but there, you know, the, the Commission held
24 that, even though the actual construction of part of
25 the facility was specifically intended as part of an

1 electric generation facility to qualify for tax
2 purposes, that that still didn't make it site
3 preparation or construction without a CPG, because it
4 could be used for something else.

5 MR. LANDIS-MARINELLO: I'm sorry. I'm doing
6 the lawyer thing. I just had one more question, and
7 then I realized I had one more. The Apple Hill project
8 that's at the Supreme Court, is the relief you're
9 seeking there to get approval of the Apple Hill project
10 as proposed?

11 ATTORNEY MELONE: Well, I guess you have to
12 clarify what you mean, as proposed.

13 MR. LANDIS-MARINELLO: So with, with, as you
14 know, we rejected the proposed amendment in March, and
15 so the actual proposal on the table, if you will, for
16 the Apple Hill site is the unamended project, and I, I
17 haven't seen -- I don't know if the briefing has
18 happened yet at the Supreme Court in Apple Hill, but is
19 the request you're making of the Supreme Court that
20 that project be approved, meaning the unamended
21 project?

22 ATTORNEY MELONE: Well, no. Well, I haven't
23 written a brief yet, but I imagine the very first point
24 is going to be that the amendment should have been
25 considered based on the plain language of the rule. It

1 says amendments can be filed at any time. And then the
2 Supreme Court will be able to address that and decide
3 whether they, what the scope of their remand was.

4 So what we're asking the Supreme Court in the
5 first instance is to rule that the scope of the remand
6 was consistent with what's called the Rule of Mandate
7 and that, once we filed the amendment, that the
8 amendment should have been considered. If they rule
9 against us on that, then, obviously, we'll have the
10 alternative arguments.

11 MR. LANDIS-MARINELLO: And one of the
12 alternative arguments would be that it should have been
13 approved unamended, right?

14 ATTORNEY MELONE: Probably, yeah. I mean,
15 another one will be that, that all the stuff related to
16 aesthetics is irrelevant, because the, you know, town
17 plan is not a clear community standard and that, even
18 if you took out these, these trees, it still should
19 have been approved.

20 MR. LANDIS-MARINELLO: Okay, thanks.

21 CHAIRMAN ROISMAN: Mr. Tousley, did you have
22 any questions for Mr. Melone?

23 MR. TOUSLEY: Yes, I did, also related to his
24 most recent statement, but, but I'm on Page 8, and I
25 know you had just testified about how you, how you got

1 into the sheep business and the agriculture business,
2 and, and it, it is in your testimony that your
3 agricultural activity is always a follow-on or a
4 partner to or, or an additional revenue stream
5 associated with a solar project.

6 You know, are you going to farm and do -- are you
7 going to raise sheep and grow hemp in non, in sites
8 that have no linkage whatsoever to solar activity?

9 ATTORNEY MELONE: It's possible. I mean,
10 the, we certainly are going to graze sheep and
11 essentially grow hemp, you know, in places like
12 Connecticut as well where the land on which the sheep
13 generally would be doesn't have a solar array, but that
14 there would be a solar array connected to it. So, for
15 example, like the Plainfield, Connecticut, site that,
16 that we, that I had mentioned in my testimony, that
17 site is about 110 acres overall. Currently, there are
18 three 1-megawatt solar projects on it that, that, I
19 guess, take up probably about 15 to 20 acres.

20 So the sheep will have access to the entire
21 property, but they're there, you know, because, one,
22 you know, the solar arrays. We have a fence around the
23 property. We have security cameras. So it just makes
24 more sense to do it that way now.

25 You know, we have looked at buying a farm

1 independently in Massachusetts with, with a cheese
2 operation as well where sheep would be, wouldn't
3 necessarily have the solar farm, but, right now, the
4 plan is to kind of colocate, even if the sheep, you
5 know, graze on, not only the area of the solar array,
6 but on the remainder of the property as well.

7 MR. TOUSLEY: Okay, okay. Looking again at
8 Page 8 in the center of the page, Line 10, it says,
9 "The raising, feeding, and management of the sheep is a
10 completely separate business and farming activity", and
11 I'll read the sentence, "and would commence prior to
12 any solar project", but there is a solar project.

13 Is it your testimony that your interest in
14 developing, in getting into the, the sheep-raising and,
15 and hemp-growing business is, arose from your work in
16 the solar industry and that you have no contemplation
17 of -- well, you said it. Is, did it arise from your
18 role as a solar developer?

19 ATTORNEY MELONE: Yeah, it, yeah, it arose,
20 because, you know, because of the solar projects which
21 we've been developing.

22 MR. TOUSLEY: So it's, farming and solar is
23 the nature of the business plan?

24 ATTORNEY MELONE: Well, you know, I know that
25 there's some disagreement as to who can, who, what

1 companies, you know, control what, but the PLH is
2 separate from the development part of, you know, the
3 business that I own. PLH owns a lot of real property
4 throughout the United States, including on solar farms
5 that we don't own, didn't build, don't operate. So it
6 not only invests in real estate where we own or where
7 the developer would own the project, property of the
8 project, but it invests in real property for any solar
9 developer.

10 And PLH would, well, owns Vineyard Sky Farm. So
11 the farming business is separate from the solar
12 development business, even though the reason why it
13 made sense to start up the farming business was because
14 we knew the farming business would at least have a
15 guaranteed income stream to some extent. So, if you've
16 got sheep, they don't have to just sit there. They'll
17 realize income over the year from bringing them from
18 point A to point B to point C.

19 MR. TOUSLEY: I'm also looking at the, the
20 branding of the Vineyard Sky Farms logo on Page 4, and,
21 when I first looked at it, I thought for sure I saw a
22 solar array in the background, and that's because I
23 haven't -- you know, from what your testimony is
24 telling us, I believe, is that, that sheep and solar go
25 together and that's the business plan.

1 ATTORNEY MELONE: Well, there's -- yeah,
2 again, sheep and solar go together, one, because it's
3 more, better for the environment if you bring sheep to
4 maintain a, you know, vegetative growth on a solar farm
5 compared to using mechanical equipment that's powered
6 by gas, usually. From me as from the perspective of
7 investing in different businesses, it makes sense that
8 this one business, Vineyard Sky Farm, because we can
9 always in the future -- I mean, if a solar company came
10 along and said, you know, Tom, we want to buy the solar
11 projects, solar business, we might sell that, yet we
12 would still keep the farming business.

13 So it's not part of the same entity. Yeah, from
14 an investment perspective, it makes sense to invest in
15 activities where you can have some, some coordination
16 or where they, you know, potentially benefit each
17 other. I mean, that's one reason why in testimony I
18 described I invested in a hemp company, so because
19 investing in the hemp company gives us access to the
20 technology to plant the hemp, to grow the hemp, to buy
21 the seeds, and to do what we intend to do in Vermont,
22 as well as other places. So, I mean, it's not part of
23 one entity's business plan, yeah. It's part of my
24 investment plan, but it's --

25 MR. TOUSLEY: Okay. I got it. Thank you. I

1 don't have any more questions.

2 CHAIRMAN ROISMAN: Does anybody who has asked
3 questions before have any questions to ask now based
4 upon responses to the questions that were asked by the
5 Commission or its staff? Okay. Mr. Melone, you're
6 excused as a witness but not as a representative of a
7 party.

8 ATTORNEY MELONE: Thank you, Mr. Chairman. I
9 did, I forgot to mention one thing to Mr. Tousley's
10 question. There is no solar module in the background
11 of the logo. This is completely independent.

12 MR. TOUSLEY: I was suggesting a correction.

13 ATTORNEY MELONE: Well, my hope is that,
14 eventually, it can be more milk- and cheese-oriented as
15 well. So this, the primary reason for this logo the
16 way it looks is because I think that will, well, we
17 think it will look good on cheese.

18 CHAIRMAN ROISMAN: All right. Mr. Melone, do
19 you have any other witnesses?

20 ATTORNEY MELONE: No, Mr. Chairman.

21 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, I
22 believe you have one witness, Mr. Popp?

23 ATTORNEY EINHORN: That is correct.

24 CHAIRMAN ROISMAN: Okay. Is he online?

25 ATTORNEY EINHORN: I do believe he is. I

1 thought I saw him.

2 CHAIRMAN ROISMAN: Yes, I assume not active
3 cameras yet. He may be just looking in.

4 ATTORNEY EINHORN: Right.

5 MR. POPP: Yeah, I'm here. This is Bob Popp.

6 CHAIRMAN ROISMAN: Okay. Mr. Popp, can you
7 turn on your camera?

8 MR. POPP: Sure. One second, please.

9 CHAIRMAN ROISMAN: Okay, all right. Mr.
10 Einhorn.

11 COMMISSIONER CHENEY: I will start by
12 swearing him in.

13 CHAIRMAN ROISMAN: Okay.

14 ROBERT POPP,
15 duly sworn to tell the truth, testifies as follows:

16 DIRECT EXAMINATION BY ATTORNEY EINHORN

17 Q. Mr. Popp, the testimony that you filed on November
18 25th, is that, along with the exhibits attached to it,
19 true and accurate to the best of your knowledge and
20 belief today?

21 A. It does.

22 Q. Okay. Just for the record, Mr. Popp had
23 previously filed testimony and three exhibits in June.
24 His testimony was ANR Exhibit 6. His exhibits then
25 were ANR 7, 8, and 9. In keeping in that order,

1 logically, his testimony here would be ANR Exhibit 10,
2 it's an affidavit, and then Exhibits 11 through 15,
3 which are various plant reports from 2017 through 2019
4 for both the Chelsea and Apple Hill project sites.

5 CHAIRMAN ROISMAN: Okay, all right.

6 ATTORNEY EINHORN: And I understand they've
7 been admitted into evidence. So Mr. Popp is available
8 for cross-examination.

9 CHAIRMAN ROISMAN: All right. Mr. Melone, do
10 you have any cross-examination for Mr. Popp?

11 ATTORNEY MELONE: Yes, I do. Thank you, Mr.
12 Chairman.

13 CROSS-EXAMINATION BY ATTORNEY MELONE

14 Q. Good afternoon, Mr. Popp.

15 A. Good afternoon.

16 Q. So I'd like to start with the facts related to
17 what the Agency's position is in, in this particular
18 case. I don't know if you recall in June you testified
19 that, if the asters were all transplanted in the
20 conservation area, then there would be no, no alleged
21 irreparable harm to the asters. Is that, is that still
22 your position?

23 A. That is correct. If they've all been moved,
24 there's no, no undue harm to the asters.

25 Q. Okay. Now, you have reviewed the Chelsea and

1 Apple Hill annual reports, correct?

2 A. I have.

3 Q. Okay. So I don't know if you recall or you can
4 bring it up. The 2019 annual report for the Chelsea
5 project shows certain locations in figure one of rare
6 plants, and it indicates that they've all been
7 transplanted; is that correct?

8 A. I don't have access to that figure right at the
9 moment, so I can't say. If you give me a moment, I can
10 try to find it, or you can share your screen and show
11 me.

12 Q. I don't have that on the computer I'm using for
13 this hearing.

14 A. What year was that?

15 Q. 2019. It's an exhibit to your affidavit filed --

16 A. Yeah.

17 Q. -- November 25th.

18 A. But it's the 2019 Arrowwood report?

19 Q. That's correct.

20 A. Okay. I think I have that. What figure are you
21 referring to now?

22 Q. I'm referring to Figure 1.

23 ATTORNEY DINGLELINE: Mr. Roisman, I'm going
24 to object that the Witness is looking at a document
25 that nobody else can verify, and I'm not even sure that

1 the questioner and the Witness are even looking at the
2 same document.

3 CHAIRMAN ROISMAN: We can solve that problem.
4 Mr. Popp, we can make you the presenter, and, if you
5 have that document available to you electronically, you
6 can show us the cover page of the document to verify
7 that it is a document that we've just received in
8 evidence.

9 MR. POPP: Okay. Can you see that?

10 CHAIRMAN ROISMAN: Yes.

11 MR. POPP: Okay, excellent.

12 ATTORNEY EINHORN: If I may interrupt --

13 ATTORNEY MELONE: Well, we can start with
14 that one. I was going to get to that one.

15 ATTORNEY EINHORN: And I believe that's the
16 2019 Apple Hill one, right?

17 ATTORNEY MELONE: Correct, that's right.

18 ATTORNEY EINHORN: Yeah, I mean, if it makes
19 -- I'm certainly happy, because I have the ANR exhibits
20 that we filed, you know, readily available to me. If
21 it helps move things along, I'm happy to use my screen
22 for sharing purposes.

23 CHAIRMAN ROISMAN: Okay. Ms. Dingleline,
24 does this deal with your objection?

25 ATTORNEY DINGLELINE: I would prefer if Don

1 were able to use the actual exhibits as opposed to this
2 email. I think I would, that's more correct.

3 CHAIRMAN ROISMAN: All right. Mr. Einhorn,
4 are you comfortable with doing that?

5 ATTORNEY EINHORN: Yes.

6 CHAIRMAN ROISMAN: Okay. So, Mr. Melone,
7 which of the exhibits that we already have in the
8 record is the one that you wish to ask Mr. Popp about?
9 And then Mr. Einhorn, who will now be the presenter,
10 will put that up on the screen for us.

11 ATTORNEY MELONE: Okay. So we might as well
12 start, if we can, with the Chelsea one, since that's
13 the one I started with. That was -- let's see. That's
14 attached to Mr. Popp's 20, or November 25, 2020
15 affidavit. It is --

16 ATTORNEY EINHORN: It's ANR Exhibit 15.

17 ATTORNEY MELONE: Okay. ANR Exhibit 15? All
18 right. So, if you can go to Figure 1 in that document
19 --

20 CHAIRMAN ROISMAN: Wait just a second. Ms.
21 Dingledine, does this satisfy your concerns?

22 ATTORNEY DINGLEDINE: Yes. Thank you very
23 much.

24 CHAIRMAN ROISMAN: Go ahead, Mr. Melone.

25

1 (Exhibit ANR-15 was shown to the Witness.)

2

3 <https://epsb.vermont.gov/?q=downloadfile/440867/150086>

4

5 BY ATTORNEY MELONE:

6 Q. Okay, okay. Thank you, Mr. Chairman. Mr. Popp,
7 so you see those circles there? Those, according to
8 the way I read the legend in the Arrowwood report,
9 indicate locations for the asters, and they all
10 indicate that they were transplanted, correct? Is that
11 your assessment of that report --

12 A. Yes.

13 Q. -- or that figure?

14 A. That's correct. All of the plants that were known
15 at that time were moved.

16 Q. Right. So, based on this information, there would
17 be, if that area were cleared that is outlined in
18 green, there would be no adverse effect to any asters;
19 is that correct?

20 ATTORNEY EINHORN: I'm going to object to the
21 form of the question, adverse effect. I think Mr. Popp
22 testified in his recently filed affidavit that his
23 concern is with the destruction of the plants. Adverse
24 effect implies the 248 standard for reviewing a CPG
25 application, and that is not what we're doing today.

1 CHAIRMAN ROISMAN: Okay. Mr. Melone, are you
2 comfortable with that correction to the question?

3 ATTORNEY MELONE: Yeah, I can reask the
4 question.

5 CHAIRMAN ROISMAN: Okay, please. Thank you.

6 BY ATTORNEY MELONE:

7 Q. So, Mr. Popp, based on this figure, is it correct
8 to say that all the asters that are located or located
9 on that figure are no longer in those locations?

10 A. Yes.

11 Q. And is it correct to say that, since that has been
12 done, there are no asters remaining in that area that
13 would be affected by clearing that area?

14 A. I cannot say that unequivocally, because there may
15 be additional asters that have either germinated or
16 moved into that site or were overlooked by Arrowwood.
17 The Agency gives three years on any planting incurred.
18 So, if work were done within that three-year period,
19 we're willing to accept some minimal damage, if you
20 will. If it's done beyond that three years, we want to
21 know the inventory done for the very reasons that I
22 stated.

23 So, in answer to your question, I cannot say that
24 no plants were harmed, but I will say that the Agency
25 would be, would overlook the few plants that could have

1 been taken that may have moved in after that inventory
2 had been done and, therefore, were not moved.

3 Q. Okay. So let me put this another way then. Based
4 on the inventory that's represented in this Figure 1,
5 there's, there would be -- well, the Agency is not
6 claiming that there would be any irreparable harm by
7 clearing that area; is that correct?

8 A. Correct, to the asters, and, if it were done, I
9 think, by on or before May, May 1st of 2021.

10 Q. Correct. So, just to be clear, follow up on that,
11 if the Commission lifted the injunction to allow us to
12 clear by May 1st 2021, the Agency is not claiming that
13 there would be any adverse, any impact to or any
14 irreparable harm to asters; is that correct?

15 A. That would be correct.

16 Q. Okay. So, Don, if you wouldn't mind bringing up
17 the Apple Hill 2019 report. Go to Figure 1 as well.
18 Okay. Now, the same questions as to the asters here.
19 Is it correct to say that all those circles that have
20 some, some version of pink outline represent asters
21 that have been transplanted and are no longer there?

22 (Exhibit ANR-14 was shown to the Witness.)

23

24 <https://epsb.vermont.gov/?q=downloadfile/440866/150086>

25

1 A. Yes, that's my understanding.

2 Q. So, to get right to the heart of the Agency's
3 position, is, is it limited then to these circles on
4 Figure 1 that haven't been transplanted? Is that the
5 area, or are those the specific plants which the Agency
6 has taken a position would create an irreparable harm
7 if those areas were cleared?

8 A. Correct. It would be all the blue polygons or
9 blue circles that are not outlined in pink or red.
10 Plus, we didn't talk about the nimblewill yet, but also
11 the nimblewill would be a concern.

12 Q. Right. But at least -- yeah, I'm going to get to
13 the nimblewill, but, at least as to the asters, the
14 Agency's concern, or is it correct to say that the
15 Agency's concern is just for those blue asters that
16 have blue dots that have not been, where asters have
17 not been transplanted?

18 A. Yes, with the caveat that clearing occur before
19 May 1st.

20 Q. Correct, right, right. Now, have you visited the
21 Apple Hill site?

22 A. I have not personally been there.

23 Q. Okay. Has anybody from ANR visited the Apple Hill
24 site and seen the flowering asters?

25 A. The enforcement person, I know, was there. I, I

1 really can't answer that other than him. There may
2 have been other people.

3 Q. Okay. Now, in terms of the nimblewill, is it
4 correct that the nimblewill is located, based on this
5 figure, in the areas shown in yellow or the, the line
6 or the blobs shown in yellow?

7 A. Correct. We use the term "polygon".

8 Q. Polygon? Okay. Yeah, I got confused with the
9 polygon reference, because I thought a polygon had to
10 have at least one straight side.

11 A. No.

12 Q. But okay. So the way I read this is the
13 nimblewill from Site B and Site C and part of Site A
14 have been transplanted; is that correct?

15 A. Let me -- I need to refresh my memory on that.
16 Site C was indeed transplanted. My understanding was A
17 and B, and I -- let me look at the reports here. Okay.
18 From the Arrowwood 2017 report, they state, "Site B
19 contained many hundreds of plants. Since it was not
20 feasible to transplant all of these plants, only a
21 portion, approximately 10 percent of the population,
22 was transplanted". So 10 percent of many hundreds,
23 they didn't put a total value on there. I don't know
24 offhand about A. I would need to go back and look if
25 that was entirely moved or not.

1 Q. Okay, all right. But so the, the specific areas,
2 you know, again, where ANR is looking to stop clearing
3 are the areas of the nontransplanted asters and
4 nimblewill shown on this figure; is that correct?

5 A. That's correct.

6 Q. Okay. Now, there's been some, some testimony here
7 on, on the definition of a population. Have, so, based
8 on ANR's general guidance, there's a certain threshold,
9 right, I think 10 percent in the case of S1 plants,
10 where those plants can be removed or destroyed without
11 creating any undue adverse effect; is that correct?

12 ATTORNEY EINHORN: I'm objecting to this
13 question, this line of questioning, if it continues.
14 The document that Mr. Melone is referring is the
15 Agency's Section 248 guidance related to rare,
16 threatened and endangered plants, and, again, we're not
17 reviewing a Section 248 CPG application today. What
18 we're reviewing today is whether or not an injunction
19 should be continued due to the fact that there is a
20 threat of irreparable harm presented for clearing that
21 is, at this time, unauthorized by the Public Utility
22 Commission under Section 248.

23 ATTORNEY MELONE: Yeah. So this is part of
24 the confusion, the, the part where I get confused,
25 because I'm not sure how you can claim there's

1 irreparable harm when the Agency itself has some
2 guidelines that, you know, removal of 10 percent of
3 plants of a population don't create undue adverse
4 effect. So I don't see how you can claim that an
5 action that has no undue adverse effect can then cause
6 irreparable harm.

7 ATTORNEY EINHORN: I mean, that's getting
8 into a legal discussion, but that approach,
9 acknowledging that a CPG applicant can have an adverse
10 impact but cannot have an undue adverse impact, is
11 essentially the legal standard for Section 248, and so
12 that is the difference between what would be considered
13 adverse and acceptable for purposes of a 248 approval,
14 recognizing that any project will have some level of
15 impact. The question is, Will that project have an
16 undue level of impact? That is the purpose of that.

17 What we're looking at today -- and that is in the
18 context of a project that meets the Section 248
19 standard and has been approved by the Commission. What
20 we're dealing with today are proposed projects that
21 have not been approved by the Commission, and, in that
22 respect, that standard doesn't apply, and then, in
23 addition to that, because they have not been approved
24 and that site clearing is taking place, they are
25 violative of the 248 prohibition on site preparation.

1 And so it's a different standard. The standard
2 becomes, Should an injunction issue? And the standard
3 for that is, Is there irreparable harm? And
4 destruction of a plant is by nature irreparable,
5 because that plant is destroyed, and it cannot be put
6 back.

7 BY ATTORNEY MELONE:

8 Q. Okay. So that clarifies the Agency's position,
9 Mr. Popp, if you could just confirm that, the Agency's
10 position here is that, even if a single plant is
11 harmed, that that constitutes irreparable harm; is that
12 correct?

13 A. Well, I, I'm certainly no lawyer.

14 ATTORNEY DINGLELINE: Objection. Outside the
15 scope of the direct testimony of this witness, and it's
16 asking for a position of an agency of the State of
17 Vermont. This is a fact witness and an expert in his
18 area, not on the position of ANR with regard to policy.

19 ATTORNEY EINHORN: I will add to that an
20 objection. We can brief that issue. Mr. Popp can
21 speak to the issue of whether or not the activities
22 that have taken place or the activities that are
23 proposed will result in the destruction of plants.

24 ATTORNEY MELONE: Well, the last page of Mr.
25 Popp's affidavit, he testifies that, you know, as to

1 what is in his view is irreparable harm. So I think
2 it's fair for me to ask him what his view is as to what
3 constitutes irreparable harm, since he's testified as
4 to it.

5 CHAIRMAN ROISMAN: Yeah. I think, Mr.
6 Melone, I think the controversy is the inclusion in
7 your questioning of him as to what the position of the
8 Agency was, and I think the nature of the objection
9 that Ms. Dingledine raised was that Mr. Popp is not
10 qualified or appropriate to ask him what the position
11 of the Agency is. He has stated in his testimony what
12 his position is, and he says, because those plants will
13 be destroyed, the harm will be irreparable. I think
14 it's fair game for you to ask him what constitutes
15 irreparable harm and whether he believes destroying one
16 plant, but confining it to what he believes, because
17 that's what his testimony says.

18 BY ATTORNEY MELONE:

19 Q. Okay. Fair enough, Mr. Chairman. So, Mr. Popp,
20 do you believe that destroying one arrowleaf aster
21 plant is irreparable harm?

22 A. From a biological standpoint, no. From a legal
23 standpoint, again, I'm not a lawyer, and I'm not
24 qualified to answer that.

25 Q. Okay. And so why, why do you conclude that it's

1 not irreparable harm from a biological standpoint?

2 A. Why do I not?

3 Q. Why do you conclude, yes, that it's not
4 irreparable harm from a biological standpoint?

5 A. Because it's under the 10 -- one plant would
6 presumably be well below the 10 percent threshold that
7 we allow.

8 Q. Okay, thank you. Now, based on your review of the
9 reports, have you totaled any of the numbers of, of,
10 say, the blue circles that have not been transplanted
11 and compared those to what you consider to be the
12 population?

13 A. I actually have, to the best extent that I can.
14 There's only one, one of Arrowwood's reports that
15 actually provide numbers, and it does not provide
16 numbers of plants at all of the polygons. So we still
17 have not had a complete count on the number of asters.

18 Q. So would, would you be more informed if, if
19 Arrowwood provided the specific number of plants at
20 each of these blue circles that represent plants that
21 were not transplanted?

22 A. I'm, could you repeat the beginning of your
23 question? There was an outside noise that I didn't
24 quite get. Sorry.

25 Q. All right. So what I'm asking is, Do you need

1 more information from Arrowwood as to the exact total
2 number that each of these blue circles represents --

3 A. Yes.

4 Q. -- to make such a determination?

5 A. Yes, absolutely.

6 Q. And so, if Arrowwood did provide that information
7 to you, then you could at least make some assessment as
8 to whether or not it exceeded the 10 percent threshold
9 you just made, you just mentioned; is that correct?

10 A. Probably. If we had numbers for all the other
11 polygons and the numbers that were moved, we could
12 conceivably do that.

13 Q. Okay, all right. So I guess then my question is,
14 Isn't it correct to say that we don't yet, yet have all
15 the information you need to determine whether there's
16 irreparable harm from a biological perspective?

17 A. We don't have the information that we need to
18 determine if the 10 percent threshold has been reached
19 and gone over, and, until we have that information,
20 yes, I guess we can't make a final decision on, on the
21 amount of irreparable harm. As far, you know, from,
22 again, this is all couched in the terms of ecological
23 damage, and I defer to the legal staff as far as what
24 constitutes damage in the, you know, as far as the
25 legal sense goes. So I just want to make clear that's

1 what my, my comments are directed completely in that,
2 you know, restricted to that narrow sense.

3 Q. I understand. All right. So the 10 percent
4 threshold is based on what's called a population; is
5 that correct?

6 A. That is correct.

7 Q. And I think we did go over what the, what the
8 Agency's or what you view as the definition of
9 population is, but why do you believe that the, the
10 population at the Chelsea and Apple Hill solar site is
11 not part of the same population as the Warner, Stark,
12 and Battle Creek site, which is right across Route 7?

13 A. We, we being the Heritage Program, have a
14 convention of what constitutes a population, and we try
15 -- we use that consistently, unless there's, you know,
16 a clear exception, and I'll get into that in a second.
17 And our convention is plants that are more than one
18 kilometer apart or are separated by a major fragmenting
19 feature, such as an interstate highway or a completely
20 different habitat, are considered to be distinct
21 populations.

22 One exception I can think of off the top of my
23 head would be riparian systems where you have, we have
24 some rare plants that occur up and down river shores,
25 and there may be a mile or two between populations, but

1 when floods come, when ice scour comes, those plants
2 move up and down. Well, they don't move up quite as
3 much. They usually move downstream. But so there's
4 some high potential for interbreeding, and that's
5 pretty much where we're going with this.

6 These are plants -- I'm not saying that no
7 interbreeding occurs between populations, but most of
8 it occurs within the population, and, you know, things
9 can interbreed long distances, but it's, it's not, not
10 that common. I mean, most of the cross-pollination is
11 occurring right on site. I could go on, probably.

12 Q. Okay. Well, on this point, back in June, you
13 know, and I guess you testified to this now. You said
14 plants move around; is that correct?

15 A. Yeah, that's reasonable. Some more than others.

16 Q. So how would the aster move around?

17 A. It can move vegetatively. You know, the roots, it
18 has, like, short, short underground rhizomes. So it
19 can send up new shoots. So it can spread on site. It
20 can also spread via seed. Those would be the two
21 primary means. Obviously, people moving them, we've
22 moved a bunch, or Arrowwood moved a bunch to the
23 conservation area.

24 Q. Right. So, when, when they -- I'd like to ask
25 about moving by seed. So, when the asters flower, is

1 that when seeds would be dispersed?

2 A. Well, no. After the, the seeds are mature, which
3 comes after the flowering.

4 Q. Okay. And so --

5 A. They flower in September. The seeds wouldn't be
6 ripe until October, probably, but, yeah, you're in the
7 ball park.

8 Q. So could the seeds travel by air?

9 A. Potentially.

10 Q. Now, we've already been told by the Intervenors
11 that there's very windy conditions there on that site.
12 So wouldn't it be reasonable to conclude that it's
13 possible that the seeds --

14 ATTORNEY DINGLELINE: Objection, Your Honor,
15 facts not in evidence.

16 BY ATTORNEY MELONE:

17 Q. Well, I'm getting to the question. Isn't it
18 reasonable to conclude that the seeds from either the
19 Apple Hill solar site could have traveled to the Warner
20 and Stark site or vice versa?

21 ATTORNEY DINGLELINE: Objection, still to the
22 foundational factual premise provided to the applicant.
23 It could be rephrased, but in this proceeding there is
24 no such evidence.

25 CHAIRMAN ROISMAN: Mr. Melone?

1 ATTORNEY MELONE: Well, the Witness has
2 testified to the fact that the, the seeds can travel by
3 air. So that's what I'm asking about.

4 CHAIRMAN ROISMAN: Do you want to ask him if
5 he is aware of whether there is any wind in Bennington
6 that might cause the seeds to move and, if so, what the
7 direction is of it?

8 ATTORNEY MELONE: I think it's enough that I
9 ask him, Isn't it reasonable to, or isn't it possible
10 that the seeds could have traveled across Route 7 in
11 either direction?

12 CHAIRMAN ROISMAN: Ms. Dingleline, if he
13 leaves it that way and leaves out any reference to wind
14 or anybody saying there's wind, does that take care of
15 your objection?

16 ATTORNEY DINGLELINE: Certainly, Your Honor.
17 Thank you.

18 CHAIRMAN ROISMAN: Okay. Mr. Melone, just
19 reask the question so Mr. Popp has it fresh in his
20 mind, please. Thank you.

21 BY ATTORNEY MELONE:

22 Q. Okay. So, Mr. Popp, is it a reasonable
23 possibility that the seeds would, the aster seeds,
24 could travel by air across Route 7, either in the
25 direction from Chelsea/Apple Hill westward or from

1 Warner/Battle Creek eastward?

2 A. Absolutely, and I think I stated that when I
3 defined what a population was. I said most of the
4 breeding occurs within the population. Occasionally,
5 there can be, there can be gene flow among populations,
6 and I can just give you a quick example. We found a
7 grape fern down in Manchester on Mount Equinox, and the
8 nearest population of it is in Michigan. I mean, how
9 did it get there? You know, a spore must have gotten
10 up in the wind column.

11 So where I'm going with this is anything's
12 possible, and, of course, there can be some gene
13 transfer or interbreeding, but the vast majority of it
14 is within that population, and that's how we define it.
15 I mean, to say, to completely exclude any inbreeding,
16 we'd have to say there's only one population of the
17 aster in the whole country, because, you know, seeds
18 could blow from Kansas. I don't know. You see where
19 I'm going with this? I mean, it gets ridiculous after
20 a while. You've got to draw some boundaries.

21 Q. Right. So my next question, just from a factual
22 perspective with the, the asters that exist on the
23 Chelsea/Apple Hill site and the asters that exist
24 across the road on the Warner, et al., sites, have you
25 done any analysis of, that compares the plants to each

1 site to see whether they are exactly the same?

2 A. Of course not. I mean, I do not have -- we don't
3 have the capability or the resources to do genetic
4 analysis. That's very, very expensive, and it's only
5 done with very high-profile plants like federally
6 endangered species, and even then not much is known
7 about endangered plants, genetically speaking.

8 Q. Okay. So then you can't tell for sure whether or
9 not the Chelsea/Apple Hill population is, in fact,
10 different from the Warner/Battle Creek population; is
11 that correct?

12 ATTORNEY EINHORN: Objection. It's been
13 asked and answered. Mr. Popp has testified as to why
14 they're considered distinct populations and the fact
15 that you could not rule out interbreeding, but the
16 breeding typically takes place or the pollination
17 within the separate populations.

18 ATTORNEY MELONE: Yeah, I think Mr. Popp has
19 testified as to general rules. I'm asking about the
20 specific facts applicable to this case and whether or
21 not there's -- he said there's been no analysis to
22 compare the two. So what I'm asking is or trying to
23 confirm that there's really no evidence that these are
24 not, these being Apple Hill asters and Warner asters,
25 are not part of the same population.

1 MR. POPP: Should I answer that? I mean,
2 it's -- okay. I didn't know if the objection --

3 ATTORNEY EINHORN: I'm sorry. I, I was
4 continuing my objection in that you're asking him to
5 prove a negative, and he said essentially that anything
6 is possible with regard to interbreeding, but it is not
7 likely.

8 ATTORNEY MELONE: Well, no.

9 CHAIRMAN ROISMAN: Mr. Melone, given that our
10 standard is more probable than not, maybe you want to
11 frame your question to him in terms of that, is it more
12 probable than not can he say that these asters that are
13 at the Apple Hill site are not the offspring of the
14 asters at Warner?

15 ATTORNEY DINGLELINE: Your Honor, may I make
16 an objection? This is Brooke Dingleline. I would like
17 to ask that the Public Utility Commission does not
18 suggest to Mr. Melone, the petitioner or the
19 cross-examiner, how to rephrase his questions. I don't
20 think it's appropriate to help one side versus the
21 other, and that's how it is feeling to the Intervenors
22 when you suggest how he should rephrase. I don't mean
23 to be inappropriate in making that objection, but I do
24 want it on the record, because my clients are concerned
25 about it.

1 CHAIRMAN ROISMAN: Okay. Ms. Dingledine,
2 just to be clear, our purpose here is to make sure we
3 get a clear and complete record. I'm sorry that it may
4 appear that we're giving assistance to Mr. Melone in
5 framing the question. I think what we were doing was
6 helping the question get framed in a way that would
7 avoid the objections and get the information in the
8 record, but I take your point. Mr. Melone, please
9 proceed.

10 BY ATTORNEY MELONE:

11 Q. Thank you, Mr. Chairman. Okay. Mr. Popp, do you
12 think it's more likely than not that the aster
13 populations on the Chelsea/Apple Hill site are part of
14 or related to the population on the Warner/Battle Creek
15 site?

16 A. I really have no basis to provide an answer to
17 that. I don't know anything about the genetics of this
18 aster. I don't know that any work has been done on it.
19 The best I can do, as I said, we've done very little
20 genetic work. One of the species we actually got some
21 funding to work on was pitch pine up in Colchester, and
22 we found clusters of pitch pine that were, you know, a
23 kilometer apart, like very close, had distinct genetic
24 differences, and that was quite surprising to us. We
25 thought it was going to be genetically uniform, and it

1 was not. So I can't even speculate how that would
2 apply to the asters, but the potential is there for
3 them to be genetically different.

4 Q. Okay. Thank you. All right. So I have a
5 question on the, the ranking of the aster. What is the
6 goal or the purpose of the ranking?

7 A. We use the ranking as part of a national,
8 international network of designating which members of
9 our flora and fauna, I would add, and natural
10 communities are considered rare and worthy of
11 protection. So, just like we have an S1 plant, we have
12 S1 animals, we have S1 natural communities. A natural
13 community being like an old-growth forest or a bog.
14 I'm not saying they're an S1, but I'm just giving you
15 an example.

16 It, it allows us to prioritize. It allows -- it's
17 used by the federal government to prioritize. I mean,
18 this is a nationwide network. There's 80 different
19 Heritage Programs across the US, Canada, Latin America,
20 and we've all agreed to use this method. So it's been
21 worked on and evolved over years by -- you know, the
22 Heritage Program started in 1984. So you do the math,
23 and that's how long this S-ranking system has been in
24 existence. It's not something that we just made up.

25 Q. Okay. So, in order to be ranked very rare or S1

1 in Vermont, is it correct that there needs to be five
2 or fewer known populations in the state?

3 A. Correct. That's, that's the standard for S1.

4 Q. Okay. And you said, as a general rule, you would,
5 you know, general rule absent some kind of barriers,
6 that you would treat as one population any plants
7 within a one-kilometer radius; is that correct?

8 A. That is correct.

9 Q. So, if you had an open field, a very big open
10 field that was just chock full of asters and that was
11 one kilometer in diameter, how many aster plants could
12 be on that, a million or more?

13 A. I'm not sure I follow the question. I mean, that,
14 if it's a contiguous population, it, it, contiguous
15 plants, it would be one population, regardless of the
16 area it occupied. We're talking about distances
17 between populations, not within populations. Maybe I
18 don't understand the question.

19 Q. No. That's right, one contiguous area. Suppose
20 there's one massive field one kilometer wide.

21 A. That would be one population.

22 Q. All right. So, if that one-kilometer area was
23 just filled every square inch with asters, wouldn't
24 there be more than, say, a million asters on that site?

25 A. I have no idea. It's unlikely. You don't get

1 pure stands of native plants in natural settings. You,
2 that sounds like a cornfield.

3 ATTORNEY DINGLELINE: I'd like to object on
4 relevance grounds.

5 BY ATTORNEY MELONE:

6 Q. Well, I'm getting to that. But you'd be able to
7 have tens of thousands, at least, right? I mean,
8 because --

9 A. No. I mean that --

10 ATTORNEY DINGLELINE: Objection, relevance.

11 MR. POPP: I mean, I mean -- no, I don't
12 think you could get that many, because there's
13 competition. There would be other plants there. I
14 mean, if you went out and plowed a field and planted
15 asters in a row like an agricultural field, maybe you'd
16 get thousands of them, but not in a natural situation,
17 even in old fields like that. Yeah, I, that sounds
18 completely unrealistic to me.

19 CHAIRMAN ROISMAN: Mr. Melone, is there some
20 relevance to where all this is going? And, if so,
21 maybe we ought to get there.

22 ATTORNEY MELONE: Okay. So, yeah, I'll
23 explain relevance. It's, the way the ranking system
24 works, there could be one aster plant in six different
25 localities in the, in the state, and, that way, the

1 plant would be no longer very rare the way I understand
2 these rules, but yet you could have tens of thousands
3 of plants in one location, but yet the plant is
4 considered very rare. That's all I'm trying to get on
5 the factual record.

6 ATTORNEY EINHORN: I'm going to object to
7 this line of questioning. First of all, Mr. Melone
8 obviously doesn't know the biology of asters or any
9 plants, apparently, based on these questions and what
10 he's just explained.

11 That aside, to the extent, and I think where he's
12 going with this is to attempt to show that this
13 particular species of aster is not a very rare plant in
14 Vermont. That's a moot point as we sit here today,
15 because all of these reports that we're looking at
16 right now, we've been looking at, have been prepared by
17 Arrowwood Environmental working on behalf of the solar
18 facility developers, and those reports clearly say that
19 these plants are S1 in the case of the aster and S2 in
20 the case of the nimblewill. So to debate whether or
21 not that's appropriate is, for our purposes, moot.
22 These report, these, the testimony that preceded these
23 reports from Arrowwood is essentially acknowledging the
24 classification and ranking of these plants.

25 CHAIRMAN ROISMAN: Mr. Melone?

1 ATTORNEY MELONE: Yeah, and I disagree, Mr.
2 Chairman. It's not a moot point, because, yeah, it's
3 true those reports just are based on what the Agency
4 has said is an S1. They don't get into whether there's
5 a justifiable basis for it, whether the system makes
6 sense, whether the system has any relation to
7 irreparable harm to either the plants or the natural
8 environment, and the Agency, in fact, has argued that
9 this is the kind of issue that we need to address at
10 the Commission first, because we have asked the
11 Superior Court to rule on this type of issue, and the
12 Agency has objected, saying that we need to go to the
13 Commission for this type of what they consider an as
14 applied challenge.

15 Now, if the Agency doesn't want us to develop a
16 record on that, then I guess they'll end up needing to
17 withdraw their argument in the Superior Court.

18 ATTORNEY EINHORN: The reference made in
19 Superior Court was because this was being challenged in
20 the context of an active Section 248 application, the
21 Warner Solar project, Case 19-0516. In these
22 particular projects which form the basis of why we're
23 here today, Apple Hill, Chelsea, and Willow Road, the
24 petitioner in those projects has essentially agreed and
25 admitted that the classifications of these plants as S1

1 and S2 are effectively appropriate. That's what they
2 are. So that makes this a moot point for the purposes
3 of this proceeding.

4 ATTORNEY MELONE: No, we haven't acknowledged
5 that just by the fact that we were agreeing to play
6 along by ANR's rules, because now, now we're in a
7 different circumstance. Now we're in a circumstance
8 where ANR is trying to take the whole bundle of sticks
9 related to plants and say that, well, we have to accept
10 the S1 characterization and, based on that, we have to
11 accept the 10 percent threshold and we have to accept
12 the population definition, and the end result is that,
13 oh, well, there's going to be an injunction to stop
14 your farming activities, so --

15 ATTORNEY EINHORN: The, the identification as
16 the plants, of the plants as S1 and S2 was made and
17 offered by the petitioner's consultants. The proposal
18 to relocate plants to the conservation areas was made
19 by the petitioner's consultants. So I don't see how we
20 go back and we revisit that.

21 CHAIRMAN ROISMAN: And, Mr. Melone,
22 notwithstanding what you represent was done in the
23 Superior Court, it sounds like what you're asking us to
24 do is to rule on a rule that was adopted by ANR as to
25 whether or not we think they made a rational decision

1 in developing a rule. I don't think we have any
2 jurisdiction to be ruling on ANR's rule.

3 There are mechanisms by which you can challenge
4 the way in which ANR classifies plants as endangered,
5 S1, S2, rare, very rare, but I don't, I don't see how
6 that's relevant here, and, even if it were, it sounds
7 like we're having a legal argument, and, of course,
8 that's not the purpose of this hearing. You'll have a
9 chance to brief that, but I don't think we need to
10 explore it any further.

11 BY ATTORNEY MELONE:

12 Q. Okay. That, that's fine then. So, Mr. Popp, to,
13 to your knowledge, has the Agency sought to enjoin any
14 other persons from removing asters or nimblewill from
15 their land?

16 A. I'm sorry. Have we prevented anyone from moving
17 them, removing them?

18 Q. Have you sought to prevent them?

19 A. Not to my knowledge.

20 Q. Okay. Now, the 10 percent threshold that you
21 mentioned before, were you involved in the, the
22 creation of that 10 percent threshold?

23 A. I was.

24 Q. And, and when was that, that decided?

25 A. Oh, in, I don't have the date off the top of my

1 head, but just prior to the guidelines for inventories
2 being completed for 248 process, and if, I think that
3 document is there somewhere, but there's a date on it.
4 Yeah.

5 Q. Right. Okay, yeah. So --

6 A. Go ahead.

7 ATTORNEY MELONE: Yeah, yeah. So I think
8 that document is, is ANR-RT-3, and I don't know if you
9 can bring this up, Don, on your screen, but the date on
10 that document, according to the copy filed, is October
11 5th 2016.

12 ATTORNEY EINHORN: I, I, if, if you're
13 referring -- that's not a document that we've offered,
14 so I don't know if I even have it, and, again, I'm
15 going to object to questioning, any line of questioning
16 on the Agency's Section 248 guidance document, because
17 that is a document that the Agency uses in reviewing
18 248 petitions. It's a document that the Agency has
19 made available to applicants so that they understand
20 what the Agency's thought process is.

21 If Mr. Melone wants to ask Mr. Popp questions
22 independently as to what his biological opinion is on
23 the topic of population impact, I think we could allow
24 that, but I also think that's already been done. I
25 don't think it's appropriate in this proceeding to be

1 discussing a guidance document that is used in the
2 context of 248 project review to determine if something
3 is unduly adverse or simply adverse. And but I don't
4 have that document handy. I could possibly dig it up
5 but with the caveat that I'm objecting to questioning
6 along the lines of that document.

7 CHAIRMAN ROISMAN: Mr. Melone, you do or
8 don't have that document?

9 ATTORNEY MELONE: I do have that document. I
10 thought it was in this, in this proceeding. If not, I
11 would certainly like to introduce it. It is marked,
12 the copy that I have is Exhibit ANR-RP-3.

13 CHAIRMAN ROISMAN: ANR, did you say P, like
14 Paul, 3?

15 ATTORNEY MELONE: Yes, P, like Paul, 3.

16 CHAIRMAN ROISMAN: Mr. Einhorn, did you have
17 a document like that?

18 ATTORNEY EINHORN: Well, I think, and, again,
19 in this proceeding, no. I think that was filed this
20 morning, which is why I don't have it. My
21 understanding is that was filed as an entire packet of
22 Mr. Popp's testimony and exhibits in the Warner solar
23 project. Is that what you're talking about, Mr.
24 Melone?

25 ATTORNEY MELONE: Yes, it must be in the

1 Warner solar project testimony that we filed in the
2 record today.

3 ATTORNEY EINHORN: You filed that today,
4 right? And now I can look for that.

5 ATTORNEY MELONE: Yeah, I mean, so all I'm
6 trying to get at it is Mr. Popp mentioned the 10
7 percent threshold that he mentioned earlier was
8 developed in connection with this guidance, and so I
9 was just trying to determine the date, and the date was
10 October 5th 2016.

11 ATTORNEY EINHORN: As I recall his testimony,
12 it was based on a biological perspective. I don't
13 think he was talking specifically about the guidance
14 document itself and, and how that document was
15 developed, which, again, I'm going to object to
16 questioning about that document. If you want to ask
17 him about his own opinions --

18 ATTORNEY MELONE: Well, I'm trying to refresh
19 his recollection as to the date when the 10 percent was
20 developed.

21 ATTORNEY EINHORN: In the document or --

22 ATTORNEY MELONE: He's the one who referred
23 to the fact that the 10 percent threshold was developed
24 at the time that they came up with and issued the
25 guidance, but he couldn't remember the date. He said

1 it was years ago. So I'm trying to get, refresh his
2 recollection as to the date, and the best way to do
3 that is to show him the guidance document.

4 ATTORNEY EINHORN: I can pull the guidance.
5 I think I found it. RP-3?

6 ATTORNEY MELONE: Yes.

7 MR. POPP: Yes. It's, October 5th 2016 is
8 when it was signed by the Commission official.

9 ATTORNEY DINGLELINE: May I enter an
10 objection, Mr. Roisman, on relevance? I don't
11 understand why we're looking at all these kinds of
12 documents when the petitioner signed MOUs and now they
13 don't like the provision of the MOUs, so they're trying
14 to go after something that's completely moot about
15 methodologies and all of this other jazz about the rare
16 species and how they're calculated and all this. I
17 simply do not understand why this inquiry is even
18 happening. It is completely irrelevant. They are in
19 violation of their promises under an MOU, and that is
20 what is relevant here.

21 CHAIRMAN ROISMAN: All right. Mr. Melone, we
22 do seem to be getting very, very far afield. As to
23 this simple question, I think we now have been told
24 what the date of this document was, and you heard Mr.
25 Einhorn's objection that, since this document described

1 at the very beginning the guidance with regard to
2 petitions under 30 V.S.A. Section 248, why should we be
3 concerned, other than that you wanted to know the date,
4 with any further questioning of Mr. Popp about what's
5 contained in the document that's relevant to issues
6 that are not in front of us?

7 ATTORNEY MELONE: Well, yeah, Mr. Chairman, I
8 first wanted to have him confirm that the timeframe
9 when he developed the 10 percent threshold was this
10 date or around this date. Second --

11 CHAIRMAN ROISMAN: And you have that now,
12 correct?

13 ATTORNEY MELONE: Correct. Second, the, so
14 I'm having a difficult time understanding how this
15 proceeding that ANR is claiming that we're engaging in
16 site preparation for an electric generation facility
17 under Section 248 but yet, at the same time, saying
18 anything related to Section 248 is not relevant to
19 hear. It just seems inconsistent to me. I mean, I
20 understand why they don't want to have to address their
21 guidance document here from a substance perspective,
22 but I think the argument's inconsistent, because,
23 otherwise, where is the jurisdiction if it's not --

24 CHAIRMAN ROISMAN: Well, it sounds like a
25 good legal argument that you will be making in your

1 brief, Mr. Melone. What I'm trying to figure out is
2 why we're spending a lot of time talking about this.
3 Ms. Dingledine?

4 ATTORNEY DINGLELINE: I just wanted to add.
5 The time for Mr. Melone to have asked these questions
6 and to challenge the methodology was before he signed
7 the MOU. There is a contract. He had obligations. He
8 has breached them. That's what this should be about,
9 not whether ANR, any of this methodology stuff. This
10 has no bearing on it. It is irrelevant. Did they or
11 did they not engage in site activities that violated
12 their MOU?

13 ATTORNEY MELONE: All right. So I would just
14 like to briefly address that. We've heard testimony
15 earlier today from Jim McClammer that we did not
16 violate the MOU, even by this proposed clearing, and,
17 secondly, the fact that we were willing to sign MOUs
18 with ANR to get their support does not mean that, well,
19 in this proceeding, which is totally different, we
20 can't challenge that.

21 I mean, clearly, the argument we made to the
22 Superior Court and the United States Supreme Court has
23 acknowledged in its almost identical circumstances that
24 the Agency has a coercive effect. They basically say,
25 Unless you play ball with us and abide by these rules,

1 whether or not they're valid or not, we're going to
2 give you a hard time. So the fact that we did it,
3 okay, that's, that's fine, but now we're having gone
4 way beyond that in trying to, to stop valid activities
5 that are unconnected to 248. That's the difference.

6 CHAIRMAN ROISMAN: That still doesn't
7 explain, Mr. Melone, why we're going into all these
8 questions about whether or not a guidance document
9 related to 248 is supportable or not supportable by
10 ANR. We're not here -- this case is not about whether
11 or not ANR is doing its job. This case is about
12 whether or not construction has taken place on a site
13 for which a CPG application has been filed in violation
14 of the provisions of the statute and the regulations of
15 the Public Utility Commission. That's the issue. I'd
16 like you to stay focused on that. I mean, it's getting
17 late. We want to finish this today. I'm just not sure
18 where you're headed with this that it's going to
19 advance the record that we need to have made in order
20 to decide the question in front of us.

21 ATTORNEY MELONE: Well, so you're right
22 there, but there are two separate legal determinations.
23 One is whether or not there's been site preparation for
24 an electric generation facility. The second one,
25 though, is the criteria for an injunction. That, that

1 goes beyond just whether you conclude that site
2 preparation for an electric generation facility has
3 occurred. There has to be irreparable harm. And what
4 I'm trying to get at by questioning Mr. Popp about the
5 10 percent threshold, that's what he says is the
6 threshold for irreparable harm. So I would like to at
7 least ask him, apart from the guidance document, where
8 that 10 percent came from. Is it based on any
9 scientific evidence?

10 CHAIRMAN ROISMAN: And I, I'm not -- I
11 thought he had answered that, but ask him that
12 question, and let's see what his answer is.

13 BY ATTORNEY MELONE:

14 Q. Okay. Mr. Popp, how did you develop the 10
15 percent threshold and on what scientific basis was that
16 developed?

17 A. It was done collectively by members of the Flora
18 Advisory Group, and then it was discussed within the
19 Agency Planning Department Division, and they accepted
20 it and then, ultimately, with our Commissioner, but the
21 groundwork was done by the Flora Advisory Group, which
22 is a scientific subcommittee of the Endangered Species
23 Committee, and I queried a number of people there. We
24 discussed it at a meeting, and we decided on 10
25 percent. You know, it's, I think -- yeah, that's, the

1 Commissioner and the Agency accepted that as
2 reasonable.

3 Q. All right. So my question was, What was the
4 scientific evidence that supports the 10 percent? Were
5 there any studies of any kind that it was based on?

6 A. We looked into, you know, some population studies
7 of plants declining, like how much, especially with,
8 like, seed removal, but also, you know, removal of
9 plants, and, you know, not a lot has been done, as you
10 can imagine, with removing individuals of endangered
11 species, just because of the very nature that, you
12 know, they're rare species, and you don't kind of mess
13 with them. So there's really nothing absolutely
14 relevant. You know, it's, most of the removal studies
15 have been done with more common species.

16 But, yeah, we did look into some literature, and,
17 and we actually looked at what other states do, and,
18 yeah, it was -- and I just want to add it was done more
19 than four years ago. That's when it finally got
20 accepted and approved by our Commissioner, and those of
21 you who work in the State know that there's a bit of
22 bureaucracy and until things get up to the higher
23 levels and get looked at and get approved takes a
24 while. So this was actually discussed two or three
25 years prior to that date. More than discussed, it was

1 determined that, you know, those were going to be the
2 thresholds we would use.

3 CHAIRMAN ROISMAN: All right. Mr. Melone,
4 unless you have only one or two more questions, I think
5 we should take a break now. Do you have one or two
6 more questions, or is it more than that?

7 ATTORNEY MELONE: I can't say it would only
8 be one or two. So I'm fine taking a break right now.

9 CHAIRMAN ROISMAN: All right. Let's take a
10 break, and we'll get back together again at 3:45.

11 (A recess was taken from 3:33 p.m. to 3:45 p.m.)

12 CHAIRMAN ROISMAN: All right. Are we all
13 back? Mr. Melone?

14 ATTORNEY MELONE: Thank you, Mr. Chairman.

15 BY ATTORNEY MELONE:

16 Q. Mr. Popp, do you consider Route 7 to be an
17 isolating barrier between the Apple Hill and Chelsea
18 population on the one hand and the Warner and Battle
19 Creek populations on the other?

20 ATTORNEY DINGLEDINE: Objection, relevance.

21 ATTORNEY EINHORN: It's been asked and
22 answered.

23 CHAIRMAN ROISMAN: I think they're right, Mr.
24 Melone.

25 ATTORNEY MELONE: I don't think he actually

1 answered that question.

2 CHAIRMAN ROISMAN: Mr. Popp, is it a barrier
3 or not?

4 MR. POPP: It is.

5 CHAIRMAN ROISMAN: All right, Mr. Melone.

6 BY ATTORNEY MELONE:

7 Q. Okay. So then on what basis do you conclude that
8 it's a barrier?

9 A. It's a completely different habitat. Our
10 guidelines are one kilometer or a barrier that's -- in
11 other words, if there was similar habitat that was
12 continuous, then it wouldn't constitute a barrier. I
13 think an interstate highway is a very different habitat
14 than a regenerating old field.

15 Q. Okay, that's fine. So, just so I understand, you
16 look at the, the roadway itself not being consistent
17 with the land on each side? Is that how you're looking
18 at it?

19 A. There is no potential whatsoever for any kind of
20 colonization by the aster in that intervening area,
21 because it's concrete, and there, and the road sides
22 are mowed. So there's no possibility of plants, a
23 population starting in between the two existing
24 populations. That's what we mean by a barrier. If
25 the, if the habitat was contiguous, there might be some

1 potential, in which case -- I'll stop there.

2 Q. So would that mean that a regular paved street, a
3 two-lane road, is an isolating barrier as well?

4 A. No. It's got to be of a certain size.

5 Q. Okay. So, so that's my question. What standard
6 is there for the size?

7 A. I mean, I guess we don't have a, a definition in
8 writing. I mean, a four- or six-lane highway is pretty
9 substantially different than a sidewalk or a logging
10 road or even a regular road. Anybody would, would, I
11 think anybody would, would agree to that.

12 Q. Right, right. I would agree with that too. I'm
13 just saying, how do you determine where the line is?

14 A. An interstate's a barrier. A single town road is
15 not or, yeah, wouldn't likely be.

16 Q. And that's because of the width?

17 A. The width and also the use, but, yeah, mostly the
18 width. Interstates are, you know, not only are they
19 wide, but the, the medians are mowed constantly or
20 regularly. So it's unlikely that any rare plant would
21 get established in the median. So it's not just the
22 concrete, it's the whole cleared area that's the
23 barrier.

24 Q. Okay. But, but it's correct to say that there's
25 no specific standard anywhere that you're basing this

1 on?

2 A. There may be, but I don't, I'm not aware of any
3 off the top of my head.

4 ATTORNEY MELONE: Okay, all right. Thank
5 you, Mr. Popp. Mr. Chairman, that concludes my
6 questions.

7 CHAIRMAN ROISMAN: Okay. Ms. Aceves, do you
8 have any questions for Mr. Popp?

9 ATTORNEY ACEVES: I do not.

10 CHAIRMAN ROISMAN: Okay. Ms. Dingledine?

11 ATTORNEY DINGLELINE: No, thank you, Your
12 Honor.

13 CHAIRMAN ROISMAN: Did you say "yes" or "no"?
14 I'm sorry.

15 ATTORNEY DINGLELINE: I beg your pardon. I
16 didn't mean to interrupt. I don't have any questions.
17 Thank you.

18 CHAIRMAN ROISMAN: Okay. Thank you.
19 Commissioner Hofmann, any questions for Mr. Popp?

20 COMMISSIONER HOFMANN: No, I don't. Thank
21 you, Mr. Chairman.

22 CHAIRMAN ROISMAN: Commissioner Cheney?

23 COMMISSIONER CHENEY: Neither do I. Thank
24 you.

25 CHAIRMAN ROISMAN: Mr. Landis-Marinello, any

1 questions for Mr. Popp?

2 MR. LANDIS-MARINELLO: No, I do not. Thanks.

3 CHAIRMAN ROISMAN: Mr. Tousley, any questions
4 for Mr. Popp?

5 MR. TOUSLEY: I do not. Thank you.

6 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, do you
7 have any redirect questions for your witness?

8 ATTORNEY EINHORN: I do, Mr. Chairman, very
9 limited.

10 REDIRECT EXAMINATION BY ATTORNEY EINHORN

11 Q. Mr. Popp, Mr. Melone asked you a number of
12 questions focused around the percentage of plants
13 impacted for, as you explained it, understanding damage
14 to plants from a biological perspective, whether the
15 percent, if you would, of impact is 10 percent or 20
16 percent or some other percentage. Do you remember
17 that?

18 A. Yes, I do.

19 Q. And, when you were talking about the damage from a
20 biological perspective based on the percent of plants
21 impacted, you were, were you talking about damage to
22 the population, or were you talking about damage to the
23 individual plant which has been harmed or damaged?

24 A. It was certainly intended to be damage towards the
25 population. Our thought is the population could

1 withstand that limit of, of impact. Obviously, if, if
2 you impact an individual plant, that plant is, is, you
3 know, is then, is done for if it's destroyed.

4 Q. Okay. Or, if it's a number of plants, it's that
5 number of plants, whether --

6 A. Correct.

7 Q. -- it's above or below 10 percent of the
8 population?

9 A. Right.

10 Q. And Mr. Melone, I shared my screen, if you
11 remember. He discussed the Apple Hill monitoring
12 report with you that showed some asters that were not
13 transplanted. Do you recall that?

14 A. I do.

15 Q. And, again, that was kind of within the
16 questioning of percent of the overall population, and I
17 think there was some discussion about, well, we really
18 don't know. We would need additional information from
19 Arrowwood Environmental to determine how many asters
20 are out there entirely, how many have been moved, how
21 many are still where they originally were and, in
22 effect, in harm's way. Do you remember that?

23 A. I do.

24 Q. Okay. So the plants that those blue polygons that
25 we've talked about that weren't surrounded by the

1 little pink circles, those plants that you said would
2 be destroyed, you don't know the exact number, as we
3 sit here today, of those plants, do you?

4 A. That's correct. We know it's more than 110.

5 Q. Okay.

6 A. Because Arrowwood provided some numbers, but not
7 all of the numbers.

8 Q. Okay.

9 A. There's some numbers that were unlabeled.

10 Q. Okay. So more than 110 based on the information
11 provided from Arrowwood, but it could be more?

12 A. Yes, it would be more, because there's some, as I
13 said, unlabeled polygons that would be destroyed.

14 Q. I understand. And, and a polygon here, it could
15 be --

16 A. Yeah.

17 Q. -- it could be 1 plant, it could be 10 plants, it
18 could be 50 plants in a, in a single polygon that we
19 see here?

20 A. Correct. We have no way of knowing.

21 Q. Okay. Are the asters the only plants that are
22 considered rare or very rare on this site that are also
23 in harm's way as we sit here today?

24 A. Well, no. The nimbwill is considered rare also.

25 Q. And do we know -- again, he, Mr. Melone, made

1 reference to the polygons in yellow of the nimblewill,
2 and he suggested he was going to ask you about that,
3 but I don't recall him coming back to that, but he did
4 bring it up, and I just want to understand from you.

5 Do we have any idea, based on the Arrowwood
6 reports, or do you have any idea about how many plants
7 are, are still in locations where Arrowwood observed
8 them and those same locations are locations that are
9 proposed to be cleared?

10 A. The best estimate we have is what I told Mr.
11 Melone, that Arrowwood's report said Site A and Site B
12 have many hundreds of plants, and their guess or
13 estimate was about 10 percent of those got moved. So,
14 I, I mean, we have to interpret what many hundreds
15 means, but you can all do the math as well as I can.
16 So it's, it's vague, but there's a lot of plants left
17 on site. I guess that's the bottom line.

18 Q. So the equation would be X representing the number
19 of plants left on site right now in harm's way of
20 clearing, times Y, which is .9, equals how many plants?

21 A. Right. Yeah. So 90 percent of the plants in A
22 and B are still there, and I guess all of D is still
23 there as well.

24 ATTORNEY EINHORN: But D, I believe -- okay,
25 yeah. That's, that's all that I have. Thank you.

1 CHAIRMAN ROISMAN: Okay. Anybody who has
2 asked questions previously have any follow-up questions
3 now after the redirect? Mr. Melone?

4 ATTORNEY MELONE: Thank you, Mr. Chairman.

5 RECROSS-EXAMINATION BY ATTORNEY MELONE

6 Q. Mr. Popp, you just testified that you think that
7 there are a minimum of 110 --

8 CHAIRMAN ROISMAN: Mr. Melone, put your
9 microphone up close to your mouth, please.

10 BY ATTORNEY MELONE:

11 Q. I apologize for that. Mr. Popp, you just
12 testified that you believe that there is at least 110
13 plants in the area or represented by the blue, blue
14 circles that don't have any pink. One of your
15 exhibits, ANR-11, it's the 2017 Apple Hill plant
16 report, and Page 33 actually does give a specific
17 number and, and just a quick calculation doesn't make
18 it seem anywhere near 110. So I'm just wondering where
19 you got the 110 number from.

20 A. Can you put that up? I'm not familiar with that
21 number that you just put out there. And then I'll
22 answer your question.

23 ATTORNEY MELONE: Don, do you have that?
24 It's Exhibit ANR-11.

25 CHAIRMAN ROISMAN: Mr. Einhorn, you're on

1 mute.

2 ATTORNEY EINHORN: I'm sorry. Thank you.
3 Mr. Melone, you're looking for Exhibit Number 11 that
4 we filed last week?

5 ATTORNEY MELONE: That's correct.

6 ATTORNEY EINHORN: Yes, I, I have it up on my
7 screen. If I can share my screen, then we will have
8 it.

9 MS. BISHOP: Mr. Einhorn, you're still the
10 presenter. So, if you just move your mouse on the
11 bottom when you see the circles, the second from the
12 right will be screen, and, if you just click on that,
13 you'll share your screen again.

14 ATTORNEY EINHORN: Okay. And I think we have
15 it now. And what page was that?

16 ATTORNEY MELONE: We can go to Page 32. It's
17 actually on both Page 32 and 33. I think it's --

18 ATTORNEY EINHORN: Let's try that. 32, 33.
19 I got it.

20 ATTORNEY MELONE: Okay. So you might have to
21 zoom in a little bit to actually see the numbers and
22 not, that are depicted in those circles.

23 CHAIRMAN ROISMAN: Mr. Melone, which circles
24 are you asking the Witness to focus on, the pink ones
25 or the yellow?

1 ATTORNEY MELONE: The pink ones that are at
2 the southern end of the property that are outside the
3 that green border.

4 CHAIRMAN ROISMAN: Oh, okay.

5 (Exhibit ANR-11 was shown to the Witness.)

6

7 <https://epsb.vermont.gov/?q=downloadfile/440863/150086>

8

9 BY ATTORNEY MELONE:

10 Q. So, kind of looking left to right, there's one
11 that has the number 7. Another one has the number 35.
12 Another one has 9. Another one's 6. So it was my
13 intention to ask for some further information from
14 Arrowwood just to confirm that these numbers represent
15 numbers of plants, but that's the way I read these.

16 So, Mr. Popp, I'm wondering where you get the 110
17 number from.

18 A. I added up all those numbers, and that's what I
19 came up with. I believe there were -- just give me one
20 moment here. Okay. I found a total of 14 polygons
21 outside of the array where plants were not moved. 12
22 of them had numbers. There were 2 additional polygons
23 that were added in the 2019 report without numbers. I
24 added the numbers up in those 12 polygons and came to
25 110, plus the 2 polygons that were unlabeled, and

1 that's why I said 110-plus. So one, two, three, four,
2 five, six, seven, eight, nine, ten, eleven. I still
3 count twelve polygons there. Somebody can check my
4 math if they would like.

5 Q. And you're saying that those are all in the, in
6 the clearing area? I'll get that plan.

7 A. Yeah. So it's, it's -- yeah, you have to overlay
8 them. It's approximate, but it's the best we can do.

9 CHAIRMAN ROISMAN: And, just so we're clear,
10 Mr. Popp, the ones you counted are the ones that are
11 not inside any of the green borders; is that correct,
12 not inside the red border?

13 MR. POPP: That is correct. Oh, you can't
14 see my cursor. I could show you the 12 that I counted,
15 but you could probably figure that out.

16 CHAIRMAN ROISMAN: Yes, I can see them.

17 BY ATTORNEY MELONE:

18 Q. Now, so the, the, at least the way when I -- so
19 are you counting the 10 and the 20 at the very bottom
20 of the screen?

21 A. I did.

22 Q. But, if you pick up the clearing plan that was
23 attached to Kobelia's testimony, the clearing plan goes
24 straight across from the southern border of the, of the
25 conservation, which would exclude the 10 and the 20,

1 because I think that that's not, that's not on the
2 landowner's property.

3 CHAIRMAN ROISMAN: Mr. Melone, are you asking
4 a question, or are you making a statement?

5 MR. POPP: I can respond to that.

6 CHAIRMAN ROISMAN: Let him answer. Go ahead,
7 Mr. Popp.

8 MR. POPP: I was going to say or ask Mr.
9 Melone, Are those plants flagged? We know from Mr.
10 Kobelia he's bringing heavy equipment in, bulldozers.
11 It looks like Polygon 20 is right adjacent to the road,
12 and you're bringing in heavy equipment on a, on an old
13 logging road. I've had numerous, a lot of experience
14 where roadside plants get totally crushed by heavy
15 equipment. So, unless those plants are flagged and
16 fenced, and fenced, not just flagged, they're not,
17 they're in jeopardy. We've had plants on construction
18 sites that were flagged and fenced with construction
19 fencing, and they were still bulldozed. So, yeah,
20 they're in jeopardy.

21 BY ATTORNEY MELONE:

22 Q. Okay. So you would think, since the clearing plan
23 doesn't contemplate clearing the 10 and the 20, that,
24 that all that would need to be done is to fence them
25 off; is that correct?

1 A. Well, fence off those two or all of them, are you
2 proposing?

3 Q. Well, yeah. I was just talking about the two that
4 are not on --

5 A. Well, if you can fence those, that would protect
6 those two, and then, remember, there's two others that
7 are not shown on this plan, because they were only
8 discovered in 2019. If you go to the 2019 plan and
9 compare it with this one, you'll see two additional
10 circles.

11 Q. Two additional circles? Well, yeah, I see one,
12 but I don't see a second one.

13 A. There's one on the west side of Willow Road just
14 up to the uncleared area, and then there's one at the
15 southwest corner of the array, just outside the green
16 line, that are not depicted on the earlier plan.

17 Q. All right. Yeah. So, so you don't have those,
18 those numbers?

19 A. That is correct.

20 Q. So, again, you couldn't tell, until you get that
21 number, whether, where things sat with the 10 percent
22 threshold; is that correct?

23 A. That would be correct.

24 ATTORNEY MELONE: Okay. That, that ends my
25 questioning, Mr. Chairman.

1 CHAIRMAN ROISMAN: Okay. Any additional
2 questions based upon responses to Mr. Melone's recross?

3 ATTORNEY EINHORN: Yes, I do.

4 REDIRECT EXAMINATION BY ATTORNEY EINHORN

5 Q. While we're looking at this ANR Exhibit 14, which
6 is the 2019 plant report for Apple Hill on which the
7 two new polygons appeared, Mr. Popp, I want to direct
8 your attention to the three polygons directly to the
9 west of the conservation area and sort of in the lower
10 part of that triangle between the Willow Road
11 extension, the conservation area, and the solar array.
12 Do you see those?

13 A. I do.

14 Q. I'm going to bring up the Exhibit RK-2, which was
15 filed yesterday, depicting the site work that Mr.
16 Kobelia has performed, and did you hear him testify
17 earlier today?

18 (Exhibit AH-RK-2 was shown to the Witness.)

19
20 <https://epsb.vermont.gov/?q=downloadfile/441501/150086>

21

22 A. I did.

23 Q. And I want to ask you if you've had an opportunity
24 to review what he has done according to this plan and
25 what he described in his testimony today and compare

1 that to the 2019 plan we were just talking about, and,
2 if, if you have had that opportunity, do you have any
3 conclusion with regard to the status of those three
4 polygons?

5 A. The plants in those three polygons are destroyed
6 as depicted on the, the site-clearing plan. They're,
7 they're certainly within that, that rectangle, and it's
8 possible the two, there's two other polygons to the
9 north that may be -- they're kind of on the edge --
10 that might be included in the clearing area.

11 Q. And, just adjacent to and to the north of that
12 conservation area, there's the cleared area that
13 continues, it kind of runs along it from east to west
14 or west to east, and Mr. Kobelia described that, I
15 believe, this morning as approximately ten feet wide.
16 Do you see that?

17 A. I'm sorry. You're talking about the, along the
18 northern boundary of the conservation area?

19 Q. Yes.

20 A. Yeah, I do.

21 Q. And are there any nimblewill in that area as
22 depicted by --

23 A. Yeah. Well, it cuts right across a swath of
24 nimblewill that Arrowwood left in place, because it was
25 outside the proposed solar array.

1 Q. What's your conclusion with regard to the plants
2 that were in that swath of clearing?

3 A. They'd be destroyed as well.

4 ATTORNEY EINHORN: Okay, thank you. I don't
5 have any further questions.

6 CHAIRMAN ROISMAN: Any additional questions
7 from anyone? Mr. Popp, thank you very much.

8 MR. POPP: You're welcome. Thank you.

9 CHAIRMAN ROISMAN: Mr. Einhorn, do you have
10 any additional witnesses?

11 ATTORNEY EINHORN: I do not.

12 CHAIRMAN ROISMAN: Ms. Aceves, I believe you
13 previously said you had no witnesses. Has anything
14 changed?

15 ATTORNEY ACEVES: No, we have no witnesses.

16 CHAIRMAN ROISMAN: Okay. Unless I'm having a
17 senior moment here, it looks like the evidentiary
18 portion of the hearing is concluded and we can go to
19 ten-minute closing statements. Does anybody have
20 anything that we need to address at this point with
21 regard to the evidentiary portion of the hearing that's
22 not going to be covered in your ten minutes?

23 ATTORNEY DINGLEDINE: Mr. Roisman, this is
24 Brooke Dingledine. In terms of any emails or text
25 messages between the Melone entities and Mr. Kobelia,

1 we'd like to try to get those before the briefs are
2 due.

3 CHAIRMAN ROISMAN: Okay. I think, Mr.
4 Melone, you had indicated that, or maybe Mr. Kobelia
5 had indicated that we could probably get those by
6 Monday, and, unless I'm very mistaken, I doubt that
7 anybody is going to propose briefing by Monday.

8 ATTORNEY MELONE: That's correct.

9 CHAIRMAN ROISMAN: Okay. And, by the way,
10 once they're produced, can we get any agreement at this
11 point that they will be admitted into evidence, or is
12 that something that everyone wants to reserve on? We
13 can always do it by emails if people want to look at
14 them before they say, yes, put them in or don't put
15 them in, but any, any thoughts on that from anybody?

16 ATTORNEY MELONE: We would like to reserve.

17 CHAIRMAN ROISMAN: Okay, all right. So
18 they'll get produced. If anybody, after they're
19 produced, wants to have them made as an exhibit, file
20 something in ePUC that requests that they be made an
21 exhibit. We'll use a quick, 24-hour turnaround time
22 for anybody who has an objection, and then we'll either
23 admit them or not admit them as the case may be.

24 ATTORNEY DINGLELINE: Mr. Roisman, may I ask
25 that the production be pursuant to an interrogatory and

1 request to produce that has to be responded to under
2 oath so that there's a very clear written record as to
3 what is being requested to be produced so there is no
4 misunderstanding of that end and Mr. Melone answer
5 under oath that those are the only materials that, once
6 he produces them, in response to that?

7 CHAIRMAN ROISMAN: If, Ms. Dingledine, if
8 you'll file before the end of the day today in ePUC
9 that request, then, Mr. Melone, when you respond, you
10 can respond to the request including, if you so choose,
11 any objection you have to whatever Ms. Dingledine has
12 asked for, and we'll receive it in that format, and
13 we'll take both the questions and the answers as being
14 filed in ePUC. I know it's been our practice that
15 often in hearings responses to the requests are not
16 themselves filed in ePUC, but, in this case, we will
17 have it filed in ePUC. Okay? And, Mr. Melone, please,
18 if you are not going to be able to produce by noon on
19 Monday, will you just send a note around to everyone,
20 again, through ePUC indicating when you're going to
21 produce?

22 ATTORNEY MELONE: Yes, I will, Mr. Chairman.

23 CHAIRMAN ROISMAN: Great, thank you. All
24 right. So, Mr. Melone, you have ten minutes.

25 ATTORNEY MELONE: Thank you, Mr. Chairman.

1 Thank you to you and the other Commissioners for
2 spending the time today. So you asked as part of
3 closing, I think, whether we think any further process
4 is needed. I think the answer to that is "yes", to a
5 small extent. That is that I think we need to produce
6 the actual numbers of the unknown polygons, because,
7 without that, I don't see how there is an evidentiary
8 basis to calculate whether there's irreparable harm or
9 not, even under ANR's purview.

10 We also have served discovery on ANR, which we
11 would like to be responded to, and Mr. Popp earlier
12 today in determining, or referenced studies on which
13 his, his 10 percent threshold is based. We would like
14 ANR to produce those studies.

15 So the, the two issues here are whether site
16 preparation for construction of an electric generation
17 facility is taking place or would take place based on,
18 on the proposed clearing for the farm use, and our view
19 is we've sent our, and our view is that this is site
20 preparation for the farming activities. It is not site
21 preparation for an electric generation facility. To
22 conclude otherwise requires the Commission to do a
23 180-degree turn from every other one of its rulings on
24 what constitutes site preparation for an electric
25 generation facility, and we cite those, those decisions

1 in our, in our memo or my testimony as well.

2 And, even if it, if there were site preparation
3 for an electric generation facility, that still doesn't
4 mean, from a legal perspective, that an injunction is
5 appropriate. There has to be irreparable harm from the
6 site-clearing activities, and we don't believe there's
7 any irreparable harm. Mr. Popp has testified that
8 there's no irreparable harm if the 10 percent threshold
9 is not reached, and we think the evidence will support
10 that the 10 percent threshold is not reached, so that
11 there's no basis for the temporary or the injunction of
12 any kind.

13 We, we continue to sufferer irreparable harm by
14 not being able to engage in those activities, and, even
15 if the Commission continues some type of injunction,
16 what we've heard from Mr. Popp today, it should be
17 limited to just the southern end of the Apple Hill or
18 the southern end of the 27-acre parcel, because that's
19 the only area where there are plants that have not been
20 transplanted. There's no, there's no basis to expand
21 it beyond where, where there are no plants that have
22 not been transplanted.

23 So that's all I have to say. Thank you again for
24 the time today.

25 CHAIRMAN ROISMAN: Okay. Thank you, Mr.

1 Melone. Mr. Einhorn?

2 ATTORNEY EINHORN: Thank you, Mr. Chairman.

3 At the outset, I said this is really a simple exercise
4 today, or I thought it would be, anyway, despite the
5 fact that we've spent a fair number of hours on it, and
6 that is, Is site clearing which is prohibited by
7 Section 248 occurring, or has it even occurred? It
8 appears that it has, and it appears that it will
9 continue to occur if there is no injunction. And will
10 that result in irreparable harm?

11 So, to test the factors as we know, is there
12 exists a threat of irreparable harm? Yes, there
13 clearly is. Percentages aside, which really are
14 dealing with the total plant population, as Mr. Popp
15 testified, there are rare plants, and a significant
16 number of those at that, that are at risk of being
17 destroyed by the clearing. In fact, it appears as
18 though there have been plants of both species that have
19 been destroyed. In that regard, discussing, even if we
20 were to use a 10 percent number, Mr. Popp said that 90
21 percent of the nimblewill population, which amounts to
22 hundreds of plants, are, in fact, in harm's way.

23 So another thing that hasn't been discussed here
24 is, even if there were no rare plants on this site,
25 it's a forested site. Those trees would be cleared,

1 and those trees would be effectively destroyed. Trees
2 do grow back, but they don't grow back when they are
3 cut down for purposes of land conversion, which is what
4 we're dealing with here, and, essentially, those are
5 the types of projects that the Commission reviews and
6 approves in Section 248, land conversion projects to
7 convert a parcel to a generation facility or a
8 transmission facility.

9 That's what's being proposed here. So the
10 clearing of the trees is for land conversion. It's not
11 for silviculture or forestry activities, and, in that
12 respect, those trees will also be gone, and they can't
13 be put back immediately when they're gone, and these
14 activities would be occurring without a permit to do
15 it, because the parcel is still under the Commission's
16 jurisdiction, because we still have solar facilities
17 being pursued there under Section 248.

18 Does the irreparable harm outweigh the potential
19 harm to the developer? I believe it does. The threat
20 is certainly definite if the clearing proceeds. We
21 know it. It's probably started to occur already. The
22 developer's harm is, seems like the potential for harm
23 there is still somewhat speculative. This
24 horticultural plan, it was hatched recently. I think
25 these projects go back to 2014, at least, when we talk

1 about the standard offer contract. So the developer
2 still has the ability to go through the approval
3 process for these projects. That's in front of the
4 Supreme Court now. Who knows where that will go? It
5 hasn't been exhausted.

6 The likelihood of success on the merits, I think
7 there's a very high likelihood of success on the
8 merits, because Section 248 is very clear in that site
9 clearing is prohibited without a certificate of public
10 good. It's also very clear that there are natural
11 resources that will be destroyed as a result of site
12 clearing, and the injunctive relief is certainly in the
13 public's interest.

14 The public has a very, very high interest in the
15 integrity of the 248 process, and that is what is, not
16 to belittle the natural resources that exist at this
17 site, but I think the integrity of the 248 process is
18 probably foremost in this instance here, especially
19 given the history of, of these projects and how we've
20 gotten to the point where we've gotten now. Obviously,
21 preventing harm to natural resources is also in the
22 public's interest.

23 I, I also will raise the issue, because I think,
24 Chairman Roisman, you, you, if you didn't mention it
25 today, I think I may have seen it in the order, is that

1 permanent injunction or temporary injunction, and then,
2 I guess, that also overlaps with, Is further process
3 needed? Clearly, further process is not needed at this
4 time for a temporary injunction, and I would say that
5 it really doesn't matter whether it's called a
6 temporary or a permanent, although I don't see any need
7 to call it permanent, because the duration of either,
8 it runs with the underlying proposals to develop energy
9 generation at this property.

10 Once those projects are either approved by the
11 Commission, then there's no need for an injunction, and
12 it dissolves by itself. If those projects are denied,
13 if the appeals are denied and they're over and they're
14 done and there's no longer a project being proposed,
15 then the injunction goes away as well, because,
16 effectively, the Commission's jurisdiction will go away
17 at that point.

18 If CPGs are granted, the Commission will retain
19 jurisdiction to enforce conditions of those CPGs, but
20 that's a different matter. So I think, you know, as to
21 preliminary or permanent, I think the duration ends up
22 being the same in this case. I think a preliminary is
23 fine at this point. I think we meet the standard for a
24 preliminary injunction, and, for that reason, I don't
25 think there's the need for any further process.

1 I, we got discovery served on us on the eve of
2 Thanksgiving, I think, at 6:30 at night, expecting
3 answers by the following Wednesday, far beyond the pale
4 of the civil rules, but, also, most of them, as my
5 quick review of the questions, are really irrelevant to
6 the issues at hand today, and I think we, we dealt with
7 those, that those are in the, several times in the
8 course of the, of the proceeding today. To the extent
9 that that discovery is out there, I think most of it is
10 irrelevant. If we were to have to respond to it, we
11 would obviously need 30 days to deal with that. Thank
12 you.

13 CHAIRMAN ROISMAN: Okay. Ms. Dingledine?

14 ATTORNEY DINGLELINE: Thank you, Your Honor.
15 Let me just follow up, first of all, by, on the
16 discovery issue, that, supposedly, a party in this
17 proceeding has served discovery on ANR. Such is not
18 the case. Apparently, Michael Melone took a set of
19 discovery requests from another case, changed the
20 caption, and forgot to change who was asking the
21 questions. So Otter Creek Solar, LLC has asked some
22 discovery questions of ANR with this case's caption on
23 it. They're not a party in interest, so I don't
24 believe there are any discovery requests pending right
25 now that have been served on ANR, at least by any

1 entity that has any relationship to this, to either of
2 these cases or this investigation.

3 We also would like to point out we think it was a
4 terribly abusive use of discovery. We would like to
5 mention to the Court and remind everybody about the
6 timeline here. We had a June 26 TRO hearing. The next
7 day a written, or that evening a written order issued.
8 Mr. Melone doesn't follow written orders. He was told
9 verbally and then received the written order that he
10 was to make sure all of his contractors and anyone
11 associated with his companies were notified and that
12 they would respond and follow any TRO that was issued
13 by the PUC.

14 That didn't happen. Mr. Melone did not contact,
15 to the best that we can tell so far, the contractor,
16 Mr. Kobelia. Obviously, it was expected. Mr. Melone
17 was told verbally during the daytime that there would
18 be a TRO issuing. So the, the concern that the
19 Intervenors have besides the next issue I'll get to in
20 just a moment, but that we seem to be in a situation
21 where all of the rules continue to be flouted, not
22 followed.

23 There are agreements that are entered into, for
24 example, the MOU. Now we're hearing, even though
25 someone was authorized to enter into that agreement,

1 that somehow they were coerced into signing it now.
2 There was a settlement agreement with the Town. Now we
3 -- I don't understand why it was even signed if they're
4 not going to abide by it. To suggest that now changing
5 the use of this property to agricultural or
6 horticultural instead of a solar array, how can that
7 not violate that, that rule?

8 The credibility of the petitioner is, the
9 positions that are being taken here just strain
10 credulity. You are now facing a, a petitioner who
11 flouts your denial of his amendment and has testified
12 that he plans to go forward, regardless of what you
13 said about his screening. He says that that Lot 1 is
14 not part of the solar array project. Well, I know he
15 has drawn his little, you know, perimeters around the
16 Van Nostrum lands only, and he continually talks about
17 how the project site is only 27 or 28 acres, but, in
18 fact, that isn't true, and just because Mr. Melone says
19 the same thing over and over and writes the same thing
20 over and over does not make it true.

21 Now, in terms of the, the Lot Number 1 not being a
22 part of the project site, we would submit it's a
23 preposterous, unsupportable suggestion, which we think
24 violates Rule 11, and had, if we had the proper timing
25 to be able to serve Mr. Melone a motion under Rule 11

1 to advise him to withdraw his unsupportable legal
2 positions, there isn't enough time to do that, but I
3 think that it is still incumbent upon the PUC to ensure
4 that our rule, Vermont Civil Rules of Procedure, is
5 abided by, that lawyers are held to a standard to do
6 their due diligence, not put in evidence that is
7 incorrect, to, to not make frivolous claims and
8 arguments that cannot be supported through the law.

9 Unfortunately, we don't have the timing to be able
10 to give him the opportunity to revise or to remove
11 those offending positions, but I would ask the PUC to
12 be very cognizant of the pattern and practice here we
13 have of making agreements and breaking them, making,
14 entering into MOUs and then claiming they were coerced,
15 asking for amendments or just declaring that amendments
16 are going to happen and not caring whether the PUC
17 approves or denies them.

18 This is an abuse of this process, and we have been
19 dragged through this situation for years and years. It
20 is time for the PUC to stand up to this gentleman and
21 say, What you're doing is wrong, and the mantra, "It's
22 easier to ask for forgiveness than to ask for
23 permission", is not the way that the PUC does business.
24 Please institute an injunction that stops any site
25 preparation, including any cutting of the orchard

1 trees. Whether they produce great apples or not,
2 that's not the point. They are part and parcel and
3 proposed as part of the screening that has been
4 represented as being part of the reasonable mitigation.

5 And, as I said in the beginning, one of two things
6 needs to happen here from our perspective. That is, if
7 Mr. Melone isn't going to follow through with his
8 proposed project without the amendment that was denied,
9 then he ought to be on notice that he no longer has a
10 project pending and it's akin to withdrawal.

11 On the other hand, the other approach is the
12 standard offer contract and the petition that was
13 provided under it, if there were material
14 misrepresentations of fact between that proposal and
15 what is on the ground or intended to be on the ground,
16 then, in our opinion, that would be a, a situation
17 where incorrect information formed the basis of the
18 reason why the contract and the permitting would have
19 been allowed, and you can't change tracks now and play
20 a bait and switch.

21 If you asked for "X", you get an answer on whether
22 you get to do "X" or not. You don't get to do "Y"
23 instead. And, if they're going to do that, the
24 underlying contract that allows them to go forward with
25 this, these sites ought to be voided, because the

1 material misrepresentations of fact no longer suffice
2 to be able to allow them to go forward with the altered
3 project that was denied. Thank you very much.

4 CHAIRMAN ROISMAN: Thank you. Ms. Aceves?

5 ATTORNEY ACEVES: Thank you. I just have a
6 few brief comments to add. We believe continuing a
7 preliminary injunction is appropriate here. I agree
8 with the Agency of Natural Resources's assertions
9 regarding the specific criteria that must be met for an
10 injunction, and I just want to add that the main
11 prerequisite to obtaining injunctive relief is a
12 finding that a party is being threatened by some injury
13 for which it has no adequate legal remedy, and we
14 believe the site clearing that has already taken place
15 here has no adequate legal remedy, thus making
16 injunctive relief appropriate.

17 And, as I alluded to further, I would posit that
18 there are larger policy implications at play here.
19 Should the Commission refrain from issuing an
20 injunction and dissolve the TRO, it could create the
21 potential to both undermine the Commission's authority
22 over the solar siting process generally, as well as
23 open the door for abuse of the Section 248 process, and
24 this is because doing so would allow this petitioner
25 and other petitioners to thwart what is a clear

1 requirement under the statute, no site preparation
2 without a CPG, which they could potentially do without
3 repercussions should an injunction not stand. And that
4 is all I have. Thank you.

5 CHAIRMAN ROISMAN: Thank you all very much.
6 A couple of matters that have come up that I think I
7 need to get, we need to get some clarification on. Mr.
8 Melone, you indicated that you feel that we don't, the
9 record's not yet ready for a resolution, because we
10 need the polygon count. If I understand correctly,
11 that is a matter within the, the, the knowledge of your
12 consultant. Is it your intent to have Arrowhead -- or
13 is it Arrowwood? I'm sorry.

14 ATTORNEY MELONE: Arrowwood.

15 CHAIRMAN ROISMAN: Arrowwood file a, a, some
16 kind of a supplemental document that indicates what the
17 count is in the, in the 2019 uncounted polygons? Is
18 That how you figure that could be done?

19 ATTORNEY MELONE: Yes.

20 CHAIRMAN ROISMAN: All right. And when do
21 you expect that to happen?

22 ATTORNEY MELONE: I think we could have it
23 done early next week, depending on what their schedule
24 is.

25 CHAIRMAN ROISMAN: Okay. You also indicated

1 that there were some studies that were referenced by
2 Mr. Popp, I believe, that form the basis, oh, or one of
3 the bases for the development of the 10 percent number.

4 ATTORNEY MELONE: Yes.

5 CHAIRMAN ROISMAN: I think, if you wish to
6 have ANR respond to that, as we've done already on
7 other matters, you should file, ideally before the end
8 of the day today, although, candidly, the day is pretty
9 much done, a request for copies of those. If something
10 more informal will work for you, you might just talk
11 with Mr. Einhorn. If it's just a matter of sending a
12 couple of links that you can have access to and that
13 works for you, I think that's fine.

14 You also indicated you wanted discovery, answers
15 to the discovery. Mr. Einhorn has expressed his belief
16 that the discovery is inappropriate, and I believe Ms.
17 Dingledine has also indicated she thinks it's
18 inappropriate. Mr. Einhorn, I would suggest that, at
19 your earliest convenience just so we don't drag our
20 feet here, you file any objections that you have to the
21 discovery and, at that time, indicate, to the extent
22 that any of the discovery requests are going to be
23 answered, when, when they'll be answered.

24 But, that said, I heard, I think it was, from you,
25 Ms. Dingledine, that the questions that were asked are

1 actually a replica of discovery that was filed in 0516.
2 If that's -- the Warner case. If that's true, then I
3 believe that we already received from, I think it was
4 you, Mr. Melone, this morning, Mr. Popp's responses to
5 discovery that took place in 0516. If all the
6 questions that have been asked in this proceeding have
7 already been answered in 0516, can't we just file those
8 answers? And, if somebody objects to them being
9 included in the record, to the extent they're different
10 than the ones we've already accepted in the record,
11 they can speak up when they're filed.

12 Am I correct, Ms. Dingledine, that, the, the
13 document that was filed here by Mr. Melone or by
14 Michael Melone is an actual replica of the very
15 discovery that was filed in 19-0516; is that correct?

16 ATTORNEY DINGLELINE: Well, Your Honor, I'm
17 not involved in that other docket, so I haven't seen
18 the discovery requests in there, but what I have seen
19 served in this case is the caption of this case, and
20 then it's, you know, it says, Otter Creek Solar, LLC
21 asks the following discovery questions of ANR, and then
22 it is signed by Michael Melone as the lawyer for Otter
23 Creek Solar, LLC. So I assume it's the same.

24 CHAIRMAN ROISMAN: All right. Mr. Melone and
25 Mr. Einhorn, if you could speak to each other on Monday

1 and ascertain whether or not that discovery request has
2 effectively already been answered and can reach some
3 resolution, that would be great. If you can't reach a
4 resolution, file the papers you need to file to bring
5 the issue up for us to decide, and we will decide it.
6 Is that acceptable to both of you, Mr. Einhorn?

7 ATTORNEY EINHORN: That's fine. I'm happy to
8 talk with Mr. Melone on Monday. I don't know if what
9 we were sent on Thanksgiving eve are the same questions
10 that were propounded on us in the Warner project. We
11 did answer two rounds of discovery questions in the
12 Warner project. They're really covering a lot of the
13 topics that Mr. Melone was asking about and that I was
14 objecting to today. And, you know, I can talk with him
15 about that. We may be able to just make this really
16 easy and just move in the responses from the Warner
17 discovery. That said, I would still be objecting to
18 the relevancy.

19 CHAIRMAN ROISMAN: I understand.

20 ATTORNEY EINHORN: But I will discuss that
21 with Mr. Melone if that works for him.

22 CHAIRMAN ROISMAN: Okay. If you guys can
23 work that out, that would be great. The second thing
24 is that on this issue of the standards for the
25 preliminary versus the permanent injunction, I would

1 just ask all the parties, when you file briefs with us,
2 to please look at two cases, City of St. Albans, 2008
3 Vermont 36, and in re: Wood, then a whole lot of other
4 stuff, 2013 Vermont 40, and address what those cases in
5 your filing with regard to the standards applicable to
6 a permanent injunction versus the standards applicable
7 to a preliminary injunction.

8 Now, briefing, have you all had a chance to think
9 about when you think top-side briefs should be due?
10 And I would suggest, in light of Mr. Melone's feeling
11 that the record needs to be completed and we are going
12 to at least wait on the email information coming on
13 Monday, that we set a time "X" days from when all
14 discovery is completed, whatever that may be, rather
15 than try to pick a date certain. Are you all
16 comfortable with doing it that way? If so, does
17 anybody want to start by proposing a first briefing
18 date?

19 ATTORNEY MELONE: I'm comfortable with that
20 approach. We would prefer a shorter timeframe as
21 opposed to a longer one. So we would be prepared to do
22 our brief within two weeks.

23 CHAIRMAN ROISMAN: Two weeks after any
24 outstanding discovery responses have been filed or
25 objections to discovery has been resolved?

1 ATTORNEY MELONE: That's correct.

2 CHAIRMAN ROISMAN: Okay. Mr. Einhorn, how
3 does that work for you, keeping in mind, everyone, that
4 we're at that time of year when two weeks might end up
5 on Christmas Eve.

6 ATTORNEY EINHORN: Right.

7 CHAIRMAN ROISMAN: Putting that aside for the
8 moment.

9 ATTORNEY EINHORN: Yeah. Simply put, it does
10 not work for me. Despite my persistence today by
11 repeatedly saying this is not a 248 application we're
12 reviewing and a CPG proceeding that we're engaged in,
13 my request would be to use the briefing schedule that
14 we normally use in 248 cases, which is 30 days or, I'm
15 sorry, 2 weeks, 4 weeks for initial briefs and 2 weeks
16 for replies.

17 CHAIRMAN ROISMAN: Okay. Before I circle
18 back around to you, Mr. Melone, Ms. Dingledine, what's
19 your thinking on, on a briefing schedule?

20 ATTORNEY DINGLEDINE: My only issue is what
21 date it starts so that I can see where we're at for
22 when it's actually due, but I would tend to agree with
23 Mr. Einhorn. Like, right now, if we had four weeks, we
24 could get the discovery, and that would make me feel a
25 little more comfortable timing-wise if we also say,

1 well, four weeks from today, at least.

2 CHAIRMAN ROISMAN: Well, yeah, that's right.
3 We're proposing, for the moment, and I thought you all
4 were in agreement, that we'll start the days for
5 briefing once we've completed the discovery process.
6 If it ends on Monday, it ends on Monday. If it ends
7 two weeks from Monday, it starts then. Are you all
8 right with that approach, Ms. Dingledine?

9 ATTORNEY DINGLEDINE: Yes, that would be
10 fine. If something comes up, for example, right now,
11 four weeks from now is January. So I think that's
12 fine. It gets us over the holidays. So I wouldn't
13 have any objection.

14 CHAIRMAN ROISMAN: All right. And has Ms.
15 Aceves views on now some competing proposed scheduling?

16 ATTORNEY ACEVES: I think we would prefer
17 four weeks for initial briefs. You know, that would
18 give time for discovery. It would also give time for
19 the transcript to be part of the record, and, just, as
20 state agencies, there's a lot more red tape that we
21 have to deal with, and so more time in that respect
22 would be useful.

23 CHAIRMAN ROISMAN: Okay. Well, thank you for
24 mentioning the transcript. The court reporter is
25 obviously still on. What looks reasonable for you in

1 terms of when a transcript would be available?

2 THE REPORTER: I think the earliest would be
3 the end of next week if that is agreeable for everyone.

4 CHAIRMAN ROISMAN: All right. So let's,
5 let's take that as a given, that there will be no
6 transcript available, realistically, until Monday, a
7 week from this coming Monday. So that's the first time
8 we'd have a transcript available. All right. Mr.
9 Melone, you asked for two weeks. Mr. Einhorn, Ms.
10 Aceves, and Ms. Dingledine asked for four. What do you
11 have to say?

12 ATTORNEY MELONE: I would be fine with four
13 if it ran from today, since I suspect we'll be able to
14 resolve the discovery questions within the next two
15 weeks. So it would put it to January 4th. But, if
16 it's going to be based off when discovery is, is
17 totally resolved, then I think two is appropriate,
18 because everyone knows what the issues are, what the
19 briefing is. So maybe it's two weeks from when the
20 transcript is issued. I think that that would be a
21 reasonable position.

22 CHAIRMAN ROISMAN: All right, okay. Back to
23 you, Mr. Einhorn. Four weeks from today or two weeks
24 from when the transcript is going to be due, which is
25 probably not until a week from today?

1 ATTORNEY EINHORN: It doesn't work. Based on
2 what we've experienced so far in this proceeding, the
3 Agency, assuming for a moment that we may not, Mr.
4 Melone and myself, reach an agreement resolving
5 discovery quickly by filing something that's already
6 been done, the Agency is not interested and frankly not
7 equipped to both engage in what will be a pretty heavy
8 lift responding to discovery or objecting and then
9 resolving all those issues while at the same time
10 briefing this case.

11 CHAIRMAN ROISMAN: All right. Ms.
12 Dingledine, what do you say to Mr. Melone's suggestion,
13 four weeks from today or two weeks from a week from
14 next Monday, basically?

15 ATTORNEY DINGLELINE: Well, I have to say I
16 do have concerns, as ANR does, in terms of this
17 discovery, and I do want to just mention that, you
18 know, discovery was asked for back in the summer
19 instead of having our preliminary injunction hearing,
20 and then, instead of serving discovery, the case was
21 appealed. Under the rules that was improper, and no
22 permission was asked for. So, at this point, you're
23 bending over backwards to give the applicant time for
24 discovery, even though now he's served it under some
25 other entity's name.

1 So I don't want to be in the situation where we're
2 waiting on this discovery stuff and then, all of a
3 sudden, we're jammed up in time because they can't get
4 an agreement about what's going on. So but let me
5 finish by saying, as long as it's in January after the
6 first couple days, I'm okay.

7 CHAIRMAN ROISMAN: Okay. Ms. Aceves?

8 ATTORNEY DINGLEDINE: I beg your pardon. So
9 long as there's sufficient time between when we get
10 everything resolved and when it's due for briefing.

11 CHAIRMAN ROISMAN: Okay. Ms. Aceves?

12 ATTORNEY ACEVES: I guess I would agree with
13 Ms. Dingledine as far as, you know, if it's in January,
14 that we would be amenable to that.

15 CHAIRMAN ROISMAN: Okay. Commissioners
16 Cheney and Hofmann, do you want to talk about this
17 between us and make a decision right now?

18 COMMISSIONER HOFMANN: I think we should. I
19 think we should get on our separate line and talk about
20 it for a minute.

21 CHAIRMAN ROISMAN: Okay. So we're going to
22 put you guys -- we're going to mute.

23 (A recess was taken from 4:52 p.m. to 4:59 p.m.)

24 CHAIRMAN ROISMAN: Okay. I think we've got
25 everybody. Yes? Looks like it. Good. Okay. So

1 we're back on the record. We're going to accept Mr.
2 Melone's suggestion with a tiny variation. Four weeks
3 from today would be the 4th of January. That's the
4 first Monday after New Year's. We don't think it's
5 realistic to think that any of you are going to be
6 working on New Year's Day, New Year's Eve, and the
7 weekend immediately following.

8 So we're going to set the deadline for the
9 briefing at the 8th of January for the upside brief,
10 subject to if you all cannot work out the discovery
11 problems such that you really have most of that time
12 and that ANR does not find itself in the bind of
13 simultaneously trying to write a brief and respond to
14 an extremely complex and prolix discovery request,
15 you'll come back to us.

16 I will note that, as Ms. Dingledine has pointed
17 out, the particular discovery request that we're
18 talking about appears not to have been validly filed in
19 this case at all and that we, in our order at the time
20 that we granted the TRO last summer, urged the parties
21 to do their discovery back then. You all have, to some
22 extent, been a little lax in getting your discovery
23 done. We've been a little generous in letting you do
24 it, and, and it, except for Ms. Aceves, it actually
25 applies to all of you. Everybody has put in a

1 discovery request well after what we thought would be
2 the, the discovery request time.

3 That said, if you all can work it out, make sure
4 you've got a record that everyone's comfortable with
5 that allows you to make the case you want to make, we
6 aren't going to get hypertechnical with you. So, for
7 now, your initial briefs will be due on the 8th of
8 January, and we will allow ten days for reply briefs.
9 If that works for everybody and you really need two
10 weeks, raise your hand now on reply briefs. These are,
11 these would then be due on the 18th of January if we
12 did it that way.

13 Okay, all right. So this, this hearing is closed
14 for now, but the record is not yet closed, and there
15 will be, when and if you either file something that has
16 shown up in discovery that you want to have or conclude
17 that you have nothing more to add. The record is not
18 open for new witnesses, new exhibits, new testimony,
19 other than whatever responses you get from these
20 discovery exchanges. Any questions?

21 ATTORNEY DINGLEDINE: Mr. Roisman, this is
22 Brooke Dingledine. Given the late hour, I have plans
23 this evening, and getting out a discovery request would
24 be burdensome on me this evening, because I'm going to
25 be running late. So I was wondering if I could get

1 that to Mr. Melone tomorrow.

2 CHAIRMAN ROISMAN: If it's okay with him. I
3 think he knows exactly what you want. I think you
4 wanted to make sure there was a formal document that he
5 responded to. So I would assume that, Mr. Melone, if
6 you got it on Saturday, when you were ready to file
7 your response, you would simply have the piece of paper
8 that you would respond to in your hand. Will that work
9 for you?

10 ATTORNEY MELONE: Yes, that would be fine,
11 Mr. Chairman, because I don't think that we can get
12 our, our discovery requests out to ANR by tonight
13 either, but we certainly can by the end of the weekend.

14 ATTORNEY EINHORN: Mr. Chairman, just for the
15 record, back in September the Agency had indicated that
16 it saw that no further process was needed, and that
17 meant that we never intended to do discovery at that
18 time, and we still don't see the need to do discovery.
19 So we're not asking to do discovery.

20 CHAIRMAN ROISMAN: I understand that, yes.
21 Thank you for that clarification, Mr. Einhorn. Okay.
22 Well, it's been a full day, everybody. Thank you for a
23 most interesting hearing, and we are going to take
24 everything under advisement, obviously, and we look
25 forward to your next filings. Have a good and safe

1 weekend.

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3 (Whereupon at 5:05 p.m. the hearing was adjourned.)

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EXHIBIT 9

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC,)	Docket No. 24-3517-PET
pursuant to 30 V.S.A. § 248, for a)	
certificate of public good authorizing)	
the installation and operation of a 2.0)	
MW solar electric generation facility)	
located off Willow Road in Bennington,)	
Vermont)	

**APPLE HILL SOLAR LLC’S PRELIMINARY COMMENTS OF THE DEPARTMENT
OF PUBLIC SERVICE’S MOTION TO STAY**

Apple Hill Solar LLC (“AHS”) will be prepared to preliminarily address the Motion to Stay of the Department of Public Service (“DPS”) and the Town of Bennington’s comments at the scheduling conference set for January 13, 2025.

In advance of the conference, AHS provides the following preliminary comments.

1. AHS has already explained to DPS that AHS is proceeding with the petition under the assumption that it would be a merchant generator. That is the same basis on which the Commission reviewed the project initially in docket 8797, which then eventually became a project with a standard offer contract *after* the CPG was issued. There is no difference here. AHS is not seeking to rely on any waivers. If DPS needs AHS to say that in different ways or clarify testimony, AHS is happy to do so.

2. With respect to Commission Rule 5.403(A)(19), it is difficult to believe that DPS even raised that point because the existence of Chelsea Solar has such a storied history. AHS has supplemented the testimony to state that the Chelsea Solar LLC project currently before the Commission in Case 23-0249 is a project described in Rule 5.403(A)(19), and that there are no others.

3. With respect to the AHS project in docket 8454, the issue of estoppel may be interesting, after all, the Commission held that the Chelsea Solar project satisfied all the requirements for a CPG but only denied the CPG based upon a then newly announced single plant rule. If estoppel is at play then the CPG for Chelsea Solar in case 23-0249 should be summarily

granted now that the Commission denied the extension of the AHS standard offer contract. Counsel to Chelsea Solar will review the estoppel issue for that proceeding and make the appropriate motion for summary judgment.

4. As for the AHS project itself in this docket, the petition itself describes the differences that would be material from the prior one such as, for example, the smaller footprint, the removal of what the Commission referred to as a “black box,” and the growth in existing vegetation.

5. Some of the players have also changed. For example, the closest neighbor to the project has filed written support for the projects. So too have other neighbors. And those neighbors spoke out in support of the project before the Town’s planning commission. In fact, more than twice the number of people spoke out in favor of the Project than against it.

6. There are other differences as well, including, *inter alia*, that there is no Bennington Town Plan in effect. Thanks to the doggedness of two honest Bennington Select Board members and a number of whistleblowers, AHS has become aware that the Bennington Town Plan expired under 24 V.S.A. §4387 on October 6, 2023, eight years after its adoption. What has ensued is a multi-faceted conspiracy to cover up that fact for a variety of reasons, including reasons related to the AHS and Chelsea Solar projects. The still active cover-up conspiracy includes all of the Select Board members but the two aforementioned and other Does and has resulted, *inter alia*, in the Town fraudulently obtaining grants from various entities, including federal funds, all of which require a Town Plan to be in effect. The expiration of the Town Plan also resulted, *inter alia*, in the loss of the Downtown Designation and the Town’s Bolio Amendment being *void ab initio*.

7. The cover up and overt acts include the forgery, counterfeiting and publication of official town and regional documents in violation of 13 V.S.A §1801 and §1802 and the submission of false certifications to the State and Federal government in violation of 13 V.S.A §2002 and 32 V.S.A §631(a)(9). The dramatic scope of the cover up is not surprising considering that since the expiration of the Town Plan in 2023, the Town has applied for and/or received millions of dollars in state and federal funds through grants and tax benefits as well as other types

of benefits from various programs that specifically require that a duly adopted municipal town plan be in place. The cover-up also includes filing false statements with the Commission that are based upon the existence of a Town Plan, but for which the Town knows does not exist and has not existed since October 6, 2023.

8. AHS's parent Allco Finance Limited is finalizing a complaint to be filed in Federal District Court against the Town of Bennington, its Select Board members (other than the aforementioned), the town planner and town manager involving their conspiracy to cover-up the fact that the Town Plan expired on October 6, 2023, as well as other claims, such as breach of contract (i.e., the settlement agreement between AHS and the Town), violations of the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c)), injunctive and declaratory relief, and violations of civil rights. The complaint will also set the record straight on why the Mount Anthony Country Club (who the Town was and may still be working with) withdrew as an intervenor in the Chelsea Solar case.

Dated: January 10, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC

By: */s/ Thomas Melone*

Thomas Melone

Apple Hill Solar LLC

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New Haven, CT 06510

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212-681-1120

EXHIBIT 10

EXHIBIT 2

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Apple Hill Solar LLC, pursuant)
to 30 V.S.A. § 248, for a certificate of public)
good authorizing the installation and)
operation of the “Apple Hill Solar Project,”)
a 2.0 MW solar electric generation facility)
located off Willow Road in Bennington,)
Vermont)

Docket No. 24-3517-PET

**PETITIONER’S RESPONSE TO THE TOWN OF BENNINGTON’S
MOTION TO STRIKE**

On January 15, 2025, the Attorney Merrill Bent, purportedly on behalf of the Town of Bennington (“Town”), filed a Motion to Strike (the “Motion”) the Petitioner’s January 10, 2025, and January 12, 2025 comments, that were filed by Petitioner in response to the State of Vermont’s Motion to Stay and Initial Comments filed by Attorney Merrill Bent, purportedly on behalf of the Town of Bennington. Attorney Bent posits that the filings should be stricken because purportedly they involve “ad hominem attacks on members of the public who are not involved in this docket, town officials, and elected officials (who serve their community as volunteers) [and] were neither responsive nor relevant to the matters raised before the PUC.” Motion at 1. Both assertions by Attorney Bent, as explained below, are false.

Attorney Bent further alleges that the filings were made for “an improper purpose in violation of Commission Rule 2.203(C),” without any evidentiary basis or even explaining what the “improper purpose” allegedly is. Motion at 1. That claim by Attorney Bent is false *too*. Then while conceding that the Petitioner’s filings *are* “responsive to the issues raised by the other parties,” Attorney Bent doesn’t want to do any work now to respond to them. As per usual, the motion is short on facts and short on the law.

A. Attorney Bent Is Not Authorized To Speak On Behalf Of The Town of Bennington.

1. Attorney Bent’s Purported Representation And Filings Violate The Vermont Open Meeting Law.

Attorney Bent states that she is acting on behalf of the Town of Bennington in this case. But there was no *public meeting* held by the Select Board that authorized Attorney Bent to file

anything in this case, nor act on behalf of the Town opposing the AHS project. The Town has held a single meeting regarding the Project in this case, at which more than twice the number of people spoke out in favor of the Project than against it.

1 V.S.A. § 312 provides:

Right to attend meetings of public agencies

(a)(1) All meetings of a public body are declared to be open to the public at all times, except as provided in section 313 of this title. **No resolution, rule, regulation, appointment, or formal action shall be considered binding** except as taken or made at such open meeting, except as provided under subdivision 313(a)(2) of this title.

[Emphasis added.]

(b)(1) Minutes shall be taken of all meetings of public bodies. The minutes shall cover all topics and motions that arise at the meeting and give a true indication of the business of the meeting.

Attorney Bent could only be appointed to act on behalf of the Town in this case after a duly noticed open meeting of the Select Board with her appointment being a duly noticed agenda item. *No such meeting occurred.* Nor did the Planning Commission hold any meeting listing as an agenda item the appointment of Merrill Bent. No duly noticed meeting was held by any public body in Bennington authorizing Merrill Bent to intervene on behalf of the Town.

Likewise, because Attorney Bent's filings in this case have taken definite positions *in opposition* to the Project, those too need to be authorized by the Select Board after a duly noticed open meeting of the Select Board with the AHS project being duly noticed agenda item. *No such meeting occurred.* Because properly noticed meetings never occurred, the public and taxpayers in Bennington were denied their rights to speak under the Open Meeting Law and under the First Amendment. While the landowner for the Project intends to file suit against the Town for violating the Open Meeting Law, for purposes of this case, Attorney Bent's motion to strike should be summarily denied and rejected unless Attorney Bent provides documentary evidence that was the

product of compliance with Vermont's Open Meetings Law that she is authorized to make filings on behalf of the Town and take positions in opposition to the AHS project.¹

2. Attorney Bent's Representation Would Violate The Vermont And New York Rules of Professional Conduct.

Similarly, even if Attorney Bent's filings were properly authorized by the Select Board (which they were not), Attorney Bent's representation would be a violation of multiple rules of the Vermont and New York attorney rules of professional conduct. Attorney Bent is admitted to practice in Vermont and New York, and as such is bound by both sets of rules.

i. Merrill Bent's Purported Representation Of The Town Violates Rule 3.7.

First, unless the Town stipulates that the Town Plan expired on October 6, 2023, Merrill Bent is a key witness and as such is disqualified from representing the Town under Vermont Rules of Professional Conduct 3.7 states:

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

And Rule 3.7 of the New York Rules of Professional Conduct which states:

(a) A lawyer shall not act as advocate before a tribunal in a matter in which the lawyer is likely to be a witness on a significant issue of fact unless:

- (1) the testimony relates solely to an uncontested issue; (2) the testimony relates solely to the nature and value of legal services rendered in the matter; (3) disqualification of the lawyer would work substantial hardship on the client; (4) the testimony will relate solely to a matter of formality, and there is no reason to believe that substantial evidence will be offered in opposition to the testimony; or
- (5) the testimony is authorized by the tribunal.

(b) A lawyer may not act as advocate before a tribunal in a matter if:

- (1) another lawyer in the lawyer's firm is likely to be called as a witness on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client; or (2) the lawyer is precluded from doing so by Rule 1.7 or Rule 1.9.

¹ The Town's purported intervention and filings in this case also constitute a breach of a settlement agreement dated September 14, 2018, between AHS and the Town. AHS intends to file a separate lawsuit against the Town making just that claim.

The Town Plan expired on October 6, 2023, but the story that Town Manager Stu Hurd and a majority of the Select Board have been spinning is that the adoption of the Energy Amendment in 2018 is considered a reoption to the entire Town Plan, which is clearly contrary to the *actual* facts and the law.

Nevertheless Mr. Hurd claims that he and the Select Board have a “legal opinion” to that effect presumably from the Town’s only regular attorney Merrill Bent, a prolific opinion writer. See **Exhibit 1** which is an attached email from Hurd stating: “We believe we have sufficient documentation and a legal opinion supporting our position. *It’s not a lie if one believes what one’s saying.*”

Mr. Hurd and a majority of the Select Board seem to also claim as part of their scheme that the Bennington County Regional Commission (“BCRC”) has accepted the Town’s position. But whether the BCRC “accepts” the Town’s position is statutorily irrelevant, which, *inter alia*, has been confirmed by the general counsel to the grant making entity—ACCD. See **Exhibit 2**.

Attorney Merrill Bent can no longer advise the Select Board on issues related to the Town Plan. She has been implicated by Stu Hurd (*see* **Exhibit 1**) and at a minimum would be a key witness which prevents her representing the Select Board. As a result, under both the Vermont and New York Rule of Professional Conduct 3.7, she is prohibited from representing the Select Board.

Mr. Hurd’s and a majority of the Select Board’s claim also is expressly contradicted by the Select Board’s certification attached as **Exhibit 3**, which correctly certifies that the last Town Plan was put in place in 2015. The certification, however, diverges from the facts when it claims that the 2015 Town Plan was still effective in 2024.²

² All grants through the Vermont Community Development Program (the “VCDP”) require that the municipality certify that it has a duly adopted and has a current municipal plan in effect. On August 26, 2024, Select Board members Sarah Perrin, Jeanne Jenkins, Ed Woods, Tom Haley and Jeanne Conner executed a “Resolution for VCDP Grant Application Authority”, and submitted it to the VCDP in connection with the Town’s planning grant for the Shires Housing Merger. The VCDP is a division within the DHCD, which in turn is a division of the Vermont Agency of Commerce and Community Development (the “ACCD”). The VCDP operates the Community Development Block Grant Program (“CDBG”) of the U.S. Department of Housing and Urban

ii. *Merrill Bent's Purported Representation Of The Town Violates Rule 1.7.*

Attorney Merrill Bent can also no longer advise the members of the Select Board for another reason. On January 13, 2025, in a secret executive session meeting held after the scheduling conference in this case, Merrill Bent imposed a gag order on the members of the Select Board, instructing them not say anything about the Town Plan. Right off the bat, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist.

Vermont Rules of Professional Conduct 1.7 states:

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) each affected client gives informed consent, confirmed in writing.

New York Rule of Professional Conduct Rule 1.7, which is more restrictive than the Vermont rule states:

CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if a reasonable lawyer would conclude that either:

- (1) the representation will involve the lawyer in representing differing interests; or

Development ("HUD"). VCDP provides CDBG grant funds to municipalities throughout Vermont for housing, economic development and other community development projects to benefit primarily low-to-moderate income persons.

(2) there is a significant risk that the lawyer's professional judgment on behalf of a client will be adversely affected by the lawyer's own financial, business, property or other personal interests.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

There are multiple reasons why Merrill Bent's purported representation of the Town would violate both Vermont and New York Rule 1.7. *First*, as stated above, Bent's advising all *individual* seven members of the Select Board what to do and what not to do, has created a conflict under Rule 1.7 that prevents her from representing the Board or any member absent informed written consent, which does not exist. *Second*, Bent's gag order plainly violates each Select Board member's First Amendment rights. This gag order followed on the heels of action targeted at two specific Select Board members—Clark and Adams. The majority of the Select Board's efforts to quash Select Board member Clark Adams's various Facebook posts (reflected in the minutes of January 2, 2025) are improper and patently unconstitutional. Government efforts to "dictat[e] the subjects about which persons may speak," *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 784-785, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978), or to suppress protected speech are "presumptively unconstitutional," *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 830, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995). And that is so regardless of whether the Government carries out the censorship itself or uses a third party "to accomplish what . . . is constitutionally forbidden." *Norwood v. Harrison*, 413 U. S. 455, 465, 93 S. Ct. 2804, 37 L. Ed. 2d 723 (1973).

Likewise, Merrill Bent issued a written opinion dated September 4, 2024, which targeted Select Board member Nancy White. Nancy White has constantly questioned the issue of the expiration of the Town Plan. Nancy White contacted the State of Vermont directly regarding a specific grant. Merrill Bent, presumably at the urging of the majority of the Select Board issued a

written opinion targeting White, stating that Nancy White’s “outreach [to the State] exceeded the authority of any single member of the Bennington Selectboard.” Bent’s opinion was a patently unconstitutional use of government funds to chill Nancy White’s First Amendment rights. Some would say that Nancy White had a *duty* to follow her conscience and check with the State on the issues which concerned her. Substantively, Nancy White clearly had a valid basis for that contact, and a valid basis to query whether “the proper federal and or state guidelines have not been followed.” Among other things, of course, without a valid Town Plan, applying for the grant was impermissible.

iii. Merrill Bent’s Purported Representation Of The Town Violates Rule 1.7 and Rule 3.7 Because Of The Violations Of The Open Meeting Law.

As discussed above, *either* Merrill Bent went rogue and just intervened in the case because of close personal relationships with opponents of the project, *or* the Open Meeting Law was violated. Either way Merrill Bent is a key witness, and would have conflicting representation interest, including concerns regarding herself becoming a defendant as well as a witness. Those direct conflicts prevent Merrill Bent from representing any party in this case.

B. The Filings Did Not Contain *Ad Hominem* Attacks.

Bent conflates *ad hominem* comments with observations of the credibility of certain individuals. Observations on an individual’s credibility that are based upon evidence are not *ad hominem* attacks, and that is the case here. *See, e.g., Hass & Gottlieb v. Sook Hi Lee*, 55 A.D.3d 433, 434, 866 N.Y.S.2d 72 (N.Y. App. Div. 2008) (the “remarks complained of were not *ad hominem* attacks, but observations of defendant’s credibility.”) And Bent opened the door by raising the issue of estoppel.

1. Observations on Maru and David Griffin’s credibility are based upon evidence and are not *ad hominem* attacks.

As shown in AHS filing dated January 12, 2025, the Griffins failed to disclose assets in the bankruptcy case. There were at least two properties in Florida, the sale documents for which were attached to the AHS filings conclusively establishing the Griffins concealment. Hiding assets can also extend the statute of limitations on debt collection.

In AHS's filing it states: "If Leon and Griffin had no problem with defrauding the federal government through the Bankruptcy Court or creditors, the filing false testimony with the Commission would seem like a walk in the park. And that false testimony served the purposes of the core opponents of the projects and was in large part used as the basis for the Commission to deny the CPG in docket 8454." That is not an *ad hominem* attack because it is based upon incontrovertible evidence—the sale documents that bear David Griffin's signature. AHS's "remarks complained of were not *ad hominem* attacks, but observations of [Griffins] credibility.")

And as AHS stated, the Commission denied the CPG in case 8454 based upon the claim repeated by the Griffins and their core group on the basis that purportedly "the whole facility would be prominently visible from the golf course." *Petition of Apple Hill Solar LLC, Order Adopting Proposal For Decision On Remand And Denying Petition*, Docket 8454 (May 7, 2020) at 37. And when the Griffins sought to repeat that made up claim in case 23-0249, the petitioner sought to depose the purported "owners" of the Mount Anthony Country Club—Maru Leon and David Griffin.

Then Leon and Griffin withdrew from case 23-0249 but only after filing a long-winded tirade reciting false reasons why they were withdrawing—those statements too are relevant to, and undercut, their credibility. Then in subsequent filings, both DPS and the Town regurgitated those false premises for why Leon and Griffin purportedly withdrew. And then likewise, the Commission backed the hearing officer's backing the home team by imposing stringent limitations on petitioner's rights to discovery and due process. Those discovery orders have been appealed to the Superior Court, and the Griffins conduct in both the Bankruptcy proceeding and the long-winded tirade are relevant to that appeal and will be an issue there as well. So too will the conduct of the Town discussed in AHS's prior filings and below.

But there's more to the Griffin credibility story. The discharge received in Case 13-10693 was only for David Griffin and Maru Leon in their individual capacities. But the petition shows that many of the debts listed were actually in the name of the corporation, Down to Earth Golf Course Development, Inc. ("DTE"), the business registrant for the Mount Anthony Country Club.

No discharge was issued to the corporation. No discharge was issued either to the Griffin Family Qualified Domestic Trust, which was a clear third-party beneficiary of many of the debts. Thus, those debts appear to still be valid, still accruing interest and not discharged.

2. The Town.

The AHS filings also reference conduct by various Town personnel related to the expiration of the Town Plan—a key factor in the prior AHS case. As noted in AHS’s filings and in the attached **Exhibit 1**, the Town is using Seinfeld’s George Costanza defense. *See, The Rise of the Costanza Defense*, New York Times (May 6, 2016),³ *i.e.*, “*It’s not a lie if one believes what one’s saying.*” As discussed in AHS’s filings and further below, there is plenty of evidence that whistleblowers have provided to AHS that supports the statements regarding Town personnel.

C. The Town’s Motion Is So Vague That It Must Be Summarily Denied.

Pursuant to Commission Rule 2.204(E)(1)(e), the Commission may strike from any filing any redundant, immaterial, impertinent, or scandalous matter. The Town does not indicate which statements in the Responses it feels are “redundant, immaterial, impertinent, or scandalous”. In fact, the Town does not even reference Rule 2.204(E)(1)(e) at all. For that reason alone, the Motion to Strike should be denied.

In typical postcard fashion, the Town’s Motion to Strike summarily requests that the entirety of the Responses be stricken. The Town refuses to allege with specificity which statements it takes issue with because the Town knows that the devil is in the details. If forced to actually do the work and adhere to the confines of Rule 2.204(E)(1)(e), the Town knows it will have no success with respect to a motion to strike as none of the facts contained in the Responses are “redundant, immaterial, impertinent, or scandalous.” So the Town does what it typically does, just phones it in and makes sweeping vague and ambiguous assertions and expects the other parties to do the work. The Town even concedes that some of Petitioner’s allegations are responsive but refuses to identify which ones those are.

³ <https://www.nytimes.com/2016/05/07/business/dealbook/the-rise-of-the-costanza-defense.html>.

Like all motions, a motion to strike must state with particularity the grounds for seeking the order. “[A] *sweeping, indiscriminate motion to strike, without any explanation as to how or why the targeted paragraphs are immaterial or redundant, does not contain the requisite particularity or otherwise clearly show that an order to strike is warranted.*” *Arias-Zeballos v. Tan*, 2006 U.S. Dist. LEXIS 78884, 2006 WL 3075528, slip op. at 10 (S.D.N.Y. 2006)(Emphasis added.) “A motion to strike must state with particularity the grounds therefor and set forth the nature of relief or type of order sought.” *Credit General Ins. Co. v. Midwest Indem. Corp.* 916 F. Supp. 766, 771 (N.D. Ill. 1996) (citing 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 1380 (2d ed. 1990)). Typically, unnecessary evidentiary details in a pleading will not be stricken. *Credit General*, 916 F. Supp. 771. In moving to strike matters as irrelevant, a movant must *clearly show that the matter is outside the issues in the case and is prejudicial.* *Id.* (Emphasis added.) *Cumis Ins. Soc’y Inc. v. Peters*, 983 F. Supp. 787, 798 (N.D. Ill. 1997); *Trust Mark Life Ins. Co. v. Univ. of Chicago Hosps.*, 1996 U.S. Dist. LEXIS 1614, No. 94 C 4692, 1996 WL 68009 at *1 (N.D. Ill. Feb. 14, 1996). The Town has not made any specific arguments as to why certain matters are “redundant, immaterial, impertinent, or scandalous”. They have not identified any paragraphs or pages that they take issue with. In fact, the Town’s assertions are so vague and ambiguous it is difficult for AHS to even respond to the Motion. Notwithstanding, AHS will assume that Bent is referring to matters relating to (i) the Town Plan expiration and the Town’s active conspiracy to cover up the expiration and (ii) the Griffins a/k/a Mount Anthony Country Club. The Griffins have been discussed above.

D. Bent’s Raising Estoppel Opened The Door To AHS’s Statements.

By raising the issue of estoppel Bent has introduced multiple issues on which the AHS’s filings regarding the Griffins and the Town Plan are directly relevant. See, Trepanier v. Getting Organized, 155 Vt. 259, 265-266 (1990). *For one*, the issue must be the same as the one raised in the later action, and, here, the expiration of the Town Plan and the Town’s actions related thereto means the issue *is different*. *Second*, there was not a full and fair opportunity to litigate the issue in the earlier action because, among other things, the PUC excluded relevant evidence, the PUC

decision was based upon evidence not in the record, and the conclusions regarding the Mount Anthony Country Club were not based upon credible evidence. *Third*, applying preclusion in the later action would not be fair. *Trepanier v. Getting Organized*, 155 Vt. 259, 265-266 (1990).

Regardless, even if Bent could meet the base requirements for preclusion (which she cannot), there are many exceptions to preclusion applicable here to which the AHS filings are directly relevant.

Exception 1. *Restatement (Second) of Judgments* §28(2)(b).⁴ Preclusion is not applicable if: the “issue is one of law and [] a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the law.” This exception applies here because, as argued above, the Town Plan has expired and to apply preclusion would surely be inequitable.

Exception 2. *Restatement (Second) of Judgments* §28(3). “A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts.” This exception applies here because, as argued above, the PUC excluded relevant evidence and based its decision on non-credible evidence and evidence not in the record.

Exception 3. *Restatement (Second) of Judgments* §28(5). “There is a clear and convincing need for a new determination of the issue.” This criterion is easily met for all the reasons set forth herein and in AHS’s other filings that Bent seeks to strike.

Exception 4. AHS is entitled to attack the earlier decision when and if other parties assert preclusion. *See, Restatement (Second) of Judgments*, §80 (“When a judgment is relied upon as the basis of a claim or defense in a subsequent action, relief from the judgment may be obtained.”)

The credibility of the Griffins and the Mount Anthony Country Club testimony, and the Town’s actions regarding the Town Plan are clearly relevant to the estoppel issue raised by Bent.

⁴ *See, Trepanier*, 155 Vt. at 265 for the Vermont Supreme Court’s endorsement of the *Restatement (Second) of Judgments* §28.

1. The Town Plan Expiration

The expiration of the Town Plan is relevant because both the Town and DPS raised the issue of estoppel. The project in Case 8454 was denied because it purportedly violated certain provisions of the Town Plan, specifically related to the Rural Conservation District. Now those provisions of the Town Plan no longer apply because there is no Town Plan as the Town Plan expired on October 6, 2023.

The Town bears the burden of establishing the elements of preclusion. *Greenberg v. Bd. of Governors of Fed. Reserve Sys.*, 968 F.2d 164, 170 (2d Cir. 1992).

Pursuant to 24 V.S.A. §4387, the 2015 Bennington Town Plan was set to expire on October 6, 2023. The town plan adoption process is laid out in 24 V.S.A. §4302, and §§4381-4387 and is formidable (due to an intervening change in the requirements of the statute) and will often take years to accomplish. Section 4387(b)(1)(A) mandates that the planning commission “engage in community outreach and involvement in updating the plan”. As the time to begin the process to head off an October 6, 2023, expiration date of the 2015 Town Plan was fast approaching, the Town was actively involved in litigation with Allco and affiliates over the proposed Chelsea Solar project and the AHS project.

Fearing that Allco would insert itself into the now more onerous planning process with respect to any newly proposed Town Plan, certain Select Board and Planning Commission members (together with the town manager and town planner) hatched a scheme to buy more time, hoping that Allco would have given up by the extended schedule.

The way in which the Town attempted to do that was to claim that the 2015 Town Plan had actually been *re-adopted* in 2018 when the Town passed the Energy Amendment, such that the Town Plan would not expire in 2023 but in 2026. The obvious issue with that scheme (besides getting caught) is that the town plan adoption process in 24 V.S.A. §4302, and §§4381-4387 cannot be circumvented and nothing that was required of the Town to *re-adopt* the Town Plan was actually accomplished in 2018.

Among other things, 24 V.S.A. §4387(a) requires that re-adoption take place in accordance with 24 V.S.A. §4385 which requires public notice and two hearings as a condition precedent to duly adopting a new town plan or re-adopting an old one. The Planning Commission never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Planning Commission never voted on a re-adoption of the Town Plan. The Select Board never issued a public notice concerning a public hearing on the re-adoption of the Town Plan. The Select Board never voted on a re-adoption of the Town Plan. And, of course, the requirement under §4387(b)(1)(A) that the planning commission “engage in community outreach and involvement in updating the plan” was never done because that is exactly what the players were seeking to avoid when they came up with the lie regarding the Town Plan. All that was ever done by the Town of Bennington on January 22, 2018, was pass an amendment to the Town Plan (i.e., the Energy Amendment), which was a process that was hijacked by the core opponents of the Chelsea and AHS projects.

Moreover, 24 V.S.A. §4387(b) requires the Planning Commission to take the following actions if it were adopting a Town Plan (none of which occurred):

- (A) consider the recommendations of the regional planning commission provided pursuant to subdivision 4350(c)(2) of this title;
- (B) engage in community outreach and involvement in updating the plan;
- (C) consider consistency with the goals established in section 4302 of this title;
- (D) address the required plan elements under section 4382 of this title;
- (E) evaluate the plan for internal consistency among plan elements, goals, objectives, and community standards;
- (F) address compatibility with the regional plan and the approved plans of adjoining municipalities; and
- (G) establish a program and schedule for implementing the plan.

No matter what the Energy Amendment might say, all that was accomplished by the Select Board was an adoption of the *Energy Amendment*.

And documentation provided by whistleblowers proves beyond a shadow of a doubt that the 2018 exercise of adopting the *Energy Amendment* was an *amendment only* and not a *readoption*.

Dated: January 29, 2025

Respectfully Submitted,

APPLE HILL SOLAR LLC

By: /s/ Thomas Melone

Thomas Melone

Apple Hill Solar LLC

157 Church Street, 19th Floor

New Haven, CT 06510

Thomas.Melone@AllcoUS.com

212-681-1120

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

EXHIBIT 1

----- Forwarded message -----

From: Stuart Hurd <shurd@benningtonvt.org>

Date: Tue, Oct 15, 2024 at 4:44 AM

Subject: RE: Town Website

To: Joey Kulkin <jkulkin71@gmail.com>, Ned <edwardnperkins@gmail.com>

We believe we have sufficient documentation and a legal opinion supporting our position. It's not a lie if one believes what one's saying. We're moving on. Enjoy the day.

Stuart A. Hurd

Town Manager

Town of Bennington

205 South Street

PO Box 469

shurd@benningtonvt.org

From: Joey Kulkin <jkulkin71@gmail.com>

Sent: Monday, October 14, 2024 7:02 PM

To: Stuart Hurd <shurd@benningtonvt.org>; Ned <edwardnperkins@gmail.com>

Subject: Re: Town Website

*** This email originated outside your organization. ***

Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Stu, you just lied to the public again about the town plan which expired on 10/6/23.

This time you said the town plan is valid in the eyes of the state.

Please produce communications from the state confirming what you just said. Because it's a lie.

We've got the documents.

You don't.

Thanks!

On Fri, Oct 11, 2024 at 3:22 PM Joey Kulkin <jkulkin71@gmail.com> wrote:

Hi, Stu, someone from your staff replaced the cover page on the state database in recent days but it's still based on a lie.

QUESTIONS:

- On what day did a member of your staff upload the ACCD database with this new cover page?
- Who uploaded it?
- Who authorized this person to make the change?

REQUEST:

EXHIBIT 2

From: "Krieger, Maxwell" <Maxwell.Krieger@vermont.gov>
Date: October 18, 2024 at 4:27:43 PM EDT
To: Ned Perkins <EdwardNPerkins@gmail.com>
Subject: RE: Freedom of Information Act - Public Records Request

Ned,

As a strict caveat, the Department, nor I can offer you legal advice or interpretation of statute. If you are seeking a legal opinion you will need to consult a private attorney.

The most relevant statute is Vermont Title 24, Chapter 117.

From the Department's perspective, the short answer to your question is no. The RPC can provide technical assistance through the municipal planning process, and the RPC must ultimately receive and review the plan for conformance with the requirements of the planning statute and regional planning goals, but the municipality itself must adopt the municipal plan.

Thank you,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>

Sent: Friday, October 18, 2024 4:17 PM

To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>

Subject: RE: Freedom of Information Act - Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Max,

One more question for you –

Do the statutes authorize a Regional Planning Commission to adopt a Municipal Town Plan on the Municipality's behalf?

Thanks for your help,

Ned

Ned Perkins
2229 South Stream Road
Bennington, VT 05201
802-442-9660 (h)
802-733-7149 (c)

From: Krieger, Maxwell [<mailto:Maxwell.Krieger@vermont.gov>]
Sent: Tuesday, October 15, 2024 9:16 AM
To: Ned Perkins
Subject: RE: Freedom of Information Act - Public Records Request

Mr. Perkins,

The Agency is not statutorily tasked with reviewing or approving the content of the plans and bylaws submitted to the database. The Agency is solely tasked with maintaining the database with the submissions from the municipalities and regional planning commissions. The Agency relies upon the submissions and representations of the municipalities and regional planning commissions with regard to evaluating the status of bylaws or plans.

If you have specific questions about the status of a municipal plan or bylaw, the municipality itself and/or the regional planning commission would be the best resources for more information.

Thank you,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>
Sent: Tuesday, October 15, 2024 9:10 AM
To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>
Subject: RE: Freedom of Information Act - Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good Morning Max,

Thank you for getting back to me. I have a quick follow-up question-

Does the Agency of Housing and Community Development formally review and/or approve submissions of Town Plans or Town Plan Amendments from individual towns to the agency?

If so, please supply copies of all documents regarding the review of the Town of Bennington's January 22, 2018 Amended Bennington Town Plan.

Thanks again,

Ned

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

From: Krieger, Maxwell [<mailto:Maxwell.Krieger@vermont.gov>]
Sent: Monday, October 14, 2024 10:51 AM
To: Ned Perkins
Subject: RE: Freedom of Information Act - Public Records Request

Mr. Perkins,

Attached, please find the documents submitted to the Department in 2018. At that time, the documents were sent directly via email to the DHCD Staff Person administering the database, who then uploaded them. The Commissioner did not receive the documents directly.

This concludes the Department's response,

-Max

Maxwell I. Krieger, Esq., General Counsel

Department of Housing and Community Development

Vermont Agency of Commerce and Community Development

1 National Life Dr., Deane C. Davis Bldg, 6th Floor

Montpelier, VT 05620

(802) 522-3132

Maxwell.krieger@vermont.gov

accd.vermont.gov

From: Ned Perkins <edwardnperkins@gmail.com>
Sent: Tuesday, October 8, 2024 5:12 PM
To: Krieger, Maxwell <Maxwell.Krieger@vermont.gov>
Subject: Freedom of Information Act - Public Records Request

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Hello Max,

Please supply a copy of the letter and all accompanying documents sent by the Town of Bennington to the Vermont Commissioner of Housing and Community Development conveying the January 22, 2018 Amended Bennington Town Plan, per VSA 4385 which states:

“Copies of newly adopted plans and amendments shall be provided to the regional planning commission and to the Commissioner of Housing and Community Development within 30 days after adoption.”

Thanks,

Ned Perkins

2229 South Stream Road

Bennington, VT 05201

802-442-9660 (h)

802-733-7149 (c)

Virus-free www.avg.com

EXHIBIT 3

RESOLUTION FOR VCDP GRANT APPLICATION AUTHORITY

Single Applicant

WHEREAS, the Town of Bennington (hereinafter "Applicant") is applying for a Grant under the Vermont Community Development Program VCDP planning grant (PG) for Shires Housing merger; and WHEREAS, it is necessary that an application be made and agreements be entered into with the State of Vermont.

Now, THEREFORE, BE IT RESOLVED as follows:

1. that Applicant possesses the legal authority as defined in the State Act [10 VSA §683(8)] to apply for the grant and to administer the program; and
2. that Applicant apply for a grant under the terms and conditions of said program and agree hereby to enter into Certifications and Assurances there of; and
3. the Applicant has a duly adopted and current Municipal Plan from October 6, 2015 (Date Adopted) and that the project is consistent with said plan; and
4. the Applicant has received documentation from the Regional Planning Commission that the project is consistent with the "Regional Plan; and
5. that Shannon Barsotti is hereby authorized to be Contact Person and as such to provide, on behalf of Applicant, all documents and information necessary for the completion of said application and to provide such coordination as may be necessary for said application; and
6. that (Name) Stuart Hurd Title Bennington Town Manager who is either the Chief Executive Officer (CEO), as defined by 10 VSA §683(8), or is the Town Manager, the City Manager, or the Town Administrator, is hereby designated to serve as the Municipal Authorizing Official (MAO) for the Grants Management On-line System, Intelligrants; and
7. that it is understood that, if the application is funded, the receipt of CDBG funds, as federal funds passed through the State of Vermont, may require that an audit of the Applicant be conducted under the provisions of the Single Audit Act, as amended, and that CDBG funds may be used to fund only a limited portion of the audit cost.

Passed this 26 day of August, 2024.

LEGISLATIVE BODY

Shannon Barsotti _____

Jane J... _____

Edward Wood _____

... _____

... _____

The above resolution is a true and correct copy of the resolution as adopted at a meeting of the Legislative Body held on the 26 day of August, 2024, and duly filed in my office.

IN WITNESS WHEREOF, I hereunto set my hand this 26 day of August, 2024

Cassandra Barbeau _____ Cassandra Barbeau _____

Clerk Signature

EXHIBIT 11

Standard Offer Testimony of Ed McNamara

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone

Sent: Monday, March 24, 2025 10:03 AM

To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L <lsibilia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us

Cc: McNamara, Ed <Ed.McNamara@vermont.gov>

Subject: Standard Offer Testimony of Ed McNamara

You don't often get email from thomas.melone@allcous.com. [Learn why this is important](#)

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

I respectfully request that I be given equal time to testify before you via zoom to address the testimony given by PUC Chair Ed McNamara to the House Committee on February 7, 2025. https://www.goldendomevt.com/VTHouseEnergyDigitalInfra_2025-02-07_11-13.html

Mr. McNamara singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. That part is true, but most of the litigation has been focused on the PUC's weaponization of the "single-plant" rule, a concocted PUC rule that has been used (and is still being used) by the PUC to crush non-utility solar projects.

I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at *7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

Allco's challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

But the "single-plant" rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed

to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter—a 2015 graduate of Middlebury College).

The PUC's new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP's nearest then existing three-phase line to the site of both projects. It was known because the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. ("Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. These would be shared with Apple Hill if constructed.") (Emphasis added.)

But the actual facts didn't matter. What appears to matter to the PUC is political connections. Thus, last year when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them using another contorted legal argument that the United States Supreme Court has described as "dangerous." The United States Supreme Court has explained that "the meaning of words in a statute cannot change with the statute's application. [] To hold otherwise 'would render every statute a chameleon,' [], and 'would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) "To give the same words a different meaning for each category would be to invent a statute rather than interpret one". *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

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EXHIBIT 12

Standard Offer Testimony of Ed McNamara

Tom Garden <tgarden@trilandpartners.com>
To: Thomas Melone <Thomas.Melone@allcous.com>

Mon, Mar 24, 2025 at 10:46 AM

Hi Tom...

Thank you for continuing this fight; your efforts benefit all of us.

If you get the opportunity, please make this Committee aware of the silent injustice perpetrated by GMP and the PUC. Both lobbied for the decimation of PURPA PPA's by stating the Standard Offer Program was VT's methodology for PURPA compliance. Now, by ending the Standard Offer Program, GMP gets to unilaterally decide which developer gets a 25-year bi-lateral PPA. To my knowledge, in recent years, that is a single developer, who also happens to be represented by the same law firm that is very connected to GMP.

And need I mention that when GMP was executing bi-lateral PPA's for its own 5MW projects they successfully argued to the PUC for inflated PPA rates, relative to the rates 2.2MW Standard Offer projects were contracting to receive. GMP has effectively lobbied in the past that smaller projects in the NM Program needed higher rates due to the lack of economies of scale. GMP conveniently neglected the reverse argument when it was lobbying the PUC for inflated PPA rates (relative to SO projects) for its own 5MW projects.

If the Standard Offer Program is not extended, should not the PUC be forced to reinstate PURPA long term PPAs at fixed rates?

Thanks again for all your efforts. Those efforts benefit us all.

Best...Tom

TRILAND PARTNERS LP
(m) 603.475.1765

[Quoted text hidden]

[Quoted text hidden]

--
You received this message because you are subscribed to the Google Groups "REV Standard Offer Working Group" group.
To unsubscribe from this group and stop receiving emails from it, send an email to rev-standard-offer-working-group+unsubscribe@revermont.org.
To view this discussion visit <https://groups.google.com/a/revermont.org/d/msgid/rev-standard-offer-working-group/e8367054-3656-992b-cba3-b9aabd0ba5c8%40allcous.com>.

EXHIBIT 13

From: [Thomas Melone](mailto:thomas.melone@allcous.com)
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibilia, L; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; [Chris Morrow](mailto:Chris.Morrow); msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed
Subject: Standard Offer Testimony of Ed McNamara
Date: Monday, March 24, 2025 10:05:23 AM

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EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Greetings Honorable Members of the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy,

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Respectfully,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
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[REDACTED]

[REDACTED]

[REDACTED]

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: [REDACTED]
Date: Monday, April 21, 2025 9:37:06 AM
Attachments: [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]
Date: Monday, March 24, 2025 5:14:51 PM
Attachments: [REDACTED]

[REDACTED]

[REDACTED]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibia, L <lsibia@leg.state.vt.us>; rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow <cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us; awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us; sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
Subject: Standard Offer Testimony of Ed McNamara

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Chief Executive Officer
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From: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]
Date: Tuesday, March 25, 2025 11:54:00 AM
Attachments: [REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Monday, March 24, 2025 5:15 PM
To: [REDACTED]
[REDACTED]
[REDACTED]
Subject: [REDACTED]

[REDACTED]

[REDACTED]

From: Thomas Melone <thomas.melone@gmail.com> **On Behalf Of** Thomas Melone
Sent: Monday, March 24, 2025 10:03 AM
To: kjames@leg.state.vt.us; scampbell@leg.state.vt.us; Sibia, L <lsibia@leg.state.vt.us>;
rbailey@leg.state.vt.us; chowland@leg.state.vt.us; bkleppner@leg.state.vt.us; Chris Morrow
<cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us;
awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us;
sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
Subject: Standard Offer Testimony of Ed McNamara

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From: [REDACTED]
Sent: Monday, April 14, 2025 2:06 PM
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Subject: [REDACTED]

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From: [REDACTED]
Sent: Monday, March 24, 2025 5:15 PM
To: [REDACTED]
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<cmorrow@leg.state.vt.us>; msouthworth@leg.state.vt.us; dtorre@leg.state.vt.us;
awatson@leg.state.vt.us; tkwilliams@leg.state.vt.us; rhardy@leg.state.vt.us;
sbongartz@leg.state.vt.us; sbeck@leg.state.vt.us
Cc: McNamara, Ed <Ed.McNamara@vermont.gov>
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Mr. McNamara singled me out (although not by name) as the single developer that has been the cause of almost all the litigation concerning the Standard Offer program. That part is true, but most of the litigation has been focused on the PUC's weaponization of the "single-plant" rule, a concocted PUC rule that has been used (and is still being used) by the PUC to crush non-utility solar projects.

I am (or more accurately my company—Allco) is the single developer that Mr. McNamara focused on in his testimony.

The Vermont Superior Court has referred to Allco as "climate warriors who would subject anything in their path to the broad sweep of their scythe, leaving the path open for all other solar developers." *Otter Creek Solar LLC v. Vermont Pub. Util. Comm'n*, docket 99-1-20-cncv (Vt. Super. November 16, 2021) at *7. Allco has a long list of *successful* litigation challenging unfair practices against small local solar projects, including in California, Connecticut, Massachusetts & Vermont.

Allco's challenges to the bad (and in my view unlawful) aspects of the Standard Offer are part of those.

But the "single-plant" rule is the worst violator of them all. In his testimony, Mr. McNamara provided context that has to date been missing. As he stated, it was around 2017 that the PUC and the Department of Public Service concluded that Standard Offer was no longer needed and that GMP (a utility owned by a natural gas company) should build all the solar projects needed to meet the RES. Shortly thereafter, the PUC weaponized and expanded the single-plant rule by denying the CPG for the very first project awarded a contract under the Standard Offer competitive solicitation rules, which is Chelsea Solar (named after my youngest daughter—a 2015 graduate of Middlebury College).

The PUC's new single-plant rule was applied *retroactively* to Chelsea and Apple Hill Solar (both Allco projects) based upon the demonstrably *false claim* that when the Chelsea Solar and Apple Hill Solar contracts were executed in 2013 & 2014 it was not known that both projects would require GMP to build a new line extension from GMP's nearest then existing three-phase line to the site of both projects. It was known because the 2013 Standard offer contract that was *approved by the PUC* specifically described the GMP interconnection plan that *clearly and unambiguously* stated that the "new Line" would be needed to interconnect both the Chelsea project and the Apple Hill project. ("Chelsea Solar would require significant reconductoring and addition of phases to the point of interconnection. These would be shared with Apple Hill if constructed.") (Emphasis added.)

But the actual facts didn't matter. What appears to matter to the PUC is political connections. Thus, last year when the "single-plant" rule became an obstacle for Global Foundries' solarization of its campus, the PUC ditched the rule for them using another contorted legal argument that the United States Supreme Court has described as "dangerous." The United States Supreme Court has explained that "the meaning of words in a statute

cannot change with the statute's application. [] To hold otherwise 'would render every statute a chameleon,' [], and 'would establish within our jurisprudence . . . the dangerous principle that judges can give the same statutory text different meanings in different cases.'" *United States v. Santos*, 553 U.S. 507, 522-523 (2008). 522-23 (internal citations omitted.) "To give the same words a different meaning for each category would be to invent a statute rather than interpret one". *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 709 (2014) citing *Clark* (internal quotations omitted). The PUC's dangerous interpretative approach undermines the rule of law, and *inter alia*, violates Allco's due process and equal protection rights, is a paradigm of arbitrariness, and is leading to even more litigation.

The PUC continues to up the ante in the weaponization of the single plant rule. And Allco will continue to respond with more litigation challenges to the PUC.

I look forward to the opportunity to answer questions and to provide a fulsome description of the litigation that has involved the Standard Offer program and that will continue.

Respectfully,

Thomas Melone
Chief Executive Officer
Allco Renewable Energy Limited
157 Church St., 19th Floor
New Haven, CT 06510
(212) 681-1120
(801) 858-8818 (fax)

This e-mail communication is confidential and is intended only for the individual(s) or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this e-mail in error by replying to the e-mail or by telephoning (212) 681-1120. Please then delete the e-mail and any copies of it. Thank you



From: [Redacted]
To: [Redacted]
Cc: [Redacted]
Subject: [Redacted]
Date: Monday, April 21, 2025 12:43:31 PM

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: [Redacted]

Sent: Monday, April 21, 2025 12:08:27 PM

To: [Redacted]

Cc: [Redacted]

Subject: [Redacted]

[Redacted]

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[Redacted]

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From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: [REDACTED]
Date: Monday, April 21, 2025 12:08:28 PM
Attachments: [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
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[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT 14

04/21/2025	Sent email notification regarding the issuance of 'Other attachment Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/21/2025	04/21/25 Other attachment Attorney Melone Ex-Parte Email Communication issued and entered
04/21/2025	Sent email notification regarding the issuance of 'Memorandum Requesting Comments Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/21/2025	04/21/25 Memorandum Requesting Comments Memorandum re: Request for Comments sent by Holly R. Anderson [Clerk of the Commission]
04/14/2025	Sent email notification regarding filing of 'Other document filed with the Commission Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/14/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/14/2025	04/14/25 Other document filed with the Commission Attachment A – Appellant's Motion for Stay or Extension of Time in VT Docket Nos. 24-AP-341 & 25-AP-004
04/14/2025	04/14/25 Response to Motion filed by Vermont Department of Public Service [P] in response to Other document filed with the Commission filed by []
04/14/2025	Sent email notification regarding the issuance of 'Order - Other Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/14/2025	04/14/25 Order - Other Order Quashing Subpoenas issued and

	entered
04/10/2025	Sent email notification regarding filing of 'Other document filed with the Commission Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/10/2025	Sent email notification regarding filing of 'Reply to Response Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/10/2025	04/10/25 Other document filed with the Commission ANR Reply to NSC Motion
04/10/2025	04/10/25 Reply to Response filed by Vermont Agency of Natural Resources [P]
04/08/2025	Sent email notification regarding filing of 'Motion - Change Schedule Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/08/2025	04/8/25 Motion - Change Schedule filed by Apple Hill Solar LLC [PET]
04/02/2025	Result for 04/4/25 Status Conference changed to Cancelled
04/02/2025	Sent email notification regarding the issuance of 'Other Clerk-issued document Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	04/2/25 Notice of Cancelled Status Conference, issued by Holly R. Anderson [Clerk of the Commission]
04/02/2025	Sent email notification regarding filing of 'Supplemental Prefiled Testimony Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	04/2/25 Supplemental Prefiled Testimony of Jim McClammer [WIT] filed on behalf of Apple Hill Solar LLC [PET]

04/02/2025	Sent email notification regarding filing of 'Exhibit Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	Sent email notification regarding filing of 'Supplemental Prefiled Testimony Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
04/02/2025	04/2/25 Exhibit AH-IJ-4 of Ian A. Jewkes [WIT] filed on behalf of Apple Hill Solar LLC [PET]
04/02/2025	04/2/25 Supplemental Prefiled Testimony of Ian A. Jewkes [WIT] filed on behalf of Apple Hill Solar LLC [PET]
03/27/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
03/27/2025	03/27/25 Response to Motion filed by Vermont Department of Public Service [P] in response to Motion - Other filed by Apple Hill Solar LLC [PET]
03/27/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
03/27/2025	03/27/25 Response to Motion filed by Vermont Agency of Natural Resources [P] in response to Motion - Other filed by Apple Hill Solar LLC [PET]
03/24/2025	Sent email notification regarding filing of 'Discovery question Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Alexander Wing[alexander.wing@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com], Willy Jane Patry[willyjane.patry@vermont.gov]
03/24/2025	03/24/25 Discovery Request PETITIONER'S NOTICE OF ISSUANCE OF SUBPOENAS filed by Apple Hill Solar LLC [PET]

EXHIBIT 15

04/21/2025	Sent email notification regarding the issuance of 'Other attachment Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
04/21/2025	04/21/25 Other attachment Attorney Melone Ex-Parte Email Communication issued and entered
04/21/2025	Sent email notification regarding the issuance of 'Memorandum Requesting Comments Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
04/21/2025	04/21/25 Memorandum Requesting Comments Memorandum re: Request for Comments sent by Holly R. Anderson [Clerk of the Commission]
04/08/2025	Sent email notification regarding filing of 'Response to Motion Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
04/08/2025	04/8/25 Response to Motion filed by Town of Bennington [P] in response to Motion - Reconsideration filed by Chelsea Solar LLC [PET]
03/27/2025	Sent email notification regarding filing of 'Discovery response Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
03/27/2025	03/27/25 Discovery response Town of Bennington's Supplemental Responses to Petitioner's Discovery filed by Town of Bennington [P]
03/25/2025	Sent email notification regarding filing of 'Motion - Reconsideration Document' to Michael Melone, Esq.[mjmelone@allcous.com], Thomas Melone, Esq.[thomas.melone@gmail.com], Secretary AAFM[agr.notice@vermont.gov], Donald J. Einhorn, Esq.[donald.einhorn@vermont.gov], Michael Swain[michael.swain@vermont.gov], Merrill E Bent[merrill@greenmtlaw.com]
03/25/2025	03/25/25 Motion - Reconsideration filed by Chelsea Solar LLC [PET]

EXHIBIT 16

From: Strauss, Andrew
Sent: Friday, April 25, 2025 3:39 PM
To: Alexander, Jon
Cc: Sickles, Brandy; Carolyn Anderson
Subject: RE: PRB Nos. 119-2025, 120-2025

OK, thanks, Jon.

Andrew R. Strauss, Esq.
Licensing Counsel
Office of Attorney Licensing
Costello Courthouse
32 Cherry Street, Suite 213
Burlington, VT 05401
Tel: (802) 951-0139

From: Alexander, Jon <Jon.Alexander@vtcourts.gov>
Sent: Friday, April 25, 2025 12:56 PM
To: Strauss, Andrew <Andrew.Strauss@vtcourts.gov>
Cc: Sickles, Brandy <Brandy.Sickles@vtcourts.gov>; Carolyn Anderson <canders12345@gmail.com>
Subject: RE: PRB Nos. 119-2025, 120-2025

Andy,

I have to decline these referrals on conflict grounds. The complainant, Merrill Bent, is chair of the JCB and I am now Special Counsel to the JCB reporting directly to her on my investigations and prosecutions.

I assume that Carolyn will arrange for conflict counsel to investigate these.

Thanks, Jon



Jon T. Alexander
Disciplinary Counsel, Professional Responsibility Program
Costello Courthouse, 32 Cherry Street, Suite 213
Burlington, VT 05401
(802) 859-3001 direct office line

From: Strauss, Andrew <Andrew.Strauss@vtcourts.gov>
Sent: Friday, April 25, 2025 12:47 PM
To: Alexander, Jon <Jon.Alexander@vtcourts.gov>
Cc: Sickles, Brandy <Brandy.Sickles@vtcourts.gov>
Subject: PRB Nos. 119-2025, 120-2025

Hello Jon,

I am referring these two complaints to you for investigation. The complainant is Attorney Merrill Bent and the respondents are Attorneys Michael Melone and Thomas Melone. Both respondent attorneys submitted written

responses to the complaint to me, which are on the server. I am referring these complaints to you for these reasons:

1. The complaint appears to make out a violation of Rule 4.2 by Thomas Melone, who knowingly sent emails directly to Attorney Bent's client. Attorney Melone claims he is not representing a client, but even so, I think Rule 4.2 would still apply. See <https://vtbarcounsel.wordpress.com/2022/09/29/aba-opinion-concludes-that-the-no-contact-rule-applies-to-self-represented-lawyers-should-vermont-amend-its-rule/>.
2. The complaint also appears to make out a violation of Rule 3.1, in that Attorney Bent is claiming that the Melones brought a frivolous lawsuit for the sole purpose of influencing a separate litigation.

Attorney Bent makes other claims of Rule violations, but I find the ones above are the most clear.

Andy

Andrew R. Strauss, Esq.
Licensing Counsel
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Costello Courthouse
32 Cherry Street, Suite 213
Burlington, VT 05401
Tel: (802) 951-0139