

BEDMINSTER TOWNSHIP

LAND USE BOARD

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IN THE MATTER OF:

CASE LUB# 12-015 (BOA)
KDC SOLAR SA55 LLC
Solar Project
Country Club Road
Block 71.02, Lot 1
Block 62, Lot 10
Block 69, Lot 4

TRANSCRIPT

OF

PROCEEDINGS

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Thursday, January 9, 2014
Bedminster, New Jersey
Commencing at 7:21 p.m.

BOARD MEMBERS PRESENT:

LANCE BOXER, Chairman
GEORGE RODELIUS
CAROL GUTTSCHALL
KENNETH OLSEN
LOUIS DiGIOVINE

ALSO PRESENT:

TRINA LINDSEY, Board Secretary
FRANK BANISCH, Board Planner
PAUL W. FERRIERO, Board Engineer

PRECISION REPORTING SERVICE

(908) 642-4299

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1 APPEARANCES:
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 3 VOGEL, CHAIT, COLLINS and SCHNEIDER, P.C.
 BY: THOMAS F. COLLINS, JR., ESQ.
 Attorneys for the Board
 4
 5 McCARTER & ENGLISH, LLP
 BY: GARY T. HALL, ESQ.
 Attorneys for the Applicant
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 8 MICHELE R. DONATO, ESQ.
 Attorneys for Objector Stop Somerset Hills
 Power Plant
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 10 RICHARD M. SASSO, ESQ.
 Attorneys for Objectors Steve and Sabina
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1 CHAIRMAN BOXER: Okay. So without any
 2 further ado, Mr. Hall, we're going to have you
 3 come back up, KDC Solar, which is Land Use Board
 4 12015. And I assume Mr. Kennedy is going to
 5 come back up with you.
 6 MR. COLLINS: Yes.
 7 MR. HALL: Yes. Good evening. Gary
 8 Hall from McCarter & English, KDC Solar. It's
 9 SA55 LLC actually.
 10 CHAIRMAN BOXER: Good evening,
 11 gentlemen. Thanks.
 12 MR. HALL: We're back. Mr. Kennedy
 13 was partly through his cross-examination.
 14 Now, Mr. Chairman, do you want to talk
 15 a few procedural things first about what's
 16 happened?
 17 CHAIRMAN BOXER: I think we can do it
 18 two ways. I know, Ms. Donato, you're not
 19 really-- it's nice to have you here. Good
 20 evening. And, Mr. Sasso, you too.
 21 MR. SASSO: Thank you.
 22 CHAIRMAN BOXER: I know that -- you're
 23 going to continue on, I assume, with Mr. Kennedy
 24 tonight?
 25 MS. DONATO: Yes, Mr. Boxer.

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1 CHAIRMAN BOXER: I also know that you
 2 sent a rather detailed letter to Mr. Hall. I
 3 think we can do it two ways. We can just allow
 4 you to start cross-examination, or continue the
 5 cross, and as you request or ask for information
 6 or documents, I guess we could hear Mr. Hall's
 7 objections if he has them and, if not, we can
 8 just continue on or we can deal with this
 9 directly. However you two think you would like
 10 to handle it.
 11 MS. DONATO: Well, Mr. Hall, I don't
 12 know how he feels, but I think it would be best
 13 if we could address these procedural issues.
 14 Because actually I think that the absence of
 15 this information -- and really the information
 16 that is needed for this applicant to establish
 17 its case and for the board to make a decision,
 18 really only prolongs the decision. We're
 19 looking at questions and then they're not
 20 answered and then, you know, more information
 21 needs to be submitted.
 22 And I just think it would behoove the
 23 process in its entirety if the information that
 24 is necessary to meet the standards of the
 25 ordinance and the criteria to obtain a "D"

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1 variance and site plan approval are before
 2 everyone and not coming in in a piecemeal
 3 manner.
 4 CHAIRMAN BOXER: All right. I'm fine
 5 with that.
 6 Mr. Hall, would you be okay with that?
 7 MR. HALL: Well, obviously, I
 8 disagree. That's a ridiculous statement. We've
 9 presented a ton of information. She's welcome,
 10 when her turn comes, to present witnesses to say
 11 what they think we should have done. But
 12 through questioning, her questioning -- for
 13 example, her letter -- all of a sudden shale
 14 bedrock in her letter is a fact. No, it's not.
 15 The only evidence in the record is Mr. Kennedy
 16 saying, no, it's not. There's no evidence on
 17 that. And Mr. Kennedy will testify that they
 18 went out and did more looking at this site that
 19 reconfirmed that conclusion.
 20 Also, frankly, you know, I got her
 21 letter 10 days ago, I think from tonight. I
 22 think it came at night, or six o'clock, which is
 23 a little late to be submitting more information
 24 anyway. But we did, for the record,
 25 Mr. Kennedy's firm submitted the additional--

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1 not additional, but the groundwater perc
 2 testing, whatever, that had been done that
 3 hadn't been filed. The work they had done
 4 previously, there was a report that came in, I
 5 think, on Monday. It's really part of the
 6 stormwater report. But when Mr. Kennedy
 7 testified, he said, yeah, we'd done some other
 8 work. And that request was to be provided. We
 9 provided that. We already had that. It's come
 10 in and Mr. Moschello will talk about that.
 11 Beyond that, the other thing, the
 12 wetlands letter of interpretation, that was
 13 issued on October 2nd. The town was copied on
 14 that. I think Mr. Ferriero was probably aware of
 15 that. I mean, we resubmitted a copy. I mean,
 16 it's in the record.
 17 Anything else, Mr. Kennedy can respond
 18 to questions and we can explain why either it
 19 was covered last time or, as we said last time,
 20 there'll be another witness that will address
 21 it. So I don't -- I'm prepared to move forward.
 22 She can question Mr. Kennedy, he can answer, and
 23 we can go from there.
 24 CHAIRMAN BOXER: All right. Ms.
 25 Donato, how do you feel about that?

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1 MS. DONATO: Mr. Boxer, there were a
 2 number of questions that were raised at the last
 3 meeting where Mr. Kennedy indicated that he
 4 could provide information, the specifications
 5 from the manufacturer.
 6 And this question of the new soil
 7 borings from July, those soil borings are solely
 8 limited to the stormwater basins and do not
 9 address the other areas of this site. And I
 10 didn't make up the idea of bedrock shale. I
 11 happened to read the report of Mr. Banisch --
 12 and I think there's some comments as well in the
 13 report of Mr. Ferriero -- regarding the
 14 existence of bedrock shale. This is a known
 15 factor. And you don't have fractured shale in
 16 the topsoil portion of the soil horizon if you
 17 don't have shale someplace.
 18 I mean, I think this-- but the problem
 19 that we have is that the soil borings that you
 20 have -- and Mr. Kennedy inherited a bad report
 21 and a bad set of data. That stormwater
 22 management report doesn't have any soil boring
 23 that shows the location of seasonal high water.
 24 This is a critical component of this
 25 entire project and any development that would

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1 take place on that project. And it's also not
 2 just related to stormwater, but it's related to
 3 the general ability to install over three
 4 thousand posts and all the conduit on this site.
 5 So the subject was really derived from
 6 your own professional's report. So let's not
 7 pretend that this doesn't exist. Mr. Kennedy
 8 did not know. The issue came about because the
 9 soil logs in the report, not the ones from July,
 10 but the soil logs in the report, refer to bucket
 11 refusal. How do you get bucket refusal? You
 12 either get it because you have a shallow depth
 13 to bedrock and they still don't know where the
 14 groundwater is and that, I think, is a really
 15 critical thing. We're asking questions and
 16 we're not getting answers.
 17 Well, if the applicant is going to
 18 provide that information later, then we're going
 19 to be back to square one all over again. It
 20 wastes your time; it wastes our time. All of
 21 these studies should be on the table. And I
 22 don't think we should be allowed to have soil
 23 logs that completely ignore the existence of
 24 groundwater. Nobody knows where it is. That's
 25 just one issue.

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1 The other issue has to do with how
 2 this conduit is being extended under the
 3 highway. There's any number of issues here that
 4 are leaving -- and really quite an unfair
 5 posture -- this board's ability to evaluate the
 6 application and our ability to question it.
 7 So if they answer the questions,
 8 whenever they answer the questions, if they
 9 answer the questions, then we're going to be
 10 back to square one cross-examining all of those
 11 studies and cross-examining all of the
 12 additional information. So it's going to
 13 prolong the process. And I think it's very
 14 unfortunate. I just think that it would be a
 15 great idea if they could say, okay, we're going
 16 to do X, Y and Z, we'll produce the information,
 17 and then we'll be able to continue with these
 18 hearings.
 19 I mean, I'm prepared to cross-examine
 20 Mr. Kennedy, but I just don't feel like having a
 21 lot of nonanswers. If he's not doing it, I'm
 22 willing to defer my testimony -- my questioning
 23 to someone else. But there's certain
 24 fundamental factors that need to come out in the
 25 engineer's basic civil engineering testimony

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1 that at this point in time we don't have answers
 2 with.
 3 And, you know, I really do sympathize
 4 with the Gladstone Engineering because they have
 5 to-- they were dealing with a partial set of
 6 information that derived from another engineer.
 7 And I think that we really-- it all needs to be
 8 looked at extremely carefully and somebody needs
 9 to do some testing to find out where the
 10 seasonal high water table is.
 11 CHAIRMAN BOXER: Thank you.
 12 MS. DONATO: And if that's going to
 13 happen, now's the time, Mr. Boxer.
 14 CHAIRMAN BOXER: No, I appreciate
 15 that.
 16 Mr. Collins and Mr. Ferriero, you
 17 know, to me, logically, as an engineer, I'm not
 18 sure that I have context on all of the
 19 implications of the reports that might be needed
 20 by either Mr. Sasso or Ms. Donato. I think it
 21 would be helpful for the professionals, maybe
 22 Mr. Banisch and Mr. Ferriero, to help us here
 23 because I actually agree with some of
 24 Ms. Donato's comments. I think that having the
 25 full scope and scape of reporting is going to be

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1 necessary. I just, frankly, don't have enough
 2 context to tell which ones are most important.
 3 And maybe the both of you can help us think it
 4 through this a little bit, how to proceed.
 5 MR. FERRIERO: It's hard for me to
 6 tell you which ones are more important than
 7 others. As an example, I'm looking at the soil
 8 logs from July and there are no indications of
 9 any seasonal groundwater.
 10 CHAIRMAN BOXER: All right.
 11 MR. FERRIERO: So how do you find
 12 groundwater elevations? You either find water
 13 in the hole or you find mottling in the soil
 14 which is an evidence of the seasonal high
 15 groundwater table. Looking at these documents,
 16 there's none indicated. I would suggest that
 17 since they show none, Mr. Kennedy can provide
 18 testimony. Was the soil-- was the soil log
 19 examined to find any evidence of groundwater?
 20 CHAIRMAN BOXER: Right.
 21 MR. FERRIERO: In these documents it
 22 says there were none. There were no
 23 observations of groundwater. And that tells me
 24 that in these soil logs, to the depths that they
 25 were constructed, they were excavated, there was

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1 no groundwater.
 2 CHAIRMAN BOXER: Yeah.
 3 Mr. Banisch, do you have any questions
 4 or comments given the fact that your report
 5 really talked about some of the shale
 6 implications?
 7 MR. BANISCH: Whenever my report is
 8 talking about, information that the master plan
 9 has reported, it's being reported from data
 10 sources that are more generalized than the
 11 site-specific information here. So I think we'd
 12 want to listen to what they found on site and
 13 rely on that.
 14 CHAIRMAN BOXER: Mr. Collins, do you
 15 have any thoughts?
 16 MR. COLLINS: I think that in a
 17 setting like this where the objector asked for
 18 information and the applicant objects,
 19 especially during the course of
 20 cross-examination, a better-- a best way to deal
 21 with it is to let cross-examination continue and
 22 for the board to use the information or lack of
 23 information to just assess the whole case. And,
 24 frankly, this case is going to take a while.
 25 CHAIRMAN BOXER: Right.

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1 MR. COLLINS: So we're in the early
 2 stage of the case. There's an objection to the
 3 request. There's a partial compliance with the
 4 request. And it's good to let cross continue to
 5 probe the meaningfulness of information or the
 6 lack of information.
 7 CHAIRMAN BOXER: Thank you.
 8 Ms. Donato, Mr. Sasso, if you have any
 9 comments, but maybe the way to approach this
 10 is -- because I agree in part. I actually agree
 11 with the logic you have. But it might be
 12 helpful, based on some of the comments we just
 13 heard, is for you to be very specific in your
 14 cross as you go through this with Mr. Kennedy.
 15 If there are -- if there is information that you
 16 require, please be very succinct and specific so
 17 that we can document it and understand it and
 18 try to understand the implication of your
 19 questions, the context of your questions.
 20 And if it's a little inefficient, I
 21 apologize in advance. I don't know how to solve
 22 this problem unless we get into the
 23 cross-examination to figure out how we can help
 24 you and Mr. Hall arbitrate this.
 25 MS. DONATO: Okay. I understand, Mr.

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1 Boxer.
 2 Mr. Sasso--
 3 CHAIRMAN BOXER: Mr. Sasso, do you
 4 have any comments?
 5 MR. SASSO: Thank you, Mr. Chairman.
 6 Yes.
 7 CHAIRMAN BOXER: Nice to have you
 8 here.
 9 MR. SASSO: I won't belabor the point.
 10 Obviously I agree with Ms. Donato. But I did
 11 ask for, and it was my understanding and
 12 Ms. Donato at the last hearing, that we were
 13 going to get the specs for the solar panels and
 14 the pipes that be being jammed into the ground.
 15 I didn't wait until a few days ago to
 16 send my letter. I sent it before the break on
 17 December 23rd, as Mr. Hall asked me to do. And,
 18 Mr. Chairman, you were present at that time.
 19 Since that time I haven't received
 20 anything. And the problem goes beyond, I think,
 21 a little bit what Ms. Donato was saying. I want
 22 to reemphasize the point that on behalf of the
 23 objector, it's impossible for me to evaluate the
 24 information after the applicant's engineer is
 25 done testifying. Now what do I do?

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1 You know, when you're applying not
 2 only for-- this isn't a bifurcated case. He
 3 wants final and preliminary site plan approval
 4 also. Well, if that's the case, then when they
 5 initially filed the application, when we kept
 6 saying that the application itself was deficient
 7 and didn't put the public-- and didn't give the
 8 public fair notice of what was being applied
 9 for, you know, we meant it.
 10 I don't know, you know, with these
 11 panels, and we touched on it already, the
 12 toxicity levels --
 13 MR. HALL: I object. I specifically
 14 said that's another witness. We had that
 15 conversation. I said the panels, we're bringing
 16 somebody in.
 17 MR. SASSO: That's not the point. The
 18 point it we were going to be provided with the
 19 information.
 20 MR. HALL: Not tonight. I didn't say
 21 when.
 22 MR. SASSO: Not when you happen to
 23 bring somebody some night and we're left here
 24 flying by the seats of our pants because you
 25 have, from a strategic standpoint, withheld

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1 additional information. Because that's the way
 2 this application has been going from the
 3 inception.
 4 MR. HALL: No.
 5 MR. SASSO: And, I'm sorry, but that's
 6 the case. You know, we have to wait and then do
 7 it on the fly while their witness is here and
 8 then I don't have a witness set up. I haven't
 9 explored with my scientific witnesses whether
 10 this particular model is toxic in 20 years.
 11 What am I supposed to say to my client?
 12 Mr. Forbes, I didn't do my job. That's what I'm
 13 going to have to tell him.
 14 Whatever they're -- whatever they're
 15 asking for, whatever the proposal is for this
 16 site, you, as a board, and everybody in the
 17 public has a right to know what it is. And with
 18 this type of application being so sensitive, I
 19 think it behooves the board to say to the
 20 applicant, you know, you don't have anything to
 21 hide. That's what you keep saying. Well, give
 22 it to them.
 23 CHAIRMAN BOXER: Thank you.
 24 Mr. Hall, on the-- I mean, we're going
 25 to continue with the cross of Mr. Kennedy. The

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1 specs for the solar panels and the posts that
 2 they will be sitting on, is it going to be
 3 difficult to find? Do you--
 4 MR. HALL: Well, here's the thing. My
 5 understanding-- and Mr. Kennedy can answer as
 6 well-- is that panels and posts, they're two
 7 separate things.
 8 CHAIRMAN BOXER: Right.
 9 MR. HALL: Specs. Basically what
 10 happens, as a business matter, if you get
 11 approval and you're going to move forward with
 12 the project, there are several different
 13 providers and you pick and choose at that time.
 14 The contents are similar, and we said we'd bring
 15 in a panel expert who can tell. I think the
 16 panels are all similar; it's what's in them.
 17 We'll have someone who can describe them. We
 18 can provide you that information ahead of time.
 19 CHAIRMAN BOXER: I understand that and
 20 that makes perfect sense. I think if you could
 21 provide even-- you know, I think take your best
 22 shot at what is available on the market today.
 23 Even though it may be what you don't choose, I
 24 think it would be a reasonable request of
 25 Mr. Sasso to just review it in advance. If you

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1 wouldn't mind, that would be great.
 2 The posts, I'm not really sure-- you
 3 know, it seems like it's pretty straightforward.
 4 So I don't think--
 5 MR. HALL: A post is a post as far as
 6 I know. If they think there will be an issue
 7 with that, they can present someone.
 8 It was my understanding that we agreed
 9 to do that, but not for tonight because we'll be
 10 lucky tonight if we get through Mr. Kennedy.
 11 CHAIRMAN BOXER: Right. I don't
 12 think -- again, I'm not sure if it needed to be
 13 tonight, but I think Mr. Sasso is giving-- he
 14 has a reasonable request. So if you wouldn't
 15 mind providing that to him as soon as you can,
 16 that would be great.
 17 MR. HALL: Okay.
 18 MR. SASSO: By way of proffer, it's my
 19 understanding from the research I've done so
 20 far, and I haven't hired an expert, is that
 21 Mr. Hall is absolutely wrong; that the panels
 22 are made of different substances. And the
 23 latest thing in our industry, quite frankly, is
 24 that some of the companies are making nontoxic
 25 panels. So that at the end of the 20 years,

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1 you're not left with a waste dump if KDC is no
 2 longer available.
 3 That's my proffer, Mr. Hall. So is
 4 your client going to be using one of these
 5 nontoxic panels or one of the original panels,
 6 that after 20 years has some of the worst
 7 pollutants around?
 8 CHAIRMAN BOXER: Well, I think
 9 certainly the board is going to be able to make
 10 declarations to the applicant if we find that
 11 our experts convince us that nontoxic panels, as
 12 an example, are the best course for our town.
 13 And we would probably apply that assuming the
 14 application would go forward.
 15 MR. HALL: We'll certainly look into
 16 that.
 17 CHAIRMAN BOXER: That would be great.
 18 MR. HALL: I mean, I'm not a panel
 19 expert.
 20 CHAIRMAN BOXER: I understand. So if
 21 it's possible, if you could provide Mr. Sasso
 22 with maybe a range of choices. I mean, if I
 23 were sitting in your shoes, I would think you'd
 24 want to find the most ecologically correct panel
 25 you could find and that's what I would be

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1 focusing on right now.
 2 Okay. So, Mr. Kennedy, are you
 3 prepared for your cross now? And Ms. Donato
 4 will come up and --
 5 THE WITNESS: Again, the only thing I
 6 can proffer in this discussion is I can just
 7 give an overview of those logs that were talked
 8 about here and maybe that would help.
 9 CHAIRMAN BOXER: Sure.
 10 THE WITNESS: There's certainly going
 11 to be cross.
 12 CHAIRMAN BOXER: Why don't we do that
 13 in your cross. How's that?
 14 THE WITNESS: That's fine.
 15 CHAIRMAN BOXER: Let Ms. Donato probe
 16 that at her pace. This way she can pick and
 17 choose the question rhythm that you have.
 18 MS. DONATO: And I also understood
 19 that those logs were going to be part of the
 20 stormwater testimony, which would have been
 21 presented by Mr. Moschello rather than
 22 Mr. Kennedy.
 23 CHAIRMAN BOXER: Yes.
 24 MS. DONATO: So I had agreed at the
 25 last meeting that if, as Mr. Kennedy indicated,

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1 since the stormwater was really in
 2 Mr. Moschello's hands, so I defer. So there is
 3 some cross-reference potentially from those
 4 logs, but for stormwater purposes, we'll put
 5 them off to Mr. Moschello.
 6 CHAIRMAN BOXER: That's fine. It's up
 7 to you. That's what I thought.
 8 MS. DONATO: Thank you very much.
 9 CHAIRMAN BOXER: Okay.
 10 MS. DONATO: So I should start?
 11 CHAIRMAN BOXER: Yes. We'll leave it
 12 up to you now.
 13 So for the people that have not been--
 14 how many of you were at the last hearing? Can I
 15 see a show of hands? How many haven't been to
 16 any hearings?
 17 Okay. So most of you now know what's
 18 going on. The process is going to be
 19 Mr. Kennedy, who is an expert on the civil side
 20 of engineering, is going to be cross-examined by
 21 Ms. Donato. This is probably the second round.
 22 We'll continue this until we're convinced that
 23 we have it covered. Mr. Sasso has the right and
 24 the objectors are going to have the right to
 25 cross-examine witnesses. So this process will

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1 accommodate all of the parties in this room and
 2 those that choose to attend at later dates.
 3 So, Ms. Donato, it's nice to have you
 4 here again. We'll let you start your
 5 cross-examination.
 6 MS. DONATO: Thank you, Mr. Boxer.
 7 it's my pleasure.
 8 CROSS-EXAMINATION
 9 BY MS. DONATO:
 10 Q. All right. And I know we went over
 11 procedural questions, Mr. Kennedy, but I just
 12 want to make certain that we can wrap up some of
 13 the issues that were referenced in the
 14 transcript of the last proceedings, so I'm going
 15 to ask you a series of questions.
 16 Now, I know that there were some soil
 17 logs that were performed in July of 2013. Those
 18 logs-- are those logs incorporated into the
 19 stormwater report that had previously been
 20 prepared by the Birdsall Group?
 21 A. **No, it was a stand-alone letter**
 22 **written December 20th of 2013.**
 23 Q. Okay. And were there any other soil
 24 tests performed on the site by your firm?
 25 A. **We performed those tests back in, I**

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1 **think it was June or July of 2013. The only**
 2 **other test is we did some soil logs yesterday,**
 3 **that we went out to the field, to answer the**
 4 **question that was brought up at the last meeting**
 5 **about the depth of, I'll call it bedrock, or**
 6 **what we encountered on the site. And we dug**
 7 **deeper logs out there, as we talked about at the**
 8 **last hearing and going deeper with the machine.**
 9 **I can talk about that if we want--**
 10 Q. All right. We'll get to that.
 11 A. **-- or we can do it later.**
 12 Q. Thank you.
 13 MS. DONATO: This is so awkward for
 14 Mr. Kennedy. He's going to have a stiff neck
 15 before the night's over. Maybe there's some way
 16 I could reorient this.
 17 CHAIRMAN BOXER: Sure.
 18 Q. Is that okay with you, Mr. Kennedy?
 19 A. **Yes. I'm sure I'm going to be up**
 20 **standing soon with the maps.**
 21 CHAIRMAN BOXER: If you want, maybe
 22 you can just turn around.
 23 MR. HALL: Do you want to sit over
 24 here? Would that help?
 25 CHAIRMAN BOXER: Maybe just sit over

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1 there. Is that okay? Whatever you guys want to
 2 do is fine.
 3 MS. DONATO: As long as he's
 4 comfortable. I'm perfectly -- having the podium
 5 is much better than standing with all of the
 6 papers like the last time. So it's a better
 7 forum, certainly.
 8 CHAIRMAN BOXER: Perfect. Thanks.
 9 BY MS. DONATO:
 10 Q. How many soil logs did you do
 11 yesterday, borings did you do yesterday?
 12 A. **I'll call them soil logs. They were**
 13 **with an excavator machine, and there were seven**
 14 **that were done.**
 15 Q. And can you tell me where on the site
 16 they were completed?
 17 A. **Yes. I'd just -- for reference,**
 18 **should I go-- I'm going to go to the exhibit. I**
 19 **just think it's easier --**
 20 Q. That would be easier certainly.
 21 A. **That way we can understand.**
 22 Q. Exactly.
 23 MR. COLLINS: I believe we're up to
 24 A-12.
 25 MR. HALL: I think this we had before.

1 MR. COLLINS: We had this before?
 2 Okay.
 3 THE WITNESS: This is not a new
 4 exhibit. I do not have a new exhibit for the
 5 logs. I'm going to point to Exhibit A-8.
 6 Q. A-8.
 7 A. **And I'm going to point to the area,**
 8 **the general area where those logs were taken.**
 9 **The area was around where a cut was being**
 10 **proposed in the natural grade.**
 11 Q. Can you just give me a directional for
 12 the record, please?
 13 A. **Certainly. It's in the -- I'll say in**
 14 **the front field, in the southern side of the**
 15 **property, near the intersection of Meadow and**
 16 **Country Club Road. That field of panels is**
 17 **where cut is being proposed, where we're**
 18 **generating cut to create a berm and the fill**
 19 **areas. There was a discussion last time that we**
 20 **have a cut.**
 21 **In addition to that, we have the**
 22 **panels, or the posts, going 6 to 8 feet in the**
 23 **ground. And there were shallow excavations that**
 24 **were done in the Birdsall report. That was the**
 25 **context of the discussion.**

1 Q. Exactly.
 2 A. **We went out there. And, again, the**
 3 **colors that are in this Exhibit A-8 represent**
 4 **different layers of excavation, depths of**
 5 **excavation. The color, it's an orange color**
 6 **that's in the center of that area on this map,**
 7 **is where the excavation is generally the**
 8 **deepest. It's in the 4- to 5-foot range of**
 9 **excavation.**
 10 **That's where we did soil logs in that**
 11 **area and also soil logs next to it, towards the**
 12 **intersection of Meadow Road and Country Club**
 13 **Road. There were six soil logs done in that**
 14 **area.**
 15 Q. So they would have been where the
 16 prior test pit 32 was that we debated?
 17 A. **We did one right there, right next to**
 18 **that pit.**
 19 Q. Okay.
 20 A. **We found it. It clearly showed a**
 21 **disturbance visually. We showed a disturbance**
 22 **in that meadow and we went right next to that**
 23 **and performed an excavation.**
 24 Q. Okay. And will you be submitting
 25 those logs to the board and the board's

1 professionals for their review?
 2 A. **Yes.**
 3 Q. And when will that take place?
 4 A. **Within the next week we can submit**
 5 **those.**
 6 Q. Okay. Did you do any logs where the
 7 conduit will extend under 287?
 8 A. **Along the routes, no. We just did it**
 9 **where the jack pit was being proposed. We did**
 10 **one log in that area.**
 11 Q. And you didn't do logs in any other
 12 location on the site?
 13 A. **We did not.**
 14 Q. Okay. And just so that-- I think I
 15 asked this, but I'm not positive. The logs from
 16 July 2013 that were just submitted this week,
 17 those logs are in the area of the basins alone
 18 and some of the -- I think some of the swales.
 19 Right?
 20 A. **Generally. They were done for the**
 21 **purpose of stormwater management so they would**
 22 **be in those basins. If there were errant one**
 23 **that was done outside of that it could be that**
 24 **we didn't design a basin in that area.**
 25 Q. Okay. And will you be preparing

1 another stormwater report or another report that
 2 will address these additional soil logs that
 3 you're performing now?
 4 A. **We'll submit the data. I don't know**
 5 **if we'll do-- it's not part of the stormwater**
 6 **report. The data that we did yesterday was to**
 7 **show the depth of excavation based on the**
 8 **comments in the last meeting's**
 9 **cross-examination.**
 10 Q. Okay. Now, at the last meeting there
 11 were a number of questions from me and from
 12 board members regarding-- and from the board
 13 professionals regarding your cut-and-fill
 14 testimony and the fact that you were, I guess,
 15 aiming to have a balanced site.
 16 Can you tell me whether or not-- you
 17 referred to a matrix that you could prepare that
 18 would help the engineer and the board to
 19 understand how you can conclude that there's a
 20 balance of the cut-and-fill. Will you be doing
 21 anything of that nature? Because you did state
 22 in the transcript that you could prepare a
 23 matrix.
 24 A. **Sure.**
 25 Q. I think that's the word you used.

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1 **A. I think it's two different things.**
 2 **One is the cut-and-fill analysis is on this**
 3 **Exhibit A-8. Okay? If the board and its**
 4 **professionals want to see that, I can provide**
 5 **the file. It isn't in any exhibit, but I can**
 6 **provide the file that shows the calculations of**
 7 **those cuts and fills.**
 8 **In addition and separately than that,**
 9 **we talked about topsoil, okay, and the balance**
 10 **of topsoil. Not the cuts and fills that are on**
 11 **the color of this map. And I said I'd provide a**
 12 **matrix for the topsoil to show that there was**
 13 **adequate topsoil to accomplish the objectives we**
 14 **spoke about at the last meeting.**
 15 Q. So what's below the topsoil?
 16 **A. A series of subsoils, whether it's**
 17 **weathered shale, decomposed shale, clay.**
 18 Q. So are you going to do a matrix that
 19 would justify your conclusion that this is a
 20 balanced-- were you saying it's a balanced site
 21 for topsoil only or for all soil that would be
 22 moved?
 23 **A. It's two different things. It's a**
 24 **balanced site for the cuts and fills of all the**
 25 **soil on the site.**

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1 Q. Okay. That's what I was asking.
 2 **A. So that was one. Separately -- and we**
 3 **had quite a bit of debate about the topsoil and**
 4 **the depth of topsoil that was observed and if**
 5 **there's enough to put back on the large cut**
 6 **areas. And then I talked about along the berms**
 7 **of putting enhanced or a more depth of topsoil**
 8 **for the agricultural purposes.**
 9 **And I think either Mr. Banisch or**
 10 **Mr. Ferriero, possibly both, raised the**
 11 **question: Is there enough to do that?**
 12 Q. Yes.
 13 **A. That's the analysis that I haven't**
 14 **finished. I will supply that and do that.**
 15 Q. Great.
 16 **A. But it's two separate things.**
 17 Q. I understand that. I wanted to make
 18 certain that I clarified that --
 19 **A. We'll get that.**
 20 Q. -- because it wasn't entirely --
 21 **A. And if the board wants this, I can**
 22 **show this balance of the cuts and fills and the**
 23 **hole site, the numbers I gave last time. If the**
 24 **board wants to see those calculations or -- it's**
 25 **a file. I can provide that file to**

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1 **Mr. Ferriero's office if the board chooses that**
 2 **it wants to see what that balance is.**
 3 MR. FERRIERO: I would like to see
 4 that, please.
 5 THE WITNESS: I can provide that.
 6 Q. Thank you.
 7 Okay. And that's for both the topsoil
 8 and for the total soil?
 9 **A. Correct.**
 10 Q. Thank you.
 11 **A. Both.**
 12 Q. Okay. Great.
 13 MR. HALL: Just procedurally, how
 14 would you like that handled? I know you like
 15 everything to go through Trina.
 16 CHAIRMAN BOXER: Definitely.
 17 MR. HALL: File with her and she'll
 18 get it to Mr. Ferriero?
 19 CHAIRMAN BOXER: I think that would be
 20 the best. This way we'll keep a record of it.
 21 MS. DONATO: Great.
 22 MR. FERRIERO: And just to be clear,
 23 there should be a file for Trina -- a copy for
 24 Trina and a copy for me.
 25 THE WITNESS: Okay.

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1 MS. DONATO: Thank you very much. And
 2 I would assume that that procedure is the same
 3 for all submissions because of the Open Public
 4 Records Act and the MLUL requirements. Thank
 5 you.
 6 BY MS. DONATO:
 7 Q. All right. Now, in reviewing the
 8 transcript as well, I saw the Chair questioning
 9 about the effects of the installation of the
 10 more than three thousand posts on subsurface
 11 drainage.
 12 Were you able to do any analysis or
 13 further study of that issue?
 14 **A. No, I have not. And if the board**
 15 **chooses or requests another expert to talk about**
 16 **that, as far as the materials of that, we're**
 17 **going to have to give them a witness to do that.**
 18 MS. DONATO: Mr. Boxer, would you like
 19 to resolve these preliminary questions of what
 20 needs to be supplied and what not on an
 21 item-by-item basis--
 22 CHAIRMAN BOXER: Probably.
 23 MS. DONATO: -- so we don't lose
 24 track?
 25 CHAIRMAN BOXER: I think that would

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1 help us. I think that would be helpful to the
 2 board.
 3 MS. DONATO: I think so too. So that
 4 question was actually something that you had
 5 raised, Mr. Boxer, at the last meeting.
 6 CHAIRMAN BOXER: Right. Mr. Kennedy,
 7 I do think it's going to be required.
 8 THE WITNESS: Okay.
 9 MR. FERRIERO: But let me try to
 10 understand the question because I don't know if
 11 I do.
 12 What is the impact that you're looking
 13 at? Are you looking at impact on groundwater
 14 flow--
 15 CHAIRMAN BOXER: Yes.
 16 MR. FERRIERO: -- ground elevations or
 17 groundwater quality?
 18 CHAIRMAN BOXER: All.
 19 MR. FERRIERO: Okay.
 20 CHAIRMAN BOXER: I think we need to
 21 understand. I mean, the basis of -- the basis
 22 of this testimony is that this site is going to
 23 be-- it will be a site that doesn't necessarily
 24 materially disturb soil, it doesn't disturb the
 25 site, it doesn't disturb drainage, even though

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1 we haven't really heard testimony even on
 2 stormwater drainage yet. So I think that as
 3 this proceeds, we have to get very comfortable
 4 that those statements can be supported.
 5 THE WITNESS: I understand that.
 6 We'll just have to find that witness to do that.
 7 CHAIRMAN BOXER: Okay.
 8 THE WITNESS: Again, on groundwater
 9 the tests that have been done, whether they're
 10 enough tests or not in the board member's or
 11 public's opinion, in the tests that we have done
 12 we have not encountered any seasonal high
 13 groundwater. We haven't encountered that with
 14 the tests that we saw from Birdsall, the nine
 15 tests that we originally did, and then the new
 16 tests we just finished.
 17 CHAIRMAN BOXER: I will actually, I
 18 think, defer to Mr. Ferriero and Mr. Banisch,
 19 particularly Mr. Ferriero, on whether or not the
 20 extent of the testing is adequate. I don't
 21 think we want to burden anybody with doing
 22 unnecessary testing. I think we just need to
 23 have enough testing so that we can correlate
 24 your statements with truth and fact.
 25 THE WITNESS: Okay.

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1 MR. HALL: Excuse me. While we're on
 2 that, just so I'm clear, because this, as we
 3 know, overlaps the stormwater work and that's
 4 actually why the soil logs were done except for
 5 in the one area, and Mr. Moschello will be the
 6 witness on that. And my sense is that we should
 7 wait until he testifies because that may
 8 identify some more issues. We do have --
 9 CHAIRMAN BOXER: I'm personally okay
 10 with that, but I want to make sure Ms. Donato
 11 will be of if she wants to see some of the
 12 information earlier.
 13 MS. DONATO: I think that stormwater--
 14 I mean, the status of the seasonal high water
 15 table is one of the most critical things that
 16 anybody ever does when they're developing a
 17 site. And I think that if I wait until the
 18 cross-examination and then Mr. Moschello goes
 19 and he then provides the information
 20 subsequently, I think we're going to be here for
 21 many years. And I just think it's-- because
 22 then I have to cross-examine on what he
 23 supplied. If that's the way the board wants to
 24 do it, that's fine.
 25 I think, the applicant's failure to

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1 have this information, which is the building
 2 block and the foundation for development, is
 3 only going to prolong the proceeding. So I
 4 just-- if the board is inclined to let
 5 Mr. Moschello testify and then produce the
 6 information, I'd ask you maybe perhaps hold on
 7 that question until we do some more
 8 cross-examination.
 9 CHAIRMAN BOXER: That's fine.
 10 Mr. Hall.
 11 MR. HALL: Yes, I mean, I was talking
 12 about groundwater flow and groundwater quality,
 13 which are environmental issues, not stormwater
 14 issues. Mr. Moschello is not going to testify
 15 about those. Maybe on a general level.
 16 CHAIRMAN BOXER: Right.
 17 MR. HALL: That's all I'm saying, when
 18 he testifies to stormwater, where there's
 19 infiltration, water quality issues. To the
 20 extent more specific, detailed questions come
 21 up, that will be passed onto the environmental
 22 expert. That's all I'm suggesting.
 23 CHAIRMAN BOXER: Are you okay with
 24 that, Ms. Donato?
 25 MS. DONATO: No.

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1 MR. FERRIERO: Let me just step in
 2 here and tell you what I'm going to be looking
 3 for when I see these soil logs. I obviously
 4 don't have any of the results from the soil logs
 5 that were done yesterday. I have the results of
 6 the original Birdsall work and I have the
 7 results of the work that was done in July of
 8 last year.

9 I am going to want to see the soil
 10 logs recorded with all of the information, any
 11 evidence of groundwater or mottling in those
 12 soil logs. That's going to tell me what the
 13 evidence is of seasonal high groundwater on the
 14 site. And that relates to stormwater, but it
 15 also relates to the overall development
 16 potential of the site.

17 CHAIRMAN BOXER: Mr. Ferriero, let me
 18 ask you, would you be inclined to want to
 19 expedite the delivery of that information or are
 20 you comfortable waiting until we have a
 21 stormwater review and possibly a secondary
 22 expert?

23 MR. FERRIERO: No, I think -- I think
 24 I need it. It bears directly on the stormwater
 25 analysis. There's some questions in the

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1 stormwater review about groundwater
 2 infiltration, that sort of thing.

3 CHAIRMAN BOXER: Right.

4 MR. FERRIERO: And so those are open
 5 questions in my report and we should have that
 6 sooner rather than later.

7 MR. HALL: I was talking about the
 8 impact of the posts.

9 MR. FERRIERO: If you're talking about
 10 the hydrogeologic effects of the posts on the
 11 groundwater, that is separate.

12 MR. HALL: Okay. That's all.

13 CHAIRMAN BOXER: I agree with that.

14 MR. HALL: Okay.

15 MS. DONATO: But the same information
 16 bears on different issues. I think that would
 17 be --

18 CHAIRMAN BOXER: Sure, it does. It
 19 does without a doubt.

20 MR. HALL: Okay. Fine.

21 MR. FERRIERO: Did we actually agree
 22 on something?

23 MS. DONATO: I'm not sure. We agreed
 24 that --

25 CHAIRMAN BOXER: Look, I know this

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1 is -- some of this is complex and there will be
 2 disagreements. And I think sequencing in some
 3 of this information -- look, it's going to be --
 4 we'll do the best we can to try and accommodate
 5 all the parties. I do think that sooner rather
 6 than later is better for this.

7 THE WITNESS: Just clarifying one
 8 element so we do get through some of these
 9 elements, the report that we submitted December
 10 20th shows the additional groundwater test or
 11 the soil testing that we did on the project.

12 CHAIRMAN BOXER: Right.

13 THE WITNESS: Okay. Consistent with
 14 what we believe were the State's stormwater
 15 standards. And the number of test locations,
 16 where they're to be done in the locations of
 17 various stormwater features. And that's been
 18 submitted. And whether that review may need to
 19 be done by Mr. Ferriero so that you can feel
 20 that it's complete or not complete on that issue
 21 when Mr. Moschello testifies on stormwater, that
 22 may help.

23 We think that we submitted the
 24 information that's consistent with your
 25 standards and the state's standards for soil

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1 testing for the stormwater. Everyone may
 2 disagree, but at least let's get to the point of
 3 what we disagree on on that issue. When you
 4 bring up the groundwater deeper, that's a
 5 different expert, hydrogeologist. That's
 6 different.

7 CHAIRMAN BOXER: I understand.

8 THE WITNESS: But for stormwater we
 9 believe we submitted what's required by your
 10 standards and the State's standards in that
 11 December 20th submission. If there's additional
 12 information needed, let's get that to you.

13 MR. FERRIERO: Just to make the record
 14 completely solid, I know the copy that I
 15 received, the logs were not signed and sealed.
 16 They should be signed and sealed.

17 THE WITNESS: All right. We will do
 18 that.

19 MS. DONATO: That's one less question.

20 CHAIRMAN BOXER: Thank you,
 21 Ms. Donato.

22 MS. DONATO: Okay. Shall I continue?

23 CHAIRMAN BOXER: Please do. Thank
 24 you.

25 BY MS. DONATO:

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1 Q. So, Mr. Kennedy, you then-- you're
2 basically stating that the soil logs for
3 purposes of stormwater management that were
4 incorporated into the report of Birdsall, the
5 report of May 31st, 2013, that those logs did
6 not comply with the stormwater management
7 regulations and the state regulations, Phase I
8 and II?

9 **A. Let me get that report just to make**
10 **sure. The report submitted May 31st, 2013, was**
11 **from Gladstone Design.**

12 Q. But you incorporated-- the only logs
13 in that were logs that were prepared by
14 Birdsall.

15 **A. Correct.**

16 Q. Okay.

17 **A. We supplemented that on December 20th**
18 **with soil logs, additional soil logs in**
19 **compliance --**

20 Q. I understand. That's not my question.

21 **A. Okay.**

22 Q. Let's try again. The soil logs that
23 are in this report that you have of May 31st,
24 2013, none of those logs were conducted by your
25 office. Is that correct?

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1 **A. That's correct. They were --**

2 Q. So they were all the logs of Birdsall?

3 **A. Yes.**

4 Q. What else in this report was actually
5 prepared by your office as opposed to Birdsall?

6 **A. Not much other information was used by**
7 **Birdsall. It was our new report that was**
8 **submitted to you -- or to the board.**

9 Q. But that report was submitted based
10 entirely on logs that were conducted by
11 Birdsall?

12 **A. That's correct.**

13 Q. Okay. Did those logs that were in
14 this stormwater management report comply with
15 the stormwater management regulations?

16 **A. Again, I can't answer that right now.**
17 **I would have to compare that. We supplemented**
18 **that on the December 20th report to show**
19 **compliance to those rules.**

20 Q. Okay. Now, when we last left, we had
21 a fairly lengthy debate about one of the test
22 pits, which was test pit 32, which I know you've
23 indicated that yesterday you--

24 **A. That was the one in the middle of the**
25 **field.**

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1 Q. Exactly. The southeast portion there.
2 You said you repeated those, you did some
3 additional studies.

4 And when I was requesting you about
5 bucket refusal, you said, and correct me if I'm
6 wrong, that the bucket refusal could have been,
7 in your opinion, because the equipment used was
8 not adequate to go beyond that depth.

9 Is that correct?

10 **A. That was one of the reasons.**

11 Q. Okay. Would you be surprised to know
12 that the equipment that was used to do the logs
13 that Birdsall did was the same exact equipment
14 that was out in the field yesterday?

15 **A. It could be. I wouldn't know. As I**
16 **said last time, I have no idea what equipment**
17 **was used in that initial test.**

18 Q. But you've used those logs in your
19 report, so didn't you want to know why there was
20 bucket refusal?

21 **A. No. I didn't go through that for the**
22 **report that I was doing, no.**

23 Q. Now, I know that you have not
24 submitted the manufacturer's information. You
25 had referred to a manufacturer called Schletter.

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1 Is that going to be submitted -- that's for the
2 posts themselves-- by you or by some other
3 expert? So I know what to do with the
4 questioning.

5 **A. Yeah, it's going to have to be by the**
6 **expert that we're going to have on the systems.**
7 **As I said at the last hearing, I was telling how**
8 **it all fit together on the site. When we start**
9 **getting into those systems, we're going to have**
10 **someone talk about that that's different from**
11 **me.**

12 Q. Okay. There was another open question
13 that I had asked about the length of the
14 trenches that would be dug in order to
15 accommodate the conduit on the site itself. Not
16 crossing the highway, but the site itself.

17 Have you had an opportunity to make
18 that calculation?

19 **A. No, and it's not a calculation that**
20 **I'm going to be able to do or other consultants**
21 **are going to be able to do until you actually go**
22 **to take the certain manufacturer and route the**
23 **specific electrical diagrams to figure out how**
24 **to get the power to the inverters and the**
25 **inverters back to the transformers and the**

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1 transformers to the switchgear.
2 So there's a lot of variables
3 associated with that electrically. This is what
4 I'm being told on this thing. And I can't say
5 it's a hundred feet, a thousand feet or ten
6 thousand feet of conduits that will be run, but
7 there's conduits, as I described last time,
8 conduits from these connection boxes back to the
9 inverters to the transformers and then from the
10 transformers to the switchgear. We know that.
11 How many there are, that won't be done until a
12 detailed electrical design is actually
13 completed.
14 Q. There were a number of questions, not
15 only from me but from board members, regarding
16 the extent of site disturbance.
17 Doesn't the extent of the trenching
18 affect the extent of site disturbance?
19 A. No different than electricity or
20 electrical trenching that is done on a
21 commercial building or a residential structure
22 that you're doing. I don't show the electric
23 lines going or the trenching going from the
24 utility pole into the building on a site plan I
25 would submit to this board for approval.

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1 Q. But this is a site plan in the
2 agricultural preservation zone of the township.
3 You kind of --
4 A. But, again, on the golf course, let's
5 say, I have irrigation systems that have
6 electrical trenches that are right next to it
7 over five hundred, six hundred acres of land.
8 That's the similar type of thing. I didn't show
9 an electrical layout for every one of those
10 conduits and pipes for the site plan approval in
11 the R-10 zone for the irrigation system.
12 Q. Was that a permitted use?
13 A. No.
14 Q. So you went in for a use variance and
15 you're comparing what you did for a use variance
16 for a golf course to what you're going to do for
17 a use variance for a solar facility?
18 A. In my view it's not about use. It's
19 about the fact that you're using -- at one of
20 the courses was a nonpermitted use that we went
21 and put a lot of lines, electric lines, in the
22 ground. And I didn't show in the site plan
23 approval process every trench for every line of
24 electricity on the site plan. That's typically
25 what we wouldn't do for a site plan approval.

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1 Q. Okay. We're here for this case,
2 Mr. Kennedy, are we not?
3 A. Yes.
4 Q. We're not here for a golf course, are
5 we?
6 A. No.
7 Q. We're not here for a bank in any
8 commercial zone, are we?
9 A. No.
10 Q. And we're not here for a use, a
11 permanent use, as those facilities would be, are
12 we?
13 A. No.
14 Q. So this is a temporary use. Have you
15 read the report of Amy Green or the
16 environmental impact statement that she
17 submitted?
18 A. I did.
19 Q. So you know that the solar panels have
20 a life. They have a certain production life.
21 Right?
22 A. That's correct.
23 Q. And then what happens after that?
24 A. Well, again, without referencing her
25 report, the panels are either taken away and

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1 replaced with new panels or it's decommissioned.
2 Q. Okay. And if the site was ever to be
3 restored to agricultural use, wouldn't the
4 extent of disturbance be something that is of
5 importance because this is a temporary -- by
6 your application's own admission, this is a
7 temporary use?
8 A. It would have to be-- well, yeah, if
9 the conduits are in the ground, they would have
10 to be removed out of the ground.
11 Q. So the extent of site disturbance --
12 given the fact that this is a temporary use, are
13 you saying that this board shouldn't consider
14 the extent of site disturbance?
15 A. No, not at all. I mean, we show all
16 these areas on-- well, this is the wrong exhibit
17 for it, but we show all these areas of
18 disturbance and I laid out the physical areas
19 that construction would take place. I forget
20 the acreages that we have in there, but I laid
21 out the areas that would occur that are the
22 physical disturbances of the land within the
23 project area. The conduits we're talking about
24 would be in that physical area of those
25 disturbances.

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1 Q. Okay. Well, I'm going to return to
 2 that issue a little later. Okay. But I want to
 3 just continue with the items that were addressed
 4 at the December meeting and some of the
 5 additional information requested either by me or
 6 by the board or its professionals. There was a
 7 question as to how you might better be able to
 8 depict the visual impacts.

9 Have you submitted or did any study as
 10 to how you might be able to do that?

11 **A. The only thing that we talked about**
 12 **that we still suggest to do is do an inspection**
 13 **on the site. And in doing that, create some**
 14 **mock-ups or some visual elements that would be**
 15 **there either of panels or of, I'll say, top of**
 16 **berms and some elements that we would come up**
 17 **with a plan that the board and the public can go**
 18 **out and physically look at elevations; look at**
 19 **where elements, critical elements, of the site**
 20 **plan are being proposed and you could get visual**
 21 **observation from different locations.**

22 **We think that's an effective tool to**
 23 **get to a lot of the questions that we're trying**
 24 **to demonstrate in a two-dimensional plan, that**
 25 **we physically go out and look at those.**

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1 Q. Okay. Now, I'm going to now switch
 2 gears and go back to where I left off the last
 3 time. Okay?

4 So with the panels that you show on
 5 your plans -- and you can just use the exhibit
 6 that you have up there right now, which is what?
 7 Is that A-8, Mr. Kennedy?

8 **A. I'll just get the other exhibit.**
 9 **Would this be the--**

10 Q. Perfect. A-6?

11 **A. A-6.**

12 Q. Okay. Now, referring to Exhibit A-6,
 13 let's start with the eastern portion, the entire
 14 eastern portion from the wetlands that are in
 15 the middle of the site. Okay?

16 **A. If I can point to it in A-6, in the**
 17 **center portion of the exhibit?**

18 Q. In the center portion of the exhibit.
 19 They're southeast to northeast, I guess. Right?

20 **A. Northeast.**

21 Q. To southeast. Right?

22 **A. Southeast.**

23 Q. Okay. So with that set of panels, are
 24 there any soils under that area of panels that
 25 are not either prime farmland or farmland of

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1 statewide significance?

2 **A. I think I testified last time they all**
 3 **are in the nonregulated areas. When I say the**
 4 **regulated areas, the wetlands, floodplains,**
 5 **those areas. So this whole field and this whole**
 6 **field has either of those two categories.**

7 Q. Great.

8 **A. I believe I started to testify to that**
 9 **last time.**

10 Q. You did. It wasn't quite complete. I
 11 wanted to be sure we had it clear. Thank you
 12 very much. I appreciate that.

13 Now, I want to go to seasonal high
 14 water. We talked about that initially this
 15 evening.

16 Why is it necessary when you're
 17 designing a site to know what the seasonal high
 18 water is?

19 **A. It's one of the design parameters that**
 20 **we use in stormwater design.**

21 Q. Is it only for stormwater design?

22 **A. I'm sure there's many relevant**
 23 **portions that everyone would take from an**
 24 **environmental standpoint to cuts-and-fills**
 25 **standpoints to design any site.**

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1 Q. So you would use the same soil logs
 2 that you used for stormwater management to
 3 determine where the seasonal high water is?

4 **A. Again, it depends on the context of**
 5 **the application and the depth of excavations**
 6 **that you would be working. It really is so**
 7 **site-- it becomes specific to what the**
 8 **improvement is on the property that you're**
 9 **talking to.**

10 Q. All right. So in this particular
 11 instance, you have 3,391 posts that are going to
 12 be driven 6 to 8 feet below the surface of the
 13 land. Right?

14 **A. That's correct.**

15 Q. In order to hold the panels. Am I
 16 correct?

17 **A. Correct.**

18 Q. So would you want to know whether or
 19 not those posts are going to be sitting in
 20 groundwater or not?

21 **A. That specific question, I'm not sure**
 22 **on that. I don't know. I haven't thought**
 23 **through if it would be a problem if a post sat**
 24 **through groundwater. And I'm going to say I**
 25 **haven't looked at it on this site. I haven't**

1 done an analysis of that. I mean, from an
2 environmental standpoint, that's something our
3 environmental consultant Amy Green can talk
4 about. I don't want to say that would be a
5 problem.

6 We put posts like this all the time
7 through areas that have seasonal high water
8 table that the post goes through, a fence post.
9 That would be all through the perimeter of this
10 property, along 287, goes right through the
11 middle of wetlands. And every one of those
12 post, the post is 3 or 4 foot. It's not 6 or 8
13 foot, but 3 or 4 foot into the ground. That
14 post is driven into seasonal high water
15 groundwater.

16 So I don't want to give a blanket
17 statement that I would never put a post into
18 seasonal high groundwater. I haven't said that.

19 Q. All right. Well, let's make this
20 easy. When I ask you about a post, I'm asking
21 you about a post that's going to hold a whole
22 array of panels.

23 A. It doesn't matter what it holds in my
24 mind.

25 Q. Well, isn't there a real question of

1 A. But that's not seasonal high water
2 groundwater. That's why you brought up this in
3 the first place.

4 Q. No. The question that I had for you
5 was, if you're putting the post into seasonal--
6 let's just take a metal post that has to have
7 structural strength and you're putting it into
8 groundwater. Are you not concerned about
9 corrosion?

10 A. Well, I'm going to defer that to an
11 environmental person.

12 Q. Well, the corrosion -- if the post
13 were to corrode, then the post might not be
14 structurally sound to hold panels. Isn't that
15 correct?

16 A. I'm going to defer that to an
17 environmental consultant.

18 Q. An environmental consultant is going
19 to talk about structural stability?

20 A. You're asking about corrosion. I'm
21 not going to talk about corrosion.

22 Q. If the pipes corrode, then they
23 don't-- if the posts corrode, then they don't
24 provide the structural support for the panels.
25 Isn't that correct?

1 the structural stability?

2 A. No.

3 Q. You're not concerned about uplift?

4 A. Yes, but it's no different than any
5 type of structure. You'd have to analyze that
6 for what's going to be held up with it.

7 Q. All right. Let's not talk be about
8 fences right now. A fence is one thing; solar
9 panels are another.

10 A. I can't say that. Not in the context
11 that you're trying to want me to say something.
12 No. It's--

13 Q. I don't want you to say anything. I
14 just-- do you recognize -- or is there someone
15 else who will testify as to the necessity to
16 have a solid structural support for the solar
17 panels? If there's somebody else, if you have a
18 geotech expert or something, that's fine. I'll
19 just defer this line of questioning.

20 A. No, I mean, I can say this, that it
21 has to be-- the posts have to be deep enough to
22 structurally take what is being put on. And in
23 this case it's not only a dead load, but it's
24 also an uplift load.

25 Q. Exactly. So that's why --

1 A. And I think that's why the posts are
2 galvanized coated to be put into the ground that
3 may or may not have groundwater.

4 Q. Do you know that galvanization and
5 galvanized pipes should not be placed in
6 groundwater?

7 MR. HALL: I object.

8 Q. Have you read anything of that nature?

9 MR. HALL: That's a statement of fact.
10 Assertion of fact.

11 A. Now you're getting into the
12 environmental.

13 MR. COLLINS: That is a --

14 A. You asked about structural and now
15 you're talking about environmental.

16 MS. DONATO: I think Mr. Collins was
17 going to weigh in it on it.

18 MR. COLLINS: Yes. The objection
19 should be sustained unless there's some--

20 MS. DONATO: I'll rephrase. I'll
21 rephrase the question.

22 Q. Are you aware of whether the
23 manufacturer or any of the manufacturers of
24 these galvanized posts would allow them to be
25 installed in groundwater?

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1 **A. I don't know.**
 2 Q. Okay. When we say something is
 3 seasonal high, what's the season? For
 4 groundwater, seasonal high water tables.
 5 **A. The relevance to that is there's**
 6 **limits within when you test for seasonal high**
 7 **water groundwater.**
 8 Q. I didn't ask you that. Let's try to
 9 get-- if you answer my questions, I think it
 10 will make our lives easier.
 11 **A. Okay.**
 12 Q. I just want to know, generically
 13 speaking, you have -- it's a term, "seasonal
 14 high water table," right, or "seasonal high
 15 water level." What is the season?
 16 **A. I tried to answer that and you**
 17 **wouldn't let me answer that.**
 18 Q. What is the high--
 19 **A. The regulations that we used say the**
 20 **seasonal high water is between January to -- I**
 21 **believe it's the end of April or the end of May.**
 22 Q. Okay.
 23 **A. That's when-- that's when they define**
 24 **the seasonal high water.**
 25 Q. And what's the time of year when the

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1 water table is the lowest?
 2 **A. Again, by my own reference I'm going**
 3 **to say September/October.**
 4 Q. Are you aware of the fact that every
 5 soil log in this report was conducted in
 6 October?
 7 **A. I don't know that.**
 8 Q. So the soil logs that are in the
 9 report that you submitted in May, all of those
 10 logs that don't identify groundwater, were
 11 conducted during the astronomical low, were they
 12 not? The seasonal high water--
 13 MR. HALL: He testified he didn't know
 14 when they were conducted so I object to that.
 15 MS. DONATO: Well, now that he knows
 16 that they're conducted-- why don't we look at
 17 them.
 18 Q. Why don't we look at the logs, Mr.
 19 Kennedy.
 20 **A. Sure. Astronomical low? Was it**
 21 **astronomically low?**
 22 Q. Isn't the astronomical low of seasonal
 23 high water in October?
 24 **A. No. There's a low season, but it's**
 25 **not astronomically low.**

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1 Q. Okay. Well, let's just say it's the
 2 low season. You've acknowledged that October is
 3 the lowest season.
 4 Directing your attention to the soil
 5 logs that are in Appendix G of this report, can
 6 you identify one log that was conducted that
 7 wasn't in October? Would you admit it is the
 8 lowest groundwater time?
 9 **A. Let me look.**
 10 Q. I appreciate that.
 11 **A. There's about 20 of them, if I'm not**
 12 **mistaken.**
 13 CHAIRMAN BOXER: Mr. Hall, while
 14 Mr. Kennedy is looking for this, one of the
 15 questions that is starting to percolate in my
 16 mind is the material effect of corrosion. I
 17 don't have context yet, but at some point in
 18 this hearing we're going to need to understand
 19 any spill-off effects of not just corrosion of
 20 the posts if, in fact, galvanized posting -- if
 21 galvanized posts have any form of, you know,
 22 corrosion materially, but also the panels
 23 themselves.
 24 You know, as I -- as I think about
 25 Ms. Donato's line of questioning, one of my

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1 great fears has always been that it's not just
 2 disturbance; it's the implications beyond
 3 disturbance. So we're going to need to really
 4 understand this whole issue of corrosion and
 5 whether it has downstream effects not just on
 6 soil, but on the aquifers and on the stormwater.
 7 MR. HALL: Understood. We'll look
 8 into that.
 9 MS. DONATO: Mr. Boxer, I would really
 10 urge the board to consider getting a
 11 metallurgist to analyze the entire question
 12 because of the nature of what galvanization is
 13 and the fact that the zinc coating on the steel
 14 is a sacrificial coating that when it corrodes
 15 into the ground, then the zinc is then released
 16 into the ground.
 17 And I think it would be very helpful
 18 if the board could get its own independent
 19 evaluation of that issue. It's not something
 20 that I think-- I know you have very competent
 21 professionals here, but it's a rather specific
 22 issue that I think should not be left
 23 unresolved.
 24 CHAIRMAN BOXER: I understand. I
 25 suspect that through this hearing process, we're

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1 going to need to bring in very specific experts
 2 to help us understand some of these reports and
 3 also some of the testimony that's been made.
 4 MS. DONATO: I appreciate that. Thank
 5 you, Mr. Boxer.
 6 **A. I looked at those and they were all**
 7 **done in August.**
 8 Q. In--
 9 **A. I mean, I'm sorry.**
 10 Q. -- August?
 11 **A. I'm sorry.**
 12 Q. They were all done in?
 13 **A. October.**
 14 Q. Okay. Now, I'd like to direct your
 15 attention to the northeast portion of the site
 16 where you're adjacent to Somerset and Preston
 17 Terrace.
 18 **A. Can I point to this exhibit?**
 19 Q. Yes, please.
 20 **A. This area here you're talking about?**
 21 Q. On the other side. Yeah, on the
 22 residential properties that are --
 23 **A. The neighborhood itself?**
 24 Q. Yes.
 25 **A. Okay.**

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1 Q. Now, have you-- do you have your
 2 grading plan or do you want me to pull mine out?
 3 **A. There's proposed grades on this plan,**
 4 **not existing grades.**
 5 Q. I want to know the grades on the
 6 adjacent properties. I can get the sheet for
 7 you if you'd like. Do you think you have it?
 8 **A. I do.**
 9 Q. All right.
 10 **A. I think we're going to have a really**
 11 **hard time reading numbers.**
 12 Q. Well, the light is...
 13 **A. And they're not to scale. I may have**
 14 **to open a bigger sheet. If you point to an**
 15 **area, I'll open a bigger sheet.**
 16 Q. All right. Because I need to get back
 17 to the mic.
 18 MS. DONATO: Am I right?
 19 CHAIRMAN BOXER: Yes.
 20 MR. HALL: And, Mr. Kennedy, tell us
 21 the exhibit number.
 22 THE WITNESS: Sure. A-9.
 23 CHAIRMAN BOXER: Ms. Donato, these
 24 come off. They're wireless. So if you need to
 25 move around, just pull them off.

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1 MS. DONATO: Oh, all the modern
 2 conveniences. Thank you.
 3 Q. Okay. Now, looking at this exhibit
 4 that you have up as A-9, I'd like to direct your
 5 attention to, first, the block 65, lot 3, this
 6 area of all these little elevation lines.
 7 Correct?
 8 **A. Correct.**
 9 Q. What does that mean?
 10 **A. Well, I know, because I know the**
 11 **neighborhood, they're the septic systems that**
 12 **have been installed, I'll say, relatively**
 13 **recently. Mounded septic systems that have been**
 14 **installed.**
 15 Q. They're mounded septic systems. So
 16 there's one on block 65, lot 3. Right? And
 17 then there's also one on block 67, lot 3?
 18 **A. This is 65, lot 5.**
 19 Q. That's a 5?
 20 **A. Yeah.**
 21 Q. Boy.
 22 **A. And block 67, lot 3.**
 23 Q. Okay.
 24 **A. Block 67, lot 4.**
 25 Q. Okay.

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1 **A. I don't see more.**
 2 Q. Okay. So these three lots, they have
 3 mounded septic. Right?
 4 **A. Correct.**
 5 Q. Why would they have mounded septic?
 6 **A. Poor permeability in the soil.**
 7 Q. Is that the only reason?
 8 **A. It could be because of groundwater,**
 9 **but I know from -- I've done a couple of septic**
 10 **systems in this neighborhood and it was not**
 11 **because of groundwater, but it was because of**
 12 **poor permeability. Now, those could be the**
 13 **cases on these, I don't think I've worked on**
 14 **these three, but I've done a couple of systems**
 15 **in that neighborhood and it was based on poor**
 16 **soil permeability.**
 17 Q. But you don't know why these are
 18 mounded in these three instances?
 19 **A. I'd say it's in the neighborhood of**
 20 **being poor soil.**
 21 Q. Okay. So you indicated that they
 22 could be -- they could be mounded septic
 23 because of permeable soils.
 24 Could they be mounded septic because
 25 of a high groundwater?

1 **A. Yes. I mean, that is a cause or an**
 2 **effect of a mounded system is due to high**
 3 **groundwater or poor soil conditions.**
 4 Q. And could it also be an issue of depth
 5 to bedrock?
 6 **A. Generally not on these sites in the**
 7 **area.**
 8 Q. Well, you don't know these three sites
 9 so let's not speculate as to these. Just
 10 generally speaking I just want to know
 11 generically--
 12 MR. HALL: He just gave you--
 13 (Indiscernible crosstalk; reporter
 14 requests one speaker)
 15 CHAIRMAN BOXER: That's okay.
 16 Ms. Donato, why don't you ask the question
 17 again.
 18 Q. Generally speaking, not just with
 19 other things that you know in this area, but
 20 generally speaking, you could have a mounded
 21 septic, you said, because the soils are not
 22 permeable, because there's a high groundwater.
 23 And my question was, generally speaking, could
 24 it also be because of depth to bedrock?
 25 **A. Not in these soils.**

1 Q. Excuse me?
 2 **A. Not in these soils.**
 3 Q. Not in these soils?
 4 **A. In these soils that are in this**
 5 **neighborhood.**
 6 Q. I'm asking you about these three
 7 sites.
 8 **A. Correct. And I'm saying not in these**
 9 **soils in these three neighborhoods or in these**
 10 **three sites.**
 11 Q. You know what the soils are on those
 12 three lots that we just referred to?
 13 **A. Yes.**
 14 Q. You know what the soils are there?
 15 Okay.
 16 **A. We have the soil logs or the soil**
 17 **tests, soil surveys that shows what the soil**
 18 **types are. It's Penn soils.**
 19 Q. Okay. Now, I know that the state
 20 legislation, the senate bill that made solar
 21 facilities inherently beneficial uses, but they
 22 said that the panels are not impervious. Is
 23 that correct?
 24 **A. That's my understanding.**
 25 Q. Yes. Okay.

1 Now, from a practical point of view,
 2 can you tell me whether the panels are
 3 impervious?
 4 **A. The panel in itself, if I lay it flat**
 5 **on the ground or lay it flat in this room, you**
 6 **can't penetrate water through the panel.**
 7 Q. Okay. And in your professional
 8 opinion, do the panels inhibit the infiltration
 9 of runoff into the ground, recharge?
 10 **A. I don't know if it inhibits it. It**
 11 **concentrates it in a different location. I**
 12 **can't say it inhibits, but I'll say it**
 13 **concentrates it in a different location.**
 14 Q. And just so that it's clear, your
 15 groundwater recharge calculations, were they
 16 based on the panels being considered pervious or
 17 impervious?
 18 **A. You'll have to ask Mr. Moschello when**
 19 **he testifies.**
 20 Q. Oh, okay. You want me to take all of
 21 the impervious stuff and leave it to
 22 Mr. Moschello?
 23 **A. If it's from a site layout standpoint,**
 24 **no. If it truly gets into the stormwater**
 25 **calculations and what we counted and what we**

1 **didn't count in the stormwater calcs, let's**
 2 **leave that to him.**
 3 Q. All right. That's fair. I'm going to
 4 defer all of those. Okay.
 5 Okay. Now, I want to refer to areas
 6 of disturbance. Now, in reviewing your report
 7 of May 31st, 2013 --
 8 **A. Can you tell me which report?**
 9 Q. Your stormwater management report, but
 10 I'm doing this for disturbance because you just
 11 addressed disturbance.
 12 **A. Okay.**
 13 Q. Okay. What did you consider to be
 14 disturbed in the report that you submitted?
 15 **A. I think we're going to have to get**
 16 **through that with Mr. Moschello because he has**
 17 **maps that shows each area of what's disturbed**
 18 **and what's not disturbed. So he can go through**
 19 **that in more specific detail than I can.**
 20 Q. So you're not aware of the fact that
 21 the stormwater management report only classifies
 22 areas where the ground cover will change, the
 23 vegetative cover will change, only classified
 24 those areas as disturbed?
 25 **A. We're getting into that report. Let's**

1 **spend the time with that report.**
 2 Q. Now, you have indicated that there's
 3 going to be two types of vegetation that will be
 4 planted on this site -- and correct me if I'm
 5 wrong -- one of them being the pasture grasses
 6 under the panels and the other being the meadow
 7 grasses on the berm. Is that correct?
 8 **A. I think I said the third one being the**
 9 **grasses in the detention basins. Maybe I didn't**
 10 **say that.**
 11 Q. Oh, yes. You did. You did. Thank
 12 you very much. They may be of a different
 13 type--
 14 **A. They're different. On our specs and**
 15 **our plan we have three different types of**
 16 **mixtures. And we also said we'd provide you**
 17 **some information on those.**
 18 Q. Yes. That's what I'm-- is there going
 19 to be a witness who will be able to testify as
 20 to, you know, the whole question of the
 21 survivability of the grasses in this particular
 22 circumstance?
 23 **A. It could be. What we found is we**
 24 **found the specs now, and I guess in the**
 25 **submission package, whatever we're going to give**

1 **the board, we'll submit that. And if there's**
 2 **questions specific, we'll see how to address**
 3 **that. But we do have actual -- the mix itself**
 4 **with the manufacturer that we're getting cut**
 5 **sheets of that we can supply as your request was**
 6 **at the last meeting.**
 7 Q. Okay. Now, I'd like to direct your
 8 attention again up to that area of your site
 9 that is adjacent to Somerset and Preston
 10 Terrace.
 11 Now, you have the berm extending a
 12 certain distance there and then it ends. Isn't
 13 that correct?
 14 **A. That's correct.**
 15 Q. Okay. And does the berm extend to
 16 protect the view from the property that is on
 17 the west side of -- I think that's Preston, is
 18 it not? The one that's all the way to the west.
 19 That one.
 20 **A. Somerset.**
 21 Q. Somerset.
 22 **A. No, the berm stops because of the**
 23 **road, or I'll say the-- yeah, the road that goes**
 24 **to the rear of the property, and it's just**
 25 **vegetation with the fence.**

1 Q. So did you do any visuals as to the
 2 impact in that area to that particular property?
 3 **A. Yes. I mean, that was one of the once**
 4 **that we had a cross section of.**
 5 Q. The property that has no berm?
 6 **A. Yeah. This Section E right here.**
 7 Q. Okay. And that doesn't quite help me
 8 visually.
 9 But are you saying that even though
 10 there's no berm, that property is not going to
 11 be able to see into this site?
 12 **A. See into the site? See the panels**
 13 **that are--**
 14 Q. See the panels.
 15 **A. -- in this area or this area?**
 16 Q. That's correct.
 17 **A. That's correct. Into the site.**
 18 **They'll see into the site. And the exhibit**
 19 **shows that the panels are obscured by the fence**
 20 **and-- well, the fence, not even the trees,**
 21 **because we dismissed the trees in our screening**
 22 **analysis.**
 23 Q. Is that from the second floor as well?
 24 **A. I believe that's only a one-story**
 25 **building there. I think the house behind it is**

1 **two stories. This is only one story here.**
 2 Q. So is the house behind it also going
 3 to have a view into this site?
 4 **A. We didn't do that analysis. It's**
 5 **right in line with this house here.**
 6 Q. Okay.
 7 MS. DONATO: I'm just trying to skip
 8 over the things that I'm going to-- I thought
 9 that he would be doing because he spoke about--
 10 he spoke about disturbance and I thought he
 11 would be testifying as to that.
 12 CHAIRMAN BOXER: Ms. Donato, whenever
 13 you think it's comfortable for a five- or a
 14 ten-minute break for people, just let me know.
 15 I don't want to break your rhythm right now, so
 16 it's not urgent that we do it at this moment,
 17 but when you are ready.
 18 MS. DONATO: Whenever you're ready,
 19 Mr. Boxer. I'm quite acceptable to do it
 20 whenever you want.
 21 CHAIRMAN BOXER: Good. If we could
 22 maybe take a five -- a ten-minute break. We'll
 23 let everybody take a breath and we'll reconvene
 24 at 8:40. Thank you.
 25 MS. DONATO: Thank you.

1 (Recess)
 2 CHAIRMAN BOXER: All right. We're
 3 back on the record. Ms. Donato is going to find
 4 Mr. Kennedy. Where is Mr. Kennedy? There he
 5 is.
 6 Mr. Kennedy, are you ready to go here?
 7 THE WITNESS: I am.
 8 CHAIRMAN BOXER: All right. So,
 9 Ms. Donato, why don't we get Mr. Kennedy back
 10 and we can start your cross again.
 11 MS. DONATO: Thank you, Mr. Boxer.
 12 CHAIRMAN BOXER: Sure.
 13 BY MS. DONATO:
 14 Q. Okay. Now, referring to the line of
 15 sight, have you considered whether or not any of
 16 those houses that are located either -- you
 17 know, Preston or Somerset -- would be able to
 18 see the panels that are further to the west,
 19 either the ones that are outside of that line of
 20 sight but to the east of the wetlands or to the
 21 panels that are to the west of the wetlands?
 22 A. **Can I point to this exhibit?**
 23 Q. Yes, please.
 24 A. **A-9. So you're saying over here?**
 25 Q. Yes.

1 A. **Okay. And then here?**
 2 Q. Yes. The ones that are to the west of
 3 that line of sight, yes.
 4 A. **Okay. We didn't cut sections through**
 5 **there. Again, I'm going to say this is -- if I**
 6 **look at Exhibit A-6, you know, it's wooded**
 7 **that's through there. We haven't cut sections**
 8 **from this location through the wooded areas into**
 9 **here. We thought that it was heavily wooded**
 10 **from those sight lines and we have not cut**
 11 **sections through there.**
 12 Q. Are they deciduous trees?
 13 A. **It is.**
 14 Q. So in the wintertime they don't have
 15 leaves?
 16 A. **Correct.**
 17 Q. So what about when the trees don't
 18 have leaves?
 19 A. **There's a significant wooded area**
 20 **that's between those. Even without trees you**
 21 **can see there's a fair amount of cedars that are**
 22 **here, that are in this location, there's cedars**
 23 **that are in this location, that you have there.**
 24 **So we didn't feel it necessary to cut that**
 25 **through.**

1 **But, again, if the board wants to do a**
 2 **site visit and walk through these areas, we can**
 3 **put things out in this area and you can see if**
 4 **you can see it.**
 5 Q. Okay. So you're saying that this
 6 empty -- this vacant land that runs to the north
 7 of the wetlands area, block --
 8 A. **62, 5.**
 9 Q. I can't even read it with my glasses.
 10 A. **62, 5.**
 11 Q. Yeah, 62, 5. This is a mix of
 12 deciduous and evergreens?
 13 A. **Yeah. And it's more deciduous to the**
 14 **north and it's more evergreens or cedar trees,**
 15 **which are an evergreen tree, down to the**
 16 **property line.**
 17 Q. Okay. But what if the person living
 18 in the house on block 65, lot 3 is looking out
 19 towards the west? They're not going to look out
 20 toward the-- I'm not asking you what they see on
 21 block 62, lot 5, but whether they would see the
 22 array of panels that are to the west of the
 23 wetlands.
 24 A. **Again, I think there's significant**
 25 **areas that are wooded, a combination of**

1 **deciduous and cedars. If the board's concerned,**
 2 **I can add more screening that could be down here**
 3 **in this location, if the board's concerned about**
 4 **that, outside of the regulated area.**
 5 Q. So there's a possibility that you
 6 would not be able to add screening vegetation in
 7 the regulated area; i.e., the wetlands or the
 8 transition areas?
 9 A. **Typically you wouldn't. You could go**
 10 **get permits for that, but there's upland areas**
 11 **outside of that that I could put those screens**
 12 **in, the screenings in.**
 13 Q. Okay. Now, the last time you
 14 testified, I think that with the description of
 15 how the site would be developed, you explained
 16 that there would first be the cut and fill, then
 17 there would be, I think, the creation of the
 18 stormwater basins, and then there would be the
 19 installation of the posts.
 20 Is that the order of construction that
 21 you gave?
 22 A. **Generally, yes. Soil erosion first,**
 23 **then you go in and do a combination of the cuts**
 24 **and fills with the stormwater design, build the**
 25 **access road. And then truly as far as the solar**

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1 **installation, it would be the posts that would**
 2 **go in first and then stabilize the ground**
 3 **underneath those posts with either-- well, it**
 4 **would be the one, the mix that we would have**
 5 **underneath the solar panels.**
 6 Q. Okay. And is that phasing plan set
 7 forth in any written documentation that's before
 8 this board?
 9 **A. We haven't done a detailed phasing**
 10 **plan. I'd say what we have done in the past in**
 11 **this town is, prior to any construction, is we**
 12 **submit to the township engineer a detailed**
 13 **construction phasing plan for a project -- I**
 14 **can't say such as this, because one hasn't been**
 15 **built such as this -- but such as this that you**
 16 **would do with the amount of construction that**
 17 **would be proposed.**
 18 **And it would be dependent on the time**
 19 **of year when construction is; it would be**
 20 **dependent on the staging of the contractor. I**
 21 **mean, there's a whole host of variables that I**
 22 **could guess now, but it wouldn't necessarily be**
 23 **the final staging plan. There's just too many**
 24 **variables that are there to that.**
 25 Q. Now, between the Sanofi site and this

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1 site that you show for development here, going
 2 to the east, you have this Country Club Road, do
 3 you not, that's winding around there?
 4 **A. Yes.**
 5 Q. Okay. And then you have the eastern
 6 portion of the site where the pond is located
 7 where you're currently proposing no panels. Is
 8 that correct?
 9 **A. Yes. That's lot 1, block 7102.**
 10 Q. Okay. Now, 287 is then further to the
 11 east of that. Is that correct?
 12 **A. That's correct.**
 13 Q. How many roads are there between where
 14 you show the site for development and the Sanofi
 15 campus?
 16 **A. Well, there's Country Club Road and**
 17 **Route 287.**
 18 Q. And you are aware from the questioning
 19 at the last meeting that that eastern tract with
 20 the pond was proposed and is included in the
 21 plans that were submitted to the BPU. Isn't
 22 that correct?
 23 **A. It was discussed at the last meeting.**
 24 **I saw a plan that you showed me that our office**
 25 **prepared that had panels on lot 1.**

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1 Q. And that particular portion, that area
 2 there with the pond, it only has one road
 3 dividing it from the Sanofi campus and 287.
 4 Isn't that correct?
 5 **A. Yes.**
 6 Q. And the rest of it, as we've just
 7 discussed where you're showing the panels now
 8 has two roads, does it not?
 9 **A. Yes.**
 10 MR. HALL: I'll object.
 11 Q. Now--
 12 MR. HALL: This has nothing to do with
 13 his testimony on direct. I know where she's
 14 headed and she can present and make her legal
 15 argument that it's not contiguous. But he's an
 16 engineer and the facts are the facts. She's
 17 wasting our time, frankly.
 18 MS. DONATO: I don't think there's any
 19 time being wasted, Mr. Chairman. It has to go--
 20 CHAIRMAN BOXER: Why don't we just let
 21 Ms. Donato continue. I think we've been very
 22 good tonight and I think we've had a good,
 23 productive discussion. So let's just see where
 24 this takes us.
 25 MS. DONATO: Thank you.

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1 Q. Are you aware that the contiguity
 2 requirement in the BPU rules only allows one
 3 road to separate the site that generally --
 4 MR. HALL: I object and repeat my
 5 objection--
 6 (Indisciperable crosstalk; reporter
 7 requests one speaker)
 8 CHAIRMAN BOXER: I thought she was
 9 talking.
 10 MR. HALL: I object for the reason I
 11 already said.
 12 MR. COLLINS: Mr. Chairman, I'd
 13 recommend let's continue the line of questions,
 14 but the objection will be deemed to be a
 15 standing objection that Mr. Hall has raised and
 16 he doesn't have to re-raise it. And let's see
 17 how far this goes.
 18 CHAIRMAN BOXER: Thank you, Mr.
 19 Collins.
 20 Ms. Donato, why don't you continue.
 21 MS. DONATO: Yes. It won't be very
 22 long.
 23 Q. So we have two roads separating the
 24 areas of the arrays shown on this plan from the
 25 Sanofi campus. Is that correct?

1 **A. That's correct.**
 2 Q. Thank you.
 3 And there was only one road separating
 4 that eastern pond portion of the tract from the
 5 Sanofi campus. Is that correct?
 6 **A. That's correct.**
 7 Q. Okay. Now, you described in your
 8 testimony that the site has environmentally
 9 sensitive features. Is that just the wetlands
 10 area? And this is in the area where the panel--
 11 where the arrays are shown.
 12 **A. Exhibit A-5 shows, I'll say, varied**
 13 **environmental constraints on the project, mostly**
 14 **along the stream corridor. There's also some**
 15 **minor steep slope areas considered by Bedminster**
 16 **to be environmentally constrained areas.**
 17 Q. With these environmentally sensitive
 18 areas, is a detailed construction plan
 19 appropriate and necessary to evaluate the impact
 20 on the environmental features?
 21 **A. I don't know what you mean by a**
 22 **"detailed construction plan." We've submitted**
 23 **plans that have quite a bit of details on them**
 24 **that you could construct off of. A phasing**
 25 **plan?**

1 Q. Okay. How about a phasing plan and
 2 also plan that shows where all of the trenches
 3 are going to be located, for example?
 4 **A. Well, again, the electric trenches, as**
 5 **I previously testified to, I wouldn't show those**
 6 **on a plan now. I would show those right prior**
 7 **to construction.**
 8 Q. So the board doesn't really know,
 9 then, how those trenches would impact on the
 10 environmentally sensitive features?
 11 **A. They'll be in the area of the site**
 12 **disturbance that we showed on our plans.**
 13 Q. So the extent and the depth of the
 14 site disturbance doesn't matter to you?
 15 **A. Well, I think the changes in grade are**
 16 **shown on Exhibit A-- are shown on Exhibit A-8.**
 17 **There'll be a series of trenches that would be**
 18 **done for the conduits that would have to comply**
 19 **with the National Electric Code for the depth of**
 20 **those trenches. I'm going to say generally**
 21 **they're 18 inches in some cases, at the maximum**
 22 **42 inches at depth for these electrical conduits**
 23 **that have to be put in.**
 24 Q. And how wide are they, Mr. Kennedy?
 25 **A. It will depend on how many conduits**

1 **are put in there. Generally 2 to 3 foot wide.**
 2 Q. Can you tell me how the conduit is
 3 going to connect the west side of the arrays to
 4 the east side?
 5 **A. That will travel along and underneath**
 6 **the drive.**
 7 Q. Is that shown in detail on the plans
 8 in any place?
 9 **A. It really isn't.**
 10 Q. They're not. So the conduits in
 11 general are not shown anywhere?
 12 **A. The only one is the bore.**
 13 Q. The bore? The jacking station?
 14 **A. The jacking bore. We have not shown**
 15 **any of those other secondary conduits.**
 16 Q. But I thought at the last meeting you
 17 said with respect to the jacking station, you
 18 show that, but you don't really show anything
 19 other than a line, isn't that correct, going to
 20 Sanofi?
 21 **A. Correct.**
 22 Q. No details as to the depth or the
 23 nature of that?
 24 **A. No. The only thing I represented was**
 25 **it has to be under the state highway system. It**

1 **has to be a minimum of 4 foot below any depth**
 2 **below grade.**
 3 Q. Below grade?
 4 **A. Below the existing grade.**
 5 Q. The top grade of the road.
 6 **A. Yeah. Well, of a surface, not**
 7 **necessarily the road. Of any surface.**
 8 Q. Okay. And is there currently an
 9 application before any agency to obtain approval
 10 for that conduit under 287?
 11 **A. No.**
 12 Q. There is nothing pending?
 13 **A. Again, I'll say not that I'm aware of.**
 14 **Nothing that we supplied. There may have**
 15 **been -- I don't believe there was an old**
 16 **Birdsall plan that was supplied. We have not**
 17 **done any applications to the DOT.**
 18 Q. Okay. And you do not know whether
 19 there is-- and it would be the DOT is the
 20 responsible agency?
 21 **A. Just to clarify. Under which road?**
 22 Q. Under 287.
 23 **A. Yes.**
 24 Q. It would be the DOT?
 25 **A. That's correct.**

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1 Q. And Country Club is a township road?
2 **A. That's a municipal road.**
3 Q. Right.
4 I'm still skipping.
5 Now, the next series of questions I'd
6 like to ask you relate to the question of
7 compaction of soils.
8 Are you familiar with the effects of
9 compaction of soils?
10 **A. In a general sense. Again, I'm not a**
11 **geotechnical engineer, but in a general sense we**
12 **deal with compaction of soils.**
13 Q. Okay. So do you know that if soils
14 are compacted, it can affect drainage on the
15 site?
16 **A. Yes.**
17 Q. And can it also affect the ability of
18 vegetation to survive?
19 **A. Yes.**
20 Q. Okay. And have you, in analyzing this
21 plan and being the general civil engineer for
22 this plan, considered how compaction might occur
23 as a result of the construction activities?
24 **A. And I'm going to say in a general**
25 **sense. We've talked about it in our design.**

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1 **We've talked about it in preparing the plans.**
2 **And the main element that is done with soil**
3 **compaction is just the timing and the scheduling**
4 **of installation. Okay? As I stated prior, even**
5 **tonight, is cuts and fills, stormwater, then put**
6 **the posts in. And then when that work is done,**
7 **the proposal is to drill seed the material, the**
8 **seed mix that would be under this. And, again,**
9 **depending on the soil type that's specific to**
10 **here, there's different ways to drill that in**
11 **and how deep it goes that's in there so you get**
12 **a good growth and stabilization of the grass**
13 **cover, the meadow mix, underneath that and**
14 **install that.**
15 Q. Okay.
16 **A. In other applications -- not with this**
17 **applicant -- that we've been involved in is they**
18 **wanted to seed until the end of the project.**
19 **Okay? They finished everything else and they**
20 **broadcast seed on top of it. What we've**
21 **learned, and we know that KDC has done, is at**
22 **the end of the post construction -- I say the**
23 **posts, the galvanized posts. At the end of that**
24 **process is that's when you stabilize the site**
25 **and stabilize the ground cover on the site. And**

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1 **let's just say under the panels as opposed to**
2 **the other areas.**
3 Q. Well, you're talking--
4 **A. Again, that's what we're proposing to**
5 **do here. So that gets the growth, that gets the**
6 **vegetation. That gets -- the one technique to**
7 **avoid soil compaction is to have a good, strong**
8 **strands of -- I'll say grass, but of a grass**
9 **material both in the soils, is to get that**
10 **stabilized and growing as quickly as possible.**
11 Q. What kind of equipment will you use to
12 do the cut-and-fill operation?
13 **A. It will be heavy equipment, and I'll**
14 **say that. It will be a combination of hydraulic**
15 **excavators and bulldozers to build berms such as**
16 **these.**
17 Q. Okay. So isn't it heavy equipment
18 that is a real problem in terms of compaction?
19 Isn't that what one of the primary reasons soil
20 gets compacted?
21 **A. Well, it's a function of the tires.**
22 **It's a function of the point load that's put on**
23 **there. Again, I'm going to say that most of the**
24 **cuts and fills are really concentrated in one**
25 **area. I'll give you the exception for these**

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1 **outer perimeters, but for most of these cuts and**
2 **fills, it's in this area in there. The other**
3 **area's underneath all these panels. For the**
4 **most part, they're in-- they're not changing the**
5 **grade. Okay? We're not proposing to change the**
6 **grade that's out there.**
7 **So, again, we're working on the**
8 **premise that we go and do the cuts and fills,**
9 **okay, and then put these posts in. And as I**
10 **stated before, it would be done with a**
11 **track-mounted drill machine that you would have**
12 **in here and then stabilize those soils.**
13 Q. Okay. You have a large stand of cedar
14 trees, do you not, on the west side of the tract
15 where that western array is proposed?
16 **A. On Exhibit A-8, in this area?**
17 Q. In the western-- the ways on the
18 west--
19 **A. Yes.**
20 Q. Okay. So what type of equipment do
21 you use to -- basically it's like a little
22 forest of cedar trees. What type of equipment
23 do you use?
24 **A. It is. You bring in your**
25 **tree-clearing equipment. That will generally be**

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1 either skid or large-rubber-tire machines that
2 will go in and remove that equipment-- or remove
3 that material.
4 Q. So does that type of equipment also
5 cause compaction of the underlying soils?
6 A. Anything causes compaction. I mean,
7 that's a simple statement. So the less you go
8 into that area, the less compaction that would
9 be in there. But that's clearly going to have
10 to be done. You're going to have to do that.
11 You're going to have to grub that material. But
12 generally in that area what's going to happen is
13 that that soil itself, the topsoil, the grade
14 won't change, but that will be disturbed that
15 you'll have to bring -- I'll call it a rake.
16 Agricultural types of rakes that you'll have to
17 bring in there, take the stumps that are out of
18 that area, take all of the twigs, those types of
19 things, rake that off and bring in a machine to
20 basically, I'm going to say fluff the soils, but
21 basically cultivate the soils there in prepping
22 for the seed. That would have to be done on any
23 project where you remove treed areas to get to a
24 meadow area.
25 Q. Okay. So you'll either remove the

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1 trees, you've done the cut and fill. Now you
2 have to install the posts.
3 A. Correct.
4 Q. Okay. So what type of equipment do
5 you use -- assuming that you find the
6 manufacturer will agree that you could pound the
7 posts into the ground, what type of equipment
8 would be used for the driver for those piles?
9 A. The best way to describe it is a
10 hydraulic ram that would be on a track-mounted.
11 I believe I described it before as a -- I used
12 another term, a nice term, but it's the size of
13 a minivan type of a structure that you would be
14 bringing in.
15 Q. So that also causes soil compaction.
16 Isn't that right?
17 A. Yes. That would go up and down the
18 rows to go and put that in. Now, again, you're
19 using rakes as much as possible.
20 Q. So when would this so-called rake, or
21 whatever you're referring to, when would the
22 loosening of the soil take place? After the
23 installation of the posts?
24 A. Prior to seeding.
25 Q. After the installation of the posts?

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1 A. And I'm going to say it really
2 depends. It depends on the time of the year.
3 It depends on construction scheduling. I don't
4 know if it would go before. It's right about
5 the same time you would do that. And I'm just
6 not sure whether you would put that in before or
7 after the posts would be installed. It could be
8 either.
9 Q. Okay. Does the type of soil also
10 affect the degree of compaction?
11 A. I could say this. I've read lots of
12 articles that say yes and lots of articles that
13 say no. It doesn't matter whether you have sand
14 or clay, soil compaction is still soil
15 compaction.
16 Q. And clay doesn't have a tendency to
17 compact more than dirt?
18 A. Again, I could probably put three
19 geotechnical engineers in here that would
20 disagree with each other. But I've read
21 articles that say it does; I've read articles
22 that say it doesn't.
23 Q. Okay. Now, will there be any effort
24 to provide some kind of a compaction plan so
25 that it's understood what the impacts on this

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1 site will be?
2 A. I think that's worthy, that's
3 something that we can talk about as far as
4 minimizing and taking techniques to minimize
5 compaction. I think that's good.
6 Q. Okay. And do you have any plans to
7 remediate the soils in order to assure that they
8 are similar to the predisturbance conditions
9 that exist?
10 A. If the board, you know, would want a
11 comfort level in doing that, we can define a
12 testing procedure prior to putting the topsoil
13 and prior to seeding that it meets certain
14 standards. That during or prior to seeding,
15 let's say, that it has to be certainly approved
16 by the applicant, but also concurred -- however
17 you want to say it -- without taking the
18 liability on the board professionals. That's
19 something that we could -- we could talk about.
20 Q. And can you also address in this
21 compaction/remediation study how permeability
22 will be established, restored to its
23 predevelopment condition?
24 A. During construction or...
25 Q. No, after. So you establish a certain

1 permeability prior.
 2 Is there a way to remediate the soils
 3 to re-establish the permeability after the
 4 construction?
 5 **A. It just becomes so subjective of what**
 6 **the study is and what it could be. You're still**
 7 **talking about, as you stated, clay soils. So I**
 8 **can go and take-- I can go to one area of this**
 9 **property right now and there's zero permeability**
 10 **in the topsoil. I can go to another area and**
 11 **there's permeability there.**
 12 I'll say as an overall, yes. It
 13 really becomes subjective on what the criteria
 14 is. If the goal is to get the best you can out
 15 of it based on the criteria, the contractor is
 16 not doing something inconsistent with good
 17 management practices, I totally agree. If it's
 18 that you have to meet certain standards in this
 19 area, there's certainly poor soils on this
 20 property today that will never meet a certain
 21 standard because of that poor soil, even the
 22 poor topsoil.
 23 Q. Okay. Now, in your testimony in
 24 December, you stated that there would be a
 25 9-foot gap between one set of panels to the

1 next.
 2 What is the set of panels to which you
 3 referred?
 4 **A. What's the best way to describe it?**
 5 **I'll put up A-6. I'm just going to say this row**
 6 **of panels, okay, to the next row of panels, the**
 7 **separation is 9 foot. The screen space that's**
 8 **there.**
 9 Q. Okay. You did say that there will be
 10 someone else who will testify as to the meadow
 11 grasses and the pasture grasses with respect to
 12 the layout of these arrays?
 13 **A. We'll submit the data, we'll see what**
 14 **the questions are, and see what the right person**
 15 **is to answer that question. Whether it's**
 16 **environmental or agricultural or-- again, it**
 17 **depends. Let's get you the data and we'll see**
 18 **what the issue is.**
 19 Q. When you say "data," you mean the
 20 specifications for the seed mix?
 21 **A. Yes.**
 22 Q. Okay. And will you also address other
 23 questions regarding the shading of the panels
 24 and the elevation of the panels?
 25 **A. Sure, because, again, that's part of**

1 **the seed mix design that's being proposed.**
 2 Q. When you opted to present this plan
 3 with the grasses that you propose, did you make
 4 any study in advance of that as to the design
 5 parameters for the installation of that type of
 6 vegetation?
 7 **A. Yes. I mean, again, it's similar to**
 8 **what this particular applicant is using on a**
 9 **similar project down the street that we've**
 10 **talked about in, I'll say, similar soils.**
 11 Q. Okay. I'm not asking what this
 12 applicant did. I'm asking about some scientific
 13 information that might be available to assist
 14 you in determining whether or not these grasses
 15 would survive in this design.
 16 **A. We-- well, we used the information**
 17 **from the other project because they had seed**
 18 **experts out there to look at it from the**
 19 **manufacturer of the seed, to look at the**
 20 **conditions that would go under solar panels with**
 21 **shading, with sunlight areas and shading, not**
 22 **having it grow too quick, grow at the right**
 23 **level, and the right height that's in there.**
 24 **And, again, that's been played out on**
 25 **a similar project and we're using the mix that's**

1 **been used down there that we-- not we. That the**
 2 **seed manufacturer used for that.**
 3 Q. Okay. The seed manufacturer has an
 4 economic interest in selling the seed, do they
 5 not?
 6 **A. It usually means that you're buying**
 7 **too much seed because they want to sell you as**
 8 **much as possible and the most expensive seed as**
 9 **possible.**
 10 Q. Right. My question, though,
 11 Mr. Kennedy, is did you look at any of the
 12 scientific information that's out there
 13 regarding solar panels and vegetation?
 14 **A. I did not.**
 15 Q. Okay. Are you going to have another
 16 witness regarding the vegetation?
 17 **A. I'll defer to Mr. Hall on whether we**
 18 **need that other witness or not, or the board.**
 19 MR. HALL: I don't know at this point.
 20 We'll look into it.
 21 CHAIRMAN BOXER: Okay. That's fine.
 22 MS. DONATO: Okay. Now, I have some
 23 photographs. I just have to-- do you want me to
 24 mark them for identification, Mr. Collins?
 25 MR. COLLINS: You know, if Mr. Kennedy

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1 never saw them, I don't know whether you're
 2 going to be able to use him as the witness to
 3 identify them, so...

4 MR. HALL: Can we have a proffer of
 5 the purpose for that?

6 MR. COLLINS: Yes.

7 MS. DONATO: The proffer is --

8 MR. COLLINS: What are the pictures?
 9 What are the pictures of?

10 MS. DONATO: The pictures are of a
 11 solar installation on Route 106 in Hamilton
 12 Township, New Jersey. The requirement of the
 13 board and the testimony presented was that there
 14 would be grasses that would be planted under and
 15 between the panels that would survive, and the
 16 photographs show flooded ground with no
 17 vegetation.

18 MR. HALL: I think we need testimony
 19 to establish the factual allegations she just
 20 made.

21 MS. DONATO: I just want to show him
 22 the photographs.

23 MR. HALL: No, I think you can present
 24 your own witness with that. I don't know what
 25 Mr. Kennedy can do with that.

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1 MS. DONATO: I understand.

2 MR. HALL: I object.

3 MR. COLLINS: The objection should be
 4 sustained.

5 MS. DONATO: Okay.

6 MR. COLLINS: When and if a witness is
 7 presented, that witness can present that
 8 information and identify those pictures.

9 MS. DONATO: Okay. That's fine. I
 10 just wanted him to identify the flooding under
 11 the panels, that's all.

12 MR. HALL: I object to that comment as
 13 gratuitous and unnecessary.

14 MR. COLLINS: Attorneys are good at
 15 argument, but that's all it is right now. So
 16 please continue with questions.

17 BY MS. DONATO:

18 Q. So in your reliance on the idea that
 19 these grasses would be planted on the site, on
 20 the berms-- and I want to really concentrate on
 21 the ones that are proposed under the arrays.

22 **A. Under the panels?**

23 Q. Yes, under the arrays. You did no
 24 independent investigation as to the
 25 survivability of those grasses in that context?

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1 **A. Other than talking to that seed
 2 manufacturer and seeing-- talking to the
 3 contractor that installed that out at the other
 4 site in Branchburg and seeing what's installed
 5 in that site.**

6 Q. So then I can presume that you're not
 7 aware of the report of the U.S. Department of
 8 Energy, Office of Energy Efficiency and
 9 Renewable Energy, entitled "Overview of
 10 Opportunities for Collocation of Solar Energy
 11 Technologies and Vegetation"?

12 **A. No.**

13 Q. Okay. And so you're not aware of the
 14 conclusions --

15 MR. HALL: I object. He said he
 16 doesn't know the report, but she's--

17 MS. DONATO: I'll restart the
 18 question.

19 MR. HALL: No. You can't -- you can't
 20 testify.

21 MS. DONATO: I'll rephrase it.

22 MR. HALL: He said he doesn't know the
 23 report.

24 MS. DONATO: Mr. Hall.

25 MR. HALL: You have to stop asking

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1 questions about it.

2 MS. DONATO: Mr. Hall, I said I'd
 3 rephrase the question. You could calm down.
 4 It's just fine.

5 BY MS. DONATO:

6 Q. Have you looked at any other instances
 7 where solar arrays were installed, grasses were
 8 proposed, and whether or not those grasses
 9 survived?

10 **A. I know this. KDC has 11 sites in New
 11 Jersey. They all have stabilized grass
 12 underneath those. And according to KDC -- I
 13 haven't seen every site -- they have not had a
 14 problem with the vegetation underneath their
 15 solar panels.**

16 Q. Have you seen those nine sites?

17 **A. I've seen multiple sites. I've not
 18 seen all nine.**

19 Q. All right. Can you tell me what they
 20 are?

21 **A. What do you mean, where they are?**

22 Q. Where they are. Where the sites are.

23 **A. Branchburg, Lawrenceville.**

24 Q. Where in Branchburg?

25 **A. It is on Route 202 in Branchburg.**

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1 Q. Okay.

2 **A. Lawrenceville on Route --**

3 Q. At the school?

4 **A. Lawrenceville School.**

5 Q. Okay.

6 **A. The Middlesex County Jail.**

7 Q. And, by the way, that Middlesex County

8 Jail, was that a KDC site?

9 **A. Yes.**

10 Q. Are you sure of that?

11 **A. That's what I know. And as I said**

12 **before, as far as the stability of the**

13 **vegetation, we'll agree with the town engineer**

14 **to have that inspected. KDC has an interest in**

15 **making sure that works underneath there. We**

16 **want the vegetation underneath there. And if it**

17 **needs to be inspected by the town, just like**

18 **other sites that are in the R-10 zone of this**

19 **town, we'll do it.**

20 Q. So this was the-- the site was at the

21 Middlesex County Correctional Facility? Is that

22 the one you're talking about?

23 **A. Yes.**

24 Q. You're not familiar with the fact that

25 it's supposed to have been done by SunDurance

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1 Energy? Is that KDC?

2 **A. They're just the contractor.**

3 Q. And what was KDC? The designer?

4 **A. The developer. They own the**

5 **property -- or they own the project.**

6 Q. They own the project, but they did not

7 install it?

8 **A. They hired a contract to install.**

9 Q. That was SunDurance Energy?

10 **A. I believe so.**

11 Q. So SunDurance didn't design-build that

12 facility?

13 **A. I don't know if they designed it. I**

14 **know that they built it.**

15 Q. Okay. All right. What else do we

16 have? We have three so far.

17 **A. That's the ones that I visited.**

18 Q. Those are the ones that you visited.

19 So you say there's another six sites. So you're

20 really relying on somebody else's statement that

21 they survived?

22 **A. Absolutely.**

23 Q. Do you know where they are?

24 **A. I couldn't-- I can provide that.**

25 Q. Can you have someone provide us with

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1 that?

2 **A. Yes.**

3 Q. Thank you.

4 Now-- I'm sorry, that's the -- that's

5 stormwater.

6 I'd like to pick up where we left off

7 about the road, the gravel road.

8 **A. You mean the proposed?**

9 Q. Isn't it-- didn't you say that that

10 gravel road is essentially following the line of

11 a previous road, or was I mistaken?

12 **A. Well, in different areas, yes, it is.**

13 **The gravel road that exists is along this**

14 **northern property line. Okay? The other ones**

15 **that are shown on the plan that generally go,**

16 **I'll say, north-south, to the east side arrays**

17 **and to the west side arrays, that doesn't exist.**

18 **That's proposed to be new.**

19 Q. And where is the geogrid going to be

20 installed?

21 **A. In the regulated areas underneath the**

22 **path/drive/road on the north side.**

23 Q. And those geogrid areas are shown on

24 plans that are submitted-- were submitted to the

25 DEP?

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1 **A. Correct. There's a detail that shows**

2 **that.**

3 Q. And it's consistent with what's on

4 these plans that are before this board?

5 **A. In that area, yes.**

6 Q. Are there areas where they are not

7 consistent?

8 **A. Well, the layout, like the grading**

9 **layout in nonregulated areas, wouldn't**

10 **necessarily be consistent. There's been a**

11 **change in that. But along this drive location**

12 **in the regulated areas, that is consistent.**

13 Q. Okay. I understand.

14 **A. Yeah, it's in upland areas, like the**

15 **berms and some of those other things. That**

16 **wasn't on the plan that was submitted.**

17 Q. And why do you have that road? What

18 will it be used for?

19 **A. Two things: Construction, and second**

20 **is access to -- in this case, on the west side**

21 **you have four of the inverter pads with the**

22 **transformers. So you would have maintenance**

23 **that would go out to that location.**

24 Q. Okay. Now, regarding the berm, if I

25 have any questions regarding the drainage

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1 impacts of the berm, would you prefer that I
 2 leave those for Mr. Moschello?
 3 **A. I think so because you're going to be**
 4 **talking about swales and about drainage. I just**
 5 **think that that will bring out different maps**
 6 **than we have out now.**
 7 Q. Are you familiar with what a Class IV
 8 dam is under DEP regulations?
 9 **A. Yes.**
 10 Q. What is it?
 11 **A. Well, classes of dams are based on the**
 12 **impoundment area of any type of structure,**
 13 **whether it's a-- any type of impoundment**
 14 **Structure that is either a permanent body of**
 15 **water or a temporary body of water like a**
 16 **detention basin.**
 17 Q. Okay. And what's the height of the
 18 embankment on a Class IV dam?
 19 **A. I don't know all the breakdowns of**
 20 **what they are. There's five different classes.**
 21 **And generally a Class IV would be a berm that's**
 22 **somewhere between 10 and 15 feet, I think the**
 23 **range is, that you would have from the fill area**
 24 **to the top of the embankment.**
 25 Q. Well, would you like to make certain

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1 that Mr. Moschello is able to answer questions
 2 as to whether or not you have any Class IV dams
 3 on this property?
 4 **A. Sure, he can answer that.**
 5 Q. Okay. Now, I want to go back to the
 6 fact that the panels -- if this board were to
 7 approve this, the panels have a certain life
 8 span. Isn't that correct?
 9 **A. That's my understanding.**
 10 Q. And at the end of that life span,
 11 there would have to be another lease or another
 12 contractual arrangement between KDC and Sanofi
 13 in order to put new panels down. Is that
 14 correct?
 15 **A. I don't know how the lease works. I**
 16 **mean, at the end of the life of the panel,**
 17 **something would have to happen with that panel.**
 18 **Replace that panel. I don't know the**
 19 **arrangement of the lease.**
 20 Q. So it's really different from most
 21 development because most development doesn't
 22 have, like, a stated period of time where it's
 23 good. Am I right?
 24 **A. Generally.**
 25 Q. Yes. So what happens to this site if

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1 either Sanofi moves or Sanofi decides it doesn't
 2 want this electric or the ^wreath reap that owns
 3 the Sanofi campus changes its mind or something
 4 happens and the panels are no longer productive
 5 and they're sitting there? What happens?
 6 MR. HALL: I object. Mr. Lynch was
 7 questioned about this. I don't think this is a
 8 site engineer question.
 9 MR. COLLINS: It does seem to be --
 10 MS. DONATO: I--
 11 MR. COLLINS: It does seem to be
 12 beyond the scope of direct testimony by this
 13 witness, so you may have to save it for another
 14 witness.
 15 MS. DONATO: All right.
 16 MR. COLLINS: Or your own witness.
 17 Q. Now, we had some discussion about
 18 shale. Now, are you going to be submitting
 19 reports to this board that will be able to
 20 establish whether or not there is shale
 21 underlying this site?
 22 **A. Well, I think that the soil logs that**
 23 **have been submitted show that there's shale on**
 24 **the property. It says it right in the report --**
 25 **or right in the soil logs.**

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1 Q. But there was an argument in the
 2 beginning here about shale. Is that shale --
 3 after you get through the decomposed areas and
 4 the different layers of the soil, is that shale
 5 the bedrock on this property?
 6 **A. Well, I mean, the shale that was**
 7 **excavated I wouldn't consider bedrock. It's**
 8 **excavated --**
 9 Q. I understand. The soil -- where it's
 10 decomposed.
 11 **A. Yeah.**
 12 Q. So you have different levels of soil.
 13 **A. Yeah.**
 14 Q. And then you have bedrock, right?
 15 What's the bedrock on this property?
 16 **A. I don't know that, but I can tell you**
 17 **this: It's below the levels that we excavated**
 18 **on the property.**
 19 Q. What do you mean, "below the levels"?
 20 **A. It would have to be below where we**
 21 **excavated on the property.**
 22 Q. Yesterday you mean?
 23 **A. Well, yes, that was one of them. But**
 24 **July, when we excavated, or the pre-Birdsall,**
 25 **they went down to different elevations on the**

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1 **property. I would submit that bedrock would be**
 2 **below the lowest elevation of where we excavated**
 3 **in that area of the soil logs.**
 4 Q. All right. But when we went over
 5 those logs last time -- and I don't want to get
 6 into that laborious process again. I just want
 7 to know when, if ever, are you going to let this
 8 board and the public know whether or not the
 9 bedrock under this site is shale.
 10 MR. HALL: We agreed at the beginning
 11 that we would provide the additional work they
 12 did. The report will be submitted. Now, if
 13 we're going beyond that, I mean, I think that--
 14 MS. DONATO: Well, I think the
 15 problem, Mr. Chairman, is--
 16 CHAIRMAN BOXER: So, Ms. Donato, maybe
 17 you can help us understand.
 18 MS. DONATO: Yes, the problem is, is
 19 that we have a series of logs that are limited
 20 to the proposed detention facilities. We have
 21 the preexisting logs from Birdsall which are
 22 essentially worthless. I mean, you know, they
 23 hit resistance and you don't-- you know, we
 24 don't know why they hit resistance. You don't
 25 know where the bedrock is--

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1 CHAIRMAN BOXER: And all the logs were
 2 done at a time when the levels were low.
 3 MS. DONATO: Right. You don't know
 4 where the groundwater is. You don't know where
 5 the bedrock is. We got into this argument in
 6 the beginning where Mr. Hall very vehemently
 7 argued that there's no proof that there's
 8 bedrock shale under this site.
 9 So when, if ever, are we going to
 10 know -- that's my question to Mr. Kennedy -- if
 11 there is bedrock shale and what is the depth of
 12 that bedrock shale from existing surface of the
 13 land?
 14 CHAIRMAN BOXER: I understand. So let
 15 me ask Mr. Hall.
 16 Mr. Hall, will the soil logs that are
 17 going to be submitted in your mind be adequate
 18 to answer some of these questions?
 19 MR. HALL: I'd defer to Mr. Kennedy.
 20 From what I heard --
 21 THE WITNESS: And, again, I'm not
 22 trying to be tongue-in-cheek about it. We dug
 23 those depths out there yesterday. And in the
 24 area -- not the whole site, but in the area that
 25 we dug -- they were down 12 to 14 foot in the

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1 ground. And clearly that is, at least in my
 2 view, below the excavation or below where we're
 3 proposing to excavate any proposed improvement
 4 on the site except for the soil boring
 5 underneath the road, underneath 287. Okay?
 6 So I understand the question of where
 7 is the bedrock? What is it down there? But by
 8 going and drilling a bore hole, let's say, not
 9 an excavator there, but drilling a bore hole
 10 that's 2 or 3 inches deep, going down 30, 40, 50
 11 foot into the ground and saying, okay, bedrock
 12 is at 30 foot down, we can do that, but I don't
 13 know what the board's going to get from that.
 14 CHAIRMAN BOXER: I think we're going
 15 to let Ms. Donato continue on and she may have
 16 to bring her own experts in. But, I mean, the
 17 last soil logs, I think certainly this board has
 18 been aware now that the soil logs that are in
 19 the report have all been taken at a time when
 20 water levels were at the lowest. So it's very
 21 likely that the board is going to be requesting
 22 updated soil logs anyway because I don't think
 23 that's going to be adequate for us.
 24 So, Ms. Donato, I'm not really sure if
 25 that answers any questions. It might just be

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1 that you need to let this one ride out a bit and
 2 then we come back to it, even though it may not
 3 be efficient, and it may even be required that
 4 you bring your own expert in to try and
 5 countermand the split.
 6 MS. DONATO: I appreciate that.
 7 Let me ask you this.
 8 That's fine. I understand the
 9 dilemma. And that goes back to, I guess, our
 10 initial procedural issue of what do you have
 11 before you? And we're proceeding in this basis.
 12 CHAIRMAN BOXER: Right.
 13 MS. DONATO: So that's how we'll have
 14 to do it, I guess.
 15 CHAIRMAN BOXER: I understand. Thank
 16 you.
 17 BY MS. DONATO:
 18 Q. You had referred to shale as, like,
 19 unrippable. I think that was the term you used.
 20 Isn't that correct?
 21 A. No, we were talking about bedrock and
 22 refusal. I don't think -- I mean, I could dig
 23 down 2 foot into the ground on this property and
 24 find shale.
 25 Q. Excuse me? I didn't hear that. I'm

Page 114

1 sorry.

2 **A. I can dig 2 foot down in this property**

3 **and find shale.**

4 Q. Decomposed shale or shale that is

5 solid shale?

6 **A. Shale. Now you're getting into-- now**

7 **you're getting into really defined terms that a**

8 **geotechnical engineer would define. That's why**

9 **I want to be careful what you're asking for**

10 **because it's getting vague on these terms that**

11 **mean something specific that could be construed**

12 **the wrong way.**

13 Q. I understand. Let me just...

14 There's four pages of index on the

15 transcript, but the word "unrippable" is not

16 here. So if you would just give me a moment,

17 please.

18 MR. SASSO: Page 76.

19 MS. DONATO: Seventy-six? Thank you.

20 MR. SASSO: Maybe 86.

21 Q. Okay. I'm referring to the transcript

22 of December the 5th, 2013. And I had asked you

23 some questions at that time about bedrock shale.

24 Do you want me to show you this

25 transcript?

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1 **A. I have it here.**

2 Q. Okay.

3 **A. What page was that?**

4 Q. Page 76 going to page 77.

5 **A. Okay.**

6 Q. Okay. Now, looking at page 76,

7 beginning at line 17, didn't you say "Again,

8 it's shale that becomes unrippable with a large

9 machine"?

10 **A. What's the question?**

11 Q. I asked you about the shale and

12 whether or not you had testified that it was

13 unrippable. And you said that, no, you hadn't

14 said that. So I'm going back to the transcript

15 to see what you said when you testified in

16 December.

17 **A. No, but you're putting it out of**

18 **context. We're talking about bedrock here and**

19 **the bedrock is different than just shale. So**

20 **you asked the question, Was bedrock under this**

21 **site? And that's when it becomes unrippable.**

22 **Again, we're mixing terms here and we're going**

23 **to get into a tongue-tie issue.**

24 Q. Okay. But shale can be the bedrock

25 under a site. Isn't that correct?

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1 **A. A form of shale can be bedrock.**

2 Q. Okay. So is there a-- we know from

3 the general information that is available in the

4 master plan and the studies, the geological

5 studies that were conducted, that they showed

6 generically that this area has bedrock shale

7 underneath it. Isn't that correct?

8 **A. I don't want to get caught into that**

9 **discussion in there. This soil surveys show**

10 **that there's shale underneath here. You're**

11 **tying bedrock and shale together and I'm not**

12 **sure that's in the right context.**

13 Q. Oh, so then Mr. Banisch is wrong about

14 the way and the master plan is wrong about the

15 way they refer to the bedrock shale under this

16 area?

17 MR. HALL: I object. That's not a

18 fair characterization. Earlier tonight

19 Mr. Banisch said it's generalized information,

20 not site specific.

21 MS. DONATO: That's what I said.

22 That's exactly the question. Generalized

23 information.

24 Q. You could have bedrock shale. Isn't

25 that correct?

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1 **A. You could have shale that's considered**

2 **bedrock, yes.**

3 Q. Okay.

4 **A. Now you're getting geologically into**

5 **what's down deeper in the ground, yes.**

6 Q. Yes. Okay. And you could have

7 bedrock shale that has a shallow depth to the

8 surface. Isn't that correct?

9 **A. You could.**

10 Q. And, in fact, the generic information

11 for this area shows that this shallow depth to

12 bedrock shale, does it not?

13 **A. What specifically are you referring**

14 **to? The actual soil --**

15 Q. I'm referring to the information that

16 Mr. Banisch --

17 **A. But he didn't go out and do tests. He**

18 **went and referred to something else. What is it**

19 **he referred to?**

20 Q. Yes, he did soil surveys or some

21 master plan or some geological studies that he

22 referred to.

23 **A. Okay, but what specific ones?**

24 Q. Well, you're the engineer. So if

25 you're the engineer and you know that the

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1 planning board planner and the studies that he
 2 relies on says that there's a shallow depth to
 3 bedrock shale, don't you want to know where that
 4 bedrock shale is?
 5 **A. I put --**
 6 MR. HALL: I object to that. He
 7 testified at the beginning of the meeting that
 8 he went out and dug holes 14 feet deep and
 9 didn't hit it. That's more specific than
 10 general information, so I don't know where
 11 you're headed with this.
 12 MS. DONATO: When I see the soil logs
 13 that he did yesterday, I'll be able to-- right
 14 now they're not before this board.
 15 MR. HALL: Then ask another question.
 16 Q. Am I correct in understanding that the
 17 only place that you did the additional logs
 18 yesterday was in that southeast area with the
 19 array where we had the previous
 20 cross-examination regarding soil log 32?
 21 **A. No. I said it was in this quadrant.**
 22 Q. Yes.
 23 **A. And then I also said we did another--**
 24 Q. Up in there. Did you do any on the
 25 west?

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1 **A. No.**
 2 Q. Okay. So when you said "It's shale
 3 that becomes unrippable with a large machine,"
 4 what were you referring to in your testimony in
 5 December?
 6 **A. What I'm referring to is that if I can**
 7 **get down to that point in that excavation, it's**
 8 **certainly not bedrock. What's below it, I don't**
 9 **know. It's certainly not bedrock to that**
 10 **elevation. So if it goes down to 4 foot, I get**
 11 **down 4 foot. If it goes down to 14 foot, I'm**
 12 **not going to consider that bedrock. I didn't**
 13 **get deeper so I don't know what's down below**
 14 **that.**
 15 Q. You do agree that the foundations, the
 16 posts that you're proposing for these arrays,
 17 must be structurally sound to support the load
 18 of the panels. Is that correct?
 19 **A. Yes.**
 20 Q. Is someone else going to assure this
 21 board and the public that these panels as
 22 they're proposed to be installed on this site
 23 will be structurally sound?
 24 **A. Again, I think that's something that**
 25 **will have to be done before a building permit is**

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1 **issued for these.**
 2 CHAIRMAN BOXER: Look, I assume that
 3 your engineers are going to certify that.
 4 THE WITNESS: It won't be now. It's
 5 going to be when we go for a building permit.
 6 It's just like I don't do a detailed design of a
 7 house footing now. I do it when I go for a
 8 building permit.
 9 MS. DONATO: Mr. Chairman, I think
 10 that's entirely too late for this board to be
 11 able to evaluate what the impacts of this site
 12 will be. If they have to -- where they have to
 13 dig down and what they have to do in order to
 14 address this very much relates to your question
 15 about the posts, the posts' impact on
 16 groundwater and everything else.
 17 So I don't think this is something
 18 that we can leave to the construction code.
 19 It's something that directly relates to a number
 20 of parameters that are before this board.
 21 CHAIRMAN BOXER: I don't think it's
 22 going to be left to this construction code.
 23 MS. DONATO: Thank you.
 24 CHAIRMAN BOXER: I think that this
 25 testimony, not just Mr. Kennedy's but throughout

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1 this hearing process, will definitely focus on
 2 structural stability along with all of the
 3 placement and corrosion issues. So I'm actually
 4 comfortable that we are at some point heading to
 5 an expert that can say to us and certify that
 6 these are going to be structurally sound.
 7 BY MS. DONATO:
 8 Q. And you are aware, Mr. Kennedy, that
 9 the geotechnical information indicates that
 10 shales and the soils that derive from them are
 11 troublesome materials to build on?
 12 **A. Again, it goes into what context?**
 13 **What's the source? What's the context for it?**
 14 Q. Well, did you look at any geology
 15 information when you were analyzing this?
 16 **A. It's all the similar soils in western**
 17 **Bedminster and we build a lot of stuff. Even**
 18 **though it's in the R-10 zone, we build a lot of**
 19 **stuff in western Bedminster. So nothing says**
 20 **that in all these depths we're going down, in**
 21 **the 6- to 8-foot range, and even some areas that**
 22 **we're excavating another 4 foot that we're going**
 23 **down, nothing in there alarms me that we're**
 24 **going deep, that we have a cause for concern --**
 25 **not environmentally, but as far as design,**

1 structurally -- to deal with this. It's the
2 environment that you deal with in western
3 Bedminster for constructing things all the time.

4 Q. And why is it, Mr. Kennedy, that when
5 I ask you a question about the site, you answer
6 something that applies generally, and if I ask
7 you something that applies generally, you say,
8 well, it doesn't apply to the site?

9 A. It's the same questions I'm getting
10 from you.

11 Q. Im asking you. You're the one who's
12 here saying this site's going to work, so, not
13 me.

14 A. Okay.

15 Q. Thank you.

16 Okay. Now, in your testimony in
17 December, you said that the sections that are on
18 the west, where the grades are changing for the
19 detention basin and the swale that "we're
20 actually excavating to the ground."

21 What did you mean by that?

22 A. That the two areas that are shown on
23 A-8, that are on the western array side, are in
24 cut areas that are shown there, where the reds
25 and the yellows are. Predominant fill areas.

1 Q. And what do you mean, "excavating to
2 the ground"?

3 A. Well, they're excavating below grade.

4 Q. Is that to ground? What is the ground
5 then?

6 A. They're not fill. They're
7 excavations.

8 Q. I understand. I want to know what it
9 meant, "to the ground." Excavating-- I want to
10 know what does it mean, "to the ground"?

11 A. It could be below the ground. It's
12 not trying to mean something else there.

13 Q. Okay.

14 A. That's where excavations below grade,
15 below existing grade, is to be.

16 Q. Now, you did indicate that with
17 respect to the cut-and-fill analysis, that
18 there's some specific mathematical document that
19 you're going to be able to provide to calculate
20 the two different types of cut, the topsoil and
21 the total soils.

22 A. Yes.

23 Q. Do you know when we'll have that?

24 A. Within the month that will be there.
25 I can get the other ones right away, but this

1 one is going to take a little time to put
2 together.

3 Q. And on the east side, where you said
4 that generally the cut area is a couple of feet,
5 what is the "couple of feet" to which you were
6 referring?

7 A. Well, it would be from zero and the
8 maximum is about 5 feet. So average is 2, 2 and
9 1/2 feet.

10 Q. You're going by average when you say
11 "couple"?

12 A. Yeah. Again, it shows you right on
13 the plan. It's about 5 foot in this middle
14 color that's here where the cut is.

15 Q. Okay. And what's the total width of
16 the berm along-- let's take the most southern
17 portion of it. It looks like it's about the
18 same all the way, isn't it, except when you get
19 up north, right?

20 A. It is. I'm going to say 175 feet.
21 Again, let me be specific. Along Meadow Road
22 and then turning at the intersection of Country
23 Club Road and along the other side of the
24 driveway along Country Club Road.

25 Q. Okay. I had asked you a number of

1 questions about the installation of the posts.

2 Are you going to supply the
3 manufacturer's data so I will defer asking any
4 further questions on that?

5 A. Yes. There may be the other, you
6 know, expert on the system.

7 Q. Okay. You described the grading cut
8 and fill as "resculpting" of the land. Did you
9 say that you could refer to it "as a berm or
10 agricultural features, it's semantics"?

11 A. Yes.

12 Q. Are you saying that the township's
13 goal of providing a scenic-- preserving the
14 scenic vistas of agricultural lands is
15 semantics?

16 A. No.

17 Q. What's the semantics? The way you
18 describe the berm?

19 A. No, I think the difference between an
20 agricultural feature versus a berm, it's
21 semantics between the two of those, the term
22 itself. Again, it's what we're trying to
23 accomplish here. What we want to call it is the
24 semantic element of it. We're trying to
25 accomplish a series of goals of changing the

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1 **grade in this area. The plan itself is the**
 2 **details. The semantics are what we're calling**
 3 **the thing.**
 4 Q. So semantics is still a goal?
 5 **A. The goal is to try to do something**
 6 **different from this area to the area along**
 7 **Meadow Road by changing the grades in a more**
 8 **gradual way that we could have a land use next**
 9 **to it. That's the goal. Whether it's**
 10 **agricultural features, berms, it's just a little**
 11 **different than a berm.**
 12 MS. DONATO: Okay. At this point --
 13 Mr. Sasso and I have tried to coordinate so that
 14 we could conserve some time. The board has been
 15 very, very patient. And I'm going to --
 16 Mr. Sasso is now going to continue the
 17 cross-examination if that's acceptable.
 18 CHAIRMAN BOXER: Absolutely.
 19 MS. DONATO: Thank you.
 20 CHAIRMAN BOXER: Thanks, Ms. Donato.
 21 I think, again, for planning we should probably
 22 plan for 10 p.m. So that gives Mr. Sasso about
 23 20 minutes.
 24 Does that work for you, Mr. Sasso?
 25 MS. DONATO: Oh, I'm so sorry. I had

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1 no idea how long I took. I'm sorry.
 2 CHAIRMAN BOXER: So let me give you a
 3 choice. We can start you now, but it really is
 4 going to be 20 minutes or so. I think
 5 everybody--
 6 MR. SASSO: I'd rather not be cut
 7 short. I'd rather have one time.
 8 CHAIRMAN BOXER: I understand.
 9 MS. DONATO: Okay. Mr. Boxer, that
 10 allows me to perhaps raise a question. I know
 11 that -- I rearranged my schedule for six months
 12 to be available here on the first Thursday.
 13 CHAIRMAN BOXER: Okay.
 14 MS. DONATO: But I have a vacation
 15 with my girlfriends from kindergarten on
 16 February the 6th up until --
 17 CHAIRMAN BOXER: From kindergarten?
 18 That's impressive.
 19 MS. DONATO: New Brunswick, New
 20 Jersey.
 21 CHAIRMAN BOXER: Nice.
 22 MS. DONATO: St. Peter's School.
 23 CHAIRMAN BOXER: So let me ask you
 24 then, what date are you looking to try to
 25 resume?

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1 MS. DONATO: I will accommodate you in
 2 any way that I possibly can except February the
 3 6th.
 4 CHAIRMAN BOXER: Okay. Well, let's
 5 talk to Mr. Hall.
 6 MS. DONATO: I tried. He doesn't --
 7 MR. HALL: Well, I'm missing my
 8 reorganization meeting of one of my boards
 9 tonight to be here.
 10 CHAIRMAN BOXER: I understand.
 11 MR. COLLINS: Though, unfortunately,
 12 Mr. Kennedy just tells me he can't be here on
 13 the first Monday-- first Thursday next month?
 14 THE WITNESS: Next Thursday I will not
 15 be here.
 16 CHAIRMAN BOXER: That's the 6th.
 17 MS. DONATO: That's the 6th. That
 18 saved my life. Thank you.
 19 THE WITNESS: I can be here on the
 20 13th.
 21 MR. HALL: Well, I'll just have to
 22 live with that, I guess.
 23 CHAIRMAN BOXER: Okay. So what we'll
 24 do, Trina, is rearrange any apps for the 6th and
 25 then we'll carry this to the 13th.

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1 BOARD SECRETARY LINDSEY: We have KRE
 2 already scheduled for the 13th, if that's not a
 3 problem. We carried them to the 13th.
 4 MR. FERRIERO: Maybe what we could do
 5 is have them re-notice for the 6th. We carried
 6 them to the 13th because we thought that they
 7 would be-- we would be otherwise occupied on the
 8 6th. So maybe what we can do is have them
 9 re-notice for the 6th.
 10 CHAIRMAN BOXER: If we could try to do
 11 that, Mr. Collins.
 12 MR. COLLINS: There is enough time to
 13 do that.
 14 CHAIRMAN BOXER: We should try and get
 15 that done. I don't think it would be fair to
 16 Mr. Hall or Ms. Donato or Mr. Sasso to have
 17 another applicant come in here. Okay. We'll
 18 try and do that.
 19 MS. DONATO: Thank you very much. I
 20 appreciate it.
 21 CHAIRMAN BOXER: Thanks, Ms. Donato.
 22 We appreciate it.
 23 MS. DONATO: Thank you so much.
 24 CHAIRMAN BOXER: So we'll go ahead and
 25 arrange it.

1 Okay. Mr. Hall, thank you for your
2 support tonight.

3 MR. COLLINS: Are we going to carry
4 now, Mr. Chairman?

5 MR. HALL: To the 13th, right? We
6 consent to an extension of time.

7 MR. COLLINS: Thank you, Mr. Hall. We
8 are carrying this application, the KDC
9 application, to a date certain of February 13th,
10 2014, at 7 p.m. There'll be no further notice.

11 CHAIRMAN BOXER: Good. Thank you very
12 much.

13 Motion to adjourn?

14 BOARD MEMBER RODELIUS: So moved.

15 CHAIRMAN BOXER: All right. Ladies
16 and gentlemen. Thank you. We're closed for the
17 hearing tonight and we'll see everybody next
18 month.

19 (Application adjourned to February 13,
20 2014, at 7:00 p.m.)

21

22

23

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