

1 COLES COUNTY PLANNING & DEVELOPMENT COMMITTEE
2 HEARING ON COLES WIND, LLC'S, APPLICATION TO CONSTRUCT
3 AND OPERATE A COMMERCIAL WIND ENERGY FACILITY (WIND FARM)
4 UPON CERTAIN PROPERTIES IN COLES COUNTY

5 March 19, 2025
6 6:30 p.m. - 10:15 p.m.

7
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I N D E X

EXAMINATION BY MR. WATTS.....	11
EXAMINATION BY MR. FREEZELAND.....	16
EXAMINATION BY MR. CLAYTON.....	18
EXAMINATION BY MR. DOUGHTY.....	20
FURTHER EXAMINATION BY MR. WATTS.....	21
EXAMINATION BY MR. CRONKHITE.....	24
EXAMINATION BY MS. WINSLOW.....	30
EXAMINATION BY MR. SHERMAN.....	36
EXAMINATION BY MR. BORGMAN.....	83
EXAMINATION BY MR. HARTKE.....	95
EXAMINATION BY MS. CLARK.....	123
EXAMINATION BY MR. CUSTER.....	128
EXAMINATION BY MR. LICKFETT.....	132
EXAMINATION BY MR. PHIPPS.....	135
EXAMINATION BY MR. LOCKHART.....	148
EXAMINATION BY MR. KEYT.....	150
EXAMINATION BY MR. DOUGHTY.....	180
EXAMINATION BY MR. CLAYTON.....	182

E X H I B I T S

NO EXHIBITS ADMITTED THIS DATE.....

1 Mr. WATTS: Good evening. I would like to
2 reconvene this meeting of the Coles County Planning
3 & Development Committee for consideration of the
4 license application for the Coles Wind Apex
5 application.

6 If you would, please stand and join me in
7 the pledge of Allegiance.

8 (Pledge of Allegiance.)

9 MR. WATTS: I'll call the roll call:
10 Mike Clayton?

11 MR. CLAYTON: Here.

12 MR. WATTS: Darrell Cox?

13 MR. COX: Here.

14 MR. WATTS: John Doty?

15 MR. DOTY: Here.

16 MR. WATTS: Pat Freezeland?

17 MR. FREEZELAND: Here.

18 MR. WATTS: And Michael Watts is here.

19 I now turn this meeting over to Mr. Kains.

20 MR. KAINS: All right. Thank you,

21 Chairman.

22 Good evening, folks. This is the second
23 night of the public hearing, resumption of a public
24 hearing involving Coles Wind, LLC.

1 A couple of housekeeping matters: First,
2 our Court Reporter Holly is here tonight, and we've
3 had a discussion. When there is murmuring and
4 talking amongst the lawyers with microphones, in the
5 public, even in the jury box with county board
6 members and Planning & Development Committee
7 members, it's difficult for her sometimes to hear.
8 So I understand there are certain times when you do
9 have to have a brief conversation. I know that
10 counsel at each of the tables might need to have
11 some discussion; but if we could, let's just keep
12 the murmuring and talking to a minimum.

13 What a nice thing this is that nobody is
14 having to stand. And I don't know if the weather is
15 keeping people away or if people just realized that
16 it wasn't going to get done in one night and they
17 will be back later, but I hope everybody is more
18 comfortable tonight.

19 We had Ms. Anderson, a witness for the
20 applicant on the stand.

21 Before she resumes the stand, let's take
22 up any preliminary matters.

23 Mr. Hess?

24 MR. HESS: Thank you very much. We have

1 two very brief preliminary matters.

2 I would like to make three brief proffers,
3 which are answers to questions that were asked
4 Monday night.

5 And then I would like to preview for
6 everyone our expected witness list and what each
7 witness is going to be speaking to tonight so that
8 people know which witness to ask which questions to.

9 MR. KAINS: Okay. Very good. And you
10 said there were three questions that you have
11 answers to?

12 MR. HESS: Yes, sir.

13 MR. KAINS: And, folks, the good news is,
14 if you have a question and the witness doesn't know,
15 they will find an answer for you. So, you know, we
16 want everybody to be as fully informed about this as
17 possible.

18 Go ahead, Mr. Hess, with your first
19 proffer.

20 MR. HESS: Thank you, Mr. Kains.

21 Mr. Clayton had two questions for us
22 Monday night. The first was the address of our
23 office here in Charleston.

24 Mr. Clayton, it is 20 North Fifth Street

1 here in Charleston. I am told that is the Old Train
2 Station.

3 MR. CLAYTON: Thank you.

4 MR. HESS: Mr. Clayton's second question
5 is the closest distance between two turbines.

6 Mr. Clayton, the closest distance, while
7 this is all in the maps -- in our application, we
8 did the math -- the closest distance is 1,548 feet.
9 The greatest distance is 4,619 feet. The average
10 distance between two turbines is 2,549 feet.

11 MR. KAINS: Okay. Very good. Thank you.

12 And did you have a third one?

13 MR. HESS: Yes, sir. Thank you,
14 Mr. Kains.

15 Our third and final proffer: Mr. Shook
16 asked how many Participating Neighbor Agreements
17 have we executed?

18 To date, we have executed 33 Participating
19 Neighbor Agreements.

20 I say to date because, since Monday night,
21 our office phone has been ringing off the hook with
22 several requests of people wanting to sign up. So I
23 expect that number will change, but as of right now
24 it is 33.

1 I will just point out that the template
2 Participating Neighbor Agreement is Exhibit,
3 appendix B4, and all of the terms and provisions are
4 there, including provision 12, just a
5 confidentiality provision that says financial terms.
6 Only the payment terms remain confidential. So
7 there is no first amendment waiver. No gag order.
8 Everyone is free to speak. That is in appendix B4.

9 MR. KAINS: What is the area, Mr. Hess,
10 that is not to be disclosed?

11 MR. HESS: Only payment terms, and that is
12 in provision 12.

13 MR. KAINS: All right. That is
14 reasonable.

15 All right. Then your proposed witnesses
16 who will testify at the hearing tonight?

17 MR. HESS: Yes, Mr. Kains. Thank you.

18 So we are hopeful to get through five
19 witnesses tonight.

20 We have Ms. Anderson who is going to be
21 prepared to answer questions.

22 After her, you will hear from Ms. Kelly
23 McQue. Ms. McQue is our decommissioning expert.
24 She is only going to testify on one subject, and

1 that is the cost calculations in the decommissioning
2 plan. So, if anyone has questions about the cost
3 calculations in that decommissioning plan, Ms. McQue
4 is your witness.

5 We will then have Mr. Adam Carlson, who is
6 our project manager, testify as to construction, the
7 construction schedule. He will also address several
8 of the questions that were raised Monday night about
9 water impact. So construction and water impact will
10 be Mr. Carlson.

11 We expect those two witnesses to be brief.

12 We will then have Dr. David Loomis, our
13 economics professor. He was the author of the
14 Economic Impacts Study. He will talk about economic
15 benefits and property taxes. Candidly, I'm not sure
16 that is going to be a brief exchange, so we might be
17 with him for a little bit.

18 I am hopeful we will have time for a fifth
19 witness. If we do, if we have time, we will put on
20 Mr. Drew Lines. He is our property values expert.
21 So there were several questions about impact to
22 property values and our property value studies. We
23 want to get those answered tonight if we can. So we
24 are going to have Mr. Lines to present.

1 Mr. Kains, if there is not enough time for
2 Mr. Lines, but we have 15 minutes, we also have
3 Jason Connelly here. He is our Director of Safety.
4 He has a very brief presentation on safety. So, we
5 could, alternatively, get that done.

6 So we are proposing to, after
7 Ms. Anderson, decommissioning, construction and
8 water, economic benefits, and then, if there is
9 time, property values, or, alternatively, safety.

10 MR. KAINS: You are clearly an optimist,
11 Mr. Hess, but I hope we can, but I am not going to
12 allow this hearing to go without questions from the
13 public.

14 I do have a statement about
15 cross-examination from the public: The
16 cross-examination is to be conducted only by persons
17 who are neutral on the issue or those opposed to the
18 position of the witness, proponent, or opponent.
19 Okay? In other words, if you are on the same side
20 of the issue as the witness. Say Ms. Anderson is on
21 the stand tonight, then persons who are in favor of
22 the project, I am not going to allow them to ask
23 questions of Ms. Anderson. Only neutral and people
24 who are opponents.

1 Similarly, when there is a witness who is,
2 later on, say a person from the public is
3 testifying, and they are opposed to the project, I
4 will not allow questions from other persons who are
5 opposed to the project, because I swear I had this
6 happen in DeWitt County about six, seven years ago,
7 where a lady was testifying, and she kind of froze
8 up and didn't really get to say what she wanted to
9 say. And I felt badly for her, but it happened.

10 Her brother got up to cross-examine her
11 and fed her the lines that she was supposed to have
12 said. So when you are testifying, it's a good idea
13 to bring your notes, but you can't bring your
14 brother.

15 So I am not going to allow same-side
16 questions. This type of questioning is known as
17 bolstering and is not true adversarial testing of a
18 witness's testimony. So if you are on the same side
19 as whoever is testifying, I am not going to allow
20 you to ask those questions.

21 All right. That is just some simple
22 housekeeping.

23 Before we start, Mr. Keyt and Ms. Rives,
24 do you have anything?

1 MR. KEYT: No, sir.

2 MR. KAINS: All right. Very good. All
3 right. Then call your next witness or your current
4 witness.

5 MR. HESS: We would recall Ms. Anderson.

6 MR. KAINS: I don't have to swear you in
7 because you were sworn in the other night.
8 Ms. Anderson, do you recall being sworn in to
9 testify and tell the truth on Monday, March 17,
10 2025?

11 THE WITNESS: I do.

12 MR. KAINS: Do you understand that you
13 remain under oath?

14 THE WITNESS: I do.

15 MR. KAINS: Okay. Very good. All right.
16 Ms. Anderson gave her presentation and direct
17 testimony, and so now it is time for questions also
18 known as cross-examination for Ms. Anderson.

19 And first we go to members of the Coles
20 County Planning & Development Committee. Are there
21 any questions from members of the committee?

22 Yes, Chairman Watts?

23 EXAMINATION

24 BY MR. WATTS:

1 Q. If you would, I appreciate that Apex said
2 they have added 150 feet of setbacks to
3 nonparticipating participants and community
4 buildings. I have some other concerns about
5 distances.

6 With shadow flicker, do you know how many
7 non-participant occupied buildings will be subject
8 to shadow flicker?

9 **A. If I could read -- as I mentioned on**
10 **Monday, all nonparticipating residences and occupied**
11 **community buildings are less than 30 hours.**

12 Q. But we don't know how many hours within
13 the 30-hour limit?

14 **A. It is in the shadow flicker report, and I**
15 **am happy to pull it up and reference it for you.**

16 Q. Okay. I can look that up. Thank you.
17 This is all based on modeling?

18 **A. That is correct.**

19 Q. Okay. Are there any cases where, after
20 the project is in operation, you go back to take
21 actual measurements and see if the modeling is
22 accurate, and especially in cases of where people
23 have made complaints or have issues?

24 **A. So, I'll answer that in two ways. So, in**

1 my 18-year career, I've never seen a wind project,
2 across many states, go back and do modeling or
3 monitoring post construction. But your ordinance
4 does have a complaint resolution process.

5 Q. Right.

6 A. And that is for any resident, participant
7 or non. And there is also a requirement for an
8 annual report, and one of the things that we have to
9 report on annually is shadow flicker.

10 Q. Okay.

11 A. And specifically to complaints about
12 shadow flicker, sound, public roads. Those are the
13 three big ones, I believe, just off the top of my
14 head.

15 Q. Okay. And the same would be true with
16 noise levels; it would be if there were any issues?

17 A. That's right. So, if a resident had a
18 complaint about noise levels, they would contact us
19 immediately. Right? There is going to be a
20 complaint procedure. They can contact us in a
21 number of ways: In person in the operations and
22 maintenance building; the project has an e-mail
23 address; there is a phone number that our landowners
24 will get.

1 **From there, every complaint is**
2 **investigated with the landowner, and then we have to**
3 **report the resolution of that complaint back to the**
4 **county board.**

5 Q. Right.

6 A. **Not just in the annual report, but after**
7 **it's resolved.**

8 Q. Okay. At the time it's resolved?

9 A. **That's right.**

10 Q. Okay. I also noticed that the ADLS light
11 calibration period is six months, which means the
12 lights are on continually through that time period,
13 if I read the license application correctly; and
14 that seems like it could be intrusive to people
15 nearby if lights are on.

16 A. **So the lights are on -- the red flashing**
17 **lights are required by the FAA to be on for any**
18 **structure over 200 feet.**

19 Q. Right.

20 A. **We will have an ADLS system, radar system,**
21 **at this project. And I'll just explain briefly how**
22 **that works. It detects low-flying airplanes -- so,**
23 **not those cruising at 20,000 feet -- within about**
24 **three and a half nautical miles from the most**

1 distant turbines, right? Not the ones in the
2 middle, but the ones on the outer edge of the
3 project. Once that -- and then the lights turn on.
4 After the aircraft is past the wind project, then
5 the lights would turn back off.

6 But there is a testing and calibration
7 period associated with that. I can't speak to
8 whether it's three to six months. Adam Carlson
9 certainly can. And I know we are implementing that
10 and testing that at our project in Piatt County
11 right now.

12 Q. Okay. Under Telecommunications, did I
13 read that, for off-air television, it says signal
14 scattering could still impact signal areas currently
15 served by the TV stations, and that would have
16 live-sited use, one wind turbine but not to the
17 service antenna; and if interference is observed,
18 then a high-beamed directional antenna is
19 recommended to be used?

20 If that is the case, does Apex assist the
21 landowner in making those necessary remediations to
22 ensure television?

23 A. Absolutely. So I'll just explain how that
24 works. So if you have satellite TV or cable TV, you

1 **are not affected.**

2 **It's really what I'll call the old-school**
3 **bunny ears, over-the-air TV that can sometimes**
4 **scatter. If you have it, and there is an issue --**
5 **right? -- we absolutely will work with you.**
6 **Sometimes it's just the implementation of a booster**
7 **signal detection that helps.**

8 Q. Okay. Then, are you the person that I ask
9 about aviation and wildlife issues?

10 **A. That witness will be here another day.**

11 Q. Okay. Then I'll save my questions for
12 that person.

13 **A. Thank you.**

14 MR. KAINS: All right. Very good. Thank
15 you, Mr. Chairman.

16 Any other questions from members of the
17 Planning & Development Committee?

18 Yes, Mr. Freezeland?

19 EXAMINATION

20 BY MR. FREEZELAND:

21 Q. There had been some complaints, from the
22 project in Douglas County, of the roads still not
23 being fixed properly to date, and I know we had some
24 discussion about that on Monday. Did you say that

1 you would work with the townships? Or how do we
2 resolve any possible road issues, if we would have
3 damage to the roadways?

4 A. Sure. So Adam will be your guy, but I
5 know enough about it to hopefully answer your
6 question. But if you have follow-up, certainly Adam
7 can see to this.

8 We will enter into a road use agreement
9 with the road authorities for this project; that is
10 Coles County, Morgan Township, and Seven Prairie
11 Townships. So that will be worked out with those
12 respective engineers, and there will be a process in
13 there for the roads to be -- how they are repaired,
14 you know, how they are improved for the equipment to
15 come in, and to make sure that they continue to work
16 in a satisfactory condition to that engineer.

17 There is also a third party that makes
18 sure that the roads are in good shape.

19 I can't speak to what is happening in
20 Douglas County. I don't know anything about it.

21 But I do know that we're finishing
22 construction of the project an hour north of here,
23 and the roads are absolutely beautiful. If there
24 was a concern about the roads not being in a good

1 condition, certainly our team will take care of it.

2 MR. KAINS: And what county is that,
3 Ms. Anderson, where the roads are beautiful?

4 THE WITNESS: Piatt County.

5 MR. KAINS: In case somebody wants to go
6 drive the roads of Piatt County near the proposed
7 wind farm to check it out.

8 Okay. Any other questions for Ms.
9 Anderson?

10 Mr. Clayton?

11 EXAMINATION

12 BY MR. CLAYTON:

13 Q. There's a couple places on your section of
14 this -- I don't know what you call this page. It's
15 the special use permit page, the first page.

16 **A. Sure.**

17 Q. About waivers.

18 **A. The checklist.**

19 Q. And one of the waivers is setback
20 requirements, and the other waiver is for shadow
21 flicker mitigation requirements. Why would you need
22 a waiver for shadow flicker mitigation requirements?

23 A. We don't need a waiver for shadow flicker
24 mitigation requirements, but that is a topic that

1 the ordinance allows us to get waivers if we need it
2 for nonparticipating residences and occupied
3 community buildings. But we don't need a waiver
4 because we're --

5 Q. So these are waivers that you would
6 obtain, not a landowner would give you?

7 You know, like if you were a participating
8 neighbor, is that included as, you know, you are
9 giving that person a waiver on the setback and the
10 shadow flicker?

11 I don't know if I am saying the question
12 right, and I apologize.

13 A. That's okay. We'll work it out.

14 The ordinance requires waivers for those,
15 again, nonparticipating residents and occupied
16 community buildings over 30 hours.

17 There are no waivers for participating
18 properties.

19 Residences, I believe there are only two
20 modeled over 30 hours, and that is with conservative
21 assumptions.

22 In terms of setbacks, there are different
23 setback requirements if you are participating or
24 non. The nonparticipating resident setback is 2.1

1 **times tip height. The participating resident**
2 **setback is 1.1 times tip height. We've maintained**
3 **all of those.**

4 Q. Thank you.

5 **A. You're welcome.**

6 MR. KAINS: Thank you for your questions,
7 Mr. Clayton.

8 Yes, Mr. Doughty?

9 EXAMINATION

10 BY MR. DOUGHTY:

11 Q. Just two questions: On page 9, or
12 slide 9, just for definition sake, participating
13 residents, is that the property line or is that a
14 structure itself?

15 **A. Based on the ordinance itself, it is the**
16 **structure.**

17 Q. I am sorry. The 1.1?

18 **A. Yep. It's the structure itself at the**
19 **time the application is submitted.**

20 Q. All right. And then, just as a point of
21 clarification from Monday night, on slide 16, I have
22 written down: Having to do with the decommission
23 plan. You talked about the bankruptcy protection,
24 but what about, like, the sale of the company?

1 That surety is also covered under that,
2 like, if you would sell?

3 I know they, Mr. Hess, talked about that
4 Apex owns everything now. It's their model.

5 But if there was a sale, we are still
6 covered under the surety plan?

7 **A. That's right. We don't plan to sell. In**
8 **that hypothetical situation, if we did, all of the**
9 **permit conditions, all of the plans, all of the**
10 **agreements would go with it, and you are still**
11 **protected by the surety. That's right.**

12 MR. KAINS: Any other questions from
13 members of the committee for Ms. Anderson?

14 MR. WATTS: Could I?

15 MR. KAINS: Yes. Mr. Chairman?

16 FURTHER EXAMINATION

17 BY MR. WATTS:

18 Q. Related to that, in your 17 years of
19 experience with this, has there ever been a scenario
20 where there have been reasons that the county ends
21 up having to pay for some of the decommissioning
22 costs?

23 **A. Never in my 18-year career.**

24 Q. All right. Thank you.

1 **A. You're welcome.**

2 MR. KAINS: Any other questions from
3 members of the committee?

4 All right. Now, on to questions from
5 members of units of local government, including
6 school districts?

7 And county board members who aren't on the
8 committee?

9 All right. Very good. Other than the
10 attorneys at the tables and inside the well, are
11 there any other licensed attorneys in the galley?

12 Then I can skip that on my checklist of
13 questions to ask.

14 We can go right to other interested
15 parties.

16 Members of the public, questions for
17 Ms. Anderson?

18 Mr. Cronkite, sir, I know you the other
19 day, in Vermilion County, didn't want to state your
20 name for the court reporter. Can I do that for you?

21 MR. CRONKHITE: Yeah, you can.

22 MR. KAINS: This is Arthur Cronkhite. Is
23 it C-o-n-k-r-i --

24 MR. CRONKHITE: No. It's actually

1 C-r-o-n-k-h --

2 MR. KAINS: Oh, Cronkhite.

3 COURT REPORTER: -- k-h- --

4 MR. CRONKHITE: -- i-t-e.

5 MR. KAINS: I am sorry. I have been
6 calling you the wrong last name for all of these
7 hearings that I see you at.

8 MR. CRONKHITE: As long as you don't call
9 me late for dinner.

10 MR. KAINS: All right. Go ahead, Mr. Late
11 for --

12 Ms. Antoniolli?

13 MS. ANTONIOLLI: Can we also have the
14 address or county stated for the record, too?

15 MR. KAINS: I think the county would be
16 appropriate.

17 MS. ANTONIOLLI: Yeah.

18 MR. KAINS: And where are you from?

19 MR. CRONKHITE: Vermilion County.

20 MS. ANTONIOLLI: Okay. Thank you.

21 MR. CRONKHITE: What is the length of when
22 you testify for out-of-towners? Is it 15 minutes?

23 MR. KAINS: Fifteen minutes, yes, sir.

24 MR. CRONKHITE: I want to make sure I've

1 got that right. That is down the road.

2 MR. KAINS: Go ahead.

3 EXAMINATION

4 BY MR. CRONKHITE:

5 Q. Ms. Anderson, you said that you dealt with
6 dozens of projects. How many have been in Illinois?

7 **A. Eight to ten wind projects and several**
8 **more solar projects.**

9 Q. Okay. Eight to ten.
10 You said something that really caught my
11 attention in your testimony.

12 And, by the way, I would like to qualify
13 kind of a little bit. From everything you explained
14 and what you do, it sounds like you are a project
15 manager. That is what we used to refer to people
16 that do what you do. So it's project management;
17 you actually build models for the project?

18 **A. I don't do that at all. I am a senior**
19 **director of project permitting. I am responsible**
20 **for writing the application.**

21 Q. Okay. So you don't do any project
22 modeling; you don't do any timelines or anything
23 like that?

24 **A. I mean I work with our broader team on,**

1 **like, the permitting timeline and the overall**
2 **project schedule.**

3 Q. Okay. Great. So that's your people
4 underneath you are doing that. But that's -- you're
5 responsible for that, correct?

6 MR. HESS: Objection. That
7 mischaracterizes her testimony. I am not sure the
8 relevance, but that is not what she said.

9 MR. KAINS: I am going to overrule your
10 objection.

11 And, you know, Mr. Cronkhite, let's get to
12 relevant questions about what she does. She wrote
13 the permit.

14 MR. CRONKHITE: All right. She wrote the
15 permit?

16 MR. KAINS: Or wrote the application.

17 BY MR. CRONKHITE:

18 Q. Okay. Well, do you have -- you have an
19 abatement management plan, I assume?

20 A. **We have a decommissioning plan. I am not**
21 **sure I understand the question, sir.**

22 Q. Okay. You have plans for all the
23 different aspects of this project, correct?

24 A. **We have several plans that support our**

1 permit application that are required by the
2 ordinance here in this county.

3 Q. So all you have right now is just for
4 this, all right?

5 Do you have -- do you only do the
6 installation planning, or this planning? Is this
7 all you do, or do you do the installation planning
8 as well?

9 A. I am responsible for obtaining the
10 discretionary permits.

11 Q. Okay. All right. Have you ever
12 personally met any of the veterans who supposedly
13 own this company?

14 **A. Absolutely.**

15 Q. Really? Okay. Excellent.

16 Have you had any dealings with Mr. Keyt,
17 the attorney here?

18 MR. HESS: I mean, with all due respect,
19 Mr. Kains, I am not sure the relevance of that, and
20 I am not sure what he's implying by asking that
21 question.

22 MR. KAINS: Yeah. How is that relevant,
23 Mr. Cronkhite?

24 MR. CRONKHITE: If we want to delve into

1 this at this point, Mr. Keyt has been our
2 representative for some time.

3 MR. KAINS: Okay. When you say "our
4 representative," I am just going to clarify --

5 MR. CRONKHITE: Attorney.

6 MR. KAINS: -- he has represented the
7 county board in your county, Vermilion County.

8 MR. CRONKHITE: Right.

9 MR. KAINS: I don't know if it's relevant.
10 They don't have a project -- correct? -- in
11 Vermilion County, so I don't know that --

12 MR. CRONKHITE: Correct. I would like to
13 know when he first interacted with this group, is my
14 question, really.

15 Who brought him in?

16 Why is he here?

17 I mean, is this what he does all the time?

18 MR. KAINS: Okay. Mr. Cronkhite, Mr. Keyt
19 represents various county entities and
20 municipalities around the state. He can be hired to
21 be in any county. And I am too. I am too.

22 MR. CRONKHITE: I know. I know.

23 MR. KAINS: You'll see me in a lot of
24 counties, and I see Mr. Keyt fairly often. I see

1 these people. I've seen Mr. Hess once prior at
2 another hearing, Ms. Antonioli, and Ms. Lode at a
3 couple prior hearings. I've seen you at a couple of
4 prior hearings.

5 It's a small world we live in. But,
6 Mr. Cronkhite, I don't know that it's relevant what
7 Ms. Anderson has -- whether she has any knowledge of
8 Mr. Keyt's practice or not. I don't think it's
9 relevant, so let's move on to another question,
10 please.

11 MR. CRONKHITE: That's fine.

12 MR. KAINS: Thank you.

13 BY MR. CRONKHITE:

14 Q. There is modeling for post -- you say
15 there is no modeling for post construction. So
16 there is no modeling or testing after the wind
17 turbines go in; is that correct?

18 MR. HESS: I am going to slightly object,
19 if his question is intended to be broad, because I
20 think that testimony was about shadow flicker. And
21 if the question is about shadow flicker, I have no
22 objection.

23 But if he's implying broadly, that is not
24 her testimony. There is certainly a lot of post

1 construction testing. The question was about shadow
2 flicker.

3 MR. KAINS: First time I ever heard a
4 slight objection, but I am going to sustain your
5 slight objection.

6 And I am going to tell you this,
7 Mr. Cronkhite, let's talk about -- if you want to
8 talk about post construction testing, I think it's
9 limited to the shadow flicker testimony that was
10 already previously stated by Ms. Anderson.

11 BY MR. CRONKHITE:

12 Q. Okay. One final question is: How many
13 decommissions have you done?

14 **A. Personally, I don't write those**
15 **decommissioning plans, so none. But every project I**
16 **permit includes a decommissioning plan that is, in**
17 **every state or county, part of the local rules.**

18 MR. CRONKHITE: Right. Thank you.

19 MR. KAINS: Thank you, Mr. Cronkhite.

20 Any other questions from members of the
21 public for Ms. Anderson?

22 Yes, ma'am?

23 And then the gentleman seated to the left.

24 MS. WINSLOW: My name is Connie Winslow,

1 W-i-n-s-l-o-w.

2 MR. KAINS: Thank you, Ms. Winslow. Go
3 right ahead.

4 EXAMINATION

5 BY MS. WINSLOW:

6 Q. Brie, are you a good neighbor?

7 **A. I like to think so.**

8 Q. Is Apex Clean Energy a good neighbor?

9 **A. Absolutely.**

10 Q. In regards to the Piatt County Apex
11 Prosperity Wind Project, what is the name of the
12 truck driver who died?

13 How old was he?

14 And did he have a family?

15 MR. HESS: With all due respect, I am
16 going to object to asking the specific personal
17 identifying information for someone who is deceased.

18 I will tell you Mr. Carlson is going to
19 directly address this subject. But if Ms. Anderson
20 can answer the question generally -- but I don't
21 think it's appropriate, for that family, to give
22 personal information.

23 MR. KAINS: Yeah. I am going to sustain
24 the objection.

1 But I am going to direct the witness to
2 answer the first portion of the question: Do you
3 know the gentleman's name?

4 I am assuming the truck driver was a
5 gentleman. It could have been a woman.

6 Do you know the person's name that died in
7 an accident involving another wind farm?

8 THE WITNESS: I do not know their name.

9 MS. WINSLOW

10 Q. Why wouldn't you?

11 **A. I mean maybe it's why would I. There is**
12 **no reason for me to know their name.**

13 Q. That is disrespectful, in my opinion.

14 MR. KAINS: Ma'am, you ask questions. You
15 can testify later. But whether it's disrespectful
16 or not, it may or may not be this witness's job to
17 know names of persons who are working on the site.

18 It's my understanding -- well, I'll ask
19 the question:

20 Ms. Anderson, are you onsite during
21 construction?

22 THE WITNESS: I am not.

23 MS. WINSLOW

24 Q. Okay. That is not your job, right?

1 **A. I worked on that permit application. I**
2 **attended those hearings, and then I was done with --**
3 **my role on the project was over.**

4 MR. KAINS: Okay. Thank you. All right.

5 Go right ahead with any other questions,
6 Ms. Winslow.

7 BY MS. WINSLOW:

8 Q. Can you tell, in decommissioning, how many
9 feet of roadway will be ripped out? Or would you
10 leave the roadway rock material to be removed by
11 someone else, besides Apex?

12 MS. ANTONIOLLI: And we do have, as we
13 noted at the opening today, we have a witness here
14 that will specifically talk about decommissioning
15 costs associated with that process.

16 MR. KAINS: Okay. That is your next
17 witness?

18 MS. ANTONIOLLI: Yes.

19 MR. KAINS: Ms. Winslow, if you could,
20 please just save that question for the next witness.
21 Thank you.

22 BY MS. WINSLOW:

23 Q. Where is the noise measured from?

24 Do you measure from inside the house,

1 outside the house, in the yard to edge of property?

2 A. So the Illinois Pollution Control Board
3 regulations require that sound from Class C land,
4 agricultural land, to class A land, residential
5 land, is measured at the land use. So it's not the
6 residence. It's not the property line. It is the
7 land use that is considered residential.

8 Q. I guess I am not understanding that
9 answer.

10 A. I'll say it differently. In the sound
11 report, included in our application, you'll see that
12 there are sound contour lines around each turbine.
13 There are eight different octave bands in the
14 Illinois Pollution Control Board limits. In every
15 octave band, the contour of sound level of that
16 limit for each octave band is only in cultivated
17 croplands. It does not cross any portion of any
18 property that might be considered residential; and
19 that means a residence, the mowed grass around a
20 residence, barns or other outbuildings that might be
21 associated with the farmstead. They are only in
22 cultivated cropland.

23 Q. If my niece and her husband and the
24 children are building a home at the very edge of my

1 property, how is it fair to restrict me where I have
2 someone that can build on my property because of the
3 wind turbines?

4 Why would I have to have a setback?

5 Is it constitutional to take land rights
6 away without compensation?

7 They would clearly be closer then to the
8 turbines and would be affected by the noise and
9 flickering. Should we be allowed to live anywhere?
10 Shouldn't we be allowed --

11 MR. IERULLI: Your Honor, I am going to
12 object.

13 MR. KAINS: Yes.

14 MR. IERULLI: It's well beyond the scope.
15 She is asking questions on the law. This witness is
16 an expert witness on the permitting process, and
17 it's simply not relevant.

18 MR. KAINS: Yes. I understand your
19 objection, Mr. Ierulli.

20 I am going to sustain Mr. Ierulli's
21 objection, and here is why: First of all, your
22 question is simply one that calls for a legal
23 conclusion by this witness, and I recall her
24 educational background, and I recall that it does

1 not involve that she has a law degree, so I'm not
2 going to require the witness to answer the question.

3 But I think your questions, Ms. Winslow,
4 are good, but I think they probably need to be
5 addressed to Mr. Carlson, who is their -- I think he
6 -- no. What is his area?

7 MR. HESS: He's the project manager.

8 MR. KAINS: Project manager, and also the
9 decommissioning expert who is going to testify next.

10 So Ms. Anderson gave an overview of the
11 application, but these are questions that kind of
12 dig a little deeper. So, if it's all right, Ms.
13 Winslow, we'll have you come back up and ask
14 questions of the other witness when they come back
15 up.

16 THE WITNESS: With all due respect, I am
17 happy to conceptionally answer the question.

18 MR. KAINS: If you want. You don't have
19 to.

20 THE WITNESS: Happily.

21 Right. So that is talking about something
22 in the future, right? So we are here for this
23 application here tonight and the ordinance.

24 I'll summarize what is required in it:

1 For participating and nonparticipating residences,
2 those are defined at the time of the application.
3 That is in the definition of the ordinance. And so
4 we have designed our project with the residences
5 that were in place at the time we submitted our
6 application.

7 MR. KAINS: Thank you. All right.

8 Next questions?

9 Mr. Sherman, Tom Sherman. Mr. Sherman,
10 how do you spell your last name?

11 MR. SHERMAN: S-h-e-r-m-a-n.

12 MR. KAINS: Okay. Very good. Thank you.
13 Go ahead with your questions for Ms. Anderson.

14 MR. SHERMAN: I need to get my 698 pages
15 ready.

16 MR. KAINS: Absolutely. Take your time.
17 And, Mr. Sherman, I'll just say that that's a
18 relatively thin application compared to some I've
19 seen.

20 MR. SHERMAN: I am sorry.

21 MR. KAINS: Go right ahead with your
22 questions.

23 EXAMINATION

24 BY MR. SHERMAN:

1 Q. You wrote all of the application, correct?

2 A. That is right.

3 Q. So from page 1 to page 56 -- I am sorry --
4 page 58 you wrote the application?

5 A. I and my team worked on it, correct.

6 Q. And you wrote or you were overseeing all
7 of the appendices, appendix, however you say that?

8 A. I reviewed them all. Yes.

9 Q. Since the state statute nor the wind
10 ordinance requires it, why did you include property
11 tax information in here?

12 A. If I could just have a second to reference
13 the specific ordinance section?

14 Q. Sure.

15 MR. KAINS: Any lawyers in the room have
16 an extra copy of the ordinance?

17 I can't seem to find mine.

18 MS. SHAPIRO: Here you go.

19 MR. KAINS: Thank you, Ms. Shapiro.

20 I am looking through my stuff, and I found
21 the Livingston County ordinance, and that is not
22 helpful here in Coles County.

23 THE WITNESS: Do we have one more? I have
24 the application not the ordinance.

1 MS. ANTONIOLLI: (Tendering documents.)

2 THE WITNESS: So we've included economic
3 benefits, information on economic benefits, and
4 property values within section 3.6, supporting
5 documentation, and we did that with specific regard
6 to the hearing factors that are listed in the
7 ordinance. And the ordinance isn't numbered, and
8 the headings are just hearing factors. So there are
9 -- so property tax information was included to
10 derive at some of those hearing factors.

11 BY MR. SHERMAN:

12 Q. Can you lead me to exactly what hearing
13 factor?

14 I've got it right here.

15 Is it A? B? C? D? What are we talking
16 about?

17 **A. I think implicitly it applies to all of**
18 **them.**

19 Q. How so?

20 **A. You establish the maintenance or operation**
21 **of the wind project will not be detrimental to or**
22 **endanger the public health, safety, morals, comfort,**
23 **or general welfare. Property --**

24 Q. What does that have to do with property

1 taxes?

2 **A. If you'll let me finish, increased**
3 **property taxes help the general welfare of this**
4 **community.**

5 Q. Okay. Why did you include economic issues
6 in the application?

7 **A. For the same reason.**

8 Q. Can you -- again, where is that at in the
9 ordinance?

10 I know where it's at in your application.

11 Where is it in the ordinance?

12 **A. It would also fall under satisfying, as a**
13 **way to satisfy the hearing factors.**

14 Q. Okay.

15 **A. Right. So property taxes are one**
16 **component of the economic study by Dr. Loomis, and**
17 **he will talk more about that tonight.**

18 Q. Okay. On page 56 of your application, why
19 did you leave out and not address the requirements
20 of the ordinance stating that the applicant shall
21 pay all costs including any litigation, disputes,
22 etc.?

23 **A. That was unintentional, but Coles Wind**
24 **would -- that is an ordinance requirement, and we**

1 **would agree to that, of course.**

2 Q. That is a big one.

3 So you would pay for any litigation?

4 Let me ask it a different way: If the
5 county board rules against your application, will
6 Apex sue the county? And, if so, will Apex pay for
7 that litigation?

8 MR. HESS: Respectfully, I am going to
9 object. That calls for speculation. It is well
10 beyond the scope of her testimony, and I don't
11 understand the relevance.

12 MR. KAINS: It's slightly beyond the scope
13 of her testimony, but I am going to overrule the
14 objection.

15 The question is: Will Apex pay the cost
16 of litigation if the county board -- if Coles County
17 gets sued?

18 Will Apex pay for the --

19 MS. ANTONIOLLI: Again, I am going to
20 object as well because that calls for a legal
21 conclusion based on interpretation of that ordinance
22 provision.

23 MR. KAINS: Overruled.

24 Will Apex pay for the cost of litigation?

1 THE WITNESS: Yes. I already said that.

2 MR. KAINS: Go ahead, Mr. Sherman. Ask
3 another question.

4 BY MR. SHERMAN:

5 Q. I want to ask that again. Apex will pay
6 for anything that is listed on page 16, fee
7 schedule, and permitting processes -- it's number 3
8 -- all costs to be paid by the applicant/owner --
9 the very last sentence says -- this includes but is
10 not limited to the direct or indirect costs
11 associated with the hearing -- which we are at --
12 permitting, operations, inspection, decommissioning,
13 litigation, disputes, and/or negotiations.

14 So Apex will pay for all of that, you just
15 said, correct?

16 A. That is correct.

17 Q. Thank you. Where exactly in Coles County
18 is Interstate 55?

19 MR. KAINS: Mr. Sherman, I am going to
20 interject here and state that I don't think this
21 witness is familiar with the interstate system in
22 Illinois, but I think everybody from Illinois knows
23 that Interstate 55 does not go through Coles County
24 in any part of the county. I am sure it's probably

1 a misnomer. It's probably Interstate 57, but that
2 is just a guess on my part.

3 MR. SHERMAN: To answer your question, in
4 appendix E3, it lists Interstate 55 in Coles County
5 as being one of the boundaries for the project.
6 That is why I am asking the question.

7 MR. KAINS: That is a very good question.
8 A good thing to qualify.

9 MR. SHERMAN: Along that same line --

10 MR. KAINS: Hang on, Mr. Sherman.

11 Is there anybody at the table who can
12 address this? And is it a misnomer?

13 MR. HESS: Mr. Kains, you are spot on.
14 Yes, sir.

15 MR. KAINS: I am sorry?

16 MR. HESS: It should be 57. Yes, sir.

17 MR. KAINS: I57 is the one that is the
18 boundary.

19 Okay. Good points, though, Mr. Sherman.
20 Go right ahead.

21 BY MR. SHERMAN:

22 Q. On page 12 of your application, where
23 exactly is State Highway 2 in Coles County?

24 And, again, this relates to where you say

1 the project is going to be.

2 Where is State Highway 2?

3 **A. (Indicating on map.)**

4 Q. Is that a state highway?

5 **A. Perhaps it's a county road highway, but**
6 **that is the intended road. Yes.**

7 Q. So it's a county road, not a state
8 highway. All right. So, again, that is two things.

9 Similar kind of question, similar space on
10 page 12 there, it says -- I am sorry. Not on
11 page 12, in appendix E3.

12 How can County Road 1900 North be a
13 western boundary of the project when County
14 Highway 1900 North runs east and west?

15 How can it be a western boundary?

16 **A. Can you tell me what page you are**
17 **referring to, please?**

18 Q. In appendix E3 in your identification and
19 description of the proposed project.

20 MS. ANTONIOLLI: If it would be helpful,
21 we do have the author of appendix E3 here tonight.

22 MR. HESS: He didn't draft this.

23 MS. ANTONIOLLI: And he is Mr. Andrew
24 Lions from CohnReznick, and we may have time for him

1 to testify to these exact issues later.

2 MR. KAINS: Okay. So let's do that.

3 MR. SHERMAN: Okay.

4 MR. KAINS: With respect to appendix E.

5 MS. ANTONIOLLI: E3.

6 MR. KAINS: E3.

7 MR. SHERMAN: And who is that again?

8 MR. KAINS: His name is Andrew Lions.

9 MR. SHERMAN: Thank you.

10 BY MR. SHERMAN:

11 Q. Can you tell me in the application where
12 the Good Neighbor Agreement is located? I can't
13 find it.

14 A. **It's called a Participation Agreement. It**
15 **is appendix B4.**

16 Q. B4. So, on Monday, when Mr. Moore
17 referred to it, and was questioned at least twice,
18 the Good Neighbor Agreement and the whatever it is
19 you just said are the same thing?

20 A. **They are synonymous terms. Right. Yes.**

21 Q. You said what appendix that was?

22 A. **B4.**

23 Q. Is that the one that has no signatures on
24 it?

1 **A. It is a template agreement. Correct.**

2 Q. So it has no signatures?

3 **A. It is a template agreement.**

4 Q. Okay. No signatures.

5 Why do you list multiple times within your
6 application two very different wind turbines?

7 **A. Because we are considering two different**
8 **turbine models for this project. I don't think they**
9 **are all that different.**

10 Q. So you are considering?

11 **A. The project will build and include either**
12 **the Vestas machine or the GE machine.**

13 Q. So you haven't decided which one?

14 **A. Not yet, but every turbine location works**
15 **for both turbine models with respect to shadow**
16 **flicker, sound, and setbacks.**

17 Q. When are you going to decide which
18 turbine?

19 **A. In the coming months.**

20 Q. After the application has already been
21 submitted a couple weeks ago?

22 **A. The application was submitted January 17.**

23 Q. Right. And do these cost exactly the same
24 to the penny, dollar wise, cent wise?

1 **A. I am not involved in the procurement of**
2 **our turbines.**

3 Q. So what's the answer?

4 They are the same amount?

5 They are not the same amount?

6 **A. I am not involved in the procurement of**
7 **our turbines. I don't know the cost of them, the**
8 **cost differences between these two turbine models.**

9 Q. On page 1, paragraph 3 of your
10 application, you write: Not all details of the
11 project are final at the time of the application
12 submittal, even though the wind ordinance requires
13 this.

14 Why is that?

15 **A. Turbine locations are final. They are not**
16 **moving, and we will build a subset, 51 of the 62**
17 **turbine locations. We are completing final**
18 **engineering geo tech analysis that will help inform**
19 **which of the 62 turbines get built, which of the 62**
20 **turbines we build 51. And then we are working**
21 **through the electrical design and civil design.**

22 So it's mostly related to those linear
23 facilities, also in coordination with landowners, to
24 be finalized. They will be on parcels that are

1 **included in this application, but they may change**
2 **locations slightly.**

3 Q. Okay. So you just said, if I was counting
4 right, at least two, maybe three things that are not
5 finalized; is that right?

6 A. **That's right, and nor are they expected to**
7 **be finalized. The ordinance allows for us to submit**
8 **geo tech reports, a final site plan, and many other**
9 **engineering documents for building permits. So, at**
10 **that stage, the final engineering issued for**
11 **construction layout will be provided to the county**
12 **at that stage of the building permits, and that is**
13 **detailed in the last page of the application. All**
14 **of the different studies that will go in and are**
15 **required by the ordinance for that phase of the**
16 **permit.**

17 Q. That kind of leads me to another question
18 here. You say on page 38 of your application:
19 Coles Wind is currently working with each road
20 authority to execute a road use agreement.

21 Is the road use agreement done or not?

22 A. **It is not, but it is accurate that we are**
23 **working with both townships and the county. I think**
24 **one of the road commissioners was here on Monday, in**

1 **fact, and perhaps more.**

2 Q. But isn't it supposed to be completed
3 within the application?

4 A. No, it's not. What was required at this
5 stage of permitting is that those three road
6 authorities, or road commissioners, for Coles
7 County, Morgan Township, and Seven Hickory Township
8 have all approved the list of roads that we intend
9 to use. That is included in the application as
10 well, their approvals.

11 And now we are working through the design
12 of the roads, the studies of the roads so that we
13 understand the improvements that need to happen, and
14 that is what goes into the road use agreements that
15 will be provided and fully executed with our
16 building permits.

17 Q. That leads me to another question then.
18 If this is a final application, since I thought it
19 was, since we are here doing this, everything should
20 be spelled out in detail, why do you say numerous
21 times in your application that Apex will pick
22 between two different types of wind turbines?

23 MR. HESS: Objection. That is asked and
24 answered.

1 MR. KAINS: Well, I am going to overrule.

2 And, Ms. Anderson, if you can briefly
3 answer why the company is choosing between two and
4 whether it is common at this stage of proceedings,
5 hearing on the special use permit application, if it
6 is common for the company to not have selected, made
7 a final selection of a turbine. Apparently, it's
8 down to two companies. So if you could, address
9 those two issues.

10 THE WITNESS: Sure. So it's very common
11 at this stage in these applications, special use
12 permits, conditional use permits, to permit multiple
13 turbine models. That allows us additional time to
14 work through and select all the different logistics
15 that go into selecting a turbine model.

16 I have worked on projects painfully that
17 have had five turbine models at this stage. So,
18 it's not uncommon at all. I lobbied pretty hard to
19 get it down to two for this application. So, that
20 is absolutely normal.

21 BY MR. SHERMAN:

22 Q. The next question: On the Wind Ordinance
23 Special Use Permit Application, Item B, Number 2, it
24 says the names, addresses, and phone numbers of

1 applicants, owners, and operators, and all property
2 owners shall be listed within here.

3 Now, do you do everything --

4 MR. HESS: Objection. That is not what it
5 says. I mean, he has done this several times now.
6 It says shall be provided. These are important
7 distinctions. Mr. Sherman is misrepresenting
8 things. We provide that. They may not be in here,
9 but he is misrepresenting what the ordinance
10 required.

11 MR. KAINS: Mr. Sherman, what are you
12 reading from? Is that the ordinance?

13 MR. SHERMAN: Yeah.

14 MR. KAINS: What section of the ordinance?

15 MR. SHERMAN: Special use. It's on
16 page 3. It starts out on page 3.

17 MR. KAINS: Let me get to it.

18 MR. SHERMAN: If they were numbered, I
19 would tell you that is exactly where it is at.

20 MR. KAINS: Okay. Special use permit
21 application. Which letter?

22 MR. SHERMAN: Letter B?

23 MR. KAINS: Uh-huh.

24 MR. SHERMAN: Special use permit

1 application shall contain -- and then right
2 underneath that -- Number 2 -- you got to go over to
3 the next page.

4 MR. KAINS: Yes, sir.

5 MR. SHERMAN: The name, addresses, phone
6 numbers, so on, and so on. There's no phone number.

7 MR. HESS: Mr. Kains, my point is: Or
8 shall be accompanied by -- shall contain or be
9 accompanied by.

10 MR. KAINS: Where are you reading that at?

11 MR. HESS: At the beginning of B. The
12 Special Use Permit shall be -- we routinely provide
13 separately people's personal phone numbers because
14 they don't want it in the application that goes up
15 on the website.

16 MR. KAINS: Sure. "Accompanied by," what
17 does that mean? What is your interpretation?

18 MR. HESS: You've got to submit it to
19 Coles County -- right? -- either through this or
20 some other way that would be acceptable to their
21 attorneys.

22 THE WITNESS: And we have.

23 MR. HESS: That is my point. He is trying
24 to represent, because it's not in this binder, we

1 haven't done it.

2 MR. KAINS: And has your testimony been,
3 Ms. Anderson, is this information has been provided
4 to Coles County?

5 Mr. Lockhart?

6 MR. LOCKHART: Yes. It has.

7 MR. KAINS: Mr. Keyt, is that your
8 understanding?

9 MR. KEYT: Correct.

10 MR. KAINS: Okay. All right. We got that
11 clarified.

12 Go ahead, Mr. Sherman.

13 BY MR. SHERMAN:

14 Q. Page 20 of the application, 13 times you
15 use the word that this is a preliminary application.
16 When are you going to turn in the final application?

17 MR. HESS: Again, I am going to object.
18 What it actually says is preliminary site plan, not
19 application. This is what he's doing, so I object
20 to all of this.

21 MR. KAINS: I am going to sustain the
22 objection. Ask another question.

23 MR. SHERMAN: I'll hold that one off.

24 MR. KAINS: It's almost like reading the

1 Jeffersonian Bible.

2 MR. SHERMAN: Yeah.

3 BY MR. SHERMAN:

4 Q. Page 26 of your application, why does it
5 say Coles Wind will submit changes made to the
6 project or application after submittal of the
7 special use application when page 5, section C, of
8 the wind ordinance says this is not permitted?

9 MS. ANTONIOLLI: Again, he's
10 misrepresenting the ordinance. It is material
11 changes.

12 MR. KAINS: What section of the ordinance
13 again?

14 MR. HESS: Section C. I believe he just
15 referenced page 26 of the application and
16 paraphrased a section called changes after notice of
17 public hearing.

18 MR. KAINS: All right. Let me get to
19 that.

20 MR. HESS: Yes. I will state that again:
21 On page 26, subsection 315, is a title -- is a
22 section title Changes After Notice of Public
23 Hearing, and the full quote is:

24 Coles Wind will submit changes made to the

1 project or application after submittal of the
2 special use permit application to the Coles County
3 Clerk and/or Mr. Kelly Lockhart, Coles County
4 Regional Planning & Development Commission, to
5 include in the application for final consideration
6 by the Coles County Board.

7 That is the full quote. It's taking
8 phrases.

9 MR. KAINS: Okay.

10 MR. SHERMAN: And the wind ordinance, if I
11 could jump in here, on section C, says: Material
12 changes to the application are not permitted once
13 the notice of the public hearing has been published,
14 unless requested or permitted by the county.

15 To my knowledge, the county hasn't
16 requested it yet. We are not done with this
17 hearing.

18 MR. KAINS: Which section C are you
19 referring to, sir? There are a lot of things in
20 here with lots of section C's.

21 MR. SHERMAN: Special Use Permit
22 Application, and then you've got to go over, down
23 that next page, all the next page, and over the
24 following page, and it's right before, where it says

1 design installation, it's above that, section C.

2 MR. KAINS: I found it.

3 MR. SHERMAN: Material changes to the
4 application are not permitted once the notice of the
5 public hearing has been published, unless requested
6 or permitted by the County.

7 MR. KAINS: All right. Then, Mr. Sherman,
8 what is your question?

9 MR. SHERMAN: If they make any changes
10 such as what kind of wind turbine we are going to do
11 or what kind of road use agreement we are going to
12 do, the application, this hearing, has already been
13 conducted, and now they are going to decide what
14 kind of turbine they want. Now they are going to
15 decide what kind of stuff is going to go in the road
16 use agreement and numerous other things that I
17 haven't got to yet, but we are going to do it after
18 we get done with this hearing.

19 MR. HESS: There is no question there. He
20 can make this argument --

21 MR. SHERMAN: I am --

22 MR. HESS: -- 15 minutes --

23 (Crosstalk.)

24 MR. KAINS: I am going to sustain the

1 objection.

2 And, Mr. Sherman, I understand -- are you
3 a Coles County resident?

4 MR. SHERMAN: Oh, yes.

5 MR. KAINS: Okay. He gets an hour. So,
6 absolutely. All right.

7 MR. SHERMAN: I started at 7:08.

8 MR. KAINS: No, no, no, no. Questions --
9 you can ask questions, Mr. Sherman.

10 MR. SHERMAN: Great. You are not going to
11 get to all your witnesses.

12 MR. KAINS: You can't take up the rest of
13 my days.

14 MR. SHERMAN: Okay.

15 MR. KAINS: But I am wanting you to ask
16 questions. But here is the thing: This section of
17 the ordinance states material changes to the
18 application are not permitted.

19 There have been rulings. In fact, I've
20 made rulings that the brand of a turbine is not a
21 material change. Okay.

22 MR. SHERMAN: Okay.

23 MR. KAINS: Because it's like whether you
24 go buy a Silverado or a Ram; they are both good

1 pickup trucks, you know.

2 Vestas and GE are both good turbine
3 companies, so that's not a material change.

4 Road use agreements have historically been
5 done prior to issuing a permit, not issuing a siting
6 approval from the county.

7 So I understand exactly where you are
8 coming from, Mr. Sherman, and these are good
9 questions and good points you are raising, but a lot
10 of times that is just how it's done. It may or may
11 not be right, but until somebody sues a county and
12 reverses my rulings, we don't really know if I am
13 right or not.

14 MR. SHERMAN: And we are not going to go
15 there. I understand.

16 MR. KAINS: No. Anybody who wants can do
17 anything. This is a courthouse, and I always said,
18 when I was in practice full time, anybody can sue
19 anybody, anytime, anywhere, any way for anything.

20 Now, whether it survives a motion to
21 dismiss or not is another story.

22 But your areas of concern, Mr. Sherman,
23 are very pertinent and relevant. However, the way
24 it is done, these are not considered material

1 changes under the ordinance.

2 Okay. So very good. Thank you.

3 Go right ahead with your next question.

4 BY MR. SHERMAN:

5 Q. Page 42 of the application,
6 section 4.12.2, the last paragraph says: Coles Wind
7 will provide the turbine manufacturer wind power
8 sound level characteristics under separate cover.

9 Does page 10, section L, noise level of
10 the wind ordinance, require this?

11 **A. It does, and those sound power curves have**
12 **been provided to the county.**

13 Q. Okay. And in reading your application, it
14 says that the sound power curves will only be
15 submitted to the county engineer or its designee
16 when the wind ordinance requires this to be in the
17 application.

18 So I am not sure if this is a question for
19 you or the county: Has that sound power curve been
20 submitted to the county engineer?

21 Because it's not in the application; that
22 is why I asked that. We have a direct thing that's
23 in here about the sound power. It's not in the
24 application. Where is it?

1 **A. It's been provided to Kelly, Mr. Keyt, and**
2 **his team, as well as HLR, who I understand is**
3 **reviewing our application. So all three parties**
4 **have those documents.**

5 MR. KAINS: What is HLR?

6 MR. LOCKHART: HLR is the engineering firm
7 who is representing the county.

8 MR. KAINS: Okay. The county's
9 engineering -- retained engineering firm. Okay.
10 Thank you.

11 MR. LOCKHART: Right.

12 MR. KAINS: Go right ahead, Mr. Sherman.

13 BY MR. SHERMAN:

14 Q. Maybe this is not the right time, but I am
15 going to ask it.

16 Why is this not for public knowledge?

17 Why is it a secret?

18 **A. Because it's more to protect -- this is a**
19 **public application. I get that.**

20 Q. Right.

21 **A. But the sound power curves, in this case**
22 **of the Vestas model and the GE model, are**
23 **confidential from each other. Right?**

24 So we don't want them coming to our

1 **application and getting each other's information.**
2 **So we provided it under separate cover, again, to**
3 **Kelly and Andy's teams, and they are using that**
4 **data.**

5 MR. SHERMAN: Is that true, Kelly?

6 MR. LOCKHART: It is.

7 MR. SHERMAN: Okay.

8 BY MR. SHERMAN:

9 Q. The wind ordinance, on page 11, section Q
10 -- and I know we've got to go through and find
11 section Q in the wind ordinance we are talking
12 about.

13 Section Q, it says engineer's certificate
14 requires that the engineer's certificate be on
15 public record and part of the application.

16 But on page 45 of the application it says
17 you are going to do it during the building permit
18 submittal.

19 MR. HESS: Again, I am going to object.
20 The wind ordinance section he's referring to is not
21 within subsection B that lists everything that has
22 to be in this application. It's under design and
23 installation. It talks about a whole bunch of
24 things that happen after this step in the process.

1 MR. KAINS: And design and installation
2 comes after this hearing?

3 MR. HESS: Some of the things do. For
4 example, the one right above what he's referring to,
5 as-built maps and plans, within 60 days of
6 completion of construction you have to submit
7 as-built maps and plans.

8 Why is he not complaining that we haven't
9 done that?

10 MR. KAINS: Well, Mr. Hess, we are not
11 going to answer that question.

12 MR. SHERMAN: I'll answer it for you.

13 MR. KAINS: No. The engineer's
14 certificate is not required at this stage.

15 MR. SHERMAN: Respectfully --

16 MR. KAINS: Yes, sir.

17 MR. SHERMAN: -- the very last sentence in
18 Q, on the wind ordinance says: The WECS project
19 engineer's certificate shall be a public record and
20 shall be submitted as part of the special use permit
21 application.

22 MR. KAINS: I stand corrected. Thank you.
23 I hadn't read that far in section Q. Thank you,
24 Mr. Sherman.

1 MR. SHERMAN: Yeah.

2 MR. KAINS: That is what it says.

3 THE WITNESS: Right. So let's also read
4 footnote 5, on page 45, of the application: Coles
5 note: Coles Wind notes that the timing of
6 submitting the engineer's certification is unclear
7 in the ordinance.

8 One section says to provide it at the
9 special use permit, and another section says to
10 provide it with the building permit.

11 However, such certifications and final
12 stamped engineering plans are typically submitted
13 with the building permit. Thus, Coles Wind will
14 submit these documents with the building permit
15 application.

16 In addition to that, Mr. Keyt asked about
17 this very thing, and we provided him with a
18 representation of what the certificate will be that
19 we will provide with our building permit.

20 MR. SHERMAN: That is not in the
21 application.

22 MR. KAINS: Mr. Keyt, do you have anything
23 that can give us some clarity on this?

24 MR. KEYT: There are two different

1 sections within the ordinance that has two different
2 timing requirements. So the property with that, of
3 course, is when is it supposed to be submitted.

4 Typically that document comes with a
5 building permit as opposed to a special use, but we
6 wanted something from the developer that would
7 demonstrate what it is their certificate is going to
8 be. So they provided their form -- what the form of
9 that general engineering certificate will look like,
10 and that has been provided and submitted to the
11 county.

12 MR. KAINS: I have one suggestion: As the
13 attorney for the county, can you rewrite this
14 ordinance?

15 MR. KEYT: I didn't write this ordinance.

16 MR. KAINS: I know. I've seen ordinances
17 you've written in other counties, and I can tell
18 because this is unclear as anything.

19 MR. SHERMAN: Welcome to my world.

20 MR. KAINS: And I love Coles County. This
21 is a great place, but yeah.

22 Mr. Keyt, you have received something from
23 the applicant, though?

24 MR. KEYT: Correct.

1 MR. KAINS: Is it an engineer certificate,
2 or what is it specifically?

3 MR. KEYT: A form of what it would be.
4 What they would plan to submit within the building
5 permit step.

6 MR. KAINS: Who is their engineering
7 company?

8 MR. HESS: May I respond?

9 MR. KAINS: Yes.

10 MR. HESS: We don't have -- it's
11 impossible to do that at this stage. You have to
12 show an engineer your final as-built plans.

13 MR. KAINS: Right.

14 MR. HESS: If I went to any engineering
15 firm, whether HLR, whether it's any of the other
16 engineering firms in Illinois, and said, "Could you
17 please stamp an engineer certificate?" They would
18 say, "You bet. Once you show me your final issue
19 for construction plans and let me review them and
20 confirm they are accurate."

21 We don't have those yet.

22 MR. KAINS: When will you have those?

23 MR. HESS: We are required to have those
24 by building permit.

1 MR. KAINS: Thank you for the
2 clarification, counsel.

3 Now, Mr. Sherman, I see you shaking your
4 head no.

5 MR. SHERMAN: Right.

6 MR. KAINS: Okay. Go ahead.

7 MR. SHERMAN: The ordinance says, again
8 the last line: It shall be submitted as part of the
9 special use permit application.

10 MR. HESS: And, respectfully, he has asked
11 this question. I understand the issue. He can make
12 his argument. Ultimately, it will be for Mr. Keyt
13 to advise the county board on whether we've
14 satisfied the ordinance.

15 If he wants to make a legal argument
16 later, there is time for that. It's not a question
17 for Ms. Anderson.

18 MR. KAINS: Yeah. Here is what I am going
19 to do: I know it says in this subsection Q, or
20 section Q, engineer certificate, it says as clear as
21 anything: It shall be submitted as part of the
22 special use permit application.

23 But from what these attorneys are telling
24 me, and from what I am understanding, they can't do

1 an engineer's certificate. So this last line of
2 section Q cannot ever be satisfied by any developer,
3 and I don't know how this came to be in this section
4 of the ordinance. I am guessing the ordinance was
5 written by somebody who wasn't an engineer, probably
6 a lawyer, and we don't know everything, folks.

7 Now, Mr. Sherman, I think we need to move
8 on from this. You, sir, will be entitled to testify
9 and make any statements you wish on the
10 application -- and I shouldn't use that word --
11 about applying this particular sentence in section Q
12 to their application, okay?

13 MR. SHERMAN: Yeah.

14 MR. KAINS: But you've made an excellent
15 point. Yeah. This was -- the way it's written is
16 wrong.

17 THE WITNESS: For clarity, the section
18 that is the opposite is design and installation, A2,
19 following the granting of siting approval under this
20 ordinance, a structural engineer shall certify as
21 part of the WECS building permit application process
22 that the foundation and tower design of the WECS is
23 within accepted professional standards given local
24 soils, subsurface, and climate conditions.

1 So that is where these two provisions are
2 competing.

3 MR. KAINS: Thank you, Ms. Anderson. All
4 right. Let's move on from this.

5 MR. SHERMAN: Okay.

6 MR. KAINS: I think, of course, everybody
7 is going to agree to disagree.

8 So go right ahead with another area of
9 concern, Mr. Sherman.

10 BY MR. SHERMAN:

11 Q. On page 12 of the ordinance, it's the
12 operation section, section A, maintenance item
13 number 1, it lists a whole bunch of things in little
14 bitty double I's, complaints pertaining to setbacks,
15 noise, shadow flicker, appearance, and it keeps
16 going on.

17 In the application on page 12, there is no
18 word of appearance. Do we not care what it looks
19 like?

20 **A. I don't think the application, page 12, is**
21 **what you are referring to.**

22 Q. I am sorry. Page 48 of your application,
23 item number 5.1, down in the bulleted things, two
24 thirds of the way down you have five bulleted items.

1 **A. Sure.**

2 Q. You've got everything in there except the
3 word "appearance."

4 **A. If the annual report requires things on**
5 **appearance, they will be included in the annual**
6 **report.**

7 Q. But it's not in the application?

8 **A. They will be included in the annual**
9 **report.**

10 Q. But it's not included in the application?

11 **A. That is correct. The word is not included**
12 **in there. It will be included in the annual report.**

13 Q. Page 53 of your application, section 6,
14 you leave out the phrase "during the life of the
15 WECS project" -- this is a big one. This refers to
16 page 15 of the ordinance, which is page 15:

17 Liability and indemnification: During the life of
18 the WECS project -- this listed on that, and it's
19 not in the application. Why did you leave out the
20 phrase "during the life of the WECS project"?

21 **A. We will maintain liability insurance over**
22 **the life of a project and provide annual**
23 **certificates of such insurance.**

24 Q. Why does it not say that in the

1 application?

2 MR. HESS: Again, I am personally not
3 quite sure what he's referring to, so I am going to
4 object because I think it's a little misleading.

5 The section of the ordinance he's
6 referring to begins with: Commencing with the
7 issuance of a WECS building permit --

8 So then the section of the application
9 he's referring to says: The ordinance requires that
10 an applicant has sufficient insurance at the time of
11 its WECS building permit submittal.

12 MR. KAINS: I am going to sustain the
13 objection. I think we are getting into a matter of
14 semantics, during the -- that phrase, during the
15 whatever it is, has been left out.

16 You wrote 698 pages of this, or supervised
17 people who wrote 698 pages; is that right?

18 THE WITNESS: That is right.

19 MR. KAINS: She may have left some things
20 out. I don't know that that is something that is
21 absolutely pertinent to this.

22 MR. SHERMAN: Okay.

23 MR. KAINS: She said they will maintain
24 insurance.

1 MR. SHERMAN: I think the next one may be
2 a big thing.

3 MR. KAINS: Okay.

4 BY MR. SHERMAN:

5 Q. On that same section, the next paragraph
6 in the wind ordinance that starts out: The
7 applicant shall defend, indemnify, and hold harmless
8 the county -- and goes on, that entire paragraph is
9 not discussed at all in the application. There is
10 nothing in there about --

11 MR. HESS: Again, I am going to make the
12 same objection because he is referring to a section
13 of the ordinance that is different than the section
14 of the ordinance that talks about what is in the
15 application.

16 MR. KAINS: Okay.

17 MR. HESS: It just says the applicant
18 shall defend.

19 He can ask her: Are you going to defend
20 and indemnify?

21 She will say yes, but --

22 MR. KAINS: I think that the issue here,
23 folks, is: What is this company going to do?

24 Are they going to provide insurance?

1 Are they going to provide indemnification?

2 And I think the answer is yes.

3 If the application is not worded
4 perfectly, I don't know that that's a distinction
5 that makes a difference.

6 But, you know, I think, though, that,
7 Mr. Sherman, you raise an excellent point.

8 And, quite honestly, counsel, I know that,
9 in fact, Mr. Hess, you are employed by Apex.

10 And I don't know if legal counsel reviews
11 every application before its submitted, but it might
12 need an eye for detail just in case there are some
13 things that pop up like this, and then we can get
14 around it.

15 But I understand your point, that you are
16 saying it's not even required in the supplemental
17 use permit application at this juncture; is that
18 correct?

19 MR. HESS: That's correct, Mr. Kains. May
20 I respond briefly?

21 MR. KAINS: Yes, you may.

22 MR. HESS: The way we read the Coles
23 County ordinance is it has a section called Special
24 Use Permit Application that then lists everything

1 that we have to include for you all, and she has
2 done that.

3 This is a big ordinance that has a whole
4 bunch of other things that we are bound by, but you
5 didn't say address every single one in your permit
6 application.

7 Otherwise, her 698 pages would have been
8 5,000 pages, right?

9 But we are still bound by the ordinance
10 provisions. If a county says, in a section, here is
11 what we want in your application, Ms. Anderson is
12 going to write it.

13 MR. KAINS: I understand. Okay. Thank
14 you for the clarification, Mr. Hess.

15 Mr. Sherman, your next question?

16 BY MR. SHERMAN:

17 Q. Do you list anything in the application
18 about the numerous drainage districts that the
19 county has?

20 **A. We do not. We do include a farmland drain**
21 **plan, though, in our application.**

22 Q. The emergency response plan -- and maybe
23 this is something for another time, but in your
24 application you refer to the emergency response plan

1 by saying you will be collecting feedback to
2 finalize the EAP in the coming months. So, that is
3 not completed yet?

4 **A. That's correct. What is completed is we**
5 **have met with several emergency response agencies,**
6 **several fire protection districts, as you'll hear**
7 **from Mr. Connelly, the sheriff, emergency management**
8 **agency, introduce the project, talked about how the**
9 **wind project operates, we provided a draft plan to**
10 **them. We are actively soliciting feedback from**
11 **them.**

12 **With our building permit, as required by**
13 **the ordinance, the emergency response plan will be**
14 **final with that input from all of those partners,**
15 **though, would have the potential to respond to a**
16 **safety situation at the project. That will be**
17 **provided with our building permit.**

18 **Q. Thank you. I am winding down. In the**
19 **application, the next-to-last -- I am sorry -- back**
20 **up.**

21 **In the wind ordinance, the next-to-last**
22 **page, under hearing factors, section 2, revocation,**
23 **why is this entirely missing from your application?**

24 **MR. HESS: And I am going to make the**

1 exact same objection. It's in a completely
2 different section of the ordinance. It has nothing
3 to do with the application.

4 MR. KEYT: If I may speak?

5 MR. KAINS: Yes. Go ahead.

6 MR. KEYT: I think what is being confused,
7 perhaps, is when an applicant on any special use
8 comes to a county for approval of a special use,
9 there's application requirements. Those application
10 requirements are what they have to cover to satisfy
11 in their written application to the county,
12 municipality, whatever it is that somebody is making
13 that application to. In addition to that, that is
14 waitlisted in the ordinance, of course.

15 In addition to that, there are a number of
16 other requirements that are contained within the
17 ordinance that are not part of submission
18 requirements for the special use.

19 An example would be revocation of a
20 special use. That doesn't happen until after a
21 special use is even issued, and only if they are in
22 a position of default that requires the county to
23 special use.

24 Those are issues we don't get into. There

1 is no reason for that to be included in an
2 application because it's an operational issue, just
3 like a remedies provision is an operational issue.
4 It's like, before they get a building permit, they
5 have to give us, or after they built the project,
6 they have to give us their as-built plans.

7 It would be impossible for the developer
8 to provide as-built plans on a project that doesn't
9 even have a special use permit or building permit.
10 To do that they have to build the project.

11 So to require the developer to come and
12 say here is our as-built plans is an impossible
13 thing to do. That's why the ordinance, like every
14 other ordinance that you see in the county,
15 regardless -- in the state, regardless of who drafts
16 that ordinance, just like this one, has application
17 requirements. It's the application requirements
18 that get vetted in the special use hearing or
19 siting.

20 MR. KAINS: All right. Then, Mr. Keyt, do
21 you have the ordinance in front of you?

22 MR. KEYT: I do.

23 MR. KAINS: Okay. If you open it up, go
24 one, two -- let's go through the definitions,

1 Mr. Sherman going along with, and counsel for Apex
2 joining along with. We go through the definitions.
3 Then, when the definitions conclude, there is a
4 section called applicability, prohibition, and
5 special use permit application.

6 Mr. Keyt, are you suggesting -- and I
7 think I am understanding this issue -- that the
8 requirements in that section, special use permit
9 application, are the ones we need to be addressing
10 here rather than anything with respect to the
11 decision factors, etc.?

12 MR. KEYT: Correct. Now, there may be
13 design requirements. For example, setbacks. So
14 when the project is built, it has to comply with all
15 of the setbacks. They have to show they are going
16 to make that compliance.

17 But it's the special use application
18 requirements that the applicant has to come in and
19 demonstrate that they can meet.

20 MR. KAINS: This is stuff that has to be
21 in the application?

22 MR. KEYT: Correct. And there's really
23 three stages that come into play. There is the
24 stage of we have a siting hearing like this.

1 There is then, if it is approved, and that
2 is only if the project is approved, then they have
3 to come back and obtain a building permit before
4 they can start constructing the project.

5 To do that, they have to meet those
6 requirements to obtain the building permit, which
7 may even include conditions that the county imposes
8 in the approval.

9 Then, once it gets built, then there is
10 another set of requirements that also kick in. For
11 example, an annual report. They don't have to say
12 they are going to comply with the annual report.
13 Regardless of whether they say they are going to
14 comply or not, they have to comply because, if they
15 don't, the county is going to hold them in default.

16 So we can talk all day long about whether
17 or not they said they are going to comply with that
18 section or not. Ultimately, it doesn't matter
19 because the county holds them to that requirement,
20 including annual report requirement. They don't
21 have an annual report yet because the project
22 doesn't exist.

23 MR. KAINS: Anything further, Mr. Hess or
24 Ms. Antoniolli?

1 MR. HESS: No. Thank you.

2 MR. KAINS: Anything else on this issue
3 from you, Mr. Sherman, because I want your questions
4 answered.

5 MR. SHERMAN: The hearing factors,
6 number 1, special use permit conditions and
7 restrictions, isn't this hearing about the special
8 use permit?

9 MR. KEYT: If I could suggest, Mr. Kains,
10 that is one of the requirements, is that they show
11 that they will do that for the county. And how they
12 meet those factors for the county, that is part of
13 this.

14 MR. KAINS: Go ahead, Mr. Sherman.

15 MR. SHERMAN: I was waiting. I didn't
16 understand anything that was just said.

17 MR. KAINS: Go ahead. Do you have any
18 other questions for Ms. Anderson regarding the
19 application?

20 BY MR. SHERMAN:

21 Q. Yeah. The revocation -- that is the first
22 one -- that is missing.

23 Transferability, on the next page, if this
24 is sold to another company, they don't even list

1 that. But we have to wait until the application is
2 approved, and the wheels get started, and the things
3 get poured, and the building and turbines go up
4 before we, as citizens, can do anything because it
5 doesn't matter?

6 MR. HESS: Mr. Kains, respectfully, I
7 would object to this whole line of questioning.

8 I would respectfully remind you that you
9 are empowered to adopt reasonable limits upon the
10 questioning of witnesses. He has been questioning
11 Ms. Anderson for over 45 minutes now doing the same
12 circle.

13 MR. KAINS: It's still very reasonable.
14 But --

15 MR. SHERMAN: To that point, we are
16 missing -- they haven't done anything with the last
17 page of the ordinance.

18 MR. HESS: Mr. Keyt just addressed that;
19 that is my point.

20 MR. KEYT: Mr. Kains, I am not necessarily
21 objecting to the question per se, but if I
22 understand it correctly, at this stage, my
23 understanding is they aren't -- they haven't sold
24 the project or are in the plans to sell the project.

1 So the transferability doesn't kick in until that
2 would occur.

3 MR. KAINS: That cart hasn't even seen the
4 horse.

5 MR. SHERMAN: But it would be a done deal,
6 wouldn't it?

7 MR. KAINS: No. It has to be approved by
8 the county board.

9 Ask another question, please.

10 MR. SHERMAN: Well, we found that there
11 are some things that are not in here. What else is
12 missing?

13 MS. ANTONIOLLI: That presupposes facts
14 that are not in the record that she did not testify
15 to.

16 MR. KAINS: I don't know that Ms. Anderson
17 is going to have an answer to that question, what
18 else is missing; and I think that question shall be
19 stricken from the record. It's more of an editorial
20 comment than a question.

21 Are you next, Mr. Hartke?

22 MR. HARTKE: I guess so.

23 MR. KAINS: What we are going to do is
24 take a recess because Holly has been at it for an

1 hour and 27 minutes, and if we don't take a recess,
2 she'll hit me with what is remaining of her hands.

3 So the committee is in recess for
4 13 minutes. We'll come back at ten after eight.

5 (Break taken.)

6 MR. KAINS: We will reconvene with
7 questions with Ms. Anderson about her application.

8 Before Mr. Sherman asked questions, he was
9 seated next to Ms. Winslow and there was somebody
10 seated -- oh, it was Mr. Hartke? No, this
11 gentleman. I think this gentleman. I think I had
12 said you were going to go next.

13 MR. BORGMAN: Do you want me to go next?

14 MR. KAINS: If you want.

15 MR. HARTKE: I am ready. Whatever.

16 MR. KAINS: You can arm wrestle for it.

17 MR. BORGMAN: I'll be short and sweet, if
18 that makes any difference.

19 MR. KAINS: I don't know that Mr. Hartke
20 will be short, but he is awfully nice.

21 Come on up, sir. And if you are not short
22 and sweet, I don't know what I'll do. Drive back to
23 Springfield.

24 MR. BORGMAN: I am short anyway.

1 MR. KAINS: Sir, I know you asked
2 questions last night, and I am trying to remember
3 your name.

4 MR. BORGMAN: Phillip Borgman.

5 MR. KAINS: Spell your first and last name
6 for the court reporter. She is different than the
7 other night.

8 MR. BORGMAN: Yes. It's P-h-i-l-l-i-p
9 B-o-r-g-m-a-n.

10 MR. KAINS: Okay. Mr. Borgman, go ahead
11 with questions for Ms. Anderson.

12 MR. FREEZELAND: Which county?

13 MR. KAINS: What county are you from?

14 MR. BORGMAN: So I live -- if you take and
15 put your finger right in the middle of this wind
16 farm, I live right in the center of this wind farm.

17 MR. KAINS: So northern Coles?

18 MR. BORGMAN: Yes.

19 MR. KAINS: Okay. Very good.

20 MR. BORGMAN: 1800.

21 MR. KAINS: Mr. Freezeland, thank you for
22 reminding me. You might have to hit me upside the
23 head with that. I am busy listening to all of these
24 arguments.

1 Go ahead, Mr. Borgman, with questions.

2 EXAMINATION

3 BY MR. BORGMAN:

4 Q. So right before I left to come here, I was
5 in my basement hiding from the tornado. We could
6 see the twister from my front porch.

7 In Monday night's questioning, somebody
8 asked how the lidar is affected by the wind farm.
9 And I went back and I found the post that was made
10 by Meteorologist -- let's see -- it was Channel 3.
11 And it says right on here, it says: Since you can't
12 count on the Lincoln Doppler radar to track storms
13 through wind farm projects -- I mean he did, in
14 fact, say that.

15 Why would he say that?

16 And what warning systems do you have, if
17 any, that help people that live underneath these
18 that are affected by the Doppler as the
19 meteorologist said?

20 **A. Sure. I am glad you asked this question.**
21 **I can't speak to whatever you are referencing on**
22 **your phone, but let me just give a little bit of**
23 **background on telecommunications.**

24 So there are two types of

1 telecommunications. There is the public
2 telecommunications, right? TV reception that we
3 talked about earlier, AM/FM radio, land, mobile, and
4 emergency services, microwave beam paths. There are
5 studies in this application, in appendix D4, that
6 state that all of our turbine locations are sited to
7 avoid interference with those types of
8 telecommunications.

9 Separately, there are federal
10 telecommunications, including Doppler radar.

11 The way we work on those
12 telecommunications isn't by a study, but we submit
13 our turbine layout, our turbine height to the
14 National Telecommunications Information
15 Administration, NTIA. They then have a
16 clearinghouse called the Interdepartment Radio
17 Advisory Committee.

18 So they, that committee, then is a
19 consortium of many federal agencies, and they
20 disseminate the project turbine layout and turbine
21 height to a number of federal agencies for review
22 and comment. That comment period is 45 days.

23 So included in our application, at the end
24 of our telecommunications studies, is a letter from

1 NTIA. And I pulled it out just in case that woman
2 came back, that asked the question on Monday night,
3 came back.

4 And I'll just paraphrase it here, but it's
5 in the application: After a 45-day period of
6 review, no reviewing agencies had concerns with
7 turbine construction of the designated build areas.

8 It goes on to say: Commerce -- so the
9 Department of Commerce, under that is NOAA, and
10 under that is the National Weather Service --
11 Commerce has completed our review of the subject
12 wind farm proposal and found that the project area
13 is over 108 kilometers east southeast of the Lincoln
14 NEXRAD radar.

15 Based upon distance and terrain, this
16 project appears to be radar neutral. No further
17 contact with the developer is requested at this
18 time.

19 So the National Weather Service that works
20 with this NEXRAD radar that you are referring to has
21 provided comments specific to this project and these
22 turbines, that we will not interfere with that
23 radar.

24 Q. Okay. So that meteorologist was referring

1 to wind field -- I believe it was Sapphire Wind.
2 That is an Apex company, correct? Or you guys have
3 a project over there? No?

4 **A. That is not an Apex project.**

5 MR. BORGMAN: Okay. That satisfies.

6 MS. ANTONIOLLI: Just to follow up on that
7 conversation: We do have an updated copy of the
8 NTIA letter that we received after filing the
9 application that, if it pleases the county, we can
10 submit and Ms. Anderson can speak to.

11 MR. KAINS: Yeah. Let's -- why don't you,
12 when we get to exhibits, you can introduce that.

13 MS. ANTONIOLLI: Okay.

14 MR. HESS: In other words, just to make
15 the record clear, the letter she quoted was from
16 2023. To make sure nothing has changed, we made the
17 same request in December. She submitted our
18 application January 17. We got the letter back in
19 February. It says the exact same thing. I'm happy
20 to make it an exhibit.

21 MR. KEYT: Mr. Kains?

22 MR. KAINS: Yes?

23 MR. KEYT: I have not seen the letter, so
24 I would like to have a copy of the letter before we

1 move to exhibits.

2 MR. KAINS: Absolutely. We are not going
3 to take up the admission of exhibits tonight. But,
4 yeah, as long as he has a copy of the letter.

5 So what you are saying is the letter says
6 the same thing as what Ms. Anderson just testified
7 to?

8 MR. HESS: Nothing has changed. Just a
9 refresh.

10 MR. KAINS: So the National Weather
11 Service is still happy?

12 MR. HESS: Yes, sir.

13 MR. KAINS: Or as happy as a federal
14 agency can be?

15 MR. HESS: Yes.

16 MR. KAINS: Mr. Borgman, did you have
17 anything further?

18 MR. BORGMAN: Yes. Offsets, are they
19 measured from the property line or to the structure
20 of the inhabited house?

21 MR. KAINS: I believe he is referring to
22 setbacks.

23 THE WITNESS: Sure.

24 BY MR. BORGMAN:

1 Q. Setbacks.

2 **A. Sure. There are different types of**
3 **setbacks. There are setbacks from residences**
4 **themselves, the edge of the house. There are also**
5 **setbacks from nonparticipating parcel lines, so the**
6 **property lines. So both but different.**

7 Q. Okay. Yep. Just making sure it wasn't
8 one or the other.

9 **A. No. It's both.**

10 Q. Let's see. It looks like you are going to
11 address water with another expert witness.

12 Let's see. 30 hours of flicker; that is
13 in a year, or is that in a week?

14 **A. That is 30 hours per year.**

15 Q. Per year, okay. I find that hard to
16 believe, and I don't have anything to stand behind
17 that. But how is that figured up?

18 I am thinking of in terms of the sun at
19 high noon, anywhere after about two o'clock, I know
20 my west-facing windows will be in direct line of a
21 turbine, and I just find it hard to believe that I
22 am not going to see more than -- or I am going to --
23 I'll see 30 hours or more of flicker during the
24 course of, you know, a week, probably.

1 A. Respectfully, I'll disagree. And the
2 reason I can say that is because the shadow flicker
3 -- 30 hours a year is standard in a lot of areas I
4 work in.

5 Q. Okay.

6 A. Across the country, that is just kind of a
7 wind industry standard.

8 Q. Uh-huh.

9 A. That is adopted all over Illinois and
10 every county I work in.

11 The modeling is conservative, in that we
12 have modeled all 62 turbine locations, and it
13 assumes -- we know when the sun comes up, when the
14 sun goes down, like we've got that stuff down.

15 It assumes the turbines are always
16 operating. It also doesn't take into account
17 anything that might be around your property, other
18 buildings, trees, and it also assumes that the cube
19 that is assumed to be the residence is just a glass
20 box, so there is no curtains or -- right? -- every
21 side of your house is just a glass box.

22 Q. Yeah.

23 A. So there are many conservative assumptions
24 that go into the modeling that we are confident that

1 **it will be less than 30 hours.**

2 **You referenced high noon, but I'll maybe**
3 **correct you and say the shadows are longest when the**
4 **sun is lower in the sky, morning and night.**

5 Q. I was just going to say that you would
6 expect anything, after the sun is high noon, as it
7 sets --

8 **A. Specific to your property?**

9 Q. Yes. Fair enough. You answered my
10 question.

11 **A. Okay.**

12 Q. So, Apex did the wind farm over in Morgan
13 County, Lincoln Wind, correct?

14 **A. Yes. That project predates me, before I**
15 **joined Apex. Apex, as we talked about the other**
16 **night, that project Lincoln Land Wind was under our**
17 **old business model, so we no longer own and operate**
18 **that project, but we did develop it.**

19 Q. How many times has that wind project sold
20 since Apex developed it?

21 **A. I don't have any knowledge of that.**

22 Q. Twice. It's now owned by Orsted, and
23 apparently the county board over there is having
24 issues with them enforcing --

1 MR. KAINS: Mr. Borgman, just ask
2 questions.

3 MR. BORGMAN: Okay.

4 MR. KAINS: You'll have a chance to
5 testify. You'll get an hour.

6 MR. BORGMAN: I have apologized.

7 MR. KAINS: You will get an hour.

8 BY MR. BORGMAN:

9 Q. So you are aware that it has been sold a
10 couple times now?

11 **A. I am not aware of it has been sold**
12 **multiple times. I am aware that we developed the**
13 **project and, under the old business model, sold to**
14 **somebody else.**

15 **We will own and operate Coles Wind.**

16 Q. Okay. You were speaking to the wind farm
17 where they said they had the beautiful roads over
18 there. Which wind farm is that?

19 **A. Prosperity Wind Project in Piatt County.**

20 Q. I have been through Prosperity, and it
21 seemed to me that the ditches were very, very, very
22 deep, and I talked to some -- I work in ag. I talk
23 to a lot of folks. I talk to farmers in and amongst
24 that project over there. They have problems with

1 farmers being able to get over on the side because
2 the ditches were too deep, and they were constantly
3 complaining about it. And I've seen it firsthand.

4 MR. KAINS: Mr. Borgman, can you ask her a
5 question relative to that?

6 BY MR. BORGMAN:

7 Q. Yes. Sorry. What are your ditch
8 limitations? Like, how deep do you dig them?

9 I mean is that going to be an issue here?

10 A. I mean that is out of my scope. Adam will
11 happily -- he's the one working on the Prosperity
12 Wind construction site. He will happily address
13 that.

14 Q. It was brought to my attention that,
15 through the Friends Agreement, sometimes trees were
16 a part of the deal. You purchase trees for
17 properties to block the turbine use; is that
18 correct?

19 A. I am not aware of that, but that is
20 something that certainly our developers, like, Alan
21 would be better off to speak to. What is negotiated
22 in each and every agreement, I can't speak to that.

23 MR. BORGMAN: Okay. Okay. That's all I
24 have for this evening.

1 MR. KAINS: Very good. Thank you, Mr.

2 Borgman. I appreciate your questions.

3 Before Mr. Hartke comes up, I just need to

4 ask:

5 Ms. Winslow, what county do you reside in?

6 MS. WINSLOW: Coles.

7 MR. KAINS: And, Mr. Shaffer, you said

8 Coles, too, right?

9 MR. SHERMAN: Coles.

10 MR. KAINS: I mean Mr. Sherman. I just

11 didn't write it down.

12 All right. Mr. Hartke, if you could,

13 state your name for the court reporter, spelling

14 your last name.

15 MR. HARTKE: Good evening. I am Theodore

16 Phillip Hartke. T-h-e-o-d-o-r-e P-h-i-l-l-i-p

17 H-a-r-t-k-e.

18 MR. KAINS: And what county do you reside

19 in?

20 MR. HARTKE: I live in Champaign County.

21 MR. KAINS: Thank you. Go right ahead,

22 Mr. Hartke.

23 MR. HARTKE: Okay. I have a little

24 question that came up today. This is for you, Mr.

1 Kains. Today you said that people in opposition are
2 not allowed to ask questions to folks who testify in
3 opposition?

4 MR. KAINS: Yes.

5 MR. HARTKE: That is not in the rules, is
6 it?

7 MR. KAINS: No. That is just how
8 cross-examination works. It is not in the rules.
9 It doesn't have to be in the rules. That is just
10 how it works.

11 MR. HARTKE: I wasn't going to lead
12 anyone, or be someone's brother, but I think that is
13 a rule that I've seen broken a lot of times in these
14 hearings, so I was surprised to hear that.

15 MR. KAINS: Well, that's why we are
16 addressing it right now.

17 MR. HARTKE: Okay. And I would like to --
18 for the record, I'll be neutral on this job, on this
19 project for these hearings. Is that okay?

20 MR. HESS: I would object to that
21 characterization.

22 MR. KAINS: Yeah. I know you so well, Mr.
23 Hartke. You couldn't be neutral on this if it was
24 the last thing on earth.

1 MR. HARTKE: But I could get out on the
2 other side of the bed tomorrow. I don't know.

3 MR. KAINS: Mr. Hartke, ask questions to
4 Ms. Anderson.

5 I know you're opposed. Anybody who knows
6 you knows you're opposed.

7 MR. HARTKE: Okay. All right. There's
8 going to be some questions that I ask that they are
9 going to say another witness, okay?

10 MR. KAINS: She can defer to another
11 witness.

12 MR. HARTKE: So don't get mad at me.

13 MR. KAINS: Oh, no. Have I ever gotten
14 mad at you?

15 I like you because we are fellow Saluki's,
16 okay?

17 MR. HARTKE: That's right, and I wore my
18 Saluki outfit today.

19 EXAMINATION

20 BY MR. HARTKE:

21 Q. It's understandable to say you don't
22 know -- okay?

23 Tonight -- I am here just to really focus
24 on noise levels and things.

1 Tonight, for the first time, I heard that
2 the wind company, Apex -- are you allowed to tell us
3 what the noise level is at the turbines?

4 Is that a confidential thing?

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5         You can't tell us what the powered noise
6         output level is?
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7 A. The sound power curves of each turbine
8 model are trade secret.

9 Q. Okay. Can you tell us what the noise is
10 10 meters from the turbine or 1 foot from the
11 turbine? Anything that is close to the turbine, can
12 you tell us what that noise level is for either
13 model?

14 And if you can't be specific, just the
15 noisiest one, if you just told me which one, what
16 the level is for any of the noisiest turbines you
17 have?

18 A. I am probably not the right witness for
19 that.

20 Q. Okay.

21 MR. KAINS: Mr. Hess, Ms. Antoniolli, do
22 you have an acoustician?

23 MS. ANTONIOLLI: Yes, we do.

24 MR. HESS: I want to be very careful here

1 because this is proprietary information of Vestas
2 and General Electric. We are legally prohibited
3 from answering some of this.

4 So, we will have an expert. It's not his
5 information either.

6 MR. KAINS: Right. Who is your
7 acoustician?

8 MS. ANTONIOLLI: It's Mr. Isaac Old.

9 MR. KAINS: Old, O-l-d?

10 MS. ANTONIOLLI: Correct.

11 MR. HESS: Who is the author of the study
12 in the application.

13 MS. ANTONIOLLI: RST.

14 MR. HARTKE: I can save that question.

15 MR. KAINS: Now, Mr. Hartke, I want you to
16 understand that any information provided by Vestas
17 or General Electric is proprietary information,
18 trade secret, and cannot be disclosed. It's not
19 that Ms. Anderson, them, or these folks, are trying
20 to hide anything from you. But some things are
21 trade secrets in the industry and can't be
22 disclosed.

23 But go ahead and ask your questions.

24 Ms. Anderson, if it's a trade secret or

1 proprietary information, that can be your answer.

2 But other than that, really do your best
3 to answer his questions, and you have been doing
4 very well so far.

5 So go ahead, Mr. Hartke.

6 MR. MR. HARTKE:

7 Q. Since you can't tell us which one is which
8 and how loud, can you tell us approximately how loud
9 either turbine is without telling me which company?
10 Just how loud is one of them? It can be either one
11 of them, without specifying any name of a company.

12 That is not a trade secret, is it?

13 MR. KAINS: That is a fine question, until
14 it raises an objection.

15 MR. HESS: I am going to object, when
16 there are only two.

17 Ms. Anderson, we heard, did this with
18 five, and we've disclosed the name of the two. I
19 think that comes very close to asking her to reveal
20 proprietary information.

21 If we hadn't revealed the names, I would
22 understand. Although, Mr. Sherman would have
23 objected. So we tried to give as much information
24 as we are lawfully allowed to give.

1 MR. KAINS: Let's stop the comments about
2 Mr. Sherman, first of all.

3 MR. SHERMAN: Thank you.

4 MR. KAINS: I think the area of sound that
5 has to be explored has to relate to whether their
6 sound expert opines that these sound levels in the
7 various octave band ranges meet the Pollution
8 Control Board regulations that have been promulgated
9 over the last however many, 30-some, years.

10 So a lot of the sound questions, Mr.
11 Hartke, if you could, please save for Mr. Old.

12 But you can try. I'll allow it.

13 MR. HARTKE: I'll save it. I asked
14 Mr. Moore two nights ago. I asked Ms. Brie
15 Anderson, Ms. Anderson, tonight. In Piatt County, I
16 asked the acoustician, and the acoustician's
17 attorneys objected, and they refused to answer that
18 line of questions. When I discussed noise level,
19 IPCB noise legal stuff, they wouldn't let him answer
20 because it was legal stuff they said, so I am asking
21 all the expert witnesses.

22 MR. KAINS: You have that right.

23 MR. HARTKE: So that's why.

24 MR. KAINS: Absolutely.

1 BY MR. HARTKE:

2 Q. Okay. So the noise level is confidential.
3 We don't know how loud each turbine is at the
4 turbine, but there is a chart that is in the plans.
5 And it's not a chart. It's a map, and it shows a
6 noise contour line getting pretty close to some
7 houses.

8 I'll find it for you in a second. I have
9 a note here.

10 I found it. Okay. We are going to look
11 at a map in the noise section. This is in section
12 D5.

13 MR. KAINS: Appendix section D5?

14 MR. HARTKE: Yes.

15 MR. KAINS: Thank you.

16 MR. HARTKE: Okay. We are going to go to
17 pages -- let's start with 66, okay?

18 If there is any way to post this on the
19 bulletin board, that would be great. But it is this
20 part of the sound study that we can ask questions
21 about, this page?

22 MS. ANTONIOLLI: Yes. And I think the
23 right time to do that is when the author of the
24 sound modeling study of appendix E5 stands up and

1 testifies.

2 MR. KAINS: Is that Mr. Old?

3 MS. ANTONIOLLI: Yes.

4 MR. HARTKE: Very good.

5 MR. KAINS: We'll defer to Mr. Old.

6 MR. HARTKE: Two nights ago Ms. Anderson
7 said she was the GIS expert and did mapping of
8 things. You have a GIS degree, or certificate in
9 GIS?

10 MR. HESS: That part is correct.

11 I would object to the first part of that
12 statement. She testified --

13 MR. KAINS: It's overruled.

14 What is your qualification on GIS?

15 THE WITNESS: I have a master's in GIS.

16 MR. KAINS: Great. Go ahead.

17 THE WITNESS: But I have not completed any
18 GIS work on this project.

19 BY MR. HARTKE:

20 Q. Okay. In the project, on the maps, would
21 it be more helpful for a person like myself to be
22 able to identify a property that sits on these
23 sheets, 66, 67, where approximate property lines are
24 located and relative to the sound contouring noise

1 lines?

2 **A.** The point of these maps, starting on
3 page 66, is to zoom in to show that the residential
4 use -- there is no -- all turbines are sited so the
5 sound contour, in each of the eight octave bands, is
6 avoiding agricultural use. I'll say it different:
7 It's only in the cultivated cropland.

8 So we've zoomed in on each of the
9 receptors where it was even close so that it is
10 abundantly clear that it is not overlapping any
11 portion of residential use.

12 There are several other maps in here that
13 will help you navigate around the project area, but
14 that is the purpose of these maps.

15 Q. Okay. Good. In the IPCB rules and
16 regulations, are you familiar with the IPCB rules
17 and noise location?

18 **A.** At a high level, yes.

19 Q. Okay. Have you ever read the part in the
20 IPCB rules where it lists for the proper location of
21 measuring noises at a property line?

22 MS. ANTONIOLLI: Same comment. This is in
23 regards to how Mr. Old prepared methodology he used
24 and how he determined compliance with the IPCB

1 limits. It's best directed to him.

2 MR. KAINS: I understand.

3 MR. HARTKE: I would like to respond to
4 that.

5 MR. KAINS: Hang on, Mr. Hartke.

6 I understand your objection.

7 The question was whether the IPCB
8 regulations require sound measurements from
9 residents or property line. Do you know the answer
10 to that question?

11 MS. ANTONIOLLI: And, again, measurements
12 are not at issue.

13 MR. KAINS: Modeling. I'm sorry. I used
14 the incorrect word. Modeling. Thank you,
15 Ms. Antoniolli.

16 Do you know what the regulation says?

17 THE WITNESS: I have it right here.

18 MR. KAINS: Okay. Go ahead.

19 THE WITNESS: Quantitative sound levels
20 that are applicable to the proposed project are
21 defined in part 901, sound emission standards and
22 limitations to property line noise sources.

23 Section 901.102 and 901.103 provide sound
24 pressure level limits for each full octave band

1 center frequency from 31 1/2 hertz to 8 hertz. So
2 those are the applicable standards that have been
3 applied to this project.

4 BY MR. HARTKE:

5 Q. Okay. And almost in the very first
6 sentence it says something about property line
7 standard. Can you say that sentence again? It says
8 something something property line.

9 **A. Quantitative sound level limits that are**
10 **applicable to the proposed project are defined in**
11 **part 901, sound emission standards and limitations**
12 **for property line noise sources.**

13 **That is just the name of the chapter, or**
14 **the section, that the Illinois Pollution Control**
15 **Board -- that is just the name of the section.**

16 Q. Do you know the other couple of places in
17 the IPCB noise, rules, regulations, and measurements
18 protocol where it calls out the noise shall be
19 measured at a property line? Do you know the areas
20 of the IPCB regulations?

21 MS. ANTONIOLLI: So this line of
22 questioning is calling for a legal conclusion
23 because there is a whole body of case law in
24 Illinois that defines how pollution control methods

1 are applied, and that is calling on our expert on
2 how she drafted the application to draw a legal
3 conclusion based on that.

4 MR. KAINS: I am going to sustain the
5 objection, and I'll have you ask another question.

6 But I think, Mr. Hartke, when it's your
7 turn to testify, if you come prepared with whatever
8 sections from the Pollution Control Board, you can
9 rebut whatever it is they're saying, or you can ask
10 these questions of Mr. Old, who prepared this
11 report.

12 MR. HARTKE: I understand that.

13 MR. KAINS: But it does call for a legal
14 interpretation, and Ms. Anderson is not an expert in
15 that area. She is an expert in a couple of
16 different areas, but let's stick to the application.

17 MR. HARTKE: Sure. Two evenings ago I
18 asked Alan Moore the same thing, and I was told that
19 he's not an attorney; this is a legal question.

20 Will a person with a law degree be able to
21 answer any of my questions, you know?

22 Ms. Anderson, do you have a law degree?

23 MR. KAINS: I have already established she
24 does not.

1 MR. HARTKE: Okay. So, when I ask a legal
2 question, talking about this in a project
3 application, it has a lot of legal stuff in here,
4 how do I get an answer to a legal question?

5 MR. KAINS: With respect to legal issues,
6 the lawyers can make their arguments, and you can
7 make your argument when it's time for you to talk.

8 MR. HARTKE: Okay. Now, if I come as an
9 out-of-county resident, 15 minutes is not near long
10 enough to even touch this.

11 MR. KAINS: Mr. Hartke, those are the
12 rules, and the county board has passed those rules.
13 So the rules are the rules are the rules are the
14 rules, and I will have you abide by those.

15 Let's ask a question of Ms. Anderson,
16 please.

17 BY MR. HARTKE:

18 Q. All right. Let's move on to some other
19 noise stuff. This project, I think that they
20 presented you as the safety expert of this project,
21 right?

22 A. They presented me as a safety expert?

23 Q. Yes. When you last -- two nights ago, the
24 presentation, you said you are the --

1 A. I am not a safety expert. I am an expert
2 in drafting applications.

3 MR. KAINS: Who is your safety expert from
4 Apex?

5 THE WITNESS: Mr. Jason Connelly.

6 MR. KAINS: Mr. Connelly will be the one.

7 BY MR. HARTKE:

8 Q. Okay. So previously a question was asked
9 about public health, safety, and welfare. Your
10 safety part is not at all. You are just going to do
11 welfare, public health, safety, and welfare. What
12 part would you be able to answer tonight about?

13 MS. ANTONIOLLI: Please ask a question,
14 and she can answer, if she can.

15 MR. HARTKE: Okay.

16 MR. KAINS: Yeah. She wrote the
17 application. So they'll have -- I am assuming
18 they'll have a public health expert.

19 Would that be fair? Do you have somebody
20 to address?

21 MS. ANTONIOLLI: Safety.

22 MR. HESS: We have a safety expert.

23 MR. KAINS: Safety expert, okay.

24 I am going to assume, because morals and

1 comfort are listed here, you are not going to have a
2 morality expert or a comfort expert.

3 So those are -- I don't know why those
4 terms are even used because that section really
5 means safety of the project and how it promotes, or
6 does not, or detracts from the general welfare.

7 MR. HARTKE: I'll turn now to maybe
8 general welfare.

9 MR. KAINS: Yeah.

10 BY MR. HARTKE:

11 Q. We talk about the tax ramifications that
12 is in the application here. That is general welfare
13 for the public because it goes to schools or
14 whatever.

15 But as a general welfare, would the noise
16 impact area on a private, unleased piece of land, is
17 that good for the public welfare to have their open
18 farm field between the house and the property line,
19 the noise abatement zone? Does that protect the
20 health and welfare and -- what do you want to call
21 it? Mental what?

22 MS. ANTONIOLLI: Can you explain what a
23 noise abatement is? Can you explain some of those?

24 MR. HARTKE: Sure. I would be happy to

1 explain what that is. So Apex has signed leases
2 with farmers to use up all their farmland. The
3 adjacent landowner has a home in the middle or far
4 side of their property.

5 The setback for distances from turbines to
6 the property line is 1.1 times the height, but the
7 setback is really to the noise level of about
8 1500 feet or so to get below the maximum noise level
9 and IPCB regulations.

10 So when a turbine is built 1.1 times the
11 height from a property line, and that thing is
12 turned on, it eats up the land, where it makes it an
13 unlivable place, and you cannot sleep in your home
14 past the property line.

15 MR. KAINS: Okay. Let's ask a question
16 now.

17 MS. ANTONIOLLI: I object. He's assuming
18 facts that are not in the record, and he's
19 testifying.

20 MR. KAINS: Yeah. We know the story.

21 Ask a question, please.

22 MR. HARTKE: I answered her question. I
23 was happy to answer it.

24 MR. KAINS: Thank you. Ask a question.

1 BY MR. HARTKE:

2 Q. So how is it protecting the health,
3 safety, and welfare of the neighbor to have their
4 farm field, around their home, that they own
5 privately, used in a noise abatement zone?

6 MR. KAINS: If you know.

7 A. I'll say it a couple ways. I am not
8 familiar with the noise abatement zone, so I am not
9 going to go there.

10 But what I will say is that all
11 residential use, participating or nonparticipating,
12 is classified the same for under the Illinois
13 Pollution Control Board.

14 And what I mean by that is there are no
15 waivers in the state of Illinois for sound. So our
16 turbines -- I don't know if it's true that an extra
17 1500 feet over 1.1 is to meet the sound standard. I
18 don't know about that.

19 But what I do know is that all 62 turbine
20 locations are sited to comply with turbine setback
21 requirements, the shadow flicker requirements, and
22 the Illinois Pollution Control sound regulations.

23 Q. Okay. I am looking for my next question.
24 I found it.

1 In the -- let's call it the waiver
2 agreement. Going to appendix B5. I'll find a sheet
3 to turn to. Sheet 3, item number 8.

4 After I asked my questions to Mr. Moore,
5 and he answered that there are no gag orders, I want
6 to check out item number 8 in the middle of the
7 page, and it says here, when the owner agrees to
8 support and not object to the wind farm, and to use
9 reasonable efforts to assist the wind farm, granting
10 reasonable requests, would you consider that an
11 instruction in a gag order that you cannot object to
12 the wind farm?

13 MR. HESS: I am going to object. I think
14 that mischaracterizes provision 8 because the phrase
15 "reasonable request" has to be read with everything
16 that precedes it.

17 The whole provision is called reasonable
18 assistance, and it says: The owner -- that would be
19 the landowner -- agrees it use all reasonable
20 efforts to assist grantee complying with the law.

21 Right? So you are going to use reasonable
22 assistance to help us comply with our legal
23 obligations. And then you get to the part that he's
24 referring to.

1 MR. KAINS: I am going to sustain the
2 objection. Ask a different question.

3 BY MR. HARTKE:

4 Q. The same thing on the confidentiality part
5 of it, item 12, it says you are not going to
6 disclose items to the public. Is that
7 confidentiality portion a gag clause that you are
8 not allowed to talk about your situation if you had
9 one occur?

10 MR. HESS: I am going to make the same
11 objection. That is not actually what provision 12
12 says. It says owner maintain the confidence of all
13 information pertaining to the financial terms of or
14 payment in this agreement. So I think he's
15 mischaracterizing the evidence.

16 MR. KAINS: Sustained. Ask another
17 question.

18 BY MR. HARTKE:

19 Q. Okay. Item 14, it says: In the event of
20 controversy, claim, or dispute -- it says any
21 controversy, the prevailing party shall be entitled
22 to recover from the losing party the prevailing
23 party's reasonable costs and expenses.

24 Is this a threat to enforce these

1 agreements on the Good Neighbor Agreement?

2 MR. HESS: Mr. Kains, I would make the
3 same objection to the extent that he's implying that
4 that provision only runs one way. What it actually
5 says is that either party, the prevailing party, may
6 receive fees. If the implication is it's a one-way
7 obligation, I would object.

8 If he just wants to ask what this
9 provision means, or properly characterize that, I
10 would have no objection.

11 MR. KAINS: Mr. Hess, could you read the
12 provision?

13 MR. HESS: Yes, sir: In the event of any
14 controversy, claim, or dispute arising out of or
15 relating to this agreement or in the enforcement of
16 breach hereof, prevailing party shall be entitled to
17 recover from the losing party the prevailing party's
18 reasonable costs, expenses, and attorney's fees
19 (including but not limited to those occurred at
20 trial or appeal or on petition for review).

21 MR. KAINS: Thank you. I am going to
22 sustain the objection.

23 Ask another question.

24 BY MR. HARTKE:

1 Q. Okay. I am going to visit over to safety
2 again.

3 Ms. Anderson, how safe from a wind turbine
4 is it for people to live?

5 How safe from a wind turbine is it safe to
6 live?

7 **A. I don't have a specific distance. But,**
8 **again, the turbine setbacks adopted by this county**
9 **and in the Illinois Siting Act provides safety from**
10 **nonparticipating residences, which is 2.1 times tip**
11 **height, and participating residences, and other**
12 **occupied community buildings. Participating**
13 **residence is 1.1. Occupied community buildings goes**
14 **back to 2.1 times tip height.**

15 Those setbacks and distances are used
16 across this state, and I work across the country,
17 and I will tell you that they are some of the most
18 conservative, meaning they are some of the larger
19 setbacks that I deal with on projects that I work on
20 across the country.

21 Q. Okay. Has Apex, or have you worked on any
22 projects in Kentucky?

23 **A. I have not.**

24 Q. Or Tennessee?

1 **A. I have not.**

2 Q. Do you know the setbacks and the noise
3 levels in Tennessee?

4 **A. I have not worked on a project in**
5 **Tennessee, so no.**

6 Q. Has Apex?

7 Do you know of any Apex projects in
8 Tennessee that is under development or they tried to
9 do?

10 **A. Not to my knowledge, or not that I have**
11 **done.**

12 Q. Okay. Does the Illinois State law of the
13 2.1 times setback height, is that a safe distance to
14 live from a turbine?

15 **A. I believe so. It was adopted by the**
16 **Illinois congress, the Illinois legislature, and**
17 **then has been adopted in counties across this**
18 **country or this state.**

19 **Like I mentioned, I work in a lot of other**
20 **states and counties that have less restrictive**
21 **setbacks. These are safe setbacks. Absolutely.**

22 Q. Did the State of Illinois, while changing
23 the statewide setback law, did they receive, or
24 listen to, or have at any hearings, any evidence or

1 any material that would support what you just said,
2 that it was safe?

3 During that decision, did they ever
4 receive any data to support 2.1 times the height
5 from a house?

6 **A. I was not part of the legislative process.**
7 **I don't work in government. I wasn't there. I**
8 **can't answer that question as to how they made their**
9 **decision as to what the setbacks should be.**

10 Q. Okay. In a wind farm, if you have a
11 nonparticipating landowner, do you think that the
12 people not participating, do you think that they own
13 all of their land on their side of the property
14 line? Do you think that they own it all? It's
15 theirs?

16 **A. Any landowner participating or**
17 **nonparticipating owns a parcel of land.**

18 Q. To the property line?

19 **A. To the parcel line.**

20 Q. Okay. Good. Does the presence of the
21 wind turbine that suddenly appears negate the
22 ability for a non-participant to still build a home
23 legally and safely close to the property line after
24 you build one 1.1 times height from the property

1 line? Will that neighbor still be able to use all
2 of their land that they own?

3 MR. HESS: I would respectfully object
4 that it calls for a legal conclusion, speculation,
5 and I guess an opinion on safety. She is not our
6 safety expert.

7 MR. KAINS: It calls for a legal
8 conclusion. She is not qualified. Ask another
9 question.

10 MR. HARTKE: This is going to be definitely an
11 objection, but I am going to get the whole question out.
12 Does the Coles County Board think it's cool or acceptable
13 to cause a portion of unleased area to be given to any
14 developer -- it doesn't matter if it's wind companies or
15 a mining company -- that they can use adjacent
16 landowner's property as any abatement zone, safety hazard
17 area? Any of that stuff? Does that sound
18 constitutional?

19 MR. KAINS: Are you asking that question
20 to Ms. Anderson?

21 MR. HARTKE: I am, but it's going to be
22 objected to.

23 MR. KAINS: Do you know the answer to
24 that?

1 MR. KEYT: Hold on, Mr. Kains. I want to
2 make sure there is an objection to this.

3 Number 1, there is a relevance issue to
4 this as to the county's bound by the state's
5 statutes and guidelines on what they want for
6 setbacks, sound, shadow flicker, etc. The county
7 board doesn't have a choice in their ordinance. The
8 statute is very clear of that aspect. That is
9 number 1.

10 Number 2: Even if that was an appropriate
11 question, which it isn't, Ms. Anderson is not a
12 member of the county board, so she can't possibly
13 answer that question anyway.

14 MR. KAINS: I am going to sustain the
15 objection and strike the question. It's just not
16 appropriate to ask that question in this room.

17 MR. HARTKE: Okay. Well, this room is --

18 MR. KAINS: Mr. Hartke, ask a question of
19 Ms. Anderson. That is the appropriate thing to do
20 here.

21 BY MR. HARTKE:

22 Q. Ms. Anderson, are we, in this room, in the
23 United States of America?

24 Are we physically in the United States of

1 America, which is governed by the US Constitution?

2 I am serious. And I know you don't like
3 to hear it, but I am serious.

4 MR. KAINS: Ms. Anderson, is this in the
5 United States?

6 THE WITNESS: We are currently in
7 Charleston, Illinois, in the United States of
8 America.

9 MR. HARTKE

10 Q. Great. If a person like me, who lives in
11 a home, in a wind farm, 1500 feet from a turbine,
12 can no longer use their home for sleep, should the
13 Illinois law be declared unconstitutional for taking
14 my use of my property away from me without
15 compensation?

16 MR. HESS: Objection. That calls for a
17 legal conclusion.

18 MR. KAINS: It does.

19 MR. HARTKE: Okay.

20 MR. KAINS: Sustained. Question stricken.

21 Ask a question that Ms. Anderson can
22 answer.

23 MR. HARTKE: Okay. I think I am exhausted
24 here.

1 Do you think that all the citizens are
2 going to be treated fairly with enough
3 representation to protect their home and property on
4 this project?

5 That is a personal question.

6 MR. HESS: Well, to the extent that he's
7 asking a personal question, I would object to the
8 relevance.

9 I also think it calls for speculation.

10 But, yeah, that would be my objection.

11 MR. KAINS: Objection is sustained. Ask
12 another question.

13 BY MR. HARTKE:

14 Q. On the flicker, when a flicker hits a
15 home, is it 100 percent predictable? From the
16 geometry of the sun and the position of the home,
17 and time of day, it is 100 percent predictable?

18 MR. HESS: I respectfully object. We will
19 have our shadow flicker expert here to answer these
20 questions.

21 MR. KAINS: Ms. Anderson, will you defer
22 the answer to that question to your shadow flicker
23 expert?

24 THE WITNESS: Sure. Mr. Runner can answer

1 that.

2 MR. HARTKE: I apologize --

3 MR. KAINS: Mr. Who?

4 THE WITNESS: Mr. Jacob Runner.

5 MR. KAINS: Mr. Runner will be the one.

6 MR. HARTKE: I apologize. I thought that
7 her presentation included shadow flicker. That is
8 my mistake.

9 MR. KAINS: That's okay.

10 MR. HARTKE: What is the speed limit going
11 to be in the project during the construction?

12 MR. HESS: I would object. That is beyond
13 the scope of her presentation. And if we can ever
14 get to Mr. Carlson, he will be the witness to
15 address that.

16 MR. KAINS: Okay. Ms. Anderson, will you
17 defer that Mr. Adam Carlson?

18 THE WITNESS: You bet.

19 MR. HARTKE: Thank you. That is all I
20 have. Thank you for your patience with me.

21 MR. KAINS: Absolutely, Mr. Hartke. I
22 always appreciate your questions. Sometimes they
23 are things that can be answered, and sometimes they
24 are not, but we appreciate you.

1 Is there any other member of the public
2 who wishes to ask questions?

3 Yes, come on up, ma'am.

4 Good evening.

5 MS. CLARK: I have just a couple
6 questions.

7 MR. KAINS: What is your name?

8 MS. CLARK: Kelly Clark.

9 MR. KAINS: Kelly Clark?

10 MS. CLARK: Uh-huh.

11 MR. KAINS: How do you spell Kelly?

12 MS. CLARK: K-e-l-l-y.

13 MR. KAINS: And Clark, does it have an E
14 on the end?

15 MS. CLARK: No.

16 MR. KAINS: Regular Clark. And what
17 county do you live in?

18 MS. CLARK: Coles.

19 MR. KAINS: Do you live in the project
20 area?

21 MS. CLARK: Yep.

22 MR. KAINS: Okay. Ms. Clark, ask
23 questions of Ms. Anderson relative to her testimony,
24 and her area is the preparing of the application.

1 MS. CLARK: Right.

2 MR. KAINS: Very good. Go ahead.

3 EXAMINATION

4 BY MS. CLARK:

5 Q. You were talking about the lights earlier,
6 and they come on, like, when a plane went over, and
7 turn back off when they go off.

8 In our area, the medical helicopter goes
9 over all of the time. I mean, it's constantly going
10 over. So is it going to allow for that, or are we
11 going to have it on all night? It's going to
12 flicker on and off all night?

13 I guess let me ask: Was that taken into
14 consideration?

15 A. It is taken into consideration, and here
16 is how: It depends on the proximity of that flight
17 path for Sara Bush Memorial Airport. We have sited
18 our turbines a distance away from that.

19 So it depends on the exact route of the
20 helicopter in comparison to the westernmost turbines
21 in the project, but the ADLS system is designed to
22 be safe for aircraft, to illuminate the turbines,
23 including helicopters and other low-flying aircraft.

24 So it's going to depend on which -- I

1 **understand there are two helicopter flight paths.**
2 **So it will depend on which one they are on and the**
3 **proximity of that to the westernmost turbine, but**
4 **that is what the system is designed to do.**

5 Q. Well, I live on the road east of 130, so
6 -- and it flies over there all the time. So it goes
7 right over all the time. And that is where the
8 windmill is mainly going, so that is why I was
9 wondering if that is considered.

10 A. **Sure. So we have been working with**
11 **experts on these helicopter routes specifically, and**
12 **we've avoided siting turbines in relation or**
13 **proximity to these helicopter routes.**

14 Q. Okay. The other thing was, is the other
15 night you were talking, and you said that the noise
16 level -- you were talking about it being -- what was
17 it? -- Monday night, you said it should be half of
18 the volume of conversational volume, but then
19 tonight you are saying noise level is confidential.

20 So how -- because they are going to be
21 close to me. I won't lie. I don't want to hear
22 them. So I am just wondering what -- because
23 conversational level is like us having a
24 conversation, and it's not going to be very loud.

1 **A. Exactly. So if I can just correct you,**
2 **what is confidential is the sound power curve from**
3 **the turbine manufacturer, GE and Vestas.**

4 Q. Okay.

5 **A. That sound power curve goes into**
6 **calculating what the sound emissions are going to be**
7 **outside the turbine.**

8 Q. Okay.

9 **A. And that is -- all turbines are sited to**
10 **meet the Illinois Pollution Control Board standards**
11 **for residential use.**

12 Q. Okay. So, if you are saying this is going
13 to be, like, half the conversational volume, then
14 say I am sleeping at night, and I can hear them
15 going off, and I call you guys, is it going to be
16 shut off so that we don't have to hear it no more?

17 You said that we shut it off, like, in a
18 switch. I mean are they going to shut off if we
19 call to complain because it's noisy, can't sleep?

20 **A. I did say that they can be shut off in an**
21 **instant, either the onsite team or remote operations**
22 **team, or the turbine sensors themselves, right? If**
23 **there is something going on with the turbine.**

24 Q. Uh-huh.

1 A. I also said that turbines do emit some
2 sound, and at a residential property that is about
3 half as loud as conversational speech, about
4 45 decibels.

5 So the Illinois Pollution Control Board
6 standard is in eight octave bands. It's not just
7 one number. That is why I related it to
8 conversational speech, just to make it easier for
9 everyone to understand what does eight octave bands
10 mean? Right?

11 So with regard to your complaint, all
12 complaints, participating and nonparticipating
13 landowners are taken seriously. And with respect to
14 noise, if you have a noise complaint, yes, the
15 turbine technicians will inspect your complaint with
16 you, follow up with you, and that is one of the
17 topics that are included in the annual report as
18 well. So that is also provided then to the county
19 board.

20 Q. Okay. And then I just have a couple more,
21 but I don't know that they actually can be answered.

22 One -- and I do not mean to be mean, but
23 do any of the county board members live by a wind
24 farm?

1 MR. KAINS: Ma'am, this is time to ask
2 questions of Ms. Anderson.

3 MS. CLARK: Okay.

4 MR. KAINS: You could probably look at
5 some kind of map of Coles County, and I don't know
6 if they can determine if there is -- there has to be
7 a county board member from that area of the county
8 because that is how it works.

9 MS. CLARK: Yeah.

10 MR. KAINS: You could ask -- I don't know
11 if Mr. Lockhart up here, in the blue shirt, has that
12 information. Or you could ask any of the members of
13 the board, but Ms. Anderson is not going to know.

14 Go ahead with another question.

15 BY MS. CLARK:

16 Q. The other one, I don't know if you can
17 answer either. I can ask you that: Do you know if
18 any of the Apex members live by wind farms?

19 **A. Mr. Carlson, hopefully we can get to him**
20 **tonight. As you'll hear from him, when he**
21 **testifies, he's got a family farm up in Ford County,**
22 **and there are turbines right next to his farm. Yes.**

23 MS. CLARK: Okay. All right.

24 MR. KAINS: Okay. Ms. Clark, thank you.

1 Any other questions from members of the
2 public for this witness?

3 Yes. Please step forward.

4 Good evening. Please state your name.

5 MR. CUSTER: My name is Steve Custer,
6 S-t-e-v-e C-u-s-t-e-r. And my question is --

7 MR. KAINS: Where are you from?

8 MR. CUSTER: I am from county line -- I
9 live in Douglas County, just on the edge of the
10 project. I am going to be probably a half or
11 three-quarters of a mile from the first turbine.

12 MR. KAINS: Okay.

13 EXAMINATION

14 BY MR. CUSTER:

15 Q. My question is: You talked about
16 flickering. So if you are not a participating
17 person, a good friend, or whatever you call it, do
18 they get -- anybody that is going to get 30 hours of
19 flicker, did they get contacted at all?

20 I mean or do you got to be a good friend
21 to get contacted?

22 I mean in being a good friend --

23 Excuse me. Can I ask another question?

24 MR. KAINS: Sure. Let's answer the first

1 question, but yes you can have all the questions you
2 want.

3 BY MR. CUSTER:

4 Q. All right.

5 A. Sure. So I'll answer. I think you asked
6 a couple questions, so let me see if I remember them
7 all.

8 You live in Douglas County, so you are a
9 nonparticipating resident.

10 Q. Right.

11 A. No nonparticipating residents are modeled
12 to have over 30 hours of shadow flicker per year.
13 That is the standard here in Coles County, and that
14 is what we've met.

15 The second thing I'll say is our shadow
16 flicker report, in the appendix -- I am happy to
17 show it to you after I am done in the hot seat up
18 here -- but we modeled shadow flicker, and sound,
19 for that matter, for flicker, it was every
20 residence, participating and non, and occupied
21 community buildings -- there was one -- within a
22 mile of the project area.

23 So, if you are within a mile of the
24 project area, we can look up your home, and I can

1 **tell you exactly how much shadow flicker you are**
2 **modeled to have with the conservative estimate of**
3 **modeling all 62 turbine locations and not just the**
4 **51 we plan to build, but I can give you that value**
5 **after I am done up here.**

6 Q. I wasn't asking for me necessarily. I was
7 asking for my good neighbors in the crowd that I
8 know that they are going to get at least that. As
9 my friend Phil said, I would be surprised if he get
10 less than 30 hours. That is not a question, but --

11 So you have to get paid to be a good
12 neighbor? Or are you just not a good neighbor if we
13 don't get paid? Just asking.

14 MR. KAINS: I think that is in reference
15 to the neighbor agreement.

16 MR. HESS: Participating Neighbor
17 Agreement, yes.

18 BY MR. CUSTER:

19 Q. So beings I live so close, I don't count,
20 being I am not participating?

21 A. **I think there's maybe two parts to your**
22 **question. You don't have to be a good neighbor to**
23 **have a participation agreement. Certainly, there**
24 **are folks in this room and in the project that have**

1 chosen to sign a participation agreement.

2 Q. I just asked because this project has been
3 ongoing for five years, I guess, trying to get land
4 and all of that, and they didn't put the application
5 in until January of this year, and that is really
6 the first I really heard that this is moving
7 forward.

8 And I am trying to understand, in
9 Illinois, that Illinois has state laws that are
10 driven by all of this stuff. But that is really all
11 I have.

12 MR. KAINS: Mr. Custer, do you have any
13 other questions?

14 MR. CUSTER: That's it.

15 MR. KAINS: Okay. Thank you very much,
16 Mr. Custer. We appreciate your questions.

17 Anybody else from the public with
18 questions for Ms. Anderson?

19 MR. LICKFETT: I got one.

20 MR. KAINS: Okay. Come on up, please. I
21 am trying to remember you from the other night.

22 MR. LICKFETT: Timothy Lickfett,
23 L-i-c-k-f-e-t-t.

24 MR. KAINS: From Douglas County, right?

1 MR. LICKFETT: Yes, sir.

2 MR. KAINS: Go right ahead, Mr. Lickfett.

3 EXAMINATION

4 BY MR. LICKFETT:

5 Q. Are there any Good Neighbor Agreements
6 signed with residents of Douglas County --

7 A. If you give me a second.

8 Q. -- that do not have windmills on property
9 that they own in Coles?

10 A. I am referencing and looking up what I
11 believe, off the top of my head, to be figure
12 appendix A2, the site control map.

13 Q. Yeah.

14 A. So if you just let me get there. There
15 are no agreements in Douglas County.

16 Q. Okay. A couple of times the road use
17 agreement stuff has been brought up and -- excuse me
18 -- there may be another, later, expert that can
19 speak to this better than what you can.

20 But it's all about Morgan and Seven
21 Hickory Township; but Bowdre Township, in Douglas
22 County, has a shared road with both of them. It's
23 1900 North in Coles County and 000 in Douglas
24 County, and I just want to make sure.

1 So I guess my question is: Is Bowdre
2 Township in Douglas County going to be brought into
3 the fold for the road use agreement stuff as a
4 whole, or are they going to be considered and worked
5 with and, you know, collaborate with them on
6 whatever we have got to do to get the roads fixed
7 after they get torn up? Because there are several
8 entrances coming in your project from 1900 North 000
9 in Douglas County.

10 MR. KAINS: Just to clarify, is it the
11 same road?

12 MR. LICKFETT: It is. It is referred to
13 as 000 in Douglas County.

14 MR. KAINS: It is the same road?

15 MR. LICKFETT: Yes.

16 MR. KAINS: And it lies both within a
17 township in Douglas --

18 MR. LICKFETT: I believe it is split down
19 the center, but maybe somebody can define that more
20 clearly.

21 THE WITNESS: Just give me a second here,
22 and I'll answer your question.

23 MR. KAINS: Great question.

24 THE WITNESS: So, based on our

1 coordination with the road authorities, specifically
2 Seven Hickory Township --

3 MR. LICKFETT: Okay.

4 THE WITNESS: The portion of 1900 Road
5 that you are -- that will be used for this project
6 for turbines and other equipment, it's about a mile
7 and a half of road. Based on coordination with the
8 county engineer in Seven Hickory Township, that
9 portion of the road is under the jurisdiction of
10 Seven Hickory Township.

11 MR. LICKFETT: Okay. Fair enough.

12 THE WITNESS: Yep. And that is the
13 portion of that road. You can see that in appendix
14 B7 in the application.

15 MR. LICKFETT: Okay. That is all I've got
16 for tonight. Thank you.

17 MR. KAINS: Very good. Thank you, sir,
18 for your questions.

19 Anybody else in the public?

20 Yes, sir. Come forward, please.

21 What is your name?

22 MR. PHIPPS: Dale Phipps, P-h-i-p-p-s.

23 MR. KAINS: And where are you from,

24 Mr. Phipps?

1 MR. PHIPPS: The little dot on the map
2 there in Coles County, right in the project.

3 MR. KAINS: Northern Coles County. Yes,
4 sir. Go right ahead, Mr. Phipps.

5 MR. PHIPPS: I apologize. I am terrible
6 at public speaking, and spent most of my life trying
7 not to be in a courtroom.

8 MR. KAINS: It's all right. Nobody is
9 going to do anything or saying anything, unless
10 Mr. Hess objects, or I jump in.

11 But, Mr. Phipps, go ahead with your
12 questions for Ms. Anderson, please.

13 EXAMINATION

14 BY MR. PHIPPS:

15 Q. I am not sure if you are the appropriate
16 one for some of these. So if not --

17 **A. I am trying on all of them.**

18 Q. So complaints have been brought up a
19 couple times. So, I guess, are you the person that
20 can elaborate on that process?

21 I know that someone is going to pick up
22 the phone, and someone is going to do something.

23 But if it's repetitive, what is the
24 process of, hey, I still can't sleep, this thing is

1 still running?

2 I know you are not going to come tear it
3 down, but I guess where is conflict resolution?

4 If this project moves forward, I don't
5 want to be stuck in a house that I bought because I
6 really liked it and now I can't stand it once you
7 guys are done.

8 A. Sure. We don't want that either, and that
9 is what the complaint resolution process is for.
10 Right? You shouldn't have to repeatedly make
11 complaints over and over again; otherwise, that
12 means it wasn't resolved. And our goal is to make
13 sure all complaints are resolved. And we have to
14 provide proof of that to the county board.

15 And so -- and the complaint resolution
16 plan, we've got to provide that prior to
17 construction. I believe it also goes in front of
18 the county board, but it is who to call, the
19 timeline for which we have to work with you. And
20 depending on the complaint, right? Some
21 investigations take different amounts of time
22 depending on what might need to be addressed.

23 Q. Right.

24 A. But we are here to be a long-term partner

1 **in the community. So we will continue to work with**
2 **you to address whatever your complaint is, how ever**
3 **long it takes because that is who we are, but we**
4 **also are bound by that by the ordinance.**

5 MR. KEYT: If I could point out, Mr.
6 Kains, there is a process for this within the
7 ordinance which is under paragraph G, complaint
8 resolution: The applicant shall, at its expense and
9 in coordination with the county, develop a system
10 for logging and investigating complaints related to
11 the WECS project.

12 So, if that were -- if at some point it is
13 approved, again, that is down the road if that were
14 to happen, but they would have to develop that plan
15 in conjunction with the county. So there is a
16 process that kind of goes along with that, and I am
17 saying that because I am objecting to the question.
18 I am saying that just for the edification of the
19 record.

20 MR. KAINS: Thank you, Mr. Keyt. There
21 will be a number, or numbers, or e-mail, or
22 something that --

23 THE WITNESS: All of the above.

24 MR. KAINS: Okay. If there is a problem,

1 there is a way to get ahold of somebody. And if
2 they don't fix it, call the county board. They'll
3 fix it.

4 THE WITNESS: Right. It's not just us
5 drafting a plan. We are doing it right in
6 collaboration, as we have collaborated with the
7 county board for years.

8 BY MR. PHIPPS:

9 Q. And that kind of was my next question
10 which is: Who determines that it's resolved?

11 I mean is it just a tech that comes out
12 and says, yeah, it's still running? They are going
13 to deal with it? We answered the call.

14 But in my eyes, that is not resolved. So
15 how is that process? Or is that still part of the
16 --

17 I forgot his name, but the lawyer guy --

18 MR. KAINS: Mr. Keyt?

19 MR. PHIPPS: Yeah.

20 BY MR. PHIPPS:

21 Q. Who determines that?

22 **A. Right. And I would agree with you,**
23 **answering the phone is not enough. Right. And that**
24 **is not our intent at all.**

1 So we will certainly answer the phone,
2 hear you, understand what is going on, and then take
3 the necessary steps. It could be coming to your
4 house and, you know, if it's sound related, hearing
5 what you are hearing. Right?

6 There is an investigation period that will
7 need to happen, and then we have to report that back
8 to the county board.

9 MR. PHIPPS: Okay.

10 MR. KEYT: I am not objecting to the
11 question at all, but for the edification of the
12 record, there is a remedies provision.

13 If a complaint is not resolved adequately
14 by the developer, there is a series of steps that
15 are taken by the county side to enforce whatever the
16 violation might be.

17 Under the remedies provision, it would
18 then govern how the county might respond to a
19 complaint, right?

20 So that all is addressed through that
21 process. Sometimes you might even have a court
22 action to enforce such a thing.

23 But, again, I am not complaining or
24 objecting to the question. I just want to make sure

1 that is reflected in the record that that process is
2 delineated out in the ordinance.

3 MR. KAINS: All right. Thank you,
4 Mr. Keyt.

5 All right. Mr. Phipps, any other
6 questions?

7 BY MR. PHIPPS:

8 Q. As far as siting the turbine locations --
9 and this may sound selfish because I am sure there
10 are several people -- how close are you to my house?
11 And how do you determine that?

12 Because, I mean, all I got was the flier
13 in the mail saying I am here because I am concerned.
14 But how do I determine how close you are going to
15 put this to my house?

16 I mean, great; there is the setback. But
17 that doesn't tell me anything.

18 **A. I don't know where you live, but I am**
19 **happy to, you know, follow up and measure, if I can**
20 **learn where you live, your specific residence to the**
21 **nearest turbine and provide that distance for you.**

22 Q. Is there a resource that is available to,
23 I guess, all nonparticipants that -- I mean
24 transparency -- Mr. Moore was addressing it the

1 other day, and all I got was it varied 30,000 foot,
2 or probably better than that resolution.

3 Just where can we get more input?

4 And if you can't answer, that is fine.

5 **A. Again, I am happy to provide that. But**
6 **there are a number of residences on the map, so to**
7 **provide that distance, we can certainly provide the**
8 **closest, the distance of the closest turbine to each**
9 **residence, and provide that. That is an easy GIS**
10 **exercise that we can provide and would be happy to**
11 **provide if that is helpful.**

12 **But we don't -- I guess we have parcel**
13 **information, so we can put landowners to it.**

14 **But as you'll see on the map -- right? --**
15 **we just provide R1, R2, R3 in numbering those**
16 **residences, and that is just arbitrary.**

17 MR. KAINS: Ms. Anderson, would you be
18 able to meet with Mr. Phipps after this?

19 THE WITNESS: Absolutely.

20 MR. KAINS: Would you be able to hang
21 around and the two of you just look at the map?

22 MR. PHIPPS: Yeah. That would great. I
23 am sure there are multiple people wondering the same
24 question.

1 The ones that are housing one of these
2 potential facilities, I am sure there has been,
3 okay, this is going to be this far and in this
4 location, but the rest of us are just kind of in the
5 dark and surrounded by it.

6 MR. KAINS: Let's get you out of the dark
7 and meet with Ms. Anderson after this session, if
8 that is all right.

9 MR. PHIPPS: All right.

10 MR. KAINS: Thank you.

11 BY MR. PHIPPS:

12 Q. And I guess that probably is going to
13 answer the same: How loud is it going to be or --

14 **A. I can look that up in the sound report. I**
15 **can also look up your flicker, but I have to know**
16 **where you live to be able to cross-reference which**
17 **residence is yours to look up those values.**

18 Q. Okay.

19 **A. Happy to provide that.**

20 Q. As far as in the siting -- and, again, if
21 this isn't a you thing -- I guess, if there is a
22 situation, let's say it's a quarter mile from my
23 house. If it's a quarter mile from my house, but
24 there is nothing else within a mile, why is it

1 within a quarter mile and not mine? How is that
2 fair?

3 A. I can tell you it's at least a quarter
4 mile, if you are a nonparticipating residence, just
5 because what I testified to the other night.

6 But how we site turbines, it's really a
7 function of meeting the setback requirements, the
8 sound regulation, and shadow flicker requirements.
9 That creates what we would call a buildable area,
10 where can we site the turbines after we have
11 considered all of those things.

12 So on the map behind me, and over there,
13 which is also in the application as the first page
14 of the preliminary site plan, the turbine setbacks
15 are like the gray that cover all of the signed land
16 in the project area. So, in some ways, it's a
17 function of the setbacks of the land around you and
18 the other residents around you, and are they
19 participating or are they non because, as we've
20 talked about, there are different distances applied
21 to those things.

22 And then there is -- we also take into
23 account -- I think a committee or board member asked
24 about what is the closest distance of turbines to

1 **each other, right?**

2 **There is spacing internally of all the**
3 **turbines, and then there is, you know, geological**
4 **and engineering things. There is a lot of different**
5 **things that go into siting a turbine.**

6 Q. Okay. I am almost done, and some of these
7 I believe you are going to have a water guy.

8 Sound wise, is there -- and, again, I
9 don't know the levels, but somebody else brought it
10 up. Is there any potential benefit from barriers or
11 how -- who do we talk to if there is an issue with
12 sound barrier that would be something of assistance?

13 A. **In my experience, a barrier, I mean, isn't**
14 **needed. We've already sited the turbines with the**
15 **four conservative models that I described with the**
16 **modeling assumptions the other night to meet the**
17 **Illinois Pollution Control Board standards.**

18 Q. Okay. Road wise -- and this has been
19 discussed several times, but I know there's the
20 restoration, but these are the roads that we drive
21 every day on the way to and from work. Who is going
22 to be the one determining during construction? Is
23 that someone we contact the township with?

24 A. **In terms of which roads are used?**

1 Q. No. As far as if the road is trashed
2 because you guys brought in super-loads or whatever
3 on it, and now there is massive potholes, and my
4 truck is garbage, is that just something that we --
5 or is that the general complaint? I guess, how is
6 that navigated?

7 A. Sure. That could be a complaint. The
8 road authorities themselves during the construction
9 process, I imagine, are going to be monitoring the
10 roads that we are improving and how we are using
11 them.

12 Certainly, our Apex onsite team, during
13 construction, we don't want trash on the roads or
14 anything like that. We want -- you know, it's not
15 beneficial for us to drive this big equipment over
16 potholes and make it worse.

17 So I think everyone, in the interest of
18 everybody, we want to have and maintain good roads
19 prior to construction, to get it ready for the
20 construction phase, but also during the life of the
21 project.

22 Q. Okay. And then there was talk -- I
23 believe this is my last question. There was a lot
24 of talk with sound studies, ground water studies,

1 etc. But is there anything for electromagnetic
2 fields as far as what that is doing to -- I am no
3 power expert. But they are usually up in the air or
4 down in the ground, and they are in my backyard.
5 Has there been any consideration of that?

6 **A. Sure. In my career, I have never seen any**
7 **MF electromagnetic spectrum frequency study for**
8 **turbines, and that can be because the transformer,**
9 **where there is the most current, is up in the**
10 **nacelle in the case of the Vestas model, or what we**
11 **call pad-mounted, in the GE mode, right next to the**
12 **base of the turbine, but those have appropriate**
13 **grounding. Typically where you see EMF studies are**
14 **things like transmission lines. This project**
15 **doesn't have a transmission line.**

16 **Q.** The other things I have is concerning
17 spills and that I may be getting more into the
18 construction site or operational. You are first in
19 the hot seat, so you are getting it.

20 I know these turbines. I actually work on
21 turbines in a different environment.

22 But what is the quantity of oil, or what
23 is the concern, or where do we find information as
24 far as now I've got 500 gallons of oil, or whatever

1 this thing takes, and it's on fire 150 feet in the
2 air or whatever?

3 But, you know, there is definitely a
4 concern about that. I have a pond. I have small
5 kids, and now there is a massive oil reservoir or
6 multiple surrounding my house?

7 **A. I don't think that the turbines host 500**
8 **gallons of oil, but they do have oils because they**
9 **are machines.**

10 **Q. Right.**

11 **A. There is a secondary containment in the**
12 **nacelle. That is where the parts are that the oil**
13 **contains. There is secondary containment up there.**

14 **And there is also an SPC plan. That is**
15 **spill prevention, counter measure -- control and**
16 **counter measure -- I think I got it -- plan that**
17 **addresses potential spills.**

18 **Q. And that's just going to be forthcoming in**
19 **more planning and developing?**

20 **A. Sure. I believe our expert, the next**
21 **expert, if we have time for her, Kelly can speak**
22 **specifically to SPC plans. She has a lot of**
23 **experience in that area. I know that we are**
24 **required to have one. We will have one prior to**

1 Q. So I will, tomorrow, get a map up for
2 everyone so they can measure distances. I mean that
3 would be helpful I think.

4 **A. Great idea.**

5 MR. KAINS: Thank you, Mr. Lockhart.

6 I apologize. Coles County is great.
7 Livingston County not so much. That is just my --
8 that is just me.

9 Further questions, Livingston County --
10 Coles County. I need to mark this out. Coles
11 County staff and consultants? Their attorneys,
12 Mr. Keyt, Mr. Ierulli, Ms. Rives?

13 MR. KEYT: Mr. Kains, we will have a
14 number of questions, but we are at almost 9:30. So
15 I don't know if we want to recess, or if we want to
16 keep going.

17 You seem to be confused.

18 MR. KAINS: I was confused before I walked
19 in, and after the testimony tonight, I am not sure
20 if I can even find my way home, but I do know that
21 Interstate 55 is not in Coles County.

22 What is the committee's pleasure?

23 Mr. Keyt has questions.

24 You'll have redirect of your --

1 MR. HESS: No, sir.

2 MR. KAINS: No?

3 So it's just going to be Mr. Keyt's
4 questions and questions from members of the zoning
5 board. We can stop now. And Ms. Anderson is going
6 to be here the whole time, and she could start us
7 off --

8 THE WITNESS: If I could correct you, I do
9 have a couple other hearings to get to, so I would
10 love to wrap up tonight, myself, selfishly.

11 MR. KAINS: What do you got? Ten minutes?

12 MR. KEYT: Probably longer than that, but
13 I am happy to give it a shot.

14 MR. KAINS: Are you here on April 10?

15 THE WITNESS: I am not.

16 MR. KAINS: You are not.

17 MR. WATTS: Let's go.

18 MR. COX: Yeah.

19 MR. KAINS: Mr. Cox and Mr. Watts say
20 let's go. I guess two out of five ain't bad.

21 All right. Mr. Keyt, your questions?

22 EXAMINATION

23 BY MR. KEYT:

24 Q. Ms. Anderson, I'll try and be efficient

1 here, but if I understand it correctly, you are
2 responsible for drafting the application. There are
3 certain subject matter experts that may have drafted
4 specific reports that are contained in part of the
5 application; is that correct?

6 **A. That is correct, and I've summarized it in**
7 **the text.**

8 Q. I understand. So when it comes to, for
9 example, shadow flicker, that is a report that is
10 drafted by somebody who specifically does shadow
11 flicker; is that correct?

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

13 Q. And same thing in relation to sound;
14 somebody has drafted the report that is specific to
15 sound?

16 **A. An expert in that field, correct.**

17 Q. When it comes to questions for shadow
18 flicker and sound, I assume that you would direct me
19 or direct that question to the expert in that field
20 that drafted the report?

21 **A. I feel like I've done pretty good, but**
22 **that is up to you.**

23 Q. All right.

24 **A. I don't know. Whatcha got?**

1 Q. When it comes to measuring sound at a
2 specific location -- I am not asking you what
3 necessarily the state requirement is. I think your
4 understanding of what the state requirement is is
5 that the sound pressure levels are measured from the
6 use of the property as opposed to a property line.
7 Is that what your understanding is?

8 **A. That is correct.**

9 Q. In relation to that, there are a number of
10 maps that are within the report prepared. I don't
11 necessarily want to go through each of them.

12 My question, though, is: How is it
13 determined, or how did the developer determine where
14 the residential use begins on a property and where
15 it ends?

16 **A. Good question. And I tried to explain**
17 **this earlier, but we tried to have no doubt about**
18 **the residential use or to make inferences about how**
19 **people use their property. So the contours on those**
20 **detailed maps that you are referencing in the sound**
21 **report, you'll see that those contours are only on**
22 **cultivated cropland, and that is so -- we did have**
23 **some that were cutting through barns, for example,**
24 **and we had to make turbine -- in preliminary**

1 **modeling. So we made turbine adjustments to make it**
2 **abundantly clear and not have to make inferences**
3 **about how somebody uses their property. So they are**
4 **all on cultivated cropland.**

5 Q. So here is my question in relation to
6 that: Is the sole source to determine whether or
7 not it's a residential use or not coming from the
8 aerial mapping that you review on, say, a GIS
9 system?

10 A. I would say that in conjunction with
11 things like land cover/land use mapping, right?
12 **Maps, cultivated cropland, and how the land is used.**

13 But generally, if looking at aerial
14 photos, and we as a company, one of our data
15 techniques is to do an aerial survey, a flight,
16 ourselves. So sometimes, if -- what most people
17 know as, like, Google Earth, if that image isn't the
18 most recent one, we have flown this site with an
19 airplane and created an aerial image from that
20 flight so we are not relying on outdated aerial
21 photos. So it's a combination of a number of
22 different things.

23 Q. Do you ever talk to the people who live in
24 that residence to determine what their use of that

1 particular property is?

2 **A. No, and I would say we haven't had to**
3 **because we're -- again, we are trying not to make**
4 **inferences of how they use their property. We are**
5 **keeping it on the actively cropped land, and that is**
6 **evident in things like land cover/land use data and**
7 **aerial images.**

8 Q. Okay. So what I am trying to understand
9 is, in making the determination of how a resident
10 uses the property that they own, the question I am
11 asking is, is the sole source then coming from the
12 aerial photographs that are either online or through
13 the flyover that you do?

14 **A. Or other data sets like the National Land**
15 **Cover Data Set, but yes.**

16 Q. In looking at the mapping that is
17 available in the application, in the sound modeling
18 report, I'll just direct your attention to I believe
19 it is page 72.

20 **A. Yep.**

21 Q. Yes, appendix D. I am sorry.

22 **A. Yes. And I know exactly where you are**
23 **going with this.**

24 Q. And I am just trying to understand.

1 **A. I know you are not trying to be tricky.**

2 **So the parcel that says, "Parcels north of**
3 **this are not residential," there is a church there.**

4 Q. Okay. So -- and this is -- let me ask a
5 question before you answer it here.

6 So, on figure 38, on that page 72, there
7 is a map, and it has, I believe, receptor number
8 00031, and that is a residence, and there is a dot
9 reflecting that residence; is that correct?

10 **A. That's right.**

11 Q. And then there is, I am going to say a
12 purple hashmark that kind of depicts where the sound
13 pressure levels are over the IPCB limit, and then
14 the remainder of it is where it is under, in other
15 words, compliant with the IPCB limit. Am I
16 understanding that correctly?

17 **A. That's right. And I'll add that, on this**
18 **particular map, we also added the parcel line, the**
19 **parcel lines, and so where receptor RE 00031 is is**
20 **within that parcel. The parcel to the north of it**
21 **is the churches.**

22 Q. So I think -- it's hard to see on the map,
23 but the parcel line is very tightly around the
24 church.

1 Am I understanding that correctly?

2 Is that what you are referring to the
3 parcel line?

4 **A. There are multiple parcel lines. The**
5 **church is bound by that.**

6 But it may be better if you look at the
7 residence. There is another line that was tightly
8 bound to that. So north of that line, so there is
9 the residence and then the parcel line. Everything
10 above that parcel line is owned by the church.

11 Q. I think -- I don't know if this is
12 possible. Is it possible to bring that picture up
13 so that everybody -- I mean everybody else is
14 looking at us having a conversation without the
15 reference.

16 **A. Exactly. Exactly.**

17 (Pause in proceedings.)

18 MR. KAINS: Back on the record.

19 BY MR. KEYT:

20 Q. So, if I am understanding it correctly,
21 the property, or what looks like a building that is
22 to the north of RE 00031, that is a church; is that
23 what you are saying?

24 **A. That is what I am saying.**

1 Q. How did you determine that is a church?

2 A. By the parcel -- the owner of the parcel.

3 Q. Okay. But in terms of determining whether
4 or not it's utilized as a church or something else,
5 other than looking at who the owner of the parcel
6 is, was there any other investigation done to
7 determine how that church is used, or that property
8 is used I should say?

9 A. No. Between parcel data from Coles
10 County, that is a church, both parcels are a church
11 outside of the residence. So we used the most
12 recent data from Coles County to determine that.

13 Q. Understood. But here is my question --

14 A. We did not do anything else.

15 Q. Gotcha. In looking at then page 75, it is
16 figure 41.

17 COURT REPORTER: Did you say 41?

18 MR. KEYT: YES.

19 COURT REPORTER: Thanks. It's hard to
20 hear you with people talking in the back.

21 MR. KAINS: Folks, if we could keep it
22 down, because Mr. Keyt is kind of quiet tonight, and
23 Holly needs to hear, so thank you.

24 BY MR. KEYT:

1 Q. I'll try to keep my voice up.

2 So, in looking at figure 41, in looking at
3 RE 00081, my assumption is that is a residence, or
4 you determined that the developers determined that
5 is a residence; is that correct?

6 **A. That is correct.**

7 Q. And then what investigation was done to
8 determine what the residential use area is on this
9 particular property?

10 **A. The same technique, looking at the aerial**
11 **photograph that contours only on cultivated**
12 **cropland.**

13 Q. So, if I am understanding correctly, you
14 utilized the overhead aerial view of the property to
15 try and determine which portions of the property are
16 being utilized for residential use versus an
17 agricultural use?

18 **A. Right, because an agricultural use would**
19 **be cultivated cropland.**

20 Q. Okay. Did you talk to the person or
21 persons who live at that residence to determine
22 which particular areas of that property they deemed
23 to be the residential use versus the agricultural
24 use?

1 **A. We did not.**

2 Q. And then, let me direct you then to --
3 it's figure 35, on page 69. On this particular
4 figure 35, my assumption is that you, the
5 developers, determined that RE 00022, that dot
6 there, is a residence, correct?

7 **A. That is correct.**

8 Q. And other than the methodology you've
9 already described in determining what the
10 residential use was, did you take any other measures
11 to determine the residential -- or what the resident
12 considers to be the residential use of that
13 property?

14 **A. We did not. We considered all cultivated**
15 **cropland to be agricultural use.**

16 Q. Let me move on to a different topic. When
17 we talk about telecommunications, you've done a
18 telecommunications study around, and that is
19 included in the materials provided to the county in
20 their application.

21 One of the primary concerns that comes up
22 from time to time is the ability of emergency
23 communications to still take place. I think you
24 understand that part.

1 **A. (Nodding.)**

2 Q. Apex, I assume, would be willing to
3 resolve any interference that may come to 911
4 communications or other emergency communications
5 that may be caused by a turbine or turbines; is that
6 fair?

7 **A. Absolutely.**

8 Q. And Apex is also willing to resolve any
9 interference that could occur in relation to radio
10 or television reception; is that fair?

11 **A. Absolutely.**

12 Q. Okay. Let me turn your attention to
13 decommissioning, and I understand, if you want to
14 defer these questions to the person that provided
15 the decommissioning cost estimates, that is fine.

16 But have you ever been involved in a
17 decommissioning of a wind project, ever?

18 **A. I, myself, haven't, no. I have been**
19 **involved in several re-powers, so that is why I was**
20 **thinking about it. But some are the decommissioning**
21 **of old turbines. And re-power is an interesting**
22 **word; it can take a lot.**

23 Q. It could be a lot of different things?

24 **A. Exactly. So, technically, they were**

1 **re-powers, but some turbines were decommissioned and**
2 **replaced.**

3 Q. All right. In those re-powers that you
4 are referring to, did any of them involve taking the
5 tower itself down, or was it just the replacement of
6 the turbine itself on top of the tower?

7 A. **These were replacements of the nacelle and**
8 **the blades. So the tower itself stayed.**

9 Q. So it wasn't a full removal of a turbine,
10 fair?

11 A. **That's right.**

12 Q. Have you ever had to perform an estimation
13 for a contractor that was bidding on a wind farm
14 decommission?

15 A. **Can you say that again?**

16 Q. Have you ever worked for a company that
17 ever did a decommissioning project on behalf of a
18 developer?

19 A. **No.**

20 Q. When did Apex construct their first wind
21 farm?

22 A. **I can tell you we were founded in 2009,**
23 **but I don't know when the first project was**
24 **constructed.**

1 Q. Have any of Apex's wind projects been
2 decommissioned?

3 **A. Not to my knowledge.**

4 Q. So if I could -- I think I know the answer
5 to the question, but has Apex ever hired a
6 contractor to perform any decommissioning of a
7 project?

8 **A. Not to my knowledge.**

9 Q. Has Apex ever had to hire a contractor to
10 fully remove a single turbine from a project?

11 **A. Not to my knowledge.**

12 Q. In the materials, there is a
13 decommissioning plan and a cost estimate, true?

14 **A. True. I would say there are two cost**
15 **estimates, one for each turbine, but yes.**

16 Q. The cost estimate, as I understand it,
17 then is an estimate of what the cost would be that
18 is performed by an outside engineer that is hired by
19 Apex; is that fair?

20 **A. That is fair.**

21 Q. Who is the engineer that sealed the
22 decommissioning plan and the estimates? Do you
23 know?

24 **A. I would have to look it up. I don't**

1 **remember his name off the top of my head.**

2 Q. Is it Kevin Anderson?

3 **A. If I can trust you on it, it sounds right.**

4 **But if you want me to look --**

5 MR. KEYT: I can let the record reflect
6 that the decommissioning and site reclamation plan
7 has a licensed professional engineer stamp of Kevin
8 Anderson.

9 MR. KAINS: The record will reflect Kevin
10 Anderson was the engineer on the decommissioning
11 study or the decommissioning cost estimate.

12 BY MR. KEYT:

13 Q. Did you talk to Mr. Anderson about the
14 methodology he used to come up with the cost
15 estimates and the plan itself?

16 **A. Personally, I did not; but Kelly, who will**
17 **testify at some point next, will work directly with**
18 **him on this, and she can talk about the relationship**
19 **of her work with Mr. Anderson.**

20 Q. Okay. In terms of decommissioning -- so
21 we are all on the same page, decommissioning is kind
22 of alluded to. It may take a number of different
23 types of terminology, but when we are talking about
24 it here in terms of this particular cost estimation,

1 decommissioning means removal of either a single
2 turbine or the entire project is out of commission;
3 is that fair?

4 **A. (Nodding.)**

5 Q. In other words, removal of the project out
6 and restoration of the land back to as required by
7 agreement?

8 **A. That's correct.**

9 Q. Essentially, the decommissioning and cost
10 estimate is designed to provide protection to the
11 county, if the county would have to perform
12 decommissioning, and potentially to landowners if
13 the county decides it's not going to do anything
14 about a removal of a project; is that fair?

15 **A. I think I would reword that, in that the**
16 **cost estimate really drives the financial assurance,**
17 **and that protects the county; but together, yes.**
18 **True.**

19 Q. That is fair.

20 **A. Yeah.**

21 Q. So there is really kind of three scenarios
22 that would occur: The project would come to its end
23 of useful life, and Apex would come in, or the
24 project on behalf of Coles Wind, LLC, would come in

1 and remove the project out of commission, restore
2 the property under the terms of AIMA. That is one
3 scenario that could occur; is that right?

4 **A. That is correct.**

5 Q. One of the other scenarios is that, if
6 Apex is no longer around, or Coles Wind is no longer
7 around, for whatever reason, the county could claim
8 the funds in the decommissioning financial assurance
9 and then hire a contractor to go out and remove the
10 project or turbines, whether it's one or all of
11 them, out of commission and restore the project back
12 or restore the land back under the terms of the
13 AIMA; is that fair?

14 **A. That is fair.**

15 Q. The third option would be, if the county
16 can't do that or, if for some reason, defers it to
17 the landowners, then the landowners, under the terms
18 of the financial assurance form that you proposed, a
19 landowner would have the option to go out and do
20 that as well; is that fair?

21 **A. That is right, because the county is the**
22 **first beneficiary on that surety bond, and**
23 **landowners are listed as secondary beneficiaries.**

24 Q. Were there any other versions of

1 decommissioning cost estimates in the plan other
2 than the version that is in the application and the
3 version that was provided on March, I believe, 14th,
4 maybe? Is there any other versions other than those
5 two versions?

6 **A. No.**

7 Q. Okay. In terms of the agricultural impact
8 mitigation agreement, you'll agree that the methods
9 that are determined for decommissioning are governed
10 by AIMA; is that fair?

11 **A. That's right.**

12 Q. And so then I assume you would also agree
13 that the language of the AIMA governs how that is
14 going to take place; is that fair?

15 **A. That's right.**

16 Q. All right. Now, that is included in
17 Exhibit F, and that has already been executed with
18 the Illinois Department of Agricultural, and there
19 is a standard form that is essentially required for
20 the developer to sign; is that fair?

21 **A. Right. It was executed by the Department**
22 **of Ag on Halloween, which is why I remember it,**
23 **October 31, 2024.**

24 Q. Do you have a copy of that up there with

1 you? I think it's the first document, Exhibit F.

2 **A. I can get to it. Yes.**

3 Q. Let me know when you are there.

4 **A. (Signaling.)**

5 Q. Okay. So, in the AIMA, on page 1,
6 paragraph A, can you read that paragraph to the
7 committee and the public?

8 **A. Sure. All construction or deconstruction**
9 **activities may be subject to county or other**
10 **requirements; however, the specifications outlined**
11 **in this AIMA shall be the minimum standards that**
12 **apply to all construction and deconstruction**
13 **activities.**

14 Q. So I assume you would agree that the
15 county, if it has other requirements that it would
16 reasonably require of the developer, you would agree
17 that the county can impose whatever those
18 requirements might be; is that fair?

19 **A. That's fair.**

20 Q. All right. In terms of a cost, the
21 estimated costs of construction, there was a slide
22 earlier that Mr. Morgan had in -- pardon me --
23 Mr. Moore had in his presentation that had a capital
24 construction cost estimate. It was north of

1 \$600 million.

2 My question then is: What is the cost of
3 construction minus the material cost, if you know?

4 **A. So I think Mr. Carlson will be able to**
5 **answer that for you, as the construction project**
6 **manager.**

7 Q. I assume then that the breakdown of what
8 that cost might be would be something that would be
9 more appropriate for Mr. Carlson?

10 **A. That's right.**

11 Q. In looking at the cost estimation that has
12 been prepared, both cost estimations for both
13 turbine -- strike that. Let me back up a little
14 bit.

15 You'll agree that, when, for example, Apex
16 is hiring a contractor, built into the contract is a
17 measure of profit for the contractor, right?

18 **A. I don't do any contracting in terms of**
19 **construction, so I can't speak to what is in our**
20 **construction contracts.**

21 Q. You'll agree, generally, though, that most
22 contractors aren't going to come and do the project
23 for free; is that fair?

24 **A. Sure.**

1 Q. In the cost estimates that are provided --
2 in the cost estimates that are provided for both
3 turbines, can you point to us where there is a line
4 item for profit?

5 **A. Kelly can walk you right through the --**

6 Q. The cost estimate?

7 **A. -- the cost estimate.**

8 Q. If you want to defer to her, that is fine.

9 **A. Sure. I mean that would be better. I can**
10 **look it up and take some time to do it, but Kelly**
11 **would be -- prepared the estimates.**

12 Q. Are you familiar with the Illinois
13 Prevailing Wage Act?

14 **A. Generally.**

15 Q. Is it generally fair to say you would
16 agree, that when a governmental body has to utilize
17 funds for construction-related activities, the
18 Illinois Prevailing Wage Act would apply?

19 **A. I think that is correct. Yes.**

20 Q. The wage rates that are reflected in the
21 plan are wage rates using what is called the RS,
22 which means material and labor estimates; is that
23 fair?

24 **A. I believe that is what Kelly used. But,**

1 **again, this will be a better question for Kelly and**
2 **how she determined the cost.**

3 Q. Okay. Along that vein, if I ask the
4 question of whether or not the labor costs are
5 calculated under the Illinois Prevailing Wage Act
6 requirements, that would be a question you would
7 defer to Kelly?

8 **A. Yes.**

9 Q. Okay. You'll agree, I think, with the
10 sentiment that Apex doesn't look at the county to be
11 on the hook to pay for decommissioning costs; is
12 that a fair statement?

13 **A. Absolutely.**

14 Q. Also fair you don't want the landowners to
15 be on the hook for paying for any decommissioning
16 costs; is that fair?

17 **A. Absolutely.**

18 Q. And there are certain tolerances that are
19 built into the plan. I think your plan calls for 15
20 percent contingency; is that correct?

21 **A. I think it's a contingency and**
22 **administrative fee.**

23 Q. And that contingency is essentially a
24 budget reserve for unexpected expenses that might

1 arise that nobody can really predict at that point;
2 is that fair?

3 **A. That is fair.**

4 Q. All right. I think -- you tell me if I am
5 incorrect here, but if the county or a landowner
6 were to have to perform decommissioning, the
7 anticipation by the developer is that, if that were
8 to occur, the county or the landowner would have to
9 hire an outside contractor to perform that work; is
10 that fair?

11 **A. I would imagine. Yes.**

12 Q. In the financial assurances under the
13 AIMA, the first five years of a project, the posting
14 requirement is 10 percent of the estimated cost of
15 decommission; is that correct?

16 **A. That is correct.**

17 Q. Okay. If Apex or Coles Wind, for whatever
18 reason, doesn't exist at some point within that
19 first five years, who then pays for the other
20 90 percent of the decommissioning process?

21 **A. I mean this is a \$650 million capital**
22 **investment. This thing is worth something. So if**
23 **Apex doesn't own it, and we will, in that**
24 **hypothetical situation -- right? --**

1 **somebody else is going to buy it and operate it.**

2 Q. Well, theoretically. But assuming for the
3 sake of argument here, let me ask you this: You'll
4 agree that no company is immune from going bankrupt,
5 fair?

6 **A. I guess.**

7 Q. And you'll agree with me that there is no
8 business sector that really is immune from, at some
9 point, becoming obsolete; is that fair?

10 **A. Yes.**

11 Q. Okay. So, if at some point in time within
12 the first five years of the project, if Apex or
13 Coles Wind is not around, and there is not a viable
14 buyer for this project, who then picks up the other
15 90 percent of the cost estimates or 90 percent of
16 the cost of decommissioning?

17 **A. So, as we are both talking about the**
18 **percentages that are set for how much financial**
19 **assurance is due at what point of the project is set**
20 **by the State of Illinois, the Department of Ag.**

21 But I think, in my experience, the reason
22 **it's phased in like this is this is very common --**
23 **several other states do this -- is because, again**
24 **it's worth so much money at that point. There is a**

1 lot of steel. The salvage value, the materials, are
2 worth a lot of money.

3 So, in some cases -- I'm getting a little
4 tired up here -- so maybe make money on it is nice
5 but not the right term, right? But there is more
6 than enough in salvage value to cover the cost of
7 decommissioning, is what I am trying to say.

8 Q. So I guess here is my question: If you
9 assume hypothetically that Apex isn't around, or
10 Coles Wind isn't around, and there is not a viable
11 buyer for the materials, or the market doesn't cover
12 all the decommissioning costs, is it Apex's position
13 that the county is supposed to foot that risk?

14 A. I mean, I guess I am not sure. Right? We
15 are following, and what we have implemented is what
16 is required by the state. And so you are asking a
17 lot of hypotheticals, and I am just not sure I can
18 answer all of them.

19 Q. Understood. I guess my question then is:
20 Well, let's take it out of the 10 percent range. So
21 after the first five years, the AIMA requirement is
22 that it has to post 50 percent of the
23 decommissioning cost for financial assurance. So
24 from year, essentially, six to the end of ten, there

1 is the requirement that Apex would have to post at
2 least 50 percent of the financial assurances, if we
3 go with just the terms of the AIMA and not other
4 county requirements, fair?

5 **A. That is what the AIMA says. Correct.**

6 Q. The AIMA also says that the county can
7 have its own standards or requirements that it can
8 also impose, fair?

9 **A. Right. So if the county board would want**
10 **us to pay that difference, we are more than happy to**
11 **post the full financial assurance in the**
12 **decommissioning agreement that the county board will**
13 **need to approve before our building permits.**

14 Q. So, if I am understanding you correctly,
15 from year one, Apex or Coles Wind would be willing
16 to post the financial assurance to the county at 100
17 percent of the decommissioning cost. Is that what
18 you are saying?

19 **A. Said differently, that is what I said.**
20 **Yes.**

21 Q. Understood.

22 **A. Thanks.**

23 Q. Yep. And I think we can agree that the
24 plan that is provided by the developer is just

1 simply your preliminary plan for the requirements,
2 to meet the ordinance requirements provided in the
3 plan, fair?

4 **A. The plan in this application?**

5 Q. Yes.

6 **A. Correct. But it is true and accurate for**
7 **the layout that is included in our preliminary site**
8 **plan.**

9 Q. Yeah. No, I am not suggesting necessarily
10 that it's not.

11 **A. Sure.**

12 Q. I am just saying, my point being that the
13 county -- as you know almost every county operates
14 the same way. I think every other state operates
15 the same way -- that whoever the permitting
16 authority is has their own engineer look at it and
17 determine to make sure the cost estimates are
18 correct, or at least in the county's opinion is
19 correct?

20 **A. That is typical, correct. And we would**
21 **welcome that.**

22 Q. I assume then that Apex is open to having
23 that discussion of negotiating what the total cost
24 of decommissioning would be?

1 **A. Absolutely, and we anticipate doing so in**
2 **the decommissioning agreement phase prior to the**
3 **building permit that I discussed earlier.**

4 Q. Understood. In the plan, it calls or has
5 a discount for salvage value; is that fair?

6 **A. It does.**

7 Q. Okay. And that discount operates
8 essentially as a discount of the total amount of
9 financial assurance that would need to be posted
10 with the county?

11 **A. Well, maybe I'll reframe it: We provide**
12 **the total cost of decommission, the salvage value**
13 **for both turbine models, and then the net. So we**
14 **provided all, really, six values, three for each**
15 **turbine model, in the decommissioning plan.**

16 Q. All right. And so I think, as we are on
17 the same page, is that the salvage value, at least
18 in the plan, operates in the discount to the amount
19 of financial assurance that would need to be posted
20 with the county?

21 **A. It can. But also, under the AIMA, the**
22 **counties can choose whether or not the financial**
23 **assurances includes salvage value or doesn't include**
24 **salvage value. That is why we provided both the net**

1 **cost and the full cost.**

2 Q. So fair to say, if the county chose, the
3 developer would post the full amount without any
4 reference to salvage value as its financial
5 assurance; is that fair?

6 **A. That is right.**

7 Q. In terms of the cost estimates that are
8 listed within the document, were you involved in
9 preparing where, for example, landfill material
10 would go or where recycled material would go?

11 **A. That is all Kelly.**

12 Q. I'll save those questions for her.

13 Were you involved in determining the type
14 or the methodology as to how the turbines would be,
15 I guess, dismantled?

16 **A. No.**

17 Q. In the plan it calls for fell of the
18 turbines. Can you describe for -- let me ask this:
19 Is that a better question for Kelly, the felling
20 process?

21 **A. Yes.**

22 Q. In terms of the financial assurances,
23 under the AIMA, the financial assurance is required
24 to be posted at the first anniversary of the

1 commercial operation date? Meaning once the project
2 goes live and begins generating electricity for sale
3 on the grid, one year from that date is when the
4 financial assurances has to be posted; is that fair?

5 **A. That's what the AIMA says. Correct.**

6 Q. Okay. What would occur if, for some
7 reason -- and I understand that that likelihood may
8 be low, but for some reason the project becomes
9 unviable during the course of construction, what
10 would happen in terms of how the project would be
11 decommissioned?

12 **A. During the construction phase, or in that**
13 **first year?**

14 Q. Either one. If it becomes -- let me
15 rephrase it.

16 If the project becomes unviable prior to
17 the first anniversary of the commercial operation
18 date, before any financial assurances would be
19 posted, what then would happen?

20 **A. I am not sure I can answer your question**
21 **with another hypothetical. I have never seen that**
22 **in my experience, which is why I am struggling to**
23 **visualize what that looks like.**

24 Q. Well, if it were to occur, and there was

1 no financial posting that had been made at that
2 point, where would any funds come from to
3 decommission the project?

4 Because at that point somebody would have
5 to come up with \$20 million -- correct? -- to remove
6 the turbines out of commission and restore the
7 property back to its original state, fair?

8 **A. The financial assurance is for the county.**
9 **In that scenario, hopefully it's Coles Wind that had**
10 **to pay to take it down, right? Coles Wind**
11 **anticipates decommissioning this project, hopefully**
12 **at the end of its useful life; but the financial**
13 **assurance is for those hypotheticals of "what if"**
14 **down the road.**

15 Q. Which is hard to predict, fair?

16 **A. Yes.**

17 Q. Okay. Let me just get to the point: Is
18 Apex willing to post the financial assurance
19 requirement prior to getting the building permit?

20 **A. We will happily do that with the**
21 **decommissioning agreements.**

22 Q. Okay. Fair enough. That is all the
23 questions that I have.

24 MR. KAINS: All right. Thank you,

1 Mr. Keyt. You better check with Mr. Ierulli.

2 MR. KEYT: We are out of questions.

3 MR. KAINS: Based upon those questions,
4 any redirect?

5 MR. HESS: No, sir.

6 MR. KAINS: Very good. Final questions
7 for this witness -- yeah, I am going to make
8 everybody wake up and think.

9 Gentleman from the Planning & Development
10 Committee, do you have any final questions for
11 Ms. Anderson?

12 MR. DOUGHTY: Yeah.

13 MR. KAINS: Mr. Doughty?

14 EXAMINATION

15 BY MR. DOUGHTY:

16 Q. Just two questions. One of -- Mr. Phipps
17 talked about the complaint process. Is there an
18 independent, someone that independently looks at
19 those complaints if it's not resolved?

20 I am just thinking, as a county board
21 member, how am I going to know how to resolve -- you
22 know, how would I know how to resolve noise or --
23 you know, because you said it kicks it back to the
24 county board.

1 Is there an independent source, if there
2 is a conflict?

3 A. There can be, but our -- I wasn't implying
4 that we are putting all the work on you, right?
5 It's just that we have to report that they are
6 resolved. That is a function of the ordinance, and
7 that is the right thing to do.

8 But, yeah, there can be a third party
9 involved to help with the resolution of complaints.

10 But I've worked on projects all over the
11 country. In some cases, like in Minnesota,
12 developers have to report complaints monthly, and a
13 lot of those reports are just empty.

14 So it's our hope that there aren't a lot
15 of complaints, but there will be a process and, if
16 needed, a third party to help resolve complaints and
17 then the reporting mechanisms.

18 Q. Thank you. Last question: Just in line
19 with our attorney, I guess my understanding was,
20 under the decommissioning with a surety company,
21 that we are covered regardless. So I don't quite
22 understand everything. And I am sure you were
23 making a point for us, but in my mind I am looking
24 at this, and I thought we were already covered.

1 **A. You are. So I'll just summarize,**
2 **hopefully, fairly, and Mr. Keyt can correct me if I**
3 **am wrong, but basically what I agreed to was,**
4 **instead of -- it was providing the full amount of**
5 **decommissioning financial assurance at building**
6 **permit and not waiting to phase it in. So it's**
7 **possible under the AIMA, so it protects you even**
8 **more.**

9 MR. KAINS: Any other questions from
10 members?

11 Yes, Mr. Clayton?

12 EXAMINATION

13 BY MR. CLAYTON:

14 Q. There is going to be a sound level expert
15 with us coming up, right?

16 **A. There is. We didn't get to him tonight.**
17 **Sorry.**

18 Q. That's fine. I thought that's what we
19 were saying.

20 And then my second question is -- I think
21 it was Mr. Sherman that said something about the
22 indemnity insurance. On page 53, it talks about
23 liability insurance and indemnification, but in the
24 body of the explanation there is nothing about

1 indemnification. What do you mean by that?

2 **A. So liability insurance, we will provide**
3 **those certificates of insurance annually. If we had**
4 **to go through an indemnification process, we would**
5 **agree to do so. I have never had to do that, so**
6 **it's hard for me to explain what that is.**

7 Q. I guess I thought indemnification was you
8 were saying that you would take away all liability
9 from whoever you were doing this with. That's what
10 to indemnify somebody means.

11 But you can't do that, can you?

12 I mean, if somebody wants to sue the Coles
13 County Board, as Mr. Kains said, you can always sue.

14 But you guys will pick this up, or what?

15 MR. KEYT: I think we could probably
16 explain that outside the context of this, but
17 essentially indemnification is when one party agrees
18 to pay the costs and expenses of potential judgment
19 for another party.

20 So, in that context, if somehow the Coles
21 County Board was sued in relation to the project in
22 some way, it may not even be in relation to
23 approvals or disapprovals or whatever might occur,
24 then the requirement under, I think, the ordinance

1 is that there would be indemnification from the
2 developer to pick up the costs of that defense of
3 Coles County.

4 So then, in that context, rather than
5 Coles County being on the hook, the developer is
6 essentially, their dollars are on the hook as
7 opposed to ours.

8 I can summarize that in a very cursory
9 level.

10 MR. CLAYTON: Thank you.

11 MR. KAINS: Any other questions for
12 Ms. Anderson?

13 All right. Ms. Anderson, you were on the
14 witness stand for over three and a half hours.

15 THE WITNESS: I thought you would never
16 say that.

17 MR. KAINS: So that is a story you can
18 tell your friends and family. Thank you. You may
19 step down.

20 THE WITNESS: Thank you.

21 (Witness stepped down.)

22 MR. KAINS: We will have night three of
23 this public hearing with respect to Coles Wind, LLC.
24 We will recess until April 10, 2025, at six o'clock

1 p.m.

2 In the future, all sessions of this public
3 hearing will begin at six p.m. and hopefully wrap up
4 around nine or so.

5 It's after ten, so everyone drive safely.

6 The Planning & Development Committee of
7 the Coles County Board is in recess until April 10,
8 at six p.m., in this very room. Thank you.

9 (End of Proceedings.)

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Dated: 3/30/2025

\$	45:22, 86:18 18 [1] - 2:5 18-year [2] - 13:1, 21:23 180 [1] - 2:19 1800 [1] - 82:20 182 [1] - 2:20 19 [1] - 1:4 1900 [5] - 43:12, 43:14, 132:23, 133:8, 134:4	4.12.2 [1] - 58:6 41 [3] - 157:16, 157:17, 158:2 42 [1] - 58:5 45 [5] - 60:16, 62:4, 79:11, 84:22, 126:4 45-day [1] - 85:5 48 [1] - 67:22	95 [1] - 2:12 9:30 [1] - 149:14	address [14] - 5:22, 8:7, 13:23, 23:14, 30:19, 39:19, 42:12, 49:8, 72:5, 88:11, 92:12, 107:20, 121:15, 137:2 addressed [4] - 35:5, 79:18, 136:22, 139:20 addresses [3] - 49:24, 51:5, 147:17 addressing [3] - 76:9, 94:16, 140:24 adequately [1] - 139:13 adjacent [2] - 109:3, 117:15 adjustments [1] - 153:1 ADLS [3] - 14:10, 14:20, 123:21 Administration [1] - 84:15 administrative [1] - 170:22 admission [1] - 87:3 ADMITTED [1] - 2:23 adopt [1] - 79:9 adopted [4] - 89:9, 114:8, 115:15, 115:17 adversarial [1] - 10:17 advise [1] - 65:13 Advisory [1] - 84:17 aerial [9] - 153:8, 153:13, 153:15, 153:19, 153:20, 154:7, 154:12, 158:10, 158:14 affected [4] - 16:1, 34:8, 83:8, 83:18 Ag [2] - 166:22, 172:20 ag [1] - 91:22 agencies [4] - 73:5, 84:19, 84:21, 85:6 agency [2] - 73:8, 87:14 ago [6] - 10:6, 45:21, 99:14, 101:6, 105:17, 106:23 agree [15] - 40:1, 67:7, 138:22, 166:8, 166:12, 167:14, 167:16, 168:15, 168:21, 169:16, 170:9, 172:4, 172:7, 174:23, 183:5 agreed [1] - 182:3 Agreement [7] - 7:2,
0	2	5	A	
000 [3] - 132:23, 133:8, 133:13 00022 [1] - 159:5 00031 [3] - 155:8, 155:19, 156:22 00081 [1] - 158:3 084-003888 [2] - 1:24, 186:19	2 [6] - 42:23, 43:2, 49:23, 51:2, 73:22, 118:10 2,549 [1] - 6:10 2.1 [5] - 19:24, 114:10, 114:14, 115:13, 116:4 20 [3] - 2:6, 5:24, 52:14 20,000 [1] - 14:23 200 [1] - 14:18 2009 [1] - 161:22 2023 [1] - 86:16 2024 [1] - 166:23 2025 [3] - 1:4, 11:10, 184:24 21 [1] - 2:7 24 [1] - 2:8 26 [3] - 53:4, 53:15, 53:21 27 [1] - 81:1	5 [2] - 53:7, 62:4 5,000 [1] - 72:8 5.1 [1] - 67:23 50 [2] - 173:22, 174:2 500 [2] - 146:24, 147:7 51 [3] - 46:16, 46:20, 130:4 53 [2] - 68:13, 182:22 55 [5] - 41:18, 41:23, 42:4, 148:14, 149:21 56 [2] - 37:3, 39:18 57 [2] - 42:1, 42:16 58 [1] - 37:4	A2 [2] - 66:18, 132:12 abatement [6] - 25:19, 108:19, 108:23, 110:5, 110:8, 117:16 abide [1] - 106:14 ability [3] - 116:22, 159:22, 186:8 able [9] - 92:1, 101:22, 105:20, 107:12, 117:1, 141:18, 141:20, 142:16, 168:4 absolutely [20] - 15:23, 16:5, 17:23, 26:14, 30:9, 36:16, 49:20, 56:6, 69:21, 87:2, 99:24, 115:21, 121:21, 141:19, 148:24, 160:7, 160:11, 170:13, 170:17, 176:1 abundantly [2] - 102:10, 153:2 acceptable [2] - 51:20, 117:12 accepted [1] - 66:23 accident [1] - 31:7 accompanied [3] - 51:8, 51:9, 51:16 account [2] - 89:16, 143:23 accurate [4] - 12:22, 47:22, 64:20, 175:6 acoustician [3] - 96:22, 97:7, 99:16 acoustician's [1] - 99:16 Act [4] - 114:9, 169:13, 169:18, 170:5 action [1] - 139:22 actively [2] - 73:10, 154:5 activities [3] - 167:9, 167:13, 169:17 actual [1] - 12:21 Adam [6] - 8:5, 15:8, 17:4, 17:6, 92:10, 121:17 add [1] - 155:17 added [2] - 12:2, 155:18 addition [3] - 62:16, 74:13, 74:15 additional [1] - 49:13	
1	3	6		
1 [8] - 37:3, 46:9, 67:13, 78:6, 96:10, 118:3, 118:9, 167:5 1,548 [1] - 6:8 1.1 [7] - 20:2, 20:17, 109:6, 109:10, 110:17, 114:13, 116:24 1/2 [1] - 104:1 10 [7] - 58:9, 96:10, 150:14, 171:14, 173:20, 184:24, 185:7 100 [3] - 120:15, 120:17, 174:16 108 [1] - 85:13 10:15 [1] - 1:5 11 [2] - 2:3, 60:9 12 [10] - 7:4, 7:12, 42:22, 43:10, 43:11, 67:11, 67:17, 67:20, 112:5, 112:11 123 [1] - 2:13 128 [1] - 2:14 13 [2] - 52:14, 81:4 130 [1] - 124:5 132 [1] - 2:15 135 [1] - 2:16 14 [1] - 112:19 148 [1] - 2:17 14th [1] - 166:3 15 [7] - 9:2, 23:22, 55:22, 68:16, 106:9, 170:19 150 [3] - 2:18, 12:2, 147:1 1500 [3] - 109:8, 110:17, 119:11 16 [3] - 2:4, 20:21, 41:6 17 [4] - 11:9, 21:18,	3 [6] - 41:7, 46:9, 50:16, 83:10, 111:3 3.6 [1] - 38:4 3/30/2025 [1] - 186:22 30 [12] - 2:9, 12:11, 19:16, 19:20, 88:12, 88:14, 88:23, 89:3, 90:1, 128:18, 129:12, 130:10 30,000 [1] - 141:1 30-hour [1] - 12:13 30-some [1] - 99:9 31 [2] - 104:1, 166:23 315 [1] - 53:21 33 [2] - 6:18, 6:24 35 [2] - 159:3, 159:4 36 [1] - 2:10 38 [2] - 47:18, 155:6	6 [1] - 68:13 60 [1] - 61:5 62 [6] - 46:16, 46:19, 89:12, 110:19, 130:3 66 [3] - 100:17, 101:23, 102:3 67 [1] - 101:23 69 [1] - 159:3 698 [4] - 36:14, 69:16, 69:17, 72:7 6:30 [1] - 1:5		
	4	7		
	4,619 [1] - 6:9	8		
		8 [4] - 104:1, 111:3, 111:6, 111:14 83 [1] - 2:11		
		9		
		9 [2] - 20:11, 20:12 90 [3] - 171:20, 172:15 901 [2] - 103:21, 104:11 901.102 [1] - 103:23 901.103 [1] - 103:23 911 [1] - 160:3		

44:12, 44:14, 44:18, 92:15, 113:1, 130:17 agreement [20] - 17:8, 45:1, 45:3, 47:20, 47:21, 55:11, 55:16, 92:22, 111:2, 112:14, 113:15, 130:15, 130:23, 131:1, 132:17, 133:3, 164:7, 166:8, 174:12, 176:2 agreements [6] - 21:10, 48:14, 57:4, 113:1, 132:15, 179:21 Agreements [3] - 6:16, 6:19, 132:5 agrees [3] - 111:7, 111:19, 183:17 agricultural [7] - 33:4, 102:6, 158:17, 158:18, 158:23, 159:15, 166:7 Agricultural [1] - 166:18 ahead [29] - 5:18, 23:10, 24:2, 30:3, 32:5, 36:13, 36:21, 41:2, 42:20, 52:12, 58:3, 59:12, 65:6, 67:8, 74:5, 78:14, 78:17, 82:10, 83:1, 93:21, 97:23, 98:5, 101:16, 103:18, 123:2, 127:14, 132:2, 135:4, 135:11 ahold [1] - 138:1 AIMA [15] - 165:2, 165:13, 166:10, 166:13, 167:5, 167:11, 171:13, 173:21, 174:3, 174:5, 174:6, 176:21, 177:23, 178:5, 182:7 ain't [1] - 150:20 air [4] - 15:13, 16:3, 146:3, 147:2 aircraft [3] - 15:4, 123:22, 123:23 airplane [1] - 153:19 airplanes [1] - 14:22 Airport [1] - 123:17 Alan [2] - 92:20, 105:18 Alex [1] - 1:10 Allegiance [2] - 3:7, 3:8 allow [7] - 9:12, 9:22, 10:4, 10:15, 10:19,	99:12, 123:10 allowed [6] - 34:9, 34:10, 94:2, 96:2, 98:24, 112:8 allows [3] - 19:1, 47:7, 49:13 alluded [1] - 163:22 almost [5] - 52:24, 104:5, 144:6, 149:14, 175:13 alternatively [2] - 9:5, 9:9 AM/FM [1] - 84:3 amendment [1] - 7:7 America [3] - 118:23, 119:1, 119:8 amount [6] - 46:4, 46:5, 176:8, 176:18, 177:3, 182:4 amounts [1] - 136:21 Amy [1] - 1:13 analysis [1] - 46:18 AND [1] - 1:2 Anderson [71] - 4:19, 7:20, 9:7, 9:20, 9:23, 11:5, 11:8, 11:16, 11:18, 18:3, 18:9, 21:13, 22:17, 24:5, 28:7, 29:10, 29:21, 30:19, 31:20, 35:10, 36:13, 49:2, 52:3, 65:17, 67:3, 72:11, 78:18, 79:11, 80:16, 81:7, 82:11, 86:10, 87:6, 95:4, 97:19, 97:24, 98:17, 99:15, 101:6, 105:14, 105:22, 106:15, 114:3, 117:20, 118:11, 118:19, 118:22, 119:4, 119:21, 120:21, 121:16, 122:23, 127:2, 127:13, 131:18, 135:12, 141:17, 142:7, 148:7, 148:11, 150:5, 150:24, 163:2, 163:8, 163:10, 163:13, 163:19, 180:11, 184:12, 184:13 Andrew [3] - 1:9, 43:23, 44:8 Andy's [1] - 60:3 anniversary [2] - 177:24, 178:17 annual [12] - 13:8, 14:6, 68:4, 68:5, 68:8, 68:12, 68:22,	77:11, 77:12, 77:20, 77:21, 126:17 annually [2] - 13:9, 183:3 answer [45] - 5:15, 7:21, 12:24, 17:5, 30:20, 31:2, 33:9, 35:2, 35:17, 42:3, 46:3, 49:3, 61:11, 61:12, 71:2, 80:17, 98:1, 98:3, 99:17, 99:19, 103:9, 105:21, 106:4, 107:12, 107:14, 109:23, 116:8, 117:23, 118:13, 119:22, 120:19, 120:22, 120:24, 127:17, 128:24, 129:5, 133:22, 139:1, 141:4, 142:13, 155:5, 162:4, 168:5, 173:18, 178:20 answered [9] - 8:23, 48:24, 78:4, 90:9, 109:22, 111:5, 121:23, 126:21, 138:13 answering [2] - 97:3, 138:23 answers [2] - 5:3, 5:11 antenna [2] - 15:17, 15:18 anticipate [1] - 176:1 anticipates [1] - 179:11 anticipation [1] - 171:7 Antoniolli [6] - 1:13, 23:12, 28:2, 77:24, 96:21, 103:15 ANTONIOLLI [27] - 23:13, 23:17, 23:20, 32:12, 32:18, 38:1, 40:19, 43:20, 43:23, 44:5, 53:9, 80:13, 86:6, 86:13, 96:23, 97:8, 97:10, 97:13, 100:22, 101:3, 102:22, 103:11, 104:21, 107:13, 107:21, 108:22, 109:17 anytime [1] - 57:19 anyway [2] - 81:24, 118:13 Apex [49] - 3:4, 12:1, 15:20, 21:4, 30:8, 30:10, 32:11, 40:6,	40:15, 40:18, 40:24, 41:5, 41:14, 48:21, 71:9, 76:1, 86:2, 86:4, 90:12, 90:15, 90:20, 96:2, 107:4, 109:1, 114:21, 115:6, 115:7, 127:18, 145:12, 160:2, 160:8, 161:20, 162:5, 162:9, 162:19, 164:23, 165:6, 168:15, 170:10, 171:17, 171:23, 172:12, 173:9, 174:1, 174:15, 175:22, 179:18 Apex's [2] - 162:1, 173:12 apologize [5] - 19:12, 121:2, 121:6, 135:5, 149:6 apologized [1] - 91:6 appeal [1] - 113:20 appearance [4] - 67:15, 67:18, 68:3, 68:5 appendices [1] - 37:7 appendix [18] - 7:3, 7:8, 37:7, 42:4, 43:11, 43:18, 43:21, 44:4, 44:15, 44:21, 84:5, 100:13, 100:24, 111:2, 129:16, 132:12, 134:13, 154:21 applicability [1] - 76:4 applicable [3] - 103:20, 104:2, 104:10 Applicant [1] - 1:12 applicant [9] - 4:20, 39:20, 63:23, 69:10, 70:7, 70:17, 74:7, 76:18, 137:8 applicant/owner [1] - 41:8 applicants [1] - 50:1 application [133] - 3:4, 3:5, 6:7, 14:13, 20:19, 24:20, 25:16, 26:1, 32:1, 33:11, 35:11, 35:23, 36:2, 36:6, 36:18, 37:1, 37:4, 37:24, 39:6, 39:10, 39:18, 40:5, 42:22, 44:11, 45:6, 45:20, 45:22, 46:10, 46:11, 47:1, 47:13, 47:18, 48:3, 48:9,	48:18, 48:21, 49:5, 49:19, 50:21, 51:1, 51:14, 52:14, 52:15, 52:16, 52:19, 53:4, 53:6, 53:7, 53:15, 54:1, 54:2, 54:5, 54:12, 55:4, 55:12, 56:18, 58:5, 58:13, 58:17, 58:21, 58:24, 59:3, 59:19, 60:1, 60:15, 60:16, 60:22, 61:21, 62:4, 62:15, 62:21, 65:9, 65:22, 66:10, 66:12, 66:21, 67:17, 67:20, 67:22, 68:7, 68:10, 68:13, 68:19, 69:1, 69:8, 70:9, 70:15, 71:3, 71:11, 71:17, 72:6, 72:11, 72:17, 72:21, 72:24, 73:19, 73:23, 74:3, 74:9, 74:11, 74:13, 75:2, 75:16, 75:17, 76:5, 76:9, 76:17, 76:21, 78:19, 79:1, 81:7, 84:5, 84:23, 85:5, 86:9, 86:18, 97:12, 105:2, 105:16, 106:3, 107:17, 108:12, 122:24, 131:4, 134:14, 143:13, 151:2, 151:5, 154:17, 159:20, 166:2, 175:4 APPLICATION [1] - 1:1 Application [3] - 49:23, 54:22, 71:24 applications [2] - 49:11, 107:2 applied [3] - 104:3, 105:1, 143:20 applies [1] - 38:17 apply [2] - 167:12, 169:18 applying [1] - 66:11 appreciate [5] - 12:1, 93:2, 121:22, 121:24, 131:16 appropriate [8] - 23:16, 30:21, 118:10, 118:16, 118:19, 135:15, 146:12, 168:9 approval [4] - 57:6, 66:19, 74:8, 77:8 approvals [2] - 48:10, 183:23 approve [1] - 174:13
---	---	--	---	--

approved [6] - 48:8, 77:1, 77:2, 79:2, 80:7, 137:13
approximate [1] - 101:23
April [3] - 150:14, 184:24, 185:7
arbitrary [1] - 141:16
area [20] - 7:9, 35:6, 67:8, 85:12, 99:4, 102:13, 105:15, 108:16, 117:13, 117:17, 122:20, 122:24, 123:8, 127:7, 129:22, 129:24, 143:9, 143:16, 147:23, 158:8
areas [7] - 15:14, 57:22, 85:7, 89:3, 104:19, 105:16, 158:22
argument [5] - 55:20, 65:12, 65:15, 106:7, 172:3
arguments [2] - 82:24, 106:6
arise [1] - 171:1
arising [1] - 113:14
arm [1] - 81:16
Arthur [1] - 22:22
as-built [6] - 61:5, 61:7, 64:12, 75:6, 75:8, 75:12
aspect [1] - 118:8
aspects [1] - 25:23
assist [3] - 15:20, 111:9, 111:20
assistance [3] - 111:18, 111:22, 144:12
associated [4] - 15:7, 32:15, 33:21, 41:11
assume [9] - 25:19, 107:24, 151:18, 160:2, 166:12, 167:14, 168:7, 173:9, 175:22
assumed [1] - 89:19
assumes [3] - 89:13, 89:15, 89:18
assuming [4] - 31:4, 107:17, 109:17, 172:2
assumption [2] - 158:3, 159:4
assumptions [3] - 19:21, 89:23, 144:16
assurance [15] - 164:16, 165:8,

165:18, 172:19, 173:23, 174:11, 174:16, 176:9, 176:19, 177:5, 177:23, 179:8, 179:13, 179:18, 182:5
assurances [6] - 171:12, 174:2, 176:23, 177:22, 178:4, 178:18
Athena [1] - 1:14
attended [1] - 32:2
attention [4] - 24:11, 92:14, 154:18, 160:12
Attorney [1] - 1:12
attorney [5] - 26:17, 27:5, 63:13, 105:19, 181:19
attorney's [1] - 113:18
Attorneys [1] - 1:9
attorneys [6] - 22:10, 22:11, 51:21, 65:23, 99:17, 149:11
author [4] - 8:13, 43:21, 97:11, 100:23
authorities [4] - 17:9, 48:6, 134:1, 145:8
authority [2] - 47:20, 175:16
available [2] - 140:22, 154:17
average [1] - 6:9
aviation [1] - 16:9
avoid [1] - 84:7
avoided [1] - 124:12
avoiding [1] - 102:6
aware [4] - 91:9, 91:11, 91:12, 92:19
awfully [1] - 81:20

B

B-o-r-g-m-a-n [1] - 82:9
B4 [5] - 7:3, 7:8, 44:15, 44:16, 44:22
B5 [1] - 111:2
B7 [1] - 134:14
background [2] - 34:24, 83:23
backyard [1] - 146:4
bad [1] - 150:20
badly [1] - 10:9
band [4] - 33:15, 33:16, 99:7, 103:24
bands [4] - 33:13, 102:5, 126:6, 126:9
bankrupt [1] - 172:4

bankruptcy [1] - 20:23
barns [2] - 33:20, 152:23
barrier [2] - 144:12, 144:13
barriers [1] - 144:10
base [1] - 146:12
based [8] - 12:17, 20:15, 40:21, 85:15, 105:3, 133:24, 134:7, 180:3
basement [1] - 83:5
beam [1] - 84:4
beamed [1] - 15:18
beautiful [3] - 17:23, 18:3, 91:17
becomes [3] - 178:8, 178:14, 178:16
becoming [1] - 172:9
bed [1] - 95:2
begin [1] - 185:3
beginning [1] - 51:11
begins [3] - 69:6, 152:14, 178:2
behalf [2] - 161:17, 164:24
behind [2] - 88:16, 143:12
beings [1] - 130:19
below [1] - 109:8
beneficial [1] - 145:15
beneficiaries [1] - 165:23
beneficiary [1] - 165:22
benefit [1] - 144:10
benefits [4] - 8:15, 9:8, 38:3
best [3] - 98:2, 103:1, 186:8
bet [2] - 64:18, 121:18
better [8] - 92:21, 132:19, 141:2, 156:6, 169:9, 170:1, 177:19, 180:1
between [7] - 6:5, 6:10, 46:8, 48:22, 49:3, 108:18, 157:9
beyond [4] - 34:14, 40:10, 40:12, 121:12
Bible [1] - 53:1
bidding [1] - 161:13
big [6] - 13:13, 40:2, 68:15, 70:2, 72:3, 145:15
binder [1] - 51:24
bit [4] - 8:17, 24:13, 83:22, 168:14
bitty [1] - 67:14
blades [1] - 161:8

block [1] - 92:17
blue [1] - 127:11
board [28] - 4:5, 14:4, 22:7, 27:7, 40:5, 40:16, 65:13, 80:8, 90:23, 100:19, 106:12, 118:7, 118:12, 126:19, 126:23, 127:7, 127:13, 136:14, 136:18, 138:2, 138:7, 139:8, 143:23, 150:5, 174:9, 174:12, 180:20, 180:24
Board [15] - 1:15, 33:2, 33:14, 54:6, 99:8, 104:15, 105:8, 110:13, 117:12, 125:10, 126:5, 144:17, 183:13, 183:21, 185:7
body [3] - 104:23, 169:16, 182:24
bolstering [1] - 10:17
bond [1] - 165:22
booster [1] - 16:6
BORGMAN [17] - 81:13, 81:17, 81:24, 82:4, 82:8, 82:14, 82:18, 82:20, 83:3, 86:5, 87:18, 87:24, 91:3, 91:6, 91:8, 92:6, 92:23
borgman [1] - 91:1
Borgman [6] - 82:4, 82:10, 83:1, 87:16, 92:4, 93:2
BORGMAN.....
[1] - 2:11
bought [1] - 136:5
bound [6] - 72:4, 72:9, 118:4, 137:4, 156:5, 156:8
boundaries [1] - 42:5
boundary [3] - 42:18, 43:13, 43:15
Bowdre [2] - 132:21, 133:1
box [3] - 4:5, 89:20, 89:21
brand [1] - 56:20
breach [1] - 113:16
break [1] - 81:5
breakdown [1] - 168:7
Brian [1] - 1:11
Brie [2] - 30:6, 99:14
brief [6] - 4:9, 5:1, 5:2, 8:11, 8:16, 9:4
briefly [3] - 14:21,

49:2, 71:20
bring [3] - 10:13, 156:12
broad [1] - 28:19
broader [1] - 24:24
broadly [1] - 28:23
broken [1] - 94:13
brother [3] - 10:10, 10:14, 94:12
brought [7] - 27:15, 92:14, 132:17, 133:2, 135:18, 144:9, 145:2
budget [1] - 170:24
build [10] - 24:17, 34:2, 45:11, 46:16, 46:20, 75:10, 85:7, 116:22, 116:24, 130:4
buildable [1] - 143:9
building [28] - 13:22, 33:24, 47:9, 47:12, 48:16, 60:17, 62:10, 62:13, 62:14, 62:19, 63:5, 64:4, 64:24, 66:21, 69:7, 69:11, 73:12, 73:17, 75:4, 75:9, 77:3, 77:6, 79:3, 156:21, 174:13, 176:3, 179:19, 182:5
buildings [9] - 12:4, 12:7, 12:11, 19:3, 19:16, 89:18, 114:12, 114:13, 129:21
built [13] - 46:19, 61:5, 61:7, 64:12, 75:5, 75:6, 75:8, 75:12, 76:14, 77:9, 109:10, 168:16, 170:19
bulleted [2] - 67:23, 67:24
bulletin [1] - 100:19
bunch [3] - 60:23, 67:13, 72:4
bunny [1] - 16:3
Bush [1] - 123:17
business [3] - 90:17, 91:13, 172:8
busy [1] - 82:23
buy [2] - 56:24, 172:1
buyer [2] - 172:14, 173:11
BY [80] - 2:3, 2:4, 2:5, 2:6, 2:7, 2:8, 2:9, 2:10, 2:11, 2:12, 2:13, 2:14, 2:15, 2:16, 2:17, 2:18, 2:19, 2:20, 11:24,

16:20, 18:12, 20:10,
21:17, 24:4, 25:17,
28:13, 29:11, 30:5,
32:7, 32:22, 36:24,
38:11, 41:4, 42:21,
44:10, 49:21, 52:13,
53:3, 58:4, 59:13,
60:8, 67:10, 70:4,
72:16, 78:20, 83:3,
87:24, 91:8, 92:6,
95:20, 100:1,
101:19, 104:4,
106:17, 107:7,
108:10, 110:1,
112:3, 112:18,
113:24, 118:21,
120:13, 123:4,
127:15, 128:14,
129:3, 130:18,
132:4, 135:14,
138:8, 138:20,
140:7, 142:11,
148:20, 150:23,
156:19, 157:24,
163:12, 180:15,
182:13

C

C's [1] - 54:20
C-u-s-t-e-r [1] - 128:6
cab [1] - 15:24
calculated [1] - 170:5
calculating [1] - 125:6
calculations [2] - 8:1,
8:3
calibration [2] - 14:11,
15:6
candidly [1] - 8:15
cannot [4] - 66:2,
97:18, 109:13,
111:11
capital [2] - 167:23,
171:21
care [2] - 18:1, 67:18
career [3] - 13:1,
21:23, 146:6
careful [1] - 96:24
Carlson [10] - 8:5,
8:10, 15:8, 30:18,
35:5, 121:14,
121:17, 127:19,
168:4, 168:9
cart [1] - 80:3
case [7] - 15:20, 18:5,
59:21, 71:12, 85:1,
104:23, 146:10
cases [4] - 12:19,
12:22, 173:3, 181:11
caught [1] - 24:10

caused [1] - 160:5
cent [1] - 45:24
center [3] - 82:16,
104:1, 133:19
certain [3] - 4:8,
151:3, 170:18
CERTAIN [1] - 1:2
certainly [9] - 15:9,
17:6, 18:1, 28:24,
92:20, 130:23,
139:1, 141:7, 145:12
CERTIFICATE [1] -
186:1
certificate [12] - 60:13,
60:14, 61:14, 61:19,
62:18, 63:7, 63:9,
64:1, 64:17, 65:20,
66:1, 101:8
certificates [2] -
68:23, 183:3
certification [1] - 62:6
certifications [1] -
62:11
certify [2] - 66:20,
186:4
chairman [1] - 16:15
Chairman [4] - 1:16,
3:21, 11:22, 21:15
Champaign [1] -
93:20
chance [1] - 91:4
change [4] - 6:23,
47:1, 56:21, 57:3
changed [2] - 86:16,
87:8
changes [9] - 53:5,
53:11, 53:16, 53:24,
54:12, 55:3, 55:9,
56:17, 58:1
Changes [1] - 53:22
changing [1] - 115:22
Channel [1] - 83:10
chapter [1] - 104:13
characteristics [1] -
58:8
characterization [1] -
94:21
characterize [1] -
113:9
Charleston [3] - 5:23,
6:1, 119:7
chart [2] - 100:4,
100:5
check [3] - 18:7,
111:6, 180:1
checklist [2] - 18:18,
22:12
children [1] - 33:24
choice [1] - 118:7
choose [1] - 176:22

choosing [1] - 49:3
chose [1] - 177:2
chosen [1] - 131:1
Chris [1] - 1:8
church [10] - 155:3,
155:24, 156:5,
156:10, 156:22,
157:1, 157:4, 157:7,
157:10
churches [1] - 155:21
circle [1] - 79:12
Circuit [1] - 186:3
citizens [2] - 79:4,
120:1
civil [1] - 46:21
claim [3] - 112:20,
113:14, 165:7
clarification [3] -
20:21, 65:2, 72:14
clarified [1] - 52:11
clarify [2] - 27:4,
133:10
clarity [2] - 62:23,
66:17
CLARK [13] - 122:5,
122:8, 122:10,
122:12, 122:15,
122:18, 122:21,
123:1, 123:4, 127:3,
127:9, 127:15,
127:23
Clark [6] - 122:8,
122:9, 122:13,
122:16, 122:22,
127:24
CLARK..... [1]
- 2:13
Class [1] - 33:3
class [1] - 33:4
classified [1] - 110:12
clause [1] - 112:7
Clayton [8] - 1:18,
3:10, 5:21, 5:24, 6:6,
18:10, 20:7, 182:11
CLAYTON [5] - 3:11,
6:3, 18:12, 182:13,
184:10
Clayton's [1] - 6:4
CLAYTON.....
[2] - 2:5, 2:20
Clean [1] - 30:8
clear [5] - 65:20,
86:15, 102:10,
118:8, 153:2
clearinghouse [1] -
84:16
clearly [3] - 9:10, 34:7,
133:20
Clerk [1] - 54:3
climate [1] - 66:24

close [9] - 96:11,
98:19, 100:6, 102:9,
116:23, 124:21,
130:19, 140:10,
140:14
closer [1] - 34:7
closest [6] - 6:5, 6:6,
6:8, 141:8, 143:24
CohnReznick [1] -
43:24
coles [1] - 148:12
Coles [62] - 3:2, 3:4,
3:24, 11:19, 17:10,
37:22, 39:23, 40:16,
41:17, 41:23, 42:4,
42:23, 47:19, 48:6,
51:19, 52:4, 53:5,
53:24, 54:2, 54:3,
54:6, 56:3, 58:6,
62:4, 62:5, 62:13,
63:20, 71:22, 82:17,
91:15, 93:6, 93:8,
93:9, 117:12,
122:18, 127:5,
129:13, 132:9,
132:23, 135:2,
135:3, 148:16,
149:6, 149:10,
149:21, 157:9,
157:12, 164:24,
165:6, 171:17,
172:13, 173:10,
174:15, 179:9,
179:10, 183:12,
183:20, 184:3,
184:5, 184:23, 185:7
COLES [3] - 1:1, 1:1,
1:2
collaborate [1] - 133:5
collaborated [1] -
138:6
collaboration [1] -
138:6
collecting [1] - 73:1
combination [1] -
153:21
comfort [3] - 38:22,
108:1, 108:2
comfortable [1] - 4:18
coming [9] - 45:19,
57:8, 59:24, 73:2,
133:8, 139:3, 153:7,
154:11, 182:15
commencing [1] -
69:6
comment [4] - 80:20,
84:22, 102:22
comments [2] - 85:21,
99:1
Commerce [3] - 85:8,

85:9, 85:11
commercial [2] -
178:1, 178:17
COMMERCIAL [1] -
1:2
commission [4] -
164:2, 165:1,
165:11, 179:6
Commission [1] -
54:4
commissioners [2] -
47:24, 48:6
COMMITTEE [1] - 1:1
committee [8] - 11:21,
21:13, 22:3, 22:8,
81:3, 84:18, 143:23,
167:7
Committee [7] - 3:3,
4:6, 11:20, 16:17,
84:17, 180:10, 185:6
committee's [1] -
149:22
common [4] - 49:4,
49:6, 49:10, 172:22
communications [3] -
159:23, 160:4
community [9] - 12:3,
12:11, 19:3, 19:16,
39:4, 114:12,
114:13, 129:21,
137:1
companies [3] - 49:8,
57:3, 117:14
company [16] - 20:24,
26:13, 49:3, 49:6,
64:7, 70:23, 78:24,
86:2, 96:2, 98:9,
98:11, 117:15,
153:14, 161:16,
172:4, 181:20
compared [1] - 36:18
comparison [1] -
123:20
compensation [2] -
34:6, 119:15
competing [1] - 67:2
complain [1] - 125:19
complaining [3] -
61:8, 92:3, 139:23
complaint [18] - 13:4,
13:18, 13:20, 14:1,
14:3, 126:11,
126:14, 126:15,
136:9, 136:15,
136:20, 137:2,
137:7, 139:13,
139:19, 145:5,
145:7, 180:17
complaints [14] -
12:23, 13:11, 16:21,

67:14, 126:12, 135:18, 136:11, 136:13, 137:10, 180:19, 181:9, 181:12, 181:15, 181:16 complete [1] - 186:6 completed [5] - 48:2, 73:3, 73:4, 85:11, 101:17 completely [1] - 74:1 completing [1] - 46:17 completion [1] - 61:6 compliance [2] - 76:16, 102:24 compliant [1] - 155:15 comply [7] - 76:14, 77:12, 77:14, 77:17, 110:20, 111:22 complying [1] - 111:20 component [1] - 39:16 conceptionally [1] - 35:17 concern [5] - 17:24, 57:22, 67:9, 146:23, 147:4 concerned [1] - 140:13 concerning [1] - 146:16 concerns [3] - 12:4, 85:6, 159:21 conclude [1] - 76:3 conclusion [7] - 34:23, 40:21, 104:22, 105:3, 117:4, 117:8, 119:17 condition [2] - 17:16, 18:1 conditional [1] - 49:12 conditions [4] - 21:9, 66:24, 77:7, 78:6 conducted [2] - 9:16, 55:13 confidence [1] - 112:12 confident [1] - 89:24 confidential [6] - 7:6, 59:23, 96:4, 100:2, 124:19, 125:2 confidentiality [3] - 7:5, 112:4, 112:7 confirm [1] - 64:20 conflict [2] - 136:3, 181:2 confused [3] - 74:6, 149:17, 149:18 congress [1] - 115:16 conjunction [2] -	137:15, 153:10 CONKRI [1] - 22:23 Connelly [4] - 9:3, 73:7, 107:5, 107:6 Connie [1] - 29:24 conservative [6] - 19:20, 89:11, 89:23, 114:18, 130:2, 144:15 consider [1] - 111:10 consideration [5] - 3:3, 54:5, 123:14, 123:15, 146:5 considered [7] - 33:7, 33:18, 57:24, 124:9, 133:4, 143:11, 159:14 considering [2] - 45:7, 45:10 considers [1] - 159:12 consortium [1] - 84:19 constantly [2] - 92:2, 123:9 Constitution [1] - 119:1 constitutional [2] - 34:5, 117:18 construct [1] - 161:20 CONSTRUCT [1] - 1:1 constructed [1] - 161:24 constructing [1] - 77:4 construction [35] - 8:6, 8:7, 8:9, 9:7, 13:3, 17:22, 28:15, 29:1, 29:8, 31:21, 47:11, 61:6, 64:19, 85:7, 92:12, 121:11, 136:17, 144:22, 145:8, 145:13, 145:19, 145:20, 146:18, 148:1, 167:8, 167:12, 167:21, 167:24, 168:3, 168:5, 168:19, 168:20, 169:17, 178:9, 178:12 construction-related [1] - 169:17 consultants [2] - 148:9, 149:11 contact [4] - 13:18, 13:20, 85:17, 144:23 contacted [2] - 128:19, 128:21 contain [2] - 51:1, 51:8	contained [2] - 74:16, 151:4 containment [2] - 147:11, 147:13 contains [1] - 147:13 context [3] - 183:16, 183:20, 184:4 contingency [3] - 170:20, 170:21, 170:23 continually [1] - 14:12 continue [2] - 17:15, 137:1 contour [4] - 33:12, 33:15, 100:6, 102:5 contouring [1] - 101:24 contours [3] - 152:19, 152:21, 158:11 contract [1] - 168:16 contracting [1] - 168:18 contractor [7] - 161:13, 162:6, 162:9, 165:9, 168:16, 168:17, 171:9 contractors [1] - 168:22 contracts [1] - 168:20 Control [10] - 33:2, 33:14, 99:8, 104:14, 105:8, 110:13, 110:22, 125:10, 126:5, 144:17 control [3] - 104:24, 132:12, 147:15 controversy [3] - 112:20, 112:21, 113:14 conversation [4] - 4:9, 86:7, 124:24, 156:14 conversational [5] - 124:18, 124:23, 125:13, 126:3, 126:8 cool [1] - 117:12 coordination [4] - 46:23, 134:1, 134:7, 137:9 copy [5] - 37:16, 86:7, 86:24, 87:4, 166:24 correct [53] - 12:18, 25:5, 25:23, 27:10, 27:12, 28:17, 37:1, 37:5, 41:15, 41:16, 45:1, 52:9, 63:24, 68:11, 71:18, 71:19, 73:4, 76:12, 76:22, 86:2, 90:3, 90:13, 92:18, 97:10,	101:10, 125:1, 150:8, 151:5, 151:6, 151:11, 151:12, 151:16, 152:8, 155:9, 158:5, 158:6, 159:6, 159:7, 164:8, 165:4, 169:19, 170:20, 171:15, 171:16, 174:5, 175:6, 175:18, 175:19, 175:20, 178:5, 179:5, 182:2, 186:6 corrected [1] - 61:22 correctly [8] - 14:13, 79:22, 151:1, 155:16, 156:1, 156:20, 158:13, 174:14 cost [42] - 8:1, 8:2, 40:15, 40:24, 45:23, 46:7, 46:8, 160:15, 162:13, 162:14, 162:16, 162:17, 163:11, 163:14, 163:24, 164:9, 164:16, 166:1, 167:20, 167:24, 168:2, 168:3, 168:8, 168:11, 168:12, 169:1, 169:2, 169:6, 169:7, 170:2, 171:14, 172:15, 172:16, 173:6, 173:23, 174:17, 175:17, 175:23, 176:12, 177:1, 177:7 costs [14] - 21:22, 32:15, 39:21, 41:8, 41:10, 112:23, 113:18, 167:21, 170:4, 170:11, 170:16, 173:12, 183:18, 184:2 counsel [5] - 4:10, 65:2, 71:8, 71:10, 76:1 count [2] - 83:12, 130:19 counter [2] - 147:15, 147:16 counties [5] - 27:24, 63:17, 115:17, 115:20, 176:22 counting [1] - 47:3 country [5] - 89:6, 114:16, 114:20, 115:18, 181:11 countryside [1] - 148:14	COUNTY [2] - 1:1, 1:2 county [102] - 4:5, 14:4, 18:2, 21:20, 22:7, 23:14, 23:15, 26:2, 27:7, 27:19, 27:21, 29:17, 40:5, 40:6, 40:16, 41:24, 43:5, 43:7, 47:11, 47:23, 54:14, 54:15, 57:6, 57:11, 58:12, 58:15, 58:19, 58:20, 59:7, 63:11, 63:13, 65:13, 70:8, 72:10, 72:19, 74:8, 74:11, 74:22, 75:14, 77:7, 77:15, 77:19, 78:11, 78:12, 80:8, 82:12, 82:13, 86:9, 89:10, 90:23, 93:5, 93:18, 106:9, 106:12, 114:8, 118:6, 118:12, 122:17, 126:18, 126:23, 127:7, 128:8, 134:8, 136:14, 136:18, 137:9, 137:15, 138:2, 138:7, 139:8, 139:15, 139:18, 159:19, 164:11, 164:13, 164:17, 165:7, 165:15, 165:21, 167:9, 167:15, 167:17, 170:10, 171:5, 171:8, 173:13, 174:4, 174:6, 174:9, 174:12, 174:16, 175:13, 176:10, 176:20, 177:2, 179:8, 180:20, 180:24 County [71] - 1:9, 1:15, 3:2, 10:6, 11:20, 15:10, 16:22, 17:10, 17:20, 18:4, 18:6, 22:19, 23:19, 27:7, 27:11, 30:10, 37:21, 37:22, 40:16, 41:17, 41:23, 42:4, 42:23, 43:12, 43:13, 48:7, 51:19, 52:4, 54:2, 54:3, 54:6, 55:6, 56:3, 63:20, 71:23, 90:13, 91:19, 93:20, 99:15, 117:12, 127:5, 127:21, 128:9, 129:8, 129:13, 131:24, 132:6, 132:15, 132:22, 132:23, 132:24,
--	---	--	---	--

133:2, 133:9,
133:13, 135:2,
135:3, 148:9,
148:17, 149:6,
149:7, 149:9,
149:10, 149:11,
149:21, 157:10,
157:12, 183:13,
183:21, 184:3,
184:5, 185:7
county's [3] - 59:8,
118:4, 175:18
couple [15] - 4:1,
18:13, 28:3, 45:21,
91:10, 104:16,
105:15, 110:7,
122:5, 126:20,
129:6, 132:16,
135:19, 150:9
course [6] - 40:1,
63:3, 67:6, 74:14,
88:24, 178:9
Court [4] - 1:23, 4:2,
186:3, 186:18
court [4] - 22:20, 82:6,
93:13, 139:21
COURT [3] - 23:3,
157:17, 157:19
courthouse [1] -
57:17
courtroom [1] - 135:7
Cover [1] - 154:15
cover [6] - 58:8, 60:2,
74:10, 143:15,
173:6, 173:11
cover/land [2] -
153:11, 154:6
covered [4] - 21:1,
21:6, 181:21, 181:24
COX [2] - 3:13, 150:18
Cox [3] - 1:18, 3:12,
150:19
created [1] - 153:19
creates [1] - 143:9
CRONKH [1] - 23:1
CRONKHTE [19] -
22:21, 22:24, 23:4,
23:8, 23:19, 23:21,
23:24, 24:4, 25:14,
25:17, 26:24, 27:5,
27:8, 27:12, 27:22,
28:11, 28:13, 29:11,
29:18
Cronkhte [8] - 22:22,
23:2, 25:11, 26:23,
27:18, 28:6, 29:7,
29:19
CRONKHTE.....
[1] - 2:8
Cronkite [1] - 22:18

cropland [8] - 33:22,
102:7, 152:22,
153:4, 153:12,
158:12, 158:19,
159:15
croplands [1] - 33:17
cropped [1] - 154:5
cross [7] - 9:15, 9:16,
10:10, 11:18, 33:17,
94:8, 142:16
cross-examination [4]
- 9:15, 9:16, 11:18,
94:8
cross-examine [1] -
10:10
cross-reference [1] -
142:16
crosstalk [1] - 55:23
crowd [1] - 130:7
CRR [1] - 1:23
cruising [1] - 14:23
CSR [1] - 1:23
cube [1] - 89:18
cultivated [9] - 33:16,
33:22, 102:7,
152:22, 153:4,
153:12, 158:11,
158:19, 159:14
current [2] - 11:3,
146:9
cursor [1] - 184:8
curtains [1] - 89:20
curve [3] - 58:19,
125:2, 125:5
curves [4] - 58:11,
58:14, 59:21, 96:7
CUSTER [6] - 128:5,
128:8, 128:14,
129:3, 130:18,
131:14
Custer [3] - 128:5,
131:12, 131:16
CUSTER.....
[1] - 2:14
cutting [1] - 152:23

D

D4 [1] - 84:5
D5 [2] - 100:12, 100:13
Dale [1] - 134:22
damage [1] - 17:3
dark [2] - 142:5, 142:6
Darrell [2] - 1:18, 3:12
Data [1] - 154:15
data [7] - 60:4, 116:4,
153:14, 154:6,
154:14, 157:9,
157:12
date [6] - 6:18, 6:20,

16:23, 178:1, 178:3,
178:18
DATE..... [1] -
2:23
Dated [1] - 186:22
David [2] - 1:17, 8:12
days [3] - 56:13, 61:5,
84:22
deal [4] - 80:5, 92:16,
114:19, 138:13
dealings [1] - 26:16
dealt [1] - 24:5
deceased [1] - 30:17
December [1] - 86:17
decibels [1] - 126:4
decide [3] - 45:17,
55:13, 55:15
decided [1] - 45:13
decides [1] - 164:13
decision [3] - 76:11,
116:3, 116:9
declared [1] - 119:13
decommission [5] -
20:22, 161:14,
171:15, 176:12,
179:3
decommissioned [3] -
161:1, 162:2, 178:11
decommissioning
[48] - 7:23, 8:1, 8:3,
9:7, 21:21, 25:20,
29:15, 29:16, 32:8,
32:14, 35:9, 41:12,
160:13, 160:15,
160:17, 160:20,
161:17, 162:6,
162:13, 162:22,
163:6, 163:10,
163:11, 163:20,
163:21, 164:1,
164:9, 164:12,
165:8, 166:1, 166:9,
170:11, 170:15,
171:6, 171:20,
172:16, 173:7,
173:12, 173:23,
174:12, 174:17,
175:24, 176:2,
176:15, 179:11,
179:21, 181:20,
182:5
decommissions [1] -
29:13
deconstruction [2] -
167:8, 167:12
deemed [1] - 158:22
deep [3] - 91:22, 92:2,
92:8
deeper [1] - 35:12
default [2] - 74:22,

77:15
defend [3] - 70:7,
70:18, 70:19
defense [1] - 184:2
defer [7] - 95:10,
101:5, 120:21,
121:17, 160:14,
169:8, 170:7
defers [1] - 165:16
define [1] - 133:19
defined [3] - 36:2,
103:21, 104:10
defines [1] - 104:24
definitely [2] - 117:10,
147:3
definition [2] - 20:12,
36:3
definitions [3] - 75:24,
76:2, 76:3
degree [4] - 35:1,
101:8, 105:20,
105:22
delineated [1] - 140:2
delve [1] - 26:24
demonstrate [2] -
63:7, 76:19
Department [4] - 85:9,
166:18, 166:21,
172:20
depicts [1] - 155:12
derive [1] - 38:10
describe [1] - 177:18
described [2] -
144:15, 159:9
description [1] - 43:19
design [9] - 46:21,
48:11, 55:1, 60:22,
61:1, 66:18, 66:22,
76:13
designated [1] - 85:7
designed [4] - 36:4,
123:21, 124:4,
164:10
designee [1] - 58:15
detail [2] - 48:20,
71:12
detailed [2] - 47:13,
152:20
details [1] - 46:10
detection [1] - 16:7
detects [1] - 14:22
determination [1] -
154:9
determine [14] -
127:6, 140:11,
140:14, 152:13,
153:6, 153:24,
157:1, 157:7,
157:12, 158:8,
158:15, 158:21,

159:11, 175:17
determined [7] -
102:24, 152:13,
158:4, 159:5, 166:9,
170:2
determines [2] -
138:10, 138:21
determining [4] -
144:22, 157:3,
159:9, 177:13
detracts [1] - 108:6
detrimental [1] - 38:21
develop [3] - 90:18,
137:9, 137:14
developed [2] - 90:20,
91:12
developer [16] - 63:6,
66:2, 75:7, 75:11,
85:17, 117:14,
139:14, 152:13,
161:18, 166:20,
167:16, 171:7,
174:24, 177:3,
184:2, 184:5
developers [4] -
92:20, 158:4, 159:5,
181:12
developing [1] -
147:19
development [1] -
115:8
DEVELOPMENT [1] -
1:1
Development [7] -
3:3, 4:6, 11:20,
16:17, 54:4, 180:9,
185:6
DeWitt [1] - 10:6
Diane [3] - 1:23,
186:17, 186:18
DIANE [1] - 186:2
died [2] - 30:12, 31:6
difference [3] - 71:5,
81:18, 174:10
differences [1] - 46:8
different [28] - 19:22,
25:23, 33:13, 40:4,
45:6, 45:7, 45:9,
47:14, 48:22, 49:14,
62:24, 63:1, 70:13,
74:2, 82:6, 88:2,
88:6, 102:6, 105:16,
112:2, 136:21,
143:20, 144:4,
146:21, 153:22,
159:16, 160:23,
163:22
differently [2] - 33:10,
174:19
difficult [1] - 4:7

dig [2] - 35:12, 92:8
dinner [1] - 23:9
direct [9] - 11:16, 31:1, 41:10, 58:22, 88:20, 151:18, 151:19, 154:18, 159:2
directed [1] - 103:1
directional [1] - 15:18
directly [2] - 30:19, 163:17
director [1] - 24:19
Director [2] - 1:20, 9:3
disagree [2] - 67:7, 89:1
disapprovals [1] - 183:23
disclose [1] - 112:6
disclosed [4] - 7:10, 97:18, 97:22, 98:18
discount [4] - 176:5, 176:7, 176:8, 176:18
discretionary [1] - 26:10
discussed [4] - 70:9, 99:18, 144:19, 176:3
discussion [4] - 4:3, 4:11, 16:24, 175:23
dismantled [1] - 177:15
dismiss [1] - 57:21
dispute [2] - 112:20, 113:14
disputes [2] - 39:21, 41:13
disrespectful [2] - 31:13, 31:15
disseminate [1] - 84:20
distance [13] - 6:5, 6:6, 6:8, 6:9, 6:10, 85:15, 114:7, 115:13, 123:18, 140:21, 141:7, 141:8, 143:24
distances [5] - 12:5, 109:5, 114:15, 143:20, 149:2
distant [1] - 15:1
distinction [1] - 71:4
distinctions [1] - 50:7
districts [3] - 22:6, 72:18, 73:6
ditch [1] - 92:7
ditches [2] - 91:21, 92:2
document [3] - 63:4, 167:1, 177:8
documentation [1] - 38:5

documents [4] - 38:1, 47:9, 59:4, 62:14
dollar [1] - 45:24
dollars [1] - 184:6
done [25] - 4:16, 9:5, 29:13, 32:2, 47:21, 50:5, 52:1, 54:16, 55:18, 57:5, 57:10, 57:24, 61:9, 72:2, 79:16, 80:5, 115:11, 129:17, 130:5, 136:7, 144:6, 151:21, 157:6, 158:7, 159:17
Doppler [3] - 83:12, 83:18, 84:10
dot [3] - 135:1, 155:8, 159:5
DOTY [1] - 3:15
Doty [2] - 1:16, 3:14
double [1] - 67:14
doubt [1] - 152:17
DOUGHTY [3] - 20:10, 180:12, 180:15
Doughty [3] - 1:19, 20:8, 180:13
DOUGHTY.....
 [2] - 2:6, 2:19
Douglas [13] - 16:22, 17:20, 128:9, 129:8, 131:24, 132:6, 132:15, 132:21, 132:23, 133:2, 133:9, 133:13, 133:17
down [21] - 20:22, 24:1, 49:8, 49:19, 54:22, 67:23, 67:24, 73:18, 89:14, 93:11, 133:18, 136:3, 137:13, 146:4, 157:22, 161:5, 179:10, 179:14, 184:19, 184:21
dozens [1] - 24:6
Dr [2] - 8:12, 39:16
draft [2] - 43:22, 73:9
drafted [5] - 105:2, 151:3, 151:10, 151:14, 151:20
drafting [3] - 107:2, 138:5, 151:2
drafts [1] - 75:15
drain [1] - 72:20
drainage [1] - 72:18
draw [1] - 105:2
Drew [1] - 8:20
drive [5] - 18:6, 81:22, 144:20, 145:15, 185:5

driven [1] - 131:10
driver [2] - 30:12, 31:4
drives [1] - 164:16
due [4] - 26:18, 30:15, 35:16, 172:19
during [16] - 31:20, 60:17, 68:14, 68:17, 68:20, 69:14, 88:23, 116:3, 121:11, 144:22, 145:8, 145:12, 145:20, 178:9, 178:12

E

e-mail [2] - 13:22, 137:21
E3 [5] - 42:4, 43:11, 43:18, 43:21, 44:5
e3 [1] - 44:6
E5 [1] - 100:24
EAP [1] - 73:2
ears [1] - 16:3
Earth [1] - 153:17
earth [1] - 94:24
easier [1] - 126:8
east [3] - 43:14, 85:13, 124:5
easy [1] - 141:9
eats [1] - 109:12
Economic [1] - 8:14
economic [6] - 8:14, 9:8, 38:2, 38:3, 39:5, 39:16
economics [1] - 8:13
edge [5] - 15:2, 33:1, 33:24, 88:4, 128:9
edification [2] - 137:18, 139:11
editorial [1] - 80:19
educational [1] - 34:24
efficient [1] - 150:24
efforts [2] - 111:9, 111:20
eight [7] - 24:7, 24:9, 33:13, 81:4, 102:5, 126:6, 126:9
either [13] - 45:11, 51:19, 96:12, 97:5, 98:9, 98:10, 113:5, 125:21, 127:17, 136:8, 154:12, 164:1, 178:14
elaborate [1] - 135:20
Electric [2] - 97:2, 97:17
electrical [1] - 46:21
electricity [1] - 178:2
electromagnetic [2] -

146:1, 146:7
emergency [8] - 72:22, 72:24, 73:5, 73:7, 73:13, 84:4, 159:22, 160:4
EMF [1] - 146:13
emission [2] - 103:21, 104:11
emissions [1] - 125:6
emit [1] - 126:1
employed [1] - 71:9
empowered [1] - 79:9
empty [1] - 181:13
end [5] - 84:23, 122:14, 164:22, 173:24, 179:12
End [1] - 185:9
endanger [1] - 38:22
ends [2] - 21:20, 152:15
ENERGY [1] - 1:2
Energy [1] - 30:8
enforce [3] - 112:24, 139:15, 139:22
enforcement [1] - 113:15
enforcing [1] - 90:24
engineer [15] - 17:16, 58:15, 58:20, 64:1, 64:12, 64:17, 65:20, 66:5, 66:20, 134:8, 162:18, 162:21, 163:7, 163:10, 175:16
engineer's [6] - 60:13, 60:14, 61:13, 61:19, 62:6, 66:1
engineering [12] - 46:18, 47:9, 47:10, 59:6, 59:9, 62:12, 63:9, 64:6, 64:14, 64:16, 144:4
engineers [1] - 17:12
ensure [1] - 15:22
enter [1] - 17:8
entire [2] - 70:8, 164:2
entirely [1] - 73:23
entities [1] - 27:19
entitled [3] - 66:8, 112:21, 113:16
entrances [1] - 133:8
environment [1] - 146:21
equipment [3] - 17:14, 134:6, 145:15
especially [1] - 12:22
Esq [7] - 1:9, 1:10, 1:10, 1:13, 1:13, 1:14, 1:14
essentially [7] - 164:9,

166:19, 170:23, 173:24, 176:8, 183:17, 184:6
establish [1] - 38:20
established [1] - 105:23
estimate [10] - 130:2, 162:13, 162:16, 162:17, 163:11, 164:10, 164:16, 167:24, 169:6, 169:7
estimated [2] - 167:21, 171:14
estimates [12] - 160:15, 162:15, 162:22, 163:15, 166:1, 169:1, 169:2, 169:11, 169:22, 172:15, 175:17, 177:7
estimation [3] - 161:12, 163:24, 168:11
estimations [1] - 168:12
etc [4] - 39:22, 76:11, 118:6, 146:1
evening [6] - 3:1, 3:22, 92:24, 93:15, 122:4, 128:4
evenings [1] - 105:17
event [2] - 112:19, 113:13
evidence [2] - 112:15, 115:24
evident [1] - 154:6
exact [4] - 44:1, 74:1, 86:19, 123:19
exactly [12] - 38:12, 41:17, 42:23, 45:23, 50:19, 57:7, 125:1, 130:1, 154:22, 156:16, 160:24
EXAMINATION [36] - 2:3, 2:4, 2:5, 2:6, 2:7, 2:8, 2:9, 2:10, 2:11, 2:12, 2:13, 2:14, 2:15, 2:16, 2:17, 2:18, 2:19, 2:20, 11:23, 16:19, 18:11, 20:9, 21:16, 24:3, 30:4, 36:23, 83:2, 95:19, 123:3, 128:13, 132:3, 135:13, 148:19, 150:22, 180:14, 182:12
examination [4] - 9:15, 9:16, 11:18, 94:8

examine [1] - 10:10 example [8] - 61:4, 74:19, 76:13, 77:11, 151:9, 152:23, 168:15, 177:9 excellent [3] - 26:15, 66:14, 71:7 except [1] - 68:2 exchange [1] - 8:16 excuse [2] - 128:23, 132:17 execute [1] - 47:20 executed [5] - 6:17, 6:18, 48:15, 166:17, 166:21 exercise [1] - 141:10 exhausted [1] - 119:23 exhibit [1] - 86:20 Exhibit [3] - 7:2, 166:17, 167:1 EXHIBITS [1] - 2:23 exhibits [3] - 86:12, 87:1, 87:3 exist [2] - 77:22, 171:18 expect [3] - 6:23, 8:11, 90:6 expected [2] - 5:6, 47:6 expense [1] - 137:8 expenses [4] - 112:23, 113:18, 170:24, 183:18 experience [5] - 21:19, 144:13, 147:23, 172:21, 178:22 expert [32] - 7:23, 8:20, 34:16, 35:9, 88:11, 97:4, 99:6, 99:21, 101:7, 105:1, 105:14, 105:15, 106:20, 106:22, 107:1, 107:3, 107:18, 107:22, 107:23, 108:2, 117:6, 120:19, 120:23, 132:18, 146:3, 147:20, 147:21, 151:16, 151:19, 182:14 experts [2] - 124:11, 151:3 explain [8] - 14:21, 15:23, 108:22, 108:23, 109:1, 152:16, 183:6, 183:16 explained [1] - 24:13	explanation [1] - 182:24 explored [1] - 99:5 extent [2] - 113:3, 120:6 extra [2] - 37:16, 110:16 eye [1] - 71:12 eyes [1] - 138:14	82:16, 83:8, 83:13, 85:12, 90:12, 91:16, 91:18, 108:18, 110:4, 111:8, 111:9, 111:12, 116:10, 119:11, 126:24, 127:21, 127:22, 161:13, 161:21 FARM [1] - 1:2 farmers [3] - 91:23, 92:1, 109:2 farmland [2] - 72:20, 109:2 farms [1] - 127:18 farmstead [1] - 33:21 favor [1] - 9:21 February [1] - 86:19 fed [1] - 10:11 federal [4] - 84:9, 84:19, 84:21, 87:13 fee [2] - 41:6, 170:22 feedback [2] - 73:1, 73:10 fees [2] - 113:6, 113:18 feet [11] - 6:8, 6:9, 6:10, 12:2, 14:18, 14:23, 32:9, 109:8, 110:17, 119:11, 147:1 fell [1] - 177:17 falling [1] - 177:19 fellow [1] - 95:15 felt [1] - 10:9 field [5] - 86:1, 108:18, 110:4, 151:16, 151:19 fields [1] - 146:2 fifteen [1] - 23:23 Fifth [1] - 5:24 fifth [1] - 8:18 figure [6] - 132:11, 155:6, 157:16, 158:2, 159:3, 159:4 figured [1] - 88:17 filing [1] - 86:8 final [17] - 6:15, 29:12, 46:11, 46:15, 46:17, 47:8, 47:10, 48:18, 49:7, 52:16, 54:5, 62:11, 64:12, 64:18, 73:14, 180:6, 180:10 finalize [1] - 73:2 finalized [3] - 46:24, 47:5, 47:7 financial [24] - 7:5, 112:13, 164:16, 165:8, 165:18, 171:12, 172:18, 173:23, 174:2,	174:11, 174:16, 176:9, 176:19, 176:22, 177:4, 177:22, 177:23, 178:4, 178:18, 179:1, 179:8, 179:12, 179:18, 182:5 fine [6] - 28:11, 98:13, 141:4, 160:15, 169:8, 182:18 finger [1] - 82:15 finish [1] - 39:2 finishing [1] - 17:21 fire [2] - 73:6, 147:1 firm [3] - 59:6, 59:9, 64:15 firms [1] - 64:16 first [33] - 4:1, 5:18, 5:22, 7:7, 11:19, 18:15, 27:13, 29:3, 31:2, 34:21, 78:21, 82:5, 96:1, 99:2, 101:11, 104:5, 128:11, 128:24, 131:6, 143:13, 146:18, 148:10, 161:20, 161:23, 165:22, 167:1, 171:13, 171:19, 172:12, 173:21, 177:24, 178:13, 178:17 firsthand [1] - 92:3 five [10] - 7:18, 49:17, 67:24, 98:18, 131:3, 150:20, 171:13, 171:19, 172:12, 173:21 fix [2] - 138:2, 138:3 fixed [2] - 16:23, 133:6 flashing [1] - 14:16 flicker [37] - 12:6, 12:8, 12:14, 13:9, 13:12, 18:21, 18:22, 18:23, 19:10, 28:20, 28:21, 29:2, 29:9, 45:16, 67:15, 88:12, 88:23, 89:2, 110:21, 118:6, 120:14, 120:19, 120:22, 121:7, 123:12, 128:19, 129:12, 129:16, 129:18, 129:19, 130:1, 142:15, 143:8, 151:9, 151:11, 151:18 flickering [2] - 34:9, 128:16	flier [1] - 140:12 flies [1] - 124:6 flight [4] - 123:16, 124:1, 153:15, 153:20 flown [1] - 153:18 flying [2] - 14:22, 123:23 flyover [1] - 154:13 focus [1] - 95:23 fold [1] - 133:3 folks [9] - 3:22, 5:13, 66:6, 70:23, 91:23, 94:2, 97:19, 130:24, 157:21 follow [4] - 17:6, 86:6, 126:16, 140:19 follow-up [1] - 17:6 following [3] - 54:24, 66:19, 173:15 foot [3] - 96:10, 141:1, 173:13 footnote [1] - 62:4 Ford [1] - 127:21 foregoing [1] - 186:4 forgot [1] - 138:17 form [5] - 63:8, 64:3, 165:18, 166:19 forth [1] - 186:8 forthcoming [1] - 147:18 forward [4] - 128:3, 131:7, 134:20, 136:4 foundation [1] - 66:22 founded [1] - 161:22 four [1] - 144:15 Frank [1] - 1:10 free [2] - 7:8, 168:23 FREEZELAND [3] - 3:17, 16:20, 82:12 FreezeLand [4] - 1:19, 3:16, 16:18, 82:21 FREEZELAND..... .. [1] - 2:4 frequency [2] - 104:1, 146:7 friend [4] - 128:17, 128:20, 128:22, 130:9 Friends [1] - 92:15 friends [1] - 184:18 front [3] - 75:21, 83:6, 136:17 froze [1] - 10:7 full [9] - 53:23, 54:7, 57:18, 103:24, 161:9, 174:11, 177:1, 177:3, 182:4 fully [3] - 5:16, 48:15, 162:10
--	--	--	--	---

function [3] - 143:7, 143:17, 181:6 funds [3] - 165:8, 169:17, 179:2 FURTHER [2] - 2:7, 21:16 future [2] - 35:22, 185:2	great [11] - 25:3, 56:10, 63:21, 100:19, 101:16, 119:10, 133:23, 140:16, 141:22, 149:4, 149:6 greatest [1] - 6:9 grid [1] - 178:3 ground [2] - 145:24, 146:4 grounding [1] - 146:13 group [1] - 27:13 guess [22] - 33:8, 42:2, 80:22, 117:5, 123:13, 131:3, 133:1, 135:19, 136:3, 140:23, 141:12, 142:12, 142:21, 145:5, 150:20, 172:6, 173:8, 173:14, 173:19, 177:15, 181:19, 183:7 guessing [1] - 66:4 guidelines [1] - 118:5 guy [3] - 17:4, 138:17, 144:7 guys [5] - 86:2, 125:15, 136:7, 145:2, 183:14	81:10, 81:19, 93:3, 93:12, 93:16, 93:22, 94:23, 95:3, 97:15, 98:5, 99:11, 103:5, 105:6, 106:11, 118:18, 121:21 HARTKE [52] - 80:22, 81:15, 93:15, 93:20, 93:23, 94:5, 94:11, 94:17, 95:1, 95:7, 95:12, 95:17, 95:20, 97:14, 98:6, 99:13, 99:23, 100:1, 100:14, 100:16, 101:4, 101:6, 101:19, 103:3, 104:4, 105:12, 105:17, 106:1, 106:8, 106:17, 107:7, 107:15, 108:7, 108:10, 108:24, 109:22, 110:1, 112:3, 112:18, 113:24, 117:10, 117:21, 118:17, 118:21, 119:9, 119:19, 119:23, 120:13, 121:2, 121:6, 121:10, 121:19 HARTKE [1] - 2:12 hashmark [1] - 155:12 hazard [1] - 117:16 head [5] - 13:14, 65:4, 82:23, 132:11, 163:1 headings [1] - 38:8 health [6] - 38:22, 107:9, 107:11, 107:18, 108:20, 110:2 hear [12] - 4:7, 7:22, 73:6, 94:14, 119:3, 124:21, 125:14, 125:16, 127:20, 139:2, 157:20, 157:23 heard [4] - 29:3, 96:1, 98:17, 131:6 HEARING [1] - 1:1 hearing [28] - 3:23, 3:24, 7:16, 9:12, 28:2, 38:6, 38:8, 38:10, 38:12, 39:13, 41:11, 49:5, 53:17, 54:13, 54:17, 55:5, 55:12, 55:18, 61:2, 73:22, 75:18, 76:24, 78:5, 78:7, 139:4, 139:5, 184:23, 185:3	Hearing [2] - 1:7, 53:23 hearings [8] - 23:7, 28:3, 28:4, 32:2, 94:14, 94:19, 115:24, 150:9 height [11] - 20:1, 20:2, 84:13, 84:21, 109:6, 109:11, 114:11, 114:14, 115:13, 116:4, 116:24 helicopter [5] - 123:8, 123:20, 124:1, 124:11, 124:13 helicopters [1] - 123:23 help [7] - 39:3, 46:18, 83:17, 102:13, 111:22, 181:9, 181:16 helpful [5] - 37:22, 43:20, 101:21, 141:11, 149:3 helps [1] - 16:7 hereby [1] - 186:4 hereinabove [1] - 186:8 hereof [1] - 113:16 hertz [2] - 104:1 Hess [14] - 1:13, 4:23, 5:18, 7:9, 9:11, 21:3, 28:1, 61:10, 71:9, 72:14, 77:23, 96:21, 113:11, 135:10 HESS [66] - 4:24, 5:12, 5:20, 6:4, 6:13, 7:11, 7:17, 11:5, 25:6, 26:18, 28:18, 30:15, 35:7, 40:8, 42:13, 42:16, 43:22, 48:23, 50:4, 51:7, 51:11, 51:18, 51:23, 52:17, 53:14, 53:20, 55:19, 55:22, 60:19, 61:3, 64:8, 64:10, 64:14, 64:23, 65:10, 69:2, 70:11, 70:17, 71:19, 71:22, 73:24, 78:1, 79:6, 79:18, 86:14, 87:8, 87:12, 87:15, 94:20, 96:24, 97:11, 98:15, 101:10, 107:22, 111:13, 112:10, 113:2, 113:13, 117:3, 119:16, 120:6, 120:18, 121:12, 130:16, 150:1, 180:5 Hickory [5] - 48:7,	132:21, 134:2, 134:8, 134:10 hide [1] - 97:20 hiding [1] - 83:5 high [5] - 15:18, 88:19, 90:2, 90:6, 102:18 high-beamed [1] - 15:18 Highway [3] - 42:23, 43:2, 43:14 highway [3] - 43:4, 43:5, 43:8 hire [3] - 162:9, 165:9, 171:9 hired [3] - 27:20, 162:5, 162:18 hiring [1] - 168:16 historically [1] - 57:4 hit [2] - 81:2, 82:22 hits [1] - 120:14 HLR [4] - 59:2, 59:5, 59:6, 64:15 hold [4] - 52:23, 70:7, 77:15, 118:1 holds [1] - 77:19 Holly [6] - 1:23, 4:2, 80:24, 157:23, 186:17, 186:18 HOLLY [1] - 186:2 home [12] - 33:24, 109:3, 109:13, 110:4, 116:22, 119:11, 119:12, 120:3, 120:15, 120:16, 129:24, 149:20 honestly [1] - 71:8 Honor [1] - 34:11 hook [5] - 6:21, 170:11, 170:15, 184:5, 184:6 hope [3] - 4:17, 9:11, 181:14 hopeful [2] - 7:18, 8:18 hopefully [6] - 17:5, 127:19, 179:9, 179:11, 182:2, 185:3 horse [1] - 80:4 host [1] - 147:7 hot [2] - 129:17, 146:19 hour [5] - 17:22, 56:5, 81:1, 91:5, 91:7 hours [13] - 12:11, 12:12, 19:16, 19:20, 88:12, 88:14, 88:23, 89:3, 90:1, 128:18, 129:12, 130:10,
G				
gag [4] - 7:7, 111:5, 111:11, 112:7 galley [1] - 22:11 gallons [2] - 146:24, 147:8 garbage [1] - 145:4 GE [5] - 45:12, 57:2, 59:22, 125:3, 146:11 general [8] - 38:23, 39:3, 63:9, 108:6, 108:8, 108:12, 108:15, 145:5 General [2] - 97:2, 97:17 generally [5] - 30:20, 153:13, 168:21, 169:14, 169:15 generating [1] - 178:2 gentleman [5] - 29:23, 31:5, 81:11, 180:9 gentleman's [1] - 31:3 geo [2] - 46:18, 47:8 geological [1] - 144:3 geometry [1] - 120:16 GIS [9] - 101:7, 101:8, 101:9, 101:14, 101:15, 101:18, 141:9, 148:22, 153:8 given [3] - 66:23, 117:13, 148:22 glad [1] - 83:20 glass [2] - 89:19, 89:21 goal [1] - 136:12 Google [1] - 153:17 gotcha [1] - 157:15 govern [1] - 139:18 governed [2] - 119:1, 166:9 government [2] - 22:5, 116:7 governmental [1] - 169:16 governs [1] - 166:13 grantee [1] - 111:20 granting [2] - 66:19, 111:9 grass [1] - 33:19 gray [1] - 143:15	H			
H-a-r-t-k-e [1] - 93:17 half [7] - 14:24, 124:17, 125:13, 126:3, 128:10, 134:7, 184:14 Halloween [1] - 166:22 hands [1] - 81:2 hang [2] - 42:10, 141:20 Hang [1] - 103:5 happily [4] - 35:20, 92:11, 92:12, 179:20 happy [14] - 12:15, 35:17, 86:19, 87:11, 87:13, 108:24, 109:23, 129:16, 140:19, 141:5, 141:10, 142:19, 150:13, 174:10 hard [7] - 49:18, 88:15, 88:21, 155:22, 157:19, 179:15, 183:6 harmless [1] - 70:7 Hartke [17] - 80:21,				

184:14 house [15] - 32:24, 33:1, 87:20, 88:4, 89:21, 108:18, 116:5, 136:5, 139:4, 140:10, 140:15, 142:23, 147:6, 148:14 housekeeping [2] - 4:1, 10:22 houses [1] - 100:7 housing [1] - 142:1 husband [1] - 33:23 hypothetical [3] - 21:8, 171:24, 178:21 hypothetically [1] - 173:9 hypotheticals [2] - 173:17, 179:13	15:14, 108:16, 166:7 Impacts [1] - 8:14 implementation [1] - 16:6 implemented [1] - 173:15 implementing [1] - 15:9 implication [1] - 113:6 implicitly [1] - 38:17 implying [4] - 26:20, 28:23, 113:3, 181:3 important [1] - 50:6 impose [2] - 167:17, 174:8 imposes [1] - 77:7 impossible [3] - 64:11, 75:7, 75:12 improved [1] - 17:14 improvements [1] - 48:13 improving [1] - 145:10 IN [1] - 1:2 include [8] - 37:10, 39:5, 45:11, 54:5, 72:1, 72:20, 77:7, 176:23 included [18] - 19:8, 33:11, 38:2, 38:9, 47:1, 48:9, 68:5, 68:8, 68:10, 68:11, 68:12, 75:1, 84:23, 121:7, 126:17, 159:19, 166:16, 175:7 includes [3] - 29:16, 41:9, 176:23 including [7] - 7:4, 22:5, 39:21, 77:20, 84:10, 113:19, 123:23 incorrect [2] - 103:14, 171:5 increased [1] - 39:2 indemnification [8] - 68:17, 71:1, 182:23, 183:1, 183:4, 183:7, 183:17, 184:1 indemnify [3] - 70:7, 70:20, 183:10 indemnity [1] - 182:22 independent [2] - 180:18, 181:1 independently [1] - 180:18 indicating [1] - 43:3 indirect [1] - 41:10 industry [2] - 89:7, 97:21 inferences [3] -	152:18, 153:2, 154:4 inform [1] - 46:18 information [18] - 30:17, 30:22, 37:11, 38:3, 38:9, 52:3, 60:1, 97:1, 97:5, 97:16, 97:17, 98:1, 98:20, 98:23, 112:13, 127:12, 141:13, 146:23 Information [1] - 84:14 informed [1] - 5:16 inhabited [1] - 87:20 input [2] - 73:14, 141:3 inside [2] - 22:10, 32:24 inspect [1] - 126:15 inspection [1] - 41:12 installation [6] - 26:6, 26:7, 55:1, 60:23, 61:1, 66:18 instant [1] - 125:21 instead [1] - 182:4 instruction [1] - 111:11 insurance [9] - 68:21, 68:23, 69:10, 69:24, 70:24, 182:22, 182:23, 183:2, 183:3 intend [1] - 48:8 intended [2] - 28:19, 43:6 intent [1] - 138:24 interacted [1] - 27:13 Interdepartment [1] - 84:16 interest [1] - 145:17 interested [1] - 22:14 interesting [1] - 160:21 interfere [1] - 85:22 interference [4] - 15:17, 84:7, 160:3, 160:9 interject [1] - 41:20 internally [1] - 144:2 interpretation [3] - 40:21, 51:17, 105:14 Interstate [6] - 41:18, 41:23, 42:1, 42:4, 148:14, 149:21 interstate [1] - 41:21 introduce [2] - 73:8, 86:12 intrusive [1] - 14:14 investigated [1] - 14:2 investigating [1] - 137:10	investigation [3] - 139:6, 157:6, 158:7 investigations [1] - 136:21 investment [1] - 171:22 involve [2] - 35:1, 161:4 involved [7] - 46:1, 46:6, 160:16, 160:19, 177:8, 177:13, 181:9 involving [2] - 3:24, 31:7 IPCB [11] - 99:19, 102:15, 102:16, 102:20, 102:24, 103:7, 104:17, 104:20, 109:9, 155:13, 155:15 Isaac [1] - 97:8 issuance [1] - 69:7 issue [14] - 9:17, 9:20, 16:4, 64:18, 65:11, 70:22, 75:2, 75:3, 76:7, 78:2, 92:9, 103:12, 118:3, 144:11 issued [2] - 47:10, 74:21 issues [10] - 12:23, 13:16, 16:9, 17:2, 39:5, 44:1, 49:9, 74:24, 90:24, 106:5 issuing [2] - 57:5 Item [2] - 49:23, 112:19 item [6] - 67:12, 67:23, 111:3, 111:6, 112:5, 169:4 items [2] - 67:24, 112:6 itself [7] - 20:14, 20:15, 20:18, 161:5, 161:6, 161:8, 163:15	joined [1] - 90:15 joining [1] - 76:2 judgment [1] - 183:18 Judicial [1] - 186:3 jump [2] - 54:11, 135:10 juncture [1] - 71:17 jurisdiction [1] - 134:9 jury [1] - 4:5
K				
k-e-l-l-y [1] - 122:12 Kains [20] - 1:8, 3:19, 5:20, 6:14, 7:17, 9:1, 26:19, 42:13, 51:7, 71:19, 78:9, 79:6, 79:20, 86:21, 94:1, 113:2, 118:1, 137:6, 149:13, 183:13 KAINS [279] - 3:20, 5:9, 5:13, 6:11, 7:9, 7:13, 9:10, 11:2, 11:6, 11:12, 11:15, 16:14, 18:2, 18:5, 20:6, 21:12, 21:15, 22:2, 22:22, 23:2, 23:5, 23:10, 23:15, 23:18, 23:23, 24:2, 25:9, 25:16, 26:22, 27:3, 27:6, 27:9, 27:18, 27:23, 28:12, 29:3, 29:19, 30:2, 30:23, 31:14, 32:4, 32:16, 32:19, 34:13, 34:18, 35:8, 35:18, 36:7, 36:12, 36:16, 36:21, 37:15, 37:19, 40:12, 40:23, 41:2, 41:19, 42:7, 42:10, 42:15, 42:17, 44:2, 44:4, 44:6, 44:8, 49:1, 50:11, 50:14, 50:17, 50:20, 50:23, 51:4, 51:10, 51:16, 52:2, 52:7, 52:10, 52:21, 52:24, 53:12, 53:18, 54:9, 54:18, 55:2, 55:7, 55:24, 56:5, 56:8, 56:12, 56:15, 56:23, 57:16, 59:5, 59:8, 59:12, 61:1, 61:10, 61:13, 61:16, 61:22, 62:2, 62:22, 63:12, 63:16, 63:20, 64:1, 64:6, 64:9, 64:13, 64:22, 65:1, 65:6, 65:18, 66:14, 67:3, 67:6, 69:12, 69:19, 69:23,				
J				
Jacob [1] - 121:4 January [3] - 45:22, 86:18, 131:5 Jason [2] - 9:3, 107:5 Jeffersonian [1] - 53:1 Jerald [1] - 1:13 Jeremy [1] - 1:19 job [3] - 31:16, 31:24, 94:18 John [2] - 1:16, 3:14 Johnson [1] - 1:17 join [1] - 3:6				

70:3, 70:16, 70:22,
71:21, 72:13, 74:5,
75:20, 75:23, 76:20,
77:23, 78:2, 78:14,
78:17, 79:13, 80:3,
80:7, 80:16, 80:23,
81:6, 81:14, 81:16,
81:19, 82:1, 82:5,
82:10, 82:13, 82:17,
82:19, 82:21, 86:11,
86:22, 87:2, 87:10,
87:13, 87:16, 87:21,
91:1, 91:4, 91:7,
92:4, 93:1, 93:7,
93:10, 93:18, 93:21,
94:4, 94:7, 94:15,
94:22, 95:3, 95:10,
95:13, 96:21, 97:6,
97:9, 97:15, 98:13,
99:1, 99:4, 99:22,
99:24, 100:13,
100:15, 101:2,
101:5, 101:13,
101:16, 103:2,
103:5, 103:13,
103:18, 105:4,
105:13, 105:23,
106:5, 106:11,
107:3, 107:6,
107:16, 107:23,
108:9, 109:15,
109:20, 109:24,
110:6, 112:1,
112:16, 113:11,
113:21, 117:7,
117:19, 117:23,
118:14, 118:18,
119:4, 119:18,
119:20, 120:11,
120:21, 121:3,
121:5, 121:9,
121:16, 121:21,
122:7, 122:9,
122:11, 122:13,
122:16, 122:19,
122:22, 123:2,
127:1, 127:4,
127:10, 127:24,
128:7, 128:12,
128:24, 130:14,
131:12, 131:15,
131:20, 131:24,
132:2, 133:10,
133:14, 133:16,
133:23, 134:17,
134:23, 135:3,
135:8, 137:20,
137:24, 138:18,
140:3, 141:17,
141:20, 142:6,
142:10, 148:4,

149:5, 149:18,
150:2, 150:11,
150:14, 150:16,
150:19, 156:18,
157:21, 163:9,
179:24, 180:3,
180:6, 180:13,
182:9, 184:11,
184:17, 184:22
keep [4] - 4:11,
149:16, 157:21,
158:1
keeping [2] - 4:15,
154:5
keeps [1] - 67:15
Kelly [19] - 1:21, 7:22,
54:3, 59:1, 60:3,
60:5, 122:8, 122:9,
122:11, 147:21,
148:10, 163:16,
169:5, 169:10,
169:24, 170:1,
170:7, 177:11,
177:19
Kentucky [1] - 114:22
Kevin [3] - 163:2,
163:7, 163:9
Keyt [24] - 1:9, 10:23,
26:16, 27:1, 27:18,
27:24, 52:7, 59:1,
62:16, 62:22, 63:22,
65:12, 75:20, 76:6,
79:18, 137:20,
138:18, 140:4,
149:12, 149:23,
150:21, 157:22,
180:1, 182:2
KEYT [28] - 11:1, 52:9,
62:24, 63:15, 63:24,
64:3, 74:4, 74:6,
75:22, 76:12, 76:22,
78:9, 79:20, 86:21,
86:23, 118:1, 137:5,
139:10, 149:13,
150:12, 150:23,
156:19, 157:18,
157:24, 163:5,
163:12, 180:2,
183:15
Keyt's [2] - 28:8, 150:3
KEYT..... [1] -
2:18
KH [1] - 23:3
kick [2] - 77:10, 80:1
kicks [1] - 180:23
kids [1] - 147:5
kilometers [1] - 85:13
kind [18] - 10:7, 24:13,
35:11, 43:9, 47:17,
55:10, 55:11, 55:14,

55:15, 89:6, 127:5,
137:16, 138:9,
142:4, 155:12,
157:22, 163:21,
164:21
knowledge [8] - 28:7,
54:15, 59:16, 90:21,
115:10, 162:3,
162:8, 162:11
known [2] - 10:16,
11:18
knows [3] - 41:22,
95:5, 95:6

L

L-i-c-k-f-e-t-t [1] -
131:23
labor [2] - 169:22,
170:4
lady [1] - 10:7
Land [2] - 90:16,
154:14
land [22] - 33:3, 33:4,
33:5, 33:7, 34:5,
84:3, 108:16,
109:12, 116:13,
116:17, 117:2,
131:3, 143:15,
143:17, 153:11,
153:12, 154:5,
154:6, 164:6, 165:12
landfill [1] - 177:9
landowner [10] - 14:2,
15:21, 19:6, 109:3,
111:19, 116:11,
116:16, 165:19,
171:5, 171:8
landowner's [1] -
117:16
landowners [9] -
13:23, 46:23,
126:13, 141:13,
164:12, 165:17,
165:23, 170:14
language [1] - 166:13
larger [1] - 114:18
last [21] - 23:6, 36:10,
41:9, 47:13, 58:6,
61:17, 65:8, 66:1,
73:19, 73:21, 79:16,
82:2, 82:5, 93:14,
94:24, 99:9, 106:23,
145:23, 148:13,
148:16, 181:18
late [2] - 23:9, 23:10
law [9] - 34:15, 35:1,
104:23, 105:20,
105:22, 111:20,
115:12, 115:23,

119:13
lawfully [1] - 98:24
laws [1] - 131:9
lawyer [2] - 66:6,
138:17
lawyers [3] - 4:4,
37:15, 106:6
layout [4] - 47:11,
84:13, 84:20, 175:7
lead [2] - 38:12, 94:11
leads [2] - 47:17,
48:17
learn [1] - 140:20
leases [1] - 109:1
least [7] - 44:17, 47:4,
130:8, 143:3, 174:2,
175:18, 176:17
leave [4] - 32:10,
39:19, 68:14, 68:19
left [4] - 29:23, 69:15,
69:19, 83:4
legal [18] - 34:22,
40:20, 65:15, 71:10,
99:19, 99:20,
104:22, 105:2,
105:13, 105:19,
106:1, 106:3, 106:4,
106:5, 111:22,
117:4, 117:7, 119:17
legally [2] - 97:2,
116:23
legislative [1] - 116:6
legislature [1] -
115:16
length [1] - 23:21
less [4] - 12:11, 90:1,
115:20, 130:10
letter [10] - 50:21,
50:22, 84:24, 86:8,
86:15, 86:18, 86:23,
86:24, 87:4, 87:5
level [19] - 33:15, 58:8,
58:9, 96:3, 96:6,
96:12, 96:16, 99:18,
100:2, 102:18,
103:24, 104:9,
109:7, 109:8,
124:16, 124:19,
124:23, 182:14,
184:9
levels [9] - 13:16,
13:18, 95:24, 99:6,
103:19, 115:3,
144:9, 152:5, 155:13
liability [5] - 68:17,
68:21, 182:23,
183:2, 183:8
license [2] - 3:4, 14:13
License [2] - 1:24,
186:19

licensed [2] - 22:11,
163:7
LICKFETT [10] -
131:19, 131:22,
132:1, 132:4,
133:12, 133:15,
133:18, 134:3,
134:11, 134:15
Lickfett [2] - 131:22,
132:2
LICKFETT.....
[1] - 2:15
lidar [1] - 83:8
lie [1] - 124:21
lies [1] - 133:16
life [8] - 68:14, 68:17,
68:20, 68:22, 135:6,
145:20, 164:23,
179:12
light [1] - 14:10
lights [7] - 14:12,
14:15, 14:16, 14:17,
15:3, 15:5, 123:5
likelihood [1] - 178:7
limit [5] - 12:13, 33:16,
121:10, 155:13,
155:15
limitations [3] - 92:8,
103:22, 104:11
limited [3] - 29:9,
41:10, 113:19
limits [5] - 33:14, 79:9,
103:1, 103:24, 104:9
Lincoln [4] - 83:12,
85:13, 90:13, 90:16
line [39] - 20:13, 33:6,
42:9, 65:8, 66:1,
79:7, 87:19, 88:20,
99:18, 100:6,
102:21, 103:9,
103:22, 104:6,
104:8, 104:12,
104:19, 104:21,
108:18, 109:6,
109:11, 109:14,
116:14, 116:18,
116:19, 116:23,
117:1, 128:8,
146:15, 152:6,
155:18, 155:23,
156:3, 156:7, 156:8,
156:9, 156:10,
169:3, 181:18
linear [1] - 46:22
Lines [1] - 8:20
lines [11] - 8:24, 9:2,
10:11, 33:12, 88:5,
88:6, 101:23, 102:1,
146:14, 155:19,
156:4

Lions [2] - 43:24, 44:8
list [5] - 5:6, 45:5, 48:8, 72:17, 78:24
listed [7] - 38:6, 41:6, 50:2, 68:18, 108:1, 165:23, 177:8
listen [1] - 115:24
listening [1] - 82:23
lists [5] - 42:4, 60:21, 67:13, 71:24, 102:20
litigation [6] - 39:21, 40:3, 40:7, 40:16, 40:24, 41:13
live [24] - 15:16, 28:5, 34:9, 82:14, 82:16, 83:17, 93:20, 114:4, 114:6, 115:14, 122:17, 122:19, 124:5, 126:23, 127:18, 128:9, 129:8, 130:19, 140:18, 140:20, 142:16, 153:23, 158:21, 178:2
live-sited [1] - 15:16
lives [1] - 119:10
Livingston [6] - 1:9, 37:21, 148:9, 148:12, 149:7, 149:9
LLC [3] - 3:24, 164:24, 184:23
LLC'S [1] - 1:1
loads [1] - 145:2
lobbied [1] - 49:18
local [3] - 22:5, 29:17, 66:23
located [2] - 44:12, 101:24
location [5] - 45:14, 102:17, 102:20, 142:4, 152:2
locations [9] - 46:15, 46:17, 47:2, 84:6, 89:12, 110:20, 130:3, 140:8, 148:23
Lockhart [7] - 1:21, 52:5, 54:3, 127:11, 148:10, 148:18, 149:5
LOCKHART [5] - 52:6, 59:6, 59:11, 60:6, 148:20
LOCKHART.....
 [1] - 2:17
Lode [2] - 1:14, 28:2
logging [1] - 137:10
logistics [1] - 49:14
long-term [1] - 136:24
longest [1] - 90:3
look [15] - 12:16, 63:9,

100:10, 127:4, 129:24, 141:21, 142:14, 142:15, 142:17, 156:6, 162:24, 163:4, 169:10, 170:10, 175:16
looking [13] - 37:20, 110:23, 132:10, 153:13, 154:16, 156:14, 157:5, 157:15, 158:2, 158:10, 168:11, 181:23
looks [5] - 67:18, 88:10, 156:21, 178:23, 180:18
Loomis [2] - 8:12, 39:16
losing [2] - 112:22, 113:17
loud [7] - 98:8, 98:10, 100:3, 124:24, 126:3, 142:13
love [2] - 63:20, 150:10
low [3] - 14:22, 123:23, 178:8
low-flying [2] - 14:22, 123:23
lower [1] - 90:4

M

ma'am [4] - 29:22, 31:14, 122:3, 127:1
machine [4] - 45:12, 186:5, 186:6
machines [1] - 147:9
mad [2] - 95:12, 95:14
mail [3] - 13:22, 137:21, 140:13
maintain [4] - 68:21, 69:23, 112:12, 145:18
maintained [1] - 20:2
maintenance [3] - 13:22, 38:20, 67:12
management [3] - 24:16, 25:19, 73:7
manager [5] - 8:6, 24:15, 35:7, 35:8, 168:6
manufacturer [2] - 58:7, 125:3
map [14] - 43:3, 100:5, 100:11, 127:5, 132:12, 135:1, 141:6, 141:14, 141:21, 143:12,

149:1, 155:7, 155:18, 155:22
mapping [4] - 101:7, 153:8, 153:11, 154:16
maps [10] - 6:7, 61:5, 61:7, 101:20, 102:2, 102:12, 102:14, 152:10, 152:20, 153:12
March [3] - 1:4, 11:9, 166:3
mark [1] - 149:10
market [1] - 173:11
Mary [3] - 1:23, 186:17, 186:18
MARY [1] - 186:2
massive [2] - 145:3, 147:5
master's [1] - 101:15
material [13] - 32:10, 53:10, 54:11, 55:3, 56:17, 56:21, 57:3, 57:24, 116:1, 168:3, 169:22, 177:9, 177:10
materials [4] - 159:19, 162:12, 173:1, 173:11
math [1] - 6:8
matter [6] - 69:13, 77:18, 79:5, 117:14, 129:19, 151:3
matters [3] - 4:1, 4:22, 5:1
MATTHEWS [1] - 186:2
Matthews [3] - 1:23, 186:17, 186:18
maximum [1] - 109:8
McQue [3] - 7:23, 8:3
mean [30] - 24:24, 26:18, 27:17, 31:11, 50:5, 51:17, 83:13, 92:9, 92:10, 93:10, 110:14, 123:9, 125:18, 126:10, 126:22, 128:20, 128:22, 138:11, 140:12, 140:16, 140:23, 144:13, 149:2, 156:13, 169:9, 171:21, 173:14, 183:1, 183:12
meaning [2] - 114:18, 178:1
means [8] - 14:11, 33:19, 108:5, 113:9, 136:12, 164:1,

169:22, 183:10
measure [6] - 32:24, 140:19, 147:15, 147:16, 149:2, 168:17
measured [5] - 32:23, 33:5, 87:19, 104:19, 152:5
measurements [4] - 12:21, 103:8, 103:11, 104:17
measures [1] - 159:10
measuring [2] - 102:21, 152:1
mechanisms [1] - 181:17
medical [1] - 123:8
meet [10] - 76:19, 77:5, 78:12, 99:7, 110:17, 125:10, 141:18, 142:7, 144:16, 175:2
meeting [3] - 3:2, 3:19, 143:7
member [5] - 118:12, 122:1, 127:7, 143:23, 180:21
Members [1] - 1:15
members [17] - 4:6, 4:7, 11:19, 11:21, 16:16, 21:13, 22:3, 22:5, 22:7, 22:16, 29:20, 126:23, 127:12, 127:18, 128:1, 150:4, 182:10
Memorial [1] - 123:17
mental [1] - 108:21
mentioned [2] - 12:9, 115:19
met [3] - 26:12, 73:5, 129:14
Meteorologist [1] - 83:10
meteorologist [2] - 83:19, 85:24
meters [1] - 96:10
methodology [4] - 102:23, 159:8, 163:14, 177:14
methods [2] - 104:24, 166:8
MF [1] - 146:7
Michael [2] - 1:16, 3:18
microphones [1] - 4:4
microwave [1] - 84:4
middle [4] - 15:2, 82:15, 109:3, 111:6
might [15] - 4:10, 8:16, 33:18, 33:20, 71:11,

82:22, 89:17, 136:22, 139:16, 139:18, 139:21, 167:18, 168:8, 170:24, 183:23
Mike [2] - 1:18, 3:10
mile [9] - 128:11, 129:22, 129:23, 134:6, 142:22, 142:23, 142:24, 143:1, 143:4
miles [1] - 14:24
million [3] - 168:1, 171:21, 179:5
mind [1] - 181:23
mine [2] - 37:17, 143:1
minimum [2] - 4:12, 167:11
mining [1] - 117:15
Minnesota [1] - 181:11
minus [1] - 168:3
minutes [9] - 9:2, 23:22, 23:23, 55:22, 79:11, 81:1, 81:4, 106:9, 150:11
mischaracterizes [2] - 25:7, 111:14
mischaracterizing [1] - 112:15
misleading [1] - 69:4
misnomer [2] - 42:1, 42:12
misrepresenting [3] - 50:7, 50:9, 53:10
missing [5] - 73:23, 78:22, 79:16, 80:12, 80:18
mistake [1] - 121:8
mitigation [4] - 18:21, 18:22, 18:24, 166:8
mobile [1] - 84:3
mode [1] - 146:11
model [10] - 21:4, 49:15, 59:22, 90:17, 91:13, 96:8, 96:13, 146:10, 176:15
modeled [5] - 19:20, 89:12, 129:11, 129:18, 130:2
modeling [16] - 12:17, 12:21, 13:2, 24:22, 28:14, 28:15, 28:16, 89:11, 89:24, 100:24, 103:13, 103:14, 130:3, 144:16, 153:1, 154:17
models [8] - 24:17, 45:8, 45:15, 46:8,

49:13, 49:17,
144:15, 176:13
Monday [13] - 5:4,
5:22, 6:20, 8:8, 11:9,
12:10, 16:24, 20:21,
44:16, 47:24, 83:7,
85:2, 124:17
money [3] - 172:24,
173:2, 173:4
monitoring [2] - 13:3,
145:9
monthly [1] - 181:12
months [4] - 14:11,
15:8, 45:19, 73:2
Moore [6] - 44:16,
99:14, 105:18,
111:4, 140:24,
167:23
morality [1] - 108:2
morals [2] - 38:22,
107:24
Morgan [5] - 17:10,
48:7, 90:12, 132:20,
167:22
morning [1] - 90:4
most [8] - 14:24,
114:17, 135:6,
146:9, 153:16,
153:18, 157:11,
168:21
mostly [1] - 46:22
motion [1] - 57:20
mounted [1] - 146:11
move [6] - 28:9, 66:7,
67:4, 87:1, 106:18,
159:16
moves [1] - 136:4
moving [2] - 46:16,
131:6
mowed [1] - 33:19
MR [600] - 2:3, 2:4,
2:5, 2:6, 2:7, 2:8,
2:10, 2:11, 2:12,
2:14, 2:15, 2:16,
2:17, 2:18, 2:19,
2:20, 3:9, 3:11, 3:12,
3:13, 3:14, 3:15,
3:16, 3:17, 3:18,
3:20, 4:24, 5:9, 5:12,
5:13, 5:20, 6:3, 6:4,
6:11, 6:13, 7:9, 7:11,
7:13, 7:17, 9:10,
11:1, 11:2, 11:5,
11:6, 11:12, 11:15,
11:24, 16:14, 16:20,
18:2, 18:5, 18:12,
20:6, 20:10, 21:12,
21:14, 21:15, 21:17,
22:2, 22:21, 22:22,
22:24, 23:2, 23:4,

23:5, 23:8, 23:10,
23:15, 23:18, 23:19,
23:21, 23:23, 23:24,
24:2, 24:4, 25:6,
25:9, 25:14, 25:16,
25:17, 26:18, 26:22,
26:24, 27:3, 27:5,
27:6, 27:8, 27:9,
27:12, 27:18, 27:22,
27:23, 28:11, 28:12,
28:13, 28:18, 29:3,
29:11, 29:18, 29:19,
30:2, 30:15, 30:23,
31:14, 32:4, 32:16,
32:19, 34:11, 34:13,
34:14, 34:18, 35:7,
35:8, 35:18, 36:7,
36:11, 36:12, 36:14,
36:16, 36:20, 36:21,
36:24, 37:15, 37:19,
38:11, 40:8, 40:12,
40:23, 41:2, 41:4,
41:19, 42:3, 42:7,
42:9, 42:10, 42:13,
42:15, 42:16, 42:17,
42:21, 43:22, 44:2,
44:3, 44:4, 44:6,
44:7, 44:8, 44:9,
44:10, 48:23, 49:1,
49:21, 50:4, 50:11,
50:13, 50:14, 50:15,
50:17, 50:18, 50:20,
50:22, 50:23, 50:24,
51:4, 51:5, 51:7,
51:10, 51:11, 51:16,
51:18, 51:23, 52:2,
52:6, 52:7, 52:9,
52:10, 52:13, 52:17,
52:21, 52:23, 52:24,
53:2, 53:3, 53:12,
53:14, 53:18, 53:20,
54:9, 54:10, 54:18,
54:21, 55:2, 55:3,
55:7, 55:9, 55:19,
55:21, 55:22, 55:24,
56:4, 56:5, 56:7,
56:8, 56:10, 56:12,
56:14, 56:15, 56:22,
56:23, 57:14, 57:16,
58:4, 59:5, 59:6,
59:8, 59:11, 59:12,
59:13, 60:5, 60:6,
60:7, 60:8, 60:19,
61:1, 61:3, 61:10,
61:12, 61:13, 61:15,
61:16, 61:17, 61:22,
62:1, 62:2, 62:20,
62:22, 62:24, 63:12,
63:15, 63:16, 63:19,
63:20, 63:24, 64:1,
64:3, 64:6, 64:8,

64:9, 64:10, 64:13,
64:14, 64:22, 64:23,
65:1, 65:5, 65:6,
65:7, 65:10, 65:18,
66:13, 66:14, 67:3,
67:5, 67:6, 67:10,
69:2, 69:12, 69:19,
69:22, 69:23, 70:1,
70:3, 70:4, 70:11,
70:16, 70:17, 70:22,
71:19, 71:21, 71:22,
72:13, 72:16, 73:24,
74:4, 74:5, 74:6,
75:20, 75:22, 75:23,
76:12, 76:20, 76:22,
77:23, 78:1, 78:2,
78:5, 78:9, 78:14,
78:15, 78:17, 78:20,
79:6, 79:13, 79:15,
79:18, 79:20, 80:3,
80:5, 80:7, 80:10,
80:16, 80:22, 80:23,
81:6, 81:13, 81:14,
81:15, 81:16, 81:17,
81:19, 81:24, 82:1,
82:4, 82:5, 82:8,
82:10, 82:12, 82:13,
82:14, 82:17, 82:18,
82:19, 82:20, 82:21,
83:3, 86:5, 86:11,
86:14, 86:21, 86:22,
86:23, 87:2, 87:8,
87:10, 87:12, 87:13,
87:15, 87:16, 87:18,
87:21, 87:24, 91:1,
91:3, 91:4, 91:6,
91:7, 91:8, 92:4,
92:6, 92:23, 93:1,
93:7, 93:9, 93:10,
93:15, 93:18, 93:20,
93:21, 93:23, 94:4,
94:5, 94:7, 94:11,
94:15, 94:17, 94:20,
94:22, 95:1, 95:3,
95:7, 95:10, 95:12,
95:13, 95:17, 95:20,
96:21, 96:24, 97:6,
97:9, 97:11, 97:14,
97:15, 98:6, 98:13,
98:15, 99:1, 99:3,
99:4, 99:13, 99:22,
99:23, 99:24, 100:1,
100:13, 100:14,
100:15, 100:16,
101:2, 101:4, 101:5,
101:6, 101:10,
101:13, 101:16,
101:19, 103:2,
103:3, 103:5,
103:13, 103:18,
104:4, 105:4,

105:12, 105:13,
105:17, 105:23,
106:1, 106:5, 106:8,
106:11, 106:17,
107:3, 107:6, 107:7,
107:15, 107:16,
107:22, 107:23,
108:7, 108:9,
108:10, 108:24,
109:15, 109:20,
109:22, 109:24,
110:1, 110:6,
111:13, 112:1,
112:3, 112:10,
112:16, 112:18,
113:2, 113:11,
113:13, 113:21,
113:24, 117:3,
117:7, 117:10,
117:19, 117:21,
117:23, 118:1,
118:14, 118:17,
118:18, 118:21,
119:4, 119:9,
119:16, 119:18,
119:19, 119:20,
119:23, 120:6,
120:11, 120:13,
120:18, 120:21,
121:2, 121:3, 121:5,
121:6, 121:9,
121:10, 121:12,
121:16, 121:19,
121:21, 122:7,
122:9, 122:11,
122:13, 122:16,
122:19, 122:22,
123:2, 127:1, 127:4,
127:10, 127:24,
128:5, 128:7, 128:8,
128:12, 128:14,
128:24, 129:3,
130:14, 130:16,
130:18, 131:12,
131:14, 131:15,
131:19, 131:20,
131:22, 131:24,
132:1, 132:2, 132:4,
133:10, 133:12,
133:14, 133:15,
133:16, 133:18,
133:23, 134:3,
134:11, 134:15,
134:17, 134:22,
134:23, 135:1,
135:3, 135:5, 135:8,
135:14, 137:5,
137:20, 137:24,
138:8, 138:18,
138:19, 138:20,
139:9, 139:10,

140:3, 140:7,
141:17, 141:20,
141:22, 142:6,
142:9, 142:10,
142:11, 148:2,
148:4, 148:20,
149:5, 149:13,
149:18, 150:1,
150:2, 150:11,
150:12, 150:14,
150:16, 150:17,
150:18, 150:19,
150:23, 156:18,
156:19, 157:18,
157:21, 157:24,
163:5, 163:9,
163:12, 179:24,
180:2, 180:3, 180:5,
180:6, 180:12,
180:13, 180:15,
182:9, 182:13,
183:15, 184:10,
184:11, 184:17,
184:22
MS [50] - 2:9, 2:13,
23:13, 23:17, 23:20,
29:24, 30:5, 31:9,
31:23, 32:7, 32:12,
32:18, 32:22, 37:18,
38:1, 40:19, 43:20,
43:23, 44:5, 53:9,
80:13, 86:6, 86:13,
93:6, 96:23, 97:8,
97:10, 97:13,
100:22, 101:3,
102:22, 103:11,
104:21, 107:13,
107:21, 108:22,
109:17, 122:5,
122:8, 122:10,
122:12, 122:15,
122:18, 122:21,
123:1, 123:4, 127:3,
127:9, 127:15,
127:23
multiple [6] - 45:5,
49:12, 91:12,
141:23, 147:6, 156:4
municipalities [1] -
27:20
municipality [1] -
74:12
murmuring [2] - 4:3,
4:12

N

nacelle [3] - 146:10,
147:12, 161:7
name [25] - 22:20,
23:6, 29:24, 30:11,

31:3, 31:6, 31:8,
31:12, 36:10, 44:8,
51:5, 82:3, 82:5,
93:13, 93:14, 98:11,
98:18, 104:13,
104:15, 122:7,
128:4, 128:5,
134:21, 138:17,
163:1
names [3] - 31:17,
49:24, 98:21
National [5] - 84:14,
85:10, 85:19, 87:10,
154:14
nautical [1] - 14:24
navigate [1] - 102:13
navigated [1] - 145:6
near [2] - 18:6, 106:9
nearby [1] - 14:15
nearest [1] - 140:21
necessarily [5] -
79:20, 130:6, 152:3,
152:11, 175:9
necessary [2] - 15:21,
139:3
need [18] - 4:10,
18:21, 18:23, 19:1,
19:3, 35:4, 36:14,
48:13, 66:7, 71:12,
76:9, 93:3, 136:22,
139:7, 149:10,
174:13, 176:9,
176:19
needed [2] - 144:14,
181:16
needs [1] - 157:23
negate [1] - 116:21
negotiated [1] - 92:21
negotiating [1] -
175:23
negotiations [1] -
41:13
neighbor [9] - 19:8,
30:6, 30:8, 110:3,
117:1, 130:12,
130:15, 130:22
Neighbor [8] - 6:16,
6:19, 7:2, 44:12,
44:18, 113:1,
130:16, 132:5
neighbors [1] - 130:7
net [2] - 176:13,
176:24
neutral [5] - 9:17,
9:23, 85:16, 94:18,
94:23
never [6] - 13:1, 21:23,
146:6, 178:21,
183:5, 184:15
news [1] - 5:13

NEXRAD [2] - 85:14,
85:20
next [26] - 11:3, 32:16,
32:20, 35:9, 36:8,
49:22, 51:3, 54:23,
58:3, 70:1, 70:5,
72:15, 73:19, 73:21,
78:23, 80:21, 81:9,
81:12, 81:13,
110:23, 127:22,
138:9, 146:11,
147:20, 163:17
next-to-last [2] -
73:19, 73:21
nice [3] - 4:13, 81:20,
173:4
niece [1] - 33:23
night [24] - 3:23, 4:16,
5:4, 5:22, 6:20, 8:8,
11:7, 20:21, 82:2,
82:7, 85:2, 90:4,
90:16, 123:11,
123:12, 124:15,
124:17, 125:14,
131:21, 143:5,
144:16, 148:13,
148:16, 184:22
night's [1] - 83:7
nights [3] - 99:14,
101:6, 106:23
nine [1] - 185:4
NO [1] - 2:23
NOAA [1] - 85:9
nobody [3] - 4:13,
135:8, 171:1
noise [36] - 13:16,
13:18, 32:23, 34:8,
58:9, 67:15, 95:24,
96:3, 96:5, 96:9,
96:12, 99:18, 99:19,
100:2, 100:6,
100:11, 101:24,
102:17, 103:22,
104:12, 104:17,
104:18, 106:19,
108:15, 108:19,
108:23, 109:7,
109:8, 110:5, 110:8,
115:2, 124:15,
124:19, 126:14,
180:22
noises [1] - 102:21
noisiest [2] - 96:15,
96:16
noisy [1] - 125:19
non [6] - 12:7, 13:7,
19:24, 116:22,
129:20, 143:19
non-participant [2] -
12:7, 116:22

none [1] - 29:15
nonparticipants [1] -
140:23
nonparticipating [15]
- 12:3, 12:10, 19:2,
19:15, 19:24, 36:1,
88:5, 110:11,
114:10, 116:11,
116:17, 126:12,
129:9, 129:11, 143:4
noon [3] - 88:19, 90:2,
90:6
normal [1] - 49:20
north [6] - 17:22,
155:2, 155:20,
156:8, 156:22,
167:24
North [5] - 5:24,
43:12, 43:14,
132:23, 133:8
northern [2] - 82:17,
135:3
note [2] - 62:5, 100:9
noted [1] - 32:13
notes [3] - 10:13,
62:5, 186:7
nothing [6] - 70:10,
74:2, 86:16, 87:8,
142:24, 182:24
notice [3] - 53:16,
54:13, 55:4
Notice [1] - 53:22
noticed [1] - 14:10
NTIA [3] - 84:15, 85:1,
86:8
Number [4] - 49:23,
51:2, 118:3, 118:10
number [21] - 6:23,
13:21, 13:23, 41:7,
51:6, 67:13, 67:23,
74:15, 78:6, 84:21,
111:3, 111:6, 118:9,
126:7, 137:21,
141:6, 149:14,
152:9, 153:21,
155:7, 163:22
numbered [2] - 38:7,
50:18
numbering [1] -
141:15
numbers [4] - 49:24,
51:6, 51:13, 137:21
numerous [3] - 48:20,
55:16, 72:18

O

o'clock [2] - 88:19,
184:24
oath [1] - 11:13

object [22] - 28:18,
30:16, 34:12, 40:9,
40:20, 52:17, 52:19,
60:19, 69:4, 79:7,
94:20, 98:15,
101:11, 109:17,
111:8, 111:11,
111:13, 113:7,
117:3, 120:7,
120:18, 121:12
objected [3] - 98:23,
99:17, 117:22
objecting [4] - 79:21,
137:17, 139:10,
139:24
objection [30] - 25:6,
25:10, 28:22, 29:4,
29:5, 30:24, 34:19,
34:21, 40:14, 48:23,
50:4, 52:22, 56:1,
69:13, 70:12, 74:1,
98:14, 103:6, 105:5,
112:2, 112:11,
113:3, 113:10,
113:22, 117:11,
118:2, 118:15,
119:16, 120:10,
120:11
objects [1] - 135:10
obligation [1] - 113:7
obligations [1] -
111:23
observed [1] - 15:17
obsolete [1] - 172:9
obtain [3] - 19:6, 77:3,
77:6
obtaining [1] - 26:9
occupied [7] - 12:7,
12:10, 19:2, 19:15,
114:12, 114:13,
129:20
occur [9] - 80:2,
112:9, 160:9,
164:22, 165:3,
171:8, 178:6,
178:24, 183:23
occurred [1] - 113:19
octave [8] - 33:13,
33:15, 33:16, 99:7,
102:5, 103:24,
126:6, 126:9
October [1] - 166:23
off-air [1] - 15:13
office [2] - 5:23, 6:21
Officer [1] - 1:7
Official [3] - 1:23,
186:2, 186:18
offsets [1] - 87:18
often [1] - 27:24
oil [5] - 146:22,

146:24, 147:5,
147:8, 147:12
oils [1] - 147:8
OLD [1] - 97:9
Old [3] - 6:1, 97:8,
97:9
old [10] - 16:2, 30:13,
90:17, 91:13, 99:11,
101:2, 101:5,
102:23, 105:10,
160:21
old-school [1] - 16:2
ON [1] - 1:1
once [8] - 15:3, 28:1,
54:12, 55:4, 64:18,
77:9, 136:6, 178:1
one [65] - 4:16, 6:12,
7:24, 13:8, 15:16,
18:19, 29:12, 34:22,
37:23, 39:15, 40:2,
42:5, 42:17, 44:23,
45:13, 47:24, 52:23,
61:4, 62:8, 63:12,
68:15, 70:1, 72:5,
75:16, 75:24, 78:10,
78:22, 88:8, 92:11,
96:15, 98:7, 98:10,
107:6, 112:9, 113:4,
113:6, 116:24,
121:5, 124:2, 126:7,
126:16, 126:22,
127:16, 129:21,
131:19, 135:16,
142:1, 144:22,
147:24, 148:21,
153:14, 153:18,
159:21, 162:15,
165:2, 165:5,
165:10, 174:15,
178:3, 178:14,
180:16, 183:17
one-way [1] - 113:6
ones [5] - 13:13, 15:1,
15:2, 76:9, 142:1
ongoing [1] - 131:3
online [2] - 148:23,
154:12
onsite [3] - 31:20,
125:21, 145:12
open [3] - 75:23,
108:17, 175:22
opening [1] - 32:13
operate [3] - 90:17,
91:15, 172:1
OPERATE [1] - 1:2
operates [5] - 73:9,
175:13, 175:14,
176:7, 176:18
operating [1] - 89:16
operation [5] - 12:20,

38:20, 67:12, 178:1, 178:17
operational [3] - 75:2, 75:3, 146:18
operations [3] - 13:21, 41:12, 125:21
operators [1] - 50:1
opines [1] - 99:6
opinion [3] - 31:13, 117:5, 175:18
opponent [1] - 9:18
opponents [1] - 9:24
opposed [8] - 9:17, 10:3, 10:5, 63:5, 95:5, 95:6, 152:6, 184:7
opposite [1] - 66:18
opposition [2] - 94:1, 94:3
optimist [1] - 9:10
option [2] - 165:15, 165:19
order [2] - 7:7, 111:11
orders [1] - 111:5
ordinance [73] - 13:3, 19:1, 19:14, 20:15, 26:2, 35:23, 36:3, 37:10, 37:13, 37:16, 37:21, 37:24, 38:7, 39:9, 39:11, 39:20, 39:24, 40:21, 46:12, 47:7, 47:15, 50:9, 50:12, 50:14, 53:8, 53:10, 53:12, 54:10, 56:17, 58:1, 58:10, 58:16, 60:9, 60:11, 60:20, 61:18, 62:7, 63:1, 63:14, 63:15, 65:7, 65:14, 66:4, 66:20, 67:11, 68:16, 69:5, 69:9, 70:6, 70:13, 70:14, 71:23, 72:3, 72:9, 73:13, 73:21, 74:2, 74:14, 74:17, 75:13, 75:14, 75:16, 75:21, 79:17, 118:7, 137:4, 137:7, 140:2, 175:2, 181:6, 183:24
Ordinance [1] - 49:22
ordinances [1] - 63:16
original [1] - 179:7
Orsted [1] - 90:22
otherwise [2] - 72:7, 136:11
ourselves [1] - 153:16
out-of-county [1] - 106:9
out-of-town [1] - 23:22

outbuildings [1] - 33:20
outdated [1] - 153:20
outer [1] - 15:2
outfit [1] - 95:18
outlined [1] - 167:10
output [1] - 96:6
outside [6] - 33:1, 125:7, 157:11, 162:18, 171:9, 183:16
over-the-air [1] - 16:3
overall [1] - 25:1
overhead [1] - 158:14
overlapping [1] - 102:10
overrule [3] - 25:9, 40:13, 49:1
overruled [2] - 40:23, 101:13
overseeing [1] - 37:6
overview [1] - 35:10
own [12] - 26:13, 90:17, 91:15, 110:4, 116:12, 116:14, 117:2, 132:9, 154:10, 171:23, 174:7, 175:16
owned [2] - 90:22, 156:10
owner [5] - 111:7, 111:18, 112:12, 157:2, 157:5
owners [2] - 50:1, 50:2
owns [2] - 21:4, 116:17

P

P-h-i-p-p-s [1] - 134:22
p.m [5] - 1:5, 185:1, 185:3, 185:8
pad [1] - 146:11
pad-mounted [1] - 146:11
page [54] - 18:14, 18:15, 20:11, 37:3, 37:4, 39:18, 41:6, 42:22, 43:10, 43:11, 43:16, 46:9, 47:13, 47:18, 50:16, 51:3, 52:14, 53:4, 53:7, 53:15, 53:21, 54:23, 54:24, 58:5, 58:9, 60:9, 60:16, 62:4, 67:11, 67:17, 67:20, 67:22, 68:13, 68:16, 73:22, 78:23, 79:17,

100:21, 102:3, 111:7, 143:13, 154:19, 155:6, 157:15, 159:3, 163:21, 167:5, 176:17, 182:22
pages [6] - 36:14, 69:16, 69:17, 72:7, 72:8, 100:17
paid [3] - 41:8, 130:11, 130:13
painfully [1] - 49:16
paragraph [7] - 46:9, 58:6, 70:5, 70:8, 137:7, 167:6
Paralegal [1] - 1:11
paraphrase [1] - 85:4
paraphrased [1] - 53:16
parcel [18] - 88:5, 116:17, 116:19, 141:12, 155:2, 155:18, 155:19, 155:20, 155:23, 156:3, 156:4, 156:9, 156:10, 157:2, 157:5, 157:9
Parcels [1] - 155:2
parcels [2] - 46:24, 157:10
pardon [1] - 167:22
part [25] - 29:17, 41:24, 42:2, 60:15, 61:20, 65:8, 65:21, 66:21, 74:17, 78:12, 92:16, 100:20, 101:10, 101:11, 102:19, 103:21, 104:11, 107:10, 107:12, 111:23, 112:4, 116:6, 138:15, 151:4, 159:24
participant [3] - 12:7, 13:6, 116:22
participants [1] - 12:3
participating [17] - 19:7, 19:17, 19:23, 20:1, 20:12, 36:1, 110:11, 114:11, 114:12, 116:12, 116:16, 126:12, 128:16, 129:20, 130:16, 130:20, 143:19
Participating [3] - 6:16, 6:18, 7:2
Participation [1] - 44:14
participation [2] -

130:23, 131:1
particular [7] - 66:11, 154:1, 155:18, 158:9, 158:22, 159:3, 163:24
parties [2] - 22:15, 59:3
partner [1] - 136:24
partners [1] - 73:14
parts [2] - 130:21, 147:12
party [11] - 17:17, 112:21, 112:22, 113:5, 113:16, 113:17, 181:8, 181:16, 183:17, 183:19
party's [2] - 112:23, 113:17
passed [1] - 106:12
past [2] - 15:4, 109:14
pat [1] - 3:16
path [1] - 123:17
paths [2] - 84:4, 124:1
patience [1] - 121:20
pause [1] - 156:17
pay [13] - 21:21, 39:21, 40:3, 40:6, 40:15, 40:18, 40:24, 41:5, 41:14, 170:11, 174:10, 179:10, 183:18
paying [1] - 170:15
payment [3] - 7:6, 7:11, 112:14
pays [1] - 171:19
penny [1] - 45:24
people [21] - 4:15, 5:8, 6:22, 9:23, 12:22, 14:14, 24:15, 25:3, 28:1, 69:17, 83:17, 94:1, 114:4, 116:12, 140:10, 141:23, 152:19, 153:16, 153:23, 157:20
people's [1] - 51:13
per [4] - 79:21, 88:14, 88:15, 129:12
percent [11] - 120:15, 120:17, 170:20, 171:14, 171:20, 172:15, 173:20, 173:22, 174:2, 174:17
percentages [1] - 172:18
perfectly [1] - 71:4
perform [5] - 161:12, 162:6, 164:11, 171:6, 171:9

performed [1] - 162:18
perhaps [3] - 43:5, 48:1, 74:7
period [6] - 14:11, 14:12, 15:7, 84:22, 85:5, 139:6
permit [45] - 18:15, 21:9, 25:13, 25:15, 26:1, 29:16, 32:1, 47:16, 49:5, 49:12, 50:20, 50:24, 54:2, 57:5, 60:17, 61:20, 62:9, 62:10, 62:13, 62:14, 62:19, 63:5, 64:5, 64:24, 65:9, 65:22, 66:21, 69:7, 69:11, 71:17, 72:5, 73:12, 73:17, 75:4, 75:9, 76:5, 76:8, 77:3, 77:6, 78:6, 78:8, 176:3, 179:19, 182:6
Permit [4] - 49:23, 51:12, 54:21, 71:24
permits [7] - 26:10, 47:9, 47:12, 48:16, 49:12, 174:13
permitted [6] - 53:8, 54:12, 54:14, 55:4, 55:6, 56:18
permitting [7] - 24:19, 25:1, 34:16, 41:7, 41:12, 48:5, 175:15
person [12] - 10:2, 13:21, 16:8, 16:12, 19:9, 101:21, 105:20, 119:10, 128:17, 135:19, 158:20, 160:14
person's [1] - 31:6
personal [5] - 30:16, 30:22, 51:13, 120:5, 120:7
personally [4] - 26:12, 29:14, 69:2, 163:16
persons [5] - 9:16, 9:21, 10:4, 31:17, 158:21
pertaining [2] - 67:14, 112:13
pertinent [2] - 57:23, 69:21
petition [1] - 113:20
phase [5] - 47:15, 145:20, 176:2, 178:12, 182:6
phased [1] - 172:22
Phil [1] - 130:9
Phillip [2] - 82:4,

93:16 PHILLIP [2] - 82:8, 93:16 PHIPPS [13] - 134:22, 135:1, 135:5, 135:14, 138:8, 138:19, 138:20, 139:9, 140:7, 141:22, 142:9, 142:11, 148:2 Phipps [8] - 134:22, 134:24, 135:4, 135:11, 140:5, 141:18, 148:4, 180:16 PHIPPS..... [1] - 2:16 phone [10] - 6:21, 13:23, 49:24, 51:5, 51:6, 51:13, 83:22, 135:22, 138:23, 139:1 photograph [1] - 158:11 photographs [1] - 154:12 photos [2] - 153:14, 153:21 phrase [4] - 68:14, 68:20, 69:14, 111:14 phrases [1] - 54:8 physically [1] - 118:24 Piatt [6] - 15:10, 18:4, 18:6, 30:10, 91:19, 99:15 pick [4] - 48:21, 135:21, 183:14, 184:2 picks [1] - 172:14 pickup [1] - 57:1 picture [1] - 156:12 piece [1] - 108:16 place [6] - 36:5, 63:21, 109:13, 159:23, 166:14, 186:7 places [2] - 18:13, 104:16 plan [40] - 8:2, 8:3, 20:23, 21:6, 21:7, 25:19, 25:20, 29:16, 47:8, 52:18, 64:4, 72:21, 72:22, 72:24, 73:9, 73:13, 130:4, 136:16, 137:14, 138:5, 143:14, 147:14, 147:16, 162:13, 162:22, 163:6, 163:15, 166:1, 169:21, 170:19, 174:24,	175:1, 175:3, 175:4, 175:8, 176:4, 176:15, 176:18, 177:17 plane [1] - 123:6 PLANNING [1] - 1:1 planning [4] - 26:6, 26:7, 147:19 Planning [7] - 3:2, 4:6, 11:20, 16:17, 54:4, 180:9, 185:6 plans [15] - 21:9, 25:22, 25:24, 29:15, 61:5, 61:7, 62:12, 64:12, 64:19, 75:6, 75:8, 75:12, 79:24, 100:4, 147:22 play [1] - 76:23 pleases [1] - 86:9 pleasure [1] - 149:22 pledge [2] - 3:7, 3:8 point [26] - 7:1, 20:20, 27:1, 51:7, 51:23, 66:15, 71:7, 71:15, 79:15, 79:19, 102:2, 137:5, 137:12, 163:17, 169:3, 171:1, 171:18, 172:9, 172:11, 172:19, 172:24, 175:12, 179:2, 179:4, 179:17, 181:23 points [3] - 42:19, 57:9, 148:22 pollution [1] - 104:24 Pollution [10] - 33:2, 33:14, 99:7, 104:14, 105:8, 110:13, 110:22, 125:10, 126:5, 144:17 pond [1] - 147:4 Pontiac [1] - 148:16 pop [1] - 71:13 porch [1] - 83:6 portion [8] - 31:2, 33:17, 102:11, 112:7, 117:13, 134:4, 134:9, 134:13 portions [1] - 158:15 position [4] - 9:18, 74:22, 120:16, 173:12 possible [5] - 5:17, 17:2, 156:12, 182:7 possibly [1] - 118:12 post [13] - 13:3, 28:14, 28:15, 28:24, 29:8, 83:9, 100:18, 173:22, 174:1,	174:11, 174:16, 177:3, 179:18 posted [5] - 176:9, 176:19, 177:24, 178:4, 178:19 posting [2] - 171:13, 179:1 potential [5] - 73:15, 142:2, 144:10, 147:17, 183:18 potentially [1] - 164:12 potholes [2] - 145:3, 145:16 poured [1] - 79:3 power [11] - 58:7, 58:11, 58:14, 58:19, 58:23, 59:21, 96:7, 125:2, 125:5, 146:3, 160:21 powered [1] - 96:5 powers [3] - 160:19, 161:1, 161:3 practice [2] - 28:8, 57:18 Prairie [1] - 17:10 precedes [1] - 111:16 predates [1] - 90:14 predict [2] - 171:1, 179:15 predictable [2] - 120:15, 120:17 preliminary [8] - 4:22, 5:1, 52:15, 52:18, 143:14, 152:24, 175:1, 175:7 prepared [7] - 7:21, 102:23, 105:7, 105:10, 152:10, 168:12, 169:11 preparing [2] - 122:24, 177:9 presence [1] - 116:20 present [1] - 8:24 presentation [6] - 9:4, 11:16, 106:24, 121:7, 121:13, 167:23 presented [2] - 106:20, 106:22 pressure [3] - 103:24, 152:5, 155:13 presupposes [1] - 80:13 pretty [3] - 49:18, 100:6, 151:21 Prevailing [3] - 169:13, 169:18, 170:5 prevailing [5] -	112:21, 112:22, 113:5, 113:16, 113:17 prevention [1] - 147:15 preview [1] - 5:5 previously [2] - 29:10, 107:8 primary [1] - 159:21 private [1] - 108:16 privately [1] - 110:5 problem [1] - 137:24 problems [1] - 91:24 procedure [1] - 13:20 Proceedings [2] - 185:9, 186:5 proceedings [2] - 49:4, 156:17 process [21] - 13:4, 17:12, 32:15, 34:16, 60:24, 66:21, 116:6, 135:20, 135:24, 136:9, 137:6, 137:16, 138:15, 139:21, 140:1, 145:9, 171:20, 177:20, 180:17, 181:15, 183:4 processes [1] - 41:7 procurement [2] - 46:1, 46:6 professional [2] - 66:23, 163:7 professor [1] - 8:13 proffer [2] - 5:19, 6:15 proffers [1] - 5:2 profit [2] - 168:17, 169:4 prohibited [1] - 97:2 prohibition [1] - 76:4 Project [2] - 30:11, 91:19 project [121] - 8:6, 9:22, 10:3, 10:5, 12:20, 13:1, 13:22, 14:21, 15:3, 15:4, 15:10, 16:22, 17:9, 17:22, 24:14, 24:16, 24:17, 24:19, 24:21, 25:2, 25:23, 27:10, 29:15, 32:3, 35:7, 35:8, 36:4, 38:21, 42:5, 43:1, 43:13, 43:19, 45:8, 45:11, 46:11, 53:6, 54:1, 61:18, 68:15, 68:18, 68:20, 68:22, 73:8, 73:9, 73:16, 75:5, 75:8, 75:10, 76:14, 77:2, 77:4, 77:21,	79:24, 84:20, 85:12, 85:16, 85:21, 86:3, 86:4, 90:14, 90:16, 90:18, 90:19, 91:13, 91:24, 94:19, 101:18, 101:20, 102:13, 103:20, 104:3, 104:10, 106:2, 106:19, 106:20, 108:5, 115:4, 120:4, 121:11, 122:19, 123:21, 128:10, 129:22, 129:24, 130:24, 131:2, 133:8, 134:5, 135:2, 136:4, 137:11, 143:16, 145:21, 146:14, 160:17, 161:17, 161:23, 162:7, 162:10, 164:2, 164:5, 164:14, 164:22, 164:24, 165:1, 165:10, 165:11, 168:5, 168:22, 171:13, 172:12, 172:14, 172:19, 178:1, 178:8, 178:10, 178:16, 179:3, 179:11, 183:21 projects [10] - 24:6, 24:7, 24:8, 49:16, 83:13, 114:19, 114:22, 115:7, 162:1, 181:10 promotes [1] - 108:5 promulgated [1] - 99:8 proof [1] - 136:14 proper [1] - 102:20 properly [2] - 16:23, 113:9 PROPERTIES [1] - 1:2 properties [2] - 19:18, 92:17 property [64] - 8:15, 8:20, 8:22, 9:9, 20:13, 33:1, 33:6, 33:18, 34:1, 34:2, 37:10, 38:4, 38:9, 38:23, 38:24, 39:3, 39:15, 50:1, 63:2, 87:19, 88:6, 89:17, 90:8, 101:22, 101:23, 102:21, 103:9, 103:22, 104:6, 104:8, 104:12, 104:19,
---	---	--	--	--

108:18, 109:4, 109:6, 109:11, 109:14, 116:13, 116:18, 116:23, 116:24, 117:16, 119:14, 120:3, 126:2, 132:8, 152:6, 152:14, 152:19, 153:3, 154:1, 154:4, 154:10, 156:21, 157:7, 158:9, 158:14, 158:15, 158:22, 159:13, 165:2, 179:7 proponent [1] - 9:18 proposal [1] - 85:12 proposed [6] - 7:15, 18:6, 43:19, 103:20, 104:10, 165:18 proposing [1] - 9:6 proprietary [4] - 97:1, 97:17, 98:1, 98:20 Prosperity [4] - 30:11, 91:19, 91:20, 92:11 protect [3] - 59:18, 108:19, 120:3 protected [1] - 21:11 protecting [1] - 110:2 protection [3] - 20:23, 73:6, 164:10 protects [2] - 164:17, 182:7 protocol [1] - 104:18 provide [25] - 50:8, 51:12, 58:7, 62:8, 62:10, 62:19, 68:22, 70:24, 71:1, 75:8, 103:23, 136:14, 136:16, 140:21, 141:5, 141:7, 141:9, 141:10, 141:11, 141:15, 142:19, 164:10, 176:11, 183:2 provided [24] - 47:11, 48:15, 50:6, 52:3, 58:12, 59:1, 60:2, 62:17, 63:8, 63:10, 73:9, 73:17, 85:21, 97:16, 126:18, 159:19, 160:14, 166:3, 169:1, 169:2, 174:24, 175:2, 176:14, 176:24 provides [1] - 114:9 providing [1] - 182:4 provision [13] - 7:4, 7:5, 7:12, 40:22, 75:3, 111:14, 111:17, 112:11,	113:4, 113:9, 113:12, 139:12, 139:17 provisions [3] - 7:3, 67:1, 72:10 proximity [3] - 123:16, 124:3, 124:13 PRP [1] - 1:23 public [33] - 3:23, 4:5, 9:13, 9:15, 10:2, 13:12, 22:16, 29:21, 38:22, 53:17, 54:13, 55:5, 59:16, 59:19, 60:15, 61:19, 84:1, 107:9, 107:11, 107:18, 108:13, 108:17, 112:6, 122:1, 128:2, 131:17, 134:19, 135:6, 148:6, 167:7, 184:23, 185:2 Public [1] - 53:22 published [2] - 54:13, 55:5 pull [1] - 12:15 pulled [1] - 85:1 purchase [1] - 92:16 purple [1] - 155:12 purpose [1] - 102:14 put [6] - 8:19, 82:15, 131:4, 140:15, 141:13, 148:23 putting [1] - 181:4	31:14, 32:5, 34:15, 35:3, 35:11, 35:14, 36:8, 36:13, 36:22, 56:8, 56:9, 56:16, 57:9, 78:3, 78:18, 81:7, 81:8, 82:2, 82:11, 83:1, 91:2, 93:2, 94:2, 95:3, 95:8, 97:23, 98:3, 99:10, 99:18, 100:20, 105:10, 105:21, 111:4, 120:20, 121:22, 122:2, 122:6, 122:23, 127:2, 128:1, 129:1, 129:6, 131:13, 131:16, 131:18, 134:18, 135:12, 140:6, 148:5, 148:7, 148:8, 148:11, 149:9, 149:14, 149:23, 150:4, 150:21, 151:17, 160:14, 177:12, 179:23, 180:2, 180:3, 180:6, 180:10, 180:16, 182:9, 184:11 quiet [1] - 157:22 quite [3] - 69:3, 71:8, 181:21 quote [2] - 53:23, 54:7 quoted [1] - 86:15	156:22, 158:3, 159:5 re-power [1] - 160:21 re-powers [3] - 160:19, 161:1, 161:3 read [10] - 12:9, 14:13, 15:13, 61:23, 62:3, 71:22, 102:19, 111:15, 113:11, 167:6 reading [4] - 50:12, 51:10, 52:24, 58:13 ready [3] - 36:15, 81:15, 145:19 realized [1] - 4:15 really [21] - 10:8, 16:2, 24:10, 26:15, 27:14, 57:12, 76:22, 95:23, 98:2, 108:4, 109:7, 131:5, 131:6, 131:10, 136:6, 143:6, 164:16, 164:21, 171:1, 172:8, 176:14 reason [10] - 31:12, 39:7, 75:1, 89:2, 165:7, 165:16, 171:18, 172:21, 178:7, 178:8 reasonable [11] - 7:14, 79:9, 79:13, 111:9, 111:10, 111:15, 111:17, 111:19, 111:21, 112:23, 113:18 reasonably [1] - 167:16 reasons [1] - 21:20 rebut [1] - 105:9 receive [3] - 113:6, 115:23, 116:4 received [2] - 63:22, 86:8 recent [2] - 153:18, 157:12 reception [2] - 84:2, 160:10 receptor [2] - 155:7, 155:19 receptors [1] - 102:9 recess [6] - 80:24, 81:1, 81:3, 149:15, 184:24, 185:7 reclamation [1] - 163:6 recommended [1] - 15:19 reconvene [2] - 3:2, 81:6 record [14] - 23:14, 60:15, 61:19, 80:14,	80:19, 86:15, 94:18, 109:18, 137:19, 139:12, 140:1, 156:18, 163:5, 163:9 recover [2] - 112:22, 113:17 recycled [1] - 177:10 red [1] - 14:16 redirect [2] - 149:24, 180:4 refer [2] - 24:15, 72:24 reference [6] - 12:15, 37:12, 130:14, 142:16, 156:15, 177:4 referenced [2] - 53:15, 90:2 referencing [3] - 83:21, 132:10, 152:20 referred [2] - 44:17, 133:12 referring [15] - 43:17, 54:19, 60:20, 61:4, 67:21, 69:3, 69:6, 69:9, 70:12, 85:20, 85:24, 87:21, 111:24, 156:2, 161:4 refers [1] - 68:15 reflect [2] - 163:5, 163:9 reflected [2] - 140:1, 169:20 reflecting [1] - 155:9 reframe [1] - 176:11 refresh [1] - 87:9 refused [1] - 99:17 regard [2] - 38:5, 126:11 regarding [1] - 78:18 regardless [4] - 75:15, 77:13, 181:21 regards [2] - 30:10, 102:23 Regional [2] - 1:20, 54:4 regular [1] - 122:16 regulation [2] - 103:16, 143:8 regulations [8] - 33:3, 99:8, 102:16, 103:8, 104:17, 104:20, 109:9, 110:22 relate [1] - 99:5 related [6] - 21:18, 46:22, 126:7, 137:10, 139:4, 169:17 relates [1] - 42:24 relating [1] - 113:15
Q		R		
qualification [1] - 101:14 qualified [1] - 117:8 qualify [2] - 24:12, 42:8 quantitative [2] - 103:19, 104:9 quantity [1] - 146:22 quarter [4] - 142:22, 142:23, 143:1, 143:3 quarters [1] - 128:11 questioned [1] - 44:17 questioning [6] - 10:16, 79:7, 79:10, 83:7, 104:22 questions [96] - 5:3, 5:8, 5:10, 5:21, 7:21, 8:2, 8:8, 8:21, 9:12, 9:23, 10:4, 10:16, 10:20, 11:17, 11:21, 16:11, 16:16, 18:8, 20:6, 20:11, 21:12, 22:2, 22:4, 22:13, 22:16, 25:12, 29:20,				

relation [7] - 124:12, 151:13, 152:9, 153:5, 160:9, 183:21, 183:22
relationship [1] - 163:18
relative [3] - 92:5, 101:24, 122:23
relatively [1] - 36:18
relevance [5] - 25:8, 26:19, 40:11, 118:3, 120:8
relevant [7] - 25:12, 26:22, 27:9, 28:6, 28:9, 34:17, 57:23
relying [1] - 153:20
remain [2] - 7:6, 11:13
remainder [1] - 155:14
remaining [1] - 81:2
remediations [1] - 15:21
remedies [3] - 75:3, 139:12, 139:17
remember [5] - 82:2, 129:6, 131:21, 163:1, 166:22
remind [2] - 79:8, 148:15
reminding [1] - 82:22
remote [1] - 125:21
removal [4] - 161:9, 164:1, 164:5, 164:14
remove [4] - 162:10, 165:1, 165:9, 179:5
removed [1] - 32:10
repaired [1] - 17:13
repeatedly [1] - 136:10
repetitive [1] - 135:23
rephrase [1] - 178:15
replaced [1] - 161:2
replacement [1] - 161:5
replacements [1] - 161:7
Report [1] - 186:4
report [27] - 12:14, 13:8, 13:9, 14:3, 14:6, 33:11, 68:4, 68:6, 68:9, 68:12, 77:11, 77:12, 77:20, 77:21, 105:11, 126:17, 129:16, 139:7, 142:14, 151:9, 151:14, 151:20, 152:10, 152:21, 154:18, 181:5, 181:12
reported [1] - 186:5
reporter [3] - 22:20,

82:6, 93:13
Reporter [4] - 1:23, 4:2, 186:3, 186:18
REPORTER [3] - 23:3, 157:17, 157:19
REPORTER'S [1] - 186:1
reporting [1] - 181:17
reports [3] - 47:8, 151:4, 181:13
represent [1] - 51:24
representation [2] - 62:18, 120:3
representative [2] - 27:2, 27:4
represented [1] - 27:6
representing [1] - 59:7
represents [1] - 27:19
request [2] - 86:17, 111:15
requested [4] - 54:14, 54:16, 55:5, 85:17
requests [2] - 6:22, 111:10
require [6] - 33:3, 35:2, 58:10, 75:11, 103:8, 167:16
required [15] - 14:17, 26:1, 35:24, 47:15, 48:4, 50:10, 61:14, 64:23, 71:16, 73:12, 147:24, 164:6, 166:19, 173:16, 177:23
requirement [11] - 13:7, 39:24, 77:19, 77:20, 152:3, 152:4, 171:14, 173:21, 174:1, 179:19, 183:24
requirements [31] - 18:20, 18:21, 18:22, 18:24, 19:23, 39:19, 63:2, 74:9, 74:10, 74:16, 74:18, 75:17, 76:8, 76:13, 76:18, 77:6, 77:10, 78:10, 110:21, 143:7, 143:8, 167:10, 167:15, 167:18, 170:6, 174:4, 174:7, 175:1, 175:2
requires [8] - 19:14, 37:10, 46:12, 58:16, 60:14, 68:4, 69:9, 74:22
reserve [1] - 170:24
reservoir [1] - 147:5
reside [2] - 93:5,

93:18
residence [20] - 33:6, 33:19, 33:20, 89:19, 114:13, 129:20, 140:20, 141:9, 142:17, 143:4, 153:24, 155:8, 155:9, 156:7, 156:9, 157:11, 158:3, 158:5, 158:21, 159:6
residences [10] - 12:10, 19:2, 19:19, 36:1, 36:4, 88:3, 114:10, 114:11, 141:6, 141:16
resident [9] - 13:6, 13:17, 19:24, 20:1, 56:3, 106:9, 129:9, 154:9, 159:11
residential [18] - 33:4, 33:7, 33:18, 102:3, 102:11, 110:11, 125:11, 126:2, 152:14, 152:18, 153:7, 155:3, 158:8, 158:16, 158:23, 159:10, 159:11, 159:12
residents [6] - 19:15, 20:13, 103:9, 129:11, 132:6, 143:18
resolution [8] - 13:4, 14:3, 136:3, 136:9, 136:15, 137:8, 141:2, 181:9
resolve [6] - 17:2, 160:3, 160:8, 180:21, 180:22, 181:16
resolved [9] - 14:7, 14:8, 136:12, 136:13, 138:10, 138:14, 139:13, 180:19, 181:6
resource [1] - 140:22
respect [9] - 26:18, 30:15, 35:16, 44:4, 45:15, 76:10, 106:5, 126:13, 184:23
respectfully [8] - 40:8, 61:15, 65:10, 79:6, 79:8, 89:1, 117:3, 120:18
respective [1] - 17:12
respond [5] - 64:8, 71:20, 73:15, 103:3, 139:18
response [4] - 72:22, 72:24, 73:5, 73:13

responsible [4] - 24:19, 25:5, 26:9, 151:2
rest [2] - 56:12, 142:4
restoration [2] - 144:20, 164:6
restore [4] - 165:1, 165:11, 165:12, 179:6
restrict [1] - 34:1
restrictions [1] - 78:7
restrictive [1] - 115:20
resumes [1] - 4:21
resumption [1] - 3:23
retained [1] - 59:9
reveal [1] - 98:19
revealed [1] - 98:21
reverses [1] - 57:12
review [5] - 64:19, 84:21, 85:6, 85:11, 153:8
review [1] - 113:20
reviewed [1] - 37:8
reviewing [2] - 59:3, 85:6
reviews [1] - 71:10
revocation [3] - 73:22, 74:19, 78:21
reword [1] - 164:15
rewrite [1] - 63:13
rights [1] - 34:5
ringing [1] - 6:21
ripped [1] - 32:9
risk [1] - 173:13
Rives [3] - 1:10, 10:23, 149:12
road [32] - 17:2, 17:8, 17:9, 24:1, 43:5, 43:6, 43:7, 47:19, 47:20, 47:21, 47:24, 48:5, 48:6, 48:14, 55:11, 55:15, 57:4, 124:5, 132:16, 132:22, 133:3, 133:11, 133:14, 134:1, 134:7, 134:9, 134:13, 137:13, 144:18, 145:1, 145:8, 179:14
Road [2] - 43:12, 134:4
roads [18] - 13:12, 16:22, 17:13, 17:18, 17:23, 17:24, 18:3, 18:6, 48:8, 48:12, 91:17, 133:6, 144:20, 144:24, 145:10, 145:13, 145:18
roadway [2] - 32:9,

32:10
roadways [1] - 17:3
rock [1] - 32:10
role [1] - 32:3
roll [1] - 3:9
room [6] - 37:15, 118:16, 118:17, 118:22, 130:24, 185:8
route [1] - 123:19
routes [2] - 124:11, 124:13
routinely [1] - 51:12
Royal [1] - 1:17
RS [1] - 169:21
RST [1] - 97:13
rule [1] - 94:13
rules [15] - 29:17, 40:5, 94:5, 94:8, 94:9, 102:15, 102:16, 102:20, 104:17, 106:12, 106:13, 106:14
rulings [3] - 56:19, 56:20, 57:12
Runner [3] - 120:24, 121:4, 121:5
running [3] - 136:1, 138:12, 148:13
runs [2] - 43:14, 113:4

S

S-h-e-r-m-a-n [1] - 36:11
safe [7] - 114:3, 114:5, 115:13, 115:21, 116:2, 123:22
safely [2] - 116:23, 185:5
Safety [1] - 9:3
safety [21] - 9:4, 9:9, 38:22, 73:16, 106:20, 106:22, 107:1, 107:3, 107:9, 107:10, 107:11, 107:21, 107:22, 107:23, 108:5, 110:3, 114:1, 114:9, 117:5, 117:6, 117:16
sake [2] - 20:12, 172:3
sale [3] - 20:24, 21:5, 178:2
Saluki [1] - 95:18
Saluki's [1] - 95:15
salvage [8] - 173:1, 173:6, 176:5, 176:12, 176:17, 176:23, 176:24, 177:4

same-side [1] - 10:15 Sapphire [1] - 86:1 Sara [1] - 123:17 Sarah [1] - 1:14 satellite [1] - 15:24 satisfactory [1] - 17:16 satisfied [2] - 65:14, 66:2 satisfies [1] - 86:5 satisfy [2] - 39:13, 74:10 satisfying [1] - 39:12 save [6] - 16:11, 32:20, 97:14, 99:11, 99:13, 177:12 scatter [1] - 16:4 scattering [1] - 15:14 scenario [3] - 21:19, 165:3, 179:9 scenarios [2] - 164:21, 165:5 schedule [3] - 8:7, 25:2, 41:7 school [2] - 16:2, 22:6 schools [1] - 108:13 scope [5] - 34:14, 40:10, 40:12, 92:10, 121:13 se [1] - 79:21 sealed [1] - 162:21 seat [2] - 129:17, 146:19 seated [3] - 29:23, 81:9, 81:10 second [8] - 3:22, 6:4, 37:12, 100:8, 129:15, 132:7, 133:21, 182:20 secondary [3] - 147:11, 147:13, 165:23 secret [5] - 59:17, 96:8, 97:18, 97:24, 98:12 secrets [1] - 97:21 Section [1] - 103:23 section [49] - 18:13, 37:13, 38:4, 50:14, 53:7, 53:12, 53:14, 53:16, 53:22, 54:11, 54:18, 54:20, 55:1, 56:16, 58:6, 58:9, 60:9, 60:11, 60:13, 60:20, 61:23, 62:8, 62:9, 65:20, 66:2, 66:3, 66:11, 66:17, 67:12, 68:13, 69:5, 69:8, 70:5, 70:12, 70:13, 71:23, 72:10,	73:22, 74:2, 76:4, 76:8, 77:18, 100:11, 100:13, 104:14, 104:15, 108:4 sections [2] - 63:1, 105:8 sector [1] - 172:8 see [21] - 12:21, 17:7, 23:7, 27:23, 27:24, 33:11, 65:3, 75:14, 83:6, 83:10, 88:10, 88:12, 88:22, 88:23, 129:6, 134:13, 141:14, 146:13, 152:21, 155:22 seem [2] - 37:17, 149:17 select [1] - 49:14 selected [1] - 49:6 selecting [1] - 49:15 selection [1] - 49:7 selfish [1] - 140:9 selfishly [1] - 150:10 sell [3] - 21:2, 21:7, 79:24 semantics [1] - 69:14 senior [1] - 24:18 sensors [1] - 125:22 sentence [5] - 41:9, 61:17, 66:11, 104:6, 104:7 sentiment [1] - 170:10 separate [2] - 58:8, 60:2 separately [2] - 51:13, 84:9 series [1] - 139:14 serious [2] - 119:2, 119:3 seriously [1] - 126:13 served [1] - 15:15 Service [3] - 85:10, 85:19, 87:11 service [1] - 15:17 services [1] - 84:4 session [1] - 142:7 sessions [1] - 185:2 set [4] - 77:10, 172:18, 172:19, 186:8 Set [1] - 154:15 setback [13] - 18:19, 19:9, 19:23, 19:24, 20:2, 34:4, 109:5, 109:7, 110:20, 115:13, 115:23, 140:16, 143:7 setbacks [21] - 12:2, 19:22, 45:16, 67:14, 76:13, 76:15, 87:22, 88:1, 88:3, 88:5,	114:8, 114:15, 114:19, 115:2, 115:21, 116:9, 118:6, 143:14, 143:17 sets [2] - 90:7, 154:14 seven [1] - 10:6 Seven [6] - 17:10, 48:7, 132:20, 134:2, 134:8, 134:10 several [14] - 6:22, 8:7, 8:21, 24:7, 25:24, 50:5, 73:5, 73:6, 102:12, 133:7, 140:10, 144:19, 160:19, 172:23 shadow [29] - 12:6, 12:8, 12:14, 13:9, 13:12, 18:20, 18:22, 18:23, 19:10, 28:20, 28:21, 29:1, 29:9, 45:15, 67:15, 89:2, 110:21, 118:6, 120:19, 120:22, 121:7, 129:12, 129:15, 129:18, 130:1, 143:8, 151:9, 151:10, 151:17 shadows [1] - 90:3 Shaffer [1] - 93:7 shaking [1] - 65:3 shall [20] - 39:20, 50:2, 50:6, 51:1, 51:8, 51:12, 61:19, 61:20, 65:8, 65:21, 66:20, 70:7, 70:18, 80:18, 104:18, 112:21, 113:16, 137:8, 167:11 shape [1] - 17:18 Shapiro [2] - 1:14, 37:19 SHAPIRO [1] - 37:18 shared [1] - 132:22 sheet [1] - 111:2 Sheet [1] - 111:3 sheets [1] - 101:23 sheriff [1] - 73:7 Sherman [31] - 36:9, 36:17, 41:2, 41:19, 42:10, 42:19, 50:7, 50:11, 52:12, 55:7, 56:2, 56:9, 57:8, 57:22, 59:12, 61:24, 65:3, 66:7, 67:9, 71:7, 72:15, 76:1, 78:3, 78:14, 81:8, 93:10, 98:22, 99:2, 182:21 SHERMAN [63] -	36:11, 36:14, 36:20, 36:24, 38:11, 41:4, 42:3, 42:9, 42:21, 44:3, 44:7, 44:9, 44:10, 49:21, 50:13, 50:15, 50:18, 50:22, 50:24, 51:5, 52:13, 52:23, 53:2, 53:3, 54:10, 54:21, 55:3, 55:9, 55:21, 56:4, 56:7, 56:10, 56:14, 56:22, 57:14, 58:4, 59:13, 60:5, 60:7, 60:8, 61:12, 61:15, 61:17, 62:1, 62:20, 63:19, 65:5, 65:7, 66:13, 67:5, 67:10, 69:22, 70:1, 70:4, 72:16, 78:5, 78:15, 78:20, 79:15, 80:5, 80:10, 93:9, 99:3 SHERMAN..... [1] - 2:10 shirt [1] - 127:11 shook [1] - 6:15 Shophia [1] - 1:14 short [4] - 81:17, 81:20, 81:21, 81:24 shorthand [2] - 186:5, 186:7 shot [1] - 150:13 show [6] - 64:12, 64:18, 76:15, 78:10, 102:3, 129:17 shows [1] - 100:5 shut [4] - 125:16, 125:17, 125:18, 125:20 side [9] - 9:19, 10:15, 10:18, 89:21, 92:1, 95:2, 109:4, 116:13, 139:15 sign [3] - 6:22, 131:1, 166:20 signal [3] - 15:13, 15:14, 16:7 signaling [1] - 167:4 signatures [3] - 44:23, 45:2, 45:4 signed [3] - 109:1, 132:6, 143:15 Silverado [1] - 56:24 similar [2] - 43:9 similarly [1] - 10:1 simple [1] - 10:21 simply [3] - 34:17, 34:22, 175:1 single [3] - 72:5, 162:10, 164:1 site [12] - 31:17, 47:8,	52:18, 92:12, 132:12, 143:6, 143:10, 143:14, 146:18, 153:18, 163:6, 175:7 sited [7] - 15:16, 84:6, 102:4, 110:20, 123:17, 125:9, 144:14 Siting [1] - 114:9 siting [8] - 57:5, 66:19, 75:19, 76:24, 124:12, 140:8, 142:20, 144:5 sits [1] - 101:22 situation [5] - 21:8, 73:16, 112:8, 142:22, 171:24 six [8] - 10:6, 14:11, 15:8, 173:24, 176:14, 184:24, 185:3, 185:8 Sixth [1] - 186:3 skip [1] - 22:12 sky [1] - 90:4 sleep [4] - 109:13, 119:12, 125:19, 135:24 sleeping [1] - 125:14 slide [3] - 20:12, 20:21, 167:21 slight [2] - 29:4, 29:5 slightly [3] - 28:18, 40:12, 47:2 small [2] - 28:5, 147:4 soils [1] - 66:24 solar [1] - 24:8 sold [6] - 78:24, 79:23, 90:19, 91:9, 91:11, 91:13 sole [2] - 153:6, 154:11 soliciting [1] - 73:10 someone [7] - 30:17, 32:11, 34:2, 135:21, 135:22, 144:23, 180:18 sometimes [8] - 4:7, 16:3, 16:6, 92:15, 121:22, 121:23, 139:21, 153:16 sorry [13] - 20:17, 23:5, 36:20, 37:3, 42:15, 43:10, 67:22, 73:19, 92:7, 103:13, 148:12, 154:21, 182:17 sound [53] - 13:12, 33:3, 33:10, 33:12, 33:15, 45:16, 58:8,
---	--	--	---	---

58:11, 58:14, 58:19,
58:23, 59:21, 96:7,
99:4, 99:6, 99:10,
100:20, 100:24,
101:24, 102:5,
103:8, 103:19,
103:21, 103:23,
104:9, 104:11,
110:15, 110:17,
110:22, 117:17,
118:6, 125:2, 125:5,
125:6, 126:2,
129:18, 139:4,
140:9, 142:14,
143:8, 144:8,
144:12, 145:24,
151:13, 151:15,
151:18, 152:1,
152:5, 152:20,
154:17, 155:12,
182:14
sounds [2] - 24:14,
163:3
source [3] - 153:6,
154:11, 181:1
sources [2] - 103:22,
104:12
southeast [1] - 85:13
space [1] - 43:9
spacing [1] - 144:2
SPC [2] - 147:14,
147:22
speaking [3] - 5:7,
91:16, 135:6
special [27] - 18:15,
49:5, 49:11, 50:15,
50:20, 50:24, 53:7,
54:2, 54:21, 61:20,
62:9, 63:5, 65:9,
65:22, 74:7, 74:8,
74:18, 74:20, 74:21,
74:23, 75:9, 75:18,
76:5, 76:8, 76:17,
78:6, 78:7
Special [3] - 49:23,
51:12, 71:23
specific [11] - 30:16,
37:13, 38:5, 85:21,
90:8, 96:14, 114:7,
140:20, 151:4,
151:14, 152:2
specifically [7] -
13:11, 32:14, 64:2,
124:11, 134:1,
147:22, 151:10
specifications [1] -
167:10
specifying [1] - 98:11
spectrum [1] - 146:7
speculation [3] - 40:9,

117:4, 120:9
speech [2] - 126:3,
126:8
speed [1] - 121:10
spell [3] - 36:10, 82:5,
122:11
spelled [1] - 48:20
spelling [1] - 93:13
spent [1] - 135:6
spill [1] - 147:15
spills [2] - 146:17,
147:17
split [1] - 133:18
spot [1] - 42:13
Springfield [2] -
81:23, 148:15
staff [2] - 148:9,
149:11
stage [10] - 47:10,
47:12, 48:5, 49:4,
49:11, 49:17, 61:14,
64:11, 76:24, 79:22
stages [1] - 76:23
stamp [2] - 64:17,
163:7
stamped [1] - 62:12
stand [9] - 3:6, 4:14,
4:20, 4:21, 9:21,
61:22, 88:16, 136:6,
184:14
standard [7] - 89:3,
89:7, 104:7, 110:17,
126:6, 129:13,
166:19
standards [8] - 66:23,
103:21, 104:2,
104:11, 125:10,
144:17, 167:11,
174:7
stands [1] - 100:24
start [4] - 10:23, 77:4,
100:17, 150:6
started [2] - 56:7, 79:2
starting [1] - 102:2
starts [2] - 50:16, 70:6
State [5] - 42:23, 43:2,
115:12, 115:22,
172:20
state [21] - 22:19,
27:20, 29:17, 37:9,
41:20, 43:4, 43:7,
53:20, 75:15, 84:6,
93:13, 110:15,
114:16, 115:18,
128:4, 131:9, 152:3,
152:4, 173:16,
175:14, 179:7
state's [1] - 118:4
statement [3] - 9:14,
101:12, 170:12

statements [1] - 66:9
states [4] - 13:2,
56:17, 115:20,
172:23
States [4] - 118:23,
118:24, 119:5, 119:7
statewide [1] - 115:23
stating [1] - 39:20
Station [1] - 6:2
stations [1] - 15:15
statute [2] - 37:9,
118:8
statutes [1] - 118:5
stayed [1] - 161:8
steel [1] - 173:1
step [4] - 60:24, 64:5,
128:3, 184:19
stepped [1] - 184:21
steps [2] - 139:3,
139:14
Steve [1] - 128:5
STEVE [1] - 128:6
stick [1] - 105:16
still [14] - 15:14,
16:22, 21:5, 21:10,
72:9, 79:13, 87:11,
116:22, 117:1,
135:24, 136:1,
138:12, 138:15,
159:23
stop [2] - 99:1, 150:5
storms [1] - 83:12
story [3] - 57:21,
109:20, 184:17
Street [1] - 5:24
stricken [2] - 80:19,
119:20
strike [2] - 118:15,
168:13
structural [1] - 66:20
structure [5] - 14:18,
20:14, 20:16, 20:18,
87:19
struggling [1] -
178:22
stuck [1] - 136:5
studies [8] - 8:22,
47:14, 48:12, 84:5,
84:24, 145:24,
146:13
study [8] - 39:16,
84:12, 97:11,
100:20, 100:24,
146:7, 159:18,
163:11
Study [1] - 8:14
stuff [12] - 37:20,
55:15, 76:20, 89:14,
99:19, 99:20, 106:3,
106:19, 117:17,

131:10, 132:17,
133:3
subject [6] - 7:24,
12:7, 30:19, 85:11,
151:3, 167:9
submission [1] -
74:17
submit [9] - 47:7,
51:18, 53:5, 53:24,
61:6, 62:14, 64:4,
84:12, 86:10
submittal [5] - 46:12,
53:6, 54:1, 60:18,
69:11
submitted [14] -
20:19, 36:5, 45:21,
45:22, 58:15, 58:20,
61:20, 62:12, 63:3,
63:10, 65:8, 65:21,
71:11, 86:17
submitting [1] - 62:6
subsection [3] -
53:21, 60:21, 65:19
subset [1] - 46:16
subsurface [1] - 66:24
suddenly [1] - 116:21
sue [4] - 40:6, 57:18,
183:12, 183:13
sued [2] - 40:17,
183:21
sues [1] - 57:11
sufficient [1] - 69:10
suggest [1] - 78:9
suggesting [2] - 76:6,
175:9
suggestion [1] - 63:12
summarize [3] -
35:24, 182:1, 184:8
summarized [1] -
151:6
sun [6] - 88:18, 89:13,
89:14, 90:4, 90:6,
120:16
super [1] - 145:2
super-loads [1] -
145:2
supervised [1] - 69:16
supplemental [1] -
71:16
support [4] - 25:24,
111:8, 116:1, 116:4
supporting [1] - 38:4
supposed [4] - 10:11,
48:2, 63:3, 173:13
supposedly [1] -
26:12
surety [5] - 21:1, 21:6,
21:11, 165:22,
181:20
surprised [2] - 94:14,

130:9
surrounded [1] -
142:5
surrounding [1] -
147:6
survey [1] - 153:15
survives [1] - 57:20
sustain [10] - 29:4,
30:23, 34:20, 52:21,
55:24, 69:12, 105:4,
112:1, 113:22,
118:14
sustained [3] -
112:16, 119:20,
120:11
swear [2] - 10:5, 11:6
sweet [2] - 81:17,
81:22
switch [1] - 125:18
sworn [2] - 11:7, 11:8
synonymous [1] -
44:20
system [7] - 14:20,
41:21, 123:21,
124:4, 137:9, 153:9
systems [1] - 83:16

T

table [1] - 42:11
tables [2] - 4:10, 22:10
Tad [1] - 1:19
talks [3] - 60:23,
70:14, 182:22
tax [3] - 37:11, 38:9,
108:11
taxes [4] - 8:15, 39:1,
39:3, 39:15
team [7] - 18:1, 24:24,
37:5, 59:2, 125:21,
125:22, 145:12
teams [1] - 60:3
tear [1] - 136:2
tech [3] - 46:18, 47:8,
138:11
technically [1] -
160:24
technicians [1] -
126:15
technique [1] - 158:10
techniques [1] -
153:15
Telecommunication
s [2] - 15:12, 84:14
telecommunications
[9] - 83:23, 84:1,
84:2, 84:8, 84:10,
84:12, 84:24,
159:17, 159:18
television [3] - 15:13,

15:22, 160:10
template [3] - 7:1, 45:1, 45:3
ten [6] - 24:7, 24:9, 81:4, 150:11, 173:24, 185:5
Tendering [1] - 38:1
Tennessee [4] - 114:24, 115:3, 115:5, 115:8
term [2] - 136:24, 173:5
terminology [1] - 163:23
terms [23] - 7:3, 7:5, 7:6, 7:11, 19:22, 44:20, 88:18, 108:4, 112:13, 144:24, 157:3, 163:20, 163:24, 165:2, 165:12, 165:17, 166:7, 167:20, 168:18, 174:3, 177:7, 177:22, 178:10
terrain [1] - 85:15
terrible [1] - 135:5
testified [3] - 87:6, 101:12, 143:5
testifies [2] - 101:1, 127:21
testify [14] - 7:16, 7:24, 8:6, 11:9, 23:22, 31:15, 35:9, 44:1, 66:8, 80:14, 91:5, 94:2, 105:7, 163:17
testifying [5] - 10:3, 10:7, 10:12, 10:19, 109:19
testimony [12] - 10:18, 11:17, 24:11, 25:7, 28:20, 28:24, 29:9, 40:10, 40:13, 52:2, 122:23, 149:19
testing [6] - 10:17, 15:6, 15:10, 28:16, 29:1, 29:8
text [1] - 151:7
THE [36] - 11:11, 11:14, 18:4, 31:8, 31:22, 35:16, 35:20, 37:23, 38:2, 41:1, 49:10, 51:22, 62:3, 66:17, 69:18, 87:23, 101:15, 101:17, 103:17, 103:19, 107:5, 119:6, 120:24, 121:4, 121:18, 133:21,

133:24, 134:4, 134:12, 137:23, 138:4, 141:19, 150:8, 150:15, 184:15, 184:20
theirs [1] - 116:15
themselves [3] - 88:4, 125:22, 145:8
THEODORE [1] - 93:16
Theodore [1] - 93:15
theoretically [1] - 172:2
thin [1] - 36:18
thinking [3] - 88:18, 160:20, 180:20
third [6] - 6:12, 6:15, 17:17, 165:15, 181:8, 181:16
thirds [1] - 67:24
THIS [1] - 2:23
threat [1] - 112:24
three [14] - 5:2, 5:10, 13:13, 14:24, 15:8, 47:4, 48:5, 59:3, 76:23, 128:11, 164:21, 176:14, 184:14, 184:22
three-quarters [1] - 128:11
tightly [2] - 155:23, 156:7
timeline [2] - 25:1, 136:19
timelines [1] - 24:22
timing [2] - 62:5, 63:2
Timothy [1] - 131:22
tip [4] - 20:1, 20:2, 114:10, 114:14
tired [1] - 173:4
title [2] - 53:21, 53:22
TO [1] - 1:1
today [4] - 32:13, 93:24, 94:1, 95:18
together [1] - 164:17
tolerances [1] - 170:18
Tom [2] - 1:17, 36:9
tomorrow [2] - 95:2, 149:1
tonight [22] - 4:2, 4:18, 5:7, 7:16, 7:19, 8:23, 9:21, 35:23, 39:17, 43:21, 87:3, 95:23, 96:1, 99:15, 107:12, 124:19, 127:20, 134:16, 149:19, 150:10, 157:22, 182:16
top [4] - 13:13,

132:11, 161:6, 163:1
topic [2] - 18:24, 159:16
topics [1] - 126:17
torn [1] - 133:7
tornado [1] - 83:5
total [3] - 175:23, 176:8, 176:12
touch [1] - 106:10
tower [4] - 66:22, 161:5, 161:6, 161:8
towners [1] - 23:22
Township [9] - 17:10, 48:7, 132:21, 133:2, 134:2, 134:8, 134:10
township [2] - 133:17, 144:23
townships [2] - 17:1, 47:23
Townships [1] - 17:11
track [1] - 83:12
trade [5] - 96:8, 97:18, 97:21, 97:24, 98:12
Train [1] - 6:1
transcript [1] - 186:6
transferability [2] - 78:23, 80:1
transformer [1] - 146:8
transmission [2] - 146:14, 146:15
transparency [1] - 140:24
trash [1] - 145:13
trashed [1] - 145:1
treated [1] - 120:2
trees [3] - 89:18, 92:15, 92:16
trial [1] - 113:20
tricky [1] - 155:1
tried [4] - 98:23, 115:8, 152:16, 152:17
truck [3] - 30:12, 31:4, 145:4
trucks [1] - 57:1
true [9] - 10:17, 13:15, 60:5, 110:16, 162:13, 162:14, 164:18, 175:6, 186:6
trust [1] - 163:3
truth [1] - 11:9
try [4] - 99:12, 150:24, 158:1, 158:15
trying [13] - 51:23, 82:2, 97:19, 131:3, 131:8, 131:21, 135:6, 135:17, 154:3, 154:8, 154:24, 155:1, 173:7

Tuck [1] - 1:11
turbine [69] - 15:16, 33:12, 45:8, 45:14, 45:15, 45:18, 46:8, 46:15, 46:17, 49:7, 49:13, 49:15, 49:17, 55:10, 55:14, 56:20, 57:2, 58:7, 84:6, 84:13, 84:20, 85:7, 88:21, 89:12, 92:17, 96:7, 96:10, 96:11, 98:9, 100:3, 100:4, 109:10, 110:19, 110:20, 114:3, 114:5, 114:8, 115:14, 116:21, 119:11, 124:3, 125:3, 125:7, 125:22, 125:23, 126:15, 128:11, 130:3, 140:8, 140:21, 141:8, 143:14, 144:5, 146:12, 148:22, 152:24, 153:1, 160:5, 161:6, 161:9, 162:10, 162:15, 164:2, 168:13, 176:13, 176:15
turbines [45] - 6:5, 6:10, 15:1, 28:17, 34:3, 34:8, 45:6, 46:2, 46:7, 46:19, 46:20, 48:22, 79:3, 85:22, 89:15, 96:3, 96:16, 102:4, 109:5, 110:16, 123:18, 123:20, 123:22, 124:12, 125:9, 126:1, 127:22, 134:6, 143:6, 143:10, 143:24, 144:3, 144:14, 146:8, 146:20, 146:21, 147:7, 160:5, 160:21, 161:1, 165:10, 169:3, 177:14, 177:18, 179:6
turn [9] - 3:19, 15:3, 15:5, 52:16, 105:7, 108:7, 111:3, 123:7, 160:12
turned [1] - 109:12
TV [5] - 15:15, 15:24, 16:3, 84:2
twice [2] - 44:17, 90:22
twister [1] - 83:6
two [38] - 5:1, 5:21,

6:5, 6:10, 8:11, 12:24, 19:19, 20:11, 43:8, 45:6, 45:7, 46:8, 47:4, 48:22, 49:3, 49:8, 49:9, 49:19, 62:24, 63:1, 67:1, 67:23, 75:24, 83:24, 88:19, 98:16, 98:18, 99:14, 101:6, 105:17, 106:23, 124:1, 130:21, 141:21, 150:20, 162:14, 166:5, 180:16
type [2] - 10:16, 177:13
types [5] - 48:22, 83:24, 84:7, 88:2, 163:23
typical [1] - 175:20
typically [3] - 62:12, 63:4, 146:13

U

ultimately [2] - 65:12, 77:18
unclear [2] - 62:6, 63:18
uncommon [1] - 49:18
unconstitutional [1] - 119:13
under [31] - 11:13, 15:12, 21:1, 21:6, 39:12, 58:1, 58:8, 60:2, 60:22, 66:19, 73:22, 85:9, 85:10, 90:16, 91:13, 110:12, 115:8, 134:9, 137:7, 139:17, 155:14, 165:2, 165:12, 165:17, 170:5, 171:12, 176:21, 177:23, 181:20, 182:7, 183:24
underneath [3] - 25:4, 51:2, 83:17
understandable [1] - 95:21
understood [4] - 157:13, 173:19, 174:21, 176:4
unexpected [1] - 170:24
unintentional [1] - 39:23
United [4] - 118:23, 118:24, 119:5, 119:7
units [1] - 22:5

unleased [2] - 108:16, 117:13 unless [3] - 54:14, 55:5, 135:9 unlivable [1] - 109:13 unviable [2] - 178:9, 178:16 up [66] - 4:22, 6:22, 10:8, 10:10, 12:15, 12:16, 17:6, 21:21, 35:13, 35:15, 51:14, 56:12, 71:13, 73:20, 75:23, 79:3, 81:21, 86:6, 87:3, 88:17, 89:13, 93:3, 93:24, 100:24, 109:2, 109:12, 122:3, 126:16, 127:11, 127:21, 129:17, 129:24, 130:5, 131:20, 132:10, 132:17, 133:7, 135:18, 135:21, 140:19, 142:14, 142:15, 142:17, 144:10, 146:3, 146:9, 147:13, 149:1, 150:10, 151:22, 156:12, 158:1, 159:21, 162:24, 163:14, 166:24, 168:13, 169:10, 172:14, 173:4, 179:5, 180:8, 182:15, 183:14, 184:2, 185:3 updated [1] - 86:7 UPON [1] - 1:2 upside [1] - 82:22 US [1] - 119:1 useful [2] - 164:23, 179:12 uses [2] - 153:3, 154:10 utilize [1] - 169:16 utilized [3] - 157:4, 158:14, 158:16	99:7 vein [1] - 170:3 Vermilion [4] - 22:19, 23:19, 27:7, 27:11 version [2] - 166:2, 166:3 versions [3] - 165:24, 166:4, 166:5 versus [2] - 158:16, 158:23 Vestas [7] - 45:12, 57:2, 59:22, 97:1, 97:16, 125:3, 146:10 veterans [1] - 26:12 vetted [1] - 75:18 viable [2] - 172:13, 173:10 Victoria [1] - 1:14 view [1] - 158:14 violation [1] - 139:16 visit [1] - 114:1 visualize [1] - 178:23 voice [1] - 158:1 volume [3] - 124:18, 125:13	W	W-i-n-s-l-o-w [1] - 30:1 Wage [3] - 169:13, 169:18, 170:5 wage [2] - 169:20, 169:21 wait [1] - 79:1 waiting [2] - 78:15, 182:6 waitlisted [1] - 74:14 waiver [7] - 7:7, 18:20, 18:22, 18:23, 19:3, 19:9, 111:1 waivers [7] - 18:17, 18:19, 19:1, 19:5, 19:14, 19:17, 110:15 wake [1] - 180:8 walk [1] - 169:5 walked [1] - 149:18 wants [5] - 18:5, 57:16, 65:15, 113:8, 183:12 warning [1] - 83:16 water [6] - 8:9, 9:8, 88:11, 144:7, 145:24 Watts [3] - 1:16, 3:18, 11:22 WATTS [10] - 3:1, 3:9, 3:12, 3:14, 3:16, 3:18, 11:24, 21:14, 21:17, 150:17 watts [1] - 150:19	WATTS..... [1] - 2:7 WATTS..... [1] - 2:3 ways [4] - 12:24, 13:21, 110:7, 143:16 weather [1] - 4:14 Weather [3] - 85:10, 85:19, 87:10 website [1] - 51:15 WECS [9] - 61:18, 66:21, 66:22, 68:15, 68:18, 68:20, 69:7, 69:11, 137:11 week [2] - 88:13, 88:24 weeks [1] - 45:21 welcome [4] - 20:5, 22:1, 63:19, 175:21 welfare [12] - 38:23, 39:3, 107:9, 107:11, 108:6, 108:8, 108:12, 108:15, 108:17, 108:20, 110:3 west [2] - 43:14, 88:20 west-facing [1] - 88:20 western [2] - 43:13, 43:15 westernmost [2] - 123:20, 124:3 whatcha [1] - 151:24 wheels [1] - 79:2 whole [9] - 60:23, 67:13, 72:3, 79:7, 104:23, 111:17, 117:11, 133:4, 150:6 wildlife [1] - 16:9 willing [4] - 160:2, 160:8, 174:15, 179:18 wind [53] - 13:1, 15:4, 15:16, 18:7, 24:7, 28:16, 31:7, 34:3, 37:9, 38:21, 45:6, 46:12, 48:22, 53:8, 54:10, 55:10, 58:7, 58:10, 58:16, 60:9, 60:11, 60:20, 61:18, 70:6, 73:9, 73:21, 82:15, 82:16, 83:8, 83:13, 85:12, 86:1, 89:7, 90:12, 90:19, 91:16, 91:18, 96:2, 111:8, 111:9, 111:12, 114:3, 114:5, 116:10, 116:21, 117:14, 119:11, 126:23, 127:18, 160:17,	161:13, 161:20, 162:1 WIND [3] - 1:1, 1:2 Wind [26] - 3:4, 3:24, 30:11, 39:23, 47:19, 49:22, 53:5, 53:24, 58:6, 62:5, 62:13, 86:1, 90:13, 90:16, 91:15, 91:19, 92:12, 164:24, 165:6, 171:17, 172:13, 173:10, 174:15, 179:9, 179:10, 184:23 winding [1] - 73:18 windmill [1] - 124:8 windmills [1] - 132:8 windows [1] - 88:20 WINSLOW [7] - 29:24, 30:5, 31:9, 31:23, 32:7, 32:22, 93:6 Winslow [8] - 29:24, 30:2, 32:6, 32:19, 35:3, 35:13, 81:9, 93:5 WINSLOW..... [1] - 2:9 wise [4] - 45:24, 144:8, 144:18 wish [1] - 66:9 wishes [1] - 122:2 WITNESS [36] - 11:11, 11:14, 18:4, 31:8, 31:22, 35:16, 35:20, 37:23, 38:2, 41:1, 49:10, 51:22, 62:3, 66:17, 69:18, 87:23, 101:15, 101:17, 103:17, 103:19, 107:5, 119:6, 120:24, 121:4, 121:18, 133:21, 133:24, 134:4, 134:12, 137:23, 138:4, 141:19, 150:8, 150:15, 184:15, 184:20 witness [32] - 4:19, 5:6, 5:7, 5:8, 5:14, 8:4, 8:19, 9:18, 9:20, 10:1, 11:3, 11:4, 16:10, 31:1, 32:13, 32:17, 32:20, 34:15, 34:16, 34:23, 35:2, 35:14, 41:21, 88:11, 95:9, 95:11, 96:18, 121:14, 128:2, 180:7, 184:14, 184:21 witness's [2] - 10:18,	31:16 witnesses [6] - 7:15, 7:19, 8:11, 56:11, 79:10, 99:21 woman [2] - 31:5, 85:1 wondering [3] - 124:9, 124:22, 141:23 word [7] - 52:15, 66:10, 67:18, 68:3, 68:11, 103:14, 160:22 worded [1] - 71:3 words [4] - 9:19, 86:14, 155:15, 164:5 wore [1] - 95:17 works [7] - 14:22, 15:24, 45:14, 85:19, 94:8, 94:10, 127:8 world [2] - 28:5, 63:19 worse [1] - 145:16 worth [3] - 171:22, 172:24, 173:2 wrap [2] - 150:10, 185:3 wrestle [1] - 81:16 write [5] - 29:14, 46:10, 63:15, 72:12, 93:11 writing [1] - 24:20 written [5] - 20:22, 63:17, 66:5, 66:15, 74:11 wrote [9] - 25:12, 25:14, 25:16, 37:1, 37:4, 37:6, 69:16, 69:17, 107:16	Y	yard [1] - 33:1 year [10] - 88:13, 88:14, 88:15, 89:3, 129:12, 131:5, 173:24, 174:15, 178:3, 178:13 years [9] - 10:6, 21:18, 99:9, 131:3, 138:7, 171:13, 171:19, 172:12, 173:21 YES [1] - 157:18	Z	zone [4] - 108:19, 110:5, 110:8, 117:16 zoning [1] - 150:4 zoom [1] - 102:3 zoomed [1] - 102:8
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