

BEDMINSTER TOWNSHIP

LAND USE BOARD

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IN THE MATTER OF:

TRANSCRIPT

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

OF  
PROCEEDINGS

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Thursday, April 30, 2015  
Bedminster, New Jersey  
Commencing at 7:02 p.m.

BOARD MEMBERS PRESENT:

LANCE BOXER, Chairman  
GEORGE RODELIUS  
CAROL GUTTSCHALL  
DORN STEWART  
LOUIS DiGIOVINE  
KATHY CHRISTIE

ALSO PRESENT:

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

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A P P E A R A N C E S:

VOGEL, CHAIT, COLLINS and SCHNEIDER, P.C.  
BY: THOMAS F. COLLINS, JR., ESQ.  
Attorneys for the Board

McCARTER & ENGLISH, LLP  
BY: GARY T. HALL, ESQ.  
Attorneys for the Applicant

MICHELE R. DONATO, ESQ.  
Attorneys for Objector Stop Somerset Hills  
Power Plant

RICHARD M. SASSO, ESQ.  
Attorneys for Objectors Steve and Sabina  
Forbes

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ROBERT MOSCHELLO

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1           CHAIRMAN BOXER: Good evening again and  
2 thanks for coming. As most of you know, tonight  
3 is a special meeting and it's been noticed and it  
4 is only for KDC, which is Land Use Board 12-015.

5           So let me go right to public comments.  
6 This is still the time where people can make  
7 comments about anything that is not on the agenda.  
8 I'll see if there's anybody out here.

9           Okay. Seeing none, Mr. Hall.

10          MR. HALL: Good evening, Chairman. Gary  
11 Hall for the applicant.

12          CHAIRMAN BOXER: Good evening, Mr. Hall.  
13 I see you met Mr. Sasso in the alley.

14          MR. SASSO: He did. Gary won,  
15 obviously.

16          MR. HALL: No, I think it was my client  
17 actually.

18          CHAIRMAN BOXER: Mr. Sasso, I'm worried  
19 about you. Last year you had your legs and now  
20 you have an arm problem. But you look good.

21          MR. SASSO: Mr. Chairman, I must say  
22 this. In these years of President Obama, every so  
23 often the doctors get together and they have  
24 difficulty making their Porsche payments and then  
25 I get the phone call.

1           So this time they said, Oh, we did a hip  
2 last year. Forget the orthopedist guys. Let's go  
3 back to Sloan Kettering and I guess they're  
4 looking for 2016 models now.

5           CHAIRMAN BOXER: Hope you're feeling  
6 better.

7           MR. SASSO: Thank you.

8           CHAIRMAN BOXER: I would suggest that  
9 you wrap your arm. It looks a little sloppy.  
10 Anyway, we're glad you're here and doing better.

11           Ms. Donato, good evening. Nice to have  
12 you here.

13           MS. DONATO: Good evening.

14           CHAIRMAN BOXER: Okay. So why don't we  
15 get started.

16           Mr. Hall, nice to have you this evening.  
17 Thanks for accommodating us on a special meeting.

18           MR. HALL: Yes. And I believe where we  
19 left off, Mr. Moschello was being questioned by  
20 Ms. Donato.

21           CHAIRMAN BOXER: You're okay with  
22 getting started, Ms. Donato?

23           MS. DONATO: Yes, I am.

24           CHAIRMAN BOXER: If you want to take a  
25 couple of seconds and we'll get going, that's

1 fine.

2 MS. DONATO: I'm still traveling through  
3 the Marshall Plan when I go to leave the island.  
4 Everything is all ripped up. I think it'll be  
5 that way for about 15 years.

6 CHAIRMAN BOXER: All right. Mr. Hall,  
7 just for planning tonight, after the  
8 cross-examination, what's the next step?

9 MR. HALL: That's all we have.

10 CHAIRMAN BOXER: So you just want to get  
11 this done tonight.

12 MR. HALL: We figure any other witness  
13 we're not going to finish anyway, so...

14 CHAIRMAN BOXER: Okay. That's fine.

15 MR. HALL: I think after tonight we're  
16 looking at probably the first Thursday in June,  
17 about six weeks. We'll start fresh.

18 CHAIRMAN BOXER: Once again, we'll have  
19 to just see how things progress and how much more  
20 time we're going to need here. I mean, I think it  
21 wouldn't be out of the question to put additional  
22 meetings on if we think we need them or we're  
23 getting backed up.

24 MR. HALL: Okay. But Mr. Moschello is  
25 all we have tonight, so...

1                   CHAIRMAN BOXER: Okay. Great. We'll  
2 just take a moment or so until Ms. Donato gets  
3 ready.

4                   MS. DONATO: Yes, the piles get larger  
5 every time.

6   EXAMINATION

7 BY MS. DONATO:

8                   Q. Okay. Now, Mr. Moschello, when we were  
9 here the last meeting, there was considerable  
10 discussion about that one test pit that was  
11 performed by your office that's in basin number  
12 one, right?

13                   A. Yeah, that was -- I'm going to go back  
14 to Exhibit A-24, which is the last one we were  
15 using. I believe it was test pit SL3-2614.

16                   Q. That's correct. Okay. And we had  
17 been -- we were trying to get an answer to the  
18 question of the distance between the high water --  
19 let's just say high water levels so we don't have  
20 to get into this perched table and all that, just  
21 the issue.

22   Because it is true we established that  
23 for purposes of designing the basin, the  
24 terminology doesn't matter as much as --

25                   A. -- where it actually is in the field.

1 Q. Exactly.

2 A. Yes.

3 Q. So at the end of the last meeting, we --  
4 we were -- kind of had a lot of numbers bouncing  
5 around.

6 Do you recall that the Board engineer  
7 suggested that you prepare an exhibit that would  
8 show various elevations, the existing ground  
9 level, the seasonal high, the bottom of the basin,  
10 the bottom of the sand bed? Do you recall that  
11 discussion?

12 A. Yes, I do.

13 Q. And do you recall that you agreed that  
14 you would prepare such a document and distribute  
15 it so that it could be reviewed in advance of  
16 these proceedings?

17 A. I remember agreeing to preparing a  
18 document. I don't remember agreeing to  
19 distributing it in advance of the meeting, the  
20 proceeding. And I know there were some  
21 conversations going back and forth with different  
22 people at that time, so it was our understanding  
23 that it was to be presented at the next meeting.

24 Q. Okay. And I'd like to -- I'd like to  
25 direct your attention to the transcript of April



1 9th, 2015. We are at page 176.

2 Do you see Mr. Ferriero's comment where  
3 he's referring to what you need to include, the  
4 cross-sections and details? And then what is your  
5 answer?

6 A. I said I can do a summary of those  
7 forms -- of those numbers and provide it to the  
8 board and Najarian. That was a summary of the  
9 numbers. That wasn't specifically relating to the  
10 exhibits. So I guess there was a  
11 miscommunication.

12 Q. Well, let me just show -- there  
13 certainly was.

14 Let me bring you to the prior page, 175.  
15 Okay? So you see:

16 "MR. FERRIERO: Just to be clear  
17 what those numbers are...would be looking  
18 at the elevations at the various soil  
19 logs and at the lowest points of the  
20 basins..."

21 Right? The existing grade?

22 A. Yes, the numbers. Yes, I remember.

23 Q. The proposed grade, the bottom, the  
24 bottom of the level of infiltration if it's there,  
25 right?

1           And I say "And the regional zone of  
2 saturation," right?

3           And then you see someone said can you  
4 provide a cross section and detail?

5           You say they're on the plans, but you  
6 can do a summary. So where -- and provide it to  
7 the Board and Najarian, right? You agree that  
8 that's what you stated?

9           A. Yes, that's what it says.

10          Q. Okay. So did that happen?

11          A. No, we didn't provide the summary. And  
12 I think that was the miscommunication at the end  
13 of the meeting that we had. We thought you were  
14 talking about the exhibits. And the plan that I  
15 thought we provided was the exhibit of A-24, and  
16 that's not talked about there.

17           So you're right, that's --

18          Q. That's in the following paragraph,  
19 Mr. Moschello, isn't it?

20          A. You're right. You're correct.

21          Q. All right. It would have been a lot  
22 easier, wouldn't it have been, if we had kind of  
23 an exhibit.

24           Do you have one tonight?

25          A. Well, I have the exhibit tonight and

1 that's what we prepared for tonight's meeting, to  
2 talk about those -- the discussion we had at the  
3 end of the last meeting.

4 Q. All right. So we were discussing what  
5 was the bottom of the basin, right, and where was  
6 the seasonal high?

7 So there's one thing I want to  
8 straighten out before we go any further. In  
9 reviewing the transcript of the last meeting, I  
10 had referred to the log, the same log that we keep  
11 referring to, right? This is the only one log  
12 that was prepared during the wet season by your  
13 firm, am I correct?

14 A. That is correct.

15 Q. Okay. So we were -- we were trying to  
16 see what this seasonal high was. And the log  
17 referred to the zone of saturation, did it not?

18 A. I'm just opening it up. Yes, SL1  
19 referred to the zone of saturation. That was  
20 noted on the log.

21 Q. Okay.

22 A. Forty-eight inches.

23 Q. And isn't it true that you stated that  
24 the zone of saturation is not the seasonal high?

25 A. I made a statement -- and I don't

1 remember the exact language, you may even have it  
2 there in the transcript.

3 Q. I do.

4 A. That I'd have to go back and check on  
5 that. But we said we would refer to it here for  
6 the purposes of the discussion.

7 Q. You eventually acknowledged that the --  
8 that the -- that the zone of saturation is the  
9 seasonal high?

10 A. Yeah.

11 Q. You eventually acknowledged that, but  
12 you did say, at page 155, we're not saying that  
13 the regional zone of saturation is the seasonal  
14 high water table. That says regional zone of  
15 saturation.

16 A. Right.

17 Q. So you didn't think it was the same.

18 A. At that point I didn't think it was the  
19 same, and then we agreed that we would rely upon  
20 that number since that was the number that we were  
21 discussing for the depth of what we'll call  
22 seasonal high groundwater for purposes of that  
23 discussion.

24 Q. Okay. And did you happen to check the  
25 regulations of the NJDEP, stormwater management

1 regulations, that specifically define what a  
2 regional zone of saturation is?

3 A. Yes, I did --

4 Q. You did, did you?

5 A. -- go back and look and that's where it  
6 did state that it was for seasonal high  
7 groundwater.

8 Q. Right. So it is the same.

9 A. Yes, and I--

10 Q. So we know then that the seasonal high  
11 is 116.9, am I right?

12 A. Based upon the -- and we're talking  
13 about existing elevations of --

14 Q. Based upon the soil log, the same log  
15 that we're talking about, 32614.

16 A. Yes.

17 Q. So we now know it's 116.9, right?

18 A. Yes.

19 Q. So there should be a 2-foot separation  
20 between that and the bottom of the sand, am I  
21 correct?

22 A. That is correct.

23 Q. Do you have an exhibit that shows that?

24 A. Yes, I do.

25 MS. DONATO: Okay. So I know it's kind

1 of out of order, but I wouldn't mind if we could  
2 mark this at this time.

3 THE WITNESS: I believe we're up to  
4 A-25?

5 MS. DONATO: Well, Mr. Collins or  
6 someone else would be more knowledgable than me.

7 MR. HALL: Well, I agree because I gave  
8 him that number earlier tonight.

9 MS. DONATO: Okay. A-25.

10 MR. COLLINS: So it will be A-25. It  
11 can be in evidence. It's prepared by  
12 Mr. Moschello.

13 (Whereupon, exhibit is received and  
14 marked A-25 in evidence.)

15 CHAIRMAN BOXER: And could you just  
16 explain to us what this exhibit is?

17 THE WITNESS: Yes, I will do that. This  
18 is an exhibit entitled "Drainage Cross Section  
19 Exhibit for Basin Number 1" and it's dated April  
20 30th, 2015. And what we have here on the board is  
21 a couple different views.

22 The first view is a plan view of the  
23 basin itself denoting all the logs and test pits  
24 that were done within the footprint of that basin,  
25 which is essentially almost identical to what was

1 shown on the original Exhibit A-24 for soil log  
2 locations. We show on that exhibit two cross  
3 section lines that represent sections through  
4 the basin. It's a Section AA going in an  
5 east-west direction, and a Section BB going in a  
6 north-south direction through the basin. And  
7 these sections just happen to essentially cross  
8 where that soil log 32614 is located in the middle  
9 of the basin.

10 And then on the board we have those two  
11 cross-sections of the basin: Section AA being the  
12 shorter section, going from the low point of the  
13 basin to the high point of the basin; and then  
14 Section BB, which is again going in a north-south  
15 direction across the basin itself. And then we  
16 add some additional information to those basins of  
17 different elevations.

18 But, more importantly, what we did is we  
19 blew up the location at 3-- at soil log 32614  
20 because that's what we were talking about. So we  
21 did a graphical representation of the different  
22 elevations at that location on the plan.

23 And what we have here is existing grade,  
24 which is 120.9. We have the regional zone of  
25 saturation, which we talked about, which is the

1 orange line at 116.9. We then have a depth of  
2 shale, the depth of the seepage that was noted on  
3 the log at 115.2. And then the depth to the test  
4 pit, which was stopped at 110.9. And what we also  
5 show on here is in the black line the basin bottom  
6 at 119.9, which is what we talked about. And the  
7 sand layer, which is 6 inches thick, at 119.4. So  
8 all those items are shown here in the cross  
9 section view of the basin.

10 And then we show different dimensions to  
11 different separations. For example, from the  
12 bottom of the sand layer 119.4 to the regional  
13 zone of saturation of 116.9 we have 2 and 1/2  
14 feet. And then to the shale 3 and 1/2, and the  
15 depth to seepage we have 4.2 feet. And that's  
16 taken at that specific location right there in the  
17 middle of the basin.

18 CHAIRMAN BOXER: I see. Thank you.

19 THE WITNESS: You're welcome.

20 BY MS. DONATO:

21 Q. Now, is that -- are the numbers on that  
22 Exhibit 25 identical to the numbers that are on  
23 the detail sheets in your plans submitted to the  
24 Board?

25 A. As far as the basin section goes, it is.



1 Q. What do you mean, "as far as the basin  
2 section"?

3 A. The basin section. The thickness of the  
4 sand is what's on the detail sheet on the  
5 drawings. The other dimensions, the other  
6 information, is not shown on detail sheets. These  
7 four lines here, the colored lines, are not shown  
8 on the construction detail sheets.

9 Q. The numbers that you have for the bottom  
10 basin at that location of that test pit are the  
11 same as shown on the plans that you submitted to  
12 this Board?

13 A. On the design plans, yes.

14 Q. Identical?

15 A. Yes.

16 Q. Now, you have on this basin one test pit  
17 that was performed by your firm. We confirmed  
18 that, am I right, which was in the wet season?

19 Now, you then had called in GTA, right?

20 A. Yes.

21 Q. Okay. So GTA did went and did some test  
22 pits and they did some pits in February. So that  
23 you had four test pits in that basin during what  
24 would ordinarily be the wet season, is that  
25 correct?

1           A.    That is correct.

2           Q.    Okay.  Now, you were here when Mr. Loh,  
3   I think is his name, when he testified about the  
4   work that he did under your direction, per your  
5   direction?

6           A.    I was here when he testified, yes.

7           Q.    Okay.  And do you recall that I  
8   questioned him with regard to the weather  
9   conditions that existed at the time that he did  
10   his test pits?

11          A.    Yes, I remember those questions.

12          Q.    And do you recall that he said that the  
13   fact that it was -- that the land, the ground, was  
14   frozen, it was extremely cold weather during that  
15   period of time, did not affect the validity of his  
16   tests?

17          A.    I remember those statements, yes.

18          Q.    Do you agree with him?

19          A.    Yes, I do agree with him.

20          Q.    Okay.  So what you're looking for in the  
21   wet season is seepage, is that right?

22          A.    That's correct.

23          Q.    So I know this might sound like a stupid  
24   question, but water freezes at less than 32  
25   degrees, doesn't it?

1           A.    Yes, it does.

2           Q.    So you don't see seepage if it's frozen,  
3 isn't that right?

4           A.    Again, it depends on the level that it's  
5 frozen. I think Mr. Loh spent a lot of time  
6 talking about depth to frost and things of that  
7 nature.

8           Q.    Well, if the top of the boring is  
9 frozen, then that water that would have been in  
10 that land would not seep down to the lower levels,  
11 isn't that correct?

12          A.    Again, I think this was for Mr. Loh to  
13 answer in terms of how the water moves through the  
14 soil. So I think he spent time answering that.  
15 I'm designing the basin based upon his  
16 information. So I think he provided you the  
17 response as to where he felt the level of  
18 groundwater was in relation to the tests that he  
19 did.

20          Q.    Right. And he said that the fact that  
21 the land was frozen made no difference. And  
22 you're presenting to this Board a plan in reliance  
23 on his tests, am I right?

24          A.    That is correct.

25          Q.    Okay. So are you familiar with the

1 procedures for permeability testing that are  
2 contained in the New Jersey Stormwater BMP Manual,  
3 Appendix E, at page E-13?

4 A. I am familiar with them, yes.

5 Q. So you're familiar with the fact that  
6 paragraph B-1 regarding percolation tests states  
7 "Percolation tests shall not be conducted in  
8 frozen ground"?

9 A. Unless I find my copy of it -- if you  
10 give me a moment.

11 Q. Here, I have one.

12 CHAIRMAN BOXER: Ms. Donato, what was  
13 the reference you just gave?

14 MS. DONATO: I have several of them.  
15 Would you like to have these marked, Mr. Collins,  
16 in any manner? They are taken from the BMP  
17 manual.

18 MR. COLLINS: Yes. You can mark them  
19 as -- for you it's "O"? Are you "O" category or  
20 are you--

21 MS. DONATO: Yes.

22 MR. COLLINS: Okay. So the next "O"  
23 exhibit, we don't have the numbers handy, but  
24 we'll just for now leave it as -- unless you know  
25 the number, Ms. Donato.

1 MS. DONATO: Oh, gosh, no, I don't.

2 MR. COLLINS: Okay. Well, then, why  
3 don't we make it --

4 MR. HALL: It was probably the picture  
5 of the mottling.

6 MR. COLLINS: And it was just the one  
7 picture.

8 MR. HALL: I think they only had one  
9 exhibit.

10 MR. COLLINS: So make it O-2 for now  
11 with today's date of April 30th, 2015, for  
12 identification now.

13 MS. DONATO: Okay.

14 MR. COLLINS: But you're saying that  
15 it's from the regs?

16 MS. DONATO: It is directly from the  
17 regulations.

18 MR. COLLINS: So I don't think there'll  
19 be an objection to that going into evidence.

20 (Whereupon, exhibit is received and  
21 marked O-2 4/30/15 for identification.)

22 THE WITNESS: I found it.

23 BY MS. DONATO:

24 Q. You have your copy?

25 A. Yes, I'm at the page. I'm on 13.

1 Q. So you see paragraph B-1 there?

2 A. Yes.

3 Q. What does it say? Does it say what I  
4 read?

5 A. It says -- I'll read it exactly for the  
6 board. It says "Percolation tests shall not be  
7 conducted in frozen ground or in holes which have  
8 been allowed to remain open to the atmosphere for  
9 periods later than three days."

10 Q. Thank you.

11 Perc tests shall not be conducted in  
12 frozen ground?

13 A. Correct.

14 Q. So your tests were performed in frozen  
15 ground, weren't they?

16 A. I can't make that statement. Mr. Loh  
17 performed the test. He determined whether or not  
18 the ground was frozen to perform in it.

19 Q. Mr. Moschello, do you recall the  
20 testimony on the temperatures that existed at the  
21 time?

22 A. Yeah.

23 Q. Do you recall that Mr. Loh acknowledged  
24 that it was frozen through to a certain level  
25 until they got down to way below a certain frost

1 level in the boring?

2 A. Right, I just don't remember the depths  
3 that he may have acknowledged to. I don't think  
4 he acknowledged to a certain depth.

5 Q. But the regulations say -- the BMP  
6 manual says you can't do it in frozen ground,  
7 period, doesn't it?

8 A. Yes, but he performed the test and he  
9 determined whether or not the ground was frozen.

10 Q. So he gives you bad data, you put it  
11 on your plan, you design a basin, and you  
12 represent to the Board that the basin's in  
13 accordance with the regulations. Is that what  
14 we're having here?

15 A. No, that's not what we're having here.  
16 Mr. Loh gave me data. He used his engineering  
17 opinion to perform the tests and provide us with  
18 the data.

19 Q. Well, doesn't that sound like that old  
20 expression, garbage in/garbage out?

21 MR. HALL: I object to that statement.

22 A. No.

23 MR. COLLINS: The objection will be  
24 overruled.

25 You should answer the question.

1           A.    No, I disagree with that statement.  
2    Mr. Loh provided his engineering opinion that the  
3    soils were capable of being tested in that  
4    temperatures at the levels he tested them at.  
5    Again, you know, he provided testimony of where he  
6    did the tests and what he performed and we relied  
7    upon that data to design the plans.

8           Q.    So you relied on bad data that's not  
9    allowed --

10          A.    I relied --

11               MR. HALL:  I object.  He didn't say it  
12    was bad data.

13                    (Indesciperable crosstalk; reporter  
14    requests one speaker)

15               MR. COLLINS:  One at a time.  There's a  
16    question.  Finish the question.  You relied upon  
17    bad data.  The objection is--

18    BY MS. DONATO:

19           Q.    You relied upon bad data--

20               MR. COLLINS:  The objection is  
21    sustained.

22               MS. DONATO:  Okay.  I'll reword the  
23    question.

24               MR. COLLINS:  First establish the  
25    principle that you're trying to establish that he



1 agrees with you that it's bad data. I haven't  
2 actually heard that yet, so...

3 MS. DONATO: Okay. The formal Rules of  
4 Evidence do not apply here, but nevertheless I  
5 will reword the question.

6 MR. COLLINS: All right. You don't need  
7 to characterize --

8 BY MS. DONATO:

9 Q. You relied upon tests that were  
10 performed at a time of year that is prohibited by  
11 the BMP manual. Explicitly it says "Percolation  
12 tests shall not be conducted in frozen ground."

13 A. The tests -- let me answer it this way.  
14 He did not say that he performed the tests in  
15 frozen ground. He said he performed the test in  
16 the soil. So it was his opinion when he did the  
17 test that that particular location he did it in,  
18 the ground was not frozen. The ground wasn't --  
19 when he talked about it, the ground wasn't frozen  
20 down to deep depths. I think he mentioned the  
21 ground was only frozen on the top, but I don't  
22 remember the depth he talked about. But he said  
23 it was only a small layer of frozen ground. And  
24 so--

25 Q. Wasn't it about 3 feet, at least 3 or 4

1 feet?

2 A. No.

3 Q. No?

4 A. No, I don't remember him saying that.

5 Q. Okay. So what happens when water  
6 freezes?

7 A. Water freezes. It becomes solid.

8 Q. Yeah. It doesn't seep, does it?

9 A. No.

10 Q. And if the ground is frozen, there's  
11 snow on the ground and it's all frozen, it  
12 doesn't -- it doesn't drain into the ground to  
13 raise the seasonal high water, does it?

14 A. Yeah, I think Mr. Loh provided the  
15 testimony on how seasonal high groundwater works.  
16 I'm not the expert on how groundwater levels  
17 fluctuate in terms of runoff or when the ground is  
18 frozen and when it's not frozen. I think Mr. Loh  
19 provided that information to the Board when he  
20 testified.

21 CHAIRMAN BOXER: Mr. Hall, I do think --  
22 I have a feeling that you're not going to be able  
23 to satisfy this line of questioning. I do think  
24 this is an important issue because it does, I  
25 think, press into question some of the validity of

1 the testing.

2 Now, we have to get Mr. Ferriero to help  
3 us here.

4 MR. FERRIERO: I have to weigh in on  
5 this.

6 CHAIRMAN BOXER: Please.

7 MS. DONATO: Thank you.

8 MR. FERRIERO: Mr. Loh did zero  
9 percolation tests.

10 CHAIRMAN BOXER: What did he do?

11 MR. FERRIERO: He did other infiltration  
12 tests.

13 CHAIRMAN BOXER: I see.

14 MR. FERRIERO: He did not do a perc  
15 test. He did not do any perc tests. He did soil  
16 logs. And they went through a depth of frost, I  
17 am sure, because it was cold out there. But he  
18 did not do any perc tests. A soil log is not a  
19 perc test. A perc test is a type of infiltration  
20 test. And in his report he describes how he did  
21 his infiltration tests, but they were not perc  
22 tests.

23 MS. DONATO: Percolation tests, you're  
24 thinking of, like, septic testing, is that  
25 correct, Mr. Ferriero?

1 MR. FERRIERO: Exactly.

2 MS. DONATO: I think that the BMP manual  
3 unfortunately uses those terms, because the BMP  
4 Manual doesn't regulate septic systems. They're  
5 regulated by an entirely different chapter and set  
6 of rules. So I think that the BMP manual may be  
7 using the term "percolation" to refer to  
8 infiltration because it's really how does the  
9 water flow through the ground?

10 MR. FERRIERO: Actually it's not really  
11 the case, because you don't do a percolation test  
12 in frozen soil because the soil is frozen and the  
13 water will never go through. If you were taking a  
14 sample and testing the sample in the lab, then the  
15 soil will not be frozen by the time you get it to  
16 the lab. And that is as it relates to this  
17 section which is specifically about permeability  
18 testing and nothing about groundwater levels.

19 MS. DONATO: I understand.

20 MR. FERRIERO: It does not say you can't  
21 do a soil log through frost. It says you cannot  
22 do a percolation test, which is a field test  
23 pouring water into a hole into frozen soil. That  
24 makes perfect sense.

25 MS. DONATO: I understand that,

1 Mr. Ferriero. I think what I will do is we  
2 have -- we will present our engineers on that  
3 particular issue, because certainly if you can't  
4 determine if there's seepage in the ground because  
5 it's frozen and the soil -- if snow isn't  
6 percolating down, I don't see how you determine  
7 the seasonal high.

8 MR. FERRIERO: But --

9 MS. DONATO: That wasn't his -- Mr. Loh  
10 very -- specifically testified that he was talking  
11 about infiltration. Are these D soils? Can they  
12 avoid having recharge because the soils were  
13 predominantly D?

14 MR. FERRIERO: I think--

15 MS. DONATO: So I think we're, like,  
16 mixing a whole lot of things up. I'm just trying  
17 to get to the bottom line: Where's the seasonal  
18 high?

19 MR. FERRIERO: I understand. And the  
20 section that you are talking about from the BMP  
21 manual is entitled "Procedures for Permeability  
22 Testing." It doesn't have anything to do with  
23 testing for seasonal high groundwater. It's a  
24 separate section. It's a separate discussion.

25 MS. DONATO: I understand that.

1 MR. FERRIERO: So while I understand  
2 what you're saying, it doesn't apply--

3 MS. DONATO: Okay.

4 MR. FERRIERO: -- to the testing that  
5 was done here.

6 MS. DONATO: And I'm not really -- I  
7 don't want to cross-examine you on it. I just  
8 want to know where the seasonal high is  
9 accurately.

10 MR. FERRIERO: I do too.

11 MS. DONATO: I do too.

12 BY MS. DONATO:

13 Q. And since it's -- you know, my common  
14 sense.

15 Mr. Moschello, we've already established  
16 water freezes below 32, is that correct?

17 MR. HALL: I object. We've heard this  
18 ten times now. Let's move on. She can bring her  
19 expert in --

20 MS. DONATO: I'm going to.

21 MR. HALL: -- if we ever get done and  
22 we'll address it that way. But I think she's made  
23 her point, we understand, and I don't think we  
24 need to hear the same thing ten times.

25 MR. COLLINS: The objection should be

1 sustained. Now let's move on. That is  
2 established. That's an acceptable fact.

3 MS. DONATO: I understand. Okay. Was  
4 there any snow--

5 MR. COLLINS: Water freezes at 32,  
6 right, in regular conditions.

7 MS. DONATO: Yes.

8 BY MS. DONATO:

9 Q. So what is the purpose of requiring that  
10 soil test to determine the seasonal high be done  
11 during the months of, I guess it's, what, December  
12 to April? What is the reason for that?

13 A. Well, typically those are the months  
14 where the groundwater is the highest in the  
15 ground. So you'd have the highest levels.

16 Q. Why is it the highest?

17 A. I'm not an expert on how water moves  
18 through the soils. I just know that at certain  
19 times a year, the way groundwater comes up, those  
20 are the months that the DEP has designated as  
21 being the months for the highest levels of  
22 groundwater.

23 Q. Isn't it because the snow and ice melts?

24 A. Again, I'm not an expert on that to say  
25 why. I'm not a hydrogeologist to be able to

1 provide that information on how the water goes up  
2 and down. I just rely upon what the testing tells  
3 me for my design purposes.

4 Q. Okay. There's something else I'd like  
5 to try to clarify. In your observations --  
6 Gladstone's, okay? In your observations, okay,  
7 you observed what you characterized as a  
8 hydraulically restricted level, is that right?

9 A. Yes.

10 Q. Okay. Now, do you recall Mr. Loh's  
11 testimony that there was no confining level  
12 observed? I'm referring again -- this is all  
13 about basin one.

14 A. Yeah, I don't remember what he  
15 specifically said about that. He talked about a  
16 lot of different levels and the different test  
17 pits.

18 Q. Well, I'm just a little bit confused.  
19 How many test pits do you need for the basin  
20 number one?

21 A. Under the DEP regulations, I believe it  
22 was four test pits based on the size -- the size  
23 of the bottom of the basin. It was three or four.  
24 I don't remember the exact square footage, but we  
25 established that on the densest testing.



1 Q. All right. So the test, the one that  
2 we've been focusing on since I began  
3 cross-examining you, was your test pit.

4 A. Right.

5 Q. Done during, I guess, March of 2014,  
6 right?

7 A. Right.

8 Q. And that test pit showed seasonal high  
9 at 48 inches below the surface, right?

10 A. Correct. We agreed upon that, yes.

11 Q. What did Mr. Loh's test pits show in  
12 terms of seasonal high?

13 A. Without going through his report, I  
14 remember him saying that I don't think he  
15 encountered any seasonal high groundwater in that  
16 particular basin when he did his test pits.

17 Q. And do you know how far away his test  
18 pits were from yours?

19 A. I mean, looking at the map here, they're  
20 generally within -- this is a 40, this is 100. So  
21 they're generally within 50 to 100 feet of each  
22 other on this map. Some are as close as 20 feet  
23 apart, 40 feet apart, but you can see the number  
24 of test pits in this -- in this one area here,  
25 though. They're generally -- they're generally

1 very close to each other.

2 Q. They're very close to each other.

3 And I understand that groundwater levels  
4 can vary within a certain distance, but is there  
5 something wrong with your numbers or is there  
6 something wrong with his numbers in terms of where  
7 the seasonal high is?

8 A. Again, the groundwater -- you just said  
9 it yourself. Groundwater not only varies within a  
10 certain distance, it varies within different times  
11 of the year.

12 Q. Well, we know that. That's why we have  
13 seasonal high.

14 A. And every year -- again, like I said,  
15 I'm not an expert on why groundwater levels  
16 fluctuate, but every year there can be different  
17 levels. You have certain years where they're  
18 higher and certain years that are low. Without  
19 explaining why, we know that they fluctuate.

20 Q. Right. We know they fluctuate generally  
21 throughout a year. That's why we have a seasonal  
22 high. And, in fact, we also have a seasonal low,  
23 don't we?

24 A. Yes, we do.

25 Q. Yeah. So I understand that. And I know

1 that they can vary from place to place. But is it  
2 likely that within 50 feet you're going to have  
3 such a dramatic difference in the seasonal high?

4 A. You just don't know what's happening  
5 under the ground. You can hit different layers as  
6 soil moves around. So, yes, it could -- it could  
7 vary that much. But we're talking from 2014 to  
8 2015, so it's a year difference when the -- when  
9 the logs were done.

10 Q. Okay. So isn't it your opinion that  
11 field permeability tests for purposes of  
12 determining infiltration are not covered by the  
13 perc rules? Is that what -- the perc rules that  
14 we referred to in Appendix E.

15 A. Appendix E is testing criteria for  
16 determining rates of infiltration. Again, it's  
17 not the only criteria for determining that.  
18 There's many different tests out there to  
19 determine the rate of -- if you want to call it  
20 percolation or infiltration through a soil, but  
21 this is the guidelines which you could follow for  
22 doing that type of work.

23 Q. Okay. And does Appendix E have a  
24 methodology -- and -- strike that. Let me just go  
25 back. I want to make sure I understand this.

1           The permeability and the percolation,  
2 they're essentially synonymous for this purpose?

3           A.    I mean, yes, you can say permeability --  
4 "percolation" is an old -- is a term that's used  
5 for perc tests.  It was a shortened version of  
6 it--

7           Q.    Septic systems.

8           A.    Right, for septic system testing.  And  
9 when they did the BMP manual, they came up with  
10 that plus other reasons -- other ways to test  
11 for -- you can do pit bail testing, basin flood  
12 testing.  Different ways to determine the rate  
13 that water would move through the soil.

14          Q.    Okay.  So are you familiar with the  
15 methodology that's contained in Appendix E for  
16 perc tests in bedrock?

17          A.    For perc tests in bedrock?

18          Q.    Yes.

19          A.    I mean, if I'm in rock, let's say, you  
20 typically -- you either do a basin flood test or a  
21 pit bail test, because you can't take a sample of  
22 the soil because it's rock.  So you want to do  
23 those -- you want to do one of those two tests to  
24 determine whether or not the water will move  
25 through the rock and if you have any infiltration

1 through that medium.

2 Q. Was that done here?

3 A. We actually did five basin flood tests  
4 back in July of 2013. I believe that was listed  
5 in one of our reports. I don't remember which one  
6 it was.

7 Q. Okay.

8 A. But we did some basin flood tests early  
9 on.

10 Q. And doesn't Appendix E establish a  
11 maximum permeability rate in bedrock?

12 A. I'd have to go back and look at the  
13 exact calculations. I don't remember if it  
14 exactly does or not. How it looks at basins for  
15 testing. I know for septic systems it's a pass or  
16 fail, I believe, for basin floods. I'd have to  
17 read through the section of Appendix E for whether  
18 or not -- as to how you establish a rate from the  
19 basin flood test.

20 Q. Okay. And are you familiar with doing  
21 mounding analysis?

22 A. I've read about it. We've looked at it.  
23 I've never done one myself.

24 CHAIRMAN BOXER: I'm sorry, would you  
25 say that again, Ms. Donato? What is it called?

1 MS. DONATO: Mounding analysis.

2 CHAIRMAN BOXER: Mounding?

3 MS. DONATO: M-O-U-N-D-I-N-G.

4 BY MS. DONATO:

5 Q. Did you -- let me just ask one question.  
6 Your firm does general civil engineering, is that  
7 correct?

8 A. That is correct.

9 Q. And you're the stormwater expert in  
10 your -- in Gladstone, is that correct?

11 A. I've been doing it longer than everybody  
12 else there.

13 Q. Okay.

14 A. So I guess by default then.

15 Q. Okay. So you're aware that there are  
16 times when a mounding analysis is really  
17 warranted?

18 A. Yes. We have talked about that on  
19 projects before. We call it a groundwater  
20 mounding analysis, if that's what you're talking  
21 about.

22 Q. Yes.

23 A. Where -- if I can just expand upon that  
24 for the Board's understanding of what it is.  
25 Basically what a groundwater mounding analysis is,

1 if you take an area -- let's say you take the area  
2 of this desk, for example, and you put water  
3 inside of a tub and you put it there. The idea is  
4 that if you focus enough water in one location  
5 over a period of time, you may technically raise  
6 the level of groundwater around that area for a  
7 certain period of time.

8 So if there's, for example, a house or a  
9 foundation, say, 10 feet away from this desk, you  
10 may raise the groundwater 6 inches or a foot and  
11 you may impact that foundation if it was close  
12 enough to the area in which you're putting water  
13 back into the ground.

14 So that's typically why you may look at  
15 a groundwater mounding analysis. I know the BMP  
16 manual talks about it, it's mentioned, but it's  
17 not technically always required when you're doing  
18 a design.

19 Q. Right. Well, are you aware of the  
20 hydraulic characteristics of shale?

21 A. I understand the general  
22 characteristics. Again, I'm not a hydrogeologist,  
23 I'm not a geotechnical engineer. But I  
24 understand, depending on different types of shale,  
25 how water may move through it.

1 Q. So, shale -- in your opinion, does shale  
2 hold a lot of water? Can it hold a lot of water?

3 A. I can't answer that question. Again,  
4 I'm not a hydrogeologist on the characteristics of  
5 shale.

6 Q. So, who's going to answer for this Board  
7 the question of how this overall basin functions  
8 with this underlying shale, this difference of  
9 opinion as to whether there's a restrictive layer,  
10 these questions about the testing? Who's going to  
11 answer that and close this gap between your  
12 hydrogeologist and your office?

13 A. Well, I don't think there is that much  
14 of a gap that you may be alluding to. Again, this  
15 is a detention basin that's out in the middle of a  
16 field. There's really -- the closest structures  
17 are hundreds, if not thousands, of feet away.  
18 And, again, we're talking about small levels of  
19 water that would be required to be put back into  
20 the ground. Basically for the coverage of the  
21 ballasts that are going on the ground that impede  
22 the water from going -- that impede the water from  
23 going into the ground.

24 I think the total area or the total  
25 volume of water was certainly less than two-acre



1 feet that we had to put back into the ground here.  
2 So while we're talking about groundwater mounding  
3 and the impacts that may lead from it, we're so  
4 far away from structures -- and not to mention  
5 this one basin's maybe 100 feet from the wetlands.  
6 We're typically -- groundwater levels could be  
7 closer to the surface anyway. That's why they're  
8 considered wetlands. They're hydric soils.

9 So it's not as if you're putting this  
10 close to a residential structure where there may  
11 be impact from groundwater. These facilities are  
12 hundreds, if not thousands, of feet away from  
13 those facilities -- from those structures.

14 Q. Okay. So is part of your answer to  
15 this -- or is your answer partially involved in  
16 the statutory exclusion of the solar panels from  
17 being calculated as impervious coverage? Does  
18 that impact your decision at all, your opinion?

19 A. Absolutely. That's part of the  
20 decision, that the panel's not considered  
21 impervious.

22 Q. It's not considered impervious, right?

23 A. The panels are not considered impervious  
24 for purposes of stormwater management.

25 Q. Water does not go through a panel, does

1 it?

2 A. No, it does not.

3 Q. So have you ever run the numbers to see  
4 what would happen if you calculated the impervious  
5 surface of the solar panels to see how it would  
6 affect the various components of a stormwater  
7 management plan?

8 A. I don't believe it's germane to the  
9 conversation primarily because -- I think I  
10 touched upon this in my original testimony. Each  
11 panel is about 3 foot by 5 foot in size. And we  
12 talked about there's a gap, I think it's a quarter  
13 of an inch, between every single one of these  
14 panels. So as the rainwater hits it, it's going  
15 to drain to the edge of that panel and then drip  
16 off into the ground.

17 So it's not as if we are covering  
18 everything with impervious surface, collecting it  
19 with an inlet, like you would with a parking lot,  
20 and then put it into a basin. This water is being  
21 allowed to drip onto the ground. Sure, it's got a  
22 3-foot or 5-foot section of area that's not being  
23 allowed. It's no different than the slats in your  
24 deck where the water drips down. It makes it to  
25 the ground within a 3-or 4-foot area of where it's

1 being blocked.

2 So, again, that's why they treat them as  
3 not being impervious, because the water makes its  
4 way to the ground in the area with which -- where  
5 it's landing.

6 Now, we don't disagree that the  
7 impervious blocks that are sitting right on the  
8 ground prevent any water from getting there and  
9 there's going to be runoff from that. And that's  
10 what's being calculated as part of the impact for  
11 water not being recharged and the runoff  
12 calculation.

13 Q. Have you ever gone to observe any of the  
14 installed solar facilities in New Jersey?

15 A. I've been to a few. Not many, but a  
16 few.

17 Q. And are you aware of the fact that some  
18 of the soil conservation districts in the state  
19 have significant problems because of the fact that  
20 these fields are flooding underneath the arrays  
21 and around the arrays?

22 A. The fields that I've been to have been  
23 with grass grown on them and they seem to be in  
24 good condition. And some of the facilities we've  
25 been to don't even have stormwater management

1 facilities associated with them.

2 Q. And have you ever seen the facilities,  
3 like, a J & J out on -- I guess it's--

4 A. Route 202.

5 Q. -- on Route 202? Did you ever notice  
6 there's no grass underneath the panels?

7 A. I did not notice that.

8 Q. Did you ever look at any of the JCP&L  
9 installations where grass was supposed to grow and  
10 wasn't there?

11 A. No.

12 Q. Have you ever done any analysis of the  
13 grass that you think is going to grow in terms of  
14 what kind of seeds, what kind of plants would grow  
15 under these panels?

16 A. We expect typical shade-tolerant grass  
17 species that will grow underneath the panels that  
18 have been used by KDC on other projects.

19 Q. Can you tell us the names of some so we  
20 can see how they survived?

21 A. The spec is on the plan. It's a mixture  
22 of different seed types. If you look at sheet --  
23 I'll tell you what sheet it's on.

24 Q. Okay. What I'm looking for are the  
25 names of the projects where you claim that these

1 grasses have survived.

2 A. I will get the names from KDC of their  
3 projects where they've used it and it's working  
4 for them.

5 Q. Okay. Now, regarding the test pits  
6 that were performed by Loh's organization, there  
7 was questioning about the fact that these pits  
8 were closed up rather quickly after they were  
9 opened?

10 A. Yes, there was talk about that.

11 Q. Isn't it good engineering practice to  
12 leave those pits open for a while?

13 A. Not necessarily. Not necessarily. If  
14 you've dug the pit, you've done your profile of  
15 the pit to see what's in the ground, you've taken  
16 your measurements, you've taken your soil samples,  
17 there's no reason to leave them open. You can  
18 close them at the end of the day, or when you're  
19 done with them for that matter. You leave it up  
20 to the geotechnical engineer and the technicians  
21 that are doing that work to do that.

22 Q. Isn't it true that it's customary  
23 engineering practice to leave them open for three  
24 to four hours to see if there's any seepage that  
25 comes in rather than just looking at the moment?

1           A.    Yes, typically they're -- typically  
2 they're left open till the mid to late part of the  
3 day and then you would backfill them. Depending  
4 on how many you've done for the day. You may have  
5 to start a little bit sooner, but usually you  
6 start after lunch or shortly thereafter to start  
7 backfilling them.

8           Q.    So that did not happen here, though, is  
9 that correct?

10          A.    My understanding was Mr. Loh left them  
11 open for a number of hours before he backfilled  
12 them, and I think he provided testimony as to how  
13 he performed those pits. I could say that when I  
14 was out there around lunchtime, the pits were  
15 still open.

16          Q.    You don't know when they were dug,  
17 though, do you?

18          A.    No, but, again, we know he started it in  
19 the morning and they were open when I got there.

20          Q.    Okay. I'd like to direct your attention  
21 to basin 2D, like in David. That's an  
22 infiltration basin, isn't it?

23          A.    That it is.

24          Q.    Okay. So what is the rate that you got  
25 in test pit 201?

1           A.    I have to look at his report.  Just give  
2 me a moment.  Test pit 201, I believe he had an  
3 infiltration rate of 0.2 inches an hour.  Is that  
4 what you got there?

5           Q.    Yes.  And what's the minimum that should  
6 be?

7           A.    Well, the minimum field tested rate is  
8 typically 1 inch per hour.

9           Q.    So this is significantly less.

10          A.    That particular test is, yes.

11          Q.    So what happens if it does not  
12 infiltrate?

13          A.    I think we talked about this at the  
14 previous meetings.  Again, that one particular  
15 test pit was less, was 0.2 inches per hour.  
16 There's four other test pits that are 1 inch per  
17 hour and greater.

18                So it was -- I can't remember if he  
19 mentioned it or if I mentioned it in my previous  
20 testimony, but if there's small pockets of soil  
21 that don't have infiltration to them, we talked  
22 about possibly doing some soil removal and  
23 replacement as part of the basin construction when  
24 we actually construct the basins.

25                Again, he had four passing tests.  So

1       there was one little area he got 0.2. And we  
2       would, again, address that at the time of  
3       construction.

4             Q.     Okay. Now, directing your attention to  
5       the basin 2, capital letter B.

6             A.     2B?

7             Q.     Yes.

8             A.     Yes.

9             Q.     It's a water quality basin, right?

10            A.     Yes, it is.

11            Q.     All right. When were the tests for that  
12       basin performed? What time of year?

13            A.     Just bear with me a second while I  
14       figure out which one is which.

15                    There were two test pits done over  
16       there. One was in July of 2013, and the other one  
17       was test pit -- actually there's three test pits  
18       in that general area. One was test pit 13, done  
19       by GTA; and the other one was test pit 14, which  
20       was done by Birdsall. The test pit 13 done by  
21       GTA -- I don't have the date on it here. If you  
22       just give me a second. It was done in August of  
23       2014.

24            Q.     August, right?

25            A.     Right, yeah. Is that what you have



1 there? Yeah, that's August of 2014.

2 Q. Yeah. But that's not the time for  
3 trying to determine seasonal high, am I right?

4 A. That is correct.

5 Q. So how many -- how many test pits do you  
6 have in the wet season for basin 2B? B like boy.

7 A. Again, none that were done there in the  
8 wet season. However, 2B is not an infiltration  
9 basin. It's just a regular bioretention basin.  
10 We're not relying upon any infiltration taking  
11 place in the soil.

12 And, also, Mr. Loh, when he did his  
13 pits, I believe he talked about the level of  
14 mottling and how there was nothing seen there that  
15 indicated any presence of seasonal high  
16 groundwater that was high enough to impact that  
17 basin in any way.

18 So based upon that information, given  
19 the small size of that basin, the fact that it's  
20 not an infiltration basin, there's no concern for  
21 groundwater there based upon his review of the  
22 information.

23 Q. But you didn't perform any tests in the  
24 season that it should be performed?

25 A. Not for that particular basin, no. But

1 the regulations don't --

2 Q. And we don't --

3 A. But the regulations don't state that you  
4 have to perform wet season testing if you're not  
5 doing infiltration there.

6 Q. You might still have a problem with the  
7 separation between the basin and the seasonal  
8 high, am I correct?

9 A. Right, but Mr. Loh in his review of the  
10 test logs did not see any indications of seasonal  
11 high groundwater.

12 Q. He didn't see seasonal high anywhere  
13 because he went in the middle of February, isn't  
14 that right?

15 A. Not with that pit. That pit was done in  
16 August.

17 Q. Well, he either went outside of the wet  
18 season or he tested when everything was frozen.

19 A. Nothing says you have to test in the wet  
20 season for seasonal high groundwater. The regs  
21 don't say you have to do it at that time of year.

22 Q. If you want to know where the seasonal  
23 high is, though, that's when you do it.

24 A. But it doesn't say you have to do it  
25 during the wet season testing.

1 Q. Takes two opinions, right,  
2 Mr. Moschello?

3 MR. HALL: I disagree. The testimony  
4 was clear that the regulations allow you to test  
5 throughout the year. There's a different test,  
6 but to imply you can only do it then is absolutely  
7 false.

8 BY MS. DONATO:

9 Q. Okay. I'd like to direct your attention  
10 to basin number three. That's a detention basin,  
11 is it not?

12 A. Yes, it is. That's the big basin,  
13 bigger basin, on the eastern side of the project,  
14 closer to Country Club Road.

15 Q. Okay. Now, you did -- your firm did a  
16 test pit in March of 2014, SL8-32614, is that  
17 right?

18 A. Yes, that is.

19 Q. Okay. Can you show me where that test  
20 pit is with respect to the basin itself?

21 A. Yes. It just happens -- it's just off  
22 the top of the slope, right here where my finger  
23 is on the plan.

24 Q. So that test pit was not taken in the  
25 basin?

1           A.    It's semantics.  It's 5 feet off the toe  
2 of the slope -- the top of the slope where it was  
3 taken.

4           Q.    Well, do the regulations allow you to  
5 semantically take the test pits outside of the  
6 basin?

7           A.    When we dug the test pit there, the  
8 basin was in that location originally, I believe  
9 we revised the grading slightly.  But, again, it's  
10 right on the edge of the basin so.  For soil  
11 purposes that is -- for what we need for the  
12 ground, that is fine.

13          Q.    And for that basin, the only test pit  
14 that was done in the wet season was the one that's  
15 outside of the basin, isn't that correct?

16          A.    That's done at the top of the slope of  
17 the basin, yes.

18          Q.    Now, you have a number of water quality  
19 swales that are proposed throughout the site,  
20 isn't that correct?

21          A.    That is correct.  There's a series of  
22 water quality swales that we designed in and  
23 around the gravel drive that's on the eastern --  
24 western side of the property.

25          Q.    And did you do any testing for any

1 purpose, soil testing, in those swales?

2 A. No. They're generally shallow water  
3 quality swales just for the purposes of treating  
4 the water quality storm. They're underlaid with a  
5 gravel layer and piping to collect the runoff once  
6 it goes through the filter medium. And pretty  
7 much they follow the road network. There's enough  
8 testing in and around this area already that was  
9 done to show that there's no levels of seasonal  
10 high groundwater anywhere near the level of those  
11 swales that are being constructed.

12 Q. Well, you just told me before that you  
13 can't tell 50 feet -- you have your test in basin  
14 number one from March 2014 that shows a high water  
15 table 4 feet below surface.

16 A. Yes.

17 Q. Then we have some tests performed by  
18 Mr. Loh's firm that were performed in, you know,  
19 frozen ground, they didn't find any groundwater,  
20 and you said, well, that's because they're 50 feet  
21 away.

22 So now you're saying, well, you can rely  
23 on those other tests there?

24 A. I can rely on the amount of tests I have  
25 between these two basins plus the interspersed

1 test pits that have been done in and around this  
2 area of the site, given the soils that we have out  
3 there, the shallowness of these swales, there's  
4 not one test pit that's saying we have groundwater  
5 within -- the closet one we have is 48 inches to  
6 the surface. Everything we designed is within 1  
7 foot or 2 foot of the surface of this site in  
8 terms of anything that deals with infiltration or  
9 groundwater.

10 So, again, the way we designed these  
11 systems, they're shallow and close to the surface  
12 to be sure that we're not impacting anything even  
13 though the closest one that we have is 48 inches  
14 below grade.

15 Q. I don't want to challenge your knowledge  
16 of the BMP manual, but don't they require testing  
17 for the swales?

18 A. No.

19 Q. You don't think--

20 A. No, not for these particular swales.  
21 They're simple, little water quality swales.  
22 They're not infiltrating anything through the soil  
23 and they're just conveying water eventually to the  
24 larger detention basin.

25 Q. Mosquito ditches.

1           A.    No, I disagree with that.

2           Q.    Well, if the water doesn't -- if the  
3 water doesn't drain out of these swales, water  
4 will remain in the swale, will it not?

5           A.    No.  These swales are constructed of a  
6 topsoil layer that allows for permeability.  We're  
7 not using clay as the surface of the swales.  
8 They're designed with a certain soil planting bed  
9 that's placed there that water will filter through  
10 into the underdrain system and then have it piped  
11 into the basin.  So they're designed to drain at  
12 actually a rate that's greater than 2 to 3 inches  
13 per hour.  We want the water to filter through  
14 them so that it goes into the detention basin at  
15 some point.

16                    So they're not mosquito ditches as you  
17 referred to.

18           Q.    But you don't really have any testing in  
19 those swales, do you?

20           A.    I don't need to test.  The soil that I'm  
21 putting in those swales is being specifically made  
22 for those swales.  It's actually probably going to  
23 be brought in from off site because it has a  
24 certain permeability rate to it that's going to  
25 meet the criteria for infiltration.

1           Just like the sand that we're putting in  
2           the bottom of the basin, that's being brought in.  
3           That's not on site anywhere. I can't get that  
4           sand on the property. I have to bring that in.  
5           Just like the soils for those swales have to meet  
6           a certain criteria. If I was able to use soil on  
7           site and it passed a certain test, I can put it in  
8           there. If it doesn't, I have to go bring that  
9           soil in to meet the infiltration rate that the  
10          water can seep through to get into the underdrain  
11          system.

12          Q.    Okay. I want to just go back to this  
13          infiltration issue, particularly with respect to  
14          basin one because that's an infiltration basin,  
15          right?

16          A.    Yes, it is.

17          Q.    All right. Now, we have established  
18          that you basically have to have a minimum of 1  
19          inch per hour of infiltration, am I right?

20          A.    That's correct.

21          Q.    Now, going through the soil testing that  
22          your office did, okay, can you tell me what rates  
23          your tests revealed?

24          A.    We only did one actual test in that  
25          basin. That was early on in July of 2013. And I



1 think it's called BF-5, which is basin flood five.  
2 And that was actually a basin flood test that was  
3 performed in the shale layer. I think we were in  
4 the 5- to 6-foot depth range. I don't remember  
5 the exact depth of it. And that failed. That did  
6 not pass the basin flood test.

7 Q. All right. Well, let me just ask you  
8 this. Let's take TP-28. Now, I'm not sure whose  
9 that was, but let's just take a look at it. It's  
10 one of the ones that's on this map that you have.

11 A. Yeah, I'm not sure who did that one  
12 either.

13 Q. It was conducted on 8/1/14.

14 A. I think that might have been GTA's.

15 Q. That had to be, right?

16 A. Okay.

17 Q. All right. So TP-28, what's the  
18 infiltration rate on that one?

19 A. Again, 0.2 inches an hour.

20 Q. So it's not the 1 inch, right?

21 A. Correct. I'm looking at the -- yeah,  
22 basin one, yeah, 0.2 inches an hour. That's  
23 correct.

24 Q. Okay. So that one fails.

25 How about TP-105?

1 A. He had 0.5 inches an hour.

2 Q. So that one fails too, doesn't it?

3 A. Correct.

4 Q. All right. How about TP-106?

5 A. That's also 0.5 and that one doesn't  
6 pass either.

7 Q. All right. How about TP-206?

8 A. That is zero.

9 Q. That one fails for sure.

10 A. Yeah. We can go--

11 Q. And how about TP-207?

12 A. Yeah, 207 failed, 208 failed, 209  
13 failed. Those test pits failed, which is why we  
14 went back out there and did additional testing at  
15 different levels and he found passing grades when  
16 he went back there.

17 Q. And how deep did he do those rates?  
18 Where did he find that--

19 A. I don't have them right here in front of  
20 me, the rates. I think they're in a chart in his  
21 report. I don't have the depths of what he did  
22 the rates at.

23 Q. All right.

24 A. I'll look at one of his charts if you  
25 give me a second.

1 Q. So you have no concern that you have  
2 one, two, three, four, five, six, seven, eight --  
3 eight tests -- I'm sorry, seven tests that failed  
4 out of 11? You don't have a concern about that?

5 A. No, because, again, Mr. Loh went out  
6 there and did different -- again, he talked about  
7 how he did the testing. So all we know is he went  
8 back out there and moved tests around and did  
9 different methodologies to find where the  
10 infiltration is taking place on the property. And  
11 he went -- and then he eventually did find it.

12 Q. Isn't it true that GTA went 3 and 1/2 to  
13 4 feet deep to find its acceptable infiltration  
14 rate?

15 A. Again, he had varying depths to find  
16 acceptable infiltration. It varied.

17 Q. Isn't it true it's 3 and 1/2 to 5 -- to  
18 4 feet deep?

19 A. I don't have the chart here in front of  
20 me. Give me one second, I will -- I-1, I-2, I-3,  
21 I-4. He was in the 3-and-12 to 4-foot range.

22 Q. Right. That's what I just said. So  
23 that question -- the answer to the question is,  
24 yes, he went 3 and 1/2 to 4 feet deep to find that  
25 rate, am I right?

1           A.    If that's what he's assuming -- if  
2           that's what the test depth here means to the depth  
3           of it, then, yes.  Again, I'd have to ask him to  
4           confirm that, but that's what his chart says here.

5           Q.    All right.  Now, for basin number one,  
6           do you have to remove any soil in order to achieve  
7           that separation between the seasonal high and the  
8           bottom of the sand bed?

9           A.    I haven't fully analyzed that yet.  
10          Again, that was a discussion that I'd have to have  
11          with Mr. Loh on generally just where that would  
12          have to come out.  Also, we would also look at  
13          that at the time of construction to see where that  
14          soil would need to come out once we go to excavate  
15          it.

16          Q.    Okay.  So when you testified in front of  
17          this Board on October 2nd, I think it is -- let me  
18          just make sure I have the right date -- 2014,  
19          didn't you -- October 2nd, 2014, didn't you say  
20          that you didn't anticipate moving any soils from  
21          the site?

22          A.    I said removing -- moving -- yes, the  
23          site was a balanced site for all intents and  
24          purposes.

25          Q.    A balanced site?

1           A.    Yes.

2           Q.    And that there would be no exported  
3 materials coming from the site for the stormwater  
4 portion of the site?

5           A.    Yeah, a balanced property.

6           Q.    So then where are you going to put the  
7 soil that you're going to be excavating since it  
8 wasn't in those previous calculations?

9           A.    I got 100 acres to work with here but,  
10 generally speaking, I've got a berm we're building  
11 on the northern side of the property. I can add  
12 six more inches to the berm. I can spread out the  
13 soil in the fields. Again, we're only talking  
14 about a couple thousand cubic yards. Not even a  
15 couple thousand cubic yards. Less than that.  
16 I've got plenty of area to spread out that soil on  
17 this property and not have it impact anything.  
18 And we're talking about a foot or two in the basin  
19 if we need to move it.

20          Q.    Right. So you're taking clay soils that  
21 are a restrictive level and you're going to go  
22 spread them on the rest of the site?

23          A.    I can spread them on the berm. I can  
24 put them wherever I need to put them. On side  
25 slopes if I need to. I have plenty of options to

1 move this soil around the property.

2 Q. So when --

3 A. There's nothing there that restricts me  
4 from doing that.

5 Q. So you think you can just put them  
6 anywhere and the Board doesn't really care how  
7 high you make the berms or where this --

8 A. Well, I think the Board cares, but the  
9 amount of material I'm referring to here may add a  
10 couple inches to the height of the berm. And I  
11 don't think that's an impact if we add a couple  
12 more inches to the height of the berm.

13 Q. A couple more inches of unsuitable soil  
14 that you have to remove because --

15 A. Well, it's unsuitable from a stormwater  
16 standpoint. I'm not saying it's unsuitable if I'm  
17 placing it on the site. There's nothing wrong  
18 with the soil. It just doesn't have an  
19 infiltration rate to it. Again, once you remove  
20 it, mix it around with other soil, you're  
21 replacing it back down and you're covering it with  
22 topsoil anyway. It's not -- there's nothing wrong  
23 with that material. It's no different than if I'm  
24 building something and I take soil out of the  
25 ground and I use it to construct a fill for

1 something else. The soil's not bad.

2 Q. Well, you're removing the soil from--

3 A. I'm removing the soil from the bottom of  
4 the basin, I'm not removing it from the site. If  
5 I was constructing a house, I would go excavate  
6 that soil from the foundation and place it either  
7 in the front yard or the side yard. I would use  
8 it on the site. There's nothing bad about the  
9 material. I may not use it for a structural fill  
10 underneath the footing but...

11 Q. Except it doesn't infiltrate, does it,  
12 Mr. Moschello? That's why you're taking it out of  
13 the basin. You're going to go put it someplace  
14 else so that it doesn't infiltrate someplace else,  
15 am I right?

16 A. That's your opinion of it. I'm not  
17 saying that you're right.

18 Q. I don't think you're going to change the  
19 soil type.

20 A. Just going to move it around, like we do  
21 on every other construction job in the state.

22 Q. Okay. So I'm just trying to understand  
23 something. You have prepared a set of plans that  
24 you presented to this Board, right?

25 A. Yes.

1 Q. There were questions of a significant  
2 nature that were raised -- I'll rephrase it. I  
3 won't say "significant."

4 There were concerns raised by the Board  
5 and you were told to go out and do more tests,  
6 right?

7 A. Yes, generally --

8 Q. About July of 2014, right? June or July  
9 of 2014?

10 A. No. When we tested in July of 2014, I  
11 don't even believe we had even testified before  
12 the Board yet. I'm sorry, maybe I'm mixing up my  
13 years.

14 Q. You are mixing it up.

15 A. I'm thinking of 2013.

16 Q. You are.

17 A. I'm sorry. We submitted plans in May of  
18 2014. I believe we submitted revised plans. And  
19 then we said we would go back and do the  
20 stormwater design, and then we submitted that  
21 design at the end of August 2014.

22 Q. Right. So you had prepared signed and  
23 sealed plans which you presented to this Board and  
24 then you were told to go back and test, because  
25 they wanted to know where the seasonal high was



1 right?

2 A. No, we were told that -- I wasn't at --  
3 Mr. Kennedy presented the plans at whatever  
4 meeting, in June or -- in June that was. And then  
5 I believe the cadence of it was to go back and  
6 finish the stormwater design and then resubmit  
7 those plans I think by the end of August 2014.

8 Q. The meeting was July 10th, 2014 that  
9 Mr. Boxer and the Board said go back and do tests  
10 and get the stormwater plans in order.

11 You were not here that evening?

12 A. I think we had this conversation the  
13 last time. I don't remember if I was at that  
14 meeting in July.

15 Q. When you submitted the set of plans  
16 before this July 2014 meeting took place, either  
17 you or Mr. Kennedy presented a stormwater plan to  
18 this Board that you said complied with the  
19 regulations, right?

20 A. We submitted the plans -- originally we  
21 provided stormwater plans to the Board. We  
22 submitted the plans in, I believe it was May of  
23 2014? I'd have to go back and look at the --

24 Q. Yes, it was May. I think that's the  
25 date.

1           A.    Yeah, May of 2014. We had a revision  
2 date of May 16 or May 18th, 2014.

3           Q.    Right.

4           A.    The stormwater system was not revised on  
5 those plans. We know that. We submitted a  
6 revised layout to show the Board the changes that  
7 we were making primarily to reduce the numbers of  
8 panels. We changed the racking system. We  
9 removed the panels from the front field and we  
10 revised the screening on the plan. We removed the  
11 wide berms that were on the corner of Country Club  
12 and Meadow. Basically based reduced the footprint  
13 of the project.

14           I don't remember the numbers, but that  
15 was the initial -- that was the presentation at  
16 that time. And then I believe the cadence was,  
17 okay, now the next step is to revise the  
18 stormwater based upon the input we got from the  
19 Board at that meeting.

20           That was my understanding of it. Like I  
21 said, I don't believe I was there.

22           Q.    And prior to that time, are you saying  
23 that your firm presented to this Board a set of  
24 plans with stormwater management basins and all  
25 kinds of pits and studies and everything else and

1 it didn't meet the requirements of the  
2 regulations?

3 A. We submitted a set of -- we submitted an  
4 original stormwater plan that we felt met the  
5 requirements at that time back in 2013, when we  
6 revised the plan. Clearly there were discussions  
7 and revisions to that design. There was  
8 discussions about changing methodology, talked to  
9 Mr. Ferriero about that and how we would redesign  
10 certain things, and then after that the project  
11 was revised.

12 Q. Right. But what I'm having a hard time  
13 with is, is that you submitted a set of plans to  
14 this Board, said they complied. Okay? Then there  
15 were a lot of questions that were raised. Then  
16 you went and did some study and you presented  
17 another set of plans.

18 So the first set of plans were, what,  
19 they were like -- you based them on information  
20 that was incorrect?

21 MR. HALL: I object.

22 A. No.

23 MR. HALL: She's twisting the procedure,  
24 what happened here.

25 A. No, the first set of plans --

1 Q. That's not--

2 MR. COLLINS: Wait, Mr. Moschello. The  
3 objection will be overruled. The witness should  
4 answer this question.

5 So maybe read back the question.

6 (Whereupon, the record was read back.)

7 MR. COLLINS: So the witness should  
8 answer that question.

9 A. There were three sets of submissions  
10 that Gladstone Design did to the Land Use Board.  
11 We did an original submission in May of 2013,  
12 which included stormwater management at that time.  
13 Then we did another submission in May of 2014,  
14 which was a revised layout which did not include  
15 revisions to the stormwater management system.  
16 And then we submitted a revised set of plans in  
17 the end of August 2014, which included those  
18 stormwater revisions.

19 Throughout this time there were  
20 discussions both with the Board, with the Board's  
21 professionals, with the attorneys' professionals  
22 about different ways to analyze the system, to  
23 design the system, to account for different  
24 things. So it was constantly being updated,  
25 constantly being modified, being talked about in

1 different lights.

2           There was a previous engineer that was  
3 involved, which had certain theories that we  
4 looked at and designed things a certain way to  
5 account for the things that we were talking about.  
6 There were a lot of details of stormwater, but  
7 there was a lot of back-and-forth on how we got to  
8 the design we have in front of us today.

9           Along the way it was revised. Along the  
10 way there was additional testing done. I don't  
11 think that's that far off from other projects that  
12 will morph and change as we design it and you have  
13 to adjust the designs that are taking place.

14           I think the project was -- again,  
15 certain projects are -- as projects change, the  
16 design changes and you have to adjust for those  
17 design changes, which is what we've been doing  
18 here with the additional testing, trying to adjust  
19 the concerns of the Board and the public and to  
20 move the project along.

21           CHAIRMAN BOXER: Okay. I think what  
22 we'd like to do, Ms. Donato, I think this is a  
23 good time to take our ten-minute break. I think  
24 the stenographer needs a little bit of a rest and  
25 so does our witness. So we'll take ten minutes

1 and we'll be back.

2 (Whereupon, a recess is taken.)

3 CHAIRMAN BOXER: All right, ladies and  
4 gentlemen. If we can get started, I'd appreciate  
5 it. Thank you.

6 Okay. Let's see. Everybody's here.  
7 Ready to go?

8 MR. HALL: Your attorney's not here.

9 CHAIRMAN BOXER: All right. We can go.

10 MR. HALL: How important we are.

11 CHAIRMAN BOXER: Okay. Ms. Donato, you  
12 can get started any time.

13 MS. DONATO: Oh, thank you very much.

14 BY MS. DONATO:

15 Q. Before we go back to where we were, I  
16 just want to revisit this question of the 2-foot  
17 separation between the bottom of the basin, basin  
18 number one, in the seasonal high.

19 What is the lowest point of the basin,  
20 the bottom of the basin, as you designed for basin  
21 one?

22 A. Well, the lowest point is along the A  
23 section line. You see on here, just where my  
24 finger is, it's the lowest contour where the  
25 outlet structure is located. And we have a 119

1       contour, and I believe I mentioned at the last  
2       meeting the elevation at the outlet structure I  
3       thought was 118 and 1/2.

4             Q.    118 and 1/2?

5             A.    The bottom of the basin varies. I think  
6       the lowest point is 118 and 1/2.

7             Q.    Doesn't the DEP require the bottom of  
8       the basin to be flat?

9             A.    It doesn't require it to be flat. It  
10       doesn't have to be flat.

11            Q.    Oh, it doesn't?

12            A.    No. You can design -- the bottom of the  
13       basin can have a slope to it. Every basin is  
14       designed slightly different. If you have a -- if  
15       you have a standard infiltration basin which is  
16       strictly -- the purpose of infiltrated runoff for  
17       controlling stormwater, the DEP says it has to be  
18       a flat basin, but this is a hybrid basin. This  
19       does both infiltration, it does attenuation. So  
20       it does a multitude of things. And we can have a  
21       slope on the bottom of the basin.

22            Q.    Okay.

23            A.    The DEP doesn't say it has to be a flat  
24       bottom.

25            Q.    Okay. So you still have to have 2 feet,

1       though, between the point of seasonal high and the  
2       bottom of the basin?

3             A.    The lowest point of the basin, you have  
4       to have a 2-foot separation, yes.

5             Q.    Right.  So you have picked the number on  
6       this exhibit -- which is not the lowest part of  
7       the basin, is it?  It's 119.5, not 118.5, isn't  
8       that correct?

9             A.    The point that this soil log was taken  
10      at was at the elevation of 119 -- 120.9, and the  
11      bottom of the proposed basin was 119.9.  And that  
12      was at -- well, I won't say the midpoint, but  
13      halfway up the slope of the basin.  But the lowest  
14      point is at the outlet structure just like there's  
15      higher points as you go up the slope.

16            Q.    I understand that.  I think we discussed  
17      that at the last meeting.

18                    So what you're basically doing is taking  
19      one number from one place and one number from  
20      another and you're saying on this exhibit that  
21      that now meets the 2-foot separation?

22            A.    No, I'm showing the ele -- I'm showing  
23      the cross section -- I'm showing the section at a  
24      certain point.  If we want to talk about  
25      groundwater across the basin, we tend to take --



1 you can take the test pits that you dig in your  
2 basin and you then extrapolate that data across  
3 the entire bottom of the basin.

4 So just like the bottom of the basin  
5 slopes, the topography slopes. So in this  
6 footprint in this basin, we have a groundwater  
7 level, and I show it on Section AA here, that that  
8 follows the slope of the ground essentially for  
9 this basin. We have a seepage of 48 inches and we  
10 show that across the bottom of the basin saying  
11 that while this -- saying that for this basin, the  
12 groundwater's 4 feet below the bottom of the  
13 basin.

14 And where we have the lowest point at  
15 118 and 1/2 of proposed grade, existing grade  
16 would be 119 and 1/2 and we would subtract 4 feet  
17 from that and that would be the elevation at that  
18 point.

19 The BMP manual doesn't say you have to  
20 test at the lowest point of the basin. It says  
21 you have to do a certain number of tests which we  
22 established already based upon the footprint of  
23 the basin.

24 Q. So you're supposed to have four tests,  
25 correct?

1           A.    I think this one was three and the  
2 larger basin, 2D, is four. I think they have the  
3 larger footprint.

4           Q.    Okay. But it's just a little confusing  
5 that sometimes you can extrapolate from one test  
6 to another and other times you can't. So I'm just  
7 wondering why your firm's March 2014 test pit  
8 which shows a seasonal high of 48 inches below the  
9 surface is now being applied across the entire  
10 basin.

11                    Is that what you're saying you're going  
12 to do?

13           A.    That's the one pit that we had found  
14 groundwater in and we're utilizing that to design  
15 our basin. If there were other groundwater pits,  
16 then I would also look at that information and  
17 make a determination about it. In this case, we  
18 only have one here and it was done at that one  
19 test. When other test pits were done, no  
20 groundwater was found.

21                    It's no different than when I look at  
22 any other detention basin that we've designed on  
23 any other project.

24           Q.    So, again, we're back to this frozen  
25 ground issue. The groundwater could be higher in

1 other portions of this basin, could it not?

2 A. We're not back to the frozen groundwater  
3 issue because I think at this point we've talked  
4 about that enough. I think Mr. Loh testified on  
5 it and provided his opinion as a geotechnical  
6 engineer as to what the level of groundwater is.

7 Q. In frozen ground.

8 MR. HALL: I object. We've heard about  
9 this 20 times now.

10 MS. DONATO: Okay. I withdraw the  
11 question.

12 MR. COLLINS: Okay.

13 MS. DONATO: I withdraw the question.

14 BY MS. DONATO:

15 Q. Are you aware of problems about what's  
16 called soil compaction?

17 A. Yes.

18 Q. Okay. What happens when soil gets  
19 compacted?

20 A. If you compact soil, you reduce the --  
21 for all -- let's look at it from the purposes of  
22 stormwater management, which is what we're talking  
23 about here. If you compact the soil, you reduce  
24 the permeability of graded soil. That's  
25 essentially the short answer to that.

1 Q. And when you compact soil, isn't it true  
2 that vegetation will ordinarily have difficulty  
3 thriving?

4 A. Yes. If you take -- yes, that is  
5 correct.

6 Q. So what measures are you going to take  
7 when these panels are being placed on the site,  
8 holes are being placed, ballasts are being placed,  
9 when all of the other improvements are being  
10 placed to prevent there from being compaction  
11 where these panels are going to be installed?

12 A. I thought Mr. Kennedy talked about this  
13 during the sequence of construction of the  
14 project. But, generally speaking, for facilities  
15 like this, you try to reduce the amount of times  
16 construction vehicles traverse the site. While we  
17 haven't provided a full construction phasing plan  
18 yet, the more and more of these facilities we  
19 construct, the more we're realizing that you have  
20 to minimize large vehicle traffic across the  
21 property and across the different solar fields.

22 So what we're finding out is you want to  
23 try to utilize the gravel access roads for the  
24 main points of access moving around the site. And  
25 then when you get into the smaller roads, you use

1 smaller equipment typically to go place those  
2 ballasts, once you place the ballasts, and then  
3 after that you go with even smaller equipment to  
4 construct the panels.

5           These are relatively small. These are  
6 only one panel per row. These aren't the large  
7 arrays that we proposed previously which had four,  
8 five panels in landscape which requires different  
9 equipment to construct it. These are only -- I  
10 believe they were 4 or 5 foot high. So it's a  
11 smaller type of installation than the larger  
12 arrays.

13           So there's different things that can be  
14 done during construction to minimize soil  
15 compaction. And I believe Mr. Kennedy touched on  
16 some of that and he agreed with Mr. Ferriero's  
17 letter that we would provide that sequencing plan  
18 prior to construction to show that we're going to,  
19 you know, be cognizant of the fact that we don't  
20 want to compact the soils on the property.

21           There's also ways you could till or  
22 aerate the soil once you -- before you seed it to  
23 break up that compaction.

24           Q. And how would you till or aerate soil  
25 under panels that have already been installed?

1           A.    It all depends on the sequencing.  You  
2    can go down the rows where the vehicles are going  
3    to drive before you -- after you placed the  
4    ballast blocks and do it.  There's different times  
5    that you can go do that during the construction  
6    process.  You know, we didn't get into that  
7    detail, but we are cognizant of the fact that we  
8    have to make sure we don't compact the soils.  And  
9    we have to have a stage of construction plan that  
10   will deal with that.

11           And we have to make sure that the grass  
12   is going to grow after we finish.  So we don't  
13   want to overcompact the soils during construction;  
14   otherwise, the grass would have a hard time  
15   growing.

16           Q.    So when you said Mr. Kennedy touched  
17   upon it, I think that the "touch upon it," it was  
18   equivalent to about one sentence, wasn't it?

19           A.    Again, I don't remember.  That's why I  
20   said that.  But Mr. Ferriero did mention --

21           Q.    When are you going to do more than  
22   touching and really address the issue?

23           A.    I think the issue is a performance  
24   standard that we can provide to Mr. Ferriero in  
25   his review letter in terms of construction staging

1 of the project. Technology changes, the way these  
2 facilities are changing. We started this project  
3 two and a half years ago with a different design.  
4 We're now today with a smaller, different design.  
5 And the technology, the way they build these,  
6 constantly changes. So we want to be up with the  
7 times and stay with that technology and follow  
8 the best practices to make sure we don't compact  
9 these soils and that the grass grows as we intend  
10 it to grow.

11 Q. Okay. So you're going to be presenting  
12 something other than a surprise to this Board?

13 A. I have to talk to my client about what  
14 we present on that.

15 Q. All right. Now, you said earlier that,  
16 you know, this is a big piece of property and, you  
17 know, you're not going to really have any problems  
18 with flooding or drainage.

19 Is that kind of a fair --

20 A. I said it was a hundred -- I believe I  
21 was talking about 100 acres for placing soil on  
22 the property. But it is a large piece of  
23 property.

24 Q. No, not for the soil. It had to do in  
25 response to a question regarding the impervious --

1 you know, what did you calculate the impervious  
2 coverage with the panels and, you know, what would  
3 be the impact. You know, just an intellectual  
4 exercise of calculating those impervious surfaces  
5 and seeing what the -- how that would impact on  
6 the stormwater calculations.

7 I mean, calling them impervious -- I'm  
8 sorry, calling them pervious is a fiction, is it  
9 not?

10 MR. HALL: I object.

11 A. No.

12 MR. HALL: We went through this whole  
13 line of questioning a half hour ago.

14 Q. All right. Well, did you say that you  
15 didn't think there were problems with flooding or  
16 something of that nature in this area?

17 A. I didn't say anything about flooding,  
18 but I believe there were some residents who  
19 brought up the issue with flooding that may be  
20 taking place along Country Club Road during storm  
21 events. And they pointed out certain conditions  
22 that may take place on the public road that is of  
23 concern to them.

24 Q. Okay. And have you ever observed  
25 anything of that nature?



1           A.    On this particular property?  No, but  
2  I've observed that all over the state on  
3  different --

4           Q.    I don't really care about the state  
5  right now.

6           A.    I have not seen the flooding that they  
7  referred to on this particular piece of property.

8           Q.    Okay.  So I'd like to show you a  
9  photograph of -- this photograph, I'll mark it as  
10 O-3 for identification, and then have it --

11           MR. COLLINS:  It will be marked for  
12 identification as O-3.

13                   (Whereupon, exhibit is received and  
14 marked O-3 for identification.)

15           MR. HALL:  Could I have a proffer?  
16 Because he said he didn't observe it.  So I don't  
17 know --

18           MS. DONATO:  I'm going to help him to  
19 observe it.

20           MR. HALL:  Yeah, but to what point?  I  
21 mean--

22           MS. DONATO:  Here you go.

23           MR. COLLINS:  It can be identified.  It  
24 will later have to be -- it probably can't go into  
25 evidence unless this witness has knowledge of it.

1 MS. DONATO: We will have someone  
2 authenticate it.

3 MR. COLLINS: Understood. You're not  
4 submitting it for evidence yet.

5 MS. DONATO: No, I'm not.

6 MR. COLLINS: You're offering it for  
7 identification.

8 BY MS. DONATO:

9 Q. Okay. Now, can you recognize that this  
10 is Country Club Road at the curve?

11 A. It is a road that's shown in the photo.  
12 I will take your word for it that this is Country  
13 Club Road. I see no -- I see no discernible  
14 markers that show that that's Country Club Road,  
15 but I'll take for the argument -- for the purposes  
16 of this discussion we'll say that's Country Club  
17 Road.

18 Q. Okay. So if I were to tell you that  
19 that photograph was taken on July 28th of 2013 and  
20 it shows the conditions where that -- there's a  
21 culvert there, right?

22 A. Yeah. I'm going to go pull up a plan  
23 that we can refer to, if you just give me one  
24 moment. I'm looking at the environmental  
25 constraints exhibit, which was Exhibit A-5 from

1 November 14th, 2013. And I believe Ms. Donato was  
2 referring to the curve in Country Club Road that  
3 is generally in this location here where my finger  
4 is, is that correct?

5 Q. That's correct.

6 A. Okay.

7 Q. Okay. And you did mention that several  
8 people in the public mentioned this particular  
9 flooding problem that's prevalent in that  
10 particular area?

11 A. That is correct.

12 Q. All right. And didn't you say it was a  
13 maintenance issue?

14 A. There's many different issues that could  
15 be taking place there. Flooding can be caused by  
16 runoff, could be caused by clogged inlets, could  
17 be caused by any number of things. So, again,  
18 this is flooding that's taking place on the road.  
19 I think that's what we see in the photo. What's  
20 causing it, I don't know.

21 Q. Okay. You do agree that the water is  
22 coming from this property, a portion of this  
23 property, to that portion of the road that we're  
24 talking about by this culvert?

25 A. There's water coming from many different

1 directions.

2 Q. I understand that.

3 Some of the water, okay, is coming from  
4 your property onto that portion of Country Club  
5 Road, isn't that correct?

6 A. Yes, there is runoff from this property  
7 that comes to Country Club Road. I made that  
8 statement earlier on.

9 Q. Right.

10 A. How much of that water is ours, I can't  
11 say that. I don't know.

12 Q. Well, I didn't ask you how much of it  
13 was yours.

14 A. I'm just making a statement.

15 Q. It could be coming from a lot of  
16 sources. Some of it's coming from your -- your  
17 property drains into this particular area.

18 A. That's correct.

19 Q. And when you were asked at the last  
20 meeting by members of the public whether anything  
21 would be done with respect to that, you said no  
22 because we're not proposing any development at  
23 that particular location?

24 A. My comment was that we're not proposing  
25 any change to the drainage patterns in terms of

1 runoff that's going to this area. We have a  
2 detention basin that's reducing the rates of  
3 runoff going in this direction, but everything  
4 else that's coming off of the fields and the  
5 wooded areas or the vegetation, we're not changing  
6 those drainage patterns.

7 Q. But you're developing an entire site,  
8 are you not?

9 A. That's correct. And it is split into  
10 three different sections of the --

11 Q. Okay. But you're developing -- your  
12 client is developing an entire site.

13 A. We're developing the property, yes.

14 Q. Okay. So you're not excluding the green  
15 areas in between the panels, because you're not  
16 putting anything on them, are you?

17 A. Excluding them in what way?

18 Q. Excluding them from your stormwater  
19 calculations and whatever measures you're  
20 undertaking.

21 A. Everything with -- as we mentioned  
22 earlier, everything within the fence, within the  
23 limit of disturbance, is accounted for in the  
24 stormwater management system.

25 Q. Okay. You realize that the culvert that

1 is located on that portion of the road is on tract  
2 to this property?

3 A. I'm sorry, say it -- is on?

4 Q. On tract.

5 A. On tract?

6 Q. Yes. Do you know what that means under  
7 the Land Use Law?

8 A. No. If you can expand on that for me,  
9 please.

10 Q. On tract means it's part of the  
11 property--

12 A. Okay.

13 Q. -- and a contiguous portion of the  
14 right-of-way to the center line of the road.

15 A. Well, the right-of-way is owned by the  
16 township. The property line that we have is the  
17 yellow line shown on here. I don't know if the  
18 culvert -- I'd have to look at the design plans to  
19 see where the culvert is actually located.

20 Q. It's located on the side of this road.  
21 On tract under the Land Use Law includes that  
22 portion of the right-of-way.

23 A. Okay.

24 MR. COLLINS: Why don't we have the  
25 witness look at the entire culvert and tell us

1 what portions, if any, are on the property in  
2 question and how much of it is on the right-of-way  
3 from the center line.

4 THE WITNESS: Give me one moment here to  
5 get some plans.

6 MR. COLLINS: On site and on tract.

7 MS. DONATO: Yes, it's on tract,  
8 Mr. Collins, not on site. On site is just within  
9 the property limits; on tract is within the  
10 property limits and within the contiguous portion  
11 of the right-of-way.

12 MR. COLLINS: I want to hear the exact  
13 dimensions.

14 MS. DONATO: Thank you.

15 THE WITNESS: There's two culverts --  
16 well, there's a series of drainage structures in  
17 Country Club Road. And the first one is a culvert  
18 that's all the way up to the north, which I don't  
19 believe is the question of this picture here. But  
20 that is furthest on the plan here is where the  
21 tributary from the Pluckemin -- from the tributary  
22 for the drainage under 78 and 287 crosses.  
23 There's a culvert here. And then further down the  
24 road there's a series of drainage pipes. That  
25 culvert is contained wholly within the township

1 right-of-way.

2 Then you come further down Country Club  
3 Road and you start with a series of drainage  
4 inlets. Generally in the location of this wetland  
5 complex here, there's inlets on the western and  
6 eastern sides of Country Club Road. That's  
7 connected by pipes. Those inlets appear to be  
8 within the right-of-way.

9 There's a pipe that crosses under  
10 Country Club Road in this general location where  
11 my finger is on the plan, basically where the  
12 pointed out wetland is, that drains into the pond  
13 on the adjacent property. That pipe is in the  
14 right-of-way and then comes on to this property  
15 and drains into the pond. And then it looks like  
16 a small portion of an inlet that may be on the  
17 property right over here. I just can't tell from  
18 looking at this scale on the map.

19 And then, continuing along to the south  
20 on Country Club Road, there are a series of inlets  
21 on both sides of the road. The pipe crosses back  
22 and forth as it goes across the road. And those  
23 inlets appear to be contained within the township  
24 right-of-way generally to approximately this point  
25 on the plan right here.



1           So there's a series of inlets and pipes  
2           that come down to that existing pipe crossing  
3           that's in the road here and they seem to be  
4           contained within the township right-of-way looking  
5           at the plans I have here without rolling out the  
6           large set.

7           Q.     Okay.  And do you understand that under  
8           the Municipal Land Use Law, the on-tract  
9           improvements are those that are on the site and  
10          within the closest half of the right-of-way?

11          A.     I'm going to defer to Mr. Hall on the  
12          definition of the legality of it.

13          MR. HALL:  I think that's a no then.

14          MR. COLLINS:  Well--

15          MS. DONATO:  I'll read the definition.

16          MR. HALL:  No, no, no.  You're asking an  
17          engineer for a legal interpretation.

18          MR. COLLINS:  Yes, he doesn't know the  
19          answer to that.

20          MR. HALL:  I think this whole line of  
21          question is improper.

22          MR. COLLINS:  Well, I don't think the  
23          whole line of questioning is improper --

24          MR. HALL:  Well, we can just have --

25          MR. COLLINS:  -- but this particular

1 question. If he doesn't -- if he can't say he  
2 knows, you can show him the Municipal Land Use Law  
3 and he can perhaps render an opinion or you can go  
4 to the next line.

5 MS. DONATO: I'm going to show him.  
6 Thank you, Mr. Collins.

7 BY MS. DONATO:

8 Q. I'm going to show you 40:55D-5. Do you  
9 see "on tract"?

10 A. Yes. On tract -- I'm going to read it  
11 for the Board. "'On tract' means located on the  
12 property which is the subject of a development  
13 application or on the closest half of an abutting  
14 street or right-of-way."

15 Q. Okay. So the obligation to make those  
16 improvements is not subject to a pro rata  
17 analysis --

18 MR. HALL: Objection. That's a legal  
19 conclusion that an engineer can't answer. I can't  
20 answer it off the top of my head either.

21 Q. Well, Mr. Moschello --

22 MR. HALL: This is cross-examination,  
23 not make your case.

24 MR. COLLINS: The objection is --

25 MR. HALL: He testified about none of

1 this.

2 MR. COLLINS: The objection is  
3 sustained. It is calling for a legal conclusion.  
4 But there may be a way to address the area of  
5 inquiry, Ms. Donato, and you can proceed if you  
6 would like to. Not with that exact question, but  
7 with the area.

8 MS. DONATO: Thank you, Mr. Collins.

9 BY MS. DONATO:

10 Q. Isn't it true that you stated that this  
11 area could have been -- there could be water  
12 coming into these culverts from a number of other  
13 areas?

14 A. There's water -- you call them culverts;  
15 I call them inlets.

16 Q. Inlets, okay.

17 A. You know, there's a differentiation  
18 between that.

19 Q. Okay.

20 A. But there's inlets along the road that's  
21 collecting runoff from the property, from the  
22 street, that is getting piped into the existing  
23 pond on block 71.02, lot 1.

24 Q. Okay. And so what is the -- why did you  
25 comment that there is water coming from other

1 locations into these inlets?

2 A. I'm not sure what you mean, "other  
3 locations." The inlets are collecting runoff from  
4 our site and from the roadway. I think I was  
5 mentioning the culvert to the north is collecting  
6 runoff from other locations.

7 Q. Okay. So if you have a known flooding  
8 condition that is on the -- on an improvement, an  
9 inlet that is located on tract, as I just read the  
10 definition, why wouldn't the applicant take care  
11 of repairing that problem?

12 A. Again, looking at it from my point of  
13 view, it's in the township road. My understanding  
14 is the road's maintained by the township and that  
15 drainage system in the road is maintained by the  
16 township. So from a stormwater design standpoint,  
17 it's our concern to make sure we don't put more  
18 water in that direction than what's going there  
19 today, which is why we have the stormwater  
20 management system to manage the runoff coming off  
21 the site.

22 But the existing drainage system that's  
23 in the road functions that way regardless of what  
24 is happening on the site. If we don't develop the  
25 property, that's still going to take place there,

1 you know, depending on what's causing it. Again,  
2 we don't know why that happens. I can't say why  
3 that flooding is like that on the road. There can  
4 be clogged inlets. There could be a number of  
5 things that cause that flooding.

6 We had a flash flood a year ago, a year  
7 and a half ago, that flooded Downtown  
8 Bernardsville. Again, that was uncharacteristic  
9 in a hundred years of flooding in this area.

10 Q. So you're proposing on behalf of your  
11 client to develop this site with all the panels  
12 and everything else that you have there and you're  
13 just going to, like, leave that condition and not  
14 address it.

15 Is that's what you're saying?

16 A. I'm proposing to develop the site and  
17 provide a stormwater management system that meets  
18 the requirements of the regulations for  
19 attenuation, recharge and water quality.

20 Q. And not take care of the inlets that are  
21 on your on tract?

22 A. They are in the township right-of-way.

23 Q. They're on-tract improvements, are they  
24 not? Didn't we just go over that when you read  
25 the definition?

1           A.    You can call them "on tract,"  
2 but they're in the township's--

3           Q.    I'm not calling them on tract.  The  
4 statute calls them on tract.

5           Okay.  Now, you have a fence that you're  
6 proposing for -- around by Preston Terrace and  
7 Somerset Terrace.

8           Are you going to put fabric on a  
9 chain-link fence?  Is that what's being proposed  
10 or did that change?

11          A.    No, I believe Mr. Kennedy testified that  
12 there would be a form of a fence on top of a berm.  
13 And I don't recall if that fence was the fence  
14 with the fabric or if it was the solid  
15 board-on-board fence.  I'd have to go back and  
16 look at the designs.

17          Q.    Do you know if there's any more of this  
18 fabric with the chain-link fence being proposed at  
19 any location?

20          A.    In terms of?

21          Q.    In terms of providing a proposed screen,  
22 a visual screen.

23          A.    It's proposed in many different  
24 locations.  I myself only proposed it on this  
25 particular project.  We're actually looking to use

1 it on one or two other projects.

2 Q. I don't care about anybody else. I'm  
3 interested in just right here with us.

4 On this particular piece of property,  
5 are you proposing chain-link fence with fabric?

6 MR. HALL: I object; beyond the scope of  
7 direct. Mr. Kennedy was here months ago talking  
8 about this stuff. Mr. Moschello talked about  
9 stormwater. Can he answer the question? Sure,  
10 but why are we spending time on it, on something  
11 that came up months ago?

12 MS. DONATO: I'll tell you why. Because  
13 Mr.--

14 MR. COLLINS: You don't have to go  
15 further. You do have the right to ask the  
16 question. This is the witness on the engineering  
17 plan. So Mr. Kennedy didn't focus on details of  
18 the engineering plans to the level that this  
19 witness is. So let's try to move it along,  
20 though.

21 MS. DONATO: I don't have much more. I  
22 have very few questions.

23 A. If you could restate the question. I  
24 pulled out the plans.

25 Q. My question to you is, are you proposing

1 chain-link fence with fabric with the fence in any  
2 location on this site?

3 A. Yes. And let me go back to the  
4 rendering that we had for the site just to point  
5 it out for the Board. This is Exhibit A-15 from  
6 October 2, 2014. It's the proposed site plan  
7 rendering. And this shows the panel layout and it  
8 shows the landscaping and it shows the berm on the  
9 northern side of the site.

10 And there's -- all the arrays are  
11 surrounded by fencing. I believe we talked about  
12 that. It's a chain-link fence. I believe it's 7  
13 foot high.

14 However, there's a couple instances  
15 where we are proposing a fabric screen on top of  
16 that chain-link fence to block the views through  
17 that fence. And there's two locations where  
18 that's taking place. The first -- at three  
19 locations. The first location is on top of the  
20 berm along the northern property line with  
21 Somerset Terrace and Preston Terrace.

22 The second location is on the southern  
23 side of the easterly array, essentially from the  
24 western point of it to the eastern point of it  
25 running along the southern side. Basically what



1 you would see from Country Club Road besides the  
2 landscaping would be a 7-foot-high fence with a  
3 green screen on the front of it.

4 And then the last location is along the  
5 westerly array. Basically from the back northwest  
6 corner along the northern side to the northeast  
7 corner of that array field, we have the same fence  
8 there with a screen on it. But no berm on that  
9 side.

10 Q. So now let's deal, first, with the  
11 Preston Terrace/Somerset Terrace portion there.

12 Will the homeowners in that area from  
13 the ground level see this fence?

14 A. Yes. The fence will be -- the fence is  
15 on top of the berm and they will see the berm, the  
16 fence and the landscaping, yes.

17 Q. So they're now currently seeing a  
18 rolling field and an agricultural field. They're  
19 going to be seeing a chain-link fence on top of a  
20 berm?

21 A. No, they're not going to be seeing a  
22 chain-link fence. They're first looking through a  
23 varied screen of vegetation that runs along the  
24 property's northern property line. Then there's  
25 an open field of -- I forget how many linear feet.

1 Maybe it's 100-plus feet. Maybe a little bit  
2 more. I don't have the exact dimensions here.  
3 And then what they're going to see is a landscaped  
4 berm that varies in height. And on top of that  
5 landscape berm, there's going to be vegetation on  
6 the northern side of it.

7 Behind that vegetation will be a  
8 chain-link fence with a green screen, the purpose  
9 of which, when you intersperse it with that  
10 grading, is to provide that screen. You're not  
11 just going to see a green screen on a chain-link  
12 fence. You're going to see landscaping, you're  
13 going to see features as you look in this  
14 direction, not just a chain-link fence.

15 Q. Has anyone prepared a visual of what  
16 that will look like from someone on Preston  
17 Terrace, for example?

18 A. I don't believe we've done a  
19 three-dimensional or a visual picture of what that  
20 looks like. There's a detail on the plan of what  
21 the green screen looks like on the fence, but  
22 there's no visual detailing of what that looks  
23 like.

24 Q. Have you provided any cut sheets that  
25 will show what this fence is supposed to look like

1 with this fabric?

2 A. I provided a construction detail showing  
3 the detailed fabric that we would be proposing.  
4 And I believe the color was -- I don't remember if  
5 it was a green or a brownish earth tone color, but  
6 that was shown on detail sheet 31A of 31.

7 Q. And what's the useful life of that  
8 fabric?

9 A. I don't have the exact number from the  
10 manufacturer, but I can say that whatever the  
11 useful life is, if the fabric tears or gets  
12 damaged, it has to be replaced. It's a  
13 function -- it's no different than landscaping  
14 that you would propose on a site plan. If a tree  
15 dies and it's part of a screen, it would be the  
16 applicant's responsibility to replace it and put  
17 it back. So it's a performance standard, that it  
18 remains in place and performs the function and  
19 duty it's required to perform.

20 Q. Is there any monetary assurance that  
21 that would take place if it were to deteriorate  
22 after the two-year maintenance bond?

23 A. I'm sure we can discuss that with our  
24 client to see if there's a willingness to post a  
25 bond or something beyond them requiring that they

1 replace it as part of the general property  
2 maintenance. But I'm sure we can talk about that  
3 with them.

4 Q. So you don't know what is the useful  
5 life of this fence, how long?

6 A. It's designed to last a number of years,  
7 not just a year or two.

8 Q. Well, how long is the facility -- the  
9 panels are, what, 20 years?

10 A. I don't remember if the lease was 15 or  
11 20 years. But, again, it has to remain in place  
12 for the life of the facility. That means if it  
13 tears or rips during that time, it needs to be  
14 replaced. And that's going to be a requirement of  
15 any site plan approval.

16 Q. Now, I have one last question. The  
17 additional testing that was performed by GTA after  
18 the last set of plans were submitted to this  
19 Board, are they in any way going to affect the  
20 design of the stormwater management system?

21 A. Affect the design of it?

22 Q. Yes. Is it going to change the design?  
23 How's that?

24 A. The testing? No, the design of the  
25 system -- the testing supports the design of the

1 system. It shows that the system's going to  
2 function as it is intended. It's not going to  
3 affect the design -- you said affect the design of  
4 it?

5 Q. You know, that would change the design.

6 A. Change the design?

7 Q. Yes.

8 A. At this point in the design process, the  
9 plan that the Board sees in front of them with the  
10 layout of the stormwater system, subject to some  
11 of the comments in Mr. Ferriero's review letter  
12 about tweaking the stormwater system, making some  
13 minor adjustment to elevations or changes of that  
14 and tweaking some construction details, the design  
15 that you see, the locations of the basins, the  
16 layout of the panels, the screening, is what we're  
17 proposing. There's no substantial change to that  
18 system that's going to require us to move a basin  
19 or move a large amount of panels to another  
20 location on the site. What you see is what we're  
21 proposing.

22 Q. I didn't ask you substantial.

23 A. Okay.

24 Q. Mr. Moschello, that was not my question  
25 to you.

1           A.    I can define minor.  I may decide to  
2           remove one set of panels right there.  I mean, I  
3           don't think the Board would be concerned if I get  
4           rid of five panels on the project.  But I'm saying  
5           substantial where you're talking about a redesign  
6           of anything.

7                     And I'm saying that this is the plan.  
8           The calculations are the calculations that we  
9           provided to Mr. Ferriero.  We made some minor  
10          adjustments to the technical side of things that  
11          Mr. Ferriero asked us to do, but the design as you  
12          see it here is what we're proposing.

13          Q.    So the fact that there are any varying  
14          levels, for example, on the infiltration tests  
15          acknowledged in the report of GTA as such, you're  
16          not going to do any further inquiry or analysis of  
17          that?

18          A.    The way we designed the basins with an  
19          infiltration rate of -- I believe it was 1 inch  
20          per hour, which is the lowest rate allowed by DEP  
21          for an infiltration basin for design purposes.  
22          I'm not going to increase that rate to try to make  
23          the basins smaller.  So I believe they're designed  
24          based upon a conservative nature of an  
25          infiltration rate.  If GTA got rates that were

1 higher than that, I didn't use those rates. I  
2 used the lowest rate that I could use for the  
3 purposes of designing the basin.

4 Q. But you didn't use the rates that your  
5 firm had shown prior to GTA's involvement when  
6 they all failed?

7 A. No, we didn't use those rates.

8 Q. Yeah, I didn't think so. Thank you.

9 MS. DONATO: I have no further  
10 questions.

11 CHAIRMAN BOXER: Thank you, Ms. Donato.

12 Mr. Collins, I believe we had the  
13 citizens cross-examine already.

14 So I think I just want to ask my  
15 colleagues. Any questions?

16 BOARD MEMBER GUTTSCHALL: No.

17 CHAIRMAN BOXER: No?

18 Thank you very much.

19 MS. DONATO: Thank you.

20 CHAIRMAN BOXER: Thank you, Ms. Donato.  
21 I appreciate it.

22 Let's talk about the schedule. So what  
23 do we have coming up, Trina?

24 SECRETARY LINDSEY: On May 14th we  
25 Lamington Farm.

1           CHAIRMAN BOXER: I'm sorry?

2           SECRETARY LINDSEY: We had Chesson on,  
3 as well, but Chesson has now canceled. So we just  
4 have Trump on May 14th. We don't have a meeting  
5 next week.

6           CHAIRMAN BOXER: Right.

7           SECRETARY LINDSEY: The next meeting  
8 would be in June.

9           CHAIRMAN BOXER: June what?

10          SECRETARY LINDSEY: We are looking at  
11 June 4th and June 11th.

12          CHAIRMAN BOXER: June 4th and June 11th.

13          Ms. Donato, Mr. Sasso, do you guys have  
14 preferences along with Mr. Hall?

15          MS. DONATO: I always have difficulty on  
16 the fourth and there is a -- on the first I mean,  
17 the first Thursday.

18          CHAIRMAN BOXER: What about you,  
19 Mr. Hall?

20          MR. HALL: I have a conflict on the  
21 second Thursday. I've missed three of those  
22 meetings already this year. I'd rather not do it  
23 again, at least not in June.

24          CHAIRMAN BOXER: Okay. We're going to  
25 try and cooperate with everybody. Mr. Hall will



1 try and maybe give you this one.

2 What about you, Mr. Sasso?

3 MR. SASSO: I'm fine.

4 CHAIRMAN BOXER: All right. So let's  
5 do --

6 MR. HALL: June 6th?

7 CHAIRMAN BOXER: We'll do June 4th this  
8 time. And we'll see how far we go and we'll see  
9 how the meeting schedules go.

10 MR. SASSO: Is it possible to get a  
11 proffer on who's next so we know who to bring and  
12 who not to bring?

13 MR. HALL: I think I said at the  
14 beginning we'd anticipate Michael Tobia, our  
15 planner.

16 MR. SASSO: Oh, the planner?

17 MR. HALL: Yes. Since we're starting,  
18 we'll have the full meeting pretty much.

19 CHAIRMAN BOXER: So you think Michael  
20 Tobia on the 4th?

21 MR. HALL: Yes, we'll start him. That's  
22 my anticipation.

23 CHAIRMAN BOXER: Thank you very much.  
24 Great. Thank you, Mr. Hall.

25 MR. HALL: Thank you. Have a good

1 night.

2 MS. DONATO: Thank you very much.

3 (Whereupon, the hearing on this  
4 application was adjourned to June 4, 2015, at 7:00  
5 p.m.)

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C E R T I F I C A T E

I, BRIDGET LOMBARDOZZI, Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

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