

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Just Wind - Wind Farm Development :
Wind Farm - Logan County : Case No. PU-07-54
Siting Application :

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PUBLIC SERVICE COMMISSION

TRANSCRIPT OF

PUBLIC HEARING

Taken At
Logan County Courthouse
301 Broadway
Napoleon, North Dakota
October 21, 2008

36 PU-07-54 Filed: 11/13/2008 Pages: 226
Transcript of October 21, 2008 Hearing in Napoleon

Emineth & Associates Court Reporters

BEFORE ALLEN C. HOBERG
-- HEARING OFFICER --

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BISMARCK, NORTH DAKOTA
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A P P E A R A N C E S

COMMISSIONERS PRESENT:

COMMISSIONER SUSAN WEFALD, President
COMMISSIONER TONY CLARK
COMMISSIONER KEVIN CRAMER

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FOR THE COMMISSION.

C O N T E N T S

	Page No.
Opening discussion	6
Opening statement by Mr. Jones	20
Closing discussion	194

CERTIFICATE OF COURT REPORTER	200

C O N T E N T S (Continued)

WITNESSES:

Jeffrey L. Metzger

Direct examination by Mr. Jones	23
Cross-examination by Ms. Bendish	29
Cross-examination by Mr. Lein	33
Examination by Commissioner Wefald	34
Examination by Commissioner Clark	39
Examination by Commissioner Cramer	45
Further examination by Commissioner Wefald	47
Redirect examination by Mr. Jones	48
Recross-examination by Ms. Bendish	51
Redirect examination by Mr. Jones	156
Recross-examination by Mr. Lein	160
Further examination by Commissioner Wefald	166
Further examination by Commissioner Clark	176
Further examination by Commissioner Cramer	183
Further examination by Commissioner Wefald	184

Larry Lacher

Direct examination by Mr. Jones	52
Examination by Commissioner Wefald	57
Examination by Commissioner Cramer	60

Brian Johnston

Direct examination by Mr. Jones	61
Examination by Commissioner Clark	65
Redirect examination by Mr. Jones	67

Richard Rothaus

Direct examination by Mr. Jones	69
Cross-examination by Mr. Lein	76
Examination by Commissioner Wefald	79
Examination by Commissioner Clark	83

C O N T E N T S (Continued)

1		
2		
3	Bart Schultz	
4	Direct examination by Mr. Jones	85
5	Redirect examination by Mr. Jones	119
6	Examination by Commissioner Wefald	127
7	Redirect examination by Mr. Jones	130
8	Further examination by Commissioner Wefald	134
9	Redirect examination by Mr. Jones	137
10	Further examination by Commissioner Wefald	137
11	Examination by Commissioner Clark	138
12	Mark Aaneson	
13	Direct examination by Mr. Jones	92
14	Cross-examination by Ms. Bendish	111
15	Redirect examination by Mr. Jones	113
16	Cross-examination by Mr. Lein	116
17	Examination by Commissioner Clark	117
18	John W. Schultz	
19	Direct examination by Mr. Jones	140
20	Examination by Commissioner Wefald	154
21	Examination by Commissioner Clark	155
22	Dennis Kost	
23	Statement by Mr. Kost	187
24	Richard Gross	
25	Statement by Mr. Gross	191

C O N T E N T S (Continued)

EXHIBITS:

No.	Marked	Offered	Received
1	53	53	53
2	62	62	62
3	70	70	70
4	86	86	86
5A-5M	88	88	88
6	93	93	93
7	111	111	112
8	141	141	141

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1 (The following proceedings were had and
2 made of record herein, commencing at 10:33 a.m.,
3 Tuesday, the 21st day of October, 2008:)

4 JUDGE HOBERG: Okay. We're going to start
5 this hearing. For the record, it's about 10:30
6 a.m. on October 21st, 2008. We're in the Logan
7 County Courthouse in Napoleon, North Dakota, for
8 the administrative hearing in the matter of the
9 wind farm siting application of Just Wind - Wind
10 Farm Development. Can you hear me back there?
11 Okay. Good.

12 We'll start by taking appearances from the
13 parties, starting with the applicant, Mr. Jones,
14 please.

15 MR. JONES: Thank you, Judge Hoberg. Can
16 you hear me? How is this?

17 JUDGE HOBERG: That's better.

18 COMMISSIONER WEFALD: Better.

19 MR. JONES: Maybe too much.

20 COMMISSIONER WEFALD: Nope. That's good.

21 MR. JONES: Thank you. My name is Norman
22 Jones. I'm appearing before this hearing as
23 attorney for Just Wind, LLC, and its subsidiary,
24 Logan County Wind Farm, LLC. I've been admitted to
25 practice in North Dakota just for the purpose of

1 this hearing.

2 JUDGE HOBERG: All right. And associated
3 with Mr. John Kapsner, who is in the back there.
4 Thank you. Ms. Bendish, would you state your
5 appearance, please?

6 MS. BENDISH: Annette Bendish for the
7 Public Service Commission. Commission staff is
8 taking an advisory role at this hearing. With me
9 at the table is Jerry Lein, an analyst with the
10 Commission, and I would ask if it would be okay if
11 Mr. Lein has questions, if he could ask those
12 directly instead of filtering them through counsel.

13 JUDGE HOBERG: Yes, he may. All right.
14 And, of course, to my left are members of the
15 Public Service Commission, Commission President
16 Susan Wefald, Commissioner Tony Clark, Commissioner
17 Kevin Cramer. Shortly I'll ask for their opening
18 comments after we do a few more preliminary things.

19 But I need to know -- there's a lot of
20 people here today and that's good. The
21 Commission's always interested in hearing from the
22 public, and there's going to be, if not already, an
23 attendance sheet circulated. We'd very much
24 appreciate it if you would put your name and the
25 other information required on the attendance sheet,

1 but at this time I'd like to have a show of hands,
2 if I could, for those who may be interested in
3 presenting testimony, in other words, presenting
4 information to the Commission or you may have
5 concerns or questions you want to ask -- this is
6 not really a question and answer session -- but
7 some of your concerns and questions that you may
8 raise may be addressed by the applicant in this
9 matter. So if I could have just a show of hands at
10 this time of those who may be interested in talking
11 or presenting information to the Commission. Raise
12 your hand, please. Just one person? Two? Two
13 people. All right. Three. Perhaps three. Well,
14 that's good. Consider that. Again, I'd like to
15 encourage those who want to present information to
16 the Commission to do so. I'm shortly going to give
17 the hearing procedure and we'll talk about when
18 that will be. So approximately three, maybe some
19 more.

20 Okay. Just briefly a background on this
21 matter. On August 1st of 2008 Just Wind filed a
22 revised application for a certificate of site
23 compatibility to authorize construction of a 368
24 milliwatt wind farm consisting of approximately 160
25 2.3 milliwatt wind turbine engines and associated

1 facilities in Logan County, North Dakota, as shown
2 on the attached map that was submitted with that
3 application, and I'm sure that map will probably be
4 up sometime or another showing that area.

5 The Commission scheduled today's hearing
6 to consider the application. The issues to be
7 considered at this hearing today are the following:
8 First of all, will the location, construction, and
9 operation of the proposed facilities produce
10 minimal adverse effects on the environment and upon
11 the welfare of the citizens of North Dakota?

12 Secondly, are the proposed facilities
13 compatible with the environmental preservation and
14 the efficient use of resources?

15 And, third, will the proposed facility
16 locations minimize adverse human and environmental
17 impact while ensuring continuing system reliability
18 and integrity and ensuring that energy needs are
19 met and fulfilled in an orderly and timely fashion?

20 So those are the issues for this
21 hearing -- this application hearing today, and I'll
22 now call on the Public Service Commissioners for
23 their opening comments, beginning with Commissioner
24 Wefald, who has the electric portfolio.

25 Commissioner Wefald, please.

1 COMMISSIONER WEFALD: Good morning. It is
2 just wonderful to be here in Napoleon today.
3 Seeing a turnout like this at this hearing reminds
4 me how important it is that the Commission hold
5 hearings in the place where the project is going to
6 be built. It gives people a chance to come and get
7 information about the project and again a chance,
8 as we will encourage you, to share any thoughts and
9 concerns that you have with the Commission.

10 This is a big wind project that we're here
11 to consider siting today. A 386 megawatt project,
12 when built, if built, it would be the largest wind
13 project in the state. At present we have seen wind
14 projects in your region. South Central North
15 Dakota is known for its great wind opportunities.
16 We already have wind turbines in this area. Also
17 in the northeast part of the state we have wind
18 turbines. That's our largest farm right now, over
19 200 megawatts of wind, but this one, which proposes
20 to authorize construction of a 368 megawatt wind
21 farm is a large wind farm anywhere in the United
22 States.

23 As we were driving into Napoleon, I said,
24 Tell me when we're eight miles out of Napoleon so
25 that I can start looking at the terrain to know

1 where this wind farm is going to be located, and,
2 of course, I said there's not a lot of trees in
3 this area that they have to avoid, and I also
4 looked and saw some nice, high ridges. I, of
5 course, studied the topography map, and I could see
6 that this is an excellent area for wind in our
7 state.

8 So we have a number of issues as the
9 hearing officer has just gone through that we're
10 going to be considering today, and I understand
11 we're going to have eight witnesses presenting
12 information to the Commission.

13 Some of the questions that the Commission
14 normally would ask have already been asked of the
15 company and they've replied to those questions in
16 writing. So you may wonder, you know, about
17 certain issues. We can certainly go over with
18 you -- you can certainly see that response that
19 we've already received from the company to a number
20 of Commissions -- questions that the Commission has
21 already asked the company.

22 Also, I just want to encourage you --
23 since you've all come and shown such an interest by
24 sharing your time with us today, that it is so
25 important that if you have as you go -- as you

1 listen to this material that's presented at the
2 hearing today, if you have any comments or if you
3 have any questions, to be sure to indicate to the
4 hearing officer that you need an opportunity to
5 share those with the Commission. That's the reason
6 we're here.

7 Thank you.

8 JUDGE HOBERG: Thank you, Commissioner
9 Wefald. Commissioner Clark, please.

10 COMMISSIONER CLARK: Well, thank you, and
11 I'd just like to welcome you all, as well, members
12 of our jury and Your Honor. You look good up
13 there, Commissioner. It is great to see such a
14 good turnout and to have to use all the seats
15 available in the room.

16 I had a kind of remarkable experience
17 yesterday as I was out touring a couple of the
18 facilities that this Commission has recently sited
19 and similar proceedings to this. I toured portions
20 of the construction spread of the TransCanada
21 Keystone Pipeline, which many of you may be
22 familiar with. It's a 30-inch pipeline that cuts
23 through the state roughly from about Walhalla to
24 Cogswell, and at the same time that I was touring
25 that particular construction site at the same

1 location, it was cutting right through the heart of
2 a brand-new wind farm that the Commission has also
3 sited. So you have right there in Barnes County an
4 interesting picture of both a more traditional form
5 of energy, of a large pipeline being laid right
6 through and literally in the shadow of new wind
7 towers that were going up and cranes that were
8 constructing the new wind towers.

9 And it, I think, really says a lot about
10 what is happening here in North Dakota right now
11 because it is particularly exciting, all of the
12 energy development that we're seeing from both
13 traditional and newer of energy.

14 It also emphasized for me as I watched the
15 tremendous construction project going on there the
16 importance of what happens here at these hearings,
17 because it's really at these hearings where we
18 develop the record where we can address a lot of
19 the issues that might come up during construction
20 because as excited as I think we all are as state
21 officials to see this kind of investment coming
22 into the state, we also know that it has to be done
23 in the right way because these projects do have a
24 tremendous impact on local communities and they
25 have a tremendous impact on the environment and a

1 tremendous impact on the long-term land use that we
2 have here throughout the state.

3 And that's why I would just emphasize what
4 Commissioner Wefald had mentioned about having your
5 opportunity if you want to put something on the
6 record.

7 One of the things you'll probably notice
8 that's a little bit different about the Public
9 Service Commission as opposed to maybe county
10 commission meetings or even the legislature if
11 you've had the opportunity to testify or witness
12 hearings there, is these do tend to be a little bit
13 more formal. They're almost a little bit like a
14 courtroom proceeding. We have a judge who handles
15 administrative matters, we have attorneys
16 representing each side, we have opportunities for
17 questioning. So it's a little more formal, and
18 it's that way because it has to be where we are
19 technically developing a record, and the Commission
20 can only consider those things that are on the
21 record and taken down at formal hearings like this
22 today.

23 But at the same time we don't want you to
24 be intimidated if you feel like you have something
25 to say because it really is your one opportunity to

1 address an issue that you might have, a concern,
2 give the Commission something to think about so we
3 can ask company witnesses. This is the time that
4 that has to happen, and I would certainly encourage
5 you to speak up, if you wish.

6 The role that we'll be playing in this
7 siting is really looking at that impact on the
8 land, how it impacts our cultural resources,
9 environmental resources, human resources, things
10 like that, and making sure that however the energy
11 development happens, that it be done in a way that
12 mitigates adverse impacts to our landscape that we
13 know is so important to all of us here in North
14 Dakota.

15 So thank you for being here. I look
16 forward to a good hearing.

17 JUDGE HOBERG: Thank you, Commissioner
18 Clark. Commissioner Cramer, please.

19 COMMISSIONER CRAMER: Thank you, Judge,
20 and thanks to all of you for your irrevocable gift
21 of time this morning. It is a tremendous testimony
22 to how important this development is in your
23 community, and perhaps even to a greater extent how
24 important energy development is in our entire
25 state.

1 We live in a remarkable time when we see
2 wars being fought in other parts of the world, we
3 see national politicians debating what to do about
4 the crisis, and we gather in North Dakota to solve
5 the problems, and we provide that which our country
6 is so desperately in need of, and that is energy.
7 And whether it's the literally hundreds of millions
8 of dollars in the last few years that have been
9 invested in oil pipelines, natural gas processing
10 plants, new coal processing -- or generation
11 facilities, over billions of dollars worth of wind
12 generation, nearly half a billion dollars in
13 transmission facilities to accommodate that new
14 energy development in the last few years, all of
15 that, as exciting as it is, as Commissioner Clark
16 said, it is important to do it right because we are
17 stewards of this land, as well.

18 And North Dakota has a rich tradition not
19 only of feeding the world both food and energy, but
20 also stewarding the land in a responsible manner.

21 So your input is very important. And let
22 me add my admonition, as well, to be sure that you
23 do not leave this hearing -- like the guy, you
24 know, that could have had a V8 -- wishing you had
25 said something you didn't say. We want to hear

1 what's on your heart and on your mind because it's
2 very, very important to us not only as your
3 representatives but as citizens of this state, as
4 well.

5 Let me also add my great pleasure in being
6 outside of the Capitol today. Sure, this was all
7 designed so that you could attend, but the blessing
8 is that we get to attend, that we get to come to
9 Napoleon, and it's always a lot more fun than just
10 being in the Capitol. So we look forward to a
11 productive day.

12 Thank you, Judge.

13 JUDGE HOBERG: Thank you, Commissioner
14 Clark -- or Commissioner Cramer.

15 COMMISSIONER CRAMER: That's okay. I only
16 wish I could be Commissioner Clark.

17 JUDGE HOBERG: I looked at the sign there
18 and -- anyway, I don't think I gave my name. My
19 name is Allen Hoberg, and I'm the designated
20 hearing officer today and administrative law judge
21 with the Office of Administrative Hearings, and
22 I've been hearing a little bit of noise from cell
23 phones. Please turn off your cell phones so we
24 don't hear some extra noises here today.

25 All right. This is the hearing procedure

1 we're going to follow today in this hearing. I'll
2 call on the applicant, Mr. Jones, to present the
3 case for the granting of the application in this
4 matter. He'll have witnesses and some documentary
5 evidence for the Commission to consider, eight
6 witnesses, I believe. Each of those witnesses will
7 be called individually and sworn in to testify and
8 he'll ask them questions. Following that the
9 Commission staff may have some questions for the
10 witnesses. Following that the Commissioners may
11 have some questions for the witnesses. Following
12 that Mr. Jones may have some questions on redirect
13 of the witnesses. Then I'll allow such further
14 questions as any of the participants may have.

15 After the applicant has presented all of
16 its evidence, all of its witnesses, and all of its
17 documentary evidence, at that time I'll again ask
18 who wishes to present testimony, information to the
19 Commission, questions or concerns they may have,
20 and we'll bring a podium up over to the side there
21 in the middle of the aisle and you can come up and
22 testify.

23 And again, I'm going to invite you,
24 encourage you, if you have anything to say to the
25 Commission, to do so at that time. I do need to

1 tell you, though, that if you do come up and
2 testify, the Commission staff and the Commissioners
3 and the applicant may have some questions for you,
4 but don't be intimidated by that because the
5 Commissioners want to hear from you.

6 After the -- we open the floor for the
7 public testimony, I'll ask the applicant if they
8 have anything further they wish to present.
9 Depending on what occurs during the public
10 testimony, they may have some further information
11 to present at that time.

12 There won't be a decision reached on this
13 matter today, of course. The Commission will
14 consider all of the evidence later and later
15 they'll issue findings of fact and conclusions of
16 law and a final order as to whether the application
17 should be granted, denied, or as to other
18 appropriate administrative action that they may
19 deem needs to be taken.

20 A party not agreeing with the final
21 decision of the Commission may have appeal rights
22 or other rights under the Commission statutes and
23 rules or under the Administrative Agencies
24 Practices Act, Chapter 28-32 of the North Dakota
25 Century Code.

1 Again, the only issues for this hearing
2 are the issues I stated at the outset, the three
3 issues.

4 Are there any questions about the
5 procedures today, Mr. Jones?

6 MR. JONES: None, sir.

7 JUDGE HOBERG: Okay. Commission staff,
8 any questions?

9 MS. BENDISH: I have none.

10 JUDGE HOBERG: All right. Then at this
11 time we'll begin with the presentation of the
12 applicant's case. Mr. Jones, did you want to make
13 an opening statement?

14 MR. JONES: Yes. Thank you.

15 JUDGE HOBERG: Please.

16 MR. JONES: I would like to outline -- as
17 you mentioned, we have multiple witnesses today.
18 I'd like to just give you an introduction to our
19 order of presentation and our plan and we'll jump
20 right to it.

21 We're going to start today with hearing
22 from Jeff Metzger, who is a -- who is in the
23 management of Just Wind and Logan County Wind Farm,
24 LLC, to give some general background as to how this
25 project got started, some indication about how

1 landowner and community involvement has proceeded,
2 and then after that we're going to move to a couple
3 of engineers from Wanzek Construction, one of the
4 leaders -- really probably the leader in the
5 construction of the wind turbines in this area, to
6 give us just a very brief, but more precise
7 overview of what's really being constructed.

8 Then we're going to go to our cultural and
9 historical resources study. Dr. Richard Rothaus
10 has very kindly done an extremely thorough study,
11 and he's going to summarize that for us.

12 Next, we're going to call Mark Aanenson,
13 an environmental scientist with Houston
14 Engineering, who has produced some information
15 regarding the physical resources, including prime
16 and almost prime farmlands, wetland easements,
17 grassland easements, wetland areas. So that will
18 be map intensive.

19 After that we'll move to the biological
20 resources study, birds and wildlife, and for that
21 we have our engineer at Houston Engineering, Bart
22 Schultz.

23 And then, finally, we also have -- we also
24 have with us John Schultz, who is -- who's got
25 particular expertise in birds, and he's got some

1 very interesting opinions, and we're -- we value
2 his opinion, and so we'd like you to hear it, as
3 well.

4 JUDGE HOBERG: Did you mention Ms. Kleppe
5 or --

6 MR. JONES: We may not need to call
7 Celeste, and there are some additional -- there are
8 some additional folks that have worked on the
9 project that we may call as necessary.

10 JUDGE HOBERG: All right. Would you
11 please call your first witness?

12 MR. JONES: My first witness is Jeff
13 Metzger. Jeff, would you please state your --

14 JUDGE HOBERG: I need to swear him in,
15 though, before he testifies, and I'll give this
16 admonition once. It's for the benefit of anyone
17 testifying here today, and that is I'm required by
18 law to tell all witnesses at administrative
19 hearings that the maximum penalty for perjury in
20 this state is a Class C felony punishable by a
21 maximum 5 years imprisonment, \$5,000 fine, or both,
22 and, of course, perjury is essentially not telling
23 the truth at a hearing such as this.

24 (Witness sworn.)

25 JUDGE HOBERG: Thank you. Mr. Jones,

1 please.

2

JEFFREY L. METZGER,

3

having been first duly sworn, was examined and

4

testified as follows:

5

DIRECT EXAMINATION

6

BY MR. JONES:

7

Q. Mr. Metzger, would you please state your
8 full name and address for the record?

9

A. My name is Jeffrey Lynn Metzger. I live
10 at 2470 Fairview Lane in Mound, Minnesota, 55364.

11

Q. What is your position with Just Wind and
12 Logan County Wind Farm, LLC?

13

A. As the project developer, I became the
14 president, secretary and treasurer. Some of those
15 things have changed. I originally carried the
16 position of president of Just Wind, LLC, which is
17 the wind farm developer for Logan County Wind Farm.

18

Q. How long have you been with Just Wind?

19

A. Since it's inception in November of 2005.

20

JUDGE HOBERG: Are you hearing the
21 attorney speak back there? He's not speaking
22 directly into the --

23

COMMISSIONER CRAMER: You can use mine
24 while you're doing that, if you want.

25

MR. JONES: Thanks very much.

1 Q. (MR. JONES CONTINUING) Mr. Metzger, can
2 you briefly -- can I call you Jeff?

3 A. Sure.

4 Q. Jeff, can you briefly describe -- very
5 briefly describe the project that Just Wind is
6 proposing?

7 A. What we're looking at -- the project has
8 grown simply because of public support, which you
9 can see in the room here today. We started out as
10 a 27 turbine project, went to 80, went to 150, and
11 it ended up at 160 turbines based on the amount of
12 people that kept coming saying we'd like to be part
13 of the project. The capabilities of the
14 transmission line based on some studies that were
15 done said that we could incorporate 368 megawatts
16 at this location.

17 Q. How many turbines are currently proposed?

18 A. We're looking at a project of 160 turbines
19 that consists of a 2.3 megawatt machine.

20 Q. Just give us a sense -- do you know
21 roughly how many thousand homes that is enough
22 energy to supply?

23 A. You know, based on who's telling you that
24 story, the calculations that we've done based on
25 capacity factors, it's about 66,000 homes.

1 Q. When did work begin on developing this
2 site as a wind farm?

3 A. The project actually had its start long
4 before we came to the table. The community decided
5 that they wanted to get into a wind farm, so they
6 set up a monitoring station here in Logan County
7 in -- I believe it was 2000, 2001. So by the time
8 we came to the community, they had five years of
9 wind data collected already that was just
10 exceptional.

11 Q. How did you get involved?

12 A. Basically, the community was involved with
13 a cost-share program for monitoring equipment that
14 was set up by the state. One of the requirements
15 of that was that that information had to become
16 public information, and in my searching for looking
17 at doing wind farms in North Dakota I came across
18 that information, and then from there I made the
19 contact with Rich Gross, who was part of that
20 program to set up that monitoring equipment.

21 Q. Can you describe the types of interaction
22 you've had since then with the community to get to
23 this point in the development?

24 A. You know, it started out Richard and I in
25 what used to be the White Maid -- it still is the

1 White Maid -- that was our first meeting. From
2 there we went and met with the economic development
3 group to see what their interest would be in us
4 coming here to develop a project. Once we saw what
5 that feedback was, then we targeted an area just
6 east of town where we would put the proposed wind
7 farm project.

8 At that point we contacted each one of the
9 landowners via mail inviting them to a meeting. As
10 I said earlier, the process grew. So more and more
11 people started coming to meetings, more and more
12 people got involved. You can see from here, these
13 are the people that are involved in our program,
14 plus the ones unfortunately that can't be here
15 because, believe it or not, they farm.

16 That was one of the things that took
17 place. We had a number of meetings in the
18 community based on the schedules of the farmers.
19 Certain times of year they're busy. We had and did
20 as many meeting as we could to incorporate all
21 those people in our project.

22 Q. What are your resources right now locally
23 to -- in your process to keep landowners in the
24 community informed of new developments?

25 A. We established an office in Napoleon,

1 which we are taking the -- what used to be the
2 Super Valu building downtown, restoring that to be
3 our corporate office. We'll have a 6,000-square-
4 foot facility in Napoleon, North Dakota. We've got
5 a temporary office right now that houses
6 approximately 12 workers.

7 Throughout the process -- and they'll
8 admit and I'll admit there's times that I couldn't
9 get back to them in time to have as many meetings
10 as we would like to have had, but we've had a
11 number of meetings. We've always tried to do
12 updates whether it was in the local paper, sending
13 out letters. You know, throughout this whole
14 process there's a number of steps that have to take
15 place that involve the landowners. So we've always
16 tried to keep them updated where we are with our
17 project.

18 The other thing is I'm in town on an
19 average of two to three to four days a week. I'm
20 in the community at the cafe. You know, they've
21 got our office. We always tell people, if you've
22 got questions and concerns, to call me. When we
23 started sending out letters to contact all the
24 landowners, I sent out a business card with that
25 letter that said if you have questions, call me.

1 I'm not afraid to have them call me, and they have.
2 I get calls all the time, and we appreciate that
3 because that's what creates the community
4 relationship.

5 Q. Jeff, he told me once that you probably --
6 you lost count of all the meetings you've been to
7 on this project in this area. I think you put it
8 at, you know, 50 or -- 50 plus or minus. Do you
9 believe that you've had enough meetings? Do you
10 think that the landowners in the community have had
11 a chance to be -- to be informed and expressed to
12 you what they wanted to tell you?

13 A. You know, we would hope they have. You
14 know, part of the whole thing was we've had a
15 number of meetings with them. Some of the people
16 that were originally targeted to be part of the
17 project never got back to us. We went back on
18 numerous occasions to make sure that they had an
19 opportunity to be part of this. Some of them did
20 change their mind and say, yes, we did, some said
21 no. We respect that. So we did try as much as we
22 could to involve everyone in the project.

23 Q. Jeff, after all that, one last question
24 for you from me. Is this a good site for a wind
25 farm?

1 coming. Those studies are still pending. We
2 should have those results potentially by mid
3 November, early December.

4 Q. Have interconnection agreements been
5 executed?

6 A. They have not. But they're -- they're
7 dependent on the system impact studies and the
8 stability studies that are pending right now.

9 Q. What is your position in the MISO field?

10 A. This becomes an interesting scenario as
11 far as it goes simply because we're not in the MISO
12 footprint. We're in the western integrated system,
13 WAPA system, which is totally separate from the
14 MISO system. Once we have our interconnect in the
15 WAPA system, we have access then to the
16 transmission grid in MISO. We do have referenced
17 que numbers for study purposes only in the MISO
18 footprint. So the thing is once we're
19 interconnected in WAPA, that has no bearing on
20 transmission service in MISO, unless we get a MISO
21 customer.

22 Q. Have your MAPP and MISO planning approvals
23 been received and were there any conditions
24 attached?

25 A. They haven't been received simply because

1 of the fact that we're not getting transmission
2 service in MISO as of this point. Once that
3 happens, then they'll have to be looked at.

4 MR. LEIN: There would still be a MAPP
5 review of the interconnection?

6 THE WITNESS: Right, there is.

7 MR. LEIN: So is that underway or --

8 THE WITNESS: Yes, it is. Basically what
9 happens is the MAPP process is generated by the
10 results of our interconnect with WAPA.

11 Q. (MS. BENDISH CONTINUING) Can you describe
12 your process for me for contacting every affected
13 landowner and what is the status of those contacts?

14 A. Okay. Project footprint was determined
15 based on kind of site capabilities, the
16 infrastructure that was already there that would
17 prevent us from doing a great amount of
18 environmental damage. If you've looked at the
19 maps, you'll see that there's a lot of section line
20 roads, a lot of minimum maintenance roads that will
21 be upgraded to accommodate turbine locations and
22 turbine access roads. So the amount of
23 environmental impact was kept at a minimum.
24 Basically what we did in that whole process then is
25 as we targeted the area, we sent letters to all the

1 landowners inviting them to meetings. We've had a
2 number of informational meetings by putting
3 articles in the paper. We've actually had a
4 business association meeting in Napoleon to get the
5 community leaders and business people involved in
6 our project and what we're planning for the future
7 for Napoleon, North Dakota. So it's been a number
8 of things. Word of mouth, public letters,
9 newspaper articles, you know, just community
10 support all in all.

11 Q. Was there an environmental assessment done
12 for the interconnection that you have planned with
13 WAPA?

14 A. Another good question. Basically, there
15 wasn't. In our conversations with WAPA is if we
16 don't kick off what's considered a federal nexus,
17 then no environmental impact study would be
18 necessary. We've done site specific environmental
19 based on turbine locations, which you'll hear from
20 some of those experts later on in the testimony.
21 In our conversation with WAPA, if in the event in
22 our system upgrades something touches the WAPA
23 system, that is a federal system, then that would
24 kick off an environmental study. But on our
25 conversations with --

1 MR. JONES: Could.

2 THE WITNESS: It could, right. Our
3 conversations with their environmental people at
4 that time would be that would be looked at as a
5 site specific instance.

6 MS. BENDISH: I have nothing further.

7 JUDGE HOBERG: Mr. Lein, did you have
8 some?

9 **CROSS-EXAMINATION**

10 **BY MR. LEIN:**

11 Q. I would ask -- you said that you
12 identified some upgrades needed. Were those on the
13 WAPA system?

14 A. No. See, that's the thing. They're in --
15 basically, our understanding at this point they're
16 Basin and Heartland. They're not on WAPA's system,
17 itself. They're WAPA's control system, but they're
18 not WAPA's lines themselves, which then, you're
19 right, would lead to the EIS, if that's the
20 capability.

21 MR. LEIN: All right. Thank you.

22 JUDGE HOBERG: Thank you, Mr. Lein.
23 Commissioner Wefald, did you have some questions
24 for Mr. Metzger, please?

25 COMMISSIONER WEFALD: Yes, I do. Again,

1 if my questions are better asked by someone else,
2 make sure to let me know.

3

EXAMINATION

4

BY COMMISSIONER WEFALD:

5 Q. All right. The first one refers to
6 information that's in your siting application
7 permit, the supplemental information that came in
8 on September of 2008, and that information -- I'm
9 looking at page two, and in there you have a
10 description -- a certificate completion checklist,
11 and the time schedule you lay out on page two, and
12 that's what I have a couple of questions about,
13 that time schedule.

14 A. Okay.

15 Q. All right. First of all, you say that
16 construction start date you anticipate October or
17 November of 2008, and then you say -- then in the
18 next line under D it says construction complete
19 summer or fall of 2010, but then two lines further
20 under F, commercial production date November of
21 2009.

22 A. Right.

23 Q. I'm confused because it seems to me if you
24 are going into commercial production, which to me
25 means you're going to be generating electricity and

1 able to sell it in November of 2009, why is your
2 construction not complete according to this until
3 fall of 2010?

4 A. Okay. Basically, what we've got there --
5 this will clear up some of that for you hopefully.
6 What happened is Turbine Supply dictated that our
7 160 turbine project would have to happen in two
8 phases of delivery. The first 104 turbines will
9 come starting the spring of '09 with part of that
10 being commissioned in the fall of '09. The second
11 bunch of turbines -- 56 turbines won't be available
12 for delivery till the spring of 2010. So our full
13 commercial operation for the project would be in
14 late 2010. So that's kind of where the timelines
15 are.

16 But what we're looking at our process
17 is -- our whole construction process will be going
18 on during that whole time period. So it's just
19 two -- we'll have a -- in a sense a temporary
20 commercial operation date with a final total
21 project completion later in 2010.

22 Q. All right. So now I'm going to see if I
23 heard this correctly. 104 turbines you anticipate
24 will be available to be put in place in the fall of
25 2009?

1 A. Yes, ma'am.

2 Q. All right. And those would go into
3 commercial production then later in the fall of
4 2009?

5 A. Yes, ma'am.

6 Q. All right. And then you're going to have
7 an additional number? What was that?

8 A. 56.

9 Q. 56 turbines that would be delivered in the
10 fall of 2010?

11 A. Spring of 2010.

12 Q. Spring of 2010. And then those would be
13 complete either summer or fall of 2010?

14 A. Yes, ma'am.

15 Q. And your construction would be complete at
16 that time?

17 A. Yes, ma'am.

18 Q. All right. Thank you for clarifying that
19 for me. All right. The other question that I have
20 is you've introduced yourself and you've said that
21 you're treasurer and secretary and president of the
22 organization. You said right now you're president.
23 A project of 368 megawatts is a huge wind project.
24 So there needs to be -- I'm sure there are other
25 people that are behind you or working with you.

1 Would you tell us about your organization of Just
2 Wind and describe it to the Commission, or is it
3 just a one-person operation?

4 A. It's actually grown. We actually put a
5 team around us that would support us that have had
6 experience in wind farm development. Up until --
7 and I keep getting this wrong, but for -- from the
8 beginning of Just Wind until earlier this year,
9 you're right, Just Wind was just Jeff. There I
10 said it. I mean, that's always kind of been the
11 thing. When we started talking to people in the
12 industry, the same thing came up, Just Wind was
13 just Jeff. At the end of the day it was, but you
14 see our team, you see our support. So --

15 Q. Who is -- is your organization still one
16 person? Is Just Wind still one person, yourself?

17 A. Outside of our employees, right.

18 Q. Do you have a board of directors?

19 A. Yes, we do.

20 Q. All right. And the board of directors is
21 comprised of how many people?

22 A. There's three.

23 Q. Three. Okay. And who is -- can you tell
24 us the name of that board?

25 A. Richard Gross is one and Steve Manske from

1 Minnesota is the other one.

2 Q. All right. And can you tell us a little
3 bit about the background of those folks, as well?

4 A. I guess I'll let Richard maybe speak for
5 himself at that point, if that's the case, and
6 Steve Manske isn't here, but, you know, you kind of
7 got his resume in our -- you know, I mean, I don't
8 know all the particulars of all his business
9 schooling and that type of stuff, but we had done
10 that simply because we needed other people besides
11 myself to make this a legal entity.

12 Q. And so Just Wind now is incorporated as a
13 legal entity?

14 A. Yes, it is. In Minnesota and North
15 Dakota.

16 Q. In North Dakota and -- okay.

17 A. Yes, ma'am.

18 Q. Thank you. And then your employees are
19 all the people who are going to be testifying
20 today?

21 A. No. Our subcontractors are our team of
22 engineers and specialists for environmental and all
23 of that. That's the team that we put around us
24 simply because as we move forward with this
25 process, believe it or not, I did realize that Just

1 Wind can't be just Jeff forever. So that's why we
2 got -- we hired professionals in the industry.
3 Wanzek Construction, Ulteig Engineering for the
4 engineering purposes, you, the environmental
5 groups, all these things, people that have
6 experience and can do what we need to have done to
7 meet the requirements to build a wind farm project.

8 COMMISSIONER WEFALD: All right. Thank
9 you. That's all the questions I have right now.

10 JUDGE HOBERG: Thank you, Commissioner
11 Wefald. Commissioner Clark, please.

12 COMMISSIONER CLARK: I do have just a few.

13 **EXAMINATION**

14 **BY COMMISSIONER CLARK:**

15 Q. Oftentimes in the applications that we get
16 the entities that come before the Commission will
17 discuss a little bit their business model, who they
18 plan to send to, their different ways of organizing
19 wind farms, whether it be an investor-owned utility
20 or a merchant plant or someone building as a
21 turnkey operation. Could you talk a little bit
22 about Just Wind's business model as far as who the
23 plans are to sell this to and --

24 A. Right now we're finalizing a contract with
25 Western Area Power Administration to purchase our

1 power from our project. Okay. That's our power
2 purchase agreement. We've got a number of entities
3 that are on the financial end that will be
4 financing our project. We've got a couple entities
5 that have approached us with that very same comment
6 that you said, a turnkey, that said -- a build
7 transfer is what they call it. We build it; when
8 it gets to a certain point, they buy out our
9 interest at our expense. So we looked at all those
10 things. Our original intention here is to own a
11 portion of Logan County Wind Farm for future
12 ongoing revenues.

13 Q. Could you give me a little bit more
14 background on the status of the WAPA PPA that you
15 discussed?

16 A. Right now legal language is the issue.
17 We've had a conversation with them. We're about to
18 get the draft of our -- one of our final drafts of
19 the power purchase agreement from WAPA. We gave
20 them a draft, we kind of had a number of meetings,
21 we've agreed on some of the parameters of the PPA,
22 and now we're putting it in a contract form.

23 Q. Is Western interested in the entire
24 project? In other words, is the project being
25 proposed to be done in phases or --

1 A. It is being proposed to be done in phases.
2 They understand that. They put out an RFP for 100
3 megawatts. In our conversations with them they had
4 other entities that answered the RFP. In our
5 conversations we've come to an agreement that we
6 can probably end up selling them 240 megawatts of
7 power on kind of a cascading basis. If these other
8 projects get built and come on line, then we would
9 give up some of that 240 megawatts; but at this
10 point that's what we're talking about.

11 Q. So I understand the WAPA RFP process, is
12 there a specific date where they have technically
13 awarded the contract?

14 A. That's what we're working on now. We were
15 chosen 2 out of 15 to fulfill their proposal. So
16 we're working now on a contract basis to get that
17 finalized.

18 Q. So it was a selected project.

19 A. Yes, it was.

20 Q. It was awarded the contract from WAPA.

21 A. Yes, sir.

22 Q. And that contract was for 100 megawatts?

23 A. It was for 100 megawatts, but in our
24 conversations with them they said they could go up
25 to 240, then potentially cascade back to 100.

1 Q. Explain that cascade back to 100.

2 A. Well, as other projects that supposedly
3 they've said have interest in providing them with
4 power would possibly come on line, then they would
5 take that away from our 240 and get us back down to
6 the minimum level of 100, but that could happen,
7 could not happen.

8 Q. Okay. It's more of an option on the
9 incremental 140?

10 A. Well, you know, part of it is based on
11 economics of are these other projects going to come
12 on line. If they don't, then we've got the
13 commitment from them based on 240 megawatts.

14 Q. So that I understand you correctly, if for
15 whatever reason you enter a contract, seek to sell
16 merchant power into the grid, strike a deal with an
17 investor-owned utility, at that point the MISO
18 interconnection process would kick in?

19 A. No. Not the interconnection process; a
20 transmission service. Because we're already going
21 to be on the grid interconnected here in the WAPA
22 system. One of the things that this becomes a
23 whole different issue -- these utilities can
24 request us to be a network resource and take the
25 power right from our substation busbar and not

1 encounter any transmission service requests on our
2 part if they've already got transmission
3 capabilities in the integrated system, which most
4 of them do. That's one of the advantages in our
5 projects in the WAPA footprint. They're taking the
6 power from our substation busbar to fill a need
7 that they're short. Their production and
8 generation is short 60 percent. We're filling a
9 need that they're short. No new transmission has
10 to be involved simply because they've got the
11 transmission capabilities already; they're just
12 short production on their end. We're just filling
13 a void.

14 Q. Then I just have one final question. In
15 the application there is some correspondence that
16 was sent to the U.S. Fish & Wildlife Service. Was
17 that under your signature related to agencies that
18 were contacted?

19 A. Oh, that we sent letters to?

20 Q. Correct.

21 A. Yes. That was under mine.

22 Q. Are questions regarding the interaction
23 with U.S. Fish & Wildlife Service appropriate for
24 you or for a different witness?

25 MR. JONES: We would like to introduce

1 that, I think, in the section of biological
2 resources where we'll be discussing bird resources
3 and wetland resources.

4 COMMISSIONER CLARK: Okay. And I don't
5 know if my question is so much about the bird
6 resource itself as just a more paperwork question.
7 So I'll ask it, and if it's better deferred to
8 someone else, let me know. The Commission earlier
9 today -- was it today, Jerry, or yesterday?

10 MR. LEIN: Yes. That was faxed in this
11 morning for filing.

12 Q. (COMMISSIONER CLARK CONTINUING) --
13 received a copy -- and I don't know if you have it
14 yet -- but a letter from U.S. Fish & Wildlife
15 Service, and in that they indicate that on April
16 4th they had provided comments regarding potential
17 impact on fish and wildlife resources, and I didn't
18 see any April 4th letter contained in the -- in the
19 documentation that you provided the Commission. Is
20 that -- is there an April 4th letter that U.S. Fish
21 & Wildlife Service responded?

22 A. That we responded to or that they sent us?

23 Q. That they sent you.

24 MS. BENDISH: Can I interject? It is in
25 the docket.

1 COMMISSIONER WEFALD: It's in the docket.

2 COMMISSIONER CLARK: It's in the docket?

3 MS. BENDISH: It's docketed separately.

4 It's not included with the application.

5 COMMISSIONER CLARK: Okay. Very good.

6 That's the letter I was looking for. Thank you.

7 That's all I have.

8 JUDGE HOBERG: Thank you, Commissioner

9 Clark. Commissioner Cramer, please.

10 COMMISSIONER CRAMER: I just have one

11 question.

12 **EXAMINATION**

13 **BY COMMISSIONER CRAMER:**

14 Q. How did you come to choose 2.3 megawatt
15 turbines? Was it a matter of they were available
16 or was there some efficiency or productivity in
17 that particular turbine?

18 A. Basically it was our wind regime. Our
19 wind speeds -- our main wind speeds throughout the
20 whole project are 9.04 to 9.96 meters per second at
21 an 80 meter hub height. We had -- we did studies
22 and analyses with our wind data compared to about
23 12 different machines. Okay. Economics to scale
24 played in here. Some of the machines would never
25 work here in our area simply because of the robust

1 wind. One of the other things we looked at is a
2 smaller machine would mean we'd have to do more
3 environmental damage because we'd have to place
4 more turbines in the area to accommodate our
5 interconnect. The main thing was the efficiency
6 factors of the Siemens machines -- and I said it,
7 it's Siemens 2.3 megawatt machines. Their capacity
8 factor for our project is between 43 and 48 percent
9 efficient. Capacity factor of 43 percent, that's
10 off the charts. Our independent engineering firms
11 confirmed that. Most industry standards are
12 between 25 and maybe 35. So it's our wind regime
13 that dictated.

14 We had turbine manufactures that said we
15 can't supply you turbines because you'll ruin our
16 equipment. So Siemens was the only one -- Siemens
17 and Mitsubishi were our top two choices; and
18 Siemens' availability on our timeline is why they
19 got the award.

20 COMMISSIONER CRAMER: I think that's all I
21 have. Thank you.

22 JUDGE HOBERG: Thank you, Commissioner
23 Cramer. Commissioner Wefald, please.

24 COMMISSIONER WEFALD: Yes.
25

FURTHER EXAMINATION

BY COMMISSIONER WEFALD:

1 Q. I just need to understand something a
2 little bit better when you were answering questions
3 from Mr. Lein about your interconnection with WAPA
4 and that they had told you that they're going to
5 require some system upgrades.
6

7 A. Right.

8
9 COMMISSIONER WEFALD: All right. And so
10 is it appropriate -- I'm asking Mr. Lein now this
11 question. Is it appropriate to ask for Just Wind
12 to file with the Commission the system upgrades
13 that have been asked for by WAPA as a late-filed
14 exhibit with the Commission?

15 MR. LEIN: I don't see any reason why not.

16 COMMISSIONER WEFALD: Okay. So I would
17 like to have a late-filed exhibit of the required
18 system upgrades from WAPA that -- that you know
19 that are going to need to occur.

20 THE WITNESS: But they're not necessarily
21 needed. They're kind of the results of some of the
22 preliminary studies. Whether they're needed or
23 not, that's what the final studies will determine.
24 They said there is some issues with some of these
25 parts of the system. It isn't necessarily that

1 they'll be upgrades needed there. They were some
2 of the concerns that came up based on the modeling
3 they did for our project.

4 Q. (COMMISSIONER WEFALD CONTINUING) All
5 right. When will you receive the final letter from
6 WAPA that tells you what system upgrades are needed
7 as part of the interconnection agreement?

8 A. Based on their schedule, if they stick to
9 their schedule, probably mid December. We would
10 have the costs and the system upgrades that are
11 necessary for our project. So we could submit them
12 at that time.

13 COMMISSIONER WEFALD: That would be good.

14 JUDGE HOBERG: Mr. Jones, can you submit
15 that then as a late-filed exhibit?

16 MR. JONES: I will.

17 COMMISSIONER WEFALD: Thank you.

18 JUDGE HOBERG: Any further questions,
19 Commissioners? Mr. Jones, do you have any further
20 questions of Mr. Metzger?

21 MR. JONES: I would like to ask a couple
22 further questions of Mr. Metzger.

23 **REDIRECT EXAMINATION**

24 **BY MR. JONES:**

25 Q. Jeff, sometimes it might feel like you're

1 the just Just, but you really are -- I wanted to
2 respond to one -- that perception. From our
3 perception Jeff is the -- just the tip of the
4 sphere. Jeff, let me ask you a question: How
5 many -- Just Wind, LLC, is a limited liability
6 company which has members. How many members,
7 approximately, does Just Wind have?

8 A. As far as -- okay. We actually probably
9 have in Just Wind a number of non-voting members
10 that are, I think, close to 98, I would imagine.

11 Q. And what -- what entitles somebody to
12 become a member? Are these folks -- these folks --

13 A. They're financial investors. Yeah.
14 Basically what happened is as the project moved
15 forward, people in the community wanted to be part
16 of it, even though they didn't have any land in the
17 project, just to show community support. So we
18 sold part of our interest in Just Wind to them as
19 investors and owners in Just Wind, LLC.

20 Q. So without raising hands, some of the
21 other members of Just Wind are in the room today;
22 right?

23 A. Yes, there are.

24 Q. I'm going to raise -- I'm going to ask
25 Jeff one further question about interconnection.

1 We do have an engineer available who is on the
2 list, wasn't scheduled to testify, about
3 interconnection from Ulteig, but I'm just going to
4 ask Jeff one question about that. So, Jeff, the
5 list of upgrades, would you characterize that as
6 preliminary and to be revised based on each
7 additional -- as each additional study is completed
8 by WAPA?

9 A. Yes, I would. I mean, they take a model
10 and they do a number of different models. They do
11 a thermal model, they do a stability system model,
12 those types of things, and the results of those
13 models indicate potential issues with the
14 transmission system. Once all the models and all
15 the studies are done, then they will have a list
16 that says out of all these studies, this one issue
17 keeps coming up as a fault or a system upgrade that
18 needs to be dealt with. So when the -- the initial
19 list is a preliminary that says these are
20 possibilities based on the results of the rest of
21 the study.

22 MR. JONES: Those are all the redirect
23 questions I had.

24 JUDGE HOBERG: Thank you, Mr. Jones. Any
25 further questions of Mr. Metzger?

1 MS. BENDISH: I do have one.

2 JUDGE HOBERG: Ms. Bendish.

3 **FURTHER EXAMINATION**

4 **BY MS. BENDISH:**

5 Q. Mr. Metzger, in your testimony you
6 referenced Logan County Wind Farm, LLC. Can you
7 tell me how that relates to Just Wind in your
8 application?

9 A. Okay. Just Wind is the developer. Logan
10 County Wind Farm is the wind farm entity that will
11 have all the assets assigned to it, which are the
12 wind turbines, the land leases, that type of stuff.

13 Q. Has Logan County Wind Farm, LLC, already
14 been formed and --

15 A. Yes, ma'am.

16 Q. -- does it exist as a business entity?

17 A. Yes, ma'am, yes, ma'am.

18 MS. BENDISH: I have nothing further.

19 JUDGE HOBERG: Thank you. Any further
20 questions then of Mr. Metzger? No. Thank you, Mr.
21 Metzger.

22 THE WITNESS: Thank you.

23 JUDGE HOBERG: Would you call your next
24 witness, please?

25 MR. JONES: Thank you. The next witness

1 we'd like to hear from is Mr. Larry Lacher. Larry,
2 if you could make your way up.

3 JUDGE HOBERG: Mr. Lacher, did you hear
4 the admonition I gave earlier in regard to perjury?

5 MR. LACHER: Yes, I did.

6 (Witness sworn.)

7 JUDGE HOBERG: Thank you. Mr. Jones,
8 please.

9 **LARRY LACHER,**
10 having been first duly sworn, was examined and
11 testified as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. JONES:**

14 Q. Mr. Lacher, can you state your name and --
15 full name and address for the record, please?

16 A. Larry L. Lacher, 3117 Fifth Street
17 Northwest, West Fargo, North Dakota, 58078.

18 Q. And, Larry, what is your position with
19 Wanzek Construction?

20 A. I am the senior project manager for
21 electrical construction on wind farms and
22 transmission systems. I am also the senior review
23 engineer for projects.

24 Q. Has Wanzek Construction constructed others
25 of these facilities?

1 A. Yes. Wanzek Construction has overall
2 constructed approximately two gigawatts of wind
3 energy. I myself have worked on -- my resume is
4 probably a little out of date -- but approximately
5 2,000 megawatts of electrical I've overseen in my
6 years at Ventis Energy and Wanzek Construction. As
7 far as the Siemens turbine, the 2.3, we are just
8 completing a 76 turbine one, and we have completed
9 two for -- one in the State of North Dakota and
10 another one in the State of Minnesota, and we're
11 beginning another one in the state of Texas.

12 Q. Mr. Lacher, I notice that we have -- we
13 have your professional resume here.

14 MR. JONES: If it would be okay, I'd
15 introduce that as an exhibit as background for the
16 expert testimony that Mr. Lacher is about to give.

17 JUDGE HOBERG: Yes, that would be
18 appropriate. Yes. We'll need to mark that.

19 Q. (MR. JONES CONTINUING) Mr. Lacher, is
20 this the resume that you've provided to us?

21 A. Yes.

22 (Exhibit 1 was marked for identification.)

23 JUDGE HOBERG: All right. Exhibit 1, the
24 resume of Mr. Lacher, is offered. If there's no
25 objection, Exhibit 1 is admitted. Mr. Jones,

1 please.

2 Q. Larry, what was -- what's Wanzek doing on
3 this project?

4 A. We are what's called the EPC, contractor
5 with the exception of the turbines, which are being
6 supplied by Just Wind. We are performing all the
7 civil, foundation, electrical, construction, and
8 all engineering with the exception of the
9 substation in our contract with Just Wind.

10 Q. And, Larry, you in particular -- what
11 aspect are you working on?

12 A. My background and my specialty is in the
13 electrical collection systems and substation
14 transmission systems, and I'll be overseeing our
15 subcontracted engineers and I'll be doing the
16 preliminary design work for the collection system
17 for this wind farm.

18 Q. As part of that involvement would you take
19 a minute or two and just briefly describe the --
20 what is actually going to be constructed? Not with
21 precise numbers and details, I'm not expecting
22 that, but the category of things that are going to
23 be constructed in this project site?

24 A. Basically this will be an underground
25 feeder collection system based on 35 kV collection.

1 There will be 34.5 to .69 kV step-up transformers,
2 2600 kV, one located at each turbine, to provide
3 the step up for the collection voltage to the grid.
4 There will be approximately 300,000 underground
5 circuit feet of buried collection cable varying in
6 size from 1,000 KC mill down to one awg, a-w-g.
7 All -- they'll be brought in -- all the units will
8 be collected in feeder sizes of approximately 10 to
9 11 turbines per feeder -- underground feeder and
10 brought into a substation that will consist of
11 eight bays.

12 Each feeder -- the feeders will either --
13 feeder size will be based primarily on the thermal
14 conductivity of the soil, and as of right now it's
15 anticipated that it will have several cross-bonded
16 feeders which will require cross-bonding of the
17 neutrals to eliminate heating, and there will be --
18 the remainder will be standard feeder systems.

19 Q. All right. Are all the collection lines
20 underground?

21 A. At this point in time, in the long-term.
22 Cost effectiveness, when we ran it, it was more
23 effected to do everything underground.

24 Q. And what's the voltage of those?

25 A. 34,500.

1 Q. At one time -- and a question has
2 arisen -- at one time wasn't there a design a while
3 back to have a short 115 kV line included as part
4 of the project?

5 A. There was two -- there was actually two
6 designs. One 115 kV and one at a 345 kV
7 transmission line to put two substations. The 345
8 would have taken too long in the permitting
9 process, and the 115 wasn't cost-effective by
10 buying additional step-up substation transformers.
11 This has proven to be the most cost-effective.

12 Q. So the current design only has one
13 substation?

14 A. One substation, correct.

15 Q. And is there any transmission necessary
16 between the substation and the existing
17 transmission line?

18 A. No. They will be located adjacent to one
19 another. There will be a strain bus connecting the
20 Basin interconnect with the Just Wind substation.

21 MR. JONES: Thank you. Those are all the
22 questions I had for Larry.

23 JUDGE HOBERG: Thank you, Mr. Jones. Ms.
24 Bendish, do you have some questions for Mr. Lacher?

25 MS. BENDISH: No, we don't.

1 JUDGE HOBERG: No questions. Thank you.
2 Commissioner Wefald, please.

3 **EXAMINATION**

4 **BY COMMISSIONER WEFALD:**

5 Q. I'm looking in the maps that were provided
6 to the Commission, a wind farm development map book
7 that was supplied to us in July of 2008, and this
8 was docketed as number 11 in our docket. We
9 received it on August 1st of 2008. I'm looking at
10 the map that is labeled FEMA Q3 flood data map,
11 phase one north. Now, maybe there's a better map
12 for me to look at, but what it shows on that map
13 is -- it shows the WAPA transmission line.

14 A. Yes.

15 Q. And it also shows a proposed
16 interconnection point in pink and a pink circle
17 and, then it shows an alternative interconnection
18 point. Would you speak about the proposed
19 interconnection point and what would cause the
20 alternative interconnection point, which is
21 approximately two miles to the northwest to be
22 used?

23 JUDGE HOBERG: Do you have that map, Mr.
24 Lacher?

25 MR. JONES: If I could just interject. We

1 did come today -- you see the stack of maps. We
2 have the expert who prepared these maps. At that
3 point I was going to have him introduce these maps
4 as an exhibit. We would like -- we'd like to be
5 able to introduce these maps as an exhibit today to
6 refer to today. They're -- they're more legible
7 than I think some of the maps you have in the map
8 book, and there were some minor modifications
9 included to that. There's no alternate station any
10 longer. At this point since the map question has
11 come up --

12 JUDGE HOBERG: Would it be better to wait
13 then?

14 MR. JONES: What we could do is just
15 introduce them. I could introduce them as an
16 exhibit today or right now, or we could wait till
17 the engineer -- I could bring the engineer up and
18 properly introduce them with who prepared the maps.

19 COMMISSIONER WEFALD: That's fine. You've
20 answered my question telling me that there's no
21 longer an alternative interconnection point, and so
22 then when everyone is looking at the maps together,
23 I'll ask further questions on the maps.

24 Q. I need a little help, though, because I'm
25 not an electrical engineer. So when you say

1 there's -- all underground lines are 34,500 --

2 A. Yes.

3 Q. -- tell me in relationship -- I'm familiar
4 with things like a 115 kV line or a 345 kV line.
5 What is the -- is that a 34.5 kV line?

6 A. 34.5 kV line.

7 Q. All right. That's what I needed to
8 understand.

9 A. A lot of times it's just referred to 35 kV
10 for quick and easy.

11 Q. All right. Did you describe anywhere in
12 your -- the burial depth of those lines?

13 A. We did all of our thermal studies right
14 now at a minimum burial depth of 48 inches and a
15 not-to-exceed depth of six feet or 72 inches.

16 Q. So at the present time, though, your
17 minimum burial distance is 48 inches?

18 A. 48. And we generally design to a five-
19 foot burial depth especially on tilled land.

20 COMMISSIONER WEFALD: Thank you.

21 JUDGE HOBERG: Thank you, Commissioner
22 Wefald. Commissioner Clark.

23 COMMISSIONER CLARK: I have no questions.

24 JUDGE HOBERG: Thank you. Commissioner
25 Cramer.

1 hold on.

2 MS. BENDISH: None.

3 JUDGE HOBERG: No further questions?

4 Thank you.

5 MR. JONES: Brian Johnston.

6 JUDGE HOBERG: Mr. Johnston, did you hear
7 the admonition earlier I gave in regard to perjury?

8 MR. JOHNSTON: Yes.

9 (Witness sworn.)

10 JUDGE HOBERG: Thank you. Mr. Jones,
11 please.

12 **BRIAN JOHNSTON,**

13 having been first duly sworn, was examined and
14 testified as follows:

15 **DIRECT EXAMINATION**

16 **BY MR. JONES:**

17 Q. Mr. Johnston, can you just state your name
18 and address for the record?

19 A. Brian James Johnston, 4224 41st Avenue
20 South, Fargo, North Dakota, 58104.

21 Q. And, Brian, what's your position with
22 Wanzek?

23 A. Project manager on the wind energy group,
24 mostly associated with construction of the roads
25 and the dirt aspect of the project.

1 Q. Brian, is this the professional resume
2 that you had provided us?

3 A. Yes, it is.

4 MR. JONES: I'd like to introduce this as
5 an exhibit.

6 JUDGE HOBERG: All right. We'll mark that
7 as Exhibit 2.

8 (Exhibit 2 was marked for identification.)

9 JUDGE HOBERG: All right. If there's no
10 objection, the resume of Brian Johnson will be
11 admitted as Exhibit 2. Please continue.

12 Q. (MR. JONES CONTINUING) Brian, what is
13 your background and experience.

14 A. Main background is in the construction of
15 roads and a couple bridge projects on these
16 projects. Mostly the project engineer out of the
17 office and a couple of -- one project I was a field
18 superintendent, and the projects with Wanzek I've
19 been the project manager in the office as support
20 to the project superintendent and the crews out in
21 the field building the projects.

22 Q. Brian, I understand that you've also
23 worked on the design of the access roads. Is that
24 part of your role?

25 A. It is a small part. I have some input on

1 sections that we like to use, depths. I do not
2 have a professional engineer's license so I can't
3 do actual design or anything to that nature, but I
4 do have some input on, you know, economically
5 feasible ways to build the roads and try to relay
6 that to the engineers and design the project.

7 Q. General approach of Wanzek and yourself,
8 do you try to use existing roads where possible
9 before building new access roads?

10 A. Yes. A majority of the roads, if
11 possible, we try access from existing roads that
12 keeps the project a little cheaper and helps to
13 speed up the process of construction.

14 Q. Currently will any of our access roads
15 require any either deep grade cuts or elevations
16 that would alter the flow of surface waters?

17 A. There are a couple spots right now on the
18 plans that show probably 10- to 12-foot cuts
19 depending on final layout. We're still in the
20 process of moving some sites around with turbines
21 being moved or finding different accesses to get to
22 the spots in regards to the final environmental
23 analyses that's completed.

24 Q. Do any of our collection lines need to
25 cross the railroad?

1 A. There is one railroad crossing. For the
2 civil portion of the project we're going to avoid
3 the railroad crossing and do a complete teardown of
4 the terrain to get across it.

5 Q. As far as the collection lines themselves
6 after the construction, are there any collection
7 lines across the project -- across the railroad?

8 A. Yes. There's one railroad crossing that
9 will be bored underneath the railroad with
10 railroad, you know, approval and --

11 Q. Okay. Do any of our collection lines need
12 to cross or use any public rights of way --

13 A. Yes.

14 Q. -- roads? Okay. Do you foresee any
15 issues there?

16 A. No.

17 MR. JONES: Okay. That's all the
18 questions I have for Brian.

19 JUDGE HOBERG: All right. Thank you, Mr.
20 Jones. Ms. Bendish, please.

21 MS. BENDISH: I have none.

22 JUDGE HOBERG: No questions. Thank you.
23 Commissioner Wefald, please.

24 COMMISSIONER WEFALD: I'm not quite sure
25 which witness to ask these questions of, so if this

1 is not the correct person, if you'll tell me, but
2 looking at your list, I don't know who it's going
3 to be. The questions about how turbine locations
4 were established -- he's in charge of the access
5 roads, so maybe he has something to do with turbine
6 locations, as well?

7 MR. JONES: I'd like to -- I think I'd
8 like to save that question back actually for Jeff.

9 COMMISSIONER WEFALD: The person who was
10 previously --

11 MR. JONES: For Jeff Metzger.

12 JUDGE HOBERG: First witness.

13 COMMISSIONER WEFALD: Okay. First
14 witness.

15 MR. JONES: Unless you had --

16 COMMISSIONER WEFALD: No. That's just
17 fine. All right. Thank you. So he could be
18 called later. That would be just fine.

19 JUDGE HOBERG: Thank you, Commissioner
20 Wefald. Commissioner Clark, please.

21 **EXAMINATION**

22 **BY COMMISSIONER CLARK:**

23 Q. Are there any road or railroad permits
24 from either local authorities or from the railroad
25 that need to be gathered and what are the status of

1 those permits?

2 A. There is a railroad permit that will need
3 to be granted from the railroad for the boring
4 underneath of the collection system. I'm not
5 familiar with where that lies in status. And then
6 once construction is started, Just Wind will need
7 to access permits from the county and the state for
8 Highway 3 and -- what's the highway that runs east
9 and west? 34.

10 Q. But those have not yet been secured?

11 A. No.

12 Q. Is it DMVW? Is that the railroad? I'm
13 trying to remember which line runs --

14 JUDGE HOBERG: If you know. If you know.

15 THE WITNESS: I don't.

16 JUDGE HOBERG: Maybe another witness
17 can --

18 COMMISSIONER CLARK: Perhaps another
19 witness can provide that or I could look on my
20 state map.

21 MR. JONES: We'll ask our witnesses as
22 they come up.

23 COMMISSIONER CLARK: Thanks. That's all I
24 have.

25 JUDGE HOBERG: Thank you, Commissioner

1 Clark. Commissioner Cramer.

2 COMMISSIONER CRAMER: I have nothing.

3 Thank you.

4 JUDGE HOBERG: Thank you. Mr. Jones, any
5 further questions of Mr. Johnston?

6 **REDIRECT EXAMINATION**

7 **BY MR. JONES:**

8 Q. Mr. Johnston, is it -- do you foresee
9 getting -- at this stage of the development would
10 we typically have needed a railroad crossing permit
11 at this point?

12 A. No.

13 MR. JONES: Okay. That's all the
14 questions I had.

15 JUDGE HOBERG: Thank you. Any further
16 questions then of Mr. Johnston? No further
17 questions? Thank you, Mr. Johnston. We're going
18 to take a ten-minute recess here. With all the
19 people here, when we take a recess, we need to get
20 back in in ten minutes. So it's a quarter to 12
21 right now. We're going to take a ten-minute
22 recess. And just so you all know, it's the
23 Commission's intent -- it looks like we can finish
24 this hearing at a reasonable time, so it's the
25 intent to go straight through with the hearing and

1 not take a lunch break. So we're going to take a
2 ten-minute recess here, and be back promptly in ten
3 minutes, please.

4 (Recess taken.)

5 JUDGE HOBERG: All right. Let's come back
6 to order, please. Mr. Jones, were you going to
7 call Mr. Metzger? If we could have it quiet,
8 please. Were you going to re-call Mr. Metzger now
9 or are you going to wait till later?

10 MR. JONES: I think we may build up a few
11 questions for him, so if I could re-call him
12 towards the end.

13 JUDGE HOBERG: Okay.

14 MR. JONES: I want to get through all of
15 your experts at least once.

16 JUDGE HOBERG: All right. Call your next
17 witness, please.

18 MR. JONES: Richard Rothaus -- Dr. Richard
19 Rothaus.

20 JUDGE HOBERG: We need it quiet in the
21 back there. We're starting the hearing again,
22 please. All right. Mr. Rothaus?

23 MR. ROTH AUS: Yes.

24 JUDGE HOBERG: Did you hear the admonition
25 I gave earlier in regard to perjury?

1 MR. ROTH AUS: Yes.

2 (Witness sworn.)

3 JUDGE HOBERG: Thank you. Mr. Jones,
4 please.

5 **RICHARD ROTH AUS,**
6 having been first duly sworn, was examined and
7 testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. JONES:**

10 Q. Dr. Rothaus, can you state your full name
11 and address for the record, please?

12 A. Richard Martin Rothaus, 1965 West High
13 View Drive, Sauk Rapids, Minnesota, 56378.

14 Q. What is your position with Trefoil?

15 A. I'm president and owner.

16 Q. Dr. Rothaus, could you give us a little
17 bit about your background? I know you're going to
18 be speaking to the historical and cultural
19 resources, which actually I find the most
20 interesting part of this, but can you give us a
21 little bit of your background and your training and
22 your experience in this area?

23 A. I have a Ph.D. from the Ohio State
24 University, 15 -- 16 -- 17 years now experience in
25 archeological and historical studies. I've done

1 archeological surveys in the U.S., Middle East,
2 Europe, Asia. I'm licensed currently by the State
3 of North Dakota by the historical society to
4 conduct surveys. I'm a registered professional
5 archeologist. I looked at my own resume last
6 night, and the past three years I've done 39
7 similar cultural resource evaluations. Five or six
8 of those were wind farms. I have four wind farm
9 surveys currently active, including this one.

10 Q. Dr. Rothaus, did you bring -- is this your
11 resume?

12 A. Yes, it is.

13 MR. JONES: I'd like to introduce this as
14 an additional exhibit for this expert.

15 JUDGE HOBERG: We'll mark this as Exhibit
16 3.

17 (Exhibit 3 was marked for identification.)

18 JUDGE HOBERG: All right. Exhibit 3, if
19 there's no objection, the resume of Dr. Rothaus, is
20 admitted. Please continue.

21 Q. (MR. JONES CONTINUING) Doctor, what were
22 you engaged to do in this project?

23 A. The North Dakota State Historical Society
24 requested that Just Wind do a Class III
25 reconnaissance survey and make recommendations for

1 any additional research, if necessary. A Class III
2 survey is an intensive survey. Basically it's go
3 everywhere where there might be any sort of
4 disturbance that would affect an archeological or
5 cultural environmental site and see what's there.

6 Q. And describe how you did that, if you
7 could.

8 A. We did -- we actually did -- immediately
9 went to a methodology more thorough than the State
10 Historical Society has requested. Their request
11 was go look and then write a report and tell us
12 where you think any sort of subsurface testing
13 should be done. I met with them and said -- and,
14 of course, with Just Wind and the others and said,
15 Look, why don't we just go there, I'll make a
16 report to myself on the spot, and if I think
17 subsurface testing needs to be done, i.e., I've got
18 to dig a hole, I'll do it while I'm there. It's
19 much more efficient and cost-effective because, of
20 course, out here it takes longer to drive to the
21 turbine locations than it does to dig a hole.

22 So we visited every turbine location. We
23 did what we call a pedestrian survey, which means
24 we walked a group of people or one individual
25 sometimes back and forth at each turbine location.

1 We covered a block that's 200 meters by 200 meters,
2 much larger than any area the turbine would
3 disturb. Every access road as sort of a snapshot,
4 as the design was the last time we were in the
5 field, we've walked those, in some cases we've
6 driven them and looked out the window looking for
7 stone rings, teepee rings. That little bit of
8 extra elevation can actually make a big difference.
9 Same with all the buried connector lines. We've
10 looked at all those routes. So in sum we did an
11 intensive survey of 3.9 square miles plus 77 miles
12 of roads and 155 miles of connector lines.

13 Q. What did you find?

14 A. We actually found a lot. We identified 13
15 sites. A site -- in the jargon that the State of
16 North Dakota uses, in their definition a site is --
17 and there's the obvious stuff like an historic barn
18 and stuff like that. For prehistoric, if there's a
19 teepee ring or if there are four or more stone
20 tools or pieces of pottery, that's a site. We
21 found 13 sites in the project area. Three of those
22 were prehistoric, nine were historic, and one was
23 actually -- had both prehistoric and historic.

24 We also find what are called isolated
25 finds, and that's the -- if we find an arrowhead in

1 the field, just one, and we look really hard and
2 there's nothing else there, then that's called an
3 isolated find. We had 15 of those on top of the 13
4 sites of the isolated, 14 prehistoric and one
5 historic. Out of all those I think there are 11
6 sites that are probably eligible for the National
7 Register of Historic Places, and a few more -- I
8 can't say probably -- but if someone looked a
9 little longer, they could. I can say probably --
10 and I don't know because all of this is being
11 avoided by the project. As we've identified areas,
12 plans have been adjusted, so --

13 Q. So were turbine locations or access roads
14 changed as a result of your findings or
15 recommendations or suggestions?

16 A. Yes. That has been ongoing. Oftentimes
17 it's just happened right on the spot. Since I've
18 been in town I'll mention it to the Just Wind
19 office and things get moved long before the paper
20 report ever gets written, and we did find --
21 actually one of the Just Wind staff found a site
22 with several stone rings at one of the turbine
23 locations just last week. We were out there
24 yesterday with some representatives from the
25 Standing Rock Sioux Tribe talking about how far

1 away is sufficient to avoid these sites, and that
2 turbine's been moved based on that recommendation.
3 An access road, as well, is going to get shifted a
4 little bit.

5 Q. So in your opinion overall have -- does
6 the current layout avoid locations with the
7 cultural or historical significance?

8 A. The current layout does. I'd have to
9 check. If it doesn't, there might be one or two
10 that the current layout hasn't caught up to yet,
11 but I think in its current state it actually does
12 avoid everything. The commitment from Just Wind
13 has been instead of -- there's two ways to deal
14 with it. You can look at a site and you can
15 evaluate it and you can start to have discussions
16 about whether this needs to be preserved or not, or
17 you can just go around it. Just Wind has chosen to
18 just go around these things rather than have the
19 discussion about impact.

20 Q. So, in your opinion, are we going to lose
21 any cultural or historic resources as a result of
22 this?

23 A. Nope. In fact, I think there's been a net
24 gain. There's been very little archeological
25 survey done in this part of North Dakota. I think

1 when I add my 13 sites to the list, I don't know, I
2 might have doubled it for the townships here, the
3 number of known sites. So it's been -- it's
4 actually a project that there's a lot of excitement
5 about within the archeological community because
6 we're doing an intensive, 100 percent survey. The
7 commissioners will know that that 100 percent
8 survey versus modeling and sampling is a very hot
9 issue in North Dakota right now, and people are
10 anxious to see what we've found.

11 Q. Sir, are you doing an unusually thorough
12 job as Just Wind asked you to do, a job more
13 thorough or different than you would sometimes get
14 engaged to do for wind farms?

15 A. Yes. It's been more thorough from the
16 get-go. In the end a lot of the wind farms I've
17 worked on, they end up being this thorough, but
18 they do it the hard way. I'm the last -- the last
19 person Wanzek and the other construction folks want
20 to see when they're working is me because if I'm
21 not here while they're out here, it means
22 something's gone wrong. So Just Wind has been
23 really forward-thinking about getting out there,
24 identifying all this, dealing with it so that once
25 cranes and parts start moving, it's already a

1 finished affair.

2 MR. JONES: Thanks, Dr. Rothaus. That's
3 all the questions I had to get us through your
4 report and your findings.

5 JUDGE HOBERG: Thank you, Mr. Jones. Ms.
6 Bendish, do you have any questions?

7 MS. BENDISH: I don't have any.

8 JUDGE HOBERG: Mr. Lein?

9 **CROSS-EXAMINATION**

10 **BY MR. LEIN:**

11 Q. Did you say that there may be one or two
12 sites out there that you haven't caught up with
13 yet? Is there some kind of a final indicator that
14 you can give that it's done?

15 A. We will -- we will revisit at least once
16 more because as access roads are finalized --
17 there's always a few things that shift. So
18 normally on a wind farm we'll come back -- on this
19 particular -- on Just Wind I'm happy now, and I
20 don't want to come back out until they're
21 absolutely sure the layout is done. So we'll wait,
22 and a few access roads inevitably will wiggle and
23 engineers will find some things. So until we've
24 done that, then we're never -- you know, I can't
25 say with confidence that there's nothing out there,

1 and actually in the end I never can say 100 percent
2 there's nothing out there because some of it's
3 underground, and if you're looking for an arrowhead
4 this big in the middle of prairie, you've got to
5 be -- I'll say good. The right answer would
6 actually be lucky to hit it.

7 So we will include in our report -- and
8 we've already talked about this with the Just Wind
9 staff and others -- have an inadvertent discovery
10 protocol, so if something does come up during
11 construction or someone notices stone rings that we
12 didn't see because the grass was high or something,
13 there will be a procedure where they can call, and
14 we'll get someone on site within hours to figure
15 out what needs to be done.

16 Q. Well, will there be a final report to SHPO
17 then or have they already got something?

18 A. There will be a final report to SHPO.
19 SHPO has requested of all the archeological
20 contractors that we not send them preliminary
21 reports. They're under a particularly heavy
22 workload right now with oil pipelines and well
23 platforms. So I have met with them regularly.
24 We've had plenty of conversations, but the final
25 report won't officially go to SHPO until -- until

1 it's ready for them to sign it and say this is the
2 final approval.

3 JUDGE HOBERG: Do you want something late-
4 filed, Mr. Lein?

5 MR. LEIN: Yeah, if we could.

6 Q. (MR. LEIN CONTINUING) And I'm wondering,
7 will they sign that off in a timely manner or are
8 they way behind over there?

9 A. They -- I think they're required by law to
10 sign within 30 days. I think they only have 30
11 days. They either sign off or it's de facto
12 approved, I think is how it works in North Dakota.

13 Q. So if we could get both the final report
14 and then the SHPO sign off when it comes.

15 A. And we'll have plenty of time because they
16 know what's going to be in the report. They've
17 seen it all. I've told them. It's just that it
18 hasn't officially arrived there.

19 JUDGE HOBERG: Mr. Jones, can you file
20 that late-filed then, please?

21 MR. JONES: We will.

22 JUDGE HOBERG: All right. Thanks.
23 Anything further, Mr. Lein, Ms. Bendish?

24 MR. LEIN: That's it for me.

25 JUDGE HOBERG: Thank you. Commissioner

1 Wefald, please.

2

EXAMINATION

3

BY COMMISSIONER WEFALD:

4

Q. When do you anticipate that that final report would be filed with SHPO?

5

6

A. I need to talk with the engineers with Just Wind about that -- that time, and we want to wait until we hit that -- we want to hit as close as possible to that period when they're really sure they're not going to be moving access roads or anything again. So the report is written. So basically if anything moves, I just have to go out and do a quick check and adjust the report. Personally, I would like it to go in sometime this winter because then it's one thing out of my head sort of spinning around.

10

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Q. Generally, the Commission has required that we have SHPO approval before construction begins.

18

19

20

A. Yes.

21

Q. All right. And so I'm just curious because we've had some indications that the company is anxious to start construction this fall, and so we generally, especially when you have to have -- the company has to have signoff from SHPO for --

22

23

24

25

1 before that can happen.

2 A. I guess I would have to get guidance from
3 my client on that, but in -- since you've mentioned
4 that, I guess in that case it probably will have to
5 go to SHPO with what we have and then do an amended
6 report to SHPO as new areas are investigated. It's
7 a continual problem on the wind farm projects
8 because plans have to change. They're just so big.

9 MR. JONES: So if we go final on the
10 report and then later an access road wiggles and
11 you go back out there, that's an amendment to the
12 report?

13 THE WITNESS: We can do that.

14 Q. (COMMISSIONER WEFALD CONTINUING) And then
15 you have to do a new survey of that area --

16 A. Yes.

17 Q. -- in order for them to know that there
18 wouldn't be any cultural resources affected by that
19 change in the road?

20 A. Yes. And, of course, most places we check
21 there is nothing, so it's --

22 Q. But there could be something?

23 A. There could be something. Nine times out
24 of ten it's a letter saying we checked it using the
25 same methodology and nothing was there, and the

1 tenth time we find something.

2 JUDGE HOBERG: So it will be the final
3 report and SHPO will sign off, and then if there's
4 anything, an amendment?

5 MR. JONES: That's right.

6 JUDGE HOBERG: All right.

7 Q. (COMMISSIONER WEFALD CONTINUING) And then
8 I thought this was interesting that one of the
9 sites that was potentially -- is a potential
10 listing on the National Register of Eligibility is
11 the Dinosaurs on the Prairie.

12 A. Yes. That's --

13 Q. It's a collection of historic threshing
14 machines arranged on a ridge line. Maybe someone
15 who's here is the owner of that, but it says,
16 Turbine installation should avoid disturbing
17 arrangement or restore arrangement when completed.
18 Cable lines should be routed around the site, is
19 your recommendation.

20 A. Yes. I'm pushing the limits of the
21 National Register of Dinosaurs on the Prairie.
22 It's not old enough technically to be on The
23 Register, but there's lots of old machines on lots
24 of hills in North Dakota. Dinosaurs on the Prairie
25 has got to be up there on the top ten collections

1 I've seen. I wouldn't want to have to get into a
2 big academic argument about whether or not it could
3 go on the National Register. So I hedge my bets
4 that it would be really good if that survived the
5 installation. Actually, I think it would be really
6 cool if there were the machines and then a turbine
7 right near them so you could see the old and the
8 new in juxtaposition.

9 Q. It says, While less than 50 years old, the
10 display is unique enough that it may have potential
11 eligibility.

12 A. That's --

13 COMMISSIONER WEFALD: Thank you. I just
14 thought that was rather interesting because I
15 hadn't seen that listed on a previous report.

16 JUDGE HOBERG: Thank you, Commissioner
17 Wefald. Commissioner Clark, please.

18 COMMISSIONER CLARK: I just need to
19 understand the maps that we will be getting. Are
20 those going to be submitted at this hearing, the
21 refined maps that will be updating this one; is
22 that correct?

23 MR. JONES: We'll get those in next.

24 COMMISSIONER CLARK: Okay.

25 MS. BENDISH: If you'd like to have those

1 now, we can just get those introduced as an
2 exhibit.

3 COMMISSIONER CLARK: That's fine. We can
4 put them in next. I just wanted to make clear in
5 my own mind.

6 **EXAMINATION**

7 **BY COMMISSIONER CLARK:**

8 Q. Now, will the -- you had said that you met
9 with some folks yesterday, and the outcome of those
10 meetings may have been to change a few of those
11 locations. Will you be able to pinpoint those for
12 us, as well?

13 A. There's only been the one location where
14 I've asked tribal representatives to come and look
15 at it. Stone Circles are particularly difficult to
16 interpret. They're also an item of big concern for
17 the tribes. So whenever I hit one of those
18 locations, I then ask for a tribal rep to come out
19 and talk about it. So --

20 Q. So perhaps once the map is introduced, you
21 can show us where the refinement might be?

22 A. And that is already on the map. We try
23 not to -- we don't like to highlight too publicly
24 where those areas are just so curious people don't
25 go bother them too much. The landowner is aware,

1 Just Wind is aware, SHPO will have it on file.
2 It's just yesterday -- in fact, when we're done
3 here, I'm going back out into the rain to do the
4 GPS measurements on it, so --

5 COMMISSIONER CLARK: That's all I have.

6 JUDGE HOBERG: Thank you, Commissioner
7 Clark. Commissioner Cramer, please.

8 COMMISSIONER CRAMER: I don't have a
9 question, but I adopt to compliment you on the
10 report because it is quite detailed, to say the
11 least, and your care is perhaps with greater
12 passion than we usually see, quite frankly, in
13 these. So it's quite an interesting document, even
14 if you aren't interested in wind farms. So thank
15 you for a good report.

16 THE WITNESS: Well, thank you very much.

17 JUDGE HOBERG: Thank you, Commissioner
18 Cramer. Mr. Jones, any further questions?

19 MR. JONES: No further questions.

20 JUDGE HOBERG: Any further questions then
21 of Dr. Rothaus?

22 MS. BENDISH: I have nothing further.

23 JUDGE HOBERG: Nothing? Thank you.

24 MR. JONES: I'd like to call Bart Schultz
25 from Houston Engineering.

1 JUDGE HOBERG: Mr. Schultz, did you hear
2 the admonition I gave earlier in regard to perjury?

3 MR. BART SCHULTZ: I did.

4 (Witness sworn.)

5 JUDGE HOBERG: Thank you. Mr. Jones,
6 please.

7 **BART SCHULTZ,**
8 having been first duly sworn, was examined and
9 testified as follows:

10 **DIRECT EXAMINATION**

11 **BY MR. JONES:**

12 Q. Mr. Schultz, will you state your full name
13 and address, please?

14 A. My name is Barton L. Schultz, and my
15 address is 18514 85th Avenue North, Maple Grove,
16 Minnesota, 55311.

17 Q. What's your position with Houston
18 Engineering?

19 A. I'm a senior project manager and manager
20 of the environmental section in our Maple Grove
21 office.

22 Q. What is -- what's some of your background
23 relating to the work that you were doing for this
24 project?

25 A. By training I'm a civil and environmental

1 engineer, and I've been basically practicing both
2 areas for the 28 years that I've been an
3 environmental engineer. I've worked on a variety
4 of projects looking at the environmental effects on
5 projects, whether it be for the utility industry at
6 transmission lines, substations, wind farms. I've
7 worked with industry on their landfills; I've
8 worked on -- with a variety of developers with
9 commercial developments; I've looked at
10 environmental impacts on a variety of projects over
11 my career.

12 Q. Bart, I notice we have -- is this your
13 resume that we have?

14 A. It is. Yes.

15 MR. JONES: I'd like to introduce this as
16 an exhibit.

17 JUDGE HOBERG: All right. We'll mark the
18 resume of Barton Schultz as Exhibit 4.

19 (Exhibit 4 was marked for identification.)

20 JUDGE HOBERG: And if there's no objection
21 to Exhibit 4, it will be admitted. Please
22 continue.

23 Q. (MR. JONES CONTINUING) Bart, what was
24 your role in this project?

25 A. Well, I was the -- I'm the project manager

1 on it, so I basically have staff underneath me that
2 provide expertise -- you're going to hear from one
3 of them just after I get done here -- and also work
4 with my GIS people that basically produced these
5 maps. And we gather information from a variety of
6 sources, one being the GIS data out there that has
7 a lot of published information. We also solicit
8 from the State agencies to gather from them, and
9 some of it comes electronically and some of it we
10 actually place on it based on coordinates that they
11 give us for the various things we're mapping on
12 these.

13 Q. Would you mind taking a look at the maps
14 in front of you to make sure that those are the
15 maps that you or your firm produced?

16 A. Yes. These are the maps that we produced.

17 MR. JONES: I'd like to have -- introduce
18 these maps as an exhibit.

19 JUDGE HOBERG: All right. There's more
20 than one map to be referred to. How many are
21 there?

22 MR. JONES: This is a series of maps.
23 There are 13 maps.

24 JUDGE HOBERG: And you're going to be
25 talking about each one maybe separately or --

1 MR. JONES: We may refer -- these may
2 be -- these may be helpful as explanatory exhibits
3 for the various expert witnesses to be able to
4 point to some avoidance areas, exclusion areas, and
5 we brought extra copies so that the Commissioners
6 would have something, I think, more legible to
7 read.

8 JUDGE HOBERG: Then let's mark them as
9 Exhibit 5A through whatever it is. There's 13 of
10 them, I guess. I don't know exactly what --
11 halfway through the alphabet, I guess. So we'll
12 mark them as that.

13 (Exhibits 5A through 5M were marked for
14 identification.)

15 JUDGE HOBERG: All right. Then if there's
16 no objection, Exhibit 5, the maps, 13 maps, A
17 through K are admitted. Sorry. A through M. I'm
18 sorry. A through M. Please continue.

19 Q. (MR. JONES CONTINUING) Mr. Schultz, what
20 do we have here?

21 A. What we have is we have basically maps
22 that provide information on location on -- showing
23 the U.S. Fish & Wildlife easements. They show the
24 location of the turbines as they sit now in number.
25 They also show the access roads that they have

1 proposed. They show some of the land uses and some
2 of the cabling. And what we've done is we've
3 divided into phase one north and south, and the
4 only reason we've done -- there's no significance
5 other than you're able to see more on the map,
6 they're clearer. As I age, I have to hold it
7 further away in order to see it. So I made it big
8 enough so you could actually read it, and --
9 because if we put the whole three townships on one
10 map, it gets pretty small. So just for legibility
11 there's a north half and a south half, and that's
12 the only significance of that.

13 MR. JONES: That's the only questions I
14 had right now for Bart. We're going to have him
15 back to finish up and present his report a little
16 bit later.

17 JUDGE HOBERG: All right. Thank you, Mr.
18 Jones. Any questions at this time then?

19 MS. BENDISH: I don't have any.

20 JUDGE HOBERG: Commissioners, any
21 questions of Mr. Schultz?

22 COMMISSIONER WEFALD: Okay. Is Mr.
23 Schultz -- what is his area of expertise?

24 MR. JONES: Mr. Schultz --

25 COMMISSIONER WEFALD: He said he's the

1 project manager.

2 THE WITNESS: Yes. For this project for
3 Houston Engineering, and we're providing the
4 environmental part of the project. The
5 environmental characterization of the area and
6 looking at impacts.

7 JUDGE HOBERG: And he's coming up later
8 again.

9 THE WITNESS: And I'm coming up later.

10 Q. (MR. JONES CONTINUING) Bart, did you
11 produce one or more of the reports that we're going
12 to see later?

13 A. Yes, I did.

14 Q. Did you produce the biological resources
15 report and then the avian and MAPP study
16 description discussion?

17 A. Yes. Along with my staff, that's correct.

18 COMMISSIONER WEFALD: All right. My
19 questions have to do with the exclusion and
20 avoidance areas, and I don't know which person I'm
21 going to be able to ask those questions of.

22 MR. JONES: I'd like to go through all of
23 those -- actually, Mark Aanenson is our next
24 witness, and he will walk us through most of these
25 maps.

1 COMMISSIONER WEFALD: Mark Aanenson -- he
2 is --

3 MR. JONES: Mark Aanenson is an engineer,
4 also with Houston Engineering.

5 COMMISSIONER WEFALD: Okay. Thank you.

6 MR. JONES: So I'd like to excuse Bart for
7 now, but bring him back.

8 COMMISSIONER WEFALD: That's fine.

9 JUDGE HOBERG: All right. Anything at
10 this time then, Commissioners?

11 COMMISSIONER CLARK: I have nothing.

12 JUDGE HOBERG: All right. Thank you then.
13 Please call Mr. Aanenson.

14 MR. JONES: Mark Aanenson from Houston
15 Engineering.

16 JUDGE HOBERG: Mr. -- is that Aanenson?

17 MR. AANENSON: Aanenson, yes.

18 JUDGE HOBERG: Did you hear the admonition
19 I gave earlier in regard to perjury?

20 MR. AANENSON: I did.

21 (Witness sworn.)

22 JUDGE HOBERG: Thank you. Mr. Jones,
23 please.

24

25

1 seven years I was the manager of the Soil and Water
2 Conservation District. My duties at that time were
3 implementation of conservation programs. I also
4 oversaw a wetland regulatory program implemented by
5 the State of Minnesota for that county, in addition
6 to some other duties.

7 After working at the Soil and Water
8 Conservation District, I took a position with
9 Houston Engineering. I've been with Houston for
10 about, I believe, 11 years now, and I've worked in
11 the areas of primarily wetlands and permitting,
12 environmental review, and those types of
13 activities.

14 Q. Mark, is this your resume?

15 A. Yes, it is.

16 MR. JONES: I'd like to introduce this as
17 an exhibit.

18 JUDGE HOBERG: All right. We'll mark that
19 as Exhibit 6.

20 (Exhibit 6 was marked for identification.)

21 JUDGE HOBERG: All right. If there's no
22 objection, Exhibit 6 will be admitted. Please
23 continue, Mr. Jones.

24 Q. (MR. JONES CONTINUING) Mark, on this
25 project what were you engaged to do and did you

1 produce some reports?

2 A. Yeah. My role on this project was
3 primarily to provide support to Mr. Schultz in
4 preparation of the biological reporting physical
5 resources report, as well as to conduct fieldwork
6 and evaluate impacts for the placement of the
7 project features, such as the tour locations and
8 the access roads, and specifically really to
9 address the Fish & Wildlife Service property
10 interests within the project.

11 Q. Well, let's -- I have some questions on
12 the physical resources report that I'd like to ask
13 you. First, I notice that we do have a map
14 relating to prime farmlands, which are an avoidance
15 or exclusion area that we need to discuss. Can we
16 talk about this map?

17 A. Sure.

18 Q. First of all, can you tell us what --

19 COMMISSIONER WEFALD: Which map is it?

20 MR. JONES: We have a map called prime
21 farmland north and prime farmland south.

22 JUDGE HOBERG: How far down is that one?

23 MS. BENDISH: E and F, I believe.

24 JUDGE HOBERG: All right. That's Exhibit
25 5E and 5F.

1 Q. (MR. JONES CONTINUING) So, Mark, on this
2 map what does this show?

3 A. Well, first of all, I guess the definition
4 of prime farmland -- I believe it's in our physical
5 resources report. The definition that most people
6 quote from USDA is about two paragraphs long, so
7 I'll just kind of summarize. Prime farmland is
8 land that has the best combination of physical and
9 chemical resources to produce agricultural
10 products, and it has to have the ability to do
11 that. So, generally speaking, that's how prime
12 farmland is defined; although that -- that category
13 is not defined by us in our project. That -- the
14 lead agency on the prime farmland is the Natural
15 Resources Conservation Service. We simply request
16 prime farmland information from the NRCS, which
17 they give us, and that's based on soil type and
18 soil -- map soil units on a per-county basis.

19 So we get that information from the NRCS.
20 We compare those soil units to the soils as they're
21 mapped within that county and compare it to
22 identifier areas of prime farmland. In this
23 particular case I believe none of the -- none of
24 those units were in our project area. We don't
25 specifically have prime farmland within the project

1 area.

2 However, in that discussion there are two
3 other categories that are often, I guess,
4 discussed, and that is farmland of statewide
5 importance and then prime farmland areas -- or
6 areas that can be considered prime farmland if
7 certain limitations are met, and that's the two
8 other categories that you see on these maps.

9 And so I guess in assembling these reports
10 we provided that information, as well, so that
11 rather than just saying there is no prime farmland,
12 we gave that information so that you could have
13 some sense of the value of the farmland in the
14 project area.

15 Q. So we're showing two out of the three
16 categories. Sort of the first category of prime
17 farmland that meets the definition, there's none to
18 show --

19 A. That's correct.

20 Q. -- on this map. Have you also
21 considered -- have you estimated the impact that
22 the turbine locations and the access roads are
23 going to have on at least the categories of
24 farmland --

25 A. Right.

1 Q. -- that we've identified?

2 A. Yeah. Of the remaining two categories
3 that we've identified on the maps according to our
4 GIS folks, around 17 -- somewhere just under
5 18,000 acres would be impacted by either tower
6 locations -- oh, I'm sorry. 18,000 acres -- I
7 misspoke there. There's 18,000 acres within the
8 project area of those other two categories. The
9 impacts, according to our GIS folks, is around 80
10 acres. However, that number -- that number
11 includes all access roads even if they're on the
12 section lines.

13 So we did not make an effort to subtract
14 off the existing prairie trails or roadways that
15 would be on those section lines which may not be
16 considered prime farmland because they're existing
17 roads. So 80 would be by far the maximum impacts
18 to those other two categories.

19 Q. So some of those acres are actually
20 already impacted because they have an existing road
21 on them?

22 A. Correct. And I think I -- and Bart could
23 probably testify better to this, but I believe with
24 the scale we were working with with our GIS folks,
25 I think it was just too difficult to try to either

1 figure a distance or to differentiate between that
2 on that scale to give us varying data there, so
3 that's the reason for that.

4 Q. When we impact some of these farmland
5 categories, describe the impact of either locating
6 a turbine there or putting an access road there.

7 A. Well, I mean, again, the definition of
8 prime farmland is it has to meet those production
9 properties, and then it has to be able to be
10 cropped. So a good example is if you have soils
11 that were identified as prime farmland, but there
12 was some sort of permanent easement or restriction
13 on there that prevented anybody from cropping that,
14 that would then not be considered prime farmland
15 because you wouldn't have the ability to crop it.
16 So if you put an access road on top of this, it
17 would probably not be considered prime farmland
18 then because, number one, you'd have an easement on
19 there that prevented them from cropping, and,
20 number two, just physically you'd be converting it
21 to a road land-use versus an agricultural land use.
22 But, again, the call on whether something is or is
23 not prime farmland is made exclusively by the NRCS
24 and not by us.

25 Q. As a percentage what -- how much impact --

1 or how many acres are impacted as a percentage of
2 all the farmland -- prime farmland or near prime
3 farmland that's in this project area?

4 A. Well, if you take the 80 acres, which
5 again is a very conservative estimate of those
6 other two categories, and divide by 18,000, you get
7 about a less than one percent, half a percent or
8 something in that ballpark.

9 Q. You had mentioned at one time that there's
10 always a tradeoff in turbine siting. Is it --
11 describe the tradeoff of siting turbines. What do
12 you gain and what do you lose? If we were to try
13 to gain -- lessen the impact on prime farmlands,
14 what would we end up doing?

15 A. Well, in some areas -- well, some of the
16 major categories we've looked at in terms of
17 avoidance here with turbines and access roads is
18 those land interests from the Fish & Wildlife
19 Service. There's grassland uses, wetland uses,
20 wetlands basins, wooded draws. Those types of
21 resources would have been our first priority on
22 avoidance here with these features, and so by
23 avoiding those areas -- and I should say remnants
24 of native prairie, as well.

25 So the rangeland and pastureland areas you

1 have within this project area correspond with the
2 remnants of native prairie, and so if you
3 continually move project features off the native
4 prairie, it tends to put those onto the cropland
5 areas and so you can have some tradeoff between
6 there. You tend to increase your likelihood of
7 having impacts to prime farmlands, or in this case
8 not prime farmlands, but farmlands of statewide
9 importance or prime farmland areas if drained.

10 Q. Those are the questions we had on prime
11 farmland. If there's no further questions, we'll
12 move on to various other aspects of the report.

13 JUDGE HOBERG: Well, did you want to see
14 if there's any questions on this now? I guess we
15 could do that. All right. Ms. Bendish, any
16 questions on these first two maps?

17 MS. BENDISH: I don't have any questions.

18 JUDGE HOBERG: All right. Thank you.

19 Commissioner Wefald?

20 COMMISSIONER WEFALD: I have no questions.

21 JUDGE HOBERG: Commissioner Clark?

22 COMMISSIONER CLARK: No.

23 COMMISSIONER CRAMER: None.

24 JUDGE HOBERG: Very well. Please
25 continue, Mr. Jones.

1 Q. (MR. JONES CONTINUING) Mr. Aanenson, did
2 you study the available data on the mineral
3 resources in this area?

4 A. We referenced, I believe it was, the face
5 of North Dakota and looked at lignite resources,
6 and I believe we did not identify any impact to
7 mineral resources here. I think our quote is in
8 our -- I believe in that publication it indicated
9 that -- it talked about strippable lignite
10 resources on the orientation of the resource to the
11 surface and whether it was economic to mine that or
12 not, and it indicated there were none of those
13 resources, I believe, in Logan County, I believe is
14 what it said.

15 So from using that as our -- I guess as
16 our evaluation, we did not identify impacts to
17 mineable resources. In addition to that, there's
18 also gravel resources that are considered mineable
19 resources, and we did the field reviews and looked
20 at the project, and we didn't identify any gravel
21 mineable resources that we know of.

22 Q. Is there any impact on groundwater as a
23 result of this project?

24 A. You know, we didn't identify impacts to
25 groundwater. I guess just based on the nature of

1 the project and how it's constructed, we didn't
2 identify impacts to groundwater.

3 Q. Is this project -- is the project area in
4 a designated floodplain?

5 A. I think when we reviewed that information,
6 I think the nearest designated or mapped floodplain
7 was in and around the City of Napoleon and I think
8 specifically on the southern end of the town, if I
9 remember correctly, but that was limited to in and
10 around the City of Napoleon, itself. So we didn't
11 identify and weren't able to come up with any
12 designated flood plains in the project area or the
13 project site.

14 Q. Mark, I'd like to move on to a discussion
15 about wetlands. Are there wetlands on the project
16 site?

17 A. Yes. Yes, we did identify wetlands to the
18 project site.

19 Q. Just so I know, can you take a few seconds
20 and tell me what a wetland is?

21 A. Yeah. One of my responsibilities at
22 Houston Engineering is wetland delineation, and I
23 do quite a bit of it more so in the State of
24 Minnesota than North Dakota, but I define wetlands
25 as areas that are saturated or inundated with water

1 long enough during the growing season to support a
2 dominance of wetland vegetation and long enough to
3 develop anaerobic conditions in the upper part of
4 the soil profile.

5 Q. I'll pretend I understood that. Do we
6 have a map of the wetlands here?

7 A. I believe we do. We have the NWI layer
8 turned on on one of the maps.

9 Q. So Exhibit 5G and H.

10 JUDGE HOBERG: Yes, 5G and 5H, about
11 two-thirds of the way down.

12 Q. (MR. JONES CONTINUING) What do you rely
13 on to map -- what data source do you rely on to map
14 these wetlands?

15 A. Well, typically our first -- our first
16 look at wetlands is always the National Wetland
17 Inventory. It's a good resource to use to get a
18 feel for what wetland resources are out there. The
19 National Wetland Inventory tends to be more
20 accurate where the topography is more rolling. It
21 tends to be less accurate where you have flatter
22 topography just for obvious reasons on holding
23 water and that sort of thing. So given the
24 topography around this project, it tends to be
25 pretty good in terms of accuracy. So that's

1 typically what we rely on, and I know earlier in
2 the project avoidance measures were taken based on
3 that NWI layer.

4 Q. I noticed that in the record there's an
5 April letter from the Fish & Wildlife Service which
6 we're going to touch on a few times, but one of the
7 points that I noticed in that letter was that the
8 NWI photography is not necessarily all complete, as
9 you said. What do you do to supplement the NWI
10 photography?

11 A. Sure. The NWI is pretty good at picking
12 up seasonally flooded basins and permanently
13 flooded basins. Where you have open water it shows
14 up on that photography and the soils pretty easily,
15 which is what we need to develop those maps, but
16 the type I wetlands, the shallow basins, the ones
17 that are flooded just for brief periods during the
18 growing season are much more difficult to pick up
19 on aerial photography and therefore they're more
20 difficult to map when you're creating the National
21 Wetland Inventory map.

22 So the type I wetlands are more difficult
23 to map than the other types of wetlands. So -- a
24 couple of reasons. One is when that photography is
25 taken, it may not be during a wet enough period to

1 show up on photography. The other reasons is that
2 those are more easily converted into agricultural
3 production. So you may very well have type I
4 wetlands, shallow wetland basins out there that are
5 essentially all soybeans when you do the
6 photography. They're still there, but they're to
7 converted agricultural production.

8 So for that reason those wetlands types
9 are easily missed by the National Wetlands
10 Inventory. What we've done to address that is I
11 did fieldwork in mid September when we had tower
12 locations and proposed access road locations, and
13 we essentially did a windshield survey, visited all
14 those sites, looked at the areas, and tried to
15 identify any of these wetland areas that did not
16 show up on the National Wetland Inventory.

17 In addition to that, I checked the
18 National Wetland Inventory polygons in terms of
19 their locations. Because that's the other things
20 that can happen to you looking at the National
21 Wetlands Inventory, is the size or orientation of
22 those basins may not be exactly as it shows on the
23 map. So as a result of doing that, we now have
24 identified approximately 1.68 acres of wetland
25 impact for the project as it sits right now.

1 Q. So prior to that did you -- prior to that
2 was it your conclusion that we were avoiding
3 permanent impacts on all wetland basins?

4 A. Well, right. Based on the National
5 Wetland Inventory and the avoidance measures that
6 were done, we're looking at zero impacts to
7 wetlands until we did the field review in mid
8 September and now we have some, and I think we may
9 have some opportunity here for some further
10 avoidance.

11 Q. Okay. So to make sure I heard you right,
12 1.6 acres --

13 A. Yep.

14 Q. -- of additional that we think we're going
15 to impact now?

16 A. Yes.

17 Q. Okay. And we're going to -- and again,
18 it's an opportunity for further tweaking to avoid
19 those?

20 A. Yes.

21 Q. Is it our objective -- is it your
22 objective to try to avoid all permanent -- any
23 permanent impact on a wetland basin?

24 A. Yes.

25 Q. Okay. Are any of those -- are any of

1 those newly found wetlands on wetland easements?

2 A. I don't believe so.

3 Q. Okay. So what is -- who do you need --
4 what other agency do you need to satisfy to --
5 before having even a temporary impact on wetlands
6 that aren't in the Fish & Wildlife easements?

7 A. Well, we have the U.S. Army Corps of
8 Engineers, and so they have jurisdiction over
9 waters in the U.S., which includes wetland basins,
10 as well. So we would have to -- once we get the
11 final alignment of all these, we would have to
12 correspond with the Corps of Engineers in terms of
13 the jurisdictional letter to determine whether or
14 not they're claiming jurisdiction on the wetland
15 areas that we've shown the impacts.

16 In addition to that, field delineation
17 work is typically followed from the windshield work
18 and the offsite work, as well. So where there are
19 impacts, field delineation work will need to be
20 done to quantify those more specifically.

21 Q. Now, thinking about temporary construction
22 activities, do we have any temporary construction
23 activities that are at least in wetland easements?
24 You know what? Let's flip the page. Do we have --
25 do we have a map showing wetland easements and

1 grassland easements?

2 A. Yes.

3 JUDGE HOBERG: Is that a different map?

4 MR. JONES: I believe that's the next two
5 pages, 5I and 5J.

6 JUDGE HOBERG: Right. Okay. 5I and 5J.
7 Correct.

8 Q. (MR. JONES CONTINUING) So will we have
9 any -- any construction activities in any wetland
10 easements or plan to have any?

11 A. Well, I should -- I guess to answer that
12 question, the wetland easement parcels, based on my
13 experience and correspondence with the Fish &
14 Wildlife Service, wetland basins are regulated
15 within those wetland easement parcels as opposed to
16 the entire parcel. So it's reported on the entire
17 parcel, but as long as your activity does not
18 impact wetland basins within that tract of land,
19 you're not in violation or in conflict with that
20 easement.

21 So will we have -- will we have
22 construction on a wetland easement parcel? I
23 believe we will. However, based on the information
24 we have at this point, I don't believe we will have
25 wetland impacts on those easement parcels. At

1 least that's our intention at this point.

2 Q. So then the procedure, if you are
3 constructing on a wetland easement but not
4 affecting a wetland, in your opinion, who do you
5 have -- do you work with the Fish & Wildlife
6 Service to make sure they agree with you about
7 that?

8 A. That's correct. And I've been in
9 conversations with Mr. Mick Erickson from the Fish
10 & Wildlife Service on this issue, and we've been --
11 again, we've discussed that. We met with them in
12 June, we drove through the project, and we've
13 committed to doing that.

14 Q. Grassland easements, are those also shown
15 on this map?

16 A. Yes.

17 Q. Are -- do we have any -- I guess take ten
18 seconds. What is a grassland easement?

19 A. Well, grassland easements specifically
20 address the vegetative cover within those parcels.
21 So it prevents that grassland area from being
22 burned and tilled and destroyed in any way.
23 Seeding plans, that sort of thing, I believe all
24 have to be worked with the Fish & Wildlife Service
25 on any type of that management activity. So

1 that -- in corresponding with them and in their
2 letter, that's one of their higher -- one of their
3 highest priorities is to keep basically our project
4 features off the grassland easement areas, and I
5 believe at this time we have no activities
6 scheduled on the grassland easement parcels at all.

7 Q. So I believe you're referring to the April
8 4 letter from the Fish & Wildlife Service
9 expressing that -- expressing concern on doing
10 anything on grassland easements; right?

11 A. Correct.

12 Q. Do we now have any turbines or access
13 roads on grassland easements?

14 A. Not to my knowledge, no.

15 Q. All right. So are we going to have any
16 impact at all on these grassland easements?

17 A. No direct impacts.

18 Q. No construction activities on these
19 grassland easements?

20 A. Not to my knowledge, no.

21 MR. JONES: Okay. That's fair enough.
22 Those are all the questions I had for Mr. Aanenson
23 on direct.

24 JUDGE HOBERG: All right. Thank you, Mr.
25 Jones. Ms. Bendish, do you have some questions for

1 Mr. Aanenson?

2 (Exhibit 7 was marked for identification.)

3 JUDGE HOBERG: Exhibit 7?

4 MS. BENDISH: Correct.

5 **CROSS-EXAMINATION**

6 **BY MS. BENDISH:**

7 Q. I have just given you what's been marked
8 as Exhibit 7. Can you tell me what that is?

9 A. It looks like a copy of the April -- oh,
10 October 21st.

11 MR. JONES: It appears it's a letter dated
12 today; is that correct?

13 MS. BENDISH: That's correct. That it was
14 faxed to Mr. Lein this morning.

15 Q. (MS. BENDISH CONTINUING) And if you'd
16 look on the last page of that letter, are you
17 listed as someone that was going to receive a copy
18 of this letter?

19 A. Yes.

20 MS. BENDISH: I'd offer Exhibit 7.

21 JUDGE HOBERG: You haven't received it
22 yet, though.

23 THE WITNESS: No, I have not.

24 JUDGE HOBERG: You've seen that, Mr.
25 Jones; correct?

1 MR. JONES: I've read it briefly while we
2 were sitting here.

3 JUDGE HOBERG: Any objection to Exhibit 7
4 being admitted?

5 MR. JONES: No.

6 JUDGE HOBERG: All right. Exhibit 7 is
7 admitted.

8 MS. BENDISH: And I'm just offering it
9 because it was just received today and it hasn't
10 been included in our docket yet, so for purposes of
11 testimony and questioning, which I believe the
12 Commissioners have and I have some, I wanted you to
13 have a chance to take a look at that.

14 Q. (MS. BENDISH CONTINUING) And if you look
15 in that letter, you can see that towards the end of
16 page two, Mr. Towner from the Fish & Wildlife
17 Service states that they didn't receive any
18 response to that April 4th letter that's already
19 been referenced, and he questioned how Just Wind
20 intends to comply with the federal laws that the
21 U.S. Fish & Wildlife Service implement, namely the
22 Endangered Species Act, the Migratory Bird Treaty
23 Act, and the Bald and Golden Eagle Protection Act.
24 Can you tell us how Just Wind intends to do that?
25 Or maybe if that's not a question appropriate for

1 you, someone else can answer it later.

2 MR. JONES: I would suggest that we have
3 two experts that can address that, Barton Schultz
4 that we'll call back, and John Schultz, our bird
5 expert.

6 MS. BENDISH: That's fine.

7 MR. JONES: However, just briefly, let me
8 just ask a question.

9 **REDIRECT EXAMINATION**

10 **BY MR. JONES:**

11 Q. You saw a copy of the April letter from
12 the Fish & Wildlife Service; correct?

13 A. Yes.

14 JUDGE HOBERG: That was the one that was
15 addressed to you?

16 THE WITNESS: Yes.

17 Q. (MR. JONES CONTINUING) And in that
18 letter, among other things, Fish & Wildlife Service
19 expressed concern and set forth some guidelines for
20 siting and not impacting grassland easements and
21 wetland easements and wetlands, among other things;
22 correct?

23 A. Yes. Under the category of fish and
24 wildlife property interests.

25 Q. Have -- has something been done to address

1 or accommodate Fish & Wildlife concerns as to
2 grassland and wetland easements and wetlands?

3 A. Yes. We requested their easement
4 information, incorporated it into our maps so we
5 could see which parcels are under easement that
6 they had. I was in discussions with Mr.
7 Erickson -- I don't recall the number -- two or
8 three times about the process on how we would
9 review any work within these easement parcels with
10 them and coordinate with them. So I've had two or
11 three discussions with him, and then we chose to
12 meet with them in June and discuss this again, and
13 we met with them in June, drove through much of the
14 project, and discussed again how we would do this.

15 And I guess in terms of property
16 interests, it's my opinion we were in agreement
17 that we would get to this point where we have the
18 final layout of everything, I've identified as many
19 wetlands as I could, and then we would review in
20 the field with Mr. Erickson any projects, any
21 particular work that would be conducted on those
22 easement parcels.

23 Q. So Fish & Wildlife has a dual role; is
24 that accurate to understand? They have a role in
25 preserving the biological and wildlife; they also

1 have a role in administering these land easements;
2 is that right?

3 A. Yes, I think that would be correct.

4 Q. And as far as the wetlands and wetland
5 easements and grassland easements aspect of their
6 role, do you believe that at this point we have --
7 we have made -- we have made changes to accommodate
8 their concerns in those areas?

9 A. Yeah. I think we've done an excellent job
10 of -- and essentially we've moved everything off
11 the grasslands completely and we've avoided any
12 wetland basins and wetland easements. In addition
13 in that letter, it did talk about high-value
14 habitat, such as wooded draws, parcels of native
15 prairie and riparian forests, I believe, and we did
16 review the project in the field to identify any of
17 those areas, as well, so --

18 MR. JONES: I have no further questions
19 then.

20 JUDGE HOBERG: Thank you, Mr. Jones. Ms.
21 Bendish?

22 MS. BENDISH: I have nothing further.

23 JUDGE HOBERG: Mr. Lein.
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CROSS-EXAMINATION

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BY MR. LEIN:

Q. I see -- it looks like in phase one in the north in the wetland map, it looks like a Fish & Wildlife waterfowl production area.

JUDGE HOBERG: 5G.

MR. LEIN: Is it G?

MR. JONES: I'm sorry. On the north map?

MR. LEIN: North map, yeah. Wetlands phase one north.

THE WITNESS: It looks like --

MR. JONES: First of all, describe what you're -- what you think he's referring to.

THE WITNESS: Are you looking at the basin kind of in the center of the map, it's green?

Q. (MR. LEIN CONTINUING) Yeah. There's a turbine labeled 103 that looks close to it.

A. I think that basin is intended -- there's two colors of green on the legend of that map, and I think that green color represents a type of wetland that is also colored green on the left. It's a semi-permanently flooded basin, and it is not -- at least I don't believe it's identified as a waterfowl production area.

Q. So there were no waterfowl production

1 areas in the project area then?

2 A. That's my understanding. Yes.

3 MR. LEIN: Thank you.

4 JUDGE HOBERG: Thank you, Mr. Lein.

5 Commissioner Wefald, do you have any questions of
6 Mr. Aanenson?

7 COMMISSIONER WEFALD: I have no questions.
8 Thank you.

9 JUDGE HOBERG: Thank you. Commissioner
10 Clark, please.

11 COMMISSIONER CLARK: I just have a
12 question regarding the correspondence with the U.S.
13 Fish & Wildlife Service.

14 **EXAMINATION**

15 **BY COMMISSIONER CLARK:**

16 Q. Will at some point there be some sort of
17 formal documentation that you'll be submitting as a
18 response to U.S. Fish & Wildlife Service? I
19 noticed in that letter they do acknowledge that
20 you've had ongoing consultations, but in language
21 which is a little bit stronger than we've usually
22 gotten from past applications, they indicated that
23 they have not received any formal response from you
24 yet. Is there a formal response pending?

25 MR. JONES: The response -- this letter is

1 addressed -- it's for the owner to respond with the
2 advice of its consultants, and can we put that on
3 Jeff's list -- Jeff Metzger's list --

4 COMMISSIONER CLARK: Sure.

5 MR. JONES: -- when we call him back to
6 ask him when he's going to be responding?

7 JUDGE HOBERG: I think the Commission is
8 probably going to want a late-filed exhibit on
9 that; correct?

10 COMMISSIONER CLARK: Oh, sure.

11 JUDGE HOBERG: So that would be then a
12 late-filed -- well, Mr. Metzger can talk about it,
13 too, but that would be a late-filed exhibit
14 response to the October 21st letter.

15 MR. JONES: In fact, I already had that on
16 my list for Jeff, so it must have been asked
17 before.

18 JUDGE HOBERG: Okay. Thank you.
19 Commissioner Clark, anything further?

20 COMMISSIONER CLARK: That's all I have.

21 JUDGE HOBERG: Commissioner Cramer?

22 COMMISSIONER CRAMER: Nothing.

23 JUDGE HOBERG: Thank you. Mr. Jones, any
24 further questions of this witness?

25 MR. JONES: None.

1 JUDGE HOBERG: Thank you, Mr. Aanenson.

2 THE WITNESS: Thank you.

3 MR. JONES: At this time I'd like to call
4 Bart Schultz back to the stand.

5 JUDGE HOBERG: Okay. Mr. Schultz, I just
6 need to remind you you're still considered to be
7 under oath. Mr. Jones, please.

8 **BART SCHULTZ,**

9 having been previously duly sworn, was examined and
10 testified further as follows:

11 **REDIRECT EXAMINATION**

12 **BY MR. JONES:**

13 Q. Bart, what were you engaged to do here?

14 A. Well, we were hired by Just Wind to
15 basically characterize the environmental conditions
16 at the site, and then in characterizing them the
17 project area, meaning the three townships which
18 include 90 sections which are shown on the maps in
19 red -- they're outlined in red, the project area --
20 to characterize that and also to get the -- to look
21 at the environmental impacts if we were to put a
22 wind turbine farm here.

23 What we produced was two white papers that
24 dealt with the biological aspects of it and also
25 the physical aspect, which Mark talked about, and

1 there's some overlap in there because some of the
2 habitat we talk about in the biological is what
3 Mark actually goes out in the field and verifies.
4 So that's why he had a part in both of these
5 because we are talking not only about the easement
6 part of it, the U.S. Fish & Wildlife easements, but
7 we're also looking at some of the habitat that
8 those easements make up.

9 Q. Let me ask you just a few questions to
10 walk through your biological resources report.
11 First of all, what other studies have you found --
12 let's talk about birds first. Did you find studies
13 about bird populations or migratory patterns?

14 A. Well, what we did is we looked at what the
15 closest studies were to the project area, and we
16 found two studies that were done through the USGS.
17 One was in Lake George, which is about seven miles
18 north of our project area, and the other one was in
19 Braddock, which is about 11 miles west.

20 And what that showed was it showed
21 basically 163 species that live and nest in this
22 area that we could potentially see in our project
23 area because it provides habitat for them, and this
24 study went on for about 11 years, and the years
25 were from '89 to '98, and it was -- they would

1 have -- the occurrences were where they'd have a
2 birder out on these areas -- these nesting areas,
3 and they would do two-and-a-half-hour segments and
4 identify the birds as they see.

5 Now, I defer to John Schultz who's going
6 to testify next to give you probably more details
7 on procedures that they do because he's actually
8 done these studies where you're out in the field
9 and identifying birds. I have not. I have not
10 actually sat on a site and identified birds. So we
11 relied on these studies that were done both in Lake
12 George and Braddock. They were closest to our
13 facility and most representative of what we could
14 find in our area.

15 Q. Let me ask you the questions asked before.
16 Are there any waterfowl production areas in the
17 project area?

18 A. No. U.S. Fish & Wildlife Service didn't
19 identify anyone, and we requested information from
20 them as we did some other agencies, and there were
21 none identified.

22 Q. In your review of studies and looking for
23 other studies, did you come across any that
24 discussed bird fatalities due to wind turbines?

25 A. There are some. There are some out there.

1 There's a lot of studies that are done through the
2 National Wind Coordinating Committee, and there's
3 other studies that are done from universities and
4 depending on who's funding stuff, and the NWCC
5 actually has compiled data from all these studies
6 that have been done across the country. They've
7 looked on the East Coast, they've looked in the
8 Midwest, they've looked in California. There's a
9 lot of studies that go in California because
10 there's a lot more wind turbines out there and they
11 seem to be a little ahead of the rest of the
12 country and have their own unique problems out
13 there, but they did a cross-section of a lot of
14 studies and looked at fatalities at these wind
15 turbines and tried to characterize, you know, the
16 occurrences of them happening but also trying to
17 look at some of the factors that cause these and
18 what would impact having less and mitigating these
19 occurrences.

20 Q. The two studies you mentioned that were
21 done over a period of 11 years, are those the most
22 relevant studies that you could find for this
23 project area and how are they -- how are they
24 relevant?

25 A. Well, as I said, I think they're the most

1 relevant because they're the closest. They're
2 closest to our area and really most representative
3 of what we could see in this area.

4 Q. Were there any -- in looking through the
5 species that were actually spotted during that
6 time, were there any threatened or endangered
7 species spotted in those studies?

8 A. No, there weren't.

9 Q. Okay. Are you -- are there any -- did you
10 check any other resources -- information --
11 resources or data to determine whether there were
12 other threatened or endangered species that had a
13 location in this project area?

14 A. We did. We -- North Dakota Parks &
15 Recreation has a database that looks at T and E
16 species occurrences, and we requested that
17 information, and I believe there's a map that shows
18 the -- did we put that in there?

19 Q. We didn't reprint this. It is in the
20 original filed map book.

21 A. In the original filing there was actually
22 a map that showed the occurrences of T and E
23 species relative to our area, and one of the ones
24 that was in question was a whooping crane, and
25 there's -- in our filing it showed migration rates

1 or areas for the whooping crane, and the closest
2 whooping crane that we had on -- that came up in
3 the database was approximately 14 miles away, and
4 it occurred 31 years ago.

5 Now, in talking with Jeffrey Towner about
6 that, he said some of that information you have to
7 take with a grain of salt because sometimes there
8 are whooping cranes moving through the area that
9 aren't sighted by anybody or they're not identified
10 or reported. So all we could do is go on what was
11 given to us as far as the recording, and that's
12 what we found.

13 Q. As long as you brought up the whooping
14 cranes, so I've heard there's a letter -- the April
15 Fish & Wildlife Service letter talks about that
16 there's a particular group of whooping cranes that
17 migrate through a wide swath of North Dakota. Is
18 that -- what can you tell us about this swath that
19 they migrate through?

20 A. Well, basically the areas that they show
21 as the migration route are centered on the Missouri
22 River, and my understanding in conversations with
23 Jeffrey Towner was they've collected data on
24 sightings of the whooping crane during the
25 migration periods, in the spring and the fall, and

1 that the centerline of that where most of them
2 occur is a mathematical center of where those
3 sightings occurred, and so the map which was also
4 filed that shows the whooping crane migration paths
5 was based on their database that showed that, and
6 our facility sits out -- intersects it, but it sits
7 out in the 15 percent area where -- if you
8 interpret the map, 15 percent of the birds that
9 could potentially go through that area when they
10 migrate, if they do migrate down from Canada, could
11 potentially go through our area. Only 15 percent
12 of the birds.

13 Q. So this is -- and I don't know exactly
14 what the -- how many miles wide this swath is, but
15 this swath cuts all the way north and south through
16 North Dakota?

17 A. North Dakota. Right. North Dakota. It's
18 180 miles wide.

19 Q. Okay. Sorry. I threw you off on your --

20 A. That's okay.

21 Q. I think that's all the questions I was
22 going to ask you about that. I was going to move
23 on to some other biological resources that you've
24 discussed. Are there any land animals that are
25 threatened or endangered in our project area?

1 A. There are none. And we got the list from
2 North Dakota Game & Fish, is who we solicited for a
3 listing of -- in our report that's in the file, it
4 talks about the mammals that you would expect to
5 find in this habitat, and there were none. There
6 were no threatened species in there.

7 Q. What's the impact on non-threatened land
8 animals?

9 A. Well, I think the predominant -- the
10 predominant habitat out there is open grassland and
11 cropland, and what we've done in siting these is we
12 identify areas of potential concern, and we --
13 basically they -- and Jeff is going to address this
14 about how they actually identify where these
15 turbines are going to be located, and we're -- our
16 role as environmental engineers and scientists are
17 to tweak that and to -- because to move those
18 turbines, that would cause an issue, whether it be
19 a wetland issue or a habitat issue, and so all
20 along the process -- and that's one of the reasons
21 why it keeps changing in some of the locations is
22 because we are tweaking them, and as we're doing
23 more fieldwork and honing in on the exact location
24 of these roads and these turbines, we're finding
25 things out there that we -- that we need to tweak

1 it and move those locations.

2 Q. Moving on, are we going to affect -- is
3 this project going to affect any fish habitat at
4 all?

5 A. No.

6 Q. Are there any rare or threatened plant
7 species in this area that have been identified?

8 A. None that were identified for us.

9 MR. JONES: That wraps up my questions for
10 Mr. Schultz at this time.

11 JUDGE HOBERG: Thank you, Mr. Jones. Ms.
12 Bendish, any questions of Mr. Schultz?

13 MS. BENDISH: I don't have any.

14 JUDGE HOBERG: No? Thank you.
15 Commissioner Wefald, please.

16 COMMISSIONER WEFALD: I do.

17 **EXAMINATION**

18 **BY COMMISSIONER WEFALD:**

19 Q. On page 13 of the section -- I think it's
20 biological resources, September 2008, which you
21 filed with the Commission -- it could be under the
22 section studies and assessments, biological,
23 section B, studies.

24 MR. JONES: I believe we have it.

25 Q. (COMMISSIONER WEFALD CONTINUING) I'm

1 looking at environmental consequences on page 13,
2 proposed action 5.3.1. It says, Potential impacts
3 to threatened and endangered resources would
4 primarily be a result of impacts to their habitat
5 and impacts to their migratory route. A habitat
6 conservation plan will be developed for the -- I
7 think that stands for -- LCWF, Logan County Wind
8 Farm -- that addresses the impacts that may occur
9 as a result of the project and the measures that
10 will be undertaken to monitor, minimize, and
11 mitigate such impacts; is that correct?

12 A. That's correct.

13 Q. Is that still your feeling about this or
14 has that changed?

15 A. In our discussions with Jeff we have never
16 said that we would not look at developing a habitat
17 conservation plan. The timing of it is --

18 Q. Okay.

19 A. I'm sorry.

20 Q. It says, A habitat conservation plan will
21 be developed for Logan County Wind Farm. Well,
22 then I'm going to the letter that was sent on
23 October 21st, and on the last page -- nope, second
24 to the last page, it talks about -- in the third
25 paragraph down --

1 as it gets to my question and I get an answer for
2 it.

3 MR. JONES: You'll get an answer, ma'am.

4 COMMISSIONER WEFALD: And then I'll ask it
5 again if I don't.

6 MR. JONES: Very good.

7 COMMISSIONER WEFALD: All right.

8 **REDIRECT EXAMINATION**

9 **BY MR. JONES:**

10 Q. First of all, tell us what a habitat
11 conservation plan -- what circumstances would a
12 habitat conservation plan be done?

13 A. Well, the habitat conservation planning
14 process is the -- how a -- a wind farm gets an
15 incidental take permit. An incidental take permit
16 is a permit that's given out by the U.S. Fish &
17 Wildlife Service for incidentally or accidentally
18 taking a threatened and endangered species. Okay.
19 So if a whooping crane came through and hit a
20 turbine, if we have an incidental take permit, we
21 wouldn't -- we wouldn't be -- have to turn our
22 turbine off.

23 Okay. Because what a plan does for you is
24 it ensures that if it occurs, it will be mitigated
25 properly. We're looking at how to mitigate and

1 avoid it to the maximum practical extent possible.
2 That's what a -- what an HCP will do, and the
3 habitat conservation plan is the first step that we
4 would have to take in going through the incidental
5 take permit process; and then the second step would
6 actually be going through -- once we develop the
7 HCP, would actually be going through the permitting
8 process where we actually get the incidental take
9 permit; and then the third stage of it would then
10 be implementation of that.

11 Q. So let me make sure I get this right. So
12 before deciding to do an HCP, an owner has got to
13 consider whether its activities are going to result
14 in a taking of a threatened and endangered species?

15 A. That's correct. That's correct.

16 Q. And to do that would an owner -- what kind
17 of information -- well, I'll just ask the question.
18 To your knowledge, has the owner commissioned some
19 additional information to be gathered on the
20 whooping crane or on bird and migration habits in
21 this area?

22 A. He has. And the expert is going to be
23 speaking after me, but there we have started a bird
24 study in the area to try to characterize actually
25 what we see at our facility -- at our project area,

1 and we do it now because this is -- we're kind of
2 at probably the middle to the -- of the migration
3 period for the fall, and then we'll continue it in
4 the spring during the migration period, and we'll
5 look at migratory and nonmigratory birds in this
6 area and try to get a database for this area in
7 order to have a basis for doing the habitat
8 conservation plan.

9 Q. So some of the elements of the habitat
10 conservation plan are -- are there any threatened
11 and endangered species in our project area at all?

12 A. There are no documented occurrences at
13 this point.

14 Q. But there could be? There could possibly
15 be?

16 A. But there could be. We're in the
17 fringe -- that 15 percent fringe of -- that's
18 centered on the Missouri River that they could pass
19 through our project area, but there aren't any
20 documented that have ever occurred in our area.

21 Q. Would another piece of information -- so
22 another piece of information you would need to know
23 is if there are threatened and endangered species,
24 are we likely to have an impact on them?

25 A. Right.

1 Q. And then, finally, if we were likely to
2 have an impact, is part of the HCP a mitigation
3 measure, what can we do about it?

4 A. It is. It's an avoidance and a
5 mitigation. You look at what factors that you can
6 build into your wind farm that will help avoid it,
7 and then also if one were to happen, how you're
8 going to mitigate that, and there's a lot of
9 questions out there right now still on what impacts
10 the design of the turbines have on whether or not
11 they have collisions or not, or if you have
12 lighting on the turbines at night, when birds are
13 migrating at night, if there's an impact whether
14 they have lighting or not lighting. So there's a
15 lot of questions out there yet.

16 Q. Based on your understanding, can -- when
17 can an HCP -- or when can an incidental taking
18 permit be employed for? At any point in the
19 process?

20 A. Well, it's not mandatory right now. In
21 the literature that we've received when this issue
22 first came up with the Fish & Wildlife Service in
23 the April 4th letter, it's not a mandatory process,
24 and it doesn't say you have to start it three years
25 before you plan your -- to start construction.

1 We're starting it, you know, a year before. Well,
2 a year before -- or nine months before we'd have to
3 start putting turbines up. So there is no
4 timeline. I mean, what they would like to see is
5 three years of data before you start the permitting
6 process for putting in a wind farm, but that's a
7 guideline from them.

8 Q. It can be applied for even during
9 operations of the wind farm?

10 A. Yes. That's our understanding of how the
11 HCP will be implemented.

12 MR. JONES: I'd like to continue answering
13 that question by calling our final expert, if I
14 may.

15 JUDGE HOBERG: When we finish with this
16 witness then. Commissioner Wefald.

17 **FURTHER EXAMINATION**

18 **BY COMMISSIONER WEFALD:**

19 Q. So the answer to my question is you don't
20 plan to file at this point -- let's say this
21 fall -- an HCP, a habitat conservation plan as
22 requested by the Federal Government?

23 A. Do you want me to answer it?

24 MR. JONES: Jeff wants to answer that.
25 Jeff Metzger wants to answer that.

1 JUDGE HOBERG: Well, so this witness can't
2 answer that?

3 THE WITNESS: Well, I would defer to Jeff
4 because it's -- part of it is a business decision
5 on his part since it is a mandatory, and he really
6 needs to make that decision.

7 JUDGE HOBERG: All right. You were
8 intending to re-call him; correct?

9 MR. JONES: Jeff Metzger, yes.

10 JUDGE HOBERG: We'll save that question
11 for him then.

12 Q. (COMMISSIONER WEFALD CONTINUING) And your
13 testimony is that this is not mandatory prior to
14 construction of the wind farm?

15 A. Correct. That's -- the information, the
16 guidance that we have gotten from U.S. Fish &
17 Wildlife Service does not say it's a mandatory --
18 it's mandatory. The problem of -- the issue of not
19 having one, if you have an incidental take that's
20 documented at your facility, then the law will be
21 against you because you went into it not getting
22 the incidental take permit when you knew there was
23 a possibility, however remote, of having a take.

24 Q. Well, you know, it just seems to me -- my
25 job is to try to prevent endangered species from

1 being taken. So as a Commissioner my job is -- I'm
2 told to watch out for endangered species, not just
3 let facilities be built that then take one whether
4 it's 5 years from now or 15 years from now or maybe
5 never, but it happens.

6 A. Right.

7 Q. So are there things that should be done as
8 part of construction that you won't know about that
9 could prevent a bird kill of a whooping crane?

10 A. I'm really -- I really don't feel that I'm
11 an expert in that area, but John is, and he can
12 address that more. So I would defer to John.

13 JUDGE HOBERG: That's the next witness?

14 THE WITNESS: That's John Schultz.

15 MR. JONES: So it's a question about
16 mitigation. Are we -- will we have forgone any
17 mitigation opportunities?

18 COMMISSIONER WEFALD: That's right. By
19 not filing this request -- this requested
20 information with the Federal Government. That
21 would be helpful for the Commission. I mean, we
22 won't know what type of mitigation they would
23 recommend by you not filing this report.

24

25

REDIRECT EXAMINATION

1
2 **BY MR. JONES:**

3 Q. Bart, have you run across ideas for
4 mitigation? I mean, I'm not asking you to vouch
5 for any of the ideas or, you know, to even tell
6 whether any have even been tried or proven.

7 A. The one mitigation option that has been
8 identified is bird deflectors on transmission
9 lines. We don't have any transmission lines
10 here --

11 COMMISSIONER WEFALD: I understand.

12 THE WITNESS: -- but there are a lot of
13 transmission lines along the Missouri River, and --
14 but -- but the wind -- Jeff doesn't have any -- any
15 authority to say our mitigation is putting bird
16 deflectors on your turbine -- on your conductor,
17 and there's other issues with bird deflectors on
18 conductors that the transmission people would want
19 to discuss before they just put bird deflectors on.

FURTHER EXAMINATION

20
21 **BY COMMISSIONER WEFALD:**

22 Q. And then somewhere in your application it
23 talks about Long Lake Wildlife Refuge, and it tells
24 the distance from Long Lake National Wildlife
25 Refuge to the wind farm. Was it 8 miles or 15

1 miles to the north?

2 A. I don't recall. It's -- I don't recall
3 how far.

4 Q. I read it in the last day or two, but I
5 can't remember where that's located?

6 A. I didn't read it in the last day or two.
7 It's north, though.

8 JUDGE HOBERG: I think that's something
9 John Schultz can talk about. I think it's more
10 than that, but he can talk about that.

11 THE WITNESS: Right. I'll defer.

12 JUDGE HOBERG: He knows the answer to
13 that.

14 COMMISSIONER WEFALD: He knows the answer
15 to that. All right. Thank you.

16 JUDGE HOBERG: Thank you, Commissioner
17 Wefald. Commissioner Clark, please.

18 COMMISSIONER CLARK: Just very quickly.

19 **EXAMINATION**

20 **BY COMMISSIONER CLARK:**

21 Q. In reading the U.S. Fish & Wildlife letter
22 it indicates that there are liabilities for
23 individuals or entities that don't perform the HCP.
24 Are you familiar with what those liabilities are?

25 A. I'm not. I'm truly not. I had a

1 discussion with Mr. Towner on that, and he just
2 alluded to that if you know going in and you don't
3 get it and you take one, the consequences will be
4 much greater, and -- but he didn't identify the
5 specific consequences that would be imposed on us
6 if we did take a whooping crane.

7 COMMISSIONER CLARK: Okay. Thanks.
8 That's all I have.

9 JUDGE HOBERG: Thank you, Commissioner
10 Clark. Commissioner Cramer, please.

11 COMMISSIONER CRAMER: I have nothing.

12 JUDGE HOBERG: Thank you. Any further
13 questions of Mr. Barton Schultz here? Ms. Bendish?

14 MS. BENDISH: Nothing.

15 JUDGE HOBERG: All right. Thank you, Mr.
16 Schultz. We're going to take another ten-minute
17 recess here, but before we do, is anybody here in
18 attendance that didn't sign the attendance sheet,
19 sign-up sheet? If there is anybody, please come up
20 and see me during the break.

21 (Recess taken.)

22 JUDGE HOBERG: We'll go back on the
23 record, and your next witness, Mr. Jones.

24 MR. JONES: I'd like to call John Schultz.

25 JUDGE HOBERG: Mr. Schultz, did you hear

1 the admonition I gave earlier in regard to perjury?

2 MR. JOHN SCHULTZ: Yes.

3 (Witness sworn.)

4 JUDGE HOBERG: Thank you. Mr. Jones,
5 please.

6 **JOHN SCHULTZ,**

7 having been first duly sworn, was examined and
8 testified as follows:

9 **DIRECT EXAMINATION**

10 **BY MR. JONES:**

11 Q. Mr. Schultz, can you state your full name
12 and address, please?

13 A. Yes. John Wesley Schultz, 1926 South
14 Grandview Lane in Bismarck, North Dakota, 58503.

15 Q. And what's your position with Western
16 Plains?

17 A. I'm current vice president and senior
18 biologist with Western Plains Consulting. I'm a
19 certified wildlife biologist.

20 Q. Tell us a little bit about your background
21 as it relates to bird studies.

22 A. I have a Master's degree from North Dakota
23 State University in zoology, wildlife management;
24 Bachelor's from Dickinson State University in earth
25 science and biology; and I was with the North

1 Dakota Game & Fish Department for 28 years serving
2 first as an upland game biologist in research,
3 regional supervisor in Devils Lake managing public
4 land, and the last five years as private lands
5 coordinator running the PLOTS program. And I have
6 a strong background in birding. That was one of my
7 passions and pretty much into anything that flies
8 and sings.

9 Q. Now, did you bring a professional resume
10 today?

11 A. Yes, I did.

12 Q. Is that it?

13 A. Yes.

14 MR. JONES: I'd like to introduce this as
15 an exhibit.

16 JUDGE HOBERG: All right. We'll mark Mr.
17 Schultz's resume as Exhibit 8.

18 (Exhibit 8 was marked for identification.)

19 JUDGE HOBERG: And Exhibit 8, if there's
20 no objection, will be admitted. Mr. Jones, please.

21 Q. (MR. JONES CONTINUING) John, has your
22 firm been engaged to do something with regard to
23 this project?

24 A. Yes, we have. About three weeks ago we
25 signed a contract with Just Wind to conduct

1 sandhill crane surveys here in the Logan County
2 Wind Farm area for a period of five to six weeks to
3 capture the migration of sandhill cranes through
4 the area. Sandhill cranes are surrogates to the
5 federally endangered whooping crane, and they
6 utilize similar habitats and forage in similar
7 areas as they migrate through in the spring and the
8 fall.

9 Q. Tell us about what that study -- how you
10 conduct that study.

11 A. As I mentioned, we conduct weekly surveys
12 here on the wind farm area and we stop at points
13 and listen for sandhill cranes on the ground or in
14 the air. We also glass areas of likely habitat
15 where they may be roosting or foraging. And as I
16 mentioned, we cover the entire wind farm area once
17 per week for a period of five or six weeks.

18 Along with the sandhill crane survey
19 weekly, we're also recording incidental
20 observations of any species that may be moving
21 through the area, geese, Canadian geese, and other
22 species, large flying birds.

23 Q. So you're studying sandhill cranes. Tell
24 me what a surrogate means in relation to the
25 whooping cranes.

1 A. Well, that term really means they will be
2 moving, sometimes migrating with the lesser
3 sandhill crane, simply because they move throughout
4 their migration corridor at similar times. Say,
5 for example, in the spring, they'll move through
6 this part of the state either spending time to rest
7 or feed or sometimes simply flying over as they
8 move north into northern Canada. Whooping cranes
9 and lesser sandhill cranes, the ones we're looking
10 for, nest in a similar area in northern Canada, and
11 likewise, they move back to their migration areas
12 in southern United States and some places in Mexico
13 at the same time. So that's what I mean by
14 surrogate. They sometimes can be found together.

15 Q. So during these surveys you're not only
16 going to record the incidences of the sandhill
17 cranes, but all other species; did I hear that
18 right?

19 A. Correct.

20 Q. What kind of data do you record about
21 these?

22 A. One of the most interesting pieces of
23 information is flight height, and we use range
24 finders to determine this, and most of us that do
25 these surveys have been at them for quite an amount

1 of time, so we're pretty accurate with it.
2 Incidentally, I'll just deviate a second here.
3 We're currently involved in six different avian
4 studies in North Dakota and South Dakota for four
5 different wind industry firms. So we've done a lot
6 of this work over the last several years and
7 currently carrying a very heavy workload.

8 But one of the things we do -- getting
9 back to some of the height information we take, the
10 height that these birds are flying, all species
11 that we record, including the sandhill crane, we're
12 looking for heights between 28 to 128 meters. This
13 is the RSA or the rotor sweep of the turbine, the
14 bottom of the turbine blade to the top as it's
15 moving. And we determine the height of the flying
16 birds so we can calculate what's called an
17 encounter rate, the likelihood of that bird flying
18 within that expanse of height and they might
19 encounter those blades.

20 Some of our studies have shown that the
21 majority of birds, a lot of resident species, don't
22 even fly up to that 28 to 30 meters. Birds that
23 may encounter that are either migrating through the
24 area, or when they're migrating through the area,
25 coming down to feed or to roost and they'll

1 sometimes move through that rotor-sweep area.

2 Q. When -- how long is this study going to
3 take?

4 A. We're looking at completing the sandhill
5 crane survey by mid-November, but as Bart mentioned
6 earlier, we're scheduled to initiate a spring
7 migration survey, 13-week survey here on Logan
8 County Wind Farm next March.

9 Q. What might you learn as a result of this
10 about -- not only about the sandhill cranes but
11 about any whooping cranes that you might spot?

12 A. Well, as mentioned earlier, Bart mentioned
13 there was an observation in 1931, and several weeks
14 ago I think there was an observation of a whooping
15 crane in Emmons County. It's really highly
16 unlikely that you're going to see many whooping
17 cranes, you know, especially during this survey
18 this fall or anything next spring, but that's not
19 to say something is not going to occur over time.

20 I think what we'll be able to find out
21 with this sandhill crane survey is where they're
22 roosting, where they're staging here, or -- and
23 where they're foraging. Some of them may just fly
24 over, as occurred last week when we observed our
25 first group of sandhill cranes moving through the

1 area, but that will give us information on the
2 habitat types they're using.

3 And talking about the water areas, most of
4 the time these are devoid of vegetation around the
5 edges. Small grainfields they like to feed in,
6 same food and other habitat needs that the whooping
7 crane has as they move through the area. If, in
8 fact, Just Wind does an HCP, this information from
9 the sandhill cranes could be used as information to
10 where you may likely find whooping cranes if they
11 would move through the area. Highly unlikely, but
12 at the same time, you have some concrete
13 information to utilize in that report.

14 Q. So the results of your study would make an
15 application and -- well, would make an HCP -- the
16 results of your study could feed into an HCP?

17 A. Sure.

18 Q. Specifically numbers and where they are
19 and height, those data points?

20 A. Well, you're talking mainly of the
21 sandhill crane. I think the most valuable
22 information for this HCP would be where the cranes
23 are staging, where they're foraging, and where
24 they're roosting, because you would think that
25 whooping cranes, if they would ever frequent the

1 area, would utilize those same areas.

2 Q. Are you aware of any similar study that's
3 been conducted on whooping cranes?

4 A. You mean sandhill crane surveys? Same
5 thing, really.

6 Q. Sure.

7 A. Yes. We've done a number of them in North
8 Dakota and South Dakota and have not ever observed
9 a whooping crane, but at the same time garnered
10 considerable more information on habitat use by
11 sandhill cranes.

12 One question you asked, too, the spring
13 surveys that are planned here at Logan County Wind
14 Farm are somewhat different than we are currently
15 doing for sandhill cranes. They're called diurnal
16 fixed-point surveys. Diurnal meaning daytime
17 surveys where throughout the entire area we'll
18 select certain points where we will stop each week
19 for 13 weeks, stop at these points for 20 minutes,
20 and in a circle of 1600 meters -- that's the
21 diameter of the circle -- we will identify
22 everything that flies and sings during that
23 20-minute period; and we also take that information
24 on the habitat they're using, how high they're
25 flying, which is very important for that rotor

1 sweep encounter rate we calculate for various
2 species. And holistically we find out what species
3 are utilizing the area at what time, what migrants
4 are coming back at what time, what migrants are
5 totally moving through the area, and we can create
6 information on species distribution and species
7 distribution maps throughout the area.

8 And I don't expect to find any species
9 outside what Bart created in this report, but it
10 will be refined. We'll have certain species that
11 are just incidentally moving through and other
12 species that are residents and -- something like
13 the horned lark -- prairie horned lark that will be
14 highly dominant in an area like this. So that will
15 give Just Wind whatever their needs are, very good
16 information on site specific avian use of the area.

17 Q. Are you aware of any -- have there been
18 any reported whooping crane fatalities on wind
19 turbines yet?

20 A. No. None that I'm aware of.

21 Q. Mr. Bart Schultz, no relation, had earlier
22 indicated that there was some connection between
23 whooping crane fatalities and aerial powerlines.
24 Do you know anything about -- have there been
25 fatalities recorded on aerial powerlines?

1 A. Yes. In fact, guide wires and aerial
2 powerlines, I think -- I could be wrong on this,
3 but I'm thinking over time since it's been
4 recorded, about 26. 26.

5 Q. Are you -- stop me if you don't know the
6 answer to this question, but have you -- have you
7 been -- have you thought about or reviewed any of
8 the -- any proposed mitigation measures in case
9 cranes -- in case you find that cranes might be
10 likely to be impacted by this project? Are there
11 any mitigation measures other than the one that
12 Bart mentioned, which was hanging bird deflectors
13 on aerial lines? Are you aware of any others?

14 A. Just a general discussion with individuals
15 from Acciona and British Petroleum, who -- several
16 of their people were working on the initial EA for
17 this habitat conservation plan concept. What was
18 discussed there was that if this was endorsed by
19 the wind industry down the road, that if cranes,
20 say, were moving through the migration corridor --
21 whooping cranes, I should say -- these companies
22 would pool funds perhaps if they all were building
23 potential farms within this area, and as mitigation
24 for this they would develop perhaps an area away
25 from it for other wildlife species, you know,

1 migratory waterfowl or the like, areas that could
2 be set aside for habitat creation outside of the
3 corridor and outside of the area where they were
4 building this wind turbine farm. That's totally
5 hypothetical and that's just something being
6 discussed, but it would seem to be a natural -- a
7 natural progression of things if something would
8 ever get to the point where it was accepted.

9 Q. The mitigation measure that was being
10 suggested -- mentioned by Mr. Schultz -- mentioned
11 by Bart Schultz was, if I'm understanding this
12 correctly, putting deflectors on overhead
13 powerlines that are over the Missouri River in
14 order -- and how does that -- how does that
15 mitigate effects of our farm over here?

16 A. Well, it's not really --

17 Q. Or what's the theory?

18 A. It's not really site specific, but at the
19 same time if they think there's going to be an
20 effect here or they may want to do something in
21 other places that may detract birds from hitting
22 those powerlines. And along the Missouri River it
23 is probably the center of the migration corridor
24 for whooping cranes, so that's just one form of
25 mitigation. Taking it offsite, that's totally

1 acceptable, you know, in some circles.

2 Q. So if there's a -- the theory would be if
3 you take one here, you mitigate somewhere else to
4 reduce the take somewhere else?

5 A. Mm-hmm. Sure.

6 Q. And that would presume that you have the
7 authority to do that somewhere else on somebody
8 else's site?

9 A. I would assume so.

10 Q. Are there any site specific mitigation? I
11 mean, you mentioned possibly creating new -- is
12 there anything that can be done to make a wind farm
13 safer for a bird --

14 A. Well --

15 Q. -- other than not build it?

16 A. I think if you look at the newer
17 generation of wind facilities that are outside
18 California -- when I visualize the wind farms in
19 California, some of the older ones, I see large
20 blocks of acreage just totally full of turbines.
21 Well, if you're flying through that, you're going
22 to hit something, probably.

23 What I see these days in the farms that
24 I've been associated with and in some of the plans
25 for the turbine arrays, they're much more spread

1 out. They're spread out on the high points and
2 separate, so they're much more conducive to birds
3 flying through those areas without the opportunity
4 for an encounter, and I think local micro siting,
5 also, has been excellent and we've heard some of
6 that today. We're staying out of the wetlands,
7 we're staying out of prime farmlands, we're working
8 around those circles, and I think all those factors
9 evolved with spreading out these turbines certainly
10 can help lessen the impact on migratory species.

11 Q. Just one final kind of overall question.
12 In your opinion, will the HCP look better if it's
13 done after your report has been completed? Let me
14 define that. Will the HCP be more effective and
15 more precise if it's done after your report is
16 finished?

17 A. First of all, we'll have knowledge of the
18 site specific species that utilize the area,
19 frequency of occurrence. We'll also have knowledge
20 of those species that are flying within the RSA,
21 the rotor-sweep area, and that's going to eliminate
22 90 percent of what's out there by just knowing what
23 we have there simply because they do not fly in
24 that area.

25 Incidentally, studies in California and

1 Oregon and Minnesota have shown that 80 percent of
2 the mortalities at wind farms are by -- are
3 Passerines or song birds, and then 50 percent of
4 that total, nocturnal migrants, migrating at night,
5 and you can imagine some of those situations, heavy
6 cloud cover, fog, they just run into things. So
7 what I'm trying to say is that we'll have better
8 information and we can be very specific on what
9 species could be at risk for flying in that turbine
10 rotor area.

11 JUDGE HOBERG: So your answer to his
12 question is yes then?

13 THE WITNESS: Yes.

14 MR. JONES: That's my last question for
15 John.

16 JUDGE HOBERG: Thank you, Mr. Jones. Ms.
17 Bendish, any questions?

18 MS. BENDISH: I don't have anything.

19 JUDGE HOBERG: Nothing. Commissioner
20 Wefald, please.

21 COMMISSIONER WEFALD: I'm trying to think
22 if there was a follow-up question that I had from
23 my last person for John and you had said he would
24 answer my question.

25 MR. JONES: I've got questions for Jeff.

1 JUDGE HOBERG: Nothing? Thank you, Mr.
2 Schultz.

3 MR. JONES: I'd like to call Jeff Metzger
4 back.

5 JUDGE HOBERG: Mr. Metzger, you're still
6 considered to be under oath. Mr. Jones, please.

7 **JEFFREY L. METZGER,**
8 having been first previously duly sworn, was
9 examined and testified further as follows:

10 **REDIRECT EXAMINATION**

11 **BY MR. JONES:**

12 Q. Jeff, a couple questions that have come
13 up. We've referred to this April letter from Fish
14 & Wildlife which covers -- it mentions both
15 wetlands and grasslands and wetland easements, and
16 then it also talks about what they'd like to see as
17 far as threatened and endangered species. Now, we
18 have not -- you've not sent any written response to
19 that yet.

20 A. Correct.

21 Q. Do we have enough information -- have we
22 gathered enough information to be able to, in your
23 view, adequately respond to the wetlands, wetland
24 easement and grassland easement comments that they
25 made?

1 A. That much we do simply based on the maps,
2 based on them actually being in the field with us a
3 couple of times, going through our whole project
4 site, seeing what we're doing and how we're doing
5 it. The comment they made to us is this is an
6 ideal project because of the steps we're taking to
7 mitigate those instances.

8 Q. Are you going to file an HCP sometime
9 after the results of the crane study are known?

10 A. You know, our whole program with the Fish
11 & Wildlife was always to file an HCP but do it
12 after the fact simply because the more information
13 we have, the better we can define what that program
14 is. They've got five criteria that they want to
15 see that define an HCP. In our conversations with
16 them and in the conference we attended in Denver,
17 Colorado, with their whole group, this is a
18 voluntary program. This isn't something mandatory.
19 We told them we will deal with this HCP, and as
20 long as our program fulfills those five categories
21 that they request, there shouldn't be in any
22 instance that they wouldn't approve our program.
23 So that's what we've done as far as it goes.

24 So the other part is, yes, the more
25 information we've got -- just like both Mr.

1 Schultzes have said, the more information we have,
2 the better we can define what that HCP needs to be
3 and how to address those issues.

4 MR. JONES: There was another question but
5 not on the HCP topic. If there would be -- I'll
6 just finish the list of questions I know about?

7 JUDGE HOBERG: Sure.

8 Q. (MR. JONES CONTINUING) Jeff, just comment
9 a little bit about the turbine siting and micro
10 siting process. How does it start, what are the
11 factors involved, who gets to give you comments on
12 that, and then how do we get to this layout?

13 A. Basically what we did, we took the five
14 years of wind data that was collected and had it
15 analyzed. In that process the independent
16 engineering firm that analyzed the data then
17 created and generated a wind resource map based on
18 that information. Then what we had done in the
19 process of this whole program was we dealt with the
20 county commission to adopt a zoning ordinance
21 pertaining to wind farms in Logan County as there
22 was no zoning ordinance in place.

23 Based on that zoning ordinance approval
24 and the setbacks that were required from that,
25 that's what determined where turbine placement

1 ended up. After turbine placement was done,
2 preliminary layout based on the map, we went to --
3 in a position of micro siting. We drove to each
4 site to see are we impacting anything in any way,
5 shape, or form. The computer generated the map
6 that was probably between 96 and 98 percent
7 accurate.

8 As we did micro siting, then we found,
9 like Mr. Rothaus mentioned, prayer rings, that type
10 of stuff, and we made adjustments. Those types of
11 things don't show up on wind resource maps. Those
12 are things that have to take place with physical
13 site visits. We've done that 100 times, and in
14 that process we've moved a number of turbines, and
15 that's what got us to the final turbine location,
16 keeping in mind that we don't want to do
17 environmental impact damage here. Not only that,
18 we come to these guys on their land as a guest. We
19 don't want to disrupt their farming operation by
20 just saying we're going to run a road -- a turbine
21 access road straight diagonally across your field.
22 We've talked to them a number of times taking into
23 consideration how they farm, how can we best
24 utilize the existing infrastructure roads, which is
25 minimum maintenance roads and section line roads,

1 to minimize the impact to our project in the area.

2 MR. JONES: I think that's my list of
3 follow-up questions that I had written down so far.

4 JUDGE HOBERG: Thank you, Mr. Jones. Ms.
5 Bendish, any further questions of Mr. Metzger?

6 MS. BENDISH: I don't have any.

7 JUDGE HOBERG: Mr. Lein?

8 MR. LEIN: I would ask a couple here.

9 **RECROSS-EXAMINATION**

10 **BY MR. LEIN:**

11 Q. Do we have a list of permits and their
12 status at this point that are out there and have
13 been gotten and are pending?

14 A. Yes, we do. Basically what we've got --
15 and a couple of these things were touched on
16 earlier. One of them I'll clarify. The railroad
17 is Canadian Pacific. In our conversation with
18 them, they will come out and supervise when we know
19 where our final cabling roads are. They will then
20 supervise as we bore under their railroad site.

21 Okay. The same thing with the State
22 Highway Department. We contacted them, we got a
23 permit application from them, and until we knew how
24 many collector and feeder lines will be going under
25 the highway, it didn't make any sense to file for a

1 permit. Their conversation with us is that's \$100
2 per hole and the time frame is about 7 to 10 days.
3 So we've got time once we get a final approval of
4 where those collector and feeder lines go to get
5 those permits. We do have our zoning -- our county
6 zoning application permit in place right now.

7 Q. And then that's it? Are there things like
8 stormwater drainage permits and stuff like that
9 from the Health Department?

10 A. Those things will come out through -- the
11 Health Department -- basically the only comment
12 they had to us based on our program was dust
13 control. That was the only issue. We have dealt
14 with Fish & Wildlife on a couple of issues, and the
15 question came up earlier about what are we going to
16 do or are we going to impact any surface water
17 drainage that would result in culverts or whatever.
18 There are preexisting roads out there with culverts
19 that we will improve, but we will not be changing
20 any of the drainage issues in the project footprint
21 based on comments from Fish & Wildlife and their
22 site visits.

23 Q. The other question I had was the setbacks.
24 You were following Logan County requirements, local
25 requirements?

1 A. Yes, sir.

2 Q. And what would be helpful to me would be
3 if you could just give us like a list of what are
4 your closest turbines to these things, especially
5 like an occupied residence. You say that you would
6 go a thousand feet, and I'm wondering, do you have
7 any actually within a thousand feet?

8 A. We do. We're -- basically, we've got a
9 few that are 750, which is the zoning ordinance
10 requirement, but then we have them farther
11 distances than that. What we came to the
12 conclusion is with our project footprint, we didn't
13 need to be right in somebody's backyard. So we've
14 followed and/or exceeded the Logan County zoning
15 ordinance for setbacks for our wind farm project.
16 We even went to the point of last week moving one
17 from an abandoned farm site. We had one within 650
18 feet. We moved it to 750 in the event that some
19 day somebody would come in and refurbish that
20 abandoned farm site.

21 Q. I'm looking at your application here, and
22 it said that you would go at least a thousand feet
23 from an occupied residence. Has that been changed?

24 A. Yes. If possible, we've done that, and
25 can I get you a count of that? I can. It would

1 have been to a whatever you call it -- additional
2 supplement.

3 Q. So you have some that are closer than a
4 thousand, and are the property owners -- the people
5 that are going to be living in those houses happy
6 with that?

7 A. As long as they met the minimum setback
8 based on zoning ordinance, they're satisfied with
9 that. We've not run into anybody that's opposed to
10 any turbine location. Every day I get people
11 coming into the office saying, Well, I've got one
12 turbine, can I have two? I don't care where you
13 put it. Well, we can't do that. We've got certain
14 rules to follow.

15 Q. Should we change this from a thousand feet
16 to 750 feet here in the application then or --

17 MR. JONES: Can I read -- can I ask Jeff
18 the questions for the record about what setbacks
19 are legally required and that he will follow?

20 MR. LEIN: That would be good for some
21 clarification.

22 JUDGE HOBERG: Sure, Mr. Jones.

23 MR. LEIN: I was referring to D in the
24 supplement that was filed in September, Section D,
25 about four, five pages in there's a table.

1 COMMISSIONER WEFALD: Setback distances
2 for wind turbines is the table that was filed.

3 THE WITNESS: Well, yeah. Basically what
4 we've done is we've tried to at least meet Logan
5 County Wind Farm setback and in most cases, if we
6 could, exceed that without impacting something else
7 in our project footprint. We could find out how
8 many are within that thousand-foot area. I mean, I
9 can't tell you offhand.

10 JUDGE HOBERG: You mean under a thousand?

11 THE WITNESS: Right.

12 JUDGE HOBERG: Is that something you want,
13 Mr. Lein?

14 MR. LEIN: Yeah. But for the whole table,
15 not just for occupied residences. Are you
16 following this table or not?

17 MR. JONES: Jeff, let me just ask the
18 question. There was a table put in there. We'll
19 flip to it. Can you give me a moment to flip to
20 it?

21 JUDGE HOBERG: Sure.

22 MR. JONES: It has a column on the left,
23 minimum distance. Would I understand that to be
24 the legally required minimum distance?

25 THE WITNESS: Correct.

1 MR. JONES: So the legal setback on the
2 left. On the right it's called Just Wind distance,
3 and if I understand right, you're saying that's --
4 you're trying to hit that, and in some cases you're
5 not able to exceed the minimum distance -- the
6 legal minimum distance by too much?

7 THE WITNESS: Okay. Based on Steve
8 Fettig, our land manager, he said we've got nothing
9 that's currently under a thousand feet.

10 Q. (MR. LEIN CONTINUING) Okay. For
11 residences?

12 A. For occupied residence.

13 Q. Looking at things like the road
14 right-of-ways, the 250 feet and the 200 feet there,
15 are those being required? I notice they're within
16 fall-down radius of the turbines, is the reason I'm
17 asking.

18 A. Right. You know, and based on county
19 zoning ordinance, we tried to exceed those limits.
20 So what you see here is basically what our project
21 footprint intended as far as what Just Wind's
22 setbacks are.

23 Q. So you'll follow the ones on the
24 right-hand side, the Just Wind distance column?

25 A. Yes, sir.

1 MR. LEIN: Thanks. No further questions.

2 JUDGE HOBERG: Thank you, Mr. Lein.

3 Commissioner Wefald, did you have any questions of
4 Mr. Metzger?

5 COMMISSIONER WEFALD: Yes, I do.

6 **FURTHER EXAMINATION**

7 **BY COMMISSIONER WEFALD:**

8 Q. On the -- what is the height of the
9 turbine -- of the tower plus the turbine for the
10 planned -- wind generation facilities you're
11 planning to put in place?

12 A. The total height of one?

13 Q. The total height.

14 A. It's 260 feet to the cell. One blade is
15 148 feet long, so it's like 418 feet from
16 foundation to tip when one tip is straight up --
17 I'm sorry, 408 feet.

18 Q. 408 feet?

19 A. Yes, ma'am.

20 Q. All right. So as I look at this, I know
21 that the minimum distance that was set by the Logan
22 County zoning is, for example, from a road, 200
23 feet.

24 A. Right.

25 Q. But if this --

1 A. That's why we're 250 feet.

2 Q. I know, but generally -- generally, you
3 site a wind turbine so that if it fell down for any
4 reason, you would not have it falling across a
5 road.

6 A. Right. Basically what --

7 Q. And so this is 200 feet. 480 feet is
8 considerably higher than 250 feet. We're also
9 concerned about that. We have been with
10 transmission lines, and you say your closest one is
11 250 feet, and also we've been concerned about it
12 with property lines, that if it fell over, it
13 wouldn't fall onto an adjacent property owner's,
14 and that's again 250 feet, and this is 480 feet.
15 These are tall wind turbines.

16 A. 408.

17 Q. 408?

18 A. Yes, ma'am.

19 Q. Not 80?

20 A. No. 408.

21 Q. 408. Excuse me. Do you have any response
22 to that comment?

23 JUDGE HOBERG: Is the distance from the
24 edge of the turbine, the outside -- the blade or is
25 it from the center of the base?

1 THE WITNESS: Say that again.

2 JUDGE HOBERG: Is the distance from --

3 THE WITNESS: From the center of the base.

4 JUDGE HOBERG: From the center of the
5 base.

6 THE WITNESS: Yeah. Everything is based
7 on the center.

8 Q. (COMMISSIONER WEFALD CONTINUING) Maybe
9 you could file us a late-filed exhibit for the
10 Commission --

11 A. Okay.

12 Q. -- those locations which are less than 408
13 feet away from a roadway, transmission line, or
14 property line.

15 A. Okay. We can do that.

16 Q. Thank you. The other question I have is
17 noise. Have you done -- have you received
18 information from the turbine operator about the
19 noise level at 1,000 feet from a residence and what
20 that noise level is?

21 A. Right, we have. We've done noise
22 calculations in our project footprint. I just got
23 the results, so we can also submit that to you
24 based on that information.

25 Q. All right. Do you know if it's above

1 50 --

2 A. I think it was 45 decibels.

3 Q. Right. It's 45 decibels at how many feet?

4 A. I guess I'd have to look. I can't tell
5 you offhand.

6 Q. All right. Because just for people's
7 information in this room, in an office location
8 where you have your computer on and your lights
9 make some noise sometimes and your heating system
10 may be on and circulating the air, that's around 50
11 decibels of noise. All right. That's normal
12 indoor noise that you deal with on a daily basis at
13 least if you work in an office. It may be quieter
14 here in Logan County, I don't know, or your home.
15 But, anyway, that -- so generally what we look for
16 is how far does the wind turbine need to be away
17 from a home in order to be able to have that much
18 noise inside the home be the same level as an
19 indoor office.

20 A. Right. And we can supply that
21 information.

22 Q. Thank you. So that will be supplied as a
23 late-filed exhibit.

24 A. Yes, ma'am.

25 Q. All right. Thank you. And then on the --

1 you had mentioned earlier in your testimony
2 about -- this is just the scope of the project.
3 You're asking for siting for 368 megawatts.

4 A. Yes, ma'am.

5 Q. But in your testimony earlier -- I need
6 you to help me understand. You said that you have
7 an agreement with WAPA for 240 megawatts.

8 A. Right.

9 Q. So that still leaves 128 megawatts.
10 What's the plan for that?

11 A. Okay. Part of it is it's based on
12 capacity factor and/or -- that's one of the things
13 we're dealing with with WAPA right now in our power
14 purchase agreement. Are they going to take power
15 as produced, which would give us anywhere from 0 to
16 368, or is it 240 that they're asking for? That's
17 kind of what the issues are that we're having with
18 them right now, is defining what the -- what the
19 gist of that contract states. We've got other
20 people interested in off-taking our power. We've
21 got two what we call power management groups that
22 would take our power and deal with it on the
23 merchant market setup, which Commissioner Cramer
24 talked about over there.

25 Q. So that's another possibility?

1 A. Right, yes. One of the things we've got
2 in our project, also, is we've got 100 megawatts of
3 firm transmission service requests, which means
4 we've got the balance to supply to another entity,
5 Xcel Energy, Great River, or another whatever other
6 off-taker.

7 Q. Okay. And then my other question relates
8 to the -- Mr. Lein had asked about local, state,
9 and national approval permits that still must be
10 received. Was that -- you went through a short
11 list with him.

12 A. Right.

13 Q. And then I had caught in the course of
14 this hearing the Corps of Engineers you need to
15 receive some permits from.

16 A. Right.

17 Q. SHPO, the State Historical Society.

18 A. Right.

19 Q. And WAPA.

20 A. Yes, ma'am. Well, WAPA's questionable.

21 Q. Well, that's the -- that was the
22 interconnection study, I guess, that had to do with
23 the improvements that need to be made.

24 A. Yeah. But whether there's permits
25 associated with that, we're not sure.

1 Q. All right. Are there any others besides
2 those I've listed and what you have already told
3 Mr. Lein --

4 A. Nope. That should be it.

5 Q. -- that are out there that need to be --

6 A. That should be it. As the project
7 information gets dealt with, all those permits
8 should be forthcoming.

9 Q. Okay. And then I know one other area.
10 That has to do with work areas, equipment storage
11 areas. On most of the wind farms that we have
12 sited there have also been -- they've identified
13 equipment storage areas. Especially on a project
14 of this scope, 368 megawatts, a lot of the
15 equipment is brought in and then it's -- there's
16 areas where it's stored. Have you identified -- I
17 didn't see on your maps -- equipment storage areas?

18 A. Basically we will have some staging areas
19 that we have identified. We just didn't put them
20 on the map. We can add those. Our conversation
21 with the turbine supplier is they're not going to
22 have staging areas. When these things come in, if
23 they all come in in an orderly manner, they come
24 in, they come off the truck, they go out, they're
25 gone.

1 Q. I understand that. But when they're
2 doing -- using, let's say, the concrete foundations
3 and such, that there's a lot of equipment that's
4 out there, especially for a project this size --

5 A. Right.

6 Q. -- moving around. And so if you would
7 supply a late-filed exhibit of the -- including on
8 the maps the equipment staging areas --

9 A. Okay.

10 Q. -- that would be helpful.

11 A. We can do that. We do have two batch
12 plant staging areas that have already been located.
13 The deals have been made with the local landowners.
14 They understand that impact.

15 Q. And then have they also had the SHPO
16 studies done?

17 A. Right, yes. They've all been in the same
18 project footprint area. So we can verify if he
19 needs to go and do more in those areas, but our
20 understanding is that's all been taken care of.

21 Q. All right. And then on the turbine
22 locations there was one map, and if you can help me
23 find which one this is that showed the locations of
24 residences in comparison to the -- it isn't on, I
25 don't believe, any of the new maps; is that

1 correct?

2 MR. JONES: It is in the existing -- in
3 the original filed map book.

4 COMMISSIONER WEFALD: It was in the
5 original filing. If you can tell me where that map
6 is located?

7 MR. JONES: It does -- as my client is
8 indicating, the residences are shown on the setback
9 map, as well.

10 JUDGE HOBERG: So Exhibit 5?

11 THE WITNESS: They're the light blue dots
12 that go with the -- do you have this Exhibit 5?

13 MS. BENDISH: 5L.

14 COMMISSIONER WEFALD: It's 5L. So it is
15 in this most recent?

16 THE WITNESS: Yes, ma'am.

17 MS. BENDISH: 5K and L.

18 JUDGE HOBERG: 5K and 5L. Okay.

19 Q. (COMMISSIONER WEFALD CONTINUING) Okay.
20 Thank you. I'll look at that more carefully then,
21 and then I have just one more question. On some of
22 the wind farms that have been developed in North
23 Dakota -- and we're getting a little more
24 experience as we see what happens. Farmers --
25 let's say -- let's say a lot of the project is done

1 in the fall, let's say the construction of the
2 roads, et cetera, and such, and then sometimes even
3 though the roads have been put in place, there's
4 some off-road traffic that occurs on farm fields.

5 A. Yes, ma'am.

6 Q. And sometimes farmers are concerned about
7 compaction then as they need to go in and plant
8 their crops the next year.

9 A. Correct.

10 Q. What are your plans of dealing with
11 concerns about compaction of farm fields with local
12 farmers?

13 A. Basically what we've done with our
14 construction company is we've got kind of a work
15 area that says you cannot exceed, you know, 100
16 feet on each side of your main access road, that
17 type of stuff. So we've dealt with those. As far
18 as it goes with the local farmers, we've had
19 constant contact with them that if in the event we
20 do any damage to their fields, we repair them at
21 our cost, whether it's crop damage, whether it's
22 compaction, any of that. That's something we deal
23 with.

24 Q. So you would be willing to go in and do
25 some extra tilling, et cetera?

1 A. Yes.

2 Q. Okay. So if that final can reflect that?

3 COMMISSIONER WEFALD: Excuse me?

4 COMMISSIONER CLARK: Oh, that the 45 dba
5 is measured at the exterior of the home, not the
6 interior of the home.

7 COMMISSIONER WEFALD: I was told it's
8 interior of the home, but you think it's exterior?

9 COMMISSIONER CLARK: Oh, I think we'd want
10 it to be exterior because you don't know what the
11 insulating conditions of the various homes would
12 be.

13 MR. JONES: Jeff, the noise --

14 COMMISSIONER CLARK: I think in past
15 applications it's always been exterior.

16 MS. BENDISH: Well, I would also think
17 that interior of the homes -- there would also be
18 other noises in the home.

19 COMMISSIONER CRAMER: Right. It's always
20 been exterior.

21 MR. JONES: It's just measured as a
22 distance from the turbine; correct?

23 THE WITNESS: Here's an analogy we use
24 when we have our community meetings. People ask
25 that question all the time, how noisy are these.

1 We always use the analogy that it's like if you're
2 sitting in your kitchen and your refrigerator kicks
3 in, and people go, well, you've never heard my
4 refrigerator, so we can't -- part of it is --
5 you're right, we haven't. If your refrigerator's
6 that loud, you probably need a new one. But we've
7 done what we can based on requests from the turbine
8 supplier and everything that have done noise
9 calculations from our project.

10 MR. JONES: So I believe it is if
11 someone's standing that distance away from the
12 turbine, what does it sound like there. It doesn't
13 take into account what's between the listener and
14 the turbine, except for distance.

15 COMMISSIONER WEFALD: All right. Thank
16 you.

17 Q. (COMMISSIONER CLARK CONTINUING) On the
18 setbacks, I have a question perhaps for staff,
19 setbacks from property lines and roadways and
20 things. In most of the cases that we've had,
21 there's been a ratio that the applicants have
22 given. Is it 1.1 times the blade tip to base
23 height that they use to calculate for a setback?

24 MR. LEIN: You know, I don't remember
25 the --

1 THE WITNESS: It's 1.5.

2 MR. LEIN: -- the ratios.

3 COMMISSIONER CLARK: I thought it was a
4 little lower than that.

5 MR. LEIN: But we were running at least a
6 setback distance of fall down from some of these
7 borders and roads and things like that, if I recall
8 right, and the -- we were running a little bit more
9 than a thousand feet on occupied residences. I'm
10 thinking 1400 feet.

11 COMMISSIONER CRAMER: That's the number I
12 recall.

13 MR. LEIN: We were going in some cases
14 more with local preferences or really what the
15 applicant proposed. I don't know that we've ever
16 established rules or anything that are definite.

17 COMMISSIONER CLARK: I'm just curious for
18 the late exhibit request if we might not want to
19 have something besides just within 408 feet, but
20 instead say anything -- any turbine that's, you
21 know, within maybe say 1.5 -- 1.5 times the base to
22 blade tip.

23 MR. LEIN: And then give the actual
24 distance and --

25 COMMISSIONER CLARK: And give the actual

1 distance to that property line or roadway, whatever
2 the -- it is.

3 THE WITNESS: I guess what we've done in
4 ours is 1.25.

5 Q. (COMMISSIONER CLARK CONTINUING) And 1.25
6 is fine.

7 A. And what we did with that, we kind of
8 adopted some of what we saw in other wind farm
9 projects throughout the United States, some of
10 their requirements and setbacks. We tried to
11 implement those in Logan County.

12 COMMISSIONER CLARK: If you could file it
13 1.25, that would be fine.

14 JUDGE HOBERG: So that's kind of an
15 amendment of that one we talked about.

16 COMMISSIONER CLARK: If it's acceptable
17 with the Commission.

18 COMMISSIONER WEFALD: Yes, it is. And
19 that's 1.25 of 408 feet?

20 COMMISSIONER CLARK: Right.

21 MR. JONES: So showing locations --
22 showing -- showing any location that is less than
23 that distance between a turbine and a road,
24 transmission line, or property line?

25 JUDGE HOBERG: Correct. 1.5 times 408.

1 COMMISSIONER WEFALD: 1.25.

2 JUDGE HOBERG: Or 1.25. I'm sorry.

3 THE WITNESS: Can I ask a question to
4 clarify? Now, part of this is everybody that's in
5 the project footprint has signed on with the
6 agreement that says there's no differentiation
7 between property lines. Now, this I think would
8 need to apply and be referenced to people that are
9 in the project footprint that haven't signed into
10 the project that we've kept the exclusion areas
11 around and the avoidance areas.

12 COMMISSIONER CLARK: That would be fine.
13 People from whom you don't have easements.

14 COMMISSIONER WEFALD: It would be from
15 people from whom you don't have easements.

16 THE WITNESS: Okay. And I can clarify
17 your one question about the instance of the HCP,
18 the consequences. I could be fined or go to jail.
19 They haven't said what the fine is and they haven't
20 said how much I can go to jail for, but those are
21 the instances.

22 Q. (COMMISSIONER CLARK CONTINUING) Okay.
23 And just to clarify on the HCP, you said that you
24 do intend to file but not until -- is it after the
25 surveys or it's not until after --

1 A. After our studies have been completed on
2 our bird and avian studies.

3 Q. But prior to the construction of the
4 project?

5 A. Probably during the same time period.
6 See, that's one of the issues that came up. This
7 is volunteer. In our conversations with them, this
8 can be done after the fact. So that's what we're
9 looking to do. We've told them we will do one
10 after the fact. They're fine with it, but then all
11 of a sudden one of them says they're not fine with
12 it.

13 Q. How does that fit into the EA? Because as
14 I understand from the previous testimony, you have
15 to have an HCP if you're doing an environment
16 assessment, and an environmental assessment is
17 triggered if you have a federal nexus, and -- but
18 it sounds like you may be heading towards a federal
19 nexus, especially if you're dealing with WAPA.

20 A. Right now we don't have a federal nexus.
21 You're correct. But if we do have some type of
22 impact -- but if you look at that, that is not a
23 mandatory HCP. It's a volunteer program. We have
24 to apply with the environmental species and all
25 those type of things. That's why we will do an HCP

1 to take the potential of mitigating that take issue
2 out of our project.

3 Q. But if you interconnect with WAPA, is that
4 a federal nexus?

5 A. No.

6 Q. Does it trigger a federal nexus?

7 A. Because the line we're tying into with
8 WAPA -- WAPA's the controlling agent. It's a Basin
9 Electric line, so it's a privately-owned line.
10 WAPA is just the regional transmission authority.

11 Q. So there's no question about that?

12 A. No. Unless at some point in our system
13 upgrades we tap into a WAPA substation or something
14 to that effect, then it becomes an issue.

15 COMMISSIONER CLARK: Okay. Thank you.

16 JUDGE HOBERG: Thank you, Commissioner
17 Clark. Commissioner Cramer, please.

18 COMMISSIONER CRAMER: I have a question
19 back to the fall-down distance.

20 **FURTHER EXAMINATION**

21 **BY COMMISSIONER CRAMER:**

22 Q. If you're inside of that fall-down
23 distance, say 408 feet -- a property line is inside
24 of that distance, do you have an easement with the
25 other property owners?

1 A. Okay.

2 MR. JONES: So the blue square
3 represents --

4 Q. (COMMISSIONER WEFALD CONTINUING) So the
5 32nd Avenue, that blue square, is an area where you
6 don't have easements?

7 A. Right.

8 Q. All right. And so then T138 would be one
9 that we would perhaps be requesting information
10 about?

11 A. Okay. We'll do with that late-filed
12 supplement. We'll indicate all those.

13 COMMISSIONER WEFALD: All right. Thank
14 you.

15 COMMISSIONER CLARK: We're looking at --
16 T78 would be another one.

17 COMMISSIONER WEFALD: And T105.

18 THE WITNESS: We'll go back and review all
19 turbine locations.

20 COMMISSIONER WEFALD: Okay. Thanks.

21 COMMISSIONER CRAMER: I have nothing else.

22 JUDGE HOBERG: Thank you. Any further
23 questions then of Mr. Metzger? Mr. Jones, anything
24 further? No. Nothing further? Thank you, Mr.
25 Metzger. All right. Do you have any other

1 evidence to present?

2 MR. JONES: We have no other evidence or
3 witnesses to call.

4 JUDGE HOBERG: All right. Okay. We're to
5 that point that I talked about earlier where we
6 would take public input. Mr. Lein, could you
7 perhaps get that podium? Change in plans here.
8 We're going to have the people come and sit and use
9 the mike, I guess. Take that down. Sorry.

10 We're going to ask people who wish to
11 testify, who wish to present information to the
12 Commission at this time to come up and sit in the
13 chair and use the mike, please. So how many want
14 to -- let's get a show of hands again. We have
15 one -- was there another gentleman, I thought?
16 Just one? Ma'am, did you --

17 UNIDENTIFIED SPEAKER: My question is
18 answered.

19 JUDGE HOBERG: Your question is answered.
20 Okay. You too, sir? Okay. Well, let's start with
21 you, sir. Why don't you come up, please. And
22 please give us your name and where you're from, and
23 then I will swear you in, too.

24 MR. KOST: My name is Dennis Kost. I
25 reside at 708 23rd Avenue Southwest, Washburn,

1 North Dakota.

2 JUDGE HOBERG: Thank you. Okay. Can you
3 spell your name for us, please?

4 MR. KOST: K-o-s-t.

5 JUDGE HOBERG: Thank you. Did you hear
6 the admonition I gave earlier in regard to perjury?

7 MR. KOST: I'm sorry. I have an ear
8 infection. I can't hear very good. Go ahead.

9 JUDGE HOBERG: Did you hear the admonition
10 I gave earlier in regard to perjury?

11 MR. KOST: Yes.

12 (Witness sworn.)

13 JUDGE HOBERG: Thank you. All right.
14 Please proceed. Tell us what you'd like to tell us
15 or your concern.

16 **DENNIS KOST,**

17 having been first duly sworn, was examined and
18 testified as follows:

19 **STATEMENT**

20 **BY MR. KOST:**

21 MR. KOST: Okay. Well, first of all,
22 thank you for, Commissioners, for the opportunity
23 to be here today and talk to you about this
24 important project.

25 Commissioner Wefald, thank you for your

1 concern about the environment. I'm an
2 environmental research biologist, and I have a
3 degree in health, and wind farms are great because
4 they provide clean power, and this project overall
5 seems to be very sound from the testimony that I
6 heard from everyone from archeologists to John
7 Schultz and the studies that are going on and not
8 many or any whooping cranes or anything
9 specifically have been identified yet.

10 So I think it's a great project. This
11 project will provide clean power to 68,000 homes,
12 and I think that's a great step towards the
13 environmental concerns. Not only will it provide
14 the power, but it provides green jobs, the envy of
15 the whole country and actual world. So this is
16 another very favorable step that this project is
17 taking here. So -- also for Napoleon, which is a
18 small community, to be able to have a project like
19 this happening in their own community, to being
20 able to put up an anemometer and stand up on their
21 own two feet and being brave and figuring out how
22 to put together all of these different parts of
23 this puzzle to make this happen today, I think
24 that's really, really something to be admired upon
25 by any community, state or national or wherever.

1 So these people have worked really hard to
2 bring this project this far, and not only have they
3 worked hard with economic development groups of the
4 city and the county and all these different people
5 here, but they've put their money where their
6 dreams are. And this is going to be owned by the
7 people, and the actual financial rewards of this
8 will be felt by the entire community, the state,
9 the taxes, the county, the revenue for the school
10 district, the ambulance, the fire department. All
11 these vital parts of the community are going to get
12 great rewards.

13 So basically I think this is a win-win
14 wind project for Napoleon, the State of North
15 Dakota, and the entire globe.

16 I urge the Commission to demonstrate your
17 concern for the environment, economic development
18 of North Dakota, for small communities, and to
19 enthusiastically approve this project ASAP. And if
20 there are these problems that exist, I urge you to
21 help facilitate to solve these problems, give them
22 a hand and try to get this project up and running
23 as soon as possible.

24 Thank you.

25 JUDGE HOBERG: Thank you. Was it Mr. Kost

1 or Kost?

2 MR. KOST: Kost.

3 JUDGE HOBERG: Thank you, Mr. Kost. Mr.
4 Jones, did you have any questions for Mr. Kost?

5 MR. JONES: No.

6 JUDGE HOBERG: Thank you. Ms. Bendish,
7 any questions?

8 MS. BENDISH: I have nothing.

9 JUDGE HOBERG: Commissioners, any
10 questions for Mr. Kost?

11 COMMISSIONER WEFALD: No, thank you.

12 COMMISSIONER CLARK: No. Thanks for being
13 here.

14 COMMISSIONER CRAMER: No. Thank you.

15 JUDGE HOBERG: Thank you, Mr. Kost.

16 MR. KOST: Thank you.

17 JUDGE HOBERG: All right, sir. Name, sir?

18 MR. GROSS: I'm Richard Gross at 3321 58th
19 Street Southeast, Napoleon, 58561.

20 JUDGE HOBERG: Thank you. Did you hear
21 the admonition I gave earlier in regard to perjury?

22 MR. GROSS: Yes, I did.

23 (Witness sworn.)

24 JUDGE HOBERG: Thank you. Please proceed.
25

1 fairly, and I think everyone was aware of the
2 project, and as the project expanded, I became a
3 landowner and farmer in the project. So I was
4 concerned about the farmers, you know, representing
5 them, making sure everything got done, you know,
6 correctly, and I think it's been done.

7 So I think just the support and like Mr.
8 Kost had said, what it will do to the community,
9 the benefits, and Main Street -- you know, our Main
10 Street is getting bare, we're losing businesses,
11 you know, fortunately our school is still strong
12 yet, but everyone is concerned about this rural
13 America, you want to keep going, and we had a
14 former business owner that opened up, took a couple
15 of old buildings, gutted them out, renovated them,
16 and offered them to Jeff for an office -- corporate
17 office building.

18 So we're concerned to keep our small town
19 going, and I think yesterday the whole community
20 struggled to try to save the drugstore that burned
21 down on Main Street, and fortunately it's a young
22 family that hopefully they'll stay and keep going.
23 So I guess I'm not aware of a lot of negative
24 concern from the community.

25 JUDGE HOBERG: Thank you, Mr. Gross. Mr.

1 Jones, any questions?

2 MR. JONES: No questions.

3 JUDGE HOBERG: Ms. Bendish?

4 MS. BENDISH: No.

5 JUDGE HOBERG: Commissioners?

6 Commissioner Wefald, please.

7 COMMISSIONER WEFALD: I'd just like to say
8 thank you for your work that you've done on this
9 project. We've been involved with -- in other
10 communities, Langdon comes to mind, to know where
11 they had put up a measurement for wind in their
12 community, as well, and it's shown that it's -- you
13 know, another company came in and took advantage of
14 the work that that community had done -- in a
15 positive way they took advantage of it, and we're
16 also seeing that around the Valley City area, you
17 know, communities grabbing hold of this and saying
18 this might be something that can help our
19 community.

20 So thank you for your work on this, and I
21 just want to tell you that, yes, I ask a lot of
22 questions as a Commissioner at these projects. I
23 just want to make sure, as my fellow Commissioners
24 said, that we want to get it done right from the
25 start. It doesn't mean that we have -- that we're

1 against the project in any way, but we want to make
2 sure that it's done correctly.

3 MR. GROSS: And we also do, too.

4 COMMISSIONER WEFALD: I know you do.

5 JUDGE HOBERG: Thank you, Commissioner
6 Wefald. Commissioner Clark?

7 COMMISSIONER CLARK: No. Thanks for
8 testifying.

9 JUDGE HOBERG: Thank you. Commissioner
10 Cramer.

11 COMMISSIONER CRAMER: Just thank you, and
12 thank you for your hospitality, as well.

13 MR. GROSS: Thank you, too. As
14 commissioners we appreciate what you've done for
15 the wind industry.

16 JUDGE HOBERG: Thank you, Mr. Gross.
17 Anyone else then? Last chance here if anybody
18 wants to talk. No one else? Mr. Jones, anything
19 else to present to the Commission?

20 MR. JONES: Nothing else. Thank you very
21 much for your attendance and coming down here
22 today.

23 JUDGE HOBERG: All right. Thank you. Ms.
24 Bendish, did we want recommended or proposed
25 findings of fact?

1 MS. BENDISH: I would ask for proposed
2 findings, yes.

3 JUDGE HOBERG: Proposed findings of fact,
4 conclusions of law, and an order. Mr. Jones, is
5 that something you can do?

6 MR. JONES: We can. How many days would
7 we need?

8 MS. BENDISH: It's up to you.

9 MR. JONES: In just a few days we'll file
10 those.

11 JUDGE HOBERG: All right. We'll expect
12 something in a few days then. All right. Anything
13 else to bring to the attention of the Commission
14 before we close this hearing?

15 COMMISSIONER WEFALD: And when do they
16 anticipate the late-filed exhibits?

17 JUDGE HOBERG: Oh, yes, correct,
18 late-filed exhibits. Well, some of them are going
19 to be a while because of the timing of them. As
20 soon as possible, Mr. Jones?

21 MR. JONES: I think I've got five-late
22 filed exhibit requests?

23 JUDGE HOBERG: I've got six.

24 MR. JONES: I've got the 1.5 times total
25 height from some of the lines.

1 JUDGE HOBERG: 1.25.

2 MR. JONES: I'm sorry, 1.25. Thank you.
3 See, gave me the benefit already. The noise and
4 then the staging areas. I think those. I'm
5 looking at my client and make sure that those are
6 fairly easy to produce. Those are the short time
7 frames. I've got the WAPA upgrades when they're
8 finally final.

9 JUDGE HOBERG: Correct.

10 MR. JONES: We'll file those immediately
11 when we get them. Okay. And then when the
12 historical and cultural report becomes final, we'll
13 file that immediately. And the sixth one --

14 JUDGE HOBERG: That's the response to the
15 October 21st letter.

16 MR. JONES: When that's -- when that's --
17 when the response to the Fish & Wildlife Service is
18 sent, the same day we'll file it with the PSC.

19 JUDGE HOBERG: Okay. Thank you, Mr.
20 Jones. Closing comments?

21 MS. BENDISH: I do have, in addition to
22 the final report from the State Historic
23 Preservation Office, also any signoff that is
24 received from them as to that report, as well.

25 JUDGE HOBERG: Right. And then any

1 amendments that --

2 MS. BENDISH: Correct.

3 JUDGE HOBERG: Any amendments. That was
4 part of that. Correct. I guess I thought that was
5 understood, but it maybe wasn't. All right. Thank
6 you, Ms. Bendish. Closing comments by the
7 Commissioners. Commissioner Wefald.

8 COMMISSIONER WEFALD: Thank you all for
9 coming. 87 people here, according to our list. I
10 bet a few slipped in who haven't signed. Anyway,
11 we just thank you for the time that you've put in,
12 and I hope the hearing -- this hearing has been
13 helpful for you today to understand how the
14 Commission goes about its business, and we are very
15 interested in this project.

16 And the next step for the Commission is to
17 hold -- once the late-filed exhibits that we need
18 to make a decision are in, once the findings of
19 fact and conclusions of law is proposed, then the
20 Commission meets in a work session. If you can't
21 be there in person for the work session but you're
22 interested, they are broadcast over the Internet.
23 And then the Commission -- after the work session,
24 that's where we give direction to our staff about
25 what we would like to have included in the order.

1 Then there's usually a period of a couple weeks
2 while that final order is prepared. It can happen
3 more quickly sometimes.

4 Then the Commission acts in a formal
5 meeting on that order that we then issue about this
6 wind project specifying all sorts of different
7 things about the wind project.

8 So you can watch, and if you have
9 questions and you're interested in any of those
10 next steps, you can contact our staff or you can
11 call a Commissioner about process issues. You
12 cannot talk to us about substantive issues. All
13 right. We're like judges, and so --

14 JUDGE HOBERG: You are the judges here.

15 COMMISSIONER WEFALD: We are judges. And
16 so we can't have a lot of interaction with you on
17 things that aren't process-oriented. This is your
18 chance today to tell us the information that you
19 want that is not process-oriented.

20 Thank you.

21 JUDGE HOBERG: Thank you, Commissioner
22 Wefald. Commissioner Clark, please.

23 COMMISSIONER CLARK: Well, I just thank
24 everyone for the hospitality especially, and thanks
25 to the folks from the county for the use of the

1 facility and thanks for the coffee and cookies,
2 which got me through the day. It would have been a
3 long day without them. So thanks to all of you
4 folks. I do appreciate you being here and look
5 forward to processing the case in a timely manner.

6 JUDGE HOBERG: Thank you, Commissioner
7 Clark. Commissioner Cramer, please.

8 COMMISSIONER CRAMER: I'd like to just say
9 thank you for the hospitality. Not surprisingly,
10 it was excellent as it always is in our small towns
11 of North Dakota. I always say the best part of
12 being a public servant is the public, and if it's
13 not, you should get a different line of work. But
14 I also want to say for the 85 of you who did not
15 testify, your presence here is a testimony, and I
16 appreciate it very much.

17 Thank you.

18 JUDGE HOBERG: Thank you, Commissioner
19 Cramer. And just if you haven't signed the
20 attendance sheet, please do come up and see me
21 afterwards.

22 All right. For the record then, it's
23 about 2:50, and this hearing is closed. Thank you
24 all very much.

25 (Concluded at 2:45 p.m., the same day.)

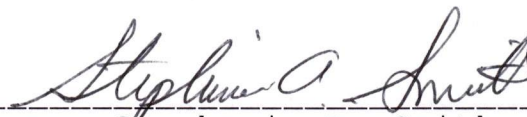
CERTIFICATE OF COURT REPORTER

I, Stephanie A. Smith, a Registered
Professional Reporter,

DO HEREBY CERTIFY that I recorded in
shorthand the foregoing proceedings had and made of
record at the time and place hereinbefore
indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing typewritten pages contain an accurate
transcript of my shorthand notes then and there
taken.

Dated at Bismarck, North Dakota, this 10th
day of November, 2008.



Stephanie A. Smith
Registered Professional Reporter

\$	13-week ^[1] - 145:7	2010 ^[9] - 34:19, 35:3, 35:12, 35:14, 35:21, 36:10, 36:11, 36:12, 36:13	167:21, 168:12, 179:19, 180:19, 180:25, 183:23
\$100 ^[1] - 161:1 \$5,000 ^[1] - 22:21	130 ^[1] - 4:5 134 ^[1] - 4:6 137 ^[2] - 4:6, 4:7 138 ^[1] - 4:8 14 ^[2] - 73:4, 124:3 140 ^[2] - 4:14, 42:9 1400 ^[1] - 179:10 141 ^[3] - 5:11 148 ^[1] - 166:15 15 ^[9] - 41:15, 69:24, 73:3, 125:7, 125:8, 125:11, 132:17, 136:4, 137:25 150 ^[1] - 24:10 154 ^[1] - 4:14 155 ^[2] - 4:15, 72:12 156 ^[1] - 3:9 16 ^[1] - 69:24 160 ^[5] - 3:10, 8:24, 24:11, 24:18, 35:7 1600 ^[1] - 147:20 163 ^[1] - 120:21 166 ^[1] - 3:11 17 ^[2] - 69:24, 97:4 1731 ^[1] - 92:9 176 ^[1] - 3:12 18,000 ^[4] - 97:5, 97:6, 97:7, 99:6 180 ^[1] - 125:18 183 ^[1] - 3:13 184 ^[1] - 3:14 18514 ^[1] - 85:15 187 ^[1] - 4:17 191 ^[1] - 4:19 1926 ^[1] - 140:13 1931 ^[1] - 145:13 194 ^[1] - 2:21 1965 ^[1] - 69:12 1st ^[2] - 8:21, 57:9	21 ^[1] - 1:17 21st ^[6] - 6:3, 6:6, 111:10, 118:14, 128:23, 196:15 225 ^[1] - 2:8 23 ^[1] - 3:4 23rd ^[1] - 186:25 240 ^[7] - 41:6, 41:9, 41:25, 42:5, 42:13, 170:7, 170:16 2470 ^[1] - 23:10 25 ^[1] - 46:12 250 ^[5] - 165:14, 167:1, 167:8, 167:11, 167:14 26 ^[2] - 149:4 260 ^[1] - 166:14 2600 ^[1] - 55:2 27 ^[1] - 24:10 28 ^[4] - 86:2, 141:1, 144:12, 144:22 28-32 ^[1] - 19:24 29 ^[1] - 3:5 2:45 ^[1] - 199:25 2:50 ^[1] - 199:23	418 ^[1] - 166:15 41st ^[1] - 61:19 4224 ^[1] - 61:19 43 ^[2] - 46:8, 46:9 45 ^[5] - 3:7, 169:2, 169:3, 176:22, 177:4 47 ^[1] - 3:8 48 ^[5] - 3:8, 46:8, 59:14, 59:17, 59:18 480 ^[2] - 167:7, 167:14 4th ^[5] - 44:16, 44:18, 44:20, 112:18, 133:23
0	0 ^[1] - 170:15	3	5
1	1 ^[4] - 5:4, 53:22, 53:23, 53:25 1,000 ^[2] - 55:6, 168:19 1.1 ^[1] - 178:22 1.25 ^[8] - 180:4, 180:5, 180:13, 180:19, 181:1, 181:2, 196:1, 196:2 1.5 ^[5] - 179:1, 179:21, 180:25, 195:24 1.6 ^[1] - 106:12 1.68 ^[1] - 105:24 10 ^[3] - 55:8, 63:18, 161:2 100 ^[12] - 41:2, 41:22, 41:23, 41:25, 42:1, 42:6, 75:6, 75:7, 77:1, 159:13, 171:2, 175:15 103 ^[1] - 116:17 104 ^[2] - 35:8, 35:23 10:30 ^[1] - 6:5 10:33 ^[1] - 6:2 10th ^[1] - 200:13 11 ^[7] - 55:9, 57:8, 73:5, 93:10, 120:19, 120:24, 122:21 111 ^[3] - 4:10, 5:10 112 ^[1] - 5:10 113 ^[1] - 4:11 115 ^[4] - 56:3, 56:6, 56:9, 59:4 116 ^[1] - 4:11 117 ^[1] - 4:12 119 ^[1] - 4:4 12 ^[3] - 27:6, 45:23, 67:20 12-foot ^[1] - 63:18 127 ^[1] - 4:4 128 ^[2] - 144:12, 170:9 13 ^[11] - 72:14, 72:21, 73:3, 75:1, 87:23, 88:9, 88:16, 127:19, 128:1, 129:16, 147:19	4	5 ^[5] - 22:21, 88:16, 136:4, 174:10, 174:12 5.3.1 ^[1] - 128:2 50 ^[6] - 28:8, 82:9, 153:3, 169:1, 169:10 51 ^[1] - 3:9 52 ^[1] - 3:16 53 ^[3] - 5:4 55311 ^[1] - 85:16 55364 ^[1] - 23:10 55402-4629 ^[1] - 2:9 56 ^[3] - 35:11, 36:8, 36:9 56378 ^[1] - 69:13 57 ^[1] - 3:16 58078 ^[2] - 52:17, 92:10 58104 ^[1] - 61:20 58503 ^[1] - 140:14 58505-0480 ^[1] - 2:14 58561 ^[1] - 190:19 58th ^[1] - 190:18 5A ^[2] - 88:9, 88:13 5A-5M ^[1] - 5:8 5E ^[1] - 94:25 5F ^[1] - 94:25 5G ^[3] - 103:9, 103:10, 116:6 5H ^[1] - 103:10 5I ^[2] - 108:5, 108:6 5J ^[2] - 108:5, 108:6 5K ^[2] - 174:17, 174:18 5L ^[4] - 174:13, 174:14, 174:18, 184:23 5M ^[1] - 88:13
	2	3 ^[5] - 5:6, 66:8, 70:16, 70:17, 70:18 3.9 ^[1] - 72:11 30 ^[3] - 78:10, 144:22 30-inch ^[1] - 12:22 300,000 ^[1] - 55:4 301 ^[1] - 1:16 31 ^[1] - 124:4 3117 ^[1] - 52:16 32nd ^[1] - 185:5 33 ^[1] - 3:5 3321 ^[1] - 190:18 34 ^[2] - 3:6, 66:9 34,500 ^[2] - 55:25, 59:1 34.5 ^[3] - 55:1, 59:5, 59:6 345 ^[3] - 56:6, 56:7, 59:4 35 ^[3] - 46:12, 54:25, 59:9 3500 ^[1] - 2:8 368 ^[7] - 8:23, 10:20, 24:15, 36:23, 170:3, 170:16, 172:14 386 ^[1] - 10:11 39 ^[2] - 3:6, 70:6	59511 ^[1] - 85:16 59564 ^[1] - 23:10 595402-4629 ^[1] - 2:9 596 ^[3] - 35:11, 36:8, 36:9 596378 ^[1] - 69:13 597 ^[1] - 3:16 598078 ^[2] - 52:17, 92:10 598104 ^[1] - 61:20 598503 ^[1] - 140:14 598505-0480 ^[1] - 2:14 598561 ^[1] - 190:19 598th ^[1] - 190:18 59A ^[2] - 88:9, 88:13 59A-5M ^[1] - 5:8 59E ^[1] - 94:25 59F ^[1] - 94:25 59G ^[3] - 103:9, 103:10, 116:6 59H ^[1] - 103:10 59I ^[2] - 108:5, 108:6 59J ^[2] - 108:5, 108:6 59K ^[2] - 174:17, 174:18 59L ^[4] - 174:13, 174:14, 174:18, 184:23 59M ^[1] - 88:13
		6	6
	2 ^[5] - 5:5, 41:15, 62:7, 62:8, 62:11 2,000 ^[1] - 53:5 2.3 ^[5] - 8:25, 24:19, 45:14, 46:7, 53:7 20 ^[2] - 2:20, 147:19 20-minute ^[1] - 147:23 200 ^[7] - 2:23, 10:19, 72:1, 165:14, 166:22, 167:7 2000 ^[2] - 25:7, 191:9 2001 ^[1] - 25:7 2005 ^[1] - 23:19 2008 ^[10] - 1:17, 6:3, 6:6, 8:21, 34:8, 34:17, 57:7, 57:9, 127:20, 200:14 2009 ^[4] - 34:21, 35:1, 35:25, 36:4	4 ^[5] - 5:7, 86:18, 86:19, 86:21, 110:8 408 ^[11] - 166:17, 166:18, 167:16, 167:17, 167:20,	6 ^[5] - 2:19, 5:9, 93:19, 93:20, 93:22 6,000-square ^[1] - 27:3 60 ^[2] - 3:17, 43:8 600 ^[1] - 2:14 61 ^[1] - 3:19

<p>62 [3] - 5:5 65 [1] - 3:19 650 [1] - 162:17 66,000 [1] - 24:25 67 [1] - 3:20 68,000 [1] - 188:11 69 [2] - 3:22, 55:1</p>	<p>abandoned [2] - 162:17, 162:20 ability [2] - 95:10, 98:15 able [14] - 35:1, 58:5, 83:11, 88:3, 89:5, 90:21, 98:9, 102:11, 145:20, 156:22, 165:5, 169:17, 188:18, 188:20 absolutely [1] - 76:21 academic [1] - 82:2 acceptable [2] - 151:1, 180:16 accepted [1] - 150:8 access [26] - 30:15, 31:22, 62:23, 63:9, 63:11, 63:14, 65:4, 66:7, 72:3, 73:13, 74:3, 76:16, 76:22, 79:10, 80:10, 88:25, 94:8, 96:22, 97:11, 98:6, 98:16, 99:17, 105:12, 110:12, 159:21, 175:16 accesses [1] - 63:21 accidentally [1] - 130:17 Acciona [1] - 149:15 accommodate [5] - 16:13, 31:21, 46:4, 114:1, 115:7 according [4] - 35:2, 97:3, 97:9, 197:9 account [1] - 178:13 accuracy [1] - 103:25 accurate [6] - 103:20, 103:21, 114:24, 144:1, 159:7, 200:10 acknowledge [1] - 117:19 acreage [1] - 151:20 acres [9] - 97:5, 97:6, 97:7, 97:10, 97:19, 99:1, 99:4, 105:24, 106:12 Act [5] - 19:24, 112:22, 112:23, 155:19 action [2] - 19:18, 128:2 actions [3] - 129:9, 129:10, 155:17 active [1] - 70:9 activities [7] - 93:13, 107:22, 107:23, 108:9, 110:5, 110:18, 131:13 activity [2] - 108:17, 109:25 acts [1] - 198:4 actual [5] - 63:3, 179:23, 179:25, 188:15, 189:7 add [4] - 16:22, 17:5, 75:1, 172:20 addition [6] - 93:5, 101:17, 105:17, 107:16, 115:12, 196:21 additional [11] - 22:7, 22:8, 36:7, 50:7, 56:10, 70:14, 71:1, 106:14, 131:19, 163:1</p>	<p>address [19] - 13:18, 15:1, 23:8, 52:15, 61:18, 69:11, 85:13, 85:15, 92:7, 92:9, 94:9, 105:10, 109:20, 113:3, 113:25, 126:13, 136:12, 140:12, 158:3 addressed [4] - 8:8, 113:15, 118:1, 191:18 addresses [2] - 128:8, 191:24 adequately [1] - 156:23 adjacent [2] - 56:18, 167:13 adjust [1] - 79:13 adjusted [1] - 73:12 adjustments [1] - 159:10 administering [1] - 115:1 Administration [1] - 39:25 Administrative [2] - 17:21, 19:23 administrative [5] - 6:8, 14:15, 17:20, 19:18, 22:18 admired [1] - 188:24 admit [2] - 27:8 admitted [10] - 6:24, 53:25, 62:11, 70:20, 86:21, 88:17, 93:22, 112:4, 112:7, 141:20 admonition [11] - 16:22, 22:16, 52:4, 61:7, 68:24, 85:2, 91:18, 140:1, 187:6, 187:9, 190:21 adopt [2] - 84:9, 158:20 adopted [1] - 180:8 advantage [2] - 193:13, 193:15 advantages [1] - 43:4 adverse [4] - 9:10, 9:16, 15:12, 129:14 advice [1] - 118:2 advisory [1] - 7:8 aerial [5] - 104:19, 148:23, 148:25, 149:1, 149:13 affair [1] - 76:1 affect [3] - 71:4, 127:2, 127:3 affected [3] - 31:12, 80:18, 129:10 affecting [1] - 109:4 afraid [1] - 28:1 afterwards [1] - 199:21 age [1] - 89:6 agencies [3] - 43:17, 87:8, 121:20 Agencies [1] - 19:23 agency [2] - 95:14, 107:4 agent [1] - 183:8 ago [3] - 124:4, 141:24, 145:14 agree [1] - 109:6 agreed [1] - 40:21 agreeing [1] - 19:20</p>	<p>agreement [9] - 40:2, 40:19, 41:5, 48:7, 114:16, 170:7, 170:14, 176:1, 181:6 agreements [1] - 30:4 agricultural [4] - 95:9, 98:21, 105:2, 105:7 ahead [2] - 122:11, 187:8 air [2] - 142:14, 169:10 airport [1] - 184:5 aisle [1] - 18:21 alignment [1] - 107:11 ALLEN [1] - 1:21 Allen [1] - 17:19 allow [1] - 18:13 alluded [1] - 139:2 almost [2] - 14:13, 21:16 alphabet [1] - 88:11 alter [1] - 63:16 alternate [1] - 58:9 alternative [3] - 57:17, 57:20, 58:21 ambulance [1] - 189:10 amended [1] - 80:5 amendment [3] - 80:11, 81:4, 180:15 amendments [2] - 197:1, 197:3 America [1] - 192:13 amount [4] - 24:11, 31:17, 31:22, 143:25 anaerobic [1] - 103:3 analogy [2] - 177:23, 178:1 analyses [2] - 45:22, 63:23 analysis [1] - 29:24 analyst [1] - 7:9 analyzed [3] - 29:3, 158:15, 158:16 anemometer [2] - 188:20, 191:9 animals [2] - 125:24, 126:8 Annette [1] - 7:6 ANNETTE [1] - 2:12 answer [18] - 8:6, 77:5, 108:11, 113:1, 129:20, 129:24, 130:1, 130:3, 134:19, 134:23, 134:24, 134:25, 135:2, 138:12, 138:14, 149:6, 153:11, 153:24 answered [5] - 29:15, 41:4, 58:20, 186:18, 186:19 answering [2] - 47:4, 134:12 anticipate [4] - 34:16, 35:23, 79:4, 195:16 anticipated [1] - 55:15 anxious [2] - 75:10, 79:23 anyway [2] - 17:18, 169:15 Anyways [1] - 197:10 appeal [1] - 19:21</p>
7			
<p>7 [10] - 5:10, 111:2, 111:3, 111:8, 111:20, 112:3, 112:6, 129:1, 129:4, 161:2 70 [3] - 5:6 708 [1] - 186:25 72 [1] - 59:15 750 [3] - 162:9, 162:18, 163:16 76 [2] - 3:22, 53:8 77 [1] - 72:11 79 [1] - 3:23</p>			
8			
<p>8 [5] - 5:11, 137:25, 141:17, 141:18, 141:19 80 [7] - 24:10, 45:21, 97:9, 97:17, 99:4, 153:1, 167:19 83 [1] - 3:23 85 [2] - 4:3, 199:14 85th [1] - 85:15 86 [3] - 5:7 87 [1] - 197:9 88 [3] - 5:8</p>			
9			
<p>9.04 [1] - 45:20 9.96 [1] - 45:20 90 [2] - 119:18, 152:22 92 [1] - 4:10 93 [3] - 5:9 96 [1] - 159:6 98 [2] - 49:10, 159:6</p>			
A			
<p>a-w-g [1] - 55:6 a.m [2] - 6:2, 6:6 AANENSON [3] - 91:17, 91:20, 92:1 Aanenson [15] - 21:12, 90:23, 91:1, 91:3, 91:13, 91:14, 91:16, 91:17, 92:6, 92:8, 101:1, 110:22, 111:1, 117:6, 119:1 Aaneson [1] - 4:9</p>			

<p>appearance [1] - 7:5 appearances [1] - 6:12 appearing [1] - 6:22 APPLICANT [1] - 2:10 applicant [8] - 6:13, 8:8, 18:2, 18:15, 19:3, 19:7, 129:13, 179:15 applicant's [1] - 20:12 applicants [1] - 178:21 application [19] - 6:9, 8:22, 9:3, 9:6, 9:21, 18:3, 19:16, 34:6, 43:15, 45:4, 51:8, 129:7, 137:22, 146:15, 160:23, 161:6, 162:21, 163:16, 176:23 Application [1] - 1:6 applications [3] - 39:15, 117:22, 177:15 applied [1] - 134:8 apply [2] - 181:8, 182:24 appreciate [5] - 7:24, 28:2, 194:14, 199:4, 199:16 appreciated [1] - 154:12 approach [1] - 63:7 approached [1] - 40:5 appropriate [6] - 19:18, 43:23, 47:10, 47:11, 53:18, 112:25 appropriately [1] - 29:14 approval [6] - 64:10, 78:2, 79:18, 158:23, 161:3, 171:9 approvals [1] - 30:22 approve [2] - 157:22, 189:19 approved [1] - 78:12 April [11] - 44:15, 44:18, 44:20, 104:5, 110:7, 111:9, 112:18, 113:11, 124:14, 133:23, 156:13 archeological [6] - 69:25, 70:1, 71:4, 74:24, 75:5, 77:19 archeologist [1] - 70:5 archeologists [1] - 188:6 area [96] - 9:4, 10:16, 11:3, 11:6, 21:5, 26:5, 28:7, 31:25, 45:25, 46:4, 69:22, 72:2, 72:21, 80:15, 89:23, 90:5, 94:15, 95:24, 96:1, 96:14, 97:8, 99:3, 100:1, 101:3, 102:3, 102:12, 109:21, 116:5, 116:24, 117:1, 119:17, 119:19, 120:15, 120:18, 120:22, 120:23, 121:14, 121:17, 122:23, 123:2, 123:3, 123:13, 123:23, 124:8, 125:7, 125:9, 125:11, 125:25, 127:7, 131:21, 131:24, 131:25, 132:6,</p>	<p>132:11, 132:19, 132:20, 136:11, 142:2, 142:4, 142:12, 142:16, 142:21, 143:10, 144:24, 145:1, 146:1, 146:7, 146:11, 147:1, 147:17, 148:3, 148:5, 148:7, 148:14, 148:16, 149:23, 149:24, 150:3, 152:18, 152:21, 152:24, 153:10, 160:1, 164:8, 172:9, 173:18, 175:15, 176:6, 184:5, 184:9, 184:10, 185:5, 191:23, 193:16 Area [1] - 39:25 areas [53] - 21:17, 73:11, 80:6, 83:24, 86:2, 88:4, 90:20, 93:11, 95:22, 96:5, 96:6, 99:15, 99:23, 99:25, 100:5, 100:9, 102:25, 105:14, 105:15, 107:15, 110:4, 115:8, 115:17, 117:1, 121:2, 121:16, 124:1, 124:20, 126:12, 142:7, 142:14, 143:11, 146:3, 147:1, 150:1, 152:3, 172:10, 172:11, 172:13, 172:16, 172:17, 172:18, 172:22, 173:8, 173:12, 173:19, 176:13, 181:10, 181:11, 184:3, 196:4 argument [1] - 82:2 arisen [1] - 56:2 Army [1] - 107:7 arranged [1] - 81:14 arrangement [2] - 81:17 arrays [1] - 151:25 arrived [1] - 78:18 arrowhead [2] - 72:25, 77:3 articles [2] - 32:3, 32:9 ASAP [1] - 189:19 Asia [1] - 70:2 aside [1] - 150:2 aspect [4] - 54:11, 61:25, 115:5, 119:25 aspects [2] - 100:12, 119:24 assembling [1] - 96:9 assessment [3] - 32:11, 182:16 assessments [1] - 127:22 assets [1] - 51:11 assigned [1] - 51:11 associated [5] - 7:2, 8:25, 61:24, 151:24, 171:25 association [1] - 32:4 assume [2] - 151:9, 176:24 attached [2] - 9:2, 30:24 attend [2] - 17:7, 17:8 attendance [6] - 7:23, 7:25, 139:18, 194:21, 199:20</p>	<p>attended [1] - 157:16 attention [1] - 195:13 attorney [2] - 6:23, 23:21 attorneys [1] - 14:15 Attorneys [1] - 2:7 August [2] - 8:21, 57:9 authorities [1] - 65:24 authority [3] - 137:15, 151:7, 183:10 authorize [2] - 8:23, 10:20 availability [1] - 46:18 available [6] - 12:15, 35:11, 35:24, 45:15, 50:1, 101:2 Avenue [5] - 2:14, 61:19, 85:15, 185:5, 186:25 average [1] - 27:19 avian [4] - 90:15, 144:3, 148:16, 182:2 avoid [11] - 11:3, 64:2, 74:1, 74:6, 74:12, 81:16, 106:18, 106:22, 129:14, 131:1, 133:6 avoidance [10] - 88:4, 90:20, 94:14, 99:17, 99:22, 104:2, 106:5, 106:10, 133:4, 181:11 avoided [2] - 73:11, 115:11 avoiding [2] - 99:23, 106:2 award [1] - 46:19 awarded [2] - 41:13, 41:20 aware [9] - 83:25, 84:1, 147:2, 148:17, 148:20, 149:13, 191:15, 192:1, 192:23 awg [1] - 55:6</p>	<p>113:3, 139:13 base [5] - 167:25, 168:3, 168:5, 178:22, 179:21 based [38] - 24:11, 24:14, 24:23, 24:24, 26:18, 29:7, 29:23, 31:15, 32:19, 42:10, 42:13, 48:2, 50:6, 50:20, 54:25, 55:13, 60:5, 74:2, 87:10, 95:17, 101:25, 104:2, 108:12, 108:23, 125:5, 157:1, 157:2, 158:17, 159:2, 161:12, 161:21, 163:8, 165:18, 168:6, 168:24, 170:11, 178:7, 184:10 Based [7] - 29:2, 48:8, 60:5, 106:4, 133:16, 158:23, 165:7 basic [1] - 60:10 Basin [3] - 33:16, 56:20, 183:8 basin [4] - 106:23, 116:14, 116:18, 116:22 basins [11] - 99:20, 104:12, 104:13, 104:16, 105:4, 105:22, 106:3, 107:9, 108:14, 108:18, 115:12 basis [5] - 41:7, 41:16, 95:18, 132:7, 169:12 batch [1] - 173:11 bays [1] - 55:11 bearing [1] - 30:19 became [2] - 23:13, 192:2 become [2] - 25:15, 49:12 becomes [4] - 30:10, 42:22, 183:14, 196:12 BEFORE [1] - 1:21 begin [2] - 20:11, 25:1 beginning [3] - 9:23, 37:8, 53:11 begins [1] - 79:19 behind [2] - 36:25, 78:8 Bendish [22] - 3:5, 3:9, 4:10, 7:4, 7:6, 29:11, 51:2, 56:24, 64:20, 76:6, 78:23, 100:15, 110:25, 115:21, 127:12, 139:13, 153:17, 160:5, 190:6, 193:3, 194:24, 197:6 BENDISH [44] - 2:12, 7:6, 20:9, 29:13, 29:18, 31:11, 33:6, 44:24, 45:3, 51:1, 51:4, 51:18, 56:25, 61:2, 64:21, 76:7, 82:25, 84:22, 89:19, 94:23, 100:17, 111:4, 111:6, 111:13, 111:15, 111:20, 112:8, 112:14, 113:6, 115:22, 127:13, 139:14, 153:18, 155:25, 160:6, 174:13,</p>
B		<p>Bachelor's [1] - 140:24 background [14] - 8:20, 20:24, 38:3, 40:14, 53:15, 54:12, 62:13, 62:14, 69:17, 69:21, 85:22, 92:15, 140:20, 141:6 backyard [1] - 162:13 balance [1] - 171:4 Bald [1] - 112:23 ballpark [1] - 99:8 bare [1] - 192:10 barn [1] - 72:17 Barnes [1] - 13:3 BART [3] - 85:3, 85:7, 119:8 Bart [18] - 4:2, 21:21, 84:24, 86:12, 86:23, 89:14, 90:10, 91:6, 97:22, 119:4, 119:13, 137:3, 145:5, 145:12, 148:9, 148:21, 149:12, 150:11 Barton [4] - 85:14, 86:18,</p>	

<p>174:17, 177:16, 190:8, 193:4, 195:1, 195:8, 196:21, 197:2</p> <p>benefit [2] - 22:16, 196:3</p> <p>benefits [1] - 192:9</p> <p>best [4] - 29:6, 95:8, 159:23, 199:11</p> <p>bet [1] - 197:10</p> <p>bets [1] - 82:3</p> <p>better [11] - 6:17, 34:1, 44:7, 47:4, 57:11, 58:12, 97:23, 152:12, 153:7, 157:13, 158:2</p> <p>Better [1] - 6:18</p> <p>between [11] - 46:8, 46:12, 56:16, 98:1, 100:5, 144:12, 148:22, 159:6, 178:13, 180:23, 181:7</p> <p>big [7] - 10:10, 72:8, 77:4, 80:8, 82:2, 83:16, 89:7</p> <p>billion [1] - 16:12</p> <p>billions [1] - 16:11</p> <p>biological [11] - 21:19, 44:1, 90:14, 94:4, 114:25, 119:24, 120:2, 120:10, 125:23, 127:20, 127:22</p> <p>biologist [4] - 140:18, 140:19, 141:2, 188:2</p> <p>biology [2] - 92:19, 140:25</p> <p>Bird [1] - 112:22</p> <p>bird [17] - 44:2, 44:5, 113:4, 120:13, 121:24, 131:20, 131:23, 136:9, 137:8, 137:15, 137:17, 137:19, 140:21, 144:17, 149:12, 151:13, 182:2</p> <p>birdier [1] - 121:2</p> <p>birding [1] - 141:6</p> <p>birds [17] - 21:20, 21:25, 120:12, 121:4, 121:9, 121:10, 125:8, 125:12, 132:5, 133:12, 142:22, 144:10, 144:16, 144:21, 150:21, 152:2, 153:3</p> <p>Birds [1] - 144:22</p> <p>Bismarck [3] - 2:14, 140:14, 200:13</p> <p>bit [19] - 14:8, 14:12, 14:13, 17:22, 38:3, 39:17, 39:21, 40:13, 47:4, 69:17, 69:21, 72:7, 74:4, 89:16, 102:23, 117:21, 140:20, 158:9, 179:8</p> <p>blade [5] - 144:14, 166:14, 167:24, 178:22, 179:22</p> <p>blades [1] - 144:19</p> <p>blessing [1] - 17:7</p> <p>block [1] - 72:1</p> <p>blocks [1] - 151:20</p> <p>blue [4] - 174:11, 184:3,</p>	<p>185:2, 185:5</p> <p>board [3] - 37:18, 37:20, 37:24</p> <p>bonded [1] - 55:15</p> <p>bonding [1] - 55:16</p> <p>book [4] - 57:6, 58:8, 123:20, 174:3</p> <p>borders [1] - 179:7</p> <p>bore [1] - 160:20</p> <p>bored [1] - 64:9</p> <p>boring [1] - 66:3</p> <p>bother [1] - 83:25</p> <p>bottom [1] - 144:14</p> <p>Boulevard [1] - 2:14</p> <p>Braddock [2] - 120:19, 121:12</p> <p>brand [1] - 13:2</p> <p>brand-new [1] - 13:2</p> <p>brave [1] - 188:21</p> <p>break [2] - 68:1, 139:20</p> <p>Brian [9] - 3:18, 61:5, 61:19, 61:21, 62:1, 62:10, 62:12, 62:22, 64:18</p> <p>BRIAN [1] - 61:12</p> <p>bridge [1] - 62:15</p> <p>brief [2] - 21:6, 104:17</p> <p>briefly [7] - 8:20, 24:2, 24:4, 24:5, 54:19, 112:1, 113:7</p> <p>bring [7] - 18:20, 58:17, 70:10, 91:7, 141:9, 189:2, 195:13</p> <p>British [1] - 149:15</p> <p>broadcast [1] - 197:22</p> <p>Broadway [1] - 1:16</p> <p>brought [5] - 55:7, 55:10, 88:5, 124:13, 172:15</p> <p>build [7] - 39:7, 40:6, 40:7, 63:5, 68:10, 133:6, 151:15</p> <p>building [7] - 27:2, 39:20, 62:21, 63:9, 149:22, 150:4, 192:17</p> <p>buildings [1] - 192:15</p> <p>built [5] - 10:6, 10:12, 41:8, 136:3</p> <p>bunch [1] - 35:11</p> <p>burial [4] - 59:12, 59:14, 59:17, 59:19</p> <p>buried [2] - 55:5, 72:9</p> <p>burned [2] - 109:22, 192:20</p> <p>bus [1] - 56:19</p> <p>busbar [2] - 42:25, 43:6</p> <p>business [10] - 27:24, 32:4, 32:5, 38:8, 39:17, 39:22, 51:16, 135:4, 192:14, 197:14</p> <p>businesses [1] - 192:10</p> <p>busy [1] - 26:19</p> <p>buy [1] - 40:8</p> <p>buying [1] - 56:10</p>	<p>BY [43] - 23:6, 29:18, 33:10, 34:4, 39:14, 45:13, 47:2, 48:24, 51:4, 52:13, 57:4, 60:4, 61:16, 65:22, 67:7, 69:9, 76:10, 79:3, 83:7, 85:11, 92:5, 111:6, 113:10, 116:2, 117:15, 119:12, 127:18, 130:9, 134:18, 137:2, 137:21, 138:20, 140:10, 154:15, 155:15, 156:11, 160:10, 166:7, 176:21, 183:21, 184:18, 187:20, 191:5</p>	<p>96:16, 96:23, 97:2, 97:8, 97:18, 98:5, 99:6, 99:16, 157:20</p> <p>category [4] - 54:22, 95:12, 96:16, 113:23</p> <p>caught [3] - 74:10, 76:12, 171:13</p> <p>Celeste [1] - 22:7</p> <p>cell [3] - 17:22, 17:23, 166:14</p> <p>center [7] - 116:15, 125:2, 150:23, 167:25, 168:3, 168:4, 168:7</p> <p>centered [2] - 124:21, 132:18</p> <p>centerline [1] - 125:1</p> <p>Central [1] - 10:14</p> <p>Century [1] - 19:25</p> <p>certain [7] - 11:17, 40:8, 96:7, 129:5, 147:18, 148:10, 163:13</p> <p>Certain [1] - 26:19</p> <p>Certainly [1] - 129:22</p> <p>certainly [4] - 11:17, 11:18, 15:4, 152:9</p> <p>CERTIFICATE [2] - 2:23, 200:1</p> <p>certificate [2] - 8:22, 34:10</p> <p>certified [1] - 140:19</p> <p>CERTIFY [2] - 200:5, 200:9</p> <p>cetera [2] - 175:2, 175:25</p> <p>chair [1] - 186:13</p> <p>chairman [1] - 191:7</p> <p>challenging [1] - 60:10</p> <p>chance [6] - 10:6, 10:7, 28:11, 112:13, 194:17, 198:18</p> <p>Change [1] - 186:7</p> <p>change [6] - 28:20, 80:8, 80:19, 83:10, 163:15, 191:21</p> <p>changed [4] - 23:15, 73:14, 128:14, 162:23</p> <p>changes [1] - 115:7</p> <p>changing [2] - 126:21, 161:19</p> <p>Chapter [1] - 19:24</p> <p>characterization [1] - 90:5</p> <p>characterize [5] - 50:5, 119:15, 119:20, 122:15, 131:24</p> <p>characterizing [1] - 119:16</p> <p>charge [1] - 65:4</p> <p>cascade [2] - 41:25, 42:1</p> <p>charts [1] - 46:10</p> <p>cheaper [1] - 63:12</p> <p>check [4] - 74:9, 79:13, 80:20, 123:10</p> <p>checked [2] - 80:24, 105:17</p> <p>checklist [1] - 34:10</p> <p>chemical [1] - 95:9</p> <p>choices [1] - 46:17</p> <p>choose [1] - 45:14</p>
C			
<p>Cable [1] - 81:18</p> <p>cable [1] - 55:5</p> <p>cabling [2] - 89:2, 160:19</p> <p>cafe [1] - 27:20</p> <p>calculate [3] - 144:16, 148:1, 178:23</p> <p>calculations [3] - 24:24, 168:22, 178:9</p> <p>California [5] - 122:8, 122:9, 151:18, 151:19, 152:25</p> <p>Canada [3] - 125:10, 143:8, 143:10</p> <p>Canadian [2] - 142:21, 160:17</p> <p>candidate [1] - 129:12</p> <p>cannot [2] - 175:15, 198:12</p> <p>capabilities [4] - 24:13, 31:15, 43:3, 43:11</p> <p>capability [1] - 33:20</p> <p>Capacity [1] - 46:9</p> <p>capacity [3] - 24:25, 46:7, 170:12</p> <p>Capitol [3] - 2:13, 17:6, 17:10</p> <p>capture [1] - 142:3</p> <p>captures [1] - 154:23</p> <p>capturing [1] - 155:4</p> <p>card [1] - 27:24</p> <p>care [3] - 84:11, 163:12, 173:20</p> <p>career [1] - 86:11</p> <p>carefully [1] - 174:20</p> <p>carried [1] - 23:15</p> <p>carrying [1] - 144:7</p> <p>cascade [2] - 41:25, 42:1</p> <p>cascading [1] - 41:7</p> <p>case [9] - 18:3, 20:12, 38:5, 80:4, 95:23, 100:7, 149:8, 149:9, 199:5</p> <p>Case [1] - 1:5</p> <p>cases [5] - 72:5, 164:5, 165:4, 178:20, 179:13</p> <p>categories [11] - 96:3, 96:8,</p>	<p>Cable [1] - 81:18</p> <p>cable [1] - 55:5</p> <p>cabling [2] - 89:2, 160:19</p> <p>cafe [1] - 27:20</p> <p>calculate [3] - 144:16, 148:1, 178:23</p> <p>calculations [3] - 24:24, 168:22, 178:9</p> <p>California [5] - 122:8, 122:9, 151:18, 151:19, 152:25</p> <p>Canada [3] - 125:10, 143:8, 143:10</p> <p>Canadian [2] - 142:21, 160:17</p> <p>candidate [1] - 129:12</p> <p>cannot [2] - 175:15, 198:12</p> <p>capabilities [4] - 24:13, 31:15, 43:3, 43:11</p> <p>capability [1] - 33:20</p> <p>Capacity [1] - 46:9</p> <p>capacity [3] - 24:25, 46:7, 170:12</p> <p>Capitol [3] - 2:13, 17:6, 17:10</p> <p>capture [1] - 142:3</p> <p>captures [1] - 154:23</p> <p>capturing [1] - 155:4</p> <p>card [1] - 27:24</p> <p>care [3] - 84:11, 163:12, 173:20</p> <p>career [1] - 86:11</p> <p>carefully [1] - 174:20</p> <p>carried [1] - 23:15</p> <p>carrying [1] - 144:7</p> <p>cascade [2] - 41:25, 42:1</p> <p>cascading [1] - 41:7</p> <p>case [9] - 18:3, 20:12, 38:5, 80:4, 95:23, 100:7, 149:8, 149:9, 199:5</p> <p>Case [1] - 1:5</p> <p>cases [5] - 72:5, 164:5, 165:4, 178:20, 179:13</p> <p>categories [11] - 96:3, 96:8,</p>	<p>96:16, 96:23, 97:2, 97:8, 97:18, 98:5, 99:6, 99:16, 157:20</p> <p>category [4] - 54:22, 95:12, 96:16, 113:23</p> <p>caught [3] - 74:10, 76:12, 171:13</p> <p>Celeste [1] - 22:7</p> <p>cell [3] - 17:22, 17:23, 166:14</p> <p>center [7] - 116:15, 125:2, 150:23, 167:25, 168:3, 168:4, 168:7</p> <p>centered [2] - 124:21, 132:18</p> <p>centerline [1] - 125:1</p> <p>Central [1] - 10:14</p> <p>Century [1] - 19:25</p> <p>certain [7] - 11:17, 40:8, 96:7, 129:5, 147:18, 148:10, 163:13</p> <p>Certain [1] - 26:19</p> <p>Certainly [1] - 129:22</p> <p>certainly [4] - 11:17, 11:18, 15:4, 152:9</p> <p>CERTIFICATE [2] - 2:23, 200:1</p> <p>certificate [2] - 8:22, 34:10</p> <p>certified [1] - 140:19</p> <p>CERTIFY [2] - 200:5, 200:9</p> <p>cetera [2] - 175:2, 175:25</p> <p>chair [1] - 186:13</p> <p>chairman [1] - 191:7</p> <p>challenging [1] - 60:10</p> <p>chance [6] - 10:6, 10:7, 28:11, 112:13, 194:17, 198:18</p> <p>Change [1] - 186:7</p> <p>change [6] - 28:20, 80:8, 80:19, 83:10, 163:15, 191:21</p> <p>changed [4] - 23:15, 73:14, 128:14, 162:23</p> <p>changes [1] - 115:7</p> <p>changing [2] - 126:21, 161:19</p> <p>Chapter [1] - 19:24</p> <p>characterization [1] - 90:5</p> <p>characterize [5] - 50:5, 119:15, 119:20, 122:15, 131:24</p> <p>characterizing [1] - 119:16</p> <p>charge [1] - 65:4</p> <p>cascade [2] - 41:25, 42:1</p> <p>charts [1] - 46:10</p> <p>cheaper [1] - 63:12</p> <p>check [4] - 74:9, 79:13, 80:20, 123:10</p> <p>checked [2] - 80:24, 105:17</p> <p>checklist [1] - 34:10</p> <p>chemical [1] - 95:9</p> <p>choices [1] - 46:17</p> <p>choose [1] - 45:14</p>	

<p>chose [1] - 114:11 chosen [2] - 41:15, 74:17 circle [3] - 57:16, 147:20, 147:21 circles [2] - 151:1, 152:8 Circles [1] - 83:15 circuit [1] - 55:5 circulated [1] - 7:23 circulating [1] - 169:10 circumstances [1] - 130:11 citizens [2] - 9:11, 17:3 city [1] - 189:4 City [3] - 102:7, 102:10, 193:16 civil [3] - 54:7, 64:2, 85:25 claiming [1] - 107:14 clarification [1] - 163:21 clarify [4] - 160:16, 181:4, 181:16, 181:23 clarifying [1] - 36:18 CLARK [50] - 2:4, 12:10, 39:12, 39:14, 44:4, 44:12, 45:2, 45:5, 59:23, 65:22, 66:18, 66:23, 82:18, 82:24, 83:3, 83:7, 84:5, 91:11, 100:22, 117:11, 117:15, 118:4, 118:10, 118:20, 138:18, 138:20, 139:7, 155:13, 155:15, 155:21, 176:18, 176:21, 177:4, 177:9, 177:14, 178:17, 179:3, 179:17, 179:25, 180:5, 180:12, 180:16, 180:20, 181:12, 181:22, 183:15, 185:15, 190:12, 194:7, 198:23 Clark [31] - 3:6, 3:12, 3:19, 3:23, 4:8, 4:12, 4:15, 7:16, 12:9, 15:18, 16:15, 17:14, 17:16, 39:11, 45:9, 59:22, 65:20, 67:1, 82:17, 84:7, 100:21, 117:10, 118:19, 138:17, 139:10, 155:12, 176:17, 183:17, 194:6, 198:22, 199:7 Class [3] - 22:20, 70:24, 71:1 clean [2] - 188:4, 188:11 clear [2] - 35:5, 83:4 clearer [1] - 89:6 client [3] - 80:3, 174:7, 196:5 close [5] - 49:10, 79:8, 116:17, 184:9, 195:14 closed [1] - 199:23 closer [1] - 163:3 closest [7] - 120:15, 121:12, 123:1, 123:2, 124:1, 162:4, 167:10 Closing [3] - 2:21, 196:20, 197:6 cloud [1] - 153:6</p>	<p>coal [1] - 16:10 Coast [1] - 122:7 Code [1] - 19:25 coffee [1] - 199:1 Cogswell [1] - 12:24 collected [4] - 25:9, 55:8, 124:23, 158:14 collection [13] - 54:13, 54:16, 54:25, 55:3, 55:5, 55:19, 63:24, 64:5, 64:6, 64:11, 66:4, 81:13 collections [1] - 81:25 collector [2] - 160:24, 161:4 collisions [1] - 133:11 color [1] - 116:20 Colorado [1] - 157:17 colored [1] - 116:21 colors [1] - 116:19 column [2] - 164:22, 165:24 combination [1] - 95:8 coming [13] - 13:21, 24:12, 26:4, 26:11, 30:1, 50:17, 90:7, 90:9, 144:25, 148:4, 163:11, 194:21, 197:9 commencing [1] - 6:2 comment [6] - 40:5, 155:10, 157:5, 158:8, 161:11, 167:22 comments [10] - 7:18, 9:23, 12:2, 44:16, 154:13, 156:24, 158:11, 161:21, 196:20, 197:6 commercial [6] - 34:20, 34:24, 35:13, 35:20, 36:3, 86:9 commission [2] - 14:10, 158:20 Commission [52] - 2:12, 7:7, 7:10, 7:15, 8:4, 8:11, 8:16, 9:5, 10:4, 10:9, 11:12, 11:13, 11:20, 12:5, 12:18, 13:2, 14:9, 14:19, 15:2, 18:5, 18:9, 18:19, 18:25, 19:2, 19:13, 19:21, 19:22, 20:7, 37:2, 39:16, 44:8, 44:19, 47:12, 47:14, 57:6, 79:17, 118:7, 127:21, 136:21, 168:10, 180:17, 186:12, 189:16, 194:19, 195:13, 197:14, 197:16, 197:20, 197:23, 198:4 COMMISSION [2] - 1:3, 2:15 Commission's [2] - 7:21, 67:23 commissioned [2] - 35:10, 131:18 Commissioner [93] - 3:6, 3:6, 3:7, 3:7, 3:10, 3:11, 3:12, 3:13, 3:16, 3:17, 3:19, 3:23, 3:23, 4:4, 4:5,</p>	<p>4:7, 4:8, 4:12, 4:14, 4:15, 7:16, 9:23, 9:25, 12:8, 12:9, 12:13, 14:4, 15:17, 15:18, 16:15, 17:13, 17:14, 17:16, 33:23, 39:10, 39:11, 45:8, 45:9, 46:22, 46:23, 57:2, 59:21, 59:22, 59:24, 60:21, 64:23, 65:19, 65:20, 66:25, 67:1, 78:25, 82:16, 82:17, 84:6, 84:7, 84:17, 100:19, 100:21, 117:5, 117:9, 118:19, 118:21, 127:15, 134:16, 136:1, 138:16, 138:17, 139:9, 139:10, 153:19, 155:11, 155:12, 166:3, 170:23, 176:9, 176:17, 183:16, 183:17, 184:15, 187:25, 193:6, 193:22, 194:5, 194:6, 194:9, 197:7, 198:11, 198:21, 198:22, 199:6, 199:7, 199:18 COMMISSIONER [155] - 2:3, 2:4, 2:4, 6:18, 6:20, 10:1, 12:10, 15:19, 17:15, 23:23, 33:25, 34:4, 39:8, 39:12, 39:14, 44:4, 44:12, 45:1, 45:2, 45:5, 45:10, 45:13, 46:20, 46:24, 47:2, 47:9, 47:16, 48:4, 48:13, 48:17, 57:4, 58:19, 59:20, 59:23, 60:1, 60:4, 60:19, 64:24, 65:9, 65:13, 65:16, 65:22, 66:18, 66:23, 67:2, 79:3, 80:14, 81:7, 82:13, 82:18, 82:24, 83:3, 83:7, 84:5, 84:8, 89:22, 89:25, 90:18, 91:1, 91:5, 91:8, 91:11, 94:19, 100:20, 100:22, 100:23, 117:7, 117:11, 117:15, 118:4, 118:10, 118:20, 118:22, 127:16, 127:18, 127:25, 129:3, 129:25, 130:4, 130:7, 134:18, 135:12, 136:18, 137:11, 137:21, 138:14, 138:18, 138:20, 139:7, 139:11, 153:21, 154:1, 154:5, 154:15, 155:8, 155:13, 155:15, 155:21, 155:22, 164:1, 166:5, 166:7, 168:8, 174:4, 174:14, 174:19, 176:18, 176:21, 177:3, 177:4, 177:7, 177:9, 177:14, 177:19, 178:15, 178:17, 179:3, 179:11, 179:17, 179:25, 180:5, 180:12, 180:16, 180:18, 180:20, 181:1, 181:12, 181:14, 181:22, 183:15, 183:18,</p>	<p>183:21, 184:12, 184:13, 184:18, 184:21, 184:24, 185:4, 185:13, 185:15, 185:17, 185:20, 185:21, 190:11, 190:12, 190:14, 193:7, 194:4, 194:7, 194:11, 195:15, 197:8, 198:15, 198:23, 199:8 commissioners [2] - 75:7, 194:14 Commissioners [15] - 9:22, 18:10, 19:2, 19:5, 48:19, 88:5, 89:20, 91:10, 112:12, 155:23, 187:22, 190:9, 193:5, 193:23, 197:7 COMMISSIONERS [1] - 2:2 Commissions [1] - 11:20 commitment [2] - 42:13, 74:12 committed [1] - 109:13 Committee [1] - 122:2 communities [4] - 13:24, 189:18, 193:10, 193:17 community [30] - 15:23, 21:1, 25:4, 25:8, 25:12, 25:22, 26:18, 26:24, 27:20, 28:3, 28:10, 32:5, 32:9, 49:15, 49:17, 75:5, 177:24, 188:18, 188:19, 188:25, 189:8, 189:11, 191:10, 191:12, 192:8, 192:19, 192:24, 193:12, 193:14, 193:19 compaction [3] - 175:7, 175:11, 175:22 companies [1] - 149:21 company [9] - 11:15, 11:19, 11:21, 15:3, 49:6, 79:22, 79:25, 175:14, 193:13 compare [2] - 95:20, 95:21 compared [1] - 45:22 comparison [1] - 173:24 compatibility [1] - 8:23 compatible [1] - 9:13 compiled [1] - 122:5 complaints [1] - 191:16 complete [6] - 34:18, 35:2, 36:13, 36:15, 64:3, 104:8 completed [6] - 50:7, 53:8, 63:23, 81:17, 152:13, 182:1 completely [1] - 115:11 completing [2] - 53:8, 145:4 completion [2] - 34:10, 35:21 compliment [1] - 84:9 comply [1] - 112:20 comprised [1] - 37:21 computer [2] - 159:5, 169:8 concept [1] - 149:17</p>
--	--	---	---

<p>concern [9] - 15:1, 83:16, 110:9, 113:19, 126:12, 187:15, 188:1, 189:17, 192:24</p> <p>concerned [6] - 167:9, 167:11, 175:6, 192:4, 192:12, 192:18</p> <p>concerns [13] - 8:5, 8:7, 10:9, 18:19, 27:22, 48:2, 114:1, 115:8, 175:11, 188:13, 191:13, 191:17, 191:19</p> <p>Concluded [1] - 199:25</p> <p>conclusion [2] - 106:2, 162:12</p> <p>conclusions [3] - 19:15, 195:4, 197:19</p> <p>concrete [2] - 146:12, 173:2</p> <p>conditions [4] - 30:23, 103:3, 119:15, 177:11</p> <p>conductive [1] - 152:2</p> <p>conduct [5] - 70:4, 94:5, 141:25, 142:10, 142:11</p> <p>conducted [2] - 114:21, 147:3</p> <p>conductivity [1] - 55:14</p> <p>conductor [1] - 137:16</p> <p>conductors [1] - 137:18</p> <p>conference [1] - 157:16</p> <p>confidence [1] - 76:25</p> <p>confirmed [1] - 46:11</p> <p>conflict [1] - 108:19</p> <p>confused [1] - 34:23</p> <p>connecting [1] - 56:19</p> <p>connection [1] - 148:22</p> <p>connector [2] - 72:9, 72:12</p> <p>consequences [4] - 128:1, 139:3, 139:5, 181:18</p> <p>Conservation [4] - 92:24, 93:2, 93:8, 95:15</p> <p>conservation [14] - 93:3, 128:6, 128:17, 128:20, 129:8, 129:16, 130:11, 130:12, 130:13, 131:3, 132:8, 132:10, 134:21, 149:17</p> <p>conservative [1] - 99:5</p> <p>Consider [1] - 8:14</p> <p>consider [6] - 9:6, 10:11, 14:20, 18:5, 19:14, 131:13</p> <p>considerable [1] - 147:10</p> <p>considerably [1] - 167:8</p> <p>consideration [1] - 159:23</p> <p>considered [12] - 9:7, 32:16, 96:6, 96:21, 97:16, 98:14, 98:17, 101:18, 119:6, 156:6, 176:6, 184:10</p> <p>considering [1] - 11:10</p> <p>consist [1] - 55:10</p> <p>consisting [1] - 8:24</p>	<p>consists [1] - 24:19</p> <p>constant [1] - 175:19</p> <p>constructed [7] - 21:7, 52:24, 53:2, 54:20, 54:23, 60:15, 102:1</p> <p>constructing [2] - 13:8, 109:3</p> <p>Construction [6] - 21:3, 39:3, 52:19, 52:24, 53:1, 53:6</p> <p>construction [35] - 8:23, 9:8, 10:20, 12:20, 12:25, 13:15, 13:19, 21:5, 34:16, 34:18, 35:2, 35:17, 36:15, 52:21, 54:7, 61:24, 62:14, 63:13, 64:6, 66:6, 75:19, 77:11, 79:18, 79:23, 107:21, 107:22, 108:9, 108:22, 110:18, 133:25, 135:14, 136:8, 175:1, 175:14, 182:3</p> <p>consultants [1] - 118:2</p> <p>consultations [1] - 117:20</p> <p>Consulting [1] - 140:18</p> <p>contact [4] - 25:19, 27:23, 175:19, 198:10</p> <p>contacted [5] - 26:8, 43:18, 160:22, 191:23, 191:25</p> <p>contacting [1] - 31:12</p> <p>contacts [1] - 31:13</p> <p>contain [1] - 200:10</p> <p>contained [1] - 44:18</p> <p>continual [1] - 80:7</p> <p>continually [1] - 100:3</p> <p>continue [8] - 62:11, 70:20, 86:22, 88:18, 93:23, 100:25, 132:3, 134:12</p> <p>Continued [3] - 3:1, 4:1, 5:1</p> <p>CONTINUING [35] - 24:1, 31:11, 44:12, 48:4, 53:19, 62:12, 70:21, 78:6, 80:14, 81:7, 86:23, 88:19, 90:10, 93:24, 95:1, 101:1, 103:12, 108:8, 111:15, 112:14, 113:17, 116:16, 127:25, 129:3, 135:12, 141:21, 158:8, 165:10, 168:8, 174:19, 178:17, 180:5, 181:22, 184:24, 185:4</p> <p>continuing [1] - 9:17</p> <p>contract [10] - 39:24, 40:22, 41:13, 41:16, 41:20, 41:22, 42:15, 54:9, 141:25, 170:19</p> <p>contractor [1] - 54:4</p> <p>contractors [1] - 77:20</p> <p>control [2] - 33:17, 161:13</p> <p>controlling [1] - 183:8</p> <p>conversation [5] - 32:21, 40:17, 160:17, 161:1,</p>	<p>172:20</p> <p>conversations [11] - 32:15, 32:25, 33:3, 41:3, 41:5, 41:24, 77:24, 109:9, 124:22, 157:15, 182:7</p> <p>converted [2] - 105:2, 105:7</p> <p>converting [1] - 98:20</p> <p>cookies [1] - 199:1</p> <p>cool [1] - 82:6</p> <p>coordinate [1] - 114:10</p> <p>coordinates [1] - 87:10</p> <p>Coordinating [1] - 122:2</p> <p>coordinator [1] - 141:5</p> <p>copies [1] - 88:5</p> <p>copy [4] - 44:13, 111:9, 111:17, 113:11</p> <p>corporate [2] - 27:3, 192:16</p> <p>Corps [3] - 107:7, 107:12, 171:14</p> <p>correct [23] - 56:14, 65:1, 82:22, 90:17, 96:19, 109:8, 111:12, 111:13, 111:25, 113:12, 113:22, 115:3, 118:9, 128:11, 128:12, 131:15, 135:8, 174:1, 176:25, 177:22, 182:21, 195:17</p> <p>Correct [15] - 43:20, 97:22, 108:7, 110:11, 111:4, 135:15, 143:19, 155:1, 156:20, 164:25, 175:9, 180:25, 196:9, 197:2, 197:4</p> <p>correctly [6] - 35:23, 42:14, 102:9, 150:12, 192:6, 194:2</p> <p>correspond [2] - 100:1, 107:12</p> <p>correspondence [3] - 43:15, 108:13, 117:12</p> <p>corresponding [1] - 110:1</p> <p>corridor [4] - 143:4, 149:20, 150:3, 150:23</p> <p>Cost [1] - 55:22</p> <p>cost [5] - 25:13, 56:9, 56:11, 71:19, 175:21</p> <p>cost-effective [3] - 56:9, 56:11, 71:19</p> <p>cost-share [1] - 25:13</p> <p>costs [1] - 48:10</p> <p>counsel [1] - 7:12</p> <p>Counsel [1] - 2:13</p> <p>count [2] - 28:6, 162:25</p> <p>country [4] - 16:5, 122:6, 122:12, 188:15</p> <p>County [30] - 1:5, 1:15, 6:7, 6:24, 9:1, 13:3, 20:23, 23:12, 23:17, 25:6, 40:11, 51:6, 51:10, 51:13, 92:24, 101:13, 128:7, 128:21,</p>	<p>129:17, 142:1, 145:8, 145:15, 147:13, 158:21, 161:24, 162:14, 164:5, 166:22, 169:14, 180:11</p> <p>county [11] - 14:9, 66:7, 93:5, 95:18, 95:21, 158:20, 161:5, 165:18, 189:4, 189:9, 198:25</p> <p>couple [16] - 12:17, 21:2, 34:12, 40:4, 48:21, 62:15, 62:17, 63:17, 104:24, 156:12, 157:3, 160:8, 160:15, 161:14, 192:14, 198:1</p> <p>course [9] - 7:14, 11:2, 11:5, 19:13, 22:22, 71:14, 71:20, 80:20, 171:13</p> <p>COURT [2] - 2:23, 200:1</p> <p>Courthouse [2] - 1:15, 6:7</p> <p>courtroom [1] - 14:14</p> <p>cover [3] - 109:20, 142:16, 153:6</p> <p>covered [1] - 72:1</p> <p>covers [1] - 156:14</p> <p>Cramer [20] - 3:7, 3:13, 3:17, 7:17, 15:18, 17:14, 45:9, 46:23, 59:25, 60:22, 67:1, 84:7, 84:18, 118:21, 139:10, 170:23, 183:17, 194:10, 199:7, 199:19</p> <p>CRAMER [25] - 2:4, 15:19, 17:15, 23:23, 45:10, 45:13, 46:20, 60:1, 60:4, 60:19, 67:2, 84:8, 100:23, 118:22, 139:11, 155:22, 177:19, 179:11, 183:18, 183:21, 184:12, 185:21, 190:14, 194:11, 199:8</p> <p>crane [27] - 123:24, 124:1, 124:2, 124:24, 125:4, 130:19, 131:20, 136:9, 139:6, 142:1, 142:5, 142:18, 143:3, 144:11, 145:5, 145:15, 145:21, 146:7, 146:21, 147:4, 147:9, 148:18, 148:23, 154:24, 155:6, 157:9</p> <p>cranes [33] - 13:7, 75:25, 124:8, 124:14, 124:16, 142:3, 142:4, 142:13, 142:23, 142:25, 143:8, 143:9, 143:17, 145:10, 145:11, 145:17, 145:25, 146:9, 146:10, 146:22, 146:25, 147:3, 147:11, 147:15, 149:9, 149:19, 149:21, 150:24, 154:7, 154:11, 154:18, 188:8</p> <p>create [1] - 148:5</p> <p>created [2] - 148:9, 158:17</p>
---	--	--	---

<p>creates [1] - 28:3 creating [2] - 104:20, 151:11 creation [1] - 150:2 crews [1] - 62:20 crisis [1] - 16:4 criteria [1] - 157:14 crop [2] - 98:15, 175:21 cropland [2] - 100:4, 126:11 cropped [1] - 98:10 cropping [2] - 98:13, 98:19 crops [1] - 175:8 Cross [5] - 3:5, 3:5, 3:22, 4:10, 4:11 CROSS [5] - 29:17, 33:9, 76:9, 111:5, 116:1 cross [5] - 55:15, 55:16, 63:25, 64:12, 122:13 cross-bonded [1] - 55:15 cross-bonding [1] - 55:16 Cross-examination [5] - 3:5, 3:5, 3:22, 4:10, 4:11 CROSS-EXAMINATION [5] - 29:17, 33:9, 76:9, 111:5, 116:1 cross-section [1] - 122:13 crossing [4] - 64:1, 64:3, 64:8, 67:10 cultural [9] - 15:8, 21:8, 69:18, 70:7, 71:5, 74:7, 74:21, 80:18, 196:12 culverts [2] - 161:17, 161:18 curious [3] - 79:21, 83:24, 179:17 current [6] - 56:12, 74:6, 74:8, 74:10, 74:11, 140:17 customer [1] - 30:21 cuts [4] - 12:22, 63:15, 63:18, 125:15 cutting [1] - 13:1</p>	<p>159:17, 175:20, 175:21 data [17] - 25:9, 29:3, 29:7, 45:22, 57:10, 87:6, 98:2, 101:2, 103:13, 122:5, 123:11, 124:23, 134:5, 143:20, 146:19, 158:14, 158:16 database [4] - 123:15, 124:3, 125:5, 132:6 date [5] - 34:16, 34:20, 35:20, 41:12, 53:4 dated [1] - 111:11 Dated [1] - 200:13 dates [1] - 155:7 days [8] - 27:19, 78:10, 78:11, 151:23, 161:2, 195:6, 195:9, 195:12 daytime [1] - 147:16 dba [2] - 176:22, 177:4 de [1] - 78:11 deal [7] - 42:16, 74:13, 157:19, 169:12, 170:22, 175:22, 176:4 dealing [4] - 75:24, 170:13, 175:10, 182:19 deals [1] - 173:13 dealt [7] - 50:18, 119:24, 158:19, 161:13, 172:7, 175:17, 191:21 debating [1] - 16:3 December [2] - 30:3, 48:9 decibels [3] - 169:2, 169:3, 169:11 decided [1] - 25:4 deciding [1] - 131:12 decision [5] - 19:12, 19:21, 135:4, 135:6, 197:18 deem [1] - 19:19 deep [1] - 63:15 defer [4] - 121:5, 135:3, 136:12, 138:11 deferred [1] - 44:7 define [5] - 102:24, 152:14, 157:13, 157:15, 158:2 defined [3] - 95:12, 95:13, 176:23 defining [1] - 170:18 definite [1] - 179:16 definition [5] - 72:16, 95:3, 95:5, 96:17, 98:7 deflectors [6] - 137:8, 137:16, 137:17, 137:19, 149:12, 150:12 degree [3] - 92:19, 140:22, 188:3 delineation [3] - 102:22, 107:16, 107:19 delivered [1] - 36:9 delivery [3] - 35:8, 35:12, 60:15</p>	<p>demonstrate [1] - 189:16 denied [1] - 19:17 Dennis [3] - 4:16, 92:8, 186:24 DENNIS [1] - 187:16 Denver [1] - 157:16 Department [5] - 92:21, 141:1, 160:22, 161:9, 161:11 department [1] - 189:10 dependent [1] - 30:7 depth [4] - 59:12, 59:14, 59:15, 59:19 depths [1] - 63:1 describe [11] - 24:4, 24:5, 25:21, 31:11, 37:2, 54:19, 59:11, 71:6, 98:5, 99:11, 116:12 description [3] - 34:10, 90:16, 129:13 design [9] - 54:16, 56:2, 56:12, 59:18, 62:23, 63:3, 63:6, 72:4, 133:10 designated [4] - 17:19, 102:4, 102:6, 102:12 designed [1] - 17:7 designs [1] - 56:6 desperately [1] - 16:6 destroyed [1] - 109:22 detailed [1] - 84:10 details [2] - 54:21, 121:6 determination [1] - 129:9 determine [5] - 47:23, 107:13, 123:11, 143:24, 144:15 determined [2] - 31:14, 158:25 detract [1] - 150:21 develop [6] - 13:18, 26:4, 103:3, 104:15, 131:6, 149:24 developed [4] - 128:6, 128:21, 129:17, 174:22 developer [3] - 23:13, 23:17, 51:9 developers [1] - 86:8 developing [3] - 14:19, 25:1, 128:16 Development [2] - 1:5, 6:10 development [13] - 13:12, 15:11, 15:22, 15:24, 16:14, 25:23, 26:2, 37:6, 57:6, 67:9, 189:3, 189:17, 191:7 developments [2] - 26:24, 86:9 deviate [1] - 144:2 Devils [1] - 141:3 devoid [1] - 146:4 diagonally [1] - 159:21 diameter [1] - 147:21</p>	<p>Dickinson [1] - 140:24 dictated [2] - 35:6, 46:13 difference [1] - 72:8 different [16] - 14:8, 39:18, 42:23, 43:24, 45:23, 50:10, 63:21, 75:13, 108:3, 144:3, 144:5, 147:14, 188:22, 189:4, 198:6, 199:13 differentiate [1] - 98:1 differentiation [1] - 181:6 difficult [5] - 83:15, 97:25, 104:18, 104:20, 104:22 dig [2] - 71:18, 71:21 Dinosaurs [3] - 81:11, 81:21, 81:24 Direct [7] - 3:4, 3:16, 3:19, 3:22, 4:3, 4:10, 4:14 DIRECT [7] - 23:5, 52:12, 61:15, 69:8, 85:10, 92:4, 140:9 direct [3] - 29:9, 110:17, 110:23 direction [1] - 197:24 directly [2] - 7:12, 23:22 directors [2] - 37:18, 37:20 dir [1] - 61:25 discovery [1] - 77:9 discuss [4] - 39:17, 94:15, 114:12, 137:19 discussed [8] - 40:15, 96:4, 109:11, 114:14, 121:24, 125:24, 149:18, 150:6 discussing [1] - 44:2 discussion [8] - 2:19, 2:21, 74:19, 90:16, 96:2, 102:14, 139:1, 149:14 discussions [4] - 74:15, 114:6, 114:11, 128:15 display [1] - 82:10 disrupt [1] - 159:19 distance [23] - 59:17, 98:1, 137:24, 164:23, 164:24, 165:2, 165:5, 165:6, 165:24, 166:21, 167:23, 168:2, 176:11, 177:22, 178:11, 178:14, 179:6, 179:24, 180:1, 180:23, 183:19, 183:23, 183:24 distances [2] - 162:11, 164:1 distribution [2] - 148:6, 148:7 district [1] - 189:10 District [3] - 92:24, 93:2, 93:8 disturb [1] - 72:3 disturbance [1] - 71:4 disturbing [1] - 81:16 diurnal [1] - 147:15 Diurnal [1] - 147:16 divide [1] - 99:6</p>
D			
<p>daily [1] - 169:12 DAKOTA [1] - 1:2 Dakota [50] - 1:16, 2:14, 6:7, 6:25, 9:1, 9:11, 10:15, 13:10, 15:14, 16:4, 16:18, 19:24, 25:17, 27:4, 32:7, 38:15, 38:16, 52:17, 53:9, 60:11, 61:20, 70:3, 70:23, 72:16, 74:25, 75:9, 78:12, 81:24, 92:10, 101:5, 102:24, 123:14, 124:17, 125:16, 125:17, 126:2, 140:14, 140:22, 141:1, 144:4, 147:8, 174:23, 187:1, 189:15, 189:18, 199:11, 200:13 damage [5] - 31:18, 46:3,</p>			

<p>divided [1] - 89:3 DMVW [1] - 66:12 DO [2] - 200:5, 200:9 doable [1] - 60:9 docket [5] - 44:25, 45:1, 45:2, 57:8, 112:10 docketed [2] - 45:3, 57:8 Doctor [1] - 70:21 document [1] - 84:13 documentary [2] - 18:4, 18:17 documentation [2] - 44:19, 117:17 documented [3] - 132:12, 132:20, 135:20 dollars [3] - 16:8, 16:11, 16:12 dominance [1] - 103:2 dominant [1] - 148:14 done [71] - 13:22, 15:11, 21:10, 24:15, 24:24, 29:23, 32:11, 32:18, 38:9, 39:6, 40:25, 41:1, 50:15, 60:11, 69:25, 70:6, 71:13, 71:17, 74:25, 76:14, 76:21, 76:24, 77:15, 84:2, 87:3, 89:2, 89:4, 92:17, 105:10, 106:6, 107:20, 113:25, 115:9, 120:16, 121:8, 121:11, 122:1, 122:3, 122:6, 122:21, 126:11, 130:12, 136:7, 144:5, 147:7, 151:12, 152:13, 152:15, 154:16, 157:23, 158:18, 159:1, 159:13, 162:24, 164:4, 168:17, 168:21, 173:16, 174:25, 175:13, 178:7, 178:8, 180:3, 182:8, 192:5, 192:6, 193:8, 193:14, 193:24, 194:2, 194:14 dots [1] - 174:11 doubled [1] - 75:2 down [18] - 14:21, 42:5, 55:6, 94:22, 103:11, 125:10, 128:25, 144:25, 149:19, 160:3, 165:16, 167:3, 179:6, 183:19, 183:22, 186:9, 192:21, 194:21 downtown [1] - 27:2 Dr [8] - 21:9, 68:18, 69:10, 69:16, 70:10, 70:19, 76:2, 84:21 draft [2] - 40:18, 40:20 drafts [1] - 40:18 drainage [3] - 161:8, 161:17, 161:20 drained [1] - 100:9 draws [2] - 99:20, 115:14 dreams [1] - 189:6</p>	<p>drive [1] - 71:20 Drive [1] - 69:13 driven [1] - 72:6 driving [1] - 10:23 drove [3] - 109:12, 114:13, 159:3 drugstore [1] - 192:20 dual [1] - 114:23 due [1] - 121:24 duly [11] - 23:3, 52:10, 61:13, 69:6, 85:8, 92:2, 119:9, 140:7, 156:8, 187:17, 191:2 during [17] - 13:19, 19:9, 35:18, 77:10, 103:1, 104:17, 104:25, 123:5, 124:24, 132:4, 134:8, 139:20, 143:15, 145:17, 147:22, 154:17, 182:5 dust [1] - 161:12 duties [2] - 93:2, 93:6</p>	<p>education [1] - 92:16 effect [2] - 150:20, 183:14 effected [1] - 55:23 effective [4] - 56:9, 56:11, 71:19, 152:14 effectiveness [1] - 55:22 effects [5] - 9:10, 86:4, 129:9, 129:15, 150:15 efficiency [2] - 45:16, 46:5 efficient [3] - 9:14, 46:9, 71:19 effort [1] - 97:13 eight [4] - 10:24, 11:11, 18:5, 55:11 EIS [1] - 33:19 either [10] - 36:13, 55:12, 63:15, 65:24, 78:11, 97:5, 97:25, 98:5, 143:6, 144:23 Electric [1] - 183:9 electric [1] - 9:24 electrical [5] - 52:21, 53:5, 54:7, 54:13, 58:25 electricity [1] - 34:25 electronically [1] - 87:9 elements [1] - 132:9 elevation [1] - 72:8 elevations [1] - 63:15 eligibility [1] - 82:11 Eligibility [1] - 81:10 eligible [1] - 73:6 eliminate [2] - 55:17, 152:21 Emmons [1] - 145:15 emphasize [1] - 14:3 emphasized [1] - 13:14 employed [1] - 133:18 employees [2] - 37:17, 38:18 encounter [6] - 43:1, 144:17, 144:19, 144:23, 148:1, 152:4 encourage [5] - 8:15, 10:8, 11:22, 15:4, 18:24 end [11] - 37:13, 40:3, 41:6, 43:12, 68:12, 75:16, 75:17, 77:1, 99:14, 102:8, 112:15 Endangered [2] - 112:22, 155:19 endangered [12] - 123:6, 123:12, 125:25, 128:3, 130:18, 131:14, 132:11, 132:23, 135:25, 136:2, 142:5, 156:17 ended [2] - 24:11, 159:1 endorsed [1] - 149:18 energy [12] - 9:18, 13:5, 13:12, 13:13, 15:10, 15:24, 16:6, 16:14, 16:19, 24:22, 53:3, 61:23 Energy [2] - 53:6, 171:5 enforcement [1] - 155:17 engaged [5] - 70:22, 75:14,</p>	<p>93:25, 119:13, 141:22 engineer [10] - 21:21, 50:1, 52:23, 58:17, 58:25, 62:16, 86:1, 86:3, 91:3 engineer's [1] - 63:2 engineering [6] - 29:2, 39:4, 46:10, 54:8, 60:17, 158:16 Engineering [12] - 21:14, 21:21, 39:3, 84:25, 85:18, 90:3, 91:4, 91:15, 92:12, 92:14, 93:9, 102:22 Engineers [3] - 107:8, 107:12, 171:14 engineers [7] - 21:3, 38:22, 54:15, 63:6, 76:23, 79:6, 126:16 engines [1] - 8:25 enjoy [1] - 154:9 ensures [1] - 130:24 ensuring [2] - 9:17, 9:18 enter [1] - 42:15 enthusiastically [1] - 189:19 entire [8] - 15:24, 40:23, 108:16, 142:16, 147:17, 189:8, 189:15 entities [6] - 39:16, 40:2, 40:4, 41:4, 138:23, 184:4 entitles [1] - 49:11 entity [6] - 38:11, 38:13, 51:10, 51:16, 155:17, 171:4 environment [5] - 9:10, 13:25, 182:15, 188:1, 189:17 environmental [34] - 9:13, 9:16, 15:9, 21:13, 31:18, 31:23, 32:11, 32:17, 32:18, 32:24, 33:3, 38:22, 39:4, 46:3, 63:22, 71:5, 85:20, 85:25, 86:3, 86:4, 86:10, 90:4, 90:5, 92:13, 93:12, 119:15, 119:21, 126:16, 128:1, 159:17, 182:16, 182:24, 188:2, 188:13 envy [1] - 188:14 EPC [1] - 54:4 equipment [9] - 25:13, 25:20, 46:16, 172:10, 172:13, 172:15, 172:17, 173:3, 173:8 Erickson [3] - 109:9, 114:7, 114:20 especially [7] - 59:19, 79:24, 145:17, 162:4, 173:4, 182:19, 198:24 Especially [1] - 172:13 essentially [4] - 22:22, 105:5, 105:13, 115:10 established [3] - 26:25, 65:4, 179:16</p>
E			
	<p>EA [2] - 149:16, 182:13 Eagle [1] - 112:23 ear [1] - 187:7 early [1] - 30:3 earth [1] - 140:24 easement [19] - 98:12, 98:18, 108:12, 108:15, 108:20, 108:22, 108:25, 109:3, 109:18, 110:4, 110:6, 114:3, 114:5, 114:9, 114:22, 120:5, 156:24, 183:24 easements [29] - 21:16, 21:17, 88:23, 107:1, 107:6, 107:23, 107:25, 108:1, 108:10, 109:14, 109:19, 110:10, 110:13, 110:16, 110:19, 113:20, 113:21, 114:2, 115:1, 115:5, 115:12, 120:6, 120:8, 156:15, 181:13, 181:15, 184:7, 185:6 easily [3] - 104:14, 105:2, 105:9 east [2] - 26:6, 66:8 East [4] - 2:14, 70:1, 92:9, 122:7 easy [2] - 59:10, 196:6 economic [5] - 26:2, 101:11, 189:3, 189:17, 191:7 economically [1] - 63:4 Economics [1] - 45:23 economics [1] - 42:11 edge [1] - 167:24 edges [1] - 146:5</p>	<p>education [1] - 92:16 effect [2] - 150:20, 183:14 effected [1] - 55:23 effective [4] - 56:9, 56:11, 71:19, 152:14 effectiveness [1] - 55:22 effects [5] - 9:10, 86:4, 129:9, 129:15, 150:15 efficiency [2] - 45:16, 46:5 efficient [3] - 9:14, 46:9, 71:19 effort [1] - 97:13 eight [4] - 10:24, 11:11, 18:5, 55:11 EIS [1] - 33:19 either [10] - 36:13, 55:12, 63:15, 65:24, 78:11, 97:5, 97:25, 98:5, 143:6, 144:23 Electric [1] - 183:9 electric [1] - 9:24 electrical [5] - 52:21, 53:5, 54:7, 54:13, 58:25 electricity [1] - 34:25 electronically [1] - 87:9 elements [1] - 132:9 elevation [1] - 72:8 elevations [1] - 63:15 eligibility [1] - 82:11 Eligibility [1] - 81:10 eligible [1] - 73:6 eliminate [2] - 55:17, 152:21 Emmons [1] - 145:15 emphasize [1] - 14:3 emphasized [1] - 13:14 employed [1] - 133:18 employees [2] - 37:17, 38:18 encounter [6] - 43:1, 144:17, 144:19, 144:23, 148:1, 152:4 encourage [5] - 8:15, 10:8, 11:22, 15:4, 18:24 end [11] - 37:13, 40:3, 41:6, 43:12, 68:12, 75:16, 75:17, 77:1, 99:14, 102:8, 112:15 Endangered [2] - 112:22, 155:19 endangered [12] - 123:6, 123:12, 125:25, 128:3, 130:18, 131:14, 132:11, 132:23, 135:25, 136:2, 142:5, 156:17 ended [2] - 24:11, 159:1 endorsed [1] - 149:18 energy [12] - 9:18, 13:5, 13:12, 13:13, 15:10, 15:24, 16:6, 16:14, 16:19, 24:22, 53:3, 61:23 Energy [2] - 53:6, 171:5 enforcement [1] - 155:17 engaged [5] - 70:22, 75:14,</p>	<p>93:25, 119:13, 141:22 engineer [10] - 21:21, 50:1, 52:23, 58:17, 58:25, 62:16, 86:1, 86:3, 91:3 engineer's [1] - 63:2 engineering [6] - 29:2, 39:4, 46:10, 54:8, 60:17, 158:16 Engineering [12] - 21:14, 21:21, 39:3, 84:25, 85:18, 90:3, 91:4, 91:15, 92:12, 92:14, 93:9, 102:22 Engineers [3] - 107:8, 107:12, 171:14 engineers [7] - 21:3, 38:22, 54:15, 63:6, 76:23, 79:6, 126:16 engines [1] - 8:25 enjoy [1] - 154:9 ensures [1] - 130:24 ensuring [2] - 9:17, 9:18 enter [1] - 42:15 enthusiastically [1] - 189:19 entire [8] - 15:24, 40:23, 108:16, 142:16, 147:17, 189:8, 189:15 entities [6] - 39:16, 40:2, 40:4, 41:4, 138:23, 184:4 entitles [1] - 49:11 entity [6] - 38:11, 38:13, 51:10, 51:16, 155:17, 171:4 environment [5] - 9:10, 13:25, 182:15, 188:1, 189:17 environmental [34] - 9:13, 9:16, 15:9, 21:13, 31:18, 31:23, 32:11, 32:17, 32:18, 32:24, 33:3, 38:22, 39:4, 46:3, 63:22, 71:5, 85:20, 85:25, 86:3, 86:4, 86:10, 90:4, 90:5, 92:13, 93:12, 119:15, 119:21, 126:16, 128:1, 159:17, 182:16, 182:24, 188:2, 188:13 envy [1] - 188:14 EPC [1] - 54:4 equipment [9] - 25:13, 25:20, 46:16, 172:10, 172:13, 172:15, 172:17, 173:3, 173:8 Erickson [3] - 109:9, 114:7, 114:20 especially [7] - 59:19, 79:24, 145:17, 162:4, 173:4, 182:19, 198:24 Especially [1] - 172:13 essentially [4] - 22:22, 105:5, 105:13, 115:10 established [3] - 26:25, 65:4, 179:16</p>

<p>estimate [1] - 99:5 estimated [1] - 96:21 et [2] - 175:2, 175:25 Europe [1] - 70:2 evaluate [2] - 74:15, 94:6 evaluation [1] - 101:16 evaluations [1] - 70:7 event [4] - 32:21, 162:18, 175:19, 176:5 everywhere [1] - 71:3 evidence [6] - 18:5, 18:16, 18:17, 19:14, 186:1, 186:2 evolved [1] - 152:9 exact [1] - 126:23 exactly [3] - 88:10, 105:22, 125:13 examination [28] - 3:4, 3:5, 3:5, 3:7, 3:8, 3:9, 3:9, 3:10, 3:10, 3:11, 3:12, 3:13, 3:16, 3:19, 3:20, 3:22, 3:22, 4:3, 4:4, 4:5, 4:5, 4:6, 4:7, 4:10, 4:10, 4:11, 4:11, 4:14 EXAMINATION [41] - 23:5, 29:17, 33:9, 34:3, 39:13, 45:12, 47:1, 48:23, 51:3, 52:12, 57:3, 60:3, 61:15, 65:21, 67:6, 69:8, 76:9, 79:2, 83:6, 85:10, 92:4, 111:5, 113:9, 116:1, 117:14, 119:11, 127:17, 130:8, 134:17, 137:1, 137:20, 138:19, 140:9, 154:14, 155:14, 156:10, 160:9, 166:6, 176:20, 183:20, 184:17 Examination [13] - 3:6, 3:6, 3:7, 3:16, 3:17, 3:19, 3:23, 3:23, 4:4, 4:8, 4:12, 4:14, 4:15 examined [11] - 23:3, 52:10, 61:13, 69:6, 85:8, 92:2, 119:9, 140:7, 156:9, 187:17, 191:2 example [4] - 98:10, 143:5, 166:22, 184:25 exceed [5] - 59:15, 164:6, 165:5, 165:19, 175:15 exceeded [1] - 162:14 excellent [4] - 11:6, 115:9, 152:5, 199:10 except [1] - 178:14 exception [2] - 54:5, 54:8 exceptional [1] - 25:10 excited [1] - 13:20 excitement [1] - 75:4 exciting [2] - 13:11, 16:15 exclusion [4] - 88:4, 90:19, 94:15, 181:10 exclusively [1] - 98:23</p>	<p>Excuse [2] - 167:21, 177:3 excuse [2] - 29:5, 91:6 executed [1] - 30:5 Exhibit [32] - 53:22, 53:23, 53:25, 62:7, 62:8, 62:11, 70:15, 70:17, 70:18, 86:18, 86:19, 86:21, 88:9, 88:16, 93:19, 93:20, 93:22, 94:24, 103:9, 111:2, 111:3, 111:8, 111:20, 112:3, 112:6, 129:1, 129:4, 141:17, 141:18, 141:19, 174:10, 174:12 exhibit [21] - 47:14, 47:17, 48:15, 53:15, 58:4, 58:5, 58:16, 62:5, 70:14, 83:2, 86:16, 87:18, 93:17, 118:8, 118:13, 141:15, 168:9, 169:23, 173:7, 179:18, 195:22 exhibits [5] - 88:2, 176:11, 195:16, 195:18, 197:17 EXHIBITS [1] - 5:2 Exhibits [1] - 88:13 exist [2] - 51:16, 189:20 existing [8] - 56:16, 63:8, 63:11, 97:14, 97:16, 97:20, 159:24, 174:2 exists [1] - 60:6 expanded [1] - 192:2 expansive [1] - 144:18 expect [3] - 126:4, 148:8, 195:11 expecting [1] - 54:21 expense [1] - 40:9 experience [10] - 12:16, 37:6, 39:6, 60:5, 62:13, 69:22, 69:24, 92:16, 108:13, 174:24 expert [8] - 53:16, 58:2, 70:14, 88:3, 113:5, 131:22, 134:13, 136:11 expertise [3] - 21:25, 87:2, 89:23 experts [3] - 32:20, 68:15, 113:3 Explain [1] - 42:1 explanatory [1] - 88:2 expose [1] - 155:17 expressed [2] - 28:11, 113:19 expressing [2] - 110:9 extent [2] - 15:23, 131:1 exterior [6] - 176:24, 177:5, 177:8, 177:10, 177:15, 177:20 extra [4] - 17:24, 72:8, 88:5, 175:25 extremely [1] - 21:10</p>	<p style="text-align: center;">F</p> <p>face [1] - 101:4 facilitate [1] - 189:21 facilities [10] - 9:1, 9:9, 9:12, 12:18, 16:11, 16:13, 52:25, 136:3, 151:17, 166:10 facility [7] - 9:15, 27:4, 121:13, 125:6, 131:25, 135:20, 199:1 fact [13] - 19:15, 31:1, 74:23, 84:2, 118:15, 146:8, 149:1, 157:12, 182:8, 182:10, 194:25, 195:3, 197:19 facto [1] - 78:11 factor [3] - 46:8, 46:9, 170:12 factors [6] - 24:25, 46:6, 122:17, 133:5, 152:8, 158:11 fair [1] - 110:21 fairly [3] - 184:9, 192:1, 196:6 Fairview [1] - 23:10 fall [21] - 34:19, 35:3, 35:10, 35:24, 36:3, 36:10, 36:13, 79:23, 124:25, 132:3, 134:21, 142:8, 145:18, 154:10, 154:19, 165:16, 167:13, 175:1, 179:6, 183:19, 183:22 fall-down [3] - 165:16, 183:19, 183:22 falling [1] - 167:4 familiar [5] - 12:22, 59:3, 66:5, 138:24, 155:16 family [1] - 192:22 far [19] - 30:11, 39:22, 49:8, 53:7, 64:5, 73:25, 94:22, 97:17, 115:4, 124:11, 138:3, 156:17, 157:23, 160:3, 165:21, 169:16, 175:17, 189:2, 191:22 Fargo [3] - 52:17, 61:20, 92:9 farm [41] - 6:9, 8:24, 10:18, 10:21, 11:1, 13:2, 23:17, 25:2, 25:5, 26:7, 26:15, 28:25, 29:6, 37:6, 39:7, 51:10, 54:17, 57:6, 70:8, 76:18, 80:7, 119:22, 130:14, 133:6, 134:6, 134:9, 135:14, 137:25, 142:12, 142:16, 150:4, 150:15, 151:12, 159:23, 162:15, 162:17, 162:20, 175:4, 175:11, 180:8 Farm [18] - 1:5, 1:5, 6:10, 6:24, 20:23, 23:12, 23:17, 40:11, 51:6, 51:10, 51:13, 128:8, 128:21, 129:17,</p>	<p>142:2, 145:8, 147:14, 164:5 farmer [1] - 192:3 farmers [6] - 26:18, 175:6, 175:12, 175:18, 176:2, 192:4 Farmers [1] - 174:24 farming [1] - 159:19 farmland [28] - 94:21, 95:4, 95:7, 95:12, 95:14, 95:16, 95:22, 95:25, 96:4, 96:5, 96:6, 96:11, 96:13, 96:17, 96:24, 97:16, 98:4, 98:8, 98:11, 98:14, 98:17, 98:23, 99:2, 99:3, 100:9, 100:11 farmlands [7] - 21:16, 94:14, 99:13, 100:7, 100:8, 152:7 farms [16] - 25:17, 39:19, 52:21, 70:8, 75:14, 75:16, 84:14, 86:6, 149:23, 151:18, 151:23, 153:2, 158:21, 172:11, 174:22, 188:3 fashion [1] - 9:19 fatalities [5] - 121:24, 122:14, 148:18, 148:23, 148:25 fault [1] - 50:17 favorable [1] - 188:16 faxed [2] - 44:10, 111:14 feasible [2] - 60:17, 63:5 features [4] - 94:7, 99:22, 100:3, 110:4 federal [8] - 32:16, 32:23, 112:20, 182:17, 182:18, 182:20, 183:4, 183:6 Federal [2] - 134:22, 136:20 federally [2] - 129:10, 142:5 feed [4] - 143:7, 144:25, 146:5, 146:16 feedback [1] - 26:5 feeder [9] - 54:25, 55:8, 55:9, 55:12, 55:13, 55:18, 160:24, 161:4 feeders [2] - 55:12, 55:16 feeding [1] - 16:19 feet [34] - 55:5, 59:15, 162:6, 162:7, 162:18, 162:22, 163:15, 163:16, 165:9, 165:14, 166:14, 166:15, 166:17, 166:18, 166:23, 167:1, 167:7, 167:8, 167:11, 167:14, 168:13, 168:19, 169:3, 175:16, 179:9, 179:10, 179:19, 180:19, 183:23, 188:21 fell [2] - 167:3, 167:12 fellow [1] - 193:23 felony [1] - 22:20 felt [1] - 189:8</p>
---	---	---	---

<p>FEMA ^[1] - 57:10</p> <p>Fettig ^[1] - 165:8</p> <p>few ^[18] - 7:18, 16:8, 16:14, 29:13, 39:12, 68:10, 73:7, 76:17, 76:22, 83:10, 102:19, 104:6, 120:9, 154:19, 162:9, 195:9, 195:12, 197:10</p> <p>field ^[15] - 30:9, 62:17, 62:21, 72:5, 73:1, 101:19, 106:7, 107:16, 107:19, 114:20, 115:16, 120:3, 121:8, 157:2, 159:21</p> <p>fields ^[3] - 175:4, 175:11, 175:20</p> <p>fieldwork ^[3] - 94:5, 105:11, 126:23</p> <p>Fifth ^[1] - 52:16</p> <p>figure ^[2] - 77:14, 98:1</p> <p>figuring ^[1] - 188:21</p> <p>file ^[15] - 47:12, 78:19, 84:1, 126:3, 134:20, 157:8, 157:11, 160:25, 168:9, 180:12, 181:24, 195:9, 196:10, 196:13, 196:18</p> <p>filed ^[25] - 8:21, 47:13, 47:17, 48:15, 78:4, 78:20, 79:5, 118:8, 118:12, 118:13, 123:20, 125:4, 127:21, 163:24, 164:2, 168:9, 169:23, 173:7, 174:3, 176:11, 185:11, 195:16, 195:18, 195:22, 197:17</p> <p>filing ^[6] - 44:11, 123:21, 123:25, 136:19, 136:23, 174:5</p> <p>fill ^[1] - 43:6</p> <p>filling ^[2] - 43:8, 43:12</p> <p>filtering ^[1] - 7:12</p> <p>final ^[30] - 19:16, 19:20, 35:20, 40:18, 43:14, 47:23, 48:5, 63:19, 63:22, 76:13, 77:16, 77:18, 77:24, 78:2, 78:13, 79:4, 80:9, 81:2, 107:11, 114:18, 134:13, 152:11, 159:15, 160:19, 161:3, 177:2, 196:8, 196:12, 196:22, 198:2</p> <p>finalized ^[2] - 41:17, 76:16</p> <p>finalizing ^[1] - 39:24</p> <p>finally ^[3] - 21:23, 133:1, 196:8</p> <p>financial ^[4] - 40:3, 49:13, 60:13, 189:7</p> <p>financing ^[1] - 40:4</p> <p>finders ^[1] - 143:24</p> <p>findings ^[7] - 19:15, 73:14, 76:4, 194:25, 195:2, 195:3, 197:18</p> <p>fine ^[13] - 22:21, 58:19,</p>	<p>65:17, 65:18, 83:3, 91:8, 113:6, 180:6, 180:13, 181:12, 181:19, 182:10, 182:11</p> <p>fined ^[1] - 181:18</p> <p>finish ^[4] - 67:23, 89:15, 134:15, 158:6</p> <p>finished ^[2] - 76:1, 152:16</p> <p>fire ^[1] - 189:10</p> <p>firm ^[4] - 87:15, 141:22, 158:16, 171:3</p> <p>firms ^[3] - 29:2, 46:10, 144:5</p> <p>First ^[10] - 9:8, 34:15, 65:12, 65:13, 94:13, 94:18, 116:12, 120:11, 130:10, 152:17</p> <p>first ^[30] - 22:11, 22:12, 23:3, 26:1, 29:21, 34:5, 35:8, 52:10, 61:13, 69:6, 85:8, 92:2, 95:3, 96:16, 99:21, 100:16, 103:15, 120:12, 131:3, 133:22, 140:7, 141:2, 145:25, 154:21, 154:22, 156:8, 187:17, 187:21, 191:2</p> <p>fish ^[4] - 44:17, 113:23, 127:3, 129:10</p> <p>Fish ^[38] - 43:16, 43:23, 44:14, 44:20, 88:23, 94:9, 99:18, 104:5, 107:6, 108:13, 109:5, 109:9, 109:24, 110:8, 112:16, 112:21, 113:12, 113:18, 114:1, 114:23, 116:4, 117:13, 117:18, 120:6, 121:18, 124:15, 126:2, 129:18, 130:16, 133:22, 135:16, 138:21, 141:1, 156:13, 157:10, 161:14, 161:21, 196:17</p> <p>fisheries ^[1] - 92:22</p> <p>fit ^[1] - 182:13</p> <p>Five ^[2] - 70:7, 92:25</p> <p>five ^[11] - 25:8, 59:18, 141:4, 142:2, 142:17, 154:25, 157:14, 157:20, 158:13, 163:25, 195:21</p> <p>five-late ^[1] - 195:21</p> <p>fixed ^[1] - 147:16</p> <p>fixed-point ^[1] - 147:16</p> <p>flatter ^[1] - 103:21</p> <p>flies ^[2] - 141:7, 147:22</p> <p>flight ^[1] - 143:23</p> <p>flip ^[3] - 107:24, 164:19</p> <p>flood ^[2] - 57:10, 102:12</p> <p>flooded ^[4] - 104:12, 104:13, 104:17, 116:22</p> <p>floodplain ^[2] - 102:4, 102:6</p> <p>floor ^[1] - 19:6</p> <p>flow ^[1] - 63:16</p>	<p>fly ^[4] - 144:22, 145:23, 152:23, 154:8</p> <p>flying ^[10] - 142:22, 143:7, 144:10, 144:15, 144:17, 147:25, 151:21, 152:3, 152:20, 153:9</p> <p>fog ^[1] - 153:6</p> <p>folks ^[11] - 22:8, 38:3, 49:12, 75:19, 83:9, 97:4, 97:9, 97:24, 198:25, 199:4</p> <p>follow ^[6] - 18:1, 153:22, 160:3, 163:14, 163:19, 165:23</p> <p>follow-up ^[2] - 153:22, 160:3</p> <p>followed ^[2] - 107:17, 162:14</p> <p>following ^[4] - 6:1, 9:7, 161:24, 164:16</p> <p>Following ^[3] - 18:8, 18:10, 18:11</p> <p>follows ^[11] - 23:4, 52:11, 61:14, 69:7, 85:9, 92:3, 119:10, 140:8, 156:9, 187:18, 191:3</p> <p>food ^[2] - 16:19, 146:6</p> <p>foot ^[3] - 27:4, 59:19, 164:8</p> <p>footprint ^[14] - 30:12, 30:18, 31:14, 43:5, 161:20, 162:12, 164:7, 165:21, 168:22, 173:18, 181:5, 181:9, 184:1, 184:4</p> <p>FOR ^[2] - 2:10, 2:15</p> <p>forage ^[1] - 142:6</p> <p>foraging ^[3] - 142:15, 145:23, 146:23</p> <p>foregoing ^[2] - 200:6, 200:10</p> <p>foresee ^[2] - 64:14, 67:8</p> <p>forests ^[1] - 115:15</p> <p>forever ^[1] - 39:1</p> <p>forgone ^[1] - 136:16</p> <p>form ^[4] - 13:4, 40:22, 150:24, 159:5</p> <p>formal ^[7] - 14:13, 14:17, 14:21, 117:17, 117:23, 117:24, 198:4</p> <p>formed ^[1] - 51:14</p> <p>former ^[1] - 192:14</p> <p>forth ^[2] - 71:25, 113:19</p> <p>forthcoming ^[1] - 172:8</p> <p>fortunately ^[2] - 192:11, 192:21</p> <p>forward ^[6] - 15:16, 17:10, 38:24, 49:15, 75:23, 199:5</p> <p>forward-thinking ^[1] - 75:23</p> <p>fought ^[1] - 16:2</p> <p>foundation ^[2] - 54:7, 166:16</p> <p>foundations ^[1] - 173:2</p> <p>four ^[5] - 27:19, 70:8, 72:19, 144:4, 163:25</p> <p>frame ^[1] - 161:2</p> <p>frames ^[1] - 196:7</p>	<p>frankly ^[1] - 84:12</p> <p>frequency ^[1] - 152:19</p> <p>frequent ^[1] - 146:25</p> <p>fringe ^[2] - 132:17</p> <p>front ^[2] - 60:13, 87:14</p> <p>fulfill ^[1] - 41:15</p> <p>fulfilled ^[1] - 9:19</p> <p>fulfills ^[1] - 157:20</p> <p>full ^[7] - 23:8, 35:12, 52:15, 69:10, 85:12, 140:11, 151:20</p> <p>fun ^[1] - 17:9</p> <p>funding ^[1] - 122:4</p> <p>funds ^[1] - 149:22</p> <p>FURTHER ^[9] - 47:1, 51:3, 134:17, 137:20, 166:6, 176:20, 183:20, 184:17, 200:9</p> <p>future ^[2] - 32:6, 40:11</p>
G			
			<p>gain ^[3] - 74:24, 99:12, 99:13</p> <p>Game ^[2] - 126:2, 141:1</p> <p>game ^[1] - 141:2</p> <p>garnered ^[1] - 147:9</p> <p>Gary ^[1] - 155:5</p> <p>gas ^[1] - 16:9</p> <p>gather ^[3] - 16:4, 87:5, 87:8</p> <p>gathered ^[3] - 65:25, 131:19, 156:22</p> <p>geese ^[2] - 142:21</p> <p>general ^[2] - 20:24, 149:14</p> <p>General ^[1] - 63:7</p> <p>generally ^[7] - 59:18, 79:24, 95:11, 154:18, 167:2, 169:15</p> <p>Generally ^[1] - 79:17</p> <p>generated ^[3] - 31:9, 158:17, 159:5</p> <p>generating ^[1] - 34:25</p> <p>generation ^[5] - 16:10, 16:12, 43:8, 151:17, 166:10</p> <p>gentleman ^[1] - 186:15</p> <p>George ^[2] - 120:17, 121:12</p> <p>get-go ^[1] - 75:16</p> <p>gift ^[1] - 15:20</p> <p>gigawatts ^[1] - 53:2</p> <p>GIS ^[5] - 87:4, 87:6, 97:4, 97:9, 97:24</p> <p>gist ^[1] - 170:19</p> <p>given ^[5] - 103:23, 111:7, 124:11, 130:16, 178:22</p> <p>glass ^[1] - 142:14</p> <p>globe ^[1] - 189:15</p> <p>Golden ^[1] - 112:23</p> <p>Government ^[2] - 134:22, 136:20</p>

<p>GPS ^[1] - 84:4 grabbing ^[1] - 193:17 grade ^[1] - 63:15 grain ^[1] - 124:7 grainfields ^[1] - 146:5 Grandview ^[1] - 140:14 granted ^[2] - 19:17, 66:3 granting ^[1] - 18:3 grass ^[1] - 77:12 grasses ^[1] - 176:7 Grassland ^[1] - 109:14 grassland ^[17] - 21:17, 99:19, 108:1, 109:18, 109:19, 109:21, 110:4, 110:6, 110:10, 110:13, 110:16, 110:19, 113:20, 114:2, 115:5, 126:10, 156:24 grasslands ^[2] - 115:11, 156:15 gravel ^[2] - 101:18, 101:20 Great ^[1] - 171:5 great ^[8] - 10:15, 12:13, 17:5, 31:17, 188:3, 188:10, 188:12, 189:12 greater ^[3] - 15:23, 84:11, 139:4 green ^[5] - 116:15, 116:19, 116:20, 116:21, 188:14 grew ^[1] - 26:10 grid ^[4] - 30:16, 42:16, 42:21, 55:3 Gross ^[7] - 4:18, 4:19, 25:19, 37:25, 190:18, 192:25, 194:16 GROSS ^[7] - 190:18, 190:22, 191:1, 191:5, 191:6, 194:3, 194:13 ground ^[1] - 142:13 groundwater ^[3] - 101:22, 101:25, 102:2 group ^[7] - 26:3, 61:23, 71:24, 124:16, 145:25, 157:17, 191:7 groups ^[3] - 39:5, 170:21, 189:3 Grove ^[2] - 85:15, 85:20 growing ^[2] - 103:1, 104:18 grown ^[2] - 24:8, 37:4 guess ^[24] - 38:4, 80:2, 80:4, 88:10, 88:11, 95:3, 96:3, 96:9, 100:14, 101:15, 101:25, 108:11, 109:17, 114:15, 169:4, 171:22, 180:3, 186:9, 191:6, 191:11, 191:15, 191:22, 192:23, 197:4 guest ^[1] - 159:18 guidance ^[2] - 80:2, 135:16 guide ^[1] - 149:1</p>	<p>guideline ^[1] - 134:7 guidelines ^[1] - 113:19 guttled ^[1] - 192:15 guy ^[1] - 16:23 guys ^[1] - 159:18</p> <p style="text-align: center;">H</p> <p>habitat ^[28] - 115:14, 120:2, 120:7, 120:23, 126:5, 126:10, 126:19, 127:3, 128:4, 128:5, 128:16, 128:20, 129:7, 129:15, 130:10, 130:12, 130:13, 131:3, 132:7, 132:9, 134:21, 142:14, 146:2, 146:6, 147:10, 147:24, 149:17, 150:2 habitats ^[2] - 129:11, 142:6 habits ^[1] - 131:20 half ^[5] - 16:12, 89:11, 99:7, 121:3 halfway ^[1] - 88:11 hand ^[3] - 8:12, 165:24, 189:22 handles ^[1] - 14:14 hands ^[4] - 8:1, 8:9, 49:20, 186:14 hanging ^[1] - 149:12 happy ^[2] - 76:19, 163:5 hard ^[4] - 73:1, 75:18, 189:1, 189:3 HCP ^[26] - 131:2, 131:7, 131:12, 133:2, 133:17, 134:11, 134:21, 138:23, 146:8, 146:15, 146:16, 146:22, 152:12, 152:14, 155:18, 157:8, 157:11, 157:15, 157:19, 158:2, 158:5, 181:17, 181:23, 182:15, 182:23, 182:25 head ^[1] - 79:15 heading ^[1] - 182:18 Health ^[2] - 161:9, 161:11 health ^[1] - 188:3 hear ^[20] - 6:10, 6:16, 16:25, 17:24, 19:5, 22:2, 32:19, 52:1, 52:3, 61:6, 68:24, 85:1, 87:2, 91:18, 139:25, 143:17, 187:5, 187:8, 187:9, 190:20 heard ^[6] - 35:23, 106:11, 124:14, 152:5, 178:3, 188:6 HEARING ^[2] - 1:11, 1:22 hearing ^[34] - 6:5, 6:8, 6:22, 7:1, 7:8, 7:21, 8:17, 9:5, 9:7, 9:21, 10:3, 11:9, 12:2, 12:4, 15:16, 16:23, 17:20,</p>	<p>17:22, 17:25, 18:1, 20:1, 20:21, 22:23, 23:20, 67:24, 67:25, 68:21, 82:20, 171:14, 195:14, 197:12, 199:23 Hearings ^[1] - 17:21 hearings ^[6] - 10:5, 13:16, 13:17, 14:12, 14:21, 22:19 heart ^[2] - 13:1, 17:1 Heartland ^[1] - 33:16 heating ^[2] - 55:17, 169:9 heavy ^[3] - 77:21, 144:7, 153:5 hedge ^[1] - 82:3 height ^[12] - 45:21, 143:23, 144:9, 144:10, 144:15, 144:18, 146:19, 166:8, 166:12, 166:13, 178:23, 195:25 heights ^[1] - 144:12 help ^[8] - 58:24, 129:23, 133:6, 152:10, 170:6, 173:22, 189:21, 193:18 helped ^[1] - 191:24 helpful ^[6] - 88:2, 136:21, 154:6, 162:2, 173:10, 197:13 helps ^[1] - 63:12 HEREBY ^[2] - 200:5, 200:9 herein ^[1] - 6:2 hereinbefore ^[1] - 200:7 high ^[6] - 11:4, 77:12, 115:13, 147:24, 152:1, 154:9 High ^[1] - 69:12 high-value ^[1] - 115:13 higher ^[2] - 110:2, 167:8 highest ^[1] - 110:3 highlight ^[1] - 83:23 highly ^[2] - 145:15, 148:14 Highly ^[1] - 146:11 Highway ^[2] - 66:8, 160:22 highway ^[2] - 66:8, 160:25 hills ^[1] - 81:24 himself ^[1] - 38:5 hired ^[2] - 39:2, 119:14 historic ^[6] - 72:17, 72:22, 72:23, 73:5, 74:21, 81:13 Historic ^[2] - 73:7, 196:22 Historical ^[3] - 70:23, 71:10, 171:17 historical ^[6] - 21:9, 69:18, 69:25, 70:3, 74:7, 196:12 hit ^[7] - 77:6, 79:8, 83:17, 130:19, 151:22, 165:4 hitting ^[1] - 150:21 hmm ^[1] - 151:5 HOBERG ^[207] - 1:21, 6:4, 6:17, 7:2, 7:13, 12:8, 15:17, 17:13, 17:17, 20:7,</p>	<p>20:10, 20:15, 22:4, 22:10, 22:14, 22:25, 23:20, 29:10, 33:7, 33:22, 39:10, 45:8, 46:22, 48:14, 48:18, 50:24, 51:2, 51:19, 51:23, 52:3, 52:7, 53:17, 53:23, 56:23, 57:1, 57:23, 58:12, 59:21, 59:24, 60:21, 60:25, 61:3, 61:6, 61:10, 62:6, 62:9, 64:19, 64:22, 65:12, 65:19, 66:14, 66:16, 66:25, 67:4, 67:15, 68:5, 68:13, 68:16, 68:20, 68:24, 69:3, 70:15, 70:18, 76:5, 76:8, 78:3, 78:19, 78:22, 78:25, 81:2, 81:6, 82:16, 84:6, 84:17, 84:20, 84:23, 85:1, 85:5, 86:17, 86:20, 87:19, 87:24, 88:8, 88:15, 89:17, 89:20, 90:7, 91:9, 91:12, 91:16, 91:18, 91:22, 93:18, 93:21, 94:22, 94:24, 100:13, 100:18, 100:21, 100:24, 103:10, 108:3, 108:6, 110:24, 111:3, 111:21, 111:24, 112:3, 112:6, 113:14, 115:20, 115:23, 116:6, 117:4, 117:9, 118:7, 118:11, 118:18, 118:21, 118:23, 119:1, 119:5, 127:11, 127:14, 129:1, 129:22, 134:15, 135:1, 135:7, 135:10, 136:13, 138:8, 138:12, 138:16, 139:9, 139:12, 139:15, 139:22, 139:25, 140:4, 141:16, 141:19, 153:11, 153:16, 153:19, 155:11, 155:23, 156:1, 156:5, 158:7, 160:4, 160:7, 163:22, 164:10, 164:12, 164:21, 166:2, 167:23, 168:2, 168:4, 174:10, 174:18, 176:9, 176:16, 180:14, 180:25, 181:2, 183:16, 184:15, 184:20, 184:23, 185:22, 186:4, 186:19, 187:2, 187:5, 187:9, 187:13, 189:25, 190:3, 190:6, 190:9, 190:15, 190:17, 190:20, 190:24, 192:25, 193:3, 193:5, 194:5, 194:9, 194:16, 194:23, 195:3, 195:11, 195:17, 195:23, 196:1, 196:9, 196:14, 196:19, 196:25, 197:3, 198:14, 198:21, 199:6, 199:18 Hoberg ^[2] - 6:15, 17:19 hold ^[5] - 10:4, 61:1, 89:6,</p>
---	---	--	---

<p>193:17, 197:17 holding [2] - 60:16, 103:22 hole [3] - 71:18, 71:21, 161:2 holistically [1] - 148:2 home [8] - 169:14, 169:17, 169:18, 176:25, 177:5, 177:6, 177:8, 177:18 homes [6] - 24:21, 24:25, 176:23, 177:11, 177:17, 188:11 honoring [1] - 126:23 Honor [1] - 12:12 hope [2] - 28:13, 197:12 hopefully [2] - 35:5, 192:22 horned [2] - 148:13 hospitality [3] - 194:12, 198:24, 199:9 hot [1] - 75:8 hour [1] - 121:3 hours [1] - 77:14 houses [2] - 27:5, 163:5 Houston [12] - 21:13, 21:21, 84:25, 85:17, 90:3, 91:4, 91:14, 92:12, 92:14, 93:9, 102:22 hub [1] - 45:21 huge [1] - 36:23 human [2] - 9:16, 15:9 hundreds [1] - 16:7 hypothetical [1] - 150:5</p>	<p>13:25, 14:1, 15:7, 30:7, 31:23, 32:17, 44:17, 74:19, 96:21, 98:4, 98:5, 98:25, 99:13, 101:6, 101:22, 105:25, 106:15, 106:23, 107:5, 108:18, 110:16, 122:18, 126:7, 132:24, 133:2, 133:13, 152:10, 159:17, 160:1, 161:16, 173:14, 182:22 impacted [4] - 97:5, 97:20, 99:1, 149:10 impacting [3] - 113:20, 159:4, 164:6 impacts [24] - 15:8, 15:12, 86:10, 90:6, 94:6, 97:9, 97:17, 100:7, 101:16, 101:24, 102:2, 106:3, 106:6, 107:15, 107:19, 108:25, 110:17, 119:21, 128:2, 128:4, 128:5, 128:8, 128:11, 133:9 implement [2] - 112:21, 180:11 implementation [2] - 93:3, 131:10 implemented [2] - 93:4, 134:11 importance [3] - 13:16, 96:5, 100:9 important [10] - 10:4, 11:25, 15:13, 15:22, 15:24, 16:16, 16:21, 17:2, 147:25, 187:24 imposed [1] - 139:5 imprisonment [1] - 22:21 improve [1] - 161:19 improvements [1] - 171:23 inadvertent [1] - 77:9 inception [1] - 23:19 inches [3] - 59:14, 59:15, 59:17 incidences [1] - 143:16 incidental [9] - 130:15, 130:20, 131:4, 131:8, 133:17, 135:19, 135:22, 142:19 Incidentally [2] - 144:2, 152:25 incidentally [2] - 130:17, 148:11 include [3] - 77:7, 119:18, 129:7 included [5] - 45:4, 56:3, 58:9, 112:10, 197:25 includes [2] - 97:11, 107:9 including [5] - 21:15, 70:9, 129:12, 144:11, 173:7 incorporate [2] - 24:15, 26:20</p>	<p>incorporated [2] - 38:12, 114:4 increase [1] - 100:6 incremental [1] - 42:9 independent [3] - 29:2, 46:10, 158:15 indicate [4] - 12:3, 44:15, 50:13, 185:12 indicated [6] - 29:22, 101:8, 101:12, 117:22, 148:22, 200:8 indicates [1] - 138:22 indicating [1] - 174:8 indication [1] - 20:25 indications [1] - 79:22 indicator [1] - 76:13 individual [1] - 71:24 individually [1] - 18:7 individuals [2] - 138:23, 149:14 indoor [2] - 169:12, 169:19 industry [8] - 37:12, 39:2, 46:11, 86:5, 86:7, 144:5, 149:19, 194:15 inevitably [1] - 76:22 infection [1] - 187:8 influenced [1] - 155:2 information [63] - 7:25, 8:4, 8:11, 8:15, 10:7, 11:12, 18:18, 19:10, 21:14, 25:15, 25:16, 25:18, 34:6, 34:7, 34:8, 87:5, 87:7, 88:22, 95:16, 95:19, 96:10, 96:12, 102:5, 108:23, 114:4, 121:19, 123:10, 123:17, 124:6, 129:5, 131:17, 131:19, 132:21, 132:22, 135:15, 136:20, 143:23, 144:9, 146:1, 146:8, 146:9, 146:13, 146:22, 147:10, 147:23, 148:6, 148:16, 153:8, 154:7, 156:21, 156:22, 157:12, 157:25, 158:1, 158:18, 168:18, 168:24, 169:7, 169:21, 172:7, 185:9, 186:11, 198:18 informational [1] - 32:2 informed [2] - 26:24, 28:11 infrastructure [2] - 31:16, 159:24 initial [2] - 50:18, 149:16 initiate [1] - 145:6 input [4] - 16:21, 62:25, 63:4, 186:6 inside [3] - 169:18, 183:22, 183:23 installation [2] - 81:16, 82:5 instance [3] - 33:5, 157:22, 181:17</p>	<p>instances [3] - 157:7, 176:8, 181:21 instead [3] - 7:12, 74:13, 179:20 insulating [1] - 177:11 integrated [2] - 30:12, 43:3 integrity [1] - 9:18 intend [1] - 181:24 intended [2] - 116:18, 165:21 intending [1] - 135:8 intends [2] - 112:20, 112:24 intensive [4] - 21:18, 71:2, 72:11, 75:6 intent [2] - 67:23, 67:25 intention [2] - 40:10, 109:1 interaction [3] - 25:21, 43:22, 198:16 interconnect [5] - 30:14, 31:10, 46:5, 56:20, 183:3 interconnected [2] - 30:19, 42:21 interconnection [16] - 29:19, 30:4, 31:5, 32:12, 42:18, 42:19, 47:5, 48:7, 49:25, 50:3, 57:16, 57:17, 57:19, 57:20, 58:21, 171:22 interest [5] - 11:23, 26:3, 40:9, 42:3, 49:18 interested [9] - 7:21, 8:2, 8:10, 40:23, 84:14, 170:20, 197:15, 197:22, 198:9 interesting [8] - 13:4, 22:1, 30:10, 69:20, 81:8, 82:14, 84:13, 143:22 interests [4] - 94:10, 99:18, 113:24, 114:16 interior [4] - 176:25, 177:6, 177:8, 177:17 interject [2] - 44:24, 57:25 intern [1] - 92:22 Internet [1] - 197:22 interpret [2] - 83:16, 125:8 intersects [1] - 125:6 intimidated [2] - 14:24, 19:4 introduce [13] - 43:25, 53:15, 58:3, 58:5, 58:15, 58:18, 62:4, 70:13, 86:15, 87:17, 93:16, 141:14 introduced [3] - 36:20, 83:1, 83:20 introduction [1] - 20:18 inundated [1] - 102:25 Inventory [8] - 103:17, 103:19, 104:21, 105:10, 105:16, 105:18, 105:21, 106:5 invested [1] - 16:9 investigated [1] - 80:6 investment [1] - 13:21 investor [2] - 39:19, 42:17</p>
I			
<p>i.e. [1] - 71:17 ideal [1] - 157:6 ideas [2] - 137:3, 137:5 identification [8] - 53:22, 62:8, 70:17, 86:19, 88:14, 93:20, 111:2, 141:18 identified [19] - 33:12, 72:14, 73:11, 97:1, 97:3, 98:11, 105:24, 114:18, 116:23, 121:10, 121:21, 124:9, 127:7, 127:8, 137:8, 172:12, 172:16, 172:19, 188:9 identifier [1] - 95:22 identify [15] - 101:6, 101:16, 101:20, 101:24, 102:2, 102:11, 102:17, 105:15, 115:16, 121:4, 121:19, 126:12, 126:14, 139:4, 147:21 identifying [2] - 75:24, 121:9 Ill [3] - 2:6, 70:24, 71:1 imagine [2] - 49:10, 153:5 immediately [3] - 71:8, 196:10, 196:13 impact [34] - 9:17, 13:24,</p>			

<p>investor-owned [2] - 39:19, 42:17</p> <p>investors [2] - 49:13, 49:19</p> <p>invite [1] - 18:23</p> <p>inviting [2] - 26:9, 32:1</p> <p>involve [2] - 27:15, 28:22</p> <p>involved [9] - 25:11, 25:12, 26:12, 26:13, 32:5, 43:10, 144:3, 158:11, 193:9</p> <p>involvement [2] - 21:1, 54:18</p> <p>irrevocable [1] - 15:20</p> <p>isolated [3] - 72:24, 73:3, 73:4</p> <p>issue [16] - 15:1, 19:15, 40:16, 42:23, 50:16, 75:9, 109:10, 126:18, 126:19, 133:21, 135:18, 161:13, 183:1, 183:14, 198:5</p> <p>issues [20] - 9:6, 9:20, 11:8, 11:17, 13:19, 20:1, 20:2, 20:3, 47:24, 50:13, 60:7, 64:15, 137:17, 158:3, 161:14, 161:20, 170:17, 182:6, 198:11, 198:12</p> <p>item [1] - 83:16</p> <p>itself [3] - 33:17, 44:6, 102:10</p>	<p>188:6</p> <p>JOHN [2] - 140:2, 140:6</p> <p>Johnson [1] - 62:10</p> <p>Johnston [9] - 3:18, 61:5, 61:6, 61:17, 61:19, 67:5, 67:8, 67:16, 67:17</p> <p>JOHNSTON [2] - 61:8, 61:12</p> <p>JONES [138] - 2:6, 6:15, 6:19, 6:21, 20:6, 20:14, 20:16, 22:6, 22:12, 23:6, 23:25, 24:1, 29:8, 33:1, 43:25, 48:16, 48:21, 48:24, 50:22, 51:25, 52:13, 53:14, 53:19, 56:21, 57:25, 58:14, 60:24, 61:5, 61:16, 62:4, 62:12, 64:17, 65:7, 65:11, 65:15, 66:21, 67:7, 67:13, 68:10, 68:14, 68:18, 69:9, 70:13, 70:21, 76:2, 78:21, 80:9, 81:5, 82:23, 84:19, 84:24, 85:11, 86:15, 86:23, 87:17, 87:22, 88:1, 88:19, 89:13, 89:24, 90:10, 90:22, 91:3, 91:6, 91:14, 92:5, 93:16, 93:24, 94:20, 95:1, 101:1, 103:12, 108:4, 108:8, 110:21, 111:11, 112:1, 112:5, 113:2, 113:7, 113:10, 113:17, 115:18, 116:8, 116:12, 117:25, 118:5, 118:15, 118:25, 119:3, 119:12, 127:9, 127:24, 129:20, 129:23, 130:3, 130:6, 130:9, 134:12, 134:24, 135:9, 136:15, 137:2, 139:24, 140:10, 141:14, 141:21, 153:14, 153:25, 154:3, 156:3, 156:11, 158:4, 158:8, 160:2, 163:17, 164:17, 164:22, 165:1, 174:2, 174:7, 176:15, 177:13, 177:21, 178:10, 180:21, 185:2, 186:2, 190:5, 193:2, 194:20, 195:6, 195:9, 195:21, 195:24, 196:2, 196:10, 196:16</p> <p>Jones [64] - 2:20, 3:4, 3:8, 3:9, 3:16, 3:19, 3:20, 3:22, 4:3, 4:4, 4:5, 4:6, 4:10, 4:11, 4:14, 6:13, 6:22, 18:2, 18:12, 20:5, 20:12, 22:25, 29:10, 48:14, 48:19, 50:24, 52:7, 53:25, 56:23, 60:22, 61:10, 64:20, 67:4, 68:6, 69:3, 76:5, 78:19, 84:18, 85:5, 89:18, 91:22, 93:23, 100:25, 110:25, 111:25, 115:20, 118:23,</p>	<p>119:7, 127:11, 139:23, 140:4, 141:20, 153:16, 156:6, 160:4, 163:22, 176:10, 185:23, 190:4, 193:1, 194:18, 195:4, 195:20, 196:20</p> <p>JUDGE [206] - 6:4, 6:17, 7:2, 7:13, 12:8, 15:17, 17:13, 17:17, 20:7, 20:10, 20:15, 22:4, 22:10, 22:14, 22:25, 23:20, 29:10, 33:7, 33:22, 39:10, 45:8, 46:22, 48:14, 48:18, 50:24, 51:2, 51:19, 51:23, 52:3, 52:7, 53:17, 53:23, 56:23, 57:1, 57:23, 58:12, 59:21, 59:24, 60:21, 60:25, 61:3, 61:6, 61:10, 62:6, 62:9, 64:19, 64:22, 65:12, 65:19, 66:14, 66:16, 66:25, 67:4, 67:15, 68:5, 68:13, 68:16, 68:20, 68:24, 69:3, 70:15, 70:18, 76:5, 76:8, 78:3, 78:19, 78:22, 78:25, 81:2, 81:6, 82:16, 84:6, 84:17, 84:20, 84:23, 85:1, 85:5, 86:17, 86:20, 87:19, 87:24, 88:8, 88:15, 89:17, 89:20, 90:7, 91:9, 91:12, 91:16, 91:18, 91:22, 93:18, 93:21, 94:22, 94:24, 100:13, 100:18, 100:21, 100:24, 103:10, 108:3, 108:6, 110:24, 111:3, 111:21, 111:24, 112:3, 112:6, 113:14, 115:20, 115:23, 116:6, 117:4, 117:9, 118:7, 118:11, 118:18, 118:21, 118:23, 119:1, 119:5, 127:11, 127:14, 129:1, 129:22, 134:15, 135:1, 135:7, 135:10, 136:13, 138:8, 138:12, 138:16, 139:9, 139:12, 139:15, 139:22, 139:25, 140:4, 141:16, 141:19, 153:11, 153:16, 153:19, 155:11, 155:23, 156:1, 156:5, 158:7, 160:4, 160:7, 163:22, 164:10, 164:12, 164:21, 166:2, 167:23, 168:2, 168:4, 174:10, 174:18, 176:9, 176:16, 180:14, 180:25, 181:2, 183:16, 184:15, 184:20, 184:23, 185:22, 186:4, 186:19, 187:2, 187:5, 187:9, 187:13, 189:25, 190:3, 190:6, 190:9, 190:15, 190:17, 190:20, 190:24, 192:25, 193:3, 193:5, 194:5, 194:9,</p>	<p>194:16, 194:23, 195:3, 195:11, 195:17, 195:23, 196:1, 196:9, 196:14, 196:19, 196:25, 197:3, 198:14, 198:21, 199:6, 199:18</p> <p>judge [2] - 14:14, 17:20</p> <p>Judge [3] - 6:15, 15:19, 17:12</p> <p>judges [3] - 198:13, 198:14, 198:15</p> <p>July [1] - 57:7</p> <p>jump [1] - 20:19</p> <p>June [4] - 60:15, 109:12, 114:12, 114:13</p> <p>jurisdiction [2] - 107:8, 107:14</p> <p>jurisdictional [1] - 107:13</p> <p>jury [1] - 12:12</p> <p>juxtaposition [1] - 82:8</p>
J			K
<p>jail [2] - 181:18, 181:20</p> <p>James [1] - 61:19</p> <p>jargon [1] - 72:15</p> <p>Jeff [41] - 20:22, 22:12, 22:13, 24:2, 24:4, 28:5, 28:23, 29:8, 37:9, 37:13, 39:1, 48:25, 49:3, 49:4, 49:25, 50:4, 65:8, 65:11, 118:3, 118:16, 126:13, 128:15, 134:24, 134:25, 135:3, 135:9, 137:14, 153:25, 154:1, 154:4, 156:3, 156:12, 158:8, 163:17, 164:17, 177:13, 191:19, 191:20, 191:23, 192:16</p> <p>Jeff's [1] - 118:3</p> <p>Jeffrey [4] - 3:3, 23:9, 124:5, 124:23</p> <p>JEFFREY [2] - 23:2, 156:7</p> <p>Jerry [2] - 7:9, 44:9</p> <p>job [5] - 75:12, 115:9, 135:25, 136:1</p> <p>jobs [1] - 188:14</p> <p>John [16] - 4:13, 7:3, 21:24, 113:4, 121:5, 136:11, 136:12, 136:14, 138:9, 139:24, 140:13, 141:21, 153:15, 153:23, 154:6,</p>	<p>188:6</p> <p>JOHN [2] - 140:2, 140:6</p> <p>Johnson [1] - 62:10</p> <p>Johnston [9] - 3:18, 61:5, 61:6, 61:17, 61:19, 67:5, 67:8, 67:16, 67:17</p> <p>JOHNSTON [2] - 61:8, 61:12</p> <p>JONES [138] - 2:6, 6:15, 6:19, 6:21, 20:6, 20:14, 20:16, 22:6, 22:12, 23:6, 23:25, 24:1, 29:8, 33:1, 43:25, 48:16, 48:21, 48:24, 50:22, 51:25, 52:13, 53:14, 53:19, 56:21, 57:25, 58:14, 60:24, 61:5, 61:16, 62:4, 62:12, 64:17, 65:7, 65:11, 65:15, 66:21, 67:7, 67:13, 68:10, 68:14, 68:18, 69:9, 70:13, 70:21, 76:2, 78:21, 80:9, 81:5, 82:23, 84:19, 84:24, 85:11, 86:15, 86:23, 87:17, 87:22, 88:1, 88:19, 89:13, 89:24, 90:10, 90:22, 91:3, 91:6, 91:14, 92:5, 93:16, 93:24, 94:20, 95:1, 101:1, 103:12, 108:4, 108:8, 110:21, 111:11, 112:1, 112:5, 113:2, 113:7, 113:10, 113:17, 115:18, 116:8, 116:12, 117:25, 118:5, 118:15, 118:25, 119:3, 119:12, 127:9, 127:24, 129:20, 129:23, 130:3, 130:6, 130:9, 134:12, 134:24, 135:9, 136:15, 137:2, 139:24, 140:10, 141:14, 141:21, 153:14, 153:25, 154:3, 156:3, 156:11, 158:4, 158:8, 160:2, 163:17, 164:17, 164:22, 165:1, 174:2, 174:7, 176:15, 177:13, 177:21, 178:10, 180:21, 185:2, 186:2, 190:5, 193:2, 194:20, 195:6, 195:9, 195:21, 195:24, 196:2, 196:10, 196:16</p> <p>Jones [64] - 2:20, 3:4, 3:8, 3:9, 3:16, 3:19, 3:20, 3:22, 4:3, 4:4, 4:5, 4:6, 4:10, 4:11, 4:14, 6:13, 6:22, 18:2, 18:12, 20:5, 20:12, 22:25, 29:10, 48:14, 48:19, 50:24, 52:7, 53:25, 56:23, 60:22, 61:10, 64:20, 67:4, 68:6, 69:3, 76:5, 78:19, 84:18, 85:5, 89:18, 91:22, 93:23, 100:25, 110:25, 111:25, 115:20, 118:23,</p>	<p>119:7, 127:11, 139:23, 140:4, 141:20, 153:16, 156:6, 160:4, 163:22, 176:10, 185:23, 190:4, 193:1, 194:18, 195:4, 195:20, 196:20</p> <p>JUDGE [206] - 6:4, 6:17, 7:2, 7:13, 12:8, 15:17, 17:13, 17:17, 20:7, 20:10, 20:15, 22:4, 22:10, 22:14, 22:25, 23:20, 29:10, 33:7, 33:22, 39:10, 45:8, 46:22, 48:14, 48:18, 50:24, 51:2, 51:19, 51:23, 52:3, 52:7, 53:17, 53:23, 56:23, 57:1, 57:23, 58:12, 59:21, 59:24, 60:21, 60:25, 61:3, 61:6, 61:10, 62:6, 62:9, 64:19, 64:22, 65:12, 65:19, 66:14, 66:16, 66:25, 67:4, 67:15, 68:5, 68:13, 68:16, 68:20, 68:24, 69:3, 70:15, 70:18, 76:5, 76:8, 78:3, 78:19, 78:22, 78:25, 81:2, 81:6, 82:16, 84:6, 84:17, 84:20, 84:23, 85:1, 85:5, 86:17, 86:20, 87:19, 87:24, 88:8, 88:15, 89:17, 89:20, 90:7, 91:9, 91:12, 91:16, 91:18, 91:22, 93:18, 93:21, 94:22, 94:24, 100:13, 100:18, 100:21, 100:24, 103:10, 108:3, 108:6, 110:24, 111:3, 111:21, 111:24, 112:3, 112:6, 113:14, 115:20, 115:23, 116:6, 117:4, 117:9, 118:7, 118:11, 118:18, 118:21, 118:23, 119:1, 119:5, 127:11, 127:14, 129:1, 129:22, 134:15, 135:1, 135:7, 135:10, 136:13, 138:8, 138:12, 138:16, 139:9, 139:12, 139:15, 139:22, 139:25, 140:4, 141:16, 141:19, 153:11, 153:16, 153:19, 155:11, 155:23, 156:1, 156:5, 158:7, 160:4, 160:7, 163:22, 164:10, 164:12, 164:21, 166:2, 167:23, 168:2, 168:4, 174:10, 174:18, 176:9, 176:16, 180:14, 180:25, 181:2, 183:16, 184:15, 184:20, 184:23, 185:22, 186:4, 186:19, 187:2, 187:5, 187:9, 187:13, 189:25, 190:3, 190:6, 190:9, 190:15, 190:17, 190:20, 190:24, 192:25, 193:3, 193:5, 194:5, 194:9,</p>	<p>K-o-s-t [1] - 187:4</p> <p>Kapsner [1] - 7:3</p> <p>KC [1] - 55:6</p> <p>keep [7] - 26:23, 27:16, 37:7, 110:3, 192:13, 192:18, 192:22</p> <p>keeping [1] - 159:16</p> <p>keeps [3] - 50:17, 63:12, 126:21</p> <p>kept [3] - 24:12, 31:23, 181:10</p> <p>KEVIN [1] - 2:4</p> <p>Kevin [1] - 7:17</p> <p>Keystone [1] - 12:21</p> <p>kick [3] - 32:16, 32:24, 42:18</p> <p>kicks [1] - 178:2</p> <p>kill [1] - 136:9</p> <p>kind [23] - 12:16, 13:21, 31:15, 35:14, 37:10, 38:6, 40:20, 41:7, 47:21, 76:13, 95:7, 116:15, 131:16, 132:1, 143:20, 152:11, 170:17, 175:14, 180:7, 180:14, 191:8, 191:11</p> <p>kindly [1] - 21:10</p> <p>kitchen [1] - 178:2</p> <p>Kleppe [1] - 22:4</p> <p>knowing [1] - 152:22</p> <p>knowledge [5] - 110:14, 110:20, 131:18, 152:17, 152:19</p> <p>known [3] - 10:15, 75:3, 157:9</p> <p>knows [2] - 138:12, 138:14</p> <p>Kost [11] - 4:16, 4:17, 186:24, 189:25, 190:1,</p>

<p>190:2, 190:3, 190:4, 190:10, 190:15, 192:8 KOST [9] - 186:24, 187:4, 187:7, 187:11, 187:16, 187:20, 187:21, 190:2, 190:16 Krapu [1] - 155:5 kV [11] - 54:25, 55:1, 55:2, 56:3, 56:6, 59:4, 59:5, 59:6, 59:9</p>	<p>176:11, 179:18, 185:11, 195:16, 195:18, 195:21, 197:17 late-filed [15] - 47:13, 47:17, 48:15, 78:20, 118:8, 118:12, 118:13, 168:9, 169:23, 173:7, 176:11, 185:11, 195:16, 195:18, 197:17 law [7] - 17:20, 19:16, 22:18, 78:9, 135:20, 195:4, 197:19 Law [1] - 2:7 laws [1] - 112:20 lay [1] - 34:11 layer [2] - 103:7, 104:3 layout [8] - 63:19, 74:6, 74:8, 74:10, 76:21, 114:18, 158:12, 159:2 lays [1] - 129:8 LCWF [1] - 128:7 lead [2] - 33:19, 95:14 leader [1] - 21:4 leaders [2] - 21:4, 32:5 learn [1] - 145:9 learning [1] - 191:14 leases [2] - 51:12, 184:5 least [11] - 68:15, 76:15, 84:11, 96:23, 107:23, 109:1, 116:23, 162:22, 164:4, 169:13, 179:5 leave [1] - 16:23 leaves [1] - 170:9 left [4] - 7:14, 116:21, 164:22, 165:2 legal [5] - 38:11, 38:13, 40:16, 165:1, 165:6 legally [2] - 163:19, 164:24 legend [1] - 116:19 legibility [1] - 89:10 legible [2] - 58:6, 88:6 legislature [1] - 14:10 LEIN [27] - 31:4, 31:7, 33:10, 33:21, 44:10, 47:15, 76:10, 78:5, 78:6, 78:24, 116:2, 116:7, 116:9, 116:16, 117:3, 160:8, 160:10, 163:20, 163:23, 164:14, 165:10, 166:1, 178:24, 179:2, 179:5, 179:13, 179:23 Lein [22] - 3:5, 3:10, 3:22, 4:11, 7:9, 7:11, 33:7, 33:22, 47:5, 47:10, 76:8, 78:4, 78:23, 111:14, 115:23, 117:4, 160:7, 164:13, 166:2, 171:8, 172:3, 186:6 less [7] - 60:12, 82:9, 99:7, 103:21, 122:18, 168:12,</p>	<p>180:22 lessen [2] - 99:13, 152:10 lesser [2] - 143:2, 143:9 letter [30] - 27:25, 44:14, 44:18, 44:20, 45:6, 48:5, 80:24, 104:5, 104:7, 107:13, 110:2, 110:8, 111:11, 111:16, 111:18, 112:15, 112:18, 113:11, 113:18, 115:13, 117:19, 117:25, 118:14, 124:14, 124:15, 128:22, 133:23, 138:21, 156:13, 196:15 letters [6] - 27:13, 27:23, 31:25, 32:8, 43:19, 191:25 level [5] - 42:6, 168:19, 168:20, 169:18, 176:12 liabilities [3] - 138:22, 138:24, 155:16 liability [1] - 49:5 license [1] - 63:2 licensed [1] - 70:2 lies [1] - 66:5 light [1] - 174:11 lighting [3] - 133:12, 133:14 lights [1] - 169:8 lignite [2] - 101:5, 101:9 likelihood [2] - 100:6, 144:17 likely [5] - 132:24, 133:1, 142:14, 146:10, 149:10 likewise [1] - 143:11 limitations [1] - 96:7 limited [2] - 49:5, 102:9 limits [2] - 81:20, 165:19 line [27] - 24:14, 31:19, 34:18, 41:8, 42:4, 42:12, 56:3, 56:7, 56:17, 57:13, 59:4, 59:5, 59:6, 66:13, 81:14, 159:25, 168:13, 168:14, 180:1, 180:24, 183:7, 183:9, 183:23, 199:13 lines [28] - 33:18, 34:19, 55:19, 59:1, 59:12, 63:24, 64:5, 64:7, 64:11, 72:9, 72:12, 81:18, 86:6, 97:12, 97:15, 137:9, 137:13, 149:13, 160:24, 161:4, 167:10, 167:12, 176:12, 178:19, 181:7, 195:25 list [16] - 50:2, 50:5, 50:15, 50:19, 65:2, 75:1, 118:3, 118:16, 126:1, 158:6, 160:2, 160:11, 162:3, 171:11, 197:9 listed [4] - 82:15, 111:17, 129:10, 172:2 listen [2] - 12:1, 142:13 listener [1] - 178:13 listing [2] - 81:10, 126:3</p>	<p>literally [2] - 13:6, 16:7 literature [1] - 133:21 live [3] - 16:1, 23:9, 120:21 living [1] - 163:5 LLC [9] - 6:23, 6:24, 20:24, 23:12, 23:16, 49:5, 49:19, 51:6, 51:13 local [11] - 13:24, 27:12, 65:24, 152:4, 161:24, 171:8, 173:13, 175:11, 175:18, 176:2, 179:14 locally [1] - 26:22 located [7] - 11:1, 55:2, 56:18, 126:15, 138:5, 173:12, 174:6 locating [1] - 98:5 location [14] - 9:8, 13:1, 24:16, 71:22, 71:25, 83:13, 88:22, 88:24, 123:13, 126:23, 159:15, 163:10, 169:7, 180:22 locations [24] - 9:16, 31:21, 32:19, 65:3, 65:6, 71:21, 73:13, 73:23, 74:6, 83:11, 83:18, 94:7, 96:22, 97:6, 105:12, 105:19, 126:21, 127:1, 168:12, 173:22, 173:23, 180:21, 185:19 Logan [27] - 1:5, 1:15, 6:6, 6:24, 9:1, 20:23, 23:12, 23:17, 25:6, 40:11, 51:6, 51:9, 51:13, 101:13, 128:7, 128:21, 129:17, 142:1, 145:7, 147:13, 158:21, 161:24, 162:14, 164:4, 166:21, 169:14, 180:11 long-term [2] - 14:1, 55:21 look [29] - 12:12, 15:15, 17:10, 57:12, 66:19, 71:11, 73:1, 74:14, 83:14, 87:13, 103:16, 111:16, 112:13, 112:14, 119:20, 122:17, 128:16, 132:5, 133:5, 151:16, 152:12, 166:20, 169:4, 169:15, 174:20, 182:22, 184:7, 184:19, 199:4 Look [1] - 71:15 looked [21] - 11:4, 17:17, 31:3, 31:18, 33:4, 40:9, 46:1, 70:5, 72:6, 72:10, 73:8, 86:9, 99:16, 101:5, 101:19, 105:14, 120:14, 122:7, 122:8, 122:14 Looking [1] - 165:13 looking [32] - 10:25, 15:7, 24:7, 24:18, 25:16, 34:9, 35:16, 45:6, 57:5, 57:9, 58:22, 65:2, 72:6, 77:3, 86:4, 90:6, 105:20, 106:6,</p>
L			
<p>labeled [2] - 57:10, 116:17 LACHER [2] - 52:5, 52:9 Lacher [13] - 3:15, 52:1, 52:3, 52:14, 52:16, 53:12, 53:16, 53:19, 53:24, 56:24, 57:24, 60:2, 60:23 laid [1] - 13:5 Lake [5] - 120:17, 121:11, 137:23, 137:24, 141:3 land [19] - 14:1, 15:8, 16:17, 16:20, 49:16, 51:12, 59:19, 89:1, 95:8, 98:21, 99:18, 108:18, 115:1, 125:24, 126:7, 141:4, 159:18, 165:8 land-use [1] - 98:21 landfills [1] - 86:7 landowner [4] - 21:1, 31:13, 83:25, 192:3 landowners [8] - 26:9, 26:23, 27:15, 27:24, 28:10, 32:1, 173:13, 191:24 lands [1] - 141:4 landscape [1] - 15:12 Lane [2] - 23:10, 140:14 Langdon [1] - 193:10 language [2] - 40:16, 117:20 large [4] - 10:21, 13:5, 142:22, 151:19 larger [1] - 72:2 largest [2] - 10:12, 10:18 lark [2] - 148:13 Larry [8] - 3:15, 52:1, 52:16, 52:18, 54:2, 54:10, 56:22 LARRY [1] - 52:9 last [20] - 16:8, 16:14, 28:23, 70:5, 72:4, 73:23, 75:18, 111:16, 128:23, 128:24, 138:4, 138:6, 141:4, 144:6, 145:24, 153:14, 153:23, 162:16, 176:10 Last [1] - 194:17 late [19] - 35:14, 47:13, 47:17, 48:15, 78:3, 78:20, 118:8, 118:12, 118:13, 168:9, 169:23, 173:7,</p>	<p>176:11, 179:18, 185:11, 195:16, 195:18, 195:21, 197:17 late-filed [15] - 47:13, 47:17, 48:15, 78:20, 118:8, 118:12, 118:13, 168:9, 169:23, 173:7, 176:11, 185:11, 195:16, 195:18, 197:17 law [7] - 17:20, 19:16, 22:18, 78:9, 135:20, 195:4, 197:19 Law [1] - 2:7 laws [1] - 112:20 lay [1] - 34:11 layer [2] - 103:7, 104:3 layout [8] - 63:19, 74:6, 74:8, 74:10, 76:21, 114:18, 158:12, 159:2 lays [1] - 129:8 LCWF [1] - 128:7 lead [2] - 33:19, 95:14 leader [1] - 21:4 leaders [2] - 21:4, 32:5 learn [1] - 145:9 learning [1] - 191:14 leases [2] - 51:12, 184:5 least [11] - 68:15, 76:15, 84:11, 96:23, 107:23, 109:1, 116:23, 162:22, 164:4, 169:13, 179:5 leave [1] - 16:23 leaves [1] - 170:9 left [4] - 7:14, 116:21, 164:22, 165:2 legal [5] - 38:11, 38:13, 40:16, 165:1, 165:6 legally [2] - 163:19, 164:24 legend [1] - 116:19 legibility [1] - 89:10 legible [2] - 58:6, 88:6 legislature [1] - 14:10 LEIN [27] - 31:4, 31:7, 33:10, 33:21, 44:10, 47:15, 76:10, 78:5, 78:6, 78:24, 116:2, 116:7, 116:9, 116:16, 117:3, 160:8, 160:10, 163:20, 163:23, 164:14, 165:10, 166:1, 178:24, 179:2, 179:5, 179:13, 179:23 Lein [22] - 3:5, 3:10, 3:22, 4:11, 7:9, 7:11, 33:7, 33:22, 47:5, 47:10, 76:8, 78:4, 78:23, 111:14, 115:23, 117:4, 160:7, 164:13, 166:2, 171:8, 172:3, 186:6 less [7] - 60:12, 82:9, 99:7, 103:21, 122:18, 168:12,</p>	<p>180:22 lessen [2] - 99:13, 152:10 lesser [2] - 143:2, 143:9 letter [30] - 27:25, 44:14, 44:18, 44:20, 45:6, 48:5, 80:24, 104:5, 104:7, 107:13, 110:2, 110:8, 111:11, 111:16, 111:18, 112:15, 112:18, 113:11, 113:18, 115:13, 117:19, 117:25, 118:14, 124:14, 124:15, 128:22, 133:23, 138:21, 156:13, 196:15 letters [6] - 27:13, 27:23, 31:25, 32:8, 43:19, 191:25 level [5] - 42:6, 168:19, 168:20, 169:18, 176:12 liabilities [3] - 138:22, 138:24, 155:16 liability [1] - 49:5 license [1] - 63:2 licensed [1] - 70:2 lies [1] - 66:5 light [1] - 174:11 lighting [3] - 133:12, 133:14 lights [1] - 169:8 lignite [2] - 101:5, 101:9 likelihood [2] - 100:6, 144:17 likely [5] - 132:24, 133:1, 142:14, 146:10, 149:10 likewise [1] - 143:11 limitations [1] - 96:7 limited [2] - 49:5, 102:9 limits [2] - 81:20, 165:19 line [27] - 24:14, 31:19, 34:18, 41:8, 42:4, 42:12, 56:3, 56:7, 56:17, 57:13, 59:4, 59:5, 59:6, 66:13, 81:14, 159:25, 168:13, 168:14, 180:1, 180:24, 183:7, 183:9, 183:23, 199:13 lines [28] - 33:18, 34:19, 55:19, 59:1, 59:12, 63:24, 64:5, 64:7, 64:11, 72:9, 72:12, 81:18, 86:6, 97:12, 97:15, 137:9, 137:13, 149:13, 160:24, 161:4, 167:10, 167:12, 176:12, 178:19, 181:7, 195:25 list [16] - 50:2, 50:5, 50:15, 50:19, 65:2, 75:1, 118:3, 118:16, 126:1, 158:6, 160:2, 160:11, 162:3, 171:11, 197:9 listed [4] - 82:15, 111:17, 129:10, 172:2 listen [2] - 12:1, 142:13 listener [1] - 178:13 listing [2] - 81:10, 126:3</p>	<p>literally [2] - 13:6, 16:7 literature [1] - 133:21 live [3] - 16:1, 23:9, 120:21 living [1] - 163:5 LLC [9] - 6:23, 6:24, 20:24, 23:12, 23:16, 49:5, 49:19, 51:6, 51:13 local [11] - 13:24, 27:12, 65:24, 152:4, 161:24, 171:8, 173:13, 175:11, 175:18, 176:2, 179:14 locally [1] - 26:22 located [7] - 11:1, 55:2, 56:18, 126:15, 138:5, 173:12, 174:6 locating [1] - 98:5 location [14] - 9:8, 13:1, 24:16, 71:22, 71:25, 83:13, 88:22, 88:24, 123:13, 126:23, 159:15, 163:10, 169:7, 180:22 locations [24] - 9:16, 31:21, 32:19, 65:3, 65:6, 71:21, 73:13, 73:23, 74:6, 83:11, 83:18, 94:7, 96:22, 97:6, 105:12, 105:19, 126:21, 127:1, 168:12, 173:22, 173:23, 180:21, 185:19 Logan [27] - 1:5, 1:15, 6:6, 6:24, 9:1, 20:23, 23:12, 23:17, 25:6, 40:11, 51:6, 51:9, 51:13, 101:13, 128:7, 128:21, 129:17, 142:1, 145:7, 147:13, 158:21, 161:24, 162:14, 164:4, 166:21, 169:14, 180:11 long-term [2] - 14:1, 55:21 look [29] - 12:12, 15:15, 17:10, 57:12, 66:19, 71:11, 73:1, 74:14, 83:14, 87:13, 103:16, 111:16, 112:13, 112:14, 119:20, 122:17, 128:16, 132:5, 133:5, 151:16, 152:12, 166:20, 169:4, 169:15, 174:20, 182:22, 184:7, 184:19, 199:4 Look [1] - 71:15 looked [21] - 11:4, 17:17, 31:3, 31:18, 33:4, 40:9, 46:1, 70:5, 72:6, 72:10, 73:8, 86:9, 99:16, 101:5, 101:19, 105:14, 120:14, 122:7, 122:8, 122:14 Looking [1] - 165:13 looking [32] - 10:25, 15:7, 24:7, 24:18, 25:16, 34:9, 35:16, 45:6, 57:5, 57:9, 58:22, 65:2, 72:6, 77:3, 86:4, 90:6, 105:20, 106:6,</p>

<p>116:14, 120:7, 121:22, 123:4, 128:1, 130:25, 143:9, 144:12, 145:4, 162:21, 182:9, 184:2, 185:15, 196:5</p> <p>looks [7] - 67:23, 111:9, 116:3, 116:4, 116:11, 116:17, 123:15</p> <p>lose [2] - 74:20, 99:12</p> <p>losing [1] - 192:10</p> <p>lost [1] - 28:6</p> <p>loud [1] - 178:6</p> <p>lower [1] - 179:4</p> <p>lucky [1] - 77:6</p> <p>lunch [1] - 68:1</p> <p>Lynn [1] - 23:9</p>	<p>66:20, 83:20, 83:22, 87:20, 89:5, 89:10, 94:13, 94:16, 94:19, 94:20, 95:2, 95:18, 96:20, 103:6, 103:13, 104:20, 104:21, 104:23, 105:23, 107:25, 108:3, 109:15, 116:4, 116:8, 116:9, 116:15, 116:19, 123:17, 123:20, 123:22, 125:3, 125:8, 158:17, 159:2, 159:5, 172:20, 173:22, 174:3, 174:5, 174:9, 184:2, 184:19</p> <p>Maple [2] - 85:15, 85:20</p> <p>MAPP [4] - 30:22, 31:4, 31:9, 90:15</p> <p>mapped [2] - 95:21, 102:6</p> <p>mapping [1] - 87:11</p> <p>maps [36] - 31:19, 57:5, 58:1, 58:2, 58:3, 58:5, 58:7, 58:18, 58:22, 58:23, 82:19, 82:21, 87:5, 87:13, 87:15, 87:16, 87:18, 87:22, 87:23, 88:16, 88:21, 90:25, 96:8, 97:3, 100:16, 103:8, 104:15, 114:4, 119:18, 148:7, 157:1, 159:11, 172:17, 173:8, 173:25</p> <p>March [1] - 145:8</p> <p>MARK [1] - 92:1</p> <p>mark [8] - 53:18, 62:6, 70:15, 86:17, 88:8, 88:12, 93:18, 141:16</p> <p>Mark [14] - 4:9, 21:12, 90:23, 91:1, 91:3, 91:14, 92:8, 92:11, 93:14, 93:24, 95:1, 102:14, 119:25, 120:3</p> <p>marked [9] - 53:22, 62:8, 70:17, 86:19, 88:13, 93:20, 111:2, 111:7, 141:18</p> <p>Marked [1] - 5:3</p> <p>market [1] - 170:23</p> <p>Martin [1] - 69:12</p> <p>Master's [1] - 140:22</p> <p>material [1] - 12:1</p> <p>materials [1] - 60:16</p> <p>mathematical [1] - 125:2</p> <p>matter [6] - 6:8, 8:9, 8:21, 18:4, 19:13, 45:15</p> <p>matters [1] - 14:15</p> <p>maximum [4] - 22:19, 22:21, 97:17, 131:1</p> <p>mean [14] - 37:10, 38:7, 46:2, 50:9, 98:7, 134:4, 136:21, 137:4, 143:13, 147:4, 151:11, 164:8, 164:10, 193:25</p> <p>meaning [2] - 119:17, 147:16</p> <p>means [6] - 34:25, 71:23, 75:21, 142:24, 143:1,</p>	<p>171:3</p> <p>measure [2] - 133:3, 150:9</p> <p>measured [2] - 177:5, 177:21</p> <p>measurement [1] - 193:11</p> <p>measurements [1] - 84:4</p> <p>measures [6] - 104:2, 106:5, 128:9, 129:13, 149:8, 149:11</p> <p>meet [4] - 39:7, 98:8, 114:12, 164:4</p> <p>meeting [5] - 26:1, 26:9, 26:20, 32:4, 198:5</p> <p>meetings [14] - 14:10, 26:11, 26:17, 27:9, 27:11, 28:6, 28:9, 28:15, 32:1, 32:2, 40:20, 83:10, 177:24, 191:22</p> <p>meets [2] - 96:17, 197:20</p> <p>megawatt [5] - 10:11, 10:20, 24:19, 45:14, 46:7</p> <p>megawatts [15] - 10:19, 24:15, 36:23, 41:3, 41:6, 41:9, 41:22, 41:23, 42:13, 53:5, 170:3, 170:7, 170:9, 171:2, 172:14</p> <p>member [1] - 49:12</p> <p>members [6] - 7:14, 12:11, 49:6, 49:9, 49:21</p> <p>mention [2] - 22:4, 73:18</p> <p>mentioned [16] - 14:4, 20:17, 80:3, 99:9, 122:20, 142:11, 142:16, 145:5, 145:12, 149:12, 150:10, 151:11, 159:9, 170:1</p> <p>mentions [1] - 156:14</p> <p>merchant [3] - 39:20, 42:16, 170:23</p> <p>met [9] - 9:19, 26:2, 71:13, 77:23, 83:8, 96:7, 109:11, 114:13, 163:7</p> <p>meter [1] - 45:21</p> <p>meters [6] - 45:20, 72:1, 144:12, 144:22, 147:20</p> <p>methodology [2] - 71:9, 80:25</p> <p>Metzger [27] - 3:3, 20:22, 22:13, 23:7, 23:9, 24:1, 29:12, 33:24, 48:20, 48:22, 50:25, 51:5, 51:20, 51:21, 60:12, 65:11, 68:7, 68:8, 118:12, 134:25, 135:9, 156:3, 156:5, 160:5, 166:4, 185:23, 185:25</p> <p>METZGER [2] - 23:2, 156:7</p> <p>Metzger's [1] - 118:3</p> <p>Mexico [1] - 143:12</p> <p>Mick [1] - 109:9</p> <p>micro [4] - 152:4, 158:9, 159:3, 159:8</p> <p>mid [5] - 30:2, 48:9, 105:11,</p>	<p>106:7, 145:5</p> <p>mid-November [1] - 145:5</p> <p>middle [3] - 18:21, 77:4, 132:2</p> <p>Middle [1] - 70:1</p> <p>Midwest [1] - 122:8</p> <p>might [14] - 13:19, 15:1, 48:25, 71:3, 74:9, 75:2, 83:21, 144:18, 145:9, 145:11, 149:9, 155:17, 179:18, 193:18</p> <p>migrants [3] - 148:3, 148:4, 153:4</p> <p>migrate [5] - 124:17, 124:19, 125:10, 142:7</p> <p>migrating [6] - 133:13, 143:2, 144:23, 144:24, 153:4, 154:8</p> <p>migration [14] - 123:25, 124:21, 124:25, 125:4, 131:20, 132:2, 132:4, 142:3, 143:4, 143:11, 145:7, 149:20, 150:23, 154:17</p> <p>migrations [1] - 154:10</p> <p>migratory [5] - 120:13, 128:5, 132:5, 150:1, 152:10</p> <p>Migratory [1] - 112:22</p> <p>mike [2] - 186:9, 186:13</p> <p>miles [12] - 10:24, 57:21, 72:11, 72:12, 120:17, 120:19, 124:3, 125:14, 125:18, 137:25, 138:1</p> <p>mill [1] - 55:6</p> <p>millions [1] - 16:7</p> <p>milliwatt [2] - 8:24, 8:25</p> <p>mind [6] - 17:1, 28:20, 83:5, 87:13, 159:16, 193:10</p> <p>mine [3] - 23:23, 43:21, 101:11</p> <p>Mine [1] - 176:18</p> <p>mineable [3] - 101:17, 101:18, 101:21</p> <p>mineral [2] - 101:2, 101:7</p> <p>minimal [1] - 9:10</p> <p>minimize [4] - 9:16, 128:10, 129:14, 160:1</p> <p>minimum [12] - 31:20, 31:23, 42:6, 59:14, 59:17, 159:25, 163:7, 164:23, 164:24, 165:5, 165:6, 166:21</p> <p>Minneapolis [1] - 2:9</p> <p>Minnesota [12] - 2:9, 23:10, 38:1, 38:14, 53:10, 69:13, 85:16, 92:21, 92:25, 93:5, 102:24, 153:1</p> <p>minor [1] - 58:8</p> <p>minus [1] - 28:8</p> <p>minute [5] - 54:19, 67:18,</p>
M			
<p>Ma'am [1] - 186:16</p> <p>ma'am [17] - 36:1, 36:5, 36:14, 36:17, 38:17, 51:15, 51:17, 130:3, 166:19, 167:18, 169:24, 170:4, 171:20, 174:16, 175:5, 176:1</p> <p>machine [2] - 24:19, 46:2</p> <p>machines [7] - 45:23, 45:24, 46:6, 46:7, 81:14, 81:23, 82:6</p> <p>Mahnomen [2] - 92:23, 92:24</p> <p>Maid [2] - 25:25, 26:1</p> <p>mail [1] - 26:9</p> <p>Main [4] - 62:14, 192:9, 192:21</p> <p>main [4] - 45:19, 46:5, 60:13, 175:16</p> <p>maintenance [2] - 31:20, 159:25</p> <p>major [1] - 99:16</p> <p>majority [2] - 63:10, 144:21</p> <p>mammals [1] - 126:4</p> <p>management [4] - 20:23, 109:25, 140:23, 170:21</p> <p>manager [9] - 52:20, 61:23, 62:19, 85:19, 86:25, 90:1, 93:1, 165:8</p> <p>managing [1] - 141:3</p> <p>mandatory [8] - 133:20, 133:23, 135:5, 135:13, 135:17, 135:18, 157:18, 182:23</p> <p>manner [4] - 16:20, 78:7, 172:23, 199:5</p> <p>Manske [2] - 37:25, 38:6</p> <p>manufactures [1] - 46:14</p> <p>map [55] - 9:2, 9:3, 11:5, 21:18, 57:6, 57:10, 57:11, 57:12, 57:23, 58:7, 58:10,</p>			

<p>67:21, 68:2, 139:16 minutes [3] - 67:20, 68:3, 147:19 MISO [10] - 30:9, 30:11, 30:14, 30:16, 30:17, 30:20, 30:22, 31:2, 42:17 missed [1] - 105:9 Missouri [5] - 124:21, 132:18, 137:13, 150:13, 150:22 misspoke [1] - 97:7 mitigate [7] - 128:11, 129:14, 130:25, 133:8, 150:15, 151:3, 157:7 mitigated [1] - 130:24 mitigates [1] - 15:12 mitigating [2] - 122:18, 183:1 mitigation [15] - 133:2, 133:5, 136:16, 136:17, 136:22, 137:4, 137:7, 137:15, 149:8, 149:11, 149:23, 150:9, 150:25, 151:10, 176:8 Mitsubishi [1] - 46:17 model [5] - 39:17, 39:22, 50:9, 50:11 modeling [2] - 48:2, 75:8 models [3] - 50:10, 50:13, 50:14 modifications [1] - 58:8 moment [1] - 164:19 money [1] - 189:5 monitor [1] - 128:10 monitoring [3] - 25:6, 25:13, 25:20 months [1] - 134:2 Moorhead [1] - 92:19 morning [4] - 10:1, 15:21, 44:11, 111:14 mortalities [1] - 153:2 most [19] - 43:3, 56:11, 69:19, 80:20, 90:24, 95:5, 121:13, 122:21, 122:25, 123:2, 125:1, 143:22, 143:24, 146:3, 146:21, 164:5, 172:11, 174:15, 178:20 Most [1] - 46:11 mostly [1] - 61:24 Mostly [1] - 62:16 Mound [1] - 23:10 mouth [1] - 32:8 move [16] - 21:2, 21:19, 38:24, 100:3, 100:12, 102:14, 125:22, 126:17, 127:1, 143:3, 143:5, 143:8, 143:11, 145:1, 146:7, 146:11 moved [7] - 49:14, 63:21,</p>	<p>73:19, 74:2, 115:10, 159:14, 162:18 movement [1] - 155:1 moves [1] - 79:12 Moving [1] - 127:2 moving [13] - 63:20, 75:25, 79:10, 124:8, 142:20, 143:2, 144:15, 145:25, 148:5, 148:11, 149:20, 162:16, 173:6 MR [187] - 2:6, 6:15, 6:19, 6:21, 20:6, 20:14, 20:16, 22:6, 22:12, 23:6, 23:25, 24:1, 29:8, 31:4, 31:7, 33:1, 33:10, 33:21, 43:25, 44:10, 47:15, 48:16, 48:21, 48:24, 50:22, 51:25, 52:5, 52:13, 53:14, 53:19, 56:21, 57:25, 58:14, 60:24, 61:5, 61:8, 61:16, 62:4, 62:12, 64:17, 65:7, 65:11, 65:15, 66:21, 67:7, 67:13, 68:10, 68:14, 68:18, 68:23, 69:1, 69:9, 70:13, 70:21, 76:2, 76:10, 78:5, 78:6, 78:21, 78:24, 80:9, 81:5, 82:23, 84:19, 84:24, 85:3, 85:11, 86:15, 86:23, 87:17, 87:22, 88:1, 88:19, 89:13, 89:24, 90:10, 90:22, 91:3, 91:6, 91:14, 91:17, 91:20, 92:5, 93:16, 93:24, 94:20, 95:1, 101:1, 103:12, 108:4, 108:8, 110:21, 111:11, 112:1, 112:5, 113:2, 113:7, 113:10, 113:17, 115:18, 116:2, 116:7, 116:8, 116:9, 116:12, 116:16, 117:3, 117:25, 118:5, 118:15, 118:25, 119:3, 119:12, 127:9, 127:24, 129:20, 129:23, 130:3, 130:6, 130:9, 134:12, 134:24, 135:9, 136:15, 137:2, 139:24, 140:2, 140:10, 141:14, 141:21, 153:14, 153:25, 154:3, 156:3, 156:11, 158:4, 158:8, 160:2, 160:8, 160:10, 163:17, 163:20, 163:23, 164:14, 164:17, 164:22, 165:1, 165:10, 166:1, 174:2, 174:7, 176:15, 177:13, 177:21, 178:10, 178:24, 179:2, 179:5, 179:13, 179:23, 180:21, 185:2, 186:2, 186:24, 187:4, 187:7, 187:11, 187:20, 187:21, 190:2, 190:5, 190:16, 190:18,</p>	<p>190:22, 191:5, 191:6, 193:2, 194:3, 194:13, 194:20, 195:6, 195:9, 195:21, 195:24, 196:2, 196:10, 196:16 MS [44] - 2:12, 7:6, 20:9, 29:13, 29:18, 31:11, 33:6, 44:24, 45:3, 51:1, 51:4, 51:18, 56:25, 61:2, 64:21, 76:7, 82:25, 84:22, 89:19, 94:23, 100:17, 111:4, 111:6, 111:13, 111:15, 111:20, 112:8, 112:14, 113:6, 115:22, 127:13, 139:14, 153:18, 155:25, 160:6, 174:13, 174:17, 177:16, 190:8, 193:4, 195:1, 195:8, 196:21, 197:2 multiple [1] - 20:17 must [3] - 118:16, 129:7, 171:9</p> <p style="text-align: center;">N</p> <p>Name [1] - 190:17 name [19] - 6:21, 7:24, 17:18, 17:19, 23:8, 23:9, 37:24, 52:14, 52:15, 61:17, 69:10, 85:12, 85:14, 92:6, 92:8, 140:11, 186:22, 186:24, 187:3 namely [1] - 112:21 Napoleon [15] - 1:16, 6:7, 10:2, 10:23, 10:24, 17:9, 26:25, 27:4, 32:4, 32:7, 102:7, 102:10, 188:17, 189:14, 190:19 nation [1] - 29:7 national [3] - 16:3, 171:9, 188:25 National [14] - 73:6, 81:10, 81:21, 82:3, 103:16, 103:19, 104:20, 105:9, 105:16, 105:18, 105:20, 106:4, 122:2, 137:24 native [6] - 99:24, 100:2, 100:3, 115:14, 176:6, 176:7 natural [3] - 16:9, 150:6, 150:7 Natural [2] - 92:21, 95:14 nature [2] - 63:3, 101:25 near [2] - 82:7, 99:2 nearest [1] - 102:6 nearly [1] - 16:12 necessarily [3] - 47:20, 47:25, 104:8 necessary [5] - 22:9, 32:18,</p>	<p>48:11, 56:15, 71:1 need [42] - 7:19, 12:4, 16:6, 18:25, 22:6, 22:14, 29:23, 39:6, 43:6, 43:9, 47:3, 47:19, 53:18, 58:24, 63:24, 64:11, 65:25, 66:2, 66:6, 67:19, 68:20, 79:6, 82:18, 94:15, 104:15, 107:3, 107:4, 107:19, 119:6, 126:25, 132:22, 162:13, 169:16, 170:5, 171:14, 171:23, 172:5, 175:7, 178:6, 181:8, 195:7, 197:17 needed [8] - 33:12, 38:10, 47:21, 47:22, 48:1, 48:6, 59:7, 67:10 needs [12] - 9:18, 19:19, 36:24, 50:18, 71:17, 74:16, 77:15, 135:6, 146:6, 148:15, 158:2, 173:19 negative [2] - 191:16, 192:23 nest [2] - 120:21, 143:10 nesting [1] - 121:2 net [1] - 74:23 network [1] - 42:24 neutrals [1] - 55:17 never [7] - 28:17, 45:24, 76:24, 77:1, 128:15, 136:5, 178:3 new [14] - 13:2, 13:6, 13:8, 16:10, 16:13, 26:24, 43:9, 63:9, 80:6, 80:15, 82:8, 151:11, 173:25, 178:6 newer [2] - 13:13, 151:16 newly [1] - 107:1 newspaper [1] - 32:9 Next [1] - 21:12 next [17] - 34:18, 51:23, 51:25, 60:15, 68:16, 82:23, 83:4, 90:23, 108:4, 121:6, 136:13, 139:23, 145:8, 145:18, 175:8, 197:16, 198:10 nexus [6] - 32:16, 182:17, 182:19, 182:20, 183:4, 183:6 nice [2] - 11:4, 155:10 night [4] - 70:6, 133:12, 133:13, 153:4 Nine [1] - 80:23 nine [2] - 72:22, 134:2 nocturnal [1] - 153:4 noise [13] - 17:22, 168:17, 168:19, 168:20, 168:21, 169:9, 169:11, 169:12, 169:18, 176:12, 177:13, 178:8, 196:3 noises [2] - 17:24, 177:18 noisy [1] - 177:25</p>
--	---	---	---

<p>non [2] - 49:9, 126:7</p> <p>non-threatened [1] - 126:7</p> <p>non-voting [1] - 49:9</p> <p>None [6] - 20:6, 61:2, 100:23, 118:25, 127:8, 148:20</p> <p>none [9] - 20:9, 64:21, 95:23, 96:17, 101:12, 121:21, 126:1, 126:5</p> <p>nonmigratory [1] - 132:5</p> <p>normal [1] - 169:11</p> <p>normally [2] - 11:14, 76:18</p> <p>NORMAN [1] - 2:6</p> <p>Norman [1] - 6:21</p> <p>north [12] - 57:11, 89:3, 89:11, 94:21, 116:4, 116:8, 116:10, 120:18, 125:15, 138:1, 138:7, 143:8</p> <p>NORTH [1] - 1:2</p> <p>North [50] - 1:16, 2:14, 6:7, 6:25, 9:1, 9:11, 10:14, 13:10, 15:13, 16:4, 16:18, 19:24, 25:17, 27:4, 32:7, 38:14, 38:16, 52:17, 53:9, 60:11, 61:20, 70:3, 70:23, 72:16, 74:25, 75:9, 78:12, 81:24, 85:15, 92:10, 101:5, 102:24, 116:9, 123:14, 124:17, 125:16, 125:17, 126:2, 140:14, 140:22, 140:25, 144:4, 147:7, 174:22, 187:1, 189:14, 189:18, 199:11, 200:13</p> <p>northeast [1] - 10:17</p> <p>northern [2] - 143:8, 143:10</p> <p>Northwest [1] - 52:17</p> <p>northwest [1] - 57:21</p> <p>not-to-exceed [1] - 59:15</p> <p>notes [1] - 200:11</p> <p>Nothing [7] - 84:23, 118:22, 139:14, 153:19, 156:1, 185:24, 194:20</p> <p>nothing [19] - 33:6, 51:18, 60:20, 67:2, 73:2, 76:25, 77:2, 80:21, 80:25, 84:22, 91:11, 115:22, 139:11, 155:22, 155:25, 165:8, 184:12, 185:21, 190:8</p> <p>notice [5] - 14:7, 53:12, 86:12, 94:13, 165:15</p> <p>noticed [3] - 104:4, 104:7, 117:19</p> <p>notices [1] - 77:11</p> <p>November [8] - 23:19, 30:3, 34:17, 34:20, 35:1, 145:5, 154:22, 200:14</p> <p>NRCS [3] - 95:16, 95:19, 98:23</p> <p>number [25] - 11:8, 11:19, 26:17, 27:11, 27:14, 28:15, 32:2, 32:7, 36:7, 40:2,</p>	<p>40:20, 49:9, 50:10, 57:8, 75:3, 88:24, 97:10, 98:18, 98:20, 114:7, 147:7, 159:14, 159:22, 179:11</p> <p>numbers [3] - 30:17, 54:21, 146:18</p> <p>numerous [1] - 28:18</p> <p>NWCC [1] - 122:4</p> <p>NWI [5] - 103:7, 104:3, 104:8, 104:9, 104:11</p>	<p>officer [3] - 11:9, 12:4, 17:20</p> <p>officially [2] - 77:25, 78:18</p> <p>officials [1] - 13:21</p> <p>offsite [2] - 107:18, 150:25</p> <p>often [3] - 96:3, 129:11, 154:11</p> <p>Offentimes [2] - 39:15, 73:16</p> <p>Ohio [1] - 69:23</p> <p>oil [2] - 16:9, 77:22</p> <p>old [5] - 81:22, 81:23, 82:7, 82:9, 192:15</p> <p>older [1] - 151:19</p> <p>once [14] - 22:16, 28:5, 30:18, 66:6, 68:15, 75:24, 76:15, 83:20, 107:10, 131:6, 142:16, 161:3, 197:17, 197:18</p> <p>Once [4] - 26:4, 30:14, 31:2, 50:14</p> <p>one [111] - 8:12, 10:19, 14:25, 21:3, 26:8, 26:16, 28:23, 34:5, 37:3, 37:15, 37:16, 37:25, 38:1, 40:18, 43:4, 43:14, 45:10, 46:16, 49:2, 49:25, 50:4, 50:16, 51:1, 53:8, 53:9, 53:10, 53:11, 55:2, 55:6, 56:1, 56:2, 56:6, 56:12, 56:18, 57:11, 60:1, 62:17, 64:1, 64:8, 70:9, 71:24, 72:22, 73:1, 73:4, 73:21, 73:22, 74:9, 76:11, 79:15, 81:8, 82:21, 83:13, 83:17, 87:2, 87:6, 87:20, 87:25, 89:3, 89:9, 90:11, 94:22, 98:18, 99:7, 99:9, 103:8, 104:6, 110:2, 113:14, 116:3, 116:10, 120:18, 123:23, 126:20, 133:7, 135:19, 136:3, 137:7, 139:3, 141:6, 144:8, 149:11, 150:24, 151:3, 152:11, 155:13, 162:16, 162:17, 163:11, 166:12, 166:16, 167:10, 170:12, 172:9, 173:22, 173:23, 174:21, 178:6, 180:15, 181:17, 182:6, 182:9, 182:11, 184:21, 185:8, 185:16, 186:15, 186:16, 191:8, 194:18, 196:13</p> <p>One [15] - 14:7, 25:14, 42:22, 46:1, 56:6, 56:14, 102:21, 104:24, 120:17, 143:22, 147:12, 160:16, 166:14, 171:1, 176:4</p> <p>one-person [1] - 37:3</p> <p>ones [7] - 26:14, 60:11, 104:16, 123:23, 143:9, 151:19, 165:23</p>	<p>ongoing [3] - 40:12, 73:16, 117:20</p> <p>open [3] - 19:6, 104:13, 126:10</p> <p>opened [1] - 192:14</p> <p>Opening [2] - 2:19, 2:20</p> <p>opening [3] - 7:17, 9:23, 20:13</p> <p>operation [6] - 9:9, 35:13, 35:20, 37:3, 39:21, 159:19</p> <p>operations [1] - 134:9</p> <p>operator [1] - 168:18</p> <p>opinion [6] - 22:2, 74:5, 74:20, 109:4, 114:16, 152:12</p> <p>opinions [1] - 22:1</p> <p>opportunities [3] - 10:15, 14:16, 136:17</p> <p>opportunity [9] - 12:4, 14:5, 14:11, 14:25, 28:19, 106:9, 106:18, 152:3, 187:22</p> <p>opposed [3] - 14:9, 108:15, 163:9</p> <p>option [2] - 42:8, 137:7</p> <p>order [12] - 19:16, 20:19, 68:6, 80:17, 89:7, 132:7, 150:14, 169:17, 195:4, 197:25, 198:2, 198:5</p> <p>orderly [2] - 9:19, 172:23</p> <p>ordinance [8] - 158:20, 158:22, 158:23, 162:9, 162:15, 163:8, 165:19, 184:11</p> <p>Oregon [1] - 153:1</p> <p>organization [3] - 36:22, 37:1, 37:15</p> <p>organizing [1] - 39:18</p> <p>orientation [2] - 101:10, 105:21</p> <p>oriented [2] - 198:17, 198:19</p> <p>original [5] - 40:10, 123:20, 123:21, 174:3, 174:5</p> <p>originally [2] - 23:15, 28:16</p> <p>outcome [1] - 83:9</p> <p>outline [1] - 20:16</p> <p>outlined [1] - 119:19</p> <p>outset [1] - 20:2</p> <p>Outside [1] - 37:17</p> <p>outside [9] - 17:6, 29:1, 148:9, 150:2, 150:3, 151:17, 167:24, 184:5, 184:9</p> <p>outstanding [1] - 60:7</p> <p>overall [4] - 53:1, 74:5, 152:11, 188:4</p> <p>overhead [1] - 150:12</p> <p>overlap [1] - 120:1</p> <p>oversaw [1] - 93:4</p> <p>overseeing [1] - 54:14</p> <p>overseen [1] - 53:5</p>
O			
<p>oath [2] - 119:7, 156:6</p> <p>objection [8] - 53:25, 62:10, 70:19, 86:20, 88:16, 93:22, 112:3, 141:20</p> <p>objective [2] - 106:21, 106:22</p> <p>obligated [1] - 191:12</p> <p>observation [2] - 145:13, 145:14</p> <p>observations [1] - 142:20</p> <p>observed [2] - 145:24, 147:8</p> <p>obvious [2] - 72:17, 103:22</p> <p>occasions [1] - 28:18</p> <p>occupied [7] - 162:5, 162:23, 164:15, 165:12, 176:22, 176:25, 179:9</p> <p>occur [5] - 47:19, 125:2, 128:8, 145:19, 155:2</p> <p>occurred [4] - 124:4, 125:3, 132:20, 145:24</p> <p>occurrence [1] - 152:19</p> <p>occurrences [6] - 121:1, 122:16, 122:19, 123:16, 123:22, 132:12</p> <p>occurs [3] - 19:9, 130:24, 175:4</p> <p>October [9] - 1:17, 6:3, 6:6, 34:16, 111:10, 118:14, 128:23, 154:22, 196:15</p> <p>OF [4] - 1:2, 1:10, 2:23, 200:1</p> <p>off-road [1] - 175:4</p> <p>off-taker [1] - 171:6</p> <p>off-taking [1] - 170:20</p> <p>offer [1] - 111:20</p> <p>Offered [1] - 5:3</p> <p>offered [3] - 53:24, 129:2, 192:16</p> <p>offering [1] - 112:8</p> <p>offhand [2] - 164:9, 169:5</p> <p>office [14] - 26:25, 27:3, 27:5, 27:21, 62:17, 62:19, 73:19, 85:21, 163:11, 169:7, 169:13, 169:19, 192:16, 192:17</p> <p>Office [2] - 17:21, 196:23</p> <p>OFFICER [1] - 1:22</p>			

<p>overview ^[1] - 21:7 overwhelming ^[1] - 191:9 own ^[6] - 40:10, 70:5, 83:5, 122:12, 188:19, 188:21 owned ^[4] - 39:19, 42:17, 183:9, 189:6 owner ^[7] - 69:15, 81:15, 118:1, 131:12, 131:16, 131:18, 192:14 owner's ^[1] - 167:13 owners ^[3] - 49:19, 163:4, 183:25</p>	<p>party ^[1] - 19:20 pass ^[1] - 132:18 Passerines ^[1] - 153:3 passion ^[1] - 84:12 passions ^[1] - 141:7 past ^[3] - 70:6, 117:22, 177:14 pastureland ^[1] - 99:25 paths ^[1] - 125:4 patterns ^[1] - 120:13 pedestrian ^[1] - 71:23 penalty ^[1] - 22:19 pending ^[4] - 30:1, 30:8, 117:24, 160:13 People ^[2] - 177:24, 181:13 people ^[39] - 7:20, 8:13, 10:6, 24:12, 26:11, 26:12, 26:13, 26:21, 27:21, 28:15, 32:5, 33:3, 36:25, 37:11, 37:21, 38:10, 38:19, 39:5, 49:15, 67:19, 71:24, 75:9, 83:24, 87:4, 95:5, 137:18, 149:16, 163:4, 163:10, 170:20, 178:3, 181:8, 181:15, 186:8, 186:10, 189:1, 189:4, 189:7, 197:9 people's ^[1] - 169:6 per ^[5] - 45:20, 55:9, 95:18, 142:17, 161:2 per-county ^[1] - 95:18 percent ^[16] - 43:8, 46:8, 46:9, 75:6, 75:7, 77:1, 99:7, 125:7, 125:8, 125:11, 132:17, 152:22, 153:1, 153:3, 159:6 percentage ^[2] - 98:25, 99:1 perception ^[2] - 49:2, 49:3 perform ^[1] - 138:23 performing ^[1] - 54:6 perhaps ^[8] - 15:23, 83:20, 84:11, 149:22, 149:24, 178:18, 185:9, 186:7 Perhaps ^[2] - 8:13, 66:18 period ^[13] - 35:18, 79:9, 92:22, 104:25, 122:21, 132:3, 132:4, 142:2, 142:17, 147:23, 154:23, 182:5, 198:1 periods ^[2] - 104:17, 124:25 perjury ^[11] - 22:19, 22:22, 52:4, 61:7, 68:25, 85:2, 91:19, 140:1, 187:6, 187:10, 190:21 permanent ^[4] - 98:12, 106:3, 106:22, 106:23 permanently ^[2] - 104:12, 116:22 permit ^[15] - 34:7, 66:2, 67:10, 129:7, 130:15, 130:16, 130:20, 131:5,</p>	<p>131:9, 133:18, 135:22, 160:23, 161:1, 161:6 permits ^[10] - 65:23, 66:1, 66:7, 160:11, 161:5, 161:8, 171:9, 171:15, 171:24, 172:7 permitting ^[4] - 56:8, 93:11, 131:7, 134:5 person ^[10] - 8:12, 37:3, 37:16, 65:1, 65:9, 75:19, 90:20, 153:23, 197:21 Personally ^[1] - 79:14 pertaining ^[1] - 158:21 Petroleum ^[1] - 149:15 Ph.D ^[1] - 69:23 phase ^[5] - 57:11, 89:3, 116:3, 116:10, 184:21 phases ^[3] - 35:8, 40:25, 41:1 phones ^[2] - 17:23 photography ^[7] - 104:8, 104:10, 104:14, 104:19, 104:24, 105:1, 105:6 physical ^[7] - 21:15, 94:4, 94:12, 95:4, 95:8, 119:25, 159:12 physically ^[1] - 98:20 pick ^[2] - 104:18, 154:21 picking ^[1] - 104:11 picture ^[1] - 13:4 piece ^[2] - 132:21, 132:22 pieces ^[2] - 72:20, 143:22 pink ^[2] - 57:16 pinpoint ^[1] - 83:11 Pipeline ^[1] - 12:21 pipeline ^[2] - 12:22, 13:5 pipelines ^[2] - 16:9, 77:22 place ^[12] - 10:5, 26:17, 27:15, 35:24, 46:3, 87:10, 158:22, 159:12, 161:6, 166:11, 175:3, 200:7 placement ^[3] - 94:6, 158:25, 159:1 places ^[3] - 80:20, 143:12, 150:21 Places ^[1] - 73:7 Plains ^[2] - 140:16, 140:18 plains ^[1] - 102:12 plan ^[19] - 20:19, 39:18, 108:10, 128:6, 128:17, 128:20, 129:8, 129:16, 130:11, 130:12, 130:23, 131:3, 132:8, 132:10, 133:25, 134:20, 134:21, 149:17, 170:10 planned ^[3] - 32:12, 147:13, 166:10 planning ^[5] - 30:22, 32:6, 129:18, 130:13, 166:11 plans ^[8] - 39:23, 63:18,</p>	<p>73:12, 80:8, 109:23, 151:24, 175:10, 186:7 plant ^[4] - 39:20, 127:6, 173:12, 175:7 plants ^[1] - 16:10 platforms ^[1] - 77:23 played ^[1] - 45:24 playing ^[1] - 15:6 pleasure ^[1] - 17:5 plenty ^[2] - 77:24, 78:15 PLOTS ^[1] - 141:5 plus ^[4] - 26:14, 28:8, 72:11, 166:9 podium ^[2] - 18:20, 186:7 point ^[33] - 25:23, 26:8, 29:24, 31:2, 33:15, 38:5, 40:8, 41:10, 42:17, 55:21, 57:16, 57:18, 57:19, 57:20, 58:3, 58:10, 58:21, 67:11, 88:4, 108:24, 109:1, 114:17, 115:6, 117:16, 132:13, 133:18, 134:20, 147:16, 150:8, 160:12, 162:16, 183:12, 186:5 points ^[6] - 104:7, 142:12, 146:19, 147:18, 147:19, 152:1 politicians ^[1] - 16:3 polygons ^[1] - 105:18 pool ^[1] - 149:22 populations ^[1] - 120:13 portfolio ^[1] - 9:24 portion ^[2] - 40:11, 64:2 portions ^[1] - 12:19 position ^[11] - 23:11, 23:16, 30:9, 52:18, 61:21, 69:14, 85:17, 92:11, 93:8, 140:15, 159:3 positive ^[1] - 193:15 possibilities ^[1] - 50:20 possibility ^[2] - 135:23, 170:25 possible ^[7] - 63:8, 63:11, 79:9, 131:1, 162:24, 189:23, 195:20 possibly ^[3] - 42:4, 132:14, 151:11 potential ^[7] - 44:16, 50:13, 81:9, 82:10, 126:12, 149:23, 183:1 Potential ^[1] - 128:2 potentially ^[6] - 30:2, 41:25, 81:9, 120:22, 125:9, 125:11 pottery ^[1] - 72:20 Power ^[1] - 39:25 power ^[16] - 40:1, 40:19, 41:7, 42:4, 42:16, 42:25, 43:6, 170:13, 170:14, 170:20, 170:21, 170:22,</p>
P			
<p>p.m ^[1] - 199:25 Pacific ^[1] - 160:17 Page ^[1] - 2:18 page ^[11] - 34:9, 34:11, 107:24, 111:16, 112:16, 127:19, 128:1, 128:23, 128:24, 129:4, 129:16 pages ^[3] - 108:5, 163:25, 200:10 paper ^[3] - 27:12, 32:3, 73:19 papers ^[1] - 119:23 paperwork ^[1] - 44:6 paragraph ^[3] - 128:25, 129:4, 129:6 paragraphs ^[1] - 95:6 parameters ^[1] - 40:21 parcel ^[3] - 108:16, 108:17, 108:22 parcels ^[9] - 108:12, 108:15, 108:25, 109:20, 110:6, 114:5, 114:9, 114:22, 115:14 Parks ^[1] - 123:14 part ^[34] - 10:17, 24:12, 25:19, 28:14, 28:16, 28:19, 29:25, 35:9, 42:10, 43:2, 48:7, 49:15, 49:18, 54:18, 56:3, 62:24, 62:25, 69:20, 74:25, 90:4, 103:3, 120:4, 120:6, 133:2, 135:4, 135:5, 136:8, 143:6, 157:24, 176:1, 178:4, 181:4, 197:4, 199:11 Part ^[1] - 170:11 participants ^[1] - 18:14 particular ^[8] - 12:25, 21:25, 45:17, 54:10, 76:19, 95:23, 114:21, 124:16 particularly ^[3] - 13:11, 77:21, 83:15 particulars ^[1] - 38:8 parties ^[1] - 6:13 parts ^[5] - 16:2, 47:25, 75:25, 188:22, 189:11</p>	<p>party ^[1] - 19:20 pass ^[1] - 132:18 Passerines ^[1] - 153:3 passion ^[1] - 84:12 passions ^[1] - 141:7 past ^[3] - 70:6, 117:22, 177:14 pastureland ^[1] - 99:25 paths ^[1] - 125:4 patterns ^[1] - 120:13 pedestrian ^[1] - 71:23 penalty ^[1] - 22:19 pending ^[4] - 30:1, 30:8, 117:24, 160:13 People ^[2] - 177:24, 181:13 people ^[39] - 7:20, 8:13, 10:6, 24:12, 26:11, 26:12, 26:13, 26:21, 27:21, 28:15, 32:5, 33:3, 36:25, 37:11, 37:21, 38:10, 38:19, 39:5, 49:15, 67:19, 71:24, 75:9, 83:24, 87:4, 95:5, 137:18, 149:16, 163:4, 163:10, 170:20, 178:3, 181:8, 181:15, 186:8, 186:10, 189:1, 189:4, 189:7, 197:9 people's ^[1] - 169:6 per ^[5] - 45:20, 55:9, 95:18, 142:17, 161:2 per-county ^[1] - 95:18 percent ^[16] - 43:8, 46:8, 46:9, 75:6, 75:7, 77:1, 99:7, 125:7, 125:8, 125:11, 132:17, 152:22, 153:1, 153:3, 159:6 percentage ^[2] - 98:25, 99:1 perception ^[2] - 49:2, 49:3 perform ^[1] - 138:23 performing ^[1] - 54:6 perhaps ^[8] - 15:23, 83:20, 84:11, 149:22, 149:24, 178:18, 185:9, 186:7 Perhaps ^[2] - 8:13, 66:18 period ^[13] - 35:18, 79:9, 92:22, 104:25, 122:21, 132:3, 132:4, 142:2, 142:17, 147:23, 154:23, 182:5, 198:1 periods ^[2] - 104:17, 124:25 perjury ^[11] - 22:19, 22:22, 52:4, 61:7, 68:25, 85:2, 91:19, 140:1, 187:6, 187:10, 190:21 permanent ^[4] - 98:12, 106:3, 106:22, 106:23 permanently ^[2] - 104:12, 116:22 permit ^[15] - 34:7, 66:2, 67:10, 129:7, 130:15, 130:16, 130:20, 131:5,</p>	<p>131:9, 133:18, 135:22, 160:23, 161:1, 161:6 permits ^[10] - 65:23, 66:1, 66:7, 160:11, 161:5, 161:8, 171:9, 171:15, 171:24, 172:7 permitting ^[4] - 56:8, 93:11, 131:7, 134:5 person ^[10] - 8:12, 37:3, 37:16, 65:1, 65:9, 75:19, 90:20, 153:23, 197:21 Personally ^[1] - 79:14 pertaining ^[1] - 158:21 Petroleum ^[1] - 149:15 Ph.D ^[1] - 69:23 phase ^[5] - 57:11, 89:3, 116:3, 116:10, 184:21 phases ^[3] - 35:8, 40:25, 41:1 phones ^[2] - 17:23 photography ^[7] - 104:8, 104:10, 104:14, 104:19, 104:24, 105:1, 105:6 physical ^[7] - 21:15, 94:4, 94:12, 95:4, 95:8, 119:25, 159:12 physically ^[1] - 98:20 pick ^[2] - 104:18, 154:21 picking ^[1] - 104:11 picture ^[1] - 13:4 piece ^[2] - 132:21, 132:22 pieces ^[2] - 72:20, 143:22 pink ^[2] - 57:16 pinpoint ^[1] - 83:11 Pipeline ^[1] - 12:21 pipeline ^[2] - 12:22, 13:5 pipelines ^[2] - 16:9, 77:22 place ^[12] - 10:5, 26:17, 27:15, 35:24, 46:3, 87:10, 158:22, 159:12, 161:6, 166:11, 175:3, 200:7 placement ^[3] - 94:6, 158:25, 159:1 places ^[3] - 80:20, 143:12, 150:21 Places ^[1] - 73:7 Plains ^[2] - 140:16, 140:18 plains ^[1] - 102:12 plan ^[19] - 20:19, 39:18, 108:10, 128:6, 128:17, 128:20, 129:8, 129:16, 130:11, 130:12, 130:23, 131:3, 132:8, 132:10, 133:25, 134:20, 134:21, 149:17, 170:10 planned ^[3] - 32:12, 147:13, 166:10 planning ^[5] - 30:22, 32:6, 129:18, 130:13, 166:11 plans ^[8] - 39:23, 63:18,</p>	<p>73:12, 80:8, 109:23, 151:24, 175:10, 186:7 plant ^[4] - 39:20, 127:6, 173:12, 175:7 plants ^[1] - 16:10 platforms ^[1] - 77:23 played ^[1] - 45:24 playing ^[1] - 15:6 pleasure ^[1] - 17:5 plenty ^[2] - 77:24, 78:15 PLOTS ^[1] - 141:5 plus ^[4] - 26:14, 28:8, 72:11, 166:9 podium ^[2] - 18:20, 186:7 point ^[33] - 25:23, 26:8, 29:24, 31:2, 33:15, 38:5, 40:8, 41:10, 42:17, 55:21, 57:16, 57:18, 57:19, 57:20, 58:3, 58:10, 58:21, 67:11, 88:4, 108:24, 109:1, 114:17, 115:6, 117:16, 132:13, 133:18, 134:20, 147:16, 150:8, 160:12, 162:16, 183:12, 186:5 points ^[6] - 104:7, 142:12, 146:19, 147:18, 147:19, 152:1 politicians ^[1] - 16:3 polygons ^[1] - 105:18 pool ^[1] - 149:22 populations ^[1] - 120:13 portfolio ^[1] - 9:24 portion ^[2] - 40:11, 64:2 portions ^[1] - 12:19 position ^[11] - 23:11, 23:16, 30:9, 52:18, 61:21, 69:14, 85:17, 92:11, 93:8, 140:15, 159:3 positive ^[1] - 193:15 possibilities ^[1] - 50:20 possibility ^[2] - 135:23, 170:25 possible ^[7] - 63:8, 63:11, 79:9, 131:1, 162:24, 189:23, 195:20 possibly ^[3] - 42:4, 132:14, 151:11 potential ^[7] - 44:16, 50:13, 81:9, 82:10, 126:12, 149:23, 183:1 Potential ^[1] - 128:2 potentially ^[6] - 30:2, 41:25, 81:9, 120:22, 125:9, 125:11 pottery ^[1] - 72:20 Power ^[1] - 39:25 power ^[16] - 40:1, 40:19, 41:7, 42:4, 42:16, 42:25, 43:6, 170:13, 170:14, 170:20, 170:21, 170:22,</p>

<p>188:4, 188:11, 188:14 powerlines [5] - 148:23, 148:25, 149:2, 150:13, 150:22 PPA [2] - 40:14, 40:21 practical [1] - 131:1 practice [1] - 6:25 Practices [1] - 19:24 practicing [1] - 86:1 prairie [8] - 77:4, 97:14, 99:24, 100:2, 100:4, 115:15, 148:13, 176:6 Prairie [3] - 81:11, 81:21, 81:24 prayer [1] - 159:9 precise [3] - 21:6, 54:21, 152:15 predominant [2] - 126:9, 126:10 preexisting [1] - 161:18 preferences [1] - 179:14 prehistoric [4] - 72:18, 72:22, 72:23, 73:4 preliminary [9] - 7:18, 29:22, 47:22, 50:6, 50:19, 54:16, 60:16, 77:20, 159:2 preparation [1] - 94:4 prepared [3] - 58:2, 58:18, 198:2 presence [1] - 199:15 present [11] - 8:15, 10:13, 18:2, 18:18, 19:8, 19:11, 59:16, 89:15, 186:1, 186:11, 194:19 PRESENT [1] - 2:2 presentation [2] - 20:11, 20:19 presented [3] - 12:1, 18:15, 60:8 presenting [4] - 8:3, 8:11, 11:11 Preservation [1] - 196:23 preservation [1] - 9:13 preserved [1] - 74:16 preserving [1] - 114:25 president [6] - 23:14, 23:16, 36:21, 36:22, 69:15, 140:17 President [2] - 2:3, 7:15 presume [1] - 151:6 pretend [1] - 103:5 pretty [6] - 89:10, 103:25, 104:11, 104:14, 141:7, 144:1 prevent [3] - 31:17, 135:25, 136:9 prevented [2] - 98:13, 98:19 prevents [1] - 109:21 previous [2] - 82:15, 182:14 previously [3] - 65:10, 119:9,</p>	<p>156:8 primarily [4] - 55:13, 93:11, 94:3, 128:4 Prime [1] - 95:7 prime [29] - 21:15, 21:16, 94:14, 94:20, 94:21, 95:4, 95:11, 95:14, 95:16, 95:22, 95:25, 96:5, 96:6, 96:11, 96:16, 97:16, 98:8, 98:11, 98:14, 98:17, 98:23, 99:2, 99:13, 100:7, 100:8, 100:9, 100:10, 152:7 priorities [1] - 110:3 priority [1] - 99:21 private [1] - 141:4 privately [1] - 183:9 privately-owned [1] - 183:9 problem [2] - 80:7, 135:18 problems [4] - 16:5, 122:12, 189:20, 189:21 procedure [4] - 8:17, 17:25, 77:13, 109:2 procedures [2] - 20:5, 121:7 proceed [2] - 187:14, 190:24 proceeded [1] - 21:1 proceeding [1] - 14:14 proceedings [3] - 6:1, 12:19, 200:6 process [32] - 26:10, 26:23, 27:7, 27:14, 31:9, 31:12, 31:24, 35:16, 35:17, 38:25, 41:11, 42:18, 42:19, 56:9, 63:13, 63:20, 114:8, 126:20, 130:14, 131:5, 131:8, 133:19, 133:23, 134:6, 158:10, 158:15, 158:19, 159:14, 191:15, 198:11, 198:17, 198:19 process-oriented [2] - 198:17, 198:19 processing [3] - 16:9, 16:10, 199:5 produce [6] - 9:9, 90:11, 90:14, 94:1, 95:9, 196:6 produced [6] - 21:14, 87:4, 87:15, 87:16, 119:23, 170:15 producing [1] - 29:6 production [12] - 34:20, 34:24, 36:3, 43:7, 43:12, 98:8, 105:3, 105:7, 116:5, 116:24, 116:25, 121:16 productive [1] - 17:11 productivity [1] - 45:16 products [1] - 95:10 professional [5] - 53:13, 62:1, 63:2, 70:4, 141:9 Professional [2] - 200:4, 200:18 professionals [1] - 39:2</p>	<p>profile [1] - 103:4 program [13] - 25:13, 25:20, 26:13, 93:4, 141:5, 157:10, 157:13, 157:18, 157:20, 157:22, 158:19, 161:12, 182:23 programs [1] - 93:3 progression [1] - 150:7 project [153] - 10:5, 10:7, 10:10, 10:11, 10:13, 13:15, 20:25, 22:9, 23:13, 24:5, 24:7, 24:10, 24:13, 24:18, 25:3, 26:4, 26:7, 26:21, 27:17, 28:7, 28:17, 28:22, 32:6, 35:7, 35:13, 35:21, 36:23, 39:7, 40:1, 40:4, 40:24, 41:18, 45:20, 46:8, 48:3, 48:11, 49:14, 49:17, 52:20, 54:3, 54:23, 56:4, 60:6, 61:25, 62:16, 62:17, 62:19, 62:20, 63:6, 63:12, 64:2, 64:7, 70:22, 72:21, 73:11, 75:4, 85:19, 85:24, 86:24, 86:25, 90:1, 90:2, 90:4, 92:18, 93:25, 94:2, 94:7, 94:10, 95:13, 95:24, 95:25, 96:14, 97:8, 99:3, 100:1, 100:3, 101:20, 101:23, 102:1, 102:3, 102:12, 102:13, 102:15, 102:18, 103:24, 104:2, 105:25, 109:12, 110:3, 114:14, 115:16, 117:1, 119:17, 119:19, 120:15, 120:18, 120:22, 121:17, 122:23, 123:13, 125:25, 127:3, 128:9, 131:25, 132:11, 132:19, 141:23, 149:10, 157:3, 157:6, 160:1, 161:20, 162:12, 162:15, 164:7, 165:20, 168:22, 170:2, 171:2, 172:6, 172:13, 173:4, 173:18, 174:25, 178:9, 181:5, 181:9, 181:10, 182:4, 183:2, 184:1, 184:4, 187:24, 188:4, 188:10, 188:11, 188:16, 188:18, 189:2, 189:14, 189:19, 189:22, 192:2, 192:3, 193:9, 194:1, 197:15, 198:6, 198:7 Project [2] - 31:14, 61:23 projects [18] - 10:14, 13:23, 41:8, 42:2, 42:11, 43:5, 52:23, 62:15, 62:16, 62:18, 62:21, 80:7, 86:4, 86:5, 86:10, 114:20, 180:9, 193:22 promptly [1] - 68:2</p>	<p>properly [2] - 58:18, 130:25 properties [1] - 98:9 property [14] - 94:9, 113:24, 114:15, 163:4, 167:12, 167:13, 168:14, 176:12, 178:19, 180:1, 180:24, 181:7, 183:23, 183:25 proposal [1] - 41:15 proposed [19] - 9:9, 9:12, 9:15, 24:17, 26:6, 40:25, 41:1, 57:15, 57:18, 89:1, 105:12, 128:2, 129:8, 129:12, 149:8, 179:15, 194:24, 195:1, 197:19 Proposed [1] - 195:3 proposes [1] - 10:19 proposing [1] - 24:6 Protection [1] - 112:23 protocol [1] - 77:10 proven [2] - 56:11, 137:6 provide [9] - 16:5, 55:2, 66:19, 87:2, 88:22, 94:3, 188:4, 188:11, 188:13 provided [6] - 44:16, 44:19, 53:20, 57:5, 62:2, 96:10 provides [2] - 120:23, 188:14 providing [2] - 42:3, 90:3 PSC [1] - 196:18 PU-07-54 [1] - 1:5 public [11] - 7:22, 19:7, 19:9, 24:8, 25:16, 32:8, 64:12, 141:3, 186:6, 199:12 PUBLIC [2] - 1:3, 1:11 Public [5] - 2:12, 7:7, 7:15, 9:22, 14:8 publication [1] - 101:8 publicly [1] - 83:23 published [1] - 87:7 punishable [1] - 22:20 purchase [4] - 39:25, 40:2, 40:19, 170:14 purchased [1] - 60:14 purpose [1] - 6:25 purposes [3] - 30:17, 39:4, 112:10 pushed [1] - 191:8 pushing [1] - 81:20 put [29] - 7:24, 14:5, 26:6, 28:7, 35:24, 37:4, 38:23, 41:2, 56:7, 60:12, 83:4, 89:9, 98:16, 100:4, 118:2, 119:21, 123:18, 137:19, 163:13, 164:18, 166:11, 172:19, 175:3, 188:20, 188:22, 189:5, 191:9, 193:11, 197:11 putting [7] - 32:2, 40:22, 98:6, 134:3, 134:6, 137:15, 150:12 puzzle [1] - 188:23</p>
---	--	--	--

Q			
<p>Q3 [1] - 57:10 quantify [1] - 107:20 quarter [1] - 67:20 que [2] - 30:17, 60:14 questionable [1] - 171:20 questioned [1] - 112:19 questioning [2] - 14:17, 112:11 questions [103] - 7:11, 8:5, 8:7, 11:13, 11:15, 11:20, 12:3, 18:8, 18:9, 18:11, 18:12, 18:14, 18:19, 19:3, 20:4, 20:8, 27:22, 27:25, 29:9, 29:11, 29:13, 29:14, 33:23, 34:1, 34:12, 39:9, 43:22, 47:4, 48:18, 48:20, 48:22, 50:23, 50:25, 51:20, 56:22, 56:24, 57:1, 58:23, 59:23, 60:22, 60:25, 61:3, 64:18, 64:22, 64:25, 65:3, 67:5, 67:14, 67:16, 67:17, 68:11, 76:3, 76:6, 84:18, 84:19, 84:20, 89:13, 89:18, 89:21, 90:19, 90:21, 94:11, 100:10, 100:11, 100:14, 100:16, 100:17, 100:20, 110:22, 110:25, 115:18, 117:5, 117:7, 118:24, 120:9, 121:15, 125:21, 127:9, 127:12, 129:21, 133:9, 133:15, 139:13, 153:17, 153:25, 154:3, 156:12, 158:6, 160:3, 160:5, 163:18, 166:1, 166:3, 176:18, 185:23, 190:4, 190:7, 190:10, 191:13, 193:1, 193:2, 193:22, 198:9 quick [2] - 59:10, 79:13 quickly [2] - 138:18, 198:3 quiet [2] - 68:7, 68:20 quieter [1] - 169:13 quite [6] - 64:24, 84:10, 84:12, 84:13, 102:23, 143:25 quote [2] - 95:6, 101:7</p>	<p>Raise [1] - 8:11 raising [1] - 49:20 ran [1] - 55:22 range [2] - 143:23, 155:1 rangeland [1] - 99:25 Rapids [1] - 69:13 rare [1] - 127:6 rate [2] - 144:17, 148:1 rates [1] - 123:25 rather [3] - 74:18, 82:14, 96:11 ratio [1] - 178:21 ratios [1] - 179:2 re [3] - 68:8, 68:11, 135:8 re-call [3] - 68:8, 68:11, 135:8 reached [1] - 19:12 read [6] - 88:7, 89:8, 112:1, 138:4, 138:6, 163:17 reading [1] - 138:21 ready [1] - 78:1 realize [1] - 38:25 really [27] - 8:6, 13:9, 13:17, 14:25, 15:7, 21:4, 21:7, 49:1, 73:1, 75:23, 79:9, 82:4, 82:5, 94:8, 123:2, 135:5, 136:10, 143:1, 145:15, 147:5, 150:16, 150:18, 179:14, 188:24, 189:1 reason [9] - 12:5, 42:15, 47:15, 89:4, 98:3, 105:8, 154:21, 165:16, 167:4 reasonable [2] - 60:9, 67:24 reasons [4] - 103:22, 104:24, 105:1, 126:20 receive [4] - 48:5, 111:17, 112:17, 171:15 Received [1] - 5:3 received [12] - 11:19, 30:23, 30:25, 44:13, 57:9, 111:21, 112:9, 117:23, 133:21, 168:17, 171:10, 196:24 recent [1] - 174:15 recently [1] - 12:18 recess [5] - 67:18, 67:19, 67:22, 68:2, 139:17 Recess [2] - 68:4, 139:21 recommend [1] - 136:23 recommendation [2] - 74:2, 81:19 recommendations [2] - 70:25, 73:15 recommended [1] - 194:24 reconnaissance [1] - 70:25 record [19] - 6:2, 6:5, 13:18, 14:6, 14:19, 14:21, 23:8, 52:15, 61:18, 69:11, 92:7, 104:4, 139:23, 143:16, 143:20, 144:11, 163:18,</p>	<p>199:22, 200:7 recorded [3] - 148:25, 149:4, 200:5 recording [2] - 124:11, 142:19 Recreation [1] - 123:15 Recross [2] - 3:9, 3:10 RECROSS [1] - 160:9 RECROSS-EXAMINATION [1] - 160:9 Recross-examination [2] - 3:9, 3:10 red [2] - 119:19 REDIRECT [7] - 48:23, 67:6, 113:9, 119:11, 130:8, 137:1, 156:10 redirect [2] - 18:12, 50:22 Redirect [7] - 3:8, 3:9, 3:20, 4:4, 4:5, 4:6, 4:11 reduce [1] - 151:4 refer [2] - 58:6, 88:1 referenced [6] - 30:16, 51:6, 101:4, 112:19, 181:8, 184:3 referred [3] - 59:9, 87:20, 156:13 referring [3] - 110:7, 116:13, 163:23 refers [1] - 34:5 refined [2] - 82:21, 148:10 refinement [1] - 83:21 refining [1] - 176:19 reflect [1] - 177:2 refrigerator [2] - 178:2, 178:4 refrigerator's [1] - 178:5 Refuge [2] - 137:23, 137:25 refurbish [1] - 162:19 regard [11] - 52:4, 60:7, 61:7, 68:25, 85:2, 91:19, 140:1, 141:22, 187:6, 187:10, 190:21 regarding [4] - 21:15, 43:22, 44:16, 117:12 regards [1] - 63:22 regime [2] - 45:18, 46:12 region [1] - 10:14 regional [2] - 141:3, 183:10 Register [5] - 73:7, 81:10, 81:21, 81:23, 82:3 registered [1] - 70:4 Registered [2] - 200:3, 200:18 regularly [1] - 77:23 regulated [1] - 108:14 regulatory [1] - 93:4 related [2] - 43:17, 176:19 relates [4] - 51:7, 92:17, 140:21, 171:7 relating [2] - 85:23, 94:14</p>	<p>relation [2] - 142:24, 148:21 relationship [2] - 28:4, 59:3 relative [1] - 123:23 relay [1] - 63:5 relevant [3] - 122:22, 122:24, 123:1 reliability [1] - 9:17 relied [1] - 121:11 rely [3] - 103:12, 103:13, 104:1 remainder [1] - 55:18 remaining [1] - 97:2 remarkable [2] - 12:16, 16:1 remember [4] - 66:13, 102:9, 138:5, 178:24 remind [1] - 119:6 reminds [1] - 10:3 remnants [2] - 99:23, 100:2 remote [1] - 135:23 renovated [1] - 192:15 rep [1] - 83:18 repair [1] - 175:20 replied [1] - 11:15 report [36] - 71:11, 71:16, 73:20, 76:4, 77:7, 77:16, 77:18, 77:25, 78:13, 78:16, 79:5, 79:11, 79:13, 80:6, 80:10, 80:12, 81:3, 82:15, 84:10, 84:15, 89:15, 90:15, 94:5, 94:12, 95:5, 100:12, 120:10, 126:3, 136:23, 146:13, 148:9, 152:13, 152:15, 196:12, 196:22, 196:24 reported [3] - 108:16, 124:10, 148:18 REPORTER [2] - 2:23, 200:1 Reporter [2] - 200:4, 200:18 reporting [1] - 94:4 reports [4] - 77:21, 90:11, 94:1, 96:9 represent [1] - 191:12 representative [2] - 121:13, 123:2 representatives [3] - 17:3, 73:24, 83:14 representing [2] - 14:16, 192:4 represents [2] - 116:20, 185:3 reprint [1] - 123:19 request [7] - 29:20, 42:24, 71:10, 95:15, 136:19, 157:21, 179:18 requested [9] - 70:24, 71:10, 77:19, 114:3, 121:19, 123:16, 129:5, 134:22, 136:19 requesting [2] - 129:19, 185:9</p>
R	<p>radius [1] - 165:16 railroad [15] - 63:25, 64:1, 64:3, 64:7, 64:8, 64:9, 64:10, 65:23, 65:24, 66:2, 66:3, 66:12, 67:10, 160:16, 160:20 rain [1] - 84:3 raise [2] - 8:8, 49:24</p>		

<p>requests [5] - 43:1, 171:3, 176:19, 178:7, 195:22</p> <p>require [3] - 47:7, 55:16, 63:15</p> <p>required [9] - 7:25, 22:17, 47:17, 78:9, 79:17, 158:24, 163:19, 164:24, 165:15</p> <p>requirement [1] - 162:10</p> <p>requirements [5] - 25:14, 39:7, 161:24, 161:25, 180:10</p> <p>research [4] - 71:1, 92:22, 141:2, 188:2</p> <p>reseed [1] - 176:7</p> <p>reside [1] - 186:25</p> <p>residence [4] - 162:5, 162:23, 165:12, 168:19</p> <p>residences [6] - 164:15, 165:11, 173:24, 174:8, 179:9, 184:3</p> <p>resident [1] - 144:21</p> <p>residents [1] - 148:12</p> <p>resource [7] - 42:24, 44:6, 70:7, 101:10, 103:17, 158:17, 159:11</p> <p>resources [37] - 9:14, 15:8, 15:9, 21:9, 21:15, 21:20, 26:22, 44:2, 44:3, 44:17, 69:19, 74:21, 80:18, 90:14, 94:5, 94:12, 95:5, 95:9, 99:21, 101:3, 101:5, 101:7, 101:10, 101:13, 101:17, 101:18, 101:19, 101:21, 103:18, 120:10, 123:10, 123:11, 125:23, 127:20, 128:3</p> <p>Resources [2] - 92:21, 95:15</p> <p>respect [1] - 28:21</p> <p>respond [3] - 49:2, 118:1, 156:23</p> <p>responded [2] - 44:21, 44:22</p> <p>responding [1] - 118:6</p> <p>response [12] - 11:18, 60:10, 112:18, 117:18, 117:23, 117:24, 117:25, 118:14, 156:18, 167:21, 196:14, 196:17</p> <p>responsibilities [1] - 102:21</p> <p>responsible [1] - 16:20</p> <p>rest [3] - 50:20, 122:11, 143:6</p> <p>restore [1] - 81:17</p> <p>restoring [1] - 27:2</p> <p>restriction [1] - 98:12</p> <p>result [9] - 73:14, 74:21, 101:23, 105:23, 128:4, 128:9, 131:13, 145:9, 161:17</p> <p>results [9] - 30:2, 31:10, 47:21, 50:12, 50:20,</p>	<p>146:14, 146:16, 157:9, 168:23</p> <p>resume [15] - 38:7, 53:3, 53:13, 53:20, 53:24, 62:1, 62:10, 70:5, 70:11, 70:19, 86:13, 86:18, 93:14, 141:9, 141:17</p> <p>revenue [1] - 189:9</p> <p>revenues [1] - 40:12</p> <p>review [9] - 31:5, 52:22, 93:12, 106:7, 114:9, 114:19, 115:16, 121:22, 185:18</p> <p>reviewed [2] - 102:5, 149:7</p> <p>reviews [1] - 101:19</p> <p>revised [2] - 8:22, 50:6</p> <p>revisit [1] - 76:15</p> <p>rewards [2] - 189:7, 189:12</p> <p>RFP [3] - 41:2, 41:4, 41:11</p> <p>Rich [1] - 25:19</p> <p>rich [1] - 16:18</p> <p>Richard [10] - 3:21, 4:18, 21:9, 25:24, 37:25, 38:4, 68:18, 69:12, 190:18</p> <p>RICHARD [2] - 69:5, 191:1</p> <p>ridge [1] - 81:14</p> <p>ridges [1] - 11:4</p> <p>right-hand [1] - 165:24</p> <p>right-of-ways [1] - 165:14</p> <p>rights [3] - 19:21, 19:22, 64:12</p> <p>ring [1] - 72:19</p> <p>rings [5] - 72:7, 73:22, 77:11, 159:9</p> <p>riparian [1] - 115:15</p> <p>risk [1] - 153:9</p> <p>River [6] - 124:22, 132:18, 137:13, 150:13, 150:22, 171:5</p> <p>road [19] - 65:23, 72:3, 74:3, 80:10, 80:19, 97:20, 98:6, 98:16, 98:21, 105:12, 149:19, 159:20, 159:21, 165:13, 166:22, 167:5, 175:4, 175:16, 180:23</p> <p>roads [35] - 31:20, 31:22, 61:24, 62:15, 62:23, 63:5, 63:8, 63:9, 63:10, 63:11, 63:14, 64:14, 65:5, 72:12, 73:13, 76:16, 76:22, 79:10, 88:25, 94:8, 96:22, 97:11, 97:17, 99:17, 110:13, 126:24, 159:24, 159:25, 160:19, 161:18, 175:2, 175:3, 179:7</p> <p>roadway [2] - 168:13, 180:1</p> <p>roadways [3] - 97:14, 176:11, 178:19</p> <p>robust [1] - 45:25</p> <p>Rock [1] - 73:25</p>	<p>role [10] - 7:8, 15:6, 62:24, 86:24, 94:2, 114:23, 114:24, 115:1, 115:6, 126:16</p> <p>rolling [1] - 103:20</p> <p>room [4] - 12:15, 24:9, 49:21, 169:7</p> <p>roost [1] - 144:25</p> <p>roosting [3] - 142:15, 145:22, 146:24</p> <p>ROTHAUS [3] - 68:23, 69:1, 69:5</p> <p>Rothaus [13] - 3:21, 21:9, 68:18, 68:19, 68:22, 69:10, 69:12, 69:16, 70:10, 70:19, 76:2, 84:21, 159:9</p> <p>rotor [5] - 144:13, 145:1, 147:25, 152:21, 153:10</p> <p>rotor-sweep [2] - 145:1, 152:21</p> <p>roughly [2] - 12:23, 24:21</p> <p>route [2] - 124:21, 128:5</p> <p>routed [1] - 81:18</p> <p>routes [1] - 72:10</p> <p>RSA [2] - 144:13, 152:20</p> <p>ruin [1] - 46:15</p> <p>rules [3] - 19:23, 163:14, 179:16</p> <p>run [4] - 137:3, 153:6, 159:20, 163:9</p> <p>running [4] - 141:5, 179:5, 179:8, 189:22</p> <p>runs [2] - 66:8, 66:13</p> <p>rural [1] - 192:12</p>	<p>scenario [1] - 30:10</p> <p>schedule [5] - 34:11, 34:13, 48:8, 48:9, 60:18</p> <p>scheduled [4] - 9:5, 50:2, 110:6, 145:6</p> <p>schedules [1] - 26:18</p> <p>school [2] - 189:9, 192:11</p> <p>schooling [1] - 38:9</p> <p>SCHULTZ [5] - 85:3, 85:7, 119:8, 140:2, 140:6</p> <p>Schultz [35] - 4:2, 4:13, 21:22, 21:24, 84:24, 85:1, 85:12, 85:14, 86:18, 88:19, 89:21, 89:23, 89:24, 94:3, 113:3, 113:4, 119:4, 119:5, 121:5, 127:10, 127:12, 136:14, 138:9, 139:13, 139:16, 139:24, 139:25, 140:11, 140:13, 148:21, 150:10, 150:11, 155:24, 156:2, 188:7</p> <p>Schultz's [1] - 141:17</p> <p>Schultzes [1] - 158:1</p> <p>science [1] - 140:25</p> <p>scientist [2] - 21:13, 92:13</p> <p>scientists [1] - 126:16</p> <p>scope [2] - 170:2, 172:14</p> <p>searching [1] - 25:16</p> <p>season [2] - 103:1, 104:18</p> <p>seasonally [1] - 104:12</p> <p>seats [1] - 12:14</p> <p>second [7] - 35:10, 45:20, 128:23, 129:4, 131:5, 144:2, 154:22</p> <p>Secondly [1] - 9:12</p> <p>seconds [2] - 102:19, 109:18</p> <p>secretary [2] - 23:14, 36:21</p> <p>Section [1] - 163:24</p> <p>section [10] - 31:19, 44:1, 85:20, 97:12, 97:15, 122:13, 127:19, 127:22, 127:23, 159:25</p> <p>sections [2] - 63:1, 119:18</p> <p>secured [1] - 66:10</p> <p>see [48] - 11:5, 11:18, 12:13, 13:21, 16:1, 16:3, 24:9, 26:3, 26:12, 31:19, 35:22, 37:14, 44:18, 47:15, 58:1, 60:17, 71:5, 75:10, 75:20, 77:12, 82:7, 84:12, 89:5, 89:7, 90:12, 96:8, 100:13, 112:15, 114:5, 116:3, 120:22, 121:4, 123:3, 131:25, 134:4, 139:20, 145:16, 151:19, 151:23, 156:16, 157:15, 159:4, 165:20, 172:17, 174:24, 184:2, 199:20</p> <p>See [3] - 33:14, 182:6, 196:3</p> <p>Seeding [1] - 109:23</p>
S			
<p>safer [1] - 151:13</p> <p>salt [1] - 124:7</p> <p>sampling [1] - 75:8</p> <p>sandhill [20] - 142:1, 142:3, 142:13, 142:18, 142:23, 143:3, 143:9, 143:16, 144:11, 145:4, 145:10, 145:21, 145:25, 146:9, 146:21, 147:4, 147:11, 147:15, 154:7, 155:5</p> <p>Sandhill [1] - 142:4</p> <p>sat [1] - 121:10</p> <p>satisfied [1] - 163:8</p> <p>satisfy [1] - 107:4</p> <p>saturated [1] - 102:25</p> <p>Saturday [1] - 154:8</p> <p>Sauk [1] - 69:13</p> <p>save [4] - 29:16, 65:8, 135:10, 192:20</p> <p>saw [5] - 11:4, 26:4, 113:11, 154:7, 180:8</p> <p>scale [3] - 45:23, 97:24, 98:2</p>			

<p>Seeing [1] - 10:3 seeing [3] - 13:12, 157:4, 193:16 seek [1] - 42:15 seem [2] - 122:11, 150:6 segments [1] - 121:3 select [1] - 147:18 selected [1] - 41:18 sell [3] - 35:1, 39:23, 42:15 selling [1] - 41:6 semi [1] - 116:22 semi-permanently [1] - 116:22 send [3] - 39:18, 77:20, 129:18 sending [2] - 27:12, 27:23 senior [4] - 52:20, 52:22, 85:19, 140:17 sense [4] - 24:20, 35:19, 96:13, 160:25 sent [10] - 27:24, 31:25, 43:16, 43:19, 44:22, 44:23, 128:22, 156:18, 191:24, 196:18 separate [2] - 30:13, 152:2 separately [2] - 45:3, 87:25 September [5] - 34:8, 105:11, 106:8, 127:20, 163:24 series [2] - 87:22, 129:21 servant [1] - 199:12 service [5] - 30:20, 31:2, 42:20, 43:1, 171:3 Service [30] - 2:12, 7:7, 7:15, 9:22, 14:9, 43:16, 43:23, 44:15, 44:21, 94:9, 95:15, 99:19, 104:5, 108:14, 109:6, 109:10, 109:24, 110:8, 112:17, 112:21, 113:12, 113:18, 117:13, 117:18, 121:18, 124:15, 130:17, 133:22, 135:17, 196:17 SERVICE [1] - 1:3 serving [1] - 141:1 session [4] - 8:6, 197:20, 197:21, 197:23 set [6] - 25:6, 25:14, 25:20, 113:19, 150:2, 166:21 setback [7] - 163:7, 164:5, 165:1, 174:8, 178:23, 179:6, 184:10 Setback [1] - 164:1 Setbacks [1] - 184:21 signbacks [8] - 158:24, 161:23, 162:15, 163:18, 165:22, 178:18, 178:19, 180:10 setup [1] - 170:23 seven [3] - 92:25, 93:1,</p>	<p>120:17 several [5] - 55:15, 73:22, 144:6, 145:13, 149:15 shadow [1] - 13:6 shallow [2] - 104:16, 105:4 shape [1] - 159:5 share [3] - 10:8, 12:5, 25:13 sharing [1] - 11:24 sheet [5] - 7:23, 7:25, 139:18, 139:19, 199:20 shift [1] - 76:17 shifted [1] - 74:3 short [8] - 43:7, 43:8, 43:9, 43:12, 56:3, 92:22, 171:10, 196:6 shorthand [2] - 200:6, 200:11 Shortly [1] - 7:17 shortly [1] - 8:16 show [15] - 8:1, 8:9, 49:17, 63:18, 83:21, 88:23, 88:25, 89:1, 95:2, 96:18, 105:1, 105:16, 124:20, 159:11, 186:14 showed [6] - 120:20, 123:22, 123:25, 125:5, 173:23 showing [7] - 9:4, 88:22, 96:15, 107:25, 180:21, 180:22 shown [9] - 9:1, 11:23, 107:15, 109:14, 119:18, 144:20, 153:1, 174:8, 193:12 shows [8] - 57:12, 57:13, 57:15, 57:17, 104:13, 105:22, 123:17, 125:4 SHPO [14] - 77:16, 77:18, 77:19, 77:25, 78:14, 79:5, 79:18, 79:25, 80:5, 80:6, 81:3, 84:1, 171:17, 173:15 side [4] - 14:16, 18:20, 165:24, 175:16 Siemens [5] - 46:6, 46:7, 46:16, 53:7 Siemens' [1] - 46:18 sighted [1] - 124:9 sightings [2] - 124:24, 125:3 sign [9] - 17:17, 78:1, 78:7, 78:10, 78:11, 78:14, 81:3, 139:18, 139:19 sign-up [1] - 139:19 signature [1] - 43:17 signed [5] - 141:25, 181:5, 181:9, 197:10, 199:19 significance [3] - 74:7, 89:4, 89:12 signoff [2] - 79:25, 196:23 similar [7] - 12:19, 70:7, 142:6, 143:4, 143:10, 147:2</p>	<p>simply [13] - 24:8, 30:11, 30:25, 38:10, 38:24, 43:10, 45:25, 95:15, 143:3, 143:7, 152:23, 157:1, 157:12 sings [2] - 141:8, 147:22 Sioux [1] - 73:25 sit [3] - 88:24, 186:8, 186:12 site [34] - 8:22, 12:25, 25:2, 28:24, 31:15, 32:18, 33:5, 54:23, 71:5, 72:15, 72:16, 72:20, 73:21, 74:14, 77:14, 81:18, 102:13, 102:16, 102:18, 119:16, 121:10, 148:16, 150:18, 151:8, 151:10, 152:18, 157:4, 159:4, 159:13, 160:20, 161:22, 162:17, 162:20, 167:3 sited [3] - 12:18, 13:3, 172:12 sites [11] - 63:20, 72:15, 72:21, 73:4, 73:6, 74:1, 75:1, 75:3, 76:12, 81:9, 105:14 siting [14] - 6:9, 10:11, 15:7, 34:6, 99:10, 99:11, 113:20, 126:11, 152:4, 158:9, 158:10, 159:3, 159:8, 170:3 Siting [1] - 1:6 sits [3] - 105:25, 125:6 sitting [2] - 112:2, 178:2 situations [1] - 153:5 six [6] - 59:15, 70:7, 142:2, 142:17, 144:3, 195:23 sixth [1] - 196:13 Sixth [2] - 2:8, 92:9 size [4] - 55:6, 55:13, 105:21, 173:4 sizes [1] - 55:8 sky [1] - 154:9 slipped [1] - 197:10 small [6] - 62:25, 89:10, 188:18, 189:18, 192:18, 199:10 Small [1] - 146:5 smaller [1] - 46:2 Smith [2] - 200:3, 200:17 snapshot [1] - 72:3 society [1] - 70:3 Society [3] - 70:23, 71:10, 171:17 Soil [3] - 92:23, 93:1, 93:7 soil [6] - 55:14, 95:17, 95:18, 95:20, 103:4 soils [3] - 95:20, 98:10, 104:14 sold [1] - 49:18 solicit [1] - 87:7 solicited [1] - 126:2</p>	<p>solve [2] - 16:4, 189:21 someone [10] - 29:15, 34:1, 39:20, 44:8, 73:8, 77:11, 77:14, 81:14, 111:17, 113:1 something's [1] - 75:22 sometime [3] - 9:4, 79:14, 157:8 sometimes [12] - 48:25, 71:25, 75:13, 124:7, 143:2, 143:7, 143:14, 145:1, 169:9, 175:2, 175:6, 198:3 somewhat [1] - 147:14 somewhere [4] - 137:22, 151:3, 151:4, 151:7 somewheres [1] - 97:4 song [1] - 153:3 soon [2] - 189:23, 195:20 Sorry [3] - 88:17, 125:19, 186:9 sorry [8] - 88:18, 97:6, 116:8, 128:19, 166:17, 181:2, 187:7, 196:2 sort [8] - 71:3, 71:12, 72:3, 79:16, 98:12, 103:23, 109:23, 117:16 Sort [1] - 96:16 sorts [1] - 198:6 sound [2] - 178:12, 188:5 sounds [1] - 182:18 source [1] - 103:13 sources [1] - 87:6 South [6] - 2:8, 10:14, 61:20, 140:13, 144:4, 147:8 south [5] - 89:3, 89:11, 94:21, 125:15, 184:22 Southeast [1] - 190:19 southern [2] - 102:8, 143:12 Southwest [1] - 186:25 soybeans [1] - 105:5 SPEAKER [1] - 186:17 speaking [4] - 23:21, 69:18, 95:11, 131:23 specialist [1] - 155:6 specialists [1] - 38:22 specialty [1] - 54:12 Species [2] - 112:22, 155:19 species [35] - 120:21, 123:5, 123:7, 123:12, 123:16, 123:23, 126:6, 127:7, 129:11, 129:12, 130:18, 131:14, 132:11, 132:23, 135:25, 136:2, 142:20, 142:22, 143:17, 144:10, 144:21, 148:2, 148:6, 148:8, 148:10, 148:12, 149:25, 152:10, 152:18, 152:20, 153:9, 156:17, 182:24 specific [9] - 32:18, 33:5,</p>
---	---	--	---

<p>41:12, 139:5, 148:16, 150:18, 151:10, 152:18, 153:8</p> <p>Specifically [1] - 146:18</p> <p>specifically [6] - 94:8, 95:25, 102:8, 107:20, 109:19, 188:9</p> <p>specifying [1] - 198:6</p> <p>speed [1] - 63:13</p> <p>speeds [2] - 45:19</p> <p>spell [1] - 187:3</p> <p>spending [1] - 143:6</p> <p>sphere [1] - 49:4</p> <p>spinning [1] - 79:16</p> <p>spot [3] - 71:16, 73:17, 145:11</p> <p>spots [2] - 63:17, 63:22</p> <p>spotted [2] - 123:5, 123:7</p> <p>spread [3] - 12:20, 151:25, 152:1</p> <p>spreading [1] - 152:9</p> <p>spring [11] - 35:9, 35:12, 124:25, 132:4, 142:7, 143:5, 145:6, 145:18, 147:12, 154:10, 154:19</p> <p>Spring [2] - 36:11, 36:12</p> <p>square [4] - 72:11, 184:3, 185:2, 185:5</p> <p>stability [3] - 29:24, 30:8, 50:11</p> <p>stack [1] - 58:1</p> <p>Staff [1] - 2:13</p> <p>staff [11] - 7:7, 18:9, 19:2, 20:7, 73:21, 77:9, 87:1, 90:17, 178:18, 197:24, 198:10</p> <p>stage [2] - 67:9, 131:9</p> <p>staging [7] - 145:22, 146:23, 172:18, 172:22, 173:8, 173:12, 196:4</p> <p>stand [2] - 119:4, 188:20</p> <p>standard [1] - 55:18</p> <p>standards [1] - 46:11</p> <p>Standing [1] - 73:25</p> <p>standing [1] - 178:11</p> <p>stands [1] - 128:7</p> <p>start [16] - 6:4, 6:12, 10:25, 20:21, 25:3, 34:16, 74:15, 75:25, 79:23, 133:24, 133:25, 134:3, 134:5, 158:10, 186:20, 193:25</p> <p>started [8] - 20:25, 24:9, 25:24, 26:11, 27:23, 37:11, 66:6, 131:23</p> <p>starting [4] - 6:13, 35:9, 68:21, 134:1</p> <p>STATE [1] - 1:2</p> <p>state [28] - 7:4, 10:13, 10:17, 11:7, 12:23, 13:20, 13:22, 14:2, 15:25, 17:3, 22:13,</p>	<p>22:20, 23:7, 25:14, 52:14, 53:11, 61:17, 66:7, 66:20, 69:10, 74:11, 85:12, 92:6, 140:11, 143:6, 171:8, 188:25, 189:8</p> <p>State [18] - 2:13, 53:9, 53:10, 69:23, 70:2, 70:23, 71:9, 72:15, 87:8, 92:20, 93:5, 102:23, 140:23, 140:24, 160:21, 171:17, 189:14, 196:22</p> <p>Statement [2] - 4:17, 4:19</p> <p>STATEMENT [2] - 187:19, 191:4</p> <p>statement [2] - 2:20, 20:13</p> <p>States [3] - 10:22, 143:12, 180:9</p> <p>states [2] - 112:17, 170:19</p> <p>statewide [2] - 96:4, 100:8</p> <p>station [2] - 25:6, 58:9</p> <p>status [6] - 29:19, 31:13, 40:14, 65:25, 66:5, 160:12</p> <p>statutes [1] - 19:22</p> <p>stay [1] - 192:22</p> <p>staying [2] - 152:6, 152:7</p> <p>step [8] - 55:1, 55:3, 56:10, 131:3, 131:5, 188:12, 188:16, 197:16</p> <p>step-up [2] - 55:1, 56:10</p> <p>Stephanie [2] - 200:3, 200:17</p> <p>steps [3] - 27:14, 157:6, 198:10</p> <p>Steve [3] - 37:25, 38:6, 165:7</p> <p>stewarding [1] - 16:20</p> <p>stewards [1] - 16:17</p> <p>stick [1] - 48:8</p> <p>still [15] - 25:25, 29:25, 30:1, 31:4, 37:15, 37:16, 63:19, 105:6, 119:6, 128:13, 133:9, 156:5, 170:9, 171:9, 192:11</p> <p>Stone [1] - 83:15</p> <p>stone [4] - 72:7, 72:19, 73:22, 77:11</p> <p>stop [4] - 142:12, 147:18, 147:19, 149:5</p> <p>storage [4] - 172:10, 172:13, 172:17, 176:13</p> <p>stored [1] - 172:16</p> <p>stormwater [1] - 161:8</p> <p>story [1] - 24:24</p> <p>straight [3] - 67:25, 159:21, 166:16</p> <p>strain [1] - 56:19</p> <p>Street [7] - 2:8, 52:16, 92:9, 190:19, 192:9, 192:10, 192:21</p> <p>strike [1] - 42:16</p> <p>strippable [1] - 101:9</p>	<p>strong [2] - 141:6, 192:11</p> <p>stronger [1] - 117:21</p> <p>struggled [1] - 192:20</p> <p>studied [1] - 11:5</p> <p>studies [37] - 24:14, 30:1, 30:7, 30:8, 45:21, 47:22, 47:23, 50:15, 50:16, 59:13, 69:25, 120:11, 120:12, 120:15, 120:16, 121:8, 121:11, 121:22, 121:23, 122:1, 122:3, 122:5, 122:9, 122:14, 122:20, 122:22, 123:7, 127:22, 127:23, 140:21, 144:4, 144:20, 152:25, 173:16, 182:1, 182:2, 188:7</p> <p>study [23] - 21:9, 21:10, 21:20, 29:22, 29:24, 30:17, 32:17, 32:24, 50:7, 50:21, 90:15, 101:2, 120:24, 131:24, 142:9, 142:10, 145:2, 146:14, 146:16, 147:2, 154:16, 157:9, 171:22</p> <p>studying [1] - 142:23</p> <p>stuff [9] - 38:9, 51:12, 72:17, 72:18, 122:4, 159:10, 161:8, 175:17, 184:6</p> <p>subcontracted [1] - 54:15</p> <p>subcontractors [1] - 38:21</p> <p>submit [3] - 48:11, 48:14, 168:23</p> <p>submitted [2] - 9:2, 82:20</p> <p>submitting [1] - 117:17</p> <p>subsidiary [1] - 6:23</p> <p>substantive [1] - 198:12</p> <p>substation [11] - 42:25, 43:6, 54:9, 54:13, 55:10, 56:10, 56:13, 56:14, 56:16, 56:20, 183:13</p> <p>substations [2] - 56:7, 86:6</p> <p>subsurface [2] - 71:12, 71:17</p> <p>subtract [1] - 97:13</p> <p>sudden [1] - 182:11</p> <p>sufficient [1] - 74:1</p> <p>suggest [1] - 113:2</p> <p>suggested [1] - 150:10</p> <p>suggestions [1] - 73:15</p> <p>Suite [1] - 2:8</p> <p>sum [1] - 72:10</p> <p>summarize [2] - 21:11, 95:7</p> <p>summer [2] - 34:19, 36:13</p> <p>Sunday [1] - 154:8</p> <p>Super [1] - 27:2</p> <p>superintendent [2] - 62:18, 62:20</p> <p>supervise [2] - 160:18, 160:20</p> <p>supervisor [1] - 141:3</p>	<p>supplement [4] - 104:9, 163:2, 163:24, 185:12</p> <p>supplemental [1] - 34:7</p> <p>supplied [4] - 54:6, 57:7, 129:6, 169:22</p> <p>supplier [2] - 172:21, 178:8</p> <p>Supply [1] - 35:6</p> <p>supply [5] - 24:22, 46:15, 169:20, 171:4, 173:7</p> <p>support [10] - 24:8, 32:10, 37:5, 37:14, 49:17, 62:19, 94:3, 103:1, 191:10, 192:7</p> <p>supposedly [1] - 42:2</p> <p>surface [3] - 63:16, 101:11, 161:16</p> <p>surprisingly [1] - 199:9</p> <p>surrogate [2] - 142:24, 143:14</p> <p>surrogates [1] - 142:4</p> <p>survey [17] - 70:25, 71:2, 71:23, 72:11, 74:25, 75:6, 75:8, 80:15, 105:13, 142:18, 145:5, 145:7, 145:17, 145:21, 155:7</p> <p>surveys [12] - 70:1, 70:4, 70:9, 142:1, 142:11, 143:15, 143:25, 147:4, 147:13, 147:16, 147:17, 181:25</p> <p>survived [1] - 82:4</p> <p>Susan [1] - 7:16</p> <p>SUSAN [1] - 2:3</p> <p>swath [4] - 124:17, 124:18, 125:14, 125:15</p> <p>swear [2] - 22:14, 186:23</p> <p>sweep [4] - 144:13, 145:1, 148:1, 152:21</p> <p>sworn [21] - 18:7, 22:24, 23:3, 52:6, 52:10, 61:9, 61:13, 69:2, 69:6, 85:4, 85:8, 91:21, 92:2, 119:9, 140:3, 140:7, 156:8, 187:12, 187:17, 190:23, 191:2</p> <p>system [29] - 9:17, 29:22, 30:7, 30:12, 30:13, 30:14, 30:15, 32:22, 32:23, 33:13, 33:16, 33:17, 42:22, 43:3, 47:7, 47:12, 47:18, 47:25, 48:6, 48:10, 50:11, 50:14, 50:17, 54:16, 54:25, 66:4, 169:9, 183:12</p> <p>systems [4] - 52:22, 54:13, 54:14, 55:18</p>
T			
<p>T105 [1] - 185:17</p> <p>T138 [2] - 184:19, 185:8</p>			

<p>T78 [1] - 185:16</p> <p>table [7] - 7:9, 25:4, 163:25, 164:2, 164:14, 164:16, 164:18</p> <p>taker [1] - 171:6</p> <p>talks [5] - 124:15, 126:4, 128:24, 137:23, 156:16</p> <p>tall [1] - 167:15</p> <p>tap [1] - 183:13</p> <p>targeted [4] - 26:5, 28:16, 31:25, 191:23</p> <p>taxes [1] - 189:9</p> <p>team [4] - 37:5, 37:14, 38:21, 38:23</p> <p>teardown [1] - 64:3</p> <p>technically [3] - 14:19, 41:12, 81:22</p> <p>teepee [2] - 72:7, 72:19</p> <p>temporary [5] - 27:5, 35:19, 107:5, 107:21, 107:22</p> <p>ten [9] - 67:18, 67:20, 67:21, 68:2, 80:24, 81:25, 109:17, 139:16</p> <p>ten-minute [4] - 67:18, 67:21, 68:2, 139:16</p> <p>tend [2] - 14:12, 100:6</p> <p>tends [4] - 100:4, 103:19, 103:21, 103:24</p> <p>tenth [1] - 81:1</p> <p>term [3] - 14:1, 55:21, 143:1</p> <p>terms [5] - 99:16, 103:25, 105:18, 107:12, 114:15</p> <p>terrain [2] - 10:25, 64:4</p> <p>testified [11] - 23:4, 52:11, 61:14, 69:7, 85:9, 92:3, 119:10, 140:8, 156:9, 187:18, 191:3</p> <p>testifies [1] - 22:15</p> <p>testify [9] - 14:11, 18:7, 18:22, 19:2, 50:2, 97:23, 121:6, 186:11, 199:15</p> <p>testifying [3] - 22:17, 38:19, 194:8</p> <p>testimony [15] - 8:3, 15:21, 18:18, 19:7, 19:10, 32:20, 51:5, 53:16, 112:11, 135:13, 170:1, 170:5, 182:14, 188:5, 199:15</p> <p>testing [2] - 71:12, 71:17</p> <p>Texas [1] - 53:11</p> <p>THE [38] - 2:10, 2:15, 31:6, 31:8, 33:2, 47:20, 51:22, 66:15, 80:13, 84:16, 90:2, 90:9, 111:23, 113:16, 116:11, 116:14, 119:2, 135:3, 136:14, 137:12, 138:11, 153:13, 155:9, 164:3, 164:11, 164:25, 165:7, 168:1, 168:3, 168:6, 174:11, 174:16, 177:23,</p>	<p>179:1, 180:3, 181:3, 181:16, 185:18</p> <p>themselves [3] - 33:18, 64:5, 155:18</p> <p>theory [2] - 150:17, 151:2</p> <p>therefore [1] - 104:19</p> <p>thermal [3] - 50:11, 55:13, 59:13</p> <p>they've [10] - 11:15, 27:20, 42:3, 43:2, 43:10, 122:7, 122:8, 124:23, 172:12, 189:5</p> <p>They've [4] - 78:16, 122:6, 157:14, 173:17</p> <p>thinking [4] - 75:23, 107:21, 149:3, 179:10</p> <p>Third [1] - 129:3</p> <p>third [3] - 9:15, 128:24, 131:9</p> <p>thirds [1] - 103:11</p> <p>thorough [6] - 21:10, 71:9, 75:11, 75:13, 75:15, 75:17</p> <p>thoughts [1] - 10:8</p> <p>thousand [10] - 24:21, 162:6, 162:7, 162:22, 163:4, 163:15, 164:8, 164:10, 165:9, 179:9</p> <p>thousand-foot [1] - 164:8</p> <p>threatened [12] - 123:6, 123:12, 125:25, 126:6, 126:7, 127:6, 128:3, 130:18, 131:14, 132:10, 132:23, 156:17</p> <p>Three [3] - 8:13, 37:23, 72:21</p> <p>three [18] - 8:13, 8:18, 20:2, 27:19, 29:3, 29:4, 37:22, 70:6, 89:9, 96:15, 114:8, 114:11, 119:17, 133:24, 134:5, 141:24, 176:10, 176:14</p> <p>threshing [1] - 81:13</p> <p>threw [1] - 125:19</p> <p>Throughout [1] - 27:7</p> <p>throughout [7] - 14:2, 27:13, 45:19, 143:3, 147:17, 148:7, 180:9</p> <p>tilled [2] - 59:19, 109:22</p> <p>tilling [1] - 175:25</p> <p>timeline [4] - 46:18, 60:8, 60:9, 134:4</p> <p>timelines [1] - 35:14</p> <p>timely [3] - 9:19, 78:7, 199:5</p> <p>timing [2] - 128:17, 195:19</p> <p>tip [5] - 49:3, 166:16, 178:22, 179:22</p> <p>today [39] - 7:20, 9:7, 9:21, 10:2, 10:11, 11:10, 11:24, 12:2, 14:22, 17:6, 17:20, 17:24, 18:1, 19:13, 20:5, 20:17, 20:21, 22:17, 24:9, 29:1, 38:20, 44:9, 49:21,</p>	<p>58:1, 58:5, 58:6, 58:16, 60:6, 60:9, 111:12, 112:9, 141:10, 152:6, 187:23, 188:23, 194:22, 197:13, 198:18</p> <p>today's [1] - 9:5</p> <p>together [3] - 58:22, 143:14, 188:22</p> <p>TONY [1] - 2:4</p> <p>Tony [1] - 7:16</p> <p>took [6] - 26:16, 93:8, 158:13, 192:14, 193:13, 193:15</p> <p>tools [1] - 72:20</p> <p>top [5] - 46:17, 73:3, 81:25, 98:16, 144:14</p> <p>topic [1] - 158:5</p> <p>topography [4] - 11:5, 103:20, 103:22, 103:24</p> <p>total [5] - 35:20, 153:4, 166:12, 166:13, 195:24</p> <p>totally [5] - 30:13, 148:5, 150:4, 150:25, 151:20</p> <p>touch [1] - 104:6</p> <p>touched [1] - 160:15</p> <p>touches [1] - 32:22</p> <p>tour [1] - 94:7</p> <p>toured [1] - 12:19</p> <p>touring [2] - 12:17, 12:24</p> <p>towards [4] - 68:12, 112:15, 182:18, 188:12</p> <p>tower [3] - 97:5, 105:11, 166:9</p> <p>towers [2] - 13:7, 13:8</p> <p>town [5] - 26:6, 27:18, 73:18, 102:8, 192:18</p> <p>Towner [4] - 112:16, 124:5, 124:23, 139:1</p> <p>towns [1] - 199:10</p> <p>townships [3] - 75:2, 89:9, 119:17</p> <p>tract [1] - 108:18</p> <p>tradeoff [3] - 99:10, 99:11, 100:5</p> <p>tradition [1] - 16:18</p> <p>traditional [2] - 13:4, 13:13</p> <p>traffic [1] - 175:4</p> <p>trails [1] - 97:14</p> <p>training [2] - 69:21, 85:25</p> <p>TransCanada [1] - 12:20</p> <p>TRANSCRIPT [1] - 1:10</p> <p>transcript [1] - 200:11</p> <p>transfer [2] - 40:7, 176:12</p> <p>transformers [3] - 55:1, 56:10, 60:14</p> <p>transmission [27] - 16:13, 24:14, 30:16, 30:20, 31:1, 42:20, 43:1, 43:2, 43:9, 43:11, 50:14, 52:22, 54:14, 56:7, 56:15, 56:17, 57:13,</p>	<p>86:6, 137:8, 137:9, 137:13, 137:18, 167:10, 168:13, 171:3, 180:24, 183:10</p> <p>travel [2] - 154:11, 154:12</p> <p>treasurer [2] - 23:14, 36:21</p> <p>Treaty [1] - 112:22</p> <p>trees [1] - 11:2</p> <p>Trefoil [1] - 69:14</p> <p>tremendous [5] - 13:15, 13:24, 13:25, 14:1, 15:21</p> <p>tribal [2] - 83:14, 83:18</p> <p>Tribe [1] - 73:25</p> <p>tribes [1] - 83:17</p> <p>tried [9] - 27:11, 27:16, 105:14, 122:15, 137:6, 164:4, 165:19, 180:10, 191:18</p> <p>trigger [1] - 183:6</p> <p>triggered [1] - 182:17</p> <p>truck [1] - 172:24</p> <p>truly [1] - 138:25</p> <p>truth [1] - 22:23</p> <p>try [13] - 28:21, 63:5, 63:8, 63:11, 83:22, 97:25, 99:12, 106:22, 131:24, 132:6, 135:25, 189:22, 192:20</p> <p>trying [5] - 66:13, 122:16, 153:7, 153:21, 165:4</p> <p>Tuesday [1] - 6:3</p> <p>Turbine [2] - 35:6, 81:16</p> <p>turbine [55] - 8:25, 24:10, 31:21, 31:22, 32:19, 35:7, 45:17, 46:14, 53:7, 53:8, 55:2, 65:3, 65:5, 71:21, 71:22, 71:25, 72:2, 73:13, 73:22, 82:6, 96:22, 98:6, 99:10, 116:17, 119:22, 130:20, 130:22, 137:16, 144:13, 144:14, 150:4, 151:25, 153:9, 158:9, 158:25, 159:1, 159:15, 159:20, 163:10, 163:12, 166:9, 167:3, 167:24, 168:18, 169:16, 172:21, 173:21, 177:22, 178:7, 178:12, 178:14, 179:20, 180:23, 185:19</p> <p>turbine's [1] - 74:2</p> <p>turbines [40] - 10:16, 10:18, 21:5, 24:11, 24:17, 24:18, 35:8, 35:11, 35:23, 36:9, 45:15, 46:4, 46:15, 51:12, 54:5, 55:9, 63:20, 88:24, 99:11, 99:17, 110:12, 121:24, 122:10, 122:15, 126:15, 126:18, 126:24, 133:10, 133:12, 134:3, 148:19, 151:20, 152:9, 159:14, 162:4, 164:2, 165:16, 167:15, 184:8</p>
---	---	---	---

<p>turn [2] - 17:23, 130:21 turned [1] - 103:8 turnkey [2] - 39:21, 40:6 turnout [2] - 10:3, 12:14 tweak [2] - 126:17, 126:25 tweaking [2] - 106:18, 126:22 Two [2] - 8:12 two [45] - 27:19, 29:4, 34:9, 34:11, 34:19, 35:7, 35:19, 46:17, 53:2, 53:9, 54:19, 56:5, 56:7, 57:21, 74:9, 74:13, 76:11, 95:6, 96:2, 96:7, 96:15, 97:2, 97:8, 97:18, 98:20, 99:6, 100:16, 103:11, 108:4, 112:16, 113:3, 114:7, 114:10, 116:19, 119:23, 120:16, 121:3, 122:20, 138:4, 138:6, 163:12, 170:21, 173:11, 188:21 two-and-a-half-hour [1] - 121:3 two-thirds [1] - 103:11 tying [1] - 183:7 type [14] - 38:9, 51:12, 95:17, 104:16, 104:22, 105:3, 109:25, 116:20, 136:22, 159:9, 175:17, 182:21, 182:25, 184:6 types [9] - 25:21, 50:12, 93:12, 99:20, 104:23, 105:8, 146:2, 159:10, 176:8 typewritten [1] - 200:10 typically [4] - 67:10, 103:15, 104:1, 107:17</p>	<p>understood [2] - 103:5, 197:5 undertaken [1] - 128:10 underway [1] - 31:7 unfortunately [1] - 26:14 UNIDENTIFIED [1] - 186:17 unique [2] - 82:10, 122:12 United [3] - 10:21, 143:12, 180:9 units [4] - 55:7, 95:18, 95:20, 95:24 universities [1] - 122:3 University [4] - 69:24, 92:20, 140:23, 140:24 unless [1] - 30:20 Unless [2] - 65:15, 183:12 unlikely [2] - 145:16, 146:11 unusually [1] - 75:11 Up [1] - 37:6 up [73] - 9:4, 12:12, 13:7, 13:19, 15:5, 18:20, 18:21, 19:1, 24:11, 25:6, 25:14, 25:20, 35:5, 37:12, 41:6, 41:9, 41:24, 48:2, 50:17, 52:2, 55:1, 55:3, 56:10, 58:11, 58:17, 60:13, 63:13, 66:22, 68:10, 74:10, 75:17, 76:12, 77:10, 81:25, 89:15, 90:7, 90:9, 99:14, 102:11, 104:12, 104:14, 104:18, 105:1, 105:16, 120:8, 124:2, 124:13, 127:9, 133:22, 134:3, 139:19, 144:22, 153:22, 156:13, 159:1, 159:11, 160:3, 161:15, 166:16, 182:6, 186:12, 186:21, 188:20, 189:22, 191:9, 191:16, 191:20, 192:14, 193:11, 195:8, 199:20 updated [1] - 27:16 updates [1] - 27:12 updating [1] - 82:21 upgrade [1] - 50:17 upgraded [1] - 31:21 upgrades [12] - 29:23, 32:22, 33:12, 47:7, 47:12, 47:18, 48:1, 48:6, 48:10, 50:5, 183:13, 196:7 upland [1] - 141:2 upper [1] - 103:3 urge [2] - 189:16, 189:20 USDA [1] - 95:6 uses [4] - 72:16, 89:1, 99:19 USGS [2] - 120:16, 155:5 utilities [1] - 42:23 utility [3] - 39:19, 42:17, 86:5 utilize [5] - 142:6, 146:13, 147:1, 152:18, 159:24 utilizing [1] - 148:3</p>	<p style="text-align: center;">V</p> <p>V8 [1] - 16:24 Valley [1] - 193:16 Valu [1] - 27:2 valuable [1] - 146:21 value [3] - 22:1, 96:13, 115:13 variety [4] - 86:3, 86:8, 86:10, 87:5 various [5] - 87:11, 88:3, 100:12, 148:1, 177:11 varying [2] - 55:5, 98:2 vegetation [2] - 103:2, 146:4 vegetative [1] - 109:20 Ventis [1] - 53:6 verifies [1] - 120:3 verify [1] - 173:18 versus [2] - 75:8, 98:21 via [1] - 26:9 vice [1] - 140:17 view [1] - 156:23 View [1] - 69:13 violation [1] - 108:19 visited [2] - 71:22, 105:13 visits [2] - 159:13, 161:22 visualize [1] - 151:18 vital [1] - 189:11 void [1] - 43:13 voltage [2] - 55:3, 55:24 voluntary [1] - 157:18 volunteer [2] - 182:7, 182:23 voting [1] - 49:9 vouch [1] - 137:4</p>	<p>33:18, 171:20, 183:8 wars [1] - 16:2 Washburn [1] - 186:25 watch [2] - 136:2, 198:8 watched [1] - 13:14 watching [1] - 154:9 Water [3] - 92:24, 93:1, 93:7 water [5] - 102:25, 103:23, 104:13, 146:3, 161:16 waterfowl [5] - 116:5, 116:24, 116:25, 121:16, 150:1 waters [2] - 63:16, 107:9 ways [4] - 39:18, 63:5, 74:13, 165:14 weather [1] - 155:2 Weather [1] - 155:3 week [8] - 27:19, 73:23, 142:17, 145:24, 147:18, 154:21, 154:22, 162:16 weekly [2] - 142:11, 142:19 weeks [8] - 141:24, 142:2, 142:17, 145:13, 147:19, 154:19, 154:25, 198:1 Wefald [39] - 3:6, 3:8, 3:11, 3:14, 3:16, 3:23, 4:4, 4:6, 4:7, 4:14, 7:16, 9:24, 9:25, 12:9, 14:4, 33:23, 39:11, 46:23, 57:2, 59:22, 64:23, 65:20, 79:1, 82:17, 100:19, 117:5, 127:15, 134:16, 138:17, 153:20, 155:12, 166:3, 176:10, 184:15, 187:25, 193:6, 194:6, 197:7, 198:22</p>
U		W	
<p>U.S [16] - 43:16, 43:23, 44:14, 44:20, 70:1, 88:23, 107:7, 107:9, 112:21, 117:12, 117:18, 120:6, 121:18, 130:16, 135:16, 138:21 Ulteig [2] - 39:3, 50:3 Under [1] - 113:23 under [17] - 19:22, 19:23, 34:18, 34:20, 43:17, 43:21, 77:21, 97:4, 114:5, 119:7, 127:21, 155:18, 156:6, 160:20, 160:24, 164:10, 165:9 underground [7] - 54:24, 55:4, 55:9, 55:20, 55:23, 59:1, 77:3 underneath [3] - 64:9, 66:4, 87:1</p>	<p>wait [5] - 58:12, 58:16, 68:9, 76:21, 79:8 Walhalla [1] - 12:23 walk [2] - 90:24, 120:10 walked [2] - 71:24, 72:5 wants [3] - 134:24, 134:25, 194:18 Wanzek [11] - 21:3, 39:3, 52:19, 52:24, 53:1, 53:6, 54:2, 61:22, 62:18, 63:7, 75:19 WAPA [30] - 30:13, 30:15, 30:19, 31:10, 32:13, 32:15, 32:21, 32:22, 33:13, 40:14, 40:19, 41:11, 41:20, 42:21, 43:5, 47:5, 47:13, 47:18, 48:6, 50:8, 57:13, 170:7, 170:13, 171:19, 182:19, 183:3, 183:8, 183:10, 183:13, 196:7 WAPA's [5] - 33:16, 33:17,</p>		<p>WEFALD [80] - 2:3, 6:18, 6:20, 10:1, 33:25, 34:4, 39:8, 45:1, 46:24, 47:2, 47:9, 47:16, 48:4, 48:13, 48:17, 57:4, 58:19, 59:20, 64:24, 65:9, 65:13, 65:16, 79:3, 80:14, 81:7, 82:13, 89:22, 89:25, 90:18, 91:1, 91:5, 91:8, 94:19, 100:20, 117:7, 127:16, 127:18, 127:25, 129:3, 129:25, 130:4, 130:7, 134:18, 135:12, 136:18, 137:11, 137:21, 138:14, 153:21, 154:1, 154:5, 154:15, 155:8, 164:1, 166:5, 166:7, 168:8, 174:4, 174:14, 174:19, 177:3, 177:7, 178:15, 180:18, 181:1, 181:14, 184:13, 184:18, 184:21, 184:24, 185:4, 185:13, 185:17, 185:20, 190:11, 193:7, 194:4, 195:15, 197:8, 198:15 Weinstine [1] - 2:7</p>

<p>welcome [2] - 12:11, 155:9 welfare [1] - 9:11 Wesley [1] - 140:13 West [3] - 52:17, 69:12, 92:9 west [2] - 66:9, 120:19 Western [4] - 39:25, 40:23, 140:15, 140:18 western [1] - 30:12 wet [1] - 104:25 wetland [38] - 21:16, 21:17, 44:3, 93:4, 99:19, 102:20, 102:22, 103:2, 103:18, 105:4, 105:15, 105:24, 106:3, 106:23, 107:1, 107:9, 107:14, 107:23, 107:25, 108:9, 108:12, 108:14, 108:15, 108:18, 108:22, 108:25, 109:3, 109:4, 113:21, 114:2, 115:4, 115:12, 116:4, 116:21, 126:19, 156:15, 156:23 Wetland [6] - 103:16, 103:19, 104:21, 105:16, 105:18, 106:5 wetlands [24] - 93:11, 99:20, 102:15, 102:17, 102:24, 103:6, 103:14, 103:16, 104:16, 104:22, 104:23, 105:4, 105:8, 106:7, 107:1, 107:5, 113:21, 114:2, 114:19, 115:4, 152:6, 156:15, 156:23 Wetlands [3] - 105:9, 105:21, 116:9 whatnot [1] - 60:7 white [2] - 119:23, 184:7 White [2] - 25:25, 26:1 whole [16] - 27:13, 28:14, 31:24, 35:17, 35:18, 42:23, 45:20, 89:9, 157:3, 157:10, 157:17, 158:19, 164:14, 184:1, 188:15, 192:19 whooping [31] - 123:24, 124:1, 124:2, 124:8, 124:13, 124:16, 124:24, 125:4, 130:19, 131:20, 136:9, 139:6, 142:5, 142:25, 145:11, 145:14, 145:16, 146:6, 146:10, 146:25, 147:3, 147:9, 148:18, 148:23, 149:21, 150:24, 154:11, 154:17, 154:23, 155:6, 188:8 Whooping [1] - 143:8 wide [3] - 124:17, 125:14, 125:18 wiggle [1] - 76:22 wiggles [1] - 80:10 Wildlife [38] - 43:16, 43:23,</p>	<p>44:14, 44:21, 88:23, 94:9, 99:18, 104:5, 107:6, 108:14, 109:5, 109:10, 109:24, 110:8, 112:16, 112:21, 113:12, 113:18, 114:1, 114:23, 116:5, 117:13, 117:18, 120:6, 121:18, 124:15, 129:18, 130:17, 133:22, 135:17, 137:23, 137:24, 138:21, 156:14, 157:11, 161:14, 161:21, 196:17 wildlife [8] - 21:20, 44:17, 113:24, 114:25, 129:11, 140:19, 140:23, 149:25 willing [1] - 175:24 win [2] - 189:13 win-win [1] - 189:13 Wind [68] - 1:5, 1:5, 6:9, 6:23, 6:24, 8:21, 20:23, 23:11, 23:12, 23:16, 23:17, 23:18, 24:5, 37:2, 37:8, 37:9, 37:12, 37:16, 38:12, 39:1, 40:11, 47:11, 49:5, 49:7, 49:9, 49:18, 49:19, 49:21, 51:6, 51:7, 51:9, 51:10, 51:13, 54:6, 54:9, 56:20, 66:6, 70:24, 71:14, 73:18, 73:21, 74:12, 74:17, 75:12, 75:22, 76:19, 77:8, 79:7, 84:1, 112:19, 112:24, 119:14, 122:2, 128:7, 128:21, 129:17, 141:25, 142:2, 145:8, 146:8, 147:13, 148:15, 164:5, 165:2, 165:24 wind [94] - 6:9, 8:24, 8:25, 10:10, 10:12, 10:13, 10:15, 10:16, 10:17, 10:19, 10:20, 10:21, 11:1, 11:6, 13:2, 13:6, 13:8, 16:11, 21:5, 23:17, 25:2, 25:5, 25:9, 25:17, 26:6, 28:24, 29:3, 29:6, 29:7, 36:23, 37:6, 39:7, 39:19, 45:18, 45:19, 45:22, 46:1, 46:12, 51:10, 51:12, 52:21, 53:2, 54:17, 57:6, 61:23, 70:8, 75:14, 75:16, 76:18, 80:7, 84:14, 86:6, 119:22, 121:24, 122:10, 122:14, 130:14, 133:6, 134:6, 134:9, 135:14, 137:14, 137:25, 142:12, 142:16, 144:5, 148:18, 149:19, 150:4, 151:12, 151:17, 151:18, 153:2, 158:14, 158:17, 158:21, 159:11, 162:15, 164:2, 166:10, 167:3, 167:15, 169:16, 172:11,</p>	<p>174:22, 180:8, 188:3, 189:14, 193:11, 194:15, 198:6, 198:7 Wind's [2] - 39:22, 165:21 window [1] - 72:6 windshield [2] - 105:13, 107:17 winter [1] - 79:15 Winthrop [1] - 2:7 wires [1] - 149:1 wish [5] - 15:5, 17:16, 19:8, 186:10, 186:11 wishes [1] - 18:18 wishing [1] - 16:24 witness [18] - 14:11, 22:11, 22:12, 43:24, 51:24, 51:25, 64:25, 65:12, 65:14, 66:16, 66:19, 68:17, 90:24, 118:24, 134:16, 135:1, 136:13, 139:23 Witness [9] - 22:24, 52:6, 61:9, 69:2, 85:4, 91:21, 140:3, 187:12, 190:23 WITNESS [36] - 31:6, 31:8, 33:2, 47:20, 51:22, 66:15, 80:13, 84:16, 90:2, 90:9, 111:23, 113:16, 116:11, 116:14, 119:2, 135:3, 136:14, 137:12, 138:11, 153:13, 155:9, 164:3, 164:11, 164:25, 165:7, 168:1, 168:3, 168:6, 174:11, 174:16, 177:23, 179:1, 180:3, 181:3, 181:16, 185:18 WITNESSES [1] - 3:2 witnesses [14] - 11:11, 15:3, 18:4, 18:6, 18:10, 18:11, 18:13, 18:16, 20:17, 22:18, 66:21, 88:3, 186:3 wonder [1] - 11:16 wonderful [1] - 10:2 wondering [2] - 78:6, 162:6 wooded [2] - 99:20, 115:14 Word [1] - 32:8 words [2] - 8:3, 40:24 workers [1] - 27:6 workload [2] - 77:22, 144:7 works [1] - 78:12 world [3] - 16:2, 16:19, 188:15 worth [1] - 16:11 wraps [1] - 127:9 write [1] - 71:11 writing [1] - 11:16 written [4] - 73:20, 79:11, 156:18, 160:3</p>	<p style="text-align: center;">X</p> <hr/> <p>Xcel [1] - 171:5</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year [5] - 26:19, 37:8, 134:1, 134:2, 175:8 years [24] - 16:8, 16:14, 22:21, 25:8, 53:6, 69:24, 70:6, 82:9, 86:2, 92:25, 93:1, 93:10, 120:24, 122:21, 124:4, 133:24, 134:5, 136:4, 141:1, 141:4, 144:6, 158:14 yesterday [6] - 12:17, 44:9, 73:24, 83:9, 84:2, 192:19 young [1] - 192:21 yourself [3] - 36:20, 37:16, 63:7</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>zero [1] - 106:6 zoning [1] - 158:20, 158:22, 158:23, 161:5, 161:6, 162:9, 162:14, 163:8, 165:19, 166:22, 184:11 zoology [1] - 140:23</p>
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