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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

NORFOLK, SS.

SUPERIOR COURT
NO. 1582CV00213

BOSTON EXECUTIVE HELICOPTERS, LLC;
MII AVIATION SERVICES, LLC, AND
HB HOLDINGS, INC.,
Plaintiffs,

v.

FLIGHTLEVEL NORWOOD, LLC;
EAC REALTY TRUST II; AND
PETER EICHLEAY,
Defendants.

DEPOSITION OF PETER EICHLEAY

TAKEN MARCH 28, 2018

AT THE LAW OFFICES OF

LeCLAIR RYAN

ONE INTERNATIONAL PLACE, 11TH FLOOR

BOSTON, MASSACHUSETTS

Reporter: Raymond F. Catuogno, Jr.

<p style="text-align: right;">2</p> <p>APPEARANCES:</p> <p>For the Plaintiffs: PIERCE & MANDELL, P.C. 11 Beacon Street, Suite 800 Boston, MA 02108 BY: MICHAEL C. FEE, ESQ. 617-720-2444 mfee@piercemandell.com</p> <p>For the Defendants: LeCLAIR RYAN One International Place, 11th Floor Boston, MA 02110 BY: A. NEIL HARTZELL, ESQ. 617-502-8259 neilhartzell@leclairryan.com</p> <p>In Attendance: Christopher Donovan, Boston Executive Helicopters, LLC</p> <p>Nicholas W. Burlingham, Esq. FlightLevel Aviation Norwood</p>	<p style="text-align: right;">4</p> <p>EXHIBITS: (continued) Exhibit 142, E-mail dated June 20, 2013 43</p> <p>Ryan Exhibit 111 55</p> <p>Exhibit 143, Letter dated June 24, 2013 62 Exhibit 144, Letter dated June 26, 2013 63</p> <p>Exhibit 145, Letter dated June 26, 2013 65 Exhibit 146, E-mail dated June 27, 2013 67</p> <p>Exhibit 147, E-mail dated July 2, 2013 73 Exhibit 148, E-mail dated July 12, 2013 74</p> <p>Exhibit 149, E-mail and Attachment dated July 12, 2013 77 Exhibit 150, E-mail dated July 12, 2013 80</p> <p>Exhibit 151, E-mail dated July 13, 2013 81 Exhibit 152, E-mail dated July 15, 2013 82</p> <p>Exhibit 153, E-mail dated July 13, 2013 84 Exhibit 154, E-mail dated July 15, 2013 with Attached Commercial Permit Application 85</p>
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<p style="text-align: right;">10</p> <p>1 PETER EICHLEAY, Deponent, having provided 2 satisfactory identification by means of a 3 Massachusetts Driver's License, was duly sworn, 4 deposes and states as follows: 5 6 MR. FEE: Usual stipulations? 7 MR. HARTZELL: Sure. 8 EXAMINATION BY MR. FEE: 9 Q. Good morning, Mr. Eichleay. 10 A. Good morning. 11 Q. We have met before, so I know you 12 know the drill. We have a lot to talk about 13 today, so I'm just going to get right to it. I 14 asked Nick, during his deposition, to explain 15 your ownership interest in FlightLevel. And I 16 think I understand his explanation, but I 17 thought I would ask you. 18 At the present time what is your 19 ownership interest in FlightLevel Norwood, LLC? 20 A. Twenty percent, phantom equity 21 stake. 22 Q. Could you explain to me what a 23 phantom equity stake is? 24 A. I can try. It's basically a -- as</p>	<p style="text-align: right;">12</p> <p>1 connection with ARR, LLC's acquisition of the 2 equity interest in FlightLevel Norwood, LLC? 3 A. It's ARR Aviation, LLC, and ARR 4 Aviation II, LLC's acquisition of the membership 5 interest in FlightLevel Norwood, LLC. 6 Q. Okay. And that transaction was 7 effective as of -- on or about January 1, 2017? 8 A. Yes. I can't remember if it's 9 technically the 31st of '16 or the 1st of '17, 10 but one or the other. 11 Q. Okay. And that transaction was 12 memorialized by a set of documents, correct? 13 A. Yes. 14 MR. FEE: I'm going to mark 15 this as the next exhibit. 16 (Exhibit 130, Three Re-Notices of 17 Deposition, marked for identification) 18 Q. (By Mr. Fee) Mr. Eichleay, I'm 19 showing you three notices of deposition to you 20 individually, EAC Realty Trust II, and 21 FlightLevel Norwood, LLC. Have you seen these 22 before? 23 A. I believe so. 24 Q. Is it your understanding that</p>
<p style="text-align: right;">11</p> <p>1 a manager of the company, as president of the 2 company, it's a compensation agreement that 3 gives me a percentage of the proceeds, cash 4 flow, when distributions are made, that kind of 5 thing. 6 Q. And so that's an ongoing payment 7 agreement whereby the company -- your 8 compensation is based on the company's profits? 9 A. It's actually based on when 10 distributions are taken. So even if we're 11 profitable, if a distribution isn't made, then I 12 don't get a piece. 13 Q. And who decides when to make 14 distributions? 15 A. ARR Aviation, LLC. 16 Q. And so you have no voting rights or 17 other equitable stake in FlightLevel Norwood, 18 LLC, other than this right to phantom equity 19 compensation; is that fair to say? 20 A. I think I have voting rights. 21 Q. Is that pursuant to terms of an 22 agreement? 23 A. I believe so. 24 Q. And that agreement was executed in</p>	<p style="text-align: right;">13</p> <p>1 you're here again today to give testimony not 2 only in your individual capacity but also as the 3 designated representative of EAC Realty Trust II 4 and FlightLevel Norwood, LLC? 5 A. Yes. 6 Q. Okay. And you can put that aside. 7 When did you first meet Chris 8 Donovan? 9 A. I can't remember exactly. 10 Q. Do you recall in what context you 11 met Chris Donovan? 12 A. I believe he approached me in a 13 parking lot at night. One of our -- the first 14 year that we were at the Norwood Airport. 15 Q. And what year was that? 16 A. Probably 2008. 17 Q. And he approached you for what 18 purpose? 19 A. I can't recall. 20 Q. Was it for a business purpose? 21 A. Not that I can remember. 22 Q. At some point did Mr. Donovan or 23 entities with which he was associated rent space 24 from FlightLevel in the condo hangar?</p>

<p style="text-align: right;">14</p> <p>1 A. It was MII that rented space.</p> <p>2 Q. And when was that?</p> <p>3 A. That was upon our taking over at</p> <p>4 Norwood.</p> <p>5 Q. Okay. So when FlightLevel Norwood</p> <p>6 acquired its interest in the airport, it</p> <p>7 acquired a leasehold interest in what's known as</p> <p>8 the condo hangar; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And the condo hangar has</p> <p>11 eight units, correct?</p> <p>12 A. I'm not sure if it's eight, but</p> <p>13 it's around there.</p> <p>14 Q. But do you recall which units MII</p> <p>15 Aviation occupied at the time that FlightLevel</p> <p>16 assumed that ownership interest or that</p> <p>17 leasehold interest?</p> <p>18 A. At the time being in 2008, would I</p> <p>19 have known off the top of my head which units</p> <p>20 were they in?</p> <p>21 Q. No. Do you know now?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What are they?</p> <p>24 A. The units they're in, they're on</p>	<p style="text-align: right;">16</p> <p>1 was conducting operations out of Condo 8?</p> <p>2 A. He references Condo 8.</p> <p>3 Q. Does it refresh your recollection</p> <p>4 as to when you first became aware of the fact</p> <p>5 that Mr. Donovan was occupying Condo 8 under the</p> <p>6 authority of MII?</p> <p>7 MR. HARTZELL: Objection.</p> <p>8 A. I don't see anything in here about</p> <p>9 MII providing authority to BEH in this e-mail.</p> <p>10 Q. Do you see the bottom line where it</p> <p>11 says, "The office is coming along great and</p> <p>12 improvements and remodel will allow us to</p> <p>13 operate?"</p> <p>14 A. I see that.</p> <p>15 Q. Were you aware at that time that</p> <p>16 Mr. Donovan was renovating Condo Hangar 8?</p> <p>17 A. I would assume so.</p> <p>18 Q. Were you aware that he was building</p> <p>19 an office above -- a second-story office in</p> <p>20 Condo 8?</p> <p>21 A. I wasn't aware as to the details of</p> <p>22 the improvements, no.</p> <p>23 Q. Did you have any objection to the</p> <p>24 improvements?</p>
<p style="text-align: right;">15</p> <p>1 the southern end.</p> <p>2 Q. Are those Units 7 and 8?</p> <p>3 A. I can't say with certainty.</p> <p>4 Q. Okay. At some point did</p> <p>5 Mr. Donovan advise you that he was conducting</p> <p>6 operations in Units 7 and 8 with the authority</p> <p>7 of MII?</p> <p>8 A. Did he advise me?</p> <p>9 Q. Yes.</p> <p>10 A. I believe so.</p> <p>11 Q. Do you know when that was?</p> <p>12 A. I can't recall.</p> <p>13 MR. FEE: Can I have this</p> <p>14 marked as the next exhibit?</p> <p>15 (Exhibit 131, E-mail dated March 23, 2010,</p> <p>16 marked for identification)</p> <p>17 Q. (By Mr. Fee) I'm showing you a</p> <p>18 document that's been marked as Exhibit 131. It</p> <p>19 appears to be an e-mail exchange between you and</p> <p>20 Mr. Donovan in or about March -- the beginning</p> <p>21 of March of 2010. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Does this refresh your recollection</p> <p>24 as to when you first understood that Mr. Donovan</p>	<p style="text-align: right;">17</p> <p>1 A. I'm not sure at the time whether I</p> <p>2 did or not, but based on my e-mail I actually</p> <p>3 had wanted to discuss a few things with him.</p> <p>4 Q. Okay. But did any of those things</p> <p>5 involve an objection to his improving Condo 8?</p> <p>6 A. Possibly.</p> <p>7 Q. But you don't know?</p> <p>8 A. I can't recall.</p> <p>9 Q. Were you aware that at some point</p> <p>10 in 2010 Mr. Donovan, in connection with his</p> <p>11 remodeling efforts in Condo 8, also repaved some</p> <p>12 tarred areas outside of Condo Hangar 8?</p> <p>13 A. I'm not aware.</p> <p>14 MR. FEE: I'm going to mark</p> <p>15 this as the next exhibit.</p> <p>16 (Exhibit 132, E-mail Exchange, June 2010,</p> <p>17 marked for identification)</p> <p>18 Q. (By Mr. Fee) I'm showing you a</p> <p>19 document marked as Exhibit 132. It appears to</p> <p>20 be an e-mail exchange between you and</p> <p>21 Mr. Donovan in or around June of 2010. Does</p> <p>22 this refresh your recollection as to whether or</p> <p>23 not Mr. Donovan advised you that he wished to</p> <p>24 re-tar around the fuel pad adjacent to Lot 8?</p>

<p style="text-align: right;">18</p> <p>1 A. It would appear that he wanted to 2 do that. 3 Q. Did you have any objection to him 4 doing that at that time? 5 A. I can't remember. 6 Q. Okay. If you did have an 7 objection, you would have asserted that to him 8 in writing? Would you? 9 MR. HARTZELL: Objection. 10 Q. (By Mr. Fee) Would you not? 11 A. Or verbally. 12 Q. But if it rose to the level of a 13 significant objection, you would probably put 14 that in writing, right? 15 MR. HARTZELL: Objection. 16 A. It depends. It could have been 17 very busy that week and slipped through the 18 cracks. 19 Q. Okay. Do you know if Mr. Donovan 20 actually did re-tar a portion of the asphalt 21 adjacent to Condo 8 in or about 2010? 22 A. I have heard that, but I have never 23 received any documentation confirming it. 24 Q. Okay. Did you ever observe it?</p>	<p style="text-align: right;">20</p> <p>1 A. It was five years ago. 2 Q. Do you have an objection now? 3 A. I think there should have been some 4 documentation and some kind of approval for 5 manipulating the building. 6 Q. Okay. If he got a building permit, 7 would that have been sufficient? 8 A. No. 9 Q. You believe there is some 10 additional approval necessary? 11 A. I believe. I would have to look at 12 the storage agreement. 13 Q. Okay. But you don't dispute that 14 Mr. Donovan advised you of his intent to put a 15 window in the unit; is that correct? 16 A. No. I dispute that he's telling me 17 he's doing it. 18 Q. Right. 19 A. He's not advising me. He's -- "I 20 am having my contractor put a window in my 21 existing hangar today on the fuel farm side of 22 the hangar. They will use caution and have a 23 building permit." That's what it says. 24 Q. I don't want to mince words with</p>
<p style="text-align: right;">19</p> <p>1 A. No. 2 Q. Now, at some point did Mr. Donovan 3 advise you that he wanted to put a new window in 4 the Condo 8 hangar? 5 A. Not that I can remember. 6 MR. FEE: Okay. Can I have 7 this marked? 8 (Exhibit 133, E-mail dated January 15, 9 2013, marked for identification) 10 Q. (By Mr. Fee) I show you a document 11 marked as Exhibit 133 -- it appears to be an 12 e-mail from Mr. Donovan to you dated January 15, 13 2013 -- and ask if that refreshes your 14 recollection as to whether or not Mr. Donovan 15 advised you that he desired to put a window in 16 his Condo Hangar 8? 17 A. He just says he's doing it. And it 18 doesn't look like he's seeking any input from me 19 whatsoever. 20 Q. Did you give him any input? 21 A. I can't remember. 22 Q. Did you voice any objection? 23 A. I can't remember. 24 Q. Did you have an objection --</p>	<p style="text-align: right;">21</p> <p>1 you, but would you agree that, in fact, 2 Mr. Donovan told you of his intention to install 3 a window in or about 2013? 4 MR. HARTZELL: Objection. 5 A. He told me he's doing it. Is that 6 fair enough? 7 Q. Yes. 8 MR. FEE: Off the record. 9 (Off-record conference) 10 MR. FEE: Back on the record. 11 Q. (By Mr. Fee) In 2010, would you 12 characterize your business relationship with 13 Mr. Donovan as productive? 14 A. Not necessarily. 15 Q. Were there problems with your 16 business relationship with Mr. Donovan in 2010? 17 A. By 2010, I probably learned of some 18 of Mr. Donovan's history that gave me pause and 19 reservations. 20 Q. When did you learn of Mr. Donovan's 21 history that gave you pause and reservations? 22 A. Shortly after arriving at Norwood, 23 but certainly after I met him. 24 Q. And that was in or about 2008?</p>

<p style="text-align: right;">22</p> <p>1 A. I would say 2009, 2010 is when.</p> <p>2 Q. And what kind of reservations did</p> <p>3 you have?</p> <p>4 A. Well, there had been an incident</p> <p>5 with one of my former employees, and then I</p> <p>6 learned about some other issues with one of his</p> <p>7 former employers. I can't remember which one.</p> <p>8 Q. So in 2008 or 2009, you -- I'm</p> <p>9 sorry, 2009 or 2010, you had serious</p> <p>10 reservations regarding Mr. Donovan?</p> <p>11 A. I had reservations.</p> <p>12 MR. FEE: I'm going to mark</p> <p>13 this as the next exhibit.</p> <p>14 (Exhibit 134, E-mail dated May 11, 2010,</p> <p>15 marked for identification)</p> <p>16 Q. (By Mr. Fee) If you had</p> <p>17 reservations regarding Mr. Donovan in 2009 or</p> <p>18 2010, could you explain to me why you gave him a</p> <p>19 business reference to Mr. Maguire pursuant to</p> <p>20 this e-mail dated May 11?</p> <p>21 A. Because I am generally an optimist</p> <p>22 and overlooked sort of the history I had heard</p> <p>23 about. And he had represented that he wanted to</p> <p>24 be a good customer of FlightLevel's, which would</p>	<p style="text-align: right;">24</p> <p>1 A. I believe Mr. Donovan approached me</p> <p>2 about whether we would be -- scratch that. I</p> <p>3 can't remember how it all started, but I know we</p> <p>4 exchanged information and signed a</p> <p>5 confidentiality agreement -- or excuse me, I</p> <p>6 provided information, including an appraisal</p> <p>7 that had been done and an airport overview as</p> <p>8 part of the confidentiality information, which</p> <p>9 was then disclosed later on, which sort of</p> <p>10 showed me no respect with the confidentiality</p> <p>11 agreement.</p> <p>12 Q. We're going to get to that in a</p> <p>13 minute. But first of all, do you recall when</p> <p>14 these discussions began?</p> <p>15 A. I think it was 2010/2011, somewhere</p> <p>16 in there.</p> <p>17 MR. FEE: I'm going to mark</p> <p>18 this as the next agreement.</p> <p>19 (Exhibit 135, E-mail Exchange, August 13,</p> <p>20 2010, marked for identification)</p> <p>21 Q. (By Mr. Fee) Mr. Eichleay, Exhibit</p> <p>22 135 is an e-mail agreement -- I'm sorry, an</p> <p>23 e-mail document showing an exchange, August 13,</p> <p>24 2010, between you and Mr. Donovan. Does that</p>
<p style="text-align: right;">23</p> <p>1 benefit FlightLevel, and so this was turning</p> <p>2 over a new leaf.</p> <p>3 Q. And so you say to Mr. Maguire, "We</p> <p>4 are looking forward to a positive and mutually</p> <p>5 beneficial working relationship with BEH for</p> <p>6 many years to come and believe they will</p> <p>7 contribute positively to the airport community."</p> <p>8 Is that right?</p> <p>9 A. That's what it says.</p> <p>10 Q. And that was true at the time,</p> <p>11 right?</p> <p>12 A. That's what I said.</p> <p>13 Q. Okay. And that was despite your</p> <p>14 prior reservations that you testified about</p> <p>15 regarding Mr. Donovan and his activities?</p> <p>16 A. That's correct.</p> <p>17 Q. Now, at some point in 2010 did you,</p> <p>18 on behalf of FlightLevel, begin to have</p> <p>19 discussions with Mr. Donovan regarding the</p> <p>20 potential acquisition of FlightLevel by BEH or</p> <p>21 MII?</p> <p>22 A. I believe it was 2010.</p> <p>23 Q. Okay. And can you describe for me</p> <p>24 those discussions?</p>	<p style="text-align: right;">25</p> <p>1 refresh your recollection as to when these</p> <p>2 discussions began to take place?</p> <p>3 A. It does.</p> <p>4 Q. Okay. And it's fair to say that</p> <p>5 was in or about the late summer of 2010?</p> <p>6 A. It appears that way, yes.</p> <p>7 Q. Okay. And you mentioned a</p> <p>8 Nondisclosure Agreement; is that right?</p> <p>9 A. Yes.</p> <p>10 MR. FEE: I'm going to mark</p> <p>11 this as the next exhibit.</p> <p>12 (Exhibit 136, Nondisclosure Agreement,</p> <p>13 marked for identification)</p> <p>14 Q. (By Mr. Fee) I'm going to show you</p> <p>15 a document marked as Exhibit 136. Have you ever</p> <p>16 seen that before?</p> <p>17 A. Yes.</p> <p>18 Q. Is that the Confidentiality</p> <p>19 Agreement you were describing?</p> <p>20 A. I believe so. I don't know if we</p> <p>21 had another one as well, but it's one of them.</p> <p>22 Q. It appears to be signed in or about</p> <p>23 October of 2010; is that right?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">26</p> <p>1 Q. Okay. And did you provide</p> <p>2 information to BEH prior to signing the</p> <p>3 Confidentiality Agreement or after signing the</p> <p>4 Confidentiality Agreement?</p> <p>5 A. I don't recall, but -- I don't</p> <p>6 recall.</p> <p>7 Q. What type of financial</p> <p>8 information -- what type of information, period,</p> <p>9 did you -- strike that.</p> <p>10 What type of information did you</p> <p>11 provide to BEH?</p> <p>12 A. I know we provided a detailed</p> <p>13 appraisal with some financial information in it,</p> <p>14 some internal work that I had done. I don't</p> <p>15 know if we provided leases or not, but we very</p> <p>16 well may have -- I can't remember -- things of</p> <p>17 that nature.</p> <p>18 Q. Anything else?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did you provide these copies in</p> <p>21 hard copy or in digital form?</p> <p>22 A. The appraisal in hard copy. As for</p> <p>23 the others, I'm not sure whether it was digital</p> <p>24 form or hard copy.</p>	<p style="text-align: right;">28</p> <p>1 disrespect the Confidentiality Agreement?</p> <p>2 A. Let me go back to your last</p> <p>3 question. It was -- because I didn't answer it.</p> <p>4 Answering yes wasn't a full answer. It was a</p> <p>5 document I had produced that showed the</p> <p>6 designation of the leaseholds at the airport --</p> <p>7 Q. Right.</p> <p>8 A. -- as opposed to just a satellite</p> <p>9 image of the airport.</p> <p>10 Q. Right. Okay. And you say that</p> <p>11 they disregarded or disrespected the</p> <p>12 Confidentiality Agreement by using that at a</p> <p>13 Norwood Airport Commission meeting?</p> <p>14 A. I think that's a show of disrespect</p> <p>15 for the Confidentiality Agreement, yes.</p> <p>16 Q. Anything else?</p> <p>17 A. No. As far as the Confidentiality</p> <p>18 Agreement goes?</p> <p>19 Q. Yes.</p> <p>20 A. No.</p> <p>21 Q. All right. And did you suffer any</p> <p>22 loss or did FlightLevel suffer any loss of money</p> <p>23 or property as a result of that alleged breach</p> <p>24 of the Confidentiality Agreement?</p>
<p style="text-align: right;">27</p> <p>1 Q. At any point did you make your</p> <p>2 books available for inspection by an accountant?</p> <p>3 A. That was later.</p> <p>4 Q. You said that there may have been</p> <p>5 some other documents. Did you provide BEH with</p> <p>6 any maps of the airport?</p> <p>7 A. Some satellite imagery through a</p> <p>8 PowerPoint that I had created.</p> <p>9 Q. Okay. You said some financial</p> <p>10 information was contained in the detailed</p> <p>11 appraisal. Do you have any idea what financial</p> <p>12 information was contained in that?</p> <p>13 A. I can't remember.</p> <p>14 Q. You mentioned something about BEH</p> <p>15 not having respect for the Confidentiality</p> <p>16 Agreement. Could you tell me what you mean by</p> <p>17 that?</p> <p>18 A. One of the documents that I</p> <p>19 provided was displayed at a Norwood Airport</p> <p>20 Commission for the general public.</p> <p>21 Q. Okay. Was that document a</p> <p>22 satellite imagery of the airport?</p> <p>23 A. Yes.</p> <p>24 Q. In any other way did they</p>	<p style="text-align: right;">29</p> <p>1 A. I can't answer that with any</p> <p>2 certainty.</p> <p>3 Q. Can you describe in any way how</p> <p>4 FlightLevel was damaged, either monetarily or</p> <p>5 nonmonetarily, by that alleged breach of the</p> <p>6 Confidentiality Agreement?</p> <p>7 A. I think it may have provided sort</p> <p>8 of fodder to BEH to make some of the claims that</p> <p>9 they've made against us, which has cost us lots</p> <p>10 of money.</p> <p>11 Q. And in what way did the use of the</p> <p>12 map at an NAC meeting provide fodder to BEH?</p> <p>13 A. It raised awareness of our</p> <p>14 leasehold interest to the general public.</p> <p>15 Q. Do you recall at what meeting this</p> <p>16 image was utilized by BEH?</p> <p>17 A. No.</p> <p>18 Q. Do you recall who was present at</p> <p>19 that meeting?</p> <p>20 A. No.</p> <p>21 Q. Do you recall what year that</p> <p>22 meeting was?</p> <p>23 A. No.</p> <p>24 Q. At some point in 2010 were there</p>

<p style="text-align: right;">30</p> <p>1 some disagreements in the condo hangar regarding 2 heat? Do you recall that? 3 A. I can't remember if it was 2010, 4 but I think I know what you're talking about. 5 Q. Okay. At some point there was a 6 disagreement between the tenants regarding 7 leaving the heat on or turning the heat off. Is 8 that a fair characterization of what went on? 9 A. Yes. 10 Q. And you interceded to square up the 11 problem; is that fair to say? 12 A. I can't remember any of the details 13 of that. 14 Q. Okay. Let me refresh your 15 recollection. 16 MR. FEE: Let's mark this as 17 Exhibit 137. 18 (Exhibit 137, E-mail Exchange, August 16, 19 2010, marked for identification) 20 Q. (By Mr. Fee) So Exhibit 137 21 appears to be an e-mail exchange between you and 22 Mr. Donovan and others in or about August 16, 23 2010. Do you see that? 24 A. Yes.</p>	<p style="text-align: right;">32</p> <p>1 question again. 2 Q. I directed your attention to the 3 e-mail at the bottom. I read it to you. And 4 I'm asking you now whether it's fair to say that 5 in or about August of 2010 you were aware of the 6 relationship between Mr. Donovan, BEH, and Mr. 7 Yanai? 8 A. I'm sure I read this e-mail where 9 it says, "I work directly for Mr. Yanai and all 10 operations in the hangar are wholly owned by Mr. 11 Yanai." 12 MR. FEE: I will mark this as 13 Exhibit 138. 14 (Exhibit 138, Authorization, marked for 15 identification) 16 Q. (By Mr. Fee) I'm showing you a 17 document that's been marked as Exhibit 138. It 18 appears to be entitled Authorization and it's 19 signed by Moshe Yanai on or about the 13th 20 August 2010. And it says, "MII Aviation 21 Services, LLC... hereby authorizes Christopher 22 Donovan of Walpole, Massachusetts, to manage, 23 repair, and improve Hangar Units 7 and 8 at 208 24 Access Road..." Did I read that correctly?</p>
<p style="text-align: right;">31</p> <p>1 Q. Does that refresh your recollection 2 as to when this problem amongst the tenants 3 happened? 4 A. Yes. 5 Q. And down at the bottom, it says -- 6 the e-mail from Chris Donovan to you says, 7 "Peter, thank you. I am not a tenant in the 8 hangar. I work directly for Mr. Yanai and all 9 operations in the hangar are wholly owned by Mr. 10 Yanai. Boston Executive Helicopters is wholly 11 owned by Mr. Yanai." Do you see that? 12 A. Yes. 13 Q. Okay. So is it fair to say that -- 14 MR. HARTZELL: That's not the 15 copy that I have. 16 MR. FEE: I'm sorry. That's a 17 different document, sorry. 18 MR. HARTZELL: Okay. 19 Q. (By Mr. Fee) So is it fair to say 20 that in or about August of 2010 you were aware 21 of the relationship between Mr. Donovan and Mr. 22 Yanai and Boston Executive Helicopters and Mr. 23 Yanai? Is that correct? 24 A. I'm sorry, I was reading. Ask the</p>	<p style="text-align: right;">33</p> <p>1 A. Yes. 2 Q. And so did you get a copy of this? 3 A. I can't remember. 4 Q. Okay. The previously marked 5 document, Number 4 -- I'm talking about Exhibit 6 137 -- contains the language, "Chris gave me 7 written confirmation signed by Moshe that his 8 tenancy in his units is justified and 9 legitimate." Do you see that? 10 A. Yes. 11 Q. Does that refresh your recollection 12 as to whether a copy of Exhibit 138, which is 13 the Authorization notarized and signed by Mr. 14 Yanai, was, in fact, provided to you in or about 15 August of 2010? 16 A. I can't say with any certainty. 17 Q. Okay. But you have no recollection 18 of seeing the Authorization document marked as 19 Exhibit 138 previously? 20 A. No. 21 Q. Okay. Now, at some point in 2011 22 did you start to talk to Mr. Donovan about a 23 potential fuel deal between BEH and FlightLevel? 24 A. I think there were some e-mail</p>

<p style="text-align: right;">34</p> <p>1 correspondences and maybe one or two 2 conversations. 3 Q. What do you recall about those 4 discussions, if anything? 5 A. What he wanted, I couldn't justify. 6 Q. And what did he want? 7 A. A deal that would require us to 8 lose money pumping fuel to him. 9 Q. And I don't mean to make you recall 10 all of the details, but what do you recall about 11 the general structure of what was being proposed 12 by Mr. Donovan? 13 A. I know the end result would mean we 14 would end up with a couple pennies per gallon 15 pumped. 16 Q. And was he suggesting that you 17 would sell to him at a particular rate that was 18 different from sales to other people on the 19 airport? 20 A. Yes. 21 Q. Okay. And why would that be 22 advantageous for you? Why would you entertain 23 that kind of discussion? 24 A. I didn't. It was shut down pretty</p>	<p style="text-align: right;">36</p> <p>1 Q. Sure. Take your time. 2 A. Okay. Do you need me to read this 3 word for word? 4 Q. No. I just wanted you to let me 5 know whether or not you believe that you sent 6 and received these e-mails in or about December 7 of 2011? 8 A. Yes. 9 Q. Now, you said that that discussion 10 fizzled fairly quickly; is that right? 11 A. It fizzled. 12 Q. Okay. 13 A. I'm not sure over what time frame. 14 This was seven years ago. 15 Q. I understand. And because at that 16 point the terms that were being offered by BEH 17 were not acceptable to you; is that right? 18 A. Yes. 19 Q. And at that time did you and 20 Mr. Donovan have any discussions about 21 Mr. Donovan's desire to become an FBO? 22 A. Probably, but I can't remember any 23 particular instance. 24 Q. Did Mr. Donovan tell you that if he</p>
<p style="text-align: right;">35</p> <p>1 quick. 2 Q. Okay. 3 A. And I know the amounts changed with 4 several different e-mails. 5 MR. FEE: I'm going to mark 6 this Exhibit 139. 7 (Exhibit 139, Series of E-mail, December 8 2011, marked for identification) 9 Q. (By Mr. Fee) Exhibit 139 appears 10 to be a series of e-mails between you and 11 Mr. Donovan in or about December of 2011. And I 12 just have a general question. That is: Do 13 these e-mails reflect the tenor of your 14 discussions with BEH regarding a potential fuel 15 agreement in or about December of 2011? 16 A. Sure. It's sort of a broad 17 question. 18 Q. Well, I can ask you a different 19 way. Did you send and receive the e-mails 20 marked as Exhibit 139? 21 A. I believe so. 22 Q. Okay. 23 A. Stand by. I've only looked at the 24 first page.</p>	<p style="text-align: right;">37</p> <p>1 was unable to get a fuel deal with you, then he 2 would consider selling fuel himself? 3 A. I'm not sure if it was at this 4 time, but that message, general message, was 5 conveyed, yes. 6 Q. When did you first start to get a 7 sense of that general message from Mr. Donovan? 8 A. It was either around this time or I 9 know there was another round in 2013, something 10 like that. 11 Q. So either in 2000 -- sometime 12 between 2011 and 2013, it was your understanding 13 that Mr. Donovan was telling you that he 14 intended to sell fuel at the airport? 15 A. Yes. 16 Q. And I mean sell fuel, S-E-L-L. 17 A. Yes. I got it. 18 Q. And you mentioned that the 19 discussions rekindled at some point in 2013? 20 A. Yes, I think it was '13. 21 Q. Who initiated that discussion? 22 A. I believe it was Donovan. 23 Q. And was that 2013 discussion 24 regarding acquisition of FlightLevel's assets or</p>

<p style="text-align: right;">38</p> <p>1 another fuel deal?</p> <p>2 A. It was certainly regarding</p> <p>3 acquisition again. I can't remember if it was a</p> <p>4 fuel deal again or not.</p> <p>5 Q. Did you execute another</p> <p>6 Confidentiality Agreement?</p> <p>7 A. I can't remember if we did or</p> <p>8 didn't.</p> <p>9 Q. Did you exchange any financial</p> <p>10 information?</p> <p>11 A. Yes.</p> <p>12 Q. I'm talking about in 2013.</p> <p>13 A. Exchanged, no. I don't believe we</p> <p>14 exchanged it, but their accountant -- I remember</p> <p>15 a gentleman came to my office and looked at our</p> <p>16 financials.</p> <p>17 Q. Do you recall who that was?</p> <p>18 A. He was the accountant. If you said</p> <p>19 the name, I -- O'Malley. I could have that</p> <p>20 wrong.</p> <p>21 Q. That's okay.</p> <p>22 MR. FEE: I'm going to mark</p> <p>23 this as the next exhibit.</p> <p>24 (Exhibit 140, E-mail Exchange, May 2013,</p>	<p style="text-align: right;">40</p> <p>1 of his intention to sell fuel at the airport if</p> <p>2 he was unable to come to a deal with</p> <p>3 FlightLevel?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And so did that in any way</p> <p>6 color the tenor of your discussions with Mr.</p> <p>7 Donovan?</p> <p>8 A. I mean, it was a -- it was a</p> <p>9 turnoff to the discussions, from my perspective,</p> <p>10 yes, using the veiled threat technique.</p> <p>11 Q. And were you concerned about</p> <p>12 Mr. Donovan's desire or stated intent to become</p> <p>13 an FBO?</p> <p>14 A. Yes.</p> <p>15 Q. And that concern began in or about</p> <p>16 May of 2013, or was it prior?</p> <p>17 A. It was prior.</p> <p>18 Q. Okay. Do you recall how these</p> <p>19 discussions ended?</p> <p>20 A. No.</p> <p>21 Q. Did Mr. Donovan make an offer?</p> <p>22 A. I can't remember. Please refresh</p> <p>23 my memory.</p> <p>24 Q. I shall.</p>
<p style="text-align: right;">39</p> <p>1 marked for identification)</p> <p>2 Q. (By Mr. Fee) So I'm showing you a</p> <p>3 document that has been marked as Exhibit 140.</p> <p>4 It appears to be an e-mail exchange between you</p> <p>5 and Mr. Donovan in or about May of 2013.</p> <p>6 A. Mm-hmm.</p> <p>7 Q. And it begins on Page 2 with an</p> <p>8 e-mail from Mr. Donovan. And it says, about</p> <p>9 three quarters of the way down that e-mail --</p> <p>10 and I'm quoting -- "We have full approval for</p> <p>11 the installation and operation of fueling</p> <p>12 facilities at our new site and will install the</p> <p>13 tanks in the next several months. I believe now</p> <p>14 is the time for us to decide to install or</p> <p>15 attempt to expand. If we do install, we intend</p> <p>16 to do whatever is possible to maximize the</p> <p>17 return on our investment and sell as much fuel</p> <p>18 as possible consistent with the lowest price</p> <p>19 possible. Our overhead is much lower as we do</p> <p>20 not have the large physical presence, etc." Did</p> <p>21 I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So is it fair to say, in or</p> <p>24 about May of 2013, Mr. Donovan was telling you</p>	<p style="text-align: right;">41</p> <p>1 MR. FEE: I'm going to mark</p> <p>2 this as the next exhibit.</p> <p>3 (Exhibit 141, E-mail Exchange, August</p> <p>4 2013, marked for identification)</p> <p>5 Q. (By Mr. Fee) Mr. Eichleay, I'm</p> <p>6 showing you a document marked as Exhibit 141.</p> <p>7 It appears to be an e-mail exchange between you</p> <p>8 and Mr. Donovan in August of 2013, but the</p> <p>9 e-mail at the bottom of the first page says --</p> <p>10 is from Chris Donovan to you on June 13, 2013?</p> <p>11 A. So prior to the last e-mail you</p> <p>12 sent me, the last document we saw; is that</p> <p>13 correct?</p> <p>14 Q. I believe so. I believe this is</p> <p>15 later. Exhibit 140 talks about e-mail exchanges</p> <p>16 in May of 2013?</p> <p>17 A. So after, okay.</p> <p>18 Q. So Exhibit 141 appears to have an</p> <p>19 e-mail on Page 1 dated June 13 from Mr. Donovan</p> <p>20 to you. And in the second paragraph Mr. Donovan</p> <p>21 says, "I'm prepared to make an offer of 3.1</p> <p>22 million." Do you see that?</p> <p>23 A. Mm-hmm.</p> <p>24 Q. And you, in the e-mail immediately</p>

<p style="text-align: right;">42</p> <p>1 above it, get back to him and say, I'm sorry, 2 that's not a number we would seriously consider? 3 A. Correct. 4 Q. Okay. Does this refresh your 5 recollection as to how the negotiations 6 terminated in 2013? 7 A. Yes. 8 Q. Okay. So in or around June of 9 2013, you are aware of the fact that you are not 10 going to have a deal with BEH for it to purchase 11 FlightLevel; is that correct? 12 A. I'm sorry, say the question again. 13 Q. In or about June of '13, you are 14 aware that you will not have a deal with BEH to 15 purchase FlightLevel? 16 A. Yes. 17 Q. Okay. And what did you do as a 18 result of that? 19 A. Went about business as usual. 20 Q. But you were aware, were you not, 21 of Mr. Donovan's statement of intent, that if he 22 was unable to get a deal with FlightLevel, he 23 would go forward and try to become an FBO and 24 sell fuel on his own; is that right?</p>	<p style="text-align: right;">44</p> <p>1 you write this letter? 2 A. I'm not sure that he did, but I 3 can't remember. 4 Q. Was this the first time that you 5 had expressed to the NAC objections regarding 6 BEH's TOFA compliance? 7 A. I can't remember that. 8 Q. That is the first time you put it 9 in writing though, right? 10 A. I can't remember that. 11 Q. I'm going to take your attention to 12 Norwood 4169, which is the attachment to your 13 June 20 letter. Do you see where it says 14 Exhibit 1? 15 A. Yes. 16 Q. Okay. And so at the top of 17 Exhibit 1, it says, "404. Taxiway and taxilane 18 object-free area." Do you see that? 19 A. Yes. 20 Q. Is it your understanding that the 21 regulation that you're citing in Exhibit 1 22 prohibits the installation of fixed objects 23 within fifty-seven and a half feet of a taxiway 24 center line?</p>
<p style="text-align: right;">43</p> <p>1 A. Yes. 2 Q. So what did you do, if anything, 3 with respect to Mr. Donovan's intentions to 4 become an FBO? I'm talking in or about June of 5 2013. 6 A. I'm not sure if that's when the 7 first letters went out or not. I can't remember 8 the timeline. 9 MR. FEE: Can I have this 10 marked as the next exhibit? 11 (Exhibit 142, E-mail dated June 20, 2013, 12 marked for identification) 13 Q. (By Mr. Fee) Exhibit 142 is an 14 e-mail from you to Russ Maguire dated June 20, 15 2013. And on Page 1, there's a forwarding 16 e-mail where Russ sends the e-mail to the town 17 manager, the fire department chief. The letter 18 that is attached is dated June 20, 2013, and 19 it's from you to the Norwood Airport Commission. 20 Do you see that? 21 A. Mm-hmm. 22 Q. Did you write this letter? 23 A. Yes. 24 Q. Okay. And did Mr. Burlingham help</p>	<p style="text-align: right;">45</p> <p>1 A. I believe so. 2 Q. Anything else? 3 A. With regard to TOFAs? 4 Q. With regard to the regulation that 5 you're citing in Exhibit 1, what is the extent 6 of the regulation that you are drawing to the 7 attention of the NAC? 8 A. I don't believe you're allowed to 9 conduct fueling operations within a TOFA. 10 Q. Okay. And what's the basis for 11 that brief? 12 A. Something I read at some point. 13 Q. Can you be more specific? 14 A. No. 15 Q. Is it an FAA advisory? 16 A. I can't remember if it's FAA or 17 what regulatory body comes up with it. I think 18 it's FAA. 19 Q. Okay. Do you know the regulatory 20 authority for TOFA regulations? 21 A. I believe it's the FAA. 22 Q. Okay. So you would consider 23 definitive FAA publications regarding the extent 24 to which activities are allowed in a TOFA. Is</p>

<p style="text-align: right;">46</p> <p>1 that a fair inference?</p> <p>2 A. I can't answer that. I'm not an</p> <p>3 expert on this stuff.</p> <p>4 Q. Well, it's your letter, so I'm just</p> <p>5 wondering. When you sent this letter to the NAC</p> <p>6 in June of 2013, did you have an understanding</p> <p>7 of what the regulatory authority was for TOFA</p> <p>8 regulations?</p> <p>9 A. Probably had a better understanding</p> <p>10 then than I do now.</p> <p>11 Q. Okay. And you would agree with me</p> <p>12 that TOFA regulations are for the purpose of</p> <p>13 providing certainty to pilots using taxiways,</p> <p>14 that they will be free of fixed objects. Is</p> <p>15 that -- would you agree with me on that?</p> <p>16 A. I can't agree or disagree with you</p> <p>17 on that, as far as the only purpose of TOFA.</p> <p>18 Q. I'm curious as to -- and I want to</p> <p>19 make sure I understand your testimony because</p> <p>20 it's an important point. What is the basis for</p> <p>21 your belief that you cannot conduct fueling</p> <p>22 activities within a TOFA?</p> <p>23 A. As I mentioned in the same question</p> <p>24 you asked earlier, I thought I read it</p>	<p style="text-align: right;">48</p> <p>1 trucks -- take place greater than fifty-seven</p> <p>2 and a half feet from the center line of the Gate</p> <p>3 3 taxiway, would that be in compliance in your</p> <p>4 mind?</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 A. Not necessarily. It would be in</p> <p>7 compliance with the TOFA.</p> <p>8 Q. That's what I'm asking. I'm sorry</p> <p>9 if I didn't make that clear. I'm focusing only</p> <p>10 on TOFA.</p> <p>11 MR. FEE: Neil, are you okay?</p> <p>12 MR. HARTZELL: I'm waiting to</p> <p>13 see if there's a question.</p> <p>14 Q. (By Mr. Fee) Do you want me to</p> <p>15 rephrase it?</p> <p>16 A. I think I answered it.</p> <p>17 Q. There seems to be some confusion.</p> <p>18 I just want to make sure it's absolutely clear.</p> <p>19 I'll rephrase it one more time because it is a</p> <p>20 little complex.</p> <p>21 Would you agree with me, if BEH</p> <p>22 fueling activities, including the loading and</p> <p>23 unloading of fuel from trucks, takes place</p> <p>24 greater than fifty-seven and a half feet from</p>
<p style="text-align: right;">47</p> <p>1 somewhere.</p> <p>2 Q. Okay. And so if BEH's fueling</p> <p>3 activities -- and by that I mean the loading and</p> <p>4 unloading of fuel into trucks -- take place</p> <p>5 greater than fifty-seven and a half feet from</p> <p>6 the Gate 3 taxiway center line, that would be</p> <p>7 okay, right?</p> <p>8 MR. HARTZELL: Objection.</p> <p>9 A. As long as it wasn't violating any</p> <p>10 other restrictions.</p> <p>11 Q. Right. I'm focusing only on TOFA</p> <p>12 now.</p> <p>13 A. No consideration to anything else.</p> <p>14 Q. Right. I'm just talking about</p> <p>15 TOFA.</p> <p>16 A. Yes.</p> <p>17 Q. So you would agree with me that</p> <p>18 if --</p> <p>19 A. Why don't you rephrase what you</p> <p>20 want me to agree with?</p> <p>21 Q. Sure. Would you agree -- I'm not</p> <p>22 telling you to agree with me. I'm asking you if</p> <p>23 you would agree with me, that were BEH's fueling</p> <p>24 activity, including the loading and unloading of</p>	<p style="text-align: right;">49</p> <p>1 the Gate 3 taxiway center line, that those</p> <p>2 activities will be in compliance with TOFA</p> <p>3 regulations?</p> <p>4 MR. HARTZELL: Objection.</p> <p>5 A. Like I said, I'm not an expert, so</p> <p>6 I'm not going to rule one way or the other.</p> <p>7 Q. You just don't know one way or the</p> <p>8 other?</p> <p>9 A. Not with enough certainty to -- nor</p> <p>10 am I the authority on it, nor have I purported</p> <p>11 to be.</p> <p>12 Q. Okay. Exhibit 2 talks about NFPA</p> <p>13 Standard 407. What do you know about that?</p> <p>14 A. I believe that is the building</p> <p>15 setback, twenty-five-foot building setback.</p> <p>16 Q. Do you know what the NFPA standards</p> <p>17 are?</p> <p>18 A. Not all of them, no.</p> <p>19 Q. Well, do you know what they are?</p> <p>20 A. National Fire Protection Agency</p> <p>21 standards.</p> <p>22 Q. Do you know who promulgates them?</p> <p>23 A. The National Fire Protection</p> <p>24 Agency.</p>

<p style="text-align: right;">50</p> <p>1 Q. Do you know if they are adopted by 2 the FAA as binding on airports? 3 A. I don't know that. 4 Q. Do you know if they are adopted by 5 the Norwood Airport Commission as binding on 6 operations at the Norwood Memorial Airport? 7 A. I think they might be. I can't say 8 with certainty though. 9 Q. Do you know if the Norwood Fire 10 Department has adopted the NFPA as binding 11 regulations for operations at the Norwood 12 Memorial Airport? 13 A. I don't know. 14 Q. You're citing to the NAC, in your 15 letter, the NFPA standards. I'm wondering, at 16 the time that you wrote the letter, what was 17 your understanding of what the NFPA standards 18 required vis-a-vis BEH? 19 A. I can't say with any certainty, but 20 I feel like the twenty-five-foot setback was a 21 requirement. 22 Q. Okay. And when you say 23 twenty-five-foot setback, that means that you 24 can't fuel airplanes within twenty-five feet of</p>	<p style="text-align: right;">52</p> <p>1 for the local flying public)." Did I read that 2 correctly? 3 A. Yes. 4 Q. At this point in time, in your 5 November letter, you've made some objections 6 regarding the potential OFA and FPA violations 7 that BEH fueling activity could engender, but 8 you're also making another argument to the NAC 9 as well; is that right? 10 A. Yes. 11 Q. And that argument is that the NAC 12 should consider not allowing a second FBO at the 13 airport because that would be harmful to 14 FlightLevel's business, right? 15 A. No. 16 Q. Well, you say that -- in that first 17 sentence that I just read that it goes without 18 saying BEH's entry into the fuel business would 19 severely undermine our business, right? 20 A. That's correct. 21 Q. So by making that statement to the 22 NAC, are you asking the NAC to take into account 23 the impact that a second FBO would have on 24 FlightLevel?</p>
<p style="text-align: right;">51</p> <p>1 a building; is that right? 2 A. Where the nozzle meets the vent 3 can't be within twenty-five feet of a building. 4 Q. But the NFPA standards don't say 5 anything about where you can fill a truck, do 6 they? 7 A. I don't know about that. 8 Q. So you don't know one way or 9 another whether the NFPA standards for fueling 10 aircraft apply to loading and unloading fuel 11 trucks? 12 A. Correct. 13 Q. Okay. In your letter of November 14 20, skipping over to the second page, the fourth 15 full paragraph you state -- and I quote -- "It 16 also goes without saying that BEH's entry into 17 the fuel business would severely undermine not 18 only our own fuel business and planned capital 19 improvement projects but also our aircraft 20 maintenance and real estate businesses as well. 21 Fuel is our lifeblood and consistent with 22 industry standard it largely subsidizes both 23 those other segments (segments in which our 24 humble opinion are critical service offerings</p>	<p style="text-align: right;">53</p> <p>1 A. I'm simply seeking to educate the 2 NAC. 3 Q. But are you not also advocating on 4 behalf of FlightLevel? 5 A. I'm looking out for my company's 6 best interest. 7 Q. Understood. And the purpose of 8 this letter is to inform them that if the NAC 9 approves BEH as a second FBO, it will have a 10 significant detrimental impact on FlightLevel, 11 right? 12 A. It's saying that BEH's entry into 13 the fuel business would severely undermine our 14 business. 15 Q. Right. And you believed that at 16 the time? 17 A. Yes. 18 Q. And you were going to take whatever 19 actions you deem necessary in order to make 20 certain that FlightLevel maintained its 21 single-FBO status, correct? 22 MR. HARTZELL: Objection. 23 A. No. 24 Q. Now, as a result of your June 20</p>

<p style="text-align: right;">54</p> <p>1 letter, do you know what actions, if any, the 2 NAC or airport manager took? 3 A. I'm -- not off the top of my head. 4 Q. After your November 20 letter, did 5 you have any discussions with the airport 6 manager regarding your concerns over OFA, NFPA 7 setbacks, or single-FBO exception? 8 A. Discussions? 9 Q. Yes. 10 A. Not that I can remember. 11 Q. Is it common for you to have 12 telephone discussions with Mr. Maguire or 13 in-person discussions with Mr. Maguire? 14 A. Define common. 15 Q. Do you talk to him daily? 16 A. No. 17 Q. Weekly? 18 A. No. 19 Q. Monthly? 20 A. No. 21 Q. On an annual basis? 22 A. Yes. 23 Q. So every couple of months, you 24 might have a conversation with Mr. Maguire?</p>	<p style="text-align: right;">56</p> <p>1 TOFA violations by BEH? 2 A. This is June 17. This letter is 3 June 20? 4 Q. Yes. 5 A. So it precedes it. 6 Q. I understand that. So you would 7 disagree that he's responding to your concerns? 8 A. At face value, based on what I'm 9 seeing here, yes. 10 Q. Well, I had to ask you if you had 11 discussions with him about this issue and you 12 said you didn't remember, so I'm asking this 13 another way. 14 These issues that are raised in Mr. 15 Maguire's memo appear to be very similar to what 16 you've raised in your June 20 letter. Would you 17 agree? 18 A. Yes. 19 Q. Would you agree then that Mr. 20 Maguire was attempting to address the potential 21 OFA issues associated with BEH having an FBO? 22 A. Yes. 23 Q. Okay. And so is it fair to say 24 that all of the concerns regarding OFA revolved</p>
<p style="text-align: right;">55</p> <p>1 A. That's fair. 2 Q. And was that the case in or about 3 2013? 4 A. Yes. 5 Q. So my question is simply: Did you 6 discuss your June 20 letter with Mr. Maguire? 7 A. Possibly. I can't recall. 8 Q. Okay. I'm going to show you a 9 document that has been marked as Exhibit 111 in 10 Mr. Ryan's deposition. 11 A. Yes. 12 Q. Do you want to take a minute to 13 read it or skim it, and I will ask you a 14 question about it. 15 A. Sure. Okay. 16 Q. Exhibit 111 from the Ryan 17 deposition appears to be a memo from Mr. Maguire 18 to the Norwood Airport Commission dated June 17, 19 2013. Have you ever seen this before? 20 A. Not that I recall, but I'm sure I 21 have. 22 Q. Is it fair to say that at or about 23 this time Mr. Maguire was investigating or 24 responding to your concerns regarding potential</p>	<p style="text-align: right;">57</p> <p>1 around the fueling of aircraft in the Gate 3 2 taxiway or the fueling of aircraft in the space 3 between Lots F and G? Is that fair to say? 4 MR. HARTZELL: Objection. 5 A. No. 6 Q. So if BEH committed not to fuel 7 aircraft in the Gate 3 taxiway and not to fuel 8 aircraft in the space between Lots F and G, what 9 objection would FlightLevel have to its fueling 10 operation? 11 MR. HARTZELL: Objection. 12 A. There is no space between Lot F and 13 G. 14 Q. Understood. There is an area that 15 exists between the two hangers known as Lots F 16 and G? 17 A. Correct. 18 Q. And at some point Mr. Donovan had 19 proposed to fuel aircraft in that space, 20 correct? 21 A. Yes. 22 Q. And at some point Mr. Donovan 23 pledged not to fuel aircraft in that space; is 24 that correct?</p>

<p style="text-align: right;">58</p> <p>1 MR. HARTZELL: Objection.</p> <p>2 A. Not at this time, no.</p> <p>3 Q. But is it your understanding, as we</p> <p>4 sit here today, Mr. Donovan has been told by the</p> <p>5 Airport Commission and has agreed not to try and</p> <p>6 fuel aircraft between Lots F and G -- between</p> <p>7 the hangers that exist on Lots F and G?</p> <p>8 A. I heard it mentioned but not</p> <p>9 definitively.</p> <p>10 Q. So you don't know one way or</p> <p>11 another whether BEH has committed to not fuel in</p> <p>12 the space between the hangers on Lots F and G.</p> <p>13 Is that fair to say?</p> <p>14 A. No.</p> <p>15 Q. It's not fair to say?</p> <p>16 A. No.</p> <p>17 Q. What do you know about</p> <p>18 Mr. Donovan's statements regarding his intent to</p> <p>19 fuel aircraft in the space between the hangers</p> <p>20 on Lots F and G?</p> <p>21 A. That I have been given no</p> <p>22 definitive assurances, contractual or otherwise,</p> <p>23 that BEH or any other entity for that</p> <p>24 matter would -- well, let's talk about BEH --</p>	<p style="text-align: right;">60</p> <p>1 A. Lots 5, 6, 7; Lots 8, 9, 10, X, Y,</p> <p>2 Z.</p> <p>3 Q. So on any of the AIP improved ramps</p> <p>4 over which FlightLevel has leases, you would</p> <p>5 argue that FlightLevel -- I'm sorry, BEH should</p> <p>6 not be allowed to fuel?</p> <p>7 MR. HARTZELL: Objection.</p> <p>8 A. On any ramps where FlightLevel has</p> <p>9 leases.</p> <p>10 Q. And FlightLevel has leases on all</p> <p>11 of the existing ramps at the airport, right?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. No. That's not correct.</p> <p>14 Q. Which levels does FlightLevel not</p> <p>15 control?</p> <p>16 A. The west ramp and DC3 ramp.</p> <p>17 Q. The DC3 ramp is controlled by Papa</p> <p>18 Whiskey?</p> <p>19 A. Papa Whiskey, LLC, yes.</p> <p>20 Q. Which you own, right?</p> <p>21 A. Yes.</p> <p>22 Q. And the west ramp is used for</p> <p>23 tie-downs, correct, currently?</p> <p>24 A. I believe so. And also, I left out</p>
<p style="text-align: right;">59</p> <p>1 would not use Lot G or any other FlightLevel</p> <p>2 leasehold to conduct any fueling operations</p> <p>3 whatsoever.</p> <p>4 Q. Okay.</p> <p>5 A. The space between Lot F and G you</p> <p>6 keep referring to does not register with me.</p> <p>7 Q. I apologize. I'll try to be more</p> <p>8 precise. When I say the space between Lots F</p> <p>9 and G, what I mean is the physical area between</p> <p>10 the two hangers that exist on Lots F and G.</p> <p>11 A. Between the two hangers?</p> <p>12 Q. Correct.</p> <p>13 A. Okay.</p> <p>14 Q. And I'm not trying to commit you to</p> <p>15 any kind of other interpretation of that</p> <p>16 language. But if Mr. Donovan and BEH were to be</p> <p>17 restricted contractually or by permit not to</p> <p>18 fuel aircraft in the space between the two</p> <p>19 hangers on Lots F and G, would FlightLevel have</p> <p>20 an objection to that?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. And no other FlightLevel leasehold.</p> <p>23 Q. And what other FlightLevel</p> <p>24 leasehold are you talking about?</p>	<p style="text-align: right;">61</p> <p>1 all the helipads, which are not under our</p> <p>2 leasehold.</p> <p>3 Q. Okay. So if BEH fueled on the west</p> <p>4 ramp and not in the space between the hangers on</p> <p>5 Lots F and G, would FlightLevel have an</p> <p>6 objection?</p> <p>7 MR. HARTZELL: Objection.</p> <p>8 A. Not based on property.</p> <p>9 Q. Okay. What other objection would</p> <p>10 it have?</p> <p>11 A. As long as the rules and</p> <p>12 regulations are being evenly applied.</p> <p>13 Q. And what do you suggest is</p> <p>14 inequitable about the current application of the</p> <p>15 rules with respect to BEH's FBO request?</p> <p>16 MR. HARTZELL: Objection.</p> <p>17 A. I haven't suggested that.</p> <p>18 Q. I'm trying to understand your last</p> <p>19 answer. You said FlightLevel's objection would</p> <p>20 be as long as the rules would be evenly applied.</p> <p>21 What do you mean by that?</p> <p>22 A. That exceptions weren't made to</p> <p>23 accommodate BEH that were not afforded to</p> <p>24 FlightLevel.</p>

<p style="text-align: right;">62</p> <p>1 Q. And are you aware of the NAC 2 applying any exceptions to BEH's FBO 3 application? 4 A. No, not in regard to TOFA/OFA. 5 Q. Right. Anything else? 6 A. Nothing comes to mind. 7 MR. FEE: Can I mark this as 8 the next exhibit? 9 (Exhibit 143, Letter dated June 24, 2013, 10 marked for identification) 11 Q. (By Mr. Fee) So back to June of 12 2013, do you recall that in response -- not in 13 response but as a result of discussions 14 regarding potential OFA violations, that the NAC 15 scheduled a meeting with the FAA? 16 A. What's the question? 17 Q. Do you recall, as part of the 18 discussion regarding potential OFA issues in the 19 taxiway -- in the Gate 3 taxiway, the NAC 20 scheduled a meeting with the FAA and others? 21 A. If that happened, I don't think I 22 was involved. 23 Q. Okay. Do you see on what's been 24 marked as Exhibit 143, which appears to be a</p>	<p style="text-align: right;">64</p> <p>1 appears to be a letter from Mr. Maguire to 2 Mr. Donovan dated June 26. Have you ever seen 3 this before? 4 A. Not that I can remember, no. 5 Q. So at the bottom it says at 6 tomorrow's meeting, Norwood Fire has been 7 invited, along with MassDOT, Chris Willenborg, 8 et cetera. Does that -- it also says, I 9 believe, Mark Ryan expects to be available. 10 Does that refresh your recollection 11 as to whether or not you attended this meeting 12 with the FAA on June 27, 2013, at BEH's proposed 13 hangar site? 14 A. No. 15 Q. You have no recollection of being 16 there on June 27, 2013? 17 A. I don't believe I was there, but I 18 could be wrong. 19 Q. What would refresh your 20 recollection as to whether or not you were there 21 at the June 27 FAA meeting? 22 A. In 2013? 23 Q. Yes. 24 A. I don't know. Attendance sheet or</p>
<p style="text-align: right;">63</p> <p>1 letter from Mr. Maguire to Mr. Donovan dated 2 June 24, 2013, on Page 2, top of the page, "I've 3 therefore scheduled a meeting at the site of 4 your proposed hangar/fuel farm adjacent to 5 Gate 3, at 12:30 p.m. this Thursday, June 27." 6 Do you see that? 7 A. Yes. 8 Q. And does that refresh your 9 recollection as to whether you had any 10 participation in the NAC's decision to schedule 11 a meeting with the FAA? 12 A. No. 13 Q. Okay. Were you present -- do you 14 know if this meeting with the FAA took place on 15 June 27? 16 A. I don't. 17 Q. Were you present? 18 A. Not that I can remember. 19 MR. FEE: I'm going to mark 20 this as the next exhibit. 21 (Exhibit 144, Letter dated June 26, 2013, 22 marked for identification) 23 Q. (By Mr. Fee) I'm showing you an 24 exhibit that has been marked as Exhibit 144. It</p>	<p style="text-align: right;">65</p> <p>1 a picture. Do you have evidence that shows I 2 was there? 3 Q. No. I'm trying to figure out what, 4 if anything, would spur your memory. And if 5 there's nothing that you can think of, then 6 that's your answer. 7 MR. HARTZELL: Objection. 8 That's not what he said. 9 Q. (By Mr. Fee) Okay. Is there 10 anything that would spur your memory regarding 11 whether or not you attended the meeting on June 12 27? 13 A. And I answered that question. 14 Q. And what is your answer again, 15 please? 16 A. Could you read it back, please? 17 (Testimony read by reporter) 18 MR. FEE: Moving on, I'm going 19 to mark this as the next exhibit. 20 (Exhibit 145, Letter dated June 26, 2013, 21 marked for identification) 22 Q. (By Mr. Fee) Mr. Eichleay, 23 Exhibit 145 appears to be a letter from 24 Mr. Donovan to Mr. Maguire and others dated June</p>

<p style="text-align: right;">66</p> <p>1 26, and it has attachments consisting of a</p> <p>2 survey plan as well as details regarding</p> <p>3 underground storage tanks. Have you ever seen</p> <p>4 this before?</p> <p>5 A. I think I may have skimmed it in</p> <p>6 the document production.</p> <p>7 Q. Okay. Do you recall receiving a</p> <p>8 copy of this in or about June of 2013 from Mr.</p> <p>9 Maguire?</p> <p>10 A. Not that I can recall.</p> <p>11 Q. Was it Mr. Maguire's practice to</p> <p>12 forward you e-mails regarding the status of</p> <p>13 BEH's construction activities?</p> <p>14 A. No.</p> <p>15 Q. And you have no recollection</p> <p>16 whether or not he forwarded this e-mail to you</p> <p>17 in or about June of 2013?</p> <p>18 A. That's correct. I know some public</p> <p>19 records requests were made. I'm not sure if</p> <p>20 they were around that period, but those are the</p> <p>21 only circumstances I could manage where we</p> <p>22 received a document like this.</p> <p>23 Q. Okay. And you say that -- well,</p> <p>24 the documents that are attached to Exhibit 145,</p>	<p style="text-align: right;">68</p> <p>1 A. I don't think I have.</p> <p>2 Q. You don't have any recollection of</p> <p>3 Mr. Maguire forwarding this to you in or about</p> <p>4 June of 2013?</p> <p>5 A. Correct.</p> <p>6 Q. Do you recall at any time reviewing</p> <p>7 the information that is contained in the</p> <p>8 attachments?</p> <p>9 A. Please ask the question again.</p> <p>10 Q. Do you recall at any time reviewing</p> <p>11 the information that is contained in the</p> <p>12 attachments?</p> <p>13 A. I don't.</p> <p>14 Q. Are you seeing them for the first</p> <p>15 time?</p> <p>16 A. Possibly.</p> <p>17 Q. So are you unaware of any potential</p> <p>18 violations of OFA -- I'm sorry, of TOFA by</p> <p>19 FlightLevel?</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 A. No, I'm aware.</p> <p>22 Q. And how did you become aware of</p> <p>23 those TOFA violations by FlightLevel?</p> <p>24 A. I can't remember, but I think it</p>
<p style="text-align: right;">67</p> <p>1 do you recall seeing them at or about the time</p> <p>2 of June 2013?</p> <p>3 A. I don't recall, no.</p> <p>4 Q. And you think you've only seen them</p> <p>5 more recently?</p> <p>6 A. I can't answer that with certainty.</p> <p>7 I may have seen them. I may have seen them back</p> <p>8 at this time, but I can't remember.</p> <p>9 Q. How would you have seen them,</p> <p>10 through a public records request?</p> <p>11 A. Yes.</p> <p>12 MR. FEE: Okay. Can I mark</p> <p>13 this as the next exhibit?</p> <p>14 (Exhibit 146, E-mail dated June 27, 2013,</p> <p>15 marked for identification)</p> <p>16 Q. (By Mr. Fee) Exhibit 146 is an</p> <p>17 e-mail from Mr. Donovan to Mr. Maguire and</p> <p>18 others dated June 27, 2013, with an attachment.</p> <p>19 And the attachment purports to illustrate a</p> <p>20 variety of alleged OFA violations at the</p> <p>21 airport. Do you see that?</p> <p>22 A. I see the exhibit, yes.</p> <p>23 Q. And so have you seen this e-mail</p> <p>24 before?</p>	<p style="text-align: right;">69</p> <p>1 was figured out on my own a long time ago.</p> <p>2 Q. Do you know how many TOFA</p> <p>3 violations there are?</p> <p>4 A. Several.</p> <p>5 Q. Okay. Is it more than ten?</p> <p>6 A. I don't know.</p> <p>7 Q. You know it's more than one?</p> <p>8 A. I believe so.</p> <p>9 Q. Okay.</p> <p>10 A. The reason being these buildings</p> <p>11 were constructed before the TOFA regulations</p> <p>12 existed.</p> <p>13 Q. Understood. And there's a variety</p> <p>14 of other objects that are at least depicted on</p> <p>15 the exhibit -- I'm sorry, the attachment to the</p> <p>16 exhibit that you're looking at, correct,</p> <p>17 nonbuilding obstructions, correct?</p> <p>18 A. On the attachment?</p> <p>19 Q. Yes.</p> <p>20 A. And this was -- who produced this?</p> <p>21 This was Mr. Donovan?</p> <p>22 Q. This is a letter from Mr. Donovan</p> <p>23 to Mr. Maguire with attached diagrams?</p> <p>24 A. Yes. It shows other objects than</p>

<p style="text-align: right;">70</p> <p>1 buildings.</p> <p>2 Q. And are you aware that FlightLevel</p> <p>3 is responsible for objects other than buildings</p> <p>4 that constitute OFA violations?</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 A. Ask the question again.</p> <p>7 Q. Are you aware that FlightLevel is</p> <p>8 responsible for objects other than buildings</p> <p>9 which are in the TOFA?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 A. Yes.</p> <p>12 Q. So -- go ahead.</p> <p>13 A. Could you be more specific with</p> <p>14 regard to your previous question? "Objects" is</p> <p>15 pretty general.</p> <p>16 Q. Right. I think I like your answer</p> <p>17 as it stands.</p> <p>18 So you have no recollection of</p> <p>19 attending the FAA meeting. Did you talk to</p> <p>20 anybody at the meeting that took place at BEH's</p> <p>21 hangar with the FAA and MassDOT?</p> <p>22 A. I don't remember.</p> <p>23 Q. Did you have any discussions with</p> <p>24 Mr. Maguire regarding the fact that he convened</p>	<p style="text-align: right;">72</p> <p>1 A. I can't remember.</p> <p>2 Q. Do you know what a 7460 is?</p> <p>3 A. Vaguely.</p> <p>4 Q. Okay. If I were to represent to</p> <p>5 you that it is a filing that's done with the FAA</p> <p>6 to obtain approval for construction activities</p> <p>7 at an airport, would that ring a bell?</p> <p>8 A. I thought it was more about</p> <p>9 clearances than approvals.</p> <p>10 Q. Okay. When you say "clearances",</p> <p>11 what are you referring to?</p> <p>12 A. From flight paths and distances</p> <p>13 from runways and taxiways and stuff of that</p> <p>14 nature.</p> <p>15 Q. Okay. And it's a approval with</p> <p>16 respect to issues over which the FAA has</p> <p>17 jurisdiction. Is that your understanding?</p> <p>18 A. I'll keep my understanding to what</p> <p>19 I just said because it doesn't go beyond that.</p> <p>20 My understanding doesn't go beyond that of what</p> <p>21 I know.</p> <p>22 Q. Okay. Do you know if at any point</p> <p>23 the FAA issued approval notices for BEH's</p> <p>24 proposed construction activities on Lot F?</p>
<p style="text-align: right;">71</p> <p>1 a meeting with FAA and DOT officials to discuss</p> <p>2 BEH's proposed construction and potential OFA</p> <p>3 and TOFA violations?</p> <p>4 A. It's possible, but not that I can</p> <p>5 remember.</p> <p>6 Q. Okay. Do you know what, if</p> <p>7 anything, the NAC did following the June 27th</p> <p>8 meeting with the FAA and the DOT?</p> <p>9 A. Ask the question again.</p> <p>10 Q. Do you know what, if anything, the</p> <p>11 NAC did following the -- or in response to</p> <p>12 the -- strike that.</p> <p>13 -- as a result of the FAA meeting</p> <p>14 that took place on June 27, 2013?</p> <p>15 A. Not that I can remember.</p> <p>16 Q. And you don't recall any</p> <p>17 discussions you had with Mr. Maguire regarding</p> <p>18 the June 27th FAA meeting, correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. Did you know at that time</p> <p>21 that Mr. Donovan, on behalf of BEH, had</p> <p>22 submitted 7460 determinations to the FAA</p> <p>23 regarding this proposed construction?</p> <p>24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">73</p> <p>1 A. I don't know.</p> <p>2 MR. FEE: Can I have this</p> <p>3 marked?</p> <p>4 (Exhibit 147, E-mail dated July 2, 2013,</p> <p>5 marked for identification)</p> <p>6 Q. (By Mr. Fee) Exhibit 147 appears</p> <p>7 to be an e-mail from Lisa Lesperance to</p> <p>8 Mr. Donovan dated July 2, 2013. And she says</p> <p>9 therein, "Well, I truly do not even believe this</p> <p>10 myself, but both of these were reviewed in about</p> <p>11 twenty-four hours. So, basically you're all set</p> <p>12 to move forward with your construction." Do you</p> <p>13 see that?</p> <p>14 A. Yes.</p> <p>15 Q. Does that refresh your recollection</p> <p>16 as to whether or not you learned at some point</p> <p>17 that the FAA had approved the construction</p> <p>18 activities -- I'm sorry, the 7460 applications</p> <p>19 that had been submitted to it by BEH?</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 A. I had no knowledge of this e-mail.</p> <p>22 Q. But does it refresh your</p> <p>23 recollection as to whether or not at some point</p> <p>24 in or about July 2013 you learned that the FAA</p>

<p style="text-align: right;">74</p> <p>1 had issued approvals for the BEH's 7460 2 applications? 3 A. No. 4 Q. Okay. At some point did you learn 5 that BEH intended to begin construction it had 6 obtained clearance from the FAA to move forward? 7 A. I learned that BEH was going to 8 build the building. 9 Q. Okay. And when did you learn that? 10 A. 2011. 11 Q. Okay. Did you have any discussions 12 with Mr. Ryan in this time frame regarding BEH's 13 proposed fuel plan? 14 A. Which time frame? 15 Q. I'm talking June/July 2013. 16 A. Not that I can remember. 17 MR. FEE: Okay. I would like 18 to mark this as the next exhibit. 19 (Exhibit 148, E-mail dated July 12, 2013, 20 marked for identification) 21 Q. (By Mr. Fee) Exhibit 148 is an 22 e-mail from Mr. Ryan to Mr. Donovan dated July 23 12, 2013. In the second paragraph he says, 24 "Please provide us with a detailed plan on</p>	<p style="text-align: right;">76</p> <p>1 attended that showed it. 2 Q. And you had vigorous objections to 3 any fueling on Lot G? 4 A. Correct. 5 Q. And you voiced those objections to 6 the NAC? 7 A. I believe at the meeting. It may 8 not have been me but, it was another 9 representative of FlightLevel. 10 Q. Okay. And other than the potential 11 impingement of FlightLevel's property rights 12 with respect to Lot G and any other leasehold, 13 did you have any other objection to BEH's 14 fueling at the airport, selling fuel at the 15 airport? 16 A. Not that was voiced at that 17 meeting. 18 Q. Okay. Do you know what, if 19 anything, BEH did to respond to the NAC's 20 request that it provide a fueling plan in or 21 about July of 2013? 22 A. What BEH did? 23 Q. Correct. 24 A. In response to the NAC's request?</p>
<p style="text-align: right;">75</p> <p>1 unloading fuel at the airport, how the delivery 2 trucks will be filled to service aircraft and 3 how you fuel airplanes at your fuel station 4 without interfering with vehicles using Gate 3." 5 Do you see that? 6 A. Yes. 7 Q. So did you have any knowledge at 8 this point in time, regarding the NAC's 9 discussions with Mr. Donovan, regarding his 10 proposed fueling plan for Lot F? 11 A. I believe by this time -- it was 12 around July of 2013 that we became aware of a 13 plan that showed fueling on Lot G, but I have 14 not seen this e-mail. 15 Q. Okay. So it's fair to say at that 16 at or about this time you were aware that BEH 17 had some plan to fuel airplanes on Lot G? 18 A. Yes. 19 Q. What was the basis for that 20 understanding? 21 A. First, it was just rumors around 22 the airport, people talking, and then it was -- 23 I believe there was a plan presented at a 24 Norwood Airport Commission meeting that I</p>	<p style="text-align: right;">77</p> <p>1 Q. I have shown you Exhibit 148. It 2 appears to be an e-mail from Mr. Ryan to 3 Mr. Donovan in July of 2013 requesting a 4 detailed fueling plan, right? 5 A. Yes. 6 Q. And my question to you is: What 7 knowledge do you have, if any, of what 8 Mr. Donovan provided to the NAC in response to 9 this request for a fueling plan? 10 A. I don't have any knowledge with any 11 certainty. 12 MR. FEE: Okay. I'm going to 13 mark this as the next exhibit. 14 (Exhibit 149, E-mail and Attachment dated 15 July 12, 2013, marked for identification) 16 Q. (By Mr. Fee) Exhibit 149 is an 17 e-mail from Russ Maguire to Mr. Donovan dated 18 July 12, 2013, which encloses a memorandum 19 entitled BEH Fuel Farm Proposal. Do you see 20 that? 21 A. Yes. 22 Q. Have you seen this before? 23 A. Not that I can remember. 24 Q. Okay. Do you recall being advised</p>

<p style="text-align: right;">78</p> <p>1 at any time that Mr. -- that the NAC's</p> <p>2 reservations regarding BEH's fueling operations</p> <p>3 with respect to OFA had been fully resolved?</p> <p>4 MR. HARTZELL: Objection.</p> <p>5 A. I can't remember.</p> <p>6 Q. Okay. And in the fourth full</p> <p>7 paragraph on Page 1 of the memo --</p> <p>8 A. Notwithstanding?</p> <p>9 Q. Yes. "Notwithstanding any</p> <p>10 additional issues or concerns posed by the</p> <p>11 Airport Commission next Wednesday, the FAA</p> <p>12 determinations - plus supporting information</p> <p>13 from its aviation planner, Lisa Lesperance -</p> <p>14 have answered my questions relative to the OFA</p> <p>15 issue. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Was it your understanding in July</p> <p>18 of 2013 that the issues raised in your June</p> <p>19 letter regarding potential OFA violations by BEH</p> <p>20 had been resolved to the NAC's satisfaction?</p> <p>21 A. I can't remember.</p> <p>22 Q. Okay. So you can't remember what</p> <p>23 you knew in July of 2013. Is that what you're</p> <p>24 saying?</p>	<p style="text-align: right;">80</p> <p>1 to Mr. Donovan?</p> <p>2 A. I can't say with any certainty what</p> <p>3 the response was.</p> <p>4 MR. FEE: Okay. Let's mark</p> <p>5 this as the next exhibit.</p> <p>6 (Exhibit 150, E-mail dated July 12, 2013,</p> <p>7 marked for identification)</p> <p>8 Q. (By Mr. Fee) Exhibit 150 is an</p> <p>9 e-mail from Mr. Donovan to Mr. Maguire and</p> <p>10 others dated July 12, 2013. Have you seen this</p> <p>11 before?</p> <p>12 A. Not that I can recall.</p> <p>13 Q. Did you have any knowledge</p> <p>14 whatsoever regarding whether or not BEH</p> <p>15 relocated its underground storage tanks prior to</p> <p>16 construction? Strike that. Bad question.</p> <p>17 Do you have any knowledge regarding</p> <p>18 a change in BEH's plans for construction of its</p> <p>19 underground fuel farm and the location of the</p> <p>20 tanks?</p> <p>21 A. No detailed knowledge, no.</p> <p>22 Q. Do you have any general knowledge?</p> <p>23 A. Now that you mentioned it, maybe I</p> <p>24 heard someone talking about it at some point.</p>
<p style="text-align: right;">79</p> <p>1 A. With regard to the resolution of</p> <p>2 TOFA issues.</p> <p>3 Q. Do you believe there are</p> <p>4 outstanding TOFA issues with respect to BEH's</p> <p>5 fueling operations?</p> <p>6 A. Today?</p> <p>7 Q. Today.</p> <p>8 A. Not necessarily.</p> <p>9 Q. Okay. And that is because they</p> <p>10 don't have an FBO or because their proposed</p> <p>11 fueling doesn't violate OFA?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. I can't answer that. I don't know.</p> <p>14 Q. So on the second page, first full</p> <p>15 paragraph, Mr. Maguire says to Mr. Donovan, "On</p> <p>16 the second concern noted in my June 24</p> <p>17 e-mail/letter - a BEH fueling plan - I have yet</p> <p>18 to receive this." Do you see that?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. So do you know what, if anything,</p> <p>21 Mr. Donovan and BEH did to respond to the</p> <p>22 request contained in Exhibit 149, which is an</p> <p>23 e-mail from Mr. Maguire to Mr. Donovan, as well</p> <p>24 as Exhibit 148, which is an e-mail from Mr. Ryan</p>	<p style="text-align: right;">81</p> <p>1 Q. Do you know who you heard talking</p> <p>2 about it?</p> <p>3 A. No.</p> <p>4 Q. Would it be Mr. Maguire?</p> <p>5 A. I have no idea.</p> <p>6 Q. Well, who would know about that</p> <p>7 that you would be talking to?</p> <p>8 A. Friends of Chris'. I don't know.</p> <p>9 MR. FEE: I would like to mark</p> <p>10 this as the next exhibit.</p> <p>11 (Exhibit 151, E-mail dated July 13, 2013,</p> <p>12 marked for identification)</p> <p>13 Q. (By Mr. Fee) Exhibit 151 is an</p> <p>14 e-mail from Mr. Donovan to Mr. Maguire dated</p> <p>15 July 13. Have you seen this before?</p> <p>16 A. Not that I recall.</p> <p>17 Q. In this letter Mr. Donovan asks Mr.</p> <p>18 Maguire for copies of any written fueling</p> <p>19 procedures at the airport. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. At that time did FlightLevel have</p> <p>22 any written fueling procedures documents on file</p> <p>23 with the NAC?</p> <p>24 A. I'm not sure.</p>

<p style="text-align: right;">82</p> <p>1 MR. FEE: Can I mark this as 2 the next exhibit? 3 (Exhibit 152, E-mail dated July 15, 2013, 4 marked for identification) 5 Q. (By Mr. Fee) Exhibit 152 appears 6 to be an e-mail from Mr. Donovan to Mr. Maguire 7 and Mr. Ryan dated July 15, 2013. Have you ever 8 seen this before? 9 A. Not that I recall. 10 Q. Okay. And the attachments to this 11 e-mail are a 7460 form, a Fuel Facility 12 Operations (Draft), two pages, and a schematic. 13 Do you see that? 14 A. Yes. 15 Q. And you say you have never seen 16 this e-mail before, correct? 17 A. Not that I can recall. 18 Q. Have you seen the schematic 19 attached as the last page? 20 A. Yes. 21 Q. Okay. And have you seen that at an 22 Airport Commission meeting? 23 A. I think so. 24 Q. And is this the document that you</p>	<p style="text-align: right;">84</p> <p>1 Q. Okay. And you communicated those 2 concerns to the NAC, correct? 3 A. Yes. 4 Q. Okay. Often, correct? 5 MR. HARTZELL: Objection. 6 A. Define often. 7 Q. I'm sorry. 8 A. And by the way, it says the fueling 9 is also Area A, not just parking, which you only 10 alluded to in your question. 11 Q. Thank you for clarifying. 12 MR. FEE: I'll mark this as 13 the next exhibit. 14 (Exhibit 153, E-mail dated July 13, 2013, 15 marked for identification) 16 Q. (By Mr. Fee) 153 is an e-mail from 17 Mr. Donovan to Mr. Maguire dated July 13, 2013, 18 and it attaches fuel cabinet procedures with an 19 attachment. Do you see that? Have you seen 20 that before? 21 A. In the document production from 22 this case, I have skimmed the binder. I think I 23 have seen it there. 24 Q. Right. At this point in time did</p>
<p style="text-align: right;">83</p> <p>1 were referencing earlier when you testified 2 about seeing a plan showing proposed fueling on 3 Lot G? 4 A. It was either this or similar to 5 it. 6 Q. Right. Something produced by BEH 7 that showed airplanes on Lot G? 8 A. Yes. 9 Q. And so this schematic indicates 10 aircraft parking in the areas between the 11 hangers on Lots F and G, does it not? 12 A. Yes. 13 Q. And when you first -- do you know 14 when you first saw this depiction? 15 A. I can't remember. 16 Q. So when you saw this depiction, you 17 would certainly understand that BEH was 18 intending to sell fuel, correct? 19 A. I would assume so. 20 Q. And you had objections, did you 21 not, to any use of any of FlightLevel's 22 leaseholds that would assist in Boston Executive 23 Helicopters selling fuel at the airport, right? 24 A. Yes.</p>	<p style="text-align: right;">85</p> <p>1 FlightLevel have a written document on file with 2 the NAC governing the dispensing of fuel from 3 its self-fueling cabinet? 4 A. At this time? 5 Q. Yes. 6 A. I'm not sure. This is 2013. I'm 7 not sure. 8 MR. FEE: I'm going to mark 9 this as the next exhibit. 10 (Exhibit 154, E-mail dated July 15, 2013, 11 with Attached Commercial Permit 12 Application, marked for identification) 13 Q. (By Mr. Fee) Exhibit 154 is an 14 e-mail from Mr. Donovan to Mr. Maguire dated 15 July 15. Have you seen this before? 16 A. Not that I can recall. 17 Q. Okay. It attaches a commercial 18 permit application. Do you see that? 19 A. Yes. 20 Q. And it checked underground 21 operations as the item called line services. Do 22 you see that? 23 A. Yes. 24 Q. So this is an application to sell</p>

<p style="text-align: right;">86</p> <p>1 fuel at the airport, correct?</p> <p>2 A. I would assume so.</p> <p>3 Q. And were you aware that Boston</p> <p>4 Executive Helicopters had submitted an</p> <p>5 application to become an FBO in or about July of</p> <p>6 2013?</p> <p>7 A. Yes.</p> <p>8 Q. And that means you were aware of</p> <p>9 their desire to sell fuel at the airport,</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 MR. FEE: I'm going to mark</p> <p>13 this as the next exhibit.</p> <p>14 (Exhibit 155, E-mail dated July 15, 2013,</p> <p>15 with Attached Draft Dual Procedures,</p> <p>16 marked for identification)</p> <p>17 Q. (By Mr. Fee) Exhibit 155 is an</p> <p>18 e-mail from Don to Mr. Maguire and others dated</p> <p>19 July 15, 2013 attaching draft fuel procedures:</p> <p>20 Have you seen this before?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. It attaches a twenty-eight-page</p> <p>23 document with attachments outlining a manual for</p> <p>24 operations. Do you see that?</p>	<p style="text-align: right;">88</p> <p>1 Q. Do you recall at any time Mr.</p> <p>2 Maguire conveying to you, in words or substance,</p> <p>3 the information contained in the attachment to</p> <p>4 Exhibit 156?</p> <p>5 A. In these exhibits?</p> <p>6 Q. Yes.</p> <p>7 A. He may have, but I can't remember.</p> <p>8 MR. FEE: Can I mark this as</p> <p>9 the next exhibit?</p> <p>10 (Exhibit 157, E-mail dated July 17, 2013,</p> <p>11 marked for identification)</p> <p>12 Q. (By Mr. Fee) Exhibit 157 is an</p> <p>13 e-mail from Mr. Maguire to a number of different</p> <p>14 addressees forwarding an e-mail from Lisa</p> <p>15 Lesperance of the FAA dated July 17, 2013. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And the second paragraph of Ms.</p> <p>19 Lesperance's e-mail says -- and I quote -- "From</p> <p>20 the data submitted to us, it is our</p> <p>21 understanding the fuel tanks will be underground</p> <p>22 and "flush", if you will, with the pavement and</p> <p>23 all venting of the fuel tanks will be along the</p> <p>24 hangar itself, therefore, there is no OFA</p>
<p style="text-align: right;">87</p> <p>1 A. What's the question?</p> <p>2 Q. Have you seen this before?</p> <p>3 A. Not that I remember.</p> <p>4 Q. Were you aware of the fact that in</p> <p>5 July of 2013 BEH had submitted to the NAC a</p> <p>6 manual for operations?</p> <p>7 A. I was not aware.</p> <p>8 Q. Okay. At this time did FlightLevel</p> <p>9 have a manual for operations governing its</p> <p>10 fueling procedures on file with the NAC?</p> <p>11 A. I'm not sure.</p> <p>12 MR. FEE: Off the record.</p> <p>13 (A recess was taken)</p> <p>14 MR. FEE: Back on the record.</p> <p>15 I'm going to mark this as the next</p> <p>16 exhibit.</p> <p>17 (Exhibit 156, E-mail dated July 15, 2013,</p> <p>18 with Attached TOFA Diagrams, marked for</p> <p>19 identification)</p> <p>20 Q. (By Mr. Fee) Exhibit 156 is an</p> <p>21 e-mail from Mr. Donovan to Mr. Maguire dated</p> <p>22 July 15 attaching TOFA diagrams. Have you ever</p> <p>23 seen this e-mail before?</p> <p>24 A. Not that I can recall.</p>	<p style="text-align: right;">89</p> <p>1 violation. Fuel trucks will park outside of the</p> <p>2 OFA (along the hangar side, somewhat between the</p> <p>3 two hangars), and a hose will run from the</p> <p>4 underground tanks to the trucks. The diagram</p> <p>5 sent included aircraft fueling to be in the same</p> <p>6 location as the parked fuel trucks (dispensing</p> <p>7 and loading). Given this information, it is</p> <p>8 FAA's understanding that no trucks or aircraft</p> <p>9 will be in the OFA, therefore, the determination</p> <p>10 was a 'no objection' to this activity." Did I</p> <p>11 read that correctly?</p> <p>12 A. You did.</p> <p>13 Q. Okay. And was it your</p> <p>14 understanding that in July of 2017 the FAA had</p> <p>15 no objection to BEH's proposed fueling plan with</p> <p>16 respect to the OFA?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 A. Based upon the information received</p> <p>19 as it states in the first paragraph.</p> <p>20 Q. Understood.</p> <p>21 A. Yes.</p> <p>22 Q. To your knowledge, did the</p> <p>23 information change thereafter?</p> <p>24 A. Not that I can recall.</p>

<p style="text-align: right;">90</p> <p>1 Q. Okay.</p> <p>2 A. But there is that qualifying</p> <p>3 statement in the beginning based on the</p> <p>4 information received.</p> <p>5 Q. Do you have any knowledge of any</p> <p>6 information being provided to FAA that was</p> <p>7 faulty?</p> <p>8 A. I'm thinking if that fueling plan</p> <p>9 was provided and it showed -- and there was no</p> <p>10 depiction made of where the leasehold interest</p> <p>11 are and there's fueling operations on the</p> <p>12 FlightLevel leasehold.</p> <p>13 Q. Is it your understanding that the</p> <p>14 FAA made any pronouncements or determinations</p> <p>15 whatsoever with respect to the private property</p> <p>16 rights of anyone at the airport?</p> <p>17 A. I'm just pointing out my concern.</p> <p>18 Q. Right. I understand you have a</p> <p>19 concern, but I'm talking right now -- and</p> <p>20 because I have Exhibit 157 in front of you</p> <p>21 regarding FAA determinations of no OFA</p> <p>22 violation, right? And my question to you is:</p> <p>23 Do you think that the FAA opines on anything</p> <p>24 other than compliance with FAA regulations?</p>	<p style="text-align: right;">92</p> <p>1 A. Yes.</p> <p>2 Q. Did you attend this meeting?</p> <p>3 A. I would assume I did.</p> <p>4 Q. Okay. And do you recall any</p> <p>5 discussion at that meeting regarding the NAC's</p> <p>6 consideration of BEH's fueling plan?</p> <p>7 A. I know it was discussed at one of</p> <p>8 the summer '13 NAC meetings.</p> <p>9 Q. Do you know if it was discussed at</p> <p>10 the July 17, 2013, meeting, the minutes for</p> <p>11 which have been marked as Exhibit 158?</p> <p>12 A. You want me to read this so I can</p> <p>13 tell you?</p> <p>14 Q. Sure.</p> <p>15 A. I mean, the topic of BEH's fueling</p> <p>16 came up.</p> <p>17 Q. And one of the issues was whether</p> <p>18 or not BEH should be allowed to fuel on</p> <p>19 FlightLevel's leasehold, correct?</p> <p>20 A. It says, "NAC needs clarification</p> <p>21 from BEH and FlightLevel regarding fueling</p> <p>22 rights. Does BEH have the right to fuel</p> <p>23 helicopters on FlightLevel property?"</p> <p>24 Q. And that was one of the issues</p>
<p style="text-align: right;">91</p> <p>1 A. I'm not sure.</p> <p>2 Q. Okay. Did you know at any time if</p> <p>3 the FAA gave you any indication of its</p> <p>4 consideration of private property disputes</p> <p>5 between you and Mr. Donovan?</p> <p>6 A. No.</p> <p>7 MR. FEE: Okay. I would like</p> <p>8 to have this marked as the next exhibit.</p> <p>9 (Exhibit 158, Airport Commission Meeting</p> <p>10 Minutes, Regular Business Meeting, dated</p> <p>11 July 17, 2013, marked for identification)</p> <p>12 Q. (By Mr. Fee) I have shown you a</p> <p>13 series of e-mails that began with requests from</p> <p>14 Mr. Maguire and Mr. Ryan to Mr. Donovan for</p> <p>15 information regarding his fueling plan, right?</p> <p>16 A. Yes.</p> <p>17 Q. And then I showed you a series of</p> <p>18 e-mails that were from Mr. Donovan to the NAC</p> <p>19 regarding various aspects of his fueling plan,</p> <p>20 right? Do you recall that?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. Yes.</p> <p>23 Q. Now I'm showing you the meeting</p> <p>24 minutes of July 17, 2013?</p>	<p style="text-align: right;">93</p> <p>1 discussed at the meeting, correct?</p> <p>2 A. It appears so.</p> <p>3 Q. Do you have any recollection of</p> <p>4 that?</p> <p>5 A. I believe this was the meeting</p> <p>6 where I think a FlightLevel representative said</p> <p>7 that fueling on our -- fueling operations of any</p> <p>8 kind on our property wouldn't be allowed.</p> <p>9 Q. And as is your right for sure. Do</p> <p>10 you know if that FlightLevel representative was</p> <p>11 yourself or Mr. Burlingham?</p> <p>12 A. I actually think it was Mike</p> <p>13 DeLaria, but I can't be certain about that.</p> <p>14 Q. Do you know if you were present at</p> <p>15 this meeting?</p> <p>16 A. I think I was.</p> <p>17 Q. Because it says -- one of the</p> <p>18 bullets three quarters of the way down the page</p> <p>19 says, "Peter Eichleay from FlightLevel will</p> <p>20 research right-of-way." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Does that refresh your recollection</p> <p>23 as to whether or not you were there?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">94</p> <p>1 Q. And what, if anything, did you do</p> <p>2 to research the right-of-way?</p> <p>3 A. I believe we -- I don't know if it</p> <p>4 came directly after this meeting, but we</p> <p>5 submitted letters and information on chain of</p> <p>6 title and all of that kind of thing.</p> <p>7 Q. Right. But your objection was to</p> <p>8 any use by BEH of any leasehold of FlightLevel</p> <p>9 for fueling. Is that fair to say?</p> <p>10 A. And in connection with Lot F.</p> <p>11 Q. Right. On any leasehold held by</p> <p>12 FlightLevel, right?</p> <p>13 A. That was the big concern at this</p> <p>14 meeting.</p> <p>15 Q. Okay. But was it your</p> <p>16 understanding that other than that, other than</p> <p>17 that concern, the NAC was in receipt of all of</p> <p>18 the fueling documents provided by BEH and voted</p> <p>19 to allow them to continue with their</p> <p>20 construction?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. Ask the question again.</p> <p>23 Q. Was it your understanding after</p> <p>24 this meeting that BEH was in receipt of -- I'm</p>	<p style="text-align: right;">96</p> <p>1 present. I asked you what, if anything, you did</p> <p>2 to research the right-of-way following the</p> <p>3 meeting and you said you looked at chain of</p> <p>4 title documents; is that right?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay. And did you have Nick do</p> <p>7 that or was that something you undertook</p> <p>8 yourself?</p> <p>9 A. I can't remember.</p> <p>10 Q. And you said you were unclear as to</p> <p>11 what your understanding was of the 3/0 vote to</p> <p>12 approve BEH's construction schedule?</p> <p>13 A. Yes.</p> <p>14 Q. And do you know if the NAC in any</p> <p>15 way memorialized further the events that took</p> <p>16 place at the July 17 meeting, other than the</p> <p>17 minutes.</p> <p>18 A. If they did anything to memorialize</p> <p>19 what took place at this meeting other than the</p> <p>20 minutes.</p> <p>21 Q. Yes.</p> <p>22 A. I can't remember.</p> <p>23 MR. FEE: I'm going to mark</p> <p>24 this as the next exhibit.</p>
<p style="text-align: right;">95</p> <p>1 sorry, the NAC was in receipt of all of the</p> <p>2 fueling operations documents provided by BEH and</p> <p>3 voted affirmatively to allow them to continue</p> <p>4 with construction?</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 A. At this time, I can't say</p> <p>7 definitively one way or the other whether that</p> <p>8 was the case.</p> <p>9 Q. About three quarters down the page,</p> <p>10 it says, "On a motion by Mr. Ryan and seconded</p> <p>11 by Mr. Shaughnessy, the commission voted 3/0 to</p> <p>12 approve BEH's current property schedule." Do</p> <p>13 you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you know what that means?</p> <p>16 A. No.</p> <p>17 MR. HARTZELL: Should we take</p> <p>18 five minutes?</p> <p>19 MR. FEE: Sure. Off the</p> <p>20 record.</p> <p>21 (A recess was taken)</p> <p>22 MR. FEE: Back on the record.</p> <p>23 Q. (By Mr. Fee) So we were talking</p> <p>24 about the July 17 meeting. You think you were</p>	<p style="text-align: right;">97</p> <p>1 (Exhibit 159, Letter dated July 18, 2013,</p> <p>2 marked for identification)</p> <p>3 Q. (By Mr. Fee) Exhibit 159 is a</p> <p>4 letter dated July 19, 2013, from Mr. Maguire to</p> <p>5 BEH. Have you seen this before?</p> <p>6 A. Yes.</p> <p>7 Q. And in the first numbered paragraph</p> <p>8 it says, "FAA's design standards relative to</p> <p>9 Norwood Airport's Gate 3 taxilane object-free</p> <p>10 area (TOFA), as it applies to your company's</p> <p>11 construction and operational plans." And Number</p> <p>12 2, "BEH's fueling plans and procedures with</p> <p>13 respect to the TOFA, and the abutting property</p> <p>14 interest of others." Do you see that?</p> <p>15 A. Mm-hmm.</p> <p>16 Q. And those are defined as the</p> <p>17 outstanding matters that were discussed at the</p> <p>18 July 17, 2013, NAC meeting, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And below that Mr. Maguire says,</p> <p>21 "Regarding the NAC's first concern" -- and he's</p> <p>22 referring back to the TOFA issue, would you</p> <p>23 agree with me?</p> <p>24 A. Yes, to the design standards</p>

<p style="text-align: right;">98</p> <p>1 relative to the airport Gate 3 TOFA as it 2 relates to your construction and operational 3 plans. 4 Q. Right. And what Mr. Maguire says 5 is, "...the board considers the matter 6 resolved." Do you see that? 7 A. Yes. 8 Q. And for the second concern, he 9 says -- and I quote -- "At Wednesday's meeting, 10 your company delivered to the Airport Commission 11 documents that more comprehensively address 12 BEH's fueling plans and procedures, especially 13 with respect to the TOFA and the abutting 14 property interest of others." Do you see that? 15 A. Yes. 16 Q. And so was that your understanding, 17 that as of July 19 the NAC was communicating to 18 BEH its approval of the BEH fueling plan and OFA 19 compliance? 20 MR. HARTZELL: Objection. 21 A. No. 22 Q. Why not? 23 A. Because it says, "Your company 24 delivered to the Airport Commission documents</p>	<p style="text-align: right;">100</p> <p>1 A. Yes. 2 Q. -- contains a request for 3 additional documents regarding the construction, 4 does it not? 5 A. Regarding point -- yes. 6 Q. Do you know if those documents were 7 ever delivered? 8 A. I don't. 9 MR. FEE: Let's mark this as 10 the next exhibit. 11 (Exhibit 160, E-mail dated July 18, 2013, 12 marked for identification) 13 Q. (By Mr. Fee) Take a look at 14 Exhibit 160, an e-mail dated July 18, 2013. 15 Have you seen this before? 16 A. Not that I can recall. 17 Q. Back to 159. The penultimate 18 paragraph that you read regarding BEH's 19 agreement to an aircraft fueling restriction 20 east of its leasehold, do you see that? 21 A. Yes. 22 Q. Is it your understanding BEH agreed 23 not to fuel in the area between the hangers on 24 Lots F and G?</p>
<p style="text-align: right;">99</p> <p>1 that now more comprehensively address the 2 fueling plan." It doesn't say anything was 3 approved, the fueling plans. And as I read the 4 second page, it says, "However, as noted in the 5 meeting, BEH still needs to deliver to the NAC 6 additional documents and revised plans which 7 your company has agreed to. These documents 8 would include..." And then it ends, "Per 9 Wednesday's meeting, BEH has furthermore agreed 10 to an aircraft fueling restriction east of its 11 leasehold since this involves abutting 12 leaseholds." And I know you've conveniently 13 left out the second page in all of these 14 depositions. 15 Q. I have not. 16 A. You have. In the ones that I've 17 attended, excuse me. 18 Q. I'm not sure what you're talking 19 about, but let's talk about the second page. 20 A. Okay. 21 Q. The document that has been marked 22 as Exhibit 159 -- 23 A. That's this document? 24 Q. I believe so.</p>	<p style="text-align: right;">101</p> <p>1 MR. HARTZELL: Objection. 2 A. It's not other than having read 3 this. I haven't seen anything -- any formal 4 agreement. 5 Q. So what is your understanding of 6 what Mr. Maguire is talking about in the 7 penultimate paragraph of Exhibit 159? 8 A. It would suggest that BEH has 9 agreed to an aircraft fueling restriction east 10 of its leasehold, its leasehold being F. But I 11 have not seen that agreement, nor has it ever 12 been produced. 13 Q. But it's your understanding that 14 Mr. Maguire is referring to the area between the 15 hangar buildings on Lots F and G? 16 A. I think so. 17 Q. And so do you know, at the July 17 18 meeting, whether the aircraft fueling 19 restriction was discussed? 20 A. I would assume so, but I can't 21 remember. 22 Q. Okay. So Mr. Maguire is writing to 23 Mr. Donovan confirming that BEH has agreed to an 24 aircraft fueling restriction east of its</p>

<p style="text-align: right;">102</p> <p>1 leasehold, correct?</p> <p>2 A. That's what this letter says.</p> <p>3 Q. And you think that it was necessary</p> <p>4 to memorialize that further in some other form?</p> <p>5 A. I would have liked to have seen</p> <p>6 that, yes.</p> <p>7 Q. And in what form would you like to</p> <p>8 see that?</p> <p>9 A. In writing of some kind.</p> <p>10 Q. If BEH gave you a writing that said</p> <p>11 we wouldn't fuel in the area between Lots F and</p> <p>12 G, would you be satisfied?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. The buildings?</p> <p>15 Q. I'm sorry, the buildings between</p> <p>16 Lots F and G.</p> <p>17 MR. HARTZELL: Same objection.</p> <p>18 A. The devil is in the details of the</p> <p>19 agreement, but we would like to see something</p> <p>20 that says something to that effect with respect</p> <p>21 to all of FlightLevel's leaseholds.</p> <p>22 Q. If I were to represent to you that</p> <p>23 BEH would be willing to give you that assurance</p> <p>24 in whatever form you would like it, would that</p>	<p style="text-align: right;">104</p> <p>1 Q. Prior to the litigation?</p> <p>2 A. Yes.</p> <p>3 Q. So sometime in 2014?</p> <p>4 A. Yes. I would say it was sometime</p> <p>5 in '14 or '15, but I can't be sure. It could</p> <p>6 have been '13.</p> <p>7 Q. Okay. And how did you come across</p> <p>8 this letter?</p> <p>9 A. I believe Nick discovered it -- we</p> <p>10 had been putting in public records requests, and</p> <p>11 this was produced as part of the public records</p> <p>12 request in discovery -- and brought to my</p> <p>13 attention.</p> <p>14 Q. But prior to this, you weren't</p> <p>15 aware that the NAC had memorialized further its</p> <p>16 actions following the July 17, 2013, meeting?</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 A. I don't think I had seen it in</p> <p>19 writing until I had seen these minutes.</p> <p>20 Q. When you say "these minutes", are</p> <p>21 you referring to Exhibit 159 or are you</p> <p>22 referring --</p> <p>23 A. Yes, 159. And by the way, that had</p> <p>24 took that long -- could have been an oversight</p>
<p style="text-align: right;">103</p> <p>1 resolve FlightLevel's objections to BEH's FBO</p> <p>2 application?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. I would say it would be a step in</p> <p>5 the right direction.</p> <p>6 Q. What other objections does</p> <p>7 FlightLevel have to BEH's FBO application?</p> <p>8 A. Objections as to just general</p> <p>9 behavior, but I'd have to think about that</p> <p>10 further.</p> <p>11 Q. Fair enough. You said you weren't</p> <p>12 sure that you had received a copy of exhibit --</p> <p>13 I'm sorry, you said that you've seen Exhibit 159</p> <p>14 before?</p> <p>15 A. Correct.</p> <p>16 Q. Do you know when you saw it?</p> <p>17 A. No.</p> <p>18 Q. Was it at or about the time that it</p> <p>19 was written in July of 2013?</p> <p>20 A. No.</p> <p>21 Q. Sometime after?</p> <p>22 A. Yes.</p> <p>23 Q. In the context of the litigation?</p> <p>24 A. No.</p>	<p style="text-align: right;">105</p> <p>1 on my part or Nick's part.</p> <p>2 Q. After the July meeting, you stated</p> <p>3 that you researched the right-of-way. Did you</p> <p>4 do anything else with respect to the FBO</p> <p>5 application by BEH at that time, fall of 2013?</p> <p>6 A. With respect to BEH's FBO</p> <p>7 application?</p> <p>8 Q. Correct.</p> <p>9 A. I can't remember.</p> <p>10 Q. Did you contact the FAA?</p> <p>11 A. I did not.</p> <p>12 Q. You don't recall contacting the</p> <p>13 FAA?</p> <p>14 A. No.</p> <p>15 Q. Do you recall anyone from</p> <p>16 FlightLevel contacting the FAA?</p> <p>17 A. Yes.</p> <p>18 Q. Who?</p> <p>19 A. Strike that. I'm not sure if we</p> <p>20 contacted the FAA or the FAA was at Norwood and</p> <p>21 we asked them while they were there.</p> <p>22 Q. Okay. And what did you ask them?</p> <p>23 A. I believe Mike DeLaria asked them</p> <p>24 whether the FAA takes any stance in property</p>

<p style="text-align: right;">106</p> <p>1 disputes.</p> <p>2 Q. And what did they say, do you know?</p> <p>3 A. I can't say with any certainty, but</p> <p>4 it was something along the lines of --</p> <p>5 Q. Not my problem?</p> <p>6 A. Either that or only in an extreme</p> <p>7 circumstance.</p> <p>8 MR. FEE: I'm going to mark</p> <p>9 this as the next exhibit.</p> <p>10 (Exhibit 161, Letter dated September 24,</p> <p>11 2013, marked for identification)</p> <p>12 Q. (By Mr. Fee) 161 is a letter to</p> <p>13 the NAC from you dated September 24, 2013. I</p> <p>14 note that it's not signed.</p> <p>15 A. And I researched this after my --</p> <p>16 when this came up in my first deposition with</p> <p>17 you and I don't think it was sent.</p> <p>18 Q. Okay. So your testimony today is</p> <p>19 that Exhibit 161 was not sent?</p> <p>20 A. I don't believe it was sent.</p> <p>21 Q. Okay. Does the accounts and</p> <p>22 descriptions of FlightLevel's contact with the</p> <p>23 FAA comport with your memory of events taking</p> <p>24 place in or around the fall of 2013?</p>	<p style="text-align: right;">108</p> <p>1 Q. Notwithstanding the fact that you</p> <p>2 don't believe this letter was ever sent?</p> <p>3 A. Correct.</p> <p>4 Q. Now, in the second paragraph,</p> <p>5 second sentence, you say -- and you're</p> <p>6 describing Mr. Vick's statement and I quote --</p> <p>7 "He also confirmed that it is the role and</p> <p>8 responsibility of the airport owner, in this</p> <p>9 case the NAC, to uphold and enforce property</p> <p>10 rights on their airport according to the common</p> <p>11 law and the terms of the leases they have in</p> <p>12 place." Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Did Mr. Vick say those words to you</p> <p>15 or someone at FlightLevel?</p> <p>16 A. Not the exact -- I would guess he</p> <p>17 didn't say those exact words.</p> <p>18 Q. Do you think it's the position of</p> <p>19 the -- I'm sorry, do you know what Mr. Vick said</p> <p>20 with respect to that -- what did Mr. Vick say</p> <p>21 that caused you to write those words?</p> <p>22 MR. HARTZELL: Objection.</p> <p>23 A. I can't remember and I did not</p> <p>24 speak to him.</p>
<p style="text-align: right;">107</p> <p>1 A. I don't remember exactly what I</p> <p>2 just said, but the start of this letter said</p> <p>3 last week we called Thomas Vick from the FAA.</p> <p>4 So I would say I made a mistake if I said he</p> <p>5 might have been there and we asked him.</p> <p>6 Q. That's fine. I'm asking you</p> <p>7 whether the description of the discussion that's</p> <p>8 contained in Exhibit 161 comports with your</p> <p>9 memory of events as they transpired in the fall</p> <p>10 of 2013?</p> <p>11 A. I have no reason to believe</p> <p>12 otherwise.</p> <p>13 Q. Okay. And --</p> <p>14 A. Could you give me a second to read</p> <p>15 this over?</p> <p>16 Q. Sure. Take your time.</p> <p>17 A. Yes. My answer stands.</p> <p>18 Q. And when you say your answer</p> <p>19 stands, you are affirming that the description</p> <p>20 contained in Exhibit 161 comports with your</p> <p>21 memory of events as they transpired in the fall</p> <p>22 of 2013?</p> <p>23 A. I have no reason to believe</p> <p>24 otherwise.</p>	<p style="text-align: right;">109</p> <p>1 Q. Who spoke to him?</p> <p>2 A. I believe it was Mike DeLaria, but</p> <p>3 I'm not certain.</p> <p>4 Q. And so the second sentence in the</p> <p>5 second paragraph, you wrote that, correct?</p> <p>6 A. I believe so.</p> <p>7 Q. And you wrote it based on your</p> <p>8 discussion with Mr. DeLaria?</p> <p>9 A. I would assume so, yes. But</p> <p>10 obviously, I have pause about this letter or</p> <p>11 else we would have sent it.</p> <p>12 Q. Understood. I'm just trying to</p> <p>13 figure out where this notion came from. Do you</p> <p>14 believe to this day that the FAA thinks it's the</p> <p>15 responsibility of the NAC to get involved in</p> <p>16 property rights disputes between persons on the</p> <p>17 airport?</p> <p>18 MR. HARTZELL: Objection.</p> <p>19 A. I believe -- I'm not an expert on</p> <p>20 it; so no, I can't say with any certainty.</p> <p>21 Q. The final line -- or the second to</p> <p>22 the final line in the letter says that</p> <p>23 FlightLevel requests the NAC to take a position</p> <p>24 on the subject matter. Do you know if the NAC</p>

<p style="text-align: right;">110</p> <p>1 ever took a position on its role with respect to 2 property disputes between persons on the 3 airport? 4 A. Well, with regard to the 5 BEH/FlightLevel property dispute, I think 6 because it was through BMA they removed 7 themselves from it. 8 Q. So it's your understanding the NAC 9 took the position that it was not going to get 10 involved in a dispute between BEH and 11 FlightLevel regarding the proper rights or uses 12 of the area between the hangers on Lots F and G? 13 A. I believe so. 14 Q. Okay. I'm going to show you an 15 exhibit that was marked as Exhibit 156 in Vick's 16 deposition. Have you seen this before? 17 A. Yes. 18 Q. Now, were you present for any of 19 the meetings in which the assignment of the 20 Swift lease from -- to BEH was discussed? 21 A. I'm sure I was. 22 Q. Okay. And did you voice -- did you 23 review any of the proposed assignment documents 24 or leases that were part of that transaction?</p>	<p style="text-align: right;">112</p> <p>1 front of you that's been previously marked as 2 Exhibit 56 to the Burlingham deposition has an 3 attached agreement. Do you see that? 4 A. Yes. 5 Q. Now, at the time that the NAC voted 6 to approve the assignment of the Swift lease to 7 BEH, were you aware of the contents of this 8 agreement? 9 A. I can't recall. 10 Q. Do you recall when you first became 11 aware of the contents of this agreement? 12 A. When FlightLevel Norwood took over 13 at the airport in 2008 -- 2007 even. 14 Q. So that would be part of the due 15 diligence that you did when FlightLevel Norwood 16 initially came on the airport? 17 A. Yes. There were consents and 18 estoppel agreements and required documentation 19 for the entire transaction, which included, 20 obviously, Lot G. 21 Q. And it was your understanding that 22 this agreement was in place at that time; is 23 that correct? 24 A. Yes.</p>
<p style="text-align: right;">111</p> <p>1 A. At the time? 2 Q. Correct. 3 A. No, and I wasn't provided with any. 4 Q. But they were public records, were 5 they not? 6 MR. HARTZELL: Objection. 7 A. I don't know. I mean, leases are 8 generally public record. But as far as the 9 transactional component, I'm not sure. 10 Q. Did you have any objection to the 11 assignment of the Swift lease to BEH? And when 12 I say you, I mean FlightLevel Norwood, LLC. 13 MR. HARTZELL: Are you talking 14 about the agreement that's referenced 15 in -- 16 MR. FEE: No. I'm asking him 17 a different question. 18 A. I can't remember. 19 Q. At the time of the assignment of 20 the Swift lease to BEH, were you aware of the 21 various agreements that were part of the 22 transaction and were part of the assignment? 23 A. Vaguely. 24 Q. Okay. So the document that's in</p>	<p style="text-align: right;">113</p> <p>1 Q. Okay. And my question is: Were 2 you aware, at the time of the proposed 3 assignment of the lease from Swift to BEH, that 4 this agreement that's in front of you and has 5 been marked as Exhibit 56 to the Burlingham 6 deposition was part of what was being assigned? 7 A. It had -- no. 8 Q. You had no specific knowledge about 9 it? 10 A. At that time. 11 Q. And you said that you weren't sure 12 when you became aware of it? 13 A. No. I was aware of it in 2007. 14 Q. Right, but when you became aware of 15 its transfer or assignment from Swift to BEH. 16 And when I say "its", I'm referring to the 17 agreement in front of you. 18 MR. HARTZELL: Objection. 19 A. I never became aware. 20 Q. At some point did you become aware 21 of the fact that the transactional documents 22 between Swift and BEH included the purported 23 assignment of the agreement that is in front of 24 you and has been marked as Exhibit 56 to the</p>

<p style="text-align: right;">114</p> <p>1 Burlingham deposition?</p> <p>2 A. Let me read the agreement --</p> <p>3 Q. Sure.</p> <p>4 A. -- because you may be talking about</p> <p>5 a different document.</p> <p>6 Q. Okay.</p> <p>7 A. First of all, who are the parties</p> <p>8 to this agreement? Okay. What's the question?</p> <p>9 Q. At what point did you become aware</p> <p>10 that this agreement was part of the bundle of</p> <p>11 rights that Swift purported to transfer to BEH</p> <p>12 as part of the assignment of its lease?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. I don't recall ever becoming aware</p> <p>15 and I'd argue that it wasn't a legitimate</p> <p>16 transfer of rights.</p> <p>17 Q. I'm well aware of your legal</p> <p>18 position with respect to the validity of the</p> <p>19 document. My question is: When did you become</p> <p>20 aware that Swift was purporting to transfer the</p> <p>21 rights enumerated in the agreement marked as</p> <p>22 Exhibit 56 to BEH?</p> <p>23 MR. HARTZELL: Objection.</p> <p>24 A. I don't recall ever becoming aware.</p>	<p style="text-align: right;">116</p> <p>1 MR. HARTZELL: Wait a minute.</p> <p>2 That's attorney-client privilege.</p> <p>3 MR. FEE: Sorry.</p> <p>4 Q. (By Mr. Fee) So as you sit here</p> <p>5 today, you've never looked at the -- or you've</p> <p>6 seen the assignment from Swift -- the</p> <p>7 transactional documents that memorialize the</p> <p>8 assignment of the Swift sublease to BEH?</p> <p>9 A. I may have seen them. I haven't</p> <p>10 read them in detail, but I can't recall with</p> <p>11 certainty.</p> <p>12 Q. Okay. Exhibit 56, which is a</p> <p>13 letter from Mr. Fox to Mr. DeLaria dated</p> <p>14 November 15, 2015, did Mr. DeLaria give this</p> <p>15 document to you?</p> <p>16 A. Yes.</p> <p>17 Q. Did you review it?</p> <p>18 A. I had a cursory review of it.</p> <p>19 Q. What did you do with it?</p> <p>20 A. I sent it to Nick Burlingham.</p> <p>21 Q. And Nick dealt with it?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Do you know how Nick dealt with it?</p> <p>24 A. I'm sure he wrote a letter or an</p>
<p style="text-align: right;">115</p> <p>1 Q. Are you aware today?</p> <p>2 A. No. I have not signed a document</p> <p>3 acknowledging any -- or been made aware of it at</p> <p>4 all as a party to this document.</p> <p>5 Q. I think that we're -- I think</p> <p>6 you're not understanding my question. I'll try</p> <p>7 to rephrase it.</p> <p>8 Do you know, as part of the</p> <p>9 assignment, Swift purported to include the</p> <p>10 agreement as a right that it was transferring to</p> <p>11 BEH?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. No.</p> <p>14 Q. Did you ever review the Proposed</p> <p>15 Assignment Agreement between Swift and BEH?</p> <p>16 A. I was never provided it.</p> <p>17 Q. At any time?</p> <p>18 A. No.</p> <p>19 Q. You've never looked at it?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Did you ever talk to Nick about</p> <p>22 what it says?</p> <p>23 MR. HARTZELL: Objection.</p> <p>24 A. Potential --</p>	<p style="text-align: right;">117</p> <p>1 e-mail.</p> <p>2 MR. FEE: I'm going to mark</p> <p>3 this as the next exhibit.</p> <p>4 (Exhibit 162, E-mail Exchange February</p> <p>5 2014, marked for identification)</p> <p>6 Q. (By Mr. Fee) Exhibit 162 appears</p> <p>7 to be an e-mail exchange between Mr. Burlingham</p> <p>8 and Mr. Moss in February of 2014. Have you seen</p> <p>9 this before?</p> <p>10 A. Not that I can recall.</p> <p>11 Q. Did you have any conversations with</p> <p>12 Mr. Moss at any time?</p> <p>13 A. As in exchanging pleasantries?</p> <p>14 Q. No, substantive conversations</p> <p>15 regarding BEH.</p> <p>16 MR. HARTZELL: I'm sorry,</p> <p>17 what's the question?</p> <p>18 Q. (By Mr. Fee) Did you have</p> <p>19 substantive conversations with Mr. Moss</p> <p>20 regarding BEH?</p> <p>21 A. Not with Mr. Moss, that I can</p> <p>22 recall.</p> <p>23 Q. Showing you a document that has</p> <p>24 been marked as Exhibit 61 to the Burlingham</p>

<p style="text-align: right;">118</p> <p>1 deposition, have you seen this before?</p> <p>2 A. Yes.</p> <p>3 Q. And can you describe for me your</p> <p>4 knowledge regarding the events that are</p> <p>5 described in this letter? Strike that. Let me</p> <p>6 be more specific.</p> <p>7 Were you aware of a repaving</p> <p>8 project that was undertaken by BEH that impacted</p> <p>9 Lot G in or about July of 2014?</p> <p>10 A. No.</p> <p>11 Q. And at any time did you become</p> <p>12 aware of it?</p> <p>13 A. No.</p> <p>14 Q. Do you see the picture that is</p> <p>15 attached to Exhibit 61?</p> <p>16 A. Yes.</p> <p>17 Q. And what do those represent?</p> <p>18 A. Construction barriers.</p> <p>19 Q. Do you know who put them up?</p> <p>20 A. I would assume BEH's contractor --</p> <p>21 Q. Okay.</p> <p>22 A. -- but no.</p> <p>23 Q. You've never seen them?</p> <p>24 A. I've seen them, but I don't know</p>	<p style="text-align: right;">120</p> <p>1 undertaken.</p> <p>2 A. I have no reason to believe that it</p> <p>3 marked an improvement.</p> <p>4 Q. Do you know why BEH did it?</p> <p>5 A. No.</p> <p>6 Q. Did you have any conversations with</p> <p>7 Mr. Donovan regarding why BEH repaved portions</p> <p>8 of Lot G?</p> <p>9 A. No. But we sent a letter asking</p> <p>10 those questions and never received a response</p> <p>11 and requested a response.</p> <p>12 Q. And that was before</p> <p>13 Mr. Burlingham's letter of July 29 that has been</p> <p>14 marked as Exhibit 61?</p> <p>15 A. Or perhaps the letter was through</p> <p>16 BEH's counsel that we made the requests.</p> <p>17 Q. Do you know how long these barriers</p> <p>18 were up?</p> <p>19 A. Several days.</p> <p>20 Q. Do you know if it impacted</p> <p>21 FlightLevel's operations in any way?</p> <p>22 A. Yes.</p> <p>23 Q. How?</p> <p>24 A. Our employees couldn't go on our</p>
<p style="text-align: right;">119</p> <p>1 who put them up with any certainty.</p> <p>2 Q. And when did you see them?</p> <p>3 A. Around this date, July 29.</p> <p>4 Q. Do you know specifically how much</p> <p>5 square footage of Lot G was impacted by this</p> <p>6 activity?</p> <p>7 A. It was thousands of square feet. I</p> <p>8 don't know the exact -- and H, I believe.</p> <p>9 Q. Was it your understanding that this</p> <p>10 activity was undertaken without notice to you?</p> <p>11 A. Yes.</p> <p>12 Q. And do you understand it was</p> <p>13 undertaken by BEH?</p> <p>14 A. Yes.</p> <p>15 Q. And do you understand that this</p> <p>16 activity fixed or improved areas of the asphalt</p> <p>17 that were broken?</p> <p>18 A. No.</p> <p>19 Q. You have no knowledge of that?</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 Q. (By Mr. Fee) I'm asking not what</p> <p>22 your position is but rather whether or not you</p> <p>23 were aware that the areas that were repaved were</p> <p>24 in bad shape at the time that the repaving was</p>	<p style="text-align: right;">121</p> <p>1 property.</p> <p>2 Q. How so?</p> <p>3 A. They were told not to walk on the</p> <p>4 property.</p> <p>5 Q. Okay. Are you testifying that you</p> <p>6 believe the barriers stopped -- prohibited</p> <p>7 FlightLevel employees from accessing FlightLevel</p> <p>8 hangers or FlightLevel fuel farms?</p> <p>9 MR. HARTZELL: Objection.</p> <p>10 A. FlightLevel leasehold. When you</p> <p>11 see construction tape, the message is don't go</p> <p>12 beyond the barrier.</p> <p>13 Q. Understood. And I understand the</p> <p>14 position that the barriers segregated a certain</p> <p>15 portion of Lot G that FlightLevel could not</p> <p>16 access while the barriers were up. I'll</p> <p>17 acknowledge that. But my question to you is:</p> <p>18 What other impact did it make on FlightLevel's</p> <p>19 operations?</p> <p>20 A. I have listed the operational</p> <p>21 component. The other concern was there was some</p> <p>22 attempt to gain some control of this leasehold</p> <p>23 by openly and notoriously taking an aggressive</p> <p>24 act.</p>

<p style="text-align: right;">122</p> <p>1 Q. And FlightLevel vigorously and in 2 writing objected to that activity, correct? 3 A. Yes. 4 Q. And what specific operational 5 activities take place on that portion of Lot G 6 which was subject to the barricade? 7 A. I'm not sure. 8 MR. FEE: Off the record. 9 (A recess was taken) 10 MR. FEE: Back on the record. 11 THE WITNESS: I would like to 12 make a correction. I think your last 13 question was, how does this affect us 14 operationally. And it affects us 15 operationally because when we take a fuel 16 delivery at the farm, which is south of 17 where these barriers are, we have to pull 18 through onto our Lot G to get out. It's 19 difficult to near impossible for him to 20 back out, so this was obstructing us from 21 basically taking a delivery. 22 MR. HARTZELL: So what you're 23 referring, just so the record is clear, is 24 a photograph attached to what was marked</p>	<p style="text-align: right;">124</p> <p>1 A. I don't believe so, but I can't 2 remember. 3 Q. Okay. So what loss of money or 4 property did FlightLevel suffer as a result of 5 the barriers being erected? 6 A. I'd have to look back at the 7 analysis, but potentially fuel some sales due to 8 exhaustion of fuel. 9 Q. Are you saying that as a result of 10 the barriers the fuel farm ran dry? 11 A. Potentially. 12 Q. I'm asking what you know 13 specifically. 14 A. I can't remember. 15 Q. Okay. Now, did you communicate 16 your frustration regarding the barriers to Mr. 17 Maguire? 18 A. I believe he was copied on the 19 letter that Mr. Burlingham produced, but I'm not 20 certain of that. 21 Q. What, if anything, did Mr. Maguire 22 do in response to your communications regarding 23 the barriers? 24 A. If I did have communications with</p>
<p style="text-align: right;">123</p> <p>1 Exhibit 61 at Mr. Burlingham's deposition? 2 THE WITNESS: Correct, Exhibit 3 61 from Burlingham. 4 Q. (By Mr. Fee) Anything else you 5 want to correct about your earlier testimony? 6 A. No. 7 Q. How many fuel deliveries were 8 disrupted as a result of the barriers? 9 A. I think one, but I can't be 10 certain. 11 Q. And what occurred? How did you 12 adapt to that obstruction? 13 A. How did we adapt to the 14 obstruction? 15 Q. Right. You said a fuel delivery 16 was scheduled. You think at least one fuel 17 delivery was scheduled? 18 A. Yes. 19 Q. What happened as a result of the 20 barriers being in that exit zone? 21 A. We wrote effectively a demand 22 letter that the barriers be removed. 23 Q. Was the truck able to get through 24 notwithstanding the barriers?</p>	<p style="text-align: right;">125</p> <p>1 Mr. Maguire, which I'm not sure that I did, I 2 don't believe there was any response from him. 3 MR. FEE: Okay. Can I mark 4 this as the next exhibit? 5 (Exhibit 163, Series of E-mails dated July 6 29-31, 2014, marked for identification) 7 Q. (By Mr. Fee) Exhibit 163 appears 8 to be a series of e-mails between you and Mr. 9 Maguire in or around July 29 to 31 of 2014. Do 10 you see that? 11 A. Yes. 12 Q. And the one on the bottom of the 13 first page is from you to owdmep@aol.com. Do 14 you see that? 15 A. Yes. 16 Q. Do you know what OWDMEP stands for 17 or whose address that is? 18 A. I believe Mike Pendergast. 19 Q. And Mike Pendergast is whom? 20 A. The owner and, I believe, president 21 of BMA. 22 Q. And so you reported this issue to 23 BMA why? 24 A. Because he is the effective</p>

<p style="text-align: right;">126</p> <p>1 landlord.</p> <p>2 Q. Did he respond?</p> <p>3 A. I don't remember.</p> <p>4 Q. It does not appear that he did from</p> <p>5 this document, correct? I mean, I didn't see</p> <p>6 any response from him in this document. Is that</p> <p>7 fair to say?</p> <p>8 A. In this document, yes.</p> <p>9 Q. Okay. And you don't recall any</p> <p>10 other response from Mr. Pendergast?</p> <p>11 A. I think there may have been a phone</p> <p>12 conversation.</p> <p>13 Q. The middle e-mail on the page is</p> <p>14 from you to Mr. Pendergast to Mr. Maguire. Is</p> <p>15 that fair to say?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And you report that the</p> <p>18 barriers had been removed on July -- on or about</p> <p>19 July 31, 2014; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know precisely how long the</p> <p>22 barriers were there?</p> <p>23 A. No, but a couple days.</p> <p>24 Q. The e-mail below says July 31 at</p>	<p style="text-align: right;">128</p> <p>1 out the day of our becoming aware of it, so my</p> <p>2 guess would be -- if you went to July 28, 28,</p> <p>3 29, 30 and I said it went down -- I write in the</p> <p>4 e-mail they have been removed on the 31st, so</p> <p>5 that's four days. That's a guess, an educated</p> <p>6 guess.</p> <p>7 Q. But you don't know, as you sit here</p> <p>8 today, exactly when the barriers went up?</p> <p>9 A. Correct.</p> <p>10 Q. Now, do you recall an instance</p> <p>11 where FlightLevel reported to Mr. Maguire</p> <p>12 actions by BEH that they considered unsafe</p> <p>13 helicopter operations?</p> <p>14 A. That FlightLevel reported directly?</p> <p>15 I can't recall.</p> <p>16 Q. Do you know if it was about this</p> <p>17 time? And I'm talking about July of 2014.</p> <p>18 A. I told you, I can't recall.</p> <p>19 MR. FEE: Okay. I'm going to</p> <p>20 mark this as the next exhibit.</p> <p>21 (Exhibit 164, E-mail dated March 3, 2014,</p> <p>22 marked for identification)</p> <p>23 Q. (By Mr. Fee) Exhibit 164 is an</p> <p>24 e-mail from Mr. DeLaria to Mr. Maguire. It</p>
<p style="text-align: right;">127</p> <p>1 9:22 to Mr. Pendergast. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Does that refresh your recollection</p> <p>4 as to when the barriers were erected?</p> <p>5 A. No.</p> <p>6 Q. You think it was before your e-mail</p> <p>7 to Pendergast?</p> <p>8 A. Yes.</p> <p>9 Q. By how much, how long?</p> <p>10 A. Well, I'm sort of doing the math</p> <p>11 here as we go, but this is dated July 29 and</p> <p>12 this is July 31. I was aware of this e-mail, so</p> <p>13 it was at least July 29. I would assume before</p> <p>14 that.</p> <p>15 Q. So forty-eight hours is a fair</p> <p>16 estimate of the amount of time that the barriers</p> <p>17 were erected?</p> <p>18 A. Not necessarily. It could be</p> <p>19 longer.</p> <p>20 Q. But you think it began on July 29?</p> <p>21 A. Or 28 even.</p> <p>22 Q. But you're not sure?</p> <p>23 A. I'm not sure, but I would -- that</p> <p>24 would be a quick turnaround if we got the letter</p>	<p style="text-align: right;">129</p> <p>1 says, "Russ, it was brought to my attention by</p> <p>2 some of our customers that Boston Executive</p> <p>3 Helicopters was using the area between Boston</p> <p>4 Air Charter Offices and the Town Ramp to land</p> <p>5 the helicopter on Saturday evening around 5:00</p> <p>6 p.m." Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Was it your understanding that it</p> <p>9 was prohibited in some fashion for BEH to land</p> <p>10 its helicopter in the place described by</p> <p>11 Mr. DeLaria?</p> <p>12 A. I'm sorry, I was reading the</p> <p>13 e-mail. Ask the question again.</p> <p>14 Q. Take your time.</p> <p>15 A. I have read it.</p> <p>16 Q. Was it your understanding it was</p> <p>17 prohibited in some fashion to land the</p> <p>18 helicopter in the area described by Mr. DeLaria?</p> <p>19 A. I can't say one way or the other.</p> <p>20 Q. Do you know what, if anything, the</p> <p>21 NAC or the airport manager did with respect to</p> <p>22 the complaint lodged by Mr. DeLaria on March 3?</p> <p>23 A. Just to be clear, we received a</p> <p>24 complaint from one of our customers which we</p>

<p style="text-align: right;">130</p> <p>1 then passed on.</p> <p>2 Q. And I asked you if you considered</p> <p>3 it inappropriate or -- I'm sorry, I asked you if</p> <p>4 it was in some fashion prohibited to land in the</p> <p>5 area described by Mr. DeLaria and you said you</p> <p>6 didn't know?</p> <p>7 A. Correct.</p> <p>8 Q. What was the purpose of you passing</p> <p>9 along the complaint from your customer?</p> <p>10 A. Just to make the airport aware.</p> <p>11 Q. Who was the customer?</p> <p>12 A. Boston Air Charter.</p> <p>13 Q. And you say that you didn't have</p> <p>14 any understanding one way or another as to</p> <p>15 whether or not it was appropriate for BEH to</p> <p>16 land where it did?</p> <p>17 A. That's correct. But I know they</p> <p>18 had a standing complaint about helicopters</p> <p>19 operating too close to their aircraft and the</p> <p>20 draft causing problems to their air runs and</p> <p>21 elevator controls, that kind of thing.</p> <p>22 Q. And who had a standing complaint?</p> <p>23 A. Boston Air Charter. Not a standing</p> <p>24 complaint, but this wasn't the first we ever</p>	<p style="text-align: right;">132</p> <p>1 Q. Do you think he did it on his own?</p> <p>2 A. Possibly.</p> <p>3 Q. You don't know for sure?</p> <p>4 A. I don't know for sure.</p> <p>5 Q. Does Mr. DeLaria normally</p> <p>6 communicate with the airport manager without</p> <p>7 consulting with you first on the substance of</p> <p>8 those communications?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you know what, if</p> <p>11 anything, the airport manager did with respect</p> <p>12 to the complaint lodged by -- the complaint that</p> <p>13 was memorialized in Exhibit 164?</p> <p>14 A. I know it came up in a commission</p> <p>15 meeting, but I'm not sure if that was this or if</p> <p>16 it was at a later date. I can't remember.</p> <p>17 MR. FEE: I'm going to mark</p> <p>18 this as the next exhibit.</p> <p>19 (Exhibit 165, Letter dated March 21, 2014,</p> <p>20 marked for identification)</p> <p>21 Q. (By Mr. Fee) Exhibit 165 is a</p> <p>22 letter dated March 21, 2014, to Mr. Donovan from</p> <p>23 Mr. Maguire. Have you ever seen this before?</p> <p>24 A. It's possible.</p>
<p style="text-align: right;">131</p> <p>1 heard of it.</p> <p>2 Q. Wasn't that a dispute between</p> <p>3 Boston Air Charter and BEH?</p> <p>4 A. That's for whomever wants to</p> <p>5 decide. I just passed it along.</p> <p>6 Q. Okay. And why was it incumbent</p> <p>7 upon FlightLevel to pass on that information?</p> <p>8 A. Because we look out for our</p> <p>9 customers and don't want anyone to be unhappy or</p> <p>10 anything to be damaged. I think it's the --</p> <p>11 it's the right thing to do.</p> <p>12 Q. Wasn't BEH a customer?</p> <p>13 A. Yes, but they weren't at risk of</p> <p>14 being damaged in this case.</p> <p>15 Q. Did you talk to anyone at BEH</p> <p>16 regarding this issue before you passed along</p> <p>17 this complaint?</p> <p>18 A. Again, the e-mail is not from me,</p> <p>19 but I'm not sure if one of our people did or</p> <p>20 not.</p> <p>21 Q. Did you talk to Mr. DeLaria before</p> <p>22 he apprised Mr. Maguire of Boston Air Charter's</p> <p>23 complaint?</p> <p>24 A. Not that I can recall.</p>	<p style="text-align: right;">133</p> <p>1 Q. But you don't recall, as you sit</p> <p>2 here today, having seen this before?</p> <p>3 A. No.</p> <p>4 Q. The tab in 1634 refers to five</p> <p>5 video stills. Do you know who provided those</p> <p>6 stills to the NAC or to the airport manager?</p> <p>7 A. I don't.</p> <p>8 Q. Does FlightLevel have the ability</p> <p>9 to provide video stills of the area in which the</p> <p>10 alleged unauthorized helicopter operations took</p> <p>11 place?</p> <p>12 A. Pretty much anyone has the ability</p> <p>13 to provide video stills of anything.</p> <p>14 Q. I'm asking if FlightLevel has the</p> <p>15 ability to provide video stills in the area</p> <p>16 where unauthorized helicopter operations took</p> <p>17 place?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have dedicated video</p> <p>20 equipment that covers that area?</p> <p>21 A. Which area is this, Gate 3</p> <p>22 taxilane?</p> <p>23 Q. Gate 3 taxilane in proximity to an</p> <p>24 electrical transformer and picnic tables near</p>

<p style="text-align: right;">134</p> <p>1 the Boston Air Charter offices and hangars?</p> <p>2 A. I'm going to guess.</p> <p>3 Q. Please don't. If you know, you</p> <p>4 know. And if you don't, that's fine.</p> <p>5 A. Okay.</p> <p>6 Q. Do you know?</p> <p>7 A. Not with certainty.</p> <p>8 Q. Okay. And you don't know if the</p> <p>9 video stills that are referenced in the</p> <p>10 Exhibit 165 came from FlightLevel or not?</p> <p>11 A. I don't know.</p> <p>12 MR. FEE: I would like to mark</p> <p>13 this as the next exhibit.</p> <p>14 (Exhibit 166, E-mail dated July 29, 2014,</p> <p>15 marked for identification)</p> <p>16 Q. (By Mr. Fee) Exhibit 166 is an</p> <p>17 e-mail from Mr. Maguire to you dated July 29,</p> <p>18 2014. The circled paragraph says, "Also,</p> <p>19 several weeks ago, Mike had sent me some e-mail</p> <p>20 correspondence, plus a photograph from one of</p> <p>21 FlightLevel's security cameras, specific to</p> <p>22 Boston Air Charter's complaints regarding BEH</p> <p>23 helo operations..." Do you see that?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">136</p> <p>1 Q. I just want to have a frame of</p> <p>2 reference as we discuss it. So as you sit here</p> <p>3 today, do you have a general description of the</p> <p>4 CAP 5 improvement project?</p> <p>5 A. Yes. It's a hangar we built. I</p> <p>6 think it's around 20,000 square feet, but I'm</p> <p>7 not certain. It's made up of several units that</p> <p>8 we completed within the past one to two years, I</p> <p>9 would say.</p> <p>10 Q. And is that area the subject of a</p> <p>11 lease with the NAC?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And that is one of the</p> <p>14 leases that the NAC voted to extend in 2014,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 A. In 2014?</p> <p>19 Q. I believe it was 2014. I may have</p> <p>20 the date wrong. But at some point the NAC voted</p> <p>21 to extend the FlightLevel's leases on Lots 5, 6</p> <p>22 and 7, correct?</p> <p>23 A. At some point. I think you may</p> <p>24 have the date wrong.</p>
<p style="text-align: right;">135</p> <p>1 Q. Does that refresh your recollection</p> <p>2 as to whether or not FlightLevel provided the</p> <p>3 video stills that were referenced in Mr.</p> <p>4 Maguire's letter, which has been marked as</p> <p>5 Exhibit 165?</p> <p>6 A. He references a photo, so I don't</p> <p>7 know if that would mean it's video multi -- that</p> <p>8 is plural. Not necessarily, but it appears at</p> <p>9 least a photo was provided.</p> <p>10 Q. So did Mr. DeLaria consult with you</p> <p>11 as to whether or not you believed it was</p> <p>12 necessary and appropriate to provide video</p> <p>13 regarding BEH's operations to the NAC or the</p> <p>14 airport manager?</p> <p>15 A. He may have. I can't remember.</p> <p>16 Q. But it may have been something that</p> <p>17 he did on his own?</p> <p>18 A. It's possible.</p> <p>19 Q. You didn't know for sure?</p> <p>20 A. Correct.</p> <p>21 Q. Do you recall -- can you describe</p> <p>22 for me the CAP ramp project? Do you know what</p> <p>23 I'm referring to, in general terms?</p> <p>24 A. Lot 5.</p>	<p style="text-align: right;">137</p> <p>1 Q. I may. So is the CAP 5 -- I'm</p> <p>2 sorry, the CAP ramp improvement project part</p> <p>3 of -- specific Lot 5?</p> <p>4 A. And six.</p> <p>5 Q. And six?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And so FlightLevel intended</p> <p>8 or intends to invest substantial funds in that</p> <p>9 improvement project. Is that fair to say?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 Q. (By Mr. Fee) Or has it already</p> <p>12 invested funds?</p> <p>13 A. It already has.</p> <p>14 Q. That's complete?</p> <p>15 A. Yes.</p> <p>16 Q. When was that completed?</p> <p>17 A. Like I said, one to two years ago.</p> <p>18 Q. In connection with that project and</p> <p>19 the financing -- was that financed in any</p> <p>20 fashion?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And in connection with that</p> <p>23 financing, did your lenders request some clarity</p> <p>24 regarding the scope and duration of your lease</p>

<p style="text-align: right;">138</p> <p>1 for Lot 5 and 6?</p> <p>2 A. I can't remember.</p> <p>3 Q. At some point did you ask the NAC</p> <p>4 to assist you in providing documentation</p> <p>5 suitable for your lenders to give them clarity</p> <p>6 and comfort regarding your rights to Lots 5 and</p> <p>7 6?</p> <p>8 A. I can't remember.</p> <p>9 Q. Did you ask the FAA to approve the</p> <p>10 transaction whereby the NAC extended the leases</p> <p>11 for FlightLevel on Lots 5 and 6?</p> <p>12 A. Did we ask the FAA to approve?</p> <p>13 Q. Yes.</p> <p>14 A. I don't believe so.</p> <p>15 Q. You don't believe so, okay. Did</p> <p>16 you ask the MassDOT to approve?</p> <p>17 A. To approve?</p> <p>18 Q. Yes.</p> <p>19 A. I don't believe so.</p> <p>20 Q. Okay. So as you sit here today,</p> <p>21 neither the FAA -- to your knowledge, neither</p> <p>22 the FAA, nor the MassDOT, have given you any</p> <p>23 kind of confirmation that they approve the next</p> <p>24 vote to extend leases on Lots 5 and 6. Is that</p>	<p style="text-align: right;">140</p> <p>1 Q. So does that refresh your</p> <p>2 recollection as to whether or not you asked the</p> <p>3 MassDOT to provide its approval of the lease</p> <p>4 extensions for Lots 5 and 6?</p> <p>5 A. Yes. But it appears this was a</p> <p>6 request of the NAC that we were following</p> <p>7 through on.</p> <p>8 Q. Okay. But you wrote a letter to</p> <p>9 MassDOT?</p> <p>10 A. Yes.</p> <p>11 Q. And you told them that you would</p> <p>12 like them to approve, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And why was that necessary,</p> <p>15 MassDOT's approval?</p> <p>16 A. I'm not sure that it was. I</p> <p>17 believe it was -- I believe it was requested of</p> <p>18 us and we were just following through on that</p> <p>19 request.</p> <p>20 Q. And you say it was requested by Mr.</p> <p>21 Maguire?</p> <p>22 A. In the letter I say NAC.</p> <p>23 Q. It says, "Norwood Airport manager,</p> <p>24 Russ Maguire (cc'd), suggested I reach out to</p>
<p style="text-align: right;">139</p> <p>1 a fair statement?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 A. To the best of my knowledge. That</p> <p>5 was a while ago.</p> <p>6 MR. FEE: Off the record.</p> <p>7 (Off-record conference)</p> <p>8 MR. FEE: Back on the record.</p> <p>9 I would like to mark this as the next</p> <p>10 exhibit.</p> <p>11 (Exhibit 167, Letter dated October 24,</p> <p>12 2014, marked for identification)</p> <p>13 Q. (By Mr. Fee) Exhibit 167 is a</p> <p>14 letter dated October 24, 2014, from you to</p> <p>15 MassDOT. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And does that refresh your</p> <p>18 recollection as to whether or not you requested</p> <p>19 MassDOT to approve the NAC's extension of leases</p> <p>20 for Lots 5 and 6?</p> <p>21 A. Yes, but please let me finish</p> <p>22 reading it.</p> <p>23 Q. Take your time.</p> <p>24 A. Okay.</p>	<p style="text-align: right;">141</p> <p>1 you to seek MassDOT approval." Do you see that?</p> <p>2 A. Yes. In the prior paragraph it</p> <p>3 says, "The Norwood Airport Commission and Boston</p> <p>4 Metropolitan Airport have indicated -- excuse</p> <p>5 me, you're right.</p> <p>6 Q. Okay. So Mr. Maguire suggested you</p> <p>7 reach out to the DOT ask for approval?</p> <p>8 A. It would appear that way, yes.</p> <p>9 Q. Okay. And do you recall the</p> <p>10 discussion you had with Mr. Maguire as to why he</p> <p>11 thought that would be advantageous?</p> <p>12 A. I do not.</p> <p>13 Q. Do you recall any discussion with</p> <p>14 Mr. Maguire regarding the need or suggestion</p> <p>15 that you should request DOT approval for the</p> <p>16 lease extensions on Lots 5 and 6?</p> <p>17 A. I don't.</p> <p>18 Q. In the letter that has been marked</p> <p>19 as Exhibit 167 --</p> <p>20 A. Yes.</p> <p>21 Q. -- it says, in the middle</p> <p>22 paragraph, you have already received approval</p> <p>23 from the FAA. Do you see that?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">142</p> <p>1 Q. Now, does that refresh your 2 recollection as to whether or not you requested 3 approval from the FAA? 4 A. Yes. And I cringe at that sentence 5 because I think that's a mistake on my part. It 6 was brought to my attention at a later date. It 7 was a misunderstanding. And I can't remember 8 the details, but -- 9 Q. Let me refresh your recollection on 10 the details. 11 MR. FEE: Let's mark this. 12 (Exhibit 168, E-mail dated November 13, 13 2014, marked for identification) 14 Q. (By Mr. Fee) Exhibit 168 is an 15 e-mail from Mr. Maguire to you dated November 16 2014 in which he says, "Peter, I received a 17 phone call this morning from MassDOT's Chris 18 Willenborg regarding your letter (attached). 19 Chris was questioning paragraph two, which 20 states FlightLevel has already received approval 21 from FAA. Chris recently spoke with FAA and, 22 according to FAA, there's been no approval from 23 their agency to date." Did I read that 24 correctly?</p>	<p style="text-align: right;">144</p> <p>1 A. I think it was from the FAA. 2 Q. But you can't recall what it was 3 about? 4 A. It was about the leases. 5 Q. Who was it from at the FAA? 6 A. I don't know. 7 Q. Was it from Vick? 8 A. I don't know. 9 Q. Lesperance? 10 A. I don't think so. 11 Q. Do you have that letter? 12 A. Possibly. I could be mistaken on 13 this whole thing, who knows. 14 Q. I just want to know what your best 15 memory is, as you sit here today. So that was 16 November of 2014. Do you recall the Airport 17 Commission meeting that took place in November 18 of 2014? 19 A. Not particularly. 20 Q. Okay. 21 A. Please refresh my memory. 22 MR. FEE: Absolutely. Can I 23 have this marked? 24 (Exhibit 169, Norwood Airport Commission</p>
<p style="text-align: right;">143</p> <p>1 A. Yes. 2 Q. And he also says this may have been 3 a misunderstanding or a miscommunication, but he 4 wanted you to know, right? 5 A. Yes. 6 Q. What caused you to believe that you 7 had requested or been granted FAA approval for 8 the extension of leases on Lots 5 and 6? 9 A. I can't remember, but I think there 10 was a letter of some kind from the FAA. I can't 11 remember what it's dated. 12 Q. Okay. So you weren't trying to 13 mislead the MassDOT; you just were mistaken. Is 14 that your testimony? 15 A. Correct. 16 Q. But you can't recall what caused 17 you to believe that the FAA had approved the 18 extension of your leases on Lots 5 and 6, 19 correct? 20 A. No. I said a letter -- 21 Q. Okay. 22 A. -- but I can't recall the substance 23 of the letter. 24 Q. And who was the letter from?</p>	<p style="text-align: right;">145</p> <p>1 Meeting Agenda dated November 25, 2014, 2 marked for identification) 3 Q. (By Mr. Fee) By the way, are you 4 familiar with the NAC's practice of creating two 5 agendas for each meeting, one that is publicly 6 posted and disseminated and one that is purely 7 for the use of the commissioners? 8 A. No. 9 Q. Okay. So if I showed you the 10 exhibit that's been marked as Exhibit 169 and 11 draw your attention to the first two pages that 12 appear to be separate meeting agendas for the 13 same meeting, would that refresh your 14 recollection as to whether or not you're aware 15 of the NAC's practice of creating two agendas 16 for each meeting? 17 A. Repeat the question, please. 18 Q. If I draw your attention to the 19 first two pages of the exhibit that's been 20 marked as Exhibit 169, would that refresh your 21 recollection as to whether you have any 22 knowledge regarding the NAC's practice of 23 creating two separate agendas for each meeting? 24 A. I don't think my knowledge -- it</p>

<p style="text-align: right;">146</p> <p>1 was necessary for my knowledge to be refreshed. 2 I said no to the original question. 3 Q. And I understood what your first 4 answer was. I was asking you a different 5 question. 6 A. Then I'm misunderstanding the 7 question. Let's try again. 8 Q. Okay. You said that you had no 9 knowledge regarding their practice of creating 10 two agendas for each meeting, correct? 11 A. This is the first I'm hearing about 12 it, from you. 13 Q. And so I showed you a document -- 14 actually, two documents and asked you to look at 15 them and said, does that refresh your 16 recollection about whether you have any 17 knowledge? And if the answer is still no, 18 that's fine. Is it still no? 19 A. Yes. 20 Q. Okay. Do you recall being at the 21 November 25 meeting? 22 A. Let me take a look. I'm looking 23 for an attendance sheet here. 24 Q. I don't see it. At the top of</p>	<p style="text-align: right;">148</p> <p>1 request was discussed? 2 A. It doesn't refresh my recollection. 3 Q. Okay. Now, I'm going to show you 4 what has been marked as Exhibit 64 to the 5 Burlingham deposition. It appears to be a 6 letter to Mark Ryan from you dated November 25, 7 2014. Do you see that? 8 A. Mm-hmm. 9 Q. And do you know if this letter was 10 sent prior to or after the meeting, the NAC 11 meeting that was -- that took place on November 12 25 -- strike that. 13 Does this refresh your recollection 14 as to whether or not you attended the NAC 15 meeting on November 25? 16 A. No. 17 Q. And do you know whether -- first, 18 did you write this letter? 19 A. Yes. 20 Q. Did Nick help you write it? 21 A. I'm not sure. 22 Q. Did you -- 23 A. Probably. 24 Q. Do you know if you sent it before</p>
<p style="text-align: right;">147</p> <p>1 Page 3 there is just the attendance list of the 2 airport officials, but it doesn't have any list 3 of attendees for the public. 4 A. I attend ninety percent of Airport 5 Commission meetings at least, but -- so I would 6 assume I was there. 7 Q. Well, the part that I want to talk 8 about is on Page 1. It's marked as new business 9 under Paragraph 5. It says -- 10 A. Page 1? 11 Q. Page 1 of the document that's been 12 marked as Exhibit 169. It says, "FY 2015 13 commercial permit request (FBO), BEH." Do you 14 see that? 15 A. Yes. 16 Q. And has a couple of asterisks next 17 to it? 18 A. Yes. 19 Q. I understand that you don't have 20 any specific recollection of being at this 21 meeting, but I draw your attention to that 22 language and ask if that refreshes your 23 recollection as to whether you attended a NAC 24 meeting in November of 2014 where BEH's FBO</p>	<p style="text-align: right;">149</p> <p>1 or after the meeting that took place, the NAC 2 meeting that took place, on November 25? 3 A. I believe it was after. 4 Q. Okay. And in it, in the second 5 sentence, you say, "I am writing first to 6 reiterate my long-standing position that the 7 airport cannot support two FBOs, just as I 8 couldn't more than a decade ago when there were 9 two FBOs..." -- 10 A. Just "as it". 11 Q. I'm sorry, "...just as it couldn't 12 more than a decade ago when there were two 13 FBOs." Do you see that? 14 A. Yes. 15 Q. Did you state this position at the 16 meeting on November 25, that you recall? 17 A. Not that I can recall, but it's 18 possible. 19 Q. Okay. And you write below in this 20 letter, "An analysis of the exclusive right 21 exclusion." Do you see that? 22 MR. HARTZELL: Objection. 23 A. Yes. 24 Q. Okay. And this is an argument or</p>

<p style="text-align: right;">150</p> <p>1 sentiment that you have conveyed in writing to 2 the NAC prior to this time, correct? 3 A. I'm not sure. 4 Q. And do you have an understanding of 5 what the exclusive-right exclusion described in 6 the cited statutes means? 7 A. Not at the moment. 8 Q. Okay. Is it fair to say that the 9 language contained in your letter that's been 10 marked as Burlingham 64 analyzes a federal 11 statute on which you rely for the proposition 12 that the NAC could deny BEH's FBO permit and 13 still not run afoul of exclusive-rights 14 exclusion provisions? 15 A. It's what we use in our position. 16 Q. Right. And your position is that 17 the NAC should deny BEH's FBO request because 18 it's appropriate or legally tenable for an 19 airport to maintain a single FBO; is that fair 20 to say? 21 MR. HARTZELL: Objection. 22 A. That it could. 23 Q. That it could? 24 A. Yes.</p>	<p style="text-align: right;">152</p> <p>1 Q. I know it doesn't state it 2 explicitly, but I'm wondering if it's a fair 3 inference from your language that you were 4 advocating on behalf of FlightLevel, based on 5 statutory language, that the NAC should deny 6 BEH's FBO permit because the airport cannot 7 support two FBOs? 8 MR. HARTZELL: Objection. 9 A. You can make whatever inferences 10 you'd like. 11 Q. I'm just asking if you think that's 12 fair inference from this letter. 13 MR. HARTZELL: Objection. 14 A. I would say not necessarily. 15 Q. Do you know if the NAC ever 16 discussed your letter at an NAC meeting? 17 A. I don't know. I can't remember. 18 Q. Do you recall what happened at the 19 December meeting? 20 A. December of 2014? 21 Q. Correct. 22 A. I don't recall. 23 MR. FEE: I would like to mark 24 this as the next exhibit.</p>
<p style="text-align: right;">151</p> <p>1 Q. And is it your position that the 2 November 25, 2014, letter that you wrote and has 3 been marked as Burlingham 64 advocates to the 4 NAC that they should deny BEH's FBO request 5 based on this statutory language? 6 MR. HARTZELL: Objection. 7 A. It's just a statement of our 8 position. 9 Q. Right. But did you hear my 10 question earlier? 11 A. Please repeat it. 12 Q. Sure. Was it your belief -- or 13 were you advocating to the NAC in writing this 14 letter dated November 25 that it should deny 15 BEH's FBO request based on the statutory 16 language that you cite? 17 MR. HARTZELL: Objection. 18 A. We were stating our position that 19 we didn't believe the airport could support two 20 FBOs. 21 Q. And therefore, the NAC should deny 22 BEH's FBO application, right? 23 MR. HARTZELL: Objection. 24 A. I don't see that in here.</p>	<p style="text-align: right;">153</p> <p>1 (Exhibit 170, Norwood Airport Commission 2 Meeting Agenda dated December 17, 2014, 3 marked for identification) 4 A. For the record, I attend four 5 Airport Commission meetings a month. So to get 6 my recollection on any one of them from four or 7 five years ago, that's going to be my answer 8 most of the time. 9 MR. HARTZELL: Just answer the 10 question as best you can. 11 MR. FEE: That's all anybody 12 wants. 13 Q. (By Mr. Fee) I'm showing you a 14 document that's been marked as Exhibit 170. It 15 appears to be several meeting agendas and then a 16 notice. And on the second page of this 17 document, referring to the meeting agenda for 18 December 17, 2014, it lists a variety of 19 correspondence, does it not? 20 A. You're looking at the agenda items? 21 Q. Yes. 22 A. There is a number of agenda items. 23 Q. It lists some correspondence? 24 A. Where is the correspondence?</p>

<p style="text-align: right;">154</p> <p>1 Q. On Page 2.</p> <p>2 A. Yes.</p> <p>3 Q. It doesn't contain your letter of</p> <p>4 November 24, does it?</p> <p>5 A. Not that I see.</p> <p>6 Q. Okay. Did it ever occur to you to</p> <p>7 ask Mr. Maguire why your letters weren't</p> <p>8 included in correspondence provided to the NAC</p> <p>9 members?</p> <p>10 MR. HARTZELL: Objection.</p> <p>11 A. Could you ask the question again?</p> <p>12 Q. Sure. Did you ever ask Mr. Maguire</p> <p>13 why letters that you were writing to him and the</p> <p>14 NAC were not included in items provided to the</p> <p>15 full Commission?</p> <p>16 MR. HARTZELL: Objection.</p> <p>17 Q. (By Mr. Fee) Strike that.</p> <p>18 Did you ever ask Mr. Maguire why he</p> <p>19 did not list your letter of November 25 on the</p> <p>20 agenda for the next scheduled NAC meeting?</p> <p>21 A. I didn't, but I don't know that I</p> <p>22 requested that it be on the agenda.</p> <p>23 Q. Well, the letter was directed to</p> <p>24 Mr. Ryan as chairman, right? Was it your</p>	<p style="text-align: right;">156</p> <p>1 2015. Do you recall that?</p> <p>2 A. No.</p> <p>3 MR. FEE: I would like to mark</p> <p>4 this as the next exhibit.</p> <p>5 (Exhibit 171, Norwood Airport Commission</p> <p>6 Meeting Agenda and Minutes dated January</p> <p>7 14, 2015, marked for identification)</p> <p>8 A. I do recall the January 2015</p> <p>9 meeting.</p> <p>10 Q. All in good time. Now, I would</p> <p>11 just represent to you that what's been marked as</p> <p>12 Exhibit 171 is two meeting agendas and minutes</p> <p>13 for the meeting that took place on January 14,</p> <p>14 2015, one of the agenda items being Boston</p> <p>15 Executive Helicopter's commercial permit. Do</p> <p>16 you recall being present at this meeting?</p> <p>17 A. I don't, but based on my ninety</p> <p>18 percent rule I probably was.</p> <p>19 Q. Do you know if your letter of</p> <p>20 November 24 was discussed at the January 14,</p> <p>21 2015, meeting?</p> <p>22 A. It does not appear to have been</p> <p>23 with a cursory review of the several pages you</p> <p>24 just provided.</p>
<p style="text-align: right;">155</p> <p>1 expectation that it was a private communication</p> <p>2 to him?</p> <p>3 A. No. Every letter or e-mail</p> <p>4 correspondence I send I know is subject to</p> <p>5 public records.</p> <p>6 Q. But would you expect your letter to</p> <p>7 Mr. Ryan to be disseminated to the Airport</p> <p>8 Commission as a whole?</p> <p>9 A. That's not my call.</p> <p>10 Q. Okay. You're spending time and</p> <p>11 energy writing correspondence to the Norwood</p> <p>12 Airport Commission. Were you concerned at all</p> <p>13 that it did not appear that they were being</p> <p>14 disseminated to the full Commission --</p> <p>15 MR. HARTZELL: Objection.</p> <p>16 Q. (By Mr. Fee) -- at least with</p> <p>17 respect to the November 24 letter?</p> <p>18 A. I don't remember that concern</p> <p>19 entering my mind.</p> <p>20 Q. Exhibit 170 indicates that the</p> <p>21 December meeting was canceled. Do you remember</p> <p>22 that?</p> <p>23 A. No.</p> <p>24 Q. The next meeting was in January of</p>	<p style="text-align: right;">157</p> <p>1 Q. At any time did you discuss, with</p> <p>2 any member of the Norwood Airport Commission,</p> <p>3 the substance of your letter of November 25,</p> <p>4 2014?</p> <p>5 A. At any time, yes.</p> <p>6 Q. In public meetings?</p> <p>7 A. I'm not sure.</p> <p>8 Q. Okay. In private meetings?</p> <p>9 A. There was one meeting where I know</p> <p>10 it came up.</p> <p>11 Q. February 4, 2015?</p> <p>12 A. That sounds right.</p> <p>13 Q. Okay. We'll get to that in a</p> <p>14 minute. Any other time?</p> <p>15 A. It's possible.</p> <p>16 Q. But as you sit here today, you have</p> <p>17 no recollection of discussing in public session</p> <p>18 FlightLevel's contention that the single FBO</p> <p>19 exception should be applied by the NAC in the</p> <p>20 case of BEH's FBO application; is that fair to</p> <p>21 say?</p> <p>22 A. I believe the topics come up in a</p> <p>23 public session.</p> <p>24 Q. Okay. And is it because you've</p>

<p style="text-align: right;">158</p> <p>1 brought it up?</p> <p>2 A. I would assume so.</p> <p>3 MR. HARTZELL: I need like</p> <p>4 five minutes.</p> <p>5 MR. FEE: Sure. Off the</p> <p>6 record.</p> <p>7 (A recess was taken)</p> <p>8 MR. FEE: Back on the record.</p> <p>9 Q. (By Mr. Fee) We were talking about</p> <p>10 the January meeting. And you didn't have any</p> <p>11 recollection of being there or what was</p> <p>12 discussed; is that fair to say?</p> <p>13 A. Yes.</p> <p>14 Q. Did you know whether the NAC</p> <p>15 discussed granting a lease to BEH in the</p> <p>16 executive session at the January 14 meeting?</p> <p>17 A. Not off the top of my head, no.</p> <p>18 MR. FEE: I would like to mark</p> <p>19 this as the next exhibit.</p> <p>20 (Exhibit 172, Airport Commission Meeting</p> <p>21 Minutes, Regular Business Meeting, January</p> <p>22 14, 2015, marked for identification)</p> <p>23 Q. (By Mr. Fee) Exhibit 172 appears</p> <p>24 to be the approved executive session minutes for</p>	<p style="text-align: right;">160</p> <p>1 A. Yes.</p> <p>2 Q. And is this before or after the</p> <p>3 January 14, 2015, meeting?</p> <p>4 A. Wednesday, January 14, 2:58 p.m.,</p> <p>5 Executive Session 104. But it also refers to an</p> <p>6 attachment, which I don't see here --</p> <p>7 Q. Right.</p> <p>8 A. -- so I would assume after.</p> <p>9 Q. I will give you that in a minute.</p> <p>10 Let's talk about the e-mail first.</p> <p>11 So you sent an e-mail shortly after</p> <p>12 the end of the January 14, 2015, meeting --</p> <p>13 A. Mm-hmm.</p> <p>14 Q. -- in which the NAC voted to offer</p> <p>15 BEH a lease, correct?</p> <p>16 A. Yes.</p> <p>17 Q. But we're not sure whether you were</p> <p>18 aware of that vote at the time that you wrote</p> <p>19 this e-mail, correct?</p> <p>20 A. Correct.</p> <p>21 Q. And I asked you whether anyone</p> <p>22 informed you that the NAC had offered -- voted</p> <p>23 to offer a lease to BEH at the January 14, 2015,</p> <p>24 meeting, and you said you don't know. Is that</p>
<p style="text-align: right;">159</p> <p>1 the January 14, 2015, meeting. It appears that</p> <p>2 the NAC discussed in executive session offering</p> <p>3 a lease to BEH and voted six to zero to offer</p> <p>4 that lease. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Were you aware of that lease offer</p> <p>7 on or about January 14, 2015?</p> <p>8 A. I don't think I was.</p> <p>9 Q. Because you weren't present in the</p> <p>10 executive section, correct?</p> <p>11 A. Correct.</p> <p>12 Q. Did someone tell you after the</p> <p>13 executive session that the NAC had voted to</p> <p>14 offer a lease to BEH?</p> <p>15 A. I became aware at some point, but I</p> <p>16 think it was long after this date.</p> <p>17 Q. Your e-mail has been marked as</p> <p>18 Exhibit 66 to the Burlingham deposition. And</p> <p>19 it's your e-mail to Mr. Maguire, Mr. Ryan,</p> <p>20 Mr. Kevin Shaughnessy, and Mr. Michael Sheehan</p> <p>21 dated January 14, 2015. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And you're requesting a meeting,</p> <p>24 correct?</p>	<p style="text-align: right;">161</p> <p>1 fair to say?</p> <p>2 A. Yes.</p> <p>3 Q. Immediately after the meeting, you</p> <p>4 write a letter to Russ and the members of the</p> <p>5 Commission asking for a meeting?</p> <p>6 A. It would appear that way.</p> <p>7 Q. Okay. And the e-mail attached a</p> <p>8 letter, correct?</p> <p>9 A. It says there was an attachment. I</p> <p>10 haven't seen it yet.</p> <p>11 MR. FEE: Can I have this</p> <p>12 marked as the next exhibit?</p> <p>13 (Exhibit 173, Letter dated January 14,</p> <p>14 2015, marked for identification)</p> <p>15 Q. (By Mr. Fee) Mr. Eichleay, 173</p> <p>16 appears to be a letter from you to Mr. Ryan</p> <p>17 dated January 14, 2015. Do you know if this is</p> <p>18 the letter that you annexed to the e-mail that</p> <p>19 was previously marked as Burlingham 66?</p> <p>20 A. Do I have your representation that</p> <p>21 it is?</p> <p>22 Q. I'm asking you what your</p> <p>23 recollection is.</p> <p>24 A. I have no reason to doubt it. But</p>

<p style="text-align: right;">162</p> <p>1 you separated them, which I question.</p> <p>2 Q. I did because I wanted to discuss</p> <p>3 each of them separately on their merits. So</p> <p>4 I've shown you the e-mail and now I'm showing</p> <p>5 you a document that's been marked as</p> <p>6 Exhibit 173. And I'm asking you, do you believe</p> <p>7 that Exhibit 173 was the attachment to</p> <p>8 Burlingham 66?</p> <p>9 A. The only reason I would have to</p> <p>10 doubt that is that you didn't include it with</p> <p>11 the original e-mail. That's it.</p> <p>12 MR. HARTZELL: I would also</p> <p>13 note that the Bates numbers appear to be</p> <p>14 slightly out of sequence. It goes from</p> <p>15 199 on Burlingham 66 to 2002 on what you</p> <p>16 just marked as Exhibit 173. I don't know</p> <p>17 if there was anything between those pages,</p> <p>18 2000 and 2001.</p> <p>19 MR. FEE: I believe the</p> <p>20 explanation for that could be myriad, so</p> <p>21 let me ask the witness again.</p> <p>22 Q. (By Mr. Fee) Do you believe what</p> <p>23 has been marked as Exhibit 173 was transmitted</p> <p>24 with Burlingham Exhibit 66?</p>	<p style="text-align: right;">164</p> <p>1 watched the meeting.</p> <p>2 Q. At some point we will, but I'm</p> <p>3 wondering as you sit here today.</p> <p>4 A. As I sit here today, that would be</p> <p>5 my guess.</p> <p>6 Q. But you're sure it was something</p> <p>7 that happened in the open session and not the</p> <p>8 executive session that caused you to have that</p> <p>9 impression?</p> <p>10 A. Yes. It's nothing that happened at</p> <p>11 the executive session. I can promise you</p> <p>12 that because I was not there.</p> <p>13 Q. And you repeat, do you not, in your</p> <p>14 letter of January 14 language, previously</p> <p>15 included in your letter of November 24, where</p> <p>16 you lay out the statutory provisions regarding</p> <p>17 exclusive-rights exclusions, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know if this letter was ever</p> <p>20 discussed by the NAC?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. So you asked for a meeting, right,</p> <p>23 in Burlingham 66?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">163</p> <p>1 A. I have no reason, other than the</p> <p>2 one I previously stated, to think otherwise.</p> <p>3 Q. Okay. And in 173, you state at the</p> <p>4 beginning of the letter, "It is my impression</p> <p>5 following the Norwood Airport Commission ("NAC")</p> <p>6 meeting today that the NAC is much closer than</p> <p>7 previously anticipated on deciding on BEH's</p> <p>8 application for permit to conduct business as a</p> <p>9 commercial fueling fixed-base operator at</p> <p>10 Norwood Airport." Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. What happened at the January 14</p> <p>13 meeting that caused you to believe that the NAC</p> <p>14 was much closer than previously anticipated to</p> <p>15 deciding BEH's FBO request?</p> <p>16 A. My guess would be that they decided</p> <p>17 at that open meeting something to that effect.</p> <p>18 Q. But you don't recall what it was?</p> <p>19 A. Not with any specific detail, no.</p> <p>20 Q. I'm just wondering what caused you</p> <p>21 to write those words that you -- your impression</p> <p>22 was they were much closer?</p> <p>23 A. Do we have video of the meeting?</p> <p>24 Because we could answer it definitively if we</p>	<p style="text-align: right;">165</p> <p>1 MR. FEE: I would like to mark</p> <p>2 this as the next exhibit.</p> <p>3 (Exhibit 174, E-mail Exchange dated</p> <p>4 January of 2015, marked for</p> <p>5 identification)</p> <p>6 Q. (By Mr. Fee) You had an e-mail</p> <p>7 exchange with Mr. Maguire, correct, regarding</p> <p>8 scheduling?</p> <p>9 A. Yes.</p> <p>10 Q. And in the middle of what has been</p> <p>11 marked as Exhibit 174, which is an e-mail</p> <p>12 exchange between you and Mr. Burlingham and</p> <p>13 Mr. Maguire, Mr. Maguire says, "I know some</p> <p>14 members of the Norwood Airport Commission have</p> <p>15 received this letter already. I'll wait to hear</p> <p>16 back from the board on a firm date for the</p> <p>17 meeting." Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Is he referring to your letter of</p> <p>20 November -- I'm sorry, January 14, do you know?</p> <p>21 A. Probably.</p> <p>22 Q. Do you know which members of the</p> <p>23 NAC received your letter?</p> <p>24 A. Well, you can look at who I cc'd</p>

<p style="text-align: right;">166</p> <p>1 and that's a pretty clear indication.</p> <p>2 Q. Did you cc all the members of the</p> <p>3 NAC?</p> <p>4 A. It would appear that I did.</p> <p>5 Q. Why is that?</p> <p>6 A. Probably didn't have their e-mails.</p> <p>7 Q. Do you know specifically why you</p> <p>8 didn't cc -- you prefaced your answer with the</p> <p>9 word "probably", so I want to know specifically</p> <p>10 why you didn't cc them?</p> <p>11 A. I gave you my best guess as to why.</p> <p>12 Q. But that's a guess. You're not</p> <p>13 sure why?</p> <p>14 A. Correct.</p> <p>15 Q. So in 174 you exchange some dates</p> <p>16 and decide that a meeting on or about the 21st</p> <p>17 or 22nd would work. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall whether that meeting</p> <p>20 took place?</p> <p>21 A. The meeting took place. Whether it</p> <p>22 happened on the 21st or the 22nd, I'm not sure</p> <p>23 if that's correct.</p> <p>24 Q. Who was at that meeting?</p>	<p style="text-align: right;">168</p> <p>1 an approved FBO; is that fair to say?</p> <p>2 MR. HARTZELL: Objection.</p> <p>3 A. Yes.</p> <p>4 Q. And was it your belief at that time</p> <p>5 that if BEH was allowed to sell fuel at the</p> <p>6 airport -- and I say S-E-L-L fuel at the</p> <p>7 airport -- that would cause FlightLevel to go</p> <p>8 out of business?</p> <p>9 A. It would cause harm.</p> <p>10 Q. Economic harm?</p> <p>11 A. Financial harm.</p> <p>12 Q. And FlightLevel at this time, was</p> <p>13 it losing money?</p> <p>14 A. No.</p> <p>15 Q. FlightLevel was profitable at this</p> <p>16 time?</p> <p>17 A. Yes.</p> <p>18 Q. And do you recall the margins that</p> <p>19 FlightLevel obtained from fuel sales at that</p> <p>20 time?</p> <p>21 A. No.</p> <p>22 Q. So what response did you get from</p> <p>23 either of the -- from either Ryan or Maguire</p> <p>24 regarding your claims that the grant of an FBO</p>
<p style="text-align: right;">167</p> <p>1 A. Hopefully I'm not getting meetings</p> <p>2 confused, but I believe it was myself, Nick,</p> <p>3 Russ Maguire, Mark Ryan, Brandon Moss.</p> <p>4 Q. Where did it take place?</p> <p>5 A. At Town Hall.</p> <p>6 Q. And what did you discuss?</p> <p>7 A. I believe we discussed this letter.</p> <p>8 Q. What did you say?</p> <p>9 A. I discussed our concern about our</p> <p>10 viability with the competitor.</p> <p>11 Q. Did you discuss -- I'm sorry, you</p> <p>12 said Maguire, Russ, Nick, you, and Moss,</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Anyone else?</p> <p>16 A. Did you get Mark Ryan?</p> <p>17 Q. I'm sorry, Maguire, Burlingham,</p> <p>18 you, Moss, and Ryan?</p> <p>19 A. Yes.</p> <p>20 Q. Anyone else present at that</p> <p>21 meeting?</p> <p>22 A. I don't think so.</p> <p>23 Q. And you discussed your viability</p> <p>24 and the threat that BEH posed to that if it was</p>	<p style="text-align: right;">169</p> <p>1 to BEH would cause financial harm to</p> <p>2 FlightLevel?</p> <p>3 A. That it really was not something</p> <p>4 they could take seriously and it basically fell</p> <p>5 on deaf ears.</p> <p>6 Q. Did they say to you, we can't help</p> <p>7 you?</p> <p>8 A. Probably not those exact words, but</p> <p>9 I think they said something to that effect.</p> <p>10 Q. Did they give you a suggestion for</p> <p>11 how to proceed?</p> <p>12 A. No.</p> <p>13 Q. Did they tell you to take it up</p> <p>14 with the Selectmen?</p> <p>15 A. No. Not that I recall, no.</p> <p>16 Q. Did Moss say anything during the</p> <p>17 meeting?</p> <p>18 A. He said the least of anyone, I</p> <p>19 would say.</p> <p>20 Q. Did he say anything?</p> <p>21 A. I'm sure he said something.</p> <p>22 Q. Do you recall anything that he</p> <p>23 said?</p> <p>24 A. Pleasantries.</p>

<p style="text-align: right;">170</p> <p>1 Q. Do you recall Nick speaking to Moss 2 about the single FBO exception? 3 A. Not directly to Moss, possibly to 4 the other attendees, to everyone at the meeting. 5 Q. Right. So there was a 6 discussion -- you recall saying something about 7 the viability of FlightLevel being threatened by 8 the approval of an FBO to BEH, and Nick said 9 something about the single FBO exception. Were 10 there any other topics that were discussed at 11 that meeting? 12 A. Not that I can remember. 13 Q. Okay. And you say you don't think 14 that they advised you to go talk to the 15 Selectmen about your problems? 16 A. I can't remember them saying that 17 at that meeting. 18 MR. FEE: Okay. I would like 19 to have this marked as the next exhibit. 20 (Exhibit 175, Letter dated January 20, 21 2015, marked for identification) 22 Q. (By Mr. Fee) Exhibit 175 is a 23 letter from you to the Selectmen -- to Michael 24 Lyons, Board of Selectmen, dated January 20,</p>	<p style="text-align: right;">172</p> <p>1 objectionable, correct? 2 A. Yes. 3 Q. And then you have discussed the 4 appointment of certain commissioners that you 5 feel were biased in favor of BEH, correct? 6 A. Can you direct me to that page? 7 Q. Sure. You talk about the freshman 8 commissioners on Page 13? 9 A. Page 13? 10 Q. Page 13, "Enough is enough. BEH 11 should not be rewarded for its own wrongdoing." 12 Do you see that? 13 A. Yes. 14 Q. So did you have concerns that 15 certain members of the Commission were 16 sympathetic to BEH's positions? 17 A. I think more that they were hostile 18 towards FlightLevel. 19 Q. Is that a binary equation in your 20 mind; that if a commissioner were sympathetic to 21 BEH, that it was inherently hostile to 22 FlightLevel? 23 MR. HARTZELL: Objection. 24 A. No.</p>
<p style="text-align: right;">171</p> <p>1 2015. Did you write this? 2 A. Yes. 3 Q. Did Nick help you? 4 A. Yes. 5 Q. Did you send it? 6 A. Yes. 7 Q. Is it fair to say this is a 8 comprehensive summary of FlightLevel's issues 9 with BEH as of January 20, 2015? 10 A. Yes. 11 Q. And you allege -- you talk about 12 airport economics and I assume this refers to 13 the issue that we've been discussing previously, 14 regarding your position that FlightLevel would 15 be financially harmed if BEH were allowed an 16 FBO, correct? 17 A. Yes. 18 Q. And then you talk about a variety 19 of other conduct and actions of BEH that you 20 find objectionable, correct? 21 A. I'm sorry, repeat the question. 22 Q. In this letter that's dated January 23 20, 2015, you describe a variety of other 24 conduct and actions by BEH that you find</p>	<p style="text-align: right;">173</p> <p>1 Q. How were these freshman 2 commissioners hostile to FlightLevel? 3 A. There were a couple of occasions 4 that I can remember where they tried to bait us 5 into committing some airport 6 rules-and-regulations violations. 7 Q. Members of the commission baited -- 8 attempted to bait FlightLevel into committing 9 rules violations. Is that your testimony? 10 A. Yes, in our opinion. And we 11 documented those, I believe. 12 Q. So on Page 13 you advocate that 13 BEH's FBO application should be denied, correct? 14 A. Yes. 15 Q. Okay. And did the Board of 16 Selectmen have any ability to approve or deny 17 BEH's FBO application? 18 A. I don't believe so. 19 Q. So what were you asking the 20 Selectmen to do, remove commissioners? 21 A. I don't believe so. Could you 22 point to where it says that? 23 Q. No. I'm asking why you were saying 24 to the Board of Selectmen BEH's FBO application</p>

<p style="text-align: right;">174</p> <p>1 should be denied when they have no power or 2 jurisdiction to grant or deny that relief? 3 A. I think for the Selectmen's 4 benefit, this was our way of getting our side of 5 the story. I think Mr. Donovan had been sort of 6 litigating his position in the press. And we 7 had largely remained out of the public eye, out 8 of the eye of the Selectmen, and we felt it was 9 time we needed to tell our side of the story. 10 Q. Was it your intention that this 11 letter would find its way into the press? 12 A. I can't remember if that was an 13 intention or not. But the Selectmen read the 14 local papers, and so we don't -- we don't think 15 they had heard our side of the story. 16 Q. Okay. 17 A. Whereas they read the local papers 18 and all the papers were one-sided towards BEH 19 because Mr. Donovan was -- you know, sought out 20 the newspapers and gave them his testimony, if 21 you want to call it that. 22 Q. His side of the story? 23 A. Exactly. 24 Q. I asked you earlier about whether</p>	<p style="text-align: right;">176</p> <p>1 overwhelming competitive advantage? 2 A. By what Mr. Donovan referred to in 3 his letter of summer '13 or summer '14, that he 4 has a fraction of the overhead. 5 Q. And so by virtue of the fact that 6 FlightLevel has higher operating costs, it was 7 your belief that the NAC should deny an FBO to 8 an entity that might have lower operating costs 9 because they would be able to sell fuel cheaper 10 than FlightLevel. Is that a fair 11 characterization of what you just said? 12 MR. HARTZELL: Objection. 13 A. At the time it was my belief that 14 choosing to enfranchise would be choosing BEH 15 over FlightLevel, just as it says. 16 Q. And I'm trying to understand the 17 overwhelming competitive advantage language that 18 you use in the first sentence. 19 A. Because of the overhead. 20 Q. Because of the overhead? 21 A. Yes, and admittedly the perceived 22 willingness -- with the understanding that BEH's 23 pockets were very deep, but that's not the main 24 factor. It was just another consideration.</p>
<p style="text-align: right;">175</p> <p>1 or not you thought there was sort of a binary 2 relationship with respect to whether a 3 commissioner could be sympathetic to BEH and 4 that would inherently be hostile to FlightLevel. 5 And you said, no, you didn't think that was the 6 case? 7 A. Yes. 8 Q. I want to draw your attention to a 9 paragraph on Page 14, the paragraph that begins 10 "Choosing to enfranchise BEH will be choosing 11 BEH over FlightLevel." Do you see that? 12 A. Yes. 13 Q. And you write -- and I'm quoting -- 14 "BEH's investment will be a mere fraction of 15 FlightLevel's \$8,000,000 stake in the airport. 16 If enfranchised as an FBO, and given additional 17 land at the airport, the NAC will have handed 18 BEH an overwhelming competitive advantage over 19 FlightLevel as a commercial fueler." Do you see 20 that? 21 A. Yes. 22 Q. What do you mean by that? 23 A. Just what it says. 24 Q. Well, how would BEH have an</p>	<p style="text-align: right;">177</p> <p>1 Q. Do you have any knowledge of how 2 deep BEH's pockets are? 3 A. Only that of the owner of BEH. 4 Q. So you have no idea of what BEH's 5 capitalization is, correct? 6 A. I think I have some idea. 7 Q. What's that idea based on, that you 8 know that Moshe Yanai is a rich man? 9 A. No. You said their capitalization 10 at the company? 11 Q. Yes. 12 A. I mean, I can estimate what they 13 have put into the business. 14 Q. What's that based on? 15 A. What Mr. Donovan has advertised as 16 the hangar costing, what the helicopters he owns 17 generally cost. 18 Q. Okay. 19 A. What the cost of labor is, 20 typically. 21 Q. Okay. So you have an understanding 22 of his financial capabilities or BEH's financial 23 capabilities? 24 A. Not directly, but I could do a</p>

<p style="text-align: right;">178</p> <p>1 back-of-the-envelope. 2 Q. So you can estimate BEH's financial 3 capabilities? 4 A. Correct. 5 Q. You have no independent explicit 6 knowledge of what their books look like; is that 7 right? 8 A. Correct. 9 Q. Turning to the snowy winter of 10 2015, you said that you had some knowledge of 11 these events? 12 A. Yes. 13 Q. So the winter of 2015 was snowy, 14 was it not? 15 A. Yes. 16 Q. And during that time, quite a bit 17 of snow piled up adjacent to the fuel farm 18 operated by FlightLevel, correct? 19 A. Could you be more specific? 20 Q. There was quite a bit of snow that 21 was piled up near the -- FlightLevel's fuel farm 22 on Lot H, correct? 23 MR. HARTZELL: Objection. 24 A. Are you referring to when BEH</p>	<p style="text-align: right;">180</p> <p>1 Q. (By Mr. Fee) I show you a picture 2 that has been marked as Exhibit 176. And it 3 appears -- let me ask you this. Does it fairly 4 and accurately represent the area adjacent to 5 your fuel farm that you contend was blocked in 6 by BEH in February of 2014? 7 A. No. 8 Q. It doesn't represent the area? 9 A. Where the snow bank is? Absolutely 10 not. 11 Q. I'm not talking about any reference 12 to any snow. I'm asking about the general area. 13 Is that your fuel farm? 14 A. This is our fuel farm. 15 Q. So you're pointing to -- 16 A. This area. 17 Q. Exhibit 176. And there is a 18 fenced-in area on the left-hand side -- top 19 left-hand side of the photograph, correct? 20 A. Yes. 21 Q. And that's your fuel farm, right? 22 A. Yes. 23 Q. Okay. And all of the -- and 24 adjacent to the fuel farm, there's a Shell</p>
<p style="text-align: right;">179</p> <p>1 plowed our fuel farm in? 2 Q. No. We're going to talk in a 3 minute in detail about who did what when. I'm 4 just trying to set the stage here. 5 Are you aware of the fact that 6 there was quite a bit of snow that was on Lot H 7 and that you allege blocked your fuel farm? 8 A. Snow fell and just the -- the 9 normal snow didn't block our fuel farm. 10 Q. Right. But snow that was plowed 11 blocked your fuel farm? 12 A. Correct. 13 Q. Do you contend that all of that 14 snow was plowed to block your fuel farm by BEH? 15 A. If not all of it, the majority of 16 it. 17 Q. Really. And is it true that 18 FlightLevel also plows and stows snow adjacent 19 to its fuel farm? 20 A. Not in that location, no. 21 MR. FEE: I would like to mark 22 this as the next exhibit. 23 (Exhibit 176, Photograph, marked for 24 identification)</p>	<p style="text-align: right;">181</p> <p>1 truck, correct? 2 A. Yes. 3 Q. Is that inside or outside the gates 4 of the fuel farm? 5 A. I think inside. 6 Q. Okay. And there's an area 7 immediately beyond the trucks that exists 8 between the fuel farm and the barrier, the metal 9 barrier. Do you see that? 10 A. Yes. 11 Q. Is that a passageway for vehicles? 12 A. I'm not sure. 13 Q. Do you know if FlightLevel's fuel 14 trucks passed through that area that I have just 15 described, which is between the fencing and the 16 metal guard? 17 A. I don't. 18 Q. Do you know if FlightLevel's fuel 19 trucks passed through that portion of the fuel 20 farm where there are gates and the trucks are 21 parked as depicted in this photograph? 22 A. Yes, I believe they do. 23 Q. And so when trucks come and go from 24 the fuel farm, they utilize that portion of the</p>

<p style="text-align: right;">182</p> <p>1 area that is closest -- that portion of the fuel 2 farm that is closest to the woods, correct? 3 MR. HARTZELL: Objection. 4 Q. (By Mr. Fee) Well, you just said 5 that the -- 6 A. The Shell trucks? 7 Q. Yes. 8 A. Yes. 9 Q. Okay. And what about deliveries? 10 A. I can't remember where the delivery 11 trucks go. 12 Q. But would you agree with me that 13 it's either the place where the Shell trucks are 14 parked now or the passageway that's immediately 15 beyond that between the Shell trucks and the 16 woods? 17 A. I would think so. 18 Q. Okay. And so that's the -- and I 19 would guess that that would be south, correct? 20 The fuel farm goes north to south? 21 A. Yes. 22 Q. So the place where the fuel trucks 23 pass to deliver fuel or move fuel from the fuel 24 farm are at the far southerly end of the fuel</p>	<p style="text-align: right;">184</p> <p>1 removal operations at FlightLevel Norwood. 2 Q. That's done by Mr. DeLaria? 3 A. It's done by a variety of people. 4 Q. Do you know who oversees it and is 5 responsible for it? 6 A. I believe it's Kevin Putnam. 7 Q. Does he work for Mr. DeLaria? 8 A. Yes. 9 MR. FEE: Let's mark this as 10 the next exhibit. 11 (Exhibit 177, Photograph, marked for 12 identification) 13 Q. (By Mr. Fee) Do you recognize the 14 truck that is depicted in Exhibit 177? 15 A. No. 16 Q. You don't know whether it's a 17 FlightLevel truck or not? 18 A. I don't think it is. 19 Q. Why not? 20 A. Because it's red. 21 Q. You don't own any red trucks? 22 A. Not that I know of. 23 Q. Okay. Does FlightLevel engage 24 contractors currently to remove snow?</p>
<p style="text-align: right;">183</p> <p>1 farm, correct? 2 A. Yes. 3 Q. The farthest southerly end of the 4 fuel farm, correct? 5 A. I don't know if the fuel farm 6 extends beyond the fence. But if that is the 7 limit, yes. 8 Q. Okay. In general, in the winter of 9 2015, FlightLevel plowed the area between the 10 two buildings on Lots F and G, correct? 11 A. They plowed Lot G. 12 Q. They plowed Lot G, correct? 13 A. Correct. 14 Q. And they plowed Lot G in roughly 15 the same fashion that this Exhibit 176 depicts. 16 In other words, beginning at the far northerly 17 end of Lot G, they pushed the snow all the way 18 up to the metal embankment and the woods, 19 correct? 20 A. Possibly. 21 Q. You don't know? 22 A. Correct. 23 Q. How come you don't know? 24 A. Because I don't conduct snow</p>	<p style="text-align: right;">185</p> <p>1 A. Occasionally. 2 Q. And who are they? 3 A. I believe it's P.J. Hayes. 4 Q. Does P.J. Hayes own any red trucks? 5 A. I don't know. 6 MR. FEE: I'm going to mark 7 this as the next exhibit. 8 (Exhibit 178, Letter dated January 29, 9 2015, marked for identification) 10 Q. (By Mr. Fee) Exhibit 178 appears 11 to be a letter to Mr. Maguire from you dated 12 January 29, 2015. Have you seen this before? 13 A. Looks like it's to Mr. Chairman, 14 but yes. 15 Q. It says, "Norwood Airport 16 Commission c/o Russ Maguire"? 17 A. "Dear Mr. Chairman," yes. 18 Q. Okay. 19 A. Yes, I've seen it before. 20 Q. And you wrote it? 21 A. Yes. 22 Q. Did Nick help you? 23 A. I believe so. 24 Q. You said earlier that you have no</p>

<p style="text-align: right;">186</p> <p>1 idea how snow was plowed on Lot G; is that 2 right?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. At the moment.</p> <p>5 Q. Did you know in February of 2015 6 how snow was plowed on Lot G?</p> <p>7 A. Three years ago I was more familiar 8 with the day-to-day operations than I am now.</p> <p>9 Q. And what was your understanding of 10 how snow was plowed on Lot G in 2015?</p> <p>11 A. I don't think it was necessarily 12 exclusively north to south.</p> <p>13 Q. I didn't ask you that. I asked 14 you, what was your understanding of how it was 15 plowed on Lot G in 2015?</p> <p>16 MR. HARTZELL: I think he just 17 answered you.</p> <p>18 A. I answered.</p> <p>19 Q. You told me what it wasn't. I'm 20 asking you what it was.</p> <p>21 A. It was -- I'm going to let my 22 answer stand.</p> <p>23 Q. Okay. So other than it wasn't 24 necessarily plowed -- first of all, what's the</p>	<p style="text-align: right;">188</p> <p>1 Kevin Putnam, Mike DeLaria, to name a few.</p> <p>2 Q. And those individuals, you contend, 3 told you that BEH had plowed snow onto Lot H?</p> <p>4 A. Yes.</p> <p>5 Q. Were you aware of the fact that 6 FlightLevel had plowed any snow onto Lot H?</p> <p>7 A. During that event?</p> <p>8 Q. At any time in 2015.</p> <p>9 A. I'm sure they had.</p> <p>10 Q. Okay. So part of the snow that is 11 accumulated on Lot H has been plowed by 12 FlightLevel and part has been plowed by BEH. Is 13 that a fair statement?</p> <p>14 MR. HARTZELL: Objection.</p> <p>15 A. Not necessarily. It could have 16 melted. It could have been taken away. That's 17 common practice.</p> <p>18 Q. I'm trying to understand if it's 19 your position that all of the snow that 20 accumulated on Lot H and which you are 21 complaining about in your letter dated January 22 29 was deposited there by BEH.</p> <p>23 MR. HARTZELL: I think he 24 answered that.</p>
<p style="text-align: right;">187</p> <p>1 basis for you saying it wasn't necessarily 2 plowed north/south?</p> <p>3 A. I've seen plowing operations that 4 weren't north/south on Lot G.</p> <p>5 Q. When?</p> <p>6 A. Ten years ago.</p> <p>7 Q. What about in 2015?</p> <p>8 A. I can't recall if I had seen 9 anything.</p> <p>10 Q. So you don't have any percipient -- 11 you didn't have any percipient knowledge as to 12 how snow was plowed on Lot G in 2015, correct?</p> <p>13 MR. HARTZELL: Objection.</p> <p>14 A. I may have at the time. I don't 15 recall anymore.</p> <p>16 Q. Now, you made some statements in 17 your letter of January 29 attributing the 18 build-up of snow on Lot H to BEH, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And that was based on information 21 that was provided to you by whom?</p> <p>22 A. Several people who work for me --</p> <p>23 Q. Who?</p> <p>24 A. -- that witnessed it, Jesse Coreas,</p>	<p style="text-align: right;">189</p> <p>1 A. I'm contending that the wall of 2 snow that went approximately from here to here 3 was deposited by BEH, not anything back in this 4 area. I don't think I ever contended that the 5 stuff -- that the snow near the metal 6 guardrail -- I don't know that I ever made the 7 case that that was deposited by BEH, if there 8 was any snow there in the first place.</p> <p>9 MR. FEE: Off the record.</p> <p>10 (Off-record conference)</p> <p>11 MR. FEE: Back on the record.</p> <p>12 Q. (By Mr. Fee) So you grabbed 173 a 13 minute ago to help explain your testimony. And 14 I think you indicated that you thought some area 15 of snow was deposited by BEH. I want you to 16 show me by marking Exhibit 177 where you think 17 BEH deposited its snow.</p> <p>18 A. I'm no artist, but it was something 19 like this.</p> <p>20 Q. You sell yourself short in your art 21 abilities.</p> <p>22 A. Do we have a picture of the snow 23 that I'm referring to because we do have 24 pictures?</p>

<p style="text-align: right;">190</p> <p>1 Q. Yes. I have plenty of pictures, 2 but I want you to mark 173 and tell me where you 3 think BEH deposited the snow. 4 A. (Witness indicating) 5 Q. So is it fair to say that the snow 6 to the south of the area where you just 7 marked -- that there was a pile of snow there 8 already? Is that fair to say? 9 MR. HARTZELL: Objection. 10 A. I can't remember if there was a 11 snowfall prior or if there was a melt or we 12 removed it, so it's not fair to say. It's 13 possible. 14 MR. HARTZELL: Don't guess. 15 Q. (By Mr. Fee) Could I mark this as 16 "X" right here to indicate by an "X" the area 17 that you testified that you believe BEH 18 deposited snow? Is that a fair assessment of 19 it? 20 A. Sure. 21 Q. Do you believe that in February of 22 2014 there was snow -- 23 A. February of '15. 24 Q. I'm sorry, February of '15 -- that</p>	<p style="text-align: right;">192</p> <p>1 Q. And so if the ramp is covered with 2 snow, are you saying that you don't think they 3 have the right to remove that snow? 4 MR. HARTZELL: Objection. 5 A. Correct. 6 Q. And why is that? 7 A. Because there was nothing that said 8 they did. 9 Q. So your testimony is that it was 10 FlightLevel's prerogative to allow snow to 11 accumulate to whatever extent they felt 12 appropriate even if it would block access and 13 egress from Condo Hangar 8 on Lot G? Is that 14 what you're saying? 15 MR. HARTZELL: Objection. 16 A. No. We use our best practices to 17 remove the snow as soon as possible. And having 18 been the snow removal operator on this lease -- 19 on this lot for years and years and years, we 20 never had an issue. 21 Q. Well, 2015 was quite an unusual 22 winter, was it not? 23 A. I mean, I look at it by snowfall 24 event. It was by no means the biggest snowfall</p>
<p style="text-align: right;">191</p> <p>1 there was any snow existing between your "X" 2 moving southerly towards the woods? Do you 3 know? 4 MR. HARTZELL: Objection. 5 A. I think there was some moving 6 southerly. The extent of it I can't remember. 7 Q. Do you know why BEH plowed snow to 8 the "X" and then stopped? 9 A. Why they were plowing snow on Lot G 10 at all is my concern. 11 Q. Understood. But there were tenants 12 on Lot G, right? 13 MR. HARTZELL: Objection. 14 A. No. There were tenants in this 15 building, not on the ramp area of Lot G. 16 There's nothing in their lease here that gave 17 them the ability to plow snow on Lot G. 18 Q. Well, they are tenants on Lot G. 19 Do they have the right to access their condo 20 hangar? 21 A. Yes. 22 Q. And they would do so by the gate 23 that opens and leads to the ramp, correct? 24 A. Yes.</p>	<p style="text-align: right;">193</p> <p>1 event we've seen. 2 Q. Okay. Do you acknowledge that 3 FlightLevel was nonresponsive to BEH's request 4 to clear snow from Lot G? 5 MR. HARTZELL: Objection. 6 A. I don't know of any such request. 7 Q. Were you aware, at any time, of BEH 8 informing FlightLevel that it desired to access 9 and egress its hangar such that there was no 10 snow on the ramp adjacent to the hangar? 11 MR. HARTZELL: Objection. 12 A. Not that I can recall. 13 Q. Do you have any knowledge of the 14 extent to which snow accumulated outside Condo 15 Hangar 8 in 2015? 16 A. I have seen the pictures. 17 Q. But you have no percipient 18 knowledge of whether or not snow accumulated 19 outside Condo Hangar 8 such that BEH was able or 20 unable to remove its equipment? 21 MR. HARTZELL: Objection. 22 A. Could you ask the question again? 23 Q. Sure. Do you have any knowledge 24 regarding whether an accumulation of snow in the</p>

<p style="text-align: right;">194</p> <p>1 winter of 2015 prohibited or impeded BEH's</p> <p>2 ability to move its equipment in and out of</p> <p>3 Condo Hangar 8?</p> <p>4 A. Not that I can recall.</p> <p>5 Q. So you never observed that?</p> <p>6 A. I observed snow in front of these</p> <p>7 units.</p> <p>8 Q. And --</p> <p>9 A. Whether or not that was enough to</p> <p>10 preclude them from moving in and out, I can't</p> <p>11 say.</p> <p>12 Q. But you had acknowledged that it</p> <p>13 was FlightLevel's responsibility to move that</p> <p>14 snow, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And if FlightLevel was tardy in</p> <p>17 moving that snow, were the condo hangar leasees</p> <p>18 without recourse?</p> <p>19 MR. HARTZELL: Objection.</p> <p>20 A. I believe so, but I'm not sure.</p> <p>21 Q. So it was incumbent upon tenants of</p> <p>22 Condo Hangar 8 to wait as long as it took for</p> <p>23 FlightLevel to remove the snow?</p> <p>24 MR. HARTZELL: Objection.</p>	<p style="text-align: right;">196</p> <p>1 not a violation of the Grant Assurances and an</p> <p>2 Airport may be denied even a qualified FBO</p> <p>3 applicant if..." And then you cite the single</p> <p>4 FBO exception, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And this is, I believe, the third</p> <p>7 time you've argued to the NAC that the single</p> <p>8 FBO exception should be applied to maintain</p> <p>9 FlightLevel's monopoly in the airport, correct?</p> <p>10 A. We're pointing out the single FBO</p> <p>11 exception.</p> <p>12 Q. And what does this have to do with</p> <p>13 snow.</p> <p>14 A. What does what have to do with</p> <p>15 snow.</p> <p>16 Q. The single FBO exception.</p> <p>17 MR. HARTZELL: Objection.</p> <p>18 Q. (By Mr. Fee) The whole body of</p> <p>19 your letter talks about this trespass and the</p> <p>20 snow problem that you're having with BEH, and</p> <p>21 then you conclude the letter with an argument</p> <p>22 that they should be denied an FBO because of the</p> <p>23 single FBO exception, right? And I'm wondering</p> <p>24 what the connection is between those two</p>
<p style="text-align: right;">195</p> <p>1 A. Yes, but we try to prioritize those</p> <p>2 with a need.</p> <p>3 Q. Did BEH communicate to you the fact</p> <p>4 that after a snowstorm part of its job</p> <p>5 responsibilities was to fly energy officials to</p> <p>6 locate downed power lines?</p> <p>7 A. Not that I know of.</p> <p>8 Q. Did anybody on your staff know that</p> <p>9 or communicate that to you?</p> <p>10 A. Not that I've heard.</p> <p>11 Q. Okay. Did you know that BEH was in</p> <p>12 the business of flying helicopters?</p> <p>13 A. Yes.</p> <p>14 Q. And did you know that BEH -- strike</p> <p>15 that.</p> <p>16 A. Could I take one second?</p> <p>17 MR. FEE: Sure. Off the</p> <p>18 record.</p> <p>19 (A recess was taken)</p> <p>20 MR. FEE: Back on the record.</p> <p>21 Q. (By Mr. Fee) Back to Exhibit 178,</p> <p>22 you raised concerns regarding the snow. And</p> <p>23 then on Page 2, you, in bold and underline, say,</p> <p>24 "The presence of a single FBO on an airport is</p>	<p style="text-align: right;">197</p> <p>1 concepts.</p> <p>2 A. Well, it's unreasonably costly,</p> <p>3 burdensome and impracticable for an airport to</p> <p>4 have this kind of behavior going on at it as a</p> <p>5 result of there being two FBOs.</p> <p>6 Q. Costly for the airport or costly</p> <p>7 for FlightLevel?</p> <p>8 A. Both.</p> <p>9 MR. FEE: I'm going to mark</p> <p>10 this as the next exhibit.</p> <p>11 (Exhibit 179, Photograph, marked for</p> <p>12 identification)</p> <p>13 Q. (By Mr. Fee) I'm showing you an</p> <p>14 exhibit marked as Exhibit 179. And it appears</p> <p>15 to depict -- let me ask you. Does it depict the</p> <p>16 area that we have been discussing adjacent to</p> <p>17 FlightLevel's fuel farm?</p> <p>18 A. Yes.</p> <p>19 Q. And the trucks over there that are</p> <p>20 in the picture are -- look like the same</p> <p>21 Shell -- or may be, perhaps, the same Shell</p> <p>22 trucks that were depicted in the prior</p> <p>23 photograph that we looked at. Is that fair to</p> <p>24 say?</p>

<p style="text-align: right;">198</p> <p>1 A. There are trucks, yes. There are 2 leased trucks. 3 Q. Okay. By the way, I asked you 4 before. You said FlightLevel does not own any 5 red trucks, right? Does ARR own red trucks? 6 A. You know what, that could be owned 7 by FlightLevel. I may be wrong. 8 Q. And you're referring to the red 9 truck in Photograph 177? 10 A. Was that taken this winter? 11 Q. Correct. 12 A. Then it could be, yes. 13 Q. Okay. So this photograph that 14 we're looking at now, which is 179, shows a 15 front-end loader removing snow adjacent to the 16 FlightLevel fuel farm, correct? 17 A. Mm-hmm. 18 Q. And is this a P.J. Hayes piece of 19 equipment? 20 A. That would be my guess. 21 Q. It's not owned by FlightLevel? 22 A. Correct. 23 Q. Or ARR, correct? 24 A. Correct.</p>	<p style="text-align: right;">200</p> <p>1 MR. FEE: I'm going to mark 2 this as the next exhibit. 3 (Exhibit 180, Photograph, marked for 4 identification) 5 Q. (By Mr. Fee) Does 180 represent -- 6 fairly depict the equipment utilized by P.J. 7 Hayes in February of 2015 to remove snow from 8 Lot H on FlightLevel's behalf? 9 A. I can't say with any certainty. 10 Q. Do you have any reason to believe 11 that this isn't the equipment utilized by P.J. 12 Hayes to remove snow from Lot H on FlightLevel's 13 behalf in February of 2015? 14 A. No. 15 Q. Okay. We talked earlier about a 16 meeting that you had on or about February 4. 17 And you may recall -- 18 MR. FEE: Let me mark this as 19 the next exhibit. 20 (Exhibit 181, Defendant FlightLevel 21 Norwood, LLC's Supplemental Answers to 22 Plaintiff, Boston Executive Helicopters, 23 LLC's First Set of Interrogatories, marked 24 for identification)</p>
<p style="text-align: right;">199</p> <p>1 Q. And is it your understanding that 2 as snow accumulates in this area adjacent to the 3 woods that from time to time P.J. Hayes would 4 come in and remove the snow and truck it away or 5 melt it in some fashion? 6 A. I'm not sure what the exact process 7 is, but I think it's something similar to that. 8 Q. Okay. And -- 9 A. Except I don't know that they melt 10 it. 11 Q. But they get rid of it? 12 A. I believe so. 13 Q. And does P.J. Hayes have a variety 14 of equipment that it utilizes to do that for 15 FlightLevel? 16 A. Define variety. 17 Q. Does it have multiple pieces of 18 equipment that it uses for that purpose? 19 A. Like three? 20 Q. Yes. 21 A. Probably. 22 Q. Do you want me to show you a 23 picture? 24 A. Sure.</p>	<p style="text-align: right;">201</p> <p>1 Q. (By Mr. Fee) You may recall 2 answering Interrogatories in this case and 3 testifying previously in a deposition, and those 4 Interrogatories are marked as Exhibit 181. Do 5 you recall seeing these before? 6 A. I believe so, yes. 7 Q. Okay. And your answer to 8 Interrogatory Number 6 says, "On Wednesday, 9 February 4, 2015, FlightLevel met with Ryan, 10 Maguire, Moss," et cetera. Do you see that? 11 A. Number 6? 12 Q. It's answer to Interrogatory Number 13 6 on Page 5? 14 A. Okay, I'm there. 15 Q. In the third paragraph it says, 16 "On Wednesday, February 4, 2015, FlightLevel met 17 with Ryan, Maguire, Moss," et cetera? 18 A. Mm-hmm. 19 Q. Is this the meeting that you 20 testified to earlier? 21 A. I would guess so. 22 MR. HARTZELL: Don't guess. 23 A. I suspect it is. 24 Q. Okay. And this was the same</p>

<p style="text-align: right;">202</p> <p>1 meeting that was referenced in your e-mail 2 exchange with Mr. Maguire immediately after the 3 January 14 meeting, right, that was marked as 4 Burlingham 66? 5 A. I would think so, yes. 6 Q. I'm just wondering if there were 7 any other meetings in that time frame other than 8 the one you testified to in response to 9 Interrogatory Number 6 for Exhibit 181? 10 A. I don't think there were. 11 Q. Okay. So you only recall one 12 meeting with Ryan, Maguire, Moss, and Nick in 13 the January/February 2015 time frame, right? 14 A. Correct. 15 Q. Now, there's another meeting in 16 these Answers to Interrogatories identified as 17 June 18, 2015, meeting, with Ryan, Maguire, 18 Moss, and an associate from Moss' firm. Do you 19 recall that? 20 A. Vaguely. 21 Q. If you could read that paragraph 22 that describes the events of the June 18 meeting 23 and tell me if that represents the entire sum 24 and substance of your recollection regarding</p>	<p style="text-align: right;">204</p> <p>1 2013 issues which had a fueling plan showing 2 operations on Lot G. And because the hangar was 3 built too big, they couldn't do it on their own 4 Lot F. 5 Q. So if you remove any fueling 6 operations involving airplanes, does your 7 contention that the hangar is defectively 8 designed still -- is that still your position? 9 MR. HARTZELL: Objection. 10 A. It applies to fuel trucks as well. 11 Q. You believe that the size of the 12 hangar designed by BEH implicates its ability to 13 use fuel trucks in or around Lot F. Is that 14 what you're saying? 15 MR. HARTZELL: Objection. 16 A. More specifically fuel trucks 17 driving on Lot G to access the fuel farm on Lot 18 F. 19 Q. So let me ask you this: If no fuel 20 truck and no airplane ever goes on Lot G in 21 connection with BEH's fueling activities, would 22 you still contend that the system design is 23 defective in some fashion or that the hangar is 24 too big?</p>
<p style="text-align: right;">203</p> <p>1 that meeting that took place on June 18, 2015, 2 or if you want to add anything to it. 3 A. That covers it. I can't remember 4 that we covered that much. I remember it being 5 a very short meeting. 6 Q. But do you remember anything else 7 about the June 18 meeting? 8 A. I think there was something else we 9 discussed that was completely unrelated that I 10 can't remember. 11 Q. Okay. Bouncing back to February 4 12 meeting, one of the topics that you described in 13 your Interrogatories being discussed is the 14 single FBO exception to the prohibition on 15 granting exclusive rights and direct 16 applicability to the situation created by BEH's 17 defective hangar and fuel system site design on 18 Lot F. Do you see that? 19 A. Yes. 20 Q. Can you describe for me what you 21 contend to be the defective hangar and fuel 22 system site design on Lot F described in your 23 answer to Interrogatory Number 6? 24 A. Well, I think it stems back to the</p>	<p style="text-align: right;">205</p> <p>1 MR. HARTZELL: Objection. 2 A. I can't answer that question with 3 definitive -- definitively right now, but it 4 would be a step in the right direction. I'd 5 have to talk with counsel. 6 Q. Is it fair to say that 7 BEH's paramount -- I'm sorry, FlightLevel's 8 paramount concern regarding BEH's proposed 9 fueling operations is that it would in some 10 fashion take place on Lot G? 11 MR. HARTZELL: Objection. 12 A. Or any other FlightLevel leasehold. 13 Q. Or any other FlightLevel leasehold? 14 A. Yes. 15 MR. FEE: Off the record. 16 (A recess was taken) 17 MR. FEE: Back on the record. 18 Q. (By Mr. Fee) You say, in your 19 answer to Interrogatory Number 6, in the final 20 paragraph, "FlightLevel had also voiced its 21 concerns, that by refusing to acknowledge the 22 design defect, and by insisting under the threat 23 of litigation that the NAC was holding its 24 project up because the foundation couldn't be</p>

<p style="text-align: right;">206</p> <p>1 poured until the tanks were installed, BEH was</p> <p>2 essentially bullying the NAC into authorizing</p> <p>3 competing fueling operations on FlightLevel's</p> <p>4 leasehold." Did I read that correctly?</p> <p>5 A. Yes.</p> <p>6 Q. Is it your contention that</p> <p>7 FlightLevel said these words at the June 30,</p> <p>8 2013, NAC meeting?</p> <p>9 A. Something to that effect.</p> <p>10 Q. Did you say those words or was it</p> <p>11 something that Nick or Mike DeLaria says?</p> <p>12 A. I can't recall.</p> <p>13 Q. And you say that you believe that</p> <p>14 BEH refused to acknowledge a design defect,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. What design defect did it refuse to</p> <p>18 acknowledge?</p> <p>19 A. How the fueling operations were to</p> <p>20 be conducted.</p> <p>21 Q. And they would be affected if they</p> <p>22 implicated Lot G, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And any other way were they</p>	<p style="text-align: right;">208</p> <p>1 Q. Do you know at this time whether</p> <p>2 FlightLevel had planned to erect barriers on Lot</p> <p>3 G in order to stop BEH from further impinging on</p> <p>4 FlightLevel's property rights?</p> <p>5 MR. HARTZELL: Objection.</p> <p>6 A. At this time did we have plans to</p> <p>7 put up the barriers?</p> <p>8 Q. Yes.</p> <p>9 A. February 6? I can't say with</p> <p>10 certainty, but I -- this was after the</p> <p>11 snow-blockade event.</p> <p>12 Q. Is there something you want to look</p> <p>13 at?</p> <p>14 A. Well, I just want to see if this</p> <p>15 was when we were blocked from accessing our fuel</p> <p>16 farm, if this was after that, because I believe</p> <p>17 that's when it happened.</p> <p>18 Q. Let me ask you another question.</p> <p>19 When did you first plan or start to plan to</p> <p>20 erect barriers on Lot H?</p> <p>21 A. After our fuel farm was blockaded</p> <p>22 by snow.</p> <p>23 Q. And I show you Exhibit 178, which</p> <p>24 appears to be a letter dated January 29, 2015,</p>
<p style="text-align: right;">207</p> <p>1 defective?</p> <p>2 MR. HARTZELL: Objection.</p> <p>3 A. I can't remember if there were any</p> <p>4 rules or regulations, TOFA restrictions, or not,</p> <p>5 but those could be the other ways potentially.</p> <p>6 Q. TOFA, OFA?</p> <p>7 A. Yes.</p> <p>8 Q. Anything else?</p> <p>9 A. I feel like I'm missing something,</p> <p>10 but I can't dig it up right now.</p> <p>11 Q. You also say, "...insisting under</p> <p>12 threat of litigation..." Do you recall that BEH</p> <p>13 threatened the NAC with litigation at the June</p> <p>14 30 meeting?</p> <p>15 A. I can't remember.</p> <p>16 Q. I show you what's been marked as</p> <p>17 Burlingham Exhibit 70. It appears to be a</p> <p>18 letter from Nick to Mr. Donovan dated February</p> <p>19 6, 2015, entitled Notice of Trespass Cease and</p> <p>20 Desist. Do you see this letter?</p> <p>21 A. Yes.</p> <p>22 Q. Did you participate in its</p> <p>23 drafting?</p> <p>24 A. I can't remember.</p>	<p style="text-align: right;">209</p> <p>1 from you to the NAC complaining about your fuel</p> <p>2 farm being blocked. Does that refresh your</p> <p>3 recollection as to when you started to plan --</p> <p>4 A. Yes.</p> <p>5 Q. And so in or about January 29 was</p> <p>6 when FlightLevel started to talk about or</p> <p>7 internally think about erecting barriers; is</p> <p>8 that fair to say?</p> <p>9 A. Plus or minus a couple days.</p> <p>10 Q. Okay. And what did you do to plan</p> <p>11 for that action?</p> <p>12 A. I didn't do much. That project was</p> <p>13 mostly Mr. Burlingham's.</p> <p>14 Q. Okay. What did do you?</p> <p>15 A. I can't remember.</p> <p>16 Q. Did you --</p> <p>17 A. Approved it.</p> <p>18 Q. Okay. So you remember the meeting</p> <p>19 on February 15, right?</p> <p>20 MR. FEE: Hang on a second. I</p> <p>21 need to mark that.</p> <p>22 (Exhibit 182, Airport Commission Meeting</p> <p>23 Minutes, Regular Business Meeting,</p> <p>24 February 11, 2015, marked for</p>

<p style="text-align: right;">210</p> <p>1 identification)</p> <p>2 Q. (By Mr. Fee) I'm showing you a</p> <p>3 document marked as Exhibit 182. It appears to</p> <p>4 be the meeting minutes of the February 11, 2015,</p> <p>5 Airport Commission meeting. Were you present?</p> <p>6 A. February of 2015, yes.</p> <p>7 Q. And Mr. Burlingham was also</p> <p>8 present, was he not?</p> <p>9 A. I believe so.</p> <p>10 Q. And Mr. Donovan was present,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And there was a discussion</p> <p>14 regarding the alleged blockading of the fuel</p> <p>15 farm by snowplowing, correct?</p> <p>16 A. My only objection is to "alleged".</p> <p>17 I think your client admitted to it.</p> <p>18 Q. Okay. I can rephrase that.</p> <p>19 Mr. Donovan acknowledged plowing</p> <p>20 snow onto Lot H, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And at that point in time</p> <p>23 FlightLevel had already purchased the barriers,</p> <p>24 had they not?</p>	<p style="text-align: right;">212</p> <p>1 A. Vaguely.</p> <p>2 Q. Okay. Well, it says -- the meeting</p> <p>3 minutes on Page 2 says they discussed your</p> <p>4 notice of trespass letter, correct?</p> <p>5 A. Yes, it says that.</p> <p>6 Q. And do you recall that that was</p> <p>7 discussed?</p> <p>8 A. Vaguely, but I don't recall any of</p> <p>9 the details that were discussed.</p> <p>10 Q. Do you recall Mr. Odstrchel and</p> <p>11 Mr. Sheehan advising both FlightLevel and BEH</p> <p>12 that they should settle their differences</p> <p>13 regarding the property dispute in Superior</p> <p>14 Court?</p> <p>15 A. Something to that effect.</p> <p>16 Q. Okay. And did you consider filing</p> <p>17 suit in order to adjudicate the various claims?</p> <p>18 A. Yes.</p> <p>19 Q. And did you file suit, in fact?</p> <p>20 A. We were working on it.</p> <p>21 Q. Okay. But you elected to put up</p> <p>22 the barriers before commencing suit, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p>
<p style="text-align: right;">211</p> <p>1 A. I would assume so.</p> <p>2 Q. Okay. And so you --</p> <p>3 MR. HARTZELL: Don't assume or</p> <p>4 guess.</p> <p>5 THE WITNESS: You're right.</p> <p>6 We may have already had them.</p> <p>7 Q. (By Mr. Fee) So at this point in</p> <p>8 time at this meeting, you had full knowledge</p> <p>9 that FlightLevel intended to erect barriers on</p> <p>10 Lot H, correct?</p> <p>11 A. I can't say with certainty.</p> <p>12 Q. Well, you said that you began to</p> <p>13 plan to erect barriers in or around January 29,</p> <p>14 2015, right?</p> <p>15 A. It was considered. I don't think</p> <p>16 the trigger had been pulled that we were</p> <p>17 definitely going to do it.</p> <p>18 Q. When did you decide to definitely</p> <p>19 do it?</p> <p>20 A. I think the day of.</p> <p>21 Q. Do you recall the discussion with</p> <p>22 commissioners at the February 11 meeting?</p> <p>23 A. Discussions?</p> <p>24 Q. Yes.</p>	<p style="text-align: right;">213</p> <p>1 A. Because there was another snowstorm</p> <p>2 coming. I couldn't risk my operation being shut</p> <p>3 down again.</p> <p>4 Q. Okay. And you contend that BEH's</p> <p>5 actions shut down your operation?</p> <p>6 A. Correct.</p> <p>7 Q. For how long?</p> <p>8 A. At least twenty-four to forty-eight</p> <p>9 hours.</p> <p>10 Q. And what loss of money or property</p> <p>11 did FlightLevel suffer as a result of snow being</p> <p>12 deposited near their fuel farm -- near its fuel</p> <p>13 farm?</p> <p>14 A. I don't have the calculation in</p> <p>15 front of me, but it was substantial.</p> <p>16 Q. More than \$100?</p> <p>17 A. Yes.</p> <p>18 Q. More than \$1,000?</p> <p>19 A. Yes.</p> <p>20 Q. More than \$10,000?</p> <p>21 A. I believe so.</p> <p>22 Q. And what is the basis for that</p> <p>23 calculation?</p> <p>24 A. I would have to look at the</p>

<p style="text-align: right;">214</p> <p>1 details.</p> <p>2 Q. So how do you know it's more than</p> <p>3 \$10,000?</p> <p>4 A. Because I remember it being more</p> <p>5 than \$10,000.</p> <p>6 Q. And what were the components of</p> <p>7 that damages calculation?</p> <p>8 A. Lost fuel revenues, premiums on</p> <p>9 immediate removal of the snow, stuff of that</p> <p>10 nature.</p> <p>11 Q. Anything else?</p> <p>12 A. Not that I can think of off the top</p> <p>13 of my head. Overtime burned due to the fact</p> <p>14 that we had to take care of it.</p> <p>15 Q. And you attribute all of those</p> <p>16 costs to the actions of BEH?</p> <p>17 A. The majority of them, yes.</p> <p>18 Q. Okay.</p> <p>19 A. I would have to look at the</p> <p>20 calculation. I would want to scratch</p> <p>21 conjecturing about the dollar amounts for the</p> <p>22 record.</p> <p>23 Q. Fair enough.</p> <p>24 MR. FEE: I'm going to mark</p>	<p style="text-align: right;">216</p> <p>1 Q. And Mr. Burlingham was in charge of</p> <p>2 the operation, correct?</p> <p>3 A. Correct.</p> <p>4 MR. FEE: I would like to mark</p> <p>5 this as the next exhibit.</p> <p>6 (Exhibit 184, E-mail Exchange dated</p> <p>7 February 13, 2015, marked for</p> <p>8 identification)</p> <p>9 Q. (By Mr. Fee) Exhibit 184 is an</p> <p>10 e-mail from Mr. Burlingham to Officer Grasso</p> <p>11 dated February 13, 2015. Have you ever seen</p> <p>12 this one before?</p> <p>13 A. Yes.</p> <p>14 Q. And did you see it at or about the</p> <p>15 time it was sent?</p> <p>16 A. I think I saw this after.</p> <p>17 Q. Okay. And the subject matter is:</p> <p>18 "Prior Notice of Possible Breach of Peace." Do</p> <p>19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. So was it your understanding at</p> <p>22 this time that there was a potential for breach</p> <p>23 of peace associated with FlightLevel's actions</p> <p>24 to erect barriers?</p>
<p style="text-align: right;">215</p> <p>1 this as the next exhibit.</p> <p>2 (Exhibit 183, E-mail Exchange dated</p> <p>3 February 12, 2015, marked for</p> <p>4 identification)</p> <p>5 Q. (By Mr. Fee) Exhibit 183 is an</p> <p>6 e-mail exchange between Mr. Burlingham and</p> <p>7 Norwood Police Department. Have you seen this</p> <p>8 before?</p> <p>9 A. I'm sure I have.</p> <p>10 Q. Did you have any role in preparing</p> <p>11 this document? And I'm talking specifically</p> <p>12 about Mr. Burlingham's e-mail to Officer Grasso</p> <p>13 dated February 12, 2015?</p> <p>14 A. I don't believe I had a hand in</p> <p>15 writing this.</p> <p>16 Q. Okay. During this time frame,</p> <p>17 February 11 and 12, 13, did you have any</p> <p>18 communications with Mr. Maguire regarding</p> <p>19 FlightLevel's intention to erect barriers?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Did you inform Mr. Maguire of</p> <p>22 FlightLevel's intention to erect barriers?</p> <p>23 A. I don't think so, but</p> <p>24 Mr. Burlingham may have.</p>	<p style="text-align: right;">217</p> <p>1 MR. HARTZELL: Objection.</p> <p>2 A. We considered the possibility that</p> <p>3 BEH could take action.</p> <p>4 Q. What did you think they would do?</p> <p>5 A. I don't know.</p> <p>6 Q. Did you talk to BEH about the fact</p> <p>7 you were going to erect barriers?</p> <p>8 A. No.</p> <p>9 Q. Did you give notice to anyone about</p> <p>10 your intention to erect barriers?</p> <p>11 MR. HARTZELL: Objection.</p> <p>12 A. I believe FlightLevel did through</p> <p>13 Nick.</p> <p>14 Q. To whom?</p> <p>15 A. I believe the police and possibly</p> <p>16 Russ Maguire.</p> <p>17 Q. Who instructed FlightLevel to fill</p> <p>18 the barriers with glycol?</p> <p>19 A. I don't remember, but I think that</p> <p>20 is the standard procedure for those barriers in</p> <p>21 cold temperature climates.</p> <p>22 Q. What is the basis for that belief?</p> <p>23 A. Years in the business.</p> <p>24 Q. But it's not based on any</p>

<p style="text-align: right;">218</p> <p>1 particular document or regulation or --</p> <p>2 A. I'm not sure.</p> <p>3 MR. FEE: I'm going to mark</p> <p>4 this as the next exhibit.</p> <p>5 (Exhibit 185, Letter dated February 14,</p> <p>6 2015, marked for identification)</p> <p>7 Q. (By Mr. Fee) Exhibit 185 is a</p> <p>8 letter to Mr. Donovan from Mr. Burlingham dated</p> <p>9 February 14, 2015. Have you seen this before?</p> <p>10 A. Yes.</p> <p>11 Q. And it talks about the fact that --</p> <p>12 I'm skipping to the second page -- "On February</p> <p>13 13, 2015, to protect its property, ameliorate</p> <p>14 other and further injury from you and your</p> <p>15 employees, and in the presence of Norwood</p> <p>16 Police, my client erected sixteen,</p> <p>17 eight-foot-long aviation-compliant barriers</p> <p>18 containing 480 gallons of glycol propylene, on</p> <p>19 its Lot G, along a line professionally surveyed</p> <p>20 for the purpose." Do you see that?</p> <p>21 A. For the purpose.</p> <p>22 Q. For the purpose. And is it your</p> <p>23 understanding that the -- I'm sorry, who oversaw</p> <p>24 the filling of the barriers with glycol</p>	<p style="text-align: right;">220</p> <p>1 Q. Do you know the individuals in the</p> <p>2 picture?</p> <p>3 A. I can only identify one of them.</p> <p>4 Q. Who is that?</p> <p>5 A. This is Kevin Putnam with the beard</p> <p>6 and the dark hat. The others I cannot identify.</p> <p>7 MR. HARTZELL: Mr. Court</p> <p>8 Reporter, could you read back the question</p> <p>9 that was asked right before he asked who</p> <p>10 the people were in the picture?</p> <p>11 (Question read by court reporter)</p> <p>12 MR. HARTZELL: Note my</p> <p>13 objection to the prior question.</p> <p>14 MR. FEE: That's Lot G. I</p> <p>15 misspoke.</p> <p>16 Q. (By Mr. Fee) Does that change your</p> <p>17 answer?</p> <p>18 A. On Lot G?</p> <p>19 Q. Yes.</p> <p>20 A. What had you said prior?</p> <p>21 Q. H.</p> <p>22 A. You misspoke about Lot H. It's G.</p> <p>23 I'll advise my answer to that, to include that</p> <p>24 rather.</p>
<p style="text-align: right;">219</p> <p>1 propylene?</p> <p>2 A. I don't know off the top of my</p> <p>3 head.</p> <p>4 Q. What is the basis for the statement</p> <p>5 here that the barriers were aviation compliant?</p> <p>6 A. Some documentation stating as much.</p> <p>7 Q. But you didn't have much</p> <p>8 involvement in this part of it, is that right?</p> <p>9 A. No.</p> <p>10 Q. These are all questions I should be</p> <p>11 asking Mr. Burlingham. Is that fair to say?</p> <p>12 A. Yes.</p> <p>13 MR. FEE: I'm going to mark</p> <p>14 this as the next exhibit.</p> <p>15 (Exhibit 186, Five Photographs, marked for</p> <p>16 identification)</p> <p>17 Q. (By Mr. Fee) So Exhibit 186 is a</p> <p>18 photograph. Does this fairly and accurately</p> <p>19 depict FlightLevel's conduct on or about</p> <p>20 February 12 -- I'm sorry, February 13, 2015,</p> <p>21 erecting barriers on Lot H?</p> <p>22 A. It appears to.</p> <p>23 Q. Is that a picture of Mr. DeLaria?</p> <p>24 A. No.</p>	<p style="text-align: right;">221</p> <p>1 Q. Lot H -- this does not depict any</p> <p>2 activity on Lot H?</p> <p>3 A. Correct.</p> <p>4 Q. And I'm talking about Exhibit 186.</p> <p>5 Now, again, I understand that you</p> <p>6 didn't have a lot of involvement in this</p> <p>7 project, but do you know what type of barriers</p> <p>8 were used?</p> <p>9 A. Orange ones, I'm sorry.</p> <p>10 Q. That's okay. I understand you</p> <p>11 didn't participate that much in this.</p> <p>12 MR. FEE: Off the record.</p> <p>13 (A recess was taken)</p> <p>14 MR. FEE: Back on the record.</p> <p>15 Q. (By Mr. Fee) I show you a document</p> <p>16 marked as Exhibit 186. It's a series of</p> <p>17 photographs taken in February of 2015, I would</p> <p>18 represent to you. Do you recognize it?</p> <p>19 A. Yes.</p> <p>20 Q. So did you observe the barriers</p> <p>21 once they were placed?</p> <p>22 A. In person?</p> <p>23 Q. Yes.</p> <p>24 A. Not on the day they were placed.</p>

<p style="text-align: right;">222</p> <p>1 Q. At some point later did you observe 2 them? 3 A. I can't remember. 4 Q. You can't remember whether you 5 actually viewed the barriers? 6 A. Whether I was there in person at 7 some point, I can't remember. 8 Q. But your recollection is that these 9 photographs fairly and accurately depict the 10 location and appearance of the barriers in 11 February of 2015; is that fair to say? 12 A. Could you repeat the question? 13 Q. The pictures that have been marked 14 as Exhibit 186, do they fairly and accurately 15 depict the barriers as they appeared in February 16 of 2015? 17 A. I believe so. 18 Q. Okay. Now, in one of your letters 19 you describe the barriers as being aviation 20 compliant. Do you know what that means? 21 A. Not off the top of my head. It was 22 one of my letters or one of Mr. Burlingham's 23 letters? 24 Q. I'm not sure.</p>	<p style="text-align: right;">224</p> <p>1 barrier that was used. Does that look correct 2 to you? 3 A. Approximately. 4 Q. Okay. The one on the left-hand 5 side immediately next to it says, "FAA 6 compliant". Do you see that? 7 A. Mm-hmm. 8 Q. That's a significantly shorter 9 component. Do you see that? 10 A. Yes. 11 Q. And as a pilot, do you know why 12 barricades are -- how they are deemed to be 13 aviation compliant? 14 A. No. 15 Q. Moving on. 16 MR. HARTZELL: Off the record 17 for a second. 18 MR. FEE: Sure. Off the 19 record. 20 (Off-record conference) 21 MR. FEE: Back on the record. 22 I'm going to mark this as the next 23 exhibit. 24 (Exhibit 189, E-mail dated February 14,</p>
<p style="text-align: right;">223</p> <p>1 A. I would like to clarify that. 2 Q. Mr. Burlingham's letters. I stand 3 corrected. 4 A. Okay. 5 Q. In one of Mr. Burlingham's letters, 6 he describes them as aviation compliant. 7 MR. FEE: Can I mark this? 8 (Exhibit 187, Photograph, marked for 9 identification) 10 Q. (By Mr. Fee) I show you a document 11 and turn you to page -- 12 MR. FEE: I'm going to mark 13 this as the next exhibit. 14 (Exhibit 188, Rochester Rotational 15 Molding, Inc., Safety Barricade System, 16 marked for identification) 17 Q. (By Mr. Fee) I show you a 18 document. And I understand that you did not 19 participate in the choosing or the erection of 20 the barriers. But I know you're a pilot, so 21 that's why I want to ask you this question. 22 On Page 3, there are pictures of 23 various types of barriers. And the one on the 24 top right-hand side, I am told, is the type of</p>	<p style="text-align: right;">225</p> <p>1 2015, marked for identification) 2 Q. (By Mr. Fee) Mr. Eichleay, I'm 3 showing you a document marked as Exhibit 189. 4 It appears to be an e-mail from you to Mr. 5 Maguire dated February 14. Have you seen this 6 before? 7 A. Yes. 8 Q. And notwithstanding the fact that 9 you testified that Mr. Burlingham was handling 10 the details of the barrier erection, do you know 11 why it is that you crafted this e-mail to 12 Mr. Maguire and not Mr. Burlingham? 13 A. No. 14 Q. Okay. Were you -- you said you 15 were not present when the barriers were placed, 16 correct? 17 A. Correct. 18 Q. And you were not present when the 19 Norwood police officer spoke to Mr. Donovan, 20 correct? 21 A. Correct, but I took input from the 22 people who were writing this letter and Nick. 23 Q. I understand. I'm wanting to 24 establish the basis for the statements contained</p>

<p style="text-align: right;">226</p> <p>1 in this letter to Mr. Maguire. And I'm just 2 going to go through each of the paragraphs and 3 confirm that it's not based on your percipient 4 knowledge but rather what was reported to you by 5 members of your staff, correct? 6 A. Correct. 7 Q. And so the third paragraph starts, 8 "Just after 7pm, FlightLevel lineman Jesse 9 Coreas noticed several of the barriers had been 10 tipped over and moved." Did you see that? 11 A. Yes. 12 Q. You didn't observe any of the 13 barriers after they were tipped over, did you? 14 A. Just on camera. 15 Q. Okay. So is it fair to say that 16 all of the information contained in the Notice 17 of Incident e-mail that you sent to Mr. Maguire 18 was information that was reported to you in some 19 fashion? 20 A. I'd have to read the whole thing to 21 answer that accurately. 22 Q. I'm wondering what, if any, 23 aspect -- 24 A. Nothing that I could think of, but</p>	<p style="text-align: right;">228</p> <p>1 A. Did they authorize us to do so? 2 Q. Yes. 3 A. No. 4 Q. In fact, FlightLevel determined 5 solely on its own to put glycol into the 6 barriers; is that correct? 7 A. I don't know. 8 Q. Do you know why FlightLevel put 9 glycol in the barriers? 10 A. I'm assuming to keep the 11 antifreeze -- for the antifreeze properties to 12 keep it from freezing and breaking the barrier 13 itself. 14 Q. Are you aware of any regulations or 15 rules governing the use of glycol at the 16 airport? 17 A. I'm aware, but I couldn't tell you 18 any detail about them. 19 Q. Are you aware of the fact that 20 whenever glycol is used the rules and 21 regulations at the airport require that it be 22 labeled? 23 A. No. 24 Q. Was there any label on any of the</p>
<p style="text-align: right;">227</p> <p>1 do you want me to read the whole thing so I can 2 answer definitively? 3 Q. I'm trying to save you that. Let 4 me ask you one question. Was there any part of 5 the barrier erection, interactions with BEH, or 6 barrier tipping that you observed personally? 7 A. Physically, no. 8 Q. Okay. Now, after you sent that 9 e-mail to Mr. Maguire, what did he do, do you 10 know? 11 A. I think he wrote some kind of 12 e-mail demanding some accountability. 13 Q. You told him that the barriers were 14 filled with glycol, right -- or did you tell 15 them they were filled with glycol? 16 A. Yes. 17 Q. And who authorized the use of 18 glycol in those barriers? 19 A. I'm not sure. 20 Q. Did Mr. Maguire authorize 21 FlightLevel to utilize glycol in the barriers? 22 A. Not that I know of. 23 Q. Okay. Did the FAA authorize 24 FlightLevel to insert glycol into the barriers?</p>	<p style="text-align: right;">229</p> <p>1 barriers indicating that there was glycol in it? 2 A. Not that I know of. 3 Q. Are you familiar with the rules and 4 regulations of the Norwood Airport? 5 A. Vaguely. 6 MR. FEE: I'm going to mark 7 this as the next exhibit. 8 (Exhibit 190, Norwood Memorial Airport 9 General Regulations, marked for 10 identification) 11 Q. (By Mr. Fee) I'm going to pull to 12 right here, which is the Storm Water Pollution 13 Prevention Plan, do you see that, right after 14 the end of the minimum standards? 15 A. What page? Is it marked? 16 Q. No. Let me direct your attention 17 to the Storm Water Pollution Prevention Plan or 18 SWPP? 19 A. Yes. 20 Q. First of all, the document that I 21 have handed you has been marked as 190. Do you 22 recognize it to be the Norwood Memorial Airport 23 General Regulations? 24 A. Yes.</p>

<p style="text-align: right;">230</p> <p>1 Q. Do you recognize them to be the</p> <p>2 documents in effect governing operations at the</p> <p>3 airport?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And was it your</p> <p>6 understanding that a Storm Water Pollution</p> <p>7 Prevention Plan was part of the general</p> <p>8 regulations in 2015?</p> <p>9 A. I don't know.</p> <p>10 Q. Is it your belief and testimony</p> <p>11 that FlightLevel complied with the Storm Water</p> <p>12 Pollution Prevention Plan in erecting the</p> <p>13 barriers and filling them with glycol?</p> <p>14 MR. HARTZELL: Objection.</p> <p>15 A. I cannot say with any certainty.</p> <p>16 Q. Do you know if FlightLevel did</p> <p>17 anything to ensure that it was compliant with</p> <p>18 the Storm Water Prevention Plan provisions of</p> <p>19 the general regulations?</p> <p>20 A. I don't know, but I would point out</p> <p>21 that it appears that the date of this is after</p> <p>22 the barriers.</p> <p>23 Q. Yes. I saw your counsel point your</p> <p>24 attention to that. What makes you think that</p>	<p style="text-align: right;">232</p> <p>1 A. I know it exists.</p> <p>2 Q. Do you know what, if anything,</p> <p>3 FlightLevel did to comply with the spill</p> <p>4 prevention control and countermeasure plan in</p> <p>5 effect at the Norwood Airport when it erected</p> <p>6 the barriers and filled them with glycol?</p> <p>7 A. No, but I know we abided by it</p> <p>8 after the contents were spilled.</p> <p>9 Q. And how do you know that?</p> <p>10 A. I remember seeing documentation --</p> <p>11 a document to that effect and the process we</p> <p>12 went through to comply.</p> <p>13 Q. After the glycol was spilled, what</p> <p>14 did FlightLevel do?</p> <p>15 A. We remediated the spill.</p> <p>16 Q. And how did you do that?</p> <p>17 A. I believe we used Cyn</p> <p>18 Environmental, our environmental contractor, to</p> <p>19 take the necessary measures.</p> <p>20 Q. Why did you do that? Were you</p> <p>21 directed to do that by Mr. Maguire?</p> <p>22 A. I can't remember.</p> <p>23 MR. FEE: I'm going to mark</p> <p>24 this as the next exhibit.</p>
<p style="text-align: right;">231</p> <p>1 it's dated after the barriers?</p> <p>2 A. I see 2015 and Mar, which I assume</p> <p>3 stands for March, but I could be wrong.</p> <p>4 Q. You don't know what the date of</p> <p>5 this is, do you?</p> <p>6 A. It's a guess.</p> <p>7 Q. Do you know what, if anything,</p> <p>8 FlightLevel did to comply with the storm water</p> <p>9 pollution prevention plan in erecting the</p> <p>10 barriers and filling them with glycol?</p> <p>11 A. Not off the top of my head, no.</p> <p>12 Q. Do you know that there's also a</p> <p>13 spill prevention control and countermeasure plan</p> <p>14 as part of the general regulations from Norwood</p> <p>15 Memorial Airport?</p> <p>16 A. Yes.</p> <p>17 Q. And can I draw your attention to</p> <p>18 those documents as well?</p> <p>19 A. Sure.</p> <p>20 MR. HARTZELL: You're asking</p> <p>21 about what?</p> <p>22 Q. (By Mr. Fee) The spill prevention</p> <p>23 control and countermeasure plan, are you</p> <p>24 familiar with that?</p>	<p style="text-align: right;">233</p> <p>1 (Exhibit 191, E-mail Exchange dated</p> <p>2 February 14, 2015, marked for</p> <p>3 identification)</p> <p>4 Q. (By Mr. Fee) Exhibit 191 appears</p> <p>5 to be an e-mail from and to -- I'm sorry, the</p> <p>6 bottom of 191, Page 1, is an e-mail from Mr.</p> <p>7 Maguire to you dated February 14, 2015. Do you</p> <p>8 see that?</p> <p>9 A. Mm-hmm.</p> <p>10 Q. And second paragraph says,</p> <p>11 "Ultimately, it may be determined that the</p> <p>12 liability rests elsewhere - I would need town</p> <p>13 counsel's opinion on this - though the barriers</p> <p>14 are FlightLevel's and there may be</p> <p>15 responsibility here for your company." Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you receive this in or about</p> <p>19 February of 2015?</p> <p>20 A. I believe so.</p> <p>21 Q. Did you construe that as direction</p> <p>22 from the NAC or the airport manager to clean up</p> <p>23 the glycol that had been spilled?</p> <p>24 A. I don't know.</p>

<p style="text-align: right;">234</p> <p>1 Q. Did you feel -- strike that. 2 Do you know what glycol is used 3 for? 4 A. I know some uses. 5 Q. What are some of the uses? 6 A. For removing ice. 7 Q. And it's used frequently at the 8 airport, is it not? 9 A. I wouldn't say frequently, no. 10 Q. In winter? 11 A. Not that I know of. 12 MR. FEE: I'm going to mark 13 this as the next exhibit. 14 (Exhibit 192, E-mail dated February 18, 15 2015, marked for identification) 16 Q. (By Mr. Fee) Do you know what an 17 MSDS is? 18 A. Not really. 19 Q. 192 is an e-mail from Mr. DeLaria 20 to Julie Hutchinson. Do you know who she is? 21 A. No. 22 Q. Do you know why Mr. DeLaria 23 provided a copy of the MSDS for propylene glycol 24 to Ms. Hutcheson?</p>	<p style="text-align: right;">236</p> <p>1 Q. The previous paragraph identifies 2 Ms. Hutcheson as the branch chief for the 3 Department of Environmental Protection Southeast 4 Region. Do you see that? 5 A. Yes. 6 Q. And Mr. Lebow reports that Ms. 7 Hutcheson had requested the MSDS sheets for 8 propylene glycol. Do you see that? 9 A. Yes. 10 Q. And he concludes, in the bottom of 11 that paragraph on the first page, "Under the 12 Massachusetts Contingency Plan" -- and I will 13 skip the citation -- "...contains a list of 14 chemicals that the department regulates. 15 Propylene glycol" -- and I'll skip the 16 citation -- "...is not a chemical listed on this 17 table and therefore No Further Action is 18 required by the department. But despite that, 19 the product was removed from the tarmac quickly 20 by Cyn Oil." Did I read that correctly? 21 A. No. It was removed from the tarmac 22 quickly by Cyn Oil. 23 Q. "But despite that, the product was 24 removed from the tarmac quickly from Cyn Oil."</p>
<p style="text-align: right;">235</p> <p>1 A. I do not. 2 Q. Do you know if Ms. Hutcheson works 3 for the DEP? 4 A. I don't. 5 Q. Do you know if glycol is regulated 6 by the DEP? 7 A. Not off the top of my head. 8 MR. FEE: I'm going to mark 9 this as the next exhibit. 10 (Exhibit 193, Letter dated February 24, 11 2015, marked for identification) 12 Q. (By Mr. Fee) 193 is a letter to 13 Mr. Donovan dated February 24, 2015, from Mr. 14 Lebow. Have you seen this letter before? 15 A. No. 16 Q. Have you had a chance to read this? 17 A. No. Would you like me to? 18 Q. Please do. 19 The bottom paragraph on Page 1 says 20 FSL Associates, which is Mr. Lebow's company, 21 contacted Ms. Hutcheson on February 17, 2015, to 22 resolve any outstanding issue the department 23 might be considering. Do you see that? 24 A. Yes.</p>	<p style="text-align: right;">237</p> <p>1 Did I read that correctly? 2 A. Yes. 3 Q. Is it your understanding that the 4 spill of propylene glycol was quickly remedied 5 and did not constitute an issue that required 6 DEP investigation or sanctions? 7 MR. HARTZELL: Objection. 8 A. I cannot say with certainty. 9 Q. Were you aware of any DEP 10 investigation regarding the environmental 11 consequences of the glycol spill? 12 A. Not that I know of. 13 Q. Did you ever receive any 14 correspondence from the DEP regarding the 15 environmental consequences related to the glycol 16 spill? 17 A. I can't remember, but again I 18 wasn't involved in this. 19 Q. Do you know how much glycol was 20 spilled? 21 A. Not off the top of my head, no. 22 Q. Do you know how much glycol is 23 allowed to be used on Norwood Airport on an 24 annual basis pursuant to the rules and</p>

<p style="text-align: right;">238</p> <p>1 regulation?</p> <p>2 A. No.</p> <p>3 MR. FEE: I would like to mark</p> <p>4 this as the next exhibit.</p> <p>5 (Exhibit 194, Norwood Police Department</p> <p>6 Narrative for Patrol James Payne, marked</p> <p>7 for identification)</p> <p>8 Q. (By Mr. Fee) Exhibit 194 is A</p> <p>9 Police Report dated 2/16/15. Have you ever seen</p> <p>10 this before?</p> <p>11 A. I believe so.</p> <p>12 Q. Were you interviewed in connection</p> <p>13 with this Police Report?</p> <p>14 A. Not that I can remember.</p> <p>15 Q. Did you provide any information to</p> <p>16 the police in connection with the preparation of</p> <p>17 this police report?</p> <p>18 A. I don't know.</p> <p>19 Q. Did you provide or did you</p> <p>20 authorize FlightLevel representatives to provide</p> <p>21 video surveillance to the police for the</p> <p>22 preparation of this report?</p> <p>23 A. I can't remember.</p> <p>24 Q. Do you know if anywhere in</p>	<p style="text-align: right;">240</p> <p>1 MR. HARTZELL: Objection.</p> <p>2 A. I don't know.</p> <p>3 Q. Were you ever present at any</p> <p>4 hearings or court proceedings that involved</p> <p>5 potential criminal charges being filed against</p> <p>6 Mr. Silva or Mr. Donovan?</p> <p>7 A. I showed up at the building but was</p> <p>8 not allowed into the room.</p> <p>9 Q. Why did you go?</p> <p>10 A. Because I had an interest in seeing</p> <p>11 justice be done.</p> <p>12 Q. And you believed that Mr. Silva and</p> <p>13 Mr. Donovan should be charged criminally for</p> <p>14 what you contend was the tipping of the</p> <p>15 barriers?</p> <p>16 A. Not necessarily. I believe they</p> <p>17 should own up to what they did. That's all.</p> <p>18 Q. Did you speak with any prosecutor</p> <p>19 or a police representative when you went to</p> <p>20 court in connection with the criminal charges or</p> <p>21 any proceedings involving Mr. Donovan and</p> <p>22 Mr. Silva?</p> <p>23 A. Did I speak with a --</p> <p>24 Q. Any District Attorney or police</p>
<p style="text-align: right;">239</p> <p>1 this report the police identified either</p> <p>2 Mr. Silva or Mr. Donovan as being parties</p> <p>3 responsible for spilling the glycol?</p> <p>4 A. I would have to read the police</p> <p>5 report to answer that.</p> <p>6 Q. Do you know if any charges were</p> <p>7 ever pressed or instituted against Mr. Silva or</p> <p>8 Mr. Donovan in connection with the glycol spill?</p> <p>9 A. I believe there was a continuance</p> <p>10 without a finding issued by the ruling</p> <p>11 authority, but there was no determination of</p> <p>12 guilt or liability or innocence.</p> <p>13 Q. My question is different. And I</p> <p>14 know that you're not -- it's not part of your</p> <p>15 profession to be familiar with criminal law, but</p> <p>16 I would represent to you that in the criminal</p> <p>17 system persons are charged with a crime, and</p> <p>18 then there's an adjudication as to whether or</p> <p>19 not they are guilty, not guilty, or their</p> <p>20 charges are continued without a finding.</p> <p>21 And my question to you is: Do you</p> <p>22 know whether the Norwood police ever filed</p> <p>23 formal charges against Mr. Donovan or Mr. Silva</p> <p>24 as a result of the glycol spill?</p>	<p style="text-align: right;">241</p> <p>1 representative.</p> <p>2 A. A police representative, yes.</p> <p>3 Q. And what did they say to you and</p> <p>4 what did you say to them?</p> <p>5 A. I can't remember.</p> <p>6 Q. Now, as a result of this barrier</p> <p>7 incident, at some point BEH filed suit against</p> <p>8 FlightLevel; is that right?</p> <p>9 A. I don't know that it was a direct</p> <p>10 result of the barrier incident, but at some</p> <p>11 point BEH filed suit against FlightLevel, yes.</p> <p>12 Q. And as part of that suit, BEH</p> <p>13 requested the Court issue a preliminary</p> <p>14 injunction, correct?</p> <p>15 A. I'm not sure what it was in</p> <p>16 connection to.</p> <p>17 Q. Okay. Was it your recollection</p> <p>18 that at some point BEH went to court seeking an</p> <p>19 Order directing FlightLevel to remove the</p> <p>20 barriers?</p> <p>21 A. Yes.</p> <p>22 Q. And were you present at that</p> <p>23 proceeding?</p> <p>24 A. Yes.</p>

<p style="text-align: right;">242</p> <p>1 Q. Did you testify?</p> <p>2 A. Briefly.</p> <p>3 Q. What did you say?</p> <p>4 A. The judge chalked it all up to a</p> <p>5 harsh winter snow removal issue and I really</p> <p>6 wasn't given an opportunity to explain that this</p> <p>7 is more a weather/snow removal issue. That's a</p> <p>8 summary.</p> <p>9 MR. FEE: I'm going to mark</p> <p>10 this as the next exhibit.</p> <p>11 (Exhibit 195, Affidavit of Kathleen E.</p> <p>12 Kelly, marked for identification)</p> <p>13 Q. (By Mr. Fee) Do you know who</p> <p>14 Kathleen Kelly is?</p> <p>15 A. Yes.</p> <p>16 Q. She's the attorney that was</p> <p>17 representing BEH, right?</p> <p>18 A. Yes.</p> <p>19 Q. And I turn your attention to</p> <p>20 Paragraph 7. This is Ms. Kelly's affidavit that</p> <p>21 was proffered in connection with another</p> <p>22 litigation. But in Paragraph 7 she says,</p> <p>23 "During the March 2, 2015, hearing, Mr. Eichleay</p> <p>24 repeatedly expressed his opinion that if BEH</p>	<p style="text-align: right;">244</p> <p>1 sabotaged by the snowplowing.</p> <p>2 Q. Okay. Anything else?</p> <p>3 A. And about the history of our</p> <p>4 leasehold being torn up. I tried to get through</p> <p>5 the litany of grievances we had but really</p> <p>6 couldn't get anywhere with the judge and was</p> <p>7 basically cut off and told -- it was throughout</p> <p>8 to be this is a snow issue and I've heard so</p> <p>9 many complaints about snow this year since it's</p> <p>10 been a very snowy winter, something to that</p> <p>11 effect, that you guys go settle it, you have</p> <p>12 however many days to propose something. It</p> <p>13 was -- none of that's word for word, but I'm</p> <p>14 trying to recall.</p> <p>15 Q. Okay. Did you talk at all about</p> <p>16 the single FBO exception?</p> <p>17 A. Not that I can remember.</p> <p>18 Q. Did you talk at all about your</p> <p>19 desire to keep BEH from having its FBO approved?</p> <p>20 A. Not that I can recall.</p> <p>21 MR. FEE: I'm going to mark</p> <p>22 this as the next exhibit.</p> <p>23 (Exhibit 196, Order, marked for</p> <p>24 identification)</p>
<p style="text-align: right;">243</p> <p>1 pumped any fuel at the airport, that FlightLevel</p> <p>2 would be unable to compete against BEH and that</p> <p>3 FlightLevel would go out of business. From</p> <p>4 these statements I inferred, I believe fairly,</p> <p>5 that FlightLevel had erected the barriers in</p> <p>6 order to disrupt BEH such that BEH would be</p> <p>7 unable to compete with FlightLevel by selling</p> <p>8 fuel at the airport." Did I read that</p> <p>9 correctly?</p> <p>10 A. You did.</p> <p>11 Q. And I assume you will take great</p> <p>12 issue with the second sentence, but let's focus</p> <p>13 on the first sentence first. Did you say during</p> <p>14 the hearing that you would be unable to compete</p> <p>15 against BEH and FlightLevel would go out of</p> <p>16 business if BEH pumped fuel at the airport?</p> <p>17 A. Not that I recall.</p> <p>18 Q. You don't recall saying that at the</p> <p>19 hearing?</p> <p>20 A. No.</p> <p>21 Q. Do you recall saying anything else</p> <p>22 at the hearing?</p> <p>23 A. I can't say with certainty, but I</p> <p>24 think I spoke about our operation being</p>	<p style="text-align: right;">245</p> <p>1 Q. (By Mr. Fee) The Court entered an</p> <p>2 Order after that hearing, correct?</p> <p>3 A. Yes.</p> <p>4 Q. And is 196 a copy of that Order?</p> <p>5 A. I believe so.</p> <p>6 Q. And it ordered you to remove those</p> <p>7 Jersey barriers, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And it ordered you to plow and</p> <p>10 maintain Lot G in a timely manner; is that</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And have you complied with that?</p> <p>14 A. To the best of my knowledge, yes.</p> <p>15 MR. FEE: I'm going to mark</p> <p>16 this as the next exhibit.</p> <p>17 (Exhibit 197, Letter dated March 6, 2015,</p> <p>18 marked for identification)</p> <p>19 Q. (By Mr. Fee) Have you had a chance</p> <p>20 to look at Exhibit 197?</p> <p>21 A. Yes.</p> <p>22 Q. It's a letter dated March 6, 2015,</p> <p>23 from you to the Airport Commission. Did you</p> <p>24 write it?</p>

<p style="text-align: right;">246</p> <p>1 A. Yes.</p> <p>2 Q. Did you send it?</p> <p>3 A. Yes.</p> <p>4 Q. And the first seven numbered</p> <p>5 paragraphs talk about the various issues and</p> <p>6 items of conduct you allege BEH engaged in,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. And on the second page, first full</p> <p>10 paragraph, you say, "Needless to say, these</p> <p>11 malicious actions, one after another, have</p> <p>12 caused FLN significant direct and indirect</p> <p>13 damages and FLN is currently pursuing recovery</p> <p>14 from BEH through litigation which may not be</p> <p>15 resolved until late 2016 or early 2017." Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. That is pretty optimistic. So that</p> <p>19 litigation that you're referring to is the case</p> <p>20 that we're sitting in deposition for right now,</p> <p>21 correct?</p> <p>22 A. I believe so.</p> <p>23 Q. And I've consistently asked you,</p> <p>24 during the course of the deposition, for you to</p>	<p style="text-align: right;">248</p> <p>1 this will only serve to embolden BEH's general</p> <p>2 disregard for authority and process, and</p> <p>3 encourage its established pattern of reckless</p> <p>4 and imperialistic behavior putting the airport,</p> <p>5 airport users, tenants and businesses at risks</p> <p>6 irrespective of our litigation which will likely</p> <p>7 take over a year to conclude." Did I read that</p> <p>8 correctly?</p> <p>9 A. Yes.</p> <p>10 Q. And so it's pretty strong words,</p> <p>11 wouldn't you say?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. Yes.</p> <p>14 Q. So when you say that BEH had a</p> <p>15 general disregard for authority, what were you</p> <p>16 talking about?</p> <p>17 A. The items numbered one through</p> <p>18 five -- or one through seven rather.</p> <p>19 Q. Okay. So you contend that Items 1</p> <p>20 through 7 represent a general disregard for</p> <p>21 authority; is that right?</p> <p>22 A. And then just the general,</p> <p>23 I'm-being-discriminated-against claims and</p> <p>24 conspiracy and, you know, objection to</p>
<p style="text-align: right;">247</p> <p>1 identify in any way you can the direct or</p> <p>2 indirect damages that you're seeking to recover</p> <p>3 in this action. And I want to ask you again, do</p> <p>4 you have any specific analysis of the amount of</p> <p>5 money or property FlightLevel has lost or is</p> <p>6 seeking to recover in this case as a result of</p> <p>7 the items that are described in numbered</p> <p>8 Paragraphs 1 through 7 on Exhibit 197?</p> <p>9 A. I believe we do. I don't know what</p> <p>10 it is off the top of my head.</p> <p>11 Q. Have you created a document?</p> <p>12 A. I think we have an informal</p> <p>13 spreadsheet that's -- I don't know that it's</p> <p>14 finalized.</p> <p>15 Q. Have you produced it?</p> <p>16 A. I don't know.</p> <p>17 Q. Have you produced any documents</p> <p>18 that would tend to memorialize or quantify the</p> <p>19 damages that FlightLevel seeks to recover in</p> <p>20 this case?</p> <p>21 MR. HARTZELL: Objection.</p> <p>22 A. I don't know.</p> <p>23 Q. In the second full paragraph on</p> <p>24 197, Page 2, you say, "However, in the meantime,</p>	<p style="text-align: right;">249</p> <p>1 helicopter operations.</p> <p>2 Q. It was difficult. Mr. Donovan was</p> <p>3 difficult. Is that what you're saying?</p> <p>4 MR. HARTZELL: Objection.</p> <p>5 A. Sure.</p> <p>6 Q. And he was saying and doing things</p> <p>7 that were threatening to FlightLevel, right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And what's the imperialistic</p> <p>10 behavior that Mr. Donovan engaged in that you</p> <p>11 object to?</p> <p>12 A. Again, I'm not a lawyer, but what</p> <p>13 we believe to be an attempt to usurp part of our</p> <p>14 leasehold for his benefit.</p> <p>15 Q. In the final paragraph you describe</p> <p>16 the airport manager's letter to BEH dated July</p> <p>17 19, 2013, in which Mr. Maguire talked about</p> <p>18 restrictions to BEH's fueling operations, quote,</p> <p>19 "Until such time that BEH can demonstrate to the</p> <p>20 Airport Commission that the property rights of</p> <p>21 others will not be violated..." Do you see</p> <p>22 that?</p> <p>23 A. Yes.</p> <p>24 Q. And then you go on to say that</p>

<p style="text-align: right;">250</p> <p>1 restriction has not and likely cannot be 2 satisfied; is that right? 3 A. Yes. 4 Q. And the language quoted from Mr. 5 Maguire's July 19, 2013, letter refers to a 6 fueling restriction in connection with BEH's 7 sale of fuel as an FBO, correct? 8 MR. HARTZELL: Objection. 9 A. I'm not sure that it's limited to 10 just as an FBO. 11 Q. Okay. Well, it's talking about 12 BEH's sale of fuel, is it not? 13 A. The July 19, 2013, letter? 14 Q. Yes. 15 A. I'd have to take a look at the 16 letter again. 17 Q. Okay. Skip it. You say that those 18 restrictions "has not and likely cannot be 19 satisfied." Is that right? 20 A. We haven't seen anything to 21 demonstrate that they can. 22 Q. Okay. So it's your conjecture, 23 therefore, that BEH would not be able to 24 self-fuel on the airport without violating the</p>	<p style="text-align: right;">252</p> <p>1 March 12, 2015. On Page 2 there's an e-mail to 2 you from Mr. Maguire that says, "At yesterday's 3 NAC meeting Nick Burlingham was using a poster 4 board representation of the Lots F, G, H lease 5 lots, and easements to illustrate how the 6 abutting properties corresponded with one 7 another. Norwood Town Counsel Brandon Moss has 8 asked if he could have a copy of this overlay. 9 Is this possible?" Do you see that? 10 A. Yes. 11 Q. Were you present at the meeting on 12 March 11, 2015? 13 A. I believe so. 14 Q. Do you recall Mr. Burlingham's 15 presentation? 16 A. With the poster board, yes. 17 Q. What was the purpose of the 18 presentation? 19 A. I can't remember exactly, but it 20 obviously involved leasehold boundaries and 21 delineations and things of that nature. 22 Q. Did it have anything to do with 23 BEH? 24 A. Probably.</p>
<p style="text-align: right;">251</p> <p>1 property rights of FlightLevel. Is that what 2 you're saying in this letter? 3 A. That's our conjecture, yes. 4 Q. Okay. Now, at some point you 5 appeared before the NAC and made a PowerPoint 6 presentation. Do you recall that? 7 A. You have to be a little more 8 specific. 9 Q. Do you recall appearing before the 10 NAC in or about March of 2015? 11 A. March of 2015? 12 Q. Yes. 13 A. With a PowerPoint presentation? 14 Q. Yes. 15 A. No. I don't recall. 16 MR. FEE: I'm going to mark 17 this as the next exhibit. 18 (Exhibit 198, E-mail dated March 12, 2015, 19 marked for identification) 20 Q. (By Mr. Fee) Have you seen 21 Exhibit 198? 22 A. Yes. 23 Q. 198 appears to be an e-mail from 24 Mr. Maguire to you, cc: Brandon Moss, dated</p>	<p style="text-align: right;">253</p> <p>1 Q. And so you took the opportunity, on 2 the first page of this document, to repeat your 3 contentions to Mr. Maguire and Mr. Moss and 4 Mr. Ryan that BEH had no right to operate on Lot 5 G. Is that fair to say? 6 A. In connection with Lot F, yes. 7 Q. And did you write this e-mail or 8 was this Nick's work? 9 A. Combination. 10 Q. Okay. And you repeat on Page 2 11 your argument, that if BEH had only reduced the 12 size of its hangar it would have no problems; is 13 that right? 14 A. In our opinion. Where does it say 15 that? 16 Q. Second paragraph. 17 A. Yes, that they would have been able 18 to fuel on its own leasehold. 19 Q. If they had a smaller building, 20 they would have more ramp space or they would 21 have an apron where they could have fueled 22 planes. Is that your contention? 23 MR. HARTZELL: Objection. 24 A. No.</p>

<p style="text-align: right;">254</p> <p>1 Q. What are you contending? What's 2 wrong with the size of the hangar? 3 A. If it had been smaller. 4 Q. If it had been smaller, then they 5 would have been able to fuel planes on their 6 leasehold? 7 A. It could have been designed in such 8 a way that could have been accomplished, yes. 9 Q. Do you have any analysis to suggest 10 that that's true? Did you consult any engineer 11 or professional that gave you that opinion? 12 A. Google Earth has a great function 13 for measuring distances and square footages and 14 that kind of thing. I've fiddled around with 15 that, but nothing is official or stamped or 16 anything to that formal effect. 17 Q. So the answer to my question is no? 18 A. Could you repeat the question? 19 Q. Sure. Do you have any expert 20 analysis or report suggesting that if BEH had 21 built a smaller hangar it would be able to fuel 22 on its lot? 23 A. Not expert analysis, but you don't 24 have to be an expert to do the measurements.</p>	<p style="text-align: right;">256</p> <p>1 restructured its site design, when repeatedly 2 warned by the NAC over two years ago, BEH would 3 now be able to operate its fueling facility on 4 its own leasehold, right? 5 A. Yes. 6 Q. And you contend that BEH's 7 inability to operate a fueling facility on its 8 leasehold is entirely BEH's -- of BEH's doing, 9 correct? 10 MR. HARTZELL: Objection. 11 A. Repeat the question. 12 Q. You contend that the reason BEH is 13 not able to fuel on its leasehold is entirely of 14 its own doing, correct? 15 A. It was our opinion at this time 16 that they couldn't do it, that we weren't the 17 experts. They may be able to do it. Prove me 18 wrong. 19 Q. Why does BEH have to prove anything 20 to you? 21 A. You don't, but -- it was something 22 in the way you worded the question that threw me 23 off. 24 Q. I'm happy to rephrase it.</p>
<p style="text-align: right;">255</p> <p>1 Q. Okay. And so do you consider 2 yourself qualified to opine on whether or not 3 BEH -- the size of BEH's hangar is too big to 4 allow fueling operations? 5 A. I could come up with a design that 6 would allow it, yes. 7 Q. But as you sit here today, you've 8 done no -- you've engaged no experts to confirm 9 that opinion? 10 A. Correct. 11 MR. FEE: I'm going to mark 12 this as the next exhibit. 13 (Exhibit 199, Letter dated June 8, 2015, 14 marked for identification) 15 Q. (By Mr. Fee) Exhibit 199 is a 16 letter dated June 8, 2015, from you to the 17 Selectmen and to the Norwood Airport Commission. 18 Do you recognize it? 19 A. Yes. 20 Q. Did you send it? 21 A. Yes. 22 Q. And you repeat in the third 23 paragraph, do you not, this contention that if 24 BEH had simply reduced the size of its hangar or</p>	<p style="text-align: right;">257</p> <p>1 A. Okay. 2 Q. You believe, do you not, that BEH 3 is solely responsible for the fact that it is 4 not, in your opinion, able to fuel on its 5 leasehold, correct? 6 A. I believe BEH is solely responsible 7 for the design of the building that it currently 8 has. 9 Q. Okay. And it's up to the NAC and 10 the FAA and the fire department to determine 11 whether BEH's design and fuel farm are compliant 12 with applicable regulations, correct? 13 MR. HARTZELL: Objection. 14 A. Yes. 15 Q. But you have consistently, 16 throughout BEH's application process, voiced 17 your opinion that A) their design doesn't comply 18 with applicable regulations and B) a single FBO 19 exception should be applied to deny their 20 application, correct? 21 A. What we've been consistent about 22 informing the NAC over is our property rights, 23 that rules are evenly applied, and what the 24 implications are of a two-FBO airport at the</p>

<p style="text-align: right;">258</p> <p>1 time the letters were written. We have no 2 authority as to whether BEH becomes an FBO or 3 not. 4 Q. But you have consistently advocated 5 that the NAC decide that they not become an FBO? 6 A. We have made our opinion known and 7 we have advocated for our own best interest. 8 Q. And that is to maintain 9 FlightLevel's monopoly on fuel sales at the 10 airport, correct? 11 MR. HARTZELL: Objection. 12 A. No. I reject the premise of the 13 question. 14 Q. Okay. Isn't it in FlightLevel's 15 best interest to maintain a fuel monopoly at the 16 airport? 17 MR. HARTZELL: Objection. 18 A. Again, I reject the premise of the 19 question. 20 Q. You said in a bunch of letters that 21 the NAC should apply the single FBO exception to 22 deny BEH's FBO application, right? 23 A. You have been saying monopoly. 24 Q. I used the word "monopoly", but you</p>	<p style="text-align: right;">260</p> <p>1 Q. Okay. And I know you have no 2 knowledge of this, but would you acknowledge 3 that there are two agendas here, one of which 4 lists your letter and one of which does not? 5 MR. HARTZELL: Objection. 6 A. I don't know what this is. This is 7 what I normally see. 8 Q. Right. The second page is what you 9 normally see, correct? 10 A. Yes. 11 Q. And you normally don't see an 12 agenda detailed as what the first page of 13 Exhibit 200 is, correct? 14 A. Correct. 15 Q. Okay. And so did you attend the 16 June 10, 2015, meeting? 17 A. I can't say with any certainty, but 18 probably. 19 Q. Did they discuss your letter? 20 A. Let's have a look, shall we? 21 Q. Yes. 22 A. This just says, regarding my 23 letter, "No action to be taken by NAC. Since 24 there is a Court Order, Mr. Maguire will have</p>
<p style="text-align: right;">259</p> <p>1 have consistently taken the position with the 2 NAC that it should utilize the single FBO 3 exception to maintain FlightLevel as the sole 4 fuel provider at the airport, right? 5 MR. HARTZELL: Objection. 6 Q. (By Mr. Fee) Correct? 7 A. As the sole fuel provider? 8 Q. Yes. 9 A. I've said it's an option to them. 10 MR. FEE: I'm going to mark 11 this as the next exhibit. 12 (Exhibit 200, Norwood Airport Commission 13 Meeting Agenda, June 10, 2015, marked for 14 identification) 15 Q. (By Mr Fee) I have shown you 16 Exhibit 200, which appears to be the NAC meeting 17 minutes for June 10, 2015. Do you see that? 18 A. Yes. 19 Q. Listed on the first page of the 20 correspondence is your letter dated 6/8/15 from 21 Peter Eichleay to the NAC and BOS. And that 22 appears to refer to Exhibit 199. Would you 23 agree with me? 24 A. Yes.</p>	<p style="text-align: right;">261</p> <p>1 town counsel look at the issue." 2 Q. I understand it says that, but my 3 question to you is: Do you recall any 4 discussion about your letter? 5 A. No. 6 Q. I forgot to ask you, were you at 7 this meeting? 8 A. I answered that. You did ask me. 9 Q. I'm sorry. Do you recall being at 10 the meeting? 11 A. I probably was. 12 Q. Did you participate in any way in 13 the NAC's consideration of BEH's financial 14 information submitted in support of its FBO 15 request? 16 A. Did we participate in the NAC's 17 decision-making process? 18 Q. Yes. 19 A. No. 20 Q. By that I mean, in any public 21 meeting did you comment or offer an opinion 22 regarding any issue regarding BEH's financial 23 information in support of its FBO? 24 A. I would be very surprised if I had.</p>

<p style="text-align: right;">262</p> <p>1 Q. So it's fair to say that you left 2 the determinations regarding whether or not BEH 3 was financially viable to run an FBO to the NAC? 4 A. I can't remember. 5 Q. Okay. I'm wondering if you made 6 any comments or recall writing any letters about 7 BEH's economic viability? 8 A. Not that I can remember. 9 MR. FEE: Okay. I'm going to 10 mark this as the next exhibit. 11 (Exhibit 201, Letter dated September 23, 12 2015, marked for identification) 13 Q. (By Mr. Fee) I'm showing you a 14 letter that's been marked as Exhibit 201. It 15 appears to be from you to the Board of Selectmen 16 and the Airport Commission dated September 23, 17 2015. Do you recall writing this? 18 A. Yes. 19 Q. Did you send it? 20 A. Yes. 21 Q. Now, this is the first time I have 22 seen you comment on the pending Part 16 23 Complaint. Is that your recollection as well? 24 A. I have no recollection.</p>	<p style="text-align: right;">264</p> <p>1 Complaint and open itself to lawsuits which will 2 be significantly harder to defend against than 3 any claim coming from BEH." Did I read that 4 correctly? 5 A. Yes. 6 Q. And then I'll skip the 7 parenthetical, but the next sentence says, "The 8 Town's Part 16 defense carries with it an 9 extremely strong likelihood of success on the 10 merits (which is why BEH and its two-pocket 11 commissioners are pushing so hard for a quick 12 political solution). The probable dismissal of 13 the Complaint will not vindicate the Town and 14 NAC, but more importantly it will eliminate 15 BEH's primary weapon in all future dealings with 16 the Town and airport - the threat of shutting 17 off federal funding if it doesn't get its way." 18 Did I read that correctly? 19 A. Yes. 20 Q. What information did you have to 21 make a determination regarding the strength of 22 the Town's Part 16 defense in September of 2015? 23 A. Just general knowledge. And it 24 seemed like the complaints were somewhat</p>
<p style="text-align: right;">263</p> <p>1 Q. Did you write this or did Nick? 2 A. I believe it was a joint effort. 3 Q. So you -- when I say you, I mean 4 FlightLevel Norwood, LLC -- stayed apprised of 5 the Part 16 Complaint process that was ongoing 6 between BEH and the NAC; is that correct? 7 A. We kept our ears open. 8 Q. And did you review the various 9 filings of the parties with respect to the FAA 10 proceedings? 11 A. I can't remember if we did or 12 didn't. 13 Q. Who provided you with copies of the 14 filings that were made in the FAA proceedings 15 regarding BEH's Part 16 Complaint? 16 A. Like I said, I can't remember if we 17 were provided those. 18 Q. Okay. On the third page of this 19 letter that's been marked as Exhibit 201, you 20 argue in the first paragraph -- and I'm 21 quoting -- "Moreover, if the NAC elects to 22 approve BEH's FBO application at this time, it 23 will render moot its now fully-briefed and 24 fully-submitted defense to BEH's Part 16</p>	<p style="text-align: right;">265</p> <p>1 farfetched. 2 Q. Did you have any idea what the Part 3 16 Complaint alleged? 4 A. I had an idea. 5 Q. Had you read the Part 16 Complaint? 6 A. Not that I can remember. 7 Q. Had you read all of the documents 8 that had been submitted by the Town in defense 9 of the Part 16 Complaint? 10 A. No. 11 Q. So is it fair to say that you 12 were -- I'm sorry, strike that. 13 So is it fair to say that you 14 didn't have a basis -- strike that. 15 What basis did you have for 16 alleging that the Part 16 defense had an 17 extremely strong likelihood of success on the 18 merits? 19 A. The general understanding through 20 going through years of this, that this was all 21 about conspiracy theories and discrimination and 22 they all seemed cockamamie to me. And this is 23 our opinion. 24 Q. I understand. And it's stated with</p>

<p style="text-align: right;">266</p> <p>1 such vigor that I'm wondering if it has any 2 basis.</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. I already told you the basis.</p> <p>5 Q. And your understanding is the Part 6 16 Complaint is a proceeding that's ongoing, 7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And it will be adjudicated at some 10 point?</p> <p>11 A. Yes.</p> <p>12 Q. And the decision will be rendered 13 by the FAA and whether BEH is correct or not 14 will all be revealed, correct?</p> <p>15 A. Correct.</p> <p>16 Q. But at their point in time you're 17 arguing that the NAC should take certain actions 18 based on the perceived strength of its defense 19 in the Part 16 Complaint, right?</p> <p>20 MR. HARTZELL: Objection.</p> <p>21 A. We're stating our opinion that it 22 will render moot its Part 16 defense. That's 23 our opinion.</p> <p>24 Q. Right. It is your opinion. I</p>	<p style="text-align: right;">268</p> <p>1 where it was determined that there would be a 2 hearing.</p> <p>3 Q. Okay. So I'm looking at the update 4 on Page 3, which appears to suggest that a 5 motion was made and it was voted to have 6 Attorney Moss write a memorandum and schedule a 7 hearing regarding the Lot G environmental spill. 8 Do you see that?</p> <p>9 A. Where is it?</p> <p>10 Q. It's in the middle of the third 11 page, the bullet Update, FlightLevel Norwood.</p> <p>12 A. Yes.</p> <p>13 Q. Do you recall being present for 14 that discussion?</p> <p>15 A. I don't recall.</p> <p>16 MR. FEE: I'm going to mark 17 this as the next exhibit. 18 (Exhibit 203, Letter dated November 17, 19 2017, marked for identification)</p> <p>20 Q. (By Mr. Fee) 203 is a letter from 21 you to the Board of Selectmen and the NAC dated 22 November 17, 2017. Have you seen that before?</p> <p>23 A. Yes.</p> <p>24 Q. Did you write it?</p>
<p style="text-align: right;">267</p> <p>1 agree.</p> <p>2 MR. FEE: Off the record. 3 (A recess was taken)</p> <p>4 MR. FEE: Back on the record.</p> <p>5 Q. (By Mr. Fee) Did you attend the 6 show cause hearing on September 30, 2015?</p> <p>7 A. I don't believe it was September 8 30, 2015.</p> <p>9 MR. FEE: I'm going to mark 10 this as the next exhibit. 11 (Exhibit 202, Norwood Airport Commission 12 Meeting Agenda, September 30, 2015, marked 13 for identification)</p> <p>14 A. This appears to be a commission 15 meeting, not the show cause hearing.</p> <p>16 Q. I may have misspoke. Did you 17 attend the commission meeting on September 30, 18 2015, during which the glycol spill was 19 discussed?</p> <p>20 A. I believe so, yes.</p> <p>21 Q. What do you recall about that 22 meeting?</p> <p>23 A. I'm not sure if it was this meeting 24 or the following meeting, but I think that is</p>	<p style="text-align: right;">269</p> <p>1 A. Yes.</p> <p>2 Q. Did you send it?</p> <p>3 A. Yes.</p> <p>4 Q. Did you discuss it with anyone on 5 the Board of Selectmen or the NAC?</p> <p>6 A. No.</p> <p>7 Q. Now, you said earlier that you kind 8 of steered clear of discussing with the NAC 9 whether or not the financial information 10 provided by BEH was sufficient, right?</p> <p>11 A. Yes. I did say something to that 12 effect.</p> <p>13 Q. Okay. And now, in this letter 14 dated November 17, 2017, Paragraph 4A on Page 2 15 appears to weigh into that topic; is that fair 16 to say?</p> <p>17 A. No, not as to what's provided.</p> <p>18 Q. Well, you do say in 4A, "The 19 requirements imposed by the NAC on the airport's 20 tenants have been reasonable, well-considered 21 and uniformly applied. Each, including proof of 22 adequate insurance, a personal guaranty of lease 23 obligations, and a professionally engineered 24 fueling plan to demonstrate that the operations</p>

<p style="text-align: right;">270</p> <p>1 of one tenant do not interfere with the property 2 rights of another is consistent with what 3 sponsors at other airports require, and are 4 easily satisfied by any airport entrant, 5 including FlightLevel which has complied in 6 full." Have I read that correctly? 7 A. Yes. 8 Q. Okay. At this juncture you're 9 opining, are you not, to the NAC about its 10 requirements regarding financial information, 11 personal guarantees, et cetera, from BEH, 12 correct? 13 A. I'm saying I think what they're 14 asking for is appropriate, not unreasonable. 15 Q. Okay. And again, that's your 16 opinion, right? 17 A. It is my opinion, but earlier you 18 asked about the substance of what they should be 19 seeking. 20 Q. Right. 21 A. And here I'm just -- I didn't 22 participate in the conversation where it's 23 determined what the NAC is seeking. 24 Q. I'm only asking you about this</p>	<p style="text-align: right;">272</p> <p>1 A. Not that I can remember. 2 MR. FEE: Okay. I'm going to 3 mark this as the next exhibit. 4 (Exhibit 204, Letter dated December 8, 5 2017, marked for identification) 6 Q. (By Mr. Fee) Exhibit 204 is a 7 letter dated October 8, 2017, from you to the 8 Board of Selectmen and the NAC. Did you write 9 it? 10 A. Nick and I wrote it. 11 Q. Did you send it? 12 A. Yes. 13 Q. What was the purpose of sending 14 this letter? 15 A. We were requested to provide backup 16 documentation to our prior letter. 17 Q. Who asked you to provide backup 18 documentation? 19 A. I think it was Russ. 20 Q. And he asked you to provide backup 21 documentation to your prior letter dated 22 November 17? 23 A. Yes, the one we just looked at. 24 Q. And did he tell you why you should</p>
<p style="text-align: right;">271</p> <p>1 particular letter because it's the first time I 2 have seen you opine to the NAC regarding issues 3 involving personal guarantees or other financial 4 information that's required of BEH. So when I 5 asked you earlier, I asked you if you had ever 6 given any information or opined regarding the 7 financial information that was being requested 8 and you said no, right? 9 MR. HARTZELL: Objection to 10 the form of the question. 11 A. And I think I may have mistook it 12 to mean, did you have any comment on any of the 13 information that was supplied. 14 Q. Okay. 15 A. Or did you have any hand or any 16 comment in devising what information should be 17 requested or required. 18 Q. Okay. Let me recharacterize the 19 question, so we're clear. 20 Prior to November 17, had you ever 21 written to the NAC or spoken at a NAC meeting 22 and offered an opinion regarding what financial 23 information should be required from BEH in 24 support of its FBO application?</p>	<p style="text-align: right;">273</p> <p>1 provide backup documentation? 2 A. I can't remember, but it may have 3 been requested by the Selectmen since that went 4 to the Selectmen. That's popping into my head, 5 but I can't say with certainty whether that was 6 the reason. 7 Q. Did he ask you to provide backup 8 documentation to your letter of November 17 in 9 an e-mail or in person? 10 A. I can't remember. 11 MR. FEE: I'm going to mark 12 this as the next exhibit. 13 (Exhibit 205, Guaranty Agreement, marked 14 for identification) 15 Q. (By Mr. Fee) You provided a 16 personal guarantee, correct? 17 A. I believe so. 18 Q. It guarantees the obligations of 19 FlightLevel under various leases at the airport, 20 correct? 21 A. Yes. 22 Q. And this is a copy of that 23 guarantee? 24 A. I would assume so.</p>

<p style="text-align: right;">274</p> <p>1 Q. Well, you don't know? Is that your 2 signature on Page 4? 3 A. Yes. 4 Q. So when you signed this, did you 5 sign this on or about the 23rd day of February, 6 2017? 7 A. I would assume so. 8 Q. And at that time you had no 9 equitable interest in FlightLevel Norwood, 10 correct -- 11 MR. HARTZELL: Objection. 12 Q. (By Mr. Fee) -- other than your 13 phantom incentive compensation plan? 14 A. Correct, phantom equity plan. 15 Q. Thank you for clarifying. 16 MR. FEE: I'm going to mark 17 this as the next exhibit. 18 (Exhibit 206, Diagram, marked for 19 identification) 20 Q. (By Mr. Fee) I know we talked 21 about 206 at your last deposition. And my 22 recollection was that you testified that 23 Mr. Burlingham was primarily responsible for 24 creating and memorializing the information that</p>	<p style="text-align: right;">276</p> <p>1 Baltimore. 2 Q. How is she related to FlightLevel 3 Norwood? 4 A. She contributed equity to the 5 purchase of the assets of Eastern Air Center. 6 Q. And what about Morris Helman? 7 A. He's an individual also from 8 Baltimore. 9 Q. And he contributed to the 10 acquisition? 11 A. Yes. 12 Q. And I can't read the last person. 13 A. Monica Teplis. 14 Q. Is she also an investor? 15 A. Yes. 16 Q. And when FlightLevel purchased or 17 acquired the assets of Eastern Air Center, did 18 it take on debt? 19 A. Yes. 20 Q. To finance that transaction? 21 A. Yes. 22 Q. How much debt did it take on to 23 finance that transaction? 24 MR. HARTZELL: Hold on. We</p>
<p style="text-align: right;">275</p> <p>1 is contained in 206. Is that a fair statement? 2 A. Yes. 3 Q. So I'm going ask Mr. Burlingham 4 about this and not you, but is there anything 5 different from -- has anything transpired since 6 the last time you and I spoke at your last 7 deposition regarding your participation in the 8 creation of this document? 9 A. No. 10 MR. FEE: I'm going to mark 11 this as the next exhibit. 12 (Exhibit 207, Norwood Memorial Airport 13 2007-2008 Commercial Permit Application, 14 marked for identification) 15 Q. (By Mr. Fee) Exhibit 207 appears 16 to be a Commercial Permit Application for 17 FlightLevel for 2007-2008. Do you recognize it? 18 A. Yes. 19 Q. And at that time you listed 20 individuals, on Page 2, who had more than 10 21 percent interest in the company; is that right? 22 A. Yes. 23 Q. Who is Barbara Kassap? 24 A. She's a woman who lives in</p>	<p style="text-align: right;">277</p> <p>1 need to be careful because there's a 2 Confidentiality Agreement in place 3 regarding that transaction. I'm not sure 4 they're able to disclose it. Can I just 5 speak with them? 6 MR. FEE: Sure. Off the 7 record. 8 (Off-record conference) 9 MR. HARTZELL: Back on the 10 record. I'm informed that there is some 11 Confidentiality Agreement that would 12 preclude Mr. Eichleay from disclosing the 13 amount of debt that was taken on. 14 MR. FEE: Can we agree that 15 that information can be the subject of an 16 attorney's-eyes-only disclosure? 17 MR. HARTZELL: Possibly. I 18 need to review the documents concerning 19 this because it was long before my time. 20 And I wasn't involved, so -- 21 MR. FEE: Okay. If we could 22 have a good-faith discussion about whether 23 or not I could get an answer to that. 24 MR. HARTZELL: I'll be happy</p>

<p style="text-align: right;">278</p> <p>1 to have a good-faith discussion with you</p> <p>2 about it once I've had a chance to review</p> <p>3 the matter in detail, which I can tell you</p> <p>4 is probably not going to happen this week,</p> <p>5 just so you know.</p> <p>6 MR. FEE: I understand.</p> <p>7 Q. (By Mr. Fee) So we were talking</p> <p>8 about the commercial permit, 2007-2008. Do you</p> <p>9 recall what documents, if any, you submitted to</p> <p>10 the NAC in connection with the Commercial Permit</p> <p>11 Application that's been marked as Exhibit 207?</p> <p>12 A. I don't recall.</p> <p>13 Q. Did they ask you for a personal</p> <p>14 guarantee?</p> <p>15 A. I can't remember.</p> <p>16 Q. Did they ask you for an irrevocable</p> <p>17 letter of credit?</p> <p>18 A. Not that I remember.</p> <p>19 Q. Did they ask you for a fueling</p> <p>20 plan?</p> <p>21 A. I can't remember.</p> <p>22 Q. Did they ask you for any balance</p> <p>23 sheets or financial statements?</p> <p>24 A. They did at some point. Whether or</p>	<p style="text-align: right;">280</p> <p>1 of its 2007-2008 Commercial Permit Application?</p> <p>2 A. Not that I can remember.</p> <p>3 MR. FEE: I'm going to mark</p> <p>4 this as the next exhibit.</p> <p>5 (Exhibit 209, Affidavit of Peter Eichleay</p> <p>6 in Support of Verified Statements of</p> <p>7 Facts, marked for identification)</p> <p>8 Q. (By Mr. Fee) I'm going to show you</p> <p>9 a document marked as Exhibit 209. It appears to</p> <p>10 be the Affidavit of Peter Eichleay in Support of</p> <p>11 Verified Statement of Facts with an attached</p> <p>12 Statement of Verified Facts, which is part of</p> <p>13 the record in the litigation that we're involved</p> <p>14 in. Could you take a look at that, please?</p> <p>15 A. Yes. Okay. I'm not going to read</p> <p>16 this word for word.</p> <p>17 Q. No. I just want to ask you whether</p> <p>18 you signed the affidavit, which is the first</p> <p>19 page.</p> <p>20 A. That looks like my signature, yes.</p> <p>21 Q. And I won't ask you to read it word</p> <p>22 for word. But as you sit here today, is there</p> <p>23 anything that you believe that's in the</p> <p>24 affidavit that's untrue or you want to change?</p>
<p style="text-align: right;">279</p> <p>1 not it was in connection with this, I can't</p> <p>2 remember.</p> <p>3 Q. Do you recall what information you</p> <p>4 submitted in support of the Commercial Permit</p> <p>5 Application in 2007 or 2008?</p> <p>6 A. No.</p> <p>7 MR. FEE: I'm going to mark</p> <p>8 this as the next exhibit.</p> <p>9 (Exhibit 208, Letter dated January 9,</p> <p>10 2008, marked for identification)</p> <p>11 Q. (By Mr. Fee) Exhibit 208 appears</p> <p>12 to be a multi-page document. The first page of</p> <p>13 which is entitled Eastern Air Center, Inc.,</p> <p>14 Renewal Certificates dated January 9, 2008, and</p> <p>15 then there's what appears to be a PowerPoint</p> <p>16 presentation that follows. And if you could</p> <p>17 take a look at that and tell me if that</p> <p>18 refreshes your recollection as to what</p> <p>19 documents, if any, FlightLevel submitted in</p> <p>20 support of its 2007-2008 Commercial Permit</p> <p>21 Application.</p> <p>22 A. Yes. I believe this was submitted.</p> <p>23 Q. Okay. Do you recall any other</p> <p>24 document that FlightLevel submitted in support</p>	<p style="text-align: right;">281</p> <p>1 Let me do it this way. Rather than make you sit</p> <p>2 and read the entire affidavit, would you pledge</p> <p>3 to me if there is anything you want to change or</p> <p>4 you believe is incorrect, that you would have</p> <p>5 your counsel report that to me within a week?</p> <p>6 A. Could we make it two weeks?</p> <p>7 Q. That's fine.</p> <p>8 MR. FEE: Is that okay with</p> <p>9 you? I don't want to make him sit here</p> <p>10 and read it.</p> <p>11 MR. HARTZELL: That's fine.</p> <p>12 MR. FEE: Today is the 28th?</p> <p>13 THE WITNESS: Could we just</p> <p>14 say the end of the second week, so two</p> <p>15 weeks and three days or whatever it is?</p> <p>16 Today's Wednesday. So next week and by</p> <p>17 Friday the following week.</p> <p>18 MR. FEE: Could you tell me</p> <p>19 what day that would be?</p> <p>20 THE WITNESS: April 13.</p> <p>21 MR. HARTZELL: Could you -- as</p> <p>22 part of this, it would be greatly</p> <p>23 appreciated if you could have copies made</p> <p>24 of it so he can take a copy, I can take a</p>

<p style="text-align: right;">282</p> <p>1 copy.</p> <p>2 MR. FEE: We'll do that right</p> <p>3 now.</p> <p>4 MR. HARTZELL: Thank you.</p> <p>5 MR. FEE: I'm going to make a</p> <p>6 copy and have a quick chat with my client,</p> <p>7 and then I will be right back. Off the</p> <p>8 record.</p> <p>9 (A recess was taken)</p> <p>10 MR. FEE: Back on the record.</p> <p>11 Q. (By Mr. Fee) I believe you</p> <p>12 testified that Mr. Radlow's ownership</p> <p>13 interest -- or took over ownership of</p> <p>14 FlightLevel effective either December 31, 2016,</p> <p>15 or January 1, 2017?</p> <p>16 MR. HARTZELL: Objection.</p> <p>17 A. Yes.</p> <p>18 Q. And so -- go ahead.</p> <p>19 A. You said December 31, '16, or</p> <p>20 January 1, '17?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. So as of that transfer of</p> <p>24 ownership, did Mr. Radlow then become</p>	<p style="text-align: right;">284</p> <p>1 Q. Have you submitted anything in</p> <p>2 writing to the NAC informing them that the</p> <p>3 ownership interest in FlightLevel has changed?</p> <p>4 A. Yes.</p> <p>5 Q. When did you submit that?</p> <p>6 A. I believe relatively recently.</p> <p>7 Q. What was it?</p> <p>8 A. I don't know.</p> <p>9 Q. Who did it?</p> <p>10 A. Mr. Burlingham.</p> <p>11 Q. Yesterday Mr. Sheehan told me about</p> <p>12 a meeting that took place at the DPW building</p> <p>13 with Mr. Radlow, Mr. Ryan, yourself, and</p> <p>14 others -- I believe Mr. Maguire -- to discuss</p> <p>15 extension of the -- or potential extension of</p> <p>16 the runway?</p> <p>17 A. Yes.</p> <p>18 Q. You were present at that meeting?</p> <p>19 A. Yes.</p> <p>20 Q. Could you tell me who organized</p> <p>21 that meeting?</p> <p>22 A. I did.</p> <p>23 Q. Okay. And is that because you</p> <p>24 believe that an extension of the runway would be</p>
<p style="text-align: right;">283</p> <p>1 responsible for all of the operations of</p> <p>2 FlightLevel?</p> <p>3 MR. HARTZELL: Objection.</p> <p>4 A. No.</p> <p>5 Q. So operations were still run by</p> <p>6 you?</p> <p>7 A. Yes. I was the highest level in</p> <p>8 the organization.</p> <p>9 Q. Okay. And when did FlightLevel</p> <p>10 notify the NAC that Mr. Radlow had taken over</p> <p>11 ownership interest in FlightLevel?</p> <p>12 MR. HARTZELL: Objection.</p> <p>13 A. I can't remember.</p> <p>14 Q. Do you recall how FlightLevel</p> <p>15 notified the NAC that Mr. Radlow had taken over</p> <p>16 the ownership interest in FlightLevel?</p> <p>17 A. No.</p> <p>18 Q. Do you recall whether there was</p> <p>19 discussions with Mr. Maguire -- did you have</p> <p>20 discussions with Mr. Maguire informing him that</p> <p>21 ownership in FlightLevel had changed?</p> <p>22 A. Possibly.</p> <p>23 Q. Do you recall when?</p> <p>24 A. No.</p>	<p style="text-align: right;">285</p> <p>1 beneficial for FlightLevel?</p> <p>2 A. Among others, yes.</p> <p>3 Q. And how would it be beneficial for</p> <p>4 FlightLevel?</p> <p>5 A. It would increase our business. It</p> <p>6 would allow bigger aircraft to utilize Norwood.</p> <p>7 Q. And is that a growth strategy that</p> <p>8 you discussed with Mr. Radlow?</p> <p>9 A. Of course.</p> <p>10 Q. Was it his idea?</p> <p>11 A. No.</p> <p>12 Q. Was it something that FlightLevel</p> <p>13 has been thinking about proposing for some time?</p> <p>14 A. I've had conversations to that</p> <p>15 effect since 2007.</p> <p>16 Q. Okay. And is it FlightLevel's</p> <p>17 expectation that the runway extension will be</p> <p>18 paid for with federal funds?</p> <p>19 A. It's not our expectation that the</p> <p>20 runway extension is going to happen at all. But</p> <p>21 if it were to happen, yes, then it would be paid</p> <p>22 for by federal funds.</p> <p>23 MR. FEE: I have no further</p> <p>24 questions.</p>

<div>1MR. HARTZELL: I don't have 2any. 3MR. FEE: Thank you for your 4time. 5(Deposition concluded) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</div>	<div>286</div> <div>April 16, 2018 A. Neil Hartzell, Esq. LeCLAIR RYAN One International Place, 11th Floor Boston, MA 02110 Re: BEH v. FLIGHTLEVEL NORWOOD, LLC, et al. Dear Counselor: Enclosed is a copy of the deposition of PETER EICHLEAY taken on March 28, 2018, in the above-entitled action. According to Rule 30(e) of the Massachusetts Rules of Civil Procedure, the deponent has thirty days to sign the deposition from the date of its submission to the deponent, which is the above date. Please have the deponent sign the enclosed Signature Page/Errata Sheet and return it to the offices of: Michael C. Fee, Esq. PIERCE & MANDELL, P.C. 11 Beacon Street, Suite 800 Boston, MA 02108 Whereupon it will be attached to the original deposition transcript, and a copy thereof to all counsel of record. Thank you for your cooperation in this matter. Raymond F. Catuogno, Jr. cc: Michael C. Fee, Esq.</div>	<div>288</div>
<div>COMMONWEALTH OF MASSACHUSETTS NORFOLK, ss. I, RAYMOND F. CATUOGNO, JR., a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that there came before me on March 28, 2018, at the offices of LeClair Ryan, One International Place, 11th Floor, Boston, Massachusetts, the following named person, to wit: PETER EICHLEAY, who was by me duly sworn to testify to the truth and nothing but the truth as to his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon examined upon his oath and said examination reduced to writing by me; and that the statement is a true record of the testimony given by the witness, to the best of my knowledge and ability. I further certify that I am not a relative or employee of counsel/attorney for any of the parties, nor a relative or employee of such parties, nor am I financially interested in the outcome of the action. WITNESS MY HAND April 13, 2018. Raymond F. Catuogno, Jr. Notary Public My Commission expires: February 12, 2021</div>	<div>287</div> <div>COMMONWEALTH OF MASSACHUSETTS Norfolk, ss. 1582CV00213 BOSTON EXECUTIVE HELICOPTERS, LLC; MII AVIATION SERVICES, LLC, AND HB HOLDINGS, INC., Plaintiffs, v. FLIGHTLEVEL NORWOOD, LLC; EAC REALTY TRUST II; AND PETER EICHLEAY, Defendants. I, PETER EICHLEAY, do hereby certify, under the pains and penalties of perjury, that the foregoing testimony is true and accurate, to the best of my knowledge and belief, with the addition of the following changes/corrections: Page Line Change/Correction _____<</div>	

A	121:17 193:2	adjudicate 212:17	260:3	airplanes 50:24
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