

1 STATE OF NEW YORK
2 SUPREME COURT

COUNTY OF ALBANY

3 In the Matter of the Application of
4 PROTECT THE ADIRONDACKS!, INC.,

Plaintiff-Petitioner,

5 -against-

Index No. 2137-13

6 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
7 CONSERVATION and ADIRONDACK PARK AGENCY,

Defendants-Respondents.

8
9 Volume XV

- N O N - J U R Y T R I A L -

10 BEFORE: HON. GERALD W. CONNOLLY
11 Acting Justice of the Supreme Court

12
13 Transcript of the Proceedings held on the record
14 on March 30th, 2017 and April 4th, 2017, at the Albany County
15 Courthouse, Albany, New York.

16 APPEARANCES:

17 For the Plaintiff:

18 JOHN W. CAFFRY, ESQUIRE
19 CLAUDIA K. BRAYMER, ESQUIRE

20 For the Defendants:

21 LORETTA SIMON, ESQUIRE
22 MEREDITH G. LEE-CLARK, ESQUIRE
23 Assistant Attorneys General
24

Protect the Adirondacks! v NYS DEC & APA

1 THE COURT: Counsel, all set to begin?

2 MS. LEE-CLARK: Yes, your Honor.

3 MR. CAFFRY: Yes, your Honor.

4 THE COURT: Miss Lee-Clark, all set?

5 MS. LEE-CLARK: Yes, your Honor.

6 We call Robert Ripp to the stand.

7 THE COURT: Okay.

8 **THEREUPON,**

9 **ROBERT RIPP,**

10 **called as a witness, having been first duly sworn, was examined and**
11 **testified as follows:**

12 **DIRECT EXAMINATION**

13 THE COURT: Good morning, Mr. Ripp. I'm Judge
14 Connolly. How are you?

15 THE WITNESS: Good morning.

16 THE COURT: Just pull it over even a little closer
17 to make sure the mic picks you up. I don't know if you
18 have been in court and heard my instructions to any of
19 the witnesses.

20 THE WITNESS: I have.

21 THE COURT: You have. And you can follow those
22 instructions?

23 THE WITNESS: I can.

24 THE COURT: Good. All right.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Go right ahead, Miss Lee-Clark.

2 BY MS. LEE-CLARK:

3 Q Mr. Ripp, please state your full name for the
4 record.

5 A Robert Ripp.

6 Q And where are you employed?

7 A Warrensburg DEC.

8 Q When did you begin working at DEC?

9 A March of 2013.

10 Q What is your current title?

11 A Senior Forester.

12 Q Do you have any previous titles with the
13 Department?

14 A Forester Trainee.

15 Q Do you hold any degrees?

16 A I do.

17 Q What are they?

18 A I have an Associate's in Professional Forestry and
19 Associate's in Fish and Wildlife Technology, a Bachelor's in
20 Ecological Forest Management.

21 Q Where are those degrees from?

22 A Paul Smith's College.

23 Q What sort of coursework were involved in those
24 degrees?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Various forms of forestry coursework, including
2 silviculture, dendrology, forest management, various science
3 courses, math, calculus.

4 Q Do you hold any special certificates?

5 A I also have a certificate in Geographic Information
6 Systems.

7 Q Did you work anywhere prior to coming to DEC?

8 A Yes. I worked for Trathen International.

9 Q What kind of organization was Trathen
10 International?

11 A That was a sawmill.

12 Q And where else?

13 A And also myself, Ripp's Forestry Service.

14 Q Was there anywhere else you were employed?

15 A Gateway Properties, but that was a subcontracting
16 under Ripp's Forestry.

17 Q What were the time frames for those three, where
18 you worked at those three organizations?

19 A Trathen was approximately six months right out of
20 college.

21 Q In what year?

22 A 2013.

23 Q 2013?

24 A I'm sorry, 2005. And Ripp's was late 2005 until

(Robert Ripp - Direct by Ms. Lee-Clark)

1 present.

2 Q What about Gateway Properties?

3 A Late 2005 until 2013.

4 Q Are you a member of any professional associations?

5 A Yes, the Society of American Foresters.

6 Q What are your current job responsibilities?

7 A I am a forester in the Warrensburg Working Circle
8 and that is a land manager to oversee, manage, establish, and
9 write plans, Unit Management Plans, and carry out the
10 activities listed in those plans.

11 Q Do you do any -- are you responsible for any
12 facilities or trails within those plans?

13 A Yes. All facilities within those plans.

14 Q What forest units do you manage?

15 A The Lake George Wild Forest, Vanderwhacker Mountain
16 Wild Forest, Hoffman Notch Wilderness, and the Camp Santanoni
17 Historic Area.

18 Q What is the approximate acreage of the forest units
19 that you manage?

20 A A little over two hundred thousand.

21 Q Mr. Ripp, I have handed you what has been marked
22 for identification as Defendant's Exhibit BC. Do you
23 recognize this?

24 A I do.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q What is it?

2 A My resume.

3 Q Did you make this?

4 A Yes.

5 Q Does it accurately reflect your professional
6 qualifications and experience?

7 A Yes.

8 MS. LEE-CLARK: Your Honor, I move to admit BC into
9 evidence.

10 MR. CAFFRY: No objection.

11 THE COURT: BC is received into evidence.

12 (Defendants' Exhibit BC received in
13 evidence.)

14 BY MS. LEE-CLARK:

15 Q Mr. Ripp, are you familiar with the first cause of
16 action in the Petition and Complaint in this matter?

17 A Yes.

18 Q Are you familiar with Article XIV, Section 1 of the
19 New York State Constitution, also known as the Forever Wild
20 Clause?

21 A Yes.

22 Q How are you familiar with it?

23 A I have read.

24 Q Are you familiar with the management guidance for

(Robert Ripp - Direct by Ms. Lee-Clark)

1 snowmobiles, also known as the 2009 guidance?

2 A Yes.

3 Q What is your general understanding of the guidance?

4 A It established the guidelines to plan, site,
5 construct, and maintain snowmobile trails.

6 Q In the forest preserve or elsewhere?

7 A Forest preserve.

8 Q Are you familiar with Class II community connector
9 trails?

10 A Yes.

11 Q I will call them Class II trails. What is your
12 understanding of these trails?

13 A They are intended to connect communities within the
14 Adirondacks to a network of snowmobile trail systems.

15 Q Mr. Ripp, when you were working as a forester for
16 private companies, what did you do?

17 A For Trathen I was a procurement forester. So I was
18 tasked with supplying a sawmill with timber.

19 Q What about with Ripp's Forestry Service?

20 A That was as a consultant. So I would work with
21 private land owners to advise them on sound forestry
22 practices and make a plan to achieve the goals that they
23 would like to achieve on their properties.

24 Q What about for Gateway Properties?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Consulting and also buying and selling real estate.

2 Q Within your profession as a forester and within
3 that context that you have just described, you mentioned the
4 word timber. What is your understanding of the word timber?

5 A Timber is a salable, marketable forest product.

6 Q What is it made of?

7 A Wood, trees.

8 Q For Trathen International, what was the minimum
9 size of tree that you marked for sale?

10 A Usually about 15-inch DBH.

11 Q Why nothing smaller?

12 A They wanted saw log quality material to saw into
13 lumber. And when you get below that size range it becomes
14 inefficient to not only harvest and transport the product,
15 but also create a finished product at the mill that they were
16 looking for.

17 Q Why does it become inefficient?

18 A The volume per stem becomes too low.

19 Q For Ripp's Forestry Service, what was's the minimum
20 size -- did you mark trees for timber sales also for Ripp's
21 Forestry Service?

22 A I did.

23 Q What was the minimum size of tree that you marked
24 for sale?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Eight to ten-inch DBH for pulp wood, which would be
2 for paper production, and 14 to 15 inch for saw logs for the
3 same reasons.

4 Q So why nothing smaller than 8-inches DBH?

5 A Volume. Again, to collect enough stems and then
6 transport all those stems of smaller diameters, less volume
7 per unit, to mills, it was too cost inefficient.

8 Q What about for Gateway Properties of Upstate New
9 York, did you mark trees for sale, mark timber for sale?

10 A Yes.

11 Q What was the minimum size of tree that you marked
12 for sale?

13 A Eight to ten for pulp wood and 14 to 15 for saw.

14 Q In your 12 years as a forester, Mr. Ripp, have you
15 ever marked a tree smaller than three-inches DBH for timber?

16 A Never.

17 Q In your professional opinion, within a reasonable
18 degree of scientific certainty, do trees under three-inches
19 DBH fall within the forestry industry understanding of timber
20 as you have just described it?

21 MR. CAFFRY: Objection, your Honor.

22 THE COURT: What's the objection?

23 MR. CAFFRY: Relevancy. Timber industry definition
24 in 2016 is not relevant to the interpretation of the

(Robert Ripp - Direct by Ms. Lee-Clark)

1 constitution.

2 THE COURT: The objection is overruled.

3 You may answer.

4 THE WITNESS: Can I hear the question again?

5 MS. LEE-CLARK: Yes.

6 (Whereupon the Reporter read back the
7 last question.)

8 A No.

9 Q Why not?

10 A They are not marketable or salable. There is not
11 enough volume per stem.

12 Q Thank you. As part of your positions with private
13 companies, did you ever do any research on the histories of
14 the forests in which you were working?

15 A I did.

16 Q What did you do?

17 A I looked into some of the deeds of the properties
18 where we were planning to put trails on in order to see past
19 ownership, and also the last sale dates as to when it became
20 forest preserve.

21 Q To your knowledge, are all of the old wood roads in
22 the Adirondacks present or shown on publicly available maps?

23 A Certainly not.

24 Q Have you been involved in any planning or

(Robert Ripp - Direct by Ms. Lee-Clark)

1 construction of Class II trails?

2 A Yes.

3 Q Which ones?

4 A Newcomb, Minerva and North Hudson connections.

5 Q In what role?

6 A For planning and construction of those.

7 Q When did you first become involved in the Newcomb
8 to Minerva to North Hudson Trail system?

9 A The summer of 2013.

10 Q What were your first steps after you were assigned?

11 A Initially I looked at the work of the previous
12 foresters for the area that have looked into areas for
13 trails. I looked at the Unit Management Plans, the maps that
14 they had made, tried to get a sense of a direction we would
15 want to take it.

16 Q Mr. Ripp, I have just handed you Defendants'
17 Exhibit BE, which is already in evidence. Do you recognize
18 this?

19 A I do.

20 Q What is it?

21 A The 2015 Community Connector Trails Plan.

22 Q Can you turn to Appendix 5, the third map?

23 A Yes.

24 Q Can you describe what is on this map?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A This is a layout of the overall trail connections
2 for the Newcomb to Minerva and North Hudson system.

3 Q What are the sections on which any on-the-ground
4 construction has been done?

5 A Section one, section two, and section four.

6 Q Is the Newcomb to Minerva to North Hudson Trail all
7 on forest preserve land?

8 A No.

9 Q Mr. Ripp, I have handed you what has been admitted
10 as Defendant's CK. Do you see the Palmer Pond Bridge access
11 on this map?

12 A I do.

13 Q Is this part of a unit that's under your
14 supervision?

15 A It is.

16 Q What is your understanding of this, as to the
17 status of the Palmer Pond Bridge access, as it relates to
18 Class II trails?

19 A It's a bridge access, but it's also listed in the
20 community connector trail plan as being roughly the
21 easternmost point of the Newcomb to North Hudson connection.

22 Q To your knowledge, has it been open for snowmobile
23 use yet?

24 A No.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q To your knowledge, when will it be opened to
2 snowmobile use?

3 A There is no trail on either side of it. So a trail
4 would have to be approved and built.

5 Q Okay. Thank you. Mr. Ripp, what was the first
6 segment that you worked on for the Newcomb to Minerva to
7 North Hudson Trail?

8 A The Camp Santanoni to Lake Harris Campground
9 segment.

10 Q When did this planning begin?

11 A The summer of 2013.

12 Q And what UMPs or Unit Management Plans do this
13 trail go through?

14 A This is listed in the 2005 Vanderwacker Mountain
15 Wild Forest UMP and the 2015 Community Connector Trails Plan.

16 Q Are there other units or classifications, land
17 classifications, that this segment of the trail goes through?

18 A There are three classifications. They are all
19 covered in the Community Connector Trail Plan, but they are
20 the Camp Santanoni Historic Area, Vanderwacker Mountain Wild
21 Forest, and the Lake Harris public campgrounds.

22 Q Is that an intensive use area, that last one?

23 A Yes, it is.

24 Q What were the -- when you were first planning this

(Robert Ripp - Direct by Ms. Lee-Clark)

1 segment, what were the features or characteristics of the
2 forest in that area?

3 A It was generally a mixed wood forest. A mixture of
4 hardwoods and softwoods of mixed age of anything from
5 seedlings and saplings up through mature trees.

6 Q Were there any condition or forest health issues
7 that you noticed when you were first on the ground?

8 A There was a lot of beach bark disease in the area.

9 Q Mr. Ripp, I have just handed you what's been
10 admitted as Defendants' BP. Do you recognize this exhibit?

11 A I do.

12 Q What is it?

13 A It is pictures that I took on the Newcomb to
14 Minerva connection of beach bark disease.

15 Q What segment did you take these pictures of?

16 A These were on segment nine.

17 Q Were the pictures in this exhibit similar -- the
18 beach bark disease in this exhibit similar to the beach bark
19 disease that you identified on Santanoni to Lake Harris
20 segment?

21 A Very.

22 Q In your experience as a forester, can you please
23 explain your understanding of beach bark disease?

24 A Beach bark disease is a fungus that is carried by a

(Robert Ripp - Direct by Ms. Lee-Clark)

1 scale insect. The insect feeds on beach trees and introduces
2 the fungus to the tree. The fungus then attacks and
3 ultimately kills the tree.

4 Q And besides -- strike that.

5 Can you point to an example in Exhibit BP that
6 shows the manifestations of beach bark disease?

7 A Sure. The first picture shows a beach somewhat in
8 the foreground just to the right, light gray bark, heavily
9 cankered with beach bark disease.

10 Picture two is a closeup of a beach that is
11 not only heavily cankered, but also has the small white dots.

12 Q Is that the fungus?

13 A It's a symptom of it.

14 Q Okay.

15 A Three is similar. It just shows the scenes of
16 beach in the back where you can see cankerage from a
17 distance. So all of these pictures actually show some sort
18 of mortality.

19 F3 on the bottom shows a dead beach with the
20 canopy completely gone.

21 It's the same thing just after that. There is
22 another closeup of more cankers on beach.

23 Q So when, Mr. Ripp, when a beach tree contracts
24 beach bark disease, what does the tree do or is there any

(Robert Ripp - Direct by Ms. Lee-Clark)

1 other symptoms besides the white dots?

2 A So, there is a defense mechanism for survival.
3 Before the tree completely dies, it will start sending up
4 root sprouts, which are individual, new individual stems,
5 originating from the root system of that parent tree.

6 So, when the main stem dies, there are still
7 several other root stems, sometimes tens, sometimes over a
8 hundred of these that are multiple stems that are genetically
9 identical and actually one tree.

10 Q When you are walking in the forest, is there any
11 way to tell which of these sprouts belong to which overall
12 tree organism?

13 A No.

14 Q How does beach bark disease affect the overall
15 forest health?

16 A When these stems sprout it creates what is commonly
17 called beach brush, and that outcompetes and overshadows other
18 vegetation, because it already has an established nutrient
19 root system.

20 So other tree species, smaller seedlings,
21 other herbaceous plants, they are easily overshadowed and
22 outcompeted, thereby weeding them out.

23 Q Did the presence of beach bark disease affect how
24 you sited any trails in the Newcomb to Minerva to North

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Hudson system?

2 A Yes.

3 Q Which ones?

4 A The entire system. There were instances of areas
5 that were equally sustainable, but some areas nearby that
6 were equally sustainable had more beach bark infestation and
7 other healthier areas that favored the other tree species
8 were left alone. So I would go through the beach bark areas.

9 Q So would the presence of beach root sprouts, could
10 that lead to a higher tree count?

11 A Certainly, the smaller trees that are growing
12 closer together. So that inflates your numbers.

13 Q On Santanoni to Lake Harris, what were your first
14 steps in the field?

15 A To scout the area with the information that I had
16 already gathered in the office from previous foresters, other
17 maps that had been made. Scout several routes.

18 When a favorable route was found, then I would
19 hang flagging ribbon from trees or branches to delineate the
20 approximate center line of the corridor that I wanted. From
21 there the ribbons were adjusted several times. Every time
22 you come back through you see little micro-adjustments and
23 adjust your center line until you are happy with it.

24 From there you would start the work planning

(Robert Ripp - Direct by Ms. Lee-Clark)

1 process, the on-the-ground work planning process.

2 Q When you were starting that process, did you
3 consider any impacts on non-timber sized trees and other
4 vegetation?

5 A All impacts are considered, yes.

6 Q So for the work planning process, what did you do
7 in the field?

8 A Initially you start following your ribbon line
9 through the forest and paint every tree that was within your
10 9 to 12-foot corridor depending on where you were. And as
11 you are painting, inventory each tree by species and
12 diameter. And I also noted their condition, whether they
13 were in good health, diseased or distressed or dead.

14 Q Did you ever estimate your numbers of trees to be
15 cut?

16 A Never.

17 Q Why not?

18 A We need accurate tree counts for the work plans and
19 the ENB notices.

20 Q Did you paint anything else other than trees to be
21 cut?

22 A Yes. All the rock features that would be moved or
23 buried or bench cuts. Any terrain alteration would be marked
24 on the ground with paint and also input in the GPS as a point

(Robert Ripp - Direct by Ms. Lee-Clark)

1 where they know attached to that point on exactly what would
2 be done, what the feature was, detailed as to how that would
3 be modified.

4 Q Mr. Ripp, I have handed you what has been admitted
5 as Defendants' BG. Do you recognize this?

6 A I do.

7 Q What is it?

8 A It is the work plan for the Camp Santanoni to Lake
9 Harris snowmobile trail.

10 Q You prepared this?

11 A Yes.

12 Q Could you please turn to page 2?

13 A Okay.

14 Q What is on page 2?

15 A There is a tree cutting description and the tree
16 tally.

17 Q What is the largest size tree listed approved to be
18 cut?

19 A There are two 18-inch trees approved to be cut.

20 Q Thank you. During your work planning process, do
21 individuals from the Adirondack Park Agency become involved
22 or interact with you in any way?

23 A Yes, staff does. Once all the trees are tallied
24 and inventoried and all the terrain alterations are

(Robert Ripp - Direct by Ms. Lee-Clark)

1 inventoried, accounted for, GPS'd, a work plan, a draft work
2 plan is written. At that point we ask that APA staff look
3 over the work plan and also walk the trail with us with the
4 work plan. And at that point we take another GPS track log
5 and go over every feature described within that work plan.

6 Q And at what point do you submit the work plan for
7 approval?

8 A After APA staff has input, sometimes small changes
9 are made, sometimes not. The work plan will be submitted to
10 that staff person. They would sign off and then it would
11 proceed from there to the regional forester.

12 Q So the final approval comes from a DEC employee?

13 A Yes.

14 Q And then once the work plan is approved, is there
15 any sort of public notice given of trail construction before
16 it begins?

17 A An ENB is published, yes.

18 Q What does ENB stand for?

19 A Environmental Notice Bulletin.

20 Q So turning now to the actual construction of the
21 Santanoni to Lake Harris segment, once you began
22 construction, who carried it out?

23 A A combination of DEC employees and student
24 conservation association crews.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q Did any APA staff assist with any actual
2 construction?

3 A Not that I recall.

4 Q Do you supervise these trail crews?

5 A Yes.

6 Q What training do you give them?

7 A To start, you know, a new crew coming in, I always
8 go over the entire project, the work plan, the specific task
9 that they will be carrying out, and an overview of the forest
10 preserve, and the importance of the task that they are
11 actually doing at that time.

12 Q Do you give them any forest preserve specific
13 instructions?

14 A As it pertains to Article XIV and tree cutting,
15 yes.

16 Q What do you instruct them?

17 A Do not cut anything unless I have specifically put
18 paint on it, unless it's within that painted corridor.

19 Q So what is the first step of trail construction or
20 what was the first step at Santanoni to Lake Harris?

21 A For construction?

22 Q Yes.

23 A We started clearing the corridor from the west to
24 the east.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q And then what?

2 A After that the terrain modifications would come in.
3 So some of that was done by hand and some of it was done with
4 small landscaping equipment.

5 Q What did you do with the cut trees?

6 A They were cut into smaller sizes so they could be
7 handled by hand and removed from the corridor and placed
8 outside the trail corridor, disbursed in the adjacent forest
9 preserve.

10 Q Did you move any rocks?

11 A Yes.

12 Q What did you do with those rocks?

13 A Usually we moved them and buried them into the
14 trail tread. Occasionally, if a rock was just too out of
15 shape or too large, we would remove it from the tread and
16 place it outside of the corridor in the adjacent forest
17 preserve.

18 Q Mr. Ripp, I'm showing you what has been admitted as
19 Plaintiff's Exhibit 140. Do you recognize this area of the
20 trail?

21 A I do.

22 Q Where is this photo?

23 A This is on the Santanoni to Lake Harris segment of
24 the trail.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q What does this photo show you about the siting of
2 the trail?

3 A It shows that the trail is sited downslope of any
4 excessive terrain and also up-slope of any wet or sensitive
5 areas, and in such a way that the water can still shed off
6 the hillside over the trail and off to the other side.

7 Q What does this photo tell you about the rock
8 manipulation in the trail corridor?

9 A In the foreground on the left-hand side of the
10 picture there is a larger rock that was left and used to
11 anchor the trail into the side of the hill. But as you can
12 see, there is a bench cut into the side of the hill where
13 other rocks that were within that soil were found. And they
14 were actually used on the out-slope side of the trail, the
15 right side of the trail, to hold the trail in place and serve
16 as a foundation for that trail.

17 Q Can you describe where in that photo, you said on
18 the right side of the trail. Can you sort of describe more
19 where that is?

20 A This was along the right edge of the trail and it's
21 fairly evident in the background of the picture further up
22 the trail, before the orange ribbon that you can see.

23 Q Thank you. Did you bring in any materials to build
24 the trail from outside the trail site?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A No.

2 Q Did you use any preventative measures to protect
3 the trail tread and surrounding forest during construction?

4 A Yes. Trail tread is protected by proper sloping to
5 properly sheet water. Also, we seeded any excavated areas
6 with a conservation mix and used straw to protect that.

7 Q Thank you. Mr. Ripp, I have handed you Plaintiff's
8 Exhibit 99.

9 MS. LEE-CLARK: Your Honor, I think that's the
10 oldest previous scan that we have is the old numbering.
11 So its marked as 91, but I think it's 99 now.

12 THE COURT: Okay.

13 MS. LEE-CLARK: Okay. Thanks.

14 THE COURT: Good enough.

15 BY MS. LEE-CLARK:

16 Q Mr. Ripp, do you recognize what is in the
17 foreground of this picture?

18 A I do.

19 Q And do you recognize where this picture was taken?

20 A Yes.

21 Q Where was it?

22 A This was on the -- towards the westernmost end of
23 the Santanoni to Lake Harris Trail.

24 Q What is in the foreground of this picture?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A These are called terra mats, and they are thick
2 plastic matting that we use over motor vehicle areas to
3 protect the trail through the construction process. We lay
4 these out to protect the ground conditions in this area.

5 Q Are these plastic coverings, terra mats, designed
6 to be permanent on the trail?

7 A No. They are only used during the construction
8 phases. And once the trail is complete they will be removed
9 from the trail tread.

10 Q What were the erosion control features that you
11 used on the Santanoni to Lake Harris segment of the trail?

12 A Besides seeding and strawing the trail, we used
13 water bars, proper side sloping, broad-based dips.

14 Q When did you stop construction on the Santanoni to
15 Lake Harris segment?

16 A Upon the Court's injunction.

17 Q That was in the summer of 2016?

18 A Yes.

19 Q Were there any preventative or protective measures
20 that you weren't able to implement because of the preliminary
21 injunction?

22 A Yes.

23 Q What were those?

24 A The trail tread was not complete. Additional water

(Robert Ripp - Direct by Ms. Lee-Clark)

1 bars needed to be installed. Final grades and sloping needed
2 to be installed on sections. Additional seeding in areas,
3 seeding and strawing.

4 Q Thank you. Mr. Ripp, I have handed you Plaintiff's
5 Exhibits 159 and 160. Do you recognize where these
6 photographs were taken?

7 A I do.

8 Q Where were they taken?

9 A These were on the Camp Santanoni to Lake Harris
10 segment of trail.

11 Q What do these photographs tell you about the
12 condition of the trail?

13 A They show a seeded and strawed bench cut where the
14 vegetation has come in very well to start holding soil in
15 place.

16 A piece of equipment came through this area
17 and there are two small ruts, but as you can see on either
18 end and off to the side of the ruts, all the soil is still in
19 place and no erosion has occurred because of the
20 stabilization.

21 Q And that's in both 159 and 160?

22 A Yes, it is.

23 Q What is left to be finished on the Santanoni to
24 Lake Harris segment of the trail?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Some bridge approaches need to be finished and
2 stabilized. Some bridge ramps need to be installed, and a
3 final grade needs to be put on any excavated areas in that
4 final sloping. Final up and down slopes of bench cuts need
5 to be put in place, and water bars, broad-based dips, all the
6 erosion control features need to be installed to their final
7 capacity. And a final seeding and strawing of any freshly
8 excavated areas needs to be done.

9 Q Mr. Ripp, when were you last on this segment of the
10 trail?

11 A The summer of 2016.

12 Q Comparing your visit in 2016 to when you first
13 began working on the trail segment, how does the forest
14 compare between those two times, the condition of the forest?

15 A The condition of the forest is very similar. There
16 is still a closed canopy. You know, when you look off the
17 sides or in the area, it looks like it did several years ago.

18 Q Thank you. After Santanoni to Lake Harris, what is
19 the next segment for which you began planning?

20 A Segment six, which was the southeastern boundary of
21 the Hyslop conservation easement and the forest preserve,
22 generally south to the Roosevelt Truck Trail.

23 Q Can you turn back to map 3 of Exhibit BE, the 2015
24 Community Connector Trail Plan?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Okay.

2 Q Can you describe where this segment is on that map?

3 A Certainly. In section one, that is outlined by the
4 yellow line. In the bottom right corner of that there is a
5 brown triangle that is the Hyslop conservation easement. The
6 trail starts where that easement meets forest preserve and
7 the trail proceeds generally south to the bottom right corner
8 of that section one block to where it intersects the
9 Roosevelt Truck Trail.

10 Q Thank you. What kind of forest does this segment
11 of the trail go through?

12 A Various types. There were mixed woods. There was
13 some hardwoods. There were some softwood stands. There were
14 some spruce plantations.

15 Q Were there any pre-existing issues with forest
16 health on this segment?

17 A There was beach bark disease here as well.

18 Q Were there any pre-existing old wood or logging
19 roads in this segment?

20 A Yes. There was evidence of old roads throughout
21 the area.

22 Q When did planning for this segment begin?

23 A This was the fall of 2013.

24 Q Was there anything different about this planning

(Robert Ripp - Direct by Ms. Lee-Clark)

1 process from the one you described for the Santanoni to Lake
2 Harris segment?

3 A Same order.

4 Q When did construction begin?

5 A In the late summer of 2015.

6 Q What was done at that point?

7 A The corridor was cleared of vegetation and a very
8 small section was excavated.

9 Q Is construction of this segment complete?

10 A No.

11 Q When was construction halted?

12 A In 2016 with the Court's injunction.

13 Q Were there any preventative or protective measures
14 that you would have taken to stop construction for such a
15 length because of the preliminary injunction?

16 A Any excavated areas I would have installed
17 additional water bars and installed additional grading to
18 properly sheet water.

19 Q What is left to be done on this segment?

20 A The remainder of the segment that has not had any
21 terrain alterations needs to be completed. All the benching,
22 rock adjustments, et cetera, that needs to be complete.
23 Materials need to be hauled into specific bridge sites.
24 Bridges need to be built. And then a final grade, including

(Robert Ripp - Direct by Ms. Lee-Clark)

1 water bars, broad based dips, and erosion control practices
2 need to be installed.

3 Q Thank you. What is the next segment of the Newcomb
4 to Minerva Trail for which you began planning?

5 A Segment eight.

6 Q Turning back to Exhibit BE, map 3, can you describe
7 where this segment is?

8 A This is in the yellow outlined block labeled
9 section two. It starts in the top left corner at the
10 Roosevelt Truck Trail and proceeds south to the Boreas River.

11 Q When did you begin planning for this segment?

12 A That was shortly after segment six, the fall of
13 2013.

14 Q How much time have you spent on this segment, the
15 Roosevelt Truck Trail to Boreas River?

16 THE COURT: The fall of what year?

17 THE WITNESS: 2013.

18 THE COURT: Thank you.

19 Do you want to hear the last question again?

20 THE WITNESS: Yes, please.

21 (Whereupon the Reporter read back the
22 last question.)

23 A I have spent quite a lot of time planning. I have
24 been in the area many times throughout it.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 BY MS. LEE-CLARK:

2 Q Did you observe any old woods or logging roads in
3 this segment?

4 A Yes, I did.

5 Q In your professional opinion as a forester, what
6 does the presence of old logging roads indicate to you?

7 A Previous disturbance by man.

8 Q Previous disturbance such as what?

9 A Logging, timber harvesting.

10 Q Thank you. What has been done on this segment?

11 A No construction has been done.

12 Q Have any trees been cut?

13 A No.

14 Q What is the next segment that you began planning?

15 A That is segment nine and that is located in the
16 yellow outlined box labeled section two. It starts at the
17 Boreas River and proceeds south to its intersection with the
18 Stony Pond Trail.

19 Q Can you describe where the Stony Pond Trail is on
20 that map?

21 A Sure. Towards the bottom of section two there is a
22 label that says 28N.

23 Q Yes.

24 A About a quarter inch above that there is a small

(Robert Ripp - Direct by Ms. Lee-Clark)

1 block of private land indicated by white that juts eastward
2 toward the trail. It's in the vicinity of where that private
3 land is close to that trail.

4 Q Thank you. What are the features or
5 characteristics of the forest through which segment nine goes
6 through?

7 A The northern part is largely mixed softwoods and
8 the southern portion was largely uplands, northern hardwoods.

9 Q Were there any pre-existing issues with forest
10 health or diseases on this segment?

11 A There were both beach bark disease and balsam
12 woolly adelgid.

13 Q Mr. Ripp, I have handed you defendants' Exhibit BQ
14 already in evidence. Do you recognize this document?

15 A I do.

16 Q And what is it?

17 A These are pictures that I took of balsam woolly
18 adelgid on segment nine.

19 Q And can you describe in your professional
20 experience what balsam woolly adelgid is?

21 A The adelgid is a small insect that attacks balsam
22 trees various ways. It can feed through the needles and
23 small twiglike stems and it can also directly infest the main
24 stem of the tree as well in advanced infestations, such as

(Robert Ripp - Direct by Ms. Lee-Clark)

1 this one. It weakens the trees, spreads easily between tree
2 to tree because it's an insect and it has varying effects
3 depending on the previous health of the tree and the growing
4 conditions in which it grows.

5 Q How did existing forest conditions, such as the
6 presence of balsam woolly adelgid, factor in to how you laid
7 out and constructed the trail?

8 A Similar to the beach bark disease. If I had
9 multiple avenues that I could take that would be sustainable
10 and all other things being equal as far as terrain and tree
11 cutting, I would favor going through the more diseased or
12 more infested area, rather than go through a healthier
13 adjacent area of the forest.

14 Q Are there any old woods or logging roads on segment
15 nine?

16 A Yes.

17 Q Mr. Ripp, I have handed you Plaintiff's Exhibit 82.
18 As part of your position as forester for this region, have
19 you done any research into the history of this segment of
20 Newcomb to Minerva?

21 A Yes, I have. I looked into many of the deeds in
22 the area.

23 Q And can you turn to the map depicting Hewitt Pond
24 Road to Stony Pond Trail habitat and forest history?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Yes.

2 Q What exhibit is that?

3 A Eighty-six.

4 Q What did you discover as part of your position?
5 What did you discover about the purchase history of this
6 portion of segment nine?

7 A Well, the original map indicates that much of it
8 was state land as of 1893. And in looking at the deeds most
9 of this area was not purchased until after that. In fact,
10 there were areas that were 1952, 1953, 1987, and one that was
11 as late as 2000.

12 THE COURT: Just a moment, please. Can I see that
13 for a minute?

14 THE WITNESS: Sure.

15 THE COURT: Okay. Thank you.

16 MS. LEE-CLARK: You have an unnumbered copy, your
17 Honor. I'm sorry.

18 THE COURT: Go ahead.

19 BY MS. LEE-CLARK:

20 Q In your professional opinion, does that indicate to
21 you anything about the forest history of this segment?

22 A That combined with the evidence of old logging
23 roads shows that it had been previously logged at various
24 times.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q Thank you. Was there anything different about your
2 planning process on segment nine than what you described for
3 the Santanoni to Lake Harris segment?

4 A No.

5 Q Mr. Ripp, I have just handed you Defendants'
6 Exhibit BL already in evidence. Do you recognize this?

7 A I do.

8 Q What is it?

9 A This is the work plan for segment nine.

10 Q And it's for the entirety of segment nine?

11 A Yes.

12 Q Can you please turn to page 2?

13 A Okay.

14 Q And what is on page 2?

15 A There is a description of the tree cutting and the
16 tree tally chart.

17 Q What is the total number of trees approved to be
18 cut?

19 A Twelve hundred and fifty-three.

20 Q Out of those 1253 trees approved to be cut, what is
21 the total number of trees 20-inches DBH or greater approved
22 to be cut for the entirety of segment nine?

23 A Eight trees altogether.

24 Q And are all of these standing live trees?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A They are all dead trees.

2 Q Thank you. When did construction for segment nine
3 begin?

4 A In the summer of 2016.

5 Q And when was construction halted?

6 A In the summer of 2016.

7 Q How much construction did you get done on this
8 segment?

9 A We cut open the corridor for the southern portion
10 from Hewitt Road to the Stony Pond Trail.

11 Q Was all of your tree cutting approved in this work
12 plan actually completed?

13 A No.

14 Q Were there any protective measures you would have
15 put in place prior to stopping construction for this long a
16 time if not for the preliminary injunction?

17 A No, because the forest is still intact. There is
18 still a closed canopy. It looks very much the same as it did
19 before we cut the corridor.

20 Q Thank you. What is the last section of the Newcomb
21 to Minerva Trail that you worked on?

22 A Segment 11.

23 Q Where is that located, if you can describe on
24 Exhibit BE, map 3?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A This is in the yellow outlined box labeled section
2 two, it starts at the Stony Pond Trail, which is in the
3 vicinity of the -- where the trail meets the private lands,
4 just above the 28N symbol, and it proceeds southward to where
5 the trail intersects private lands in Minerva.

6 Q Turning back to the exhibit that I just handed you
7 from Mr. Signell, can you find the one that relates to
8 segment 11 of Newcomb to Minerva?

9 A Yes.

10 Q What exhibit number is that?

11 A Eighty-seven.

12 Q And can you read, just to make sure we are all on
13 the same page, the heading at the top of that map?

14 A Map. Stony Pond Trail to End of Forest Preserve
15 Habitat and Forest History.

16 Q Thank you. Was there anything in your professional
17 duties that you discovered that you can note about this
18 section of the trail, this segment of the trail?

19 MR. CAFFRY: Objection. Overly broad.

20 THE COURT: Sustained.

21 Q Can you describe anything about the forest history
22 of this segment of the trail in terms of its condition?

23 A Sure. This was largely open hardwood areas and
24 there were evidence in various spots of old forest roads.

(Robert Ripp - Direct by Ms. Lee-Clark)

1 Q And do you notice on this map where Mr. Signell has
2 indicated aspen stands?

3 A Yes.

4 Q And what does the presence of aspen stands indicate
5 to you as a forester?

6 A Aspen are a pioneer species that typically come in
7 after some sort of disturbance, whether it be natural or
8 manmade, through timber harvesting or fires or blowdowns.
9 And aspens typically only live until about 80 years old.

10 Q Thank you. Is there anything different between
11 your planning process for segment 11 and the one that you
12 described for Santanoni to Lake Harris?

13 A No.

14 Q Has any construction been done on this segment?

15 A None.

16 Q Do you recall the largest tree that you marked to
17 be cut for this segment?

18 A I do not. I would have to look.

19 Q I can get you the work plan.

20 A Okay.

21 Q Mr. Ripp, I just handed you BM already in evidence.
22 What is this exhibit?

23 A This is the work plan for segment 11.

24 Q Can you please turn to page 2?

(Robert Ripp - Direct by Ms. Lee-Clark)

1 A Yes.

2 Q And what is the largest tree you marked to be cut
3 on this segment?

4 A There is a dead sugar maple at 25 inches.

5 Q So turning back to, I believe it's Exhibit 87.

6 A Yes.

7 Q What does that lead you to conclude about the
8 annotations about various sizes of trees along the trail?

9 A These sizes are much bigger in most instances and
10 they can't be within the corridor. They must be adjacent to
11 there.

12 Q So you did not mark those trees to be cut?

13 A No.

14 Q What is left to be done on segment 11?

15 A All phases of construction.

16 Q Thank you. Mr. Ripp, in your professional opinion,
17 within a reasonable degree of scientific certainty, has the
18 construction of Class II trails on any part of the Newcomb to
19 Minerva North Hudson Trail system negatively affected the
20 condition of the forests through which it travels?

21 A No, I don't believe so.

22 Q Why not?

23 A These trails are kept to the periphery of the
24 forest first off. They largely follow a state highway and in

(Robert Ripp - Direct by Ms. Lee-Clark)

1 some instances are within sight, sound, and even on the
2 highway.

3 Also, the canopy throughout has been kept
4 intact, you know, by avoiding larger dominant trees. So the
5 light penetrating the forest is still similar throughout.

6 MS. LEE-CLARK: Thank you. I have no further
7 questions of this witness.

8 THE COURT: All right. This would be a good time
9 for our morning recess. We will recommence at about
10 five minutes before 11.

11 You may step down.

12 (Whereupon a recess was taken from
13 10:46 a.m. to 11:04 a.m.)

14 MR. CAFFRY: Your Honor, can I have one more
15 minute? We were handed Mr. Ripp's file during the break
16 and we are working on something related to that.

17 THE COURT: Do you want one or five?

18 MR. CAFFRY: One.

19 THE COURT: Fine.

20 You are still under oath, sir.

21 MR. CAFFRY: I'm ready, your Honor.

22 THE COURT: All right. All set?

23 THE WITNESS: Yes.

24 THE COURT: Go right ahead, Mr. Caffry.

(Robert Ripp - Cross by Mr. Caffry)

CROSS EXAMINATION

1
2 MR. CAFFRY: I would like to have something marked
3 that came from Mr. Ripp's file, which we reviewed during
4 the break.

5 THE COURT: Sure.

6 (Plaintiff's Exhibit 172 marked for
7 identification.)

8 BY MR. CAFFRY:

9 Q Mr. Ripp, you were just testifying about I believe
10 it's Exhibits 83 to 87 or 88, which were prepared by Mr.
11 Signell; is that correct?

12 A Correct.

13 Q And during the break we were handed your file,
14 which contained one document which appears to me to be
15 photocopies of those exhibits, five pages stapled together.
16 Would that be correct?

17 A Correct.

18 Q And I assume it's in your file, because it's
19 something that you prepared in preparation for your testimony
20 here today?

21 A Yes.

22 Q And when did you prepare that?

23 A I prepared that document just a few days ago.

24 Q Some of the pages appear to be copied and match

(Robert Ripp - Cross by Mr. Caffry)

1 identically Mr. Signell's exhibits, but some have white
2 blocks in them with arrows pointing to various locations and
3 words in the white blocks. Is that correct?

4 A Correct.

5 Q And that would be on several of the different
6 pages, I believe three of the five pages. Does that sound
7 right to you?

8 A I would have to see it to verify it, but it sounds
9 right.

10 Q Are these, the notations in those white blocks, are
11 they part of the basis of the testimony you just gave
12 regarding Mr. Signell's maps?

13 A They are indications of what I observed when I was
14 in the field in those particular sections.

15 Q Would they also be indications, perhaps, of the
16 deeds, research and such that you testified about?

17 A Yes, some of it, but I also did deed research prior
18 to this case.

19 Q Mr. Ripp, I have just handed you what has been
20 marked as Exhibit 172. Do you see that?

21 A I do.

22 Q And below the sticker that says 172, is there also
23 a sticker that says Plaintiff's Exhibit 82?

24 A Yes.

(Robert Ripp - Cross by Mr. Caffry)

1 Q And that sticker was on the document when it was in
2 your file or that, a copy of that sticker was on the copy
3 that was in your file?

4 A A copy, yes.

5 Q For purposes of this line of questioning, I'm going
6 to refer to it as 172, because that's the current information
7 for your annotated version. Is that understandable?

8 A Yes.

9 Q And Exhibit 172 is the document you were just
10 testifying about when I was asking you, and that you prepared
11 that document?

12 A Yes.

13 MR. CAFFRY: Your Honor, I would move that Exhibit
14 172 be admitted into evidence.

15 MS. LEE-CLARK: Relevance, your Honor. This merely
16 contains his notes as to what he has already testified
17 about.

18 THE COURT: Mr. Caffry.

19 MR. CAFFRY: I think that the annotations and the
20 arrows on it are relevant to the questions of where --
21 he testified about when certain land was purchased,
22 where certain trees were, habitat types. The notations
23 on there are, I believe, relevant to the discussion that
24 or the testimony that he gave and the questions that I'm

(Robert Ripp - Cross by Mr. Caffry)

1 going to ask him about that.

2 THE COURT: Well, the objection is sustained. You
3 haven't developed that enough for it to be placed into
4 evidence at this point, but it is something that you can
5 certainly use to explore with him and incorporate it
6 into your questions of him and then you may renew your
7 application if the relevance becomes more clear to me as
8 you elicit that. Okay?

9 MR. CAFFRY: Thank you.

10 BY MR. CAFFRY:

11 Q Mr. Ripp, I would like to ask you to look at the
12 third page of Exhibit 172 for identification.

13 A Okay.

14 Q And do you also have in front of you Exhibits 83 to
15 87 or, I'm sorry, yeah, 87 or 88?

16 A I only have what you just handed me.

17 MR. CAFFRY: Has that been returned to the table?

18 Q Mr. Ripp, are you ready?

19 A Yes.

20 Q Okay. I have handed you what's been previously
21 introduced as Exhibits 83 to 88, which were prepared by Mr.
22 Signell. Have you had a chance to look at them?

23 A Yes.

24 Q And I may have misspoken, but is it true that 83 to

(Robert Ripp - Cross by Mr. Caffry)

1 87 correspond to the five pages in your document, which has
2 been marked as number 172?

3 A Yes.

4 Q And so 88 is not -- there is no copy of 88 in 172;
5 is that correct?

6 A Correct.

7 Q So, looking at the third page in 172, I'm sorry,
8 the fourth page of 172, do you have that?

9 A I do.

10 Q Does that correspond to Mr. Signell's map that is
11 Exhibit 86?

12 A Yes, it does.

13 Q With regard to Exhibit 86, I believe you testified
14 that there is some portions of the area depicted in Exhibit
15 86 were not state land in 1893, but there is -- and were
16 purchased later?

17 A Correct.

18 Q And do you see on Exhibit 86 in the key on the left
19 side where it says state land 1893?

20 A I do.

21 Q And that seems to be indicated in the key by a
22 small box with red dots in it?

23 A It does.

24 Q And do you see on the map itself of Exhibit 86

(Robert Ripp - Cross by Mr. Caffry)

1 areas marked with red dots? Do you see that?

2 A I do.

3 Q Would that indicate to you that at least according
4 to Mr. Signell's maps, those are areas that were state land
5 in 1893?

6 A According to that map layer, yes.

7 Q And on Exhibit 172, the fourth page, I see a box
8 with an arrow that says 1987 PURC. Do you see that?

9 A I do.

10 Q And does that indicate an area of land you believe
11 the state purchased in 1987?

12 A It does.

13 Q Does that overlap in any way with the area that Mr.
14 Signell has labeled on Exhibit 86 as having been state land
15 in 1893?

16 A No.

17 Q Likewise, there is one above that, 1904 PURC. Does
18 that overlap with the area Mr. Signell indicates as having
19 been state land in 1893?

20 A That one does not.

21 Q The next one 2000 PURC. Does that overlap with the
22 area designated on Mr. Signell's map as state land in 1893?

23 A That one is very close, but there are no property
24 boundaries on this map, so I can't say for certain.

(Robert Ripp - Cross by Mr. Caffry)

1 Q And above there, 1952 plus 1953 purchase, does that
2 overlap with the area that Mr. Signell designated on his map
3 as state land in 1893?

4 A That is very close as well and that does appear to
5 overlap.

6 Q Does it appear to be right on the border of?

7 A The scale of this is very close. It's too close to
8 say with certainty unless you were in a mapping program.

9 Q You see another box on page, the fourth page of
10 Exhibit 172 in the kind of upper left?

11 A Um-hum.

12 Q And it says evidence of old logging roads
13 throughout this mapped area, including through the area
14 marked as old growth?

15 A I do.

16 Q And that's consistent with your testimony earlier?

17 A Yes.

18 Q Does the fact that there may have been a logging
19 road through a particular area, absolutely prove that it was,
20 in fact, logged once?

21 A It does not prove that it was absolutely logged,
22 but it proves there was some sort of human disturbance or
23 activity.

24 Q They may have just been passing through without

(Robert Ripp - Cross by Mr. Caffry)

1 cutting any trees. Is that possible?

2 A Very difficult to tell.

3 Q Isn't it true that in the 19th century in
4 particular, logging didn't necessarily, wasn't necessarily
5 heavy in the Adirondacks? They may have just taken select
6 species or select trees and left the rest of the trees alone?

7 MS. LEE-CLARK: Objection.

8 THE COURT: Overruled.

9 If you know, sir.

10 A Yes. There are several types of logging activity
11 and several prescriptions that you can do with forest
12 management, varying from the lightest touch depending on what
13 the stand is and what the objectives are for that stand, all
14 the way through the other end, through shade trees, seed
15 tree, and clear cuts.

16 Q So, it's entirely possible then in areas within a
17 logging road that you have described, that they only did a
18 very light cutting and the remaining trees are of an old
19 growth age?

20 MS. LEE-CLARK: Objection.

21 THE COURT: Overruled.

22 You may answer.

23 A That is possible.

24 Q Did you --

(Robert Ripp - Cross by Mr. Caffry)

1 THE COURT: Hang on.

2 You may finish your answer.

3 A Typically if one was in an area of forest and
4 attempting to do proper forest management, they would select
5 a variety of trees, including some very well established
6 larger trees, along with smaller, more distressed or diseased
7 trees, and your larger trees would be the ones that would be
8 most marketable. So they would be sought after. So, to
9 leave an overabundance of very large trees would not be
10 typical. You would leave some of them scattered throughout
11 in order promote future regeneration and seeding.

12 Q That's one type of forest management. Didn't you
13 describe several different types with different goals and
14 different options?

15 A I did.

16 Q And are you discussing what you learned as a modern
17 forester?

18 A I am.

19 Q Did that, did the type of forestry philosophy and
20 techniques that you learned and have practiced since your
21 formal education, did those necessarily pertain in the era
22 prior to 1893?

23 A No.

24 Q Turning now to the fifth page of Exhibit 172, and

(Robert Ripp - Cross by Mr. Caffry)

1 also please look at Exhibit 87. Do you have that in front of
2 you?

3 A I do.

4 Q Does the fifth page of your Exhibit 172 -- I'm
5 sorry. But the Exhibit 172, which you have said you
6 prepared, does that page correspond to Exhibit 87, which is
7 already in evidence?

8 A Yes, it does.

9 Q And it contains a similar box discussing evidence
10 of old logging roads, similar to what you just testified
11 about?

12 A Yes, it does.

13 Q And I believe you testified on direct about aspen
14 as a pioneer species; is that correct?

15 A Yes.

16 Q And on Exhibit -- do you see a box on your map,
17 Exhibit 172, about aspen?

18 A I see two of them, yes.

19 Q Well, one box of text?

20 A Oh, yes.

21 Q Could you read that box for us, please? Or read
22 the contents of the box.

23 MS. LEE-CLARK: Objection.

24 THE COURT: The objection is sustained.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Isn't it true that the box says, aspen is a pioneer
2 species that comes in after a fire or clearcut; it also only
3 lives about 80 years, not from 1800s. Do you see that?

4 A Yes.

5 Q And looking at either Exhibit 172 or Exhibit 87, do
6 you see on the key on the left side a list of ecosystems?

7 A I do.

8 Q And the first one says aspen slash hardwood and
9 there is kind of an orange color in a little box next to it?

10 A I do.

11 Q And the second one has a slightly different orange
12 box. That says aspen slash spruce slash fir. Do you see
13 that?

14 A Yes.

15 Q Now, on this map of Exhibit 87, and from your box
16 it discusses aspen. Do you see two arrows that go from the
17 box to what appears to be the trail?

18 A Yes.

19 Q And there is a lower one. Do you see the first
20 one, the lower one, the southernmost?

21 A Yes.

22 Q And does this map also contain the same key in the
23 same red dot areas regarding state land as of 1893 as the map
24 you just testified to?

(Robert Ripp - Cross by Mr. Caffry)

1 A The southern one does not.

2 Q No. I'm talking about the map in general.

3 A The map does.

4 Q Okay. So, of the southern aspen area that you just
5 said, that is not in an area marked on Mr. Signell's map as
6 being state land 1893; is that correct?

7 A Correct.

8 Q And then there is another one a little farther
9 north. Do you see that?

10 A I do.

11 Q And would it be fair to say that that area is
12 marked aspen slash hardwood, and it appears to partly
13 overlap, but not entirely be within the red dot area that is
14 denoted as state land 1893?

15 A That is correct.

16 Q And is it possible, or given the age of aspen
17 trees, is it likely that sometime after 1893, there was a
18 fire that would have then permitted aspen trees to come into
19 this area, even if it was an old growth area of forest?

20 A If it was an old growth area and a fire came in and
21 aspen started, that would indicate that the forest itself
22 restarted with large open canopy gaps and pioneer species
23 moving in; therefore, it wouldn't be a densely-wooded forest
24 anymore.

(Robert Ripp - Cross by Mr. Caffry)

1 Q In that limited area, within the larger area marked
2 as 1893 on the map, that's a very limited area that has
3 aspen, isn't that true?

4 A Yes.

5 Q So, the fact that there is aspen in that one
6 location doesn't negate the designation of the rest of it as
7 being acquired in 1893, does it?

8 A I'm not sure I understand your question.

9 Q Let me ask it a different way.

10 The fact that there is aspen trees there,
11 potentially evidence of fire, doesn't change the fact that it
12 could have been acquired by the state prior to 1893?

13 A No.

14 Q There is no change, correct? State land can burn
15 and then aspen regenerates, regardless of whether the land
16 was acquired, correct?

17 A It can.

18 Q You see a third box on Exhibit 87?

19 A I'm sorry, which box?

20 Q I'm sorry, on the fifth page -- well, on the fifth
21 page of your, of Exhibit 172, which -- does that -- which
22 equates to Exhibit 87.

23 A Okay.

24 Q In the lower left there is a third box. Do you see

(Robert Ripp - Cross by Mr. Caffry)

1 that?

2 A I do.

3 Q And you put that box there?

4 A I did.

5 Q And it says, something important to note is I only
6 have one tree listed in the work plan as 25 inches or
7 greater, so all of the trees listed on this map are
8 observations and not trees to be cut. Is that what it says?

9 A Correct.

10 Q And that part is consistent with your testimony?

11 A I testified that I did not mark any trees listed on
12 here. They must be outside of my corridor that I marked.

13 Q Is there anything on Exhibit 87 prepared by Mr.
14 Signell that says that these are trees that were marked to be
15 cut?

16 A It does not.

17 Q Were you here when Mr. Signell testified about
18 these exhibits?

19 A A portion.

20 Q Do you recall him testifying in particular about
21 these maps?

22 A I recall, but not specific.

23 Q So the fact that he has these trees denoted on this
24 map, such as hemlock 33.1-inch DBH, that doesn't necessarily

(Robert Ripp - Cross by Mr. Caffry)

1 mean that he is saying that tree was marked to be cut, does
2 it?

3 MS. LEE-CLARK: Objection.

4 THE COURT: Overruled.

5 You may answer.

6 A No, I don't believe so. That is just a note within
7 my folder.

8 MR. CAFFRY: Your Honor, I would again move that
9 Exhibit 172 be admitted into evidence.

10 MS. LEE-CLARK: I have no objection, your Honor.

11 THE COURT: Okay, 172 is received into evidence.

12 (Plaintiff's Exhibit 172 received in
13 evidence.)

14 MR. CAFFRY: I have no further questions about 172
15 at this point.

16 BY MR. CAFFRY:

17 Q Mr. Ripp, you testified about your experience in
18 marketing or purchasing logs for private timber industry. Do
19 you recall that?

20 A Yes.

21 Q Were you in the timber business or industry in
22 1894?

23 MS. LEE-CLARK: Objection.

24 THE COURT: Sustained. Excuse me. I'm sorry.

(Robert Ripp - Cross by Mr. Caffry)

1 Overruled.

2 We know the answer, but I will presume that that's
3 a lead into a further question.

4 A I was not.

5 Q Isn't it true that you only entered this industry
6 upon your graduation from Paul Smith's College in, I believe
7 it was 2005?

8 A That is correct.

9 Q And all of the testimony you gave on that subject
10 regarding the size of trees that are purchased by private
11 industry these days, that all related to private industry,
12 correct, and their need for resale of timber products,
13 correct?

14 A Correct.

15 Q You testified about your photographs of trees,
16 beach trees that are subject to the beach bark disease.

17 A I did.

18 Q Isn't it true that almost all beach trees in the
19 Adirondacks are to some extent or another affected by this
20 disease?

21 A The majority that I have seen.

22 Q And isn't it true that despite that there are still
23 many, many, many beach trees in the forest preserve?

24 A There are many beach trees, but very, very few

(Robert Ripp - Cross by Mr. Caffry)

1 mature beach trees left because of this.

2 Q Despite that, do beach trees continue to play an
3 important role in the ecology of the forest preserve?

4 A They, upon infection, actually start acting more
5 invasive in nature than cohabitating as they would naturally
6 without the infection.

7 Q And that's through this spreading of shoots that
8 you described?

9 A The beach brush, yes.

10 Q Do infected beach trees continue to produce the
11 nuts or the seeds or whatever?

12 A On occasion, but not typically. And if they do,
13 not to the extent, near the extent that they normally would.

14 Q And you also discussed in relation to your Exhibit
15 BQ I believe it was, the adelgid that affects the balsam
16 trees.

17 A Adelgid.

18 Q Adelgid?

19 A Yes.

20 Q Isn't it true that tree diseases are a natural part
21 of any forest ecosystem?

22 A Diseases in general, but both of these, both the
23 adelgid and the fungus of the beach bark disease, were
24 introduced from foreign nations through imports. So they

(Robert Ripp - Cross by Mr. Caffry)

1 behave very differently than native diseases and insects.

2 Q But, in general, there is always going to be sick
3 trees and healthy trees no matter where you look, isn't that
4 true?

5 A Yes.

6 Q Looking at Exhibit BG, do you have that in front of
7 you or were they all returned to the table?

8 A They were all returned.

9 Q Okay. Looking at Exhibit BG, I believe that's the
10 work plan for the Santanoni to Lake Harris section of the
11 Newcomb to Minerva Trail; is that correct?

12 A Correct.

13 Q Turning to page 2, I believe you testified about
14 this chart on page 2?

15 A Yes.

16 Q And I believe you testified you tried to route the
17 trail through areas that were subject to the beach disease
18 and for various reasons, is that correct?

19 A Yes.

20 Q Isn't it true that on the chart on page 2, in fact
21 only 40 beach trees were marked for removal of 3-inches DBH
22 or more, and an additional seven dead beach trees were marked
23 for removal?

24 A Correct.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Of 3-inches DBH or more?

2 A Correct.

3 Q Out of a total of on this chart at least 356,
4 correct?

5 A Correct.

6 Q And just for clarification, the parties did have a
7 stipulation as to the number of trees authorized to be cut on
8 various trails. For this trail segment I believe the number
9 is 363. Was there an additional seven trees added as a
10 result of a work plan modification?

11 A There was a work plan modification for this
12 segment.

13 Q Did that add additional trees?

14 A I would have to see it to verify.

15 MR. CAFFRY: Your Honor, given that the pile of
16 exhibits on the table is somewhat out of order, rather
17 than take the time to search for it, the work plan
18 modification, which is in evidence as Exhibit BN,
19 counsel for the defendants and I have agreed to
20 stipulate that an additional seven trees were added as
21 part of the modification.

22 MS. LEE-CLARK: We just ask that you look at the
23 parties' stipulations already and stipulation one about
24 the total numbers of trees.

(Robert Ripp - Cross by Mr. Caffry)

1 THE COURT: Okay.

2 MR. CAFFRY: I just want to clarify the difference
3 between this work plan and the stipulation.

4 THE COURT: I understand. It doesn't sound exactly
5 like Miss Lee-Clark is agreeing that there is an
6 additional modification of the work plan, but rather
7 that she is just asking that will I accept, again, the
8 stipulation to the effect of that 363 trees. Is that
9 acceptable?

10 MR. CAFFRY: Right. The work plan is in evidence.
11 We could find it if we took enough time.

12 THE COURT: Later you can, but I appreciate you
13 trying to move it along and I will note and I accept,
14 again, the stipulation regarding 363 trees.

15 BY MR. CAFFRY:

16 Q As long as we are on that document, Exhibit BG, the
17 original work plan, Mr. Ripp, do you still have that in front
18 of you?

19 A I do.

20 Q Can you look at the bottom of page 2? You see the
21 phrase there punji sticks?

22 A Yes.

23 Q Can you tell us what that phrase means?

24 A When you are clearing a corridor, you are left with

(Robert Ripp - Cross by Mr. Caffry)

1 stumps that can be elevated above the surface level, and
2 punji sticks referred to smaller diameter stumps in which one
3 might not see as easily and could be trip or fall hazards for
4 a user using the trail. So we would not want punji sticks.
5 We would want them cut flush to ground level for user safety.

6 Q And could you read the sentence that starts there
7 and finishes on the top of page 3?

8 A Punji sticks of any size along the trail corridor
9 will not be left and many have to be further addressed after
10 trail has been used and experiences typical soil compaction.

11 Q And what is soil compaction?

12 A Through use of a trail the soil, it is just as it
13 states, can become compacted if the users leave the actual
14 treads that's constructed or the tread that's there is not
15 adequate to sustain the level of use that it experiences.

16 Q So this is a result of an impact of the trail users
17 upon the forest floor within the trail corridor itself?

18 A Correct.

19 Q Isn't it true, yes or no, that soil compaction is
20 generally considered to be an adverse impact upon the forest?

21 A Yes.

22 Q When you were testifying about beach sprouts, I
23 believe you called them, is that a correct phrase?

24 A Correct.

(Robert Ripp - Cross by Mr. Caffry)

1 Q How big can they be?

2 A Anything from very small, just breaking the soil
3 surface. Depending on the actual tree and the sprout, it
4 could be almost as big as the parent tree.

5 Q So they could be 10, 20, 30 feet high, 40?

6 A Could, but not typical.

7 Q What's typical?

8 A The zero to 6 to 7-inch range DBH.

9 Q I was asking about height first. We will get to
10 DBH.

11 A Okay. Typically 10, 15 feet, up to 20 feet. They
12 can go higher though.

13 Q And now for the diameter and you are talking DBH,
14 diameter at breast height, correct?

15 A Correct.

16 Q What's the typical DBH of these beach sprouts?

17 A Typical would be 6 to 7-inches and below, but
18 again, they could get a little bigger, but rarely.

19 Q So, even at 6 to 7 inches DBH, isn't that
20 essentially a tree?

21 A Yes.

22 MR. CAFFRY: Your Honor, I have a number of
23 questions to ask Mr. Ripp about exhibits, and given the
24 problem that we have been having finding exhibits on the

(Robert Ripp - Cross by Mr. Caffry)

1 table and that it's five of 12, which is close to
2 lunchtime, I would like to suggest, with your consent,
3 that we take the lunch break now so we have an
4 opportunity to reorganize the exhibits so that the
5 testimony will go faster.

6 THE COURT: That will be fine. We will stop now
7 and we will recommence at 1:00.

8 MR. CAFFRY: Thank you.

9 THE COURT: You can step down, sir.

10 (Whereupon a lunch recess was taken at
11 11:54 a.m. to 1:02 p.m.)

12 THE COURT: Mr. Ripp, come on up, sir.

13 All set, Mr. Caffry?

14 MR. CAFFRY: Yes, your Honor.

15 THE COURT: Please go ahead.

16 BY MR. CAFFRY:

17 Q Good afternoon, Mr. Ripp.

18 A Good afternoon.

19 Q As I understand your testimony, you had worked or
20 cleared certain sections of the Newcomb to Minerva Trail and
21 graded certain sections prior to an injunction being issued,
22 which put certain limitations on work; is that correct?

23 A Correct.

24 Q And as I also understand your testimony, I want to

(Robert Ripp - Cross by Mr. Caffry)

1 make sure I get this clear, you did a lot of grading on the
2 Lake Harris section and then continued to do clearing south
3 of there, but there still remained additional water bars and
4 erosion work and such things to be done on the Lake Harris
5 section; is that correct?

6 A To complete the trail, yes.

7 Q And is there any reason why you had to cut new
8 sections of trail before completing the erosion control work
9 on the Lake Harris section?

10 A We actually had crews on the Lake Harris section
11 installing ramps to the bridges that were constructed and all
12 the ramps are not complete for those bridges. So we could
13 not get any machinery back in to complete those drain
14 modifications and install those water bars.

15 Q Was there hand rock work that could have been done
16 on those sections -- withdrawn.

17 Was there hand work, hand labor that could
18 have been done on those parts of the Harris Lake Trail or
19 Harris Lake section while you were also clearing further
20 south?

21 MS. LEE-CLARK: Objection.

22 THE COURT: Overruled.

23 You may answer if you can.

24 A Not in any significance to make an actual, a full

(Robert Ripp - Cross by Mr. Caffry)

1 benefit into install all these water bars and slopes. The
2 small landscaping equipment would have been needed to achieve
3 all of this.

4 Q When you use the term small landscaping equipment,
5 are you referring to things like a Kubota excavator?

6 A A mini excavator, yes.

7 Q Correct me if I'm wrong. Did you testify that the
8 injunction prevented you from doing additional seeding or
9 putting hay on exposed areas of the trail?

10 A There were a few small areas, yes, that I could
11 have done additional seeding and strawing.

12 Q Do you know whether or not the injunction actually
13 prevented you from doing that?

14 MS. LEE-CLARK: Objection.

15 MR. CAFFRY: He opened the door, your Honor.

16 THE COURT: Overruled.

17 Go ahead. You may answer.

18 A I'm not aware.

19 Q You testified you supervised the work on the Palmer
20 Pond Bridge Trail; is that correct?

21 MS. LEE-CLARK: Objection.

22 THE COURT: What's the objection?

23 MS. LEE-CLARK: That's not what he testified to.

24 THE COURT: Overruled.

(Robert Ripp - Cross by Mr. Caffry)

1 You may answer.

2 A I did not supervise bridge construction for the
3 Palmer Pond Bridge.

4 Q I wasn't asking about the bridge. I was asking
5 about the trail. I believe you testified there was a trail
6 there. It's within your region or your area of
7 responsibility, and the trail to the bridge was also
8 designated as part of a Class II trail, and so some trees
9 were cut there?

10 A Trees were cut for the bridge project, but there is
11 no snowmobile trail there right now.

12 Q But eventually it may become part of a snowmobile
13 trail?

14 A If it does, and I'm still the land manager for that
15 area, then I would supervise the planning and construction of
16 a trail to it.

17 Q You had no involvement in the construction of -- of
18 any tree removal there though in 2015 or 2016?

19 A I went out and marked a few, roughly a dozen
20 additional trees that needed to be cut, but I did not mark or
21 write a work plan for the initial tree cutting for that
22 project.

23 Q Are you aware that after the Appellate Division
24 issued it's, first issued its injunction last year, the

(Robert Ripp - Cross by Mr. Caffry)

1 department, through its attorneys, approached the plaintiffs,
2 and asked whether or not we would agree to allow the tree
3 cutting to go forward on the Palmer Pond Bridge Trail,
4 because that was also intended as a safety measure, the
5 bridge itself or the damn were intended safety measures, and
6 therefore would we agree to allow that to be excluded from
7 the injunction. Are you aware of that?

8 A I'm not aware of details about that.

9 Q Did it ever occur to you or anybody else in the
10 DEC, to your knowledge, to ask the plaintiff if it would
11 agree to a modification of the injunction to allow you to go
12 in and do additional trail stabilization work to prevent
13 erosion and otherwise prevent harm to the forest preserve
14 during the pendency of the injunction?

15 MS. LEE-CLARK: Objection.

16 THE COURT: What's the objection?

17 MS. LEE-CLARK: Mr. Ripp has not testified that it
18 is his role as within DEC to ask for legal modifications
19 to what plaintiff drafted as their preliminary
20 injunction.

21 THE COURT: Overruled.

22 You may answer if you can.

23 THE WITNESS: Could I hear that back, please?

24 MR. CAFFRY: Could you read it back, please?

(Robert Ripp - Cross by Mr. Caffry)

1 (Whereupon the Reporter read back the
2 last question.)

3 A I was not aware of the specifics of the injunction
4 and, therefore, not aware of any lenience that could be
5 granted upon request. So, no, I'm not aware of any.

6 Q Did someone within DEC tell you to stop work on the
7 trail because of an injunction?

8 MS. LEE-CLARK: Objection.

9 THE COURT: Overruled.

10 You may answer.

11 A Yes.

12 Q Who was that?

13 MS. LEE-CLARK: Objection.

14 THE COURT: What's the objection?

15 MS. LEE-CLARK: Relevance. It doesn't matter who
16 it was.

17 THE COURT: What is the relevance?

18 MR. CAFFRY: He said -- he testified that he had to
19 stop work. I'm trying to find out who told him, what
20 their authority was.

21 THE COURT: That's implicit in the question. The
22 question is what's the relevance of the question.

23 MR. CAFFRY: It goes to whether or not they could
24 have taken additional steps to protect the trail in the

(Robert Ripp - Cross by Mr. Caffry)

1 forest preserve during the pendency of the injunction or
2 just stop work when they weren't actually required to
3 completely stop everything.

4 THE COURT: I think we have gone a little far
5 afield on this issue now and it's collateral, so I'm
6 going to sustain the objection.

7 You may continue.

8 BY MR. CAFFRY:

9 Q Mr. Ripp, I have handed you a few exhibits. Do you
10 have Exhibit BN in front of you?

11 A I do.

12 Q Is that the work plan modification report for the
13 Santanoni to Lake Harris section of the Newcomb to Minerva
14 Trail?

15 A Yes, it is.

16 Q And did you prepare that plan?

17 A Yes.

18 Q The modification?

19 A Yes.

20 Q And looking at that, do you see it appears to be
21 written in blue, where it says seven additional trees?

22 A Yes.

23 Q That's a number we discussed earlier, correct?

24 A Correct.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Could you read the next sentence after that?

2 A In order to properly align the trail in such a way
3 that a tract groomer can groom the trail during the winter
4 months, seven additional trees need to be cut.

5 Q Going to the bottom of that document, can you read
6 the last sentence, which then runs over onto the top of the
7 next page?

8 A Starting with at 1.43?

9 Q Yes.

10 A At 1.43 miles the 10-foot bridge will be reduced to
11 a 10-foot bog bridge. The character of this seasonal runoff
12 will be adequately served with a 4-foot wide bog bridge
13 rather than the more intrusive nature of a 12-foot wide
14 bridge.

15 Q Skipping to the next paragraph and looking at the
16 one that starts with at 1.66 miles. Can you read the last
17 sentence of that paragraph?

18 A The character of this seasonal runoff will be
19 adequately served with a 4-foot wide bog bridge rather than
20 the more intrusive nature of a 12-foot wide bridge.

21 Q And then the last such paragraph starts with at
22 2.14. Can you read the first sentence of that?

23 A At 2.14 a small 30-foot bench cut will be added in
24 order to adequately support snow and grooming equipment

(Robert Ripp - Cross by Mr. Caffry)

1 without -- I'm sorry.

2 Q You can read the rest if you want.

3 A Without this, snow and tract groomers will be prone
4 to sliding off the edge of the trail.

5 Q At the bottom of that page, page 2, do you see what
6 appears to be a signature line for DEC forester?

7 A I do.

8 Q Is there a signature in there?

9 A There is not.

10 Q Should your signature have been there?

11 A Yes.

12 Q Regardless, this modification was approved by the
13 regional forester and the division director that's indicated
14 by their signatures on the bottom of the page?

15 A Yes.

16 Q And next to where your signature should have been,
17 do you see a signature line for APA contact?

18 A I do.

19 Q And you see a signature and a date there?

20 A Yes.

21 Q Do you know whose signature that is?

22 A It appears to be Kevin Prickett's (phonetic).

23 Q And he would have been the DEC staff person who
24 reviewed and approved this modification?

(Robert Ripp - Cross by Mr. Caffry)

1 THE COURT: DEC?

2 MR. CAFFRY: APA. Thank you, your Honor.

3 A He was the APA staff person on this segment.

4 Q And he signed off on it?

5 A If that's his signature. It's difficult to read.

6 Q I've just handed you what's been marked as Exhibit

7 BG. Do you have that there?

8 A I do.

9 Q Is that the original work plan for this trail
10 section that we were just discussing?

11 A Yes.

12 Q Can you turn to page 11 of 14?

13 A Yes.

14 Q And on this one you did sign where it says DEC
15 forester?

16 A Yes, I did.

17 Q And over the line for APA contact, it again
18 contains a signature that appears to be Mr. Prickett's?

19 A Yes.

20 Q And he's listed on page 1 as the APA contact
21 person?

22 A Yes.

23 Q And you signed on February 12 -- excuse me, May 12,
24 2014, and he signed on May 15, 2014; is that correct?

(Robert Ripp - Cross by Mr. Caffry)

1 A Correct.

2 Q And subsequent to that, the regional forester
3 approved it on May 23, 2014; is that correct?

4 A Correct.

5 Q Whose signature appears there?

6 A Christopher Alberta.

7 Q And he was the DEC forester for the region at that
8 time?

9 A Yes.

10 Q Excuse me. The regional forester?

11 A Yes.

12 Q Looking at photo 140, which I have handed you --

13 A Yes.

14 Q -- I believe you testified about this photo
15 earlier; is that correct?

16 A Correct.

17 Q Do you see exposed soil on the left side of the
18 picture above the large rock, basically on the up-slope of
19 the bench cut that's depicted there?

20 A Beyond the large rock, on the up-slope, yes, there
21 is a bit of exposed soil.

22 THE COURT: What number is that exhibit?

23 MR. CAFFRY: 140.

24 THE COURT: Go ahead. Please continue.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Do you see other areas of exposed soil on the
2 up-slope of the bench cut depicted in this picture?

3 A In the background there is areas that are void of
4 straw as the previous one you just asked about near the
5 boulder. As you can see, there is some vegetation moving in
6 on that as well.

7 Q Is that vegetation on the trail surface itself, the
8 flat part?

9 A There is some vegetation on the trail surface, yes.

10 Q And then looking on the right side, is that what
11 you would call the downslope of the bench cut?

12 A Yes.

13 Q And do you also see areas of exposed soil on the
14 downslope?

15 A I see areas of sides of the trail where there is no
16 straw, but there is leaf litter, especially where areas were
17 not affected by the terrain alterations. And I also see some
18 vegetation moving in, along with some small areas without
19 vegetation.

20 Q Do you see in the lower right corner of that
21 picture an area of exposed soil?

22 A I do.

23 Q Dr. Sutherland testified that he took this photo in
24 the middle of August 2016. Since that time, to your

(Robert Ripp - Cross by Mr. Caffry)

1 knowledge, has the department gone back to this location and
2 placed any additional straw or done anything else to control
3 erosion of exposed soil?

4 A August of 2016?

5 Q Yes.

6 A Not to my knowledge, but there is no slope right
7 here. It's all on properly sloped bench cut that appears
8 firm and stable.

9 Q Have you looked at it since August of 2016?

10 A I looked at it late summer to early fall. I do not
11 recall an exact date.

12 Q I believe you also testified in this photograph
13 about a line of rocks that had been placed on the right side
14 or in the area of the downslope; is that correct?

15 A Correct.

16 Q You said that was to lay a foundation, am I
17 correct? How did you describe that?

18 A These rocks were uncovered while installing this
19 bench cut, so they were all subsurface. And at the point
20 near the background, before the person walking and before the
21 orange ribbon, we were able to use these rocks to reinstall
22 into the trail tread on the downslope in order to hold the
23 toe of that slope and maintain a proper slope on that bench
24 cut.

(Robert Ripp - Cross by Mr. Caffry)

1 Q So, yes or no, that they were essentially placed
2 there to function as a retaining wall?

3 MS. LEE-CLARK: Objection.

4 THE COURT: Overruled.

5 You may answer.

6 A No.

7 Q What was their function?

8 A To support the base, the bottom toe of that
9 out-slope in which soil would be on them, not as a retaining
10 wall, which would hold the side of an earthen area of soil
11 from washing out. This is meant to actually be under the
12 bottom toe of that.

13 Q But aren't they on the surface?

14 A Yes. This trail has received one pass through with
15 the mini excavator for the terrain alterations. And the
16 intent was to lay a trail tread, which is firm and stable,
17 can shed water, and allow us to haul bridging materials
18 through the winter months on top of the snowpack.

19 Once that occurs, the following season the
20 intent is bridges are built. And when all the construction
21 on the bridges is complete, another pass with the mini
22 excavator will go through and put all finishing touches,
23 finished erosion control devices that function for the long
24 term and are permanent.

(Robert Ripp - Cross by Mr. Caffry)

1 Q How does that affect this line of rocks on the side
2 of the trail? Would it be the intention to bury them under
3 the trail tread?

4 A Yes. There will be a top coat of soil on top of
5 these.

6 Q So are they more like the foundation of a house
7 than a retaining wall?

8 MS. LEE-CLARK: Objection.

9 THE COURT: Overruled.

10 You can answer.

11 A They are the -- they are much more like a
12 foundation than a retaining wall.

13 Q Thank you. Looking at -- oh, pardon me. Going
14 back to that. About how long is that bench cut depicted in
15 this photograph?

16 A I don't recall. I would have to measure.

17 Q Do you know on the work plan, I believe you have
18 most of your bench cuts and stuff identified by mileage down
19 to the hundredth of a mile; is that correct?

20 A That is.

21 Q And do you know which mile point this picture was
22 taken at approximately?

23 A No. There are dozens and dozens of points. I
24 would need the GPS and the, you know, associated mileage with

(Robert Ripp - Cross by Mr. Caffry)

1 that in order to determine.

2 Q And you can't estimate the length of the bench cut
3 from observing the photograph?

4 MS. LEE-CLARK: Objection.

5 THE COURT: Sustained.

6 Q Can you estimate the width of the bench cut from
7 the top of the up-slope to the bottom of the downslope based
8 on the photograph?

9 A In the foreground the trail tread is 9 feet. So
10 near that boulder it's only 9 feet. Moving up the trail
11 further into the background, again, the bench cut surface is
12 9 feet. The up-slope appears to be anywhere from 2 to 4 feet
13 and the downslope appears to be anywhere from 1 to 3 feet.
14 So depending on exactly where it could be 12 feet.

15 Q And that section, is that on a curve or a hill
16 where the 2009 snowmobile trail guidance would allow a
17 12-foot trail width?

18 A There is only a 9-foot trail width here, being the
19 surface of the bench cut.

20 Q Do you have Exhibit 158 in front of you?

21 A I do.

22 Q That's been previously identified in testimony as
23 having been taken near Harris Lake in 2016 -- I'm sorry,
24 2015. Do you recognize that large -- withdrawn.

(Robert Ripp - Cross by Mr. Caffry)

1 Do you recognize the orange object in the
2 middle of the picture?

3 A Yes.

4 Q Can you tell us what it is?

5 A That is a mini excavator.

6 Q And was that piece of machinery used in building
7 the Newcomb to Minerva Trail?

8 A This was used on the Lake Harris to Santanoni
9 segment of trail.

10 Q And in what years was it used?

11 MS. LEE-CLARK: Objection.

12 THE COURT: Sustained.

13 MR. CAFFRY: May I be told the grounds for the
14 sustaining of the objection?

15 THE COURT: I did not see the relevance. If you
16 are concerned that you need to make that clear --

17 MR. CAFFRY: I will continue.

18 THE COURT: -- that it was part of the Class II
19 community connector trail, I will revisit my ruling.

20 I will allow the question.

21 Go ahead.

22 Why don't you ask it again?

23 MR. CAFFRY: Can I have it read back, please?

24 THE COURT: You may.

(Robert Ripp - Cross by Mr. Caffry)

1 (Whereupon the Reporter read back the
2 last question.)

3 A This was in 2015.

4 BY MR. CAFFRY:

5 Q Do you know what this piece of machinery weighs?

6 A Not the exact weight, but it is approximately
7 9,000 pounds.

8 Q Does driving a 9,000 pound machine on a forest
9 floor contribute to soil compaction?

10 A Not really. The way that the tracks are designed
11 on mini excavators are to distribute weight and apply that
12 weight over a broad surface area so your pressure per square
13 inch or per square foot is greatly reduced. So it acts as a
14 flotation rather than creating excessive, you know,
15 disturbance.

16 Q And do you see an object on the front of the
17 machine that looks like a blade of some sort resting on the
18 ground?

19 A I see a backfill blade.

20 Q What is the purpose of that?

21 A The primary purpose is for stabilization while
22 digging. That blade is put down on the ground to create more
23 surface area. So when a load is put on the bucket,
24 especially outreached --

(Robert Ripp - Cross by Mr. Caffry)

1 Q Excuse me. You are referring to the bucket that
2 extends off the other end of the machine?

3 A Yes.

4 Q Okay. Please continue.

5 A It allows the machine to stay stable while digging
6 or doing any terrain modifications.

7 Secondly, if a hole is created by that bucket,
8 it can help to put the freshly excavated soil back into that
9 hole.

10 Q And do you see soil on that blade in this picture?

11 A I do.

12 Q Would that be soil that would have come from the
13 trail that was being constructed at that time?

14 MS. LEE-CLARK: Objection.

15 THE COURT: Overruled.

16 A Yes.

17 Q And was this piece of equipment owned by DEC or did
18 you rent it somewhere?

19 MS. LEE-CLARK: Objection.

20 THE COURT: What's the relevance?

21 MR. CAFFRY: It goes to an exhibit I'm about to ask
22 him to look at.

23 THE COURT: Okay. Overruled.

24 If you know. Was it owned or rented?

(Robert Ripp - Cross by Mr. Caffry)

1 A This one was rented.

2 Q And did you or your crews use any other excavators
3 on the Newcomb to Minerva Trail?

4 MS. LEE-CLARK: Objection. This goes beyond the
5 scope of direct examination.

6 THE COURT: Overruled.

7 You may answer.

8 A We used another one on the Santanoni to Lake Harris
9 segment previous to renting this.

10 Q What was that?

11 A A Bobcat mini excavator.

12 Q Is that a white one owned by the department?

13 A It was a white one owned by the department.

14 Q Do you know how many days or hours you and your
15 crews operated excavators on the Santanoni to Lake Harris
16 section during 2015?

17 MS. LEE-CLARK: Objection.

18 THE COURT: Overruled.

19 If you know.

20 A Not off the top of my head, but it's all in the
21 logs.

22 Q I have just handed you what's been marked as
23 Plaintiff's Exhibit 170 for identification. Is that the logs
24 you were just referring to?

(Robert Ripp - Cross by Mr. Caffry)

1 A Yes.

2 Q Is it accurate to state that there is an e-page log
3 dated October 8th, 2015, and signed by you on page 8 on
4 November 19th of that year?

5 A Correct.

6 Q And then stapled behind it is a two-page log dated
7 November 3rd, 2015, and signed by you on that same date, on
8 November 19?

9 A Correct.

10 Q And having looked at that, can you tell us now how
11 many days during 2015 you and your crews operated excavators
12 on the Santanoni to Harris Lake Trail section?

13 A If I can have a moment.

14 Q Go right ahead.

15 A That was 13 days.

16 Q And does that, do those logs also show how many
17 days you and your crews operated ATVs or all terrain vehicles
18 on that trail section?

19 A They show one UTV.

20 Q And how many days was that operated on that trail
21 section during the period covered by these logs?

22 A I count 12.

23 Q And is it true that these logs are maintained
24 pursuant to Commissioner Policy CP-17 of the department?

(Robert Ripp - Cross by Mr. Caffry)

1 A That is my understanding.

2 Q And is it your responsibility to maintain these
3 logs for projects that involve the use of motor vehicles in
4 wild forest areas?

5 A I took it on as my responsibility for this trail.

6 Q Were those then maintained in the regular course of
7 DEC's business?

8 A I'm sorry, can you --

9 Q It is somebody's job within DEC to maintain these
10 logs when vehicles are used on wild forest areas, correct?

11 A As I understand.

12 Q And are these in Exhibit 170 true and accurate
13 copies of those logs?

14 A They appear to match my originals.

15 MR. CAFFRY: Your Honor, I would move that Exhibit
16 170 be admitted.

17 MS. LEE-CLARK: I have no objection.

18 THE COURT: 170 is received into evidence.

19 (Plaintiff's Exhibit 170 received in
20 evidence.)

21 BY MR. CAFFRY:

22 Q Now, did you fill out -- can I call this a CP-17
23 report? Would that be a fair description?

24 A It's activity log.

(Robert Ripp - Cross by Mr. Caffry)

1 Q An activity log. Did you fill out an activity log
2 for your work on this trail section for any other months in
3 2015?

4 A I would have to look. I don't recall.

5 Q Do you recall whether or not you used the excavator
6 or ATVs on this trail section in any other months in 2015?

7 A I don't recall.

8 Q Did you use an excavator and/or ATVs on the Hyslop
9 section of the trail?

10 A Segment six from the Hyslop conservation easement
11 south to Roosevelt Truck Trail, I did use a different
12 excavator and the same UTV.

13 THE COURT: The same UTV?

14 THE WITNESS: UTV.

15 THE COURT: Thank you.

16 BY MR. CAFFRY:

17 Q When was that done?

18 A Summer of 2016.

19 Q Did you fill out or did anybody else, to your
20 knowledge, fill out one of these activity logs for that work?

21 MS. LEE-CLARK: Objection.

22 THE COURT: What's the objection?

23 MS. LEE-CLARK: The relevance of his keeping
24 required records by DEC on his use of motor vehicles.

(Robert Ripp - Cross by Mr. Caffry)

1 THE COURT: Briefly do you want to be heard on
2 that?

3 MR. CAFFRY: Yes, your Honor.

4 If there were such logs, they should have been
5 provided to us in discovery.

6 Also, as you can see, the witness could not answer
7 my question about how much these types of machines were
8 used until I provided the logs and he was able to look
9 at them and refresh his recollection. So if there were
10 such logs for other activities, that would lead to
11 perhaps relevant testimony.

12 THE COURT: All right. The objection is overruled.
13 You may answer if you can.

14 THE WITNESS: May I have that restated?

15 (Whereupon the Reporter read back the
16 last question.)

17 A I filled out activity logs on segment six.

18 BY MR. CAFFRY:

19 Q For the Hyslop segment, the section near Hyslop?

20 A Yes.

21 Q But you don't recall off the top of your head? I
22 will tell you I don't have those here.

23 You don't recall off the top of your head how
24 many days of activity you used those machines on that

(Robert Ripp - Cross by Mr. Caffry)

1 section?

2 A I don't recall an exact number of days. It was
3 very limited.

4 Q One day, two, three? Do you have an estimate? I
5 understand it's only an estimate.

6 A Just guessing, maybe five or six. Probably less.

7 Q Mr. Ripp, I have handed you a number of exhibits,
8 photographic exhibits, that have already been admitted into
9 evidence and identified as having been taken on the Santanoni
10 to Lake Harris Trail in August of 2016. Do you have number
11 143 in front of you?

12 A I do.

13 Q And you see a bridge in the picture?

14 A Yes.

15 Q Would that bridge be 12-feet wide?

16 A Yes.

17 Q Keeping that in mind, do you also see on the left
18 side of the picture a pile of cut logs?

19 A Yes.

20 Q And do you see on the right side of the picture an
21 area without any vegetation more than a couple feet high and
22 what appear to be some cut log sections standing upright on
23 end on the right side of the picture?

24 A Yes.

(Robert Ripp - Cross by Mr. Caffry)

1 Q And the bridge is in the middle?

2 A Yes.

3 Q Approximately, can you estimate the total width
4 from the left side of the left-hand pile of logs, to the edge
5 of the area where those turned up logs are on the right?

6 A They look like they are maybe 4 feet beyond the
7 bridge, so 16.

8 Q You are assuming that the trail, four and four is
9 eight, and the trail is, you are assuming, nine?

10 A From the bridge, not from the trail tread. The
11 trail tread in this picture is 9 feet coming into a 12-foot
12 approach to meet the bridge.

13 Q So how wide is the area, the cleared area to the
14 right of the bridge?

15 A On the far right of the picture it only appears to
16 be a couple feet wide.

17 Q Well, let me ask you. Do you see an individual
18 with the red backpack standing in the middle of the picture?

19 A I do.

20 Q And then you see those turned up logs to his right?

21 A I do.

22 Q And you are telling me, it's your opinion that that
23 distance is only 2 feet?

24 MS. LEE-CLARK: Objection.

(Robert Ripp - Cross by Mr. Caffry)

1 THE COURT: Overruled.

2 A Those logs, from my recollection in the field, are
3 very near the stream, which puts them much farther back into
4 the background of that picture than what the individual with
5 the red backpack would be.

6 So, with that depth, no, they are nowhere
7 close to each other, because it's farther back in the
8 picture.

9 Q Let me see if I understand this then. Are you
10 saying basically from the left side of the bridge to those
11 turned up logs on the right is about 16 feet?

12 MS. LEE-CLARK: Objection.

13 THE COURT: Overruled.

14 A Approximately.

15 Q And then more towards the foreground of the picture
16 there is the logs on the left side of the trail. You see
17 that?

18 A I do.

19 Q From the left side of that pile, to the location
20 furthest across the trail depicted in this exhibit, can you
21 estimate the width of that area?

22 A Sure. So that the trail tread is approximately
23 near the right edge of the stack of logs proceeding right you
24 would have a 9 to 12-foot trail tread, because it's

(Robert Ripp - Cross by Mr. Caffry)

1 approaching the bridge, until approximately the small stick
2 that has no bark on it near the right edge of the picture.
3 That would be your trail tread. And then the picture cuts
4 off immediately at that small stick with no bark.

5 So if you look back further into the
6 background, again, hard to see actual depth, you are a couple
7 feet beyond the outside of the trail tread there.

8 Q So, would you say that's approximately 18 feet as
9 to what's visible there?

10 MS. LEE-CLARK: Objection.

11 THE COURT: Overruled.

12 A No. I would say you have a 9-foot trail tread from
13 those logs over, and then another couple feet on top of that.
14 So maybe 12. And this is, you know, estimation from a
15 two-dimensional picture.

16 Q Do you see any exposed soil in the foreground of
17 that picture?

18 A I see soil that was excavated, has revegetated, and
19 I see straw still around in other vegetation, but not exposed
20 or erodable soil right there, no.

21 Q Looking at Exhibit 96, do you see that?

22 A I don't have exhibit numbers on the other pictures.

23 Q They are on the back.

24 A Oh, I'm sorry. Yes.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Do you recognize that location?

2 A Yes.

3 Q That's on the Newcomb to Minerva Harris Lake
4 section?

5 A Correct.

6 Q Does this depict a bench cut?

7 A It does.

8 Q Can you estimate from the picture approximately how
9 long that bench cut is?

10 A Hard to say exactly. Again, without the work plan
11 and seeing, I would guess approximately 50 to 60 feet.

12 Q Can you estimate from the picture the width of the
13 cleared area here from the top of the up-slope to the bottom
14 of the downslope?

15 MS. LEE-CLARK: Objection.

16 THE COURT: What's the objection?

17 MS. LEE-CLARK: These are all calling for
18 speculative answers. Mr. Ripp has already established
19 that he can't, with certainty, from these pictures say
20 how wide these are. And this information is already in
21 the record.

22 THE COURT: The question, can you estimate from the
23 picture on areas that he can't identify, is problematic.
24 You understand that, Mr. Caffry.

(Robert Ripp - Cross by Mr. Caffry)

1 I'm sorry. I don't mean to say you either
2 understand that or you don't. I'm telling you it is
3 extraordinarily problematic. We're all looking at
4 pictures. The pictures tend to speak for themselves.

5 If you are asking about personal knowledge of the
6 pictures, that is one thing. In some of them he does
7 have personal knowledge.

8 So the objection is, to be clear, sustained.

9 Go ahead.

10 MR. CAFFRY: Thank you, your Honor.

11 BY MR. CAFFRY:

12 Q Do you know the width of the trail at the location
13 depicted in this picture from the top of the up-slope to the
14 bottom of the downslope?

15 A The trail tread here is 9 feet and I would have to
16 estimate the up and down, but it's short, probably a foot on
17 each side.

18 Q And do you see a row of rocks in the, kind of on
19 the right side, partially hidden by a tree?

20 A I do.

21 Q And those are along the side of the trail; is that
22 correct?

23 A Correct.

24 Q And were those placed there by one of your work

(Robert Ripp - Cross by Mr. Caffry)

1 crews?

2 A They look fairly large. They would have had to
3 have been placed there by the mini excavator.

4 Q And would they be serving any function similar to
5 the line of rocks that you previously testified about with
6 regard to a different exhibit?

7 A These --

8 MS. LEE-CLARK: Objection.

9 THE COURT: Overruled.

10 You may answer.

11 A These are protruding higher than the actual trail
12 tread and they are off the side, so they are not servicing
13 that bench cut. They are removed from that trail tread for
14 some reason or another, too large, couldn't dig down, et
15 cetera. And they were removed from the trail tread and
16 placed outside of the tread into the adjacent forest
17 preserve.

18 Q So they don't serve, to your knowledge, they are
19 not serving any function with regard to the trail?

20 A Without being on site and seeing exactly where this
21 is, I don't see them serving that bench cut.

22 Q On the left side of the picture on the up-slope, do
23 you see bare earth on the face of the up-slope?

24 A Yes.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Doesn't that extend pretty much the entire length
2 of the up-slope?

3 A Over half, yes.

4 Q And do you see vegetation growing in the trail?

5 A I do.

6 Q Isn't it true that that is mostly or entirely
7 grass?

8 A It is a conservation mix. I couldn't tell the
9 species from here on each individual plant, but it's a
10 conservation mix.

11 Q Where does the department get this so-called
12 conservation mix?

13 MS. LEE-CLARK: Objection.

14 THE COURT: Sustained.

15 Q Is the conservation mix something that the
16 department acquires for placement on trails for purposes of
17 erosion control?

18 A Yes.

19 Q And you placed it on this trail?

20 A Correct.

21 Q For that purpose?

22 A Correct.

23 Q Looking at Exhibit 97, do you have that in front of
24 you?

(Robert Ripp - Cross by Mr. Caffry)

1 A Yes.

2 Q Are you familiar with that location on the
3 Santanoni to Lake Harris section?

4 A Yes.

5 Q And do you know where on the trail it is?

6 A Not exactly. I could explain approximately, but --

7 Q But you are familiar with it?

8 THE COURT: Hang on.

9 Were you done answering?

10 THE WITNESS: Yes.

11 THE COURT: I'm sorry.

12 The next question was, but you are familiar with
13 it.

14 A Yes.

15 Q And does that depict a bench cut?

16 A Yes.

17 Q Where in the picture is the bench cut?

18 A It's hard to tell from the foreground.

19 Approximately -- actually, basically the entire length of the
20 trail that is visible.

21 Q And do you know the approximate length of the bench
22 cut?

23 A I do not.

24 Q Do you see in the left foreground of the picture an

(Robert Ripp - Cross by Mr. Caffry)

1 excavated area which appears to be off the side of the trail
2 tread itself?

3 A I see a seeded area, yes, off the left side.

4 Q And it's got grass growing in it?

5 A Yes, it does.

6 Q Is that the natural forest floor in that area on
7 the left or is that an area that was excavated and later
8 replanted?

9 A We used a little bit of that material in the actual
10 bench, but that was a natural concave area into the hillside
11 to start.

12 Q So, in effect, it's a borrow pit?

13 A Not in my understanding, no.

14 Q But you excavated soil from that location, moved it
15 to another location, and used it in the construction of the
16 trail tread; is that correct?

17 A If soil is moved anywhere, especially in a bench
18 cut, it is used immediately in that adjacent area, within
19 feet. So there is no transportation of this anywhere like
20 it would be for a borrow pit. This is used to construct this
21 feature, a portion of this feature.

22 Q When you say feature, you mean the bench cut,
23 including the flat trail tread part of the bench cut?

24 A Correct.

(Robert Ripp - Cross by Mr. Caffry)

1 Q So, on this picture, from the far left side of the
2 picture in the foreground, this excavated area that's off the
3 side of the trail, to the bottom of the downslope in the
4 bench cut, how wide is that?

5 A Without measuring I couldn't be accurate, but there
6 is a 9-foot trail tread that appears to be the widest point
7 of the area. So 15 feet approximately. Again, that is an
8 estimation without measuring.

9 Q Looking at Exhibit 98, again, the number is
10 probably on the back.

11 A Yes.

12 Q And, again, this has been previously identified as
13 having been taken on the Santanoni to Harris Lake section in
14 2016. Does this depict a bench cut?

15 A Yes, it does.

16 Q Do you know how high the bench cut is?

17 A How high the --

18 Q Are you familiar with this location?

19 A Yes.

20 Q Do you know how high it is from the elevation of
21 the trail tread to the top of the up-slope of the bench cut?

22 MS. LEE-CLARK: Objection.

23 THE COURT: What's the objection?

24 MS. LEE-CLARK: This is all cumulative if we are

(Robert Ripp - Cross by Mr. Caffry)

1 going to go through every bench cut.

2 THE COURT: It does seem cumulative, Mr. Caffry.
3 If you are going somewhere in particular, please make a
4 proffer at this time.

5 MR. CAFFRY: This appears to be one of the larger
6 bench cuts and I would like to establish how high it is.

7 THE COURT: Objection sustained.

8 BY MR. CAFFRY:

9 Q I have handed you what's been previously introduced
10 into evidence as Exhibit 111 as a photo taken on that same
11 trail in 2016. Do you have that in front of you?

12 A I do.

13 Q Do you see in the lower middle of the photo a black
14 object that appears to be partially buried in mud?

15 A I do.

16 Q Is that one of those mats that you were testifying
17 about earlier today?

18 A That is one of several.

19 Q Could you look at Exhibit BE, Appendix 5, map 3,
20 which the exhibit is the 2015 Community Connector Trail Plan
21 for this trail that you previously testified about?

22 A I don't have it.

23 Q I will hand it to you. I thought you still had it.

24 A Thank you.

(Robert Ripp - Cross by Mr. Caffry)

1 Q Sorry about that. You have it now?

2 A Yes.

3 Q And if you already testified to this, I apologize,
4 but is the section of the trail from Santanoni to Lake
5 Harris, is that open for snowmobiling this past year?

6 A No.

7 Q In the general route as you described it today, and
8 as shown on this map that I refer you to, once the section
9 that you built, at the end of that it then hits the Lake
10 Harris campground?

11 A Correct.

12 Q And it goes through the campground about how far?

13 A The entire way out of the campground to the east,
14 along the road system.

15 Q What's the next section -- and then it goes through
16 private land, correct?

17 A Correct.

18 Q What is the next section after that that you have
19 built or plan to build?

20 MS. LEE-CLARK: Objection.

21 THE COURT: What is the relevance?

22 MR. CAFFRY: I'm trying to walk through the whole
23 route. I do have questions about the route as we go
24 along.

(Robert Ripp - Cross by Mr. Caffry)

1 THE COURT: You are going to need more than that.

2 MR. CAFFRY: Withdrawn.

3 BY MR. CAFFRY:

4 Q With regard to the section from the Roosevelt Truck
5 Trail to the Boreas River, you recall testifying about that
6 earlier?

7 A Yes.

8 Q And as I understand it, that is not yet complete?

9 A No work at all has been done on that, no
10 on-the-ground construction.

11 Q Do you even have a work plan for it?

12 A Not yet.

13 Q Why is that?

14 A It's still in the draft stage.

15 Q Why is that? Why -- let me ask you this: Why have
16 you done some sections of this trail -- why rather than start
17 at one end at Santanoni and work continuously to the south,
18 have you done a section here, a section there, and left out
19 other sections in between?

20 MS. LEE-CLARK: Objection.

21 THE COURT: Overruled.

22 If you can answer, sir.

23 A As far as the work planning process, they are not
24 in order. I do anticipate finishing construction in an

(Robert Ripp - Cross by Mr. Caffry)

1 orderly manner, but a final route still needs to be
2 determined on the segment 8. I'm still looking into
3 different avenues, especially on the southern end where it
4 approaches the river.

5 Q Now, have you flagged or painted some parts of this
6 segment?

7 A I have, yes.

8 Q And as the trail approaches the river, it's going
9 to need a bridge, right, to cross the river?

10 A It will.

11 Q Has a location for the bridge been selected?

12 A Locations have been looked at, but not selected.

13 Q So, once one is selected, then additional sections
14 will have to be flagged and trees painted and tallied, so
15 there will be additional trees cut beyond those that have
16 been tallied to date?

17 A I'm not sure. It depends on the location. It's
18 all dependent.

19 Q Have you flagged and painted a route all the way to
20 the river?

21 A I flagged and painted a route to just before the
22 river, out to a potential intersection with Route 28N.

23 Q And then Route 28N crosses the river; is that
24 correct?

(Robert Ripp - Cross by Mr. Caffry)

1 A It does.

2 Q And did you flag and paint a route that continues
3 after the river, to the south?

4 A Yes, I did. That is segment nine.

5 Q Has that section been built yet or cut yet or
6 anything?

7 A Not the northern section where the Boreas River is,
8 but the southern section between Hewitt Road and Stony Pond
9 Trail has been cleared.

10 Q And, again, is that because the final location of
11 the bridge has not yet been determined?

12 A Partly. Partly because it was much of the southern
13 section was along old roads and it was very easy to establish
14 some of those sections that are going to be very usable. So
15 the terrain was a determination as well.

16 Q And from the Boreas River, as I understand, the
17 trail then continues down to the Stony Pond Trail?

18 A Correct.

19 Q And from there on down to a private land boundary?

20 A From the Stony Pond Trail south to, yeah, private
21 lands near Minerva, yes.

22 Q Have those sections been flagged or painted?

23 A Both, yes.

24 Q Both. All the way to the private land boundary?

(Robert Ripp - Cross by Mr. Caffry)

1 A Yes.

2 Q Where does the trail go from there?

3 MS. LEE-CLARK: Objection.

4 THE COURT: Sustained. Unless you have an offer of
5 proof with regard to the relevance.

6 MR. CAFFRY: Yes, your Honor. I would like to ask
7 the witness, and I believe I know the answer, whether or
8 not they have agreements from the private land owner to
9 cross the property there.

10 THE COURT: What's the relevance of that?

11 MR. CAFFRY: If they don't, then they have to
12 potentially reroute the trail and potentially cut more
13 trees in a different location than the one they flagged
14 and painted to date.

15 MS. LEE-CLARK: Any of that land is not on forest
16 preserve land. So we are only looking at what's on the
17 ground, your Honor.

18 THE COURT: Objection sustained.

19 Q Is the department involved at all in selecting
20 routes once the trail leaves the forest preserve and crosses
21 private land?

22 MS. LEE-CLARK: Objection.

23 THE COURT: The objection is sustained.

24 MR. CAFFRY: Can I just have a minute to confer

(Robert Ripp - Cross by Mr. Caffry)

1 with co-counsel, your Honor?

2 THE COURT: Of course.

3 MR. CAFFRY: No further questions for this witness
4 at this time, your Honor.

5 THE COURT: Any redirect, Miss Lee-Clark?

6 MS. LEE-CLARK: No, your Honor.

7 THE COURT: Thank you, Mr. Ripp.

8 THE WITNESS: Thank you.

9 THE COURT: You may step down.

10 Let me ask. Before I tell the witness to bring the
11 evidence back to the evidence table, is there any --
12 just check. If you are going to need it, keep it in a
13 pile before it gets reordered.

14 MR. CAFFRY: I'm not aware of more need for those
15 particular exhibits.

16 THE COURT: Good enough. Okay.

17 Miss Lee-Clark?

18 MS. LEE-CLARK: We have no further witnesses, your
19 Honor. So the defense rests at this point.

20 THE COURT: All right. Were you prepared for that?
21 Do you want to take a few moments or do you want to be
22 heard in any way at this time?

23 MR. CAFFRY: I don't think there is anything to be
24 heard. As I understand from our sidebar yesterday, we

Protect the Adirondacks! v NYS DEC & APA

1 might as well put this on the record, we will have a
2 conference with you in chambers Tuesday at 9:30 to
3 discuss an evidentiary issue related to a deposition
4 transcript. And then it is our intention that after
5 that conference to offer Stephen Signell for some
6 rebuttal testimony, and that's all we have left.

7 THE COURT: Good enough. All right. Thank you,
8 Counsel. I will see you on Tuesday at 9:30.

9 MR. CAFFRY: Thank you.

10 MS. LEE-CLARK: Thank you, your Honor.

11 (Whereupon the proceedings were adjourned
12 for the day.)

13 * * *

14 (The following proceedings were held on
15 April 4th, 2017.)

16 (Plaintiff's Exhibit 173 marked for
17 identification.)

18 THE COURT: Good morning. This is a continuation
19 of the matter of the application of Protect the
20 Adirondacks! against New York Department of
21 Environmental Conservation and Adirondack Park Agency.

22 Counsel, all set to proceed?

23 MS. SIMON: Yes.

24 MS. BRAYMER: Yes.

Protect the Adirondacks! v. NYS DEC & APA

1 THE COURT: At our conclusion last Thursday the
2 defense had rested on the record, correct?

3 MS. LEE-CLARK: That is correct, yes.

4 THE COURT: And you have some rebuttal, Counsel?

5 MS. BRAYMER: Yes. Plaintiff would like to call
6 Mr. Signell for rebuttal testimony.

7 THE COURT: Okay. Go ahead.

8 Mr. Signell, I'm going to have you sworn again.

9 **THEREUPON,**

10 **STEPHEN SIGNELL,**
11 **called as a witness, having been first duly sworn, was examined and**
12 **testified as follows:**

13 **DIRECT EXAMINATION**

14 THE COURT: Whenever you are ready, Miss Braymer.

15 BY MS. BRAYMER:

16 Q Could you please state your full name for the
17 record one more time?

18 A Stephen Signell.

19 Q Are you familiar with Dr. Howard's testimony about
20 your use of the Fulcrum app to collect and analyze data on
21 tree stumps on the various Class II community connector
22 trails?

23 A Yes.

24 Q Did you witness Dr. Howard's testimony?

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 A I did.

2 Q How many total pictures of tree stumps from the
3 Seventh Lake Mountain Trail, Gilmantown, Wilmington, and
4 Newcomb to Minerva Class II trails, were collected and
5 analyzed in Fulcrum?

6 MS. SIMON: Objection.

7 THE COURT: What's the objection?

8 MS. SIMON: This is in the record. It's a
9 rebuttal. He's either going to rebut a fact or an
10 opinion of Dr. Howard, not rehabilitate his testimony.

11 THE COURT: Overruled.

12 You may answer.

13 A I believe it was 11,683.

14 Q And how many of those pictures of tree stumps did
15 you take?

16 A 2,337.

17 Q And how many pictures of tree stumps did Mr. Bauer
18 take?

19 A 9,346.

20 Q Let me back up. Were you here when Dr. Howard
21 testified about the difficulty identifying a tree stump
22 versus a woody plant at diameter less than one inch at stump
23 height?

24 A Yes.

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 Q And how many of the pictures of the 11,683 tree
2 stumps were under one-inch diameter at stump height?

3 A Very few. There were some that -- we didn't
4 photograph stumps that were smaller than one inch. There is
5 a few, if you go back and look at them, that you could
6 probably debate whether they are, you know, slightly above or
7 slightly less. A matter of maybe a dozen or two.

8 Q Are you confident that you can personally
9 differentiate between the stump of a tree and the stump of a
10 woody plant?

11 A Yes.

12 Q And to be clear, does each picture in the Fulcrum
13 app include the tape measure placed over the tree stump to
14 show a stump measurement?

15 A Yes.

16 Q And then how many total pictures from those four
17 trails were collected and analyzed in the Fulcrum app that
18 are one-inch diameter at stump height or greater?

19 A Over 11,600 roughly. Almost all of the ones --
20 almost all of them were above an inch.

21 Q Are you familiar with Dr. Howard's testimony about
22 the use of aerial photography to show the Class II community
23 connector trails?

24 A Yes.

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 Q Did you witness Dr. Howard's testimony?

2 A Yes.

3 Q Have you looked at any of the Class II trails that
4 are the subject of this case using aerial photography?

5 A Yes, I have.

6 Q Which trail or trails?

7 A The Seventh Lake Mountain Trail. I've looked at
8 aerial photography for all the trails really.

9 Q Do you have training or experience analyzing aerial
10 photography?

11 A Yes.

12 Q What is that training and/or experience?

13 A In my collegiate career I took several classes on
14 aerial remote sensing. So it involves analyzing aerial
15 photography.

16 I took classes in multispectral image
17 analysis, which takes aerial imagery and runs the typical
18 metrics off of them. I have done a lot of aerial imagery
19 over the course of my work in the last 15 years.

20 Q I have handed you what's been marked for
21 identification as Plaintiff's Exhibit 173. Do you recognize
22 this set of documents?

23 A Yes.

24 Q And can you tell us what they are?

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 A These are two sets of photographs of the Seventh
2 Lake Mountain Trail, I believe segment one, the southern
3 section, two different sections.

4 One, the first two pages were from a dataset
5 from 2015. The last two pages were from the same dataset
6 that Howard used, the 2013, his photograph, aerial photograph
7 imagery of the Seventh Lake Mountain Trail.

8 And they show the trail --

9 Q I'm going to stop you right there. Did you prepare
10 these maps?

11 A I did, yes.

12 Q And where did you obtain the aerial data like you
13 referenced from Dr. Howard's, the 2013 data?

14 A Yeah. So the third and fourth page here is from
15 the 2013 New York State orthoimagery data.

16 The first two pages from the National Aerial
17 Imagery Program, which is the USDA program that produces
18 aerial imagery for the entire country. This was run in 2015.

19 Q Did you add any of the features that are shown on
20 the maps?

21 A Yes. The second and fourth pages have some
22 annotations showing where the trail is, location of bridges.

23 Q And I see a scale. Did you have a scale or is that
24 part of it?

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 A I added the scale, yes.

2 MS. BRAYMER: Your Honor, I move Plaintiff's
3 Exhibit 173 into evidence.

4 MS. SIMON: Objection. First, lacking foundation
5 and they are uncertified. The first two photos, he
6 says, are from the USDA, but they are uncertified.

7 The second two photos from New York State are also
8 uncertified. So I object to that.

9 And generally, the other objection is it's improper
10 rebuttal. And I would like to cite Appellate Division
11 case, Hutchinson versus Shaheen, 55 AD2d 833. A party
12 holding the affirmative of an issue is bound to present
13 all the evidence on his side of the case before he
14 closes his proof, and may not add to it by the device of
15 rebuttal evidence. He may not hold back some evidence
16 and then submit it to bolster his case after the
17 defendant has rested.

18 Those are my objections.

19 THE COURT: Miss Braymer, let me say this. With
20 regard to the objection on rebuttal, on whether this
21 does or does not constitute proper rebuttal, the
22 objection is overruled.

23 I think it constitutes proper rebuttal and I'm
24 going to be clear on referencing also now, so I'm

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 referencing our discussions off the record that all
2 counsel had with me when you gave us an overview. Why
3 don't you give us an overview again?

4 Based on the overview you already provided off the
5 record, I'm inclined to overrule the objection, because
6 my understanding of the evidence that is to be elicited
7 is that it's going to reference Dr. Howard's testimony,
8 about the ability to identify the trail or breaks,
9 alleged breaks in the canopy from overhead aerial
10 photography.

11 But go ahead. Why don't you be clear on the record
12 as to what your proposed evidence is.

13 MS. BRAYMER: Yes, that is correct. We would like
14 to rebut the testimony of Dr. Howard that the trail
15 cannot be seen from aerial photography.

16 He testified that, you know, it was not visible.
17 And I asked him questions about whether or not the
18 leaves covered the ground and that's why he couldn't see
19 it, and he said that was not his reasoning.

20 So we would like to get rebuttal testimony on that
21 aspect.

22 As to the foundation --

23 THE COURT: Okay. Hang on a moment. Let's deal
24 with that first.

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 So based upon that proffer, the Court is overruling
2 that objection. You are right, and it is a bugaboo,
3 particularly with many trial court judges when people --
4 when they want to hold something back and spring it in
5 rebuttal.

6 I think this is appropriate rebuttal, because the
7 plaintiff had not elicited evidence with regard to
8 aerial photography and that aspect of it being able to
9 demonstrate the break in the canopy, which has been an
10 issue, a relevant issue in the case, that was
11 affirmatively brought out by the defense in their
12 presentation. And accordingly I think it's appropriate
13 grounds for rebuttal.

14 So that's my ruling on that. Now, foundationally
15 though, that could be a problem.

16 Where are we on that, Miss Braymer, with regard to
17 those photographs?

18 MS. BRAYMER: With regard to these photographs, I
19 may have missed a question that I should have asked, but
20 otherwise I think he's properly trained in aerial
21 photography and that lays the foundation for this type
22 of evidence.

23 THE COURT: I agree. And he has evinced sufficient
24 expertise in the field to give some testimony, opinion

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 testimony with regard to aerial photography,
2 particularly of forest trails.

3 That having been said, the objection, as I
4 understood it, was that there is not an adequate
5 foundation for the photographs themselves, because they
6 are not certified, and there has been no testimony from
7 Mr. Signell to the effect that I have been in a plane or
8 a helicopter or somehow looking over these trails, and I
9 can say these are a fair and accurate representation of
10 the trails as of those dates.

11 So, I will say often in these non-jury trials
12 parties can stipulate to these issues. But I will also
13 say that neither party has been stipulating on these
14 type of issues throughout this trial.

15 So without an adequate foundation from Mr. Signell
16 or from the document itself, I can't allow the document.

17 That doesn't preclude him from necessarily
18 testifying from other documents that are in evidence --
19 other photos that are in evidence.

20 MS. BRAYMER: May I just one thing?

21 THE COURT: You can try to, unless you have some
22 further argument on the foundational issue, that will be
23 my ruling.

24 If you have some further argument, I would be happy

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 to hear it. If not, you can take my ruling and you can
2 try to establish further foundation now with this
3 witness as well.

4 MS. BRAYMER: I will take your ruling. Thank you.

5 THE COURT: Okay. Go ahead.

6 BY MS. BRAYMER:

7 Q Mr. Signell, is the data that you referenced from
8 those two sources, is that the type of data that you and
9 others in your profession regularly use for this type of
10 analysis?

11 A Yes.

12 Q And are these true and accurate copies of the
13 images that you used for your analysis?

14 A Yes.

15 Q And are these true and accurate copies of the maps
16 that you prepared then from that dataset?

17 A Yes, they are.

18 MS. BRAYMER: Your Honor, I move Exhibit 173 into
19 evidence.

20 MS. SIMON: I maintain my objection on foundation,
21 particularly on the federal documents, which are the
22 first two. They are uncertified.

23 THE COURT: To the extent you are going to rely on
24 the hearsay exception to the rules of evidence, that is

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 something that an expert uses in doing such analysis or
2 normally uses in the course of his occupation in order
3 to do an analysis, that does give him the ability to
4 reference documents or photographs when testifying, even
5 if they are not adequately -- even if there is
6 inadequate or foundation for them. It does not allow
7 for the receipt -- to substitute for the foundation for
8 the documents themselves and thereby get the document
9 into evidence.

10 So to the extent you are proffering the documents
11 or the photographs here, the proffer is, again, the
12 objection is sustained and the proffer is denied.

13 He can use them to reference. I'm not going to
14 look at them. He can use them in some way while he is
15 testifying, but that cannot serve as an adequate
16 foundation to allow the photographs into evidence.

17 MS. BRAYMER: I do have one legal argument to make
18 if I may.

19 THE COURT: Go ahead.

20 MS. BRAYMER: Dr. Howard's aerial photography was
21 allowed into evidence even though the certifications
22 were not considered by your Honor. And it was the same
23 dataset, the same scenario that he relied on that data,
24 and I asked him questions about whether or not he had

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 requested any sort of certification and it wasn't him.
2 It was the attorney general's office. And none of that
3 was admitted into evidence. So I'm not --

4 THE COURT: My recollection, and yours may well be
5 better than mine, is that these were certified documents
6 from governmental agencies. I don't remember that we
7 had a specific discussion about whether that
8 certification was adequate, but rather -- well, I'm not
9 going to say what the discussion was.

10 If you are concerned that I gave an inconsistent
11 ruling, I'm giving an inconsistent ruling, I would share
12 your concern in that I don't want to do that ever to any
13 party. I don't believe that that was my ruling.

14 Do you want --

15 MS. BRAYMER: I did not take your ruling with Dr.
16 Howard to be that you were accepting them as government
17 certified documents.

18 That he had prepared the aerial photosets using the
19 data from a government agency.

20 THE COURT: Counsel?

21 MS. SIMON: The USDA photos were entered into
22 evidence with their certifications. The New York State
23 photos at plaintiff's request were entered into evidence
24 without the certification, and I reserved my right to

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 object later and make an application to the Court to put
2 them back in. We have the certifications of both. As I
3 said, the federal aerial images are in evidence as
4 certified and these federal images are not certified.

5 THE COURT: My ruling stands, Miss Braymer.

6 MS. BRAYMER: Thank you.

7 THE COURT: Again, if there are other, if there is
8 other aerial evidence, photographs that are already in
9 evidence, he may well be able to testify from those.
10 You don't need my guidance, but he may well be able to
11 testify about those.

12 MS. BRAYMER: I'm happy to take your guidance.

13 BY MS. BRAYMER:

14 Q Mr. Signell, did you analyze aerial photography of
15 the Seventh Lake Mountain Trail?

16 A Yes.

17 Q And based on that analysis, can you tell me whether
18 or not you were looking at a -- what the condition of the
19 trees were at the time of the aerial photography?

20 A Yes.

21 Q What was that?

22 A The condition of the trees in certain parts of the
23 trail made it so that you could see the actual trail from the
24 aerial photography, see a linear trail in certain sections

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 traveling along in areas up to a third of a mile long. You
2 can identify the trail from the aerial imagery.

3 Q And is that consistent with your ground
4 observations of the tree canopy?

5 A It is.

6 Q How much of the Seventh Lake Mountain Trail did you
7 analyze using the aerial photography? I know that we had
8 photographs, which are not now in evidence, but can you tell
9 us how much of the trail that you analyzed in this fashion
10 using the aerial photography?

11 A I looked at the whole trail, in general, using
12 several different aerial imagery sets, including the 2013 and
13 the 2015 and, you know, there are multiple sections where you
14 could easily see the trail.

15 MS. BRAYMER: May I just have a moment, your Honor?

16 THE COURT: Of course.

17 (Pause.)

18 Q One more question, Mr. Signell. Did you observe
19 the Seventh to Eighth Lake Loop Trail on the aerial
20 photography?

21 A Yes.

22 Q Were you able to see that trail?

23 A Portions of it, yes.

24 Q Do you recall which portions?

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 A Well, it's -- I can't describe exactly the
2 arrangement of the portions, but certain portions of the
3 trail that had been closed you could see.

4 Q I'm going to interrupt you there. Which part of
5 the loop? Did you analyze the whole loop trail?

6 A No. I didn't really look -- I didn't look
7 specifically at the loop trail. I was looking at the new
8 trail, but, you know, the old trail intersects the new trail,
9 so I did see it in the imagery.

10 Q And would that be in segment one?

11 A Yes.

12 Q That you were reviewing where the Seventh Lake
13 Mountain Trail intersects with the loop trail?

14 A That is correct.

15 Q And your testimony is that you were able to see
16 portions of that trail from the aerial photography?

17 A Yes.

18 Q Were you able to see where the Seventh Lake
19 Mountain Trail intersects with the northern portion of the
20 loop trail? Did you analyze that part?

21 A Yes. Yeah, you could see it. That's the Old Uncas
22 Road, which you can see.

23 MS. BRAYMER: I have no further questions at this
24 time.

(Rebuttal - Stephen Signell - Direct by Ms. Braymer)

1 THE COURT: Thank you.

2 MS. SIMON: I have no questions.

3 THE COURT: All right.

4 Thank you, Mr. Signell.

5 All right. Anything else, Miss Braymer?

6 MS. BRAYMER: That's it, I believe, for the
7 plaintiff's witnesses. Thank you.

8 THE COURT: So no further rebuttal?

9 MS. BRAYMER: Correct.

10 THE CLERK: Any surrebuttal, Counsel?

11 MS. SIMON: No.

12 THE COURT: All right. So that leaves us only, as
13 I understand it, Counsel, with the issue of the
14 deposition testimony of Mr. Linck, which on consent of
15 counsel I have gone through informally in detail with
16 counsel in my chambers.

17 I will now place my rulings, along with the
18 objections, on the record, and I will pause after I make
19 each ruling and statement so that each side may make
20 further correction to what I have said or objection to
21 what I have said or exception, take further exception.

22 The rulings in and of themselves are sufficient to
23 preserve each of these rulings for appellate review. So
24 you don't need to except for each one of them.

Protect the Adirondacks! v NYS DEC & APA

1 These are objections made to the testimony of Mr.
2 Linck, all objections made by the defense. First at
3 page -- and I'm referencing the submitted deposition
4 testimony transcript of Mr. Linck, which is not the
5 entire testimony, but which is marked as Plaintiff's
6 Exhibit number 164.

7 MR. CAFFRY: Correct.

8 THE COURT: Which for purposes of these rulings and
9 for preservation, I will accept into evidence unless
10 there is an objection by either party to my doing that.

11 MS. SIMON: I'm sorry, you are asking for?

12 THE COURT: I'm accepting 164 into evidence.

13 MS. SIMON: Yes.

14 THE COURT: As limited by first the pages that have
15 been provided, and, well, it speaks for itself. The
16 pages that are provided and also as limited by my
17 sustained objections and instructions.

18 MS. SIMON: Can I ask a question?

19 THE COURT: Yes.

20 MS. SIMON: Are you going to redact the items that
21 we --

22 THE COURT: They will be stricken so I won't
23 consider them. I was not intending to go through the
24 redaction process, but if you would like to submit me a

Protect the Adirondacks! v NYS DEC & APA

1 redacted version of 164 on notice to counsel, I would be
2 very comfortable with returning my version of 164.

3 MS. SIMON: That's fine. Thank you.

4 THE COURT: Okay. I'm going to mark my version
5 into evidence.

6 Actually, I'm referring to this as 164. I think
7 since I'm receiving it into evidence, we will call it
8 Court Exhibit -- what Court Exhibit are we up to?

9 THE CLERK: Three.

10 THE COURT: On third thought, we will call it
11 Plaintiff's 164 and I will receive it in evidence.

12 (Plaintiff's Exhibit 164 received in
13 evidence.)

14 THE COURT: Actually, on further thought also with
15 regard to redacting.

16 Miss Simon, I think that's a good suggestion.

17 So, as I make my rulings, I'm going to, by hand,
18 redact whatever rulings are sustained and answers
19 stricken, and I will do that by crossing out the lines
20 and initialing there when I do it.

21 And you are all welcome to -- I'm going to keep
22 this with the evidence, which you are all welcome to
23 review before we break for the day. Okay?

24 So, there is an objection at -- first of all, there

Protect the Adirondacks! v NYS DEC & APA

1 was a general objection stated by the defense with
2 regard to any testimony by Mr. Linck that -- any opinion
3 testimony by Mr. Linck.

4 That general testimony with regard to the proffer
5 of opinion testimony from Mr. Linck is overruled. I
6 find that the evidence adduced early on, I'm not going
7 to go through it all, but the evidence adduced
8 established sufficient expert qualifications in the form
9 of Mr. Linck's education, where he has a BS and a Master
10 of Science in the relevant fields, that is a BS in
11 Biology, with a major in Forest Zoology, and an MS in
12 Environmental Science, his extensive training in forest
13 management, which he set forth, his position with the
14 APA as an associate national resources planner, and
15 particularly, his qualifications with the APA, and his
16 experience with the APA over the last number of years in
17 reviewing Unit Management Plans, particularly with
18 regard to snowmobile trails, I believe constitute, taken
19 in the light most favorable to the plaintiff, more than
20 adequate expertise in the field to give the opinion
21 testimony, general opinion testimony with regard to
22 trail construction, maintenance, and effect, to serve as
23 a basis for such testimony.

24 In addition, I find with regard to the general

Protect the Adirondacks! v NYS DEC & APA

1 objection that he is not noticed as an expert, first. I
2 find that given the fact that his deposition testimony
3 happened back on November 16th, 2015, there was more
4 than adequate time to prepare and respond by the defense
5 and thereby obviate any prejudice from the lack of
6 notice, since this trial obviously has occurred here in
7 2017.

8 So they had plenty of notice with regard to the
9 intent to use that by the mere fact that they were at
10 the deposition and the questions themselves, and
11 moreover, though typically when expert opinion testimony
12 is elicited, there always must be notice given, and to
13 some degree that requirement is even more underscored by
14 the general Third District Rules on the issue. That in
15 this case the testimony is inextricably interwoven to
16 his position as a fact witness here, as well as with
17 regard to his responsibilities in approving, helping
18 site, and not construct, but helping site and plan and
19 maintain the trails.

20 So you have your exception, but I will allow such
21 testimony.

22 So, at page 29, line 11 to line 15, where the
23 objections were both with regard to Mr. Linck's
24 competence to give such opinion testimony, as well as

Protect the Adirondacks! v NYS DEC & APA

1 the fact that it was unnoticed expert testimony, those
2 objections are overruled for the reasons just stated,
3 general reasons just stated.

4 With regard to page 38 to 39, lines -- the question
5 starting, as I understand it, at line 9 on page 38, up
6 to line 23 on page -- it looks like it's a long answer
7 and it actually ends on page 40, line 3. Those
8 objections are overruled. The objection, as I
9 understood it, was with regard to his, again, to his
10 competence to give such testimony.

11 On pages 40 to 41, particularly the answer -- that
12 objection was -- I have line 21. Do I have that wrong
13 there, Miss Simon?

14 MS. SIMON: On page 40?

15 THE COURT: Yes. I have a note that there is an
16 objection to the use of the word we.

17 MS. SIMON: On line 19.

18 THE COURT: I see. Yes. So there is an objection
19 there to the use of we. Tell me what that objection was
20 again.

21 MS. SIMON: It's hearsay. He is talking about
22 persons other than himself.

23 THE COURT: That objection is overruled on the
24 grounds of his prior testimony with regard to his

Protect the Adirondacks! v NYS DEC & APA

1 working together with DEC in making and siting and
2 approving the trails.

3 On page 42 there is an objection on lines 9 to 20.
4 That objection was sustained. The objection, as I
5 understood it, was that it was based upon hearsay and
6 speculative. That objection has been sustained,
7 particularly noting line 12, I have had stories related
8 to me, and line 16 to 17, about what I have heard. I
9 think that renders the entire -- and, of course, line 9,
10 first of all, I never have experienced doing that.

11 So lines 9 to 20 the objection is sustained and
12 those are stricken as speculative and hearsay.

13 The next page is 42 to 43, lines 21 on page 42, to
14 14 on page 43. There is an objection that it's
15 speculative, presumably based upon the prior testimony
16 that I just struck at page 42. I find that, however,
17 that the question set forth at line 21 on page 42 asks a
18 nonspeculative, does not call for speculation and asks
19 instead for specific evidence from the defendant as a
20 fact witness, and accordingly the objection is
21 overruled.

22 Also, page 43 at line 15 to 17 is an objection with
23 regard to his competence to testify. That objection is
24 overruled as well.

Protect the Adirondacks! v NYS DEC & APA

1 Objection at page 45, lines 12 to 15, that
2 objection is overruled. It's an objection with regard
3 to his knowledge of the classification scheme and the
4 answer is that he doesn't know the classification
5 scheme. I don't see the ground for objection.

6 Page 46, line 21, there is an objection with regard
7 to the question and answer with regard to Mr. Linck's
8 knowledge of the last time trunk trails were testified.
9 The objection is overruled as a proper question, going
10 to the extent of these trunk trails that are 6-foot wide
11 that have been made and his knowledge during his period
12 of time with the APA, and as stated off the record I
13 find it of limited relevance, but that doesn't mean it's
14 not appropriately asked and answered under these
15 circumstances. So it's overruled.

16 Page 47, line 16 is also overruled for the same
17 reason.

18 Next is page 100, lines 9 to 19.

19 MS. SIMON: I'm sorry. Could you repeat that?

20 THE COURT: Page 100, lines 9 to 19. There is an
21 objection on the basis of hearsay. That objection has
22 been sustained. I'm striking lines 9 to 19.

23 Page 115, line 18 -- excuse me. Yes, line 18.

24 There is an objection to Mr. Linck's stated opinion.

Protect the Adirondacks! v NYS DEC & APA

1 The objection is overruled.

2 At page 116, lines 12 to 14, there is another
3 objection to his belief. That objection is also
4 overruled for the reasons previously stated.

5 Page 117, line 17, there is a general objection
6 going from 117 down with regard to working with
7 machinery creating greater impact to the soil, and
8 working its way down into 118 with regard to those
9 issues, up to line -- give me one second. I have 117
10 starting at 17. So the objection with regard to
11 machinery creating greater impacts on the soil and
12 compaction is overruled.

13 And the question at 118, I have lines 8 to 13, the
14 objection is sustained as hearsay. So I'm redacting 8
15 to 13 on 118 as a sustained objection.

16 Counsel, just for all of you, if you would like, we
17 can just shoot copies of my redactions here of the
18 entire transcript, again, for your use in your
19 submissions it might make it easier. We can do it down
20 in my chambers when we are done.

21 MR. CAFFRY: That would be fine, your Honor. Your
22 secretary previously did that with another exhibit, just
23 scanned it, e-mailed it, and we were fine with that.

24 THE COURT: Good. There we go.

Protect the Adirondacks! v NYS DEC & APA

1 Page 138, lines 14 to 21, there is an objection to
2 Mr. Linck's opinion. That objection is overruled for
3 the reasons previously stated.

4 Page 142, line 21, the objection is sustained, line
5 21 to 22, solely to the extent that Mr. Linck said I
6 can't imagine they carried them very far, as
7 speculative.

8 Page 152, line 17, the objection is sustained and
9 the question stricken, line 17 to 19. There was no
10 answer to the question.

11 Page 155, lines 6 to 14, that is for the answer,
12 and then the question, and then the next answer is
13 stricken. It references an unresolved issue between the
14 two agencies with regard to bridge signage, references
15 the DEC policy, and the State Land Master Plan issue,
16 and it's stricken for failure to establish speaking
17 authority on the part of Mr. Linck such that he could
18 make such statements for the APA.

19 The Court notes that Judge Ceresia's prior
20 decision, which was quoted in my decision allowing for
21 Mr. Linck's testimony generally as a fact witness,
22 not -- a representative of the agency, but as a fact
23 witness with respect to what he observed and what
24 decisions that he made, but specifically stating that

Protect the Adirondacks! v NYS DEC & APA

1 generally the thought process that went into the review
2 is really not an issue to be determined. So it's
3 largely irrelevant in any event.

4 In any event, I don't believe that the speaking
5 authority for Mr. Linck with regard to overall agency
6 issues was established at any point in the testimony.

7 Go ahead, Miss Braymer.

8 MS. BRAYMER: Thank you. I just wanted to ask
9 which lines.

10 THE COURT: I said lines -- so we are at page 155,
11 lines 6 through 14.

12 MS. BRAYMER: Thank you.

13 THE COURT: Okay. All right.

14 Page 170, line 14. The question at line 14 going
15 down through line 22, the objection is overruled to the
16 extent that it is hearsay. It is his direct discussions
17 with DEC that he is referencing or saying that he
18 doesn't know about. So the question is not improper. I
19 don't know that it elicited evidence that is usable in
20 any event.

21 Page 175, lines 13 and 14 -- excuse me, line 13
22 down to line 15. The objection is sustained with regard
23 to what he believes and the follow-up question with
24 regard to that issue. So I will sustain -- so from line

Protect the Adirondacks! v NYS DEC & APA

1 13, starting with, and I believe, down through how much
2 does a boy scout weigh, I'm striking those.

3 Finally, page 176, lines 3 to 16, there is an
4 objection with regard to speculation and in regard to
5 his knowledge of the grooming process DEC follows and
6 what they can do on trails. The objection is overruled.
7 I find that based upon his testimony of his
8 responsibilities with regard to these trails and the
9 trail planning, that he's demonstrated the knowledge of
10 the process and the planning that goes into the trail
11 construction, which would involve, of course, the
12 knowledge of how the grooming was intended to be done.
13 So that it's not purely speculative. So that objection
14 is overruled as well.

15 You do have, again, exceptions to all of them.
16 Both parties have exceptions to all of that with regard
17 to that deposition testimony.

18 Is there anything else, folks?

19 MS. LEE-CLARK: Yes, your Honor. We have one more
20 thing.

21 THE COURT: Okay.

22 MS. LEE-CLARK: At this time we would like to move
23 once again for a directed verdict, and more specifically
24 we would like to renew our motion to dismiss the

Protect the Adirondacks! v NYS DEC & APA

1 Petition and Complaint against the Adirondack Park
2 Agency. Even through the evidence in Mr. Linck's
3 transcript, plaintiff has still not shown any facts
4 regarding that the agency participated in the
5 construction of Class II trails, and it hasn't met its
6 burden to sustain its complaint against the Adirondack
7 Park Agency.

8 Here, even using the standard in *Dumas versus*
9 *Adirondack Medical Center*, the directed verdict
10 dismissing the Petition and Complaint is appropriate,
11 because even in a light most favorable to the plaintiff,
12 there is no rationale process by which the Court could
13 find that the APA has in some way violated or
14 constructed these trails in a manner that violates
15 Article XIV, Section 1.

16 So we just renew our motion.

17 THE COURT: The process itself requires that they
18 approve the UMPs, correct?

19 MS. LEE-CLARK: The UMPs, that is correct, your
20 Honor.

21 THE COURT: The UMPs, which are the plans for the
22 trails themselves.

23 MS. LEE-CLARK: No, I --

24 THE COURT: Effectively the plans for the Class II

Protect the Adirondacks! v NYS DEC & APA

1 community connector trails.

2 MS. LEE-CLARK: Well, under -- yes and no, your
3 Honor. The UMP goes through a review process by the
4 agency and then there is also the work planning
5 process --

6 THE COURT: Right.

7 MS. LEE-CLARK: -- that the agency representative
8 signs off on, but it's not technically an approval. The
9 final approval comes from the regional forester, who is
10 a DEC representative. And so the ultimate calls about
11 where, how construction is actually carried out on the
12 ground, those are all DEC calls, and APA --

13 THE COURT: Aren't both approvals required?

14 MS. LEE-CLARK: Under the Memorandum of
15 Understanding they are required, but there is no -- any
16 work that's actually done on the ground, certainly the
17 DEC foresters consult with APA planners.

18 THE COURT: We can leave the work on the ground
19 outside.

20 MS. LEE-CLARK: Okay.

21 THE COURT: But if their approval is required,
22 aren't they a necessary party to this action? I know
23 that's not the question the way you are going with this,
24 but by definition a necessary party, aren't they?

Protect the Adirondacks! v NYS DEC & APA

1 MS. LEE-CLARK: Perhaps, your Honor, but --

2 THE COURT: It would need to be heard in order for
3 full relief to be given. They have the right to be
4 heard.

5 MS. LEE-CLARK: Certainly they have the right to be
6 heard, but our argument is that plaintiff has shown no
7 evidence that any actions by anybody at APA has led to
8 the construction of these trails in a manner that
9 violates Article XIV, Section 1, and so we believe that
10 a directed verdict pursuant to 4401 is appropriate.

11 THE COURT: I'm not going to ask you to respond at
12 this time. I'm going to reserve on it. You can present
13 some further legal arguments in your papers if you would
14 like.

15 MS. LEE-CLARK: Thank you.

16 THE COURT: Unless you would like to be heard now.

17 MR. CAFFRY: I would like to add one thing, your
18 Honor.

19 THE COURT: Okay.

20 MR. CAFFRY: I won't repeat the discussion that was
21 just had about approval of plans and all that.

22 What I would like to point out is Mr. Linck's
23 deposition transcript, which was just the portions of
24 which were just admitted into evidence, shows that as

Protect the Adirondacks! v NYS DEC & APA

1 part of his duties at APA, he was out in the field with
2 the DEC staff people helping pick the route, helping
3 decide which trees would be cut, how to potentially try
4 to avoid impacts or whatever.

5 So, sure, he may not have a shovel in his hands,
6 but he was directly involved as part of his job with the
7 APA in the route selection, which went into the work
8 plans, which were approved, and which were then
9 constructed by DEC. So I would just add that additional
10 argument.

11 THE COURT: So noted.

12 All right. So we are at the conclusion of the
13 evidentiary phase of this matter. We had some
14 discussions off the record in which counsel have told me
15 that given the intent to submit detailed proposed
16 findings of fact and conclusions of law, you both plan
17 to waive making closings in this matter. You have told
18 me that, but I won't hold you to it. I would just as
19 soon hear a waiver on the record now or if either of you
20 choose to make a brief closing, you are more than
21 welcome to do so.

22 MS. LEE-CLARK: We waive.

23 MR. CAFFRY: We would waive a closing, your Honor.

24 THE COURT: So I will give you dates now for

Protect the Adirondacks! v NYS DEC & APA

1 submissions of proposed findings of fact and conclusions
2 of law based upon an understanding from our discussion
3 off the record that you have been informed by our
4 stenography team on this case that they think a
5 reasonable estimate of when the entire transcript from
6 the trial will be prepared would be approximately 60
7 days.

8 So we will assume that you will have the
9 transcripts by June 2nd, 2017. So, Counsel, unless one
10 of you has an objection, I would propose that you get
11 your proposed findings of fact and conclusions of law by
12 July 17th, 2017, which would be approximately 45 days
13 thereafter.

14 Does that seem okay, an issue for either?

15 MR. CAFFRY: It is an issue for me, your Honor.

16 Do I have the discussion on or off the record?

17 THE COURT: We can stay on the record. I'm happy
18 to work within reason.

19 MR. CAFFRY: We have a rather long vacation planned
20 with my wife's extended family right toward the end of
21 that period, like June 28 to July 10, or something like
22 that.

23 THE COURT: You may have told me about this earlier
24 off the record.

Protect the Adirondacks! v NYS DEC & APA

1 Go ahead.

2 MR. CAFFRY: So I would ask instead the date be
3 made July 31st instead.

4 THE COURT: Any objection, Counsel?

5 MS. LEE-CLARK: We don't have any objection.

6 THE COURT: July 31st. Submissions on
7 July 31st.

8 Just a reminder. I know you are all experienced
9 attorneys, but a reminder of how proposed findings of
10 fact and conclusions of law should be submitted to the
11 Court.

12 With regard to findings of fact, I expect to see
13 individually numbered sentences or at least every
14 factual assertion should contain a citation to the
15 record somewhere.

16 So if you want to write in paragraphs, every
17 sentence that you have in your paragraph should be
18 followed by a citation either to an exact point in the
19 transcript or to, obviously, a piece of evidence that's
20 been received at trial.

21 No general citations to 20 pages of the transcript
22 or something along those lines. I want to see
23 line-by-line citations.

24 In addition, this is, as you all well know, this is

Protect the Adirondacks! v NYS DEC & APA

1 not motion practice. So I would encourage counsel to
2 coordinate with each other and submit these proposed
3 findings of fact and conclusions of law simultaneously
4 on the 31st. Or if you all want to do it on a date
5 earlier than that, you can do that as well.

6 If I see any reference to somebody else's proposed
7 findings of fact and conclusions of law, to your
8 opposing side's proposed findings of fact and
9 conclusions of law in your papers, I'm going to, at a
10 minimum, ignore that reference. At a maximum, I may
11 find that you have not appropriately followed Court
12 rules, and strike the entire proposed findings of fact
13 and conclusions of law, in which case you will be in a
14 position where I'm working only off of somebody else's
15 proffer.

16 So you can certainly -- you are more than welcome
17 to coordinate with each other on that. So July 31st.

18 Is there anything else, folks?

19 MS. LEE-CLARK: Your Honor, do you have any
20 specific requirements as to conclusions of law similar
21 to the findings of fact or no?

22 THE COURT: You may submit your own conclusions of
23 law.

24 MS. LEE-CLARK: Thank you.

Protect the Adirondacks! v NYS DEC & APA

1 THE COURT: Okay. Anything else beyond that?

2 MS. LEE-CLARK: No, your Honor.

3 THE COURT: Mr. Caffry, Miss Braymer, anything
4 else?

5 MR. CAFFRY: Nothing, your Honor.

6 THE COURT: All right. I want to thank you all for
7 your courtesy and professionalism in this case. It was
8 appreciated. I will see you soon.

9 MS. SIMON: Thank you, your Honor.

10 MR. CAFFRY: Thank you.

11 (Whereupon the proceedings were
12 concluded.)

13

14

15

16

17

18

19

20

21

22

23

24

Protect the Adirondacks! v NYS DEC & APA

I N D E X

Volume XV - Pages 1507-1648

PLAINTIFF'S REBUTTAL WITNESS

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Stephen Signell	1612	----	----	----

DEFENDANTS' WITNESS

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Robert Ripp	1509	1547	----	----

PLAINTIFF'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>EVID.</u>
164	Excerpt from transcript of Walt Linck	----	1629
170	NMT - L & FC-1 forms	----	1590
172	Map, Hyslop to Roosevelt Truck Trail Habitat and Forest History	1547	1561
173	Set of 4 aerial photos, Seventh Lake Mountain Trail, segment 1	1611	----

DEFENDANTS' EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>EVID.</u>
BC	Robert Ripp's resume	----	1512

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

C E R T I F I C A T I O N

I, Tracie Pamela Hilton, C.S.R, R.P.R., a Senior Court Reporter for the Unified Court System, Third Judicial District of the State of New York, do hereby certify that I attended and reported the foregoing proceedings; that it is a true and accurate transcript of the proceedings had therein to the best of my knowledge and ability.

Tracie Pamela Hilton

Tracie Pamela Hilton
Certified Shorthand Reporter
Registered Professional Reporter

Dated: April 12, 2017

Tracie Pamela Hilton, CSR, RPR
Senior Court Reporter