

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.

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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.

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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

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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

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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

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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

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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

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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.

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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.

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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.

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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

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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

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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

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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

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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?

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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

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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

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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.

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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

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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.

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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.)

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I N D E X

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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

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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