

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ALBANY

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

Plaintiff-Petitioner,

Index No.  
2137-13

-against-

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

Defendants-Respondents.

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BEFORE: HON. GERALD W. CONNOLLY  
Acting Supreme Court Justice

APPEARANCES:

For the Plaintiff:

JOHN W. CAFFRY, ESQUIRE  
CLAUDIA K. BRAYMER, ESQUIRE  
WILLIAM F. DEMAREST, III, ESQUIRE

For the Defendants:

LORETTA SIMON, ESQUIRE  
MEREDITH G. LEE-CLARK, ESQUIRE  
Assistant Attorneys General

Transcript of NON-JURY TRIAL taken in the  
above matter held at the Albany County Courthouse,  
Albany, New York, on March 2, 2017.

VOLUME II

March 2, 2017 - Pages 131 - 314

1 (Proceedings continued in open court on  
2 March 2, 2017, at 10:18 a.m.)

3 (Defendant's Exhibit CQ marked for  
4 identification.)

5 THE COURT: Good morning, ladies and  
6 gentlemen. All set to proceed?

7 MR. CAFFREY: Yes, your Honor.

8 THE COURT: All right. Please go ahead,  
9 Mr. Caffry.

10 MR. CAFFREY: Your Honor, I'd like to  
11 start off just preliminarily discussing a few  
12 logistical type issues.

13 THE COURT: Go right ahead.

14 MR. CAFFREY: As we discussed yesterday,  
15 we will open up with me reading a few sections  
16 from the pleadings and a few sections from  
17 deposition transcripts, and then Miss Simon may,  
18 as is her right, read additional sections. I  
19 assume that you would want to do it as I do each  
20 reading rather than wait until the end? Would  
21 that be the best procedure, your Honor?

22 THE COURT: It would be up to Miss Simon  
23 and her trial strategy.

24 MR. CAFFREY: We'll see how that goes.

1 The next witness will be Stephen Signell, one of  
2 our experts. I just wanted to let the Court know  
3 that we may or may not get to this today but at  
4 some point we want to show a video. And we did  
5 discuss with the stenographer late in the day  
6 yesterday how that tends to be set up but there  
7 will be some logistical issues. We may or may not  
8 get to that but I wanted you to be aware of it.

9 We also, your Honor, because  
10 Mr. Signell's testimony is so significant, we  
11 would like to be able to split his questioning  
12 between Ms. Braymer and myself; that certain  
13 discreet sections we would do and we would be very  
14 careful not to overlap. If it's a section she is  
15 questioning him about, I will not say anything. I  
16 will stay out of the way. And vice versa. The  
17 intention is when he's first called, I would go  
18 through his qualifications with him. Then  
19 Miss Braymer would take over and do one discreet  
20 area of questioning, particularly the tree counts  
21 that he performed. Then when that is all  
22 finished, I would go on to a different discreet  
23 area and she would no longer say anything. Just  
24 as a practical matter, given the volume of his

1 testimony, we propose to do that. We would be  
2 very careful to avoid any confusion and not have  
3 two people talking at once and all that kind of  
4 thing, and there would be a discreet handoff of  
5 the duty if that's acceptable to the Court.

6 THE COURT: Miss Simon.

7 MS. SIMON: I'm not sure how that would  
8 work. I would object if I have two people  
9 objecting or, you know, battling and it's two  
10 against one. But if there is some -- however the  
11 Court wants to deal with it fairly, I will try  
12 to --

13 THE COURT: Given that we're in a  
14 nonjury trial, I will allow it. And I appreciate  
15 your recognition of the potential issues which I  
16 know you recognize them because you have set forth  
17 that you're going to be sure to keep the issues  
18 discreet between the two of you. It would help  
19 even more if you would announce as you start each  
20 one what issue you're going to be discreetly  
21 questioning Mr. Signell on.

22 MR. CAFFREY: Yes.

23 THE COURT: And as best you can let's --  
24 let me ask you this: With regard to the direct

1 testimony of Mr. Signell, that's fine. What is  
2 your plan with regard to objections?

3 MR. CAFFREY: During his direct  
4 testimony, all objections would be handled by the  
5 attorney questioning.

6 THE COURT: I meant with regard to  
7 objections to any cross examination. I'd rather  
8 those were handled by one attorney or the other.  
9 The Court, of course, will give you time to speak  
10 to each other if you need to.

11 MR. CAFFREY: I think -- I don't think  
12 we're going to get to his cross today.

13 THE COURT: Okay.

14 MR. CAFFREY: But we would make sure  
15 that one attorney would be clearly responsible and  
16 we can work that out so that, again, we're not  
17 creating that type of confusion.

18 THE COURT: Good enough. Then your  
19 application or your request is granted.

20 MR. CAFFREY: Thank you, your Honor.

21 THE COURT: Anything else or are we all  
22 set?

23 MR. CAFFREY: No. In terms of  
24 preliminaries, that's it. Thank you.

1           Your Honor, basically, in the offer of  
2 proof, if you will, yesterday regarding the  
3 reading of these documents, as I said, they go to  
4 the issue of whether or not the trails at issue,  
5 the Class II trails, are a single system of trails  
6 or whether the number of trees cut and the  
7 impairment of the wild forest preserves -- nature  
8 of the Forest Preserve should be considered in  
9 total or in segments or trail by trail or  
10 whatever. First I would like to read from the  
11 plaintiff's combined complaint and petition dated  
12 April 12, 2013. Paragraph 63 states --

13           MS. SIMON: Objection. The complaint is  
14 part of the record here. Why do we need to read  
15 from it?

16           MR. CAFFREY: -- the final snowmobile  
17 plan includes recommendations --

18           THE COURT: Hang on. I'm sorry. That  
19 hand gesture meant why don't you explain to me why  
20 you're going to --

21           MR. CAFFREY: This is a very brief  
22 statement, your Honor, and we believe it's a key  
23 admission. I think that along with the deposition  
24 transcripts --

1 THE COURT: So you're reading the  
2 complaint and you're -- State what your intention  
3 is -- entire intention is with regard to reading  
4 the complaint, Mr. Caffry.

5 MR. CAFFREY: I intend to read from the  
6 complaint and then the matching response from the  
7 answer that was filed by the state to that  
8 complaint, in effect the admissions, and just very  
9 brief sections of those two documents.

10 THE COURT: To the extent that you were  
11 going to say, Miss Simon, that the Court can and  
12 should take judicial notice of all of the file,  
13 pleadings in this case, I will and I do, but I'm  
14 not going to prevent Mr. Caffry to briefly -- from  
15 briefly reading the relevant portions of the  
16 complaint and the response.

17 MR. CAFFREY: Thank you, your Honor.  
18 Paragraph 63 of the complaint dated April 12,  
19 2013: The final snowmobile plan includes  
20 recommendations for a system of snowmobile trail  
21 connections between communities in the Adirondack  
22 Park.

23 The defendants' verified objections in  
24 point of law, answer and return dated

1           September 24, 2013, paragraph 63: With respect to  
2           the allegations in paragraph 63 of the complaint,  
3           one, admit the allegations in the first sentence.  
4           And let me clarify that what I read from the  
5           complaint was the first sentence of paragraph 63.

6                         Paragraph 65 of the complaint, again  
7           starting at the beginning: The final snowmobile  
8           plan (PP45-46, 49-50, 52) includes a system of  
9           hundreds of miles of community connector trails.  
10          And I will end the reading there. The answer,  
11          paragraph 65: Deny the allegations in paragraph  
12          65 and the footnote 14 of the complaint except,  
13          one, admit that the final snowmobile plan  
14          recommended a system of snowmobile community  
15          connector trails, and I will end the reading  
16          there. And that's all I intend to read from the  
17          pleadings, your Honor.

18                         THE COURT: Please go ahead.

19                         MR. CAFFREY: Okay. I'm done reading.  
20          I just wanted -- if Miss Simon has anything she  
21          wants to read, as we would do with transcripts,  
22          she may read additional sections. I'm just  
23          waiting. If she's not going to, I will move right  
24          on.



1 THE COURT: Miss Simon, you can now if  
2 you wish to, or if you wish to read some  
3 additional sections, you also have that  
4 opportunity also during the course of your  
5 presentation of the defense in this matter.

6 MS. SIMON: I have nothing to read, your  
7 Honor.

8 THE COURT: Okay.

9 MR. CAFFREY: I will now read from  
10 deposition transcripts given by employees of the  
11 defendants during discovery in this case for the  
12 same purpose, and starting with -- the first one  
13 is the deposition of Karyn, K-A-R-Y-N, Richards on  
14 page one. Page one does not have the lines  
15 numbered but starting at the beginning of the text  
16 after the heading.

17 MS. SIMON: Objection.

18 THE COURT: What's your objection?

19 MS. SIMON: My objection is my  
20 understanding of what he is offering this into  
21 evidence for is a system-wide trail system for  
22 community connector trails and to -- yes, he has  
23 the ability to read it in pursuant to CPLR 3117,  
24 but it doesn't constitute an admission of the

1 party because Ms. Richards -- and I would extend  
2 this objection to all the employees of DEC and  
3 APA -- they cannot bind the agency unless they are  
4 a designee of the commissioner. So I'm not  
5 objecting to it being read but it doesn't  
6 constitute an admission.

7 THE COURT: They don't have speaking  
8 authority, you're stating.

9 MS. SIMON: Yes.

10 THE COURT: Understood. So you're  
11 making your position clear on the record that you  
12 do not -- that there is no admission on the part  
13 of the state or DEC that this is -- they consider  
14 this a binding admission based upon the speaking  
15 authority issue.

16 MS. SIMON: Correct. And it applies to  
17 the APA too. They're both defendants. And my  
18 other objection is there are elements of this that  
19 are not relevant or they refer to trails that may  
20 not even be in the time frame.

21 THE COURT: Understood. The Court will  
22 reserve on your objections. Again, you may make  
23 further presentation on these issues, these  
24 evidentiary issues in particular, in the context

1 of the findings of fact and conclusions of law,  
2 but I will allow -- subject to that reservation, I  
3 will allow Mr. Caffry to go forward.

4 MR. CAFFREY: May I just briefly be  
5 heard on that question just for the record at this  
6 point, your Honor?

7 THE COURT: Sure.

8 MR. CAFFREY: Thank you. I understand  
9 that the admissions in the answer are binding on  
10 the defendants and I understand that statements by  
11 employees of the department may only be evidence  
12 and not absolutely binding. I understand that  
13 distinction and if that's -- that's all I'll say.

14 THE COURT: Well, to be clear, the  
15 speaking authority issue can go to actually the  
16 admissibility as well at least with regard to  
17 specific admissions. But an employee deposition  
18 is governed I believe specifically by the CPLR.  
19 So you can take a close look at that, Counsel, and  
20 give me your analysis of where that places us in  
21 your findings of fact and conclusions of law.

22 MR. CAFFREY: Mm-hmm.

23 THE COURT: Okay?

24 MR. CAFFREY: Thank you, your Honor.

1 Starting then on the deposition transcript of  
2 Karyn Richards, page one, the lines on page one  
3 are not numbered. I will begin reading at the  
4 beginning directly beneath the heading:

5 "Deposition upon oral examination of the  
6 defendant, New York State Department of  
7 Environmental Conservation, by and through its  
8 agent, representative or employee, Karyn Richards,  
9 held pursuant to notice at the NYS Environmental  
10 Protection Bureau, 146 State Street, Albany, New  
11 York, on Wednesday, January 7, 2015."

12 Page three, line one:

13 "Karyn Richards, having been first duly  
14 sworn by the notary public, was examined and  
15 testified as follows." And that's on line four.

16 Page four, line eight:

17 "QUESTION: And you're an employee of  
18 the Department of Environmental Conservation?

19 "ANSWER: Yes, I am.

20 "QUESTION: What's your position there?

21 "I am a special assistant forest  
22 preserve coordinator.

23 "QUESTION: Who are you special  
24 assistant to?

1 "ANSWER: The department. I work for  
2 Rob Davies, the director of the Divisions of Lands  
3 and Forest.

4 "QUESTION: And how long have you been  
5 with DEC?

6 "ANSWER: I started with DEC in 1981 as  
7 an intern. Was employed in 1983. Left for a  
8 period of time to work for the Adirondack Park  
9 Agency and returned to the department." That's on  
10 line 21.

11 22:

12 "QUESTION: And when you were at the  
13 Park Agency, what was your job there?"

14 Going to page five, line one:

15 "ANSWER: I was the deputy director of  
16 the Park Agency."

17 MS. SIMON: Objection on relevance  
18 again. He disclosed to me also that he was going  
19 to read page 55, 56, 63 and 64 and 79.

20 THE COURT: I assume this is  
21 preliminary.

22 MR. CAFFREY: This is preliminary, your  
23 Honor, and especially given the discussion we just  
24 had about authority and the level of weight

1 perhaps to be given to some of these, I think it's  
2 important to establish who the employee was, what  
3 their responsibilities were, and that will go to  
4 that question.

5 THE COURT: Well, there's specific  
6 questioning to be done to meet the standard to be  
7 considered having speaking authority.

8 MR. CAFFREY: I'm sorry, your Honor?

9 THE COURT: My fault. There is specific  
10 questioning to be done or specific questions to  
11 ask to establish speaking authority for the  
12 agency. I'll be frank. My understanding of the  
13 law -- I haven't looked at it closely in the last  
14 few days, but my understanding of the law is that  
15 general statements with regard to someone's  
16 position are not sufficient to demonstrate  
17 speaking authority. So if you're going to read 20  
18 or 30 pages to generally show speaking authority  
19 because of the experience, unlikely. But if  
20 you've got something you can focus on his position  
21 and his interaction with the executive staff,  
22 perhaps.

23 MR. CAFFREY: Your Honor, I did look  
24 at -- with all due respect, I did look at the law

1 on this recently and I hope we get the opportunity  
2 to brief it and then you can decide. But I would  
3 like to get some of it in. There's a little  
4 more -- Karyn Richards, because she is the highest  
5 ranking employee that we had the opportunity to  
6 depose, that's why I'm giving more of her  
7 background. Some of the other employees, their  
8 background is just job title.

9 THE COURT: Good enough. You may go  
10 ahead.

11 MR. CAFFREY: Thank you, your Honor.

12 THE COURT: Your objection is noted and  
13 the Court reserves based upon that.

14 MS. SIMON: Thank you.

15 MR. CAFFREY: Page five, line 22:

16 "QUESTION: When you returned from APA,  
17 what was your position at that time?" Page six,  
18 line one:

19 "ANSWER: I was a special assistant  
20 forest preserve coordinator -- special assistant  
21 at that time and I headed up the unit management  
22 planning initiative for the department.

23 "QUESTION: And that's for the  
24 Adirondack Forest Preserve under the State Land

1 Master Plan?

2 "ANSWER: Adirondack and Catskill Forest  
3 Preserve.

4 "QUESTION: Are you still in charge of  
5 that? Are you still doing that?

6 "ANSWER: In my position I -- the -- the  
7 Bureau of Forest Preserve reports to me and unit  
8 management planning for Forest Preserve at both  
9 parks is done in the Bureau of Forest Preserve  
10 Management.

11 "QUESTION: What are your other duties  
12 in your current position?

13 "ANSWER: I oversee the Forest Preserve  
14 Bureau and the public access -- public lands  
15 access section in the division."

16 Line 18 is where that was found.

17 Turning now to page 63, line 22:

18 "QUESTION: I'd like you to look at page  
19 two of the -- can we refer to this as the 2009  
20 guidance --

21 "ANSWER: Yes.

22 "QUESTION: -- for ease of reference.

23 "ANSWER: Mm-hmm.

24 "QUESTION: At page two of the 2009



1 guidance, is that what you were talking about when  
2 you said earlier that this document is what is  
3 implementing the goal of creating the snowmobile  
4 trail system?

5 "ANSWER: Yes. As stated in the first  
6 paragraph, the October 2006 snowmobile plan was a  
7 conceptual plan outlining concepts that are now  
8 implemented, and implementation of those is  
9 supported by this management guidance.

10 "QUESTION: So through this management  
11 guidance, is it true that the department is now  
12 implementing those goals in the 2006 plan?

13 "ANSWER: As outlined in this management  
14 guidance.

15 "QUESTION: And the system of snowmobile  
16 trails between communities that it refers to, is  
17 that the system conceptually listed at pages 45  
18 and 46 of the 2006 plan?

19 "ANSWER: As qualified by the paragraph  
20 I've read twice." And that is line 21 on page 64.

21 Turning to page 79, line seven:

22 "QUESTION: Thank you. Page four of  
23 that document, the 2009 document, under the  
24 heading of Establishment of Community Connections,

1           it talks about linking Adirondack communities  
2           together. Can you tell me as one of the preparers  
3           of this document and the 2006 document why that is  
4           a goal or a policy of the department?

5                         "ANSWER: As noted in the Section 1,  
6           page two of the management guidelines, it states,  
7           the snowmobile plan presents a conceptual plan  
8           with the goal of creating a system of snowmobile  
9           trails between communities. Third sentence:  
10          'Implementation is supported by this management  
11          guidance.'

12                        "QUESTION: Well, my question is, was  
13          that goal adopted? Why did the department believe  
14          it was worthwhile to connect communities via  
15          snowmobile trails?

16                        "ANSWER: That is all that -- that is  
17          all articulated in the 2006 snowmobile plan.

18                        Now, turning to page 80, on line one:

19                        "QUESTION: What is your understanding  
20          of it, your personal understanding of the person  
21          who oversees much of the department's work on the  
22          Forest Preserve?

23                        "ANSWER: When I became involved in this  
24          process, that was a goal that was on the table,"

1 line six.

2 Nothing further to read from Karyn  
3 Richards' transcript. Should I continue with the  
4 next one, your Honor?

5 THE COURT: Miss Simon.

6 MS. SIMON: Your Honor, is this being  
7 admitted into evidence as an exhibit or just being  
8 read?

9 THE COURT: Well, it's now on the record  
10 as evidence.

11 MS. SIMON: Okay. My further objection,  
12 then, is there's no correction sheet here. There  
13 are signed correction sheets for each one of these  
14 transcripts and those need to be part of the  
15 record if we're going to put them in. There may  
16 be corrections to these pages.

17 THE COURT: So Mr. Caffry -- I  
18 understand this is not your responsibility.

19 MR. CAFFREY: Mm-hmm.

20 THE COURT: I started to say Mr. Caffry  
21 but I'm speaking to Miss Simon. I apologize.

22 I understand this is not your  
23 responsibility but Mr. Caffry provided you with  
24 the sections and the portions of the transcript

1           that he's going to read -- yes? -- previously?

2                   MS. SIMON:   Not all of them.   He read  
3           much more than what he provided me.   What was  
4           provided was not --

5                   THE COURT:   Okay.   Do you have the  
6           correction sheets with you?

7                   MS. SIMON:   I do.

8                   THE COURT:   Is there any portion of what  
9           was read other than a general objection that there  
10          is a correction sheet and he didn't tell us  
11          whether he looked at it or not?   I can't sustain  
12          that.   If you have an objection that something was  
13          misread because he did not include a correction  
14          from the correction sheet, then, of course, I'm  
15          going to sustain that if that occurred.   But you  
16          can't just say, Judge, there's a correction sheet.  
17          I don't know what happened.

18                   MS. SIMON:   I'm sorry.   Of the two  
19          pages, 55, 56, 63, 64, there are some corrections  
20          for 65.   I do have the sheet.   But he also read  
21          additional pages which he didn't give me ahead of  
22          time so may I have a moment to look at those other  
23          pages?

24                   THE COURT:   Of course, you can.

1 MR. CAFFREY: Excuse me, your Honor.  
2 May I just briefly say something, your Honor?

3 THE COURT: Let's give Miss Simon a  
4 moment. Then you may.

5 (Pause)

6 MS. SIMON: I have the correction.

7 THE COURT: Okay. Just one moment.

8 Mr. Caffry, did you want to be heard  
9 on -- or can we allow Miss Simon to state what her  
10 correction is?

11 MR. CAFFREY: I have no problem with her  
12 stating the corrections. I apologize for not  
13 putting it in when I read it myself. As we speak,  
14 my co-counsel are trying to do that for some of  
15 the others. We did give Miss Simon at some point  
16 in the not-too-distant past a copy of the entire  
17 Richards transcript with the correction sheet  
18 stapled in the back and --

19 MS. SIMON: I gave it to them.

20 MR. CAFFREY: I'm sorry. It came from  
21 somewhere. My copy I'm reading from has it. As  
22 to the others where we are reading -- where I will  
23 be reading from, we gave her the pages we intended  
24 to read from with the correction sheets in the

1 back.

2 THE COURT: Okay.

3 MR. CAFFREY: So she had all that before  
4 today.

5 THE COURT: Just to be clear when I made  
6 my statement to Miss Simon was I understand this  
7 is not her responsibility. I will underscore that  
8 again. It is not her responsibility to have -- to  
9 make sure that you are reading -- responsibility  
10 as opposing attorney but it should not be her  
11 responsibility to have to make sure for the Court  
12 that you are reading the correct transcript. That  
13 is your responsibility. I know you know that and  
14 you will be careful with that in the future.

15 MR. CAFFREY: Yes. Thank you, your  
16 Honor.

17 THE COURT: Miss Simon, please go ahead  
18 with your correction.

19 MS. SIMON: Thank you. So the  
20 correction to the transcript of Karyn Richards at  
21 page 79, line four, reads:

22 Delete quote T-W-O end quote.

23 Add quote types of trails end quote.

24 And then the word after and then in

1 quotes three, T-H-R-E-E, end quotes. Thank you.

2 THE COURT: Anything else?

3 MS. SIMON: No. Can I have an  
4 opportunity to read a line myself in?

5 THE COURT: You may. From Ms. Richards?

6 MS. SIMON: Yes.

7 THE COURT: You may.

8 MS. SIMON: It's already been marked,  
9 your Honor.

10 THE COURT: Go ahead, Miss Simon.

11 MS. SIMON: Thank you. All right.

12 Reading from the transcript of Karyn Richards,  
13 page 57, line 18:

14 "Is it the department's policy or goal  
15 to create a park-wide community connection system?

16 "ANSWER: It's the department's policy  
17 to implement the management guidance. I need to  
18 refer to that.

19 "QUESTION: One more question about the  
20 2006 snowmobile plan. Who within DEC would have  
21 given final approval to this document?

22 "ANSWER: As the record indicates, it  
23 was approved by the then-commissioner Denise  
24 Sheehan."

1           That's it, your Honor.

2           THE COURT: Thank you. All set,  
3           Mr. Caffry?

4           MR. CAFFREY: I just have a question.  
5           Before reading, Miss Simon handed both the court  
6           reporter and I two pages of Ms. Richards'  
7           transcript with a sticker on it that says  
8           Defendant's Exhibit CQ and today's date. I want  
9           to know the purpose of that and whether she's  
10          expecting it to be admitted into evidence seeing  
11          that we did not and there is -- we did not do so  
12          with what I read and there are things on these  
13          pages that she did not read and are presumably  
14          outside the scope of what we have just been  
15          reading about. So I'd like to know what --

16          THE COURT: Well, my immediate answer to  
17          you would be she didn't offer it into evidence.  
18          It's not in evidence and I am not looking at it.  
19          But, Miss Simon, perhaps you'd like to help  
20          Mr. Caffry by responding to his request to know  
21          what your intent was by handing Defendant's CQ --  
22          you don't need to.

23          MS. SIMON: Okay.

24          THE COURT: It's not in evidence.



1 MR. CAFFREY: As long as she's not going  
2 to --

3 THE COURT: If she makes a proffer at  
4 some point, you can object or accede as you wish  
5 and I will rule on it at that point.

6 MR. CAFFREY: Thank you. I just wanted  
7 to clarify that point, your Honor.

8 Reading now -- next from the deposition  
9 transcript of Peter Frank, page one, line 13:

10 "Examination Before Trial of the  
11 defendant, New York State Department of  
12 Environmental Conservation, by and through its  
13 agent, representative or employee" --

14 MS. SIMON: Objection, your Honor.  
15 Could I just -- do you want me to renew my  
16 objection or should it just apply -- it applies to  
17 all of them?

18 THE COURT: So state your objection  
19 again and then we'll leave it as a standing  
20 objection.

21 MS. SIMON: We'll leave it as a standing  
22 objection?

23 THE COURT: After you restate it.

24 MS. SIMON: My objection to the

1 transcript of Mr. Frank being read into the record  
2 is a global objection that applies to all the  
3 transcripts of APA and DEC employees being read;  
4 that they can be read pursuant to 3117 of the CPLR  
5 but they do not constitute an admission. None of  
6 these employees can speak on behalf of the agency.  
7 It doesn't bind the agency. That's the first  
8 objection.

9 The second is the relevance because many  
10 of these -- the references include -- may include  
11 trails that are outside the scope of this  
12 proceeding. Thank you.

13 THE COURT: All right. That will be a  
14 standing objection. My ruling that I've already  
15 made with respect to Miss Richards' deposition  
16 testimony will stand. That is that I reserve with  
17 regard to those applications and I will allow them  
18 to be read. Go ahead, Mr. Caffry.

19 MR. CAFFREY: Thank you, your Honor.  
20 Again, the deposition transcript of Peter Frank,  
21 page one, line 13:

22 "Examination Before Trial of the  
23 defendant, New York State Department of  
24 Environmental Conservation, by and through its

1 agent, representative or employee, Peter Frank,  
2 held pursuant to notice at the New York state  
3 Environmental Protection Bureau, 146 State Street,  
4 Albany, New York, on Thursday, January 8th, 2015."  
5 And that ends on line 19.

6 Page four, line three:

7 "Peter Frank, having first been duly  
8 sworn before the notary public, was examined and  
9 testified as follows." That ends on line five.

10 Page five, line five:

11 "QUESTION: Okay. And you're an  
12 employee of the Department of Environmental  
13 Conversation?" Apparently that was either I  
14 misspoke or the stenographer got it wrong and that  
15 does not appear to have been on his correction  
16 sheet. So reading again:

17 "And you're an employee of the  
18 Department of Environmental Conversation?

19 "ANSWER: Yes.

20 "QUESTION: And how long have you been  
21 employed there?

22 "ANSWER: I've been with the department  
23 since 1986.

24 "QUESTION: And what is your current

1 position there?

2 "ANSWER: I'm the bureau chief of the  
3 Bureau of Forest Preserve Management." And that  
4 ends on line 12.

5 Turning now to page 50, line seven:

6 "QUESTION: And there is a list of goals  
7 of communities to be connected, correct?

8 "ANSWER: Correct.

9 "QUESTION: And is DEC now in the  
10 process of creating the system of community  
11 connector trails which are set out here as goals?

12 "ANSWER: Portions of them.

13 "QUESTION: And some of them have  
14 already been constructed; that's correct?

15 "ANSWER: Correct.

16 "QUESTION: And others are yet to be  
17 constructed?

18 "ANSWER: That's to be determined." And  
19 that's on line 18.

20 Page 68, line 14:

21 "QUESTION: Turning to page two of the  
22 2009 guidance of Exhibit 5, and you see at the top  
23 of the page it discusses the 2006 snowmobile plan  
24 presenting a conceptual plan for snowmobile

1 trails?

2 "ANSWER: Yeah. In the first paragraph?

3 "QUESTION: Yes. And is part of this  
4 guidance intended to implement that -- the  
5 creation of that system of trails?

6 "ANSWER: Yes.

7 "QUESTION: And how would you describe  
8 the system that it refers to there? What does the  
9 system consist of?"

10 Turning now to page 69, line one:

11 "ANSWER: The system is -- it's a  
12 network of snowmobile trails.

13 "QUESTION: And the department's in the  
14 process of building and creating this network?

15 "ANSWER: Some of it exists and some is  
16 new construction and other areas, portions, that  
17 will be closed.

18 "QUESTION: But you're in the process of  
19 doing this?

20 "ANSWER: Correct."

21 That ends on line 8 and, your Honor, to  
22 the best of my knowledge there's no corrections to  
23 what I just read on the correction sheet that was  
24 ultimately signed by Peter Frank.

1 MS. SIMON: No further comment.

2 THE COURT: You do not wish to read  
3 anything from Mr. Frank's deposition at this time?

4 MS. SIMON: I do not.

5 THE COURT: Please go ahead, Mr. Caffry.

6 MR. CAFFREY: Turning now to the  
7 deposition of Thomas D. Martin, page one, line 13:

8 "Examination Before Trial of the  
9 defendant, New York State Department of  
10 Environmental Conservation, by and through its  
11 agent, representative or employee.

12 Thomas D. Martin, held pursuant to  
13 notice at New York State Department of  
14 Environmental Conservation, 232 Golf Course Road,  
15 Warrensburg, New York, on Thursday, January 28th,  
16 2015." And that ends on line 19.

17 Turning now to page three, line one:

18 "Thomas D. Martin, having been first  
19 duly sworn by the notary public, was examined and  
20 testified as follows." And that ends on line  
21 three.

22 Turning to page five, line eight:

23 "QUESTION: Can you please state your  
24 name for the record?

1 "ANSWER: My name is Thomas D. Martin.

2 "QUESTION: And you are an employee of  
3 DEC?

4 "ANSWER: Yes.

5 "QUESTION: The department. And what is  
6 your position?

7 "ANSWER: I am the natural resources  
8 supervisor for DEC region five.

9 "QUESTION: And how long have you been  
10 with DEC?

11 "ANSWER: Since May of 1979.

12 "QUESTION: And how long have you been  
13 in your current position?

14 "ANSWER: It will be three years in  
15 March of this year." And that ends on line 18.

16 Turning now to page 13, line 12:

17 "QUESTION: What is your understanding  
18 of the purpose of the 2006 plan for the  
19 Adirondacks?

20 "ANSWER: At the time there was a  
21 statewide snowmobile plan and it's my  
22 understanding that this plan was -- was designed  
23 to be a subset of that statewide plan for laying  
24 out how snowmobile trails would be developed in

1 the park.

2 "QUESTION: Is it fair to say that the  
3 plan also created conceptual goals for a  
4 snowmobile system that will be implemented by the  
5 department?

6 "ANSWER: I believe that that's correct.

7 "QUESTION: Is there a time frame by  
8 which the department is aiming to have those goals  
9 met by --"

10 Turning to page 14, line one:

11 "ANSWER: Not that I'm aware of.

12 "QUESTION: " -- or to have that system  
13 finished?

14 "ANSWER: Not that I'm aware of." That  
15 ends on line three. And that concludes the  
16 reading from the transcript of Thomas D. Martin.

17 Again, to the best of my knowledge,  
18 there's no corrections to those parts that I just  
19 read.

20 THE COURT: Miss Simon.

21 MS. SIMON: May I just have a moment? I  
22 want to check one more correction sheet.

23 THE COURT: You may.

24 (Pause)



1 MS. SIMON: No corrections. Thank you,  
2 your Honor.

3 THE COURT: And nothing to read from  
4 Mr. Martin's deposition at this time?

5 MS. SIMON: I do not.

6 THE COURT: Go ahead, Mr. Caffry.

7 MR. CAFFREY: Thank you, your Honor.

8 Turning now to the deposition transcript  
9 of Tate Connor, C-O-N-N-O-R, page one, line 13:

10 "Examination Before Trial of the  
11 defendant, New York State Department of  
12 Environmental Conservation, by and through its  
13 agent, representative or employee, Tate Connor,  
14 held pursuant to notice at New York State  
15 Department of Environmental Conservation, 232 Golf  
16 Course Road, Warrensburg, New York, on Thursday,  
17 January 21st, 2015."

18 MS. SIMON: Objection, your Honor.

19 THE COURT: Go ahead.

20 MS. SIMON: This is a cumulative issue.  
21 We've heard the same thing from all the  
22 transcripts he's already read from, all from DEC  
23 employees. This particular one he's going to read  
24 I believe the same thing about community connector

1 trails and the network system. The two people  
2 that he read from initially, Mr. Frank and  
3 Miss Richards, are policy foresters higher up in  
4 the chain. This is a forester on the ground who I  
5 think it's an unnecessary continued reading of the  
6 same issue. It's cumulative.

7 THE COURT: Briefly, Mr. Caffry.

8 MR. CAFFREY: Yes. Your Honor, this is  
9 the only employee at that level that I am going to  
10 read from. This is the last DEC employee that I  
11 am going to read from. I think it does in effect  
12 go to the weight to be attributed to these  
13 statements to show that they filtered down to the  
14 people in the field.

15 THE COURT: Objection is overruled.  
16 I'll take it for what it's worth.

17 MR. CAFFREY: Thank you, your Honor.  
18 Again page one, line 13. I did read all that.  
19 Turning now to page three, line one:

20 "Tate Connor, having been first duly  
21 sworn by the notary public, was examined and  
22 testified as follows." That ends on line three.

23 Page three, line 21:

24 "QUESTION: And you're employed by the

1 Department of Environmental Conservation?

2 "ANSWER: I am."

3 Turning to page four, line one.

4 "And what's your position there?"

5 "ANSWER: I am a forester one." And  
6 that ends on line two.

7 Reading lines 18 and 19:

8 "QUESTION: And how long have you been  
9 employed by DEC?"

10 "ANSWER: Since 2006."

11 Turning to page 17, line three:

12 "QUESTION: You said you reviewed the  
13 2006 snowmobile plan of 2009. Was that in  
14 connection with your contributions to this 2009  
15 guidance?"

16 "ANSWER: More than likely.

17 "And in your work today or in your work  
18 since 2009 in connection with snowmobile trails,  
19 do you -- would you base that work on the 2006  
20 plan or the 2009 guidance?"

21 "ANSWER: The 2009 guidance." That ends  
22 on line 10.

23 Going to page 18, line one:

24 "QUESTION: As I understand it, the

1 guidance calls for the creation of a system of  
2 Class II community connector snowmobile trails.  
3 Would that be an accurate statement?

4 "ANSWER: Yes.

5 "QUESTION: Is that system based upon  
6 the system outlined in the 2006 snowmobile plan?"  
7 That ends on line six.

8 Turning now to line 18:

9 "ANSWER: My understanding is that the  
10 2006 snowmobile trail -- the snowmobile plan  
11 created a general concept of how there would be  
12 connectivity in the park with the snowmobile  
13 community connector trails but ultimately those  
14 routes are determined through the unit management  
15 plan process." Ending on line 22.

16 Turning now to page 38, line 21:

17 "QUESTION: You kept referring to  
18 connectivity and the need for connectivity. What  
19 do you mean by that?

20 "ANSWER: The snowmobile plan talks  
21 about connecting" -- and I am now turning to page  
22 39 -- "communities so that people can snowmobile  
23 from Ticonderoga to Plattsburgh and hit different  
24 points along the way, Indian Lake to Speculator

1 and all of the other places that are listed."

2 That ends my reading from the transcript  
3 of Tate Connor. And, again, to the best of my  
4 knowledge there are no corrections on the  
5 correction sheet affecting the parts that I just  
6 read.

7 THE COURT: Miss Simon.

8 MS. SIMON: If I could have 30 seconds,  
9 there are a few extra pages that he hasn't  
10 disclosed.

11 THE COURT: Fine.

12 (Pause)

13 MS. SIMON: I have corrections to read  
14 from the correction sheet of Mr. Connor.

15 MR. CAFFREY: My apologies, your Honor.

16 THE COURT: Go ahead, Miss Simon.

17 MS. SIMON: The correction sheet is  
18 dated March 31st, 2015.

19 Correction one, page one, line 19,  
20 change from Thursday to Wednesday. Wrong day.

21 And page 40, line six, change making to  
22 stating.

23 Page 40, line seven, change that was to  
24 that trail was.

1                   Page 40, line seven, change fee, F-E-E,  
2                   to feet, F-E-E-T.

3                   MR. CAFFREY:    Objection, your Honor.  I  
4                   don't believe I read from page 40.

5                   MS. SIMON:    I made a note.

6                   MR. CAFFREY:    I think I stopped on page  
7                   39.

8                   (The Court Reporter checked the record.)

9                   THE COURT:    There is no reference to  
10                  page 40 in the transcript of Mr. Caffry's reading  
11                  of the deposition.

12                  MS. SIMON:    Is there anything past page  
13                  39?  We may have heard it wrong.  He only read up  
14                  to page 39 and no higher number?

15                  THE COURT:    So you're saying anything  
16                  above 40?

17                  MS. SIMON:    I may have heard it wrong.  
18                  I thought he said page 40 but maybe it was 41.  I  
19                  don't know.  Okay.  If there is nothing past page  
20                  39, I have no further corrections.

21                  THE COURT:    Thank you.  You're saying  
22                  you do not believe you read anything past 39,  
23                  correct, Mr. Caffry?

24                  MR. CAFFREY:    Correct, your Honor.

1 THE COURT: Good enough.

2 MS. SIMON: Thank you. I misunderstood.

3 THE COURT: Anything else, Mr. Caffry?

4 MR. CAFFREY: Yes. One more, your  
5 Honor.

6 THE COURT: Okay. This is the  
7 deposition of Walter W. Linck, L-I-N-C-K.

8 Page one, line 13: "Examination Before  
9 Trial of the defendant, Adirondack Park Agency, by  
10 and through its agent, representative or employee,  
11 Walter W. Linck, held pursuant to notice at New  
12 York State Department of Environmental  
13 Conservation, 232 Golf Course Road, Warrensburg,  
14 New York, on Monday, November 16, 2015." That  
15 ends on line 18.

16 Turning to page three, line one:

17 "Walter W. Linck, having been first duly  
18 sworn by the notary public, was examined and  
19 testified as follows." That ends on line three.

20 Page three, line 22:

21 "QUESTION: And are you an employee of  
22 the Adirondack Park Agency?"

23 Page four, line one:

24 "ANSWER: Yes.

1 "What's your position there?

2 "ANSWER: Associate natural resources  
3 planner.

4 "QUESTION: And how long have you been  
5 at the APA?

6 "ANSWER: Nearly 15 years." That ends  
7 on line five.

8 Turning to page 34, line four:

9 "QUESTION: I'm going to hand you what's  
10 been previously marked as Plaintiff's Exhibit 2  
11 and it was marked on January 7th, 2015. Is this  
12 the 2006 plan you're referring to?

13 "ANSWER: Yes.

14 "QUESTION: You have in front of you the  
15 2009 guidance which is Plaintiff's -- marked as  
16 Plaintiff's Number 5, is that correct?

17 "ANSWER: Yes.

18 "QUESTION: And can you look at the top  
19 of page two?

20 "ANSWER: Yes.

21 "QUESTION: Can you see where it shows  
22 the plan -- the 2006 plan presents a conceptual  
23 snowmobile plan with a goal of creating the system  
24 of snowmobile trails between communities in the



1 Adirondack Park? Do you see that?

2 "ANSWER: Yes.

3 "QUESTION: Is it your understanding  
4 that the trails you have already testified about  
5 here, the Gilmantown Trail, the Seventh Lake  
6 Mountain Trail, for instance, are they part of  
7 that system?"

8 Turning to page 35, line one:

9 "ANSWER: Yes, they are.

10 "QUESTION: And I believe there is a  
11 trail recently or currently under construction in  
12 the Newcomb-Harris Lake area. Are you familiar  
13 with that trail?

14 "ANSWER: Not from fieldwork but, yes,  
15 I'm familiar with the plans that proposed that  
16 trail and -- and I understand that work is  
17 ongoing.

18 "QUESTION: Is that trail part of this  
19 system?

20 "ANSWER: Yes, it is.

21 "QUESTION: And are you aware that there  
22 is also a trail currently under construction  
23 between Minerva and Newcomb?

24 "ANSWER: Yes.

1                   "QUESTION: Do you know the name of that  
2 trail?

3                   "ANSWER: I'm not certain that that  
4 trail has a name yet.

5                   "QUESTION: But is that trail part of  
6 the system of community connector trails?

7                   "ANSWER: It's -- it's intended to be  
8 upon completion, yes." That ends on line 17.

9                   And, again, your Honor, to the best of  
10 my knowledge there are no corrections on the  
11 correction sheet to the parts of the transcript  
12 that I just read.

13                   THE COURT: Miss Simon.

14                   MS. SIMON: Can I have one second?

15                   THE COURT: Sure.

16                   (Pause)

17                   MS. SIMON: I have no corrections to the  
18 transcript to add and I would just add an  
19 objection that as per depositions, there are  
20 leading questions in Mr. Caffry's words that are  
21 in those depositions. There's no opportunity for  
22 cross. But that's my objection.

23                   THE COURT: Your objection is overruled.  
24 Anything else? Mr. Caffry?

1 MR. CAFFREY: Yes, thank you, your  
2 Honor. If you could just give me a moment, your  
3 Honor, to find my next set of notes.

4 (Pause)

5 THE COURT: All set for Mr. Signell?

6 MR. CAFFREY: Yes.

7 THE COURT: Why don't we take a  
8 five-minute -- five- to ten-minute morning recess  
9 now and then I expect to work until about 12:30  
10 before we take our luncheon recess.

11 MR. CAFFREY: Thank you, your Honor.

12 THE COURT: All right.

13 (Recess taken after which the  
14 proceedings continued as follows.)

15 (Plaintiff's Exhibit 78 marked for  
16 identification.)

17 THE COURT: All set, Mr. Caffry?

18 MR. CAFFREY: Yes, your Honor. I just  
19 have one further thing to say regarding the  
20 reading of deposition transcripts. Miss Simon  
21 questioned the authority to bind the department of  
22 the people whose transcripts I read. I just want  
23 to make it clear that we did request the  
24 opportunity to depose other people higher up in

1 the department hierarchy, I believe it includes  
2 the commissioner. And I don't have that with me  
3 here today so I can't say for sure but we could  
4 address it in the briefing. But I just want you  
5 to be aware that we did request authority to go  
6 higher up the chain, and the highest person that  
7 they agreed to give us -- under the CPLR they get  
8 to choose to some extent who they can provide --  
9 the highest person in DEC we got was Karyn  
10 Richards.

11 THE COURT: Understood. Go ahead.

12 MR. CAFFREY: Your Honor. The plaintiff  
13 would like to call Stephen Signell.

14 THEREUPON,

15 STEPHEN SIGNELL,

16 called as a witness, having been first duly sworn, was  
17 examined and testified as follows:

18 THE COURT: Good morning, Mr. Signell.

19 THE WITNESS: Good morning.

20 THE COURT: Couple things before we  
21 begin. As you can see, we've got a court reporter  
22 taking down verbatim everything that's said.  
23 Because of that, I need you to make sure when you  
24 answer questions, you answer them out loud in a

1 nice clear voice. Stay away from head nods and  
2 uh-huhs and huh-uhs, okay?

3 THE WITNESS: Yes.

4 THE COURT: If you hear an objection at  
5 any point either to a question that's been asked  
6 of you or to your response that you begin making,  
7 I want you to not answer the question or stop  
8 immediately, give me a chance to rule on it. I'll  
9 tell you whether you can answer or not, okay?

10 THE WITNESS: Yes.

11 THE COURT: Finally, if Miss Simon says  
12 to you, I want a yes-or-no answer to this  
13 question, you have three possible answers. Those  
14 are yes, no, or I can't give you a yes-or-no  
15 answer to that question. No explanation of any of  
16 the three. Understood?

17 THE WITNESS: Yes.

18 THE COURT: Good enough. All set,  
19 Mr. Caffry?

20 MR. CAFFREY: Yes, your Honor.

21 DIRECT EXAMINATION

22 BY MR. CAFFREY:

23 Q Will you state your name, please?

24 A Stephen Signell.

1 Q And what city do you reside in, or town?

2 A Niskayuna.

3 Q New York?

4 A New York.

5 Q And what is your current employment?

6 A I am a consultant. I have my own company.

7 Q What's the name of your company?

8 A Frontier Spatial.

9 Q And so you're self-employed?

10 A Yes.

11 Q Do you have employees?

12 A No.

13 Q And what type of work does Frontier Spatial  
14 do, just very basically?

15 A Primarily it's geographic information systems  
16 consulting which involves maps, mapping tools, data  
17 bases, spatial data bases, anything having to do with  
18 mapping data primarily.

19 Q Do you do any other types of consulting?

20 A Yes. On occasion I do ecology, ecological  
21 consulting.

22 Q Do you have a college degree?

23 A I do.

24 Q And where did you earn that?

1           A       My undergraduate degree is from the  
2 University of Michigan.

3           Q       And what was that in?

4           A       My major was resource needs system  
5 management. Basically was forest ecology and landscape  
6 ecology.

7           Q       And during your education there, were you  
8 involved in any research of any kind?

9           A       Yes, a number of projects, the most  
10 pertinent of which here, before my senior year, I spent  
11 a summer at the Biological Station in Northern Michigan  
12 and I was part of a landscape ecosystem mapping project  
13 where we mapped out the ecosystems of the 14,000 acre  
14 property. I spent the entire summer walking the  
15 property with a crew and the end result was an  
16 ecosystem map of the entire property, roughly 130  
17 ecosystems delineated in a patchwork pattern. So I  
18 have a lot of experience -- I gained a lot of  
19 experience there in different needs of the ecosystems  
20 and discerning between kinds of forest types and things  
21 like that.

22           Q       And very briefly what did you do after  
23 college?

24           A       Between undergraduate and grad school I

1 spent --

2 Q Excuse me. Between college and grad school.

3 A Is that not what I said? Okay. Between  
4 college and grad school I lived in Maine and I was  
5 involved with environmental education. I taught. I  
6 was a program director and I ended up founding --  
7 co-founding the Ecology School Incorporated which is a  
8 large environmental education center in Maine.

9 Q Thank you. And you mentioned that you were  
10 mapping ecosystems. Can you define for the Court the  
11 term ecosystem?

12 A Yes. So landscape ecology is concerned with  
13 ecosystems and how they relate to each other on the  
14 landscape. So an ecosystem is an area that has a  
15 relatively constant -- constant is not the right  
16 word -- a unique set of factors including nonliving and  
17 living things. So an ecosystem might have a certain  
18 set of -- certain type of soil and certain aspect of  
19 the south-facing, north-facing, moisture regime,  
20 temperature. But within that, those things can combine  
21 to support a certain type of plant and animal community  
22 within it. They're distinct from other ones  
23 surrounding it.

24 Q You mentioned grad school. Where did you go



1 to graduate school?

2 A Penn State.

3 Q And did you earn a degree there?

4 A Yes.

5 Q What degree was that?

6 A Master's in science, in forest science.

7 Q And can you explain briefly what that means?

8 A Master's degree in science, you have a  
9 thesis. You do a large research project, write a  
10 thesis about it. My particular course of study thesis  
11 was about fire and the impact of fire disturbance on  
12 forest ecosystems, and most of the project involved me  
13 going into the woods and either looking at stumps and  
14 trying to find fire starters or actually cutting trees  
15 down, another 14 thousand acre property located in  
16 Indiantown Gap in Pennsylvania where there had been a  
17 lot of fires to binomials. They do bombing runs and  
18 things there, firescapes. When the fires get going,  
19 they don't put them out until it reaches the road. So  
20 there are certain areas that are burned a lot and  
21 certain areas across the street that haven't. So my  
22 study was I looked at hundreds and hundreds of stumps,  
23 counting tree rings, looking for fire starters and I  
24 looked at a lot of stumps during that.

1 Q And that was part of the work for your  
2 thesis?

3 A Yes.

4 Q And you mentioned forest science was part of  
5 your degree. What is forest science?

6 A Well, the name of the degree is somewhat  
7 general. Forest science is essentially forest ecology  
8 at this point, but my specific concentration is within  
9 that sort of larger group was dendrochronology. So  
10 dendro meaning tree, chronology meaning time. So this  
11 is the study of tree rings, and in landscape ecology,  
12 which I might talk about a little bit more later, and  
13 geographic information systems.

14 Q Have you done any teaching at the college  
15 level?

16 A I have.

17 Q Where?

18 A At Penn State and at RPI.

19 Q And did any of that involve forest ecology,  
20 dendrochronology, or any of those subjects?

21 A At Penn State I was a TA so I didn't teach  
22 any class, but I was a TA for a forest ecology class,  
23 involved all those things.

24 Q What have you taught at RPI?

1 A I taught geographic information systems.

2 Q And have you published any articles in  
3 scientific journals?

4 A I have.

5 Q Approximately how many?

6 A Half a dozen. I mean -- yeah, about half a  
7 dozen or so.

8 Q And were they peer reviewed?

9 A Yes.

10 Q Mr. Signell, I've just handed you what's been  
11 marked for identification as Exhibit 28. Do you have  
12 that in front of you?

13 A I do.

14 Q Did you have a chance to look at it?

15 A Yup.

16 Q Do you recognize it?

17 A I do.

18 Q And what is it?

19 A It's my resumé.

20 Q Did you prepare it?

21 A Yes.

22 Q Is there a big black mark at the top?

23 A Yes.

24 Q Does it appear that something was redacted

1 there?

2 A Yup.

3 Q What might have been redacted?

4 A My phone number maybe.

5 Q Okay. Thank you. Does this accurately  
6 summarize your education and experience?

7 A Yes.

8 MR. CAFFREY: Your Honor, I'd like to  
9 move Exhibit 28 into evidence.

10 THE COURT: Miss Simon.

11 MS. SIMON: No objection.

12 THE COURT: 28 is received into  
13 evidence.

14 (Plaintiff's Exhibit 28 received into  
15 evidence.)

16 BY MR. CAFFREY:

17 Q Mr. Signell, I'd like to follow up on a few  
18 things that are on this exhibit. Under the heading of  
19 employment, underneath your current position, do you  
20 see where it says senior GIS analyst?

21 A Yes.

22 Q And can you tell us where that position was  
23 located?

24 A At the Adirondack Ecological Center in

1 Newcomb, New York.

2 Q Is that in the Adirondacks?

3 A Yes.

4 Q And what years were you there?

5 A 2005 to 2012.

6 Q Who was your employer there?

7 A The Research Foundation of New York.

8 Q And what were your duties?

9 A My duties were to basically provide GIS  
10 support for the unit management planning process in a  
11 general way.

12 Q And when you say unit management plan, would  
13 that involve the Forest Preserve?

14 A Yes.

15 Q Did you do any fieldwork in your time in the  
16 Adirondacks, working at Newcomb in the Adirondacks?

17 A Very little.

18 Q Did you live there while you were there?

19 A I lived in Long Lake.

20 Q And did you take the opportunity to explore  
21 the Adirondacks while you lived there?

22 A Yes.

23 Q Did you do any hiking or any other outdoor  
24 activities?

1 A Yes. Hiking, canoeing, paddling, swimming.

2 Q How much of that, those kinds of activities,  
3 did you do?

4 A On a regular basis.

5 Q And under the heading of expertise at the top  
6 of your resumé --

7 A Yes.

8 Q -- you've mentioned GIS. Can you very  
9 briefly explain -- withdrawn. I believe you already  
10 explained what GIS is. I'm sorry.

11 It lists informatics. Very briefly,  
12 what is that?

13 A Informatics is more popularly known now as  
14 data science.

15 Q Thank you. And forest ecology, I believe  
16 you've already described what that is and  
17 dendrochronology you've explained. So thank you.

18 Finally, have you had any affiliation  
19 with the plaintiff, Protect the Adirondacks!, prior to  
20 this case?

21 A No.

22 MR. CAFFREY: Your Honor, at this time,  
23 as we've previously discussed, Ms. Braymer will be  
24 questioning the witness. I will not participate

1 in asking him questions, objecting, or responding  
2 to objections or anything like that.

3 THE COURT: Good enough. All set,  
4 Miss Braymer?

5 MS. BRAYMER: Yes, I am.

6 THE COURT: Please go ahead.

7 MS. BRAYMER: May it please the Court, I  
8 am going to question Mr. Signell regarding tree  
9 counts.

10 BY MS. BRAYMER:

11 Q After being retained by Protect the  
12 Adirondacks!, did you undertake to count the number of  
13 trees cut on Class II community connector snowmobile  
14 trails in the Forest Preserve?

15 A Yes.

16 Q And what trails did you count trees on?

17 A Okay. The Newcomb to Minerva Trail, the  
18 Seventh Lake Mountain Trail and the Wilmington and  
19 Gilmantown Trails. I produced tree counts for those  
20 trails. I think that's it.

21 Q In any of your tree counts, did you count  
22 bushes, shrubs, or other vegetation that is not  
23 included in the definition of tree?

24 A No.

1 Q So in your professional opinion all of the  
2 items that you counted are considered trees?

3 A Yes.

4 Q And in doing your tree counts, did you create  
5 a spreadsheet, chart, table, or other similar document  
6 summarizing those counts?

7 A Yes.

8 Q Have you had a chance to look at the document  
9 that I handed you which is marked Plaintiff's  
10 Exhibit 78 for identification?

11 A Yes.

12 Q And is that a copy of the chart that you  
13 mentioned you created?

14 A Yes.

15 Q And you did create that table?

16 A I did.

17 Q Does it accurately represent your tree count  
18 results for the trails that you counted?

19 A Yes.

20 MS. BRAYMER: I would like to move this  
21 document into evidence.

22 MS. SIMON: Objection, your Honor, on  
23 multiple counts.

24 THE COURT: Go ahead.



1 MS. SIMON: Let me start with we have a  
2 stipulation that is in the record as to the number  
3 of trees three inches DBH or greater that were cut  
4 on each of the trails in the stipulation, and  
5 rather than sticking with that number, we have a  
6 whole new column here of a different number of  
7 Mr. Signell's count.

8 THE COURT: With regard to?

9 MS. SIMON: With regard to trees three  
10 inches DBH or greater cut. That is in violation  
11 of the stipulation. It contradicts the  
12 stipulation. This cannot be admitted in  
13 contradiction to the stipulation.

14 THE COURT: So that's your first  
15 objection. That's with regard to one column on  
16 Plaintiff's 78, correct?

17 MS. SIMON: Yes. The second  
18 objection --

19 THE COURT: Hang on. Hang on. Hang on.

20 MS. SIMON: Sorry.

21 THE COURT: Let's address that one  
22 first.

23 MS. BRAYMER: May I respond?

24 THE COURT: You may.

1 MS. BRAYMER: We are abiding by the  
2 stipulation of trees three inches DBH or greater.  
3 If there is an incorrect number in that column for  
4 the stipulated trees, we will correct it. There  
5 was no intention to have a number different than  
6 the stipulated numbers.

7 THE COURT: Okay. Since there's a  
8 stipulation that gives exact numbers that you have  
9 stipulated to for the Court, for the facts for the  
10 Court to determine, frankly I would suggest -- you  
11 wouldn't want to change it because then it  
12 wouldn't be his document anymore. I would suggest  
13 that you simply redact that section with regard to  
14 that objection -- that column. It should simply  
15 be fully redacted because there's no reason for  
16 the Court to have a different set of numbers if  
17 it's a stipulated set of numbers. Does that make  
18 sense? No?

19 MS. BRAYMER: It does make sense, your  
20 Honor. He does have other -- he does use that  
21 column for other purposes within this table for  
22 calculating so it would make it difficult if it  
23 were actually physically redacted. But I can  
24 certainly refer to the Court's Exhibit 1, I

1 believe, for the facts, for the specific number.

2 THE COURT: Miss Simon.

3 MS. SIMON: Shall I go to my second  
4 objection or are we still on the first one?

5 THE COURT: We're still on the first  
6 one.

7 MS. SIMON: I absolutely object to this  
8 being put into evidence. It is not part of the  
9 stipulated agreement. If she wants to make  
10 reference to any of the information on the  
11 stipulation, I have no objection. This is an  
12 alternative --

13 THE COURT: I understand. I was  
14 thinking.

15 MS. SIMON: Sorry.

16 MS. BRAYMER: Judge, may I ask opposing  
17 counsel a question?

18 THE COURT: Why don't we go off the  
19 record for a moment and you can speak. I will say  
20 this: To the extent that you are saying I need to  
21 use that column to address these other columns,  
22 for him to address his other columns, that's --  
23 the same problem would still apply because you're  
24 talking about putting in evidence from other

1 columns that would also be -- if you're using  
2 those numbers, then could also be in contravention  
3 of the stipulation.

4 MS. BRAYMER: I am representing to your  
5 Honor that the numbers in that column are the  
6 stipulated numbers.

7 THE COURT: Oh. Why don't we go off the  
8 record and you and Miss Simon can speak for a  
9 moment.

10 MS. BRAYMER: Thank you.

11 (Discussion off the record.)

12 THE COURT: Back on the record. Go  
13 ahead.

14 MS. BRAYMER: I misunderstood  
15 Miss Simon's objection. She was not objecting to  
16 the column related to stipulated trees. She was  
17 objecting to the column that includes our expert's  
18 count of the trees three-inches DBH or greater.

19 MS. SIMON: Objection. I can speak for  
20 myself.

21 THE COURT: Continue, Miss Braymer.

22 MS. BRAYMER: I'm trying to clarify.  
23 Thank you. And those numbers that he counted do  
24 not match the stipulated numbers. The only reason

1 we included it in the table is because it goes to  
2 his methodology. We are not going to ask the  
3 Court to use other than the numbers that we asked  
4 for in the stipulated numbers.

5 THE COURT: Briefly, Miss Simon.

6 MS. BRAYMER: Oh, and your Honor, I'm  
7 sorry, one more thing. There is no stipulation  
8 regarding the three-inches DBH or greater trees to  
9 be cut on one of the trail segments so we do want  
10 to include his number for that trail. That's  
11 another reason we need that column in. It cannot  
12 be completely redacted.

13 THE COURT: Miss Simon.

14 MS. SIMON: My comment on that is I am  
15 assuming she's talking about segment eight which  
16 is the Roosevelt Truck to Boreas River portion.  
17 There have been no trees cut on that so how can  
18 there be a tree count. We object to this entire  
19 chart. It cannot go into evidence without a  
20 proper foundation for all the facts on here that  
21 are not stipulated.

22 THE COURT: Okay. Well, she did say  
23 with reference to that one section trees to be  
24 cut. She did not claim that they were cut, as you

1 just said.

2 MS. SIMON: But that's not -- the chart  
3 says trees cut. She said trees to be cut. Their  
4 column says --

5 THE COURT: I understand what you're  
6 saying.

7 MS. SIMON: Sorry.

8 THE COURT: All right. Generally  
9 speaking the chart sounds -- you haven't developed  
10 the foundation much but it sounds like a chart  
11 that was prepared by Mr. Signell with his numbers  
12 that he wants to use and that you want to use. As  
13 such, it is not necessarily admissible in any  
14 event. That doesn't mean that he can't simply use  
15 it to refresh his recollection and testify from  
16 all the numbers while the two of you over the next  
17 few days discuss possibly your ability on consent  
18 to submit charts to me that I can utilize. I do  
19 appreciate the submission of charts. Charts make  
20 it easier, particularly in this case will make it  
21 easier for me from both sides. For the time being  
22 Miss Simon's objection is sustained. I will not  
23 accept Plaintiff's 78. You may, of course, use  
24 Plaintiff's 78 in the context of his testimony to

1 refresh his recollection as to any numbers you ask  
2 him and you may get the testimony onto the record  
3 and before the Court and the evidence on the  
4 record and before the Court in that fashion.

5 MS. BRAYMER: Thank you. And I do  
6 object to the ruling.

7 THE COURT: You except. You except to  
8 the ruling.

9 MS. BRAYMER: I accept the ruling and I  
10 would like to perhaps renew my request for it to  
11 be admitted into evidence later in his testimony.

12 THE COURT: Okay. I was saying except  
13 to the ruling, E-X-C-E-P-T.

14 MS. BRAYMER: Oh, yes. I take  
15 exception. Thank you.

16 THE COURT: Okay. You've excepted the  
17 ruling and I will give you an opportunity to make  
18 further proffer later on after you and Miss Simon  
19 perhaps have had more of a chance to review it, or  
20 you and Mr. Signell have reviewed it to address  
21 some of these concerns.

22 MS. SIMON: Can I say one thing?

23 THE COURT: Yes.

24 MS. SIMON: This updated chart was

1 handed to me at 11:15 this morning.

2 THE COURT: Which is why -- one of the  
3 reasons the objection was sustained.

4 MS. SIMON: Thank you, your Honor.

5 THE COURT: Go ahead.

6 MS. BRAYMER: I do have one more  
7 question for your Honor. Can it be used as a  
8 demonstrative tool?

9 THE COURT: That's not what a  
10 demonstrative exhibit is.

11 MS. BRAYMER: Thank you.

12 THE COURT: Okay?

13 BY MS. BRAYMER:

14 Q Are there trails that you examined as part of  
15 this case that are not listed on the chart that you  
16 have in front of you?

17 A Yes -- can you say the question again?

18 Q Are there other trails that you examined  
19 while you were working on this case and can you  
20 remember the names of those other trails?

21 A Yes. I don't think the Goodman Mountain  
22 Trail is on here.

23 MS. SIMON: Could I have a readback on  
24 what he just said?



1 THE COURT: He said I don't think the  
2 Goodman Mountain Trail is on here.

3 THE WITNESS: Goodman, not Goodnow.

4 Q And are there any others?

5 A Not that I can recall. Well, there was  
6 another trail but I don't think that's part of this  
7 case.

8 Q What was the name of that trail?

9 A The Polaris Bridge Trail.

10 Q What is the status of that trail?

11 A It has not been cut or marked.

12 Q Did you do tree counts on Goodman Mountain  
13 Trail?

14 A I did.

15 MS. SIMON: Objection. She hasn't  
16 established that that Goodman Mountain Trail is in  
17 this case.

18 THE COURT: Overruled for now. Go  
19 ahead.

20 Q Why are the counts for the Goodman Mountain  
21 Trail not included on your chart?

22 A They're not Class II community connector  
23 trails, or it is not.

24 Q Before going out to count trees, did you

1 create a protocol for counting trees on the snowmobile  
2 trails in the Forest Preserve?

3 A Yes.

4 Q What were the steps of that field protocol in  
5 general outline?

6 A Well, the general -- so when I was first  
7 contacted to do work on this case, I was asked to count  
8 the stumps along the Hyslop to Roosevelt Truck Trail.  
9 So I developed a protocol that involved photographing  
10 every stump above three inches in diameter at stump  
11 height, and that protocol was extended in all the cut  
12 sections. We walked the trail -- I would walk the  
13 trail. Every stump I encountered, take a photograph of  
14 it and then later on summarized it.

15 Q When you were out in the field, did you do  
16 any other collecting data, documenting any other  
17 general --

18 A Yeah. I also documented with photography and  
19 GPS various other features. Streams, water crossings,  
20 places where it looked like something unique had  
21 happened in that particular spot.

22 Q Did you document the forest type?

23 A I did. That was a different protocol but I  
24 did identify as I was going along generally what forest

1 type it was in, some ecological characteristics.

2 Q Have you had a chance to review what's been  
3 marked Plaintiff's Exhibits 55 through 58?

4 A Yes.

5 Q Do you recognize what's depicted in  
6 photograph number 55?

7 A I do.

8 Q Do you recognize what's depicted in 56?

9 A Yes.

10 Q And photo 57?

11 A Yes.

12 Q And Exhibit 58?

13 A Yes.

14 Q And what do those exhibits show?

15 A These are pictures -- these are the actual  
16 photographs that I took along these trails. Couple of  
17 them I think are from the Hyslop, couple of them from  
18 Hewitt. But this just shows how I photographed the  
19 trees with a measuring tape, the stumps. So I'd lay  
20 the measuring tape across the stump, attempt to do it  
21 across the shortest distance of the stump to be  
22 conservative because at this height, stumps are very  
23 irregularly shaped. So in order to try to best  
24 approximate what they would have looked like if the

1 stumps were still there, I measured across the shortest  
2 diameter that I could find. And then when I measured  
3 the -- when I recorded the diameter, I rounded it down  
4 to the nearest whole number. So if a stump was  
5 3.8 inches across, I just recorded it as a three. So  
6 everything above -- everything from four to  
7 five inches, for example, was given a four, 4.999,  
8 whatever. So they were binned into one-inch categories  
9 and everything was rounded down to the nearest whole  
10 number.

11 Q Do those four photographs accurately depict  
12 and represent your observations in the field?

13 A Yes.

14 MS. BRAYMER: I would like to move into  
15 evidence exhibits number 55 through 58.

16 MS. SIMON: Objection, your Honor.

17 Improper foundation. May I explain?

18 THE COURT: I didn't hear the last part  
19 of that.

20 MS. SIMON: Improper foundation.

21 THE COURT: You said something after  
22 that.

23 MS. SIMON: Oh. I said may I explain.

24 THE COURT: Yes.

1 MS. SIMON: It hasn't been established  
2 that these photos were taken on any particular  
3 trail that is within the scope of this proceeding  
4 and where. Where and when hasn't been  
5 established.

6 THE COURT: Miss Braymer.

7 MS. BRAYMER: He did establish that he  
8 took these photos himself on trails that he  
9 counted for this case, for snowmobile trails.

10 THE COURT: Let me ask you this: What  
11 is the purpose for which you are offering these?  
12 Are you demonstrating that they show specific  
13 evidence of trails upon which the Court is making  
14 a determination whether as a trail or as a system,  
15 or merely as demonstration of his process and his  
16 protocol in doing these measurements.

17 MS. BRAYMER: They are representative of  
18 his protocol and doing his measurements.

19 THE COURT: Based upon that proffer, the  
20 Court receives 55 to 58 into evidence for that  
21 purpose stated.

22 (Plaintiff's Exhibits 55 through 58  
23 received into evidence.)

24

1 BY MS. BRAYMER:

2 Q Can you describe for the Court the height of  
3 the stump?

4 A Most of the stumps --

5 MS. SIMON: Objection. What are we  
6 talking about? What stump? What picture?

7 THE COURT: Sustained.

8 MS. BRAYMER: Rephrase.

9 Q While you were doing your fieldwork, can you  
10 describe typically what the height of the stumps were  
11 of the ones that you counted on trails that are already  
12 cut?

13 A They were height above the ground somewhere  
14 between one and three inches mostly.

15 Q Which trails did you take photographs of  
16 trees on?

17 A Photographs of trees or stumps? I took  
18 photographs of trees on all the trails except for  
19 Gilmantown. I did not take any photographs of the  
20 trees on Gilmantown.

21 Q Let me back up. Did you take photographs of  
22 stumps on the trails where the trees were cut?

23 A I took the photographs on some of them. On  
24 some of them Mr. Bauer did under my supervision.

1 MS. SIMON: Objection. Hearsay.

2 THE COURT: Overruled.

3 Q And on trails where the trees were not yet  
4 cut, who took the photographs or did the analysis of  
5 those trails?

6 A I did.

7 Q Which trails did Mr. Bauer take photographs?

8 A He photographed --

9 MS. SIMON: Objection. Unless he  
10 witnessed it, he can't testify to it.

11 THE COURT: Overruled. You may answer.

12 A He photographed stumps on the Gilmantown,  
13 Wilmington, Lake Harris and Seventh Lake Mountain  
14 Trails.

15 Q Is it an acceptable --

16 THE COURT: Hang on. Give me one  
17 second. Give me those again.

18 THE WITNESS: Wilmington, Gilmantown,  
19 Seventh Lake Mountain and Lake Harris.

20 THE COURT: Thank you. Go ahead,  
21 Miss Braymer.

22 MS. BRAYMER: Thank you, your Honor.

23 Q Is it an accepted practice for professionals  
24 such as yourself to rely on assistance to collect data

1 which is then analyzed and interpreted by yourself, the  
2 professional?

3 A Absolutely.

4 Q Have you ever used an assistant for this  
5 purpose before?

6 A Yes.

7 Q Can you give the Court a couple of  
8 examples --

9 A Sure.

10 Q -- of who and where and when?

11 A One example is I did some work with Essex  
12 County in the Adirondacks. We used the same app, data  
13 collection application. I'll get into the details a  
14 little later probably. But we were identifying  
15 recreation areas and things, various things having to  
16 do with wellness; farms, community gardens, various  
17 things. And so I set up an app for their staff to  
18 collect data in the field. I trained them how to use  
19 it. They went out, they successfully collected data  
20 much more complicated than this, and I QC'd it and it  
21 worked very well.

22 Q Are you aware of any other professionals  
23 using assistance for this purpose in your field?

24 A Yes.



1 Q Can you give the Court an example of that?

2 A Practically every -- not every but many,  
3 many, many, for instance, academic research projects  
4 that involve grad students or they hire field  
5 assistants. Sometimes we might have a crew of three or  
6 four people. I myself worked as one of these people  
7 when I was in the Biological Station in Michigan and in  
8 other places. It's a very common practice to farm out  
9 some of the grunt work to multiple people or other  
10 people, train them. They collect the data and then you  
11 go over it.

12 Q Did you personally train Mr. Bauer in the  
13 tree-counting protocol that you had developed?

14 A Yes, I did.

15 Q And on the trails that Mr. Bauer examined,  
16 those trees had all been cut and he was --

17 MS. SIMON: Objection, not in evidence.

18 THE COURT: I didn't hear you.

19 MS. SIMON: I said objection, it's not  
20 in evidence that all those trees were cut on  
21 whatever trails we're talking about.

22 THE COURT: It sounded like she wasn't  
23 quite done and was starting to rephrase her  
24 question anyway, so I'll sustain the objection to

1 the question to the extent there is one out there  
2 and let you rephrase. Go ahead, Miss Braymer.

3 Q On the trails that Mr. Bauer went out and  
4 collected data for you, were the trees cut on those  
5 trails?

6 A Yes.

7 MS. SIMON: Okay. That would be an  
8 observation, unless he made that observation  
9 personally. I withdraw my objection if he's  
10 speaking to that.

11 THE COURT: Your objection is overruled.  
12 Mr. Bauer to my understanding is here, is going to  
13 testify, and I am going to allow this witness to  
14 testify from that. To the extent you have an  
15 issue with the underlying data that is relied  
16 upon, he does have the ability to rely upon such  
17 data that is collected by others and Mr. Bauer is  
18 being made available. So your objection is  
19 overruled. Go ahead, Miss Braymer.

20 Q I will ask, did you train Mr. Bauer how to  
21 identify a stump and collect the data that you wanted?

22 A I did.

23 Q Does what he was doing require any particular  
24 expertise?



1 trips I was able to find all those stumps. I had the  
2 photograph that he had taken and I was able to go into  
3 the field using the GPS coordinates that were included  
4 with those photographs and find those stumps.

5 Q Was Mr. Bauer with you when you went to do  
6 the field check?

7 A No.

8 Q What did you determine from the field check?

9 A Well, he was there for -- he was there for  
10 one of them maybe. Yeah, he was there for one of them.  
11 He happened to be -- go ahead.

12 Q What were the results of your field check?

13 A I found all of the stumps that I had selected  
14 before I went out in the field. I selected a bunch of  
15 stumps before I did my surveys and I was able to find  
16 them afterwards. There was three or four stumps that I  
17 couldn't find the first time because I made the wrong  
18 assumption that I would be able to visually see on my  
19 phone the photo of the stump. When I got out in the  
20 field, it was too bright and I couldn't see -- I  
21 couldn't really see what the photo looked like so I had  
22 to come back later with a printout. I printed out the  
23 photos of these stumps and I had to go back and find  
24 them, which I did.

1 Q So ultimately, in your professional opinion,  
2 the field check was successful in showing that he had  
3 followed your protocol?

4 A Absolutely. And I also, because these stumps  
5 are done -- the photos were taken in sequential order,  
6 I'm able to -- I also informally would -- I could look  
7 at the stumps he had taken and just start off on a  
8 section of trail and see yes, yes, yes, yes, here they  
9 are.

10 Q Would it be fair to say that Mr. Bauer only  
11 collected the raw data and you did the professional  
12 analysis of it?

13 A Yes.

14 Q Were there photos of stumps that Mr. Bauer  
15 took and provided to you that you did not count?

16 A No.

17 Q Did Mr. Bauer provide you with photographs?

18 A Yes.

19 Q Did he provide you with any other sets of  
20 data?

21 A He took, as I did, as viewed from another  
22 trail, he took photographs of other things that he  
23 thought were noteworthy. Grassy stretches. There was  
24 an ability to do things besides just photographing

1 stumps the way the data collection was taken, but those  
2 were not included in the stump counts or anything.

3 MS. SIMON: Your Honor, could I have  
4 that again?

5 THE COURT: Sure.

6 A Mr. Bauer --

7 THE COURT: Hang on.

8 (Last answer read by the reporter.)

9 Q Mr. Signell, what happens to this data that  
10 he's collecting including the photos?

11 A All the data that Mr. Bauer collected synched  
12 up to a data base. So the way -- I can get into more  
13 details if you'd like, but people are collecting the  
14 data on their phones, in this case myself and Mr. Bauer  
15 in the field, and then when we're done, you synch the  
16 data and it all goes in the data bases.

17 Q I know that some of the trails you use and  
18 you mentioned before an app or an application. Can you  
19 tell the Court what that app was and how it works?

20 A Sure. So a lot of the data collection was  
21 done using something called Fulcrum. It's a data  
22 collection app built for mobile devices, tablets,  
23 phones, and what it does is it allows you to build a  
24 custom form to collect whatever kind of data you want.

1 In this case it was a very simple form that I built.  
2 Had a diameter and a couple other fields in it.  
3 Something for notes if you wanted to write notes.

4           But the thing about Fulcrum is that it  
5 records the GPS coordinates. It's a map-based field  
6 collection, so everything you do is associated with a  
7 geographic coordinate. So if you take a photograph,  
8 there's a coordinate for it. It records the time, it  
9 records the user. And then that data is all assembled  
10 into a data base, and the great thing about it is you  
11 can use it -- you don't have to be in cell phone  
12 service. All you need is a GPS signal from satellites.  
13 So it works even in the field, in the remote  
14 wilderness. So we were able to collect the data using  
15 Fulcrum, a lot of the data was collected using Fulcrum.

16       Q     And does that data include photographs --

17       A     Yes.  Yup.

18       Q     -- in some instances?

19       A     Yup.

20       Q     Where did you obtain the Fulcrum app?

21       A     Fulcrum is a subscription service.  You just  
22 pay a monthly fee, you get to use it.

23       Q     Is this a standard tool in your industry?

24       A     It's a standard tool in a lot of industries.

1 Forest ecology is starting to use this kind of data  
2 collection. It's very common for people doing utility  
3 work, gas. If someone came to your house in the last  
4 few months or the last year doing a gas inspection,  
5 they were probably using Fulcrum. They have all the  
6 addresses loaded in. They come into your house. They  
7 take a photo of the gas meter and various things and  
8 they fill out some information and they have 10, 12  
9 guys or people out in the field doing this and they all  
10 synch up in the evening and that's how they do it. So  
11 there's a lot of big, big companies using it. You  
12 know, forest ecology isn't necessarily the cutting edge  
13 of technology use so it's starting to filter into that.

14 Q In your experience, though, is this  
15 application accurate and reliable?

16 A Yes.

17 Q Have you used it before working on this case?

18 A Yes.

19 Q How often?

20 A I use it all the time.

21 Q For what types of projects?

22 A Well, like for instance the Essex County  
23 project that I was speaking of before. There's a  
24 couple of water projects, people trying to keep track



1 of their water system. I have been working on a  
2 project called the Adirondack Atlas which is a giant  
3 data base for all sorts of things. We use it for that.  
4 So...

5 Q Did you use this in your work with the State?

6 A No. I don't believe it existed.

7 Q Does the Fulcrum app collect stump diameter  
8 information?

9 A Well, you collect it using Fulcrum. There's  
10 a field -- you take a photo -- basically the protocol  
11 using Fulcrum was you take a photo and then you enter  
12 in the diameter into the form and then it goes off.

13 Q Thank you for correcting me. So the person  
14 collects the data and then it can go into the app.

15 Referring back to Exhibits 55 through 58.

16 A Yes.

17 Q Are they typical of the photos that would  
18 have been taken and then stored and collected with the  
19 Fulcrum app?

20 A Yes.

21 Q Approximately how many photos of trees and/or  
22 stumps were taken throughout your whole work on this  
23 case? Not necessarily with the Fulcrum app.

24 A I think it was around 9,000.

1 Q Do you know how many of those were stored  
2 through the Fulcrum app?

3 A I think all of them. But I only didn't use  
4 it on one section of trail so other than that, there  
5 was about a thousand, maybe 1100 trees in that one,  
6 1300. I could look at my chart here.

7 Q Go ahead.

8 A Okay. Around 1300 were not collected using  
9 Fulcrum. Those were photos that I took.

10 Q Jumping back to data collection, were you  
11 able to use the data collected to prepare anything  
12 other than the tree counts summarized on the chart?

13 A Not the stump data. The stump photos and  
14 things were just used to -- the photos of the stumps  
15 were used to create the numbers on the chart. Some of  
16 the other information collected on Fulcrum was used for  
17 other purposes.

18 Q Such as?

19 A Well, there was -- I did a whole separate  
20 study about sort of an ecosystem. I did regular plots  
21 along the trail and did various -- collected data not  
22 related to tree counting or anything. More of an  
23 ecosystem -- a way to sort of get an assessment of what  
24 kind of ecosystems were along the trail and where they

1 were arranged and how the trail -- what the trail was  
2 going through. But that was a separate form and a  
3 totally separate process than the stump -- than the  
4 tree counting.

5 Q We heard about DBH. Are you familiar with  
6 the term DBH?

7 A Yes.

8 Q Can you tell us what that stands for?

9 A DBH stands for diameter at breast height.

10 Q How high is breast height?

11 A 4.5 feet.

12 Q Is that a standard term used in the fields of  
13 forestry and ecology?

14 A Yes.

15 Q Are there standard ways to determine diameter  
16 on a standing tree out in the forest?

17 A Yeah. Typically what is done -- there's a  
18 number of ways to do it but probably the most common in  
19 a straight-forward way is to use something called a  
20 diameter tape. You go up to the tree, you wrap the  
21 measuring tape around it, and the numbers on it are  
22 already corrected to read diameter, not the  
23 circumference. So it's very easy. Wrap it around, it  
24 says 3.7, that's the diameter. So...

1 Q Do you own a DBH tape?

2 A I do.

3 Q Are you experienced in using it?

4 A Yes.

5 Q You did mention there were other ways. Could  
6 you give us one other example?

7 A Sure. I mean you could use calipers like you  
8 would use in -- you might have in your tool room.  
9 There's ways of sort of estimating tree height using  
10 prisms and various things that make things much quicker  
11 if you're not worried about the exact diameter of every  
12 tree. There's a bunch of ways you can do it. You  
13 could just wrap a measuring tape around and measure the  
14 circumference and go back and do the division and all  
15 that.

16 Q I think you may have answered this but is DBH  
17 the only way to measure the width of a tree, by DBH?

18 A No.

19 Q Can you elaborate if that wasn't already  
20 covered?

21 A Well, if there is no tree, if the tree has  
22 already been cut, you can't obviously do that. So, you  
23 know, there's -- I guess you could measure a tree --

24 Q Let me interrupt you for one second. Why

1 can't you measure the DBH of a tree that's been cut?

2 A Because there's nothing at breast height. So  
3 there are ways of trying to guess what the breast  
4 height was from a stump but all those methods are  
5 assuming that the stumps are a foot high which none of  
6 these stumps were. So, you know, there's sort of some  
7 ways to sort of guess at what the tree might have been  
8 based on what the stump looks like but --

9 Q What methodology did you decide to use for  
10 calculating DBH when you were measuring a tree stump?

11 A So --

12 MS. SIMON: Objection. I think she  
13 said -- I'm not sure that's what the witness  
14 testified to, measuring DBH from stump.

15 MS. BRAYMER: I believe I said  
16 calculate.

17 THE COURT: Yes. He hadn't testified  
18 yet that he actually did that but it seems to be  
19 understood in the question so the objection is  
20 overruled and you may answer the question.

21 A Okay. So I did not calculate DBH from stump  
22 height. What I did was I used the stump diameter as a  
23 proxy to try to estimate how many trees of three-inches  
24 DBH there would have been if the trees were still

1 there. Okay? So I mean that's all that you can really  
2 do when there is nothing left but a stump. You're left  
3 with what you have. So what I did was -- because we  
4 were in this position where we tried -- we have these  
5 two sets of numbers. One's for a bunch of cut stumps  
6 and one's for actual trees. So the challenge is, well,  
7 how do we bring all these different measurements  
8 together and have it mean anything. So I had to kind  
9 of come up with some way to estimate from the stumps  
10 how many of those stumps were probably above three  
11 inches in diameter. So this is not an exact thing.  
12 This is -- so what I did was I said, okay, I'm going to  
13 count everything, every stump that's greater than four  
14 inches in diameter as if it were a three-inch diameter  
15 at breast height tree. So if a stump was four inches  
16 down -- if it was four inches diameter at the stump, I  
17 made the assumption, educated guess, that it was going  
18 to be three inches at breast height.

19 Q What is the difference between -- what is  
20 typically the difference in diameter between the stump  
21 at one inch and the stump at DBH -- I'm sorry -- the  
22 tree at DBH?

23 A Well, it really varies.

24 THE COURT: Hang on. Hang on. I know

1           you got that but I didn't. Read that question  
2           back again, please.

3                         (Pending question read by the reporter.)

4           THE COURT: Understood. You may answer.

5           A        It's variable. There's no -- I mean it just  
6 varies from tree to tree. A lot of times a tree that's  
7 one inch DBH is pretty close to one inch at the ground  
8 too. They're very -- they haven't had a lot of time to  
9 sort of grow in anything but a vertical structure.  
10 Some of the three-inch, three- or four-inch ones,  
11 they're a little bit more -- they have more growth at  
12 the bottom. It's a little more irregular. So I think  
13 it turned out to be a relatively good proxy.

14                         MS. SIMON: I'm sorry. I'm sorry, I  
15 didn't hear. A relatively good?

16                         THE WITNESS: It was a good proxy.

17                         MS. SIMON: Proxy. Okay.

18           Q        In counting all of the trees, did you count  
19 trees both greater than three DBH and also trees under  
20 three DBH?

21           A        Yes.

22           Q        If you were counting the total number of all  
23 trees cut regardless of size, would it matter whether  
24 or not they were measured at stump height or at breast

1 height?

2 A No.

3 MS. SIMON: Objection. Matter in what  
4 way?

5 THE COURT: The question and answer will  
6 stand but your confusion with regard to this is --

7 MS. SIMON: I'm not sure what it's  
8 evidence of.

9 THE COURT: I'm assuming it will be  
10 developed further and the objection is overruled.

11 Q Why would it not matter for tree counts if  
12 you were measuring at the stump height or at the breast  
13 height?

14 A Because a tree is a tree and, you know, they  
15 can be of any size. So usually you divide them up into  
16 some sort of categories when you're counting things but  
17 the reality is that they're all trees. Even a tiny  
18 seedling is a tree just as a baby is a human. So  
19 they're all trees.

20 Q Did you apply the same method that you  
21 described earlier to count tree stumps of all sizes or  
22 did you use some different protocol for trees that were  
23 greater than versus -- I'm sorry -- tree stumps that  
24 were greater than or tree stumps that were less than



1 three DBH?

2 A Can you say that again?

3 Q Did you use the same protocol when measuring  
4 and counting tree stumps regardless of size?

5 A The protocol was slightly different on the  
6 first couple trails that we did -- that I did in the  
7 fall of 2015.

8 Q Let me clarify.

9 A Okay.

10 Q The actual measuring of the stump.

11 A Oh, yes.

12 Q Was the actual measuring of the stump the  
13 same regardless of the size of the stump?

14 A Yes. With the exception that on the first  
15 one we did, we only photographed stumps above three  
16 inches, so the smaller ones I tallied in that case.

17 Q Would that have been three inches at the  
18 stump height?

19 A Stump height, yes.

20 MS. BRAYMER: If I may, I would like to  
21 begin going through each of the trails. This may  
22 be a good time to stop or I can --

23 THE COURT: No, this will be fine. We  
24 can take our luncheon recess now. We'll

1           recommence at 1:20, okay? You may step down, sir.

2                           (Lunch recess taken.)

3                           (Proceedings continued in open court at  
4           1:45 p.m.)

5                           THE COURT: All set, Counsel?

6                           MR. CAFFREY: Yes, we are, your Honor.

7                           THE COURT: All right. Let's bring  
8           Mr. Signell back up to the stand and continue.

9                           (The witness resumed the witness stand.)

10                          THE COURT: You're still under oath,  
11           sir. Go ahead, Miss Braymer.

12                          MS. BRAYMER: Thank you.

13 BY MS. BRAYMER:

14           Q           Mr. Signell, we're going to walk through the  
15           trails that you examined and the first one that we're  
16           going to go over is the Newcomb to Minerva Trail. Are  
17           you familiar with the Newcomb to Minerva Trail?

18           A           Yes.

19           Q           Did you examine the entire trail on forest  
20           preserve lands?

21           A           Yes.

22           Q           Where does that trail start and end or what  
23           are the two locations of the ends?

24           A           I believe they've delineated Camp Santanoni

1 as the north end and the southern end is where the  
2 state land runs out just north of Minerva.

3 Q Now, you said they. Who are you referring  
4 to?

5 A DEC.

6 Q How many segments has DEC designated as part  
7 of the trail on forest preserve?

8 MS. SIMON: Objection. She's asking him  
9 a question of something that DEC did.

10 THE COURT: Overruled. Go ahead, you  
11 may answer, if you can.

12 A How many sections? I can't recall exactly  
13 how they delineated the sections but I know that there  
14 is Lake Harris section and there is a section that goes  
15 from the Hyslop Tract down to the Boreas -- to the  
16 Roosevelt Truck Trail, and there's a Roosevelt Truck  
17 Trail to the Boreas River, then they have Boreas River  
18 to the Stone Pond Trail and the Stone Pond Trail south  
19 to Minerva. That's how they divided it up.

20 Q And was data collected on all those trail  
21 segments on the forest preserve that day?

22 A Yes.

23 Q Mr. Signell, while you're looking at those  
24 exhibits that I handed you which are marked for

1 identification as Plaintiff's Exhibits 69 and 70, can  
2 you tell me who collected the data on the Newcomb to  
3 Minerva Trail?

4 A Well, some of the data was collected by  
5 myself, some was collected by Mr. Bauer.

6 Q Are you familiar with the exhibits?

7 A Yes.

8 Q And do you recognize them?

9 A Yes.

10 Q What do those exhibits depict?

11 A They depict alternatives for a community  
12 connector trail plan between the town of Newcomb and  
13 Minerva showing a couple different options.

14 Q Does it show the option that you examined as  
15 the Newcomb to Minerva Trail?

16 A For the most part, yes.

17 MS. BRAYMER: Your Honor, I would like  
18 to move Exhibits 69 and 70 into evidence. They  
19 are on the stipulated document list as number 2M.

20 MS. SIMON: Could we identify which is  
21 which on the stipulated list? I'm going to  
22 object. I just want to be clear.

23 THE COURT: Which is 69 and which is 70?

24 MS. BRAYMER: They are part of the same

1 document. Your Honor, 2M on the list is the 2015  
2 community connector plan for the towns of Newcomb  
3 to Minerva Trail and North Hudson and Essex  
4 County, and these two maps come from that document  
5 and I can certify to the Court that they are  
6 copies that came from that document.

7 THE COURT: All right. I think  
8 Miss Simon is just asking that you identify them  
9 for her own purposes so she knows what we're  
10 talking about. So 69 and 70 are two documents  
11 from that overall larger document?

12 MS. BRAYMER: Correct.

13 MS. SIMON: From Exhibit 2M of the  
14 stipulated documents.

15 THE COURT: Okay. 69 and 70 are  
16 received into evidence.

17 (Plaintiff's Exhibits 69 and 70 received  
18 into evidence.)

19 BY MS. BRAYMER:

20 Q Directing your attention to the segment known  
21 as the Hyslop to Roosevelt Truck Trail --

22 THE COURT: Known as the what? I'm  
23 sorry. I missed that.

24 MS. SIMON: I didn't hear what you said,

1           your Honor.

2                       THE COURT: I said known as the what? I  
3 missed that. So let me hear that.

4           Q       Directing his attention to the Hyslop to  
5 Roosevelt Truck Trail segment of the Newcomb to Minerva  
6 Trail --

7                       MS. SIMON: Could we identify the  
8 exhibit we're talking about?

9           Q       Can you tell the Court which exhibit has that  
10 segment?

11          A       Actually they both do.

12          Q       Can you describe -- give us since we can't  
13 see the --

14          A       Exhibit 70 shows the trail down to the  
15 railroad tracks just north of the Roosevelt Truck Trail  
16 and Exhibit 69 shows the section south of the railroad  
17 grade to the Roosevelt Truck Trail so there's just one  
18 small segment. I don't know how you would to divide  
19 this up but...

20          Q       That's fine, Steve.

21          A       The section I counted is on two different  
22 maps here.

23                       MS. BRAYMER: Your Honor, would you like  
24 a copy of the maps?

1 THE COURT: Sure. Thank you.

2 Q Did you field study this segment personally?

3 A Yes.

4 Q When did you do that?

5 A I did that in the fall of 2015.

6 Q Did Mr. Bauer assist you with that?

7 A No. Other than showing me where it was. It  
8 was my first trail that I did this on so he brought me  
9 out there and showed me where it was and where the  
10 stumps were and that sort of thing. And then  
11 subsequently I went and did the work.

12 Q And you went at a later time, is that  
13 correct?

14 A Yes.

15 Q How would you describe this trail segment?

16 A In general terms this is a section that had  
17 been cut before I got to it. It extends from the  
18 Hyslop easement down to the Truck Trail. It is a  
19 fairly disturbed forest, goes through a number of  
20 different forest types. There's a Norway spruce  
21 plantation on part of it and there's just a lot of sort  
22 of different ecosystems along the way. But the trail  
23 had been cleared before I got to it.

24 Q What was the construction status of the trail

1 segment when you analyzed it?

2 A I believe they had completed cutting it and  
3 they were starting to grade parts of it. Maybe they  
4 were still --

5 MS. SIMON: Objection, your Honor. He  
6 can testify to his observations but he's referring  
7 to they. I don't know who that is and I don't  
8 have any objection --

9 A I heard chain saws while I was.

10 THE COURT: Hang on. Hang on. Hang on.  
11 When there's an objection --

12 THE WITNESS: I'm sorry.

13 THE COURT: The objection is sustained  
14 with regard to that portion of his answer that  
15 began with the word maybe. You may ask further  
16 questions and redirect him to that area of your  
17 discussion if you'd like, Miss Braymer. Go ahead.

18 Q With respect to the construction status, who  
19 was constructing the trail?

20 A I believe it was the DEC had some people,  
21 their staff or trail workers, constructing the trail.

22 Q Had they begun grading the trail?

23 MS. SIMON: Objection. The same  
24 objection. I just want to establish what facts he



1 observed and not have him talk about what DEC did  
2 unless he was there when they did it.

3 THE WITNESS: I did observe them grading  
4 the trail.

5 THE COURT: Hang on, hang on. Objection  
6 first, then you.

7 THE WITNESS: I'm sorry.

8 THE COURT: Your objection is?

9 MS. SIMON: It's leading. That's the  
10 objection.

11 THE COURT: I got it. Well, your  
12 objection is sustained. You can ask him about  
13 what he observed on the trail and you can ask him  
14 further questions once you've elicited the facts  
15 of what he observed on the trail including any  
16 disturbance to the trail and how it appeared to  
17 have occurred if that's within his field of  
18 expertise.

19 MS. BRAYMER: I do take exception to the  
20 ruling in the fact that DEC has not denied that  
21 their staff are cutting trails.

22 THE COURT: So your exception is to  
23 their objection. The ruling, frankly, is correct  
24 on the law. I don't know that I disagree with

1           you. I'm not sure we can't get to this point more  
2           easily but that's not my ruling. My ruling is on  
3           the law and I am not going to substitute my  
4           judgment for that of Miss Simon as to what she  
5           wants to object to or not. I'm just going to rule  
6           on the legal basis for the objection which in this  
7           case I find exists and therefore sustain the  
8           objection. Go ahead.

9           Q       Mr. Signell, did you observe any grading on  
10          the trail?

11          A       I did.

12          Q       What was the extent of that grading?

13          A       The grading I observed took place after I  
14          counted the trees and it was sort of -- it was in the  
15          middle of the trail. I believe it was in November or  
16          December and they had machinery out there and they  
17          were -- they were grading and bench cutting and  
18          removing rocks and stones and planting seeds, planting  
19          grass.

20          Q       What kind of equipment did you observe?

21          A       A large backhoe sort of -- I'm not terribly  
22          well versed in my classification of heavy machinery but  
23          it had two big treads and had a backhoe sort of device  
24          on it.

1 Q With respect to the rocks, what did you  
2 observe had been done to the --

3 MS. SIMON: Objection. There was no  
4 testimony on rocks if I heard you correctly. You  
5 said rocks?

6 THE COURT: Objection is overruled. Go  
7 ahead. Complete your question.

8 Q What did you observe with respect to the  
9 rocks?

10 A Well, there were several places where I had  
11 gone through and taken video before they did the  
12 grading and then after they did the grading, and there  
13 were stumps and rocks that had been marked for whatever  
14 they were going to do to grade the trail. And I went  
15 back later and took another video. They were gone  
16 so... This is all after the stumps were counted.

17 Q So did the status of the tree cutting and/or  
18 construction impact your ability to do your tree  
19 counts?

20 A It did not impact my ability to do stump  
21 counts. I could count the trees if there were any  
22 left.

23 Q What was the stump counting protocol that you  
24 followed for this segment?

1           A       Okay.  So for this -- this was the first  
2 segment that I counted for the plaintiff and originally  
3 I was tasked with counting all the trees above three  
4 inches so I decided, okay, I want to have some evidence  
5 that it can't be just he-says she-says, or whatever, so  
6 I went out and took photographs of the stumps.  So  
7 that's when I decided I was going to go out in the  
8 field with Fulcrum and I was going to photograph all  
9 the stumps that were above three inches.

10                       So I got the Fulcrum app, loaded it on  
11 my phone, and I started hiking down the trail taking  
12 photos of stumps.  I did the whole trail that way, the  
13 whole section of trail that way.  Now -- so that's how  
14 the stumps were photographed.

15                       Later on we decided, well, maybe we  
16 should have some counts of the smaller things as well  
17 so I went out again and just tallied the smaller things  
18 among the trail segment, the stumps smaller than three  
19 inches.

20           Q       I'd like to reference the Court's Exhibit 1  
21 with respect to the tree counts for trees greater than  
22 three inches DBH or larger approved to be cut.

23                       Mr. Signell, are you aware of the  
24 stipulation between the parties with respect to those

1 counts of trees three inches DBH or greater?

2 A Yes, I am.

3 Q And is that number reflected on your chart  
4 that was marked earlier as a plaintiff's exhibit but  
5 not admitted?

6 A Yes.

7 Q What number trees do you have on your chart  
8 for that?

9 MS. SIMON: Your Honor, I object to him  
10 reading -- I'm sorry. I object to the question.  
11 This chart is not in evidence, and he should not  
12 be reading from it and he should only be using it  
13 to refresh his recollection perhaps of what he  
14 did.

15 THE COURT: Your objection is sustained.

16 Q I would like to reference the Court's Exhibit  
17 1 then and --

18 THE COURT: Do you want him to hold  
19 Court's Exhibit 1?

20 MS. BRAYMER: Yes. Thank you.

21 THE COURT: You're welcome.

22 THE WITNESS: Thank you.

23 THE COURT: Go ahead.

24 Q For this trail segment what is the number of

1 the stipulated trees three inches DBH or larger  
2 approved to be cut?

3 A 1,148.

4 Q Thank you. What was your tree count for  
5 trees less than three inches DBH for this segment?

6 A It was 3,251.

7 THE COURT: Give me that number again.

8 THE WITNESS: 3,251.

9 THE COURT: Thank you.

10 Q Does this include all trees less than three  
11 inches for this segment?

12 A It does not include all trees. So what we  
13 decided in consultation with the client, because we  
14 needed to count -- we needed to decide what to count  
15 here, we made a decision that -- or I made the decision  
16 that the most reasonable thing to count was stems that  
17 had observable tree rings on them. So, of course, this  
18 is an area that's been cut over and it's kind of  
19 difficult to see exactly what's going on with these  
20 small stems, but essentially it means that I counted  
21 things that were above about a quarter of an inch in  
22 diameter. So if I was hiking -- this is a small tree  
23 count that I did after I photographed all the stumps.  
24 So I walked along these different segments and tallied

1 the number of trees that looked like they had grown  
2 enough to have exhibited tree rings on them. So tiny  
3 little things were not counted. So that's the protocol  
4 we used for this section.

5 Q So taking the stipulated number of trees  
6 greater than -- equal to or greater than three inches  
7 DBH and your count of trees less than three inches,  
8 what is the total number of trees for that segment?

9 A 4,399.

10 Q Mr. Signell, we have also stipulated to the  
11 mileage of this trail segment and if you refer to  
12 Court's Exhibit 1, can you tell us what the mileage is  
13 of the segment?

14 A 2.9 miles.

15 Q Using that mileage, were you able to  
16 calculate the acreage for the trail segment?

17 A Yes.

18 Q And can you tell us what that was?

19 A Well, let me just explain how I calculated  
20 that. In order to calculate the acreage, I used a  
21 nine-foot-width trail which is the minimum width the  
22 trail could be in order to come up with a conservative  
23 estimate of how many acres. So I just remember how  
24 many feet the trail was, multiplied that by nine and

1 then divided by how many feet are in an acre.

2 Q I'm sorry. Could you repeat that last?

3 A Yes. I multiplied the length of the trail in  
4 feet by the width of the trail, nine feet, got a number  
5 of square feet, and then just divided it out to get  
6 acres. And the number of acres calculated as 3.2.

7 Q And using the stipulated number of trees  
8 greater than three inches DBH, did you come up with a  
9 number of trees per acre?

10 A Yes.

11 Q And what was that number?

12 A 363.

13 Q And then using the total number of trees did  
14 you get a number of trees per acre?

15 A Yes. 1,390.

16 Q And then for trees per mile, were you able to  
17 calculate that?

18 A Yes.

19 Q Using the stipulated trees greater than three  
20 inches DBH per mile, what was that?

21 A 396.

22 Q And then the total number of trees per mile?

23 A 1,517.

24 Q Was there anything else related to your



1 protocol in this segment?

2 A I don't believe so.

3 Q Moving on, then, to the next segment of the  
4 Newcomb to Minerva Trail which is referred to as the  
5 Santanoni to Lake Harris or Harris Lake Trail. Do you  
6 see that segment of the trail on the exhibits?

7 A Yes.

8 Q The two maps.

9 A Yes.

10 Q Can you identify for the Court where this  
11 segment is on -- which map are you looking at, which  
12 exhibit?

13 A 70.

14 Q And then where exactly is the segment?

15 A It's on the far western end of the trail  
16 extending from Camp Santanoni to the Lake Harris  
17 Campground.

18 Q Mr. Signell, just backing up for a second,  
19 after you did the Hyslop segment, was this the next  
20 segment that you examined?

21 A No.

22 Q Okay. Which one was the next?

23 A The Roosevelt Truck Trail to the Boreas  
24 River.

1 Q Can you direct our attention to the map that  
2 shows the Roosevelt Truck Trail to the Boreas?

3 A Yes.

4 Q Thank you.

5 A That is 69.

6 Q And can you identify for us where that  
7 segment is on Exhibit --

8 A It's at the very northern section of that map  
9 extending from the Roosevelt Truck Trail down to the  
10 Boreas River.

11 Q Did you personally field study this segment?

12 A I did.

13 Q The whole -- the entire segment?

14 A This whole segment, yes.

15 Q Was Mr. Bauer with you at any point during  
16 that time?

17 A No.

18 Q How would you describe this trail segment?

19 A This trail segment had not been cut. It had  
20 been painted and marked for cutting and it is a little  
21 bit more interesting ecologically in terms of it starts  
22 off in Norway spruce plantation and then it comes out  
23 into sort of a very typical hardwood forest that's a  
24 little bit older, much older than the previous section.

1 And then there's one small section that contains  
2 old-growth trees, very old trees, and then it continues  
3 on through a wetlands and the spruce forest. It's  
4 pretty varied as well but I would say less disturbed  
5 than the previous section overall in terms of forests,  
6 in terms of the forest being attacked.

7 Q Can you please describe the painting and the  
8 markings that you observed?

9 A Yes. So when DEC goes to mark a trail --

10 MS. SIMON: Objection. He needs to  
11 testify to what he knows.

12 THE COURT: Overruled. Let him finish  
13 and you may renew your objection. Let's see what  
14 he says.

15 A Okay. Somebody painted along the trail line  
16 that roughly follows this, what's on the map. They  
17 went along and they painted orange spots on the trees  
18 that were to be cut, I assume. So it's very easy to  
19 follow the trail through the woods. There's flagging.  
20 There's paint on the trees.

21 Q Were you able to identify where this segment  
22 would have matched up with the first segment that you  
23 examined, the Hyslop, at the north end of this segment  
24 that we're talking about?

1           A       Yes.  It's just right across the Roosevelt  
2 Truck Trail.  The cutting stops and then on the other  
3 side the painting starts.

4           Q       At the south end of this segment, were you  
5 able to identify the beginning of the next segment  
6 which is -- let me stop there.  Were you able to  
7 identify the next segment?

8           A       Initially I was not.  So I wasn't able to  
9 identify this whole section.  It comes out to the road  
10 a couple hundred feet above the Boreas River on the  
11 east side, and after I had completed this section, I  
12 did go to the southern side of the river and try to  
13 look for where the trail would continue.  I did not  
14 find that.  I don't know whether that was because it  
15 wasn't there or I just wasn't looking in the right  
16 place, but I was not -- in the fall of 2005 I was not  
17 able to find where the trail extended south of the  
18 Boreas River, if that's what you're asking.

19          Q       Were you eventually able to find that?

20          A       Yes.

21          Q       Can you describe what you found?

22          A       Okay.  So the section going south from the  
23 Boreas River also starts from the road so there's a  
24 small section where there's no trail where the bridge

1 is across the Boreas River. It comes out to the road  
2 north of the bridge and then it starts on the road  
3 south of the bridge and then it extends into the woods  
4 and continues southward.

5 Q Going back to the Roosevelt Truck Trail to  
6 the Boreas River segment, what protocol did you follow  
7 for counting trees for this segment?

8 A Okay. So when I was asked to then count  
9 trees that hadn't been cut, I thought okay, well, I'm  
10 going to try to replicate exactly what I did for the  
11 stump counting to the north. So I in this case,  
12 instead of photographing stumping, I went tree to tree.  
13 The protocol was to go down the path tree to tree.  
14 Every tree that was above three inches, I stopped,  
15 measured them with a diameter tape, recorded to the  
16 species, whether they were alive or dead, and then I  
17 did that along the entire trail. And then I came back  
18 and I counted all the things below three inches. And I  
19 tried to use the same -- it's kind of difficult because  
20 previously all the trees had been cut down to the  
21 ground. I tried to use the same methodology to count  
22 the trees coming back, the small trees. So small trees  
23 that were counted were roughly the same size as the  
24 ones counted on the Hyslop section.

1           Q       How did you determine which trees you were  
2 going to count for this segment?

3           A       I had to eyeball it. The lower limit. If a  
4 tree looked like it was close to three inches, you  
5 know, all the trees that were close to three inches got  
6 measured and the ones that was above three inches got  
7 counted as three plus.

8           Q       But can you describe how it was that you knew  
9 that you were counting trees within the trail corridor?

10          A       Oh, okay. Well, it was clearly delineated.

11          Q       By how was it delineated?

12          A       The painting of the trees. Now, I also had  
13 with me, if I wasn't sure or if there was a section of  
14 trail that didn't have painted trees, I had a section  
15 of a dowel that -- I know my wing span. I can't  
16 remember the exact length of it, but I calculated how  
17 far it was from here to the end of my arm and then I  
18 had a stick that I could extend out and that was  
19 four-and-a-half feet. So if I wasn't sure whether  
20 something was in and some reason the trail -- it wasn't  
21 obvious, for instance, if there weren't -- they tend to  
22 only mark the trees that was above three inches. So,  
23 for instance, if there was a section of trail where  
24 there wasn't any for 10 or 20 feet or something, then I

1 used that sort of count to determine which ones were  
2 within the trail corridor.

3 Q You mentioned using your wing span. What  
4 then was the total width of the trail that you  
5 considered part of the trail corridor?

6 A Nine feet. Again, I wanted to be  
7 conservative.

8 Q And why was that conservative?

9 A Because nine feet is the minimum width of  
10 these trails.

11 MS. SIMON: Objection. That's not in  
12 evidence.

13 THE COURT: Overruled.

14 Q What is the maximum width of these trails?

15 A I'm not super well-versed in the  
16 technicalities of it all, but I think it's 12.

17 Q How did you determine the DBH of the trees  
18 that you counted?

19 A With the diameter tape.

20 Q You mentioned going through and then going  
21 back to count trees less than three inches DBH. What  
22 size of trees did you count?

23 A I basically counted the same as I counted the  
24 other section. It was trees from about a quarter inch

1 up to three inches.

2 Q Did you have a basis for your decision about  
3 the quarter inch? I should say what was your basis?

4 A The original thinking on that was these are  
5 trees that have grown past the point where -- they're  
6 several years old. That was the thinking. That trees  
7 that have visible rings that you could see that they  
8 have multiple rings are not just from that particular  
9 year. They've survived a certain amount of time in the  
10 forest and that's why they were counted that way.

11 Q Referring to Court's Exhibit 1 for this  
12 segment of Roosevelt Truck Trail to the Boreas River,  
13 what is the stipulated number of trees three inches DBH  
14 or greater?

15 A I don't believe there is one.

16 Q What was your count of those trees?

17 A 715.

18 Q What was your tree count for trees less than  
19 three inches DBH?

20 MS. SIMON: Your Honor, I want to renew  
21 my objection. I'm not sure what he's referring  
22 to. He's got documents in his hand and I don't  
23 want him reading from something not in evidence.

24 THE COURT: Okay. Just to be clear, if



1           you can't remember a number off the top of your  
2           head and you refresh your recollection by using  
3           your chart there, I can't remember what number it  
4           is, it's in your right hand -- what is the number  
5           on that?

6                         THE WITNESS: 78.

7                         THE COURT: If you're refreshing your  
8           recollection in order to give an answer by looking  
9           at 78, I need you to make sure you say let me look  
10          at this. Don't read from it but tell us you've  
11          looked at it and refresh your recollection.

12                        THE WITNESS: Okay.

13                        THE COURT: Okay?

14                        THE WITNESS: Yes.

15                        THE COURT: So to that extent your  
16          objection is sustained. You can tell us before  
17          you give an answer as where you're getting the  
18          answer. Okay? Ask the question again.

19           Q        Mr. Signell, do you remember the number of  
20          trees that you counted that were less than three  
21          inches?

22           A        I don't remember exactly.

23           Q        Is there something you can use to refresh  
24          your recollection?

1 A Yes, there is.

2 MS. BRAYMER: May he do so, your Honor?

3 THE COURT: Yes, he may.

4 A Forgive me. There's a lot of numbers. I  
5 can't possibly memorize them all. 3101.

6 Q 3101?

7 A Yes, 3101.

8 Q Using your numbers, what was the total tree  
9 count on this trail segment? Do you remember the total  
10 tree count?

11 MS. SIMON: Clarification. Is this  
12 trees cut or trees counted?

13 MS. BRAYMER: May I respond?

14 THE COURT: You may.

15 MS. BRAYMER: Thank you. I'll rephrase.

16 Q What was the number of trees that you counted  
17 that were not yet cut if you remember?

18 A I need to refresh my memory.

19 Q Yes. Do you have something to refresh your  
20 recollection?

21 A Yes, I do. 3,816.

22 Q Referring to Court Exhibit 1, we have  
23 stipulated to the mileage of this trail segment -- I'm  
24 sorry. We did not. Withdrawn.

1                   Do you remember the mileage for this  
2 trail segment?

3           A       No.

4           Q       Do you have something that you can use to  
5 refresh your recollection?

6           A       Yes.

7                   MS. SIMON:  Objection.  Could we have  
8 some foundation for what his basis was for  
9 determining the mileage, please.

10                   THE COURT:  Your objection is overruled.  
11 Ms. Braymer, you don't need to keep referring him  
12 to that.

13                   MS. BRAYMER:  Okay.

14                   THE COURT:  I appreciate that you're  
15 trying to follow the rules.  As long as he states,  
16 I need to refresh my recollection and I am going  
17 to look down at Plaintiff's Number 78, that will  
18 be sufficient for us to move along.  Okay?  The  
19 objection with regard to mileage is overruled.  
20 You may wish to explore that on cross examination.  
21 If you do, Miss Simon, you're more than welcome  
22 to.  Why don't you ask the question again with  
23 regard to mileage, Miss Braymer.

24           Q       What was the trail mileage for this segment?

1 A 1.95 miles, I believe.

2 Q Were you able to calculate the acreage?

3 A Yes.

4 Q Do you remember what that was?

5 A I don't recall. I need to refresh my memory  
6 from Plaintiff's Exhibit 78. 2.1 acres.

7 Q Then using the total number of trees that you  
8 observed to be cut, what was the --

9 MS. SIMON: Objection. Observed was  
10 not -- it's not in the record they were to be cut.  
11 It's in the record they were either, if I recall,  
12 painted or flagged. Could we just not have the --

13 THE COURT: Your objection is sustained  
14 in that you are assuming something that's not in  
15 evidence, Miss Braymer. He's referenced trees  
16 that are either painted orange or that he believes  
17 in his measurement of what he believes was the  
18 trail to be within that zone. But your question  
19 did assume something that is not technically in  
20 evidence though you may well have ample grounds  
21 from which to argue that those numbers are  
22 correct. But let's keep our questions precise and  
23 move on. Okay? So the objection is sustained.  
24 You may re-ask the question.

1 Q From your total number of trees that you  
2 counted on this segment, what was the total number of  
3 trees per acre?

4 A 1,794.

5 THE COURT: 1794?

6 THE WITNESS: Yup.

7 THE COURT: Thank you.

8 Q And what was the total number of trees that  
9 you counted per mile?

10 A 1,957. The mileage and acreage, it turns out  
11 that at this width, it's roughly the same number per  
12 mile as per acre.

13 Q Mr. Signell, for the trees that you counted  
14 three inches DBH or over, did you get a number of trees  
15 per mile?

16 A Yes.

17 Q Do you remember what that number is?

18 A No. Let me refresh myself -- my memory, I  
19 should say. Per mile you said?

20 Q Yes, per mile.

21 A 367.

22 Q And I want to back up. For calculating the  
23 acreage, what was the width that you used?

24 A Nine feet. I used nine feet for all of these

1 calculations so it's a minimum really, minimum acreage.

2 Q Mr. Signell, are you familiar with how DEC  
3 would mark trees for cutting a trail?

4 A Generally, I think.

5 Q And would you describe what you are familiar  
6 as the process --

7 MS. SIMON: Objection. Could we  
8 establish how he's familiar or voir dire how he's  
9 familiar with it?

10 THE COURT: Yes. Objection sustained.

11 Q Mr. Signell, could you please describe for  
12 the Court your experience with DEC and trail cutting?

13 A I was told that the DEC had marked trails --

14 MS. SIMON: Objection. Hearsay.

15 THE COURT: Sustained.

16 Q Mr. Signell --

17 A I saw marked --

18 THE COURT: Hang on. Next question. Go  
19 ahead, Miss Braymer.

20 Q Do you have any experience working with DEC  
21 in projects where they would have been marking trees  
22 for cutting a trail?

23 A I was involved with very early stages of  
24 possibly siting some trails when I worked at the

1 ecological center, but I was never involved with  
2 actual -- any kind of actual trail makings or trail  
3 construction or anything of that sort. I never saw it  
4 in the field or...

5 Q Is it your understanding that DEC would mark  
6 trees with flags?

7 MS. SIMON: Objection. Same objection.

8 THE COURT: Objection is sustained.

9 MS. BRAYMER: I'll move on.

10 Q Are the trees that you counted within the  
11 area that you observed as being marked?

12 A Yes.

13 Q Mr. Signell, after that segment, what was the  
14 next segment that you evaluated on the Newcomb to  
15 Minerva Trail?

16 A The next segment that I evaluated on that  
17 trail was chronologically I believe the Hewitt Road to  
18 Stony Brook -- Stony Pond Trail. Well, no. That's not  
19 true. Lake Harris. In the fall of 2015 I observed  
20 Lake Harris Trail. I forgot that one.

21 Q Do you see that trail on the Exhibit 69 or  
22 70?

23 A I do.

24 MS. SIMON: Could we have a

1 clarification.

2 THE WITNESS: 70.

3 MS. SIMON: Thank you.

4 A It's at the western, far western end of the  
5 map.

6 Q Of which one? I'm sorry.

7 A 70.

8 Q Did you personally field study this segment?

9 A I did personally visit and walked the whole  
10 trail. I did not count the stumps on it.

11 Q And who did that?

12 A Peter Bauer.

13 Q And did he follow the protocol that you had  
14 explained to him previously?

15 MS. SIMON: Objection. It's hearsay.

16 THE COURT: Sustained.

17 Q Earlier you testified about training Peter  
18 Bauer. Did you train him before he did the counting on  
19 this segment?

20 A Yes.

21 Q How would you describe this trail segment?

22 A This trail segment, it had been cut  
23 previously, sometime previously. Parts of it had been  
24 graded when I saw it. I saw the heavy equipment on it.



1 It goes through sort of youngish age forest, northern  
2 hardwoods mostly along the side of -- most of it goes  
3 alongside of a hill, sort of traverses along the  
4 hillside. Number of bridges on it that they were in  
5 the process of constructing. A lot of grading.

6 Q Can you give us a little bit more description  
7 about what you observed as the extent of the grading?

8 A There were sections of trail that had  
9 undergone extensive grading, bench cutting, lots of  
10 sections had been planted. There was hay down with  
11 grass seed. I assume grass seed. Seeded it with  
12 something. A lot of places where stumps had been  
13 pulled out and removed. They might pull out -- looks  
14 like they pulled out a stump from here, put it down on  
15 the lower side of the hill, sort of backfilling below  
16 the trail to flatten it out.

17 Q What kind of equipment did you observe?

18 A I think it was the same piece of equipment.  
19 A little backhoe type thing.

20 Q Did the status of the trail construction  
21 impact the ability to do the stump counts?

22 A Yes.

23 THE COURT: The status of the what? I  
24 missed that. I'm sorry.

1 Q Did the status of the construction --

2 A Yes.

3 Q Can you explain how that impacted the ability  
4 to do the counts?

5 A Well, in large sections of the trail the  
6 stumps had been removed physically and/or destroyed  
7 through -- I mean a lot of the smaller stumps -- a lot  
8 of the types of stumps I saw on the Hyslop Tract were  
9 not there because a lot of the smaller stumps, you  
10 know, machinery going back and forth and actually  
11 actively hauling things out, it destroyed a lot of the  
12 stumps.

13 THE COURT: Are we still on Lake Harris?

14 THE WITNESS: Yes.

15 THE COURT: You said Hyslop. That's a  
16 different --

17 THE WITNESS: I just contrasted it to  
18 what I observed on the Hyslop that I had  
19 previously counted but they hadn't graded it.

20 THE COURT: Thank you.

21 A So the count was very incomplete there on the  
22 Lake Harris Trail.

23 Q Incomplete?

24 A Incomplete, yes. The stump count is low, I

1 would say. That's because a lot of the stumps are  
2 gone.

3 Q What kind of tree counting protocol did you  
4 use for this segment?

5 A So at this point it started to become obvious  
6 that I wasn't going to be able to do all this work. I  
7 don't live up there. I have to make special trips to  
8 go up there. So we explored the possibility as to a  
9 way Peter could do this or someone else could do it.  
10 What we had learned from the other trails, I thought it  
11 would be easier, instead of trying to take photos of  
12 everything above three inches and then count and tally  
13 things below three-inch, we would just take photos of  
14 everything above one inch because that was very  
15 straight-forward. It was something he could follow  
16 easily, or anyone could follow, and it was a much more  
17 clearly delineated -- it was just that was the only --  
18 I didn't feel comfortable with having him photograph  
19 the stump and then tallying things, and things like  
20 that. So I just said, okay, just go out there and  
21 photograph with a measuring tape every stump above one  
22 inch. And that was sort of the new protocol that we  
23 followed throughout the rest of the study because it  
24 was faster and it was simpler.

1           Q       What was your basis for the decision to start  
2 counting at one inch rather than the diameters that you  
3 had mentioned previously?

4           A       So one inch -- there's no real standard in  
5 terms of how to count trees. In science really you're  
6 supposed to be -- you're collecting data for some  
7 purpose. This type of thing hasn't really been done  
8 too much, counting stumps for snowmobile trail  
9 construction. So I looked around for guidance and the  
10 first thing I always think when I think of what's the  
11 standard for forestry, ecology, and it's something  
12 called Forest Inventory and Analysis that the U.S.D.A.,  
13 Department of Forest Service tests, and this is a  
14 program where they do long-term monitoring of forests.  
15 They have these plots that they've set up across the  
16 country, private land, public land, and they revisit  
17 them periodically to measure the forest, see how it's  
18 growing. You can tell about the productivity of a --  
19 productivity of a site, if diseases have come in, all  
20 sorts of things. So this is a giant project funded by  
21 the federal government, and foresters and ecologists  
22 all across the country use this data and they have --  
23 they define a tree as everything above one inch.  
24 Everything below one inch they count as a seedling.

1 And as an ecologist, I've already said these are all  
2 trees, even little ones. But in reality you have to  
3 start cutting things off somewhere. I mean it becomes  
4 difficult to count.

5 Q Mr. Signell would it be fair to say that it  
6 doesn't define the tree but gives you a basis from  
7 which to start measuring?

8 A Yes.

9 MS. SIMON: Objection. Counsel is  
10 testifying. Also I'm having a hard time hearing  
11 everything that's being said by the witness.

12 THE COURT: Okay. Your objection is  
13 overruled because she was effectively just  
14 reiterating the answer he had already given. Do  
15 you need anything read back?

16 MS. SIMON: I would appreciate -- that  
17 was a long statement. I'm sorry but there were  
18 pieces of it...

19 THE COURT: Nothing to be sorry for.  
20 You need to hear that statement again?

21 MS. SIMON: I would appreciate that.  
22 Thank you.

23 THE COURT: If you could read  
24 Mr. Signell's last answer again, I would

1 appreciate it, Cindy.

2 (Last answer read by the reporter.)

3 THE COURT: Okay. That was an  
4 extraordinarily long answer. So Miss Braymer, I'm  
5 going to ask you and Mr. Signell to kind of make  
6 sure you -- Mr. Signell, make sure you listen just  
7 to the question, answer only the question that's  
8 being asked of you. Miss Braymer, you can  
9 continue to direct him to whatever questions you  
10 wish. Once they start dragging on, let's bring it  
11 in.

12 MS. SIMON: There was one piece in the  
13 middle toward the end there that I was going to  
14 object and I wasn't sure what I was hearing and he  
15 was speaking to "they" count everything above one  
16 inch. I feel like that's hearsay. If they want  
17 to put some evidence in that the U.S.D.A. counts  
18 everything a certain way, that's fine. But I just  
19 object to that piece.

20 THE COURT: Your objection is overruled.  
21 Go ahead, Miss Braymer.

22 BY MS. BRAYMER:

23 Q Is the manual that you referenced an accepted  
24 manual for forest protocol in your field of expertise?

1 A Yes.

2 Q Are smaller trees necessarily young or  
3 immature?

4 A No.

5 Q How old can the smaller trees be?

6 A In the Adirondacks in particular, trees less  
7 than three inches can be, in my experience, some of  
8 them can be in excess of a hundred years old and many  
9 trees of that size are sexually able to reproduce and  
10 do reproduce with many different species.

11 Q Did you check the age of any of the trees on  
12 the Class II trails that you visited, not just this  
13 segment but any of the trails?

14 A Yes. I did many -- I counted a lot of rings  
15 while I was on those trails.

16 Q How do you determine the age of the trees?

17 A The trees put on a ring of growth every year.  
18 Certain species it's very hard to tell, but a lot of  
19 the species that are out there in the forest that were  
20 cut to stumps or even things that were cut that fell  
21 across the trail were cut this way. All of that was  
22 evidence -- there was tree rings on all of those  
23 things. So I didn't count every, you know -- actually  
24 the photographs show the tree rings very clearly in

1 many cases. But I counted a lot of trees because, I  
2 mean, that's what -- I'll stop there.

3 Q Do you have examples of trees that you aged  
4 that were less than three inches DBH?

5 A Yes.

6 Q And what were some of the ages of those trees  
7 less than three inches DBH?

8 A Most of the trees in the two to three-inch  
9 range that I looked at were in the 30-to-80-year range.  
10 I think 80 was the oldest of those, of the ones I  
11 looked at.

12 MS. SIMON: Point of clarification or  
13 objection. Where are we talking about? What  
14 trail? Are we still on the Santanoni to Lake  
15 Harris Trail?

16 THE COURT: Miss Braymer, that's an  
17 appropriate question. Why don't you clarify that.

18 Q Mr. Signell, can you clarify where you saw  
19 the trees that you're referring to that were less than  
20 three inches DBH and within this 30-to-80-year age  
21 range?

22 A The ones I'm talking about were along the  
23 Hyslop Trail.

24 Q Was there a difference by tree species as to



1 whether or not they could be small yet old?

2 A Yes. I mean...

3 Q Are there specific specie trees that --

4 A Most of the trees that I looked at that were  
5 small are red spruces because they're very easy to see  
6 the rings on, especially when they're small. It's not  
7 easy to see rings on a lot of different tree species.  
8 So typically when I came across a spruce tree or a pine  
9 or any of the conifers, it was a lot easier to see the  
10 rings on them, especially when they're out in the field  
11 and they haven't been -- if they have been cut by a  
12 chain saw, it can be hard to see the rings because it's  
13 a jagged cut. But it's not hard with red spruces.

14 Q Other than Hyslop, did you age trees that  
15 were less than three inches DBH on any of the other  
16 trails?

17 A Not in any kind of formal way other than just  
18 noting them as I passed them by the hundreds.

19 Q Were the red spruce species common on the  
20 other trails?

21 A They're fairly common, yes.

22 Q Why are these trees so small if they're so  
23 old?

24 MS. SIMON: Objection. Counsel is

1 characterizing trees as so old. I'm not sure  
2 that's appropriate. I'd rather the witness  
3 answer.

4 THE COURT: The objection is overruled.  
5 You may answer.

6 A So a lot of trees in the forest, red spruce,  
7 hemlock, beech, a lot of the trees, they have a  
8 strategy. They're called shade tolerant trees. So  
9 their strategy in life is to grow up in the understory  
10 of the forest under shady conditions. They don't need  
11 a lot of sunlight, unlike grass or aspen trees or birch  
12 trees. They can grow without much light and they grow  
13 slowly and they just wait for a tree above them to die,  
14 essentially, or get blown over. Then they can rise up  
15 to the top. So that's their life strategy.

16 Q What then is the role of those trees, the  
17 smaller trees in the ecosystem of the wild forest?

18 A Those trees are the next generation of trees.  
19 So just a short anecdote to illustrate. A lot of the  
20 trees in the forests, the large trees now, if you've  
21 cut them down or you do a tree cord and you look at  
22 them, they were about -- they were very small around  
23 1900. These were tiny trees.

24 MS. SIMON: Objection. Is there a basis

1 for this testimony, trees from 1900?

2 THE COURT: I understand. Overruled.

3 You may continue.

4 A If you look at the tree rings on them,  
5 they're very tight. They might be three inches and a  
6 hundred, hundred fifty years old. And then you see  
7 around 1900 they take off. Now, these are trees that  
8 when they went through around 1900, they cut all the  
9 big trees, these are the trees that replaced them. So  
10 these were not trees that the loggers at the time  
11 wanted, or whatever, these are the trees that are  
12 waiting. This is the next generation of the forest.  
13 So when all those other trees got removed, these ones  
14 took off. So the big trees you see in the forest were  
15 at one time these little trees that were in waiting in  
16 the understory.

17 Q Mr. Signell, going back to just this segment,  
18 Santanoni to Harris Lake, what was your tree count of  
19 trees less than three inches DBH for this segment?

20 A Let me refresh my memory.

21 MS. SIMON: Could I have a point of  
22 clarification. Are we talking about trees or  
23 stumps for the count?

24 THE COURT: Ms. Braymer.

1 MS. BRAYMER: These are stumps of trees  
2 that we have tallied -- that Mr. Signell has  
3 tallied.

4 THE COURT: Do you understand that  
5 question, Mr. Signell?

6 THE WITNESS: I do.

7 THE COURT: Good enough. Go ahead.

8 A There was 265 above three inches and 245  
9 below three inches.

10 MS. SIMON: Objection to the number  
11 three inches or above. We've stipulated to  
12 whatever that number is.

13 MS. BRAYMER: Yes. Mr. Signell, just  
14 only do the question I'm asking.

15 THE WITNESS: Okay.

16 MS. BRAYMER: Only answer --

17 THE WITNESS: I'm sorry. I  
18 misunderstood your question.

19 THE COURT: Objection sustained. Start  
20 over again, Miss Braymer with regard to the  
21 numbers. Go ahead.

22 Q What was your tree count for trees less than  
23 three inches DBH for this segment?

24 A 245.

1 Q And referring to Court Exhibit 1, what is the  
2 stipulated number of trees three inches DBH or greater?

3 A 363.

4 MS. SIMON: I renew my objection. I'm  
5 sorry, your Honor, but rather than using  
6 information to refresh his recollection, the  
7 witness has I believe been continually holding  
8 items. I renew my objection.

9 THE COURT: Okay. So your objection is  
10 that you believe that he's reading from documents  
11 not in evidence?

12 MS. SIMON: Yes.

13 THE COURT: Okay. Your objection is  
14 sustained to the extent that that happened. Just  
15 remember what I instructed you, Mr. Signell and  
16 Ms. Braymer. If he's looking at that to refresh  
17 his recollection, he must simply state that he's  
18 doing so. Understood? I don't know if he was or  
19 not. Miss Simon, who I trust as an officer of the  
20 Court just like I would any of plaintiff's  
21 counsel, appears to have observed that and I am  
22 going to rely upon her observations in making that  
23 ruling. You may ask your question again,  
24 Miss Braymer, the same question if you like.

1 Q Mr. Signell --

2 MS. BRAYMER: Can I have the last  
3 questioned read back? I don't remember exactly  
4 what it was.

5 THE COURT: If you would please, Cindy.

6 (Last question read by the reporter.)

7 A 363.

8 Q Mr. Signell, do you remember the total number  
9 of trees adding together the stipulated trees three  
10 inches DBH and greater and the count of trees less than  
11 three inches DBH? Do you remember that number?

12 A No, I do not. Let me refresh my memory from  
13 Exhibit 78.

14 THE COURT: Go right ahead.

15 MS. SIMON: Exhibit for identification  
16 70, did you say?

17 THE WITNESS: 78.

18 MS. SIMON: I'm sorry.

19 A Stipulated trees per acre?

20 Q No. I'm asking --

21 A Total. Sorry.

22 Q Please try not to read it. Just refresh your  
23 recollection and then give us your answer.

24 A I was trying to remember which thing you had

1 asked me. All right. Stipulated and my count trees  
2 less than three inches. Let me refresh my memory. It  
3 is 253 per acre.

4 Q I'm going to back you up just for a second,  
5 Mr. Signell. I need first the count of the total  
6 trees.

7 A Oh.

8 Q Do you remember that number for this segment  
9 which is --

10 A No.

11 Q -- still on Harris?

12 A Let me refresh my memory. The total number  
13 of trees, 608.

14 Q I'm sorry. Did you answer that question?

15 A Yes.

16 Q Referring to Court's Exhibit 1, we have  
17 stipulated to the mileage for this segment. Can you  
18 please tell the Court what we have there in Court  
19 Exhibit 1 for mileage of the Lake Harris segment?

20 A 2.2 miles.

21 Q And using that, were you able to come up with  
22 an acreage of trees cleared for this segment?

23 A Yes. 2.4.

24 MS. SIMON: Objection. The acreage

1           cleared is different. It's a different issue.

2                       THE COURT: Understood.

3                       MS. SIMON: It's a leading question.

4           Sorry.

5                       THE COURT: Overruled. You may answer.

6           A       2.4.

7           Q       And what width did you use for coming up with  
8 the acreage?

9           A       Nine feet.

10          Q       For the stipulated number of trees per acre,  
11 did you calculate that?

12          A       Yes.

13          Q       And do you remember that number?

14          A       Not offhand. Let me refresh my memory. 151.

15          Q       And using the total number of trees that you  
16 testified to earlier per acre, what is that number?

17          A       253.

18          Q       And the stipulated number of trees per mile,  
19 do you recall that number?

20          A       Yes.

21          Q       What is it?

22          A       165.

23                       MS. SIMON: Objection.

24                       THE COURT: What's the --



1 MS. SIMON: There is no stipulated  
2 number of trees per mile. It's a stipulated  
3 number of miles per every trail and a stipulated  
4 number of trees.

5 THE COURT: That is my understanding.  
6 My understanding of the question, which I think  
7 was Mr. Signell's as well, was that she was asking  
8 about the stipulated number of three-inch or  
9 greater per mile. So your objection is overruled.

10 Q And then finally for this segment, the total  
11 stipulated trees plus the trees less than three inches  
12 DBH that were counted per mile, did you calculate a  
13 number for that?

14 A I did.

15 Q Do you recall what that number is for this  
16 segment?

17 A No. Let me refresh my memory. 276.

18 Q Mr. Signell, what was the next segment that  
19 you analyzed on the Newcomb to Minerva Trail?

20 A I believe the next trail section I counted  
21 was the Hewitt to Stony Pond Trail which had been  
22 recently cut before I counted it.

23 MS. SIMON: Could we identify that  
24 trail, please, by the name on the stipulation?

1 THE WITNESS: The name of this -- this  
2 is part of the Boreas River to Stony Pond segment.  
3 Half of that segment -- roughly half of that  
4 segment had been cut. The rest of it was marked  
5 and remains marked to this day.

6 BY MS. BRAYMER:

7 Q How do you refer to the other half of the  
8 segment nine that we have in Court Exhibit 1, the  
9 stipulation?

10 A I in my work think of them as the Boreas to  
11 Hewitt section which is uncut, and the Hewitt to Stony  
12 section which has been cut.

13 Q For purposes of our questioning, would it be  
14 okay if we use the terminology in the stipulation to  
15 cover both of those segments or would you prefer if we  
16 went through each one separately, each half?

17 A It doesn't matter to me. It's just that if  
18 we lumped them all together, you just realize that I am  
19 lumping stumps and live trees in into one count.

20 MS. SIMON: May I speak, your Honor?

21 THE COURT: Yes.

22 MS. SIMON: It's not clear to me how  
23 he's broken up that trail. That trail is already  
24 a segment. I think we need more foundation or

1           questioning.

2 BY MS. BRAYMER:

3           Q       Can you identify the segment on the maps,  
4 Exhibit 69 and 70?

5           A       Yes. This is Exhibit 69. There's very few  
6 labels on this map so I'm going to have to try to  
7 describe it as best I can. Towards the northern  
8 portion of this map there is the Boreas River is  
9 labeled. The trail extends south until it meets a --  
10 until it hits an inholding of private land shown in  
11 white on the east side of the trail. That section to  
12 the north of that inholding has not been cut. It goes  
13 from the road just south of the Boreas River and it  
14 comes back to the road to avoid the inholding.

15                       Then the black line extending  
16 eastward -- there's no marked trail. I believe it is  
17 intended to follow the roadside, I'm not sure. But the  
18 black line extending eastward towards a big lake I  
19 believe is Hewitt Road. The section -- the other  
20 section you're talking about extends southward from  
21 that to the Lost Ponds Trail not shown on this map, and  
22 that section has been cut.

23           Q       And what you described is all of segment  
24 nine?

1           A       Yes.

2           Q       Did you personally field study this entire  
3 segment meaning from Boreas River through Hewitt Pond  
4 down to the Stony Pond, the start of the Stony Pond  
5 portion?

6           A       I did.

7           Q       And was Mr. Bauer with you at any point  
8 during this time?

9           A       No.

10          Q       How would you describe that entire trail  
11 segment, so segment nine, both what you've testified to  
12 cut and uncut? Can you run us through both?

13          A       Yes. The uncut section to the north runs  
14 through a very disturbed sort of diverse young forest.  
15 The trees certainly 20th century origin. Probably  
16 between 50 and 80, 90 years old maybe. Just a kind of  
17 hodgepodge of spruce, fir, hardwood, pine. Youngish  
18 forest I would say, especially in Adirondack terms.

19                   The section extending south from Hewitt  
20 all the way to Minerva including all the sections  
21 southward on this trail is basically an uninterrupted  
22 old growth northern hardwood forest.

23          Q       In the north section which is uncut, did you  
24 see any markings on the trees?

1 A Yes.

2 Q Can you please describe what those markings  
3 were?

4 A The trees were painted orange, once again,  
5 and very easy to delineate the trail, the intended  
6 trail, whatever they were marking it for. This was a  
7 sort of nine-foot swath through the forest with the  
8 larger trees marked orange.

9 Q You just testified that once again. What are  
10 you referring to as a prior observation of -- let me  
11 withdraw that. Have you seen similar markings to that  
12 any time before?

13 A Yes.

14 Q And where was that?

15 A On the Roosevelt to Boreas section.

16 Q And that section was uncut?

17 A That's correct.

18 Q What was the construction status of the trail  
19 half of segment nine that is cut?

20 MS. SIMON: Objection. This is a  
21 leading question because a path implies there's a  
22 trail there and if it's an uncut section -- I  
23 think we just need to hear about his observations  
24 if he says there's a path.

1 THE COURT: Are you asking about the cut  
2 or uncut?

3 MS. BRAYMER: I asked about the cut.

4 THE COURT: So withdrawn?

5 MS. SIMON: Withdrawn. I thought we  
6 were still on the uncut section.

7 THE COURT: So you heard and understood  
8 the question?

9 THE WITNESS: Yes.

10 THE COURT: Please go ahead.

11 A The section south of Hewitt Pond Road, Hewitt  
12 Road, had been very recently cut when I got to it. I  
13 believe there's a line --

14 MS. SIMON: Objection. Basis?

15 THE COURT: Sustained. Go ahead,  
16 Miss Braymer.

17 Q Did you observe any signs of construction on  
18 that trail?

19 A No. I observed that someone had cut the  
20 trees down along the entire corridor.

21 Q Did you observe any grading or bench cutting  
22 or any equipment?

23 MS. SIMON: I want to object. This was  
24 raised earlier and I didn't object where counsel

1 is asking if he's observed trail construction  
2 features and he hasn't been asked even if he knows  
3 what those are and he hasn't been -- he doesn't  
4 have experience as far as we know in trail  
5 construction features.

6 THE COURT: She has in her questioning  
7 sometimes asked conclusory questions such as that  
8 and typically then follow them up with his  
9 descriptions. I believe that in his previous  
10 testimony he did describe some of the trail  
11 construction features that he believed he had  
12 observed. I'm going to allow it, but it's worth  
13 what it's worth. So if he gives a conclusory  
14 response to a question, she asks about having seen  
15 trail construction features and she does not fill  
16 that blank in later on in his testimony, you can  
17 rest assured, Miss Simon, that you can point it  
18 out and I will observe it again in making my  
19 determinations and my decisions in this case. I  
20 don't mean to dissuade you from making objections  
21 because those objections are typically properly  
22 stated because you need a basis before you can say  
23 something. The law generally on evidence is that  
24 an expert is allowed to give the conclusion first

1           and then give the basis thereafter. What you  
2           might do, frankly, is make an application at some  
3           point that certain parts of his conclusory  
4           statements be stricken from the record because  
5           they've never been followed up on appropriately or  
6           the basis has not been given afterwards. But with  
7           expert testimony it is not unusual, it is  
8           typically, as I understand it, accepted in the  
9           courts that they can give the conclusion first and  
10          then fill in the basis later on.

11                        So I'm going to deny your objection but  
12          I do recognize it on both those -- under both  
13          those standards of review. That is, it may not be  
14          worth much unless they fill it in and I may even  
15          grant your application that it be stricken if it's  
16          not filled. Understood, Miss Braymer?

17                       MS. BRAYMER: Yes, your Honor.

18                       THE COURT: Do you have some more  
19          questions on this trail or would now be a good  
20          time to take our afternoon recess? Do you want to  
21          ask a few more first?

22                       MS. BRAYMER: I have more than a few.

23                       THE COURT: Okay. We'll take our  
24          afternoon recess now. We will recommence at 3:15.



1 Thank you, folks.

2 (Recess taken after which the  
3 proceedings continued as follows.)

4 THE COURT: All set to continue?

5 MS. BRAYMER: Yes, your Honor.

6 THE COURT: Okay. You're still under  
7 oath, sir. Go ahead, Miss Braymer.

8 MS. BRAYMER: Thank you, your Honor.

9 BY MS. BRAYMER:

10 Q Reminding us we are on the Boreas to Hewitt  
11 to Stony Pond segment and I want to go back and ask  
12 you, when did you do your fieldwork on this trail?

13 A The summer of 2016.

14 Q And when you did your fieldwork, what kind of  
15 ground conditions did you observe?

16 A On the northern half it was uncut forest. On  
17 the southern portion of this trail it was --

18 MS. SIMON: I'm sorry to object. This  
19 is asked and answered. We started with segment  
20 nine Boreas and he was asked what he observed.

21 THE COURT: It's a preliminary question  
22 I assume to get him back into the track of his  
23 testimony. Accordingly your objection is  
24 overruled. Go ahead, Miss Braymer -- or

1 Mr. Signell. I'm sorry if you weren't done.

2 Q Could you please tell us about the ground  
3 conditions on the southern section?

4 A This trail had been cut, the trees had been  
5 cut along this trail section.

6 Q Did you observe anything about the condition  
7 of the ground where the trees had been cut?

8 A Nothing out of the ordinary that I recall.

9 Q Had any construction started?

10 A No.

11 MS. SIMON: Can I make an objection  
12 here. He can make his observations but not say  
13 whether construction was started or not if he  
14 wasn't there when it was happening.

15 THE COURT: Overruled. Go ahead.

16 Q What was the tree counting protocol that you  
17 followed for the uncut section?

18 A Okay. So for the uncut section, in light of  
19 the fact that we were now counting every stump above  
20 one inch on the cut areas, I -- and in the interest of  
21 saving time, I did not measure every single tree as I  
22 had done in the previous section. That was very  
23 time-consuming. The information gleaned from it was  
24 not particularly useful in terms of which species were

1 which and all these things that takes a lot of time to  
2 record. So I tallied the trees as I went into three  
3 classes. Zero-to-one-inch at breast height,  
4 one-to-three-inch at breast height, and above three  
5 inches at breast height. And I proceeded down the  
6 trail.

7 THE COURT: This is in the cut area?

8 THE WITNESS: No. This is the uncut  
9 section.

10 THE COURT: Sorry. Go ahead.

11 MS. SIMON: Your Honor, we started on  
12 this with -- I just want to make sure I understand  
13 what trail we're talking about. Segment nine,  
14 which is on our stipulation, Boreas to Hewitt, the  
15 beginning of your testimony I understand was trees  
16 were cut.

17 THE COURT: I thought you were talking  
18 about the southern cut section also.

19 MS. SIMON: Southern.

20 THE COURT: So that's why I asked the  
21 question. If you want to make clear what you're  
22 talking about with Miss Braymer, I would  
23 appreciate it. Go ahead, Miss Braymer.

24 MS. BRAYMER: Thank you.

1 Q My question is what protocol did you follow  
2 for the uncut section? And please tell us where that  
3 was, north, south.

4 A Okay. Sorry. I misunderstood.

5 Q No, no.

6 A The uncut section -- wait. The uncut  
7 section.

8 Q You're on.

9 A Okay. The uncut section, the northern part  
10 from Boreas to Hewitt, I tallied the trees into three  
11 classes; zero to one, one to three, and above three.

12 Q Did you count the trees zero to one?

13 A I did, separately, yup.

14 Q And you also counted everything above one  
15 inch DBH?

16 A Yes. Those three classes I counted.

17 Q What protocol did you use for the southern  
18 cut portion?

19 A I used the same protocol that Peter used for  
20 the Lake Harris. I photographed every stump that was  
21 greater than one inch in diameter stump height.

22 Q And all of this counting, this is all  
23 collected and compiled into a data base?

24 A That's correct.

1 Q Again, what was the application that you  
2 used?

3 A So in this case we -- I learned of this trail  
4 segment very soon before an affidavit we needed to  
5 submit information. So when I got out there, I  
6 realized I wasn't going to have time to do this all  
7 using the Fulcrum app. It wasn't going to happen. So  
8 I followed the same protocol. Measured the trees, took  
9 photographs, but I just went down the line in order and  
10 took photographs by tenth-of-a-mile segment. So it was  
11 the same effect as -- the same evidence. It's just  
12 that there is not a GPS location associated with every  
13 single photograph. I know where the segments begin and  
14 end, and within that section, you can do the same  
15 thing. You can walk the trail in order and you can see  
16 the photographs as they come down the trail.

17 Q Did you ultimately input that data into the  
18 data base?

19 A Into the data base, yes. Yup.

20 Q According to Court Exhibit 1, how many trees  
21 three inches DBH or greater were stipulated as approved  
22 to be cut?

23 MS. SIMON: Could we identify the trail  
24 based on the name of the stip, please?

1 THE WITNESS: The name of the trail in  
2 the stip is Boreas River to Stony Pond segment  
3 nine. The stipulated number is 1,148.

4 Q Could you just double check that,  
5 Mr. Signell?

6 A Wrong one. Sorry. 1,253.

7 Q Thank you. And while you're just looking  
8 right there, what is the mileage for the stipulation  
9 for segment nine?

10 A 5.3 miles, 1.85 miles of new trail.

11 Q And what was your tree count for trees less  
12 than three inches DBH for this entire segment nine if  
13 you remember?

14 A Let me refresh my memory. This is  
15 Exhibit 78.

16 MS. SIMON: Was this a tree count less  
17 than three inches DBH, diameter at breast height,  
18 or the alternative which I believe he testified to  
19 was stump height? Just a clarification.

20 THE WITNESS: Okay.

21 THE COURT: Hang on. No, no. Your  
22 objection is overruled. If the question is  
23 unclear from her, that's not grounds for an  
24 objection. That's just an unclear question. I

1 understand your objection but she's going to ask  
2 her own questions and we'll go from there. You  
3 may wish to clarify it on cross or point it out in  
4 your arguments at some point. Okay?

5 So as I understood it, the question was  
6 your additional, the extras you counted on that  
7 5.3 trail as you've described.

8 A Okay. So the total I'm going to give you  
9 includes some stumps and some trees, and the total of  
10 that section was 1,875.

11 Q Using the stipulated number of trees greater  
12 than three inches -- equal to or greater than three  
13 inches DBH and your count of trees and stumps less than  
14 three inches DBH, what was the total number of trees?

15 A Let me refresh myself here. Exhibit 78.  
16 Total number was 3,128.

17 Q Were you able to calculate the trees per mile  
18 using the stipulated trees greater than three DBH?

19 A Yes. But I used -- I used the total number,  
20 not the cut section in the calculations I have at hand.  
21 So I'm not sure -- I didn't realize that the stipulated  
22 number was not the cut section so I'm not sure the  
23 number... do you understand what I am saying? This  
24 stipulated number -- there's actually two stipulated

1 numbers. There's one for the section of the trail and  
2 there was one for the area that was cut.

3 THE COURT: There was one what?

4 THE WITNESS: There was one for the area  
5 that was to be cut on the construction trail, I  
6 think.

7 MS. SIMON: May I clarify?

8 THE COURT: You may.

9 MS. SIMON: Could we just rely on what  
10 the stipulation actually says rather than having  
11 him continually read from it because it actually  
12 says approved to be cut, not cut.

13 THE COURT: Okay. My understanding of  
14 his testimony is that he stated it's to be cut and  
15 cut. You're asking again to kind of direct how he  
16 answers questions as opposed -- are you stating  
17 that you believe he's misstating the stipulation?

18 MS. SIMON: Yes, that's my  
19 understanding.

20 THE COURT: Okay. It's not clear to me  
21 from your objection exactly how he misstated the  
22 stipulation. I'm not saying you're not right but  
23 it's just not clear to me how. But, Miss Braymer,  
24 if you could ask the question again in order to



1           make sure that we are appropriately referencing  
2           the stipulation, I would appreciate it.

3 BY MS. BRAYMER:

4           Q       Mr. Signell, if you were to assume that the  
5           stipulation of 1,253 trees is for trees that were cut  
6           and also those that were yet to be cut, and then that  
7           was the total -- you used that for your total number of  
8           trees, could you calculate the total number of trees  
9           per mile?

10          A       Yes.

11          Q       Do you remember what that number is?

12          A       No, but I can refresh my memory. The total  
13          for stipulated and smaller trees that were cut per mile  
14          according to the stipulated mileage of 5.3 is 541.

15          Q       Mr. Signell, could you double check that  
16          you're looking at per mile, that you are giving us a  
17          number of trees per mile?

18          A       Per mile. 590.

19                   THE COURT: I'm off a little bit. I  
20                   thought you asked three inches or greater. Did  
21                   you ask three inches or greater and it's 590?

22                   MS. BRAYMER: No.

23                   THE COURT: That's what I thought.

24                   MS. BRAYMER: Okay. Can I back up? Or

1 he can answer that question?

2 THE COURT: If I missed your question,  
3 the record will stand and we're fine. Did you ask  
4 three inches or greater? He answered total number  
5 of trees. I thought you asked three inches or  
6 greater.

7 MS. BRAYMER: Can I have the last  
8 question read back?

9 THE COURT: Yes.

10 (The following was read by the reporter:

11 "Mr. Signell, if you were to assume that  
12 the stipulation of 1,253 trees is for trees that  
13 were cut and also those that were yet to be cut,  
14 and then that was the total -- you used that for  
15 your total number of trees, could you calculate  
16 the total number of trees per mile?"

17 MS. BRAYMER: Okay, Judge, you were  
18 correct. Thank you.

19 BY MS. BRAYMER:

20 Q The stipulated trees per mile is the question  
21 before you, Mr. Signell.

22 A Okay.

23 Q Do you remember that number?

24 A No. 541? Refresh my memory from this

1 exhibit.

2 Q Mr. Signell, can you recall just the  
3 stipulated trees per mile?

4 MS. SIMON: I'm confused. This has been  
5 asked and answered.

6 THE COURT: Let me say this with  
7 reference to all of this. Since we're in a  
8 nonjury trial, I am capable and you are, too, in  
9 your submitted proposed findings of fact and  
10 conclusions of law of dividing 1,253 trees by  
11 5.3 miles. So you don't necessarily have to --  
12 you have enough already on the record for this  
13 argument to be made and possibly you can move on  
14 beyond this area if you wish to. It is your case.  
15 You can do what you want.

16 MS. BRAYMER: Thank you.

17 BY MS. BRAYMER:

18 Q Mr. Signell, using the stipulated mileage,  
19 were you able to calculate the acreage --

20 A Yes.

21 Q -- that would be covered by this trail?

22 A Yes.

23 Q Do you remember what that number is?

24 A Not offhand, but I will refresh my memory.

1 The acreage would be 5.8 acres.

2 Q And what width did you use for calculating  
3 the acreage?

4 A Nine feet.

5 Q Okay, Mr. Signell, what was the next segment  
6 that you evaluated on the Newcomb to Minerva Trail?

7 A Stony Pond south to the southern terminus.

8 Q Can you identify that in the two exhibits,  
9 either of the exhibits that we gave you, 69 and 70?

10 A It's Exhibit 69.

11 Q Can you describe to the Court where it is on  
12 Exhibit 69, where the trail goes?

13 A Yes. I believe it's roughly the  
14 blue-and-black dotted trail. Coming in from the west  
15 perpendicular to this trail, I believe, is the Stony  
16 Pond Trail, and where that meets the red trail south is  
17 the section I'm referring to. This trail below the --  
18 although it ends well before the trail on this map  
19 ends, it ends at the southern end of the green public  
20 DEC lands.

21 Q What is beyond the end of the trail?

22 A Private land.

23 Q Did you personally field study this segment?

24 A I did.

1 Q When did you do that?

2 A Also in the summer of 2016.

3 Q Was Mr. Bauer with you?

4 A No, he was not.

5 Q How would you describe the trail segment?

6 A This is sort of a hilly forest with many,  
7 many, many very old trees, very large trees. Beech --  
8 not beech. Birch, maple, a lot of the hemlock. A lot  
9 of the 30 plus inches, even a couple larger than  
10 40 inches in diameter and pretty much uninterrupted  
11 stretch of that sort of forest. There was one small  
12 patch of a different forest type but it was maybe a  
13 quarter mile of the trail or something.

14 Q When you did your field study, what was the  
15 status of tree cutting on this segment?

16 A There had been no cutting that I observed.

17 Q Did you observe any markings on the trees?

18 A Yes. They were marked in a similar fashion  
19 to the other uncut sections.

20 Q Can you describe what exactly they were?

21 A Orange paint on the larger trees in a swath  
22 delineating whatever it was they were painting.

23 Q In your professional experience and your  
24 experience having already studied other trails on this

1 Newcomb to Minerva Trail, is it your professional  
2 opinion that this was the markings for the trail?

3 A Yes.

4 MS. SIMON: Objection.

5 THE COURT: Objection sustained. The  
6 answer is stricken.

7 Q What tree counting protocol did you follow  
8 for this segment?

9 A The same as I followed for the Boreas to  
10 Hewitt. I tallied trees zero to one inch, one to three  
11 inch and above three inches diameter at breast height.

12 Q And, again, when you say Boreas to Hewitt,  
13 that is the northern part of segment nine, is that  
14 correct?

15 A That's correct.

16 Q According to Court Exhibit 1, how many trees  
17 three inches or greater did DEC approve to be cut on  
18 segment 11?

19 A 423.

20 THE COURT: Just to be clear -- can I  
21 see that for a second. Go ahead.

22 Q What was your tree count for trees less than  
23 three inches DBH for this segment?

24 A I don't recall offhand. Let me refresh my

1 memory. 2,178.

2 Q Would you be able to -- were you able to add  
3 together the stipulated number of trees greater than  
4 three inches DBH and those that you counted less than  
5 three inches DBH?

6 A Yes.

7 Q And do you recall that number?

8 A No. Let me refresh my memory. Total number  
9 would be 2,601.

10 Q And according to Court Exhibit 1 we have a  
11 stipulated length of this trail. Could you please  
12 indicate to the Court the length of segment 11?

13 A 2.9 miles.

14 Q And using that length were you able to  
15 calculate the acreage to be cleared of trees in segment  
16 11?

17 A I was.

18 MS. SIMON: Objection. Approved to be  
19 cleared. It's a leading question.

20 THE COURT: Overruled. Go ahead.

21 A Yes, I was. I used a nine-foot width and I  
22 don't recall the exact number so I would like to  
23 refresh my memory from this exhibit. The acreage for  
24 this section would be 3.2 acres.

1 Q Mr. Signell, I'm going to move us on to the  
2 Seventh Lake Mountain Trail. What UMP is this trail  
3 in?

4 A Moose River Plains Wild Forest.

5 Q Have you had a chance to look at that?

6 A Yes.

7 Q Does that depict the Seventh Lake Mountain  
8 Trail?

9 A It does.

10 MS. BRAYMER: Your Honor, I'd like to  
11 move this into evidence. This is the document in  
12 our stipulation record number 37.

13 THE COURT: What's the exhibit number?

14 MS. BRAYMER: It is Exhibit 79.

15 MS. SIMON: Could I just have a moment.  
16 I have just want to confirm.

17 THE COURT: Sure.

18 MS. SIMON: Can I confer with counsel  
19 for a moment?

20 THE COURT: Yes.

21 MS. SIMON: Thank you.

22 (Discussion held off the record)

23 MS. SIMON: Thank you, your Honor. I'm  
24 ready to go forward.



1 THE COURT: Any objection to 79?

2 MS. SIMON: No.

3 THE COURT: 79 is received into  
4 evidence.

5 (Plaintiff's Exhibit 79 received into  
6 evidence.)

7 THE COURT: Thank you. I will take a  
8 copy. Thank you very much.

9 BY MS. BRAYMER:

10 Q Mr. Signell, did you personally field study  
11 the Seventh Lake Mountain Trail?

12 A Yes.

13 Q What parts or all of the trail did you study?

14 A I studied the entire trail.

15 Q Was Mr. Bauer with you for any of this?

16 A No.

17 Q How would you describe the Seventh Lake  
18 Mountain Trail, Mr. Signell?

19 A The Seventh Lake Mountain Trail is -- it goes  
20 to two distinct basic forest types with a few  
21 exceptions. The southern section of the trail shown  
22 here in orange, most of that goes through a northern  
23 hardwood forest, 20th century origin. There are very  
24 few large trees in there. Sugar maple, beech, birch,

1 forest, pretty typical of mid elevations. When the  
2 orange trail takes a veer off to the west at a sharp  
3 angle, a lot of that is an old road or a trail that was  
4 a pre-existing trail, I believe, parts of it.

5           The blue and purple sections go through,  
6 again, a section of forest with many, many, many very  
7 large, very old trees, almost all of them hemlock -- I  
8 mean northern hardwood, kind of standard Adirondack  
9 forest but of exceptional age. And there was a couple  
10 little hilltop ecosystems that were kind of distinctive  
11 of the trail as well. They were a little bit  
12 different, but for the most part it was northern  
13 hardwood forest. The northern two-thirds or northern  
14 half is very old forest.

15           Q       Can you describe the purple segment?

16           A       Yeah. The purple segment goes through a  
17 block of forest delineated by roads on various sides.  
18 It's what I described. It's an old northern hardwood  
19 forest. It's very similar to the blue section.

20           Q       What was the status of the tree cutting on  
21 this trail?

22           A       This trail I believe had been cut in 2012.

23                   MS. SIMON: Objection.

24                   THE COURT: Sustained.

1           A       This trail had been cut at some point in the  
2 past.

3           Q       When did you do your field study?

4           A       I visited that trail in the summer of 2016.

5           Q       And when you visited it, were the trees  
6 already cut?

7           A       Yes.

8           Q       Can you describe your observations of the  
9 ground on the trail starting with the orange segment.  
10 Orange, I'm referring to the map.

11          A       Yes. This trail was flattened in generally a  
12 road-like appearance, wide, nine plus feet the entire  
13 length of the trail. There was a lot of grass, a lot  
14 of stumps still there. There were certain sections  
15 that appeared to have been graded and bench cut and  
16 typical trail construction activity.

17          Q       Mr. Signell, you just referred to grading and  
18 bench cutting and you did that on a couple of the other  
19 trails previously. Do you have experience with trail  
20 construction?

21          A       Personally I have not built trails.

22          Q       What are you referring to when you say graded  
23 and bench cutting? What does that mean in your mind?

24          A       A bench cut in my mind is when a trail is on

1 a hill or slight incline --

2 MS. SIMON: Objection, your Honor.

3 Relevance to his thinking of what a bench cut is.

4 THE COURT: Overruled. You may  
5 continue.

6 A A trail, if something is on a hillside, in  
7 order to flatten it out you cut into the hillside, then  
8 you flatten the trail. I mean you see it in roads;  
9 doesn't have to be a trail. Engineers recognize that  
10 feature in all sorts of transportation corridors, not  
11 just trails. And grading refers to smoothing a trail,  
12 removing rocks, removing stumps, things of that nature.

13 Q If you could just refer to Court Exhibit 1.  
14 It does indicate on our stipulation the estimated  
15 construction time period. Could you inform the Court  
16 what we have there for the construction time period for  
17 Seventh Lake Mountain Trail?

18 A Yes. 9/4/2012 to 2/15/2013.

19 Q How did the status of the trees being cut and  
20 the construction that you observed impact your ability  
21 to do the counts in your fieldwork?

22 A Well, similar to the Lake Harris Trail, a lot  
23 of the stumps had been -- were no longer there.  
24 Stretches had been graded. Some of the smaller stumps

1 were probably gone in that period of time, four years.  
2 So I was able to create a count but it is a partial  
3 count of what was cut.

4 Q I want to go back to originally my question  
5 asked you about the status of the orange -- the  
6 construction status of the orange segment. What you  
7 testified to, does that apply across the other two  
8 segments of the trail or do you need to go back and  
9 cover some more information about that, those other  
10 two?

11 A There was evidence of that sort of thing  
12 along most of the trail except where it went on  
13 previously existing roads. Other than the fact that  
14 the orange section is in a younger forest, most of it,  
15 not all of it, the construction -- what I observed of  
16 the trail condition, there wasn't anything I observed  
17 that was noticeably on one section versus not on  
18 others.

19 Q What was the tree counting protocol that you  
20 followed for this trail?

21 A So Mr. Bauer followed the stump protocol for  
22 this trail. I didn't have the time to actually count  
23 it so he went out and photographed every stump above  
24 one inch in diameter.

1 Q Did he use the Fulcrum app or no, not for  
2 this?

3 A Yes, he did. That way I could be confident  
4 because with the Fulcrum map, it records a GPS of every  
5 photograph. I could be confident that he went and did  
6 that work.

7 Q According to Court Exhibit 1, how many trees  
8 three inches or greater DBH were approved to be cut on  
9 the Seventh Lake Mountain Trail?

10 A 2,085.

11 Q And what was your count of trees less than  
12 three inches DBH for this trail if you recall?

13 A Let me refresh my memory. 5,116.

14 Q So using the stipulated number of trees and  
15 your count of the additional smaller trees, what was  
16 the total number of trees cut?

17 A Let me refresh my memory here. Exhibit 78.  
18 Total number of trees 7,201.

19 Q And according to Court Exhibit 1, we have a  
20 stipulated length of the trail. Can you indicate to  
21 the Court what that length was?

22 A 11.9 miles.

23 Q And using that, were you able to calculate an  
24 acreage of the cleared area for this trail?

1 A 13 acres.

2 Q And what was the width that you used?

3 A Nine feet.

4 Q I'm going to move on to the next trail that  
5 I'd like you to talk to us about, the Gilmantown Trail.  
6 What UMP is this trail located in?

7 A I believe it's Jessup River Wild Forest.

8 Q I've handed you what's been marked as  
9 Plaintiff's Exhibit 67 for identification. Do you  
10 recognize that map, that exhibit?

11 A Yes.

12 Q And can you tell me what it depicts?

13 A It looks like a map work plan for the  
14 Guilderland town snowmobile trail.

15 Q And where would a work plan -- do you know  
16 who originates the work plan?

17 A Someone at the DEC, I believe.

18 MS. BRAYMER: Your Honor, I'd like to  
19 move this exhibit into evidence.

20 MS. SIMON: Can we identify this on the  
21 stipulated list, please.

22 MS. BRAYMER: This particular document I  
23 did not locate it on the stipulation. I do  
24 believe it is identified as Defendant's Exhibit R

1 and -- if I may, your Honor. Let me revise that  
2 statement. There is a --

3 THE COURT: Hold on. Miss Simon looks  
4 like she wants to speak with you.

5 (Discussion held off the record.)

6 THE COURT: What's up? Miss Braymer, go  
7 ahead.

8 MS. SIMON: We agree that she's going to  
9 check later to see if it's in the stipulated  
10 agreement and for now she's just going to use it  
11 for identification to reference.

12 THE COURT: Good enough. Is that  
13 correct, Miss Braymer?

14 MS. BRAYMER: That's correct.

15 THE COURT: Okay.

16 MS. BRAYMER: I would appreciate the  
17 opportunity to double check.

18 THE COURT: Of course. Go ahead.

19 MS. BRAYMER: May I give the Court a  
20 copy of this?

21 THE COURT: Well, it's not in evidence.

22 MS. BRAYMER: Okay. Thank you.

23 BY MS. BRAYMER:

24 Q Now, Mr. Signell, did you personally field



1 study the Gilmantown Trail?

2 A No. This is another trail I didn't make it  
3 out to.

4 Q Who did do the field study?

5 A Peter Bauer did a stump count. He  
6 photographed the stumps in the same manner that he did  
7 the other trails.

8 Q Did he collect any other data besides the  
9 count?

10 A I don't believe so in this case.

11 Q What was the status of tree cutting on the  
12 Gilmantown Trail when Mr. Bauer did his count?

13 A It had been cut at some point in the past.

14 MS. SIMON: Objection. Time frame? Is  
15 this within the time frame of the case?

16 THE COURT: Your objection is overruled.

17 You may ask another question if you'd like to.

18 BY MS. BRAYMER:

19 Q Mr. Signell, could you refer to Court Exhibit  
20 1 where it identifies the time frame of construction of  
21 the Gilmantown Trail and indicate to the Court what  
22 that time frame was?

23 A Yes. 12/2012 to 1/2013.

24 Q Do you know when Mr. Bauer did his field

1 study?

2 A He did it in 2016.

3 Q Were there any changes to the tree count  
4 protocol that Mr. Bauer had followed previously?

5 A No.

6 Q According to Court Exhibit 1, how many trees  
7 three inches DBH or larger were approved to be cut on  
8 the Gilmantown Trail?

9 A 127.

10 Q What was your count of trees less than three  
11 inches DBH for this trail?

12 A I don't recall. Let me refresh my memory  
13 from this exhibit. Small trees on this section were  
14 261.

15 Q And adding together the stipulated number and  
16 your additional trees for the trees less than three  
17 inches DBH, what was that total?

18 A 388.

19 Q And according to Court Exhibit 1, we have a  
20 stipulated mileage for this trail. Can you indicate  
21 that mileage?

22 A 2.4.

23 Q Were you able to calculate an acreage of area  
24 cleared for this trail?

1           A       Yes.  I used a nine-foot width and I will  
2 refresh my memory from this sheet and tell you that it  
3 was 2.6 acres.

4           Q       Mr. Signell, moving right along to the  
5 Wilmington Trail.  Did this trail have another name?

6           A       I believe so.

7           Q       Perhaps what did you refer to it at times?

8           A       I referred to it as the Wilmington Trail but  
9 I think it was called the Cooper Kiln Trail or  
10 something like that.

11                   THE COURT:  What?

12                   THE WITNESS:  Cooper Kiln.

13                   THE COURT:  Cooper Kiln?

14                   THE WITNESS:  Maybe.

15           Q       You referred to it as Wilmington?

16           A       Yes, Wilmington Trail.

17           Q       And what unit management plan is this located  
18 in?

19           A       I think it's in the Wilmington Wild Forest.

20           Q       Do you recognize that map?

21           A       Yes.

22           Q       Can you describe what you see on it?

23           A       This is a map of a portion of the Wilmington  
24 Wild Forest showing the Wilmington Trail, snowmobile

1 trail, specifically segment three, or segment three is  
2 highlighted here.

3 Q That map, are there other segments of  
4 Wilmington Trail that are not shown on that map?

5 A No. The whole trail is shown. Just they've  
6 labeled segment three here as something noteworthy.

7 MS. BRAYMER: I'd like to move this map  
8 into evidence.

9 MS. SIMON: Objection unless there's a  
10 foundation or it's on our stip.

11 MS. BRAYMER: I appreciate the  
12 opportunity to locate this in our stipulation or  
13 in the record. I do know that it's Defendant's  
14 Exhibit E. Let me double check, if you'll just  
15 give me one second.

16 THE COURT: You can. I don't know what  
17 the number is on that. What's the number on that  
18 one?

19 THE WITNESS: 68.

20 MS. BRAYMER: The Wilmington Wild Forest  
21 UMP is on our stipulation but I'll confirm that  
22 that map is definitely in the UMP.

23 THE COURT: We are talking about a map  
24 demonstrating the Cooper Kiln Trail? That's what

1           68 is?

2                   MS. BRAYMER:   Yes, your Honor.

3                   THE COURT:   And he's identified it as a  
4           map that demonstrates the Cooper Kiln Trail that  
5           he reviewed?

6                   MS. BRAYMER:   Yes.

7                   THE COURT:   Okay.  Whether it's on the  
8           stipulation or not, what's your objection,  
9           Miss Simon?

10                   MS. SIMON:   This may or may not be the  
11           map created by DEC of this trail.  It's not  
12           referred to as the Cooper Kiln map.  It's the  
13           Wilmington Trail segment three.

14                   THE COURT:   Well, it wasn't my  
15           understanding that it was being proffered as a DEC  
16           map but rather as a map of the area of the trail  
17           that we're discussing.

18                   MS. SIMON:   I have no objection to him  
19           looking at it and talking about it.  It's a matter  
20           of whether it goes into evidence.

21                   THE COURT:   I understand that.  I'm  
22           asking you what's your objection to it going in  
23           simply as a map of the trail that we're discussing  
24           whether DEC has authorized or formally issued it

1 or not? I'm asking what the legal objection is to  
2 it going into evidence.

3 MS. SIMON: It hasn't been authenticated  
4 as the map of the Wilmington Trail segment three.

5 THE COURT: The objection is overruled.  
6 68 is received into evidence.

7 (Plaintiff's Exhibit 68 received into  
8 evidence.)

9 THE COURT: I am not receiving 68 as a  
10 DEC-authenticated or formally-issued map of a  
11 trail. Go ahead, Miss Braymer.

12 MS. BRAYMER: I would like to move that  
13 Exhibit Number 67 be admitted on the same basis.

14 MS. SIMON: Objection. We already had a  
15 ruling.

16 THE COURT: I think she withdrew her  
17 proffer based upon your concern that it was not  
18 referenced in the stipulation. I don't think I  
19 denied 67, frankly. That's not my recollection.

20 MS. SIMON: Okay.

21 THE COURT: You can ask him a couple  
22 more questions about 67 to see if he can identify  
23 67 as the map of the relevant trail that you're  
24 proffering it for and I will reconsider it or I'll

1           accept your proffer.

2                       MS. BRAYMER: Thank you.

3 BY MS. BRAYMER:

4           Q       Mr. Signell, do you have a copy of 67?

5           A       Yes.

6           Q       What does that depict?

7           A       67 depicts the Gilmantown snowmobile trail.

8           Q       And is that an accurate map of the Gilmantown  
9 Trail that you studied?

10          A       Yes, I believe so.

11                       MS. BRAYMER: That's all I have.

12                       THE COURT: You're offering --

13                       MS. BRAYMER: I'm offering it, yes.

14                       THE COURT: You're offering 67.

15          Miss Simon.

16                       MS. SIMON: I maintain my objection.

17          There's no foundation or authentication of these  
18 two maps.

19                       THE COURT: 67 is received into  
20 evidence.

21                       (Plaintiff's Exhibit 67 received into  
22 evidence.)

23                       MS. BRAYMER: Your Honor, may I offer  
24 you a copy of 67?

1 THE COURT: You may.

2 MS. BRAYMER: 67 and 68.

3 Q Mr. Signell, going back to the Gilmantown  
4 Trail -- excuse me -- the Wilmington Trail, did you  
5 personally study this trail?

6 A I did.

7 Q And did Mr. Bauer assist you with that?

8 A No. I did it. I did an ecosystem survey  
9 sort of protocol. I did an ecosystem overview. He did  
10 the stump count at a different time.

11 Q So the trees on this trail were already cut  
12 when you and Mr. Bauer evaluated it?

13 A That's correct.

14 Q When did you go and do your study?

15 A It was in the fall of 2016.

16 Q And according to Court Exhibit 1, when was  
17 the Wilmington Trail constructed?

18 A 6/2012 to 7/31/2014.

19 Q From your field analysis, how would you  
20 describe the trail segment?

21 A This trail segment -- it's kind of hard to  
22 divide it up because -- generally it was a medium-aged  
23 forest, northern hardwood forest. The southern portion  
24 of it, the trail I observed was -- had already been a



1 trail and then so on the map, if I can describe from  
2 this where it says segment three, this vertical  
3 north-south trail in general, it goes up from a road  
4 and then it meets another trail that heads off to the  
5 east. From there north is where the cutting, most of  
6 the cutting, occurred. There was one section of trail  
7 in the southern spur where they had rerouted the  
8 existing trail and cut a number of trees but I don't  
9 believe that's part of the stipulated agreement. I  
10 could be wrong.

11 Q What was the length of that southern spur  
12 that you're talking about?

13 A I am not -- I don't have that number.

14 Q Do you recall the length of the rest of the  
15 trail that you just described --

16 A I think it was two --

17 Q -- as medium aged?

18 A 2.9 miles, I believe.

19 Q You can look at Court Exhibit 1.

20 A Okay.

21 Q If that will help you.

22 A 2.96.

23 Q And on the 2.96-mile segment, what was the  
24 construction status of that segment?

1 A It had been cut and graded.

2 Q Can you describe to the Court your  
3 observations of the trail ground conditions?

4 A Yeah. It was similar to the other trails  
5 that had been constructed in the same time frame.  
6 There were places where looked like the trail had been  
7 graded, bench cut. Just similar to the other ones.

8 Q Did you observe that any rocks had been  
9 removed?

10 A Any rocks had been removed? Not that I --  
11 not in any specific rock that I recall.

12 Q Did the status of the construction of the  
13 trail impact your ability to do the counts?

14 A Yes.

15 Q Can you explain?

16 A Same reasons as before. A lot of the stumps  
17 were gone and had been removed in the process of  
18 constructing the trail. So we were able to count the  
19 stumps but it's an underestimate of how many stumps  
20 were actually cut.

21 Q What tree counting protocol did you use for  
22 this segment, the Wilmington?

23 A Peter Bauer did the counting according to the  
24 trail. He hiked the entire trail and photographed with

1 a measuring tape every stump above one inch.

2 Q And the data that he collected, where was  
3 that -- where did that go?

4 A He used Fulcrum. It went into the data base  
5 and I was able to summarize it from the photographs.

6 Q And what was your count of trees less than  
7 three inches DBH on the Wilmington?

8 A I'm not sure. Let me refresh myself, refresh  
9 my memory. 1,490.

10 Q And according to Court Exhibit 1, what was  
11 the stipulated number of trees greater than or equal to  
12 three-inch DBH, Court Exhibit 1?

13 A 482.

14 Q And if you were to add those two numbers  
15 together, what's that total number?

16 A Let me refresh my memory. 1,972.

17 Q According to Court Exhibit 1, we already  
18 established the mileage -- withdrawn. Using the  
19 mileage, were you able to calculate an acreage of clear  
20 area for the trail?

21 A Yes. I used nine-foot width and the total  
22 acres was 3.2 acres.

23 Q Did you count the trees on the spur outside  
24 of the 2.9?

1           A       Yes. Mr. Bauer photographed those as well  
2 but those aren't included in that number because it  
3 wasn't part of the stipulated trail.

4           Q       That was my follow-up question. Are those  
5 tree counts included in the count that you just  
6 provided to the Court?

7           A       No.

8           Q       Having gone through all of these trails and  
9 your counts, Mr. Signell, what is your total count of  
10 trees less than three inches DBH?

11          A       Let me refresh my memory here.

12                   THE COURT: So this is on all of the  
13 trails that he's testified to this morning and  
14 this afternoon or this afternoon?

15                   MS. BRAYMER: Yes, your Honor.

16                   THE COURT: Okay.

17          A       17,517.

18                   THE COURT: Give me the number again,  
19 please.

20                   THE WITNESS: 17,517.

21                   THE COURT: Thank you. Go ahead.

22          Q       And considering all of the trails that you've  
23 testified to today, what is the total number of miles  
24 of trail?

1           A       Let me refresh my memory from this exhibit.  
2 The total miles 32.45.

3           Q       And what is the total acreage cleared for  
4 these trails?

5           A       Let me look. 35.4.

6           Q       We do not have this on our stipulation, the  
7 total number of trees greater than or equal to three  
8 inches DBH on Court Exhibit 1, but if you were to add  
9 together all of those trees on the stipulation plus  
10 your count for the trees on the Roosevelt Truck Trail  
11 to Boreas River, what is that total number?

12                   MS. SIMON:  Objection on the last thing  
13 she just said.

14                   THE COURT:  You confused me with that.  
15 Can you restate that question, please?

16                   MS. BRAYMER:  Yes.

17                   THE COURT:  Okay, thank you.

18 BY MS. BRAYMER:

19           Q       Mr. Signell, do we have a number for the  
20 trees greater than or equal to three inches DBH on the  
21 Roosevelt to Boreas segment of the Newcomb to Minerva  
22 Trail?

23           A       No, not to my knowledge.

24           Q       What is that number?

1 A There isn't one.

2 Q What is your number for that?

3 A 750.

4 Q And if you were to add that into the  
5 stipulated number of trees three inches DBH or greater,  
6 what would the total number of trees be?

7 A I'm refreshing my memory here. I have to say  
8 I'm not sure whether this number -- I don't think that  
9 the number I'm going to give you includes those trees  
10 because it wasn't a stipulated number. I'd have to go  
11 back and see how I put the sheet together to see what I  
12 substituted that number in.

13 Q I'm going to withdraw that question, then,  
14 Mr. Signell.

15 A Okay.

16 Q I don't want you to try to do the calculation  
17 on the stand. Thank you.

18 A Okay.

19 Q Mr. Signell, in your professional opinion are  
20 your tree counts conservative counts of what DEC has  
21 cut or will cut?

22 A Yes.

23 MS. BRAYMER: May I confer with counsel  
24 for a moment, your Honor?

1 THE COURT: Yes.

2 MS. BRAYMER: Thank you.

3 (Pause)

4 MS. BRAYMER: Your Honor, that finishes  
5 my line of questioning and I would like to turn  
6 over control from our side to attorney Caffry.

7 THE COURT: Okay. Would this be a good  
8 time to stop for the day, Mr. Caffry?

9 MR. CAFFREY: I believe so, your Honor.  
10 I was going to suggest that. I see Mr. Signell  
11 raising his hand. I'm not sure.

12 THE COURT: Mr. Signell, would you like  
13 to clarify or correct an answer you've given? If  
14 not --

15 THE WITNESS: Yes.

16 THE COURT: Go ahead.

17 THE WITNESS: Just refreshing my memory  
18 from the sheet, I would -- to answer your last  
19 question, now that I've looked at it and I  
20 remember how it's put together, the number of  
21 trees stipulated --

22 MS. SIMON: I think the question was  
23 withdrawn.

24 THE COURT: It was withdrawn. We'll let

1 Mr. Caffry ask the question next time we come  
2 back. How would that be?

3 MS. BRAYMER: Thank you.

4 THE COURT: Write that one down,  
5 Mr. Caffry. You can clarify the record next time.  
6 Anything else for today, Counsel?

7 MR. CAFFREY: Your Honor, I do have  
8 another line of questioning that I was ready to  
9 start with Mr. Signell after Miss Braymer finished  
10 but I know this line of questioning will go at  
11 least an hour and we won't be back for 10 days. I  
12 believe we would be better off given the time of  
13 day not continuing.

14 THE COURT: That's fine. That's what we  
15 will do. Is there anything else besides that  
16 before we break for the day?

17 MR. CAFFREY: I don't believe so.

18 THE COURT: Miss Simon?

19 MS. SIMON: No, your Honor.

20 THE COURT: All right. You may step  
21 down, sir. Counsel want to approach the bench.

22 (Discussion held off the record at the  
23 bench.)

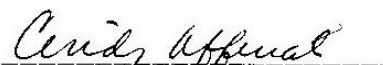
24 (Proceedings adjourned at 4:15 p.m.)



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C E R T I F I C A T I O N

I, Cindy Affinati, Official 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.



Cindy Affinati  
Official Court Reporter

March 30, 2017

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W I T N E S S E S

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