

1 STATE OF NEW YORK
2 SUPREME COURT

COUNTY OF ALBANY

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

Plaintiff-Petitioner,

5 -against-

Index No. 2137-13

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

Defendants-Respondents.

8
9 Volume III

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

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

13
14 Transcript of the Proceedings held on the record
15 on March 15, 2017, at the Albany County Courthouse, Albany,
16 New York.

17 APPEARANCES:

18 For the Plaintiff:

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

22 For the Defendants:

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

Protect the Adirondacks! v. NYS DEC & APA

1 (Plaintiff's Exhibits 81 through 122
2 marked for identification.)

3 THE COURT: This is the continuation of our
4 non-jury trial of the matter of Protect the Adirondacks!
5 against New York State DEC and the Adirondack Park
6 Agency.

7 Counsel, all set to proceed?

8 MR. CAFFRY: Yes, your Honor.

9 THE COURT: Okay. We have some stipulations to
10 place on the record and also it's my understanding we
11 are going to substitute in a witness. Is that correct?

12 So why don't we start with the stipulation and then
13 take it from there.

14 MS. SIMON: Okay. I have the stipulation, your
15 Honor. It's our second stipulation with regard to
16 documents for trial in this first cause of action. And
17 its defendant and plaintiff exhibits and we stipulate
18 that each is authentic and will be deemed admitted into
19 evidence without objection. Any factual assertions
20 contained therein are subject to refutation by other
21 evidence. And it is signed by John Caffry today,
22 March 15th, and myself, Loretta Simon, March 15th,
23 2017, and we would like to give it to the stenographer.

24 THE COURT: All right. And the stipulation lists

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1 the exhibits that are being received into evidence?

2 MS. SIMON: Yes.

3 THE COURT: Okay.

4 Mr. Caffry, is that a correct statement?

5 MR. CAFFRY: Yes, your Honor.

6 THE COURT: All right. We have not marked the
7 stipulation itself, correct?

8 MS. SIMON: Correct.

9 THE COURT: So we will mark that as Court Exhibit
10 3. I will deem that received as Court's 3.

11 (Court's Exhibit 3 marked for
12 identification and received in evidence.)

13 THE COURT: Court's Exhibit 3 contains a list that
14 begins at -- why don't I state them for the record.
15 Plaintiff's Exhibits 29, 30, 31, 67, 68, 69, 70, 71, 72,
16 73, and 79 are accordingly received into evidence based
17 upon that stipulation under the conditions stated on the
18 record.

19 In addition, Defendant's Exhibits D, E, F, L, M, N,
20 O, P, Q, R, S, T, U, V, Y and Z, as well as AD, AE, AF,
21 AG, AT, AU, AX, AY, AZ, BA, BB, BE, BF, BG, BH, BI, BJ,
22 BK, BL, BM, BN, BO, BP, BQ, CO and CP are also received
23 into evidence pursuant to the terms of that stipulation
24 and under the conditions stated on the record by Miss

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1 Simon.

2 Was that correctly stated, Miss Simon?

3 MS. SIMON: Yes. Thank you, your Honor.

4 THE COURT: Mr. Caffry?

5 MR. CAFFRY: Yes, your Honor.

6 THE COURT: Okay. Do you need to mark those
7 exhibits as in evidence?

8 Okay. We are going to take one moment while we
9 mark those exhibits that are just stipulated into
10 evidence into evidence.

11 (Plaintiff's Exhibits 29, 30, 31, 67, 68,
12 69, 70, 71, 72, 73 and 79 received in
13 evidence.)

14 (Defendant's Exhibits D, E, F, L, M, N,
15 O, P, Q, R, S, T, U, V, Y, Z, AD, AE, AF, AG,
16 AT, AU, AX, AY, AZ, BA, BB, BE, BF, BG, BH,
17 BI, BJ, BK, BL, BM, BN, BO, BP, BQ, CO and CP
18 received in evidence.)

19 THE COURT: All set, counsel?

20 MR. CAFFRY: Yes, your Honor.

21 THE COURT: Please go ahead.

22 MR. CAFFRY: Your Honor, as you previously
23 mentioned, the parties have agreed, I believe, that our
24 witness, Dr. Ronald Sutherland, will in effect be taken

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1 out of order, interrupting the testimony of Stephen
2 Signell, because Dr. Sutherland is flown in from North
3 Carolina and we would like to be able to get him in and
4 out of here perhaps before the next blizzard, but he did
5 make it in Monday before the blizzard. And so with the
6 Court's permission we will call Dr. Ronald Sutherland.

7 THE COURT: No objection, Miss Simon?

8 MS. SIMON: No objection.

9 THE COURT: Go ahead, Mr. Caffry.

10 Mr. Sutherland, come on up and be sworn in.

11 Doctor, I'm sorry.

12 **THEREUPON,**

13 **RONALD W. SUTHERLAND,**

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

16 **DIRECT EXAMINATION**

17 THE COURT: Good afternoon, Doctor. I'm Judge
18 Connolly. Just a couple of things before we begin.

19 As you can see, we have our court reporter taking
20 down verbatim everything that is said. So I need you
21 when you answer questions to answer them out loud, nice
22 and clear. Stay away from head nods yes or no and that
23 sort of thing. Those don't show up well on our
24 transcript.

(Ronald Sutherland - Direct by Mr. Caffry)

1 If at any point you hear an objection to one of the
2 questions that's asked, don't answer the question until
3 I have had a chance to rule on it.

4 If you are speaking already and somebody says
5 objection, just stop immediately. I will rule on it. I
6 will tell you whether you can continue, okay?

7 Finally, if at some point Miss -- are you going to
8 be doing the cross-examination, Miss Simon?

9 MS. SIMON: Yes, your Honor.

10 THE COURT: If Miss Simon says she wants a yes or
11 no answer to a question, you may answer yes or no or I
12 can't answer that with a yes or no answer.

13 THE WITNESS: Okay.

14 THE COURT: Do not explain any one of the three.
15 Understood?

16 THE WITNESS: Yes.

17 THE COURT: Don't say why you can't do it or why
18 it's yes or why it's no.

19 Mr. Caffry, will it be you?

20 MR. CAFFRY: Yes, it will be me today.

21 THE COURT: Go ahead.

22 BY MR. CAFFRY:

23 Q Can you state your name for the record, please?

24 A Sure. It's Ronald W. Sutherland.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q What city and state do you reside in?

2 A Durham, North Carolina.

3 Q Where are you employed?

4 A At a conservation nonprofit called Wildlands
5 Network.

6 Q And do you have a bachelor's degree?

7 A I do, from North Carolina State University.

8 Q When did you earn that?

9 A 1999.

10 Q What's that degree in?

11 A Biology.

12 Q Did you participate in any research there?

13 A Yes, I did.

14 Q And what is that?

15 A I conducted some research into genetics of an
16 isolated population of hemlock trees and also looked at
17 nesting ecology of flatback sea turtles in Cape York,
18 Australia.

19 Q And did you earn an advanced degree after your
20 bachelor's?

21 A Yes, two.

22 Q What was the first one?

23 A I got a master's degree in conservation biology and
24 sustainable development from the University of Wisconsin

(Ronald Sutherland - Direct by Mr. Caffry)

1 Medicine.

2 Q What is conservation biology?

3 A Simply put it's the science of trying to figure out
4 how to save different species from going extinct.

5 Q And did you participate in any research while
6 working on this degree?

7 A Yes, I did. I looked at sustainable hunting
8 practices in the Gran Chaco region of Bolivia.

9 Q Did you do any research in the part of the country
10 where Madison, Wisconsin is located while you were there?

11 A Yes, I did. I participated in various types of
12 fieldwork, including prairie ecosystems, but also up in
13 the -- I conducted a site conservation plan for the Presque
14 Isle Ontonagon watershed, and that's up in the upper
15 peninsula of Michigan.

16 Q And did you -- you mentioned a second degree,
17 advanced degree. What's that?

18 A Yes. I received a PhD in environmental science and
19 policy from Duke University in 2009.

20 Q And did you participate in any research while
21 earning that degree?

22 A Yes. My dissertation focused on the impacts of
23 roads and urbanization on a wide range of bird species in the
24 longleaf pine forest area of North Carolina called the

(Ronald Sutherland - Direct by Mr. Caffry)

1 Sandhills.

2 Q And have you been in teaching?

3 A I have. I served as a teaching assistant, graduate
4 teaching assistant for quite a few classes in Madison and at
5 Duke. And I also taught one course myself in the practice of
6 land conservation at Duke.

7 Q And have you published any scientific books or
8 articles in your field?

9 A Yes. I published three peer review publications so
10 far and at least half a dozen non peer reviewed reports and
11 internal articles.

12 Q And are any of them related to the impact of roads
13 on wildlife?

14 A Yes.

15 Q Or on forests?

16 A Yes. My most recent publication, one was peer
17 reviewed and one was an internal report, focused on our
18 habitat connectivity modeling that we have been doing for a
19 range of species in the southeastern United States and that
20 modeling heavily depended on taking into account the road
21 network of the southeast, including the traffic patterns and
22 the spatial arrangement of roads.

23 Q What types of species were involved in that?

24 A We used black bear, red wolf, Florida panther,

(Ronald Sutherland - Direct by Mr. Caffry)

1 timber rattlesnake, eastern diamondback rattlesnake, and pine
2 snake, and box turtle.

3 Q Where did you first work after receiving your PhD?

4 A I had a consulting job for Natureserve in Durham.

5 Q What is Natureserve?

6 A Natureserve is a nonprofit that was spun off of the
7 nature conservancy and they specialize in understanding and
8 mapping the spatial distribution of rare species around the
9 country.

10 Q Are you familiar with the New York State Natural
11 Heritage Program?

12 A In general terms, yes.

13 Q Is Natureserve related to that program in some way?

14 A Yes, it is. Natureserve works closely with the
15 natural heritage programs from every state.

16 Q And is it true that since then you have been at the
17 Wildlands Network?

18 A Yes.

19 Q And what's your job title there?

20 A Conservation scientist.

21 Q And what do you do there as a conversation
22 scientist?

23 A I do a mix of regional research and advocacy,
24 including the habitat connectivity model I just mentioned.

(Ronald Sutherland - Direct by Mr. Caffry)

1 We have been working on a field research project looking at
2 red wolves and other wildlife species, including the various
3 large mammals down in Alligator River National Wildlife
4 Refuge. And let's see, we also -- with my colleagues we have
5 been running a project. Actually, we just completed a
6 project to analyze all of the roads in North Carolina and
7 look at the highest priority ones for wildlife road
8 crossings, bridges, and underpasses, so that wildlife can go
9 underneath.

10 Q And does that work include researching the effects
11 on the ecosystems of North Carolina on habitat fragmentation
12 by those roads?

13 A Yes, it does.

14 Q And I'm going to hand you what's been marked as
15 Plaintiff's Exhibit 92 for identification.

16 MR. CAFFRY: Your Honor, I assume your prior
17 instruction stands, we can approach without asking
18 permission?

19 THE COURT: Yes. Thank you.

20 BY MR. CAFFRY:

21 Q Do you recognize that document?

22 A I do.

23 Q Can you tell us what it is?

24 A It's my CV.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q And did you prepare that?

2 A Yes.

3 Q Does it accurately describe your education,
4 scholarship, and professional experience?

5 A It does.

6 MR. CAFFRY: Your Honor, I move that Exhibit 92 be
7 admitted into evidence.

8 THE COURT: Miss Simon?

9 MS. SIMON: No objection.

10 THE COURT: Ninety-two is received into evidence.

11 (Plaintiff's Exhibit 92 received in
12 evidence.)

13 THE COURT: Are you going to refer to that further
14 in this witness's testimony?

15 MR. CAFFRY: Possibly.

16 THE COURT: We will leave it here then. Go ahead.

17 BY MR. CAFFRY:

18 Q Dr. Sutherland, it appears from your CV that much
19 of your work has been done in the southeastern U.S. Do you
20 have any experience working in the northern United States?

21 A I do.

22 Q Could you describe that for us?

23 A Yes. Most of it is related to my three years I
24 spent doing my master's degree in Wisconsin.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Was that done -- you mentioned in Upper Peninsula.
2 Did you also do work in your field in Wisconsin?

3 A Yes.

4 Q And has this work prepared you for working on this
5 current matter in the Adirondacks or how has this?

6 A It has, because the northern hardwood forest is
7 fairly similar between the upper midwest and this area of New
8 York, it was my understanding.

9 Q And is habitat connectivity and habitat
10 fragmentation, are they unique to any particular area?

11 MS. SIMON: Objection, leading.

12 THE COURT: Overruled.

13 You may answer.

14 A No, they are not. They are widely cited global
15 phenomenon that have received the same kinds of research in
16 many places, parts of the world, including the northeast.

17 Q Does the Wildlands Network, your current employer,
18 do any work in New York?

19 A We do.

20 Q Could you briefly explain that?

21 A Yes. I have a colleague, Mr. John Davis, who is
22 based in Essex, New York, and we advocate for habitat
23 connectivity improvements and conservation of various
24 species.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q And are you involved in the organization's New York
2 work at all?

3 A I am. I talk to Mr. Davis frequently and in
4 person.

5 Q Are you doing any other work related to New York?

6 A We also recently completed in the past month a
7 habitat connectivity plan for the entire eastern side of
8 North America that included all of New York.

9 Q It appears from your CV that much of your work has
10 involved amphibians and reptiles. Have you also studied the
11 impacts of roads and habitat fragmentation on mammals, fish
12 or birds?

13 A Yes, I have, particularly the mammals and birds.
14 The fish are a lifetime -- native fish are a lifetime
15 interest of mine, but in terms of actual research, I have
16 worked on, like, the red wolf camera trapping program that we
17 are working on has involved using camera traps to look at the
18 entire suite of native mammal species, for example. And my
19 PhD research also involved looking at live that animals of
20 all types on the roads in the Sandhills area of North
21 Carolina.

22 Q Have you also had occasion to study the impacts of
23 roads and habitat fragmentation on native vegetation and
24 other ecological values besides wildlife?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A Yes, I have. A large component of my work, because
2 I'm based in the southeast, the southeast flagship ecosystems
3 are longleaf pine forests. And a lot of my work involves
4 trying to map out an optimal set of habitat corridors for
5 along the pine forests across the region, and that requires
6 an understanding of the underlying vegetation.

7 Q And did there come a time when you were retained by
8 Protect the Adirondacks! to do some work related to this
9 case?

10 A Yes, last summer of 2016.

11 Q Prior to that did you have any affiliation with the
12 plaintiff, other than your current work on this case?

13 A No.

14 Q Did there come a time when you went to the
15 Adirondacks to do any field work in connection with this
16 case?

17 A Yes, last August 2016.

18 Q And what dates was that on?

19 A August 16th through the 19th.

20 Q And approximately how many hours did you spend in
21 the field related to this case?

22 A Twelve hours.

23 Q Are you familiar with the term Class II community
24 connector snowmobile trail?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A I am.

2 Q Can you tell us what it is and how you know that?

3 A Yes. It's my understanding that a Class II
4 community connector snowmobile trail is a larger improved
5 snowmobile trail that's meant to connect small towns in the
6 Adirondacks. And I know that in part because of
7 conversations with Mr. Bauer and his associates and also from
8 reading the affidavits from the defendants.

9 MS. SIMON: Objection, hearsay for his
10 conversations with Mr. Bauer.

11 THE COURT: Are you specifically requesting that
12 certain portions of that response which he gave be
13 stricken from the record?

14 MS. SIMON: Yes, your Honor.

15 THE COURT: All right. That portion of Dr.
16 Sutherland's response which categorizes or, excuse me,
17 characterized his understanding of the community
18 connector trails based upon Mr. Bauer's statements to
19 him is stricken from the record and will be disregarded
20 by the Court in making its determination.

21 BY MR. CAFFRY:

22 Q Dr. Sutherland, you mentioned affidavits by the
23 defense. Can you elaborate on what those were?

24 A Yes. There has been several rounds of affidavits

(Ronald Sutherland - Direct by Mr. Caffry)

1 filed in this case. My understanding I have, I think, most
2 of them saved on my computer, and I have read through the
3 ones by Miss Simon and Mr. Howard in particular.

4 Q During your time in the Adirondacks last summer,
5 did you inspect any Class II community connector trails?

6 A I did.

7 Q Which ones?

8 A We hiked up the Newcomb to Minerva Trail, three
9 different sections of that trail, and we also hiked the
10 Seventh Lake Mountain Trail.

11 Q I would like to ask the stenographer to hand you
12 what were previously admitted into evidence as 69 and 70.

13 We will hand you.

14 MR. CAFFRY: I apologize, your Honor. I didn't
15 realize that was them on the table here.

16 BY MR. CAFFRY:

17 Q Have you had a chance to look at them?

18 A I have.

19 Q And what are they?

20 A These are two different maps of portions of the
21 Newcomb to Minerva Community Connector Trail Plan.

22 Q And I believe you said that's one of the trails
23 that you inspected?

24 A Yes, it is.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q On what date did you do so?

2 A August 16th of 2016.

3 Q And were you with anybody else when you did that?

4 A Yes, I was. I was with Mr. John Davis, Mr. William
5 Amadon, A-M-A-D-O-N, and Miss Evelyn Greene.

6 Q And is Mr. Davis the colleague you mentioned
7 earlier that works for the same organization you do?

8 A Yes.

9 Q And did you inspect particular segments of that
10 trail? And if so, can you tell us which ones?

11 A Yes. Okay. The first segment we hiked was from
12 Santanoni historic area to Lake Harris Campground. And the
13 second segment we hiked was from the Hyslop area and where
14 the railroad intersects the Highway 28 there, up to the
15 Roosevelt Truck Trail. And then the third portion we hiked
16 was from the Hewitt Pond Road up to what I believe is called
17 the Stony Brook Pond Road, and that's a laborious portion of
18 that trail.

19 Q I would like to hand you what's previously been
20 marked as Court Exhibit number 1.

21 MS. BRAYMER: Your Honor, do you want copies of 69
22 and 70?

23 THE COURT: Please. You can hand them to
24 Miss Murphy.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Thank you.

2 BY MR. CAFFRY:

3 Q On Court Exhibit number 1, could you please look at
4 page 3, item 14?

5 A Yes.

6 Q Do you see a column on there labeled approximate
7 mileage of trail?

8 A I do.

9 Q And that's in a table of trails and various other
10 information?

11 A Um-hum.

12 Q Does it say how long this trail segment is?

13 A Which trail segment?

14 Q The one you just mentioned. I'm sorry, Santanoni
15 to Harris Lake.

16 A It does, 2.2 miles.

17 Q And when you hiked this trail as you observed it,
18 what if anything did you notice about the status of the
19 completion of its construction?

20 A That portion of the trail seemed to be recently
21 completed, but the grass had had time to grow, had time to
22 sprout. There was still hay, straw on the ground. So I
23 assume it was recently completed. The stumps on the trail
24 were fairly fresh cut.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Looking again at the table in Court' Exhibit 1, do
2 you see a column labeled estimated construction time period?

3 A I do.

4 Q What does it state with regard to the Santanoni to
5 Lake Harris Trail segment?

6 A It says between June 1st, 2014, and
7 December 31st, 2016.

8 Q Do you feel that's consistent with the observations
9 you made in the field?

10 MS. SIMON: Objection.

11 THE COURT: Overruled.

12 You may answer.

13 A Yes, I do.

14 Q Referring now from the trail segment to Hyslop to
15 the Roosevelt Truck Trail, could you again explain to the
16 judge where that is located on Exhibit 70?

17 A Sure. So it's on the lower right section of the
18 map where the -- actually, the portion we hiked was
19 indicative of where the railroad that you see on the bottom
20 right intersects Highway 28 North. We hiked from there along
21 a portion of the trail that is not shown on the map, up to
22 the Roosevelt Truck Trail and back down again.

23 Q And does the table on Court Exhibit 1 say how long
24 this trail segment is?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A It does.

2 Q How far is that?

3 A The entire segment from Hyslop to Roosevelt Truck
4 Trail is listed as 2.9 miles.

5 Q And does the table say when the estimated
6 construction time period for that trail segment was?

7 A It does. August 15th, 2015, to December 31st,
8 2016.

9 Q And when you were on that trail segment, what did
10 you observe about the status of the completion of its
11 construction?

12 A It was newer than the previous segment of trail.
13 They had cleared the trees on most of it, but they had not
14 disturbed the ground as much, graded the ground in the
15 trails, and they had not completed a bridge. There is a
16 bridge over, I think it's known as Vanderwalker Brook. They
17 had not completed that bridge. So we had to go across the
18 brook ourselves and then at the end of the trail there is a
19 portion that was not completed at all.

20 Q And what date did you inspect that trail segment?

21 A August 16th, 2016.

22 Q And was -- based on your observations in the field,
23 was that -- the date given on the table for the construction
24 time period, was that -- were those two consistent?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A Yes.

2 Q And then you mentioned a third segment of that
3 trail that you walked. What day was that on?

4 A That was also on August 16th.

5 Q And what was the name of it again or what was it
6 near?

7 A It was another portion of that same Newcomb to
8 Minerva Trail and we hiked from Hewitt Pond Road up the hill
9 to I think Stony Brook Pond Road.

10 Q Did you hike the entire trail segment?

11 A As I just described it, we did, but we did not hike
12 the entire segment, to Boreas Pond our Boreas River and back.

13 MR. CAFFRY: Your Honor, would you like a copy
14 also?

15 THE COURT: Sure.

16 BY MR. CAFFRY:

17 Q Is this a map of one of the trails you inspected?

18 A It is.

19 Q And which trail is that?

20 A This is the map of the Seventh Lake Mountain Trail.

21 Q And using the map, can you describe the segment or
22 segments of the trail that you inspected?

23 A Yes. We hiked from the Moose River Plains Road,
24 which in the map is shown in the -- it's the bottom middle of

(Ronald Sutherland - Direct by Mr. Caffry)

1 the map, the left-hand side of the orange trail, if you can
2 see that.

3 And we hiked from there all the way up to, I
4 think the junction with Uncas Road, which is in between
5 Seventh Lake, which is their middle, the lake in the middle
6 and Eighth Lake, which is the lake on the upper right of the
7 map, and that would be the blue segment.

8 Q And on -- you have Plaintiff's Exhibit 79 in front
9 of you; is that correct?

10 A Yes.

11 Q And on that map are those trail segments designated
12 in particular colors?

13 A Yes, orange and blue.

14 Q Pardon me?

15 A Orange and blue.

16 Q The first one is orange; the second one is blue?

17 A Correct.

18 Q The map shows a third segment. Did you hike that
19 segment?

20 A No, I did not.

21 Q What day did you hike on this trail?

22 A August 18th, 2016.

23 Q And were you by yourself?

24 A No.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Who was with you that day?

2 A Mr. Davis, Mr. John Davis, Mr. William Amadon, and
3 Mr. Peter Bauer.

4 Q And Peter Bauer, to your knowledge, is employed by
5 the plaintiff?

6 A Yes.

7 Q And about how far did you walk that day on that
8 trail?

9 A Eight miles or so.

10 Q How did you know it was the Seventh Lake Mountain
11 Trail?

12 A This trail was marked with signs.

13 Q And --

14 A That said Seventh Lake Mountain.

15 Q As you observed this trail, what if anything did
16 you notice about the status of the completion of its
17 construction?

18 A This trail appeared to have been constructed
19 several years before my visit. The grass had time -- the
20 place where there was grass in the trail, the grass was
21 fairly tall, and there was no signs of straw being on the
22 ground, for example, so.

23 Q And looking again at Court Exhibit number 1, page
24 3, at the table there, does it say when the estimated

(Ronald Sutherland - Direct by Mr. Caffry)

1 construction time period for this trail was?

2 A Yes. It says September 4th, 2012, to
3 December 15th, 2013.

4 Q Is that consistent with your observations in the
5 field?

6 A Yes.

7 MS. SIMON: Can I have that read back? I don't
8 think I heard correctly his answer.

9 THE COURT: Sure. The last question and answer
10 back, is that what you want?

11 MS. SIMON: Just the answer.

12 THE COURT: Just the last answer.

13 (Whereupon the Reporter read back the
14 answer.)

15 THE COURT: Go ahead, Mr. Caffry.

16 BY MR. CAFFRY:

17 Q So it would be fair to say you inspected about four
18 years after it was constructed?

19 A Yes.

20 Q And so how many years before the Newcomb to Minerva
21 Trail was built was the Seventh Lake Mountain Trail built?

22 A Between two and three.

23 Q And as a biologist and a conservation scientist,
24 was that knowledge useful to you in assessing the condition

(Ronald Sutherland - Direct by Mr. Caffry)

1 of these Class II trails in the potential to impair the
2 ecology of the forest in which they were built?

3 A Yes, it was. It gave me a sense of how quickly the
4 trail vegetation, for example, might recover from the trail
5 building process itself.

6 Q Were there other things that allowed you to assess
7 besides just the recovery time?

8 A Let's see. Yes. For example, there was also the
9 degree to which any soil erosion problems would have
10 self-corrected during that time period, for example.

11 MS. SIMON: Objection. There has been no evidence
12 of soil erosion problems.

13 THE COURT: Overruled.

14 BY MR. CAFFRY:

15 Q Has your work required you to travel on forest
16 roads often?

17 A Yes.

18 Q And where has that taken you? Within what areas?

19 A I have driven forest roads in major protected areas
20 all across the southeast, including a number of national
21 forests, national wildlife refuges, military bases, state
22 game lands, and then also up in Wisconsin and Michigan,
23 various national forests up there.

24 Q And about how many miles have you driven those

(Ronald Sutherland - Direct by Mr. Caffry)

1 roads?

2 A I would have to say hundreds of miles.

3 Q And when you say forest roads, can you briefly
4 describe what you mean by that?

5 A Yeah. When I say forest roads, I mean an unpaved
6 road, usually gravel or dirt, that goes through a forest to
7 the area.

8 Q Are they typically one lane wide or two lanes wide
9 or how wide are they?

10 A They vary to a certain extent. They are typically
11 just wide enough that two vehicles can get around each other
12 if they dance a little bit.

13 Q In your work and personal life, have you spent much
14 time on hiking trails?

15 A Yes.

16 Q And where has that been?

17 A Well, I have enjoyed hiking my entire life. So I
18 have hiked all over the southeast, a few trips to the
19 northeast and out west, and other hiking trails out there.

20 Q And how many miles do you think you have of trail
21 do you think you have covered in your lifetime?

22 A Again, hundreds of miles.

23 Q And do you apply this knowledge of such forest
24 roads and hiking trails in your work?

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1 A I do. One of the projects that I described
2 already, the habitat connectivity modeling projects, we had
3 to discriminate which roads we would put into the analysis,
4 for example, and in terms of which roads would have impacts
5 on wildlife. And so we had to use various road data sets,
6 such as the TIGER road data set from the U.S. Census Bureau.
7 We had to discriminate which photos we would use. And we
8 also don't typically use trails in analyses of that sort,
9 landscape analyses of wildlife, habitat connectivity, for
10 example, because the trails are not thought to have very much
11 impact.

12 Q And why is it that they are thought to not have
13 much impact?

14 A For numerous reasons. One of which is the lack of
15 motorized vehicles on those trails. So hiking trails don't
16 lead to road mortality like you see on other types of roads.
17 Animals getting run over.

18 There is also the -- there is a great
19 difference in the relative width between a hiking trail and a
20 forest road or any other type of road. Hiking trails are
21 typically much narrower and they don't inflict any openings
22 in the canopy on a regular basis.

23 Q What about the presence or absence of noise from
24 vehicles? Is that a factor?

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1 MS. SIMON: Objection, your Honor. It's outside
2 the scope.

3 THE COURT: Outside the scope of the trial or the
4 expert disclosure?

5 MS. SIMON: Outside the scope of the trial and two
6 prior orders and prior testimony in this case. It's law
7 of the case. The issue of noise was not in the petition
8 for all of those reasons.

9 THE COURT: Okay. Which order specifically are you
10 referencing?

11 MS. SIMON: I'm sorry, what?

12 THE COURT: Which order specifically are you
13 referencing?

14 MS. SIMON: The first order of Judge Ceresia of
15 October 15th, 2014, which narrowed the scope of this
16 proceeding to trail construction on the ground, work
17 done on the ground. And your order of January 25th,
18 2017, that set the scope for this trial involving work
19 done on the ground.

20 Noise goes to the issue of use of snowmobiles.
21 That was not -- it's not articulated in the petition.
22 We did not go through discovery on that issue. It was
23 raised for the first time in summary judgment in this
24 case and our understanding is that it is not part of

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1 this case. It's law of the case if it's been decided
2 twice already. We did not answer on it. There was
3 nothing produced on this. There was no evidence put in.

4 THE COURT: Mr. Caffry.

5 MR. CAFFRY: Your Honor, we believe this was
6 covered within the scope of the original complaint.
7 Moreover --

8 THE COURT: How is it covered? I mean, you knew
9 the issue was coming up. Tell me where it says in the
10 initial complaint something that would include that this
11 would reasonably be included within the scope.

12 MR. CAFFRY: It's an impact on the wild forest
13 nature of the forest preserve, which we stated in the
14 complaint as a general matter. But in particular,
15 during the motions for summary judgment, when Dr.
16 Sutherland addressed this issue in his affidavit, the
17 defendants made a motion to strike that part of his
18 affidavit from the record and you denied that motion.

19 So I would submit that the law of the case says
20 that this issue can be raised at trial, because you did
21 not grant their motion to strike it at that time. And
22 we made all those arguments on the motion to strike at
23 that time and you denied that part of the motion. You
24 only granted a very small part of the motion, which

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1 didn't have anything to do with this particular
2 question.

3 THE COURT: I don't recall specifically stating
4 that I believe that noise was an aspect. Did I do that?
5 Is it your recollection that I did?

6 MR. CAFFRY: You do not mention noise. You granted
7 part of the motion and you denied the rest. And noise
8 was one of the parts that was raised. I believe you
9 ruled from the bench and all there was was an order on
10 that motion. You didn't specify any particular reason
11 for denying the other parts of it, other than the small
12 part that you did grant.

13 But this really has to do with once a trail is
14 built into an area that previously does not contain a
15 trail, the noise will create impacts on wildlife in
16 particular that will have effects on the forest and on
17 the wild forest character of the forest preserve,
18 because it is impacting the wildlife.

19 So that is our belief as to why it's covered, even
20 though noise -- the word noise may not appear in the
21 complaint. It's a part of that overall question.

22 THE COURT: Go ahead, Miss Simon, briefly.

23 MS. SIMON: I agree the word noise does not appear
24 in the complaint and the issue of noise has never been

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1 raised in this case for the first three and a half years
2 until summary judgment and Dr. Sutherland's affidavit.
3 That was the first time it was raised and we objected to
4 it.

5 Your decision of January 25th, 2017, says this
6 Court does not agree with plaintiff's counsel that the
7 standard for this Court includes an analysis of whether
8 the, quote, proposed use, end quote, is, quote,
9 reasonably necessary to provide the public use of the
10 park, end quote, but rather finds the standard to be
11 applied to this case is whether the construction of
12 trails at issue, one, results in the cutting or removal
13 of trees to an unconstitutional extent, and, two -- I
14 left out and a material degree. And/or, two,
15 constitutes an improper use of forest preserve impairing
16 wild forest lands to an unconstitutional extent.

17 There are further sections. I won't read them all,
18 your Honor, but your decision at page 21 also
19 specifically lists the issues to be addressed here at
20 trial. All involve trails, trees, the length of the
21 trails, what constitutes timber, and whether there were
22 certain closings of trails. Noise is not part of this
23 case. They did not bring a case challenging snowmobile
24 use.

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1 Mr. Caffry wrote an affidavit opposing the
2 snowmobile association as an amicus in this case. And
3 he specifically clarified therein he's challenging Class
4 II trail construction.

5 Mr. Bauer in his deposition, if I may. Do you want
6 me to stop, your Honor? I could go on. I will leave it
7 at that.

8 THE COURT: Go ahead.

9 MS. SIMON: Mr. Bauer in his deposition also
10 clarified they were not -- I brought it with me. If you
11 want me to, I can read from it. They are not opposing
12 all snowmobile trails, just Class II trails. That's the
13 sole issue here, construction of Class II trails.

14 THE COURT: Mr. Caffry, is Miss Simon's assertion
15 that previously in this case you wrote a submission, you
16 made a submission to the Court with regard to a
17 snowmobiler's association looking to be heard in the
18 case as amicus curiae, stating that the issue of
19 snowmobiles was not an issue in the case?

20 I know I'm paraphrasing, as she is, but I'm going
21 to let you go ahead and explain to me or give me the
22 best answer you can with regard to that issue, because
23 if that is the case, then you are going to be barred
24 from taking two contrary positions in this Court.

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1 MR. CAFFRY: Your Honor, we may have written that,
2 but there is a distinction here.

3 THE COURT: We are going to take ten minutes. You
4 are going to find what you wrote in that submission.
5 And you are too, Miss Simon. I'm going to take a look
6 at it.

7 If that is not the case, frankly, I am inclined to
8 reserve on the application, even though my inclination
9 at this time is that there should not be testimony on
10 it. But I will reserve and allow you to give me further
11 submission with regard to the issue of noise.

12 If you have previously taken a position that
13 snowmobiles or the use of snowmobiles are not at issue
14 in this case, I'm not going to allow you to elicit this
15 testimony. You have got ten minutes. Take a look at
16 what you have written. Find it. Track it down. We
17 will all take a look at it.

18 MR. CAFFRY: Your Honor, I'm pretty sure I do not
19 have those papers from that motion with me.

20 THE COURT: Let's make it one hundred percent sure,
21 because we are not going to do this until I take a look
22 at them. I want to see them. I want to see them
23 immediately and I want to see them before I make this
24 decision. So we can take a few moments.

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1 MR. CAFFRY: May I have an opportunity to be heard
2 on the distinction between what was in that affidavit --

3 THE COURT: Let's go through the affidavit first.
4 Let me see what's in it and then you can be heard. You
5 will all be heard.

6 And you can step down, sir.

7 MS. SIMON: Are we taking a moment?

8 THE COURT: I'm ready whenever you are ready.

9 Hang on. We are off the record with all your
10 permission.

11 (Discussion off the record.)

12 THE COURT: We are back on the record.

13 Miss Simon has provided me with a copy of an
14 affidavit and response to an amicus curiae affidavit.
15 The affidavit in response being Mr. Caffry's, dated
16 December 11th, 2013. An affidavit in response to
17 amicus curiae affidavit filed by Mr. James Wolf of the
18 New York State Snowmobile Association. In that at
19 paragraph 4, page 2, Mr. Caffry states in pertinent part
20 the first cause of action is directed solely at the
21 construction of the so-called, quote, Class II community
22 connector, unquote, trails, not at snowmobile trails in
23 general.

24 The Court will again note that the first cause of

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1 action is the action that is the current matter before
2 the Court for non-jury trial.

3 In addition, Miss Simon has provided the Court with
4 deposition testimony of Mr. Bauer as the representative
5 of Protect the Adirondacks!, stating answer at page 94,
6 line 24, and continuing, we have long taken a position,
7 as I had said at the beginning, snowmobiling is an
8 allowable recreational activity on the forest preserve.
9 We believe that Class I snowmobile trails built narrowly
10 and groomed with lighter equipment did not necessitate
11 the tree cutting or the destruction of the forest
12 preserve that violates the constitution. We believe the
13 Class II community connector trail we have seen with the
14 Seventh Lake Mountain Trail violates the constitution
15 because of how they are designed and constructed
16 largely, not exclusively, but largely to facilitate
17 their grooming with large multi-ton groomers, which are
18 very different than a snowmobile towing a small drag.

19 I'm afraid I was unclear in that reading, so I'm
20 going to be clear and read the question that led to that
21 response as well. Question beginning at line 20 on page
22 94. Question. Is it simply that you don't like the
23 equipment on it as opposed to, you are not opposed to
24 the width then, or if it was wider for other reasons,

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1 you don't like these larger vehicles on them?

2 Miss Simon, do you wish to be heard any further?

3 MS. SIMON: Yes. Just that they -- opposing
4 counsel has indicated that this was raised in their
5 petition and they have not produced any evidence of
6 that. Nothing on snowmobile use is in the petition. We
7 never had the opportunity to respond to issues related
8 to use and there was no discovery. There was no
9 exchange of documents. There was no evidence produced
10 on use. And given the fact that the two prior decisions
11 limited discovery and scope, we believe the snowmobile
12 use is a different case, not this case.

13 THE COURT: Mr. Caffry.

14 MR. CAFFRY: Yes, your Honor. I would agree
15 completely that this lawsuit and my client do not seek
16 to prohibit all use of all snowmobiles on the Adirondack
17 Forest Preserve. That's never been our position.

18 There are existing snowmobile trails that are open.
19 We are not seeking to shut them down. This case is not
20 about that, and that's the point I was trying to make in
21 the affidavit, and Mr. Bauer was trying to make in his
22 deposition.

23 This isn't about those existing trails. It's about
24 construction of the new Class II trails, which as a

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1 practical matter I think are the only ones that are
2 really being built these days. And we believe it is
3 within the scope of the complaint, which repeatedly
4 refers to the construction being not consistent with the
5 wild forest nature of the forest preserve, which we
6 think includes impacts on the wildlife. And as an
7 offer -- in the form of an offer of proof, your Honor,
8 this testimony about noise is going to connect to
9 impacts from opening up new areas where there is not
10 currently a trail, fragmenting the forest, and then the
11 noise from the snowmobiles that's introduced as a result
12 of the new trails will impact the wildlife in various
13 ways, which Dr. Sutherland is very well qualified to
14 testify upon.

15 In addition, the type of trail construction in
16 other, which will be other issues we will get to,
17 affects the wildlife. Just because the defendants
18 didn't recognize that a wild forest includes wildlife
19 and didn't ask about it in discovery, that doesn't
20 preclude us from bringing that up, because it is within
21 the scope of the wild forest nature.

22 THE COURT: Did you file a Bill of Particulars in
23 this matter?

24 MR. CAFFRY: There were no Bills of Particulars in

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1 this matter I don't believe. There was no demand for
2 one served.

3 And I believe Dr. Terrie's testimony last week
4 discussed the forest as a whole and not just limited to
5 trees and timber, but also would also support the idea
6 that wildlife is part of --

7 THE COURT: The problem, Mr. Caffry, is that you
8 have -- you appear to have specifically taken the
9 position at any number of times during the course of
10 this litigation that you do not have a general issue in
11 the course of this litigation with the use of
12 snowmobiles in the forest. And it is a reasonable
13 argument from Miss Simon that by attempting now to bring
14 up noise created by snowmobiles or attempting to make an
15 end run around an issue that you have apparently
16 repeatedly disclaimed during the course of this
17 litigation, thereby preventing the defendants from
18 preparing adequate defense to any such claim, and she
19 specifically referenced this line, which seems pretty
20 all inclusive from your argument, and a substantive
21 line, which was clearly intended in the context of the
22 submission of the affidavit on the amicus curiae matter,
23 to oppose the amicus curiae brief filed by the New York
24 State Snowmobile Association saying, hey, don't worry

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1 about it, we are not talking about snowmobiles here, we
2 are talking about the impact of these particular type
3 trails, and you say it, the construction of these
4 particular type trails.

5 Now you want to talk about noise from snowmobiles.
6 I can understand logically the basis for your position
7 without knowing the facts one way or the other as yet,
8 because I haven't heard them, but Miss Simon's argument
9 is well taken. You have said, and Mr. Bauer has said in
10 deposition, this case is not about the effect of
11 snowmobiles out there. And you are doing an end run by
12 saying, while we are moving the snowmobiles, while we're
13 moving them from one place to another, the new place
14 will affect the animals.

15 I understand your point. I understand what the
16 doctor wants to testify to, but that's not how we do a
17 civil case that's gone through three years of discovery.
18 I have to disagree and I have to uphold the objection,
19 sustain the objection, and I'm going to prevent the
20 testimony.

21 You have your exception. This trial will go on for
22 a little while yet. If you want to submit something for
23 me to take a further look at, I will be happy to do so.

24 MR. CAFFRY: Thank you, your Honor.

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1 THE COURT: For now the objection is sustained to
2 the testimony with regard to the effect of noise from
3 snowmobiles, not from construction equipment. Noise
4 from snowmobiles utilizing the trails after they are
5 done on the wildlife.

6 MR. CAFFRY: If I may just have a moment, your
7 Honor, to get back to where I was before we argued the
8 objection.

9 THE COURT: Go right ahead.

10 BY MR. CAFFRY:

11 Q Dr. Sutherland, I believe we had asked you about
12 reasons why you don't take trails into account when doing
13 your habitat fragmentation analyses; is that correct?

14 A Yes, that is correct.

15 Q And do you recall any other reasons why you would
16 make a distinction between trails and roads? Do you recall
17 that at this time?

18 A I need to review what I -- so I mentioned road
19 mortality and I mentioned the impact on the canopy, I think,
20 already if that's correct. Let me think for one second.

21 There is also the practical matter that it
22 can -- it's very hard to find unified data sets showing trail
23 locations across the country, for example, whereas roads are
24 better mapped. But that's a secondary consideration, because

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1 I don't think we would use the trails even if we had maps.

2 Q Based upon your work and your opinion, do roads
3 impair the functioning of a forest ecosystem to a greater
4 degree than trails?

5 A Yes, I think they do.

6 Q Can you explain why?

7 A Well, in addition to the sheer fact that they are
8 much larger on a regular basis than trails are. They are
9 used by motor vehicles and trails are not. And that leads to
10 direct wildlife mortality and other factors. And, again, the
11 roads open up the forest canopy or forest roads can open up
12 the forest canopy, which leads to edge effects and the loss
13 of what you might term interior forest habitat. Once you
14 start opening up the canopy along roads you get edge effects
15 of that type occurring. And, you know, road construction is
16 typically done in such a way that it alters the terrain that
17 the road goes across, whereas trail construction typically
18 you don't go -- you go around trees and you go around rocks
19 and you go around obstacles, whereas road construction you
20 are typically creating a roadbed and grading that roadbed.
21 So the local impact on the actual physical terrain is much
22 greater.

23 Q And when you say it would -- the roads would impair
24 the functioning of the ecosystem, what meaning would you

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1 ascribe to the word impair?

2 A For me it's -- it's I guess movement in a direction
3 away from the conditions that you would expect in an
4 unaltered mature forest in this particular case. So it's
5 anything that takes an ecosystem away from the condition it
6 would be in not subject to such alterations.

7 Q And when you came to the Adirondacks to do the
8 field work for this project, did you travel on any hiking
9 trails in the forest preserve?

10 A Yes, I did.

11 Q And can you tell us where that was?

12 A Yes. There was one trail to Rock Lake, I believe.

13 Q And about how long was that?

14 A It was a little less than a mile out and back.

15 Q And when did you do that?

16 A That was on August 19th, 2016.

17 Q I'm going to hand you what's been marked as
18 Plaintiff's Exhibits for identification, number 93 and 94.

19 MR. CAFFRY: Your Honor, would you like copies of
20 those photos?

21 THE COURT: Sure. Thank you.

22 Miss Simon, to be clear, you have no objection to
23 me receiving extra copies of exhibits that are in
24 evidence that are being utilized?

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1 MS. SIMON: Are these being put in for
2 identification or evidence?

3 THE COURT: I'm sorry.

4 MR. CAFFRY: These are on your exhibit list. We
5 intend to move them into evidence.

6 MS. SIMON: I have no objection once they are in
7 evidence.

8 THE COURT: That's fair. Thank you.

9 I won't get them yet, Mr. Caffry. Let's wait and
10 see if we receive them first.

11 MR. CAFFRY: Should I hold on to them?

12 THE COURT: Yes, please.

13 BY MR. CAFFRY:

14 Q Dr. Sutherland, you have before you Plaintiff's
15 Exhibits for identification 93 and 94?

16 A Yes.

17 Q Can you identify those exhibits?

18 A These are two photos that I took on August 19th
19 at that Rock Lake Trail.

20 Q Do they fairly and accurately represent the scene
21 depicted on them at the time that you took them?

22 A Yes, they do.

23 MR. CAFFRY: Your Honor, I move admission of
24 Exhibits 93 and 94.

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1 MS. SIMON: Could we have a location where Rock --
2 whatever the name of this Rock Lake Trail is, and where
3 the photos were taken?

4 THE COURT: Are you asking for a voir dire?

5 MS. SIMON: Yes.

6 THE COURT: You may go ahead. You may briefly voir
7 dire Dr. Sutherland on the admissibility of the
8 photographs.

9 VOIR DIRE EXAMINATION

10 BY MS. SIMON:

11 Q Dr. Sutherland, where is the Rock Lake Trail?

12 A Rock Lake Trail comes off Highway 28, I believe,
13 and it's roughly midway between the Newcomb to Minerva and
14 Seventh Lake Mountain Trail.

15 THE COURT: Anything further, Miss Simon?

16 BY MS. SIMON:

17 Q Do you know the kind of unit it is in the
18 Adirondack Park?

19 MR. CAFFRY: Objection, your Honor.

20 MS. SIMON: I'm trying to clarify where it is.

21 THE COURT: Okay. The objection -- you are
22 objecting because you don't think it's appropriate voir
23 dire?

24 MR. CAFFRY: I believe that the question is not

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1 appropriate. It's not relevant which unit of the forest
2 preserve the state bureaucracy has drawn a line around
3 and put this trail in. He's already identified the
4 physical location.

5 THE COURT: Miss Simon has stated for her own
6 reason that she's asking the question in order that she
7 may be -- so she can get the information to know what
8 part of the trail we are talking about. So I don't have
9 any problem with both you and Miss Simon all being on
10 the same page so we know what we are talking about, but
11 I do agree with you and I'm going to sustain the
12 objection, because I fail to see how that answer will
13 give her the answer, the information that she's looking
14 for.

15 But Miss Simon, you can ask another question.

16 BY MS. SIMON:

17 Q Could you identify the location of this trail in
18 any more detail than off Highway 28?

19 A I think I did mention that it's roughly midway
20 between the -- if you look at where the Newcomb to Minerva
21 Trail is and the Seventh Lake Mountain Trail, Rock Lake is
22 roughly on a line between those two areas.

23 MS. SIMON: All right. No further questions, your
24 Honor.

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1 THE COURT: Any objection?

2 MS. SIMON: No.

3 THE COURT: Plaintiff's 93 and 94 are received into
4 evidence.

5 (Plaintiff's Exhibits 93 and 94 received
6 in evidence.)

7 THE COURT: Mr. Caffry, you started to ask me
8 something.

9 MR. CAFFRY: Yes. I was just wondering if you
10 would like your courtesy copies now.

11 THE COURT: I have them. Thank you.

12 BY MR. CAFFRY:

13 Q Dr. Sutherland, looking at Exhibits 93 and 94 which
14 are now in evidence, can you tell the Court what they show
15 about that Rock Lake Trail?

16 THE COURT: Make sure you tell us which picture you
17 are looking at. Give it to us by numbers if you would.

18 THE WITNESS: Okay.

19 A So Exhibit 93 shows Mr. Amadon and his dog, William
20 Amadon and his dog on the trail. The trail goes through the
21 middle of the photo and in that photo you can see that the
22 trail, to my eyes, represents a very typical hiking trail of
23 the sort you would see anywhere in the eastern United States.

24 It's the footpath part of the trail where

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1 there is some exposed dirt where people walk is appears to be
2 between two and three feet wide. And at the end of the trail
3 that you can see in this photo, you can tell that the trail
4 veers off to the left around some vegetation. There are --
5 it's shaded in this picture when we were there. And the
6 dense tree cover around the trail implies a closed canopy
7 around that particular piece of trail. So I think that's the
8 basic description of the Exhibit 93.

9 Exhibit 94 shows the same trail, different
10 place on the trail. The trail wraps through the middle of
11 the photo and then turns to the left. If anything, it
12 appears to be even narrower than the trail in photo 93. And
13 as you can see, there is a considerable amount of vegetation
14 on both sides of the trail, right up to the edge of the
15 narrow tread where people walk down the trail. And, again,
16 there is dense tree cover and the trail is shaded and the
17 trail appears to route around several trees that are in the
18 middle of the photograph.

19 Then you can also see that there is a number
20 of rocks in the middle bottom section of the photo and those
21 rocks are still sitting in the trail, have not been moved.

22 BY MR. CAFFRY:

23 Q And are the conditions which you just described
24 typical of the length of the Rock Lake Trail?

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1 A Yes, they are.

2 Q And in Exhibit 94, do you see some yellow objects
3 and a red object in the middle of the picture?

4 A Yes, I do.

5 Q Can you tell us what they are?

6 A Yes. Those are two plastic signs. The yellow sign
7 says snowmobiles not allowed and the red sign says foot
8 trail.

9 THE COURT: Are you all done with 93 and 94?

10 MR. CAFFRY: Yes, your Honor.

11 BY MR. CAFFRY:

12 Q Dr. Sutherland, I have handed you what has been
13 marked as Plaintiff's Exhibits 95 to 98 for identification.
14 Can you identify those three exhibits -- four, I'm sorry.

15 A Yes, I can. These are four photographs that I took
16 on August 16th at the Newcomb to Minerva Trail;
17 specifically the portion of the trail from Santanoni to
18 Harris Lake.

19 Q And do they fairly and accurately represent the
20 scenes depicted on that trail at the time that you took them?

21 A They do.

22 MR. CAFFRY: Your Honor, I would move the admission
23 of all four of them, numbers 95 to 98.

24 THE COURT: Miss Simon.

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1 MS. SIMON: No objection.

2 THE COURT: Ninety-five through 98 are received in
3 evidence.

4 (Plaintiff's Exhibits 95 through 98
5 received in evidence.)

6 BY MR. CAFFRY:

7 Q Dr. Sutherland, beginning with number 95 and
8 remembering to tell the judge which photo you are discussing
9 at each point, can you tell the Court what each one shows
10 with regard to the nature of the construction of the Newcomb
11 to Minerva Trail?

12 A Yes. So beginning with photo Exhibit 95, this is a
13 photo with a large grassy swath going through the middle of
14 the photo. It shows Mr. Amadon and I think that is Miss
15 Evelyn Greene, and Mr. Amadon's dog. And what this photo
16 shows is a small forest road.

17 MS. SIMON: Objection.

18 THE COURT: The objection as to the
19 characterization?

20 MS. SIMON: Yes, your Honor.

21 THE COURT: I'm going to overrule the objection and
22 allow you to make that -- explore that point to the
23 extent you wish to in the context of cross-examination
24 or your own case.

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1 MS. SIMON: Okay.

2 THE COURT: Okay.

3 MR. CAFFRY: Your Honor, I would have no objection
4 to Miss Simon having a continuing objection to the
5 witness's use of the word road so that she doesn't have
6 to say it every time.

7 MS. SIMON: I'm fine with that. I object to every
8 use of the word road without a definition and without
9 any foundation.

10 THE COURT: Understood. Thank you.

11 Go ahead.

12 BY MR. CAFFRY:

13 Q Would you continue with your description of what
14 Exhibit 95 depicts?

15 A Yes. The photo shows what appears to be a small
16 road and I say that because it's evident in the photo that
17 the trail or road or cleared area through the forest is
18 easily wide enough to drive an ordinary vehicle of a pickup
19 truck or a Jeep down. And it's covered in grass in this
20 picture that was presumably planted there and it appears to
21 have been graded. There is no obstacles on the foot path of
22 that trail or there is no obstacles on the cleared area of
23 this road or trail.

24 Q Is there any forest understory within the trail

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1 itself?

2 A There is not.

3 Q Please continue.

4 A Sure. So if we move on to photo Exhibit 96, this
5 is another portion of the same trail or road. Again, to me
6 it appears to be a road, again, because it's straight and
7 wide and quite suitable for driving vehicles on.

8 There is a large -- along the left side of the
9 road there is a cut into the slope of the hillside. The hill
10 slopes up left away from the road as you can tell and it
11 slopes down to the right on the other side. And on the left
12 side of the road there is a cut into that hillside to allow
13 the road surface to be flat rather than follow the angle of
14 the hill slope. And that's been cut out. I believe that
15 that feature is, whether it's for road construction or trail
16 construction, is referred to commonly as a bench cut or a
17 hill slope cut. And in this particular photo it appears to
18 be at least 20 feet long along the side of the trail.

19 There is also on the right side of the road or
20 trail of this photo you can see rocks that have been piled up
21 that looked to me at the time that have been piled there by
22 the road construction process. Again, this trail or road is
23 straight and has no obstacles in the roadbed that would serve
24 in any way to deter motor vehicle transit.

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1 MS. SIMON: Your Honor, I object to the testimony
2 for this witness, as he hasn't been certified as an
3 expert in road construction or trail construction or the
4 features of those or what distinguishes between a road
5 and a trail.

6 THE COURT: I think his testimony adequately falls
7 within the area of his expertise as previously testified
8 to and your objection is accordingly overruled.

9 The Court will note, however, that the evidence, to
10 a large extent, also speaks for itself, and the Court
11 will take such evidence into account and the extent of
12 the substance of such evidence in applying it to the
13 opinion referenced by Dr. Sutherland.

14 Okay. Go ahead.

15 BY MR. CAFFRY:

16 Q Please continue, Dr. Sutherland.

17 A Okay. I think that is enough for photo 96.

18 Moving on to Exhibit 97, this photo is the
19 same trail, different place. This is Mr. Davis with the
20 camera in his hand and Miss Greene is on the left of Mr.
21 Davis.

22 In this photo you can see again what appears
23 to me to be a road. It felt like a road and we were walking
24 down it.

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1 In particular, this particular stretch has two
2 ruts going parallel down the surface of the road or trail
3 that are quite characteristic of forest roads in many of the
4 areas that I have visited around the country where you have
5 vehicle traffic. There is quite a bit of straw again and
6 quite a bit of grass. There is actually a large area on the
7 bottom left of the photo that where the grass and straw
8 actually extends to what appears to be at least eight or
9 ten feet to the left off the trail, and I think that was an
10 area that was disturbed during the road or trail construction
11 process.

12 MS. SIMON: Objection. Not in evidence.

13 THE COURT: That objection is sustained. The last
14 statement by Dr. Sutherland that was led with, I think
15 that was an area that was disturbed, is stricken, and
16 will be disregarded by the Court unless you can give
17 further basis or elicit further basis for such
18 testimony, Mr. Caffry.

19 BY MR. CAFFRY:

20 Q Dr. Sutherland, did you make any observations of
21 the grassy area on the left side of the photo that would
22 allow you to form an opinion as to how that area came into
23 being?

24 A Yes. My observation is that grass was also planted

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1 and straw was also applied to that area in equal amounts to
2 the graded road surface itself.

3 Q And would that have been done on an area that
4 hadn't been disturbed by the trail construction process?

5 MS. SIMON: Objection. Leading question.

6 THE COURT: Sustained.

7 Q Would there have been any reason to do that outside
8 of the trail corridor?

9 A The only reason that comes easily to mind would be
10 if the soil had been disturbed.

11 Q And regarding the previous photo, you testified
12 about rocks having been moved to the side of the trail. Do
13 you see any evidence of that in this picture, number 97?

14 A Yes, I do. There is a large rock in the
15 approximate center of the photograph, a little bit to the
16 right, and there is also several trees and things also there
17 that are on that downslope going off the trail.

18 MS. SIMON: Could I have a readback? Which photo
19 are we talking about?

20 THE COURT: We are on 97.

21 Go ahead.

22 (Whereupon the Reporter read back the
23 last question and answer.)

24 MS. SIMON: I have an objection that there is

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1 nothing in evidence saying that those rocks were removed
2 from the trail.

3 THE COURT: Okay. If your objection is that the
4 doctor has not enunciated a specific basis for such
5 opinion, that objection is sustained.

6 BY MR. CAFFRY:

7 Q Dr. Sutherland, do you see a large object in the
8 center of the photograph?

9 A I do.

10 Q And where is it located in relation to the trail or
11 road?

12 A It's one or two feet downhill from the trail or
13 road.

14 Q And did you observe anything about that rock that
15 would permit you to form an opinion as to how that rock came
16 to be in that location?

17 A Yes. The most obvious thing about that particular
18 rock is that it is, the surface of it is bare and not covered
19 with any kind of leaf litter or moss, and that implies
20 relatively recent disturbance. It doesn't guarantee
21 relatively recent disturbance, but it implies a good chance
22 that rock has been moved in the recent past.

23 Q If it had been -- if that had been in its original
24 location, would it have been covered with moss or other such

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1 things?

2 MS. SIMON: Objection.

3 THE COURT: Overruled.

4 If you can answer, Doctor, to a reasonable degree
5 of scientific certainty within your field.

6 You don't mind me adding to you?

7 MR. CAFFRY: Thank you.

8 A If I can say that based on the other rocks I saw
9 while hiking in this portion of the trail or road in this
10 portion of the Adirondacks, most of the rocks I saw that were
11 not disturbed had moss or leaf litter on top of them and this
12 rock does not. So it implies to me that there is a good
13 chance that it may have been disturbed.

14 BY MR. CAFFRY:

15 Q Looking at Exhibit 97, approximately how wide is
16 the, and excluding areas to the side of the trail, how wide
17 is the trail itself in that location based upon your
18 observations?

19 A It appears to be within the range of eight to
20 ten feet.

21 Q And you previously mentioned the cleared area in
22 the lower left corner. Do you know the approximate
23 dimensions of that cleared area?

24 A I cannot recall how long it was parallel to the

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1 trail, but you can tell in the photograph that it is at least
2 as wide as the trail itself or road itself. So another
3 ten feet wide. Eight to ten feet wide.

4 Q Turning now to Exhibit 98, can you tell us what
5 that exhibit depicts with regard to the construction of the
6 trail?

7 A Yeah. So this is another part of the Newcomb to
8 Minerva Trail with Miss Greene in the center of the
9 photograph. And next to Miss Greene, to the left, this
10 particular stretch of trail wrapped around a steep or a hill
11 and that appears to have necessitated a larger degree of
12 bench cutting along there. And so you can see that there is
13 a deep dropoff where the slope of the hill intersects with
14 the edge of the road. It appears to be anywhere from two to
15 three feet tall.

16 Q And in the picture can you tell us approximately
17 how long that bench cut is at the part of it that's in the
18 picture?

19 A Yes. I think you can safely say it's between at
20 least 30 to 40 feet. It appears to wrap around, as you would
21 go down the road away from Miss Evelyn, it appears to have
22 continued to wrap around the hill. So that would be a
23 minimum length.

24 Q Do you see any ruts or grooves in the surface of

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1 the land within the trail?

2 A Yes. Yeah, again, you can tell, you can see the
3 two characteristic ruts and they are typical of a forest road
4 used by vehicles.

5 Q So in your professional and personal experience
6 that you have previously testified regarding forest roads,
7 could someone drive a motor vehicle on this Class II
8 community connector trail?

9 A Yes. I would say it's safe to say that they have.

10 Q Based on your personal and professional experience
11 that you have previously testified to, and your field visits
12 to the Newcomb to Minerva Trail and the Seventh Lake Mountain
13 Trail that you have testified to, do these Class II community
14 connector snowmobile trails have the characteristics of
15 forest roads or of foot trails?

16 MS. SIMON: Objection.

17 THE COURT: What's the basis of the objection?

18 MS. SIMON: There is no foundation for what
19 constitutes a forest road in the Adirondack Forest
20 Preserve and this witness doesn't have experience that
21 has been demonstrated to the Court in road construction
22 or trail construction.

23 THE COURT: Well, let's take that a couple at a
24 time. One at a time if we can.

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1 So he doesn't have the experience in what
2 constitutes a forest road in the Adirondack Preserve,
3 yes?

4 MS. SIMON: Yes.

5 THE COURT: Are you stating that there is some sort
6 of legal definition, statutory regulatory definition of
7 what constitutes a forest road in the Adirondack
8 Preserve?

9 MS. SIMON: The Adirondack Park Master Plan has
10 such definitions.

11 THE COURT: Okay. And he has not testified to his
12 opinion that this matches the characteristic of a road
13 as defined in the Adirondack Master Plan, but simply
14 that it matches his description of a road as he's
15 previously testified to what a road is, correct? Did
16 that make sense?

17 MS. SIMON: I'm not sure.

18 THE COURT: That's a no. That's a nicely said no.

19 So he's testified to what he believes is a forest
20 road, which is one that is capable, as I understand it,
21 generally of motor vehicle traffic.

22 MS. SIMON: Yes.

23 THE COURT: And he's referenced that in his
24 testimony and he's stated why he believes what's

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1 depicted in 95 to 98 constitutes a forest road.

2 So, with regard to the first portion of your
3 objection, your objection is overruled in that I'm not
4 finding that he needs to define a road as the Adirondack
5 Park Preserve defines a road for purposes of his
6 testimony.

7 So what's the second part of your objection again?

8 I can have it read back.

9 MS. SIMON: I wasn't sure which part was first or
10 second, but my general objection was that, as I
11 understand his resume and his experience as an ecologist
12 and environmental scientist or however you want to term
13 it, that does not include expertise in road construction
14 design or trail construction and design.

15 THE COURT: Okay.

16 MS. SIMON: And, therefore, his opinion is not an
17 expert opinion.

18 THE COURT: All right. Your objection is
19 overruled. I find that he has testified to sufficient
20 expertise and experience in this field to give such an
21 opinion, but as you are no doubt aware, his ability to
22 testify to that and the credibility and the weight that
23 the Court gives to that testimony will be affected by
24 the extent of his experience and education in the field.

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1 And I do not disagree that he has not testified to any
2 experience in the area of road construction. I do not
3 believe that that would preclude his testimony as stated
4 thus far. So your objections are overruled.

5 Anything further, Miss Simon?

6 MS. SIMON: No.

7 THE COURT: All right. Do you want to hear that
8 question again so you make sure you have got it straight
9 or do you want to just start --

10 MR. CAFFRY: Your Honor, I would request that it be
11 read back, please.

12 THE COURT: Always a good idea.

13 (Whereupon the Reporter read back the
14 last question.)

15 THE COURT: Go ahead. You may answer.

16 A The forest roads.

17 BY MR. CAFFRY:

18 Q And are the sections of snowmobile trails shown in
19 these four exhibits, number 95 to 98, are they typical of the
20 13 miles of Class II community connector trail that you
21 walked in August of 2016?

22 A Yes, they are.

23 Q And of the 13 miles of Class II community connector
24 trail that you walked at that time, did you see any sections

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1 that did not show similar road-like characteristics?

2 A No, I did not.

3 THE COURT: Mr. Caffry.

4 MR. CAFFRY: Yes, your Honor.

5 THE COURT: Is this a good time for our afternoon
6 break or are you getting near to the end of your direct
7 questioning of Dr. Sutherland?

8 MR. CAFFRY: This is a fine time for a break, your
9 Honor. It's not as if I just had one more question.

10 THE COURT: We will take ten minutes folks.

11 (Whereupon a brief recess was taken.)

12 THE COURT: All set, Mr. Caffry?

13 MR. CAFFRY: Yes, your Honor.

14 THE COURT: Please go ahead.

15 BY MR. CAFFRY:

16 Q Dr. Sutherland, I'm going to hand you what's been
17 marked as Plaintiff's Exhibits 99 and 100 for identification.
18 Dr. Sutherland, have you had a chance to look at those two
19 exhibits?

20 A Yes.

21 Q And looking at Exhibit 99, can you identify what
22 that is?

23 A Yes. This is a photo I took on August 16th. It
24 shows Mr. Amadon and his dog walking on a portion of the

(Ronald Sutherland - Direct by Mr. Caffry)

1 Newcomb to Minerva Trail and they are walking on some large
2 black plastic mats and they are approaching a good-sized
3 wooden bridge structure.

4 Q And does it fairly and accurately represent the
5 scene depicted at the time that you took it?

6 A Yes.

7 MR. CAFFRY: Your Honor, I would move its admission
8 into evidence, Exhibit 99.

9 MS. SIMON: Your Honor, may I voir dire?

10 THE COURT: Yes.

11 VOIR DIRE EXAMINATION

12 BY MS. SIMON:

13 Q Where is this photo on the Newcomb to Minerva North
14 Hudson Trail?

15 A My recollection is that it is on the first section
16 we hiked from Santanoni to Harris Lake.

17 MS. SIMON: Thank you. No further questions.

18 THE COURT: No objection?

19 MS. SIMON: And no objection.

20 THE COURT: Exhibit 99 is received in evidence.

21 BY MR. CAFFRY:

22 Q And Dr. Sutherland, looking at Exhibit 100 for
23 identification, can you identify that?

24 A Yes. This is a photo that I took on Seventh Lake

(Ronald Sutherland - Direct by Mr. Caffry)

1 Mountain Trail and it shows the legs of Mr. Amadon and Mr.
2 Bauer.

3 Q And what does it show besides those people? What
4 does it show of the trail?

5 A In the foreground there is a large ledge of a rock
6 with some evidence of damage to that rock and in the
7 background --

8 MS. SIMON: Objection. He's testifying to what is
9 in the exhibit. It hasn't been entered into evidence
10 yet.

11 THE COURT: Objection sustained.

12 A So there is a rock.

13 Q What date did you take this on?

14 A August 18th, 2016.

15 Q And does it fairly and accurately represent the
16 scene depicted at the time when you took it?

17 A Yes, it does.

18 MR. CAFFRY: Your Honor, I would move that Exhibit
19 100 be admitted into evidence.

20 MS. SIMON: May I voir dire?

21 THE COURT: You may.

22 VOIR DIRE EXAMINATION

23 BY MS. SIMON:

24 Q Where is this located on the Seventh Lake Mountain

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1 Trail?

2 A That is a good question. I would have to reconsult
3 my notes and try to track it down. It was a long eight-mile
4 trail and there was about at least 12 bridges that we had to
5 count. So I would have to figure out which one it was.

6 MS. SIMON: No further questions. No objection.

7 THE COURT: Okay. So 100 is also received into
8 evidence.

9 (Plaintiff's Exhibits 99 and 100 received
10 in evidence.)

11 (Discussion off the record.)

12 THE COURT: So the record should reflect we just
13 had a brief discussion about evidentiary issues between
14 the Court and counsel. If anyone wants to place any of
15 that on the record, you are more than welcome to.

16 Mr. Caffry.

17 MR. CAFFRY: Not at this time, your Honor.

18 THE COURT: Miss Simon?

19 MS. SIMON: No, nothing.

20 THE COURT: If at any time you wish to, you are
21 more than welcome to.

22 All right. Ninety-nine and 100 are in evidence.

23 Go ahead, Mr. Caffry.

24

(Ronald Sutherland - Direct by Mr. Caffry)

1 BY MR. CAFFRY:

2 Q Dr. Sutherland, with regard to Exhibit 99, can you
3 tell the Court what it shows besides Mr. Amadon and his dog?

4 A Yes. Mr. Amadon is approaching a large wooden
5 bridge. The bridge, as I recall, is constructed with several
6 layers of what look like nominal two-inch thick wooden
7 lumber. And underneath the bridge, you cannot see that in
8 this photo, but the bridges were supported by large utility
9 pole type structures. And there is four corner posts on each
10 corner of the bridge that extend, you know, easily six or
11 seven feet above the surface of the bridge. We measured
12 these bridges out. They were 12 feet wide.

13 Q What is that in the foreground of the picture?

14 A The foreground shows a series of black plastic mats
15 that have been placed on the road or trail. And my
16 understanding is those would be used in a situation like this
17 to try to control erosion.

18 MS. SIMON: Objection. Basis.

19 THE COURT: The objection is sustained. The last
20 statement that began with my understanding is stricken.

21 Go ahead, Mr. Caffry.

22 BY MR. CAFFRY:

23 Q And looking at Exhibit 100, can you tell us what it
24 depicts that you didn't previously mention?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A Yeah. In the background of the picture there is a
2 wooden bridge of the same basic variety as the bridge in
3 Exhibit 99, except it doesn't have the wooden ramp in front
4 of it. On this particular bridge the four corner posts have
5 been shortened a bit and the yellow and black plastic signage
6 has been added to those and the bridge is the same
7 approximate width, about 12 feet.

8 Q And with regard to bridges on forest roads, have
9 you had experience with them during the course of your
10 professional life?

11 A Yes. I've driven over a number of them.

12 Q I'm sorry, I didn't hear you.

13 A Yes. I have driven over a number of bridges on
14 forest roads.

15 Q And in what type of vehicle?

16 A Different types of sport utility vehicles.

17 Q Did the bridges that you observed on the Class II
18 community connector trails that are in Exhibits 99 and 100,
19 do they appear to be suitable for that type of vehicle?

20 A Yes, they do. I would not hesitate to drive my own
21 personal vehicle over either one of those.

22 Q And did you see other bridges that looked like
23 these on the 13 miles of Class II community connector trails
24 that you inspected?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A Yes. There were quite a number of them and
2 anywhere the roads or trails crossed a creek, for example,
3 then there will be a bridge like this.

4 Q And are these bridges in the pictures typical of
5 the ones you observed on the trails?

6 A Yes, they are.

7 Q Are these bridges like something that you would
8 find on a hiking trail?

9 A I have not seen on any of the hiking trails I have
10 ever hiked any kind of bridge that would be 12-foot wide, but
11 as low, and crossing as small of a stream as these bridges
12 are.

13 Typically, I mean, hiking trail bridges can be
14 made out of sturdy materials, but they are usually much
15 narrower, because you don't need to drive anything over them.

16 And there is also -- if I can keep going.

17 Q Continue.

18 A The four corner posts are also not features
19 typically that would be found on a hiking trail bridge,
20 because there is no expectation that somebody that is hiking
21 on the trail, you know, would need, in the case of Exhibit
22 100, you know, if you are approaching that bridge on foot,
23 you don't really need those hazard signs, at least in my
24 experience.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Are the bridges in pictures 99 and 100, are they
2 similar to what you would find on the forest roads that you
3 were experienced with?

4 A They are. They are sturdy and new versions of some
5 bridges I have seen in other places that are older and in
6 worse shape. But yes, they are.

7 Q Have you had a chance to review that exhibit?

8 A Yes, I have.

9 Q You previously testified about bench cuts on I
10 believe the Newcomb to Minerva Trail in particular. How
11 often did you observe bench cuts on the Class II community
12 connector trails that you inspected?

13 A Quite often. Anywhere the community connector
14 trails wrapped around the hillside when there was a
15 significant slope on one side of the trail, then they were
16 probably forced to cut into the side of the hill.

17 Q And can you identify Exhibit 101?

18 A Yes. This is a photo I took on the Newcomb to
19 Minerva Trail.

20 Q Which segment of the Newcomb to Minerva Trail?

21 A This is from the first segment, the Santanoni to
22 Harris Lake Campground.

23 Q What date did you take that on?

24 A August 16th.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Of last year?

2 A Um-hum.

3 THE COURT: Yes?

4 THE WITNESS: Yes. Sorry.

5 BY MR. CAFFRY:

6 Q Does it fairly and accurately represent the scene
7 depicted at the time that you took it?

8 A Yes, it does.

9 MR. CAFFRY: Your Honor, I move this photograph
10 into evidence.

11 MS. SIMON: No objection.

12 THE COURT: 101 is received in evidence.

13 Is that the only one you are putting in right now?

14 MR. CAFFRY: The only one at this moment.

15 THE COURT: Let Tracie mark it.

16 (Plaintiff's Exhibit 101 received in
17 evidence.)

18 BY MR. CAFFRY:

19 Q Dr. Sutherland, does this photograph depict a bench
20 cut similar to what you testified to previously?

21 A It does.

22 Q And could you describe for the Court what it shows
23 regarding the bench cut?

24 A Yes. What you can see in this photo is in the

(Ronald Sutherland - Direct by Mr. Caffry)

1 foreground there is an area of grass, a little bit of grass
2 and an extensive amount of straw. And then there is a --
3 where the hill slope has been cut away there is now a steep
4 base of exposed soil that is approximately three or four feet
5 tall. And then above that you see the return of the normal
6 forest floor and understory vegetation, vegetation on the
7 ground.

8 Q Are bench cuts like these something that would
9 occur naturally in a forest?

10 A No.

11 Q Are they a manmade feature?

12 A They are.

13 Q Do bench cuts such as this, as well as the ones you
14 testified to previously as depicted in other photographs in
15 evidence, do they have an ecological impact?

16 A They do. There is two primary things, two primary
17 impacts of a structure like this being put on the side of a
18 road or trail. The first is the way this bench cut
19 undermines the vegetation on the side of the trail. As the,
20 you know, the slope of the bench cut is too steep to allow
21 vegetation to grow and it's also too erodable, if that's a
22 word. As vegetation try to grow it will be knocked down.
23 And yet the plants on top of the hill will try to retain
24 their position with their roots. So what you will end up

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1 with is a significant amount of erosion of the mineral soil
2 underneath there and the plants on top will be undercut and
3 eventually they will fall and die because of that impact.

4 So the bench cut will tend to continue to
5 erode up the hill until it reaches a stable angle
6 essentially, a stable slope. And so there is that local
7 impact on the plant communities along the side of the road or
8 trail.

9 Then all that dirt has to go somewhere. And
10 because a roadbed or a trail bed for that matter tends to
11 have compacted soil along it, what you will end up with, that
12 causes the flow of water runoff from rain to go faster. So
13 the erosion of soil from the bench cut will be swept across
14 the road and down the hill on the other side, because in this
15 sort of situation there is always a downhill slide of the
16 road as well. And that will cause the soil to enter the
17 creek, the adjacent creek or river or stream. And the
18 sediment is one of the major water pollution sources that's
19 recognized by the scientific literature on the ecological
20 impacts of humans on natural systems in streams and rivers.
21 Sediment, when it enters a river or a stream, it's well known
22 to cause negative impacts on fish species, particularly
23 salmonids, like trout, salmon, that need sediment-free rivers
24 to spawn. And also the invertebrates that the species eat

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1 are sensitive to sediment. And many species of aquatic
2 salamanders possibly could be sensitive to sediment.

3 Q And taking the example of salamanders. When you
4 say sensitive, how are they affected by it?

5 A Several mechanisms, the most notorious of which is
6 the tendency of sediment, as opposed to exposed gravel and
7 sand, you have silt, which is what sediment becomes. The
8 sediment in the stream tends to smother the eggs of
9 salamander and fish for that matter and reduce the flow of
10 oxygen from the water into the eggs of the fish or amphibians
11 and that kills the eggs and reduces the reproductive rate.
12 If there is too much of that, then the reproductive effort of
13 that species collapses.

14 Q And all of this testimony you have just given about
15 the effects of bench cuts, is this just your personal opinion
16 or is this based upon literature and research that you have
17 reviewed?

18 A It's based on research that I have reviewed.

19 Q These opinions you have just expressed, are they
20 your opinions to a reasonable degree of scientific certainty
21 within your area of expertise?

22 A Yes. Yeah. And it's broadly understood that
23 sedimentation leads to water quality decline and problems
24 with sensitive species like fish and amphibians.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q And do larger bench cuts have greater ecological
2 impacts than smaller ones?

3 A They do, just because of the sheer volume of
4 materials is greater and because they are associated with
5 wider roadbeds that have more compacted soil underneath
6 because of the heavier, you know.

7 Q And, again, is that your opinion to a reasonable
8 degree of scientific certainty within the scope of your
9 profession?

10 A It is. And it's also just basic logic that more
11 dirt would be ejected from a larger gash at the side of a
12 hill.

13 Q And so far I believe you have testified about foot
14 trails and Class II snowmobile trails using the exhibits.
15 Based upon that testimony and using the exhibits if
16 necessary, can you explain for the Court some of the
17 differences between the Adirondack foot trail that you
18 inspected and the Class II community connector snowmobile
19 trails that you inspected?

20 A Yes, I can. Let's see. The core difference of
21 course is the width. The foot trail is two or three feet
22 wide and the Class II community connector trails that I
23 traveled were all between eight and ten feet wide at a
24 minimum.

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1 And the second factor was the degree of
2 grading that had occurred on the foot trails versus the
3 snowmobile trails. You know, the Class II community
4 connector trails had been graded to an extent where there
5 were no longer rocks and logs and other structures that were
6 in the surface of the trail bed or footbed or roadbed.

7 And there is also the issue of the routing of
8 the foot trail. The foot trail was clearly routed around
9 trees and rocks and other obstacles, whereas the community
10 connector snowmobile trails were routed in a way that made
11 them much straighter and any obstacles that were in the way
12 had clearly been removed.

13 And the degree of bench cutting that I
14 observed on these community connector trails was much greater
15 in part because if you intersect a wider flat surface, wider
16 horizontal surface with a hill slope, then you end up with a
17 deeper degree of cut. So that was one difference.

18 Q Were there any -- could you describe any
19 differences regarding the vegetation along the trail?

20 A Yeah. The -- well, two primary differences there.
21 You know, on the foot trail the vegetation was growing in
22 wherever it could and some places it was trying to resprout
23 on the foot trail itself anywhere there was shelter from
24 rocks.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Was that the natural forest vegetation or something
2 else?

3 A It appeared to be the same vegetation that was in
4 the surrounding forest, yes.

5 Q Please continue.

6 A And then on the community connector trails there
7 was no -- generally speaking there was not any natural
8 vegetation growing on most of the trail. And on the
9 community connector trails the vegetation, of course, was not
10 present across the entire width of eight to ten-foot wide
11 trail. So there is a wider area of loss of vegetation.

12 And then the second difference between the
13 trails and the snowmobile connector trails was that between
14 the foot trail and the snowmobile connector trails was the
15 open canopy areas. So in some areas in the community
16 connector trails the canopy had been opened and so you had
17 quite different vegetation on those trails.

18 Q And was that present on the hiking trail?

19 A It was not.

20 Q And do these features of the Class II community
21 connector trails and their construction that you just
22 described, impair the forest ecology of the land where the
23 trails are located?

24 A Yes. I would say that they do.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q And do the Class II community connector trails that
2 you observed follow the terrain?

3 A In a general sense, yes, but I also know several
4 places where the community connector trails went straight up
5 a hill that would have, you know, based on my experience,
6 would have been difficult -- some of those hills that we went
7 up on the trails would have been difficult to a drive a motor
8 vehicle up because they were so steep.

9 Q Did they fit in with the natural appearance of the
10 forest?

11 A No. They looked like roads.

12 Q Do you ever see trails in forests that are not
13 manmade?

14 A Yes. Yes, sometimes you see game trails that are
15 made by bear and deer, that kind of thing.

16 Q And do they resemble either hiking trails or forest
17 roads?

18 A I have never seen a game trail look like a forest
19 road. So I think they do approximate, yeah, hiking trails,
20 foot paths, um-hum.

21 Q And do they -- do the levels of erosion,
22 sedimentation, canopy openings, and such things created by
23 game trails, are they more similar to those of forest roads
24 or of hiking trails?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A Hiking trails.

2 Q Have you ever been confused about the difference
3 between a game trail and a hiking trail?

4 A I have, yes, at times. One memorable instance in
5 the Joyce Kilmer Wilderness in west North Carolina, my wife
6 and I took a game trail instead of a primitive wilderness
7 hiking trail and we got stuck in the woods for a night.

8 Q And based upon your many years of field research
9 and study and your field work in the Adirondacks, do you have
10 a professional opinion to a reasonable degree of scientific
11 certainty within your field as to whether the potential
12 adverse impacts of the Class II community connector trails
13 are equivalent to those of a road or of a trail?

14 A I think the impact would be much more along the
15 lines of what you would see with a road.

16 Q And why is that?

17 A Basically because they were the same size,
18 composition, and nature as a forest road. There was no
19 difference.

20 MS. SIMON: Objection. The size, composition and
21 nature of forest roads are not in evidence.

22 THE COURT: Overruled. I will accept it for what
23 it is worth. The answer will be accepted.

24 Were you finished speaking?

(Ronald Sutherland - Direct by Mr. Caffry)

1 THE WITNESS: Yes.

2 MR. CAFFRY: I'm sorry, your Honor. I believe he
3 answered the question.

4 THE COURT: He did. He did. That's what I asked
5 him. I didn't speak loud enough. I'm sorry. I asked
6 him if he finished speaking and he said he was.

7 BY MR. CAFFRY:

8 Q Dr. Sutherland, in your professional opinion,
9 what's a forest canopy? You mentioned that before. Could
10 you explain to the Court what that is?

11 A Sure. Yeah. The canopy of a forest is simply the
12 upper part of the trees of the forest that's borne by the
13 branches and leaves and it's distinct from the understory,
14 which is underneath that. The canopy is the part of the
15 forest that intersects the sun against the canopy.

16 You can have a closed canopy where the trees
17 are close together so not much light gets through. And you
18 can also have an open canopy where abundant sunshine can make
19 it through.

20 Q And do the, in your experience, having visited the
21 Adirondacks, do those forests typically have a canopy?

22 A The forests I visited did have canopies, yes.

23 Q And I believe you mentioned previously northern
24 hardwood forest. Do northern hardwood forests, in general,

(Ronald Sutherland - Direct by Mr. Caffry)

1 have a canopy of the type you described?

2 A Yes, they do.

3 Q Is the canopy ecologically significant?

4 A It is, yes. You know, not only are there a large
5 number of species that live in the canopy or use the canopy
6 for foraging and nesting or other things, like birds nest in
7 the canopy, insects feed in the canopy. But then you also
8 have the significant implements of the structure of the
9 canopy on the understory vegetation underneath.

10 And so the canopy provides shade, but it also
11 provides, well, you know, it provides shade, which forces the
12 understory plants to adapt to low light conditions. So you
13 have -- generally speaking you have a different suite of
14 species of plants that live under closed canopy forests than
15 open canopy forests, for example.

16 And then the canopy of the forest also
17 influences the degree of moisture that is retained on the
18 forest floor.

19 Q Can you explain about the moisture retention?

20 A Yeah. You know, in an open canopy situation or
21 just an open field, you have abundant solar radiation coming
22 from the sun. And that solar radiation causes water to
23 evaporate much more quickly.

24 And in a closed canopy situation where you

(Ronald Sutherland - Direct by Mr. Caffry)

1 have shade, then that evaporation is not happening to the
2 same degree. And, of course, trees are busy transpiring,
3 putting out water out their leaves. And when you have all
4 that vegetation that's transpiring and it's not being
5 evaporated by the sun, then that moisture tends to
6 accumulate. So you get more humidity and more moisture
7 building up in the leaves from the bottom of the forest.

8 Q And does that level of moisture, that higher level
9 of moisture, how does that affect the flora and fauna that
10 live in those areas?

11 A Well, it allows a different, again, a different
12 suite of animals. For example, terrestrial salamanders, for
13 example, many of those, many terrestrial salamanders actually
14 breathe with their skin. So they require their skin to be
15 kept moist so they can maintain an oxygen flow with the
16 surrounding air.

17 And so you have species like that, many
18 species of ground, understory plants need that high moisture
19 conditions, like ferns, some fern species. And then, let's
20 see, and then there is fungi. For example, fungi are tightly
21 linked to the amount of moisture in the environments and the
22 diversity of mushrooms is much greater when you have
23 sufficient water.

24 Q And if there is an opening in the canopy and the

(Ronald Sutherland - Direct by Mr. Caffry)

1 dryer conditions you just testified about result, how does
2 that affect these different plants, animals, and fungi that
3 you just described?

4 A Well, if the canopy opening is large enough and
5 enough sun gets down to the forest floor, then that dries out
6 the local, what ecologists would term the microclimate of
7 that environment. So there is -- it's dryer and it's warmer
8 and that makes it unsuitable for different types of animals,
9 you know, depending on -- obviously it depends on the degree
10 of local rainfall in a given area. But generally speaking,
11 you would find very different animals living in an open
12 setting, open sunny setting under an open canopy than you
13 would underneath a closed canopy.

14 Q And does an open canopy have any effect with
15 relation to non-native plants entering in the area?

16 THE COURT: I didn't hear that, the last word.

17 BY MR. CAFFRY:

18 Q Does an open canopy have any relationship to the
19 ability of non-native plants to enter into an area?

20 A Yes, it does. Quite a few species of exotic
21 plants, plants that are not from a particular area, are
22 adapted to living in sunny environments. That's one of the
23 common characteristics of invasive exotic plants.

24 And so when you open up the forest interior

(Ronald Sutherland - Direct by Mr. Caffry)

1 with gaps in the canopy, then that provides opportunities for
2 the exotic plants to grow and thrive.

3 Q And how can openings in a forest canopy come into
4 existence?

5 A There is various ways, natural mechanisms like
6 trees falling over, weather disturbances, lightning strikes,
7 wind throws, you know, when a gust of wind or a larger
8 disaster like a tornado or a hurricane. Or there can be
9 manmade influences, like logging, cutting trees or building
10 roads, that sort of thing.

11 Q Is a natural canopy opening likely to be similar to
12 those that would occur if a Class II community connector
13 snowmobile trail or a forest road is constructed?

14 A No. The primary difference -- again, two
15 differences. One difference between the openings you see
16 along a road or a snowmobile trail and a natural opening is
17 that the road tends to be a linear feature and the canopy
18 openings extend along that linear feature and can coalesce at
19 a certain point.

20 The tree fall gaps are a well studied
21 phenomenon in the ecology of eastern deciduous forests. And
22 those tree fall gaps tend to be in small clusters, one or two
23 trees at a time here and there. So they tend to be circular,
24 rather than long and linear.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q And does that difference then result in different
2 ecological effects?

3 A Yes. If the linear edge, you know, ecologists use
4 the word edge a lot, edge habitat or edge effects, but the
5 edge, the edge is defined as the junction between two
6 different types of ecosystems. And if that edge habitat is
7 long enough, then it's going to provide sufficient habitat
8 for certain species, things like brown-headed cowbirds, for
9 example, to reside on that habitat. Whereas, you know, small
10 isolated tree fall gaps by themselves are not going to be
11 large enough to support some of those, the same suite of
12 species.

13 There is also the issue of depending on the
14 orientation of a linear cut in the forest, you can get
15 significantly more solar radiation coming down. If the roads
16 or whatever kind of opening it is, if it's a long, linear
17 opening, it's more that the sun is over the top of that and
18 angled down into the linear opening. That can greatly
19 increase the amount of solar radiation that's hitting the
20 ground. That would increase the dessication, for example,
21 along that stretch.

22 Q Could you tell us what you mean by dessication?

23 A Dessication is the process of things drying out.
24 And wind also can tend to concentrate in a linear gap more so

(Ronald Sutherland - Direct by Mr. Caffry)

1 than a small circular gap, because it gives the wind a place
2 to come down into the forest. And that can lead to more
3 dessication and more things like tree death.

4 Q And does the wind have any other effect on trees
5 potentially in that situation?

6 A It can just knock them down basically. Besides
7 drying them out it can knock them down.

8 Q Would you say a game trail or a hiking trail is a
9 linear feature?

10 A Yes. They can be linear features.

11 THE COURT: Are you referring to the canopy or
12 just --

13 MR. CAFFRY: I'm beginning with the trail itself
14 and I will then ask him to lead that to the canopy.

15 THE COURT: Go ahead.

16 A Yeah, they can be linear features, sure.

17 Q Would they have the same effect on the canopy as a
18 Class II snowmobile trail or a forest road in the manner you
19 just described?

20 A No, they would not. The primary reason being that
21 game trails by necessity and hiking trails by convention are
22 routed around trees and rocks and other things. So you don't
23 cut down large trees. You don't put holes in the canopy when
24 you build the trail.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q Do canopy openings affect the variety of vegetation
2 beneath the opening?

3 A Yes, they do. It's generally recognized in forest
4 ecology that there are certain types of trees, for example,
5 that prefer open sunny conditions and then there are certain
6 types of trees that are shade tolerant that can grow in
7 forest interior conditions. They can survive without the
8 heavy sun. And the same is true for various types of
9 understory plants.

10 And then it's also recognized that when you
11 have an edge between, for example, a forest road and the
12 interior of a forest, then that can actually -- that's been
13 studied and they have shown that, for example, exotic species
14 presence, which we talked about exotic species coming in;
15 exotic species presence is elevated within 15 meters of the
16 forest road edge, and that's primarily because of that
17 opening in the canopy. And native plant species richness,
18 it's actually been shown to decrease within five meters of
19 the forest road.

20 Q With regard to animal life in the area beneath a
21 canopy opening along the forest road or a Class II snowmobile
22 trail, as well as the surrounding forests, do canopy openings
23 have along those features affect the variety or frequency of
24 animal life?

(Ronald Sutherland - Direct by Mr. Caffry)

1 A Yes. You know, studies have shown that forest
2 roads, because of the edge effects that I have already
3 described, studies have shown that terrestrial salamander
4 populations are reduced in the area along the roads and out
5 to a distance of up to 80 meters, as I recall. And so the
6 salamander abundance and diversity is reduced along such
7 roads.

8 There has also been studies of soil
9 macroinvertebrates. And that's basically insects that live
10 in the soil and those have shown a reduction in the amount of
11 insects living in the soil out to 100 meters from the edge of
12 forest roads.

13 And the same study concluded that that was
14 probably closely related to the fact that the amount of leaf
15 litter also declines as you get closer to a forest road.

16 Q Before you continue, can you explain what leaf
17 litter is and why that's important?

18 A Yeah. Leaf litter is basically just all the, all
19 of the leaves and assorted other organic materials that have
20 fallen from trees or have built up through fungal action and
21 that sort of thing that is on the bottom of the forest on top
22 of the soil. So it's most people would term it leaves. You
23 would see it when you walk through a deciduous forest and you
24 have a steady covering of old decaying trees on the ground.

(Ronald Sutherland - Direct by Mr. Caffry)

1 That's the leaf litter.

2 Q Does leaf litter perform any ecological functions
3 or is it just litter?

4 A No. It's believed to be very important. It
5 provides habitats for quite a few species, the insects I was
6 talking about, the salamanders that eat those insects. They
7 all live in the leaf litter.

8 Numerous species of snakes and other types of
9 reptiles and amphibians live in the leaf litter. Box turtles
10 take refuge in leaf litter. There is a whole suite of
11 species that use it.

12 It also serves a valuable function in a forest
13 like this. When you have heavy canopy the leaf litter is
14 very important to controlling erosion, because if you didn't
15 have the leaf litter there, you would have bare soil between
16 a lot of these trees and small shrubs and other qualifiers
17 and things. The leaf litter is important. It intercepts the
18 rainfall. It reduces the eroding capacity of the rainfall.

19 Q And do you have any other examples before I
20 interrupted you of animal life that's affected in this
21 manner?

22 A Yeah. Actually, there is another example. Forest
23 interior bird species. There is a suite of bird species that
24 are found primarily inside a forest, rather than on the edge

(Ronald Sutherland - Direct by Mr. Caffry)

1 of the forest, and between forests and fields. And those
2 forest interior bird species have been shown to be greatly
3 reduced in abundance and diversity within, I think it's about
4 150 meters of a forest road in some studies.

5 Q And do you know, based on your training and
6 experience or your research, what causes this loss of
7 abundance of forest -- interior forest birds?

8 A The papers I have read have attributed it to, for
9 example, the loss of foraging capacity because, in fact, they
10 cite the soil macroinvertebrate study saying maybe there is
11 not enough insects for these birds, because several of the
12 forest interior bird species forage on the ground. They are
13 looking for insects to eat. And if that insect population is
14 reduced, again, maybe because the leaf litter composition has
15 been altered because of the different microclimate from the
16 sun coming in to the forest edge, then there is nothing for
17 the forest interior birds to eat.

18 Q And you testified regarding non-native plants. Is
19 there such a thing as non-native animals and could they have
20 any effect due to a Class II trail being constructed?

21 A Yeah, there is several different impacts.
22 Essentially, there are species of animals that prefer edge
23 habitats and those species will tend to be promoted. So
24 there are bird species that would move in. One of those bird

(Ronald Sutherland - Direct by Mr. Caffry)

1 species in particular that's native, but is not typically
2 found in forest interior habitats, is the brown-headed
3 cowbird. And it's a bird species that forages out in the
4 field, but when it wants to nest it looks for other bird
5 species nests on forest edges and then it parasitizes those
6 nests by placing its own eggs in those nests. And when those
7 eggs hatch, the baby cowbird pushes the other birds out of
8 the nest essentially. And that leads to high levels of nest
9 failure. And that's probably another one of the reasons why
10 forest interior birds don't do as well in forest edges. They
11 are not adapted to that level.

12 Q Are you aware of any research that's been done on
13 the effect of the brown-headed cowbird on forest interior
14 bird species along newly-constructed forest roads?

15 A The research that I'm familiar with -- I have not
16 exhaustively surveyed that particular literature, but some of
17 the research I'm familiar with does indicate that cowbirds do
18 form their home ranges along linear edge features, including
19 roads.

20 Q In your professional opinion, are all these effects
21 on plants and animals that you just described, likely to
22 occur along the Class II community connector snowmobile
23 trails as exemplified by the ones that you have inspected?

24 A Yes, I think so. Yeah. I see no reason why their

(Ronald Sutherland - Direct by Mr. Caffry)

1 impact would be any different from a similar sized forest
2 road.

3 Q Based upon your experience, would these types of
4 adverse effects related to canopy openings occur along hiking
5 trails or game trails?

6 A No. Again, because the hiking trails and game
7 trails don't create that forest edge environment. They don't
8 open the canopy.

9 MR. CAFFRY: Can we go off the record very briefly,
10 your Honor?

11 THE COURT: We can.

12 (Discussion off the record.)

13 BY MR. CAFFRY:

14 Q Dr. Sutherland, could you please look at Exhibit
15 104 marked as Plaintiff's Exhibit 104 for identification?

16 A Yes.

17 Q Can you identify that?

18 A Yes. This is a photo that I took of an open canopy
19 situation along the Newcomb to Minerva Trail on
20 August 16th, 2016.

21 Q What section of the Newcomb to Minerva Trail was
22 that taken on?

23 A I believe it was taken on the Santanoni to Harris
24 Lake section.

(Ronald Sutherland - Direct by Mr. Caffry)

1 Q And does that fairly and accurately represent the
2 scene depicted at the time that you took it?

3 A Yes.

4 MR. CAFFRY: Your Honor, I would move that number
5 104 be admitted into evidence.

6 MS. SIMON: No objection.

7 THE COURT: Number 104 is received into evidence
8 without objection.

9 Do you anticipate more?

10 MR. CAFFRY: We have two more similar photos if
11 that's your question.

12 THE COURT: That is my question. I just want to
13 give our stenographer a chance to mark them all at the
14 same time if you anticipate offering them all at the
15 same time. Or if he is just going to testify from 104,
16 we can go forward.

17 BY MR. CAFFRY:

18 Q Could you look at Exhibit 102 marked for
19 identification?

20 A Yes. That's a photo that I took on the Seventh
21 Lake Mountain Trail on August 18th.

22 Q Can you just very briefly tell us what is in it?

23 A Sure. Again, it's a photo, another photo of the
24 sky, surrounded by trees on the lower side of the photo, and

(Ronald Sutherland - Direct by Mr. Caffry)

1 it represents another situation of open canopy above the
2 Seventh Lake Mountain Trail.

3 Q Do you recall what section or segment of the
4 Seventh Lake Mountain Trail you took it on?

5 A I do not.

6 Q Do you have anything that may refresh your
7 recollection on that question?

8 A It's possible. I could check my notes.

9 May I?

10 THE COURT: Just identify specifically what you are
11 looking at when you do it. Do not read any of it out
12 loud. You can look at it and identify it specifically.

13 THE WITNESS: Identify what I'm looking at?

14 THE COURT: Exactly.

15 THE WITNESS: Okay. I'm going to look -- I don't
16 need to show or hand it up?

17 I'm looking at essentially a contact sheet showing
18 some of the photos that I took and the dates and the
19 image numbers of those photos.

20 So now I'm looking at a written transcript of my
21 field notes that I took while I was hiking the trail.

22 THE COURT: I'm going to go off the record for a
23 moment.

24 (Discussion off the record.)

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1 (Plaintiff's Exhibit 104 received in
2 evidence.)

3 (Whereupon the proceedings were adjourned
4 for the day.)

5 * * *

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I N D E X

8

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9

PLAINTIFF'S WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
Ronald W. Sutherland	320	---	---	---

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Tracie Pamela Hilton, CSR, RPR
Senior Court Reporter

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CP	Work plan, Mt. Tom East Trail reroute 7/10/13	---	318

COURT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>IDENT.</u>	<u>EVID.</u>
3	Stipulation	317	317

Protect the Adirondacks! v. NYS DEC & APA

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C E R T I F I C A T I O N

I, Tracie Pamela Hilton, C.S.R, R.P.R., a Senior Court Reporter for the Unified Court System, Third Judicial District of the State of New York, do hereby certify that I attended and reported the foregoing proceedings; that it is a true and accurate transcript of the proceedings had therein to the best of my knowledge and ability.

Tracie Pamela Hilton

Tracie Pamela Hilton
Certified Shorthand Reporter
Registered Professional Reporter

Dated: March 31, 2017

Tracie Pamela Hilton, CSR, RPR
Senior Court Reporter