

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

INDEX NO.
2137-13

for a Judgment Pursuant to Section 5 of Article
14 of the NYS Constitution and CPLR Article 78,

-against-

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

Defendants-Respondents.

NON-JURY TRIAL

B E F O R E:

HON. WILLIAM W. CONNOLLY,
Acting Supreme Court Justice

A P P E A R A N C E S:

For the Plaintiff:

JOHN W. CAFFRY, ESQ., and
CLAUDIA BRAYMER, ESQ., and
WILLIAM DEMOREST, ESQ.

For the Defendant:

LORETTA SIMON, ESQ., and
MEREDITH LEE-CLARK, ESQ.,
Assistant Attorney Generals.

TRANSCRIPT OF PROCEEDINGS in the above-entitled matter
held at the Albany County Courthouse, Albany, New York on
Thursday, March 16th, 2017.

DEBORAH MEHM, CSR
Senior Court Reporter

1 (The following occurred in open court at 1:35
2 p.m.)

3 THE COURT: Thank you folks. Please be
4 seated.

5 Dr. Sutherland all set? Come on up. You
6 are still under oath sir. Go ahead Mr. Caffry.

7 MR. CAFFRY: Thank you, Your Honor.

8 DIRECT EXAMINATION OF DR. SUTHERLAND

9 BY MR. CAFFRY:

10 Q. Dr. Sutherland, according to your CV and your prior
11 testimony much of your research and your professional work
12 has been done on the issue of habitat fragmentation due to
13 the building of roads. Is this a primary concern and area of
14 research for conservation scientists such as yourself?

15 A. Yes, it is.

16 Q. To the extent you may not have already testified to
17 this could you explain to the Court in more detail how roads,
18 including forest roads, may cause habitat fragmentation?

19 MS. SIMON: Objection. This was asked and
20 answered yesterday.

21 THE COURT: It does seem like it was, but
22 he didn't preface his question to the extent you
23 have not testified already. So if there is anything
24 you feel you haven't said in response to that

1 question you may go ahead and respond solely to that
2 extent.

3 A. Okay. I'm just remembering everything we talked
4 about yesterday.

5 THE COURT: I will not let you do the whole
6 thing over again, but if you are not sure on a
7 couple of topics you can touch on them and we will
8 see if Ms. Simon believes they have been testified
9 to. So err on the side of caution for yourself.

10 A. I will do my best. So thinking about the big
11 picture about the conservation of biodiversity and the impact
12 of roads on fragmentation. I assume I touched on road
13 mortality of various animals yesterday, so I don't need to
14 cover that again.

15 One other -- probably the core influence of roads on
16 habitat fragmentation is that roads provide access to land
17 and that access of humans to land has led to clearing of land
18 and resulting habitat fragmentation around the earth.

19 Q. Is the opening of the tree canopy, which you
20 previously testified about, a manifestation of habitat
21 fragmentation?

22 A. Yes, it is.

23 Q. And the DEC states at pages 113 and 114 of its
24 2011 --

1 COURT REPORTER: Wait a minute. Start that
2 again, please?

3 THE COURT: Bear in mind, counsel, Ms. Mehm
4 is an excellent court reporter but she is just
5 starting here and it takes time to get the flow.
6 Particularly when we are talking about terms that
7 are not usually used in our courtroom settings. So
8 take it slow for the first half hour or so, if you
9 can remember to do that. You too Doctor.

10 Go ahead.

11 MR. CAFFRY: The prior question is withdrawn.

12 Q. Dr. Sutherland, Exhibit D in evidence is the DEC's
13 2011 management plan for the Moose River Plains Wild
14 Forest. Pages 113 and 114 of that state that DEC will be
15 closing all or part of 20 existing snowmobile trails to use
16 by snowmobiles.

17 In your professional opinion assuming that they
18 were, in fact, closing all of those trail miles would that
19 necessarily make up for the fragmentation of habitat caused
20 by the new class two community connector trails?

21 MS. SIMON: Objection. He has not
22 testified that there is fragmentation in the Moose
23 River Plains. It is not in evidence.

24 THE COURT: Overruled. You may answer.

1 A. One second.

2 Q. Would you like the question read back?

3 A. No. I recall it. In my professional opinion I do
4 not think that closure of the other roads would be sufficient
5 to mitigate the impacts of construction of new trails in the
6 Moose River Plains Wild Forest and principally that is
7 because of the time. The considerable amount of time it
8 takes for an ecosystem to recover after a road has been built
9 and then either removed or simply abandoned.

10 I think I have already testified about the case with
11 the studies that have shown that salamander populations had
12 yet to recover after 80 years of abandonment on old forest
13 roads.

14 Specifically thinking about the Moose River Plains
15 Wild Forest. That is the area that we were just talking
16 about where we observed substantial acreage, or at least
17 substantial amounts of old growth forest. And even if the
18 roads that were closed were in old growth forest, which I
19 cannot pretend to testify to at this point. Even if those
20 roads were closed the actual area of disturbance of those
21 roads in my opinion and based on what I know will take, you
22 know, at least 100 years to recover to relatively pristine
23 conditions. There is no getting around the fact that it
24 would take two to 300 years to approximate the old growth

1 conditions that I observed in that portion of the second
2 section of the Seventh Lake Mountain Trail.

3 So if you are taking the cosmic geological sense
4 maybe there would be some mitigation in two or 300 years, but
5 in the meantime during that period the net impact on
6 fragmentation will be negative.

7 Q. And in your professional opinion will the Seventh
8 Lake Mountain Trail cause habitat fragmentation in the Moose
9 River Plains Wild Forest?

10 A. Yes. I think it already has.

11 Q. And you just testified about trail closures versus
12 impacts to the old growth part of the Seventh Lake Mountain
13 trail. Would there be a similar delay in the offset or
14 mitigation for or vis-a-vis the portions of the Seventh Lake
15 Mountain Trail that are not old growth forest?

16 A. Yes. I would say that would be in rough proportion
17 to the age of those other sections. If you are talking about
18 getting a fair amount or balanced amount of mitigation from
19 closures of some other roads. Some other snowmobile
20 trail. You would have to take into account the ages of the
21 different sections and take into consideration the scientific
22 understanding of how long it would take for those areas to
23 fully recover.

24 Q. In your professional opinion can the impacts on the

1 forest of the new Class II trails be considered in isolation
2 from each other, or should the impacts of the entire system
3 of new Class II community connector trails be considered
4 cumulatively?

5 A. My professional opinion is that a cumulative
6 understanding is really the only way to approach
7 understanding the impact of any sort of trail or road network
8 construction in a large natural area such as the
9 Adirondacks. I don't know if truism is the right word, but
10 if you consider any tiny piece of a new rail road
11 construction in isolation it is very easy to always say that
12 such a tiny fragment of trail or road has no impact, but if
13 you take the entire system into account and look at the big
14 picture and the cumulative impact, which is what the
15 state-of-the-art environmental impact analysis is gradually
16 approaching after years of neglect. We know that you are
17 supposed to take into account the cumulative impact of things
18 like road networks, and there has been increasingly more
19 studies to that effect.

20 So if you don't take into account the network of
21 other roads or trails in the Adirondacks when considering the
22 impact of adding more roads or trails to the system, then you
23 really have no idea about the impact on the overall
24 ecosystem.

1 Q. Would that also be true if you are creating multiple
2 new roads or trails? You can't just look at one? You have
3 to look at the whole system of them?

4 A. Yes.

5 MR. CAFFRY: Your Honor, no further
6 questions of this witness at this time.

7 THE COURT: Thank you Mr. Caffry.

8 Ms. Simon are you all set?

9 MS. SIMON: I would like to look at his
10 materials. Could we take a however long minute
11 break you are willing to give us, because it looks
12 like he has quite a stack.

13 THE COURT: The answer to both of those
14 questions is yes. You will be able to look at
15 those materials. I should have asked Mr. Caffry to
16 provide them to you during the lunch recess. I
17 think we all forgot to do that.

18 MS. SIMON: I didn't think of it either.

19 THE COURT: It is what it is. We will take
20 15 minutes, and if at the end of 15 minutes you need
21 more time you can come and tell me you need more
22 time and I will give you more time.

23 MS. SIMON: May we use the jury room?

24 THE COURT: You may.

1 MS. SIMON: Thank you.

2 THE COURT: Doctor please give her your
3 folder. We will take 15 minutes.

4 (Recess.)

5 THE COURT: Back on the record.

6 Ms. Simon please proceed.

7 CROSS-EXAMINATION OF DR. SUTHERLAND

8 BY MS. SIMON:

9 Q. Dr. Sutherland, isn't it true that you submitted an
10 affidavit in this case dated September 27th, 2016 and
11 referenced Class II trails at paragraph seven? You noted
12 "these trails retained a closed canopy for much of their
13 length."

14 A. Yes. That does sound familiar.

15 Q. Dr. Sutherland, during your 12 hours that you spent
16 on these Class II trails did you personally observe
17 construction in progress on the Seventh Lake Mountain
18 Trail?

19 A. No.

20 Q. Dr. Sutherland, during your 12 hours on these trails
21 did you personally observe construction in progress on the
22 Newcomb to Minerva trail?

23 A. No.

24 Q. Dr. Sutherland, isn't it true that one of the

1 articles in your materials, and I will give you the name of
2 the article. "Effects of Forest Roads on the Abundance and
3 Activity of Terrestrial Salamanders" and the authors are
4 David Marsh and Nowell Beckman. And my question is: Isn't
5 it true that that study only examined the effects of gravel
6 roads?

7 A. I don't know how to phrase this answer. I probably
8 would have to refresh my recollection.

9 MS. SIMON: May I approach to give him
10 back his material?

11 THE COURT: You may.

12 Q. Could you turn your attention to page 1189 at the
13 bottom beginning with "another limitation of our study".

14 A. Can you read the first author of that or do you have
15 the study?

16 Q. I'm sorry. I didn't hear you.

17 THE COURT: Identify the study again
18 please.

19 A. Sorry. They were in alphabetical order. I was
20 looking for it deep in the stack. So which page again?

21 Q. 1889 at the bottom. Last paragraph. The sentence
22 that begins with another. So my question is --

23 A. Yes. That is correct.

24 Q. It is true. Okay. Thank you.

1 MS. SIMON: Your Honor, at this time I
2 would like to move to strike the questions and
3 answers on his opinion as an expert that are not
4 based on a reasonable degree of certainty in his
5 field of ecology. Questions and answers relating to
6 road construction and trail construction design that
7 are not within his field of expertise.

8 THE COURT: Haven't you already moved or
9 objected to testimony periodically through the
10 course of his direct testimony and received rulings
11 on those?

12 You need to be more specific with me so I
13 know exactly what you are referencing and what I am
14 ruling on. I'm sure Mr. Caffry wants to hear that
15 too, unless he understood you better than I did.

16 MS. SIMON: Yes. I have objected to one
17 of two things I just stated. I objected on his
18 testimony as an expert with regard to road
19 construction and trail construction design.

20 With regard to the proper foundation as an
21 expert there were a number of questions in his
22 testimony today that the question did not ask him
23 with a reasonable degree of certainty within his
24 field of ecology or within his field of study. I'm

1 objecting to those questions today.

2 THE COURT: I understand. So any question
3 that you believe that was asked, and you can't
4 identify them specifically for me right now. But
5 any question that was asked to which he -- any
6 opinion question to which he replied and did not
7 preface or in some way incorporate a statement
8 generally stating to a reasonable degree of
9 scientific certainty?

10 MS. SIMON: Yes, Your Honor.

11 THE COURT: Mr. Caffry?

12 MR. CAFFRY: Yes, Your Honor. I believe
13 that he did testify on that basis. I also believe
14 it is not necessary when an expert is testifying for
15 every question to be prefaced or every answer to be
16 prefaced with those words when obviously he is
17 testifying within his area of expertise.

18 As far as construction not being within
19 his expertise. I believe you previously denied any
20 objections based upon that.

21 THE COURT: I didn't recognize him as an
22 expert in construction, but I did certainly deny
23 certain objections with respect to his ability to
24 give opinions with regard to characteristics of wood

1 lands to my recollection, and I will stand by that
2 decision.

3 With respect to his alleged failure during
4 the course of his direct testimony to include words
5 to the effect of to a reasonable degree of
6 scientific certainty when giving his opinion, it is
7 my understanding of the law as well, Mr. Caffry,
8 that such a mantra need not be repeated in every
9 circumstance. I did cite to that phrase in one
10 particular objection that I was ruling upon. That
11 frankly was more brought on by the phrase that Dr.
12 Sutherland used in the objected to answer, which I
13 think was something along the lines of I believe
14 that or I think that. It didn't strike me, and that
15 was why I thought it was objectionable, as
16 conclusive enough with regard to his opinion.

17 So I don't believe it is legally required
18 in the context of every question, even though I
19 would consider it whenever an objection is
20 raised. But the objection and your application now
21 is denied.

22 So you may continue.

23 MS. SIMON: I have no further questions.

24 THE COURT: All right. Anything else Mr.

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Caffry?

MR. CAFFRY: Yes, Your Honor, if I may.

Ms. Simon had the witness read or asked him about a brief part of his affidavit that he had signed previously in this case. I would like to have him read for the record the entire sentence from that.

Could I approach and hand him a copy of that affidavit to read from?

THE COURT: Any objection Ms. Simon?

MS. SIMON: It is in the record.

THE COURT: Is it? I'm not sure it is in the record.

MS. SIMON: Not here. Summary judgment.

THE COURT: It's not in the record here?

MS. SIMON: Correct.

THE COURT: So no objection to the application?

MS. SIMON: No.

THE COURT: Okay. Go ahead Mr. Caffry.

MR. CAFFRY: I can specify which part I would like him to read.

REDIRECT EXAMINATION OF DR. SUTHERLAND

BY MR. CAFFRY:

1 Q. Dr. Sutherland, Ms. Simon asked you about an
2 affidavit that you previously signed in this action. I have
3 just handed you a document. Is that a copy of the affidavit
4 she asked you about?

5 A. Yes.

6 Q. And you remember signing that affidavit?

7 A. Yes.

8 Q. And I believe she asked you to read from paragraph
9 seven. Is that correct?

10 A. Yes.

11 Q. And could you look at paragraph seven and read the
12 third sentence of that paragraph?

13 A. Yes. "So these trails retained a closed canopy for
14 much of their length, but there were significant canopy
15 openings at regular intervals that appeared to be the direct
16 result of trail construction."

17 Q. Thank you. Are you aware of anything else in your
18 affidavit that relates to the issue that Ms. Simon had you
19 just read that would perhaps clarify the part she had you
20 read?

21 MS. SIMON: Objection. That goes beyond my
22 cross. I only referenced paragraph seven, and he
23 has already given extensive testimony.

24 THE COURT: The objection is sustained for

1 the reasons stated by Ms. Simon as well as it is too
2 open ended of a question.

3 If there is something -- if you want to
4 take a moment yourself Mr. Caffry and take a quick
5 look at the affidavit and see if there is anything
6 you want to direct him specifically to you are more
7 than welcome.

8 MR. CAFFRY: Thank you.

9 (Pause.)

10 Q. Would you turn to paragraph 14 in that affidavit?

11 A. Yes.

12 Q. And with the Court's permission I would like to ask
13 him to read the first two sentences of that paragraph,
14 because they bear directly on the same issue on which Ms.
15 Simon asked him to read from paragraph seven.

16 MS. SIMON: Your Honor, most of what is in
17 those first two sentences has already been covered
18 in his direct testimony in this matter and has been
19 asked and answered regarding canopy. We spent a
20 long time on it.

21 THE COURT: I am the only one who has not
22 seen it, but I believe your assertions. That having
23 been said you have read something from the affidavit
24 in cross-examination that you argue is

1 inconsistent. There is an argument that there is
2 further consistent statements that would explain
3 that and I will allow it for what it is worth.

4 So the objection to the extent there is
5 one is overruled. Follow the direction of Mr.
6 Caffry.

7 A. Did you say two or three?

8 Q. The first two sentences of paragraph 14.

9 A. Okay. It says, "Walking along the trails I
10 witnessed numerous areas where the canopy had been opened up
11 by the trail construction process. Exhibit B, photos four
12 through six. In some cases this was due to large trees being
13 cut down directly, and in other places the canopy was open
14 because trees along the new trail had died post-construction
15 and lost their leaves."

16 Q. Thank you.

17 MR. CAFFRY: Your Honor if I may, could I
18 have a moment to read or at least look at the
19 article that Ms. Simon asked him about? I have not
20 read all of these articles and I would like to
21 review the article briefly to see if there is any
22 redirect on that.

23 THE COURT: You may have a moment.

24 Yes. If you would hand that down. We will go off

1 the record.

2 (Discussion off the record.)

3 THE COURT: Back on the record.

4 MR. CAFFRY: Your Honor may I return this
5 to the witness please?

6 THE COURT: Sure.

7 BY MR. CAFFRY:

8 Q. Dr. Sutherland, Ms. Simon asked you about a journal
9 article that you had apparently testified about and your
10 testimony may have at least in part been based on that
11 article. Can you tell us the name of the article again?

12 A. "The Effect of Forest Roads on the Abundance and
13 Activity of Terrestrial Salamanders."

14 Q. What journal was that published in?

15 A. Ecological Applications.

16 Q. And when was that published?

17 A. 2004.

18 Q. And if the study describing that article was done on
19 gravel roads, does that necessarily mean that the results of
20 the study were not applicable to other types of forest roads
21 in your professional opinion to a reasonable degree of
22 scientific certainty?

23 THE WITNESS: Can I ask one clarifying
24 question?

1 THE COURT: You may.

2 THE WITNESS: Am I allowed to reference
3 the other articles in my response?

4 THE COURT: I didn't hear you.

5 THE WITNESS: Am I allowed to reference
6 other articles in my response?

7 THE COURT: Listen carefully to the
8 question. We will have the question read back and
9 we will see where we are.

10 (Reporter read the last question.)

11 A. So in my professional opinion no. It does not mean
12 that they are not applicable to other types of forest
13 roads. One certainly would qualify the applicability of this
14 particular study. One of several, but the -- my
15 understanding of the impacts of forest roads on terrestrial
16 salamanders is that there are several lines of action that
17 cause the impact of forest roads on salamanders.

18 My actual understanding of the process is actually
19 that the core cause of action is the entrance of sun light
20 and the desiccation, the drying up of the habitat that is
21 caused by open canopy conditions along said roads. But it is
22 also conceivable that gravel roads in particular by creating
23 a substantial amount of dust do cause greater impacts than
24 dirt roads.

1 Q. And are you or have you consulted with other
2 articles that address this same subject?

3 A. The impact of forest roads on terrestrial
4 salamanders?

5 Q. Yes.

6 A. Yes.

7 Q. And even discounting the fact that this particular
8 study was on gravel roads would that affect the opinions that
9 you have given today regarding the effects of forest roads
10 and/or Class II community connector snowmobile trails on
11 salamander populations?

12 A. No.

13 Q. Can you name any of the other articles that you
14 reviewed that, if any, that would support that opinion?

15 A. The other study that I am familiar with off the top
16 of my head is a study by Semlitch. I have to spell
17 it. S-E-M-L-I-T-C-H. There is an S in there too.

18 Q. I'm sorry. You stopped to spell a word for the
19 stenographer. Did you have anything else to say about that
20 study?

21 A. No.

22 Q. Could you look at the first article? The one that
23 you were questioned about. Do you have that in front of
24 you?

1 A. Yes.

2 Q. Could you turn to page 1889? Starting in the lower
3 right corner there is a paragraph there that I believe runs
4 over on to page 1890. Could you take a moment to read that
5 paragraph?

6 (Pause.)

7 Q. Could you summarize for the Court what that
8 paragraph says about the applicability of the results of this
9 study to roads other than gravel roads?

10 MS. SIMON: Your Honor I object.

11 THE COURT: The objection is sustained.

12 MR. CAFFRY: Your Honor, may I ask him to
13 read the paragraph into the record to clarify?
14 Because defense counsel asked him questions about
15 this, and I am asking him to look at the article and
16 see if there is anything that would clarify or rebut
17 the question she asked him based upon the actual
18 content of the article.

19 THE COURT: Ms. Simon.

20 MS. SIMON: This article is not evidence in
21 this case. Him reading it doesn't make it evidence
22 so I object.

23 THE COURT: Your application is denied Mr.
24 Caffry. Ms. Simon asked one question specifically

1 going to the article. He has given the
2 response. We do not have to review it. You have
3 the response and you have had an opportunity to
4 redirect and to address any perceived
5 inconsistency. There is no basis for the article as
6 a whole or significant portions of it to come into
7 the record.

8 MR. CAFFRY: No further questions for the
9 witness Your Honor.

10 THE COURT: Anything else Ms. Simon?

11 MS. SIMON: No. Thank you.

12 THE COURT: Thank you Doctor.

13 (Witness left the stand.)

14 THE COURT: All set Mr. Caffry? Or do you
15 need a moment?

16 MR. CAFFRY: Just one moment Your Honor.

17 THE COURT: We are off the record.

18 (Discussion off the record.)

19 THE COURT: Sir you may resume the
20 stand. You are still under oath.

21 MS. BRAYMER: Your Honor, Mr. Signell
22 previously testified to the tree counts that he
23 conducted on various trails.

24 THE COURT: Correct.

1 MS. BRAYMER: He testified that he
2 summarized those counts within a chart. I had
3 previously moved to have that chart admitted into
4 evidence and that was denied prior to his testimony
5 on all the counts.

6 Since then Mr. Signell has testified about
7 the methodology for all of his counts and has
8 provided the foundation for each one of those trail
9 counts.

10 He has also at this time revised his chart
11 and I would like to move that chart, which has been
12 marked for identification as Exhibit number 80 into
13 evidence for the Court's aid.

14 THE COURT: Have you given it to Ms. Simon
15 and given her an opportunity to review it?

16 MS. BRAYMER: I have provided it to Ms.
17 Simon.

18 THE COURT: Ms. Simon?

19 MS. SIMON: I got a version last night
20 before we left, and then there was a change this
21 morning. I believe it was just one change. Is that
22 correct?

23 MS. BRAYMER: That is correct.

24 MS. SIMON: On Roosevelt Truck Trail to

1 Boreas. Was that the only change?

2 MS. BRAYMER: Yes.

3 MS. SIMON: Yes. I have a copy.

4 THE COURT: Any objection Ms. Simon?

5 MS. SIMON: Yes.

6 THE COURT: What is the objection?

7 MS. SIMON: This chart is not evidence. It
8 is purported to be a summary chart of evidence
9 introduced. However, each fact on this chart has
10 not been provided into evidence either in the
11 witness's testimony or in a documentary exhibit.

12 Mr. Signell testified that he did not
13 collect the data for all of these trails. There has
14 been no testimony about the collection of data for
15 Seventh Lake Mountain or for Gilmantown. He says in
16 his testimony he has never been to Gilmantown
17 trail.

18 THE COURT: Let's break this up for a
19 moment. So your general position you have taken
20 thus far is that Plaintiff's Exhibit number 80
21 cannot be received into evidence as it contained
22 certain information which -- it's a summary of
23 information, and some of that information has not
24 been brought before the Court in evidentiary form.

1 MS. SIMON: Correct.

2 THE COURT: I didn't know if you were
3 referencing some counts made by other individuals
4 under the guidance and direction of Mr. Signell. So
5 that is why I am breaking in on you. I don't want
6 to start mixing up our issues.

7 So I think Mr. Signell, if I recall
8 correctly, testified a week and a half or so ago to
9 the effect that certain individuals, including Mr.
10 Bauer I think had collected information under his
11 direction. That is not part of the objection that
12 you are making right now?

13 MS. SIMON: I'm not sure I understand what
14 you are getting at.

15 THE COURT: I am trying to identify the
16 basis for your objection. I have identified one,
17 which is that some of the figures or facts or
18 evidence contained in Plaintiff's Exhibit number 80
19 there is no evidentiary basis that has been elicited
20 at this trial for those figures.

21 MS. SIMON: Yes.

22 THE COURT: I'm asking you if you are also
23 objecting based upon some of the figures that are in
24 Plaintiff's Exhibit number 80 being the result of

1 collection practices or collections or
2 investigations that was made by individuals under
3 Mr. Signell's direction.

4 MS. SIMON: Yes. Do you want me to wait?

5 THE COURT: To the extent that your first
6 objection that I have referenced. That is that it
7 contains certain numbers or evidence to which there
8 is no evidentiary basis, whether challenged or not
9 before the Court is made. Can you identify
10 specifically what you are talking about? Can you
11 speak to Ms. Braymer. Do you want to speak to her
12 off the record for a moment and see what we are
13 missing?

14 I'm not going to accept a chart that has
15 information on it to which they have not received
16 testimony or evidence. So I can't receive
17 that. Ms. Simon is saying specifically what she
18 identified.

19 To the extent that the objection goes to
20 numbers being collected under Mr. Signell's
21 direction as he set forth and as he set forth as the
22 scientific practice in his field that objection is
23 overruled.

24 Let me say this also for what it is worth

1 counsel. You may all bear in mind as we are
2 proceeding in this matter that I assume you are all
3 going to want to submit to me proposed findings of
4 fact and conclusions of law at the conclusion of the
5 trial. Unless you are all going to consent on not
6 submitting such to me.

7 MS. BRAYMER: I think we do want post-trial
8 briefs.

9 THE COURT: I thought you would. It is
10 common practice for attorneys to put together charts
11 in circumstances like this when they submit them to
12 the Court in the context of findings of fact and
13 conclusions of law, as long as those charts are
14 premised solely upon evidence that is identifiable
15 either in evidentiary form that was received or in
16 the transcript. So you understand what I'm saying?

17 It is possible if you elicited or if you
18 submit a chart to me in the context of a proposed
19 finding of fact and conclusion of law. If you are
20 trying to use it in order to help me follow along
21 now you are going to have to meet the requirements
22 that I just stated on the record.

23 MS. BRAYMER: You had just asked Ms. Simon
24 to identify the pieces that were not in evidence.

1 THE COURT: Rather than have us go back
2 and forth right now I will go off the record for a
3 minute and have you and Ms. Simon speak for a moment
4 to come to an agreed upon conclusion on those
5 issues, because I don't want to have to review the
6 entire transcript to see if something is there or
7 not.

8 So we will take a moment off the
9 record. If you can't figure it out we will go from
10 there.

11 MS. BRAYMER: Understood.

12 (Discussion off the record.)

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

15 MS. BRAYMER: it is my understanding from
16 my discussion with Ms. Simon off the record that
17 there aren't any evidentiary missing holes per se.
18 That she does have disagreement with some of the
19 nomenclature at the top of the chart for the column
20 headings, for instance. And also for one of the
21 trail segments there was not a stipulated number,
22 but in that row we did put an asterisk indicating
23 that there was no stipulated number, but we would
24 use Mr. Signell's number that he testified to.

1 THE COURT: Okay. Ms. Simon.

2 MS. SIMON: That is true. The column
3 that says miles. It has an error in terms of
4 mileage for Cooper-Kiln Trail Wilmington and
5 conflicts with our stip. It doesn't have the same
6 number

7 THE COURT: I'm not looking at the
8 document. I accept what you said. So Ms.
9 Braymer.

10 MS. BRAYMER: It is a rounding issue.

11 THE COURT: If there was a number on the
12 stipulation I would suggest that the best thing to
13 do would simply have Mr. Signell cross out the
14 number with a pen that is on Plaintiff's number 80
15 and write in the stipulated number.

16 MS. BRAYMER: Okay. Can you do that
17 please Mr. Signell?

18 MS. SIMON: Does he know the number?

19 MS. BRAYMER: I can hand him Court Exhibit
20 1.

21 THE COURT: With Ms. Simmons' approval or
22 consent you can prompt him.

23 MS. SIMON: I believe it is Court Exhibit
24 number 1. I believe it is a factual stip. Page

1 three. It is what is referenced on the stip as
2 Wilmington trail segment three. It is referenced on
3 the summary of tree counts at the bottom. It is
4 referred to as Cooper-Kiln Trail (Wilmington). The
5 mileage for that trail is 2.96. Is that clear?

6 THE COURT: Mr. Signell seems to have
7 it. Just put your initials and the date next to
8 that too. Just down below it. Thank you.

9 (The witness complied.)

10 MS. SIMON: In the column titled stipulated
11 number of trees greater than DBH. Those in our
12 stipulation are approved to be cut.

13 THE COURT: I'm not sure what that
14 means. You don't have to explain it to me.

15 MS. BRAYMER: He can write that onto the
16 column.

17 THE COURT: Do you understand the area they
18 are referencing?

19 THE WITNESS: Yes.

20 THE COURT: Go ahead. You can amend
21 Plaintiff's 80 to that extent.

22 THE WITNESS: To be cut?

23 MS. SIMON: Approved to be cut. In that
24 column approved to be cut. Roosevelt Truck trail to

1 Boreas River. The number 715 with the
2 asterisk. They indicate it is not part of the
3 stipulation, even though it is in that column

4 THE COURT: Is there a stipulated number?

5 MS. SIMON: No. There is none approved to
6 be cut. That is not in evidence yet.

7 THE COURT: Understood. But he has
8 testified. Anything further with regard to
9 Plaintiff's 80?

10 MS. SIMON: Not with the specifics of it,
11 but I maintain my objection to it being entered as
12 evidence. It is a summary, and I haven't been able
13 to compare it to the transcript to see if these
14 numbers actually match his testimony.

15 THE COURT: Plaintiff's 80 is received
16 over objection.

17 (Plaintiff's Exhibit 80 was received in
18 evidence.)

19 MS. BRAYMER: Please remember to speak
20 slowly for the court reporter.

21 DIRECT EXAMINATION OF MR. SIGNELL

22 BY MS. BRAYMER:

23 Q. You testified previously that you counted live trees
24 that were marked with flagging and paint on the route to the

1 proposed Newcomb to Minerva Trail. Were there any other
2 markings on these uncut routes that assisted you in knowing
3 where the location of the route was?

4 A. Some of the areas were flagged.

5 Q. And were there any markings on the ground?

6 A. There were some markings on the ground in portions
7 of the trail, but those were markings for grading and stump
8 removal and things like that after I did the count.

9 MS. SIMON: Objection. Basis.

10 THE COURT: Sustained.

11 Q. Could you tell the Court what you observed on the
12 ground as far as markings and not speculate as to what they
13 were for?

14 A. There were some markings on the ground on the Hyslop
15 to Roosevelt Truck Trail in the late fall of 2016 after I
16 counted.

17 Q. What did they look like? What did the markings look
18 like?

19 A. Spray paint. Orange spray paint. Circles around
20 rocks and stumps.

21 Q. On the proposed Newcomb to Minerva Trail did you
22 count any live trees that were under three inches DBH on
23 portions that were uncut?

24 A. Yes.

1 Q. Did you count beech trees that were less than three
2 inches DBH?

3 A. Yes.

4 Q. What was the height of some of those beech trees
5 that were less than three inches DBH?

6 A. It ranged from probably ten feet to 30 to 40 feet.

7 Q. Did you count ash trees that were less than three
8 inches DBH?

9 A. Yes.

10 Q. What was the height of the ash trees that were less
11 than three inches DBH?

12 A. Similar range. Possibly a little higher.

13 Q. Did you count any maple trees that were less than
14 three inches DBH?

15 A. Yes.

16 Q. What was the height of those maple trees that were
17 less than three inches DBH?

18 A. Those were also taller than the beech trees ranging
19 up to probably 50 feet in height.

20 Q. Did you count any red spruce trees less than three
21 inches DBH?

22 A. Yes.

23 Q. What was the height of those red spruce trees that
24 were less than three inches DBH?

1 A. Those were a little shorter. Probably in the 10 to
2 35 foot range.

3 Q. And did you count any white pine trees that were
4 less than three inches DBH?

5 A. Yes.

6 Q. What was the height of those white pine trees that
7 were less than three inches DBH?

8 A. Fifteen to 50 feet.

9 Q. Do you recall any other species that we haven't just
10 covered that were less than three inches DBH?

11 A. Yes.

12 Q. Can you please identify those?

13 A. Yellow birch. Hemlock. There was a lot of them.

14 Q. For those two examples what was the height of the
15 yellow birch trees that were less than three inches DBH?

16 A. Similar. 15 to 40 feet.

17 Q. Same with the hemlock?

18 A. Yes.

19 Q. You testified regarding tree counts on numerous
20 Class II community connector snowmobile trails. Did you do
21 tree counts on any foot trails?

22 A. Yes.

23 Q. Which trails were those?

24 A. Goodman Mountain.

1 Q. Any others?

2 A. Tree counts? No.

3 Q. Did you do any other field study of the foot
4 trails?

5 A. I summarized some data, some photographs of stumps
6 that were taken by Mr. Bauer on Coney Mountain Trail.

7 Q. I have handed you what has been marked for
8 identification as Exhibits 38, 81 and 82. Do you recognize
9 those documents?

10 A. I do.

11 Q. What does Exhibit 38 depict?

12 A. It depicts a portion of the Goodman Mountain Trail
13 winding through the trees.

14 Q. And can you tell us where on the Goodman Mountain
15 Trail that photo was taken?

16 A. Yes. It was actually taken close to the summit.
17 How do you want me to describe this? It is about a quarter
18 mile from the summit I believe.

19 Q. Did you take this photograph?

20 A. I did.

21 Q. Does it fairly and accurately represent the scene
22 that you observed when you took that photograph?

23 A. Yes.

24 MS. SIMON: May I voir dire?

1 THE COURT: Yes.

2 VOIR DIRE BY MS. SIMON:

3 Q. Is the Goodman Mountain Trail in the Adirondack
4 Forest Preserve?

5 A. I believe so.

6 Q. Where is it located?

7 A. It is located south of Tupper Lake just north of the
8 Hamilton County boundary.

9 MS. BRAYMER: Could I clarify?

10 BY MS. BRAYMER:

11 Q. Could you spell the name of the trail please?

12 A. G-O-O-D-M-A-N.

13 MS. BRAYMER: I would like to move Exhibit
14 38 into evidence.

15 MS. SIMON: I would argue it is not
16 relevant if it is not in the Adirondack Park.

17 THE COURT: Exhibit 38 is received into
18 evidence over objection. If evidence is developed
19 it is not part of the Adirondack Park at some point
20 in the trial you can be assured that I will not
21 consider number 38 in the context of this case.

22 (Plaintiff's Exhibit 38 received in
23 evidence.)

24 BY MS. BRAYMER:

1 Q. Can you identify Exhibits 81 and 82?

2 A. Yes. Exhibit 81 shows the stumps that were
3 photographed on the Goodman Mountain Trail. Exhibit 82 shows
4 the stumps that were photographed on the Coney Mountain
5 Trail.

6 Q. Did you create these two maps?

7 A. Yes.

8 Q. And you testified that Mr. Bauer took the stump
9 photographs for Exhibit 82?

10 A. That is correct.

11 Q. And who took the photographs for Exhibit 81?

12 A. I did.

13 MS. SIMON: Point of clarification. Are
14 we talking about photographs or Exhibit 81 and 82?

15 Q. Mr. Signell how is it that you created these two
16 maps?

17 A. Okay. So I went out in the field and just as I did
18 for the snowmobile trails I walked the trail and I
19 photographed every stump that I encountered that was greater
20 than one inch in diameter in stump height. Each one of those
21 photographs is associated and has a time stamp and a latitude
22 and longitude associated with it. That is reported as you
23 take the photographs. So the points on these maps represent
24 the locations of where the photographs were taken.

1 Q. For Exhibit 81 Goodman Mountain when was that study
2 done on that trail?

3 A. That was in the fall of 2015 I believe.

4 Q. And for Coney Mountain?

5 A. It was -- I have to refresh my memory on that.

6 Q. Do you have something that you can use?

7 A. Yes.

8 Q. Go ahead. Just identify for the Court what you are
9 looking at.

10 A. I am looking at a chart that was provided I believe
11 under one of the affidavits showing who did what field work
12 when. Coney Mountain is not on here. I believe it was in
13 the -- it was in 2016 some time I believe.

14 MS. BRAYMER: Your Honor I would like to
15 move Exhibits 81 and 82 into evidence.

16 THE COURT: Have you had an opportunity to
17 see them Ms. Simon?

18 MS. SIMON: Yes.

19 THE COURT: Do you wish to be heard?

20 MS. SIMON: I do. May I voir dire?

21 THE COURT: You may.

22 VOIR DIRE BY MS. SIMON:

23 Q. Where is the Coney Mountain foot trail that you
24 observed?

1 A. The Coney Mountain foot trail is just about a mile
2 or so south of Goodman Mountain. It is right on the Hamilton
3 County, Franklin County border I think. It is right on the
4 Hamilton County border. The north side of Hamilton County on
5 the way to Tupper Lake.

6 MS. SIMON: I object to Exhibit 81 going
7 into evidence because it is characterized as a newly
8 constructed foot trail, and there not been testimony
9 about that trail having been constructed.

10 THE COURT: So there is a characterization
11 of it on 81 referencing it as a newly constructed
12 foot trail?

13 MS. SIMON: Correct.

14 THE COURT: Your objection is sustained.

15 BY MS. BRAYMER:

16 Q. Do you know when the Goodman Mountain Trail was
17 constructed?

18 A. I believe it was within the last two or three
19 years.

20 MS. SIMON: Objection. Basis.

21 THE COURT: Hang on. The objection is
22 sustained. You stated I believe it was in the last
23 two or three years. We need a little better than
24 that.

1 BY MS. BRAYMER:

2 Q. Mr. Signell do you have a basis for your
3 understanding of when the Goodman Mountain Trail was
4 constructed?

5 A. I do.

6 Q. What is your understanding?

7 A. Well of my time looking at all of these stumps I am
8 able to tell how long it has been since they have been
9 cut. These are not -- these were much fresher stumps and in
10 much better shape than the ones along the Seventh Lake
11 Mountain Trail. So I would say that it is been constructed
12 since that time. Since 2012.

13 I'm also familiar with some press releases that came
14 out. I can't remember exactly when they were, but this trial
15 was promoted as a new trail some time within the last few
16 years.

17 Q. Do you recall why there were press releases about
18 that?

19 MS. SIMON: I can't hear the question.

20 THE COURT: The question was: Do you
21 recall why there were press releases about that?

22 MS. SIMON:

23 Objection. Relevance. Hearsay.

24 THE COURT: Sustained.

1 MS. BRAYMER: My point in that question was
2 trying to get some more basis for how he knows the
3 timeframe for the construction of the trail. If he
4 knows there were press releases about its
5 construction.

6 THE COURT: I think your question was how
7 or why there were press releases and the objection
8 was relevance, which was sustained. How or why
9 would not go to that.

10 Ms. Simon said afterwards she also noted
11 the issue of hearsay with regard to the press
12 releases. Upon that objection I am also sustaining
13 that. You can't put the press releases together.

14 MS. BRAYMER: The testimony about the
15 press release. It is not offered for the truth of
16 that matter.

17 THE COURT: The truth asserted that is
18 being challenged is the approximate date or time of
19 the creation of the foot trail. He is saying he
20 remembers the timeframe because he read press
21 releases after the 2012 work at Seventh Lake. That
22 is going to the truth of the matter asserted.

23 MS. BRAYMER: He did testify that it was
24 more recently than 2012.

1 THE COURT: Right now we are talking about
2 her objection to the last question. You did elicit
3 evidence, it is true, from Mr. Signell to the effect
4 that he had observed the stumps and his opinion
5 based upon his observation of the condition of the
6 stumps.

7 MS. BRAYMER: I would like to renew my
8 motion to move that into evidence. 81.

9 MS. SIMON: I renew my objection. It is
10 an improper foundation. He has not testified to any
11 personal knowledge of when that trail was
12 constructed.

13 THE COURT: He has testified that -- I'm
14 sorry. I won't go through the whole analysis.

15 In my belief frankly, Ms. Simon, he has
16 testified in his field of expertise that he had a
17 chance to look at those stumps on the trail and they
18 appeared newer than 2012. I think that is
19 sufficient for him to make a reference in
20 Plaintiff's Exhibit 81 to them as a new foot trail.
21 Accordingly your objection is overruled. Exhibit 81
22 is received into evidence.

23 (Plaintiff's Exhibit 81 was received in
24 evidence.)

1 THE COURT: Go ahead.

2 MS. BRAYMER: Thank you.

3 BY MS. BRAYMER:

4 Q. How did you create the map for Exhibit 82?

5 A. I did it in the same way I described for the Goodman
6 Mountain Trail.

7 Q. And in your opinion what was the age of the stumps
8 that you analyzed for that trail?

9 A. They were two years old or less.

10 MS. SIMON: Point of clarification. Are
11 we talking about Hyslop to Roosevelt Truck Trail?

12 THE COURT: Is that what you are talking
13 about Ms. Braymer?

14 MS. BRAYMER: Exhibit 82. Renumbered
15 exhibits.

16 MS. SIMON: I think we are looking at the
17 wrong exhibit number. Hold on. May we confer?

18 THE COURT: Off the record.

19 (Discussion off the record.)

20 THE COURT: Folks we will take five
21 minutes.

22 (Recess.)

23 THE COURT: Thank you folks. Please be
24 seated.

1 All set counsel? Mr. Signell resume the
2 stand. Go ahead Ms. Braymer.

3 (Reporter read the last question and
4 answer.)

5 BY MS. BRAYMER:

6 Q. To clarify Exhibit 82. Which trail is this?

7 A. The Coney Mountain Trail.

8 Q. How many times have you hiked the Coney Mountain
9 Trail?

10 A. Probably ten.

11 Q. And approximately over what time period in years
12 please have you hiked that trail?

13 A. 2005 to 2015. Sixteen. Ten years. Eleven years.

14 Q. What is the length of that trail?

15 A. That trail is roughly a mile long.

16 MS. BRAYMER: Your Honor, I move Exhibit
17 82 into evidence.

18 MS. SIMON: May I voir dire?

19 THE COURT: Yes.

20 BY MS. SIMON:

21 Q. Mr. Signell, you have hiked this trail from 2005 to
22 2016. Is that your testimony? The Coney Mountain?

23 MS. BRAYMER: Objection. That was not
24 exactly his testimony.

1 THE COURT: It wasn't?

2 MS. BRAYMER: I think he said 2015.

3 THE WITNESS: May I clarify?

4 THE COURT: Why don't you answer. You
5 may. Go ahead. Answer Ms. Simmons' question and
6 you may clarify while doing so.

7 A. I have hiked the Coney Mountain Trail. Over this
8 time period the location of the Coney Mountain Trail has
9 changed over this time period. So it used to have a
10 different route. The construction that we are speaking of
11 occurred within the timeframe I mentioned, and so I have not
12 hiked this exact route since 2005 because it wasn't in this
13 location then.

14 Q. When was the last time you were in this location and
15 identified these trees? These stumps?

16 MS. BRAYMER: Objection. That is not his
17 testimony about having hiked the trail to take this
18 data.

19 THE COURT: Sustained.

20 VOIR DIRE BY MS. SIMON:

21 Q. This map that is Exhibit 82 marked for
22 identification indicates that it is newly constructed. Is
23 this the portion that you are referring to as a reroute?

24 A. Yes.

1 Q. And where is that location exactly in relation to
2 the old trail, if you know?

3 A. Yes. The old trail. The green and white boundary
4 on this map is the Hamilton County line I believe, and the
5 old trail followed that boundary very closely until it came
6 almost to -- it came to the southern most point. Until it
7 came to -- it intersected with the existing trail that is on
8 the map. So the very last portion up to the Summit is not a
9 new trail.

10 Q. Say that again. The very last portion?

11 A. The very last portion of the trail there is two
12 little sections that go to the summit. I do not believe that
13 those are new trails. I think that was part of the old
14 trail. So everything, all the stumps you see and all the
15 dots you see on this map are the new trail until the very
16 last one, and from that last dot up to the summit I believe
17 is the old trail and the new trail converged.

18 MS. SIMON: Okay. Thank you for the
19 clarification. No further objections.

20 THE COURT: Plaintiff's 82 is received into
21 evidence.

22 (Plaintiff's Exhibit 82 was received in
23 evidence.)

24 BY MS. BRAYMER:

1 Q. Referring back to 81. How many trees did you count
2 on the Goodman Mountain Foot Trail?

3 A. 64.

4 Q. And to clarify those were cut trees?

5 A. Those were stumps. Yes.

6 Q. The stumps you counted. What was the length of that
7 trail?

8 A. It was a mile and a quarter. The section shown on
9 the map.

10 Q. Thank you. Referring to Exhibit 82. How many tree
11 stumps were tabulated for the Coney Mountain Foot Trail?

12 A. 13.

13 Q. You already testified to the length of that Coney
14 Mountain Trail. How does the number of trees that were cut
15 on these two foot trails compare to the number of trees cut
16 on the Class II community connector snowmobile trails or
17 roads that you analyzed?

18 MS. SIMON: Point of information. Which
19 Class II trail are we comparing it to?

20 THE COURT: There have been a number he
21 testified to. You need to make this comparison at
22 this point with this testimony. I assume you are
23 going to have him just reiterate numbers he has
24 already testified to. Correct?

1 MS. BRAYMER: I'm asking him not a
2 quantitative but a qualitative analysis. A
3 comparison.

4 THE COURT: Go ahead. Do you understand
5 the question?

6 THE WITNESS: Yes.

7 A. Yes. The number of stumps located on these trails
8 was vastly fewer than on the snowmobile connector trails by
9 an order of magnitude or more.

10 MS. SIMON: Objection. What trails are we
11 talking about? It has not been identified.

12 THE COURT: May I have the answer read back
13 please?

14 (Reporter read the pending question.)

15 THE COURT: The objection is overruled.

16 Q. Can you explain to the Court what an order of
17 magnitude is or what you meant by that?

18 A. An order of magnitude is ten times. So one order of
19 magnitude is ten times less. Two orders of magnitude would
20 be 100 times less. That answers your question I think.

21 Q. Changing gears Mr. Signell. What is your
22 understanding of the characteristics of an old growth
23 forest?

24 A. Old growth forests are forests that contain a lot of

1 old trees. They have several unique features. One being the
2 presence of very old, very large in some cases large
3 trees. They typically have an even aged distribution of
4 size, or even distribution of size. Meaning that there are
5 relatively equal numbers of very large trees and very small
6 trees. As opposed to a younger forest which might have a lot
7 of trees that are the same size and same age. Because they
8 have been left undisturbed for long periods of time the trees
9 are allowed to die of natural causes. So that creates a
10 dynamic where you have gaps in various parts of the forest as
11 trees die. Canopy trees die, and so it makes sort of an
12 interesting patchwork within the ecosystem.

13 It is typified by coarse, woody debris which is
14 large downed tree trunks from trees that have fallen over
15 naturally that provide all sorts of eating habitat,
16 especially if they fall over a stream. They are typified by
17 large standing dead snags. So a tree that has died but has
18 not fallen over yet provides all sorts of habitat for
19 animals. Birds. Mammals. All sorts of things. Insects.

20 It is typified by what they call pit and mound
21 topography, which is caused by a large tree falling over and
22 the root mass then decays into a hill or mound and next to it
23 is a pit that is left from when the tree pulled up dirt. So
24 there is a lot of things you can look at to determine if a

1 forest is old growth.

2 Q. What is the age range for the old trees in an old
3 growth forest in your professional opinion?

4 A. Well old growth forest. There is a few different
5 meanings. Typically I would say trees that are 150, 200
6 years old. Sometimes old growth is confused with virgin
7 timber, which means that they have never been disturbed by
8 humans. But old growth trees are trees that have been
9 allowed to live hundreds of years without disturbance.

10 Q. For purposes of this lawsuit we are in the
11 Adirondack Park. What is your understanding of that age
12 group category of old growth tree in the Adirondack forest?

13 A. I think the simplest way to think about it in the
14 Adirondacks is that there are trees that predate European
15 settlement. So any tree over 200 years old
16 roughly. Certainly any tree over 225 years old is going to
17 be a tree that I would call old growth.

18 Q. Did you observe any old growth forest when you were
19 observing the Seventh Lake Mountain Trail or the Newcomb to
20 Minerva Trail? And just go one at a time if you could.

21 A. I did. The first patch I identified was the
22 Roosevelt Truck Trail to Boreas River. There is a small
23 patch of old growth forest there.

24 The next patch that I found was south of Hewitt

1 Road. Essentially all the way to Minerva. The southern
2 terminus of that proposed trail.

3 The third area was the portion of the Seventh Lake
4 Mountain Trail that extends northward from Seventh Lake.

5 Q. I have handed you what has been marked for
6 identification as Plaintiff's Exhibits 83 through 88. Do you
7 recognize those documents?

8 A. Yes.

9 Q. What do they depict?

10 A. These are maps that I created showing -- it is
11 basically an ecosystem. Maps of the ecosystems that the
12 trail traverses.

13 Q. And who created those maps?

14 A. I did.

15 Q. Can you describe how you were able to put those
16 together?

17 A. Yes. I had a protocol where all of the trail
18 segments, except for Gilmantown. I went out and every 10th
19 of a mile I had a point that I had made before I went in the
20 field. A series of points that are a 10th of a mile apart
21 from each other, and in the field I would get to that point
22 and I would stop. Take photographs. I don't remember if I
23 have gone over this before. I would take a photograph along
24 the trail to the north. One to the south, and then a

1 photograph each direction to the side of the trail to the
2 east and west. Generally most of these trails go north
3 south. I also recorded what kind of an ecosystem it
4 was. This is audio. Notes about the ground cover or
5 whatever I might see at that point.

6 Q. Are these accurate representations of the maps that
7 you created?

8 A. Yes.

9 MS. BRAYMER: I move into evidence
10 Exhibits 83 through 88.

11 MS. SIMON: Objection. I have objections
12 on each of them individually.

13 THE COURT: Let's do them one at a time.

14 BY MS. BRAYMER:

15 Q. With respect to Exhibit 88 -- I'm
16 sorry. 83. Which trail is that depicting?

17 A. This is the Hyslop to Roosevelt Truck Trail.

18 Q. Which trail, overall trail is this located on?

19 A. Minerva to Newcomb. Newcomb to Minerva.

20 THE COURT: All right. You are proffering
21 83?

22 MS. BRAYMER: Yes, I am.

23 THE COURT: What is your objection?

24 MS. SIMON: May I voir dire?

1 THE COURT: Yes.

2 VOIR DIRE BY MS. SIMON:

3 Q. There is reference on this map in the key to state
4 land 1893. What does that mean?

5 A. That is a GIS layer that I have obtained showing
6 1893. The extent of the forest preserve in 1893.

7 Q. Where did you get that?

8 A. There is several data sets that have data
9 information on this floating around. I can't recall at the
10 moment which one this was. As far as the number.

11 Q. What does 1916 fire map represent?

12 A. The 1916 fire map is a map that delineates created
13 in 1916. It delineates areas that had been burned, denuded,
14 logged. Barren lands. Its accuracy, you know, I wouldn't
15 take it verbatim that every single line on these maps are
16 correct. It's just a map that I believe the Adirondack Park
17 Agency digitized. It is meant to give a broad idea if there
18 was fire in the area essentially.

19 Q. What is the origin of that map? Is it a state
20 map?

21 A. Adirondack Park Agency.

22 Q. Are these both publicly available?

23 A. Yes.

24 MS. SIMON: No objection.

1 THE COURT: I didn't hear you.

2 MS. SIMON: No objection.

3 THE COURT: 83 is received into evidence.

4 (Plaintiff's Exhibit 83 was received in
5 evidence.)

6 Go ahead Ms. Braymer.

7 MS. BRAYMER: Thank you.

8 THE COURT: I told her to hold off because
9 you were going to do them all. You can do it
10 however you want to do it.

11 MS. BRAYMER: I will keep going to lay the
12 foundation for each one to be admitted.

13 THE COURT: Good enough. Go ahead.

14 MS. BRAYMER: Thank you.

15 BY MS. BRAYMER:

16 Q. For Exhibit 84. What overall trail is this
17 showing?

18 A. Roosevelt Truck Trail to Boreas River.

19 Q. And which trail is this part of?

20 A. Newcomb to Minerva.

21 MS. BRAYMER: I proffer Exhibit 84 into
22 evidence.

23 MS. SIMON: May I voir dire?

24 THE COURT: Yes. You have my standing

1 authority to do so when a piece of evidence is
2 proffered. Thank you for asking.

3 VOIR DIRE BY MS. SIMON:

4 Q. Same question. Now this says state land 1893. What
5 does that represent?

6 A. Land that has been in the state -- that the state
7 has owned since 1893.

8 Q. Same as the other map then? The data is the same?

9 A. Yes.

10 Q. And the same for 1916?

11 A. Yes.

12 Q. Could you tell me the basis for the second item on
13 the key called old growth? What does that represent?

14 A. That represents my observations along the trail of
15 the forest that is consistent with old growth. There were
16 large trees. Very large trees with old furrowed
17 bark. Coarse woody debris. Pit and mound topography.

18 Q. What topography?

19 A. Pit and mound topography.

20 Q. Did you measure any trees in that area or black out
21 and do a census type study of that area?

22 A. I did not do an official census, but I did measure
23 some trees. Yes.

24 Q. Were you able to determine the age by observing

1 rings?

2 A. No.

3 MS. SIMON: I object on the basis of the
4 old growth area mapped out basically because the
5 observations are not based on old growth trees but
6 based on observation of Mr. Signell, who has not
7 done an old growth study or a census of those
8 trees.

9 THE COURT: The objection is overruled. 84
10 is received into evidence.

11 (Plaintiff's Exhibit 84 was received in
12 evidence.)

13 BY MS. BRAYMER:

14 Q. With respect Mr. Signell to Exhibits 83 and 84 that
15 have already been admitted and your other maps 85, 86 and
16 87. Which all reference the 1893 maps and the 1916 maps
17 which Ms. Simon has questioned you about. Are those maps
18 typical reference materials in your field of expertise?

19 A. Yes.

20 Q. And with respect to Exhibit 85 what trail segment is
21 this depicting?

22 A. This is the Boreas River to Hewitt Pond on the
23 Newcomb to Minerva trail.

24 MS. BRAYMER: I offer 85 into evidence.

1 VOIR DIRE BY MS. SIMON:

2 Q. What is the scale of this map?

3 A. I'm not sure of the exact number.

4 Q. Can you give me an approximation?

5 A. One to 15 thousand.

6 Q. And unless I'm not seeing it because of the colors
7 is there any old growth outlined in this map?

8 A. No.

9 MS. SIMON: Thank you. No objection.

10 THE COURT: 85 is received into evidence.

11 (Plaintiff's Exhibit 85 was received in
12 evidence.)

13 BY MS. BRAYMER:

14 Q. With respect to Exhibit 86. What trail is this
15 depicting?

16 A. This is the Hewitt Pond to Stoney Pond Trail on the
17 Newcomb to Minerva Trail.

18 MS. BRAYMER: I offer Exhibit 86 into
19 evidence.

20 VOIR DIRE BY MS. SIMON:

21 Q. Do you have a scale? This looks like a different
22 scale. Is it a different scale from the prior exhibit?

23 A. It is roughly the same.

24 Q. Could you tell me the dark boundary? Is that meant

1 to be the old growth boundary?

2 A. Yes.

3 Q. Based on what?

4 MS. BRAYMER: Objection, Your

5 Honor. Withdrawn. I withdraw my objection.

6 A. So keep in mind when looking at these maps that I
7 am -- these green lines don't necessarily delineate the
8 boundary of old growth. This is about as far away from the
9 trail that I could see as I walked along. So in many cases
10 and perhaps in most cases the old growth extends beyond these
11 boundaries, but I just can't speak to what is out there
12 because I didn't go in that area.

13 Q. Did you do a census in this area of old growth as
14 reasonably done in your field to determine old growth?

15 A. Well I did measure many trees, and I also counted
16 rings on trees that had been cut to make the trail. And you
17 can actually see it on the map here I put them in -- there
18 is many trees that are 30 plus inches. Some of them are over
19 40 inches in diameter. One of the trees I was able to count
20 had 190 rings on it. Roughly. This is a field count, which
21 qualifies as an old growth tree.

22 Q. On the other trees that you have marked on this map
23 if I understand them to be trees where you marked like
24 hemlock 28 DBH. Did you count rings on any others or just

1 that one that you indicated 190 rings?

2 A. I was only able to count rings on trees that had
3 been cut. So the trees that I am referencing here were not
4 cut to make the trail or cut for any reason.

5 Q. I understand, but with regard to the 190 rings.
6 That was cut?

7 A. That was cut. It was lying across the trail and it
8 was cut.

9 MS. SIMON: No further objections.

10 THE COURT: 86 is received into
11 evidence.

12 (Plaintiff's Exhibit 86 was received in
13 evidence.)

14 BY MS. BRAYMER:

15 Q. With respect to Exhibit 87. Which trail is this?

16 A. This is the Stony Pond Trail down to Minerva. The
17 southern terminus of the Newcomb to Minerva Trail.

18 Q. On this map it does identify, if I'm reading it
19 correctly, some old growth areas. Is that correct?

20 A. Yes.

21 Q. And was this segment of the Newcomb to Minerva Trail
22 cut or uncut?

23 A. Uncut.

24 Q. How did you determine that these areas that you have

1 identified on the map as being old growth were old growth
2 forests without doing a count of rings of trees that had not
3 been cut?

4 A. So I enumerated some ways you can identify old
5 growth without having to count rings earlier. All of those
6 characteristics were present here. If you do happen to find
7 a tree and count rings that provides very, very strong
8 evidence. And I was able to count trees in other areas that
9 were of similar size. The rings of trees that were a similar
10 size. Finding trees in the Adirondacks that are longer than
11 35 inches, 30 inches is rare. These are very large
12 trees. Exceptionally large trees.

13 MS. BRAYMER: I offer Exhibit 87 into
14 evidence.

15 VOIR DIRE BY MS. SIMON:

16 Q. Mr. Signell on this map you have under old growth
17 19th Century. Could you tell me what you mean by that?

18 A. Because old growth can have several meanings I
19 decided to break it up into centuries to give you an idea of
20 how old I believe the trees were based on ring counts and the
21 size of trees. So there is a couple areas in here I believe
22 that were of 18th or 19th Century origin. They are not as
23 old as the other sections.

24 Q. The same thing then for 18th Century. It means 18th

1 Century origin. So everything outlined in green you are
2 indicating dates to the 18th Century?

3 A. Yes.

4 Q. My question is the same here. Did you do a census
5 on this area that is typically done in your field to measure
6 old growth?

7 A. No.

8 MS. SIMON: I object to this being entered
9 into evidence on that basis.

10 THE COURT: 87 is received into evidence
11 over objection.

12 (Plaintiff's Exhibit 87 was received in
13 evidence.)

14 BY MS. BRAYMER:

15 Q. With respect to Plaintiff's Exhibit 88. What trails
16 does this depict?

17 A. Seventh Lake Mountain Trail.

18 Q. Is this showing the entire trail? This map?

19 A. Yes.

20 Q. There are items in the legend talking about 18th
21 Century and 19th Century. Is that the same as what you just
22 previously testified to with respect to Exhibit 87? The
23 meaning of those two items in the legend?

24 A. Yes.

1 Q. Can you explain what is meant by 17th Century in
2 this legend?

3 A. Well 17th Century would mean that the trees in there
4 dated back to the 1600s.

5 Q. Are there --

6 A. Some of them.

7 Q. Some. Are there areas on the map indicated that you
8 found trees from 17th Century? Or growth. Forest growth?

9 A. There are areas in here delineated in the pink dot
10 dashed line that I believe are of 17th Century origin based
11 on the tree ring counts I was able to obtain from the cut
12 trees.

13 MS. BRAYMER: I offer Exhibit 88 into
14 evidence.

15 VOIR DIRE BY MS. SIMON:

16 Q. Mr. Signell could you explain what you mean by blow
17 down 1950?

18 A. So blow down 1950 is another very well-known data
19 set in the Adirondacks. There was a hurricane in 1950 that
20 destroyed large portions of the forest. It destroyed it in
21 some portions more than others, and I believe it was the
22 Adirondack Park Agency and Clarkson University. I could be
23 wrong. The Adirondack Park Agency has provided this data I
24 believe. They digitized these areas. They flew over this

1 area after the hurricane and made maps. They sort of said
2 okay. This area has 20 to 50 percent damage. This one is 50
3 to 100 percent. They digitized. Again they are not
4 exact. They are included here to give an idea of where this
5 might have happened in the 1950s.

6 Q. Where you have indicated the pink outline that
7 indicates trees dating to the 17th Century. The 1600s.
8 Correct?

9 A. Yes.

10 Q. I see there is one 350 plus rings on the northern
11 section?

12 A. Yes.

13 Q. And did you do a census also of any of the areas
14 shaded in pink for an old growth study?

15 A. No, because this was not an old growth study. But
16 the forestry college doesn't need to do a census to be able
17 to determine if something is old growth.

18 Q. Could you identify other than the 370 rings in the
19 northern section and 295 rings in the middle section did you
20 identify any other old growth rings?

21 A. I believe those were the ones that I found on this
22 section of trail. There may have been others, but I don't
23 recall.

24 MS. SIMON: I object to its admission

1 based upon a failure of old growth census.

2 THE COURT: Plaintiff's 88 is received into
3 evidence over objection.

4 To be clear with respect to those
5 objections, Ms. Simon. I don't think you have
6 adequately developed substantively in your voir dire
7 of Mr. Signell the need for a census in order for
8 him to express his opinion, which is what he is
9 doing on these maps that he is observing old growth.
10 In particular he has testified as he noted earlier
11 in some detail about other characteristics that are
12 observable in his field of expertise and experience
13 that allow him to determine something as old growth
14 forest without having to cut down the trees and
15 count the rings.

16 So I wanted to be clear for the record
17 with regard to those. You may mark all of those
18 now. Exhibits 83 through 88.

19 BY MS. BRAYMER:

20 Q. Mr. Signell going back to 83. I don't think we
21 covered this. Is there any old growth in this segment of the
22 Newcomb to Minerva Trail?

23 A. No. Not in my opinion.

24 Q. And with respect to Plaintiff's Exhibit 84. Is

1 there old growth indicated on this map?

2 A. Yes.

3 Q. And can you describe that? I don't believe you
4 covered that for this particular map.

5 A. There is a patch of forest there that has very old
6 trees and has no sign of cutting and displays the
7 characteristics of an old growth forest.

8 Q. With respect to Plaintiff's Exhibit 85. Or now
9 Exhibit 85. Is there old growth shown on this map?

10 A. No. This is a young forest.

11 Q. And on Exhibit 86.

12 A. Yes. Is there a question?

13 Q. What can you tell us about the indications of
14 whether or not this was impacted by the fire of 1916?

15 A. I don't believe it was. There is no evidence of
16 fire. Usually if there is a fire there is aspen trees or
17 birch trees. There was nothing like that here. There is no
18 evidence in the old layers that there was a fire here that
19 corroborates the idea that this was not ever burned.

20 Q. Do you recall if the tree count in this segment was
21 high or low?

22 A. It was low compared to the areas of younger
23 forest.

24 Q. Why would that be?

1 A. As I mentioned earlier old growth forests have an
2 even aged, even sized distribution. So while there are large
3 trees they are typically spaced apart from each other at
4 least in distance. There are fewer small trees
5 also. Because it is an old growth forest it is easier to put
6 a wide trail through an old growth forest without cutting
7 large trees. Because they are spread farther away from each
8 other.

9 Q. Looking at Exhibit 87. We have already discussed
10 this one. Is there anything else you wanted to draw the
11 Court's attention to?

12 A. I don't believe so. Except just you know many, many
13 large trees along the entire length of it.

14 Q. Just to refresh our recollection. Is that section
15 cut? When you did this was it cut or not cut?

16 A. It was not cut.

17 Q. And Exhibit 88. Can you tell us about the 18th and
18 19th Century trees, if any, on this map?

19 A. I didn't identify any areas that were 19th Century
20 on this map. I classify these are 17th Century because of
21 the trees that I found that had rings that were 300 or more
22 years old. The other trees looked very similar to those.

23 Keep in mind that the 295 rings and the 370 plus
24 that are on this map. For instance the red spruce. That was

1 actually cut 15 feet from the ground. The tree had fallen
2 across the path and it had been cut so --

3 Q. Mr. Signell I will interrupt you. Which one are you
4 looking at?

5 A. I'm looking towards the top of the map that says 370
6 plus rings on a 20 inch red spruce. This is a 20 inch
7 diameter stem here. It had 370 rings 15 feet above the
8 ground. So there is many rings. It is far older than
9 that. It's older than that for sure, because it took that
10 tree some years to get 15 feet tall. So these numbers are
11 sort of a minimum age for these trees.

12 Q. Were there any trees that were greater than 30
13 inches DBH?

14 A. Along this trail?

15 Q. Yes.

16 A. Many.

17 Q. Can you give an estimate as to how many?

18 A. Along this entire stretch of trail hundreds.

19 Q. In your professional opinion does the construction
20 of Class II community connector trails have a negative impact
21 on the old growth forest where these trails have been
22 located?

23 A. Yes.

24 Q. What are those impacts?

1 A. These trails are so wide and they have been cut
2 heavily enough to allow some plants, shrubs, grasses. Things
3 that are not naturally found in the forest to thrive along
4 the trail corridor. Many sections of the trail corridor. So
5 that indicates to me that what was once an intact chunk of
6 old growth forest within these roadless areas has now been
7 bisected by a different kind of ecosystem. One that has more
8 in common with a lawn than a forest. It doesn't blend with
9 the forest vegetation in my opinion. It is an entirely
10 different type of vegetation on huge sections of this
11 trail. That degrades, that fragments the forest and you know
12 it reduces the integrity of that ecosystem .

13 MS. BRAYMER: That is all I have for today
14 Your Honor.

15 THE COURT: Good enough. We will commence
16 at 9:30 on Monday morning. Have a good weekend
17 folks. We will go until noon on Monday.

18 MS. BRAYMER: Thank you.

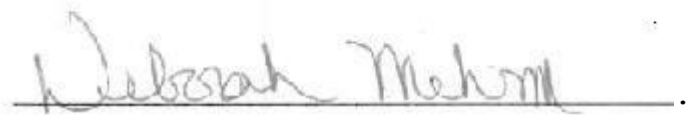
19 THE COURT: Okay folks. Have a good
20 weekend.

21 (Proceedings adjourned to Monday, March
22 20th, 2017 at 9:30 a.m.)
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C-E-R-T-I-F-I-C-A-T-I-O-N

I, **DEBORAH MEHM**, Senior Court Reporter in the Unified Court System, Third Judicial District, do hereby certify that the foregoing is a true and accurate transcript of the proceedings reported stenographically by me in the above-captioned matter in Albany, New York before the HON. WILLIAM W. CONNOLLY, Acting Supreme Court Justice held on Thursday, March 16th, 2017.



DEBORAH MEHM, C.S.R.