

IN THE VERMONT SUPERIOR COURT
ESSEX COUNTY CIVIL DIVISION

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PLUM CREEK MAINE) Case No. 72-12-10Excv
TIMBERLANDS, LLC,) 30-6-11Excv
Plaintiff,) Guildhall, Vermont
)
- against -)
) May 29, 2013
VERMONT DEPARTMENT OF) 9:06 AM
FOREST and PARKS,)
Defendant.)
_____)

PLUM CREEK MAINE) Case No. 19-4-11Excv
TIMBERLANDS, LLC,) 31-6-11Excv
Plaintiff,) Guildhall, Vermont
)
- against -)
) May 29, 2013
VERMONT DEPARTMENT OF TAXES,) 9:06 AM
Defendant.)
_____)

TRANSCRIPT OF COURT TRIAL
BEFORE THE HONORABLE MARY MILES TEACHOUT,
SUPERIOR COURT JUDGE

APPEARANCES:

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1 (Proceedings convened at 9:06 AM)

2 THE COURT: Good morning.

3 IN UNISON: Good morning.

4 THE COURT: This is dockets 72-12-10Excv, and 30-6-
5 11Excv, both of which are appeals from decisions of the
6 Department of Forestry and Parks. And dockets 31-6-11, and
7 19-4-11, which are appeals from the decision of the Department
8 of Taxes.

9 And representing the appellant Plum Creek are -- and
10 I'd like to ask you to identify yourselves.

11 MR. DAVID GRAYCK: Good morning, Your Honor. My
12 name is David Grayck, and I represent Plum Creek Maine
13 Timberlands, LLC. And with me is co-counsel.

14 MR. KIMBERLY CHENEY: Good morning, Kimberly Cheney.
15 I'm also representing Plum Creek.

16 THE COURT: All right.

17 MR. MICHAEL DUANE: Michael Duane, Your Honor,
18 Assistant Attorney General, Your Honor, for the State of
19 Vermont.

20 MS. THEA SCHWARTZ: Thea Schwartz, Assistant
21 Attorney General for the State of Vermont.

22 THE COURT: All right. And let me just put on the
23 record that yesterday, May 28th, the Court took a view of the
24 property. Myself as presiding judge, and both Assistant
25 Judges Noble and Colby were present. Attorney Grayck and

1 various representatives from Plum Creek were present, and
2 Attorney Schwartz and various representatives from the State
3 of Vermont were present. And we did two of the properties.
4 Only the attorneys spoke and pointed out things to bring to
5 our attention to enable us to better understand the evidence
6 that we're going to be hearing in this hearing.

7 Let me just ask if there are any preliminary
8 logistical matters before we get started.

9 MR. DUANE: I don't think so, Your Honor. Thank
10 you.

11 MR. GRAYCK: I just have exhibits and we're prepared
12 to share them with the Court in due course.

13 THE COURT: Are there any stipulated exhibits?

14 MR. DUANE: Yes, Your Honor. We've been acting
15 cooperatively, and I think we've agreed to the admission of
16 the exhibits with regard to their authenticity. There may be
17 some arguments with regard to relevancy. But we've exchanged
18 exhibits, exhibit lists, and I think we've come to an
19 agreement with regard to the foundation for the documents.

20 THE COURT: Okay. So we'll just take them up as we
21 go through then.

22 MR. DUANE: Yes.

23 THE COURT: If there's no objection, you can just
24 tell me so we can do that expeditiously.

25 MR. DUANE: Thank you.

1 THE COURT: And are you prepared to give an opening
2 statement of some kind?

3 MR. DUANE: Well, we talked about that, Your Honor.
4 And we, in light of the fact that we have submitted trial
5 memorandum, and the Court has reviewed them, that we were not
6 going to do opening statements.

7 THE COURT: All right. All right, Mr. Grayck?

8 MR. GRAYCK: Your Honor --

9 THE COURT: I'm assuming Mr. Grayck starts, but did
10 you discuss that?

11 MR. GRAYCK: Yes.

12 MR. DUANE: Yes. And Your Honor, based on our
13 mutual understanding of the process in this kind of a case, as
14 an appeal by Plum Creek from these two decisions, I've marked
15 as exhibits the decisions below.

16 THE COURT: Okay. Great.

17 MR. DUANE: One from the director of Property
18 Valuation and Review, and one from the acting commissioner of
19 Forest Parks and Recreation. They are contained within the
20 record that those tribunals forwarded to the Court.

21 THE COURT: Yes, but I would prefer having
22 everything marked as an exhibit so it's altogether.

23 MR. DUANE: Exactly. That was my sense as well,
24 Your Honor. So I've had these marked as State's A, which is
25 the decision of the Department of Forest, Parks and

1 Recreation; and State's B, which is the director's decision
2 from the Property Valuation and Review Division of the Vermont
3 Department of Taxes. And at this time, I would offer into
4 evidence what's been marked for identification as State's A
5 and State's B.

6 MR. GRAYCK: No objection.

7 THE COURT: State's A and State's B are admitted.

8 MR. DUANE: Thank you.

9 (Decision was hereby marked for identification and
10 received into evidence as State's Exhibit A, as of this date.)

11 (Decision was hereby marked for identification and
12 received into evidence as State's Exhibit B, as of this date.)

13 MR. DUANE: Thank you very much. May I approach,
14 Your Honor?

15 THE COURT: Yes.

16 MR. DUANE: Here are the two exhibits.

17 THE COURT: Thank you.

18 MR. DUANE: And the State submits that, at that
19 point in time, with those being offered and admitted into
20 evidence, that the burden of persuasion and proof rests with
21 Plum Creek, and I will sit down.

22 THE COURT: Mr. Grayck?

23 MR. GRAYCK: Thank you, Your Honor. We'll call Mr.
24 Mark Doughty.

25 MARK DOUGHTY

1 part of the team that came over and inventoried, or check
2 inventoried part of the lands.

3 Q. Okay. Could you please describe what business Plum
4 Creek is in?

5 A. Excuse me?

6 Q. If you could describe what business Plum Creek
7 engages in?

8 A. Plum Creek is an owner of Timberlands and a manager
9 of Timberlands, growing and harvesting trees.

10 Q. And how many acres does Plum Creek own in Vermont?

11 A. 86,212, plus or minus.

12 MR. GRAYCK: Your Honor, I have a series of
13 exhibits. I have the -- what I call the official copies
14 stickered and ready to give to the clerk. I also made
15 additional copies for each member of the Court.

16 THE COURT: Thank you.

17 MR. GRAYCK: If it's all right, I would provide
18 those to you, or you tell me --

19 THE COURT: Only once they're admitted.

20 BY MR. GRAYCK:

21 Q. Showing you, Mark, what's been marked as Plumb Creek
22 Exhibit 1. Do you recognize that document?

23 A. I do.

24 Q. What is it?

25 A. It's the limited warranty deed passing ownership of

1 the land in question from Essex Timber Company to Plum Creek
2 Maine Timberlands, LLC.

3 (Warranty deed was hereby marked for identification as
4 Plum Creek's Exhibit 1, as of this date.)

5 Q. Okay. And from whom did pc purchase the land?

6 A. Essex Timber Company.

7 Q. And from whom did Essex Timber Company purchase the
8 land?

9 A. The Conservation Fund.

10 Q. And from who did the Conservation Fund purchase the
11 land?

12 A. Champion.

13 Q. And prior to Champion, who was the owner of the
14 land?

15 A. St. Regis.

16 Q. Okay.

17 MR. GRAYCK: Your Honor, I'd like to offer 1 through
18 5 for admission at this point.

19 THE COURT: And what are 2, 3, 4 and 5?

20 MR. GRAYCK: 2 is the limited warranty deed of
21 Champion International Corporation to the Conservation Fund.
22 3 is Champion International working forest grant of
23 development rights and conservation restrictions. 4 is
24 Champion International working forest lands grant of public
25 access easement. And 5 is quit claim deed, St. Regis

1 Corporation, Vermont Electric Transmission Company.

2 MR. DUANE: Your Honor, we have no objection to
3 their admission, although I would prefer if the witness would
4 identify the documents and state what they are before we --
5 before we -- in the future -- agree to their admission without
6 objection. Thank you.

7 THE COURT: Plum Creek's 1 through 5 are admitted.

8 (Warranty Deed was hereby received into evidence as Plum
9 Creek's Exhibit 1, as of this date.)

10 (Warranty Deed was hereby marked for identification and
11 received into evidence as Plum Creek's Exhibit 2, as of this
12 date.)

13 (Restrictions was hereby marked for identification and
14 received into evidence as Plum Creek's Exhibit 3, as of this
15 date.)

16 (Public Access Easement was hereby marked for
17 identification and received into evidence as Plum Creek's
18 Exhibit 4, as of this date.)

19 (Quit Claim Deed was hereby marked for identification and
20 received into evidence as Plum Creek's Exhibit 5, as of this
21 date.)

22 MR. GRAYCK: Your Honor, I do have an exhibit list,
23 if the Court would like one?

24 THE COURT: Yes, that would be helpful. Thank you.

25 MR. GRAYCK: And I have one for each member of the

1 Court, if that's okay.

2 THE COURT: All right.

3 BY MR. GRAYCK:

4 Q. Mark, I'm showing you a document. Do you know what
5 it is?

6 A. Yes, I do.

7 Q. What is that?

8 A. It's the --

9 THE COURT: Excuse me, does it have a number?

10 MR. GRAYCK: It's Exhibit 2, Your Honor, I
11 apologize.

12 THE COURT: Okay. All right.

13 MR. GRAYCK: Exhibit 2.

14 BY MR. GRAYCK:

15 Q. And what is Exhibit 2?

16 A. It's a limited warranty deed from Champion
17 International Corporation to the Conservation Fund selling all
18 of their holdings in Vermont, I believe.

19 Q. Okay. And I'm also handing you Exhibit 3, which is
20 the -- Exhibit 3. Have you seen this before?

21 A. Exhibit 3 is the Champion International Lands
22 working forest grant of development rights and conversation
23 restrictions.

24 Q. How, if at all, does the document you're holding
25 describe or divide the lands of Plum Creek?

1 THE COURT: Excuse me just a moment. You are
2 confined to one spot only in the courtroom.

3 MR. GRAYCK: I'm sorry.

4 A. On page number 5, under permitted uses of the
5 protected property, it says that the right to convey the
6 protected property has four distinct tracts, provided each
7 such tract is conveyed its entirety as each tract is depicted
8 on the conversation plan. The protected property shall not
9 otherwise be subdivided or conveyed.

10 Q. Okay. And I'm now going to show you Exhibit 4. And
11 that's this document?

12 A. This is the Champion International working forest
13 lands grant of public access easement.

14 Q. And in effect, what does that document allow for
15 with respect to the use of Plum Creek's land?

16 A. It allows for public access in different ways.

17 Q. And how does the public access the land? What are
18 some of the examples of uses that are made of it?

19 A. Unlimited foot access at any time. There are also
20 corridor managers that are assigned or approved to manage
21 vehicular access on roadways. There are -- there's a corridor
22 manager to manage snowmobile access in the wintertime. There
23 is a corridor manager for horseback riding, for a hiking
24 trail. And at the present time, one's been added for a boat
25 launch in Lemington.

1 Q. Okay. And with respect to Exhibit 3, which was the
2 development rights and conservation restrictions which you had
3 already testified about. How, if at all, does that restrict
4 the use of Plum Creek's land?

5 A. It retained the development rights by the
6 conservation fund, so we are not allowed to develop it at all.
7 In other words, subdivide and build buildings on it or things
8 like that.

9 Q. And in what context did the declaration of the
10 conservation easement arise, in that which transaction was it
11 part of?

12 A. After the Conservation Fund bought the land from
13 Champion, they placed a conservation easement on the land
14 before they sold it to Essex Timber.

15 Q. So now, if at all, is sometimes the Plum Creek land
16 referred to as the former Champion land?

17 A. That's correct.

18 Q. Okay. All right. I'm going to show you --

19 THE COURT: I'm sorry; it's a little confusing what
20 the sequence of these documents were. I think you attempted
21 to clarify that with your last question, but could you go over
22 that again, please?

23 Q. Could you explain the transaction where Champion
24 International divested itself of its property holdings here in
25 Vermont, and who was the initial purchaser of the land which

1 is now owned by Plum Creek?

2 A. I believe it was 1999 that Champion sold the land to
3 the Conservation Fund. The land was broken up into three
4 pieces. One went to the National Wildlife Refuge, now called
5 Conte. One went to the State of Vermont and is the West
6 Mountain Wildlife Refuge. And the working forest portion went
7 to Essex Timber. They purchased that portion.

8 Q. And in connection --

9 THE COURT: It went to from whom?

10 THE WITNESS: From the Conservation Fund to Essex
11 Timber Company.

12 THE COURT: And what was the first one again?

13 THE WITNESS: The National Wildlife Refuge, now
14 called Conte.

15 THE COURT: All right.

16 BY MR. GRAYCK:

17 Q. And Mark, could you describe how long the
18 Conservation Fund's period of ownership was of the property it
19 purchased?

20 A. It was very brief.

21 Q. And from -- to whom did the Conservation Fund convey
22 the property? The former Champion --

23 A. It was conveyed to those three parties.

24 Q. Thank you.

25 A. Would you like the acreages?

1 Q. We're going to get there.

2 A. Okay.

3 THE COURT: But then the -- when was the -- when
4 were there restrictions put on?

5 THE WITNESS: The restrictions were put on during
6 the Conservation Fund's ownership prior to -- prior to
7 transfer to Champion.

8 Q. Excuse me. To Champion or to -- the restrictions
9 were put --

10 A. Oh, sorry. Prior to transfer to Essex Timber
11 Company.

12 THE COURT: Okay, go ahead.

13 Q. Showing you Exhibit 5. And what's this?

14 A. Exhibit 5 is a quit claim deed from St. Regis
15 Corporation to the Vermont Electric Transmission Company
16 selling a strip of land 200 feet in width across their
17 ownership in Lewis Avery's Gore, and one other town, and I
18 don't see it here. Sorry, across Avery's Gore, Lewis,
19 Brunswick, Bloomfield, Ferdinand, Victory and Granby in the
20 County of Essex.

21 Q. So how, if at all, does the property owned by --
22 that was conveyed to VETCO, how, if at all, does it affect
23 Plum Creek's property in the town of Lewis?

24 A. It splits it into -- the one parcel into two because
25 VETCO and now VELCO owns a two-hundred-foot-wide strip in fee.

1 Q. Okay. Showing you what's been marked as Exhibit 6.
2 Do you know what that is?

3 A. It's the State of Vermont Public Service Board's
4 decision under petition by the Vermont Electric Power Company
5 for a certificate of public good.

6 (PSB decision was hereby marked for identification as Plum
7 Creek's Exhibit 6, as of this date.)

8 Q. And how does Exhibit 6 relate, if at all, to Exhibit
9 5?

10 A. I believe the Vermont Electric Company received the
11 certificate of public good before purchasing the transmission
12 line, which is -- or the land for the transmission line which
13 is the subject of this certificate of public good.

14 MR. GRAYCK: Your Honor, I would move the
15 introduction of Exhibit 6.

16 MR. DUANE: No objection.

17 THE COURT: Plum Creek 6 is admitted.

18 (PSB decision was hereby received into evidence as Plum
19 Creek's Exhibit 6, as of this date.)

20 BY MR. GRAYCK:

21 Q. I'm handing you what's been marked as Exhibit 7.
22 Can you tell the Court what that is?

23 A. Exhibit 7 is the Champion Lands conservation plan,
24 which is a map of the Champion Lands holdings in Vermont and
25 represents the distribution of the three blocks that it was

1 broken into.

2 (Champion Lands conservation plan was hereby marked for
3 identification as Plum Creek's Exhibit 7, as of this date.)

4 Q. Could you please look at Exhibit 3, which is the
5 conservation easement?

6 A. Yes.

7 Q. How, if at all, or where, if at all, does Exhibit
8 3's conservation easement make reference to Champion Lands
9 conservation plan?

10 A. On page 5 --

11 Q. Could you --

12 A. -- under number 3, permitted uses of the protected
13 property, item 1. The right to convey the protected property
14 has four district tracts, provided each such tract is conveyed
15 in its entirety as each tract is depicted on the conservation
16 plan.

17 Q. And so I'd ask you to look at Exhibit 7. And --

18 THE COURT: I'm sorry, would you state again where
19 that is on page 5 in Plaintiff's 3 -- or Plum Creek 3?

20 THE WITNESS: On number 3, the protected uses of
21 the -- the permitted uses of the protected property. It's
22 item number 1 under that.

23 THE COURT: Okay.

24 BY MR. GRAYCK:

25 Q. So is Exhibit 7 what is referred to in the deed?

1 A. Yes, it is, it's the conservation plan.

2 MR. GRAYCK: Your Honor, I'd move the introduction
3 of Exhibit 7.

4 MR. DUANE: No objection, Your Honor, thank you.

5 THE COURT: All right. Would you wait just a
6 minute, please?

7 (Pause)

8 THE COURT: All right. Plum Creek 7 is admitted.

9 (Champion Lands Conservation Plans was hereby received
10 into evidence as Plum Creek's Exhibit 7, as of this date.)

11 BY MR. GRAYCK:

12 Q. Mark, I'm handing you an oversized exhibit. Can you
13 identify what that is?

14 A. This is the Champion Lands Conservation Plan, a copy
15 of Exhibit 7.

16 Q. And who prepared that exhibit? Who prepared the
17 oversized exhibit that you're holding?

18 A. I prepared that by printing it on a plotter and
19 taking it to Staples.

20 Q. Okay.

21 MR. GRAYCK: We just wanted to use the oversized
22 exhibit for illustrative purposes, Your Honor.

23 THE COURT: Any objection?

24 MR. DUANE: No, Your Honor. Thank you.

25 THE COURT: Fine, thank you.

1 MR. GRAYCK: Okay.

2 BY MR. GRAYCK:

3 Q. Mark, can you please describe what's shown as
4 Subdivision A on the Champion Lands Conservation Plan?

5 A. The four subdivisions are shown in a small breakout
6 block. And subdivision A are these towns: Lewis, Avery's
7 Gore, Brighton, and Morgan.

8 Q. And if you could describe -- if you could describe
9 subdivision B, please?

10 A. Subdivision B are on the other side of the VELCO
11 ownership. It's the blocks in Averill -- two blocks --
12 Lemington, Bloomfield, and Brunswick.

13 Q. And subdivision C?

14 A. Subdivision C are -- is down in this area. It's
15 Maidstone and Brunswick.

16 Q. And subdivision D?

17 A. Here is Burke, East Haven, Granby, Ferdinand.

18 Q. Okay. And this Champion Lands Conservation Plan, it
19 was -- when was it produced? Or which transaction was it
20 produced in connection with?

21 A. It was produced in connection with the transfer to
22 the conservation fund prior to their transferring it to the
23 three -- three holders.

24 Q. And approximately how many acres are represented by
25 subdivisions A, B, C and D?

1 A. In total?

2 Q. Yes.

3 A. 86,212.

4 Q. Okay. And I'm going to show you Exhibit 8. Would
5 you like to -- yeah, go ahead.

6 A. I'd like to clarify that, if I may.

7 Q. Yeah. Yes. Go right ahead.

8 A. The original sale from the Conservation Fund to
9 Essex Timber Company involved 84,000 acres. Subsequent
10 purchases increased the acreage to Essex Timber Company.

11 Q. So if you'd just -- you can put that down. We'll
12 continue to use it in just a little bit.

13 I show you what's been marked as Exhibit 8. And
14 what's Exhibit 8?

15 A. Exhibit 8 is also the Champion Lands Conservation
16 Plan and it's one that I made some highlighting and notes on.

17 (Champion Lands Conservation Plan was hereby marked for
18 identification as Plum Creek's Exhibit 8, as of this date.)

19 Q. Could you please explain what the highlightings and
20 notes represent?

21 A. The --

22 THE COURT: First, what is it again?

23 THE WITNESS: It's the conservation plan.

24 THE COURT: The same as 7?

25 THE WITNESS: The same plan. Yes.

1 THE COURT: Okay.

2 THE WITNESS: Yup. It was just a copy of that.

3 A. So to this plan, I added a purchase by Essex in 2000
4 of approximately 1,483 acres.

5 THE COURT: 1,433?

6 THE WITNESS: 1,483.

7 THE COURT: 83.

8 A. These acres were subsequently placed under an almost
9 identical conservation easement to the original.

10 BY MR. GRAYCK:

11 Q. If you could please continue to explain each of the
12 additions on this exhibit?

13 A. Certainly. In East Haven, Essex Timber purchased a
14 228 block, which is not covered by a conservation easement.
15 And that was done in 2005, even though the map says it's 2001.
16 And in Bloomfield, Essex Timber purchased an additional 226
17 acres in 2006.

18 THE COURT: And what town was the 2005 transaction?

19 THE WITNESS: The 220-acre transaction was in 2005.

20 THE COURT: In what town?

21 THE WITNESS: In East Haven.

22 BY MR. GRAYCK:

23 Q. And now I'll show what you're holding, which is
24 Exhibit 8. Who is the present owner of the acreages shown on
25 the conservation plan?

1 A. Plum Creek Timber.

2 Q. And so how many acres does Plum Creek own?

3 A. Total 86-212, plus or minus.

4 Q. And how much did Essex Timber purchase from the
5 Conservation Fund?

6 A. 84,000 acres.

7 Q. Okay. So this map, am I correct, represents
8 additional acreage since the time of the Conservation Fund
9 transaction.

10 A. That's correct.

11 Q. Okay.

12 MR. GRAYCK: Your Honor, we would move the
13 introduction of Exhibit 8.

14 MR. DUANE: No objection, Your Honor.

15 THE COURT: Plum Creek 8 is admitted.

16 (Champion Lands conservation plan was hereby received into
17 evidence as Plum Creek's Exhibit 8, as of this date.)

18 BY MR. GRAYCK:

19 Q. Okay, showing you what's been marked as Exhibit 9,
20 also, again, and oversized. What is Exhibit 9, Mark?

21 A. Exhibit 9 is a map of Plum Creek's holdings showing
22 subdivision A, and subdivision B, and also showing the adverse
23 inspection report area that we visited yesterday, and the
24 upper Clough Brook North harvest prescription area; that 471
25 acres that was approved for harvest.

1 (Plum Creek Map was hereby marked for identification as
2 Plum Creek's Exhibit 9, as of this date.)

3 THE COURT: Before we get there, do I understand
4 correctly that Plum Creek 7 was all of the Champion Lands
5 prior to the transfers to the three different entities, of
6 which Essex Timber was one?

7 THE WITNESS: The conservation plan is. It
8 represents all three blocks.

9 THE COURT: So it would be helpful to understand
10 which part went to Wildlife, which part went to the State, and
11 then which part went --

12 THE WITNESS: Okay.

13 THE COURT: -- Essex Timber.

14 MR. GRAYCK: Sure. Sure.

15 BY MR. GRAYCK:

16 Q. Mark, could you identify --

17 MR. GRAYCK: I'm sorry, Your Honor, I didn't hear
18 you. You also said you would like to have clarified what Plum
19 Creek owns as shown on this? I just didn't hear you.

20 THE COURT: Well, as I understand it, this was all
21 of the land that Champion conveyed to the Conservation Fund.
22 And that the Conservation Fund then conveyed out in three
23 chunks.

24 MR. GRAYCK: Yes.

25 THE COURT: One to Wildlife, one to the State of

1 Vermont, and one to Essex Timber.

2 MR. GRAYCK: Yes.

3 THE COURT: So if you could clarify --

4 MR. GRAYCK: Okay.

5 THE COURT: -- what those three areas were.

6 MR. GRAYCK: Yup. Okay.

7 BY MR. GRAYCK:

8 Q. Mark, could you please first clarify what Essex
9 Timber got?

10 A. Essex Timber got subdivision A, subdivision B,
11 subdivision C, and subdivision D.

12 Q. And I know it's somewhat difficult, but can you try
13 and -- can you correlate the subdivisions as shown on the
14 small box with the broader plan?

15 A. Sure. Subdivision A is here. Subdivision B is
16 here. Subdivision C is here. And subdivision D is here.

17 THE COURT: So where's the part that the Wildlife
18 entity got?

19 THE WITNESS: The National Wildlife Refuge got this
20 portion here, which is right here.

21 THE COURT: So that's not part of Subdivision A?

22 THE WITNESS: That's correct.

23 THE COURT: Okay.

24 THE WITNESS: Subdivision A's break is here.

25 THE COURT: All right. And what did the State of

1 Vermont get?

2 THE WITNESS: Got the West Mountain Wildlife area,
3 this area in green here.

4 THE COURT: Oh, that's the wildlife area?

5 THE WITNESS: Or is this yellow? Yes.

6 THE COURT: Okay. I thought that you previously
7 said that there were three chunks. One is the National
8 Wildlife Refuge that became known as Conte.

9 THE WITNESS: Um-hum.

10 THE COURT: So which one is that?

11 THE WITNESS: It's this one up here.

12 THE COURT: Okay. And then the State of Vermont is
13 in green.

14 THE WITNESS: Yes.

15 THE COURT: But you called it something else. What
16 did you call it?

17 THE WITNESS: West Mountain Wildlife Management
18 Area.

19 THE COURT: Okay. Thank you.

20 MR. GRAYCK: I'm sorry, Your Honor, is Exhibit 8
21 admitted?

22 THE COURT: Yes.

23 MR. GRAYCK: Thank you.

24 BY MR. GRAYCK:

25 Q. Okay. And so Mark, you have Exhibit 9 in front of

1 you? Or --

2 A. Not yet.

3 Q. Didn't I hand that one to you?

4 A. Oh, yes. I'm sorry, yes.

5 Q. So what is Exhibit 9?

6 A. Exhibit 9 is Plum Creek's holdings in subdivision A,
7 and subdivision B. It shows the adverse inspection report
8 area, as well as the 471-area that's approved for harvest.

9 Q. Okay.

10 THE COURT: So Exhibit 9 only shows A and B?

11 THE WITNESS: Only shows A and B, correct. C would
12 be -- C and D are south of the map.

13 Q. Mark, the director of Property Valuation and Review
14 decision has been admitted into evidence, and that document
15 disqualifies 56,604 acres of Plum Creek land. Does Exhibit 9
16 show any land which is not included in that disqualification?

17 A. Yes.

18 Q. Could you point that out to the Court?

19 A. This 812-block of land up here, which is not
20 contiguous, is not included in that 56,404 acres. But the
21 rest of subdivision A and subdivision B are included.

22 THE COURT: 800 and how much? 800 what?

23 THE WITNESS: 812.

24 THE COURT: Twelve?

25 BY MR. GRAYCK:

1 Q. And that 812 acres is wedged between two ponds.
2 Could you just identify the ponds that you see on the map
3 there?

4 A. Little Averill Pond and Great Averill Pond.

5 Q. Okay. And where, if at all, is the power line
6 corridor in Lewis?

7 A. The power line corridor is here in the Town of
8 Lewis.

9 MR. GRAYCK: Your Honor, I'd move the introduction
10 of Exhibit 9.

11 MR. DUANE: No objection, Your Honor.

12 THE COURT: Plaintiff's 9 -- or Plum Creek 9 is
13 admitted.

14 (Plum Creek Map was hereby received into evidence as Plum
15 Creek's Exhibit 9, as of this date.)

16 BY MR. GRAYCK:

17 Q. Mark, I'm going to show you what's been marked as
18 Exhibit 10. Please tell me what Exhibit 10 is.

19 A. Exhibit 10 is the same map that we just saw Exhibit
20 9 with the lands that Plum Creek owns in the Town of Lemington
21 crosshatched.

22 MR. GRAYCK: Your Honor, I'd move the introduction
23 of Exhibit 10.

24 MR. DUANE: No objection, Your Honor. Thank you.

25 THE COURT: Plum Creek 10 is admitted.

1 (Town of Lemington map was hereby marked for
2 identification and received into evidence as Plum Creek's
3 Exhibit 10, as of this date.)

4 BY MR. GRAYCK:

5 Q. Your Honor, I'd show you Exhibit 11. What's that?

6 A. Exhibit 11 is the same back map as Exhibit 9 and 10
7 with the area crosshatched that is east of the power line and
8 does not include the Averill wedge land.

9 MR. GRAYCK: We'd move the introduction of Plum
10 Creek 11.

11 MR. DUANE: No objection, Your Honor.

12 THE COURT: Plum Creek 11 is admitted.

13 (Power line boundary map was hereby marked for
14 identification and received into evidence as Plum Creek's
15 Exhibit 11, as of this date.)

16 BY MR. GRAYCK:

17 Q. Mark, I'm showing you what's been marked as Exhibit
18 12. What's that?

19 A. Exhibit 12 is the same basic map as Exhibits 9, 10,
20 and 11. This time, the crosshatched area represents the
21 parcel of 56,604 acres that the commissioner of forests --
22 excuse me, Property Valuation and Review has removed from UVA
23 for five years.

24 (56,604-acre map was hereby marked for identification as
25 Plum Creek's Exhibit 12, as of this date.)

1 Q. Could you take that oversized exhibit, which is the
2 Exhibit 7, the conservation plan map, and if you could also
3 just have that available to you.

4 A. Um-hum.

5 Q. I'm just going to --

6 MR. GRAYCK: Your Honor, may I -- may I hold up one
7 exhibit while --

8 THE COURT: Yes.

9 Q. So in looking at what is Exhibit 12, which
10 represents the 56,604 acres disqualified by Property Valuation
11 and Review, could you please correlate what's shown on Exhibit
12 12 with respect to what's shown on the Champion Land
13 conservation plan which is Exhibit 7, pointing out what
14 differences, if any, there are between the two.

15 A. Okay. The differences -- the similarities are
16 subdivision A, subdivision B -- subdivision A, subdivision B.
17 A and B. And the difference is this 812, 820-acre block which
18 is right up here between the Great and Little Averill Ponds.

19 MR. GRAYCK: We would move for the introduction of
20 Exhibit 12.

21 MR. DUANE: Might I inquire, Your Honor?

22 THE COURT: Yes.

23 MR. DUANE: Thank you.

24 VOIR DIRE EXAMINATION

25 BY MR. DUANE:

1 Q. Mr. Doughty, with respect to Exhibit 12, who made
2 that document?

3 A. That was made by a Plum Creek employee.

4 Q. And did you oversee them making that document?

5 A. I worked with that employee to make that document,
6 yes.

7 Q. And Plum Creek also owns an additional few thousand
8 acres that make up the 82- or 84,000. Where are they in
9 relation to the parcel shown on Exhibit 12?

10 A. Can I use this map?

11 Q. Yes, please.

12 A. I believe you're talking about subdivision C.

13 Q. Okay.

14 A. And subdivision D. And they are south of
15 subdivision A and subdivision B.

16 Q. And they're not contained on the parcel depicted on
17 number 12, correct?

18 A. That's correct. They're not shown on that map.

19 Q. Okay. And when you indicated that this map showed
20 the parcel that was excluded from current use by the director
21 of Property Valuation and Review, that other land you
22 indicated to the south was not excluded, correct?

23 A. That's correct.

24 Q. Thank you.

25 MR. DUANE: Your Honor, we have no --

1 THE COURT: I'm sorry, ask that question again.

2 MR. DUANE: When he was talking about -- when Mr.
3 Doughty was talking about the land to the southern part of the
4 exhibit he's holding up which I believe has been marked and
5 admitted as number 9 -- 7. That the 56,000 acres that was
6 excluded from current use that's on appeal does not include
7 the land to the bottom two sections of that map. That those
8 acreages which total then 82,000, the difference, those were
9 not excluded and are not subject of today's proceedings.

10 THE WITNESS: Correct, these were not excluded.

11 MR. DUANE: Thank you.

12 THE COURT: Wait a minute. Okay. All right.

13 MR. DUANE: With that, we have no objection to the
14 admission of Exhibit number 12.

15 THE COURT: Plum Creek 12 is admitted.

16 (56,604-acre map was hereby received into evidence as Plum
17 Creek's Exhibit 12, as of this date.)

18 BY MR. GRAYCK:

19 Q. And Mark, again, just to clarify, the total land
20 holding by Plum Creek in Vermont is how many acres?

21 A. 86,212.

22 Q. Okay. And the acreage essentially represented by
23 subdivisions A and B, except for the acreage wedged between
24 the two Averill ponds, is approximately how many acres as
25 determined by the director of PVR?

1 A. Approximately 56,604 acres.

2 Q. Okay. I'm going to show you what's been marked as
3 Exhibit 13, and can you tell me what that is?

4 A. This is a map of Plum Creek holdings in Vermont, all
5 four subdivisions with the acreages from the forest management
6 plan table represented on the towns.

7 (Plum Creek holdings map was hereby marked for
8 identification as Plum Creek's Exhibit 13, as of this date.)

9 Q. Okay. So again, in looking at Exhibit 13, if you
10 could point out to the Court what acreages and property
11 acreages constitute the 56,604, which is the subject of the
12 director's decision?

13 A. Would you like me to just point them out or read
14 them?

15 Q. Yeah, if you could --

16 THE COURT: Well, let me -- I thought you said this
17 was all Plum Creek holdings in Vermont? Or based on the
18 question, it sounded like it was only the 56,604. So if we
19 could have that clarified.

20 Q. Mark, what does this map show?

21 A. This map shows all Plum Creek holdings in Vermont.
22 So it's subdivision A, subdivision B, subdivision C, and
23 subdivision D.

24 THE COURT: Plus the additional subsequently-
25 purchased pieces?

1 THE WITNESS: Yes. That's all represented here,
2 plus the 1,483. Yup.

3 Q. So approximately how many acres does this map show?

4 A. Approximately 86,212.

5 Q. Okay.

6 A. The forest management plan, all the acreages here
7 add up to 86,262 acres. That's what's in the forest
8 management plan.

9 Q. We haven't yet introduced the forest management
10 plan, but let me just ask you this question.

11 A. Um-hum.

12 Q. In the course of your work, what variations have you
13 encountered with respect to the precise amount of land owned
14 by Plum Creek in Vermont?

15 A. We've come across slight corrections on boundary
16 lines, on acres of ponds, on road acres, those kind of things.
17 Just small corrections.

18 Q. And what is the threshold amount, if any, which you
19 have found the various sources to be in agreement regarding?

20 A. Ask that a different way, please.

21 Q. I'm sorry. What amount of acreage does everyone
22 seem to at least agree on of the variations that you've
23 discovered?

24 A. 86,212 is a very commonly-used acreage.

25 Q. Okay. And sometimes it's also adding up to slightly

1 different than that?

2 A. Yes.

3 Q. And that slightly different amount is?

4 A. Due to mapping corrections, mapping errors.

5 Q. Okay.

6 MR. GRAYCK: We would move the introduction of Plum
7 Creek 13.

8 MR. DUANE: No objection, Your Honor.

9 THE COURT: Plum Creek 13 is admitted.

10 (Plum Creek holdings map was hereby received into evidence
11 as Plum Creek's Exhibit 13, as of this date.)

12 BY MR. GRAYCK:

13 Q. Mark, you just made reference to a document and I'm
14 going to show you what's been marked as Exhibit 14. Could you
15 please tell me what that document is?

16 A. That's the forest management plan for the Essex
17 Timber Company lands. It was produced in November 2007, and
18 it was subsequently accepted by Plum Creek and by FPR as the
19 management plan for Plum Creek's lands after we purchased
20 them.

21 (Forest management plan was hereby marked for
22 identification as Plum Creek's Exhibit 14, as of this date.)

23 Q. And what familiarity, if any, do you have with
24 Exhibit 14?

25 A. I've read it rather extensively, I guess.

1 Q. Perhaps on more than one occasion.

2 A. Um-hum.

3 Q. Okay. And just to clarify again, what is a forest
4 management plan?

5 A. It specifies the different -- it contains an
6 inventory of the forest, and it specifies the different
7 treatments that can be applied.

8 Q. Okay.

9 A. To the different types of the forest.

10 Q. What is your understanding as to the acreage to
11 which that forest management applies?

12 A. This plan applied to the acreage in the table on
13 page 8, and it's listed as 86,262 acres.

14 Q. Who presently owns that acreage referred to in the
15 table?

16 A. Plum Creek owns that land, and Merck owns a very
17 small piece that was excepted from the sale.

18 Q. Okay. And do you know --

19 THE COURT: Who? Murph?

20 THE WITNESS: Wilhelm Merck, the Essex Timber
21 Company.

22 THE COURT: Okay.

23 BY MR. GRAYCK:

24 Q. Do you know approximately how much land Mr. Merck
25 excepted?

1 A. Approximately 50 to 70 acres. It's not clear to me.

2 Q. And is that again another source of one of those
3 slight variations?

4 A. Yes.

5 Q. Between 86,212, and 86?

6 A. Yes, it is.

7 Q. Okay. All right.

8 MR. GRAYCK: We'd like to move the introduction of
9 Exhibit 14.

10 MR. DUANE: No objection, Your Honor. Thank you.

11 THE COURT: Plum Creek 14 is admitted.

12 (Forest management plan was hereby received into evidence
13 as Plum Creek's Exhibit 14, as of this date.)

14 Q. And so now I'm showing you what's Exhibit 15, Plum
15 Creek Exhibit 15. And what's Exhibit 15?

16 A. Exhibit 15 is the use value appraisal forest
17 management plan signature page for the lands of Plum Creek
18 Maine Timberlands.

19 (Signature page was hereby marked for identification as
20 Plum Creek's Exhibit 15, as of this date.)

21 Q. And what did that document do? What was the
22 consequence of that document?

23 A. It certifies that it constitutes an addendum to the
24 forest management plan that Plum Creek has elected to adopt
25 the plan developed by Essex Timber Company, which was admitted

1 as Exhibit 14.

2 Q. Okay. So what constitutes the present Plum Creek
3 forest management plan?

4 A. Exhibit 14, which is the forest management plan
5 developed for Essex Timber and adopted by Plum Creek.

6 Q. Okay. And what about Exhibit 15? Is that a part of
7 the plan?

8 A. Yes; it's an addendum to the plan.

9 Q. Okay.

10 MR. GRAYCK: We would move the introduction of
11 Exhibit 15.

12 MR. DUANE: No objection, Your Honor.

13 THE COURT: Plum Creek 15 is admitted.

14 (Signature page was hereby received into evidence as Plum
15 Creek's Exhibit 15, as of this date.)

16 Q. Mark, I'm showing you Exhibit 16. Could you please
17 identify the documents which comprise Exhibit 16?

18 A. Exhibit 16 is made up of eight tax bills from
19 different municipalities for the tax year 2012 covering Plum
20 Creek's lands in those towns.

21 (2012 tax bills were hereby marked for identification as
22 Plum Creek's Exhibit 16, as of this date.)

23 Q. And can you identify the municipalities in the tax
24 bills, please?

25 A. The Town of Averill, Town of Avery's Gore,

1 Bloomfield, the Town of Brighton, the Town of Brunswick, the
2 town of Lemington, the town of Lewis, and the town of Morgan.

3 Q. Okay. With respect to the 56,604 acres, how much,
4 if any, is covered in those -- in the acreages specified in
5 those tax bills?

6 A. Everything except for the Averill wedge, which is --
7 I'm sorry, the Averill wedge would be included in this. So
8 the Averill wedge, in addition to the 56,604 acres.

9 Q. Okay. Except for the Averill wedge --

10 A. Um-hum?

11 Q. -- otherwise, the tax bills are representative of
12 the 56,604?

13 A. That's correct.

14 Q. Okay.

15 MR. GRAYCK: We would move the introduction of
16 Exhibit 16 and the tax bills identified therein.

17 MR. DUANE: No objection, Your Honor. Thank you.

18 THE COURT: Plum Creek 16 is admitted.

19 (2012 tax bills were hereby received into evidence as Plum
20 Creek's Exhibit 16, as of this date.)

21 Q. Mark, do you still have the oversized exhibit
22 showing the conservation land plan?

23 A. Yup.

24 Q. Okay. Could you please identify on the conservation
25 land plan the location -- or which subdivision is the alleged

1 cut contrary located in?

2 A. Located in subdivision B.

3 Q. Okay. And the 471 acres, which subdivision is that
4 located in?

5 A. It's located in subdivision B.

6 THE COURT: What was the question again?

7 MR. GRAYCK: The 471-acre --

8 THE COURT: Okay.

9 MR. GRAYCK: -- harvest unit, what town -- what
10 subdivision is it located in.

11 THE WITNESS: Subdivision B.

12 BY MR. GRAYCK:

13 Q. And then Plum Creek's land in the Town of Lemington,
14 which subdivision is it located in?

15 A. That is located in subdivision B also.

16 Q. Thank you.

17 MR. GRAYCK: May I have one moment, Your Honor?

18 THE COURT: Um-hum.

19 (Pause)

20 Q. Mark, looking at Exhibit 16, which is the tax bills.

21 THE COURT: Excuse me; I just want to ask one
22 question --

23 MR. GRAYCK: Sure.

24 THE COURT: -- about that exhibit, the oversized
25 Exhibit 7. You've indicated that the 471 acres in the

1 Lemington lands are in subdivision B. What are the white
2 squares in subdivision B?

3 THE WITNESS: The white squares were those lands
4 that were not owned by Champion when the land was conveyed to
5 the Conservation Fund.

6 THE COURT: So they are not owned by Plum Creek now?

7 THE WITNESS: There are some squares that are owned
8 by Plum Creek now. And those were the yellow squares located
9 on Exhibit, I believe, 8.

10 THE COURT: Okay. Thank you.

11 BY MR. GRAYCK:

12 Q. Mark, a small point of clarification with respect to
13 the tax bill for the Town of Brunswick. Would there be a
14 portion of property in Maidstone that would have been included
15 in that tax bill, but is not encompassed by the 56,000?

16 A. Yes. That's correct.

17 Q. Could you just explain that to the Court?

18 A. Actually in the Town of Brunswick.

19 Q. Brunswick. Thank you.

20 A. Yes. Subdivision B is here, subdivision C is down
21 here. In the Town of Brunswick, there's land in subdivision
22 B, as well as land in subdivision C. And the Town of
23 Brunswick makes no differentiation between subdivision B and
24 C. So they included both of these parcels on the tax bill.

25 Q. And so the Plum Creek land in Brunswick, how, if at

1 all, is it contiguous?

2 A. In Brunswick?

3 Q. Yes, just in Brunswick.

4 A. There's two parcels in Brunswick that are not
5 contiguous.

6 Q. Okay. And of the two parcels, how many, if any, are
7 included within the 56,000 disqualified by the director of
8 PVR?

9 A. This parcel adjacent in subdivision B is included in
10 that 56,640.

11 Q. So one of the two parcels?

12 A. One of the two.

13 Q. Okay. Thank you. Mark, Exhibit 14, which is the
14 forest management plan.

15 A. Um-hum?

16 Q. I just -- just to assist the Court, could you just
17 identify where in the plan there's a description of a
18 transcript which involved the Conservation Fund and Essex
19 Timber?

20 A. On page number 4, the first paragraph talks about
21 Champion International Corporation selling its Vermont
22 timberlands to the Conservation Fund.

23 Q. Okay. And then of course, after Essex owned it, and
24 then to whom did Essex sell the land?

25 A. Essex sold --

1 THE COURT: I'm sorry, what were you referring to
2 again? I --

3 MR. GRAYCK: On page 4.

4 THE COURT: What I'm looking at as page 4 doesn't
5 seem to be what he's looking at, so what was the question
6 again?

7 MR. GRAYCK: The question was just to identify for
8 the Court where in the Essex Timber Company forest management
9 plan the transaction from conservation fund to Essex Timber is
10 described.

11 THE COURT: Okay. I have found it.

12 MR. GRAYCK: I mostly just wanted to point that out
13 to the Court, if it's looking for a summary of the
14 transaction.

15 BY MR. GRAYCK:

16 Q. And looking after page 4 to page 5 of that plan,
17 what are we looking at on that page?

18 A. We're looking at the subdivision map that was
19 contained on the conservation plan.

20 Q. Okay. So how, if at all does what's at page 5 of
21 the Essex Timber Company forest management plan, which is now
22 the Plum Creek forest management plan, how does that compare
23 to the conservation plan map which was -- we have as an
24 oversized exhibit in front of you?

25 A. It shows, basically, this block down here without

1 showing the Conte and the West Mountain Wildlife area. It
2 shows subdivisions A, B, C, and D.

3 Q. And is what's in the plan an accurate -- is what's
4 in the Essex Timber Company forest management plan on page 5,
5 is that an accurate -- or how accurate is that representation
6 of the subdivisions?

7 A. Looks to me like an accurate representations of the
8 subdivisions.

9 Q. Okay.

10 MR. GRAYCK: No further questions, Your Honor.

11 THE COURT: Mr. Duane?

12 MR. DUANE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. DUANE:

15 Q. Good morning, Mr. Doughty.

16 A. Good morning.

17 Q. How are you?

18 A. Very good, thank you.

19 Q. Mr. Doughty, your current position at Plum Creek is
20 community affairs manager, is that correct?

21 A. Yes.

22 Q. And what does that entail with regard to interacting
23 with state or local governments.

24 A. One of my interactions is with state government, the
25 legislature and agencies.

1 Q. And do you work just in Vermont? Or do you work in
2 other northeastern states?

3 A. I work in about six states with varying levels of
4 responsibility in those states.

5 Q. And what states do you work?

6 A. In Vermont, New Hampshire, Maine, Michigan,
7 Wisconsin, and West Virginia.

8 Q. Okay. And where are you based from?

9 A. Fairfield, Maine.

10 Q. And have you appeared before those legislative
11 bodies in those states for any variety of reasons over the
12 years you've been the community affairs manager?

13 A. I've appeared before the Vermont Legislature, and
14 the Maine legislature committees, specifically.

15 Q. And you're also responsibility for community and
16 environment affairs, as well, is that correct?

17 A. More community, and I dabble in environment, you
18 could say.

19 Q. And with regard to community affairs, how does that
20 differ than governmental affairs?

21 A. Community affairs is much more of an outreach
22 position. We have the Plum Creek Foundation which is a
23 philanthropic organization of Plum Creek that I administer or
24 help administer for our six states.

25 Q. And again, in addition to Maine, New Hampshire, and

1 Vermont, you mentioned Wisconsin?

2 A. Wisconsin, Michigan, and West Virginia.

3 Q. And does Plum Creek own lands in those states, as
4 well?

5 A. Yes.

6 Q. And in how many states does Plum Creek own land?

7 A. Nineteen.

8 Q. And is Plum Creek one of the largest landowners in
9 the United States?

10 A. Yes.

11 Q. Is it the largest landowner in the United States?

12 A. We think so.

13 Q. Thank you. And with regard to Vermont, it's true,
14 is it not, that Plum Creek is the largest landowner in the
15 State of Vermont?

16 A. We believe that we are, yes.

17 Q. Now, when Plum Creek was going to buy the Essex
18 Timber Company lands from Essex Timber Company in 2008, you
19 testified that you were involved in the due diligence process,
20 is that correct?

21 A. That's correct.

22 Q. And what is the due diligence process with regard to
23 a real estate transaction such as this?

24 A. It's basically looking into all the different
25 factors that we would encounter if we bought land in Vermont

1 and how they would affect the land.

2 Q. And the purchase of the Champion lands from
3 Champion, to the conservation fund, to the Essex Timber
4 Company, and the breaking off of the portions to the federal
5 government and to the state government, and to the Essex
6 Timber Company, and thence to Plum Creek in 2008 is not a
7 simple real estate transaction, is it?

8 A. That's correct.

9 Q. It's a complicated real estate transaction. And
10 with regard to doing the due diligence in the purchase by Plum
11 Creek from Essex, did you work with anyone else in the Plum
12 Creek organization to do that due diligence?

13 A. Yes.

14 Q. And who was that?

15 A. The senior resource manager for New England was Tim
16 Durrell. He was a team meeting. Paul Davis, who is the
17 general manager for New England was a team member.

18 Q. And in doing the due diligence, I believe you
19 testified on direct examination that you reviewed the
20 regulatory structure, is that correct?

21 A. That's correct.

22 Q. And what did that entail?

23 A. That entailed bringing together all of the
24 regulations and reviewing those, and it would have included
25 things like the AMP manual and the use value appraisal manual.

1 Q. And the AMP manual, just for the record, is the
2 accepted management practices on logging jobs in Vermont,
3 correct?

4 A. Yes.

5 Q. And the UVA manual, UVA, just for the record, stands
6 for use value appraisal?

7 A. Um-hum.

8 Q. And sometimes it's -- is that a yes?

9 A. Yes.

10 Q. Sorry. Thank you. And sometimes that's known in
11 Vermont as the current use program, correct?

12 A. That's correct.

13 Q. And at the time that Plum Creek purchased the land
14 from the Essex Timber Company, the land was enrolled in the
15 current use program, correct?

16 A. That's correct.

17 Q. And the land had been enrolled in the current use
18 program since 2001, correct?

19 A. I'll accept that date. I am not clear exactly when
20 the land was brought into use value.

21 Q. But it was enrolled in use value prior to the
22 purchase by Plum Creek, correct?

23 A. That's correct.

24 Q. And you knew that, correct?

25 A. Yes.

1 Q. And at the time that Plum Creek purchased the land
2 in 2008 from Essex Timber Company, the Vermont Land Trust had
3 a conservation easement on the land, correct?

4 A. Correct.

5 Q. And are you familiar in your work in your states
6 with the notion or concept of a conservation easement on land?

7 A. Yes, we are.

8 Q. Have you ever done title searches in the course of
9 your work, and looking at deeds and records?

10 A. I haven't done title searches, but I've looked at
11 deeds and records.

12 Q. Okay. So you're familiar with deeds and records?

13 A. Yes.

14 Q. As a part of your job.

15 A. Correct.

16 Q. And the Vermont Housing and Conservation Board also
17 had an easement on the Essex Timber Company land at the time
18 Plum Creek purchased it, correct?

19 A. They were a co-holder with the Vermont Land Trust.

20 Q. And the Vermont Land Trust's easement is a
21 conservation easement, correct?

22 A. Yes.

23 Q. And the Vermont Housing and Conservation Board also
24 holds an easement on the property with the Agency of Natural
25 Resources, correct?

1 A. The access easement.

2 Q. That's the access easement you talked about earlier,
3 correct?

4 A. Yes. Um-hum.

5 Q. And that's the public access easement.

6 A. That's correct.

7 Q. And the Agency of Natural Resources includes the
8 Department of Forestry, Parks and Recreation, isn't that
9 correct?

10 A. Yes.

11 Q. Now Plum Creek is based in Washington?

12 A. Washington State.

13 Q. Washington State, in Seattle?

14 A. Correct.

15 Q. And it's a large corporation, is it not?

16 A. Yes.

17 Q. And in 2012, Plum Creek had a gross revenue of 1.34
18 billion dollars, is that correct?

19 A. Yes.

20 Q. That sounds about right?

21 A. Sounds about right.

22 Q. Okay. And in 2012 Plum Creek's net income was 203
23 million dollars, is that correct?

24 A. That sounds very close, yup.

25 Q. Thank you. And Plum Creek is in the business of

1 purchasing timber resources throughout the United States,
2 correct?

3 A. Yes.

4 Q. And in purchasing those timber resources, is it fair
5 to suggest or state that Plum Creek gets involved in
6 complicated real estate transactions?

7 A. Yes.

8 Q. This is not just a neighbor buying another
9 neighbor's house, correct?

10 A. Correct.

11 Q. And so in the Essex Timber Company transaction from
12 conservation fund, the federal government bought a part,
13 correct?

14 A. Yes.

15 Q. Or took a part?

16 A. Yes. Um-hum.

17 Q. And the State of Vermont took a part?

18 A. Yes.

19 Q. And Essex Timber Company took a part? And at the
20 same time that was going on, the Vermont Land Trust obtained
21 an easement, correct?

22 A. Um-hum.

23 THE COURT: You have to --

24 Q. Yes?

25 THE COURT: -- say yes or no when you're testifying.

1 THE WITNESS: Sorry. Yes.

2 Q. Sorry, Mr. Doughty, just for the record, the yes or
3 no is great.

4 A. Yes.

5 Q. Thank you. And the Vermont Housing Conservation
6 Board and the Agency of Natural Resources also took and
7 easement, correct?

8 A. That's correct, an access easement.

9 Q. And in your role as community affairs manager, being
10 involved in governmental affairs and community affairs, do
11 you, in the six states you cover, ever have meetings with
12 executive agency officials like forestry department officials
13 in Maine, in New Hampshire, and Vermont?

14 A. Yes.

15 Q. So you're familiar with the workings of state
16 governments?

17 A. Um-hum. Yes.

18 Q. Yes, thanks.

19 A. Yes, I am. Yes.

20 Q. In your area of forestry.

21 A. Correct.

22 Q. And you're a forester yourself.

23 A. I am.

24 Q. You have a degree in forestry?

25 A. Um-hum. Yes, sir.

1 Q. From the University of Maine?

2 A. Yes.

3 Q. And you have appeared before the Vermont
4 Legislature?

5 A. I have, yes.

6 Q. And when did you appear before the Vermont
7 Legislature?

8 A. That would have been during the 2011 session.

9 Q. Two years ago.

10 A. Two years ago.

11 Q. And why did you appear before the Vermont
12 Legislature?

13 A. The senate agriculture committee invited me to
14 appear and testify.

15 Q. And what were you testifying about?

16 A. They were looking into clarification of the UVA
17 program around penalties for the large landowner alternative
18 program.

19 Q. And Plum Creek had hired a lobbyist, correct?

20 A. That's correct, in 2011.

21 Q. To go to the legislature on Plum Creek's behalf,
22 correct?

23 A. That's correct.

24 Q. And you went to the legislature on February 17th,
25 2011, does that sound about right?

1 A. Sounds about right.

2 Q. And you were asking the legislature to deal with the
3 situation that we're here in court today on, isn't that
4 correct?

5 MR. GRAYCK: Your Honor, I'm going to object. It's
6 not relevant to the issues before the Court.

7 MR. DUANE: Your Honor?

8 THE COURT: Mr. Duane?

9 MR. DUANE: It's extremely relevant. In Plum
10 Creek's pretrial memorandum, they suggest -- not -- more than
11 suggest, they expressly state that the legislature could not
12 have intended the result in this case. And what I'm trying to
13 show with the evidence is that Mr. Doughty, on behalf of Plum
14 Creek went to the legislature to try to get the law changed to
15 clarify or amend the current use statute for this particular
16 purpose. So I think it is highly relevant what his testimony
17 was and what his purpose was at being at the legislature,
18 given Plum Creek's position in this case.

19 MR. GRAYCK: In response, Your Honor, Mr. Doughty
20 has testified that the purpose was to seek clarification of
21 the law. With respect to the trial memorandum, the trial
22 memorandum presented the chronology of events which
23 encompassed the enactment of the UVA statute, its amendment,
24 the enactment -- the adoption of the current use advisory
25 board rules. And included with the large landowner

1 alternative. So the pretrial memorandum focused on events
2 that led up to but did not occur after the adoption of the
3 large land owner alternative. So I think there's a
4 distinction between what has happened since and what happened
5 prior.

6 THE COURT: The objection is overruled. Based on
7 Plum Creek's position as expressed in its pre-trial
8 memorandum, and the fact that it's always relevant what an
9 individual testifying might have as a bias or an involvement
10 on a particular issue. So the Court will take the evidence.

11 MR. DUANE: Thank you.

12 BY MR. DUANE:

13 Q. And Mr. Doughty, a bill was introduced to affect the
14 result in this case, is that correct?

15 A. Yes.

16 Q. And the legislature did not enact that bill, is that
17 correct?

18 A. That's correct.

19 Q. Mr. Doughty, I just wanted to clarify a couple of
20 points, if I may, and I'm going to show you, if I may, what
21 was marked for identification and admitted as number 14, which
22 is the forest management plan of the Essex Timber Company,
23 which you identified earlier.

24 MR. DUANE: And Your Honor, may I approach the
25 witness?

1 THE COURT: Yes.

2 MR. DUANE: Thank you.

3 BY MR. DUANE:

4 Q. And Mr. Doughty, I'm going to show you what is my
5 copy of Exhibit 14.

6 A. Okay.

7 Q. Rather than getting it from the Court.

8 A. Sure.

9 Q. Thank you. Thank you, sir. And this is the forest
10 management plan for Essex Timber Company?

11 A. That's correct.

12 Q. Dated in 2007?

13 A. Yes.

14 Q. And this was prepared by Landvest, correct?

15 A. That's correct.

16 Q. And who is Landvest, if you know?

17 A. Landvest is a forestry consulting company with
18 offices here in Vermont.

19 Q. And have you done business with Landvest in the
20 past?

21 A. Yes, we have.

22 Q. And you find them to be a reputable organization?

23 A. Yes, we do.

24 Q. In terms of their qualifications?

25 A. Sure.

1 Q. And this forest management plan, and I am now
2 looking at page 3, that is signed by Matt Langlais, correct?

3 A. That's correct.

4 Q. And Matt is the Essex-Orleans County forester,
5 correct?

6 A. Correct.

7 Q. And Matt approved this plan, correct?

8 A. Correct.

9 Q. And the plan is also signed by Dan -- and you know
10 Matt.

11 A. I do.

12 Q. You've met him.

13 A. Yes.

14 Q. And the plan is also signed by Dan Kilborn for the
15 Town Plan Trust, correct?

16 A. Correct.

17 Q. And Vermont Land Trust approved this plan.

18 A. Correct.

19 Q. And do you know Dan Kilborn?

20 A. I do.

21 Q. Okay.

22 MR. DUANE: And Your Honor, may I approach again?

23 THE COURT: Yes.

24 MR. DUANE: Thank you.

25 BY MR. DUANE:

1 Q. Mr. Doughty, I want to show you what's been marked
2 and admitted as number 15. And again, this is my binder copy,
3 rather than taking it from the Court.

4 A. Okay.

5 Q. And if I can show you what's been admitted as 15.
6 This is the use value appraisal and that's the current use
7 program, correct?

8 A. Correct.

9 Q. And this is the signature page for Plum Creek's
10 land, correct?

11 A. Accepting the forest management plan.

12 Q. Accepting Essex Timber Company's forest management
13 plan.

14 A. Correct.

15 Q. And this is also approved by Matt Langlais, correct?

16 A. That's correct.

17 Q. He's the Essex-Orleans County forester?

18 A. Um-hum. Yes.

19 Q. Correct. And it's also signed by Plum Creek by Tim
20 Durrell, correct?

21 A. Correct.

22 Q. Is that the same Tim Durrell you mentioned earlier?

23 A. That's correct.

24 THE COURT: We'll take our morning break now for
25 fifteen minutes and continue at 10:45.

1 MR. DUANE: Thank you.

2 COURT OFFICER: All rise.

3 (Recess at 10:27 a.m., until 10:47 a.m.)

4 THE COURT: Please be seated.

5 Mr. Duane.

6 MR. DUANE: Thank you, Your Honor.

7 BY MR. DUANE:

8 Q. Mr. Doughty, you were aware, then, that the land
9 from the Essex Timber Company was enrolled in the use value
10 program before it was purchased by Plum Creek, correct?

11 A. That's correct.

12 Q. And in the other states that you work, those states
13 have tax relief or tax abatement programs for agricultural and
14 forest lands to some extent as well, don't they?

15 A. Yes.

16 Q. Vermont is not unique, is it, with regard to its
17 current use program with regard to trying to promote working
18 forest land, correct?

19 MR. GRAYCK: Your Honor, I'm going to object to the
20 extent that the line of questioning is going to include, has
21 included, and is asking for answers relating to other states.
22 I don't see what other states' programs have any relevance.
23 And it's also going to require us to start taking the statutes
24 from the other states, and regulations from other states, and
25 going through them in detail. And I think it's not relevant

1 to what's before the Court.

2 MR. DUANE: Your Honor, I think it is relevant. It
3 goes to the fact that the current use value appraisal program
4 in Vermont is not unique. That when a landowner with the
5 sophistication of Plum Creek come in --

6 THE COURT: Well, let me just stop you.

7 MR. DUANE: I'm sorry.

8 THE COURT: You asked a general question.

9 MR. DUANE: I did.

10 THE COURT: The objection appears to be carrying it
11 further and getting specific about state statutes. Are you
12 planning to get specific about state statutes?

13 MR. DUANE: No.

14 THE COURT: The objection is sustained as to going
15 into individual state statutes.

16 MR. DUANE: But with regard -- if I may, Your Honor?

17 THE COURT: The specific question that you asked in
18 the general nature is permissible.

19 MR. DUANE: Thank you.

20 BY MR. DUANE:

21 Q. Now, Mr. Doughty, you testified also that the
22 Vermont Land Trust has a conservation easement on the
23 property, correct?

24 A. That's correct.

25 Q. And you've -- you're familiar with that conservation

1 easement?

2 A. Yes.

3 MR. DUANE: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 MR. DUANE: Thank you.

6 BY MR. DUANE:

7 Q. Mr. Doughty, I'm going to show you what's been
8 marked and admitted into evidence as Exhibit number 3 from my
9 binder.

10 A. Um-hum.

11 Q. And this is the Champion International Lands'
12 working forest grant of development rights and conservation
13 restrictions, correct?

14 A. Correct.

15 Q. And Plum Creek owns the land, correct?

16 A. Correct.

17 Q. But the Vermont Land Trust and the Vermont Housing
18 and Conservation Board own the development rights of the land,
19 correct?

20 A. Correct.

21 Q. And so Plum Creek doesn't own those legal rights,
22 correct?

23 A. Correct.

24 Q. They've granted those to the land trust, correct?

25 A. Correct.

1 Q. And that was part of the financing arrangement of
2 the purchase of the property with regard to Essex, and
3 conservation fund, and now Plum Creek, correct?

4 A. That was taken into account, yes.

5 Q. Thank you. Because generally speaking, those
6 easements lower, to some extent, the otherwise fair market
7 value of the property, correct?

8 A. That's correct. Or they should.

9 Q. They should. And that's helpful to the purchaser,
10 correct?

11 A. Yes.

12 Q. And I'm going to direct your attention to the first
13 page of the Vermont Land Trust conservation easement and I'm
14 going to direct your attention to section 1, subsection 2,
15 subsection (a), and that provides, does it not, that the
16 principal objective of the grant or the easement is to
17 maintain productive forestry resources on the protected
18 property, correct?

19 A. That's one, yes.

20 Q. That's the primary.

21 A. Primary.

22 Q. Principal objective.

23 A. Yes.

24 Q. Correct?

25 A. Yes.

1 Q. And as a result of having sold the development
2 rights to the Vermont Land Trust and the Vermont Land Trust
3 having a conservation easement, the landowner, now Plum Creek,
4 has to have a forest management plan, correct?

5 A. Would you ask that again, please?

6 Q. As a result of selling the development rights to the
7 Vermont Land Trust, the landowner, as a part of the easement,
8 has to have a forest management plan, correct?

9 A. As part of the easement, yes.

10 Q. And the Vermont Land Trust oversees that easement,
11 correct?

12 A. That's correct.

13 Q. And as part of being in the current use program, the
14 landowner has to have a forest management plan, correct?

15 A. Correct.

16 Q. And the Vermont Department of Forest and Parks
17 oversees that forest management plan, correct?

18 A. Correct.

19 Q. And is it your experience that the Vermont Land
20 Trust, and Plum Creek, and the Department of Forestry and
21 Parks have attempted to work together with regard to those
22 forest management plans?

23 A. I think that's a good characterization.

24 Q. Thank you. And you've been involved in some of
25 those discussions, haven't you?

1 A. Some of those discussions.

2 Q. Yes. And at one point, isn't it correct that Mr.
3 Langlais, on behalf of the department, raised some concerns
4 with regard to Plum Creek's compliance with the forest
5 management plan?

6 A. At what point are you referring?

7 Q. Well, in February of 2009, didn't Mr. Langlais raise
8 some questions with regard to Plum Creek's compliance with the
9 forest management plan regarding the Town of Averill?

10 MR. GRAYCK: Objection, Your Honor. The line of
11 inquiry is not related to the two decisions which are on
12 appeal for the Court.

13 MR. DUANE: I was attempting to clarify, if I may,
14 Your Honor, for the witness, he asked me to what I was
15 referring with regard to the relationship between the State,
16 Plum Creek, and the Vermont Land Trust.

17 MR. GRAYCK: And my objection, Your Honor, is that
18 what's before this Court are the two decisions, and that those
19 decisions pertain to the events surrounding an alleged cut
20 contrary at Clough Brook North. To the extent that the State
21 is now seeking to introduce evidence regarding other harvest
22 activities, I don't think it's relevant to the decisions and
23 the two main issues which are on appeal.

24 THE COURT: So what is the scope of this line of
25 questioning?

1 MR. DUANE: The scope of the line of questioning
2 will end up with the Town of Lemington and the land in
3 question that caused the expulsion of the entire parcel, and
4 Mr. Doughty's personal understanding of what happened in
5 Lemington.

6 THE COURT: So how is communication about the forest
7 management plan as applied to some other parcel? Is this the
8 Averill wedge?

9 MR. DUANE: No. It's another parcel in Averill.

10 THE COURT: Okay. Another Averill piece relevant to
11 the matter before the Court.

12 MR. DUANE: I believe it's relevant, Your Honor, but
13 I can withdraw the question at this time, because I --

14 THE COURT: Okay.

15 MR. DUANE: Frankly, I was responding to Mr.
16 Doughty's inquiry to me. But I believe it is relevant. It
17 will come up at another time.

18 THE COURT: All right.

19 MR. DUANE: If I may. Thank you.

20 BY MR. DUANE:

21 Q. Mr. Doughty, with regard to the Clough Brook North
22 tract in the Town of Lemington, did there not come a time in
23 which Mr. Langlais raised concerns with Plum Creek regarding
24 its compliance with the forest management plan on that tract?

25 A. There did some a time with the amendment to the

1 forest management plan.

2 Q. Thank you. And on -- do you recall meeting with Mr.
3 Langlais on February 19th, 2010 to discuss, at this office in
4 St. Johnsbury, to discuss the State's concerns regarding what
5 was happening at Clough Brook North?

6 A. I do. That was some time ago, but I do recall.

7 Q. Thank you. And prior to that meeting, isn't it true
8 that Plum Creek asked Landvest to go out and conduct a cruise
9 of the property over which Mr. Langlais had concerns?

10 A. Yes.

11 Q. And Landvest -- again, that's the same Landvest who
12 developed the forest management plan -- went out and did a
13 cruise of a portion of the property in Lemington, correct?

14 A. Correct.

15 Q. And they provided Plum Creek with some data,
16 correct?

17 A. Correct.

18 Q. Let me show you what's --

19 MR. DUANE: I am going to, Your Honor, marked for
20 identification and offer as a State's Exhibit C, what has
21 otherwise been at least marked for identification as Plum
22 Creek's Exhibit 28. So if at this time we had this marked as
23 State's C, I'd appreciate it. Thank you.

24 (Pause)

25 MR. DUANE: Thank you very much.

1 Q. Mr. Doughty, let me show you what's been marked for
2 identification as State's C. Do you recognize that document?

3 A. I believe I've seen this before, but I recognize the
4 map more than I do the figures.

5 (Landvest cruise results were hereby marked for
6 identification as State's Exhibit C, as of this date.)

7 Q. Okay. And is that a document that Landvest prepared
8 at Plum Creek's request, if you know?

9 A. I wouldn't be certain enough to say. I suspect that
10 it is.

11 Q. Do you have any reason to doubt that it's not?

12 A. No. I don't see Landvest's name except on the map,
13 but I guess I don't doubt that it is the report from Landvest
14 to Plum Creek of the cruise.

15 Q. Thank you.

16 A. Yes.

17 MR. DUANE: Your Honor, I'd like to offer into
18 evidence what's been marked for identification as State's 3.

19 MR. GRAYCK: No objection.

20 THE COURT: State's C is admitted.

21 MR. GRAYCK: No objection.

22 (Landvest cruise results were hereby received into
23 evidence as State's Exhibit C, as of this date.)

24 MR. DUANE: Thank you very much. Thank you, Your
25 Honor.

1 BY MR. DUANE:

2 Q. Mr. Doughty, when you met with Matt and other folks
3 from the State on February 19th, 2010, at the Agency of
4 Natural Resources in St. Johnsbury, that data was discussed,
5 was it not?

6 A. I would imagine that was one of the topics that we
7 talked about. I have a vague recollection.

8 Q. And at that meeting -- and who was there besides you
9 at that meeting, if you can recall?

10 A. It was myself; Tim Durrell, the senior resource
11 manager; and Chris Fife, the forester.

12 Q. And that's the same Tim Durrell you've mentioned a
13 couple of times?

14 A. Yes.

15 Q. And Chris is the -- Chris Fife is the Plum Creek
16 forester for this area.

17 A. Yes.

18 Q. And in addition to Matt, do you know -- do you
19 recall who else was present at that meeting in St. Johnsbury?

20 A. Ginger Anderson was there. I believe Kathy Decker
21 was there.

22 Q. And -- thank you. And they're employees of the
23 Department of Forestry, Parks and Recreation, correct?

24 A. Correct.

25 Q. Okay. And that document that's been admitted as C

1 is in reference to stands 34 of the Clough Brook North tract,
2 correct?

3 A. I believe so. If I could see it again, I'll --

4 Q. Thank you.

5 MR. DUANE: If I can approach, Your Honor, and had
6 it to the witness.

7 Q. Mr. Doughty.

8 A. Thank you. Yes, that's correct.

9 Q. Thank you.

10 A. Stand 34.

11 Q. And isn't it true that, when Matt Langlais mentioned
12 to you and your colleague at Plum Creek that his analysis of
13 stand 34 came up with a certain residual basal area -- and you
14 know what residual basal area means?

15 A. Yes, I do.

16 Q. I'm sure you do better than I. But just for the
17 record, what is residual basal area?

18 A. It's the basal area of trees that are remaining on
19 the stand after the harvest.

20 Q. And when Matt said to you that the residual basal
21 area for stand 34, as calculated by him, was nineteen square
22 feet, didn't you say, "That's almost exactly what we came up
23 with."

24 A. For the area that was harvested, that's correct.

25 Q. Thank you. And isn't it true, Mr. Doughty, that the

1 Vermont Land Trust, with regard to its conservation easement
2 over the Plum Creek property also had concerns about Plum
3 Creek's compliance with the forest management plan?

4 A. Correct.

5 Q. And didn't the Vermont Land Trust request of Plum
6 Creek that Plum Creek go out and employ a third-party forestry
7 company, forest partnership, to go and do a cruise of the
8 property, correct?

9 A. I believe that's correct, yes.

10 Q. And Vermont Land Trust went out and hired a company
11 named Dirigo, is that correct? D-I-R-I-G-O.

12 A. In Maine we call it Dirigo.

13 Q. Thank you.

14 A. Yeah.

15 Q. And they are a Maine company, correct?

16 A. Correct.

17 Q. And Dirigo did an analysis of the property in
18 Lemington and other towns at Vermont Land Trust's request,
19 correct?

20 A. I believe so. Yes.

21 Q. Okay. Thank you very much.

22 MR. DUANE: Your Honor, I have no further questions
23 for Mr. Doughty at this time. Thank you.

24 THE COURT: Mr. Grayck?

25 MR. GRAYCK: Thank you, Your Honor.

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REDIRECT EXAMINATION

BY MR. GRAYCK:

Q. Mark, you've been asked some questions with respect to the forest management plan, but what I would like to ask you is what's a timber harvest prescription?

A. It's basically a plan of how to harvest the timber to accomplish the goals of the harvest.

Q. Okay. So Plum Creek's forest management plan, which is in effect an adoption of the Essex Timber Company's forest management plan, what harvesting, if any, does that forest management plan allow for?

A. None; no harvesting.

Q. No harvesting.

A. Unless an amendment is offered and approved.

Q. And what do we call the amendment? What's the common phrase that you, and me, and the county foresters use to describe that document?

A. It's a harvest prescription.

Q. Okay. So when Mr. Duane was asking you questions about the forest management plan, were you talking about the forest management plan that Plum Creek adopted from Essex Timber Company, or were you talking about the prescription for Clough Brook North?

A. When he asked me about the forest management plan, I was talking about the forest management plan.

1 Q. Okay. And with respect to the harvest activities at
2 Clough Brook North, were you talking about the forest
3 management plan or the prescription?

4 A. That would have been about the prescription.

5 Q. Okay. All right. Now, Mr. Duane asked you
6 questions about the meeting in St. Johnsbury, and he asked you
7 about your concurrence with Mr. Langlais with respect to a
8 residual basal area of nineteen for the area harvested, is
9 that correct?

10 A. Correct.

11 Q. Okay. What significance, if any, does the residual
12 basal area -- why did you emphasize for the area harvested?

13 A. Because that was the area that we cruised at that
14 time.

15 Q. Okay. And the area harvested for stand 34, does
16 that encompass the entire area authorized for stand 34, or was
17 the area harvested something less than what the prescription
18 authorized?

19 A. It was something less. It was just a portion of
20 stand 34.

21 Q. Okay. So the residual basal area of nineteen was
22 for the area harvested, correct?

23 A. That's correct.

24 Q. Okay. Is there a different residual basal area for
25 the area of stand 34 which was not harvested?

1 A. Yes.

2 Q. Okay. Now, do you have any recollection of what the
3 residual basal area for the area not harvested on stand 34 is?
4 Or if you could look at the Landvest cruise results.

5 A. I'd have to look at the cruise results.

6 Q. Okay. Do you have them still in front of you?

7 A. No.

8 MR. GRAYCK: Where did that go?

9 MR. DUANE: It's been admitted as an exhibit, so the
10 Judge has it.

11 MR. GRAYCK: Your Honor, may I give my witness my
12 copy?

13 THE COURT: Yes.

14 BY MR. GRAYCK:

15 Q. I know this is a bit on the spot, but are you able
16 to discern the area harvested from the area not harvested from
17 the respective residual basal areas?

18 A. Boy, I'd have to study it for a little while and --

19 Q. Can you just -- we'll deal with it later. But can
20 you just show the Court the area that -- of stand 34 that was
21 not harvested?

22 A. Based on the basal areas listed on the plots, it
23 would be this area over here.

24 Q. Okay. If you -- is it possible, if at all, to
25 calculate a residual basal area across an entire span?

1 A. Yes.

2 Q. Okay. If the residual basal area of the area of
3 stand 34 which was harvested was nineteen, and you assume that
4 the residual -- that the basal area of the area on stand 34
5 which was not harvested is higher than nineteen, is the
6 residual basal area across stand 34 going to be greater or
7 lesser than nineteen?

8 A. Greater.

9 Q. And why will it be greater?

10 A. Because the average residual basal area across the
11 stand includes both the harvested and the unharvested area in
12 stand 34.

13 Q. Okay.

14 A. And those averaged together give you a higher
15 number.

16 Q. And why, if at all, is it important to measure
17 across the stand?

18 A. Because that's the average residual basal area. And
19 that's the unit of measure in Vermont, is the stand. That's
20 what the prescription is written for.

21 Q. Thank you. Now, Mr. Duane asked you some questions
22 about Plum Creek's business and its profitability. I want to
23 ask you, first off, generally speaking, what effect, if any,
24 does increased property taxes have on the value of timberland?

25 A. Tends to depress the value of timberlands.

1 Q. And why is that the case?

2 A. Because it's a higher carrying cost for that land; a
3 higher outlay.

4 Q. And what does -- what, in terms of financial
5 objective does the harvesting of timber result in?

6 A. Revenue and income.

7 Q. Revenue income.

8 A. Yes.

9 Q. And what are the property taxes paid out of?

10 A. Revenue and income.

11 Q. So if the property taxes go up, what happens to the
12 revenue and income?

13 A. It goes down.

14 Q. What action, if any, does Plum Creek take when a
15 unit, or an area of property ceases to be profitable? What's
16 one of the actions Plum Creek could take?

17 A. We could sell it.

18 Q. And why would you sell it?

19 A. If it's not profitable, then it doesn't make sense
20 to keep it for the business.

21 Q. And why doesn't it make sense?

22 A. Because it's not making money.

23 Q. And to whom does Plum Creek owe an obligation to
24 with respect to making money?

25 A. Our shareholders.

1 Q. Now, Mr. Duane asked you questions, and the Court
2 admitted the testimony to show your knowledge and experience
3 regarding legislative matters. And Mr. Duane asked you
4 questions. And I want to ask you, what was the senate
5 agriculture's reaction to your testimony?

6 A. They thought that --

7 MR. DUANE: Objection, Your Honor; hearsay.

8 THE COURT: You may not testify as to anything any
9 particular person said, but you may give your understanding of
10 your general impression of what the reaction was.

11 MR. GRAYCK: Yes.

12 BY MR. GRAYCK:

13 Q. Go ahead.

14 A. My general impression was that most people that
15 heard that 56,604 acres were being disqualified for an alleged
16 140-acre cut contrary said that was a disproportionate
17 penalty.

18 Q. And what was your understanding as to why the
19 legislative committee didn't do anything in terms of passing a
20 bill or amending the law?

21 MR. DUANE: Objection, Your Honor; calls for
22 speculation on the part of the witness with regard to what the
23 legislature committee did or didn't do.

24 THE COURT: He may testify as to his own impression.

25 MR. DUANE: Thank you.

1 A. The senate agriculture committee was interested in
2 seeing the bill passed. It was the full legislature that did
3 not pass the bill.

4 Q. Okay. And what concern, if any, did the legislative
5 committee have with respect to legislation and the timing of
6 it?

7 A. The committee was interested in a retroactive
8 provision, which would mean that this case would be included
9 in whatever law was passed.

10 Q. Um-hum.

11 A. And the general legislature, it was my impression,
12 did not like ruling on a case currently before the Courts,
13 currently that had not been decided.

14 MR. GRAYCK: Thank you, Your Honor.

15 MR. DUANE: No further questions?

16 THE COURT: Does that complete your --

17 MR. GRAYCK: No further questions.

18 THE COURT: -- redirect?

19 MR. GRAYCK: I'm sorry.

20 THE COURT: All right. That completes your
21 testimony. You may step down. Thank you.

22 MR. DUANE: Your Honor, may I redirect?

23 THE COURT: On what new material?

24 MR. DUANE: On the property tax, and selling it, and
25 the legislature's reaction.

1 THE COURT: That's not new material.

2 MR. DUANE: If I may, Your Honor, I think --

3 THE COURT: You brought it up yourself on cross-
4 examination.

5 MR. DUANE: Well, with regard to the effect of
6 property taxes and Plum Creek then having the option of
7 selling the land, that was nothing I brought up.

8 THE COURT: You may ask about that.

9 MR. DUANE: Thank you, Your Honor. Thank you very
10 much.

11 REXCROSS-EXAMINATION

12 BY MR. DUANE:

13 Q. Mr. Doughty, if Plum Creek wanted to sell the land,
14 that conservation easement that Vermont Land Trust has on the
15 land runs with the land, correct?

16 A. It runs with the land.

17 Q. And the easement that the State of Vermont and the
18 Vermont Housing and Conservation Board have on the land would
19 run with the land, correct?

20 A. Yes; correct.

21 Q. And so Plum Creek cannot chop up their holdings in
22 Vermont and sell them as individual lots, or camps, or
23 resorts, or personal property, correct?

24 A. That's correct.

25 Q. And it has to stay as a working forest land,

1 correct?

2 A. That's correct.

3 Q. That's the whole point, isn't it?

4 A. That's correct.

5 Q. Okay. Thank you.

6 And when -- I'm going to assume that you are as
7 sophisticated as you appear, and land is taxed on its fair
8 market value, correct? Generally speaking.

9 A. Land can be taxed on its fair market value, unless
10 you're in the current use program and then it's taxed at the
11 use value appraisal.

12 Q. Thank you.

13 A. Yes.

14 Q. There's fair market value, correct? Generally,
15 there's fair market value as a value of property for tax
16 purposes, correct?

17 A. Correct.

18 Q. And then if there's an easement on the land, like
19 the Vermont Land Trust has, that lowers the value of the
20 property because the development rights have been sold off,
21 correct?

22 A. It should.

23 Q. It should. And then the current use program lowers
24 the value for tax purposes even further, correct?

25 A. Yes. Depending on the level of reduction for a

1 conservation easement, yes.

2 Q. So anyone who is going to buy the Plum Creek land
3 would have to buy it with those considerations and those legal
4 restrictions in mind, correct?

5 A. Certainly.

6 Q. Thank you.

7 MR. DUANE: Nothing further, Your Honor.

8 THE COURT: Mr. Grayck?

9 MR. GRAYCK: Nothing further, Your Honor.

10 THE COURT: All right. That completes your
11 testimony. You may step down, thank you.

12 THE WITNESS: Thanks.

13 MR. GRAYCK: Your Honor, I just need a few minutes
14 to put some items back together and get the next set of
15 documents ready for my next witness. Could --

16 THE COURT: All right. We'll take a very short
17 break.

18 MR. GRAYCK: Yeah, just a few minutes. Thank you,
19 Your Honor.

20 COURT OFFICER: All rise.

21 (Recess at 11:18 a.m., until 11:27 a.m.)

22 THE COURT: Please be seated.

23 Mr. Grayck?

24 MR. GRAYCK: Plum Creek calls Christopher Fife to
25 the witness stand, Your Honor.

1 COURT OFFICER: Please raise your right hand.

2 CHRISTOPHER FIFE

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. GRAYCK:

6 Q. Will you state your name, please?

7 A. Christopher Fife.

8 Q. And for whom are you -- by whom are you employed?

9 A. Plum Creek.

10 Q. And where is your office?

11 A. Colebrook, New Hampshire.

12 Q. And what is it you do for Plum Creek?

13 A. I'm a unit supervisor, resource supervisor. I
14 supervise three other foresters. I'm in the management of our
15 Vermont and New Hampshire lands.

16 Q. And what is your title?

17 A. Resource supervisor.

18 Q. Resource supervisor. Senior resource supervisor?

19 A. No.

20 Q. Resource supervisor.

21 A. Yes.

22 Q. Okay. And prior to your current position, by whom
23 are you employed?

24 A. Plum Creek.

25 Q. Yup. And what was your job duty?

1 A. I was a senior resource forester.

2 Q. And where were you doing that?

3 A. In Maine.

4 Q. In Maine. And before that, who did you work for?

5 A. Also for Plum Creek.

6 Q. And where were you?

7 A. I was in Virginia.

8 Q. And what were you doing in Virginia?

9 A. Managing timberland.

10 Q. Okay. And before that where were you?

11 A. I was in Georgia.

12 Q. And who were you working for?

13 A. Plum Creek and the timber company who was -- the
14 timberlands arm of Georgia Pacific.

15 Q. Okay. And before that who were you working for?

16 A. I worked for the timber company in Maine.

17 Q. And was that the James W. Soule Company?

18 A. No. No. That was after Soule Company.

19 Q. Oh, okay. And what did you do for the Soule
20 Company?

21 A. The Soule Company, I cruised timber.

22 Q. Okay. And what's your education?

23 A. I have a Bachelors of Science in forest management
24 from the University of Maine.

25 Q. And what professional licenses and certifications do

1 you hold, if any?

2 A. I'm a licensed professional forester in the State of
3 Maine, and a member of the Society of American Foresters.

4 Q. Okay. Chris, where were you yesterday?

5 A. I was in the woods in Lemington.

6 Q. I'm showing you what's been marked as Exhibit 52.
7 What's that show?

8 A. This is a picture of the landing where we parked the
9 vehicles yesterday.

10 (Photograph was hereby marked for identification as Plum
11 Creek's Exhibit 52, as of this date.)

12 Q. How, if at all, is it an accurate and true
13 representation of what you saw yesterday?

14 A. It's a picture of where we were and what we saw.
15 It's on the landing and shows the surrounding area.

16 Q. All right. So keep 52 right there -- what's been
17 marked as 52.

18 Showing you what's been marked as Exhibit 53. What
19 does that show?

20 A. It also appears to be from the site visit yesterday.
21 It looks like the first area that we walked into the woods.

22 (Photograph was hereby marked for identification as Plum
23 Creek's Exhibit 53, as of this date.)

24 Q. Okay. And how, if at all, is it an accurate
25 representation of what you observed yesterday?

1 A. This is -- it's a picture of where we were when we
2 walked into the woods.

3 Q. I show you what's been admitted -- marked -- marked
4 as Exhibit 54. What does that show?

5 A. This shows the group yesterday in the wood.

6 (Photograph was hereby marked for identification as Plum
7 Creek's Exhibit 54, as of this date.)

8 Q. And how accurate, if at all, is it a depiction of
9 what you saw?

10 A. It's very accurate.

11 Q. Okay. I'm going to show you what's been marked as
12 Exhibit 55. What does that show?

13 A. This is the same picture, same -- it's the same as
14 54.

15 Q. Okay. And what location is it at?

16 A. This appears to be in stand 43. We were walking up
17 one of the skid trails.

18 Q. Okay.

19 (Photograph was hereby marked for identification as Plum
20 Creek's Exhibit 55, as of this date.)

21 MR. CHENEY: Can you speak up a little? I can't
22 hear you.

23 THE WITNESS: Oh, yes.

24 BY MR. GRAYCK:

25 Q. And how accurate, if at all, is it a depiction of

1 what we saw yesterday?

2 A. It's where we were yesterday.

3 Q. Okay. I'm going to show you what's been marked as
4 56. What does that show?

5 A. Appears to show stand 43 where we were yesterday.
6 (Photograph was hereby marked for identification as Plum
7 Creek's Exhibit 56, as of this date.)

8 Q. And how accurate a depiction is it with respect to
9 what we saw yesterday?

10 A. It looks to be showing what we looked at.

11 Q. Showing you what's been marked as 57. What's that
12 show?

13 A. This is also from yesterday's site visit.

14 (Photograph was hereby marked for identification as Plum
15 Creek's Exhibit 57, as of this date.)

16 Q. About what location do you think?

17 A. Again, it looks like stand 43 when the group was
18 walking up into the cut contrary area.

19 Q. Okay. Showing you what's marked as Exhibit 58.
20 What does that show?

21 A. This shows that same area that we visited in stand
22 43, in the alleged cut contrary.

23 (Photograph was hereby marked for identification as Plum
24 Creek's Exhibit 58, as of this date.)

25 Q. Showing you what's been marked as 59.

1 I'm sorry, did I ask you whether 58 is a true and
2 accurate representation of what we saw?

3 A. You did.

4 Q. And your answer?

5 A. It is.

6 Q. Thank you. I apologize.

7 I'm showing you Exhibit 59. What's that?

8 A. This also appears to be a picture from the site
9 visit yesterday.

10 (Photograph was hereby marked for identification as Plum
11 Creek's Exhibit 59, as of this date.)

12 Q. And can -- what does it show?

13 A. It shows softwood and hardwood trees regeneration.

14 Q. Is it a true and accurate picture of what we saw
15 yesterday?

16 A. Yes, it is.

17 Q. Showing you what's been marked as 60. What does
18 that show?

19 A. This is also a stop on the site visit yesterday with
20 the group.

21 (Photograph was hereby marked for identification as Plum
22 Creek's Exhibit 60, as of this date.)

23 Q. Is it a true and accurate representation of what we
24 saw yesterday?

25 A. Yes, it is.

1 Q. I'm going to show you what's been marked as number
2 61. What does that show?

3 A. This looks like the ruffed grouse nest that we saw.
4 (Photograph was hereby marked for identification as Plum
5 Creek's Exhibit 61, as of this date.)

6 Q. What, if any regeneration is in this picture?

7 A. There's maple, spruce.

8 Q. Is it a true and accurate representation of what we
9 saw yesterday?

10 A. Yes, it is.

11 THE COURT: Did you say ruffed grouse?

12 THE WITNESS: Yes, ruffed grouse.

13 Q. Let me show you what's marked as Exhibit 62. What
14 does that show?

15 A. It shows regeneration.

16 (Photograph was hereby marked for identification as Plum
17 Creek's Exhibit 62, as of this date.)

18 Q. Is it a true and accurate -- or how, if at all, is
19 it a true and accurate picture or representation of what we
20 saw yesterday?

21 A. It appears to be a picture of a site we stopped at.

22 Q. Showing you what's been marked as Exhibit 63. What
23 does it show?

24 A. It's another picture from the site visit yesterday.
25 It shows trees and the group walking through the -- through

1 the woods.

2 (Photograph was hereby marked for identification as Plum
3 Creek's Exhibit 63, as of this date.)

4 Q. Is it a true and accurate representation of what we
5 saw yesterday?

6 A. Yes, it is.

7 Q. Let me show you what's been marked as Exhibit 64.
8 What does that show?

9 A. It's a picture of the harvest area, Clough Brook,
10 from yesterday.

11 (Photograph was hereby marked for identification as Plum
12 Creek's Exhibit 64, as of this date.)

13 THE COURT: What did you say after harvest area?

14 THE WITNESS: On Clough Brook, where we were
15 yesterday, Your Honor.

16 Q. Is it a true and accurate representation of what you
17 saw yesterday?

18 A. Yes, it is.

19 Q. I show you what's been marked as Exhibit 65. What
20 does that show?

21 A. Appears to be the edge of a long landing.

22 (Photograph was hereby marked for identification as Plum
23 Creek's Exhibit 65, as of this date.)

24 Q. Is it a true and accurate representation of what you
25 saw yesterday?

1 A. Yes, it is.

2 Q. Showing you what's been marked as Exhibit 66. What
3 does that show?

4 A. It shows the group on yesterday's site visit.

5 (Photograph was hereby marked for identification as Plum
6 Creek's Exhibit 66, as of this date.)

7 Q. Is it a true and accurate representation of what you
8 saw yesterday?

9 A. Yes, it is.

10 Q. I show you what's been marked as Exhibit 67. What's
11 that show?

12 A. It's showing a view from yesterday's site visit.

13 (Photograph was hereby marked for identification as Plum
14 Creek's Exhibit 67, as of this date.)

15 Q. How accurate is it a representation of what we saw
16 yesterday?

17 A. It's very accurate.

18 Q. Showing you what's been marked as Exhibit 68. What
19 does that show?

20 A. This is also a picture from yesterday's site visit.

21 (Photograph was hereby marked for identification as Plum
22 Creek's Exhibit 68, as of this date.)

23 Q. Is it a true and accurate representation of what you
24 saw yesterday?

25 A. Yes, it is.

1 Q. Showing you what's been marked as Exhibit 69. What
2 does this show?

3 A. This is a picture from yesterday's site visit.

4 (Photograph was hereby marked for identification as Plum
5 Creek's Exhibit 69, as of this date.)

6 Q. What's the approximate location of this -- what's
7 depicted in this picture?

8 A. This would be on the boundary of stand 43 and 54 up
9 at the top of the hill.

10 Q. Okay. And so in terms of yesterday's site visit,
11 about how far along were we when this picture was taken?

12 A. Approximately a third of the way.

13 Q. Thank you. Is it a true and accurate representation
14 of what we saw yesterday?

15 A. Yes, it is.

16 Q. Showing you what's been marked as number 70. What
17 does that show?

18 A. This is also a picture from yesterday's site visit.

19 (Photograph was hereby marked for identification as Plum
20 Creek's Exhibit 70, as of this date.)

21 Q. Can you tell the approximate location?

22 A. It appears to be on the border of stand 43 and 44 as
23 we began to head back down the hill.

24 Q. Okay. Is it a true and accurate representation of
25 what we saw yesterday?

1 A. Yes, it is.

2 Q. Showing you what's been marked as Exhibit 71. What
3 does that show?

4 A. It shows a view of stand 34 looking up the hill.

5 (Photograph was hereby marked for identification as Plum
6 Creek's Exhibit 74, as of this date.)

7 Q. And is it a true and accurate representation of what
8 we saw yesterday?

9 A. Yes, it is.

10 MR. GRAYCK: Pardon me, Your Honor, for just sitting
11 down for a moment.

12 THE COURT: All right.

13 Q. Showing you what's been marked as Exhibit 72. What
14 does that show?

15 A. You're pointing to regeneration -- maple
16 regeneration.

17 (Photograph was hereby marked for identification as Plum
18 Creek's Exhibit 72, as of this date.)

19 Q. Is that what -- is it -- can you identify the
20 regeneration?

21 A. Yes. It's maple regeneration.

22 Q. Thank you. And the number of that exhibit is?

23 A. 72.

24 Q. Showing you what's been marked as Exhibit 73. What
25 does that show?

1 A. This is another picture of the site visit yesterday.

2 (Photograph was hereby marked for identification as Plum
3 Creek's Exhibit 73, as of this date.)

4 Q. Is it a true and accurate representation of what we
5 saw?

6 A. Yes, it is.

7 Q. Were you able to tell the approximate location of
8 where this picture was taken?

9 A. This appears to be on top of the hill once the State
10 was leading the group, where we stopped and looked at an
11 alleged AMP violation.

12 Q. Thank you. Showing you what's been marked as 74.
13 What does that show?

14 A. This is another picture from yesterday's site visit
15 of you pointing to regeneration.

16 (Photograph was hereby marked for identification as Plum
17 Creek's Exhibit 74, as of this date.)

18 Q. And can you make out what the regeneration is?

19 A. Yellow birch.

20 Q. Is it a true and accurate representation of what we
21 saw yesterday?

22 A. Yes.

23 Q. Showing you what's been marked as Plum Creek Exhibit
24 75. What does that show?

25 A. This is a view from yesterday's site visit of the

1 group on top of the hill, again, at the alleged AMP violation
2 site when the State was leading us through.

3 (Photograph was hereby marked for identification as Plum
4 Creek's Exhibit 75, as of this date.)

5 Q. Showing you what's been marked as Exhibit 76. What
6 does this show?

7 A. This is from yesterday's site visit on the way up
8 the hill, on the way to the previous picture, showing a tree
9 with SB printed on it in blue paint.

10 Q. I'm sorry; I didn't hear what you said. Showing
11 what?

12 A. SB painted on a tree in blue paint.

13 (Photograph was hereby marked for identification as Plum
14 Creek's Exhibit 76, as of this date.)

15 Q. And what does the SP --

16 A. B.

17 Q. B.

18 A. SB.

19 Q. What is that?

20 A. Stream boundary.

21 Q. Okay. Is it a true and accurate representation of
22 what you saw yesterday?

23 A. Yes, it is.

24 Q. Showing you what's been marked as Exhibit 77. What
25 does that show?

1 A. It's a closer picture of that same tree with the SB
2 on it.

3 (Photograph was hereby marked for identification as Plum
4 Creek's Exhibit 77, as of this date.)

5 Q. And are you able to tell us, by looking at this
6 picture, approximately where we were in the site visit?

7 A. This was just before we got to the top of the hill
8 where Exhibit 75 showed the alleged AMP violation.

9 Q. And is this picture -- was it taken -- do you recall
10 if at all having lunch -- a lunch break?

11 A. This was after the lunch break.

12 Q. Thank you. Showing you what's been marked as
13 Exhibit 78. What's that a picture of?

14 A. It's a picture of a stump that we looked at on the
15 site visit yesterday in close proximity to the tree that was
16 marked with the SB.

17 (Photograph was hereby marked for identification as Plum
18 Creek's Exhibit 78, as of this date.)

19 Q. And is it a true and accurate depiction of what you
20 saw yesterday?

21 A. Yes, it is.

22 Q. Okay. And using your experience and training as a
23 professional forester, are you able to identify whether, if at
24 all, this stump is from the Clough Brook North harvest, or
25 some other harvest?

1 A. This would have been from a previous harvest.

2 Q. Okay. Are you able to gauge some amount of time
3 from what you saw yesterday in this picture?

4 A. The stump was beginning to decay and covered in moss
5 and some lichen, so -- but I wouldn't be able to say how long
6 before.

7 Q. Okay.

8 A. Maybe fifteen, twenty years. Something like that.

9 Q. And do you know who was the owner of the property
10 approximately fifteen to twenty years ago?

11 A. It would have been Champion.

12 THE COURT: It is time for us to break for lunch.
13 We will resume at 1 o'clock.

14 MR. GRAYCK: Thank you, Your Honor.

15 COURT OFFICER: Please rise.

16 (Recess at 11:58 a.m., until 12:59 p.m.)

17 THE COURT: Please be seated.

18 Mr. Grayck.

19 MR. GRAYCK: Thank you, Your Honor. Your Honor, it
20 was pointed out to us over the lunch break that Exhibit 54 and
21 55 are identical. So we will withdraw 54, if that's
22 acceptable to the Court.

23 MR. DUANE: No objection, Your Honor, thank you.

24 THE COURT: All right. So 54 is -- it hasn't been
25 admitted yet anyway.

1 MR. GRAYCK: Right. We're just --

2 THE COURT: But I understand you're withdrawing.

3 MR. GRAYCK: But I'm not changing the numbering
4 sequence.

5 THE COURT: Right.

6 MR. GRAYCK: Okay.

7 THE COURT: Thank you.

8 MR. GRAYCK: And Your Honor, my records indicate
9 that I left off with 78.

10 THE COURT: 78 was the last one.

11 MR. GRAYCK: That's been marked and handed to --
12 okay.

13 BY MR. GRAYCK:

14 Q. Chris, I'm handing you what's been marked as Exhibit
15 79. What's that a picture of?

16 A. This is showing a harvested portion of the area that
17 we walked at the harvest boundary -- the boundary of the
18 approved harvest area.

19 (Photograph was hereby marked for identification as Plum
20 Creek's Exhibit 79, as of this date.)

21 Q. And is it a true and accurate depiction of what you
22 observed yesterday?

23 A. Yes, it is.

24 Q. And now I'm providing you with what's going to be
25 marked as Exhibit 80. And what's that a photo of?

1 A. This is a picture of the -- another alleged AMP
2 violation location on the site visit yesterday.

3 (Photograph was hereby marked for identification as Plum
4 Creek's Exhibit 80, as of this date.)

5 Q. And is it a true and accurate depiction of what you
6 observed yesterday?

7 A. Yes, it is.

8 Q. And then I'm showing you what's been marked as
9 Exhibit 81. And what's that a picture of?

10 A. This is a picture of the stream crossing just
11 below -- just downhill from the last picture that we looked at
12 together yesterday where Plum Creek believed the alleged AMP
13 violation site was.

14 (Photograph was hereby marked for identification as Plum
15 Creek's Exhibit 81, as of this date.)

16 Q. Okay. Is it a true and accurate photo of what you
17 saw and observed yesterday?

18 A. Yes, it is.

19 Q. Okay. Now I'm showing you what's been marked as
20 Exhibit 82. And what's that a photo of?

21 A. This is a photo of an area just after the last
22 picture where we crossed from stand 43 into stand 34, the
23 group talking about the site at that location.

24 (Photograph was hereby marked for identification as Plum
25 Creek's Exhibit 82, as of this date.)

1 Q. And is it a true and accurate depiction of what you
2 observed yesterday?

3 A. Yes, it is.

4 Q. Handing you what's been marked as Exhibit 83. And
5 what's that a picture of?

6 A. This is a picture looking uphill in stand 34 up to
7 the boundary of the approved harvest area, up to the 2,500-
8 foot line.

9 (Photograph was hereby marked for identification as Plum
10 Creek's Exhibit 83, as of this date.)

11 Q. And I'm handing you a picture of what's been marked
12 as Exhibit 84. And what's that a picture of?

13 A. This is a picture of a stop yesterday on the site
14 visit in stand 34.

15 (Photograph was hereby marked for identification as Plum
16 Creek's Exhibit 84, as of this date.)

17 Q. Is it a true and accurate depiction of what you
18 observed yesterday?

19 A. Yes, it is.

20 Q. I'm handing you what's been marked as Exhibit 85,
21 and what's that a picture of?

22 A. This is also a picture from stand 34 from our site
23 visit yesterday, looking at an individual stem of a tree.

24 (Photograph was hereby marked for identification as Plum
25 Creek's Exhibit 85, as of this date.)

1 Q. And is it a true and accurate depiction of what you
2 observed yesterday?

3 A. Yes, it is.

4 Q. Showing you what's been marked as Exhibit 86.
5 What's that a picture of?

6 A. This is a picture of the group on the site visit
7 yesterday in the log landing second from the end on the
8 road -- the winter road.

9 (Photograph was hereby marked for identification as Plum
10 Creek's Exhibit 86, as of this date.)

11 Q. And is it a true and accurate depiction of what you
12 observed yesterday?

13 A. Yes, it is.

14 Q. And I'm showing you a picture of Exhibit 87. And
15 what's that a picture of?

16 A. This is a picture of the group in the same landing
17 showing the area of an alleged AMP violation and part of an
18 old culvert laying in the grass.

19 (Photograph was hereby marked for identification as Plum
20 Creek's Exhibit 87, as of this date.)

21 Q. And now I'm showing you what's been labeled as
22 Exhibit 88. And what's that a picture of?

23 A. This is a picture of a stream crossing as we left
24 that landing I was just speaking of. And this was also cited
25 as an alleged AMP violation.

1 (Photograph was hereby marked for identification as Plum
2 Creek's Exhibit 88, as of this date.)

3 Q. Is it a true and accurate depiction of what was
4 observed yesterday?

5 A. Yes, it is.

6 Q. Showing you Exhibit 89. And what's that a picture
7 of?

8 A. It's a picture from the site visit yesterday in
9 stand 43.

10 (Photograph was hereby marked for identification as Plum
11 Creek's Exhibit 89, as of this date.)

12 Q. And is it a true and accurate depiction of what was
13 observed yesterday?

14 A. Yes, it is.

15 Q. And I'm showing you what's been marked as Exhibit
16 90. And what's that a photo of?

17 A. This is also a picture from the site visit yesterday
18 looking across from -- looking across at the western portion
19 of stand 34.

20 (Photograph was hereby marked for identification as Plum
21 Creek's Exhibit 90, as of this date.)

22 Q. Is it a true and accurate depiction of what you
23 observed yesterday?

24 A. Yes, it is.

25 Q. And now I'm showing you photo 91 -- Exhibit 91. And

1 what's that a picture of?

2 A. This is another picture from yesterday's site visit
3 and the eastern portion of stand 34 up the hill.

4 (Photograph was hereby marked for identification as Plum
5 Creek's Exhibit 91, as of this date.)

6 Q. And now I'm showing you what's been marked as
7 Exhibit 92. And what's that a photo of?

8 A. This is a photo of a tree with a blue X on it, a
9 marking that related to the timber harvest.

10 (Photograph was hereby marked for identification as Plum
11 Creek's Exhibit 92, as of this date.)

12 Q. And now I'm showing you a photo marked Exhibit 93,
13 and what's that a photo of?

14 A. This is a picture from yesterday's site visit of an
15 old fallen tree starting to decay.

16 (Photograph was hereby marked for identification as
17 Plum Creek's Exhibit 93, as of this date.)

18 Q. All right. Is it a true and accurate depiction of
19 what we observed yesterday -- what you observed yesterday?

20 A. Yes, it is.

21 Q. And now I'm showing you what's marked as Exhibit 94.
22 What's that a photo of?

23 A. This is a photo of stand 34 a little further down
24 the hill from the downed log that was in the previous picture.

25 (Photograph was hereby marked for identification as Plum

1 Creek's Exhibit 94, as of this date.)

2 Q. And now I'm showing you what's been marked as
3 Exhibit 95. And what's that a photo of?

4 A. This is a photo of what we referred to yesterday as
5 stump 9 on the edge of the uncut portion of stand 34.

6 (Photograph was hereby marked for identification as Plum
7 Creek's Exhibit 95, as of this date.)

8 Q. And now I'm showing you Exhibit 96, and what's that
9 a photo of?

10 A. That's a photo looking at the boundary between stand
11 43 and stand 34 as we walked out the winter truck road
12 yesterday.

13 (Photograph was hereby marked for identification as Plum
14 Creek's Exhibit 96, as of this date.)

15 Q. And is that a true and accurate depiction of what
16 you saw yesterday?

17 A. Yes, it is.

18 MR. GRAYCK: Your Honor, Plum Creek would move the
19 introduction of Exhibits 52, 53, and then 55 through 96.

20 MR. DUANE: No objection. Thank you.

21 THE COURT: All of those are admitted.

22 (Photographs were hereby received into evidence as Plum
23 Creek's Exhibits 52, 53, 55 through 96, as of this date.)

24 MR. GRAYCK: All right. All right.

25 BY MR. GRAYCK:

1 Q. Chris, the admitted exhibits, are they --

2 THE COURT: All the photos, I believe, are in --

3 Q. Do you have them in front of you?

4 THE COURT: -- front of Mr. -- we will need to mark
5 them as admitted, but if you want to go ahead and use them,
6 fine, we'll pick them up later.

7 Q. Chris, could you show us Exhibit 53? If you could
8 just point at it? Thank you. All right. What's shown in
9 Exhibit 53 with respect to shade, if any?

10 A. This is a picture from the first stop where we
11 walked into the woods. We walked down the road and into the
12 woods. There's -- you can see the shade in this picture. The
13 understory here is primarily what's called hobblebush. It's
14 not a tree species, it's a bush. It tends to be heavy
15 competition to regeneration of trees.

16 Q. And what stand would that have been in?

17 A. This was on the -- I am not one hundred percent
18 sure.

19 Q. What would it have been --

20 A. I need to look at the map.

21 Q. -- on the edge of, or straddling?

22 A. I think it was on the edge of 44 and 54.

23 Q. Okay. All right. Thank you. If you could hold
24 up --

25 THE COURT: What number was that again?

1 THE WITNESS: That's Exhibit 53.

2 THE COURT: 53, all right.

3 BY MR. GRAYCK:

4 Q. Turning to Exhibit 55. What does this photo show
5 with respect to treatment?

6 A. This was as we walked off of the winter road up --
7 the first sort of area through the woods. We were walking on
8 a skid trail. We saw moose prints nearby here in the mud.
9 This would be an overstory removal treatment. It shows the
10 variability of the height of the trees that are left. We have
11 areas that are open. We have areas that have larger, taller
12 spruce trees. There's some hardwood trees noted in here, as
13 well. There's also some dead trees that were left, which is
14 more for diversity -- or those would be goals more to do with
15 certification under Sustained Forestry Initiative and the
16 conservation easement.

17 Q. Okay. Looking at Exhibit 56, what area of
18 harvest -- of the Clough Brook North harvest is shown in
19 Exhibit 56?

20 A. This is stand 43, and it's looking from about the
21 edge of the alleged cut contrary area back into non-cut
22 contrary area. So this was an area that was not cited as cut
23 contrary. We walked through here, actually, on this skid
24 trail coming out of the picture. It shows the variability,
25 again, of heights of trees, the gaps of the skid trail, and

1 the openings in the background that makes a species primarily
2 softwood, but also some hardwood species.

3 Q. And what portion -- of what's depicted in this
4 photo, what portion, if any, is in what we refer to as the OSR
5 box?

6 A. This entire picture would be looking into what we
7 refer to as the OSR box.

8 Q. Now if you go to picture 57. With respect to
9 variability, what's depicted in picture 57?

10 A. Again, this picture is in stand 43. This is pretty
11 much turning around from where the last picture was taken and
12 looking back the other direction to the north. You see
13 variability, again, of tree heights, of density of trees,
14 openings, but also areas where groups of trees were left, see
15 variable regeneration of softwood and hardwood regeneration.
16 So really it's a variable nature of the harvesting in this
17 area.

18 Q. In fact, as a forestry concept, what is variability?
19 What does variability refer to?

20 A. Well, variability could be variability of species,
21 it could be variability of size, it can be variability of
22 health conditions. So there's a number of things that
23 contribute to what would be called variability. It's kind of
24 what it sounds like.

25 Q. Okay. And with respect to in Exhibit 57, what, if

1 any, slash on the trail is shown?

2 A. Yes. This skid trail that we walked along was
3 covered in tops and limbs, which is referred to as slash.
4 It's the material that's not used. It's left. And in this
5 case, and in many cases, it's used to -- it's put on the
6 trails to keep the trails from getting rutted by the
7 equipment. So it's a way to implement acceptable management
8 practices or best management practices in harvesting so you
9 don't have so much -- you don't have impact on soft ground.

10 Q. Turning to Exhibit 58. What does Exhibit 58 show
11 with respect to overstory?

12 A. Again, this is in stand 43, at that same stop,
13 turning and looking to the west. There's a variability here
14 of, again, species, softwood, and hardwood, both in the
15 overstory, and in the regeneration. A variability of the
16 density of the trees that are left. You have gaps with no
17 overstory trees left, and you have areas with groups of
18 overstory trees left.

19 Q. And what about regeneration. What, if any,
20 regeneration is evident in this picture?

21 A. The entire foreground is very evident that it's
22 regenerated. You can see quite a bit of maple in there, some
23 birch, and other species.

24 Q. Looking at Exhibit 61, I know you touched on this
25 before, but what's this a picture of?

1 A. This is a picture of the ruffed grouse nest that we
2 saw on a stump along our way.

3 Q. Okay. And am I right there's also a little bit of
4 regeneration in this photo?

5 A. There is. There's a spruce seedling here beside
6 the -- to the left side of the picture. And there's maple
7 both in the upper portion of the picture, and in the lower
8 portion of the picture.

9 Q. All right. Could you turn to Exhibit 63? And
10 what's that a photo of?

11 A. This is a photo of walking through the riparian
12 area. Soon after we passed by that, where the nest was, we
13 went and crossed the stream, and that area was the riparian
14 area that's a stream-side zone that's protected. In this
15 case, it was left uncut. That was not always -- you can do
16 some management in those areas, but given the sensitivity, it
17 was left uncut in this instance. And this was right on the
18 southern boundary of the cut contrary -- the alleged cut
19 contrary area. So a portion of this riparian zone was all
20 included in the alleged cut contrary area.

21 Q. Thank you. And I apologize; I'm going to ask you to
22 back up to photo 62. What does photo 62 show?

23 A. Photo 62 is a photo of the regeneration. This was
24 when -- I think we got down close to the ground to look at
25 this, which it was small regeneration, quite a bit of maple,

1 softwood, there's fir in here. It's noticeably older,
2 although it's still small, kind of stunted. And also beech
3 and birch growing in here. So it shows regeneration.

4 Q. Chris, if there were a couple inches of snow on the
5 ground instead of the day we had yesterday, how visible, if at
6 all, would this regeneration be?

7 A. You would still see it with a couple inches.

8 Q. And if it -- and what about more than a couple
9 inches? Let's say six inches.

10 A. It would -- could become difficult to see with six
11 inches of snow.

12 Q. And more than six inches?

13 A. You probably wouldn't see this regeneration, or most
14 of it, if it's more than six inches of snow.

15 Q. And Exhibit 64? I'm sorry, Exhibit 65, I apologize.
16 And what's Exhibit 65 a picture of?

17 A. This was just before we started heading up the hill,
18 we went onto another winter road that headed back to the
19 south, but up the hill. We didn't stay on it very long. We
20 were in a corner here right on the edge of stand 43 and stand
21 44. And this picture is showing that transition between stand
22 43 which had more of a softwood component, to stand 44, which
23 had really almost no softwood component in it. Just
24 illustrative of the fact that stand lines on the ground are as
25 narrow and black-and-white in some cases as they are drawn on

1 a map, for instance. You often have bleed over of a little
2 bit of the softwood coming out of the stand, and a little more
3 hardwood coming in. So it's not always a very defined line on
4 the ground, and that was the case right here. You can see the
5 hardwood and the softwood both in the overstory and in the
6 understory.

7 Q. Looking at Exhibit 66, what's that a photo of?

8 A. Exhibit 66 is a photo of a yellow birch -- well, a
9 number of trees. It's looking at the crowns of the trees, but
10 right in the center of the photo, David is pointing at a
11 yellow birch with a very nice crown to it. It's -- the top of
12 the tree with the leaves and the branches is the crown of the
13 tree. This would be a very healthy-looking crown. Lots of
14 branching and leaves to it. It would be a good seed producer.
15 With the size of it, it would be able to produce seed, and
16 that's, obviously, a way to provide for regeneration of a
17 stand when it's harvested, is for seed to fall and grown into
18 those seedlings. And it also has a nice straight stem to it,
19 so the stem is also a thing that will determine which trees
20 are left, which trees are cut; the form of the stem.

21 Q. And would that be an example of unacceptable or
22 acceptable growing stock?

23 A. From what I can see in the picture, this would be an
24 example of acceptable growing stock.

25 Q. And what would make it -- what attributes, if any,

1 would make it acceptable growing stock?

2 A. Acceptable growing stock is defined as a tree that
3 does now, or can in the future contain a saw log, and this
4 tree, because of the form, the straightness, how long it has
5 that straightness before it gets into the top, the limbs of
6 the tree, and no evident major damage, as well as the species
7 of the tree, all would lead me to believe that it could be --
8 could grow a log, or even may contain, depending on the size
9 of it, a saw log, which would make it acceptable.

10 Q. Now, with respect to seed, approximately how much
11 seed might a tree like this produce or throw off in a season
12 or a year?

13 A. Tens of thousands -- probably hundreds of thousands.
14 I mean, that's a very huge -- big crown, healthy crown on that
15 tree.

16 Q. Okay. So now let's go to 68. And can you tell us
17 what's shown in Exhibit 68?

18 A. Exhibit 68 is looking into the uncut -- the
19 unharvested portion of stand 44. This was left when we ceased
20 harvesting. And what it's illustrating, I think what we were
21 trying to capture is the tops. There's -- here, there's a top
22 that was broken. Part of the top is broken out. Here there's
23 another part of the top that's been broken and is leaning over
24 sideways. This was -- it's probably a result of the ice
25 storm. There was a fair amount of damage up in this area

1 noted from the ice storm because of the elevation and the
2 aspect of this area. So that's illustrating some of the
3 lower-quality crowns that were in that area pre-harvest.

4 Q. And when you say ice storm, to what ice storm are
5 you referring to?

6 A. The 1998 ice storm.

7 Q. So the 1998 ice storm you are able -- or how are
8 you, if at all, able to discern from the trees' present
9 condition, damage related to that ice storm?

10 A. It's -- you couldn't say for sure, but knowing the
11 mapping that was done of where the ice damage was more
12 prevalent, this area was very hard hit by the ice, and that
13 was one of the things that happened, was the tops of trees, as
14 you may know, broke -- broke out. Branches and tops broke out
15 of trees from the heavy loading of ice.

16 Q. Moving to Exhibit 69. What stand is that?

17 A. We were standing on the boundary between stand 54
18 and stand 43; 54 would be to the left, 43 to the right. 54
19 was not in the alleged cut contrary area. 43 is in the
20 alleged cut contrary area. The stand boundary runs kind of up
21 through the left-hand side of this picture. This was near the
22 stream crossing up on top of the hill -- the first stream
23 crossing on top of the hill that we got to.

24 Q. Exhibit 71, what does this photo depict in terms of
25 type of harvest area?

1 A. This is a picture of stand 34. It's a more open
2 area. It would be what you would expect to see in one of the
3 patches that was prescribed for this area where all of the
4 trees are harvested, to provide for an area of -- basically,
5 it's a clear cut -- it's a small clear-cut area. All the
6 trees are harvested and then it regenerated from the seed and
7 shoots that are there.

8 Q. And what, if anything, is shown with respect to
9 initial stand quality?

10 A. Nothing in the picture shows the initial stand
11 quality. But the fact that the patch was implemented here
12 would indicate to me that that was one of the places with the
13 lowest quality -- the poorest initial quality in the stand,
14 probably highest ice damage. Maybe the highest percentage of
15 low-quality trees.

16 Q. Exhibit 72. What's that a picture of?

17 A. This is a picture of regeneration. Again, Dave --
18 Mr. Grayck is pointing to the sugar maple regeneration in this
19 case.

20 Q. And going to Exhibit 74. What's that a picture of?

21 A. This is also a picture of regeneration in the same
22 location. Mr. Grayck is pointing to yellow birch tree
23 generation right here.

24 Q. Then going to picture Exhibit 75. What's in this
25 photo?

1 A. This is the first alleged AMP violation that we
2 looked at, and the State was -- had led us up to the top of
3 the hill. This is an area where a small stream is running
4 through a grassy area. This is an area that we had a little
5 question about on the visit. And when I went back and checked
6 the data that I received from the State and the maps, this
7 location was not identified originally as an AMP violation
8 location in the regional cut contrary that we received.

9 Q. Okay.

10 A. It's also notable that this area would have been
11 covered in snow, probably not even noticeable. Had previous
12 harvesting all around it, and no skidding occurred across this
13 particular channel that we looked at.

14 Q. And so you just referenced snow. When would it have
15 been covered in snow?

16 A. This would have been covered in snow during the site
17 visit that Plum Creek took with the State -- the Land Trust in
18 January.

19 Q. Do you recall the date of that visit?

20 A. It was January 26th.

21 THE COURT: What year?

22 Q. Of what year?

23 A. of 2010.

24 Q. Exhibit 76, can you tell us what that's a photo of?

25 A. This is a photo of a tree with SB marked on it. SB

1 indicates stream buffer. This is one of the ways that the
2 stream buffers are delineated in the field ahead of the
3 harvest. We often use flagging, blue ribbon, but this is
4 another way that was implemented up there, because the stand
5 was being marked with blue paint anyway with the harvesting,
6 and so the paint was also used to mark SB to indicate to the
7 contractor, the logging contractor, that this was the place to
8 stop.

9 Q. Going to Exhibit 78. I believe we touched on it
10 before, but briefly, what's Exhibit 78?

11 A. Yes, we did. This is the stump. This is in that
12 same area of the alleged AMP violation that I just spoke of.
13 This stump is an old stump from a previous harvest. It's
14 already decaying, covered in moss and lichens. So just
15 indicates that past harvest had happened in this area, and
16 some of these openings are actually still the result of that.

17 Q. And moving to Exhibit 80. What's Exhibit 80 a photo
18 of?

19 A. Exhibit 80 is a photo of the second alleged AMP
20 violation site that we walked down into as a group.

21 Q. And what, if any, would have been visible in this
22 area on January 26, 2010?

23 A. Similarly, this area would have been under quite a
24 bit of snow. The tracks from the equipment would have been
25 visible, but the actual water courses, or the -- some of the

1 wet areas in the surrounding area wouldn't necessarily have
2 been visible.

3 Q. Now, what's the basis of your understanding that
4 this is an area of alleged AMP violation?

5 A. Well, the stop yesterday, we believe -- the
6 discussion on January 26th was of the location a little bit
7 further downstream, just down below this, and it was where we
8 thought that the issue had occurred and we had hoped to
9 remediate anything that had been brought to our attention.
10 But yesterday we walked to a site above that, which apparently
11 the State thought was also part of this violation area.

12 Again, the data that we received with the cut
13 contrary, the map, doesn't show this location as a point of an
14 AMP violation. It shows the area further downstream.

15 Q. Okay. And let's go to Exhibit 81. And what's in
16 Exhibit 81?

17 A. Exhibit 81 is the area I was just referring to, just
18 further downstream, where we stood at a stream crossing. The
19 stream crossing has been -- received AMP close-out work, so it
20 has been seeded and mulched. It's re-vegetated. The channel
21 is clear. There's no ongoing erosion or discharges here.

22 Q. And let's go to Exhibit 82. And what's this a photo
23 of?

24 A. 82 is a photo just after that last one. We were
25 walking up from stand 43 back up into stand 34. We were

1 continuing uphill at that point, and the group was talking
2 about the current stand conditions right in that area. It
3 shows the variability, again, of openings, groups of trees
4 that are left, variable density of the trees that are left.

5 Q. And Exhibit 83, what's that a photo of?

6 A. Exhibit 83 is looking uphill from close to the
7 last -- where the last photo was taken. This is looking up
8 towards an uncut area in stand 34. That's the 2,500-foot
9 line, so that is the -- we stopped at the contour 2,500 feet.
10 Above 2,500 feet requires an Act 250 permit to harvest, and we
11 did not go through that process for this harvest. Instead, we
12 cut the harvest off at the 2,500-foot contour line.

13 Q. And what's Exhibit 85 showing?

14 A. Exhibit 85 is showing damage to an individual stem.
15 There were wounds from a previous harvest, and also a wound on
16 the stem from this past harvest. These would be things that
17 would cause a tree to be considered unacceptable growing
18 stock. It demonstrates a couple of things. One, the idea
19 that, if you have a big enough scar on the base of a tree,
20 it's a place that disease can come in, or that just will never
21 allow this to develop into a saw log, because your saw log is
22 in this lower portion of the tree, what we call the bowl of
23 the tree. It also indicates that sometimes we will use what
24 would be considered then unacceptable growing stock. Because
25 it has damage, it can't grow into a saw log, but it still can

1 serve a purpose of other than just being cut. In this case,
2 to protect the regeneration of small trees that are growing
3 behind it. So when the wood is being pulled out, this tree
4 already had a scar on it, it was a good choice to leave to be
5 scarred again, since it was not going to become a valuable saw
6 log tree.

7 Q. So even though a tree might be identified as
8 unacceptable growing stock, it's not, what I like to say, the
9 kiss of death for the tree.

10 A. No. No. There could be a number of reasons why you
11 might keep acceptable growing -- unacceptable growing stock on
12 a site.

13 Q. And if you could look at Exhibit 86? What's that a
14 photo of?

15 A. This is a photograph of the landing. We came off of
16 the hill and stand 34 intersected the road that was running
17 north and south through the harvest block. We walked south
18 down to this landing and we looked at another alleged AMP
19 violation with a stream course that came down behind the
20 landing, along the side of the road, and then crossed the road
21 in a channel on the road and went down behind the landing.

22 Q. And if I could have you turn to Exhibit 87? And
23 what's that a photo of?

24 A. Exhibit 87 is in the same location, but it's looking
25 slightly more to the northeast -- north northeast. It shows

1 the remnants of an old culvert. Again, we were doing the
2 closeout which would be implementing remediation or it's
3 implementing AMPs that prevent erosion when you're not on the
4 site. So that over the years, when you're not up there doing
5 anything, things stay stable and there isn't erosion to the
6 water bodies.

7 We had had some disagreement about where the course
8 of this stream had been in the first place. The AMP violation
9 stated that the stream had been moved. As we did the
10 remediation, we found that, actually, the old stream crossing
11 was in the location that we now have it on the road. The old
12 culvert was evidence of that and was dug out and just the
13 channel left open so the water could flow freely. And we saw
14 that after all the snow was gone. This would have been in the
15 spring of the year, and I believe it was March when we were
16 back looking at this area with no snow on it. So it wasn't
17 evident during the wintertime, but became evident when the
18 snow was gone.

19 Q. In March of which year?

20 A. 2010.

21 Q. Okay. And moving to Exhibit 88, what's that a photo
22 of?

23 A. This is a photo of the stream as we left that
24 location and walked back out of the skid trail, into the
25 woods. It was just before we took a break in a wet area.

1 There was a big piece of -- looked like gears or something off
2 of a piece of machinery. This was just back before that.
3 This was also cited as an AMP violation. There's no
4 discharge. It was a crossing done according to the acceptable
5 management practices for logging. And as you can see, there's
6 no discharge presently.

7 Q. And Exhibit 89, what's that? What do we see in that
8 picture?

9 A. Exhibit 89 is another view of stand 43 further along
10 after we climbed up the hill probably halfway. We -- this is
11 looking at a group of trees that were released. This is
12 softwood trees, but you also see small hardwood in the
13 foreground here. Another example of the diversity of the
14 stand following harvest.

15 Q. And when you see diversity, what do you mean?

16 A. Both the heights of trees, species of trees that are
17 out there growing on the site now.

18 Q. And that's variability, yes?

19 A. Yes.

20 Q. Exhibit 90, please? What's that a photo of?

21 A. Exhibit 90 is standing just beyond that last photo,
22 a little further across the slope looking back across at stand
23 34, the western portion of stand 34. It shows the variability
24 of the stand, and it may be difficult to see without having it
25 close up, but there's more open in the middle here, more of

1 the patches we were talking about, a little more dense as you
2 go what would be to the north and -- or the right-hand side of
3 this photo. It's showing how that harvest was implemented and
4 the variability of the implementation of the different
5 prescriptions.

6 Q. And what we see in Exhibit 90, can you recall
7 whether this was the State's portion of the site visit or was
8 this the State's site location? Or are we on the Plum Creek
9 portion?

10 A. This was the State's.

11 Q. This was the State's, yes?

12 A. This was the State portion.

13 Q. Exhibit 91, what's that a photo of?

14 A. This is after we got to the -- the last time we got
15 to the top of the hill, and this is looking to the eastern
16 part of stand 34. This is showing again just the variability
17 of the density of the trees that are left, the stem form of
18 the trees that are left straight. You have green crowns
19 growing, healthy crowns here. This is an area that had more
20 trees left for the shelterwood in this area.

21 Q. And are you able to discern any of the condition
22 prior to harvest?

23 A. Not by -- not from what I see from the photo. I
24 could only infer what -- that this was probably a better
25 quality area. That this was implemented leaving more trees

1 because there were more quality trees to leave.

2 Q. And Exhibit 92, what's that a photo of?

3 A. Exhibit 92 is a photo of a maple tree with a blue X
4 on it. This harvest was implemented by what we would call
5 marked to leave. The trees that were supposed to be left were
6 marked with a blue X. Trees that had no mark on them were to
7 be harvested. So this is an example of a tree that was marked
8 to leave.

9 Q. And Exhibit 93, what's that a photo of?

10 A. Exhibit 93 is a photo of a downed tree. It's an
11 older tree that had fallen probably before this harvest, but
12 it may have been dead at the time and fallen after the
13 harvest. This is -- we try to protect these. This is more
14 towards the goals of the conservation easement. We call this
15 coarse woody debris. Coarse woody debris is a habitat for a
16 lot of critters and an important part of the functioning
17 ecosystems. So that's one of the goals of the easement,
18 different from the goal of use value. Sort of an additional
19 goal.

20 Q. And Exhibit 94, what's that a photo of?

21 A. Exhibit 94 again is stand 34 as we were heading down
22 the hill before we rejoined the Plum Creek route. This is
23 just an example again of the quality of the stems in that part
24 of the stand; tall, straight. We would call that good form to
25 then have the potential to grow into good saw-log trees and to

1 continue to develop and have health crowns that will expand
2 and help the tree to grow.

3 Q. And Exhibit 95? That's a picture of what?

4 A. Exhibit 95 is the stop second from the end where we
5 were on the edge of the harvested portion of stand 34 looking
6 into the unharvested portion. So this area was planned for
7 harvest. It was part of the approved harvest. We stopped the
8 harvest at that boundary after our site visit on January 26th
9 in response to the concerns. So this area is approved for
10 harvest, it just has not yet been harvested.

11 Q. And Exhibit 96, what's that a picture of?

12 A. Exhibit 96 was walking out the winter truck road --
13 when we came back out onto the road from that last stop, by
14 the other harvested area. We stopped along the way on the way
15 out. This is where the stands 34 and 43, the stand line,
16 again, between the two, to the right. And 34 was alleged cut
17 contrary to the left; and 43 was not alleged cut contrary.
18 And the stand line curved away and back up the hill from this
19 point along the side of the road. So 43 would be over here;
20 34 over here. And the road does curve around behind here.
21 You know, it's open here, but there's a little more of an open
22 impression with the road curving.

23 Q. All right. Chris, I'm going to hand you what's been
24 marked as Exhibit 97. First of all, do you recognize what
25 this document is?

1 A. Yes.

2 Q. Okay. What is this?

3 A. This is a map that I created based on the route that
4 we took yesterday. The green lines on this represent the
5 boundaries of the approved harvest area and the interstand --
6 the stand boundaries within that approved harvest. The black
7 line represents the alleged cut contrary area. The red line
8 shows most of the route we took. Just at the beginning, we
9 didn't capture a small section from where we parked, which
10 would be right here, down and back up to right here near the
11 number 43. Beyond that, this shows the entire route that we
12 walked and each of the stops that we took, where pictures were
13 taken where we discussed anything on the site visit.

14 (Site visit map was hereby marked for identification as
15 Plum Creek's Exhibit 97, as of this date.)

16 Q. And what data did you rely upon to produce this map?

17 A. The GPS data from the GPS unit that we were
18 carrying.

19 Q. And what experience, if any, do you have with
20 respect to GPS units?

21 A. Use them regularly in the course of laying out
22 harvest, doing any number of jobs, forestry jobs, from
23 navigation to layout. The interaction now between computer --
24 what we call geographic information systems, which would be
25 what contains all this information on stand boundaries and all

1 these shapes, and the GPS, is we often will put these
2 boundaries into a GPS and then use that GPS in the field in
3 order to locate where these -- basically, where these are on
4 the map. So we'll use it for things like layout. We'll use
5 the GPS for mapping streams that aren't mapped. This site had
6 one stream mapped on it when we -- when we started doing the
7 layout on his harvest. There are actually numerous small
8 streams, as we saw yesterday. As we do the -- as we flag
9 those or buffer those, we would take that data in the GPS
10 unit, put it back into our geographic information system to
11 update our information. So quite a bit of experience with
12 GPS.

13 MR. GRAYCK: Your Honor, I'd move the introduction
14 of Exhibit 97.

15 MR. DUANE: No objection, Your Honor. Thank you.

16 THE COURT: Plum Creek 97 is admitted.

17 (Site visit map was hereby received into evidence as Plum
18 Creek's Exhibit 97, as of this date.)

19 MR. GRAYCK: Thank you, Your Honor.

20 BY MR. GRAYCK:

21 Q. Chris, what experience, if any, do you have with the
22 administration of the conservation easement which is on Plum
23 Creek's land?

24 A. I've been administering that easement, working with
25 the Vermont Land Trust since I started working in Vermont in

1 2008 -- the end of 2008.

2 Q. And who is the Vermont Land Trust forester that you
3 work with?

4 A. Dan Kilborn is the stewardship forester for the
5 Vermont Land Trust.

6 Q. And what participation, if any, does Mr. Kilborn
7 have in the review and approval of the timber harvests that
8 Plum Creek conducts?

9 A. This was mentioned earlier. The management plan --
10 the forest management plan for Plum Creek is a conceptual
11 plan. The Vermont Land Trust views that plan the same way;
12 the conservation easement refers to our management plan. So
13 any harvest, individual harvests that are planned, have to be
14 approved by Dan Kilborn on a harvest-by-harvest basis. It
15 works hand-in-hand with the use value process.

16 Q. Now, what's -- what do you mean by conceptual plan?
17 What are you referring to?

18 A. I'm referring to the forest management plan. The
19 document that was introduced earlier that -- and I call it
20 conceptual because it doesn't -- it gives a concept, in
21 general, of the management that will be implemented. But for
22 an individual group of stands, it might give three or four
23 options of what could be done. And the approval of that plan
24 doesn't approve any activity, any harvesting activity. So
25 it's conceptual in the sense that it's saying this is how we

1 plan to do our management. But then the actual management has
2 to be done on a stand-by-stand basis providing more data for
3 each of those stands, as well as the prescription.

4 Q. And what's the relationship, if any, between an
5 individual harvest prescription and the concept plan?

6 A. The individual harvest prescriptions are considered
7 amendments to the management plan. So it's an amendment to
8 allow harvesting activity. So in the case of Clough Brook
9 North, that area was submitted for approval to harvest, and
10 the approval was given to harvest those 470 acres per the
11 amendment that had been submitted. Other than that, there's
12 no activity -- no harvesting activity approved under the ten-
13 year management plan.

14 Q. And when you say the ten-year management plan, is it
15 what's been admitted as Exhibit 14, the forest management plan
16 of Essex Timber Company, and Exhibit 15, the use value
17 appraisal forest management plan signature page for the lands
18 of Plum Creek?

19 A. I would need to see that.

20 Q. Here, I'll show it to you; no problem. So this is
21 Exhibit 14, and this would be Exhibit 15. So what is Exhibit
22 14 and 15?

23 A. Yes. That -- Exhibit 14 is the management plan that
24 I'm referring to; the ten-year management plan. And then 15
25 is Plum Creek's acceptance of or adoption of that approved

1 management plan for the balance of the life of the plan, the
2 ten years.

3 Q. So while Exhibit 14 says Essex Timber on it, whose
4 plan is it today?

5 A. It's Plum Creek's plan.

6 Q. And as of what date has it been Plum Creek's plan?

7 A. As of the 11th -- I'm sorry, the 7th of November
8 2008.

9 Q. Thank you. And the date you chose -- why did you
10 choose that day in particular?

11 A. That's -- there's two signatures. Tim Durrell, who
12 is the senior resource manager for Plum Creek, and then Matt
13 Langlais, who is the Essex-Caledonia County forester, and Matt
14 signed it on November 7th, so until Matt signed it, it
15 wouldn't have been approved as adopted.

16 Q. Okay. I'd like you to keep that. Can you turn to
17 the first page of Exhibit 14, which is right there? First
18 page of 14. Yup. Do the initials FSC appear in the title
19 page to the Essex Timber Company plan, which is now the Plum
20 Creek plan?

21 A. Yes, they do.

22 Q. Okay. To what does the FSC -- could you read the
23 whole title to the plan?

24 A. Forest management plan, Essex Timber Company, LLC,
25 Essex, Orleans, and Caledonia Counties, Vermont, Vermont FPR

1 Department, BLT and FSC version.

2 Q. Okay. And does it indicate on that first page who
3 prepared that plan? The bottom.

4 A. Landvest, Inc., Timberland Division, and Richard G.
5 Carbonetti, VP of Timberland, Project Manager.

6 Q. Okay. To what does FSC refer to?

7 A. FSC is forest stewardship certification.

8 Q. And what is forest stewardship certification?

9 A. I'm sorry; I believe it's actually Forest
10 Stewardship Council.

11 Q. Forest -- okay.

12 A. And it's a certification -- it's a third-party
13 sustainability certification or forest certification just so
14 that consumers and other outside parties can be assured that
15 the timberlands are being managed in a sustainable way with
16 regard for all different attributes of the ecological
17 functions that they provide.

18 Q. What third-party certification, if any, does Plum
19 Creek have in relation to its forestry practices?

20 A. Plum Creek is a sustainable forestry initiative, or
21 SFI certified. A similar program; it's a third-party
22 verification system for sustainability and also looks at
23 things like community involvement, buy diversity, wildlife, a
24 number of things like that.

25 Q. I'm showing you what's been marked as Exhibit 17.

1 Could you just tell me what Exhibit 17 is?

2 A. This appears to be kind of a definition and an
3 introduction to the Sustained Forestry Initiative standard
4 from the SFI Web site.

5 (SFI standard was hereby marked for identification as Plum
6 Creek's Exhibit 17, as of this date.)

7 Q. And is that -- is that the certification that Plum
8 Creek has? SFI?

9 A. Yes, it is.

10 MR. GRAYCK: I move the introduction of Exhibit 17,
11 Your Honor.

12 MR. DUANE: No objection, Your Honor.

13 THE COURT: Plum Creek 17 is admitted.

14 (SFI standard was hereby received into evidence as Plum
15 Creek's Exhibit 17, as of this date.)

16 BY MR. GRAYCK:

17 Q. Chris, what environmental stewardship projects, if
18 any, does Plum Creek have here in Vermont?

19 A. Well, we've been involved in Spruce Grouse
20 relocation project, which was capturing spruce grouse in
21 Maine, working with the Department of Fisheries and Wildlife
22 to bring those over and relocate them. They were able to
23 relocate those in Vermont.

24 We were -- we were involved in working with the
25 State and Trout Unlimited on some stream habitat enhancement,

1 where we're allowing them to add coarse woody debris to
2 streams to improve fish habitat.

3 We're also looking at improving crossings for fish
4 passage so that fish can get up and down the streams and try
5 to again improve the fisheries.

6 We have an eagle nest reporting program where we
7 reward people for reporting eagle nests that helps the State
8 document those, but also helps us to, if they're on Plum Creek
9 property to tailor our management and to recognize those
10 appropriately. Those are a few of them that come to mind.

11 Q. What stewardship projects, if any, are located on
12 the 56,604 acres proposed to be -- or disqualified by PVR?

13 A. The fish -- the trout enhancement, stream
14 enhancement project, some of the crossing projects. There's
15 projects we worked cooperatively to try to monitor moose and
16 moose grouse, and to work with hunters to have access to our
17 property and try to help them to -- when they have a
18 successful moose hunt, get their moose out of the woods. That
19 would occur on those acreages.

20 We work with some trout stocking with the -- I
21 believe it's called the Vermont Fish and Wildlife. It's a
22 separate group. It's not like a -- not a government group.
23 But they stock with the State's approval small beaver ponds
24 and things. That occurs on those acreages. Those are a few
25 of them.

1 Q. And what's an FSI (sic) audit?

2 A. Will you say that again?

3 Q. What is an SFI audit?

4 A. An SFI audit would be -- it's a third-party audit,
5 so a third-party company comes in, they audit both the
6 policies that we have in place to meet the SFI standard. They
7 audit from the corporate level and in the book side of things,
8 all the way down through the local level. So at my level, at
9 a local level, it would primarily involve going to the wood
10 with an auditor, they pick random harvest sites. They go out
11 and they do a rigorous audit of the site to see if we're
12 implementing the practices we say we use to see if we're
13 paying attention to the environment in the way that SFI
14 requires.

15 Q. What governmental agency, if any, requires Plum
16 Creek to be SFI certified?

17 A. There isn't any requirement for certification.

18 Q. And so why has Plum Creek chosen to be SFI
19 certified?

20 A. I think it's a decision to try to display the
21 commitment to the environment as a large -- one of the largest
22 land-owning companies. Obviously, there's a hope that the
23 market will reward that and pay more for products that have
24 that SFI stamp on them, and therefore, landowners like Plum
25 Creek could maybe command a premium in the market place for

1 the timber that we grow. We don't necessarily see that yet,
2 but we hope that will come in the future.

3 Q. All right. So that's SFI.

4 Now I'd like to ask you what's the Vermont heavy cut
5 law? What does that mean; heavy cut?

6 A. The heavy cut law is a law in Vermont that applies
7 to harvests where the harvesting will bring a stand below a
8 certain level of stocking. There are stocking guides.
9 Stocking refers to, in real simple terms, the number of trees
10 on a site. It's also based on size of those trees. And if
11 the stocking will come below a certain level on a stocking
12 guide for that type of stand, which is the C line. There are
13 different lines on the stocking guide, then a heavy cut permit
14 is required. Heavy cuts -- for example, a clear cut would be
15 a heavy cut. There's no residual volume of larger trees on
16 that site after the harvest. So you would be required to have
17 a heavy cut permit in order to do that harvest.

18 Q. How, if at all, does the heavy cut requirement
19 interact or influence -- I'm sorry, interact with your getting
20 UVA approval for harvest?

21 A. They're fairly integrated. We deal with County
22 Forester Langlais as our forester for UVA. We submit our
23 amendments to propose a harvest to him.

24 Richard Greenwood is the heavy cut forester. He
25 works out of the same office in St. Johnsbury, so they work

1 very closely together.

2 Usually, we'll submit the plan to Matt Langlais, and
3 then, if we do a site visit ahead of the harvest to look over
4 what the plan is proposing, both Dick Greenwood and Matt will
5 come, if possible. And then if any changes are requested, we
6 make those changes, resubmit. Once Matt Langlais has approved
7 our amendment, then because he has approved it, if it involves
8 a heavy cut, we submit the heavy cut permit. But we are given
9 an exemption from that based on the fact that our harvesting
10 was approved through the UVA -- with -- because we have an
11 approved ten-year plan. And this amendment would fall under
12 that plan at that point. It's approved as an amendment to the
13 plan to do harvesting.

14 Q. So as part of the --

15 THE COURT: I'm sorry, I didn't understand. You
16 said there was an -- meant there was an exemption from getting
17 a heavy cut permit?

18 THE WITNESS: It's a --

19 THE COURT: Once it's been approved under the plan?

20 THE WITNESS: It's -- because the heavy cut is
21 approved by the county forester, you're not required to have
22 the actual permit. You are given -- am I using the right
23 term?

24 MR. GRAYCK: You are, and I'm going to help out the
25 Court.

1 THE WITNESS: An exemption from that. If I had the
2 permit in front of me.

3 MR. GRAYCK: Your Honor, may I give the witness an
4 exhibit that will clarify the Court's question?

5 THE COURT: Is this a document that hasn't been
6 admitted yet?

7 MR. GRAYCK: It has not yet been admitted, but I am
8 going to be moving to admit it.

9 THE COURT: Okay. Can you show Mr. Duane what it
10 is?

11 BY MR. GRAYCK:

12 Q. Could you look at what's been marked as Exhibit 23
13 and just explain to the Court what that is.

14 A. Thank you. This is the notice of determination
15 approving a heavy cut.

16 (Notice of determination of heavy cut was hereby marked
17 for identification as Plum Creek's Exhibit 23, as of this
18 date.)

19 And the box that has been checked -- this is signed
20 by Virginia Anderson, so it goes through Richard Greenwood.
21 And the box that is checked says this proposal is in
22 conformance with rules adopted by the department. The cut may
23 proceed. And it says that for parcels that do not qualify --
24 I'm trying to find that here. As the landowner, when we
25 fill this out, we fill out the section under exemptions.

1 There's a box here to check that says I certify that the
2 proposed heavy cut is consistent with one of the following.
3 Number one is a forest management plan currently in effect and
4 approved by the department under the current use assessment
5 program.

6 So the steps in the process are the county forester
7 has to approve the amendment so it becomes a part of the
8 approved management plan. And then the heavy cut exemption
9 can be allowed because the UVA program has approved that.

10 MR. GRAYCK: So we'll move the introduction of
11 Exhibit 23.

12 MR. DUANE: No objection, Your Honor.

13 THE COURT: Plum Creek 23 is admitted.

14 (Notice of determination of heavy cut was hereby received
15 into evidence as Plum Creek's Exhibit 23, as of this date.)

16 BY MR. GRAYCK:

17 Q. So, Chris, we've talked about UVA, the conservation
18 easement, SFI, and heavy cut law.

19 Now I'd like to look at Exhibit 18. And can you
20 tell me what Exhibit 18 is.

21 A. This is what we refer to as the AMPs -- acceptable
22 management practices for maintaining water quality on logging
23 jobs in Vermont. This would be the booklet that contains the
24 actual AMPs for logging.

25 (AMP for water quality was hereby marked for

1 identification as Plum Creek's Exhibit 18, as of this date.)

2 Q. Now, with respect to Plum Creek's activity, who
3 administers the AMP rules with respect to your prescription
4 harvests?

5 A. Our first point of contact would be the county
6 forester, Matt Langlais.

7 Q. And after that?

8 A. Jeff Briggs is or was the AMP forester out of St.
9 Jay.

10 Q. Okay. And how do you implement AMPs with respect to
11 a timber harvest?

12 A. AMPs really are -- I think of them as three phase.
13 There's the planning phase, so you need to plan to implement
14 things like stream crossings in the right place, to put
15 buffers in the right place. There's the implementation, then,
16 when you go and actually put those on the ground. And there's
17 some of those that occur during the harvest. When skidding is
18 finished on a trail, a skid trail, then it may require water
19 bars, and a skidder might put some in. Maybe they're
20 temporary at that point, but at least they're something that's
21 implemented as the harvest is ongoing. And then there's a
22 close-out phase. So after the harvest is complete, there's
23 certain acceptable management practices that are implemented
24 at that point to stabilize the site so that there aren't
25 erosion issues or water quality issues during that interim

1 time when you're not actually there doing anything on the
2 site. And those apply to everything from skid trails and
3 stream crossings, to actual truck roads. Like, for example,
4 yesterday we walked over a number of humps, both in the skid
5 trails and in the truck roads that were water bars. They were
6 diverting water so it wouldn't pick up too much velocity and
7 begin to cause erosion. And so that it wouldn't run down into
8 streams.

9 Q. Now, how, if at all, do the AMPs pertain to the UVA
10 2006 manual?

11 A. The manual refers to the AMPs. It requires the
12 enrollees in current use, use value, implement AMPs to the
13 maximum practical extent that they can be done on the logging
14 jobs.

15 MR. GRAYCK: I'd like to move the introduction of
16 Exhibit 18.

17 MR. DUANE: No objection, Your Honor. If I may -- I
18 have an inquiry. Those are being admitted as the rules of the
19 Vermont Department of Forest, Parks and Recreation.

20 MR. GRAYCK: Yes.

21 MR. DUANE: As adopted rules.

22 MR. GRAYCK: Yes. And -- yes.

23 MR. DUANE: Okay. No objection.

24 THE COURT: Plum Creek 18 is admitted.

25 (AMP for water quality was hereby received into evidence

1 as Plum Creek's Exhibit 18, as of this date.)

2 BY MR. GRAYCK:

3 Q. Okay. Now, Chris, what's your understanding of the
4 status of Plum Creek's plan after it purchased it from Essex
5 Timber Company with respect to enrollment in UVA?

6 A. We're enrolled in UVA.

7 Q. Okay. Now, can you go to Exhibit 15? And again,
8 what's Exhibit 15?

9 A. This is the use value appraisal forest management
10 plan signature page for the lands of Plum Creek Maine
11 Timberlands, LLC, signed by Tim Durrell and Matt Langlais.

12 Q. Okay. And what's your understanding of the large
13 landowner alternative?

14 A. The large landowner alternative is a program that
15 was developed by Forest and Parks to allow landowners with
16 over 5,000 contiguous acres to enroll in UVA without having a
17 stand-specific inventory -- so a stand-level inventory of
18 their property. And that's where the approval of the ten-year
19 management plan with no activity actually approved comes in.
20 It allowed for a different level of data, a lower level of
21 data collection -- what's called stratified sampling where
22 you'd lump stands that are similar together in your inventory.
23 It allowed for that in order to develop the management plan --
24 the ten-year management plan for the property. But that ten-
25 year management plan, as I said, under the large landowner

1 program does not approve any harvesting activity. So all
2 harvesting, when it's proposed, must meet the standards of the
3 UVA program that applied to all landowners in the program. So
4 our amendments to our ten-year plan meet the requirements of
5 any other landowner as far as inventory data, and mapping, and
6 all the other things that are required to have that amendment
7 approved.

8 Q. And when we use the phrase stand specific, what does
9 that mean?

10 A. Part of the approved forest management plan is a map
11 showing the property broken into stands. The stands are
12 identified or delineated from aerial photography based on
13 things like composition of hardwood versus softwood, size of
14 the trees that are there, past harvest history, soils
15 underlying those sites can affect the stands. All of those
16 factors create areas that you can see that are different from
17 each other. You can imagine hardwood and softwood -- pure
18 hardwood and softwood would be a very obvious one, especially
19 if they were side by side. Those would be two separate
20 stands. And so this map that's provided with the plan, that's
21 an integral part of the plan, delineates all the stands. And
22 that was a -- that's a requirement of the large landowner
23 program, as well. Then those stands are what are carried
24 forward and used to define where the management will occur.
25 So we would prescribe harvest activity to a stand, and then go

1 and implement that on that stand.

2 Q. Okay. So which meets the definition of stand
3 specific? The concept plan or the prescriptions that get
4 filed for a harvest?

5 A. From the point of view from harvesting, the stand-
6 specific map that is submitted for the harvest, the amendment,
7 that meets the definition.

8 Q. Okay. And --

9 THE COURT: I'm sorry, I didn't understand the
10 answer. Maybe I didn't understand the question.

11 MR. GRAYCK: My apologies, Your Honor. I'll do
12 better.

13 Q. Chris, when we say that there's a stand-specific
14 forest management plan, since you're in the large landowner
15 alternative, when we say stand-specific forest management
16 plan, are we referring to the prescription which was approved
17 for the harvesting, for a specific harvest unit? Or are we
18 referring to the concept plan?

19 A. We'd be referring to the actual prescription that
20 was approved, because the concept plan gave a number of
21 different potential scenarios, you could say, from a
22 harvesting point of view. These are different types of
23 silviculture that could be implemented in this type of stand.
24 And then, when you look at -- it lumped stands together, so it
25 wasn't stand-specific. It was looking at groups of stands.

1 And in this group of stands, we would generally have maybe
2 these three options. But when we look at the specific stand,
3 and collect the data, the inventory data on it, and write the
4 prescription, we're writing it for that specific stand.

5 Q. Okay. What's stratified data?

6 A. Stratified data, as I was saying, is grouping those
7 stands together. You take stands that are similar to each
8 other, maybe they're softwood stands, but they aren't all
9 exactly the same height, and you group them together and you
10 inventory that group of stands. It requires less points in
11 the inventory, but it doesn't give you the precision -- it
12 doesn't always give you the precision to make decisions at
13 that stand level because you don't necessarily have any
14 points. You haven't collected any data, necessarily, in every
15 specific stand.

16 Q. Okay. And so when you obtain harvest approval, are
17 you -- when you obtain harvest approval in connection with the
18 submission of a prescription, are you submitting stand-
19 specific data or stratified data?

20 A. We're submitting stand-specific data.

21 Q. And the stratified data would be contained in which?
22 Prescription or the concept plan?

23 A. It would be in the concept plan -- the ten-year
24 management plan.

25 Q. And again, the ten-year management plan, what

1 harvesting, if any, does it approve?

2 A. It does not approve any harvesting.

3 Q. And what do the prescriptions approve?

4 A. The prescriptions approve harvesting on the
5 individual stands that have been submitted in an amendment.

6 Q. So when we refer to the Clough Brook North harvest
7 unit, or when I refer to it, what does that mean to you?

8 A. The Clough Brook North harvest unit was an area that
9 was submitted as an amendment with maps, inventory on the
10 number of stands and current conditions noted, and the
11 prescriptions for those stands, the harvesting that we were
12 requesting to do as a unit, that package was submitted, and
13 that would be the stand-specific plan, the prescription for
14 the Clough Brook North. That was the name we gave that
15 harvest area.

16 Q. Okay. And Exhibit 14 and 15, which is the Essex
17 Timber Company forest management plan, and Exhibit 15 is Plum
18 Creek's adoption of it. So again, it's, in essence, Plum
19 Creek's plan. To what acreage does the ten-year concept plan
20 apply to? I mean, approximately how many acres does it apply
21 to?

22 A. 86,000.

23 Q. I'm sorry; can you just say that louder?

24 A. 86,000.

25 Q. Okay. So essentially, the concept plan applies to

1 the entire Vermont landholding of Plum Creek, right?

2 A. Yes.

3 Q. Okay. And then -- and then, when you do a
4 prescription, what is it applicable to? The entire 86,000 or,
5 obviously, a portion thereof?

6 A. A portion. Whatever portion is submitted in that
7 amendment.

8 Q. Okay. Now UVA adopted this category called the
9 large landowner alternative. What's the large landowner
10 alternative an alternative to?

11 A. It would be an alternative to a landowner with over
12 5,000 acres going out and doing individual inventory plots on
13 every stand that comprised that 5,000 acres in order to get a
14 level of data that would be meaningful to the county forester
15 and the State in order to be able to approve harvesting on
16 those acres for ten years. So it would require identifying --
17 it would require collecting data at that level, and then
18 identifying all the activities that were to occur in our case
19 on 86,000 acres for the next ten years, and submitting those
20 in detail to Forest and Parks, to the county forester for
21 their approval.

22 Q. So what would it take to produce a stand-specific
23 forest management plan for your 86,000 acres?

24 A. Take a lot of time, and manpower, and money.

25 Q. And so how, if at all, has Plum Creek benefitted

1 from the large landowner alternative?

2 A. Well, it allows us to be in the use value program,
3 the current use program, to enjoy the tax benefits of that,
4 while managing under this approved plan, which doesn't approve
5 any activity, and being able to submit each individual harvest
6 area for approval. So it, basically, says, yes, you can be in
7 the program, yes, you should be allowed to have those tax
8 benefits, as long as you meet the requirements. But I guess I
9 would say it elongates the time frame to meet those
10 requirements. It allows us to meet them over the course of
11 the ten years on the stands we're really going to do
12 something -- some kind of harvesting activity versus having to
13 submit volumes and volumes of data on areas that we may not do
14 anything for the next ten years.

15 Q. Okay. Let's talk a little forestry terms. We've
16 used the word stand, but what is the definition of a stand?

17 A. It's a group -- it's a delineation of an area of the
18 forest based on similarities in the trees that are there.
19 Whether it's like I said, species, age, past harvest history.
20 So it's a way to break the larger forest down into smaller
21 units based on similarities of the trees that are there on
22 that unit.

23 Q. Okay. And what's the specific management practice
24 or practices applied to a stand of trees? What's that called?

25 A. For harvesting, it would be silviculture.

1 Q. Okay. So what's silviculture? What does that word
2 mean?

3 A. Silviculture is the -- it's the systems, the various
4 systems -- application of -- in this case we're talking about
5 harvesting in order to get desired results in a forest. So
6 the silviculture is in your bag of tools in order to come up
7 with the outcome that you're looking for from your harvest.
8 It's really a way to manipulate forests to try to cause them
9 to grow the way you want them to grow to produce the species
10 of quality. That you use those natural processes by
11 implementing these disturbances, which really is what
12 harvesting silviculture is: to come out with the outcomes you
13 want.

14 Q. In other words, what commodity, if any, is the
15 result of -- results from silvicultural practices?

16 A. The timber would be a commodity. Wildlife habitat
17 you could call a commodity. It's not really a commodity,
18 exactly, but it's an outcome you could have from your
19 silviculture.

20 Q. And how or to what extent is silviculture both an
21 art and a science?

22 A. Well, silviculture is based on science. It's based
23 on studies that show, if you do this, this is the response you
24 can expect. There's different types of silviculture based on
25 the species that you're working with; hardwood, softwood,

1 spruce, and fir, versus northern hardwoods of sugar maple, and
2 birch, and beech. There's Champion based on the outcome that
3 you want. What mix of those species that you're looking for.
4 And so the -- I'm sorry, can you repeat the question?

5 Q. Well, just how is silviculture, if at all, both a
6 practice of art and science?

7 A. The art portion is implementing those different
8 tools, as I said, those different silviculture to take into
9 account the variations that are out there naturally in our
10 forests. So for us in the northeast, in particular, you know,
11 we have varying species, which may bring the different
12 dynamics of health or marketability. And you may want more of
13 a species or less of a species. And as you implement your
14 silviculture, the art part really becomes trying to get that
15 result that you're looking for. Trying to work with those
16 natural systems and implement a harvesting regime that gives
17 you the results you're looking for as far as value, or
18 habitat, or species composition.

19 Q. So when you're starting a new forest, what's that
20 called?

21 A. The forest starting as regeneration.

22 Q. And then during the period when the trees are
23 growing, what's the term that that refers to that period when
24 the trees are growing, but not yet harvested?

25 A. Growth. There's, I mean, a couple of different

1 levels there. You have saplings, you have a pole stand, you
2 have smaller trees that you aren't actually harvesting, you're
3 just delaying to put on growth.

4 Q. So there's a period of tending.

5 A. Yes.

6 Q. Yes?

7 A. Well, tending would imply actually going in there
8 and doing something. That would be at the stage where the
9 stand is developed to the point where you're now able to go
10 in. It might be pre-commercial. It might be something that
11 you go in and do some cutting of trees that don't produce a
12 product, but they make space for the trees adjacent to them
13 that are -- that you want to release and give more sunlight.
14 Or it may be actually a commercial type of treatment where you
15 go in and do some work.

16 Q. And then lastly, with respect to silviculture,
17 what's the last phase?

18 A. The harvesting phase, when you're going in and
19 you've tended the stand, you're growing it to grow value, for
20 instance. You've thinned it, you've removed the lower value.
21 Over time, you've improved the quality, the trees are mature
22 and you would harvest them and restart another stand again.

23 Q. And so these three phases of regeneration, tending,
24 and harvesting, how, if at all, do they apply to the
25 formulation of a silviculture system for a particular stand of

1 trees?

2 A. They're all -- you're thinking about the outcome
3 that you're looking for, so the silvicultural system would be
4 implemented in order to tend or harvest that area and make
5 sure that you got the right objective the next time around.
6 So silviculture is really forward looking. So in the case
7 that you're asking about with regenerating a stand, if you
8 were regenerating a whole area, you would want to implement a
9 type of silviculture that would make sure you got seedlings
10 back on the ground, got regeneration on the ground; otherwise,
11 it wouldn't have been a successful harvest.

12 Q. And how, if at all, can professional foresters
13 disagree with respect to an appropriate silvicultural practice
14 for a given stand of trees?

15 A. There's a -- there's a number of different ways you
16 can implement silviculture to get, in the long run, similar or
17 the same type of result. A good example would be even-aged
18 management versus uneven-age. Even age, you are treating a
19 whole stand through time across the stand to -- as one age
20 class. Kind of think of a crop, you know, a crop of corn or
21 something, where it's growing. In this case, it's growing
22 together. You're tending it. You're removing the lower-
23 quality trees, but the trees you're leaving are all the same
24 age. And then near the end of that rotation when you're going
25 to harvest that overstory on those mature trees, you either

1 already have regeneration that you've got started by your past
2 harvesting, or you need to do something to open up more light,
3 get more seed on the ground, get that regeneration established
4 before you do that final harvest. And at that point, you
5 would have two age classes, still even age. You would have
6 the older trees on top, the little seedlings below, and then
7 you would cut the trees that are over top, and you would have
8 one age class again; those seedlings that would grow up
9 through and you would treat them the same way.

10 You could do -- you could have a similar result of
11 high-quality large trees at the end of your rotation by doing
12 what's called uneven-age management, where you do more age
13 trees -- you try to keep the age and size classes, a variation
14 of those across throughout the stand so that every time you go
15 in you're trying to make sure you have some of each of a
16 certain category, a size -- we'll call it size or age of trees
17 in there. So you end up with more than two ages in that
18 stand. But after a time, every time you go in, you're able to
19 remove some amount of mature trees, some amount of smaller
20 trees, and you try to keep this balance.

21 So those would both give you a result of growing and
22 being able to harvest high-quality saw-log trees, but they are
23 two different methods of silviculture to get to that same end.

24 Q. Thank you. All right. Let's turn to --

25 THE COURT: We'll take our afternoon break at this

1 point and continue at five minutes of three.

2 MR. GRAYCK: Thank you, Your Honor.

3 COURT OFFICER: All rise.

4 (Recess at 2:35 p.m., until 2:58 p.m.)

5 THE COURT: Please be seated.

6 Mr. Grayck?

7 BY MR. GRAYCK:

8 Q. So Chris, we've already touched on this before, but
9 we've used this phrase a lot, the prescription. Okay? So
10 when you want to get the county forester's approval for a
11 particular harvest, you submit what's called a prescription,
12 am I right?

13 A. We submit UVA forms, and part of those forms is the
14 prescription, the what we want to do from a harvesting point
15 of view in that stand.

16 Q. Okay. So let's start talking about the selection of
17 the Clough Brook North harvesting area. What's the process
18 that Plum Creek was using in 2009 to identify and select
19 harvest areas?

20 A. Well, we had employed Landvest to, as I mentioned
21 earlier, as a contractor. They were the authors of the ten-
22 year management plan which, again, gave the general guidance
23 on how the management, the harvesting, and the implementation
24 of silviculture would go on the property. We hired them to
25 identify sites based on the management plan that were ready

1 for harvest. To develop plans for those sites and provide
2 those to us and then to lay out the harvest; basically, get
3 everything ready for the harvest to occur on those sites.

4 Q. Okay. And who are the employees that Landvest was
5 having do the Plum Creek work with respect to prescription --
6 preparation of prescriptions?

7 A. In the -- on Clough Brook North, Johnson Horton was
8 the Landvest employee who did that preliminary work, and
9 ordered the prescription, and was involved -- was a forester
10 for them.

11 Q. And who is Dan Singleton?

12 A. Dan Singleton is another forester that worked for
13 Landvest who was employed into 2009. I believe he had left
14 Landvest by that point -- by the time we submitted the plan
15 for Clough Brook North.

16 Q. And before it was Plum Creek, when it was still
17 Essex Timber, there was an outfit called North Country
18 Environmental and Consulting. Were there employees of that
19 firm who then came and did work via as Landvest employees for
20 Plum Creek?

21 A. Yeah. Yes. When Plum Creek purchased the property,
22 one of the reasons that we brought Landvest on was that they
23 hired two employees who worked for North County Environmental
24 as foresters for Essex Timber Company. And so they already
25 had familiarity with the property; that was John Horton and

1 Dan Singleton. They had been doing this work, basically, on
2 the property for Wilhelm Merck as the owner of Essex Timber
3 Company, and we wanted to keep that continuity. So by
4 bringing Landvest on, who hired these two foresters that had
5 been working on the property, the idea was to keep the
6 continuity, keep that knowledge base. No one from Plum Creek
7 had ever worked in Vermont, let alone on this property, and in
8 this area before, so we wanted to try to start out on the
9 right foot, be successful in, you know, implementing both this
10 management plan that was written by Landvest and the -- and
11 involvement with the different programs, the different people,
12 agencies that we interacted with.

13 Q. So when Plum Creek purchased the land, what
14 assessments, if any, did it do of the acreage or the land base
15 in formulating a plan to develop an inventory of harvests?

16 A. Well, one of the -- my understanding, one of the
17 discussions -- and I was not involved directly in these, but
18 between Tim Durrell, who was my boss, and Landvest, was to
19 develop an inventory of harvest blocks that were ready to go
20 with plans written and approved, and harvest layout done, the
21 streams identified and marked, skid trails laid out.
22 Everything that needed to be done, done to the point where the
23 logging contractor could move in when the time was
24 appropriate.

25 Q. Okay. So do you know when the Clough Brook North

1 area was identified as a potential harvest area?

2 A. It was in the middle of 2009, probably I would say
3 around August of 2009.

4 Q. Okay. Now I'm handing you what's been marked as
5 Exhibit 19. Can you tell us what Exhibit 19 is?

6 A. This is an e-mail from me to Matt Langlais and Dan
7 Kilborn with an attachment of stand boundaries, a digital --
8 in a digital format saying that I was sending them for the
9 areas we would be looking at in Lemington. And it as dated
10 October 16th, 2009.

11 MR. GRAYCK: I move the admission of Exhibit 19.

12 MR. DUANE: No objection, Your Honor.

13 THE COURT: Plum Creek 19 is admitted.

14 (October 16, 2009 e-mail was hereby marked for
15 identification and received into evidence as Plum Creek's
16 Exhibit 19, as of this date.)

17 BY MR. GRAYCK:

18 Q. So what plans, if any, were made between you and
19 either Matt Langlais and VLT to take a pre-harvest or a pre-
20 inspection cruise of the Clough Brook North area?

21 A. I'm smiling at your term cruise. I think of it as
22 us in a big car, but it wasn't like that. We set up a plan --
23 this e-mail was part of that plan -- to go visit these stands
24 together. We would do this routinely on areas that were
25 submitted as harvest prescriptions. These amendments that

1 were submitted for areas to harvest. What the e-mail that you
2 just had me read referenced a couple of different areas what
3 we would be going and looking at. One of them of which was
4 this Clough Brook North area. The plan had been written,
5 submitted, and we were taking that plan that had been written
6 to the woods as a group; Dan Kilborn, Matt Langlais, myself,
7 the Landvest forester John Horton, I believe Richard Greenwood
8 was along as well. And going and walking through the entire
9 area, looking at the stands, looking at the prescriptions for
10 the stands, the data that we were providing for the stands, as
11 a group to discuss the silviculture proposed, and just kind of
12 make sure we were all on the same page with that.

13 Q. And about what time was this occurring; what month?
14 What year?

15 A. Well, that was in October I sent that e-mail. The
16 site visit -- I believe it was in November of 2009.

17 Q. Okay.

18 A. I would say.

19 Q. Now, I used the word cruise. Is that -- what
20 meaning does that word have to foresters?

21 A. Cruising is another word for inventory. So when I
22 think cruise, I think going out and taking plots to collect
23 data about the stand.

24 Q. And while we'll hear more about it as a part of the
25 case, what does it mean to take a plot? What do you -- what

1 is that? What are you referring?

2 A. You're measuring -- you're taking measurements of
3 the trees in a specific place to then indicate what's there
4 across the stand. So you do individual plot measurements, you
5 measure the trees, how many are there, what size are they,
6 what species, quality. And then from those plots, you
7 extrapolate to the entire stand what is actually there.

8 Q. In other words, when you say that word extrapolate,
9 if you could just explain that? It's not that you are
10 literally counting everything.

11 A. Correct. In place of counting every single tree and
12 measuring the diameter, and height, and species, and quality,
13 which would take too much time, you can scientifically figure
14 out how you can measure enough plots and then extrapolate that
15 data out to represent what's actually in the entire stand with
16 a fairly good level of confidence.

17 Q. Okay. Now I'm showing you what's been marked as
18 Exhibit 20. Would you tell us what that is?

19 A. This is the initial harvest prescription. This is
20 actually what we referred to as the harvest prescription fact
21 sheet. It was a document that Landvest produced to put all
22 the information about the stand, the prescription for the
23 stand, and then some also conservation easement-related
24 documentation in one format. It also includes a map that was
25 submitted, again, to meet the UVA standards. And this would

1 be what we took to the field with us that day for the site
2 visit before the area was approved.

3 (Draft harvest prescription fact sheet was hereby marked
4 for identification as Plum Creek's Exhibit 20, as of this
5 date.)

6 Q. And I'd like to -- well, actually, are there some
7 handwritten notes on that document?

8 A. There are.

9 Q. What are those notes? Actually, whose notes are
10 those?

11 A. Those are my notes.

12 Q. And what are they notes of?

13 A. Well, up in the upper right-hand corner there are a
14 couple of combinations for the two gates going into the site.
15 And then I made a note, include moose grouse here for Dan,
16 talking about current stand conditions, which is something we
17 noted that Dan would be -- Dan Kilborn -- that we, you know,
18 wanted -- he wanted us to refer to that and make note of it in
19 the documentation.

20 On stand 34 I wrote a note that says mention areas
21 that will receive patch cut under the prescriptions, which
22 would be the harvest prescription section of this. So I was
23 making notes about things that we were talking about on the
24 site that were changes that needed to be made, or the group
25 had agreed should be made to this document before it became

1 final.

2 Q. So you had provided this document to -- to whom had
3 you provided this document to prior to the site visit, or at
4 the site visit you took?

5 A. This document would have been provided to Matt
6 Langlais, to Dan Kilborn, and to Richard Greenwood.

7 Q. I move the introduction of Exhibit 20.

8 MR. DUANE: No objection to 20, Your Honor. Thank
9 you.

10 THE COURT: Do you want to remove the combinations
11 of the locks? Those aren't necessary for the --

12 THE WITNESS: They've been changed.

13 THE COURT: Oh, they've been changed?

14 THE WITNESS: Yes.

15 THE COURT: Um-hum. So Plum Creek 20 is admitted.

16 (Draft harvest prescription fact sheet was hereby received
17 into evidence as Plum Creek's Exhibit 20, as of this date.)

18 BY MR. GRAYCK:

19 Q. So Chris, that was, in effect, a draft prescription
20 that you took out on the site visit with the people you
21 mentioned, right?

22 A. Yes.

23 Q. Okay. And what happened on the site visit?

24 A. We met; we drove up onto the site, very much like we
25 did yesterday. In fact, I believe we parked in this same

1 location that was shown in Exhibit 52. It looked a little bit
2 different at the time because no harvesting had occurred in
3 quite a while up there. And then we proceeded to walk
4 through, just determine a route that we wanted to walk, and
5 walked through trying to cover all of the stands using a GPS,
6 like we did yesterday, to know where we were on the site and
7 within each of these stands. And taking that document along
8 with us, looking at how is this stand described. Does it seem
9 to be described accurately from the inventory that was done?
10 What about the prescription? Does the prescription meet what
11 we're seeing? Sometimes we talk about terminology,
12 silviculture, the things that foresters like to discuss and
13 bat around amongst ourselves as we come up with the best way
14 to reach the objective for those stands. So we walked a loop,
15 basically. Well, if I remember right, it was somewhat a
16 reverse of the route that we walked yesterday, only we went
17 further to the south and to those stands that we didn't walk
18 in yesterday. And we walked then up through the different --
19 course, all of it was unharvested at that time, but those
20 different stands, looking at the conditions in the stand and
21 comparing them to that document -- the harvest prescription
22 fact sheet.

23 Q. On that site visit, what additional information, if
24 any, were you asked to provide?

25 A. We were asked to provide a map that gave a general

1 Idea of where, in stands that had multiple harvest
2 prescriptions, harvest treatments -- and by that, I mean
3 different silviculture that was going to be applied in the
4 same stand, we were asked to provide a map that gave a general
5 idea of where we thought the majority of that type of
6 harvesting would occur. If there was a place in a stand that
7 would receive primarily overstory removal, for example, we
8 were asked to delineate that. And then, other than that, we
9 agreed to change the prescription on a couple of stands to
10 reflect the harvesting that we wanted to do out there and the
11 condition of the current stands out there. So, basically, a
12 collaborative process to arrive at something we could all
13 agree to that would meet our objectives as landowner and
14 satisfy the requirements of UVA and the VLT requirements under
15 the easement.

16 Q. Okay. So I'm going to show you Exhibit 21. What's
17 Exhibit 21?

18 A. Exhibit 21 is an e-mail from me to Matt Langlais,
19 Dan Kilborn, and Richard Greenwood, copying John Horton with
20 the updated maps I was referring to, where I said we -- John
21 had updated these maps and we were providing them via e-mail
22 electronic format. And I had mentioned to Matt on here that
23 he should receive the amended UVA forms in the mail the next
24 day, and then I would be e-mailing those to Dan Kilborn.

25 (November 5, 2009 e-mail was hereby marked for

1 identification as Plum Creek's Exhibit 21, as of this date.)

2 Q. Okay, and again, who is Dan Kilborn?

3 A. Dan Kilborn is the stewardship forester for the
4 Vermont Land Trust.

5 Q. And who is Richard Greenwood?

6 A. Richard Greenwood is the heavy-cut forester for
7 Forest and Parks.

8 Q. And Matt Langlais?

9 A. Matt Langlais is the county forester for Essex and
10 Orleans County.

11 Q. And does this e-mail identify the people who were on
12 that site visit?

13 A. Yes.

14 Q. Okay.

15 MR. GRAYCK: I move the introduction of Plum Creek
16 21.

17 MR. DUANE: No objection, Your Honor. Thank you.

18 THE COURT: Plum Creek 21 is admitted.

19 (November 5, 2009 e-mail was hereby received into evidence
20 as Plum Creek's Exhibit 21, as of this date.)

21 Q. So after you sent your e-mail and mailed in the
22 revised documentation, what happened next?

23 A. We received the approvals from Matt Langlais, UVA,
24 and the approval for the heavy cut, as most all of these
25 prescriptions were heavy cut prescriptions, required that

1 heavy cut application. And we also received Dan Kilborn's
2 approval for the prescriptions and for the construction of two
3 winter roads, as they had requested; two of those roads we
4 walked on yesterday.

5 Q. Okay. Now I'm going to show you Exhibit 22. And
6 I'd like you to go through it page-by-page and tell us what
7 each page is.

8 A. This is the amended harvest prescription fact sheet.
9 (Amended harvest prescription fact sheet was hereby marked
10 for identification as Plum Creek's Exhibit 22, as of this
11 date.)

12 So that after the changes were made that I referred
13 to with the prescriptions. The harvest prescription fact
14 sheet consists of four pages. It goes from describing the
15 stand, the current stand conditions, some information about
16 the harvest, the size of the area as 471 total acres in the
17 stands, where it is, general information about the stand
18 numbers.

19 And then a regeneration table that describes what
20 was on the stand for regeneration based on the cruising that
21 was done. Information about the elevation, the terrain there,
22 surrounding landscape. It talks about where it is, how you
23 get there, desired goals of the harvest, which are general
24 goals and what the objective is of what we're trying to do.

25 Then the recommended prescriptions by stand, the

1 harvesting that was to be implemented on each stand.

2 And then it goes into how the layout would be done.
3 It has some definition of the pre-harvest layout, how the
4 designated timber -- how the timber would be designated for
5 harvest.

6 And then stream and legacy buffer prescriptions.
7 Some of that is related to the easement, some of that is
8 related to AMPs.

9 Truck road conditions, just would be an opportunity
10 to say if there was any work needed on the truck roads. Skid
11 trails, how those will be laid out, the expectations around
12 those. The landings that will be used. That will be a place
13 to mention if any new landings were going to be created, or of
14 any special information about the landings.

15 Any special regulatory conditions which in this case
16 it says there were none.

17 Any permit requirements, and the heavy cut is
18 mentioned here as a requirement to this -- part of this.

19 And then habitat retention designation. This is
20 related to the goals -- the conservation easement goals, also
21 the goals that were stated in the management plan, based on
22 that habitat retention and how that will be implemented. Any
23 threatened and endangered species; there's a place to note
24 that.

25 Any signage that would be required or notifications

1 that are required. And in this case, it says intent to cut
2 notification to Forest and Parks and VLT due to the UVA.

3 And then conservation easement conditions, it talks
4 about many conservation -- conservation easement conditions
5 that need to be met. It mentions the easement requires to
6 sixteen inch or greater logs, coarse woody debris per acre.
7 And so this is, you know, we looked at that picture of the
8 large downed tree. I think that was near the end here. Right
9 here. Exhibit 93, that would be an example of trying to meet
10 this goal across the ownership of that course downed woody
11 debris.

12 And then any special closeout requirements, and in
13 this case, it says refer to the contract.

14 And then the actual current use UVA forms, which are
15 really the description and prescription from timber harvest
16 prescription fact sheet are identical to the prescription down
17 here. This consists of three parts, really. Each stand has a
18 description page which is referred to as form 2, page 1. It
19 can be a little confusing, because there could be multiple
20 form 2 page ones because of multiple stands, and then each --
21 this gives information about the prescription for each of the
22 stands.

23 And then there's a form 2, page 2, which gives the
24 prescription which matches the prescription of the harvest,
25 the prescription fact sheet that's really a copy and paste

1 function between these two formats. It describes which stand,
2 the year that the harvesting is expected to take place, and
3 the harvesting that will take place.

4 And then this is the page that has the place for the
5 signature of the landowner and the county forester, and also a
6 place to indicate who prepared the plan.

7 And then there are maps for -- two maps that go with
8 the plan. There's a map that's on a photo-based map. It
9 shows the stand delineation with stand numbers. It shows
10 roads in the area. It has the same tables as the map that
11 you've already seen; the map we used to draw our route
12 yesterday. But this is submitted with the harvest area
13 identified.

14 And then the map that is on a topographic that also
15 has the harvest area identified. This is the 471 acres. And
16 each of the stands has a number. It ties to a table down
17 here. It describes the strata, which is what we were talking
18 about what, the overall ten-year plan, which strata was it in,
19 not what individual stand is it, but what was the type that it
20 was inventoried as. And then the overstory type, that would
21 be that specific stand, what is it. And then the
22 prescription, and there codes for different prescriptions
23 here, and the acreage of each stand that it applies to. And
24 then a legend describing what's being displayed on this map.
25 It has things like landings and ground. The road is

1 indicated. Streams are indicated.

2 And then, in this instance, there's a third map that
3 I'll call this suggested treatment map. The map that I e-
4 mailed to Matt, and Dan, and Richard Greenwood that John
5 Horton created where he took that last map and just attempted
6 to draw on here the areas that -- where he felt the bulk of
7 the prescription would occur. So, for example, stand 43 had
8 overstory removal as a prescription. It had two-stage
9 shelterwood as a prescription. He indicated here that, in
10 this box, which we referred to yesterday as the OSR box, and
11 again, there's a picture from our site visit. This number 56
12 was looking back into that what we call the OSR box. That's
13 the -- that's this area here that we walked through yesterday.
14 So that's indicated on this map where --

15 THE COURT: But you interrupted yourself. You
16 didn't complete describing what it means.

17 THE WITNESS: I'm sorry. The -- so he was
18 attempting to show where the -- if there was an area that
19 would receive predominately that treatment, that prescription,
20 that overstory removal within that stand, he was attempting to
21 display where that would occur.

22 THE COURT: Could you repeat that, please? What
23 does the OSR box mean?

24 THE WITNESS: So the OSR box, when referring to this
25 red outlined area, is a portion of stand 43 that the forester,

1 John Horton who wrote the plan, and when it was requested that
2 we try to depict where the majority of that type of harvest
3 would occur, this is where he indicated that he felt roughly
4 the majority of this treatment would occur.

5 BY MR. GRAYCK:

6 Q. And so by treatment, what is it you mean? By
7 treatment? What --

8 A. Well, if I may --

9 Q. That exhibit right there, what's OSR?

10 A. OSR is an overstory removal.

11 Q. And so just tell the Court what's an overstory
12 removal? What does that mean?

13 A. So an overstory removal is when you have established
14 regeneration, trees, you know, seedlings already in place, and
15 you've usually done a preparatory cut, you've done something
16 to allow more light. You've taken trees, cut trees out to
17 allow more light to reach the ground. You now have
18 regeneration. Now you take those trees that you had left the
19 first time off the top.

20 Ideally, in a textbook sense, you could imagine it
21 looking like just a sea of thirty-foot trees, little trees
22 under bigger trees, and you cut all the bigger trees off.
23 That's the overstory. You're taking all of those. You're
24 cutting all of those and you're giving all the sunlight,
25 nutrients, everything to that next crop of trees, those small

1 seedlings that are there.

2 What we saw yesterday in the OSR box just shows that
3 there's variability in how that can be applied. I mean, in
4 this case, obviously, these aren't small seedlings. That
5 this -- an overstory -- an OSR was applied here. This was in
6 the area that was identified for overstory removal. This is
7 not alleged to be cut contrary. It's not little seedlings,
8 either. So there's variability in how that is applied, how
9 the outcome can look. But the intention is you're
10 releasing -- you're allowing to grow trees that are onsite,
11 established at a previous -- a prior time.

12 Q. And Chris, what's the number of the picture you
13 referred?

14 A. This is 56.

15 Q. 56, okay. So just to help further explain what OSR
16 is, you've mentioned that there are essentially two cuttings,
17 and another word might be treatments. Approximately how many
18 years separate the two treatments?

19 A. They can really vary. In an ideal case, if you
20 harvested, and you got regeneration, and -- you had a uniform
21 stand, you harvested, you got your regeneration established,
22 come back in five years and do your overstory removal.

23 In cases like we were looking at yesterday, with
24 that type of variability, the stand that's there now was
25 established without a lot of regard for the type of

1 silviculture we're talking about. It wasn't going in and
2 thoughtfully necessarily harvesting. It was more extracting
3 value. And so you have pockets that have bigger trees, and
4 pockets that have really small regeneration right now, and
5 different species in there. And overall, you look at it, you
6 can still apply this overstory removal type technique, but
7 it's not as clean looking. It doesn't look as textbook. And
8 then you throw things in there like the ice storm and the
9 other things that mother nature likes to throw at us --
10 disease and that further impacts this, which is really why
11 there were multiple treatments prescribed in -- within
12 individual stands in this area.

13 Q. There are a couple things I still want to ask
14 questions about to further explain what you just testified to.
15 So when you said there was extractive harvesting on the prior
16 occasion, what do you mean by that? What are you talking
17 about?

18 A. The -- near the end of the time that Champion owned
19 the property, they were probably thinking more about just
20 getting the value now. Going in and taking what was valuable
21 then, not necessarily creating value down the road for the
22 future, which is at odds with silviculture sometimes. Because
23 the value -- if you are -- if you have a stand that's not
24 ready for that type of harvesting, for final harvest, or you
25 just go in and just take the best trees, it's opposite of what

1 we've been talking about already, both -- you know, in the
2 silviculture we were discussing you really want to leave
3 better trees. You want to promote a better forest stand so
4 you have more value in the future. If you cut your best trees
5 now, then you're left with lower-quality trees.

6 Fortunately, the sites still tend to regenerate.
7 You have something to work with to move forward, but you don't
8 have that quality current stand to work with to move forward.

9 Q. There's another phrase; high grading. What's high
10 grading?

11 A. High grading is another term for that type of
12 cutting where you would just go in, remove all the value, and
13 leave the lower-quality, lower-value stems. You're just
14 really trying to extract the value out, liquidate the value in
15 a stand of trees.

16 Q. Okay. Now you've talked about overstory removal in
17 terms of two treatments, two harvesting of trees. What's a
18 two-stage shelterwood?

19 A. A shelterwood -- two-stage shelterwood is also -- we
20 would refer to both of those as regeneration cuts. The
21 overstory removal is the final phase of the shelterwood
22 system. So in a shelterwood system, you would do a
23 preparatory cut to establish a regeneration. And sometimes
24 you might do more than one. It depends on the type of trees
25 you're trying to regenerate, the rotation that you want as far

1 as going back in to cut again. But the intent is you get
2 regeneration through seeds, through sprouts on the ground by
3 letting more light to the ground. And then you go back, once
4 you have that, and you cut the rest of the trees.

5 Q. And when you --

6 A. The overstory. And your regeneration comes up. And
7 that's the overstory removal. The overstory removal is the
8 final phase of the shelterwood treatment.

9 Q. Okay.

10 MR. GRAYCK: I'd like to move the admission of
11 Exhibit 22.

12 MR. DUANE: No objection, Your Honor. Thank you.

13 THE COURT: Plum Creek 22 is admitted.

14 (Amended harvest prescription fact sheet was hereby
15 received into evidence as Plum Creek's Exhibit 22, as of this
16 date.)

17 MR. GRAYCK: We're not done with Exhibit 22. I just
18 wanted to get it admitted. And now the Court may have it at
19 its disposal. We have extra copies of Exhibit 22, if I could
20 approach?

21 THE COURT: That would be helpful.

22 MR. GRAYCK: Okay.

23 (Pause)

24 MR. GRAYCK: Your Honor, I've taken out the exhibits
25 which have not yet been admitted, so I'd like to give the

1 Court a binder of the exhibits that have been admitted, 1
2 through 23.

3 THE COURT: All right.

4 MR. GRAYCK: So these are for the Court.

5 THE COURT: For the assistant judges? Because I've
6 got the originals.

7 MR. GRAYCK: Yes.

8 THE COURT: Thank you.

9 MR. GRAYCK: Thank you. Okay.

10 BY MR. GRAYCK:

11 Q. All right, so Chris, now we're going to do some more
12 questioning about Exhibit 22. Who required or who requested
13 that you provide a harvest prescription fact sheet?

14 A. No one specifically requested the harvest
15 prescription fact sheet. This was something that Landvest I
16 think had been using on other consulting jobs that they do and
17 has worked well. They just proposed it to us as a way to
18 consolidate a lot of different requirements into one format.

19 Q. Okay. And going to the second page of Exhibit 22,
20 that chart we now see. How many stands comprise the Clough
21 Brook North Harvest Unit?

22 A. Six.

23 Q. Six. And the numbers of them?

24 A. Stand 24, stand 34, stand 43, stand 44, stand 46 and
25 stand 54.

1 Q. Okay. The alleged cut contrary is alleged to have
2 occurred on which stands?

3 A. It's alleged to have occurred in stand 34, stand 43,
4 and stand 44.

5 THE COURT: 44?

6 THE WITNESS: Portion of 44, yes.

7 Q. Now of the three stands alleged to be cut contrary,
8 34, 43 and 44, what portions of those stands, in terms of all
9 of them or less than the entire stand is alleged to be cut
10 contrary?

11 A. Less than the entire stand on each of them is
12 alleged to be cut contrary.

13 Q. Okay. So cut contrary is not with respect to all of
14 stand 34, 43, and 44, it's just with respect to portions of
15 them, correct?

16 A. Yes. That's right.

17 Q. Okay. What harvesting, if any, was done in stand
18 24?

19 A. Stand 24 was harvested, and the harvesting was
20 completed in it.

21 Q. I'm sorry? I didn't hear you.

22 A. The harvesting was completed in stand 24.

23 Q. Okay. And what allegation, if any, has there been
24 that stand 24 was cut contrary?

25 A. There hasn't been any.

1 Q. Okay. And so what's your understanding as to the
2 status of the harvesting done on stand 24?

3 A. It was -- it's fine. It was done according to the
4 plan, and there's no contentions about it.

5 Q. Okay. What about with respect to stand 46? What
6 portion of stand 46, if any, has been harvested?

7 A. Stand 46 has not been harvested at all.

8 Q. Okay. What about stand 54? What portion, if any,
9 has been harvested?

10 A. Stand 54 has the small area we actually walked by
11 yesterday, with just a few -- very few acres that stood along
12 the boundary.

13 Q. And approximately how many acres is stand 54?

14 A. Stand 54 is 97.4 acres.

15 Q. Okay. So stand 24 is complete, yes?

16 A. Yes.

17 Q. Okay. Stand 34, if allowed to continue with the
18 Clough Brook North harvesting, would there be any area in
19 stand 34 that could be harvested?

20 A. Yes, there would be.

21 Q. Okay. If allowed to continue with the Clough Brook
22 North harvest with respect to stand 43, is there any area at
23 all, or not, that could still be harvested -- stand 43?

24 A. There's a small portion of stand 43.

25 Q. Okay.

1 A. Still to harvest.

2 Q. And with respect to stand 44, if Clough Brook North
3 harvest was allowed to proceed, what portion, if any,
4 approximately, could be harvested?

5 A. There's still a large portion of stand 44.

6 Q. When you say large portion, could you give me some
7 idea as to what that means in terms of numbers?

8 A. There's approximately thirty acres, maybe a little
9 less of stand 44 still to harvest.

10 Q. Okay. Was there an occasion on the site visit
11 yesterday when the State asked to have an observation taken as
12 to an area not being cut contrary and I believe I remarked,
13 "Well, it hasn't even been harvested."

14 A. Yes. I remember that.

15 Q. What were we talking about? What stand were we
16 talking about when that took place?

17 A. That was the eastern portion of stand 34.

18 Q. Okay.

19 A. Near the end of the day.

20 Q. Okay. Okay. Now, I want to go to what's identified
21 as -- this is form 4. Okay? Management plan summary form on
22 the left. And on the right it says form 4.

23 A. Yes.

24 Q. Yes? And in Exhibit 22. If you want to just show
25 it to the Court so they see what we're talking about.

1 (Pause)

2 THE COURT: Okay.

3 MR. GRAYCK: Okay? Okay.

4 Q. Chris, what is form 4?

5 A. Form 4 is a form that summarizes the management
6 activities that are prescribed on each of the stands involved
7 in the proposed harvest area. So in this case, it lists the
8 stand numbers of the six stands we were talking about. It
9 lists the acreage for each of those stands; the condition,
10 even aged or uneven aged, which refers to the structure of the
11 stand that I had mentioned earlier in the comparison of
12 uneven-aged management versus even-aged; the predominate-sized
13 class which each of these -- the next page has a definition
14 for a lot of these blocks that are filled out. It has the
15 definitions of the acres, and uneven age, and even age, but
16 then also the forest types and a code for each of those, and
17 the management and activity codes. So those relate to this
18 page. So this is a summary of the key information for each of
19 the stands from an inventory point of view, and the harvest
20 prescriptions that are prescribed for those stands, and the
21 scheduled or anticipated date of harvest of the stand.

22 Q. In fact, on form 4 at item 9, can you please read
23 that out loud for us?

24 A. Item 9 says: "Stand information. This information
25 is for data entry only and does not override what is in actual

1 plan."

2 Q. Okay. To what is this referring to as the actual
3 plan?

4 A. The other forms that follow this, the form 2, page 1
5 descriptions, and the form 2, page 2 prescriptions for each of
6 the stands.

7 Q. Okay. So now we're going to start talking about UVA
8 form 2, page 1. All right? And so this is a UVA form,
9 correct?

10 A. It is.

11 Q. Okay. And so the first form 2, page 1, is with
12 respect to which stand?

13 A. It's with respect to stand 24 over on the far left-
14 hand side under the Town of Lemington, there's a stand number,
15 it say LM0324. That's stand 24. The last two numbers -- the
16 first number -- the first letters indicate the town. The
17 second numbers indicate the compartment or the general area in
18 that town from the original ten-year plan map. And then the
19 final number is the stand number, so in this case it's 24.

20 Q. Okay. And the next form 2, page 1, is with respect
21 to which stand?

22 A. The next one is with respect to stand 34.

23 Q. Okay. All right. So now I want to ask you some
24 very specific questions about form 2, page 1, with respect to
25 stand 34. And I just want to make sure that I've done a

1 sufficient job -- okay.

2 MR. GRAYCK: Thank you, Your Honor.

3 Q. Okay. Now, there's an item here that says sand
4 history. Can you explain to me what that means, and can you
5 explain to us what it means by harvested by Champion Paper
6 Company approximately twenty, twenty-five years ago. What's
7 that all about?

8 A. This is an estimate of what had happened in the
9 stand before. If you remember the exhibit with the stump,
10 which was Exhibit 78 of the photos, that stump I had said was
11 from a previous harvest. This would be referring to the
12 estimate of when that previous harvest happened; so twenty to
13 twenty-five years ago Champion was in this area. We see
14 evidence of that. For example, these stumps, the
15 regeneration -- the height of the trees that grew back from
16 that harvest, things like that.

17 Q. Okay. Now it says forest health conditions. The
18 stand has high-residual stand damage. Beech bark necrotia
19 complex. What does that mean? What do those two sentences
20 mean?

21 A. There's -- yeah, there's two things here. So the
22 objective here is to describe, as it says, any conditions that
23 affect the stand from a health point of view. One of the
24 things noted here is this high-residual standard damage. If
25 you remember the picture of the --

1 Q. Just slow -- because my --

2 MR. GRAYCK: I have extra copies of the photos which
3 have been admitted. I'd like to prove them to the Court, if
4 that's acceptable.

5 THE COURT: Yes, that would be helpful. Thank you.

6 MR. GRAYCK: Thank you, Your Honor.

7 MR. CHENEY: Does Judge Teachout have a copy?

8 MR. GRAYCK: Your Honor, do you --

9 THE COURT: Yes, I have the originals.

10 MR. CHENEY: Okay.

11 A. So for example, on number 85, we were talking about
12 scarring, and I mentioned there were two ages of scars there.

13 BY MR. GRAYCK:

14 Q. Chris, just give the Court an opportunity to get to
15 photo 85, okay?

16 A. Sure.

17 Q. I just want to -- okay, go ahead.

18 A. And the older of those would have occurred during
19 that previous harvest. And that's one of -- that's a type of
20 residual stand damage. That means the damage that was
21 leftover from the last time the stand was harvested.

22 It could also be referring to breakage in the tops
23 of trees. We've mentioned the ice storm had a -- caused a lot
24 of breakage. But also past harvesting can cause breakage. It
25 can have impact to roots. There can be compaction or just

1 cutting of the roots if there's rutting. That can cause a
2 tree to be damaged and not grow well after the fact. So those
3 are all types of residual stand damage.

4 Stand damage that occurred at the last time the area
5 was harvested, and it was noted here that there was a high
6 incidence of residual stand damage. Unfortunately, that's not
7 uncommon from what I've seen on these former Champion lands.
8 Especially the wounding in the base of the trees.

9 The other thing that's noted here is the beech bark
10 nectria complex. This is a disease that affect beech trees
11 and has pretty well made beech a worthless species for us from
12 the point of view of logs and, you know, growing high-value
13 products, because so much of it is killed by or susceptible to
14 and infected by this nectria complex. And what happens is
15 there an insect, a scale insect that attaches to the tree.
16 And then disease is introduced through the -- through that
17 insect. And it's very widespread; from the Maritimes, all the
18 way over through our forests, unfortunately. But in our
19 beech, in particular, we have a high incidence of this
20 nectria, which either can kill a tree, or just can degrade the
21 value of it by reducing -- by causing lesions, basically, on
22 the bark of the tree that go into the tree. The value of the
23 tree, like I said, is in that -- for a saw log -- is in that
24 bottom part of the tree, and that's where this infects. So it
25 causes real damage.

1 And the other thing that this disease has done is
2 it's meant there really isn't a market for beech. Even if you
3 have a really good, nice beech tree, if you cut it down and
4 cut it as a saw log, there's not necessarily anybody that
5 wants to buy it, because there aren't enough of them out
6 there. So it makes beech a lower-value species. But this
7 bark nectria complex is referring to that disease. So that
8 was observed in this stand 34.

9 Q. Okay. And given that the stand had high residual
10 stand damage and presence of beech bark nectria complex,
11 overall, how would you characterize the health condition of
12 this stand?

13 A. It was not a very healthy stand.

14 Q. Let's go onto where it says grand list description.
15 What's the number there?

16 A. It says 86,226.

17 Q. 262?

18 A. 62, I'm sorry.

19 Q. Okay. How many acres are -- to what is that 86,262
20 referring to?

21 A. That's referring to the total Plum Creek ownership.

22 Q. In?

23 A. In use value.

24 Q. In Vermont?

25 A. In current use.

1 Q. In Vermont?

2 A. In Vermont in current use.

3 Q. Yes. Okay. So it's -- does that number reflect the
4 specific grand list description of stand 34?

5 A. No. There isn't a grand list description of stand
6 34.

7 Q. Okay. All right. Now let's go to stand
8 description, and there's two categories. One's called even
9 aged, and then it's called uneven aged. First, we've talked a
10 little bit about this. Can you just explain again what's even
11 aged?

12 A. The even aged and uneven aged are two different
13 management strategies for growing and harvesting timber. Even
14 aged is going in and cutting -- basically, you're keeping all
15 of the trees pretty much the same age or the same size, with
16 the exception of, at one point, when you're regeneration the
17 stand, you might have two age classes out there; the big trees
18 that are over top and the little seedlings that are coming
19 back. But generally, you have two distinct age classes of
20 trees. When you get more than that, then you start to go into
21 uneven-age management, and there's a strategy in order to keep
22 the stand more complex as far as age structure goes, size
23 structure, the trees that are in it. And that involves doing
24 a different type of management and required different data for
25 UVA -- even aged versus uneven aged.

1 Q. In fact, you mentioned as required with by UVA --

2 MR. GRAYCK: Your Honor, the State's trial exhibits
3 at number 10 provide the use value program manual -- use value
4 appraisal program manual 2006. And I have also in my
5 exhibits, a little bit farther down the road, the same
6 exhibit. I'd like to ask the witness question in relation to
7 the manual. I'm happy to use the State's copy. I don't know
8 what you want it marked as or numbered as, but I just would
9 like to ask the witness some questions about this manual.

10 MR. DUANE: I think it should be offered and
11 admitted, if there's no objection, and I would have no
12 objection to it being admitted.

13 MR. GRAYCK: Okay. Okay. In that case, I guess
14 what I would like to do is offer it at Exhibit 22A, and would
15 move the introduction of Exhibit 22A as the use value
16 appraisal program manual.

17 MR. DUANE: No objection, Your Honor.

18 THE COURT: And is there a year?

19 MR. GRAYCK: 2006. Yes, Your Honor. Its effective
20 date is March 31, 2006.

21 THE COURT: Okay. Plum Creek 22A is admitted.

22 (Use vale appraisal manual was hereby marked for
23 identification and received into evidence as Plum Creek's
24 Exhibit 22A, as of this date.)

25 MR. GRAYCK: And if the Court would just allow me,

1 I'm going to get copies of this exhibit so that the board
2 members have it as we proceed with the examination.

3 (Pause)

4 MR. GRAYCK: So I'd like to provide copies of
5 Exhibit 22A.

6 THE COURT: Um-hum.

7 MR. GRAYCK: And these are three-hole punched, so if
8 the Court would like to put them in the binders, they can.

9 And Your Honor, I don't know if you want the
10 official one or do you want this one?

11 THE COURT: Do we have one that's been admitted?

12 MR. GRAYCK: We moved it -- yes, there it is. I
13 apologize.

14 (Pause)

15 THE COURT: Go ahead.

16 MR. GRAYCK: Thank you, Your Honor. I'd ask the
17 Court if they could locate page 28, as well as page -- well,
18 it's 31. Page 28 and 31.

19 BY MR. GRAYCK:

20 Q. And Chris, if you could do the same? So page 28
21 should say minimum standards for forest management and
22 regeneration effective April 15th, '06. And page 31 would say
23 minimum standards for forest management plans effective 4-15-
24 06. Okay?

25 Chris, we're talking about right now the description

1 of the stand, correct?

2 A. Yes.

3 Q. Because we're on -- we're on what? We're on page 1
4 of form 2 for stand 34, right?

5 A. We are.

6 Q. Okay. And you just started talking about even-aged
7 or uneven-aged management, correct?

8 A. Yes.

9 Q. Okay. Can you please find for us and show us, in
10 the 2006 manual where it's going to discuss even or uneven
11 aged with respect to forest management plans?

12 A. On page 33.

13 Q. Thank you.

14 A. Number 11.

15 Q. Okay. So when we look at UVA form 2, page 2, and we
16 see it described even aged or uneven aged, how does that
17 correlate to page 33 of the 2006 manual? Is it talking about
18 the same thing, or is it talking about two different things?

19 A. It's talking about the same thing.

20 Q. Okay. So looking at the manual on page 33, it says
21 long-range objectives must include at least the following.
22 Even-age management. Present stand age and rotation age.
23 What does -- what's that mean?

24 A. That means that you need, if you're doing even-age
25 management, if you check that box, you need to indicate that,

1 that that was your choice. And then also give the present
2 stand age, so the age of what is there, which is really an
3 estimate. The way trees grow in the northeast, you can have
4 very small trees that are very old, and you can have bigger
5 trees that are the same age. So it's -- but it's an estimate
6 based on knowledge of the size of what the current age of the
7 stand is, and also the rotation age, which would be when you
8 would expect to harvest that and start a new stand of trees.

9 Q. In fact, if you could look on the right-hand side of
10 form 2, page 1 for stand 34, there's a heading: long-range
11 objective. And what is the long-range objective for stand 34?

12 A. So it indicates even-age management with the present
13 stand age between seventy and seventy-five, and a rotation age
14 of eighty years.

15 Q. And how, if at all, is the information listed under
16 long-range objective on form 2, page 1 for stand 34 related to
17 page 33 of the 2006 manual?

18 A. Page 33 is part of the minimum standards for forest
19 management plan. So this part of form 2, page 1 addresses
20 that requirement that you give -- provide your long-range
21 objectives and, under those, the type of management; even age
22 or uneven age.

23 Q. Of the information you've just described, what
24 portion of it, if any, is in the ten-year concept plan?

25 A. It's in the concept -- it's in the management plan

1 in concept. That this is the way these types of stands --
2 like I said, there may be multiple options of how they will be
3 treated, and the management plan -- the ten-year management
4 plan talked about doing even-age management on quite a large
5 number of acres in the first portion of the implementation of
6 that plan.

7 Q. And so what portion, if any, is specific to stand 34
8 in form 2, page 1?

9 A. Nothing in the ten-year management --

10 Q. In -- in --

11 A. In the concept plan. The ten-year management plan
12 would have been specifically saying that that's what we would
13 do on this stand. It was a concept. It wasn't saying -- it
14 was never intended to say, "This is what we'll do on each of
15 these stands." That was left to the amendment, which is what
16 we're looking at now. Which is, when we give the specific
17 data about the stand that justifies the treatment.

18 Q. Okay. Now --

19 THE COURT: Excuse me. And what did the -- what was
20 your testimony just now about what the concept plan said?

21 THE WITNESS: It gave a general idea of the
22 management that would occur across the property based on the
23 distribution of hardwood and softwood, and the condition of
24 the stands. But it didn't go down to the specific stand
25 level. It left that until the amendment.

1 THE COURT: All right. But did you say what that
2 general plan was or not?

3 THE WITNESS: That's the approved ten-year
4 management plan for the property.

5 THE COURT: Right. But did you identify anything
6 specific?

7 THE WITNESS: No, I didn't.

8 THE COURT: Okay.

9 BY MR. GRAYCK:

10 Q. So now, if we look at what's listed as the schedule
11 of treatment on form 2, page 1, what does that say?

12 A. It says type and year, and it says shelterwood as a
13 number 3, and 2011.

14 Q. Okay. What does that mean?

15 A. The number 3 is the number that refers to the --
16 that's the code for shelterwood, as we saw on the summary
17 form.

18 Q. Can you show the Court where that 3 code is?

19 A. If you go back to the summary form, which was form
20 4, this form, that code, for stand 34 is the second stand
21 listed, and it has management activities 3. 3 refers to a
22 shelterwood.

23 Q. Okay. So now we go back into the middle. We've
24 talked about even age, and it says forest height H3B. What's
25 that mean?

1 A. That's a code that's used to find the -- the trees
2 that are there, hardwood or softwood, and it's sort of a
3 percentage -- a general percentage of those. So in this case,
4 it's H, so it's greater than seventy-five percent hardwood in
5 this stand. 3 is a size class. You have 1 through 4, so 3
6 would be on the small saw log size of that. It's a size -- it
7 represents the size of the trees, the average trees that are
8 up there. And the B is a density. So B describes -- an A
9 would be fully stocked, a B is less trees out there, C would
10 be even less trees, D would be a very scattered stock of
11 trees.

12 Q. Okay. So stand 34 in UVA form 2, page 1, prior to
13 harvest had what level of stock?

14 A. B level of stock.

15 Q. And now at the bottom there's two numbers; total BA
16 and AGSBA. What do those terms mean?

17 A. BA is basal area. And this is a measure of the
18 volume of trees on the site. And it's -- so this is saying
19 that they're -- it's a measure -- it's actually a square-foot
20 measure. So this is in square feet. This is eighty-two
21 square feet and thirty-five square feet. And it refers to the
22 area that the stem of the tree takes up, four and a half feet
23 off the ground. We refer to that as diameter breast height.
24 And it's a common term of measurement in forestry. That's
25 the -- that's where you measure trees when you're inventorying

1 and things like that. You measure at diameter breast height,
2 or DBH. So in -- what this is measuring is the area of that
3 stem. The area that that stem is taking up in square feet.

4 And if you took an acre of ground, you would have
5 eighty-two square feet of solid wood, basically, on that acre.

6 Q. And when you say stem, I always think of something
7 little and thin, but what do you mean when you say stem?

8 A. The trunk of the tree.

9 Q. Trunk of the tree.

10 A. So the -- you know, on a twelve-inch tree, that we
11 would be -- when we said it was twelve inches, we would be
12 referring to that at four and a half feet off the ground. So
13 twelve inches across in diameter. And if you cut it off right
14 there, that area that the solid wood is taking up in square
15 footage would be the basal area for that one stem. So if you
16 put all the stems together on an acre, in this case, the
17 measurements indicate there's eighty-two square feet. And we
18 use those measurements to help inform our decisions on
19 management and on prescriptions.

20 The second number, the thirty-five, the AGS is
21 acceptable growing stock. So that's what we described
22 earlier, the trees that have now, or can contain in the future
23 a saw log in that lower portion of the tree. And those trees,
24 in this case, thirty-five square feet of the total eighty-two
25 are acceptable. Are trees that could grow into or now do

1 contain a saw log.

2 Q. And what's the relationship, if any, between
3 acceptable growing stock and total basal area when the numbers
4 in relation are eighty-two and thirty-five. What, if
5 anything, are those numbers telling you as a professional
6 forester?

7 A. Thirty-five is a low number for acceptable basal
8 area. It limits your options of what you can do to carry this
9 stand forward without carrying a lot of unacceptable poor-
10 quality trees. To me, it indicates this is time to regenerate
11 this stand, to do something -- a type of harvest that would
12 either start a new stand, or if you have the seedlings we were
13 talking about before, to release those and let them become
14 your next crop of trees on those acres. You have to remember
15 part of that thirty-five may be trees that are mature and have
16 saw logs that are not gaining any more value. So you
17 wouldn't -- from a financial point of view, you wouldn't want
18 to leave those now, because they are no longer gaining value.
19 So your investment has reached its maturity in that specific
20 tree. So a portion of this thirty-five, that number may --
21 probably is quite a bit lower than thirty-five. It could be
22 twenty or fifteen. You know, we don't know from this, the way
23 the data is represented here. But I'm sure that a portion of
24 those were actually trees that also needed to be harvested.

25 Q. And I think it was pretty obvious to everyone, but

1 in relation to the area the stem takes up versus the healthy
2 crown of a tree, you know, when you look at the given acre, if
3 it has healthy trees on it, what's taken up most of the room;
4 the crowns or the stems?

5 A. Yeah, the crown by far takes up -- so I mean, eight-
6 two square feet actually isn't a very big area. And a hundred
7 square feet would be an easy number to work with. But a
8 hundred square feet, that would be a fully-stocked stand in
9 some instances where, when you walked underneath it, it would
10 be all shady, because those crowns are so big, they're
11 intercepting all the light that's coming down. So we use
12 that, as I said, as an indicator. It helps inform our
13 management decisions. But you have to realize the crown of
14 the tree spreads so far beyond the stem of the tree, the bowl
15 of the tree, that's what's taking up most of the room. And
16 this is a surrogate that helps us to think about light and
17 crowns and how we're getting the regeneration we want,
18 creating the gaps we want, things like that.

19 Q. Okay. So now at the bottom of this form it has
20 description of stand conditions. Can you explain to us, you
21 know, what this is telling us, what this is telling you as a
22 professional forester?

23 A. Sure. So this is -- there's specific categories
24 above, and then this is kind of a summary of the condition of
25 the stand right now. And for stand 34 it says stand 34 is a

1 well-stocked northern hardwood type. That means it contains
2 species we associate with northern hardwoods. With total
3 basal area of eighty-two square feet. Of that, thirty-five
4 square feet is acceptable growing stock. The stand is
5 dominated by sugar maple, yellow birch, beech, balsam fir and
6 red spruce. So it gives the dominate species that we see out
7 there. The mean stand diameter is 8.4 inches. The stand is
8 weighted towards the medium saw timber class. So it's not big
9 saw log trees, it's more that medium size. The current stand
10 has a high level of residual stand damage, which we spoke
11 about before, and a fair -- it says "about," it should be
12 "amount" of crown dieback.

13 Q. What's crown dieback?

14 A. We saw crown dieback yesterday. I am not sure if
15 any of these pictures really captured it. On Exhibit 67, you
16 need to look at yours, I think, to see this, because it's on
17 the margin of the photograph here. There's a crown -- there's
18 a crown of the tree on the far right-hand side, the very top
19 of the tree, and you can see branches that have no leaves on
20 them. That's crown dieback. You'll have branches up there,
21 no leaves on them, the crowns are in decline. There's a
22 number of things that could cause that, but it's an indicator
23 of load vigor in trees. Trees that aren't good, healthy-
24 growing trees.

25 Q. And Chris, is this what you're referring to as --

1 A. Yes. This right here.

2 Q. Can you show it to the Court? Okay. And just -- I
3 think you used another term of art. You said low vigor, am I
4 right?

5 A. I did say low vigor. It's -- vigor is the health --
6 overall health of the tree. Vigor relates to how well the
7 tree is growing. A vigorous tree would be putting on growth
8 and have a good crown. And if you -- if its crown started to
9 get crowded by its neighbors and you thinned out around it, it
10 would take off and continue to grow. So it's that idea of,
11 you know, healthy, good-growing tree. Low vigor would be the
12 opposite of that. You know, a tree that is either in decline,
13 like is mentioned here, with the decline seen in the crown, or
14 has obvious injuries or things that are causing the tree not
15 to grow quickly. It could just be a tree that was always
16 under other trees. It's what we would call a suppressed tree.
17 And even if you give it lots of light, it won't respond, it
18 won't grow, and all of a sudden it will take off and start
19 becoming a vigorous tree.

20 So it's really a term of science, I would say, but I
21 can understand why you would call it a term of art, because it
22 involves understanding a number of conditions -- health
23 conditions and past practices that could impact the vigor of
24 the tree.

25 Q. The next sentence says the understory varies greatly

1 in stocking of acceptable regeneration with small pockets of
2 sugar maple seedling and saplings in a patchy distribution
3 around the stand. What does that mean?

4 A. So this is just documenting the fact that there's
5 acceptable regeneration in this stand, but it's not
6 everywhere. There's places that have it, places that don't.
7 When it says acceptable regeneration, that's talking about
8 acceptable species of regeneration. So there's certain things
9 that aren't acceptable species; pin cherry, striped maple,
10 those are not a tree species that will grow into a valuable
11 product. They aren't an acceptable regeneration species. So
12 the stock -- it says it varies greatly in stocking and it
13 talks about pockets. So there's places with more
14 regeneration, places with less regeneration, places with
15 pockets that have a lot, pockets that have sugar maple
16 seedling and saplings, patchy, scattered through the stand.
17 So you should get the impression of just what it says, that
18 patches throughout this stand have varying degrees of amounts
19 of regeneration, types of regeneration, and that would make
20 sense from the past harvest practice and not really thinking
21 about a uniform treatment. You're thinking about just going
22 in, cutting the valuable trees. So some places you might make
23 a big opening, some places you might make no openings, and
24 that would affect how much and the type of regeneration that
25 would have come back and responded on that -- on these

1 different areas of stand 34.

2 Q. Chris, how, if at all, does this UVA form 2, page 1
3 for stand 34 describe a stand that is variable?

4 A. In the ways I just mentioned. Really, the stand
5 conditions are where you read most of the variability, but the
6 harvest history would indicate that this probably is going to
7 be a variable stand. So those are two indicators.

8 Q. Okay. Now, I'd like you to go to the UVA manual,
9 and this time, I want you to start at page 28, which is the
10 minimum standards for forest management and regeneration.
11 Okay?

12 A. Um-hum.

13 Q. Now, text begins on page 29. There is a paragraph
14 that's headed practices.

15 A. Yes.

16 Q. Or a section that's headed practices on page 29.
17 There are three practices which are identified. Which of
18 these three, if any, was applied to stand 34?

19 A. The regeneration, even-age management scheme.

20 Q. Okay. So in other words, it says regeneration,
21 even-age management and uneven-age management. When we go to
22 look at the prescription and we start reviewing it, what kind
23 of harvest was prescribed? Regeneration? Even-age
24 management? Or uneven-age management?

25 A. The prescription for this stand was -- well, it was

1 regeneration, even-age management.

2 Q. Okay. So can you read regeneration?

3 A. Regeneration says, for newly regenerated stands, the
4 successful establishment of acceptable species must not be
5 less than 350 stems per acre well distributed throughout the
6 stand three years after the regeneration cut is made or for
7 initial eligibility. 350 stems per acre equals an average
8 spacing of eleven feet.

9 Q. Okay. Now I'd like you to turn to UVA form 2, page
10 2. Okay?

11 A. Um-hum.

12 Q. Can you show the Court where the management practice
13 to be accomplished during the next ten year plan for stand 34?
14 I just want to make sure we're all in the same place.

15 A. It's the second one down.

16 Q. Okay.

17 A. It says stand 34 in the far left.

18 Q. Okay. Tell us the treatment that's prescribed for
19 stand 34. Read it out loud for us.

20 A. It says stand 34 will receive a two-stage
21 shelterwood, even age UVA code 3. The stand lacks an
22 acceptable amount of regeneration and the majority of the
23 overstory is unacceptable growing stock. A low-density
24 shelterwood with the residual basal area of thirty to forty
25 square feet will be utilized to discourage the establishment

1 of beech in the understory. The shelterwood will be regular
2 in distribution and will target sugar maple and yellow birch
3 with large crowns to provide shade and seed distribution. The
4 portions of stand -- portions of the stand will also receive
5 one- to two-acre patches where quality and stocking are not --
6 this should say "sufficient" -- are not sufficient for a
7 shelterwood. The patches will not affect the overall stand
8 residual basal area of thirty to forty square feet.

9 Q. Okay. First, how, if at all, does the stand
10 description influence or determine the stand treatment that
11 you just read. What's the relationship between the two, if
12 any?

13 A. The stand description talked about the amount of
14 acceptable growing stock, or the acceptable basal area that
15 was out there. This is referring to doing a harvest that
16 would leave, across the stand, an average of thirty to forty
17 square feet. So that's a basal area measurement. It says
18 that the -- it lacks acceptable amount of regeneration so
19 there's -- it's recognizing there's places that don't have
20 enough regeneration to just work with, and cut, and release at
21 this point. It also talks about portions of the stand
22 receiving of up to two-acre patches where there's not
23 sufficient stocking and quality, so those issues we talked
24 about with ice damage, previous logging damage, crown dieback,
25 mostly beech, those areas would be the low-quality areas that

1 would receive -- be targeted to receive patches which are
2 clear cuts.

3 Q. And how, if at all, does this treatment for stand 34
4 set about to achieve the goal for stand 34 as set forth in its
5 description?

6 A. I'm sorry; I am not sure what goal you're referring
7 to.

8 Q. Well, just to the extent that it's going to receive
9 a two-stage shelterwood, why is it receiving that treatment?

10 A. To begin that regeneration process across the stand.

11 Q. And why --

12 A. So the shelterwood would establish regeneration
13 where there isn't any and get that growing.

14 Q. And why regeneration? Why is that -- why is that
15 the choice here?

16 A. There's not enough -- as I mentioned before, there's
17 not enough quality in this stand, according to the numbers,
18 and some of that, the quality is mature, so therefore, we need
19 to restart the stand, get a good, vigorous stand growing so
20 that we don't just have a stagnant stand of trees that's not
21 gaining any value.

22 Q. Okay. In other words, it's to grow a new forest, at
23 least with respect to this stand.

24 A. Yes.

25 Q. Okay. Then --

1 THE COURT: We'll stop now. It seems like an
2 appropriate breaking point.

3 I do want to ask -- you may step down. I do want to
4 ask one question now that we've had a number of exhibits
5 admitted. And this is in relation to the memos -- pretrial
6 memos that had been filed. One of the exhibits shows a 200-
7 foot-wide strip of land deeded to VELCO's predecessor,
8 apparently now owned by VELCO.

9 MR. GRAYCK: Yes, Your Honor.

10 MR. DUANE: Yes.

11 THE COURT: Is that east of all of the -- of the
12 entire 471 Clough Brook area? West, I mean.

13 MR. DUANE: West.

14 MR. GRAYCK: West, Your Honor.

15 THE COURT: It's all west?

16 MR. GRAYCK: It's west.

17 THE COURT: But do I understand correctly from the
18 maps that it bisects the 56,604 acres?

19 MR. GRAYCK: That is Plum Creek's position, Your
20 Honor, yes.

21 MR. DUANE: Well, it goes -- I'm sorry, Your Honor,
22 it goes through it.

23 THE COURT: And what is -- it goes through it.

24 MR. DUANE: Yes.

25 THE COURT: So but is --

1 MR. DUANE: But I don't know if bisect is the --

2 THE COURT: Well, whatever.

3 MR. DUANE: It's not fifty-fifty.

4 THE COURT: Okay. I guess the question is, is the
5 State taking the position that, despite the running of the
6 strip, two-hundred-foot-wide strip through --

7 MR. DUANE: Yes.

8 THE COURT: -- the 56,604 acres, that the 56,604 is
9 still all contiguous?

10 MR. DUANE: Yes, Your Honor.

11 THE COURT: Okay. And on what basis are you taking
12 that position?

13 MR. DUANE: The State's interpretation of the
14 Current Use Advisory Board's rules that talk about contiguity
15 and land that's not contiguous.

16 THE COURT: Okay. But if you have another owner
17 that has a parcel between two pieces, how are those two pieces
18 contiguous?

19 MR. DUANE: Because the rules say that a power line
20 does not make a parcel non-contiguous. And the actual VELCO
21 document, in addition, factually, allows Plum Creek to cross,
22 enter, harvest, log, go back and forth across that strip.
23 They're not blocked off. And if VELCO was ever to give up
24 that transmission corridor, the land reverts back to Plum
25 Creek.

1 THE COURT: According to the deed?

2 MR. DUANE: According to the deed. And we had
3 looked at it quite thoroughly and took the position that it
4 does not make the parcel non-contiguous. Thank you.

5 THE COURT: Okay. I'm not asking you to argue that
6 point today. I just was -- a point was raised in Plum Creek's
7 pretrial memo about the contiguous land, and not addressed in
8 the State's memo, and then the exhibit came along.

9 MR. DUANE: Yes.

10 MR. GRAYCK: Understanding what Your Honor has just
11 said, there's one point of clarification that I would press
12 the Court to be aware of. Attorney Duane used the word parcel
13 in reference to the Current Use Advisory Board rules. I
14 believe the Current Use Advisory Board rule that's specific to
15 the right-of-way actually uses the word tract, and we will
16 have those rules available for the Court, and we can then see
17 whether it uses parcel or tract.

18 THE COURT: Okay. All right. You'll have an
19 opportunity to --

20 MR. DUANE: Yes.

21 THE COURT: -- address that issue more fully later.
22 I just was trying to get a general sense of positions. All
23 right. Thank you.

24 MR. DUANE: Your Honor, excuse me. One question?
25 Perhaps the clerk can inform us. Assuming the courthouse will

1 be locked tonight, can we leave a number of our materials here
2 on our tables or chairs? I don't know if there's any --

3 THE COURT: Yeah, that's fine. No one else is --

4 MR. DUANE: I don't know if there's anything
5 scheduled for tomorrow morning.

6 THE COURT: No, nothing else is scheduled.

7 MR. DUANE: Okay, great. And that would be okay if
8 we did that?

9 THE COURT: That's fine.

10 MR. DUANE: Thank you very much.

11 THE COURT: And we'll continue at 9 o'clock.

12 MR. DUANE: Okay. Thank you.

13 COURT OFFICER: All rise.

14 (Proceedings concluded at 4:30 PM)

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

I, Janice D. Badeau, the court approved transcriber,
do hereby certify the foregoing is a true and correct
transcript from the official electronic sound recording of the
proceedings in the above-entitled matter.



June 24, 2013

JANICE D. BADEAU

DATE

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IN THE VERMONT SUPERIOR COURT
ESSEX COUNTY CIVIL DIVISION

PLUM CREEK MAINE)	Case No. 72-12-10Excv
TIMBERLANDS, LLC,)	30-6-11Excv
Plaintiff,)	Guildhall, Vermont
)	
- against -)	
)	May 30, 2013
VERMONT DEPARTMENT OF)	9:03 AM
FORESTS and PARKS,)	
Defendant.)	
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PLUM CREEK MAINE)	Case No. 19-4-11Excv
TIMBERLANDS, LLC,)	31-6-11Excv
Plaintiff,)	Guildhall, Vermont
)	
- against -)	
)	May 30, 2013
VERMONT DEPARTMENT OF TAXES,)	9:03 AM
Defendant.)	
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TRANSCRIPT OF COURT TRIAL

BEFORE THE HONORABLE MARY MILES TEACHOUT,
SUPERIOR COURT JUDGE

APPEARANCES:

DAVID L. GRAYCK, ESQ.
KIMBERLY B. CHENEY, ESQ.
Attorneys for the Plaintiff

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I N D E X

		DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
WITNESSES:						
For the Plaintiff:						
	JONATHAN HORTON	4	10	13		
	CHRIS FIFE	14	116	145	155	
	ROBBO HOLLERAN	156				
EXHIBITS: DESCRIPTION MARK ADMIT						
For the Plaintiff:						
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1 (Proceedings convened at 9:03 AM)

2 THE COURT: Please be seated. Good morning.

3 Are you continuing with Mr. Fife's examination?

4 MR. GRAYCK: Your Honor, we do have a witness
5 that we would like to take out of turn. I've discussed it
6 with Attorney Duane, and he has no objection. The witness
7 will address a discrete issue.

8 THE COURT: All right.

9 MR. DUANE: Your Honor, if I may; I was remiss
10 yesterday in introducing to the Judges Steve Sinclair, who's
11 sitting here with Assistant Attorney General Schwartz and I.
12 Steve is the director of Forests for the Department of
13 Forests, Parks and Recreation, and he's here on behalf of the
14 State of Vermont with Thea and I.

15 THE COURT: All right.

16 MR. DUANE: Thank you.

17 THE COURT: So we will suspend Mr. Fife's
18 testimony and take your other witness out of turn.

19 MR. GRAYCK: Thank you, Your Honor. Jonathan
20 Horton, please.

21 JONATHAN HORTON

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. GRAYCK:

25 Q. Could you state your name, please?

1 A. Jonathan Horton.

2 Q. And where do you live?

3 A. I live in Deerfield, New Hampshire.

4 Q. And for whom are you presently employed?

5 A. The State of New Hampshire.

6 Q. And at whose request are you here today?

7 A. At the request of Plum Creek.

8 Q. When, if ever, did you work for LandVest?

9 A. I worked for LandVest from September of 2008 until
10 December of 2010.

11 Q. Okay. And are you familiar, if at all, with the
12 Clough Brook North Harvest?

13 A. Yes.

14 Q. Okay. And what participation, if any, did you have
15 in the drafting of the prescription documentation for the
16 Clough Brook North Harvest?

17 A. I did the initial inventory and also did the majority
18 of the planning for the silviculture that took place in Clough
19 Brook.

20 Q. Okay. Were you a participant in a site visit in
21 about October of 2009 to Clough Brook North Harvest area?

22 A. Yes.

23 Q. Okay. And what, if any, discussions do you recall
24 regarding the proposed treatment for Clough Brook North on
25 that site visit?

1 A. I'm sorry, could you say that again?

2 Q. While on the site visit were there any discussions
3 about what would be the appropriate treatment for Clough Brook
4 North?

5 A. Yes. There were discussions about the appropriate
6 treatment, but we had continued to discuss -- it was a large
7 area, and we had continued to discuss between both parties
8 what the appropriate treatment was. So there were lengthy
9 discussions as to what the treatments for these specific areas
10 should be.

11 Q. Okay. And I apologize, I should have asked you this
12 first: what is your profession?

13 A. I'm a forester.

14 Q. And in what capacity were you employed by LandVest?

15 A. I was a staff forester, so a field forester.

16 Q. Okay. I'm going to have you take a look at a map
17 which is part of what's been admitted as Exhibit 22. I'm just
18 going to show it to you. Actually, why don't you look at this
19 document in front of you.

20 A. Okay.

21 Q. Does that look familiar at all?

22 THE COURT: Can you identify for the record
23 what --

24 MR. GRAYCK: Exhibit 22.

25 THE COURT: All right.

1 BY MR. GRAYCK:

2 A. Yes.

3 Q. In fact, there are some --

4 A. My initials.

5 Q. -- initials J.C.H. Whose initials are those?

6 A. Those are my initials.

7 Q. Those are your initials, J.C.H., on Exhibit 22? The
8 last page of Exhibit 22 there's a map. Do you see that?

9 A. Yes.

10 Q. What familiarity, if any, do you have with respect to
11 this map?

12 A. I have a lot of familiarity with this map. I created
13 this map.

14 Q. Okay. Can you tell me why you created this map?

15 A. It was of my own doing. I had taken the map and I
16 brought it with us on a walkthrough to kind of familiarize the
17 foresters with where we might do proposed silvicultural
18 treatments.

19 Q. Okay. Now one page prior there is what appears to be
20 a similar map. Do you recall which map you would have had on
21 the site visit in October?

22 A. I believe it was this first map.

23 Q. Yeah. Can you show it to the Court, please? So when
24 did you produce the second topo map?

25 A. It was between the first -- I believe we had a first

1 visit, and then a later -- a visit -- we revisited the site,
2 and it was during the period in time between that we -- that I
3 created this map.

4 Q. There are letters with arrows. What was the purpose
5 of adding the letters and the arrows which indicate
6 treatments? Why did you do that?

7 A. It was to clarify where the silvicultural
8 prescriptions that I had planned would take place.

9 Q. And what was your understanding as to the specificity
10 or precise depiction of where those treatments would take
11 place?

12 A. It's not very precise.

13 Q. And why not?

14 A. Because this was done on a program that was -- that
15 doesn't necessarily use precise and accurate measurement. It
16 was essentially using a computer as a crayon to draw around a
17 map. It wasn't using any geographic information. It was more
18 of a doodle than a GPS'd or actually located drawings.

19 Q. So how, if at all, was this map intended to convey
20 that treatments would only occur where specified on that map?

21 A. I used it more as just to clarify the bottom -- the
22 bottom of the map was confusing as to where these
23 silvicultural treatments were to take place. So in order to
24 clarify that, I used those to just show a general location as
25 to where these silvicultural treatments would take place.

1 Q. Okay. And why was the bottom of the map confusing?

2 A. It just wasn't a very good representation of
3 illustrating where these silvicultural treatments were going
4 to be.

5 Q. Okay. And do you remember who requested that this
6 map be produced? Or on the site visit was there a request
7 that an additional map be produced?

8 A. I don't remember specifically if there was a request
9 to produce a map.

10 Q. Okay. One -- a few more questions. Now you're
11 Jonathan Horton, right?

12 A. Yes.

13 Q. Okay. And your dad is Jim Horton, correct?

14 A. James Horton; yes.

15 Q. James Horton. And for whom does your dad -- who is
16 he employed by?

17 A. He works for the State of Vermont.

18 Q. In what --

19 A. Forests and Parks.

20 Q. In Forests and Parks? And is he a forester?

21 A. He's a forester as well.

22 Q. Is he a county forester?

23 A. No.

24 Q. But he's within the division of Forestry.

25 A. Yes.

1 Q. Okay. So if we see something later on that says Jim
2 Horton, good chance is it's your dad.

3 A. Yes.

4 Q. Okay. Thank you.

5 MR. GRAYCK: Nothing further, Your Honor.

6 THE COURT: Ms. Schwartz.

7 CROSS-EXAMINATION

8 BY MS. SCHWARTZ:

9 Q. Hi. I'm Thea Schwartz. I'm with the Attorney
10 General's office.

11 A. Hello.

12 Q. I just have a few questions for you. So you were
13 talking about a site visit that you were on in October of
14 2009?

15 A. Yes.

16 Q. And Matt Langlais, who was the county forester, was
17 there with you?

18 A. Yes.

19 Q. And the purpose of the site visit was to discuss the
20 prescriptions that you had proposed --

21 A. Yes.

22 Q. -- for the Clough Brook? And was to discuss the
23 prescriptions and as to whether they were appropriate or not?

24 A. It was -- it was more of a -- we would do
25 walkthroughs of these, and we would illustrate what we were

1 going to do by showing the foresters what was -- what was out
2 there and what -- explain to them what we were thinking in a
3 particular stand.

4 MS. SCHWARTZ: May I approach the witness?

5 THE COURT: Yes.

6 BY MS. SCHWARTZ:

7 Q. I believe you were just looking at a map with
8 Attorney Grayck?

9 A. Yes.

10 Q. Can you show us where you walked on the map?

11 A. I don't really remember where we walked. I know a
12 general location as to -- or the point -- the part that I do
13 remember was we walked from this landing out and around, and
14 then circled back up through the -- these stands.

15 Q. But you would have walked through Stand 43?

16 A. Correct.

17 Q. And in Stand 43 do you recall what you proposed? Was
18 it overstory removal?

19 A. Yes.

20 Q. And did you prescribe anything else for Stand 43? I
21 see on the map it says overstory removal here.

22 A. Yes. I can't remember if I did prescribe anything
23 else.

24 Q. Now is this -- and was there a map that you amended
25 after this that you --

1 A. After this?

2 Q. -- made changes to?

3 A. I don't remember if there was a map that we -- I
4 believe that was the last map that I remember making myself.

5 Q. Do you recall if there was discussion about overstory
6 removal in Stand 43?

7 A. I -- there were -- there was discussion. There were
8 parts of the stand that didn't exhibit what would be an
9 overstory removal. So there was discussion as to whether it
10 was the correct treatment. I believe that's why I put the
11 two-stage shelterwoods in the locations that I put them in.

12 Q. So there was some areas that were marked overstory
13 removal on your initial map that you had proposed that wasn't
14 appropriate for overstory removal? That was the discussion
15 that you all had?

16 A. I believe from this -- from what I did on this map
17 that that --

18 Q. And that would have been changed to two-stage
19 shelterwood?

20 A. Yes.

21 Q. And would that have been an agreement among Matt
22 Langlais, the county forester, along with Plum Creek, that
23 those areas did not exhibit what was necessary to have
24 overstory removal as a prescription?

25 A. It would have been -- yeah, it would have been a

1 verbal agreement based on discussions that we had on site. A
2 lot of times we would discuss whether certain stands would
3 receive the same treatment, or in certain areas where we felt
4 the conditions didn't exist for that treatment we would use
5 something more appropriate for those sites within that
6 treatment. And those were normally verbal agreements between
7 Matt Langlais -- sorry, I'm blanking on the Land Trust --

8 Q. The Land Trust was at the visit, too?

9 A. Yes.

10 Q. So there was a discussion between the Land Trust, the
11 Forests, Parks and Rec and Plum Creek as to what would be the
12 appropriate treatment?

13 A. Yes.

14 Q. And so you were all in agreement as to what would be
15 the appropriate treatment?

16 A. I believe leaving the last field visit we were in
17 agreement.

18 Q. That's it. Thank you.

19 THE COURT: Mr. Grayck?

20 REDIRECT EXAMINATION

21 BY MR. GRAYCK:

22 Q. Attorney Schwartz was asking questions about the
23 different treatments. Do you recall?

24 A. Yes.

25 Q. Okay. To what extent does the variability, or did

1 the variability of the stand influence the treatments that
2 were prescribed?

3 A. They greatly influenced the treatments. Variability
4 was very evident in a lot of the stands that I had worked in
5 on this property. There -- you know, you'll reach pockets of
6 a stand that don't exhibit the same -- or vastly differ from
7 the rest of that same stand.

8 Q. Okay. Thank you.

9 THE COURT: Anything further?

10 MS. SCHWARTZ: Just one second, please.

11 No further questions.

12 MR. GRAYCK: Thank you, Your Honor.

13 THE COURT: That completes your testimony. You
14 may step down. Thank you.

15 (The witness was excused.)

16 MR. GRAYCK: Chris Fife?

17 THE COURT: You're still under oath from your
18 prior testimony.

19 CONTINUATION OF DIRECT EXAMINATION

20 OF CHRIS FIFE

21 BY MR. GRAYCK:

22 Q. Good morning, Chris.

23 A. Good morning.

24 Q. Yesterday when we left off we were just still talking
25 about Stand 34. Yes? And --

1 A. Yes.

2 Q. Okay. And we were just beginning to look at the UVA
3 form that has the treatment for Stand 34?

4 A. That's correct.

5 Q. And I'm just going to turn to that. Okay. So just
6 to help orient the Court again, could you show the page of
7 Form 2, Page 2 that we're looking at? The exhibit in 22.

8 A. Exhibit 22, and that's the page that says Form 2,
9 Page 2 up on the right-hand corner, and has a list of stands
10 on the left-hand side. The stand we were referring to at this
11 point was Stand 34 in the middle. It would be the second one
12 down.

13 Q. Okay. So the first sentence is "Stand 34 will
14 receive a two-stage shelterwood even age UVA Code 3." What
15 does that mean?

16 A. That's a prescription for silviculture for that
17 stand, for that type of harvesting that would occur in that
18 stand.

19 Q. Okay. And then it says, "The stand lacks an
20 acceptable -- lacks an acceptable amount of regeneration and
21 the majority of the overstory is unacceptable growing stock."
22 What does that mean?

23 A. It's an indicator that there is not adequate
24 regeneration across the stand right now to just release. It
25 has a lack of acceptable, which would be commercial species or

1 approved species, of regeneration, and the majority of the
2 overstories, or most of the trees in the overstory or that
3 canopy above are unacceptable for growing stock, as we talked
4 about yesterday.

5 Q. Okay, then it states "A low density shelterwood, with
6 the residual basal area of thirty to forty square feet will be
7 utilized to discourage the establishment of each in the
8 understory." First, what is the portion that states a low
9 density shelterwood with the residual basal area of thirty to
10 forty square feet mean? What does that mean?

11 A. A shelterwood treatment can have a wide range of
12 residual basal areas, depending on the objective: the species
13 that are desired; the species that are on site currently; the
14 stage that that stand is in, as far as the openings that
15 already exist; the quality of the overstory. So a low density
16 would be referring to the density of trees that are left after
17 the harvest is done. Low density shelterwood would be down in
18 the thirty to forty square feet remaining as basal area
19 remaining. Sometimes even now some of the silviculturalists
20 are talking about going down as low as twenty. And then the
21 range on a shelterwood, depending on the species that are in
22 that stand, could go up to eighty or ninety, probably eighty,
23 really, in a residual, so you have a wide range. The low
24 density is at the low end of the range. The higher density,
25 more traditional shelterwoods are at the upper end of the

1 range in hardwoods.

2 Q. And then you said "Would be utilized to discourage
3 the establishment of beech in the understory." Why discourage
4 the establishment of beech in the understory?

5 A. Beech was mentioned in the description of this stand
6 as an issue. There was a high percentage of beech that had
7 the Nectria disease. Beech in this region is susceptible to
8 that. And as I mentioned, it's not a high value species as
9 far as growing into a high value commercial product. Beech
10 does not respond as well as yellow birch and the other birches
11 in sunlight, so by increasing the sunlight, leaving less trees
12 in the overstory, helps to promote birch over beech in the
13 regeneration.

14 Q. "The shelterwood will be irregular in distribution
15 and will target sugar maple and yellow birch with large crowns
16 to provide shade and seed distribution." What does that
17 sentence mean?

18 A. The stand as described was variable. There were
19 areas in it that had more density of trees, areas with less
20 density of trees, areas with more quality trees, areas with
21 less quality of trees in the overstory, areas that already did
22 have some regeneration, even adequate levels of regeneration.
23 And areas, obviously because this is a prescription for a
24 shelterwood, that did not have adequate levels and needed to
25 have regeneration established. So the irregular distribution

1 of this shelterwood would be an irregular application of that
2 silviculture or that harvesting across the stand, so it
3 wouldn't look the same everywhere it was applied on the stand.

4 And then the targeting of sugar maple and yellow
5 birch with large crowns is targeting to leave, not targeting
6 to cut, because it says that those large crowns would provide
7 shade and seed distribution. So the intent being that where
8 you're looking to have shade as part of the objective, in
9 portions of this with that higher density of shelterwood, you
10 would have more shade, you would want trees that have the
11 large, live crowns.

12 If I may -- In our Exhibit 66, in the site visit
13 photographs, we talked about the crown of this tree. It's a
14 large, live crown. It exhibits the characteristics that you
15 would ideally be looking for. This is the type of tree you
16 would want to seek out to leave for shade. And also in this
17 case, especially with the yellow birch, that will throw tens
18 of thousands of seeds to help establish regeneration on the
19 site.

20 Q. The next sentence is "The portions of the stand will
21 also receive one to two acre patches where quality and
22 stocking are not, it says, insufficient for a shelterwood."
23 What correction, if any, should be made in that sentence?

24 A. I believe this sentence should read instead of "the
25 portions", just "portions", and the "insufficient" should be

1 changed to "sufficient". In other words, "Portions of the
2 stand will receive one to two acre patches where quality and
3 stocking are not sufficient for a shelterwood."

4 Q. Okay.

5 A. Where the overstory trees that exist before the
6 harvest are of low quality, or just there aren't enough of
7 them at that time to do a shelterwood, even a low-density
8 shelterwood, then the intent would be to take all of the trees
9 and allow that to regenerate as a patch clearcut, in effect,
10 is what it is.

11 Q. Okay. And the last sentence states "The patches will
12 not affect the overall stand residual basal area of thirty to
13 forty square feet." What does that mean?

14 A. The objective here -- it's a way to measure the
15 outcome of the harvest. So on Stand 34, when the stand
16 harvest is complete, the overall residual basal area across
17 the stand will not be below thirty to forty square feet of
18 basal area. So when the patches are taken into account that
19 have a zero residual basal area, when everything's accounted
20 for across the stand, the residual basal area will be targeted
21 to be between thirty to forty square feet.

22 Q. Okay. Now yesterday we talked about the Forest
23 Management Plan, which is Exhibit 14, and its adoption by Plum
24 Creek as Exhibit 15. So with reference to the Forest
25 Management Plan in Exhibit 14, how, if at all, does the

1 description of Stand 34 relate to the ten-year concept plan?

2 A. As I mentioned, the concept, or the management plan,
3 the ten-year management plan, which is Exhibit 14, is the
4 guiding document for the management on the Plum Creek
5 timberlands for the ten years. We adopted it. Essex Timber
6 had already begun this management scheme, but it addresses the
7 type of management -- it provides the framework for the
8 management that will occur.

9 So if you look in the Forest Management Plan, at
10 page 16, my understanding is a forester in inheriting this
11 plan, and then reading it, as the guidance for our management,
12 if you look at the bottom of Page 16, it gives context to the
13 current conditions. This plan was based on an inventory, a
14 stratified inventory, which we talked about yesterday, as a
15 less intensive inventory, but still covers the entire land
16 base. So it's talking about conditions across the entire land
17 base. And it says in the last bullet point on Page 16 "The
18 hardwood resource has been high-graded through the historical
19 use of diameter limit cuttings, and that effect has been the
20 establishment of large blocks of regenerated, even aged
21 hardwood and mixed wood stands, crudely referred to as two-
22 storied." So that's a bit of description of what we were
23 talking about yesterday, where the value was taken out. Lower
24 value, lower quality stems and trees were left, done in a sort
25 of picking here and there type of way that didn't apply

1 uniform silviculture across stands, and therefore left this,
2 as it stated here, "Crudely referred to two-storied stands."
3 I believe it says "crudely referred to", because it's very
4 difficult in many cases to see two actual stories.

5 When you look at these stands, there's many more
6 height classes. And if you can imagine, if we look at, again,
7 the photographs at 56, Exhibit 56, again, this is looking into
8 the overstory removal box, as we've been calling it, the
9 overstory removal area. But there's many trees that are quite
10 tall in this picture. There's also young, smaller trees in
11 the regeneration underneath here. That would be -- this was
12 referred to as a two-aged, or, as they said here, a two-
13 storied stand, even though when you looked at it you saw
14 really multiple levels, multiple heights of trees throughout.
15 And I believe that's why they say "crudely referred to".

16 Again, if we turn the page to Page 17, we yesterday
17 spoke about -- I spoke about beech and the issues with beech.
18 And in fact it's identified on Page 17 on the bullet point at
19 the top of the page. "The beech resource is in serious
20 decline as a result of the beech Nectria disease." The 2006
21 inventory, which this plan is based on, further reinforces the
22 view that as "Typically the beech tally fell into the UGS, or
23 Unacceptable Growing Stock category, it has poor form and
24 bigger". So beech was recognized as an issue and, again,
25 that's a guiding concept in our management.

1 And then below the next bullet point, that paragraph
2 in the middle of that page says that -- talks about the
3 conditions and how they affect the decision-making, and that
4 the silvicultural objectives will be directed toward improving
5 and correcting these conditions through a sound program of
6 early rotation activities. So, again, just the idea that
7 there was correcting and -- what was the word that they used
8 -- improving and correcting that was required in these stands.
9 And that -- that just -- that would be expected, given the
10 history -- the harvesting and the condition of many of these
11 stands.

12 Then if we look at Page 35, it starts to talk more
13 specifically about the types. And if I could at the same time
14 refer you -- on Exhibit 22, if you still have that available,
15 you may remember on the maps, at the bottom of the map, they
16 talked about the chart at the bottom of the maps. The maps
17 are the last page in the exhibit, the last and the second to
18 last page. And the chart --

19 Q. Just one second, Chris.

20 A. I'm sorry. The chart at the bottom of the page has a
21 stand number as the first column, which we've been referring
22 to throughout the prescription discussion. And then it has
23 the next column, says Strata (phonetic). And if we look at
24 Stand 34, which is the second one down in the chart, the
25 Strata is H3B. And I tried to describe what that code meant

1 yesterday a little bit. But that code then is what's being
2 referred to here in the management plan. So if we flip back
3 to Page 35 of the management plan, H-types are -- that H of
4 the H3B -- and H is hardwood, and it says that "The hardwood
5 stands on this tract were targeted by the previous owner to
6 take advantage of markets and have left stands with varying
7 conditions of quality, health, and stocking. The long-term
8 goal for the hardwood forest type will be to improve the
9 overall quality and long-term value. Management on a stand
10 level will vary depending on current conditions and previous
11 treatments. As a result, some stands require no treatment
12 other than time to appreciate in volume and value, while some
13 stands will need to be rehabilitated or moved to regenerate
14 due to issues of long-term viability and value." And I
15 believe that's what we're talking about. It wasn't a stand we
16 looked at and said we would just leave.

17 And then further on that, if we turn to Page 37, a
18 couple pages further along, there's actually a description a
19 little beyond halfway down on this page. They're calling
20 these stands, these are the straight of the large
21 conglomeration of individual stands, and for the H3B-slash-H2B
22 it says that "The treatments, in general, will be overstory
23 removal reserving clusters of crop trees, but for some healthy
24 stands improvement thinning can be considered." And that's,
25 as you know, pretty much it's what was the prescription for

1 this stand.

2 And then just -- finally, as well, still tying this
3 prescription to the management plan, on Page 41 it talks about
4 at the bottom of the page canopy removal justification.
5 Overstory removal is a canopy removal, as is clearcuts or
6 patches. And it says that "Regeneration harvest will be used
7 under two primary conditions. Condition one is where there is
8 adequate advanced regeneration that is ready for release and
9 overtopped by poor quality overstory. The goal will be to
10 remove the overstory and release the advanced regeneration."
11 That's the overstory removal that we've been talking about.

12 "Condition two is where stands have not adequately
13 regenerated and the overstory is not growing at satisfactory
14 rates, is in decline, or stocked with an unsuitable level of
15 acceptable growing stock. The goal in these conditions will
16 be to complete the seed tree, overstory removal, shelterwood
17 or silvicultural clearcut, regeneration harvest strategy."
18 And that's actually what was prescribed for Stand 34 through a
19 shelterwood system with patches, which are clearcuts -- patch
20 clearcuts, and for the very reasons that were stated in that
21 paragraph. So this stand actually met quite well the
22 conditions described for most -- for a number of the stands in
23 this straight, or this larger grouping of stands.

24 So that's how --

25 THE COURT: Could we just go over this

1 paragraph and what it says and means?

2 THE WITNESS: Yes, Your Honor.

3 A. So the paragraph is talking about its harvest
4 strategies, is the heading that we're under here in the plan.
5 And for the harvest strategy of canopy removal, the
6 justification for that is one of two things. It's either A, -
7 regeneration, which would be establishing a new stand, the
8 young seedlings to grow. Those would be your focus. Or
9 rehabilitation, which would be trying to return the stand to a
10 level of value and quality where you could manage it going
11 forward.

12 And under regeneration it gives a justification for
13 using this, that there's two primary conditions: the first one
14 is where you have an adequate advanced regeneration, so you
15 have seedlings already on site. They've already started to
16 grow beneath the stand that was -- that's there, the
17 overstory, the bigger trees, and it's ready for release and
18 overtopped by poor quality.

19 THE COURT: What does "ready for release" mean?

20 A. Release is cutting the trees off the top, and release
21 means releasing the small seedlings to grow. So they -- when
22 you cut the trees off the top that are blocking the light from
23 them, they receive the light. They're released to grow.

24 And that's the last part of that sentence. It says
25 "The goal will be to remove the overstory to release the

1 advanced regeneration," so to allow it to grow.

2 The second condition that's mentioned here is where
3 stands have not adequately regenerated, and if you remember in
4 the prescription that we were just looking at, it said there's
5 not adequate acceptable regeneration. And in those cases, you
6 still may decide to do a regeneration harvest when, it says,
7 "The overstory is not growing at satisfactory rates, is in
8 decline," which was mentioned in the stand description for
9 Stand 34, "or is stocked with an unsuitable level of
10 acceptable growing stock." We talked yesterday about the
11 thirty-five square feet being an unacceptable level of -- an
12 unacceptable level of acceptable growing stock to carry a
13 stand forward.

14 And so the goal, the final sentence, the goal in
15 both of these conditions, is to "Complete one of these
16 treatments, a seed tree harvest, an overstory removal harvest,
17 a shelterwood harvest, or a silvicultural clearcut harvest to
18 regenerate the stand." Those are all -- all of those harvest
19 types are focused on regeneration. So they're not focused on
20 the bigger trees that are on site, so much as establishing
21 young seedlings or releasing the young seedlings that are
22 there.

23 BY MR. GRAYCK:

24 Q. Do you still have more from the plan?

25 A. If I may, just one more section that relates to the

1 overstory removal.

2 On Page 45 -- Page 45 again is talking about the
3 different types of cut. And it describes an overstory
4 removal, which we were talking about the difference between
5 the shelterwood and the overstory removal. "This
6 silvicultural option would be quite common on the lands of
7 Essex Timber Company -- now Plum Creek -- as many acres are
8 found with two-age stands where the older and partially
9 overtopping age class is often in poorer condition, and in
10 many instances losing volume and value to decline and
11 subsequent mortality. Further, these older age classes are
12 often completely lacking in a suitable level of acceptable
13 growing stock to warrant carrying them for a longer period in
14 the rotation of the straight-up."

15 And then it goes on to describe the way these will
16 often be implemented and the goals of the treatment -- this
17 treatment option.

18 Q. And so how does what you just read relate to the
19 treatment for Stand 34?

20 A. So if we turn back to Exhibit 22, which is the
21 treatment, when we look at that page -- Form 2, Page 2 --
22 actually, if I have you look at the Form 2, Page 1 that we
23 looked at yesterday, which says Stand 34 up in the corner, and
24 it's I think about the fifth -- fourth or fifth page in.
25 Seventh page in, I believe. It's this one. This reflects

1 that there's past harvesting by Champion which was described,
2 the outcome of a lot of that in the overall plan, the health
3 conditions of beech Nectria, the acceptable basal area level
4 of only thirty-five square feet. And then down in the bottom
5 it talks about the current stand having a high level of
6 residual stand damage and a fair amount of crown die back;
7 understory that varies greatly in stocking of acceptable
8 regeneration; pockets of sugar maple, seedling and sapling,
9 and patchy distributions of some places have good regen and
10 some others don't. Very much matching to me the description
11 that was in the approved management plan.

12 And then if we turn to Form 2, Page 2, on Stand 34
13 where we started today; on the prescription for this stand,
14 it's a two stage shelterwood, which is one of the options that
15 was talked about to regenerate these type of stands when you
16 didn't have adequate regeneration. There wasn't an adequate
17 level of seedlings already on the ground. So even though the
18 description stated that there are areas that had adequate
19 regeneration, in fact pockets of good acceptable regeneration
20 -- sugar maple, yellow birch -- overall the prescription was
21 to do a low-density shelterwood so that you would establish
22 regeneration; small trees from seeds and sprouts in those
23 areas that didn't have adequate regeneration right now.

24 Q. Okay. So that's what we've done with respect to
25 Stand 34.

1 I'm going to ask you to turn to the UVA Form 2, Page
2 1 for Stand 43. And there's probably going to be some overlap
3 of what we've already talked about on Stand 34, so to the
4 extent that there is you'll let us know. Okay? But I'm going
5 to -- let's just go through it.

6 So with respect to stand history again --

7 A. This is -- it looks the same as the description page
8 for 34. I have to look up in the corner -- top left-hand
9 corner says LMO343.

10 Q. Okay, so stand history; what's it telling us?

11 A. The same as the other stands; that this was harvested
12 by Champion Paper approximately twenty to twenty-five years
13 ago.

14 Q. Okay. Forest health condition; what's it telling us?

15 A. Also the same as the previous Stand 34, that this
16 stand had high residual stand damage from past logging and
17 possibly the ice storm, other events, and the beech bark
18 Nectria disease.

19 Q. Okay. What's the long range objective?

20 A. Over on the far right it talks about the long range
21 objective being even age management with the present stand age
22 of between seventy to seventy-five and a rotation age of
23 eighty, which would be when you would start.

24 THE COURT: Could you point out on the map
25 generally where 43 is?

1 THE WITNESS: Yes.

2 THE COURT: It's very hard to see on these maps
3 where the different stands are.

4 MR. GRAYCK: Your Honor, for demonstrative
5 purposes may we also present a large map of the stands?

6 MR. DUANE: No objection, Your Honor.

7 THE COURT: All right.

8 MR. GRAYCK: I'm sorry, Your Honor, we don't
9 have it in the courtroom, so we'll just continue.

10 BY MR. GRAYCK:

11 A. It is difficult to see, and Stand 43 is particularly
12 confusing because it's sort of an octopus in a way. It is in
13 the center here, where it's labeled, but there's an arm of it
14 that comes up and it goes across the top on the far western
15 part of the stand, up on the -- of the area, the proved area
16 on the ridge. It also has a small arm that reaches up. So
17 the black lines on this map are depicting the boundaries, or
18 the black dotted lines are depicting the boundaries of the
19 stand, and the number within that is the stand number. And
20 this stand actually goes from here, in the middle of the --
21 sort of the middle of the harvest area. It has this arm that
22 reaches across, and also goes both ways along the ridge in a T
23 type of fashion. There's quite a -- it covers quite a bit of
24 different geography on the site. And then Stand 34 wraps
25 around the top with a large portion over here to the east, and

1 a large portion to the west, and then sort of a narrower
2 connecting piece of the top.

3 Q. So going back to the Form 2, Page 1 for Stand 43,
4 looking at the stand description, what is it telling us?

5 A. The stand description has even age checked on this,
6 so, again, this is scheduled for even age management. The
7 forest type is H3B. That was the type that was assigned
8 through the typing of the overall forest in that forest
9 inventory. The stocking level is at the B line. There's
10 eighty-eight square feet of basal area total, and thirty-eight
11 of that is acceptable basal area.

12 Q. And what does that relationship of eighty-eight total
13 BA to thirty-eight BGS BA tell you?

14 A. It's -- this is a poor quality stand. Most of the
15 basal area out there is in the unacceptable growing stock
16 category.

17 Q. Okay. Can you look at the description of the stand
18 conditions as set forth on Form 2, Page 1 for Stand 43 and
19 tell us what it means. What's it telling us?

20 A. Actually, if I could just make -- I believe there's a
21 mistake on this form, and I didn't catch it even on
22 submission. And apparently the State didn't catch it, either.
23 But from the map, which I believe would be the most -- should
24 be an accurate place to look at this -- this stand is actually
25 typed as an HS3B, and on here the forest type is listed as

1 H3B. I believe that's incorrect. I believe it should be HS.
2 And the reason I believe that -- you'll remember we observed
3 as we walked through Stand 43 on the site visit a lot of
4 softwood out there, and it was now coming in the understory.
5 I know there was softwood in the overstory, and the HS stand
6 type indicates that it's a hardwood stand with a softwood
7 component to it, versus more of a pure hardwood stand. So
8 there's greater than twenty-five percent softwood in the
9 initial stand out there. So I believe that forest type is an
10 error on Form 2, Page 1.

11 Q. So now with respect to the description of stand
12 conditions?

13 A. So the description of the stand conditions at the
14 bottom says "Stand 43 is well stocked, hardwood dominated
15 mixed wood type, total basal area of eighty-eight; of that,
16 thirty-eight square feet is acceptable growing stock." So
17 it's well stocked, it's stocked at the B-line, which is a good
18 stocking for this type of stand if what you had was good
19 quality. But the end of that sentence says that "The total
20 basal area is eighty-eight, and only thirty-eight square feet
21 of that is acceptable growing stock, is quality trees." And
22 again, as I mentioned yesterday, acceptable growing stock also
23 contains mature trees. So some of that thirty-eight square
24 feet is likely in trees that have a saw log now that should be
25 cut in order to not lose value or have that saw log just rot

1 on the stump.

2 The stand is dominated by yellow birch, balsam fir,
3 white birch, red spruce and red maple. Those are the species
4 that were predominant when the inventory was done. The mean
5 stand diameter is eight-point-two inches. The stand is
6 weighted toward the medium saw timber size class. So this is
7 describing the average size of the trees out there -- at that
8 four and a half feet off the ground that I spoke about
9 yesterday. So on average this would be considered a medium
10 sized class. It's not real big trees. We aren't in the
11 fifteen inch type of trees. We're in this eight and a half or
12 eight-point-two inch diameter class. That doesn't mean that
13 all the trees out there are eight-point-two inches, as I'm
14 sure you're probably aware. That's small trees and big trees,
15 and they -- this is where the overall average falls out.

16 The white birch in the stand is in severe decline,
17 means it's dying, it was noted in the tops, in the condition
18 of the stems, that the white birch, which is a short-lived
19 species, was beginning to really decline.

20 The majority of the balsam fir is mature. Again,
21 that's also -- tends to be a shorter-lived species, an early
22 species comes in, occupies a site, and then will die more
23 quickly than the longer-lived species that follow it.

24 And then finally, it says "The majority of the stand
25 has good stocking and red spruce seedlings and saplings in the

1 understory." So the indication there is that there's a good
2 stocking of red spruce in the understory of the seedlings of
3 red spruce on this stand.

4 Q. Now, just with respect to the stand cruise data;
5 first of all, what's stand cruise data? What does that mean?

6 A. This is an indication of the work that was done for
7 this individual stand in order to write the prescription for
8 this stand. Stand cruise data is giving information on how
9 the data was collected. It's a way to communicate to the
10 county forester what was done out there. It says a prism
11 factor or plot size. This was a prism cruise, and I think
12 that later we'll get into the methods of cruising.

13 Q. But briefly summarize.

14 A. There's two methods of cruising: there's a fixed
15 radius plot where you stop and you count the trees within a
16 certain radius from where you are, and then that's used to
17 extrapolate, as I mentioned before, across the stand of how
18 much is there. There's a variable radius plot that uses as a
19 prism. It's a ground piece of glass that is used to count
20 trees, and it takes into account the diameter of the trees so
21 you have a variable radius to your plot. You stand in the
22 middle of the plot and you swing around with this prism, this
23 piece of glass, and it indicates which trees are part of your
24 plot and which trees are not. And then again you collect that
25 data and extrapolate it across the stand.

1 Q. When you say indicates, how does it indicate? What
2 you are doing with the prism?

3 A. The prism -- you hold the prism, because it's a
4 ground piece of glass, a prism shape -- it's sort of thicker
5 on one end, thinner on the other. When you look through it at
6 a tree, the part of the tree you see through the prism will be
7 offset from the part of the stem above and the part of the
8 stem below. So you'll have a section that looks offset. And
9 if the top and the offset portion on the bottom still are
10 connected in your view through that piece of glass, above and
11 below it and through the glass, then that tree gets counted as
12 a tree on that plot.

13 However, if that section that's displaced appears to
14 be floating out in space by itself, with the section above and
15 below it disconnected from it, that tree is not part of the
16 plot and is not counted. So what that does is based on
17 diameter of the trees, it gives a variable radius to the plot.
18 A smaller tree closer to you will still be counted, but if
19 it's a little bit further away it will look displaced
20 completely. And it's really a mathematical formula to
21 represent what is there. It's another way of representing
22 what's on a site for trees. You take enough plots that you
23 have a confidence about what you have seen, about the data
24 that you've gathered, a statistical confidence, and then those
25 extrapolate out to the entire stand.

1 So again, instead of counting every single tree in a
2 stand, which as you can imagine would not be practical, you
3 sample trees on points and then extrapolate from that data to
4 the stand level.

5 And in this case it's indicating this was a ten
6 factor prism. I know it just says ten. Ten is understood to
7 be indicating a ten factor prism there. That's -- the prisms,
8 depending on how they're ground, how much of an angle is on
9 that glass, adjusts the factor, and the factor adjusts whether
10 smaller trees are counted or not counted. So the factor of
11 prism is it's just an important piece of data for the county
12 forester to understand how this was collected.

13 The number of points sampled is just what it says,
14 so eight points in this stand. And then the date that those
15 samples were done.

16 Q. Okay. So now let's turn to UVA Form 2, Page 2 with
17 respect to Stand 43.

18 A. And this is the stand below 34 that we were looking
19 at. This is the last one on that page, Stand 43 over on the
20 far left.

21 Q. And what I'd like you to do is go sentence by
22 sentence and explain each sentence to the Court.

23 A. "Stand 43 will receive a two-stage shelterwood, a
24 2SS, which is the short -- short for the 2-stage shelterwood,
25 "even age, UVA Code 3". Just reiterating that code again

1 that's on the summary sheet. "And overstory removal, OSR,
2 even age, UVA Code 4." So two different prescriptions:
3 shelterwood prescription and an overstory removal
4 prescription.

5 "Thirty to forty percent of the stand will receive
6 an overstory removal, where the overstory is in severe
7 decline, and the understory is well-stocked with seedling and
8 sapling size red spruce". So the intent would be that thirty
9 to forty percent of the area of the stand would receive an
10 overstory or a removal treatment where these conditions exist.
11 An overstory in severe decline, an understory that's well
12 stocked with seedlings and saplings and red spruce.

13 "Then the remaining portion of the stand will
14 receive a shelterwood", which is the second treatment that's
15 listed in the first sentence. "The harvest will target at-
16 risk and mature stems", so the lower quality, the unacceptable
17 growing stock and the mature acceptable growing stock.

18 "The target residual basal area is sixty square
19 feet". The harvest -- and the sixty square feet refers to the
20 shelterwood, so the target residual basal area and the
21 sections of the stand that receive the shelterwood will be
22 sixty square feet. It's assumed that an overstory removal
23 would have zero residual basal area, so it would be zero
24 square feet.

25 Q. Why is that assumed?

1 A. You take all -- the definition of an overstory
2 removal is to remove all of the trees in the overstory and the
3 canopy, so you would not be measuring any trees after that
4 harvest.

5 And our final sentence, "The harvest will release
6 quality growing stock and provide gaps to promote
7 regeneration." So the idea, the objective of this harvest to
8 release the quality seedlings that are there, also to provide
9 gaps, which gaps again would be openings so there'll be places
10 here where there's not adequate regeneration, not adequate
11 overstory, you'll have some gaps that will promote
12 regeneration. And that speaks to that variability in all of
13 these stands where there's usually cases where the overall
14 prescription for the stand doesn't fit on a small set of the
15 acres in the stand, and you try to adjust as you go so that
16 you are treating each acre in the appropriate way to, in this
17 case, regenerate the stand. Because again, these two -- two-
18 stage shelterwood and the overstory removal are both
19 regeneration harvests. They're both focused on the next stand
20 of trees.

21 Q. And you're talking about -- you were talking
22 regeneration. Why does it promote regeneration?

23 A. The shelterwood, as I mentioned, promotes
24 regeneration through seed and light. The overstory removal
25 promotes regeneration through releasing the regeneration

1 that's there, and the gaps would promote regeneration by
2 providing light to the ground where a seed exists to allow
3 that to begin to regenerate.

4 Q. Now we went -- you went through the Forest Management
5 Plan with respect to Stand 34. Were there any other
6 additional provisions of that plan which you'd like to
7 highlight with respect to Stand 43?

8 A. No. I think all of the things that apply to the
9 overarching principles of the ten year management plan, which
10 doesn't actually approve any harvesting, but it guides the
11 prescriptions for our harvesting, those same things that I
12 pointed to before would apply to this stand and to the thought
13 process that went into setting a prescription for, and
14 implementing a prescription on this stand.

15 Q. Chris, what stand is the OSR box located in?

16 A. The OSR box is located in Stand 43.

17 Q. What repairing areas, or repairing zones, if any, are
18 included within the OSR box?

19 A. There's -- turn to the map again -- the last map
20 shows what we're referring to as the OSR box. This is a red
21 outline in the center of the harvest area. The -- pretty much
22 entire left-hand or western side of that box is a riparian
23 area on Clough Brook. We actually -- when we left the landing
24 we crossed that, and I believe -- on Exhibit 52, the picture
25 of the landing where we parked the vehicles, actually what --

1 the trees right here that are in the back of that picture in
2 the center, those are part of Stand 43, and also part of that
3 OSR box. That's the riparian area you may remember when we
4 walked to our first site, came back through the landing, took
5 a right and started out a winter road and immediately had to
6 cross a stream, kind of a difficult crossing, and that was the
7 headwaters of Clough Brook. And this is the riparian area on
8 Clough Brook.

9 Q. Chris --

10 THE COURT: Would you point that out again on
11 the map, please?

12 THE WITNESS: Yes. That would be on the
13 western side of this red box that says -- that has an OSR
14 label in it.

15 THE COURT: All right. And just for
16 orientation -- the legend is too small for me to read what
17 this black and white dotted line is and what the red and black
18 dotted line is down below.

19 THE WITNESS: The black and white dotted line
20 indicates a road that is -- I'm trying to see what it calls
21 that, but that's the winter road that goes -- runs north and
22 south through the block. This is a gravel road, the road we
23 drove in, the red and black, to the point where we parked.
24 The black and white is actually a winter road, only can be
25 trucked on in the winter, it's not improved for summer

1 trucking. And that's also a snowmobile trail. But all of
2 that actually is a snowmobile trail in the winter. And then
3 there's two roads that aren't showing on here that we built
4 for this harvest, and those are the other two winter roads,
5 one that runs from where we parked in the middle over towards
6 the east, and one that runs from the top of the hill back
7 towards the southwest up the hill. We did not walk on that.
8 We were just at the very mouth of that road, but we didn't
9 spend any time on the site visit on that road.

10 BY MR. GRAYCK:

11 Q. So Chris, I think you just pointed out to the Court
12 that there's a riparian area in Stand 43 located within the
13 OSR box. Am I right?

14 A. Yes, that's right.

15 Q. Okay. What prohibitions, if any, are there with
16 respect to harvesting adjacent to a riparian or within a
17 riparian buffer zone?

18 A. We would be required to follow the acceptable
19 management practices on this portion of this stream.
20 Actually, below this, south of this, we have a restriction
21 under the conservation easement that we have a fifty foot no
22 cut buffer on either side of this.

23 But in the area that we're discussing, and the area
24 that was approved for harvest, we would follow the AMPs, which
25 have a minimum of a fifty foot buffer. Depending on the slope

1 to the stream, it could be more. In this case a fifty foot
2 buffer. Harvesting may occur in that buffer through selection
3 of individual trees without making large gaps in the canopy.
4 And you're not allowed to put equipment within twenty-five
5 feet of the stream, you're not allowed to have soil
6 disturbance within twenty-five feet, the idea being to prevent
7 erosion, sedimentation into the water bodies.

8 Q. So if you had -- if there had been overstory removal
9 throughout the area of the overstory removal box, what would
10 have happened with respect to compliance with the AMPs that
11 you just described?

12 A. We would have been in violation of the AMPs.

13 Q. Okay. Let's go to Stand 44. And if we go back to
14 UVA Form 2, Page 1.

15 THE COURT: Again, before we start, can you
16 point out on the map where 44 is?

17 THE WITNESS: Yes, Your Honor. On the last
18 map, Stand 44 borders the red OSR box on the east. The black
19 line that is its boundary runs to the west, follows down to
20 the south, and back down to the east. So it's this box. Just
21 -- predominately, most of the stand is to the west of this
22 road that's running up and down through the east, near the
23 center of the block. It has an arrow pointing to it that says
24 ITH, pointing into the stand.

25 BY MR. GRAYCK:

1 Q. So now looking at UVA Form 2, Page 1 for Stand 44,
2 again, if you could just speak to the stand history.

3 A. Again, the stand history notes the same thing, that
4 this was harvested by Champion Paper Company approximately
5 twenty to twenty-five years ago. Not surprising, they
6 probably used the same road system and harvested these stands
7 likely at the same time, so that's to be expected.

8 Q. The forest health condition?

9 A. Forest health mentions that it has high residual
10 stand damage and beech bark Nectria complex, the same as Stand
11 34 and 43.

12 Q. And the long range objective?

13 A. Even age management with, again, a present stand age
14 of approximately seventy to seventy-five years and a rotation
15 age of eighty years.

16 Q. And the scheduled treatment?

17 A. Scheduled treatment says it's a shelterwood, number
18 3, and to occur in 2011.

19 Q. Okay. With respect to the stand description?

20 A. Stand description, again, is even age; the forest
21 type is described as an H3A. The A indicates a higher density
22 of trees initially. It's B-line stocking, so on the stocking
23 chart this is falling still at -- at or just above the B-line.
24 The mean stand diameter is seven-point-six, slightly smaller
25 than the other two stands that we looked at. The total basal

1 area is ninety-seven square feet. The acceptable basal area
2 is forty-two square feet.

3 Q. And what is the relationship? What does the
4 relationship of those two numbers tell you about this stand?

5 A. Again, the majority of the basal area in this stand
6 is unacceptable growing stock. But it does have a higher
7 level of acceptable than the other two stands that we looked
8 at.

9 Q. Okay. So now the description of the stand; can you
10 please go through that and tell us what it means?

11 A. Stand 44 is a well stocked northern hardwood type
12 with a basal area of ninety-seven square feet. Of that,
13 forty-two square feet is acceptable growing stock. So I just
14 described, again, a northern hardwood type that's an indicator
15 of the species that would be expected out there. This is a
16 hardwood section of the forest. The stand is dominated by
17 sugar maple, yellow birch, beech, balsam fir and red spruce.
18 So those are predominate species that were tallied when it was
19 cruised. The mean stand diameter is seven-point-six inches,
20 as indicated above. The stand is weighted toward the small,
21 saw timber size class. So again, this is not the medium saw
22 timber, but it's a small saw timber. The stand has a fair
23 amount of acceptable stocking in -- I believe there's an "of"
24 there that shouldn't be -- in the small saw timber size class.
25 So I believe that sentence should read, "The stand has a fair

1 amount of acceptable stocking in the small saw timber size
2 class", which would be an indication that when this stand was
3 cruised, the individual doing the inventory saw that there was
4 acceptable growing stock; that of this, forty-two square feet
5 of acceptable growing stock, the good trees, if you want to
6 call them that, the quality trees, many of those occurred in
7 the small saw timber size class. So they weren't big trees,
8 but they weren't on the smallest side of trees either. They
9 were in the small saw timber size class.

10 And then finally at the bottom -- again, this was a
11 ten factor prism that was used to do the cruising. Five
12 points were sampled, and it was cruised 10/13/09.

13 Q. Now let's turn to UVA Form 2, Page 2 for Stand 44.
14 And can you please go through the treatment sentence by
15 sentence?

16 A. "Stand 44 will receive an intermediate thinning, ITH,
17 in even age, UVA code 2. The stand is well stocked with small
18 saw timber. However, many of the medium and large saw timber
19 stems are in decline." So I mentioned it's an H3A, has higher
20 stocking, higher density, more stems in it. And if I may, the
21 site visit -- Exhibit 68 is a photograph of the uncut portion
22 of Stand 44. Most of 44 is not cut. And we looked at a part
23 of it when we were -- just before we started up the first real
24 climb, kind of up the steeper high speed skid trail. So this
25 is what it looked like. And the density -- you can see

1 there's a lot of stems there, they're close together. That's
2 what density is referring to. So when it says that "The stand
3 is well stocked with small saw timber, many of the medium and
4 large saw timber stems are in decline," it's well stocked, it
5 has a more dense stocking. In the smaller size classes, but
6 where there's larger trees, many of them are not good quality.
7 They're in decline.

8 "The thinning that is prescribed, this intermediate
9 thinning, will target the at risk and mature stems and leave a
10 target residual basal area of sixty square feet." So again --
11 and I should step back. We haven't talked about intermediate
12 thinning. An intermediate thinning is a harvest that's not
13 focused on regeneration. It's focused on the stand that's
14 there. It's still even aged, you still have predominately a
15 single age in that stand, but you are not thinking about
16 regenerating the stand at that point. You're thinking about
17 growing the trees that are there into higher value products.

18 This stand is marginal for that treatment because of
19 the low level of acceptable growing stock. If we're going --
20 it says that "The thinning will target at risk and mature
21 stems", which would make sense. We want to leave our better
22 quality trees, take out the mature trees and the trees that
23 are at risk. At risk means that risk of dying before we get
24 back in there. They're the ones we were talking about with
25 crown die back or scarring from the past harvest, this high

1 residual stand damage that was referred to in the description.

2 "And you'll target leaving a residual basal area of
3 sixty square feet." If you remember in the description for
4 this stand, Stand 44, the description says there's forty-two
5 square feet of acceptable growing stock. So by definition
6 this prescription will need to leave some unacceptable growing
7 stock in order to meet the level across the stand of sixty
8 square feet.

9 The final sentence says "The release, this release"
10 -- again, if I can insert this -- this should say "This
11 release will -- this will release and will allow to grow the
12 small saw timber size class and open up gaps for
13 regeneration." So again, the idea of gaps is mentioned, which
14 would be openings where regeneration would be established. So
15 even though this prescription isn't focused on regenerating
16 the stand right now at this point, there's still a thought in
17 the forester's mind that, you know, in areas of this stand
18 where there's really poor quality, which is indicated by the
19 description, there'll be some openings in order to get
20 regeneration started when there's nothing to work with in the
21 overstory.

22 So overall this is a thinning, we're going to target
23 sixty square feet of residual basal area across the stand. We
24 recognize that that sixty square feet will contain
25 unacceptable growing stock, but we try to keep the

1 unacceptable trees that still will be worth something. Maybe
2 it's a pulpwood tree that will never been more than a piece of
3 pulpwood as far as a product goes, but it's also not going to
4 die before we go back to do a shelterwood harvest and
5 regenerate this entire stand.

6 Q. Okay. And Chris, how is the treatment that's
7 authorized for Stand 44, how is the treatment a two age
8 treatment?

9 A. This would be -- it's a single age treatment, so the
10 stand is considered to be one age class. Fairly uniform. And
11 the treatment is really -- the intermediate thinning is
12 treating that one age class without seeking to establish the
13 second age class. Although, as I mentioned in that last
14 sentence, in those gaps you would be beginning to regenerate a
15 second age class. Doing things like that also can lead you
16 towards uneven age management down the road. If you can start
17 to grow some more quality, you've already got one age class in
18 the overstory, you regenerate some gaps that start to grow,
19 and then potentially you could go back in if the quality is
20 there, thin again, develop another age class.

21 Now if you have three, now you have something to
22 work with to start towards uneven age management, if that was
23 the landowner's goal.

24 In this case we're treating one age class. We're
25 allowing for some amount of gaps to promote some regeneration

1 where there's just nothing to work with in this stand.

2 Q. Okay. Now in terms of the forest management plan,
3 again you had identified provisions of that forest management
4 plan. If you could just address the linkage between the
5 description and treatment authorization for Stand 44 and the
6 concept plan provisions.

7 A. Sure. Much of it is the same, and I won't go back
8 over -- the things that applied to hardwood apply to this
9 stand as well. This is a hardwood stand. The stand type --
10 on Page 37, just above the middle of the page, talks about the
11 H3A stand type. And it describes poor quality residual
12 overstory in the last sentence. According to the simulation
13 which was the model that was run -- they actually ran this
14 through a computer model -- improvement thinning is not
15 feasible. Forest type covers sixteen thousand, two hundred
16 and thirty-seven acres. The treatment that is recommended in
17 this type we're looking at is an overstory removal, removing
18 clusters of crop trees, but for some healthy stands,
19 improvement thinning can be considered. Operational cruises
20 will determine implemented silviculture. And the operational
21 cruise is the cruise that's referred to at the bottom of the
22 prescription sheet that we were looking at.

23 THE COURT: I'm sorry, I --

24 THE WITNESS: Yeah, I'm sorry. It's right
25 here.

1 THE COURT: Did you say Page 37?

2 THE WITNESS: Page 37, just above the --
3 halfway down the page it says "Stand 3, H3A" --

4 THE COURT: Right.

5 THE WITNESS: -- sixteen thousand. And then
6 there's a description of kind of the overall for all these
7 stands; what are the -- what do they look like. And then I've
8 started at this -- where it says poor quality residual.

9 THE COURT: Okay.

10 THE WITNESS: And the simulation is the
11 computer model.

12 THE COURT: Okay.

13 BY MR. GRAYCK:

14 A. And it says that improvement thinning is not
15 feasible. However, in the treatment section just below that
16 it says some healthy stands, improvement thinning can also be
17 considered. As I said, this is a borderline stand to consider
18 improvement thinning. But I think in the discussion out there
19 with the group it was considered there was enough quality in
20 that small saw timber class throughout different areas of this
21 stand to try to carry it forward.

22 And then if I could just direct you to Page 46 of
23 the overall management plan; this describes at the bottom of
24 the page, improvement thinnings. This is what we're talking
25 about. It says "In those stands in the straight or where

1 current stocking levels are represented by a sufficient basal
2 area of acceptable growing stock, and that are at or near the
3 A-line on the appropriate stocking guide, partial cuts in the
4 form of improvement thinnings would be very appropriate.
5 Goals of this option are release of targeted crop trees,
6 improvement if the percentage of acceptable growing stock and
7 the residual stand take out the unacceptable growing stock."
8 Automatically the percentage of what's left that's acceptable
9 will go up. "Thinning to the B-level stocking based on the
10 appropriate silvicultural guide." That's the sixty square
11 feet that's the target in this stand. "Limited site
12 disturbance and residual stand damage." When we're doing a
13 treatment like this, the last thing we want to do is damage
14 all the trees we leave, or else we'll have left a whole bunch
15 of unacceptable growing stock.

16 And then following page continues, describing how
17 the silviculture -- how this harvesting will be implemented.
18 "Cluster thinnings would be the preferred on the ground
19 methodology", it says. Cluster thinnings would be removing
20 groups of trees, little clusters to implement this thinning,
21 clusters that were thin, clusters that weren't. "Concentrate
22 removals so as to limit the impact on the residual stands and
23 the soils." Just as I mentioned, you don't want to damage
24 what you're leaving in this type of harvest, because those are
25 your future crop trees. "Release of stems of crop tree

1 quality", and it names the species there that you would want
2 to be targeting. So you're trying to grow things that will
3 grow into valuable saw logs.

4 "To retain, as a goal, and all the minor species."
5 So you're retaining some of these minor species and that
6 speaks to diversity, really, just that you don't want to have
7 just a homogenous one species forest out there. Really that's
8 a goal directed at the easement, and the residual stand
9 stocking recommendations, seventy-five to a hundred and ten
10 square feet of mixed wood, and sixty to seventy square feet in
11 the hardwood areas. Seventy -- or wide range -- seventy to a
12 hundred and fifty in the softwood. So this is the thinning
13 that's being prescribed for this stand.

14 And again, if I could, just a correction that I
15 apologize I didn't catch initially, and I don't -- I guess the
16 State didn't either, but on Form 2, Page 1, the description
17 page for this, which is the first one we looked at --

18 BY MR. GRAYCK:

19 Q. For which stand?

20 A. For Stand 44.

21 Q. Okay.

22 A. The treatment is listed as shelterwood. But on the
23 actual prescription page --

24 Q. When you say prescription page, which form?

25 A. The Form 2, Page 2, the last page before the maps

1 that has the signatures on it. This stand is indicated as
2 receiving an intermediate thinning, and that was our
3 understanding.

4 Q. So is it fair to say there's a conflict between the
5 description and the treatment authorization?

6 A. There is. And that may be because of the -- I'm not
7 sure. This may be one of the stands. The prescription
8 initially was a shelterwood and was changed to a thinning.
9 That would be one explanation, but I'm not sure on that. But
10 I am sure that 44, the intermediate thinning with these gaps
11 was what was finally approved. My signature and county
12 forester Matt Langlais's signature are on this prescription
13 sheet.

14 Q. So does -- what goals, if any, does the ten year
15 management plan outline in relation to total harvest volume?
16 And again, that would be referring to Exhibit 14, the concept
17 plan.

18 A. Sure. I don't have the page memorized. The plan has
19 a goal of a harvest level -- I better find the page.

20 MR. GRAYCK: Your Honor, do you want to just
21 take --

22 THE COURT: We'll take our morning break now.
23 I thought we might be finished with Stand 44 before the break,
24 but we'll take it now and resume at five minutes of eleven.
25 (Thereupon, a recess in the proceedings took place at 10:36

1 AM. The hearing resumed at 10:56 AM)

2 THE COURT: Please be seated.

3 Mr. Grayck?

4 BY MR. GRAYCK:

5 Q. So Chris, the last question I asked was what goals,
6 if any, does the ten year concept plan outline in relation to
7 total harvest volume.

8 A. And I found the page I was looking for. It's Page 40
9 in the management plan. And the second to last paragraph is
10 talking about the harvest levels. Actually, the first
11 paragraph talks about it. It's reiterated again at the bottom
12 of the page. The end of the first paragraph on Page 40, "This
13 plan calls for a harvest level between thirty thousand and
14 forty thousand cords, covering about thirty-five hundred acres
15 per year over the ten year period".

16 Q. And has Plum Creek been harvesting at those levels at
17 all in 2010?

18 A. No, we didn't.

19 Q. And how, if at all, has -- how, if at all, has Plum
20 Creek been able to reach the goals since 2010?

21 A. We haven't reached this level of harvesting that's
22 documented or identified as a goal in the plan yet. We've
23 been -- in 2010 we were about half of that volume. But we're
24 working towards it though planning and trying to get ahead on
25 our harvest areas that are plan approved and laid out.

1 Q. What financial goals, if any, are outlined in the
2 plan?

3 A. Near the beginning of the plan it talks about
4 financial goals. Page 17 discusses financial considerations.

5 Q. Just give the Court a moment to get there.

6 A. It refers to Essex Timber Company, but, again, these
7 would apply to Plum Creek. "Essex Timber Company purchased
8 its land in a competitive bid process, and it did so with the
9 expectation of making a competitive rate of return on the
10 capital committed. While the conservation easement removes
11 all development value from the land, it also protects the
12 landowner's right to manage the parcel as a working forest.
13 The plan is in keeping with those principles. Essex Timber
14 Company's returns thus far have been deliberately modest, but
15 the timber management contemplated here intends to enable the
16 land to produce a great volume of higher quality products
17 indefinitely."

18 Q. And now one final note. Going back to the draft
19 prescription that you had on the site visit prior to the
20 harvest in -- do you have that exhibit?

21 A. Exhibit 20?

22 Q. Yeah. Do you have that?

23 A. Yes.

24 Q. Okay. Can you read out loud -- there was a note on
25 that about moose?

1 A. On the first page I had written "Include moose browse
2 here for dam."

3 Q. And so how, if at all, does the prescription for
4 Stand 34 relate to your note about the moose?

5 A. I think the note about the moose was related to
6 probably most of the prescriptions, because most of these were
7 heavy cuts that would be -- they were regeneration harvests,
8 so we're looking for regeneration. In the past moose had been
9 a real problem eating the regeneration, so that you ended up
10 with a stand of no value there. Your regeneration was
11 basically killed. I think there's a picture actually from
12 yesterday. If you look at the difference between the softwood
13 in Exhibit 76, there's small softwood in the understory in the
14 background, and they look -- you can see the green lens and
15 that classic kind of Christmas tree shape to them.

16 On 78, Exhibit 78, which is the one -- the picture
17 with the stump, but beside the stump is actually a little
18 stick that has a few green twigs growing on it. That's a fir.
19 That should look the same as those other softwoods in the
20 other picture. The reason it doesn't is the moose have
21 browsed that, and they -- when they were at their worst, their
22 highest levels -- I say worst because I'm a forester, and they
23 do a lot of damage to the regeneration, cause problems for us
24 in that way -- when they were at those highest levels they
25 were wiping out regeneration of fir and hardwoods, to the

1 point where sites would not regenerate, or if they did
2 regenerate, their regeneration would be no good by the time it
3 reached basically the snow depth. They would browse it during
4 the winter, browse it and browse it again and again at snow
5 depth, and just end up with these bushy-looking seedlings or
6 saplings that are not going to ever have any value. So the
7 note to mention moose browse would have applied to each of
8 these prescriptions as a note on just the idea of what we
9 anticipate, how we're thinking about that, just commenting
10 that it was something that was thought of as we did a
11 regeneration harvest.

12 Fortunately, the wildlife department seems to feel
13 that they have the permit numbers at the right level now, the
14 hunting permits. Plum Creek is doing what we can to attract
15 hunters onto our property where we know we have higher moose
16 levels to keep those levels in check. And we're seeing --
17 we're not seeing the issue in -- we're not seeing a problem
18 with it. There's certainly moose browse on our sites, but we
19 have -- there's an acceptable level when you have twenty to
20 thirty thousand seedlings regenerating per acre, then it's
21 okay if the moose eat some of those. But you don't want them
22 to eat all of the seedlings.

23 So that's where the moose browse comment would have
24 been just noting that moose could potentially be an issue, had
25 historically been an issue here, and addressing that in the

1 plan.

2 Q. Okay. I'm going to show you what's been marked as
3 Plum Creek Exhibits 33, 34, and 35. Let's just start with 33.
4 So what is Exhibit 33?

5 A. Exhibit 33 is a map of another harvest. It went with
6 another proposed harvest --

7 Q. Okay.

8 A. -- in Ferdinand. It was called the South America
9 Pond STA Harvest.

10 Q. And who prepared the exhibit?

11 A. LandVest prepared this.

12 Q. Okay. And how reliable, if at all, is LandVest in
13 preparing such an exhibit?

14 A. They seem to do a pretty good job at creating these
15 maps.

16 Q. And generally what information does it contain that
17 is relevant to this case?

18 A. This is an area -- this stand is Stand 30 in
19 Ferdinand, Compartment 2. It's a six hundred and four acre
20 stand, so it's a very large stand. Everything that's blue on
21 the map there is part of the stand. And the last page is the
22 prescription page, the Form 2, Page 2 that we were reviewing
23 for the Clough Brook Harvest, this would be the same Form 2,
24 Page 2. But for this stand, it says that this will receive
25 group selection cuts not to exceed two acres in size, and

1 treating a third of the total acreage. It describes how those
2 groups will be located, targeting pockets of mature and
3 declining stems with poor form that lack -- and lacking
4 acceptable regeneration; targeting the removal of beech when
5 possible to promote the regeneration of yellow birch and sugar
6 maple. A harvest layout will be designed to avoid pockets of
7 established acceptable regeneration.

8 And then it goes on. The acceptable generation and
9 pockets with high levels of acceptable pole stocking. The
10 stand has a high percentage of legacy trees that have been
11 reserved from the last harvest. These will be identified and
12 maintained if located in a patch for wildlife (indiscernible).
13 They're just talking about leaving some large trees out there.
14 The significance is that this is a treatment that will be
15 implemented in two acre blocks, up to two acre blocks,
16 treating a third of the stand. So there will be two acre
17 patches across a third of this six hundred acres.

18 Q. And how is it illustrated on the map? What's the
19 significance of the map in relation?

20 A. There's no illustration of where those two acre
21 patches would occur.

22 MR. GRAYCK: We'd move -- Plum Creek to move
23 the introduction of Exhibit 33.

24 MR. DUANE: No objection, Your Honor.

25 THE COURT: Plum Creek 33 is admitted.

1 (Harvest map for Ferdinand was hereby received into
2 evidence as Plum Creek Exhibit 33, as of this date.)

3 BY MR. GRAYCK:

4 Q. I'm going to show you Exhibit 34. And just briefly,
5 what is Exhibit 34?

6 A. Exhibit 34 is a copy of a harvest plan and maps, the
7 photo map and the prescription map for Maidstone North in
8 Brunswick and Maidstone, Vermont.

9 Q. And again, what's the point of this map in relation
10 to the treatment relative to what, if any, is shown on the map
11 relative to the treatment?

12 A. On the map and on the harvest prescriptions, a number
13 of these stands have indicate that they will receive different
14 treatment within the stand. For example, if we look two-
15 thirds of the way down the list, Maidstone 1 -- I'm sorry,
16 Maidstone 16, down near the bottom, indicates it will receive
17 improvement thinning and shelterwood, but doesn't indicate
18 where those different treatments will occur. Also, one
19 indicates it will receive patch clearcuts, but it doesn't
20 indicate where in the stand those clearcuts will occur.

21 MR. GRAYCK: Plum Creek would move the
22 introduction of Exhibit 34.

23 MR. DUANE: No objection, Your Honor.

24 THE COURT: Plum Creek 34 is admitted.

25 (Harvest map of Maidstone was hereby received into

1 evidence as Plum Creek Exhibit 34, as of this date.)

2 BY MR. GRAYCK:

3 Q. And lastly Chris, Exhibit 35. What map is it, and
4 how does the treatment relate to the map?

5 A. This is, again, another past harvest area on Plum
6 Creek in the towns of Averill and Lewis. This map represents
7 the treatments that will occur according to stand, and it
8 actually does indicate the general area where a patch cut will
9 occur and also where strip clearcuts will occur, which would
10 be cuts that treat -- take everything, are clearcut in a
11 linear fashion that would cut all of the trees, treating a
12 third of the stands that are indicated. That also was
13 referenced on the prescription document. These are a
14 representation of where these strips would be to give an idea
15 of what you would expect to see on the ground, but the strips
16 don't occur exactly as straight lines in exactly the location
17 indicated on the map.

18 Q. Chris, how, if at all, does the map show, with
19 blueprint-like precision, what you would see post-harvest?

20 A. It doesn't. It was never intended to be a blueprint.
21 This is an indication of where these treatments would occur to
22 give an idea of the general layout of the harvest on this
23 area.

24 MR. GRAYCK: Plum Creek would move the
25 introduction of Exhibit 35.

1 MR. DUANE: Your Honor, just a question, if I
2 may. Does the Averill Exhibit 35 also include the Form 2,
3 Page 2 for the prescriptions for the Averill land, as well as
4 the harvest prescription fraction for the Averill land?

5 MR. GRAYCK: It has what you have in front of
6 you --

7 MR. DUANE: So all -- it's not just the map?

8 MR. GRAYCK: What you have in your book is
9 what's been offered. Yes.

10 MR. DUANE: Great. And just to -- thank you.

11 So we have no objection.

12 And if I may inquire of Attorney Grayck, with regard
13 to Exhibit 34, which has been admitted, with regard to the
14 towns of Brunswick and Maidstone, those also include the
15 prescriptions for those towns as well? Everything that's in
16 here?

17 MR. GRAYCK: Everything you have is what's been
18 admitted. So it's UVA Form -- that's the Form 4.

19 MR. DUANE: Yeah, but Form 2, Page 2?

20 MR. GRAYCK: Yeah. What you have is what's been
21 offered to the court.

22 MR. DUANE: Okay. Thank you.

23 THE COURT: Plum Creek 35 is admitted.

24 (Harvest map for towns of Averill and Lewis was hereby
25 received into evidence as Plum Creek Exhibit 35, as of this

1 date.)

2 MR. GRAYCK: And Your Honor, I have copies of
3 those exhibits for the court members if they would like them.

4 THE COURT: Okay. Is the top one the original?

5 MR. GRAYCK: No. The originals have been
6 provided to the clerk. There's --

7 THE COURT: Okay.

8 MR. GRAYCK: There's three.

9 THE COURT: All right.

10 MR. GRAYCK: If Your Honor doesn't want one --

11 THE COURT: I'm going to give one back, just to
12 avoid confusion. Thank you.

13 BY MR. GRAYCK:

14 Q. So Chris, now that the court members have the
15 exhibits we just gave, do you have 33, 34, and 35?

16 A. I do.

17 Q. So just -- now that the court members have it, will
18 you just point out on the map what you were saying in terms of
19 how it depicts prescriptions?

20 A. Sure. On 33, which is the Ferdinand harvest, the
21 large six hundred acre stand, this would have -- the
22 prescription is to have groups up to two acres in size, that
23 we would be removing all of the trees scattered over this,
24 treating a third of the stand. The groups are not depicted on
25 that map. On stand -- on Exhibit 34, which is the Brunswick

1 and Maidstone, Vermont map, the -- Maidstone is to the
2 southeast, Brunswick is to the north -- I'm sorry -- southwest
3 and Brunswick is to the northeast. There's two things here,
4 there are stands that have multiple prescriptions:
5 improvement thinning, shelterwood. Brunswick 17, for example,
6 that does not indicate where the break would be between those
7 two prescriptions. There's also prescriptions for clearcut
8 here. For example, Maidstone 1 shows this patch clearcut.
9 That's a thirteen acre stand over here on the boundaries in
10 Maidstone. And the prescription page for Maidstone 1 -- it
11 describes the size of those patches, but the patch is not
12 indicated on the map where it will be located.

13 Q. Chris, would you show that to the Court, please.

14 A. The clearcut is not indicated in the stand. It's
15 just showing that it will receive that treatment. Brunswick
16 10, Stand 10 is the same. Stand 10's up here, says it will
17 see patch clearcut.

18 And then on Exhibit 35, the final map we were just
19 talking about, this is in Averill and Lewis, and there's the
20 prescription in this stand, in some of these stands for strip
21 clearcut, and the strips are actually represented on the map
22 how they -- to give an impression of how they would be laid
23 out, as well as a clearcut here that crosses the boundary
24 between the two towns. That's that square indicating a
25 clearcut. So in this case there was an indication given, but

1 again, not the intention that this would be how it looks on
2 the ground. And in fact it is not how -- that clearcut does
3 not look like a square box on the ground as implemented.
4 These strips are not in exactly the location they show on this
5 map due to terrain and wet ground and other factors that were
6 taken into account during layout.

7 Q. And who approved those prescriptions in Exhibit 33,
8 34, and 35?

9 A. These were all approved by Matt Langlais.

10 Q. And how, if at all, have the prescriptions -- have
11 they been carried out?

12 A. The prescriptions have been implemented. Almost all
13 of the Averill one is complete. The Maidstone and Brunswick
14 piece is complete. And the South America Pond STA and
15 Ferdinand is not complete. It's approximately a third of
16 that, maybe a little more, has been implemented.

17 Q. Okay. And how, if at all, do these prescriptions
18 reflect the typical specificity of the prescriptions that have
19 been authorized?

20 A. This would be a pretty good cross-section of how, in
21 some cases, we would show something on a map, in other cases
22 we would just show that an area would receive a treatment. We
23 tried to give indication in the narrative on the Form 2
24 prescription. If it's a portion of a stand that will be
25 treated and it can be identified, we try to give some

1 narrative about where that will occur. So these are a good
2 representation of the varying types of plans that have been
3 approved.

4 Q. Okay. It's already been admitted, so just -- well,
5 Exhibit 22, which is for the Clough Brook North; so what
6 constitutes the treatment that was authorized for Clough Brook
7 North with respect to the stands? Which document do we look
8 at to know exactly what was authorized for treatment?

9 A. The Form 2, Page 2, where we went through the
10 prescriptions -- this is -- these two pages for this harvest
11 are signed by myself for Plum Creek and Matt Langlais for the
12 State as the county forester, so these are the authorized
13 prescriptions for those areas.

14 Q. Okay. Now when did county forester Langlais give his
15 authorization for the Clough Brook North forest -- harvest?

16 A. November 16th of 2009.

17 Q. Okay. And then what approval came in next? In
18 looking at Exhibit 23, which has been admitted, what approval
19 was that?

20 A. This is the notice of determination regarding the
21 heavy cut application, so this would be the notice that we
22 were approved under the heavy cut.

23 THE COURT: I'm sorry, I guess I missed the
24 question. Could you repeat the question so I know what the
25 answer is about?

1 MR. GRAYCK: Yes, Your Honor.

2 BY MR. GRAYCK:

3 Q. Chris, after you received county forester Langlais'S
4 approval, what was the next approval you received from the
5 Department of Forests, Parks and Recreation?

6 A. The next approval was the notice of determination for
7 the heavy cut, so an approval for the heavy cut prescriptions
8 on Clough Brook.

9 Q. In other words, would you have proceeded without
10 receiving Exhibit 23?

11 A. No.

12 Q. So after you received these approvals, what was the
13 next step in the process?

14 A. After we received the approvals, then we needed to
15 contract with the logging contractor to implement this harvest
16 along with -- prior to and along with that the LandVest
17 foresters would have been beginning to do the layout once we
18 had the approval for our harvest prescriptions, any layout
19 that was required for those prescriptions. So if you --
20 again, if you remember yesterday, we saw a couple of -- I'm
21 sorry, not yesterday -- on the site visit we saw a few
22 indications of that layout that was done. One of those is
23 this picture of 92, the blue X on the tree, I mentioned that
24 in this case in the shelterwood it was a mark to leave, so the
25 foresters marked the trees with a blue X that they wanted

1 left, and the trees that were not marked were to be cut. That
2 was how the shelterwood -- that was the plan to implement the
3 shelterwood harvest.

4 We also had -- the riparian buffers were identified.

5 Q. And this is all falling under the general category of
6 laying out the prescription?

7 A. Yes, it is. Remember the picture; this is Exhibit
8 77, the blue SB on the tree marking the boundary. So while
9 LandVest was doing a layout, I was looking for a contractor to
10 harvest the site. We had some contractors, logging
11 contractors, working on us at the time, but we needed to scale
12 up for the winter harvest to bring on a new logging
13 contractor. So I, through asking around, and working actually
14 with LandVest, they had provided a list initially of some
15 contractors they work with. So when we started this -- when I
16 started this process of looking for a contractor, one of the
17 contractors on that list was WELOG out of Colebrook. I went
18 and spoke with the owner, Malcolm Washburn, negotiated a
19 contract with him, and put this Clough Brook North harvest
20 area under contract with WELOG to harvest that winter.

21 Q. Okay. Now I'm showing you Exhibit 24; if you could
22 briefly state what that is.

23 A. This is an email exchange between Dan Kilborn, the
24 Vermont Land Trust stewardship forester, and myself setting up
25 a visit to look at the jobs that were active, the winter jobs

1 that were active. Identifying 26th of January is the date
2 that we could get together to do that. This was a fairly
3 common -- or very common practice. We actually did this on
4 most of the active harvests, Dan Kilborn and I. And often
5 representatives from the State, Matt Langlais and Richard
6 Greenwood, as well as the LandVest forester would get together
7 during the active jobs and go out, look at how things were
8 going, make sure the silviculture was being implemented as
9 everybody had expected. Just a general touching base and
10 keeping in communication about what was going on on the
11 logging jobs.

12 MR. GRAYCK: So I'd move the introduction of
13 Exhibit 24.

14 MR. DUANE: No objection, Your Honor.

15 THE COURT: Plum Creek 24 is admitted.

16 (Email exchange was hereby received into evidence as Plum
17 Creek Exhibit 24, as of this date.)

18 MR. GRAYCK: I have two copies for the Court.

19 BY MR. GRAYCK:

20 Q. So that email is reflective of the correspondence
21 that January 26th was set for a visit to Clough Brook North,
22 right?

23 A. Yes, Clough Brook North and another harvest in
24 Lemington.

25 Q. Okay. And what about Vermont Land Trust? What

1 communication, if any, did you receive from the Vermont Land
2 Trust with respect to the Clough Brook North harvest?

3 A. We received an approval letter -- we received an
4 approval and then a letter following up. Dan always provides
5 us with the letter saying here's your approval, and had also
6 approved the construction of the two winter roads that I
7 mentioned earlier.

8 Q. And I'm showing you Exhibit 25. And what's that?

9 A. That's a copy of the approval letter for this and a
10 few other harvest areas.

11 MR. GRAYCK: Plum Creek moves the introduction
12 of Exhibit 25.

13 MR. DUANE: No objection, Your Honor.

14 THE COURT: Plum Creek 25 is admitted.

15 (Approval letter was hereby received into evidence as Plum
16 Creek Exhibit 25, as of this date.)

17 BY MR. GRAYCK:

18 Q. Okay. So please describe for me the events of
19 January 26th, beginning in the morning when you met with
20 county forester Langlais. What happened?

21 A. So we met together as a group on the morning of
22 January 26th at the Lemington town office. It was where we
23 had arranged to meet. Dan Kilborn, Matt Langlais, county
24 forester, Dick Greenwood, myself, Kevin Lemere that LandVest
25 had hired to replace Jonathan Horton. Jonathan Horton had

1 left LandVest in December.

2 Q. What about a representative from the Vermont Housing
3 Conservation Board?

4 A. Billy Coster from the Vermont Housing Conservation
5 Board also joined us that day. He was invited by Dan Kilborn
6 to come along. He hadn't had the chance to get out on harvest
7 operations, and as part of the Vermont Housing and
8 Conservation Board their involvement in conservation
9 easements, he was interested in seeing the management on the
10 easement, just how the easement was being implemented. So he
11 came along as well.

12 Q. What about Dick Greenwood? Did you mention him?

13 A. Yes.

14 Q. Okay. So where did you start on the morning of
15 January 26th?

16 A. So we met at the town office in Lemington. We drove
17 up actually into an area we referred to as Willard Stream,
18 Meacham Swamp area. We had a harvest going on in that area,
19 an active winter harvest with another logging contractor. We
20 spent the majority of the morning on that harvest. Two or
21 three different areas really on that same harvest, looking at
22 the harvesting that was going on, discussing the silviculture,
23 just again, as I said, making sure that things were occurring
24 to everybody's satisfaction, to their expectations according
25 to the plan.

1 When we finished reviewing that site, we drove down
2 and around and back in, kind of on the other side of the
3 ridge, so where we were in the morning was on one side of the
4 ridge, the Clough Brook North harvest area is on the other.
5 We drove up in to Clough Brook North.

6 Q. By what time did you reach Clough Brook North? What
7 time of the day is it by then? What portion of the day?

8 A. It was about halfway through the day. I guess around
9 noon, maybe a little bit after noon.

10 Q. Okay.

11 A. I'm not 100 percent sure. We parked our vehicles.
12 There was an active logging job going on, of course. There
13 were actually -- I refer to them as sides, and when I say
14 that, those are individual parts of the harvesting operation.
15 So in this case -- and they would entail a piece of equipment
16 that's cutting the wood, a piece of equipment hauling the wood
17 out of the woods, and the processing that's going on from
18 those. We had a processor in forwarder side, which were --
19 the processor actually cuts the trees in the woods, lays them
20 down, strips the limbs off in the woods, and cuts the trees
21 into the length of the product right there in the woods. And
22 then what we call affectionately a buggy, but it's a machine
23 with a bunk on the back they load the logs into and drive them
24 out to the landing. There's one of those operating, there
25 were two feller bunchers, which are a large piece of equipment

1 with a rotating saw head. It's a mechanical piece that goes -
2 - walks up to the tree -- the operator walks it to the tree,
3 cuts the tree, and then lays those down, grapple skidders come
4 and grab the trees that are laid down, they back up to them,
5 grab a hold of those bunches and pull them back out to the
6 landing to be processed. So in that case the limbs are taken
7 off the trees at the landing, and then some returned onto the
8 trails or -- in the smaller trees, and some of the tops
9 chipped for bio mass.

10 So it was a busy place. There were three, and then
11 actually a hand crew was working there as well, so there was a
12 lot going on. We started close to where we went on the site
13 visit, and that landing we parked at. We walked out to the
14 east, we made a loop through the stands that were being
15 harvested on the eastern side of the job, we came through
16 Stand 34 and 43. Again, in somewhat of a zigzag fashion, but
17 similar in reverse to kind of what we did on the site visit.
18 And then we came up into Stand 34 at the landing. It would be
19 this landing with the -- this is Exhibit 87, the landing with
20 the culvert, the old culvert that was there, kind of partway
21 down the hill. There was one landing further up the hill than
22 this.

23 We came out to this landing. Of course everything
24 was snow covered. The streams were open. We'd had a very
25 heavy rain the day before, one of those January rains. I

1 would say unusual, but they really don't always seem to be
2 that unusual. It had opened up the streams, but things had
3 frozen back overnight and it was very cold again that day. We
4 walked up through Stand 34, we walked along the stream that
5 came out of that landing. It was getting later in the day.
6 At that point Matt Langlais expressed concerns about the
7 harvesting, the level of harvesting in Stand 34, the number of
8 trees that had been cut, and also about the AMPs with the
9 crossings of that stream and around that landing -- the stream
10 channel, as I mentioned on the site visit, and the number of
11 crossings.

12 We got to the top of the hill. We looked at a
13 crossing that was not a crossing authorized by LandVest or
14 Plum Creek that the logging contractor had actually just gone
15 and crossed the stream, put brush in the stream and just
16 crossed it on their own, which is not per our normal
17 procedures. So we found some issues that raised concerns for
18 all of us on the site visit.

19 Q. And specifically Chris, just to be clear, what did
20 you see that was the source of concern for everyone? What was
21 there?

22 A. Well, as I said, it was two things: one immediate
23 concern was the questions and the issues around the AMPs. You
24 know, crossings and places where equipment had gotten too
25 close to that small stream. We -- that was violation. That

1 was against the AMPs. We wanted to take care of anything like
2 that as quickly as possible.

3 And then the other thing that was causing concern
4 was the level of harvesting, the number of trees that were cut
5 in that portion of Stand 34 that we were looking at. And we
6 -- as we had gone through the landing, one of the things that
7 caught our attention as a group was there were trees with blue
8 X's marked on them that were in the piles of wood on the
9 landing, waiting to go to a mill. And as I mentioned earlier,
10 the implementation of this shelterwood cut was supposed to be
11 done by marking blue X's for the trees to leave. So it was
12 obvious that some amount of trees that were supposed to be
13 left had been cut and processed, and of course that raised a
14 big red flag for -- had other trees been cut and processed and
15 already gone to mills that had been marked? These mechanical
16 operations are -- things move quickly, they cover a lot of
17 ground quickly, so it's important to figure out what was going
18 on and to try to correct matters as soon as possible. And,
19 you know, frankly --

20 Q. Chris, just in that pile, approximately how many
21 trees marked blue did you see? How many were there when you
22 see this?

23 A. If I remember correctly, there were about half a
24 dozen. Six or ten trees.

25 Q. Okay. Keep going.

1 A. So -- and given the concern of trees being cut that
2 were supposed to be left in that stand, my immediate thought
3 was we need to figure out where we're at with regards to the
4 prescription across this stand.

5 Q. Okay, Chris. By what time in the afternoon are we
6 at? You know, where are we in the day now?

7 A. It's pretty late in the day. We walked up that
8 stream and through the cut right up to the top. Again, where
9 we walked with the site visit on the -- what would be the
10 western boundary of the stand. By the time we came back down
11 to that landing, as I recall, it was starting to get dusky.
12 This is wintertime, so the days are quite short anyway. It
13 was cold, we were tired. It was late in the day.

14 Q. And what concerns did county forester Langlais
15 express to you?

16 A. He was concerned about the trees that were cut, that
17 had been marked to leave; about the level, the volume, the
18 residual basal area in that portion of Stand 34; that it might
19 be too low. And he expressed most concern about the AMPs and
20 the compliance with AMPs, that those things that seemed like
21 they could create issues get taken care of right away.

22 Q. Okay. And what about VLT forester Kilborn? What
23 concerns, if any, did he have?

24 A. The same concerns.

25 Q. And in response to these concerns what did you --

1 what did you do?

2 A. Well, I -- as soon as we finished our site visit -- I
3 mean, I shared the same concerns that Matt Langlais and Dan
4 Kilborn did about this area. I went to Malcolm Washburn's
5 house, the logging -- the owner of the logging company, told
6 him that we -- that it seemed there were issues or AMP issues
7 that needed to be taken care of immediately on the job, and
8 that I wanted to meet with him in the morning out on the site
9 to review the harvest and what was going on out there, and
10 that until we -- that at that point I wanted harvesting
11 stopped on Stand 34 so we could get a handle on where we were
12 at with the prescription. He agreed to meet me out there in
13 the morning and to have an excavator there first thing to
14 remove any crossings that weren't needed anymore, fix the
15 issues. The one in particular up near the top of the hill in
16 that stream, that there was a place the skidders had gotten
17 close to the stream and made a rut, and the concern was that
18 in the spring runoff might be able to divert and start --
19 divert the stream down the skid trail instead of staying in
20 the stream channel. Matt Langlais had requested that we put a
21 berm, a small berm there to prevent that from being able to
22 happen, just smooth those ruts. So he was made aware of that
23 and -- Malcolm was -- and did that the next day, took care of
24 those issues.

25 Q. Okay. Now Chris, where did the conversation with

1 Malcolm Washburn take place?

2 A. At his home.

3 Q. Okay. So about what time were you at his home?

4 A. Oh, I'm guessing that would have been 6:30, somewhere
5 around then.

6 Q. Okay. And when had your day started?

7 A. 5:30.

8 Q. 5:30 what?

9 A. A.M.

10 Q. And you were at Malcolm's at 6:30 PM?

11 A. Yes.

12 Q. Okay. Where did you go after Malcolm -- Malcolm's
13 office?

14 A. I went back to my house.

15 Q. Okay. Now I'm going to show you Exhibit 26. Where
16 did you go after your house?

17 A. Well, this is actually an email from me to Matt
18 Langlais, Dan Kilborn --

19 Q. Just wait a sec -- where did you go after Malcolm's
20 place? You went to your house. Where did you go after your
21 house?

22 A. I went to my house.

23 Q. And after your house did you go the office or did you
24 stay at home?

25 A. My house -- I was working out of my house at the

1 time.

2 Q. Okay. That's fine. So you're at your house.

3 A. Yes.

4 Q. What's Exhibit 26?

5 A. So Exhibit 26 is an email from me to Dan Kilborn,
6 Matt Langlais, Richard Greenwood, and Billy Coster, copying
7 Kevin Lemere, so the people that were on the site visit, just
8 summarizing what we saw.

9 Q. Okay.

10 MR. GRAYCK: I want to move the introduction of
11 Exhibit 26.

12 MR. DUANE: No objection, Your Honor.

13 THE COURT: Plum Creek 26 is admitted.

14 (Email from Chris Fife was hereby received into evidence
15 as Plum Creek Exhibit 26, as of this date.)

16 BY MR. GRAYCK:

17 Q. So Chris, I want you to look at the Exhibit 26. I
18 want you to read the email that you sent. I want you to read
19 it for us.

20 A. So the email says "Thank you to each of you for your
21 time and input today in the field. The interaction around of
22 implementation of silvicultural prescriptions, AMPs, layout,
23 and operations is very helpful for me as we move forward with
24 management of this land base. I was glad that you were able
25 to meet Kevin and hear his thoughts on the operations. If

1 you're like me, even though we saw a lot of good things today,
2 the final stop on WELOG's mechanical job will be what's
3 consuming most of your thoughts. Please understand that Plum
4 Creek takes our obligations seriously, whether to UVA and the
5 State of Vermont, the conversation easement, or the
6 implementation of AMPs to protect water quality. These
7 commitments drive how we do our business each day, as well as
8 who we partner with to manage our land. Harvesting and brook
9 buffers and cutting trees contrary to the silvicultural
10 prescription for the block will not be tolerated. I met with
11 Malcolm Washburn this evening to explain the problems we
12 found, and we're meeting on the job first thing tomorrow
13 morning. Thanks for your cooperation and working through
14 these issues. I'll keep you updated on our progress. Chris
15 Fife."

16 Q. Approximately what time did you send that email?

17 A. 8:30 PM.

18 Q. PM. Okay. Why did you send the email?

19 A. I wanted to express my feelings about what we had
20 seen, just to let people know that follow-up was ongoing as I
21 said it would; that we were taking this seriously and
22 responding immediately.

23 Q. What did you do the next day?

24 A. The next day I met with Malcolm Washburn, as I
25 indicated in this email. I met him in the morning on the site

1 and went over what we had discussed the day before, the issues
2 with both the harvesting, the trees we had seen that were cut
3 that should not have been cut, the -- again, the prescription
4 of how this was supposed to be cut. Looked at the AMP issues
5 that had been identified around that one landing and the
6 stream crossings above it. He already had the excavator there
7 and had started to remove crossings and stabilize the areas
8 around them, so that work was already ongoing.

9 Q. So, I just want to be clear. So the work you just
10 described was in response to what?

11 A. This was in response to the visit the day before.
12 The group visit.

13 Q. Okay. Keep going, please, about what happened on the
14 27th. Keep going. What you did on the 27th.

15 A. So after I got with Malcolm -- honestly I can't
16 remember what -- where I went after I got done with Malcolm.

17 Q. That's all right. I'm going to show you Exhibit 27.
18 What's Exhibit 27?

19 A. Exhibit 27 is a follow-up letter that I wrote dated
20 the 27th to -- I actually sent this to Dan Kilborn, Matt
21 Langlais, and Richard Greenwood was copied on this, as well as
22 Billy Coster.

23 Q. How did you send it to them on the 27th?

24 A. I put it in the mail.

25 Q. And did you use email as well?

1 A. I did.

2 Q. Okay.

3 MR. GRAYCK: I'd like to move the introduction
4 of Exhibit 27.

5 MR. DUANE: No objection, Your Honor.

6 THE COURT: Plum Creek 27 is admitted.

7 (Follow-up letter and email was hereby received into
8 evidence as Plum Creek Exhibit 27, as of this date.)

9 BY MR. GRAYCK:

10 Q. Chris, why did you send this letter?

11 A. Again, this was my way of trying to follow up, trying
12 to summarize to everybody what we had seen, what the concerns
13 were, the commitment, my personal commitment, as well as my
14 commitment of Plum Creek to make sure that things were done
15 right on the site, and to let folks know some of the things
16 that were already in progress before the site inspection, but
17 also some of the new policies we intended to implement, and
18 things we intended to do as a follow up.

19 Q. Okay. Now, as an experienced forester how, if at
20 all, can you make an estimation as to an area's residual basal
21 area based upon what you see?

22 A. I think an experienced forester probably has a gut
23 feel from taking enough plots with actual prism to know
24 looking around what kind of basal area is there.

25 Q. Okay. But how do you accurately determine what a

1 stand's residual basal area is?

2 A. You would have to take plots across the stand. I
3 mean, a gut feel doesn't tell you what is there. The only way
4 to tell you what is there is to actually measure across the
5 stand to see what the numbers add up to.

6 Q. Okay.

7 A. If you're standing -- for example yesterday, we saw
8 a lot of -- I'm sorry, on the site visit we saw a lot of
9 variability areas with very few trees, areas with many trees.
10 I mean, if those all occur in the same stand, if I just looked
11 at the area with many trees I would over represent in my own
12 mind the basal area; if I looked at the area with few trees I
13 would under represent it. So you really have to do it through
14 a scientific process of taking plots; enough plots to have
15 confidence in your answer and extrapolating those to the
16 stand.

17 Q. So look at the second paragraph of your January 27th
18 letter. What are you expressing in that second paragraph?
19 What's being expressed in that paragraph?

20 A. The objectives -- and some of what we -- for Stand
21 34, the residual basal area objectives -- some of what we saw,
22 both in Stand 34 as far as right where we were, the basal area
23 there.

24 Q. Okay. So based upon what you saw on January 26th,
25 what concerns did you have on January 27th?

1 A. I was concerned because portions of the area had
2 obviously had trees cut that were not supposed to be cut, so
3 the residual basal area was lower than intended in those
4 areas. And I was afraid that that could affect the overall
5 residual basal area for the stand and make it so we couldn't
6 meet the prescription.

7 Q. In fact, can you please read the last sentence on the
8 first page of the January 27th letter? What does it say?

9 A. "In addition, we will cruise Stand 34 immediately to
10 determine the overall residual basal area."

11 Q. What does that sentence mean?

12 A. We were going to immediately have -- I had already
13 contacted LandVest to have them cruise Stand 34, put plots in
14 a systematic way to determine what the stand residual basal
15 area was at that point.

16 Q. Why were you interested in the overall residual basal
17 area? Why did you want to know that?

18 A. Well the prescription for the stand said that the
19 overall residual basal area for that stand would be between
20 thirty to forty square feet.

21 Q. Show the Court where it says that. On the exhibit,
22 show the Court.

23 A. Well, in my letter I reference it in the second
24 paragraph: "Harvest prescription calls for a two stage
25 shelterwood with a residual basal area of thirty to forty

1 square feet". That's the second paragraph.

2 Q. Okay. Show the Court on Exhibit 22 where it says
3 what the requirement was. I want you to show the Court.

4 A. On Exhibit 22, on Form 2, it's the one with the
5 prescriptions on it, the first page of Form 2, the middle
6 prescription was for Stand 34. This would be this page, the
7 one with the stands listed in order down it. The stand number
8 is off to the left. Stand 34 and the prescription says -- the
9 last sentence of that says "The patches will not affect the
10 stand residual basal area of thirty to forty square feet." So
11 it described what would happen, it described the shelterwood,
12 how it would be implemented, described these one to two acre
13 patches, and then it says that the overall stand residual
14 basal area would be thirty to forty square feet. So measured
15 across the stand when we were done harvesting, it would be
16 thirty to forty square feet on average of basal area, across
17 that stand.

18 Q. So going back to that last sentence on the first page
19 -- of Exhibit 25 -- 26 -- I'm sorry, 27; so what's that last
20 sentence referring back to?

21 A. This is referring back to the stand prescriptions.
22 Basically what I was saying is we'll cruise this stand
23 immediately to see where we're at with regard to the
24 prescription.

25 Q. Okay. Flip the page of Exhibit 27. Okay. When you

1 turn over the page of your letter you talk about changes that
2 you made prior to inspection. Could you please just explain
3 to us what you're talking about in that first section of the
4 back side of the January 27th letter? What's going on?

5 A. I mention changes, a few changes that I made prior to
6 the inspection, but after this stand was laid out, so the
7 layout before the harvest on this stand was already done. But
8 on other areas that we were laying out for harvest, these are
9 things we were already beginning to implement. Of these, the
10 first one is all stream buffers are now flagged fifty feet out
11 on both sides of the stream. Any trees to be cut within the
12 buffer are marked. This was a change we made to try to
13 eliminate confusion. Before this we had been flagging the
14 center line of streams. The operator of the equipment or the
15 crew cutting the trees would see the blue flagging and now
16 they needed to stay fifty feet back. We just felt like
17 clarifying that by putting the flagging at fifty feet out,
18 even though it meant twice as much flagging, or marking of
19 those buffers, made it more clear where they were. So that
20 was something that had already been implemented.

21 Second bullet point says Plum Creek has provided all
22 woods foremen for our Vermont harvesting contractors with GPS
23 units with harvest boundaries, including blue line streams
24 loaded. The blue line streams referred to here are the
25 streams that are in the easement with a fifty foot no-cut

1 buffer on either side. Those tend to be the larger streams
2 that show up on topo maps. Those maps or what were used to
3 develop that layer. So those streams, as well as the harvest
4 boundaries, loaded on a GPS unit that they can have as they
5 oversee their harvest on Plum Creek.

6 The third bullet point, contractors will only cross
7 streams at designated locations. This was already in the
8 written documentation, but this was a reiteration of the fact
9 that a forester would identify all stream crossings, so we
10 wouldn't have issues. We would not tolerate things like
11 happened where the logging contractor just decided to cross
12 the stream without authorization from us as the landowner or
13 LandVest foresters.

14 And then in that section, finally, one LandVest
15 forester will be responsible for Plum Creek. That -- LandVest
16 had people coming and going, as mentioned this morning by John
17 Horton. He had worked for LandVest and left LandVest in
18 December. So just before this they had brought on a new
19 forester, and they assigned that forester specifically to Plum
20 Creek as the lead forester, so that all Plum Creek issues, or
21 all Plum Creek planning would go through that forester. We
22 wouldn't have multiple different foresters with LandVest that
23 all had a little piece in the planning.

24 Q. Okay. Now the next section it states: "In addition,
25 in response to the issues identified yesterday, we are doing

1 the following." I want you to go through each one, step by
2 step, and explain what they mean and what we're doing.

3 A. Okay. So the first one says, "As mentioned above,
4 immediately cruise Stand 34 to determine the overall residual
5 basal area." I had already spoken with LandVest, asked them
6 to do this. They had a plan in place to start within a day or
7 so, and I had stopped harvesting -- stopped the contractor
8 from doing any more harvesting on Stand 34. So there wouldn't
9 be any changes to that stand so we could measure and find out
10 what the basal area was.

11 The next bullet point, "Review AMPs related to
12 stream buffers and crossings with all logging contractors in
13 Vermont this week." So we -- I went out personally and had
14 the other foresters go out to all logging contractors that
15 were working on Plum Creek property at the time and take the
16 AMP book, the guidelines for logging jobs, and review it page
17 by page with them to be sure there was no confusion about our
18 expectations or what was required for us as a landowner and
19 UVA, and really for them, as they did logging in Vermont.

20 Next was to "Distribute additional GPS units so that
21 each harvester has one." Harvester there refers to the feller
22 buncher or the equipment doing the cutting. We obtained and
23 loaded harvests on that. So if we had more than one GPS
24 -- I'm sorry -- more than one feller buncher or piece of
25 equipment doing cutting on a larger job, we could have each of

1 them have a GPS unit in the cab of that piece of equipment so
2 they could reference where they were. They have a map, they
3 have the GPS, they could reference where they were on the
4 site.

5 The next bullet point says, "Renew the practice of
6 stump marking leave trees." In this instance the mark to
7 leave, the X's on the trees, were the only mark. And one of
8 the ways you can be sure after somebody cuts trees that are
9 marked whether they were cut or not is if you mark a mark on
10 the stump. So when you paint the X you also squirt a mark on
11 the stump which doesn't get cut. It's down low to the ground.
12 And if you see stumps in this case with marks, you would know
13 that a tree was cut here that was supposed to be left. That
14 practice was not followed on the Clough Brook North harvest,
15 and it was -- we recognized that was one of the things that
16 could have helped in figuring out really how many trees that
17 were marked to leave actually got cut. We didn't have a good
18 handle on that, other than the ones that were in the pile that
19 we saw on the landing.

20 And then finally, the LandVest forester who painted
21 within the stream buffer will no longer do unsupervised layout
22 on Plum Creek. If he marks on Plum Creek it will be with
23 another LandVest forester and under their direct supervision.
24 LandVest has identified that particular forester may have
25 created some confusion on the logging job because instead of

1 stopping his marking in all cases at the fifty foot buffer, he
2 marked through that -- into that buffer as though it was part
3 of the harvest block, which then of course logically could
4 cause the contractor, the logging contractor, to cut trees
5 within that -- too many trees within that stream buffer.

6 Q. Okay. And --

7 THE COURT: We'll stop for lunch now and
8 continue at 1:00.

9 (Thereupon, a break in the proceedings took place at 12:01 PM.
10 Hearing resumed at 1:01 PM)

11 THE COURT: Please be seated.

12 Mr. Grayck.

13 BY MR. GRAYCK:

14 Q. Chris, when we left off you were looking at Exhibit
15 27, the back page or second page where your signature is, and
16 you had just finished going through the bulleted items with
17 respect to issues identified yesterday and were doing the
18 following. So why did you identify those issues? Why did you
19 write that in the letter?

20 A. These were all things I was -- wanted to communicate
21 to the -- both Matt Langlais and Dan Kilborn with the Land
22 Trust, as far as being on the same page with what we were
23 doing as a company to change practices to help continue to get
24 better with what we were doing in the field, kind of implement
25 the best practices, and also follow up on the questions and

1 concerns of the day before.

2 Q. Why don't you look at the next paragraph in your
3 letter? Can you just read that?

4 A. "It's worth stating that Plum Creek has higher
5 expectations than this for all our logging contractors, and we
6 are very disappointed with this new contractor's performance
7 on this portion of the harvest block. I am actively working
8 to resolve these issues."

9 Q. Okay. What were you doing?

10 A. I was working with WELOG to -- and Malcolm Washburn,
11 the owner, to address the issues that had come up to try to
12 find out what the root of these problems was and make sure
13 this didn't happen in the future.

14 Q. And on January 27th what was the status of the
15 harvest with respect to Stand 34?

16 A. I had stopped all harvesting in Stand 34.

17 Q. What, if any, harvesting has been done to Stand 34
18 since the conclusion of work on January 26, 2010?

19 A. There hasn't been any more harvesting. There was
20 wood that was cut on that date that was pulled to the landing
21 and processed, but the cutting was pretty close to the
22 skidding, so that was probably a day or a day and a half more
23 that was left to do.

24 Q. Okay. Can you please read the last paragraph?

25 A. "Despite the issues that we identified yesterday on

1 LM030109, I hope you will recognize the pattern of good
2 practices employed on Plum Creek over the past year in Vermont
3 and our desire to constantly improve. We -- I -- value your
4 input as a forester and partner in management and continue to
5 strive to be responsive to your requests. Sincerely, Chris
6 Fife."

7 Q. Why did you write that?

8 A. I wanted to know -- the State and Matt to know that I
9 was looking to continue to be cooperative, that I thought this
10 relationship of working together, although we were new to it
11 really still was an important one, and one that was workable,
12 and that I valued and wanted to continue to cultivate.

13 Q. What response, if any, did you receive from county
14 forester Langlais in response to this letter?

15 A. I didn't receive any response.

16 Q. What did you next do with respect to the Clough Brook
17 North harvest area in terms of inspection and managing of the
18 harvest?

19 A. Well, I had contacted my boss, Tim Durrell, the
20 evening before, on the 26th, and I -- he came over, we
21 inspected the area together. So I was out there inspecting.
22 LandVest had gone back out to continue inspecting the active
23 jobs, which is a normal part of what we do in managing logging
24 jobs and overseeing them. And then Tim came out, and Tim and
25 I went out on the job together.

1 Q. And what day approximately was that?

2 A. It would have been -- I believe it was around
3 February 2nd, something like that.

4 Q. Within a week of when -- of January 26?

5 A. Yes.

6 Q. Okay. And what was the result of your inspection
7 with your supervisor, Mr. Durrell?

8 A. We went out, we inspected the job together and
9 decided to shut the job down completely, cease all harvesting
10 on that job, and let things sit until we could resolve the
11 questions that had come up on the site visit on the 26th.

12 Q. So by approximately what date was all harvesting, the
13 Clough Brook North job terminated?

14 A. I'm sure that it was all terminated by February
15 5th --

16 Q. Okay.

17 A. -- of 2010.

18 Q. And what, if any, harvesting has been done at Clough
19 Brook North since that time?

20 A. There hasn't been any harvesting since that time.

21 Q. Okay. Now in your letter you said that you were
22 going to have all of Stand 34 cruised to determine the overall
23 residual basal area. Did that occur?

24 A. Yes, it did.

25 Q. And I'm going to show you what's been admitted as

1 State's C, the LandVest Stand 34 cruise results.

2 MR. GRAYCK: Does the Court have that? Do the
3 Court members have a copy of that?

4 THE COURT: Of what?

5 MR. GRAYCK: Of -- it's been admitted as State
6 Exhibit C, the LandVest Stand 34 cruise results. I had
7 intended to make --

8 THE COURT: Oh, that's right.

9 MR. GRAYCK: I had intended to make it Plum
10 Creek --

11 THE COURT: 28.

12 MR. GRAYCK: -- Exhibit 28.

13 THE COURT: Yup. Okay.

14 MR. GRAYCK: But I'd like -- I have additional
15 copies of it if the Court would accept at this time so that my
16 client --

17 THE COURT: I do have it. The additional
18 copies would be helpful.

19 BY MR. GRAYCK:

20 Q. So the document you have in front of you has been
21 admitted as Exhibit State's C. What is Exhibit State's C
22 again?

23 A. This is the results of the cruise of the processing
24 and results of the cruise that LandVest did on Stand 34 for
25 us.

1 Q. Okay. And what's the result of the LandVest cruise
2 of Stand 34 that's provided for in Exhibit State's C?

3 A. The basal area, the residual basal area on the entire
4 stand is thirty-five.

5 Q. And can you show that page where that is to the
6 Court?

7 A. It's Page 6 of 6. It would be the last page that has
8 data on it. Total acres a hundred and thirty-eight. That's
9 the total stand acres, with a hundred and forty-one plots.
10 And the basal area is -- it says "mean basal area per acre,
11 thirty-five."

12 Q. And what did that tell you?

13 A. That told me that across the stand we were in
14 compliance with the prescription still, which called for a
15 residual basal area between thirty and forty square feet.

16 Q. Okay. Now part of the cut contrary involves that
17 compliance or lack thereof with the accepted management
18 practices. I'm showing you Exhibit 29. What's Exhibit 29?

19 A. This is a letter from AMP forester Jeff Briggs, state
20 forester, documenting a site visit that we took on Clough
21 Brook.

22 MR. GRAYCK: Move the admission of Plum Creek
23 29.

24 MR. DUANE: No objection, Your Honor.

25 THE COURT: Plum Creek 29 is admitted.

1 (Letter from forester Jeff Briggs was hereby received into
2 evidence as Plum Creek Exhibit 29, as of this date.)

3 BY MR. GRAYCK:

4 Q. Exhibit 29 makes reference to a visit held on
5 February 9th, 2010. Can you please describe -- or can you
6 please tell us who was -- who met on February 9th, 2010, and
7 where did you meet?

8 A. That was a visit to the site with Matt Langlais;
9 Reginald Smith, who was the ANR enforcement officer,
10 environmental enforcement officer, Jeff Briggs; and -- I'm
11 trying to remember -- I don't remember who else was there.
12 Myself, for sure.

13 Q. Can you read the first sentence of the second
14 paragraph of the February 18th letter?

15 A. It says, "On February 9th, 2010, Matt, Reginald
16 Smith, ANR environmental enforcement officer and I met with
17 you on site. There was too much snow to observe the
18 underlying soil and water conditions. We did observe that
19 some remedial work had been done in the buffer area where the
20 violation occurred and near the landing. We were also able to
21 observe that you had taken out two of the -- two crossings of
22 the brook, but there were areas of disturbed soil and had no
23 water bars in place. In addition, we looked at the area up
24 top where a skidder had driven through the brook."

25 Q. Okay. So what is this paragraph referring to?

1 A. This was a site visit, as I said, with both Reg
2 Smith, Matt, and Jeff Briggs, where we went back to the site
3 to look at the issues identified by Matt Langlais on the
4 January 26th site visit. And we visited -- we mostly spent
5 our time around that landing with the crushed culvert, the one
6 that I've shown the picture of.

7 Q. My next question is how, if at all, did the AMP
8 violations and their locations in this letter -- which of them
9 did we see yesterday, if any? Two days ago on the site visit.

10 A. The area that we visited was in that landing. And I
11 will find the picture. We visited the area around Exhibit 86,
12 which is the landing. Exhibit 87 was also a picture of that
13 landing area with the culvert. We looked at where the stream
14 channel comes in behind the landing in this general landing
15 area, because there's a stream close by on this -- what would
16 be the southern side of the landing. Then we walked up the
17 stream behind the landing, looking at the crossings. And we
18 did this in reverse order on the site visit. So we were up
19 top by those crossings.

20 This would be -- and Exhibit 80, the area where it
21 was a wet, grassy area. We stood there. Plum Creek believed
22 that the AMP issues were lower -- just below that, at a
23 crossing which is shown on Exhibit 81. So this was the area
24 referred to here where a skidder had driven through the brook.
25 They had just put some loose brush there and crossed this.

1 And also the -- so that's the area that was remediated and
2 closed out, brush removed, reseeded the encroaches.

3 Q. Now what does the remainder of this letter address of
4 Exhibit 29?

5 A. Jeff mentions that we agreed to a return visit, and
6 then talks about the specific violations relating these to the
7 AMP guidelines from the AMPs for logging jobs. And there's
8 two -- two sections of that, AMPs that apply during the
9 logging job referred to at first, and then AMPs apply at
10 closeout. Those are ones that would be expected to be done
11 before the job was left when you're -- we -- when everything's
12 done we call that closeout work, when you're finishing the
13 job, closing it out, so it stays stabilized through until the
14 next time you are working in that area.

15 Q. Okay. Now the letter states "We referred this case
16 to Reginald Smith, environmental enforcement officer, who will
17 be working with all parties involved to insure compliance with
18 the State of Vermont's water quality laws." What further
19 contact, if any, have you had with Reginald Smith?

20 A. I haven't had any.

21 Q. I'm now showing you what's been marked as Plum Creek
22 30. What is that?

23 A. This is another letter from Jeff Briggs, the AMP
24 forester, following a final site visit on April 19th of 2010.

25 MR. GRAYCK: Plum Creek moves the introduction

1 of Exhibit 30.

2 MR. DUANE: No objection, Your Honor.

3 THE COURT: Plum Creek 30 is admitted.

4 (Letter from AMP forester Jeff Briggs was hereby received
5 into evidence as Plum Creek Exhibit 30, as of this date.)

6 BY MR. GRAYCK:

7 Q. Okay. The first paragraph of the April 27th letter
8 refers to a site visit on April 19th.

9 A. Yes.

10 Q. Do you recall that site visit?

11 A. I do.

12 Q. Okay. Who was on that site visit?

13 A. Gary Sayborn, who is a forester with the Agency of
14 Natural Resources; Reg Smith, who was the State enforcement
15 officer; and Jeff Briggs.

16 Q. And who else was there?

17 A. Mark Doughty.

18 Q. Okay. And what did you go look at?

19 A. We went back and inspected the site, looked at the
20 areas that were identified as issues, AMP issues on the first
21 visit, looked at the closeout that had been done, the
22 crossings that had been pulled, the way those had been seeded
23 and mulched. Basically the implementation that had been done
24 of the AMPs and the stabilization of the site. We looked at
25 water bars. We looked at multiple water -- stream crossings.

1 So all the stabilization measures that had been completed.

2 Q. Okay. And who had Plum Creek hired to assist with
3 remedial AMP measures?

4 A. We hired Alan Poirier, who is a contractor that does
5 AMP type of work, as well as road building and other
6 excavating work for us.

7 Q. And what work did he do at the site?

8 A. Alan did the AMP work, the closeout work, so he used
9 a small excavator to put in water bars on skid trails that
10 needed water bars because of the steepness. He put -- pulled
11 the crossings that needed to be pulled. Basic closeout of the
12 job as he would do for us on any of our other jobs. Smoothed
13 ruts in some places where there was some rutting that needed
14 to be smoothed. And then spread hay and seed on the
15 encroaches of the crossings. Put the water diversions on the
16 winter roads so that they were stable.

17 Q. Now what was your understanding on receipt and review
18 of this letter with respect to the status of the alleged AMP
19 violations?

20 A. My understanding was that we were in compliance and
21 there were no more AMP issues that needed to be taken care of
22 on the site.

23 Q. Looking at the second page of the letter, do you see
24 the four bolded items?

25 A. Yes.

1 Q. Forester Briggs characterized them as, you know, a
2 reiteration of the main points. Could you please address the
3 four bolded items and what response, if any, Plum Creek has
4 and has done in response to those four items?

5 A. Sure. The first one is "The need for pre-harvest
6 water quality AMP planning that specifically involves the crew
7 on the ground that is doing the work. We understand that you
8 and Gary will be working together to put together a logger
9 training session focusing on this subject." We had conducted
10 logger training every year. We do a springtime -- what we
11 call a -- kind of like a mud breakfast, when the loggers are
12 not in the woods working. We get them together. One of the
13 things that we train on is AMPs and the implementation of
14 those. We have not had Gary at any of those. He's -- right
15 after this was very busy with the rewrite of the AMPs, and
16 hasn't been able to cooperate with us on that in person, but
17 -- so we've done that.

18 As far as the first sentence, "The need for pre-
19 harvest water quality AMP planning that specifically involves
20 the crew on the ground that's doing the work", we have a pre-
21 harvest checklist that one of the items on there is to review
22 the AMPs during a walk-through of the site with the contractor
23 so that the logging contractor knows where the water courses
24 are, knows where any special sites are. Anything unusual on
25 the site is identified and noted on that inspection form. And

1 one of the items on there is that the logging contractor has
2 been given or has produced a copy of the AMP rules to show
3 that they have those and have access to them in order to
4 reference them during the job.

5 The second item there, "The need for better
6 oversight by Plum Creek. We understand that Plum Creek is
7 hiring another forester to oversee operations in Vermont which
8 should help." One of the changes that we've made was to bring
9 our Vermont operations more in line with how we do our
10 business in other states. We have gotten away from using a
11 contractor for planning and layout and hired our own
12 foresters. At this point we were hiring one other forester
13 besides myself. We now have four foresters, including me,
14 working out of the Colebrook office managing the Vermont and
15 New Hampshire land.

16 Q. And as a result of hiring those foresters, you said
17 you've moved away the model of using outside consultants. Who
18 are you -- who are you referring to, or who was the outside
19 consultant?

20 A. LandVest was the outside forestry consultant that we
21 were using for the planning and layout purposes. So now we're
22 doing all of that in-house ourselves, which is how we --
23 that's really our business model of how we do things in other
24 states.

25 Third, "Our concern that the scale of harvesting

1 that Plum Creek operates at and with the harvesting plans it
2 has for the future in Vermont, that a higher level of AMP
3 water quality compliance be adhered to going forward." I
4 think that really is addressed in the initial items. AMPs are
5 high on our list anyway. As a third party certified company,
6 we need to pay attention to those things. We have no
7 intention to violate AMPs and no benefit from violating them.
8 Losing our certification would be a major blow, so it's not
9 something that we want to risk. We want to be an exemplary
10 landowner, someone that others point to and say that's the way
11 it should be done.

12 So I understand the concern that was expressed here
13 by Mr. Briggs, and I think that we have -- we have addressed
14 that. I think it's part of the culture of Plum Creek to try
15 to be at that level of excellence around environmental issues.
16 And we have not had water quality AMP issues since these were
17 cited.

18 As far as the scale of harvesting that there's a
19 concern about, you know, the scale of harvesting was laid out
20 in the approved forest management plan, and that scale of
21 harvesting we still to date have not reached the levels
22 mentioned in the forest management plan. But certainly one of
23 the reasons for that is wanting to make sure that we comply on
24 the environmental side and don't expand the operation beyond
25 what we can handle and can supervise, taking care of the AMPs

1 and that side of things first.

2 And then the fourth point there just is our shared
3 commitment to work together. And as I said, I think that's
4 been proven out. This happened in 2010. We're still working
5 with the agency. We're still going through the UVA process
6 and the approval process on all our harvests. We're still
7 implementing AMPs on all jobs that we operate. We're still
8 seeking input from the county forester, the Vermont Land Trust
9 forester, other state foresters. We're trying to work
10 cooperatively on this and other projects, so I feel that we do
11 have a commitment to work together, and that that's been
12 proved out since 2010.

13 Q. I'm showing you what's been marked as Plum Creek
14 Exhibit 31. What is that?

15 A. This is an email that I sent to Jeff Briggs, Matt
16 Langlais, Gary Sayborn, Reg Smith and Dan Kilborn, copying Tim
17 Durrell, letting them know that all the closeout was complete;
18 all the AMP closeout was complete on Clough Brook.

19 MR. GRAYCK: Move the introduction of Exhibit
20 31, Plum Creek 31.

21 MR. DUANE: No objection, Your Honor.

22 THE COURT: Plum Creek 31 is admitted.

23 (Email from Chris Fife re: closeout of Clough Brook was
24 hereby received into evidence as Plum Creek Exhibit 31, as of
25 this date.)

1 BY MR. GRAYCK:

2 Q. Chris, what do the AMP rules require for a winter
3 crossing a stream?

4 A. A winter crossing of a stream -- it has to be frozen
5 crossing. You can use brush or pole crossing. So you can
6 basically put brush, poles, wood into the crossing and use
7 that to skate across the stream. That has to be removed and
8 the channel, you know, opened and the banks stabilized when
9 the logging job is finished.

10 Q. So I take it you've just described the conditions
11 under which it's permissible to cross a stream under the AMP
12 rules during the wintertime.

13 A. Yes.

14 Q. Okay. Did you attend the meeting between -- or a
15 meeting with the Vermont Land Trust officials and Forests,
16 Parks and Recreation officials on February 18th, 2010?

17 A. Two separate meetings; yes.

18 Q. Could you tell me about the first meeting?

19 A. We -- Tim Durrell and myself went to the BHCV office
20 to meet with the Vermont Land Trust and BHCV in Montpelier to
21 follow up on the Clough Brook North site visit and the -- get
22 more input from them, find out what follow-up they might want
23 to see from that, basically just to reach out to them and see
24 how we could work cooperatively to address their concerns.

25 Q. And what was the next meeting?

1 A. The next meeting we then left Montpelier, we drove to
2 St. Johnsbury on the way back, met with members of the
3 Department of Forests, Parks and Recreation. Ginger Anderson,
4 Matt Langlais -- I don't recall if anybody else from Forest
5 and Parks was there -- myself, Tim Durrell and Mark Doughty.

6 Q. At that time what did you learn from FPR officials as
7 to the status of its investigation or pursuit of a UVA cut
8 contrary violation for the Clough Brook North harvest?

9 A. At that time we were given a draft of the cut
10 contrary that Matt Langlais had been working on, and that was
11 the first that I had heard of it. We until then didn't really
12 know that that was the way this was progressing.

13 Q. I'm going you Exhibit 32. What's that?

14 A. These are copies of the letter that I received from
15 Steve Sinclair with the memorandum to Ginger Anderson from
16 Matt Langlais requesting removal of -- or documenting the UVA
17 violation and requesting removal of the acreage.

18 MR. GRAYCK: Plum Creek moves the admission of
19 Exhibit 32.

20 MR. DUANE: No objection, Your Honor.

21 THE COURT: Plum Creek 32 is admitted.

22 (Letter from Steve Sinclair was hereby received into
23 evidence as Plum Creek Exhibit 32, as of this date.)

24 BY MR. GRAYCK:

25 Q. Do you have Exhibit 32 in front of you, Chris?

1 A. Yes, I do.

2 Q. Okay. We're going to go through this page by page,
3 okay? What's the first -- I'm sorry.

4 So Exhibit 32; when did you get this?

5 A. I received this -- I believe the postmarked envelope
6 is in here -- this is May 24th it's postmarked. I would have
7 received it May 25th or 26th.

8 Q. Can you show the Court the last page of the exhibit
9 so they can see where the postmark is?

10 A. Right here.

11 Q. What, if any, of the correspondence that's dated
12 prior to the postmark did you receive prior to the postmark?

13 A. I received the draft of Matt's -- Matt Langlais's
14 inspection with the map that is in here. But we did not
15 receive anything until that date as far as anything final that
16 Matt had done, or any of the rest of the documentation in
17 here.

18 Q. Okay. So the first page of what you received; it's a
19 letter from Steve Sinclair?

20 A. Yes.

21 Q. Okay. And what -- what did this letter tell you?

22 A. He said that Matt's field work was complete and he
23 had done his write-up. The write-up and copies of the maps
24 and plans which were posted -- posted April 30th were
25 forwarded to Waterbury for review. They were sent to

1 Department of Taxes, Property and Valuation and Review,
2 recommending that the property be removed from UVA for
3 harvesting contrary to the management plan.

4 Q. And what about the second paragraph?

5 A. He stated that until actions related to the potential
6 UVA violation are completed, Forests, Parks and Recreation
7 will not be in a position to approve any new activities in the
8 area referred to as Clough Brook North.

9 Q. All right. Second page of Exhibit 32; what's that --
10 what is that?

11 A. That's a photocopy of the envelope that was in this
12 packet, which I -- was paper clipped to Matt's inspection.

13 Q. They sent you an envelope in the envelope?

14 A. Yes.

15 Q. Can you turn the page, please?

16 A. Yes.

17 Q. Okay. What's the next document in Exhibit 32?

18 A. This is a letter from Matt Langlais saying "Please
19 find enclosed a copy of the report to Ginger Anderson, chief
20 of forest management, recommending the lands owned by Plum
21 Creek Maine Timberlands, LLC be removed from the Use Value
22 Appraisal program. Inspection of the 2009-10 harvesting
23 operations found that a hundred and thirty-nine-point-five-
24 four acres have been cut contrary to the forest management
25 plan on file. Recommendation for discontinuance is also

1 predicated on -- upon failure of Plum Creek to implement the
2 minimum acceptable standards for maintaining water quality
3 AMPs during forest management operations."

4 Q. Okay. So as a result of this letter what was your
5 understanding of the State's conclusion with respect to the
6 harvest activities at Clough Brook North?

7 A. That a hundred and thirty-nine-point-five-four acres
8 was cut contrary, and that we were going to have the land
9 described removed from UVA for a period of five years.

10 Q. Okay. Could you turn the page, please? What's the
11 next page?

12 A. The next page is the memorandum from Matt Langlais to
13 Ginger Anderson, chief of forest management, regarding UVA
14 violation Plum Creek Maine Timberlands, LLC, hundred and
15 thirty-nine-point-five-four acres cut contrary. And it goes
16 on to describe Matt's report of what he did, what he found,
17 including the AMP violations that he alleged.

18 Q. And what, if any, data have you received from the
19 State of Vermont with respect to the location of the AMP
20 violations?

21 A. There's a map -- the next page in here is a map.
22 That map has green triangles that represent AMP violation
23 sites. That's -- this map is all I have received as far as --

24 Q. Can you please show the map to the Court?

25 A. This map is what I have received.

1 Q. When we were on the site visit and there was
2 disagreement as to the location of the alleged AMP violations,
3 what was the basis of your opinion as to the location of the
4 AMP violations?

5 A. Violation -- the first site that the State took us to
6 is indicated on Exhibit 75, the photograph that was at the top
7 of the hill in a grassy area. We stopped there, and Matt said
8 that this was a location of an AMP violation. When you look
9 at the route we took, which --

10 Q. It's Exhibit 97?

11 A. You need to do a little --

12 Q. Just wait for the Court, please.

13 MR. GRAYCK: If the Court needs extra copies,
14 we have them available.

15 THE COURT: I think we only have the one. I
16 don't -- did you get -- oh, you did. Okay. Never mind.
17 We're fine. Thank you.

18 MR. GRAYCK: Your Honor, is one extra copy
19 required? We're concerned that we missed one binder.

20 THE COURT: Okay. That might be so. We're all
21 set.

22 MR. GRAYCK: Thank you, Your Honor.

23 BY MR. GRAYCK:

24 Q. Please continue, Chris.

25 A. The site we stopped at was right along the boundary,

1 just crossing here. And if you compare shapes, that's really
2 probably the easiest way to figure it out. And I'll hold this
3 up. But down here on the inspection report there's a fairly
4 recognizable shape of the stand line that is this. You can
5 recognize the same stand line. This is based on the same
6 data. This was all the same base data. So this stand and
7 this stand match. We were right against this stand line where
8 we stopped. These orange triangles indicate that stop when we
9 talked about the AMP violation. And if you look at the map
10 that we were provided, there's no green triangle anywhere near
11 this stand boundary up there. That's why I was surprised when
12 we went to that site, and Matt Langlais said that was a site
13 of an AMP violation.

14 Q. So with respect to the AMP violation, so going back
15 to the April 26th memorandum from Ginger -- from Matt Langlais
16 to Ginger Anderson, there's an item on that first page that
17 says SPAN number. Do you see that?

18 A. Yes.

19 Q. Could you please flip to Exhibit 16 and find me the
20 tax bill for the town of Lemington? Can you compare the SPAN
21 number listed on the town of Lemington tax bill in Exhibit 16
22 to the SPAN number identified on the April 26th memorandum
23 from Matt Langlais to Ginger Anderson?

24 A. They're the same.

25 Q. Thank you. Can you please go to -- in Exhibit 32 to

1 the March 24th letter to Michelle Wilson from Virginia
2 Anderson?

3 A. Yes.

4 Q. Can you please read that letter?

5 A. "Dear Michelle: This is a request --

6 THE COURT: Can you wait just a minute?

7 THE WITNESS: I'm sorry.

8 THE COURT: What is it?

9 BY MR. GRAYCK:

10 Q. Do you want to hold it up and show it to the Court?

11 A. It's a letter dated May 24th to Michelle Wilson --

12 THE COURT: What exhibit is this in?

13 MR. GRAYCK: It's in Exhibit 32, Your Honor.

14 It follows the ortho photo with the AMP violations.

15 THE COURT: May 24th?

16 THE WITNESS: May 24th.

17 THE COURT: Okay.

18 THE WITNESS: Should be behind the --

19 THE COURT: Okay.

20 BY MR. GRAYCK:

21 Q. Can you read that letter?

22 A. "Dear Michelle: This is a request to have a portion
23 of a forest UVA parcel in Essex County removed from the Use
24 Value Appraisal program. Attached to this letter is
25 documentation by Matt Langlais, Essex, Caledonia county

1 forester, regarding an adverse inspection that found a hundred
2 and thirty-nine-point-five-four acres of the property was cut
3 contrary to the owner's UVA plan. I also submit a copy of the
4 report that documents the prompt resolution by Plum Creek of
5 the AMP issues mentioned in the text of Matt's memo to me.
6 Plum Creek is Vermont's largest landowner enrolled in UVA with
7 parcels in several towns in Essex County. The SPAN number for
8 this parcel is 34-108-10039. Please call me or Matt if you
9 have any questions."

10 Q. What's your understanding as to the parcel that's
11 identified as SPAN 34810810039?

12 A. That would be referring to Lemington.

13 Q. And how many acres in Lemington?

14 A. I need my list. Being nine thousand, nine hundred
15 fifteen.

16 Q. When did you learn that the State proposed to
17 disqualify fifty-six thousand, six hundred and four acres of
18 Plum Creek land from the UVA program?

19 A. I received a letter from the Department of Propety
20 Valuation and Review.

21 Q. Approximately when?

22 A. I don't recall.

23 Q. If we showed you State's Exhibit A, does that help
24 refresh your recollection?

25 A. Yes.

1 Q. So about when did you learn that it was fifty-six
2 thousand?

3 A. So this was July 9th of 2010.

4 Q. And if you flip it to the next -- to the next
5 exhibit; what's that?

6 A. It's the appeal decision.

7 Q. And if you flip that page, State's Exhibit A, what's
8 it showing?

9 A. This is a list of the acres to be discontinued and
10 their SPAN numbers, towns that they're in.

11 THE COURT: What are you referring to?

12 THE WITNESS: State's Exhibit 8.

13 MR. GRAYCK: I thought it was A.

14 THE COURT: I have A, but it doesn't have a
15 list of SPAN numbers.

16 MR. GRAYCK: Okay. I apologize. This is --
17 I'd like to admit into evidence as Plum Creek 32A, a July 9th,
18 2010 letter from William Johnson, Director of Property
19 Valuation and Review, to Corporate Tax Department and Plum
20 Creek.

21 BY MR. GRAYCK:

22 Q. And I'll show you this letter. Did you ever recall
23 seeing that?

24 A. Yes.

25 Q. And what is it?

1 A. This is the letter that I received from the Corporate
2 Tax Department, or from the State Department of Taxes
3 concerning the discontinuance.

4 Q. And what did you learn from that letter?

5 A. That they intended to remove fifty-six thousand, six
6 hundred and four acres of Plum Creek property from the Use
7 Value program.

8 MR. GRAYCK: Plum Creek moves for the
9 introduction of Exhibit 32A.

10 MR. DUANE: No objection, Your Honor.

11 THE COURT: 32A is admitted.

12 (Letter from Vermont Tax Department was hereby received
13 into evidence as Plaintiff's Exhibit 32A, as of this date.)

14 MR. GRAYCK: Your Honor, may I have a moment to
15 confer with my client?

16 THE COURT: All right.

17 MR. GRAYCK: Thank you.

18 THE COURT: Are you asking for us to take a
19 total break, or just -- you just want to speak briefly?

20 MR. GRAYCK: Briefly, Your Honor.

21 THE COURT: Okay.

22 (Thereupon, a brief pause in the proceedings took place.)

23 MR. GRAYCK: Thank you, Your Honor. I'm
24 finished with my examination of Mr. Fife; my direct exam.

25 THE COURT: Mr. Duane?

1 MR. DUANE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DUANE:

4 Q. Good afternoon, Mr. Fife.

5 A. Good afternoon.

6 Q. How are you?

7 A. Good.

8 Q. Mr. Fife, when you first became involved with Plum
9 Creek up here in Vermont on the Vermont lands in late 2008,
10 you began having meetings with Matt Langlais and other folks
11 from the Department of Forests, Parks and Recreations,
12 correct?

13 A. Yes.

14 Q. And some of those meetings involved talking about the
15 Current Use program and what was required for someone who's
16 enrolled in the Current Use program, correct?

17 A. Yes.

18 Q. Okay. Now the large landowner alternative program
19 that you talked about earlier in your examination by Attorney
20 Grayck; that went into place around the time that you became
21 involved with Plum Creek's operations up here, correct?

22 A. I'm not sure about that.

23 Q. Isn't it true that the large landowner alternative --
24 that is, the alternative plan for landowners of more than five
25 thousand acres, is very helpful to large landowners, correct?

1 A. Yes.

2 Q. And there are only a handful of large landowners --
3 that is, holdings of more than five thousand acres in the
4 State of Vermont, correct?

5 A. I'm not sure.

6 Q. About a half a dozen? Does that sound about right to
7 you?

8 A. I don't know.

9 Q. Do you know much about the Current Use program?

10 A. No, I didn't.

11 Q. Do you know how many forest owners there are enrolled
12 in the Current Use program?

13 A. No, I don't.

14 Q. Now the large landowner program -- which Plum Creek
15 is enrolled in, correct?

16 A. Yes, we are.

17 Q. If Plum Creek was not in that large landowner
18 protocol or procedure, Plum Creek would have to do a forest
19 management plan every ten years for its entire eighty-two
20 thousand acres, correct?

21 A. Can you clarify that question?

22 Q. If Plum Creek was not in the large landowner program,
23 Plum Creek would have to do a forest management plan for its
24 entire holding every ten years, correct?

25 A. As we do now.

1 Q. Yeah. But that's the conceptual plan.

2 A. Yes.

3 Q. And isn't it true that if you own five thousand acres
4 or, in particular, eighty-two thousand acres, you might never
5 even get to some of the places that you own in that plan,
6 correct?

7 A. Can -- can you clarify what you mean by get to?

8 Q. You might not even go in and harvest or do a sale --

9 A. Yes.

10 Q. -- or cut any timber --

11 A. Yes.

12 Q. -- on some parts of your land.

13 A. Yes.

14 Q. For many years.

15 A. Yes.

16 Q. And so not having to do a ten year plan for your
17 entire holding saves you, as you testified, time and money,
18 correct?

19 A. Yes.

20 Q. And so it's a good deal for the large landowners,
21 correct?

22 A. It makes sense.

23 Q. It makes sense. And that was Matt's brainchild,
24 wasn't it? In other words --

25 A. I don't know that.

1 Q. -- he came up with that. Isn't that correct?

2 A. I don't know.

3 Q. Now Plum Creek had been in the Current Use program
4 since 2001, correct? Or the land had been in the Current Use
5 program since 2001, correct?

6 A. Yes, that's correct.

7 Q. When Essex Timber Company bought it.

8 A. That's my understanding, yes.

9 Q. And enrolled it. Now when you're practicing
10 silviculture, and I think you stated -- correct me if I'm
11 wrong -- that when you're practicing silviculture you're
12 manipulating the forest to receive a certain outcome or goal,
13 correct?

14 A. Yes. That's correct.

15 Q. So when you go in and harvest or cut, you don't do it
16 on a willy-nilly basis, correct?

17 A. We do it with a plan.

18 Q. And you don't do it haphazardly, correct?

19 A. Correct.

20 Q. And you don't do it randomly, correct?

21 A. Correct.

22 Q. And you don't go in and cut and cross your fingers
23 and hope for the best and see what happens, correct?

24 A. That's correct.

25 Q. You have a plan that has an outcome, and you use

1 scientific principles to attempt to achieve that outcome,
2 correct?

3 A. Yes.

4 Q. You just don't hope you get lucky and everything kind
5 of turns out okay, correct?

6 A. Correct.

7 Q. Okay. And isn't it true that what you're trying to
8 do when you do silviculture -- and you're a professional
9 forester, correct?

10 A. I am.

11 Q. When you're doing silviculture you're trying to
12 create the conditions on the ground, in the forest, to achieve
13 your goal, correct?

14 A. Yes.

15 Q. Now when the Clough Brook North tract was being
16 proposed for harvest, it was a collaborative process, wasn't
17 it, between Plum Creek, the State of Vermont, the Vermont Land
18 Trust, the Vermont Housing Conservation Board, correct?

19 A. Yes.

20 Q. You did a draft of a prescription.

21 A. Yes.

22 Q. And the Vermont Land Trust got a chance to look at
23 it, correct?

24 A. Yes.

25 Q. And the State of Vermont, through Matt Langlais, got

1 a chance to look at it, correct?

2 A. Yes.

3 Q. And then you all went out into the field, correct?

4 A. Yes.

5 Q. And some recommended changes were made, correct?

6 A. Yes.

7 Q. And you came up with a final plan, correct?

8 A. Yes.

9 Q. And Matt approved that, correct?

10 A. Yes.

11 Q. Now there was a conceptual plan. Mr. Fife, let me
12 show you what's been admitted into evidence as Plum Creek
13 Number 15. And I have my binder copy here.

14 MR. DUANE: And Your Honor, if I could approach
15 the witness I'll show him this document.

16 THE COURT: All right.

17 BY MR. DUANE:

18 Q. And Mr. Fife, do you recognize Plum Creek Number 15?

19 A. I do.

20 Q. And that -- this is the Current Use Management Plan
21 signature page for Plum Creek?

22 A. Yes.

23 Q. And this document takes the Essex Timber Company
24 conceptual plan and puts it into the alternative procedure for
25 landowners of more than five thousand acres.

1 MR. GRAYCK: Objection --

2 A. No.

3 MR. GRAYCK: -- Your Honor. The document
4 speaks for itself. Mr. Duane is suggesting a conclusion as to
5 the consequence of this document. The document speaks for
6 itself.

7 THE COURT: The objection is overruled. He may
8 testify as to its significance and effect, if he knows.

9 BY MR. DUANE:

10 Q. And so I'll try to restate my question as accurately
11 as I -- as I can, Mr. Fife.

12 This document recognizes that it was the Essex
13 Timber Company plan, correct?

14 A. It does.

15 Q. And then Plum Creek agrees to enroll in the
16 alternative large landowner protocol, correct?

17 A. May I?

18 Q. Yes. Thank you.

19 A. No, I don't believe that's what that page is doing.

20 Q. And what do you think the page is doing, if I may?

21 A. I think this page is adopting -- is Plum Creek
22 adopting the approved ten year management plan that was Essex
23 Timber management plan before that.

24 Q. And this document is signed by Tim Durrell on behalf
25 of Plum Creek?

1 A. Yes.

2 Q. And I think you've testified before he was your boss
3 at the time?

4 A. That's right.

5 Q. And doesn't the signature -- could you just read for
6 me, please, just so I don't misrepresent what it says --
7 what's it say right there where -- in the second sentence,
8 under the bolded language signatures?

9 A. Okay. It says, "I have elected to adopt the plan
10 developed by Essex Timber Company, LLC, and understand and
11 agree to the above requirements of the Use Value appraisal
12 large landowner alternative forest management plan strategy
13 for continued eligibility in UVA.

14 Q. Okay. So this document does certify that Plum Creek
15 has elected to -- has agreed to the requirements of the Use
16 Value appraisal large landowner alternative plan strategy,
17 correct?

18 A. Yes, it does.

19 Q. Okay. Thank you.

20 So when Plum Creek submits amendments to its forest
21 management plan, as you testified earlier this morning
22 regarding the stands in question, those are very specific
23 prescriptions on a stand by stand basis, correct?

24 A. Yes, they are.

25 Q. Okay. And that's what the landowner is supposed to

1 follow when they go in the woods and harvest, correct?

2 A. Yes, they are.

3 Q. And if there's a dispute between what the conceptual
4 plan says and what the prescription actually calls for, it's
5 the on the ground prescription that controls what the
6 landowner is supposed to do, correct?

7 A. Yes, I think so.

8 Q. Thank you. Now you testified about forest management
9 plans in Ferdinand and in the towns of Maidstone and Brunswick
10 and in the towns of Averill and in towns of Lewis, correct?

11 A. I did.

12 Q. And those plans were recently approved by Matt
13 Langlais, correct?

14 A. No.

15 Q. They weren't?

16 A. Could you clarify the question?

17 Q. Well, thanks.

18 A. Maybe be more specific as far as recent. I'm not
19 sure what you mean by recent.

20 Q. Okay. Thank you.

21 MR. DUANE: Again, Your Honor, if I could
22 approach the witness?

23 THE COURT: All right.

24 MR. DUANE: Thank you.

25 BY MR. DUANE:

1 Q. Mr. Fife, I'm going to show you again from my binder,
2 but I'll represent that it's the same document that's been
3 admitted, okay?

4 A. Yup.

5 Q. And I'm going to stand up here and I'll show you
6 Number 34. And this has to do with the towns of Maidstone and
7 Brunswick in Vermont.

8 A. Yup.

9 Q. And here's a --

10 A. That's this one.

11 Q. There's a prescription, and it's approved by Mr.
12 Langlais on January 12th, 2012, correct?

13 A. Correct.

14 Q. Okay. And the plan having to do with Averill was
15 approved in 2009, correct?

16 A. Correct.

17 Q. And the plan for the town of Ferdinand was approved
18 in 2008, correct?

19 A. I don't think so, no.

20 Q. No?

21 A. That one's 2009 as well.

22 Q. Okay. Thank you very much.

23 And those plans in relation to the maps that were
24 attached to it show that Matt, on behalf of the Department, is
25 a flexible person to work with, correct?

1 A. In -- can you be more specific?

2 Q. Well, in terms of the map not being exactly what's in
3 the prescription, Matt approved that anyway, didn't he?

4 A. No.

5 Q. Didn't you testify that there were differences
6 between what was on the map and what was in the prescriptions
7 in some of those exhibits?

8 A. No.

9 Q. When you first came on board in late 2008 you were
10 the only forester for Plum Creek for Vermont, correct?

11 A. Yes, I was.

12 Q. And so Plum Creek may be the largest landowner in the
13 United States, correct?

14 A. Yes.

15 Q. And Plum Creek is the largest landowner in the State
16 of Vermont, correct?

17 A. Yes.

18 Q. And Plum Creek owns eighty-two thousand acres in the
19 State of Vermont, correct?

20 A. Eighty-six thousand.

21 Q. With the extra four.

22 A. Correct.

23 Q. Eighty-six thousand, two hundred and two, or two
24 hundred and --

25 A. Yes.

1 Q. -- twelve.

2 A. Twelve.

3 Q. Plus or minus, as we may say. And there was only one
4 forester, correct, at that time when you came on board for all
5 that land.

6 A. Can you be more specific? When --

7 Q. You were the only forester on the ground in Vermont
8 for Plum Creek when you first started, correct?

9 A. I was the only Plum Creek employee on the ground.

10 Q. You were contracting with other people, correct?

11 A. Other foresters, yes.

12 Q. Okay. But not directly employed by Plum Creek,
13 correct?

14 A. Correct.

15 Q. Okay. And Plum Creek is a 1.3 billion dollar
16 company, correct?

17 A. I will trust you on that one.

18 Q. Okay. Thank you very much. And now they have four
19 foresters.

20 A. Yes.

21 Q. And things have improved, correct, in your mind with
22 regard to the management of that land vis-à-vis Current Use
23 and your easement with the Land Trust, correct?

24 A. I don't think I can answer that question. Can you --

25 Q. Do you think things have improved since 2008 and 2009

1 with regard to the relationship with the State, despite the
2 fact that we're here today?

3 A. I think that our relationship has continued to
4 develop, and that we have a working relationship that's
5 functioning.

6 Q. Thank you. Now the accepted management practices for
7 forestry and logging jobs in Vermont; you're familiar with
8 those?

9 A. Yes, I am.

10 Q. And in fact that's been admitted as an exhibit,
11 correct?

12 A. Yes.

13 Q. Okay. And are you familiar with those rules and
14 regulations? Are you familiar with the AMP rules and
15 regulations?

16 A. Yes.

17 Q. And do you use them regularly?

18 A. Yes.

19 Q. Have you read them?

20 A. I have read them.

21 Q. Have you read them more than once?

22 A. I have read them more than once.

23 Q. And those are the same regulations you I believe
24 testified you gave to some of the logging contractors so that
25 they'd actually have a copy, correct?

1 A. That's correct.

2 Q. And let me show you a copy of what's been marked and
3 admitted as Plum Creek 18.

4 MR. DUANE: And I'll represent to the Court
5 that this is a copy of the AMP book.

6 BY MR. DUANE:

7 Q. You've seen this before?

8 A. I have.

9 Q. This is the book.

10 A. May I?

11 Q. Yes, you may. Thank you.

12 A. Not that I doubt it.

13 Q. Oh, no.

14 A. It looks like the book.

15 Q. Okay. And in fact it's got a nice orange cover so
16 you won't lose it out in the woods.

17 A. That's right. Especially in the wintertime.

18 Q. Okay. Great. And the purpose of these rules and
19 regulations is to protect water quality in Vermont, correct?

20 A. Yes.

21 Q. And it -- and these regulations -- well, let me just
22 have you read from the exhibit. What's -- what's number --
23 I'm looking at Page 3, Number 1, Introduction. What does that
24 say, Mr. Fife?

25 A. It says, "A violation occurs only if there's a

1 discharge. If no discharge occurs, the logger or landowner
2 cannot be fined or prosecuted for not having the AMPs in
3 place."

4 Q. Okay. Thank you. That's Number 1 on Page 5. And if
5 you look -- could you read, please, into the record at the
6 bottom of Page 5 the paragraph that begins "In summary".
7 Could you read that, please?

8 A. Sure. "In summary, a logger or landowner is liable
9 to legal action only when a discharge takes place and either
10 no permit has been obtained or the AMPs have not been
11 followed. Thus, the AMPs are not only basic to sound
12 forestry, they also legally protect the logger or landowner
13 during and after timber harvesting."

14 Q. Thank you. So it's true, isn't it, that if a logger
15 or landowner doesn't follow the AMPs, and there's a discharge
16 into the water, that that's against the law in the State of
17 Vermont, correct?

18 A. Yes.

19 Q. And there were discharges up at Clough Brook North,
20 correct?

21 A. Yes.

22 MR. DUANE: Your Honor, may I approach again?

23 THE COURT: Yes.

24 MR. DUANE: Thank you.

25 BY MR. DUANE:

1 Q. Mr. Fife, let me show you -- again, this is from my
2 binder, but it's Exhibit 29, Plum Creek 29, and it's a letter
3 to you from Jeff Briggs. And you just testified about this
4 letter, correct?

5 A. Yes.

6 Q. And you received that letter.

7 A. I did.

8 Q. And Jeff noted that there were one, two, three, four,
9 five AMP violations, correct?

10 A. He did.

11 Q. And then in order to close out the job there was
12 another one, two, three, four, five AMP issues that needed to
13 be addressed, correct?

14 A. Yes.

15 Q. And you acted upon that letter.

16 A. Yes.

17 Q. And you hired somebody to fix those water quality
18 discharge violations, correct?

19 A. Yes.

20 Q. And when Jeff sent you that closeout letter, again
21 dated April 27th, Jeff stated to you, did he not, that -- and
22 again, it's the letter of April 27th from Jeff Briggs to you
23 -- that the State's intention is to enforce the law and
24 remediate the violations in a timely manner, correct?

25 A. Yes. Remediate and rehabilitate in a timely manner,

1 yes.

2 Q. So the enforcement division of the Agency of Natural
3 Resources worked cooperatively with you, did they not?

4 A. Is Jeff Briggs enforcement?

5 Q. He's in the Agency of Natural Resources --

6 A. Yes.

7 Q. -- correct?

8 A. Yes.

9 Q. And what happened here was not sent to some law
10 enforcement state's attorney's office for prosecution for
11 water quality violations, was it?

12 MR. GRAYCK: Objection, Your Honor. It's an
13 argumentative question.

14 THE COURT: Overruled.

15 BY MR. DUANE:

16 Q. This was not sent to any kind of criminal law
17 enforcement for violation, was it?

18 A. I'm not sure what Reg Smith -- he's an enforcement
19 officer -- I thought he was law enforcement for the
20 Environmental Division, but I could be wrong about that.

21 Q. But these two letters are from Jeff Briggs, right?

22 A. They are, yes.

23 Q. And he's a forester?

24 A. He is.

25 Q. And he works with the Agency of Natural Resources?

1 A. He does.

2 Q. And he enforces and oversees the AMP water quality
3 laws?

4 A. Yes.

5 Q. And he worked cooperatively to remediate the
6 situation, correct?

7 A. Correct.

8 Q. And yet there were violations and Plum Creek paid to
9 have them fixed, correct?

10 A. We did.

11 Q. When we went out to the site at Clough Brook North on
12 January 29th, 2010 with the Land Trust, the Housing and
13 Conservation Board and Matt Langlais to do an inspection,
14 that's the time when you went to the landing and you saw the
15 blue marked trees that should have been left to stand cut and
16 processed and on the landing, correct?

17 A. Yes.

18 THE COURT: Do you mean January 26th? You said
19 29th.

20 MR. DUANE: I said 29th?

21 MR. GRAYCK: Yeah, you did.

22 MR. DUANE: And -- the 29th; thank you.

23 THE COURT: Do you mean the 26th?

24 MR. DUANE: Oh, 26th; yes. Thank you.

25 BY MR. DUANE:

1 Q. And during that time around January 26th there was a
2 lot of logs coming off those stands in Clough Brook North,
3 correct?

4 A. Can you define a lot?

5 Q. About sixty loads a week. Is that about right?

6 A. No, it wouldn't have been that high.

7 Q. Stand 34 was a hundred and thirty-seven acres, or
8 one-thirty-eight perhaps. Is that right?

9 A. I think so. The improved portion was, yes.

10 Q. So that the Stand 34 harvest description indicated it
11 was a hundred and thirty-seven, hundred thirty-eight acres,
12 correct?

13 A. It did.

14 Q. Okay. And by early 2010 ninety acres of that one-
15 thirty-seven had been cut, correct?

16 A. Yes.

17 Q. More than half of Stand 34 had been cut.

18 A. Yes.

19 Q. And Stand 43 was a hundred and fifteen acres,
20 correct?

21 A. Yes.

22 Q. And about forty acres of that had been cut, correct?

23 A. That sounds right.

24 Q. About a third, correct? And Stand 44 was about
25 thirty-seven acres, correct?

1 A. Correct.

2 Q. And eight acres of Stand 34 had been cut, correct?

3 A. That sounds about right.

4 Q. About a quarter or a fifth of that stand.

5 Q. Yes. Yup.

6 THE COURT: I'm sorry; what was the question
7 and answer regarding 34 again?

8 MR. DUANE: I believe, Your Honor, that I had
9 asked the witness that Stand 34 was a hundred and thirty-
10 seven, hundred and thirty-eight acres, and in early 2010 at
11 the time of the visit on January 26th, that ninety acres of
12 that one-thirty-seven had been cut. And I believe the witness
13 answered --

14 THE WITNESS: Yes.

15 MR. DUANE: -- in the affirmative.

16 May I, Your Honor?

17 THE COURT: Yes.

18 MR. DUANE: Thank you.

19 BY MR. DUANE:

20 Q. And Mr. Fife, in the Clough Brook North tract, in
21 addition to Stands 34, 43 and 44, there were three other
22 stands, correct?

23 A. Yes.

24 Q. Stand 24, correct?

25 A. Yes.

1 Q. Stand 46, correct?

2 A. Yes.

3 Q. And Stand 54, correct?

4 A. Yes.

5 Q. And work had been going on -- by work, I mean timber
6 harvesting -- had been going on in those three other stands,
7 24, 46 and 54, correct?

8 A. No.

9 Q. There was no timber harvesting going on at those
10 three stands?

11 A. Correct.

12 Q. Had timber harvesting happened on those three stands?

13 A. On one of those stands.

14 Q. Which stand was that?

15 A. Stand 24 had been harvested. Stand 54 had barely,
16 just a little piece that we saw on our site visit; negligible.
17 And Stand 46 had not been harvested at all.

18 Q. And Stand 24 and 54 there was -- they are not
19 involved in this adverse inspection report appeal, are they?

20 A. No.

21 Q. And Matt went out and looked at those two stands as
22 well, correct?

23 A. As far as I know.

24 Q. Okay. Now you were at the meeting in St. Johnsbury,
25 I believe you testified, with Mr. Doty and Matt and Ginger

1 Anderson, and perhaps Cathy Decker was also there on -- in
2 February 19th, 2010, correct?

3 A. Correct.

4 Q. And that's when Matt and the Department told you
5 about the cut contrary on Clough Brook North, correct?

6 A. Yes, that's correct.

7 Q. And were you surprised by that?

8 A. Yes, I was.

9 Q. Isn't it true, though, about a year before that, in
10 April 2009, you were at a meeting at Matt's office in St.
11 Johnsbury, and he asked you to -- took you aside to talk to
12 you about what was going on with regard to Plum Creek and its
13 holdings in Vermont, correct?

14 A. I'm sorry, I don't recall that.

15 Q. Do you recall meeting with Matt about a year prior to
16 2010 that if Plum Creek had violations, or additional
17 violations of its forest management plans, that its entire
18 fifty-six thousand acre parcel could be excluded from Current
19 Use?

20 A. No, I don't. We didn't have any violations before
21 this.

22 Q. Please correct me if I'm wrong, but didn't Matt tell
23 you that the consequences that Plum Creek would be in the
24 hundreds of thousands of dollars of lost tax benefits if
25 things did not improve with regard to its harvesting practices

1 in Vermont?

2 A. I don't remember the conversation you're talking
3 about at all.

4 Q. Now when you say there were no prior violations,
5 wasn't there a thirty acre violation up in Averill, Vermont in
6 2009?

7 A. We never received any citation of a violation from
8 the Department.

9 Q. I know you didn't receive a citation, and I guess
10 that's kind of my point. Wasn't there -- didn't Matt notify
11 you or tell you that there was a thirty acre cut contrary in
12 Averill in April -- in February of 2009?

13 A. Dan Kilborn notified me of that, and Matt was there.

14 Q. Dan Kilborn, being the forester for the Vermont Land
15 Trust?

16 A. Yes, the Vermont Land Trust forester.

17 Q. And Matt was there when Dan said that to you.

18 A. Yes.

19 Q. And the State of Vermont did not take any action to
20 file an adverse inspection report with the Tax Department
21 regarding that Averill cut contrary, correct?

22 A. No, they didn't.

23 Q. And has it been your experience that the Department
24 of Forest and Parks tries to work with landowners in helping
25 them comply with rules and regulations?

1 A. I think they try to.

2 Q. Wasn't there also a cut contrary violation of a
3 forest management plan in Brighton back in 2009 of about ten
4 acres?

5 A. Again, there was no citation of any cut contraries in
6 Brighton that I'm aware of.

7 Q. And so -- and there was no citation, was there?

8 A. No citation.

9 Q. There was no -- excuse me. I'm sorry to interrupt.
10 There was no adverse inspection report filed, was there?

11 A. No.

12 Q. There was no action by the Tax Department to exclude
13 Plum Creek's holding because of the cut contrary in Brighton,
14 was there?

15 A. I'm not sure if it would be considered a cut contrary
16 if nothing was filed.

17 Q. No legal action was taken by the State of Vermont
18 with regard to that violation in Brighton, correct?

19 A. Nobody took any legal action.

20 Q. And is that an example of the State, particularly
21 with Matt, trying to work cooperatively with landowners
22 regarding compliance with Current Use?

23 A. I think we were all working cooperatively.

24 Q. Now with regard to the LandVest cruise of Stand 34,
25 you received that from LandVest, correct?

1 A. Yes, I did.

2 Q. Again, I'm going to look at my binder, but I'll
3 represent that it's the same document.

4 MR. DUANE: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 MR. DUANE: Thank you very much.

8 BY MR. DUANE:

9 Q. So Mr. Fife, I want to show you what's in my binder,
10 and this document says 550 Plum Creek Clough Brook North Stand
11 34. That's the LandVest document that was admitted into
12 evidence either as State's C or another document that Attorney
13 Grayck presented to you, correct?

14 A. Okay. Yup.

15 Q. Is that right?

16 A. Yes.

17 Q. Okay. And I'm going to direct your attention -- this
18 is Page 6 of 6, and then there's 1 of 1. Page 1 of 1 of this
19 document --

20 A. Um-hmm.

21 Q. -- shows that the residual basal area mean Plum Creek
22 Clough Brook North Stand 34 is nineteen-point-five-nine acres,
23 correct?

24 A. Can you clarify the acreage?

25 Q. Hundred and thirty-seven acres.

1 A. This is on the cut portion. That's correct.

2 Q. Okay.

3 THE COURT: I'm sorry. I couldn't tell what
4 you're referring to.

5 MR. DUANE: Your Honor, I'll walk over to the
6 Court --

7 THE COURT: All right.

8 MR. DUANE: -- if that's appropriate. The
9 document has Page 1 of 6, and then there's -- it's followed by
10 a Page 1 of 1.

11 THE COURT: Right.

12 MR. DUANE: And I was referring the witness to
13 Page 1 of 1, where it says "Mean", and then it has "Basal area
14 per acre", and it says "Nineteen-point-five-nine."

15 THE COURT: All right.

16 MR. DUANE: That's what I was directing his
17 attention to.

18 BY MR. DUANE:

19 Q. And Mr. Fife, you were at the office in St. Johnsbury
20 when you met with Matt and other folks from the Department of
21 Forests and Parks, and Mr. Doty was there, correct?

22 A. Correct.

23 Q. And when Matt presented his draft, isn't it true that
24 Mark said to him words to the effect of, "That's exactly what
25 we came up with"?

1 A. I don't remember that, but Mark could testify that
2 that was so.

3 Q. And at the time of that review by both the State and
4 LandVest on behalf of Plum Creek, or at least at Plum Creek's
5 direction, ninety acres of that a hundred and thirty-seven
6 acre stand had been cut, correct?

7 A. I don't have that acreage in front of me. I haven't
8 done that breakdown of the harvested acres, but it sounds --
9 it sounds about right.

10 Q. Okay. Thank you. And when you went out to inspect
11 the Clough Brook North tract on January 26, setting aside the
12 AMP violations, when you looked at the harvesting violations
13 you saw problems, didn't you?

14 A. Can you ask that -- you're asking me two questions
15 there.

16 Q. Sorry. Setting aside the AMP violations, when you
17 went and looked at the timber harvesting that had been taking
18 place on those three stands, you, as Plum Creek's forester,
19 saw problems with regard to compliance with the forest
20 management prescription, correct?

21 A. I was concerned there could be problems.

22 Q. So much so you went to Mr. Washburn's home that night
23 and told him he needs to get out there and start fixing
24 things, correct?

25 A. The AMPs, yes.

1 Q. And Tim Durrell, your boss, and you -- I'm sorry, I'm
2 assuming that -- forgive me -- decided to stop the harvesting
3 activity there for a while.

4 A. Yes. Correct.

5 Q. And you've been working with Matt since late 2008,
6 correct?

7 A. That's correct.

8 Q. Matt Langlais, the --

9 A. Yes.

10 Q. -- the county forester? And it's your opinion, isn't
11 it, that Matt's a fine forester, correct?

12 A. I think Matt does his job well.

13 Q. Didn't -- do you remember having your deposition
14 taken by me?

15 A. I do.

16 Q. Okay. Do you remember me -- do you remember --
17 excuse me. I'm going to look it up. Do you remember being
18 asked the following question and given -- and giving the
19 following answer? Question: "What's your opinion of Matt
20 Langlais as a forester in terms of his professional
21 capability?" Answer: "I'm probably not the best one to
22 judge. I mean, I think he -- he seems like a fine forester."
23 Do you remember saying that?

24 A. I do.

25 Q. Okay. And do you also remember testifying with

1 respect to that question and giving an answer "So far as I can
2 tell he seems to be competent to do his job." Do you remember
3 that?

4 A. Could I see it? I -- I think I remember saying that,
5 yes.

6 Q. Okay. Would that help you refresh your memory if I
7 show you this?

8 A. Yes.

9 MR. DUANE: Your Honor, can I approach the
10 witness?

11 THE COURT: Yes.

12 MR. DUANE: Thank you.

13 BY MR. DUANE:

14 Q. Mr. Fife, I'll direct your attention to Page 88 --
15 well, let me show you the document. This is your deposition?

16 A. Um-hmm.

17 Q. Christopher Fife; that's you?

18 A. Yes.

19 Q. That's your signature?

20 A. That is my signature.

21 Q. Thank you. And so Page 88; there's the question I
22 asked you.

23 A. Um-hmm.

24 Q. Do you recall me asking you that question?

25 A. Yes.

1 Q. And now I'm going to turn to Page 89. And can you
2 just read that right there?

3 A. "Discussion about forestry issues together. So far
4 as I can tell he seems to be competent to do his job."

5 Q. Thank you.

6 MR. DUANE: Your Honor, I have no further
7 questions for the witness.

8 THE COURT: All right.

9 Mr. Grayck?

10 MR. GRAYCK: Excuse me, Your Honor, just one
11 moment.

12 THE COURT: All right.

13 (Thereupon, a pause in the proceedings took place.)

14 REDIRECT EXAMINATION

15 BY MR. GRAYCK:

16 Q. Chris, you were asked questions about the AMPs. Do
17 you recall?

18 A. Yes.

19 Q. Okay. Could you go to the UVA 2006 manual? That is
20 Exhibit -- that is Exhibit 22A.

21 A. I'll need a copy.

22 Q. Pardon?

23 A. I don't have a copy.

24 Q. Do you have -- okay. You don't have a copy. I'll
25 get you one. Here you go. Can you go to Page 29?

1 A. Yup.

2 Q. Okay. And at the bottom, again, it says "Erosion
3 Control and Water Quality." Am I right?

4 A. Yes.

5 Q. Okay. And what's that section then referring to?

6 A. It refers to the acceptable management practices for
7 maintaining water quality on logging jobs; the AMPs that we
8 were talking about.

9 Q. Okay. And just look at the page again. What's your
10 understanding as to the extent to which you are required to
11 comply with the AMPs under the 2006 UVA manual?

12 A. It says that we must -- shall be employed to the
13 maximum practicable extent on all enrolled parcels. So
14 wherever possible -- I mean, the intent is to imply -- to
15 apply the AMPs as the job is ongoing, to apply them in your
16 planning, and to apply them on closeout, as I described. But
17 as -- with anything, there's probably times when it's not
18 practicable to apply a specific AMP, especially when
19 discharges are considered to be a limb across a stream.
20 Because a limb in a stream counts as a discharge, just the
21 same as sedimentation counts as a discharge. So the
22 discharges that were referred to were discharges of slash that
23 was followed across the stream. On the 26th, on the site
24 visit, I didn't observe any discharge of sedimentation, mud,
25 into streams. And when I was out there with Mr. Briggs, he

1 said "It's not worth arguing about. I can find a discharge on
2 any logging job in the State of Vermont." So I didn't argue
3 about it.

4 Q. Okay. Now what's your understanding with respect to
5 county forester Langlais's intent to comply with the 2006 UVA
6 manual? Do you think he tries to comply with it?

7 A. I think so.

8 Q. Okay. Let's look at Form 1, the 2006 manual. Could
9 you find that, please?

10 MR. GRAYCK: Can the Court find it also?

11 THE COURT: Yes.

12 BY MR. GRAYCK:

13 Q. Got it?

14 A. Yeah.

15 Q. Have you ever received a Form 1 with respect to the
16 Averill Harvest that Mr. Duane asked you about?

17 A. No.

18 Q. Have you ever received a Form 1 with respect to the
19 Brighton Harvest that Mr. Duane asked you about?

20 A. No.

21 Q. Do you think Matt Langlais -- or how, if at all, do
22 you think Matt Langlais tries to comply with the UVA 2006
23 manual?

24 A. In the application of silviculture?

25 Q. Yeah.

1 A. I think he looks to see that the guides we're using
2 for our silviculture meet the requirements, that we meet the
3 standards for our maps and our plans.

4 Q. And how do you rely upon what you received from
5 county forester Langlais to gauge Plum Creek's harvesting
6 activities in Vermont?

7 A. Well, he's our feedback from the State of Vermont. So
8 what he provides to us is taken as important and considered in
9 our planning and in what we do.

10 Q. Okay. Let's look at Form 1 in particular. Can you
11 explain what you believe Form 1 is for?

12 A. It appears to be an inspection report that the -- I
13 think that a forester, a state forester, could use inspecting
14 a landowner who is enrolled in UVA.

15 Q. So if county forester Langlais did an inspection and
16 he had concerns, what would your expectation be with respect
17 to the receipt of a UVA Form 1?

18 A. I would expect some kind of written documentation of
19 his concerns.

20 THE COURT: We'll take our afternoon break at
21 this point and continue at 3:00.

22 (Thereupon, a break in the proceedings took place at 2:42 PM.
23 Hearing resumed at 3:00 PM.)

24 THE COURT: Please be seated.

25 Mr. Grayck?

1 MR. GRAYCK: Thank you, Your Honor.

2 BY MR. GRAYCK:

3 Q. So, Chris, you were asked some questions about the
4 ten year master plan. Right? What's your understanding with
5 respect to Plum Creek's obligation to maintain qualification
6 in UVA upon the expiration of the ten year period which
7 commenced with FPR's approval of Exhibit 14, which was the
8 Essex Timber Company Forest Management Plan, which is now Plum
9 Creek's Forest Management Plan?

10 A. Plum Creek will be required to submit another updated
11 forest management plan for the next ten year period.

12 Q. Okay. And so really, the question is whether it's
13 under a large landowner alternative or not under a large
14 landowner alternative if Plum Creek wants to stay in UVA,
15 correct?

16 A. Yes. That's correct.

17 Q. Okay. Now I'm showing you what's marked as Plum
18 Creek Exhibit 48. Can you just tell me what it is?

19 A. This is a letter from Virginia Anderson to Dan
20 Singleton, along with a heavy cut permit.

21 MR. GRAYCK: Plum Creek moves the introduction
22 of Exhibit 49.

23 MR. DUANE: No objection.

24 THE COURT: Did you say no objection?

25 MR. DUANE: No objection, Your Honor. We just

1 move to --

2 THE COURT: Plum Creek 48 is admitted.

3 (Letter from Virginia Anderson to Dan Singleton was hereby
4 received into evidence as Plum Creek Exhibit 48, as of this
5 date.)

6 MR. GRAYCK: And two copies for the Court, Your
7 Honor.

8 BY MR. GRAYCK:

9 Q. So Chris, who is Dan Singleton?

10 A. Dan Singleton was a forester that had worked for --
11 worked on Essex Timber Company land, and then was hired by
12 LandVest, worked for LandVest for a time as a forester on Plum
13 Creek's land.

14 Q. Okay. Was Mr. Singleton ever employed directly by
15 Plum Creek?

16 A. No, he wasn't.

17 Q. So as this letter is addressed to him in Fairfield,
18 Maine, what was your reaction to that?

19 A. It was obvious there was confusion, probably because
20 of the address on the heavy cut application and his name.

21 Q. Okay. I want to refer you to the third paragraph of
22 the letter. Can you read the third paragraph for me?

23 A. It says, "On this application the number of plots
24 sampled for both regeneration and inventory are not to
25 standards. The team OUVA exemption was designed to allow

1 applicants more time to produce detailed stand information,
2 including adequate field plots on which to base activity
3 decisions. This system was designed to facilitate field
4 operations, but it is an internal policy and can be rescinded
5 in favor of the more detailed ten year management plan for
6 each stand on each enrolled parcel. This may be critical,
7 given the number of heavy cut applications that may be
8 generated from your operations."

9 Q. Now when it says team OUVA exemption, to what is that
10 referring to?

11 A. I believe that's referring to the large landowner
12 strategy.

13 Q. And the large landowner strategy as you understand
14 it, I believe, is Exhibit 15; Plum Creek 15?

15 A. Plum Creek 15 is the signature page which refers to
16 the large landowner alternative forest management plan
17 strategy for continued eligibility. That's the one signed by
18 Tim Durrell and Matt Langlais.

19 Q. When did Mr. -- when did Matt Langlais sign Exhibit
20 15? What's the date on it?

21 A. November 7th of 2008.

22 Q. And what's the date on the letter to Mr. Singleton?

23 A. February 13th of 2009.

24 Q. So it's, what, approximately two years from when you
25 take on the large landowner alternative to the letter?

1 A. Not even.

2 Q. Not even?

3 THE COURT: I'm sorry. I missed whatever
4 meaning of that was, so could you back up again?

5 MR. GRAYCK: Sure, Your Honor. If you could
6 look at Exhibit 48, Your Honor?

7 BY MR. GRAYCK:

8 Q. And Chris, if you could look at Exhibit 48 again.
9 That third paragraph; what's it telling you? Not with respect
10 to the forestry practices, but what's it telling you with
11 respect to Plum Creek's status or continued eligibility under
12 the large landowner alternative? What's it telling you?

13 A. Well, it says it -- this strategy is an internal
14 policy, and it can be rescinded in favor of a more detailed
15 ten year management plan. It sounds like at any time if we
16 don't meet the requirements under the large landowner
17 strategy, then we could be required to go back to meeting the
18 requirements of the program without the land owner -- large
19 landowner strategy.

20 Q. If Ms. Anderson had decided to carry through with
21 what she stated in this letter, and she had rescinded Plum
22 Creek's enrollment under the large landowner alternative, in
23 favor of a more detailed ten year management plan for each
24 stand on each enrolled parcel, what would it have taken for
25 Plum Creek to produce such a plan? What would you have had to

1 do?

2 A. It would have been a huge undertaking. I mean, every
3 stand on our property would have to be individually cruised to
4 the standards that we talked about for the amendments, and
5 then submitted for review. And any harvesting that we wanted
6 to do would have had to be submitted at that time. So it
7 would be a huge -- huge process.

8 Q. What was your reaction, if any, to the statement by
9 Ms. Anderson in this letter that the large landowner
10 alternative is an internal policy and can be rescinded. What
11 was your reaction to that?

12 A. I think we -- that was my understanding of the
13 policy, and that, you know, we -- as it had been explained, we
14 just needed to work with the State and with Matt and Ms.
15 Anderson to meet the requirements to continue to be enrolled
16 in this strategy.

17 Q. Now when you're out doing the field inspection and
18 there's a discussion amongst you and Mr. Kilborn and Mr.
19 Langlais, and suggestions are made as to changes in the
20 prescription, what's the consequence, or what could be the
21 consequence if you decline to make the changes that county
22 forester Langlais wants?

23 A. Probably the plan wouldn't be approved.

24 Q. And what does that mean if it's not approved?

25 A. We can't harvest.

1 Q. Can't harvest what?

2 A. Can't harvest that site that we've -- there's a plan
3 for.

4 Q. The prescription?

5 A. Correct. Yes.

6 Q. Okay. Now going to Exhibit 29; in Exhibit 29 which
7 are described as violations?

8 A. The first five items that are referenced.

9 Q. And the remainder? What are they?

10 A. Those are AMPs that need to be applied at closeout.
11 So when the job is completed.

12 Q. When the job is what?

13 A. Completed.

14 Q. Okay. And if you could remind us; what are the three
15 phases of, you know, the AMP practice that you employ?
16 Describe that again.

17 A. I describe it as the planning phase where you think
18 about how you will implement the AMPs and implementation and
19 then closeout. So closeout is the last phase, where you're
20 doing all the stuff to button the site up so that there isn't
21 erosion in the interim time when you're not doing any activity
22 out on the site.

23 Q. Okay. Now with respect to stream crossings, how do
24 you decide on whether to cross a stream?

25 A. Well, the -- kind of the first rule of thumb is you

1 try not to cross streams if you don't have to. If you can
2 bring wood to a landing without crossing streams you try to do
3 that. Depending on the size of operation and the terrain and
4 where the wood needs to get to the landings, you have to cross
5 stream crossings, then you try to keep those to a minimum.

6 MR. GRAYCK: Thank you, Your Honor. I'm done.

7 THE COURT: Anything further?

8 MR. DUANE: Briefly, Your Honor. Thank you.

9 RE CROSS-EXAMINATION

10 BY MR. DUANE:

11 Q. Mr. Fife, with regard to Plum Creek's submission of
12 plans for approval to the Department, and Matt in particular,
13 for harvest approval, the State has approved nearly eight
14 thousand acres for harvest by Plum Creek, correct?

15 A. I'm not sure of the acreage.

16 Q. But not one plan submitted by Plum Creek has been
17 disapproved by the State, correct?

18 A. They have been disapproved until amendments have been
19 made.

20 Q. And after the amendments have been made, no plans
21 have been disapproved or denied, correct?

22 A. Correct. When we have put the changes Matt
23 requested, he's approved them.

24 Q. Thank you.

25 THE COURT: Anything further?

1 MR. GRAYCK: Nothing further, Your Honor.

2 THE COURT: Okay. That completes your
3 testimony. You may step down. Thank you.

4 (The witness was excused.)

5 MR. GRAYCK: I'm just shifting gears for a
6 moment, Your Honor. I'll be right back.

7 (Thereupon, a pause in the proceedings took place.)

8 MR. GRAYCK: Okay, Your Honor. We'd call Mr.
9 Robbo Holleran.

10 ROBBO HOLLERAN

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. GRAYCK:

14 Q. What is your name, please?

15 A. Robbo Holleran.

16 Q. And --

17 THE COURT: Excuse me. Would you please spell
18 both your first and last names?

19 THE WITNESS: Robbo, R-O-B-B-O Holleran, H-O-L-
20 L-E-R-A-N.

21 BY MR. GRAYCK:

22 Q. And is Robbo a nickname or is it your name?

23 A. It's a nickname.

24 Q. And what's your -- what's your legal name?

25 A. Robert.

1 Q. Okay. Mr. Holleran, what is your profession?

2 A. I'm a consulting forester.

3 Q. And could you please tell us, what is your
4 educational background?

5 A. I have a degree in forestry from the University of
6 Maine, and quite a bit of continuing education.

7 Q. And what year did you receive your degree from the
8 University of Maine?

9 A. 1982.

10 Q. And what was it in?

11 A. Forestry.

12 Q. And could you please describe your experience as a
13 professional forester?

14 A. Well, I made the mistake of starting my own business
15 fresh out of college, so I've been in business for thirty
16 years. And I manage about fifty thousand acres of land,
17 mostly in the southern half of Vermont, but into northern
18 Vermont and all three adjacent states. I'm licensed in
19 Massachusetts, certified in New York. And the forester that
20 works for me is in the process of getting a New Hampshire
21 license.

22 Q. Okay. And what professional forestry organizations,
23 if any, are you involved in?

24 A. I'm involved with the Vermont Forest Products
25 Association; the Vermont Forestry Foundation; the Associated

1 Industries of Vermont Forest Policy Task Force; Tree Farm;
2 probably others.

3 Q. And what recognition, if any, have you received from
4 your professional peers?

5 A. Well, I've been elected as president of the Vermont
6 Forestry Foundation, and I've been a director of the Forest
7 Products Association for about twenty years.

8 Q. Could you please describe silviculture?

9 A. Silviculture is described as both an art and a
10 science, as Chris has mentioned. The -- it's like
11 agriculture, and silvi refers to forest. So it's the
12 culturing of forests to provide specific objectives. And it's
13 definitely a science, but it's also -- it's not quite crisp in
14 the sense that it's also an art with variations in soils and
15 genetics and the way trees behave at different ends of their
16 range and so on. There's an art to it.

17 Q. Okay. I'm going to show you what's been marked as
18 Plum Creek Exhibit 36. I just want you to tell me what it is.

19 A. This is my complete report from September 15, 2011,
20 from my initial review of the Clough Brook North harvest area.

21 Q. And who prepared the exhibit?

22 A. I did.

23 Q. Generally what information does it contain that is
24 relevant to what you did or observed in this case?

25 MR. DUANE: Your Honor, I'm going to object. I

1 think the witness is not qualified to testify about what's
2 relevant and what's not relevant. Perhaps it's just a
3 question of wording, but we would object to the question.

4 MR. GRAYCK: I'll rephrase the question.

5 THE COURT: Okay.

6 BY MR. GRAYCK:

7 Q. Robbo, what information does that exhibit contain
8 that addresses the issues which are before the Court?

9 A. It includes my opinion and the supporting information
10 to arrive at that opinion.

11 Q. Okay. Opinion with respect to what?

12 A. To the harvesting and whether or not it complies with
13 the forest management plan.

14 Q. Okay.

15 MR. GRAYCK: Your Honor, at this time I'd move
16 the introduction of Exhibit 36.

17 MR. DUANE: No objection, Your Honor.

18 THE COURT: Plum Creek 36 is admitted.

19 (Robbo Holleran's Report dated 9/15/11 was hereby received
20 into evidence as Plum Creek Exhibit 36, as of this date.)

21 BY MR. GRAYCK:

22 Q. Okay. So you now have Exhibit 36 in front of you,
23 okay, Robbo?

24 A. Okay.

25 Q. All right.

1 THE COURT: I would prefer formal names in
2 court.

3 MR. GRAYCK: I apologize, Your Honor.

4 BY MR. GRAYCK:

5 Q. Mr. Holleran --

6 A. Yes.

7 Q. -- if you could turn to Exhibit 2 of Exhibit 36.

8 What is the silvicultural guide to northern hardwood forest
9 types?

10 A. It's a booklet that we commonly refer to as the
11 guide, silvicultural guide. It includes -- well, we have a
12 guide like this for each forest type. For example, for white
13 pine, for hemlock, for spruce and fir, and the northern
14 hardwood guide also includes the mixed wood forest types and
15 applies to something like eighty percent of Vermont's forests.
16 So it's the one that we use all the time. It includes the
17 specific recommendations and the thought process for arriving
18 at those recommendations for different kinds of silvicultural
19 treatments from A to Z. And then it's a concise thing to
20 quote; for example, if you're saying that you're doing a
21 particular treatment you say "as described in the guide
22 Prescription J, or Prescription M."

23 Q. Okay.

24 A. Or whatever it is.

25 Q. How, if at all, is it relied upon professionals in

1 your field?

2 A. It's relied upon heavily.

3 Q. And how, if at all, is it relied upon by the UVA
4 program?

5 A. In the program manual it lists acceptable sources of
6 supporting information, and it's the first citation.

7 Q. Okay. Now what edition of the guide are you looking
8 at?

9 A. The 1987 edition is what's in use.

10 Q. And what is your understanding with respect to the
11 preparation of a revised edition of the guide?

12 A. Bill Leek, who is an author of this guide and the
13 previous guide, has asked me to assist in preparing the
14 current revision, which should be published in the next year.

15 Q. What is the difference, if any, in the practice of
16 silviculture in natural stands compared to pine plantations,
17 for example?

18 A. Well, pine plantations are fairly simple. When we
19 talk about even age management in northern hardwoods in this
20 area compared to a pine plantation in Georgia, where you know
21 the trees were all started the same day in a nursery, they
22 were all planted the same week in the forest, when you say
23 that's even aged it really is all the same age. The stands
24 are uniform. It's almost like a cookbook type of recipe.
25 When you say you're going to thin that stand, you might take

1 out every third row, and it's very crisp. And then when you
2 say, well, we're going to do a shelterwood, you might take out
3 the next row. And when you're doing the overstory removal
4 you'd take out the last third row, or something like that.

5 Whereas our natural hardwood stands, especially with
6 a history of active management and let's say extractive high
7 grading over the last hundred years, they're extremely
8 diverse. We're working with a lot of variability within the
9 stands.

10 And the other important difference is the pine
11 plantations, by nature of the word plantation, they're planted
12 stands. Somebody goes out and plants a tree. And with our
13 natural stands, we're working with the native species, and
14 what we're doing is we're influencing the amount of light,
15 shade, disturbance to develop the next stand without planting
16 trees.

17 Q. Okay. What is your familiarity with Use Value
18 appraisal?

19 A. I'm very familiar with Use Value.

20 Q. And how many forest management plans have you
21 prepared with respect to qualification in the UVA program?

22 A. Many hundreds of plans.

23 Q. Many hundreds?

24 A. Yes.

25 Q. And how many forest management plans under the large

1 landowner category strategy have you prepared?

2 A. None.

3 Q. Please describe your understanding of the UVA large
4 landowner category alternative.

5 A. Well, for comparison, the typical landowner in Use
6 Value, my typical client has between a hundred and two hundred
7 acres. I have a few larger clients with larger holdings than
8 that, but the typical plan for, say, a two hundred acre lot
9 might be divided into four or five stands. The plans are
10 updated every ten years. We have to go out and remeasure the
11 whole forest, write a new plan that will have the specific
12 information for all forest stands, let's say, and schedule the
13 treatments. It might say no treatment in that stand, in that
14 stand, and we're going to thin this one, and do an overstory
15 removal in that one. So the large landowner requirement
16 recognizes that on a large property the areas that you're not
17 going to treat are certainly eligible, but don't need a
18 refinement of detail for a plan, is my understanding.

19 Q. Okay.

20 A. And so then the amendments are filed that basically
21 comply with the same requirements that a two hundred or four
22 hundred acre landowner would have to do to do a harvest on
23 their land.

24 Q. Okay. With respect to Exhibit 36, what investigation
25 did you undertake in connection with the preparation of your

1 September 15th report?

2 A. Well, we started by doing an initial cruise where we
3 were given maps from Plum Creek of the stands that were
4 harvested, and we did a moderate intensity cruise where we had
5 a plot every four acres across the four stands that were
6 essentially harvested: Stand 24, 34, 43 and 44. So we
7 harvested -- we sampled those stands across the entire stand
8 with about one plot every three and a half acres. And then in
9 looking at that and talking about what was in contention, we
10 decided to go back and provide more detailed information on
11 the alleged cut contrary areas so that we could better
12 understand the issues where there was disagreement on their
13 compliance.

14 Q. And how did you set up your initial cruise?

15 A. We use a fairly simple computer mapping program
16 called DeLorme Topoquads, and probably not quite as
17 sophisticated as the folks at Plum Creek or the State, and --
18 but we laid that out on a -- basically on a grid on the
19 Topoquad software, created GPS locations where the points
20 needed to be taken, and then we went out and collected the
21 data.

22 Q. With respect to the collection of the data, what
23 portion, if any, of the stand was it done on?

24 A. The initial review was done across the entire stand.

25 Q. And why did you sample across the entire stand?

1 A. Because the stand is the unit of measure for forest
2 management.

3 Q. And when you say the stand is the unit of forest
4 management, what, if anything, in the UVA 2006 manual forms
5 the basis of your opinion? And we're going to have to give
6 you the manual.

7 MR. GRAYCK: It's been admitted, Your Honor.

8 BY MR. GRAYCK:

9 A. Okay. I'm going to be looking around Page 28 or 31.
10 So I think there's a place that says this more clearly, but on
11 Page 32 and 33 it goes into detail about exactly what is
12 required for each forest stand in terms of sampling data,
13 stand description, objectives and treatments.

14 Q. And that's in which portion of the 2006 manual?

15 A. It's in the Minimum Standards for Forest Management
16 Plans.

17 Q. And so is that portion of the manual pertaining to
18 the preparation of a plan for qualification, or the
19 preparation of a harvest? What's -- what's that portion of
20 the manual pertaining to?

21 A. This portion applies to the management plan.

22 Q. Okay. And just -- could you please compare it to the
23 Minimum Standards for Forest Management and Regeneration?
24 What's -- what are these -- what are these two portions of the
25 manual doing that is different?

1 A. One sets the standard for the paperwork that's
2 required for initial eligibility or continuing eligibility,
3 and then the other Minimum Standards for Forest Management and
4 Regeneration would be applicable to the implementation of
5 these plans.

6 Q. Okay. So what type of sampling did you do for the
7 initial cruise reported in Exhibit 36?

8 A. We did variable radius point sampling with a prism,
9 as Chris mentioned.

10 Q. And did you bring your prism to court today?

11 A. It's in my truck.

12 Q. Okay.

13 A. I can -- I can explain it --

14 Q. Could you please explain --

15 A. -- without the prism.

16 Q. Yeah. Why don't you go ahead? I mean -- go ahead.
17 Briefly.

18 A. Real simple way to explain this: if you hold your
19 arm up and hold your thumb up, the prism reflects an angle
20 that's about the same as the angle of the width of your thumb.
21 And so if you hold your thumb up and picture that, say, Mr.
22 Grayck is a tree, then Mr. Grayck appears larger than your
23 thumb at this distance, and he would be considered as in the
24 plot. Whereas -- let's -- we need somebody a little further
25 back -- Mr. Langlais's head is just a little smaller than my

1 thumb, so a tree that size would be considered out of the
2 plot. So the size of the plot is based on the diameter of the
3 tree. And the mathematics that make this work are staggering,
4 but it's so simple to use, because each tree that you count in
5 your plot counts as ten square feet in basal area. So when
6 you're, say, marking an area to be harvested and you say,
7 well, I have a residual goal of sixty for this stand, you can
8 mark and then you can check yourself. You just stand in that
9 one spot and you can just go around with a prism and say, oh,
10 there's -- there's six trees here, there's five trees here,
11 there's seven trees here that are in the plot. That's, you
12 know, in the ballpark of what we're looking for.

13 And then the specific data that we collect is more
14 involved than that, but each tree with a ten (indiscernible)
15 of prism counts as ten square feet of basal area.

16 Just one more thing to mention, because I know
17 there's a learning curve probably for you folks in terms of
18 all the forestry language. With basal area, if a -- we count
19 basal area in square feet. You've heard that mentioned so
20 far. And a fourteen inch circle is almost equal to one square
21 foot. You know, a twelve inch circle is a little small. A
22 fourteen inch circle makes about one square foot. So if the
23 trees were all fourteen inches, then square feet of basal area
24 would be the same as trees per acre. So when we say there's
25 eighty-eight square feet of basal area, it's like saying

1 there's eighty-eight trees per acre if they were fourteen
2 inches. But a ten inch circle for ten inch trees is about a
3 half of a square foot, so that's closer to our average. So
4 just in terms of ways to think about it, when we say a basal
5 area of eighty square feet per acre, it's like a hundred and
6 fifty trees per acre.

7 So that just helps give you a framework, I think,
8 for thinking about basal area.

9 Q. Now you described the initial inventory work you did.
10 What subsequent inventory work did you do in connection with
11 the preparation of your report at Exhibit 36?

12 A. We went back out and took additional plots in the
13 area that was given an adverse inspection, because that was
14 controversial. We wanted to understand what was going on in
15 those areas more thoroughly, so we went back out so that we
16 would have a total of about one plot per acre in those areas.
17 And that's a very intensive sample. Just for comparison, the
18 initial management plan has about one plot for every ten
19 acres.

20 Q. And who assisted you in conducting the intensive
21 cruise of the contrary area?

22 A. My employee, Ben Viseri (phonetic), who had worked
23 for me for six years. He has a degree in forestry also. And
24 then Steve Hardy, who's another consulting forester that I
25 contracted with to work with me on that.

1 Q. I'll show you what's been marked as Exhibit 37.
2 What's Exhibit 37?

3 A. This is the subsequent report that I wrote on --
4 finished on September 22nd, 2011.

5 Q. And who prepared Exhibit 37?

6 A. I did.

7 Q. And what's the subject matter of Exhibit 37?

8 A. I had received the report and data information from
9 the State, and so this is my response to the State's
10 information.

11 MR. GRAYCK: Plum Creek moves the introduction
12 of Exhibit 37.

13 MR. DUANE: No objection, Your Honor.

14 THE COURT: Plum Creek 37 is admitted.

15 (Robbo Holleran's subsequent report dated 9/22/11 was
16 hereby received into evidence as Plum Creek Exhibit 37, as of
17 this date.)

18 MR. GRAYCK: There's two copies for the Court,
19 Your Honor.

20 BY MR. GRAYCK:

21 Q. Now Robbo, I'm showing you what's been marked as --
22 I'm sorry -- now, Mr. Holleran, I'm showing you what's been
23 marked as Exhibit 38. And what is Exhibit 38?

24 A. Exhibit 38 is my report on the regeneration that we
25 did on October 16th of 2012.

1 Q. And who prepared Exhibit -- who prepared the report
2 in Exhibit --

3 A. I did.

4 Q. And what's the subject matter of it again?

5 A. Review of the regeneration in Stands -- in portions
6 of Stands 43 and 44.

7 MR. GRAYCK: Plum Creek would move the
8 introduction of Exhibit 38.

9 MR. DUANE: No objection, Your Honor.

10 THE COURT: Plum Creek 38 is admitted.

11 (Robbo Holleran's report on regeneration dated 10/16/12
12 was hereby received into evidence as Plum Creek Exhibit 38, as
13 of this date.)

14 BY MR. GRAYCK:

15 Q. And Robbo, I'm also going to show you what's been
16 marked as Plum Creek 39. And what is Exhibit 39?

17 A. This is a letter I wrote this May regarding a certain
18 map that we called Exhibit 8, which probably is called
19 something else now.

20 Q. Okay. And who prepared the exhibit?

21 A. I did.

22 Q. And what is the subject matter of Exhibit 39?

23 A. It's a review of that particular map and how it
24 applies to the prescription and compliance with the
25 prescription.

1 Q. And which portion -- which map; which portion?

2 A. It refers to the overstory -- the overstory removal
3 box that we talked about in Stand 43.

4 Q. Okay.

5 MR. GRAYCK: Plum Creek moves the admission of
6 Exhibit 39.

7 MR. DUANE: No objection, Your Honor.

8 THE COURT: Plum Creek 39 is admitted.

9 (Letter dated May 2013 regarding overstory removal was
10 hereby received into evidence as Plum Creek Exhibit 39, as of
11 this date.)

12 BY MR. GRAYCK:

13 Q. Robbo -- Mr. Holleran --

14 MR. GRAYCK: I apologize, Your Honor.

15 BY MR. GRAYCK:

16 Q. Mr. Holleran, what's the summary of your opinion with
17 respect to whether Plum Creek has complied with the
18 prescription for Stand 34?

19 A. I think they have.

20 Q. Okay. What is the description of Stand 34?

21 A. We're going back to the management form, and that's
22 Exhibit 1 in my folder in the Exhibit 36, so I don't know if
23 you call that 36-dash-1 or something like that. So we're back
24 to the Form 2, Page 1 from the management plan. And this is
25 the approved version, Stand 34

1 Q. And briefly, if you could summarize, given Mr. Fife's
2 testimony.

3 A. Yes. This has all been gone through. The important
4 things to point out -- the total basal area is eighty-two.
5 With northern hardwoods you can almost think of it in terms of
6 a percent stocking, because around a hundred is a normal
7 number. You might have a hundred and thirty or a hundred and
8 fifty in an extremely overstocked forest. So this is eighty-
9 two. It's like eighty-two percent stocking is one way to
10 think of it. It's not exactly correct, but just in terms of
11 thinking about stocking. The acceptable growing stock is only
12 thirty-five. It's way below what would be considered a
13 manageable amount of acceptable growing stock.

14 And the summary paragraph at the bottom of the page
15 is fairly crisp. "Stand 34 is a well stocked northern
16 hardwood type with a total basal area of eighty-two square
17 feet. Of that, thirty-five square feet is acceptable growing
18 stock. The stand is dominated by sugar maple, yellow birch,
19 beech, balsam fir, red spruce, typical species for that area.
20 The main stand diameter is eight-point-four inches. The stand
21 is weighted towards the medium saw timber size class. The
22 current stand has a high level of residual stand damage and a
23 fair amount of crown die back." We noticed that when we were
24 out on the site visit. "And the understory varies greatly in
25 stocking. They have acceptable regeneration of its small

1 pockets of sugar maple seedling and saplings in a patchy
2 distribution around the stand."

3 Q. Okay. Now looking at Exhibit 2 to your report -- so
4 that's Exhibit 2 to Exhibit 36 --

5 A. Um-hmm.

6 Q. -- which is the guide --

7 A. Silvicultural guide.

8 Q. -- silvicultural guide; what does the silvicultural
9 guide recommend for a stand in this condition? And if you
10 could please refer the Court to the page of the guide you're
11 referring to.

12 A. I'm going to go to about Page 25 of the guide; 25 and
13 26. And --

14 Q. Just give the Court a moment to get to there, please.

15 A. Yup. So for twenty-five pages the guide has talked
16 about the concepts of forest management, and basically with
17 even aged management, like a pine plantation, the stand
18 started at some point. It has grown. And then with even aged
19 management, eventually you're basically clearing the old trees
20 and planting new trees, which is not what we're doing. But
21 then at this point in the guide there's a key, to make it
22 simple for us simple-minded foresters, where -- when you start
23 with -- on Page 25, underneath these charts, it starts with
24 the top -- at the top of the key here -- it says, "If you have
25 pole timber and saw timber stands with a mean deviation of

1 overstory trees four inches or more." So that's where our
2 stand is, based on the information we have. And the Question
3 1 is, "Is your objective uneven aged management?" And we say
4 in -- basically one of the problems with this guide is it
5 starts with the preposition that you know whether or not you
6 want to do even aged or uneven aged management. It also
7 doesn't really take into consideration the understory, which
8 is part of what we're revising.

9 But in this guide we start with the question "Do you
10 want to do uneven aged or even aged management?" In this case
11 we're doing even aged management. So you go down to the
12 bottom of Page 25 and you get back to 1, Objective even aged
13 management.

14 So then Question 2, the stocking of acceptable
15 growing stock is less than the C line for the appropriate type
16 -- and if that's yes, you'd go to I. If it's no, you'd go to
17 the next line. But the acceptable growing stock is thirty-
18 five, and the A line -- the C line for a stand in that
19 condition is about forty-five. So it's below the C line;
20 significantly below.

21 So we'd go to Prescription I, and on the -- two
22 pages over, Page 27, in the upper left-hand corner, now we're
23 in this list of prescriptions. So these are the different
24 options for what you might do. And the --

25 Q. Give the Court a moment to get to the page.

1 A. Yup. And as I was saying, the way the guide is used,
2 when you get to this conclusion, foresters talking to
3 foresters, I can just say, oh, we're using Prescription I.
4 And whoever the county forester, or whoever is, has this book,
5 and when I say Prescription I, what goes with it is all of
6 this whole discussion before it. So it's just part of our
7 language.

8 Prescription I says "Acceptable growing stock is
9 inadequate. Plan to regenerate the stand with clear-cutting,
10 strip-cutting, or shelterwood cutting when commercially
11 feasible." So it just means you don't have enough good trees
12 to grow, it's time to start over.

13 Q. Okay.

14 A. And it gives you those three options.

15 Q. Please read the prescription for Stand 34 from UVA
16 Form 2, Page 2. And again, if you could tell the Court where
17 it's located in your report.

18 A. Okay. Form 2, Page 2 is back here. Okay. We're
19 going to back to the Form 2, Page 2, which is in the Exhibit 1
20 category here towards the back. And it's the prescription
21 that we're on now?

22 Q. Yes, for Stand 34.

23 A. So that's the Form 2, Page 2, and so this is the
24 prescription for Stand 34. Stand 34 --

25 Q. Robbo, which page are you on for your exhibit?

1 A. It's Exhibit 1-13.

2 Q. Of Exhibit 36.

3 A. Yes.

4 Q. Go ahead.

5 A. "Stand 34 will receive a two-stage shelterwood, 2SS,
6 even aged Code 3. This stand lacks an acceptable amount of
7 regeneration and the majority of the overstory is unacceptable
8 growing stock. A low density shelterwood with a residual
9 basal area of thirty to forty square feet will be utilized to
10 discourage the establishment of beech in the understory. The
11 shelterwood will be irregular in distribution and will target
12 sugar maple and yellow birch with large crowns to provide
13 shade and seed distribution. Portions of the stand will also
14 receive one to two acre patches where quality and stocking are
15 not sufficient for shelterwood." I'm reading in the changes
16 that I think are assumed typographical errors here. "The
17 patches will not affect the overall stand residual basal area
18 of thirty to forty square feet."

19 Q. Okay. So what does the prescription require?

20 A. Well, going back to the guide, the guide talks about
21 regenerating the stand, and gives a few different options.
22 And just to explain what two-stage shelterwood means for
23 comparison, we all know what a clear-cut looks like. That's
24 pretty easy to describe. There's no trees left. There might
25 be a few trees. A shelterwood is a process where a portion of

1 the stand is harvested so that the new trees are going to be
2 established with a certain mixture of sun and shade. And that
3 mixture might be very shady if you're looking for certain
4 species of trees. It might be very sunny if you're looking
5 for other species of trees. There's a wide range of
6 treatments that we call shelterwood. And a shelterwood can be
7 done in various numbers of stages. The two-stage shelterwood
8 is the simplest. The first cut you're cutting it to establish
9 the regeneration with some scattered amount of overstory, and
10 then the second stage is the overstory removal. So I know
11 you've heard both of those terms. I just want to put them
12 into context.

13 So two-stage shelterwood is that first establishment
14 cut. It implies that you don't already have the regeneration,
15 and you're cutting it to get regeneration to start. And in
16 this case, especially battling beech regeneration is an
17 important part of forest management in the northeast. Beech
18 is a low value tree. It's almost just a weed, except that you
19 can sell it for pulp or firewood. So we -- unless you're
20 trying to grow beech for bear habitat or something like that.
21 But from a commercial timber standpoint, beech can --
22 especially with very shade-based systems -- and I work with a
23 lot of landowners with small woodlots. They don't want to
24 have a lot of daylight in their woods, and they're growing
25 beech and straight maple for that next regeneration -- that

1 next generation forest.

2 So a low density shelterwood gives you a lot of
3 daylight, and in my opinion that's an important way to combat
4 existing beech and hobblebush and straight maple regeneration
5 that's already present. It gives you a lot of disturbance to
6 the site.

7 So what's required for the prescription is a fairly
8 low density shelterwood with irregular spacing of trees, so
9 you would expect to see quite a bit of variability; some areas
10 more fully stocked, some areas fairly open. And then it also
11 includes one to two acre patch cuts, so those would be clear-
12 cuts that would be up to two acres with no trees, and areas
13 with more trees. And I think the controlling language here is
14 that the overall stand residual basal area should be somewhere
15 near thirty to forty to be considered acceptable.

16 Q. Okay. So briefly, what's the overall goal of the
17 prescription?

18 A. To start a new forest.

19 Q. Okay. What is the accepted range for residual basal
20 area in a two-stage shelterwood cut?

21 A. It could be a very wide range. It could be as low as
22 twenty and as high as eighty. It could be even higher in a
23 mixed wood or a softwood forest type.

24 Q. And what is the accepted basal area for a patch cut?

25 A. It would be zero.

1 Q. And what are the regeneration requirements for a two-
2 stage shelterwood or a patch cut?

3 A. When you are doing the harvest there would be no
4 regeneration requirement at the time of harvest.

5 Q. And how, if at all, does the prescription require a
6 uniform treatment?

7 A. I think the prescription requires specifically a dis-
8 uniform treatment.

9 Q. Okay. What indications are there, if any, that
10 indicate the stand was spatially irregular?

11 A. Well, back in the description, a couple of pages
12 back, the Exhibit 1-9, first of all, the fact that it was
13 harvested by Champion --

14 THE COURT: Doesn't 1-9 refer to Stand 43?

15 THE WITNESS: Oops. Correct. Thank you, Your
16 Honor.

17 BY MR. GRAYCK:

18 A. Stand 34, Exhibit 1-8. The harvesting by Champion
19 tended to be irregular, just from what I've seen. I also
20 looked at some older aerial photography, and you could see the
21 spatial irregularity of the -- of this whole area. Also,
22 things like residual stand damage and beech bark problems
23 would not tend to be uniform across the stand. They would be
24 -- you would only have beech (indiscernible) where you have
25 beech, and so that would tend to be irregular.

1 Further down on the bottom it mentions crown die
2 back and pockets of maple seedlings and saplings also are
3 indicative of spatial variability.

4 Q. Okay. And what did you find for total stand basal
5 area?

6 A. If you go to the beginning of my report, on Page 2
7 there's a summary table, Table 1, and right at the beginning
8 of the table at the top the stand numbers down the left-hand
9 side, the categories across the top. In the third column is
10 the stand total basal area, and for Stand 34 I found the total
11 basal area to be forty-seven-point-four with thirty-nine
12 points.

13 Q. Okay. And what did you find the residual basal area
14 to be in the portion that Forests, Parks and Recreation has
15 alleged was cut contrary?

16 A. That's the second column on this table, and it was
17 about ninety-one acres, and I found the residual basal area to
18 be twenty-eight-point-five in that portion of the stand.

19 Q. And what was the general condition of the residual
20 trees in this area?

21 A. Could we have the pictures? There's a stack on my
22 bench there. Where I was sitting there's a file.

23 We saw these areas on our field trip. And when we
24 consider that the initial stand was very low quality based on
25 the numbers in the description, the residual trees looks

1 pretty good. They were straight, they were good quality
2 stems, and they had reasonably good-sized crowns. I've got to
3 get in the right stand here.

4 Oh, here's a nice picture; Picture Number 71.
5 That's right in the real low density portion of the stand on
6 that upper elevation, east facing slope. The -- and you can
7 see that the crowns are all nice, full crowns. You know,
8 they're just starting to leaf out, so they're not green yet.
9 And the trees are mostly nice, straight, good quality stems.

10 Q. And what was the condition of the regeneration in
11 this portion of the stand?

12 A. The regeneration was abundant. We did not do a very
13 quantitative analysis of the regeneration here because it was
14 not controversial. You walked through it and saw it. You
15 couldn't take three steps without stepping on a young tree.
16 Heavy to sugar maple and yellow birch. There was very little
17 beech out there. In our detailed cruise we found just a few
18 little pockets of beech. We tried to show you some on the
19 tour, and we only walked by a few. And the -- there's a
20 scattering of spruce and fir in there. Some red maple, some
21 white birch. We did see some shad, some willow, and a fair
22 amount of mountain ash on the higher -- higher elevations. So
23 it was a very high proportion of the desirable commercial
24 species, and enough diversity to keep it very interesting.

25 Q. Okay. And to what portion of Stand 34 does the

1 State's residual basal area apply?

2 A. My understanding is the State only cruised the
3 allegedly contrary portion, which was about ninety-point-five
4 acres.

5 Q. Okay. And I'd like to look at Exhibit 4 to Exhibit
6 36. And if you could please turn to Paragraph 6 of that.
7 First, do you know what that -- what's that document?

8 A. Okay. This is the decision memorandum from Acting
9 Commissioner Clark, which -- I guess my understanding is she
10 is confirming the adverse inspection report from Matt
11 Langlais.

12 Q. Okay. And could you please go to Paragraph 6 of that
13 -- of the decision?

14 A. Yes.

15 Q. What does it state?

16 A. Paragraph 6 -- everybody ready for that? "Although
17 the unit --

18 Q. Rob, I'm sorry. I didn't know if the Court had it.
19 I'm sorry.

20 A. Ready to go?

21 Q. Go ahead.

22 A. Okay. "Although the unit of measure for forest
23 management purposes and Use Value appraisal is the stand,
24 management can alter the unit enough to create different
25 stands. As a stand is a contiguous group of trees

1 sufficiently uniform in age, class, distribution, composition
2 and structure, and growing on a site of sufficiently uniform
3 quality to be a distinguishable unit, the harvesting in Stand
4 34 has created two separate stands, as that area harvested has
5 a very different age, class, distribution, composition and
6 structure now, compared to that area left untreated. They are
7 no longer the same stand. Therefore, they should be sampled
8 and evaluated separately.

9 Q. And how, if at all, do you agree with this
10 conclusion?

11 A. Well, that's a complicated question. If I was going
12 out there today to write a management plan for that parcel,
13 obviously the area that was shelterwood cut is very different
14 from the area that was not cut. So you'd say, yes, this is
15 different from that. However, in this case, there's already a
16 stand that's been established and approved by the State as a
17 unit, and that's the unit of the management plan. So to come
18 in and -- what was the question again? I think I'm getting
19 off track.

20 Q. Well, do you agree with the portion of the decision
21 that talks about the creation of two stands?

22 A. So I don't think it applies to the way the
23 prescription needs to be evaluated.

24 Q. Okay. And why is the harvesting not created two
25 separate stands relative to the prescription?

1 A. Because the prescription applies to a certain area,
2 and that area is that area.

3 Q. Okay. Now how did Forests, Parks and Recreation
4 characterize the harvest in terms of silvicultural application
5 and the condition of residual trees?

6 A. Okay. It's in this document somewhere.

7 Q. With respect to crown size?

8 A. Yes. All right. Well, I guess it's still that same
9 set of paragraphs that's -- it's on the next page from what I
10 was reading. It's still Bullet Point 6. And -- okay. Okay.
11 "Additionally, the residual trees comprising this basal area
12 are at best intermediate stems in the ten to twelve inch
13 diameter class that lack the crown size necessary to provide
14 the shady conditions, even if the desired residual basal area
15 target was met." So they're saying that the trees didn't have
16 adequate crowns, and that they were intermediate from the
17 original -- intermediate in crown position, which means not
18 dominant or co-dominant in the crowns.

19 Q. And what did FPR allege about considering shade trees
20 a kilometer away?

21 A. So that's in the same section. In the same paragraph
22 further up it says, "The notion that the goals and objectives
23 of the shelterwood treatment were met by considering shade
24 from trees over a kilometer away in the uncut portion of the
25 stand as providing the necessary microenvironmental condition

1 as a misapplication and complete misunderstanding of the
2 principle of the silvicultural practice."

3 Q. And how, if at all, do you agree with the FPR
4 contentions there?

5 A. I don't agree. First of all, we saw those crowns.
6 They were not small crowns. If the average stand diameter was
7 eight inches before the harvest, the trees that are ten inches
8 and larger are above average in diameter, they're going to be
9 above average in crown size. We saw that yesterday. And the
10 shelterwood treatment allows for wide range of basal area. So
11 some areas that are as low as twenty would be considered a low
12 density shelterwood. Some areas that are as high as sixty
13 would be a higher density shelterwood. And so we're not
14 saying that it's going to be thirty or forty on every acre,
15 and that the shade somehow from a tree a mile away is going to
16 come over here and give us that magic thirty to forty number.
17 What I'm saying is that if we're measuring -- if the
18 requirement is to have thirty to forty square feet across the
19 entire stand, then you're going to have to count trees at this
20 end of the stand and at that end of the stand, because the
21 stand is large and almost a mile across.

22 Q. Okay. And could you please describe the unharvested
23 portion of Stand 34?

24 A. Back to my initial report. We did break out the data
25 separately. We cruised the whole stand --

1 Q. Before you begin, what page of your report are you
2 at?

3 A. I'm sorry. I'm on Page 2, that Table 1.

4 Q. Of Exhibit 36?

5 A. Of Exhibit 36.

6 Q. Go ahead.

7 A. We found the uncut portion of Stand 34 to have a
8 residual basal area of eighty-three, which was very close to
9 the initial description. But the acceptable growing stock was
10 a much higher proportion there. It was about seventy. So
11 most of the trees remaining in that end of the stand were
12 healthier and better trees to grow. Higher proportion of
13 sugar maple, less yellow birch. And one aspect of that is the
14 ice storm of 1998. I don't know if you folks remember that,
15 but as a forester it left a bright impression. The east
16 facing slopes tended to take it hard in 1998, and we saw
17 evidence of that on our site visit. So the west side of the
18 stand faces more to the east. The east side of the stand,
19 because it's in a bowl, faces more to the west. And so the
20 eastern side of the stand didn't suffer as much from the ice
21 storm as the west side.

22 Q. All right.

23 A. So it was better quality --

24 Q. We're talking about the unharvested portion of Stand
25 34. Please describe it.

1 A. It's better quality, fully stocked, you know, B level
2 stocking or a little higher, and mostly sugar maple.

3 Q. Okay. If Forests, Parks and Recreation's conclusion
4 that the residual basal area of nineteen-point-seven is
5 correct, how, if at all, does the harvest comply with the
6 prescription?

7 A. The prescription calls for an irregular treatment.
8 Where some areas are going to be zero, and some areas are
9 going to be thirty to forty, and some areas are going to have
10 to be above thirty to forty to have an average of thirty to
11 forty across the stand. So if you separate out a portion that
12 includes the zeroes, then an average that's below your total
13 target for the stand is going to be an obvious conclusion for
14 a portion of the stand. So you have low density shelterwood
15 that's going to be twenty, thirty, forty through that area,
16 and patch cuts. So an average stocking of nineteen-point-
17 seven or the nineteen-point-six that LandVest found, or the
18 twenty-eight-four that I found, are all within a range of
19 acceptable treatment based on this prescription.

20 Q. Okay. Now if Forests, Parks and Recreation's
21 residual basal area of nineteen-point-seven is correct, and
22 the remaining unharvested portion of Stand 34 is harvested to
23 a residual shelterwood basal area of fifty-two, what would the
24 resulting basal for the entire stand be?

25 A. Okay. This is a mathematical question, and it has to

1 do with weighting the average of so many acres at fifty-two
2 and so many acres at nineteen-point-seven, and it comes up to
3 an average of thirty-point-five.

4 Q. Why is it important to measure across the stand?

5 A. Because the prescription is for the stand as an area.

6 Q. So was the overall goal of the treatment in Stand 34
7 met?

8 A. In the harvested area? Yes.

9 Q. And what is your opinion with regard to whether Plum
10 Creek has complied with the prescription for Stand 34?

11 A. I believe they have.

12 Q. Moving to Stand 43: what's the summary of your
13 opinion with respect to whether Plum Creek has complied with
14 the prescription for Stand 43?

15 A. I believe they have.

16 Q. Okay. Could you look at UVA Form 2, Page 1, the
17 Stand 43, which is going to be Exhibit Page 1-9 of Exhibit 36.
18 Again, if you could briefly describe the description of Stand
19 43.

20 A. This stand was very similar in the sense of the
21 history and the treatment, the ratio of acceptable and
22 unacceptable growing stock. The basic difference is this
23 stand included more of a softwood component; a little spruce
24 and fir mixed in.

25 Q. Okay. Now going to the silvicultural guide: what

1 does the guide recommend the stands in this condition? If you
2 could please direct the Court to the page of the guide you're
3 going to refer to.

4 A. Okay. This is -- this is the same as what we had
5 before. We go through the key in the same way on Page 27 of
6 the guide. So it brings us to Prescription I. Because your
7 acceptable growing stock is below the sea level, the stand is
8 economically viable, or commercially feasible is the phrase
9 they use. So the guide recommends to regenerate the stand
10 with clear-cutting, strip-cutting, or shelterwood cutting when
11 commercially feasible.

12 Q. Okay. Now could you please turn to the treatment
13 authorized for Stand 43 at Form 2, Page 2. It's going to be
14 Exhibit Page 1-13 of Exhibit 36. What is the treatment
15 prescription for Stand 43?

16 A. Okay. This is -- as Chris has gone over this, this
17 is a fairly complicated prescription. This is not a take out
18 every third row type of prescription, and it fits this kind of
19 a variable forest. "Stand 43 will receive a two-stage
20 shelterwood even age Code 3, and overstory removal, even age
21 Code 4. Thirty to forty percent of the stand will receive an
22 overstory removal where the overstory is in severe decline and
23 the understory is well stocked with seedling and sapling sized
24 red spruce. The remaining portion of the stand will receive a
25 shelterwood. The harvest will target the at-risk and mature

1 stems. The target residual basal area is sixty square feet
2 for the shelterwood portion, I would presume there. The
3 harvest will release quality growing stock and provide gaps to
4 promote regeneration."

5 Q. Okay. So how -- please describe OSR.

6 A. Okay. As we were saying --

7 Q. Wait, wait, wait. Please describe the OSR in terms
8 of what portions of Stand 43 of the applicable (indiscernible)
9 practice and what should be found after the harvest.

10 A. As we were saying, the process of regenerating a
11 forest with the shelterwood treatment, the initial harvest we
12 call an establishment cut, especially if it's a two-stage
13 shelterwood. You might remove the overstory in three or four
14 stages, but that gets a little more complicated. So once you
15 have an understory, the harvest of the overstory is called the
16 overstory removal. So as far as the prescription here points
17 out that where you -- where the overstory is in particularly
18 bad shape, and particularly where there's spruce regeneration,
19 that those are the areas recommended for overstory removal.

20 Q. And what should be found after the harvest?

21 A. There should be regeneration after the harvest.

22 Q. Okay. And would you describe two-stage shelterwood
23 in terms of what portions of Stand 43 would be applicable to
24 this practice and what should be found after the harvest?

25 A. Well, we've already talked about the shelterwood

1 method. It includes a range of treatments that would be
2 varied, based on the species that are present, the site. And
3 you would expect to have remaining overstory trees that would
4 be at least reasonably good seed trees of desirable species,
5 and the basal area on those shelterwood portions might range
6 from as low as twenty to as high as eighty. This gives us a
7 target of sixty. It also mentions gaps in that shelterwood
8 portion, so that would account for areas like a group that
9 would be -- maybe didn't have acceptable regeneration, didn't
10 have acceptable overstory, so you'd have a -- basically a
11 patch cut there to give regeneration and full sunlight.

12 Q. Okay. Now we have to talk about gaps. Can you
13 describe gaps in terms of what portions of Stand 43 would be
14 applicable to this practice --

15 A. Okay.

16 Q. -- and what should be found after the harvest.

17 A. I interpret gap there to be the same as a group; a
18 group selection, which generally would be these patch cuts of
19 one to two acres. It's a reliable way to regenerate northern
20 hardwoods, especially birches. And that would be done, as I
21 said, where there's not an -- not acceptable overstory trees
22 to leave, and you don't have advanced regeneration all ready
23 to go. And so actually, in a lot of those areas, you tend to
24 have a poor quality understory, like hobble bush or beech or
25 straight maple, and so you actually want to disturb those

1 areas, like rototilling the garden to get something
2 established there.

3 Q. Okay. Now I believe when you started out you
4 described the description for Stand 43 as being complicated.
5 Am I right? Okay. Why is it complicated? What -- why? Tell
6 us why.

7 A. Well, it goes into the art of silviculture; that
8 these are not uniform stands, they're not all one specie,
9 they're not really all one age. Part of it is the history,
10 that these areas have been harvested repeatedly. And so
11 there's a lot of variation. And some of the areas -- when we
12 think of overstory removal, typically you do your first stage
13 of the shelterwood cut, and you come back five or ten or
14 fifteen years later, and you have small seedlings that are
15 one, two, three feet tall. Ideally with spruce they're
16 shorter than the depth of the snow, so one foot, two foot is
17 nice to doing overstory removal for spruce.

18 But we saw some of those understory trees on our
19 field trip yesterday, or Tuesday, and some of them were six
20 and eight inches in diameter and thirty-five feet tall and
21 covered over by seventy foot tall hardwood trees. So this is
22 -- it's -- it's not a textbook forest.

23 Q. And how, if at all, does what you just described
24 define the meaning of variability?

25 A. Yes. It's a variable forest, and those are all

1 aspects of the variability.

2 Can I turn the Court's attention to some pictures?

3 Just to --

4 Q. No.

5 A. Just to wrap this up?

6 THE COURT: It's the end of the court day.

7 We'll stop now --

8 MR. GRAYCK: Okay.

9 THE COURT: -- and continue at 9:00 tomorrow.

10 MR. GRAYCK: Thank you, Your Honor.

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14 (Proceedings concluded at 4:26 PM)

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IN THE VERMONT SUPERIOR COURT
ESSEX COUNTY CIVIL DIVISION

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PLUM CREEK MAINE TIMBERLANDS, LLC,)	Case No. 72-12-10 Excv
Plaintiff,)	30-6-11 Excv
)	Guildhall, Vermont
- against -)	
)	June 3, 2013
VERMONT DEPARTMENT OF FOREST and PARKS,)	1:49 PM
Defendant.)	
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PLUM CREEK MAINE TIMBERLANDS, LLC,)	Case No. 19-4-11 Excv
Plaintiff,)	31-6-11 Excv
)	Guildhall, Vermont
- against -)	
)	June 3, 2013
VERMONT DEPARTMENT OF TAXES,)	1:49 PM
Defendant.)	
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TRANSCRIPT OF COURT TRIAL

BEFORE THE HONORABLE MARY MILES TEACHOUT,
SUPERIOR COURT JUDGE

APPEARANCES:

DAVID L. GRAYCK, ESQ., and KIMBERLY B. CHENEY, ESQ.
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I N D E X

VOIR

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	DIRE
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For the Defendant:

Matthew Langlais	3	52			23
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EXHIBITS:	DESCRIPTION	I.D.	EVID
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For the Defendant:

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G	Alternative Planning Strategy Proposal	42	
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1 (Proceedings convened at 9:02 AM)

2 THE COURT: Please be seated. First, I do want to
3 apologize for the fact that this morning was taken away from
4 you, although you indicated that you thought that you would be
5 able to finish the case in the remaining time, but then
6 secondly, for the late start this afternoon. It was an
7 unfortunate series of events that meant that I had to remain
8 to finish some emergency criminal matters.

9 So it should not detract from the amount of time
10 available for you. We'll figure out how to handle that one
11 way or the other, but I don't mean it to diminish at all the
12 opportunity of any of you to present the case thoroughly. So
13 we are in the direct examination of Mr. Langlais.

14 (Matthew Langlais resumed the witness stand at this time.)

15 THE COURT: Ms. Schwartz.

16 MS. SCHWARTZ: May I ask the witness to take Exhibit
17 1 of Plum Creek's -- I mean Trial Binder 1 of Plum Creek's
18 exhibit?

19 THE COURT: All right. And you are still under oath
20 from last week.

21 THE WITNESS: Thank you.

22 CONTINUED DIRECT EXAMINATION

23 Q. Good afternoon, Mr. Langlais.

24 A. Good afternoon.

25 Q. Were we discussing Stand 43 on Friday when the day

1 ended?

2 A. Yes, we were.

3 Q. What were the treatments prescribed for Stand 43 in
4 the Harvest Prescription Amendment to the Forest Management
5 Plan?

6 A. Stand 43 called for two prescriptions; an overstory
7 removal in one portion of the stand and a two-stage
8 shelterwood in the other portion of the plan.

9 Q. Is the location of where those treatments were to
10 occur in Stand 34 marked on the map -- I'm sorry. Is the
11 location of where those treatments were to occur in Stand 43
12 marked on the map that is part of Exhibit 22, the Harvest
13 Prescription Amendment?

14 MS. SCHWARTZ: Mr. Langlais is looking at Exhibit 22.

15 A. Yes, it is.

16 Q. Was that map amended as a result of your field review
17 in 2008 which Jonathan Horton testified to?

18 A. Yes, it is.

19 Q. Was the prescription for Stand 43 changed to include
20 overstory removal and shelterwood?

21 A. It was changed to include shelterwood. During our
22 field visit prior to the harvest, we found that Plum Creek
23 would not be able to successfully implement the overstory
24 removal due to a lack of red spruce regeneration. We
25 therefore requested that they change their prescription to

1 include two-stage shelterwood where they didn't have that
2 regeneration resulting in this map.

3 Q. Did you include -- in your Adverse Inspection Report
4 the acres for Stand 43 that were cut contrary, did you include
5 any of those acres that were prescribed overstory removal?

6 A. No. In reviewing that area for my Adverse Inspection
7 Report, I thought that they had the required amount of
8 regeneration, so did not consider that portion of the stand to
9 be cut contrary.

10 Q. How did you determine which acres were cut contrary in
11 Stand 43?

12 A. I determined it through an inventory calculating basal
13 area values as well as doing a regeneration inventory.

14 Q. Did you conduct your inventory in Stand 43?

15 A. Yes, I conducted the inventory in Stand 43.

16 Q. Was there snow on the ground when you conducted your
17 inventory?

18 A. No, there wasn't. I waited until end of March and
19 early April for the snow to go so that I could view the
20 regeneration.

21 Q. Are the dates that you visited the property, Stand 43,
22 to conduct your inventory recorded in your Adverse Inspection
23 Report, which is Exhibit 32?

24 A. Yes.

25 Q. And what were those dates?

1 A. March 17th, 2010 and April 13th, 2010.

2 Q. And can you explain where on your Adverse Inspection
3 Report you are finding those dates?

4 A. Yes. No. 2 -- the second page for No. 2, Clough Brook
5 North Harvest, LM-03-01-09, Stand LM-03-43, Section B,
6 Inspection Findings.

7 Q. How many acres did you determine were cut contrary in
8 Stand 43?

9 A. 40.15 acres.

10 Q. And when you visited Stand 43, what did you do there
11 for your inventory?

12 A. I first delineated the area using a GPS. I then set
13 up a systematic grid sampling and used that systematic grid
14 sampling to perform the inventory. The data collected from
15 the inventory points were entered into the State of Vermont's
16 forest examination software, and the resulting numbers that
17 came out of that were used to compare back to the harvest
18 prescription, the NE-603 standard guide that we use and the
19 overall Forest Management Plan.

20 Q. As a result of your inventory, what was the residual
21 basal area that you found in acres that you determined cut
22 contrary?

23 A. I found 23.3 square feet of basal area. The goal was
24 sixty square feet of basal area, and with sixty square feet of
25 basal area, a shelterwood harvest is trying to get at a

1 residual canopy closure of eighty percent, so sixty square
2 feet of area -- basal area equates to eighty percent crown
3 cover, so when I looked at those results and compared those
4 residual basal areas back to the chart that NE-603 provides, I
5 found that ninety percent of the plots did not meet the canopy
6 closures required for successful implementation.

7 Q. When you say successful implementation, please explain
8 successful implementation of what?

9 A. That the prescription was followed.

10 Q. And the prescription was for what?

11 A. A two-stage shelterwood.

12 Q. Okay. Also I note in your Adverse Inspection Report,
13 Exhibit 32 on Page 2 in the same section which you were
14 looking at, B, Inspection Findings, after it says 23.3 square
15 feet of basal area, can you please read after that?

16 A. Yes. "23.3 square feet of basal area and 15.38
17 percent of regeneration plot stocked."

18 Q. What does 15.38 percent of regeneration plot stocked
19 mean?

20 A. Yes. I did one point per acre according to the
21 appropriate silvicultural guide to gauge regeneration. The
22 prescription states -- stated that the goal of the harvest was
23 red spruce regeneration, and to confirm my initial belief that
24 there wasn't enough red spruce regeneration, I did an
25 inventory to look at that.

1 Q. Did you find enough red spruce regeneration?

2 A. No, not at all. I found two plots stocked with a red
3 spruce seedling -- sapling, excuse me.

4 Q. Are you familiar with Mr. Holleran's opinion as to
5 whether Stand 43 was cut contrary?

6 A. Yes, I am.

7 Q. Did you review that opinion?

8 A. Yes, I did.

9 Q. Did you analyze it?

10 A. Yes, I did.

11 Q. Were you in the courtroom when Mr. Holleran testified?

12 A. Yes, I was.

13 Q. Do you agree with Mr. Holleran's finding?

14 A. No, I do not.

15 Q. Did you accompany Mr. Holleran on a regeneration of
16 Stand 43 that he testified to?

17 A. Yes. Mr. Grayck invited me along to accompany Mr.
18 Holleran on his regeneration cruise. I agreed to go along.
19 And the reason that I don't agree with Mr. Holleran's results
20 is I was able to witness firsthand his methodology, and what I
21 found was that his methodology had substantial bias in his
22 sampling.

23 Mr. Holleran used a methodology to find his sample
24 locations using a recreational grade GPS unit, and I believe
25 he testified that it's accurate to about thirty-five square

1 feet or thirty-five feet, so that gave Mr. Holleran about a
2 850-square-foot area in which to locate his sample points.

3 The bias came in that I witnessed Mr. Holleran
4 consistently walking around in that 850-square-foot area
5 arbitrarily locating his sample points, and when we
6 arbitrarily locate our sample points, the data then becomes in
7 question.

8 Q. What kind of regeneration did Mr. Holleran include in
9 his data?

10 A. Mr. Holleran included regeneration that was not there
11 immediately after the harvest. I witnessed him counting
12 first-year seedlings that would not have been there on site
13 right after I had done my regeneration cruise because they
14 became established after the harvest. I also witnessed him
15 counting stems that were from sprouts, and when small trees
16 and stumps get cut, trees will sprout from the stump, and
17 these trees would not have been there directly after the
18 harvest. However, they were there three growing seasons later
19 when Mr. Holleran did his regeneration cruise.

20 The UVA Program Manual requires that for overstory
21 removals, the -- that there be 350 stems immediately after the
22 overstory has occurred, and that's because the focus of an
23 overstory removal is to pull the overwood after the next
24 feature stand has become established.

25 Q. When you say first-year regeneration, what size would

1 that be?

2 A. The balsam fir that I was looking at that he was
3 measuring were two to three inches in height.

4 Q. Do you agree or disagree with Mr. Holleran's
5 conclusion on the residual basal area that he found for Stand
6 43?

7 A. No. Mr. Holleran found substantially more basal area
8 than -- than I found. I believe his results were 53.6, and
9 that could possibly be attributed to his sampling methodology
10 once again which included substantial bias.

11 MS. SCHWARTZ: May I please ask the witness to
12 approach the map that's labeled D for identification purposes?

13 THE COURT: Yes.

14 (The witness left the stand at this time.)

15 Q. Mr. Langlais, please look at the map. What do the
16 green triangles on the map represent?

17 A. The green triangles on the map represent locations
18 where we found water quality violations.

19 Q. All right. Do those green triangles reflect the AMP
20 violations you recorded in your Adverse Inspection Report?

21 A. Yes, they do.

22 Q. Please point on the map to the location of Stand 44.

23 A. Stand 44 is right here.

24 MS. SCHWARTZ: The witness is pointing to the bottom
25 third of the map left of the center of the map. Thank you.

1 (The witness resumed the stand at this time.)

2 Q. Let me direct your attention to Exhibit 22, the
3 Harvest Prescription Fact Sheet which is part of the Harvest
4 Prescription Amendment to the Forest Management Plan.
5 Three-quarters of the way down the page under the bold heading
6 of Current Stand Condition, do you see where it says Stand 44?

7 A. Yes.

8 Q. Can you please read through the description of Stand
9 44 and, in your opinion, tell us what it -- how it describes
10 Stand 44.

11 A. Certainly. "Stand 44 is a well-stocked northern
12 hardwood type with a basal area of ninety-seven square feet.
13 Of that, forty-two feet is acceptable growing stock. The
14 stand is dominated by sugar maple, yellow birch, beech, balsam
15 fir, red spruce. The mean stand diameter is 7.6 inches. The
16 stand is weighted towards the small saw timber size class.
17 The stand has a fair amount of acceptable growing stock in --
18 in the of" -- I believe that's not correct -- "in the small
19 soft timber size classes."

20 Q. Are you pointing at the "of" as not being correct?

21 A. Correct.

22 Q. So when this says well-stocked, what does well-stocked
23 mean?

24 A. Ninety-seven square feet is a fair amount of stocking
25 in a forest. It's well above the B line approaching the A

1 line stocking.

2 Q. Can you explain what A line stocking is?

3 A. Certainly. Do we have the NE-603?

4 Q. I believe it has been admitted into evidence as part
5 of Exhibit 36. I would have to check on what sub-exhibit it's
6 in. You should have it in the binder. Can the witness grab
7 the next trial binder? And it's Exhibit -- Sub-Exhibit 2. It
8 would be Exhibit 36, Sub-Exhibit 2.

9 A. So in the Northern Hardwood Stocking Guide, in order
10 for foresters to know where their stand is -- I'm sorry. This
11 is Page 17.

12 Q. This is Page 17 of Exhibit 36, Sub-Exhibit 2.

13 A. So in order -- the way that foresters use this
14 stocking guide, we have a basal area per acre on this left
15 axis, and then across the top of the chart are mean stand
16 diameters, so in order to know -- specifically for this stand,
17 we know that it's ninety-seven square feet, so we're just
18 about at this hundred line, and it's about a 7.6-inch mean
19 stand diameter.

20 So as you can see, it's -- this stand is well-
21 stocked. There's a lot of trees there. It's approaching the
22 A line, which is overstocked. When we perform intermediate
23 treatments, we usually want to bring that stocking level down
24 to this B line or this quality line in younger stands.

25 Q. What is an intermediate treatment?

1 A. An intermediate thinning is a commercial operation
2 where you're trying to put the growth of your -- the growth of
3 the stand into your best quality trees, so you're making crown
4 space around your crop trees, your best trees and thinning it
5 out so that you're putting all of your future value and growth
6 into those best trees.

7 Q. When you say "commercial operation," what do you mean
8 by that?

9 A. Sometimes we can do these thinnings non-commercially
10 where we're simply going in and taking -- taking out firewood
11 or just dropping trees and leaving them on the ground. This
12 was an operation that is -- was commercially viable, meaning
13 that there were enough big trees that could come out to make
14 it commercially worthwhile to thin that stand.

15 Q. Please describe what it would be when those trees --
16 enough big trees were removed what the stand would then look
17 like.

18 A. You would see a fully stocked stand at this B level
19 stocking. For Stand 44, the prescription stated that they
20 would reduce it to that B line stocking, and that's -- that's
21 the quality line. That reduces your stocking enough so that
22 trees can expand their crowns, expand their -- their boughs.

23 However, it doesn't reduce the stocking so much that
24 the trees would become susceptible to form sprouts, which is
25 adventitious buds on the -- on the base of the tree, that if

1 the trees get too much sunlight, they will push those out, and
2 that causes a decrease in the value of the tree.

3 Q. Let me direct your attention to Page 2 of Exhibit 22,
4 which is the Harvest Prescription Fact Sheet for the Harvest
5 Prescription Amendment to the Forest Management Plan. Please
6 look under the bold heading Recommended Treatment
7 Prescription, and on the bottom of the page, it says Stand 44.
8 Can you please read through that and, in your opinion, explain
9 what it means.

10 A. "Stand 44 will receive an intermediate thinning. This
11 stand is well-stocked with small saw timber. However, many of
12 the medium and large saw timber stems are in decline. The
13 thinning will target at-risk and mature stems and leave a
14 target residual basal area of sixty square feet. This release
15 the small saw timber size class and open up gaps for
16 regeneration."

17 This tells me that there was enough quality there
18 that they could implement the harvest for which they chose and
19 that the target for trees to be removed are that which they
20 state.

21 Q. What was the targeted residual basal area?

22 A. Sixty square feet.

23 Q. It also says, "This release the small timber size
24 class and open up gaps for regeneration." What does gaps for
25 regeneration mean?

1 A. The term gap comes from the ecological idea of a
2 tree-fall gap, and it's -- it's a -- it is a concept where a
3 tree falls in the forest, it opens up a gap because there's
4 no -- there's no longer shade over that spot, and that gap can
5 create some regeneration, so the removal of one tree creates a
6 gap.

7 Because the harvest prescription didn't include any
8 statement that there would be large areas of gaps which would
9 be required in the UVA Program Manual, as we require anything
10 over quarter of an acre to have a statement as to how many
11 there would be and a size range of those gaps, this -- this
12 statement is saying that there wouldn't be any larger gaps but
13 just simple tree-fall gaps.

14 Q. In your opinion, is eight to nine -- would eight to
15 nine acres be a gap?

16 A. Absolutely not.

17 Q. Mr. Langlais, did you determine that Stand 44 was cut
18 contrary?

19 A. Yes, I did.

20 Q. How did you make this determination?

21 A. I went out with my GPS and went around the boundary as
22 evidenced by overcutting and, within that area, set up a
23 systematic grid sampling system, conducted the basal area
24 points, entered those points into the State of Vermont's
25 forest examination software and reviewed the results in

1 comparison to what the harvest prescription called for, the
2 silvicultural guides, the UVA Manual and the overriding Forest
3 Management Plan.

4 Q. Did you use standards to make your determination?

5 A. Yes, I did.

6 Q. And what were those standards?

7 A. Those standards that I just described.

8 Q. Did you visit this property to do your inventory?

9 A. Absolutely.

10 Q. Do you know what day you visited the property to do
11 this inventory?

12 A. Yes, I do.

13 Q. What document are you referring to?

14 A. If you could point me to the --

15 Q. Your --

16 A. -- Adverse Inspection Report?

17 Q. Yes, it's Exhibit 32.

18 A. Yes, I conducted the inventory on March 26, 2010.

19 Q. How many acres did you determine were cut contrary in
20 Stand 44?

21 A. 8.47 acres.

22 Q. Did you make a determination as to the residual basal
23 area in the cut contrary acreage?

24 A. Yes. I calculated a residual basal area of 16.3
25 square feet, far below the sixty square feet required.

1 Q. And how many inventory points did you take?

2 A. I took one point per acre, so I did eight.

3 Q. And if you could look at the bottom of your Adverse
4 Inspection Report, which is Exhibit 32, it says with 4.60
5 standard error. Is that the standard error that you have
6 explained previously for Stand 43 and 34?

7 A. Yes, it is. It's our confidence limits.

8 Q. Did you review Mr. Holleran's opinion regarding
9 whether Stand 44 was cut contrary?

10 A. Yes, I did.

11 Q. Did you analyze it?

12 A. Yes, I did.

13 Q. Do you agree with it?

14 A. No, I do not.

15 Q. Why do you not agree with it?

16 A. I don't agree with it due to the sampling methodology
17 which I described earlier. If he had used that same sampling
18 methodology that I witnessed him using, that substantial bias
19 could play a heavy role. I believe Mr. Holleran found twice
20 as many trees with a average basal area of thirty-six in his
21 inventory.

22 Q. When you say "average basal area," do you mean
23 residual basal area?

24 A. I'm sorry. Residual basal area.

25 Q. Do you agree with his conclusion as to whether the

1 stand was cut contrary or not?

2 A. Well, yeah, Mr. Holleran's thirty-six square feet of
3 basal area, his findings agree that sixty square feet was not
4 made.

5 MS. SCHWARTZ: May I approach the witness?

6 THE COURT: Yes.

7 Q. Let me show you what has been admitted into evidence
8 as State's Exhibit 6. (Indiscernible) excuse me. Do you
9 recognize this document?

10 A. Yes, I do.

11 Q. What is it?

12 A. This is a -- results of an inventory conducted by
13 LandVest at the direction of Plum Creek after our January 26
14 field visit where we found that the area was likely out of
15 compliance with its Forest Management Plan.

16 Q. When were you first made aware of this LandVest data?

17 A. I was first made aware of this data at a meeting at
18 our office on February 19th, I believe, where Plum Creek had
19 asked to sit down with us to discuss the Clough Brook
20 treatment, and Mr. Dorrell, Tim Dorrell mentioned this
21 inventory.

22 I had explained to Tim that I had just completed my
23 inventory of Stand 34 and that I had found that they were far
24 below their intended residual basal area. I stated that we
25 had found 19.7 square feet of basal area, and I believe Mr.

1 Dorrell was looking at this when he stated that's exactly what
2 we found.

3 Q. Who else was at the meeting on February 19th? And is
4 that 2010?

5 A. Yes, it was. My direct supervisor, Kathleen Decker,
6 and her supervisor, Ginger Anderson, were at that meeting as
7 well as Chris Fife, Mark Doty and Tim Dorrell.

8 Q. Did you discuss this data with Mark Doty?

9 A. I -- no. Mr. Dorrell spoke about this data.

10 Q. Did you agree with -- I'm sorry. Did you review the
11 data after?

12 A. Yeah, when I got a copy of this, I reviewed it and
13 fully agreed with Mr. Dorrell that it is exactly what we came
14 up with for basal area.

15 Q. So is it that -- your opinion that the LandVest Plum
16 Creek data for Stand 34 conforms to your data?

17 A. Yes, absolutely.

18 Q. Why is that?

19 A. They took a tremendous number of plots. Their --
20 their statistics are accurate, and it reinforces me that my
21 data is -- is subject to be relied on as well because this
22 supports it.

23 Q. How does this LandVest Plum Creek data for Stand 34
24 support or not support your opinion regarding Plum Creek's
25 violation of their Forest Management Plan for Stand 34?

1 A. Yes, for that portion of Stand 34 that we both
2 measured in that area that we considered cut contrary, these
3 inventories are dead on.

4 MS. SCHWARTZ: Excuse me for one moment, please. May
5 I please mark this as State's Exhibit F? Thank you. May I
6 approach the witness, please?

7 THE COURT: Yes.

8 BY MS. SCHWARTZ:

9 Q. Let me show you what's been marked as State's Exhibit
10 F. Do you recognize this document?

11 A. Yes, I do.

12 Q. What is this document?

13 A. This is a inventory completed by a company out of
14 Maine called Dirigo. The Vermont Land Trust, in overseeing
15 their easement on this parcel, required Plum Creek to hire an
16 independent third party to inventory the Clough Brook
17 harvests.

18 Q. Do you know why would the Vermont Land Trust require a
19 third party to inventory -- to do this inventory?

20 A. Yes. They -- they wanted an independent view of the
21 harvesting that had taken place.

22 Q. Do some of the lands included in this inventory
23 include areas of the Clough Brook North tract?

24 A. Yes, it includes Clough Brook, but it's also three
25 other locations where cut contraries had occurred.

1 Q. Do you know what those --

2 MR. GRAYCK: Objection, Your Honor, and I move to
3 strike the answer. The question -- the specific question was
4 with respect to Clough Brook North. The witness answered
5 areas in addition to Clough Brook North.

6 Q. Do some of the lands include --

7 THE COURT: Are you withdrawing the question?

8 MS. SCHWARTZ: Yes. I'm sorry.

9 THE WITNESS: Sorry.

10 BY MS. SCHWARTZ:

11 Q. Do some of the lands included -- in this inventory
12 include Clough Brook North tract?

13 A. Yes, it does.

14 Q. Do you know when approximately the Dirigo cruise of
15 the Clough Brook North tract was conducted?

16 A. I believe it was August of 2011.

17 Q. Sometime in late 2011?

18 A. That sounds about right.

19 Q. Have you reviewed the Land Trust/Dirigo cruise data?

20 A. Yes, I have.

21 Q. How did you review this data?

22 A. This data was not submitted on a stand level basis, so
23 I did have to use some methodologies to extrapolate these
24 points from -- from their overall data set in order to
25 allocate them to the specific stands where they were.

1 I used a process called georectification. I took
2 their stand map showing their -- showing their point
3 locations, and using the Geographic Information System, I was
4 able to overlay them and line up the respective boundaries and
5 was able to then allocate those points to the specific stands
6 in which they -- they were in.

7 Q. Did your review of the Dirigo/Land Trust cruise data
8 contribute to your opinion regarding whether Plum Creek
9 complied with its Forest Management Plan for Stand 34, 43 and
10 44?

11 A. Yes, the Dirigo inventory data for Stand 34, they came
12 up with a residual basal area of 17.7 square feet, which lines
13 up directly --

14 Q. Mr. Langlais, just yes or no.

15 A. I'm sorry.

16 Q. So I ask the question again. Did your review of the
17 Dirigo/Land Trust cruise data contribute to your opinion
18 regarding whether Plum Creek complied with its Forest
19 Management Plan for Stands 34, 43 and 44?

20 A. Yes.

21 MS. SCHWARTZ: I'd like to offer into evidence what
22 has been marked as the State's Exhibit F.

23 THE COURT: Mr. Grayck?

24 MR. GRAYCK: May I inquire, Your Honor?

25 THE COURT: Yeah.

VOIR DIRE EXAMINATION

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BY MR. GRAYCK:

Q. What was the date of your Adverse Inspection Report?

A. The date of my Adverse Inspection Report was April 26, 2010.

Q. What was the date of the Dirigo cruise?

A. It was late 2011. I apologize. I don't know the exact date.

Q. It was certainly after you had filed your Adverse Inspection Report?

A. Yes, it was.

Q. Is there information in this exhibit other than Clough Brook North?

A. Yes, there is.

MR. GRAYCK: Your Honor, we would object on two grounds: First, the Adverse Inspection Report had already been filed it sounds like months if not over a year prior to this cruise work being done. In addition, this exhibit contains information which is not relevant to the issues before the Court.

MS. SCHWARTZ: This is a de novo hearing, so we can put in additional evidence; and second, we'd be happy to remove the other data from the other areas cut contrary.

THE COURT: That can be done?

MS. SCHWARTZ: I think they're separate pages in the

1 document.

2 THE COURT: Okay. Mr. Grayck?

3 MR. GRAYCK: The testimony was specific to the
4 Adverse Inspection Report, so I don't see how the document has
5 any relevancy to the Adverse Inspection Report produced
6 months, if not a year, prior.

7 THE COURT: The objection is overruled. His
8 testimony was that it contributed to his opinion, which the
9 Court understands to be his opinion as expressed today.
10 However, the objection is sustained if it commingles data as
11 to some of the areas at issue here, and with information about
12 other places, that will be confusing, so the objection is
13 sustained until a redacted version can be reoffered.

14 MS. SCHWARTZ: I believe if we take the last three
15 pages off of the document. May I approach the witness?

16 THE COURT: Um hum. (Pause).

17 MS. SCHWARTZ: May I approach the witness?

18 THE COURT: First show it to Mr. Grayck. And this
19 is -- you've now removed some pages and this is what you're
20 offering?

21 MS. SCHWARTZ: I have removed the last three pages,
22 and I'm now offering this document.

23 THE COURT: Any objection?

24 MR. GRAYCK: In addition to what's already been made,
25 no, Your Honor.

1 THE COURT: Okay. State's F is admitted.

2 (An inventory of Clough Brook harvests completed by Dirigo
3 was hereby received into evidence as Defendant's Exhibit F, as
4 of this date.)

5 MS. SCHWARTZ: Will you please mark this as admitted?
6 Thank you. May I approach the witness?

7 THE COURT: Yes.

8 BY MS. SCHWARTZ:

9 Q. Mr. Langlais, how did the Vermont Land Trust/Dirigo
10 cruise data contribute to your opinion that Plum Creek
11 violated their amended harvest forest -- I'm sorry, harvest
12 prescription for Stand 43, 44 and 34?

13 MR. GRAYCK: Your Honor, objection. Again this
14 information can -- I believe is being offered to bolster an
15 opinion that was reached back in April of 2010, so I object to
16 the question since it's trying to expand the use of this
17 document beyond I believe what the Court has allowed it to be
18 used for.

19 THE COURT: Well, we're taking a lot of evidence
20 about things that were explored and analyzed after the
21 original Adverse Inspection Report. Are you arguing that the
22 evidence of the State should be limited to that date but that
23 you can introduce evidence after that date?

24 MR. GRAYCK: Yes, Your Honor, given that the State
25 has introduced the decisions from the administrative

1 authorities and has maintained the position that those
2 establish the presumption of compliance and that the burden of
3 proof is solely upon Plum Creek to disprove the administrative
4 decisions, and therefore the data and information which is the
5 basis for those decisions is the decision -- is the
6 information which the State is relying upon, and anything
7 after that date can't be used to persuade the Court that Plum
8 Creek has failed to override the deference and the presumption
9 which attaches to the respective administrative decisions.

10 THE COURT: If the Court determines that Plum Creek
11 has introduced sufficient evidence to overcome the
12 presumption, then just like in a property tax appeal, isn't it
13 wide open that the Court has to make a determination about the
14 facts, period?

15 MR. GRAYCK: I believe that is the law, but Mr.
16 Duane, when we were discussing his motion made at the
17 conclusion of the Plum Creek direct case, disputed my
18 assertion that that was exactly -- that the legal status was
19 exactly as you described, and Mr. Duane's position was that
20 the burden of proof and -- that there was no shifting of
21 burden of proof and that it solely remains upon Plum Creek to
22 establish that it did not cut contrary in reference to the
23 respective administrative decisions as supported by the
24 Adverse Inspection Report.

25 THE COURT: Okay. So you're taking this position

1 sort of defensively in response to the State's position even
2 though your own is that everything should be admissible; is
3 that right?

4 MR. GRAYCK: Well, I take the position that -- given
5 the precedent as set forth by the Vermont Supreme Court and
6 what the State -- and the position that the State has
7 maintained throughout the proceedings that the burden of proof
8 is solely upon Plum Creek, and as a result, our case has
9 always been based upon the decisions, which is how this appeal
10 commenced with the State introducing those decisions and
11 asserting that they caused the burden of proof to shift
12 permanently to Plum Creek.

13 THE COURT: Okay. I am going to be sorting that out
14 later, but in the meantime, we'll take the evidence, so the
15 objection is overruled.

16 MR. GRAYCK: Thank you, Your Honor.

17 BY MS. SCHWARTZ:

18 Q. Mr. Langlais, how did the Vermont Land Trust/Dirigo
19 cruise data contribute to your opinion that Plum Creek
20 violated their Forest Management Plan with regard to Stand 34?

21 A. The Land Trust/Dirigo data supported my contention
22 that Stand 34 was cut contrary with their findings.

23 Q. How did it support your conclusion?

24 A. It supported my conclusion with its determination of
25 17.7 square feet of basal area, which was very, very close to

1 my 19.51 for that area that was consistent.

2 Q. This residual basal area that you are referring to?

3 A. Yes.

4 Q. That's the basal area after the cutting --

5 A. Yes.

6 Q. -- occurred? What was your conclusion with regard to
7 Stand 43 as to how the Dirigo cruise data contributed to your
8 opinion that Plum Creek violated its Forest Management Plan in
9 that stand?

10 A. The Dirigo data lined up very, very close to my data.
11 I believe Dirigo found 2.3 square feet more than I had found,
12 which is minimal. In Stand 43, I had 23.3 square feet, and I
13 believe the Dirigo data found 26.1 or 26.2 square feet of
14 basal area.

15 Q. How did the Vermont Land Trust/Dirigo cruise data
16 contribute to your opinion that Plum Creek violated their
17 Forest Management Plan with respect to Stand 44?

18 MR. GRAYCK: Your Honor, I just want to have, for the
19 record, a continuing objection.

20 THE COURT: Okay. You won't need to repeat it again.
21 It's --

22 MR. GRAYCK: Thank you, Your Honor.

23 THE COURT: -- accepted as a continuing objection.

24 MR. GRAYCK: Thank you, Your Honor.

25 A. For Stand 44, the Dirigo data supported my conclusions

1 that that area was not at sixty square feet of basal area as
2 well. I believe Dirigo had slightly higher basal area. I
3 believe they found 31.1 square feet of basal area.

4 BY MR. SCHWARTZ:

5 Q. What was the finding of your opinion as to regard to
6 Stand 44 and the residual basal area you found with respect to
7 your inventory?

8 A. Yes, my inventory was 16.3 square feet. I was asked
9 to accompany Dirigo on their inventory for one of their days,
10 and I did accompany them, and I found that they did not use
11 the standard from the UVA Manual that requires that only trees
12 that are touching for the main crown canopy be counted. I
13 witnessed them counting suppressed trees, so that's my belief
14 that there's a difference between my 16.3 and their thirty-one
15 square feet.

16 Q. What is a suppressed tree?

17 A. It's a tree the same age as the trees in the
18 overstory. It simply doesn't have the capacity nor ever had
19 the capacity to -- to be a tree that we could definitively say
20 would be there in the future.

21 Q. Overall, did you agree with the findings of the
22 LandVest/Dirigo cruise -- I'm sorry. Overall, did you agree
23 with the findings of the Vermont Land Trust/Dirigo cruise as
24 to the residual basal area for the stands on Clough Brook
25 North?

1 A. Yes --

2 MR. GRAYCK: Objection, Your Honor. What findings?
3 Object to the form of the questions. I'm not clear what
4 findings are being referred to.

5 MS. SCHWARTZ: With regard to the residual basal
6 areas for the three stands at issue.

7 THE COURT: The objection is overruled.

8 A. Yes, I agree with the Dirigo findings of residual
9 basal areas for Stands 34, 43 and 44.

10 MS. SCHWARTZ: May I have one moment, please?

11 BY MS. SCHWARTZ:

12 Q. You were here when Chris -- were you here in the
13 courtroom when Chris Fife testified that he was surprised to
14 receive the draft Adverse Inspection Report?

15 A. Yes, I was.

16 Q. Let me show you what is marked and admitted into
17 evidence as Exhibit 36, Sub-Exhibit 4.

18 MS. SCHWARTZ: May I approach the witness, please?

19 THE COURT: Yes.

20 Q. What is Exhibit 36, Sub-Exhibit 4?

21 A. This was the decision of the Department of Forest,
22 Parks and Recreation's appeal of Plum Creek Maine Timberlands.

23 Q. Can you speak up, please, Mr. Langlais?

24 A. I'm sorry. This is the decision written by the
25 Commissioner of the Department of Forest and Parks regarding

1 the appeal of Plum Creek Maine Timberlands.

2 Q. That's what's on appeal in this case; is that correct?

3 A. Yes, it is.

4 Q. Let me direct your attention to Page 6 of Exhibit 36,
5 Sub-Exhibit 4. Under the heading of Conclusion, can you
6 please read the second sentence?

7 A. "As noted by the county forester" --

8 Q. That's you?

9 A. Yes.

10 Q. Continue, please.

11 A. -- "we have provided Plum Creek with a considerable
12 amount of technical assistance, both reviewing plans and
13 prescriptions as well as field advice, and have overlooked
14 past infractions."

15 Q. Thank you. When did you first become involved with
16 working with Plum Creek with regard to their enrollment in the
17 Use Value Appraisal Program and their understanding of its
18 requirements?

19 A. My very first meeting with Plum Creek took place
20 directly after they purchased the property. Tim Dorrell,
21 Chris Fife and Mark Doty asked to meet with me in my St.
22 Johnsbury office where we talked about the requirements of the
23 UVA Program and specifically what it entails, what Plum Creek
24 had gotten themselves into in purchasing this land and what
25 their requirements are when they take over a UVA-enrolled

1 parcel.

2 Q. Do you recall what the discussion was with regard to
3 the specific requirements?

4 A. Not -- not exactly. It was a lengthy meeting, and I'm
5 sure that we covered all of the elements of the UVA Program
6 Manual.

7 Q. You testified that you had met earlier on the land
8 with Jonathan Horton to do a field review of the Clough Brook
9 North tract pre-harvest?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes, it is.

13 Q. Are there other times on other tracts that make up
14 part of the 56,000-acre parcel of Plum Creek that you visited
15 with Jonathan Horton or others of Plum Creek to discuss
16 pre-harvest reviews?

17 A. Oh, absolutely. Up until the time of the Clough Brook
18 harvest, I had spent eleven days in the field with Plum Creek
19 foresters. Additionally, we've calculated that department
20 staff has expent fifty-one person days directly working with
21 Plum Creek educating them about their requirements to remain
22 eligible in the Use Value Program.

23 Q. Do you recall in particular what any of those -- where
24 any of those pre-harvest reviews took place?

25 A. Yes. Pre-harvest reviews took place in Averill early

1 that year, Lemington --

2 Q. Is Averill part of the 56,000-acre parcel at issue?

3 A. Yes, it is.

4 THE COURT: In what year?

5 THE WITNESS: That would have been late 2008, early
6 2009.

7 Q. Do you recall what the discussion was in April when
8 you conducted your pre-harvest review?

9 MR. GRAYCK: Objection, Your Honor. I don't see the
10 relevancy how discussions regarding a harvest in Averill is
11 related to the issues which are on de novo appeal to the
12 court, and the issues on appeal were set forth by Plum Creek
13 in its statement of questions which it was required to file
14 under Rule 74.

15 THE COURT: Ms. Schwartz?

16 MS. SCHWARTZ: Plum Creek brought in other UVA towns
17 that are not directly involved in Clough Brook North with
18 regard to Matt's forest -- approval of harvest prescription
19 amendments, and it is relevant in the response to that.

20 Plum Creek also brought other UVA cut contrary
21 situations up in Reading and Pomfret when Mr. Holleran was
22 testifying, and Matt's working relationship with regard to
23 Plum Creek and its continuing eligibility for the Use Value
24 Appraisal is directly relevant standing alone to provide
25 immediate context to Plum Creek's case in chief and to the

1 basis for his Adverse Inspection Report that we are here about
2 today and which is on appeal.

3 And lastly, Mr. Fife testified that he was surprised
4 to receive the Adverse Inspection Report, and also the Forest,
5 Parks and Rec decision, that's what's on appeal and that's why
6 we're here, and we heard Mr. Langlais read that he -- that as
7 part of that decision, Commissioner Clark noted that he had
8 provided a considerable amount of technical assistance both
9 reviewing plans and prescriptions as well as field advice and
10 had overlooked past infractions.

11 THE COURT: Before I hear from Mr. Grayck again, what
12 is the line of inquiry that you're starting? Were you
13 intending to introduce evidence about several different places
14 where there had been pre-harvest meetings? What's the scope
15 of what you're getting into?

16 MS. SCHWARTZ: I am not intending to introduce
17 evidence, only testimony as to Mr. Langlais' meeting with Plum
18 Creek as well as in reference to the amount of technical
19 assistance he provided and the field visits and his
20 overlooking of past infractions.

21 THE COURT: Right, but my question is what level of
22 detail are you planning to get into with respect to that
23 general subject area?

24 MS. SCHWARTZ: Not great detail. I'd like to discuss
25 a few -- ask him about a few of the times that he met with

1 Plum Creek and what he found.

2 THE COURT: Mr. Grayck?

3 MR. GRAYCK: Your Honor, the examples which were
4 submitted in the course of Mr. Holleran's testimony were
5 admitted to show the past administrative practice with respect
6 to whether parcels or portions thereof had been excluded. It
7 was only allowed into evidence for that limited purpose. What
8 the State is attempting to do is to turn this into a trial
9 within a trial, prior harvesting activities for which it can
10 produce no evidence with respect to Plum Creek having been
11 served with, quote, unquote, "past infractions".

12 There is no UVA form that I'm aware of which exists
13 which would have triggered Plum Creek's rights under the
14 statute to contest whether -- what Mr. Langlais and what the
15 Commissioner claims to be past infractions. I can't control
16 the language that the Commissioner used in that decision, but
17 the statement "past infractions" represents a legal
18 conclusion. Plum Creek's never had an opportunity to contest
19 whether there have been past infractions because it's never
20 been served with the appropriate paperwork required by the UVA
21 Manual and the statute to trigger its rights to contest.

22 THE COURT: The objection is overruled. We've
23 already heard a fair amount of evidence about the interaction
24 between Plum Creek either employees or agents and the state --
25 county forester, Vermont Land Trust personnel, others involved

1 in this complex deal starting when Plum Creek purchased in the
2 fall of 2008, so we will permit testimony concerning the
3 communications and interactions that took place pre-harvest.

4 MS. SCHWARTZ: Thank you.

5 BY MS. SCHWARTZ:

6 Q. Please describe your --

7 THE COURT: Although there might be some limit on
8 level of detail. That's why I was asking you about level of
9 detail.

10 Q. Mr. Langlais, did you meet with Plum Creek to do a
11 post-harvest review on their land in Averill?

12 A. Yes, the very first post-harvest review that the
13 Vermont Land Trust, myself and Plum Creek took was on a
14 harvest in Averill.

15 Q. Do you recall who from the Land Trust was there?

16 A. Yes, it would -- Dan Kilborn from the Vermont Land
17 Trust.

18 Q. Who from Plum Creek was at that visit?

19 A. Chris Fife was at that visit as well as Dan Singleton,
20 who worked for Plum Creek as their LandVest forester.

21 Q. Did you go to the site to do the field review?

22 A. Yes, we did.

23 Q. What did you find during your field review?

24 A. We found that about thirty acres of a 204-acre stand
25 did not appear to have been cut to the prescription. It

1 called for a shelterwood harvest, and as we walked through
2 that area, there were no shelterwood trees left.

3 MR. GRAYCK: Your Honor, I object and again will move
4 to strike the answer to the extent that it went beyond a
5 request for a description of what was found. Mr. Langlais is
6 glossing it with his conclusion as to whether it's a matter of
7 compliance, and this is going to bring us to a trial within a
8 trial where we're going to be litigating whether there were,
9 quote, unquote, "past infractions," so I have to object again
10 and move to strike.

11 THE COURT: The object is sustained. We're not going
12 to have little mini trials on what actually happened on these
13 other places. You -- my ruling was that you may describe
14 meetings and interactions and general outcomes but not the
15 specific details about the bases for outcomes.

16 Q. Mr. Langlais, did you file an Adverse Inspection
17 Report at Averill -- for the Averill site?

18 A. No, I did not.

19 Q. Why did you not file an Adverse Inspection Report?

20 A. I didn't file an Adverse Inspection Report --

21 MR. GRAYCK: Your Honor, I'm going to object again.

22 A. -- due to the newness of the --

23 THE COURT: You have to stop when there's an
24 objection.

25 THE WITNESS: I'm sorry. I'm sorry.

1 MR. GRAYCK: The question seeks to elicit why an
2 Adverse Inspection Report wasn't filed, and that is now moving
3 us to where the witness is going to describe discretionary
4 judgments with respect to another harvest and whether or not
5 the conduct necessitated him to take certain actions, and that
6 brings us right back to a trial within a trial.

7 THE COURT: The objection is sustained. My ruling
8 was that you may ask about interactions and communications
9 between the Plum Creek people, State people on these issues,
10 so you may ask him about conversations that he had with people
11 from Plum Creek about whether or not there would be an
12 inspection report, but you may not ask him about the specific
13 substantive content of his own opinions about that. Do you
14 understand the difference?

15 MS. SCHWARTZ: Yes.

16 THE COURT: You can ask about communications back and
17 forth between the two sides but not the question you just
18 asked.

19 MS. SCHWARTZ: Okay. Thank you.

20 BY MS. SCHWARTZ:

21 Q. Did you have conversations with Plum Creek regarding
22 your not filing an Adverse Inspection Report for the Averill
23 site?

24 A. Yes, we discussed what we were seeing in the field and
25 the importance of following their Forest Management Plan.

1 Q. Did you visit again the Averill property with Plum
2 Creek at a later date after your post-harvest review?

3 A. In Averill, we visited another site at a -- on a
4 different date where we again talked about the importance of
5 following their Forest Management Plan.

6 Q. Did you have any specific discussions with Plum Creek
7 staff regarding the Acceptable Management Practices for water
8 quality?

9 A. Yes. You know, as I mentioned, you know, up until
10 this Clough Brook harvest, we had spent considerable time and
11 taxpayer dollars working with Plum Creek, fifty-one person
12 days, and a considerable amount of that time was talking about
13 the water quality rules. We had one pre-harvest inspection
14 where I invited along our chief water quality person out of
15 our Waterbury office, Gary Sabourin, to specifically talk to
16 them about their needs to comply with the AMP's.

17 Q. Do you recall what Plum Creek's response was to Mr.
18 Sabourin's discussion of their need to comply with AMP's?

19 A. Yes. Tim Dorrell specifically asked if there was an
20 industrial standard that was different than the standard
21 everyone else had to follow.

22 Q. Do you recall Chris' testimony -- Chris Fife -- Mr.
23 Fife's testimony earlier last week with regard to his not
24 recalling the -- your discussion of call -- your talking with
25 him as to the consequences of failing to comply with the

1 adverse -- I'm sorry, with the Use Value Appraisal Program
2 requirements?

3 A. Yes, I do recall that testimony.

4 Q. Did you have a conversation with Mr. Fife regarding
5 the consequences of failing to comply with the Use Value
6 Appraisal Program requirements?

7 A. Yes, specifically.

8 Q. When did you have that conversation?

9 A. Yeah, in April of 2009, Chris was in my office for a
10 meeting with other department staff for our annual partners'
11 meeting. That's a meeting that all of the landowners that are
12 part of the former Champion lands gets together once a year.

13 And in having Chris in the office, I took the
14 opportunity, knowing that he was going to be there, to prepare
15 some numbers for him, and after his meeting, I invited him
16 into my office and presented to him the importance of
17 following their Forest Management Plan.

18 Due to what I perceived to be problems in their
19 implementation, I calculated for Chris the entire 56,000 acres
20 that could be removed if they continued to not follow their
21 Forest Management Plan and presented to him the lost revenue
22 in tax benefits specifically.

23 Q. How did you arrive at the lost benefit impact?

24 A. I used the --

25 Q. And approximately how much was it?

1 A. It was approximately 800,000 dollars, I believe, at
2 that time, and I calculated it using the data from the
3 property valuation and review, which we have access to their
4 data -- their data.

5 Q. Did you talk to -- you talked to Mr. Fife, you just
6 testified, about the 56,000 acres. Were you here earlier when
7 folks testified that Plum Creek owned 84,000 plus or minus
8 acres in the state of Vermont?

9 A. Yes, I was.

10 Q. Why isn't the 84,000 acres plus or minus being
11 disenrolled, if you know?

12 A. Because it's discontinuous. Where we had been
13 discussing in the field the problems with the implementation,
14 I was calculating just the contiguous area for where we were
15 having those field discussions.

16 Q. Mr. Langlais, did Plum Creek itself ever initiate any
17 meetings with you and other department staff regarding the
18 interactions between Plum Creek and the State?

19 A. Yes, I believe we have.

20 Q. Do you recall what those -- when those meetings were?

21 A. No, not specifically.

22 Q. Do you recall what occurred at those meetings?

23 A. Yes, I think so.

24 Q. What was that?

25 A. I believe we discussed eligibility requirements and

1 what Plum Creek needs to do to maintain their eligibility in
2 the UVA Program.

3 Q. Do you recall who would have -- who attended those
4 meetings from the State?

5 A. I believe it could possibly be myself, Kathleen Decker
6 from my office, Ginger Anderson.

7 Q. Thank you.

8 MS. SCHWARTZ: One moment, please. If I may have a
9 moment?

10 THE COURT: You may.

11 MS. SCHWARTZ: May I please have this marked as
12 Exhibit G, I believe? Thank you. May I approach the witness?

13 THE COURT: Yes.

14 BY MS. SCHWARTZ:

15 Q. I'm showing you what's been marked as State's Exhibit
16 G. Do you recognize this document?

17 A. Yes. I believe I prepared this document.

18 Q. What is this document?

19 A. This was a proposal to my superiors in our Waterbury
20 office for a alternative planning strategy for large
21 landowners.

22 Q. Is this the large landowner alternative that has been
23 discussed over the last few days in court?

24 A. Yes, it is.

25 MS. SCHWARTZ: I move to admit this document that's

1 been marked as Exhibit G. May I approach the witness?

2 THE COURT: Yes. Does Mr. Grayck have a copy?

3 MS. SCHWARTZ: Yes, he does.

4 MR. GRAYCK: One moment, Your Honor, if I might.

5 (Pause).

6 MS. SCHWARTZ: It's in your Trial Binder 3. It's
7 part of your Exhibit 50, I believe.

8 MR. GRAYCK: Yes, I'm aware of that. I want to -- I
9 believe it's being offered as this constitutes the official
10 alternative as adopted by Forest, Parks and Recreation, and I
11 simply want to compare it to --

12 THE COURT: That's fine. We'll take our afternoon
13 break now. We'll take a break until twenty past 3.

14 THE CLERK: All rise.

15 (A recess was taken at 3:01 p.m., until 3:16 p.m.)

16 THE COURT: Please be seated. We normally end the
17 court day at 4:30, but because of the late start, we can go on
18 until 5:15 today. Does that inconvenience anyone?

19 MS. SCHWARTZ: That's fine.

20 MR. DUANE: Thank you, Your Honor.

21 THE COURT: All right.

22 MR. GRAYCK: May I address the Court on the offer of
23 admission of Exhibit G?

24 THE COURT: Yes.

25 MR. GRAYCK: So Plum Creek objects for two reasons.

1 I need -- I have not -- I'm not aware as to whether the State
2 is offering Exhibit G as a practice under Section 801, paren,
3 (7) of the Administrative Procedure Act -- that would be 3
4 V.S.A. 801, paren (7) -- whether it's being offered as a
5 procedure under 3 V.S.A., Section 801, paren, (8), or whether
6 it's being offered as a rule under 3 V.S.A., Section 801,
7 paren, (9).

8 In addition, Your Honor, we think there's a
9 completeness objection in that the offer is part of a broader
10 packet of documents which I was given by the Agency of Natural
11 Resources in no, what appear to me, logical order, and
12 therefore I believe that the entirety of the documents which
13 were provided to me, which included this Exhibit G, should be
14 admitted, so I have -- I have two objections with respect to
15 its admission.

16 THE COURT: Ms. Schwartz?

17 MS. SCHWARTZ: We're offering it for what it is, and
18 we have no objection to the entire packet that Mr. Grayck
19 refers to being admitted into evidence.

20 THE COURT: When you say "what it is" --

21 MS. SCHWARTZ: It's none of the above that he read.
22 We're offering it as the alternative UVA plans for selected
23 large landowners. The title -- it doesn't matter whether it's
24 a practice or procedure or --

25 THE COURT: Well, let's start first with the

1 completeness issue. So you're saying that you have no
2 objection to offering the entire packet?

3 MS. SCHWARTZ: No, we have no objection.

4 THE COURT: All right. So let's find out first if
5 Mr. Grayck agrees with you that what you're offering is the
6 entire packet is the entire packet. You need to produce it.

7 MS. SCHWARTZ: It's Exhibit 30 of their trial
8 exhibits, I believe.

9 MR. GRAYCK: (Indiscernible).

10 MS. SCHWARTZ: It's Exhibit -- oh, Exhibit --

11 MR. GRAYCK: Well --

12 MS. SCHWARTZ: -- 50.

13 THE CLERK: (Indiscernible).

14 MR. GRAYCK: Yeah, (indiscernible).

15 MS. SCHWARTZ: I offer the entire packet into
16 evidence.

17 THE COURT: So is this another --

18 MS. SCHWARTZ: This is part of Exhibit G.

19 THE COURT: Why don't you two just confer for a
20 moment and take a look at what you each have and -- (Pause).

21 MR. GRAYCK: So we have agreement on the packets
22 with --

23 THE COURT: Which is what?

24 MR. GRAYCK: What I would call Plum Creek 49 and 50.
25 I don't know what the State wants to call it.

1 MS. SCHWARTZ: I began with State's Exhibit G.

2 THE COURT: Okay. But as I understand it, G is now
3 being withdrawn and something else is going to be offered?

4 MS. SCHWARTZ: Yes.

5 THE COURT: Okay. So we're not talking about State's
6 G anymore.

7 MS. SCHWARTZ: Talking about Exhibit -- State's
8 Exhibit H. Exhibits H and I.

9 THE COURT: So Mr. Grayck, have you looked at H and
10 I?

11 MR. GRAYCK: Yes, Your Honor.

12 THE COURT: Do you have any objection to them on
13 completeness grounds?

14 MR. GRAYCK: No longer anymore, Your Honor.

15 THE COURT: Okay. And then what about the other
16 issue that you raised as an objection?

17 MR. GRAYCK: I believe that issue remains before the
18 Court to the extent that the agency is offering this as
19 evidence of something it did in its official capacity. If
20 that is what it did, then under the Administrative Procedure
21 Act, when an agency acts in a formal manner, based upon how it
22 does so, there is a different level of legal classification
23 and legal status which attaches to the document and --

24 THE COURT: Aren't you raising issues now about what
25 the significance of it is or how it should be treated, how it

1 should be addressed by the Court --

2 MR. GRAYCK: And --

3 THE COURT: -- and as separate from admissibility?

4 MR. GRAYCK: And my only objection was I believe to
5 the way it was being characterized as what it was. I have no
6 objection if the Court takes the documents and reserves for
7 itself a determination as to the legal status of the
8 documents. I -- so with that said, I understand what the
9 Court is saying.

10 THE COURT: Okay. So State's H and I will be
11 admitted, and then we'll see if there are questions that raise
12 issues about --

13 MR. GRAYCK: Thank you.

14 THE COURT: -- admissibility. (Pause).

15 (The entire packet of documents from ANR and the
16 Alternative UVA Plans for Selected Large Landowners were
17 hereby received into evidence as Defendant's Exhibits H and I,
18 respectively, as of this date.)

19 MS. SCHWARTZ: Could you please mark these as Exhibit
20 H and Exhibit I? (Pause). May I approach the witness?

21 THE COURT: Yes.

22 CONTINUED DIRECT EXAMINATION

23 BY MS. SCHWARTZ:

24 Q. I'm showing you what's been marked and admitted as
25 State's Exhibit H and I. Could you please look in Exhibit I?

1 THE COURT: Do you have other copies of those that he
2 could use so those could be used here?

3 MS. SCHWARTZ: We have two other copies.

4 THE COURT: Okay.

5 MS. SCHWARTZ: Can I approach the bench?

6 THE COURT: Yes. It would be better if he uses those
7 and we have the admitted ones. Okay.

8 MS. SCHWARTZ: Here's the other copy. Would you like
9 (indiscernible)?

10 THE COURT: Yes. Thank you.

11 BY MS. SCHWARTZ:

12 Q. In Exhibit I, Alternative UVA Plans for Selected Large
13 Landowners, the document on the right, it says 1/13 on the top
14 right corner. Have you found that document?

15 THE COURT: Did you say 13?

16 MS. SCHWARTZ: Yes, on the top right corner, it says
17 1/13, and it's entitled Alternative UVA Plans for Selected
18 Large Landowners.

19 A. Yes.

20 Q. Have you found it, Mr. Langlais?

21 A. Yes, I have.

22 Q. What is it?

23 A. This is the alternative planning strategy which I
24 proposed to my superiors in order to allow large landowners to
25 utilize a different methodology for developing their Forest

1 Management Plans.

2 Q. Let me direct your attention to Paragraph 2 of the
3 document. The third sentence reads, "The average parcel size
4 for enrolled forest land is 110 acres in the UV" -- and
5 that -- does that refer to the average parcel size in the UVA
6 Program?

7 A. Yes. That's statewide.

8 Q. Based on your knowledge of the UVA Program, as a
9 Vermont county forester, is that 110-acre parcel average still
10 basically correct?

11 A. Yes, it is.

12 Q. Mr. Langlais, do you know how many forested parcels
13 that there are in the UVA Program?

14 A. Roughly 14,000.

15 Q. And if you know, is that the total number of parcels
16 in the UVA Program?

17 A. No. The total number of parcels is about 17,000. The
18 difference is in the enrollment of agricultural parcels.

19 Q. With regard to the Large Landowner Alternative
20 Strategy that we've been talking about over the last couple of
21 days, after you conceived of this concept, to whom did you
22 propose it to in the Department of Forest, Parks and
23 Recreation?

24 A. I proposed this to Ginger Anderson, the Chief of
25 Forest Management.

1 Q. Did it get reviewed by others within the department?

2 A. Yes. While I was developing it, I ran it by others
3 within the department as well as consulting foresters outside
4 of the department that this would impact their land holdings.

5 Q. Did you get feedback from others in the department on
6 this -- your proposal?

7 A. Yes, I did.

8 Q. Did you consider those comments?

9 A. Most of them I did, yes.

10 Q. When you say "most of them," what do you mean by that?

11 A. There was some push-back from some of my counterparts
12 in other areas of the state that didn't agree.

13 Q. Okay. And did you get comments back from the large
14 landowners and consulting foresters that you mentioned?

15 A. Yes. The two largest consulting firms in Essex
16 County, Jim Wood of North Country Environmental and Forestry
17 and Richard Carbonetti from LandVest, I sent them drafts and
18 had them review it and provide comments back to see if it
19 would be something that they would be interested in.

20 Q. Mr. Langlais, what portion of your time as the county
21 forester do you devote to reviewing Plum Creek's timber
22 operations?

23 A. A considerable amount of time. There are about a
24 third of the total acreage -- acreage enrolled in UVA for
25 Caledonia and Essex counties.

1 Q. Why have you spent a considerable amount of time
2 reviewing Plum Creek's timber operations?

3 A. I've spent a considerable amount of time because their
4 Forest Management Plan calls for harvesting at rates that
5 those lands hadn't seen in a number of years. The Forest
6 Management Plan calls for increasing it. Under Essex Timber
7 Company, they were operating at about 7,000 cords a year. The
8 new Forest Management Plan increased that to 45,000 cords a
9 year, so it's a tremendous amount of harvesting, and so it
10 takes a lot of time to review those harvest plans and work
11 with them.

12 Q. When you review those harvest plans, do you discuss
13 with them the requirements of the UVA Program and the
14 requirements of their Forest Management Plan?

15 A. Absolutely. Mostly in our field visits.

16 Q. And today is there a substantial amount of harvesting
17 on the Plum Creek land?

18 A. Yes. Today Plum Creek is following through with its
19 goal of meeting 45,000 cords a year. Last year, I believe
20 Plum Creek accounted for forty-five percent of the total
21 volume harvested in Caledonia and Essex counties in the UVA
22 Program.

23 Q. Did what you observed as county forester on Stands 43,
24 34 and 44 on the Clough Brook North tract of Plum Creek's
25 56,000-acre parcel encourage and assist in the preservation

1 and conservation of that land for future productive forest
2 use?

3 A. No, not at all.

4 MS. SCHWARTZ: No further questions.

5 THE COURT: Mr. Grayck?

6 MR. GRAYCK: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. GRAYCK:

9 Q. Good afternoon, Mr. Langlais.

10 A. Good afternoon, Mr. Grayck.

11 Q. Mr. Langlais, you're familiar with the UVA statutes?

12 A. Yes, I am.

13 Q. And you would consider yourself possessing substantial
14 expertise with their application and interpretation?

15 A. Yes, I try.

16 Q. And you're familiar with the Current Use Advisory
17 Board Rules?

18 A. Yes.

19 Q. In fact, the Current Use Advisory Board Rules are part
20 of the 2006 manual, aren't they?

21 A. I believe they are.

22 Q. In fact, the -- why don't we turn to those Current Use
23 Advisory Board Rules in the manual. If we went to Exhibit --
24 Volume 2 -- go to Volume 2. We should find the 2006
25 (indiscernible). Exhibit 36 -- Exhibit 5 of 36. Could you

1 find for me the Current Use Advisory Board Rules? Does your
2 copy not have -- okay.

3 A. It doesn't have it.

4 Q. Here.

5 MR. GRAYCK: If I may approach the -- is that okay?

6 MR. DUANE: Yeah.

7 MR. GRAYCK: Your Honor, may I?

8 THE COURT: Yes. But are you implying that Exhibit 5
9 of --

10 MR. GRAYCK: I've got 5.

11 THE COURT: -- Exhibit 36 is not identical to Exhibit
12 22A?

13 MR. GRAYCK: No, I just recalled that it is Exhibit
14 22A --

15 THE COURT: Okay.

16 MR. GRAYCK: -- and I apologize, Your Honor.

17 THE COURT: Okay.

18 MR. GRAYCK: I should be referring to this as Exhibit
19 22A. I apologize.

20 THE COURT: Okay.

21 MR. GRAYCK: So that's Exhibit 22A.

22 BY MR. GRAYCK:

23 Q. So Mr. Langlais, of Exhibit 22A, I believe it's
24 Appendix G. If you could find that, please. Okay. So those
25 are the Current Use Advisory Board Rules. I'm sure you have

1 occasion to apply them frequently in your responsibilities as
2 the county forester?

3 A. Yes.

4 Q. And you're familiar with the terms and requirements of
5 these rules?

6 A. Yes.

7 Q. And you routinely apply them in the course of your
8 duties. Yes?

9 A. Yes.

10 Q. Mr. Langlais, could you please turn to Page 6 of 10 of
11 the Current Use Advisory Board Rules? Do you see what is set
12 forth there as Rule (c) and it's a sub of Rule 2?

13 A. Yes, I do.

14 Q. Okay. Could you please read out loud Rule (c)?

15 A. Rule (c). "A tract of qualifying land shall be
16 considered contiguous for the purposes -- for the purpose of
17 determining eligibility for Use Value Appraisal even though
18 divided by a right-of-way, highway or town line."

19 Q. Now, my understanding it's the State's position that
20 the VELCO power line which bisects or divides the VELCO --
21 which divides the Plum Creek property is covered to this -- is
22 covered by this rule; am I correct?

23 A. I believe you are.

24 Q. Could you please identify for me what is the tract of
25 qualifying land for purposes of Rule 2(c)?

1 A. I'm sorry. Could you rephrase that?

2 Q. Could you please identify for me the tract of
3 qualifying land with respect to Plum Creek's property and its
4 application to whether the VELCO power line causes the tract
5 to not be contiguous? What is the tract being referred to in
6 this rule? What's the acreage of the tract?

7 A. 56,000 acres.

8 Q. So am I to understand that the tract being referred to
9 in this rule is the same acreage which has been determined to
10 be the parcel which is to be disqualified if the Director of
11 Property Valuation and Review decision is upheld by this
12 Court?

13 A. Yes.

14 Q. Now, current use -- I'm sorry. Strike that. Exhibit
15 22A, it contains the UVA statutes, correct?

16 A. Yes, it does.

17 Q. Okay. And my understanding is that the statutes begin
18 at what's identified as Page 12 of the 2006 manual or Page 11
19 of the 2006 manual? It's identified in the lower right-hand
20 corner. Yes?

21 A. Yes.

22 Q. Okay. Now, could you please read for us the
23 definition of 32 V.S.A., Section 3752, managed forest land?

24 A. "Managed forest land means, A, any land, exclusive of
25 any house site, which is at least twenty-five acres in size

1 and which is under active, long-term forest management for the
2 purpose of growing and harvesting repeated forest crops in
3 accordance with minimum acceptable standards for forest
4 management; or B, any land exclusive of any house site which
5 is, I, certified under Subsection 6306(b) of Title 10; 2, it
6 is owned by an organization that is certified by the
7 Commissioner of Taxes as a qualified organization as defined
8 in 10 V.S.A. 6301(a) and, for at least five years preceding
9 its certification, was determined by the Internal Revenue
10 Service to qualify as a Section 501(c)(3) organization, which
11 is not a private foundation as defined in Section 509(a) of
12 the Internal Revenue Code; and 3, is under active conservation
13 management in accord with standards established by the
14 Commissioner of Forest, Parks and Recreation."

15 Q. Okay. Now, looking at the definition of 9, paren, (a)
16 and its reference to minimum acceptable standards for forest
17 management, where is that phrase defined in Section 3752?

18 A. I'm not sure.

19 Q. Could you please look at 32 V.S.A., Section 3752,
20 paren, (13)? Do you see that?

21 A. Yes, I do.

22 Q. Mr. Langlais, could you please read that out loud for
23 us?

24 A. "Minimum acceptable standards for forest management
25 refer to certain standards established by the Commissioner of

1 the Department of Forest, Parks and Recreation."

2 Q. With respect to the issue that's before the Court, Mr.
3 Langlais, can you please tell me what are the certain
4 standards established by the Commissioner of the Department of
5 Forest, Parks and Recreation which are applicable?

6 A. It's I believe the Use Value Appraisal Program Manual.

7 Q. And by that, you mean the 2006 manual?

8 A. Correct.

9 Q. Is there anything else?

10 A. Within that manual are specific references.

11 Q. And what are those specific references, Mr. Langlais?

12 A. They're U.S. Forest Service silvicultural guides,
13 technical handbooks and textbooks.

14 Q. Mr. Langlais, can you please direct us to the list of
15 the items you just described?

16 A. Certainly. It would be Page 78, Appendix A.

17 Q. So just so I understand, Mr. Langlais, you're telling
18 me that the certain standards established by the Commissioner
19 with respect to the minimum acceptable standards for forest
20 management include the twenty-six items in Appendix A?

21 A. Yes.

22 Q. And those are all certain standards?

23 A. Yes.

24 Q. And those are all the certain standards you regularly
25 apply?

1 A. Yes.

2 Q. Are there any other additional certain standards which
3 you apply to Plum Creek with respect to the determination of
4 your cut contrary conclusion?

5 A. No, I don't believe there were.

6 Q. Mr. Langlais, are you familiar with a publication -- I
7 believe the last author's name is Smith?

8 A. David Smith, yes.

9 Q. Mr. Langlais, have you ever seen this book?

10 A. Yes.

11 Q. Did you rely on any portion of this book for your
12 determination that Plum Creek had committed a cut contrary?

13 A. I used a definition from that book to -- in my
14 discussions with Plum Creek during field harvest reviews.

15 Q. Yes, but my question is did you rely upon any portion
16 of this book in reaching your determination that Plum Creek
17 had committed a cut contrary?

18 A. I relied on the definition for an irregular
19 shelterwood in that publication, yes.

20 Q. Is this book one of those listed in the appendix to
21 the 2006 UVA Manual which defines the acceptable standards?
22 Is this book on the list?

23 A. No, I don't believe it is.

24 Q. Mr. Langlais, can you please turn to 32 V.S.A.,
25 Section 3755, paren, little (b), paren, little (3)?

1 A. Yes.

2 Q. Are you familiar with that provision?

3 A. Yes.

4 Q. It includes the use of the word tract; am I right?

5 A. Yes, it does.

6 Q. If you'll allow me, I'll read, and you'll let me know
7 if I've quoted it incorrectly. Okay?

8 A. Please do.

9 Q. I'm beginning with the portion that states, "There has
10 not been filed with the Director an Adverse Inspection Report
11 by the department stating that the management of the tract is
12 contrary to the Forest Conservation Management Plan or
13 contrary to the minimum acceptable standards for forest or
14 conservation management." Did I read that correctly?

15 A. Yes, you did.

16 Q. Thank you. What is the tract being discussed in that
17 provision as it pertains to this appeal?

18 A. I believe that it's synonymous with the word parcel.

19 Q. So it's your conclusion that tract, as being used in
20 this sentence, is referring to 56,604 acres?

21 MS. SCHWARTZ: Objection. Mr. Langlais is a smart
22 man, but the question calls for a legal conclusion.

23 MR. GRAYCK: I believe, Your Honor, he's testified
24 that he's -- as part of his duties on a regular basis, he
25 applies the UVA statutes and rules and that this is

1 fundamental to his conclusion that he reached an adverse
2 inspection, and I'm simply asking him to identify what
3 constitutes the tract.

4 MS. SCHWARTZ: He's asking him to interpret a
5 statute.

6 THE COURT: The objection is overruled. He may be
7 asked about his implementation of the statute and rules and
8 his understanding of them as they apply to this particular
9 case.

10 BY MR. GRAYCK:

11 Q. Do you remember the question or shall I repeat it?

12 A. Please repeat it.

13 Q. Okay. Could you please tell me what is the tract at
14 issue in this -- in this appeal with respect to Plum Creek as
15 used in 3755 which I read and you confirmed I have properly
16 read?

17 A. On the 56,000 acres.

18 Q. Okay. And is it your understanding that that's also
19 consistent or identical to the definition of parcel which the
20 Director of Property Valuation and Review has found fit to
21 disqualify, correct?

22 A. Could you please state that again?

23 Q. Your identification of the 56,000 acres as the tract
24 for purposes of the statutory provision we've been
25 discussing --

1 A. Um hum.

2 Q. -- that is the same as the parcel which the Director
3 of Property Valuation and Review proposes to disqualify from
4 the Use Value Program, correct?

5 A. I believe so.

6 Q. Now, we continue on in 32 V.S.A., Section 3755, and if
7 we go to, paren, little (c), and set within that provision is
8 the sentence, and please correct me if I'm wrong, "If that
9 department finds that the management of the tract is contrary
10 to the Conservation or Forest Management Plan or contrary to
11 the minimum acceptable standards for Conservation or Forest
12 Management, it shall file with the owner, the assessment
13 officials and the director an Adverse Inspection Report within
14 thirty days of the inspection." Do you see that?

15 A. Yes, I do.

16 Q. Okay. The Adverse Inspection Report that you filed in
17 compliance with that provision, could you identify it for us,
18 please?

19 A. The 56,000 acres.

20 Q. Yes, I understand that. I'm talking about the actual
21 date of the report.

22 A. The date of the report?

23 Q. Yes.

24 A. April 26, 2010.

25 Q. And that Adverse Inspection Report has been admitted

1 into evidence. Yes?

2 A. Yes.

3 Q. Okay. And so that Adverse Inspection Report is
4 discussing the tract for purposes of the provision I just -- I
5 just asked you about?

6 A. Yes.

7 Q. Mr. Langlais, we've talked at length about -- Mr.
8 Langlais, turning to that Adverse Inspection Report, can you
9 please tell me where it references 56,000 acres?

10 A. It references 56,000 acres where I've written next to
11 Lemington contiguous with lands in Bloomfield, Averill,
12 Avery's Gore, Lewis, Brighton, Morgan and Brunswick.

13 Q. Okay. And that's the reference that you're relying on
14 to say that the Adverse Inspection Report is representing
15 56,000 acres?

16 A. Yes.

17 Q. And the specific activities --

18 THE COURT: I'm sorry. Would you please point that
19 out in --

20 THE WITNESS: Yes. On Page 1 of the Adverse
21 Inspection Report --

22 THE COURT: Okay.

23 THE WITNESS: -- under -- the first line under the
24 memorandum, there is landowner, span number and then parcel
25 town.

1 THE COURT: Okay.

2 BY MR. GRAYCK:

3 Q. So Mr. Langlais, I'd like you to have in front of you
4 Exhibit 22. Now, as I understand it, Exhibit 22 constitutes
5 the amendment to the Plum Creek Conceptual Management Plan; am
6 I correct?

7 A. Correct.

8 Q. Okay. And the only document that you signed is UVA
9 Form 2, Page 2, correct?

10 A. Correct.

11 Q. And your signature on UVA Form 2, Page 2 is your
12 authorization of the treatments set forth on UVA Form 2, Page
13 2, correct?

14 A. Correct.

15 Q. Now, the third map which we've referred to as
16 containing the OSR box, which I believe is the last page, do
17 you see that?

18 A. Yes, I do.

19 Q. Okay. My understanding is that that map was produced
20 after the field visit which you had with Mr. Horton, Mr. Fife,
21 yourself and maybe others and that that map was produced after
22 the field visit which took place in October, mid-October?

23 A. Correct.

24 Q. Okay. In the area encompassed by the OSR box that
25 we've talked about a lot, it includes a riparian buffer zone,

1 correct?

2 A. Correct.

3 Q. And you know that it violates the AMP's to conduct an
4 OSR in a riparian buffer zone, correct?

5 A. Correct.

6 Q. Did you intend that by acceptance of this map to
7 authorize OSR in the riparian buffer zone?

8 A. I didn't authorize OSR in the buffer zone, no. They
9 have to follow the AMP's, which clearly state that you can't
10 do an OSR --

11 Q. Okay.

12 A. -- in a riparian zone.

13 Q. So if we were just looking at the map, however, I
14 don't see any exclusion for the riparian buffer zone in the
15 OSR box; am I right?

16 A. Correct.

17 Q. So if one was just looking at the map, one could get I
18 believe a mistaken impression that you had authorized OSR
19 treatments throughout the entire area represented by that box,
20 correct?

21 A. One could get that impression, yes.

22 Q. But that would be a mistaken impression, wouldn't it?

23 A. Correct, it would.

24 Q. And it would be one that would conflict with the
25 AMP's, correct?

1 A. Yes, it would.

2 Q. So you'd agree with me there's a conflict between
3 what's shown on that map and what the AMP's require. Yes?

4 A. Yes, there is a conflict.

5 Q. And so it was smart of Mr. Fife to ensure that there
6 was no harvesting in the riparian buffer zone notwithstanding
7 that map which shows OSR treatment authorized in a riparian
8 buffer zone, correct?

9 A. Correct.

10 MR. GRAYCK: Excuse me for one moment, Your Honor.

11 Q. Mr. Langlais, the Essex Timber Company Forest
12 Management Plan, which I believe is Exhibit 14 --

13 A. Yes.

14 Q. -- that's a concept plan; am I right?

15 A. It is an overriding plan for the parcel. It's
16 conceptual in that it doesn't have stand-specific information.
17 However, it provides the direction for the management that is
18 to take place when the stand-specific data comes in for
19 specific harvests.

20 Q. Does it authorize any harvesting?

21 A. It does not authorize any harvesting.

22 Q. It's referred to in Exhibit 15 as a concept plan; am I
23 correct?

24 A. Yes.

25 Q. The prescription amendment is the implementation of

1 the concept plan, correct?

2 A. Correct.

3 Q. Do you recall the hearing held with Commissioner
4 Clark?

5 A. Yes, I do.

6 Q. And my understanding was that Commissioner Clark was
7 acting commissioner. Do you know that that's the case?

8 A. Yes, it was.

9 Q. And my understanding is that Commissioner Clark does
10 not have a forestry background; am I right?

11 A. You're correct.

12 Q. I believe maybe she has an accounting background or a
13 business management background?

14 A. I believe so.

15 Q. Now, prior to the hearing with Commissioner Clark, do
16 you recall meeting with her to discuss the upcoming Plum Creek
17 hearing before her?

18 A. Not specifically I don't.

19 MR. GRAYCK: I'd like to have this marked, please.

20 Q. I'm showing you what's been marked as Exhibit 100.

21 A. Thank you.

22 Q. That's your name at the top, correct?

23 A. Yes, it is.

24 Q. Do you see how it's an e-mail from Steve Sinclair?

25 A. Yes, I do.

1 Q. Do you see that you're included as among the
2 recipients of that e-mail?

3 A. Yes, I do.

4 Q. Can you please read what's contained in that e-mail?

5 A. Certainly. This is from Steve Sinclair to Meghan
6 Purvee, who's our staff counsel, Commissioner Clark, myself,
7 Mike Duane and Corinne Richardson. The statement is, "We need
8 to have our pre-hearing planning meeting. Corinne, can you
9 please check calendars and with Matt. Thanks."

10 Q. Do you remember receiving this e-mail?

11 A. Yes, I must have received this e-mail.

12 Q. Okay. Do you remember attending a pre-hearing
13 planning meeting as described in the e-mail?

14 A. I don't recall the meeting. I apologize, but I --

15 Q. No, no need to apologize.

16 A. -- I was there. I must have been.

17 Q. No need to apologize. Now, you would agree with me
18 that the e-mail from Mr. Sinclair to the recipients is
19 referring to the hearing that was eventually held before the
20 Commissioner, correct?

21 A. Correct.

22 MR. GRAYCK: Plum Creek would move the introduction
23 of Exhibit 100.

24 MS. SCHWARTZ: We have no objection.

25 THE COURT: Plum Creek's 100 is admitted.

1 (An e-mail from Steve Sinclair was hereby received into
2 evidence as Plum Creek Exhibit 100, as of this date.)

3 THE WITNESS: Oh, I'm sorry.

4 BY MR. GRAYCK:

5 Q. Now, you attended the hearing with Commissioner Clark.
6 Yes?

7 A. Yes, I did.

8 Q. Do you recall taking notes of that hearing?

9 A. Yes, I did.

10 Q. Do you have your notes with you?

11 A. I do.

12 Q. Could you please get them out? (Pause). Do you have
13 your notes in front of you?

14 A. I do, sir.

15 Q. My understanding is that your notes were taken on
16 first page to be done in 2010, and the second page would be
17 address and phone directory?

18 A. Correct.

19 Q. Thank you. I just wanted to make sure. Mr. Langlais,
20 it's my understanding that your notes include the following:
21 Variability issue; sampling does not reflect this at LV
22 intensity; make sure to talk about this with Sarah. Did I
23 read your notes correctly?

24 A. That's what that states.

25 Q. And it states that you were going to talk to Sarah

1 about this, correct?

2 A. It indicates that I should try to talk to Sarah about
3 this.

4 Q. And did you?

5 A. I don't recall what this statement was about to be
6 quite honest.

7 Q. Okay. But it's certainly a note that you wanted to
8 follow up with her after the hearing with her regarding an
9 issue that was discussed. Yes?

10 A. It certainly seems that way, yes.

11 Q. Thank you, Mr. Langlais. Now, in the course of the
12 conduct of your duties, you make an attempt to assist
13 landowners in compliance with the UVA statutes; am I right?

14 A. Correct.

15 Q. And you've testified regarding the extensive amount of
16 time that you've spent with Plum Creek; am I right?

17 A. Correct.

18 Q. And Plum Creek is the largest landowner in Use Value
19 Appraisal, correct?

20 A. Correct.

21 Q. And because they're qualified under a concept plan,
22 each harvest needs to be reviewed, right?

23 A. Correct.

24 Q. Mr. Langlais, do you remember the circumstances of how
25 you ended up being part of the January 26 visit to Clough

1 Brook North? Do you recall how that came about?

2 A. It probably came about as all of our other
3 post-harvest field visits have come about.

4 Q. Okay. And when you say "post-harvest," it was
5 actually -- the harvest was ongoing, wasn't it?

6 A. True. Yes.

7 Q. Okay. All right. I'm showing you what's been marked
8 as Exhibit 101.

9 A. Thank you.

10 Q. Is that your name at the top?

11 A. Yes, it is.

12 Q. And this is an e-mail from Dan Kilborn to you dated
13 January 15th, 2010, correct?

14 A. Yes, it is.

15 Q. Okay. Do you remember receiving this e-mail?

16 A. Not this specific e-mail, but I'm sure I did receive
17 it.

18 Q. Okay. Do you see the sentence that begins "I have to
19 touch base"? Do you see that?

20 A. Yeah.

21 Q. Can you read that out loud?

22 A. It states, "I have to touch base with Chris on the
23 26th, today, so I will mention that I think it would be a good
24 idea if you could come along, too" --

25 Q. And you got this e-mail?

1 A. -- "talk to you soon. Dan."

2 Q. I'm sorry?

3 A. "Talk to you soon. Dan."

4 Q. Yeah. You got this e-mail. Yes?

5 A. Yes, I did.

6 Q. And this is from -- this is from your -- you know,
7 your files. It's got your name on it, right?

8 A. Yes.

9 Q. Okay.

10 MR. GRAYCK: I move to admit Plum Creek 101.

11 MS. SCHWARTZ: Can we --

12 MR. GRAYCK: Oh, I'm -- I apologize.

13 MS. SCHWARTZ: -- can we see a copy, please?

14 MR. GRAYCK: Of course. I apologize.

15 MS. SCHWARTZ: The State has no objection.

16 THE COURT: Plum Creek 101 is admitted.

17 (An e-mail dated 1/15/10 was hereby received into evidence
18 as Plum Creek Exhibit 101, as of this date.)

19 BY MR. GRAYCK:

20 Q. So it's my understanding then that the 26th had been
21 identified by Mr. Kilborn at VLT for an inspection and that he
22 thought it would be fortuitous if you come along, too,
23 correct?

24 A. Correct, as -- correct.

25 Q. Okay. And in fact, Mr. Kilborn and yourself and Mr.

1 Fife have an extensive working relationship, correct?

2 A. Yes, we do.

3 Q. And my understanding is notwithstanding this appeal
4 that all three of you have continued to work professionally
5 with each other; is that right?

6 A. Absolutely.

7 Q. Okay. Now, my understanding is that you received Mr.
8 Fife's letter of January 27, 2010, which has been admitted as
9 Exhibit 27, and in that letter, Mr. Fife makes reference that
10 he's going to have LandVest cruise all of Stand 34. Do you
11 see that?

12 A. Yes.

13 Q. Is it fair to say that when you received that letter,
14 in your mind, you had already concluded that the issue, if
15 there was an issue, wouldn't necessarily apply to all of Stand
16 34, correct?

17 A. Yes, because there were uncut portions of Stand 34.

18 Q. And were there portions of Stand 34 which had been cut
19 but were ultimately determined to be cut contrary?

20 A. I think I would have realized that during my field
21 inspection.

22 Q. Yes, I understand that. I'm just simply asking now
23 whether there were portions of Stand 34 which were cut but
24 which you decided were not cut contrary.

25 A. Yes.

1 Q. Yes.

2 A. Inevitably.

3 Q. Yes. Okay. And so when you did your inventory work,
4 to determine whether there was a cut contrary, in your mind,
5 you had already decided that there was some areas which you
6 needed to check up on but other areas you didn't, right?

7 A. Due to that first walk-through on the 26th, yes.

8 Q. Absolutely. Absolutely. So that you had seen the
9 stand, and in your mind, you had decided there's a portion
10 over there that doesn't strike you visually to be in conflict
11 with the prescription, so you need to focus on what you think
12 is in conflict with the prescription, correct?

13 A. Correct.

14 Q. And then ultimately when you would do your inventory
15 work, you would just inventory what you thought had been cut
16 contrary?

17 A. I based the GPS-ing that I did on the -- on the
18 evidence of overcutting.

19 Q. Okay. So I think what you're telling me, and please
20 correct me if I'm wrong, that you used a GPS to inventory the
21 area that you thought could be cut contrary?

22 A. Correct.

23 Q. But that there was some other area which you had
24 decided wasn't cut contrary and therefore didn't need to be
25 inventoried, right?

1 A. Correct.

2 Q. Okay. And I can understand that the reason why you
3 wanted to focus on what you thought was cut contrary was
4 because that's what gets reported to the Property Valuation
5 and Review; am I right?

6 A. If it ultimately is considered to be an adverse
7 inspection, yes --

8 Q. Okay.

9 A. -- that's what would go to PV and R.

10 Q. That's what goes to PVR. So when you go out there,
11 your focus is on trying to decide what needs to get sent to
12 PVR, correct?

13 A. No, my focus is determining whether or not the stand
14 has been cut contrary.

15 Q. And in the course of doing that, determining what
16 acreage needs to get sent to PVR. Yes?

17 A. Not at that time, no.

18 Q. When?

19 A. After the adverse inspection has occurred -- after the
20 inspection has occurred and the preparation of the Adverse
21 Inspection Report.

22 Q. Okay.

23 A. That's when it's determined what -- what acreage is
24 eventually sent over to PV and R.

25 Q. Okay. So the results from your inventory work is

1 taken and reviewed, and you reach a conclusion as to what you
2 think was cut contrary; am I right?

3 A. Yes.

4 Q. And that's the acreage in the Adverse Inspection
5 Report which is then reported to PVR, right?

6 A. Yes.

7 Q. And in this instance, the Adverse Inspection Report
8 didn't include all the acreage in the stand; am I right?

9 A. Correct.

10 Q. It only included what you thought was cut contrary and
11 therefore needed to be reported to PVR because that's the
12 portion which is subject to the land use change tax, correct?

13 A. Yes.

14 Q. Now, with respect to NE-603 -- which sometimes we call
15 the guide; am I right?

16 A. Correct.

17 Q. Okay. Am I right that the guide is simply that, it's
18 a guide?

19 A. Yes, it's a guide for forest managers to employ.

20 Q. I'm sorry?

21 A. It's a guide for forest managers to employ when
22 practicing under the UVA Program.

23 Q. And that there's many other options. Yes?

24 A. Yes, there are other options.

25 Q. Mr. Langlais, could you please look at Form 2, Page 2

1 for Stand 34? And that would be in Exhibit 22. Okay?

2 A. Yes.

3 Q. It begins "Stand 34 will receive a two-stage
4 shelterwood." Yes?

5 A. Correct.

6 Q. Now, a patched clear cut will have a residual basal
7 area of zero, correct?

8 A. Correct.

9 Q. And the treatment authorized for Stand 34 only says
10 that portions of the stand will also receive one- to two-acre
11 patches, correct?

12 A. Yes.

13 Q. And there is no specific target, correct?

14 A. The target is reflected in the residual basal area.

15 Q. Well, there could be five patches, correct?

16 A. There could be if it did not affect the overall
17 residual basal area of thirty to forty square feet.

18 Q. And if there were fifteen patches, you would have to
19 determine whether the prescription had been met, correct?

20 A. Yes.

21 Q. And you would have to do an averaging; am I right?

22 A. No, actually. All you would need to do is measure the
23 basal area of the stand to see that it came to the thirty to
24 forty square feet that was prescribed.

25 Q. In fact, the last sentence of the Stand 34 treatment

1 states, "The patches will not affect the overall stand
2 residual basal area of thirty to forty square feet," correct?

3 A. Correct.

4 Q. And that means that the two-stage shelterwood will
5 contain areas above thirty to forty square feet to offset the
6 zero basal area measurements in the patches themselves,
7 correct?

8 A. No, not specifically.

9 Q. Mr. Langlais, do you remember me taking your
10 deposition on October 31st, 2011?

11 A. I do.

12 MR. GRAYCK: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 Q. Mr. Langlais, I'm showing you the transcript of your
15 deposition book, and at the back, there is an errata sheet
16 with signature?

17 A. Yes.

18 Q. Do you recognize that signature?

19 A. Yes. That is my signature.

20 Q. That's your signature. Okay. I'm going to hand you
21 this deposition.

22 A. Thank you.

23 Q. And I'm going to ask that you turn to Page 79 of your
24 deposition. Do you see that, Page 79?

25 A. Yes, I do.

1 Q. Do you see there's a question that begins at Line 10?

2 A. Correct.

3 Q. And there's an answer that ends at Line 16. Do you
4 see that?

5 A. Correct.

6 Q. Can you please read the question and answer from Line
7 10 to Line 16?

8 A. Certainly. Question, "The last sentence states the
9 patches will not affect the overall stand residual basal area
10 of thirty to forty square feet. What does that mean?"
11 Answer, "It means that the two-stage shelterwood contain areas
12 above thirty to forty square feet to offset the zero basal
13 area measurements and the patches themselves."

14 Q. And that was your testimony, correct?

15 A. Correct.

16 Q. Okay. Therefore, because if you're trying to hit
17 between thirty and forty and some areas are going to be less
18 than zero, then some areas have to be greater than at least
19 thirty, correct?

20 A. Correct.

21 Q. Because eventually you're going to average the entire
22 stand to see if it's thirty to forty, correct?

23 A. Yes. (Pause).

24 MR. GRAYCK: Apologize, Your Honor. I've lost a pad.
25 (Pause).

1 Q. Mr. Langlais, the guides that are set forth and
2 incorporated into the UVA Manual as the certain standards, is
3 it possible that they contradict with each other on a given
4 issue of silviculture?

5 A. It could possibly happen.

6 Q. I mean, there's twenty-six of them -- twenty-seven of
7 them?

8 A. I'll take your word for it.

9 Q. And the UVA Form 2, Page 2 that you signed at least
10 for Plum Creek didn't specifically reference any of those
11 guides; am I right?

12 A. No, they left them out.

13 Q. I'm sorry. So they -- what you signed doesn't
14 specifically reference any guides, correct?

15 A. What I signed doesn't specifically -- where they
16 should have filled in the specific guide, they did not, and I
17 signed that form, yes.

18 Q. Okay. But nevertheless, you signed it; am I right?

19 A. Correct.

20 Q. And you returned it to Plum Creek; am I right?

21 A. Correct.

22 Q. And so it was returned to Plum Creek without any
23 specific guides referenced; am I right?

24 A. The guides are specifically referenced in the program
25 manual.

1 Q. Yes, I understand that, but I'm asking you about
2 whether the guides, if any, were specifically referenced in
3 the document you signed. Are any of the guides included in
4 what you signed?

5 A. No.

6 Q. Mr. Langlais, you accompanied Mr. Holleran on the
7 regeneration cruise; am I right?

8 A. I did.

9 Q. And that was at my invitation, correct?

10 A. Correct.

11 Q. And so as necessary, you've been able to access the
12 property to do what you need to do for this case?

13 A. That was the last time I had been on the property.

14 Q. And if you need -- and has there been any prohibition
15 or obstacle to you visiting the property if that's what you
16 wanted to do?

17 A. I don't believe there has.

18 Q. Okay. And in fact, as I said -- as you said, I mean,
19 I invited you to go along with Mr. Holleran on the
20 regeneration cruise, right?

21 A. Correct.

22 Q. And that was to facilitate the two of you sharing
23 information, correct?

24 A. Correct.

25 Q. Okay. Mr. Langlais, in the course of your

1 investigation of the alleged cut contrary, you took the time
2 to observe the property. Yes?

3 A. Correct.

4 Q. And you have a Bachelor's of Science degree in
5 wildlife management; is that right?

6 A. That's correct.

7 Q. And I take it you consider yourself skilled in
8 recognizing land use activities that could be evidence of
9 environmental harm; am I right?

10 A. Certain portions, yes.

11 Q. Certain portions. And my understanding is that you
12 had concerns about what the AMP violations might have done to
13 streams; am I right?

14 A. Correct.

15 Q. Okay. With your attorney's permission, I'm showing
16 you Exhibit 51.

17 THE COURT: Did you say 51?

18 MR. GRAYCK: Yes, Your Honor --

19 THE COURT: Five-one?

20 MR. GRAYCK: -- I did say five-one, yes.

21 BY MR. GRAYCK:

22 Q. Matt, just -- do you recollect what that document is?

23 A. Yes, this is from our deposition.

24 Q. Right. And I'm trying to do this with -- again with
25 your attorney's permission to save us a little time. Do you

1 recall what that's -- what is shown on Exhibit 51?

2 A. I believe it's the streams going through the area.

3 Q. And it's the streams going through the area that you
4 thought were adversely affected; am I right?

5 A. Correct.

6 Q. Okay.

7 MR. GRAYCK: Plum Creek moves to admit Exhibit 51.

8 MS. SCHWARTZ: No objection.

9 THE COURT: Plum Creek 51 is admitted.

10 (A document from Matthew Langlais' deposition showing
11 adversely-affected streams was hereby received into evidence
12 as Plum Creek 51, as of this date.)

13 BY MR. GRAYCK:

14 Q. Now, in looking at Exhibit 51 and the streams that you
15 thought were adversely affected, are you able to tell whether
16 they extend off of the Clough Brook North harvest area?

17 A. I must assume that they do.

18 Q. But in looking at what you drew, okay, are you able to
19 see the blue lines that you drew on the exhibit? Do you have
20 a copy of it in front of you?

21 A. No, I don't.

22 Q. I apologize.

23 A. Thank you.

24 Q. You see how there's blue lines on it?

25 A. Yes.

1 Q. Yes. And you drew those lines; am I right?

2 A. Yes. I think you asked me to draw them during the
3 deposition.

4 Q. And you graciously -- you graciously agreed. Thank
5 you. Those lines, as I recall, represented your
6 identification of the streams that you thought had been
7 adversely affected by the Clough Brook North harvest; am I
8 right?

9 A. Correct.

10 Q. Okay. Are you able to discern from what you've put on
11 that map in the blue lines whether those lines extend off of
12 the Clough Brook North harvest area?

13 A. Yes, they would continue off of the Clough Brook
14 harvest area.

15 Q. In fact, it would continue within the Clough Brook
16 North watershed; am I right?

17 A. Yes.

18 Q. Okay. Now, do you know what the acreage of the Clough
19 Brook North watershed area is?

20 A. No, I don't.

21 Q. Do you believe that the Clough Brook North watershed
22 area extends to the entire 56,604 acres which Property
23 Valuation and Review proposes to disqualify?

24 A. No, I don't believe it would.

25 Q. So to some extent, what you consider to be the

1 environmental harm doesn't extend into the 56,604 acres; am I
2 right?

3 A. Correct.

4 Q. And it certainly couldn't extend upstream of Clough
5 Brook North, the harvest location, right?

6 A. It certainly could if the water quality violations
7 impeded fish passage.

8 Q. Could it exceed beyond the headwaters of Clough Brook
9 North -- of Clough Brook river stream?

10 A. Yes.

11 Q. And how far?

12 A. I couldn't venture a guess right now.

13 Q. Okay. But you didn't do any further investigation
14 with respect to harmed wildlife with respect to what you
15 observed from Plum Creek at Clough Brook North; am I right?

16 A. No. I would not have needed to for filing an adverse
17 inspection.

18 Q. But as a employee of the Agency of Natural Resources
19 in the Department of Forest, Parks and Recreation, as an
20 employee of the Division of Forestry, you're certainly
21 familiar with other departments of the Agency of Natural
22 Resources, aren't you?

23 A. Yes, I am.

24 Q. And that includes the Department of Fish and Wildlife,
25 doesn't it?

1 A. Yes, it does.

2 Q. And in fact, in your office in St. Johnsbury, are
3 there members of the Department of Fish and Wildlife who are
4 stationed in St. Johnsbury?

5 A. Yes, there are.

6 Q. And if you thought there was problems with Clough
7 Brook North, you wouldn't hesitate to go talk with them; am I
8 right?

9 A. I think that I would let it work through the
10 enforcement officer to extend that invitation to Fish and
11 Wildlife to work through that.

12 Q. And that's Reg Smith; am I right?

13 A. Yes, Reg Smith.

14 Q. Environmental Enforcement Officer Reg Smith; am I
15 right?

16 A. Correct.

17 Q. Have you had any conversations with him regarding this
18 Clough Brook North since the original incident arose in
19 January of 2010?

20 A. No, I don't believe I have.

21 Q. Okay. And, of course, if you had thought that the
22 harvesting occurred above the elevation of 2,500 feet, you
23 would have sought out the district coordinator for Act 250 in
24 the St. Johnsbury office, wouldn't you have?

25 A. Possibly, yes.

1 Q. Yes. And the district coordinator is Kirsten Sultan,
2 isn't it?

3 A. Correct.

4 Q. Yes. You know Kirsten, don't you?

5 A. Yes, I do.

6 Q. So if you were taking your inventory of Clough Brook
7 North and you thought there was an Act 250 violation, you'd go
8 talk to her, right?

9 A. Possibly, yes.

10 Q. Okay. And as I recall, there's also a stream
11 alteration engineer in the St. Johnsbury office or at least
12 there used to be. His name is Barry Cahoon?

13 A. Correct.

14 Q. Does he still work there?

15 A. I couldn't tell you.

16 Q. Have you seen Barry lately?

17 A. He comes in and out at strange hours.

18 Q. Okay. But he was certainly working there at the time
19 of the Clough Brook North --

20 A. He might have been in Waterbury at that time.

21 Q. Okay. But if you thought that a stream had been
22 substantially damaged, you could have consulted with him or at
23 least put him on notice?

24 A. Yes, and again I relied -- relied upon our AMP
25 foresters, Jeff Briggs who contacted Reg Smith, to do that.

1 Q. Okay. And ultimately AMP Forester Briggs communicated
2 with Plum Creek; am I right?

3 A. Yes, he did.

4 Q. And that correspondence is already in evidence. Yes?

5 A. Yes, it is.

6 Q. Thank you. Mr. Langlais, could you turn to the UVA
7 Manual again? And the UVA Manual is Exhibit 22A. Now, you
8 can understand how an enrolled property owner in UVA relies on
9 this manual just like you do, correct?

10 A. I'm sorry. I'm not finding it. You said 22A?

11 Q. Do you need another copy of the 2006 manual? Did we
12 give you one? I believe maybe you put it in -- is it
13 possible --

14 A. It's missing from where it states it should be.

15 Q. Okay. Could you check Exhibit 36 or 35? Perhaps it
16 was -- I believe it's right in front of you if I just -- see
17 if we can help solve the mystery of the missing --

18 A. Okay. I'm sorry

19 Q. -- manual -- the missing manual. Okay?

20 A. Right in front of me.

21 Q. Right in front of you. Yes?

22 A. Yes, it is.

23 Q. Okay. Thank you. The manual has a UVA Form 1,
24 correct?

25 A. Yes.

1 Q. Okay. And I'm just going to ask that we give everyone
2 a chance to turn to it. It's Page 38; am I right?

3 A. Correct.

4 Q. Okay. And UVA Form 1 is a Current Use Program
5 Conformance Inspection Report; am I right?

6 A. Correct.

7 Q. Okay. Do you regularly use or did you regularly use
8 this form while the 2006 manual was in effect?

9 A. Yes.

10 Q. And you know what this form is for, correct?

11 A. I do.

12 Q. Okay. Did you issue any UVA Form 1's to Plum Creek?

13 A. No.

14 Q. Could we go to the Essex Timber Company -- I'm sorry.
15 Exhibit 14. What was the Essex Timber Company Forest
16 Management Plan but which is now the Plum Creek Forest
17 Management Plan. Are you there?

18 A. Yes, I am.

19 Q. Could you go to Page 51, please? Are you there, Page
20 51?

21 A. Yes.

22 Q. Okay. It's headed Residual Stand Objectives. Yes?

23 A. Yes, it is.

24 Q. Okay. Now, Attorney Duane did an illustration on the
25 blackboard. Do you see it?

1 A. Yes, I do.

2 Q. Do you recall it?

3 A. Yes, I do.

4 Q. Okay. Could you please turn to Page 53? Do you see
5 the top diagram on Page 53?

6 A. Yes.

7 Q. And it illustrates a clumped retention zone, does it
8 not?

9 A. Yes, it does.

10 Q. And the rest of the box is bare, isn't it?

11 A. Yes, it is.

12 Q. And this is part of the Essex Timber Company Forest
13 Management Plan, correct?

14 A. Yes, to me --

15 Q. And it's part of the plan which you approved for Essex
16 Timber Company, correct?

17 A. Yes, for its specific purpose.

18 Q. And it's also the plan which Plum Creek adopted with
19 your approval, correct?

20 A. Correct.

21 Q. Thank you.

22 MR. GRAYCK: Your Honor, may I have a moment with my
23 client?

24 THE COURT: All right. (Pause).

25 Q. Mr. Langlais, there's been talk of ice damage to the

1 stands. Do you recall testimony to that effect?

2 A. I heard that, yes.

3 Q. And in your cruising, in your site visits, have you
4 seen evidence of that ice damage?

5 A. Yes, I have.

6 Q. And the stands have also been described as variable.
7 Do you recall?

8 A. I recall that Plum Creek described them as variable.

9 Q. And variability is a function of species. Yes?

10 A. Any number of components.

11 Q. Yes. Species?

12 A. Species, correct. Yes.

13 Q. Age?

14 A. Yes.

15 Q. Yes?

16 A. Yes.

17 Q. Vigor?

18 A. No, I wouldn't believe vigor would be --

19 Q. Okay.

20 A. -- an issue with variability.

21 Q. Crown size?

22 A. Yes, you could have variable crown sizes in a stand.

23 Q. And whether it's hardwood type or a softwood type?

24 A. Correct.

25 Q. And you're aware that the prior practices of Champion

1 have been described as extractive or hydrating?

2 A. Some people have said that, correct.

3 Q. Okay. And you've done cruising of various portions of
4 the former Champion land?

5 A. I cruised 9,000 acres that was purchased by the State.

6 Q. And then I assume that you have sufficient skill to
7 distinguish harvesting that was done twenty-five years ago as
8 opposed to harvesting that's been done within the past five
9 years. Yes?

10 A. Yes.

11 Q. So if you wanted to ascertain to what extent the stand
12 had been harvested by Champion, you're sufficiently skilled to
13 do so; am I right?

14 A. Yes.

15 Q. Now, my understanding of the Commissioner's decision
16 is that it, in part, states that as a result of the activity
17 undertaken by Plum Creek but which had halted that new stands
18 have been created; am I right?

19 A. Correct.

20 Q. Could you please show me in the UVA -- in the 2006 UVA
21 Manual where it allows the State to divide an existing parcel
22 into two on its own accord?

23 A. On Page 32, near the bottom of Page 32 on No. 5, our
24 definition of a stand which states, "A group or groups of
25 trees sufficiently uniform in age class distribution,

1 composition and structure and growing on a site of
2 sufficiently uniform quality to be a distinguishable unit."

3 Q. Okay. Now, that's contained in the portion of the
4 2006 manual which are the standards for Forest Management
5 Plans; am I right?

6 A. Correct.

7 Q. Okay. And those standards are what someone uses when
8 they're drafting a Forest Management Plan; am I right?

9 A. Correct.

10 Q. Okay. But what I want you to point out to me is where
11 it's authorized in the 2006 manual that the State, that FDR,
12 that used you as the county forester have the authority to
13 identify the creation of new stands in the course of a harvest
14 which has been authorized.

15 A. The harvesting that has occurred has created two
16 different stands because it no longer meets the definition
17 that the department uses to define a stand.

18 Q. But doesn't that determination need to be made at the
19 conclusion of the harvesting?

20 A. It can be made at any time those conditions or those
21 components are no longer similar. At any point they become
22 dissimilar, they are then two different stands.

23 MR. GRAYCK: One more moment, Your Honor, if I may.

24 (Pause). Thank you, Your Honor. Nothing further.

25 THE COURT: Okay. Ms. Schwartz --

1 MR. GRAYCK: Just -- no, I apologize. I've been --

2 THE COURT: Oh.

3 MR. GRAYCK: -- I've been paged by senior counsel.

4 BY MR. GRAYCK:

5 Q. Mr. Langlais, I believe you testified that you used
6 the David Smith publication as part of your determination of
7 the cut contrary; am I right?

8 A. Yeah, to define the irregular shelterwood term.

9 Q. Okay. If I was a landowner and I was trying to figure
10 out what you rely upon to make your decisions, how would I
11 know you use the David Smith publication if it's not in the
12 list in the 2006 manual?

13 A. Because that's a book that all foresters take when
14 they go to forestry school, and landowners usually reply --
15 landowners usually rely upon foresters to prepare their Forest
16 Management Plans, and that's a -- that's a staple textbook in
17 all forestry curriculum.

18 Q. Mr. Langlais, I'm going to show you your deposition
19 from October 17th, 2011.

20 MR. GRAYCK: Your Honor, may I?

21 THE COURT: Yes.

22 Q. Is that your signature at the bottom?

23 A. Yes, sir.

24 Q. Thank you. I'd like you to read beginning at Line 6
25 and concluding at Line 18, if you may.

1 A. Thank you.

2 Q. Thank you.

3 A. Question, "If I was a landowner and I was trying to
4 figure out what you rely upon to make your decisions, how
5 would I know you use the David Smith publication if it's not
6 in the list in the 2006 manual and it's 2009? How would I
7 know you used the David Smith book if it's not listed here?"
8 Answer, "You wouldn't specifically. The David Smith book is
9 just one reference that I used. I used many of the references
10 listed in this 2006 appendix. Does your Adverse Inspection
11 Report reference the publication The Practice of Silviculture
12 by David Smith?" Answer, "No."

13 Q. So basically what you're saying is that you get to
14 pick and choose which guides you want to use to make a cut
15 contrary determination; is that correct?

16 A. No, sir.

17 MR. GRAYCK: Thank you, Your Honor. Nothing further.

18 THE COURT: Ms. Schwartz?

19 MS. SCHWARTZ: Your Honor, we don't have any
20 questions for Mr. Langlais. Thank you.

21 THE COURT: All right. That completes your
22 testimony. You can step down. Thank you.

23 THE WITNESS: Thank you.

24 MR. DUANE: Your Honor, with that, the State rests
25 its case in chief.

1 THE COURT: All right. Mr. Grayck?

2 MR. GRAYCK: Your Honor, given that it's five of 5
3 and we do believe we'll be able to finish tomorrow, would it
4 be all right if we adjourn for today and resume with Plum
5 Creek's rebuttal case tomorrow morning?

6 THE COURT: All right. We will continue at 9 o'clock
7 in the morning.

8 MR. GRAYCK: Thank you, Your Honor.

9 MS. SCHWARTZ: Thank you.

10 MR. DUANE: Thank you, Your Honor.

11 THE CLERK: All rise.

12 (Proceedings concluded at 3:30 PM)

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

I, Donna Gould, the court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Donna Gould

June 27, 2013

DONNA GOULD

DATE

AAERT Certified Electronic Transcriber CET**D-679

<p>A</p>	<p>active (2) 56:1,12</p>	<p>54:11</p>	<p>4:4,13;11:4;14:5; 63:5;65:25</p>	<p>appropriate (2) 7:21;35:20</p>
<p>able (10) 3:5;4:23;8:20;22:4, 5;80:11;82:15,18; 83:10;95:3</p>	<p>activities (3) 35:9;62:17;81:8</p>	<p>affect (3) 76:16;77:1;78:9</p>	<p>amendments (1) 33:19</p>	<p>approval (2) 33:18;89:19</p>
<p>above (5) 11:25;44:21;77:5; 78:12;85:22</p>	<p>activity (1) 91:16</p>	<p>affected (3) 82:4,15;83:7</p>	<p>among (1) 67:1</p>	<p>approved (1) 89:15</p>
<p>Absolutely (8) 15:16;16:9;19:17; 32:17;51:15;72:6;73:8, 8</p>	<p>acts (1) 46:21</p>	<p>afternoon (6) 3:6,23,24;43:12; 52:9,10</p>	<p>amount (15) 3:9;5:7;11:17,24; 31:12;34:8,18;35:23; 39:12;50:23;51:1,3,9, 16;69:15</p>	<p>approximately (3) 21:14;40:25;41:1</p>
<p>acceptable (10) 11:13,17;39:7;56:3, 16,24;57:19;58:21; 59:13;61:11</p>	<p>actual (1) 61:20</p>	<p>again (14) 10:10;22:16;25:13; 28:20;34:11;37:3,9,21; 39:1,4;60:22;81:24; 86:24;87:7</p>	<p>AMP (4) 10:19;81:12;86:24; 87:1</p>	<p>April (7) 5:19;6:1;23:4;25:15; 33:7;40:9;61:24</p>
<p>acceptance (1) 64:6</p>	<p>addition (4) 21:5;23:18;24:24; 44:8</p>	<p>age (3) 29:17;90:13;91:25</p>	<p>AMP's (6) 39:16,18;64:3,9,25; 65:3</p>	<p>arbitrarily (2) 9:5,6</p>
<p>accepted (1) 28:23</p>	<p>additional (2) 23:22;58:2</p>	<p>Agency (5) 44:10;46:18,21; 84:18,21</p>	<p>analyze (2) 8:9;17:11</p>	<p>area (67) 5:6,13;6:12,21,23,24, 25;7:2,2,15,16;9:2,4; 10:5,7;11:12;12:14; 14:14,21;15:22,23; 16:23,24;17:20,22,23, 24;18:3,14,24,25; 19:14;20:2;22:12; 27:25;28:1,2,4,14;29:1, 1,2,3,6,24;34:23;37:2; 41:14;63:24;64:19; 73:21,23;76:7,14,17, 23;77:2,6;78:9,13; 82:2,3,16;83:12,14,19, 22</p>
<p>access (2) 41:3;80:11</p>	<p>Address (2) 43:22;68:17</p>	<p>agents (1) 35:24</p>	<p>analyzed (1) 25:20</p>	<p>Anderson (3) 19:6;42:6;49:24</p>
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<p>accord (2) 56:13;91:22</p>	<p>admissibility (2) 47:3,14</p>	<p>agreed (3) 8:18;19:13;83:4</p>	<p>anyone (2) 46:6,14</p>	<p>arguing (1) 25:21</p>
<p>accordance (1) 56:3</p>	<p>admissible (1) 27:2</p>	<p>agrees (1) 45:5</p>	<p>apologize (12) 3:3;23:7;53:16,19; 67:14,15,17;71:12,14; 78:24;82:22;93:1</p>	<p>arose (1) 85:18</p>
<p>according (1) 7:20</p>	<p>admission (2) 43:23;44:15</p>	<p>agricultural (1) 49:18</p>	<p>appeal (12) 26:12;27:9;30:22; 31:1,2;33:11,12;34:2, 5;59:17;60:14;72:3</p>	<p>arrive (1) 40:23</p>
<p>accounted (1) 51:20</p>	<p>admit (3) 42:25;71:10;82:7</p>	<p>alleged (1) 81:1</p>	<p>appear (2) 36:25;44:11</p>	<p>ascertain (1) 91:11</p>
<p>accounting (1) 66:12</p>	<p>admitted (16) 12:4;18:7;25:1,5; 30:16;35:5;44:14,19; 47:11,24;48:7;61:25; 67:25;71:16;72:8;82:9</p>	<p>allocate (2) 21:25;22:5</p>	<p>Appendix (5) 53:24;57:16,20; 58:20;94:10</p>	<p>asserting (1) 27:11</p>
<p>accurate (2) 8:25;19:20</p>	<p>adverse (41) 5:3,6,22;6:2;7:12; 10:20;16:16;17:3;23:3, 4,9,16;24:4,5;25:21; 26:24;30:14;34:1,4; 37:16,19,20;38:2,22; 40:1;59:10;60:1;61:13, 16,25;62:3,8,14,20; 74:6,19,20;75:4,7; 84:16;94:10</p>	<p>allow (2) 48:24;59:6</p>	<p>applicable (1) 57:5</p>	<p>assertion (1) 26:18</p>
<p>acre (4) 7:20;12:14;15:10; 17:2</p>	<p>adopted (2) 43:10;89:18</p>	<p>allowed (1) 25:17;35:7</p>	<p>application (2) 52:14;55:4</p>	<p>assessment (1) 61:12</p>
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<p>across (1) 12:15</p>	<p>adversely-affected (1) 82:11</p>	<p>along (6) 8:17,18;39:14;70:24; 71:22;80:19</p>	<p>Appraisal (7) 31:17;33:24;40:1,6; 54:17;57:6;69:19</p>	<p>assume (2) 82:17;91:6</p>
<p>Act (4) 44:3;46:21;85:23; 86:7</p>	<p>advice (2) 31:13;34:9</p>	<p>although (2) 3:4;36:7</p>	<p>approach (13) 10:12;18:5;20:6; 24:15,17;25:6;30:18; 42:12;43:1;47:20;48:5; 53:5;77:12</p>	<p>at-risk (1) 14:13</p>
<p>acting (1) 66:7</p>	<p>Advisory (6) 52:16,19,23;53:1,25;</p>	<p>always (1) 27:9</p>	<p>approaching (2) 11:25;12:21</p>	<p>attaches (2) 26:9;46:23</p>
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IN THE VERMONT SUPERIOR COURT
ESSEX COUNTY CIVIL DIVISION

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PLUM CREEK MAINE)	Case No. 72-12-10Excv
TIMBERLANDS, LLC,)	30-6-11Excv
Plaintiff,)	Guildhall, Vermont
)	
- against -)	
)	June 4, 2013
VERMONT DEPARTMENT OF)	8:47 AM
FOREST and PARKS,)	
Defendant.)	
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PLUM CREEK MAINE)	Case No. 19-4-11Excv
TIMBERLANDS, LLC,)	31-6-11Excv
Plaintiff,)	Guildhall, Vermont
)	
- against -)	
)	
VERMONT DEPARTMENT OF TAXES,)	
Defendant.)	
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TRANSCRIPT OF COURT TRIAL

BEFORE THE HONORABLE MARY MILES TEACHOUT,
SUPERIOR COURT JUDGE

APPEARANCES:

DAVID L. GRAYCK, ESQ.
Attorney for the Plaintiff

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I N D E X

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Rebuttal for Plum Creek:					
Robert Holleran	3	43	44		35
Christopher Fife	45	67	70		
Surrebuttal for the State of Vermont:					
Matthew Langlais	72	82	88	89	

EXHIBITS:	DESCRIPTION	MARK	ADMIT
For Plum Creek:			
102	Revised Table 1	35	42
103	Map	53	54
104	Pages from Practice of Silviculture	104	--

1 (Proceedings convened at 8:47 AM)

2 THE COURT: Please be seated. Good morning.

3 MR. MICHAEL DUANE: Good morning.

4 THE COURT: Mr. Grayck?

5 MR. DAVID GRAYCK: Thank you, Your Honor. Mr.
6 Holleran, please?

7 ROBERT HOLLERAN

8 having been duly sworn, testified as follows:

9 REBUTTAL DIRECT EXAMINATION

10 BY MR. GRAYCK:

11 Q. Good morning Mr. Holleran.

12 A. Good morning.

13 Q. You've been here to hear the testimony of County
14 Forester Langlais?

15 A. Yes.

16 Q. Okay. And you heard his testimony in response to
17 your reports?

18 A. Yes.

19 Q. Okay. And you've heard his criticisms of the
20 protocol for basal area plots?

21 A. Yes.

22 Q. Could you explain your protocol for basal area plots;
23 the reports you've done?

24 A. The -- the whole process of forest sampling provides
25 an estimate and not a true value. If you were sampling a --

1 let's say a tank of maple sap for the sweetness and you mix it
2 all up, it's remarkably uniform. One sample will do to give
3 you a reliable estimate. Forests, on the other hand, are much
4 more diverse than that, and one of the things that we do is we
5 take a number of plots to average for a -- a better estimate.

6 The protocols that a forester might use in sampling a
7 forest, there's a range of things that we might do. You
8 notice that all of us used a ten-factor prism, for example.
9 There's other factors and reasons to use other factors for
10 different types of cruises. We all use the GPS to go find our
11 plots. We all -- I'm sure that all the foresters that were
12 involved in these cruises are skilled at deciding which trees
13 to accept as in or out of plots, and locating their plots,
14 setting up the cruise.

15 The -- there are a number of biases that can be put
16 into a cruise by improper procedure. And probably the most
17 important one is how to handle borderline trees. And if
18 you're just doing a management plan type of cruise, or even a
19 timber inventory, it's common procedure to -- with the prism,
20 you can tell which trees are clearly in and clearly out, but
21 there's a tree that is just right on the edge of the plot for
22 its radius -- for the tree's diameter. And what we used is a
23 research quality protocol for that where you actually measure
24 the distance from the plot center to the tree. You measure
25 the diameter of the tree to the nearest tenth of an inch. And

1 you compare that to a table to determine whether the tree is
2 in or out. I haven't heard anybody else mention how they
3 handle borderline trees. But that's what we did --

4 THE COURT: Would you repeat that please?

5 A. It's a procedure for determining borderline trees
6 called limiting distance where when you -- as I explained, if
7 you hold up your thumb and you've got a tree that's just
8 exactly the size of your thumb, in essence, and it's not
9 clearly in or out of the plot, we measure the distance from
10 the center of the plot to the tree to the tenth of a foot. We
11 measure the diameter of the tree to the tenth of an inch, and
12 there's a ratio that's in a table that we carry with us in the
13 field and look at the table and see that the tree is 10.4
14 inches, and the distance is 44.2 feet, and then you can see
15 oh, this tree is clearly in or out of plot.

16 And the reason that's important is trees aren't
17 always perfectly round so if you're looking at the wide side
18 of the tree, it might appear in, but it's out. If you're
19 looking at the narrow side of the tree, if it's oblong, then
20 it might appear out when it's in. And as I said, I didn't
21 hear anybody else mention what they did for protocol for
22 borderline trees.

23 Now, there's several other kinds of bias. For
24 example, if you have plots that are at the edge of a stand,
25 there are no -- or along a road -- what we did for that is, if

1 the plots fall right at the edge of a truck road, or a
2 landing, we would move perpendicular to the edge of that area
3 that's not part of that forest until the plot was completely
4 in, the minimum distance that we would need to move so that
5 the plot would be outside of that road. But at the edges of
6 stands, especially with the irregular shapes of some of these
7 sample areas, you have a lot of plots that would be close to
8 an edge. And one protocol would be to move, say,
9 perpendicular to that edge a fixed distance fifty or a hundred
10 feet, or something like that. We elected not to use that type
11 of a protocol, but to take the plots where they fall and
12 measure the trees even if it included one or two trees that
13 were outside of the stand so to speak.

14 And we did that for a very important reason. If
15 you -- if say you're at something that you think is a stand
16 boundary, and you elect -- you take the plot there but don't
17 count, say, the two trees that might be across the stand
18 boundary, but you're not sampling the whole plot, and that
19 brings in a worst bias in my opinion.

20 But the other thing is edges are often different.
21 And if you, by protocol, move every plot, say, a hundred feet
22 away from an edge, then you're not sampling that edge. And if
23 the edge is different, you're missing an important part of the
24 sample, especially with these irregular and narrow sampling
25 units in some cases. And one example of that would be the

1 edges, for example, might be more shaded. And in a shaded
2 environment, you might have more shade-tolerant trees like
3 sugar maple or spruce. And especially in a regeneration
4 survey, if you moved all your plots away from the edge, you
5 wouldn't necessarily be sampling all of the perimeters of that
6 area.

7 And Mr. Langlais' specific criticism of my protocol
8 had to do with possibly moving the plot to some kind of a more
9 favorable position within the accuracy of the GPS. So I don't
10 know if you've ever used a hand-held GPS, or a GPS maybe in
11 your car, but you notice when in a vehicle GPS, if you're in a
12 parking lot, the GPS doesn't quite know really where you are
13 or where you're headed sometimes, or if you pull off of the
14 road. With a hand-held GPS, it shows a point that is your
15 location. And in this case, it shows the predetermined point
16 from our cruise setup that is our plot location. And as
17 you're walking to it, there's some inaccuracy. And as you
18 stop moving, it gets more accurate. So you'd walk to -- you'd
19 walk towards the plot, but it's kind of moving around you, and
20 what we would do is walk around until the plot and until my
21 location crossed over the plot center. And as soon as
22 it -- as soon as it told me the first time that I was on the
23 plot, I would stop right there and take the plot. And that
24 involved a little wandering and Matt witnessed that.

25 Now, his conclusion is that I may have been moving

1 the plot around to get a more favorable location for that plot
2 but I had already reviewed these areas and done a preliminary
3 regeneration survey and was aware that there were probably at
4 least ten thousand trees per acre in the regeneration strata.
5 And with the threshold of 350, it would be ludicrous to move
6 my plot around to try to gain one or two more trees on a plot.
7 And then to -- to apply that to the basal area plots, we want
8 a true and representative sample to give as best estimate as
9 we can of the basal area. So it's again ludicrous to think
10 that we moved the plots around to gain a few trees on some of
11 the plots.

12 And along with that I would like to say that this has
13 probably been the most looked at piece of forest land in
14 Vermont in the last few years. We've heard about four
15 different samples taken in these areas. Landvest cruised, I
16 think, all of stand 34. I don't know if they looked at the
17 other stands. Dirigo from Maine was cruising with nothing to
18 do with this case or the use value or anything like that. My
19 understanding is they were looking at regeneration, I think,
20 in relation to overstory basal area. And so their points they
21 covered some of the same areas that we covered, but they
22 weren't sampling the same areas that we're talking about, so
23 their numbers are not really particularly valid.

24 But I just find it interesting that Mr. Langlais was
25 in perfect agreement with Landvest and thought they did a

1 great job, and he was in agreement with Dirigo when Dirigo's
2 plots were within the same kind of estimate on some of the
3 areas. But on the areas where Dirigo's numbers were
4 significant different than Mr. Langlais, all of a sudden he's
5 suggesting that maybe -- that maybe they had some kind of an
6 improper protocol. So --

7 Q. Mr. Holleran you testified as to your experience. I
8 would like to ask you when, if at all, have you used the same
9 or similar methods you just described in your other work with
10 other county foresters?

11 A. We do at least thirty, maybe forty, management plans
12 every year that involve similar cruising, but at a much lower
13 intensity; usually one plot every four to ten acres depending
14 upon the landowner's interest there. And my work has never
15 been called into question.

16 Q. Could you identify some of the county foresters
17 who've reviewed your work and approved forest management plans
18 that you've prepared?

19 A. Well, most of my work is in the four southern
20 counties which have five county foresters. And so Sam
21 Schneski is the one I work with most of the time close to
22 home, and Bill Guenther, Jon Bouton, Kyle Mason is the new guy
23 down in Bennington County, and Chris Stone is in Rutland
24 County, but also Dave Paganelli, Russ Barrett. Those would be
25 the seven county foresters I work with the most.

1 Q. Now, we've heard testimony with respect to the guide;
2 the Bill Leak Guide NE-603. Can you explain how NE-603 uses
3 discretionary language in comparison to the program manual;
4 for example, in regards to regeneration? And in that respect,
5 if you could turn to Page 16 of the guide, and also have
6 available the program manual at page 29.

7 THE COURT: Okay, the --

8 MR. DUANE: Your Honor, I'm sorry, excuse me,
9 objection. This appears to be general evidence rather than
10 rebuttal. These guides were discussed in their case in chief.

11 MR. GRAYCK: Your Honor, I believe that there was
12 cross-examination of Mr. Langlais on the topic of the guides,
13 the role they play, and to what extent there are conflicts in
14 the guide, other guides, and the program manual.

15 MR. DUANE: Your Honor, I believe that came out in
16 the case in chief. I'm not sure what the rebuttal question
17 is, if any.

18 THE COURT: What is the rebuttal question?

19 MR. GRAYCK: The rebuttal question is to respond to
20 Mr. Langlais' testimony regarding conflicts between guides and
21 the program manual specifically in respect to the issue of
22 regeneration which we've been discussing.

23 THE COURT: It's a pretty general question just to
24 respond to Mr. Langlais'.

25 MR. GRAYCK: Okay. I'll -- I'll --

1 THE COURT: You can narrow the question.

2 MR. GRAYCK: Yup. Okay.

3 BY MR. GRAYCK:

4 Q. Mr. Holleran, you heard Mr. Langlais testifying that
5 the specific requirement for regeneration is in NE-603. Okay?

6 A. Yes.

7 Q. How, if at all -- or could you please explain in
8 response to that testimony with respect to where you think the
9 requirement for regeneration is located?

10 A. I'd like to open up the -- the guide which is Exhibit
11 2 of Exhibit 36 and I'd just like to read a paragraph and a
12 half to explain to offer the type of language that's used.

13 So on page 16 of the guide, I'm just going to read
14 the first sentence of the second paragraph under regeneration
15 where it says: "One approach to evaluating regeneration
16 following clear cutting is to take a series of circular plots,
17 each one seven hundredth to one, one thousandth acre in size."

18 Q. Okay.

19 A. Matt and I both did that.

20 Q. Okay.

21 A. And then on the top of the second column, so the next
22 paragraph, it says: "Data from shelterwood cuttings in the
23 lake states indicate that at least five thousand well
24 distributed seedlings per acre three to four feet tall should
25 be present before the removal cut. After the removal cut, the

1 regeneration can be evaluated using the plot system described
2 for clear cutting."

3 Q. Okay.

4 A. And now I'd like to turn to the program manual which
5 I have as Exhibit 5. And the page number Mr. Grayck?

6 Q. 29. And the Court has it as 22(a).

7 A. So in the program manual under regeneration on page
8 29, and we've looked at this before, it says: "For newly
9 regenerated stands, the successful establishment of acceptable
10 species must be not less than 350 stems per acre well
11 distributed throughout the stand three years after the
12 regeneration cut is made or for initial eligibility."

13 Q. And in response to Mr. Langlais' criticism that you
14 improperly used the 350 standard, when if at all, have other
15 county foresters accepted that as the regeneration standard?

16 A. I've never seen any other standard used than -- than
17 the program manual.

18 Q. So to clarify and make it clear, in response to his
19 criticism, have any other county foresters ever denied or
20 rejected your usage of the 350 standard on page 29 of the
21 program manual?

22 A. No.

23 Q. Mr. Langlais testified regarding the gaps. Do you
24 agree with his definition?

25 A. The definition of gaps is poorly defined, and in

1 looking at a number of treatises, gaps are not mentioned in
2 any 603 which is the applicable guide to this forest type.
3 There are -- all different books have different definitions,
4 so I believe that the applicable definition is found in the
5 program manual in the minimum standards for management plans,
6 so it's going to be page maybe 33 -- 34.

7 Q. 34. We'll just give the Court a moment to get there.
8 Okay.

9 A. So I'm going to read that second paragraph. "It is
10 recognized that the practice of forestry is both art and
11 science, and that specific silvicultural treatments often
12 differ from place to place within a stand due to normal stand
13 variability. Even so, it is the responsibility of the
14 landowner to supply enough detail about the proposed stand
15 prescription that it can be effectively evaluated by the
16 Department of Forest, Parks and Recreation. If the
17 silvicultural prescription calls for the creation of openings
18 larger than one quarter acre in size, provide a statement of
19 the intent and size range of the openings and an estimate of
20 the residual basal area between the openings."

21 So I believe that that language makes it clear that
22 gaps can certainly be as large as one quarter acre without
23 being further defined, as they were in stand 34, for example.

24 Q. Okay. Now, Mr. Langlais testified about shelterwood,
25 do you recall?

1 A. Yes.

2 Q. Okay. In response to that testimony, can you please
3 tell us what is the acceptable basal area range for a two-
4 stage shelterwood treatment?

5 A. Two-stage shelterwood can have a wide range of
6 residual basal areas. It can be as high as eighty, or it may
7 be even higher for softwood stands. For hardwood stands, it
8 would tend to be in the eighty range down to as low as twenty
9 as an acceptable treatment for two-stage shelterwood.

10 Q. Okay. Now, regarding stand 34, Mr. Langlais
11 testified that essentially the wrong trees were left, do you
12 recall?

13 A. Yes.

14 Q. Okay. How, if at all, do you disagree with that
15 testimony?

16 A. Well, if you'll recall, Mr. Langlais drew the
17 beautiful artistic rendition on the board there showing those
18 giant crowns like the oak tree out on the green, and if you'll
19 remember in the forest, it didn't have trees like that to
20 start with. It tended, in the uncut areas that we saw, the
21 crowns were more moderate in size. But there's a -- there is
22 a range in crown sizes and we have names for them, of course,
23 because we're foresters; we have names for everything. And we
24 call the larger crowns dominate; they kind of dominate the
25 crown. The ones that are not quite as big as the largest are

1 called co-dominant. The next category is called intermediate,
2 which would tend to be the ones that are in the main canopy
3 but definitely struggling. And then the suppressed trees
4 would be the trees that don't reach the main canopy of -- of
5 the crown. And sometimes those are defined as trees of the
6 same age that are definitely runts, but you could also say
7 that an understory that's younger is also suppressed
8 underneath the overstory so Mr. Langlais suggested that the
9 larger trees were cut, and the smaller runty trees were left,
10 I think was the general thrust of his testimony.

11 Q. Now, in -- in illustrating your testimony, can you
12 please turn to photo Exhibit 71? Again, in response to Mr.
13 Langlais' testimony, can you please show to the Court how --
14 what's depicted in photo Exhibit 71 illustrates your answer?

15 A. This is part of our site visit where we walked
16 through, and this is the more heavily cut portion with the
17 patch cuts on that west side of stand 34. And you can see
18 that basically every tree in this picture was a main-canopy
19 tree with a full rounded crown all the way around. There's
20 one tree here that's more of a co-dominant or possibly
21 intermediate tree but the -- as we just looked through the
22 whole forest, almost every tree there has a nice big crown.

23 Q. And could you please turn to photo Exhibit 82? And
24 could you please explain how, if at all, that the photo
25 illustrates your response to Mr. Langlais' testimony?

1 A. So this also shows the majority of the remaining
2 trees have main, you know, large crowns in the main canopy.
3 You've got kind of a leave group here that's going to include
4 smaller crown trees, but you can see that the trees at the
5 edge are the full-size crowns, that these trees are larger
6 than average here. These are not the small runty trees left.

7 Q. And if you could please turn to photo Exhibit 83.
8 And explain how, if at all, that photo is responsive to Mr.
9 Langlais' testimony?

10 A. Again, the same situation as we scan through this.
11 You see mostly trees with large full crowns.

12 Q. And turning to photo Exhibit 84, could you please
13 explain how that photo illustrates your response to Mr.
14 Langlais?

15 A. Again, the same situation here. You can see one
16 tree here that's a suppressed or intermediate tree that was
17 left, but the majority of the trees are definitely main-canopy
18 trees with full crowns.

19 Q. And turning to photo Exhibit 86, could you please
20 explain how that photo illustrates your response to Mr.
21 Langlais' testimony?

22 A. The same here. The main trees that you see are
23 overstory trees with full crowns. There's a few understory
24 trees that remain in this area, but that wasn't particularly
25 typical.

1 Q. And again turning to photo Exhibit 87.

2 A. This is back down on the landing with a view off into
3 the forest, and you have a long range view, but you don't see
4 spindly ratty crowns covering the area.

5 Q. Turning to photo Exhibit 91 could you please explain
6 how it illustrates your response to Mr. Langlais' testimony?

7 A. This is over on the east side where it was more sugar
8 maple, and again you can see the -- the picture chops off a
9 lot of the crowns, but into the distance you see full crowns
10 on most of the trees.

11 Q. And lastly turning to photo Exhibit 94, would you
12 please explain how it illustrates your response to Mr.
13 Langlais' testimony?

14 A. Again, in that sugar maple section, you can see the
15 trees in the background are all full crowns. The one in the
16 foreground looks like a co-dominant tree, but it's kind of
17 chopped off there.

18 Q. Now, Mr. Langlais testified that the wrong trees were
19 left. That the small trees were left improperly, am I right?

20 A. Yes.

21 Q. Okay. Did Mr. Langlais -- did Mr. Langlais' cruise
22 measure any trees smaller than eight inches?

23 A. According to my review of Mr. Langlais' results, the
24 average diameter of the stand was eight inches and yet he
25 measured no trees on thirty-six plots that were smaller than

1 eight inches.

2 Q. So can you please explain why that's an
3 inconsistency?

4 A. Because the trees that were smaller than eight inches
5 must have been cut to leave trees that were eight inches and
6 larger.

7 Q. Because how does the stand description illustrate
8 that there were small trees there to begin with?

9 A. Well, if the tree of average basal area is eight
10 inches, then you're obviously going to have trees smaller than
11 eight inches and larger than eight inches. And the smaller
12 than eight inches were not in Mr. Langlais' results.

13 Q. Mr. Langlais testified regarding overall stand
14 residual basal area. Would you explain the phrase overall
15 stand residual basal area?

16 A. I --

17 MR. DUANE: Your Honor, objection. Again, I think
18 this is general evidence. It doesn't appear to be a question
19 in rebuttal. We covered this on -- in case in chief when Mr.
20 -- I believe --

21 THE COURT: Sustained. You may re --

22 A. It's plain English.

23 Q. No, no, no.

24 A. Oh, I'm sorry.

25 Q. The question was sustained.

1 A. Oh, sustained, I'm sorry.

2 Q. Mr. Holleran?

3 A. Yes?

4 Q. Do you recall Mr. Langlais' testimony regarding
5 overall standards of the basal area?

6 A. Yes.

7 Q. Okay. And do you recall the criticisms he made of
8 how you were using the phrase in your analysis?

9 A. I -- I think the gist of his testimony was that
10 the -- that he thought it was most appropriate to sample just
11 the portions that had been harvested.

12 Q. And in response to that?

13 A. That overall stand basal -- overall stand basal area
14 refers to the overall stand.

15 Q. And what has been your experience with respect to
16 other county foresters and their interpretation of that term?

17 A. The stand has always been the measure of unit -- of
18 the unit of measure.

19 Q. Now, do you recall Mr. Langlais' testimony where he
20 states that Plum Creek failed to execute the prescription
21 properly and, therefore, didn't fulfill its purposes?

22 A. Yes.

23 Q. Okay. What is your response to Mr. Langlais'
24 testimony regarding Plum Creek's execution of the primary
25 purpose of the stand 34 treatment?

1 A. Well, the primary purpose was to regenerate the stand
2 with two-stage shelterwood and patch cuts. So it requires two
3 different kinds of treatments. And I think as we look through
4 those pictures and see the adequate crowns for shelterwood
5 condition, suitable basal area for a range of shelterwood
6 treatments, and occasional areas where the basal area was
7 lower than what you would consider a shelter-wood treatment
8 that would be the required gaps for the -- in groups for the
9 prescription, that -- that the individual acres meet -- meet
10 the prescription. The stocking for that portion is low,
11 according to Mr. Langlais' data, but that it requires
12 measurement across the stand to comply with the prescription
13 language where it refers to overall stand residual basal area.

14 Q. Okay. Turning to stand 43. Mr. Langlais testified
15 that the cut contrary portion of stand 43 did not satisfy
16 requirements of two-stage shelterwood or overstory removal.
17 Can you respond to his testimony that it didn't comply with
18 two-stage shelterwood?

19 A. I believe Mr. Langlais looked at the forty-acre
20 portion of stand 43 and applied a standard of shelterwood
21 treatment across the entire forty acres and determined that
22 this particular forty acres is not all shelterwood so it
23 doesn't comply.

24 Q. Now, could you --

25 THE COURT: I'm sorry. Could you repeat that?

1 A. I believe that Mr. Langlais looked at the forty acres
2 that he determined was cut contrary to the management plan,
3 and he took the entire forty acres and used a measuring stick
4 of two-stage shelterwood treatment and said this entire forty
5 acres is not satisfactory implementation of a two-stage
6 shelterwood.

7 Q. And what about responding to his testimony regarding
8 overstory removal?

9 A. I believe he looked at the entire forty acres and
10 applied a measuring stick of overstory removal and determined
11 that the entire forty acres does not satisfy the requirements
12 for an overstory removal.

13 Q. And in response to that testimony, how did you
14 evaluate the forty acres in relation to the two treatments you
15 just described?

16 A. When you look at each individual section of stand 43,
17 you can clearly see either released understory shelterwood
18 conditions, or the occasional gap as allowed in the
19 prescription.

20 Q. And the gap would be which kind of prescription?

21 A. The prescription allows for gap treatments, and I
22 believe the gaps are defined in the program manual.

23 Q. Okay. Now, do you recall what Mr. Langlais'
24 testimony was with regard to whether OSR treatment could
25 happen outside the OSR box?

1 A. I believe Mr. Langlais did testify that OSR treatment
2 would be allowed where the understory was adequate.

3 Q. Okay. Now, you heard Mr. Langlais' testimony with
4 respect to what are acceptable species in the stand, do you
5 recall?

6 A. Yes.

7 Q. Okay. And could you just say what you recall of that
8 testimony?

9 A. Well, it's a -- it's a hardwood dominated mixed wood
10 stand, and I believe he used the phrase that it would -- it
11 would like to grow or would want to grow soft wood, and while
12 that sounds a little strange, I can perfectly understand that.
13 I might say the same thing. We do kind of think that we know
14 what the forest would like to do, and there are some areas
15 that are more prone to -- are better sites for growing one
16 specie or another and some portions of stand 43 are obviously
17 regenerating well to softwoods, but the stand is a long
18 strange shape, diverse stand from the bottom of the valley to
19 the top of the ridge, with a range of soils. And it is a
20 hardwood dominated mixed wood stand. It included a higher
21 proportion of hardwoods and softwoods initially. Some
22 portions have a higher proportion of softwood regeneration.
23 Some portions have a higher proportion of hardwood
24 regeneration. And particularly, yellow birch is well suited
25 to those sites. The softwood tends to grow in either the

1 wetter sections or areas with less nutrients. The sugar
2 maple, as we found, for example, on the east side of the stand
3 34, that's a richer site with sugar maple. But on the west
4 side of stand 34, you'll remember it was mostly yellow birch,
5 which is better suited to that heavier cutting in the patch
6 cuts, and low density shelterwood. And on that west side of
7 stand 43 in the adjacent areas, yellow birch is a perfectly
8 acceptable species for that forest type.

9 Q. Okay. Now, do you recall Mr. Langlais' testimony
10 regarding patchy -- patchiness? Patches and patchiness, do
11 you recall that?

12 A. Yeah, there was discussion about the variability in
13 stand 43.

14 Q. Okay. And what was your understanding of Mr.
15 Langlais' testimony with regard to the patchy arrangement of
16 two-stage shelterwood, overstory removal, and gaps in stand
17 43?

18 A. Well, I don't really remember exactly what he said
19 about that, but my recollection is that in analyzing the forty
20 acres as either all two-stage shelterwood, or all overstory
21 removal, he was not accepting the obvious variability in that
22 section of the stand.

23 Q. Okay. In response to that testimony, can you please
24 turn to photo Exhibit 55 and explain how it illustrates your
25 testimony in response to Mr. Langlais' testimony?

1 A. Well, this is part of the overstory removal box, and
2 you can see different heights of spruce trees indicating
3 probably older and younger trees. And while this is not a
4 typical overstory removal type of situation -- usually in an
5 overstory removal, the trees are young small trees, two,
6 three, four, five feet tall, sometimes a little taller. Some
7 of these are obviously thirty and forty feet tall; some older
8 trees. So you can see a patchy arrangement in the heights of
9 the spruce trees.

10 Q. Can you please turn to page 56, photo Exhibit 56, and
11 continue with your explanation?

12 A. Again, I think this is the north end of the overstory
13 removal box looking south, and you see some hardwoods, some
14 softwoods, you've got the skid trail that we walked on. And
15 you can see around behind here the trees are shorter, there's
16 a lot of daylight coming through, so it's an indication of
17 irregular nature of the area.

18 Q. And continue with photo Exhibit 57?

19 A. And this crosses over into the allegedly cut contrary
20 portion. And again, you can see shaded areas, sunny areas,
21 hardwood areas, tall trees, short trees.

22 Q. And how, if at all, does that illustrate patchy
23 arrangement?

24 A. I think that's a beautiful picture of patchy
25 arrangement.

1 Q. Can you turn to photo Exhibit 57?

2 A. That's 57.

3 Q. I'm sorry 58?

4 A. This is a little further over in the same area just
5 north of the overstory removal box. And again you can see the
6 patchy arrangement with tall trees, short trees, openings,
7 understory released. And most of these different areas are a
8 quarter of an acre in size.

9 Q. And turning to photo Exhibit 59.

10 A. Again, the same situation here. Mostly released
11 understory but some overstory trees. That's -- that's
12 probably a skid trail. So you can see various situations.

13 Q. And turning to photo Exhibit 60?

14 A. Here, the presence of larger trees spaced out is an
15 example of shelterwood group in -- in this patchy arrangement.

16 Q. Photo Exhibit 62?

17 A. This is a look at the regeneration, and while it's
18 very short, some of this is -- these fir trees I remember
19 looking at these fir trees, and even though they're small
20 trees, they're more than three years old, so these are
21 established seedlings that would be released in an overstory
22 removal type of situation.

23 Q. And photo Exhibit 65?

24 A. Can I stop at 64 for a minute?

25 Q. Yes.

1 A. And this is a riparian zone, an uncut portion
2 Of -- that was considered cut contrary. We're looking to the
3 north. We're standing right on the boundary so the area to
4 the north we're looking at here is in the allegedly cut-
5 contrary area, and it's obviously fully stocked.

6 Q. And now turning to photo Exhibit 65?

7 A. This is back up on the road where we were looking up
8 the boundary from stand 44 to stand 43. And again, you can
9 see scattered overstory trees with large crowns, some
10 overstory spruce and understory spruce, and new regeneration.
11 So it's -- it's very patchy.

12 THE COURT: Could you repeat what the overall point
13 is that -- his point about patchiness and your point about
14 patchiness? Somehow it got lost.

15 A. All right. In -- in -- I think Mr. Langlais
16 acknowledged the diversity, or what's the word I'm looking
17 for -- the diversity of arrangements in the stand. However,
18 in the forty acres that he alleged to be cut contrary, he
19 didn't make allowance that some acres, or quarter acres, or
20 three-acre sections might be a satisfactory implementation of
21 overstory removal, and some sections might be adequate
22 implementation of shelterwood method. And I think the
23 pictures make it quite clear that this is far from uniform and
24 needs to be --

25 THE COURT: Can you say it again? I don't

1 understand --

2 THE WITNESS: Okay.

3 THE COURT: -- what you're saying.

4 MR. GRAYCK: Your Honor, may I just ask a clarifying
5 question?

6 THE COURT: Okay.

7 MR. GRAYCK: Okay.

8 THE COURT: Both -- I'm trying to understand what Mr.
9 Holleran's characterization is of Mr. Langlais' testimony and
10 what Mr. Holleran's own position is.

11 MR. GRAYCK: Okay.

12 BY MR. GRAYCK:

13 Q. So Mr. Holleran, I think what you're telling us is
14 that within the forty acres that's at issue, one way to
15 analyze it's compliance is to look at the entire forty acres
16 and evaluate whether it complies with a single kind of
17 treatment; correct?

18 A. Correct.

19 Q. Okay. And that my understanding of Mr. Langlais'
20 testimony is that first he takes the two-stage shelterwood
21 treatment measuring stick, and he looks at the forty acres,
22 and he says nope, it's not two-stage shelterwood across forty
23 acres; correct?

24 A. Correct.

25 Q. Okay. Then he takes the OSR measuring stick and he

1 says, nope, it's not OSR across forty acres; right?

2 A. Correct.

3 Q. Okay. And therefore, he concludes because the forty
4 acres are neither all overstory removal or all two-stage
5 shelterwood, it is cut contrary. Is that your understanding?

6 A. That's my understanding.

7 Q. Okay. My understanding of your testimony is that, if
8 you take the OSR measuring stick, and you take the two-stage
9 shelterwood measuring stick and you hold onto both of those
10 measuring sticks at the same time as you survey the forty
11 acres, you're going to find questions which meet the measuring
12 stick for OSR and portions which meet the measuring stick for
13 two-stage shelterwood; is that right?

14 A. Yes.

15 Q. Okay. And that that is an acceptable method to
16 confirm compliance based upon the wording and requirements of
17 the treatment prescription for stand 43?

18 A. Especially --

19 Q. Am I -- am I explaining it correctly?

20 A. Yes, you're explaining it well but it's within the
21 context of the stand.

22 Q. And within the context of the stand, okay. So to
23 help make it clear to the Court, given what -- what we've just
24 discussed, can you turn to the prescription for stand 43 and
25 explain why, in response to Mr. Langlais' testimony, you

1 believe it's appropriate to have both the OSR measuring stick
2 and the two-stage shelterwood measuring stick as you evaluate
3 the forty acres which he found contrary?

4 A. On the form 2, page 2 prescription the --

5 Q. Let's give the Court a moment to get there. And the
6 full prescription is Exhibit 22. And we're talking about
7 stand 43; am I right?

8 A. Yeah.

9 Q. Okay. Give the Court a moment to get there. Okay?

10 A. So --

11 Q. Please -- please proceed.

12 A. So I know we've looked at this before, so just to
13 summarize, the prescription clearly calls for thirty to forty
14 percent of the stand to receive an overstory removal, sixty to
15 seventy percent to receive a two-stage shelterwood. Target
16 residual goal for the shelter-wood portion is sixty, which is
17 obviously going to have some areas above sixty and some areas
18 below sixty. And that will also include gaps to promote
19 regeneration.

20 Q. Okay. And so in the context of the prescription --
21 prescription for the stand, and in relation to whether OSR can
22 occur aside of the OSR box, why is it appropriate to have the
23 two measuring sticks when you're looking at the forty acres?

24 A. The -- the forty acres was obviously fairly heavily
25 cut. The overstory removal box accounts for just over twenty

1 percent of the stand. The prescription allows forty percent
2 overstory removal, so obviously there's allowable other
3 overstory removal acres. They're not all in one big patch; I
4 believe that we've seen that. The pictures show it. We saw
5 it walking through that there are sections of overstory that
6 are released that account for this part of this portion of
7 allowable overstory removal. And the remainder fits that
8 definition of shelterwood with -- gets -- with a mix of sun
9 and shade to provide conditions for new regeneration with
10 occasional gaps as allowed for it in the prescription.

11 MR. GRAYCK: Your Honor, have I addressed the Court's
12 concerns?

13 THE COURT: That's sufficient, yes.

14 Q. Rob, are there additional photographs which would
15 continue to illustrate what we've talked about?

16 A. I think we've seen it.

17 Q. Okay. That's what I wanted to confirm. Thank you.

18 Now, again responding to the criticism or -- or Mr.
19 Langlais' testimony that the program manual requires a
20 different methodology with respect to the measurement of
21 regeneration of three years, why is your opinion that the
22 program manual requires regeneration be evaluated three years
23 after harvest?

24 A. Well, we just read the program manual language, and
25 it's very clear that that is "must" and "shall" and "will,"

1 compared to the Northern Hardwood Guide, which is a guideline,
2 and says one option is this, and you can do it this way, or
3 you might do it that way, or you should do it this way, but
4 that the control -- that the firmer language is in the program
5 manual.

6 Q. Okay. Now, Mr. Langlais believed that a prescription
7 for stand 43 was not carried out and that the purpose of the
8 treatment for stand 43 was -- was not complied with. Can you
9 please respond specifically to his testimony regarding stand
10 43 and whether the purpose and the requirements prescription
11 were carried out?

12 MR. DUANE: Objection, Your Honor, this again appears
13 to be general evidence rather than specific questions about
14 something Mr. Langlais said. Because we've covered all of
15 this in the cases in chief.

16 THE COURT: Sustained.

17 MR. GRAYCK: I'll rephrase the question.

18 THE COURT: Yes.

19 BY MR. GRAYCK:

20 Q. In addressing the forty acres that we've been talking
21 about and keeping in mind Mr. Langlais' testimony, how does
22 your explanation of how the forty acres can be measured, how
23 does that demonstrate compliance with the prescription?

24 MR. DUANE: Your Honor, I'm sorry; objection. It
25 seems to be general evidence that was covered in both cases in

1 chief and the question is not eliciting something that's
2 proper for rebuttal evidence.

3 THE COURT: You do need to narrow it down.

4 MR. GRAYCK: Okay. I will --

5 THE COURT: He's rebutting something specific that
6 Mr. Langlais said. You need to get out --

7 MR. GRAYCK: Okay.

8 THE COURT: -- what it is that Mr. Langlais said that
9 he's rebutting.

10 MR. GRAYCK: Yep, understood, Your Honor.
11 Understood.

12 BY MR. GRAYCK:

13 Q. Mr. Langlais, again, his testimony was related to how
14 the forty acres should or should not be measured; correct?

15 A. I'm not sure.

16 Q. Well, you've -- you've described how, within the
17 forty acres, there's portions which are OSR, and portions
18 which are two-stage shelterwood; yes?

19 A. Yes.

20 Q. Okay. And if that's the methodology which is used,
21 does the harvest comply with the prescription, notwithstanding
22 Mr. Langlais' testimony that the proper methodology is to
23 evaluate the forty all for either OSR or all two-stage
24 shelterwood?

25 A. The -- the overriding goal of both prescriptions, or

1 all three allowable treatments in the area, were for
2 replacement of a poor quality old declining stand with new
3 regeneration either through overstory removal or two-stage
4 shelterwood, and I think the regeneration results clearly show
5 successful implementation of both of those treatments.

6 Q. Thank you. Now, turning to stand 44, can you
7 describe what Mr. Langlais' criticisms were of your analysis
8 of stand 44?

9 A. Well, I think his main criticism was that my basal
10 area estimate varied widely from his.

11 Q. And do you recall what his testimony was about the
12 three different estimates of residual basal area?

13 A. I don't want to put a lot of weight on Dirigo's
14 numbers because they're completely taken out of context. I
15 don't know if his plots -- if their plots were located across
16 the same sample area, but I heard the number thirty-one
17 mentioned for residual basal area, and Mr. Langlais, I
18 believe, found sixteen. And you'll recall -- well, in our
19 tour, we didn't go the way we thought we were going to go; we
20 didn't get as good a look at stand 44 as we had hoped to --
21 but it was very patchy. There were definitely sections with
22 more trees, sections with less trees, and it's also the
23 transitional boundary between the hardwood stand and the mixed
24 wood stand where you had understory patches in stand 44 that
25 could be released, and it's not a crisp boundary like the edge

1 of a pine plantation. So -- I think I'm getting off the
2 track.

3 Q. Well, with respect to these different basal areas --

4 A. Yep.

5 Q. -- okay? -- specifically in response to Mr. Langlais'
6 testimony ,what's your experience as a forester with respect
7 to these different values that he reported and the
8 characterizations which he put on them?

9 A. That sampling basal area is an estimate, and
10 especially with such a small area that's very irregular in
11 distribution, and only having six or eight or ten plots for
12 any of us who cruised that area, I would not expect to have a
13 lot of agreement about the numbers. That it doesn't surprise
14 me that we found divergent estimates there. But what's
15 obvious is that the treatments were irregular, and I think in
16 this case it's important to consider that the harvest was
17 stopped in midstream. There's another seventy-five percent of
18 the stand to be harvested that is fully stocked. The basal
19 area was very low of acceptable growing stock in this area,
20 and that it needs to be measured across the stand to consider
21 it in context.

22 Q. Mr. Langlais -- Mr. Holleran, I'm about to show you
23 what's been marked Exhibit 102. Did you prepare this?

24 A. Yes, I did.

25 Q. When did you prepare it?

1 A. Last week.

2 Q. What's it a summary of?

3 A. This is --

4 Q. Briefly, what's it a summary of?

5 A. A revised table 1 from my September 15th report that
6 just uses Mr. Langlais' numbers for the areas he cruised, and
7 the areas that I cruised we used my numbers, and came up with
8 a weighted average for across the stand averages.

9 MR. GRAYCK: Plum Creek moves the introduction of
10 Exhibit 101 (sic).

11 (Revised table 1 from Mr. Holleran's September 15th report
12 was hereby marked for identification as Plaintiff's Exhibit
13 102, as of this date.)

14 MR. DUANE: May I inquire, Your Honor?

15 THE COURT: Yes.

16 VOIR DIRE EXAMINATION

17 BY MR. DUANE:

18 Q. When last week -- I'm sorry, good morning Mr.
19 Holleran.

20 A. Hi.

21 Q. Hi. When last week did you prepare this?

22 A. I think I did it Friday night. I'm not sure. I
23 think I did it over the weekend maybe on Saturday.

24 MR. DUANE: Your Honor, we object. There's been an
25 ongoing duty to supplement discovery, and this differs from

1 Mr. Holleran's report, and it would have been nice if we had
2 received this before this minute. And we object to its
3 admission as a document.

4 MR. GRAYCK: Your Honor, it's simply taking the data
5 that's in evidence and presenting it in a different manner.
6 It doesn't -- it doesn't contain any evidence that hasn't
7 already been introduced to the Court.

8 THE COURT: Well, two things. One is it hasn't been
9 sufficiently identified yet. I don't understand exactly what
10 it is.

11 MR. GRAYCK: Okay.

12 THE COURT: Maybe it was said, but not enough for me
13 to take it in. So it may not be clear to the State either.
14 And -- and it -- but then secondly -- so you need to establish
15 a firmer foundation first. Then I'll defer ruling, give the
16 State an opportunity to review it during the break.

17 MR. DUANE: Okay.

18 THE CLERK: Judge, I see that it should be 102.

19 MR. GRAYCK: Did I -- what -- what did we label it
20 as?

21 THE WITNESS: 102.

22 MR. GRAYCK: I apologize; 102. Is that how it's
23 labeled Rob?

24 THE WITNESS: Yes.

25 MR. GRAYCK: Mr. Holleran?

1 THE COURT: That's correct. 101 was an e-mail. It's
2 already been admitted.

3 MR. GRAYCK: I apologize, 102. 102.

4 THE COURT: Okay, thank you.

5 BY MR. GRAYCK:

6 Q. Did you hear what the Court said?

7 A. Yes.

8 Q. Okay. Can you please address what the Court said?

9 A. Since there's discrepancy over Mr. Langlais and I
10 numbers for certain areas, I deferred to Mr. Langlais to use
11 his numbers for the portions he cruised, and I used my numbers
12 for the remainders of the stand to come up with a total across
13 the stand basal area.

14 Q. And how does this respond to Mr. Langlais' testimony;
15 specifically, to his contention that improper residual basal
16 areas have been achieved through the harvesting that's been
17 conducted today?

18 A. It clearly shows sufficient basal area across the
19 stand to meet compliance.

20 MR. GRAYCK: Your Honor, we would move the
21 introduction of the exhibit.

22 MR. DUANE: Objection, Your Honor, this is a document
23 prepared by their expert. There's been an ongoing -- ongoing
24 duty to supplement discovery. We received it three minutes
25 ago, and without an opportunity to look at it, and digest it,

1 and review it, we would object to its admission.

2 THE COURT: Well, I'm going to defer ruling to give
3 you an opportunity to look at it further during the break.

4 MR. DUANE: Thank you, Your Honor.

5 BY MR. GRAYCK:

6 Q. Mr. Holleran, could you please respond to Mr.
7 Langlais' testimony that the appropriate residual basis areas
8 were not achieved by the harvesting to date, and respond to it
9 by explaining how this table shows the use of Mr. Langlais'
10 numbers, whether or not it still results in compliance?

11 MR. DUANE: Objection, Your Honor. He is asking the
12 witness to refer to and read from a document that hasn't been
13 admitted into evidence.

14 THE COURT: You can't use it. You can't read from
15 it. You can't demonstrate it, but you can describe what you
16 did in evaluating the testimony.

17 A. There's ongoing debate about whether the prescription
18 has been complied with. There are a number of different ways
19 to consider the question. I think it's important to consider
20 the specific sivicultural treatments in each area within the
21 context of compliance across the stand, and one measure of
22 that is the basal area. And so by using Mr. Langlais' -- by
23 conceding Mr. Langlais' number for the portions that he
24 provided the detailed survey of, using my numbers for the
25 remainder of the stand which was not in contention as being

1 cut contrary, that I think that that's a fair way to consider
2 both of our testimonies and look at the total basal area for
3 the stands and compare that to the requirements in the
4 prescription language.

5 Q. Okay. Now, you've heard Mr. Langlais' testimony that
6 Plum Creek didn't comply with the prescription, yes?

7 A. Yes.

8 Q. Okay. If Plum Creek was allowed to resume the
9 harvest at Clough Brook North, could it successfully complete
10 the prescriptions?

11 A. Easily. And in my opinion, they should have kept
12 going.

13 MR. GRAYCK: A moment, Your Honor?

14 THE COURT: All right.

15 (Pause)

16 Q. Mr. Holleran, if you used County Forester Langlais'
17 numbers for the alleged cut contrary, and you used your
18 numbers, does it comply with the prescription?

19 A. Easily, yes.

20 Q. Okay.

21 MR. GRAYCK: Your Honor, I would still move the
22 admission of Exhibit 102.

23 THE COURT: Again, I'm not going to rule until the
24 State has had an opportunity to spend the right time with it,
25 so if -- do you have other questions or are you --

1 MR. GRAYCK: I was going to -- I'm prepared to
2 conclude, Your Honor.

3 THE COURT: Okay. In that case, we could take -- why
4 don't we take a break early, give the State an opportunity.
5 So we'll continue at 10:30.

6 THE CLERK: All rise.

7 THE COURT: Oh, and while we're talking about
8 admissibility of evidence, I don't know if the State had
9 intended to introduce 99 and D that are on the -- the wall or
10 not, but it's just a -- it's something to think about.

11 MR. DUANE: Well, I was wondering myself, Your Honor,
12 how I would convert my blackboard into an exhibit that would
13 fit in the Court's file, so --

14 THE COURT: Okay. Well, the blackboard itself is not
15 an exhibit.

16 MR. DUANE: I know.

17 THE COURT: But the others are.

18 MR. DUANE: Right. So we'll address that when we
19 come back.

20 THE COURT: Okay.

21 (Recess beginning at 10:12 AM until 10:32 AM)

22 THE COURT: Please be seated. And Mr. Duane, your
23 response to the offer of 102?

24 MR. DUANE: Thank you, Your Honor. We were also
25 handed another document, when the Court recessed, that appears

1 to be a map that was, according to the box, created on June
2 2nd. We just received it a couple of minutes ago, but we're
3 not going to object to that. It appears to be plots as to the
4 site visit. But we are objecting, Your Honor, to the
5 admission of the document with regard to Mr. Holleran's
6 analysis. Again, it's last-minute. It wasn't part of any
7 supplementation. We've stood outside trying to figure it out
8 with our expert, Mr. Langlais, and the director of forestry,
9 and I think his testimony is sufficient for what it's worth,
10 but we're objecting to the admission of the document itself.

11 THE COURT: Your objection is that you don't
12 understand it?

13 MR. DUANE: Not without further analysis, Your Honor.
14 I think we have a sense of what it might be, but we didn't
15 have our -- it would take us time to -- more time than was
16 allowable to check it, understand it, think about it, analyze
17 it to be able to perhaps cross-examine on it. So we are --
18 we're objecting to it -- to its admission.

19 THE COURT: Mr. Grayck?

20 MR. GRAYCK: Your Honor, I -- I think it's a
21 relatively simple exhibit, as we explained. He's simply
22 taking the numbers which have -- which are in evidence and
23 combining them to express a result. And I think it's
24 actually, you know, the key issue before the Court which we've
25 been talking about. Do you take numbers from just the cut

1 contrary portion, or do you take numbers from both cut, uncut,
2 cut contrary, not cut contrary, and add them up, and -- and
3 measure it across the stand, and there's nothing new about
4 those numbers.

5 THE COURT: Well, the Exhibit 102 is admitted. It
6 has been an issue from the start, continuously, what the
7 residual basal area measurements were as made by both
8 foresters, what lands they applied to, whether the proper
9 measurement was across the stand or overall in the stand, or
10 whether it was as to the cut contrary area. So the issue is
11 not new. The information is not new.

12 We'll permit the State, though, to call Mr. Holleran
13 back after the lunch hour to cross-examine further on that, if
14 you feel that you haven't had sufficient preparation time in
15 the fifteen minutes of the morning break, and also to call Mr.
16 Langlais.

17 (Revised Table from Mr. Holleran's September 15th Report
18 was hereby received into evidence as Plaintiff's Exhibit 102,
19 as of this date.)

20 MR. DUANE: Thank you, Your Honor.

21 THE COURT: So 102 is admitted, and where is it?

22 (Pause)

23 THE COURT: So that completes your --

24 MR. GRAYCK: Yes, yes, Your Honor.

25 THE COURT: -- examination.

1 Mr. Duane?

2 MR. DUANE: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. DUANE:

5 Q. Mr. Holleran, in your testimony this morning,
6 you -- you mentioned the Dirigo information; correct?

7 A. Yes.

8 Q. But you never included any information regarding
9 Dirigo in your 2012 report; is that correct?

10 A. I'm going to look in my regeneration report. No, I
11 don't believe it's mentioned in the report.

12 Q. And your regeneration report is dated October 16th,
13 2012; correct?

14 A. Correct.

15 Q. And the Dirigo information was produced in late 2011;
16 correct?

17 A. I-- I'm not familiar.

18 Q. And you also did another report on May 9th, 2013;
19 correct?

20 A. Correct.

21 Q. And there's nothing in that report dated May 9th,
22 2013, that references the 2011 Dirigo information that Plum
23 Creek conducted at the request Vermont Land Trust; correct?

24 A. Can you rephrase the question, please?

25 Q. I'm sorry. There's nothing in your May 9th, 2013,

1 report that makes a reference to the Dirigo cruise that the
2 Vermont Land Trust required Plumb Creek to conduct; correct?

3 A. Correct.

4 Q. And there was nothing in your testimony last week on
5 direct examination regarding the Dirigo cruise; correct?

6 A. Correct.

7 Q. So Mr. Holleran, it's your opinion, isn't it, that
8 with regard to the residual basal area, that County Forester
9 Matt Langlais is wrong, that Dirigo-Vermont Land Trust is
10 wrong, that Landvest-Plum Creek is wrong, but that you're
11 correct; isn't that right?

12 A. No.

13 Q. Thank you.

14 MR. DUANE: Your Honor, I have nothing further for
15 Mr. Holleran.

16 THE COURT: All right. Mr. Grayck?

17 REDIRECT EXAMINATION

18 BY MR. GRAYCK:

19 Q. Mr. Holleran, can you please explain why you answered
20 no to Mr. Duane's last question?

21 A. Well, it's a complex question, and it has to do with
22 what forest sampling is. And as I explained, it's an
23 estimate. I'm confident that my numbers are well constructed,
24 that the cruise was well done. I'm reasonably confident that
25 everybody else's numbers are well constructed. And -- and

1 that's why I offered that final table which gives the benefit
2 of the doubt to Mr. Langlais for the numbers that he provided,
3 and uses my numbers for the portions that there are no other
4 numbers for, to take a broader look at the big picture.

5 MR. GRAYCK: Nothing further, Your Honor.

6 THE COURT: Anything else?

7 MR. DUANE: Nothing further, Your Honor, thank you.

8 THE COURT: Okay. That concludes your testimony.

9 You may step down. Thank you.

10 THE WITNESS: Thank you.

11 (Pause)

12 MR. GRAYCK: Mr. Fife -- I would call Mr. Fife to the
13 stand, please.

14 COURT OFFICER: Please raise your right hand.

15 CHRISTOPHER FIFE

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GRAYCK:

19 Q. Good morning, Mr. Fife.

20 A. Good morning.

21 Q. Do you recall Mr. Langlais' testimony regarding the
22 adoption of the land -- large landowner alternative and its
23 use of stratified data?

24 A. Yes, I do.

25 Q. And do you recall his explanation of -- of why he put

1 the large landowner alternative together?

2 A. Yes.

3 Q. Okay. Has any other Forest, Parks and Recreation
4 personnel expressed an opinion to you as to whether large
5 landowners should be in the program based upon the use of
6 stratified data?

7 A. When I first met Mr. Sinclair in April of 2009, it
8 was at a Vermont Woodlands Association meeting, and his first
9 comment to me was that it was a mistake for Forest, Parks and
10 Recreation to have allowed large landowners to be in UVA using
11 stratified data.

12 Q. Now, turning to Mr. Langlais' testimony regarding
13 changes that were made to the prescription for Clough Brook
14 North, do you recall Mr. Langlais' testimony that he says that
15 Mr. Horton agreed to changes?

16 A. Yes.

17 Q. Okay. What was your role with respect to the
18 changes?

19 A. Well, Mr. Horton, working for Landvest, was making
20 those changes on behalf of Plum Creek, so I was intricately
21 involved with the discussions on the site visit, as well as
22 approving the final changes before they were sent to Forest,
23 Parks and Recreation.

24 Q. Okay. Mr. Langlais refers to stand 43 so that Plum
25 Creek complied -- those changes were made that could comply.

1 Do you recall how Mr. Langlais used the word "add" in his
2 testimony?

3 A. Yes, I do.

4 Q. Can you explain, or can you testify as to what you
5 heard with his -- with his use of the word "add"?

6 A. Yes. Mr. Langlais said that the -- he requested that
7 Plum Creek add the two-stage shelterwood because in order
8 to -- that they -- we could meet the prescription for the
9 stand -- comply with the prescription for the stand.

10 Q. Okay. And what is your response to his testimony
11 that you added the stand 43 prescription?

12 A. Well, if I could, looking at the -- comparing the
13 Exhibit 20 which was the prescription that we took to the
14 field and used for a basis for our discussions on that field
15 visit in October before the final submission, or before the
16 changes were submitted and approved for the prescriptions, and
17 comparing that to Exhibit 22 which is the actual proved final
18 version of the prescription.

19 Q. Go ahead.

20 A. So on -- on the October version that was taken to the
21 field, stand 43 was prescribed to have an improvement thinning
22 and an overstory removal. And if that is -- and it was
23 twenty-five to thirty percent of the stand receiving and
24 overstory removal. That's compared to the approved
25 prescription.

1 THE COURT: Would you point out where you are?

2 THE WITNESS: Yes, Your Honor. Exhibit 20 has a --
3 on Page 2 it lists the prescriptions for each stand, and I'm
4 looking at stand 43 which is down in the last quarter of the
5 page. And I'm comparing that to Exhibit 22, also the second
6 page, which looks very similar.

7 THE COURT: Okay. Go ahead.

8 A. And on Exhibit 20, the original prescription that was
9 put on the stand which we discussed in the field, was for an
10 improvement thinning and an overstory removal with the
11 overstory removal covering twenty-five to thirty percent of
12 the stand. The final approved prescription, after our
13 discussion in the field, was for a two-stage shelterwood and
14 an overstory removal with the overstory removal treating
15 thirty to forty percent of the stand. So it was not in
16 addition to the prescription so much as a change in the
17 prescription from a thinning, an improvement thinning, to a
18 two-stage shelterwood, and an increase in the percentage of
19 overstory removal on that stand.

20 And the importance of that I think is that we
21 recognized that the focus on this stand, on stand 43, was
22 regeneration; either establishing it through a shelterwood
23 type of harvest and releasing it through overstory removal.
24 And that there was more established regeneration -- pockets of
25 established regeneration throughout this stand than would have

1 been represented if -- twenty-five to thirty percent of the
2 stand would not have given enough latitude to treat enough of
3 the stand with overstory removal, so that number was increased
4 to thirty to forty percent of the total stand acres.

5 And that also relates to the testimony we've heard
6 about the overstory removal box, which was just over --
7 represented just over twenty percent of the stand but also
8 included areas that would not be authorized for harvesting the
9 riparian areas. So twenty percent of the stand approximately
10 was represented by that overstory removal box. Clearly, there
11 was another ten to twenty percent of the stand outside of that
12 box that we had agreed to that would receive overstory
13 removal. And that was the areas that were more patchy in
14 distribution as far as the regeneration.

15 Q. Now, with respect to stand 34, I believe Mr. Langlais
16 testified that stand 34 called for an irregular shelterwood;
17 do you recall?

18 A. Yes, he did.

19 Q. Okay. Could you please respond to his statement with
20 respect to an irregular shelterwood by turning to the
21 authorized treatment for stand 34?

22 A. Again, the approved prescription for stand 34 is in
23 Exhibit 22.

24 Q. And we'll just give the Court a moment to get there.

25 A. The form 2, page 2.

1 MR. DUANE: Page what?

2 A. It's the Form 2, Page 2 that looks like this. It's
3 the first one after the description pages. Stand 34 is the
4 second block of data down.

5 And in the prescription for this stand, it says it
6 will receive a two-stage shelterwood even age, UVA code 3.
7 The stand lacks an acceptable amount of regeneration, and the
8 majority of the overstory is unacceptable growing stock. A
9 low-density shelterwood with a residual basal area of thirty
10 to forty square feet will be utilized to discourage the
11 establishment of beech in the understory. The shelterwood
12 will be irregular in distribution and will target sugar maple
13 and yellow birch with large crowns to provide shade and seed
14 distribution.

15 If you will recall the line of questioning around
16 patchy -- of Mr. Langlais' -- around patchy versus patch, this
17 is a similar situation here. An irregular shelterwood is a
18 term of silviculture; it's an actual treatment just as a two-
19 stage shelterwood is a treatment, just as a clear cut is a
20 treatment. So if we had meant an irregular shelterwood,
21 that's what would have been written here, "irregular
22 shelterwood." A shelter -- a low-density shelterwood that is
23 irregular in distribution is describing how that shelterwood
24 will be applied across the stand. So it won't be a regular
25 distribution across the stand. There will be places that are

1 open. There will be places that have higher density, places
2 that have lower density. There will be places that
3 potentially are patches where there was already-established
4 regeneration. And this is a -- this type of distribution of
5 shelterwood, a traditional shelterwood, is clearly described
6 in forestry texts, so it's not a new concept. It's very
7 similar, as I said, to the difference between patchy, which
8 describes how things are laid out on the forest, versus a
9 patch. Which, when we say patch, we mean a silvicultural
10 treatment. It's a clear cut. It has a defined size and you
11 remove all the trees. So an irregular shelter, as Mr.
12 Langlais described correctly, is a shelterwood where you --
13 you do your establishment, got your shelterwood cut, and then
14 you allow the understory to grow for twenty or more years.
15 It's a very extended type of shelterwood harvest.

16 Q. And so just to put what you said in context, how does
17 what you just explained in response to Mr. Langlais' testimony
18 identify or -- or evidence the major misunderstanding over
19 stand 34?

20 A. Well, if -- after stand -- the portion of stand 34
21 that was harvested, in looking at that, if that was reviewed
22 with the idea of an irregular shelterwood in mind, you would
23 be looking for a different result than if you were looking for
24 a shelterwood that was irregular in distribution along with
25 the patches that were called for in that stand.

1 THE COURT: I'm afraid that it will all have to be
2 repeated or said differently. I thought I was following but
3 didn't.

4 THE WITNESS: The irregular shelterwood is -- was not
5 the treatment that was called for in this stand. The
6 treatment called for was a shelterwood that was irregularly
7 applied; irregular in distribution. So it's a non-uniform
8 application of the shelterwood treatment. And as it's been --

9 THE COURT: Would you explain the difference between
10 an irregular shelterwood treatment and a shelterwood that is
11 irregularly --

12 THE WITNESS: An irregular shelterwood treatment is a
13 treatment where you allow the stand -- after the initial
14 harvest to establish regeneration, you allow the stand to
15 continue much longer than you normally would before removing
16 those trees in what's called the overstory removal. That's a
17 specific treatment. In the -- in the shelterwood treatment
18 that was prescribed here, it was a traditional shelterwood
19 treatment with the low density -- it calls for a thirty to
20 forty square feet of basal area -- but that that would be
21 irregular across the stand. So the basal areas would not all
22 be low; there would be some high, some low. And across the
23 stand it would average to the target of thirty to forty square
24 feet which is what the prescription says.

25 THE COURT: So then what are you saying that Mr.

1 Langlais said, and how do you differ from what he said?

2 THE WITNESS: Mr. Langlais read this prescription and
3 said that this was an irregular shelterwood; a type of
4 silviculture that is different from a traditional two-stage
5 shelterwood. But what is called for here is not an irregular
6 shelterwood. What's called for here is a traditional
7 shelterwood, but the application of it will be irregular in
8 distribution, so it will be -- it won't be a uniform
9 distribution in the way that it's applied. And those are two
10 different things; one is a term of silviculture, and one is
11 describing the spatial implementation of the harvest.

12 THE COURT: All right.

13 BY MR. GRAYCK:

14 Q. Mr. Fife, I'm going to ask you to hold up Exhibit
15 103 -- Exhibit 103. Who created that?

16 (Map was hereby marked for identification as Plaintiff's
17 Exhibit 103, as of this date.)

18 A. I did.

19 Q. When did you create it?

20 A. I created this on Saturday.

21 Q. And why did you create it?

22 A. I created this to illustrate the -- the interrelation
23 of the -- the conformance map that the State created, along
24 with the AMP violation sites that were provided to Plum Creek
25 in relation to the Court site visit that we took and the route

1 which is identified by the yellow dotted line on here.

2 MR. GRAYCK: Plum Creek moves the admission --
3 introduction of the exhibit.

4 MR. DUANE: No objection, Your Honor.

5 THE COURT: Plum Creek 103 is admitted.

6 (Map was hereby received into evidence as Plaintiff's
7 Exhibit 103, as of this date.)

8 MR. GRAYCK: May the witness hold on to it during the
9 course of his testimony?

10 THE COURT: Yes.

11 BY MR. GRAYCK:

12 Q. So Mr. Fife, do you recall Mr. Langlais' testimony
13 regarding location of the alleged AMP violations?

14 A. Yes, I do.

15 Q. Okay. Can you please respond to this testimony as to
16 your disagreement with it relative to the exhibit you're
17 holding?

18 A. Mr. Langlais testified that the green triangles,
19 which are the same here as on the State's map, represented the
20 locations of the AMP violations. And that -- that map is the
21 map that was provided with the initial investigation report
22 that Plum Creek received. So these green triangles are the
23 alleged AMP violation locations from the original report we
24 received from the State. However, the -- the photography
25 underneath this is a different photography. This is post-

1 harvest. This photography was taken after the harvest reached
2 the state it is in now, and things like stream crossings are
3 quite evident on this. And our root from the other day was
4 GPSd. There's a portion --

5 THE COURT: Before you go on --

6 THE WITNESS: Yes.

7 THE COURT: -- are you saying that the underlying
8 depiction of the land and the trees on 102 is not the same as
9 it is in State's **B**?

10 **THE WITNESS:** I am. It's different photography.

11 THE COURT: So --

12 THE WITNESS: The scale is the same, and the area is
13 the same. They're both aerial photographs of the same area.
14 This one is color infrared photography taken after the
15 harvesting that we saw on the site visit. I believe the
16 State's exhibit was pre-harvest. No -- so pre this current
17 harvest.

18 THE COURT: Okay.

19 A. There -- there's a portion of our site visit which
20 was not captured on the GPS that we weren't tracking the route
21 at that point. So from -- we parked at this landing here and
22 walked down the road. We did take points at the site we
23 stopped at in the woods. We walked back up the road, and
24 out. And then we started up through the woods, and we took a
25 couple of more points here. These are points where we stopped

1 and talked. Turned the track on here on the GPS. So after
2 that, we were also tracking where we were walking, and so you
3 can see our route up into the cut contrary area. This is the
4 area we referred to as the overstory removal box. We came
5 down, we crossed through the riparian area which was right
6 along the edge of the boundary of the alleged cut contrary.
7 The black is the edge of the stand lines. The red is the edge
8 of the alleged cut contrary. We went up the hill. We crossed
9 the stream crossing. We went down to the area, we had lunch.
10 Tracked back up the hill and across this stream crossing we
11 had to cross going down. We actually changed our route
12 slightly; went off of our path that we had taken going down
13 the hill and came back over beside the riparian area. This
14 is -- we looked a tree that was marked with a blue SB, and an
15 old stump. And then this green triangle -- this orange
16 triangle -- I'm sorry -- is the area where we stopped first,
17 as we were following the State, and Mr. Langlais stated this
18 was the location of an -- of an AMP violation. And as you can
19 see, the green triangle from the report is downhill below the
20 area we even crossed. I -- I assume, in my interpretation of
21 the report, that that triangle actually represents the
22 crossing that we crossed, because there's nothing below that
23 that would have been anything that could have possibly been an
24 AMP violation. There was -- there was nothing there, so I
25 assume it related to the crossing, but we were clearly quite

1 far away from that. We followed along the hill and,
2 similarly, stopped over here at a location that Mr. Langlais
3 again represented as the location of an alleged AMP violation.
4 And the green triangle from the report is not in the same
5 location as the track and the point where we were. And then
6 our track from the day continues around, and across the site,
7 and back to where we came back to the vehicles.

8 I used the green triangles in my initial response,
9 after receiving the report, to go out to the field and attempt
10 to locate the locations the State had identified as AMP
11 violations to make sure that nothing had been missed out
12 there. We had already -- I had already had a thorough review
13 of the site done both by myself and others; walking it over,
14 making sure -- trying to make sure we didn't miss anything.
15 But again, we went back and, in that review, discovered that
16 some of these green triangles did not represent places where
17 there were AMP violations. This one, in particular, is one
18 that I recall. This is just a ski trail. It's way up beyond
19 the head of a stream. I believe with the snow on the ground
20 at the time, there was probably concern that that was actually
21 or potentially could be a stream, but in returning during bare
22 ground, there's no water there. There were no water quality
23 issues there.

24 BY MR. GRAYCK:

25 Q. Okay.

1 A. Thanks.

2 Q. Now, turning to Mr. Langlais' testimony regarding
3 stand 43 and the approved silviculture for stand 43, do you
4 recall what his testimony was with -- with respect to the
5 location of the OSR treatment?

6 A. I believe I do.

7 Q. Okay. And do you recall his testimony regarding red
8 spruce seedlings in OSR areas?

9 A. Yes, I do.

10 Q. Could you just tell us -- tell us what your
11 understanding of his testimony was?

12 A. Yes. Again, if you take Exhibit 22, and starting at
13 the beginning of that exhibit is the harvest prescription fact
14 sheet. Page 2 of that has a table at the top. And the third
15 item down on the table, the third line down on this table is
16 for stand 43, and it lists the seedlings per acre and the one
17 to three inch stems per acre of what we would consider
18 regeneration for a total of -- there's a total of 410 stems
19 per acre. And then it also lists at the end the dominant
20 acceptable species, and it mentions red spruce.

21 I believe that in interpreting the description of
22 stand 43, as well as the table, it was interpreted that we
23 were attempting to manage for red spruce. Red spruce being
24 listed as a dominant acceptable species in the regeneration
25 does not mean it's exclusive by any means. Dominant -- if

1 there was twenty percent red spruce, depending on the other
2 species that were there -- the yellow birch, the sugar maple,
3 the red maple, the fir -- could make it a dominant. It could
4 be dominant with only twenty percent of the total. I'm not
5 sure what the total numbers were here, so I -- I cannot -- I
6 can't guess at that. But this is certainly saying that it was
7 the -- the most prevalent species but it doesn't tell -- tell
8 us how prevalent.

9 We know from the original walk through that there
10 were many other species in the regeneration. There are areas
11 of stand 43 that clearly were very dominant to red spruce,
12 where red spruce would have been more than fifty percent of
13 the regeneration. But fir was certainly a high component, as
14 were birches. And I believe that the interpretation that we
15 were managing for softwood on stand 43 made by Mr. Langlais is
16 an incorrect interpretation; something that was never stated
17 for an objective across stand 43. Stand 43 was
18 a -- described as a hardwood-dominated mixed wood stand. And
19 a hardwood-dominated mixed wood stand would not be a stand
20 that you would necessarily manage for softwood.

21 Q. So with respect to stand 44 and Mr. Langlais'
22 testimony about gaps and low level of acceptable growing stock
23 -- do you recall that?

24 A. Yes, I do.

25 Q. Okay. Can you just tell us what your understanding

1 of Mr. Langlais' testimony is?

2 A. Well, Mr. Langlais actually did not focus on the low
3 levels of acceptable growing stock. In his testimony, he did
4 a good job of explaining what this intermediate thinning
5 prescription would generally look like in a stand with high
6 stocking, but he did not describe the fact that this stand has
7 a low level of acceptable growing stock. And these gaps for
8 regeneration, which can be up to quarter-acre gaps as
9 described by the UVA manual, would be an important part of a
10 treatment like this where you have beech in the stand, you
11 have lower quality trees in the overstory, you have groups of
12 trees that are not healthy trees. So it would be -- you
13 can't -- you would want to make sure that you considered that,
14 even though you have a higher level of stocking, you also have
15 a high level of unacceptable growing stock here. The --
16 the -- the description of this stand, of stand 44, has ninety-
17 seven square feet of basal area initially, and, of that, only
18 forty-two square feet is acceptable growing stock, which in
19 many cases, as we looked at the guides, would actually bring
20 you to -- that's not enough acceptable growing stock to carry
21 that stand by itself. I think I mentioned early on that in
22 order to do an intermediate thinning on this stand and have
23 the proper residual basal area of sixty square feet, you would
24 need to carry some unacceptable growing stock in portions of
25 the stand. So this isn't a high-quality stand, but it's a

1 stand that does have potential and -- and we felt enough
2 potential to carry forward.

3 Q. And when you say -- when you say carry forward, what
4 are you -- what are you saying?

5 A. That --

6 THE COURT: I -- I'm confused about what stand you're
7 talking about.

8 THE WITNESS: I'm talking about --

9 THE COURT: The question had to do with 34, and it
10 seems like you've migrated to 43.

11 THE WITNESS: I -- I believe you asked me about 44?

12 MR. GRAYCK: Yes. I thought I said 44, Your Honor.

13 THE COURT: Oh, okay. Well, no wonder I'm confused.
14 Okay. Go ahead.

15 A. Yes. Stand 44, the testimony did not focus at all --
16 by Mr. Langlais -- did not focus on the portion of acceptable
17 versus unacceptable growing stock. And this had a high level
18 of unacceptable growing stock.

19 THE COURT: Okay.

20 BY MR. GRAYCK:

21 Q. So I just want to make sure there's no confusion that
22 I might have caused by what I said. So just -- when you say
23 carry it forward -- right? -- when you said -- when you just
24 used that phrase, what does that mean? What are -- what are
25 you telling us? As a forester, what are you saying? So what

1 are you telling us?

2 A. We've talked about regeneration harvest where our
3 focus is the next stand. In this case, we're focused on the
4 trees that are there and growing a portion of those trees for
5 quality. Releasing trees that are already in the overstory
6 and growing those longer to add value, to add size, and then
7 coming back in and thinking about regeneration as the primary
8 objective probably the next time we harvest on that site.

9 Q. And about how many years in the future might that be?

10 A. Fifteen -- fifteen to twenty years.

11 Q. There was testimony by Mr. Langlais regarding an
12 inventory done by Dirigo; do you recall that?

13 A. Yes, I do.

14 Q. Okay. And could you summarize what you understand
15 Mr. Langlais to have testified with respect to the Dirigo
16 cruise?

17 A. I believe that Mr. Langlais testified that he
18 received those cruise results, and he took the plot data from
19 the maps, and tried to extrapolate that to the different
20 stands and portions of stands that matched the areas of cut
21 contrary, and used those to come to some kind of conclusion
22 about the way -- the -- the basal areas and the support, or
23 lack thereof, of his cruise information.

24 Q. Okay. Why was the Dirigo cruise done?

25 A. The Dirigo cruise was done as a collaborative effort

1 between the Vermont Land Trust and Plum Creek. We wanted to
2 do what we termed a resource assessment primarily looking at
3 regeneration, but also the interaction with the overstory on
4 the Clough Brook site. Dan Kilborn, the stewardship forester
5 for the -- for the Land Trust, and I looked at the post-
6 harvest photography, the same photography that was the base
7 for the math I showed you just a few minutes ago. We
8 identified together areas that we wanted assessed, and then
9 gave that to Dirigo and asked them to provide us -- to -- to
10 do an inventory and provide the data back to us on
11 regeneration as well as overstory.

12 The area that we selected did not consider the stand
13 boundaries and did not consider the alleged cut contrary
14 boundaries. We weren't looking at that. We were looking at
15 an area that Plum Creek and Vermont Land Trust had agreed
16 upon.

17 Q. And -- and the Dirigo cruise, it would have been
18 prepared in connection with the conservation easement; is that
19 correct?

20 A. Yes, that's correct.

21 Q. As part of the ongoing relationship between Vermont
22 Land Trust and Plum Creek in the administration of the
23 conservation easement?

24 A. Yes, that's correct.

25 Q. Mr. Langlais testified regarding the amount of time

1 and taxpayer dollars the agency has spent working with Plum
2 Creek; do you recall that testimony?

3 A. Yes, I do.

4 Q. Could you tell us what you recall of his testimony?

5 A. He stated that the department has spent a great deal
6 of time and taxpayer money on working with Plum Creek, on
7 meeting with Plum Creek. He testified about the number of
8 days he, as well as the Department staff, in general, had put
9 into working with Plum Creek.

10 Q. And what's your response to that specific testimony?

11 A. I -- well, I appreciate the time that the department
12 has spent with us. I think that, from my perspective, a lot
13 of that time has been discussing silviculture and the
14 implementation of silviculture, the correct silviculture in
15 different sites. The department has felt the need to go and
16 review every one of our harvest prescription amendments in the
17 field ahead of the approval for those, which takes a great
18 deal of time.

19 I think on a ratio, if you looked at the 110-acre
20 average size of the parcels in UVA, that it's probably a good
21 deal. I think that the -- the amount of time spent is in no
22 way excessive compared to the time that would be spent with a
23 smaller landowner. And I -- I feel that, you know, we as Plum
24 Creek, obviously, coming into Vermont, never having owned land
25 in Vermont before, we did have a great deal to learn about the

1 rules and laws, the just in making connections and building
2 relationships with both regulators and the Land Trust, and the
3 other people that we cooperate with in managing this property.

4 I also think, you know, with all due respect, that
5 the Forest and Parks and County Forester Matt Langlais had a
6 learning curve as well. That there was a -- a level of trying
7 to learn about a company that owns its own land, employs its
8 own foresters to manage that land, which is not a norm in
9 Vermont. So I think there was probably a great learning curve
10 on both sides, and a great deal of energy expended both by
11 Plum Creek and by the department.

12 And really, with the contribution that's made to the
13 local economies, Mr. Langlais testified that forty-five
14 percent of the total harvest volume in Essex and Caledonia
15 Counties this year came from the harvest on Plum Creek
16 property. Given the size of the property and the approved
17 ten-year plan that isn't a surprising number, but that number
18 is actually with -- without us actually meeting the goals of
19 the ten-year plan yet; the -- the harvest goals of the forty-
20 five thousand cords that Mr. Langlais referred to. And I feel
21 that the Department of Forest and Parks should be proud of the
22 time they spent with Plum Creek, and the success in having
23 that level of input into the local economies and into a
24 productive working forest.

25 Q. Now, with respect to Mr. Langlais' testimony as to

1 the deleterious effect of the harvesting done at Clough Brook
2 North, do you recall his testimony?

3 A. Yes, I do.

4 Q. Okay. Can you just summarize it for us?

5 A. I believe he was asked whether this -- the -- what he
6 observed on the stands at Clough Brook North contributed to a
7 productive forest, and he replied that it did not.

8 Q. And could you please respond to that specific
9 testimony with respect to the Clough Brook North?

10 A. Well, forest productivity is really related to site.
11 The -- the site determines the productivity of the trees
12 growing on it. And then the history of what has happened to
13 those trees is what determines the individual productivity of
14 those trees. So in order to address the productivity of the
15 Clough Brook North site, you have to think about the entire
16 site, and we saw that on our site visit. We saw a lot of
17 regeneration, vigorous young trees coming. We saw soils that
18 are supporting those trees growing. We saw wildlife habitat.
19 We saw birds. We saw signs of moose using that area. We have
20 seen bear tracks in the area, so we know bear are using that
21 area. And the stands that were described were all described
22 as being in fairly poor condition; low levels of acceptable
23 growing stock, damage, ice storm damage, past logging damage,
24 beech bark nectria disease, things that did not describe
25 really healthy vigorous stands. What our silviculture was

1 aiming for was to regenerate that area so that we could have
2 vigorous young trees, seedlings, saplings coming back. And I
3 feel it's clear from what we saw from the regeneration tallies
4 that have been done that have showed over 10,000 trees to the
5 acre out there, that that's exactly the result we got. And we
6 have a more productive forest coming now exactly as planned on
7 Clough Brook North. And if we had been able to continue the
8 harvest through to completion, I think you would see that,
9 across the stand, there would be compliance with the
10 prescriptions. There would be a vigorous new forest growing
11 that then Plum Creek could track through the future and
12 continue to treat, continue to keep it growing so that we
13 would continue to have a productive forest up there.

14 Q. Okay.

15 MR. GRAYCK: Nothing further, Your Honor.

16 MR. DUANE: Thank you, Your Honor.

17 THE COURT: Mr. Duane?

18 MR. DUANE: Can I have just one minute, Your Honor?

19 THE COURT: All right.

20 (Pause)

21 CROSS-EXAMINATION

22 BY MR. DUANE:

23 Q. Good morning Mr. Fife.

24 A. Good morning.

25 Q. It was Plum Creek through you that closed down the

1 harvest on Clough Brook North; correct?

2 A. That's correct.

3 Q. Matt didn't close down -- Matt Langlais did not close
4 down the harvest on Clough Brook North; correct?

5 A. No, he didn't.

6 Q. Okay. Now, with regard to the Dirigo cruise by
7 Vermont Land Trust which you described as a collaborative
8 effort, isn't it correct that the Vermont Land Trust had
9 concerns that Plum Creek through its harvesting was violating
10 the terms of the conservation easement?

11 A. Can I clarify?

12 Q. Well, I -- I -- perhaps you can clarify when you're
13 redirected, but isn't it true that the Vermont Land Trust had
14 that cruise done because it had concerns regarding Plum Creek
15 being in compliance with the conservation easement?

16 A. They were concerned about the -- assessing the
17 regeneration.

18 Q. It was the Land Trust, wasn't it, that initiated the
19 request that Plum Creek go out and hire a third party to do
20 the inventory; correct?

21 A. No. It was a collaborative thing. It was brought up
22 a meeting.

23 Q. And it was brought up because of the concerns that
24 the Land Trust had specifically when it was accompanying you
25 on January 26th, 2010, to the Clough Brook tract; correct?

1 A. Correct.

2 Q. And it not only involved the land in Lemington, but
3 Plum -- but the Land Trust wanted lands in Averill and in
4 Brighton also inventoried; correct?

5 A. Correct.

6 Q. Because of concerns the Land Trust had with regard to
7 Plum Creek being in compliance with its conservation easement
8 in those two towns as well; correct?

9 MR. GRAYCK: Objection, Your Honor, it's not relevant
10 to the issues before the Court. Mr. Duane is once again
11 trying to create trials within trials. We don't see the Land
12 Trust here. We don't see any testimony from the Land Trust
13 regarding compliance with easements or not. It's an
14 independent cause of action vested in the Land Trust. If it
15 wants to pursue legal action with respect to enforcing its
16 rights under an easement, it can do so. It's not -- it's not
17 what's -- it's not what's before here. And it's also hearsay,
18 Your Honor.

19 MR. DUANE: If I may? Mr. Grayck asked Mr. Fife why
20 did the Vermont Land Trust request Dirigo cruise to be
21 conducted.

22 MR. GRAYCK: And it was specific in response to Mr.
23 Langlais' testimony which was solely limited to the Town of
24 Lemington where the exhibit itself had pages removed so that
25 that would be the case.

1 THE COURT: The objection is overruled. We've heard
2 testimony about the use of the data from the Dirigo cruise,
3 and also we've heard testimony about how it came about. So
4 it's a fair subject for cross-examination.

5 MR. DUANE: Thank you.

6 BY MR. DUANE:

7 Q. Mr. Fife, just to repeat. The Land Trust also
8 requested Plum Creek to hire a third party to inventory the
9 lands in Brighton and Averill because of concerns regarding
10 compliance with the conservation easement; correct?

11 A. Correct.

12 Q. Thank you.

13 MR. DUANE: That's all I have, Your Honor.

14 THE COURT: Mr. -- Attorney Grayck?

15 MR. GRAYCK: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. GRAYCK:

18 Q. Mr. Fife, could you please turn to Exhibit 32 in
19 Volume I.

20 A. Yeah.

21 Q. Do you have that?

22 A. I do.

23 Q. Who is that a letter from?

24 A. Steve Sinclair.

25 Q. Can you read the second paragraph of the letter that

1 begins "until"?

2 A. "Until all actions related to the potential UVA
3 violations are completed, FPR will not be in a position to
4 approve any new activities in the area referred to as Clough
5 Brook North. Matt will be working on the plans and requests
6 that have been submitted for any other Plum Creek harvest
7 areas as well."

8 Q. What's your understanding of this letter's directive
9 to you regarding Clough Brook North?

10 A. That there would be no more activity -- no new
11 activities on Clough Brook North.

12 Q. And would that include completing the harvest?

13 A. Yes, I would say it would.

14 MR. GRAYCK: Nothing further, Your Honor.

15 THE COURT: That concludes your testimony. You may
16 step down.

17 THE WITNESS: Thank you, Your Honor.

18 MR. GRAYCK: That concludes Plum Creek's case, Your
19 Honor.

20 THE COURT: Mr. Duane?

21 MR. DUANE: Thank you, Your Honor. We would intend
22 to call Mr. Langlais on surrebuttal with respect to the
23 testimony that was put forth this morning from the two
24 witnesses and be mindful of limiting it to that extent.

25 THE COURT: All right.

1 COURT OFFICER: Please raise your right hand.

2 MATT LANGLAIS

3 having been duly sworn, testified as follows:

4 COURT OFFICER: Please be seated.

5 MR. DUANE: Your Honor, if I might have just one
6 moment?

7 THE COURT: All right.

8 (Pause)

9 SURREBUTTAL DIRECT EXAMINATION

10 BY MR. DUANE:

11 Q. Good morning, Mr. Langlais.

12 A. Good morning.

13 Q. Were you present in the courtroom this morning when
14 Mr. Holleran was testifying?

15 A. Yes, I was.

16 Q. And do you recall his testifying regarding your use
17 of measurement sticks in stand 43?

18 A. Yes, I do.

19 Q. Do you recall that he said that you, as the county
20 forester, should have used both sticks when you were in the
21 overstory removal and shelterwood areas at once in that stand?

22 A. Yes, I do.

23 Q. And do you agree or disagree with his assessment of
24 your capabilities when you went out there and looked at that
25 part of stand 43?

1 A. Yes, I do disagree.

2 Q. And why do you disagree?

3 A. If we were to -- I use two measuring sticks at every
4 plot that we take, it would not give an accurate
5 representation of either prescriptions. It would create a
6 scenario where at every single point you would have a
7 different prescription, and that in turn could create a
8 different stand at absolutely every different point that you
9 visited. It's a -- it's completely unattainable to utilize
10 that methodology to state that on a point by point basis a
11 prescription is either met or unmet.

12 Q. Thank you, Mr. Langlais. And were you present when
13 Mr. Holleran testified about a topic involving 350 stems per
14 acre?

15 A. Yes, I was.

16 Q. And are you familiar with the concept of 350 stems
17 per acre?

18 A. Yes.

19 Q. And -- and what is the concept of 350 stems per acre?

20 A. Yeah. In the program manual, we have a statement
21 that Mr. Holleran regarding 350 stems. And 350 stems of
22 regeneration is what we use in the department to determine
23 whether or not a forest is a forest or a forest is a field.
24 It tells us whether or not the area for which application --
25 application is being submitted for is a forest or a field, and

1 the minimum standard is 350 stems. It further states that,
2 for regeneration cutting, 350 stems is needed three years
3 after the harvest. Mr. Holleran was stating that we needed to
4 use that to evaluate the overstory removal harvest. Now,
5 within the program manual on I think it's Form 4, we state
6 that, for overstory removals, that immediately after the
7 harvest, there needs to be either -- either sixty square feet
8 if it's a 2-H stand or 350 stems of acceptable regeneration.

9 So Mr. Holleran was using that portion of the manual
10 out of the context -- out of context and applying it where it
11 should not been applied.

12 Q. Mr. Langlais, were you present in the courtroom this
13 morning when Mr. Fife talked about there being a major
14 misunderstanding with respect to the interpretation of the
15 prescription for stand 34?

16 A. Yes, I was.

17 Q. And were you present when he testified about the
18 difference in his opinion between an irregular shelterwood and
19 either the distribution of it or the -- the location of it in
20 the stand?

21 A. Yes.

22 MR. DUANE: Your Honor, if I could approach the
23 witness and show him an exhibit?

24 Q. Mr. Langlais, I'm going to bring to your attention --
25 and for my convenience, it is in Mr. Holleran's Exhibit 36

1 entered as Plum Creek Exhibit 36, and it's sub-Exhibit 2, and
2 it is the Northern Hardwood Type Forest Guide. You're
3 familiar with that document?

4 A. Very familiar.

5 Q. You've testified about it a lot in the course of this
6 proceeding; correct?

7 A. The last few days, yes.

8 Q. Let me show you what's been marked -- actually I'm
9 going to let Mr. Grayck see. I'm going to show the witness a
10 highlighted portion of it. So I'm going to show you where
11 it's highlighted on page 15 and 14. So we've highlighted
12 that.

13 MR. DUANE: Your Honor, I'm showing Mr. Grayck and
14 his expert pages 14 and 15 highlighted in my version of a
15 document. It's not highlighted on the admitted document that
16 the Court has. Thank you.

17 Q. So with that, Mr. Langlais, let me show you again
18 Exhibit 36 of Plum Creek, sub-Exhibit 2, and I'll direct your
19 attention to page 14 and 15. Do you -- is that a copy of the
20 Leak Guide?

21 A. Yes, it is. This is NE-603.

22 Q. And with -- is there a description of the -- the term
23 shelterwood in there?

24 A. Yes, there is.

25 Q. And you listened to Mr. Fife's testimony about the

1 irregularity, or not, of the shelterwood cut; correct?

2 A. Correct.

3 Q. And do you agree or disagree with his testimony of
4 this morning regarding that concept?

5 A. I disagree.

6 Q. And why do you disagree with his testimony regarding
7 that concept?

8 A. The shelterwood called for a two-stage shelterwood.
9 He stated that it was going to be a two-stage shelterwood.
10 The successful implementation of a shelterwood is, if you look
11 at this image here, you see a very --

12 Q. And when -- when you say image here, what are you
13 referring to?

14 A. The image, figure 5 on page 15.

15 Q. Continue please.

16 A. This is the author's description of the successful
17 implementation of a two-stage shelterwood. Further below, it
18 says: "Marking for seed cuts and prep cuts must be from
19 below. Removing the smaller stems as first priority and
20 leaving a uniformly distributed stand." The irregular
21 shelterwood description came in to tell us that when these
22 stands regenerate, that regeneration period is going to extend
23 for so long that the stand will no longer be truly even age
24 but two aged. So it's a further -- it was used to further
25 describe the future of that stand, not how it's to be

1 interpreted directly after the harvest.

2 THE COURT: What was used for that? You said "it,"
3 what do you mean?

4 THE WITNESS: Yeah, I'm sorry. Within their
5 prescription for stand 34, they used the term "irregularly
6 distributed."

7 THE COURT: So what was your point again?

8 THE WITNESS: My point is that that was a part of the
9 prescription which led to our evaluation of that prescription
10 and subsequent use of it.

11 THE COURT: But what did you mean when you said
12 describe the future not -- I'm trying to understand your --
13 what your testimony is about the irregular distribution of the
14 shelterwood.

15 THE WITNESS: Yeah, it -- it refers to the -- to the
16 age class distribution; twenty, thirty, forty years down the
17 line, because that regeneration period is extended so long.
18 So when they included it in their prescription, that told me
19 that they would be carrying that overwood for a long period of
20 time.

21 THE COURT: Can you -- can you describe more clearly
22 the difference between your interpretation and Mr. Fife's?

23 THE WITNESS: Mr. Fife believed that the use of the
24 term "irregular" talked about the spatial arrangement of
25 cuttings. When we have discussed shelterwoods in the field

1 and have referred to them -- I believe it's page 51 of the
2 Plum Creek plan specifically talks about that irregular
3 shelterwoods would be used. That's from where we base our
4 discussions in the field, and it's a very specific type of
5 shelterwood in that it's -- it's about the extended length of
6 the regeneration period not about the spatial arrangement of
7 cuttings.

8 THE COURT: So you're saying that the word
9 "irregular" is used to mean that this is lasting a longer
10 period of time than a usual span of time?

11 THE WITNESS: Yeah, exactly. You've got it.

12 BY MR. DUANE:

13 Q. Thank you. Mr. Langlais, you mentioned in your
14 testimony just now Page 51 of the conceptual plan. And were
15 you here when there was testimony regarding some scheme --
16 schematic drawings in that plan regarding residual basal area?

17 A. Yes, I was.

18 Q. And were you present this morning when Mr. Holleran
19 was talking about residual basal area?

20 A. Yes, I was.

21 MR. DUANE: Let me if I may, Your Honor, if I could
22 approach the witness to show him what's been admitted into
23 evidence as Plum Creek's 13 and refer him to page 53 which was
24 brought up in Plum Creek's case in chief?

25 MR. GRAYCK: Your Honor --

1 MR. DUANE: And in their discussions this morning
2 about residual basal areas.

3 MR. GRAYCK: Your Honor, I object. The portion of
4 this plan was not brought up this morning.

5 MR. DUANE: But the residual basal discussion was in
6 terms of how one measures it. That was pretty much the heart
7 of what Mr. Holleran was testifying about this morning in his
8 rebuttal testimony.

9 THE COURT: Well, what is -- what is the subject
10 matter that you're seeking to approach now?

11 MR. DUANE: Approach about how one determines
12 residual basal area in a harvest.

13 MR. GRAYCK: Your Honor, the portion of the plan that
14 Mr. Duane would like to use is part of my examination of Mr.
15 Langlais. Mr. Duane had an opportunity to redirect, and he
16 chose not to.

17 THE COURT: The objection is overruled. How to
18 measure residual basal areas is a constant theme in this case.
19 He's referring to something that's been admitted in evidence.
20 It may be used.

21 MR. DUANE: Thank you, Your Honor. And if I could
22 again approach the witness?

23 BY MR. DUANE:

24 Q. Mr. Langlais, let me direct your attention to
25 conceptual plan for Plum Creek's lands. Let me direct you to

1 page 51 and 53. Do you recall this drawing --

2 THE COURT: Wait, wait.

3 MR. DUANE: I'm sorry.

4 THE COURT: What is you're looking at?

5 MR. DUANE: I'm looking at Plum Creek 13 which is
6 the -- excuse me, 14.

7 THE COURT: Okay.

8 MR. DUANE: My tab is bent -- my tab is bent in on my
9 binder.

10 THE COURT: Okay.

11 MR. DUANE: Exhibit 14 which is the forest management
12 plan for the Essex Timber Company that Plum Creek has taken.

13 THE COURT: All right.

14 MR. DUANE: And I'm directing the witness' attention
15 to page 51, and then to page 53 where there's a -- two little
16 schematic drawings.

17 BY MR. DUANE:

18 Q. And with respect -- with respect to residual basal
19 area, Mr. Langlais, to what do the schematic drawings on page
20 53 refer?

21 A. These schematics refer specifically to retention
22 which is required in the Vermont Land Trust easement.

23 MR. GRAYCK: Objection.

24 A. When clear --

25 MR. DUANE: Sorry. Go ahead. What?

1 MR. GRAYCK: I thought you were finished. Go ahead.

2 A. -- when the landowner employs clear cutting. So this
3 has a very specific application to retain legacy trees when
4 clear cutting.

5 MR. GRAYCK: And objection, Your Honor, move to
6 strike. This is not about residual basal area. The concept
7 of retention is different.

8 MR. DUANE: If I may, Your Honor, the document, page
9 53 talks about fifteen acres 20(b)(a), which is basal area.
10 And page 51, to which the witness was referring, says the
11 following four figures are illustration of ways to maintain
12 twenty basal area retention in the clear cut, so it has to do
13 with basal area, how one measures basal area, and, in fact, I
14 know we're on rebuttal, but in Plum Creek's case in chief they
15 were attempting to show that this was how one measures
16 residual basal area, and it came up again on rebuttal. I'm
17 doing a simple clarifying question.

18 THE COURT: Anything further?

19 MR. GRAYCK: I'll address it on re -- on --

20 THE COURT: Okay. The objection -- are you still
21 objecting?

22 MR. GRAYCK: I'll withdraw the objection. We'll
23 address it.

24 THE COURT: Okay. All right. Okay, go ahead.

25 MR. DUANE: And with that, Your Honor, I have no

1 further questions of Mr. Langlais.

2 THE COURT: Mr. Grayck?

3 CROSS-EXAMINATION

4 BY MR. GRAYCK:

5 Q. Good morning Mr. Langlais.

6 A. Good morning Mr. Grayck.

7 Q. As I recall, you testified that you had used David
8 Smith's The Practice of Silviculture for stand 34 with respect
9 to shelterwood; is that right?

10 A. I used it for the definition of an irregular
11 shelterwood.

12 Q. I'd like to see whether you agree or disagree with
13 the following statement. It is not necessary that the
14 distribution of reserved trees be absolutely uniform?

15 A. It depends on what -- what portion of that book that
16 that's coming from and for what -- for what it describes.

17 Q. An uneven distribution may occasionally be favorable,
18 the seedlings in their competition with the older trees for
19 soil moisture?

20 MR. DUANE: Objection, Your Honor. Is that a
21 question or statement?

22 Q. Do you agree or disagree with that -- with that
23 sentence?

24 A. I would have to know that context, and the full
25 paragraph, and the chapter within which it's placed in order

1 to evaluate that statement. Thank you.

2 Q. Advantage is taken of all groups of advanced growth
3 that may have started naturally or as an unintentional result
4 of preparatory cuttings or thinnings; do you agree or disagree
5 with that?

6 A. It depends on what silviculture is being prescribed.

7 Q. Now, you had just testified --

8 MR. GRAYCK: Your Honor, may I approach?

9 THE COURT: Yes.

10 Q. You had just testified that it depended upon where
11 these statements were located, and in what context; am I
12 right?

13 A. Correct.

14 Q. Okay. I'm going to show you Smith book.

15 A. Thank you.

16 Q. And what's the heading on page -- on page 406?

17 A. The heading is silviculture systems.

18 Q. And can you find where your definition of a regular
19 shelterwood is located in that book, in that chapter, in that
20 subsection?

21 A. Yes. I find it where it's on page 410. It states
22 variations in shelterwood methods.

23 Q. Can I have the book? Now, that you've seen where the
24 statements I've read are located in the Smith book that you
25 relied upon, do you agree or disagree with the statements I

1 read from the Smith book?

2 A. Did you read those from the specific subsections on
3 the irregular shelterwood method?

4 Q. I'll show you where they originated from. I'm
5 showing you what's been marked as Plum Creek Exhibit 104. And
6 please see if that helps to clarify the location.

7 (Practice of silviculture was hereby marked for
8 identification as Plaintiff's Exhibit 104, as of this date.)

9 MR. DUANE: Excuse me, Your Honor, I'm wondering if
10 we could get a copy of that exhibit?

11 MR. GRAYCK: Certainly. I apologize.

12 A. Yeah, this location is not where I've taken my
13 definition of the irregular shelterwood.

14 Q. In fact --

15 MR. DUANE: Your Honor, I'm sorry, maybe it would be
16 helpful if Mr. Grayck handed the witness the entire book so he
17 could get to the point of the question.

18 MR. GRAYCK: Well, I think he has the text that's
19 necessary for my question.

20 MR. DUANE: Oh, I'm sorry.

21 THE COURT: Okay.

22 BY MR. GRAYCK:

23 Q. Isn't the point that what we've been reading and
24 looking at here is regular shelterwood?

25 A. I'm sorry. Your -- your copy is --

1 Q. Here --

2 A. -- has taken off half of the -- half of the words.

3 My use of the Smith textbook, specific to a regular
4 shelterwoods, comes from page 414 where it states the -- "This
5 differs from other variance in the shelterwood method in that
6 the regeneration period is extended so long that the new stand
7 is not really even aged. This does not mean that it has three
8 or more age classes that denote the uneven age condition. It
9 does, however, mean that the stand will include two age
10 classes for long periods and sometimes even for a whole
11 rotation. The adjective irregular refers mainly to the
12 variations in tree heights within the new stand."

13 Q. Right. Isn't it also possible that a regular
14 shelterwood can be irregularly distributed across the stand?

15 A. No.

16 Q. As a different treatment -- as a different treatment,
17 isn't it possible that the regular shelterwood can be
18 irregularly distributed across a stand?

19 A. On page 14 -- 416, application of shelterwood -- let
20 me find it here.

21 Q. I'm asking your personal knowledge, Mr. Langlais, not
22 what it says in the book at this point. Isn't it possible
23 that a regular shelterwood can be irregularly distributed
24 across a stand?

25 A. No, it cannot. And that's based on the text from

1 which we described in the field when we talked about irregular
2 shelterwoods. The spatial arrangements of cuttings can either
3 be uniform, so when an irregular shelterwood can be uniformly
4 arrangement in its spatial arrangements of cuttings. It can
5 be in a strip arrangement or in a group arrangement. Plum
6 Creek chose a uniform arrangement as it did not chose to
7 employ a strip irregular shelterwood or a group irregular
8 shelterwood as they have done in other prescriptions where
9 they have called for those other spatial arrangements in
10 employing the irregular shelterwood.

11 Q. Mr. Langlais, isn't it true that it's not necessary
12 that the distribution of reserved trees be absolutely uniform
13 when a regular shelterwood is irregularly distributed; isn't
14 that true?

15 A. Could you restate that?

16 Q. Isn't it true it's not necessary that the
17 distribution of reserved trees be absolutely uniform in a
18 regular shelterwood irregularly distributed?

19 A. So long as you're able to meet your crown closure
20 requirements. You know, absolutely uniform is -- that would
21 be difficult to attain -- absolutely uniform -- but there's a
22 big difference between absolutely uniform and the great
23 variation that resulted in the cuttings.

24 Q. Now, you just crown closure; am I correct?

25 A. I did.

1 Q. Yes. To ascertain crown closure, does it require a
2 specific piece of equipment?

3 A. It requires, if you're doing science or need an exact
4 measurement, you can use a densiometer. However, the NE-603
5 Guide provides a table for foresters to use when they are
6 trying to use basal area as a surrogate for crown closure.
7 It's how we use NE-603 to mark our shelterwoods.

8 Q. When you were doing your investigations for the
9 adverse inspection report, did you have a densiometer with
10 you?

11 A. No, I relied on the NE-603 Guide.

12 Q. Did you take any densiometer measurements?

13 A. No, I did not.

14 Q. Did you report any in your adverse inspection report?

15 A. It was indicative --

16 Q. Did you report any densiometer readings in your
17 adverse inspection report expressly?

18 A. Densiometer readings, no.

19 (Pause)

20 Q. You just relied on the guide; am I correct?

21 A. I relied on the chart in the back of the guide;
22 correct.

23 Q. And you are aware that Mr. Holleran has been selected
24 to assist with the guide, aren't you? He just testified, and
25 you heard him say that?

1 A. I heard him say that, yes.

2 MR. GRAYCK: Thank you, Your Honor, nothing further.

3 MR. DUANE: No further evidence, Your Honor, but just
4 a point of evidence. Is the document, Practice of
5 Silviculture, these few pages, been offered into evidence?
6 And the reason I ask is because the witness was reading from a
7 document that hadn't been admitted into evidence and so,
8 therefore, we have no objection to this as long as it's a
9 cleaner copy and we include the back pages of the Smith text
10 that Mr. Langlais was reading from.

11 MR. GRAYCK: I didn't offer it and, at this point,
12 I'm not. And I didn't hear any objection to what I was doing
13 when I was doing it.

14 MR. DUANE: Just a point of -- thank you for the
15 clarification, and I just have one follow-up question to Mr.
16 Langlais. Very briefly.

17 THE COURT: All right.

18 REDIRECT EXAMINATION

19 BY MR. DUANE:

20 Q. The book in front of you, the David Smith Practice of
21 Silviculture that Mr. Langlais -- excuse me -- that Mr. Grayck
22 presented to you, Mr. Langlais, is that the Smith text that
23 was talked earlier in these proceedings?

24 A. Yes, it's the same one.

25 Q. And is that the book I think you described, and

1 correct me if I'm wrong, that all good foresters, including
2 yourself, have on their bookshelf?

3 A. Anybody who took silviculture class in forestry
4 school has this.

5 Q. Okay. Thank you. What you read from today was the
6 same text you testified about the other day?

7 A. Correct.

8 Q. Thank you.

9 MR. DUANE: That's it.

10 MR. GRAYCK: And one brief follow-up question, Your
11 Honor.

12 THE COURT: All right.

13 RECROSS-EXAMINATION

14 BY MR. GRAYCK:

15 Q. Is that book in the guide? Is it one of those listed
16 in the appendix?

17 A. No, it's not.

18 MR. GRAYCK: Nothing further, Your Honor.

19 THE COURT: That concludes your testimony. You may
20 step down. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Does that complete all of the evidence?

23 MR. DUANE: Yes.

24 MR. GRAYCK: Yes, Your Honor.

25 THE COURT: Okay. And what about these exhibits?

1 You're simply not offering them?

2 MR. DUANE: Not offering them, Your Honor. I believe
3 that the larger map -- the larger map marked for
4 identification purposes, if I may, as B, was a copy of a
5 document that was already into evidence, but this is a blown
6 up version of it. And the State's Exhibit E, which is Mr.
7 Langlais' drawing of trees, is something we are not offering
8 as -- into evidence as an exhibit.

9 THE COURT: Okay.

10 MR. DUANE: Thank you.

11 THE COURT: So it's now noon. Would you like to make
12 arguments after lunch?

13 MR. DUANE: Well, Your Honor, if I may, Mr. Grayck
14 and I spoke yesterday about the next step and, at that time,
15 we were going to suggest to the Court that, given the evidence
16 that was submitted and the number of legal arguments involved
17 in this case, that we would ask the Court for permission to
18 file proposed findings of fact and proposed conclusions of
19 law. And we were thinking that, based on everyone's schedules
20 and trying to absorb everything, that if we would have thirty
21 days to do that?

22 MR. GRAYCK: Yes, Your Honor.

23 THE COURT: Are you in agreement?

24 MR. GRAYCK: Yes, Your Honor.

25 THE COURT: Okay. All right. So that would be July

1 4th, so we'll make it the following Monday. I think July 4th
2 is a Thursday, so that would be the 8th maybe.

3 MR. GRAYCK: I don't want to take my cell phone,
4 which is also my calendar, out of my pocket and use the court,
5 Your Honor.

6 THE COURT: Okay. All right.

7 MR. DUANE: So that works for us.

8 MR. GRAYCK: Yes, so the Monday following July 4th.

9 THE COURT: All right. So and you'll file them
10 simultaneously?

11 MR. DUANE: That's what I was thinking, Your Honor.

12 MR. GRAYCK: Yes, Your Honor.

13 THE COURT: And are you seeking additional time to
14 respond to the other person's?

15 MR. DUANE: Given the interesting nature of the legal
16 arguments that have been made throughout this case, I think
17 that might be a good idea.

18 MR. GRAYCK: Yes, Your Honor.

19 MR. DUANE: Would you concur, David?

20 MR. GRAYCK: Yes, I would agree, Your Honor.

21 THE COURT: Okay. So then -- July 22nd, then, for
22 any responses?

23 MR. DUANE: That would be fine. Thank you.

24 MR. GRAYCK: And, yes, Your Honor, I believe the --
25 the first filing date is July 8th?

1 THE COURT: Yes.

2 MR. GRAYCK: And can we just clarify, are these mail-
3 in dates or arrive-at-the-court dates, please? I just want to
4 know what we're agreeing to. I'm happy for them to be
5 mailed -- postmarked dates.

6 THE COURT: The -- the civil rules would call for it
7 just to be mailed on that day.

8 MR. DUANE: I think mail-in date would be -- work
9 well for us.

10 MR. GRAYCK: We'll exchange correspondence.

11 THE COURT: Okay.

12 MR. GRAYCK: Thank you, Your Honor, I just wanted to
13 clarify.

14 THE COURT: All right.

15 MR. DUANE: And just as a matter of -- of a technical
16 nature, Your Honor, at this point, the State would, under Rule
17 50, renew its motion for a directed verdict, or judgment as a
18 matter of law, and we can address that in our legal filing.

19 THE COURT: All right. Okay. I'll look forward to
20 your submissions. Thank you very much.

21 MR. DUANE: Thank you.

22 MR. GRAYCK: Thank you, Your Honor.

23 THE CLERK: All rise.

24 (Proceedings concluded at 12:02 PM)

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

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I, Kimberly K. Moirano, the court approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Kimberly K. Moirano

June 20, 2013

KIMBERLY K. MOIRANO

DATE

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