

1 ISSUES CONFERENCE VOLUME 6

2

3 In the Matter of the Applications of

4 CROSSROADS VENTURES, LLC

5

6 for the Belleayre Project at Catskill Park
7 for permits to construct and operate pursuant to
8 the Environmental Conservation Law

7

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Margaretville Fire House
Margaretville, New York
June 18, 2004

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10 B E F O R E :

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HON. RICHARD WISSLER,
Administrative Law Judge

12

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

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WHITEMAN, OSTERMAN & HANNA, LLP.
Attorneys for Applicant,
CROSSROADS VENTURES, LLC
One Commerce Plaza
Albany, New York 12260

15

16

17

BY: DANIEL RUZOW, ESQ., of Counsel
BY: TERRESA M. BAKNER, ESQ., of Counsel

18

19

20

NEW YORK STATE DEPARTMENT
of Environmental Conservation
Region 3
21 South Putt Corners Road
New Paltz, New York 12561

21

22

23

BY: VINCENT ALTIERI, ESQ., of Counsel
Regional Attorney

24

25

□

1

2

LAW OFFICE OF MARC S. GERSTMAN
Attorneys for CATSKILL COALITION,
ROBINSON SQUARE
313 Hamilton Street
Albany, New York 12210

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6-18-04 OPTICROSS

BY: MARC S. GERSTMAN, ESQ., of Counsel
BY: CHERYL A. ROBERTS, ESQ., of Counsel

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(FOREST PRESERVE ISSUE)

1204

1 (June 18, 2004)

2 (9:30 A.M.)

3 P R O C E E D I N G S

4 ALJ WISSLER: This will be office of
5 Hearings 14.

6 (THE LA GROUP LANDSCAPE ARCHITECTURE
7 SITE INSPECTION CHRONOLOGY 6/17/04 RECEIVED
8 AND MARKED AS OHMS EXHIBIT NO. 14, THIS DATE.)

9 ALJ WISSLER: This is the Issues
10 Conference in the matter of the application of
11 Crossroads Ventures, LLC.

12 I'll have the appearances of counsel,
13 please.

14 MR. RUZOW: Dan Ruzow, Teresa Bakner
15 for the Applicant.

16 MR. ALTIERI: Vincent Altieri, DEC
17 Staff.

18 MR. GERSTMAN: Marc Gerstman and
19 Cheryl Roberts for the Catskill Preservation
20 Coalition.

21 ALJ WISSLER: The record should
22 reflect that the City of New York is not
23 represented here today, nor is the Coalition
24 of Watershed Towns.

25 Anything before we begin with the
(FOREST PRESERVE ISSUE)

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1205

1 issue of forest preserve impact?

2 Mr. Gerstman?

3 MR. GERSTMAN: No, your Honor.

4 ALJ WISSLER: All right. Forest
5 preserve impacts. Mr. Gerstman.

6 MR. GERSTMAN: Yes, thank you, Judge.

7 I'd like to introduce you to Mr. Chad
8 Dawson. His resume has been submitted as part
9 of our Petition for Party Status, and his
10 letter to Mr. Neil Woodworth has also been
11 submitted. Resume is, I believe, Exhibit I to
12 the petition.

13 Professor Dawson, would you tell the
14 Judge a little bit about your background and
15 Experience.

16 DR. DAWSON: Good morning, your Honor.

17 I'm a professor at the College of
18 Environmental Science and Forestry in
19 Syracuse, New York. I'm also the chairman of
20 the department of forest and natural resources
21 management. In my capacity there, as both a
22 professor, scientist, researcher and outreach
23 specialist, my interest has been varied from
24 tourism development to wilderness management.

25 The idea at the college is really to
(FOREST PRESERVE ISSUE)

1206

1 be able to present a balanced view of all
2 aspects of land use and land-use management,
3 resources management, forestry and all the
4 varied professions. And we pride ourselves on
5 having faculty who are able to do that, that
6 really present a balanced view.

7 My interest in research has been
8 varied, again, as my teaching is, from tourism
9 planning and development all the way through
10 to preservation issues.

11 The matter today, before us today that
12 I would like to testify about is the
13 wilderness character and some of the potential
14 impacts of the project as proposed on that
15 wilderness character. So I want to establish
16 a little bit of my background in that area and
17 my capacity to make those statements.

18 First of all, in working in various
19 capacities in research, I've worked with both
20 DEC, know these gentlemen here, conducted
21 workshops. Currently doing four research
22 projects in the Adirondack Park, and working

23 on supporting three Unit Management Plans in
24 the Adirondack Park.

25 I also have two graduate students who
(FOREST PRESERVE ISSUE)

1 are staffing DEC's projects in the Adirondack¹²⁰⁷
2 Park, implementing the Adirondack Park State
3 Land Master Plan in those Unit Management
4 Plans. So we have direct hands-on experience
5 in the management planning process over the
6 last 20 years, as well as all these current
7 projects.

8 I also teach in the area of wilderness
9 management and conduct research in the area of
10 wilderness management and other preserved
11 lands, like wild forest areas.

12 MR. GERSTMAN: Professor Dawson, you
13 mentioned that you're involved in the planning
14 and development of -- in the use of resource
15 areas. Does that include areas that are in
16 proximity to the proposed project area, like
17 the Big Indian Wilderness Area and the Slide
18 Mountain-Panther Mountain Wilderness Area?

19 DR. DAWSON: Some of my testimony
20 today is the proximity of those two wilderness
21 areas is of concern to me, that the project
22 has not taken into consideration the long-term
23 quality of those two wilderness areas. And
24 also the wild forest areas of Shandaken. We
25 could be talking about the whole park, but I
(FOREST PRESERVE ISSUE)

1 want to talk about those in particular because¹²⁰⁸

2 I think they really bring to bear a lot of
3 what I think is at issue, from my perspective.
4 Again, let me elucidate my perspective.

5 I work in New York State
6 predominantly, but I also work doing research
7 in the northeast and all the way across the
8 United States. I don't have several copies of
9 this today, but I'm the co-author of a
10 wilderness management textbook. It's
11 considered the standard of the industry in
12 North America, and I'll leave it with Mr.
13 Gerstman. Again, I don't have seven copies to
14 donate to the court today, but simply the idea
15 is that I work far more than just in New York
16 State. My research, as well as my teaching,
17 has taken me all across North America.

18 I'm also currently the managing editor
19 of the International Journal of wilderness,
20 and that journal is a worldwide distribution.
21 It's a worldwide emphasis on wilderness and
22 preservation of wild areas, protected areas,
23 parks and so forth. In that capacity, I have
24 evaluated a lot of science, in addition to
25 conducting my own scientific research.

(FOREST PRESERVE ISSUE)

1 One of the issues I have is there's
2 not enough information from the Applicant to
3 be able to do a good scientific analysis of
4 the potential impacts of recreation upon the
5 adjoining lands. That's going to be the sum
6 of my testimony.

7 I understand the Applicant can say

8 it's speculative, but I can give you case
9 after case after case in New York, around the
10 United States and around the world, where
11 adjacent land management is critical to
12 maintaining the wilderness resource.

13 I would love to be able to do a model
14 of that if I had the information that would be
15 necessary to conduct that.

16 MR. GERSTMAN: Your Honor, I want to
17 introduce three exhibits now. I believe it's
18 CPC 38, would be excerpts from the Catskill
19 State Land Master Plan. And if you want, I
20 can indicate which pages, but there are
21 several of them.

22 ALJ WISSLER: Is Professor Dawson
23 going to enumerate for me what he believes he
24 needs in order to do the analysis he proposed?

25 MR. GERSTMAN: Yes. We'll talk about
(FOREST PRESERVE ISSUE)

1 the methodology and what would be required to¹²¹⁰
2 do a model to predict impacts.

3 DR. DAWSON: That's correct.

4 MR. GERSTMAN: CPC 38, excerpts on the
5 Catskill Park State Land Master Plan.

6 (EXCERPTS FROM THE CATSKILL PARK
7 STATE LAND MASTER PLAN RECEIVED AND MARKED AS
8 CPC EXHIBIT NO. 38, THIS DATE.)

9 MR. GERSTMAN: Judge, CPC 39 would be
10 the Big Indian-Beaverkill Range wilderness
11 Area Unit Management Plan from June 1993.

12 ("BIG INDIAN-BEAVERKILL RANGE

13 6-18-04 OPTICROSS
14 WILDERNESS AREA UNIT MANAGEMENT PLAN" -
15 EXCERPTS RECEIVED AND MARKED AS CPC EXHIBIT
16 NO. 39, THIS DATE.)

17 MR. GERSTMAN: CPC Exhibit 40 will be
18 the Slide Mountain Wilderness Unit Management
19 Plan dated October 1998, excerpts.

20 (EXCERPTS FROM "SLIDE MOUNTAIN
21 WILDERNESS UNIT MANAGEMENT PLAN" RECEIVED AND
22 MARKED AS CPC EXHIBIT NO. 40, THIS DATE.)

23 MR. GERSTMAN: CPC Exhibit 41.

24 ("REGION 3 CATSKILL FOREST PRESERVE
25 TRAILHEAD TALLY SUMMARY" RECEIVED AND MARKED
AS CPC EXHIBIT NO. 41, THIS DATE.)
(FOREST PRESERVE ISSUE)

1 MR. GERSTMAN: Mr. Dawson, could you ¹²¹¹
2 explain -- you submitted a letter dated April
3 19th, 2004 to Mr. Neil Woodworth as part of
4 this record to inform the Judge and the
5 Commissioner concerning impacts to, potential
6 impacts to the forest preserve from the
7 proposed Crossroads development project.

8 Can you explain the basis for your
9 professional opinion that this project will
10 have significant impacts on the forest
11 preserve and its use?

12 DR. DAWSON: I need to start off with
13 the definition of wilderness from the State
14 Land Master Plan. Is it necessary for me to
15 read it in its entirety, or can I refer to it?

16 ALJ WISSLER: How long is it?

17 DR. DAWSON: One page.

18 ALJ WISSLER: Is it going to be
Page 13

19 -- it's critical to what you have to say?

20 DR. DAWSON: Yes.

21 ALJ WISSLER: Okay. I mean, does it
22 exist in one of the exhibits you have given
23 us?

24 DR. DAWSON: It does. It's page 23 of
25 the 1985 State Land Master Plan.
(FOREST PRESERVE ISSUE)

1 ALJ WISSLER: You just want to read
2 that definition?

3 DR. DAWSON: I need to emphasize --

4 ALJ WISSLER: If it's going to be
5 helpful to you, you can just read it.

6 DR. DAWSON: The preamble to this is
7 that wilderness is to preserve some of these
8 areas as they now exist where areas are
9 classified as wilderness from the State Land
10 Master Plan.

11 The definition is: "A wilderness area
12 is an area where the earth and its community
13 of life are untrammled by man, where man
14 himself is a visitor who does not remain."

15 A wilderness is further defined to
16 mean: "An area of state land or water having
17 a primeval character without significant
18 improvements or permanent human habitation."

19 This is what I want to emphasize:
20 "Such an area is protected and managed so as
21 to preserve its natural conditions.
22 wilderness. One, generally appears to have
23 been unaffected primarily" -- sorry, "to have

1212

24 been affected primarily by the forces of
25 nature, where the imprint of man's work is
(FOREST PRESERVE ISSUE)

1213

1 substantially unnoticeable.

2 "Two, it offers opportunities for
3 solitude or primitive and unconfined type of
4 recreation.

5 "Three, has at least 10,000 acres of
6 land and/or water of sufficient size and
7 character as to make practicable its
8 preservation and use in an unimpaired
9 condition."

10 Fourth condition. "May also contain
11 ecological, geological, or features of
12 scientific, educational scenic historic
13 value."

14 what is critical to me, as I think
15 about this, is that this is not a designation
16 that might be zoning, where you say this is
17 residential and that's commercial. New York
18 State has a long history of wilderness
19 preservation. The Forever wild clause is one
20 of the original constitutional protections.
21 It's one of the original in the United States.

22 Let me emphasize that the national
23 U.S. definition of wilderness is very similar
24 to this. This was written in the Adirondacks
25 by Howard Zahniser who spent about 15 years in
(FOREST PRESERVE ISSUE)

1214

1 the Adirondacks in his cabin thinking about
2 the concept of wilderness, inspired by the
3 concept of wilderness in New York State.

4 He wrote that by taking retreats from
5 Washington D.C. and really reflecting on what
6 preservation meant and why we're going to take
7 this small percentage of our land and lock it
8 up in perpetuity, natural conditions and
9 natural processes being allowed to continue.

10 MR. GERSTMAN: Professor, who was that
11 individual who said that?

12 Howard Zahniser, Z-A-H-N-I-S-E-R.

13 DR. DAWSON: And he was supported by
14 New Yorkers, such as Louis Marshal, Robert
15 Marshal, who became very famous in the
16 national wilderness movement.

17 New York is really the home of the
18 birthplace of the wilderness concept and
19 wilderness movement. And to that effect, this
20 October will be the 40th anniversary of the
21 1964 U.S. Wilderness Act. And one of the
22 major celebrations will be conducted in the
23 Adirondack Park as a national celebration.

24 There will be approximately 200, 250
25 people who will gather at Lake George, Fort
(FOREST PRESERVE ISSUE)

1 William Henry, from all over the United States¹²¹⁵
2 to celebrate that ideal.

3 And again, I want to emphasize that
4 when we talk about wilderness, we're talking
5 about an area in which we want to give it in
6 perpetuity to the next generations, not just
7 for our use and abuse now.

8 In the U.S., there's about 4.4,

9 4.5 percent of the area set aside for
10 wilderness. Something similar to that in New
11 York State. It's a very limited resource. We
12 can't make any more of it. And so it's part
13 of our national heritage.

14 Think of the 200 years of the history
15 of the United States, that's the stuff out of
16 which we carved civilization. And the idea is
17 to hold it in perpetuity to remind us about
18 which we came from culturally, that which we
19 live off of. We can also have it for
20 spiritual values, scientific values, things
21 about medicine we may never even know unless
22 we preserve some natural processes and
23 conditions unaltered.

24 It also serves as an environmental
25 baseline. There's lots of values and reasons
(FOREST PRESERVE ISSUE)

1 why bipartisan and across the United States
2 wilderness is strongly supported. It's not a
3 group of fanatics who are standing at the
4 fringe of society who are rallying against it.
5 That's not it at all.

1216

6 This is really the core of some of the
7 American heritage, American values. So lots
8 of different kinds of people get together to
9 celebrate that, protect it and preserve it
10 over time. That's what I'm addressing today.
11 So the definition tells you a little bit of
12 that story.

13 The other component of it that I want
14 to get at is that it was given to the state to

15 maintain, manage and protect it. So if we go
16 to -- again, we're on the State Land Master
17 Plan, Exhibit 38. We're on page 32. This is
18 a long list of management considerations that
19 are given to the managing agency, DEC, and it
20 includes this statement: "wilderness carrying
21 capacities of individual units will be
22 determined, will be determined as part of the
23 Unit Management Planning Process. Where the
24 degree and intensity of permitted recreational
25 uses threaten the wilderness resource,
(FOREST PRESERVE ISSUE)

1217

1 appropriate administrative and regulatory
2 measures will be taken to limit such use to
3 the capacity of their resource. Such
4 administrative and regulatory measures may
5 include, but need not be limited to," and then
6 it goes into a series of them.

7 The important point being here that
8 the amount of use has been recognized
9 statutorily, as well as in the science, as
10 having a significant impact on resource
11 conditions and processes within a wilderness
12 area. I want to sort of say that I don't
13 believe the Applicant has really addressed
14 this. I would also argue that neither has
15 DEC.

16 The Unit Management Planning Process,
17 which we'll talk about in a little bit, I
18 don't believe they have followed that letter,
19 and I worry that the Applicant is doing the

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exact same thing.
Now, I admire these people that work for DEC. I'm not taking them to task, other than I don't believe anyone has thoroughly addressed what needs to be done. Modeling use is expensive, and there's limited information (FOREST PRESERVE ISSUE)

1218

from the Applicant to actually be able to run the model. DEC has also found that it has limited information to run its own models. There are models that exist. There are models that can be run.

An example of those that are used by the Bureau of Land Management, the National Park Service, US Forest Service is called the "recreation behavior simulator." It can take data like this and it can look at various kinds of impacts spatially, temporally, socially, environmentally, and take these various things into account.

ALJ WISSLER: who has that product?

DR. DAWSON: That product is a private enterprise. It was originated by people in New Zealand and at the University of Arizona. And it's a consultant who uses this now with the National Park Service, with the US Forest Service and with the Bureau of Land Management, because all these agencies have recognized that maintaining the resource requires that you understand the number of users and the type of use you have on those lands.

1 ALJ WISSLER: Has it been utilized in
2 New York State; do you know?

3 DR. DAWSON: It has not, to my
4 knowledge, been used in New York State. We
5 have attempted to get it here. We have not
6 found funding to be able to do that. There
7 are some older models that we've used in the
8 '60s and '70s in the Adirondacks, but I don't
9 think they're as robust as they need to be for
10 this kind of analysis.

11 MR. GERSTMAN: The Judge asked
12 previously about what kind of input, I believe
13 is the question, you would need to run a model
14 to be able to understand what the impacts are.

15 Taking the recreational behavioral
16 simulation model, what kind of input would you
17 need and to apply it to a situation like this,
18 for instance?

19 DR. DAWSON: An example of that, in
20 the Grand Canyon, the National Park Service is
21 trying to figure out what social and
22 environmental impacts are occurring there.
23 And what they do is -- this is an existing
24 condition, so it's a little easier -- an
25 existing condition, you interview the people
(FOREST PRESERVE ISSUE)

1 that are using it. You find out the
2 behaviors. You talk to the outfitters. You
3 talk to the managers. You input that into a
4 variety of algorithms, and you begin to see as

5 the numbers of users increase and you know
6 what the physical capacity of various places
7 are, you can begin to see what the
8 consequences of increased use are.

9 It becomes much more difficult in this
10 setting to do that. And I would argue that
11 neither the state has done that through DEC,
12 nor has the Applicant addressed that
13 adequately.

14 And I would argue that that is a
15 principal component of the statutes and what
16 we know to be the important science in
17 managing those lands in New York and around
18 the United States.

19 Have I answered your question?

20 ALJ WISSLER: So far.

21 DR. DAWSON: The kinds of input that
22 would be needed from an Applicant or from the
23 DEC, were they to run this type of model,
24 would be at first making different scenarios
25 about what the likely level of use is.

(FOREST PRESERVE ISSUE)

1 You're going to have to interview the ¹²²¹
2 current people out there, seeing what their
3 experiences are. You're going to have to
4 physically measure the resource; how many
5 areas can you camp? How much flat land is
6 there? As much as you do a visual analysis of
7 the area, you would also have to model what is
8 available for recreation. It's not all the
9 same. It's not all the same.

10 where could you camp? where can you

11 hike? what is the physical capacity of
12 putting people on the trails?

13 Think of this as a conveyor belt. If
14 you put people into the parking lot at one
15 time in the morning or up through the middle
16 of the day, how long does it take them to
17 traverse the trail and come out the other side
18 and turn around and come back?

19 All of those things are modeled. And
20 very clearly the models that are being used by
21 the federal agencies around the United States
22 are taking all that into consideration.

23 So when you look at current users,
24 then you've got to make some assumptions about
25 what the clientele at these particular
(FOREST PRESERVE ISSUE)

1 facilities would be.

1222

2 The Applicant is selling the forest
3 preserve as one of the amenities of this
4 resort complex, both as a background to an
5 experience, whether they're golfing or as an
6 actual experience.

7 what's so speculative as I look at
8 appendices in particular, I was looking at --
9 I believe it's Appendix 26, Chapter 4. It
10 talks about the operational period. And I was
11 trying to get some understanding of the number
12 of guests, how long they're staying, because
13 that information becomes very critical.

14 If you're selling the forest preserve
15 as part of the experience and people are going

16 to be hiking in it and walking in it and
17 camping in it, then we need to know what
18 estimates would be available to model what use
19 would be like. Then it will be very easy to
20 begin to look at things.

21 Remember, the definition talked about
22 not only the idea of primitive, undisturbed,
23 untrammled, we talked about the idea of
24 solitude.

25 wilderness is not just a physical
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1 place. It's also, as I keep referring to, is ¹²²³
2 sort of a heritage. It's a resource in which
3 you have an experience. It's a place in which
4 you have a kind of experience. And that
5 experience is to not be one on top of another.
6 To experience the environment.

7 I understand your Honor is a hiker.
8 You understand what I'm describing. You're
9 out there. You're trying to get away from the
10 world. You don't want to hear somebody's
11 beeper going. You don't want to hear cell
12 phones. You're out there trying to mesh
13 yourself in that environment and transport
14 yourself to a whole nother mental,
15 psychological place. You're renewing, you're
16 refreshing yourself, and it's hard to do that
17 on top of each other.

18 So that's part of that whole
19 experience, the heritage of wilderness. And
20 that's why it's written into the legislation
21 and the definition.

22 So one would have to model what the
23 difference is and separation is between
24 people. How often do you encounter others?
25 This is the kind of research I'm conducting
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1 now in the Adirondacks; putting out trail
2 counters, interviewing people, finding out how
3 far and fast they travel. Mapping where they
4 go. Trying to understand what the impact is on
5 the experience, the social experience, as well
6 as on the environment. All that becomes very
7 important.

8 I have a great deal of difficulty from
9 what the Applicant has supplied being able to
10 begin to formulate a model, because I don't
11 understand exactly the number of users, the
12 seasonality of them, what they expect that
13 market, that demographic to look at. How
14 active are they going to be? what's their
15 interest in not just seeing that forest, but
16 actually going in and experiencing it? It's
17 very unclear to me what that is.

18 So again, I'm talking about further
19 information. I'm not here to stop a project.
20 I'm here to make sure the impacts have been
21 adequately considered, and that DEC and others
22 have made appropriate management strategies to
23 deal with what will surely be a very large
24 influx of visitors.

25 ALJ WISLER: Professor Dawson, let me
 (FOREST PRESERVE ISSUE)

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1 ask you this. There's probably some data that
2 exists with respect to trail usage now, just
3 as an example, of the utilization of the
4 forest preserve. Just so that I'm clear, from
5 the models that you are familiar with, I think
6 are used by the National Park Service, is
7 there a correlation between the number of new
8 visitors that could be anticipated as a result
9 of a project, the creation of some venue, some
10 site, and the impact to a neighboring forest
11 preserve? I'm not sure I'm clear.

12 In other words, if 10,000 visitors,
13 new visitors are expected a year as a result
14 of a particular project, are you suggesting
15 that this model would tell us that 10 percent
16 of those people would hike and, therefore, the
17 numbers that we now have we should be
18 projecting to be 10 percent higher in the
19 future? Is that what this model is going to
20 tell me or tell us?

21 DR. DAWSON: No. That's what the
22 Applicant needs to be able to provide so that
23 one could run a model to see what the impacts
24 will be in the wilderness area.

25 Again, these are areas that they
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1 intend to use as part of the amenities, the
2 resources of the project. This is what's
3 drawing the people here. You read the plan,
4 and what it sounds like is -- and looking at
5 the physical positioning of this, the
6 particular properties, I think this is Exhibit

7 5, these particular properties are located
8 right adjacent --

9 MR. GERSTMAN: That's CPC Exhibit 3B.

10 DR. DAWSON: 3B. So when you have a
11 project that's located in physical proximity
12 between two wilderness areas, and we have
13 another part of the project on this side of
14 this wilderness area and this wild forest
15 area, and we're saying that we're bringing
16 people here to enjoy the forest, where are
17 they going to go? They're going to the most
18 proximate place there is. And I speculated in
19 my memo what it would be like if they could
20 distribute it across the entire park.

21 I think it should be more properly
22 modeled what's going to happen to the
23 adjoining areas, because that's exactly where
24 the viewsheds are going to be in and that's
25 where the activity areas are going to be
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□

1 interested in. That's the proximity that
2 they're going to be. So I would say it's the
3 Applicant's responsibility to provide
4 reasonable modeling of who is going to be
5 using that physical resource.

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6 I understand the visual aspects of it.
7 we've been dealing with the visual aspect of
8 it in other ways. You're going to deal with
9 the traffic aspects of it and sort of that
10 windshield viewing of the forest preserve at
11 another time. I'm talking about the people

12 who are physically going to go there into the
13 resource.

14 Am I answering the question?

15 ALJ WISSLER: I guess my question is,
16 if we know -- if we can reasonably project the
17 number of people who would come to the
18 project, can we from that extrapolate a number
19 of people who would be using the forest
20 preserve?

21 DR. DAWSON: It depends on which "we"
22 you're referring to. I would argue that it's
23 the Applicant's responsibility to define what
24 the demographic is that would be using these
25 facilities, and therefore, what would be the
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1 use likely projected in these areas. Then 1228
2 with that number, one can look at the impacts
3 in these areas. That's a different model.

4 So one is sort of the export model,
5 who are they going to be sending to the forest
6 preserve; and the other component of it is
7 having received them in the forest preserve,
8 then what's the impact.

9 I'm referring to a model that looks
10 within the state land area.

11 MR. GERSTMAN: Let me interrupt one
12 second. Would it, in your experience --

13 ALJ WISSLER: So the -- I'm sorry. So
14 their side of the equation, if you will, their
15 side of the balance, the demographics, who do
16 we expect to draw to the project? How many of
17 those folks would be using it? That's a

18 number you're saying does not exist and cannot
19 be derived from what's presented in the DEIS?

20 DR. DAWSON: That's correct. That's
21 what I've searched through, and that's what I
22 cannot find in there. Again, you can see my
23 line of logic. If we don't know how many
24 people are coming, it's very difficult to
25 begin to actively predict what kinds of
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1 impacts will occur here. So what I'm arguing ¹²²⁹
2 for is more information, and with that
3 information one can begin to then model what's
4 going to happen here.

5 Now, the State Land Master Plan
6 requires the DEC to do that modeling. They
7 have not done it. They don't either have the
8 capacity to do it, to get the data -- we've
9 described this as something that's going to
10 take a lot of money and time to do it, but
11 it's something that's required under, I
12 believe, my interpretation of the statutory
13 definition of wilderness and what is required
14 to create a Unit Management Plan.

15 MR. GERSTMAN: Let me continue the
16 line of inquiry that the Judge has asked.

17 You're talking about obtaining
18 demographic numbers from the Applicant as the
19 basis for the model, if I understand you
20 correctly?

21 DR. DAWSON: It's one input to the
22 model.

23 MR. GERSTMAN: Is it your experience
24 that the demographic number -- withdraw that
25 question.

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1 Has it been your experience that one
2 could reasonably project the use of, for
3 instance, the forest preserve surrounding the
4 proposed project from the demographics that
5 are available to an Applicant like this?

6 DR. DAWSON: Yes. Again, I'm relying
7 on my tourism experience. For a number of
8 years, I worked as a consultant to tourism
9 businesses. My business, which still exists,
10 it's sort of been mothballed now that I'm
11 full-time at the college. I used to be nine
12 months at the college. I had a business
13 called Vista Consulting, and in that business,
14 we did things like projections of what would
15 occur in a project related to snowmobiling and
16 so forth. So I'm a well aware that can be
17 done.

18 And it's not an exact science because
19 one is certainly speculating in terms of the
20 percentages and so forth because you project a
21 market image. You want people to respond.
22 You not always convince them to respond. But
23 you have to make reasonable assumptions and
24 you move forward and make those predictions
25 within a certain range.

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1 ALJ WISSLER: As you indicated that
2 the demographics were one input you need, what

3 other inputs do you need?

4 DR. DAWSON: From the Applicant, I
5 think the most important input is the actual
6 number of users who would likely use the
7 forest preserve properties.

8 From the State Land Master Plan
9 approach to it, it must be clear what the
10 experience is of the users so there's a social
11 component to what users are experiencing.

12 One could think of -- working with the
13 National Parks Service on the upper Delaware
14 River, we looked at everything from a distance
15 between boats -- if you watch the upper
16 Delaware River over the years and watch the
17 density of the use change there over time, one
18 of the aspects of maintaining and managing a
19 resource like that is visual distance, sound
20 separation of people. Again, because you're
21 trying not to impinge on their experience.

22 I want to be clear, solitude is not
23 solitary. Solitude means my group and your
24 group and the separation between them, because
25 my group is trying to have an experience. So
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1 there's often group living stats so that
2 groups don't get too large. But a group
3 traveling together have to have some
4 reasonable experience of having some solitude
5 at some point, not every point. But that must
6 be part of their experience.

7 So there's models that can tell you

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8 socially what's going on. So we need to know
9 a little bit about the physical area and how
10 people tend to travel, how fast they travel,
11 how fast can you climb one of these trails.

12 You know, think of these trails as
13 conveyer belts, they're moving people around.
14 People travel at different speeds. That all
15 can be modeled. We just need simple inputs on
16 those type of things.

17 The environmental inputs are much more
18 difficult to do. I could go back to the State
19 Land Master Plan in between where I read the
20 definition and where I talked about the
21 carrying capacity, it will specify what can
22 and cannot be done.

23 For example, hardening trails. How
24 many people can you put through the area and
25 not have environmental impacts? well, you can
(FOREST PRESERVE ISSUE)

□

1 do so many kinds of things to the trail, but
2 you can't go put a road in there, you can't
3 put a tramway in there. It's not going to be
4 a railroad. It has to be a wilderness-type
5 experience, that means primitive. Think about
6 primeval and primitive experiences.

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7 Again, what we do to manage this area
8 is one of the inputs. What the impacts of
9 people are, given the management, the
10 interventions that have been done, is another
11 kind of input. All these things are being
12 done by federal land managing agencies for the
13 very reasons we're here today.

14 MR. GERSTMAN: Professor Dawson, I'll
15 ask you a couple more follow-up questions.

16 Would it be your professional opinion
17 that for a project of this magnitude and of
18 the proximity that this project is to the
19 wilderness and wild forest areas, that such a
20 model is essential to be able to understand
21 what the impacts are?

22 DR. DAWSON: It's not only essential,
23 it's required by the State Land Master Plan.
24 It's required of the DEC as the land managing
25 agency. But I would argue it is also on the
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1 Applicant because of the level of impact, and¹²³⁴
2 this is a DEIS, so this is a type of
3 environmental impact on public resources that
4 needs to be considered.

5 MR. GERSTMAN: Follow-up with one more
6 question. In your letter dated April 19th,
7 2004, which is part of CPC's Petition for
8 Party Status, you project certain uses in your
9 letter, I believe it's paragraph 3 of your
10 letter. Do you want to take a look at that?

11 DR. DAWSON: Again, it's very
12 difficult to make any definitive statements
13 because it's very hard to understand Appendix
14 26 and the amount and type of use that likely
15 would occur.

16 So if I just start looking at -- I
17 think if I got the numbers right, 435,860
18 persons at the timeshare, 195,250 visitors or

19 visitor nights at the various hotels -- again,
20 these are very difficult to measure -- 6,707
21 people are visitor nights per year at High
22 Mount Estates, I end up with 637,800 people or
23 visitor nights.

24 And if you just take a little bit of
25 that and you begin to look at, just take a
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1 small fraction of those. Am I speculating? 1235
2 Absolutely, I'm speculating. Nobody in this
3 room has the necessary information to be able
4 to identify the number of people so that we
5 can begin to think about what the amount of
6 the impacts are.

7 If you then compare that to the
8 current use, the exhibit we're on now, the
9 Region 3 Catskill Preserve Trailhead Tally
10 Summaries, CPC 41, what you begin to look at
11 is the number of users per year on all these
12 forest preserve trails. And it ranges from a
13 low of, what, 39,107 to about 49,368. We
14 picked the lowest and highest years.

15 So if we just -- that's the whole
16 forest preserve. That's not just the
17 immediate proximate trails here. So we can
18 argue about whether these numbers are
19 absolutely correct. I do research on this, so
20 I can debate that with the best of you.
21 80 percent of the people are registered,
22 60 percent of the people registered, I can go
23 get data. We're doing it in the Adirondacks.
24 These are important issues.

25

But we believe the significant
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1 proportion of people are doing these
2 registrations. And if this is representative
3 of the kind of use that's currently there now,
4 and we begin to talk about hundreds of
5 thousands of additional users coming to the
6 area, I'm speculating, but I'd love to be able
7 to do the model. It says, what's the likely
8 number of those people that are going to spend
9 so many days and miles hiking these trails,
10 and therefore, what's the total percentage
11 increase.

12 ALJ WISSLER: Just to go back about
13 what I was asking about the correlation
14 between new folks coming in and impact to
15 known numbers. So that I'm clear about what
16 you're saying, if you took those 600,000
17 people plus, and the Applicant did a
18 demographic analysis saying, okay, there's
19 600,000 people coming in but our demographic
20 shows that 75,000 people will hike, then 75
21 would be the number that you would use and
22 compare to these existing numbers in 41; am I
23 right?

24 DR. DAWSON: That's correct.

25 ALJ WISSLER: So it isn't necessarily
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1 that 600,000 people means that 300,000 people
2 are going to hike. Could be, but we don't
3 know, because you're saying the demographics

4 were not done by the Applicant that needs to
5 be done.

6 DR. DAWSON: And there's two kinds of
7 demographics. One is the seasonal users --

8 ALJ WISSLER: So there's no clear
9 correlation between number of people that come
10 in, and if we get an influx of 200 percent,
11 then we're going to see 200 percent increase
12 usage on the trails? No, that doesn't follow.
13 It's not linear in that sense? Am I right?

14 DR. DAWSON: Particularly because --

15 ALJ WISSLER: We have to cull out of
16 that larger number the demographics of who
17 would actually use the forest preserve?

18 DR. DAWSON: Exactly. There's two
19 kinds of numbers that are needed. Seasonal
20 users are presumably going to be here, and
21 they're going to be more interested in using
22 the resources in the area. So they may have a
23 disproportionate impact. So we can talk about
24 days of use in that area. That would be
25 important to understand.

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1 So we can get the percentage of people¹²³⁸
2 that are doing it, but you need to know
3 whether they're seasonal residents and how
4 much they're here versus just coming for
5 overnight and likely spending two hours
6 hiking, just to say they had the Catskill
7 experience.

8 ALJ WISSLER: Was that one of the
9 parameters looked at by the National Parks

10 Service in the model that they use?

11 DR. DAWSON: Absolutely. They used
12 equivalencies, 12-hour equivalencies. One day
13 of the park service is 12 people for one hour,
14 one people for 12 hours, because they know the
15 amount of use, the duration of use has a
16 direct impact on the resource. It's not just
17 number of visits. Then again, these things
18 can all be estimated.

19 MR. GERSTMAN: Let me interrupt for
20 one second. The issue of the demographics
21 seems -- is certainly of concern. Based upon
22 your review of the information in the DEIS,
23 your understanding of the project, essentially
24 what we have referred to as the core
25 competitive advantage of locating the project
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1 in the forest preserve in this area, would it¹²³⁹
2 be reasonable to project a certain percentage
3 of people who are going to be visiting the
4 resort to make use of the forest preserve?

5 Could you make that projection in a
6 rough way, based upon what you know of the
7 project and its surroundings?

8 DR. DAWSON: No, the reason I can't --

9 ALJ WISSLER: You just kind of
10 answered that for me; right?

11 DR. DAWSON: But let me answer his
12 question in a different way.

13 You can't just take the number. You
14 need to know the demographics. And the

15 demographics become crucial, because you can
16 go in and look at age groups and their
17 participation rate for hiking, for example.
18 So the Applicant could go in and say we have
19 this many people in this age range, we
20 therefore believe there will be this much use.

21 I can't just -- what I thought
22 Mr. Gerstman was asking me was, can I do a
23 percentage analysis of it. And the answer is
24 not just one number. It needs to be done as a
25 segmentation analysis. You would have to look
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1 at the various segments you've got, the
2 propensity for them to go hiking, and do a
3 summation across those as much as you do for
4 any other marketing type study. That's how
5 you know how many people are going to buy your
6 units, whether they're going to buy
7 snowmobiles or whatever. We can do all that
8 because they're probabilistic statements.

9 what I thought he said was, can I give
10 it one percentage, one proportion, and the
11 answer is no, it's more complicated. You have
12 to break it down by markets.

13 MR. GERSTMAN: Let me ask you a
14 follow-up question. Again, I think this is an
15 area that, obviously, this is very important
16 to evaluating the impacts of the project.

17 Have you had experience, both in Vista
18 Consulting and your research with projects
19 with similar attributes as this one,
20 significant size resort, close to wilderness

21 areas, using the wilderness areas as a means
22 to attract guests, knowing generally the
23 demographics of people who would visit a
24 resort of that nature?

25 I'm not asking you to give a
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1 percentage, because I understand demographics ¹²⁴¹
2 require you to break it down into segments of
3 users and visitors and then be able to
4 extrapolate from that.

5 Is there a range of -- sort of a
6 percentage that you would anticipate, in your
7 professional opinion, of users who would visit
8 this project and who you would expect to take
9 advantage of the forest preserve by hiking and
10 other things? Again, I'm not -- whatever the
11 answer is, is obviously what the Judge needs
12 to hear.

13 DR. DAWSON: I'd be speculating.
14 There just isn't enough information. That's
15 why in my letter to Neil Woodworth, I comment
16 that, you know, even if we look at one-half of
17 those visitors taking one trip a year, that
18 seems pretty conservative. They came to the
19 Catskills, I would assume they're going to
20 take a look around somewhere on the forest
21 preserve land, which is where most of the
22 trails are. Again, I was unable to see the
23 number of trails and the amenities that were
24 going to be on the Applicant's properties to
25 understand how one might be captured on their
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1 property as opposed to going in the forest
2 preserve. And I think that might be
3 interesting to find out, as well.

4 Again, if you just take one-half of
5 the people taking one trip, it doesn't matter
6 whether it's an hour or whatever, that's a
7 700 percent increase of the whole forest
8 preserve. Is that a significant number? I
9 would say so. I would say so.

10 If you'd like me to talk about what's
11 going on --

12 ALJ WISSLER: I understand what you're
13 saying. But aren't you, then, really saying
14 to get to that 700 percent increase, I mean,
15 you really are drawing a correlation between
16 total numbers -- you're making an assumption.
17 You're saying --

18 DR. DAWSON: He asked me to speculate,
19 and I'm speculating. I'm acknowledging that
20 I'm speculating because I'm trying to make the
21 point that the scale of this is what's
22 troubling. The scale of this. I'm not trying
23 to peg the number. I'm really saying just
24 take a wild number, any speculative number,
25 and you should be troubled by the percentage
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1 increase from what is currently on those
2 trails.

3 ALJ WISSLER: The potential
4 percentage?

5 DR. DAWSON: Exactly, the potential.

6 So the speculation is intentionally that, to
7 make a point that there is a need for better
8 information. Is that obvious?

9 ALJ WISSLER: Yes.

10 DR. DAWSON: Again, I could go into
11 what we summarized around the United States,
12 adjoining land management problems, adjacent
13 projects. An example, a week ago I was in
14 Colorado at Eagles Nest wilderness near
15 Dillon, Colorado, looking at where townhouses
16 had been built right up to the boundary of the
17 Eagles Nest wilderness. So the impacts are
18 there. Again, I'm not going to speculate
19 other than to say there are very clear
20 impacts, obvious impacts, and the forest
21 service is in the process of trying to
22 document that.

23 It's difficult to come up with a model
24 that I could -- comparative analysis,
25 comparative common-size analysis where you go
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1 out and -- think of real estate appraisals. ¹²⁴⁴ I
2 want to sell my house. I go out and find a
3 bunch of comparative properties and get some
4 common size there, and then I make the
5 comparison. These sold for this amount,
6 therefore, my house is worth this amount in
7 assessment. We can think of those comparative
8 kinds of analyses and what the impacts are
9 ecologically, socially.

10 But unfortunately, those studies are

11 just being done on a master scale, because the
12 realization has come that there is a
13 significant amount of impact by adjoining
14 developments at wilderness boundaries.

15 As I said, I was a week ago at Eagles
16 Nest in Colorado, and clearly that's something
17 they're wrestling with right now. You can't
18 put 10,000 townhouses at the boundary of the
19 wilderness and not have an impact.

20 ALJ WISSLER: You mean an impact on
21 the wilderness, that experience of solitude,
22 that wilderness experience?

23 DR. DAWSON: The experience of
24 solitude and the environmental impacts.
25 Trails have gone from being tread widths of
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1 several feet to 10, 15, 20 feet wide because
2 as people walk along and it gets muddy and
3 churning it up, what people do, they walk on
4 each side of that. Well, if they can't do
5 that, they begin to move out a little farther
6 wherever the mud is. Pretty soon, you have
7 wider and wider trails, braided trails, and
8 wide trails that are occurring. And these
9 environmental impacts lead to erosion, et
10 cetera.

11 ALJ WISSLER: That's not really the
12 question I'm asking. What I'm asking: when
13 you talk about townhouses and so forth being
14 built up to the border of a wilderness
15 preserve, assuming there are no increase in
16 the number of hikers and so forth, people who

17 are hiking would -- the experience of a
18 residential use or some other use so close to
19 the forest preserve would have some impact on
20 the wilderness experience that they have or
21 the solitude that they have; am I right?

22 DR. DAWSON: Right.

23 ALJ WISSLER: So there are impacts
24 that happen within the borders of the forest
25 preserve, but there are impacts also
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1 associated with activity outside the forest 1246
2 preserve that because of noise or visual
3 aspects and so forth have effects on the
4 wilderness experience; am I right?

5 DR. DAWSON: Exactly.

6 ALJ WISSLER: Is that quantifiable?

7 DR. DAWSON: It is quantifiable.

8 They'll use sort of a remoteness index. The
9 idea of that if you can hear -- this is one of
10 the unfortunate things of geography -- the
11 wilderness areas are on the hilltops. How
12 does sound travel, particularly with
13 temperature change, sound travels up.

14 So being able to not hear what's going
15 on down here in the wilderness or not see
16 it -- if I walk off trail and I'm in one of
17 these viewsheds, I imagine I could see that
18 particular project.

19 ALJ WISSLER: Is that an input to the
20 kind of analysis that, again, that is done by
21 the National Park Service or other people?

22 DR. DAWSON: Yes. There's a visual
23 analysis. It's being done by both the Forest
24 Service and the Park Service. And to use an
25 example, the Park Service on the upper
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1 Delaware River had to do a visual analysis of¹²⁴⁷
2 the corridor. They only own, what, 350 acres
3 along there, but they have been enjoined to
4 work with the 17 towns on the upper Delaware
5 River and that whole compact, the three states
6 involved in it, and try and do a visual
7 assessment.

8 what they had to do was actually put
9 people in canoes and think about from the
10 perspective of person in a canoe, what can I
11 see, because that was the experience they were
12 attempting to protect.

13 So these kinds of analyses are done,
14 and they do not have to be burdensome. Again,
15 they're back to the idea of what is it we're
16 trying to protect, and we're trying to protect
17 these resources over time.

18 ALJ WISSELER: And was that kind of
19 analysis done in the DEIS, in your opinion?

20 DR. DAWSON: No.

21 ALJ WISSELER: Okay. Mr. Gerstman.

22 MR. GERSTMAN: Yes, just let me
23 interrupt for one moment to refer your Honor
24 to Appendix 3, Recreational Amenities Plan in
25 the DEIS, and specifically I want to refer you
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1 to some --

2 ALJ WISSLER: Appendix, what is it?

3 MR. GERSTMAN: Appendix 3, which talks
4 about the vision for the project. To quote on
5 page 3, it says: "The resort is an active
6 community, integrating the assets of the
7 forest preserve --

8 ALJ WISSLER: I don't have that in
9 front of me. What is the actual page number?

10 MR. GERSTMAN: It's Appendix 3, page
11 3.

12 "The resort is an active community,
13 integrating the assets of the forest preserve,
14 history of the region, and the special
15 character of the land to form a place for all
16 the family to have fun, learn and be with
17 nature."

18 And there are -- I won't refer to all
19 of the sections that talk to the issue of the
20 integration between the resort and the forest
21 preserve and the setting of this resort, but
22 Appendix 3, in terms of its vision for the
23 Recreational Amenities Plan, does talk and
24 speak to this issue on a number of different
25 pages, and makes it very clear that that's a
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1 major premise of the resort.

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2 In fact, Professor Dawson just pointed
3 out, that I will read on the bottom of page 4.
4 It's a paragraph I will read slowly:

5 "The Belleayre Resort at Catskill Park
6 is a place where the visitor can access the

7 natural environment in a secure, comfortable
8 preserve setting. The resort guests can spend
9 a weekend, week or season, learning, shopping,
10 doing or relaxing. New Yorkers can rediscover
11 the Catskills, its environment, its culture,
12 its history and its vast potential for
13 recreation. The visitor can choose his or her
14 environment, ranging from shopping in the
15 village to exploring the 'forever wild.'"

16 That's on the bottom of page 4.

17 ALJ WISSLER: Professor, let me ask
18 you this question: with respect to the
19 demographics, will the implications of the
20 demographics vary depending upon the use?

21 In other words, there will be folks
22 who will be using a hotel, there will be folks
23 who will be using a timeshare. There will be
24 folks that have some kind of permanent
25 residency. So there needs to be a breakout,
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1 demographic breakout of use of the forest
2 preserve with respect to those three groups?

3 DR. DAWSON: Correct.

4 ALJ WISSLER: which means what?

5 DR. DAWSON: well, once again, the
6 correlation needs to be made between the
7 number of people who are going to use the
8 forest preserve and their likely impacts on
9 that resource.

10 ALJ WISSLER: I guess my question is:
11 Are folks who stay at a hotel less likely to
12 have an impact than folks who live there

13 permanently, or is that a correlation that can
14 be even drawn?

15 DR. DAWSON: I'm not sure. Are you
16 asking about individually, do they have a
17 greater impact because of knowledge or skills,
18 or are you saying that just the percentage or
19 numbers of them?

20 ALJ WISSLER: Percentage and numbers.

21 DR. DAWSON: I don't know. All I know
22 is the way they're positioning marketing the
23 resort would suggest to me that there's going
24 to be a high percentage of people that are
25 going to want to go out and enjoy that nature
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1 forever wild.

2 So it's based on their positioning
3 statements, like the one Mr. Gerstman just
4 read. So one would assume it's going to be a
5 fairly high percentage, but not everybody.

6 ALJ WISSLER: Mr. Gerstman.

7 MR. GERSTMAN: Give Mr. Dawson a
8 moment.

9 DR. DAWSON: You have two exhibits
10 that are before you, portions of them this
11 morning; the Unit Management Plan for the Big
12 Indian-Beaverkill Range wilderness Area being
13 one of them, the other one being pages from
14 Slide Mountain Wilderness Unit Management
15 Plan.

16 ALJ WISSLER: CPC Exhibits 39 and 40,
17 respectively.

18 DR. DAWSON: The first one, the Big
19 Indian-Beaverkill, and we go to like page 50,
20 there's a specific address in this of the
21 capacity of the resource to withstand use. I
22 would submit to you that this is an inadequate
23 analysis. I want to be very clear that what
24 we have been talking about has not been
25 conducted in these Unit Management Plans. So,
(FOREST PRESERVE ISSUE)

1 unfortunately, there's no way to go in and use¹²⁵²
2 Applicant's materials to second-guess what DEC
3 might have already done. It had not been done
4 yet.

5 ALJ WISSLER: Can you be more
6 specific? What has not been done? Take me to
7 page 50 and tell me what's wrong with what's
8 said there.

9 DR. DAWSON: Page 50, Section F starts
10 off: "The capacity of the resource to
11 withstand use." It simply has one sentence.
12 It says, "The ability of this unit to
13 withstand use is a function of its physical
14 and biological resources, as well as the type
15 of use the area receives."

16 what follows are several paragraphs
17 that relate to land resource characteristics,
18 wildlife resources, some hunting information,
19 a little bit on fishery resources.

20 There is nothing in there that does
21 what the State Land Master Plan requires,
22 which is how does use, amount of use affect
23 the environment. How does it affect the

24 experience? And that's what's required in the
25 State Land Master Plan. So, unfortunately, we
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1 can't go in and second-guess what the state 1253
2 might have done. This is a difficulty.

3 Now, had that been done, we might have
4 said, given the amount of use there now and
5 the amount of impacts, they might have been
6 able to make some extrapolations. They don't
7 exist. There's no modeling. There's no
8 statistical analysis. There's no conclusion.

9 MR. RUZOW: You're referring to the
10 plan itself?

11 DR. DAWSON: I'm referring to the
12 DEC's Unit Management Plan. Again, I'm
13 arguing that what it says in the State Land
14 Master Plan: "wilderness carrying capacities
15 of individual units will be determined as part
16 of the Unit Management Planning Process."
17 And it talks about the degree of intensity of
18 use and so forth. It has not been done.

19 We can do that same thing in the Slide
20 Mountain, exactly the same thing occurs. So
21 we're unable to do any extrapolations from the
22 existing documents.

23 To come back to a question the Judge
24 raised, and I'm sure it's in everybody's mind,
25 is there any real scientific evidence that
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1 changes in use affect these things? 1254

2 I would argue, and I'll go to the

3 textbook, we have a whole chapter on
4 ecological impacts of wilderness recreation
5 and their management. And it carefully
6 delineates hundreds upon hundreds of studies
7 in which that's been looked at.

8 Again, the parallel is the federal
9 legislation, much like the state legislation,
10 uses the same definition. It's related to the
11 same person who happened to be in New York,
12 and they recognize that both statutorily and
13 from a perspective of preserving this
14 resource, they need to know what use does to
15 the resource itself and to the social
16 experience.

17 ALJ WISSLER: Mr. Gerstman, are you
18 offering those pages?

19 MR. GERSTMAN: I don't have seven
20 copies.

21 MR. RUZOW: At least what the text
22 title is.

23 DR. DAWSON: Title of the textbook is,
24 Wilderness Management: Stewardship and
25 Protection of Resources and Values, Third
(FOREST PRESERVE ISSUE)

1 Edition, 2002. Authors are John C. Hendee and ¹²⁵⁵
2 Chad P. Dawson.

3 MR. GERSTMAN: Since your Honor would
4 like copies -- what we had intended to do was,
5 since Professor Dawson is an author and editor
6 of the text, we had intended to rely on his
7 professional opinion to explain the scientific
8 studies and the results and conclusions. If

9 your Honor would like to have the experts that
10 he refers to, we'd be glad to provide the
11 copies.

12 ALJ WISSLER: It appears that that's
13 part of his testimony just now, yes -- or his
14 offer of proof rather.

15 MR. GERSTMAN: Yes.

16 ALJ WISSLER: So I would like those
17 pages he's referring to.

18 MR. GERSTMAN: Page 413, Chapter 15.

19 DR. DAWSON: The correlation between
20 use and impacts is not a linear one; very
21 clear about that. And the shape of the impact
22 depends on the fragility of the resource. So
23 the Unit Management Plan has correctly
24 identified soils and vegetation and wildlife,
25 and all those things. Each of those things
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1 have a different sensitivity.

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2 You can imagine if you're in a
3 riparian zone, you're in that water interface
4 between land and water, that vegetation is
5 much more subject to impact than, let's say,
6 if you're on a dry site that is already fairly
7 heavily used. It's going to be able to stand
8 more use than that water-based site because of
9 the types of vegetation that grows there.

10 So one of the types of analysis and
11 modeling I'm talking about needs to understand
12 the vegetation, the slope issues, the slope
13 aspect. All those things factor into how

14 quickly impacts affect something.

15 ALJ WISSLER: Isn't it also a function
16 of the season?

17 DR. DAWSON: Absolutely. And if you
18 were in a young growing season and you're, for
19 example, in that riparian zone and you trample
20 those plants, many of them will not come back.

21 If you're in an alpine zone and you
22 trample the plants, they're not going to come
23 back. They have too short of a season to be
24 able to recover from.

25 So absolutely. So there's a variety
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□

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1 of things that begin to impact it. This
2 chapter tries to come up with the principles
3 of how that works. It's not a linear
4 relationship. And the function of how it
5 occurred and how quickly the impacts occur is
6 based on the sensitivity of the resource
7 itself. So that's something that would need
8 to be determined, and I think the DEC
9 correctly identifies that, but then doesn't
10 take it to the next step, what are the impacts
11 and how much does it take to occur.

12 I'm not clear how far you would like
13 me to go with this. Faculty are able to talk
14 in 55-minute bursts indefinitely, and I'm
15 looking for some feedback in terms of how much
16 information you would like, how much testimony
17 you would like.

18 ALJ WISSLER: You have answered my
19 questions.

20 MR. GERSTMAN: There are several other
21 areas, Judge, that we would like to pursue.

22 One question is, Professor Dawson,
23 concerning -- and we'll provide some -- once
24 you have established what the impacts are and
25 the stress that you would expect using the
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1 model, the UMPs, I understand, identify
2 certain management techniques that might help
3 reduce or avoid those impacts; is that your
4 understanding of the UMPs?

5 DR. DAWSON: That is correct. The
6 whole point of the UMP is to figure out what
7 the use is and likely impacts are so one can
8 begin to develop the management plan to make
9 sure that those impacts don't occur.

10 There's a whole variety of monitoring
11 that needs to go on to find out whether or not
12 you'd exceeded that limit of change. Anybody
13 going anywhere is going to have an impact.
14 Anybody going anywhere is going to have an
15 impact. More people have more impacts.

16 The question is, at where do you limit
17 that impact? You can't have a trail without
18 having some kind of impact. So where is that
19 limit? And that's where the management plan
20 really has to address where is that limit, and
21 when we've exceeded it, what do we need to do
22 about it. Is it education information when
23 you have to travel and move through this
24 resource? Is it some kind of limit on use by

25 season?

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1 Anybody who knows mud season knows
2 that once the frost has gone out of the
3 ground, it's a bad time to be on the trails,
4 it's a bad time to be on the roads. You have
5 more of an impact in two or three weeks than
6 you might have in three or four months during
7 the year.

8 So there's a whole variety of factors
9 that management would take into account.

10 ALJ WISSLER: But you don't get there
11 until you've dug up the demographics and you
12 know what kind of usage you're looking at?

13 DR. DAWSON: Exactly.

14 MR. GERSTMAN: In your experience in
15 the Adirondacks and the research that you have
16 done, are you familiar with the management
17 efforts that have been made by the Department
18 of Environmental Conservation to regulate use
19 of the trails in and around the high peaks and
20 those areas?

21 DR. DAWSON: The high peaks,
22 obviously, are one of the most heavily used
23 and the most heavily impacted wilderness areas
24 in New York State. With over 140,000 users a
25 year, there's substantial environmental and
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1 social impacts to that area, some of which has
2 been documented.

3 DEC is taking a heavier regulatory
4 approach to that area than they are any other

5 unit that they manage within the Adirondacks
6 or the Catskills. They still have not
7 completed, for any unit in the Adirondacks and
8 the Catskills, the carrying capacity of the
9 analysis. And that's why I've been contracted
10 to begin to help them to do that in the
11 Adirondack Park.

12 MR. GERSTMAN: Is it your experience
13 that the mediation measures that are set forth
14 in the UMPs will always be successful or can
15 be successful to mitigate the types of
16 pressures that are associated with intensive
17 use of wilderness areas?

18 DR. DAWSON: Ultimately, the use can
19 and will reach points in which some users must
20 be turned away to protect the resource and
21 protect the experience. There are classic
22 examples of that all over the United States,
23 all around the world.

24 If you want to go on the Grand Canyon
25 raft trip, you may be a year and a half to
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1 five years on a waiting list to get on that
2 experience. And people respect that because
3 they want to make sure that if and when they
4 finally have that experience, that experience
5 is the quality that's expected of it.

6 Again, do you arrive eventually at a
7 point where you have to limit the amount of
8 use? Yes, you do. But you have to understand
9 what the relationship is between use and

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10 impacts or you won't know when you have
11 reached that point.

12 And once you have done damage, and
13 anybody who has walked anywhere in the
14 Catskills and the Adirondacks -- once you've
15 treaded down to bedrock and say, well, there's
16 no further impact -- well, yes, there is.
17 Erosion continues along the sides of the
18 trail.

19 In the Adirondacks, alpine area has
20 been lost to the high peaks because of the
21 trampling of vegetation. There are a lot of
22 environmental impacts that are irreversible
23 once they begin to occur in these fragile of
24 environments.

25 So we have to know when we're going to
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1 hit that before we hit it. We can't try and ¹²⁶²
2 back up at a later date and say, oh, look,
3 we'll just fix this. Some things cannot be
4 replaced.

5 Can nature recover? Nature can
6 recover quite a bit, but it cannot make it the
7 way it was before. And what we're attempting
8 to do with wilderness areas is to make sure
9 natural processes and natural conditions are
10 going in perpetuity.

11 MR. GERSTMAN: Is it your experience
12 that New York State has taken any regulatory
13 measures to restrict the use of trails, for
14 instance, in the high peaks, access to the
15 forest preserve, in those areas where the use

16 has caused the stresses that you have
17 identified?

18 DR. DAWSON: Absolutely. In the
19 eastern high peaks zone, in particular, the
20 DEC is actively managing the size of the
21 parking areas. The ability of the people to
22 get too easily to the trailheads is just a
23 deterrent. It's a buffer. It's sort of a
24 psychological way of making you walk another
25 couple of miles to get to the wilderness.
(FOREST PRESERVE ISSUE)

1 Some people aren't going to go there. Or the¹²⁶³
2 fact you need to get a permit, or you can only
3 camp in designated sites.

4 All those things restrict the
5 experience in recognition of the environmental
6 impacts that are occurring, and the social
7 impacts that are occurring. Anybody who
8 camped at Colden Lake in the eastern high
9 peaks can clearly say it was not a solitude
10 experience on many weekend nights.

11 Again, I don't want to enter all this
12 in the testimony, but there are other chapters
13 in the book in which we talk about the aspects
14 of management, in which we talk about the kind
15 of threats that occur in the wilderness. And
16 I kind of conclude with that observation that
17 threats to wilderness are going to continue to
18 happen all the time. And the idea is to
19 understand what causes them and trying to
20 eliminate them, minimize them, mitigate them

21 as much as humanly possible to keep that
22 resource in perpetuity, because we can't make
23 more of it.

24 And the whole point of the book is to
25 store the resources. It's not to say things
(FOREST PRESERVE ISSUE)

1 shouldn't occur or things shouldn't happen. 1264
2 It's just trying to make us very aware -- very
3 proactive to make sure that we're not later
4 sorry we didn't do a better management job, or
5 we didn't keep track of what the resources
6 were, because they can't really be replaced.

7 And with that I'm done, unless you
8 have more questions.

9 MR. GERSTMAN: I have several.

10 You alluded previously to the expert
11 that we have provided on visual impacts. And
12 without drawing any conclusions on that
13 expertise, that would be for the Judge in
14 making his issues rulings, at least some of
15 the testimony that both Mr. Olney from the
16 Catskill Center and Mr. Sundell from Peter J.
17 Smith Associates, has suggested that the
18 project site will be visible, and the project
19 will be visible from various locations in the
20 forest preserve, both I believe in the Big
21 Indian Wilderness Area and from the Slide
22 Mountain Wilderness Area.

23 Referring back to the question that
24 the Judge had raised concerning the impacts of
25 users, even -- who don't necessarily stay at
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1 the hotel, but certainly people who would be
2 visiting the forest preserve in the area of
3 the project site -- would that, in your
4 estimation, if they can see the project site,
5 result in adverse impacts to their wilderness
6 experience and the various attributes of the
7 wilderness experience you testified to
8 earlier?

9 DR. DAWSON: I believe the Judge asked
10 the question earlier and there was an
11 affirmative there. Yes, it will have an
12 impact. And it's the degree to which it has
13 an impact and what you're doing to mitigate
14 it. And I don't think that analysis has been
15 completely done.

16 Vegetation doesn't come in blocks.
17 You can see through vegetation, you can hear
18 through it. And again, it's not that these
19 areas can never have any impact. It's the
20 degree to which we have considered what the
21 impacts are that I think are very important,
22 and what the change in the experience in that
23 area is.

24 One could map the sense of remoteness,
25 one could map a variety of things and try and
(FOREST PRESERVE ISSUE)

1 determine what the possible impacts are. I 1266
2 want to talk about buffers to that, visual
3 buffers, sound buffers, space buffers, all
4 those different things that could be done.
5 And again, I don't think the project has done

6 that.

7 And I think because of its proximity
8 to the wilderness areas, I think it's
9 incumbent that you can consider that possible
10 impact. It is a type of environmental impact.

11 MR. GERSTMAN: In your professional
12 experience, Professor Dawson, are you familiar
13 with projects, and I think you might have
14 alluded to one in Colorado, where the
15 development takes place in close proximity to
16 wilderness areas?

17 Have you seen the impacts of those
18 types of project developments?

19 DR. DAWSON: Absolutely. We talk
20 about 17 threats to wilderness, Chapter 13 in
21 the book. And one of those is this type of
22 development in close proximity adjoining
23 wilderness properties. And the idea simply is
24 a lot of people -- if you live in Denver and
25 you want to enjoy the Rockies, you want to go
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1 up and have a piece of the Rockies. So many ¹²⁶⁷
2 of these second-home communities are put right
3 adjoining those because it increases the value
4 of that resource. Because in a sense you
5 partially capture that resource. People have
6 to go through your community now to actually
7 get to the resource in some of those cases,
8 and it really has caused an adverse impact on
9 that resource.

10 The developers have used that to add
11 value to their project and have not adequately

12 considered the externalities of that in an
13 economic sense.

14 MR. GERSTMAN: One further question.
15 An issue that has been raised in this
16 proceeding by the Catskill Preservation
17 Coalition has to do with the potential
18 cumulative impacts of the proposed project
19 with the proposed expansion of the Belleayre
20 Mountain Ski Center, something that I briefly
21 alluded to earlier in our conversation. The
22 types of users who would be attracted to the
23 ski center may well also access the forest
24 preserve those non-skiing days, for instance.

25 would you think it would be valuable
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□

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1 to evaluate what the potential cumulative
2 impacts are from the project, including the
3 potential impacts from any proposed expansion
4 at the ski center?

5 DR. DAWSON: That's a complicated
6 question. Anytime there's a substantial
7 increase changing use up or down, it ought to
8 be evaluated. And so again, I would think
9 that it would be incumbent to find out if you
10 change a project, you want to add a project,
11 you want to know what is the impact upon the
12 surrounding public land. And it needs to be
13 quantified in some way or other.

14 So, again, if we're modeling other
15 things, we're modeling a variety of things,
16 this is something that ought to be considered.

17 whether it's any aspect of this project or
18 other adjoining projects, they all have an
19 impact.

20 There's different impacts in the
21 winter, spring, summer, fall; all those things
22 are different. Different types of users,
23 whether they be cross-country skiers, ten
24 people with three dogs, whatever they are,
25 they all have different kinds of impacts. And
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1 those types of things need to be categorized
2 and considered.

3 MR. GERSTMAN: Judge, any further
4 questions?

5 ALJ WISSLER: I don't want to sound
6 like Larry King trying to help you plug your
7 book, but tell me who uses this text of yours.

8 DR. DAWSON: This book is used by the
9 federal land managing agencies, Bureau of Land
10 Management, U.S. Forest Service, Fish and
11 wildlife Service where they have wilderness
12 areas, and National Park Service. It's also
13 used by academic institutions, and it's
14 literally used around the world.

15 ALJ WISSLER: As a standard text for
16 this --

17 DR. DAWSON: As a standard text. It
18 is the standard text for this. And I say that
19 -- I got on this in the third edition, I was
20 not in the first two editions. They
21 established it that way, and I have been
22 pleased to join that long-term effort. It's

23 endorsed by all four federal agencies on the
24 front cover.

25 ALJ WISSLER: Okay. Anything else,
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1 Mr. Gerstman?

2 MR. GERSTMAN: I think we're set, your
3 Honor. This is subject to connection later on
4 concerning some of the other -- with respect
5 to some of the other witnesses who will be
6 testifying concerning forest fragmentation,
7 habitat fragmentation and the important bird
8 areas. But that will be subject to our
9 further discussion or briefing.

10 ALJ WISSLER: Are we doing that today?

11 MR. GERSTMAN: We expect to have
12 Dr. Michael Burger in later this afternoon,
13 and forestry impacts will be on some other
14 day.

15 MR. RUZOW: The 29th.

16 ALJ WISSLER: Do we need -- do you
17 want Staff to go first?

18 MS. BAKNER: We're happy to go first,
19 your Honor, just to cover what's on the record
20 right now.

21 ALJ WISSLER: Do you need five
22 minutes?

23 MS. BAKNER: No, actually we don't.

24 Your Honor, I think what we would
25 argue here, based on what we have heard today
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1 from Mr. Dawson, which in many respects is

2 broader and more precise than he furnished in
3 his letter that was attached in the exhibit, I
4 think what we have here is a fundamental
5 disagreement about what SEQRA requires.

6 The State Environmental Quality Review
7 Act does not require one to redo all the Unit
8 Management Plans undertaken by the state at
9 considerable state expense over the past 20
10 years. The State Environmental Quality Review
11 Act doesn't require an encyclopedic evaluation
12 of all of the speculation that could be
13 attributed to a particular project. One of
14 the reasons why, it's my understanding, that
15 SEQRA does not do that is because, in and of
16 itself, an environmental impact statement is a
17 heavy burden for a project sponsor to bear.

18 To make that burden manageable in the
19 context of the balance with economic
20 development, there is a process known as the
21 scoping process that sets forth what has to be
22 covered in the DEIS, in addition to the
23 regulations and everything else.

24 The New York-New Jersey Trails
25 Conference was a part of that scoping process,
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□

1 most likely because that took place in the
2 year 2000. And Mr. Dawson is now indicating
3 that the park service, for its most popular
4 sites, such as the Grand Canyon, is now just
5 using this methodology. It's likely that that
6 may perhaps explain why there was no model
7 that was suggested that we use to predict

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8 these kind of very speculative impacts.

9 we would submit that the document that
10 we have provided does provide information, all
11 the information we have, your Honor, about the
12 demographics and the people who will be
13 attending or living at, if you prefer, the
14 project site.

15 So we have estimated visitor days. We
16 have estimated who is coming. We have
17 identified our primary market area, which is
18 the New York City metropolitan area. We have
19 provided extensive studies done by
20 tourism-based consultants saying who is likely
21 to come and why we think this resort will be
22 successful at this location. And I submit
23 that a lot of the economic information that we
24 submitted is an atypical submission in a Draft
25 Environmental Impact Statement.

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1 Throughout the process of developing ¹²⁷³
2 the document, it was informed by and directly
3 referenced some of the documents that
4 Mr. Dawson was discussing. And we would like
5 to introduce the entire copies of the Unit
6 Management Plans into the record for your
7 Honor's review. Specifically we have the
8 complete copy of the Big Indian-Beaverkill
9 Range Wilderness Area.

10 ALJ WISSLER: That will be Applicant's
11 14.

(COMPLETE COPY OF "BIG

13 6-18-04 OPTICROSS
INDIAN-BEAVERKILL RANGE WILDERNESS AREA"
14 RECEIVED AND MARKED AS APPLICANT'S EXHIBIT NO.
15 14, THIS DATE.)

16 MS. BAKNER: We're also introducing
17 the Shandaken wild Forest Draft Unit
18 Management Plan by DEC.

19 (COMPLETE "SHANDAKEN WILD FOREST
20 DRAFT UNIT MANAGEMENT PLAN" RECEIVED AND
21 MARKED AS APPLICANT'S EXHIBIT NO. 15, THIS
22 DATE.)

23 MS. BAKNER: Mr. Altieri, I understand
24 you guys are going to be introducing the
25 Catskill Forest Preserve Public Access Plan
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1 from August 1999?

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2 MR. ALTIERI: That's correct.

3 MS. BAKNER: We would like to refer to
4 that as part of our discussion here. So if
5 you would like the staff's exhibit to go in
6 now?

7 ALJ WISSELER: Sure.

8 MR. ALTIERI: This is Staff Exhibit 1
9 then.

10 (COMPLETE "CATSKILL FOREST PRESERVE
11 PUBLIC ACCESS PLAN DATED AUGUST 1999" RECEIVED
12 AND MARKED AS DEC EXHIBIT NO. 1, THIS DATE.)

13 MS. BAKNER: For the record, in the
14 Draft Environmental Impact Statement, we
15 discuss all of the plans that were available
16 at the time to us. Obviously, the draft
17 June 2003 Shandaken wild Forest Draft Unit
18 Management Plan was not available and,

19 therefore, was not mentioned.

20 ALJ WISSLER: Are you making a
21 specific reference to a page in the DEIS?

22 MS. BAKNER: I am, indeed. Page 1-9
23 -- I'm sorry, Kevin is correcting me. We did
24 mention the June 2003 plan on page 1-11.

25 But 1-9, we talk about, extensively
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1 about the Catskill Park State Land Master
2 Plan.

3 Page 1-10, we have references to the
4 Beaverkill Range Wilderness Area Unit
5 Management Plan. And that's the June 1993
6 plan.

7 Page 1-11, we talk about the Shandaken
8 Wild Forest Draft Unit Management Plan through
9 to page 1-12.

10 And then on page 1-17, we have a
11 discussion of the Catskill Forest Preserve
12 Public Access Plan. And specifically, we
13 discuss in there the estimates of annual
14 visitation to the Catskill Forest Preserve,
15 and we use whatever data, in fact, that the
16 state has made available to us regarding that
17 use.

18 I also want to refer to Appendix 3 and
19 Appendix 4. Appendix 3 of the Draft
20 Environmental Impact Statement is the
21 Recreational Amenities Plan prepared by SE
22 Group for Crossroads Ventures. And the goal
23 of that resort programming was to ensure that

24 we had adequately disclosed to the public what
25 our intentions were regarding how the resort
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1 was anticipated to be used by the people who ¹²⁷⁶
2 would visit the resort.

3 So what we go through here very
4 deliberately, in addition to the general
5 vision of what the resort is going to do, is
6 we have a discussion of the market study that
7 was done by the SE, and emerging trends in the
8 market so that we can predict how people are
9 likely to want to use the resort. And we
10 looked specifically at environmental education
11 and cultural and educational programming.

12 So part of what we're doing here, in
13 addition to exposing people to all of the
14 surrounding recreational uses, is providing a
15 component of education with respect to those
16 recreational uses. And that is discussed on
17 page 12 of that document.

18 ALJ WISSLER: Appendix 3?

19 MS. BAKNER: Yes, of appendix 3,
20 that's correct. And it's discussed on pages
21 15 through -- pretty much the remainder of the
22 document here. Just sort of the programming
23 that people will be exposed to. And the
24 section on environmental education can be
25 found at pages 25 -- page 25 through 26.
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1 Specifically, in Appendix 4, we talk ¹²⁷⁷
2 about the wilderness Activity Center program.
3 The wilderness Activity Center program is

4 going to be housed in the former Highmount Ski
5 Center area. And the idea here was to provide
6 an opportunity for guided tours and education
7 with respect to hiking, climbing, any of the
8 sort of non--- well, any of the sort of uses
9 that people are likely to want to make, either
10 within the forest preserve or on trails within
11 this property.

12 There is also detail provided on the
13 trails within the property and what's proposed
14 to provide people who may not be up to or
15 desirous of going out into the wilderness area
16 to use trails actually in and around the
17 resort on the resort property.

18 So there's quite a bit of information
19 about that as well.

20 MR. RUZOW: Your Honor, with respect
21 to our obligation, the Applicant's obligations
22 under SEQRA, there is clearly much value to
23 what Professor Dawson is suggesting for the
24 state to be performing with respect to Unit
25 Management Plans, should there be funds
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1 available to it. But it is clearly not an 1278
2 Applicant's responsibility to, in effect, fill
3 in the gaps in what is a State Management Plan
4 for hundreds of thousands of acres.

5 We have reviewed those plans. There
6 is information that is essentially impossible
7 for us to develop and maintain in connection
8 with our project that would be needed based on

9 Professor Dawson's proffer, that -- in order
10 to perform the models that he's talking about.
11 There hasn't been the studies of the trail
12 usage with any level of reliable
13 predictability of use of existing levels, let
14 alone for what we are proposing to do. And
15 I'll speak to that in a moment.

16 The context of the character of the
17 resource in the trails, the Unit Management
18 Plans we have in front of us, he criticized as
19 being absent, they haven't done their job.
20 It's not our job to perform that before any
21 activity that is proposed in and near these
22 areas is performed.

23 You heard last week regarding the
24 market issues from both Dr. Alschuler and from
25 Erich Baum about the market that they're
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1 seeking to bring into this area, and
2 Mr. Baum's testimony or proffer of testimony
3 regarding the uniqueness. There aren't
4 five-star resorts in the Catskills. There's
5 no examples to draw upon reliably as applied
6 to this location that will tell you precisely
7 the way -- or with enough detail the nature of
8 the visitations and how much forest preserve
9 use that's going to occur. The
10 600-plus-thousand potential visitations occur
11 across a 12-month, four-season period of time.
12 The number of days that would be available to
13 any number of visitation is speculation, based
14 on who would go out on the trail in what

15 season.

16 We are drawing in -- the market is for
17 bringing golfers into this area and visits,
18 parties as the primary draw to have a
19 four-season resort, but a golf resort at the
20 base during the season, and that season is
21 from May to sometime in early November, at
22 best, with the shoulder seasons.

23 So the opportunities to perform the
24 kind of academic analysis that Professor
25 Dawson would like to see are not -- is not
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1 there. And he's characterized appropriately ¹²⁸⁰
2 in a number of ways the speculation that would
3 be necessary. The law does not require us to
4 speculate in terms of impacts to get there.
5 And it's just not our obligation.

6 When Neil Woodworth provided his
7 comments in June of 2000 for the scoping,
8 there was no such model suggested. His focus
9 was on the visibility of the site. He asked
10 for an assessment on the forest preserve, and
11 we provided the information that is available
12 to do that.

13 In comments that were provided on
14 preliminary drafts of the EIS, no one -- in
15 2002, no one suggested a particular model that
16 existed. And indeed, even with respect to
17 this model, it's a model not used in New York
18 for projects in New York. It's a model that
19 has been developed in academic circles, which

20 may be great at the federal level where you
21 have multiple times the number of visitors and
22 users and the threat on the land is perhaps
23 greater than here. It may be developed over
24 time here and used in New York State, but the
25 time has not yet come, and this project is not
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1 the experiment for the application of such a ¹²⁸¹
2 model because it is both inappropriate and
3 unfair to seek to impose that type of model on
4 an individual project.

5 If you extend the logic of Professor
6 Dawson's concerns as applied to not just this
7 project but to any project, then the state
8 should not be funding any of the tourism
9 development opportunities that are suggested.
10 There shouldn't be any funding, state or
11 federal funding of any hamlet rehabilitation
12 going on that might draw additional visitors
13 to the area because we haven't done the
14 studies necessary to look at what the
15 potential use would be on the forest preserve.

16 There's a lot that is done, and
17 there's a lot that's not done, but it doesn't
18 necessarily rise to a level of an individual
19 Applicant's obligation under SEQRA to perform
20 in this circumstance.

21 I'll leave to Ms. Bakner the rest of
22 it. But as a matter of principle, I would
23 object to the suggestion at this stage in an
24 EIS proceeding, and since it was not mentioned
25 in either of the scoping comments that were

1 offered or in the context of the April 19th
2 letter, that a model -- all of a sudden, a
3 model that has apparently existed in some
4 preliminary stages and used elsewhere should
5 now be visited upon an Applicant at this stage
6 of the proceeding. To me it is an incredible
7 assertion and is totally inappropriate.

8 MS. BAKNER: The other thing that we'd
9 like to point out to your Honor is the
10 relationship between the wilderness areas and
11 the areas that surround them. And
12 specifically this gets to the history of
13 tourism in the Catskills and also the history
14 of past uses in the Catskills.

15 These areas are not based on objective
16 proof, untrammled by man, nor are they
17 primeval in character. This is a mosaic of
18 forest preserve lands, substantial forever
19 wild holdings adjacent already to substantial
20 tourism uses, including tourism uses that the
21 state's UMP recognize has a long history in
22 this particular area.

23 And what I'd like to direct your
24 attention to, your Honor, is the June 1993 Big
25 Indian-Beaverkill Range wilderness Area Unit
(FOREST PRESERVE ISSUE)

1 Management Plan, specifically starting at
2 pages 10 -- 10 and following.

3 And looking particularly at page 11,
4 again, to put the scope of our project into

5 the historic context of the Catskills, this is
6 a reference to resort hotels. It says: "But
7 probably the most notable resort hotel in this
8 region was the Grand Hotel, backed by Thomas
9 Cornell of the Ulster & Delaware Railroad.
10 The Grand Hotel was the largest of three large
11 hotels on the Ulster & Delaware line, the
12 others being the Overlook and the Tremper
13 Mountain Hotel. Built in 1880 on Monka Hill
14 near present day Highmount, it was an eighth
15 of a mile long, had accommodations for 450
16 guests, and commanded a mountain view
17 unequalled in the state."

18 So our requirement under SEQRA is to
19 look at baseline environmental conditions in
20 the history of the area. We don't look at
21 wilderness areas devoid from the remaining
22 past uses, existing uses and other potential
23 future uses for this particular area.

24 On the issue of untrammelled by man, I
25 have an additional exhibit I would like to put
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1 in at this time. This exhibit are the pages, ¹²⁸⁴
2 are excerpts from The Catskill Forest: A
3 History by Michael Kudish. This came up
4 previously in connection with our discussion
5 of wildlife impacts, but it is an excellent
6 history of the industry and resort operations
7 in the area and their extensiveness, in terms
8 of the forest preserve in the wilderness
9 areas.

10 ALJ WISSLER: Applicant's 16.
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11 ("THE CATSKILL FOREST: A HISTORY" BY
12 MICHAEL KUDISH RECEIVED AND MARKED AS
13 APPLICANT'S EXHIBIT NO. 16, THIS DATE.)

14 MS. BAKNER: So the existence of the
15 wilderness preserves in this area go hand in
16 hand with concerns for the economies of the
17 local communities and the promotion of tourism
18 in the Catskills. This is reflected in all of
19 the public access plans, as well as the UMP.

20 But I direct your attention, your
21 Honor, to page 3 of the Catskill Forest
22 Preserve Public Access Plan from 1999, the
23 blue document. Specifically, it indicates
24 that the goals of the Public Access Plan --

25 ALJ WISSLER: Staff's 1 for the
(FOREST PRESERVE ISSUE)

1 record.

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2 MS. BAKNER: -- is to support and
3 encourage forest preserve uses that contribute
4 to the economies of the local communities in a
5 manner consistent with the Catskill Park State
6 Land Master Plan, and the Article 14 of the
7 New York State Constitution, which declares
8 the forest preserve forever wild.

9 So what we have in this area is a
10 history of tourism, and indeed, industrial
11 uses, such as logging, tanning, and then we
12 have also the forest preserve. But the
13 concept of the forest preserve isn't one that
14 can be considered in a vacuum, and I'm sure
15 Professor Dawson isn't suggesting that it be

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considered in a vacuum.
However, by making comments regarding the scope of the scale and the proposed activity, the implication is there that tourism in this area and increased numbers of people coming to these communities is, at its heart, a bad thing for the forest preserve and, therefore, should not be encouraged. That concept is not reflected in any of the planning documents put together by the
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Department of Environmental Conservation.
In fact, on page 1 of the Catskill Forest Preserve Public Access Plan, it says that: "The 300,000 acres of forever wild public lands receive more than a half million visitors a year who drive the scenic highways of the region on their way to hike, bike, canoe, hunt, fish, camp and study nature. Surrounding communities depend heavily on access to forest preserve lands as a nature-based tourism attraction that can be the cornerstone of sustainable economic development for the region."

ALJ WISSLER: What page?
MS. BAKNER: Page 1.
ALJ WISSLER: Of what?
MS. BAKNER: Of the Catskill Forest Preserve Public Access --
ALJ WISSLER: Staff 1?
MS. BAKNER: Yes. Then on page 2, it goes on to say that: "Recreational

22 opportunities need to be identified and
23 enhanced to ensure access for a broad range of
24 users, particularly families and people with
25 disabilities. Another goal of the plan is to
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1 encourage cooperation between the public and ¹²⁸⁷
2 private sectors in enhancing the use,
3 enjoyment and protection of the forest
4 preserve."

5 So the forest preserve, while it has
6 elements, some of the elements that Mr. Dawson
7 has identified, also serves a much broader
8 purpose in the context of the state, and in
9 this particular area, tourism enhancement and
10 the provision of recreational opportunities
11 for the People of the State of New York.

12 I want to also quote from page 20 of
13 the same document, your Honor. It says:
14 "Monitoring the condition of trails and
15 parking areas and early detection of changes
16 as they occur are currently conducted by
17 rangers and foresters. If they feel the
18 impacts are too great, they can close trails
19 at certain seasons to prevent erosion, reroute
20 trails, require permits for large parties, and
21 employ other management strategies to maintain
22 the quality of the resource and the
23 recreational environment."

24 So there's no suggestion, although you
25 do have these two compatible concepts, there's
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1 no suggestion that the forest preserve should
2 somehow be sacrificed for public-use purposes.
3 However, the state has a substantial interest
4 and staff to monitor conditions on the trails
5 and to determine during the course of a UMP,
6 which may cover five, ten years, whether
7 changes need to be made in order to ensure
8 that environmental degradation does not occur.

9 I would like Kevin Franke to go over
10 sort of the information that we have been able
11 to locate regarding the statistics of use in
12 the area.

13 MR. FRANKE: Right. This goes back to
14 your question about the potential percentage,
15 your Honor, and that discussion with Professor
16 Dawson earlier. Exhibit K of the CPC
17 petition, which is Professor Dawson's letter
18 of April 19th, 2004, cites an annual use of
19 39,107 to 49,368 trail visits on all forest
20 preserve trails in all areas of the Catskill
21 Park. In reality, these numbers are from CPC
22 41 and are for Region 3 trailheads only. So
23 to characterize, existing level-of-use numbers
24 don't take into account any trailhead tallies
25 from Region 4. According to the State Land
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1 Master Plan, approximately 40 percent of the
2 Catskill Park is contained within Region 4,
3 including such trails as the escarpment trail,
4 the trails on Hunter Mountain, et cetera.

5 So in an effort to get a handle on
6 overall trail use in the Catskill Park, I

7 consulted the August 2003 Draft Revision to
8 the Catskill Park State Land Master Plan.

9 ALJ WISSLER: Are you offering this as
10 Applicant's 17?

11 MR. FRANKE: If I may do so
12 presumptuously, your Honor, yes, I am.

13 ALJ WISSLER: Applicant's 17.

14 ("DRAFT REVISION CATSKILL PARK STATE
15 LAND MASTER PLAN" DATED AUGUST 2003 RECEIVED
16 AND MARKED AS APPLICANT'S EXHIBIT NO. 17, THIS
17 DATE.)

18 MR. FRANKE: Turning your attention to
19 page Roman numeral I.

20 MR. GERSTMAN: Can I just clarify with
21 possibly the DEC Staff when this went out for
22 public comment, August 2003?

23 MR. RIDER: This plan was submitted as
24 a draft in August 2003, and we held public
25 meetings throughout the Catskills, including
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1 Albany, Guilderland area, throughout the
2 winter to take public comment. It still is a
3 draft. It has not come out as a final plan.

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4 ALJ WISSLER: Okay. We have CPC 38,
5 which is the actual plan, adopted '85?

6 MR. RIDER: That's the existing, the
7 original Catskill State Land Master Plan
8 adopted in 1985. That is still the current
9 plan.

10 ALJ WISSLER: That's still the current
11 plan?

12 MR. RIDER: Still the current plan we
13 must operate under.

14 ALJ WISSLER: This is the draft
15 revision of this?

16 MR. RIDER: Correct.

17 MR. RUZOW: It's on the DEC website.

18 MR. FRANKE: Again, drawing your
19 attention to page Roman numeral I, within that
20 table there are annual forest preserve
21 public-use statistics. Examining the
22 wilderness and wild forest numbers, together
23 they total approximately 110,000 visitors to
24 these units, and these estimates are based on
25 2002 trail registers.

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1 Professor Dawson has alluded to in his ¹²⁹¹
2 presentation the variability in the amount of
3 sign-in hikers as opposed to the numbers of
4 users. Now, this can vary from trail to
5 trail, and you'll see it certainly does, even
6 just within the Catskills itself.

7 When the Unit Management Plan for the
8 Big Indian-Beaverkill Range Wilderness Area
9 was prepared, that was submitted as CPC 39 and
10 then what follows Applicant's 14, they
11 utilized a 65 percent sign-in rate. That was
12 based upon observations of the forest rangers
13 in that area.

14 So if one were to apply this rate,
15 which does vary, but if you were to apply this
16 rate uniformly across the forest preserve, the
17 actual number of hikers in wilderness and wild

18 forest can be approximately 148,000. So we'll
19 put the existing use in a more current
20 context.

21 In the same table on page Roman
22 numeral I, the total use is listed as
23 approximately 553,000 visitors per year. So
24 approximately 20 percent of the total visitors
25 per year, just the state facilities, are
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1 utilizing trails. There was some discussion ¹²⁹²
2 of demographics and how you would identify
3 what percentage of the resort users might use
4 the trails. Simply point out that this
5 20 percent of state facility users are there
6 for that purpose, to utilize the state
7 facilities.

8 ALJ WISSLER: Kevin, let me stop you.
9 I'm looking at Applicant's 17, and I'm looking
10 at the 553 visitors a year.

11 MR. FRANKE: Correct.

12 ALJ WISSLER: Are you saying that that
13 means 553 people are on the hiking trails?

14 MR. FRANKE: No. If you look under
15 wilderness and wild forests, respectively,
16 there are 34,000 and 66,000 in those two
17 units.

18 ALJ WISSLER: Where are you?

19 MR. FRANKE: At the top.

20 ALJ WISSLER: Okay.

21 MR. FRANKE: Those are based on, you
22 see underneath the footnote, "2002 Trail

23 Registers"?

24 ALJ WISSLER: Okay. Camping permit
25 and lift ticket sales, all of them?
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1 MR. FRANKE: Right. Campgrounds, ski¹²⁹³
2 areas.

3 ALJ WISSLER: So it's not broken out
4 by who is hiking alone?

5 MR. FRANKE: In talking to Lands and
6 Forest Central Office, they confirm that those
7 numbers from wilderness and wild forest are
8 hikers.

9 MS. BAKNER: Based on the 2002 trail
10 registers?

11 MR. FRANKE: Right.

12 ALJ WISSLER: Just as an aside, but I
13 don't know that you can answer this, probably
14 DEC should answer this. But looking at CPC
15 41, which is the Region 3 Catskill
16 Preservation Trailhead Tally Summary, we were
17 on a little piece of the Pine Hill-West Branch
18 trail the other day. How is that reflected in
19 that tally there? Is it or isn't it?

20 MR. RIDER: Pine Hill-West Branch
21 Trail currently only has one trail register at
22 the head of the trail. There's side registers
23 and side trails off -- it would be the Biscuit
24 Brook Trailhead, which is down on County Route
25 47 beyond --
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1 ALJ WISSLER: So we're looking at CPC¹²⁹⁴
2 41, that second group?

3 MR. RIDER: Yes. To qualify that,
4 that's a trailhead that's directly on the Pine
5 Hill-West Branch Trail as opposed to lateral
6 trails that also lead into the Pine Hill-West
7 Branch that also have registers, which would
8 be Mckenley Hollow, Rider Hollow --

9 ALJ WISSLER: Lost Clove.

10 MR. RIDER: Lost Clove does not have a
11 trail register, nor does the Pine Hill-West
12 Branch coming up out of Pine Hill Village does
13 not have a trail register.

14 And just to qualify that, we have not
15 put registers in places where we have had low
16 entry or haven't seen problems to date. We
17 are eventually going to have trail registers
18 at all trail entrances, but at the current
19 time, we have not put them in on lower-used
20 trails.

21 ALJ WISSLER: Thank you.

22 Mr. Franke.

23 MR. RUZOW: Your Honor, I have two
24 points. One, a technical argument and the
25 second, pure legal. Your Honor, looking at
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1 CPC Exhibit 3B, what Professor Dawson and
2 Kevin Franke have been talking about this
3 morning have been focused on the Big Indian
4 and Shandaken wild Forest, the areas in the
5 dark green that we're talking about here.
6 what has been ignored in this discussion is
7 the fact that the light brown color area here,

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8 which is the high-intensity Belleayre Unit
9 Management Plan, high-intensity use. We will,
10 subject to connection when we come back to
11 talk about the Applicant's presentation on
12 community character, we will be looking at the
13 draft management -- the Big Indian -- the
14 Belleayre Unit Management Plans that currently
15 exist, the 1998 plan, and the location of the
16 project flanking that to the east and west,
17 which is fundamentally different in terms of
18 the use and the intensity of use that are
19 proposed than are on the adjacent and -- and
20 to the south of wilderness forest preserve
21 lands.

22 I also point out that this is a wild
23 forest to the east. It's a wild forest
24 designation of the forest preserve as opposed
25 to a --

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1 ALJ WISSLER: Shandaken?

2 MR. RUZOW: Yes. As opposed to
3 wilderness area. And moreover, when you look
4 at the areas proposed that Mr. Olney had
5 marked as the Open Space Plan as potential
6 acquisitions, you see areas that are marked
7 with red dots, which are infills, with the
8 exception of Fleischmanns Mountain, which is
9 further to the west of the property that is
10 involved.

11 Our property is not listed in that
12 area as an acquisition on the Open Space Plan,
13 and you see infill in the wilderness areas to

14 the south. This area, which is adjacent to
15 Route 28, and the developed Route 28 Corridor
16 in this area historically, is just
17 fundamentally different. What Ms. Bakner read
18 from in terms of the recognition in the Big
19 Indian Plan or the Catskill Access Plan of
20 recognizing that use is part of that whole
21 planning process. The impacts -- part of that
22 larger plan analysis contemplates activities
23 of different dimensions in different places.

24 And I would submit, your Honor, when
25 one looks, depending upon the vantage point
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1 from different locations, when one looks north¹²⁹⁷
2 and can see the areas that are not -- further
3 north -- that are not state lands and are not,
4 therefore, protected, and you start picking up
5 the Route 28 Corridor in your vistas, the
6 expectation of what you see is different.

7 Similarly, with respect to the views
8 that are capable of capturing part of the
9 Belleayre Ski Center, another developed site,
10 your expectations and your views are different
11 than when you are looking in the interior of a
12 wilderness area.

13 And the number of vantage points,
14 we're debating the number of vantage points
15 one could have as a glimpse along a trail, but
16 all of that is taken into account in terms of
17 where you're looking, what your reasonable
18 expectations are when you're on a trail and

19 traveling and you look out. Experienced trail
20 goers will know that.

21 On a legal principle, what Professor
22 Dawson has suggested and what CPC has
23 suggested should be done from a SEQRA
24 perspective, what the regs require is the
25 identification and nature and relevance of
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1 unavailable -- certain information, we've
2 heard that today. The summary of existing
3 credible scientific evidence, if available.
4 And they're asking us to assess the
5 likelihood, even if the probability of
6 occurrence is low, of potential impacts using
7 theoretical approaches or research methods
8 generally accepted in the scientific
9 community.

10 ALJ WISSLER: Are you quoting from
11 something?

12 MR. RUZOW: I am quoting, indeed, your
13 Honor. I am quoting from the SEQRA
14 regulations, section 617.9, regarding the
15 preparation and content of environmental
16 impact statements. And I'm reading from
17 subparagraph B, 617.9(B), and paragraph 6,
18 which pertains to the exercise that one is
19 required to undertake for worst-case analysis
20 when you are undertaking such actions as
21 -- and locating an oil supertanker port, a
22 liquid propane gas/liquid natural gas
23 facility, the sighting of hazardous waste
24 treatment facilities. It does not apply in

25 the review of such actions as shopping malls,
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1 residential subdivisions or office facilities. 1299

2 This is the worst-case section of the
3 SEQRA regulations that has a parallel
4 provision in the NEPA regulations. It's
5 reserved to catastrophic -- potentially
6 catastrophic impacts to the environment from
7 ultrahazardous activities.

8 with all due respect, your Honor, the
9 location of a resort, destination resort
10 hotel, even in close proximity to the
11 high-intensity use area of the Belleayre Ski
12 Center and the nearby wilderness areas, does
13 not rise to the -- legally, does not rise to
14 the level of a condition requiring the
15 application of this tool.

16 what we have heard at length today is
17 the uncertainty of data, the unavailability of
18 data regarding all sorts of things that might
19 be used in a model yet to be used in New York.
20 And I submit, your Honor, this is interesting,
21 it is fascinating, it is valuable
22 prospectively. If the government wants to
23 undertake these types of activities down the
24 road, it makes perfect sense. We are
25 certainly willing to cooperate and provide
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1 data, to the extent we have it or it's
2 available to us in the future for this
3 project. But it's not something in the

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4 initial review of a project for
5 decision-making by the Department is, with all
6 due respect, relevant.

7 ALJ WISSLER: Give me that section one
8 more time, 617.

9 MR. RUZOW: 617.9(B)(6).

10 Your Honor, we've completed our
11 presentation.

12 ALJ WISSLER: Okay. Just one
13 clarification. Applicant's 16, Catskill
14 Forest: A History, Michael Kudish, that's
15 excerpts from that book; correct?

16 MS. BAKNER: Yes.

17 MR. RUZOW: Correct, the same book
18 that was introduced --

19 ALJ WISSLER: I understand.

20 MR. ALTIERI: Could we take ten before
21 we go?

22 ALJ WISSLER: 10, you got it.

23 (11:36 - 11:49 A.M. - BRIEF RECESS
24 TAKEN.)

25 ALJ WISSLER: Back on the record.
(FOREST PRESERVE ISSUE)

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1 Mr. Altieri.

2 MR. ALTIERI: First, your Honor, I
3 would like to submit a few exhibits. Staff
4 Exhibit 2 will be Catskill Park State Land
5 Master Plan, 1985.

6 (COMPLETE COPY "CATSKILL PARK STATE
7 LAND MASTER PLAN" RECEIVED AND MARKED AS DEC
8 EXHIBIT NO. 2, THIS DATE.)

9 MR. ALTIERI: Exhibit 3 is a Catskill
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10 Forest Preserve Official Map and Guide.

11 ("CATSKILL FOREST PRESERVE OFFICIAL
12 MAP AND GUIDE" RECEIVED AND MARKED AS DEC
13 EXHIBIT NO. 3, THIS DATE.)

14 MR. ALTIERI: Exhibit 4, Big
15 Indian-Beaverkill Range Wilderness Area Unit
16 Management Plan excerpts.

17 (EXCERPTS FROM "BIG INDIAN-BEAVERKILL
18 RANGE WILDERNESS AREA UNIT MANAGEMENT PLAN"
19 RECEIVED AND MARKED AS DEC EXHIBIT NO. 4, THIS
20 DATE.)

21 MR. ALTIERI: Next is excerpts of
22 Slide Mountain wilderness Unit Management
23 Plan.

24 (EXCERPTS "SLIDE MOUNTAIN WILDERNESS
25 UNIT MANAGEMENT PLAN" RECEIVED AND MARKED AS
(FOREST PRESERVE ISSUE)

1 DEC EXHIBIT NO. 5, THIS DATE.)

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2 MR. ALTIERI: Finally, Exhibit 6,
3 Proposed Special Conditions.

4 ("PROPOSED SPECIAL CONDITIONS -
5 CROSSROADS VENTURES, LLC." RECEIVED AND MARKED
6 IN AS DEC EXHIBIT NO. 6, THIS DATE.)

7 ALJ WISSLER: To what permit?

8 MR. ALTIERI: Pardon?

9 ALJ WISSLER: Special condition to --

10 MR. ALTIERI: It would be a special
11 condition to --

12 ALJ WISSLER: SPDES Permit?

13 MR. CIESLUK: well, they'd be
14 attached -- at this point we've put together

15 the two special conditions for consideration,
16 and in all likelihood they would be attached
17 to permits that are going to continue on past
18 the initial stage, protection of water, most
19 likely SPEDES, water supply. We view them as
20 general attached conditions in the package.

21 MR. ALTIERI: I would like to
22 introduce Jeffrey Rider. Could you please
23 state your full name for the record and your
24 position for DEC Staff.

25 MR. RIDER: Jeffrey Rider, senior
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1 forester with New York State DEC at the New
2 Paltz office, which is Region 3.

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3 My job duties as senior forester out
4 of that office mainly surround the forest
5 preserve in Ulster and Sullivan counties, with
6 a little land extending outside of the forest
7 preserve of my jurisdiction.

8 The bulk of my job is to oversee
9 recreational use on the forest preserve; trail
10 usage, camping usage, inventory, as far as
11 hazardous trees in campsite areas,
12 intensive-use areas for public safety.

13 MR. ALTIERI: Could you please just
14 start off in a general way defining the
15 Catskill Preserve.

16 MR. RIDER: There's two terms,
17 generally, that get interchanged that are
18 distinctly different regarding either the
19 Catskill or Adirondack Forest Preserves. You
20 have the Catskill Park, you have the Catskill

21 Forest Preserve. The distinction between the
22 two, the Catskill Park is about 705,000 acres
23 of public and privately owned lands that's
24 within a boundary typically called the blue
25 line.

(FOREST PRESERVE ISSUE)

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1 within that, you have the Catskill
2 Forest Preserve, which is the state-owned
3 lands, which is about 40 percent of that or
4 300,000 acres, state-owned lands within that
5 park boundary.

6 MR. ALTIERI: And we have four
7 classifications within that?

8 MR. RIDER: There's four
9 classifications here in the Catskills or land
10 classifications when it comes to the Catskill
11 Forest Preserve. The highest land
12 classification is wilderness areas. These are
13 areas that offer a remote experience for all
14 the reasons that Mr. Dawson brought forth
15 earlier.

16 The second classification is wild
17 forest, which is usually a little less
18 opportunity for solitude, maybe a little more
19 opportunity for public use, a little more
20 development is allowed on these properties.

21 Third classification is intensive-use
22 areas, which the campgrounds, New York State
23 DEC campgrounds fall into, as well as
24 Belleayre ski center.

25 And the fourth land classification is
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1 the administrative-use areas, such things as
2 the Catskill Fish Hatchery, the Simson Ski
3 Slope. Administrative-use areas are
4 predominantly utilized by the Department for
5 purposes of enhancing the forest preserve.
6 The hatchery provides fish. We stock many of
7 the streams through the hatchery, so it
8 enhances the angling experience in the forest
9 preserve. Some of these other areas include
10 areas where we may stage lean-to development
11 in support of the trails or camping areas,
12 pre-built lean-to's, and then move them at a
13 later date within the forest preserve.

14 ALJ WISSLER: All four of these are
15 designations within that are then applied to
16 the state preserve state lands; right?

17 MR. RIDER: All four of these
18 designations are for the Catskill Forest
19 Preserve lands only. Adirondack lands include
20 several additional land designations within
21 the forest preserve.

22 MR. ALTIERI: Turning for a moment to
23 Staff Exhibit 1, Catskill Forest Preserve
24 Public Access Plan, does that articulate
25 purposes for the creation of the preserve? If
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1 so, could you elaborate?

2 MR. RIDER: Essentially, if you're
3 looking at the Catskill Forest Preserve Public
4 Access Plan of 1999 --

5 ALJ WISSLER: Staff 1.
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6 MR. RIDER: Correct. If you look at
7 page 8, in the beginning it gives you a little
8 background on the Catskill Forest Preserve,
9 some of what I just gave you, approximately
10 300,000 acres of public lands within the
11 forest.

12 If you look down at the third
13 paragraph, it says, "The primary justification
14 for establishing a forest preserve was to
15 protect water resources." That was both in
16 the Catskills and the Adirondacks. That was
17 the primary goal for the forest preserve.

18 The secondary goal or justification
19 was to establish the forest preserve for
20 public recreation. There were two purposes
21 for forest preserve, and both of these
22 purposes were due to overuse and up-use of
23 lands prior to the state ownership. Public
24 had general concerns over the lands in the
25 high peaks area of the Catskills and the peaks
(FOREST PRESERVE ISSUE)

1 of the Adirondacks where a lot of logging had¹³⁰⁷
2 occurred. They had much industry.

3 Initially, logging pertained to
4 hemlock tan barking, where the hemlock barking
5 is removed -- we had vast stands of hemlocks,
6 mainly in the lower-elevation areas. where we
7 had extensive stands and hemlocks were brought
8 in, hemlocks were cut down and bark removed
9 and the bark used for tanning, which was used
10 in the tanning industry.

11 Late 1800s, much of the hemlock had
12 been stripped off the mountains, many of which
13 had been clear cut. We had a second growth of
14 hardwoods that came back in which provided
15 another opportunity for industry to come in.
16 We had lumbering that occurred. We had
17 charcoal kilns that were set up. There was
18 acid factories, there was hoop making, hoop
19 barrels at the turn of the century. So much
20 of the Catskills was utilized a second time.

21 A lot of fires had occurred and the
22 public outcry was to protect some of these
23 lands. And basically in 1885, on that same
24 page 8, you see that Governor David B. Hill
25 signed a law requiring that: "All the lands
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□

1 now owned or which may hereafter be acquired ¹³⁰⁸
2 by the State of New York (three Catskill and
3 eleven Adirondack counties) be forever kept as
4 wild forest lands. They shall not be sold or
5 leased or taken by any person or corporation,
6 public or private, nor shall the timber
7 thereon be sold, removed or destroyed."

8 That was further amended at a later
9 date to encompass a fourth county in the
10 Catskills, which was Delaware County. The
11 initial Catskill Forest Preserve only covered
12 Ulster, Sullivan and Greene counties. At a
13 later date it was amended to also include
14 lands in Delaware County.

15 MR. ALTIERI: Regarding these two
16 purposes and thinking about the second

17 purpose, same document, pages 20 to 21, does
18 it speak to, I guess the balance, the use of
19 the preserve?

20 MR. RIDER: Essentially, this plan was
21 written and completed in August of 1999. The
22 intent of the plan was the Catskills, in
23 general, are viewed as being underutilized for
24 public recreation. We do have some areas that
25 see substantial amount of usage, but there are
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1 many areas that have not had a lot of usage. 1309

2 And the whole gist of this access plan
3 was to try to promote more public recreational
4 usage of the Catskill Forest Preserve lands.
5 And in conjunction with private lands, meaning
6 they were looking at trying to connect routes
7 like in-to-in routes, town-to-town routes,
8 connector routes from town to town to promote
9 tourism, and also promote economic viability
10 for the local towns within the Catskill Park.

11 Essentially, it's a document promoting
12 the Catskill Forest Preserve. Some of the
13 items documented in there, we have started to
14 complete. There are many other items in there
15 we would like to complete. Either due to lack
16 of staff, lack of funding or lack of time,
17 many of these things have not been completed
18 yet. But the main goal of the document was to
19 preserve the Catskill Forest Preserve for
20 recreation.

21 MR. ALTIERI: I'll just read a portion

22 from page 21 of the same document. It's the
23 last sentence: "However, balance and
24 appropriate access for all - hikers,
25 sportsmen, cross-country skiers, equestrians,
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1310

1 mountain bikers, snowmobilers, wildlife
2 observers, people with disabilities and other
3 groups that use the forest preserve land for
4 recreation, pleasure, is the aim of the DEC's
5 management policies."

6 MR. RUZOW: What page was that?

7 MR. ALTIERI: 21.

8 Oh, and just in terms of this site,
9 where does it lie regarding the preserve and
10 areas that it may apply?

11 MR. RIDER: If you want to refer to
12 the Catskill Forest Preserve Mapping Guide,
13 Number 3. The proposed project, as far as
14 proximity to state lands -- just to take note,
15 the Catskill Forest Preserve Map and Guide is
16 something we produce as the Department. It's
17 a publication that we try to mass produce and
18 get out to the public promoting the Catskill
19 Park, along with individual brochures based on
20 management areas, such as the Big Indian
21 wilderness and Slide Mountain wilderness and
22 other areas within the park to try to promote
23 public use.

24 MR. ALTIERI: For further background
25 on the map, so this is essentially a marketing
(FOREST PRESERVE ISSUE)

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1 document or tool used by the DEC to market the
Page 95

2 activities that one could engage in to use the
3 park to make more use of the park?

4 MR. RIDER: This actual map itself,
5 this brochure, intent was to get it out for
6 public use so they could see, number one, what
7 the Catskill Forest Preserve is within the
8 Catskill Park; where it's located, where the
9 trailheads are located and what opportunities
10 are available out there for public use.

11 MR. ALTIERI: How many of these are
12 produced and distributed every year, or other
13 like documents?

14 MR. RIDER: The first printing of this
15 particular map, I believe, was 150,000 that we
16 submitted the first year, which I believe, was
17 in 1997. There have been two printings, to my
18 knowledge, since then; one for about 75,000
19 brochures, and the latest one was 40,000
20 brochures.

21 Currently this map is under review.
22 It has been revised, and we're planning on
23 coming out with a 100th anniversary edition
24 that should come out sometime this late summer
25 in the celebration of the 100th anniversary of
(FOREST PRESERVE ISSUE)

□

1 the Catskill Park.

1312

2 MR. ALTIERI: Then going back to the
3 location of this particular project in
4 relation to the preserve and one of the four
5 categories that the preserve may have in
6 different parts of the project.

7 MR. RIDER: The project location is
8 both on the east and west sides of the
9 Belleayre Mountain Ski Center intensive-use
10 area, which is managed for high volumes of
11 people; intensive management where many people
12 come and enjoy. A lot of recreational
13 facilities are installed there that you don't
14 normally find out in some outlying areas, like
15 the wilderness areas.

16 It also is near the Big Indian
17 wilderness, and it is west of the Slide
18 Mountain wilderness, which are the two largest
19 wildernesses currently in the Catskills right
20 now of state land.

21 There are proposed changes to some of
22 these wilderness areas and wild forest areas
23 in the Draft Catskill Park State Land Master
24 Plan that just came out this past August 2003.
25 That is not a final, so I won't address the
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1 enlargements of wilderness areas and reduction¹³¹³
2 of all forest areas at this time.

3 But just to take note, this project is
4 either bordering or near both an intensive-use
5 area and a wilderness area which, by our
6 standards, are two extremes in state land
7 management.

8 wilderness is managed for solitude, as
9 Mr. Dawson read you the definition, relatively
10 untrammelled by man, a certain size requirement
11 of 40,000 acres, or at least large enough to
12 produce a feeling of remoteness or has some

13 special characteristic. Both of those
14 wilderness areas, Slide Mountain Wilderness
15 Area, as it's now known, and the Beaverkill
16 Wilderness Area, as it's now known, both offer
17 opportunities for solitude under their current
18 usage.

19 ALJ WISSLER: I'm sorry, say that
20 again.

21 MR. RIDER: We know it departmentally
22 wide as the Beaverkill wilderness Area. We've
23 dropped the -- I'm sorry, the Big Indian
24 wilderness Area, we've dropped the Beaverkill
25 Range part of the title.

(FOREST PRESERVE ISSUE)

1 ALJ WISSLER: Where Beaverkill Range ¹³¹⁴
2 occurs, we should read Big Indian?

3 MR. RIDER: Big Indian wilderness
4 Area. If I may, just one other background on
5 how wilderness is set up. Just so you
6 realize, there's two wildernesses there. The
7 reason that is not one contiguous wilderness
8 area is that it is bisected by both private
9 lands and there's a highway that traverses the
10 center of it, County Route 47. And by our own
11 rules within the DEC, we cannot have a highway
12 that bisects wilderness areas, which is why
13 you have two distinct wilderness areas and not
14 considered one. Nor can you have a private
15 inholding totally surrounded by state lands
16 classified as wilderness areas. We cannot
17 classify state preserved lands as wilderness

18 if it has a private land inholding, meaning
19 there's a private parcel surrounded by state
20 lands. Just a distinction on how we classify
21 lands.

22 In particular here in the Catskills,
23 there's no Catskill Park agency like there is
24 in the Adirondacks. Here in the Catskills,
25 lands are classified by the New York State
(FOREST PRESERVE ISSUE)

1 DEC, which is distinctly different than the ¹³¹⁵
2 Adirondacks where lands are classified by the
3 Adirondack Park Agency. So here DEC
4 classifies the lands and defines the land
5 usage.

6 MR. ALTIERI: Now, in your work
7 managing the preserve, overseeing the
8 preserve, do you use -- there's an acronym,
9 LAC when examining uses of that land?

10 MR. RIDER: Yes. Professor Dawson
11 alluded to the fact that some of our UMPs and
12 most all the UMPs -- all of the UMPs have not
13 addressed what he's termed the limits of
14 acceptable change or taken into account
15 modeling of public usage.

16 Most of these plans in the Catskills
17 have already been completed prior to knowledge
18 of having this modeling plan that we can
19 utilize.

20 As a side note, Mr. Dawson has been
21 hired by New York State to basically educate
22 DEC on the use of this modeling and that is
23 something we're taking a hard look at and

24 trying to incorporate it into our future
25 revisions and future Unit Management Plans for
(FOREST PRESERVE ISSUE)

1 our area. But the way they were completed, 1316
2 although looking today they look inadequate,
3 when Unit Management Plans were written and
4 public use was taken into consideration, it
5 was from on-the-ground people, direct
6 observations of trail usage, direct
7 observation of overusage. If there was use of
8 trail registers where we had them out, use of
9 camping permit numbers where they're issued
10 either by the rangers or folks attending in
11 the more intensive-use areas of public
12 campgrounds. So it was our best guess at the
13 time as to public usage and effect on the
14 lands.

15 MR. ALTIERI: Does Staff have certain
16 mechanisms to control use of the trails?

17 MR. RIDER: Currently we employ many
18 techniques when it comes to trails.
19 Specifically, to remove water off the trails,
20 to harden trails, to allow for alleviation of
21 erosion problems that may or may not have
22 occurred or that could potentially occur.

23 Currently, as we speak today, there is
24 a professional crew that's under contract with
25 the DEC that's working right now in the
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1 Catskill Forest Preserve doing trail work. 1317
2 And some of the structures that are required

3 of them to put in, we put in structures known
4 as rock water bars. They're water
5 diversionary structures that we maintain on
6 trails we put in. It's designed to remove
7 water as quick as possible off the trail. And
8 in very steep sections, we go in, and these
9 may be 15 feet apart. The quicker you get the
10 water off the trail, the less erosion you're
11 going to have with water.

12 we have hardening of areas, where
13 there's a technique known as stepping stones
14 where you put in large stones in spring seeps
15 where there may be an existing trail. This is
16 to try to bring the public up out of the seeps
17 and up out of muddy areas where they're
18 walking on hard surfaces.

19 we have areas where we put in stone
20 staircases on some of the older trails that
21 have been in existence, very steep terrain
22 where there's no way you can prohibit erosion
23 without actually hardening it to the point of
24 putting in a staircase. We do this with
25 natural native materials of existing stone
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1318

1 from the area.

2 we have the ability to re-route trails
3 if there's problems, and we're trying to
4 continually re-route trail sections.

5 Traditionally, trails were created in
6 the Catskill Forest Preserve through use,
7 meaning -- Slide Mountain was the first
8 designated state trail up a mountain, and

9 typically people wanted to get from point A to
10 point B as quick as possible, and they always
11 took the direct route.

12 Direct route might not necessarily
13 have been the best route, so you have a lot of
14 trails that have been established that have
15 been around for a hundred years that went
16 straight up the side of a mountain. So no
17 consideration was taken into account, the
18 visibility of the trail, the potential runoff
19 of a trail, overuse of a trail.

20 Right now we have the ability to
21 re-route trails through some of these problem
22 areas, make them less steep, try to keep away
23 from wet areas. We try to keep away from
24 swampy areas that may be regulated by us as
25 wetlands. Take into account slope on new
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1319

1 trails and re-routes.

2 Recommendation right now is to try to
3 use best management practices to include --
4 currently we're trying to keep trails at a
5 10 percent grade or less, which requires
6 longer trails, in many instances, in the
7 Catskills because it requires switchbacks as
8 opposed to going straight up the mountain.

9 we have the ability to close trails,
10 either through site conditions, overuse,
11 emergency situations such as fire, or in
12 recent history we have closed trails due to
13 tornados, due to hurricanes. Hurricane Floyd,

14 we closed the Peekamoose Trail in 1999 until
15 we could get the trail cleared for safety of
16 public access.

17 MR. ALTIERI: Regarding controls on
18 people who use the trails?

19 MR. RIDER: There's controls set in
20 place, both in the Big Indian -- in specific,
21 the Big Indian Unit Management Plan and the
22 Slide Mountain Wilderness Unit Management
23 Plan. And currently now in the Draft Catskill
24 Park State Land Master Plan, we have
25 provisions in the language that state for
(FOREST PRESERVE ISSUE)

1 group camping or for camping purposes, groups ¹³²⁰
2 of more than 12 will not be allowed or given a
3 permit to camp in wilderness areas.

4 Under current regulations, camping can
5 occur anywhere on state forest preserve lands
6 as long as you're below 3500 feet in elevation
7 during the summer months, essentially from
8 March 22nd to December 20th. From December
9 21st to March 21st, you were allowed to camp
10 above 3500 feet in areas we have got snow
11 cover, therefore, the fragile outlying
12 vegetation is protected.

13 In addition to that, group sizes,
14 anybody wishing to camp in the forest
15 preserve, if you have more than nine people,
16 you have to get a camping permit from the
17 local ranger. They usually make
18 recommendations to the group, depending on
19 group size, where they would like them to camp

20 to minimize the impact.

21 In wilderness areas, I stated that
22 group sizes greater than 12 will not be
23 allowed to camp overnight.

24 In addition to that, any individual or
25 any group who wishes to remain at the same
(FOREST PRESERVE ISSUE)

1321

1 campsite for more than three nights is
2 required to get a camping permit. You can't
3 stay in one spot more than three nights.

4 MR. ALTIERI: And these provisions are
5 generally found in the Big Indian wilderness
6 Area UMP?

7 MR. RIDER: These provisions, actually
8 prior to being put in the Draft Catskill
9 Master Plan, they were not introduced in the
10 1985 Catskill Park State Land Master Plan.
11 What we had done in the Big Indian-Beaverkill
12 wilderness Area Unit Management Plan and the
13 Slide Mountain wilderness Management Plan, we
14 actually put in those conditions that we will
15 not issue camping permits to groups larger
16 than 12.

17 The whole reason behind this, as
18 Mr. Dawson pointed out, the larger the group,
19 the more impact to both the environment and
20 more so to the social environment of someone's
21 perception of wilderness. They have a greater
22 impact.

23 Again, it depends on the person.
24 Studies show that some people can handle

25 seeing another 20 people in wilderness areas
(FOREST PRESERVE ISSUE)

1322

1 when they hike a particular trail. A
2 different person may decide that one person is
3 too many people to see on a particular trail.

4 what the Department has basically
5 tried to do is come up with a happy medium.
6 The number 12 that was derived at the time was
7 derived based on what the Boy Scouts -- a
8 typical group that we received in the
9 Catskills would be a group of Boy Scouts, and
10 the way they're formed at that time was 10
11 scouts required two leaders -- and we thought
12 that was an adequate group size for wilderness
13 as a maximum.

14 And wild forest areas, different land
15 classification, you're allowed up to 20
16 individuals. So we did make the distinction
17 in wilderness to try to put a few more
18 parameters on wilderness to protect the social
19 end of wilderness in the amount of people that
20 are seen on the trail.

21 If you look at page 80 in the Big
22 Indian-Beaverkill Range wilderness Area, this
23 was a project --

24 ALJ WISSLER: Staff's 4?

25 MR. RIDER: Correct.
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1323

1 ALJ WISSLER: Page what?

2 MR. RIDER: Page 80 of the excerpts.

3 Number 6, Project Number 6, Group

4 Camping, it says: "Department Rules and
Page 105

5 Regulation", Part 199.4(E), states: "No group
6 of 10 or more individuals may camp on state
7 lands at any time except under permit issued
8 by the Department."

9 Further it says: "In recent years,
10 the Department has not issued group camping
11 permits to groups of more than 12 individuals
12 wishing to camp in the Big Indian-Beaverkill
13 Range Wilderness Area." And it goes on to
14 say: "We will continue this policy."

15 what we have done, we had similar
16 language in the Slide Mountain Wilderness Area
17 Unit Management Plan. We have now made that
18 Catskill wide in the proposed -- in the Draft
19 Catskill State Land Master Plan, and that now
20 applies to all wilderness areas in the
21 Catskill Park, not just the two that were
22 mentioned specifically in the UMP, just to
23 show the state recognized group size as having
24 influence on wilderness character.

25 In addition to group sizes, when asked
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1 for information -- we take numerous phone
2 calls a day regarding camping on state
3 lands -- and when someone requests information
4 on the Catskill Park, we send out all the
5 information that we have available on all our
6 lands to try to distribute some of the usage
7 on state land and try not to promote usage of
8 just one particular area. So we try to
9 spatially distribute some people when we see

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there's some problems.

MR. ALTIERI: Staff Exhibit 2,
Catskill Park State Land Master Plan --

ALJ WISSLER: Let me stop you. When
you say you see some problems, what does that
mean? You get an abundance of calls for one
particular area and you start suggesting other
areas that they can --

MR. RIDER: What we see typically,
much of the use in the summertime is day use
and overnight camping by hikers predominantly.
And what you typically have with a hiking
community is there is a goal, they either want
to be on the highest peak or one of the
highest peaks, and the goal is to have a
viewshed.

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1325

And some of the areas that have more
views or open views, such as Slide Mountain
wilderness, you've got Slide Mountain as the
highest peak in the Catskills. That's a goal
for people to go and see that particular area.
You have some views off of Slide that are
currently phenomenal views of the valley and
areas that attract visitors in there.

Slide, depending on which way you go
up Slide, which is also known as the Burroughs
Range Trail after John Burroughs, if you go
from the Slide Mountain parking lot, you can
typically see at least 50 people a day go up
Slide from that side. But yet if you go into
woodland valley Campground and go up the

16 Wittenberg side of the Burroughs Range, you
17 may only have two or three or five people, if
18 that, per day access that side, that way to
19 slide, because it's much more difficult and a
20 lot longer route of getting there.

21 So knowing that Slide Mountain parking
22 lot is the main access for any visitors to go
23 up slide, we many times recommend someone go
24 up from the other direction and redistribute
25 some of the usage. It's not to say that
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1 Slide's main trailhead has gotten to the point¹³²⁶
2 of degradation where we're that concerned, but
3 we're trying to still give people solitude one
4 way or the other when going up to the
5 wilderness area.

6 You take that in contrast with a
7 different wilderness area, in particular this
8 one we mentioned, Big Indian-Beaverkill Range
9 wilderness, sees very, very low usage. The
10 reasoning behind that, our best synopsis of
11 it, it has very few viewpoints. Has high
12 peaks, part of the 3500-foot peaks, but
13 doesn't have a viewshed that offers people a
14 goal to go and see something. It's a trail
15 walk. You don't see a lot of use from this.
16 It's one of my favorite walks when looking for
17 solitude, which is definitely the trail, Pine
18 Hill-West Branch, and the laterals going to
19 it.

20 So its perception -- again, a lot of

21 the wilderness management is based on one
22 person's perception of what wilderness should
23 be. So as an overall goal, the DEC takes a
24 looks at wilderness and says, well, we're
25 going to limit group camping size to 12 to try
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1 to limit large groups and have a large effect¹³²⁷
2 on an individual's experience; but on the
3 other hand, we don't regulate group size of
4 day hikers. We recommend to people if there's
5 25 in a group, that they split themselves in
6 half and have no more than 12, but we don't
7 hold anyone to a group size.

8 ALJ WISSLER: As these requests come
9 in and you steer folks to less used area and
10 so forth, is that in any way tabulated?

11 MR. RIDER: Basically, what we try to
12 rely on --

13 ALJ WISSLER: Are records kept?

14 MR. RIDER: -- you have seen as the
15 exhibit the Region 3 Catskill Forest Preserve
16 Trailhead Tally Summary.

17 ALJ WISSLER: CPC 41.

18 MR. RIDER: Yes. I produced this
19 based on trailheads where we have registers,
20 and it gives you a very rough idea on how many
21 people are utilizing the trails.

22 For instance, when I say a rough idea,
23 the sign-in rate varies greatly from trailhead
24 to trailhead. What we see is in trails that
25 are more remote and less traveled, we have a
(FOREST PRESERVE ISSUE)

1 higher percentage of sign-in rate than a trail
2 that is highly traveled, because of people's
3 perception of remoteness and fear of maybe
4 getting lost or maybe getting hurt and having
5 to be removed.

6 For instance, if you look at the Slide
7 Mountain Trailhead, it's about halfway down
8 the page. For 2003, we have recorded as
9 people that signed in -- these are actually
10 numbers I counted -- 5,119 people signing in
11 at Slide. At the Slide Trailhead, we could
12 probably estimate that about 80 percent or
13 greater people signed in at that particular
14 trailhead because of its perceived remoteness.

15 If you go up to Overlook Mountain, a
16 third of the way down, we have a sign-in rate
17 of 6,928 for the year 2003. That trail, I
18 bet, does not see 30 to 40 percent sign-in
19 rate because it's an old road that goes up to
20 the fire tower and sees many visitors.

21 As an example, not as a scientific
22 study, but there's been several instances
23 where I have gone up very early in the morning
24 to Overlook, there's a fire tower as a
25 destination there. I've signed in at the
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1 trail register. I counted as many as 50
2 people on my way out of Overlook coming down,
3 and I was the last entry in the register. So
4 we know we have a very low sign-in rate, and
5 we continually get complaints from the public

6 that they saw large groups going in that never
7 signed in.

8 So it depends on a person's perception
9 of where they are and what the sign-in rate
10 is. So we have to take that into
11 consideration. You're seeing hard and fast,
12 actual numbers on these trailheads that have
13 registers in Region 3, which is southern
14 Ulster County, but again, it represents just a
15 portion of the actual users that we're seeing
16 out there on --

17 ALJ WISSLER: Can you be more
18 specific? Can you quantify that? Can you
19 tell me how much these numbers reflect true
20 numbers?

21 MR. RIDER: It would be speculation at
22 best because there's only been a couple of
23 instances where we actually put trail counters
24 out on the trail, Slide Mountain being one of
25 them, which is where we have a fairly high
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1 sign-in rate.

2 The problem that we had with our trail
3 counter is apparently we did not hide it well
4 enough, because it took on some vandalism, and
5 that was the end of the trail counter.

6 ALJ WISSLER: For the length of time
7 you had it in place, what did you find?

8 MR. RIDER: It showed that Slide
9 actually had a fairly high register rate,
10 which was up around 80 percent, and we kind of
11 expected that because of the remoteness.

12 A person traveling that whole trail
13 actually finds some difficulties in the trail.
14 We have some log stairs with log ladders. We
15 have places where you actually have to use all
16 four appendages to get up over ledges.

17 For instance, Thursday night before
18 Memorial, weekend we had a young lady and her
19 partner, the lady fell off the ledge, fell on
20 her back between Slide and Cornell, fractured
21 her back, spent the night there. We were able
22 to get in and we actually physically took that
23 particular person down off Slide Mountain. We
24 got back out of there approximately 9 o'clock
25 Friday night. This shows that people have a
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□

1 perception, and it's true, that some trails 1331
2 are very remote, very difficult -- usually a
3 higher sign-in rate because of the factor that
4 potentially you could get hurt.

5 ALJ WISSLER: And typically the higher
6 sign-in rate is 80 percent?

7 MR. RIDER: The higher sign-in rate
8 would be typically around 80. If I was to
9 generalize it, it would be -- I would say you
10 will probably across-the-board be possibly
11 looking at 60, 65 percent sign-in rate as a
12 maximum sign-in rate. That's speculation.
13 Much of this is speculation.

14 ALJ WISSLER: I completely understand
15 that. Let me be more conservative. You would
16 say, based upon high use -- remote trails,

17 80 percent sign-in, that the numbers
18 represented in CPC 41 are undercounted by at
19 least 20 percent?

20 MR. RIDER: Oh, absolutely. At least
21 20 percent.

22 MR. ALTIERI: Getting back to Staff
23 Exhibit 2, Catskill Park State Land Master
24 Plan. There's, I guess, further basis for
25 the, I guess, the control mechanism regarding
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1 trails, use of trails in general terms?

2 MR. RIDER: Yes. This again is in the
3 1985 Catskill Park State Land Master Plan,
4 Exhibit 2, page 31, letter F. I'll begin with
5 recreational use and overuse.

6 It says, basically: "The following
7 types of recreational use are compatible with
8 wilderness as long as the degree and intensity
9 does not endanger the wilderness resource
10 itself." It goes on to mention: "Hiking,
11 mountaineering, tenting, hunting, fishing,
12 trapping, snowshoeing, ski touring, nature
13 study and other forms of primitive and
14 unconfined recreation. Horseback riding,
15 while permitted in the wilderness, will be
16 strictly controlled and limited to suitable
17 locations."

18 Further defines that: "Wilderness
19 carrying capacities of individual units will
20 be determined as part of the Unit Management
21 Planning Process." This is an overall guidance
22 document for all the Catskill Forest Preserve

23 lands.

24 Underneath the guidance of this
25 document you have individual Unit Management
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1 Plans like you have with Slide Mountain
2 wilderness and you have with Big
3 Indian-Beaverkill wilderness.

4 Further down in the document it says:
5 "Where the degree and intensity of permitted
6 recreational uses threaten the wilderness
7 resource, appropriate administrative and
8 regulatory measures will be taken to limit
9 such use to the capacity of the resource.
10 Such administrative and regulatory measures
11 may include, but need not be limited to,
12 restricting the total number of persons who
13 have access to or remain in a wilderness area
14 during a specified period by permit or other
15 appropriate means."

16 You heard Mr. Dawson testify that we
17 already implemented special regulations and
18 special conditions in the high peaks area of
19 the Adirondack Forest Preserve. That was done
20 due to degradation to try to limit the numbers
21 of people and the periods of time that these
22 folks were out there enjoying the
23 wilderness -- also known as "trip tickets."
24 You actually get a ticket in order to go in
25 and access parts of the forest preserve there,
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1 as well as restricting parking areas to

2 numbers of vehicles. So if you're restricting
3 it to a 20-car parking area, you can only get
4 20 vehicles in there so that you try and
5 further restrict numbers. So we can restrict
6 total numbers of persons being there.

7 "The temporary closure of all or
8 portions of wilderness areas to permit
9 rehabilitative measures." I gave you the
10 example of the Peekamoose Mountain trail that
11 goes up over the Peekamoose Mountain, part of
12 the long path. Back in 1999, we closed that
13 section of the trail due to Hurricane Floyd
14 and the large blow-down until we could get
15 such trail cleared open. So we closed it for
16 rehabilitative measures. And we also have
17 intensified educational programs to improve
18 public understanding of back-country use,
19 including anti-litter and pack-in/pack-out
20 campaign will be undertaken.

21 what we have done at the trailheads,
22 we have signage out there that says,
23 obviously, "Please do not litter. Pack it in,
24 pack it out," meaning whatever you take in,
25 please remove. And what we've done
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1 internally, as far as when we receive phone
2 calls, requests of the Catskill Forest
3 Preserve, is we send out -- we get many, many
4 calls, a lot of times based on information or
5 promotion of the preserve that the DEC has not
6 done. For instance, the Adirondack Mountain
7 Club a number of years ago put out promotional

8 material for hiking all the fire towers in the
9 Catskills and the Adirondack Forest Preserves.
10 All of a sudden, we had a huge influx on the
11 trails associated with fire towers.

12 we've had instances with the 3500-foot
13 peaks, there's a club out there, the 3500-Foot
14 Club where the goal of each member is they
15 have to climb all the peaks that are above
16 3500 feet -- there's 35 of them in the
17 Catskills -- to be a member. And they also
18 have challenges where certain peaks are in the
19 wintertime or certain peaks are at night.
20 Anytime you have additional challenges like
21 this, it puts an additional burden on state
22 lands.

23 But in here, these challenges where
24 people request certain maps -- L. L. Bean had
25 us on the website for Slide Mountain
(FOREST PRESERVE ISSUE)

1 wilderness, in particular, to go hike the 1336
2 Burroughs Range. When we had a request for
3 maps for the Burroughs Range, we also sent out
4 all the other maps that we had for all of the
5 other areas. And we verbally spoke to people,
6 and we tried to promote other areas in the
7 park, as well, to try to not have overuse in
8 one particular area due to someone's
9 advertising.

10 ALJ WISSLER: Night hiking, the trails
11 don't close at dusk?

12 MR. RIDER: No. Trails are open 24/7

13 unless closed for a specific reason.

14 I'm not sure if you're aware of the
15 recent challenge that went on. I believe it
16 was last year, we had a fellow that does speed
17 hiking that came through and hiked all the
18 trails and all the peaks in the Catskills in
19 some phenomenal set time. I don't recall what
20 it was, but he does this all across the
21 country. That's his life goal is to set all
22 these speed records. He hiked, obviously he
23 hiked around the clock, so he was hiking
24 during the night. I -- in jest with some of
25 our counterparts --

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1 ALJ WISSLER: Maybe we'll try that.

2 MR. RIDER: In addition, we have
3 folks, Slide being the popular site -- we've
4 had instances, even with Department employees,
5 where there's been traditions where there's
6 certain employees that used to cross country
7 ski Slide Mountain after dark on New Year's
8 Eve so that they were on the top of Slide
9 Mountain when the clock struck midnight.

10 So you have all types of users, all
11 times of the year, all types of abilities,
12 from folks who just come up for a day hike,
13 very little experience or no experience day
14 hiking or camping in the Catskills; to folks
15 that come in that are strictly remote
16 back-country users that don't want to see
17 another hiker, don't use trails, use their own
18 campsites, bushwhack essentially through the

19 mountains without using the trails.

20 The typical user in the Catskills runs
21 anywhere from someone belonging to an urban
22 area that has absolutely no experience to
23 someone who -- either local or someone who has
24 a lifetime experience in remote situations.

25 You run the full gamut of users of the forest
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1 preserve.

2 We also, in wilderness, we also in
3 most places where the trails cross, say from
4 wild forest into the wilderness boundaries, we
5 generally mark the wilderness boundaries so
6 people know that we are now in wilderness
7 areas. Typically, in wilderness areas, we
8 don't do as much trail improvement as we would
9 in wild forest or other areas. It's supposed
10 to give you a little more sense of remoteness,
11 a little less intruded by man. You may have
12 to take your shoes off to cross a stream, as
13 opposed to having a bridge or maybe just a
14 tree that's dropped across a stream to act as
15 a bridge. So we try to mark those areas so
16 people are familiar -- okay, you know, I'm in
17 a wilderness area, at least respect that it's
18 a little more remote.

19 MR. ALTIERI: There was a comparison
20 to the Catskills and the Adirondacks. In
21 terms of the number of site visits, what's the
22 comparison like in terms of the use of the
23 trails, to the best of your knowledge?

24 MR. RIDER: It depends on the trail.

25 The Adirondacks see a higher volume of users.
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1 It's a larger park. It's a larger mass of 1339
2 forest preserve of state-owned lands.

3 Adirondacks has similar issues that we
4 have in the Catskills in that there's an
5 Adirondack 46-er Club, much like the 3500 Club
6 here. There's 46 peaks that members of this
7 club actually go out and "bag," as part of
8 their creed, part of their process.

9 Adirondacks, in particular the high
10 peaks area, has seen a dramatic increase in
11 use because of the highest peak being there,
12 Mount Marcy, and some of the other attractions
13 like Lake Colden.

14 All of our state lands vary in use and
15 impact. As I stated before, when you have
16 vistas or an end point, whether it's a fire
17 tower or highest peak or a notable peak, those
18 generally see a lot higher usage; whereas you
19 have a trail with no vistas, no named peaks,
20 no prominent peaks, they see much less usage.

21 We're similar to the Adirondacks
22 except the Adirondack's volume of use is much
23 greater than we have here in the Catskills, to
24 date.

25 MR. ALTIERI: In terms of trail
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1 maintenance standards, you spoke about that 1340
2 before. But what about cutting back brush and
3 things of that nature?

4 MR. RIDER: Trail maintenance
5 standards here within the preserved lands,
6 hiking trail is considered to be four-foot
7 width. It doesn't necessarily mean the tread
8 itself is four feet, although it could be.
9 Typically our standard hiking trails is you
10 have a cleared width, meaning someone could
11 walk through or past another person. A
12 typical limbing has occurred where we side
13 cut, side brush, so it's not in the trail,
14 brushing as you go by.

15 The standards, if you look at our
16 policies that we have, some of them date back
17 to the late '70s and early '80s, and trail
18 clearing is considered adequate when a man has
19 cleared a trail as high as he can reach his
20 axe -- reach with an axe.

21 Some of our trails are larger than
22 that because they're on old roads. For
23 instance, much of the Slide Mountain Trail
24 leading from the Slide Mountain parking lot is
25 on the old fire tower road. Some of that road
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1 can go up to 12, 15 feet wide because it was ¹³⁴¹
2 an old existing road. But the remote trails
3 that did not follow old roads were trails that
4 traditionally, through habit, or intentionally
5 were put in, basically take into account the
6 terrain, local terrain that's there. You
7 don't go in and alter the terrain to too great
8 a degree other than hand tools. And they're

9 much, much smaller than what many folks might
10 consider hiking trails should be.

11 Some of them are pretty remote and
12 pretty small, and some of the trails through
13 non-use, a lot of times grow to the point
14 where they're grown in where you have to
15 distinctly look to find the trail.

16 MR. ALTIERI: What about the same
17 standards as applies to vista maintenance?

18 MR. RIDER: I understand vistas were
19 one of the issues under visual aspects that I
20 was not here for, but the policy of New York
21 State DEC on vista management, it depends on
22 the land classification.

23 In wilderness, if there is an existing
24 vista and we like the existing vista and wish
25 to maintain it, we address it in a Unit
(FOREST PRESERVE ISSUE)

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1 Management Plan that we will maintain that
2 existing vista. Generally, it has to be to
3 the point that it's an immaterial amount of
4 cutting.

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5 Generally speaking, in a wilderness
6 vista we do not cut major trees, mainly
7 limbing, side cutting of brush, creating
8 windows or pictures of opportunity for a view
9 as opposed to a panoramic view, unless it
10 already exists.

11 We cannot create any new vistas in
12 wilderness areas. They can be created
13 naturally. Some vistas tend to close in on
14 their own. Others are created, whether it's

15 an ice storm or tornado or wind damage or
16 something, vistas are created and we can
17 address them as they come.

18 In wild forest areas, we're allowed to
19 do a little more cutting to allow for a more
20 panoramic view. Wild forest areas are
21 designated as such because they can handle a
22 little more public use. We can provide a
23 little more maintenance, be a little more
24 proactive in what views that we would like to
25 provide. We can create a new vista. We can
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1 come to a prominent point and there is no
2 vista there now, we can create a vista at the
3 wild forest areas.

4 MR. ALTIERI: Is there a vista at
5 Simon's Rock, are you familiar with that site?

6 MR. RIDER: Yeah. Simon's Rock vista
7 is on the Pine Hill-West Branch Trail. It's a
8 little known vista. The public, generally,
9 unless they look at the Unit Management Plan
10 map -- more recently, I believe the more
11 current New York-New Jersey Trail Conference
12 maps may reference that vista. The vista is
13 not marked on the trail. It's called Simon's
14 Rock vista. It's got two prominent erratic
15 rocks that are near it, deposited there,
16 they're just -- it's not a -- it's a natural
17 feature but it's unnatural in its setting.

18 Without knowing where to turn off the
19 trail, I would estimate that 99 percent of the

20 users of the Pine Hill-West Branch Trail don't
21 know it exists. I visited that vista just for
22 my own re-edification on Tuesday of this week.
23 The vista has grown pretty well closed. You
24 do have some windows of opportunities between
25 the trees and the limbs to see portions of
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1 Lost Clove and portions of Panther Mountain,
2 and looking around to portions of Balsam
3 Mountain. That vista -- until recently, I
4 haven't had any interest in that vista, nor
5 has that vista been maintained as an open
6 vista in recent history.

7 MR. ALTIERI: Do you have a general
8 estimate as to the number of years?

9 MR. RIDER: In my estimation, as far
10 as maintenance of that particular vista --
11 we're probably talking since that Unit
12 Management Plan was written, which I believe
13 was '93, that vista was documented then just
14 as an existing vista -- and I believe there
15 has not been maintenance of that vista since
16 that time.

17 MR. ALTIERI: Although it is mentioned
18 in the plan, it could be maintained?

19 MR. RIDER: It is certainly mentioned
20 in the plan, and we have the option of
21 maintaining that vista.

22 MR. ALTIERI: Do you have the duty to
23 maintain or the option?

24 MR. RIDER: We have an option to
25 maintain. It does not -- we're not required

1 to maintain a vista.

2 Probably some of the reasoning between
3 vista maintenance -- it's perception both by
4 the public whether or not there's an outcry to
5 maintain the vista and also in the field
6 personnel. And some personnel err more
7 towards wilderness management to the extreme
8 that man basically does not intrude and does
9 not do any cutting or anything along that
10 nature to improve a view, whereas we still do,
11 though, have the opportunity to maintain that.

12 Given the rangers that previously had
13 been in the area and their views on
14 wilderness, my speculation is that's the
15 reason why the vista was not maintained. It
16 was just a strong wilderness view that we
17 don't touch the vista even though we can.

18 MR. ALTIERI: Although there was an
19 inquiry very recently?

20 MR. RIDER: Yeah. I had an inquiry,
21 probably two weeks ago, by the individual
22 requesting to be the maintainer of the vista.
23 To back up a little bit. New York State
24 policy, DEC policy with forest preserve, we
25 have many volunteer groups that come in and
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1 perform volunteer activities for us.

2 Originally, New York-New Jersey Trail
3 Conference, Adirondack Mountain Club, the
4 Appalachian Mountain Club, some of these

5 larger organizations, we had entered into a
6 Memorandum of Understanding with these
7 organizations years ago where they would adopt
8 sections of trails or they would adopt
9 lean-to's or they would adopt vistas, and they
10 would do the light maintenance necessary to
11 keep them open. And they'd submit reports to
12 us basically stating when there's major
13 blow-down or major trail issues that need to
14 be addressed, or major problems with
15 maintenance. So we have volunteers out there
16 that utilize these.

17 The current policy now is called
18 "Adopt a Natural Resource," ANR for short.
19 It's very similar to the Memorandum of
20 Understanding but an individual or a group can
21 come forth to DEC, and if a trail or whatever
22 feature it is they want to adopt has not been
23 previously adopted, they can adopt it. And we
24 enter into an agreement with that particular
25 party which spells out what they can and can't
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□

1 do, what their requirements are, what we have¹³⁴⁷
2 to be notified of, and then both parties sign
3 off.

4 Again, it's a voluntary agreement that
5 can be canceled by either party at any time.
6 There are many groups out there that maintain
7 a lot of our hiking trails, as far as brush
8 and clearing blow-down.

9 MR. ALTIERI: Turning to CPC's
10 petition, page 35, there's a mention of: "The
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11 project will result in a 700 percent increase
12 in use of the forest preserve trails."

13 Do you have a view of that 700 percent
14 increase based on your knowledge of the
15 preserve and what you learned about this
16 proposed project?

17 MR. RIDER: In my professional
18 opinion -- I have to agree with Professor
19 Dawson regarding the current Unit Management
20 Plans that we have out for New York State, in
21 that when these plans were written, there was
22 no models that we were aware of or made aware
23 of to basically determine public use or the
24 amount of public use and what effect it might
25 have on state lands. We did not have that at
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1 our disposal. We are currently working
2 towards that goal as the DEC.

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3 Mr. Dawson based some of his facts and
4 figures on speculation, which is the best any
5 of us can do at this point, on public use
6 numbers based on numbers provided for this
7 application. And he also referenced back on
8 my numbers here, this Region 3 Catskill Forest
9 Preserve Trailhead Tally Summary, of my actual
10 trailhead sign-in numbers.

11 And I've got to preface this with --
12 we have already stated these are actual
13 sign-ins, and that we do know this is only a
14 percentage of people who sign it. And this is
15 not all trailheads. Even in Region 3, many

16 trails do not have trail registers.

17 MR. ALTIERI: Because?

18 MR. RIDER: Because of low usage, as
19 well as -- and we don't have the numbers here
20 in front of us from DEC Region 4, which would
21 cover Greene and Sullivan Counties -- excuse
22 me, Delaware County.

23 So based on my numbers and my
24 knowledge of the area, I looked into -- in the
25 appendix there's a section there under
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1 "Wilderness Activity Center." And in that I
2 did become a little bit concerned in that they
3 are promoting the use of the forest preserve
4 and surrounding areas for hikes, camping, you
5 know, I call them outward bound types of
6 adventure trips.

7 But as I read further, some of the
8 conditions that they put on themselves where
9 they were going to try to lead small group
10 sizes, they were talking about staying within
11 the parameters of what we've already addressed
12 in the Unit Management Plans and in the
13 Catskill Master Plan, and they also addressed
14 the issue that they're not necessarily going
15 to stick with the adjacent lands, meaning have
16 a large effect on Slide Mountain and Big
17 Indian, but they are also looking parkwide for
18 opportunities.

19 MR. ALTIERI: In that regard, I point
20 to Staff Exhibit 6, the Proposed Special
21 Conditions. Do you want to read that into the
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22 record?

23 MR. RIDER: To take into consideration
24 since we don't -- as DEC, we do not have hard
25 and fast numbers in a modeling system to take
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1 into consideration what the potential use
2 might be, and I think it would be purely
3 speculation on anyone's part on the numbers
4 provided to us how many folks are going to
5 utilize the forest preserve, how many trips
6 they're going to make, how much time they're
7 going to stay out there in the forest
8 preserve. I'd love to have numbers like that.
9 I think it would be pure speculation at this
10 point.

11 we're not arguing the fact there could
12 be an increase usage on our trails and on the
13 state-owned forest preserve. We took a look
14 at the numbers and decided that to propose
15 some special conditions, meaning try to get
16 ahold of some hard and fast numbers of users
17 or potential users due to the project on our
18 forest preserve lands. And under condition
19 number 1, it says: "Prior to the start of
20 resort construction, Crossroads Ventures, LLC
21 shall develop a plan to be submitted to NYS
22 DEC for its approval to implement a program to
23 educate and guide resort guests in the use of
24 trails in the forest preserve. In developing
25 the plan, the Applicant shall consult with the
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1 New York State DEC and other appropriate
2 groups, including the New York-New Jersey
3 Trail Conference, to identify area trails, in
4 particular, those which may be the subject of
5 overuse, in order to redirect guests to less
6 intensively visited trails. Plans shall
7 include a method of keeping track of resort
8 guests' usage of forest preserve trails or
9 seeking feedback from resort guests on all
10 trail conditions. The information on guest
11 usage and trail condition shall be compiled
12 into an annual report and submitted to New
13 York State DEC. In addition, Crossroads
14 Ventures, LLC shall provide a monthly report
15 to NYS DEC of uses of forest preserve trails."

16 Now, the basis behind this is, this
17 would give us hard and fast numbers. We're
18 not saying actual numbers of users, we're
19 looking at folks that request or put in a
20 request to use the state lands. We may end up
21 with a number higher than actual users. But
22 what this would give us, much to what
23 Mr. Dawson spoke about, it would give us hard
24 and fast numbers where we can take those
25 numbers, put them into a modeling program and
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1 also see what effect that may have on
2 neighboring trails or on the Catskill Forest
3 Preserve.

4 In addition to that, condition number
5 2: "Crossroads Ventures, LLC shall develop a
6 plan to be submitted to NYS DEC for its

7 approval to implement a maintenance program
8 for all trails on its property. This
9 maintenance program shall emphasize the
10 prevention and minimization of erosion and
11 sedimentation from these trails."

12 what this takes a look at is what DEC
13 is now taking a look at, and what you've heard
14 Mr. Dawson talk about, is to take into account
15 hard and fast parameters. We are now, as the
16 DEC, trying to get a handle on usage,
17 potential overusage, environmental impacts,
18 physical impacts, social impacts to our trails
19 and to our preserve.

20 what we, as the DEC, need to do, and
21 we're starting to go that way, is to look at
22 this LAC process, this limits of acceptable
23 change, which you can take measurable
24 quantitative measurements. For instance, at a
25 campsite you can measure the existing
(FOREST PRESERVE ISSUE)

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1 conditions of overall impact, meaning areas
2 that are devoid of vegetation, that are
3 compacted, that may be eroded. You can take
4 an actual measurement of that. You can take a
5 measurement of the actual fire ring that might
6 be on that campsite that exists. You can take
7 a measurement of the impacted vegetation
8 around the parameters of that campsite, as it
9 now exists. You can take all those into
10 consideration.

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11 Then at a point in time down the road

12 in the future, whether it's six months, a
13 year, annually, you can go back in and
14 remeasure those actual parameters and see how
15 much more has that site been degraded, has it
16 revegetated some through non-use, has it
17 expanded to the point of overuse; and
18 basically come up with a limit where you say,
19 if we reach this particular limit, whether
20 it's a campsite or whether it's a trail, reach
21 a limit where we're saying that's the
22 threshold, above that some action has to be
23 taken. And then you look back at our
24 potential actions.

25 Do we eliminate the campsite? Do we
(FOREST PRESERVE ISSUE)

□

1 improve the campsite hardening off? Do we
2 plant trees around the campsite to limit the
3 size? Do we limit the number of people
4 accessing that campsite via trip tickets,
5 permits, special regulations, those types of
6 things?

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7 In addition to that, that also allows
8 us quantitatively to see how much our trails may
9 be getting used or overused, and it will
10 trigger factors such as do we need to install
11 more water bars to get erosion water off the
12 trail, do we need to restrict trails.

13 There's various techniques that you
14 can do to keep trails from becoming braided.
15 Mr. Dawson alluded to braided trails. A
16 braided trail is a trail which may have
17 several different trails that braid off of a

18 main trunk trail and then come back together.

19 Typically that occurs around wet
20 areas, occurs at areas where people need to
21 pass, occurs at areas where there's not a
22 marked trail, like, for instance, some of the
23 3500-foot peaks that have unmarked -- there's
24 no trails, they're considered trails peaks --
25 and various trails that go up and meet and
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1 congregate at the top.

2 we can take a look at some of these
3 areas, and if we need to harden an area off so
4 we don't have a braided trail, we can elevate
5 the treadway using stones or boulders. we can
6 put in scree, which is generally loose stones
7 or it could be brush. we can brush the sides
8 of the trail to control where people actually
9 place their feet. The limiting numbers.
10 That's things -- we're basically looking at
11 best-management practices, possibly rerouting
12 a trail out of a wet area if it's in a bad
13 area. Keeping off steep slopes. All these
14 factors we take into consideration now that we
15 didn't years ago when the trails were
16 installed because they were hard paths or just
17 traveled by use. we now try to take that into
18 consideration on any new trails and any new
19 routes.

20 we also want to extend that to
21 Crossroads ventures that when they put out new
22 trails on their own properties, that we would

23 like to see that they're going to take into
24 account things such as slope, such as
25 wetlands, such as potential runoff, potential
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1 use of the trail, what it's being used for.
2 Viewpoints, how are they going to cope with
3 potential degradation. Are they going to use
4 water bars? Are they going to use
5 switchbacks? Are they going to use stepping
6 stones? Are they going to require staircases?
7 What are their parameters in maintaining the
8 trails on their property the same as we have
9 to take into consideration on state lands.

10 MR. ALTIERI: Earlier in your
11 testimony you said that the park perhaps may
12 be underutilized?

13 MR. RIDER: Yeah. Currently, the
14 reasoning behind the Catskill Forest Preserve
15 Public Access Plan is DEC is trying to promote
16 the Catskills as the place to be, the
17 alternative to the Adirondacks. Adirondacks,
18 in many areas, are overutilized, which is why
19 we have special regulations in some areas.

20 The Catskills, in many instances, are
21 underutilized. We're trying to promote more
22 usage of the Catskills by the general public,
23 but still stay within the parameters of the
24 master plan, and even further within the
25 parameters of the Unit Management Plans, based
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1 on land designation.

2 For instance, Slide Mountain Plan, as
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3 was quoted earlier, I believe it was in the
4 letter Mr. Dawson had written to Neil
5 Woodworth, one of the single biggest threats
6 to wilderness areas is overuse. And it
7 depends how you manage that use whether you
8 have overuse or not.

9 In a particular site like Slide
10 Mountain, you could argue the point that the
11 quickest way up Slide from the parking lot is
12 highly used. Is it to the point of overuse?
13 That's when you have to step back and take a
14 look, okay, is it overused because it's
15 physical damage to the terrain, biological
16 damage or it's more of a social impact of the
17 user himself or herself? Is that user
18 affected by seeing one other person or
19 affected by seeing 20 other people? It's a
20 perception of what you have out there.

21 So DEC, we have to balance between
22 providing recreational opportunities, because
23 that's one of the main goals of the forest
24 preserve, with protecting the resource so we
25 don't degrade the resource. So it's a
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1 balancing act, and it's very subjective, based¹³⁵⁸
2 on, a lot of times public perception, how you
3 manage a particular piece of land.

4 MR. ALTIERI: So then in the CPC brief
5 where they mention impacts of trampling,
6 disturbed vegetation, physical changes to the
7 trail system and visitor distribution; we have

8 methods to prevent or control, redirect people
9 to prevent or minimize that risk from
10 happening?

11 MR. RIDER: Yes.

12 MR. ALTIERI: Talking about the
13 celebration of the Catskill Park, just flesh
14 out what DEC is doing in that regard.

15 MR. RIDER: Currently, there's some
16 promotion. This is the centennial
17 celebration, 100th year celebration of the
18 Catskill Park. Again, that's the Catskill
19 Park state and private lands created in 1904,
20 and here we are at 2004.

21 So what we have done with many
22 partners is we've created basically from
23 October 2nd -- it's a year-long celebration of
24 the park, public usage of the park. It's
25 going to culminate in a roughly week-long
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1 celebration from October 2nd to October 11th ¹³⁵⁹
2 of the anniversary of the Catskill Park.

3 And what we have done is modeled our
4 events, and our promotion was much like the
5 Hudson River Ramble. We're not allowed to use
6 the term "ramble," so the term became the
7 "Catskill Lark in the Park." Basically, what
8 this is, is we're promoting the Catskill Park
9 for public use. And a private firm had been
10 hired to basically do outreach to the various
11 groups that utilize the Catskills, whether it
12 be tourism industry, hiking groups, snowmobile
13 groups, mountain biking groups, all the

14 various groups, paddling groups, and have them
15 propose actual events in the Catskills
16 celebrating the Catskill Park that's open for
17 public use.

18 And basically what we have done is
19 there are very numerous number of hikes
20 proposed by various groups, not only DEC Staff
21 but also hiking groups and individuals. There
22 are kayak and canoe paddles that are proposed,
23 there are mountain bike trips and road bike
24 trips that are proposed. It can go so far. I
25 don't recall if anything has been proposed for
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1 horseback riding and some of these other 1360
2 things. But what it culminates into is a
3 week-long celebration, generally during the
4 peak foliage season, to bring potentially new
5 users to the park, mainly from urban areas,
6 that may not have had the experience or the
7 opportunity to come out and enjoy what the
8 Catskills have to offer on the state land
9 that's available for public use.

10 MR. ALTIERI: Regarding the modeling
11 that Professor Dawson spoke of, do the current
12 UMPs or regs require this modeling he alluded
13 to currently?

14 MR. RIDER: Mr. Dawson alluded to the
15 fact that in the master plan we're required to
16 come up with a synopsis of basically the
17 carrying capacity of each unit of land. And
18 within those Unit Management Plans, the actual

19 capacity was determined basically on the
20 ground from on-the-ground knowledge. We had
21 no modeling procedure, per se, in place,
22 either it was not available, we weren't aware
23 of it, what have you. But the actual
24 determination of how much an area can
25 withstand public use was based on current use
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1 that we had seen. Uses that were proposed,
2 whether we decided we were going to propose
3 more access points via parking areas,
4 trailheads, additional trails, lean-to
5 opportunities, things of that nature.

6 We took into consideration the
7 rangers, New York State forest rangers, each
8 assigned to a particular area, foresters that
9 are involved with Unit Management Plan
10 writing -- which is one of my jobs, to write
11 Unit Management Plans -- and general knowledge
12 of Department staff, as well as you take into
13 account all the individual user groups, which
14 include the hiking groups, the biking groups
15 and the hunters and all the various groups
16 that utilize the Catskills, in determining
17 what an area's capacity to withstand use is.

18 And at that point in time when these
19 plans were written is based on -- again, it's
20 a judgment call on what you've seen in the
21 past, what you predict in the future, and what
22 you have right now. So it's been based on
23 judgment, it has not been based on a modeling
24 perspective.

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MR. ALTIERI: In general, all of the
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control mechanisms and monitoring that the DEC¹³⁶²
currently has regarding the preserve,
including, say, the two provisions that were
offered as an exhibit, do you think that the
DEC will continue to be able to balance the
preserve with the second purpose of the
preserve, to make it open for public use in a
balanced way, in light of the project that's
proposed?

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MR. RIDER: It's my professional
opinion, at this point in time, based on what
I have seen, pending acceptance of those two
permit conditions that are proposed, that at
this time we'll be able to absorb much greater
public use on most of the trails that we have
right now.

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The only thing I would state further
is right now we, as a Department, have to take
a hard look at how we're managing our lands.
And as I spoke before, this concept of limits
of acceptable change is starting to come to
fruition in the Department. And it's on us to
basically come out and try and evaluate our
own lands to see what our existing conditions
are and what we expect.

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Currently, based on what I have read¹³⁶³
and in the appendices referenced by the
applicant stating that much of the anticipated

4 use is going to be led hikes or guided hikes
5 or climbs or however, mountain bike tours; if
6 we're going to have requirements that they let
7 us know by month in an annual report of number
8 of users based on area or trails utilized, we
9 should get a reasonable handle on trail usage
10 in a reasonable amount of time to make the
11 necessary adjustments, if necessary, to either
12 limit use of certain trails, improve certain
13 trails to handle higher use, or spatially
14 redistribute some of the use on the trails;
15 meaning we may -- you know, you could get to
16 the point, such as the high peaks, where you
17 limit numbers of users or limit group size or
18 limit times of year that somebody might be
19 able to utilize a certain section or portion
20 of trail or portion of state lands.

21 MR. ALTIERI: Your Honor, I would just
22 conclude that -- referring to Professor
23 Dawson's reliance on this modeling, even he
24 provided that this modeling was not used in
25 New York State -- DEC hasn't employed this
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1 mentioned modeling technique in its activities¹³⁶⁴
2 when it promotes use in the Catskills.

3 The DEC has to strike a balance
4 between preserving the natural state and
5 fulfilling the secondary purpose of the
6 preserve, which is open to the public. We
7 believe with the array of controls that the
8 state already has and the proposed conditions,
9 that there's no substantive or significant

10 issue that the Applicant failed to prove -- a
11 substantive or significant issue as to impacts
12 on the forest preserve given all the
13 foregoing.

14 And as to the UMP, staff, Applicants,
15 whoever, people who are relying on the
16 lawfully issued UMPs that exist at the time
17 they're thinking about or undertaking their
18 activity, staff or anyone else cannot presume
19 that a UMP is somehow deficient, conclude what
20 it should be and then somehow address what it
21 should be and not what it is in reality. We
22 have effective UMPs that were issued in a
23 lawful manner, and that's how this project
24 should be viewed.

25 ALJ WISSLER: That's it?
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1 MR. ALTIERI: Yes, your Honor.

2 MS. BAKNER: Your Honor, we just
3 wanted to note for the record that we accept
4 the conditions, and we have no objections to
5 those.

6 MR. RUZOW: And your Honor, as
7 observed by Ms. Bakner in the original
8 presentation, Appendix 3 to the DEIS, there is
9 both an existing trail plan, it's a pullout,
10 and a concept amenities plan which shows,
11 again, the preliminary thought process that
12 would be developed in concert with this
13 potential condition of connections between the
14 properties and the existing state trails, as

15 well as trail development on the properties
16 themselves.

17 MR. GERSTMAN: Judge, we would like to
18 actually probably start our reply at this
19 point. We'll try and keep it brief before
20 lunch, and then we have some scheduling issues
21 to talk about.

22 ALJ WISSLER: How much time do you
23 need now. If you're going to tell me 10
24 minutes, I'm done. I'm breaking for lunch.

25 MR. GERSTMAN: Judge, I would like the
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1 opportunity, Professor Dawson has traveled -- ¹³⁶⁶

2 ALJ WISSLER: You'll have it. We're
3 going to break for lunch now. We'll reconvene
4 at quarter to 2.

5 DR. DAWSON: I have travel plans
6 outside of the United States, which I cannot
7 change. If you give us 15 minutes, we will
8 summarize.

9 ALJ WISSLER: It is 1:07 -- 1:22.

10 MR. GERSTMAN: Thank you, Judge, I
11 appreciate it.

12 I'll forego the legal argument in the
13 context of SEQRA that Mr. Ruzow and Ms. Bakner
14 were referring to. I believe they are trying
15 to turn SEQRA on it's head.

16 Let me just preface that SEQRA
17 requires an early evaluation of the potential
18 environmental impacts of a project. We are
19 here to determine whether there's substantive
20 or significant issues concerning those impacts

21 on the forest preserve. Dr. Dawson has
22 established, based upon his analysis, that
23 essentially the DEIS utterly fails in that
24 regard. We will deal with the legal issues in
25 terms of whether the DEC condition can
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1 retroactively comply with SEQRA after the
2 project's built.

3 What's most important now for your
4 Honor to hear is the technical discussion and
5 analysis that Professor Dawson has done,
6 preserving the legal issues for later.

7 DR. DAWSON: I'll be very direct. The
8 characterization that either these models or
9 this information was only recently available
10 is not true. This book I referred to was
11 published in 1978 in the first edition, 1990
12 in the second edition, and it addresses these
13 things from the beginning. It was endorsed by
14 all four federal land management agencies in
15 every single issue.

16 LAC did not just pop out of the
17 woodwork. Modeling did not just pop out of
18 the woodwork. It has been in practice for
19 decades. So to say that this was not
20 available either for the UMP planning process
21 or for their modeling of the Applicant is not
22 accurate. To say that the modeling is
23 academic is also not accurate. Federal
24 agencies claim Applicants have found ways to
25 do analysis. I spoke of a recent model. It
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1 is not the only model. There are many ways of¹³⁶⁸
2 doing the analysis.

3 The analysis is particularly important
4 because we are talking about environmental
5 impacts. And if we're going to be
6 environmentally responsible, as both the
7 Applicant claims and as the DEC claims, then I
8 believe we need to address some of these
9 issues before they occur.

10 Let me give you two points related to
11 that. One is if I go back to the Applicant's
12 material, they have this statement --

13 MR. GERSTMAN: Appendix 3, page 3.

14 DR. DAWSON: Appendix 3, page 3. It
15 says: "The Belleayre Resort at Catskill Park
16 is intended to marry," notice the word
17 "marry," "the physical assets of the Belleayre
18 Mountain Ski Resort and the Catskill Forest
19 Preserve with new facilities and programs that
20 will enhance these assets for the benefit of
21 both visitors to the resort and the general
22 public."

23 If I'm marrying somebody, I want a
24 prenuptial agreement. I want to know what it
25 is I'm getting into as an agreement, and I
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1 want to understand what the consequences are¹³⁶⁹
2 of it. And I would argue that those
3 consequences have not been dealt with.

4 I make two points related to that.
5 First of all, for 15 years I've tried to get

6 DEC to do this analysis. I've talked with
7 Peter Duncan, I've talked with Bob Bendict
8 before that -- these are deputy commissioners.
9 I made it abundantly clear to them they needed
10 to do the analysis that was required.

11 But nobody, even when I got outside
12 funding, nobody wanted to do it. So this is
13 not news. The reason DEC is doing this is
14 because the EPA will not approve any further
15 Unit Management Plans in the Adirondack Park
16 until this type of analysis is done. That's
17 why this came to be.

18 So let's be abundantly clear about
19 this, that these types of UMPs have been found
20 to be inadequate by the Adirondack Park Agency
21 in their jurisdiction. It's not just my
22 opinion. They have made that a legal matter.
23 This is not something that is rediscovered or
24 just appeared.

25 Second point, when looking at these
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1 things, it's imperative that we understand
2 what's going to happen before it occurs. I
3 would hope that nobody also proposes some kind
4 of agreement whereby you take transportation
5 and say, well, we'll let the people who drive
6 on these roads tell you at a later time what
7 the quality of the experience is like and then
8 we'll adjust the roads at a later time.

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9 I hope the people who drink the water
10 in this area don't at a later time try and

11 say, well, okay, let's do a report after they
12 build a resort to find out whether or not
13 there are impacts. These are things that
14 should and must be conducted in advance of the
15 project, and taken into consideration.

16 Third point, we are not against
17 tourism. I am not against tourism. It has a
18 place. It definitely has a place, as does
19 wilderness. There's all varieties of
20 opportunities for recreation and tourism. I'm
21 merely pointing out that one of them needs
22 more consideration and protection than some of
23 the others.

24 And although it may have been trampled
25 at one point, or trammeled, those are
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1 different words, that does not preclude the
2 protection of those resources now and in
3 perpetuity. To argue that because there was
4 logging or something that happened at one
5 time, we shouldn't continue to protect it is
6 not helpful, because the law would indicate
7 otherwise.

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8 Finally, there's a couple of minor
9 points -- wild forests, if you look at the
10 definition of wild forests, someone says it's
11 not wilderness-like. In fact, the definition
12 does include that.

13 MR. GERSTMAN: Which section are you
14 referring to?

15 DR. DAWSON: I'm in the 1985 plan, I'm
16 on page 34. Definition of a wild forest says

17 in part: "It may contain within its bounds
18 smaller areas of land or water that are
19 essentially wilderness in character with the
20 fragility of the resources or other factors
21 which require wilderness management." That's
22 wilderness management within the wild forest
23 area. Again, these areas are meant to be
24 maintained in perpetuity.

25 Another minor point. I believe it was
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1 Dan Ruzow who talked about, often about the ¹³⁷²
2 speculative nature of everything. I think
3 largely what we have heard today from all
4 parties today is largely speculative. And
5 that is exactly what I'm concerned about is
6 that there is not a lot of facts.

7 Kevin tried to come up with numbers we
8 hadn't seen before and do ratios between them,
9 that's all speculative. There is no concrete
10 data on which to base any of these judgments
11 from anybody's point of view. And that is
12 what I'm objecting to.

13 Final point, that the idea that there
14 are some controls in the Catskills is helpful,
15 but it's not a proactive protecting the
16 resource. It's a reactive approach to it.

17 They have characterized the
18 Adirondacks as having a lot of heavy use.
19 There's only one-third of one area, that's the
20 eastern high peaks of the Adirondacks, that
21 has higher use than the areas down here.

22 The other areas, from our
23 measurements, have 3- or 4,000 users per year,
24 actual user numbers, maybe 7- or 8,000 in some
25 areas. There's a lot of the Adirondacks that
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1 doesn't have a lot of use.

2 The point of the wilderness is that
3 there is opportunities for solitude. One
4 could argue the opposite of what DEC has, that
5 in fact, there is an impact. Different people
6 going up Slide Mountain is definitely an
7 impact on my style to the experience. So some
8 people are going to guard that. I can go into
9 a whole theory, sociopsychological theory, on
10 what happens in solitude. I'll forego that
11 for the moment.

12 The point being very simply, it's
13 great there are management ideas, concepts
14 partially in place, but I don't think it
15 completely addresses the potential impact of
16 this because nobody has really measured what
17 the potential impact of it is, estimated it.
18 Everything, economics, all these things, local
19 sales tax revenues, all those things could be
20 called speculative. They could also be called
21 a type of estimation based on science. And
22 I'm arguing that we do that type of thing just
23 as vigorously for the environment as we do it
24 for economics and traffic and so forth.

25 MR. GERSTMAN: Going back to the
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1 exhibit introduced by Crossroads, the Draft
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2 Modification of the Catskill State Land Master
3 Plan 2003.

4 MR. RUZOW: Applicant's 17.

5 MR. GERSTMAN: Mr. Franke referred to
6 the numbers and tried to draw some
7 conclusions, although, I actually don't know
8 what those conclusions were based upon the
9 numbers. Could you give us some sense of the
10 annual forest preserve public use and what
11 those mean?

12 DR. DAWSON: This is the first time
13 I've seen these, and I have not seen
14 definitions of them. But I was confused by
15 what Kevin was introducing, the idea that
16 there was any relationship between the 34,000,
17 the 66,000, and the intensive use. I didn't
18 understand what that type of analysis was.
19 I'd like to see a much more thorough analysis
20 of a variety of things. Saying that there's a
21 relationship between whether or not somebody
22 gets a lift ticket and whether or not they
23 hike on the trails, whether there's some kind
24 of ratio there, I don't understand that.

25 We've heard a lot of ratios thrown
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1 around, a lot of proportions thrown around
2 today. Again, it highlights what I'm driving
3 at. There is not good data. Good data is
4 needed to make decisions in advance of the
5 project, or you might as well go ahead and do
6 the water, traffic and everything else this

7 way, after the fact. You see a problem, try
8 and fix it. You see a problem, try to fix it.
9 I always thought that planning tried to get
10 around that and tried to foresee what the
11 likely outcomes would be of the project and
12 deal with it.

13 Again, no one is trying to stop the
14 project -- it's my opinion. I am not trying
15 to stop the project. I'm trying to see that
16 it's done in a manner that's environmentally
17 responsible, which I think is the tag line of
18 this project.

19 MR. GERSTMAN: Dr. Dawson, your letter
20 to Neil Woodworth suggested that there might
21 be Catskill Preserve-wide impacts. would you
22 expect, in your evaluation, that most of the
23 impacts would be felt in the two wilderness
24 areas of the wild forest areas that are most
25 proximate to the project?

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1 DR. DAWSON: That's why I focused on
2 that today. There's a distance to K function,
3 the farther you get from the primary
4 destination, the less people you're going to
5 have. So you look at those kinds of functions
6 and realize if you go geographically, it's
7 going to be a larger impact in those adjoining
8 areas. It's logical, it's based on science
9 and a variety of types of science. So, yes,
10 I'm more concerned about those two areas, but
11 I have a general concern about the whole
12 forest preserve.

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13 MR. GERSTMAN: There was some
14 suggestion that the Catskill -- I'm not sure
15 if it was to the Catskill Park or the Catskill
16 Forest Preserve, as we've heard those terms
17 used today -- is an underutilized resource.
18 Can you speak to that issue?

19 DR. DAWSON: Again, Jeff and others
20 used the word. Some of this is in the eye of
21 the beholder, and I think many of these
22 resources are somewhat in the eye of the
23 beholder as well.

24 The concept in recreation and tourism
25 management is there's a continuum of
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1 opportunities of experiences that you could ¹³⁷⁷
2 have. On the far end, let's use the left end
3 where things are relatively sparse in use, you
4 could have a particular kind of experience.
5 On the human built end, on the far extreme
6 end, you have an urban environment and you
7 have a very different density of use. And the
8 idea is that you're not going to distribute
9 use across the whole park evenly. wilderness
10 areas would be on the left end, the less used
11 end of the spectrum.

12 So are there places in wilderness that
13 are underutilized? I don't know. That might
14 be antithetical to the definition of it. And
15 also, we have to be careful to talk about wild
16 areas and intensive-use areas, maybe some of
17 those areas are underutilized. But to

18 characterize all the lands as underutilized I
19 think is misrepresenting the fact that there's
20 a continuum of the four categories that Jeff
21 and others spoke about. So I would argue that
22 we should be careful about that kind of
23 generalization and talk about the different
24 kinds of use in different places and the
25 appropriateness of the volume of use in that
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1 area.

2 MR. GERSTMAN: As far as you have
3 reviewed the documents in connection with this
4 project and your experience with the DEC's
5 land classification categories and their use,
6 have you seen any evidence or hard data to
7 support those conclusions?

8 DR. DAWSON: Which conclusions?

9 MR. GERSTMAN: The conclusions that
10 the Catskill Park is underutilized per se,
11 with the caveat that we've talked about.

12 DR. DAWSON: Given the amount of use
13 that -- use any one of these 34,000 public
14 use -- again, I have no way of verifying --
15 this is the 2003 draft plan which is
16 Crossroads -- I don't know what number it is.

17 MS. ROBERTS: 17.

18 DR. DAWSON: They talk about 34,000
19 users, and I don't know whether these are
20 registrations or whatever. Again, we're
21 playing with numbers here. Nice round number,
22 34,000. One would have to go look at the
23 miles of trail, the acres of possible use to

24 try and make an assessment of is that used
25 adequately? Is it appropriately used? Is it
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1 overused? We don't know. Every three of
2 these tables is going to have a different
3 opinion on that. So until there's some facts,
4 I think we can play this game back and forth
5 day after day. And I don't think you look
6 forward to that possibility.

7 So again, I'm arguing for real hard
8 information that people can at least agree on
9 the methodologies and agree on what they are,
10 and then everybody can draw implications from
11 it.

12 MR. GERSTMAN: Two more questions.
13 We've heard Mr. Rider talk about the promotion
14 of the Catskill Park during this 100th year
15 anniversary of the Catskill Park. If one
16 would expect that that would attract
17 additional users to the park, would it be your
18 professional opinion that the need for
19 analysis of the impact of Crossroads' project
20 is, in fact, even greater than perhaps you
21 came here today thinking?

22 DR. DAWSON: I'll go back. Something
23 was said earlier that in 2000 nobody brought
24 this up as a possibility. Well, it wasn't
25 until 2003 that people could see the full
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1 breadth of what was going on. As it keeps
2 unfolding and the discussions of partnerships,

3 I think the possibility that this project is
4 going to have a larger impact on the park is
5 likely true. I don't think anybody knew in
6 2000 what to expect. They didn't know all the
7 details of it.

8 I think it's evolving as it goes. So
9 I think it's appropriate that people have
10 different questions now than they had in 2000.
11 Point one.

12 Point two, to answer your question a
13 little more directly. Definitely, I think as
14 enthusiasm for this type of project grows, I
15 think there is likely to be other people who
16 want to do other things. We're certainly not
17 going to ask Applicants to do a generic EIS,
18 but what we are saying is we ought to at least
19 know where it begins. We ought to know where
20 sort of the epicenter of the various economic
21 impacts are and what they are in traffic and
22 environmental and other things before those
23 other things get added on to it.

24 MR. GERSTMAN: Judge, do you have any
25 further questions?
(FOREST PRESERVE ISSUE)

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1 ALJ WISSLER: No.

2 Mr. Altieri, do you have anything
3 else?

4 MR. ALTIERI: Just again to go back to
5 this modeling. Apparently, if I understood
6 correctly, the modeling, this technique in
7 general has been proffered, I guess it's been
8 in that book since 1978. I would just note

9 for the record that the Catskill Park Master
10 Plan was issued in '85; the Catskill Forest
11 Preserve Public Access Plan, 1999; Slide
12 Mountain Wilderness Unit Management Plan,
13 1998; and the Big Indian Unit Management Plan,
14 1993. And just based on what I have heard, it
15 seems like this modeling, in general, has been
16 mentioned to the DEC, or to the state in
17 general, for decades and it has not been
18 adopted.

19 As to hard numbers, our proposed
20 conditions are the closest things that we can
21 come to regarding hard numbers more than any
22 modeling which has never been adopted in New
23 York State, or any other theoretical analysis.

24 Regarding underusage. Underusage just
25 isn't based on numbers, it's also based on
(FOREST PRESERVE ISSUE)

1 trail conditions, based on staff's view of the ¹³⁸²
2 status of trails and how much they look like
3 they've been used based on growth and those
4 kind of indicators.

5 That's everything.

6 ALJ WISSLER: Okay. I want to take a
7 short lunch break. We still have a lot of
8 business to do here today, so how much time do
9 folks need? Can we reconvene at 2 o'clock.

10 (1:30 - 2:00 P.M. LUNCHEON RECESS
11 TAKEN.)

12 ALJ WISSLER: It's 2 o'clock. Are we
13 ready to go?

14 MR. GERSTMAN: Judge, we have a few
15 additional exhibits to respond to some
16 questions that you had raised during our
17 initial presentation. How would you like us
18 to do that? Would you like us to make that
19 presentation now?

20 ALJ WISSLER: That was with respect to
21 the derivation of the numbers for the 49A and
22 28, that intersection?

23 MR. GERSTMAN: Yes. There's also the
24 references to the ITE Manual that we have.

25 ALJ WISSLER: It's just a matter of
(TRAFFIC ISSUE)

1 marking those as exhibits and putting them in? ¹³⁸³

2 MR. GERSTMAN: No. There's some
3 additional explanation that needs to be done.
4 There's also the Route 28 Corridor now.

5 ALJ WISSLER: Make an explanation
6 before you start. Go ahead.

7 MR. GERSTMAN: Our first thing to be
8 done would be to mark as CPC Exhibit 42,
9 excerpts from the 6th Edition of the ITE Trip
10 Generation Manual, Volume 1 of 3, those pages
11 that Mr. Ketcham referenced earlier.

12 ("TRIP GENERATION 6TH EDITION VOLUME
13 1 OF 3" RECEIVED AND MARKED AS CPC EXHIBIT NO.
14 42, THIS DATE.)

15 MR. GERSTMAN: Also, I would like to
16 identify an augmented Table 2 from
17 Mr. Ketcham's previous testimony or offer of
18 proof. It's entitled, "Table 2 Augmented
19 Comparison of Traffic Counts Reported by CME

20 for the Belleayre Resort with Counts Taken for
21 the Catskill Center on February 15th, 2003."

22 Judge, you asked how Mr. Ketcham had
23 derived certain numbers, and he has provided
24 an explanation on how he has done that.

25 ALJ WISSLER: Okay.
(TRAFFIC ISSUE)

1 ("TABLE 2 (AUGMENTED) COMPARISON OF 1384
2 TRAFFIC VOLUMES REPORTED BY CME FOR THE
3 BELLEAYRE RESORT WITH COUNTS TAKEN FOR THE
4 CATSKILL CENTER ON FEBRUARY 15, 2003" RECEIVED
5 AND MARKED AS CPC EXHIBIT NO. 43, THIS DATE.)

6 MR. GERSTMAN: I have CPC Exhibit 44
7 entitled, "Impacts of Belleayre Resort on
8 Travel in Route 28 Corridor" in response to
9 your questions concerning Route 28 Corridor
10 impacts. It's submitted by Brian Ketcham.

11 ("IMPACT OF BELLEAYRE RESORT ON
12 TRAVEL IN ROUTE 28 CORRIDOR" BRIAN KETCHAM
13 COMMUNITY CONSULTING SERVICES, JUNE 14, 2004
14 RECEIVED AND MARKED AS CPC EXHIBIT NO. 44,
15 THIS DATE.)

16 MR. GERSTMAN: Next exhibit, your
17 Honor, is CPC 45 entitled, "Estimate of
18 Average Daily Travel, 2014, by Month, Route 28
19 Near Big Indian (Total, Both Directions)"
20 prepared by Mr. Ketcham.

21 ("ESTIMATE OF AVERAGE DAILY TRAVEL,
22 2014, BY MONTH ROUTE 28 NEAR BIG INDIAN
23 (TOTAL, BOTH DIRECTIONS)" RECEIVED AND MARKED
24 AS CPC EXHIBIT NO. 45, THIS DATE.)

25

1 46 is entitled, "Hidden Costs of Added Traffic¹³⁸⁵
2 from Belleayre Resort Will Exceed Local
3 Economic Benefits."

4 ("HIDDEN COSTS OF ADDED TRAFFIC FROM
5 BELLEAYRE RESORT WILL EXCEED LOCAL ECONOMIC
6 BENEFITS" - BRIAN KETCHAM, RECEIVED AND MARKED
7 AS CPC EXHIBIT NO. 46, THIS DATE.)

8 MR. GERSTMAN: Judge, we introduced
9 several exhibits in response to questions that
10 have been raised in Mr. Ketcham's previous
11 presentation. I'd like to introduce again
12 Mr. Brian Ketcham from Community Consulting
13 Services.

14 Your Honor, if you want any further
15 explanation on Exhibit 42, which is the
16 excerpts from the ITE Trip Generation Manual,
17 we would be glad to give those. Those were
18 basically references that had been previously
19 discussed in his offer of proof.

20 ALJ WISSLER: No.

21 MR. GERSTMAN: Exhibit No. 43 was the
22 Augmented Table 2, your Honor, which
23 identified -- and maybe this requires some
24 explanation for your Honor -- how the numbers
25 were derived from the traffic counts that were
(TRAFFIC ISSUE)

1 provided.

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2 Does your Honor want further
3 explanation of that calculation?

4 ALJ WISSLER: Briefly.
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5 MR. KETCHAM: The cover sheet which
6 shows the table and the figure, what I have
7 done is plotted for the p.m. peak hour for the
8 data taken from February 15th of '03, plotted
9 that data. And what is in the boxes are
10 basically how we derived the traffic flow east
11 of County Road 49A. And you can see in the
12 westbound direction is 196, and in the
13 eastbound direction, 657. This is what we had
14 observed in the -- in our traffic counts.

15 Then on the second page it shows what
16 I described last time as my estimate for the
17 temporal characterization of travel along
18 Route 28 at that same location. And what's
19 boxed there is the same number. It's just
20 illustrative on how we translated the data
21 observed in the field to the estimated
22 temporal characteristics.

23 MR. GERSTMAN: Your Honor, shifting to
24 Exhibit 44. There were several questions
25 raised during Mr. Ketcham's offer of proof
(TRAFFIC ISSUE)

1 concerning the impacts of the project on the ¹³⁸⁷
2 Route 28 Corridor. And I have asked
3 Mr. Ketcham to elaborate on how he reached the
4 conclusion that the entire Route 28 Corridor
5 will be impacted. Mr. Ketcham?

6 MR. KETCHAM: I'd like to first go to
7 about the fifth page, says: "Memorandum,
8 Route 28, Seasonal Traffic Changes and the
9 Belleayre Resort." I downloaded off the

10 state's website their characterization of
11 seasonal changes, and those are appended.
12 Basically what they show is that summertime
13 traffic for a road representative of Route
14 28 -- this is not Route 28, it's based on
15 statewide averages representative of 28 -- and
16 28 is considered by state DOT to be a
17 recreational road, that would be back to Route
18 60, and you can see from any of the tables
19 there that the summertime traffic is
20 considerably greater than winter traffic.
21 That is just contrary to what is depicted in
22 the DEIS.

23 That stated, what I've done at your
24 request is to undertake a quarter analysis.
25 If you go to the next page, and as you heard
(TRAFFIC ISSUE)

1 in considerable detail earlier today -- and 1388
2 the same is true not just with forest
3 management but with traffic data -- we don't
4 have a lot of information about this project.
5 I made that point last time I appeared here.

6 And on the second page you have a list
7 of the kind of information that's really
8 required to do a complete corridor analysis.
9 we don't have hourly traffic.

10 ALJ WISSLER: What document are you
11 looking at now?

12 MR. KETCHAM: Looking at Number 44.

13 ALJ WISSLER: Which page?

14 MR. KETCHAM: The second page.

15 ALJ WISSLER: The second page of your
Page 159

16 report?

17 MR. GERSTMAN: Yes.

18 MR. KETCHAM: The list there is basic
19 information that we need to do a detailed
20 corridor analysis, not just hourly counts but
21 travel speeds, classification counts.

22 A lot of the detail, travel speeds
23 I've already mentioned, that is basic to doing
24 a corridor analysis. We don't have that. And
25 so what I have had to do -- if you go to the
(TRAFFIC ISSUE)

1 table that follows the text, I'll just explain¹³⁸⁹
2 that. That is a cut at a quarter analysis.
3 what I'm looking at here is daily impacts. If
4 you look at the top table --

5 ALJ WISSLER: You're looking at Table
6 1?

7 MR. KETCHAM: I'm looking at Table 1.
8 And what this shows is -- if you go to the
9 third -- fourth column. Third column is the
10 link -- the from/to is the link along Route 28
11 beginning at Interstate 87 and going to
12 Margaretville at the end. Total of 43 miles.
13 And you look over to the fourth column and it
14 says AADT, that's the -- in this case, the
15 average annual daily traffic in both
16 directions along Route 28. You'll see that it
17 is very high at the interstate, and for the
18 first several miles, and then it begins to
19 taper off to the project site.

20 I have then increased that volume to

21 estimate conditions in 2014 without any of
22 these projects, without the expansion of the
23 Belleayre Ski Resort, without the Belleayre
24 Resort itself. And then you'll see --

25 MR. GERSTMAN: Excuse me. You
(TRAFFIC ISSUE)

1390

1 increased it by what percent?

2 MR. KETCHAM: 2 percent per year
3 compounded from 2002 to 2014.

4 MR. GERSTMAN: Is that the background
5 growth rate given to general uses or --

6 MR. KETCHAM: That's what's in the
7 DEIS, and that's what I used.

8 So you have -- the result, if you have
9 an estimate of 2014 traffic, again, both
10 directions total. And then I've estimated the
11 impact of the 60 percent growth in the
12 Belleayre Ski Resort.

13 MR. RUZOW: what percentage?

14 MR. KETCHAM: 60 percent, increasing
15 from 5,000 skiers per day on a peak day to
16 8,000. And I've read in a number of
17 publications recently that they're thinking
18 even of 10,000, but I kept my analysis on the
19 conservative side.

20 Then I've estimated the impact of the
21 Belleayre Resort itself. You see that about
22 the eighth column. It starts with 2000, et
23 cetera; it goes down. The reason it increases
24 near the site is there's a lot of travel
25 between the two project sites. And you can
(TRAFFIC ISSUE)

1 see the percent increase from -- in travel
2 along the corridor as a consequence of the
3 project.

4 In the second -- the bottom half of
5 the table, what I've done is estimated
6 existing travel speeds. And here I've used a
7 relationship between speed and volume along
8 the roadway. Speed is inversely, roughly
9 inversely proportional to the volume along the
10 roadway. It's actually proportional from the
11 volume-to-capacity ratio. But for all intents
12 and purposes, it's proportional to the volumes
13 since the capacity is constant.

14 From that, and the equations are in
15 the text of my report, I've estimated future
16 travel speeds. And based on those speeds and
17 the volumes, I've estimated for Belleayre
18 Resort, I calculated the hours of delay
19 associated just as a consequence of the
20 Belleayre Resort traffic, and that comes to
21 about 3,000 hours on a typical -- on a
22 Saturday. At two people per car and \$10 an
23 hour, that comes out to about \$60,000 in
24 losses for these conditions.

25 Now, this is an estimate. And it can
(TRAFFIC ISSUE)

1 only be an estimate because we don't have most
2 of the information that is required to do this
3 kind of work. It's simply not been provided
4 in the DEIS. But it gives you a good order of
5 magnitude of the impact of this project on the

6 Route 28 Corridor.

7 Now, the submission 45 is a
8 consequence of a fax I got yesterday from
9 Region 8, State Department of Transportation.
10 I had asked them -- I requested their ATR,
11 their automatic traffic recorder counts for
12 Route 28 to get -- to see if they had data
13 that supported these seasonal changes.

14 Frankly, the data is pretty sparse.
15 It's spread out. There's only one comparable
16 location there, and it's not -- for a very
17 short time period, it's two days' worth of
18 data. And frankly, I don't think there's
19 -- there's enough information there to tell
20 whether or not -- to get a handle on the
21 summer/winter variation.

22 However, they did send me the third
23 table, which actually is a year old. But I
24 used those numbers, both for the factor group
25 40 and the factor group 60. 60 would be the
(TRAFFIC ISSUE)

1 first table, and 40 the second table, just to ¹³⁹³
2 illustrate the difference in travel volumes
3 along Route 28, at least near Big Indian, both
4 for -- for the 12 months of the year. And as
5 you can see from the first figure, summer
6 travel, July/August is about 70 percent
7 greater than the peak ski season,
8 February/March is what I took as an average,
9 at least assuming Route 60 is a heavy seasonal
10 traffic roadway.

11 MR. GERSTMAN: Let me refer you back
Page 163

12 to Exhibit CPC 45. And if we can take the
13 information that you received from DOT
14 concerning traffic counts. Take me through
15 that, if you would, what information you got
16 from DOT first.

17 MR. KETCHAM: These are the results of
18 the automatic traffic recorder counts. The
19 first table says: "Station 860230."

20 MR. GERSTMAN: When you refer to the
21 first table --

22 MR. KETCHAM: It's the fourth table in
23 the series here. It says: "Station 860230."
24 I guess they have to refer to it as that.
25 It's in the upper left-hand corner. These are
(TRAFFIC ISSUE)

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1 the results of --

2 ALJ WISSLER: Fourth page of Exhibit
3 45?

4 MR. GERSTMAN: Yes, your Honor.

5 MR. KETCHAM: These are the results of
6 the automatic traffic recorder counts. In
7 this case, it was April 28th, 2003 -- 28th and
8 29th, -- May 1st and 2nd of 2003. And what
9 that shows you is the results from the hourly
10 counts for each of the four days they took
11 counts.

12 And at the bottom of the page they've
13 averaged those together. And they have an ADT
14 and AADT at the bottom, the average daily
15 traffic, which is varied by season, and the
16 annual average daily traffic, which is

17 constant year-round. It's the average of the
18 year's count.

19 And there are several locations that
20 were provided. However, again, there's just
21 not enough data here to make a real
22 determination on seasonal variation. They
23 just don't have enough information for this
24 particular roadway. It was not provided in
25 the DEIS.

(TRAFFIC ISSUE)

1 MR. GERSTMAN: How did you derive the
2 first page of Exhibit 45?

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3 MR. KETCHAM: Well, the first page,
4 both of these were -- I took the seasonal
5 adjustment factors by month, which are listed
6 in the first column -- actually the second
7 column, the first column is the month. I then
8 multiplied those times the ADT, which is
9 listed at the bottom of the page, to get the
10 average daily traffic for each month.

11 And in the fourth column, I simply
12 compared the results against the average of
13 February and March, which shows the -- that
14 during the summer, volumes are much higher
15 than during the winter.

16 MR. GERSTMAN: Did you previously
17 offer testimony concerning the analysis of
18 traffic peaks in the Draft Environmental
19 Impact Statement and the seasonal relationship
20 to those peak volumes?

21 MR. KETCHAM: Yes.

22 MR. GERSTMAN: What was your testimony

23 concerning the analysis in the DEIS? What was
24 the premise in terms of peak traffic?

25 MR. KETCHAM: Well, the DEIS asserts
(TRAFFIC ISSUE)

1 that traffic during the winter months, the ski¹³⁹⁶
2 months, is up to 150 percent greater than
3 during the summer months. And as a
4 consequence, on that basis, they assumed that
5 they didn't have to analyze traffic impacts
6 for this project during the summer months.

7 MR. GERSTMAN: Is it your conclusion
8 that, in fact, the summer months may
9 potentially provide peak or worst-case
10 conditions?

11 MR. KETCHAM: Well, that's my
12 observation from living up here, and I'm
13 seeing it on a weekly basis, at least. And
14 certainly, the database that's provided by
15 state DOT would substantiate that. And they
16 haven't provided any raw data for the Route 28
17 corridor which is contrary to that.

18 MR. GERSTMAN: Mr. Ketcham, I direct
19 your attention to CPC Exhibit 46.

20 MR. KETCHAM: Right. When I appeared
21 here last time, I talked about externality
22 costs, the full costs of benefits on this
23 project, and you asked that I elaborate on
24 that. This is a report that does that,
25 explains what externalities are.
(TRAFFIC ISSUE)

1 There's -- let me walk you through ¹³⁹⁷

2 this. what I did after my appearance is just
3 recalculate this whole thing. I had, I think,
4 testified that the externality costs would be
5 about \$27 million a year for the entire
6 project. what I did here was to break it
7 apart. I did the whole project, plus I did
8 the whole Route 28 corridor by itself.

9 And the bottom line, based on some
10 very conservative assumptions, I come up with
11 a quarter impact of about \$16 million, which
12 just coincidentally matches the benefits that
13 are claimed for this project after 2014. If
14 you extend it beyond Route 28 to other access
15 roads, like Interstate 87, it comes out to
16 \$44 million.

17 Now, there's several ways of
18 calculating this. Basically, it's pretty
19 simple. And what we don't have for submission
20 is the supporting documentation.

21 The approach I have used here is
22 pretty simple and pretty common right now. I
23 could provide your Honor with a copy of this.
24 This is my marked-up copy, but this is a
25 document that basically defines what
(TRAFFIC ISSUE)

□

1 externality cost analysis is. It's where I
2 derived the cost factors that are shown on
3 Tables 1 and 2 here -- or Tables 2 and 3, and
4 actually Tables 6, 7 and 8. It's the most
5 exhaustive detailed presentation of this
6 information, and I thought we -- we can make
7 -- I thought we had submitted a summary of

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8 this with some relevant chapters, which I
9 think will help to explain this, and we can do
10 that after the fact.

11 MR. GERSTMAN: The title of the volume
12 is: "The Transportation Cost and Benefit
13 Analysis, Techniques, Estimates and
14 Implications," Victoria Transport Policy
15 Institute. Updated June 2002.

16 ALJ WISSLER: The bottom of Tables 2
17 and 3; right?

18 MR. KETCHAM: Right. This is very
19 exhaustively explained here in what looks like
20 about 600 pages, and you can go online and
21 he's got four or five different volumes like
22 this that explain this.

23 This is a process that's being used
24 around the world --

25 ALJ WISSLER: Is it a private entity
(TRAFFIC ISSUE)

1 that puts it out or is it a governmental
2 entity?

3 MR. KETCHAM: I'm sorry?

4 ALJ WISSLER: Is it a private --

5 MR. KETCHAM: It's privately done.

6 But there have been, and we can provide
7 government documents that are similar to
8 those.

9 ALJ WISSLER: I was just curious about
10 this one, that's all.

11 MR. KETCHAM: This one is done by this
12 organization, Victoria Transport Policy

1399

13 Institute of Vancouver, Washington, but it
14 actually summarizes work done by myself and
15 hundreds of other people who work in this
16 field. And I just mention it because it's the
17 most exhaustive compilation of this kind of
18 material anywhere.

19 I might add that just in terms that
20 this is actually -- some of this is used for
21 -- on a routine basis, and I mentioned this at
22 my last appearance, in accident analysis for
23 the State Department of Transportation. And
24 in fact, I have included a couple of pages
25 here that do that, and I'll get to that in a
(TRAFFIC ISSUE)

1400

1 minute.

2 Going back to Tables 2 and 3,
3 basically what I have done is estimated the
4 amount of vehicle travels per year as a
5 consequence of this project. It comes to
6 about 77 million miles of added travel; a lot
7 of that associated with travel from New York
8 City, but a lot of it took along the -- in
9 fact, about half of it along the Route 28
10 corridor itself.

11 So I have estimated them and these
12 tables show that, the cost by externality
13 type, not just air pollution and noise
14 impacts, but I've included accident costs
15 here, both internal and external, and other
16 externality costs that are summarized in the
17 report. Other externalities are things like
18 water pollution that I haven't added up -- I

19 have aggregated here; disposal of automobile
20 tires, stuff like that that adds significantly
21 to the real cost of driving and should be
22 accounted for in any project that adds mileage
23 to our highway system.

24 So just taking the top of Table 2, it
25 says, "Vehicle Miles Traveled by Urban Off
(TRAFFIC ISSUE)

1 Peak and Rural Travel," and multiplying that ¹⁴⁰¹
2 times the cost factors listed below that
3 result in the estimates that you see in the
4 second, third, fourth and the totals in the
5 fifth column.

6 And the same is true for Route 28,
7 only for Route 28 that's Table 3. I'm
8 assuming everything is rural travel, and
9 you'll see by comparing the externality cost
10 factors at the bottom of the page that
11 basically externality costs in rural areas are
12 considerably less than they are in urban areas
13 for most of these factors.

14 Any questions so far?

15 (NO AFFIRMATIVE RESPONSE.)

16 Tables 4 and 5 are a little different
17 cut at this. Basically this is how I got --
18 the first half of the table shows how I got
19 the vehicle miles of travel for this project
20 and how they're divided into local, arterial,
21 expressway, and local roads. In this case I
22 have taken, in the bottom part, is an estimate
23 of the number of accidents that would be

24 associated with this. The DEIS does an
25 accident analysis, but it looks at
(TRAFFIC ISSUE)

1 intersections and it does report the number of ¹⁴⁰²
2 accidents along the Route 28 corridor for a
3 limited distance.

4 But if you look at the totality of the
5 project and adding 77 million miles to the
6 region's highway system, you'll see in Table
7 4, using state DOT accident rate factors that
8 are shown here and the cost per accident, that
9 -- that's on the DOT website and that we use
10 for accident analysis for the State Department
11 of Transportation -- you come out with a --
12 doing it this way, you come out with a total
13 cost -- well, first of all, you see that the
14 project will result in about one death a year,
15 37 injuries a year and 113 property
16 damage-only accidents a year. And the cost of
17 that is about \$6.7 million.

18 For Table 5, I estimated it just for
19 the corridor. And then Tables 6, 7 and 8 are
20 actually the externality cost factors taken
21 from this report from the Victoria Transport
22 Policy Institute.

23 So the bottom line is that the costs
24 associated with traveling to and from this
25 project are about equal to the benefits that
(TRAFFIC ISSUE)

1 are reported to the community. ¹⁴⁰³

2 MR. GERSTMAN: Judge, I would need to
3 make copies of some of the excerpted

4 materials. We do have an exhibit which we can
5 mark as CPC Exhibit 47, and we'll provide
6 copies to the other parties as soon as we can
7 make them.

8 (EXCERPTS FROM THE VICTORIA TRANSPORT
9 POLICY INSTITUTE TRANSPORTATION COST AND
10 BENEFIT ANALYSIS RECEIVED AND MARKED AS CPC
11 EXHIBIT NO. 47, THIS DATE.)

12 MR. KETCHAM: I just want to go back
13 to the Exhibit 44, just -- I forgot to mention
14 something I think that is really important. I
15 think it's Exhibit 44. In the first page, I
16 had submitted in my materials at my earlier
17 appearance work that we had done with
18 Creighton Manning on Lake Placid. And if you
19 look at the third paragraph there, we looked
20 at that work, reviewed that work -- and this
21 is just reinforcing what I'm saying about
22 summer traffic being much higher than winter
23 traffic. Even for Lake Placid, which it says
24 here, "The winter sports capital of the
25 world," summer traffic is 33 to 132 percent
(TRAFFIC ISSUE)

□

1 higher than at other times of the year.

1404

2 So it's just reinforcing what I was
3 saying earlier about the characteristics that
4 have been reported by State DOT and are --
5 contradict what has been reported in the DEIS.

6 MR. GERSTMAN: Thank you, Judge.

7 ALJ WISSELER: Why don't we take five
8 minutes.

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TAKEN.)

ALJ WISSLER: Ms. Bakner.

MS. BAKNER: Thank you, your Honor.

The first thing I would like to cover for the purposes of the record is the information that we've submitted so far throughout the course of this proceeding on transportation impacts. First of all, we have the DEIS scoping outline which set the type and the nature of the study that was required to be done to evaluate the transportation impacts to the project. In putting together the proposal that Creighton Manning did to evaluate transportation impacts, they corresponded with the Department of Transportation, the New York State Department of Transportation on several
(TRAFFIC ISSUE)

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occasions, and the Department of Transportation approved the methodologies and assumptions that were used by them in undertaking their study.

The study that resulted from the DOT-approved methodology can be found at Appendix 25 in the Draft Environmental Impact Statement. At the back of Appendix 25 is a brief addendum, and that addendum, in part, represents responses to comments made on the preliminary Draft Environmental Impact Statement by DEC's consultants, Tim Miller Associates and Clough Harbor Associates.

Also, in the Draft Environmental
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15 Impact Statement at Roman numeral XIV, and in
16 Section 2.2 and Section 3.7, the traffic study
17 is summarized for the record. It's easier to
18 read than the study in the appendix which
19 includes all the diagrams and all the traffic
20 counts and all the model runs.

21 In addition to working with the New
22 York State Department of Transportation and
23 with DEC's consultants, we also worked with
24 the planning boards of the Town of Middletown
25 and Shandaken, and went to several meetings
(TRAFFIC ISSUE)

1406

1 with them to go over the results of the
2 transportation analysis, and also to obtain
3 any comments that they may have on the study.

4 In addition, we've had conversations
5 with Delaware County and Ulster County
6 Departments of Public Works, since county
7 roads as well as New York State DOT roads are
8 a subject of the study.

9 It's obvious from the documentation
10 that we have put into the record that the
11 primary focus is the one and only traffic
12 corridor through this area, which is New York
13 State Route 28. And because the primary road
14 in this instance is a New York State
15 Department of Transportation road, we have
16 kept in close contact with DOT, and as
17 recently as 2004 have obtained a letter from
18 them indicating that they approve the
19 methodology and the study results, and that we

20 should come back in when we're ready for our
21 highway work permits.

22 This is going to be introduced into
23 the record as part of the exhibits by
24 Creighton Manning -- which we'll do now
25 because I think it will be easier. The first
(TRAFFIC ISSUE)

1 thing we have here is a memo, May, 24th, 2004,¹⁴⁰⁷
2 revised today, which is a response to comments
3 prepared by Creighton Manning.

4 ALJ WISSLER: This will be Applicant's
5 18.

6 (MEMO FROM CREIGHTON MANNING
7 ENGINEERING DATED 5/24/04 RECEIVED AND MARKED
8 AS APPLICANT'S EXHIBIT NO. 18, THIS DATE.)

9 MS. BAKNER: The next document is:
10 "Exhibits, Testimony regarding the Traffic
11 Portions of the DEIS Prepared for Belleayre"
12 by Creighton Manning.

13 (EXHIBITS - TESTIMONY REGARDING THE
14 TRAFFIC PORTIONS OF THE DEIS PREPARED FOR THE
15 BELLEAYRE RESORT AT CATSKILL PARK RECEIVED AND
16 MARKED AS APPLICANT'S EXHIBIT NO. 19, THIS
17 DATE.)

18 MS. BAKNER: The last exhibit which we
19 have here is the disk showing a traffic
20 simulation.

21 (DISK SHOWING TRAFFIC SIMULATION
22 RECEIVED AND MARKED AS APPLICANT'S EXHIBIT NO.
23 20, THIS DATE.)

24 MS. BAKNER: As before and throughout
25 this process, our transportation specialists

1 have continued to respond, address, and take
2 seriously all comments. However, at this
3 point, the issue is -- presents a rather heavy
4 burden for the interveners in this case,
5 because they have to show that we have a
6 substantive and significant issue likely to
7 result in negative findings.

8 You'll see from our presentations here
9 today that the mitigation that we have
10 originally proposed, and which DOT has signed
11 off on, continues to suffice to take care of
12 any of the impacts from the proposed project.

13 Also, contrary to raising an issue
14 that's likely to result in project denial,
15 what we have here is the primary involved
16 agency has signed off on the study and
17 methodology and is ready to proceed to the
18 highway permitting process on the
19 improvements. There's been no showing that
20 the proposed mitigation is inadequate.

21 DEC's role in this proceeding as lead
22 agency is definitely to take a hard look at
23 transportation impacts, and DEC has done this.
24 In addition to requiring us to commission the
25 appropriate study and to have DOT sign off on
(TRAFFIC ISSUE)

1 it, they have also had their own consultants
2 independently review the traffic analysis.

3 Case law is clear that the lead agency
4 can be informed by a sister involved agency

5 with expertise and responsibility for the key
6 road in the entire analysis, which is New York
7 State Route 28.

8 SEQRA, as we've said before, does not
9 change jurisdiction by and among agencies. I
10 just want to reference the many commissioners'
11 decisions that back up this point. In the St.
12 Lawrence Cement case, as Mr. Gerstman is very
13 familiar with that case, the Department took
14 the position that with DOT input and extensive
15 traffic record and proposed mitigation
16 measures that had been signed off on by DOT,
17 that there was no substantive and significant
18 issue raised by transportation impacts.

19 The only caveat there was if, in fact,
20 the trucks needed to roll on the roads instead
21 of having certain types of deliveries by
22 barge. This approach is consistent with a
23 number of other cases, including the William
24 Daley mining case, and the somewhat older
25 case, the matter of Wilmoreite.

(TRAFFIC ISSUE)

1 Today, we're going to very carefully ¹⁴¹⁰
2 go through what we did as a study in the Draft
3 Environmental Impact Statement to show what
4 our baseline is; and then in addition to that,
5 we're going to go over the memorandum results
6 that I just handed out as Exhibit 18, I
7 believe, and we're going to show how, even if
8 you do a more -- if you use a build year
9 that's more consistent with what -- if we're
10 lucky -- may actually happen for this project,

11 we still meet all the requirements of the
12 methodology, plus we have adequate mitigation.

13 I would like now to introduce Chuck
14 Manning and Wendy Cimino from Creighton
15 Manning Engineers.

16 And Chuck and Wendy, if you could just
17 talk about your background and expertise
18 before you start your presentation.

19 MR. MANNING: I thought I'd start
20 first by just talking a little bit about our
21 firm. As Creighton Manning Engineering, we
22 were founded in 1965, and we do complete
23 traffic, engineering and transportation
24 planning services.

25 We have done studies in all of the New
(TRAFFIC ISSUE)

1411

1 York State Department of Transportation
2 regions. We're currently under contract to
3 New York State DOT for term agreements for
4 traffic engineering, and we've had five of
5 those term agreements over the last five
6 years.

7 we're also under contract to do
8 planning, transportation planning services for
9 the Dutchess County MPO, Metropolitan Planning
10 Organization.

11 About half of our work is done for
12 public agencies and half is done for private
13 clients, and we pride ourselves in doing work
14 in a professional and objective manner because
15 of our ability to work with either type of

16 client.

17 Myself, I'm a professional engineer in
18 New York State. I've been working in
19 transportation planning for 35 years. And
20 currently I'm a member of the TRB Task Force
21 on transportation in national parks and on
22 public lands.

23 Prior to that, I served on the
24 transportation research board committee in the
25 development of the Highway Capacity Manual;
(TRAFFIC ISSUE)

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1 and also on the Institute of Transportation
2 engineers committee on the development of the
3 Trip Generation Manual. So I have experience
4 with both of those critical sources which
5 we're using in this study and continue to use
6 in many of our other studies.

7 Wendy Cimino, who is the project
8 engineer from our firm, has 14 years of
9 experience. She has completed over a hundred
10 traffic impact studies for various types of
11 clients and for different levels of clients.
12 She graduated in 1990 from Worcester
13 Polytechnic Institute, and she's currently
14 waiting to find the results of her PE exam.
15 So she's also eminently qualified to do this
16 type of work.

17 what I'd like to do today is cover
18 five specific topics, starting with just the
19 basic methodology that we used when we
20 developed the initial study with the analysis
21 for 2008, look at the initial recommendations

22 that we came up with from that study, talk
23 about some additional analysis we have done to
24 respond to the comments that have been
25 provided to us previously, and then some final
(TRAFFIC ISSUE)

1413

1 conclusions.

2 As I go through this, I think it's
3 important to keep in mind the relative
4 magnitude of traffic from this resort versus
5 other ski area-type resorts, relative to other
6 types of land uses, relative to background
7 traffic in the area and relative to the
8 capacity of the highway network.

9 I wanted to start with the basic
10 methodology and how we came up with our
11 initial analysis. We used standard traffic
12 engineering procedures that have been approved
13 by the Federal Highway Administration, the
14 Institute of Transportation Engineers, New
15 York State Department of Transportation and
16 the American Association of Highway and
17 Transportation Officials.

18 We measured existing conditions,
19 projected background traffic, projected
20 project trip generation growth, added these
21 together to come up with the design hour,
22 recommended traffic conditions for that design
23 hour, and recommended improvements.

24 I'd like to start with the
25 determination of the peak period, and this
(TRAFFIC ISSUE)

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7 like a shopping center or another type of
8 seasonal type of use, we would use a design
9 hour around their peak period but not
10 necessarily try and pick the absolute highest
11 one.

12 Throughout this analysis, what we've
13 tried to do is pick the absolute highest
14 design hour. So throughout this analysis,
15 we've tried to evaluate what the worst case
16 would be with the maximum Belleayre traffic,
17 maximum traffic from the development, and the
18 maximum traffic on the highway net.

19 We took traffic counts at eight
20 different intersections as required in the
21 scoping of the DEIS.

22 ALJ WISSLER: These exist in the
23 exhibits?

24 MR. MANNING: This is in the exhibit
25 packet.

(TRAFFIC ISSUE)

1 ALJ WISSLER: Why don't you tell us ¹⁴¹⁶
2 where in the exhibit packet that is so we can
3 all follow.

4 MR. MANNING: That one I think is
5 about 5 or 6 --

6 MS. BAKNER: Page 11.

7 ALJ WISSLER: Looking at page 11 of
8 Applicant's 19.

9 MR. MANNING: It shows the
10 intersections where we did do traffic counts,
11 and they went as far as Route 214.

12 We began down here at Route 28 and
13 Route 214, and went all the way up to Route
14 49A where it ran into Route 28. 49A is where
15 the access to the Belleayre Ski Area is.

16 We conducted traffic counts at those
17 locations for the winter peak period and the
18 fall peak period. We also looked at traffic
19 along Route 28 to determine -- and this is
20 Exhibit 1 -- here we're looking at the past
21 traffic growth in various segments of Route
22 28. You can see it runs from the fairly high
23 traffic volumes down near -- the Thruway,
24 I-87, down to lower traffic volumes as you get
25 out near the site. And these, again, are
(TRAFFIC ISSUE)

1 average annual daily traffic.

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2 So, in effect, the overall traffic
3 throughout that corridor, the background
4 traffic, if you will, has not grown
5 significantly from 1992 through 2003. It's
6 been essentially flat in that period of time.

7 However, in discussions with the DOT,
8 we decided to use a 3 percent growth factor to
9 go forward to the initial design year we were
10 working with, which was 2008. As you'll see
11 later on, we also used that same 3 percent
12 when we went forward to 2014.

13 MS. BAKNER: Chuck, just to clarify
14 for the record, the data in here isn't
15 something we generated, that's something we
16 got from DOT?

17 MR. MANNING: That's correct.

18 MR. RUZOW: Referring to page 11 of
19 Exhibit 19.

20 ALJ WISSLER: Right.

21 MR. MANNING: Terresa has already
22 referred to the two letters we received from
23 the DOT. They're included in here on pages 2
24 and 3. And they did verify both our trip
25 generation procedure and our growth procedures
(TRAFFIC ISSUE)

1418

1 on Route 28.

2 when we were looking at the trip
3 generation -- I want to spend a fair amount of
4 time on this because we did have a lot of
5 discussion about trip generation at the last
6 couple of meetings -- and I want to start with
7 page 4 of the exhibits.

8 ALJ WISSLER: Page 4 of Applicant 19?

9 MR. MANNING: Yes. All of the
10 references will be to that.

11 ALJ WISSLER: To 19?

12 MR. MANNING: For a while. The first
13 page here on page 4 talks about the selection
14 of methodologies within the Trip Generation
15 Manual for developing trip generation for
16 different types of land uses. There are two
17 different methods that are described in the
18 highlighted area. One uses regression
19 equations, and the second uses weighted
20 averages.

21 If you turn the page onto page 5, it
22 shows the graph or the information for the

23 peak hour of the generator for recreational
24 homes. The Trip Generation Manual has
25 virtually hundreds of pages like this of
(TRAFFIC ISSUE)

1419

1 different types of information for different
2 types of land uses, with trip generation for
3 different types of periods of time. We chose
4 the Saturday because that, again, was what was
5 identified as our peak design hour.

6 You can see looking at this page that
7 this information is based on eight studies up
8 at the top of the page where it says number of
9 studies. It says, "The average number of
10 dwelling units is 331," and it gives a
11 directional distribution of trips coming and
12 going to that type of land use within that
13 time period. So it says 48 percent are
14 entering, 52 percent are exiting. The average
15 rate for this type of development is listed as
16 .36, and that's the average rate we used in
17 developing the trip generation for the second
18 home development within the Belleayre Resort.

19 On the next page you see the same type
20 of thing for the hotel, and again, you have
21 got nine different studies. Saturday peak
22 hour of generator, and again, we applied the
23 same process.

24 If you go to page 7, I have broken it
25 down into some more detail into exactly how we
(TRAFFIC ISSUE)

1420

1 did the trip generation. You can see for each
2 of the different components of the
Page 185

3 development -- for example, taking the hotel,
4 you have a 250-room hotel at wildacres,
5 multiply that times .72 trips per room and
6 come up with 180 trips.

7 Alternatively, if we use the
8 regression equation analysis, we have .694
9 times 250 rooms, plus 4.3, gives 178 trips.
10 So in that particular case, the regression
11 analysis or the weighted analysis comes up
12 with essentially the same number of trips
13 generated from the hotel for that Saturday
14 peak hour.

15 Likewise, we did a similar type of
16 thing with the club membership and lodging
17 units. And you'll see there that the rate
18 calculation was somewhat lower than the
19 regression calculation. In the case of 168,
20 the rate was 60, regression was 80. In the
21 case of 183, the rate was 67, the regression
22 was 83.

23 One of the things we also did was
24 compare the rates and the trip generation with
25 some other similar type of land uses to make
(TRAFFIC ISSUE)

□

1 sure that what we were doing made sense and
2 was reasonable. So those are listed at the
3 bottom, and you'll see the lodging-type units
4 and second home-type units had a rate at Mount
5 Snow of .31. The rate we used was .36, so we
6 used a higher rate than what was used at Mount
7 Snow. So that's essentially how we did the

1421

8 trip generation.

9 Now, again, going back to what I said
10 at the beginning with regard to the overall
11 trip generation. If we look at the total trip
12 generation from the resort and compare it to
13 other types of land uses, what we find is that
14 this resort has a peak hour trip generation
15 rate that's comparable to the peak hour trip
16 generation rate that you would get from a
17 medium-size supermarket.

18 So as you look at relative impacts in
19 terms of traffic, you can look at this from
20 the standpoint of a medium-size supermarket or
21 a resort of this type for this peak hour trip
22 generation.

23 There will be differences in trip
24 lengths and all that sort of thing, and we can
25 deal with that as we look at the other parts
(TRAFFIC ISSUE)

1 of the analysis. But in terms of actual trip¹⁴²²
2 generation, that's the level of comparison
3 that we're dealing with here. I think that's
4 helpful in keeping things in relative
5 perspective.

6 ALJ WISSLER: You're just providing
7 that to me by way of illustration --

8 MR. MANNING: Yes.

9 ALJ WISSLER: -- that's not contained
10 in here?

11 MR. MANNING: No. The other thing on
12 this table, if you look on page 7, you'll see
13 the rates that were suggested by Mr. Ketcham.

14 Those represent the absolute highest rate that
15 were found in the tables. There's nothing in
16 the standard ITE trip generation procedures
17 that recommend using those highest rates. So
18 we didn't think it was reasonable to apply
19 those rates, although later on in the
20 sensitivity analysis you'll see the effect if
21 we had used those higher rates. But in terms
22 of our consideration and our analysis, we
23 don't think it's reasonable to use those
24 higher rates.

25 Just another item of comparison we put
(TRAFFIC ISSUE)

1 in here is that Sunday River Hotel has a rate¹⁴²³
2 which is roughly measured at half. This is up
3 at the top of the table there. That rate is
4 roughly half of the rate that we used as the
5 average rate from the ITE Manual.

6 (Indicating)

7 If we look at page 8, this is just a
8 summary table, it's from Exhibit 25 of the
9 DEIS; and it shows the total trip generation
10 for the different hours that we looked at.
11 Again, what we came up with was that the
12 Saturday p.m. peak hour would be the peak hour
13 for this development. That was the conclusion
14 that had been agreed to by Mr. Ketcham in his
15 original testimony of a couple of weeks ago.

16 The next item I wanted to talk about
17 is the resort shuttle, because there was a
18 great deal of discussion back and forth about

19 the resort shuttle, and we included the
20 shuttle in this analysis because this type of
21 resort typically has some type of a shuttle
22 service. As Mr. Ketcham mentioned, we worked
23 together on the Lake Placid study. He had
24 done an analysis of other types of resorts --
25 Vail I think was in there, Aspen, Sunday
(TRAFFIC ISSUE)

1424

1 River -- a number of different types of
2 resorts throughout the country where there are
3 ski resorts that have a shuttle service that
4 provides an opportunity for people to have
5 what we like to call a car-free vacation.
6 They're able to come to the resort, leave
7 their car and take the shuttle from wherever
8 they're staying, either at Wildacres or Big
9 Indian, to go directly to Belleayre, and then
10 to be picked up from Belleayre and go back to
11 the resort.

12 In our initial analysis, we assumed
13 that of the people going skiing, 80 percent of
14 them would use the shuttle. Now, he, in his
15 analysis, had correctly done some detailed
16 analysis on how long those trips would be
17 taking, and felt that potentially that
18 percentage might be lower than the 80 percent.

19 I think what we're dealing with here
20 is essentially operational issues, and as the
21 resort would go forward, planning could be
22 done to, in effect, provide some form of
23 on-demand service from the Big Indian area
24 which would, in effect --

25

ALJ WISSLER: So a shuttle ride
(TRAFFIC ISSUE)

1425

1 wouldn't be 82 minutes long?

2 MR. MANNING: Right, so that the
3 shuttle ride wouldn't be 82 minutes long. So
4 that, in effect, you could call up, reserve a
5 shuttle in advance, or using a form of GPS,
6 have the shuttle get there a little more
7 quickly and not have to take 82 minutes.

8 But again, I want to go back to what
9 the impact of this whole discussion of what
10 the shuttle is. I think we can dispense with
11 it in terms of relevance of the overall
12 consideration of the impacts of traffic from
13 this resort because what we have was -- again,
14 if you look at this map, we had reduced 46
15 trips from wildacres to Belleayre as a result
16 of traffic operating on the shuttle. And if,
17 for example, we said those 46 trips would not
18 be on the shuttle that, in fact, that would
19 represent people driving back and forth. If
20 you look at where those people would be, they
21 would be confined, in effect, to Route 49A for
22 that peak period of time.

23 So in an analysis that I'll talk about
24 a later bit later, we took those 46 trips out
25 and added them back in the traffic just to see
(TRAFFIC ISSUE)

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1 if it would affect what we recommended in
2 terms of our mitigation.

3 Likewise, with Big Indian, we had 32

4 trips that we had taken out, 32 trips during
5 that peak design hour. Again, what I have
6 done and later on in the sensitivity analysis,
7 is add those 32 trips back on to the traffic
8 that's on the roadway just to see if it, in
9 effect, changes our conclusion regarding the
10 mitigation.

11 So we still feel that it's important
12 to have shuttle service, we feel it's an
13 essential amenity for the resort, but at the
14 same time the number or percentage of trips
15 that actually use that shuttle are not
16 critical to the overall analysis and the
17 conclusions regarding the traffic and the
18 traffic impacts of the resort. Again, because
19 it's limited to this limited area right around
20 the area of the resort itself.

21 What I want to do now is talk about
22 the improvements that we did recommend, and
23 there are a series of mitigating measures
24 which have been proposed as part of this
25 project. They were listed out in Exhibit 25,
(TRAFFIC ISSUE)

□

1 and they -- starting from Route 49A and
2 -- many of them are stop signs. I'm not going
3 to talk about those, just adding stop signs to
4 driveways and that sort of thing where they're
5 necessary. But I think the first significant
6 one really is along 49A where we're adding
7 left-turn lanes into the upper driveway at the
8 Belleayre Resort and into the driveway at the
9 Wildacres resort.

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15 Plateau to facilitate both through-traffic,
16 getting around traffic which is coming up to
17 Big Indian Plateau, and to also allow a
18 waiting area for Big Indian Plateau to wait
19 for traffic that's going east and gets through
20 that area.

21 Coming further to the east, we're
22 recommending monitoring traffic at these three
23 locations -- because as you'll see as I talk
24 about a little bit more later on -- there are
25 conditions during the peak design hour which
(TRAFFIC ISSUE)

1 if a signal was installed at those locations 1429
2 would be mitigated, however, they occur for
3 such a short period of time and for a period
4 of time which is only occurring two or three
5 times a year that it isn't reasonable, in
6 terms of standard traffic signal warrants, to
7 put signals at those locations. However, at
8 some point in the future it may be necessary
9 to install signals at those particular
10 locations. So we're recommending continuing
11 monitoring as the project goes forward at
12 those locations.

13 Just as a point of reference, the
14 level of service, and we'll be talking about
15 level of service, I think we spent some time
16 on that before, it runs from A through F; the
17 level of service for this location in 2008 was
18 forecast to be a level of service B, and that
19 was what was in the original analysis.

20 MS. BAKNER: Chuck, before you leave
Page 193

21 that intersection, I don't know if you're
22 going to get into this later, would
23 improvements be a good idea at this
24 intersection during the day during those peak
25 periods?

(TRAFFIC ISSUE)

1430

1 MR. MANNING: Yes, absolutely.

2 MR. RUZOW: We're talking about 49A?

3 MR. MANNING: Yes, 49 and 28. Simply
4 because of the traffic from Belleayre.

5 ALJ WISSLER: What's the present level
6 of service at that intersection; do you know?

7 MR. MANNING: During the exit from
8 Belleayre? F. It's unsignalized, and it's my
9 understanding --

10 ALJ WISSLER: It's F now?

11 MR. MANNING: Well, during the winter
12 peak period. Like today, it's probably A
13 because there's no traffic.

14 ALJ WISSLER: I understand. You're
15 saying that, assuming a 2008 date, by your
16 analysis, that with the lanes that you would
17 add and the actuated signal light and so
18 forth --

19 MR. MANNING: Then it would be B.

20 ALJ WISSLER: It would be B?

21 MR. MANNING: Correct.

22 ALJ WISSLER: Even with the resort?

23 MR. MANNING: Yes. Again, to clarify,
24 it would be -- if the resort were not built
25 and if the improvements were not made, then it

(TRAFFIC ISSUE)

1 would be an F, during that same design hour.

2 ALJ WISSLER: Are you suggesting that
3 the simple addition of those lanes --

4 MR. MANNING: And the signal.

5 ALJ WISSLER: -- and the signal would
6 elevate it that much?

7 MR. MANNING: Yes.

8 So in response to the comments that
9 were received, we've done two additional sets
10 of analysis, and one was we looked at the 2004
11 conditions at Belleayre. And we got
12 information from Belleayre on the last four
13 seasons, in terms of attendance.

14 You can see here that it's been a
15 little bit -- roughly 20 percent, 25 percent
16 higher between 2001 and 2002 season; between
17 2000 and 2001, it was relatively quiet; and
18 between 2002 and 2003, it's relatively quiet
19 again. (Indicating)

20 ALJ WISSLER: For the sake of the
21 record, we're looking at Applicant's 19, page
22 12.

23 MR. MANNING: And this represents
24 total skier days for the year, so it's not a
25 particular day but covering the full year. So
(TRAFFIC ISSUE)

1 we did a traffic count for, again, Martin
2 Luther King weekend because that was again
3 perceived as the highest weekend of the year.
4 And then after that we got the listing of
5 skier days for the whole year, and that's

6 shown in the next three pages of your
7 exhibits, page 13 --

8 ALJ WISSLER: 13A, B and C?

9 MR. MANNING: Correct.

10 ALJ WISSLER: And D?

11 MS. BAKNER: D.

12 MR. MANNING: What we found on that
13 day, looking at the listing of different days
14 and rank ordering them as to the highest day
15 of the year, is that the day we counted was
16 the third highest day of the year. So it was
17 about 11 percent lower than the highest day of
18 the year. So if you look through there, you
19 can find the 17th, and I think the number is
20 around 4600. And the next one down gives you
21 the highest day. (Indicating)

22 Also, I wanted to note on that
23 particular day, we also did a count of the
24 parking lots, and we counted a total of 1668
25 vehicles parked in the parking lot on the day
(TRAFFIC ISSUE)

□

1 that we counted, which was the 17th of
2 January.

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3 The parking lots, according to
4 officials at Belleayre, the parking lots have
5 a capacity of 1,435 cars. So in effect, the
6 parking lots were over-capacity, there were
7 people parked along the roadways, and there
8 really isn't additional capacity at Belleayre
9 for a significantly higher number of skier
10 days.

11 If you look at that historical data,
12 you see there's about one day a year that's
13 over 5,000, there are two or three days that
14 are ranging from 4,000 or 4500 to 5000, and a
15 few days less than that.

16 ALJ WISSLER: Mr. Manning, just let me
17 stop you there. 13A, B, C and D, where is
18 that data derived from?

19 MR. MANNING: That data was delivered
20 to us by Belleayre.

21 ALJ WISSLER: By the ski center?

22 MR. MANNING: By the ski center.

23 ALJ WISSLER: Is this the only period
24 -- is this the only period that they keep,
25 from November through April?

(TRAFFIC ISSUE)

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1 MR. MANNING: Yeah, the ski season.

2 Essentially where I was, was it's our
3 conclusion that, in effect, the traffic at
4 Belleayre is really -- Belleayre, the ski
5 area, is really at its capacity in terms of
6 traffic, that it's not reasonable to expect
7 there to be additional traffic at Belleayre
8 until there are new parking areas constructed;
9 and I think Teresa might want to comment on
10 that a little bit.

11 MS. BAKNER: If I can just address the
12 1998 final UMP for the Belleayre Ski Center,
13 provided for a number of improvements,
14 including the construction of a roughly
15 500-car parking lot.

16 We have contacted Ms. Krebs to see if

17 she could contact the ski center and verify
18 for us that that parking lot had been built,
19 and that was verified by Carol, and I'm sure
20 she can confirm it on another day that she's
21 here. She sent us an e-mail confirming that.

22 So what Chuck is saying then, is under
23 the current improvements authorized by the
24 final UMP, everything has been done. So in
25 addition to that, they managed to squeeze a
(TRAFFIC ISSUE)

1435

1 lot of cars in, to the tune of almost
2 -- around 168 additional cars -- and you
3 visually verified that there's no place else
4 to put cars. That's basically where we are.

5 MR. MANNING: So what we did then was
6 we had our new counts from 2004. We factored
7 those up to 2014. We did a series of
8 level-of-service analysis for the peak-hour
9 condition with the 2014 condition in
10 background traffic, the same trip generation
11 from the resort and the higher peak volume
12 from Belleayre. And looking at these
13 intersections, the same mitigation measures
14 again. What we found was that, in effect,
15 that the mitigation measures that we proposed
16 previously would still be able to accommodate
17 the traffic.

18 At this point in time, the level of
19 service, overall we were still able to
20 maintain the level of service B at this
21 critical intersection because of the

22 -- because of the capabilities of the traffic
23 signal and the additional lanes that we added
24 at that location.

25 Also the volume-to-capacity ratio at
(TRAFFIC ISSUE)

1 that peak period along Route 28 was .5. So in ¹⁴³⁶
2 effect, we're using about half the capacity
3 available on Route 28 during that peak-hour
4 period.

5 The other thing I wanted to just go
6 over with regard to the skier days and the
7 impact of the fact that we used this absolute
8 peak analysis, is if you look at page 14,
9 there's a real rapid drop-off in the traffic
10 coming from Belleayre, and this is based on
11 those numbers which we had presented
12 previously.

13 So you can see by the tenth day --
14 tenth day there's 74 percent less
15 -- 26 percent less traffic than there was on
16 the peak day. Then by the 20th day, that's
17 dropped to 58 percent; and by the 30th day,
18 that's dropped to 48 percent.

19 And the average day at Belleayre is
20 1192 skiers, versus the peak day which was
21 over 5,000.

22 Again, the reason this is relevant
23 from a traffic impact standpoint is we're able
24 to provide a level of service B for the
25 absolute peak day of the year with all of the
(TRAFFIC ISSUE)

1 Belleayre traffic, plus the resort traffic. ¹⁴³⁷
Page 199

2 As this Belleayre traffic goes through this
3 steep decline, it just gets better.

4 So I think we've taken a very
5 conservative approach in terms of our
6 analysis, and there's no question that we're
7 able to handle the traffic for the worst day
8 of the year as well as all of the days other
9 than the worst day of the year.

10 what I'd like to do next is just
11 address a few of the other comments that were
12 made prior to today, and specifically with
13 regard to the trip generation. We talked
14 about how we used standard ITE trip generation
15 procedures. Another thing we can do is look
16 at it from a reasonableness perspective.

17 In other words, if we look at all the
18 units that are proposed for the resort and the
19 number of trips that we say are generated,
20 essentially we're saying that 60 percent of
21 the units are making a trip during the peak
22 hour, which just from a reasonable standard,
23 reasonable standard seems to make sense. That
24 if you take all the units that are there,
25 60 percent of them that are there are making a
(TRAFFIC ISSUE)

1 trip in or out. That's just to keep things in ¹⁴³⁸
2 sort of an order of magnitude again.

3 The shuttle service, I mentioned I'd
4 come back to that. When we did pull out the
5 shuttle service from the trips and added those
6 trips back into the network, if you look at

7 page 16, that will show you the level of
8 service that was again done at the 49A\Route
9 28 intersection. And this is the standard
10 short report from the Highway Capacity Manual.
11 We talked about it a lot, so I just want to
12 spend a little bit of time showing you where
13 the relevant results are. (Indicating)

14 They're actually at the bottom of the
15 page. And you can see there's an approach
16 level of service for each of the approaches;
17 say at the eastbound is at C, the westbound is
18 at B, the northbound is at B, and the
19 southbound is at B. And then the intersection
20 level of service is also at the bottom, and
21 that's at B as well. (Indicating)

22 So again, we added in those trips,
23 which are potentially shuttle trips, and still
24 came up with a level of service B at that
25 location for the peak design hour of the year.
(TRAFFIC ISSUE)

□

1 There were some comments about offsite¹⁴³⁹
2 trips, and we have actually assigned 129 trips
3 to and from Big Indian off the site. These
4 are not going to Belleayre, but they're, in
5 effect, going somewhere else down Route 28.
6 So we've accounted for trips with people going
7 out to go to a restaurant, going out to go
8 shopping, whatever they're going to do, those
9 trips are leaving, either wildacres or Big
10 Indian, and heading off the site. So we have
11 129 of those from Big Indian and 175 from
12 wildacres.

13 ALJ WISSLER: During what time?

14 MR. MANNING: During the peak design
15 hour.

16 ALJ WISSLER: And where is that
17 reflected?

18 MR. MANNING: That's reflected in
19 the -- pages 9 and 10.

20 ALJ WISSLER: 9 and 10?

21 MR. MANNING: If you want, I can go
22 through those in a little more detail.

23 ALJ WISSLER: Yeah. How did you
24 derive the figure of 129 and 175?

25 MR. MANNING: That was the difference
(TRAFFIC ISSUE)

□

1 between the traffic which was going to and 1440
2 from Belleayre, so we had some of the traffic
3 returning from Belleayre, which was 50 percent
4 of the entering traffic we assumed was coming
5 from Belleayre. The other 50 percent we
6 assumed was coming from somewhere else. And
7 then the traffic coming back to the resort or
8 going away from the resort, we assumed was all
9 leaving and going out onto Route 28. So it's
10 100 percent of the existing traffic from the
11 resort and 50 percent of the entering traffic.

12 If you look at the diagram here, page
13 9, this represents the outbound traffic, and
14 this is from wildacres. And so we've
15 highlighted in blue all the traffic coming out
16 from the development. (Indicating)

17 MR. GERSTMAN: Excuse me, could you

18 refer to the exhibit so that we can --

19 ALJ WISSLER: You want to come up
20 here.

21 MR. MANNING: Page 9, this represents
22 the traffic from wildacres, and it's coming
23 out here from the three driveways that serve
24 Route 49A, and we've distributed it among the
25 three driveways. You have the majority of it
(TRAFFIC ISSUE)

1 heading down to Route 28 and only three trips¹⁴⁴¹
2 heading up into the boonies. And what that
3 gives you is about --

4 ALJ WISSLER: I'm sure the folks who
5 live up there appreciate that.

6 MR. MANNING: In the record, I think
7 there was reference to boonies before.

8 They come down to Route 28, and we
9 have most of them going right. Now, there's
10 been discussion about whether we should have a
11 higher proportion going left or not.
12 Conceivably, they might go left to do some
13 activity down here. We felt, again, a
14 conservative analysis by having a higher
15 proportion going right, we would see what the
16 impact along 28 would be.

17 Likewise, if you look at Figure 10, we
18 have the opposite traffic with the traffic
19 coming back into the wildacres development;
20 and again, we have it coming up Route 28,
21 making a left-hand turn on 49, and coming up
22 and distributed across the three driveways.
23 (Indicating.)

24 So what I'd like to do now is turn to
25 page 17 in the exhibit, and what we've done
(TRAFFIC ISSUE)

1 here is we've taken the trip generation and
2 the distribution and so on that was done in
3 Mr. Ketcham's report, and although we don't
4 agree with the trip generation and we don't
5 agree with the growth at Belleayre, we wanted
6 to see if we took what I would consider an
7 extreme worst case. With the mitigation
8 measures we proposed, still handle that
9 extreme worst case.

1442

10 So what this shows on 17, page 17 is
11 again a level-of-service analysis for the
12 intersection of County Route 49A and Route 28,
13 using the volumes that were projected in
14 Mr. Ketcham's report, which we don't agree
15 with, but just to see if, in fact, the
16 mitigation measures we proposed would carry
17 that traffic in a satisfactory manner.

18 And if again, you looked down at the
19 bottom of that analysis sheet, you'll see that
20 the levels of service overall for the
21 intersection is C, and the levels of service
22 go from A to D, with the northbound approach
23 coming out from County Route 49 and Belleayre
24 having the level of service D, all of which
25 are acceptable levels of service for that
(TRAFFIC ISSUE)

1 intersection.

1443

2 MR. RUZOW: Better than the current

3 condition?

4 MR. MANNING: Yes, and better than the
5 current condition.

6 ALJ WISSLER: Which you characterize
7 as F?

8 MR. MANNING: Correct. When there's
9 not the police officer there directing
10 traffic.

11 Now, the other thing we have done is,
12 at the last hearing, we had a presentation of
13 a synchro-analysis with the little cars
14 running back and forth, which is what the disk
15 we presented has that information on that.
16 And I also have that on my computer, if you
17 would like to look at it.

18 This diagram, which again
19 illustrates -- what number is this?

20 MR. RUZOW: Page 15 of Exhibit 19.

21 MR. MANNING: That again illustrates
22 the dramatic peaking and the relative trip
23 generation between Belleayre and the project
24 itself. This is for the peak hour only.

25 So during the peak hour coming out
(TRAFFIC ISSUE)

1 from Belleayre for the peak day would be 1165¹⁴⁴⁴
2 cars. And it shows it relative to the trip
3 generation from the elements of the project.

4 ALJ WISSLER: Let me see if I
5 understand. Looking at 14 and then looking at
6 15 --

7 MR. MANNING: Okay.

8 ALJ WISSLER: -- you're saying that
Page 205

9 the highest day, 5,038 skiers --
10 MR. MANNING: Correct.
11 ALJ WISSLER: -- generated 1165
12 vehicles --
13 MR. MANNING: Vehicles, during the
14 peak hour.
15 ALJ WISSLER: That's a derivation of
16 your own? That's not based on some car
17 count --
18 MR. MANNING: This 1165 is based on a
19 car count. It's just for one hour. And we
20 know that on that day there were roughly 1600
21 cars that are parked there. So what that says
22 is that roughly two-thirds of them come out
23 during that one peak hour from Belleayre and
24 then the other third are staying in the
25 parking lot or left earlier or something like
(TRAFFIC ISSUE) 1445
1 that.
2 So for the 1600 cars with 5,000
3 skiers, you have approximately three skiers
4 per car.
5 ALJ WISSLER: And the 559 for that is
6 what?
7 MR. MANNING: The 559 represents the
8 30th highest day. It's again representing
9 that drop in traffic from Belleayre between
10 the highest day and the 30th highest day.
11 MR. RUZOW: And the 30th highest day
12 is the number shown -- this is on page 14
13 -- is 2416.

14 MR. MANNING: What I have got, this is
15 using the 2014 -- using the 2014 volumes, and
16 one of the things I want to emphasize here,
17 I'll try and point it out as this runs, is one
18 of the reasons this works as well as it does
19 is because we're using a three-phase signal.
20 Essentially what that means is when the left
21 turn is going-- part of it is a protected left
22 turn, so they're given like a green arrow to
23 make the left turn into here. This traffic
24 going east on 28 is stopped, and at the same
25 time they're going. That means that the right
(TRAFFIC ISSUE)

1446

1 turn coming out from 49A can happen at the
2 same time. (Indicating)

3 So those two movements can happen
4 simultaneously, and since this is the largest
5 movement at the intersection, that helps
6 optimize the use of the intersection.
7 (Indicating)

8 Right now -- it's all red at the
9 moment. These red dots indicate the signal.

10 ALJ WISSLER: Phase of the light?

11 MR. MANNING: Right, phase of the
12 light. You can see right here, this is the
13 green phase for the traffic coming this way
14 and also traffic is allowed to go right at the
15 same time. (Indicating)

16 So this is the way that would run with
17 our estimate of 2014 volumes, and this is
18 where we came up with the level of service B
19 for the intersection. You can see there's no

20 queues building up even though you have a
21 heavy volume coming from Belleayre and
22 wildacres. The queue starts to build-up and
23 it clears out again. (Indicating)

24 The other thing we've done is I think
25 we've refined a little bit the timing because
(TRAFFIC ISSUE)

1 of the limit Mr. Ketcham brought out earlier.¹⁴⁴⁷
2 I think there was a two-phase timing, and what
3 we did was a three-phase, and you can see the
4 impact of that if you run these sort of
5 simultaneously. And it really shows the
6 benefit of the two-phase and the three-phase
7 because you can see here these left turns are
8 starting to back up when you're only running
9 the two-phase system, and the little blue cars
10 are -- this is also using, as I mentioned
11 before, the higher volumes which we considered
12 extremely high. But we wanted to just see,
13 again, putting this much stress on the
14 network, would it continue to operate in a
15 satisfactory fashion. (Indicating)

16 And over here with the two-phase you
17 can see the queue starting to build-up,
18 whereas over here, it's still flowing
19 smoothly. There's a little bit of a backup
20 here, but when the phase changes, then it
21 clears out with the permitted phase.
22 (Indicating)

23 MS. BAKNER: Can the Judge run these
24 comparisons on his computer using the disk

25 that we gave him?
(TRAFFIC ISSUE)

1448

1 MR. MANNING: Yes.

2 MS. BAKNER: What program?

3 MR. MANNING: All he has to have is
4 PowerPoint. There's directions right in
5 there. You have to load it into a file and
6 you can operate this on your computer. You
7 can do this at home, make as many changes as
8 you like.

9 ALJ WISSLER: That's run at full
10 speed, is that -- I mean --

11 MR. MANNING: About four times actual
12 operating speed.

13 ALJ WISSLER: Let me see what is
14 normal operating speed.

15 MR. MANNING: I can't do that.

16 ALJ WISSLER: Oh, you cannot?

17 MR. MANNING: The way it's set up
18 here. The way we set this up is it actually
19 is run in a separate program that we download
20 into a PowerPoint presentation, and that's how
21 you can do it without the software.

22 There have been comments, and I will
23 put this up here sort of as a summary. I
24 think this is on page 18.

25 MS. BAKNER: Yes, page 18.
(TRAFFIC ISSUE)

1449

1 MR. MANNING: And it shows the
2 -- again, just a listing of the mitigation
3 measures because there have been comments that
4 we aren't doing any mitigation. And I just
Page 209

5 wanted to show the list of mitigation measures
6 that we are doing.

7 The other thing I wanted to comment
8 on, and this is relevant to some of the
9 material I think we got today as well, is the
10 economic impact analysis and the relevance of
11 that. What I'd like to say about that, I
12 guess, is that first of all, our firm has done
13 a number of benefit cost-type analysis for
14 highway improvements for both bypass-type
15 highways as well as for accident analysis.
16 And we've used procedures, in terms of
17 accident costs and so on, that are similar to
18 the procedures that were presented in the
19 impact analysis for this report -- for this
20 project.

21 I think the difference has been that
22 in all of those cases, we had sort of two
23 sides of the equation. We had a situation
24 where we had a cost of a particular project
25 related to construction cost and so on, and
(TRAFFIC ISSUE)

1 then we had a benefit possibly in terms of
2 reduced accidents. And so we could compare
3 the cost of the project to the benefits.

4 I think what we're looking at here is
5 really one side of the equation. In effect,
6 if I checked this out correctly, it was
7 estimated there would be 77 million added
8 miles of travel on the roadway, that that
9 would be done by 500,000 cars, which means

1450

10 each one of those cars is making a trip that's
11 154 miles long. So in effect, maybe it's two
12 trips, so it's 77 miles. So it's clearly
13 taking this impact far beyond simply the
14 corridor in which we're looking at.

15 In effect, it's taking them -- because
16 if you look at the calculations, it's taking
17 those trips back to use of the thruway or use
18 of an expressway because they list rural
19 expressway and urban expressway in all those
20 calculations.

21 Now, I was thinking about what would
22 be the opposite side of this equation. So in
23 other words, what this analysis implies is
24 that if this resort were not here, the way I
25 interpret it anyway, those trips would not be
(TRAFFIC ISSUE)

1 made. I think that's the only thing you can ¹⁴⁵¹
2 conclude, because it's implying that all of
3 those costs are associated with the fact this
4 resort is here. So that means if those people
5 who are making those trips don't come to this
6 resort, in effect, they're not going anywhere,
7 which I don't think is logical.

8 Because the way I would look at it is
9 if they were not coming to this resort, they
10 most likely would be going to some other
11 resort or just go skiing or to play golf or
12 whatever they were going to be doing. And if
13 they were doing that, then you have to
14 consider the distance to that other resort and
15 all of these associated costs that have been

16 calculated to that other resort and compare it
17 to what was done to this resort. And that
18 began to become more and more complicated and
19 less and less reasonable and more and more
20 assumptions had to be made. And I think
21 falling into that kind of analysis is why this
22 type of analysis has never been considered in
23 looking at this type of project. Because you
24 could hypothetically say that these people
25 who, say, come from Putnam County or
(TRAFFIC ISSUE)

□

1 Westchester County or even New York City, up ¹⁴⁵²
2 to this resort, if this resort were not here,
3 they would be going to the Adirondacks or they
4 would be going to Vermont, which is further.
5 So therefore, if you added up all those costs,
6 in effect, you could say building this resort
7 would have a benefit because the cost would be
8 lower because those trips are further.

9 But I really don't want to get into
10 that type of analysis because I don't think it
11 makes sense. And I don't think it should be
12 considered in the consideration of whether
13 traffic is a significant issue for this
14 project or not.

15 I think that this type of analysis has
16 some usefulness if you're comparing perhaps a
17 new improvement to an intersection, a new
18 highway bypass, some sort of a project where
19 you're able to compare both sides of the
20 equation. But in this case, I don't think

21 that has been done, and furthermore, I don't
22 think it's reasonable to do it. So I just
23 wanted to have that initial comment on the
24 economic analysis. I haven't had a chance to
25 look at the new information presented today in
(TRAFFIC ISSUE)

1453

1 enough detail to see if that has been
2 addressed, but that was a statement I wanted
3 to make about the economic analysis that we
4 received previously.

5 MS. BAKNER: Just to interject, we're
6 reserving our rights to respond to that.

7 ALJ WISSLER: I'll allow you to do
8 that.

9 MS. BAKNER: So that we can give Chuck
10 an opportunity to compare that to what he had
11 before.

12 MR. GERSTMAN: Can we go off the
13 record a moment --

14 ALJ WISSLER: Are you going to make
15 copies of Victoria's --

16 MR. GERSTMAN: -- in terms of
17 scheduling?

18 ALJ WISSLER: Are we --

19 MS. BAKNER: No, we're not done.
20 we've still got quite a lot to cover -- not a
21 lot, sorry.

22 MR. GERSTMAN: Can we just go off the
23 record for a moment for scheduling?

24 (4:07 P.M. DISCUSSION OFF THE
25 RECORD.)

(TRAFFIC ISSUE)

1 MR. MANNING: So I guess I just wanted
 2 to summarize and come to the final
 3 conclusions. And essentially, from our view,
 4 traffic is no longer a substantive issue for
 5 this project. We proposed mitigation measures
 6 that we feel address the absolute worst peak
 7 hour of the year, any other hour of the year
 8 the traffic situation will be better.

9 We've done some other research. We've
 10 located ten other ski resorts in the
 11 northeast, which have five to 10,000 skiers
 12 per day, and they're served by two-lane state
 13 highways. So again, looking at
 14 reasonableness, I think this area is served by
 15 a state highway system that can handle the
 16 traffic.

17 We've got a review and acceptance by
 18 New York State DOT in the letters we've
 19 already talked about, the March 6th of 2002
 20 and the May 4th of 2004. Next step with the
 21 Department of Transportation is simply getting
 22 the permits to do the work that we feel is
 23 necessary. And we will be doing that work
 24 prior to the build-out of the resort so it
 25 will be in place by the time the resort is on
 (TRAFFIC ISSUE)

□

1 line.

2 Using the absolute highest projected
 3 traffic, both based on the computer and the
 4 Highway Capacity Manual analysis, we were able
 5 to show that the mitigation measures proposed

6 can handle the traffic.

7 Finally, the 2014 peak hour, there
8 will still be a reserve capacity on Route 28
9 of about 1100 vehicles. So there's still,
10 even using the worst-case analysis, there's
11 reserve capacity available on Route 28.
12 Again, that's something I want to look at this
13 additional information on, but I have a
14 feeling that we will still be able to show
15 that there will be available capacity on Route
16 28 to handle the traffic.

17 And the project Applicant has agreed
18 to make all the improvements, so I think that
19 traffic is really not a substantive issue.

20 MS. BAKNER: Let me ask you a couple
21 of quick questions.

22 MR. MANNING: Sure.

23 MS. BAKNER: In all your assumptions
24 Chuck, you've assumed full build-out of the
25 resort?

(TRAFFIC ISSUE)

1456

1 MR. MANNING: That's correct.

2 MS. BAKNER: So no matter what the
3 build here is, ultimately, you've assumed from
4 the first moment that it's all open and all
5 operating in your analysis of the peak hour?

6 MR. MANNING: Yes. So we assumed that
7 initially for 2008, and that in our subsequent
8 analysis we assumed it for 2014.

9 MS. BAKNER: In terms of the shuttle
10 bus trips, in your final analysis of the peak,
11 you just made the assumption we wouldn't have

12 any shuttle bus trips?

13 MR. MANNING: That's correct.

14 MR. RUZOW: So you're using all the
15 cars. If, as we had planned it, we were using
16 shuttle buses, it will be a further reduction
17 and therefore levels of service would --

18 MR. MANNING: Frankly, as we got into
19 it, it's an incremental change. The shuttle
20 service makes a lot of sense from an amenity
21 point of view. From a traffic point, it's not
22 significant.

23 MS. BAKNER: It's been suggested by
24 CPC that it would somehow be informative or
25 helpful or maybe even is required somewhere to
(TRAFFIC ISSUE)

□

1 do analysis of the distribution of traffic,
2 not just at the peak hour but somehow
3 throughout other hours of the day. What's
4 your professional opinion of that?

1457

5 MR. MANNING: In terms of traffic
6 operations, that type of analysis, I don't
7 think would provide any benefit because we
8 have already shown that the traffic mitigation
9 measures proposed will address the traffic
10 needs during that peak hour. So I was saying,
11 I don't think that further analysis of levels
12 of service would lower traffic volumes makes
13 sense at this point in time.

14 MS. BAKNER: There was also a question
15 raised, and this may be something you may need
16 to respond to later, that somehow the time of

17 year and the days that you picked weren't the
18 peak, that somehow that peak period actually
19 occurs in the summer.

20 MR. MANNING: I do want to look at
21 that in a little more detail, although my
22 initial reaction is looking at the volume of
23 traffic that's generated by Belleayre in the
24 wintertime versus the summertime means that
25 that offsets the type of factors, sort of
(TRAFFIC ISSUE)

1458

1 these statewide seasonal factors that were
2 presented. There was no data presented which
3 indicated that the summer was enough higher to
4 offset that traffic from Belleayre.

5 MR. RUZOW: And Belleayre brings
6 traffic all the way from --

7 MR. MANNING: The Thruway.

8 MR. RUZOW: So the entire corridor is
9 encompassed at the highest use of Belleayre?

10 MR. MANNING: Yes. And proportionally
11 as you go further out the corridor, that
12 effect becomes more significant. Obviously,
13 as you're out near 49A, there's a very
14 significant effect on that traffic.

15 MS. BAKNER: It carries it through
16 further along the main stem on Route 28?

17 MR. MANNING: Yes.

18 MS. BAKNER: With respect to the new
19 exhibits that we received today, 42 through
20 46, is there anything else you want to add at
21 this time in response to any of those?

22 MR. MANNING: I think I've talked
Page 217

23 about most of them. I would like to spend
24 some more time looking at 46.

25 MS. BAKNER: For the record, 46 is the
(TRAFFIC ISSUE)

1459

1 hidden costs of added traffic?

2 MR. MANNING: Yes.

3 MS. BAKNER: Last question, I promise
4 no more. People have suggested that we should
5 have looked, have done an analysis of all the
6 intersections between the Thruway and 49A.
7 Can you just explain for us why that, in your
8 professional judgment, isn't warranted?

9 MR. MANNING: As you go further east
10 on 28, the impact of the resort traffic, and
11 the Belleayre traffic for that matter,
12 decreases in terms of a proportion of the
13 total traffic in the corridor. So if you get
14 down to some of those higher volumes I showed
15 earlier on the graph where you had 20,000 cars
16 or something like that, if you look at the
17 traffic coming from Belleayre during the peak
18 hour was 1165. So you're down to a relatively
19 small percentage of the total traffic.

20 So at some point, you have to cut off
21 how far east you're going because you're
22 getting influenced much more by other traffic
23 than by the traffic either from the resort or
24 from Belleayre.

25 MS. BAKNER: That's all we have, your
(TRAFFIC ISSUE)

1460

1 Honor?

2 MR. GERSTMAN: Can we go off the
3 record?

4 ALJ WISSLER: Do you have a comment on
5 traffic?

6 MR. GERSTMAN: Yes, we'll have
7 extensive replies that we want to present
8 after this analysis, and I understand Mr.
9 Manning also wants to reserve time to analyze
10 and come back and present further information.

11 ALJ WISSLER: You're not doing that
12 today?

13 MR. GERSTMAN: What I was going to
14 suggest is after DEC makes its comments on
15 traffic, that we schedule Mr. Burger to deal
16 with the bird impacts and come back on a
17 Monday or Friday when Mr. Ketcham is available
18 to pick up and conclude on the traffic.

19 ALJ WISSLER: What do you have on
20 time?

21 MR. ALTIERI: A very brief comment.

22 ALJ WISSLER: Let's hear it.

23 MR. ALTIERI: The staff was going to
24 submit the DOT letter dated May 4th, 2004 as
25 an exhibit, but it's already been submitted as
(TRAFFIC ISSUE)

□
1 within Applicant's 19, page 3, and basically ¹⁴⁶¹
2 it's relying on that letter, the staff would
3 find there's no substantive or significant
4 issue regarding traffic concerning the
5 project.

6 ALJ WISSLER: Okay.

7 MR. GERSTMAN: In terms of analysis,
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8 my proposal is to pick up traffic and conclude
9 it on either a Monday or Friday. Mr. Manning,
10 I believe, expressed an interest and,
11 obviously, Dan and Terresa --

12 ALJ WISSLER: Ms. Bakner, is it your
13 intention to have Mr. Manning come back and
14 respond to these exhibits, or is it something
15 you'll be putting in some kind of response, a
16 written response?

17 MS. BAKNER: We're more than happy to
18 deal with that in writing and put it in the
19 record along with our briefs.

20 ALJ WISSLER: Then we'll take
21 Mr. Ketcham today and we can complete traffic.

22 MR. GERSTMAN: Can we take one minute,
23 your Honor.

24 ALJ WISSLER: Why don't we take five.

25 (4:17 - 4:26 P.M. - BRIEF RECESS
(TRAFFIC ISSUE)

□

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1 TAKEN.)

2 ALJ WISSLER: Ready to reconvene.

3 MS. ROBERTS: Our witness on the
4 Important Bird Area Dr. Michael Burger. Dr.
5 Burger will discuss his credentials in a
6 moment because his CV is missing a couple of
7 pages. So we will get you a full resume.

8 And before you introduce yourself,
9 Dr. Burger, I wanted to submit for the record
10 the exhibits you'll be relying on. So
11 Dr. Burger is going to be giving a PowerPoint
12 with a hard copy of the PowerPoint which will

13 be CPC Exhibit 48. 6-18-04 OPTICROSS
14 (HARD COPY OF POWERPOINT PRESENTATION
15 BY MICHAEL BURGER RECEIVED AND MARKED AS CPC
16 EXHIBIT NO. 48, THIS DATE.)

17 MS. ROBERTS: Exhibit 49 is the
18 Catskill IBA Blowup, Important Bird Area.

19 (CATSKILL IBA BLOWUP RECEIVED AND
20 MARKED AS CPC EXHIBIT NO. 49, THIS DATE.)

21 MS. ROBERTS: 50 is a letter dated
22 June 17th, 2004 from Dr. Kenneth Rosenberg.

23 (LETTER DATED 6/17/04 FROM CORNELL
24 LABORATORY OF ORNITHOLOGY FROM KENNETH V.
25 ROSENBERG RECEIVED AND MARKED AS CPC EXHIBIT
(WILDLIFE ISSUE)

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1 NO. 50, THIS DATE.)

2 MS. ROBERTS: 51 is Catskill Peaks IBA
3 Summary.

4 (CATSKILL PEAKS IBA SUMMARY RECEIVED
5 AND MARKED AS CPC EXHIBIT NO. 51, THIS DATE.)

6 MS. ROBERTS: 52 is IBA Spatial
7 Analysis Methodology.

8 ("IBA SPATIAL ANALYSIS METHODOLOGY
9 AUDUBON USES GIS TO IDENTIFY IMPORTANT BIRD
10 AREAS IN NYS" RECEIVED AND MARKED AS CPC
11 EXHIBIT NO. 52, THIS DATE.)

12 MS. ROBERTS: 53 is Partners in
13 Flight.

14 ("PARTNERS IN FLIGHT NORTH AMERICAN
15 LANDBIRD CONSERVATION PLAN" RECEIVED AND
16 MARKED AS CPC EXHIBIT NO. 53, THIS DATE.)

17 MS. ROBERTS: Dr. Burger, introduce
18 yourself and state your name for the record.

19 DR. BURGER: My name is Michael
20 Burger, and what's missing on my CV in the
21 packet is my educational background and my
22 recent employment history. I received an
23 undergraduate degree in 1987, Wittenberg
24 University in Ohio majoring in biology.

25 In 1993 I received a Master's Degree
(WILDLIFE ISSUE)

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1 in Natural Resource Ecology and Management
2 from the University of Michigan in Ann Arbor,
3 and in 1998 received my Ph.D. at the same
4 school, University of Michigan in Ann Arbor,
5 also in Natural Resource Ecology and
6 Management.

7 Since 1999, I've been employed by the
8 National Audubon Society, initially as a
9 forest ecologist studying the implications of
10 forest management on breeding birds, breeding
11 birds in the Adirondacks.

12 And since January of 2000, I've been
13 Director of Bird Conservation for Audubon New
14 York, which is the state program of the
15 National Audubon Society. As part of my
16 responsibilities in that role, I oversee the
17 Audubon's Important Bird Area Program as it's
18 implemented in the State of New York.

19 What I want -- I'll be talking about
20 today is about the Catskill Important Bird
21 Area, specifically about habitat fragmentation
22 concerns. As the Draft Environmental Impact
23 Statement acknowledges, the site consists, the

24 Crossroads Ventures' development site consists
25 nearly entirely of a homogeneous forest
(WILDLIFE ISSUE)

1 community with small, scattered occurrences of ¹⁴⁶⁵
2 different habitat types. Furthermore, it goes
3 on to say that it is contained within a
4 landscape dominated by this forest type and
5 the similar intact forest.

6 The DEIS then concludes that because
7 of the preponderance of intact forest in the
8 area, it alleviates concerns about
9 fragmentation on the development site and
10 -- of the Crossroads ventures -- and it goes
11 on to suggest that the different habitats that
12 would result from this development,
13 essentially cleared areas, golf courses and
14 other impacted habitats, would result in a net
15 increase in avian bird richness, local bird
16 diversity.

17 what I want to talk about today is --

18 ALJ WISSELER: Dr. Burger, the quotes
19 you have from the DEIS, do we have a report
20 from you or --

21 DR. BURGER: We're getting it right
22 now.

23 ALJ WISSELER: Do you have a reference
24 to the sections of the DEIS that you were
25 speaking of right now?
(WILDLIFE ISSUE)

1 DR. BURGER: Out of my notes right ¹⁴⁶⁶
2 now, but I can give it to you.

3 ALJ WISSELER: If it's readily
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4 available.

5 DR. BURGER: Yes, page 3-103. Where
6 it reports that "Currently, the assemblage
7 consists of nearly homogeneous assemblage of
8 wildlife habitat." And then -- essentially,
9 there's more there.

10 ALJ WISSLER: It's all at that page?

11 DR. BURGER: It's in there.

12 So the Draft Environment Impact
13 Statement concludes because this habitat is
14 intact and predominates the area, that
15 alleviates concern about fragmentation on the
16 development site. And what I want to say
17 today is that these conclusions that they have
18 drawn run exactly counter to current
19 conservation biology theory and application as
20 it applies to breeding birds, and that it's
21 exactly and precisely the homogeneous nature
22 of the intactness of the forest in this area
23 that makes it so important. And that that
24 importance extends far beyond the local area
25 and should be evaluated due to its regional
(WILDLIFE ISSUE)

□

1 significance.

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2 Slide 2 in the handout is a map in
3 green of the area that we have identified
4 recently as the Catskill Important Bird Area;
5 we being Audubon New York. This was done
6 through a process based on spatial analysis, a
7 GIS analysis I'll talk more about later. And
8 it was reviewed and accepted by a technical

9 committee that is made up of many members of
10 the natural resources and environmental
11 community, including people from the
12 Department of Environmental Conservation, such
13 as Brian Swift, the leader of the non-game and
14 habitat unit; Mike Richmond, who is the
15 director of the US Fish and wildlife
16 Cooperative Research Unit at Cornell
17 University; and others. And a list can be
18 made available.

19 Although a formal announcement of this
20 Important Bird Area designation has not been
21 made, this site has been approved and will be
22 announced in the fall. So it's no longer in a
23 temporary status.

24 MS. ROBERTS: Dr. Burger, do you want
25 to refer to CPC Exhibit 49 which is the blowup
(WILDLIFE ISSUE)

1 of the IBA area with the shape of the project¹⁴⁶⁸
2 superimposed on it, just for reference?

3 MR. RUZOW: You didn't give a date
4 when it was approved and by whom.

5 DR. BURGER: Approved by the technical
6 committee and the date was sometime in May of
7 2004 -- sorry.

8 ALJ WISSLER: What was approved?

9 DR. BURGER: This site was approved as
10 an IBA, but will be announced in the fall.

11 MS. BAKNER: You said it was approved
12 by the technical committee; I didn't catch
13 that.

14 DR. BURGER: The technical committee
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15 overseas and is the official group that
16 basically signs off on IBA identification in
17 the state. It's a group that we have pulled
18 together and chair, but it's made up of
19 academic, natural resource professionals
20 and --

21 MR. RUZOW: So this is an Audubon
22 decision, not a state decision?

23 DR. BURGER: Correct. This is an
24 Audubon designation.

25 ALJ WISSELER: When you talk about
(WILDLIFE ISSUE)

1 Audubon designation, we're looking at Exhibit ¹⁴⁶⁹
2 49 or slide 2 of the presentation?

3 DR. BURGER: The green area has been
4 identified by Audubon as an Important Bird
5 Area.

6 MS. BAKNER: And the date was in May?

7 DR. BURGER: Actually I don't know the
8 date offhand, but I can get that. There was a
9 committee vote, and I can get you the exact
10 date of that.

11 Briefly, what I want to talk about is
12 why is habitat fragmentation such a concern?
13 Which species are important to consider? What
14 are Important Bird Areas and how are they
15 identified? And why is the Catskill bird area
16 so important?

17 I don't know if you can see this map,
18 but I want to start out with a concept that I
19 want to introduce right at the beginning,

20 because it's critical to understand the
21 significance of this site from a larger
22 perspective.

23 I want to use two thrushes, two
24 woodland thrushes as an example, the wood
25 Thrush and the Swainson's Thrush. And the
(WILDLIFE ISSUE)

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1 maps below each species show essentially
2 southeastern New York. And the squares that
3 are colored in in one of the colors are from
4 the Breeding Bird Atlas conducted by the state
5 that show in cooperation -- by the State
6 Environmental Conservation Department and the
7 Federation of New York State Bird Clubs and
8 other partners, and these blocks show where
9 these species are likely to breed in New York
10 State.

11 My point is, if your frame of
12 reference is restricted to a relatively local
13 area, you might get a different impression
14 about which species are species of concern.
15 For example, the wood Thrush is widely
16 distributed in southeastern New York. In
17 contrast, the Swainson's Thrush is relatively
18 rare in this region. So you might come away
19 with questioning what has been released by
20 both Audubon and Partners in Flight recently
21 that the wood thrush is a species of concern
22 and that might expect that the Swainson's
23 Thrush is rare, and those are not exactly
24 valid conclusions.

25 If you look on a broader continental
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□

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1 scale, you can see that the wood Thrush has a
2 breeding range restricted to essentially the
3 Eastern United States, and its population is
4 estimated at about 1400 individuals. In
5 contrast, the Swainson's Thrush has a
6 population estimated at around 100 million
7 individuals, nearly an order of magnitude
8 larger, and breeds throughout the vast oriole
9 forest from Alaska through the Canadian
10 maritimes. So a broader perspective gives you
11 a different impression about which species is
12 one to be concerned about.

13 why are we concerned about forest
14 fragmentation? These two graphs depict, the
15 black being the forested habitat,
16 theoretically depict a fragmented forest on
17 the left and an intact forest on the right.
18 There are a number of concerns having to do
19 with forest fragmentation and breeding birds
20 that I want to talk about specifically. The
21 first is, there's an overall loss of habitat
22 for forest birds in a fragmented forest; and
23 second, there are specific edge effects that
24 occur that have negative impacts on breeding
25 birds in particular.

□

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1 One of those edge effects is the
2 accessibility to forest breeding birds by
3 cowbirds. Brown-headed cowbirds are
4 parasitic, a nest parasite. A nest parasite

5 is a bird that lays its eggs in another birds
6 nests and allows the host bird to raise its
7 young for it.

8 Some have argued that this is not a
9 concern in the vast forested regions of New
10 York, such as the Catskills and the
11 Adirondacks. I show the map from the Breeding
12 Bird Atlas of brown-headed cowbird occurrences
13 to demonstrate that these are ubiquitous
14 throughout New York except for some of the --
15 essentially roadless areas of the Adirondacks.
16 They are prevalent in the Catskills and have
17 been detected on the project site. They
18 travel up to seven kilometers from feeding
19 areas to where they breed or parasitize nests
20 of birds. They parasitize nests up to several
21 hundred meters into a forest, penetrating into
22 the forest from an edge.

23 Cowbird eggs have been found in nests
24 of more than 200 species. And it's well
25 documented that raising cowbird young reduces
(WILDLIFE ISSUE)

□

1 the number of their own young that the host
2 species can raise. So there's a decrease in
3 the reproductive success of the host species
4 as a result of nest parasitism.

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5 The photo on the bottom right shows
6 -- it's hard to make out -- the host species
7 is the smaller bird feeding a much larger
8 cowbird fledgling. You can imagine the
9 -- there's quite an energetic demand on a
10 small host species like a warbler-type bird

11 when it's forced to feed a much larger baby
12 bird than it's accustomed to feeding.

13 In addition -- let me go back one and
14 say something about one of the other major
15 edge effects that occurs in a fragmented
16 forest habitat is nest predation. And often
17 what happens, and it has been documented, is
18 that meso predators, M-E-S-O predators such as
19 skunks, racoons possums, foxes, have much more
20 easy access to the nests of forest breeding
21 species when there's fragmentation. And as a
22 result, nest predation rates increase, and so
23 nest failures increase, and again, there's a
24 decrease in the reproductive output of forest
25 breeding birds in a fragmented area.

(WILDLIFE ISSUE)

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1 Current theory in avian demography is
2 suggesting a model -- a metapopulation model
3 of sources and sinks. What that means is some
4 habitat patches are sinks, they're small
5 fragments or small patches, in general, where
6 the predation and parasitism rates can be so
7 high that, on average, the adult birds cannot
8 successfully reproduce themselves over their
9 lifetime, which means that birds that breed
10 there are coming in and sinking. As the
11 population sinks, it's taking away from the
12 population. They can't keep up. You've heard
13 of zero population growth levels; they're
14 below ZPG, essentially.

15 In contrast, sources are often large,

16 unfragmented patches where the nest parasitism
17 and predation rates are sufficiently low, such
18 that reproduction occurs and an excess of
19 young are produced. And this metapopulation
20 is maintained because there is immigration
21 into the sinks from the sources.

22 So there may be birds present on
23 fragmented habitats that are replenished
24 through migration from sources, but those
25 birds are not maintaining their population,
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1 they're not contributing to the population,
2 essentially.

3 So these are some concepts that are at
4 the forefront of ornithology right now and
5 demographics that I wanted to introduce
6 because they're very important for addressing
7 why this site is identified as an Important
8 Bird Area and why it's so important in this
9 region.

10 To determine which species we should
11 be concerned with in the context of Important
12 Bird Areas, we have relied on the Species
13 Assessment Protocol used by Partners In
14 Flight, and I will direct you to this.
15 Details about the assessment are here, but I
16 will run through it in general terms. And
17 while this has your attention, I would point
18 to page 2 of the Executive Summary of this
19 document where it says -- it talks about the
20 major threats to breeding land birds, to land
21 bird conservation in North America, and it

22 says that: "Fragmentation and degradation of
23 remaining habitats due to intensified
24 agricultural practices, inappropriate grazing,
25 pesticide use, urban and suburban development,
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1 fire suppression and spread of exotic
2 vegetation is considered one of the main
3 threats to birds, bird conservation in North
4 America."

5 I would also point out that one of the
6 authors of this plan is also the director of
7 conservation science at the Cornell Laboratory
8 and has submitted the letter that has been
9 entered in support of this.

10 MS. ROBERTS: That's Dr. Rosenberg?

11 DR. BURGER: Dr. Rosenberg, Dr.
12 Kenneth Rosenberg.

13 The Partners in Flight species
14 assessment process relies on two concepts,
15 vulnerability and responsibility. I want to
16 walk through those and show how they are based
17 in sound conservation science and directly
18 impact the significance of the Catskill
19 Important Bird Area.

20 There are four vulnerability factors
21 that are considered: Population size, the
22 size of the distribution in area, the
23 population trend of the species and the
24 threats to the species. Each of these are
25 scored on a scale from 1 to 5. There's
(WILDLIFE ISSUE)

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1 information in the plan that talks about it,
2 and then the scores are added up to assess the
3 overall vulnerability of the species.

4 I'll give you some examples of how
5 these are used. Again, using two thrushes as
6 an example, the American Robin and Bicknell's
7 Thrush. In evaluating the vulnerability of
8 these species, according to their population
9 size, the Robin is estimated to have a North
10 American breeding population of around
11 326 million individuals.

12 In contrast, the Bicknell's Thrush is
13 estimated to have a population of 40,000
14 individuals. Clearly, when evaluating
15 vulnerability to extinction or local
16 extirpation, the Robin is much less vulnerable
17 than the Bicknell's Thrush.

18 Similarly, if you look at the breeding
19 distribution of these species, and on these
20 maps of range, the blue and the green areas
21 are where they breed in North America.

22 The Robin has a very, very large
23 breeding distribution in North America. The
24 Bicknell's Thrush has a very restricted
25 breeding range in North America. And thus
(WILDLIFE ISSUE)

1 from that factor, the Robin is much also less¹⁴⁷⁸
2 vulnerable to extension than the Bicknell's
3 Thrush.

4 You might refer to the handouts
5 because these bottom graphs are difficult to
6 see on the next slide.

7 Again, population trend is one of the
8 factors used to assess the vulnerability of
9 these species. Swainson's Thrush in New York
10 State has a relatively flat trend. There's no
11 significant increase or decrease. That
12 species is deemed not very vulnerable.
13 Henslow's Sparrow, in contrast, this is a
14 grassland species, is declining significantly.
15 It is estimated to have declined in excess of
16 99 percent in New York State in the last 30
17 years. This is a species that its population
18 trend suggests that it's very vulnerable.

19 These are the concepts that have gone
20 into the species assessment at the continental
21 scale. Species with high combinations of
22 those vulnerability factors are deemed to be
23 species of continental concern. They're
24 identified on the Partners in Flight watch
25 list, and their species, according to Partners
(WILDLIFE ISSUE)

1 In Flight, should be addressed and conserved ¹⁴⁷⁹
2 wherever they occur throughout North America.

3 Other species can have regional
4 concern levels that don't achieve quite
5 continental concern but should be addressed in
6 regions where they are prevalent.

7 Now I want to talk about the next
8 issue of regional responsibility. This is a
9 very important concept that has been emerging
10 over the past ten years or so and is
11 essentially replacing the old model of

12 restricting your vision to a limited range,
13 which is often how state lists of endangered,
14 threatened, and special concerned species are
15 derived. So this is a concept that is,
16 essentially recognizes that these species are
17 more common in some areas than others, and
18 they should be addressed, their conservation
19 should be addressed in areas that are the core
20 parts of the range rather than the periphery.

21 This is assessed through The Partners
22 in Flight approach using two measures. One is
23 relative abundance, which is a relative
24 breeding density, it can be thought of as a
25 relative breeding density, and it's based on
(WILDLIFE ISSUE)

□

1 bird conservation regions, which I'll
2 introduce next.

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3 The second is a percent of the
4 population; what percentage of its continental
5 population is estimated to occur within these
6 bird conservation regions.

7 Regional responsibility really only
8 makes sense if you have some kind of region or
9 unit on which to evaluate these species, and
10 the units that are used now almost across the
11 board by all bird planning initiatives are
12 bird conservation regions, which were derived
13 by the North American Bird Conservation
14 Initiative, NABCI is the group, and these were
15 essentially created for the purpose of
16 assessment and planning for bird conservation
17 purposes.

18 In New York State, we have parts of
19 four bird conservation regions. The dark
20 green is the Atlantic Northern Forest. In the
21 tan color, the lowlands of New York is the
22 lower Great Lakes-St. Lawrence Plain Bird
23 Conservation Region. The light blue-green off
24 the coast is the southern New England
25 Mid-Atlantic Region. And the red is the
(WILDLIFE ISSUE)

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1 Appalachian Mountains Bird Conservation
2 Region, which is the bird conservation region
3 that we're concerned with today.

4 To illustrate these concepts of
5 regional responsibility, again, two species to
6 use as an example. Black Tern, which is
7 listed as an endangered species in New York
8 State, and the Black-throated Blue warbler,
9 which is a relatively common woodland warbler
10 in parts of New York.

11 If you look at the maps on the bottom
12 which are from the Breeding Bird Survey, which
13 is a North American or U.S. Southern Canada
14 wide survey conducted by USGS, you can see
15 -- well, I hope you can see, maybe it comes
16 out better on the handouts -- the Black Tern
17 center of distribution is in the Canadian
18 prairies. There's some light pink that comes
19 into here. There's no light pink detected in
20 New York State. New York State is at the very
21 eastern edge of this species' breeding
22 distribution. Partly because this bird is so

23 rare in New York, it's identified as an
24 endangered species in New York. The fact is
25 the species is not declining continentally.
(WILDLIFE ISSUE)

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1 There's no real reason to think that it's a
2 species of continental concern. And New York
3 state is the last place you would try to
4 conserve this species if you were really
5 interested in a continental population effect.

6 In contrast -- and the Bird
7 Conservation Region 13, which is the lower
8 Great Lakes-St. Lawrence Plain Bird
9 Conservation Region, holds only less than one
10 percent of the entire continental population
11 of that species. You could do everything you
12 can and pour a lot of money into conserving
13 Black Terns in New York and make no measurable
14 impact on its continental population. So
15 that's one species.

16 In contrast, the Black-throated Blue
17 warbler has greater than 32 percent of its
18 population estimated to be in Bird
19 Conservation Region 14, which is the Atlantic
20 Northern Forest Bird Conservation Region. But
21 it's also common down the Appalachian Mountain
22 crests, and its geographic range is slightly
23 smaller than the Black Tern and it's centered
24 over New York.

25 So this is the epitome of what we call
(WILDLIFE ISSUE)

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1 a responsibility species. This is a species
2 for which New York has the long-term

3 responsibility for its conservation. This is
4 a concept that is permeating the conservation
5 world right now, especially in bird
6 conservation planning, because people are
7 realizing that the place to pay attention to
8 species is in the core parts of the range, not
9 the periphery, and there has been an analysis
10 and a paper that is nearly ready for
11 submission for publication that analyzes the
12 state endangered, threatened and special
13 concern list, and shows that essentially
14 states miss most of the continental concern
15 species that occur within their borders
16 because they're focused on rare edge of range
17 species.

18 And that's one of the reasons Partners
19 in Flight has developed, over the course of
20 about 12 years, the species assessment process
21 to demonstrate that species of continental
22 concern need to be addressed where their
23 populations are significantly high.

24 As a result of this species assessment
25 process, the species can be essentially sorted
(WILDLIFE ISSUE)

1 into various categories of priority levels. 1484
2 Some species are species of continental
3 concern and high regional responsibility. An
4 example would be the Bicknell's Thrush here in
5 New York.

6 Some species are continental concern
7 but low regional responsibility, such as the

8 Olive-sided Flycatcher, which occurs in New
9 York but it's more common in northern forests
10 far north of here.

11 Or they might be a species of regional
12 concern, not quite continental concern, but of
13 high regional responsibility, such as the
14 Black-throated Blue warbler -- or of regional
15 concern and low regional responsibility, such
16 as the Chimney Swift.

17 what we have done for the purposes of
18 identifying Important Bird Areas at Audubon
19 New York, is we have re-sorted these species
20 into two groups: Species at risk, which
21 include the state-listed species such as Black
22 Tern, but also the watch list, which is all
23 the species of continental concern, whether or
24 not they're high or low regional
25 responsibility for this state. And then
(WILDLIFE ISSUE)

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1 responsibility species, which are all the
2 species of high regional responsibility. They
3 have high area of importance or relative
4 abundance, high percentage of the population,
5 a disproportionately high proportion of their
6 populations in the Bird Conservation Regions
7 that make up New York.

8 But irregardless of their level of
9 concern, whether they're continental concern,
10 regional concern, or high or low regional
11 concern, so we have species at risk and
12 responsibility species.

13 I want to switch gears and talk about
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14 Important Bird Areas, what they are and how
15 they're identified. The Important Bird Area,
16 IBA, began in the mid-1980s in Europe, a group
17 called Bird Life International. It spread to
18 the Mideast, Africa into Asia. And in 1987,
19 Audubon New York completed the first
20 assessment in the western hemisphere,
21 essentially in the New world, and we based our
22 assessment on the global criteria that was
23 developed back in the mid-'80s by Bird Life
24 International. Since then, Audubon has become
25 the official partner of Bird Life
(WILDLIFE ISSUE)

□

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1 International to implement Important Bird
2 Areas in the United States. Audubon is doing
3 that state by state.

4 Currently there are 46 states that
5 have Important Bird Areas programs. There are
6 annual conferences where the coordinators from
7 the various states gets together and talk
8 about issues, challenges, earth science,
9 alignment with the global criteria, et cetera.

10 The state, in case you're counting
11 states, the other white state is Rhode Island.
12 It's easy to miss up there.

13 In the past two years new York has
14 begun, and is nearly finished with, what we
15 call the second round of identifying IBAs.
16 And we have gone back and reassessed the
17 criteria that we use, collected new data and
18 organized existing data sources and reconvened

19 a new technical committee to make sure that
20 our assessment is as comprehensive as
21 possible, and it's as closely integrated and
22 aligned with the international efforts of Bird
23 Life International.

24 There are three criteria used to
25 identify Important Bird Areas in New York
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1 State. There are sites that are species at
2 risk, sites for assemblages of responsibility
3 species, and there are sites for congregatory
4 species.

5 what I'm talking about today are the
6 sites for the responsibility species
7 assemblages. What we're looking for as IBAs
8 under this criteria are large sites consisting
9 of relatively intact, for example,
10 least-fragmented habitats, that support
11 breeding populations of species for which New
12 York has a high regional conservation
13 responsibility.

14 Some of the birds that emerged as high
15 regional responsibility for the Appalachian
16 Mountains Bird Conservation Region, which is
17 the one that we are in, include -- sorry that
18 these are difficult to see in this setting --
19 top left, Scarlet Tanager; moving across,
20 Louisiana Water Thrush. Let me say that in
21 the IBA summary, which has been introduced,
22 there's a complete list --

23 MS. ROBERTS: CPC Exhibit 51.

24 DR. BURGER: -- there's a complete
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25 list on the third and fourth pages of the
(WILDLIFE ISSUE)

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1 entire assemblage of responsibility forest
2 species for Bird Conservation Region 28.
3 Unless anybody is interested, I'll skip naming
4 the birds on the slide.

5 MS. BAKNER: Could you name the rest
6 of them?

7 DR. BURGER: You want me to name the
8 rest of them? I will. Scarlet Tanager,
9 Louisiana Water Thrush, Rose-breasted Grosbeak
10 across the top.

11 The middle row is the Canada warbler,
12 the wood Thrush, the Cerulean warbler.

13 And the bottom row is the
14 Black-throated Blue warbler, worm-eating
15 warbler and the Hooded warbler.

16 To identify the most important sites
17 for responsibility species assemblages, we
18 undertook a spatial analysis to be as
19 comprehensive as possible in site assessment.
20 What we did through this analysis was identify
21 the most important sites for each assemblage
22 in each Bird Conservation Region of New York.
23 We defined the most important as the largest,
24 most intact, least-fragmented patches of
25 habitat that support the highest richness of
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1 responsibility species making up each
2 assemblage with the greatest chance of
3 long-term protection.

4 Thus, we took a reserve network
5 approach and decided that it was a defensible
6 target of identifying the very most important
7 ten percent of habitats in each bird
8 conservation region for each assemblage and
9 designated those as potential Important Bird
10 Areas.

11 Then we verified the existence of all
12 of these species, or the species that were
13 predicted at the sites, using the recent and
14 the ongoing Breeding Bird Atlas that New York
15 is in the middle of right now. And if there
16 were no Atlas blocks that were sufficiently
17 covered for the sites with potential Important
18 Bird Areas, we sent field crews out in the
19 breeding season of 2003 to do surveys and
20 verify presence of species of the assemblages.

21 MS. ROBERTS: CPC Exhibit 52 provides
22 a more detailed analysis of the methodology
23 that was used.

24 DR. BURGER: And I'll provide some
25 more details right now as well, including some
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□
1 figures. 1490

2 To begin this analysis, we divide the
3 habitat in each BCR into blocks that were
4 determined by major roads so the dividing
5 lines between these blocks are the major
6 roads. And this helped partition the
7 landscape into manageable units that could be
8 assessed. We scored each of these blocks
9 according to four factors. The total area of

10 habitat -- and when I talk about habitat, I'm
11 talking about land cover from the New York GAP
12 project.

13 MS. ROBERTS: What does that stand
14 for?

15 DR. BURGER: GAP Analysis Program or
16 project.

17 So each block was scored according to
18 the total area of habitat, the percent area of
19 habitat -- that is, within the block is
20 50 percent of it forest covered or is 90
21 percent of it forest covered -- the density of
22 habitat patches. We did a patch analysis
23 using a computer program called Frag Stats,
24 and it looks at the contiguity of the forest
25 type that you're looking at, in this case it
(WILDLIFE ISSUE)

1 was forest habitat, and assesses -- you can
2 assess how many patches are in a block. And
3 so actually the index we used was inverse of
4 density because when density is high, there
5 are more patches in a block. That indicates a
6 more fragmented landscape than when the
7 density of patches is lower. If there's one
8 big block, thus a low density, it's a
9 less-fragmented habitat.

10 We also looked at an area-weighted
11 mean species richness. As modeled by the
12 wildlife habitat, relationship models of New
13 York GAP, they predict -- they have linked
14 their land cover data to wildlife habitat

1491

15 models for each species and predict where
16 these species should occur. And so we were
17 able to assess spatially then what the
18 area-weighted mean species richness was for a
19 block.

20 We stratified this effort by the
21 ecoregions of New York State. This is a map
22 put out by the New York Natural Heritage
23 Program, and the colored areas represent the
24 ecoregions. So you can see that this tan
25 roughly corresponds to the edge of that Bird
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1 Conservation Region 28, but that this
2 Appalachian plateau is a tan, the Catskill
3 Mountains in gray, and parts of the Hudson
4 valley and the Hudson Highlands are all within
5 Bird Conservation Region 28.

6 These ecoregions represent and capture
7 real significant ecological variation, and
8 therefore, we, in wanting to make sure that we
9 captured that variation in the Important Bird
10 Areas program, stratified our approach by
11 ecoregions. So therefore, then, we were
12 looking for the ten percent of the most
13 intact, largest, least-fragmented habitats for
14 these assemblages in each ecoregion of Each
15 Bird Conservation Region.

16 After analyzing and assessing the
17 large blocks, we constructed a cumulative
18 index, and we determined which blocks were
19 essentially the top 30 percent; what are the
20 top 30 percent highest-scoring blocks in each

21 ecoregion.

22 This was determined as -- what cutoff
23 was correct was determined by trial and error
24 because our ultimate goal was ten percent of
25 the habitat, and we determined that we were
(WILDLIFE ISSUE)

1 taking a large-scale, big-picture perspective,¹⁴⁹³
2 and we were going down to the local -- from
3 the big picture to the local area to identify
4 patches that should be included in Important
5 Bird Areas. And we determined after trial and
6 error that we needed to essentially focus
7 initially on the best 30 percent of those
8 blocks in order to consistently find
9 sufficient patches that make up ten percent in
10 order to reach our target for Important Bird
11 Areas.

12 In the Catskill Mountains ecoregion
13 part -- and these black lines are a little
14 hard to see on this, but maybe they're better
15 on the handout -- you can see that the areas
16 in red were the top 30 percent of the highest
17 scoring blocks in that ecoregion. This
18 doesn't show up at all. Let me see, how does
19 it look.

20 MR. RUZOW: Your Honor, may we request
21 that CPC produce a normal size, 8 1/2 by 11 of
22 these printed out so --

23 ALJ WISSLER: Especially I'd like the
24 earlier graphs and so forth.

25 MR. RUZOW: If you can do a printout
(WILDLIFE ISSUE)

1 on that scale then we can see --

2 MS. ROBERTS: Okay.

3 ALJ WISSLER: Or put the PowerPoint
4 presentation on a disk or something.

5 MS. ROBERTS: We can do that. We
6 weren't sure if we could do that. Is that
7 better?

8 ALJ WISSLER: Make us all a floppy or
9 CD.

10 DR. BURGER: It's on a CD. If you
11 refer to the handout, slide 28, it shows up a
12 little better there. What was red in this
13 previous slide for this ecoregion is now gray
14 and you can see -- maybe you can't see it, a
15 bigger one would be better -- but this is
16 after the patch analysis has been run with
17 Frag Stats. So you can see where the gray and
18 the red is where the forest habitat is within
19 these blocks, within this ecoregion. And the
20 red areas are the highest scoring patches of
21 forest habitat patches according to patch
22 size, therefore, how many acres or what area
23 of forest was in a patch, and what's its
24 distance to conservation lands, because
25 long-term, we're looking at a long-term
(WILDLIFE ISSUE)

□

1 reserve network design here for species that
2 we have long-term conservation responsibility.
3 And we are trying to identify which sites have
4 the greatest chance of surviving long-term in
5 an intact state, and thus supporting these

6 species into the future.

7 So we come down to the map we started
8 with on slide 2. It is the red areas --
9 essentially the red areas on this map. This
10 was the area that was eventually identified as
11 an Important Bird Area, was ground truth to
12 make sure that the birds that we were
13 predicting were present there, were actually
14 present there. And recently it was approved
15 eventually by the technical committee. The
16 date of that approval I don't have offhand,
17 but I can get that.

18 ALJ WISSLER: The birds you were
19 predicting were which?

20 DR. BURGER: Those are in the summary
21 sheet. If you look at pages 3 and 4 of the
22 summary sheet, the left-hand column predicted
23 by GAP, the left-hand column, a bird in there
24 with an X is one that the GAP wildlife habitat
25 models predicted would be present in this
(WILDLIFE ISSUE)

□

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1 Important Bird Area.

2 ALJ WISSLER: Such as the
3 Black-and-white warbler?

4 DR. BURGER: Correct. And the
5 breeding bird confirmed BBA, means that the
6 Breeding Bird Atlas effort confirmed that they
7 do in fact -- they are supported within this
8 Important Bird Area.

9 MS. ROBERTS: Can I interrupt for a
10 second? How many IBA's are there in New York?

11 DR. BURGER: Currently 127. That
12 number will undoubtedly change this fall when
13 a new list is announced.

14 MS. ROBERTS: This particular IBA, how
15 important is this -- 10 percent represents the
16 best 10 percent of --

17 DR. BURGER: It helps make up the best
18 10 percent of habitat in this Bird
19 Conservation Region, this particular region.

20 Maybe this map will help answer the
21 question. This map shows all of the sites
22 that were identified as potentially meeting
23 this -- an IBA for an assemblage of
24 responsibility species. There were 107 of
25 them that were evaluated ultimately. The
(WILDLIFE ISSUE)

1 technical committee accepted 46 of those and 1497
2 rejected 61 of those.

3 So in the next edition of the
4 Important Bird Areas book that comes out in
5 the fall, 46 sites -- and there's a potential
6 that they'll be some slight mediation from
7 that as things are looked at in the final
8 version -- but 46 sites have essentially been
9 accepted under this criteria, which is one of
10 three criteria. So I can't give you a final
11 number yet.

12 MR. RUZOW: I'm trying to conform what
13 you have given us in Exhibit 49 to what I'm
14 seeing right up there?

15 DR. BURGER: Yeah, and the reason is
16 that -- this doesn't match up is what you're

17 saying?

18 MR. RUZOW: Yes.

19 DR. BURGER: Because we are right here
20 at the border of one of the Bird Conservation
21 Regions, and so there is a larger area that
22 was identified as important habitat here, but
23 officially that's going to be a different IBA
24 even though it's contiguous with this one
25 because it's in a different Bird Conservation
(WILDLIFE ISSUE)

1 Region.

1498

2 So this is all the slides I had that I
3 wanted to present, but what I wanted to say
4 is, from a continental perspective of
5 determining which species are significant to
6 pay attention to here in this part of New
7 York, and from a long-term view and a broad
8 perspective of which habitats are most
9 significant and the very most important for
10 long-term survival of these species, we
11 identified that the Catskill Important Bird
12 Area is, in fact, the largest, the most intact
13 and the most important habitat for these
14 species anywhere in New York for this
15 assemblage.

16 ALJ WISSLER: And that habitat
17 consists of the forest lands that exist within
18 the Catskills?

19 DR. BURGER: It's the contiguous
20 forest that were identified according to the
21 land use by GAP.

22 ALJ WISSLER: And anytime development
23 removes some of that forest, that is
24 fragmentation of the forest?

25 DR. BURGER: It is.
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1 ALJ WISSLER: So would it be
2 fragmentation whether or not it's a farm or a
3 commercial establishment or a golf course?

4 DR. BURGER: Yes.

5 MR. RUZOW: Or a ski center?

6 DR. BURGER: Yes.

7 ALJ WISSLER: Let me take you to
8 Exhibit 49. The black lines indicate, look
9 like Route 28 and 49A going to wildacres;
10 right?

11 DR. BURGER: Right.

12 ALJ WISSLER: So if I look between
13 wildacres and where the green begins, the
14 green is contiguous forest; am I reading it
15 right?

16 DR. BURGER: You are.

17 ALJ WISSLER: So the white area
18 between wildacres and the green forest is
19 where Belleayre Ski Center is, like the lodge
20 and all that stuff?

21 DR. BURGER: I don't have that level
22 of detailed information from the GAP land
23 cover. This was an analysis that was done
24 from a very big perspective.

25 ALJ WISSLER: Any part of the
(WILDLIFE ISSUE)

1500

1 Belleayre ski center that is forest would be
Page 251

2 part of this, but if it's ski slopes, it isn't
3 part of it?

4 DR. BURGER: That's correct, but there
5 are levels of resolution from -- these data
6 were collected via satellite, so they're
7 appropriate for a certain scale of analysis.
8 And we were concerned mostly with the big
9 picture and coming down, but for very
10 small-scale questions, you would need to look
11 at an aerial photo.

12 ALJ WISSLER: I understand the point
13 you're making. When I look at Exhibit 49 and
14 if I look at this large green area which has,
15 I guess it would indicate the footprints of
16 the two proposed developments, does this
17 entire green area show only contiguous
18 forests? In other words, are there areas in
19 here that may be developed, may be farm, may
20 be ski slope, may be something where this
21 green is, in fact, fragmented? Within the
22 meaning within the way you used the term, I
23 mean, where if it is contiguous forest, it
24 ain't fragmented?

25 DR. BURGER: It's possible if it's
(WILDLIFE ISSUE)

1 true it wasn't detected by the satellite and ¹⁵⁰¹
2 the satellite imagery used to construct these
3 land-use classifications were collected in the
4 early '90s. So it's also very possible that
5 there has been fragmentation since these were
6 collected, but still they're valid data to

7 use, and nothing better was available because
8 the other alternative of a comprehensive
9 land-use classification was the national land
10 cover classification, and it's from the same
11 vintage satellite imagery.

12 So there's nothing that is
13 comprehensively available statewide of a newer
14 vintage. And this is appropriate for the
15 level of analysis we were looking for,
16 essentially a statewide analysis.

17 I would say that the boundaries of
18 this Important Bird Area should not be
19 interpreted as precisely as green or white on
20 this map, and in fact, it's a concept that we
21 call -- that has been referred to as notional
22 boundaries, and you know, call them what you
23 want, fuzzy boundaries, thick lines; for the
24 scale of the data that we were using to assess
25 these, they're good for the big picture but
(WILDLIFE ISSUE)

1502

1 they're not good for the little picture.

2 So if you really are concerned about
3 going in and determining exactly where would
4 you place or draw that line on this area, you
5 would have to use a different source of data.
6 But I think what's significant to point out is
7 that the proposed development sites are within
8 or adjacent to what is the largest
9 unfragmented patch of forest in this
10 ecoregion. There's no question about that.

11 ALJ WISSLER: Can you quantify that
12 for me a little bit? Can you tell me how this

13 proposed resort would affect bird populations,
14 effect species propagation between that forest
15 preserve? Do you understand my question?

16 DR. BURGER: Yeah. Certainly there
17 would be local impacts on the development
18 properties themselves with -- as habitat is
19 altered, you would very likely lose habitat
20 and breeding territories of many of the
21 species found there. Many of the species that
22 were found during the surveys are species of
23 the assemblage we were looking for. So you
24 would have local impacts.

25 I would say, based on the experience
(WILDLIFE ISSUE)

1503

1 we have with development and some of the
2 secondary impacts, they're very likely to be
3 more widespread impacts, especially if there
4 are residences and house cats introduced which
5 essentially becomes one of those predators --

6 ALJ WISSLER: Another one of those
7 predators?

8 DR. BURGER: One of the predators that
9 extend the implications of fragmentation into
10 surrounding areas. But it's difficult -- I
11 won't tell you that development of this site
12 of Crossroads will ruin the Catskill IBA.
13 That's just not true. But it is a fact that
14 it's the cumulative impacts of developments
15 just like this, and this one is larger than
16 most, that are resulting in the loss of
17 functionality of our landscape for breeding

18 birds.

19 MS. ROBERTS: I just want to go back a
20 few steps. I think in the beginning we might
21 have been left with the impression this is
22 just an Audubon initiative, but IBAs have been
23 adopted by New York; yes?

24 DR. BURGER: New York has a Bird
25 Conservatory Program which is administered
(WILDLIFE ISSUE)

1 through the non-game and habitat unit of the ¹⁵⁰⁴
2 Department of Environmental Conservation, and
3 it's also contributed -- there's a
4 contribution by the State Office of Parks,
5 Recreation and Historic Preservation. And
6 they are establishing state law criteria
7 similar to -- modeled after the Important Bird
8 Area criteria -- that give the state the
9 authority to designate any state-owned lands
10 and waters that meet those criteria as Bird
11 Conservation region -- I'm sorry, Bird
12 Conservation Areas.

13 At the time that the initial Important
14 Bird Area network was identified, this
15 Catskill IBA was not, in fact, as large as it
16 is. It was restricted to the Catskill peaks.
17 Because we, at that time, the committee was
18 looking primarily for species like Bicknell's
19 Thrush, and it was the alignment with Bird
20 Life International's global criteria which
21 specifically target bio-restricted assemblages
22 of species, and the step-down state
23 interpretation of that are these

24 responsibility species assemblages, that we
25 felt justified to enlarge this site and
(WILDLIFE ISSUE)

1505

1 capture this exact area as essentially a
2 breeding factor for the species that we have
3 regional responsibility for.

4 So there is a state designated Bird
5 Conservation Region in the Catskills. It's
6 restricted to the higher elevations. It's
7 aligned with the state-owned portion of the
8 original Important Bird Area identified in
9 1997. It deviates from the Important Bird
10 Area that will be identified and released
11 publicly in the fall. Does that answer your
12 question?

13 MS. ROBERTS: And the significance of
14 that release is -- when it's released?

15 DR. BURGER: That will essentially
16 capture, and it's a public release of all of
17 the sites that we -- one or more of the IBA
18 criteria.

19 MS. ROBERTS: Did you know about this
20 site while you were conducting your IBA
21 analysis, the Crossroads site?

22 DR. BURGER: No.

23 MS. ROBERTS: Can you comment on the
24 mitigation measures that the DEIS talks about
25 on 3-108?

(WILDLIFE ISSUE)

1506

1 DR. BURGER: Yeah, I think the one
2 most pertinent to this discussion is 4-A where

3 it talks about enhancement projects for
4 species that prefer open habitats, and
5 specifically speaks about Eastern bluebirds.
6 I think that that is not a defensible
7 mitigation suggestion. Essentially, it's
8 offering to swap forest interior breeding
9 habitat for habitat suitable for a species
10 that can thrive in suburban backyards and
11 highway right-of-ways. And what it loses
12 sight of is the significance and the
13 importance of the site in a regional and a
14 continental perspective. So I don't think
15 that's a fair trade. I don't think you'd find
16 any bird conservationists or conservation
17 biologists that would think that that is even
18 close to a fair trade.

19 MS. ROBERTS: Can I have one second?

20 ALJ WISSLER: Yes.

21 MS. ROBERTS: Doctor, I want you to
22 take a look at CPC 51. It's a summary of the
23 birds that you'd likely find in this IBA -- I
24 just have a couple more questions. Were all
25 the birds listed as assemblage species found
(WILDLIFE ISSUE)

□

1507

1 in the DEIS?

2 DR. BURGER: No, quite a few weren't.
3 Black-and-white warbler was found,
4 Black-Throated Blue --

5 ALJ WISSLER: Slow down. Go through
6 51 for me.

7 DR. BURGER: I want to point out that
8 these are not all the species that we would

9 expect to be in this Important Bird Area.
10 These are only the species that are
11 high-regional responsibility that we would
12 predict are in this Important Bird Area. This
13 refers to the entire Important Bird Area, not
14 the project site portion of it. So of the
15 species that are listed on the third and
16 fourth pages of this summary --

17 ALJ WISSLER: When you say "high,"
18 because high population; right?

19 DR. BURGER: In part. High
20 proportions of their --

21 ALJ WISSLER: When you go through the
22 analysis with the rare species and so forth,
23 we're not talking about those species that
24 might be rare but Continentally very abundant?

25 DR. BURGER: We're talking about
(WILDLIFE ISSUE)

1 species that have some level of risk with the ¹⁵⁰⁸
2 vulnerability factors and are
3 disproportionately abundant in bird
4 conservation regions -- this region as
5 compared to other regions -- and have high
6 relative abundances.

7 The DEIS survey found during the
8 breeding season during June, the June surveys,
9 Black-and-white warbler, Black-Throated Blue
10 Warbler, Eastern Wood-Pewee, Least Flycatcher,
11 Northern Flicker, Rose-Breasted Grosbeak,
12 Scarlet Tanager, Sharp-Shinned Hawk and wood
13 Thrush. I would say that that suggests that

14 the site is, indeed, important to supporting
15 this assemblage in general. A couple of the
16 species --

17 ALJ WISSLER: What you just went
18 through is what's reported in the DEIS?

19 DR. BURGER: Yes.

20 ALJ WISSLER: On your list you have
21 Black-Billed Cuckoo, Blue-Gray Gnatcatcher,
22 Canada warbler; you're saying they're not
23 listed in the DEIS?

24 DR. BURGER: They did not find them in
25 surveys conducted for the DEIS. Some of those
(WILDLIFE ISSUE)

□

1 may be here. For an area the size of what's 1509
2 referred to as the assemblage in the DEIS, I
3 would say that the number of days that were
4 spent surveying is inadequate. We would
5 generally spend three -- we would put three
6 visits into a 25-acre stand during the
7 breeding season to see that we could capture
8 as many species as possible. And part of the
9 reason is that there's a statistical
10 phenomenon that rare events are obviously less
11 likely to be captured, especially by a
12 randomized search. And therefore, you need
13 much more search effort to pick those up.

14 That could include species like
15 Black-Billed Cuckoo, Canada warbler. And
16 there's reference to some previous logging
17 done, which could easily have resulted in
18 habitats for the Canada warbler, which is a
19 species both of continental concern and of

20 regional responsibility. And that wasn't
21 picked up.

22 ALJ WISSLER: You're saying it wasn't
23 picked up because the survey was only a few
24 days?

25 DR. BURGER: It's hard to tell, you
(WILDLIFE ISSUE)

1 don't -- can't prove that. But more effort 1510
2 could easily -- and would be expected to pick
3 up additional species.

4 ALJ WISSLER: That doesn't help me.
5 How much time should have been spent on the
6 survey, in your view, in this case?

7 DR. BURGER: I would have spent -- I
8 know they started at 6:00 in the morning, and
9 it wasn't clear to me exactly when they ended,
10 and it wasn't clear to me if those were mobile
11 counts. I found it difficult that roughly
12 2,000 acres would have been covered
13 sufficiently in three visits with that amount
14 of time.

15 ALJ WISSLER: As a minimum, how much
16 time would you have spent?

17 DR. BURGER: I would have expected
18 that probably at least triple that would have
19 been necessary.

20 ALJ WISSLER: Triple that, 10 days?

21 DR. BURGER: Yes. Especially if one
22 is interested in capturing --

23 ALJ WISSLER: Ten days straight or
24 spread over a period of time?

25

1511

1 point. I think that the surveys were
2 conducted three days in a row, and in general,
3 you would want to spread out throughout the
4 breeding season because the breeding phenology
5 of the species vary and you would want to
6 capture more. Particularly in early June is a
7 time when many species are starting to lay
8 eggs. And so a lot of males are paying more
9 attention to mate protection than territorial
10 defense and they're not singing as much at
11 that time. So running those surveys
12 successive days then, you increase your
13 chances of missing things because you're not
14 spreading your effort across the breeding
15 progression events.

16 MS. ROBERTS: And the survey was done
17 in May and June?

18 DR. BURGER: It was done in May, and I
19 wouldn't expect May to capture many breeders.
20 I'm certain that some of the breeders overlap
21 with the migrants. A May survey is more
22 appropriate for the migrants, and the June
23 survey is more appropriate for the breeders.

24 ALJ WISSELER: When was the survey done
25 in the DEIS?
(WILDLIFE ISSUE)

1512

1 MS. BAKNER: May 5th, 10th, 11th and
2 12th, and June 7th, 8th and 9th, as well as
3 there was a site visit on the 19th of April.

4 MS. ROBERTS: Those were not just for
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5 birds, though. They looked at also plants,
6 animals and birds. There were several things
7 going on. So that's part of our point too,
8 that these surveys were done on not enough
9 days and they were doing three things at once,
10 and it's successive days.

11 MS. BAKNER: All I can say is in
12 Appendix 20, it describes what we did, and
13 it's there for the record.

14 ALJ WISSLER: Doctor, are you familiar
15 with the methodology that was used for the
16 bird surveys that were in the DEIS?

17 DR. BURGER: Yeah, I read the DEIS
18 section of that. It wasn't -- there were no
19 standardized methods like point counts
20 employed.

21 ALJ WISSLER: What is a point count?

22 DR. BURGER: Point count is where you
23 stand stationary and listen for a prescribed
24 length of time. Standards units of time are
25 three, five or ten minutes. Just like with
(WILDLIFE ISSUE)

□

1 any study, the amount of effort you put in
2 increases your chance of detecting rare
3 events, therefore, most people are going
4 toward longer point counts, like 10-minute
5 point counts, because species that sing
6 infrequently are not detected on shorter
7 counts as often.

1513

8 ALJ WISSLER: If you wanted to do a
9 point count, what do you do?

10 DR. BURGER: What would you do?
11 Actually, if I were to do it, I would start
12 with a habitat map, and I would randomly
13 select locations that are stratified by
14 habitat type. I would select a sufficient one
15 of those. We generally would use, in our
16 studies that we conduct, about six locations
17 per 25 acres, and that's been shown to be
18 adequate to capture the breeding bird
19 community. And I would visit those sites
20 three times spread out over the breeding
21 season.

22 ALJ WISSLER: So we take those figures
23 times 2000 acres, divided by 25?

24 DR. BURGER: Yeah, which is probably
25 an unreasonable amount of effort, but still
(WILDLIFE ISSUE)

1 what was completed in my view was not
2 adequate.

3 ALJ WISSLER: What would be
4 reasonable?

5 DR. BURGER: I think that if there
6 were ten days where point counts were
7 conducted and they were stratified randomly,
8 randomly located stratified by habitat type
9 such that you were assembling all the
10 different habitats that were available and you
11 could visit -- depending on the length of the
12 count and travel time between counts, you
13 roughly have a five-hour window, from 5:00 to
14 10:00, at most, in the morning. Therefore,
15 you could calculate how many points you could

1514

16 conduct in the morning. And you would want to
17 get a thorough enough coverage of the site
18 repeated three times so that you could do a
19 thorough assessment of the breeding bird
20 community.

21 ALJ WISSLER: Are the protocols for
22 such an assessment of the breeding bird
23 community, are they laid out in any kind of
24 state regulation that you're aware of, or any
25 kind of Audubon regulation or any kind of
(WILDLIFE ISSUE)

1515

1 regulation?

2 DR. BURGER: There are guidelines or
3 standardized methods for bird census
4 techniques that are available and put out by a
5 federal agency.

6 ALJ WISSLER: There is a federal
7 guideline on this?

8 DR. BURGER: Sure.

9 ALJ WISSLER: What is that?

10 DR. BURGER: It talks about the
11 point-count methodologies, it talks about
12 other survey methodologies.

13 ALJ WISSLER: Can you be specific?
14 What is it?

15 DR. BURGER: It talks about --

16 ALJ WISSLER: The name of it.

17 DR. BURGER: It talks more about the
18 nature of the method and the trade-offs that
19 are involved in deciding how many points you
20 can cover versus how long you spend at each

21 point. The trade-off is involved with
22 detecting rare events, such as infrequent
23 singers, et cetera. It doesn't give hard and
24 fast rules for do this many per area.

25 ALJ WISSLER: Does that document have
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1 a name or something like that?

2 DR. BURGER: Yes, and I can't give it
3 to you offhand.

4 MS. ROBERTS: We can provide that for
5 you.

6 ALJ WISSLER: I'm done.

7 MS. ROBERTS: I just wanted to follow
8 up on this idea that enough followup was not,
9 in your opinion, conducted to identify all the
10 birds. In particular, there's a common night
11 hawk that I guess was identified or suspected
12 to be there based on a boom call, which is not
13 really a call.

14 DR. BURGER: The boom is a wing whir.
15 It's air rushing over the primary feathers of
16 the wings.

17 MS. ROBERTS: First of all, this is in
18 decline, this bird?

19 DR. BURGER: This is in decline. It's
20 declining significantly, both continentally
21 and statewide. I don't have a number on the
22 decline statewide, although I do note that,
23 according to this plan, it scored a four out
24 of five continental population trend, which
25 does mean it has a statistically significant
(WILDLIFE ISSUE)

1 decline of something less than 50 percent over
2 the past 30 years; but that it is also known
3 to be declining rather precipitously in New
4 York State. I don't have a number to put on
5 that.

6 MS. ROBERTS: Could we get that
7 number?

8 DR. BURGER: Yes.

9 MS. ROBERTS: If you were out in the
10 field and you heard this boom, considering
11 that this bird is very much in decline in New
12 York, what would that require, in your
13 opinion, to go out and make sure that the bird
14 was --

15 DR. BURGER: You would have to put
16 more concerted effort in appropriate breeding
17 habitat to try to follow-up and determine
18 whether or not it is actually a breeding area.
19 And that would be forest openings, power line
20 right-of-ways, that type of things --

21 MS. ROBERTS: So would it be more than
22 the three days you suggested, or take a look
23 or three visits?

24 DR. BURGER: Depends. Depends.

25 MS. ROBERTS: We're done.
(WILDLIFE ISSUE)

1 ALJ WISSLER: Need a few minutes?

2 MS. BAKNER: Oh, no, I don't want a
3 few minutes. We're ready to go.

4 I think this might be Exhibit 25.

5 ALJ WISSLER: 21.

6 MS. BAKNER: This is a Belleayre Bird
7 Survey from 2004.

8 (BELLEAYRE BIRD SURVEY FROM 2004
9 RECEIVED AND MARKED AS APPLICANT'S EXHIBIT NO.
10 21, THIS DATE.)

11 MS. BAKNER: These are the resumes of
12 a number of gentlemen from Lawler, Matusky &
13 Skelly. Can I put them in all together?

14 ALJ WISSLER: Yes.

15 MS. BAKNER: Barry Babcock, Joseph F.
16 Cullen, Christon Robbins, Stephen M. Seymour,
17 who is with us here today. And they're there.
18 That's Exhibit 22.

19 (RESUMES OF BARRY BABCOCK, JOSEPH F.
20 CULLEN, CHRISTON ROBBINS, STEPHEN M. SEYMOUR
21 FROM LAWLER, MATUSKY & SKELLY ENGINEERS, LLP.
22 RECEIVED AND MARKED COLLECTIVELY AS
23 APPLICANT'S EXHIBIT NO. 22, THIS DATE.)

24 MS. BAKNER: And this is Habitat
25 Assessment Services by LMS, and this is the
(WILDLIFE ISSUE)

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1 last exhibit.

2 ("HABITAT ASSESSMENT SERVICES"
3 RECEIVED AND MARKED AS APPLICANT'S EXHIBIT NO.
4 23, THIS DATE.)

5 MS. BAKNER: It's a drawing entitled,
6 "Blasting Noise Assessment." This is the
7 combination of the graphics that we presented
8 in the noise presentation on the amphitheater
9 effect.

10 (MAP OF "BLASTING NOISE ASSESSMENT"
11 RECEIVED AND MARKED AS APPLICANT'S EXHIBIT NO.
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12 24, THIS DATE.)

13 MS. BAKNER: Your Honor, I have here
14 with me today Steve Seymour of Lawler, Matusky
15 & Skelly, and he's standing in for himself as
16 well as the other gentlemen whose resumes we
17 gave you.

18 And Steve, if you could, describe both
19 your qualifications and the qualifications of
20 Lawler, Matusky & Skelly in the area of doing
21 bird surveys.

22 MR. SEYMOUR: Personally, I have a
23 degree in Fish and wildlife Technology from
24 SUNY Cobleskill. I have a Fishery Biology
25 Degree from Colorado State University. I'm a
(WILDLIFE ISSUE)

1 Certified Professional wetlands Scientist, and ¹⁵²⁰
2 I've been conducting fish-wildlife studies in
3 southern New York, New York-New Jersey harbor,
4 northern New Jersey and Long Island for over
5 20 years, typically for SEQRA and for state
6 and federal permitting activities. And staff
7 that was in the field, the crew that we had,
8 represented nearly 100 years of combined
9 experience in conducting these type of surveys
10 for bird identification for SEQRA actions and
11 for permitting actions.

12 MS. BAKNER: The document that we
13 introduced entitled, "Belleayre Bird Survey
14 2004" was a document that was produced by your
15 team after they did their work in the field?

16 MR. SEYMOUR: Yes.

17 MS. BAKNER: Can you describe for us
18 the methods that you used to look at
19 -- basically the methods that you used for the
20 survey.

21 MR. SEYMOUR: The methods we used did
22 mirror just what was described by the doctor a
23 few moments ago, that we did use a point-count
24 survey technique. What we did, we started out
25 with a habitat map, identified the habitats on
(WILDLIFE ISSUE)

1 the site, and insured that we did put a point ¹⁵²¹
2 in each of the habitats.

3 we wound up with a total of 32
4 locations, split evenly between the east and
5 the west parcels, plus we also added three
6 transects to increase the likelihood of
7 encountering birds. And we did use each of
8 the points for a total of ten minutes to
9 observe birds and also record vocalizing
10 birds.

11 what we did in addition, is we went
12 out on the evening of June 3rd with callbacks
13 for owls and whippoorwills. That night was
14 the full moon, and what we wanted to do -- at
15 the time it was very likely if there were
16 vocalizing owls or whippoorwills that we would
17 encounter them. We checked sites in both the
18 east and west parcels. None were heard during
19 the course of that survey, but we thought it
20 was timely and we did add that to our work.

21 MS. BAKNER: Can you sum up for us
22 what the results of your study were in

23 identification of the bird species?

24 MR. SEYMOUR: We had a total of 75
25 species of birds. That was between an initial
(WILDLIFE ISSUE)

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1 site reconnaissance on May 17th, and the
2 two-day survey that was conducted on June 3rd
3 and June 4th. We had two 2-person crews in
4 the field for the days of June 3rd and June
5 4th. Also at the time I was doing a
6 supplemental survey for amphibians in the
7 vicinity of the mansion, wetland 20 complex,
8 and recorded birds that were in the vicinity
9 while I was there that day.

10 of the 75 species of birds that we did
11 record, 59 were in common with what was
12 recorded in 2000 by the L.A. Group. We did
13 observe 16 species that they did not observe.
14 Of those 16 species, nine of them were single
15 individuals or in single habitats indicating
16 that they're a relatively uncommon species on
17 the site.

18 We did observe two special concern
19 species. We did observe one Cooper's Hawk,
20 and we also observed Cerulean warblers in two
21 locations. We did not observe any threatened
22 or endangered species on the federal or state
23 level.

24 MS. BAKNER: Steve, did you look for
25 evidence of booming nighthawks while you were
(WILDLIFE ISSUE)

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1 out there?

2 MR. SEYMOUR: The crews were aware
3 that there had been -- that they had heard
4 nighthawks on one occasion during prior
5 surveys. The crew members had been on surveys
6 before where nighthawks had been heard. I had
7 been on the surveys where they had been heard,
8 familiar with the noise that they do make and
9 know nighthawks were heard during the surveys
10 that we were on.

11 MS. BAKNER: You were asked as part of
12 your analysis of the site, if you will, to
13 take a look at the studies that had been done
14 by L.A. Group in the year 2000 and
15 specifically to review the Environmental
16 Impact Statement with special attention to
17 3-81 and 3 -- the sections of the DEIS that
18 covered all the habitat cover and everything
19 else -- in addition to Appendix 20, which
20 conducted -- which included the details of the
21 surveys and how they were done. In your
22 professional opinion, was the work that L.A.
23 Group did acceptable and well within
24 professional standards?

25 MR. SEYMOUR: Yes. They had made the
(WILDLIFE ISSUE)

1 proper database searches prior to conducting ¹⁵²⁴
2 the work, and the work was conducted in a way
3 where they did check the habitats. They
4 worked off a habitat map and insured the
5 representative habitats were covered as a
6 portion of their fieldwork.

7 MS. BAKNER: If I can have five
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8 minutes, your Honor?

9 ALJ WISSLER: Sure.

10 (6:05 - 6:08 P.M - BRIEF RECESS
11 TAKEN.)

12 MS. BAKNER: Steve, I want to ask you
13 a specific question about the proposed
14 mitigation measures here, but before I do
15 that, was there any characteristic of the site
16 that you saw that you found to be relevant in
17 terms of the species that you found and the
18 types of habitat that you saw on-site?

19 MR. SEYMOUR: Most of the forests that
20 I saw, it's a relatively young forest, and
21 that's a function that the area was
22 intensively logged in the past; how that could
23 affect the birds that we saw is there's not a
24 lot of cavity trees, trees with hollows in
25 them or other cover, per se, for some species
(WILDLIFE ISSUE)

1 such as owls that would be cavity nesters. ¹⁵²⁵ So
2 that was one factor that we saw that could
3 preclude some species from either being on the
4 site or affect their abundance on the site.

5 MS. BAKNER: We heard from Dr. Burger
6 that our mitigation measures are somehow --
7 some of them, a few of them are somehow
8 inadequate. And I just want to, for the
9 record, run down --

10 ALJ WISSLER: We're looking at page
11 3-108?

12 MS. BAKNER: Page 3-107 of the volume

13 1 of the DEIS. The first one is we're
14 preserving 71 percent of the 1960-acre
15 assemblage, and we're going to protect it
16 using deed restrictions. In your experience
17 reviewing projects and working on projects,
18 how would you characterize that item of
19 mitigation?

20 MR. SEYMOUR: That is an extensive
21 amount of land to be left undisturbed as a
22 result of a project.

23 MS. BAKNER: Is that typical or is
24 that something you see very often?

25 MR. SEYMOUR: Not that high a percent
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1 of land being left undisturbed.

2 MS. BAKNER: We've proposed to
3 re-plant 4,000 indigenous tree species in the
4 portions of the project site that have been
5 subject to development.

6 MR. SEYMOUR: That is a very good
7 plan. Again, that's going on only those
8 portions that are going to be disturbed, that
9 29 percent. So that's a good effort.

10 MS. BAKNER: We've also proposed an
11 enhancement project once we've constructed the
12 golf course involving Eastern Bluebird boxes.
13 What's your opinion of that proposal?

14 MR. SEYMOUR: Bluebirds are the state
15 bird. I know there's many programs throughout
16 the state to improve and establish Bluebird
17 through Bluebird trails and other efforts.
18 And based on the use of the land as a golf

19 course, I think it's an admirable effort to
20 assist in restoring the state bird to this
21 portion of the Catskills.

22 MS. BAKNER: Next, you'll note that in
23 order to accommodate some species, such as the
24 Pileated Woodpecker, which was observed very
25 recently on the site, we're proposing to
(WILDLIFE ISSUE)

1 maintain dead snags and branches found on the ¹⁵²⁷
2 property. Do you find that to be an
3 appropriate method of mitigation?

4 MR. SEYMOUR: That's very helpful to
5 identify those trees that provide, one,
6 nesting habitat, and cover for the woodpeckers
7 and to help maintain their numbers. Obviously
8 the trees have to be left -- they can't be
9 kept in areas where there's a threat to people
10 or the habitation, but to identify those trees
11 and to make sure they're adequately marked and
12 protected so they can continue to serve as
13 nesting sites or future nesting sites.

14 MS. BAKNER: Focussing on the golf
15 course habitat enhancement, we're proposing to
16 put bat boxes, again, this is small diameter
17 trees, really as -- just to enhance existing
18 habitats for bats. Is that a trend or
19 something that's commonly found, or a good
20 idea for mitigation purposes?

21 MR. SEYMOUR: Sort of like "Field of
22 Dreams," if you build it, they will come. As
23 long as there's a food supply for them and

24 that there are bats in the area and bat
25 boxes -- and again, it's something that has to
(WILDLIFE ISSUE)

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1 be monitored. It's something that requires
2 monitoring to determine the level of
3 effectiveness for bats on the site.

4 MS. BAKNER: And for the record, I'm
5 not asking Steve about some of the other
6 mitigation measures that aren't directly
7 related to birds, just to save time. I think
8 that's all for Steve.

9 The only thing that we wanted to point
10 out is, again, we're preserving 70 percent of
11 the site. The pieces of the site that we're
12 preserving are those adjoining areas that are
13 forested, as you can see from the site visits.

14 One parcel in particular, the
15 Adelstein parcel, is being preserved in its
16 entirety. We have nothing proposed for that
17 particular area.

18 The site has been extensively logged.
19 If this project were for any reason not to go
20 forward as private property, it will be
21 developed in some other form. And I guess the
22 point I'm making here is Dr. Burger in his
23 evaluation of important areas that are likely
24 to remain wild obviously did not take into
25 account existing features such as roads and
(WILDLIFE ISSUE)

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1 the extensive clearing at Highmount for the
2 old ski center, as well as the existing
3 Belleayre ski center, which is certainly an

4 astonishing large feature in the landscape.

5 But more importantly, it fails to
6 account for the fact that this is private
7 property in an area where 75 percent of the
8 property in the Town of Shandaken is owned by
9 public entities. So certainly, regardless of
10 whether this project goes forward, it's
11 susceptible for development and it would be
12 developed in the future.

13 ALJ WISSLER: When you say "site,"
14 you're talking about wildacres-Big Indian?

15 MS. BAKNER: Yes.

16 MR. RUZOW: Your Honor, a couple of
17 observations, and I reserve, clearly for the
18 record, an opportunity for further response to
19 this once we have had an opportunity to
20 examine the presentation materials and the
21 important IBA information that has been
22 provided.

23 On CPC Exhibit 3-C, if I could borrow
24 that for a moment, the New York City watershed
25 boundary lines. If you compare the shape of
(WILDLIFE ISSUE)

1 the IBA -- if you compare the shape of the IBA¹⁵³⁰
2 as it shows on CPC Exhibit 51 --

3 MS. BAKNER: Exhibit 49.

4 MR. RUZOW: -- 49, okay. If you
5 compare it and you look relative to the site,
6 you will see -- and I suggest that we look at
7 all these exhibits further -- the overlap, if
8 you will, of bat habitat area, as they have

9 identified it, with the New York City
10 Watershed boundaries -- because it extends
11 beyond it -- and the priority areas for
12 acquisition, Priority Area 2, the third most,
13 it's 1-A, 1-B and then 2 for acquisition,
14 that's the unit in which 75,000 -- 7500 acres
15 New York City has acquired so far. And some
16 of the lands were shown on CPC 3 -- that one
17 shows some of the recent acquisitions, but
18 doesn't show them all and has an update in the
19 Ashokan Basin near the site that Mr. Olney has
20 identified. But there are some down here that
21 are in the basin, here, that recently were
22 acquired by New York City. That acquisition
23 process is continuing, there are significant
24 city funds for land acquisition. (Indicating)

25 In addition, Mr. Olney indicated a
(WILDLIFE ISSUE)

1 couple of areas -- this is CPC Exhibit 3-B --¹⁵³¹
2 on the Open Space Plan that are targeted also
3 within the areas identified by Dr. Burger for
4 acquisition so that -- and that the majority
5 of the land that is within -- if you look at,
6 and this is a quick look, but if you look at
7 DEC Exhibit 3, which is the state forest
8 reserve lands, if you match the green areas on
9 that that are state land and you match the
10 boundaries of the forested area that they've
11 identified for habitat, you'll see a very
12 close match with regard to that.

13 So that the vast majority of lands
14 within that habitat area, at least on a quick

15 look, are either state-owned forest preserve,
16 forever wild, and the amount of land that
17 isn't already targeted for additional
18 acquisition, either by the city, is a very
19 small amount, and indeed, would encompass our
20 land, the project site land.

21 So the image that is created when you
22 have that is that the amount of land that our
23 project site represents as a threat to the
24 erosion of that Important Bird Area is very,
25 very small, the majority of the land being
(WILDLIFE ISSUE)

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1 protected already.

2 The other thing is -- a couple things
3 I want to mention is that the IBA, we're -- we
4 have some familiarity with the process and the
5 action -- is a recent thing. It hasn't been
6 adopted yet. The DEIS was complete in
7 December. It was never made a comment during
8 the course of the scoping session in 2000.

9 Graham Cox, who is related to the New
10 York Audubon and whose comments came in as
11 Exhibit M to the petition from CPC, works with
12 Dr. Burger. Audubon has taken a position
13 opposed to this project since as early as the
14 scoping session. So the fact that Mr. Burger
15 may not have been aware of where this project
16 was, there is no question that Mr. Cox and
17 Audubon was aware of where this project is.

18 And for forever it's worth, the
19 boundaries to encompass our project, I would

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just bring to your attention.

Lastly, we do reserve a right to respond further once we have had an opportunity to look at this. And I think with that, I will end for this afternoon.

MS. BAKNER: All done, your Honor.
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ALJ WISSELER: I'm not. Mr. Seymour, you indicated that when you did your survey that you prepared a habitat map?

MR. SEYMOUR: Yes.

ALJ WISSELER: And that ultimately there were 32 survey points on there --

MR. SEYMOUR: Right.

ALJ WISSELER: -- located along three transects?

MR. SEYMOUR: Well, we had 32 points throughout the site. In addition, we had three transects. So there were 32 points evenly split between the east and the west parcels to make sure that we hit all the identified habitat types of vegetation communities on each side.

ALJ WISSELER: Those points were located on a habitat map?

MR. SEYMOUR: Yes.

ALJ WISSELER: Okay. Is that habitat map part of the DEIS?

MR. SEYMOUR: No. I can provide copies of that though. I don't have a copy for presentation today, but we do have that. All the points were recorded by GPS, so they

1 are reproducible and we can produce that.

2 ALJ WISSLER: I would ask that you do
3 that.

4 MR. SEYMOUR: Okay.

5 ALJ WISSLER: And that's all that I
6 have.

7 Let's take five minutes.

8 (6:20 - 6:28 P.M. - BRIEF RECESS
9 TAKEN.)

10 ALJ WISSLER: Ms. Roberts.

11 MS. ROBERTS: Thank you, your Honor.
12 We wanted to just make a few comments. First
13 of all, on the experience of the staff that
14 went out and did this supplemental survey, I
15 would like to point out that the staff
16 credentials are, we think, suspect considering
17 that the individuals have -- well, one, an
18 Associates Degree from a community college and
19 no publications attached. Another Associates
20 Degree in Marine Biology, and then a master's
21 in Public Administration, which really doesn't
22 help much in doing field surveys. So we would
23 just like to say that we're under-impressed on
24 that score.

25 In general, the survey work, we think,
(WILDLIFE ISSUE)

1 confirms what we suspected, that the survey
2 work previously done was not adequate. In
3 fact, there were several species of concern
4 found, the Cerulean Warbler and the Cooper

5 Hawk were found; and also that other regional
6 species that Dr. Burger indicated would be
7 there are actually there, which says that this
8 area really is important in terms of regional
9 protection.

10 We have some concerns about the way
11 this methodology was actually implemented. I
12 think Ms. Bakner said that Mr. Seymour did
13 exactly what Dr. Burger suggested, which was
14 to do the point-survey analysis, but I would
15 like to have Dr. Burger comment on now the --
16 on the brief review of what you've handed us,
17 what the inadequacies were with this survey
18 that was just done over one day.

19 MS. BAKNER: Two days.

20 ALJ WISSLER: We're talking about
21 comments on Applicant's 21?

22 MS. BAKNER: Yes.

23 DR. BURGER: Having not read this
24 thoroughly, still questions remain about the
25 level of effort put into the surveys, how many
(WILDLIFE ISSUE)

1 points were conducted per acre of each habitat
2 type, were those points located randomly,
3 stratified by the habitat types, what was the
4 effort -- total effort. Was the 32 counts,
5 were those repeated on each day or was that
6 the cumulative total of counts conducted over
7 the two days. It's not clear to me the
8 answers to those yet. Still, I would say that
9 32 points spread over that number of acres and
10 among that many habitat types would appear too

11 low of an effort.

12 MS. ROBERTS: Would points taken after
13 10 a.m. in the morning be of any value?

14 DR. BURGER: Well, some birds are
15 still singing after 10 a.m., but many birds
16 have stopped singing by then. In fact, some
17 birds stop singing much earlier than that. So
18 you are likely -- if you are continuing doing
19 point counts throughout the day and into the
20 afternoon, you're undoubtedly missing many
21 birds.

22 MS. ROBERTS: What about the time of
23 year now, are many birds singing really at
24 all?

25 DR. BURGER: Birds are singing this
(WILDLIFE ISSUE)

1 time of year, but if it coincides with females¹⁵³⁷
2 laying eggs and an increased nest guarding
3 period, which it usually does this time of
4 year; and again, we still have surveys from
5 essentially the first week of June and nothing
6 farther on, so there's still a good chance
7 that they are not capturing the full breeding
8 chronology, timing.

9 MS. ROBERTS: On the Cerulean warbler,
10 can you just comment about the status of that?
11 Is that bird -- it's a special concern, and
12 also potentially a threatened federal species?

13 DR. BURGER: The Cerulean warbler is a
14 species of special concern in New York State.
15 It was proposed for listing under the Federal

16 Endangered Species Act and --

17 MS. ROBERTS: And its status at this
18 point in unclear?

19 DR. BURGER: Its status is unclear.
20 There was initial rejection on some grounds
21 from the U.S. Fish and Wildlife Service, and
22 then there subsequently was a lawsuit. And I
23 do not know the current status.

24 MS. ROBERTS: In your opinion as an
25 ornithologist, is this a bird to be very
(WILDLIFE ISSUE)

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1 concerned about in New York?

2 DR. BURGER: Cerulean warblers are
3 certainly declining continent-wide. Their
4 trend in New York is less well known because
5 they do not occur on a Doppler for breeding
6 bird survey routes to create a statistically
7 sound analysis. So it's not clear what their
8 status would be regionally. Continentally,
9 certainly they're a species of high concern.
10 They're one of the highest species of concern
11 in this Exhibit R, which is Exhibit 53.

12 MS. ROBERTS: We have heard this
13 argument several times that the Applicant is
14 protecting 70 percent of the site so that's a
15 form of mitigation and that's going to help
16 protect some of these species, but you made
17 some points earlier about the regional nature
18 of some species being very limited. So that
19 would you say that if this warbler, for
20 example, is on the 30 percent that's being
21 developed as opposed to the 70 percent that's

22 being protected, that that would not be
23 adequate mitigation?

24 DR. BURGER: Correct. In fact, many
25 of the species that occur at lower densities
(WILDLIFE ISSUE)

1 are very likely to be scattered, and obviously¹⁵³⁹
2 not common throughout the site and may be on
3 sites that are going to be the most highly
4 impacted.

5 MS. ROBERTS: So if we have inadequate
6 surveys and we don't know where everything is,
7 then there's a chance that you could build a
8 site in exactly the wrong spot; so that by
9 just saying it's all kind of homogenous, it's
10 all the same, we're going to save 1300 acres
11 and that will be adequate, that's not adequate
12 mitigation?

13 DR. BURGER: It could be that the
14 areas impacted highly are the areas that are
15 most significant to those particular species.

16 MS. ROBERTS: I know you have not been
17 on the site. We have been on the site. The
18 Judge has been on the site. We've heard that
19 there's not a lot of large trees, it's a
20 relatively young forest. We're going to
21 dispute, actually, that a little later, and
22 that there's not a lot of cavity trees. But I
23 know there are some sapsuckers there. Can you
24 talk about -- can Erik talk about it, Erik has
25 been on the site.

(WILDLIFE ISSUE)

1 DR. KIVIAT: When I walked around the
2 public trails around the edges of the site
3 earlier in the spring, yellow-bellied
4 sapsuckers were very conspicuous. There
5 seemed to be a good-sized population. This is
6 a bird, a woodpecker that drills cavities in
7 trees. It's a primarily cavity maker and is
8 creating cavities, which are often used by
9 other birds and also by other kinds of
10 wildlife, as well as birds.

11 ALJ WISSLER: Are you saying that
12 wasn't seen in this survey that the Applicant
13 did?

14 MS. BAKNER: It was seen.

15 DR. KIVIAT: Right. The point is,
16 this is a fairly common bird on the site.
17 It's making cavities. Those cavities are
18 available for other animals. So I don't think
19 we can dismiss the availability of tree
20 cavities for other kinds of birds and other
21 wildlife to use on this site.

22 The other point that I want to make is
23 that during the site visits, I saw a number of
24 areas where there were, not large numbers, but
25 modest numbers of trees in the approximately
(WILDLIFE ISSUE)

18 to 24 or so inch diameter range. These are¹⁵⁴¹
2 good size trees. These are certainly trees
3 that are big enough and old enough, and in
4 some cases damaged or diseased enough, to have
5 cavities which cavity-using wildlife would
6 potentially make use of. So I'm just

7 disputing the point that Mr. Seymour made, I
8 think, a little while ago that there are a lot
9 of small trees on this site and there really
10 isn't much of an opportunity for cavity-using
11 animals.

12 MS. ROBERTS: Can you talk about bats
13 and bat boxes?

14 DR. KIVIAT: Bat boxes are a good
15 thing, but bat boxes are for bats, and there
16 are dozens or perhaps even hundreds of
17 different kinds of animals that potentially
18 use tree cavities or spaces under loose bark
19 or other kinds of microhabitats, which bat
20 boxes are similar to. But bat boxes are
21 basically designed for bats. They're not
22 going to be used very much by birds or insects
23 or reptiles or amphibians. And there are a
24 number of species in those groups that are
25 cavity users, and some of them depend on
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1 cavities in trees.

2 So bat boxes mitigate the loss of
3 large trees or diseased trees for bats, but
4 they don't mitigate the loss of those snags,
5 as we call them, for other kinds of animals,
6 particularly wild birds. So bat boxes are
7 good, but they're not good enough to be
8 mitigation for --

9 ALJ WISSLER: Other species?

10 DR. KIVIAT: -- many of the kinds of
11 things that we're talking about.

12 MS. ROBERTS: Your Honor, we would
13 also like to reserve some time to take a look
14 at what's submitted here because we would like
15 to just keep this thing going here.

16 MR. GERSTMAN: Can we go off the
17 record about the procedure because there is a
18 concern?

19 ALJ WISSLER: About what?

20 MR. GERSTMAN: About the issue of
21 keeping the record open and to brief it.

22 ALJ WISSLER: We're on the record;
23 we're not off the record.

24 MR. GERSTMAN: We've had the
25 opportunity to present today -- we knew today
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1 was the day for discussion of impacts to
2 birds. Obviously, the Applicant, the DEC were
3 on notice that this was the subject of
4 discussion. Their expert should have been
5 here, and was, to rebut the issues that have
6 been presented. They're asking for an
7 opportunity --

8 ALJ WISSLER: Didn't you just produce
9 an expert today that put in a whole bunch of
10 exhibits here that have not heretofore been in
11 the record that weren't given to me? Were
12 they given to the Applicant?

13 MR. GERSTMAN: No, the exhibits are
14 new, the concepts of IBA have been presented
15 in the past.

16 ALJ WISSLER: If people are going to
17 introduce stuff on the record, I'll take it,

18 but I'm going to allow people a fair
19 opportunity to respond. Sometimes, as like
20 has happened today with traffic, maybe it's
21 something we can talk about in the brief.
22 It's great.

23 MR. GERSTMAN: I agree. The only
24 issue for me --

25 ALJ WISSLER: But if you want to put
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1 in new stuff, I'm going to give people the
2 opportunity to review that new stuff, digest
3 it and answer it.

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4 MR. GERSTMAN: Ordinarily, during the
5 Issues Conference, we would have a chance to
6 have a sur-reply to whatever the Applicant
7 puts in a response. We're not having that
8 opportunity unless they put it in and we're
9 present to discuss it.

10 ALJ WISSLER: Anything else?

11 MS. ROBERTS: I think that's it.

12 MR. ALTIERI: I just want to reiterate
13 how we left off last time with wildlife, that
14 we would provide a comment. At this point, it
15 will probably be a written comment from staff
16 at the end regarding its concerns regarding
17 the nonaquatic habitat.

18 ALJ WISSLER: Okay. Is that it?

19 MS. ROBERTS: When are we doing
20 wildlife so we can get Dr. Kiviat back? We
21 have to reschedule.

22 ALJ WISSLER: I believe we agreed -- I

23 indicated earlier today that we weren't going
24 to get to him, and I had said that you could
25 let him go. I'm delighted that he has been
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1 here to participate in the discussion, but no,¹⁵⁴⁵
2 we're not going on any further tonight.

3 MS. ROBERTS: I know that. I'm asking
4 when should we have him back here? Do we have
5 a date? That's all I'm asking.

6 MR. RUZOW: why don't we try a
7 conference call on Monday. We're not sure we
8 need you yet, but maybe the same approach.
9 But in any event, we can use Debbie and get a
10 conference call set up and then we can see
11 what dates people are available.

12 ALJ WISSLER: I will not be in on
13 Monday.

14 MR. RUZOW: Debbie will help us out on
15 that.

16 MR. GERSTMAN: That's fine.

17 MR. ALTIERI: Next week is booked so
18 can we discuss it Tuesday?

19 ALJ WISSLER: We can go off the
20 record.

21 (6:41 P.M. - WHEREUPON, THE ABOVE
22 PROCEEDINGS ADJOURNED FOR THE DAY.)

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

I, THERESA C. VINING, hereby certify
and say that I am a Shorthand Reporter and a Notary
Public within and for the State of New York; that I
acted as the reporter at the Issues Conference
proceedings herein, and that the transcript to which
this certification is annexed is a true, accurate
and complete record of the minutes of the
proceedings to the best of my knowledge and belief.

THERESA C. VINING

DATED: August 13, 2004

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