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The trial in this matter was conducted over the course of five days during November and December of 2001. Portions of the trial transcript are included in the Printed Case and are identified below using the following convention: 11/7/01 Volume I, 11/8/01 Volume II, 11/9/01 Volume III, 12/20/01 Volume IV and 12/21/01 Volume V. This table provides citations to the transcript while the brief contains only printed case citations.

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As defined in 32 V.S.A. 3752 (5).

- 1) The State of Vermont is estopped from claiming any violations or "Development"¹ of the Joneses Property based on any cutting of timber contrary to the Joneses 1991 Forest Management Plan for cutting of timber that took place on the Joneses property in 1992. The State is estopped from asserting that any such violations or "Development" did, in fact, occur.
- 2) Any lien filed on the Joneses Property by the State as a result of alleged violations or Development of the Joneses Property contrary to the Joneses 1991 Forest

of Law and Order dated November 13, 2002, it is hereby ORDERED as follows:

Based upon the evidence adduced at trial and the Court's Findings of Fact, Conclusions of Law and Order dated November 13, 2002, per Judge Cohen, issued "Findings of Fact, Conclusions of Law and Order." Cohen, Superior Court Judge, on multiple days in November of 2001. The Court on November 13, 2002, per Judge Cohen, issued "Findings of Fact, Conclusions of Law and Order."

THIS MATTER having come before the Court on Appellants Joseph C. Jones and Anne J. Jones' appeal from a decision of the Commissioner of Vermont Department of Forests, Parks and Recreation ("the Department") upholding an adverse inspection report, filed in 1996 with the Department by Nate Rice the Vermont State Forester for Rutland County.

The case was tried in the Rutland Superior Court before the Honorable William D.

JUDGMENT

CONFORMED COPY
RUTLAND SUPERIOR COURT
DEC 09 2002

Joseph C. Jones
Clerk

RUTLAND SUPERIOR COURT
DOCKET NO. S0202-97 RC Ca

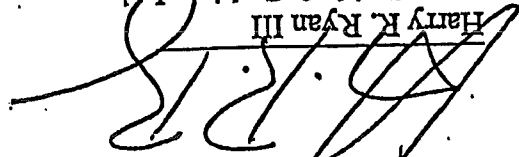
JOSEPH JONES and ANNE JONES,
Appellants
v.
VERMONT DEPARTMENT OF
FORESTS, PARKS AND RECREATION,
Appellee

STATE OF VERMONT
RUTLAND COUNTY, SS

#280391.5982/1

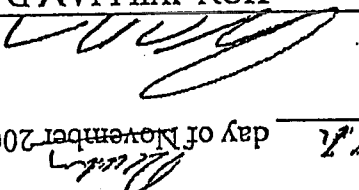
Rutland, VT 05702-0310
P.O. Box 310
Ryan Smith & Carbine, Ltd.
Harry K. Ryan III

Submitted on behalf of Appellants by:



HON. WILLIAM D. COHEN

DATED at Rutland, Vermont this 9th day of November 2002.



- Management Plan, or alleged cutting of timber contrary to the Joneses 1991 Forest Management Plan, is void *ab initio*.
- 3) The Appellants are entitled to and shall be deemed to have properly removed their property from the State's Current Use Appraisal Program by having elected the "1996 Use Value Program Withdrawal Option" effective as of August 30, 1996.
 - 4) The correct Land Use Change Tax percentage that might have been assessed to the Jones property pursuant to 32 V.S.A. 3757 for any "Development" would have been the percentage applicable pursuant to 32 V.S.A. 3757 in the year such Development took place. Had any Development of the Joneses Property occurred in 1992, the correct Land Use Change Tax percentage would have been 10%, not 20%.

numbered 1 through 5.

- 8) The 1991 Forest Management Plan divided the Jones' property into five stands Jones' property.
- 7) In November 1991, Riley prepared a third Use Value Forest Management Plan for the Forest Management Plan on April 30, 1985.
- 6) Philbrook approved and accepted for the State of Vermont the April 25, 1985 UVA Forest Management Plan on April 25, 1985.
- 5) Riley prepared a subsequent UVA Forest Management Plan for the Jones' on April Jones' Forest Management Plan on October 5, 1980.
- 4) James Philbrook, the State of Vermont's Rutland County Forester, approved the Jones' Forest Management Plan on October 5, 1980.
- 3) Riley prepared the Jones' Forest Management Plan in late 1980.
- 2) In 1980, Jones hired Mark D. Riley, Sr. as a consulting forester, to prepare the Jones' first Use Value Appraisal (UVA) Forest Management Plans for the property.
- 1) Joseph and Anne Jones (hereinafter "Jones") enrolled with the State of Vermont, 498 acres of their property located in Mendon, Vermont, in the State's Land Use Value Program. This occurred in 1980.

Findings of Fact

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Joseph Johnson
Clerk

NOV 13 2002

CONFIRMED COPY
RUTLAND SUPERIOR COURT

RUTLAND SUPERIOR COURT
DOCKET NO. S0202-97 R.C.2

STATE OF VERMONT
RUTLAND COUNTY, SS

VERMONT DEPARTMENT OF
FORESTS, PARKS AND RECREATION

Appellants

JOSEPH C. JONES and
ANNE J. JONES

v.

Appellee

- 9) Philbrook approved and accepted for the State of Vermont the 1991 Forest Management Plan.
- 10) The 1991 Forest Management Plan called for timber cutting in Stand 1 and patch cutting in Stand 3.
- 11) In the fall of 1991, Joseph Jones hired Claude G. Dern (hereinafter Dern), an experienced logging contractor to conduct forest management activity on the Jones' property as set forth in the 1991 Forest Management Plan.
- 12) Before any cutting on the property, Dern familiarized himself with the requirements of the Land Use Value Program.
- 13) Before any cutting on the property, Dern obtained a copy of and became familiar with the Jones' 1991 Forest Management Plan.
- 14) In December of 1991, before any cutting on the property, Dern was shown the property by Randy Wilcox, who generally explained to Dern what needed to be cut on the property.
- 15) Dern represented to Jones that he was knowledgeable with respect to the type of cutting that had to be done to conform the Jones' property to the 1991 Forest Management Plan.
- 16) On or about June 22, 1992, Jones authorized and instructed Dern to conduct cutting of the property consistent with the 1991 Forest Management Plan.
- 17) Any violation of the 1991 plan was not with Jones' knowledge.
- 18) Any violation of the 1991 Forest Management Plan was not with Jones' permission.
- 19) When Dern logged the Jones' property in 1992, he believed he had logged the property in compliance with the 1991 Forest Management Plan.
- 20) When Dern logged the Jones' property in 1992, Jones believed that Dern had logged in compliance with the 1991 Forest Management Plan.
- 21) 32 V.S.A. § 3755(c) requires the Department of Forest, Parks and Recreation to inspect the Jones' property at intervals not to exceed five years "to verify that the

terms of the management plan have been carried out." Philbrook conducted a UVA field inspection on the Jones' property pursuant to 32 V.S.A. Section 3755(c) on August 6, 1985.

22) Following his August 6, 1985 inspection pursuant to 32 V.S.A. Section 3755(c), Philbrook wrote to Jones formally advising Jones of the problems Philbrook found with Jones' compliance with the Forestry Management Plan which existed at the time.

23) Following his August 6, 1985 inspection pursuant to 32 V.S.A. Section 3755(c), Philbrook completed a UVA Conformance Inspection Report for the Jones' property. 24) The State was required to conduct a UVA field inspection on the Jones' property pursuant to 32 V.S.A. Section 3755(c) in 1992 or failing that, no later than December 27, 1993.

25) If Philbrook conducted a UVA field inspection on the Jones' property pursuant to 32 V.S.A. Section 3755(c) in 1992 he (Philbrook) had an obligation to inspect the property thoroughly to determine if there were any violations.

26) While James Philbrook did not conduct a UVA field inspection on the Jones' property pursuant to 32 V.S.A. Section 3755(c) in 1992 as part of his obligation to inspect "each tract" of property enrolled in the UVA program at intervals not to exceed five years to verify compliance with the Jones 1991 Forest Management Plan, had he chosen to, he could have conducted a complete evaluation at that time.

27) If James Philbrook did conduct a UVA field inspection on the Jones' property pursuant to 32 V.S.A. Section 3755(c) in 1992 he did not file an official inspection report.

28) If Philbrook's 1992 visit was an official inspection pursuant to 32 V.S.A. Section 3755(c) it did not recommend that the Jones' property be removed from the Land Use Value Program.

29) Following an inspection pursuant to 32 V.S.A. Section 3755(c), the inspector (Philbrook) is required to file an adverse Conformance Inspection Report if he finds that the plan has not been followed and he does not exercise his discretion to waive the violation. 32 V.S.A. Section 3755(c).

30) James Philbrook inspected the Jones property in 1992 and though he believed the cutting that was being conducted was in violation of the plan, he chose not to cite Jones for any violation or recommend that the Jones property be removed from the Land Use Value Program.

31) Philbrook never wrote to Jones to advise Jones of his observations during his 1992 visit so that Jones would have been put on any notice of alleged problems and/or violations.

32) Philbrook has no clear memory of going over any issue of nonconformance with the 1991 Forestry Management Plan with Jones.

33) Philbrook left a phone message for Jones but he is not even sure he called the correct number, since he got an answering machine for "some chem clean company".

34) When Philbrook visited the property in 1992, it is unknown if the area of the alleged violation in Stand 1 had been cut.

35) It is unknown if the area of the alleged violation in Stand 3 had already been cut when Philbrook visited the property in 1992.

36) Philbrook would have approved any amendment of the 1991 Forest Management Plan that reflected the actual cutting on the property performed by Dern in 1992 that took place in Stands 1 and 3, if an amended 1991 Forest Management Plan had been submitted to him at that time for approval.

37) The State of Vermont Rutland County Forester James Philbrook accepted the Conformance Reports (Exhibit H) concerning the Jones property in 1993, 1994, 1995 and 1996 without comment.

38) On June 1, 1996, Jim Philbrook retired from the Vermont Department of Forests and Parks and Nate Fice became the State of Vermont's Rutland County Forester.

39) Jones could have withdrawn his property from the Use Value Program without penalty in 1992, and that withdrawal would have included removal of the lien also without penalty in 1992 after the cutting and at any time from 1992 up to September 1, 1996.

40) On October 18, 1996, Fice visited the Jones' property to conduct a conformance inspection.

41) During the October 18, 1996 inspection of the property, Fice believed that Jones had intentionally logged the property in violation of the 1991 Forest Management Plan because Stand 3 had patch cuts with diameters greater than 40 feet, and Fice believed a 15.8 acre portion of the 230 acres of Stand 1 was thinned below standards for residual acceptable basal area.

42) The violations cited by Fice were a 15.8-acre portion of Stand 1 and patch cuts in Stand 3.

43) Because Fice cited Jones for the violations, Jones' entire property was removed from the Land Use Program.

44) Neither Philbrook nor Fice had any written, uniform or reviewable standards for exercising discretion to find any landowner in violation of a UVA plan.

45) Stand 1 of the property consists of 230 acres, more or less. The only alleged violation in Stand 1 is that excess cutting in a dogleg section of Stand 1 consisting of 15.8 acres resulted in a basal area in that 15.8 acre dogleg of less than that called for in the 1991 Forest Management Plan.

46) Of the 230 acres in Stand 1, Fice only cited a single area of the Stand 1, consisting of 15.8 acres, to be in violation of the 1991 Forest Management Plan during his 1996 inspection.

47) There are no standards for establishing basal area violations of stands of varying sizes.

48) There are no standards for evaluating basal area violations by the percentage of a stand that may have a basal area less than required by a Forest Management Plan.

49) At the time of his 1996 inspection, Fice did not know what the basal area of the trees in Stand 1 was prior to it being thinned in 1992.

50) At the time he issued the violations in January 1997 Fice did not know what the basal area of the trees in the 15.8-acre dogleg section of Stand 1 was prior to it being thinned in 1992.

51) The 15.8-acre area of Stand 1 where Fice took his basal area measurements in 1996 was an area that required logging in 1992 to conform to the 1991 Forest Management Plan.

52) The 15.8 acre area of Stand 1 where Fice took his basal area measurements in 1996 was an area that Fice created by selecting a section of Stand 1 so as to produce an area with the lowest basal area.

53) The 15.8-acre area of Stand 1 where Fice took his basal area measurements in 1996 was not below the basal area requirements of the 1991 Forest Management Plan as a result of Dern's 1992 thinning.

54) The 1991 Forest Management Plan called for "the release of desirable Spruce/Fir regeneration by completing group selection cuts in Stand 3 approximately 40 feet in diameter. To assure that winter cover is maintained for deer, area regulation will allow for approximately 20 percent of the stand to be regenerated in this manner." (See 1991 UVA Forest Management Plan, Exhibit F).

55) The alleged violation in Stand 3 is that there were three patch cuts of 1.0, 1.5 and 2.0 acres.

56) Jones did not mark the patches in Stand 3 to be cut.

57) Randy Wilcox marked the patches in Stand 3 to be cut.

1996 State inspection, no one had ever measure the basal diameter of the trees in Stand 1. determine if the deficiency found in 1996 resulted from the 1992 cutting. Prior to the They appeal that determination, alleging that there was no baseline from which to lien of nearly \$80,000 was imposed on their property.

contrary to the Plan. As a result, the Joneses were withdrawn from the Program and a in a basal diameter less than called for in the Plan, as well as clear-cut an area (Stand 3) Commissioner found that the Joneses cut trees in part of their property (Stand 1) resulting the property was found not to be in compliance with all the Program's provisions. The Program), subject to an approved forest management plan (the Plan). However, in 1996 Mendon, Vermont that was enrolled in the State's Current Use Appraisal Program (the Department by the State forester for Rutland County. The Joneses own forested land in (the Department), upholding an adverse inspection report, filed in 1996 with the decision of the Commissioner of Vermont Department of Forests, Parks and Recreation This case comes before the Court on appeal by Joseph and Anne Jones from a

Conclusions of Law

- 58) The patches actually marked in Stand 3 accomplished the regeneration requirement set forth in the 1991 Forest Management Plan and do not violate the 1991 Forest Management Plan.
- 59) The purpose of the patch cuts in Stand 3 as set forth in the 1991 Forest Management Plan has been met by the cutting that actually took place in 1992.
- 60) Fice told Wilcox that had he known Wilcox marked the patch cuts in Stand 3, Fice would not have cited the Joneses for a violation concerning Stand 3.
- 61) Had Fice known that Riley or Wilcox had marked the patch cuts in Stand 3, Fice would not have cited the Joneses for a violation concerning Stand 3.

Thus, they claim the inspector's measurements are unreliable. Also, they contend that any non-compliance that did exist was inadvertent, the result of the actions of forestry experts on whom they relied to keep them in compliance with the Program, and not from a lack of intent on their part.

They further contend that the State knew of the violations in 1992 but failed to raise them until 1996. Consequently, the Joneses assert that they were prevented from remedying the alleged violations within a time and in a manner that would have allowed them continued enrollment in the Program or, alternatively, permitted them to take advantage of a legislatively approved, low-penalty withdrawal from the Program available at the time.

Vermont's Current Use Appraisal Program is governed by 32 V.S.A. §§ 3751-3776. It provides a tax incentive for landowners not to develop their agricultural or forest land. In order to be taxed at the more favorable "current" (i.e., undeveloped) use valuation instead of at the higher so-called "best" use valuation, the land is subjected to a forest management plan and the property owners are required to comply with various requirements and land restrictions. These include receiving approval from the director of the Division of Property Valuation and Review (32 V.S.A. § 3756(a), (c)); growing and harvesting forest crops as per the Plan (32 V.S.A. § 3755); and reporting annually on compliance to the Department of Forest, Parks and Recreation (32 V.S.A. § 3755(b)(2)).

In order to verify that the terms of the management plan have been carried out in a timely fashion, the Department is required to audit the management plans and conformance reports and to inspect each tract at intervals not to exceed five years. 32 V.S.A. § 3755(c). If the inspection reveals that the management of the tract is not in

compliance with the Plan, an adverse inspection report must be filed with the director of

the Division of Property Valuation and Review and with the owner. *Id.* At that point,

the property is no longer eligible for the Program. 32 V.S.A. § 3755(b)(3).

The director of the Division of Property Valuation and Review is required to

review a property's eligibility for the Program annually, 32 V.S.A. § 3756(f), and must

remove the property from the Program when there is an adverse inspection report on file

with the Department. If a property is removed from the Program under these

circumstances, it is subject not only to highest and best use appraisal (32 V.S.A. §

3757(c); *Scott Construction Inc. v. Newport Bd. Of Civil Auth.*, 165 Vt. 232, 235-36

(1996); 32 V.S.A. § 3481(1)), but also it can potentially be subject to a "land use tax", if

"development" within the meaning of 32 V.S.A. § 3752(5) is involved. Currently, that

tax is based on twenty percent of the full fair market value of the changed land. 32

V.S.A. § 3757. In 1992 and in 1996 the legislature allowed Program participants to

withdraw their land from the Program without penalty. See Public Act No. 245 §

37(b)(2) and Public Act No. 178 § 292 (Vt. Adj. Sess. 1995).

The Court agrees with the Joneses and finds that the State did not act in a timely

or consistent manner, and effectively waived any claims it may have had concerning the

Joneses' non-compliance. "A waiver is the intentional relinquishment or abandonment of

a known right and may be evidenced by express words as well as by conduct." *Chimney*

Hill Owner's Ass'n v. Antignani, 136 Vt. 446, 453 (1978). Mr. Philbrook's 1992

inspection of the Jones' property qualified as the "five year" inspection required by the

statute. He inspected the Jones' property as he was required to do under 32 V.S.A.

3755(c) and was aware of the cuttings that took place on Stands 1 and 3 in 1992. Mr.

Philbrook did not cite the Joneses for any violation regarding the cutting that took place in 1992, as was his duty to do so. 32 V.S.A. § 3755(c) (requiring adverse inspection report to be filed within 30 days of the inspection). Because he not only declined to file an adverse inspection report, but also stated that he would have approved an amendment to the Plan that reflected the actual cutting on the property performed by Mr. Dern if such a request had been submitted to him at the time, the Court finds that the State waived its right to file an adverse report several years later.

Furthermore, the Joneses quite arguably relied to their great detriment on the State's (de facto) determination that no violations existed at that time. Accordingly, the State is estopped from later asserting that such violations did, in fact, occur. "The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith, and justice, and its purpose is to forbid one to speak against his own act, representations of commitments to the injury of one to whom they were directed and who reasonably relied thereon." My Sister's Place v. City of Burlington, 139 Vt. 602, 609 (1981) (quoting Dutch Hill Inn, Inc. v. Patten, 131 Vt. 187, 193 (1973)).

In order for estoppel to apply, the party to be estopped must know the facts and intend that its conduct be relied upon, or the acts must be such that the party asserting estoppel has a right to believe it can rely on them; the asserting party must be ignorant of the true facts and detrimentally rely on the conduct of the party to be estopped. Id. at 609. The State had a duty to file an adverse report if it found during its 1992 inspection that the Jones' property was in violation of the Plan. 32 V.S.A. § 3755(c). Since the State knew of the 1992 cuttings and declined to file an adverse report, as the Statute requires, the Joneses had no reason to believe their property was in violation of the Plan.

The State now asserts that the Joneses are in violation and as a result, they owe tens of thousands of dollars in taxes and penalties. However, had the Joneses known that they were in violation of the Plan they could have availed themselves at the time of the legislature's 1992 or 1995 advantageous tax benefit program by withdrawing their property from the Plan. The penalty at the time was 10% and is now 20% of the fair market value of the developed property. It would be unfair to the Joneses for them to suffer the higher penalty because the State led them to believe that their property was properly compliant with the Plan, only to later assert, when it was too late for the Joneses to remedy the situation by requesting an amendment or by opting out of the Plan at the lower penalty rate, that the Joneses were in violation. It would be unfair for the Joneses to be made ineligible for a government benefit where the ineligibility could have been avoided or mitigated had the government done its job correctly in the first place.

Order

The parties, Appellants Joseph and Anne Jones, and Appellee Vermont Department of Forest, Parks and Recreation, having come before the Court in the appeal of this matter and having presented evidence before the Court, the Honorable William D. Cohen presiding, and the issues having been duly considered, it is ORDERED and ADJUDGED: That the State is estopped from pursuing any alleged violations of the 1991 Forest Management Plan for logging that took place in 1992. The Appellants are entitled to remove their property from the UVA program by electing the "1996 Use Value Program Withdrawal Option" effective as of August 30, 1996. The correct Land Use Change Tax figure that should be assessed to the property for violations occurring in 1992 or 1996 is

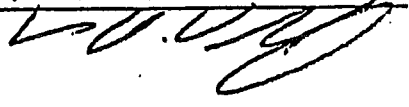
10%. The correct Land Use Change Tax figure that should be assessed to the property

for violations occurring in 1997 is 10%.

The attorney for the Plaintiffs shall prepare an appropriate judgment order for the

Court to sign.

Dated at Rutland, Vermont, this 13th day of November, 2002.


Hon. William D. Cohen, Superior Court Judge

Docket No. 202-4-97 Rdcv Jones et al vs. State of VT Agency of Na
Last Judge: William D. Cohen
Case Type: Not set
Case Track: Disposed
Case Status: Court trial
Court/Jury: Court trial
Next Hearing:

Case Type: Not set
Case Track: Disposed
Case Status: Court trial
Court/Jury: Court trial
Next Hearing:

=====
PARTIES
No. Role Litigant Name Attorney Name Telephone
p# 1 apl Jones, Joseph C. Ryan, Harry R. III 786-1040
p# 2 apl Jones, Anne J. Ryan, Harry R. III 786-1040
p# 3 ape State of VT Agency of Natural Resources, Rebecca M. Ellis, Rebecca M. 241-3691
=====
DISPUTES
Disputants Dispo Date
p#1-2 v p#3 jplf 12/09/02
Appeal - Other
=====
MOTIONS/PETITIONS/REQUESTS FOR RELIEF
Status Judge Date
No. Type
=====

=====
04/14/97 Appearance by Rebecca M. Ellis as Co-Counsel for party 3. Appeal -
Other case filed by Appellant Joseph C. Jones and Appellant Anne J.
Jones against Appellee State of VT Agency of Natural Re.
05/21/02 SEE DOCKET SHEET FOR PREVIOUS ENTRIES.
UNDER ADVISEMENT FROM Merits hearing.
11/13/02 Entry Order by Judge William D. Cohen: Findings of Fact, Conclusion
of Law and Order issued. ORDER: The State is estopped from pursuing
any alleged violations of the 1991 Forest Management Plan for
logging that took place in 1992. The Appellants are entitled to
remove their property from the UVA program by electing the "1996 Use
Value program Withdrawal Option" effective as of August 30, 1996. The
correct Land Use Change Tax figure that should be assessed to the
property for violations occurring in 1992 or 1996 is 10%. The correct
Land Use Change Tax figure that should be assessed to the property
for violations occurring in 1997 is 10%. Atty. for Plfs shall
prepare an appropriate judgment order for the courts signature.
Conformed copies to parties.
FINAL ORDER TO BE SUBMITTED BY ATTY. Case status changed to Active -
pretrial.
11/21/02 1 document filed by Attorney Harry R. Ryan III for parties 1-2:
Proposed judgment order.
Entry Order by Judge William D. Cohen: Judgment Order based on
findings issued. Conformed copies to parties. Dispute 1 disposed:
Judgment for plaintiff - Court trial. Case closed.
Appearance entered by Jeanne Elias Asst Atty Gen'l on behalf of
Co-Counsel for party 3 Rebecca M. Ellis.
1 document filed by Attorney Jeanne Elias Asst Atty Gen'l for party
4: NOTICE OF APPEAL to VT Supreme Court.

=====
04/14/97 Appearance by Rebecca M. Ellis as Co-Counsel for party 3. Appeal -
Other case filed by Appellant Joseph C. Jones and Appellant Anne J.
Jones against Appellee State of VT Agency of Natural Re.
05/21/02 SEE DOCKET SHEET FOR PREVIOUS ENTRIES.
UNDER ADVISEMENT FROM Merits hearing.
11/13/02 Entry Order by Judge William D. Cohen: Findings of Fact, Conclusion
of Law and Order issued. ORDER: The State is estopped from pursuing
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property for violations occurring in 1992 or 1996 is 10%. The correct
Land Use Change Tax figure that should be assessed to the property
for violations occurring in 1997 is 10%. Atty. for Plfs shall
prepare an appropriate judgment order for the courts signature.
Conformed copies to parties.
FINAL ORDER TO BE SUBMITTED BY ATTY. Case status changed to Active -
pretrial.
11/21/02 1 document filed by Attorney Harry R. Ryan III for parties 1-2:
Proposed judgment order.
Entry Order by Judge William D. Cohen: Judgment Order based on
findings issued. Conformed copies to parties. Dispute 1 disposed:
Judgment for plaintiff - Court trial. Case closed.
Appearance entered by Jeanne Elias Asst Atty Gen'l on behalf of
Co-Counsel for party 3 Rebecca M. Ellis.
1 document filed by Attorney Jeanne Elias Asst Atty Gen'l for party
4: NOTICE OF APPEAL to VT Supreme Court.

DOCKET #50202-97 Rca

PLAINTIFF(S) 1. JONES, JOSEPH C. & ANNE J
 DEFENDANT ATTORNEY(S) 1. GIBBY, M. McGRATH, Esq.
 2. Rebecca H. Ellis, Esq.

STATE OF VERMONT AGENCY

CASE TYPE: OTHER TORT

SERVICE 6/19/1998

DATE FILED 4/14/1997 SETTLEMENT CONFERENCE DATE

BACKUP HEARING DATE

FURTHER PRE-TRIAL DATE 9/12/1997

MOTION HEARING DA

JURY DRAWING TIME

TRIAL DATE 12/11/2000 TRIAL TIME

NUMBER OF DAYS

DISCOVERY STIP DUE DATE 10/15/2000

HOLD CODE HOLD DATE

DISPOSITION: Appeals - Pending

DETAIL DOCKET ENTRIES

1 - APPEAL OF DECISION OF THE DIRECTOR OF THE DEPT OF FOREST, PARKS,
 & RECREATION dated March 24, 1997.
 2 -
 3 -
 4 - DEPT - OF-NATURAL RESOURCES
 5 - DEPT - OF-NATURAL RESOURCES - Atty Kaveh S. Shahi
 6 -
 7 -
 8 -
 9 - Notice of appeal with attached copies of documents in support of
 10 - appeal filed by Atty Christopher Corsones.
 11 - ENTERED 14 April 1997.
 12 -
 13 - 18 April 1997: AMENDED NOTICE of appeal (clarifies the purpose
 14 - of the appeal), filed by Atty Corsones.
 15 -
 16 - 08 May 1997: Notice of appearance filed along with a certiff of
 17 - service re the same, submitted by ~~REBECCA H. ELLIS~~ on behalf
 18 - of the Vermont Agency of Natural Resources.
 19 -
 20 - 12 Sept 1997 - Pretrial not necessary as information received.
 21 - Ready for trial by 3/1/98 Order filed and mailed.
 22 -
 23 - 10 October 1997: Discovery Certif re service of Pltfs' Interrogas
 24 - and requests to produce upon Atty McGrath, filed by Atty Chris
 25 - Corsones w/ copy of his cover letter addressed to Atty McGrath
 26 - re the same.
 27 -
 28 -
 29 - 24 October 1997: Stipulation for substitution of counsel (ie
 30 - Atty Harry Ryan will substitute for Atty Corsones on behalf of
 31 - pltfs Joseph and Anne Jones), s/ by Atlys Corsones and Ryan,
 32 - filed by Atty Corsones.
 33 -

- 139 - Motion for joint trial for hearing on 3/28/00.
- 138 - 10 March 2000 - Motion Reaction order filed and mailed setting
- 137 -
- 136 -
- 135 -
- 134 -
- 133 - supports the motion to join (attached copy of stippled discovery)
- 132 - 50547-99RCC, filed by Atty Ryan, noting that the St of VT
- 131 - 09 Feb 2000; Def Jones, MOTION FOR JOINT TRIAL with docket
- 130 -
- 129 - and McGrath.
- 128 - 04 Feb 2000; Stipulated discovery schedule filed by Atlys Ryan
- 127 -
- 126 - Jenkins, C. Todd; recorder.
- 125 - be filing a stip as to discovery/motions to be filed. Judge
- 124 - 1 Feb 2000 - Conference. Counsel represented that they would
- 123 -
- 122 - on 1/26... hearing changed to 2/1 with agreement of Atty Ryan.
- 121 - 10 Jan 2000 - telephone call from Atty McGrath re conflict
- 120 -
- 119 - 6 Jan 2000 - Notice of Status Conference on 1/26/00.
- 118 -
- 117 - Joint Motion to continue merits from 11/10.
- 116 - 19 Oct 1999 - Motion Reaction Order filed and mailed granting
- 115 -
- 114 - has a copy for her sig, filed by Atty Ryan.
- 113 - 11-10-99, s/ by Atty Ryan with advisement that Atty McGrath
- 112 - 14 Oct 1999; JOINT MOTION TO CONTINUE hearing scheduled for
- 111 -
- 110 - upon Atty McGrath, filed by Atty Ryan.
- 109 - requests for admissions and interrog on deft State of VT
- 108 - 24 Sept 1999; Discovery certificate re service of plffs
- 107 -
- 106 - Motion to Dismiss 3rd party action.
- 105 - 26 August 1999 - Motion Reaction Order filed and mailed granting
- 104 -
- 103 - 19 July 1999 - notice of standby date of 11/10 sent.
- 102 -
- 101 - by Atty Ryan.
- 100 - Marthage on behalf of third-party deft Mark D. Riley, filed
- 99 - 14 July 1999; Waiver of service of summons s/ by Atty Brian
- 98 -
- 97 - memorandum of law in support of motion.
- 96 - filed by Atty Brian Marthage along with MOTION TO DISMISS w/
- 95 - and Marthage on behalf of third-party deft Mark D Riley Sr.
- 94 - 13 July 1999; Notice of appearance of the firm of Deborah Wright
- 93 -
- 92 - filed by Atty Shahl. rs
- 91 - ANSWER, with answer and Affirmative Defenses
- 90 - 02 Jul 1999; Notice of Appearance of Atty Kavesh Shahl on behalf
- 89 -
- 88 - Party Complaint dated 6/28/99 filed by Atty Ryan. rs
- 87 - 02 Jul 1999; Return of Service on Claude Dern of Summons & Third

DOCKET #.....50202-97 RCCa

DOCKET #50202-97 Rca

- 140 -
- 141 - 28 March 2000 - Motion for joint trial granted with 50547-99Rcc
- 142 - with trial readiness 10/15 and trial in November. Motion to
- 143 - consolidated denied. Judge Jenkins, C. Todd, recorder
- 144 - (Atty Ryan to submit proposed order.)
- 145 -
- 146 -
- 147 - 31 March 2000: Proposed order re: motion for joint trial, filed
- 148 - by Atty Ryan.
- 149 -
- 150 - 31 March 2000: Defts Jones' MOTION FOR SUMMARY JUDGMENT;
- 151 - Statement of undisputed facts in support of motion; affidavit of
- 152 - Joseph and Anne Jones; copies of depositions in support of
- 153 - motion; filed by Atty Ryan.
- 154 -
- 155 - 5 Apr 2000 Order granting Motion for joint trial filed. Con-
- 156 - formed copies to adverse attys. ms
- 157 -
- 158 - 03 May 2000: STIPULATION TO EXTEND TIME for defts' response to
- 159 - plaintiffs' motion for summary judgment filed by Atty's Ryan and
- 160 - McGrath.
- 161 -
- 162 - 17 May 2000: Plaintiff's DEPOSITION to defts Jones' Motion for
- 163 - summary judgment w/ attachments and affidavit of Nathan Rice;
- 164 - filed by Atty McGrath (cc: Atty Ryan)
- 165 -
- 166 - 18 May 2000: Plaintiff's MOTION TO WITHDRAW ADMISSIONS (requests to
- 167 - admit and interrogatory dated 5-10-00 and 9-23-99); filed by
- 168 - Atty McGrath with cert of service of same upon Atty Ryan.
- 169 -
- 170 - 02 June 2000: Deft's (sic) (Pliff) Jones' memorandum in opposi-
- 171 - tion to the state of vt's motion to withdraw admissions; filed
- 172 - by Atty Ryan.
- 173 -
- 174 - 13 June 2000: Deft Joneses; Reply Memorandum in Support of
- 175 - their Motion for Summary Judgment filed by Atty Ryan. BMS
- 176 -
- 177 - 23 June 2000: Letter to the court from Atty Ryan REQUESTING
- 178 - ORAL ARGUMENT on their motion for summary judgment and on the
- 179 - State's motion to withdraw admissions.
- 180 -
- 181 - 26 June 2000 - Motion Reaction Orders filed and mailed setting
- 182 - Motion to withdraw Admissions and Motion for Summary Judgment
- 183 - for hearing on 7/11/00.
- 184 -
- 185 - 11 July 2000 - Motion for Summary Judgment and Motion to Withdra
- 186 - Admissions heard and UNDER ADVISEMENT. Judge Jenkins, C. Todd,
- 187 - recorder.
- 188 -
- 189 - 25 July 2000: Memorandum of Decision on Motion to Withdraw
- 190 - Admissions and Motion for Summary Judgment issued by Judge
- 191 - Jenkins. Motion to Withdraw Admissions is GRANTED; Motion for
- 192 - Summary Judgment is DENIED without prejudice. Conformed copies

- 193 - to attys of record. sjm
- 194 -
- 195 - 28 July 2000: Defts Motion to Reconsider the Amount of Attys
- 196 - fees filed by Atty Ryan. sjm
- 197 -
- 198 - 08 August 2000: Plt's DEPOSITION to deft Joneses' motion to
- 199 - reconsider the amount of atty's fees, filed by Atty McGrath.
- 200 -
- 201 - 11 August 2000: Deft Joneses' MOTION to deem requests for
- 202 - admissions as admitted, filed by Atty Ryan with attachments.
- 203 -
- 204 - 31 August 2000 - Notice sent for jury drawing on 10/23/00.
- 205 -
- 206 - 31 August 2000 - Motion Reaction Order filed and mailed denying
- 207 - Motion to Reconsider the Amount of Attorney's Fees; Motion Order
- 208 - filed and mailed setting Motion to Deem Requests as Admitted
- 209 - for hearing on 9/15/00.
- 210 -
- 211 - 5 Sept 2000 - telephone call from Attys Ryan and Shems re the
- 212 - 9/15 date for motion hearing ... Atty McGrath on vacation. Both
- 213 - counsel agreed to 9/21 at 8:30 verbally.
- 214 -
- 215 - 05 Sept 2000: State of VT's MOTION TO CONTINUE hearing scheduled
- 216 - for 9-15-00, filed by Atty McGrath with certiff of service of
- 217 - same upon Atty Ryan.
- 218 -
- 219 - 07 Sept 2000: Notice of appearance on behalf of the Agency of
- 220 - Natural Resources by Atty Ron Shems as co-counsel with Atty
- 221 - McGrath.
- 222 -
- 223 - 15 Sept 2000 - Motion re Admissions moved to 9/21 at request and
- 224 - by agreement of counsel.
- 225 -
- 226 - 18 Sept 2000: Defts Joneses' MOTION FOR ADVISORY JURY filed by
- 227 - Atty Ryan.
- 228 -
- 229 - 18 Sept 2000: State's DEPOSITION to Joneses' Motion to deem
- 230 - request for admission as admitted filed VIA FAX by Attys Ellis
- 231 - and Shems.
- 232 -
- 233 - 19 Sept 2000: Original state's opposition filed by Atty Ellis
- 234 - and Shems (see 9-18-00).
- 235 -
- 236 - 20 Sept 2000 - Offices were called regarding changing motions
- 237 - from 9/21 to 10/2....confirmed via mail....because of an ongoing
- 238 - jury trial.
- 239 -
- 240 - 25 Sept 2000: State of VT's DEPOSITION to Joneses' motion for
- 241 - advisory jury, filed by Atty Shems with attachments.
- 242 -
- 243 - 26 Sept 2000 - Notice sent for trial on 12/11/00.
- 244 -
- 245 - 2 October 2000: Joneses' Reply Memo in Support of Motion to

DOCKET #.....50202-97 Rca

DOCKET #.....50202-97 RCGA

- 352 - kid
- 353 -
- 354 - 11 Jan 2002; VT Dept's proposed findings of fact and conclusions of law (revised 1-10-02); filed by Atty Ellis with certif of service of same upon Atty Ryan . A computer disk is also included with the same information on it. kc
- 357 -
- 358 -
- 359 - 14 Jan 2002; Pife Jones' Requests for findings of fact and conclusions of law dated 1-11-02; filed by Atty Ryan. kc
- 360 -
- 361 -
- 362 - 5 February 2002; Copy of decision in re Lowry filed for judges
- 363 - review. sim

VERMONT DEPARTMENT OF FORESTS, PARKS AND RECREATION
 USE VALUE APPRAISAL FOREST MANAGEMENT PLAN FORM

APPLICANT NAME Joseph & Ann Jones
 ADDRESS Box 580
Butland, Vermont 05701
 Greater than 1 mile from Class 1, 2, 3 road
 Less than 1 mile from Class 1, 2, 3 road

(Use additional sheets if necessary)

PARCEL IDENTIFICATION NO. _____
 TOWN WHERE LAND IS LOCATED Mendon, Vt.
 GRAND LIST DESCRIPTION 385 acres (T)
90 acres (B2), 37 Acres-lease land
 DATE October 5, 1980

AREA NO.	AREA ACRES	SITE CLASS	STAND DESCRIPTION	MANAGEMENT OBJECTIVE AND RECOMMENDATION
1	210	I	northern hardwoods, BA 50-55, 11" Ave. DBH, understocked. Area has been cut heavily in past ten years	Complete 20 acres/yr of cull tree removal through girdling or firewood cutting. where practical in stands 1 and 2- no major timber harvesting should be conducted for at least twenty years.
2	27	I	Mixed spruce-northern hardwood BA 55, 10" Ave. DBH, understocked; some areas very wet, cut heavily in past ten years	
3	10	I	Red pine-spruce plantations 20 yrs. old, BA 140, Ave. DBH 9"	row thin red pine plantations during the next five years
4	3	I	open areas	Keep mowed for wildlife use
TOTAL	507			

MANAGEMENT SUMMARY see attached sheet

PREPARED BY: [Signature]
 CERTIFIED BY: [Signature]
 3 rd 80



Site I = 250
 Site II = 235
 #29 CVH

MANAGEMENT SUMMARY: The vast majority of this woodland has been cut heavily for sawlogs over the past twenty years or more. Many acres are therefore understocked and support many cull trees. Good hardwood regeneration is present in a few areas recently harvested. It is therefore very important that future forest management decisions be based on this plan and carried out by a professional Forester.

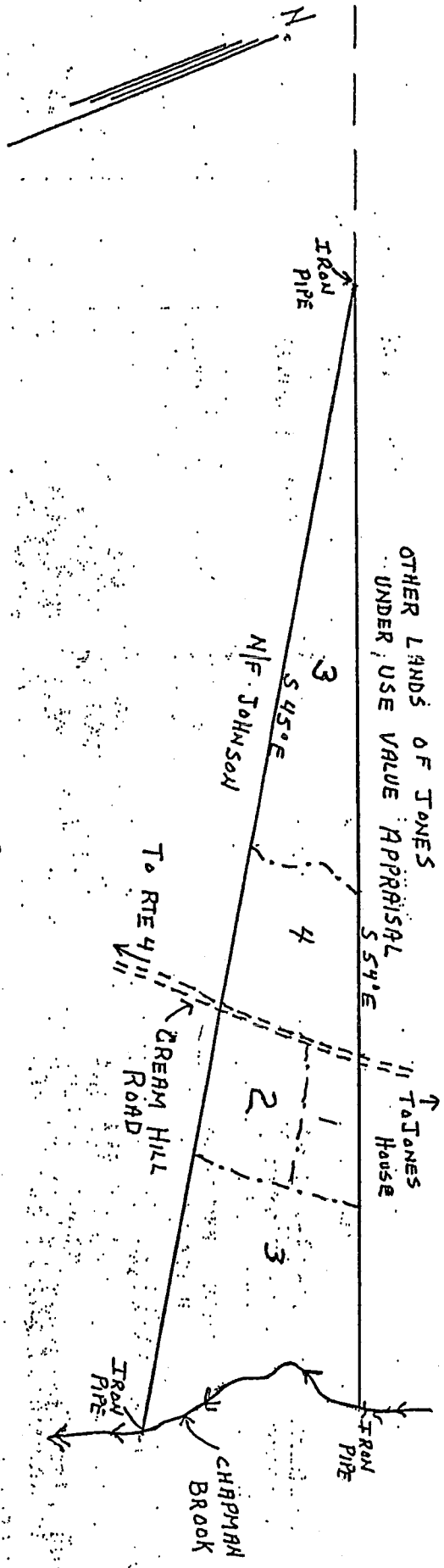
The landowner is interested in deriving a yearly firewood volume from the property. This cutting can be incorporated into the management recommendations for Stands 1 & 2.

SCHEDULE: Areas 1 & 2 Complete twenty acres per year 1981-1991
of cull tree removal/girdling

Area 3 Row thin (removing every third 1981-1986
row) red pine plantations.

Area 4 Keep open areas mowed for 1981-1983
wildlife. yearly or as
needed

Locate and paint all boundary 1981-1983
lines.



Vt. Use Value Appraisal
 Forest Management Map
 JOSEPH & ANN JONES PROPERTY
 Cream Hill Road
 Mendon, Vermont
 January-1982

Scale: 1"=400'

This is a 16-acre parcel of woodland recently acquired by Jones to be classified under the Use Value Appraisal program. This property is located adjacent to other lands of Jones already classified.

Area 1,	1.5 acres,	Site I
Area 2,	2.5 acres,	Site II
Area 3,	9 acres,	Site II
Area 4,	3 acres,	Site I
Total 16 acres		
Site I=	7 acres	
Site II=	9 acres	

Completed by:
 Mark D. Riley
 Resident Forester
 NEFP

APPLICANT'S NAME Joseph & Anne Jones
 ADDRESS Box 580
Rutland, Vermont 05701

TOWN WHERE LAND IS LOCATED Mendon
 PHOTO NUMBER Vt. 62 H 23-195
 GRAND LIST DESCRIPTION 528 acres plus improvement
5 acres will not be appraised
at Use Value

Cruise data based on all stems in plot 6" DBH and greater.

AREA NO.	ACRES	SITE CLASS	ACCESS DISTANCE	STAND DESCRIPTION	LONG-RANGE OBJECTIVE AND SCHEDULED TREATMENT
1	210 :93 :82	I II III	-1 mile -1 mile +1 mile	EVEN AGED <u>ALL AGED X</u> STOCKING LEVEL <u>inadequate N.S.D. 8.5"</u> FOREST TYPE <u>northern hardwood</u> TOTAL BA <u>59</u> ACCEPT. GROW. STOCK BA <u>50</u> INSECTS OR DISEASE <u>beech scale/ nectria</u>	LONG-RANGE OBJECTIVE Quality sawlog production- unevenaged management. SCHEDULED TREATMENT Due to the understocked condition of the woodland, little treatment is warranted at this time. Limited weeding and thinning work will be completed in areas of higher stocked poles- reduce to B level stocking (BA 70). LONG-RANGE OBJECTIVE Quality sawlog production- unevenaged management.
2	36 29:5 22	I II III	Less than one mile	EVEN AGED <u>ALL AGED X</u> STOCKING LEVEL <u>inadequate N.S.D. 8.5"</u> FOREST TYPE <u>red spruce/ soft maple/ beech</u> TOTAL BA <u>60</u> ACCEPT. GROW. STOCK BA <u>54</u> INSECTS OR DISEASE <u>Beech scale/ nectria, limited dieback in spruce</u>	LONG-RANGE OBJECTIVE Quality sawlog production- unevenaged management. SCHEDULED TREATMENT Due to the understocked condition of the woodland, little treatment is warranted at this time. Release spruce/fir regeneration by patch cutting inferior hardwood.

SITE CLASS DETERMINED BY:

STAND HISTORY

Mixed second growth stand, predominantly old pasture, recovering from heavy sawtimber cuts over past twenty years. Variable stocking.

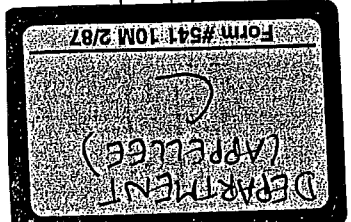
PLEASE CONSULT

6/2/86

PREPARED BY: M. D. Hickey
 DATE: 4/25/85

CERTIFIED BY: _____
 DATE: _____

James S. Priddy
5/30/85



AREA NO.	ACRES	SITE CLASS	ACCESS DISTANCE
	10	I	Less than one mile

SITE CLASS DETERMINED BY:

STAND HISTORY

25 to 30 year old plantations- mostly red pine with a few small patches of Norway spruce

3A	1.5	I	Less than one mile
----	-----	---	--------------------

SITE CLASS DETERMINED BY:

Site Index

STAND HISTORY

ed pine plantation- more mature than Area 3. Thinned about eight ears ago.

4	6	III. II	Less than one mile
---	---	---------	--------------------

SITE CLASS DETERMINED BY:

Soil Maps

STAND HISTORY

Open Land

STAND DESCRIPTION

EVEN AGED ALL AGED
 STOCKING LEVEL overstocked M.S.D. 8.2"
 FOREST TYPE red pine plantations
 TOTAL BA 166 ACCEPT. GROW. STOCK BA 160
 INSECTS OR DISEASE -

LONG-RANGE OBJECTIVE AND SCHEDULED TREATMENT

LONG-RANGE OBJECTIVE
 Quality sawlog production- evenaged management.
 SCHEDULED TREATMENT
 Row thin, removing every third row for pulp. This work will increase stocking to BA 110, and increase growth rates of residual trees. Pruning may also be completed to improve quality and esthetics.

EVEN AGED ALL AGED
 STOCKING LEVEL adequate M.S.D. 12"

FOREST TYPED red pine plant.

TOTAL BA 130 ACCEPT. GROW. STOCK BA 130

INSECTS OR DISEASE -

LONG-RANGE OBJECTIVE

Quality sawlog production- evenaged management.

SCHEDULED TREATMENT

No further intermediate treatment is necessary. Reevaluate area in 7. years for possible liquidation of stand.

EVEN AGED ALL AGED
 STOCKING LEVEL - M.S.D. -

FOREST TYPE -

TOTAL BA - ACCEPT. GROW. STOCK BA -

INSECTS OR DISEASE -

LONG-RANGE OBJECTIVE

Open areas will be kept open.

SCHEDULED TREATMENT

Mow areas at least once every three years.

PC-30

RED BY: *Mark D. Wiley*
 11/22/85

CERTIFIED BY: *[Signature]*
 DATE: 4/30/85

AREA	ACRES	SITE CLASS	ACCESS DISTANCE
0.	2.5	I	Less than one mile
SITE CLASS DETERMINED BY: the Index			
STAND HISTORY lorway spruce plantation.			
SITE CLASS DETERMINED BY:			
STAND HISTORY EVEN AGED <input type="checkbox"/> ALL AGED <input type="checkbox"/> STOCKING LEVEL <input type="checkbox"/> M.S.D. <input type="checkbox"/> FOREST TYPE <input type="checkbox"/> TOTAL BA <input type="checkbox"/> ACCEPT. GROW. STOCK BA <input type="checkbox"/> INSECTS OR DISEASE <input type="checkbox"/>			
SITE CLASS DETERMINED BY:			
STAND HISTORY EVEN AGED <input type="checkbox"/> ALL AGED <input type="checkbox"/> STOCKING LEVEL <input type="checkbox"/> M.S.D. <input type="checkbox"/> FOREST TYPE <input type="checkbox"/> TOTAL BA <input type="checkbox"/> ACCEPT. GROW. STOCK BA <input type="checkbox"/> INSECTS OR DISEASE <input type="checkbox"/>			

LONG-RANGE OBJECTIVE AND SCHEDULED TREATMENT

LONG-RANGE OBJECTIVE
Quality sawlog production- even aged management.
SCHEDULED TREATMENT
No further intermediate treatment is necessary. Reevaluate area in 7-10 years for possible liquidation of stand.

LONG-RANGE OBJECTIVE

SCHEDULED TREATMENT

LONG-RANGE OBJECTIVE

SCHEDULED TREATMENT

REPAIRED BY: M. L. R. [Signature]
DATE: 4/30/85
CERTIFIED BY: [Signature]

USE VALUE APPRAISAL FOREST MANAGEMENT PLAN PAGE 4

MANAGEMENT PRACTICES TO BE ACCOMPLISHED WITHIN NEXT 15 YEARS (PRIORITY, FOREST TYPE, OPERABILITY, KIND, AMOUNT, LOCATION, WHY)

AREA NO.	YEAR	
3	1985-86	Locate and paint all boundary lines.
2	1987-89	<p>Row thin red pine plantation, cutting every third row. This will reduce stocking to BA 110, and will leave the stand just above B level stocking. Pruning may also be completed to improve tree quality and esthetics.</p> <p>Complete staggered patch cuts in areas supporting advanced spruce/fir regeneration. Patches should not exceed .25 acres in size. This cut will remove a high percentage of inferior hardwood, mainly soft maple and beech. (NE-6, NE-143)</p> <p>Reevaluate stand for second series of patch cuts.</p>
1	1994	<p>While patch cutting systems will be used to release softwood regeneration, management of the stand as a whole will be aimed at establishing an unevenaged in stand structure. Due to heavy cutting of sawtimber in years past, the present Q value of the stand is 2.0. The long term Q value goal for the stand is 1.6. (NE-332)</p> <p>Reevaluate stand for single tree selection cut in areas not supporting advanced softwood regeneration.</p>
1	1987-89	<p>A small portion of this area, located northwest of the house, will be thinned through a single tree selection firewood cut. This is in an area not previously cut, and tree quality is very poor. Retain a stocking of BA 70, regardless of quality. (approx. B. level) (NE-143)</p>
	1990	<p>Reevaluate remainder of area.</p> <p>As a result of past sawtimber cuts, the area supports a Q of 2.0. While most of the area must recover from past cuts, future treatment will be aimed at establishing unevenaged stand structure and a Q goal of 1.6. (NE-332)</p>

PC-38

PREPARED BY: *Mark Q. Wiley*

CERTIFIED BY: *James S. Hayes*
 DATE: *4/13/85*

USE VALUE APPRAISAL FOREST MANAGEMENT PLAN

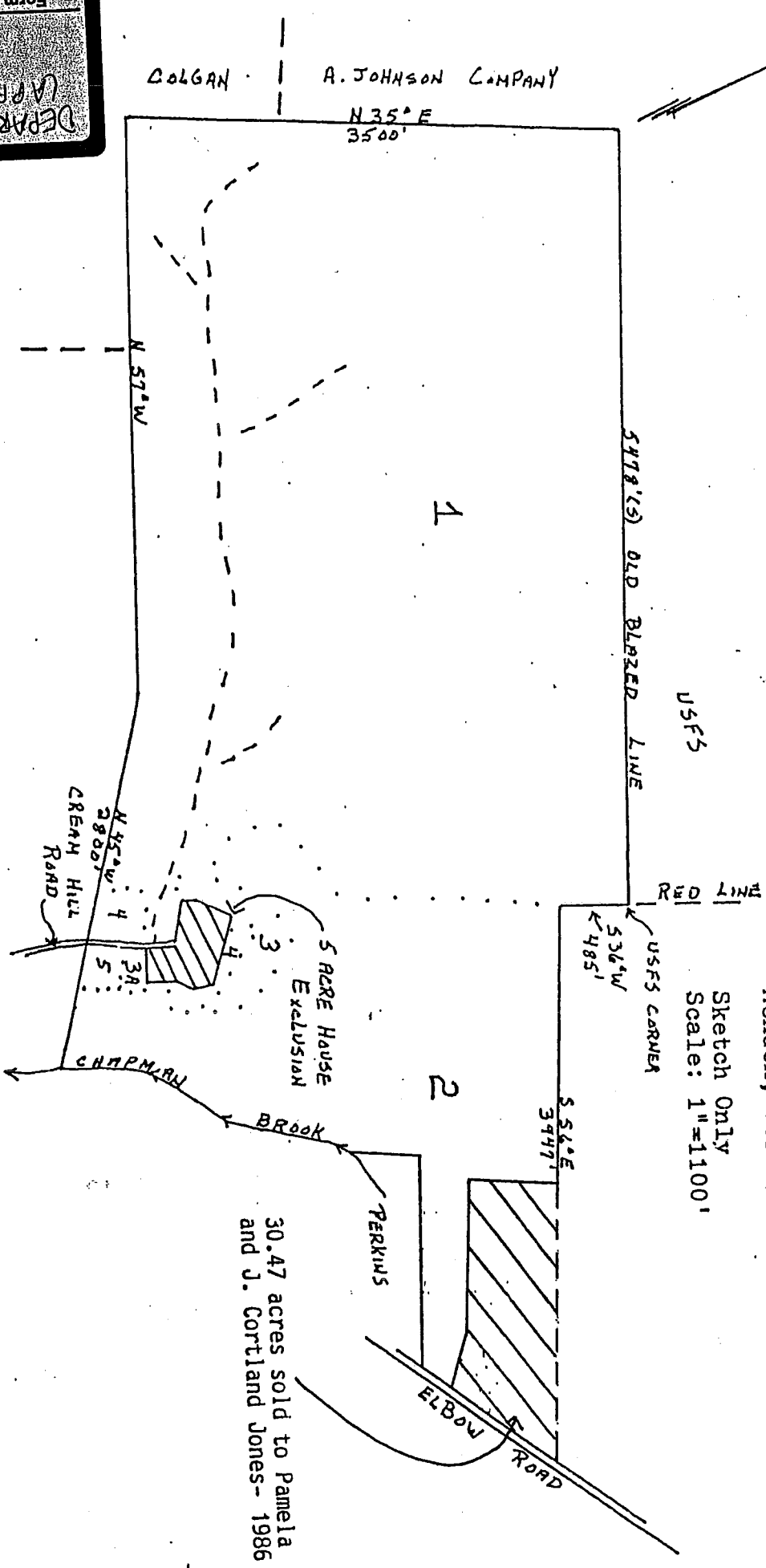
MANAGEMENT PRACTICES TO BE ACCOMPLISHED WITHIN NEXT 15 YEARS (PRIORITY, FOREST TYPE, OPERABILITY, KIND, AMOUNT, LOCATION, WHY)

AREA NO.	YEAR	
3A	1992	Evaluate area for possible stand liquidation. If growth rates have stagnated, stand will be clear cut and a new plantation will be established.
5	1992	Treat same as Area 3A.
4	1985-2000	Mow all open areas at least once every three years.

M.L. O.J.L. 4/25/85
 CERTIFIED BY: James S. [Signature] 4/25/85

Vt. Use Value Appraisal
 FOREST MANAGEMENT MAP
 LANDS OF JOSEPH & ANNE JONES
 Cream Hill Road
 Mendon, Vermont

Sketch Only
 Scale: 1"=1100'



LEGEND

- Boundary —————
- Forest Road - - - - -
- Area Line

Area 1	210 acres	Site I
	93 acres	Site II
	82 acres	Site II +1 mile ac
	36 acres	Site I
	29.5 acres	Site III
	22 acres	Site I
	10 acres	Site I
Area 3A	1.5 acres	Site I
Area 4	6 acres	AG-Tillable II
Area 5	2.5 acres	Site I
Total	492.5 acres	



Map corrected-June, 1986
 Map & Plan by: Mark D. Riley-NEFF
 April-1985

Mark D. Riley

Date: 15 July 87
Approved: Vermont Department of Forests, Parks and Recreation

James J. Jones

Date: 7/7/87

Land located in town(s) of: MEXIDON

Address: Green Hill Road
MEXIDON, VERMONT 05701

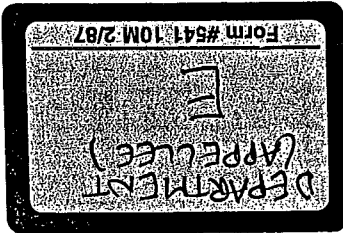
Landowner's Name(s): ANNE J. JONES
JOSEPH C. JONES

Signature(s): *Joseph C. Jones*
Anne J. Jones

I (we) certify that my (our) forest land, exclusive of any houseite or other developed portion, is at least 25 acres in size and is under active long-term forest management for the purpose of growing and harvesting repeated forest crops in accordance with minimum acceptable standards for forest management.
This signature page shall constitute an addendum to my forest management plan. By signing below I understand I am signing my forest management plan.

Vermont Current Use Program Forest Management Plan

Signature Page



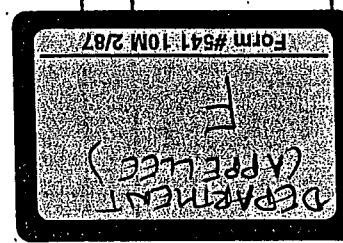
APPLICANT'S NAME: Joseph and Anne Jones
 ADDRESS: Route 4 East
 P.O. Box 1809
 Rutland, VT 05701

TOWN WHERE LAND IS LOCATED: Mendon
 PHOTO NUMBER: Orthophoto # 120128, 116128
 GRAND LIST DESCRIPTION: 498 acres plus improvements

AREA NO.	ACRES	SITE CLASS	ACCESS DISTANCE	STAND DESCRIPTION	LONG-RANGE OBJECTIVE AND SCHEDULED TREATMENT
1	232.1	II	Less than one mile	EVEN AGED <u> </u> ALL AGED <u>X</u> STOCKING LEVEL Adequate <u> </u> K.S.D. <u>9"</u> FOREST TYPE Northern Hardwood TOTAL BA <u>65</u> ACCEPT. GROW. STOCK BA <u>50</u> INSECTS OR DISEASE <u> </u> Beech Scale <u> </u> Nectria noted.	LONG-RANGE OBJECTIVE Quality sawlog production - uneven aged management. SCHEDULED TREATMENT Begin single tree/group selection harvest of the overstocked portions of the stand within next 5 years. These will be primarily pulpwood harvests.
Existing Q = 1.7				EVEN AGED <u> </u> ALL AGED <u>X</u> STOCKING LEVEL Inadequate <u> </u> K.S.D. <u>10"</u> FOREST TYPE Yellow Birch/White Birch TOTAL BA <u>60</u> ACCEPT. GROW. STOCK BA <u>35</u> INSECTS OR DISEASE <u> </u> No problems noted.	LONG-RANGE OBJECTIVE Site Protection. SCHEDULED TREATMENT No work scheduled in this area.
2	48	III	Less than one mile	Visual Observation STAND HISTORY High elevation, thin soil stand on Blue Ridge. Mostly short bodied Birch timber and pulp. Existing Q = 1.8	LONG-RANGE OBJECTIVE Site Protection. SCHEDULED TREATMENT No work scheduled in this area.

PREPARED BY: Randy Wilcox/Mark D. Riley
 Consulting Foresters
 Vermont Forest & Field, Inc.
 DATE: November, 1991

CERTIFIED BY: _____
 DATE: _____



AREA NO.	ACRES	SITE CLASS	ACCESS DISTANCE	STAND DESCRIPTION	LONG-RANGE OBJECTIVE AND SCHEDULED TREATMENT
3	116	II	Less than one mile	EVEN AGED <input checked="" type="checkbox"/> ALL AGED _____ STOCKING LEVEL Adequate M.S.D. 9.5" FOREST TYPE Spruce/Fir and Mixed Woods TOTAL BA 140 ACCEPT. GROW. STOCK BA 60 INSECTS OR DISEASE Beech Scale Nectria and Spruce dieback noted.	LONG-RANGE OBJECTIVE Quality sawlog production and deer yard protection - uneven aged management. SCHEDULED TREATMENT Softwood release by patch cuts.
SITE CLASS DETERMINED BY: Site Index STAND HISTORY Even aged mixed/Softwood of predominantly old field origin. Stocking and species composition variable.					
4	7	I	Less than one mile	EVEN AGED <input checked="" type="checkbox"/> ALL AGED _____ STOCKING LEVEL Adequate M.S.D. 8.5" FOREST TYPE Red Pine Plantation TOTAL BA 170 ACCEPT. GROW. STOCK BA 160 INSECTS OR DISEASE No problems noted.	LONG-RANGE OBJECTIVE Quality sawtimber production - even aged management. SCHEDULED TREATMENT Thin every third row to reduce BA to 110.
SITE CLASS DETERMINED BY: Site Index STAND HISTORY 35 +/- year old Red Pine plantation with a few patches of Norway Spruce. Approximately 3 acres thinned in 1988.					
5	2	I	Less than one mile	EVEN AGED <input checked="" type="checkbox"/> ALL AGED _____ STOCKING LEVEL Adequate M.S.D. 12" FOREST TYPE Norway Spruce TOTAL BA 160 ACCEPT. GROW. STOCK BA 160 INSECTS OR DISEASE Some evidence of "Red Rot" noted.	LONG-RANGE OBJECTIVE Quality sawlog production - even aged management. SCHEDULED TREATMENT Single tree selection for logs and pulp to reduce BA to 120 +/- and promote Softwood regeneration.
SITE CLASS DETERMINED BY: Site Index STAND HISTORY Norway Spruce plantation. Some past thinning in stand.					

PREPARED BY: Vermont Forest & Field, Inc. CERTIFIED BY: _____

DATE: November, 1991 DATE: _____

AREA NO.	ACRES	SITE CLASS	ACCESS DISTANCE	STAND DESCRIPTION	LONG-RANGE OBJECTIVE AND SCHEDULED TREATMENT
5A	1	I	Less than one mile	EVEN AGED <input checked="" type="checkbox"/> ALL AGED _____ STOCKING LEVEL Adequate M.S.D. 13" FOREST TYPE Red Pine Plantation TOTAL BA 160ACCEPT. GROW. STOCK BA 140 INSECTS OR DISEASE Some Pine declining	LONG-RANGE OBJECTIVE Quality sawtimber production - even aged management. SCHEDULED TREATMENT Clearcut this 1 acre +/- area before value declines. Established Sugar Maple regeneration will be released.
SITE CLASS DETERMINED BY: Site Index STAND HISTORY: Red Pine plantation approximately 50 years old, showing signs of decline.					
6	6	Prod. Ag.	Less than one mile	EVEN AGED -- ALL AGED _____ STOCKING LEVEL -- M.S.D. _____ FOREST TYPE Open Land TOTAL BA _____ ACCEPT. GROW. STOCK BA _____ INSECTS OR DISEASE _____	LONG-RANGE OBJECTIVE Maintain open areas. SCHEDULED TREATMENT Mow at least once every 3 years.
SITE CLASS DETERMINED BY: Soil Maps STAND HISTORY: Open Land.					
SITE CLASS DETERMINED BY: _____ STAND HISTORY: _____				LONG-RANGE OBJECTIVE SCHEDULED TREATMENT	

PREPARED BY: Vermont Forest & Field, Inc. CERTIFIED BY: _____
 DATE: November, 1991 DATE: _____

USE VALUE APPRAI FOREST MANAGEMENT PLAN

MANAGEMENT PRACTICES TO BE ACCOMPLISHED WITHIN NEXT 15 YEARS
(PRIORITY, FOREST TYPE, OPERABILITY, KIND, AMOUNT, WHY)

AREA NO.	YEAR	
1	1993	<p>A Northern Hardwood stand cut for sawtimber during the 1970's. Stand structure is predominantly Hardwood sawlogs and poles, with a BA in the 60-80 range. Desirable Hardwood regeneration is found throughout. A few overstocked areas do exist in portions of the area not cut in the 70's. Most of the stand needs no work for at least 5 years, except in these overstocked areas.</p> <p>Complete limited single tree and group selection cut in overstocked areas. Maintain <u>Maintain</u> average BA of 80.</p>
2	2001	<p>Evaluate stand and schedule future treatments.</p> <p>Long term management will maintain uneven aged stand structure while producing quality sawlogs. The Q objective is 1.6. (NE-603)</p>
3	2006	<p>A high elevation, marginal site, located mostly above 2500 feet in elevation. Stand structure is generally understocked Yellow Birch and White Birch poles and sawtimber. Much of this area is inoperable due to steep, rocky terrain.</p> <p>Evaluate stand and schedule future treatments.</p> <p>This is a low priority area, considered to be unproductive.</p> <p>This area is a highly variable mix of Spruce/Fir timber and pulp, with varying amounts of Hardwood. Portions of this area are mapped as deer yard. Regeneration is variable; although some areas do support abundant Spruce and Fir. Much of the Spruce/Fir sawtimber in this stand is becoming stagnant.</p>
4	1995 2006	<p>Complete the release of desirable Spruce/Fir regeneration by completing group selection cuts approximately 40 feet in diameter. To assure that winter cover is maintained for deer, area regulation will allow approximately 20 percent of the stand to be regenerated in this manner.</p> <p>Complete second series of group selection cuts.</p> <p>Long term management will produce Spruce and Fir sawlogs and pulpwood while maintaining winter cover for deer. The management guide for deer wintering areas in Vermont will be followed.</p> <p>35 year old Red Pine plantation. Small percentage of the stand thinned in 1988.</p> <p>Complete row thinning to reduce average basal area to 120.</p> <p>Evaluate stand and schedule future treatments.</p> <p>Long term management will be based on even aged stocking guides for Red Pine. (NC-33)</p>

USE VALUE APPRAI FOREST MANAGEMENT PLAN

MANAGEMENT PRACTICES TO BE ACCOMPLISHED WITHIN NEXT 15 YEARS
 (PRIORITY, FOREST TYPE, OPERABILITY, KIND, AMOUNT, WHY)

AREA NO.	YEAR	
5	1995	50 year old Norway Spruce plantation. Scattered trees showing signs of "red rot". Complete selection thinning, removing diseased and/or defective stems. Maintain basal area of approximately 120.
5A	1993	Evaluate stand and schedule future treatments. Long term management will be based on even aged stocking guides for Spruce. (NE-6)
6	1991 - 2006	Small (1 acre) patch of stagnant Red Pine timber. Advanced Sugar Maple regeneration. Due to maturity, liquidate this stand for Red Pine poles. Long term management will allow Sugar Maple regeneration to become established. (NE-603)
		Maintain as open land by periodic mowing.

PREPARED BY: Vermont Forest & Field, Inc.

CHECKED BY:

November 1004

DATE:

DVA MANAGEMENT PLAN SUMMARY FORM (New)

Name of landowner

Town located

MEAD

1) Parcel ID # 1111384

2) Plan Preparer (last name first) VERMONT FOREST

3) Year of Entry 19 82 5) Previous Owner (last name first)

4) Year of Last Plan 19 91 6) Year Parcel Withdrawn from Program 19

7) Year of Last Inspection 19 87

8) USFS Ground Plot No. - - - - -

Following is prepared by applicant/agent

9) Landowner Name (last name first) DOWNS, ROSEMARY ANN

10) Landowner Address (street, RFD, PO Box) RIVIERA LEASIT, RAILBOX 11809 (town) RIVIERA (State) VT (zip) 05701

11) Total Forestry Acres in Parcel 488 (Grand list acreage, minus agricultural land and exclusions)

12) Stand Information: (recommended that stands not be typed smaller than 10 acres or 10% of total area)

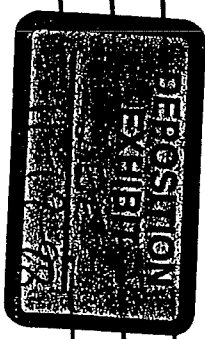
Stand #	Acres	Evenaged (existing)	Predominant Site Class	Timber Type	K.S.D.	Total BA	AGS BA	Management Activities	Scheduled Date (YYS-YY)
1	1312	21	1 site I, 2 site II, 3 site III, 4 site IV	1061	119	1615	1510	1131	1993
2	1310	1	1 site I	1061	110	1610	1315	1061	1993
3	1161	1	1 site I	1061	119	1410	1610	1021	1995
4	117	1	1 site I	1061	112	1610	1410	1021	1995
5A	112	1	1 site I	1061	113	1610	1410	1041	1993
6	112	1	1 site I	1061	113	1610	1410	1041	1993
7	112	1	1 site I	1061	113	1610	1410	1041	1993
8	112	1	1 site I	1061	113	1610	1410	1041	1993

*Amendment - If this form is used to file an amendment, indicate the revised information in the appropriate stand, and write an explanation in section 16.

13) No Activity (identify stand # and reasons) STAND 2 - HIGH ELEVATION UNDERTACKED STAND.

14) Management Activities - other (identify stand #)

LANDOWNER'S SIGNATURE: James Spalding
 CERTIFIED BY: James Spalding
 DATE: 11/13/91



DEPARTMENT (APPELLEE)
FORM #541 TOM 2/87

James Philbrook
Rutland County Forester

Date: 30 Sept 92

Anne Jones

Anne J. Jones

Date: 9/26/92

Joseph Jones

Joseph E. Jones

Date: 9/26/92

This note serves as an Amendment to Joseph & Anne Jones' Use Value Appraisal Forest Management Plan, for lands located in Mendon, Vermont.
Due to excessive rot in a plantation defined as Area #5, this stand will be liquidated.
If you have any questions, feel free to give me a call.

Jim-

RE: Joseph & Anne Jones - Amendment to Use Value Appraisal Forest Management Plan, dated December 4, 1991.

DATE: September 25, 1992

FROM: Mark D. Riley
Consulting Forester
VT Forest & Field, Inc.

TO: James Philbrook
Rutland County Forester
RR 2, Box 2161
Pittsford, VT 05763



For continued eligibility for use value appraisal, this form must be completed and filed with the Town Clerk by March 1. The upper portion must be completed by the landowner, and the lower portion must be signed by the County Forester. Filing this form with the Town Clerk will reinstate the management plan, with any revisions noted above, for the next succeeding ten years.

for the Dept. of Forests, Parks, and Recreation
Agency of Environmental Conservation
Montpelier, Vermont
James P. O'Leary

Date
16 Feb 84

This report has been reviewed and approved. Certification of the above information will be addressed in a separate report.

Date
2/14/84

Landowner's signature
Joseph & Anne Jones

Comments: Report by: Mark D. Riley-Forester
New England Forestry Foundation

No activity completed this year, but thinning of red pine plantation is scheduled for 1984.

Activities completed this year:

applicable to the succeeding ten years as previously filed.
 applicable to the succeeding ten years as revised and amended on the attached.

and that the management plan is

in the town of Mendon for the year of 1982

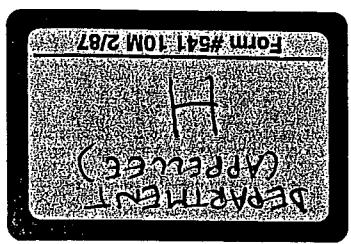
forest management plan for (parcel #, d

consistent with the objectives, standards and activities prescribed by th

Joseph & Anne Jones (landowner's name) have been

I certify that the management practices of

ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND



County Forester

ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

I certify that the management practices of J

Joseph C. Jones + Rhue (landowner's name) have been

consistent with the objectives, standards and activities prescribed by the

forest management plan for

in the town of Mendon

for the year of _____

(parcel i.d.)

and that the management plan is

applicable to the succeeding ten years as previously filed.
 amendable to the succeeding ten years as revised and

Activities completed this year:

Area⁴ - Mowed as defined in the forest management plan.

Field work has been completed on new forest management plan
required under new State standards.

Comments: Report by: Mark D. Riley
New England Forestry Foundation

Joseph C. Jones
Landowner's signature

Date

2/6/85

This report has been reviewed and approved. Certification of the above
information will be addressed in a separate report.

James S. Jones
for the Dept. of Forests, Parks, and Recreation
Agency of Environmental Conservation
Montpelier, Vermont

Date

22 Feb 85

For continued eligibility for use value appraisal, this form must be
completed and filed with the Town Clerk by March 1. The upper portion must
be completed by the landowner, and the lower portion must be signed by the
County Forester. Filing this form with the Town Clerk will reinstate the
management plan, with any revisions noted above, for the next succeeding
ten years.

ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

I certify that the management practices of

Joseph C. and Anne Jones (landowner's name) have been

consistent with the objectives, standards and activities prescribed by the

forest management plan for _____ (parcel i.d.)

in the town of Mendon for the year of 1985

and that the management plan is

XXX applicable to the succeeding ten years as previously filed.
_____ applicable to the succeeding ten years as revised and
_____ amended on the attached.

Activities completed this year:

A new Forest Management Plan was completed to meet new State standards.
While activity has been slow in years past, the owner is now interested
in proceeding with active management practices under the new Plan. A
search is currently under way to find an operator interested in thinning
Area #3 - the red pine plantation.

Comments: A few acres will be removed from the Use, Value Appraisal near
Elbow Road in 1986.

Report by: Mark D. Riley
Vermont Forest and Field, Inc.

Landowner's signature

Date

1/19/86

This report has been reviewed and approved. Certification of the above
information will be addressed in a separate report.

for the Dept. of Forests, Parks, and Recreation
Agency of Environmental Conservation
Montpelier, Vermont

PC-47

For continued eligibility for use value appraisal, this form must be
completed and filed with the Town Clerk by March 1. The upper portion must
be completed by the landowner, and the lower portion must be signed by the
County Forester. Filing this form with the Town Clerk will reinstate the
management plan, with any revisions noted above, for the next succeeding
ten years.



ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

I certify that the management practices of

JOSEPH C. and ANNE JONES

(landowner's name) have been

consistent with the objectives, standards and activities prescribed by the

forest management plan for

in the town of Mendon

for the year of 1986

and that the management plan is

applicable to the succeeding ten years as previously filed.
amended on the attached.

Activities completed this year:

Contracted with logger to row thin red pine plantation (area 3).
Actual cutting will begin early in 1987.

Comments:

Report by: Mark D. Riley

CONSULTING FORESTER

Vermont Forest and Field, Inc.

George Jones
Landowner's signature

Frank J. Jones

Date

2/13/87

This report has been reviewed and approved. Certification of the above information will be addressed in a separate report.

for the Dept. of Forests, Parks, and Recreation
Agency of Environmental Conservation
Montpelier, Vermont

James S. Jones
Signature

Date

1/7/87

or continued eligibility for use value appraisal, this form must be completed and filed with the Town Clerk by March 1. The upper portion must be completed by the landowner, and the lower portion must be signed by the County Forester. Filing this form with the Town Clerk will reinstate the management plan, with any revisions noted above, for the next succeeding ten years.

ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

I certify that the management practices of

Joseph & Anne J. Jones (landowner's name) have been

consistent with the objectives, standards and activities prescribed by the

forest management plan for _____ (parcel i.d.)

in the town of Mendon for the year of 1987

and that the management plan is

applicable to the succeeding ten years as previously filed.
 applicable to the succeeding ten years as revised and amended on the attached.

Activities completed this year:

Area 3: Row thinning of Red Pine plantations completed in westerly half of this stand. Management will proceed as defined in the Forest Management Plan.

Comments: Report by: Mark D. Riley
Consulting Forester
Vermont Forest & Field, Inc.

Landowner's signature
Joseph & Anne J. Jones

Date
2/2/88

This report has been reviewed and approved. Certification of the above information will be addressed in a separate report.

of the Dept. of Forests, Parks, and Recreation
Agency of Environmental Conservation
Montpelier, Vermont

Date
2/2/88

for continued eligibility for use value appraisal, this form must be completed and filed with the Town Clerk by March 1. The upper portion must be completed by the landowner, and the lower portion must be signed by the County Forester. Filing this form with the Town Clerk will reinstate the management plan, with any revisions noted above, for the next succeeding ten years.

for continued eligibility for use value appraisal, this form must be completed and filed with the town clerk by March 1. The upper portion must be completed (Note: In 1989 and thereafter, this form will be filed with the county forester only, by February 1).

FOR THE DEPARTMENT OF FORESTS, PARKS AND RECREATION, AGENCY OF ENVIRONMENTAL CONSERVATION, WATERBURY, VERMONT

Date 11/24/89

This report has been reviewed and approved.

Upon approval by the county forester, this signed Annual Conformance Report shall become an addendum to the landowner's forest management plan and shall constitute landowner acceptance of and signature of said plan.

Landowner(s) Signature Date 12/30/89

Report by: Mark D. Riley Consulting Forester VT Forest and Field, Inc.

Comments:

Harvest Activity Since Last Report: (to help determine if the use value appraisal program is enhancing Vermont's forest productivity, please provide the following information)

Stand # Board Foot Volume Harvested Cordwood Volume Harvested Major Species Harvested

No management activity was completed this year. In conformance with my forest management plan, the activities I have completed this year include (describe activities; if none state NONE): activities completed since last report.

I certify that the management practices on my land have been consistent with the objectives, standards and activities prescribed by my forest management plan for (town where land is located) Mendon Vermont for the year of 1988 (enter previous year) and that the Management plan is (check one of the following): applicable to the succeeding ten years as previously filed X applicable to the succeeding ten years as revised and amended on the attached.

ANNUAL CONFORMANCE REPORT USE VALUE APPRAISAL OF FOREST LAND

ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

Joseph and Anne J. Jones

I, Joseph and Anne J. Jones (landowner's name(s)) certify that the management practices on my land have been consistent with the objectives, standards and activities prescribed by my forest Management Plan for Wendon (town where land is located) for the year of 1989 (enter previous year) and that the Management Plan is (check one of the following):
 applicable to the succeeding ten years as previously filed
 applicable to the succeeding ten years as revised and amended on the attached.

In conformance with my forest management plan, the activities I have completed this year include (describe activities; if none state NONE):
Activities completed since last report:
No management activities were completed in 1989. Management will continue as defined in the forest Management Plan.

Harvest activity since last report:
(to help determine if the Use Value Appraisal Program is enhancing Vermont's forest productivity, please provide the following information)

Stand #	Board Foot Volume Harvested	Cordwood Volume Harvested	Major Species Harvested

Comments:	Report By:
	Mark D. Riley

VT Forest & Field, Inc.
Consulting Forester

Landowner(s) Signature: Joseph & Anne Jones
Date: 1/10/90

When signed, this Annual Conformance Report shall become an addendum to the landowner's forest management plan and shall constitute landowner acceptance of and signature of said plan.
Received by: [Signature]
For the Department of Forests, Parks and Recreation, Agency of Environmental Conservation, Waterbury, Vermont
Date: 18 JAN 90

For continued eligibility for use value appraisal, this form must be completed and filed with the county forester by February 1.

FORM UVA-ACR-1989

For continued eligibility for use value appraisal, this form must be completed and filed with the County Forester by February 1.

For the Department of Forests, Parks and Recreation, Agency of Natural Resources, Waterbury, Vermont

Date 8 Jan 91

Received by: *[Signature]*

When signed, this Annual Performance Report shall become an addendum to the Landowner's Forest Management Plan and shall constitute Landowner acceptance of and signature of said plan.

Date 12/20/90

Landowner(s) Signature Henry L. Jones

Date 12/20/90

Landowner(s) Signature *[Signature]*

Report By: Mark D. Riley
Consulting Forester
VT Forest & Field, Inc.

Comments:		

Harvest Activity Since Last Report:

Stand #	Board Foot Volume Harvested	Cordwood Volume Harvested	Major Species Harvested

(To help determine if the Use Value Appraisal Program is enhancing Vermont's forest productivity, please provide the following information)

No management activities were completed in 1990. Management will continue as defined in the Forest Management Plan.

I, Joseph and Anne J. Jones (Landowner's name(s)) certify that the management practices on my land have been consistent with the objectives, standards and activities prescribed by my forest management plan for Wendon (parcel I.D.) located in the town of Wendon for the year of 1990 (enter previous year) and that the Management Plan is (check one of the following):

applicable to the succeeding ten years as previously filed
 applicable to the succeeding ten years as revised and amended on the attached.

In conformance with my forest management plan, the activities I have completed this year include (describe activities; if none state NONE):
activities completed since last report:

ANNUAL PERFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

For continued eligibility for use value appraisal, this form must be completed and filed with the county forester by February 1.

For the Department of Forests, Parks and Recreation, Agency of Environmental Conservation, Waterbury, Vermont

Date 2/19/91

Received by: [Signature]

When signed, this Annual Conformance Report shall become an addendum to the landowner's forest management plan and shall constitute landowner acceptance of the plan.

Landowner(s) Signature: [Signature] Date: 2/19/91

Report By: Mark D. Riley, Consulting Forester, VI Forest & Field, Inc. Comments:

Harvest Actively Since Last Report: [] Board Foot Volume Harvested / Harvested Major Species

(to help determine if the use value appraisal program is enhancing Vermont's forest productivity, please provide the following information)

An updated forest management plan was completed during 1991. The recommendations for management listed in that plan are presently being implemented.

Joseph & Anne D. Jones certify that the management practices on my land have been consistent with the objectives, standards and activities prescribed by my forest management plan for Mendon (town where land is located) for the year of 1991 (enter previous year) and that the management plan is (check one of the following):

Annual Conformance Report Use Value Appraisal of Forest Land

ANNUAL CONFORMANCE REPORT
USE VALUE APPRAISAL OF FOREST LAND

Joseph and Anne Jones

I certify that the management practices on my land have been consistent with the objectives, standards and activities prescribed by my forest management plan for [Mendon] (town where land is located) for the year of [1992] (enter previous year) and that the Management Plan is (check one of the following):
 applicable to the succeeding ten years as previously filed
 applicable to the succeeding ten years as revised and amended on the attached.

In conformance with my forest management plan, the activities I have completed this year include (describe activities; if none state NONE):
Activities completed since last report:

Thinnings were completed in all areas where work was recommended. Future work will proceed as defined in the Forest Management Plan.

Harvest Activity since last Report:

(to help determine if the Use Value Appraisal Program is enhancing Vermont's forest productivity, please provide the following information)

Board Foot
Cordwood Volume
Major Species

Stand #	Board Foot	Cordwood Volume	Major Species

Report By: Mark D. Riley
Consulting Forester
VT Forest & Field, Inc.

Landowner(s) Signature: [Signature]
Date: 1/6/93
Landowner(s) Signature: [Signature]
Date: 1/6/93

I am signed, this Annual Conformance Report shall become an addendum to the Landowner's Forest Management Plan and shall constitute Landowner acceptance of and signature of said Plan.

Received by: [Signature]
For the Department of Forests, Parks and Recreation, Agency of Environmental Conservation, Waterbury, Vermont

For continued eligibility for use value appraisal, this form must be completed and filed with the County Forester by February 1.

for the Department of Forests, Parks and Recreation, Agency of Natural Resources

Received by:

Date

12/15/94

Landowner Signature

Date

Joseph R. Jones

Landowner Signature

Date

Thomas J. Jones
1/5/94

When signed, this Annual Conformance Report shall become an addendum to the landowner's Forest Management Plan and shall constitute landowner(s) acceptance of said Plan. All landowners must sign.

previously filed revised and amended on the attached

(check one of the following):

Plan for this parcel is applicable for a period of 10 years, including the 12-month period beginning on next April 1, as for 488 acres located in the Town of Mendon (town where parcel is located). The Management Plan for this parcel has been consistent with the objectives, standards and activities prescribed by the Forest Management Plan. I/We Joseph & Anne Jones (landowner's name(s)) certify that the management practices on

Comments: Report By: Mark D. Riley, Consulting Forester
VT Forest & Field, Inc.

Stand #	Board Foot	Volume Harvested	Cordwood Volume	Harvested	Major Species	Harvested

Please provide the following information to help determine if the Use Value Appraisal Program is enhancing Vermont's forest productivity:
Harvest Activity Since Last Report:

No management activity was completed during 1993. Work will proceed as defined in the Forest Management Plan.

Activities Completed Since Last Report:

I/We have completed the following activities for the year 1993 in conformance with the Forest Management Plan for this parcel (describe activities; if none state NONE):

City State Zip Code

Street/R.O. Box

City State Zip Code

Street/R.O. Box

Cream Hill Road

Landowner(s) Name

Mailing Address

Joseph Jones

Anne Jones

NOTE: Both copies of this form must be completed and filed with the County Forester by February 1.

STATE OF VERMONT
USE VALUE APPRAISAL PROGRAM
ANNUAL FORESTLAND CONFORMANCE REPORT

STATE OF VERMONT

RECEIVED: 10-27-98; 12:16PM;

STATE OF VERMONT
USE VALUE APPRAISAL PROGRAM
ANNUAL FORESTLAND CONFORMANCE REPORT

NOTE: Both copies of this form must be completed and filed with the County Forester by February 1.

Please print and attach additional page if necessary.

Landowner(s) Name

Mailing Address

Joseph Jones

Cream Hill Road
Street / R.O. Box
Mendon VT 05701
City State Zip Code

Anne Jones

Street / R.O. Box
City State Zip Code

I/We have completed the following activities for the year 1994 in conformance with the Forest Management Plan for this parcel (describe activities; if none state NONE):
Activities Completed Since Last Report:
No management activity was completed during 1994. Work will proceed as defined in the Forest management Plan.

Harvest Activity Since Last Report:

Please provide the following information to help determine if the Use Value Appraisal Program is enhancing Vermont's forest productivity.

Stand #

Board Foot
Volume Harvested

Cordwood Volume
Harvested

Major Species
Harvested

Comments: Report By: Mark D. Riley, Consulting Forester
VT Forest & Field, Inc.

I/We Joseph & Anne Jones (landowner's name(s)) certify that the management practices on this parcel have been consistent with the objectives, standards and activities prescribed by the Forest Management Plan for 488 acres located in the Town of Mendon (town where parcel is located). The Management Plan for this parcel is applicable for a period of 10 years, including the 12-month period beginning on next April 1, as (check one of the following):

revised and amended on the attached _____ previously filed X

When signed, this Annual Conformance Report shall become an addendum to the landowner's Forest Management Plan and shall constitute landowner(s) acceptance of said Plan. All landowners must sign.

Landowner Signature

Date

Landowner Signature

Date

Received by:

for the Department of Forests, Parks and Recreation, Agency of Natural Resources

Date

Department of Forests, Parks and Recreation

Received by: Wally Jones

Date 1/7/97

Landowner Signature Wally Jones Date 12/18/96
Landowner Signature Hans J Jones Date 12/18/96

When signed, this Annual Conformance Report shall become an addendum to the landowner's Forest Management Plan and shall constitute landowner(s) acceptance of said Plan. All landowners must sign.

previously filed revised and amended on the attached

one of the following):
for this parcel is applicable for a period of 10 years, including the 12-month period beginning on next April 1, as (check
acres located in the Town of Mendon (town where parcel is located). The Management Plan
parcel have been consistent with the objectives, standards and activities prescribed by the Forest Management Plan for
I/We Joseph & Anne Jones (landowner name(s)) certify that the management practices on this

Comments:

Report By: Mark D. Riley, Consulting Forester
VT Forest & Field, Inc.

Stand #

Board Foot

Volume Harvested

Cordwood Volume

Harvested

Major Species
Harvested

rest productivity.

ease provide the following information to help determine if the Use Value Appraisal Program is enhancing Vermont's

Harvest Activity Since Last Report:

No management activity was completed during 1996. Work will proceed as defined in the Management Plan.

Activities Completed Since Last Report:

I/We have completed the following activities for the year 1996 in conformance with the Forest Management Plan for this parcel (describe activities, if none state NONE):

*The disclosure of your social security or federal identification number is mandatory, is solicited by the authority granted by 42 U.S.C. §405(c)(2)(C)(i), and will be used by the Department of Taxes in the administration of Vermont tax laws to identify individuals affected by such laws.

City _____ State _____ Zip Code _____

Street / P.O. Box _____

Anne Jones

City _____ State _____ Zip Code _____

Street / P.O. Box _____

Mendon VT 05701

Joseph Jones

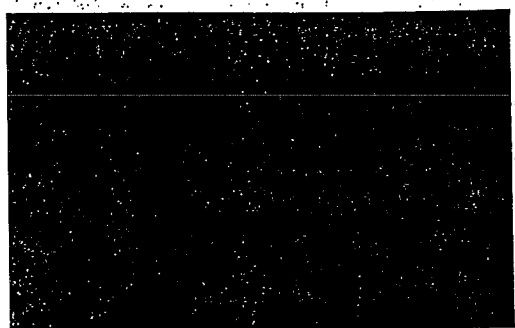
Cream Hill Road

Landowner Name(s) _____ Mailing Address _____

use print and attach additional page if necessary.

NOTE: Both copies of this form must be completed and filed with the County Forester by February 1.

STATE OF VERMONT
USE VALUE APPRAISAL PROGRAM
ANNUAL FORESTLAND CONFORMANCE REPORT



DATE OF INSPECTION

12-15-55

INSPECTING FORESTER

James S. [Signature]

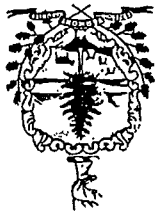
SECTION IV -- INSPECTING FORESTER RECOMMENDATIONS

- 1. Management plan and field treatments are satisfactory. I recommend this landowner be continued in the Land Use Appraisal Program. X
- 2. Other: Explain problems and give recommendations: Owner has not followed management recommendations too closely. His forester has already revised his plan and has spoken with the owner regarding his responsibility to the program. Another year will hopefully demonstrate a more active role by the owner and field accomplishments.

SECTION III -- FIELD CHECK

- 1. Have prescribed treatments been performed in conformance with the management plan? Yes No
- If "No", explain why not. Pine stand needs to be thinned Area #3. Area #4 was mowed to keep open. Area #1 had some fuelwood harvested. Property lines were not painted.
- 2. From a random sample of forest stands (at least 1 stand sampled):
 - a. Does the stand description in the management reflect the conditions on the ground? Yes No If not, explain:
 - b. Number of stands sampled: Areas 3, 3A, 4 and 5

FEB 7 11 34 AM '57



State of Vermont

AGENCY OF ENVIRONMENTAL CONSERVATION

Department of Forests, Parks & Recreation
Pittsford Regional Office
RFD 1, Pittsford Academy
Pittsford, Vermont 05763

Department of Fish and Game
Department of Forests, Parks, and Recreation
Department of Water Resources & Environmental Engineering
Natural Resources Conservation Council

Box 89B
August 8, 1985

Mr. and Mrs. Joseph Jones
Cream Hill Road
Mendon, Vermont 05701

Dear Mr. and Mrs. Jones:

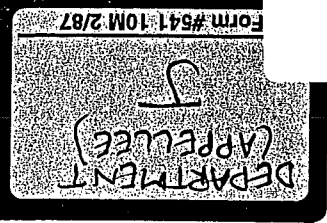
Over the past several weeks I have visited each woodland property which entered the Use Value Appraisal in 1980 and 1981. By statute, each property is reviewed at least every five years to assure compliance with good forestry practices.

Mark Riley has updated and revised your forest management plan for the next fifteen years. Your present plan appears to repeat many of the same recommendations made in the original plan dated October, 1980. Actually over the past five years very little has been accomplished that was outlined for activities to be completed in your forest land.

You have a conformance report due prior to March 1, 1986. At that time I will expect documentation of sincere effort on your behalf to implement Mark's recommendations. Especially Areas 1 and 3 need attention.

James Philbrook, County Forester

JP/vc



PC - 61

USE VALUE APPRAISAL
CONFORMANCE INSPECTION FORM

SECTION I -- GENERAL INFORMATION

Participant's Name Joseph & Anne Jones
Address Box 580
Rutland, VT 05701
Year entered program 1982
Town Mendon
Grand List Description 528 Ac. plus improvements
Inspection Date _____

SECTION II -- MANAGEMENT PLAN

1. Copies on file: Dept. of Forests & Parks Yes No _____

Town Clerk

2. Plan prepared by: Mark D. Riley

3. Acres Woodland: 488

4. Does plan cover succeeding 10 years? Yes _____

5. Does plan appear adequate. If not, why? Yes _____

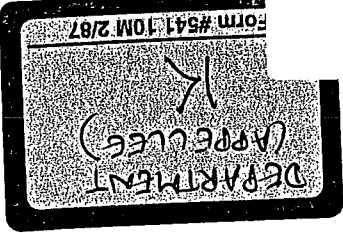
6. Were any areas scheduled for treatment over the last five years? Yes No _____
If "yes", give Area # and type of treatment prescribed: _____

#3 (85-86) - Row thin red pine

#2 (87-89) - Patch cut - hardwoods in heavy sp & fir regeneration

#1 (87-89) - thin for firewood

(OVER)



DATE OF INSPECTION 12/27/88

INSPECTING FORESTER

(For JSP)

Stand 1 could use some work; outlets close to drainage

Explain problems and give recommendations: Water bars near landing in

2. Other:

Landowner be continued in the Land Use Appraisal Program. Yes

1. Management plan and field treatments are satisfactory. I recommend this

SECTION IV -- INSPECTING FORESTER RECOMMENDATIONS

b. Number of stands sampled: 1, 2, 3, 3A

If not, explain:

on the ground? Yes No

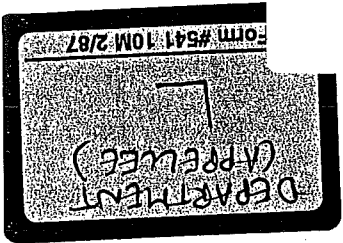
a. Does the stand description in the management reflect the conditions

2. From a random sample of forest stands (at least 1 stand sampled):

If "No", explain why not Row thinning in 3/4 of stand no other activity

1. Have prescribed treatments been performed in conformance with the management plan? Yes No

SECTION III -- FIELD CHECK



UVA Inup. Case for re: cutting
+ need to revise plan to
reflect present activity + what
has happened.

Aug 26 92 -
UVA Inup. call
for re cutting + need
to revise plan to
reflect present
activity + what
has happened.

Spoke with Randy - Jones gave
loggers ^{Devin's crew} instructions to
clear spruce stand along with
red pine. Check AMP + Spruce
for violations.

12 Aug - 92
Spoke with Randy
Jones gave loggers
Devin's crew instructions
to clear spruce stand
along w/ red pine.
Check AMP + Spruce for
violations.

Muddy water
Reported on Barron's
by Kathy.
rest + field not
involved.

Muddy water
reported on Barron's
by Kathy.
12 Aug 92
Forsyth field

has spoken with Dean who he said had been given
a copy of plan to implement - also that Riley
has been request to ?

F

Mrs. Spitzer - Dean who he has
said had been given a copy
of plan to implement - also
that Riley had been request
to be seen in future.

Joe Jones called

8/30pt/92

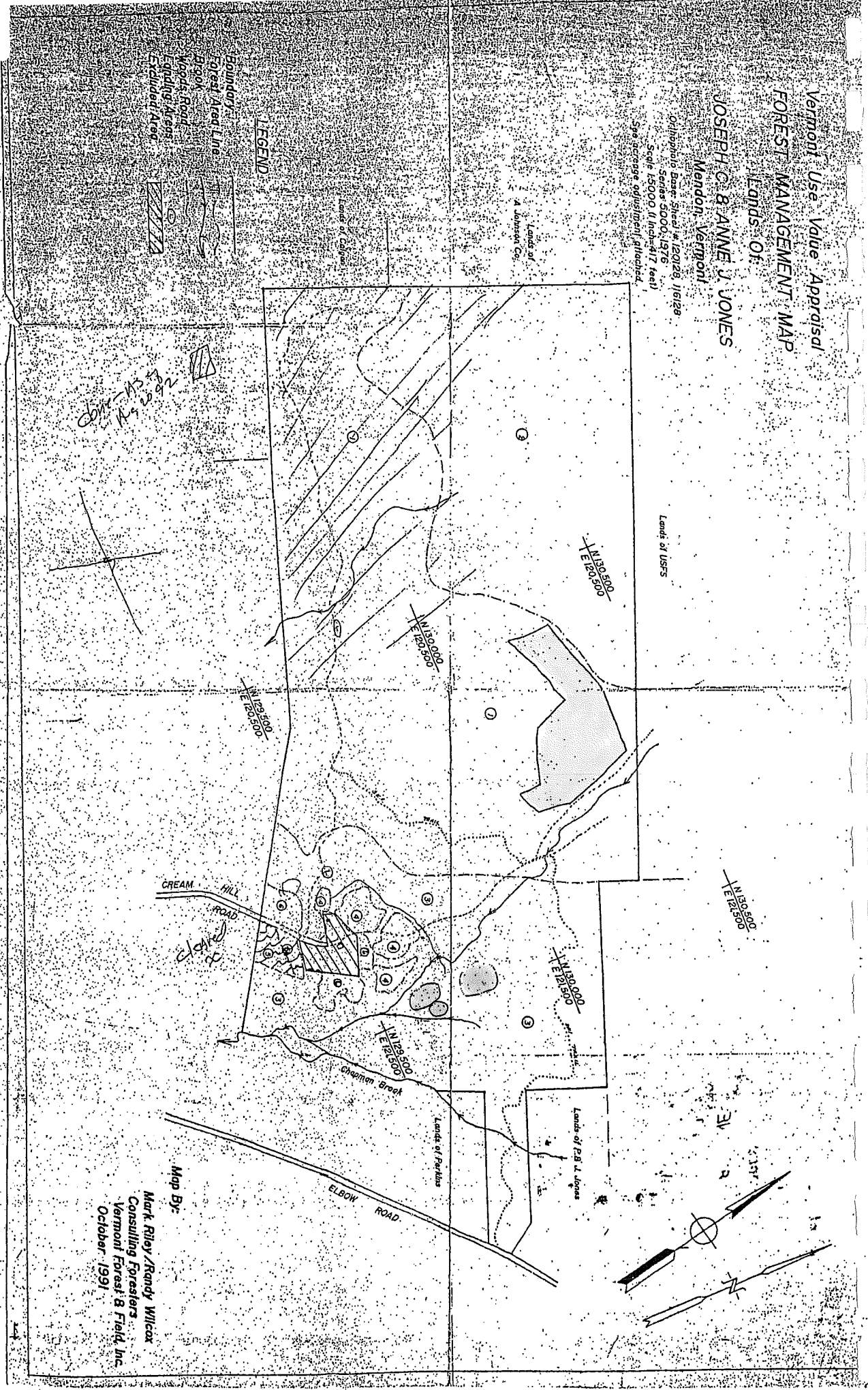
Vermont Use Value Appraisal
FOREST MANAGEMENT MAP

Lands Of:

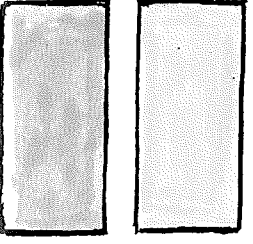
JOSEPH C. BAWNE & J. JONES
 Mendon, Vermont

Colchester Base Sheet # 120128, 112128
 Series 5000-1976
 Scale 1:5000 (1 inch = 127 feet)
 See acreage adjustment attached.

Lands of USFS



Highlight Key



Stand 1 "Dog Leg"

Stand 3 "Patch Cuts"

Map By:
 Mark Riley /Randy Wilcox
 Consulting Foresters
 Vermont Forests & Field, Inc
 October, 1991.

Vermont Agency of Natural Resources
A.M.P. INSPECTION REPORT

REPORT No.: 81492
Received By: Reay, Dr. Robert F. & Dan
Complainant: Cream Hill Rd Mendon
Address: Book being studied by logging operation
Nature of Complaint: Book being studied by logging operation

Investigated By: Reay
Complainant Contacted: Yes
Telephone Person: Called Jim Larson to schedule site visit. Ca
Notes: Plants better, left message on machine.

Date of Inspection: 8/14/92
Time: AM/PM
Town: Mendon
County: Rut
Location of Logging Operation: 1/2 mile no. of Rd # 4
From Nearest State Highway: Route 100
Logger/Operator: Donor

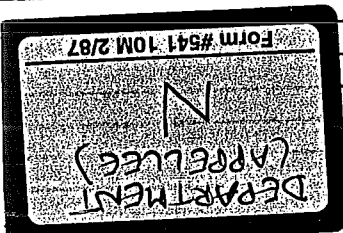
Landowner(s): Joe Green Rd
Address: for Green Hill Rd
Persons Spoken With: George Betty, Chuck Kohn, Skidan operator
Address: Tel.:
Recommended AMPs/Actions to Eliminate Discharge: Red bridge should have been
made. Alternate crossing was clear of stream but
been discontinued & connected @ time of visit. Other
upstream dump were also mentioned, but no connection
one water bar dumps close to stream - need hay bale check at
per Amr Figure 7, page 21

Recommended Advisory Team Visit? Yes No
Date of Reinspection: _____
Inspected By: _____
Technical Team Members: _____
Findings: _____

Recommendation for Further Actions: Problems appeared to be typical of a
short cuts by employees due to lack of supervision in
woods

Environmental Conservation Investigator: [Signature]
Landowner/Agent: [Signature]
Investigator: [Signature]
Copy To: Logger
Other: _____

Department of Forests, Parks and Recreation
PC - 68
Date: 8/15/92



Disposition

Site Reinspection

Initial Site Inspection

Follow-Up

Complaint

Jones

Hill Rd

Landing

knob

Upper Landing

Violation

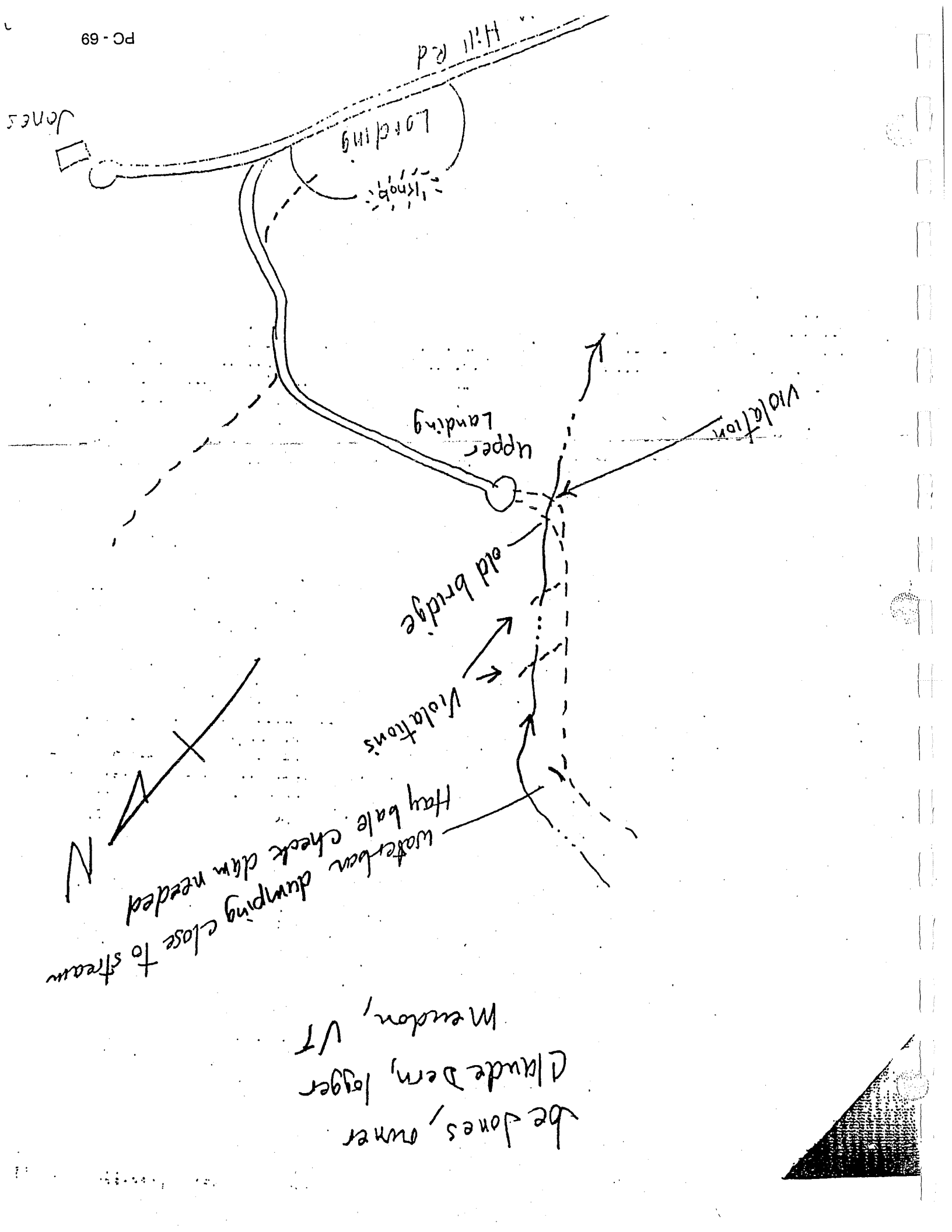
old bridge

Violations

water been dumping close to stream
check dam needed
Hay bale

N

the Jones, owner
Claude Dem, logger
Mendon, VT



CURRENT USE PROGRAM CONFORMANCE INSPECTION REPORT

- (1) Landowner Name: Joseph + Anne Jones
- (2) Current Use Parcel I.D.#: 8.10000-11384 (3) Town: Mendon
- (4) Inspection Date: 10/18 + 11/5/96
- (5) Acres Woodland: 492.9
- (6) Is management plan adequate? Y Comments:
- (7) Were any areas scheduled for treatment over the last five years? Yes No

Stand #	Work	Year	Status
1	THINNING	93	Complete (see 8)
3	Group Selection	93	Partial (see 8)

(8) Have prescribed treatments been performed in conformance with the management plan? Yes X No Comments:

(9) Parcel recommended for continuation in UVA program? Yes X No
 STAND # 1 - Possible 30 ac ± thinned below standards for residential Acq
 STAND # 3 - 3 areas totaling 4.5 acres were cleared - convert to of

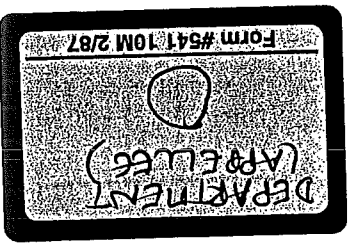
NEED TO RETURN AND TAKE BR PLOTS IN AREA OF STAND
 IN QUESTION.

Inspecting Forester: [Signature]
 Date: 11/6/96

Inspection Basis
 File Inspection _____
 Discussion _____
 Field Inspection X _____
 with _____

TM 2/6/95

To	From	Date	Post-It® Fax Note
DAVE STEVENS	DAVE	2/14	7671
Co. Dept.	Co.	Phone #	Fax #
EPH	WINDFORD	483-2735	241-1481



Department of Fish and Wildlife
Department of Forests, Parks and Recreation
Department of Environmental Conservation
State Geologist
Natural Resources Conservation Council



AGENCY OF NATURAL RESOURCES
Department of Forests, Parks & Recreation
RR #2, Box 2161
Pittsford, Vermont 05763-9713
Tel.: (802) 483-2314
Fax: (802) 483-9374
VT Relay Service: 1-800-253-0191

13 November 1996

Mr. and Mrs. Joseph Jones

Route 4 East
P.O. Box 1809
Rutland, VT 05701

Dear Mr. Jones:

As you'll remember, Lisa Thornton and I visited your property on 18 October 1996 for a routine inspection of your forest land enrolled in the Use Value Appraisal (UVA) program. We were unable to finish our inspection of the 490.9 acre parcel then and I returned on the afternoon of 05 November 1996 with Tim Morton, County Forester (Windham & Windsor), to complete the inspection.

At the conclusion of my inspection, I had identified three items of concern about the logging activity that occurred in 1992-93 that could possibly jeopardize your enrollment in the UVA program. Item number one is the skidder bridge that was not removed from the stream channel in Stand 3. The failed bridge has altered the stream from its original path. Russell Rey was in contact with you about this situation and I will defer to his recommendation to remove it after he has consulted with a fisheries biologist. It must be removed according to the Acceptable Management Practices (AMPs) and the UVA requirements that state all roads and stream crossings will meet the AMP standards.

The second item of concern is the treatment that occurred in Stand 3. The prescription in your management plan calls for "the release of desirable Spruce/Fir regeneration by completing group selection cuts approximately 40 feet in diameter" and "to assure that winter cover is maintained for deer." The patch cuts of 1.0, 1.5, and 2.0 acres are much larger than they were supposed to be. While there is some Spruce/Fir regeneration in these openings, it is not adequate and the hardwood stems will probably dominate.

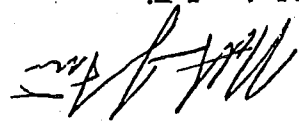
The third concern I have is an area in the eastern part of Stand 1. It is west of the hiking trail and in the corner of your property and the Stand 2 boundary line shown on the map. It appears that portions of this area may have been cut below the minimum standards set by the UVA program for acceptable growing stock and what was prescribed in the plan. In short, most of the valuable trees were harvested and the poorer quality trees were left. I will need to revisit this site to sample the basal area and determine the total acreage affected. I would like to collect this information Thursday, 21 November 1996.



Mr. and Mrs. Joseph Jones
13 November 1996
Page 2

I cannot decide on a recommendation for your continued participation in the UVA program, until analyzing the data I need to collect. I would like to work with you to resolve this matter quickly, possibly avoiding a penalty. Please feel free to contact me at the phone number or address listed above should you have questions or concerns about this situation.

Sincerely,



Nathan J. Fice

Rutland County Forester

cc: Jay Maciejowski, District Forester
Russell Reay, AWP Forester

State of Vermont

Department of Fish and Wildlife
Department of Forests, Parks and Recreation
Department of Environmental Conservation
State Geologist
Natural Resources Conservation Council

November 18, 1996

Mr. Joseph Jones
Route 4 East
RR 2 Box 7552
Rutland, VT 05701

Dear Mr. Jones:

You will recall that on October 25, 1996 Jim Lawson and I visited your land in Mendon in response to an alleged violation of *The Acceptable Management Practices For Maintaining Water Quality on Logging Jobs in Vermont*, AMPrs for short. On that date we confirmed that a violation had occurred in the form of a logging bridge which had been constructed to temporary standards and had not been removed upon completion of the operations. At this point it is worth noting that the location of the bridge is a good one, the decision to construct the bridge was proper, and the construction methods and techniques were appropriate for a temporary bridge.

The violation came in the form of the decision to leave the bridge in place. The waterway (square feet of opening) under this bridge was never more than 15 square feet, and proper design standards require a permanent structure at this location to have a waterway of at least 34 square feet. A six-foot diameter culvert, or bridge with an 11-foot span 3 feet above the water meet this criteria. Because the bridge had less than half its needed capacity, it comes as no surprise that it plugged with debris and failed. The stream has carved a new channel in a way that will make future crossings at this point difficult and disproportionately disruptive.

I have spoken with Chet Mackenzie, the Vt. Department of Fish and Wildlife's fisheries biologist for this district, and Environmental Enforcement Officer, Don Gallus about a proper course of action to be taken. The first order of business at this time is to do nothing. Brook trout have spawned, and any action which causes turbidity can be detrimental to the successful hatching of the eggs. Next summer, however, you are hereby required to arrange for the removal of the bridge. If you can get the logger to return to perform the task, that is fine, but the State's position is that, due to the passing of several years since the violation, you are responsible for corrective action.

In late July or August, 1997 following several days without rain, you should secure an excavator or dozer with a winch to remove the bridge. The objective must be to remove all the obstruction and accumulated gravel with the least possible impact on the stream, while restoring as thoroughly as possible the unobstructed stream channel. This mission should take no more than two hours, but will depend on what you want to do with the bridge components after they have been pulled from the stream. Feel free to call me to discuss the matter beforehand, but please be certain to notify me when the work is planned so I can monitor the action.

Sincerely,

Russell S. Reay
State Lands Forester

cc: Jim Lawson, Vt Forests Products Assn; Don Gallus, EBO; Chet Mackenzie, fisheries biologist



PC-73

AGENCY OF NATURAL RESOURCES
Department of Forests, Parks & Recreation
RR #2, Box 2161
Pittsford, Vermont 05763-9713
Tel: (802) 483-2314
Fax: (802) 483-9374
VT Relay Service: 1-800-253-0191



40 10 07

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28

20 10 07

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50 10 40

16

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11

20 10 07

14

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1.5 90

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8

10

Emp Plot

14

8

Emp NSE 3896 slope
T A u



AVE = 45 12 33

10 10 10

60 30 40

30

8

12 10

2 2

10 14

30 10 30

10

2 CH from level

16 12

40 10 30

10

14

END

20 10 10

28

11

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10

STATE OF VERMONT

AGENCY OF NATURAL RESOURCES

DEPARTMENT OF FORESTS, PARKS & RECREATION

RR 2 Box 2161, Pittsford, Vermont 05763-9713

Telephone (802) 483-2314 - FAX (802) 483-9374

e-mail: NRCR@amr.pitts.vt.us

MEMORANDUM

NRCR

TO:

Brian Stone, Chief of Forest Management

FROM:

Nathan J. Fice, Rutland County Forester

DATE:

November 26, 1996

SUBJECT:

U.V.A. Violation

RE:

Joseph and Anne Jones

RR 2, Box 7552

Rutland, VT 05701

802-773-8251

Land in Mendon

Parcel # 8.10000-11384

This is to report an adverse inspection of the Joseph and Anne Jones parcel in Mendon that is 492.9 acres of forest land enrolled in the Use Value Appraisal (U.V.A.) program. I conducted a routine inspection of a portion of this property on 18 October 1996 with Lisa Thornton, Forestry Technician. I returned on 05 November 1996 with Tim Morton, County Forester, to finish the inspection. On 21 November 1996, Tim and I visited the property again to collect basal area and acreage figures. A timber sale had occurred on the property in 1992-93. Stands 1, 3, 5, & 5A were treated.

The management plan, approved and dated November 1991, called for "limited single tree and group selection cut in overstocked areas. Maintain average BA of 80." The inspection revealed that 15.8 acres of Stand 1 was treated contrary to the uneven-age prescription for Stand 1 in the management plan and is currently below the minimum standards set by the U.V.A. program for an uneven-age Northern Hardwood forest type. The 17 data plots revealed the following average basal area figures: Total BA = 45, Acceptable Growing Stock BA = 12, Unacceptable Growing Stock BA = 33.

DEPARTMENT
(APPEALS)
S

The plan also called for "the release of desirable Spruce/Fir regeneration by completing group selection cuts approximately 40 feet in diameter. To assure that winter cover is maintained for deer, area regulation will allow for approximately 20 percent of the stand to be regenerated in this manner." in Stand 3 which includes a mapped deer yard. The inspection revealed that three patch cuts of 1.0, 1.5, and 2.0 acres were located in the Spruce/Fire component of Stand 3. This treatment was contrary to the management plan's prescription for Stand 3.

The main skid road used to access the patch cuts in Stand 3 crosses a stream channel. A bridge was used at this crossing for the harvesting operation and was not removed upon completion of the timber sale. Please read the enclosed letter from Russ Reay to Mr. Jones. This is contrary to the U.V.A. requirements that all roads and stream crossings on the property shall conform to the "Acceptable Management Practices."

In addition, 14.87 acres was transferred to a Mr. Cort Jones in February of this year. Please refer to the enclosed subdivision map. The resulting parcel is less than the 27 acres required to remain in the program.

Enclosures

cc: Jay Maciejowski, District Forestry Manager, w/o enclosures
Joseph and Anne Jones, Landowner, w/o enclosures

NOTICE OF DEVELOPMENT OR DISCONTINUANCE FROM
 LAND USE VALUE APPRAISAL PROGRAMS
 PLEASE READ INSTRUCTIONS ON BACK
 PLEASE PRESS HARD WHEN WRITING

VERMONT
 DEPARTMENT OF TAXES
 MONTPELIER VT 05602



SECTION A To be completed by Landowner or Town Official Name of Landowner: Joseph + Anne Jones Street, P.O. Box or RFD: RR 2 Box 7552 City: Rutland, VT 05701 State: _____ Zip Code: _____	
Parcel Identification No.: Jones. 6 81 TOWN: Mendon	Date of original use value appraisal approval: 1981 Date of development or discontinuance: 3/31/96

Check appropriate boxes; and explain reasons for withdrawal or loss of eligibility below

- Voluntary withdrawal from appraisal program
- Loss of eligibility but no development
- Withdrawal due to development
- Full parcel of land withdrawn
- Portion of parcel withdrawn (please describe)

Description: **Entire remaining parcel after 4.67 and 10.2 acres conveyances. No acreage enrolled for 1996 tax year.**

Reason for withdrawal: **Adverse inspection report - harvesting contrary to management plan. Land use change tax of \$1,547.00 plus \$600 licn release fee due**

Please remit payment to the Town of Mendon, RR 2 Box 8785, Mendon, VT 05701. The town will notify Beverly Gray, VT Tax Dept, Montpelier, VT 05709-1401 when they receive payment so she can issue lien

Estimate of: Number of acres withdrawn **478.03**
 Number of acres developed **20.3**



Signature of Landowner _____ Date _____
 OR
 Signature, Town Chief Assessing Official or Chairman of the Board of Listers _____ Date _____

Mail all copies of completed form to: Property Valuation & Review Division
 43 Randall St., Waterbury VT 05676-1512

SECTION B To be completed by the PROPERTY VALUATION & REVIEW DIVISION Number of acres withdrawn from use value appraisal: 478.03 Fair Market Value \$: 364,293.00 Number of acres developed: 20.3 Fair Market Value \$: 15,470.00 Date of Determination: 1/15/97 Signature - Director, Property Valuation & Review: William B. Hayden Date Issued: 1/15/97	
--	--

NOTICE OF ADVERSE INSPECTION REPORT

Withdrawal From Use Value Appraisal

To: Joseph + Anne Jones From: Director

Prop. Val. & Review

43 Randall Street

Waterbury, VT 05676

RR 2 Box 7552

Rutland, VT 05701

and

Joey Wilcox
Chief Assessing Official

Pursuant to 32 VSA, section 3756(i), this Division has withdrawn your enrolled forest land in the Town of Mendon from use value appraisal.

32 VSA, section 3758(d) states, "Any owner who is aggrieved by a decision of the

department of forests, parks and recreation concerning the filing of an adverse inspection

report or the denial of approval of a management plan may appeal to the commissioner of the

department of forests, parks and recreation. An appeal of this decision of the commissioner

may be taken to the superior court in the same manner and under the same procedures as an

appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter

131 of this title."

The above allows for an appeal either to the commissioner of the department of forests, parks and recreation or to the superior court. Such an appeal must be received in the office of the commissioner or the office of the pertinent superior court before the close of business on the 21st day after the date of mailing of this notice. The filing fee is \$150 for an appeal to the superior court. There is no filing fee for an appeal to the commissioner.

William B. Hayden
Director

1/15/97





NOTICE OF ASSESSMENT

Withdrawal From Use Value Appraisal

To: Joseph + Anne Jones

From: Director
Prop. Val. & Review
43 Randall Street
Waterbury, VT 05676

RR 2 Box 7552
Rutland, VT 05701

and

Jody Wilcox
Chief Assessing Official

Pursuant to 32 VSA, section 3757(c), this Division has assessed that portion of your parcel in the Town of Mendon that has been withdrawn from use value appraisal. This portion is identified as 478.03 acres remaining and its value for the purpose of computing the land use change tax has been determined to be \$ 364,293.00 as of 1/15/97.

32 VSA, section 3758(b) states, "Any owner who is aggrieved by the determination of the director of the fair market value of classified land for the purpose of computing the land use change tax, or of the fair market value appraisal of a particular property as set by the director under section 3756(h) of this title, may appeal therefrom to the director, and from there in the same manner and under the same procedures as an appeal from a decision of a board of civil authority, as set forth in subchapter 2 of chapter 131 of this title.

The above allows for an appeal either to the director or to the superior court. Such an appeal must be received in the office of the director or the office of the pertinent superior court before the close of business on the 21st day after the date of mailing of this notice. The filing fee is \$15 for an appeal to the director and \$150 for a court appeal.

William B. Hayden
Director
1/15/97

COURT REPORTERS ASSOCIATES

1 THE COURT: Okay.

2 (A recess was taken.)

3 (The hearing resumed.)

4 THE COURT: Okay. Ms. Ellis?

5 MS. ELIAS: State's ready to call its

6 next witness. Mr. Jim Philbrook.

7 THE COURT: All right. Mr. Philbrook.

8 JAMES PHILBROOK, having been duly sworn to tell the

9 whole truth and nothing but the truth, testified as

10 follows:

11 DIRECT EXAMINATION BY MS. ELIAS:

12 Q. Please state your name.

13 A. James S. Philbrook, Senior.

14 Q. What's your occupation?

15 A. I am a retired forester.

16 Q. Are you currently employed?

17 A. No. I do some consulting on my own, but

18 I'm working for myself.

19 Q. So you're employed as a consultant now,

20 self-employed?

21 A. Yes.

22 Q. What's your former employment?

23 A. I worked for the Department of Forest and

24 Parks as a forester.

25

COURT REPORTERS ASSOCIATES

1 concerning the Jones' forest management plans from
 2 Nate Rice and has heard testimony concerning the
 3 conformance inspection component of that program.
 4 I would like to call your attention to the
 5 year 1985. I realize this is going back some time,
 6 and ask whether you recall conducting a conformance
 7 inspection on the Jones property in that year?
 8 A. I remember doing it. I don't know the
 9 details without seeing some documentation, but I
 10 remember there being a file with records to that
 11 effect, yes.
 12 Q. Do you recall conducting an inspection of
 13 the Jones property in 1985?
 14 A. Yes.
 15 Q. Do you recall specifically what you learned
 16 and observed during that inspection?
 17 A. Not exactly, no. I would have to see
 18 something to refresh my memory, I think.
 19 Q. Would you take a look in the book that's on
 20 the table in front of you, please? Take a look at
 21 Tab I. Take a moment to read that item and tell me
 22 if that refreshes your recollection about the
 23 inspection you did of the Jones property in 1985?
 24 A. Yes. That's what I did in '85 as a result
 25 of the inspection.

1 Q. Okay. Can you tell us what you learned and
2 what you observed about the Jones property in 1985
3 based on that inspection?

4 I'm not asking you to read from the report
5 specifically, but I'm asking you to look at that
6 report; look away; let me know if it refreshes your
7 recollection about what you did out there in 1985.
8 A. Okay. I looked at portions of the

9 property and to see if what was happening there
10 reflected what the owner had intended to do by way of
11 what was written in the management plan, and then I
12 made some notes in the inspection report that the
13 owner was a bit behind on some of his work that he
14 had hoped to get done.
15 Q. Can you tell us whether you reached a

16 conclusion about whether this tract was in
17 conformance with the Jones Forest Management Plan?
18 MR. RYAN: Object, your Honor.

19 Relevance. This is 1985.
20 MS. ELIAS: Your Honor, I think
21 we've established that this inspection served as the
22 basis for Mr. Rice's fall review when he went out to
23 review the property both in 1988 --

24 THE COURT: We'll take the answer.
25 MS. ELIAS: Okay. I forget what my

COURT REPORTERS ASSOCIATES

1 explain why not," and I said, "pine stand needs to be
 2 thinned and that was area three. Area four was mowed
 3 to keep open. Area one had some firewood harvested.
 4 Property lines were not painted. And number two in
 5 that section --."

6 MS. ELIAS: Do you need him to read

7 number two?

8 MR. RYAN: No. Just one.

9 MS. ELIAS: Okay. That's good.

10 BY MS. ELIAS:

11 Q. So the conclusion was that the tract was

12 not being managed in conformance with the plan for

13 those reasons that you listed on this inspection form

14 right?

15 A. Yes.

16 Q. Did you make a recommendation about

17 whether Mr. Jones should be continued in the UVA

18 program following this inspection?

19 A. I did not recommend he not be continued in,

20 but I made, I guess, a comment that he needed to live

21 up to the spirit of the plan and the goals that he

22 established when he signed the plan.

23 Q. Can I call your attention to section four

24 of that same exhibit I and ask you to take a look at

25 the inspecting forester recommendations?

COURT REPORTERS ASSOCIATES

1 A. Yes.

2 Q. And so I, again, ask you, did you make a
 3 specific recommendation that Mr. Jones be continued
 4 in the plan or in the program?

5 A. Yes. I recommended that he stay with the
 6 program, if that's your question.

7 Q. Yes. That's my question. And then can I
 8 also call your attention to paragraph 2 in that same
 9 section with regard to what you previously mentioned
 10 as recommendations that you made?

11 MR. RYAN: She's called his attention
 12 to it, Your Honor. I don't hear a question.

13 MS. ELIAS: I'm asking him to look at
 14 it at this point in time.

15 THE COURT: All right. Take a look
 16 at it.

17 THE WITNESS: Thank you. Okay.

18 BY MS. ELIAS:

19 Q. Mr. Philbrook, you indicated that you
 20 recommended that this landowner be continued in the
 21 program but that you made some recommendations to
 22 him. Do you recall what those recommendations to
 23 him were?

24 A. Apparently, I recommended that he work more
 25 closely with his forester and try to get caught up on

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1 Q. And how were you in contact with them?
 2 A. I apparently wrote him this letter
 3 informing him that I was there and that I had certain
 4 expectations of him being more involved with the
 5 management of the property.
 6 Q. And, in fact, calling your attention to the
 7 second paragraph of exhibit J, can you read the last
 8 -- can you read that paragraph?
 9 A. The whole paragraph?
 10 Q. Uh-huh.
 11 A. "Mark Riley has updated and revised the
 12 Forest Management Plan for the next 15 years. Your
 13 present plan appears to repeat many of the same
 14 recommendations made in the original plan dated
 15 October of 1980. Actually, over the past five
 16 years, very little has been accomplished that was
 17 outlined for activities to be completed in your
 18 forest plan."
 19 Q. And you went on to list what your
 20 expectations were of Mr. Jones following this, and in
 21 your own words right now, not reading from the
 22 letter, what were those expectations?
 23 A. Well, there was a plantation that needed to
 24 be thinned, and I believe the plan had indicated they
 25 were going to do some removal of low quality material

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1 that -- what did you say it was? From a forester on
 2 a neighboring property?
 3 A. Yes.
 4 Q. What did you do in response to receiving
 5 that information?
 6 A. I went to the Jones property and --
 7 Q. Excuse me. Did you make any other inquiry
 8 prior to going to the Jones property?
 9 A. I may have contacted the forester I thought
 10 was involved. Mark Riley.
 11 Q. Can I call your attention to exhibit L and
 12 see if that refreshes your recollection? I realize
 13 this is nine years ago.
 14 A. Well, it appears that on the 12th of
 15 August, I also spoke with Randy.
 16 Q. Who would Randy be?
 17 A. It's Randy Wilcox. He's a forester, and at
 18 the time he was working with Forest and Field which
 19 is a management consulting firm doing management work
 20 for Mr. Jones. At least I thought he was.
 21 Q. And did you learn anything from Mr. Wilcox
 22 that made you -- that impacted your decision to do an
 23 inspection?
 24 A. He mentioned that a pine stand had been
 25 eliminated or cut which had not been scheduled to be

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1 BY MS. ELIAS:

2 Q. And the note that you observed on exhibit M
3 regarding a date and the UVA inspection, do you
4 recognize the handwriting?

5 A. Yes. That's mine.

6 Q. Okay. Thank you. Do you recognize exhibit
7 M, Mr. Philbrook?

8 A. Yes, I do.

9 Q. And what is exhibit M?

10 A. It's the scale map prepared for the Jones
11 property for the use value plan.

12 Q. And have you seen that map before?

13 A. Yes, I have.

14 Q. And where did you see it?

15 A. It was in the file at the Forest and Parks
16 office.

17 Q. Did you refer to this map at the time of
18 your 1992 inspection?

19 A. Yes, I believe I did. That's when I made
20 the notes on that map.

21 Q. And when you say you made notes on that
22 map, are you referring to the handwriting on the
23 bottom left corner that says UVA inspection, August
24 20, 1992?

25 A. Yes.

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1 Q. And do you remember where you went specifically on the property during your 1992 inspection?

2

3 A. I can't say specifically, no.

4 Q. Okay. Would looking at any notations on that map assist your recollection of where you --

5

6 A. In a general way, yes, but still it's hard to recall. I saw the plantations --

7

8 Q. Well, wait. I'll go through this in question and answer form. Would you please approach the map and I'll ask you specific questions about where you were on that day, and to the best of your recollection as you can recall you should answer the questions.

9

10 Do you remember where you parked on the date of your, let's just call it your August 1992 inspection since we are not clear on the exact date?

11

12 A. Not exactly, but it was -- I believe it was before I got to the house, and I think that's where the log landing was where they were yarding logs and the sale was in progress, and wherever that yard was is probably where I parked, and exactly where it is on this map, I don't know where they yard the logs.

13

14 I don't know.

15

16 Q. But you seem to have a clear recollection

17

18

19

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1 that you parked prior to the house up the road?
 2 A. I believe I parked in this area here
 3 somewhere, but that's the best I can say.
 4 Q. Okay. Do you recall whether you spoke to
 5 Mr. Jones that day?
 6 A. I do not recall seeing Mr. Jones that day.
 7 Q. I asked you whether you spoke to him and
 8 you answered whether you recalled seeing him. Did
 9 you see him that day?
 10 A. No.
 11 Q. Did you speak to him that day?
 12 A. In the notes there, it said I talked to Mr.
 13 Jones on the 26th. If I was out there on the 26th,
 14 then -- otherwise, so it's possible I called him when
 15 I got back to the office.
 16 Q. Okay. But my understanding, your
 17 testimony that you don't have a recollection of
 18 speaking with him on the property that day.
 19 A. I did not speak to him on the property that
 20 day.
 21 Q. Okay. Thank you. To the best of your
 22 recollection, can you recall where you went on the
 23 property starting with after you parked your car?
 24 A. I believe I followed this woods road, and
 25 my concern was getting up to where they were cutting,

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1 and I believe this is the brook that was running so I
 2 was concerned about the source of that, but I believe
 3 it was up from here up this way into here.
 4 MR. RYAN: Object, your Honor. Ask
 5 that it be stricken. He's speculating. Unless he
 6 can testify with certainty where he was, I would ask
 7 him not to guess.
 8 BY MS. ELIAS:
 9 Q. Mr. Philbrook, are you reasonably certain
 10 as to the path you took across the property on the
 11 date of your August 1992 inspection?
 12 A. Yes. Yes.
 13 Q. Okay.
 14 A. I mean, within --
 15 Q. You answered the question that you're
 16 reasonably certain. Now, staying right there with
 17 the map, I have a few more questions, and it's
 18 important for the record here that when you describe
 19 a path that you took, when you say "here" and you're
 20 pointing to a map, we need a little bit more detail
 21 so that we can understand when we read a transcript
 22 later where you went.
 23 So if you could use north, south, east,
 24 west, and describe exactly what appears on the map
 25 that you're pointing at, that will help us. So you

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1 parked your car on the road near the house and then
 2 you proceeded in what direction?
 3 A. It would be northeasterly -- no.
 4 Northwesterly direction.
 5 Q. Okay. And that map is delineated by stand
 6 boundaries and stands; is that correct?
 7 A. That is correct.
 8 Q. And can you tell us the number of the stand
 9 that you were in this when you started?
 10 A. It appears I would have been in Stand One.
 11 I don't think I got out of Stand One. I observed the
 12 plantations in stands five or so, but it was stand
 13 One that I was walking in when I got up into this
 14 area.
 15 Q. Please explain again why you were
 16 specifically heading there.
 17 A. That's the source of the sediment in the
 18 brook that I was concerned about, and I believe the
 19 logging activity was ongoing so I was walking up an
 20 active skid trail and as I approached, I could hear
 21 the loggers, so I was approaching that direction or
 22 going to see the logger involved.
 23 Q. And when you were -- The note that you
 24 referred to earlier talks about muddy water. And
 25 what did that connote to you, the muddy water

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1 problem?
 2 A. As a result of some activity in the wood
 3 lot, they were crossing the stream in some way so
 4 that they were creating mud in the water, and it was
 5 moving enough so they were creating enough mud so
 6 that it was coming from the Jones property down into
 7 theirs.
 8 Q. And why is this a problem?
 9 A. It's a --
 10 MR. RYAN: Object, Your Honor.
 11 Relevance. We're into water quality again.
 12 THE COURT: All right. We'll take
 13 the answer.
 14 BY MS. ELIAS:
 15 Q. You can answer that.
 16 A. It's a water quality issue. Mainly for
 17 habitat.
 18 Q. Is this part of acceptable managing
 19 practices for forestry?
 20 A. Yes, it is.
 21 Q. Would -- never mind. You had just
 22 finished describing your path towards a brook in
 23 Stand One. Stand One is a very large portion of
 24 that map.
 25 Can you give us a little bit more

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1 specificity of whether there is a road on that map
2 that you followed, or you mentioned that you followed
3 a skid road. Is that indicated on that map?
4 A. I believe this is the road, yes. That Mr.
5 Riley showed on the map was an existing road, and I
6 followed the road which had been used over the years
7 so I was on this road here.
8 Q. And it would be accurate to say that that's
9 the road closest to the southern boundary of the
10 property?
11 A. Yes.
12 Q. And you said you were heading for a brook.
13 Did you get to that brook?
14 A. Yes, I did.
15 Q. And what did you observe there?
16 A. I believe there was a crossing being used,
17 but in the way it was constructed, it was
18 contributing silty waters as they were going through
19 it.
20 Q. Okay. And how did this relate to the
21 information that had brought you out there, this call
22 from another forester?
23 A. Well, it confirmed the fact that the muddy
24 water was the result of logging activity.
25 Q. On the Jones property?

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1 A. Yes.

2 Q. What did you do after you crossed that

3 brook?

4 A. I could hear the logger operating up here,

5 and I proceeded in that direction towards the -- it

6 would be north. Just about due west. Maybe a

7 little bit to the north but due west, and that's

8 where the logger was working.

9 Q. Okay. Mr. Philbrook, you're pointing to

10 the area of the map that indicated a Stand One on the

11 western most portion of the map?

12 A. Yes.

13 Q. And I notice that on exhibit M, there are

14 long pencil lines drawn through Stand One on that

15 map. Do you know anything about those lines and

16 what they connote?

17 A. I put those lines in there based on the

18 information that the logger gave me of the

19 approximate area that he thought he covered.

20 Q. When did you put those lines on there?

21 A. It says done -- well, it says August 20,

22 1992.

23 Q. And so do you know from those notes or from

24 any of those recollections when you put the lines on

25 the map?

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1 A. I believe it says done as of August 20,
 2 '92. I assume I put it on that date.
 3 Q. Okay. Did you discuss the existence of the
 4 Jones' Forest Management Plan with the logger you
 5 encountered?
 6 A. Um, yes. We discussed --
 7 Q. I'm sorry. You can take your chair back.
 8 You can be seated again.
 9 A. Thank you. I think I told him that the
 10 property had a plan, and I believe I asked him if he
 11 knew that and he indicated, I guess, that he knew it
 12 was in use value and had a plan because of that.
 13 Q. Did you know whether he had a copy of the
 14 plan with him?
 15 A. I don't know that. He didn't indicate he
 16 did.
 17 Q. Okay. Did you make any comments to him
 18 about the logging he was doing in relation to the
 19 plans?
 20 A. Yes. I related to him that I had a
 21 concern that he was cutting trees in a way that was
 22 not in the spirit of the plan the way it was written,
 23 and I expressed that concern to him.
 24 Q. Did you tell him to stop logging?
 25 A. No, I didn't.

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1 Q. Okay. Are there any other notations on
 2 exhibit M besides the date that we mentioned on those
 3 cross hatch marks in the bottom left portion of stand
 4 One that you made during your August '92 inspection?
 5 A. There are some. There is a note here in
 6 Stand Five and 5A. Little jiggly lines which said
 7 clear.
 8 Q. Okay. Can you tell us when you originally
 9 parked your car, you mentioned being in Stand One.
 10 You parked your car and you mentioned being near
 11 Stand Five. Did you inspect Stand Five at the time?
 12 A. I gave it -- I observed Stand Five. I
 13 don't remember actually walking into it or onto it,
 14 but it was there beside the road so I saw it.
 15 Q. Okay. Did you go back to it at any other
 16 time during your inspection that day?
 17 A. I don't believe so.
 18 Q. And you had previously said that you
 19 observed there had been cutting in Stand Five?
 20 A. Yes.
 21 Q. And what specifically did you observe about
 22 the cutting?
 23 MR. RYAN: Your Honor, object.
 24 Relevance.
 25 THE COURT: We'll take the answer.

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1 BY MS. ELIAS:

2 Q. You can answer the question. What did you
 3 observe about Stand Five?

4 A. I remember Stand Five being just cut.
 5 There were no trees left, essentially.

6 Q. Was that in conformance with the Jones'
 7 management plan as far as you knew on that date?
 8 A. No, it was not.

9 Q. You can take your seat again. When you
 10 testified previously about the area that you covered
 11 during your August 1992 visit, you talked about
 12 observations you made in Stand Five and you talked
 13 about a walk that you took on the bottom portion of
 14 Stand One. Did you go into Stand Two of the Jones
 15 property on that date in August of 1992?
 16 A. No. I don't believe I did not get that far
 17 east.

18 Q. And do you know if you went into Stand
 19 Three on the date of your August 1992 inspection?
 20 A. No, I did not.

21 Q. I'm sorry to keep making you get up and
 22 down. I realize now that these questions do concern
 23 and require you to approach the map, so maybe you
 24 better stand next to the map until I'm sure I'm
 25 finished with questions about it.

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1 I want to call your attention to the center
2 part of that map. Right where the middle crease is
3 there is a dog leg section outlined in pencil on the
4 map. That's what you're pointing to right now.
5 And that area is in Stand One, correct?
6 A. Yes, it is.
7 Q. Did you make that notation on the map?
8 A. That is not mine, no.
9 Q. And do you know when you were in that
10 portion of Stand One during your August 1997 visit to
11 the Jones property?
12 A. I was not that far to the north.
13 Q. Are you sure?
14 A. Yes.
15 Q. Okay. You can have your seat again.
16 MS. ELIAS: If I can just take a
17 moment to look at this map myself.
18 BY MS. ELIAS:
19 Q. Mr. Philbrook, on this map in what appears
20 to be Stand Three and Stand One, there are little
21 circles with Is on them. That look to me like they
22 are Is.
23 MR. RYAN: I see what you're talking
24 about.
25 BY MS. ELIAS:

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1 Q. Do you see these that say L?

2 A. Yes. Now I do.

3 Q. What does the L stand for? If you know.

4 A. I can assume. I don't know for sure. I

5 would guess it was landing.

6 Q. What does landing mean?

7 A. It would be a small clearing where they

8 would have brought the logs or the trees being cut up

9 and then motor toward onto a truck.

10 Q. And then calling your attention to the path

11 that you took, I note the Stand Three boundary goes

12 to the southern border of the property. Is it

13 possible I had asked you previously if you went

14 through Stand Three, and you said you didn't have a

15 recollection of doing so.

16 Would it be possible to get from where you

17 indicated you parked, taking the route that you did

18 to Stand One without going through Stand Three?

19 A. No. When I saw three, I was looking up

20 here. I didn't realize three came all the way down.

21 Q. Okay. Let me just ask you a couple more

22 questions about Stand Three. Now that we've

23 established that you were in Stand Three, did you

24 observe anything in Stand Three that gave you reason

25 to believe that Mr. Jones was not in compliance with

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1 his Forest Management Plan?
 2 A. No, I did not.
 3 Q. Okay. Thank you. You mentioned
 4 encountering a logger on the property during your
 5 August 1992 inspection. Aside from your conversation
 6 with that logger, did you encounter any other people
 7 that day during your visit?
 8 A. No, I did not.
 9 Q. Okay. Calling your attention back to what
 10 you observed back in Stand Five, what was your
 11 conclusion about whether the treatment you observed
 12 in Stand Five was in conformance with the forestry
 13 management plan?
 14 MR. RYAN: Object. Relevance.
 15 THE COURT: We'll take the answer.
 16 THE WITNESS: The plantation had been
 17 scheduled for thinning, and what was done was
 18 essentially a complete removal of the trees there
 19 rather than a thinning, so it was out of conformance.
 20 BY MS. ELIAS:
 21 Q. Do you recall what was the next thing you
 22 did with regard to the Jones property following your
 23 inspection in August of 1992?
 24 A. I believe I tried to reach Mr. Jones by
 25 phone, and I believe I left a message and then I

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1 believe Mr. Jones got back to me.

2 Q. Is there any record of this attempt to call

3 Mr. Jones, this leaving of a message and this

4 conversation with Mr. Jones? And you can answer

5 those in a series. That's three parts. Is there any

6 record of your attempt to contact Mr. Jones by

7 telephone?

8 A. I believe there is.

9 Q. And --

10 A. These little notes in here some place.

11 Q. Let me call your attention to exhibit L

12 again.

13 A. Okay.

14 Q. And is exhibit L a record of the activities

15 that you conducted with regard to the inspection of

16 the Jones property after the inspection?

17 A. Yes.

18 MR. RYAN: Well, let me object to it,

19 Your Honor. Exhibit L appears to be a Xerox, at

20 least mine is, of three post-it notes; is that right?

21 MS. ELIAS: Yes. I'm asking if

22 it's a record of what he did.

23 THE COURT: We'll take the answer.

24 THE WITNESS: It's a copy of a

25 post-it note that I had written for the file, and I

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1 had called Mr. Jones and let him know that I had been
 2 on the property and was concerned about the cutting
 3 that I observed and --
 4 BY MS. ELIAS:
 5 Q. Let me stop you to get some specificity to
 6 this. You previously testified that you called and
 7 left a message, and you also testified that you
 8 eventually spoke to Mr. Jones.
 9 Can you distinguish when you're making
 10 these comments now, can you tell me whether they
 11 occurred during the phone message you left or whether
 12 they are from the phone call you had with Mr. Jones?
 13 A. I would have to refer to the notes.
 14 Q. That's okay. If you need the notes to
 15 refresh your recollection, take a moment. Read over
 16 all of them.
 17 A. Apparently, I left a note. I talked to an
 18 answering machine on the -- that date is not clear
 19 right there. But it's September something, '92.
 20 Q. You're talking about the second page of
 21 exhibit L?
 22 A. Yes.
 23 Q. At the top?
 24 A. I am at the top.
 25 Q. And this is the portion of exhibit L on

1 page 2 that has in large letters "Joe Jones, phone"?

2 A. Yes, it is. These are some notes to myself. I was trying to -- I wanted to impress Mr. Jones that he has to work more closely with his plan, so I looked up his actual tax savings and that's what that number refers to there.

7 Q. What do you mean by his tax savings and the number?

8

9 A. Well, being in the program he was saving some tax, property tax money, and so I -- many times we have a record of this so I looked it up just to note that I had a feel for what he was saving as far as being in the program.

13 Q. And what was Mr. Jones saving?

14 A. It was \$3,700 a year he was saving at that point for being in the program, and I wanted to impress him with the fact that to me it's a substantial amount of money and it would behoove him to pay more attention to the management of that property to continue that savings.

20 Q. Okay. And did you eventually speak with Mr. Jones following your August 1992 inspection?

22 A. Yes.

23 Q. I would like you to tell me about that conversation. What information did you convey to Mr.

25

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1 Jones during that conversation?
2 A. Can I look at this?
3 Q. Yes, you can. To refresh your
4 recollection.
5 A. Okay. Here it says September 3rd I spoke
6 with Mr. Jones and he seemed quite willing to work
7 more closely with his forester, and I did mention
8 that he could use or lose his eligibility for use
9 value if he didn't pay more attention to the way the
10 plan was written and what he was doing with the wood
11 lots.
12 Q. And was it your suggestion or Mr. Jones'
13 suggestion to involve Mark Riley?
14 A. It was my suggestion that he work more
15 closely with his forester who had done the plan for
16 him.
17 Q. And what was Mr. Jones' response again to
18 that?
19 A. He indicated that he would certainly
20 involve Mr. Riley.
21 Q. Okay. Can I call your attention to page 3
22 of exhibit L.
23 A. Yes.
24 Q. And is this also in your handwriting?
25 A. I must have the wrong page. Page 3 of

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1 exhibit F.

2 Q. L.

3 A. Okay. Yes.

4 Q. Can I ask you to take a look at that and --

5 A. Yes. That's my note.

6 Q. Okay. Does this note reflect a subsequent conversation that you had with Mr. Jones about this August '92 inspection?

7 A. Yes, it does.

8 Q. And do you have a recollection of what you spoke with Mr. Jones about on that occasion?

9 A. Only because I just saw that. Apparently, the logger, Mr. Dern, had been given a copy of the management plan.

10 Q. Do you have a recollection of who gave him the plan, or were you told who gave him the plan?

11 A. No.

12 MR. RYAN: Your Honor, it's obvious he doesn't have any memory whatsoever.

13 MS. ELIAS: I'm trying to find out if he has a recollection of that specific question.

14 It's not there, but he may have a recollection independent of this.

15 THE COURT: Can you answer the question?

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25 conversation with Mr. Jones when he called me on the

24 with Mr. Jones on September 3rd, and I had another

23 THE WITNESS: I had one conversation

22 THE COURT: We'll take the answer.

21 leading.

20 MR. RYAN: Object, your Honor. It's

19 day that you had that conversation with Mr. Jones?

18 Q. Would that connote to you that that's the

17 A. Yes.

16 of exhibit L has a date of September 3?

15 Mr. Jones once. It looks like the bottom of page two

14 -- I assume based on your testimony you spoke with

13 Q. And did you during this second conversation

12 with the management of the property.

11 Riley. Trying to get his forester to assist him more

10 A. We talked about the involvement with Mr.

9 during that phone call?

8 Q. What else did you discuss with Mr. Jones

7 BY MR. ELIAS:

6 THE WITNESS: No, I did not.

5 him?

4 THE COURT: You didn't give it to

3 that the owner would give him the plan.

2 the plan. I assume that he had a copy of the plan;

1 THE WITNESS: I didn't give Mr. Dern

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1 8th of September.
 2 BY MS. ELIAS:
 3 Q. And you just mentioned or you started to
 4 discuss the fact that during that second
 5 conversation, Mr. Jones indicated to you that the
 6 logger had been given a copy of the plan, and what
 7 else was discussed during that conversation?
 8 MR. RYAN: Object, your Honor. He
 9 doesn't have a recollection of that. The leading
 10 question mischaracterizes his testimony.
 11 THE COURT: Do you have any evidence
 12 that Mr. Jones, in fact, gave the logger the plan?
 13 THE WITNESS: No.
 14 THE COURT: Other than assuming that
 15 somebody had to give him it and it wasn't you?
 16 MS. ELIAS: Your Honor, I thought
 17 that my question was Mr. Jones had said that Dern had
 18 been given a --
 19 THE COURT: Why don't you ask him
 20 that. I don't think that's what you said, but go
 21 ahead.
 22 BY MS. ELIAS:
 23 Q. Other than hearing from Mr. Jones that Mr.
 24 Dern had been given a copy of the plan, what else did
 25 you discuss with Mr. Jones during that phone call?

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1 A. That Mr. Riley was going to become more involved.

2

3 Q. And who said that? You?

4 A. No. Mr. Jones said that to me.

5 Q. Okay. Did you talk about anything else during that phone call?

6 A. Don't recall.

7 Q. Okay. Let me call your attention, I don't think I quite finished discussing the September 3 phone call. What did you discuss with regard to UVA eligibility during the September 3rd phone call with Mr. Jones?

8 A. I believe -- Well, I can't recall exactly what I said, but I'm sure it involved some discussion of the plantation that had been cut and what I observed when I visited with the logger that was up in the area one.

9 Q. Okay. Now, I want to verify that there are a total of five post-it notes that comprise exhibit L. Exhibit L is a Xerox of these post-it notes.

10 The original post-it notes are in there with an exhibit number of Mr. Ryan's, I believe. I'm not sure exactly. If I may approach the witness.

11 A. This is not a post-it note here.

12 Q. Okay.

THE WITNESS: Yes.

BY MS. ELIAS:

3 Q. And do the notes on exhibit M, the map that
4 you made in August of 1992, serve as a record of some
5 of the activities relating to your August of 1992
6 inspection?

7 A. Yes.

8 Q. Did you fill out an official department
9 inspection form on your 1992 inspection?

10 A. No, I did not.

11 Q. And why not?

12 A. I guess I can't say why not. I guess I
13 just got involved with this and just never went to
14 the formal format. I just didn't do it.

15 Q. Okay. Based on what you saw on the Jones
16 property in August of 1992, did you reach any
17 conclusion about whether the activity underway in
18 Stand One was in conformance with the Jones Forest
19 Management Plan?

20 A. It was not in conformance with the plan
21 when I looked at it.

22 Q. Did you -- following your August '92
23 inspection, did you reach any conclusion about
24 whether the activity under way in Stand Five was in
25 conformance with the plan?

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1 MR. RYAN: Object. Relevance.

2 MS. ELIAS: Pardon me?

3 THE COURT: We'll take the answer.

4 THE WITNESS: The activity in stand five was not in conformance.

5 BY MS. ELIAS:

6 Q. Did you issue an adverse inspection report following your 1992 inspection?

7 A. No, I did not.

8 Q. Did you make any recommendation about whether the landowner would be continued in the use value appraisal program?

9 A. No, I didn't. No, I did not. There is nothing in the record as to that.

10 Q. Okay. What did you -- one moment. We discussed previously the phone conversations that you had with Mr. Jones following the August 1992 inspection report.

11 You testified that Mr. Jones expressed to you his willingness to involve Mark Riley in current -- was it in current activities on the land?

12 MR. RYAN: Object.

13 THE WITNESS: Yes.

14 BY MS. ELIAS:

15 Q. Did that information have an impact on your

1 decision to issue an adverse inspection report?

2 A. Yes, it did.

3 Q. And what was that impact?

4 A. When Mr. Jones indicated a willingness to

5 work more closely with his forester, I was, I guess I

6 would say okay! let's get this on track and get on

7 with the spirit of the plan, and I was willing to, I

8 guess, have that effort put forth and things would be

9 all right.

10 Q. Did you consider this decision to be part

11 of your discretion as a forester?

12 A. Yes, I did.

13 Q. What was the next thing that happened with

14 regard to that inspection; do you recall?

15 A. I believe we had an amendment to the plan

16 which I recommended that we might have just to cover

17 what had happened in Stand Five. Stand Five, I

18 believe was three or four acres. Something like

19 that. A relatively small area of the total

20 ownership, and Mr. Wilcox had indicated they had in

21 the process of cutting Stand Five, they had found

22 some rot in the bases of some of the trees so that

23 the clear cutting that was not that out of line after

24 finding that problem, so we decided that I would

25 accept a revision of the plan for Stand Five.

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1 Q. Can I call your attention to exhibit G in the notebook?

2 A. Yes.

3 Q. Okay. And what is exhibit G?

4 A. This was the amendment filed by Mr. Riley to the Forest Management Plan for area five.

5 Q. And did you approve this amendment?

6 A. Yes, I did.

7 Q. And does this amendment relate to the area you described earlier as Stand Five?

8 A. Yes.

9 Q. Now, I want to ask you some questions. Does this amendment relate to any cutting in Stand One?

10 A. No, it does not.

11 Q. Does this amendment change the requirements of the 1991 plan with regard to Stand One?

12 A. No, it does not.

13 Q. Does this amendment relate to any cutting in Stand Three?

14 A. No.

15 Q. And does this amendment change any of the 1991 plan requirements with regard to Stand Three?

16 A. No, it does not.

17 Q. Now, let me call your attention back to

1 1 o'clock that I believe is going to be called in.
2 It shouldn't be more than 15 minutes so we'll be
3 ready to resume again at 1:15. Mr. Ryan?
4 MR. RYAN: Fine, your Honor. Ms.
5 Elias mentioned to me at the break that she wanted me
6 to call two witnesses to get them in this afternoon,
7 and we thought we were going to need them. Am I to
8 assume that after Mr. Philbrook, that the state is
9 going to rest?
10 MS. ELIAS: I think that that's our
11 plan at this time, your Honor. I was asking --
12 there was a little bit of a question when I talked to
13 Mr. Ryan yesterday, I was of the understanding
14 between counsel that when or at the conclusion of Mr.
15 Philbrook's testimony, we would begin Mr. Jones'
16 testimony, and I wasn't focusing on whether Mr. Riley
17 or Wilcox would be called on our behalf or on behalf
18 of Mr. Jones. I was just focusing on witness order,
19 and when I heard Mr. Ryan speak this morning, it
20 sounded as though the decision to put his client on
21 and testify would now depend on whether or not there
22 would be Randy Wilcox and Mark Riley would be called
23 by us versus him.
24 I thought given the nature of this case so
25 far, that we already had testimony from Mark Riley

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1 which Mr. Ryan already called as his witness; that
 2 that was clear that he called that witness and that
 3 we would continue in that vein, and I was just trying
 4 accommodate witness's scheduling time; and he
 5 indicated on the phone that after Mr. Philbrook
 6 finished, we would move on to Mr. Jones, and since I
 7 got the impression that that was not exactly how Mr.
 8 Ryan wanted to proceed this afternoon, I was just
 9 trying to figure out who we were going to call next
 10 and whether we needed to call these witnesses.
 11 Mr. Riley is already on the stand under Mr.
 12 Ryan's subpoena, and if he's available, I think we
 13 need to call him and continue that if he doesn't
 14 think the Jones' testimony will take the rest of the
 15 afternoon after Mr. Philbrook is finished.
 16 MR. RYAN: I got totally lost in
 17 that. I apologize. But let me tell -- I asked Mr.
 18 Riley to be here at 9 o'clock. Ms. Elias instructed
 19 him not to be here at 9 o'clock. I may not bring him
 20 back. If they want him back, they can bring him
 21 back. And I will take them at their word that when
 22 Mr. Philbrook is finished, that they will rest. And
 23 I will arrange witnesses after that.
 24 MS. ELIAS: Well, we certainly need
 25 to have Mr. Riley come back at some point because the

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1 direct of Mr. Riley hasn't finished, and I have not
 2 had an opportunity or Rebecca has not had an
 3 opportunity to cross examine Mr. Riley.
 4 THE COURT: Or his testimony is going
 5 to be stricken. You may still have a right to cross
 6 examine him. I'm not going to --
 7 MS. ELIAS: Right. But we are in
 8 the middle of his testimony, so I assumed Mr. Ryan
 9 would be finishing with the direct examination.
 10 MR. RYAN: And I asked him to be here
 11 at 9 o'clock, and he was instructed not to be here by
 12 Ms. Elias. Not by me.
 13 THE COURT: Did you instruct him not
 14 to be here at 9 o'clock?
 15 MS. ELIAS: Based on an agreement
 16 that I had reached in a phone call with Mr. Ryan, I
 17 said you are still under your subpoena. It looks
 18 like we are not going to get to your testimony at 9
 19 o'clock this morning. I mean, if you say instruct
 20 him not to be here, he wasn't here, and it was
 21 because Mr. Ryan and I agreed that he wasn't going to
 22 be testify. That we had Mr. Rice and that we had
 23 Mr. Philbrook, and Mr. Ryan represented to me that if
 24 we finished with Mr. Philbrook, he would put his
 25 client on, and that we could have Mr. Riley and Mr.

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1 Wilcox appear on tomorrow's court schedule.
 2 MR. RYAN: Well, I don't remember it
 3 exactly that way, your Honor. As a matter of fact,
 4 I said Mr. Riley is not available Friday afternoon.
 5 I want to bring him on. I got a call back saying
 6 I've arranged for him to come back Friday.
 7 THE COURT: So if he comes, he comes.
 8 MS. ELIAS: Well, he's not going to
 9 come unless we call him. I'm just trying to figure
 10 out what we should do for the afternoon.
 11 MR. RYAN: Here is my problem. I
 12 tried to get him here. He was instructed not to be
 13 here. I don't want to have his testimony stricken
 14 because I can't get him here Friday afternoon. His
 15 office told me he was busy Friday afternoon. Ms.
 16 Elias called me and said I've taken care of that, and
 17 I wanted it to be her responsibility to get him here.
 18 Not mine.
 19 THE COURT: Well, if there is some
 20 issue involving that, that will be crucial in the
 21 decision, but right now you're going to probably have
 22 45 minutes, possibly, --
 23 MR. RYAN: Max.
 24 THE COURT: And if the State rests at
 25 that point, you can put Mr. Jones on.

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1 MR. RYAN: Right.

2 THE COURT: And fill out the rest of

3 the day.

4 MR. RYAN: Hopefully, I'm going to

5 call Mr. Wilcox right now, and hopefully I can get

6 Mr. Wilcox in this afternoon, too. I might as well

7 get rid of him and be mostly done this case.

8 MS. ELIAS: Your Honor, I was merely

9 trying to accommodate witness schedules and the

10 Court's time, and working with Mr. Ryan yesterday

11 afternoon to determine which witnesses would take how

12 long, and to get them here when we could make that

13 use of their time. I don't know if Mr. Riley is

14 available this afternoon. That's another

15 possibility.

16 It was just based on my conversation with

17 Mr. Ryan, it appeared that we had, and particularly

18 in this case where we have been taking witnesses out

19 of order and we've got Dern which is one of Mr.

20 Ryan's witnesses on and off the stand. We had Mr.

21 Riley in progress. I was merely trying to

22 accommodate everybody's schedule and make sure we had

23 enough witnesses but not too much. It sounds like I

24 was doing something that Mr. Ryan was unaware of when

25 I thought we had a conversation and an agreement

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1 about what the order of witnesses was, and I assumed
 2 that Mr. Riley would be continuing his direct
 3 testimony --
 4 THE COURT: Well, I'm not going to --
 5 if Mr. Riley is unable to be here, then I'll make a
 6 decision as to whether or not someone is to blame for
 7 him not being here and act accordingly; but if Mr.
 8 Riley can be here, why are we arguing about this?
 9 MR. RYAN: Would you check your file,
 10 your Honor? I'm missing Plaintiff's exhibit 2. I
 11 don't know if the State has it, or it might have been
 12 left on the bench.
 13 THE COURT: Has it been admitted?
 14 MS. ELIAS: Yes, it has.
 15 THE COURT: I don't think we have any
 16 exhibits. I may have some in the file but -- 1:15.
 17 (A recess was taken.)
 18 (End of Tape One.)
 19 (Beginning of Tape Two.)
 20 THE COURT: Ms. Elias?
 21 MS. ELIAS: I believe we had
 22 completed the direct examination.
 23 THE COURT: All right. Mr. Philbrook
 24 is still on the stand.
 25 MR. RYAN: While he's taking the

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1 stand, your Honor, we coordinated with witnesses. I
 2 called Mr. Wilcox. He's going to be here at 3
 3 o'clock. Ms. Elias called Mr. Riley, and he's going
 4 to be here at 9 o'clock tomorrow morning.
 5 THE COURT: All right.
 6 CROSS EXAMINATION BY MR. RYAN:
 7 Q. Mr. Philbrook.
 8 A. Yes.
 9 Q. On Stand One, you indicated that there had
 10 been some firewood taken from Stand One prior to the
 11 1992 cutting; is that right?
 12 A. I believe I said that, yes.
 13 Q. Okay. Do you know where it was taken from?
 14 A. No. I would have to look in the
 15 conformance report to see if Mr. Jones reported where
 16 it was cut from.
 17 Q. Sure.
 18 MR. RYAN: Do we have those, Jeanne?
 19 MS. ELIAS: They are in evidence.
 20 MR. RYAN: I think it's F. Well,
 21 no.
 22 MS. ELIAS: H.
 23 THE WITNESS: I recall that being a
 24 report from Mr. Jones, but I can't find evidence of
 25 it here, but it was a matter of a few cords so it was

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1 -- but I can't remember where I would have got that.
 2 BY MR. RYAN:
 3 Q. Okay. And we're talking about some place
 4 in Stand One prior to '92, and you don't know where
 5 and you actually don't know how much, do you?
 6 A. I don't know if it was Stand One.
 7 Q. Okay. Firewood was taken some place.
 8 Could have been Stand One. You just don't know?
 9 A. Well, I thought firewood would have been
 10 taken. I don't see it in evidence here. Mr. Jones
 11 in his conformance report doesn't indicate that he
 12 cut firewood so I must have been mistaken.
 13 Q. Oh.
 14 A. But I thought that there had been an
 15 attempt to get some cutting done, but I see it in the
 16 record here it doesn't show it.
 17 Q. It doesn't show it in the record, but your
 18 recollection was actually being out there and talking
 19 with Mr. Riley or whatever is that firewood was
 20 taken; is that correct? That's your memory?
 21 A. I don't know what prompted my memory as to
 22 some wood having been cut.
 23 Q. That was your testimony this morning,
 24 wasn't it?
 25 A. You're adding some details to it which I

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1 don't totally agree with. I did acknowledge that
2 some wood, I thought, had been reported cutting, but
3 I can't find it in here so I'm not sure what to say
4 at this point.
5 Q. All right. Listen to my question and see
6 --
7 A. Okay.
8 Q. Your memory was that some firewood had been
9 cut on the Jones property pursuant to a plan prior to
10 1992; is that correct?
11 A. I believe that was my recollection, yes.
12 Q. Okay. That is your recollection?
13 A. That is my recollection.
14 Q. You just can't find it in the reports?
15 A. Yes.
16 Q. Okay. Now, you don't know where that
17 firewood was taken from, do you?
18 A. No, I don't.
19 Q. You don't know how much firewood was taken,
20 do you?
21 A. No, I don't.
22 Q. Okay. Now, with regard -- how large is
23 Stand One, by the way?
24 A. I would have to refer to notes. I assume
25 it's over 200 acres, but I will have to look.

1 Q. No. I'll take your word that it's over 200
2 acres. In parcel one, over 200 acres, did you ever
3 take any basal area readings prior to 1992?
4 MS. ELIAS: Your Honor, this is
5 beyond the scope. I object. This is beyond the
6 scope of the direct.
7 THE COURT: He can answer.
8 MR. RYAN: Thank you, your Honor.
9 THE WITNESS: No.
10 BY MR. RYAN:
11 Q. Before 1992, did you ever go out in the
12 area of this (inaudible) and actually see what it was
13 like up there that you recall?
14 A. I don't recall being over there.
15 Q. Okay. So you just don't know what that
16 area looks like?
17 A. No.
18 Q. You did do an inspection of this property
19 in 1985; is that correct?
20 A. Yes. I believe I did.
21 Q. And I think that's exhibit I. Do you
22 remember testifying to that this morning?
23 A. Yes, I did.
24 Q. Tell me what you did when you went out and
25 inspected the property in 1985?

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1 A. Let me refresh myself with this for a
 2 minute.
 3 Q. Sure. Let me ask this. Did you go in
 4 Stand One?
 5 A. Yes, I did.
 6 Q. Did you -- This morning, Mr. Rice testified
 7 that when you do an inspection you have a duty to
 8 inspect it to make sure there are no violations.
 9 Would you agree with that?
 10 A. Yes.
 11 Q. When you inspected the property in 1985,
 12 did you go all over Stand One to determine if there
 13 were violations?
 14 A. No.
 15 Q. Okay. Did you go all over Stand Three to
 16 determine if there were violations in 1985?
 17 A. No.
 18 Q. So between '85 and '92, you don't know if
 19 the firewood that was taken from the property was
 20 taken from the little dog leg area, the 15.8 acre
 21 section, do you?
 22 MS. ELIAS: Excuse me, Your Honor.
 23 I think that's assuming facts in evidence. He's
 24 talking about firewood taken between '85 and 1992.
 25 There has been no testimony either on direct or cross

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1 of this witness that firewood was taken from the
 2 property between 1985 and 1992. There was previous
 3 testimony about firewood based on the '85 inspection.
 4 I'm not -- I don't think this question has the
 5 proper foundation.
 6 MR. RYAN: I must have missed what
 7 she said, your Honor. I thought she almost agreed
 8 with me about the firewood.
 9 THE COURT: We'll take the answer.
 10 BY MR. RYAN:
 11 Q. Let's answer my question. My question
 12 is: Do you know whether or not the firewood that was
 13 taken came from the dog leg area? Yes or no, sir.
 14 Do you know or don't you?
 15 A. I -- I'm having trouble with that question
 16 saying just yes or no. In my report it says that
 17 some firewood was harvested.
 18 Q. Do you know --
 19 A. And I assumed it was from area one, and it
 20 could have been -- I'm not sure.
 21 Q. You assumed it was from area one, correct?
 22 A. Yes. It says it right here.
 23 Q. And it could have been to the 15.8 acre
 24 section, correct? You just don't know?
 25 A. That's right. I don't know. But that was

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1 cut prior to '85.

2 Q. And there has been other logging operations
 3 going on on that property before '92; isn't that
 4 true?

5 A. Yes.

6 Q. And in an over 200 acre section such as
 7 parcel one, is it common for the basal area to vary
 8 from acre to acre?

9 A. It --

10 MS. ELIAS: Objection. Beyond the
 11 scope.

12 MR. RYAN: You know, this beyond the
 13 scope stuff, your Honor --

14 THE COURT: I'm going to overrule the
 15 objection. Again, I think everybody needs to look
 16 at Rule 611. It allows him to ask questions so --

17 that are beyond the scope.

18 BY MR. RYAN:

19 Q. Would you answer my question, please?

20 A. There is some variability, certainly.

21 Q. As a matter of fact, in an over 200 acre
 22 parcel such as this one, there could be significant
 23 variability, couldn't there, depending on the
 24 elevation?

25 A. Depending on the elevation, it could.

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1 Q. Am I correct that you might find a greater basal area the lower you go, and a lesser basal area the higher you go?

2

3 A. No.

4 Q. Would it work the other way around, then?

5 A. Not necessarily.

6 Q. No correlation between elevation and how thick the trees might be?

7 A. It depends on the soil as well as past use, so you can't -- I wouldn't generalize that way.

8 Q. You have discretion as to whether or not to violate a person for violations, or you did when you were the forester?

9 A. I have, I guess, used some discretion.

10 Whether I want to cite them, I'm not sure if it's nonconformance or what it would be, but, yes, I do take -- I think most of the foresters in the program have a certain amount of discretion.

11 Q. As a matter of fact, you have used that discretion in Mr. Jones' case, haven't you?

12 A. Yes, I did.

13 Q. You have used it in other cases, haven't you?

14 A. In a few. There has been a few.

15 Q. Are the guidelines for your discretion

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1 outlined anywhere? Are there written rules when you
 2 can use your discretion?
 3 A. I don't believe so.
 4 Q. So that discretion is totally up to you.
 5 You're subjective deciding whether you want to do it
 6 or not?
 7 A. That's possible. I don't know for sure.
 8 There might be a point where I'd say, Jim, you should
 9 have done that for various reasons. I don't know.
 10 Q. But as far as you know, totally up to you?
 11 A. If the violation was for building a camp or
 12 something like that on the property, no. It wouldn't
 13 be up to me.
 14 Q. Well, let's stick with what we're talking
 15 about. These kinds of things?
 16 A. That would be a violation.
 17 Q. The kinds of violations we're talking about
 18 on the Jones property are totally within your
 19 discretion, aren't they?
 20 A. Yes.
 21 Q. Now, you were out on the property in 1992?
 22 A. Yes.
 23 Q. And you walked around the property?
 24 A. Yes.
 25 Q. You don't know exactly where you were?

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1 A. I know in the general vicinity. I can't
 2 say exactly. I wasn't sure how close we are calling
 3 exact this morning, but I know about where I was.
 4 Q. I hand you what's been marked as exhibit
 5 32. It is a copy of your deposition. Do you
 6 remember your deposition being taken?
 7 A. Yes.
 8 Q. Do you remember your deposition being
 9 taken?
 10 A. Yes, I said.
 11 Q. And you swore to tell the truth?
 12 A. Yes.
 13 Q. Have you had a chance to review the
 14 deposition?
 15 A. Some time ago, yes.
 16 Q. You had a chance to make any corrections
 17 you wanted to; is that right?
 18 A. I did the best I could with it, yes.
 19 Q. And in that deposition we talked about
 20 where you were on the property. Do you recall that?
 21 A. Not exactly, but I'm sure we did.
 22 Q. Now, on exhibit M, if you could turn to
 23 page 61. Before you do that, see this little one
 24 right here?
 25 A. Yes.

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1 Q. On line 15 you were showing me on that map
 2 where you were. Do you recall doing that? And I
 3 said you were indicating somewhere around that small
 4 one and your answer was, "It might not have been up
 5 that far. I -- it's hard." Well, why don't you
 6 read it to the court what you told me.
 7 A. I --
 8 Q. Please. Read your answer to my question.
 9 Page 61, beginning at line 17.
 10 A. "It might have not been that far up.
 11 It's hard. I really can't recall where it was.
 12 Kind of remember walking toward the sound of the
 13 skidder, and where I encountered the logger is --
 14 it's hard to remember. I don't know where it is
 15 exactly."
 16 Q. Thank you. Now, Mr. Dern has testified in
 17 this case and said that the logging was completed in
 18 August.
 19 MS. ELIAS: Objection, your Honor.
 20 I don't believe that's a proper characterization of
 21 the testimony.
 22 THE COURT: Well, let him finish the
 23 question.
 24 BY MR. RYAN:
 25 Q. My recollection is Mr. Dern testified that

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1 the logging was completed in August of 1992. Do you
 2 know when you were there if any portion up in this
 3 dog leg had been cut before you were there?
 4 A. When I spoke with the person cutting,
 5 where I cross hatched is where the logging had been
 6 completed, and I believe I was talking about area one
 7 where that one is down lower. Not the one up top
 8 where you just indicated.
 9 Q. Do you know if this cutting was done when
 10 you were there in August of 1992?
 11 A. I believe it was not.
 12 Q. Do you know if it was done or not? Did
 13 you go up there?
 14 A. I was not there.
 15 Q. By the way, was this an inspection, use
 16 value inspection, as required to be done every five
 17 years?
 18 A. It turned out to be that way, yes.
 19 Q. Why do you say it turned out to be that
 20 way?
 21 A. It wasn't really scheduled except I got
 22 called in there to look at the water quality
 23 violation.
 24 Q. Did you do a use valuation report?
 25 A. No, I did not.

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1 Q. You knew there was violation in section
 2 one, correct?
 3 A. I didn't, no.
 4 Q. You knew there was violations in Stand One
 5 when you went out in 1992, didn't you?
 6 A. They weren't cutting. It's -- it was not
 7 what I considered a violation.
 8 Q. It wasn't?
 9 A. They weren't cutting the way I would like
 10 to see it cut, but there was a way of working through
 11 this and (inaudible) it a bit so that we could get
 12 this stand to respond, and it would be a decent
 13 activity if a forester was involved.
 14 Q. Please turn to page 73 in your deposition.
 15 My question at line 14. "Okay. Now, as a result of
 16 your inspection you found a violation."
 17 A. "Yes."
 18 Q. That was your answer, wasn't it?
 19 A. There was a violation in area five.
 20 Q. You didn't find a violation in area one?
 21 A. I found that they weren't cutting in a way
 22 that the plan had indicated they would.
 23 Q. Is that a violation or not?
 24 A. It wasn't a violation that I thought was
 25 grievous enough for me to pursue for them to have

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1 them thrown out of use value. I thought there was
 2 still room for some working with the owner to get
 3 this resolved.
 4 Q. Your deposition was taken on what date?
 5 A. November.
 6 Q. November 19, 1998?
 7 A. Yes.
 8 Q. On that date, I asked you if you were doing
 9 a use value appraisal, and you told me you weren't.
 10 Do you recall that?
 11 MS. ELIAS: Could we have line and
 12 page, please?
 13 MR. RYAN: I referenced the
 14 deposition.
 15 MS. ELLIS: I think you're just
 16 asking -- If you're asking a specific question about
 17 a specific question and specific answer of the
 18 deposition. You asked him the date of deposition,
 19 and you just asked him did he tell you that he was
 20 doing the use value inspection, and his answer was no
 21 but we don't have a line and page in the record.
 22 MR. RYAN: This is an interruption,
 23 not an objection, your Honor.
 24 THE COURT: You can ask him the
 25 question, and if he wants to impeach him with it or

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1 If he wants to refresh his recollection or use the
2 deposition in any other way, he can do so.
3 BY MR. RYAN:
4 Q. Do you recall telling me this was not a
5 use value inspection?
6 A. I do not recall saying that. My intent to
7 go up there was not initially --
8 Q. Excuse me. I have not asked a question.
9 A. Okay. I thought I was just trying to
10 clarify. Sorry about that.
11 Q. Page 71 of your deposition I asked, line 5.
12 "Now, when you were out there, were you doing a use
13 value appraisal conformance inspection," and what was
14 your answer, the next line?
15 A. Where are you here?
16 Q. I am at page 71.
17 A. Okay.
18 Q. Your answer is at line 8.
19 A. I said no.
20 Q. Okay. Later you changed that to a yes,
21 didn't you? You decided it was an inspection. Is
22 that a yes or a no?
23 A. I changed my answer to a yes. Correct.
24 Q. First you told me it wasn't an inspection,
25 and then later you decided it was an inspection, is

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1 that right? A. That's right.

2 A. That's right.

3 Q. If you do a use value inspection, you had a duty to survey the property to determine if there are violations, correct?

4 A. No.

5 Q. I thought you just told the court and me that.

6 A. I have the option of doing just an office review of the file to see what information is there.

7 I don't have to go out on the property. I did go out on this property.

8 Q. If you go out on the property, you have a duty to inspect the property to determine if there are any violations, correct?

9 A. I do my best to find what is happening there, yes.

10 Q. When you do an inspection, you file a use evaluation inspection report?

11 A. It's a filed record. I don't have to.

12 Q. You do, don't you, normally?

13 A. It's normal but not always.

14 Q. Did you file --

15 A. It's a filed record. That's all.

16 Q. Did you file a use valuation report in this

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1 case?

2 A. No, I did not.

3 Q. So there is nothing -- Exhibit L, for instance, is not a use valuation report, is it, in this book?

4 A. I'm not sure.

5 Q. You're not sure what a use valuation report is?

6 A. Well, your terminology.

7 Q. Exhibit I. That's the one you did in 1985.

8 That's the conformance inspection report. Right?

9 A. I know what those are.

10 Q. Did you do a conformance inspection report in '92?

11 A. No.

12 Q. And exhibit L, your post-it notes are not a conformance inspection report, are they?

13 A. I'm lost here. I'm sorry.

14 Q. Okay. Take a look at exhibit I or exhibit K. You don't have to go very far. Conformance inspection form. Do you see that?

15 A. Yes.

16 Q. You read from one of these this morning, didn't you?

17 A. Yes.

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1 Q. Okay. Exhibit L, your post-it notes.
 2 Your post-it notes are not a conformance inspection
 3 report, are they?
 4 A. They are a bit informal.
 5 Q. My question is they are not a conformance
 6 inspection report, are they?
 7 A. They are not from the form but it's a
 8 report. It's in the file. It's working to my
 9 satisfaction as to what I was after there.
 10 Q. You went right through Stand Three on your
 11 way to Stand One, correct?
 12 A. There is a small section of three which is
 13 on either side of that access road. Yes. I believe
 14 I did.
 15 Q. Did you consider that an inspection of
 16 Stand Three?
 17 A. Yes.
 18 Q. Okay. So Stand Three was inspected and
 19 Stand One was inspected in 1992, correct?
 20 A. If I walked through an area, I listed it
 21 as an area that I walked through as being inspected,
 22 yes.
 23 Q. So the answer to my question is yes; Stand
 24 One and Stand Three were inspected by you in 1992?
 25 A. Yes.

COURT REPORTERS ASSOCIATES

1 Q. And you didn't find a violation in either
 2 area. Is that your testimony?
 3 A. Yes. I believe that's the case.
 4 Q. And you don't know when any patches were
 5 cut in Stand Three, do you? You don't know if those
 6 exhibited patch cuts in Stand Three at the time you
 7 were there in August of 1992, do you?
 8 A. They hadn't been done prior to '92.
 9 Q. As of August 1992 when you were on the
 10 property, you don't know whether or not any patches
 11 had been cut in Stand Three in 1992?
 12 A. Correct.
 13 Q. And just to reiterate, you don't know if
 14 the dog leg had been cut before or after your visit
 15 in 1992?
 16 A. I believe it had not been cut before '92.
 17 Q. At the time of your inspection, you don't
 18 know if the dog leg area had been cut or not cut,
 19 correct?
 20 A. That's true.
 21 Q. Okay. Now, let's go to exhibit L, the
 22 first page of exhibit L is also marked as exhibit 34;
 23 is that correct?
 24 A. Where do I find the number 34?
 25 Q. Just go to exhibit L. Is there a 34 on

COURT REPORTERS ASSOCIATES

1 exhibit L?

2 MS. ELIAS: Harry, the post-it note

3 version that are in your exhibits that are marked the

4 originals are behind the tabbed indications in there,

5 so they are in different places but they are all in

6 the same book.

7 MR. RYAN: Thank you. There you go.

8 BY MR. RYAN:

9 Q. That's your original post-it notes now?

10 A. Yes, they are.

11 Q. Which one is the first post-it note you

12 wrote after your visit to the Jones property in

13 August of 1992?

14 A. The first note after the exhibit -- or

15 after the visit.

16 Q. Start with the first note in 1992.

17 A. Yes.

18 Q. Is that the one in the upper left-hand

19 corner that says 12 August '92?

20 A. Yes.

21 Q. Could you read that, please, because I

22 can't read it.

23 A. It says, "Muddy water reported on

24 (inaudible) by Kathy. 12 August '92." And then it

25 says, "Forest and Field not involved."

COURT REPORTERS ASSOCIATES

1 Q. Now, as a result of that you went up to the Jones property at some point in August?

2 A. Yes.

3 Q. What post-it note reflects what happened up there?

4 A. I believe it would probably be the August 26.

5 Q. Well, isn't the one dated 12 August '92?

6 A. Yes.

7 Q. And that's when you spoke with Randy Wilcox?

8 A. You asked me what -- I guess I misinterpreted your question.

9 Q. Sorry. I probably asked it badly. Let's stick with the notes in chronological order. August 12, '92 post-it note says you spoke with Randy?

10 A. Yes.

11 Q. Meaning Randy Wilcox?

12 A. Yes.

13 Q. Did you call him or did he call you?

14 A. I believe I called him.

15 Q. Okay. Why did you call him?

16 A. Because I was just wondering what was going on up on the property.

17 Q. Okay. And so you two had a discussion

COURT REPORTERS ASSOCIATES

1 about what was going on on the property?

2 A. Yes.

3 Q. Did Mr. Wilcox tell you he had marked some

4 patches to be cut in Stand Three?

5 A. I don't recall him saying that.

6 Q. Did Mr. Wilcox tell you that he took Mr.

7 Dern, the logger, out all through Stand One and Stand
8 Three and personally showed Mr. Dern what was to be

9 cut?

10 A. No, he didn't.

11 Q. Did you ask him that?

12 A. No.

13 Q. Would that have been important information

14 to know?

15 A. If he had -- if it had been of interest,

16 possibly.

17 Q. So you spoke with Mr. Wilcox on August 12,

18 1992. What were you talking about?

19 A. Reflecting on what's here. We were

20 discussing what was happening on the Jones property,

21 but he volunteered the fact that Mr. Jones had given

22 the Dern crew permission to cut and that he had

23 eliminated the plantation.

24 Q. And you found out about it and that's at

25 Stand Five?

COURT REPORTERS ASSOCIATES

1 A. Yes.

2 Q. And you found out that because it was

3 (inaudible)?

4 A. Well, yes.

5 Q. August 26, 1992. What does that note say?

6 A. It says, "UVA inspection." I guess I

7 called it an inspection that day. "Call Joe re:

8 cutting. Need to revise plans to reflect present

9 activity and what has happened."

10 Q. Okay. Now, that doesn't say you did call

11 Joe?

12 A. That's right.

13 Q. You don't know if you called Joe on that

14 day or not, do you?

15 A. That's correct.

16 Q. This is a post-it note marked exhibit 36.

17 Have you got to that one?

18 A. Yes, I have.

19 Q. Would you read that, please?

20 A. It gives a home phone number on the top,

21 and it says, "Joe Jones," and it says "Home." "Work

22 with Forester if not in compliance with plan.

23 Eligibility for program is to be reviewed," and then

24 it says "Savings, \$3,700."

25 Q. Blow that?

COURT REPORTERS ASSOCIATES

1 A. "Work with Forester. Change to reflect. Some called and left message September 2nd at home. Some chemical company answering machine or something." 3
 4 Q. So exhibit 36 which is part of exhibit 1 is a note that you had, and apparently on that date you called some number and got a chemical company answering service? 7
 8 A. Yes.
 9 Q. And you left a message on that machine?
 10 A. I did. That's the best number I had.
 11 Q. So you don't know up to this point you hadn't -- up to September -- what's the date of that exhibit 36? 13
 14 A. I think it's the 2nd.
 15 Q. So as of that date, you don't know if you talked to Mr. Jones or not?
 17 A. I believe that's correct.
 18 Q. Okay. Now, September 3rd, exhibit 37.
 19 A. Right.
 20 Q. What does that say?
 21 A. "Spoke with Joe. He was quite willing to involve Mark Riley, and we talked about using UVA eligibility." So he must have got my message 23
 24 because I believe that was a call from Joe to me.
 25 Q. Did you talk to Mr. Riley at all? I'm not

COURT REPORTERS ASSOCIATES

1 asking you to guess. If you don't recall, you don't
 2 recall.
 3 A. I don't recall.
 4 Q. Did you talk to Mr. Wilcox again?
 5 A. I believe yes.
 6 Q. When did you talk to Mr. Wilcox again?
 7 A. It would be some time before I got the
 8 amendment that I got for the plan. I think we
 9 talked between the time some of these notes indicate
 10 that he and I talked, and when I got the amendment to
 11 Joe's plan.
 12 Q. When did you get the amendment?
 13 A. I can't find it.
 14 Q. Don't feel bad. I can't either.
 15 MS. ELIAS: The amendment is G.
 16 BY MR. RYAN:
 17 Q. And that's dated September 26?
 18 A. Yes.
 19 Q. And you would have gotten it -- well, you
 20 got it on September 30. Is that the indication?
 21 A. That's when I got it, yes.
 22 Q. And as of that time having been on the
 23 property, your notes don't indicate that you cited
 24 Joe for any violation, do they?
 25 A. That's true.

COURT REPORTERS ASSOCIATES

1 Q. And any modification to the plan that you worked out with Mr. Riley and Mr. Wilcox and Mr. Jones was filed and accepted by you on September 30, 1992; is that correct? 4

5 A. Yes. 5

6 Q. After that, in the years after that, you got annual conformance reports; is that right? 7

8 A. I believe, yes. I believe I got them for every year. 9

10 Q. You got them in '92 after this. You got a conformance report? 11

12 A. I think they are here. I just got to find them. 13

14 Q. Try L. 14

15 A. H. 15

16 Q. So in 1992 -- 16

17 A. I'm on the conformance report for 1992. 17

18 Q. Okay. The conformance report you understand to be filled out by Mr. Riley? 19

20 A. Mr. Riley normally sent them to me. I'm not sure who actually filled them out. 21

22 Q. You never found out that Mr. Riley was handling this property? 23

24 A. I don't recall. 24

25 Q. Okay. You knew they came from Mr. Riley? 25

COURT REPORTERS ASSOCIATES

1 is that correct?

2 A. Oh, yes.

3 Q. And you accepted the '92 conformance report

4 in January of '92, correct?

5 A. January '93.

6 Q. I'm sorry. And that, again, was after you

7 had done your inspection in '92?

8 A. Yes.

9 Q. And that was after you realized that there

10 was cutting on the property, including cutting in

11 area one that you felt was not in conformance,

12 strict conformance, with the plan?

13 A. Yes.

14 Q. That's also true in '94?

15 A. Yes. It says here that the report is by

16 Mark Riley, so I assume he was still involved.

17 Q. It does say reported by (inaudible) and

18 Mark Riley. And that's true in '94, '95, '96,

19 correct?

20 A. Yes.

21 Q. So of all those years up through 1996,

22 after having been on the property in 1992, you

23 accepted these conformance reports; is that right?

24 A. Yes. It indicated no more work was done

25 except what was completed in 1992.

COURT REPORTERS ASSOCIATES

1 Q. So you also knew that there were opt outs
of this program available to Mr. Jones and other land
owners about penalty, didn't you?
2 MS. ELIAS: Objection. Beyond the
3 scope of direct.
4 THE COURT: We'll take the answer.
5 BY MR. RYAN:
6 Q. Didn't you?
7 A. I don't know when those dates were.
8 Q. Thank you. In the back there you'll find
9 -- you were more familiar with them when you were
10 county forester, weren't you?
11 A. I think so.
12 Q. If I were to represent to you exhibit 2 in
13 the back of the book is one of them that have allowed
14 an opt out -- I guess we have to go the other way.
15 A. I'm not sure. This is exhibit 28 so I've
16 got to go --
17 Q. Do you have exhibit 2 now, Mr. Philbrook?
18 A. Yes.
19 Q. Does that refresh your recollection as to
20 opt out times?
21 A. This is for September '96. All right.
22 Q. Does that reflect your recollection that
23 Mr. Jones could have opted out as of September '96?

COURT REPORTERS ASSOCIATES

1 A. Yes.

2 Q. So any time up to September 1996, even if

3 you had found that there was a violation on Jones'

4 property in sections one or three, assuming Mr. Jones

5 clear cut all of section one, all of section three,

6 and you found him in violation, he could have opted

7 out of the program in 1996 without any penalty at

8 all; isn't that right?

9 A. If I had found him in violation, no. I

10 don't think he would have had -- he would have to get

11 out if he was still in good stead with the program,

12 he could not violate the conditions of the plan and

13 then just walk.

14 Q. Well, exhibit 2 speaks for itself. In any

15 event, you did not find him in violation up through

16 '96, correct?

17 A. That's true.

18 Q. And if he wanted -- and if he thought he

19 was in violation or if he had been put on notice that

20 he was in violation, he could have opted out?

21 A. He could have got out if he wanted to,

22 anyway.

23 Q. But my point is in '96, if he had been put

24 on notice that there was any question that the '92

25 cutting you inspected was in any way in violation

1 that would result in him being thrown out of the
 2 program, he could have opted out in September of 1996
 3 before you retired and Mr. Fice became the new
 4 forester; he could have opted out at that time
 5 without penalty, correct?
 6 A. You've got a number of things running here.
 7 Q. Let's start with September of 1996. Were
 8 you the forester there? When did you retire?
 9 A. June of '96.
 10 Q. You know Mr. Fice's inspection was some
 11 time after September of 1996. Isn't that true?
 12 A. It could be. I don't know.
 13 Q. So before Mr. Fice's inspection, if Jones
 14 wanted to, any time up to then he could have opted
 15 out of this program without any penalty, correct?
 16 A. Yes, he could have.
 17 Q. And you when you were forester, never put
 18 him on notice that you felt anything that was done in
 19 1992 was what you considered to be a violation of the
 20 plan that would result in his being terminated from
 21 the program?
 22 A. That's not correct. I think my
 23 conversation with Mr. Jones was at least a notice for
 24 a reasonable person to take notice that you're on the
 25 edge here.

COURT REPORTERS ASSOCIATES

1 Q. But you didn't cite him for any violations in '92?

2 A. If I had cited him, then he would have not had the option of getting out.

3 Q. But my point is you didn't cite him?

4 A. I didn't have a reason to, I didn't feel.

5 Q. You didn't cite him, did you?

6 A. That's right.

7 Q. And you got some sticky notes, but you didn't write him a letter, did you?

8 A. I don't believe I did.

9 Q. You wrote him a letter after the '85 inspection, didn't you? Exhibit J.

10 A. Yes.

11 Q. And there it was just some minor things, and you wrote to him and put him on clear notice of those minor things, didn't you?

12 A. Yes, I did.

13 Q. You didn't do that after the '92 inspection, did you?

14 A. No. I think I relied on the phone conversations and the contact with his forester and his forester contacting me. I thought we had a pretty good dialogue going.

15 Q. As a result of that dialogue, you accepted

COURT REPORTERS ASSOCIATES

1 an amendment to the plan that -- concerning lot
 2 number five, correct?
 3 A. Just five, yes.
 4 Q. If the plan had been amended to include any
 5 cutting on exhibit -- on lot one or lot three, you
 6 also would have accepted that, wouldn't you?
 7 A. It would -- well, I would have to see what
 8 the proposal was. If we were talking about the bulk
 9 of the property, we would be looking for still a
 10 sound and (inaudible) treatment of that area.
 11 Q. Do you remember telling me in your
 12 deposition that if the plan had been amended to
 13 incorporate what was actually done on the ground on
 14 lot one and three, that you would have accepted it?
 15 A. I don't understand your question here.
 16 Q. If Jones had amended his plan to include
 17 the cutting that was actually done in Stand One and
 18 Stand Three, you would have accepted it, wouldn't
 19 you?
 20 A. No.
 21 Q. To this day, you don't even know what was
 22 done in Stand One and Three. Is that what you
 23 understand?
 24 A. I only understand or I only have knowledge
 25 of the area of Stand One that I walked. Cutting was

COURT REPORTERS ASSOCIATES

1 in progress when I was there.

2 Q. The logging road that's shown on exhibit --

3 I think it's M -- that was the logging road that you

4 were walking on in August of 1992?

5 A. I believe, yes.

6 Q. Was that a new logging road they had just

7 cut?

8 A. I don't think so.

9 Q. They were using one that had been there for

10 a while?

11 A. Yes.

12 Q. Did you see any new logging roads up there

13 at all?

14 A. I didn't. I don't recall seeing any.

15 Q. When you accepted the conformance reports

16 knowing there was cutting going on out there in 1992,

17 you accepted whatever cutting took place, didn't you?

18 A. I acknowledged the fact that the report had

19 been filed with me. Yes. It doesn't ask me to

20 evaluate the activity at that point. I'm not --

21 Q. Would you turn to page 140 of your

22 deposition. Let me know when you're there, please.

23 We were talking about inspection, conformance

24 reports. And we were talking about Stand One. Do

25 you recall that on page 140?

COURT REPORTERS ASSOCIATES

1 A. Whereabouts are you?

2 Q. You can start with up on line 6. You

3 understand that we're talking about conformance

4 reports accepted by you, and it says January of '92

5 because that's when it's dated?

6 A. Okay.

7 Q. January 15 of '93 and thereafter. Down on

8 line 15 I said to you, "And you received that and

9 read it and accepted it, and yet you knew it wasn't

10 true, correct?" And you stated -- would you read

11 your answer to the Court?

12 A. "I certainly knew there were problems that

13 were -- excuse me. I certainly knew there was some

14 problems with those areas but I -- my signature is on

15 it, but it doesn't necessarily say that I agree with

16 everything that was done. Even though it might be

17 read into it by what is on the paper here."

18 Q. Sure. But you accepted those conformance

19 reports and you accepted the cutting that was done in

20 1992 by accepting those reports, didn't you?

21 A. Based on what I saw, yes. The knowledge I

22 had at hand, I accepted the conformance report.

23 Q. And if you look -- if you continue on,

24 bottom of page 140, we reaffirm that, don't we, that

25 you accepted anything that was done? The question

COURT REPORTERS ASSOCIATES

1 is, "All right. In connection with your other
2 testimony and the fact that you received this and you
3 received one for the next year and the year after
4 that, you didn't go out and do any other inspections
5 or do any or cite Jones for any violations. You
6 accepted what was done on the ground out there in
7 1992 on or before you received these compliance
8 reports, correct, as an amendment to the plan?" And
9 what was your answer?
10 A. I said yes.
11 Q. My question was, "All right. And what did
12 you say again?"
13 A. I said yes.
14 Q. Your use valuation inspection report for
15 1992 does not recommend that Joe Jones be taken out
16 of the program, does it?
17 A. True.
18 Q. As a matter of fact, by not asking him to
19 be taken out of the program, your so-called
20 conformance report, the post-it notes, recommends
21 that Jones be continued in the UVA program, don't
22 they?
23 A. Yes.
24 MR. RYAN: Thank you. That's all I
25 have.

COURT REPORTERS ASSOCIATES

1 THE COURT: Ms. Elias, redirect?

2 MS. ELIAS: A quick three or four

3 questions, Your Honor.

4 REDIRECT EXAMINATION BY MS. ELIAS:

5 Q. Mr. Philbrook, calling your attention to

6 those conformance reports you just looked at, they

7 are under tab H. Particularly, the one that you

8 just looked at for 1992 dated January of 1993?

9 A. If you were speaking to me, Jeanne, I

10 can't hear you.

11 Q. I'm sorry. Recalling your attention to the

12 annual conformance reports filed by the landowner?

13 A. Yes.

14 Q. I ask you to look again at the one we were

15 discussing for the work that happened in '92 that's

16 dated in '93.

17 A. Yes.

18 Q. There have been questions from Mr. Ryan

19 about whether or not you accepted these reports, and

20 I would ask you to look at that particular report and

21 look at the line that appears printed above your

22 signature on that report.

23 A. Okay.

24 Q. What does it say immediately above your

25 signature on that report?

COURT REPORTERS ASSOCIATES

1 A. The first word I can't read, but "This annual conformance report shall become an addendum."
2 Q. No, I'm sorry. There is a line that your signature is on.
3 A. Received by.
4 Q. That's what I wanted to ask you about. When you sign those conformance reports, Mr. Philbrook, were you indicating that you had physically received the reports?
5 A. That's all.
6 Q. And is the purpose of -- It doesn't say "accepted by", does it?
7 A. No, it does not.
8 Q. Let me call your attention to the portion of your deposition Mr. Ryan was asking you about before. The bottom question on page 140, line 24, what line was that?
9 Q. Start with Mr. Ryan's question on line 24, page 140.
10 A. Yes.
11 Q. Okay. Continue on to page 141, line 5.
12 A. Yes.
13 Q. The question from Mr. Ryan was, "You accepted what was done on the ground out there in 1992 or before you received these compliance reports,"

COURT REPORTERS ASSOCIATES

1 correct, as an amendment to the plan." And then
 2 your answer on line 6 is (inaudible), and he asked
 3 you again, "All right," question mark, or "All
 4 right," period, and then "Yes." I want to ask you
 5 is the activity reported by the landowner in this
 6 case in the 1992 conformance report, is that an
 7 amendment to the plan?
 8 MR. RYAN: Object, Your Honor. His
 9 testimony is what it is.
 10 MS. ELIAS: Your Honor, I want to
 11 clarify what this --
 12 THE COURT: We'll let you clarify.
 13 THE WITNESS: No, it's not.
 14 BY MS. ELIAS:
 15 Q. And you have previously testified that
 16 during your 1992 inspection, you never went up to the
 17 dog leg area of area one, did you?
 18 A. I did not go up there.
 19 Q. And you also testified that you never went
 20 into the upper area of Stand Three; is that correct?
 21 MR. RYAN: This is way leading, your
 22 Honor.
 23 THE WITNESS: That's correct.
 24 THE COURT: He testified to it under
 25 his cross that he never went up there so --

COURT REPORTERS ASSOCIATES

1 BY MS. ELIAS: 2 Q. Did you ever amend the plan to change the requirements for Stand One in the dog leg area and Stand Three in the patch cut area?

3 A. No, I did not.

4 Q. In fact, you never saw those areas, did you.

5 THE COURT: Ms. Elias, you do need to watch the leading questions.

6 MS. ELIAS: Okay. That's all I have.

7 THE COURT: All right. Thank you.

8 You can step down.

9 THE WITNESS: Thank you, Your Honor.

10 MS. ELIAS: Mr. Wilcox was asked to come at 3. We will be calling him in our case. We don't have another witness here right now. If Mr. Ryan wants to call Mr. Jones to start the direct testimony, that's the way we can handle the time between now and 3 o'clock.

11 MR. RYAN: I'm willing to do that, Your Honor.

12 THE COURT: All right. How many witnesses -- you're done?

13 MR. RYAN: They changed their minds. They are not done.

COURT REPORTERS ASSOCIATES

1 Otherwise, I'll call Mr. Wilcox myself.

2 THE COURT: I'm not going to limit

3 you on that. I haven't done that to anybody on that.

4 MS. ELIAS: Okay.

5 THE COURT: Redirect I'll limit, but

6 on cross examination of a witness, a non-party --

7 MS. ELIAS: Okay.

8 THE COURT: I have no intention.

9 MS. ELIAS: Okay. I'm happy to have

10 Mr. Ryan examine Mr. Wilcox first.

11 THE COURT: Great.

12 MR. RYAN: I'll get him on and off as

13 quickly as possible.

14 (A recess was taken.)

15 (The hearing resumed.)

16 MR. RYAN: Your Honor, we would

17 interrupt Mr. Jones' testimony for Mr. Wilcox who is

18 here.

19 THE COURT: All right. Mr. Wilcox.

20 RANDY WILCOX, having been duly sworn to tell the

21 whole truth and nothing but the truth, testified as

22 follows:

23 DIRECT EXAMINATION BY MR. RYAN:

24 Q. Mr. Wilcox, would you state your name for

25 the record, please?

COURT REPORTERS ASSOCIATES

1 A. Randy Wilcox.

2 Q. And, Mr. Wilcox, would you tell me about

3 your -- I understand you're a forester?

4 A. That's correct.

5 Q. Would you tell me about your training and

6 education in that regard, please?

7 A. I have a degree in forestry from the

8 University of Maine at Orono. I worked for eight

9 years for the A. Johnson Lumber Company in Bristol,

10 Vermont, as a forester, and I worked for the last 13

11 or 14 years as a private consulting forester.

12 Q. Do you know Dick Rose?

13 A. I know the name. Never met him.

14 Q. You worked for Mr. Riley on occasion?

15 A. Worked as a subcontractor, yes.

16 Q. And I understand that back prior to 1991,

17 the State was requiring some work be done on Mr.

18 Jones' property to keep it in the use value plan.

19 Are you aware of that?

20 A. I'm aware that there was an update of the

21 management plan was due around 1991 at some point.

22 Q. I understand you actually were the person

23 who did that plan?

24 A. I went out and did the field work and

25 supplied the data to Mr. Riley in order to prepare

COURT REPORTERS ASSOCIATES

1 the plan.

2 Q. so you went all over the Jones property?

3 A. I spent a couple of days walking the

4 property. It's a large property so I did not see

5 every last acre of it.

6 Q. Okay. Now, when you did your notes for the

7 preparation of the 1991 plan, were you out on Stand

8 Three?

9 A. Yes. I spent some time in Stand Three.

10 Q. Was it your intention in Stand Three to

11 have some cutting, some clear cut patches done there?

12 A. Yes.

13 Q. Why did you want those patches done in

14 Stand Three?

15 A. The overall condition of that particular

16 stand was on the poorer side. Lower quality trees

17 and disease. Some trees that didn't appear to be

18 growing all that well, so it needed some work.

19 Patch clear cuts. I'll back up a little bit. The

20 ground, soil in that area, tended to be wet, and it

21 was more suited to do some small patch clear cuts as

22 a method of forestry, rather than trying to go

23 through and pick out individual trees to thin out

24 which then might blow over because they are not very

25 deeply rooted.

COURT REPORTERS ASSOCIATES

1 Q. Did anything Mr. Riley tell you or were you
 2 aware that the state was requiring specific cutting
 3 in that area?
 4 A. I don't recall that.
 5 Q. Okay. When you were out there taking your
 6 notes, did you mark at that time the patches to be
 7 cut?
 8 A. No. I don't believe I did. I was up there
 9 for a few days and there were several things going
 10 on. I was walking the lot to look at it in order to
 11 get the data to do this management plan update. Was
 12 also in the process of flagging out the location for
 13 a cross country ski trail. And in the process of
 14 that, I was in and around and through Stand Three,
 15 and I was looking at areas where I thought some
 16 patches needed to be put in.
 17 Q. Did you put those patches in?
 18 A. Yes.
 19 Q. Tell the Court how you did that.
 20 A. Once I had saw an area that I thought
 21 needed to be regenerated or small clear cut, I went
 22 through with a can of spray paint and I sprayed two
 23 spots, I believe, around the perimeter of where these
 24 patches would be, and I numbered each one, also, so
 25 that I could keep track of where they are and noted

COURT REPORTERS ASSOCIATES

1 them on the map.

2 Q. How many patches did you actually mark?

3 A. I think 12. Without looking at my notes, I'm not positive.

4 Q. Did you mark all 12?

5 A. Yes.

6 Q. And you mark it by taking a can of spray paint?

7 A. Paint the trees that would be the perimeter of the cut.

8 Q. My understanding, the clear cut patches that you marked were in the area of an acre-and-a-half?

9 A. Probably range from a half an acre upwards of an acre-and-a-half.

10 Q. Now, did Mr. Jones take you out there to show you where he wanted these patch cuts?

11 A. No. Initially the first day, I went up with Mark and he took me up and showed me where Mr. Jones wanted this cross country ski trail to begin and he showed me two patches shortly out there that where Mr. Jones wanted cleared.

12 Q. I'm talking about the patches that you cut and Mr. Dern. The patches that you marked and Mr. Dern cut that resulted in this violation. Did Mr.

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1 Jones show you those cuts?
 2 A. Not the ones that were cut.
 3 Q. The ones that were cut were your decision
 4 based on what you thought was good forestry
 5 management practice?
 6 A. That's correct.
 7 Q. And for the reasons you told the Court, it
 8 was wet and --
 9 A. Condition of the trees warranted. They
 10 were not doing well.
 11 Q. Later, you took Mr. Dern out and showed him
 12 the patches to be cut, didn't you?
 13 A. I showed him some of the patches. I don't
 14 recall which ones, specifically.
 15 Q. And after this lawsuit and after Mr. Jones
 16 was in violation, you went back up to look at the
 17 cuts that Mr. Dern had done in section three, didn't
 18 you?
 19 A. Went up to see if, indeed, this violation
 20 that had come up was, indeed, in fact these same
 21 patches that I have marked out.
 22 Q. And were they?
 23 A. Yes.
 24 Q. So the patches that you marked and Mr. Dern
 25 cut and that Mr. Jones had nothing to do with were

1 the patches that resulted in the violation?

2 A. The patches -- I guess, yeah. I mean, I

3 don't -- I believe that's the case.

4 Q. Okay. Now, when you went back up to look

5 at those patches, were those patches doing the job

6 that you intended them to do?

7 A. The patches that were cut, they did have --

8 before they were cut and when I marked them out, I

9 noted that they did have some seedling trees in there

10 already established, and one of the reasons for

11 locating those patches in those spots was because

12 those seedlings were already there. When we went

13 back and looked at the cuts and took the pictures,

14 those trees that were that tall when I first laid the

15 patches out had been opened up to the full sunlight

16 and were growing very well.

17 Q. So the patches were doing exactly what you

18 intended them to do?

19 A. Yes.

20 Q. After you cut, you marked those patches

21 physically on the ground, you had a chance to meet

22 with Mr. Riley and see the actual plan, didn't you?

23 A. We met at some point. I saw the plan a few

24 weeks after actually physically marking the patches

25 on the ground. I don't remember the circumstances.

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1 Q. And at that time you noted the plan said
 2 40-foot patches, didn't you?
 3 A. I did note that, yes.
 4 Q. You knew that the plan said 40-foot patches
 5 and that you had marked something much larger. An
 6 acre-and-a-half-ish?
 7 A. That's correct.
 8 Q. And you had a conversation with Mr. Riley
 9 about that, didn't you?
 10 A. I believe we discussed -- I think I told
 11 him what was in the plan was not exactly what I had
 12 done on the ground.
 13 Q. Okay. As a matter of fact, you had a
 14 specific conversation about they weren't 40 feet?
 15 A. Yeah. I told him that what I had done out
 16 there was not a 40-foot diameter.
 17 Q. And so Riley knew it and you knew it before
 18 Dern did any cutting?
 19 A. Yes.
 20 Q. And you didn't call Mr. Jones or Mr. Dern
 21 to alert them to that fact?
 22 A. I thought that there was enough -- No, I
 23 didn't.
 24 Q. And Mr. Riley, as far as you know, did not
 25 call Mr. Dern or Mr. Jones to alert them to that

1 fact, correct?

2 A. As far as I know. I don't know.

3 Q. You were about to say you thought there was
 4 enough what?

5 A. In the plan as it was written, we referred
 6 to patch cuts in that area and also referred to
 7 regenerating a total of 20 percent of the total stand
 8 by that method, and I thought that there was enough
 9 flexibility or whatever you want to call it, wiggle
 10 room, within that plan that there would not be a
 11 problem because the patches made good sense
 12 silviculturally from a forestry standpoint that there
 13 wouldn't be a problem down the line.

14 Q. You knew Mr. Philbrook?

15 A. Yes.

16 Q. You knew that he was a reasonable man?

17 A. Yup.

18 Q. You knew that if you had told Mr.
 19 Philbrook, hey, this is the purpose of these cuts
 20 even though the plan says 40 feet, he would have
 21 accepted them?

22 A. I think he would have.

23 Q. So you didn't really -- At that time, there
 24 wasn't of great concern to you or to Mr. Riley that
 25 these patches were greater than 40 feet?

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1 A. No, there wasn't.

2 Q. You went out with Mr. Dern before the

3 cutting. You showed him where the patches would be

4 in Stand Three, correct?

5 A. I showed him some of the patches. I don't

6 recall which ones.

7 Q. You took him to Stand One and showed him

8 what needed to be done there?

9 A. We discussed it. I didn't take him to the

10 stand.

11 Q. But you discussed what needed to be done

12 with Mr. Dern?

13 A. We discussed that there were a couple of

14 small areas, maybe five or ten acres, that did have

15 sufficient timber in them that could be sent out, but

16 the vast majority of the stand did not need any work.

17 Q. That's what you told Mr. --

18 A. That's right.

19 Q. So he should have known exactly what needed

20 to be done in Stand One?

21 A. I would -- that's for him to say. I don't

22 know what he --

23 Q. At any rate, you had a talk with him. You

24 had the plan with you?

25 A. I assume that I had the plan. I can't

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1 recall exactly if I had it in my hand.
 2 Q. Even if you didn't, you knew the property
 3 well enough to have an intelligent discussion with
 4 Mr. Dern about what needed to be done?
 5 A. I remember telling him that I didn't think
 6 the bulk of Stand One needed any work.
 7 Q. Later on after this cutting had been done
 8 and Mr. Jones had been violated, cited with a
 9 violation, were you concerned at all?
 10 A. I knew that we didn't have anything to do
 11 with marking or any supervision up in Stand One, and
 12 I didn't really think -- Again, I thought that there
 13 was, since what I had marked out of the patch cuts
 14 made good sense from the forestry standpoint, I
 15 didn't expect that there would be any big problem
 16 with it.
 17 Q. Some time later you ran into Mr. Fice on
 18 another project in the woods, didn't you?
 19 A. Well, we have walked a lot of properties.
 20 MS. ELIAS: Excuse me. I can't see
 21 the witness where you're standing, Mr. Ryan.
 22 BY MR. RYAN:
 23 Q. And at that time, you had a conversation
 24 with Mr. Fice about the Jones property, didn't you?
 25 A. I think -- I don't recall exactly. I

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1 think Nate asked me if I had anything to do with the
 2 logging up on Mr. Joneses' property.
 3 Q. And what did you tell him?
 4 A. I told him I did not have anything to do
 5 with the work up in Stand One and that I had laid out
 6 the patches in Stand Three.
 7 Q. Mr. Fice was shocked at that, wasn't he?
 8 A. I don't know if he was shocked. I don't
 9 think that he realized or knew at that point that I
 10 -- I don't know. That I had marked the patches out.
 11 Q. Well, in fact, Mr. Fice told you if he
 12 knew you had marked those patches, then he wouldn't
 13 have violated Jones?
 14 A. I'm not sure if he said that. He might
 15 have said that he wouldn't have written up that stand
 16 as a violation. I don't know. I don't think he said
 17 that.
 18 Q. You don't have a clear recollection at this
 19 time?
 20 A. No.
 21 Q. It was something along that line?
 22 A. Something along that line, yeah.
 23 Q. Getting to Stand One. When you went
 24 through there -- Did you, in 1990 or 91 when you went
 25 through Stand One, take any basal readings?

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1 A. As I walked through, I'm sure I took some
 2 spot checks as I went through, but I don't have notes
 3 here today or town sheets or anything like that to
 4 show you.
 5 Q. Do you think you did a comprehensive study
 6 of Stand One to determine basal area?
 7 A. As I say, I spent one day in Stand One.
 8 It's a large stand so I walked along the southerly
 9 boarder to the southwest corner and then angled
 10 across the lot toward the Cauty Brook, as it were,
 11 and --
 12 THE COURT: Northeast?
 13 THE WITNESS: Well, yeah. In a
 14 northeast direction.
 15 BY MR. RYAN:
 16 Q. See this dog leg up here?
 17 A. Uh-huh.
 18 Q. Can you testify whether or not you were up
 19 in that area?
 20 A. I think I probably was.
 21 Q. Can you tell me whether or not you took any
 22 basal readings?
 23 A. I don't recall.
 24 Q. So you can't testify what the basal area in
 25 this area?

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1 A. No, I can't.

2 Q. In that dog leg prior to 1990 or '92?

3 A. No.

4 Q. And the basal area of trees in Stand One would vary from spot to spot?

5 A. Somewhat.

6 Q. And you found only two spots in Stand One that you thought had to be cut; is that correct?

7 A. I found two areas, again, five to ten acres at most, where there was enough trees that it could be cut, but, again, I didn't think that that justified doing any work in the entire stand for those two small spots.

8 Q. Sure. And those two stands. What was the basal area of those two stands that needed cutting?

9 A. I can't tell you today what the basal area was. My recollection is that they were more heavily stocked with a little bit larger trees than the rest of the area was.

10 Q. Would it be fair to say the basal area was some place between 60 and 80?

11 A. Those spots that we're talking about, I suspect it was higher than that in those spots.

12 Q. You just don't know?

13 A. I don't know. I can't tell you today.

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1 MR. RYAN: Thank you. That's all I
 2 have.
 3 THE COURT: All right. Ms. --
 4 CROSS EXAMINATION BY MS. ELIAS:
 5 Q. Mr. Wilcox, you just testified that you
 6 were in Stand One in 1991 when you were preparing to
 7 work on the plan and doing -- preparing the work for
 8 the 91 plan; is that correct?
 9 A. Uh-huh.
 10 Q. At that time, you were also laying out
 11 cross country ski trails?
 12 A. That's correct.
 13 Q. You just told the Court that you believe
 14 that during that time period you were in the dog leg
 15 area that's marked on the map?
 16 A. Yes.
 17 Q. Was that dog leg area one of the areas
 18 where you saw overstocking?
 19 A. I believe it was. I think on one of my
 20 maps this was a piece of evidence that there was a
 21 comment written decent maple which would be up in
 22 that area, general area, and that was one of the two
 23 areas that I noted that I thought was a little bit
 24 heavier stocked.
 25 Q. And you said that the overstocked areas,

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1 your recollection was that the basal readings were
 2 over 60 to 80?
 3 A. If I noted that it was overstocked or
 4 heavier stocked then the basal area normally would
 5 have been over 60 or 80.
 6 Q. And did you notice any logging activity had
 7 occurred in that dog leg area when you were there in
 8 1991?
 9 A. No.
 10 Q. Meaning that you didn't notice or none had
 11 happened?
 12 A. None had happened at that time.
 13 Q. Okay. And did you note any portion of the
 14 dog leg that you walked through that had the basal
 15 area in the neighborhood of 45 to 12?
 16 A. I can't recall. I can't recall.
 17 Q. If you had noted an area with a basal area
 18 in the neighborhood of 45 average, 12 acceptable
 19 growth stock, would you have thought that significant
 20 enough to make a note of?
 21 MR. RYAN: Object, Your Honor. He
 22 said he didn't recall.
 23 MS. ELIAS: Well, I'm asking him a
 24 different question now.
 25 THE COURT: We'll take the answer.

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1 THE WITNESS: Can you repeat it?

2 I'm sorry.

3 BY MS. ELIAS:

4 Q. While you were walking through Stand One
5 when you were doing the plan in 1991 in the fall, if
6 you had noted areas where the basal area that was as
7 low at 45 in Stand One, would you have thought that
8 was significant enough to make a note about?

9 A. If it was an area the size of this room,
10 no. If it was, you know, 20 acres, yes.

11 Q. If it was a 15-acre area with a basal area
12 of 45, would you have noted it?

13 A. I can't honestly say. I don't know.

14 Q. Fair enough. You said you laid out the ski
15 trail in 1991. How did you mark the ski trail?

16 A. Hung flagging or ribbons along the trail.
17 And with regard to the patch cuts you cut
18 in area three, you said you marked those areas with
19 spray paint?

20 A. That's right.

21 Q. And you said you marked those areas larger
22 than what was specified in the plan?

23 A. That's correct.

24 Q. But you didn't write the plan, did you,
25 Mr. Wilcox?

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1 A. I didn't physically prepare the final plan.
 2 As I said I -- the patches are marked out and the
 3 plan was -- the data and everything was all happening
 4 at the same time. It was a couple of weeks after I
 5 marked the patches before I saw the final plan.
 6 Q. And so you didn't see the plan until after
 7 you marked the patches?
 8 A. That's correct.
 9 Q. And you recognize that there was a
 10 discrepancy in your markings and what was on the
 11 plan?
 12 A. I recognized that there was a point where
 13 they mentioned the 40-foot diameters that I knew I
 14 had exceeded that, but, again, I felt there was
 15 sufficient leeway in the remainder of the description
 16 of that stand that there wouldn't be a problem.
 17 Q. But you agree that there was big difference
 18 between the plan and what you had marked?
 19 A. Well --
 20 MR. RYAN: Object to (inaudible) big,
 21 Your Honor.
 22 THE WITNESS: There was a difference.
 23 The magnitude of that would be for someone else to
 24 say.
 25 BY MS. ELIAS:

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1 Q. Well, what's the difference between 40-foot
2 diameter circle and the largest of the patches that
3 you marked?
4 A. A 40-foot diameter circle is probably maybe
5 the size of this room or a little bit, you know,
6 about the size, and a half-acre patch is not a whole
7 lot bigger than that. Some of my patches were an
8 acre-and-a-half, so they might have been a couple
9 hundred feet, you know, by three or four hundred
10 feet. Something like that.
11 Q. So they could have been four hundred feet
12 in diameter?
13 A. I don't think there was anything that
14 large, but, you know, without reviewing the notes,
15 I'm not sure.
16 Q. Okay. Let me call your attention to your
17 visit to the property. I'm going to call your
18 attention to a specific date. September 4, 1992.
19 You testified in your deposition that you visited the
20 property on that date, and this was based on
21 reference to your work records. Does that sound --
22 Do you recall visiting the property on that date?
23 A. I recall visiting the property, and I think
24 that date is correct based on the records.
25 Q. Do you recall what your reason was for

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1 visiting the property on that day?
 2 A. I was up there at some point. I had
 3 marked out some trees within a small plantation area
 4 along with the patch cuts I marked in area three. I
 5 also marked area five and 5A, I think. For some
 6 work and I was back up there subsequent to that, I
 7 think, on that date you're mentioning, and it came to
 8 my attention that the loggers --
 9 MR. RYAN: This is not a question,
 10 your Honor.
 11 THE COURT: We'll take it. He's
 12 responding.
 13 THE WITNESS: When I got there I
 14 discovered that the loggers -- I had marked these,
 15 one of these areas for thinning and the other one to
 16 be clear cut, and I think they are maybe only one
 17 acre each. When I got up there, the loggers were
 18 cutting this one area. They were clear cutting it.
 19 Not just the trees already marked but some other
 20 trees, also, and I asked them, you know, why they
 21 were doing that.
 22 MR. RYAN: Object, your Honor.
 23 We're clearly getting into hearsay.
 24 THE COURT: What they tell you is not
 25 admissible.

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1 MS. ELIAS: Sorry, Your Honor. I'm
 2 catching up to where the witness is going here. I
 3 asked him what areas he visited and what did he see
 4 and he got ahead of me there. I apologize.
 5 Actually I don't apologize. I withdraw the apology.
 6 THE COURT: All right. I withdraw
 7 my acceptance of your apology.
 8 BY MS. ELIAS:
 9 Q. Do you know why the entire Stand Five and
 10 SA was clear cut?
 11 MR. RYAN: Calls for a yes or no.
 12 MS. ELIAS: I want to find out.
 13 BY MS. ELIAS:
 14 Q. Do you know why?
 15 A. Yes.
 16 Q. And what was the reason that you understood
 17 for the clear cut?
 18 MR. RYAN: If we can find out how he
 19 knows, because it's hearsay --
 20 THE WITNESS: I was told by loggers.
 21 THE COURT: All right. So the basis
 22 for your understanding is what other people told you.
 23 THE WITNESS: Say that again, sir?
 24 THE COURT: Is the basis for your
 25 understanding what the loggers told you?

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1 THE WITNESS: I'm not sure if I follow.

2

3 THE COURT: You have an understanding

4 about the clear cutting, correct?

5 THE WITNESS: Yes.

6 THE COURT: Is it based on what the

7 loggers told you that day when you went up there and

8 you asked them?

9 THE WITNESS: Which I later verified.

10 BY MS. ELIAS:

11 Q. Let's get to the later verification, then.

12 Not addressing what the loggers told you, you are not

13 allowed to tell the Court what the loggers told you.

14 Did you learn from another source why the stand five

15 and 5A had been clear cut?

16 MR. RYAN: Object to that

17 phraseology. She can ask if he was told something.

18 MS. ELIAS: I want to know if he

19 learned from another source. If he was told

20 something, we will get into the same hearsay problem.

21 Did you learn from another source?

22 THE WITNESS: Yes.

23 BY MS. ELIAS:

24 Q. Did you ever learn from Mr. Jones why

25 stands five and 5A were cut?

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1 A. Yes.

2 Q. And what did Mr. Jones tell you as to the
3 reason for clear cutting Stand Five and 5A?
4 A. The stand was located below his house, and
5 he wanted to clear the trees in that area to open the
6 view up.

7 Q. So the purpose of cutting it was the view?
8 A. This one small area that had been clear cut
9 instead of thinned. That was my understanding.

10 Q. Was that clear cutting that you observed on
11 that day in conformance with the plan?
12 A. In this one small area, I don't believe it
13 was on that day.

14 Q. And did anything -- were you involved in
15 anything further with regard to that clear cut of
16 that stand in areas five, 5A?
17 A. I believe I had a conversation with Mr.
18 Riley about that; that an amendment would have to be
19 filed to cover that small one acre clear cut because
20 it wasn't, you know, originally what was in the plan.
21 Q. And other than that conversation or during
22 that conversation with Mr. Riley, did you mention a
23 reason why that needed to be clear cut?
24 A. In looking at the stumps when I was out
25 there that day, I did note that most of the stumps,

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1 including both the trees that I had marked and the
2 trees I had not marked had an interior rot that was
3 going on, and, therefore, this was a silvicultural or
4 a forestry justification to clear cut that stand,
5 even though I had initially had written it up as a
6 thinning. Upon seeing the stumps and the rot inside,
7 then this was a reason, therefore, to do that clear
8 cut.
9 Q. And beyond that conversation with Mr.
10 Riley, did you have anything further to do with the
11 amendment?
12 A. I don't believe so.
13 Q. Okay.
14 A. Can I back up on that? On that last
15 question, or do you --
16 Q. Is there some part of the question that you
17 don't believe you answered?
18 A. Can you restate the question again? I
19 want to make sure I answered it.
20 Q. My question was after you had a
21 conversation with Mr. Riley about the reason for
22 clear cutting Stand Five, did you have anything
23 further to do with the amendment?
24 A. I didn't prepare the amendment, but I
25 believe I did hand carry it in to Jim Philbrook's

1 office and explained to him the reason for bringing
 2 this amendment in.
 3 Q. Okay. Thank you. Let me go back to 1991
 4 when you marked the patch cut areas in Stand Three of
 5 the property.
 6 You testified at your deposition and on
 7 direct testimony that you were up in the Jones
 8 property after you had marked the patch cuts with
 9 Claude Dern; is that correct?
 10 A. We walked -- I think we walked part of the
 11 ski trail and looked at a few of the patches.
 12 Q. Do you know whether Mr. Dern had the
 13 Forest Management Plan with him?
 14 A. I don't recall at this point.
 15 Q. Did you have a copy of the plan with you?
 16 A. I probably had. What was the date on that?
 17 Q. 12-9-91, according to your deposition
 18 testimony.
 19 A. I may have not had an updated plan. I
 20 probably had an older copy of one of the earlier
 21 plans with me.
 22 Q. Did you have any maps with you?
 23 A. Again, I don't recall exactly, but
 24 typically I go out with a map or something if I go
 25 out in the woods.

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1 Q. And with regard to showing -- you said you
2 showed Mr. Dern the ski trail?
3 A. Part of it.
4 Q. And you also showed Mr. Dern some patch
5 cuts?
6 A. Uh-huh.
7 Q. What was your understanding about Mr.
8 Dern's role in what was going to happen on the
9 property at that point in time?
10 MR. RYAN: I have a problem with what
11 was your understanding questions, your Honor.
12 MS. ELIAS: What did you know? Is
13 that better?
14 THE COURT: I don't have a problem
15 with what was your understanding, but --
16 MR. RYAN: It calls for hearsay. We
17 get an answer and then we find out he heard it from
18 somebody who heard it from somebody, so I was just
19 trying avoid that. I can't properly object when a
20 question calls for hearsay or may call for hearsay.
21 THE COURT: Again, we're looking for
22 what his understanding was and we'll limit it to
23 that, but if there is a question regarding the basis
24 of the understanding that comes from another party's
25 statement --

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1 BY MS. ELIAS:

2 Q. What was your understanding about Mr. Dern's role with regard to future work on the property at the point in time you showed him the ski trail?

3

4

5 trail?

6 MR. RYAN: Same objection, Your Honor. Is she asking what he was told?

7

8 MS. ELIAS: No. I want to know what he knew.

9

10 MR. RYAN: If she's going to ask what he knew, then I have a foundation objection.

11

12 THE COURT: We'll take the answer.

13 MS. ELIAS: After all that, Mr. Wilcox, do you remember the question?

14

15 THE WITNESS: What did I know or understand. I don't think that I -- I wouldn't have been involved in any sort of negotiations involving the sale of, you know, there would have been Mr. Riley's, you know, handling, would have handled that end of it since that was his subcontracted to him, so I don't know.

21

22 I remember just showing Claude the ski trail and beyond that, I don't or didn't have any preconceptions, I don't believe, for how it would play out.

25

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1 BY MS. ELIAS:

2 Q. Do you know whether Mr. Dern had been

3 retained at that point to do the work?

4 A. I don't know.

5 Q. You don't know?

6 A. I don't know.

7 Q. Did you know at that time?

8 A. At that time?

9 Q. Yes.

10 A. No. I believe I was just showing to him,

11 and for him to decide if he wanted to pursue it or

12 not.

13 Q. So at the time you showed him the patch

14 cuts, you didn't know for sure he was going to do the

15 work?

16 A. No.

17 Q. Did you know that anybody was going to do

18 the work?

19 A. The assumption would have been that

20 somebody would have, but I didn't know at that date

21 who it would have been.

22 Q. Did you know about any relationship between

23 the cost of putting in the ski trail and wood taken

24 from these patch clear cuts?

25 A. I vaguely remember, you know, Mark Riley

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1 indicating that --

2 MR. RYAN: Objection, Your Honor.

3 Obvious hearsay.

4 THE COURT: Sustained.

5 BY MS. ELIAS:

6 Q. Did you collect any information or write
7 down any notes about how much wood would be taken
8 from each of those patch cuts?

9 A. I made a very general eyeball estimate as I
10 marked these patches as to how much timber and/or
11 firewood or pulpwood was in each one.

12 Q. What was the purpose of making that
13 estimate?

14 A. Just to have a ballpark idea of what was
15 there for timber.

16 Q. Okay. When you were with Mr. Dern on the
17 property in December of 1991, did you go into stand
18 One?

19 A. No.

20 Q. You said you were in Stand Three and you
21 showed him the patch cuts?

22 A. We walked part of the ski trail which I
23 believe -- well, I'll back up. Part of the ski
24 trail that we did walk is the first section.

25 Q. Can you point to exhibit M over there and

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1 point out where you were referring to on the map?
 2 A. My memory is that we walked -- this is the
 3 ski trail where they laid out. It goes all the way
 4 around, and I think that day Claude and I walked this
 5 section of the ski trail. I believe we came back
 6 down and looked at a couple of the patches over here.
 7 I think that was all we did.
 8 Q. And did you go through the dog leg area?
 9 A. No.
 10 Q. Mr. Wilcox, are you familiar with the Deer
 11 Wintering Guide?
 12 A. Yes.
 13 Q. And do you recall that the Deer Wintering
 14 Guides are referenced in the 1991 management plan?
 15 A. I know what they are. At the time, again,
 16 the plan, you know, at the time that I was marking
 17 this stuff, I didn't actually have the plan. The
 18 new plan hadn't been actually written down yet.
 19 Q. But what my question was, do you remember
 20 after having looked at the plan, not at the time you
 21 marked but later, do you remember that the Deer
 22 Wintering Guides are referenced?
 23 A. Yes.
 24 Q. And do you recall that the Deer Wintering
 25 Guides reference 40-foot circles?

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1 A. That's patches, yeah. I think -- yeah. I think three of them had been cut within the patches.

2 think three of them had been cut within the patches.

3 cut within the patches.

4 Q. Was there more cutting than what was in the patches in area three?

5 A. There was some trees that had been cut outside of the patches but within Stand Three. In between the patches that were not originally marked in any way.

6 Q. What kind of trees were those?

7 A. All I saw was the stumps. There was some larger stumps and --

8 Q. Okay. Do you know the cost or what it would have cost Mr. Jones to put in that ski trail?

9 You marked the ski trail. Do you have any idea as a forester what the cost of laying it out?

10 A. I don't know. It probably was a couple days of Mr. Dern with his bulldozer to do it. I'm guessing. It was a couple of miles, I think.

11 Q. Do you have any idea what the cost is?

12 A. No. I don't have any idea what the cost is.

13 Q. Now, going back to your visit on September 4 of 1992, you indicated that you noticed what was happening in Stand Five and that you had a

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1 conversation with the loggers about what they were
 2 doing in Stand Five and 5A; is that correct?
 3 A. Uh-huh.
 4 Q. Do you recall which logger that was?
 5 A. No. I mean, I don't remember specifically
 6 if it was Claude or one of his crew that was working
 7 for him. I don't remember.
 8 Q. You don't know if Claude was there?
 9 A. I don't know.
 10 Q. Okay. And you said that you had verified
 11 later that the reason for the cut, the clear cut of
 12 Stand Five and 5A was at the direction of Mr. Jones;
 13 is that correct?
 14 A. One of those five or 5A --
 15 MR. RYAN: Object. Asked and
 16 answered. It's like a loop here.
 17 MS. ELIAS: I need to return to that.
 18 BY MS. ELIAS:
 19 Q. Did you have a conversation with Mr. Jones
 20 that day?
 21 A. I believe it was that day, yes.
 22 Q. Was that conversation in-person?
 23 A. Yes.
 24 Q. Can you tell me about that conversation?
 25 A. I just went up and asked him if he had

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1 instructed the loggers to clear cut one of the two
2 areas, and I don't remember which is which, but one
3 of them was supposed to be clear cut and the other
4 was supposed to be thinned; and when I got there they
5 had both been -- they were in the process or, you
6 know, they were clearing them both, and I went up to
7 ask Mr. Jones if he had instructed the loggers to do
8 that, and he said he had in order to open the view up
9 below his house.

10 Q. Did you talk to him about any other space
11 between five and 5A during that conversation?

12 A. No.

13 Q. What else did you notice on that September
14 4, 1992 visit about the Jones property that day?

15 A. I'm not -- I didn't notice anything else
16 that I can remember.

17 Q. You noticed that there was logging activity
18 going on in Stands Five and 5A?

19 A. That's correct.

20 Q. Did you notice any logging activity going
21 on anywhere else on the property?

22 A. Not at that time.

23 Q. Did you go on any other areas of the
24 property during that September 4, 1992 visit?

25 A. I don't remember the date. I know that the

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1 last time that I was up there I walked -- Again, I
 2 walked the first portion of the ski trail, and that
 3 was when the work was going on in Stand One but that
 4 was later. It wasn't the same day. I don't know if
 5 that gives with my dates, but it wasn't the same day
 6 that I looked at this that we're talking about the
 7 pine plantations.
 8 Q. So your testimony is that it was these two
 9 times that you visited this property when logging was
 10 going on?
 11 A. Correct.
 12 Q. One day there was logging in five and SA?
 13 A. That's right.
 14 Q. On that date you had a conversation with
 15 Mr. Jones?
 16 A. That's correct.
 17 Q. On a separate occasion?
 18 A. Right.
 19 Q. Are you testifying that that was a later
 20 date?
 21 A. It was a later date. I don't remember.
 22 Q. And what did you observe on that later
 23 date?
 24 A. That later date I observed that there was
 25 logging going on in Stand One, and my observation, I

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1 stopped up and saw that that was going on and I left.
2 Q. Can you tell me or can you approach the map
3 and tell me the area that you think logging was going
4 on, and then I'm going to ask you some questions
5 about what your observations were that led you to
6 conclude that.
7 A. I'll tell you what I did. I came here. I
8 walked up this -- this is a skid trail or a logging
9 trail. I came up and there was obviously logging
10 equipment, and there was obviously a log job going on
11 that day. I walked up and I walked this section of
12 the ski trail again.
13 Q. Is this the ski trail you laid out?
14 A. Yes.
15 Q. At this point, is it completed?
16 A. Yes.
17 Q. Okay.
18 A. So there was this trail was being used to
19 bring logs down, obviously, out of Stand One. I
20 crossed the second trail. As I walked the ski trail
21 that was coming down off by Stand One and I got out
22 here, there was, I think, one is the (inaudible)
23 trail and another old logging trail. This road was
24 being used also to bring the logs down off of Stand
25 One, and I walked back out and I left.

1 Q. Did you make any observations about Stand
 2 Three, the area where you had done the marking of the
 3 patch cuts at that time?
 4 A. This was no logging going on at Stand
 5 Three on that day.
 6 Q. And how do you know that?
 7 A. Because as I walked down, back down the
 8 Cauty Brook trail or the last logging road that I
 9 showed you, I checked to see where the road crossed
 10 that brook to go over into Stand Three where those
 11 patches were marked out, and there was no logging
 12 activity going across that brook over into Stand
 13 Three at that time.
 14 Q. If there had been logging activity, what
 15 would you have expected to observe?
 16 A. Well, there would have been either a bridge
 17 or a road going across that brook and over to the
 18 other side of that brook where these patches were
 19 located.
 20 Q. If this was, well, we know you don't recall
 21 the specific date. You've established that it was
 22 after your September 4, 1992 visit. If those patch
 23 cuts had been marked earlier that summer, would you
 24 have seen any evidence on the ground?
 25 A. If they had been marked or --

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1 Q. I'm sorry. I keep making that mistake.

2 If those patches had been cut earlier that summer.

3 There has been testimony that logging happened

4 starting in June of 1992.

5 If those patches had been cut some time

6 between June of 1992 and your visit which was some

7 time after September, would you have seen evidence?

8 A. I can't say for sure. Probably, but I'm

9 not positive. My recollection is that there hadn't

10 been any work done.

11 Q. Based on what you observed that day?

12 A. Based on what I observed.

13 Q. Okay. And you said as soon as you heard

14 that there was logging activity, you turned around

15 and left?

16 A. No. After I determined that there was not

17 anything -- when I felt that there wasn't any work

18 going on in Stand Three, I left.

19 Q. Okay. And -- one second. Did you ever

20 talk to Mr. Jones that day?

21 A. That day when I walked -- no.

22 Q. Did you ever discuss the logging that you

23 heard in progress with Mr. Jones?

24 A. No.

25 Q. Were you as a subcontractor of Vermont

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1 Forest and Field involved in that logging job?
 2 A. The one in Stand One?
 3 Q. Yes.
 4 A. No.
 5 Q. And if Vermont Forest and Fields had been
 6 involved, what types of tasks would you have been
 7 expecting to be conducting?
 8 MR. RYAN: Object, Your Honor.
 9 Clearly calls for speculation.
 10 MS. ELIAS: I'll withdraw the
 11 question.
 12 THE COURT: All right.
 13 BY MS. ELIAS:
 14 Q. Now, Mr. Wilcox, you testified on your
 15 deposition -- well, let me ask you. Based on your
 16 observations on that later date when you observed
 17 work going on in Stand One, did you believe that --
 18 did you observe -- did the logging that you observed
 19 conform to the requirements in the 1991 plan?
 20 MR. RYAN: Object, Your Honor.
 21 Unless we're talking about the area of the violation
 22 which is the 15.8 acre section. That's the area of
 23 the violation. I have been really trying to let this
 24 go. We have been talking about Stand Five which is
 25 unrelated, and now we're talking about areas of Stand

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1 One which are apparently unrelated.

2 MS. ELIAS: Your Honor, this witness

3 has just testified that he saw evidence of logging --

4 THE COURT: I understand that he said

5 that, so let's just focus it on that, on the dog leg

6 action. So the action that was taken in that

7 section, if he has observation about whether or not

8 that complied or didn't comply.

9 MS. ELIAS: Right. That's basically

10 the question.

11 BY MS. ELIAS:

12 Q. Based on what you observed on the skid

13 trails and logging roads and cross country ski trail

14 in that area near the dog leg portion marked on the

15 map, did you make any observations that would have

16 led you to believe that there was a violation or

17 nonconformance with the plan that you and Mr. Riley

18 wrote?

19 MR. RYAN: Excuse me for just a

20 second. Same objection. She's talking about on the

21 Cauty Trail near the dog leg. If she rephrases it to

22 say within the dog leg, I don't have a problem with

23 it. But "near" bothers me, and as I recall this

24 witness's testimony, he went up the ski trail, not

25 into the dog leg.

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1 MS. ELIAS: That is my recollection
2 of the witness's testimony.
3 THE COURT: Right. So let's focus it
4 only on the dog leg area. That's the area of
5 violation.
6 MS. ELIAS: Right.
7 BY MS. ELIAS:
8 Q. Mr. Wilcox, can you tell what kind of trees
9 were being taken out of Stand One from up above the
10 in the dog leg area, or did you notice what trees
11 were taken out of dog leg area during your
12 observations on that date?
13 A. I only walked up the ski trail and back
14 down the Cauty Trail. I didn't go up into that dog
15 leg area on this visit you're talking about.
16 Q. So you don't know specifically what area
17 was being cut?
18 A. No.
19 Q. If the dog leg area was being cut when you
20 were up, would they have come down the ski road that
21 you were walking?
22 A. Probably would have come down that Cauty
23 Road that I indicated.
24 Q. And you did see evidence of logging on that
25 second visit?

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1 A. Yeah. On the road.

2 Q. On the road that you were on?

3 A. Yeah.

4 Q. Did you ever see during that visit on or in
5 the fall of 1992 but the second visit, did you ever
6 see any logs on any of the landings?

7 A. I never, you know, there were logs there
8 but I didn't spend any time looking them over.

9 Q. So you don't know what kind of trees were
10 being taken?

11 A. No.

12 Q. And you don't know where they came from?

13 A. Just the assumption was from Stand One, but
14 beyond that --

15 Q. And you did testify that there were two
16 specific separate areas of Stand One where you
17 believe logging had been going on during that visit?

18 A. I thought there were two areas where there
19 was sufficient volume of timber.

20 Q. No. That's not my question. My question
21 is based on your observation during that fall '92
22 visit, I believe you testified that there was
23 evidence of use of skid roads in two portions of
24 Stand One.

25 A. There were three skid roads that I saw.

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1 Q. How many? 2

2 A. Three. 3

3 Q. And were those all in the area of stand 4

4 One? 5

5 A. They were all coming out of, yeah, the area 6

6 of stand one. 7

7 Q. Okay. So, Mr. Wilcox, you didn't go up 8

8 into stand one during that visit? 9

9 A. No. 10

10 MR. RYAN: You know, Mr. Wilcox is 11

11 not a nail. He has been hit with the same question 12

12 over and over and over again, and we all forget 13

13 questions that we've asked but this is getting so 14

14 redundant as to be absolutely ridiculous. 15

15 THE COURT: All right. Ms. Elias, 16

16 would you move on please? 17

17 MS. ELIAS: Yes. 18

18 BY MS. ELIAS: 19

19 Q. Mr. Wilcox, did you believe that there was 20

20 a violation in stand one following that visit? 21

21 MR. RYAN: Object, your Honor. We 22

22 have been through this, too. We're talking about the 23

23 15.8 acre section. I have stood up and made this 24

24 objection. The court has sustained the objection, 25

25 and now we are back to it again.

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1 MS. ELIAS: I would like to impeach
 2 the witness. I'll need a moment to get a copy of
 3 his deposition.
 4 MR. RYAN: Impeach what? What
 5 question is being impeached?
 6 BY MS. ELIAS:
 7 Q. Mr. Wilcox, do you recall telling us,
 8 telling Mr. Ryan and --
 9 MR. RYAN: This is improper cross
 10 examination with the deposition. I don't know
 11 what's being impeached here.
 12 THE COURT: Is there -- do you have a
 13 prior inconsistent statement?
 14 MS. ELIAS: Yes, Your Honor.
 15 Concerning testimony about violation in Stand One
 16 that Mr. Wilcox made during his deposition, and I'm
 17 being prevented from asking this question at this
 18 time but I believe that it is relevant and I believe
 19 Mr. Wilcox has -- pardon me if I said your name wrong
 20 just now.
 21 Mr. Wilcox has previously testified that he
 22 felt that there was a violation based on his
 23 observations on that day.
 24 MR. RYAN: Sure. That may have been
 25 true, Your Honor. That was in a deposition. She

1 can ask questions in a deposition which may not be
 2 relevant but which may lead to relevant evidence.
 3 That's a deposition. Today in court, she asked the
 4 same question. I object to it. It's properly
 5 sustained. She can't go back to a deposition and
 6 impeach him with it when he hasn't even gotten to
 7 answer the question in the courtroom.
 8 THE COURT: Right. He would have to
 9 answer something inconsistently today in order for
 10 you to impeach him with the deposition.
 11 MS. ELIAS: Right. I understand,
 12 your Honor.
 13 MR. RYAN: And we don't have an
 14 answer. So you can't.
 15 THE COURT: Okay. Mr. Ryan, if you
 16 want to discuss the rules of evidence with Ms. Elias,
 17 you can do so out in the hallway.
 18 MR. RYAN: I apologize to the court.
 19 BY MS. ELIAS:
 20 Q. You indicated that you saw logging activity
 21 on three skid roads. Before when you indicated on
 22 the map, you showed us two skid roads. Can you
 23 please identify where the three is on there?
 24 A. This road was being used. There was
 25 another road that does not show on this map coming

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1 down out of this area, and then this road which I
 2 refer to as the Cauty Trail or Cauty Road was being
 3 used.
 4 Q. And you saw evidence of current logging
 5 activity on all those three roads when you were on
 6 the property?
 7 MR. RYAN: Object. Asked and
 8 answered.
 9 THE COURT: Sustained.
 10 BY MS. ELIAS:
 11 Q. Let me call your attention, Mr. Wilcox, to
 12 the encounter that you have previously discussed
 13 regarding a conversation you had with Nate Fice about
 14 these patch cuts.
 15 I think what you were asked is to what
 16 degree you remember that conversation about that
 17 encounter, and you know what I'm talking about when
 18 you saw Mr. Fice some time after?
 19 A. Uh-huh.
 20 Q. Do you have a specific recollection that
 21 Mr. Fice told you that if he had known you were
 22 involved, that he wouldn't have issued an adverse
 23 inspection report?
 24 A. I don't recollect that he said that if he
 25 knew I, myself, was involved, but I think he

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1 indicated that if he realized that the patches, you
 2 know, the reason for them, that he might not have
 3 issued the violation on that Stand Three area.
 4 Q. Do you have a clear recollection? Are you
 5 positive that that conversation took place in that
 6 way?
 7 A. I believe it did.
 8 Q. Would it have been possible that what you
 9 and Mr. Fice discussed was, I wish I knew that
 10 Vermont Forest and Fields was involved with those
 11 patch cuts?
 12 MR. RYAN: Object. Calls for him to
 13 guess.
 14 MS. ELIAS: No. I want to know --
 15 THE COURT: We'll take the answer.
 16 THE WITNESS: Can you repeat the
 17 question again, please?
 18 BY MS. ELIAS:
 19 Q. Is it possible that the conversation or
 20 comment from Mr. Fice was, I wish I had known that
 21 Vermont Forest and Fields, you Mr. Wilcox, and Mr.
 22 Riley were involved in those patch cuts?
 23 A. It could have been.
 24 Q. Are you positive that Mr. Fice told you if
 25 he had known of your involvement, he wouldn't have

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1 issued the violation, the notice of adverse
2 inspection?
3 A. I can't recall at this point exactly the
4 conversation. I just remember we had a conversation
5 about it.
6 Q. And did you have a conversation with Mr.
7 Fice about the violation in Stand One at that time?
8 A. Again, I don't recall. We probably did but
9 I -- I'm sure I told him that we didn't have any
10 involvement in the work in Stand One.
11 Q. And by not having involvement with Stand
12 One, you meant?
13 A. Marking any trees. Any involvement with
14 supervising the log job or anything like that.
15 Q. You didn't do any of those activities?
16 A. No.
17 Q. Didn't never mark any trees in Stand One?
18 A. Not in Stand One.
19 MR. RYAN: Object. Asked and
20 answered.
21 THE COURT: Sustained.
22 BY MS. ELIAS:
23 Q. Mr. Wilcox, have you ever been up in the
24 Stand One area since the dog leg area where this
25 violation took place since your 1991 work in creating

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1 the plan?
 2 A. No.
 3 Q. You never went there after Dern did the
 4 logging?
 5 A. No.
 6 MR. RYAN: Object. Asked and
 7 answered.
 8 BY MS. ELIAS:
 9 Q. And you haven't been there since?
 10 MR. RYAN: Object. Asked and
 11 answered.
 12 THE COURT: We'll take the answer.
 13 THE WITNESS: I'm sorry. Is there a
 14 question to me?
 15 BY MS. ELIAS:
 16 Q. Yes. Did you go back there after you were
 17 there making the plan in 1991?
 18 A. No.
 19 Q. Did you ever talk to Mr. Jones about
 20 needing to be in compliance with the plan?
 21 A. I just think that the date I approached him
 22 to ask him about the trees that had been cleared
 23 below the house, I think I indicated that we would
 24 have to make a change in the plan because that wasn't
 25 what we had initially put in the plan, and that he

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1 just needed to be careful about making sure that we
 2 were staying within the plan.
 3 MS. ELIAS: Okay. I'm having trouble
 4 remembering this. I don't want to ask a question
 5 that this witness already answered, but I would like
 6 to ask it because I can't remember the answer.
 7 THE COURT: Go ahead and answer or go
 8 ahead and ask, I mean.
 9 BY MS. ELIAS:
 10 Q. During that first visit, the September
 11 visit and when you saw the Stand Five, Stand 5A,
 12 what areas of the property did you go to on that day?
 13 A. Again, my recollection is that I looked at
 14 that, and I may have walked part of the ski trail
 15 that date just to check on the construction of it,
 16 but I honestly don't remember much beyond looking at
 17 five and 5A.
 18 Q. Okay. Did you go as far on that day as you
 19 did on the subsequent day?
 20 A. I don't remember.
 21 Q. Okay. Thank you.
 22 MS. ELIAS: I just want to check
 23 here. I'm almost finished, your Honor. Which would
 24 be good timing.
 25 BY MS. ELIAS:

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1 Q. One last question, Mr. Wilcox. You testified that you marked the patches in areas, in area three between half an acre and approximately one-and-a-half acres. Your best recollection?

2

3

4 A. Yes.

5 Q. You didn't do the cutting on those areas; is that correct?

6

7 A. The cutting, no.

8

9 Q. But you did go up and see the cutting that had happened after the fact in 1998, correct?

10

11 A. Yes.

12 Q. And you do know that the plan as you testified previously specified 40-foot patch cuts; is that correct?

13

14 A. I knew it in 1998.

15

16 MR. RYAN: This has been asked and answered. All of it.

17

18 BY MS. ELIAS:

19 Q. Mr. Wilcox, were the patch cuts that were cut presumably by Claude Dern in area three in conformance with what was in Mr. Jones's management plan for that area?

20

21

22

23 MR. RYAN: Object. Asked and answered.

24

25 MS. ELIAS: I don't think this

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1 witness has answered this question. I asked him if
 2 they were in conformance with the written plan as
 3 written.
 4 THE COURT: Well, he hasn't
 5 specifically said, but he did indicate that the plan
 6 said 40 feet and he marked out half an acre to an
 7 acre-and-a-half.
 8 MS. ELIAS: And that that was bigger.
 9 I'm asking him were the cuts in conformance with the
 10 plan.
 11 THE COURT: We'll take the answer.
 12 THE WITNESS: Again, I stated that I
 13 felt that there was leeway in the plan that I had
 14 written regarding -- I referred to these cuts as
 15 patch clear cuts, which in my forestry knowledge is
 16 something bigger than a 40 acre or 40-foot diameter.
 17 BY MS. ELIAS:
 18 Q. I'm not asking you your opinion of their
 19 silvicultural integrity. You testified that you
 20 believe that it was --
 21 THE COURT: He answered the question.
 22 He answered it. He said that --
 23 MS. ELIAS: I just want to get a
 24 clear answer on whether these cuts as they were cut
 25 were in conformance with the plan as written.

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1 THE COURT: Whether he understood the plan.

2 MS. ELIAS: I'm just trying to find out.

3 THE COURT: As the plan -- all right.

4 He can answer it if he can.

5 THE WITNESS: I felt the cuts were within the parameters that I had set in the plan. I was aware that they were bigger than 40-foot diameter, but I thought that the parameters of the plan would allow and common sense would allow them to be a little bit bigger.

6 BY MS. ELIAS:

7 Q. And you never did an amendment to the plan to have it conform to what you thought --

8 A. Never knew that the patches, if and when they had ever been cut.

9 Q. Pardon?

10 A. I never knew that, if or when these patches had ever been cut, until the violations came down.

11 Q. Right. But you never did an amendment to the plan?

12 A. No.

13 Q. You never did an amendment to the plan for Stand Three?