

forest, is substantial and will be long-lasting. I am also familiar with the 2009 “Snowmobile Trail Management Guidance” (Record Exhibit 8) issued by the Defendant Adirondack Park Agency (“APA”) and Defendant Department of Environmental Conservation (“DEC”) as their policy governing the construction of these connector trails. For the following reasons, it is my opinion that the construction of a network of these snowmobile connector trails in the Adirondack Forest Preserve is not consistent with the wild forest character of the Forest Preserve.

3. I have read the memorandum of law and Answering Affidavits supporting the State’s motion for summary, including the affidavits of Robb Ripp, Josh Clague, Max Wolckenhaur, Tate Connor and Timothy Howard. These affidavits question Plaintiff’s counts of trees destroyed during construction of new class II community connector snowmobile trails in the Adirondack Forest Preserve and Plaintiff’s estimates of trees to be destroyed in planned class II community snowmobile trails. These affidavits also state that class II community connector snowmobile trails are built in the “character of a foot trail” and maintain the “wild forest character” of the Forest Preserve, which Plaintiff demonstrates is false. These affidavits also state that the negative environmental impacts of these trails have been offset by closure of snowmobile trails in other parts of the Forest Preserve, which Plaintiff also demonstrates is false.

Class II Community Connector Snowmobile Trails

Are Not the Character of a Foot Trail

4. On page 4, the memorandum of law states erroneously states “Plaintiffs argument, which effectively challenges all trails in the forest Preserve, is extreme.” This statement is

a deliberate attempt to muddy the waters. There are vast differences between a class II community connector snowmobile trails and a foot trail. Plaintiff is not challenging the state's ability to maintain trails on the Forest Preserve, just those large trails that require cutting thousands of trees and clearing dozens of acres of Forest Preserve lands. Class II snowmobile trails are much different than foot trails. The affidavit of William Amadon enumerated 15 discrete ways that class II community connector snowmobile trails are different than foot trails:

- The materials used to build bridges are much different;
- Bridge design is much different, bridges are much larger;
- Trail widths are far greater;
- Flattened, graded trail surfaces are the standard;
- Large bench cuts are pervasive along the trailside;
- Extensive tree cutting and presence of large number of tree stumps;
- Extensive grassy fields thrive on the trail;
- Heavy machinery is used, whereas hand tools are used to build foot trails;
- Damage to trailside trees is common;
- Fracturing of bedrock and use of gravel;
- Vast trailside debris from high numbers of cut down trees;
- Large pits on trailsides from stump and boulder removal;
- Large waterbars used to capture stormwater from extensive cleared area;
- Extensive canopy openings; and
- Trail signs similar to those used on roads.

5. In my professional experience, working on Forest Preserve management policy for more than 25 years, and hiking through many areas of the Forest Preserve, I have not seen management of Forest Preserve facilities with this level of tree cutting and this level of forest disturbance, where it is common that 1,000 trees per mile are destroyed, and where trails are graded with heavy equipment. This level of tree cutting and terrain alteration is unprecedented in the history of Forest Preserve management and violates Article 14, Section 1 of the NYS Constitution.

6. Mr. Connor quotes (para 7) the State Land Master Plan requirement that

snowmobile trails are supposed to have “essentially the same character as a foot trail.” Mr. Connor apparently believes that because the State Land Master Plan requires this of the DEC, that somehow the DEC has automatically complied. The facts in the field, as demonstrated in the Bauer Answer Aff, the Amadon Affidavit, and the Signell Affidavits, have amply shown that class II community trails are far more road-like than foot trail-like, in no way possess essentially the same character as a foot trail, and have been highly disturbed and degraded.

7. In para 26, Mr. Connor states that “construction of the trail is consistent with the surrounding wild forest.” This is not so. The state has not presented any analysis to support this contention, whereas Plaintiff has put ecological experts in the field, such as Steve Signell, Ron Sutherland and William Amadon, to review and analyze this trail and state their findings to this Court. The Seventh Lake Mountain Trail is heavily disturbed, devoid of trees, and for great stretches has been transformed into a grass-covered trailway. The disturbed and degraded trail corridor is starkly different from the intact forest that surrounds the trail.

8. Mr. Connor states in his conclusion “The Seventh Lake Mountain Trail was designed for safe recreational access to the Forest Preserve, with construction features that control erosion, protect wetlands and streams, maintain the forest canopy and preserve and maintain the essential wild forest character of the Forest Preserve.” This is inaccurate. In my Answer Affidavit I showed areas where this trail that was eroding (Exhibit B). Further, Mr. Signell stated in his Answer Aff (para 18-23) that he conducted a study of the Seventh Lake Mountain Trail where he recorded data at each .10th of a mile. He reported that “56% of these locations showed extensive grass on the trail,” which is

evidence of disturbance and degradation and stands in stark contrast to the surrounding forest.

**Foot Trails Require Far Far Less Tree Cutting
Than Class II Community Connector Snowmobile Trails**

9. I read the Answer Affidavit of Tate Connor. In paragraph 8, Mr. Connor refers to my affidavit talking about tree cutting on the “Goodnow Mountain” foot trail. He remarks that this is not an accurate comparison because the Goodnow Mountain Trail is on private land. I agree. My affidavit mistakenly referenced the Goodnow Mountain where I should have stated “Goodman Mountain,” which is a newly constructed foot trail in the Horseshoe Lake Wild Forest area. I note that while I made this mistake in my affidavit, Exhibit G of my affidavit clearly states “Goodman Mountain” and shows that 64 trees were cut on the newly built 1.16-mile trail to the summit of the mountain.

10. On November 17, 2016, I hiked Coney Mountain, also a relatively newly constructed foot trail in the Horseshoe Lake Wild Forest Area. I counted and photographed tree stumps along 1.2 miles of this trail, from the parking lot on Route 30, to the summit. I counted 13 tree stumps along this trail, one over 3”DBH, the rest smaller. See Exhibit A for maps and locations of stumps for both Goodman Mountain and Coney Mountain. It is clear that when DEC’s tree cutting on the Seventh Lake Mountain Trail was at a rate of at least 553 trees per mile (and many tree stumps were obliterated by grading of the trail with heavy machinery so the actual count was much higher), and when tree cutting on many parts of the Newcomb-Minerva trail topped 1,000 trees per mile, that the level of tree cutting on class II community connector snowmobile trails is far different than on foot trails. This is beyond dispute.

11. Class II community connector trails do not possess the character of a foot trail. These are wide road-like trails, far different from narrow foot trails. The extensive tree cutting and extensive terrain alteration through grading with heavy machinery, supersized bridges, signage similar to highways and roads, canopy openings, vast stretches where the trail corridors have been transformed to monolithic grassy fields, vast trail widths, vast number of tree stumps, extensive use of bench cuts on the trailsides which introduces man-made geometric forms into a forest setting, among many other features, shows the many ways that class II community connector trails are starkly different from foot trails and degrade the wild forest character of the Forest Preserve. My earlier affidavits, along with the affidavits of William Amadon, a foot trail construction expert, and Steve Signell have provided extensive analysis to support this position.

Class II Community Connector Snowmobile Trails

Are Vastly Different than Class I Snowmobile Trails

12. Defendants mischaracterize the differences between class I and class II snowmobile trails and foot trails. The state attempts to blur the realities between these different types of snowmobile trails when it states:

“DEC uses the same construction design and erosion control techniques for Class II trails as for other trails in the Forest Preserve, the only difference being that these trails are one foot wider than other trails to limit the effects of snowmobiling on the surrounding environment, while ensuring that snowmobiles may pass each other safely.” (Defendants’ Memorandum of Law, Page 3-4)

This statement is not accurate. There are major differences between a class 1 snowmobile trail. The Snowmobile Trail Guidance enumerates many differences between class I and class II snowmobile trails:

“Class I Trails. Trail surfaces should generally follow the existing contours of the

natural forest floor and not be graded flat. **While limited leveling and grading may be undertaken, this work will be done using hand tools almost exclusively.** In rare circumstances, appropriate low-impact landscaping equipment may be used as specified in a Work Plan.”

Class II Trails. Trail surfaces should generally follow the existing contours of the natural forest floor and not be graded flat. Limited leveling and grading may be undertaken using appropriate low-impact landscaping equipment as specified in a Work Plan.

The key difference to note is that class I trails are to be built with hand tools whereas class II trails are built with motorized equipment. Other key differences are that rock removal and bench cutting is done on class I trails with hand tools whereas motorized equipment is used on class II trails to remove rocks and create larger bench cuts. Motorized heavy equipment used by the state to build these trails is shown in the Affidavit of William Amadon in Exhibit I. The use of hand tools and heavy motorized equipment to construct trails is a major difference.

13. Perhaps nothing shows the major differences between class I and class II snowmobile trails better than the bridges. On November 18, 2016, I visited the class I trail near Rock Lake in the Blue Mountain Wild Forest. I measured and photographed the bridge over an inlet to Rock Lake. This bridge was 8' 5" in width, whereas class II trail bridges are over 12 feet, 50% wider. The bridge is designed for passage of one snowmobile driving in one direction at a time. This bridge on the class I trail stands in stark contrast to bridges on class II trails, which are over 12 feet. See Exhibit B. I affirm that these photographs are true and accurate representations of the scenes described in this affidavit and in the captions to Exhibit B, as of the time that they were taken.

Independent Field Work Has Faithfully and Accurately

Showed that over 31,333 Trees Have Been or Will be Destroyed by the State

14. Through Plaintiff's counts of trees that have been destroyed and will be destroyed for construction of class II community connector snowmobile trails, Plaintiff has shown that the Defendants undercount tree cutting on the snowmobile trails in questions. See Signell Affidavit sworn to on August 25, 2016 (Exhibit D) . Through field work, Plaintiff has shown that the Defendants have destroyed at least 15,667 trees, and likely many more where the evidence is unrecoverable due to heavy grading of the snowmobile trail corridor, and that Defendant DEC plans to destroy an estimated 15,666 more trees that still stand on new class II community connector snowmobile trails that are approved or planned. By documenting the actual or imminent destruction of over 31,000 trees on the Forest Preserve, Plaintiff has shown as a fact that DEC systematically undercounts tree cutting.

15. In paragraphs 8-18, Mr. Connor quibbles about tree counts on the Seventh Lake Mountain Trail. Mr. Connor holds that the DEC tree count of 2,085 live and dead trees over 3" DBH is the extent of tree cutting. Mr. Connor states that DEC does not count tree less than 3" DBH. Had the DEC counted all trees that were cut down, rather than just trees over 3"DBH, his counts would have been significantly higher.

16. In para 18, Mr. Connor mentions my "alleged observations" about tree cutting on the Seventh Lake Mountain Trail. Mr. Connor clearly does not understand how I counted trees that were cut down over the entire length of this trail. In July and August 2016, I spent eight days measuring and photographing stumps of trees cut down to build the Seventh Lake Mountain Trail. Steve Signell instructed me on the field protocol using the

Fulcrum field biology application. Using Fulcrum, I recorded 6,480 pictures of tree stumps, and measurements for each stump, on the Seventh Lake Mountain Trail. We believed it was important to have a photographic record for all tree stumps that I counted. Of the 6,480 stumps I measured and photographed, 893 were stumps of 3" or larger, 5,587 were stumps were 3" or less. In his reply affidavit (paragraph 7), Steve Signell states:

In my view, however, our evidence is irrefutable, given that we have a photograph of every stump with a diameter measurement, along with an associated timestamp, latitude and longitude, make/model of camera etc. I trained Peter Bauer to use the Fulcrum field biology monitoring application to do this work and he photographed over 9,000 pictures of stumps, which have been provided to the state. I have successfully located many stumps in the field and am absolutely confident that all the stumps in the photos do in fact exist within a few meters of the specific geographic coordinates that were recorded when the photograph was taken. Stumps do not lie-- every photograph represents a tree that the DEC cut down.

17. A photographic record of these 6,480 tree stumps was provided to the state. There should be no dispute in the record about the fact that at least 6,480 trees were cut to build the Seventh Lake Mountain Trail. These stumps remain in the forest and with the GPS coordinates provided for each picture can be easily located and verified. As a test, Mr. Signell randomly selected 30 stumps to find and located them all.

18. One thing that is important to note is that I only found 893 stumps that were over 3" DBH where Mr. Connor states that the DEC cut down 2,085. Long stretches of the Seventh Lake Mountain Trail were graded with heavy machinery weighing several tons or more. The process to grade and flatten the trail, and to cut out bench cuts, destroyed many tree stumps. Additionally, long stretches of the trail had grown over with grass, which was often 2-3 feet high. Grass grows in disturbed terrain and in many areas locating stumps in these grass fields was difficult. Due to these factors, I believe that the overall level of tree cutting of all sizes was far beyond the 6,480 that I found.

19. It is important to note that I also used the Fulcrum program to photograph 559 stumps on the Harris Lake Trail, 387 stumps on the Gilmantown Trail, and 2,199 stumps on the Cooper Kiln trail. These counts, in addition to the 6,480 on the Seventh Lake Mountain Trail, total 9,625 photographs of tree stumps that we have recorded and provided to the Defendants.

20. The "Polaris Trail" is a roughly 5-mile class II community connector snowmobile trail in the Vanderwhacker Mountain Wild Forest Area. This trail was approved as part of the Essex Chain Complex Unit Management Plan and when constructed will connect to the Newcomb-Minerva trail. I obtained through a Freedom of Information Request to the DEC (December 22, 2015; see Exhibit C) GPS coordinates for this trail. Irrespective of whether the GPS coordinates show a preliminary or final route, the forest habitat is similar east of the Hudson River in the area where this trail is routed. Based on the data that we obtained from the DEC we asked Steve Signell to perform a tree count of large and small trees along a potential route. He counted trees in a 10-foot route, selecting that width given that class II community trails vary continually from 9-12 feet.

Extensive Grassy Fields Character of Class II Community Connector

Snowmobile Trails Degrades Wild Forest Character

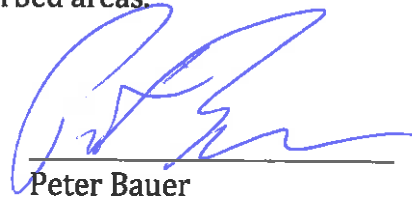
21. In the memorandum of law (page 1), Defendants state: "The Department's submissions, based on personal knowledge and actual tallies, establish each trail's width and mileage; number, size and species of trees cut; number of bridges constructed; and details of any erosion control features used. " This statement is not accurate. For instance, despite voluminous submissions, Defendants have never submitted any information on the width of the trails in question. Defendants have never provided any analysis of the

amount of class II community connector trails in question that are 9 feet wide, 12 feet wide, or wider. I have visited all of the class II community connector trails in question, some many times, and have seen many areas that exceed 12 feet in width. To this date, the state has not provided any data about the mileage of class II trails that are nine feet in width and the length that is 12 feet in width.

22. In the memorandum of law (page 6), Defendants state: "The Department does not merely count trees but analyzes in comprehensive detail the number and size of trees of each species to be cut, and the impact that will have on the character of the wild forest." There has been no "analysis" of "impacts." The only thing Defendants have provided is an affidavit from Tate Connor where he walked part of the Seventh Lake Mountain Trail and took five pictures (two of which showed large grassy disturbed areas). Defendants have provided no analysis to support the inaccurate statement in their memorandum of law.

23. In the memorandum of law (page 7), Defendants state: "Among the trail features they implement to preserve the forest, DEC trail construction crews preserve the tree canopy, which maintains the integrity of the forest ecology. Because the canopy is maintained and the trails do not create a forest edge, they likewise do not constitute a 'clearcut' within either the forestry or ecological definitions of the term." This is not an accurate statement. As forest ecologist Steve Signell has shown from his study of 117 points along the Seventh Lake Mountain Trail, 56% of these points had large grassy swathes. Grass is a sun-loving plant. There is very little grass in an intact forest. The only way that this grass could thrive the way it does on the Seventh Lake Mountain Trail is because the trail is highly disturbed and degraded, and receives lots of sunlight. Defendants have provided no evidence to support their false claim that the forest integrity

of the trail corridor has been maintained beyond Tate Connor walking the trail and taking five pictures, two of which showed highly grassy disturbed areas.



Peter Bauer

Sworn to before me this 18th
day of November, 2016.



NOTARY PUBLIC

CLAUDIA K. BRAYMER
NOTARY PUBLIC, State of New York
Reg. No. 02BR6238807
Qualified in Warren County
Commission Expires April 11, 20 19

EXHIBIT "A"

Map of the Goodman Mountain foot trail in the Horseshoe Lake Wild Forest Area. This newly constructed foot trail had 64 stumps where trees were cut down to build it.



Map of the Coney Mountain foot trail in the Horseshoe Lake Wild Forest Area. This newly constructed foot trail had 13 stumps where trees were cut down to build it.

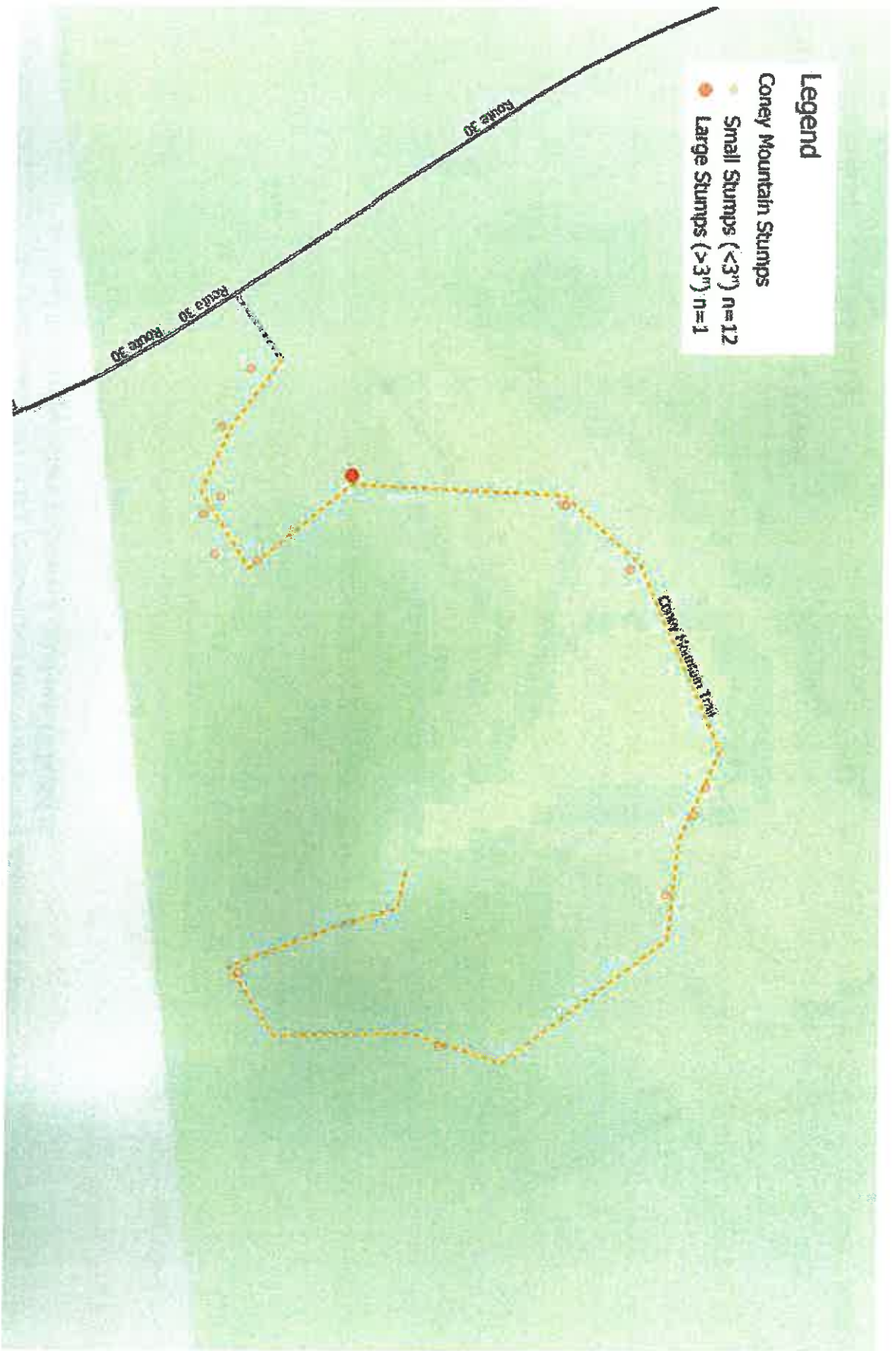


EXHIBIT "B"

Class II Community Connector Snowmobile Trail Bridges



The pictures above show a typical bridge on a class II community connector trail under construction and the finished product. These bridges are on the Seventh Lake Mountain Trail. They are over 12 feet wide.


Class I Snowmobile Trail Bridge





The pictures above shows a bridge on a class I snowmobile trail near Rock Lake in the Blue Mountain Wild Forest. This bridge is just over 8 feet wide.

EXHIBIT "C"

Menu

 FOIL Request Main Page

 I want to... 

Contact E-Mail: executivedirector@protectadks.org

Reference No: W002316-123015

Type of Record(s) Requested: Other

Description of Record(s) Requested: All maps, GPS coordinates, habitat assessments, or any other documentation or materials about the new Class II community trail and routed through the Vanderwhacker Mountain Wild Forest area that will connect Chaisson Road in Newcomb to the Polaris Bridge in the recently approved Essex Chain Lakes management Complex UMP.

NYSDEC Office processing the Request: Central Office (Albany) Covers the entire state
If your request pertains to just one Region, select that Region. If your request pertains to more than one Region, select Central Office. If you're unsure which Region your request pertains to, select Central Office. The Department will route your request to the appropriate Region(s)

Preferred Method to Receive Records: Electronic copies
NYSDEC will use its best efforts to provide records via the method you select. However, in some cases a particular delivery method is not feasible. In such cases NYSDEC will deliver the records via an alternative method

Please note not all public documents are available in electronic format. If the document(s) requested are not available electronically, we will make them available for inspection or by paper copy in accordance with the Public Records Law.

Attachments: [chaisson rd wintering model.jpg](#)
[Community Connector Trail Plan.pptx](#)

[Chasin to Polaris section 6.dbf](#)
[Chasin to Polaris section 6.prj](#)
[Chasin to Polaris section 6.sbn](#)
[Chasin to Polaris section 6.sbx](#)
[Chasin to Polaris section 6.shp](#)
[Chasin to Polaris section 6.shx](#)
[chasinrdconnection.dbf](#)
[chasinrdconnection.prj](#)
[chasinrdconnection.sbn](#)
[chasinrdconnection.sbx](#)
[chasinrdconnection.shp](#)
[chasinrdconnection.shx](#)
[hudson river buffer east.dbf](#)
[hudson river buffer east.prj](#)
[hudson river buffer east.shp](#)
[hudson river buffer east.shx](#)
[Polaris Bridge area Linck-Ripp scouting.mxd](#)
[Polaris Bridge Area scouting.dbf](#)
[Polaris Bridge Area scouting.prj](#)
[Polaris Bridge Area scouting.sbn](#)
[Polaris Bridge Area scouting.sbx](#)
[Polaris Bridge Area scouting.shp](#)
[Polaris Bridge Area scouting.shx](#)
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[New Message](#)[X Cancel](#)**Message History**

On 3/11/2016 2:56:38 PM, New York DEC Support wrote:

Peter Bauer Executive Director Protect the Adirondacks PO Box 7691851 State Route 9 Lake George, NY 12845 Office 518.685.3088 Cell 518.796.0112 executivedirector@protectadks.org www.protectadks.org Follow Protect the Adirondacks on Facebook Follow @ProtectAdkPark on Twitter
On Jan 13, 2016, at 2:43 PM, New York DEC Support wrote:

On 1/13/2016 2:42:25 PM, New York DEC Support wrote:

RE: PUBLIC RECORDS REQUEST of 12/30/2015, Reference # W002316-123015

Dear Mr. Bauer,

This is regarding your Freedom of Information Law (FOIL) request seeking all maps, GPS coordinates, habitat assessments, or any other documentation or materials about the new Class II community trail and routed through the Vanderwhacker Mountain Wild Forest area that will connect Chaisson Road in Newcomb to the Polaris Bridge in the recently approved Essex Chain Lakes management Complex UMP.

As staff actively work to identify documents responsive to your request, the documents are subject to review to ascertain if any legal privileges may apply. The volume of potentially responsive documents and the legal review will preclude staff from responding within twenty business days. Consequently, you may expect a reply by March 4, 2016. If you have any questions in the interim, please contact me and refer to FOIL request W002316-123015.

Ruth L. Earl

Records Access Officer, Office of General Counsel

New York State Department of Environmental Conservation

625 Broadway, Albany, NY 12233-1500

P: (518) 402-9522 | F: (518) 402-9018 | access.records@dec.ny.gov

www.dec.ny.gov

On 12/30/2015 2:15:58 PM, New York DEC Support wrote:

Dear Peter:

Thank you for your Freedom of Information Law (FOIL) request. Your request has been received and is being processed. Your request was received in this office on 12/30/2015 and given the reference number FOIL #W002316-123015 for tracking purposes.

Record Requested: **All maps, GPS coordinates, habitat assessments, or any other documentation or materials about the new Class II community trail and routed through the Vanderwhacker Mountain Wild Forest area that will connect Chaisson Road in Newcomb to the Polaris Bridge in the recently approved Essex Chain Lakes management Complex UMP.**

You can monitor the progress of your request at the link below and you'll receive an email when your request has been completed. Again, thank you for using the FOIL Center.

https://mycusthelp.com/NEWYORKDEC/_rs/RequestLogin.aspx