





STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

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In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,           INDEX NO.  
2137-13

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

-against-

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

Defendants-Respondents.

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**NON-JURY TRIAL**

B E F O R E:

**HON. GERALD W. CONNOLLY,**  
Acting Supreme Court Justice

**VOLUME XIV**

**TRANSCRIPT OF PROCEEDINGS** in the above-entitled  
matter held at the Albany County Courthouse, Albany, New  
York on Wednesday, March 29th, 2017 commencing at 1:35 p.m.

DEBORAH MEHM, CSR  
Sr. Court Reporter

**A P P E A R A N C E S:****For the Plaintiff:**

CAFFRY & FLOWER  
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BY JOHN W. CAFFRY, ESQ.,

and

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**For the Defendant:**

HON. ERIC SCHNEIDERMAN,  
New York State Attorney General  
BY: LORETTA SIMON, ESQ., and  
MEREDITH LEE-CLARK, ESQ.,  
Assistant Attorneys General.

1                   (Plaintiff's Exhibits 170 and 171 were  
2                   marked for identification. Defendants' Exhibits CR &  
3                   DE were marked for identification.)

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

6                   Good afternoon, ladies and gentlemen. All  
7                   set to recommence? We are back with Mr. Connor.

8                   Mr. Connor come on up. You understand you  
9                   are still under oath sir?

10                  THE WITNESS: Yes, sir.

11                  THE COURT: Mr. Caffry if you would please  
12                  go ahead.

13                  MR. CAFFRY: Thank you.

14                  CROSS-EXAMINATION OF MR. CONNOR

15                  BY MR. CAFFRY:

16                  Q. Hello again Mr. Connor.

17                  A. How are you doing sir?

18                  Q. Fine. And you?

19                  A. Good.

20                  Q. When we last were doing this you had testified about  
21                  ladders on certain trails in the forest preserve in  
22                  connection with photo four of your Exhibit AJ. Do you recall  
23                  that?

24                  A. Yes, sir.

1 Q. Yes or no. There are ladders on approximately 13  
2 trails in the High Peaks Wilderness Area?

3 A. I can't answer yes or no.

4 Q. Are there approximately 12?

5 A. (No response.)

6 Q. Do you know approximately how many --

7 THE COURT: Hang on. Did you answer the  
8 last question?

9 THE WITNESS: I said I couldn't answer.

10 THE COURT: No. The one where he said are  
11 there approximately 12. Did you answer? Because I  
12 did not hear you answer.

13 THE WITNESS: No.

14 THE COURT: Do you want to answer that?

15 That is not a yes or no question.

16 A. Just a moment. I can't answer with certainty that  
17 there are 12.

18 Q. Do you know, yes or no, do you know approximately  
19 how many trails in the High Peaks Wilderness areas have  
20 ladders of that sort on them?

21 A. Yes.

22 Q. How many is that?

23 A. I'm aware of the trails given the question that you  
24 are asking. I'm trying to count them in my head. So I'm not

1 able to answer with exactness at this moment.

2 Q. That's why I said approximately.

3 A. Yes, sir. Understood.

4 Q. Can you say approximately how many?

5 A. I could say approximately a dozen.

6 Q. You previously mentioned there is one or more  
7 ladders on Crane Mountain which is not in the High Peaks?

8 A. Correct. It is in the Wilcox Lake Wild Forest.

9 Q. So that would mean to your knowledge there are  
10 ladders on approximately 13 trails in the forest preserve  
11 that you are aware of?

12 A. Those are the ladders that I'm aware of in the  
13 forest preserve.

14 Q. Yes or no. When you testified previously that you  
15 were aware of multiples of ten ladders in the forest preserve  
16 were you referring to the fact that some of these trails may  
17 have more than one ladder?

18 A. There are multiple --

19 THE COURT: Hang on. It was a yes or no.

20 THE WITNESS: My apologies.

21 THE COURT: That's okay. Go ahead and  
22 answer it.

23 A. Yes.

24 Q. Mr. Connor, I have handed you what is now in

1 evidence as Exhibit 168, which is the CP-38 forest preserve  
2 roads policy. Do you have that right there?

3 A. Yes, sir.

4 Q. And yes or no. CP-38 does not define a road as  
5 having any of the characteristics that you previously  
6 testified were part of your personal definition of a road?

7 MS. SIMON: Objection. I don't think he  
8 testified to this document in direct. This  
9 document on roads.

10 THE COURT: So your objection is the cross  
11 is beyond the scope of direct?

12 MS. SIMON: It is beyond.

13 THE COURT: Your objection is  
14 overruled. If you can remember exactly what you  
15 stated on your direct as to your personal definition  
16 of a road then you should go ahead and answer the  
17 question. Go ahead.

18 A. It was a yes or no question?

19 Q. Correct.

20 A. I can't answer that with certainty given the fact  
21 that I admitted that I was not intimately familiar with this  
22 document.

23 Q. On Exhibit 168 would you look at page one. The  
24 first paragraph that says summary. Do you see that?



1           A.    Yes, sir.

2           Q.    Can you read to us the last two sentences which  
3 begin with the word further?

4           A.    "Further this policy establishes that generally  
5 forest preserve roads are low maintenance seasonal roads  
6 which are narrow surfaced with gravel, suitable for low  
7 speeds likely traveled by the public, partially or fully  
8 shaded by tree canopy. Such roads are further constructed  
9 and maintained to minimum standard necessary to provide  
10 passage by appropriate motor vehicles in a manner which  
11 protects the environment."

12          Q.    Yes or no. That is different from your personal  
13 definition that you previously testified to?

14          A.    I don't recall exactly what I had said.

15          Q.    Would you look at page four of that  
16 document. Withdrawn, Your Honor. Mr. Connor, do you recall  
17 giving testimony about an area on segment one of the Seventh  
18 Lake Mountain Trail where you said -- and obviously I'm  
19 paraphrasing at this point so feel free to clarify if I don't  
20 say it quite right. But there is an area where the trail  
21 was -- the intended path of the trail that you originally  
22 looked at was so thick with spruce and balsam fir trees that  
23 had grown in on an old road that visibility was  
24 difficult. Do you recall that?

1 A. Yes.

2 Q. Do you know what type of old road it was? Did you  
3 see any evidence that would have indicated that to you?

4 A. Based on pieces of metal from sled runners that we  
5 hit and found on the road bed, I would make a fairly educated  
6 guess that it was for skidding forest products out at the  
7 time when that was used via sleds.

8 Q. With horses?

9 A. Yes, sir.

10 Q. To your knowledge how wide are those types of  
11 conveyances historically?

12 A. They would vary based on the -- probably based on  
13 the company that was doing the job or the size of the  
14 sleds. They were different based on my historic knowledge of  
15 past logging stuff. There were different orders of skid  
16 roads.

17 Q. Do you have any idea whether from that section or  
18 elsewhere how wide this skid road in question was?

19 A. My observations in the field were that this old road  
20 bed that I had mentioned was 12 to 20 feet wide.

21 Q. And to your knowledge in the section where you said  
22 it was overgrown with spruce and fir trees. Had it been used  
23 as a foot trail or a bicycle trail in the intervening  
24 years?

1           A.    No.  It had not.

2           Q.    Did you see any indication that it had been used by  
3 people in the intervening years?

4           A.    In the process of scouting the trail segment we came  
5 across hunter's flagging and stuff.  So I would imagine it  
6 was used by sportsmen.

7           Q.    And the section that you said was overgrown.  Did  
8 you see any evidence that they had done that?

9           A.    Probably not in that specific section.

10          Q.    You testified about having graded certain sections  
11 of the Seventh Lake Mountain Trail.  Or your crews having  
12 graded it.  Did that include knocking down hummocks that were  
13 in the path of the trail?

14          A.    There were places along the different segments of  
15 the trail where we did deal with -- the trail went through  
16 an area that had hummocks and hollows, and we addressed the  
17 hummocks.

18          Q.    What section of the trail or what area of the trail  
19 was that in?

20          A.    Could you repeat that?

21          Q.    What section of the trail or what area of the trail  
22 was that in?

23          A.    Over the 11.9 miles I think that there were probably  
24 multiple sections.  The biggest one that sticks out in my

1 mind was on segment three just up the hill from the water  
2 supply for the Eighth Lake Campground.

3 Q. What is a hummock?

4 A. So a hummock is a term referred to a raised section  
5 of earth where in the past a tree had uprooted and then  
6 rotted and the subsequent mound of dirt. Another term for  
7 this is pit and mound. So, again, when the tree tips over it  
8 pulls up dirt and rocks that are attached to the root system,  
9 and then as the root system decomposes that stuff is left in  
10 a pile. And then adjacent to it where the root structure was  
11 there is a hole where that material had gotten pulled out  
12 of.

13 Q. Typically how big is a hummock like that?

14 A. They can vary in size. A few feet to maybe up to  
15 ten feet in a really large section where maybe multiple trees  
16 had blown over and the whole root matter had been grown  
17 together. But most of them are probably about the size of  
18 between an ottoman and a Lazy Boy in their surface area.

19 Q. What did you do with the dirt and such that was in  
20 the hummock when you knocked it down?

21 MS. SIMON: Your Honor, objection. This is  
22 beyond the scope of direct. There was no direct  
23 examination on hummocks and pit and mound.

24 THE COURT: Overruled. You may answer.

1           A.    We put the hummock back in the hollow.

2           Q.    Do you know do hummocks and the hollows next to them  
3 provide habitat for animals?

4           A.    I'm sure on some level of the ecological scale there  
5 is plant communities or plant and animal communities that  
6 exist in the hummocks and hollows, but I'm not familiar with  
7 that as I'm not a forest ecologist.

8           Q.    How were these hummocks knocked down or dealt with  
9 as you said?

10                       MS. SIMON: Objection.

11                       THE COURT: Sustained.

12           Q.    How did you take the dirt from the hummocks and get  
13 it into the hole?

14                       MS. SIMON: Objection. We just went  
15 through this.

16                       THE COURT: The objection is  
17 sustained. Unless you can explain to me the  
18 relevance of that given the prior cross-examination  
19 of this witness with regard to their use of  
20 machinery in doing the trail and the fact that he  
21 has already stated that they used the hummocks to  
22 fill the hollow.

23                       If there is something in particular you  
24 are going to, as I stated before, I don't want to

1           keep you from developing your entire case but it  
2           seems repetitive to me. If I am wrong or you think  
3           I am tell me and I will readdress the objection.

4 BY MR. CAFFRY:

5           Q.    Moving onto bench cuts. Mr. Connor, I have handed  
6           you what has been marked as Plaintiff's Exhibit 152 which was  
7           identified in Mr. Bauer's testimony as a picture that he took  
8           of the Seventh Lake Mountain Trail. Do you see that?

9           A.    Yes, sir.

10          Q.    And is there a bench cut depicted in that picture?

11          A.    Yes, sir.

12          Q.    On what would be the right side of the trail?

13          A.    Right.

14          Q.    You would consider the bench to be the full  
15          width. Let me rephrase that. Within this picture does it  
16          depict a bench cut with the upslope on the right side and  
17          then the trail tread and then the downslope on the left  
18          side?

19          A.    I would agree.

20                       MS. SIMON: Objection, Your Honor.

21                       THE COURT: What is the objection?

22                       MS. SIMON: This photo number 152. They  
23          have already confirmed what was on this trail as he  
24          was asked about this in direct.

1 THE COURT: In cross. Prior cross?

2 MS. SIMON: Sorry. I'm mixing it up.

3 We've had so many days. In the prior cross. Thank  
4 you.

5 MR. CAFFRY: Your Honor, I believe we did  
6 not previously ask Mr. Connor about this particular  
7 photograph to the best of my recollection.

8 THE COURT: I was checking my notes. I did  
9 not see 152. So I am going to allow it.

10 You may well be right, Ms. Simon, but I  
11 would take the risk of being repetitive than going  
12 back through the whole testimony and doing a search  
13 to see if it was previously addressed.

14 MS. SIMON: I withdraw my objection then.

15 THE COURT: Thank you.

16 I did check my notes. They are not as  
17 good as a transcript, but they are pretty good and I  
18 didn't see a reference to 152 in the cross, but it  
19 may well have occurred.

20 So thank you for withdrawing your  
21 objection. So we will continue. Do you remember  
22 the question Mr. Connor? Do you want to hear it  
23 again?

24 A. I was complimenting Mr. Caffry on identifying

1 that. I agree with him.

2 Q. I have learned your terminology. Haven't I?

3 A. I'm doing my job.

4 Q. So are you familiar with this location on the  
5 Seventh Lake Mountain Trail?

6 A. Yes, sir.

7 Q. And from the top of the upslope on the right to the  
8 bottom of the downslope on the left approximately how wide is  
9 the cleared area depicted in this picture? Starting at the  
10 the bottom and working your way up at least to the curve that  
11 is depicted.

12 A. By bottom you mean the furthest point in the --

13 Q. The bottom of the photo working your way towards --  
14 up to about the middle of the photo.

15 A. So with no scale obviously we are looking at  
16 estimations. I would say at the bottom of the photo the  
17 closest point from the observer's point of view. There is a  
18 little bit of work. Perhaps a foot or less on the upslope  
19 side. The tread is probably about nine feet, and then  
20 because of the leaf litter and stuff on the downslope I can't  
21 say with certainty but there is potentially a few feet on the  
22 downslope to the looker's left of the trail tread.

23 Q. If you go further up to where there is a couple of  
24 trees depicted just above the top of the upslope with kind of



1 gray bark. Do you see where I'm talking about?

2 A. The larger of the two trees that curves over the  
3 trail?

4 Q. Correct.

5 A. Yes, sir.

6 Q. Approximately how wide is the cleared area of the  
7 trail in that location?

8 A. There it looks like it might be -- the upslope might  
9 be up to two feet. Again that is an estimation. There is  
10 the nine foot of tread. Given the fact that this is on a  
11 curve that is also on a hill there is the possibility that  
12 that is a little bit greater.

13 Then the downslope at that particular location from  
14 the observer's standpoint just above, just beyond where you  
15 see exposed dirt on the left. I would say there is probably  
16 three feet of downslope.

17 Q. So what would the total be in that location?

18 A. If we took the nine foot tread and we added the two  
19 foot upslope and the three foot downslope I would say 14  
20 feet.

21 Q. And possibly greater because it is on a curve. Is  
22 that correct?

23 A. There is the possibility of that. Without having a  
24 tape measurer there.

1 Q. About how long is this bench cut?

2 A. From what I remember about this. Just beyond the  
3 point that we just mentioned that is kind of in the middle of  
4 the picture as the trail is then curved down to meet the old  
5 road bed, I believe the bench cut stops just past that point.  
6 So we are probably looking at 30 to 50 feet in length.

7 Q. Is this fairly typical of the bench cuts you would  
8 have built on the Seventh Lake Mountain Trail?

9 A. I would say this is not as typical as other pictures  
10 that have been offered into evidence. Only because it is on  
11 a curve in a downhill. So while there are other places we  
12 did this, generally if we are laying this out for the initial  
13 layout the bench cut would have been continued across the  
14 contour to intercept the next segment of trail shot, but in  
15 this case it was brought back down to the old road bed.

16 Q. But in terms of the length and width of this bench  
17 cut are they fairly typical?

18 A. The length, as I mentioned before, ranged I would  
19 say 20 to 50 feet is fair throughout the project. And the  
20 width varied. If we were in steeper side slope then  
21 obviously the upslope would be potentially a little wider or  
22 narrower or sort of shallower slope. It would be smaller.

23 Q. I also gave you Exhibit 154, which was also  
24 introduced by Mr. Bauer's testimony as a picture he took on

1 the Seventh Lake Mountain Trail in 2012. Do you have that in  
2 front of you?

3 A. Yes, sir.

4 THE COURT: The number again please?

5 MR. CAFFRY: 154. To the best of our  
6 knowledge we did not previously ask Mr. Connor about  
7 this one.

8 Q. Do you recognize the scene depicted in number 154?

9 A. I'm not as certain about the location as I was on  
10 the previous picture, but I am -- generally this does look  
11 familiar.

12 Q. And does this depict a bench cut?

13 A. It does.

14 Q. And in this one the upslope is on the viewer's left  
15 and the downslope is on the viewer's right. Is that  
16 correct?

17 A. Yes, sir.

18 Q. And can you tell us in your best estimation how wide  
19 the cleared area is on the trail in the location depicted in  
20 this picture at the location of the bench cut?

21 A. From the top of the upslope across the trail tread  
22 to the bottom of the downslope I would say this is possibly  
23 comparable. Again, based on a visual estimation based on the  
24 photo without a scale possibly in the 14 foot range.

1 Q. Do you know approximately how long this bench cut  
2 is?

3 A. I would imagine this one is comparable to the  
4 other. Obviously an estimation. We don't have the benefit  
5 of a reference. 20 to 50 feet.

6 Q. And would this bench cut be typical in length and  
7 width of the bench cuts that were built on the Seventh Lake  
8 Mountain Trail?

9 MS. SIMON: Objection.

10 THE COURT: The objection is sustained. He  
11 has already testified as to his ability and the  
12 description of the length and width. His ability as  
13 so described. Please go ahead.

14 Q. In creating a bench cut like this in both pictures,  
15 yes or no, dirt is removed from its original location and  
16 moved to a new location?

17 MS. SIMON: Objection.

18 THE COURT: Sustained.

19 Q. In creating a bench cut like the one in Exhibit 154  
20 is it true that dirt is removed from its original location?

21 THE COURT: The objection was just  
22 sustained Mr. Caffry. Unless you have something  
23 else.

24 MR. CAFFRY: It is a different question. I

1           didn't know what the basis was.    I was trying to  
2           rephrase.

3                   THE COURT:   The objection is sustained as  
4           repetitive.  We have gone over this multiple times  
5           with this witness.

6                   MR. CAFFRY:  With other bench cuts.  Thank  
7           you.

8                   THE COURT:  Mr. Caffry, I will make my own  
9           rulings without you breaking in and explaining  
10          them.  Understood?

11                   MR. CAFFRY:  Understood.  I was just trying  
12          to agree.  I'm sorry.

13                   THE COURT:  If you want to be heard further  
14          on the objection --

15                   MR. CAFFRY:  No.

16                   THE COURT:  I promise you always can.  If  
17          what you were trying to say is with my breaking in  
18          there was I wanted to know specifically if dirt was  
19          moved in this one.  In this particular bench cut.  
20          If you have a reason for asking that specific  
21          question that you believe is relevant say so now and  
22          I will reconsider my ruling on the objection.

23                   MR. CAFFRY:  No.  I don't have a reason to  
24          ask that different from his answers with regard to

1 other bench cuts.

2 THE COURT: Okay. Please go ahead.

3 MR. CAFFRY: Thank you.

4 Q. In looking at the photo in Exhibit 155. Do you have  
5 that?

6 A. Yes, sir.

7 Q. That's a photograph that you have previously  
8 testified about where you are depicted sitting in the  
9 background in a yellow shirt. Correct?

10 A. Yes, sir.

11 Q. And there is a partial constructed bridge in the  
12 middle of the picture?

13 A. Yes, sir.

14 Q. Do you see some cut trees on the viewer's left of  
15 the picture?

16 A. I see cut portions of tree stems on the viewer's  
17 left just to the left of the bridge streams.

18 Q. When the bridge was completed were those cut  
19 portions of stems left there or were they removed from that  
20 location?

21 A. I'd love to be able to answer that with accuracy,  
22 but over the course of the multiple months of the project and  
23 11.9 miles and over 50 people working on the trail I can't  
24 say whether or not they were picked up and thrown away or if

1 they were still there.

2 Q. Was it generally your practice to have them removed  
3 from the immediate trail site?

4 A. Yes. For the most part the intent of the clearing  
5 or cutting portion was that the stems and brush material was  
6 dragged off into the adjacent forest.

7 Q. And on the right side of the picture. The lower  
8 right corner. Do you see some squareish or rectangular  
9 objects?

10 A. Yes, sir.

11 Q. Do you know what those are?

12 A. Yes.

13 Q. What are they?

14 A. They are pieces of four by four pressure treated  
15 lumber. They are cut 12 inches long and the purpose of them  
16 is to act as chinks along the side of the stringers, which  
17 are the poles depicted in the picture. They would be affixed  
18 to the sill and prevent the stringers from rolling or  
19 moving.

20 Q. I'm specifically asking you about the ones that  
21 aren't on the bridge affixed to the stringers, but if you  
22 will between the viewer and the bridge itself?

23 A. Yes. They are stacked up there waiting to be  
24 installed.

1 Q. I'm sorry. Could you repeat that?

2 A. They are stacked there waiting to be installed.

3 Q. Oh. Those are some of those pieces?

4 A. Right. Because this is in construction. What you  
5 see on the bridge are shims. Pieces of pressure treated two  
6 by material that were used to raise or lower the tapered end  
7 of the poles. So that we could have all of the stringers be  
8 generally uniform for when the planking or decking was put  
9 on.

10 Q. With regard to the tree stem segments on the left  
11 side of the picture. When trees were cut in construction of  
12 the trail were they typically cut into numerous segments like  
13 that before being moved off into the woods, or were they left  
14 whole?

15 A. I believe it would vary both in the size of the  
16 tree. The person. The size of the person cutting the trees,  
17 and the proximity of the tree or vegetation to how it was  
18 laid down in the forest. What I mean by that is bigger trees  
19 had to be segmented because people could not lift them up. A  
20 larger person could drag a smaller or medium size tree off  
21 whole, and for the direction or placement of them if somebody  
22 was able to cut a tree into the adjacent area to the trail  
23 then the portions that are still in the trail would be cut up  
24 into smaller segments to be removed, and then the portion



1 furthest away from the trail corridor potentially would just  
2 be cut up so that it was touching the ground.

3 Q. How high off the ground were the trees cut when they  
4 were cut down?

5 MS. SIMON: Objection. Relevance.

6 THE COURT: What is the relevance Mr.  
7 Caffry?

8 MR. CAFFRY: It relates to actually Doctor  
9 Howard's testimony about measuring trees and the  
10 formula for trees of DBH. And you can estimate them  
11 from one foot stumps and if you have a one foot  
12 stump and that kind of thing. I'm trying to see if  
13 that is what was happening here on this trail.

14 THE COURT: Go ahead Ms. Simon.

15 MS. SIMON: There has already been  
16 testimony when Mr. Bauer visited this trail the  
17 stumps were cut to the ground. Both Mr. Bauer and  
18 Mr. Signell and therefore they had a difficult time  
19 identifying all the stumps.

20 THE COURT: I am having difficulty seeing  
21 the relevance, but the objection is overruled. I  
22 will allow it. You may answer the question.

23 A. If you are speaking or requesting how high the tree  
24 was cut at the time that it was felled?

1 Q. Correct.

2 A. The chain saw operator in some cases might do a  
3 first cut at waist height, and then because we wanted the  
4 stumps cut as low to the ground as possible they could then  
5 run the chain saw parallel to the ground surface and as low  
6 as possible doing a full through cut. And by only having  
7 that small stump there they don't have to worry about the  
8 impacts to the lean or the weight of the tree pinching the  
9 saw.

10 In other cases I'm sure that they cut them right at  
11 the ground with their wedge or cutting out their front notch  
12 and their back cut. So there would be some stumps that have  
13 the hinge still on it, and others were where it was cut up  
14 high and, as I said, just flattened so it was safer.

15 MR. CAFFRY: No further questions for this  
16 witness Your Honor.

17 THE COURT: Thank you Mr. Caffry.

18 Ms. Simon any redirect?

19 MS. SIMON: Yes, Your Honor.

20 REDIRECT EXAMINATION OF MR. CONNOR

21 BY MS. SIMON:

22 Q. Mr. Connor, I have given you what was previously  
23 entered into evidence as Exhibit AF, which are pictures you  
24 took in 2013 if you recall.

1 A. Yes, ma'am.

2 Q. Could you look at the second picture?

3 A. Yes.

4 Q. In the cross-examination you were asked about this  
5 area and you testified that, correct me if I am wrong, the  
6 disturbed area during construction, and this is the Seventh  
7 Lake Mountain Trail, was approximately 17 feet. Do you  
8 remember that?

9 A. Yes, ma'am.

10 Q. That 17 feet. Does that include the bench cut?

11 A. Yes. It includes the upslope. The trail tread on  
12 the bench cut itself, and the downslope.

13 Q. And what width will this trail be maintained to?

14 A. Nine feet in width.

15 Q. Thank you. Regarding your testimony about bridges.  
16 and the width of bridges. In your opinion what is the reason  
17 for a 12 foot wide bridge on the Class II trails?

18 A. In our snowmobile bridge design it speaks about the  
19 different widths of the deck or the travel surface of the  
20 bridge, and it advises that the width of a bridge would be  
21 greater than the trail corridor for safety reasons. A lot of  
22 that has to do with the conical tendency of the snow to build  
23 up on the bridges. So by the bridge being wider than the  
24 trail width, which in this case would be nine feet, it allows

1 for the tapering of the snow as it is naturally packed on and  
2 shaped by the use. And by having the extra width as long as  
3 the bridge is not greater than six feet above the water below  
4 is for safety reasons. It doesn't need to have a railing.

5 Q. Thank you.

6 THE COURT: Excuse me. What do you mean  
7 when you say conical? Can you explain that for me?

8 THE WITNESS: Certainly. So conical might  
9 not be the best way. Maybe an isosceles trapezoid,  
10 if you will. If we were all at the bridge and there  
11 was snow there it would generally be about the width  
12 of the bridge.

13 Naturally the edges would not have  
14 structures that would fall off. As the snow builds  
15 up and users go across that that will kind of be  
16 shed off. So there is not full support of the snow  
17 the full width of the flattened part.

18 THE COURT: Thank you. Go ahead Ms.  
19 Simon.

20 Q. Mr. Connor, are all forest preserve roads gravel  
21 roads?

22 A. Could you repeat the question?

23 Q. I'm referring to forest preserve roads. You were  
24 asked to read from the forest preserve road policy. So my

1 question is: Are all forest preserve roads in your  
2 experience made of gravel?

3 A. I would say that not all forest preserve roads are  
4 made of gravel, but the majority of them would be.

5 Q. And have you seen in your experience dirt roads?

6 A. Yes.

7 Q. Do you still have Exhibit 152 in front of you?

8 A. Yes, ma'am.

9 Q. Is this an area of the Seventh Lake Mountain Trail  
10 that had either what you referred to as an old carriage road  
11 or old skid road?

12 A. Yes. In the far left corner of the picture. This  
13 section of trail reroute intersects with what was the old  
14 carriage road, and at the time of building this was an  
15 existing DEC snowmobile trail that was built on that carriage  
16 road.

17 MS. SIMON: Thank you. No further  
18 questions.

19 MR. CAFFRY: Your Honor one request please?

20 RE-CROSS-EXAMINATION OF MR. CONNOR

21 BY MR. CAFFRY:

22 Q. Just to clarify about the last question on Exhibit  
23 152. I asked you about the bench cut depicted in the middle  
24 of the picture. Is that bench cut on a new section of trail

1 that you constructed and the old carriage road that you just  
2 referred to in answer to Ms. Simons' question is further  
3 away. It is in the background and it is not where the bench  
4 cut is. Is that correct?

5 MS. SIMON: Objection. That is a compound  
6 question.

7 THE COURT: Overruled. You may answer if  
8 you can.

9 A. What you had asked me about the bench cut in the  
10 main body of the picture is a bench cut that we did construct  
11 for the trail. That is not on part of the old carriage road  
12 that I just mentioned. That is to kind of the back left of  
13 the picture. I had mentioned earlier that the reason that we  
14 did not use the old road in this place was because there was  
15 a massive wash out uphill from the location where we tied  
16 in.

17 MR. CAFFRY: No further questions, Your  
18 Honor.

19 THE COURT: Anything else Ms. Simon?

20 MS. SIMON: No.

21 THE COURT: You are all set

22 Mr. Connor. Thank you.

23 THE WITNESS: Thank you.

24 MS. LEE-CLARK: Your Honor we would like to

1 call John Burth to the stand.

2 THE COURT: All right. Mr. Burth.

3 JOHN BURTH,

4 Having been duly sworn, was examined and  
5 testified as follows.

6 THE COURT: Good afternoon sir. I'm Judge  
7 Connolly.

8 THE WITNESS: Good afternoon.

9 THE COURT: I didn't notice. Have you  
10 been in the courtroom and heard my instructions to  
11 other witnesses as to how to answer questions?

12 THE WITNESS: I have not.

13 THE COURT: Okay. Let's go through them  
14 again then.

15 As you can see we have a court reporter  
16 here who is taking down verbatim everything that is  
17 said. So when you answer questions from either side  
18 I want you to make sure you answer nice and clearly  
19 and slowly and verbally. That means, briefly, other  
20 than the self-explanatory part stay away from head  
21 nods yes or no in response to questions and stay  
22 away from ut-huh and hah-huh because as I understand  
23 it they come out looking the same on the  
24 transcript. We don't know what your answer is.

1                   If you hear an objection to a question at  
2                   any point, don't answer until I have ruled on it. I  
3                   will rule on the objection and tell you whether you  
4                   can answer or not. If someone objects while you are  
5                   answering just stop immediately and I will tell you  
6                   whether you can complete your answer or not. Okay?

7                   THE WITNESS: Okay.

8                   THE COURT: Finally if Mr. Caffry says to  
9                   you he wants a yes or no answer to a question you  
10                  have three possible answers at that point. Those  
11                  are yes, no and I can't give you a yes or no  
12                  answer. Don't explain any one of the three. Don't  
13                  go any further than yes, no or I can't give you a  
14                  yes or no answer. Understood?

15                  THE WITNESS: Understood.

16                  THE COURT: Thank you. Ms. Lee-Clark  
17                  please go ahead.

18 DIRECT EXAMINATION OF MR. BURTH

19 BY MS. LEE-CLARK:

20                  Q. State your full name for the record?

21                  A. John Mathias Burth.

22                  Q. And where are you employed?

23                  A. The New York State Adirondack Park Agency.

24                  Q. What is your current title?



1           A.    I'm an environmental program specialist two, and I  
2 manage the Agency's enforcement program.

3           Q.    Do you hold any degrees?

4           A.    Yes.  I hold a Bachelor's in Economics from Union  
5 College, and a Master of Professional Studies in Natural  
6 Resource Management from the SUNY College of Environmental  
7 Science and Forestry.

8           Q.    What are your current job responsibilities?

9           A.    I supervise six staff members, and we work on  
10 investigating alleged violations of the Adirondack Park  
11 Agency Act rules and regulations.  The New York State Fresh  
12 Water Wetlands Act.

13                   THE COURT:  Slow down.  Start over  
14           again.

15           A.    I supervise six staff and we work on investigating  
16 alleged violations of the Adirondack Park Agency Act and the  
17 rules and regulations.  The New York State Fresh Water  
18 Wetlands Act, and the New York State Wild Scenic and  
19 Recreational Rivers Act within the Adirondack Park, and we  
20 work to resolve violations when they are found.

21           Q.    Are you familiar with the first cause of action in  
22 the petition and complaint?

23           A.    Yes.

24           Q.    Are you familiar with Article XIV, Section 1 of the

1 New York State Constitution also known as the Forever Wild  
2 clause?

3 A. Yes. I am familiar.

4 Q. Do you enforce Article XIV, Section 1?

5 A. No. I do not.

6 Q. Are you familiar with Class II community connector  
7 trails?

8 A. Yes. I'm familiar.

9 Q. I will call them Class II trails. Have you or  
10 anyone on your enforcement staff ever participated in any  
11 construction of Class II trails?

12 A. No. Not that I'm aware of.

13 Q. To your knowledge has anyone at the Adirondack Park  
14 Agency participated in the construction of Class II trails?

15 A. Not to my knowledge.

16 Q. To your knowledge have there ever been any  
17 complaints made to the Agency about the construction of Class  
18 II trails?

19 A. Yes. We have received three complaints.

20 Q. For what trail?

21 A. The Seventh Lake Mountain Trail within the Moose  
22 River Plains Wild Forest.

23 Q. Has the Agency ever found that there was a violation  
24 of any of the laws that you enforce on Class II trails?

1 MR. CAFFRY: Objection. Relevancy.

2 THE COURT: Ms. Lee-Clark?

3 MS. LEE-CLARK: Your Honor, plaintiff has  
4 put forward multiple allegations of violations of  
5 the Fresh Water Wetlands Act and erosion and we  
6 believe that Mr. Burth's testimony addresses those  
7 allegations and that evidence.

8 THE COURT: The last question was: Did you  
9 make a finding or what was your finding as to these  
10 violations that were alleged?

11 MS. LEE-CLARK: No. I asked if there had  
12 ever been a finding.

13 THE COURT: What is the relevance of that  
14 response? What his finding is? Is it a preliminary  
15 question to get to the rest of his testimony?

16 MS. LEE-CLARK: Yes.

17 THE COURT: The objection is overruled. I  
18 do not -- I want to make clear that I do not  
19 consider myself in any way bound by any finding made  
20 by Mr. Burth or his Agency with regard to this  
21 issue. I will accept it as preliminary evidence at  
22 this time.

23 MS. LEE-CLARK: We are not offering it for  
24 that, Your Honor.

1 THE COURT: So the objection is  
2 overruled. Go ahead. You may answer.

3 A. In one instance out of the three potential violation  
4 reports Agency staff did find what appeared to be a violation  
5 of the New York State Fresh Water Wetlands Act.

6 Q. So for the other two. You mentioned there were  
7 three violations. The other two there was no finding of a  
8 violation?

9 A. That's correct. The other two there was no finding  
10 of a violation.

11 Q. Can you describe the situation surrounding the  
12 finding of a violation? That one finding?

13 MR. CAFFRY: Objection, Your  
14 Honor. Relevancy.

15 May I be heard on this further?

16 THE COURT: Yes.

17 MR. CAFFRY: Your Honor, we acknowledge  
18 that the complaints were filed about the Wetlands  
19 Act. Basically though you have already decided that  
20 this line of testimony is not relevant.

21 As you may recall, during discovery when  
22 we asked to depose a staff person from the  
23 Adirondack Park Agency we were given -- McNamara  
24 testified that at the time he was one of the staff

1 people supervised by Mr. Burth. That was the only  
2 witness we were given, and all he could testify  
3 about was alleged violations of the Wetlands  
4 Act. We then made a motion to be allowed to examine  
5 someone who actually was involved with the trails  
6 and not just an enforcement rule.

7 You held the plaintiff is entitled to a  
8 deposition of Mr. Linck upon the issues immediately  
9 relevant to the remaining cause of action grounds  
10 upon which Mr. McNamara did not, pursuant to the  
11 submissions, possess knowledge.

12 So in effect you held Mr. McNamara's  
13 testimony was irrelevant.

14 THE COURT: Is that what I said?

15 MR. CAFFRY: I just read it word for  
16 word.

17 THE COURT: I didn't say irrelevant. I  
18 said you were entitled to further depositions  
19 because you had identified what I agreed with you  
20 was a further area that you were entitled to a  
21 deposition on. I don't believe what you just read  
22 to me, frankly I don't recall stating or feeling  
23 that Mr. McNamara's deposition or the evidence  
24 adduced was irrelevant.

1 MR. CAFFRY: The quote ended with the word  
2 grounds upon which Mr. McNamara did not -- let me  
3 explain. You said we were entitled to depose Mr.  
4 Linck about relevant information. You said Mr.  
5 McNamara did not possess knowledge about that.

6 THE COURT: About certain relevant  
7 information upon which you wished to depose Mr.  
8 Linck.

9 MR. CAFFRY: Correct. So Mr. Burth only  
10 knows what Mr. McNamara knows. None of this is  
11 relevant.

12 THE COURT: Your exception is noted. Your  
13 objection is noted. It is overruled.

14 Go ahead.

15 MS. LEE-CLARK: May I have the last  
16 question read back please?

17 THE COURT: Yes.

18 (Reporter read the pending question.)

19 A. Yes. In the spring of 2014 our Agency received a  
20 potential violation report and photographs that appeared to  
21 depict construction debris that was placed or left in a  
22 wetland that had been associated with construction of a  
23 bridge and wetland crossing that had been permitted by the  
24 Agency.

1 I reviewed those materials with the Agency's  
2 Executive Director, Terry Martino, who is my supervisor on  
3 enforcement matters and also was the acting director of  
4 planning at that time. We concluded that the most consistent  
5 approach to resolving that apparent violation would be to  
6 communicate with DEC staff and request that the construction  
7 debris be removed from the wetland.

8 Q. To your knowledge did that actually happen?

9 A. Yes. To my knowledge Ms. Martino contacted Region 5  
10 director Bob Stegman and communicated that, and subsequent to  
11 that the Agency did have staff on-site and I did not receive  
12 any reports back indicating that the construction materials  
13 were still in the wetland.

14 MS. LEE-CLARK: Thank you. No further  
15 questions.

16 THE COURT: Mr. Caffry.

17 CROSS-EXAMINATION OF MR. BURTH

18 BY MR. CAFFRY:

19 Q. What was the construction debris found in the  
20 wetland?

21 A. It appeared to be wood scraps. Cut off materials.

22 Q. When you say wood scraps or cut off materials. Are  
23 you talking about sections of trees or is it cut lumber?

24 A. It would be cut lumber. Dimensional lumber.

1 MS. LEE-CLARK: Objection.

2 THE COURT: Hang on. I didn't hear the  
3 full answer. It was cut off.

4 Can you read back the answer?

5 (Reporter read the last answer.)

6 THE COURT: So you said cut lumber and  
7 something.

8 THE WITNESS: Dimensional lumber.

9 THE COURT: Thank you. State your question  
10 again.

11 Q. So this was on the Seventh Lake Mountain Trail?

12 A. Yes.

13 Q. Where on the trail?

14 A. It was at the location of a bridge crossing that the  
15 Agency had permitted.

16 MR. CAFFRY: No further questions.

17 THE COURT: Anything else Ms. Lee-Clark?

18 MS. LEE-CLARK: No, Your Honor.

19 THE COURT: Thank you Mr. Burth.

20 THE WITNESS: Thank you.

21 THE COURT: You again Ms. Lee-Clark?

22 MS. LEE-CLARK: Yes. Briefly, Your  
23 Honor.

24 At this time I would like to move to



1 dismiss the petition or complaint against the  
2 Adirondack Park Agency pursuant to CPLR 4401.

3 Throughout his case in chief and during  
4 his cross-examination of two APA witnesses plaintiff  
5 has not elicited any evidence that anyone from APA  
6 participated in the construction of Class II  
7 trails.

8 Plaintiff has not shown that any facts  
9 regarding the Agency are in dispute, and thus there  
10 is no rational process by which the Court could find  
11 for the plaintiff.

12 Plaintiff has not met its burden to  
13 sustain its complaint as against the Adirondack Park  
14 Agency. The threshold requirements for dismissal  
15 under CPLR 1101 have been met, and we request that  
16 the remaining first cause of action be immediately  
17 dismissed against the Agency.

18 THE COURT: Mr. Caffry, do you wish to be  
19 heard on this now or do you want some time to  
20 respond to the application?

21 MR. CAFFRY: I can respond right now.

22 The record is very clear that the Agency  
23 approved Unit Management Plans by which these trails  
24 were built. It was intimately involved in their

1 planning and the development of their work plans  
2 that were used to construct them. That would be  
3 reflected in Exhibit double A. The memorandum of  
4 understanding between the two agencies. The process  
5 that goes through them.

6 As I recall the work plans, which are in  
7 evidence, have to be signed off on by the Agency.  
8 So, therefore, even if the Agency Staff wasn't out  
9 in the field wielding the chainsaws and driving the  
10 excavators they were certainly involved in the  
11 planning and approval of these trails and,  
12 therefore, the cause of action should not be  
13 dismissed.

14 THE COURT: Do you want to be heard briefly  
15 Ms. Lee-Clark in regard to that response?

16 MS. LEE-CLARK: Yes, Your Honor. Although  
17 work plans may contain a signature from APA staff,  
18 all of the construction and the construction  
19 decisions are made by DEC staff. APA staff has no  
20 role in determining what was done on the  
21 ground. Ultimately the decision rests with the DEC  
22 foresters. So we believe that plaintiff has not met  
23 its burden and they haven't shown any evidence of  
24 APA's role.

1 MR. CAFFRY: One more thing Your Honor.

2 The excerpts from Mr. Linck's deposition  
3 transcript, which we have proffered and which are  
4 going to be discussed with the Court on Monday,  
5 contain extensive discussions of Mr. Linck's  
6 experience and involvement in this process. And he  
7 is a member of the APA staff. So I think that  
8 totally contradicts what counsel just said.

9 THE COURT: It certainly makes the  
10 application premature. I have not carefully  
11 reviewed Mr. Linck's transcript as yet, although I  
12 know certain portions were submitted in motions on  
13 this matter, but that is not trial evidence and I  
14 have not made a determination as to whether that is  
15 trial evidence or not.

16 So the motion is denied for now as  
17 premature in light of the transcript issue which we  
18 all agreed to discuss in a few days.

19 MS. LEE-CLARK: Thank you.

20 MS. SIMON: May we have a moment to regroup  
21 for our next witness?

22 THE COURT: Sure.

23 (Pause.)

24 MS. SIMON: I'm ready.

1 We call Jonathan DeSantis to the stand.

2 JONATHAN DESANTIS,

3 Having been duly sworn, was examined and  
4 testified as follows.

5 THE COURT: Good afternoon Mr. DeSantis.

6 THE WITNESS: Good afternoon.

7 THE COURT: Pull that in front of you.

8 You heard my instructions to Mr. Burth  
9 here in court?

10 THE WITNESS: I did.

11 THE COURT: You can abide by those?

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 Ms. Simon please go ahead.

15 DIRECT EXAMINATION OF MS. DESANTIS

16 BY MS. SIMON:

17 Q. Mr. DeSantis would you please state your full  
18 name?

19 A. Jonathan Vincent DeSantis.

20 Q. Where are you employed?

21 A. I am employed by the Department of Environmental  
22 Conservation, Northville suboffice in Region 5.

23 Q. And that is in the Adirondack Park?

24 A. Yes.

1 Q. What is your title?

2 A. My title is forester.

3 Q. And how long have you been with DEC?

4 A. It was four years this past Monday.

5 Q. Have you held any other positions with DEC?

6 A. Yes. I was a seasonal forest technician from 2007  
7 to 2009.

8 Q. Do you hold any degrees?

9 A. I have two degrees. I have an Associate's Degree  
10 from Paul Smith's College in Forest Technology, and a  
11 Bachelor's Degree in Forest Resource Management from SUNY  
12 College of Environmental Science and Forestry.

13 Q. What are your job responsibilities?

14 A. My job responsibilities. I'm a land manager in the  
15 Adirondack Park assigned to ten land units.

16 Q. What do those responsibilities include?

17 A. Managing the trail system. Conducting maintenance  
18 and improvement activities on those trail  
19 systems. Overseeing crews that do that work. Development of  
20 Unit Management Plans and Unit Management Plan Amendments,  
21 and implementing actions within those plans.

22 Q. How many acres of land of the forest preserve are  
23 you responsible for?

24 A. Roughly 800 thousand, which is approximately the

1 size of the State of Rhode Island.

2 Q. Could you take a moment to show us on the map what  
3 land area you are responsible for?

4 (Witness left the stand.)

5 Q. If you could face the stenographer when you do that.

6 A. Yes.

7 MS. BRAYMER: Your Honor, could I just ask  
8 that he state what unit he is pointing to.

9 MS. SIMON: Sure.

10 THE WITNESS: I can do that.

11 A. The ten units comprise from the southern blue line  
12 of the Adirondack Park Shaker Mountain Wild Forest. To the  
13 west. Ferris Lake Wild Forest. Silver Lake Wilderness.  
14 Jessop River Wild Forest. West Canada Lake  
15 Wilderness. Moose River Plain Wilderness. Little Moose  
16 Mountain Wilderness. Blue Ridge Wilderness. Sergeant Ponds  
17 Wild Forest, and Blue Mountain Wild Forest.

18 MS. BRAYMER: Thank you.

19 (Witness resumed the stand.)

20 Q. Mr. DeSantis, have you read the petition and  
21 complaint in this case?

22 A. Yes.

23 Q. Are you familiar with the first cause of action in  
24 this matter? Class II trails violate Article XIV, Section 1

1 of the New York State Constitution the Forever Wild Clause?

2 A. Yes.

3 Q. Are you the forester responsible then for managing  
4 the Moose River Plains Wild Forest trail that is within your  
5 area?

6 A. I am.

7 Q. And are you familiar with the Moose River Plains  
8 Wild Forest Unit Management Plan?

9 A. Yes.

10 Q. I have shown you what has been marked as Defendants'  
11 Exhibit D. Do you recognize it?

12 A. Yes. This is the Moose River Plains Wild Forest  
13 Unit Management Plan.

14 Q. And just for a refresher what is the date on the  
15 plan?

16 A. The date is in the lower right. It is January of  
17 2011.

18 Q. Thank you. Does this plan call for closure of  
19 snowmobile trails?

20 A. Yes.

21 Q. Could you turn your attention to page 131 of the  
22 plan. Tell me what references it makes between the pages of  
23 131 and 135 regarding closures?

24 A. Page 135 has the proposed closure miles, which was

1 approved through this plan. And that number is 45.66  
2 miles.

3 Q. I'm not sure I heard the number correct. What page  
4 is that?

5 A. Page 131.

6 Q. 131. Thank you. As land manager for this area what  
7 is the effective date for closure of those trails?

8 A. The effective date for closure of these trails was  
9 upon the approval of this Unit Management plan, which would  
10 be January of 2011.

11 Q. And turning to page 135. What is depicted?

12 A. 135 is a map depicting the Moose River Plains Wild  
13 Forest, and the proposed snowmobile trail system which was  
14 approved through this Unit Management Plan.

15 Q. What, if anything, to the best of your knowledge has  
16 been done to close these trails?

17 A. The trails depicted here for closure have been  
18 closed pursuant to this plan. Any stewardship agreements  
19 which had previously authorized their grooming and  
20 maintenance had been altered to remove those trails from  
21 those lists, and all the signage has been removed from the  
22 trailhead relating to snowmobile trails.

23 Q. What, if anything, has been done with regard to  
24 gates or barriers?



1           A.    If gates exist at the trailheads those have remained  
2 closed in the winter.

3           Q.    You mentioned agreements.  What agreements are you  
4 referring to?

5           A.    The Department enters into agreements with towns,  
6 municipalities or snowmobile clubs to assist in the  
7 maintenance of the snowmobile trail system.  Agreements with  
8 towns are typically done through the temporary revocable  
9 permit process.  Or TRP.  And snowmobile clubs, which are  
10 volunteer organizations, are signed up through our volunteer  
11 stewardship program.

12          Q.    Are the grooming agreements for snow grooming?

13          A.    Yes.

14          Q.    And those are permitted by those agreements?

15          A.    Yes.

16          Q.    Who is responsible for issuing the grooming  
17 agreements for the Moose River Plains Wild Forest Unit?

18          A.    I draft the agreements in consultation with the  
19 clubs or towns, and it is reviewed in my regional  
20 headquarters in Ray Brook and signed off by my regional  
21 director.

22          Q.    Turning your attention to page 113 and 114.  And if  
23 I might take a moment.  We are looking at page 113 and  
24 114.  It is part of Exhibit D, but it is also part of Exhibit

1 29. That is what my questioning involves.

2 Have any grooming agreements for the trails listed  
3 on page 113 and 114 been approved since your taking the  
4 position in 2013?

5 A. No.

6 Q. Showing you what has been marked as Defendants'  
7 Exhibit BR for identification. Do you recognize this  
8 document?

9 A. Yes. This is three pages from the Moose River  
10 Plains Unit Management Plan.

11 Q. What are those pages?

12 A. Pages 135, 113 and 114.

13 Q. And could you describe what the first page is?

14 A. The first page is a map depicting the proposed  
15 snowmobile trail system within Moose River Plains, including  
16 the proposed trail closures to snowmobiles.

17 Q. Is the map in this exhibit marked for identification  
18 BR, is it identical to the map on page 135 of the RP?

19 A. No. I superimposed black letters on the map, which  
20 correspond to the listing of the trail names on page 113 and  
21 14. And I also wrote the two sentences at the bottom in red  
22 ink.

23 Q. Did you make any other changes to the page 135  
24 map?

1 A. No.

2 Q. And the lettering that you say is on the map  
3 corresponds to the trails on page 113 and 114?

4 A. Yes.

5 Q. Are the letters upper case? Lower case?

6 A. Lower case letters which correspond to the trail  
7 names listed on the subsequent pages.

8 Q. Is this an accurate copy of the map as you made  
9 it?

10 A. Yes.

11 MS. SIMON: I move to admit Defendants'  
12 Exhibit BR into evidence.

13 THE COURT: Mr. Caffry?

14 MS. BRAYMER: It is me Your Honor.

15 THE COURT: I apologize. Go ahead.

16 MS. BRAYMER: He may have answered this.

17 VOIR DIRE BY MS. BRAYMER:

18 Q. I want to be clear that the letters on the first  
19 page, which is identified as page 135. They correspond to  
20 each of the letters on the next two pages. Is that  
21 correct?

22 A. They correspond to the trails on the next page.

23 Q. The next two pages?

24 A. Yes.

1 Q. It goes on to page 114?

2 A. Yes.

3 MS. BRAYMER: No objection.

4 THE COURT: Defendants' BR is received  
5 into evidence.

6 (Defendants' Exhibit BR was received in  
7 evidence.)

8 BY MS. SIMON:

9 Q. Looking at Exhibit BR. Could you tell me is the  
10 Seventh Lake Mountain Trail on this map?

11 A. Yes.

12 Q. Where is it depicted?

13 A. It is depicted roughly in the center of the  
14 map. The dotted yellow line.

15 Q. And the red lines. What do they depict?

16 A. The red lines depict the trails that are now closed  
17 to snowmobiling

18 Q. Are there any Class I trails on this map or other  
19 snowmobile trails?

20 A. Yes. Class I trails are depicted by the orange  
21 dotted lines, and snowmobile trails that are on forest  
22 preserve roads are on the solid yellow lines.

23 Q. Thank you. Showing you what has been marked as  
24 Defendants' Exhibit BS. Do you recognize this document?

1           A.    Yes.  This is a document I made.  It has eight  
2 photos of barriers within Moose River Plains.

3           Q.    How many pages is this document?

4           A.    Three pages.

5           Q.    Let's start with the first photo.  How many photos  
6 are on the first page?

7           A.    Three.

8           Q.    Did you take all of the photos on the first page?

9           A.    Yes.  In the fall of 2016.

10          Q.    The first photo.  What does it depict?  What trail  
11 if any?

12          A.    The first photo depicts a steel gate at the  
13 trailhead of Bear Pond Trail.

14          Q.    And you took all of these photos in the same  
15 timeframe?

16          A.    Yes.

17          Q.    And does this photo number one that is Bear Pond  
18 Trail that you just described.  Does it fairly and accurately  
19 depict the scene that you took at that time?

20          A.    Yes.

21          Q.    And the second photo.  What is the location of that  
22 photo?

23          A.    The second photo depicts a steel gate and mounted  
24 stop sign at the trailhead of Beaver Lake Trail.

1 Q. Does this photo fairly and accurately depict the  
2 scene when you took the photo?

3 A. Yes.

4 Q. And the third photo on the first page. What does  
5 that depict?

6 A. The third photo depicts a steel gate and mounted  
7 stop sign at the trailhead to the Benedict Creek Trail.

8 Q. And turning to the second page. First photo on that  
9 page. What does that depict? Sorry. Is it a fair and  
10 accurate representation?

11 A. Yes.

12 Q. Turning to the second page.

13 A. The first photo depicts boulders located at the  
14 trailhead for the Ice House Pond Trail.

15 Q. Does this photo fairly and accurately depict the  
16 scene when you took the photo?

17 A. Yes.

18 Q. And the second photo on page two?

19 A. Second photo depicts a steel gate and mounted stop  
20 sign at the trailhead to the Lost Pond Trail.

21 Q. Does this photo fairly and accurately depict the  
22 scene when you took the photo?

23 A. Yes.

24 Q. And the next photo?

1           A.    The next photo is boulders at the trailhead of the  
2 Otter Brook Truck Trail.

3           Q.    Does this photo fairly and accurately depict the  
4 scene at the time you took the photo?

5           A.    Yes.

6           Q.    Turning to the third page.  The first photo.  What  
7 does this depict?

8           A.    The first photo depicts a steel gate with a mounted  
9 stop sign at the Sly Pond trailhead.

10          Q.    Does this photo also fairly and accurately depict  
11 the scene at the time you took the photo?

12          A.    Yes.

13          Q.    And the last photo which is on page three.  What  
14 does that depict?

15          A.    The last photo is one that I did not take  
16 personally, but it depicts boulders at the Indian Lake  
17 Road.

18          Q.    Also at the trailhead or in some other location?

19          A.    Yes.  The trailhead.

20          Q.    Where is this photo from?

21          A.    This photo is from archived files from my  
22 predecessor.  Forester Thomas Capalewski, who is retired  
23 now.

24          Q.    Is it the practice of your office to keep photos

1 such as this in the regular course of business?

2 A. Yes.

3 Q. Have you been to the location depicted in this  
4 photo?

5 A. Yes.

6 Q. When?

7 A. I've been there multiple times. As recently as the  
8 fall of 2016.

9 Q. When you were there in the fall of 2016 were there  
10 any boulders at the trailhead?

11 A. Yes. These same boulders.

12 Q. Do photos one through seven and photo eight fairly  
13 and accurately depict what you observed when you were  
14 there?

15 A. Yes.

16 MS. SIMON: I move to admit Defendants'  
17 Exhibit BS into evidence.

18 VOIR DIRE BY MS. BRAYMER:

19 Q. Mr. DeSantis, there are some captions on the left  
20 hand side and they refer to Exhibit A and letter such and  
21 such?

22 A. Yes.

23 Q. Are the letters referring to the list of trail  
24 closures in the Unit Management Plan on pages 113 and 114?



1           A.    Yes.  That's correct.

2           Q.    So then Exhibit A is sort of irrelevant at this  
3 point?

4           A.    Right.

5           Q.    And then with respect to the very last photo, which  
6 is captioned Indian Lake Road boulders.  It has three letters  
7 there.  O, R and S.

8           A.    Yes.

9           Q.    Can you explain how this photo is depicting three of  
10 the trails?

11          A.    The letters below the trail name is meant to  
12 describe which trails on the listing on page 113 and 14 of  
13 the UMP have blocked access because of these particular  
14 barriers.  So in the case of the Indian Lake Road boulders,  
15 that blocks access to three of the trails listed on page 113  
16 and 114 of the UMP.

17                       MS. BRAYMER: No objection.

18                       THE COURT: Defendants' BS is received into  
19 evidence.

20                       (Defendants' Exhibit BS was received into  
21 evidence.)

22 BY MS. SIMON:

23          Q.    Mr. DeSantis, what is the purpose of the gates and  
24 barriers?

1           A.    The purpose of the gates and barriers is to prevent  
2 public motor vehicle access onto the trails.

3           Q.    Are these gates locked in the winter?

4           A.    Yes.

5           Q.    And are these gates then intended to block  
6 snowmobiles as well?

7           A.    Yes.  The fact that they remain locked in winter  
8 does prevent snowmobile use.

9           Q.    Is there an enforcement mechanism to keep  
10 snowmobiles off the trails?

11          A.    The enforcement mechanism would be the local forest  
12 rangers who patrol the area.

13          Q.    Is it your testimony that some of the gates and  
14 barriers block access to more than one trail?

15          A.    Yes.

16          Q.    How many trails?  Let's begin with which of the  
17 pictures depicted in this exhibit block more than one  
18 trail?

19          A.    As I described earlier, the last picture which  
20 depicts the Indian Lake Road boulders blocks access to three  
21 of the listed trails.

22          Q.    Calling your attention again to Exhibit BR.  Could  
23 you tell us where on Exhibit BR those other trails that are  
24 blocked are located?

1           A.    At the base of the map where the lower case letter O  
2 is superimposed on the map. Just to the right of that it  
3 depicts the three trails that are blocked by those  
4 boulders.

5           Q.    Returning again to look at Exhibit BS. Other than  
6 those gates and barriers depicted in BS. Are there other  
7 gates and barriers in this Moose River Plains closure of  
8 trails map in BR? Are there others that have gates or  
9 barriers?

10          A.    Yes.

11          Q.    Can you tell me what they are?

12          A.    In the same area which I just described. There is a  
13 gate at the Otter Brook Bridge just to the right of the O.

14          Q.    That would be letter O on the map BR?

15          A.    Correct.

16          Q.    Thank you. Are there any other gates or barriers?

17          A.    There is also an additional gate at the Butter Brook  
18 Trail, which is labeled as E on this map.

19          Q.    And are there any others?

20          A.    I believe there is another gate on the Sly Pond  
21 Trail, which is labeled P on this map.

22          Q.    As unit manager of this area since 2013, have you  
23 authorized any snow grooming for any of the trails listed  
24 here?

1 A. No.

2 Q. Showing you what has been marked as Plaintiff's  
3 Exhibits 89, 90 and 91. Are you familiar with these  
4 documents?

5 A. Yes.

6 Q. Calling your attention to first number 89. Are you  
7 aware of any roads or trails within that land area? This is  
8 one of the maps prepared by Mr. Signell?

9 A. Right. Yes. I'm aware of two existing trails which  
10 are located in the lower right corner of that block.

11 Q. What are those?

12 A. There is a trail just to the west of Sagamore Lake,  
13 which is the Beaver Flow Trail. Then branching off of that  
14 farther to the west is the Uncas Farm Meadow Trail, or also  
15 known as the Mohegan Lake Trail.

16 Q. Thank you.

17 MS. BRAYMER: Your Honor, I object to and I  
18 would like to strike the answer as not responsive to  
19 the question, which was regarding roads in the  
20 area.

21 THE COURT: Let me hear the last question  
22 please?

23 (Reporter read the last few questions and  
24 and answers.)

1 MS. BRAYMER: I withdraw my

2 objection. Thank you.

3 BY MS. SIMON:

4 Q. Calling your attention to Exhibits 90 and 91. Also  
5 maps prepared by Mr. Signell and in evidence. Do you have  
6 those?

7 A. Yes.

8 Q. Can you tell me where, and please just describe it,  
9 the Old Uncus Road is on this map?

10 A. The Old Uncus Road is located on the lower -- it  
11 defines the lower left boundary of the identified block, and  
12 it is depicted by a red line

13 Q. Are you looking at 90 or 91?

14 A. 90.

15 Q. Okay. What is the status of Old Uncus Road? Is it  
16 open or closed?

17 A. Old Uncas Road is closed. I believe a portion  
18 closer to Route 28 has become part of the existing Seventh  
19 Lake Mountain Trail, but the remaining portion is a trail  
20 closed to snowmobiling

21 Q. Does Old Uncas Road go by another name?

22 A. I believe it is also referred to in the UMP as the  
23 Seventh Eighth Lake loop.

24 Q. Is that Seventh Eighth Lake loop in the UMP at page

1 113 or 114? Could you take a look?

2 A. Yes. Seventh and Eighth Lake loop is labeled as  
3 letter F on the listing. On page 113 of the Unit Management  
4 Plan.

5 Q. Thank you. When was Old Uncus or the Seventh Eighth  
6 Lake Loop closed to snowmobiles?

7 A. This trail, like the others, was closed pursuant to  
8 the UMP which would be January of 2011.

9 Q. And have you issued any snow grooming agreements for  
10 the closed portion of Old Uncus Road?

11 A. No.

12 Q. Calling your attention again to Exhibit BR. Give me  
13 a moment please. I forgot you already have 89. Could you  
14 please look at 89?

15 A. Yes.

16 Q. Does this map include the lands you are responsible  
17 for as land manager?

18 A. Yes. This block is a part of the Moose River Plains  
19 Wild Forest.

20 Q. Thank you. Turning your attention now to the Jessup  
21 River Wild Forest area and the Gilmantown Trail. I believe  
22 you testified and showed us on the map you are responsible  
23 for those lands as well?

24 A. Correct.

1 Q. Turning your attention to the second to last page of  
2 the Unit Management Plan, which is Exhibit F for the Jessup  
3 River unit, which is already in evidence. What is on that  
4 second to last page?

5 A. This page depicts a map of the Jessup River Wild  
6 Forest and proposed snowmobile trail system, which was  
7 approved through the passage of this amendment.

8 Q. What color is the Jessup River Wild Forest area?

9 A. On this map it is depicted by a dark green color.

10 Q. What does the brown color of the map depict?

11 A. The brown color is private land. It is industrial  
12 forest land, which the department has a conservation easement  
13 with.

14 Q. I have also showed you what has been marked into  
15 evidence as Exhibit CV. This is a document that was put into  
16 evidence by Dr. Howard. Could you take a moment to look at  
17 it?

18 A. Yes.

19 Q. Can you tell me whether the map -- there are two  
20 maps on Exhibit CV. They depict the same land area. Can you  
21 tell me whether that map is part of the map on the second to  
22 last page of the Jessup River UMP?

23 A. Yes. This map depicts a partial of the Jessup River  
24 Wild Forest, which is located on the lower right corner of

1 the second to last page of the Jessup River Wild Forest UMP  
2 amendment.

3 Q. Could you identify if there is a town where you  
4 could explain where this unit is exactly? This portion of  
5 the unit. My mistake.

6 A. Yes. This particular parcel of the Jessup River  
7 Wild Forest is just to the north of the Village of Wells and  
8 southeast of the Village of Speculator.

9 Q. Does the map in Exhibit F of the UMP show any trails  
10 in Dr. Howard's study area other than the trails depicted on  
11 Dr. Howard's map?

12 A. No.

13 Q. Does the map on this page of the UMP Exhibit F show  
14 any roads in that study area?

15 A. No.

16 Q. Are there other areas in the Jessup River Wild  
17 Forest that depict snowmobile trails?

18 A. Yes. Those are depicted on the second to last  
19 page.

20 Q. In that second to last page map what do the lines  
21 that are dotted yellow represent?

22 A. Those lines represent proposed Class II snowmobile  
23 trails.

24 Q. And as land manager for that area have those trails



1     been built?

2             A.     Some of the trails have been built, but not all of  
3     the trails depicted here.

4             Q.     And in the map on the left hand section where it has  
5     the red trails what do those depict?

6             A.     Those depict existing snowmobile trails that I  
7     believe upon the construction of the new Class II trails  
8     those trails, according to this map, are proposed for closure  
9     to snowmobiles.

10            Q.     Showing you what has been marked as Defendants'  
11     Exhibit DE for identification. Do you recognize this  
12     exhibit?

13            A.     Yes. These are three photos I took depicting the  
14     Dunning Pond Trail.

15            Q.     Where is the Dunning Pond Trail?

16            A.     The Dunning Pond Trail is located in the Jessup  
17     River Wild Forest. It is depicted on Exhibit CV.

18            Q.     There are two maps on Exhibit CV. Which of the two  
19     is it depicted on?

20            A.     It is depicted on the left map, and it is the pink  
21     yellow line. Solid pink line.

22            Q.     How many pages is this exhibit?

23            A.     Three.

24            Q.     And is there a total of three photos?

1 A. Yes.

2 Q. Where was photo one taken?

3 A. Photo one was taken at the Dunning Pond Trailhead  
4 off of Route 30.

5 Q. And where was photo two taken?

6 A. Photo two is taken just inside the trailhead. It  
7 depicts the Dunning Pond Trail off of Gilmantown Road.

8 Q. And number three?

9 A. Three depicts a trailhead of the Dunning Pond Trail  
10 directly off of Gilmantown Road.

11 Q. When did you take these pictures?

12 A. I took these pictures last week.

13 Q. Do these photos that you took of the Dunning Pond  
14 Trail fairly and accurately represent what you observed at  
15 that time?

16 A. Yes.

17 MS. SIMON: I move to admit them into

18 evidence. DE.

19 THE COURT: Miss Braymer.

20 VOIR DIRE BY MS. BRAYMER:

21 Q. On the third photo where was that taken? If you  
22 could reference Exhibit CV that would be helpful.

23 A. Okay. Photo three was taken on the western portion  
24 of the Dunning Pond Trail right off of Gilmantown Road, and

1 it is a photo taken standing on the road shoulder of  
2 Gilmantown Road looking at the Dunning Pond Trail.

3 Q. That's the far west of the pink line?

4 A. Correct.

5 Q. On the left photo of Exhibit CV?

6 A. Correct.

7 Q. Could you run through that for the other two photos?  
8 Starting with the first one.

9 A. Sure. Referencing Exhibit CV. Photo one is the far  
10 right of the Dunning Pond Trail, which is in the pink. That  
11 photo is taken standing on the road shoulder of Route 30  
12 looking up at the Dunning Pond Trail.

13 Photo two is taken at the same location as photo  
14 three. Just maybe 30 or 40 feet up the trail.

15 MS. BRAYMER: No objection, Your Honor.

16 THE COURT: Defendants' DE is received into  
17 evidence.

18 Ms. Simon is this a good time for a break?

19 MS. SIMON: It is a good time.

20 THE COURT: Once we have marked these in  
21 we will take a ten minute break. Ten minutes  
22 folks.

23 (Defendants' Exhibit DE was received in  
24 evidence.)

1 (Recess.)

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

4 All set Ms. Simon?

5 MS. SIMON: Yes. Thank you.

6 BY MS. SIMON:

7 Q. Pick up Exhibit DE again.

8 A. Yes.

9 Q. Starting with photo number one. Can you remind me  
10 where this is if you look at the map on CV?

11 A. Yes. This is the trail at Dunning Pond Trail  
12 directly off of State Route 30.

13 Q. And looking again -- do you still have CV there?

14 A. Yes.

15 Q. If we are looking at the left hand map where the  
16 pink line is. Where is it on that left hand map?

17 A. It's all the way to the right of the pink line,  
18 where it intersects that black line.

19 Q. What is that black line?

20 A. I believe that black line is what was used to  
21 delineate this block.

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

23 A. I believe the black line is what Dr. Howard used to  
24 delineate this particular parcel of forest.

1 MS. BRAYMER: Objection. That answer was  
2 speculation. Speculation as to that answer.

3 MS. SIMON: I can rephrase.

4 THE COURT: Sustained. Go ahead.

5 Q. Where did you take photo number one? You testified  
6 you took it from a State Route. What was that State Route?

7 A. State Route 30, which is all the way to the right.  
8 The solid pink line.

9 Q. What can you tell me about photo number one?

10 A. I visited the trailhead. There was no snowmobile  
11 tracks or any tracks on the trail.

12 Q. Do you recall -- first of all are there signs in  
13 your picture?

14 A. Yes. There is two signs. The sign all the way to  
15 the right is the trail identification sign.

16 Q. I'm sorry. In photo number one?

17 A. Yes. There is a sign to the right in photo number  
18 one, which is a trail identification sign. It is hard to  
19 read here, but it says trail two with an arrow pointing to  
20 where the trailhead starts. You can't read it here but it  
21 says Dunning Pond Trail, and below that is Gilman Lake.

22 Q. There is another sign in the distance sort of in the  
23 middle of the picture. Do you know what that says?

24 A. Yep. That's a white sign with red lettering that

1 says "caution bridge out".

2 Q. And taking a look at photo number two. Identify  
3 this again on map CV on the left.

4 A. This photo two is taken at the Dunning Pond Trail  
5 just in the trail. All the way to the left of the pink  
6 line.

7 Q. And what road was that off of? I think you  
8 testified there was a road there as well.

9 A. Yes. That road is Gilmantown Road.

10 Q. And the sign in picture number two. What does that  
11 say?

12 A. That sign says "caution bridge out".

13 Q. And did you make any observations that this trail  
14 had in terms of the scene?

15 A. Again there was no tracks. Snowmobile or foot  
16 tracks, which led me to believe that no one has been in there  
17 since the latest snow fall.

18 Q. Photo number three. My copy is kind of dark. Could  
19 you tell us if you know what that trailhead sign says?

20 A. That trailhead sign is very faded, but it basically  
21 says the same wording as the trail sign in photo number  
22 one. Trail two with an arrow pointing to where the trail  
23 enters the woods. It says Dunning Pond Trail and Gilman  
24 Lake.

1 Q. Did you make any observations at that location?

2 A. Same as in photo number two. There was no tracks of  
3 any kind. It didn't look like there was much use there.

4 Q. When you visited these trail locations did you see  
5 any snowmobile signs?

6 A. No.

7 Q. Have you issued any snowmobile -- I'm sorry. Any  
8 snow grooming agreements for this trail?

9 A. No.

10 Q. As land manager for this area do you know this trail  
11 to be closed to snowmobiles?

12 A. Yes.

13 Q. And what do you base that on?

14 A. It was closed pursuant to the Jessup River Wild  
15 Forest UMP and UMP amendment. Any stewardship agreements  
16 that had previously authorized the grooming and maintenance  
17 of this trail, the ones that I have been involved in have not  
18 included the Dunning Pond Trail on them. There is no signage  
19 indicating snowmobile use at either of the trailheads.

20 Q. This again is from the period of time you began  
21 working in this unit in 2013?

22 A. Yes.

23 Q. Thank you. Mr. DeSantis, did there come a time when  
24 you were asked to visit segment three of the Seventh Lake

1 Mountain Trail to locate a large tree identified by  
2 plaintiff's expert Mr. Signell as old growth?

3 A. Yes.

4 Q. Did you review Mr. Signell's affidavits and/or  
5 photos of old growth stumps?

6 A. Yes, I did.

7 Q. Did you obtain the GPS or GIS coordinates for the  
8 location based on Mr. Signell's disclosures?

9 A. Yes.

10 Q. Did you go to that location?

11 A. Yes. I went here in the fall of 2016.

12 Q. And what, if anything, did you find at that  
13 location? First of all, tell me where the location was in  
14 this segment three?

15 A. Yeah. The photos depicted here are from segment  
16 three of a large tree.

17 Q. I'm sorry. I can't hear you.

18 A. The photos here are taken from segment three where  
19 the trail comes close to Route 28. They depict a fallen tree  
20 on the forest floor.

21 Q. So I have shown you what has been marked as  
22 Defendants' Exhibit BT for identification. These are the  
23 photos you are referring to?

24 A. Yes.



1 Q. Did you take these photos?

2 A. Yes, I did.

3 Q. When did you take them?

4 A. Early November of 2016.

5 Q. How many pages are in this exhibit?

6 A. Seven.

7 Q. Does each page have a photograph?

8 A. Yes. There are seven photographs.

9 Q. Are there any other markings on this page, these  
10 pages and can we start with page one? I believe it is  
11 labeled figure one.

12 A. Yes. There is text markings that I put on these  
13 photos for directional purposes.

14 Q. And on page one could you just identify -- there is  
15 more than one location where there is text. Correct?

16 A. There is a heading text that states figure one.

17 Q. Don't read it please. That was directional  
18 information?

19 A. Yep. There is also arrows on the photo as well.

20 Q. I can't hear you very well. Sorry.

21 A. Sorry. Yes. There is a heading text, and there is  
22 arrows on the photo and also text boxes within the photo.

23 Q. Did you put those additional representations on this  
24 photo?

1 A. Yes, I did.

2 Q. And turning to the second page. Figure two is  
3 labeled second photo. Is there anything additional besides  
4 the photo on this figure two?

5 A. Yes. There is text as a heading and there is also  
6 an arrow on the photo that I put both of them on.

7 Q. And without reading it what is referenced in the  
8 heading?

9 A. Directional information on the photo.

10 Q. And the next photo. That would be figure three.

11 A. Yes. This photo also has text and a heading and an  
12 arrow in the photo, and the text in the heading is  
13 directional.

14 Q. And photo or figure four.

15 A. This photo also has a text in the heading.

16 Q. And nothing on the photo?

17 A. No.

18 Q. Figure five?

19 A. Same as the last photo. Just a text and the heading  
20 with nothing in the photo.

21 Q. Figure six.

22 A. Same as before. Text in the heading.

23 Q. And figure seven?

24 A. The same.

1 Q. Do these photos fairly and accurately depict what  
2 you observed on the trail when you took them?

3 A. Yes.

4 MS. SIMON: I move to admit Defendants'  
5 Exhibit BT into evidence.

6 VOIR DIRE BY MS. BRAYMER:

7 Q. Mr. DeSantis, are all of these figures up to seven.  
8 Are they generally depicting the same location?

9 A. Yes.

10 Q. And which trail was this? Which segment of Seventh  
11 Lake Mountain Trail?

12 A. This is on segment three of the Seventh Lake  
13 Mountain Trail.

14 Q. Can you give us a more exact location?

15 A. On segment three it is where the trail comes close  
16 to State Route 28.

17 MS. BRAYMER: No objection, Your Honor.

18 THE COURT: Defendants' BT is received into  
19 evidence.

20 (Defendants' Exhibit BT was received in  
21 evidence.)

22 BY MS. SIMON:

23 Q. Looking at Exhibit BT. Starting with figure  
24 one. Could you explain what is depicted in this scene?

1           A.    This photo depicts the Seventh Lake Mountain Trail,  
2           which is generally the center right of the photo.  There is a  
3           fallen tree leading up to the trail corridor.

4           Q.    Is the trail corridor what has been testified to  
5           previously as covered with leaf litter?

6           A.    Yes.  The trail corridor is covered with leaf  
7           litter.

8           Q.    Sort of to the right?

9           A.    Yes.

10          Q.    Okay.  Continue.  What is the arrow showing that you  
11          have put in the center of that photo?

12          A.    The center arrow shows the length.  Approximate  
13          location of the fallen tree trunk, and there is also an  
14          additional arrow to the left of the photo showing a stump.

15          Q.    And the longer arrow.  Could you read what you put  
16          in text below that?

17          A.    Yes.  The text below the longer arrow states first  
18          cut on the trunk of the fallen tree occurs at 26.5 feet from  
19          the base.  Diameter at that cut is 20 inches.

20          Q.    Did you measure that distance and that diameter?

21          A.    Yes, I did.

22          Q.    And to the left what does it state under the smaller  
23          arrow?

24          A.    The text states trunk broke off from the stump four

1 feet from the base of the tree.

2 Q. Turning to the next photo. Is this an image of the  
3 same tree that is pictured on the ground in figure one?

4 A. Yes.

5 Q. And looking at it from a different angle.

6 A. Yes. It's standing on the Seventh Lake Mountain  
7 Trail looking up the tree.

8 Q. And the cut that you are looking at. Where does  
9 that fall in relationship to the trail?

10 A. The cut is right at the trail corridor.

11 Q. Did you observe a cut at the other end of that tree  
12 on the ground?

13 A. No, I didn't.

14 Q. What is the blue arrow pointing to?

15 A. The blue arrow is pointing to what I believe to be  
16 the stump that is associated with this fallen tree stem.

17 Q. Turning to figure three. Can you tell me what this  
18 depicts?

19 A. This is just a close up side profile of the  
20 scene. It depicts the view looking north. It shows the  
21 fallen stem to the far right is the Seventh Lake Mountain  
22 Trail corridor.

23 Q. To the left the blue arrow?

24 A. The blue arrow is pointing at what I believe to be

1 the stump of this fallen tree.

2 Q. And turning to figure four. Is this the stump  
3 depicted in the blue arrow on the prior figure?

4 A. Yes.

5 Q. Approximately how tall was that stump if you  
6 recall?

7 A. This stump has a splintered edge that is  
8 approximately eight feet high.

9 Q. How would you describe what you observed with regard  
10 to that trunk or stump? I'm not sure how you characterize  
11 it.

12 A. The stump has visible signs of rot and decay and  
13 again the splintered edge on it. I observed no cut marks  
14 from a chain saw.

15 Q. No cut marks on that stump?

16 A. No.

17 Q. Turning to figure five. Is this the same tree?

18 A. Yep. This is another shot of the stump with the  
19 fallen stem just to the left.

20 Q. I'm sorry. Where are you referring to?

21 A. You have the stump in the center of the photo. Just  
22 to the left is the moss covered tree stump, and that is  
23 heading towards the Seventh Lake Mountain Trail corridor.

24 Q. And number six. Figure six.

1           A.     Figure six is showing a side profile of the fallen  
2 tree with the Seventh Lake Mountain Trail running through the  
3 middle.

4           Q.     And number seven.  Could you read what you wrote on  
5 figure seven?

6           A.     Figure seven states bucked up pieces of the fallen  
7 trunk disbursed to the west of the trail.

8           Q.     What is bucked up?

9           A.     Bucked up is a term used when you cut segments of a  
10 tree or a log.

11          Q.     So based on your observation in the field and  
12 searching for one of these old growth forests, is it your  
13 belief that this was a fallen tree?

14          A.     Yes.  I believe that this tree likely fell from  
15 natural causes, as is evidenced by the large amount of rot  
16 and decay in the associated stump and the absence of any  
17 chain saw marks that would indicate that this tree had been  
18 felled by humans.

19          Q.     With the exception of you did observe one chain saw  
20 mark though?

21          A.     Right.  The fallen stem has -- a segment of the  
22 fallen stem was removed where the Seventh Lake Mountain Trail  
23 now travels.

24                         MS. SIMON: No further questions.

1 THE COURT: All set Ms. Braymer or do you  
2 need a minute?

3 MS. BRAYMER: I am ready Your Honor.

4 THE COURT: Good. Go right ahead.

5 CROSS-EXAMINATION OF MR. DESANTIS

6 BY MS. BRAYMER:

7 Q. At the break about ten minutes ago did you confer  
8 with Ms. Simon?

9 A. Yes.

10 Q. And what were you discussing?

11 MS. SIMON: Objection.

12 THE COURT: Overruled. You may answer.

13 A. We were looking at one of the exhibits.

14 Q. Which one was that?

15 A. I believe it was Exhibit CV.

16 Q. That is Dr. Howard's maps?

17 A. Yes.

18 Q. Was there a problem with your prior testimony about  
19 CV and related to the trails on that map?

20 A. No. I think Ms. Simon was -- just needed some  
21 clarity on where the roads were, because they are not labeled  
22 on the map.

23 Q. You mean Route 30?

24 A. Yes. Route 30 would be to the right and Gilmantown



1 Road to the left.

2 Q. Was there anything else discussed?

3 A. No. I don't believe so.

4 Q. You testified that 45.66 miles of snowmobile trails  
5 have been closed to snowmobile use. Correct?

6 A. Yes.

7 Q. How many different trails are made up of that 45.66  
8 miles?

9 A. I believe it is 16 trails, and the remaining four  
10 are public motor vehicle roads.

11 Q. Were any of the trails or roads that were closed to  
12 snowmobiles listed on those two pages of Exhibit 29 already  
13 beginning to revegetate due to having received little or no  
14 use for some time?

15 A. Yes.

16 Q. Which trails were those that were already beginning  
17 to revegetate?

18 A. I'm not sure. I haven't been on all of the trails,  
19 so I don't know firsthand the characters of each trail.

20 Q. If you were to refer to Exhibit 29 would that help  
21 you refresh your recollection --

22 A. Yes.

23 Q. -- as to which two.

24 A. Can you repeat the question please.

1 Q. Which two were already -- I'm sorry. Which trails  
2 were already beginning to revegetate due to having received  
3 little or no use for some time?

4 A. Of the trails I have been on personally I can  
5 testify to the fact that Rock Dam Trail, which is indicated  
6 by the letter H, as well as Sly Pond Trail, which is  
7 indicated by the letter I. And Bear Pond Trail. Letter B.

8 MS. SIMON: Could I hear a repeat of the  
9 last answer? I didn't hear it.

10 THE COURT: Yes.

11 (Reporter read the last answer.)

12 MS. SIMON: Thank you.

13 Q. Mr. DeSantis, I handed you two documents. Did you  
14 previously testify in this particular case through  
15 affidavits?

16 A. Yes.

17 Q. And did you understand that it was important to tell  
18 the truth when you were writing and signing these  
19 affidavits?

20 A. Yes.

21 Q. And did you tell the truth when you signed the  
22 affidavits?

23 A. Yes. To the best of my ability.

24 Q. I appreciate that. Are the copies that I have

1 handed you, are the documents I have handed you copies of  
2 your affidavits in this case?

3 A. Yes.

4 Q. And I'm going to refer you to your November 15th,  
5 2016 affidavit, paragraph eight to refresh your recollection  
6 about some of the trails that have already started to  
7 revegetate due to receiving little use. Do you see that?

8 A. Paragraph eight?

9 Q. Paragraph eight.

10 A. Yes.

11 Q. Do you know of any other trails besides the ones  
12 that you just testified about that have already begun to  
13 revegetate?

14 A. Yes. In this paragraph I refer --

15 THE COURT: Hang on. Don't read it to  
16 us. Read it to yourself. If it helps refresh your  
17 recollection, your memory about other trails that  
18 had already begun to revegetate just testify. Just  
19 tell us that now. Don't read from the document or  
20 tell us what is in it. Okay?

21 THE WITNESS: Yes.

22 THE COURT: Go ahead.

23 A. Can you repeat the question please?

24 Q. Sure. You testified about some trails already and I

1 asked you to refresh your recollection using the  
2 affidavit. Do you recall any other trails now that you have  
3 refreshed your recollection that have started to revegetate  
4 due to receiving little use?

5 A. Yes.

6 Q. What are those?

7 A. Well I can't testify to the fact that these trails  
8 have started -- have revegetated because I have not been on  
9 either of these trails.

10 Q. Let me ask a different question then. Would you be  
11 able to testify about them receiving little use?

12 A. Yes.

13 Q. Okay. So are there other trails other than the ones  
14 you testified to that have received little use?

15 A. Yes. I believe that is accurate.

16 Q. I'm sorry?

17 A. Yes.

18 Q. What are those?

19 A. What other trails that have received little use?

20 Q. Right.

21 A. Two of the trails that I know to have received  
22 little use are the Benedict Creek Trail and the Butter Brook  
23 Trail as I stated in my affidavit.

24 Q. Okay. Can you using Exhibit 29 can you tell us

1 which letters Benedict and Butter Brook Trail are?

2 A. Yes. Benedict Creek Trail is letter C. Butter  
3 Brook Trail is letter E.

4 Q. Mr. DeSantis please answer yes or no. Is it  
5 possible for snowmobiles to go around boulders and gates?

6 A. Yes.

7 Q. Did all of the trails listed in Exhibit 29 pages 113  
8 and 114 have maintenance agreements for grooming?

9 A. (No response.)

10 Q. Exhibit 129 is in evidence so if you need to refer  
11 to it --

12 A. I have it right here.

13 Q. I'm sorry. I can't see behind that.

14 A. Yes. I believe at one time all of these trails did  
15 have agreements for grooming and maintenance.

16 Q. Are there specific ones that were more -- you said  
17 at one time. I guess my question is then which trails  
18 actually had maintenance agreements in place that needed to  
19 be canceled or ceased? Or whatever the terminology is to  
20 cancel the agreement between that club and DEC?

21 MS. SIMON: Objection.

22 THE COURT: I understand the

23 objection. The objection is overruled. If you can

24 answer the question you may go ahead and answer

1           it.

2           A.    I'm a little confused by the question.  All of these  
3 trails at one time had agreements to groom and maintain  
4 them.  You are asking what trails were removed?  That would  
5 be all of them.

6           Q.    No.  I'm sorry.  Not to say no to your answer, but  
7 in your prior testimony you said that these trails -- one of  
8 the methods by which these trails were closed to snowmobile  
9 use was to cease or perhaps maybe not renew a stewardship  
10 agreement?

11          A.    Correct.

12          Q.    How many of the trails did that apply to at the time  
13 that the UMP was adopted and this all became effective?

14          A.    I can't testify to what -- how many of these trails  
15 were removed from those agreements.  That was before my time  
16 with the DEC.

17          Q.    Were all of the trails listed on pages 113 and 114  
18 of Exhibit 29 closed to all uses?

19          A.    No.  The UMP is very clear that some of these trails  
20 will remain open for foot or bicycle use, and they are all  
21 listed here on page 113 and 114.

22          Q.    Isn't it true that some of them are also open to  
23 motor vehicle use?

24          A.    Yes.

1 Q. Which ones are those?

2 A. Lost Ponds Road, which is indicated by the letter

3 J. Indian Lake Road, letter O. Beaver Lake Road, letter

4 Q. And Helldiver Pond Road, letter T.

5 Q. What about letter N, Beaver Lake Trail?

6 A. It is my understanding that Beaver Lake Trail is  
7 closed to motorized vehicles.

8 Q. Could you please read letter N for us?

9 A. Yes. It says, "Beaver Lake Trail. 2.0 miles. This  
10 trail is within an area proposed to be managed with very  
11 limited motorized uses. This trail will be maintained as a  
12 foot trail."

13 Q. For trails that have been closed to snowmobile use,  
14 have all of the trails had physical barriers installed at the  
15 trailheads to prevent the use of those trails by  
16 snowmobiles?

17 A. No.

18 Q. I know you testified earlier about some and I was  
19 trying to keep track. I believe it amounts to 13. Is that  
20 correct?

21 THE COURT: Thirteen trails?

22 MS. BRAYMER: Yes.

23 A. Can you repeat that question please?

24 Q. Sure. My question is: How many of the trails or

1 roads have had physical barriers installed at the trailheads  
2 to prevent use of those trails by snowmobiles?

3 A. (No response.)

4 Q. I will break in while you are thinking. At the time  
5 you were testifying you were referring off of Exhibit BS.

6 A. Yes. BS depicts a number of gates, but these are  
7 not all the gates on all the trails.

8 Q. You testified to a few others?

9 A. Yes.

10 Q. So my question to you is: Is the total number of  
11 trails that are blocked by gates or boulders 13?

12 A. I'm going to need a minute to think this through. I  
13 believe it is 12, but I can't be certain because I have not  
14 been to all of the trailheads listed that are depicted on  
15 Exhibit BR as being closed to snowmobile trails

16 Q. On those remaining trails closed to snowmobiles  
17 where there have not been physical barriers installed at the  
18 trailheads, are there other physical barriers that prevent  
19 snowmobilers from using these purportedly closed trails? Yes  
20 or no?

21 A. No.

22 Q. I will switch gears and ask you questions about the  
23 Jessup River Wild Forest.

24 A. Sure.



1 Q. That is Exhibits F and CV. Is the Dunning Pond  
2 Trail open for uses other than snowmobiling?

3 A. Yes. I believe so.

4 Q. What uses?

5 A. To my knowledge I believe it is open to foot  
6 traffic.

7 Q. And are there gates or boulders at either of the  
8 ends of this trail?

9 A. Yes. There is a gate off the Route 30 side of the  
10 Dunning Pond Trail.

11 Q. In your photos of that, which are Exhibit DE. Is  
12 that photo one?

13 A. Yes. DE depicts the trailhead of Dunning Pond  
14 Trail.

15 Q. At Route 30?

16 A. Yes.

17 Q. Is this photo showing a picture of a gate?

18 A. No.

19 Q. But your testimony is that there is a gate there  
20 somewhere?

21 A. Yeah. It's up in the woods maybe a few hundred  
22 feet.

23 Q. Prior to last week when was the last time you  
24 visited this trail?

1           A.    This was the first time I visited this trail.  Last  
2 week was the first time.

3           Q.    So you have no knowledge of the use of this  
4 particular trail prior to seeing it from last week?

5           A.    No firsthand knowledge, but knowledge with  
6 conferring with my colleagues and just general knowledge of  
7 the area.

8           Q.    Do you supervise people?

9           A.    Yep.  Yes, I do.

10          Q.    Do those people regularly visit and monitor this  
11 trail for its use?

12          A.    Not this particular trail.  No.

13          Q.    Turning to Exhibit F.  That is Jessup River?

14          A.    Yep.

15          Q.    The second to last page.  The map we have been  
16 looking at.

17          A.    Yes.

18          Q.    Which Class II community connector trails are yet to  
19 be built?

20          A.    The Fish Mountain Trail, which is the long trail in  
21 the lower center of the photo of the map.  And I believe --  
22 yeah.  The entire segment of the Fish Mountain Trail I  
23 believe is not constructed at this time.

24          Q.    Would that include -- are you referring to both

1 Fish Mountain Trail and Fish Mountain Trail Spur Trail as one  
2 thing?

3 THE COURT: I didn't hear that.

4 Q. Fish Mountain Trail Spur Trail.

5 A. Yes. I don't believe the Fish Mountain Spur Trail  
6 has been constructed either.

7 Q. What about the Crow Hill Relocation?

8 MS. SIMON: Can I hear that again please?

9 THE COURT: Do you want to say it again?

10 MS. BRAYMER: Crow Hill Relocation.

11 THE COURT: Thank you.

12 A. I'm not familiar with that trail and it is not  
13 depicted on this map. That is not labeled. I'm not sure  
14 where that trail is.

15 Q. Referring to your August 22nd, 2016 affidavit. On  
16 the very last page, paragraph 15 you mention some trails that  
17 have not yet been built. One of them is the one I'm asking  
18 you about right now.

19 A. Yes. I see that there.

20 Q. Does that refresh your recollection looking at that  
21 paragraph?

22 A. Yes.

23 Q. So has the Crow Hill Relocation Trail been  
24 constructed?

1 A. No.

2 Q. What about the Brister Brook Trail?

3 A. Also no.

4 Q. Has the Fish Mountain -- sorry. Has the Mud Lake  
5 Trail been constructed?

6 A. I believe not.

7 Q. And these are all trails that would be located  
8 within the Jessup River Wild Forest?

9 A. Yes. I believe so.

10 Q. Staying right there. If you look on the same page,  
11 paragraph 16 it might refresh your recollection about my next  
12 question.

13 What Class II Community Connector Trails have been  
14 constructed in the Shaker Mountain Wild Forest?

15 MS. SIMON: Objection. Goes beyond the  
16 scope.

17 THE COURT: Counsel?

18 MS. BRAYMER: Mr. DeSantis is the land  
19 manager in charge of ten different units in the  
20 forest preserve. Several of them are wild  
21 forests.

22 We have alleged in the complaint that  
23 there is a system of trails that includes many  
24 different units, trails in different units and the

1 State's first witness also confirmed that there was  
2 a system of trails. Mr. Peter Frank. This line of  
3 questioning is going to that area.

4 THE COURT: It is beyond the scope. I  
5 will not preclude the questioning of Mr. DeSantis by  
6 you with regard to these issues, but you will not be  
7 allowed to lead in your questions.

8 MS. BRAYMER: Not allowed to lead?

9 THE COURT: Correct. You would not be able  
10 to ask leading questions the way you normally would  
11 in cross-examination, because it is beyond the  
12 scope. Unless you feel it in some way goes directly  
13 to what he testified to or his credibility. If so  
14 you can make that argument now.

15 MS. BRAYMER: He has testified that he is  
16 the land manager for the Shaker Mountain Wild  
17 Forest.

18 THE COURT: I will allow the question. It  
19 is a new area so you will be allowed to ask the  
20 questions, but you will not be allowed to lead.

21 MS. SIMON: May I ask for a proffer for  
22 whether it is within the scope of the case between  
23 2012 and 2014?

24 THE COURT: I believe a sufficient proffer

1           has already been made, and I will allow the  
2           questioning.

3                       Go ahead.

4           Q.    My question is:  What Class II Community Connector  
5 Trails have been constructed in the Shaker Mountain Wild  
6 Forest?

7           A.    I believe the answer is none, because the Shaker  
8 Mountain Wild Forest Unit Management Plan was written and  
9 approved before the snowmobile guidance, which designated the  
10 Class I and Class II system.  So all of the snowmobile trails  
11 currently within that unit cannot be labeled as Class I or  
12 Class II.

13          Q.    Is it possible that a UMP amendment can be passed  
14 changing the classification of any of the current trails?

15                       MS. SIMON:  Objection.

16                       THE COURT:  Sustained.

17          Q.    With respect to the Sergeant Wild Forest.  Is that  
18 one of the units within your management?

19                       MS. SIMON:  Objection.

20                       THE COURT:  Overruled.  You may answer.

21          A.    Sergeant Ponds Wild Forest.  Yes.

22          Q.    Thank you for correcting the name.  What Class II  
23 Community Connector Trails have been constructed in that  
24 unit?

1           A.    Zero, because there is no current Unit Management  
2 Plan for that unit.

3           Q.    With respect to the Blue Mountain Wild Forest.  Are  
4 you the manager for that?

5           A.    Yes.

6           Q.    What Class II Community Connector Trails have been  
7 constructed in that unit?

8           A.    I believe the answer is zero, because that Unit  
9 Management Plan was written in 1995 and approved during that  
10 year.  So it predates the snowmobile guidance.

11          Q.    Changing gears on you.  When did you visit the  
12 Seventh Lake Mountain Trail when you took the picture in  
13 Exhibit BT?

14          A.    It was early November in 2016.

15          Q.    Did you find this tree using Mr. Signell's GPS data  
16 that was provided to DEC?

17          A.    Yes.

18          Q.    And you were able to locate it accurately using that  
19 GPS data?

20          A.    The GPS data got me close, but I basically just  
21 walked up the trail and found it.

22          Q.    Did you measure the diameter of the base of the  
23 stump of the tree?

24          A.    No, I did not.  There was a lot of decay and rot,

1 and I don't think that would have been an accurate  
2 measurement.

3 Q. Did you measure any other portions of the tree?

4 A. I measured the length of the fallen trunk from near  
5 the stump to where it intersected with the Seventh Lake  
6 Mountain Trail. I measured the diameter of the cross cut at  
7 that point. I measured the height of the stump. I believe  
8 that is the only measurements I took.

9 Q. Starting with the first measurement. What was the  
10 distance between the stump and the intersection with the  
11 trail?

12 A. It was a distance from the base of the fallen stem  
13 to the trail corridor.

14 Q. How far was that?

15 A. 26.5 feet.

16 Q. So the stump was 26.5 feet from the trail?

17 A. No. That's not correct.

18 Q. I'm sorry.

19 A. The stem was located roughly four feet from the base  
20 of the stump.

21 Q. So total distance. I'm asking what was the distance  
22 between the stump where it broke off and the trail?

23 A. I guess the distance from where the stump is to the  
24 trail would be 30.5 feet.



1 Q. Did you measure the diameter at the intersection  
2 with the trail?

3 A. Yes.

4 Q. And what was that measurement?

5 A. 20 inches.

6 Q. And you previously testified that it fell from  
7 natural causes. Is that correct?

8 A. I can't testify to how the tree fell, but it is my  
9 opinion that it likely fell from natural causes considering  
10 the large amount of rot and decay in the stump and the --  
11 and no chain saw marks nearby.

12 Q. And you don't think anybody moved that tree into  
13 that location?

14 MS. SIMON: Objection.

15 THE COURT: Overruled.

16 A. No, I don't.

17 MS. BRAYMER: Your Honor, may I have a  
18 moment to confer with counsel?

19 THE COURT: Of course.

20 (Counsel conferred.)

21 MS. BRAYMER: No further questions for this  
22 witness at this time.

23 THE COURT: Any redirect?

24 MS. SIMON: Just two brief questions.

1 REDIRECT EXAMINATION OF MR. DESANTIS

2 BY MS. SIMON:

3 Q. Look again at Exhibit BR and page 113. Second page  
4 of BR.

5 A. Yes.

6 Q. I believe you testified that the Sly Pond Trail was  
7 letter I. Could you look at that again? I just want to  
8 confirm what letter Sly Pond Trail is.

9 A. Yeah. I misspoke there. It is actually letter L.

10 Q. L?

11 A. Yes.

12 Q. Thank you. And even without barriers would it be  
13 illegal for snowmobiles to travel on trails closed to  
14 snowmobiles?

15 A. Yes.

16 MS. SIMON: No further questions.

17 MS. BRAYMER: I have nothing further Your  
18 Honor.

19 THE COURT: All right. Thank you Mr.  
20 DeSantis. You may step down.

21 MS. SIMON: I have no further witnesses for  
22 today.

23 THE COURT: Anything else for the record  
24 before we break for the day folks?

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MR. CAFFRY: I have a few things to discuss  
off the record.

THE COURT: Nothing else for the record at  
this time?

MS. SIMON: No.

THE COURT: Okay. You are all set. Thank  
you.

Okay. 9:30 tomorrow morning folks.

(Proceedings concluded.)

<u>FOR THE DEFENDANTS:</u>	<u>WITNESSES</u>		<u>REDIRECT</u>	<u>RECROSS</u>
	<u>DIRECT</u>	<u>CROSS</u>		
TATE CONNOR				
By Ms. Simon			1431	
By Mr. Caffry		1410		1434
JOHN BURTH				
By Ms. Lee-Clark	1437			
By Mr. Caffry		1444		
JONATHAN DESANTIS				
By Ms. Simon	1449		1503	
By Ms. Braymer		1485		
<u>PLAINTIFF EXHIBITS</u>		<u>ID</u>		<u>EVIDENCE</u>
170 NMT-L&FC-1 Forms		1410		
171 SLMT-L&FB-1 Forms		1410		
<u>DEFENDANT EXHIBITS:</u>		<u>ID</u>		<u>EVIDENCE</u>
BR Map of trail closures in Moose River Plains			1457	
BS Eight photographs Closed trails in Moose River Plains			1462	
BT Seven photos			1480	
CR Wetlands Permit		1410		
DE Photographs - 3		1410	1472	

C-E-R-T-I-F-I-C-A-T-I-O-N

I, **DEBORAH MEHM**, Senior Court Reporter in the Unified Court System, Third Judicial District, do hereby certify that the foregoing is a true and accurate transcript of the proceedings reported stenographically by me before the HONORABLE GERALD W. CONNOLLY, Acting Supreme Court Justice on Wednesday, March 29th, 2017.

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**DEBORAH MEHM, C.S.R.**