



STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

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.

NON-JURY TRIAL

B E F O R E:

HON. GERALD W. CONNOLLY,
Acting Supreme Court Justice

VOLUME VI

TRANSCRIPT OF PROCEEDINGS in the above-entitled
matter held at the Albany County Courthouse, Albany, New
York on Monday, March 20th, 2017.

DEBORAH MEHM, CSR
Sr. Court Reporter

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

CAFFRY & FLOWER
100 Bay Street
Glens Falls, NY 12801
BY JOHN W. CAFFRY, ESQ.,

and

CLAUDIA BRAYMER, ESQ.,
P.O. Box 2369
Glens Falls, NY 12801

For the Defendant:

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

1 to respond now or take a little more time to check
2 it out?

3 MS. SIMON: I would like to take some time
4 after I check with DEC. If it is a legitimate copy
5 from the website I'm sure it will be okay. If we
6 could wait until a break?

7 THE COURT: I was accepting the testimony
8 anyway if I recall correctly. So I think it can
9 wait until tomorrow. Let's try to get it figured
10 out by tomorrow.

11 MS. SIMON: May I add one thing?

12 I appreciate there is a lot of work to be
13 done here. We got another revised table of
14 contents, table of exhibits with a pile of new
15 exhibits this morning.

16 My understanding was at the beginning of
17 the trial Judge O'Connor ordered that exhibits and
18 witnesses should be provided to us ahead of
19 time. So I am again this morning at a disadvantage
20 as a whole bunch of new stuff will be introduced
21 that I haven't had a chance to look at.

22 THE COURT: That is the exigencies of
23 trial. I understand, but if you have not been given
24 the time unfortunately we will take the time and let

1 you do whatever you have to do to make sure you can
2 represent your client properly. Within reason you
3 will be given any time you wish. Okay?

4 MS. SIMON: Thank you.

5 THE COURT: All set counsel?

6 MS. BRAYMER: I am. Thank you. Mr.
7 Signell.

8 THE COURT: You understand you are still
9 under oath sir.

10 THE WITNESS: I do.

11 THE COURT: Good enough.

12 CONTINUED DIRECT EXAMINATION OF MR. SIGNELL

13 BY MS. BRAYMER:

14 Q. Good morning Mr. Signell.

15 A. Good morning.

16 Q. According to your resume, which has been admitted
17 into evidence as Plaintiff's Exhibit number 28, one of your
18 areas of expertise is landscaping ecology. Could you please
19 describe for us what that is?

20 A. Yes. So landscape ecology is concerned with sort of
21 the arrangement of ecosystems and ecosystem processes on the
22 landscape. Any given landscape is thought of as a patchwork
23 of different types of ecosystems.

24 With any ecosystem ecology sort of functions in a

1 certain way. These ecosystems can change over time. They
2 can change as a result of a human disturbance. A natural
3 disturbance. Fire. But generally landscape ecology is
4 concerned with mapping these out, identifying them and trying
5 to understand the processes that not only occur within the
6 ecosystem but how the ecosystems interact with other
7 ecosystems on the landscape.

8 Q. Can you give us a general idea of what you mean
9 exactly by patchwork?

10 A. So you can almost think of a quilt. If you look at
11 an aerial imagery, photographs taken from above. You can
12 almost think of a quilt where there might be a partnership of
13 forest, and then there is a patch of fields next to it. Then
14 there is a patch of parking lot. Then there might be a
15 lake. The whole landscape is made of these contiguous little
16 patches of different shapes. Then even within like a forest
17 patch you might have many different kinds of forests within
18 that. Different ages and different things.

19 Q. You talked about them changing over time. How do
20 they change?

21 A. Ecosystems can change over long time
22 periods. Glaciers can come and destroy all of them. Turn it
23 into one giant icescape, and then recede again. Then you
24 might have boreal species, tundra species come in as the

1 glacier recedes and then eventually forests will form.

2 So there is long term changes that can happen, but
3 ecosystems can also change as a result of a road being built
4 or a parking lot being built or a giant mud slide taking out
5 an entire hillside would drastically change the ecosystem.

6 Q. Would the Class II community connector trail
7 construction have those same kind of changes?

8 MS. SIMON: Objection.

9 THE COURT: Sustained. That's a little
10 general.

11 Q. Can changes to patchworks result from the
12 construction of long narrow strips of road or trail through a
13 forest?

14 A. Yes.

15 Q. And why would that be?

16 A. Well an ecosystem doesn't have to have any
17 particular shape. It doesn't have to be a round or square
18 system. It can be a long, thin shape. A stream would be an
19 example of a natural ecosystem that is very long and very
20 thin. So if a human disturbance is large enough to create a
21 different whole set of species within that patch then it is a
22 different ecosystem.

23 Q. From a forest ecology standpoint do the patches
24 function differently from the adjoining patches?

1 A. Yes. That is why they would be identified as a
2 separate ecosystem.

3 Q. Can you explain what the characteristics of the
4 different ecosystems would be? How you would define that?

5 A. In the case we are talking about now we have a
6 forest ecosystem. An intact forest ecosystem that is
7 characterized by shady conditions. Cool. A typical
8 Adirondack forest is shaded and cool. It has a certain suite
9 of ground cover plants. Typically plants that are very shade
10 tolerant. So they can live underneath the forest over
11 story. As I said it is cooler. It is moister.

12 Then the ecosystem I observed along some of the
13 constructed trails is a drier sunnier ecosystem that supports
14 plants that are shade intolerant like grasses and extensive
15 fern beds and things like that.

16 Q. So is it fair to say that the forest ecosystem on
17 the trail differs from that found outside the adjoining
18 forest patches?

19 A. Yes. I would not call it a forest ecosystem. Large
20 sections of the trail are not forest. They are grasslands
21 essentially. They are a narrow strip going through the
22 forest ecosystem.

23 Q. Would any of the animals utilizing the trail
24 corridor be different than those outside the trail?

1 MS. SIMON: Objection, Your Honor. This
2 whole line of questioning has been gone through
3 extensively with Dr. Sutherland, and I believe we
4 have talked about the ecosystem extensively with Mr.
5 Signell as well. It has all been asked and
6 answered.

7 THE COURT: Ms. Braymer.

8 MS. BRAYMER: I'm trying to set up the
9 foundation for future questions, but I can do it
10 more briefly.

11 THE COURT: It is up to you.

12 Is that what you wish to do or do you want
13 me to rule on the objection?

14 MS. BRAYMER: I would like a ruling on the
15 objection please.

16 THE COURT: The objection is
17 overruled. You may go ahead. You may answer. Do
18 you remember the question or we can have it read
19 back?

20 THE WITNESS: I will have it read back.

21 (Reporter read the pending question.)

22 A. A lot of animals would use the trail corridor
23 probably. Wild forest animals would use it, especially in
24 the winter because it is going to be easier to walk on

1 because it is tramped down by snowmobiles and it would be a
2 lot easier to walk on. I don't think it would
3 necessarily -- the animals that would be different in that
4 area would probably be mostly insects and small animals that
5 tend to prefer grass communities than animal
6 communities. The main difference in terms of animals on the
7 trail, of course, would be humans on snowmobiles.

8 Q. Would the characteristics of the Class II community
9 connector trail contribute to the impairment of the
10 ecological function of the forest?

11 A. Yes. The forest ecosystem. Yes.

12 Q. Can you describe what those impairments would be in
13 your professional opinion within the forest ecology?

14 A. Right. So I think an analogy here, and this may
15 seem a little off the wall but I think it is apt. If you
16 think about an intact forest within a roadless area as if it
17 is a loaf of bread with a crust. A loaf of fresh bread with
18 a crust on it.

19 A loaf of bread sitting out is susceptible to
20 mold. It can get infected with things, but the loaf itself
21 has the crust. It has to come in through the crust of the
22 bread in order to effect the interior of the forest or this
23 chunk.

24 So the same thing is true before us. You have an

1 intact forest that has an intact canopy covering the
2 top. Wind will blow over this thing. You might have seeds
3 of invasive plants or any other kind of plants that like
4 grass or sun, but it just passes right over the forest. If a
5 few of these seeds happen to drop through the forest canopy
6 there they won't grow. There is too much shade.

7 So a foot trail, like the one we saw in Goodnow
8 Mountain where you are only cutting maybe two or three trees
9 a mile and the trail winds through the trees and comes out
10 the other side of the forest. This is like taking a needle
11 and thread through this loaf of bread. It's a narrow little
12 tunnel that goes through and passes almost unnoticed through
13 and out the other side. You almost wouldn't know where this
14 trail began unless you knew there was a sign. It's just a
15 small kind of little hole going through the woods.

16 This trail is more like taking a knife or a saw and
17 sawing through this loaf. So now you have an opening. Maybe
18 not an opening everywhere, but large sections of this trail
19 now you have cut a big section. You have cut a big swath
20 through it. There is more sunlight. There is air. There is
21 more wind. Any invasive plants. Any seeds blowing over this
22 ecosystem can now enter into it. They now have a place where
23 if they land they can germinate.

24 Likewise you will see in some of the pictures I have

1 taken. It gives an opportunity for trees next to the trail
2 that have been cut to get blown over. If those die then it
3 becomes bigger and bigger.

4 So I think that is an effective way to describe the
5 difference here and what this trail is, and what it does to a
6 forest. It makes it more susceptible to non-desirable and
7 non-native functions.

8 Q. For a layperson what is the forest function? What
9 is the forest ecological function? Just briefly.

10 A. Just the natural -- there is a suite of species
11 that are native to the area. They have a way that they
12 interact with each other. Some of the species will hang out
13 and wait for a little gap in the canopy and then grow
14 up. Other ones spend their whole life on the forest floor
15 and provide food for the native animals that live
16 there. Salamanders and mice and things like that. There is
17 a whole different suite of those things. A grass land
18 functions very differently. A whole different set of animals
19 and plants. The whole thing

20 Q. Switching gears. What is the oldest of the Class II
21 community connector trails that you had inspected?

22 A. Seventh Lake Mountain Trail.

23 Q. Would surveying that older trail versus a more
24 recently cut trail have any advantages for the process of

1 determining the impacts of those community connector
2 trails?

3 MS. SIMON: Objection.

4 THE COURT: What is the objection?

5 MS. SIMON: I think it is a confusing
6 question.

7 THE COURT: It is a little confusing. I
8 agree, but I think it is preliminary and I will
9 allow it. You may answer it.

10 A. The longer a trail has been in existence the more
11 data you have on what the effects of it are.

12 Q. I believe you testified earlier that you walked the
13 entire length of the Seventh Lake Mountain Trail. While you
14 were doing this work did you observe grass growing on the
15 Seventh Lake Mountain Trail?

16 MS. SIMON: Objection. We have definitely
17 been over this.

18 THE COURT: That is true Ms. Braymer. Are
19 you getting to something else?

20 MS. BRAYMER: We would like to get into the
21 scientific basis for his study of the grass and the
22 percentage of grass on the trail.

23 THE COURT: Go ahead.

24 MS. SIMON: I thought you were telling her

1 to go ahead.

2 THE COURT: No. I apologize. You looked
3 like you had something further to say.

4 MS. SIMON: Your Honor, both Mr. Signell
5 and Dr. Sutherland have talked extensively about
6 grass and the impacts of grass. The difference
7 between the ecological impact of grass versus other
8 forest ground cover. It has been asked in the last
9 several days. Each day we have had a trial.

10 THE COURT: There has been much discussion
11 about grass. I don't think she is going to exactly
12 whatever scientific basis she is recognizing. So I
13 will sustain this objection because this is an
14 objection on a question that has been asked and
15 answered numerous times. I direct you to get to
16 whatever your point is you are going to with this
17 Ms. Braymer.

18 MS. BRAYMER: Okay.

19 THE COURT: I'm not barring you from going
20 into a scientific basis for analysis of the grass on
21 the trails.

22 MS. BRAYMER: That is what I wanted to do
23 next.

24 THE COURT: Go right ahead.

1 MS. BRAYMER: Thank you.

2 BY MS. BRAYMER:

3 Q. Mr. Signell, did you undertake a quantitative
4 analysis of the presence and absence of grass on the Seventh
5 Lake Mountain Trail?

6 A. Yes, I did.

7 Q. What year did you do this?

8 A. 2016.

9 Q. How many years was that after the trail was
10 constructed?

11 A. I believe around four years.

12 Q. When you were walking the trail which direction were
13 you headed?

14 A. North.

15 Q. And can you describe for the Court how you performed
16 your field survey of the grass on the trail?

17 A. Yes. So I think I described it before. Every 10th
18 of a mile I took four photos. Two along the trail and two
19 off the trail. The trail was almost 1.2 -- 10.2 miles
20 long. I think I had 117 of these points. The analysis I did
21 was post-hoc. I was looking at the photographs that I had
22 taken. Looking for the presence or absence of grass in each
23 photograph.

24 Q. Were you able --

1 MS. SIMON: Can I have a read back on the
2 point he just answered?

3 THE COURT: Sure.

4 (Reporter read the last answer.)

5 MS. SIMON: My objection is to the
6 miles. We have a stipulated number of miles here of
7 11.9 and he is testifying now that the trail is
8 10.2.

9 THE COURT: Overruled.

10 Q. Mr. Signell I have handed you what has been marked
11 as Court Exhibit 1. Would you refer to that and tell the
12 Court the length of the Seventh Lake Mountain Trail?

13 A. 11.9. I misspoke. There is 117 points along that I
14 took which corresponds roughly to this number.

15 Q. After you collected all of the data what were the
16 four categories of points that you arrived at?

17 A. There were points where there was grass both on and
18 off the trail. There was points where there was grass
19 neither. There was no grass either on or off the
20 trail. There was places where there was grass on the trail
21 but not in the woods, and there was one place where there was
22 grass visible in the woods but not on the trail.

23 Q. How many points did you find that had grass both on
24 and off the trail?

1 A. I think there were ten. These were mostly in places
2 either adjacent to wetlands where grass would grow naturally,
3 or on the south facing hill slopes that are actually dried
4 and more open where grass typically can grow in the native
5 forest.

6 Q. I have handed you what has been marked for
7 identification as Plaintiff's Exhibits 63, 64, 65 and 66. Do
8 you recognize these sets of photographs?

9 A. Yes.

10 Q. Did you take these photographs?

11 A. Yes, I did.

12 Q. When were you there taking these photos?

13 A. In the summer of 2016.

14 Q. Referring your attention to Exhibit 64. Is this one
15 point where you took the four photographs at a single
16 location that you described earlier?

17 A. Yes.

18 MS. SIMON: I object. As we go through
19 these are we going to do them all? There are
20 multiple photos in every packet. On this one I was
21 going to ask to clarify where it is.

22 Q. Mr. Signell what segment of the Seventh Lake
23 Mountain Trail is this located in?

24 A. This is on the section north of the Eighth Lake

1 campground.

2 Q. Are these four photographs true and accurate
3 representations of the scenes depicted at the time?

4 A. Yes.

5 MS. BRAYMER: Your Honor, I move Exhibit 64
6 into evidence.

7 MS. SIMON: May I voir dire?

8 THE COURT: Yes.

9 VOIR DIRE BY MS. SIMON:

10 Q. For the first photo in number 64. Is this a photo
11 on the trail or off the trail?

12 A. That is along the trail.

13 Q. Meaning not on the trail?

14 A. It is looking down the trail.

15 Q. And the next photo. Is that on the trail or off the
16 trail? Looking off the trail or looking on the trail?

17 A. That one is looking off the trail. The third one is
18 on. Looking southward. Northward along the trail.

19 Q. I'm sorry. I didn't hear you. Say that again?

20 A. Third one is looking along the trail either to the
21 south or north. I believe to the south.

22 Q. And the last?

23 A. That's not true. The last one is looking along the
24 trail. Because you can see a trail marker.

1 Q. Could you repeat? Is the third one on the trail?
2 You are looking at the trail or you are looking at the
3 woods?

4 A. Looking at the woods.

5 MS. SIMON: No further questions. No
6 objection.

7 THE COURT: No objection to the admission.
8 I just heard you offer 64.

9 MS. BRAYMER: Yes. I have the other two
10 that I would like to do too.

11 THE COURT: So 64 is one batch of four
12 photographs?

13 MS. BRAYMER: Yes.

14 THE COURT: 64 is received into evidence.

15 MS. BRAYMER: I have a couple questions on
16 64. Or do you want me to offer them?

17 THE COURT: However you want to do it is
18 fine. If you are going to ask a few questions about
19 64 I will have her mark 64.

20 MS. BRAYMER: Let's have it marked please.

21 (Plaintiff's Exhibit 64 received in
22 evidence.)

23 BY MS. BRAYMER:

24 Q. In your professional opinion do these exhibits show

1 the presence of grass both on and off the trail?

2 A. They do.

3 Q. And are these photos typical of those taken at the
4 survey points at which you found grass growing both on and
5 off the trail?

6 A. Yes.

7 Q. Did you find any points that had no grass on the
8 trail but did have grass off the trail?

9 A. Yes.

10 Q. How many of those sites?

11 A. I believe just one.

12 Q. If you would turn to Exhibit 65.

13 THE COURT: Are you all done with 64?

14 MS. BRAYMER: Yes.

15 THE COURT: May I see that? Thank you. Go
16 ahead.

17 BY MS. BRAYMER:

18 Q. Do you recognize what is in this exhibit?

19 A. Yes.

20 Q. What are these?

21 A. These are pictures taken in an area sort of the --
22 on the part of the southern section of the trail south of
23 Seventh Lake Mountain boat launch. I believe that was a long
24 a pre-existing road. I don't think they had to do much

1 construction here. You can see the trail markers along this
2 one.

3 Q. So which ones are taken of the trail corridor?

4 A. One and four. It is pretty easy in this one to
5 tell.

6 Q. One and four. Are these four photos true and
7 accurate representations of the scene depicted at that survey
8 point?

9 A. Yes.

10 MS. BRAYMER: Your Honor, I move number 65 into
11 evidence.

12 MS. SIMON: May I voir dire?

13 THE COURT: Yes.

14 VOIR DIRE BY MS. SIMON:

15 Q. Mr. Signell, in the first photo. The question for
16 all the photos is: Are they all on segment one?

17 A. What is segment one?

18 Q. The southern most segment of the Seventh Lake
19 Mountain Trail?

20 A. Yes. Yes. I believe so

21 Q. Could you tell me more precisely where on segment
22 one? Are they all in the same area on segment one?

23 A. These all are taken from the same spot.

24 Q. Thank you.

1 A. I believe it was 5.6 miles to the north of the
2 southern terminus.

3 MS. SIMON: Thank you. No objection.

4 THE COURT: Plaintiff's 65 is received into
5 evidence.

6 (Plaintiff's Exhibit 65 received in
7 evidence.)

8 BY MS. BRAYMER:

9 Q. I have handed you Exhibits 72, 73 and 79. Does that
10 help you identify where this point was? Where Exhibit 65 was
11 taken?

12 A. Yeah. Somewhere in the vicinity of bridge six or
13 seven. Bridge five.

14 Q. Can you tell us with respect to 65 which is the
15 photo that is showing grass? Or photos?

16 A. When I was -- the third photo exhibit is grass. You
17 can't see it very well in this photo, but I did this on my
18 computer screen. Higher resolution photographs. It looks
19 like there is grass along the trail in photo number four, but
20 I couldn't really tell because it was so far away. So I
21 didn't mark it as having grass on it.

22 Q. Does this survey point in your opinion -- let me
23 rephrase that. Did you form an opinion as to why there was
24 grass off the trail but not on the trail?

1 A. There is a wetland. Picture number three depicts a
2 wetland which always has more sun and supports various
3 grasses than a forest. So this would be a little patch of
4 wetland within the forest ecosystem.

5 Q. How many of your survey points had no grass on the
6 trail or in the woods?

7 A. I believe 40.

8 Q. What, if anything, did you conclude about these
9 points that had no grass?

10 A. That the forest -- for whatever reason grass has not
11 been able to colonize these areas. Either the canopy had not
12 opened up sufficiently to allow them to grow in, or I think
13 probably a bigger factor is that no grass was actively
14 planted in these areas.

15 MS. SIMON: Objection. Calls for
16 speculation.

17 THE COURT: Overruled.

18 Q. Mr. Signell, looking at Exhibit 66 marked for
19 identification. Do you recognize what is in that exhibit?

20 A. Yes.

21 Q. What are those?

22 A. A section of trail on the very northern section. I
23 can give you a section number. South of Sagamore Road. The
24 northerly section. You can see one of the very large old

1 growth trees in the first photograph. A moss-covered sugar
2 maple probably around 30 inches in diameter. There is no
3 grass along or off the trail in any of these photos, although
4 the character of the trail is certainly easily distinguished
5 from the forest surrounding it.

6 Q. Are these four photos true and accurate
7 representations of the scene depicted at that survey point?

8 A. They are.

9 MS. BRAYMER: Your Honor, I move 66 into
10 admission.

11 VOIR DIRE BY MS. SIMON:

12 Q. Could you tell me that survey point? You said
13 northern point. I'm assuming you are talking about the
14 Seventh Lake Trail?

15 A. Yes. I believe it was point 96. Somewhere around
16 there. Somewhere almost ten miles north of the southern
17 terminus.

18 Q. Can we go through these photos one at a time? First
19 photo is looking at the trail?

20 A. Yes.

21 Q. And the second photo?

22 A. Off the trail.

23 Q. Third photo?

24 A. Off the trail.

1 Q. And last photo?

2 A. Along the trail.

3 MS. SIMON: Thank you. No objection.

4 THE COURT: 66 is received into
5 evidence.

6 (Plaintiff's Exhibit 66 received in
7 evidence.)

8 BY MS. BRAYMER:

9 Q. Are these photos typical of those taken at the 40
10 survey points at which you found no grasses growing either on
11 or off the trail?

12 A. Yes. More or less.

13 Q. How many survey points had grass on the trail but
14 not in the woods?

15 A. I think 66.

16 Q. What, if anything, in your professional opinion did
17 you conclude about these 66 points where there was grass on
18 the trail and not in the woods?

19 A. So these are points where I would say that the
20 actual ecosystem of the patchwork of the forest has been
21 altered drastically, because the entire makeup of the trail
22 corridor is completely different than the forest around
23 it. It is not a transitory thing. It is not going to go
24 away tomorrow. The way you get grass -- the difference

1 between a forest and a lawn is actually not as much as you
2 might think. The way to get a lawn is to cut the trees
3 down. First you have to cut trees down. Remove all of the
4 stuff and then plant grass, and then you keep cutting it so
5 the trees can't grow back. That is, in effect, what has
6 happened here. The tree has been cut down. Grass has been
7 planted in many of these areas, and the trail is regularly
8 maintained to keep forest species out.

9 Q. Looking at Exhibit 63. Do you recognize this set of
10 exhibits?

11 A. Yes.

12 Q. Did you take those photos?

13 A. I did.

14 Q. That was at one of the survey points on the Seventh
15 Lake Mountain Trail?

16 A. Yes.

17 Q. Where more specifically was this survey point?

18 A. I think this was point 11. So a little over a mile
19 from the southern end.

20 Q. Which photos are shown in the trail corridor?

21 A. One and four. Easily visible.

22 Q. So two and three are looking out into the woods?

23 A. That's right.

24 Q. Are these true and accurate representations of the

1 scenes depicted at that survey point?

2 A. Yes.

3 MS. BRAYMER: Your Honor, I move Exhibit 63
4 into evidence.

5 MS. SIMON: No objection.

6 THE COURT: 63 is received.

7 (Plaintiff's Exhibit 63 was received in
8 evidence.)

9 Q. Specifically looking at photos one and four which
10 you said were on the trail corridor. What are they
11 showing?

12 A. They show just a dense mat of grass. Occasional
13 fern in this section. Really grass as far as the eye can see
14 in either direction along the trail.

15 Q. As far as two and three which were out into the
16 woods did you observe any grass?

17 A. No.

18 Q. Are these photos typical of those taken at the 66
19 survey points at which you found grass growing on the trail
20 but not off into the woods?

21 A. Yes. Some had more grass; some had less. But yes.

22 Q. Getting into your analysis, Mr. Signell. What
23 percentage of the survey points consist of data with grass on
24 but no grass off the trail?

1 A. 56 percent.

2 Q. Does the presence of grass at 56 percent of your
3 survey points. The presence of grass on the trail. That is
4 56 percent of your survey points mean there was grass growing
5 on 56 percent of the trail?

6 A. No.

7 Q. Why is it that?

8 A. Well some of the points -- all I was measuring the
9 presence and absence of grass. Some of the photographs might
10 be a hundred percent covered with grass and some of the
11 photographs there might be five percent. But in all of those
12 photographs there was some grass present. So it's hard to
13 say, you know, a certain amount of the trail was covered with
14 grass, but that much of the trail had grass along it.

15 Q. Are you trained in statistical analysis?

16 A. Yes.

17 Q. Where did you obtain that training?

18 A. College and grad school. Private practice.

19 Q. Did you perform a statistical analysis on the grass
20 survey data?

21 A. Yes. It is a very straightforward, simple
22 analysis. A presence and absence statistic is very simple.

23 Q. What particular type of analysis?

24 A. I did a pair and t-test. It means that you at each

1 point you have a pair of observations. So one of the
2 observations is the trail and one of the observations is off
3 the trail. So you can compare the things at each point
4 against the other things at each point.

5 Then I also did another non-pair metric test. You
6 probably don't want me to get into the details of that, but
7 they are all standard tests to determine if what you are
8 seeing in the data is a significant difference.

9 Q. In this situation is the 56 percentage points. Is
10 that a high amount?

11 A. It is a high amount. It is very statistically
12 significant. The tests show without a doubt with 99.99999
13 percent certainty that there are real measurable differences
14 between the trail and the forest in terms of the grass
15 community.

16 Q. Is it fair to say that grass now exists in the
17 surrounding forests in a very low percentage, but exists on
18 the trail at a very high percentage?

19 A. Yes.

20 Q. What does your analysis tell you in your
21 professional opinion about the current state of the trail
22 versus the natural state of the trail?

23 A. As I said before, it has been transformed into
24 something non-forest. It's just a different ecosystem into

1 itself.

2 Q. What does your analysis tell you about the duration
3 of these impacts? The impacts of grass on the trail?

4 A. So grass is an indicator species. An indicator
5 species is something when you see it in the woods it tells
6 you something very clear.

7 So, for instance, if you see an Aspen tree in the
8 forest you know that forest is less than 100 years old or 120
9 years old because they don't live longer than that. If you
10 find blueberry you know the soil is acidic. If you find
11 grass you know that there either is now sunlight reaching it
12 or at some point in the past sunlight has been abundant in
13 that spot.

14 So in order to establish grass has to have a lot of
15 light. Once it is established it can persist for decades in
16 the forest. So when I'm out in the forest and I'm wandering
17 through an area and I find a grassy patch in the forest. An
18 established forest. Often you look around and you will find
19 evidence of humans. You might find an old foundation or an
20 apple tree that was planted.

21 This grass will persist for decades even if they
22 stop maintaining this trail. These things you will be able
23 to come in 100 years and you will know there was a road there
24 or a trail or whatever. You will know that at one time there

1 was -- that things had been broken up to the point where
2 grass could thrive, and the grass here is clearly
3 thriving. It is not just hanging on.

4 Q. Did you form a professional opinion within a
5 reasonable degree of scientific certainty as to whether or
6 not the construction of the trail led to the presence of
7 grass at 56 percent of the survey points?

8 A. Yes. I believe so. I don't think it would -- there
9 is no way that grass would be there if the canopy had not
10 opened up and the grass had been actively planted.

11 Q. In addition to surveying for the presence or absence
12 of grass on the Seventh Lake Mountain Trail did you make
13 other observations on this trail?

14 A. Yes.

15 Q. Do you recognize those exhibits?

16 A. Yes, I do.

17 Q. What are they?

18 A. These are other photos I took along the trail.

19 Q. When was that?

20 A. The same time period. August. Or summer of 2016.

21 Q. Looking specifically at Exhibit 60. What segment or
22 can you give us a more specific location?

23 A. This one I believe was in the northern section of
24 the trail.

1 Q. Do you have something that would refresh your
2 recollection as to the location?

3 A. I do, but not on me probably. A couple of these
4 look -- a lot of the photographs look similar along the
5 trail. So I'm having trouble remembering exactly which
6 section these two are in particular. 61 and 60.

7 One was taken along the southern section of the
8 trail and another one -- I believe. And the other one was
9 taken north of the Eighth Lake Mountain or Eighth Lake
10 campground.

11 MS. BRAYMER: Your Honor may I provide him
12 something?

13 THE COURT: You may.

14 Q. I have handed you some information to refresh your
15 recollection. After refreshing your recollection can you
16 tell us more specifically where photo number 60 was taken?

17 THE COURT: Identify the information you
18 have handed to him.

19 MS. BRAYMER: They are e-mails from Mr.
20 Signell to my office.

21 A. So this one was 5.7 miles north of the southern
22 terminus.

23 THE COURT: This one being 60 or 61?

24 THE WITNESS: 60.

1 Q. And 61?

2 A. 61 was 10.9 miles north of the southern terminus.

3 Q. And 62?

4 A. That was 1.8 miles north of the southern terminus.

5 Q. Are these three photos true and accurate
6 representations of the scene depicted at the time you took
7 the photos?

8 A. Yes.

9 MS. BRAYMER: Your Honor, I move Exhibits
10 60, 61 and 62 into admission.

11 MS. SIMON: One question on number 62.

12 VOIR DIRE BY MS. SIMON:

13 Q. Are you looking at the trail?

14 A. Yes.

15 MS. SIMON: No objection.

16 THE COURT: 60, 61 and 62 are received into
17 evidence.

18 (Plaintiff's Exhibits 60, 61 and 62 were
19 received in evidence.)

20 BY MS. BRAYMER:

21 Q. Mr. Signell, in your professional opinion what are
22 these photographs showing to you?

23 A. In particular 61 and 62 show areas that have had
24 significant grading. Flattening in areas where it appears

1 that grass was intentionally planted. 62 shows an area that
2 is kind of typical of places -- I'm not sure whether grass
3 was planted there, but the grass has certainly colonized the
4 area along with fern from the forest. Which we are not
5 addressing the fern issue here. That is a whole different
6 issue, but fern exists pretty extensively in the forest not
7 in a solid mat but it can colonize these more sunny
8 roads. You know, the sunny area within the trail boundary
9 here. And they can really take over huge areas also,
10 sometimes excluding grass completely as well.

11 Q. What did these photos depict with respect to the
12 length of the grassy patch areas?

13 A. They are long and extensive. You can't see the end
14 of them. You see it until it -- you can see the grass
15 extending until it goes out of view.

16 Q. Can you give us an approximate range for the
17 length?

18 A. Of all of these photos?

19 Q. Sure. If you can go one by one.

20 A. I can't really say from memory how long these
21 particular stretches of grass were. They ranged from 100
22 feet to a quarter of a mile in length.

23 Q. Did you observe other patches of grass growing on
24 the trail in stretches like this?

1 A. Oh, yeah.

2 Q. Can you give us an approximate number of the times
3 you saw stretches of grassy patches like that?

4 MS. SIMON: Objection. I think this has
5 been asked and answered and we talked about
6 this. It is cumulative. We have covered 40 grass
7 areas and another 66 grass areas, and we have seen
8 multiple photos of the same thing.

9 THE COURT: Ms. Braymer.

10 MS. BRAYMER: This is my last question on
11 that.

12 THE COURT: Overruled. You may answer.

13 A. There were dozens of stretches like this.

14 Q. Changing gears Mr. Signell. Does the presence or
15 absence of grass along the trail provide any indication of
16 the level of openings in the forest canopy over the trail?

17 MS. SIMON: Objection.

18 THE COURT: Sustained.

19 Q. Mr. Signell you testified earlier regarding two new
20 hiking trails that DEC -- let me rephrase. You testified
21 regarding two hiking trails that DEC has constructed. The
22 Goodman Mountain Trail and Coney Mountain Trail. Did you
23 observe the levels of grass growing on those trails similar
24 to what you observed on the Seventh Lake Mountain Trail?

1 A. No.

2 Q. Do those trails have conditions necessary to support
3 the growth of grass at a level similar to what you observed
4 on Seventh Lake Mountain Trail?

5 A. No. Far too shady.

6 MS. BRAYMER: Your Honor, we have a video
7 to show to the Court. May we go off the record?

8 THE COURT: Yes.

9 (Discussion off the record.)

10 THE COURT: We will take a ten minute
11 recess now and work hopefully straight through to
12 lunch.

13 MS. BRAYMER: Thank you.

14 (Recess.)

15 THE COURT: All set?

16 BY MS. BRAYMER:

17 Q. Mr. Signell, did you make a video of a section of
18 the Seventh Lake Mountain Trail?

19 A. Yes. Several.

20 Q. And using Exhibit 79 that you should still have up
21 there. Where is this section on the Seventh Lake Mountain
22 Trail?

23 A. This is a southern section extending southward from
24 Seventh Lake Mountain itself towards the southern terminus.

1 Q. When did you take this video?

2 A. In the fall of 2016.

3 Q. After you had been out there doing the grass survey
4 analysis?

5 A. Yes.

6 Q. What distance did you cover while taking this
7 video?

8 A. About a quarter of a mile.

9 Q. And after you took the video did you provide it to
10 my office?

11 A. Yes.

12 MS. BRAYMER: I would like to move 76 into
13 evidence.

14 THE COURT: 76. Okay.

15 MS. SIMON: One question.

16 VOIR DIRE BY MS. SIMON:

17 Q. Where in the southern terminus was this video
18 taken?

19 A. Yes. It extends southward from Seventh Lake
20 Mountain towards the southern end. Roughly I think 1.1 miles
21 to maybe .8 miles.

22 Q. From?

23 A. From the southern terminus.

24 MS. SIMON: Thank you.

1 THE COURT: 76 is received into
2 evidence. 76 is a CD?

3 MS. BRAYMER: Yes.

4 (Plaintiff's Exhibit 76 was received in
5 evidence.)

6 MS. BRAYMER: We will have Mr. Bauer run
7 the video. We have arranged for him to stop at a
8 few points. Mr. Signell I would like you to narrate
9 while the video is playing. If you need it to be
10 stopped at any point to explain something just let
11 Mr. Bauer know.

12 THE WITNESS: Okay.

13 (The video was played.)

14 A. So this is showing the trail heading southward
15 towards the southern terminus. You can see grass on both
16 sides. There is a very narrow little strip of tread in the
17 middle. So occasionally I will stop and show the trail to
18 the side so you can get an idea.

19 You will see here an area where they dug a water
20 bar, and you will see there has been some significant erosion
21 and some rocks showing on the ground here where the water
22 goes through the side. There is large -- you will see over
23 here large patches of sunlight. This will move forward over
24 the course of the day. Unfortunately if you pause these you

1 will not see much, because it is not the highest quality
2 video.

3 Q. This is stopped at 40 seconds.

4 A. So this is -- I think we want to highlight the
5 patches of sunlight. You will see dirt. Bare dirt in
6 sections of this trail. This is giving you an idea of what
7 it is like to hike along this trail. Highlighting --

8 Q. Stop it right there.

9 A. There you go. Now when you are playing it you will
10 see the native vegetation and what it looks like. You have
11 seen pictures of these, but if you pause right there.

12 (The video was stopped.)

13 A. A little faster.

14 Q. Keep playing it.

15 A. Keep going.

16 (The video was played.)

17 A. So now we are heading down the hill here. There is
18 another place where there is a water bar. You see the grass
19 here. Much of this I believe has been planted by the
20 DEC. This is an area that looks like it has been fairly
21 heavily graded. You will see more sections of bright
22 sunlight shining right down on the forest. When you go to
23 the side. This is showing the density of grass. Next time
24 we go to the side as soon as the camera stops -- hit it right

1 there.

2 (The video was stopped.)

3 Q. This is stopped at one minute and 37 seconds.

4 A. This is showing the native vegetation. What this
5 forest would look like. This is showing the native
6 vegetation on the side. You don't see a lot of bright
7 sunlight. When the camera pans to the side you will see, you
8 might see patches of sunlight, but they will be higher up in
9 the forest. Not reaching the forest floor. This picture
10 shows several of these trees that are around three inches.
11 So for instance that tree to the right on the far right is
12 probably around three inches in diameter. Certainly that
13 little tree in the center is below three inches. We see
14 bigger trees in the background. That is the way the forest
15 looks on each side of the trail.

16 Q. Let's play it.

17 (The video was played.)

18 A. Here is another view of the native forest. Totally
19 different set of plant species. Here we have bare
20 dirt. Some rocks showing through. Even though it is shaded
21 here there is still plenty of grass. A different time of day
22 the sun will shine directly on to this section of the
23 trail. Here is another bright, sunny patch. You can see
24 that this is not -- this is pretty much uninterrupted forest

1 here. Here is another place where they dug a water bar.

2 MS. SIMON: Objection to the
3 characterization of who they is and what DEC did.

4 THE COURT: Sustained.

5 A. All right. Continuing down the trail we have an
6 area with a little bit more fern in it. Still mixed with
7 grass. We have bright patches of sunlight. I'm not sure
8 exactly where it is in the video but you will see where a
9 tree has been overthrown and you have bare rock.

10 I believe that we may have talked about this before
11 in testimony, but when you open up a trail and grade the
12 trail it disturbs the root structures and trees on the trail
13 are more easily to be thrown over by wind. Again, this goes
14 back to the idea that this sort of is a slice through the
15 forest and the wind is able to topple trees more easily as
16 they go through. Here is another view of the side of the
17 forest.

18 So a foot trail would thread through a forest like
19 that without having to cut any large trees at all. Very
20 rarely would you have to cut a large tree. Ferns. Not much
21 sunlight to the forest floor.

22 So continue down the trail. Here is another area
23 with bare rock on the trail. Some of these areas the soil
24 has been eroded down to bedrock. Here we have more

1 grass. We are coming up on the area, I believe, with an
2 overthrown tree displayed on the other side.

3 This will give you an example of what I was doing as
4 I was walking along taking photos. I would stop at a point
5 and take photos in each direction. Again we have
6 erosion. Now we are starting to head down the hill towards
7 drainage. Another water bar. Solid grass. Almost looks
8 like more sunlight.

9 There is the overthrow coming up on the right where
10 a tree is tipped over. This is sort of what makes a pit and
11 mound. Sort of. Trees being thrown over will pull up bare
12 dirt and make it much easier to erode.

13 Q. We are now at 4:55. Let it go Peter

14 MS. SIMON: Could you speak louder? I
15 can't hear you.

16 A. Showing the edges here again. Continuing with the
17 same vegetation. Large opening coming up. More
18 bedrock. There is water spilling down this trail
19 occasionally. Bright sunlight. This is a very different
20 experience than hiking down a hiking trail in my opinion.

21 We have a large -- another large gap coming up in
22 the canopy allowing sunlight in. More bare dirt. This is
23 the section, I believe, where there is a tree overturned on
24 the side. We pass by it quickly here.

1 Here is an area where there has been some real
2 erosion of the trail. You can see where something is
3 disturbed. The edge of the trail. This is looking back.
4 You can see like a tire rut.

5 Q. We are at 6:12.

6 A. So significant erosion in that section of the
7 trail. Continuing on the left you can still see it. So the
8 water bar, and we are sort of coming towards the end of the
9 video shortly. I was focusing on the grass thinking maybe I
10 would be able to identify some of these grasses when I got
11 back to the -- when I got to view it. Whenever I got around
12 to it. Grass at the bottom of this. You can see the
13 exceptions again of the forest to the side and native
14 vegetation to either side. Going down the trail.

15 This little last section here is coming down to a
16 bridge. One of the bridges that you see on the maps. See at
17 the very end of the video. It is grass all the way down
18 there. Now where the stream would typically be it might be
19 an area where you might actually find grasses normally. On
20 the very edge of the stream.

21 You will see in a second this bare dirt and grass
22 really continues to the edge of the stream, and I think there
23 is a shot at the very end where we go up. One more shot into
24 the woods right at the stream. Even right near the stream

1 edge there is some bare dirt. Even right near the stream
2 edge in the woods there is no grass present. This is very
3 common. There was a lot of work done on the bridges. Here
4 is the woods. Here is native forest.

5 Q. That is 7:57.

6 A. And here is the other side. This is not a naturally
7 grassy area, even though it is right next to a stream. You
8 can see here the grass goes right up to the stream.

9 So here is the bridge. This is a typical bridge
10 that is constructed along these trails. So that's the video
11 showing a large section of trail. The grass and what it sort
12 of looks like. The idea is the experience you might have
13 walking along that section of trail.

14 Q. Thank you.

15 (Video concluded.)

16 MS. SIMON: Your Honor before we move on
17 from the video. I had requested early on if there
18 was any audio of any of Mr. Signell's tapes, if you
19 call them that.

20 In our letter to Judge O'Connor early on
21 before you were reassigned to this case I made a
22 demand those be produced. On the day of trial they
23 did produce to us the videos, but when Mr. Signell
24 testified just most recently he referred again to an

1 audio. We never received an audio. So he did a
2 long narrative there which is objectionable as
3 narrative, but if there was audio not disclosed I
4 ask it be disclosed to us.

5 THE COURT: Ms. Braymer.

6 MS. BRAYMER: Your Honor, I'm not aware of
7 any audio that goes with that video.

8 THE COURT: So those are videos done
9 without any audio recording.

10 MS. BRAYMER: That is my understanding. I
11 will certainly check into that.

12 THE COURT: If a proper request was made
13 for such then it is, of course, your responsibility.
14 It is an appropriate request and it is your
15 responsibility and your duty under the law to
16 provide it as soon as possible.

17 So I will need to give her a full answer
18 by tomorrow morning as to whether or not there is
19 any audio. I understand it is your position you
20 believe there is not. You can check again if you
21 wish to and give her a final answer. If there is
22 and she gets it then it may require that Mr. Signell
23 be reproduced for cross-examination on that audio.

24 MS. BRAYMER: Okay.

1 MS. SIMON: Thank you.

2 BY MS. BRAYMER:

3 Q. Mr. Signell what is forest fragmentation?

4 A. Forest fragmentation is just slicing up of the
5 ecosystems over time. Mostly European settlement is one
6 giant forest, and it has been sliced time and time again by
7 roads. Trails. Development. So what were once large forest
8 tracts. Large uninterrupted forest patches have been sliced
9 over and over and over again until there are all these little
10 fragments separated by roads usually.

11 Q. In your professional opinion has the construction of
12 the Class II community connector trail system caused
13 fragmentation of the forest preserve?

14 A. Yes.

15 Q. Did you analyze the fragmentation of the forest
16 where the Seventh Lake Mountain Trail was constructed?

17 A. Yes.

18 Q. Looking at the exhibits that I handed you, which are
19 marked for identification as Plaintiff's Exhibits 89, 90 and
20 91. Do you recognize those exhibits?

21 A. Yes, I do.

22 Q. And what are they?

23 A. These are maps that I created for one of the
24 affidavits, I believe.

1 Q. Do those maps show the location where the Seventh
2 Lake Mountain Trail was constructed?

3 A. One of them does. Yes.

4 Q. Which exhibit shows the trail?

5 A. 91.

6 Q. How is the trail shown on the map?

7 A. Orange solid line.

8 Q. Do the other two maps represent the same area where
9 the Seventh Lake Mountain Trail was constructed?

10 A. Yes.

11 Q. What does the first map show?

12 A. Exhibit 89 shows a map of the block overlaid on the
13 1916 map that we discussed the other week, and it also has an
14 overlay of one of the early state land maps showing what has
15 been in the forest preserve since the 1890s. The purpose of
16 this map is to just show that historically there was no roads
17 within that block.

18 MS. SIMON: Objection. That's not in
19 evidence.

20 THE COURT: Mr. Signell's most recent
21 statement with regard to the purpose of the maps is
22 stricken. Your objection is upheld. Go ahead.

23 Q. Mr. Signell can you explain a little bit more about
24 the 1916 map?

1 A. Yes. The 1916 map is the basic background map.
2 This was created in 1916 to delineate mostly where fires had
3 occurred, but it also shows the location of roads and things
4 like that. Telegraph lines.

5 THE COURT: I didn't hear the end of
6 that.

7 A. Telegraph lines and roads are also depicted on
8 this.

9 Q. Do you see any roads depicted on the map overlay
10 from 1916?

11 A. Yes.

12 Q. Can you describe to us where they are on the map?

13 A. The roads would be the double dashed lines.

14 Q. Can you give us an example of one?

15 A. There is one on the right hand side. At least down
16 to where it says Camp or Sagamore Lake. There is actually
17 two. There is also one that runs along -- all of the red
18 lines delineating the area in question. It has roads along
19 it.

20 Q. Are there any roads within the red lined area?

21 A. No.

22 MS. SIMON: Objection, Your Honor. This is
23 not in evidence. Where there are and are not
24 roads. This is a map from 1916 it is true. It is

1 uncertified, and also a map overlay of 1893. It is
2 120 plus years. There is no evidence of what roads
3 were in existence from that period of time until
4 now. This is being discussed as if it is in
5 evidence. I would like to argue that it not be put
6 into evidence.

7 THE COURT: I think she is laying a
8 foundation for it. So with regard to the last
9 question your objection is upheld. It is sustained,
10 because he is testifying from it more as if it is in
11 evidence then just laying foundation.

12 So your objection is sustained on that
13 last question and answer. That is does it show any
14 roads in this area is stricken and will not be
15 considered by the Court.

16 With regard to your potential objection to
17 its offer of admissibility regarding what has
18 happened between 1916 and now in the last hundred
19 years. That would go to weight and not
20 admissibility.

21 I don't think she has proffered it
22 yet. So let's wait and see where we are. You have
23 also noted that you have no evidence of where the
24 map came from or the authenticity I should say of

1 the map.

2 So go ahead Ms. Braymer.

3 Q. Mr. Signell, in your professional practice are the
4 1916 maps and the 1893 maps typical reference materials for
5 you?

6 A. Yes.

7 Q. Where are you obtaining those maps?

8 A. I think we went over this before. Some of it comes
9 from the Adirondack Park Agency. Some of it comes from maps
10 that have been digitized. Historic maps.

11 So there are many different maps from that time
12 period all showing roughly the same thing, although not
13 exactly the same. I'm talking about the 1893 maps now.

14 MS. BRAYMER: Your Honor, I move
15 Plaintiff's Exhibit 89 into evidence.

16 MS. SIMON: Objection.

17 THE COURT: To be clear, 89 is an overlay
18 of the Seventh Lake Mountain multiple use trail
19 overlaid over by the 1893 and the 1916 maps? Is
20 that the evidence you have alluded to?

21 MS. BRAYMER: It is, except for this does
22 not show the actual trail location. Exhibit
23 89. But it is over that area.

24 THE COURT: So 89 --

1 MS. BRAYMER: It doesn't show the trail.
2 There is no line showing the trail.

3 THE COURT: Understood. 89 is the 1893 and
4 1916 maps together?

5 MS. BRAYMER: Yes.

6 THE COURT: What is your objection?

7 MS. SIMON: Multiple. These are
8 uncertified. Not authenticated. It is purely
9 speculative whether or not there were other roads
10 that are not indicated on these maps, and it is not
11 a fair and accurate representation of the last 120
12 years.

13 These maps doesn't reflect roads, trails,
14 campgrounds for the last 120 years. Logging
15 roads. The statement at the top is speculative
16 saying the red dotted area had been protected for
17 over 120 years and continued old growth areas of
18 forest.

19 These are things that are not in
20 evidence. These are uncertified maps and they don't
21 reflect what the heading says. That it appears to
22 be added on. They are not authenticated.

23 THE COURT: There is no mention of the
24 heading by you Ms. Braymer or by Mr. Signell. So

1 the heading is stricken. It will be redacted prior
2 to the Court accepting number 89 into evidence.

3 As I stated a moment ago, the fact that
4 the maps are either 100 or approximately 123 or so
5 years old will go to weight and not
6 admissibility. Ms. Simon's point is well taken as
7 to what may or may not have been there when the
8 Seventh Lake Mountain multiple use or community
9 connector trail was cut in. That is certainly
10 something to be considered by the Court. That
11 issue.

12 Finally with regard to the
13 authentication. Given the age of the maps and the
14 testimony of this witness with regard to the maps
15 being in common use and commonly accessed, including
16 on the website or accessed from one of the
17 defendants in this case. That objection is
18 overruled.

19 So with the proviso that the heading just
20 referenced by Ms. Simon be redacted 89 is received
21 into evidence over objection.

22 (Plaintiff's Exhibit 89 was received in
23 evidence.)

24 THE COURT: With your permission just so

1 we are clear on the record with regard to 89. I
2 will draw a line through the heading and initial and
3 date it. Is that acceptable for redaction Ms.
4 Simon?

5 MS. SIMON: Yes, Your Honor.

6 MS. BRAYMER: Yes.

7 THE COURT: So I'm leaving forest
8 fragmentation example, but the rest I am crossing
9 out.

10 Are you done with this or do you want me
11 to give it back to the witness?

12 MS. BRAYMER: I think I need to go back and
13 ask him some questions that were stricken based on
14 objections.

15 THE COURT: Go ahead.

16 BY MS. BRAYMER:

17 Q. Mr. Signell, does the area inside the -- first of
18 all what does the red line depict? The bright red line?

19 A. The red line depicts an area for which we have no
20 evidence that there was ever a road within it.

21 Q. And what was that timeframe? The timeframe you are
22 talking about?

23 A. Certainly now there is no roads within that.

24 MS. SIMON: Objection. It is not in

1 evidence. That there are not roads within that
2 line.

3 THE COURT: Presumably that is where she
4 is going with these questions. I do understand your
5 objection. I will hold off on it. You can
6 reiterate it in a moment to see if she lays a
7 foundation.

8 Go ahead Ms. Braymer.

9 Q. Based on the reference maps that you used to create
10 this map, are there any roads shown on your map within the
11 bright red line?

12 A. No.

13 Q. Are there any other improvements shown within the
14 bright red line?

15 A. On Exhibit 89?

16 Q. Yes.

17 A. No.

18 Q. Do you see any roads or improvements outside the
19 bright red line?

20 A. Yes. Many. Roads. Logging camps. Towns. Some
21 trails.

22 MS. SIMON: Your Honor I object. This map
23 has no key and it is -- to me that is
24 speculative. He is telling us that he sees camps

1 and roads and things that are not indicated on this
2 map.

3 THE COURT: So you are objecting to his
4 testimony? The map is in evidence. You are
5 objecting to his testimony as unsupported?

6 MS. SIMON: Unsupported by what is on the
7 map.

8 THE COURT: That is not an appropriate
9 objection. It is something for
10 cross-examination. So your objection is
11 overruled.

12 MS. SIMON: Okay. Thank you.

13 BY MS. BRAYMER:

14 Q. Mr. Signell, what do the dotted red areas
15 indicate?

16 A. The dotted red areas indicate these are areas that
17 were shown as state land on a map from 1893.

18 Q. Owned by the State of New York?

19 A. Correct.

20 Q. That is what that map is showing?

21 A. Yes. The initial forest preserve and the lines are
22 not exact. These were made quite a long time ago, but if you
23 look at all of the different maps from that time period there
24 is a lot of agreement.

1 Just to clarify, there are logging camps. The thing
2 I am referring to as logging camps are the things like look
3 like houses and have a number next to them. The number next
4 to them indicates how many men were at this logging camp at
5 the time. So if there was a fire emergency they would know
6 how to get people to fight the fires in these logging
7 camps. You can see the two -- the southern end is sort of on
8 either side of the state land. The logging camps would not
9 have been on the state land at this time. They would have
10 obviously been on private land in 1916.

11 Q. Mr. Signell moving to Exhibit 90 for
12 identification. Just to clarify. Did you create this map?

13 A. I did.

14 Q. Did you use any other resources to create this map?
15 What resources did you use to create this map?

16 A. The roads and trails on this map come from a data
17 base of roads and trails that I have created from various
18 sources and approved based on field visits.

19 Q. And on Exhibit 90 there is some text at the
20 top. Did you write that text?

21 A. Yes.

22 MS. BRAYMER: Your Honor, I move Exhibit 90
23 into evidence.

24 VOIR DIRE BY MS. SIMON:

1 Q. Mr. Signell, at the top of this map is written in
2 the second sentence. Note that the forest block shown on the
3 1916 map remains intact. Did you write that?

4 A. Yes.

5 Q. What is it referring to?

6 A. That there are -- that there are few roads in
7 there. There are actually two very small roads in that
8 forest block. Road like things but they are very short, and
9 they don't cut through the forest block.

10 Q. This map doesn't indicate what the 1916 area
11 is. Does it?

12 A. No, it doesn't.

13 Q. So what is it?

14 THE COURT: For my own information what do
15 you mean when you say the 1916 area?

16 MS. SIMON: His statement at the top says:
17 "Note that the forest block shown on the 1916 map
18 remains intact" but there is no showing of the 1916
19 block or map on this map. There is nothing in the
20 map indicating it.

21 A. So these three maps are meant to be looked at
22 together and compared to each other. So they could all be
23 printed on one sheet, I suppose, but they are meant to be
24 compared to each other. If you hold all three maps up

1 against each other I think it will -- that reference becomes
2 clear.

3 MS. BRAYMER: May I clarify?

4 THE COURT: Yes.

5 BY MS. BRAYMER:

6 Q. Is the 1916 map that you are referring to on Exhibit
7 90 meaning Exhibit 89?

8 A. Yes.

9 MS. SIMON: Thank you. No further
10 objection.

11 THE COURT: 90 is received into evidence.

12 (Plaintiff's Exhibit 90 is received in
13 evidence.)

14 BY MS. BRAYMER:

15 Q. Mr. Signell, is Exhibit 90 showing the Seventh Lake
16 Mountain Trail?

17 A. No, it is not.

18 Q. Why not?

19 A. This is meant to be a before and after comparison
20 with the number 91.

21 Q. Does Exhibit 90 show all of the improvements in this
22 forest block that may have been present on the ground?

23 A. These show the things that I observed in the
24 field. I have traversed that entire perimeter of the

1 trail.

2 THE COURT: She is talking about 90?

3 THE WITNESS: 90. That's correct.

4 THE COURT: Yes? 90?

5 MS. BRAYMER: Yes. 90.

6 THE WITNESS: Yes. I believe that the
7 roads and trails on this map are accurate, to the
8 best of my knowledge.

9 THE COURT: Thank you.

10 BY MS. BRAYMER:

11 Q. Going to exhibit 91. Who created this map?

12 A. I did.

13 Q. And without getting into detail what is it
14 showing?

15 A. Very simply, it is just showing the new trail that
16 is being constructed and recalculated the acreage based on
17 the four different blocks that are created by the
18 fragmentation that this trail has caused.

19 Q. Did you write the text at the top of the map?

20 A. Yes.

21 Q. And did you calculate the different acreages that
22 are both on the map and in the text?

23 A. I did.

24 Q. What references did you use to create this map?

1 A. The GPS coordinates of the trail that was
2 constructed.

3 Q. Did you also use the transportation data base you
4 mentioned for Exhibit 90?

5 A. Yes.

6 MS. BRAYMER: Your Honor, I move Exhibit 91
7 into evidence last.

8 MS. SIMON: Objection. I have a
9 question.

10 THE COURT: Go ahead.

11 VOIR DIRE BY MS. SIMON:

12 Q. The narrative at the top where it says -- let me
13 ask. What is the basis for your narrative at the top?

14 A. It is my belief that this block of forest has been
15 relatively undisturbed by humans.

16 Q. Since the retreat of the glaciers as it says at the
17 top?

18 A. That is my belief.

19 Q. What is your basis for that?

20 A. The fact that the area is full of -- it has many old
21 growth trees. All of the characteristics of old growth we
22 have gone over before, and I found no evidence of roads. I
23 didn't observe any old roads while I was in that forest
24 block. I didn't see any evidence on old maps that had ever

1 been developed. So that is, you know, that is the evidence
2 that there is. There is no evidence saying that any
3 disturbance has gone on within that block.

4 MS. SIMON: Your Honor, I object to the
5 narrative on the top of this page and I move that it
6 be stricken. It is highly speculative to say that
7 this has been undisturbed since the time of
8 glaciers.

9 THE COURT: You are not opposing the
10 proffer of the rest of Plaintiff's 91?

11 MS. SIMON: Correct.

12 THE COURT: Plaintiff's 91 is received into
13 evidence. Your application is granted, not because
14 of the highly speculative, which I agree, nature of
15 the statement but rather the cause that it is a
16 statement which is pure testimony which is
17 unnecessary to the exhibit itself and, therefore,
18 does not need to be submitted in such a way.

19 So we will redact that statement from
20 it. With that redaction 91 is received into
21 evidence. With your permission I will redact it the
22 same way as Plaintiff's 91.

23 (Plaintiff's Exhibit 91 was received in
24 evidence.)

1 MS. BRAYMER: I want to be clear. We are
2 striking all the text?

3 THE COURT: It was not necessarily all the
4 text. Let me look. I haven't seen all the text
5 yet. Let me see. No. Not the first line of the
6 text. The first sentence, but the second sentence
7 only. Is that acceptable?

8 MS. BRAYMER: Yes.

9 THE COURT: Yes Ms. Simon?

10 MS. SIMON: Yes. Thank you.

11 THE COURT: Good enough.

12 BY MS. BRAYMER:

13 Q. Mr. Signell, now that this has been admitted into
14 evidence can you describe in a little bit more detail how the
15 construction of the Seventh Lake Mountain Trail divided the
16 original plot of land?

17 A. Sure. So as opposed to 61 hundred acres we now have
18 a relatively large size 47 hundred acre block. A very small
19 22 acre block that is bounded by the wide trail and another
20 road going to a pump station, I believe. Then a 12 hundred
21 acre block between the trail on Route 28 to the north and
22 another 222 acre block on the western side next to Eighth
23 Lake between the trail and the road. So instead of one block
24 it would now be three or four.

1 Q. In your professional opinion within a reasonable
2 degree of scientific certainty has this block of forest shown
3 on Exhibit 91 been -- let me start over. In your
4 professional opinion within a reasonable degree of scientific
5 certainty has the 61 hundred acre forest block shown on
6 Exhibit 91 existed in this manner since at least 1893?

7 A. It is my opinion. Yes. I'm not going to say with
8 scientific certainty.

9 Q. Mr. Signell, what are some of the impacts of forest
10 fragmentation on the forest ecology of the original 61
11 hundred acre forest block?

12 MS. SIMON: Objection. I believe these
13 have been asked and answered.

14 THE COURT: I believe so also. Are you
15 going somewhere new with this Ms. Braymer?

16 MS. BRAYMER: If that has been covered I
17 will move on.

18 THE COURT: I think it has, but if you have
19 some point you have not hit you are more than
20 welcome.

21 Q. In your professional opinion will other Class II
22 community connector snowmobile trails cause similar forest
23 fragmentation?

24 MS. SIMON: Objection. Speculative. Calls

1 for speculation.

2 THE COURT: Overruled. Go ahead. You can
3 answer.

4 A. Yes.

5 MS. BRAYMER: May I have one moment please?

6 THE COURT: Of course.

7 MS. BRAYMER: Thank you.

8 (Pause.)

9 Q. Mr. Signell, previously you testified about trees
10 dating back to the 17th Century. Is that correct?

11 A. Yes.

12 Q. Does Exhibit 91 show that area?

13 A. Yes.

14 Q. Mr. Signell, I have handed you Exhibits 29, 30 and
15 31 which are already in evidence. Are you aware of
16 defendant's argument that the impacts of the construction of
17 the Class II community connector snowmobile trails are offset
18 by the purported closure of other trails?

19 A. Yes.

20 Q. And referring to Exhibit 29. What does that show?

21 A. 29 is from a unit management plan from the Moose
22 River Plains Wild Forest, and it describes snowmobile trail
23 construction and some trail maintenance stuff it looks like.

24 Q. Is it showing any of the trails that the defendants

1 purported to close?

2 A. Yes. I see that now.

3 Q. Did you inspect any of the trails that the defendant
4 identified as being closed?

5 A. Yes. I did.

6 Q. Generally what was the status of those trails that
7 the defendants purportedly closed?

8 A. There was a few different conditions, but generally
9 some of the trails were not trails at all, or if they had
10 been trails they were trails long ago. They had been
11 completely grown over. They are essentially bush whacks at
12 this point.

13 Then there was another set of trails that were
14 closed to snowmobiling but still exist and are still
15 maintained as trails. Wide trails most of them. In some
16 cases the snowmobile trails they closed are actually roads
17 that are currently traveled by vehicles and maintained as
18 gravel roads.

19 MS. SIMON: Objection to the maintenance
20 statements.

21 THE COURT: Sustained. That portion of the
22 testimony will be stricken.

23 Q. I have handed you what has been marked for
24 identification as Exhibit 53. Do you recognize that?

1 A. Yes.

2 Q. What does it show?

3 A. This shows -- I believe it is the -- I guess the
4 Butter Brook Trail. There is also a Sly Pond connector trail
5 that looks very similar to this.

6 THE COURT: Can you spell Sly?

7 THE WITNESS: S-L-Y.

8 Q. You just mentioned the Butter Brook Trail. Did you
9 examine that trail?

10 A. Yes.

11 Q. I have handed you Exhibit 37. Do you recognize
12 that?

13 A. I believe that is the Butter Brook Trail.

14 Q. And did you take that photograph of number 37?

15 A. Yes.

16 Q. The Butter Brook Trail?

17 A. Yes.

18 Q. Is that a fair and accurate representation of the
19 scene as you took it?

20 A. Yes.

21 MS. BRAYMER: Your Honor, I move Exhibit 37
22 into evidence.

23 VOIR DIRE BY MS. SIMON:

24 Q. Can we have the location?

1 A. Just south of the Cedar River Road where the Butter
2 Brook Trail used to be. I assume it used to be a bridge.

3 Q. Is it your testimony that this is one of the trails
4 on page 113 of your Exhibit 29?

5 A. Yes.

6 Q. Which one?

7 A. Yes. This would be the Butter Brook Trail. Number
8 E on the trail closure list.

9 MS. SIMON: No objection.

10 THE COURT: 37 is received into evidence.

11 (Plaintiff's Exhibit 37 received in
12 evidence.)

13 BY MS. BRAYMER:

14 Q. Mr. Signell did you inspect the Sly Pond Road
15 Trail?

16 A. Just the trail head.

17 Q. How do you refer to that trail? What terminology
18 were you using?

19 A. I think I used the Sly Pond connector. It actually
20 connects over to the Sly Pond trail, which is a different
21 trail.

22 Q. Can you identify in Plaintiff's Exhibit 29 which
23 trail you mean by the Sly Pond connector if there is a
24 direct --

1 A. Sly Pond. I think they call it the Sly Pond Loop
2 Trail. I think so. Yep.

3 Q. Do you recognize Exhibit 53?

4 A. Yes.

5 Q. Did you take that photo?

6 A. Yes.

7 Q. And what is it showing?

8 A. It is showing the trail head. This is as far as I
9 could get on this day due to the fact that there is no bridge
10 and the water was high. This is the beginning of that
11 trail.

12 Q. Which one?

13 A. The Sly Pond Loop Trail.

14 Q. When did you take that photo?

15 A. Last fall. Fall of 2016.

16 Q. Is this a fair and accurate representation of the
17 scene when you took the photo?

18 A. Yes.

19 MS. BRAYMER: Your Honor, I move Exhibit 53
20 into evidence.

21 MS. SIMON: No objection.

22 THE COURT: 53 is received into evidence.

23 (Plaintiff's Exhibit 53 was received in
24 evidence.)

1 BY MS. BRAYMER:

2 Q. Mr. Signell, staying on the Sly Pond connector.
3 Exhibit 53. What did you observe as the status of that
4 trail?

5 A. I couldn't really detect much of a trail across the
6 river. It certainly didn't look like a trail that had been
7 maintained for snowmobiles. It appeared to me that the
8 bridge, what was left of the bridge was long since
9 gone. Certainly no evidence of a recent maintained bridge
10 that I could see.

11 Q. Moving back to Butter Brook Trail. Exhibit
12 37. What was the status of that trail?

13 A. Very similar. This one I could not detect any real
14 evidence of a trail on the other side. I also saw no
15 evidence of a bridge at all. So my initial thought was that
16 there had not been a bridge there for quite some time.
17 Either that or they had completely removed it.

18 MS. SIMON: Objection to characterizing
19 what might have been there.

20 THE COURT: Objection sustained.

21 Everything from "my initial thought" on is
22 stricken.

23 Q. Referring to Exhibit 29. What is the status of
24 Butter Brook Trail according to Exhibit 29 on page 113?

1 A. This is a trail within an area proposed to be
2 reclassified to wilderness. This trail will not be
3 maintained for any other uses.

4 Q. Mr. Signell, did you inspect the Benedict Creek
5 trail?

6 A. I did.

7 THE COURT: What is the name again please?

8 MS. BRAYMER: Benedict Creek Trail.

9 THE COURT: Thank you.

10 Q. When did you do that?

11 A. Again all of these were done in the fall of 2016.

12 Q. I have handed you what has been marked for
13 identification as Exhibit 36. Do you recognize that?

14 A. Yes.

15 Q. What does it depict?

16 A. This is the status of that trail.

17 Q. Just to be clear Benedict Creek Trail?

18 A. This is the Benedict Creek trail. It was difficult
19 to find. To a trained eye it was not hard to find, but it is
20 completely overgrown.

21 Q. Did you take that photograph?

22 A. Yes.

23 Q. And does it fairly and accurately represent the
24 scene at the time you took the photo.

1 A. Yes..

2 MS. BRAYMER: Your Honor, I move Exhibit 36
3 into evidence.

4 VOIR DIRE BY MS. SIMON:

5 Q. Mr. Signell, where on the Benedict Creek Trail was
6 this photo taken?

7 A. This I managed to get a quarter mile up the trail, I
8 believe, from the Cedar River Road.

9 Q. Did you say a quarter mile up the trail?

10 A. Yeah. Northward from the Cedar River Road.

11 Q. And your testimony is this photo is looking at the
12 trail?

13 A. Yes.

14 MS. SIMON: No further questions. No
15 objection.

16 THE COURT: 36 is received into
17 evidence.

18 (Plaintiff's Exhibit 36 was received in
19 evidence.)

20 BY MS. BRAYMER:

21 Q. What did you observe about the status of the
22 Benedict Creek Trail shown in Exhibit 36?

23 A. The degree of overgrowth and the size of the trees
24 that were growing on the trail itself led me to believe that

1 that trail has not been used for snowmobiling in at least ten
2 to 20 years.

3 Q. Do you have training and expertise that enables you
4 to determine the age of a forest?

5 A. Yes, I do.

6 Q. And turning to Exhibit 29 on page 113. What does it
7 stay about the status of the Benedict Creek Trail?

8 A. This trail is almost indiscernible in places and
9 receives little or no use. Due to its numerous wet areas
10 this trail will not be maintained for any use.

11 Q. Mr. Signell did you inspect the Lost Ponds Road?

12 A. Yes.

13 Q. Again fall of 2016?

14 A. Yes. Fall of 2016.

15 Q. Do you recognize what is depicted in Exhibit 43?

16 A. Yes. This is the section of road going from Cedar
17 River Road to the gate where the trail, the foot trail
18 starts. It is about a quarter mile long roughly. It leads
19 to some camp sites that people drive to fairly frequently.

20 Q. Did you take this photo?

21 A. Yes.

22 Q. Does it fairly and accurately represent what you
23 observed?

24 A. Yes.

1 MS. BRAYMER: Your Honor, I move Exhibit 43
2 into evidence.

3 VOIR DIRE BY MS. SIMON:

4 Q. Mr. Signell, if you turn your attention to
5 Plaintiff's Exhibit 29 at page 113. Could you identify which
6 trail or road you are referring to on this list?

7 A. Lost Ponds Trail.

8 Q. That would be D?

9 A. Yes.

10 Q. And not J. Lost Ponds Road.

11 A. Oh, no. You are correct.

12 THE COURT: So which is it?

13 THE WITNESS: J. This is Lost Ponds
14 Road.

15 Q. Where on Lost Ponds Road did you take this photo?

16 A. This is maybe an eighth of a mile from the
17 road. The Cedar River Road. North of the Cedar River
18 Road.

19 MS. SIMON: No further questions and no
20 objection.

21 THE COURT: 43 is received into evidence.

22 (Plaintiff's Exhibit 43 was received in
23 evidence.)

24 BY MS. BRAYMER:

1 Q. Mr. Signell, what did you observe about the status
2 of Lost Ponds Road?

3 A. It continues to be a road. So saying that closing
4 it to snowmobiling somehow defragments the landscape doesn't
5 hold any water ecologically. The road still exists. It is
6 still there. Nothing has been changed. So there has been no
7 positive effect of defragmenting the landscape from closing
8 this to snowmobiles.

9 Q. In your professional opinion how long will the
10 fragmentation persist?

11 A. As long as the road is open. As long as it is
12 maintained.

13 Q. Referring to Exhibit 29. Page 113. Letter J. What
14 does that state about the status of Lost Ponds Road?

15 A. This is a short dead end road and receives no
16 use. The road will remain open as a motor vehicle road.

17 Q. Mr. Signell, did you inspect the Helldiver Pond
18 Trail?

19 A. I did. In the fall of 2016.

20 Q. Do you recognize what is shown in Exhibit 29?

21 A. 39?

22 Q. I'm sorry. 39.

23 A. Yes. This is a photograph I took that fairly and
24 accurately represents the status of this location.

1 Q. Where on the Helldiver Pond Trail did you take this
2 photograph?

3 A. It's a very short trail. It's just -- it might be
4 an eighth of a mile or a 16th of a mile from the parking
5 lot.

6 Q. Referring to Exhibit 29. Can you tell us which
7 trail this refers to in that exhibit? If you flip to page
8 114.

9 MS. SIMON: Objection to the question as
10 characterizing it as a trail.

11 THE COURT: Overruled.

12 A. This is the -- this isn't on this list I guess.

13 Q. Can I direct your attention to page 114 at the
14 top.

15 A. Hell Diver Pond Road.

16 Q. Do you see any others that might fit this
17 description?

18 A. No.

19 Q. Does this photograph fairly and accurately depict
20 the scene when you took the photograph?

21 A. Yes.

22 MS. BRAYMER: Your Honor, I move 39 into
23 evidence.

24 MS. SIMON: Objection. It is not

1 relevant.

2 THE COURT: You have not shown relevance
3 yet Ms. Braymer. The objection is sustained.

4 MS. BRAYMER: I will move on from that
5 one.

6 THE COURT: Okay.

7 BY MS. BRAYMER:

8 Q. Did you inspect the Ice House Pond Trail?

9 A. Yes, I did.

10 Q. When did you do that?

11 A. Fall of 2016.

12 Q. I have handed you Exhibit 40. Do you recognize
13 that?

14 A. Yes.

15 Q. And what does that depict?

16 A. This is the Ice House Pond Trail and this is number
17 K on Exhibit 29. This is taken about an eighth of a mile
18 from the parking area.

19 Q. Did you take this photo?

20 A. Yes.

21 Q. Does it fairly and accurately represent the scene
22 when you took the photo?

23 A. Yes.

24 MS. BRAYMER: Your Honor, I move Exhibit 40

1 into evidence.

2 MS. SIMON: No objection.

3 THE COURT: Exhibit 40 is received into
4 evidence.

5 (Plaintiff's Exhibit 40 was received in
6 evidence.)

7 BY MS. BRAYMER:

8 Q. Mr. Signell, what did you observe about the Ice
9 House Pond Trail?

10 A. This is a trail that is maintained for accessible
11 use I believe. Wheel chairs.

12 MS. SIMON: Objection.

13 THE COURT: Sustained as unresponsive or if
14 responsive then without foundation. Go ahead.

15 Q. Mr. Signell, what did you observe about whether the
16 trail was open or closed?

17 A. This trail is signed. It has a sign advertising
18 it. It is open for use. It is about four to six feet wide
19 in general.

20 Q. Can you describe what you observed with respect to
21 the trail's significance?

22 A. It has a hard surface, which is typical of trails
23 that are used to enable handicapped people with wheel chairs
24 to be able to travel on them. Those trails are typically

1 wider and have a harder surface.

2 Q. Referring you to Exhibit 29. What does that
3 indicate about the size of Ice House Pond Trail?

4 A. According to this it says that it is maintained. It
5 will be maintained as an accessible trail in order to provide
6 access to the pond. It also says this trail is not used.

7 MS. BRAYMER: Could I clarify whether
8 Exhibit 40 was admitted?

9 THE COURT: It was. Yes.

10 MS. BRAYMER: Thank you.

11 Q. Mr. Signell did you inspect the Squaw Lake Trail?

12 A. No. I believe this photo was taken by Mr. Bauer.

13 Q. Mr. Bauer collected the data and provided it to
14 you?

15 A. That's correct.

16 Q. Did he do that within his scope of activities of
17 assisting you with research in this case?

18 A. Yes.

19 Q. Do you recognize what is shown in Exhibit 54?

20 A. Based upon the GPS coordinates of where this photo
21 was taken it is the Squaw Lake Trail.

22 MS. BRAYMER: Your Honor, I move exhibit
23 54 into evidence.

24 MS. SIMON: Objection.

1 THE COURT: Lack of foundation.

2 Sustained.

3 Q. Mr. Signell do you know if Peter Bauer took a photo
4 of the Squaw Lake Trail?

5 THE COURT: Ms. Braymer, if he can't
6 testify that that is a fair and accurate
7 representation of what the Squaw Lake Trail looked
8 like at the time the picture was taken, he is not
9 going to be able to lay a foundation for it.
10 Whether Mr. Bauer took it at his direction or not.

11 MS. BRAYMER: I will offer it subject to
12 cross-examination and connection by Mr. Bauer.
13 Either tomorrow or Wednesday.

14 THE COURT: Ms. Simon.

15 MS. SIMON: I still object.

16 THE COURT: Why?

17 MS. SIMON: Mr. Bauer can bring in other
18 photos, and I'm sure he will. Frankly, Your Honor,
19 this is all cumulative so I maintain that
20 objection.

21 THE COURT: With regard to cumulative. We
22 are going through a series of photographs and
23 alleged analyses clearly intended to demonstrate the
24 point from the plaintiffs that the position taken by

1 the defense in this litigation that at least there
2 is a significant set off at a minimum of trails and
3 that some of the trails are being closed while some
4 are being open or constructed. I don't think it is
5 cumulative with respect to that.

6 With respect to the possibility of Mr.
7 Bauer testifying and taking Plaintiff's number 54
8 subject to that connection, I am inclined to do so
9 and I will do so given the fact that it is a
10 non-jury trial. I allow Mr. Signell to testify from
11 it.

12 If the connection is not made in Mr.
13 Bauer's testimony you can reapply and I will revisit
14 that issue.

15 So 54 is received into evidence under the
16 exigencies of the case and solely for that reason
17 and subject to later connection by Mr. Bauer in his
18 testimony. 54 is received.

19 (Plaintiff's Exhibit 54 was received in
20 evidence.)

21 BY MS. BRAYMER:

22 Q. Mr. Signell, in your professional opinion what does
23 Exhibit 54 show you about the status of the Squaw Lake
24 Trail?

1 A. This appears to be a wide foot trail. Perhaps
2 multi-use trail. Looks to be about six feet wide. It is
3 maintained and has bridges. Someone put a bridge in. Let me
4 put it that way.

5 Q. Can trees revegetate on this purportedly closed
6 trail?

7 A. They could potentially. If it was left
8 unmaintained.

9 Q. Would trees be able to revegetate in the foreseeable
10 future?

11 A. Not if this trail remains open for use.

12 Q. Mr. Signell, before we move on to the next exhibit
13 can you refer to Exhibit 29?

14 A. Yes.

15 Q. With respect to Squaw Lake Trail what does it state
16 about the status of that trail?

17 A. This road dead ends at the river and will be closed
18 to all motor vehicle use. This trail will be maintained as a
19 foot and bicycle trail.

20 Q. Can you go back and refer to the Squaw Lake Trail?

21 A. Oh. Did I read the wrong one? Sorry.

22 THE COURT: What letter is that?

23 THE WITNESS: R.

24 A. This trail is within an area proposed to be managed

1 with very limited motorized usage. The trail will be
2 maintained as a foot trail.

3 Q. Mr. Signell did you examine another trail referred
4 to as the Lost Pond Trail?

5 A. Lost Ponds Trail. Yes.

6 Q. Was that in the fall of 2016?

7 A. Yes.

8 Q. Did you also examine a Lost Ponds Trail extension?

9 A. Yes. The Lost Ponds Trail referred to in Exhibit 29
10 actually has two distinctly different trail
11 characteristics.

12 Q. Can you indicate which letter in Exhibit 29 you are
13 talking about?

14 A. D.

15 Q. Do you recognize what is shown in Exhibits 46 and
16 47?

17 A. Yes, I do.

18 Q. Did you take those photographs?

19 A. Yes.

20 Q. And just generally what are they showing?

21 A. Exhibit 46 shows the southern part of the trail that
22 extends from the end of this Lost Ponds Road to Lost Ponds
23 themselves. It is a wide trail. Eight to ten feet. There
24 is grass growing on it. It is open canopy.

1 THE COURT: A filled in canopy did you
2 say?

3 THE WITNESS: No. It is open.

4 THE COURT: Open canopy.

5 A. A wide trail used mostly by people fishing.

6 MS. SIMON: Objection.

7 THE COURT: Sustained.

8 Q. Mr. Signell what does 47 show or depict?

9 A. So when you get up to Lost Ponds there is a long
10 section of trail that extends northward, and I think it is
11 almost two miles and that road is -- that trail is completely
12 overgrown with small trees. I aged some of the small trees
13 on that section of trail. They are growing right in the
14 middle of the trail and they are 20 years old or older. So
15 this trail has not been maintained.

16 MS. SIMON: Objection as to maintenance.

17 THE COURT: Overruled. You may continue.

18 Q. Mr. Signell to clarify, 46 and 47 are both part of
19 letter D on page 113 of Exhibit 29?

20 A. That's correct.

21 Q. And did you take these photographs 46 and 47?

22 A. Yes.

23 Q. Do they fairly and accurately represent the scenes
24 depicted at the time you took those two photos?

1 A. Yes.

2 MS. BRAYMER: Your Honor, I move into
3 evidence Exhibits 46 and 47.

4 MS. SIMON: Quick question on 47.

5 VOIR DIRE BY MS. SIMON:

6 Q. You said this is north of the pond?

7 A. Yes.

8 Q. So what distance is that from the beginning of the
9 trail approximately?

10 A. It is a little less than a mile from the beginning
11 of the trail.

12 MS. SIMON: No objection.

13 THE COURT: 46 and 47 are received into
14 evidence.

15 (Plaintiff's Exhibits 46 and 47 received
16 in evidence.)

17 BY MS. BRAYMER:

18 Q. With respect to this trail. Lost Ponds Trail Letter
19 D in Exhibit 29. What did you observe about the status of
20 this trail?

21 A. The southern section is open for use. It is
22 advertised with road signage. I observed people hiking on it
23 when I was there. The northern portion I don't believe there
24 has been anything more than a bushwhack for quite some

1 time.

2 Q. Referring to Exhibit 29. Can you read what it
3 states there for Lost Ponds Trail under letter D?

4 A. "A dead-end trail which receives little or no
5 use. The trail will continue to be maintained for foot and
6 bicycle use."

7 THE COURT: Is this a good spot to end?

8 MS. BRAYMER: Yes.

9 THE COURT: All right. We will break for
10 the day. We will return tomorrow. We will
11 recommence at 9:30 tomorrow morning. We will be
12 able to go all day.

13 Anything else folks?

14 MS. SIMON: No. Thank you, Your Honor.

15 MS. BRAYMER: No. Thank you.

16 THE COURT: Have a good evening.

17 (Proceedings adjourned to Tuesday, March
18 21st, 2017 at 9:30 a.m.)

19

20

21

22

23

24

WITNESSES

<u>FOR THE PLAINTIFF:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
STEPHEN A. SIGNELL By Ms. Braymer	580			

<u>PLAINTIFF'S EXHIBITS:</u>	<u>ID</u>	<u>EVIDENCE</u>
#36 Photo - Benedict Creek		646
#37 Photo - Butter Brook		642
#40 Photo - Ice House Pond trail		652
#43 Photo - Lost Pond Road		648
#46 Photo - Lost Pond Trail		659
#47 Photo - Lost Pond Trail Extension		659
#53 Photo - Sly Pond Cutoff		643
#54 Photo - Squaw Lake		655
#60 Photo - SLMT Point 57		608
#61 Photo - SLMT Point 109		608
#62 Photo - SLMT Point 18		608
#63 4 Photos - SLMT Point 11		602
#64 4 Photos - SLMT Point 82		594
#65 4 Photos - SLMT - Point 54		597
#66 4 Photos - SLMT - Point 97		600
#76 CD		613
#89 Map		627
#90 Map		633
#91 Map		636
#123 Bog River UMP Amendment	578	
#124 Resume - William R. Amadon	578	
#125 Champlain Area Trails Map	578	
#126 Photo - T Lake Trail	578	
#127 Photo - T Lake Trail	578	
#128 Photo - T Lake Trail	578	
#129 Photo - T Lake Trail	578	
#130 Photo - T Lake Trail	578	
#131 Photo - T Lake Trail	578	
#132 Photo - T Lake Trail	578	
#133 Photo - T Lake Trail	578	
#134 Photo - T Lake Trail	578	
#135 Photo - NMT, SLH Segment	578	
#136 Photo - NMT, SLH Segment	578	

<u>PLAINTIFF'S EXHIBITS:</u>	<u>ID</u>	<u>EVIDENCE</u>
#137 Photo - NMT, SLH Segment	578	
#138 Photo - NMT, SLH Segment	578	
#139 Photo - NMT, SLH Segment	578	
#140 Photo - NMT, SLH Segment	578	
#141 Photo - NMT, SLH Segment	578	
#142 Photo - NMT, SLH Segment	578	
#143 Photo - NMT, SLH Segment	578	
#144 Photo - NMT		
Hyslop to Roosevelt Trail	578	
#145 Photo		
CATS Field and Forest Trail	578	
#146 Photo		
CATS Field and Forest Trail	578	
#147 Photo		
Signell measuring stump	578	
#148 Photo - SLMT	578	
#149 Photo - SLMT	578	
#150 Photo - SLMT	578	
#151 Photo - SLMT	578	
#152 Photo - SLMT	578	
#153 Photo - SLMT	578	
#154 Photo - SLMT	578	
#155 Photo - SLMT	578	
#156 Photo - SLMT	578	
#157 Photo - SLMT	578	
#158 Photo		
Newcomb to Minerva Kubota	578	
#159 Photo		
Newcomb to Minerva Trail	578	
#160 Photo		
Newcomb to Minerva Trail	578	
#161 Photo		
Newcomb to Minerva knotweed	578	

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 CONNOLLY, Acting Supreme Court Justice on Monday, March 20th, 2017 in Albany, New York.

DEBORAH MEHM, C.S.R.