



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 VIII**

**TRANSCRIPT OF PROCEEDINGS** in the above-entitled  
matter held at the Albany County Courthouse, Albany, New  
York on March 21st, 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., and  
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 (Plaintiff's Exhibits 164 and 165 were  
2 marked for identification.)

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

5 All set counsel?

6 MR. CAFFRY: Yes, Your Honor.

7 THE COURT: All set Ms. Lee-Clark?

8 MS. LEE-CLARK: Yes.

9 THE COURT: Mr. Amadon come on up. You  
10 are still under oath.

11 CONTINUED DIRECT EXAMINATION OF MR. AMADON

12 BY MR. CAFFRY:

13 Q. Mr. Amadon, could you explain the process that you  
14 used to design, lay out and build trails for Champlain Area  
15 Trails?

16 MS. LEE-CLARK: Objection, Your Honor.

17 THE COURT: Overruled. Briefly Mr.

18 Amadon.

19 A. First thing I do is go out and GPS potential routes,  
20 sometimes there are restrictions that are placed on the  
21 potential route by the landowners, and after we come to an  
22 agreement. The route of the trail. Then we usually schedule  
23 a volunteer day. We like to do volunteer days on new trail  
24 construction. After that point there is still a lot of work

1 to do. So I go through the process of finishing the trail to  
2 the point of trail head signage and marking.

3 Q. When you are laying out or scooping out the route  
4 for the trail do you take into account soil types?

5 A. Yes. Soil types vary throughout the Champlain  
6 Valley, and it is important to site the trail properly from  
7 the beginning. One of the things that I primarily am  
8 concerned with is the ease of travel for the hiker and also  
9 how much maintenance will be required.

10 Q. Do you take into account the erosion potential of a  
11 route and how to prevent it?

12 A. Yeah. That is maintenance. That is covered in the  
13 maintenance concern.

14 Q. Do you take into account the slopes?

15 A. Yeah. We try to keep the grades to probably less  
16 than ten percent, if possible.

17 Q. Do you attempt to minimize the cutting of trees?

18 A. The trails are primarily single track trails that  
19 are less than two feet wide.

20 Q. How does that go to minimizing the cutting of  
21 trees?

22 A. It is very rare that we have to cut anything over  
23 probably two and a half or three inches.

24 THE COURT: Is that in diameter?

1 THE WITNESS: Yes, sir.

2 Q. Do you try to achieve a certain appearance in a foot  
3 trail?

4 A. The foot trail should -- basically I think the goal  
5 is to have it blend as much as possible into the surrounding  
6 land. So that it doesn't necessarily appear to be manmade.

7 Q. When you are designing and building trails did you  
8 ever build water bars?

9 A. Occasionally we utilize water bars, but that is  
10 usually because we are restricted to old logging skid roads  
11 that have drainage problems. A lot of that is avoided in the  
12 initial planning of the trail route.

13 Q. If you are building a new trail that is not on an  
14 old skid road do you find it necessary to build water bars?

15 A. Very rarely.

16 Q. Do you ever include bench cuts in the trails that  
17 you design and build?

18 A. The only bench cut that we would do probably if the  
19 trail is sited properly would be a rake cut just to establish  
20 a minimal tread.

21 Q. What do you mean by "a rake cut"?

22 A. It is similar to actually making a bench cut and  
23 then creating a tread with an out fill, except it is just  
24 using a metal rake to disturb the soil a little bit.

1 Q. Would that be like a typical rake like you would use  
2 in your garden or you could buy in a hardware store?

3 A. They are typical garden rakes.

4 Q. What type of terrain are the CAT trails located on?  
5 What type of land?

6 A. It is variable. From flat land. Bottom land in the  
7 valley to mountain sides.

8 Q. Is it all forested?

9 A. No. Some of it runs through working farms. Others  
10 run through fallow fields that are evolving back to forest,  
11 and then there is dense forest.

12 Q. Did there come a time when you were retained by  
13 Protect the Adirondacks! to do some work related to this  
14 case?

15 A. Yes.

16 Q. And when was that?

17 A. I was approached probably in June of last year.

18 Q. Prior to that had you had any affiliation with the  
19 plaintiff, other than your current work on this case?

20 A. No.

21 Q. Did there come a time when you did some field work  
22 in connection with this case?

23 A. Yes.

24 Q. When was that?

1 A. In August of 2016.

2 Q. And --

3 A. And also September of 2016.

4 Q. Did you visit any Class II community connector  
5 snowmobile trails as part of that field work?

6 A. Yes.

7 Q. I have handed you some maps that have already been  
8 entered into evidence. Could you look at Exhibits 69 and  
9 70. Do you have them there? You are shaking your head.  
10 Could you please speak?

11 A. Yes.

12 Q. Do these maps show the Newcomb to Minerva Trail?

13 A. Yes.

14 Q. Is that one of the trails you went to?

15 A. Yes.

16 Q. When did you go there?

17 A. In August of 2016.

18 Q. And who did you go with?

19 A. I went with Evelyn Green, Peter Bauer, John Davis.

20 Q. Was Dr. Sutherland with you?

21 A. Yes. Ron Sutherland was with us. Yes.

22 Q. And do you know which sections of the Newcomb to  
23 Minerva Trail you inspected?

24 A. I inspected three-quarters of the Lake Harris



1 section from Santanoni. Probably for about a mile and a half  
2 from the parking lot of Santanoni. And also a section from  
3 the railroad tracks to the Roosevelt Truck Trail crossing. I  
4 think it was the Vanderwalker Brook.

5 Q. And was that all on the same day?

6 A. Yes.

7 Q. When you walked the section around Santanoni and  
8 Lake Harris what did you observe about the trail, if  
9 anything, that would have indicated the status of completion  
10 of its construction?

11 MS. LEE-CLARK: Objection, Your Honor.

12 THE COURT: What is the objection?

13 MS. LEE-CLARK: Cumulative. We have heard  
14 this testimony under Dr. Sutherland.

15 THE COURT: Overruled. Briefly go ahead.

16 A. The trail appeared to have been completed because of  
17 vegetation that had regrown. Possibly in like a three or  
18 four month period, but there was still a lot of disturbance  
19 and fresh -- disturbance of soils. So it was worked on in  
20 that 2016 summer season.

21 MS. LEE-CLARK: Objection, Your  
22 Honor. Speculative.

23 THE COURT: Sustained.

24 Q. Would your observations of the other section of the

1 trail you walked be similar as to when it was completed?

2 A. That section of trail was in a similar state, but  
3 probably within a month or so because there was evidence of  
4 balsam branches that were just turning brown. There was a  
5 lot of leaves. Deciduous tree branches that were probably  
6 cut in the last month or so.

7 MS. LEE-CLARK: Objection.

8 THE COURT: What is the objection?

9 MS. LEE-CLARK: Speculative.

10 THE COURT: overruled. Go ahead.

11 Q. Mr. Amadon do you have Exhibit 79 there?

12 A. Yes.

13 Q. And is that a map of the Seventh Lake Mountain  
14 Trail?

15 A. Yes.

16 Q. That is one of the trails you inspected?

17 A. Yes. I did.

18 Q. When did you inspect that?

19 A. That was two days later. I think the date of the  
20 Newcomb to Minerva Trail was on August 16th, and the  
21 inspection of the Seventh Lake Mountain Trail was on August  
22 18th.

23 Q. Who did you inspect the Seventh Lake Mountain Trail  
24 with?

1 A. Ron Sutherland, Peter Bauer, and John Davis.

2 Q. Did you walk all or part of that trail?

3 A. I walked all of it.

4 Q. Looking at the map can you look and see if you  
5 walked the entire 12 mile length or just parts of it?

6 MS. LEE-CLARK: Objection, Your Honor.

7 THE COURT: Overruled.

8 A. I walked the section that started on the road from  
9 Limekiln Lake. Actually only to Route 28 at Eighth Lake.

10 Q. What on the map are those sections colored?

11 A. There is a yellow section, a blue section and a  
12 purple section.

13 Q. Which ones did you walk?

14 A. I walked the entirety of the yellow. The entirety  
15 of the blue. And a short -- about half of the purple.

16 Q. And when you observed this trail what did you notice  
17 about -- withdrawn.

18 A. This trail was --

19 Q. I'm sorry. I withdrew the question.

20 A. Okay.

21 Q. You don't have to answer that.

22 A. Okay.

23 Q. Mr. Amadon, I have just handed you what has been  
24 marked for identification Plaintiff's Exhibits 126 through

1 134. Have you had a chance to look at those?

2 A. Yes.

3 Q. Can you identify them?

4 A. These are photographs I took in September of 2016 on  
5 the New York State DEC T Lake foot trail.

6 Q. And can you tell us about how far from the trailhead  
7 they were taken?

8 A. These photographs were taken about half a mile to a  
9 mile and a half from the trailhead.

10 Q. What road is that trailhead on?

11 A. Old Piesco Road.

12 Q. And is that near one of the campgrounds you  
13 previously worked at?

14 A. The trailhead is across the road from Poplar Point  
15 Campground.

16 Q. Does each one fairly and accurately depict the scene  
17 or accurately represent the scene depicted at the time that  
18 you took it?

19 A. Yes.

20 Q. Is this the same section of the DEC foot trail to T  
21 Lake that you testified earlier you had observed being built  
22 by Ranger Wagner in the 1960s?

23 A. Yes.

24 Q. And how often had you been on this section of the

1 trail since it was built?

2 A. Occasionally. Sometimes I haven't been on it for a  
3 few years, but I would say three or four times in a ten year  
4 period.

5 MR. CAFFRY: Your Honor, I would move that  
6 Exhibits 126 to 134 be admitted.

7 MS. LEE-CLARK: Objection, Your Honor.

8 THE COURT: What is the objection?

9 MS. LEE-CLARK: Relevance. It is outside  
10 the scope of this case.

11 THE COURT: What is the relevance Mr.  
12 Caffry?

13 MR. CAFFRY: Your Honor, the witness is  
14 going to testify about the nature of a foot trail or  
15 the character of a foot trail vis-a-vis the Class II  
16 community connector trails. These photos would be  
17 used for comparison of certain features of a typical  
18 foot trail to a Class II community connector  
19 trail.

20 MS. LEE-CLARK: Your Honor, I believe we  
21 already have this kind of testimony in the  
22 record. Both Mr. Signell and Dr. Sutherland put in  
23 pictures of foot trails in the forest preserve.

24 THE COURT: I will sustain the objection

1 on relevance solely. I think you need a further  
2 question, which is to ask Mr. Amadon if in his  
3 opinion that foot trail represented in 126 to 134 is  
4 consistent generally with the nature of the foot  
5 trails as he experienced them.

6 You may have asked him that already. If  
7 you did I apologize. I will tell you to ask that  
8 again. Generally with the foot trails and, if so, I  
9 will overrule the objection and allow them into  
10 evidence.

11 MR. CAFFRY: That was about two questions  
12 down on my list Your Honor. Thank you.

13 THE COURT: I thought so.

14 Q. Mr. Amadon why did you take these photographs?

15 A. I wanted to show the natural setting that this foot  
16 trail is in.

17 Q. Based on your experience as a trail builder as well  
18 as living and hiking in the Adirondacks for your entire life,  
19 is the trail and the conditions of the trail depicted in  
20 Exhibits 126 to 134 typical of an Adirondack foot trail?

21 A. Yes. It is quite typical that foot trails have this  
22 character. More of a minimal scale.

23 MR. CAFFRY: Your Honor, I move again that  
24 Exhibits 126 to 134 be admitted.

1 THE COURT: 126 to 134 are accepted into  
2 evidence over objection.

3 (Plaintiff's Exhibits 126 to 134 received  
4 in evidence.)

5 THE COURT: Go ahead Mr. Caffry.

6 Q. Mr. Amadon, have you had a chance to look at what I  
7 have handed you? Plaintiff's Exhibits 135 to 143 for  
8 identification. Have you had a chance to look at those?

9 A. Yes.

10 Q. Can you identify them?

11 A. These are photographs that I took on August 16th on  
12 the Harris Lake section of the Newcomb to Minerva Trail.

13 Q. And do you know roughly how far from the -- when  
14 you walked that trail which end did you start at?

15 A. Santanoni parking lot.

16 Q. Do you know roughly how far you walked when you took  
17 these photographs?

18 A. Some of these photographs are only an eighth of a  
19 mile from the parking lot. The furthest one is probably a  
20 little over a mile.

21 Q. And are the conditions depicted in those exhibits  
22 typical of the conditions on the Class II community connector  
23 snowmobile trails you observed last August?

24 A. Yes.

1 MR. CAFFRY: Your Honor, I move exhibits  
2 135 to 143 be admitted into evidence.

3 MS. LEE-CLARK: Objection, Your Honor.

4 THE COURT: Go ahead. What is your  
5 objection?

6 MS. LEE-CLARK: These are cumulative. We  
7 already have pictures from this date and this trail  
8 by Dr. Sutherland. They are already in the record  
9 and almost this same depiction. At least for 136  
10 and 138. Sorry 137 and 138.

11 THE COURT: Mr. Caffry what new are we  
12 getting from these photographs?

13 MR. CAFFRY: The witness is going to, as I  
14 previously stated, compare conditions on a Class II  
15 trail versus those on a typical hiking trail. We  
16 could have pulled out Dr. Sutherland's photos, but  
17 we thought it would be both faster as well as there  
18 would be less question about the evidence if they  
19 were pictures he took. So there would be no doubt  
20 that he observed the scene and he had authenticated  
21 the photographs, as opposed to having him try to  
22 testify about photos that somebody else took.

23 THE COURT: The aforementioned exhibits.  
24 What are the numbers on them? I have them



1           here. Numbers 135 to 143 are received into evidence  
2           over objection.

3                         (Plaintiff's Exhibits 135 to 143 were  
4           received in evidence.)

5                         THE COURT: Go ahead.

6           Q. Mr. Amadon, I have handed you what has been marked  
7           as Plaintiff's Exhibit 144 for identification. Can you  
8           identify this?

9           A. This is a photograph on the Newcomb to Minerva Class  
10          II snowmobile trail that is near Vanderwalker Brook.

11          Q. And did you take this photograph?

12          A. Yes.

13          Q. When did you take it?

14          A. I took this on August 16th of 2016.

15          Q. Does it fairly and accurately represent the scene  
16          depicted at the time that you took it?

17          A. Yes.

18                         MR. CAFFRY: Your Honor, I move Exhibit 144  
19          be admitted into evidence.

20                         MS. LEE-CLARK: I am making the same  
21          objection, Your Honor.

22                         THE COURT: What is different about 144?

23                         MR. CAFFRY: Again he will use this in his  
24          comparison. I hope in that line of questioning he

1 will use it to compare a Class II trail to a typical  
2 foot trail, and although there may be a similar  
3 picture somewhere in the record already or not we  
4 felt that it would be more appropriate for him to  
5 testify about a photo that he took himself so there  
6 is no authentication problems.

7 THE COURT: You are offering it as a  
8 typical Class II trail?

9 MR. CAFFRY: Typical of a certain type of  
10 condition on the Class II trail.

11 THE COURT: 144 is received.

12 (Plaintiff's Exhibit 144 received in  
13 evidence.)

14 Q. Mr. Amadon, I have handed you what has been marked  
15 as Plaintiff's Exhibits 145 and 146 for identification. Can  
16 you identify those photos?

17 A. These are two photos that I took on the field and  
18 forest trail. Champlain Area Trails.

19 Q. When did you take these photographs?

20 A. These photographs were taken in September of 2016.

21 Q. And the trail you mentioned. Is that a trail built  
22 and maintained by your employer Champlain Area Trails?

23 A. Yes.

24 Q. And were you personally involved in its

1 construction?

2 A. Yes.

3 Q. And where specifically is this? The trailhead for  
4 this trail?

5 A. The trailhead is on County Route 10 just west of  
6 Wadams. Then there is another trail on Ferris Lane.

7 Q. Is that in Essex County?

8 A. Yes.

9 Q. And about how long is this trail?

10 A. This trail is roughly three and a half miles.

11 Q. With regard to Exhibit 145 can you tell us about how  
12 far from the trailhead this was taken and which trailhead you  
13 are referring to?

14 A. That is approximately the halfway point of the  
15 trail.

16 Q. And with regard to Exhibit 146 this is on the same  
17 trail as the previous photo?

18 A. Yes.

19 Q. Can you tell us where vis-a-vis the trailhead where  
20 on the trail it was taken and about how far away from it?

21 A. This is probably a quarter of a mile from the  
22 northern trailhead on Ferris Lane.

23 Q. And do these photos fairly and accurately represent  
24 the scenes depicted at the time that you took them?

1 A. Yes.

2 Q. Why did you take these photos?

3 A. These photos are examples of a boardwalk and a small  
4 bridge that are typical of the installations that we do on  
5 our CAT hiking trails.

6 Q. Do you sometimes see trails -- pardon me. Bridges  
7 and boardwalks of this type on trails located in the New York  
8 State forest preserve?

9 A. There are some small installations on forest  
10 preserve trails, but more than likely there are fewer  
11 boardwalks and bridges.

12 MR. CAFFRY: Your Honor, I move exhibits  
13 145 and 146 be admitted into evidence.

14 MS. LEE-CLARK: Objection for a number of  
15 reasons Your Honor. Relevance. This is not on  
16 forest preserve land and it is outside the scope of  
17 this trial. We are only talking about typical  
18 trails on the forest preserve. Not typical foot  
19 trails anywhere else in the country. So I would  
20 object to its admittance into evidence.

21 THE COURT: Overruled. I will take them  
22 for what they are worth. 145 and 146 received into  
23 evidence.

24 (Plaintiff's Exhibits 145 and 146 are

1 received in evidence.)

2 BY MR. CAFFRY:

3 Q. Could you look at Exhibits 126, 127 and 128. Do you  
4 have those in front of you?

5 THE COURT: He is looking for them.

6 A. Could you repeat the question?

7 Q. Do you have Exhibits 126 and 127 and 128 in front of  
8 you there?

9 A. Yes.

10 Q. And briefly can you tell us what each one of them  
11 shows about the width of the T Lake Trail?

12 MS. LEE-CLARK: Your Honor, may I ask a  
13 point of clarification? Which T Lake Trail are we  
14 talking about? There is multiple T Lake Trails.

15 THE COURT: If you could answer Mr.  
16 Caffry.

17 MR. CAFFRY: The one that he testified  
18 about earlier that he observed being built as a  
19 child that he has hiked in at least several times  
20 since then, and that he took photographs of just a  
21 few months ago. That same T Lake Trail. I don't  
22 intend to ask him about any other T Lake Trail.

23 MS. LEE-CLARK: Thank you.

24 THE COURT: Okay. Go ahead.

1 A. The width of this trail is under two feet.

2 Q. And what does the first picture show? 126?

3 A. 126 shows that the trail meanders around a large  
4 boulder.

5 Q. What does 127 show?

6 A. 127 shows that the trail tends to wind and meander  
7 around stumps and trees.

8 Q. Which photo are you looking at? I said 127.

9 A. Okay. Sorry. That shows the scale of the trail  
10 with my shoe as far as scaling it in width. Showing the  
11 tread to be basically 20 inches.

12 Q. And going now to 128.

13 A. 128 shows the trail meandering around a stump and  
14 some large red spruce trees.

15 Q. And could you now look at Exhibits 135, 136, 137 and  
16 138. Do you have those?

17 A. Yes.

18 Q. Briefly what does each show about the width of the  
19 Newcomb to Minerva Trail?

20 A. When I took these photographs I paced the distance  
21 to be averaging around nine feet.

22 Q. Are there areas where the cleared area is wider than  
23 nine feet?

24 A. On some of the turns in the trail it probably was

1 around 12 feet.

2 Q. Looking at number 136. About how wide is the  
3 cleared area on 136?

4 A. The cleared treated area is probably around 11  
5 feet.

6 Q. When you design and build foot trails is the width  
7 of the trails more like the T Lake trail or the Newcomb to  
8 Minerva Trail?

9 A. More like the T Lake Trail.

10 Q. Based upon your professional experience and your  
11 testimony about the trails that are depicted in these two  
12 groups of exhibits, in your opinion does the Newcomb to  
13 Minerva Trail have the type of width that is characteristic  
14 of a foot trail?

15 MS. LEE-CLARK: Objection, Your  
16 Honor. Calls for an expert opinion and he has not  
17 been established as an expert properly.

18 THE COURT: Tell me about your objection to  
19 his qualifications to testify as an expert between  
20 the two types of trails.

21 MS. LEE-CLARK: I would argue that although  
22 Mr. Amadon has testified that he has some experience  
23 in foot trail construction, he has not demonstrated  
24 any educational expertise. Any formal education in

1           any other kinds of trails. Any kind of trail  
2           building in the forest preserve, and any other  
3           knowledge other than what may be useful as observing  
4           other people, but it doesn't qualify him as an  
5           expert in trail construction.

6                        THE COURT: He did testify to 50 years  
7           experience with trails generally, as well as  
8           multiple use experience as set forth in his CV,  
9           which I have misplaced right now, with regard to  
10          trail construction and with the Adirondack  
11          trails. I will take your objection on a  
12          question-by-question basis. I think you have stated  
13          it properly.

14                      Let me hear the question asked again  
15          please.

16                      (Reporter read the pending question.)

17                      THE COURT: I am going to allow this  
18          question. Your objection is overruled. I think he  
19          has set forth the minimum to be qualified as an  
20          expert to give opinion in this area, although that  
21          is subject to a question-by-question analysis.  
22          Particularly as we get into possibly, if we do, more  
23          technical aspects of construction. I think he has  
24          set forth enough to give the opinion testimony. I



1           will allow it. Of course, his education and  
2           experience are all matters to be considered by the  
3           Court in determining how much weight to be given to  
4           that testimony.

5                        You may have your exception. You may  
6           answer the question sir. If you want to hear it  
7           again that's not a problem.

8                        THE WITNESS: Yes. That would be good.

9                        (Reporter read the pending question.)

10          A. No.

11          Q. Mr. Amadon, looking at Exhibits 135 to 138 again,  
12          which are photographs of Newcomb to Minerva trail. Do they  
13          show whether or not that trail was graded flat?

14          A. The trail has been graded. I cannot say that the  
15          trail has been graded flat.

16          Q. It has some imperfections?

17          A. Yes.

18          Q. Looking at Exhibits 126, 128, 129 and 130, which you  
19          have testified you took on the T Lake trail. What do they  
20          show about the surface of that trail? Especially in terms of  
21          its flatness or lack thereof?

22          A. There has been no grading.

23          Q. And are there rocks in the trail?

24          A. Yes.

1 Q. Are there roots in the trail?

2 MS. LEE-CLARK: Objection, Your Honor.

3 THE COURT: The pictures do speak for  
4 themselves. Sustained to the extent that wasn't  
5 clear. Go ahead.

6 MR. CAFFRY: If I already asked this I  
7 will withdraw it.

8 Q. Do they show whether or not the T Lake trail was  
9 graded?

10 THE COURT: You did already ask that. He  
11 said no.

12 MR. CAFFRY: Withdrawn.

13 Q. Based upon your professional experience and your  
14 testimony about the trails depicted in these two sets of  
15 exhibits, in your opinion does the trail surface of the  
16 Newcomb to Minerva trail have the character of a foot  
17 trail?

18 MS. LEE-CLARK: Objection, Your Honor, for  
19 the same reasons I objected before. There is no  
20 evidence that he did any grading on it either.

21 THE COURT: Let me hear the question.

22 (Reporter read the pending question.)

23 THE COURT: Didn't you already ask that  
24 question and didn't I overrule her objection?

1 MR. CAFFRY: I asked about that with regard  
2 to the width. This is part of the line of  
3 questioning about grading.

4 THE COURT: Thank you. Overruled. The  
5 objection is overruled. You may answer sir.

6 THE WITNESS: Can she repeat the question?

7 (Reporter read the pending question.)

8 A. No.

9 Q. I would like to ask -- did you need a moment to get  
10 the photos back in order?

11 A. Yes.

12 (Pause.)

13 A. Okay.

14 Q. Ready?

15 A. Yes.

16 Q. Could you please look at Exhibit 128? One of your  
17 photographs from the T Lake Trail. Do you see any stumps in  
18 that picture?

19 A. Yes.

20 Q. Where is it in relation to the trail tread?

21 A. It is to the right hand side.

22 Q. How far away from the trail tread is it?

23 A. Just a few inches.

24 Q. And does it appear to still be rooted in the ground?

1 MS. LEE-CLARK: Objection, Your Honor. The  
2 photograph speaks for itself.

3 THE COURT: Sustained.

4 Q. Looking please at Exhibit 139. That is a picture of  
5 the Newcomb to Minerva Trail?

6 A. Yes.

7 Q. And do you see any stumps in that picture?

8 MS. LEE-CLARK: Objection, Your Honor.

9 THE COURT: The objection is sustained both  
10 because the photograph can be reviewed by the Court  
11 and is in evidence. Also because the questions are  
12 leading.

13 If there is something you want to direct  
14 the Court's attention to on a photo already in  
15 evidence, you still have the opportunity to do it at  
16 the time of your submission of the proposed findings  
17 of fact and conclusions of law. If you are trying  
18 to use this to direct his attention to an entire  
19 line of substantive questioning I will allow it.

20 MR. CAFFRY: It is the beginning of a line  
21 of questioning.

22 THE COURT: I will allow it. You may  
23 answer the question. What do you see in 139?

24 A. There is a large stump in the left center of the

1 photograph.

2 Q. Is that stump still rooted in the ground?

3 A. No.

4 Q. And could that have happened in that manner without  
5 human intervention?

6 MS. LEE-CLARK: Objection.

7 THE COURT: Overruled.

8 A. No.

9 Q. Is the movement of stumps like that consistent with  
10 the character of a foot trail and the construction of a foot  
11 trail?

12 A. No.

13 MS. LEE-CLARK: Objection.

14 THE COURT: Overruled.

15 A. No.

16 Q. Looking at photographs 128, 132 and 133.

17 A. Would you please repeat the numbers.

18 Q. Yes. 128. 132. 133. Do you have those?

19 A. Yes.

20 Q. Do those photographs tell you anything about the  
21 existence of roots in the T Lake trail?

22 A. Yes. There are roots.

23 Q. Do they appear to be intact?

24 A. They appear to be undamaged by foot traffic.

1 Q. When you inspected the Newcomb to Minerva Trail and  
2 the Seventh Lake Mountain Trail did you observe any tree  
3 roots in the trails?

4 A. Most of the tree -- I did not see a lot of tree  
5 roots, but what tree roots I saw were damaged or in pieces.

6 Q. Is that something that as a trail designer and  
7 builder you would seek to avoid when you design and build a  
8 foot trail?

9 MS. LEE-CLARK: Objection, Your Honor.

10 THE COURT: Overruled. You may answer.

11 A. I think one of the major concerns of siting a foot  
12 trail is that you don't damage the surrounding trees. In  
13 other words, you try to lessen any impact from not just the  
14 construction but the actual use of the trail.

15 Q. Turning now to Exhibits 126, 129 and 130 which are  
16 among your pictures from the T Lake Trail. Do you have those  
17 available?

18 A. Not yet.

19 THE COURT: He is putting them back in  
20 order. Just a moment.

21 (Pause.)

22 A. Could you please repeat the numbers?

23 Q. Looking at Exhibits 126, 129 and 130 which are among  
24 your pictures from the T Lake Trail.

1 A. Okay.

2 Q. Have the rocks in those pictures been moved or left  
3 in place?

4 MS. LEE-CLARK: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q. Do those pictures show rocks next to the trail?

7 MS. LEE-CLARK: Objection.

8 THE COURT: Overruled.

9 A. There are rocks next to the trail and actually rocks  
10 in the tread that meanders around.

11 Q. Do they appear to have been moved or to have been  
12 left in place?

13 A. I really can't answer that question as to whether  
14 they were ever moved in the initial construction, but they  
15 appear to have been left in place.

16 Q. Did they appear to have been there for a very long  
17 time?

18 A. Yes. They are covered with moss and lichens.

19 Q. Does the trail go around them --

20 A. Yes.

21 Q. and through them? Looking at Exhibits 138 and 140,  
22 which are pictures you took on the Newcomb to Minerva  
23 Trail.

24 MS. LEE-CLARK: Is this 130 or 138?

1 MR. CAFFRY: 138 and 140.

2 MS. LEE-CLARK: Thank you.

3 A. Say that again.

4 Q. 138 and 140. Do you have those?

5 A. Yes.

6 Q. Are there rocks along the trail in those pictures?

7 A. Yes.

8 Q. Does it appear as if the rocks have been left in  
9 place?

10 MS. LEE-CLARK: Objection, Your Honor.

11 THE COURT: The objection is sustained,  
12 both on substantive grounds and because there is an  
13 awful lot of leading going on.

14 Let me suggest, for what it is worth, that  
15 your expert testimony is of more use to the Court if  
16 he were giving the testimony pursuant to non-leading  
17 questions.

18 MR. CAFFRY: I'm just trying to move things  
19 along.

20 THE COURT: I know you are. He is your  
21 witness. You want to hear his expertise and his  
22 opinion. Let's do it that way. Ask him to point  
23 out features, if you wish, that you feel are  
24 consistent or inconsistent with foot trails or



1 snowmobile trails. Why he feels that way.

2 I'm sorry. I know you are an experienced  
3 lawyer and I know you are trying to move it along,  
4 but frankly I feel there has been too much leading  
5 with this witness.

6 MR. CAFFRY: Thank you, Your Honor.

7 Q. Looking at Exhibit 138. Do you observe rocks in the  
8 picture?

9 A. Yes.

10 Q. Where are they located in the picture primarily?

11 A. They are primarily in line off to the left side of  
12 the trail.

13 Q. And do they appear to have been left in their  
14 original place?

15 MS. LEE-CLARK: Objection, Your Honor.

16 THE COURT: Sustained.

17 Q. What can you tell us about the appearance of those  
18 rocks in number 138?

19 A. Just from my observation of being there they appear  
20 to have been moved. They are not in their original  
21 position.

22 Q. And do they appear in any particular formation?

23 A. They are basically all in one area of the trail.

24 Q. And is that a natural appearance?

1 MS. LEE-CLARK: Objection, Your Honor.

2 THE COURT: Sustained.

3 Q. Looking at number 140. Do you observe any large  
4 rocks in that picture?

5 A. There are rocks on the left hand side of the trail,  
6 and a large boulder or large boulder on the left hand side of  
7 the trail and many rocks on the right hand side of the  
8 trail.

9 Q. Is there any difference in appearance between the  
10 rocks on the left and the rocks on the right?

11 MS. LEE-CLARK: Objection.

12 THE COURT: Sustained.

13 Q. What can you tell us about the appearance of each  
14 set of rocks?

15 A. The rock on the left is covered with moss and  
16 lichen.

17 Q. What does that indicate to you?

18 A. It indicates that it has not been disturbed.

19 Q. What about the appearance of the rocks on the  
20 right?

21 A. The rocks on the right appear to have some soil on  
22 them and no moss or lichens.

23 Q. What does that tell you about them?

24 A. It tells me that they have been moved.

1 Q. And is the movement of rocks in that manner as you  
2 have described in both 138 and 140 something that is  
3 typically done in the construction of a foot trail?

4 MS. LEE-CLARK: Renewing my objection, Your  
5 Honor.

6 THE COURT: Overruled. Go ahead.

7 A. Rocks of that size are rarely moved, because the  
8 trail tread can be accommodated without disturbing them.

9 Q. And in your professional opinion having large rocks  
10 like that having been moved. Does that give a trail a  
11 manmade appearance?

12 MS. LEE-CLARK: I will renew my objection,  
13 Your Honor.

14 THE COURT: Sustained.

15 Q. Could you look at Exhibit 140, which is one of your  
16 pictures from the Newcomb to Minerva Trail. Do you have  
17 that?

18 A. Yes.

19 Q. Besides rocks what do you observe along the trail?

20 A. On the left hand side I see a bench cut that  
21 extends --

22 MS. LEE-CLARK: Objection.

23 THE COURT: What is the objection?

24 MS. LEE-CLARK: He doesn't have the

1 expertise to determine what a bench cut is. He has  
2 not established that.

3 MR. CAFFRY: Your Honor, I believe the  
4 witness has already testified about how he himself  
5 uses bench cuts, albeit of a very small size in  
6 trail construction, and I believe that demonstrates  
7 adequate experience to testify about bench cuts.

8 THE COURT: Overruled. Go ahead. You may  
9 answer.

10 A. It shows a bench cut that starts at the boulder that  
11 appears not to have been moved, and extends through the  
12 photograph to a large tree on the left hand side. A distance  
13 of probably 75 feet.

14 Q. And can you tell us how high that bench cut appears  
15 to be?

16 A. The bench cut, as I remember, was probably 14 or 15  
17 inches in height.

18 Q. In your opinion is this a natural form that appears  
19 in the forest?

20 MS. LEE-CLARK: Objection, Your Honor.

21 THE COURT: Overruled. You may answer.

22 A. This bench cut is pretty severe in profile. It  
23 basically is projecting a view of something that doesn't  
24 happen in nature.

1 Q. In your opinion does that give the trail a manmade  
2 appearance?

3 MS. LEE-CLARK: Objection.

4 THE COURT: Sustained.

5 Q. Is a trail with a bench cut of that size one that  
6 has the character of a foot trail in your opinion?

7 A. No.

8 Q. Turning to Exhibit 134 which you said was taken on  
9 the T Lake Trail.

10 THE COURT: What was that number?

11 MR. CAFFRY: 134.

12 Q. Do you have that?

13 A. Yes.

14 Q. Can you tell us what that picture shows?

15 A. This is the Upper Mill Stream crossing on the T Lake  
16 Trail.

17 Q. What is the Upper Mill Stream?

18 A. Mill Stream is a tributary to Piesco Lake.

19 Q. And you said crossing. What crosses it?

20 A. The trail.

21 Q. And how do people cross the stream there?

22 MS. LEE-CLARK: Objection.

23 THE COURT: Overruled. You may answer.

24 A. It is a ford.

1 Q. What do you mean by a ford?

2 A. It is just a natural pedestrian crossing without any  
3 structure.

4 Q. Meaning no bridge. Would that be correct?

5 A. Yes.

6 Q. And how then do hikers using the T Lake Trail get  
7 across this ford? How do they typically use the ford?

8 A. That all depends on the water level in the stream.

9 Q. Could you explain that?

10 A. If the water level is high and swift they probably  
11 would not cross it.

12 Q. If it is lower what would they do?

13 A. It is an easy walk across.

14 Q. And is this type of stream crossing common on foot  
15 trails in the Adirondacks?

16 MS. LEE-CLARK: Objection.

17 THE COURT: Overruled.

18 A. Most trails, including the T Lake Trail basically  
19 have very few structures. The T Lake Trail has no bridge  
20 structures at all. No boardwalks.

21 Q. So the hikers typically would then cross at a ford  
22 like this?

23 A. Yes.

24 Q. And will you look now at exhibits 142 and 143, which

1 you have testified were taken on the Newcomb to Minerva  
2 Trail. Do you have those?

3 A. Yes.

4 Q. And briefly 142 first and then 143. Can you tell us  
5 what each of them shows?

6 MS. LEE-CLARK: Objection.

7 THE COURT: What is the objection?

8 MS. LEE-CLARK: These photos speak for  
9 themselves.

10 THE COURT: I will let him identify them so  
11 he can comment on them if he wishes  
12 to. Overruled. Go ahead.

13 A. These are two photographs of bridges on the Newcomb  
14 to Minerva Class II snowmobile trail.

15 Q. When you observed these bridges did you make any  
16 effort to ascertain how wide they are?

17 A. Roughly 12 feet.

18 Q. And are there sometimes bridges on foot trails in  
19 the Adirondacks?

20 A. Yes.

21 Q. And is it necessary to build a bridge 12 feet wide  
22 for a foot trail?

23 MS. LEE-CLARK: Objection.

24 THE COURT: Sustained.

1 Q. In your professional opinion is it necessary to  
2 build a bridge 12 feet wide on a foot trail?

3 MS. LEE-CLARK: Objection.

4 THE COURT: The objection is sustained with  
5 regard to the use of the word necessary.

6 Q. Is it normal or common to build a bridge that wide  
7 for a foot trail?

8 A. No.

9 Q. Typically on a foot trail how wide, if there is a  
10 bridge how wide is the bridge going to be built?

11 MS. LEE-CLARK: Objection.

12 THE COURT: Sustained.

13 Q. In your observations of bridges on foot trails in  
14 the Adirondacks typically how wide are those bridges?

15 A. They can vary in width, but they are likely to be no  
16 wider than three feet.

17 Q. Does that correlate to the width of the foot  
18 trails?

19 MS. LEE-CLARK: Objection.

20 THE COURT: I think we know the width of  
21 both, Mr. Caffry, so I will sustain the objection.

22 Q. Based on your professional experience and your  
23 testimony about the trails depicted in these exhibits and the  
24 presence of these bridges does the Newcomb to Minerva Trail



1 have the character of a foot trail?

2 MS. LEE-CLARK: Objection.

3 THE COURT: Overruled.

4 A. No.

5 Q. I would ask you to look at Exhibit 141 please. Do  
6 you have that?

7 A. Yes.

8 Q. That is a photograph you took on the Newcomb to  
9 Minerva Trail. Correct?

10 A. Yes.

11 Q. Can you tell us what it depicts?

12 A. It is a photograph of rag weed and grass.

13 Q. In your experience is that something that you have  
14 seen in an undisturbed forest?

15 A. Rarely.

16 MR. CAFFRY: May I have one moment? I am  
17 almost done with this witness.

18 THE COURT: Sure.

19 (Attorneys conferred.)

20 Q. Mr. Amadon could you look at Exhibit number  
21 144. That is one of your pictures from the Newcomb to  
22 Minerva Trail?

23 A. Yes.

24 Q. And what does this show?

1           A.     This shows the section near the Vanderwalker Brook  
2 under construction.

3                     MS. LEE-CLARK: Objection.

4                     THE COURT: What is the objection?

5                     MS. LEE-CLARK: Characterizing it as under  
6 construction.

7                     THE COURT: Sustained.

8           Q.     Can you describe what you see on the surface of the  
9 trail between the foreground and the person standing in the  
10 background?

11           A.     There are multiple stumps.

12           Q.     And is that a condition that is common on a foot  
13 trail in the Adirondacks in your opinion?

14                     MS. LEE-CLARK: Objection.

15                     THE COURT: Overruled.

16           A.     Looking at the spacing of those stumps if it were a  
17 foot trail those trees would have been left.

18                     MS. LEE-CLARK: Objection.

19                     THE COURT: Overruled.

20           Q.     In your opinion does a trail that has been built  
21 that way and has created that many stumps does that have the  
22 character of a foot trail?

23           A.     No.

24           Q.     Do you know what the term turnpiking means in trail

1 building?

2 A. Yes.

3 Q. Could you describe what it means?

4 A. It is a mitigation process for wet, muddy areas on a  
5 trail.

6 Q. Is it a common technique in foot trail construction  
7 in the Adirondacks?

8 MS. LEE-CLARK: Objection.

9 THE COURT: What is the objection? To his  
10 knowledge of foot trail construction in the  
11 Adirondacks?

12 MS. LEE-CLARK: Throughout the  
13 Adirondacks.

14 THE COURT: Sustained.

15 Q. Is that a common technique in foot trail  
16 construction in general?

17 MS. LEE-CLARK: Objection.

18 THE COURT: Overruled. If you know.

19 A. I haven't seen a lot of turnpiking, mainly because  
20 the materials that are needed usually have to come from the  
21 actual tread where the work needs to be done and it is not  
22 suitable for that process.

23 Q. In your professional opinion is that an appropriate  
24 technique for foot trail construction?

1 MS. LEE-CLARK: Objection.

2 THE COURT: Sustained.

3 MR. CAFFRY: No further questions, Your  
4 Honor.

5 THE COURT: Do you want some time to look  
6 at Mr. Amadon's file if he has one? Or our  
7 afternoon break in any event?

8 MS. LEE-CLARK: If I may have a quick  
9 moment Your Honor?

10 THE COURT: Sure.

11 (Pause.)

12 THE COURT: Do you have a file sir?

13 THE WITNESS: Yes.

14 MS. LEE-CLARK: We will look at his file  
15 during the break.

16 THE COURT: We will take a break until five  
17 before three. Okay. Thank you folks.

18 (Recess.)

19 THE COURT: Mr. Amadon come on up sir.

20 You are still under oath sir.

21 Ms. Lee-Clark.

22 MS. LEE-CLARK: Thank you, Your Honor.

23 CROSS-EXAMINATION OF MR. AMADON

24 BY MS. LEE-CLARK:

1 Q. Mr. Amadon, do you know the trail classification for  
2 the T Lake Trail?

3 MR. CAFFRY: Objection, Your  
4 Honor. Irrelevant.

5 THE COURT: Overruled.

6 A. No.

7 Q. Mr. Amadon, isn't it true that there are multiple  
8 classifications of foot trails in the forest preserve? Yes  
9 or no?

10 A. I'm aware that there are classifications --

11 THE COURT: Hang on. Remember what I told  
12 you? Yes, no or I can't answer that with a yes or  
13 no answer.

14 THE WITNESS: Could you please repeat the  
15 question?

16 Q. Isn't it true that there are multiple  
17 classifications of foot trails in the forest preserve? Yes  
18 or no?

19 A. Yes.

20 Q. And isn't it true, yes or no, that foot trail widths  
21 in the forest preserve vary from two to eight feet?

22 A. Yes.

23 Q. And just to clarify. Your testimony was that you  
24 did rake cuts rather than bench cuts in your position at the

1 Champlain Area Trails. Yes or no?

2 A. Yes.

3 MS. LEE-CLARK: Those are all the  
4 questions I have, Your Honor.

5 At this point I would move to strike any  
6 expert testimony or any testimony in the form of an  
7 expert opinion.

8 THE COURT: On something beyond the  
9 objections you have already made?

10 MS. LEE-CLARK: No. On the same bases.

11 THE COURT: Your objection is overruled.

12 Any redirect Mr. Caffry?

13 MR. CAFFRY: Yes.

14 REDIRECT EXAMINATION OF MR. AMADON

15 BY MR. CAFFRY:

16 Q. Mr. Amadon, you were just asked a question about the  
17 trail widths in the Adirondacks varying from two feet to  
18 eight feet. Do you recall that?

19 A. Yes.

20 Q. Are eight foot wide trails typical?

21 A. No.

22 MR. CAFFRY: No further questions.

23 MS. LEE-CLARK: Objection.

24 THE COURT: The objection is

1           overruled. You may ask any recross based on that  
2           question.

3                       MS. LEE-CLARK: No questions, Your Honor.

4                       THE COURT: Thank you Mr. Amadon.

5                       MS. BRAYMER: Your Honor, our next witness  
6           is Mr. Bauer. I will be questioning him.

7                                       PETER BAUER,

8                       Having been duly sworn, was examined and  
9           testified as follows.

10                      THE COURT: Mr. Bauer, you have been here  
11           and I know you know the drill. Correct?

12                      THE WITNESS: Yes.

13                      THE COURT: You heard my directions and my  
14           instructions to the other witnesses who were here in  
15           court?

16                      THE WITNESS: Yes, I did.

17                      THE COURT: You can abide by those?

18                      THE WITNESS: Certainly.

19                      THE COURT: Good. Go ahead Ms. Braymer.

20           DIRECT EXAMINATION OF MR. BAUER

21           BY MS. BRAYMER:

22                      Q. Please state your name for the record.

23                      A. Peter Bauer. B-A-U-E-R.

24                      Q. What is your current position?

1           A.    I am the Executive Director with the organization  
2 Protect the Adirondacks!

3           Q.    What are your responsibilities as Executive  
4 Director?

5           A.    I oversee all of the programmatic and administrative  
6 responsibilities of a private not-for-profit environmental  
7 advocacy organization.

8           Q.    How long have you held the position of Executive  
9 Director with Protect!?

10          A.    Since September of 2012.

11          Q.    I will refer to Protect the Adirondacks! as  
12 just Protect! if that is okay.

13          A.    Yes.

14          Q.    Thanks. Mr. Bauer where did you go to college?

15          A.    State University of New York at New Paltz. I have  
16 an undergraduate degree there, and a Master's in history from  
17 SUNY Albany.

18          Q.    Did you take any environmental graduate courses?

19          A.    I did. I took a number of courses towards an MS in  
20 Environmental Science at Bard College. Ecology. Systems  
21 Ecology. Community Ecology. Field Ecology. Population  
22 Ecology. Field biology courses, including a two week field  
23 biology course in the Adirondacks with Jerry Jenkins, who has  
24 published a number of books in the Adirondacks. He is a



1 well-known researcher.

2 Q. What organizations did you serve before your current  
3 position?

4 A. Immediately prior to my work with Protect! for five  
5 years I was the Executive Director of the Fund for Lake  
6 George. Prior to that for 14 years I worked with the  
7 Residence Committee to Protect the Adirondacks. RCPA. The  
8 RCPA was one of the groups that merged. Two groups merged to  
9 create Protect the Adirondacks! So the RCPA is one of the  
10 precursor organizations.

11 Prior to the RCPA I worked for the Commission on the  
12 Adirondacks in the 21st Century under Governor Mario Cuomo,  
13 and prior to that assistant editor of Adirondack Life  
14 Magazine.

15 Q. What years did you serve on the commission?

16 A. I was on the staff of the commission. I was not a  
17 commissioner. I worked on the commission in 1989 and 1990.

18 Q. What other Adirondack advocacy experiences do you  
19 have?

20 A. Sure. In my capacity as Executive Director of the  
21 RCPA and now Protect the Adirondacks! I served with the  
22 Forest Preserve Advisory Committee with the Department of  
23 Environmental Conservation.

24 I have served on a technical advisory group with the

1 Adirondack Park Agency around regulatory reform. I have both  
2 with the RCPA and with Protect -- we have had a 20 year  
3 partnership with Paul Smith's College. The Adirondack Water  
4 Shed Institute implementing a long term water quality  
5 monitoring program on over 75 lakes in the Adirondacks.

6 Additionally, I was part of a team that put together  
7 the first aquatic invasive species management plan for the  
8 Adirondacks.

9 Q. Do you have any advocacy experience relating to  
10 snowmobiles or snowmobile trails?

11 A. Yes. In a couple ways. For a number of years in  
12 the late 90s, early 2000s I was on a snowmobile focus group  
13 administered by the Department of Environmental Conservation  
14 and the Office of Parks, Recreation and Historic  
15 Preservation.

16 I have also in my professional capacities at the  
17 RCPA and Protect! have commented in public hearings on  
18 numerous unit management plans, and I have visited numerous  
19 roads, trails and snowmobile trails throughout the forest  
20 preserve in the Adirondacks.

21 Q. Briefly what areas were discussed by the snowmobile  
22 focus group?

23 MS. LEE-CLARK: Objection.

24 THE COURT: What is the relevance?

1 MS. BRAYMER: These are background  
2 questions to lay the foundation for Mr. Bauer's  
3 testimony about further areas that he visited on the  
4 the Class II community connector trails.

5 THE COURT: Further areas that what?

6 MS. BRAYMER: Trail segments that he  
7 visited on the Class II community connector  
8 trails.

9 THE COURT: Are they background questions  
10 in order to establish him as an expert in certain  
11 fields?

12 MS. BRAYMER: No. It's to help establish  
13 his acquaintance with certain trail features.

14 THE COURT: Overruled. Go ahead.

15 A. Throughout the four or five years that I served on  
16 the snowmobile focus group, we roughly met quarterly. And a  
17 constant subject for that group were trail widths of  
18 snowmobile trails. Grading of snowmobile trails. Of  
19 vertical protrusion of rocks and stumps. Bench cutting.

20 The focus of the snowmobile focus group was the  
21 creation of a new class, entirely new type of trail system in  
22 the Adirondacks which has become a Class II community  
23 connector trail system.

24 Q. Have you edited or authored any literature regarding

1 the Adirondacks?

2 A. Yes. The RCPA published major reports on  
3 development trends in the Park. We published a major report  
4 on ATV, all terrain vehicle damage on the forest preserve  
5 called Ruttled and Ruin.

6 I have published an article in a book put together  
7 by Ross Whaley, former chairman of the Adirondack Park  
8 Agency. With Bill Porter and John Erickson. Two well-known  
9 researchers in the Adirondacks.

10 I authored a chapter of a book called Thrill Craft,  
11 which looked at the problems with motor vehicles on public  
12 lands. And I put in a chapter on ATV impacts to the forest  
13 preserve in the Adirondacks.

14 Q. When did you first start hiking in the  
15 Adirondacks?

16 MS. LEE-CLARK: Objection, Your Honor. It  
17 is interesting but --

18 THE COURT: Overruled. For now. Go  
19 ahead. You may answer.

20 A. In junior high school living in Ithaca, New York and  
21 my boy scout troop came up in 1977.

22 Q. Over how many miles of snowmobile trails do you  
23 think that you have traveled in the Adirondacks?

24 A. Hundreds of miles of snowmobile trails. On all of

1 the roads that can be driven on the forest preserve in wild  
2 forest units at one time or another, from the independent  
3 River Wild Forest, the Black River Wild Forest area I have  
4 driven on those roads to document their conditions.

5 I have ridden my bike or walked on a number of  
6 snowmobile trails. Especially all of the ones that were  
7 being developed for unit management plans. Not all of the  
8 wild forest areas have approved unit management plans. So I  
9 haven't been on every snowmobile trail in the park, but I  
10 have been probably on more of the half of the total miles on  
11 the forest preserve.

12 Q. Does your family own any land in the Adirondacks  
13 that --

14 MS. LEE-CLARK: Objection.

15 THE COURT: Sustained.

16 Q. Have you managed any land in the Adirondacks in a  
17 professional capacity?

18 A. I have. While at the RCPA for ten years we were  
19 certified by the Forest Stewardship Council, the FSC, to  
20 provide sustainable forest recertification to private land  
21 owners in the Adirondacks.

22 As the Executive Director at that time I was a  
23 certificate holder that signed the management plans where we  
24 provided FSC certification. We at the high point of the

1 program had over 10,000 acres enrolled in our FSC  
2 certification program. I toured all of those properties,  
3 especially when there were harvests underway or immediately  
4 after an area was harvested.

5 Q. Turning to Protect!. What is Protect!?! You  
6 mentioned a little about it. Can you give us a better sense  
7 of Protect!?!?

8 A. It is a private not-for-profit environmental watch  
9 dog organization that monitors the management and use of the  
10 public forest preserve. We monitor the Adirondack Park  
11 Agency land use and development plan. How it is implemented  
12 for private land regulation. We advocate for land  
13 acquisition. We get involved in major policies affecting the  
14 future of the Adirondacks. We advocate on a range of budget  
15 issues each year regarding key programs for the funding of  
16 State agencies and different state programs related to the  
17 environmental protection of the Adirondacks.

18 We also engage in an extensive amount of research.  
19 Both policy research such as building trends. ATV  
20 use. Economic and development trends and long term  
21 scientific research, such as a partnership on water quality  
22 monitoring with Paul Smith's College.

23 Q. What is Protect's mission and/or vision statement?

24 MS. LEE-CLARK: Objection.

1 THE COURT: Overruled. You may answer.

2 A. I can't quote our vision statement verbatim. It is  
3 quite lengthy. It is on the Protect! website. Generally to  
4 protect the public and private lands in the Adirondack Park  
5 and to help to build a network of thriving communities in the  
6 park.

7 Q. How many members does Protect! have?

8 A. We have over 2,000 member households.

9 Q. How many regular employees does Protect! have?

10 A. One full-time and two part-time.

11 Q. How many volunteers assist Protect! in its  
12 activities?

13 A. Over 100. We have over 80 volunteers in our  
14 Adirondack Lake assessment program. Each Lake has one or two  
15 different people that go out and collect water quality  
16 samples in the summer. We have 19 members on our board of  
17 directors. We also have -- our most active committee is our  
18 Conservation and Advocacy Committee, and we have a number of  
19 the members of the board plus eight to ten non-board members  
20 who are members of the CAC.

21 Q. Who directs and oversees Protect's activities?

22 A. The board of directors as mentioned before.

23 Q. And you mentioned the lake research. Are there any  
24 other research efforts or activities involving Protect the

1 Adirondacks!?

2 A. The long term. We have two projects underway  
3 looking at long term economic and development trends in the  
4 park just looking at the park experience. Again, national  
5 and economic development trends. Economic and population  
6 trends, especially related to rural areas of the country. We  
7 are also looking at long term building rates and impacts.

8 Q. When did Protect! first become concerned about the  
9 construction of improvements in the forest preserve?

10 A. Right. So as I mentioned before Protect the  
11 Adirondacks! has been around since 2009 when two  
12 organizations merged. One being the Residence Committee to  
13 Protect the Adirondacks, and the other being the Association  
14 for the Protection of the Adirondacks. The Association was  
15 the plaintiff in the McDonald decision. The Association  
16 versus McDonald decision. So that is one of the  
17 organizations that formed Protect!. So clearly the long  
18 term, historic interests of Protect! go back to the 30s and  
19 before that. The association was formed in 1908.

20 The RCPA had a long interest in forest preserve  
21 management issues, and we were involved in the snowmobile  
22 focus group of the late 90s, early 2000s that I mentioned  
23 before. This is the management of large motor vehicle  
24 corridors and their impacts on the forest preserve has been



1 of consistent interest and focus by Protect! and its  
2 pre-cursor organizations for decades.

3 Q. And did that concern carry over once Protect!  
4 merged? Once those precursor organizations merged?

5 A. Absolutely.

6 Q. Getting into some more detail of your testimony Mr.  
7 Bauer. In your current and prior roles have you ever done  
8 field work to document trail conditions in the Adirondacks?

9 A. Yes. Many times. As I mentioned before, we  
10 published a report called Ruttled and Ruin on ATV damage where  
11 we documented ATV abuse in the late 1990s on dozens, scores  
12 of roads in the Adirondacks, and on a number of snowmobile  
13 trails and foot trails where there was illegal use.

14 That report, among other things, led to the closure  
15 of more than 90 roads to ATVs on the forest preserve. We  
16 have documented through photographs not only the ATV damage,  
17 but other public policy matters relating to management of the  
18 forest preserve. Often times when we send in comment letters  
19 to the Adirondack Park Agency and the DEC those comment  
20 letters are accompanied with photographs.

21 Q. Did you undertake field work to document trees cut  
22 down on the forest preserve on Class II community connector  
23 snowmobile trails?

24 A. I did. Starting in my capacity with Protect! in

1 September of 2012. That fall we started -- I started going  
2 out into the field to collect information on the level of  
3 tree cutting to build what was the newest Class II community  
4 connector trail. The biggest one being built to date, which  
5 was the Seventh Lake Mountain Trail which was under  
6 construction in the fall of 2012.

7 Q. Did you undertake field work to document trees cut  
8 down on the forest preserve on Class II community connector  
9 snowmobile trails under the direction of Mr. Steve Signell?

10 A. I did. I did that in 2016.

11 Q. Which Class II community connector snowmobile trails  
12 did you undertake field work under the direction of Mr.  
13 Signell?

14 A. On four trails. On the Newcomb to Minerva Trail,  
15 but only on one section. That was the new trail section from  
16 Camp Santanoni historic area to the Lake Harris intensive use  
17 area, where it runs through parts of the Vanderwhacker  
18 Mountain wild forest area. It was that stretch only.

19 I also counted trees that were cut on a Gilmantown  
20 Trail in the Jessop River Wild Forest area. On the  
21 Wilmington Class II trail. The Wilmington Wild Forest area,  
22 and on the Seventh Lake Mountain Trail in the Moose River  
23 Plains Wild Forest area.

24 Q. Did Mr. Signell train you on the protocol for

1 conducting this field work?

2 A. He did.

3 Q. What was the protocol that you followed?

4 A. As Mr. Signell has previously described it, I used  
5 the Fulcrum app. This is an app that is very useful to a  
6 number of people who are collecting data in the field, and  
7 you can access it on one's smart phone. I know Mr. Signell  
8 has described how it works. Should I describe that again?

9 Q. Is there anything additional that you need to add or  
10 do you feel that his testimony covered the protocol you  
11 followed?

12 A. I would add just a couple things. One is that Mr.  
13 Signell provided me with access to his Fulcrum account. He  
14 provided a new file for each of the four trails that I  
15 mentioned before. Those files had a base map of the area in  
16 question. Within each file I would then be able to add new  
17 data points. That involved taking a picture of a stump with  
18 a tape measurer over the top of the stump, or at a  
19 representative location on the stump to be able to record the  
20 diameter of the stump.

21 After I took the picture there was an in click  
22 field to record physically the diameter of the stump, rounded  
23 down to the nearest inch. There were also other fields where  
24 if notes needed to be made then I would do that. I would

1 save that entry, and that was repeated again and again  
2 through the course of collecting data each day. Usually  
3 hundreds of stumps were photographed and the diameters  
4 recorded.

5 The important thing about Fulcrum is that each data  
6 entry is date and time stamped. Also provided with a GPS  
7 location. That worked through my smart phone. When I came  
8 home at the end of the day or I came back to a location with  
9 wi-fi I would upload all of the information from that day's  
10 work to the Fulcrum site. That usually took several hours.

11 After I uploaded all of the data I would send Mr.  
12 Signell an e-mail making sure all of the data had  
13 arrived. He would then check it and get back to me.

14 MS. LEE-CLARK: Objection.

15 THE COURT: What is the objection?

16 MS. LEE-CLARK: This is a narrative answer  
17 without questions in it.

18 My second objection is that he can't  
19 necessarily testify to how Steve Signell --

20 THE COURT: Your first objection is  
21 overruled.

22 Your second objection with respect to what  
23 Mr. Signell did or did not do is sustained and that  
24 portion of the testimony is stricken.

1                   Go ahead Ms. Braymer.

2           Q.    Mr. Bauer, after you collected all of the data on  
3 your end did you communicate with Mr. Signell?

4           A.    I did communicate with Mr. Signell. I wanted to  
5 make sure the data had been received, and often times he had  
6 a better count than I did. I did not keep count of the  
7 number of stumps that I photographed each day in the field.

8                   I would ask him how many stumps I photographed, but  
9 more importantly I would ask him to tell me the distance of  
10 the trail. The number of miles I had covered, because the  
11 Seventh Lake Mountain Trail is 12 miles long and some days I  
12 worked all day long but only covered less than a mile. So I  
13 wanted to know how much further I had in the days ahead.

14           Q.    I have handed you what has been marked for  
15 identification as Plaintiff's Exhibits 147, 162 and 163.

16                   THE COURT: 147, 162 and 163?

17                   MS. BRAYMER: Yes.

18                   THE COURT: Thank you.

19           Q.    Do you recognize what is in these exhibits?

20           A.    I do.

21           Q.    And what do they show? What do they depict  
22 generally?

23           A.    Exhibit 147 shows Mr. Signell on a location on the  
24 Newcomb to Minerva Trail in between the railroad and the

1 Route 28 on the Hyslop section. In the fall of 2015 where he  
2 was performing the protocol using Fulcrum that I just talked  
3 about. When he was out there doing his own stump counts. I  
4 met with him briefly that day in the field and took this  
5 picture, but it aptly shows what is involved in recording and  
6 making -- recording a stump diameter count using Fulcrum.

7 Q. Does 147 fairly and accurately depict the scene at  
8 the time that you took that photo?

9 A. Yes.

10 MS. BRAYMER: I move Exhibit 147 into  
11 evidence.

12 MS. LEE-CLARK: No objection Your Honor.

13 THE COURT: 147 is received into  
14 evidence.

15 (Plaintiff's Exhibit 147 received in  
16 evidence.)

17 BY MS. BRAYMER:

18 Q. You said you recognized Exhibit 162. Can you tell  
19 us what that depicts?

20 A. Yes. Exhibit 162 is a photograph that I took using  
21 Fulcrum of a stump around two inches in diameter in a very  
22 grassy section of the Seventh Lake Mountain Trail in July or  
23 August of 2016.

24 Q. And Exhibit 163?

1           A.     Exhibit 163 shows a slightly larger stump around ten  
2 inches in diameter.  Again, a very grassy section of the  
3 Seventh Lake Mountain Trail that I took in July or August of  
4 2016.

5           Q.     Are these two photos representative of your  
6 protocol?  You engaging in the protocol for measuring stumps  
7 on trails?

8           A.     Yes.  We took thousands of pictures like this in  
9 the summer of 2016.

10          Q.     Do these two photographs fairly and accurately  
11 depict the scene at the time you took them?

12          A.     Yes.

13                         MS. BRAYMER: Your Honor, I move exhibits  
14 162 and 163 into evidence.

15                         MS. LEE-CLARK: No objection, Your Honor.

16                         THE COURT: 162 and 163 are also received  
17 into evidence.  We will have them marked now.

18                                 (Plaintiff's Exhibits 162 and 163 received  
19 in evidence.)

20 BY MS. BRAYMER:

21          Q.     Mr. Bauer you testified that you undertook field  
22 work on four different trails or trail segments.  Generally  
23 did you have any difficulty following the trails on which you  
24 counted the stumps?

1           A.    No.  The trails in question are the four community  
2 connector trails that I photographed.  Stumps of cut trees in  
3 the summer of 2016 were easy to follow.  The trail was nine  
4 to 12 foot wide.  A little wider in some places.  There were  
5 standing trees on both sides of the trail.  The trail was a  
6 pathway of stumps, so it was easy to follow.

7           Q.    Just to be clear.  That testimony refers to all four  
8 of the trails?

9           A.    Correct.  All four trails had that same  
10 characteristic.  The number of stumps varied between the  
11 trails, but they were all easy to follow corridors through  
12 intact forest on both sides.

13          Q.    Did you have any difficulty counting the tree stumps  
14 on the four trails?

15          A.    On two trails there were difficulties.

16          Q.    So please identify which two trails?

17          A.    I will do that.  On the Seventh Lake Mountain Trail  
18 in the summer of 2016 that was about four years after the  
19 trail had been cut out.  So the stumps -- a lot of grass had  
20 grown up in many areas.  The grass was two or three feet  
21 high.  Many other places there were extensive fern beds that  
22 have taken over the trail corridor, and we have seen pictures  
23 depicting these conditions in prior testimony.  Searching for  
24 stumps in these long stretches of grass and fern growth was



1 very challenging.

2           There were other places on the Seventh Lake Mountain  
3 Trail that had been heavily graded, and I know that because I  
4 visited the trail when grading was taking place in the fall  
5 of 2012. In those places there were not a lot of stumps,  
6 even where it was evident based upon the character of the  
7 forest on both sides that there were more stumps there prior  
8 to the construction of the trail.

9           On the Santanoni to Harris Lake section of the  
10 Newcomb to Minerva Trail. Similarly, especially on the  
11 second half of that trail, there had been extensive grading  
12 and there were no stumps visible for long stretches on the  
13 trail, but in the forest that was surrounding the trail  
14 clearly was of a type where there were many trees that had  
15 been in the trail.

16           Q. Can you please state whether or not you had any  
17 difficulty on the Gilmantown Trail counting stumps?

18           A. No. The Gilmantown trail the stumps were pretty  
19 clear. There had not been much grading on the Gilmantown  
20 Trail.

21           Q. At the time that you took the count or did your  
22 field study?

23           A. Right.

24           Q. At the time that you did your field study on

1     Wilmington did you have any difficulty counting or  
2     identifying the stumps?

3             A.     I should also add both with Gilmantown and  
4     Wilmington the cutting had occurred just a few years prior.  
5     So in Wilmington not only was the cutting more recent than it  
6     had been on the Seventh Lake Mountain Trail, but also the  
7     grading was confined to a few sections and was not nearly as  
8     extensive as it was on the Seventh Lake Mountain Trail and on  
9     the Harris Lake section of the Newcomb to Minerva Trail.

10            Q.     I will ask you to clarify.  You said the cutting on  
11     Gilmantown and Wilmington had taken place a few years prior  
12     to your field work?

13            A.     That's correct, but after 2012.  So whereas the  
14     cutting of the Seventh Lake Mountain Trail was largely cut  
15     out.  The trees were cut in 2012.  I believe that the  
16     Gilmantown Trail and the Wilmington Trail were cut at a point  
17     after that.

18                         MS. LEE-CLARK:  Objection, Your Honor.  We  
19     have already stipulated to when the trails were  
20     constructed.

21                         THE COURT:  So the objection is there has  
22     been testimony with regard to when he believes the  
23     cutting occurred?

24                         MS. LEE-CLARK:  I'm sorry?

1 THE COURT: So the objection is to any  
2 testimony as to when he believes the cutting occur?

3 MS. LEE-CLARK: Correct, Your Honor.

4 THE COURT: I understand your  
5 objection. There is a stipulation to that effect  
6 but he is using it to explain, I think, his  
7 difficulties in finding the stumps or alleged  
8 difficulties in finding the stumps.

9 So I will allow it solely for that  
10 purpose, but the evidence in the case will be guided  
11 by the joint stipulation between the parties as to  
12 the dates. It will not be guided in any way by his  
13 testimony, which I am only accepting for the reasons  
14 stated. Go ahead.

15 Q. Did you record any other data in the Fulcrum as part  
16 of the tree stump counting field work?

17 A. Occasionally. There were probably a few dozen times  
18 where I took pictures of extensive grassy areas or other  
19 features on the trail that I wanted to note with Fulcrum  
20 because it had a GPS capacity.

21 Q. Turning specifically to the Seventh Lake Mountain  
22 Trail. When did you undertake your field work to count the  
23 stumps on that trail?

24 A. In July and August of 2016.

1 Q. And again you followed the protocol developed by Mr.  
2 Signell?

3 A. That's correct.

4 Q. Approximately how many days were you out counting  
5 stumps?

6 A. I believe that field work took me eight days in July  
7 and August of 2016.

8 Q. I have handed you what has been marked for  
9 identification as Plaintiff's Exhibits 148, 149 and 150. Do  
10 you recognize those exhibits?

11 A. Yes, I do.

12 Q. And can you tell me what they depict in Exhibit 148  
13 first?

14 A. Yes. Exhibit 148 depicts a section in segment one  
15 on the Seventh Lake Mountain Trail that I took this past  
16 summer of 2016. It depicts an extensive area with grass and  
17 ferns that made stump location challenging.

18 Q. Exhibit 149?

19 A. 149 is another picture that I took in the summer of  
20 2016. This shows a section of the Seventh Lake Mountain  
21 Trail in segment two of that trail, and this area had been  
22 heavily graded and did not have many stumps. Although you  
23 could see by the forest on both sides there are small and  
24 large diameter trees.

1 Q. Exhibit 150. What does that depict?

2 A. Yes. Exhibit 150 is, again, the Seventh Lake  
3 Mountain Trail. A section on segment one. And, again, there  
4 are a few ferns in this picture, but it is largely a grass  
5 field. This is a stretch that had been heavily graded and  
6 due to the grading and the significant growth of grass  
7 finding all of the stumps there would have been -- was a  
8 challenging job.

9 Q. These three photos. Do they represent typical  
10 conditions where you had encountered grass and difficulty  
11 finding the stumps on the Seventh Lake Mountain Trail?

12 A. Yes, they do.

13 Q. And do these three photographs fairly and accurately  
14 depict the scenes at the time you took the photographs?

15 A. Yes, they do.

16 MS. BRAYMER: Your Honor, I move Exhibits  
17 148 and 150 into evidence.

18 MS. LEE-CLARK: I object, Your Honor, on  
19 the ground these are cumulative. We have several  
20 other pictures, similar pictures on the Seventh Lake  
21 Mountain Trail.

22 THE COURT: We do have multiple similar  
23 pictures. 148, 149 and 150 are being proffered for  
24 a different reason now so I will accept them. They

1           are accepted into evidence over your objection.

2                           (Plaintiff's Exhibits 148, 149 and 150  
3           were received in evidence.)

4 BY MS. BRAYMER:

5           Q.    You have mentioned the term grading.  How did you  
6           become acquainted with the term grading or most recently?

7           A.    I became well acquainted with the term grading in  
8           the years that I worked on the snowmobile focus group.  That  
9           was an ongoing topic of discussion.  The snowmobile focus  
10          group was not only environmental leaders working with State  
11          agencies, it also involved local government leaders and  
12          representatives from the snowmobiling community.  One of the  
13          focuses of that group was the development of the new trail  
14          system.  The snowmobile community wanted trails with large  
15          graded surfaces  --

16                           MS. LEE-CLARK: Objection.

17                           THE COURT: Sustained.

18          Q.    When was the first time you visited the Seventh Lake  
19          Mountain Trail?

20          A.    I visited the trail for the first time in the fall  
21          of October of 2012.  I had been to parts of the unit prior to  
22          the trail being constructed years before that.

23          Q.    Why did you go there in the fall of 2012?

24          A.    Sure.  As I mentioned, I had started my work with

1 Protect! in September of 2012. At the direction of the board  
2 of directors they were very concerned about this new major  
3 Class II community connector trail that was under  
4 construction, and they wanted me to go out into the field and  
5 record in pictures the construction process. Specifically  
6 looking at the number of trees that were being cut down. The  
7 level of grading that was under way. The level of bench  
8 cutting that was under way, and how wide this trail system  
9 was.

10 Q. What did you observe when you were there in 2012?

11 A. On my first trip in October of 2012 I came in from  
12 the Seventh Lake Mountain Trail boat launch area. Walked  
13 about a third of a mile on the access road to where I reached  
14 a portion of the Seventh Lake Mountain Trail at the northern  
15 end of segment one where trees had been cut, but that stretch  
16 of trail had not yet been graded.

17 I continued further where bridges were under  
18 construction. Mr. Connor was there that day with a team of  
19 people working on one of the bridges. I talked to them. I  
20 continued walking south. Eventually I reached the portion of  
21 the trail where the grading had occurred recently. The  
22 equipment was on the side of the trail. It was very easy to  
23 tell the graded sections from the non-graded sections, and  
24 then I continued on all the way to the Moose River Plains

1 Road at the very beginning of the south end of the Seventh  
2 Lake Mountain Trail. And then walked all the way back, and I  
3 took pictures all along the way.

4 Q. I have handed you what has been marked for  
5 identification as Plaintiff's Exhibit 151. Do you recognize  
6 that photograph?

7 A. Yes, I do.

8 Q. And what does that depict?

9 A. This is a photograph I took. I believe it was  
10 October 18th of 2012. This depicts a motor vehicle with a  
11 large mechanical arm. An excavator. It has the old  
12 Department of Environmental Conservation logo on it. The  
13 word Bobcat appears on it. This equipment sits at the edge  
14 of a graded and ungraded trail.

15 Behind the equipment is, behind this motor vehicle  
16 is a trail that appears to be ungraded where in the  
17 foreground is trail that is graded. I note that there is one  
18 stump on the left hand side of the picture about a third of  
19 the way from the bottom of the frame that seems to be  
20 partially dug out.

21 MS. LEE-CLARK: Objection.

22 THE COURT: What is the objection?

23 MS. LEE-CLARK: First he has not

24 established, plaintiffs have not established that



1 Mr. Bauer is an expert in grading or trail  
2 construction. Second. The photo speaks for  
3 itself.

4 THE COURT: The objection is sustained  
5 with regard to the extensive description of the  
6 photo. Go ahead.

7 Q. Which trail segment of the Seventh Lake Mountain  
8 Trail did you take this photo on?

9 A. I took this picture on segment one.

10 Q. And can you describe to us more precisely where on  
11 segment one?

12 A. If I had a map that would be helpful. A map with  
13 the bridges on it would be very helpful.

14 Q. I have handed you Court Exhibits 72, 73 and 79. I'm  
15 sorry. They are Plaintiff's Exhibits. Tell us which one you  
16 are using to identify more exactly where you were?

17 A. Looking at Exhibit Number 72. There are bridges  
18 numbered five, six, seven. It was roughly in the area near  
19 bridge -- the location somewhere around bridges five and  
20 six.

21 Q. Does this photograph fairly and accurately depict  
22 the scene at the time you took it?

23 A. Yes, it does.

24 MS. BRAYMER: Your Honor, I move Exhibit

1 151 into evidence.

2 MS. LEE-CLARK: No objection.

3 THE COURT: 151 is received into  
4 evidence.

5 (Plaintiff's Exhibit 151 received in  
6 evidence.)

7 Q. Can you describe the state of the trail in the  
8 foreground of the photo?

9 MS. LEE-CLARK: Objection, Your  
10 Honor. This is what we just --

11 THE COURT: I assume it is a preliminary  
12 question so I will allow it. You may answer.

13 A. It is disturbed, having been recently graded.

14 Q. And you were attempting to testify earlier about  
15 something on the left hand side of the photograph. What was  
16 on there?

17 A. A stump on the edge of the trail.

18 Q. From your vantage point as a photographer what was  
19 on the other side of the white machine?

20 A. Behind the white machine is more of the Seventh Lake  
21 Mountain Trail that had not yet been graded.

22 Q. Walking the trail near this area what did you  
23 observe along the side of the trail?

24 A. That day that I was out there there were -- I walked

1 along about two miles of trail that had been cut out but not  
2 yet graded. Then I reached this section where the grading  
3 began. The trail is very different in the sections where  
4 there had been active grading and active bench cutting than  
5 in the sections that had just been recently cut. Where the  
6 trees had just been recently cut down.

7 Q. What were those differences?

8 A. The differences had to do with the surface of the  
9 trail tread. The areas where there had been extensive work  
10 on the trail tread for grading purposes. The ground was  
11 rutted. It was recently churned up. It was recently  
12 disturbed. It had the appearance consistent with what we see  
13 in picture 151.

14 Q. In the foreground of that photo?

15 A. In the foreground of that photo. Yes.

16 Q. How wide was the area of the freshly disturbed  
17 trail?

18 A. It was in the nine to 12 foot range.

19 Q. Are you familiar with the work plan of the Seventh  
20 Lake Mountain Trail?

21 A. I am familiar with the work plan, but it has gone  
22 through a number of modifications. So I believe there are a  
23 number of different work plans for the different sections of  
24 the Seventh Lake Mountain Trail.

1 Q. I will hand you what has been marked as a Court  
2 Exhibit, Defendant's Exhibit AD. That copy of the exhibit is  
3 broken down into segments. I would like you to turn to the  
4 section talking about segment one of the trail. Turn to  
5 modification six.

6 A. Okay.

7 Q. Then within that modification six turn to page two  
8 of 19.

9 A. Yes.

10 Q. Can you please read the first sentence of paragraph  
11 three?

12 A. Is this the paragraph that begins the second  
13 reroute?

14 Q. Yes.

15 A. "The second reroute will require extensive bench  
16 cutting and some rock removal at the bottom."

17 Q. Can you turn to page five of 19?

18 A. Yes.

19 Q. Starting with the paragraph that says point nine  
20 eight.

21 A. Yes.

22 Q. Can you read that paragraph please?

23 A. Point nine eight. "There is a six inch beech to be  
24 cut and added to the tree tally. This tree will allow for

1 bench cutting to be fully cut and tapered. The other side of  
2 the trail has an outslope over a bit of ledge so moving the  
3 trail to the high side is a much safer location. The  
4 material for bench cutting can be moved forward to a low spot  
5 beyond. This will require about a 30 foot bench cut."

6 Q. Are you acquainted with what a bench cut looks  
7 like?

8 A. Yes.

9 Q. How have you become acquainted with what a bench cut  
10 looks like?

11 A. Initially from the snowmobile focus group that I  
12 participated on for several years, and then taking pictures  
13 in the field at the RCPA on Class I trails and some that had  
14 problems, and then more recently in photographing Class II  
15 trails.

16 Q. I have handed you Exhibits 152, 153 and 154. Do you  
17 recognize those exhibits?

18 A. Yes, I do.

19 Q. And what do they depict?

20 A. These three pictures are all pictures that I took in  
21 October. I believe on October 18th, 2012. They are all from  
22 segment one of the Seventh Lake Mountain Trail. Picture 152  
23 shows a section of trail with a large bench cut on the right  
24 hand side as in a trail that has been extensively graded. It

1 appears to be nine to 12 feet wide.

2 Q. Staying with Exhibit 152. You said this was segment  
3 one. Can you describe more exactly where you were when you  
4 took this photograph?

5 A. May I look at the map you previously provided?

6 Q. Please.

7 A. This is a picture in the vicinity of bridges four,  
8 five and six.

9 Q. What does Exhibit 153 depict?

10 THE COURT: 153?

11 MS. BRAYMER: Yes.

12 THE COURT: Thank you.

13 A. 153 is a picture, again, that I took on October  
14 18th, 2012. It shows a section further south of picture  
15 152. It is also on the Seventh Lake Mountain Trail in  
16 segment one. It shows an area where there has been extensive  
17 grading, and there appears to be water that is pooled in the  
18 freshly graded area and there are extensive ruts that can be  
19 clearly identified. The trail appears to be nine to 12 feet  
20 wide.

21 Q. And what does Exhibit 154 depict?

22 A. 154 is even further south on the Seventh Lake  
23 Mountain Trail. It depicts a section of trail where there  
24 has been -- approaching a turn where there has been extensive

1 bench cutting on the left hand side of the trail and  
2 extensive grading on the trail surface. The trail appears to  
3 be nine to 12 feet wide and the surface is then extensively  
4 disturbed.

5 Q. Do these three photos fairly and accurately depict  
6 the scene at the time you took the photos?

7 A. Yes, they do.

8 MS. BRAYMER: I move Exhibits 152, 153 and  
9 154 into evidence.

10 MS. LEE-CLARK: No objection, Your Honor.

11 THE COURT: 152 to 154 are received in  
12 evidence.

13 MS. BRAYMER: And 153 Your Honor.

14 THE COURT: I said 152 to 154. To be  
15 clear 152, 153 and 154.

16 (Plaintiff's Exhibits 152, 153 and 154  
17 were received in evidence.)

18 BY MS. BRAYMER:

19 Q. Mr. Bauer, did you find any other graded sections on  
20 the Seventh Lake Mountain Trail in 2012?

21 THE COURT: Any other did you say graded?

22 Q. Graded sections. Yes. In addition to the sections  
23 that you photographed with these three photographs that were  
24 just admitted?

1           A.    Yes.  On the day that I visited the trail in 2012  
2 all of segment one, which I believe is roughly five and a  
3 half miles or so, had been cut out and probably two-thirds or  
4 70 to 75 percent of the trail heading south to north had  
5 been -- there had been active grading on the majority of the  
6 trail.

7           Q.    Did those places where you saw grading have an  
8 appearance similar to that shown in these three exhibits?

9           A.    Yes.  These three exhibits are very representative  
10 of the condition of the trail in 2012 and the extensive  
11 grading that had taken place.

12          Q.    Did you find any other graded sections on the  
13 Seventh Lake Mountain Trail when you visited later on in  
14 2016?  And not just with segment one, if you traveled on the  
15 other two segments.

16          A.    Okay.  I did return to the Seventh Lake Mountain  
17 Trail prior to 2016 and witnessed grading.  Areas that had  
18 been graded.

19                   MS. LEE-CLARK:  Objection.

20                   THE COURT:  What is the objection?

21                   MS. LEE-CLARK:  Not responsive to the  
22 question.

23                   THE COURT:  Sustained.

24          Q.    Did you find any other graded sections on the



1 Seventh Lake Mountain Trail when you visited that trail after  
2 2012?

3 A. Yes, I did.

4 Q. What segments did you find the graded sections on?

5 A. In November of 2012 I visited segment two and there  
6 had been extensive grading on segment two.

7 In 2013 I went back and visited segment three and  
8 segment two. Mostly when the grading had been completed.  
9 They were still undertaking bridge construction at that  
10 time.

11 Then, of course, in 2016 I walked the entire trail  
12 when I did the stump count and saw numerous areas from the  
13 south end to the north end that had experienced grading.

14 Q. Did you find any other bench cuts on the Seventh  
15 Lake Mountain Trail when you visited it?

16 A. Yes. Bench cuts such as depicted in 152 and Exhibit  
17 154 are regular features on the Seventh Lake Mountain  
18 Trail.

19 Q. How long are the bench cuts typically?

20 A. They vary in length. The bench cut, for instance,  
21 on 152 starts at the bottom of the picture a few inches high  
22 and by the center of the picture it is probably a few feet in  
23 height running there 15 to 20 feet.

24 The bench cut in picture 154 on the left hand side.

1 This picture does not show the entire bench cut, but that  
2 bench cut is probably a 20 foot section. I know from  
3 reviewing the work plans there are many references to 20 and  
4 30 foot bench cuts and bench cuts even bigger than that.

5 Q. Did you observe any bridges on the Seventh Lake  
6 Mountain Trail?

7 A. I did.

8 Q. I have handed you Exhibit 155. Do you recognize  
9 that?

10 A. I do.

11 Q. What does that depict?

12 A. This depicts a bridge under construction on Seventh  
13 Lake Mountain Trail on section one. Looking at Plaintiff's  
14 Exhibit 72 it is one of the northern most bridges on that  
15 section. I believe it is either seven, eight or nine. You  
16 can see the large telephone pole style beams that serve as  
17 the undergirding support for the bridge. You can see that  
18 the trail --

19 MS. LEE-CLARK: Objection.

20 THE COURT: What is the objection?

21 Sustained. Sorry. Go ahead.

22 MS. BRAYMER: Your Honor did you say  
23 sustained?

24 THE COURT: I sustained because he is



1 THE COURT: Overruled.

2 Q. Do you know who his employer is?

3 MS. LEE-CLARK: Objection.

4 THE COURT: Overruled. You may answer.

5 A. Tate works for the Department of Environmental  
6 Conservation. I don't know his job title at that point, but  
7 it is my understanding based on review of the work plans that  
8 he was basically the project director for actually building  
9 the Seventh Lake Mountain Trail. The other individuals were  
10 part of the trail crew.

11 Q. What else does this picture show?

12 A. This picture shows a typical Class II community  
13 connector bridge under construction. There are six large  
14 telephone pole style beams that have been stretched across  
15 what appears to be a large stream, and the bridge is actively  
16 under construction. I see exposed earth around the  
17 bridge. I don't see any silk fencing around the bridge, but  
18 I do see exposed earth.

19 Q. From your observation how wide was the stream?

20 A. That stream is probably three or four feet. The  
21 total width of the stream channel. A similar depth.

22 Q. I have handed you Exhibits 156 and 157. Do you  
23 recognize those?

24 A. Yes, I do.

1 Q. And what are they? Without getting into detail.

2 A. Picture 156 is a section of the Seventh Lake  
3 Mountain Trail that I photographed on I believe it was  
4 October 18th, 2012.

5 Picture 157 is a section of the access road to the  
6 Seventh Lake Mountain Trail. The Seventh Lake Mountain Trail  
7 boat launch that I photographed in mid-November of 2012.

8 Q. With respect to 156 can you give us more precisely  
9 the location in segment one?

10 A. Yes. Again, this picture has an all terrain vehicle  
11 parked on the side of the trail.

12 MS. LEE-CLARK: Objection.

13 THE COURT: I will overrule the objection  
14 until I hear where he is going with the answer.

15 A. This is in the same. This was close by the motor  
16 vehicle that was pictured in a previous exhibit.

17 Q. Would that be 151?

18 A. Yes. 151 which was in the neighborhood of bridges  
19 four, five and six.

20 THE COURT: The objection is overruled.

21 Q. Do these two photographs fairly and accurately  
22 depict the scene at the time you took the photographs?

23 A. Yes, they do.

24 MS. BRAYMER: I move Exhibits 156 and 157

1           into evidence.

2                       MS. LEE-CLARK: I object to 157 because it  
3           is part of the access trail. It is not actually  
4           part -- I believe it is not part of the Seventh Lake  
5           Mountain Trail, and so it is not part of this  
6           case.

7                       THE COURT: Ms. Braymer.

8                       MS. LEE-CLARK: It is an access road rather  
9           than a trail.

10                      MS. BRAYMER: This photo depicts equipment  
11           and construction materials used on the Seventh Lake  
12           Mountain Trail.

13                      THE COURT: Did he testify to that?

14                      MS. BRAYMER: Yes.

15                      THE COURT: It depicted the equipment he  
16           saw being used?

17                      MS. BRAYMER: Yes.

18                      THE COURT: You are proffering it solely  
19           for that purpose?

20                      MS. BRAYMER: These are examples of the  
21           equipment and materials that they used.

22                      MS. LEE-CLARK: Your Honor, I don't believe  
23           that he testified that these were materials used.

24                      MS. BRAYMER: Can you repeat that?

1                   THE COURT: She stated she didn't believe  
2                   he testified that these were materials  
3                   used. Whatever is depicted on 157 which I have not  
4                   yet seen. Do you want to address that in his  
5                   testimony?

6                   MS. BRAYMER: Yes.

7                   THE COURT: Go ahead.

8                   Exhibit 156 is received in evidence. We  
9                   will hold off for a moment on marking it until you  
10                  are finished, if you are going to, with 157. Go  
11                  ahead.

12                  (Plaintiff's Exhibit 156 was received in  
13                  evidence.)

14                  BY MS. BRAYMER:

15                  Q. Mr. Bauer with respect to 157. What are the  
16                  vehicles shown in that photograph?

17                  A. They are on the side of the trail. They are both  
18                  all terrain vehicles and trailers that were used to carry the  
19                  long telephone pole style beams for bridge construction as  
20                  well as the larger beams and decking for bridges. This  
21                  picture was taken right across the street from the Seventh  
22                  Lake boat launch, which during the construction of the  
23                  Seventh Lake Mountain Trail served as a stockpiling location  
24                  for lots of different materials.

1 MS. LEE-CLARK: Objection.

2 THE COURT: What is the objection?

3 MS. LEE-CLARK: The basis of his  
4 knowledge. If he was there throughout the entire  
5 construction of the Seventh Lake Mountain Trail and  
6 also just to reiterate this is a road. Not a  
7 trail.

8 THE COURT: Are we clear on that? I wasn't  
9 clear on that. I want to be sure that the record is  
10 clear with regard to your position, which has not  
11 been controverted, that this is not part of the  
12 trail.

13 It is being proffered, as I understand it,  
14 solely to show the equipment and the materials  
15 used. I don't know that Ms. Braymer was going to  
16 ask questions of this witness in order to tie the  
17 materials and the equipment that he has testified to  
18 to his knowledge of their use on the trail.

19 So I will overrule your objection for now  
20 and give Ms. Braymer an opportunity to tie them to  
21 his knowledge.

22 Go ahead Ms. Braymer.

23 MS. BRAYMER: Can I please have the last  
24 question read back?



1 THE COURT: Yes.

2 (Reporter read the last question.)

3 Q. I believe you already answered that question. Mr.  
4 Bauer, is the vehicle in the foreground of 157 the same or  
5 similar to the vehicle in 156?

6 A. Yes.

7 Q. And you mentioned the stockpile area. Did you  
8 observe that yourself?

9 A. Yes. Several times.

10 Q. What else was stored there? What materials were  
11 stored there?

12 A. At different times it stored materials, as I  
13 previously talked about, for the bridges. At other times it  
14 had stacks or bales of hay. Other times it had piles of  
15 gravel.

16 Q. And with respect to the bridges. You testified  
17 previously about 155 that you observed that bridge. Did you  
18 observe decking on those bridges?

19 A. I observed decking used on other bridges on the  
20 Seventh Lake Mountain Trail, but the bridge that was under  
21 construction that you just referenced.

22 Q. 155?

23 A. 155. I believe Mr. Connor is sitting on decking  
24 materials.

1 Q. Does the material stacked up in Exhibit 157 appear  
2 to be or is the same as the decking material in Exhibit  
3 155?

4 A. It appears to be similar. Yes.

5 MS. BRAYMER: Your Honor, I move Exhibit  
6 157 into evidence.

7 MS. LEE-CLARK: I have no further  
8 objection.

9 THE COURT: 157 is received into  
10 evidence.

11 (Plaintiff's Exhibit 157 was received in  
12 evidence.)

13 Q. Now Mr. Bauer what did you observe and what is shown  
14 in Exhibit 156?

15 A. 156 shows a freshly disturbed part of the Seventh  
16 Lake Mountain Trail. There are large ruts in the recently  
17 disturbed and graded trail surface.

18 MS. LEE-CLARK: Objection.

19 THE COURT: Overruled. You may continue.

20 A. You can also see large tracks. Large all terrain  
21 vehicle tracks.

22 MS. LEE-CLARK: Objection.

23 THE COURT: Sustained.

24 Q. Mr. Bauer do you have experience identifying and

1 documenting ATV damage and ruts on trails in the  
2 Adirondacks?

3 A. Yes, I do.

4 Q. Can you describe that experience?

5 MS. LEE-CLARK: Objection.

6 THE COURT: What is the objection?

7 MS. LEE-CLARK: Relevance, and it is  
8 outside the scope.

9 THE COURT: Sustained.

10 Q. What does Exhibit 157 depict and what did you  
11 observe that is depicted in Exhibit 157?

12 A. This is a part of a corridor that was -- that is  
13 not far from where the ATV that says Polaris is  
14 parked. There is a gate on Route 28. This is a snowmobile  
15 trail, a foot trail and a hiking trail. This is not a DEC  
16 road.

17 MS. LEE-CLARK: Objection, Your Honor.

18 THE COURT: What is the objection?

19 MS. LEE-CLARK: I believe this is the  
20 access road to the Seventh Lake Mountain Trail, and  
21 unless there is a document that he can point to  
22 saying that this is not a DEC administrative road.

23 THE COURT: Okay. So functionally it is  
24 two objections. One that he is wrong, and the other

1 is that he doesn't have a basis for this  
2 statement.

3 MS. LEE-CLARK: Correct.

4 THE COURT: I will sustain the second  
5 objection. If you can elicit a basis from Mr. Bauer  
6 for the statement of course I will allow it

7 Q. Mr. Bauer did you see any signs when you were  
8 visiting this access road?

9 A. I can't recall the signs at the end of the access  
10 road.

11 Q. What is your basis for your description of the road  
12 and its administrative status?

13 A. The gate. Every time that I approached this trail  
14 the gate was locked. While it is quite evident that the DEC  
15 staff utilized this as an access road, it is not a public  
16 road for the public to drive on. This is an access road that  
17 DEC authorized for administrative purposes to facilitate the  
18 construction of the trail.

19 MS. LEE-CLARK: Objection, Your Honor.

20 THE COURT: The objection is sustained with  
21 regard to all of Mr. Bauer's answers after the point  
22 where he said it is quite evident.

23 Go ahead. I think you have elicited  
24 sufficient to make your point with regard to a

1           locked gate for what it is worth, but I don't know  
2           your point the way you do. If you want to go  
3           further please go ahead.

4                       MS. BRAYMER: Thank you.

5           Q.     Moving onto the Newcomb to Minerva Trail. When did  
6           you undertake your field work to count stumps cut on that  
7           trail?

8           A.     The one section of the Newcomb to Minerva Trail  
9           where I counted stumps. That was the first section under Mr.  
10          Signell's direction that I counted stumps, and that was in  
11          the first half of 2016.

12          Q.     Just remind us. Which segment of the Newcomb to  
13          Minerva Trail?

14          A.     I counted stumps from the Santanoni historic area to  
15          Lake Harris. Roughly two miles or so.

16          Q.     Did you follow the protocol developed by Mr.  
17          Signell?

18          A.     Yes, I did.

19          Q.     Approximately how many days were you out counting  
20          tree stumps on that segment?

21          A.     One day.

22          Q.     Were you able to count the total number of trees  
23          that were cut on this trail?

24          A.     Yes. Except in the areas that had been heavily

1 graded. There were no stumps to be found.

2 Q. I have handed you Exhibit 158. Do you recognize  
3 that exhibit?

4 A. Yes, I do.

5 Q. And what does it depict generally?

6 A. This generally depicts a large, all terrain vehicle  
7 in the background and an excavator with a large mechanical  
8 arm and a Kubota brand name in the foreground.

9 Q. Did you take this photo?

10 A. Yes.

11 Q. When was that?

12 A. I took this photograph in the fall of 2015. This is  
13 at a location in the Harris Lake intensive use area  
14 campground about 30 or 40 feet from the end. From the point  
15 in which the Class II community connector trail comes into  
16 the intensive use area. Formal campground area where it  
17 accesses the campground road.

18 Q. Does this photo fairly and accurately depict the  
19 scene at the time you took it?

20 A. Yes, it does.

21 MS. BRAYMER: I move Exhibit 158  
22 evidence.

23 MS. LEE-CLARK: No objection.

24 THE COURT: 158 is received into

1 evidence.

2 (Plaintiff's Exhibit 158 received in  
3 evidence.)

4 Q. At the time that you visited this trail segment what  
5 did you observe?

6 A. This was on a weekend and so there were no crews  
7 working that day. So the equipment was off the trail and  
8 parked. I observed an area, a trail that had been freshly  
9 graded. Bridges were still under construction. But grading  
10 had been recently done in the weeks before.

11 MS. LEE-CLARK: Objection.

12 THE COURT: Sustained absent a further  
13 basis.

14 Q. What did you observe about the trail surface?

15 A. The trail surface on the day that I visited was  
16 heavily graded.

17 Q. What is on the blade of the orange piece of  
18 machinery?

19 A. That appears to be --

20 MS. LEE-CLARK: Objection.

21 THE COURT: To the extent the answer is  
22 commensurate with "that appears to be" the objection  
23 is sustained. You are talking about the back blade  
24 or the front shovel part?

1 Q. Mr. Bauer what is on the front shovel blade of the  
2 orange machine?

3 A. There is dirt coating the blade, and the top of the  
4 blade.

5 THE COURT: I'm referring to the bucket  
6 thing. The front shovel. You refer to it however  
7 you want.

8 MS. BRAYMER: I'm referring to the bucket  
9 thing.

10 THE COURT: Okay. Ask the question again

11 Q. So the flat thing that is down on the ground that is  
12 the width of the orange machine. What is on that part of the  
13 equipment?

14 A. That piece of equipment is caked with dirt.

15 Q. And in addition to the time you went to this section  
16 on the Newcomb to Minerva Trail to count stumps, did you  
17 visit this section at any other time?

18 A. Yes. I visited the section a few different times  
19 while it was under construction in the fall of 2015.

20 Q. Did you document anything when you went there?

21 A. I took pictures. I went to this trail several times  
22 in 2015 and took pictures while it was under construction,  
23 and then I took pictures again in 2016 after construction had  
24 been completed and it was -- parts of it were replanted.



1 Q. I have handed you Exhibit 159 and Exhibit 160. Do  
2 you recognize those?

3 A. Yes, I do. These are photographs that I took.

4 Q. When did you take Exhibit 159?

5 A. I took these in the late spring of 2016.

6 Q. Both of those?

7 A. Yes. Both 159 and 160.

8 MS. LEE-CLARK: Was that 2015 or 2016?

9 THE COURT: You may answer.

10 THE WITNESS: I took the pictures depicted  
11 in Exhibits 159 and 160 in the late spring of  
12 2016.

13 MS. LEE-CLARK: Thank you.

14 BY MS. BRAYMER:

15 Q. This was on the Newcomb to Minerva trail. Which  
16 segment exactly?

17 A. This is on the second half of the trail. This is on  
18 the section that runs from Camp Santanoni to Harris  
19 Lake. This is on the Harris Lake side of the Harris Lake end  
20 of the trail.

21 Q. Do these photographs fairly and accurately depict  
22 the scene at the time you took them?

23 A. Yes, they do.

24 MS. BRAYMER: I am moving Exhibits 159 and

1 160 into evidence.

2 MS. LEE-CLARK: No objection.

3 THE COURT: 159 and 160 are received into  
4 evidence.

5 (Plaintiff's Exhibits 159 and 160 were  
6 received in evidence.)

7 Q. Based on the time you visited what did you observe  
8 and what is shown in these photographs?

9 A. Starting with Exhibit 159. It is quite evident  
10 there is a large bench cut --

11 MS. LEE-CLARK: Objection.

12 THE COURT: Overruled.

13 A. It is quite evident there is a large bench cut on  
14 the right hand side of the picture that extends for most of  
15 the trail section that you can see in this picture. 30 or 40  
16 feet. The trail shows newly grown grass that had grown in  
17 2016.

18 MS. LEE-CLARK: Objection.

19 THE COURT: Sustained. You may continue

20 A. You can see straw that had been placed on the  
21 trail. It's not native to the area. The straw was placed in  
22 2015.

23 MS. LEE-CLARK: Objection.

24 THE COURT: Sustained. You may continue.

1           A.    There is lots of grass growing in the trail corridor  
2 on 159.  There appears to be straw in the picture of  
3 159.  You can see trees or sections of trees that had been  
4 cut on the left hand side.  You can see deep ruts down the  
5 center of the picture.

6                       MS. LEE-CLARK:  Objection, Your Honor.

7                       THE COURT:  Overruled.

8           A.    That appear to be ruts that have equal spacing of  
9 that of some type of motor vehicle.

10                      MS. LEE-CLARK:  Objection.

11                      THE COURT:  Sustained.

12           A.    You can see two deep ruts in the picture.  This is  
13 in my observations and my visits to this part of the Harris  
14 Lake trail, this is a very typical view of what the trail  
15 looks like.  Picture 160 --

16           Q.    Hold on.  I want to ask you about 156.

17                      THE COURT:  156 or 159?

18                      MS. BRAYMER:  I'm sorry.  159.

19           Q.    How high was the grass that you observed?

20           A.    About six inches.

21           Q.    Do you know when the straw was placed on that  
22 trail?

23           A.    Yes.  In the fall of 2015.

24                      MS. LEE-CLARK:  Objection.

1 THE COURT: Sustained.

2 Q. You said that you know when the straw was  
3 placed. How do you know when the straw was placed on that  
4 trail?

5 A. I believe I have photographs from the fall of 2017  
6 that depict, that show lots of straw on the trail.

7 Q. From your observations what is depicted in Exhibit  
8 160?

9 A. 160 like 159 is an area that appears to have been  
10 heavily graded. This was an area where counting stumps was  
11 very difficult, because there were not many stumps present  
12 due to the level of grading. You can see small trees on and  
13 larger trees on both sides of the trail. So this was a trail  
14 corridor where trees were present.

15 MS. LEE-CLARK: Objection.

16 THE COURT: Sustained.

17 A. Given the level of grading in both 160 and 159  
18 counting stumps was very difficult. I would point out that  
19 in picture 159 you can see the slope on the right side of the  
20 trail. The bench cut interrupts that slope and a lot of soil  
21 was removed.

22 MS. LEE-CLARK: Objection.

23 THE COURT: Sustained.

24 MS. BRAYMER: Your Honor, I want a time

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check.

THE COURT: I think we are at a good point to stop. If you want to go for a few more moments with Mr. Bauer that is fine.

MS. BRAYMER: Whatever you want. Let's go for a few more moments or we can stop.

THE COURT: How much further do you have with Mr. Bauer?

MS. BRAYMER: I have more than I can get done in a few minutes.

THE COURT: We will stop and we will recommence tomorrow at one o'clock folks.

MS. BRAYMER: Thank you.

THE COURT: Have a good evening.

(Recess.)

WITNESSES

FOR THE PLAINTIFF:

DIRECT

CROSS

REDIRECT

RECROSS

WILLIAM R. AMADON

By Mr. Caffry

750

792

By Ms. Lee-Clark

790

--

PETER BAUER

By Ms. Braymer

793

PLAINTIFF'S EXHIBITS:

ID

EVIDENCE

#126 Photo - T Lake Trail		761
#127 Photo - T Lake Trail		761
#128 Photo - T Lake Trail		761
#129 Photo - T Lake Trail		761
#130 Photo - T Lake Trail		761
#131 Photo - T Lake Trail		761
#132 Photo - T Lake Trail		761
#133 Photo - T Lake Trail		761
#134 Photo - T Lake Trail		761
#144 Photo - NMT: Hyslop To Roosevelt Trail		764
#145 Photo - CATS Field and Forest Trail		766
#146 Photo - CATS Field and Forest Trail		766
#147 Photo - Signell measuring stump		808
#148 Photo - SLMT		816
#149 Photo - SLMT		816
#150 Photo - SLMT		816
#151 Photo - SLMT		820
#152 Photo - SLMT		825
#153 Photo - SLMT		825
#154 Photo - SLMT		825
#155 Photo - SLMT		829
#156 Photo - SLMT		833
#157 Photo - SLMT		836
#158 Photo - Newcomb to Minerva Kubota		841
#159 Photo - Newcomb to Minerva Trail		844
#160 Photo - Newcomb to Minerva Trail		844
#162 Photo - stump		809
#163 Photo - stump		809
#164 Transcript excerpt - Walt Linck	750	
#165 Four photographs	750	

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 in Albany, New York on March 21st, 2017.

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