

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

Index No.
2137-13

-against-

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

Defendants-Respondents.

BEFORE: HON. GERALD W. CONNOLLY
Acting Supreme Court Justice

APPEARANCES:

For the Plaintiff:

JOHN W. CAFFRY, ESQUIRE
CLAUDIA K. BRAYMER, ESQUIRE
WILLIAM F. DEMAREST, III, ESQUIRE

For the Defendants:

LORETTA SIMON, ESQUIRE
MEREDITH G. LEE-CLARK, ESQUIRE
Assistant Attorneys General

Transcript of NON-JURY TRIAL taken in the
above matter held at the Albany County Courthouse,
Albany, New York.

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1 (Proceedings continued in open court on
2 March 23, 2017, at 1:35 p.m.)

3 THE COURT: Counsel, all set?

4 MS. SIMON: Yes, your Honor.

5 MR. CAFFRY: Yes, your Honor.

6 THE COURT: So, Counsel, you've redacted
7 AJ to both counsel's satisfaction?

8 MS. SIMON: Yes. To mine.

9 THE COURT: All right. So with your
10 permission, we will return the exhibit that was
11 previously marked as AJ out of the Court's
12 possession into you and you will substitute the
13 redacted version. Is that acceptable?

14 MS. SIMON: Okay.

15 THE COURT: We'll do that.

16 (Defendant's Exhibit AJ received into
17 evidence.)

18 THE COURT: Go ahead, Miss Simon.

19 MS. SIMON: I think we're going to read
20 the rest of the stip into the record first before
21 we start.

22 THE COURT: Yes. This is the
23 stipulation that was referenced this morning?

24 MS. SIMON: Yes, your Honor.

1 THE COURT: Good.

2 MR. CAFFRY: Yes, your Honor. This is
3 basically paragraph three of what the parties had
4 agreed to and the wording has now been refined to
5 the satisfaction of both parties.

6 Three. These exhibits were offered and
7 admitted into evidence on the subject of the
8 internal procedures and standards upon which
9 defendants' staff relied, among other items, in
10 their design siting and construction of Class II
11 community connector trails.

12 THE COURT: Is that correct, Miss Simon?

13 MS. SIMON: Yes, it is.

14 THE COURT: That's the agreed-upon
15 stipulation?

16 MS. SIMON: Along with what was read
17 this morning.

18 THE COURT: Then as stated on the record
19 it is received as a stipulation by the parties.

20 Okay. Go ahead, Miss Simon, you may
21 continue with Mr. Connor.

22 MS. SIMON: Thank you, your Honor.

23 (Document handed to the witness.)

24

1 DIRECT EXAMINATION (Cont'd)

2 BY MS. SIMON:

3 Q Mr. Connor, can we look again at Exhibit AJ,
4 photo one, and can you tell me what this photo depicts?

5 A This photo depicts a section of a bench cut,
6 a full bench cut on a trail. There is, if you look in
7 the center of the photo where there appears to be an
8 orange color, the orange color is on the right-hand
9 side of the trail tread and then it proceeds to the
10 left to where there is some sunlight on the soil and
11 that is the trail tread. And then from that point on
12 the left where the sunlight is up to the green
13 vegetation, continuing left, is the up-slope that I had
14 spoke about regarding the finishing portion of cutting
15 a bench cut.

16 The trail tread that is adjacent to the
17 orange marking that you're seeing in the center is
18 designed to be slightly tilted to the downhill side so
19 that any moisture or water that comes on that trail
20 will run across the trail tread and off into the lower
21 side so that there is no erosion. And also, by having
22 that water off the trail tread, the soil, the mineral
23 soil in the trail tread, is dry and less susceptible to
24 erosion from use, hikers, feet hiking on the trail

1 tread.

2 Q And, Mr. Connor, is this a feature you used
3 in construction of the Class II trail at Seventh Lake
4 Mountain?

5 A Yes, ma'am.

6 Q Is this also a feature that you used on
7 hiking and foot trails in the forest preserve?

8 A Yes, ma'am.

9 Q Is this also a feature that's used on other
10 kinds of trails such as cross country ski trails?

11 A On a ski trail, if you were going to do tread
12 development and go across the side slope to avoid a
13 double fall line in the trail, you would use the same
14 exact method.

15 Q Mr. Connor, with regard to bench cutting, did
16 you hear the testimony of plaintiff's witness,
17 Mr. Amadon?

18 A Yes, ma'am.

19 Q And did you hear Mr. Amadon testify about a
20 rake bench cut?

21 A I heard him testify about a rake cut.

22 Q And have you ever heard of that? What is it?

23 A I have no clue. I've never heard that term
24 used before.

1 Q Okay, thank you. Mr. Connor, looking at
2 photo two of Exhibit AJ, could you tell us what this
3 photo depicts?

4 A On the left-hand side of the trail, the
5 lighter brown color where you see a person standing, is
6 a raised section of trail referred to as turnpiking.
7 And you will notice to the right of the individual
8 there is, in the center of the photo, there is what
9 appears to be a line of rocks. Turnpiking is a
10 technique that is used in existing trails that have
11 poor drainage or areas where you're going to rout a
12 trail where you're not able to get up on a side slope
13 or don't have readily-available mineral soil and good
14 drainage to get water away from the trail tread.

15 So in this case, on this particular
16 trail, this was an old Jeep road. Over the years it
17 was heavily eroded and impacted. We took rocks that
18 had been previously removed from the trail tread, put
19 them back into the trail tread to create the foundation
20 to raise the trail tread higher than the adjacent area
21 so that any rain or water would drain off the trail
22 tread or that the soil and rock that made up the base
23 of the trail tread would be physically higher than the
24 adjacent micro water table so that it would drain out.

1 And to the right of the rocks you see a drainage ditch
2 that we created.

3 Q And what was the purpose of putting these
4 features here?

5 A This was to -- the primary reason for this
6 was to halt the width expansion of the trail. When
7 users, regardless of the type of user, come to muddy
8 sections, they go to the adjacent sides of the trail
9 and create greater impacts instead of walking directly
10 through the mud. So by creating a durable and dry
11 surface for the hikers or users to go through, you
12 create the use and limit the impacts to the surrounding
13 forest preserve.

14 Q Is this a feature used on Class II trails and
15 did you use it on the Seventh Lake Mountain Trail?

16 A Yes. This is a feature that would be used on
17 a Class II trail and there are portions of variations
18 of this technique used on the Seventh Lake Mountain
19 Trail.

20 Q Is this also a feature used on hiking and/or
21 foot trails?

22 A Yes, ma'am.

23 Q Is this feature used in any other trail type
24 such as cross country ski trails?

1 A Depending on the design and layout of the
2 trail, if there were impacts to winter use -- if winter
3 use was having impacts on the area, you may use this
4 technique on a cross country ski trail.

5 Q Turning your attention to photo three, what
6 does this photo show?

7 A This shows another example of turnpiking.
8 This photo is characteristic of what is referred to as
9 a dugway trail or road, and that's a case where the
10 original route or trail was developed by pushing
11 through a mound of dirt or up a hillside to expose
12 mineral soil and effectively creating a ditch and it
13 became the low point of the surrounding area so water
14 would flow into it. This technique of road and trail
15 construction is no longer used but this trail was very
16 old, so in this case we used the turnpiking technique
17 in conjunction with uphill ditching, and the uphill
18 ditching, which is indicated on the right side of the
19 light brown trail tread, is designed to catch any
20 surface water coming from the uphill side and transport
21 it down along the trail tread, and the reason that we
22 are doing that is because the adjacent land on the
23 opposite side of the ditch is also high so --

24 Q I'm sorry. I didn't hear you. Is also?

1 A Is also elevated above the trail tread so
2 there's no way to get the drainage to go directly to
3 the side of the trail.

4 Q Thank you. Turning your attention to photo
5 four, could you say what this photo is? Depicts. I'm
6 sorry. What it depicts.

7 A This shows a ladder system that was put on a
8 trail, in this case the Orebed Trail going up to the
9 junction of the range trail between Gothics Mountain
10 and Saddleback Mountain.

11 Q And what's the purpose of this feature?

12 A We regularly use structures similar to this
13 to concentrate use and travel by users. Without this
14 ladder in this location, hikers would come to the
15 bottom of the slope, and if they were not confident of
16 their ability to climb up the rock face or up the
17 section of trail, they would scurry to the left and
18 pull themselves up along the edge where the vegetation
19 and soils are, and as they did that, they would expand
20 the width of that opening over time, erosion. And this
21 is something that is used throughout multiple types of
22 hiking trails and other variations of this to
23 concentrate use to prevent additional erosion adjacent
24 to the trail corridor.

1 Q Thank you. Mr. Connor, can you turn to photo
2 five. Could you tell me what this depicts?

3 A This is the shore of Avalanche Lake, and in
4 the bottom right-hand corner you see a walkway or
5 bridge section and then that comes into the bottom of
6 the ladder that goes up the boulder and over.

7 Avalanche Lake --

8 MR. CAFFRY: Objection, your Honor.

9 There's nothing that indicates this is relevant to
10 a Class II snowmobile trail. It shows a ladder
11 going over a boulder. Snowmobile trails don't do
12 that.

13 THE COURT: The objection is overruled
14 on the presumption that this is going to be tied
15 in as examples of features put in by the DEC on
16 foot trails. Is that correct?

17 MS. SIMON: That is correct, your Honor.

18 THE COURT: The objection is overruled.

19 Go ahead. You may continue.

20 A So in the case of this location and adjacent
21 areas on the trail along Avalanche Lake, it is
22 characterized by large rocks and boulders. If the
23 trail was developed without any of these structures, as
24 hikers come to these obstacles, similar to what I

1 stated they would do on the rock slide, they would try
2 to go and find their own route not paying any attention
3 to the vegetation or soils they would impact. So by
4 having this facility here, we concentrate the use and
5 allow for minimal impact to the adjacent Forest
6 Preserve.

7 Q And so is it your testimony that the goal is
8 to keep the user on the trail?

9 A Yes.

10 Q Thank you. Could you turn to page six and
11 tell me what this depicts?

12 A This is a section of trail that is located
13 between the Upper Works Trailhead in the town of
14 Newcomb, heading north into Indian Pass, and
15 historically this was a logging skid road that was used
16 in modern times when the previous landowner conducted
17 logging operations. The trail, when it was used or
18 when the trail easement was developed for recreational
19 access across the private land, they just marked the
20 existing route of the skid trail. When this property
21 became Forest Preserve, we continued to just mark the
22 old skid trail. As a result of it, there was never any
23 tread development and this old woods road had poor
24 drainage and no defined trail tread so people would

1 hike in whatever method across the trail corridor to
2 try to stay dry. By concentrating our work and
3 developing turnpiking and cross drainage, we were able
4 to allow users to travel on this muddy and wet section
5 of trail in a very specific place and lessen the
6 impacts on the adjacent area, and this will allow the
7 previously-impacted area of the old woods road to start
8 to regenerate because people will not be varying off
9 the trail.

10 Q And in your experience does DEC use existing
11 skid roads for trails in a Forest Preserve?

12 A Unfortunately we do have a history of using
13 old woods roads and skid roads on the Forest Preserve.

14 Q And why do you say unfortunately?

15 A Traditionally there are two different methods
16 that were utilized on the Forest Preserve for trail
17 development. Back a hundred years or so, as people
18 were first going to hike mountains, their primary
19 interest was to go from point A to the summit and,
20 generally speaking, they went in the fastest, shortest
21 route possible and that developed the history of what
22 we refer to as fall line trails. The fall line trail,
23 as I mentioned earlier, is the route that the water
24 will follow. So as the hikers and users go up those

1 trails that just go straight up the slope, any
2 rainwater or snow melt will run off down that or keep
3 the trail tread wet so it will be easily erodible.

4 The second method that has been used in
5 a non-mountainous area is generally adopting an
6 existing route through the woods. And obviously there
7 is a history of activity, logging and other uses on the
8 Forest Preserve, and when we get -- when Forest
9 Preserve lands are -- when you're trying to -- excuse
10 me. Historically when they would put a trail to a
11 location, they will follow these old woods routes and
12 generally these old woods routes were not designed
13 purposefully for hiking or for all-season use. In many
14 cases the old woods routes followed the path of least
15 resistance, generally in the bottom of drainages, or
16 they were used for single-season use in the winter
17 where the intent was to freeze-in the road to make it
18 easier to prepare for logging. As a result of
19 utilizing those for hiking trails, you're saddled with
20 a oversized corridor that doesn't have any
21 purpose-built drainage or design to it. So that's why
22 I say it's --

23 Q Thank you. In terms of being oversized, are
24 they wider than some of the trails that you might have

1 constructed earlier, in the classifications you
2 designed earlier?

3 A Yes.

4 Q And in your experience what are those widths?

5 A For example, this trail that we're looking at
6 in photo six is 25- to 30-foot wide. We're looking to
7 bring that down to a trail tread that's three feet
8 wide. When we developed the Seventh Lake Mountain
9 Trail, portions of that followed old woods roads where
10 the old roadbed was up to 20-foot wide, and because of
11 the past history and how the road was developed and
12 drainage concerns, it didn't fully vegetate so there
13 were sections where the old roadbed had no trees
14 growing in it and the adjacent land next to that
15 roadbed was higher and dryer so we routed the trail
16 there to try to get away from the water.

17 Q Thank you. Finally, the seventh photo, what
18 does that depict?

19 A That depicts one type of water bar. A water
20 bar's primary purpose is to catch water that is running
21 down the trail tread in length and dump it off the
22 trail tread. Water bars can be constructed of mineral
23 soil, they can be constructed of logs or wood, though
24 that is not as sustainable as mineral soil or rocks,

1 and some places rock water bar is installed so that
2 it's a more durable surface for the water to run
3 against. And as I mentioned, water bars are one of
4 multiple different drainage features that we use to get
5 water directly off the trail that has run down the
6 trail tread.

7 Q Is the water bar a feature, then, that's used
8 on hiking and foot trails?

9 A Yes.

10 Q And is water bar a feature that's used on
11 Class II trails?

12 A Yes.

13 Q And is water bar a feature that is used on
14 other types of trails such as cross country ski trails
15 or horse trails?

16 A Yes.

17 Q Thank you. Mr. Connor, could you tell the
18 Court what trail hardening is?

19 A Trail hardening is an act similar to
20 turnpiking where the intent is to take mineral soil or
21 rock and put that on the trail tread in areas where the
22 underlying mineral soil that is the trail tread is not
23 substantial enough to hold up to the use from the
24 traffic.

1 Q Is trail hardening a feature used on hiking
2 trails?

3 A Yes.

4 Q Is trail hardening a feature used on Class II
5 trails?

6 A On a Class II trail, depending on the other
7 multiple uses, that would be approved for use on that
8 trail. Then there are sections of a Class II trail
9 inside the corridor where trail hardening would be done
10 in the exact same way with the focus of accommodating
11 the non-winter use.

12 Q Thank you. Turning your attention now to
13 another issue, Mr. Connor, what is brushing?

14 A So brushing is the act of clearing vegetation
15 out of the trail corridor. When trail workers are
16 trained in the act of brushing or blow-down removal,
17 they are told about the concept of a trail corridor
18 box. That box is effectively the trail corridor
19 cleared width and the trail corridor cleared height,
20 and the act of brushing is removing any vegetation that
21 grows adjacent to the trail tread, between the trail
22 tread and the edge of the corridor width, or pruning
23 back any branches that are growing in from outside the
24 corridor width.

1 Q Mr. Connor, do you do brushing on any hiking
2 trails?

3 A Yes.

4 Q Do you do brushing on Class II trails?

5 A Yes.

6 Q Do you do brushing on other kinds of trails
7 like cross country ski trails?

8 A Yes. Every form of trail that would go
9 through a forested area would require regular brushing.

10 Q Mr. Connor, are there certain trail
11 construction features that are used for crossing
12 waterways?

13 A Yes. There's a range of them.

14 Q Could you tell me what those are?

15 A Taking into consideration the characteristics
16 of the water crossing and the classification of the
17 trail and the amount of use, some water crossings are
18 unimproved where the user just crosses the waterway.
19 Generally speaking, if you have a trail that has at
20 least a moderate or more amount of use, that is not the
21 most sustainable method to cross so the secondary
22 method to be used would be hardening the stream base on
23 the approach and then possibly having stonework in the
24 stream bed that would allow users to go across. And

1 those would be only on low volume streams and crossings
2 and in places where the use on the trail would not
3 impact the stream banks.

4 As you approach the stream bank, the
5 soils are moist, so if people scattered left to right
6 to try to get the best footing to get across, then they
7 would be impacting a wider swath than the trail tread.
8 And then we move into wooden bridges.

9 Q Could you tell me do you use bog bridging,
10 and what is that?

11 A Yes. Bog bridging is generally referred to
12 as a type of bridging that runs at a low profile over
13 wet ground or swampy areas. Sometimes it is natural
14 logs that are flattened and nailed together on top of a
15 sill or sleeper log, and at other times they're made
16 out of pressure treated lumber where pressure treated
17 timbers are laid down and planking is run between them.

18 Q And what kind of bridges do you build -- I'm
19 sorry. Leading question. What do you build over
20 streams or rivers?

21 A So when the first two examples of a crossing
22 don't work and you go into what's called a span bridge,
23 again, based on the classification of the trail and the
24 amount of use, we would look at building a bridge that

1 has structure to it. Generally on either side of the
2 stream you would install abutments and then there would
3 be strainers, long logs or timbers that span from the
4 abutment that carry the load across the stream, and
5 then there would be a decking surface that the users
6 would travel on.

7 Q Thank you. Turn your attention now to tree
8 cutting, Mr. Connor. Are there tree cutting policies
9 in the Adirondack Forest Preserve that you follow?

10 A Yes, ma'am.

11 Q Are you familiar with those policies?

12 A Yes, ma'am.

13 Q Mr. Connor, I'm showing you what's been
14 marked into evidence as Defendant's Exhibit C. Are you
15 familiar with this document?

16 A Yes, ma'am.

17 Q What is it?

18 A It's our tree cutting policy LF912.

19 Q And is this one of the policies you followed
20 with regard to tree cutting?

21 A Yes, ma'am.

22 Q What do you do before cutting trees in the
23 Forest Preserve?

24 A So when you're developing a work plan that

1 will have tree cutting in it, the first step to do is
2 to inventory the trees. We take measurement, the DBH
3 of the tree, and note the species.

4 Q For the record, what is DBH?

5 A Diameter at breast height. It's
6 four-and-a-half feet above the ground.

7 Q I'm sorry. Go ahead. Then the next thing
8 after that?

9 A So the trees are measured for diameter and
10 species and then you produce a tally of the tree
11 cutting in the work plan as you submit it for approval.

12 Q What size trees do you tally?

13 A Trees three inches in DBH and greater.

14 Q Do you tally anything else about the trees to
15 be cut?

16 A I usually denote whether or not the tree is
17 dead or alive. In some cases if we're cutting stumps
18 that are of any significant height greater than one's
19 knees or waist, I'll make a note of that because the
20 base of the tree stump may appear after the cutting to
21 have been a tree.

22 Q I didn't hear your answer. It would appear
23 to be?

24 A To have been a tree.

1 Q Okay. Thank you. How do you determine
2 whether a tree is three inches DBH or larger?

3 A There's multiple different ways that
4 foresters can measure the tree diameters. The most
5 accurate way is using what's called a diameter tape
6 which is a special tape measure that allows you to read
7 the diameter of a tree by wrapping the tape measure
8 around its circumference. There's a mathematical
9 formula built into it. There's also tree calipers
10 which allow you to measure the width of the tree. And
11 probably the most common tool that I use is what's
12 referred to as a Biltmore stick, and a Biltmore stick
13 is a special ruler that is designed to measure the
14 diameter of a tree based on its placement up against
15 the tree and its distance from your eye.

16 Q Have you used these devices to measure DBH?

17 A Yes, ma'am.

18 Q Did you use any of these devices to measure
19 trees on the Seventh Lake Mountain Trail?

20 A I used a Biltmore stick during my time at
21 Seventh Lake Mountain Trail.

22 Q Mr. Connor, do you prune trees and brush on
23 the Forest Preserve in terms of height?

24 THE COURT: I didn't catch that. Did

1 you get that? If you could, would you read it
2 back to me, please.

3 (Last question read by the reporter.)

4 A Yes, ma'am.

5 Q Is there a height limitation that you use for
6 pruning trees in the Forest Preserve?

7 A Similar to the brushing or cleared width
8 that's based on classification. Ten feet is one of the
9 numbers for several classifications. In the case of
10 snowmobile trails, classification Class I and Class II,
11 they're allowed to be pruned up to 12 feet in height.

12 Q Do you know why there is a greater height for
13 snowmobile trails?

14 A Yes.

15 Q What is that reason?

16 A Trails that are designed to be used in the
17 winter are generally designed with the concept that
18 there will be snow pack on the trail tread so that you
19 elevate the users up higher into the trail corridor.
20 So the combination of the users being above the forest
21 floor and also any weighting, snow or ice sticking to
22 branches, having them hang down into the trail
23 corridor, we clear up a little higher so there's
24 clearance.

1 Q Did you trim any trees to that height on the
2 Seventh Lake Mountain Trail?

3 A Yes, ma'am.

4 Q Mr. Connor, does DEC have any directives that
5 you know of regarding cutting large trees?

6 A Generally the intent is to avoid cutting
7 large trees.

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

9 A Generally the intent is to avoid cutting
10 large trees.

11 Q Thank you. Mr. Connor, based on your
12 experience in the Forest Preserve and your jobs with
13 DEC and your oversight of 300,000 acres, did you have
14 an opportunity to observe forest roads?

15 A Yes.

16 Q And based on your experience with this
17 observation, what are the differences if any between
18 forest roads and trails?

19 A There's a couple of different things. I
20 break it down into travel design, drainage, and
21 surfacing. So with travel design, the difference
22 between a road and a trail, generally a forest road is
23 an uninterrupted improved way for the purpose of a
24 motor vehicle traveling. And on a trail you can have

1 gaps in the improvements along the trail tread because
2 the users can span that with stride or with the
3 different skiing, snow shoes, snowmobile. They can all
4 go over the trail gaps much easier. So a forest road
5 is designed to be an uninterrupted surface and a hiking
6 trail or any kind of trail can have irregularity in it.

7 The second thing has to do with
8 drainage. I may have them out of order, but drainage,
9 roads are designed to be crowned and crown means that
10 the center of the road is higher than the adjacent
11 sides, and that serves to shed the water to the side.
12 For forest roads that are regularly maintained, that
13 crown is recreated on a periodic basis with machinery.
14 In hiking trails, we don't crown hiking trails and with
15 the exception of extremely degraded areas, you wouldn't
16 go back in for the purpose of redistributing the
17 surface of the trail tread on any regular maintenance
18 with the hiking trail. The design of the trail is to
19 shed the water and clean out the cross drains.

20 Q And in your experience is there a difference
21 in width between roads in the Forest Preserve and
22 trails in the Forest Preserve?

23 A Yes. Forest Preserve roads or roads in the
24 forest are generally wider, 12 to 20 plus feet

1 depending on their intended purpose. And their width
2 also normally includes associated linear ditching for
3 the purpose of moving moisture. So from the back of
4 the ditch line across the ditch, across the road
5 surface and to any other ditch in some places can be
6 upwards of 30 feet wide.

7 Q Thank you. Mr. Connor, is crowning used on
8 Class II trails?

9 A No.

10 Q Mr. Connor, you mentioned earlier that there
11 are various types of trails in the Forest Preserve and
12 I wanted to revisit that and ask you to just identify
13 by name, not necessarily each classification, but the
14 different kinds of trails that exist.

15 A So there's hiking trails, trails that are
16 designed just for or designated just for use for
17 hiking. There are ski trails that are designed for
18 skiing. In some cases those ski trails are designed
19 for -- in some cases the ski trails are designed for no
20 summertime use. There are horse trails. On the horse
21 trail anybody could hike or ski on them. There's no
22 prohibition to those other uses. We also have the
23 snowmobile trails and bike trails.

24 Q Mr. Connor, for trails that are winter use

1 only, does the trail tread look any different?

2 A Yes.

3 Q Why?

4 A Because the predominant use of the trail is
5 when it's covered with snow and ice, you don't need to
6 develop the trail tread to be as durable for use or to
7 shed water in the same way that you would develop a
8 hiking trail or any other multiple season trail.

9 Q And vegetation?

10 A Vegetation can largely be left intact.
11 They'll brush out for the corridor width on the ski
12 trail.

13 Q And vegetation at Class II trail?

14 A So vegetation, ferns, grasses and other
15 nonwoody vegetation, would be growing across the entire
16 portions of the Class II trail corridor. There would
17 potentially be variations in the amount of vegetation.
18 It's not intended to be a completely vegetated section.
19 Any woody debris or, excuse me, woody vegetation that
20 encroached into the trail corridor either from the
21 trail corridor width floor or from adjacent areas would
22 be regularly removed.

23 Q Thank you. Mr. Connor, I've handed you
24 what's been marked into evidence as Defendant's Exhibit

1 D. Do you recognize this document?

2 A I do.

3 Q What is it?

4 A It is the Moose River Plains Wild Forest and
5 Moose River Plains Intensive Use Area and Special
6 Management Area Plan for -- do you want me to read the
7 entire name?

8 Q That's fine. The Moose River Plains UMP?

9 A Yes, ma'am.

10 Q And is this the Unit Management Plan that
11 includes the Seventh Lake Mountain Trail?

12 A Yes, ma'am.

13 Q Would you mind coming up to the map and
14 showing us where the Moose River Plains Forest is?

15 A Absolutely.

16 Q Maybe just describe it for the record.

17 A The Moose River Plains Wild Forest is located
18 in the southwestern portion of the Adirondack Park.
19 It's generally south of Route 28, south of Raquette
20 Lake and Inlet. It is bordered on the east by Blue
21 Ridge Wilderness, to the south the Little Moose
22 Wilderness, and to the west the Adirondack League
23 property, and it's identified on this map in light
24 green.

1 Q Thank you. Turning your attention back to
2 Defendant's Exhibit D, could you turn to page 325.

3 A I'm on 325.

4 Q And what is on page 325?

5 A 325 is appendix nine, the trail
6 classification system.

7 Q Can you tell us what is this trail
8 classification system?

9 A This is the trail classification system that
10 I referenced earlier. It was first -- it first
11 appeared in the 1999 High Peaks Unit Management Plan
12 and it lays out a classification system of eight, in
13 this case nine, different trails on the Forest Preserve
14 and it denotes the different characteristics of those
15 classifications.

16 Q And does this system of classifications
17 include a variety of types of hiking trails?

18 A Yes, ma'am.

19 Q And/or foot trails?

20 A Yes.

21 Q Could you just tell us what some of those
22 are?

23 A Sure. The Class I is the unmarked route.
24 This would be a route that is similar to a fishing

1 trail going to a pond. It's not established by the
2 department. It's infrequently used but if you were
3 confident walking in the woods, you would be able to
4 follow traces of use.

5 The Class II trail is a path. This is
6 similar to the herd paths that are present in the High
7 Peaks Wilderness and some other places where unofficial
8 trails -- unmarked trails go to a destination on the
9 Forest Preserve that are very lightly maintained but
10 generally easy to follow because of the use they
11 receive. Then we get into the Class III primitive
12 trails. They represent the first layer of marked
13 trails that we have. There's a secondary trail. Class
14 V is a trunk or primary trail. Class VI is a
15 front-country trail. Class VII is a horse trail.
16 Class VIII is a ski trail. And in this classification
17 there is a Class IX mountain bike trail and it says
18 that's according to the International Mountain Biking
19 standards. Just to clarify, the Class IV is a
20 secondary trail. I did not say the roman numeral.

21 Q Thank you. Mr. Connor, do you also oversee
22 maintenance of trails?

23 A Yes, ma'am.

24 Q And does the frequency of maintenance of

1 trails affect the trail tread?

2 A Yes.

3 Q In what way?

4 A For maintenance of a trail that is a trail
5 that we adopted by use through a Unit Management Plan
6 or was generally built more than 10 years ago, prior to
7 acceptance of modern standards of trail building that
8 are sustainable, the maintenance of a trail would
9 heavily influence the trail tread depending on the
10 conditions. If the trail had extensive erosion or wet
11 areas that were causing users to expand the width of
12 the trail tread impacts or the corridor, then those are
13 times where we would do maintenance that looked like
14 some of the techniques that we talked about.

15 Q And can trail tread of hiking trails be
16 widened by use?

17 A Absolutely.

18 Q Do you know examples of that?

19 A Yes. There are multiple examples in the High
20 Peaks and other trails, for instance Cascade Mountain.
21 By design the Cascade Mountain trail would probably
22 fall into a secondary trail, a Class IV trail, and that
23 indicates that the width would be four feet wide and in
24 some places the Cascade Mountain trail is 20 feet wide

1 as people try to avoid wetness on the trail. There is
2 also smaller trails outside the High Peaks that receive
3 similar impacts. Hadley Mountain down in the Wilcox
4 Lake Wild Forest has areas where there are extensive
5 and expanded width of the trail because of erosion, and
6 that trail would fall in the same class and in that
7 case probably 15 feet wide.

8 Q Thank you. Mr. Connor, are you aware of the
9 testimony earlier in this trial of plaintiff's experts
10 regarding roads and their characterization that Class
11 II trails are like roads?

12 A Yes.

13 Q Do you agree with that?

14 A I do not.

15 Q Why?

16 A As I mentioned earlier, road is designed for
17 a wheeled vehicle traveling on it. It has the
18 characteristics of a generally uninterrupted surface.
19 It has associated drainage structures that extend
20 beyond the trail for a road, extends beyond the road
21 tread width, and also they receive a regular type of
22 maintenance in terms of reshaping of the tread of the
23 road surface.

24 Q Thank you. Mr. Connor, you stated you had a

1 role in construction of the Seventh Lake Mountain
2 Trail. What was your role?

3 A I was involved in developing the work plan
4 and overseeing on the ground all the construction.

5 Q And when did you begin construction on the
6 Seventh Lake Mountain Trail?

7 A The construction of the Seventh Lake Mountain
8 Trail was started in September of 2012.

9 Q And did you work with anyone in construction
10 of the trail?

11 A Yes. I'm assuming you don't want specific
12 names.

13 Q No. Thank you. Just let me ask, did you
14 have a trail crew?

15 A Yes. There was several trail crews involved
16 in the construction.

17 Q Thank you.

18 MS. SIMON: Your Honor, do you want a
19 copy?

20 THE COURT: Is this the Seventh Lake
21 Mountain Trail?

22 MS. SIMON: Yes.

23 THE COURT: I think I have it.

24 MS. SIMON: It's AE.

1 THE COURT: Give me one second. That's
2 79, Plaintiff's 79?

3 MS. SIMON: I think that's another
4 version perhaps. I'm not sure. Ours is AE. It's
5 a foldout.

6 THE COURT: If you have a copy, I'll be
7 happy to take it. Thank you. Please go ahead.

8 Q Mr. Connor, I have shown you what is
9 Defendant's Exhibit AE. Do you recognize this
10 document?

11 A Yes.

12 Q What is it?

13 A This is a map depicting the location of the
14 Seventh Lake Mountain Trail in relationship to the
15 Adirondack Park blue line and also the up-close view
16 and the layout of the three segments of the Seventh
17 Lake Mountain Trail.

18 Q And what are those segments? Could you
19 identify them by color on the map as well?

20 A Yes. Segment one is at the lowest point in
21 the map. It is depicted in a color orange and it
22 extends from the Moose River Plains road up to what is
23 referred to as generally to the east of Seventh Lake.
24 Segment two is a blue section that extends from the end

1 of the orange line to the northeast to the east of the
2 Eighth Lake Campground. And segment three is a purple
3 line that extends from that blue line east of Eighth
4 Lake and to the northeast past the Raquette Lake
5 Reservoir.

6 Q Mr. Connor, looking at segment two and three,
7 the blue and the purple, to the left on the map, what
8 is the black line that goes along parts of the lakes
9 there?

10 A That's New York State Route 28.

11 Q And in construction of the Seventh Lake
12 Mountain Trail, in the scouting for the trail, did you
13 have any goals with regard to the location?

14 A Yes. The intent of the scouting and layout
15 of the trail was to position it as close to the highway
16 or the periphery of the unit as possible taking into
17 account multiple different considerations in how you
18 would lay that trail out and build it. So, yes, we
19 were trying to keep it as close to Route 28 as
20 possible.

21 Q Thank you. And you discussed earlier that
22 there were sections of the Seventh Lake Mountain Trail
23 that were old. I don't know if you called them skids
24 roads or woods roads. Is that correct?

1 A Yes. Woods roads.

2 Q And could you tell us where those were?

3 A Certainly. On segment one, the orange line,
4 on the southwestern end of it or the left side as the
5 trail goes up the shoulder of Seventh Lake Mountain --

6 Q Which is where?

7 A Which is just to the north of the orange
8 line. You'll notice the contours. As we went up the
9 southwestern and southern side of the mountain, we
10 utilized many existing skid roads that were on that
11 side of the mountain. And then as it proceeded to the
12 northeast around where it's just north of several
13 little ponds, we caught on with some old woods roads,
14 and for the most of the rest of the length we were on
15 some form of woods road or another. However, roughly a
16 mile from Seventh Lake on segment one's northern
17 terminus, we used an old or an existing DEC snowmobile
18 trail that was situated on an old carriage road.

19 Q And so in segment one, given the things
20 you've just mentioned, approximately how long was the
21 existing trail and/or skid road?

22 A All combined, a conservative estimate would
23 be at least close to 50 percent of the trail on segment
24 one was located on previously existing routes.

1 Q And the same question for segment two.

2 A Segment two is a section of trail that was
3 laid out parallel to Route 28, and with the exception
4 of what this map depicts at the northern end of it
5 where the line hooks to the left, the entirety of
6 segment two below that hook was not on any previously
7 existing routes.

8 Q Thank you. And segment three?

9 A Segment three where it starts on the south
10 side, it traveled up an old or a current access road to
11 a water supply for the Eighth Lake Campground.

12 Q Could you explain where that is?

13 A It's basically just to the right of where the
14 blue and purple lines come together, and the distance
15 was a quarter mile or so.

16 Q Thank you. So were there any existing roads,
17 skid roads or woods roads, in segment three?

18 A So there was that section that's existing,
19 and then other than passing or -- sorry --
20 perpendicularly crossing a few old woods roads in the
21 middle section of segment three, the only other time we
22 were on a section of road was right near the Raquette
23 Lake Reservoir where we crossed an access road. The
24 town has to get to their dam there.

1 Q Thank you. Mr. Connor, can you tell me
2 briefly what did you do to construct the trail in the
3 beginning?

4 A In the beginning the first -- once the
5 initial route was roughed in, flagged in, trees were --

6 Q Hold it right there, please. What is flagged
7 in?

8 A So when you're laying out a trail, as you're
9 looking at your different options for routing the trail
10 considering all the different aspects like tree cutting
11 or tread development or drainage, you rough in that
12 route by hanging flagging which is commonly used in
13 forestry and surveying. You hang it from trees and
14 branches to depict the centerline of the route.

15 On the subsequent trips in you would
16 follow that line with a second look at the route,
17 adjusting it as you go to take into consideration micro
18 adjustments to avoid trees or put the trail tread in a
19 more suitable location. So once we were fairly certain
20 of the route, we would tally the trees in the method I
21 indicated earlier and then mark them. In this case I
22 marked them with spray paint. And then a crew would
23 come through and cut the trees down, and for the case
24 of segment one, there were multiple passes through

1 looking to adjust and respecify the work that was going
2 to be done for any tread development or drainage work.

3 Q Why particularly segment one?

4 A One of the issues that we ran into with
5 segment one, particularly in the northern portion of it
6 that was kind of where the orange line makes a
7 90-degree turn, is on the old woods roads, the balsam
8 fir and spruce regeneration in some places was just so
9 thick, maybe 6 to 20 feet tall, and the ability to see
10 the ground to determine what drainage things that you
11 would need on that old roadbed was problematic.

12 Q After you did the scouting and flagging and
13 marking trees -- did you say cutting trees also?

14 A Yes, ma'am.

15 Q What did you do next?

16 A So using spray paint, the ground would be
17 marked up to indicate locations where bench cuts would
18 be made or drainage devices would be put in. And in
19 the case of this job, we used a mini excavator to do
20 the bulk of the work and then a crew with hand tools
21 came behind that cleaning up and finishing the work.

22 As the tread development was underway,
23 we had multiple bridges, so during the fall of 2012
24 there was a pretty steady supply of ATVs bringing

1 bridge materials into the different bridge segments.

2 Q After you created tread development, what was
3 left to do, if anything, on the trail?

4 A Once we completed the tread development, we
5 had to finish building the bridges and the accessory
6 ramps for those. But directly following tread
7 development, we laid down straw and put down a
8 conservation mix to help curtail possible erosion.

9 Q Once that was completed, was there anything
10 else?

11 A No. Once the bridges were all built and we
12 marked the trail, the trail was done.

13 Q And then you mentioned some types of
14 machinery or vehicles. Is there a certain class of
15 machinery that you used on this trail?

16 A Yes. The snowmobile guidance calls for us
17 using low impact landscaping equipment and we used what
18 the industry would call mini excavator for this work.
19 In addition to that, we had six-by-six ATVs and there
20 was one or two four-wheel UTVs on the project.

21 Q Thank you.

22 THE COURT: What's a UTV?

23 THE WITNESS: A UTV is a -- why am I

24 blanking on the acronym. They are similar to an

1 ATV. They're a little bit wider and they're
2 designed to sit -- people sit next to each other.

3 Q Mr. Connor, I've handed you what's marked
4 Court's Exhibit 1. Could you take a look at that,
5 please. Could you take a look at the page, I think
6 it's page three that has a chart on there.

7 A Yes, ma'am.

8 Q Do you see the Seventh Lake Mountain Trail on
9 there?

10 A I do, I see the Seventh Lake Mountain Trail.

11 Q And what is the tree tally for trees three
12 inches DBH or greater for that trail?

13 A 2,085 trees.

14 THE COURT: 2,085?

15 THE WITNESS: Yes, sir.

16 THE COURT: Go ahead.

17 Q Mr. Connor, you mentioned that you also
18 tallied dead trees?

19 A Yes, ma'am.

20 Q Were there dead trees within that count?

21 A Yes, ma'am.

22 Q Do you recall how many?

23 MR. CAFFRY: Objection, your Honor.

24 THE COURT: What's the objection?

1 MR. CAFFRY: The distinction between
2 dead trees and live trees is irrelevant for
3 purposes of Article XIV.

4 MS. SIMON: Can I make a proffer?

5 MR. CAFFRY: Trees are trees.

6 THE COURT: You may make a proffer.

7 MS. SIMON: I would agree that trees are
8 trees, but if the forester has a choice to cut
9 down a dead tree or a live tree, that's where I'm
10 going with this. It goes to the issue of
11 preserving the forest.

12 THE COURT: Okay. The Court will accept
13 the evidence. The objection is overruled. You
14 may answer.

15 A Of the 2,085 trees, according to my tallies,
16 about 161 trees were denoted as dead.

17 Q Mr. Connor, do you recall the diameter at
18 breast height of the largest trees that you cut on the
19 Seventh Lake Mountain Trail?

20 A I could refresh my memory.

21 Q Do you have something there that you could
22 refresh your memory with?

23 A Yes, ma'am.

24 Q Okay. Do that. Thank you.

1 A In the tally, the largest tree that I have
2 record of for segment one was a red maple at --

3 MR. CAFFRY: Objection, your Honor. He
4 appears to be reading from something rather than
5 just merely refreshing. And secondly, the
6 document has not been identified.

7 THE COURT: The objection is sustained.
8 So when you're given the opportunity to refresh
9 your recollection, you may look at the document.
10 Once you've identified what the document is, then
11 answer the question. But you may not read
12 directly from the document. Understood?

13 THE WITNESS: Understood. My apologies.

14 THE COURT: That's okay. Do you want to
15 hear the question again?

16 THE WITNESS: Sure.

17 THE COURT: If you would, Cindy, please.

18 (Pending question read by the reporter.)

19 A Yes, the largest live trees that I marked
20 were two red maple trees that were 20-inch DBH.

21 Q Thank you. Mr. Connor, I've handed you
22 what's been marked into evidence as Defendant's AD. Do
23 you recognize this?

24 A Yes.

1 Q And what is it?

2 A This is a collection of my work plans and
3 work plan modifications for segments one, two and three
4 of the Seventh Lake Mountain Trail.

5 Q And just briefly, Mr. Connor, did you write
6 these?

7 A Yes, ma'am.

8 Q What kind of information other than tree
9 cutting -- you've mentioned that you did tree tallies
10 by three-inches DBH and species. What other kinds of
11 general information did you put in those work plans?

12 A General information included in these work
13 plans would identify areas of bench cutting, areas of
14 drainage, areas where we would install drainage
15 facilities, and any other action that we were going to
16 do out on the trail throughout the development of the
17 construction process.

18 Q Mr. Connor, did you count seedlings or
19 saplings during construction of the Seventh Lake
20 Mountain Trail?

21 A No, I did not.

22 Q Why didn't you count them?

23 A Because we do not have a policy that requires
24 us to do so.

1 Q Other than seedlings and saplings, did you
2 cut any other woody growth on the Seventh Lake Mountain
3 Trail?

4 A Yes.

5 Q Could you describe what it is?

6 A One of the major shrub or understory species
7 that we cut was commonly called witch hobble. It's a
8 low-growing ground cover that's present in the forest.

9 Q Was this present on the Seventh Lake Mountain
10 Trail?

11 A Yes. In multiple locations.

12 Q Could you describe what it looks like?

13 A Could you repeat that?

14 Q Could you describe what is it? It's a shrub?

15 A Witch hobble is a shrub. Can grow a few
16 inches tall up to probably -- not in the Seventh Lake
17 Mountain Trail but in other places I've observed it as
18 high as four feet. Generally the range is six inches
19 to two feet on the Seventh Lake Mountain Trail.

20 Q When you say -- could you explain what you
21 just said?

22 A My apologies. That's the growth in height.
23 The shrub is a collection of stems coming from the
24 ground so that in addition to growing in height in that

1 range, six inches to two feet, it expands and occupies
2 an area in the understory, and that can vary from a
3 single plant to a swath in the forest that's several
4 hundred feet in width in any direction.

5 Q And what was the size of the witch hobble?
6 What range size in the forest did you see in the
7 Seventh Lake Mountain Trail?

8 A So there were portions of the Seventh Lake
9 Mountain Trail where there would be a few witch hobble
10 associated with the trail corridor that we would cut
11 out isolated plants, and then there were sections,
12 particularly on segment three and segment two, where
13 there were fairly thick swaths that we went through
14 ranging from 10 to 50 feet, possibly larger sections.

15 Q And were these cut down to stump when you
16 built the trail?

17 A Yes, they were cut at ground level.

18 Q And could you give me an estimate of the
19 numbers of these?

20 A So witch hobble's growth pattern, you could
21 have multiple stems coming out of the ground in a
22 square foot. So depending on the area, there could be
23 10s, multiple 10s of stumps in a given area that we
24 cut.

1 Q And could you describe the approximate
2 thickness of these witch hobble stems?

3 A Witch hobble varies probably up to
4 three-eighths, maybe half-inch in diameter on some
5 larger sections, but generally it's three-eighths or
6 less.

7 Q Thank you. Did you remove any rocks from the
8 Seventh Lake Mountain Trail if you recall?

9 A No rocks were removed from the Seventh Lake
10 Mountain Trail. We did do rock work on the Seventh
11 Lake Mountain Trail.

12 Q Did you remove any trees from the Seventh
13 Lake Mountain Trail?

14 A No trees were removed from the Seventh Lake
15 Mountain Trail.

16 Q What did you do with the trees?

17 A The trees were dispersed in the woods
18 adjacent to the Seventh Lake Mountain Trail.

19 Q Other than repositioning of rocks on the
20 trail, was there any other --

21 MR. CAFFRY: Objection, your Honor.

22 That wasn't his testimony.

23 THE COURT: What did I miss? How was it
24 not his testimony?

1 MR. CAFFRY: She said reposition them on
2 the trail. He said something about rock work.

3 THE COURT: He said that he did not
4 remove any rocks from the trail but all the rocks
5 that were removed remained on the trail. So the
6 question as I understood it was fair and your
7 objection is overruled. You may complete your
8 question, Miss Simon.

9 MS. SIMON: I'll start again.

10 Q What did you do with rocks on the trail
11 again, Mr. Connor? I'm sorry.

12 A In the sections of trail where there was
13 bench cutting done, the bench cutting involved removing
14 the overburdened area above the trail tread which in
15 many cases included rocks that were mixed in with the
16 mineral soil. So those rocks were excavated off the
17 trail tread and in some cases used adjacent to the
18 bench cut or on the downhill side of the bench cut.
19 Any rocks that generally were in the trail that were
20 identified in the work plan for some form of dealing
21 with it, we would potentially reposition a rock or take
22 a selection of rocks that were problematic and
23 consolidate them so as to create a trail surface.

24 Q So other than that, was there any other

1 manipulation of rocks on the Seventh Lake Mountain
2 Trail?

3 A Yes. There was a rock that we shaped the top
4 of.

5 Q Where was that?

6 A That was located on the southwestern end of
7 segment two just before the first bridge that you would
8 come to if you were hiking segment two from the
9 junction with segment one.

10 Q And why did you shape that rock? What was
11 the reason for it?

12 A During the layout of segment two, as we tried
13 to transition from segment one where we were on the old
14 existing snowmobile trail, there were some challenges
15 to get up across some drainages and hillside, to get up
16 on a bench along Route 28. Considering automatically
17 different options for crossing a stream, we found the
18 best location to put a bridge. And just before that
19 bridge there was a segment of rock that went
20 perpendicular across the trail corridor. So when we
21 realized that that rock was -- that we couldn't move it
22 with the excavator, the idea was to shape the top of
23 the rock so that it would allow users to go directly to
24 the bridge and not create a scenario where people would

1 deviate around the rock to impact an area greater than
2 the trail corridor.

3 MR. CAFFRY: Your Honor, could I see the
4 exhibit?

5 MS. SIMON: Sorry.

6 (Exhibit handed to the witness.)

7 Q Mr. Connor, I've shown you what's been
8 admitted into evidence as Defendant's Exhibit AF. Do
9 you recognize that document?

10 A I do.

11 Q What is it?

12 A It's a packet of photos that I took.

13 Q That you took? When did you take them?

14 A No. I took -- not all the pictures in this
15 packet I took on the same day. Would you like me to go
16 through them one at a time?

17 Q No. They're already admitted into evidence.

18 A Okay.

19 Q But I would like to go through the photos.
20 Are these photos all from the Seventh Lake Mountain
21 Trail?

22 A Yes, ma'am.

23 Q Do you remember what year they were taken?

24 A These were taken in 2013.

1 Q And can we start with the first photo and can
2 you tell me where is that section of the trail?

3 A Absolutely. This is a section of segment two
4 on the Seventh Lake Mountain Trail.

5 Q And Mr. Connor, this picture, what does it
6 show on the trail tread?

7 A I see on the trail tread in this picture
8 vegetation. Also rocks and leaf litter.

9 Q What's leaf litter?

10 A Leaf litter is the previous year's leaves
11 that are lying on the forest floor or in the process of
12 decomposing to organic material.

13 Q And when you testified earlier, you said you
14 seeded the trail when you were near completion?

15 A Yes, ma'am.

16 Q And why did you do that?

17 A In the fall of 2012, as we finished the tread
18 work, we had a storm water -- my apologies -- we had a
19 plan developed to mitigate erosion from potential storm
20 water on the trail. One of the things that was set
21 forth in that was for us to use a conservation mix to
22 reseed the trail and put down straw to help bind the
23 soil to be resistant to erosion in the period of time
24 post construction until the forest floor had fully

1 naturalized.

2 Q And returning to the photo, what segment is
3 this?

4 A This is segment two.

5 Q And the next photo?

6 A This is also segment two.

7 Q And a similar thing there, you reseeded it,
8 as you testified, as part of erosion control?

9 A Yes, ma'am.

10 Q The next photo?

11 A This is also a picture of segment two.

12 Q Are there any other features here that you
13 would point out?

14 A This is a bench cut on segment two.

15 Q Where is the bench cut?

16 A The bench cut is characterized by the area
17 where predominantly in the picture generally in center
18 it curves from the bottom, it goes slightly to the
19 right, and then curves back to the left before going
20 straight off in the center of the picture. It's
21 generally characterized as having green vegetation on
22 it and yellow straw in addition to some leaf litter.

23 Q And the following photo?

24 MR. CAFFRY: Excuse me, your Honor.

1 Objection, or at least a request. Which photo are
2 we talking about? They're not numbered.

3 MS. SIMON: I'm sorry. They are not
4 numbered. That's true. So we're now moving to
5 photo four.

6 THE COURT: Why don't you hold that
7 photo up so everybody can see it to make sure
8 we're on the same one. I meant Mr. Connor but I
9 appreciate that.

10 A Yes. Photo four.

11 Q What section of the trail is this?

12 A Photo four is a picture on segment one.

13 Q And what does it show?

14 A This shows the trail corridor on part of one
15 of the existing roadways that we established the trail
16 on. In the foreground it shows leaf litter on the
17 ground. There's pieces of wood to the right of the
18 trail corridor and then you can see the trail winds its
19 way into the center of the picture.

20 Q And, Mr. Connor, did you hear testimony
21 earlier this week regarding the amount of grass on the
22 Seventh Lake Mountain Trail?

23 A Yes, ma'am.

24 Q Are there also sections of the Seventh Lake

1 Mountain Trail that look like this photo with leaf
2 litter, photo four?

3 A At the time I took the picture there were
4 sections of Seventh Lake Mountain Trail that looked
5 like this, yes.

6 Q And then the next photo, where is that?

7 A This is a picture on section three. It's a
8 picture with humans on the trail tread.

9 Q Did you say segment three?

10 A Yes, ma'am. It's to the west of the Raquette
11 Lake Reservoir.

12 Q And what does this photo show in terms of
13 trail tread?

14 A This is a section of a very subtle bench cut
15 that goes across a hillside. This is actually a great
16 representation of bench cutting with the intent of
17 blending into the uphill, up-slope portion. The water
18 will shed to the side of the trail and not run down the
19 trail.

20 THE COURT: Miss Simon, would this be a
21 good time for our afternoon break?

22 MS. SIMON: Absolutely.

23 THE COURT: All right. We'll take a
24 break for approximately 10 minutes, folks.

1 (Recess taken after which the
2 proceedings continued as follows.)

3 THE COURT: All set to continue,
4 Counsel?

5 MS. SIMON: Yes, your Honor.

6 THE COURT: Yes, Mr. Caffry?

7 MR. CAFFRY: Yes, your Honor.

8 THE COURT: All right. Mr. Connor,
9 you're still under oath.

10 THE WITNESS: Yes, sir.

11 THE COURT: Go ahead, Miss Simon.

12 You're all done with Defendant's AF?

13 MS. SIMON: Yes.

14 (Exhibit handed to the witness.)

15 BY MS. SIMON:

16 Q Mr. Connor, I'm showing you Defendant's
17 Exhibit AG which is in evidence, and do you recognize
18 this document?

19 A Yes.

20 Q And what is it?

21 A It's a series of pictures that I took on the
22 Seventh Lake Mountain Trail.

23 Q When did you take these pictures?

24 A The summer of 2016.

1 Q And are these photos numbered?

2 A Yes. There are numbers in the bottom
3 right-hand corner.

4 Q So I'm going to refer to them by their
5 numbers. Beginning with the first photo which I
6 believe the last four numbers are 6659, could you
7 identify where that is on the Seventh Lake Mountain
8 Trail?

9 A This is on segment two of the Seventh Lake
10 Mountain Trail, on the southern end of it.

11 Q And what does it depict?

12 A It depicts seven hikers hiking up the trail.
13 The trail tread is generally covered with vegetation.
14 There is mineral soil exposed where the people are
15 walking and there are sections of leaf litter exposed
16 on the trail tread. And I'd like to clarify this is on
17 segment one. I misspoke.

18 Q Thank you. The next photo, number 6660,
19 where is this on the Seventh Lake Mountain Trail?

20 A This is a bridge on segment one of the
21 Seventh Lake Mountain Trail.

22 Q And is this a typical bridge that you built
23 on the Seventh Lake Mountain Trail?

24 A Yes. This represents -- most of the bridges

1 on the trail look exactly like this.

2 Q And how many bridges did you build on the
3 Seventh Lake Mountain Trail?

4 A Twenty-nine bridges.

5 Q Thank you. The next photo, 6661, do you know
6 where this is?

7 A Yes. This is on segment two just above the
8 intersection with segment one on the southern end just
9 before the first bridge.

10 Q And what does it depict?

11 A In the background is a bridge with a dog
12 named Stella on it, and in the foreground is a rock
13 that goes across the trail corridor perpendicular to
14 the direction of travel. And I see leaf litter and
15 ferns and other vegetation growing as well as some
16 exposed rock.

17 Q And, Mr. Connor, is this the rock that you
18 testified that you shaped on Seventh Lake Mountain
19 Trail?

20 A Yes, it is.

21 Q Thank you. Turn to the next photo. This
22 would be 6662.

23 A Yes, ma'am.

24 Q Where is this on the Seventh Lake Mountain

1 Trail?

2 A This is further up segment two.

3 Q And what does it depict?

4 A This shows an area with a curve that had a
5 bench cut. I see vegetation and leaf litter on the
6 trail tread.

7 Q Is there any evidence of erosion that you can
8 see here?

9 A The picture does not depict any erosion.

10 Q And the next picture, 6663, where is that on
11 the Seventh Lake Mountain Trail?

12 A This is a picture of what we refer to in the
13 work plans as the access trail that goes from Route 28
14 across from Seventh Lake boat launch to the
15 intersection of where segment one and segment two meet.

16 MR. CAFFRY: Objection, your Honor.

17 Same objection they made when Mr. Bauer testified
18 regarding access roads. It's not been established
19 that this is part of the trail system.

20 THE COURT: Miss Simon.

21 MS. SIMON: Could I ask him that
22 question?

23 THE COURT: You can. Has AG already
24 been stipulated into evidence?

1 MS. SIMON: It's been stipulated as on
2 the Seventh Lake Mountain Trail.

3 THE COURT: But his testimony and your
4 position with regard to that photograph are noted,
5 so the objection is overruled based upon the
6 stipulation; but if you're objecting to any
7 testimony with regard to what's depicted in the
8 photograph, you certainly have that right. I'll
9 see what he says or attempts to say. Okay? Go
10 ahead.

11 MR. CAFFRY: I was not objecting to the
12 photo. I was objecting to the question.

13 MS. SIMON: Okay.

14 THE COURT: Okay.

15 MS. SIMON: Can we go on?

16 THE COURT: You may. So far he's
17 identified what the photo is.

18 Q Did you say the location, what segment this
19 is on?

20 A It is not on a segment of the Seventh Lake
21 Mountain Trail.

22 Q It is not?

23 A No.

24 Q Thank you.

1 THE COURT: Give me that number again.

2 THE WITNESS: The last four is 6663.

3 THE COURT: 6663. Thank you.

4 Q Mr. Connor, at the time these photos were
5 taken in 2016, standing on the Seventh Lake Mountain
6 Trail and looking around, how would you describe the
7 condition of the trail?

8 A On all the pictures that I've said were taken
9 on the Seventh Lake Mountain Trail segments one and
10 two, the condition of the trail is starting to
11 naturalize to its -- or continuing to naturalize to its
12 final stage.

13 Q Did you see any serious erosion control --

14 THE COURT: Any what?

15 Q I'm sorry. -- erosion on the trail?

16 A No.

17 Q Thank you. Mr. Connor, I've handed you
18 Defendant's Exhibit AA which is in evidence. Can you
19 look at appendix D of this document.

20 A You said D as in dog?

21 Q D as in dog.

22 A I'm looking on page 33 at appendix D.

23 Q What is the name of it?

24 A NYS DEC Steps for Using Herbicides to Control

1 Invasive Plants.

2 Q Sorry. The wrong -- that is not the exhibit
3 I'm looking for. I'm looking for the -- I may have
4 written it down wrong. Sorry. The appendix on bridge
5 design.

6 MR. CAFFRY: Objection, your Honor.

7 This is leading. There is no question in there.

8 THE COURT: Well, let's get him there
9 first. So the objection is overruled. She's
10 directing him to a section of an exhibit that's in
11 evidence or what she believes is a section to an
12 exhibit that's in evidence. We haven't found it.

13 MS. SIMON: It's my mistake. My
14 apologies.

15 THE COURT: That's okay.

16 THE WITNESS: Could I have direction on
17 the page?

18 MS. SIMON: It's not consecutively
19 numbered but it's about two-thirds of the way in.
20 One-third, I'm told. Can I show the witness where
21 it is?

22 THE COURT: Yes.

23 THE WITNESS: Yes, I'm on appendix D.

24 Q Do you recognize this document?

1 A Yes.

2 Q What is it?

3 A The larger document is our MOU between the
4 APA and the DEC.

5 Q And appendix D?

6 A And appendix D covers our snowmobile trail
7 design for bridges.

8 Q And does this apply to Class II trails?

9 A Yes.

10 Q And do you use this and did you build bridges
11 on the Seventh Lake Mountain Trail according to this
12 guidance?

13 A Yes.

14 Q Is this guidance limited to Class II trails?

15 A My understanding is that this design can be
16 used for Class II and Class I trails anywhere we build
17 a snowmobile trail bridge.

18 Q And to the best of your knowledge are there
19 any load bearing requirements in building of bridges
20 for Class II trails?

21 A Yes, there is.

22 Q Do you know what they are in laymen's terms
23 generally?

24 A Generally, in laymen's terms, the load

1 calculations for the snowmobile bridges is designed for
2 a complete population of pedestrians on the bridge
3 surface standing on what would be considered a full
4 snow load. That's how the load calculations are
5 developed.

6 Q And are the bridge design guidelines also
7 used on hiking trails?

8 A Fundamental parts of the snowmobile trail
9 bridge design are used on hiking trails though hiking
10 trail bridges vary in their development.

11 Q Do you recall the testimony of plaintiff's
12 witness, Mr. Amadon, regarding the width of bridges on
13 those foot trails?

14 A Yes.

15 Q Do you agree with his testimony?

16 A I disagree.

17 Q Why?

18 A In his testimony he indicated that a foot
19 trail bridge would not exceed three feet in width ever
20 and we regularly have bridges that are approved and we
21 build or place that are greater than three feet on foot
22 trails or hiking trails and ski trails all across the
23 Forest Preserve.

24 Q And what are some of the widths of the hiking

1 trails on the Forest Preserve? Bridges, sorry.

2 A So there's different bridge widths and if I
3 could look at the trail classification Moose River
4 Plains document to refresh my memory, I could give
5 specifics.

6 Q You still have it there if you would like to
7 do that, yes. And it was page 300-something if I
8 recall.

9 A So there's various notes in the trail
10 classification that allow bridges to, for instance, on
11 horse trails, it says there's a minimum of six --

12 MR. CAFFRY: Objection, your Honor.
13 Horse trails are not relevant.

14 THE COURT: Miss Simon.

15 MS. SIMON: We're showing the Court that
16 there are all kinds of trails on the Forest
17 Preserve. The plaintiffs have only shown two-foot
18 wide, the smallest --

19 THE COURT: Objection is overruled. You
20 may continue.

21 A For horse trails, a Class VII trail, six foot
22 minimum width with kick rails. For ski trails, it does
23 not indicate a specific width but generally there are
24 ski trails that are approved in the site management

1 plan that have bridges that are six- to eight-feet
2 wide. And on the other classes of trail, it talks
3 about bridging streams in terms of log width with
4 various different sizes based on the span. And log
5 width is generally one foot so, for instance, a Class V
6 trunk trail could have a four-foot wide bridge on it.

7 Q Mr. Connor, I've shown you what's marked as
8 Plaintiff's Exhibit 148 and this is an exhibit that was
9 introduced during the testimony of Mr. Amadon. Do you
10 recall that?

11 A Yes, ma'am.

12 Q Wait. Did I give you 145?

13 A Yes, ma'am.

14 Q I said 148. It's 145. Thank you. Do you
15 recall the testimony of Mr. Amadon regarding the
16 Champlain Trail?

17 A I do not recall the specifics.

18 Q This was a photo he introduced at that time,
19 and are you generally familiar with the Champlain Trail
20 system?

21 MR. CAFFRY: Objection, your Honor.

22 THE COURT: What's the objection?

23 MR. CAFFRY: There's no testimony
24 regarding a Champlain Trail system.

1 MS. SIMON: I have the name. You
2 referred to it as Cats Champlain, C-A-T-S
3 Champlain. I don't remember the full name.

4 THE COURT: So you're referring to the
5 Champlain -- what you're calling the Champlain
6 system was referred to as Cats in Mr. Amadon's
7 testimony?

8 MS. SIMON: Yes.

9 THE COURT: To the extent you're
10 referring to that and that's clear to you, the
11 objection is overruled. Go ahead.

12 Q This photo --

13 THE COURT: To be clear, when I said
14 that's clear to you, I was addressing that to Mr.
15 Connor, not to you. I don't think that was clear
16 on the record. Please recommence. Sorry to break
17 in on you.

18 Q The two logs depicted in this photo 145, is
19 this a kind of bridge that you might build in the
20 Forest Preserve in your experience?

21 A This is similar in nature to bridges that we
22 would build in a Forest Preserve. Again, based on the
23 classification system of the trail, the approach from
24 both sides of a stream and its flow, we may or may not

1 use a bridge. Generally our bridges would be built, if
2 we were using a two-log span bridge similar to this, it
3 would be gapped in the middle, meaning the two logs
4 would not be touching so that organic material cannot
5 collect there to hold moisture and increase the rotting
6 of the wood. And potentially on a stream, not knowing
7 this site specifically, on a stream with little to no
8 regular flow, we might have a ford there. And if it
9 was a higher volume stream, we could potentially have a
10 wider bridge there.

11 Q And if you were to use this type of two-log
12 system, what width trail would you use it on?

13 A It would be on one of our smaller trails,
14 probably a Class II -- sorry -- Class III primitive
15 trail. The problem we run into with smaller bridges
16 like this on the higher-volume trails is that people
17 will, particularly in the wintertime, they will not be
18 able to stay on the narrow bridge and that will result
19 in people going around them. Or sometimes during the
20 non-winter months there will be impacts associated with
21 people who are actually uncomfortable with crossing
22 this type of bridge that's so narrow.

23 Q Thank you. Mr. Connor, I'm showing you a
24 series of photos that were put into evidence by

1 plaintiff through Mr. Amadon and the numbers are 148,
2 149, 150, 151, 152, 153 and 155. Do you have that?

3 A Yes, ma'am.

4 Q Starting with photo 148, do you recognize
5 this photo?

6 A Yes.

7 Q And why do you recognize it?

8 A It's on the Seventh Lake Mountain Trail.

9 Q And what do you think this photo shows in
10 your opinion?

11 A This shows a trail several years after
12 construction that's starting to naturalize. I see
13 vegetation along most of the trail corridor. I see
14 large sort of coarse woody debris on the trail. I see
15 some advanced regeneration creeping in from the sides,
16 branches and trees that are -- vegetation that's
17 outside the box or corridor box has grown in and
18 softened the width of the corridor.

19 Q When you say advanced regeneration, what do
20 you mean?

21 A For instance, in the front left-hand portion
22 of the picture there is some witch hobble that is now
23 growing into the trail tread so that is starting to --
24 stuff that is more woody than grasses and ferns is

1 starting to come back.

2 Q Can you turn to photo 149.

3 A Yes, ma'am.

4 Q And do you recognize that?

5 A Yes. It's a section of the Seventh Lake
6 Mountain Trail on segment two.

7 Q And what does the photo show to you in terms
8 of the trail tread?

9 A So the trail tread does have some vegetation
10 growing on it. It has leaf litter adjacent to the
11 trail. On the right is some ledge rock.

12 Q Some what? I'm sorry.

13 A Ledge rock that goes down to the side of the
14 trail. So I don't see a lot of vegetation to the
15 right-hand side of the trail but that's characteristic
16 where there would be shallow soils associated with
17 ledge rock just below the surface.

18 Q You testified earlier that you seek to have a
19 sustainable trail tread. Is this an example of a
20 sustainable trail?

21 A I believe this would be an example of a
22 sustainable trail. The tread has the ability to shed
23 the water across the slope. In this picture there is a
24 slight rise as you go further away from the point of

1 photo, so any water that comes down -- sorry. If the
2 trail tread was not shaped like this, water could come
3 down from the high point running along the trail and
4 erode or saturate the soil leading to users eroding the
5 trail tread.

6 Q And turning your attention to Plaintiffs'
7 Number 150, do you recognize this?

8 A Yes. It's another section of segment two. I
9 see quite a bit of vegetation growing in the trail
10 corridor including ferns in the foreground. Trees and
11 vegetation that is on the edge of the trail corridor
12 seem to have grown in a little softening the cup of the
13 box. And also this is a slight bench cut so it allows
14 the water to shed to the side.

15 Q Thank you. Number 152, do you recognize
16 this?

17 A Yes.

18 Q How do you recognize it?

19 A This is a section of segment one on the
20 trail. This is approximately a mile from where segment
21 one and segment two join. In the far part of the
22 picture to the left, that's the original snowmobile
23 trail that came up from Seventh Lake boat launch that
24 was routed on an old carriage road. And what you don't

1 see to the left of the picture, that old roadway went
2 up a hill and it had been severely washed out multiple
3 feet down. There's a complete trench. So as a result
4 we created a reroute of the existing trail that was
5 there and cut this bench cut trail through the woods to
6 avoid having to deal with that massive washout from the
7 original roadbed that was there.

8 Q Thank you. Photo 153, do you recognize that?

9 A Yes. This is another picture of segment one
10 of the Seventh Lake Mountain Trail. This is further to
11 the south from the previous picture along kind of the
12 top middle portion of the trail where I had mentioned
13 that a trail had run along old woods roads, and what
14 you're seeing here is the pre-existing trail tread or
15 roadway tread from when this was used for whatever
16 purpose it was used before we built a trail here. And
17 the slope to the left of the -- in the left of the
18 picture, the drainage comes down and there is no good
19 way for that water to get across the trail and the
20 trail backs it up, and as a result this and many other
21 sections of trail linked in that area have very
22 saturated soils.

23 So once we removed the vegetation in the
24 way, we created cross drains which are similar to a

1 water bar but the intent is to allow water from the
2 uphill side of the trail to be able to cross below the
3 trail tread. So we're actually digging a little cross
4 drainage ditch, but this is a very difficult place for
5 the trail to be put.

6 Q So what was the condition of this old woods
7 road when you began construction?

8 A The soft wood regeneration was fairly thick
9 in it as is the case of old woods roads that regenerate
10 after use. The vegetation grows up in that area. And
11 we did nothing -- there was no tread work other than
12 those drainage devices done in this area.

13 Q Turning your attention to photo 155, do you
14 recognize this document?

15 A Yes, I do recognize this document.

16 Q What is it?

17 A This is a picture on segment one. It was
18 taken the fall of 2012. It's the first --

19 MR. CAFFRY: Objection, your Honor. No
20 basis for that statement.

21 THE COURT: Sustained. You may continue
22 describing the picture -- didn't Mr. Amadon
23 testify that Mr. Connor was in this picture?

24 MS. SIMON: Yes.

1 MR. CAFFRY: No, he didn't. Mr. Bauer
2 may have.

3 THE COURT: Sorry. It was Mr. Bauer.
4 My mistake.

5 MR. CAFFRY: But it's not his picture.

6 Q Mr. Connor, are you in this picture?

7 THE COURT: The objection is overruled.

8 A Yes. I'm in the yellow shirt with a goatee
9 on my face on the far side of the bridge in this
10 picture.

11 Q And what can you tell me about this picture?
12 What does it depict?

13 A The background scene depicts us waiting for
14 Mr. Bauer to move on down the trail after he chatted
15 with us. But in the foreground the project represents
16 the foundation and stringer logs for snowmobile bridge.

17 Q And the bridge design that I showed you
18 earlier, is this following that kind of bridge design?
19 The guidance, I'm sorry.

20 A Yes. This is the basic construction method
21 that is outlined in the bridge guidance.

22 Q Thank you. Mr. Connor, do you have photo
23 156, Plaintiff's 156?

24 A Yes, ma'am.

1 Q Do you recognize this?

2 A Yes.

3 Q What does it show?

4 A This shows a portion of segment one of the
5 Seventh Lake Mountain Trail during construction in the
6 fall of 2012. This is an area of the trail tread that
7 is currently being worked with the mini excavator which
8 is not present in this picture, but there is an ATV
9 present to the right of the trail. This represents the
10 process of doing the grubbing or removing the
11 overburden from the top of the bench cut and it is not
12 complete.

13 Q What is not complete?

14 A The tread work that was being developed here
15 with the mini excavator.

16 Q And in this same area was it later completed
17 and did you see it?

18 A Yes.

19 Q Thank you. Mr. Connor, based on your
20 observations, how would you characterize now the
21 Seventh Lake Mountain Trail?

22 A As of the last time that I was on it in the
23 summer of 2016, the portions of the Seventh Lake
24 Mountain Trail that I got to hike on are stabilized for

1 the most part. Vegetation is growing on large portions
2 of the trail corridor. It's starting to develop a bed
3 of organic material or leaf litter on the trail
4 surface, and as I mentioned, the peripheral vegetation
5 is starting to grow in. The trail has been completed.
6 The tread work construction and bridge construction has
7 been completed since the end of 2014 so it's a trail
8 that is fairly stable and not showing huge concerns
9 with erosion or impacts.

10 Q Thank you. Mr. Connor, in your professional
11 opinion can you say with a reasonable degree of
12 certainty in your field that Class II trails have
13 substantially the same construction features and
14 characteristics of hiking trails in the Adirondack
15 Forest Preserve?

16 A Yes, I believe Class II trails to have the
17 same general features in construction practices that
18 we -- there's little to no difference. It's just a
19 function of the classification of size.

20 MS. SIMON: Thank you very much. No
21 further questions.

22 THE COURT: All right. Give me one
23 moment.

24 (Pause)

1 THE COURT: All right. Is it you,
2 Mr. Caffry, or you?

3 MR. CAFFRY: Yes, your Honor.

4 THE COURT: Do you want some time -- do
5 you have to review any file that Mr. Connor has?

6 MR. CAFFRY: Yes, we would like time to
7 review his file.

8 THE COURT: You can have it. You've got
9 10 minutes. We'll take a ten-minute break. Mr.
10 Connor, provide your file to Mr. Caffry. I'd
11 appreciate it. Other than that, we've got a
12 ten-minute break.

13 (Recess)

14 THE COURT: All set, folks? Come on
15 back up, Mr. Connor. You're still under oath.
16 Please go ahead, Mr. Caffry.

17 MR. CAFFRY: Yes, your Honor. We've had
18 the opportunity to review Mr. Connor's file, all
19 six pages of it. And as I understand the Third
20 District rule, an expert is supposed to bring
21 their entire file. In fact our witness,
22 Mr. Signell, was required to produce some audio
23 after his testimony for review by the defendants'
24 attorneys when they requested it and they were

1 given the opportunity to review that audio and see
2 whether or not they wanted to recall Mr. Signell.

3 THE COURT: That's correct.

4 MR. CAFFRY: And we did provide that. I
5 find it hard to believe that with all the work Mr.
6 Connor supposedly did on this trail, that his
7 entire file consists of six sheets of paper, two
8 of which came out of a Unit Management Plan and
9 there is maybe four pages of notes that look like
10 they were prepared for refreshing purposes for
11 this trial rather than representing his file that
12 he used in doing all of the work that he just
13 testified to.

14 THE COURT: Okay. Well, the file that
15 an expert is supposed to bring is his file in his
16 capacity as an expert. Presumably everything else
17 that Mr. Connor has done, I'm guessing, but
18 presumably it's already been turned over to you in
19 the discovery process. Or not?

20 MR. CAFFRY: We received various things
21 from Mr. Connor, but since they've qualified him
22 as an expert, it's hard to say where that line is
23 drawn. And that was a point that Ms. Simon kept
24 making when we were arguing over whether or not he

1 should be allowed to testify as an expert.

2 THE COURT: Okay. So please continue.
3 I'm sorry for breaking in on you.

4 MR. CAFFRY: That's okay. So we would
5 request that he be required to produce his file so
6 that we may review it and, if necessary, recall
7 him.

8 THE COURT: Okay. Well, the way this is
9 normally addressed in my experience, and I think
10 it's the appropriate way to address it, would be
11 for you to commence your cross examination,
12 perhaps elicit responses either consistent or
13 inconsistent with your position and take it from
14 there. Once you've gotten the responses under
15 oath from Mr. Connor, if you have reason to
16 believe that you have not received the file or
17 certain documents that you should receive, make
18 your application and I promise you if I agree,
19 which I'm likely to if such documents exist,
20 absent express privilege or that you already have
21 them, then I'm going to grant your application.
22 Okay? So if you'd like, you can start right away
23 with the file and address that issue with Mr.
24 Connor. He's your witness.

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CROSS EXAMINATION

BY MR. CAFFRY:

Q Mr. Connor, at the end of your direct testimony, you handed us your file, is that correct?

A Yes.

Q And it appears to be a Redwell envelope, letter size, with your name written on it in pencil?

A Yes.

Q And did I characterize it correctly as four pages of notes, three typed, one handwritten, including a picture of you with two small children on the typed one as well as a two-page excerpt from the High Peaks Wilderness Area Unit Management Plan?

A That's what's in the folder.

Q And is that your entire file upon which all of your expert testimony that you have given in this case is based?

A All the stuff that I spoke to and answered questions on with the exception of refreshing my memory regarding trees. All the other information is the result of me working for the State of New York in my capacity for the past ten and a half years. All the work that I produced, all the written preparation work that I produced for the Seventh Lake Mountain Trail is

1 reflected in the accommodation of those work plans and
2 modifications. So I answered all the questions that
3 Miss Simon asked based on what is my collective
4 knowledge and mastery of the subject.

5 Q It's all represented on these pages?

6 MS. SIMON: Objection. That's not what
7 he said.

8 THE COURT: Overruled. You may answer.

9 A No. What I said was there are a few numbers
10 related to trees of the extreme sizes represented on
11 those pages that I referenced. Everything else that I
12 spoke of, exclusive of those notes that I just
13 mentioned and the document that I created that led to
14 the bound collection of work plans and modification
15 reports for Seventh Lake Mountain, that's the extent of
16 the written stuff that I am able to produce. The rest
17 of it is in my head. This is my job. I don't walk
18 around with a file that tells me how to do my job. All
19 the reference material that I used for the purposes of
20 policy and practices are generally referenced here in
21 the exhibits that the Court has received.

22 MR. CAFFRY: Your Honor, I would just
23 request that Miss Simon review with Mr. Connor,
24 who also produced multiple affidavits during the

1 course of this litigation, whether or not there is
2 anything else that would consist of expert
3 preparation materials that is not included in this
4 file and produce that if necessary. Obviously
5 he's going to be back here on Monday or sometime
6 next week and I would request that they review
7 that.

8 THE COURT: Miss Simon.

9 MS. SIMON: I think Mr. Connor's answer
10 was clear. If you want me to consult with him
11 further, I will do that. But I --

12 THE COURT: He's making a request that
13 you review in order to ensure that you have fully
14 met your responsibilities to turn over Mr.
15 Connor's disclosures as required as an expert
16 witness. I'm sure it's not an issue that in the
17 whole world, I'm sure, to be a hundred percent
18 comfortable, even though you have already done so,
19 to reiterate, if you're comfortable doing that
20 now. I'm not asking that you all go to Mr.
21 Connor's house or anything like that but, again,
22 to review the issue to make sure that you're
23 comfortable, that is not an unreasonable request.

24 MS. SIMON: Okay.

1 THE COURT: Thank you. Go ahead,
2 Mr. Caffry.

3 MR. CAFFRY: Thank you, your Honor.

4 BY MR. CAFFRY:

5 Q Mr. Connor, first couple of questions about
6 the photographs that you took that you testified about.
7 One set I believe was identified as Defendant's
8 Exhibit AF. Do you have that handy there?

9 THE COURT: I think it was returned to
10 our exhibit pile there.

11 (Document handed to the witness.)

12 A Yes, sir.

13 Q And I'm sorry but I missed when you said what
14 year you took those pictures in. When was that?

15 A These pictures were in 2013.

16 Q And what month was that again?

17 A I don't recall the specific month but the
18 first four pictures are with leaf out and the final
19 picture that depicts people hiking down the trail is
20 just as leaf-out was happening in 2013.

21 Q Could you explain what leaf out means and
22 then perhaps tie that into months of the calendar as
23 closely as you can?

24 A Sure. So deciduous trees that drop their

1 leaves every year, they create buds in the early
2 spring, and as the season changes, those buds open up
3 similar to a hand opening from a fist, and they extend
4 a small leaf. That normally happens during the month
5 of May. Depending on the tree species, it could vary
6 from early spring into early summer. Different trees
7 leaf out at different rates.

8 Q So it was sometime around May or so or
9 thereafter?

10 A Yup. And then once the trees fully roll out
11 their leaves through the growing process, the leaves
12 get larger throughout their growing season.

13 Q And that would apply, you said, to the first
14 four. What about number five?

15 A Number five is probably earlier in the
16 season, toward the middle of May to potentially the
17 beginning of June.

18 Q And that's based on vegetation you can see in
19 the picture?

20 A Yes, sir.

21 Q And so as far as you can tell, these pictures
22 were taken on two different occasions in the first half
23 of 2013?

24 A I think that would be an accurate reflection.

1 Q And then on Exhibit AG, do you have that
2 available to you or perhaps somebody could make it
3 available to you?

4 THE COURT: We'll put our clerk...

5 (Document handed to the witness.)

6 A I've got AG in my hand.

7 Q And that I believe is a set of five
8 photographs?

9 A Yes, sir.

10 Q And I think you said those were taken in 2015
11 or '16?

12 A '16, sir.

13 Q And what month of the year?

14 A So this would have been in the middle of
15 summer. I don't recall the exact date. July or
16 August.

17 Q And were they all taken on one visit?

18 A Yes, sir.

19 Q When did construction of this trail, the
20 Seventh Lake Mountain Trail, when was that completed?

21 A The formal, full-on construction at the
22 Seventh Lake Mountain Trail was completed in September
23 of 2014. That's when the last of the bridges were
24 finished. But all the primary tree cutting and tread

1 development and drainage work was done about the end of
2 December in 2012.

3 Q And so then there was additional work with
4 bridges and such in 2013 and 2014?

5 A Yes, sir.

6 Q And any other work besides bridge building in
7 2013 and 2014?

8 A I believe during the 2013 field season, we
9 addressed some drainage concerns, but I would have to
10 look at the work plan to confirm that. But there was
11 no major trail construction during that time.

12 Q And did you continue to supervise the work on
13 this trail until 2014?

14 A Yes. After the initial construction phase
15 and moving of materials throughout the winter of
16 2012-2013, my role for this project included overseeing
17 the crew allocations and supervising their work on the
18 project.

19 Q You said oversight, overseeing crew
20 allocations. When did you move to the job in the High
21 Peaks?

22 A I was assigned the High Peaks in November of
23 2014.

24 Q And when was the last time you were in the

1 field working on the Seventh Lake Mountain Trail? And
2 I say that, involved with construction in any way.

3 MS. SIMON: Your Honor, I think he
4 answered that question.

5 THE COURT: Overruled. You can answer.

6 A So as I said, at the end of December 2012 the
7 main construction and development of the trail tread
8 and drainage and the trail cutting was completed. In
9 early 2013, during that winter into March, we
10 transported materials via snowmobile to the different
11 bridge sites. Through March of 2013 I was directly on
12 that project the entirety of the time from September
13 until March.

14 Q Of 2013?

15 A Of 2013. During the construction season or
16 the field season of 2013, Student Conservation
17 Association Adirondack Corps crews were assigned to the
18 Seventh Lake Mountain Trail, and I forget the exact
19 number of weeks that they were assigned but each week,
20 a five-day hitch, a ten-day hitch, they would be doing
21 work on the trail.

22 Q Okay. But when were you out there?

23 A So I'm getting to that, sir. I would meet
24 with the crew and go over the project of the week for

1 them, each of those crew weeks throughout 2013, and
2 then there was a period of time in 2014, in the field
3 season 2014, that that would have happened again, just
4 lesser weeks. And I would have met with the crew, laid
5 out the project. So probably toward the end of August
6 of 2014 was the time when I was done directly
7 supervising any construction work and IDing the trail
8 completely.

9 Q I guess I'm still confused. When you say you
10 met with them, did you meet with them at the office or
11 did you meet with them at the job site in the field?

12 A On the job site, at the bridge site, showing
13 them what I needed them to do, going over everything,
14 checking in with them potentially, depending on a bunch
15 of different factors, with them communicating back to
16 me their need to have me check in.

17 Q After 2014, after I think you said August of
18 2014, how many times have you visited the Seventh Lake
19 Mountain Trail?

20 MS. SIMON: Relevance, your Honor.

21 THE COURT: Overruled. You may answer.

22 A During 2015 and 2016, I probably went to the
23 Seventh Lake Mountain Trail one to three times during
24 each of those years.

1 Q And what parts of it?

2 A Over the course of those visits I would have
3 been on each of the segments, different portions of the
4 trail.

5 Q The entire segment?

6 A No.

7 Q So, for instance, when you took the pictures
8 in Exhibit AG, how far did you walk on the trail that
9 day?

10 A Based on the location of the pictures, we
11 went up segment one. Heading from the intersection
12 between segment one and segment two, we head south or
13 went uphill to passing the first I think three bridge
14 sites. And then coming back to the intersection with
15 segment two, then heading down segment two probably
16 possibly a third to a half the distance.

17 Q And how far did you walk when you said you
18 went past two or three bridges I think on segment one?
19 How far was that in miles, do you know?

20 MS. SIMON: Your Honor, relevance.

21 THE COURT: Overruled.

22 A Probably a little over a mile. I apologize
23 for not having exact numbers. Throughout the course of
24 the process, I've walked on the trail quite a bit so

1 it's blended together.

2 Q And on any of these visits in 2015-2016, did
3 you take any notes?

4 A No.

5 Q Did you take any pictures on those -- on all
6 those visits in 2015-2016, did you take any photographs
7 other than the ones that were introduced into evidence
8 today?

9 A No.

10 Q Earlier you testified about some pictures
11 that Ms. Simon stated were taken by Mr. Amadon. Is
12 that your recollection of who took those pictures? You
13 were hear when testimony was given by Mr. Amadon,
14 weren't you?

15 THE COURT: Let's be more specific
16 because there were a number of different pictures.

17 MR. CAFFRY: Exhibits -- I'll withdraw
18 that question.

19 THE COURT: If you want to generally
20 reference all of the pictures --

21 MR. CAFFRY: No. I'll withdraw the
22 question.

23 THE COURT: Okay.

24 Q I believe you testified about two pictures or

1 one picture of a small bridge that Mr. Amadon had
2 taken. Is that correct?

3 A Yes.

4 Q Isn't it true that all the other pictures
5 were actually taken by Mr. Bauer and introduced through
6 Mr. Bauer's testimony?

7 MS. SIMON: Objection. How would he
8 know?

9 MR. CAFFRY: He was here.

10 THE COURT: Well, he answered a question
11 from you stating that they were taken by
12 Mr. Amadon and accordingly incorporated your
13 question as Mr. Amadon when he did it and the
14 question is were you here during the testimony. So
15 the objection is overruled. If you remember, you
16 can answer.

17 All counsel should recall that, of
18 course, the record speaks for itself as to through
19 whom the pictures were entered into evidence. But
20 if you remember, you may answer.

21 A Can you re-ask the question?

22 Q Sure. You testified about a number of
23 pictures starting at number 148 of the Seventh Lake
24 Mountain Trail ending with 155 but not every single one

1 in between there. One of them I believe was the
2 picture of you sitting near the bridge. Do you recall
3 who testified about those pictures? Was it Mr. Bauer
4 or Mr. Amadon?

5 A Peter Bauer testified to the picture of me
6 sitting on the wood behind the bridge.

7 Q And do you recall about the rest of them?

8 A We could go over the specific pictures, but
9 to my recollection the only thing I testified to today
10 was a picture Mr. Amadon had taken of a flat top,
11 two-log strand bridge.

12 MR. CAFFRY: Your Honor, I was just
13 trying to correct the record. I believe that
14 counsel misspoke when she identified the pictures,
15 and other than the two-log bridge, they were all
16 Mr. Bauer's exhibits or exhibits that were
17 introduced through him. Your Honor, at this point
18 it's 4:28. I would suggest it may be an
19 appropriate time to adjourn.

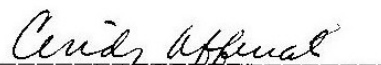
20 THE COURT: That's fine. So we're going
21 to adjourn for the day. We're off the record
22 unless anyone has anything they'd like to place on
23 the record before the day is over. All right.
24 Thank you, Counsel. Off the record.

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(Proceedings adjourned at 4:29 p.m.)

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

I, Cindy Affinati, Official Court Reporter for
the Unified Court System, Third Judicial District of
the State of New York, do hereby certify that I
attended and reported the foregoing proceedings; that
it is a true and accurate transcript of the proceedings
had therein to the best of my knowledge and ability.



Cindy Affinati
Official Court Reporter

I N D E X

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W I T N E S S E S

DEFENDANT'S WITNESSES Direct Cross Redirect Recross

TATE M. CONNOR (Cont'd) 1068 1142