



STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

PROTECT THE ADIRONDACKS! INC.,

Plaintiff-Petitioner,

INDEX NO.
2137-13

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

-against-

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

Defendants-Respondents.

NON-JURY TRIAL

B E F O R E:

HON. GERALD W. CONNOLLY,
Acting Supreme Court Justice

VOLUME X

TRANSCRIPT OF PROCEEDINGS in the above-entitled
matter held at the Albany County Courthouse, Albany, New
York on Thursday, March 23rd, 2017 commencing at 9:35 a.m.

DEBORAH MEHM, CSR
Sr. Court Reporter

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

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

and

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

For the Defendant:

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

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

3 Counsel do you want to approach please?

4 (Bench conference was held off the
5 record.)

6 THE COURT: Back on the record. We have
7 not yet recommenced the evidentiary phase of the
8 trial. We have had a discussion at the bench in
9 which we have discussed in particular we finished
10 discussing or we ended the day yesterday discussing
11 the use of Defendants' Exhibits and the acceptance
12 of Defendants' Exhibits A, B, C, double A, J and
13 I.

14 It is my understanding that counsel have
15 been working hard together to reach a stipulation
16 with regard to the use and the acceptance of those
17 into evidence. The Court does stand ready to give
18 further rulings if required, but it is my
19 understanding you are working well together, which I
20 appreciate and I'm sure both sides appreciate each
21 others collegiality in doing that on a stipulation
22 with regard to that which we have agreed on some
23 portions, but not quite all of them.

24 As I stated off the record I will preclude

1 any questioning of Mr. Frank with regard to the
2 basis for general statements in those documents with
3 regard to the constitutionality of the snowmobile
4 plan. The Class II community connector snowmobile
5 plan.

6 I will preclude that for now, pending
7 agreement on a stipulation or further Court ruling
8 in the event that the stipulation or further Court
9 ruling does not, in your mind, foreclose such
10 questioning. Mr. Caffry and Ms. Braymer, I will
11 give you the opportunity to be heard further, and if
12 you convince me that such questioning is appropriate
13 then I will direct Mr. Frank's return in order to
14 allow for his questioning on those issues.

15 As I stated off the record to you at the
16 end of the day yesterday before you began your
17 discussions and attempts at stipulation, it is
18 certainly the Court's position that no statements
19 inside any of those documents with regard to the
20 constitutionality of the defendants' actions are in
21 any way binding, or even such conclusory statements
22 are even relevant evidence with regard to the actual
23 constitutionality. Although I feel such statements
24 may serve as background evidence of the framework

1 that the defendants were attempting to avoid in the
2 construction of the Class II community connector
3 snowmobile trails. So we will stay away from that
4 line of questioning with Mr. Frank for now.

5 We have had further discussions with
6 regard to Mr. Linck's deposition testimony, and I
7 have set forth for you the process and my intent to
8 follow there. I will off the record, first, review
9 such testimony and any objections to the
10 admissibility of such testimony with counsel in my
11 chambers, after which we will go on the record and
12 counsel will be able to place any legal arguments or
13 exceptions with respect to any ruling that I made.
14 i will make them all on the record with regard to
15 the admissibility of such transcripts. The
16 testimony contained in such transcript.

17 Understood counsel?

18 MR. CAFFRY: Yes, Your Honor.

19 MS. SIMON: I have one question. When do
20 you think you want to do the transcript depositions?

21 THE COURT: We will try to schedule
22 that. Frankly it is at your convenience,
23 counsel. You know my schedule and you have your own
24 trial schedules. So I would rather try to work it

1 in. I do not think it would take us more than half
2 an hour to 45 minutes to go through the
3 transcript. Typically when I have done these
4 transcripts in jury trial proceedings, I would try
5 to work around all of your witness schedules because
6 I know even in a non-jury trial it is difficult to
7 work around witness schedules.

8 As you all know I'm unavailable on Monday
9 afternoons, Wednesday mornings and Fridays because
10 of my drug court responsibilities. Other than that
11 I'm at your convenience. If you want to do it very
12 early one day or later one day give me a warning and
13 we will do it then. Unless there is some particular
14 area in there you are concerned that you need to get
15 rulings on, because it is going to effect your
16 presentation of your defense. Then we can
17 accelerate it and do it whenever you need to in
18 order to make sure it fits in.

19 Speak to co-counsel and let me know when
20 you want to do that. Other than that any questions
21 or exceptions to what I have just stated on the
22 record. Ms. Simon?

23 MS. SIMON: No, Your Honor.

24 THE COURT: Mr. Caffry?

1 MR. CAFFRY: No, Your Honor.

2 Would you like me to read the agreed upon
3 paragraphs of the stipulation into the record at
4 this time?

5 THE COURT: That is fine by me. It is a
6 stipulation. If that is on the consent of Ms. Simon
7 then you should do so. Stipulations should always
8 go on the record as soon as possible, unless the
9 agreed upon sections are in some way effected by the
10 non-agreed upon sections.

11 MS. SIMON: I would agree we could read
12 paragraphs one, two and four. We have agreed we
13 will talk at lunch about the remaining paragraph.

14 THE COURT: Go enough. Go ahead Mr.
15 Caffry.

16 MR. CAFFRY: The stipulation on the use of
17 those documents reads.

18 One. Defendants' policies, guidances
19 guidelines and plans including Exhibits A, B, double
20 A, C, J and I were not offered or admitted as
21 evidence on the question of whether Class II
22 community connector trails individually or
23 collectively or any aspect of the design, siting or
24 construction are constitutional under the New York

1 State Constitution Article XIV, Section 1.

2 Two. Any statements therein as to their
3 constitutionality will not be considered by the
4 Court.

5 Skipping over number three for now.

6 Four. In particular these exhibits are
7 not admitted on the question of whether the
8 policies, procedures and standards contained in the
9 exhibits are constitutional under Article XIV,
10 Section 1 or whether Defendants' employees alleged
11 following of those policies, procedures and
12 standards was constitutional under Article XIV,
13 Section 1.

14 THE COURT: That is a stipulation agreed
15 upon by the defense counsel?

16 MS. SIMON: Yes, Your Honor.

17 THE COURT: The stipulation is accepted by
18 the Court.

19 All set to bring Mr. Frank back up
20 counsel?

21 MS. SIMON: Yes, Your Honor.

22 THE COURT: Mr. Caffry?

23 MR. CAFFRY: Yes, Your Honor.

24 THE COURT: Mr. Frank you are still under

1 oath sir.

2 CROSS-EXAMINATION OF MR. FRANK

3 BY MR. CAFFRY:

4 Q. Good morning Mr. Frank.

5 A. Good morning.

6 Q. You testified previously, and correct me if I am
7 wrong, that you oversee all of the projects in the forest
8 preserve, including the Class II community connector
9 trails?

10 A. All of the projects are carried out in my bureau.

11 Q. In your bureau?

12 A. Yes.

13 Q. So ultimately the responsibility for them. The buck
14 stops with you?

15 A. I don't know if I would say that.

16 Q. But they are within your bureau?

17 A. Yes.

18 Q. And you testified that through October 2014
19 approximately 27 miles of Class II trails had been
20 constructed. Is that correct?

21 A. Yes.

22 Q. And about 29 acres were cleared?

23 A. Correct.

24 Q. Could you look at Court Exhibit 1, which is a

1 stipulation regarding facts. Page three, paragraph 14. I
2 have handed that to you previously.

3 A. Okay.

4 Q. Do you see a table there of trail names and
5 information regarding Class II community connector trails?

6 A. Yes.

7 Q. What was the date that you testified to yesterday as
8 to the 27 miles?

9 A. I would have to go back and look at the date
10 range.

11 Q. At what?

12 A. I have to go back and look at the date range I
13 testified to.

14 Q. Was it October of 2014 do you recall?

15 MS. SIMON: Objection.

16 THE COURT: What is the objection?

17 MS. SIMON: He said he would have to go
18 back and look.

19 THE COURT: Overruled.

20 Q. Do you have something you can look at?

21 THE COURT: Hang on. The objection was
22 overruled. Can you read back Mr. Caffry's last
23 question?

24 (Reporter read the pending question.)

1 THE COURT: So Mr. Frank you may answer
2 that question.

3 A. I would have to look at my notes to see the dates.

4 Q. Do you have those notes with you?

5 A. I have my affidavits.

6 Q. Could you look at that please?

7 A. Sure.

8 Q. May I clarify? These are affidavits that you
9 previously signed and submitted in this case?

10 A. Yes. I understand the relevant timeframe to be
11 January 1st, 2012 through October 15th, 2014

12 Q. And so looking at Court Exhibit number 1 on page
13 three. Which trails were built within that timeframe?

14 MS. SIMON: Objection, Your Honor. They
15 are all stipulated to with the dates in the
16 agreement.

17 THE COURT: The objection is overruled. I
18 assume it is a preliminary question that he is
19 asking in order to direct his attention to something
20 he is going to get more specific to in a few
21 moments.

22 MR. CAFFRY: Yes, Your Honor.

23 THE COURT: The objection is overruled.

24 A. The Perkins Clearing Lewie Lake Trail. The Steam

1 Sleigh Trail. The Mount Tom East Trail. Taylor Pond to
2 Wilmington connector trail. The Gilmantown trail. The
3 Wilmington trail, segment three. The Seventh Lake Mountain
4 Trail. That is where it ends.

5 Q. And do you see a column there that says approximate
6 mileage of trail for all of those trails you just listed the
7 have a number in them?

8 A. Yes.

9 Q. Would it be fair to say that all those trails the
10 mileage only adds up to 18.8 miles and not 27?

11 A. I don't know.

12 Q. Would you like some time to do the math?

13 MS. SIMON: Objection, Your Honor.

14 THE COURT: Sustained.

15 Q. Assuming for the sake of discussion that they add up
16 to 18.8 miles. Are there other trails that were included in
17 your total of 27 that are not on this chart?

18 A. I don't recall.

19 Q. You don't recall. Were you perhaps seeking any
20 Class I trails? Has the department built any Class I trails
21 in that timeframe?

22 MS. SIMON: Objection. Relevance.

23 THE COURT: Overruled. You may answer.

24 A. I don't recall the other trails being constructed.

1 Q. Of either Class I or Class II?

2 A. Correct.

3 Q. When I say Class I and Class II I am referring to
4 the 2009 guidance that you testified to yesterday that
5 creates those classifications. Correct?

6 A. Correct.

7 Q. And so if there is a discrepancy in between 18.8 and
8 27 you don't know where that came from?

9 A. No, I don't.

10 Q. Mr. Frank, I have handed you what has been admitted
11 for certain purposes as Defendants' Exhibit I. Do you have
12 that before you?

13 A. Yes.

14 Q. Have you had a chance to look it over?

15 A. I'm looking it over now.

16 Q. Could you let us know when you are ready?

17 A. Okay.

18 (Pause.)

19 A. Okay.

20 Q. As I understand it this is a forest preserve policy
21 manual. A policy on snowmobile trails which is still in
22 effect for the department?

23 A. No.

24 Q. It is not?

1 A. No. It is not in effect.

2 Q. This policy is not in effect at all?

3 A. It's not in effect.

4 Q. It is not used at all?

5 A. No.

6 MR. CAFFRY: Your Honor this document was,
7 I believe, admitted yesterday and that was not the
8 witness's -- there was no mention of the fact that
9 it was no longer in effect. There was a separate
10 one that was testified to that no longer applies to
11 the Adirondacks, but given the witness's testimony I
12 would move that this exhibit be stricken in its
13 entirety.

14 THE COURT: I will wait until the end of
15 Mr. Frank's testimony and then you may reassert that
16 application.

17 MR. CAFFRY: May I continue questioning him
18 about this document then?

19 THE COURT: You may.

20 Q. Mr. Frank, looking at page seven of 14 of that
21 document. Do you have that in front of you?

22 A. Yes.

23 Q. I believe you testified yesterday there was a
24 mileage limit or mileage cap for snowmobile trails on the

1 Adirondack forest preserve. Is that correct?

2 A. I believe I said there would be no material
3 increase.

4 THE COURT: Remember to slow down for us.

5 Q. Would it be fair to say that there is a limit, but
6 that limit is then subject to increase so long as it is not a
7 material increase?

8 MS. SIMON: Objection.

9 THE COURT: Overruled. If you can answer
10 that question. Please answer it.

11 A. Can you restate the question?

12 Q. Sure. So would it be fair to say that there is a
13 rule in effect for the Adirondack forest preserve that there
14 is a recognized number of snowmobile trail mileage and that
15 the mileage of snowmobile trails may be increased but the
16 increase -- there may be no material increase?

17 A. Yes.

18 Q. And do you know what that number is prior to any
19 increase?

20 A. The number was set at 848.88 miles.

21 Q. And that number is set forth on page seven of
22 Exhibit I?

23 A. Yes.

24 Q. And even if Exhibit I is no longer in effect of

1 department policy that limit subject to no material increase
2 is still in effect pursuant to other policies or documents?

3 A. Yes.

4 Q. And is there anything in Exhibit I or any of those
5 other policies or documents that would prevent, yes or no,
6 that would prevent DEC from creating 848.88 miles of Class II
7 community connector trails so long as enough miles of
8 existing trails on the forest preserve are closed to use by
9 snowmobiles so as to keep the total at or under 848.88 or a
10 non-material increase?

11 MS. SIMON: Objection. Compound
12 question.

13 THE COURT: Sustained. Break it down Mr.
14 Caffry.

15 Q. Given the existence of this limitation that you have
16 just testified to. Yes or no. The DEC can close mileage of
17 existing trails and then build new Class II community
18 connector trails and stay within that limitation? Yes or
19 no?

20 A. Yes.

21 Q. Is there anything in any of these policies or rules
22 or whatever they may be that contains this limitation that
23 would prevent all of the 848.88 plus the non-material
24 increase from being used for new Class II community connector

1 trails if enough other trails are closed? Yes or no?

2 A. No.

3 MR. CAFFRY: Your Honor, I withdraw my
4 motion to strike Exhibit I.

5 THE COURT: Understood.

6 Q. Mr. Frank, I have handed you two exhibits and I see
7 you are looking them over. Let me know when you have had a
8 chance to check them over please. Take your time.

9 A. I'm familiar with them and I am ready.

10 Q. I have handed you Defendants' Exhibit B, which could
11 we call that the 2009 snowmobile trail guidance?

12 A. Yes.

13 Q. Yes or no. The 2009 snowmobile guidance does not
14 contain any directives or recommendations to staff to avoid
15 or minimize habitat fragmentation when building snowmobile
16 trails in the Adirondack forest preserve?

17 A. I'm not sure I would answer the question based on
18 the way it was stated. Could you restate it? The positive
19 or negative result on that.

20 Q. I won't ask it as a yes or no then. Does Exhibit B,
21 2009 guidance, does that contain any policy or directive to
22 the DEC staff to avoid or minimize habitat fragmentation?

23 A. Yes. It makes recommendation to preserve remote
24 interiors and --

1 THE COURT: Hang on. You need to restate
2 your answer and slow down a little bit.

3 A. It does make recommendations for reconfiguring the
4 trail system by avoiding remote interiors and moving trails
5 to periphery of units.

6 Q. Does it say specifically in there, yes or no, that
7 that is for purposes of habitat fragmentation?

8 A. No.

9 Q. Yes or no. The 2009 guidance does not contain any
10 directive or policies with regard to avoiding constructing
11 trails in old growth forests?

12 A. Again the way you word it. You said does not
13 contain.

14 Q. I will ask a direct question instead of yes or
15 no. Does the 2009 guidance contain any directive or policy
16 that would require the staff to avoid building a trail in an
17 old growth forest by specifically discussing old growth
18 forest?

19 A. Yes.

20 Q. Where does it refer to old growth forest?

21 A. Give me a minute.

22 (Pause.)

23 A. I'm having trouble looking. Give me a minute.

24 (Pause.)

1 Q. Mr. Frank have you had a chance to review that
2 document?

3 A. Yes. I'm looking for a reference. I'm having
4 trouble locating it.

5 Q. Let me just clarify the question and maybe it will
6 speed it up. There is a section on page seven on snowmobile
7 trail siting standards. My question more specifically has to
8 do with avoidance of siting trails in old growth forests. Is
9 there anything in those siting standards which are on page
10 seven and eight that require avoidance of old growth
11 forest?

12 A. Number four refers to siting trails with an
13 objective to avoid areas considered environmentally sensitive
14 such as wetlands --

15 THE COURT: Hang on. Slow down. Start
16 over. Number four.

17 A. New and rerouted snowmobile trails will be sited
18 with an objective to avoid areas considered environmentally
19 sensitive such as wetlands, endangered plant or animal
20 populations that might be harmed by the trails and/or their
21 use. Remote interior areas as defined by these guidelines
22 and forested corridors connecting such remote interior areas
23 and deer wintering areas and other significant habitats so
24 that the values of these areas are not diminished.

1 Q. Yes or no. That section does not include the words
2 old growth forest?

3 A. It does not.

4 Q. Turning now to Exhibit C. Do you have that before
5 you?

6 A. Yes.

7 Q. Is it correct that this is a memorandum numbered
8 LF91-2 and the topic is the cutting of trees on forest
9 preserve lands. Summarizing the topic. It is the tree
10 cutting policy. Correct?

11 A. Yes.

12 Q. And you testified yesterday about certain procedures
13 the department goes through, and some of the documents that
14 were introduced subject to your testimony about environmental
15 review. Seeker review. Things like that done on those
16 documents. Was this policy LF-91-2 reviewed under the State
17 Environmental Quality Review Act to your knowledge?

18 A. I don't know the answer to that question.

19 Q. Do you know whether any public hearings were held on
20 the adoption of this document?

21 A. No. I don't know.

22 Q. Looking at the first paragraph on page one entitled
23 purpose. Do you see that?

24 A. Yes.

1 Q. Could you read the first sentence of that
2 paragraph?

3 A. "The purpose of this memorandum is to establish
4 administrative procedures for the implementation of
5 Commissioner Williams' organization and delegation memorandum
6 number 84-06 relating to the construction of new facilities,
7 the expansion or modification of existing facilities, and
8 routine maintenance projects on lands of the forest
9 preserve."

10 Q. So in that sentence the only stated purpose is
11 administrative procedures. Yes or no?

12 A. Yes.

13 Q. You testified yesterday that approximately 29 acres
14 of forest preserve was cleared for Class II trails within a
15 certain timeframe. Do you recall that?

16 A. Yes.

17 Q. Within the 29 acres to your knowledge are there any
18 trees --

19 MS. SIMON: Objection, Your Honor. I think
20 it was -- I'm sorry. Withdrawn.

21 THE COURT: Restart your question please.

22 MS. SIMON: I'm sorry.

23 Q. To your knowledge within the 29 acres are there
24 any trees over 3-DBH left standing?

1 A. I don't have firsthand knowledge to answer that.

2 MR. CAFFRY: May I have a moment Your
3 Honor?

4 THE COURT: Sure.

5 MR. CAFFRY: Your Honor, we have no further
6 questions for this witness at this time, subject to
7 your prior ruling that he is subject to recall under
8 certain circumstances.

9 THE COURT: Thank you. Ms. Simon any
10 redirect?

11 REDIRECT EXAMINATION OF MR. FRANK

12 BY MS. SIMON:

13 Q. Mr. Frank do you still have Defendants' Exhibit B?

14 A. Yes.

15 Q. Would you turn to page ten?

16 A. Okay.

17 Q. Just for the record could you read number one?

18 A. "Cutting of overstoried trees will be avoided in
19 order to maintain a closed canopy wherever possible. Large
20 and old growth trees should be protected."

21 Q. Thank you. Mr. Frank, do you recall an affidavit of
22 August 24th, 2016 in this case that you made?

23 A. Yes.

24 Q. Do you have that with you that you can consult?

1 MR. CAFFRY: Objection, Your Honor.

2 MS. SIMON: Do you want me to ask the
3 question first?

4 MR. CAFFRY: Unless he needs to refresh his
5 recollection I don't see why he should consult a
6 prior affidavit. It would only be usable, to my
7 understanding, to refresh his recollection and it
8 has not been established that he needs to do so.

9 THE COURT: If it is not in evidence then
10 you need to ask the question. Go ahead.

11 MR. CAFFRY: Objection to her reading from
12 the affidavit if it is not evidence.

13 MS. SIMON: I'm not reading it.

14 THE COURT: Let her ask it.

15 MR. CAFFRY: Okay.

16 THE COURT: Then we will see. Go
17 ahead. Ask your question. Not the affidavit.

18 Q. Mr. Frank, when you made the affidavit in this case
19 and here you also testified that there were 27 miles of Class
20 II trails constructed in the timeframe of this case or for
21 which construction commenced. Correct?

22 A. Yes.

23 Q. Did you rely on any other information other than
24 your role as oversight of this Class II trail system. Did

1 you rely on any other information?

2 A. No. I don't recall other information.

3 Q. My question is: Did you rely on any information in
4 coming up with the 27 miles?

5 A. No. That was information that was submitted.

6 MS. SIMON: Thank you. No further
7 questions.

8 THE COURT: Anything else Mr. Caffry?

9 MR. CAFFRY: Yes. I do have something on
10 redirect.

11 RE-CROSS-EXAMINATION OF MR. FRANK

12 BY MR. CAFFRY:

13 Q. Mr. Frank you just read from the 2009 guidance
14 Exhibit B. Correct? On cross-examination?

15 A. Yes.

16 Q. You read two sentences, one of which said large and
17 old growth trees should be protected. Correct?

18 A. Yes.

19 Q. Yes or no. That comes under the heading of tree
20 cutting on that document?

21 A. Yes.

22 Q. Yes or no. That is not in the section on trail
23 siting of that document?

24 A. Yes.

1 MR. CAFFRY: No further questions.

2 THE COURT: Anything else Ms. Simon?

3 MS. SIMON: No, Your Honor.

4 THE COURT: Thank you Mr. Frank. You may
5 step down.

6 MS. LEE-CLARK: Your Honor, we would like
7 to call Kathy Regan to the stand.

8 KATHLEEN REGAN,

9 having been duly sworn, was examined and
10 testified as follows.

11 THE COURT: Good morning Mrs. Regan. I'm
12 Judge Connolly. You have heard my prior
13 instructions to other witnesses on the stand?

14 THE WITNESS: No. I have not.

15 THE COURT: So a couple things.

16 As you can see, we have a court reporter
17 here taking down verbatim everything that is
18 said. Because of that I need you to make sure when
19 you answer questions you answer them slowly and
20 clearly in a verbal manner. Stay away from head
21 nods, yes or no and ut-huh and ah-ha.

22 THE WITNESS: I will try. I tend to speak
23 too quickly anyway.

24 THE COURT: It does happen here on the

1 stand. That is why I have that instruction. I will
2 remind you of it if need be. Particularly if you
3 are reading something out loud. Be very careful of
4 that.

5 Second. If you are hear an objection at
6 any point, do not answer the question until I have
7 ruled on the objection. If you are already speaking
8 and someone says objection just stop immediately. I
9 will rule on the objection and I will tell you
10 whether you can finish or not.

11 THE WITNESS: Okay.

12 THE COURT: Finally if at some point -- it
13 will be you Mr. Caffry? If at some point Mr. Caffry
14 says he wants a yes or no answer to a question, you
15 have three possible answers at that point. Yes, no
16 and I can't give you a yes or no answer to that
17 question. Do not explain why. Understood?

18 THE WITNESS: Understood.

19 THE COURT: No explanation beyond yes, no
20 and I can't do it.

21 THE WITNESS: Okay.

22 MS. LEE-CLARK: As a preliminary matter.
23 Can we move the easel over on this side?

24 THE COURT: Sure.

1 MS. LEE-CLARK: The map is already in
2 evidence.

3 MR. CAFFRY: Your Honor, may I take a look
4 at the map before she begins questioning?

5 THE COURT: Sure.

6 (Counsel conferred.)

7 DIRECT EXAMINATION OF MS. REGAN

8 BY MS. LEE-CLARK:

9 Q. Please state your full name.

10 A. Kathleen Dorothy Regan.

11 Q. Ms. Regan where are you employed?

12 A. At the Adirondack Park Agency.

13 Q. And what is your title?

14 A. My title is Deputy Director of Regional Planning.

15 Q. How long have you been with the Adirondack Park
16 Agency?

17 A. I started at the Park Agency in January of 2007 as
18 an EPA contract employee. A non-state employee. An EPA
19 contractor. In July of 2008 I was hired as a state employee
20 as a natural resource planner. In September of 2014 I was
21 promoted to the current position.

22 Q. Do you hold any degrees?

23 A. Yes, I do.

24 Q. What are they?

1 A. I have a Bachelor's of Science in Botany from the
2 University of Vermont. I have a Master's of Science in
3 Botany from Miami University in Ohio.

4 Q. Could you please state your current job
5 responsibilities?

6 A. I oversee a staff of seven people. Two of those
7 people are primarily involved with local government
8 planning. Two of the other people are primarily responsible
9 with map amendments and GIS data. Three people are primarily
10 responsible for overseeing state land projects.

11 Q. Have you held any other positions with the
12 Adirondack Park Agency? I will call it either the Agency or
13 APA.

14 A. As I said earlier I was a contractor and then I was
15 also a natural resource planner.

16 Q. What were your job responsibilities as a natural
17 resource planner?

18 A. As a natural resource planner I was primarily
19 involved with reviewing unit management plans or management
20 plan amendments. State land consultation when the department
21 needs to come to the Agency to ask whether they need to have
22 a UMP or whether they need a wetlands permit, also involved
23 with classification of newly acquired state lands and
24 reclassification of already classified state lands.

1 Q. When you say "department" do you mean the Department
2 of Environmental Conservation?

3 A. Yes, I do. I'm sorry.

4 Q. That's okay. Ms. Regan what did you do prior to
5 working at the Agency?

6 A. I was employed by the Nature Conservancy for 17
7 years in three different locations. I started in
8 Pennsylvania as a data manager and botanist for the Heritage
9 Program. Then I moved to Arlington, Virginia for their
10 headquarters office where I organized and ran week long
11 training programs for new Heritage employees. Then I came to
12 the Adirondacks and was the director of science and
13 stewardship for that chapter.

14 Q. Do you hold any awards or honors related to your
15 work?

16 A. I received an award in 2013 from the Guy Waterman
17 Stewardship Foundation for my work with the Summit
18 Stewardship Program, and the Summit Stewardship Program has
19 won multiple awards.

20 Q. Ms. Regan have you read the complaint in this
21 case?

22 MR. CAFFRY: Objection, Your Honor.

23 THE COURT: What is the objection?

24 MR. CAFFRY: We object to this witness

1 testifying on behalf of the Adirondack Park Agency
2 because we were never allowed to depose her or
3 anyone above the level of Mr. Linck in the discovery
4 phase of this case.

5 During discovery we noticed numerous staff
6 members of the Agency, including the Chairman, the
7 executive director and the state lands director Mr.
8 Rick Weber.

9 As you have heard before the only witness
10 from the agency that was voluntarily provided to us
11 under 3106 D was -- I'm sorry. His name escapes me.
12 Mr. McNamara, who as it turned out knew nothing
13 about the trails other than potential wetland
14 violations that he investigated.

15 Pursuant to your court order we were then
16 allowed to depose Mr. Walter Linck. We didn't
17 notice Ms. Regan specifically on the list at the
18 time. She was at that time roughly equivalent to
19 Mr. Linck's level. It appeared that he had reviewed
20 more of the trails, and as far as that level of
21 employee we thought that was sufficient.

22 So we only got to depose Mr. Linck. We
23 didn't get to go any higher up the
24 administration. We did not get to depose any

1 supervisory people. Ms. Regan has since been
2 promoted into higher positions. First she went into
3 the job Mr. Weber held. That of state lands
4 director. Mr. Weber was on our list of people we
5 wanted to depose and couldn't. Now her job
6 supervises that position.

7 The point remains we never got to depose
8 anybody above Mr. Linck's level. We have offered
9 excerpts of Mr. Linck's transcript into the
10 record. That is still to be resolved.

11 We think it would be highly prejudicial to
12 allow anybody else from the agency to testify at
13 this time as a fact witness when we were not allowed
14 to depose either them or their predecessor in the
15 discovery process.

16 Even when Ms. Regan was promoted into
17 higher level positions they did not offer her to us
18 as an alternative. Therefore we object to her
19 testifying on anything on behalf of the Agency.

20 THE COURT: Ms. Lee-Clark.

21 MS. LEE-CLARK: Your Honor, we don't
22 believe that the plaintiff ever requested Ms. Regan
23 for depositions. She has been in this position I
24 believe she testified --

1 THE COURT: Why don't you give us an offer
2 of proof with regard to her testimony and then make
3 your argument.

4 MS. LEE-CLARK: She will testify as to the
5 background documents in terms of the state land
6 classifications and where snowmobile trails are
7 allowed to be sited. Her testimony is limited. All
8 of the documents that she will testify to have
9 either already been admitted as evidence or
10 plaintiff has seen them for years.

11 Additionally, plaintiff could have
12 requested Ms. Regan at anytime and they did
13 not. She has also submitted numerous -- at least
14 one affidavit --

15 THE COURT: Hang on. You are getting ahead
16 of me. Give me your offer of proof with regard to
17 her proposed testimony again slowly.

18 MS. LEE-CLARK: So she will testify as to
19 the state land master plan, which she will testify
20 that is the operative document that the Adirondack
21 Park Agency uses in their interaction with Class II
22 trails.

23 She will explain the various
24 classifications for forest preserve lands upon which

1 snowmobile trails may be sited. If plaintiff
2 believes this is irrelevant --

3 THE COURT: Hang on. You are beyond me
4 again. So now you have heard the offer of proof
5 with regard to what Ms. Lee-Clark intends to elicit
6 from Ms. Regan.

7 MR. CAFFRY: If it is strictly limited to
8 policy documents and nothing that requires any
9 specific knowledge of any facts, policies or
10 procedures outside of the documents reserving my
11 right to object to any particular object, I would
12 not object to her being used for that extremely
13 limited purpose. Beyond that I reserve the right to
14 object.

15 THE COURT: Understood. So we will proceed
16 forward.

17 As you have just stated Mr. Caffry, there
18 is no bar on you objecting at any point to any
19 question for any purpose and we will take them as
20 they come. For now we will proceed and I will on
21 that offer of proof deem your immediately prior
22 objection withdrawn and we will go forward.

23 Go ahead.

24 MS. LEE-CLARK: Thank you.

1 THE COURT: Ask your next question.

2 Q. Ms. Regan have you read the complaint in this
3 case?

4 A. Yes, I have.

5 Q. Are you familiar with the first cause of action
6 regarding the constitutionality of Class II community
7 connector snowmobile trails on the Adirondack forest
8 preserve?

9 A. Yes.

10 Q. I will call them Class II trails. Are you familiar
11 with Article XIV, Section 1 of the New York State
12 Constitution known as the Forever Wild clause?

13 A. Yes.

14 Q. Could you briefly state the APA's role regarding the
15 Adirondack Park?

16 A. The Adirondack Park Agency is responsible for the
17 development and implementation of long range planning on both
18 public and private lands. We oversee and administer three
19 acts. The Adirondack Park Agency Act. The New York State
20 Fresh Water Wetlands Act within the Park, and the New York
21 State Wild Scenic Recreational Rivers Act on private lands
22 within the park.

23 Q. What is the APA's role regarding state owned forest
24 preserve lands?

1 A. The APA's role is involved in two ways. We are
2 involved with the classification of state lands, and we are
3 also involved with the unit management plan and process.

4 Q. Ms. Regan do you have a general knowledge and
5 understanding of documents and policies of the APA?

6 A. Yes.

7 Q. Is there a primary document that governs the forest
8 preserve land?

9 A. Yes.

10 Q. What is that?

11 A. The Adirondack Park State Land Master Plan.

12 Q. I will call it the master plan. What is the master
13 plan?

14 A. The master plan is a document that was approved by
15 the Legislature and the Governor in 1972 to direct the
16 Adirondack Park Agency with its role in classification of
17 state lands and the development of unit management plans. It
18 defines the state land classifications and the basic
19 guidelines that must be followed for each of those
20 classification categories.

21 Q. Ms. Regan, what is the APA's role in the oversight
22 of the forest preserve lands in the Adirondack Park
23 specifically as it relates to Class II trails?

24 A. We review Class II trails in two ways. The first

1 would be when a unit management plan or amendment comes to us
2 we -- actually my board. Not me personally. Reviews it to
3 see if it is in conformance with the guidelines. Then after
4 if a board decides that the trail is in conformance and the
5 unit management plan is adopted, we do review the work plans.

6 Q. You had said the board reviews UMPs and amendments
7 for conformance with guidelines. What guidelines are
8 those?

9 A. With the guidelines of the State Land Master Plan.

10 Q. Ms. Regan, I am showing you what has been marked as
11 Defendants' Exhibit X for identification. It has been
12 stipulated to in Court's Exhibit 2 as authentic. Do you
13 recognize this document?

14 A. Yes, I do.

15 Q. What is this document?

16 A. This is the Adirondack Park State Land Master Plan
17 dated October 2011.

18 MS. LEE-CLARK: Your Honor, I move Exhibit
19 X into evidence.

20 MR. CAFFRY: Your Honor, we do not object
21 to the admission of this document into evidence if
22 it is made subject to the stipulation that we
23 entered into earlier this morning as to the
24 limitations on the reasons for its admission and its

1 use in this action, and subject to our right to
2 object to any further use or discussion of it at an
3 appropriate time in response to particular
4 questions, briefs or whatever.

5 MS. LEE-CLARK: I believe it is already
6 subject to any further objections, and we consent to
7 it being part of the stipulation.

8 THE COURT: All right. Under the stated
9 conditions Defendants' X is received into
10 evidence.

11 (Defendants' Exhibit X received in
12 evidence.)

13 BY MS. LEE-CLARK:

14 Q. Ms. Regan, is this a copy of the Master Plan that
15 was in effect between the timeframe of this case otherwise
16 known as between 2012 and October 15th of 2014?

17 A. Yes.

18 Q. Does the Master Plan in any way determine the use of
19 forest preserve lands?

20 A. Yes.

21 Q. How does it do so?

22 A. I'm trying to decide how to begin that
23 question. The Master Plan identifies nine classification
24 categories, which land is state land forest preserve is

1 classified into based on four criteria that we need to follow
2 to make that determination.

3 The criteria are the biological
4 considerations. Things like natural communities and rare
5 species. Physical characteristics. Things like
6 slopes. Soils. Topography. Intangible characteristics such
7 as remoteness, sense of ruggedness and existing uses.

8 Q. Is there any consideration of potential uses on
9 those forest preserve lands?

10 A. Yes. As we are looking at --

11 MR. CAFFRY: Objection, Your Honor. I
12 earlier objected to this witness testifying and then
13 withdrew that so long as her testimony was limited
14 to putting the documents into evidence. I think
15 these questions are starting to go beyond that. The
16 document speaks for itself and I would object to
17 any -- I renew my objection to her testimony on the
18 previously stated grounds as to further questions
19 about the document.

20 (Reporter read the pending question.)

21 THE COURT: Ms. Lee-Clark do you want to be
22 heard on the objection?

23 MS. LEE-CLARK: Yes, Your Honor. I don't
24 believe your ruling was solely for, and correct me

1 if I am wrong Your Honor, but was solely for placing
2 documents in evidence.

3 THE COURT: I didn't make a ruling. You
4 gave us a proffer of proof and Mr. Caffry
5 accordingly withdrew that objection. So don't worry
6 about my ruling. I'm sorry. I don't mean to say
7 worry. You know what I mean. Just address the
8 objection.

9 MS. LEE-CLARK: The State Land Master Plan
10 is the guiding document for the Adirondack Park
11 Agency and any of their interactions with Class II
12 trails. It is the discussions of how those lands
13 are classified and directly ties into the Agency's
14 role as to those trails.

15 THE COURT: I can accept that. The basis
16 of Mr. Caffry's objection, as I understand it, is
17 that the defendants in this matter vociferously
18 objected to their proposed deposition of members of
19 the Adirondack Park Agency, who may well have been
20 in a position to answer the type of questions that
21 you are asking and go to the evidence that you are
22 now starting to say you want to elicit from this
23 witness.

24 So you need to address that more

1 specifically as opposed to telling me what they do
2 because I understand, I think. But he has made an
3 objection on the grounds that you are taking an
4 inconsistent position than that previously taken in
5 this litigation.

6 MS. LEE-CLARK: I would argue that
7 plaintiff sought ultimate policy makers. The burden
8 was on them to request any further rulings on
9 whether they wanted additional witnesses. They
10 could have asked for Ms. Regan or somebody else post
11 when they applied to have both, I believe, Walter
12 Linck and Ken Hamm deposed. They didn't do
13 so. They have been on notice throughout our summary
14 judgment motions and previous motions that we intend
15 to go into this testimony, and that that testimony
16 is essential to establishing the Agency's role in
17 any way in this complaint.

18 THE COURT: I am going to allow this
19 question, but over your objection Mr. Caffry. I am
20 cautioning you that I expect any evidence in this
21 matter to be sharply curtailed if not by you then by
22 Mr. Caffry's objection and my rulings. Okay?

23 So go ahead. Do you want to hear the
24 question?

1 THE WITNESS: I would like to hear the
2 question again. Thank you.

3 (Reporter read the pending question.)

4 A. Yes. When we are reviewing the characteristics, the
5 four characteristics that we look at. We look at the
6 biological and physical characteristics --

7 MR. CAFFRY: Objection, Your Honor. The
8 witness is testifying as to what we look at. She is
9 not testifying about the document.

10 This is the heart of my objection to this
11 witness. If she wants to read chapter and verse
12 from the document into the record I can't object to
13 that. If she is going to testify about what we do
14 and this is why. This is the kind of thing we did
15 not get to depose any supervisory personnel.

16 THE COURT: You are reiterating your
17 objection, which I heard the first time and ruled on
18 this question. So the objection is again
19 overruled. I am not in any way foreclosing you from
20 any further objections along that line.

21 MR. CAFFRY: I didn't realize it was the
22 same question.

23 THE COURT: I think she was answering that
24 question. Go ahead.

1 A. We need to see if the land is capable of
2 withstanding certain uses. The Master Plan directs us to do
3 that by looking at those criteria. So capable of
4 withstanding uses can mean should certain recreational uses
5 be allowed in certain areas.

6 Q. Thank you. What are the state land classifications
7 on which snowmobile use is typically permitted?

8 A. Snowmobile use can be permitted on multiple
9 classification categories. It tends to be limited to wild
10 forest.

11 Q. Why is that?

12 A. Snowmobiles -- in the State Land Master Plan it
13 states that snowmobiles are generally prohibited from
14 wilderness, permitted and canoe areas. There is an
15 exception. And that motorized activity isn't allowed in
16 those classification categories, but is in wild forest.

17 Q. Does the Master Plan define snowmobile trails?

18 A. Yes, it does.

19 Q. What is that definition?

20 A. I need to find it.

21 Q. I believe it is at page 18.

22 A. Thank you.

23 MR. CAFFRY: May we have the witness state
24 what document she is looking at?

1 THE WITNESS: 2011. October 2011

2 Adirondack Park State Land Master Plan.

3 THE COURT: That is Exhibit X in

4 evidence. Go ahead.

5 A. On page 18, number 31. Snowmobile trail. "A marked
6 trail of essentially the same character as a foot trail
7 designated by the Department of Environmental Conservation on
8 which when covered by snow and ice snowmobiles are allowed to
9 travel and which may double as a foot trail at other times of
10 the year."

11 Q. Ms. Regan does APA build snowmobile trails?

12 A. We do not.

13 Q. What is the APA's role, if any, with regard to
14 planning or approval of Class II trails?

15 MR. CAFFRY: Objection.

16 THE COURT: Overruled.

17 A. The APA board must approve a unit management plan or
18 unit management plan amendment that states where a
19 snowmobile, a community connector trail would be placed.

20 Q. After the unit management plan or UMP process, is
21 there any other document that requires APA sign off for
22 construction of Class II trails?

23 A. After the trail has been approved the Agency also
24 signs off on a work plan that is done in consultation with

1 the Department.

2 Q. Does the Agency or its representatives or staff do
3 they -- does the Agency conduct field visits --

4 MR. CAFFRY: Objection.

5 THE COURT: Overruled. Go ahead.

6 Q. -- to Class II trails as part of the planning
7 process?

8 A. Yes.

9 Q. When does that occur?

10 A. It varies in time. It starts as they are trying to
11 develop where the trail should go. In a unit management plan
12 a trail is sort of -- the concept is laid out and not the
13 specifics on the land. So there is work conducted to exactly
14 where that trail would be located and as the trail is being
15 developed.

16 Q. Ms. Regan, does the Master Plan contain a definition
17 for roads within the context of the Adirondack Park?

18 A. Yes, it does.

19 Q. Can you please read from page 17 that definition?

20 A. Again we are in the October of 2011 version on page
21 17. Number 29. "A road is an improved or partially improved
22 way designed for travel by automobiles and which may also be
23 used by other types of motor vehicles except snowmobiles,
24 unless the way is a designated snowmobile trail and is (i)

1 either maintained by a state agency or local government and
2 open to the general public. Two. Maintained by private
3 persons or corporations primarily for private use, but which
4 may also be open for the general public for all or a segment
5 thereof. Or three. Maintained by the Department of
6 Environmental Conservation or other state agency and open to
7 the public on a discretionary basis."

8 Q. Thank you. Ms. Regan, I would like you to turn your
9 attention to Exhibit Y, which we have posted for everyone's
10 viewing enjoyment over here. It has been admitted pursuant
11 to Court's Exhibit 3.

12 MS. LEE-CLARK: Your Honor, would you like
13 another copy to look at?

14 THE COURT: I appreciate the offer. Let's
15 wait to see where you go with it. Thank you.

16 Q. Do you recognize this document Ms. Regan?

17 A. Yes, I do.

18 Q. Can you see it from where you are?

19 A. Mostly.

20 Q. I will move it if you need it. What is this
21 document?

22 A. This is the Adirondack Park Land Use and Development
23 Plan Map and State Land Map.

24 Q. Was this prepared under your supervision?

1 A. This was prepared by a staff person who I
2 supervise.

3 Q. What does this map show?

4 A. This map shows the classifications of both public
5 and private lands within the Adirondack Park.

6 Q. Is there a common term for the outline of the
7 Adirondack Park?

8 A. The outline of the Adirondack Park is called the
9 blue line.

10 Q. Does that include both public and private lands?

11 A. Yes, it does. It is a mixture of both public and
12 private lands.

13 Q. Do you know approximately how many acres in the
14 Adirondack Park are state owned forest preserve lands?

15 A. Approximately 2.5 million acres are state land
16 forest preserve.

17 Q. Is it your understanding that these forest preserve
18 lands are the lands protected by the forever wild clause?

19 A. Yes.

20 Q. Do the yellow and orange lands on the map depict
21 public or private lands?

22 A. Public lands.

23 Q. Do the yellow and orange depict public or private
24 lands?

1 THE COURT: If you need to step down to
2 look at the map you are more than welcome to.

3 THE WITNESS: Thank you.

4 (Witness left the stand.)

5 A. The yellow and orange are private lands.

6 Q. Could you describe for the Court where a wilderness
7 area is just to give a sense?

8 A. This area here is the High Peaks Wilderness Area,
9 and it is just south of Lake Placid. It is in a sort of dark
10 blue green color.

11 Q. Thank you. Could you point out an area that is wild
12 forest?

13 A. Wild forest area would be the Moose River Plains
14 area down here by Inlet and Old Forge. It is in a lighter
15 area.

16 Q. Thank you. That's all I need for the map.

17 (Witness resumed the stand.)

18 Q. Ms. Regan does the Agency work with DEC to
19 coordinate planning in the Adirondack forest preserve?

20 A. Yes.

21 Q. Is there a document that memorializes that working
22 relationship?

23 A. Yes.

24 THE COURT: Ms. Lee-Clark would this be a

1 good time to take our morning recess?

2 MS. LEE-CLARK: Yes.

3 THE COURT: We will take approximately ten
4 minutes. You are more than welcome to do whatever
5 you need to do.

6 (Recess.)

7 THE COURT: You are still under
8 oath. Ms. Lee-Clark all set?

9 MS. LEE-CLARK: Yes.

10 BY MS. LEE-CLARK:

11 Q. Ms. Regan, I have handed you what has already been
12 admitted as Defendants' Exhibit AA. Ms. Regan, does the
13 agency work with DEC to coordinate planning in the Adirondack
14 forest preserve?

15 A. Yes, we do.

16 Q. Is there a document that memorializes that working
17 relationship?

18 A. Yes, there is.

19 Q. What is that?

20 A. It is the document you have handed me, which is
21 Defendants' Exhibit AA. A memorandum of understanding
22 between the Adirondack Park Agency and the Department of
23 Environmental Conservation concerning implementation of the
24 State Land Master Plan for the Adirondack Park.

1 Q. Does the MOU make reference of a planning process
2 between the two agencies?

3 A. Yes.

4 Q. How does that process work?

5 A. The memorandum sets up guidelines for the working
6 relationship between the Department and the Agency. Who the
7 contact people are. What the procedure is. Time lines for
8 passing documents back and forth to each other. This is
9 through the classification process as well as the unit
10 management planning process and state land consultations.

11 Q. What is the APA's role in the unit management
12 planning process?

13 A. The APA's role, the Board's role is to determine
14 whether a unit management plan conforms to the State Land
15 Master Plan. We get involved early on by having a team
16 member, a staff person working with the Department on the
17 development of the unit management plan.

18 Q. Do these UMPs address the -- I'm sorry. Can you
19 turn to Exhibit X once again? This is State Land Master
20 Plan. Does the State Land Master Plan include any limit on
21 the number of snowmobile miles in the Adirondack Park?

22 A. There is not a specific number listed in the State
23 Land Master Plan.

24 Q. Does it discuss any limitation on snowmobile trails

1 in the Adirondack Park?

2 A. Yes, it does. The material increases the phrasing
3 that is used.

4 Q. Do the UMPs, the Unit Management Plans that you just
5 discussed within the context of the memorandum of
6 understanding, do these address this Master Plan
7 requirement?

8 A. I'm sorry. Can you repeat that?

9 Q. I'm sorry. So the Unit Management Plans. Do they
10 address this master plan requirement about net gain or loss
11 of mileage?

12 MR. CAFFRY: Objection, Your Honor.

13 THE COURT: Overruled. Go ahead.

14 A. Each Unit Management Plan that has snowmobile trails
15 in the plan has a chart included within the plan, and that
16 chart lists how many trails have been closed. Additional
17 trails that have been opened. A net loss or gain, and the
18 current mileage park wide for snowmobile trails.

19 Q. Thank you. Ms. Regan, turning back to the
20 memorandum of understanding. Is there anything in that
21 document regarding invasive species in the Adirondack Park?

22 A. Yes. There is an appendix in this MOU, memorandum
23 of understanding, that was added, I forget which year, that
24 has best management practices for the control of invasive

1 species.

2 Q. Could you turn to that appendix. I believe it is
3 page 33.

4 A. Yes.

5 Q. Then turning to the next page 34. Do you see
6 anything listed for the Camp Santanoni historic area?

7 A. Yes. This is a chart that lists the location and
8 approximate size of certain invasive species populations and
9 for Camp Santanoni --

10 MR. CAFFRY: Objection, Your Honor.

11 THE COURT: What is the objection?

12 MR. CAFFRY: It goes beyond the scope for
13 which the document was admitted. The document was
14 admitted for purposes of establishing policies and
15 processes and not for specific facts that may be
16 contained within it.

17 MS. LEE-CLARK: That was not my
18 understanding, Your Honor. We admitted this under
19 Mr. Frank's testimony yesterday.

20 MR. CAFFRY: But it is subject to the
21 stipulations.

22 THE COURT: It is subject to the
23 stipulation. It is also subject to your
24 objections. This objection is overruled. You may

1 continue.

2 A. This lists the Camp Santanoni Japanese knotweed was
3 located in two populations for a total affected area of .03
4 acres.

5 Q. Is there any indication in this appendix about when
6 this was identified? When these populations were identified?
7 Turning back to page 33.

8 A. The document states that this information was gained
9 in 2004 and 2005 by the Adirondack Nature Conservancy
10 Adirondack Park Invasive Plan program staff.

11 Q. To your knowledge was this prior to the construction
12 of the Class II trail from Santanoni to Lake Harris?

13 A. Yes.

14 THE COURT: Hang on. I want to be clear
15 about my ruling with regard to that question and the
16 answer and your objection.

17 This remains, as I understand it, a
18 previously authenticated document on which there was
19 a stipulation which governs the acceptance of the
20 document and on which as you state, I think, Mr.
21 Caffry the evidence just adduced does not fall
22 within the terms of that stipulation.

23 Despite that because it has been
24 authenticated and because it contains factual issues

1 that are relevant to what is before us now, I am
2 accepting it separate and apart from the strictures
3 of the stipulation over your objection.

4 You still may assert any such objections
5 separate and apart from the stipulation with regard
6 to anything that she proffers but I wanted to be
7 clear. I agree with you that does fall outside the
8 scope of the stipulation and I am accepting it over
9 your objection. Understood?

10 MR. CAFFRY: Understood. Yes.

11 THE COURT: Please go ahead.

12 MS. LEE-CLARK: Thank you.

13 Q. Are you familiar with the 2009 management
14 guidance?

15 A. Yes, I am.

16 Q. Is there a unified principle behind the State Land
17 Master Plan, the MOU, Exhibit AA and the 2009 guidance?

18 MR. CAFFRY: Objection.

19 THE COURT: I am inclined to sustain
20 that. I have had a chance to review again Judge
21 Ceresia's decision as well as my decision with
22 regard to the discovery issue, and it seems that is
23 exactly the area that Mr. McCaffrey was previously
24 objecting to with regard to evidence seeking the

1 rationale for determining their actions to comply
2 with the Constitution as well as the rationale used
3 in the review process leading up the APA's
4 approvals.

5 So I am willing to let you be heard on
6 this, because you both obviously know your evidence
7 and the case far better than I do. It seems to fit
8 within those areas upon which the Plaintiffs in this
9 case were largely barred from conducting
10 depositions.

11 MS. LEE-CLARK: I can rephrase Your
12 Honor.

13 THE COURT: Go ahead.

14 The objection is sustained.

15 Q. Ms. Regan, will you turn to page one of the State
16 Land Master Plan? Will you read the second paragraph in the
17 first column going onto the second column?

18 A. Yes, I will. "If there is a unifying theme to the
19 Master Plan it is that the protection and preservation of the
20 natural resources of the state lands within the Park must be
21 paramount. Human use and enjoyment of those lands should be
22 permitted and encouraged, so long as the resources in which
23 their physical and biological context as well as their social
24 or psychological aspects are not degraded. This theme is

1 drawn not only from the Adirondack Park Agency Act (Article
2 27 of the Executive Law) "The Act" and its legislative
3 history, but also from a century of the public's demonstrated
4 attitude towards the forest preserve and the Adirondack
5 Park. Fortunately the amount and variety of land and water
6 within the Adirondack Park provide today and will provide in
7 the future, with careful planning and management, a wide
8 spectrum of outdoor recreational and educational pursuits in
9 a wild forest setting unparalleled in the eastern half of
10 this country."

11 Q. Thank you.

12 MS. LEE-CLARK: Your Honor may I have a
13 moment?

14 THE COURT: Yes.

15 (Counsel conferred.)

16 MS. LEE-CLARK: Your Honor, I have no
17 further questions for this witness.

18 THE COURT: All set Mr. Caffry?

19 MR. CAFFRY: Yes, Your Honor.

20 THE COURT: Please go ahead.

21 CROSS-EXAMINATION OF MS. REGAN

22 BY MR. CAFFRY:

23 Q. Ms. Regan, please turn to Exhibit double A. Do you
24 still have that up there?

1 A. Yes.

2 Q. Page 33 and 34, which I understand you testified was
3 an appendix about invasive plants?

4 A. Yes.

5 Q. As I understand it you supervise all of the State
6 Land staff of APA?

7 A. I do currently.

8 Q. How big is the Camp Santanoni historic area?

9 A. I do not know. I can look it up in the State Land
10 Master Plan if you would like.

11 Q. Sure. Please do.

12 A. The area description for Camp Santanoni says it is
13 12,900 plus or minus acres.

14 Q. And you previously read or described on page 34 that
15 there were apparently two populations of Japanese Knotweed
16 within that unit. Is that correct?

17 A. Reported by the Adirondack Park in 2004 or --
18 excuse me. Adirondack Nature Conservancy in 2004 and 2005.

19 Q. Where were you working at that time? APA or the
20 Nature Conservancy?

21 A. Neither. I was an independent contractor at that
22 time.

23 Q. And who did you contract to?

24 A. I contracted to a variety of people.

1 Q. Not to either of those bodies?

2 A. No.

3 Q. Going back to the question. So if the Camp
4 Santanoni historic area is over 12 thousand acres, does this
5 say where on the 12 thousand acres these populations of
6 Japanese Knotweed are located?

7 A. It does not in this document.

8 Q. Do you know?

9 A. I do not know.

10 Q. Do you know whether or not these populations are
11 identified in 2004 or 2005 were ever treated or removed?

12 A. I do not have that information.

13 MR. CAFFRY: No further questions for this
14 witness, Your Honor.

15 THE COURT: Thank you Ms. Regan. You are
16 all set. I apologize.

17 Any redirect?

18 MS. LEE-CLARK: I have one question.

19 THE COURT: I'm sorry.

20 REDIRECT EXAMINATION OF MS. REGAN

21 BY MS. LEE-CLARK:

22 Q. Can you please turn to page 110 of the State Land
23 Master Plan. Let me know what you have at the top?

24 A. What section are we looking for?

1 Q. Historic areas.

2 A. Page 107 in this version of 2011.

3 Q. Thank you. Will you read the first sentence under
4 Camp Santanoni?

5 A. "Camp Santanoni historic area is 35 acres in size,
6 and is located north of New York State Route 28 and in the
7 Town of Newcomb in Essex County."

8 MS. LEE-CLARK: Thank you. No further
9 questions.

10 MR. CAFFRY: Your Honor.

11 RE-CROSS-EXAMINATION OF MS. REGAN

12 BY MR. CAFFRY:

13 Q. Ms. Regan, do you know where within this 35 acres
14 these two populations of Japanese Knotweed were located?

15 A. No. I still do not know.

16 Q. And the document does not say that either?

17 A. The document does not say that.

18 MR. CAFFRY: No further questions.

19 THE COURT: Ms. Lee-Clark anything further
20 of Ms. Regan?

21 MS. LEE-CLARK: No. All set. Thank you.

22 THE COURT: Thank you Ms. Regan. Now you
23 may step down. Leave those documents right on that
24 table.

1 All set Ms. Lee-Clark?

2 MS. LEE-CLARK: Yes. We would like to call
3 Tate Connor to the stand. We need a couple minutes
4 to rearrange.

5 THE COURT: That is fine.

6 (Counsel conferred.)

7 THE COURT: All set Ms. Simon?

8 MS. SIMON: Yes, I am.

9 THE COURT: Mr. Caffry all set?

10 MR. CAFFRY: One more minute.

11 (Pause.)

12 THE COURT: Mr. Connor I am Judge
13 Connolly. Good morning. You heard my interactions
14 with some of the other witnesses with regard to
15 their actions on the stand?

16 THE WITNESS: Yes.

17 THE COURT: You understood those and can
18 abide by them?

19 THE WITNESS: Yes, sir.

20 THE COURT: All set Ms. Simon?

21 MS. SIMON: Yes, I am.

22 THE COURT: Please go ahead.

23 DIRECT EXAMINATION OF MR. CONNOR

24 BY MS. SIMON:

1 Q. Mr. Connor state your name?

2 A. Tate Michael Connor.

3 Q. And where do you work?

4 A. I work in the Ray Brook office for New York State
5 Department of Environmental Conservation.

6 Q. What region is that?

7 A. Region five.

8 Q. What is your title?

9 A. My title is a Forester 1 Land Manager.

10 Q. Could you please tell the Court what degrees you
11 hold?

12 A. I have an Associate's in Applied Science in Forest
13 Recreation from Paul Smith's College, and a Bachelor of
14 Science in Forestry from the University of Maine.

15 Q. Have you received any honors or awards in your
16 field?

17 A. Yes. In 2015 I received an American Trail's
18 Association trail worker award.

19 Q. What was that award for?

20 A. For the work that I did in building the Seventh Lake
21 Mountain Trail.

22 Q. Do you have experience in forest recreation
23 management?

24 A. Yes, ma'am.

1 Q. What is that experience?

2 A. In my capacity as a forester for DEC since 2006, I
3 have been working on forest preserve lands and conservation
4 easements dealing predominantly with outdoor recreation.

5 Q. Do you have experience in trail construction?

6 A. Yes, I do.

7 Q. What is that experience?

8 A. Since my time in college and through my professional
9 career I have multiple different experiences working on
10 trails. Getting educated on trail construction.

11 Q. Did you take course work on trail construction?

12 A. Yes. As part of my Associate's Degree at Paul
13 Smith's College there were trail building classes taken, in
14 addition to that course topic being interwoven into other
15 courses I took.

16 Q. Do you have any trail construction experience with
17 DEC?

18 A. Yes. During the 2000, 2001 and 2002 seasons I
19 worked on the New York State DEC trail crew at the Camp
20 Santanoni complex in Newcomb.

21 Q. Do you have any other Adirondack forest work with
22 DEC involving trail construction?

23 A. Yes. Since working for the DEC in 2006 I have
24 worked on trails in multiple units that I have been

1 responsible for. Both in my current position and previous
2 places of employment in Region 5.

3 Q. What kinds of trails have you constructed?

4 A. I have built foot trails. Ski trails. Worked on
5 horse trails and snowmobile trails.

6 Q. When you say ski trails what kind of trails do you
7 mean?

8 A. Cross-country ski trails on the forest preserve.

9 Q. Did you build any Class II community connector
10 snowmobile trails?

11 A. Yes. The Seventh Lake Mountain Snowmobile Trail.

12 Q. Approximately how many trails have you built in your
13 years with DEC or otherwise?

14 A. In my capacity at DEC I have worked on multiple new
15 trails that were proposed in UMPs, which involve the scouting
16 and laying out and overseeing the construction of the trail
17 that didn't exist before. In addition to that I have worked
18 on trail rehabilitation, reroutes of existing trails both
19 within UMPs and just out of need through work plan
20 development. Outside of DEC I have worked on trails in the
21 private sector and for previous employers.

22 Q. Do you have experience -- how many years of
23 experience do you have?

24 A. Eighteen to 20 years of experience working in

1 forestry and forest recreation.

2 Q. When did you first start working with DEC?

3 A. I have three seasons. 2000, 2001 and 2002 that I
4 mentioned. In my current forestry series title I started
5 working for DEC in September of 2006.

6 Q. What is the nature of your current work at DEC?

7 A. Currently I manage multiple wilderness areas in the
8 Ray Brook working circle, including the High Peaks Wilderness
9 Complex. The Dix Mountain Wilderness Area. The Giant
10 Mountain Wilderness Area. The Hurricane Mountain Wilderness
11 Area, and the Hurricane Mountain Fire Tower Historic Area and
12 several other primitive areas associated with each of those
13 units, as well as overseeing recreational work on multiple
14 conservation easements adjacent to those lands.

15 Q. Mr. Connor can you see the map --

16 A. Yes, ma'am.

17 Q. -- from where you are sitting? Which part? Can you
18 describe what is your area of responsibility right now?

19 A. So if you are looking at the map it is just above
20 the center of the map. The large blue green area located
21 predominantly in Essex County with some of it spilling over
22 into Hamilton County and Franklin County. It is generally
23 south of Saranac Lake and Lake Placid, and north of Newcomb
24 and what is referred to as the Blue Ridge Road going from

1 Newcomb to the Town of North Hudson.

2 Q. What is the High Peaks area? Can you describe it?

3 A. It's the largest wilderness area we have in the
4 Adirondacks. It is almost 300 hundred thousand acres in
5 size. It goes from the shores of Long Lake and the Raquette
6 River over to Keene Valley.

7 Q. Are you responsible for facilities in that 300
8 thousand acres?

9 A. Yes. My job is predominantly to work on developing
10 unit management plan and unit management plan amendments, and
11 also implementing and overseeing work plans and routine
12 maintenance requests in the process of maintaining and
13 administering all of the trails, campsites, lean tos and
14 other facilities DEC has within those units.

15 Q. Does that include all of the trails did you say? I
16 didn't hear you.

17 A. Yes. It includes all of the trails.

18 Q. Construction and maintenance?

19 A. Yes, ma'am.

20 Q. Thank you. Approximately how many miles of trails
21 are you responsible for?

22 A. Between the multiple units it is over 400 miles of
23 trail.

24 Q. And do you supervise any trail construction or

1 maintenance?

2 A. Yes.

3 Q. What is that?

4 A. There is a combination of resources that we use to
5 complete projects, including some DEC staff contracts. Sorry
6 contractors. And partner organizations that put crew time
7 together to work. In addition to volunteer organizations
8 that have volunteer stewardship agreements with the
9 department, and regular volunteers that would show up for
10 work on the forest preserve. And each year I'm lucky enough
11 to get a crew of student conservation association back
12 country steward interns that work for me throughout those
13 units.

14 Q. And what types of trails do you work on with those
15 crews?

16 MR. CAFFRY: Objection, Your Honor. I
17 understand that any witness can be allowed to
18 testify about their work and their background, but
19 we are now into discussing his work in the High
20 Peaks Wilderness Area.

21 As we heard from Ms. Regan, snowmobile
22 trails are generally not allowed in the High Peaks
23 Wilderness Area because they are not allowed in
24 wilderness areas in general, and certainly none of

1 the trails at issue in this case are in the High
2 Peaks Wilderness Area. So I'm not sure where it is
3 going, but it just doesn't seem relevant.

4 MS. SIMON: I will tell you where it is
5 going. We are putting him forward as a forest tree
6 trail construction expert. This goes directly to he
7 supervises crews every year --

8 THE COURT: Understood.

9 MR. CAFFRY: Your Honor may I be heard on
10 that?

11 THE COURT: Briefly.

12 MR. CAFFRY: I actually have a very lengthy
13 objection to him testifying as an expert.

14 THE COURT: Go ahead. I will withdraw my
15 briefly.

16 MR. CAFFRY: Thank you, Your Honor.

17 When the first expert witness disclosure
18 in this case was served in 2014, I believe it was,
19 Mr. Connor was listed as a fact witness. Subsequent
20 to the pretrial conference that you conducted some
21 time in 2015 which established -- you signed an
22 order for expert witness disclosure. The trial date
23 and things like that. The parties served updated
24 expert witness disclosures. Mr. Connor was still

1 listed at that time as a fact witness. Not an
2 expert witness. None of the disclosure that would
3 go with an expert witness was in that disclosure at
4 that time.

5 On February 14th of this year the
6 defendant served a revised expert witness
7 disclosure, and Mr. Connor had somehow moved from
8 being a fact witness to an expert witness. However,
9 under the Third District Rule a change like that
10 would have required an order of a court to make a
11 change like that.

12 At that same time we served an amended
13 one and we took people off, but we didn't add
14 anybody. So then on February 15th I wrote Ms. Simon
15 a letter trying to clarify this situation regarding
16 Mr. Connor, to which I received no response.

17 On February 22nd she served a further
18 amended expert witness disclosure, which I think
19 removed one possible witness. I don't object to her
20 removing someone, but even after I wrote and tried
21 to get some clarification as to Mr. Connor's status
22 there was no modification. No additional
23 information provided regarding his status in the
24 February 22nd, 2017 expert witness disclosure

1 certified by defendants. That is my first
2 objection.

3 The second objection is that even if he
4 had been timely noticed as an expert witness, the
5 scope of the expert witness disclosure did not
6 comply with CPLR Section 3101(d)(i), which requires
7 several elements to be disclosed. Identify the
8 person. Yes. That was done. Disclose in
9 reasonable detail the subject matter on which each
10 expert is expected to testify. When he became
11 listed --

12 THE COURT: Let me stop you for a
13 moment. Do you have a copy of the expert disclosure
14 provided that I can follow along with you on?

15 MR. CAFFRY: Sure.

16 THE COURT: Not necessarily the letters,
17 but the expert disclosure provided. I don't mean
18 the back and forth yet.

19 MR. CAFFRY: This is basically my file
20 copy. I have another copy that I can't lay my hands
21 on.

22 THE COURT: Does anyone have a copy?

23 MR. CAFFRY: I will give it to you.

24 THE COURT: You will get it back, but if

1 you need it to make the application to me I don't
2 want to take it away from you.

3 MR. CAFFRY: No. I have a scribbled up
4 copy also.

5 THE COURT: Bring it right to me please.

6 MS. SIMON: May I see which copy please?

7 MR. CAFFRY: Sure.

8 (Attorneys conferred.)

9 THE COURT: Thank you Mr. Caffry.

10 MR. CAFFRY: I believe it is on page
11 six. This is February 22nd. Their final
12 disclosure.

13 THE COURT: Got it. Go ahead.

14 MR. CAFFRY: So there is a list that I
15 assumed could be construed as subject
16 matter. However, the CPLR also requires disclosure
17 in reasonable detail of the substance of the facts
18 and opinions on which each expert is expected to
19 testify, and a summary of the grounds for each
20 expert's opinion that is completely absent from this
21 disclosure. It also requires the qualifications of
22 the expert witness.

23 At no time in any of these expert witness
24 disclosures was Mr. Connor's qualifications

1 provided. The prior witnesses and even on some of
2 the more recent expert disclosures they provided
3 resumes for the expert witnesses. Mr. Connor's was
4 not provided as part of this disclosure.

5 If you look at the expert disclosure in
6 the same document that I showed you. February 22nd.
7 For instance Timothy Howard Ph.D. His resume was
8 provided, even though you don't have it in front of
9 you. There is a section on subject matter and a
10 section on substance of facts and opinions. I'm not
11 going to comment on the completeness of that
12 disclosure, but at least it is there.

13 With Mr. Connor we didn't get at least
14 three of the five things required by the CPLR. So I
15 have a procedural objection to the timing of his
16 noticing as an expert witness, and a substantive
17 objection to the scope of the expert witness
18 disclosure that we did receive from him at the late
19 date.

20 THE COURT: Recognizing that you received
21 it late did you ever make a motion to strike that
22 expert disclosure?

23 MR. CAFFRY: No. It was a week before
24 trial.

1 THE COURT: I'm recognizing that you
2 received it at a later date than that set forth
3 certainly in the District Rules.

4 Go ahead Ms. Simon.

5 MS. SIMON: First I would like to correct a
6 few things.

7 Mr. Caffry when he provided us his
8 original witness list, every witness was listed as
9 an expert except for Mr. Bauer, which denied us the
10 opportunity to depose them. In his most recent he
11 changed it and made -- so we were not able to depose
12 his experts with the exception of Mr. Bauer.

13 That being said, we did timely notice Mr.
14 Connor and there is a notice before the one that you
15 have. I only have an electronic version, but we
16 did --

17 THE COURT: So it is an earlier date?

18 MS. SIMON: It is an earlier date in
19 July.

20 THE COURT: July of 2016?

21 MS. SIMON: Yeah. This most recent one you
22 have is February 2017. Correct?

23 THE COURT: Yes.

24 MS. SIMON: Yes. There was for each

1 disclosure in the early -- we have done -- let me
2 put it this way. We have done multiple witness
3 disclosures in this case. Mr. Connor's resume was
4 originally provided in 2013, even before we started
5 this case by the attorney that handled this case and
6 when he retired I took it over. So I know they did
7 have an early resume. We updated his resume more
8 recently.

9 One of the reasons we added him as a trail
10 construction expert is because our original list had
11 another DEC forester as an expert. Rod Ripp. And
12 I'm explaining this because I put Rod Ripp in as an
13 expert in trail construction because he was not
14 going to be a fact witness in this case. Then Your
15 Honor made one of your decisions and added his
16 entire trail to this case. The Newcomb to Minerva
17 Trail.

18 So now I have this dilemma. I have fact
19 witnesses that are also the experts that we were
20 going to use. So that's when I noticed that Mr.
21 Connor would now act as an expert on trail
22 construction and separate from that he also built
23 the Seven Lake Mountain Trail.

24 THE COURT: Understood.

1 So there was an expert disclosure made
2 with regard to Mr. Connor, which is substantially
3 similar to the one that I have in front of me from
4 February 22nd, 2017 that was made in July of
5 2016. Is that what you are saying?

6 MS. SIMON: We are trying to check the date
7 electronically in our files. I may be wrong on the
8 date.

9 MR. CAFFRY: Your Honor --

10 THE COURT: Hang on a moment. Let's Let
11 them look for what they are looking for. Unless you
12 have an answer to the question itself.

13 MR. CAFFRY: I have an expert disclosure
14 from them dated August 31, 2016 and, again, it
15 doesn't list Mr. Connor as an expert. I can show it
16 to you if you would like.

17 THE COURT: Wait and see.

18 MS. SIMON: So the last disclosure we did
19 was August 31st. In that disclosure Mr. Connor was
20 still a fact witness. I would have to go back to
21 check the dates, but I believe it was your decision
22 after the preliminary injunction that we argued in
23 2016 that you added Newcomb to Minerva. And then I
24 had the dilemma that my experts were also fact

1 witnesses. So I added Mr. Connor in the subsequent
2 disclosure and provided an updated resume.

3 THE COURT: The resume had previously been
4 provided. Mr. Connor's resume was previously
5 provided.

6 MS. SIMON: It was a very shortened version
7 in 2013, and I did not provide it. It was my prior
8 counsel. She is checking to see if there was an
9 additional one. It was also provided as an
10 attachment in August of 2016.

11 THE COURT: So the resume was
12 provided. Was Mr. Connor previously deposed in this
13 case?

14 MS. SIMON: At length.

15 THE COURT: And Mr. Connor, if I remember
16 correctly, also submitted certain affidavits in this
17 matter as well?

18 MS. SIMON: Yes.

19 THE COURT: All right. So Mr. Caffry you
20 are going to need to explain to me what prejudice
21 the plaintiff has suffered from this alleged late
22 and insufficient notice and preclude his expert
23 testimony, given the fact that you received his
24 resume in 2013. That the notice given is

1 substantially similar to that of previous experts,
2 though not of his own, with regard to the subject
3 matter facts and opinions that he is going to
4 testify to. And get into an area that has been
5 extensively, extensively investigated throughout
6 this litigation and is clearly the main subject
7 matter to be investigated and to be determined in
8 the course of this trial. As well as the fact that
9 he has previously been extensively deposed by you
10 and has provided the Court affidavits obviously on
11 notice to the plaintiff. I need to know what the
12 prejudice is.

13 MR. CAFFRY: First as you once said to me
14 the rules are the rules.

15 THE COURT: I understand. The rule does
16 require that I consider prejudice in the application
17 such as you are making.

18 MR. CAFFRY: The prejudice is that we could
19 prepare for him as a fact witness. Until very, very
20 recently we had no notice he was going to be
21 testifying as an expert, which requires a different
22 type of preparation and potentially a different type
23 of rebuttal. And because we had this very late and
24 insufficient notice weren't able to undertake that

1 type of preparation with this witness.

2 THE COURT: Do you want me to give you an
3 extension of time with regard to Mr. Connor to
4 prepare for? If you are asking me for more time and
5 for me to direct that Mr. Connor may not be called
6 at this moment I will do so.

7 MR. CAFFRY: I guess I would say at this
8 time if his testimony is limited to fact issues --

9 THE COURT: No. I'm talking about his
10 expert testimony. I want to be clear. I am not
11 inclined to preclude this testimony. However, if
12 there is any prejudice that you have suffered that I
13 can't address and you have identified an
14 insufficient amount of time to prepare for his
15 expert testimony, I will address that by giving you
16 some more time and directing the defendants that
17 they may not call Mr. Connor at this time, but they
18 may call him at a later point in this trial.

19 MR. CAFFRY: I would like to suggest a
20 slightly different process.

21 THE COURT: Suggest away.

22 MR. CAFFRY: I recognize the direction you
23 are inclining in, but I think if we went ahead and
24 given the timing and everybody's schedules. And I

1 don't know if the State has another witness ready to
2 go today or not. That we could proceed with Mr.
3 Connor today, but that if we feel the need to have
4 him recalled. If he finishes today and we feel the
5 need to recall him later for additional
6 cross-examination --

7 THE COURT: Specifically on expert opinion
8 issues?

9 MR. CAFFRY: Correct.

10 THE COURT: Only.

11 MR. CAFFRY: Only.

12 THE COURT: That sounds appropriate to
13 me. Is that acceptable Ms. Simon?

14 MS. SIMON: Yes.

15 THE COURT: That is fine. We will proceed
16 in that fashion. Thank you Mr. Caffry.

17 MR. CAFFRY: Thank you, Your Honor.

18 THE COURT: That does not obviate your
19 exception to his testimony. Your exception still
20 stands.

21 MR. CAFFRY: Thank you, Your Honor.

22 MS. SIMON: I think I have to have the last
23 question reread. I don't know where I left off.

24 (Reporter read the pending question.)

1 A. In my current position we work on hiking
2 trails. Ski trails. Horse trails.

3 Q. And snowmobile trails?

4 A. In past positions I have worked on snowmobile
5 trails.

6 Q. Okay. Thank you. Mr. Connor do you currently hold
7 any other positions besides your DEC position?

8 A. Yes. I operate a business called Adirondack Forest
9 Service.

10 Q. What is that?

11 A. It offers general tree work. Custom saw mill work,
12 and recreational land opportunities for private properties.

13 Q. And prior to your employment with DEC were you
14 employed?

15 A. Yes, ma'am.

16 Q. Where?

17 A. I worked for a company called Longview Forest
18 Contracting that operated in the Connecticut River Valley in
19 both Vermont and New Hampshire.

20 Q. What did you do there?

21 A. I was a timber faller and forest technician for
22 them.

23 Q. A timber faller?

24 A. Yes, ma'am.

1 Q. What is that?

2 A. I worked -- essentially I was their tree cutter and
3 in a logging situation, except it was a non-traditional
4 system where we used foresters. So I would cut the trees
5 down, remove all the limbs and then I would buck the trees
6 for the highest value into logs, and then the machine would
7 come pick them up.

8 In addition to that I operated as a forest
9 technician for their company contracting out work to other
10 land owners and companies doing forest inventory and
11 exploration work.

12 Q. Is there any other company that you worked at
13 besides Longview?

14 A. Prior to working for Longview I worked for a company
15 called Upland Forestry. It is headquartered in Bristol,
16 Vermont. In that capacity I was a forest technician. I
17 worked as a contractor on International Paper lands in the
18 Adirondacks. Upland contracted me out to the International
19 Paper Company when they were the owners of their
20 properties. During that time I did timber sale
21 marking. Harvest layout. Boundary marking. Other stuff.

22 Q. Do you have any other work experience outside of New
23 York State?

24 A. Yes. I worked for the United States Forest Service

1 in the Wayshaw Cache National Forest in southwestern Wyoming
2 and northeast Utah. I worked on a timber crew there. I was
3 the crew chief, and our job was to do harvest marking, cruise
4 timber and do harvest layout.

5 Q. Do you have any training or education in the study
6 of forest systems?

7 A. Yes, ma'am.

8 Q. What types of forest systems?

9 A. My two degrees. The locations I got my education
10 was in the northeast United States. So the forest types that
11 we predominantly focused on were the typical forest systems
12 of the northeast, both in the Adirondacks and northern
13 Maine. I spent a semester in Utah working on college courses
14 at Utah State University and studied Rocky Mountain Forest
15 ecosystems.

16 Q. What types of courses have you taken relating to
17 forests when you got your degree?

18 A. Multiple different courses similar to
19 dendrology. Civil culture. Forest ecology. Multiple forest
20 management classes.

21 Q. Does your experience or training include erosion
22 control measures?

23 A. Through course work that I have taken and trainings.
24 Yes.

1 Q. Mr. Connor, have I have shown you what has been
2 marked as Defendants' Exhibit AC for identification? Do you
3 recognize this document?

4 A. Yes, ma'am. It is my resume.

5 Q. Is this resume an accurate summary of your education
6 degrees, work experience and other professional
7 accomplishments?

8 A. Yes, ma'am.

9 MS. SIMON: I move to submit Defendants' AC
10 in evidence.

11 MR. CAFFRY: Same objection as previously,
12 Your Honor.

13 THE COURT: That is based on the expert
14 disclosure?

15 MR. CAFFRY: Yes, Your Honor.

16 THE COURT: Nothing beyond that?

17 MR. CAFFRY: No.

18 THE COURT: Defendants' AC is received
19 into evidence over objection.

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

22 MR. CAFFRY: As Mr. Connor testifies this
23 afternoon, rather than me objecting every time he
24 offers an expert opinion could we just have it on

1 the record I have a continuing objection to any such
2 opinion?

3 THE COURT: I believe your original
4 objection, in my mind, constituted such but so we
5 can be clear on the record the answer is yes.

6 You have a continuing objection to all
7 expert opinion based upon the alleged failure to
8 provide timely and adequate expert disclosure.

9 MR. CAFFRY: Thank you.

10 THE COURT: Go ahead.

11 BY MS. SIMON:

12 Q. Mr. Connor, what are the general principles you
13 follow in construction of trails?

14 A. When it comes to construction of trails it is broken
15 down into multiple steps. The first would be the scouting
16 for siting a trail, based on the different rules and the
17 guidelines that would be available for the area to work
18 in. You would choose to layout a trail or find a route for a
19 trail that weaves its way through the forest and is located
20 on the ground so that it is the most sustainable location
21 possible that still provides a good experience for the user.

22 Q. What do you mean by sustainable?

23 A. The sustainabilty for trail construction is
24 predominantly focused around designing trails that resist

1 erosion both from weather and from use. So traditionally
2 trails in the Adirondacks going up mountains would go
3 straight up the trail, or what is called the fall line.

4 That over time has proven to be a horrible way to
5 layout a trail because the water runs directly down the trail
6 tread and erodes the soil. In addition to that water running
7 down the trail tread the users, hikers or bikers going up
8 that grade would help to increase that erosion.

9 Q. What is trail tread?

10 A. So the anatomy of a trail. The shell tread is the
11 durable surface that is defined within the trail corridor for
12 the purpose of traveling on.

13 Q. And what, if any, trail tread development do you do
14 in constructing trails?

15 A. So there is a suite of options that someone looking
16 to develop a trail and subsequent trail tread could
17 use. Going across rolling terrain or mountainous terrain,
18 one of the key components used is a concept called bench
19 cutting. That is where on the side slope, meaning that you
20 are going across a hill, the general intent is to dig down to
21 mineral soil and create a relatively flat tread surface that
22 has a slight downhill slope to allow the water to drain
23 directly to the side of the trail and resist the ability of
24 it to run down the trail tread.

1 On the uphill side of that shelf the bank of
2 material is then shaped or upsloped so that it presents a
3 smoother transition for the trail tread in the setting and
4 also resists erosion.

5 Q. Are there any other activities involved with
6 creating the trail tread?

7 A. Yes. So bench cutting is kind of the go to method
8 for crossing slopes, and in areas -- anywhere where you are
9 traveling on an area where there is the ability to be on a
10 slope. The benefit of the bench cut is that you can shed the
11 water to the side.

12 In areas where there is not the topography to allow
13 you to put in a bench cut you might use what is referred to
14 as turnpiking, which is using rocks and mineral soil to raise
15 the trail tread above the adjacent area. So like if you had
16 a flat section of forest and the soils were not as well
17 drained as they could be that is a technique to be used in
18 developing a trail tread.

19 Q. Bench cuts and turnpiking. Are they erosion control
20 features?

21 A. Yes.

22 Q. Are there other erosion control features you use in
23 trail construction?

24 A. Yes, ma'am. Water bars are probably the number one

1 method that is used on existing trails or trails that have
2 issues with water running down the trail tread. That is a
3 depression that is dug into the trail tread, or some form of
4 barrier put across the trail generally at a 45 degree angle
5 to the trail tread and slightly downhill. And the purpose of
6 a water bar is to intercept the water that is traveling down
7 the trail tread and transferred off the trail.

8 In addition to water bars there is a few variations
9 of things like broad based dips that are designed to do the
10 same thing. Broad based dips were designed predominantly to
11 be able to allow the users to transition across the drainage
12 device without interruption of stride or travel. So they
13 tend to be more user friendly than a water bar.

14 Q. Mr. Connor, I have shown you what has been marked as
15 Defendants' Exhibit AJ marked for identification. Can you
16 identify this?

17 A. This is a packet of photos. Seven photographs.

18 Q. Did you take these photographs?

19 A. Yes, ma'am.

20 Q. Where were these taken?

21 A. These were taken in various different areas that I
22 work.

23 Q. Were these photographs taken on forest preserve
24 land?

1 A. Yes, ma'am.

2 Q. What kinds of trails are depicted in these
3 photographs?

4 A. These photographs show a range of trails, including
5 hiking trails and horse trails.

6 Q. Taking these one at a time beginning with photograph
7 number one Mr. Connor. Where was that taken?

8 A. This photograph was taken in the Hurricane Mountain
9 Wilderness Area. It is on the Hurricane Mountain Trail that
10 goes from Route 9N to the summit of Hurricane Mountain.

11 Q. Approximately where on the trail was it taken?

12 A. This is in the upper third of the trail.

13 Q. When was the photograph taken?

14 A. This photograph was taken in 2014 during the
15 summer.

16 Q. Is this photograph a fair and reasonable
17 representation of the condition of the trail at the time you
18 observed it?

19 A. Yes, ma'am.

20 Q. Turning your attention to the second
21 photograph. Can you identify this?

22 A. Yes. This is a trail in the Pharoah Lake Wilderness
23 Area. The Pharoah Lake Trail. It is the southern access to
24 get into Pharoah Lake. This trail is a combination horse

1 trail and hiking trail in addition to being used as a ski
2 trail.

3 THE COURT: Hang on. Spell that.

4 THE WITNESS: P-H-A-R-O-A-H.

5 THE COURT: Go ahead.

6 Q. I think I asked. Did you say when it was taken?

7 A. This would have been taken in 2014 as well.

8 Q. I think I asked you for all of these photographs.

9 You took all of them?

10 A. Yes, ma'am.

11 Q. Continuing with photo number two. Is this a fair
12 and reasonable representation of the condition of the trail
13 at the time you observed it?

14 A. Yes.

15 Q. Turning to photograph number three.

16 A. This is a trail in the Pharoah Lake Wilderness area
17 on the Pharoah Lake Trail.

18 Q. Where on the Pharoah Lake Trail?

19 A. This was approximately at the halfway point between
20 the interior parking lot and Pharoah Lake.

21 Q. When was it taken?

22 A. In the summer of 2014.

23 Q. Is this photograph a fair and reasonable
24 representation of the condition of the trail at the time you

1 observed it?

2 A. Yes, it is.

3 Q. Turn to photograph number four.

4 A. This is a picture in the High Peaks Wilderness
5 Area. The Orebed Trail.

6 THE COURT: Spell that.

7 THE WITNESS: O-R-E-B-E-D.

8 Q. Where was it taken on the Orebed Trail?

9 A. This was taken at a point where the trail coaligns
10 with a slide.

11 Q. A slide?

12 A. Yes. A land slide.

13 Q. Thank you. When was this photo taken?

14 A. This photo was taken in 2013.

15 Q. Is this photo a fair and reasonable representation
16 of the condition of the trail at the time you observed it?

17 A. Yes, ma'am.

18 Q. Can you turn to photograph number five.

19 A. This is a picture of the --

20 Q. First where is this trail?

21 A. In the High Peaks Wilderness Area. It is a picture
22 of the trail along Avalanche Lake.

23 Q. When was this photo taken?

24 A. In the summer of 2016.

1 Q. Is this photograph a fair and reasonable
2 representation of the condition of the trail at the time you
3 observed it?

4 A. Yes, ma'am.

5 Q. Can you turn to photograph six. Where is this
6 trail?

7 A. This photograph is in the High Peaks Wilderness
8 Area. It is on the Indian Pass Trail from the south.

9 Q. When was this photograph taken?

10 A. In the summer of 2016.

11 Q. Is this photograph a fair and reasonable
12 representation of the condition of the trail at the time you
13 observed it?

14 A. Yes, ma'am.

15 Q. And the final photograph. Number seven. Where was
16 this taken?

17 A. This photograph is taken in the High Peaks
18 Wilderness Area. On the Cascade Mountain Trail. It was
19 taken in the fall of 2016.

20 Q. Approximately where on the Cascade Mountain Trail
21 was this photo taken?

22 A. On the bottom third.

23 Q. Is this photograph a fair and reasonable
24 representation of the condition of the trail at the time you

1 observed it?

2 A. Yes, ma'am.

3 MS. SIMON: Your Honor, I move to admit
4 Exhibit AJ into evidence.

5 MR. CAFFRY: Your Honor, I have some
6 blanket objections to these photographs. If the
7 motion survives those objections I would request
8 voir dire as to several of them. Would that be
9 appropriate?

10 THE COURT: Yes.

11 MR. CAFFRY: First of all, we have had no
12 testimony from Mr. Connor that these photographs
13 represent typical foot trails.

14 Whenever our witnesses in the prior days
15 of this trial presented photos of foot trails you
16 only admitted them after the witness, and sometimes
17 after objection until they made this statement that
18 these represented typical foot trails because this
19 case isn't about foot trails. It is about
20 snowmobile trails, and those photos were only
21 admitted for comparison purposes of typical foot
22 trails. We have heard no testimony that any of
23 these are typical.

24 Second. They all contain captions and

1 descriptions which go beyond just merely stating the
2 location. Those statements are all hearsay and
3 should not be admitted.

4 Mr. Connor testified that they were fair
5 and reasonable representations. Not a fair and
6 accurate representation of the scene.

7 Lastly, I believe the Pharoah Lake Trail,
8 which he testified to. I know he said it is a
9 hiking trail and a ski trail. I thought he also
10 said it was a horse trail.

11 THE COURT: They are different
12 photos. Numbers two and three?

13 MR. CAFFRY: Two and three were Pharoah
14 Lake. I believe he said horse. Although I'm not
15 positive. Perhaps that could be read back if
16 necessary.

17 THE COURT: I think I wrote it down.

18 MR. CAFFRY: I think he listed three types
19 of use.

20 THE COURT: Hiking and horse I have. I
21 didn't hear skiing, but maybe you are right.

22 What is the objection with regard to that
23 issue?

24 MR. CAFFRY: There is an argument in this

1 case, and we heard from Ms. Regan reading from the
2 State Master Plan that snowmobile trails were
3 supposed to have the character of a foot trail.

4 A horse trail is a horse of a different
5 color. Pun intended. Obviously with horses on it
6 and hooves it requires different
7 treatment. Different type of construction and
8 maintenance than a foot trail, and any photos of a
9 horse trail have no relevance to a comparison of a
10 snowmobile trail to a foot trail.

11 THE COURT: Got it. Anything else?

12 MR. CAFFRY: Those are my general
13 objections prior to any voir dire on particular
14 photographs.

15 THE COURT: Understood.

16 First. With regard to your objection in
17 regard to the alleged required testimony that these
18 represent typical foot trails. Your objection is
19 sustained to the extent that Ms. Simon has not
20 demonstrated the relevance of these photographs to
21 the issue at bar here today.

22 That does not mean I am requiring that
23 there be specific testimony along the catechism, if
24 you will, of typical foot trails. But she does need

1 to show relevance and that has not yet been
2 demonstrated through Mr. Connor's testimony. So
3 that objection is sustained at this point with, of
4 course, leave for Ms. Simon to address that issue in
5 her further questioning of Mr. Connor.

6 With regard to captions or
7 descriptions. Your objection is also sustained. My
8 inclination on such captions or descriptions is,
9 first of all, you are of course correct. Any
10 description involved there is hearsay and is not
11 going to be received unless and until Mr. Connor can
12 specifically testify to exactly that. In which case
13 I will reassess my position on that. But for now
14 they will not be received as proffered, unless and
15 until he gives a basis for literally every word on
16 those descriptions.

17 Even then having had those statements on
18 the record the descriptions become superfluous and
19 would not be needed. But in any event you are
20 correct. The descriptions must be testified to so
21 that you can hear them on the record and have the
22 opportunity to address them before they are accepted
23 as evidence by the Court.

24 With regard to fair and reasonable as

1 opposed to fair and accurate. Fair and accurate is
2 the commonly accepted term of art. You are
3 correct. I suppose fair and reasonable could be
4 seen as different than fair and accurate
5 characterizations of the photo. Accordingly your
6 objection is sustained.

7 I think that was on the last either four
8 or five that she said fair and reasonable. I do not
9 believe she said it on the first two.

10 Finally with regard to the issue of horse
11 trails. The testimony that they are both horse and
12 hiking trails on the ones that were identified as
13 horse trails, and accordingly although your
14 objection is noted and your substantive objection is
15 noted and may well be followed up by you in
16 cross-examination. That objection is overruled.

17 So Ms. Simon if you would like you may ask
18 Mr. Connor some more questions to address the
19 previously expressed sustained objections. And
20 after that, assuming that you have met my
21 requirements and that Mr. Caffry does not have
22 further objections, we will allow Mr. Caffry to voir
23 dire on the photographs.

24 MS. SIMON: Thank you, Your Honor.

1 THE COURT: With regard to the issue of
2 fair and accurate. If you wish I will allow you to
3 ask as a whole of all of the photographs using that
4 language.

5 MS. SIMON: Thank you, Your Honor.

6 BY MS. SIMON:

7 Q. Mr. Connor with regard to photos one, two, three,
8 four, five, six and seven in Exhibit AJ. Do these photos
9 represent a fair and accurate depiction of the condition of
10 the trails at the time you observed them?

11 A. Yes.

12 Q. Mr. Connor with regard to photograph number
13 one. What type of trail is this?

14 A. This is a hiking trail up Hurricane Mountain.

15 Q. Mr. Connor, do you distinguish between hiking and
16 footpath? Hiking trail and foot path?

17 A. Yes.

18 Q. What is that distinction?

19 A. The trail system classification that I operate on
20 that is spelled out in our unit management plans has multiple
21 classes of trails. Foot trails they are referred
22 to. Generally I refer to all of the trails that are
23 predominantly -- or singularly used for foot traffic as
24 hiking trails.

1 Q. So you used that term interchangeably?

2 A. I don't tend to use foot trail other than for the
3 formalities.

4 Q. So you mentioned that there are classes of hiking
5 trails or foot trails. What are those classes?

6 MR. CAFFRY: Objection.

7 THE COURT: What is the objection?

8 MR. CAFFRY: He said paths. He didn't say
9 trail. The question was about paths. It wasn't
10 about trails.

11 THE COURT: Overruled. You may finish the
12 question.

13 MS. SIMON: Could you read it back please?

14 (Reporter read the pending question.)

15 A. So there is multiple different classes of trails in
16 our classification. They range from a Class I up to a Class
17 VII trail, and that encompasses everything from an occasional
18 hunter's path through our herd paths that are unmarked trails
19 that are used enough that they are maintained through use.

20 A bunch of middle trails that are of different sizes
21 for working in their interconnectivity in a larger trail
22 network. Then horse trails and ski trails are also included
23 in that classification system.

24 Q. With all of these trails do they vary in width?

1 A. Yes, ma'am.

2 Q. But they are all -- of the hiking trails they are
3 all hiking trails but they vary in width how?

4 A. So they vary in width in their allowable trail
5 corridor width, and the trail corridor is the area adjacent
6 to the trail tread that is cleared of vegetation for users to
7 travel in.

8 Q. What is the range of widths for hiking trails?

9 A. The range of width of hiking trails for the trail
10 corridor widths would be starting with our Class III trail.
11 Three feet up to eight feet for horse trails.

12 Q. And in the pictures, in the photos in Exhibit
13 AJ. What type of trails, if we need to go through one at a
14 time we will, but what type of trail is depicted in
15 photograph one?

16 A. Photo one would be a Class III trail.

17 MR. CAFFRY: Objection, Your Honor. He is
18 testifying to a document that is not in
19 evidence. If it is we have no idea what document he
20 is referring to.

21 THE COURT: You have number one in front of
22 you? You have a copy of the first photograph on AJ
23 in front of you?

24 MR. CAFFRY: I have the photos, but he is

1 talking about this classification system and I have
2 no idea which one he is testifying to.

3 THE COURT: You are talking about when he
4 is referencing documentation. When he references
5 Class III.

6 MR. CAFFRY: Yes.

7 THE COURT: I understand.

8 MR. CAFFRY: We argue it is beyond the
9 scope of a proper foundation, but if we at least
10 know what he is referring to in terms of this
11 classification system then I am not going to object
12 to it.

13 THE COURT: I think you were a little early
14 there. So your objection is overruled. Let's see
15 if Ms. Simon develops an explanation of what three
16 is and take it from there. If not you can renew
17 your objection and I will determine that. I will
18 rule on that. Go ahead.

19 BY MS. SIMON:

20 Q. On the various types of hiking trails that you are
21 aware of. You have testified that the widths range from
22 three to eight feet. Correct?

23 A. Yes, ma'am.

24 Q. And on the photographs one through seven are these

1 all hiking trails?

2 A. Yes, ma'am.

3 Q. Are any of them also multi-purpose trails that would
4 incorporate other uses?

5 A. Yes, ma'am.

6 Q. Which ones?

7 A. Photo two and photo three are both designated hiking
8 and horse trails. That designation came in the Pharoah Lake
9 Wilderness Unit Management Plan.

10 Q. For each of these trails is there a Unit Management
11 Plan?

12 A. Yes, ma'am.

13 Q. And does it identify the trail classification?

14 A. Yes, ma'am.

15 Q. Are all of these trails that are depicted in photos
16 one through seven typical of hiking trails in the Adirondack
17 Forest Preserve?

18 A. These trails represent a variety of the typical
19 trails that would be on the Adirondack Forest Preserve.

20 Q. Understood. Some of them vary in classification
21 type?

22 A. Yes, ma'am.

23 Q. So in addition to being hiking trails. Just to
24 clarify. You said photograph number two and what was the

1 other photo that was also a horse trail?

2 A. Photo number three.

3 Q. Number three.

4 MS. SIMON: Your Honor, I move to admit all
5 of these into evidence as typical hiking trails in
6 the forest preserve. He has testified there are
7 various classifications of hiking trails in the
8 forest preserve.

9 THE COURT: Understood. Go ahead.

10 MR. CAFFRY: I renew my objection and I
11 think I may have to do some voir dire at this
12 time.

13 THE COURT: All right. Your objection with
14 the exception of any issues you bring up on voir
15 dire is overruled. Please go ahead with voir
16 dire.

17 VOIR DIRE BY MR. CAFFRY:

18 Q. Mr. Connor with regard to the trail classification
19 system you you just testified about --

20 THE COURT: I apologize for breaking in Mr.
21 Caffry.

22 Your objection with regard to the caption
23 issue still stands. I don't think that has been
24 addressed. Or maybe it has. I don't know what is

1 in the captions, not having looked at the evidence
2 as yet.

3 Has that been addressed to your
4 understanding Ms. Simon in the questions you have
5 asked?

6 MS. SIMON: No.

7 THE COURT: Okay. Do you want to readdress
8 that or do you want to simply agree to remove the
9 captions from the photographs during the lunch break
10 before the Court looks at the photographs?

11 MS. SIMON: They can be removed and we will
12 just have him discuss the photographs.

13 THE COURT: Is that acceptable Mr. Caffry?

14 MR. CAFFRY: Yes.

15 THE COURT: All of your other exceptions,
16 including that exception.

17 You may commence with your voir dire.

18 VOIR DIRE BY MR. CAFFRY:

19 Q. Mr. Connor, with regard to the Pharoah Lake
20 Trail. You are apparently familiar with that because you
21 once worked in the Pharoah Lake Wilderness Area. Is that
22 correct?

23 A. Yes, sir. I was the manager for the Pharoah Lake
24 Wilderness Area for several years.

1 Q. And you just testified that the trail is both a
2 hiking trail and horse trail. It has a dual designation?

3 A. Yes, sir.

4 Q. And you were previously asked a question about this
5 trail classification system. Is that contained in the
6 Pharoah Lake Unit Management Plan?

7 A. No. The trail classification system I referred to
8 was first used in the 1999 High Peaks Wilderness Complex Unit
9 Management Plan.

10 Q. Has that system ever been officially adopted as a
11 Department policy document outside of being contained in
12 individual unit management plans?

13 MS. SIMON: Objection. Relevance.

14 THE COURT: What is the relevance?

15 MR. CAFFRY: Trying to find out what weight
16 this document carries that he has relied upon.

17 THE COURT: Voir dire can only go to
18 foundation issues. So the objection is sustained.

19 VOIR DIRE BY MR. CAFFRY:

20 Q. In this classification system you have testified
21 about you said that the trail -- and I want to make sure I
22 understand this. There is a difference between tread width
23 and the cleared width of a trail?

24 A. Yes. The cleared width or corridor width.

1 Q. And you testified that the width of the trails on
2 the system varies from Class III at three feet wide up to a
3 horse trail, which is eight feet wide. Is that correct?

4 A. Yes, sir.

5 Q. Isn't it true that under this classification system
6 the widest cleared width for a hiking trail is Class V
7 sometimes referred to as a trunk or primary trail?

8 MS. SIMON: Objection Your Honor.

9 THE COURT: Let him finish the question.

10 Q. Where the maximum clear width is six feet wide?

11 MS. SIMON: Objection.

12 THE COURT: It sounds like appropriate
13 cross-examination. It is not clear to me how it is
14 appropriate examination with regard to the
15 authentication or immediate relevance of these
16 photographs, but please tell me.

17 MR. CAFFRY: Because he testified that
18 trails can have a width of three feet to eight feet,
19 but where I am going with this is he actually
20 combined hiking trails and horse trails. Then he
21 testified that these are typical hiking trails, even
22 though horse trails have a wider defined width than
23 hiking trails.

24 THE COURT: Which you developed when you

1 were going to something else with the last two
2 questions.

3 MR. CAFFRY: I only want to clarify what is
4 the maximum width. That there is a difference
5 between the maximum width of a hiking trail and the
6 width of a horse trail.

7 THE COURT: The objection is overruled.
8 Do you want to hear the question again?

9 THE WITNESS: Yes. Please.

10 (Reporter read the pending question.)

11 THE COURT: You may answer that.

12 A. It is true that the Class V trunk trail description
13 and width is exactly as you indicated it.

14 Q. Thank you.

15 MR. CAFFRY: Your Honor, I renew my
16 objection to these exhibits being admitted as
17 relevant for numbers two and three because that is a
18 horse trail which has -- its classification has a
19 wider width. Therefore, it is not representative of
20 what would otherwise be a foot trail.

21 With regard to his testimony that that --
22 in general his blanket testimony that these trails
23 are typical. He said the trails are typical. He
24 did not say that the scenes depicted are typical.

1 These photographs, if you do get to see
2 them, are very non-typical scenes in our opinion and
3 we could develop that on cross. He did not even
4 establish that the scenes depicted, the sections
5 depicted are typical. He only said the trails in
6 general, some of which may be miles and miles long
7 are typical. I think that is a very important
8 factor on the relevance of these particular
9 photographs.

10 THE COURT: I don't disagree with you. I
11 think it is appropriate grounds for
12 cross-examination. I will overrule that
13 objection.

14 With regard to the issue with regard to
15 sections -- excuse me. What we are calling
16 photographs two and three, and I don't even know if
17 there are numbers written on them. Presumably we
18 are working our way through them in order as they
19 are stapled together. Your objection is
20 overruled.

21 Mr. Connor's testimony was specifically
22 that he considered a hiking trail as different from
23 a foot path, and that everything only for foot
24 traffic was for Mr. Connor a hiking trail whereas a

1 foot trail could be something different. But,
2 again, I think that is grounds for cross-examination
3 and may well be fertile grounds as to
4 cross-examination and comparison of the trails.

5 So your objection with the exception of
6 the objection with regard to the captions and
7 descriptions on the photograph are overruled.

8 AJ is received into evidence subject to
9 the redaction that we already discussed.

10 (Defendants' Exhibit AJ was received in
11 evidence.)

12 THE COURT: With that we are going to
13 break for lunch and we will return at 1:35.

14 MS. SIMON: Thank you, Your Honor.

15 MR. CAFFRY: Thank you.

16 THE COURT: Off the record.

17 (Lunch recess.)

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WITNESSES

FOR THE DEFENDANTS :

DIRECT

CROSS

REDIRECT

RECROSS

PETER FRANK

By Ms. Simon

By Mr. Caffry

979

966

981

KATHLEEN REGAN

By Ms. Lee-Clark

By Mr. Caffry

984

1013

1014

1014

TATE CONNOR

By Ms. Simon

1016

DEFENDANTS' EXHIBITS :

ID

EVIDENCE

X Adirondack Park State Land
Master Plan October 2011

994

AC Resume of Tate Connor

1038

AJ Seven photographs of foot
trails in the Adirondack Forest
Preserve

1063

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

I, **DEBORAH MEHM**, Senior Court Reporter in the Unified Court System, Third Judicial District, do hereby certify that the foregoing is a true and accurate transcript of the proceedings reported stenographically by me before the HONORABLE GERALD W. CONNOLLY, Acting Supreme Court Justice in Albany, New York on March 23rd, 2017.

DEBORH MEHM, CSR
Senior Court Reporter