

STATE OF NEW YORK

SUPREME COURT

COUNTY OF ALBANY

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

Plaintiff-Petitioner,

Index No.
2137-13

-against-

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

Defendants-Respondents.

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

APPEARANCES:

For the Plaintiff:

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

For the Defendants:

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

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

VOLUME XII

March 27, 2017 - Pages 1156 - 1239

1 (Proceedings continued in open court on
2 March 27, 2017, at 9:30 a.m.)

3 (Defendant's Exhibit CT and Plaintiff's
4 Exhibits 166 through 169 marked for
5 identification.)

6 THE COURT: Good morning, ladies and
7 gentlemen. How are you. All set to proceed?

8 MR. CAFFRY: Yes, your Honor.

9 MS. LEE-CLARK: Your Honor, we have a
10 couple of preliminary issues just to talk about --

11 THE COURT: Go right ahead.

12 MS. LEE-CLARK: -- before cross. So a
13 few months ago I had agreed to argue a case out in
14 the Fourth Department a week from today and so I
15 would be out of town, obviously, on that day. So
16 we propose for that morning at 9:30 going through
17 Mr. Linck's transcript. Miss Simon would be able
18 to do that in chambers and then put any -- if you
19 were ready to put any rulings on the record, to do
20 so at that point. But then as it's only a half
21 day, we would request that we adjourn for the rest
22 of that day. We anticipate being done with our
23 case the middle of next week so it would not delay
24 the court proceedings significantly.

1 THE COURT: Did you talk to opposing
2 counsel?

3 MS. LEE-CLARK: I did. I e-mailed
4 opposing counsel on Friday.

5 THE COURT: Is that acceptable?

6 MR. CAFFRY: Your Honor, she did send an
7 e-mail to Ms. Braymer who was kind enough to
8 forward it to me. I'm not sure that's the best
9 procedure in that it potentially wastes some time.
10 I think you said yourself this conference may only
11 be a half hour, 45 minutes. Even if it's an hour,
12 then there's another hour and a half. I see it as
13 something that could be squeezed in perhaps at the
14 end of the day if a witness finishes up, something
15 like that. I recognize that Ms. Lee-Clark has
16 another commitment but, likewise, Miss Braymer is
17 not here today. She had another commitment in
18 what I will call her other job, so I was able to
19 get Mr. Demarest to come help out today. The
20 attorney general's office has many attorneys.
21 Most of them or many of them have been coming in
22 here and sitting and watching. I assume that we
23 could finish up a full day on Monday morning and
24 not potentially waste an hour and a half. It's

1 ultimately your call, but that's my position. I
2 don't care that much one way or another. I just
3 would like to see this thing move along.

4 THE COURT: I would as well.

5 Nevertheless, I do think we need that time and,
6 frankly, I'm spending a lot of my time at the end
7 of days and at the beginning of days doing my
8 other responsibilities. So I'm going to grant the
9 request. We're going to -- we will meet in my
10 chambers at 10:30 on Monday morning, Monday the --

11 MS. LEE-CLARK: I believe it's the 3rd,
12 your Honor.

13 THE COURT: Thank you. -- April 3rd to
14 review the transcript to the extent required. We
15 will not have courtroom appearances on that date.

16 MS. LEE-CLARK: We wanted one additional
17 thing. We have reviewed Mr. Signell's notes and
18 we don't have any further cross examination at
19 all.

20 THE COURT: So give me one moment to
21 e-mail my staff with regard to our scheduling for
22 next week so we don't forget, and then we'll get
23 started.

24 (Pause)

1 THE COURT: All set, then?

2 MS. LEE-CLARK: Yes, your Honor.

3 THE COURT: Please go ahead. Where are
4 we?

5 MS. SIMON: I think we're on the cross
6 examination still of Tate Connor. Shall I call
7 him?

8 THE COURT: Yes.

9 MS. SIMON: Mr. Connor, would you please
10 come up.

11 (Witness resumed the witness stand)

12 THE COURT: Good morning, Mr. Connor.

13 THE WITNESS: Good morning, your Honor.

14 THE COURT: You understand you're still
15 under oath, correct?

16 THE WITNESS: Yes, sir.

17 THE COURT: Good enough. Mr. Caffry.

18 MR. CAFFRY: Yes, your Honor. When we
19 had finished up on Thursday with Mr. Connor, we
20 had been provided with his file and there were a
21 few things that I wanted to question him about
22 that were in his file. I see he's brought what
23 appears to be his file with him again and I would
24 ask that I be allowed to review it again and

1 perhaps question him. I don't need to take a
2 break to review it. I just need to look at it
3 unless there's something new in it.

4 THE COURT: Go ahead.

5 CROSS EXAMINATION (Cont'd)

6 BY MR. CAFFRY:

7 Q Mr. Connor, I recognize this may be a little
8 difficult because now I have your documents and you
9 don't, but maybe you will remember what's in them.
10 There's one that's a three-page -- appears to be a
11 three-page document printed out, unstapled, picture of
12 you and two children. I assume those are your kids?

13 A Yes, sir.

14 MS. SIMON: Objection.

15 MR. CAFFRY: I'm just trying to identify
16 the document so I make sure we're asking about the
17 same document.

18 THE COURT: Overruled. Go ahead.

19 Q So in the right-hand corner or, I'm sorry,
20 the picture is in the right-hand corner. In the
21 left-hand corner are some abbreviations and some
22 numbers. I'd like to ask you what they mean. What
23 does it mean where it says SEG RM 20? Do you know?

24 A SEG would be abbreviation for segment. RM

1 would be an abbreviation for red maple and 20 would be
2 the diameter at breast height.

3 Q And then it says the exact same thing
4 underneath that. Do you recall that?

5 A Yes.

6 Q And then the next one says SEG AB 28 SIG
7 comma. Can you tell us what that means?

8 A Could you read it again?

9 Q SEG AB 28 SIG.

10 A You said AE?

11 Q AB.

12 A AB. That would be segment, American beech,
13 and then the number would be the diameter and the SIG
14 would stand for significant stump which refers to a
15 note that I made in the work plan regarding tallying of
16 stumps that stood above the ground to an extent that
17 when cut down flush, they potentially could be confused
18 with a tree that was cut.

19 Q So this was a stump of a tree that had
20 somehow fallen over before you began work on the trail?

21 A Correct.

22 Q What were the first two, the 20-inch red
23 maples? Where were they located and what was that
24 about?

1 A The first one, SEG would stand for segment,
2 RM red maple. That stood for segment one. That was a
3 live tree. And on segment two, the second line, it's
4 the same. There was a tree of the same species and
5 size on segment two.

6 Q And that was cut? Those were both cut for
7 the trail?

8 A Those were both marked and tallied to be cut
9 in the work plan for the trail construction.

10 Q And where was the 28-inch American beech.
11 What segment was that in?

12 A The first two represent segment one and
13 segment two. The remainder of the list are on segment
14 three.

15 Q Following after are three in a row that say
16 SM 20 D. Can you tell me what those mean?

17 A The SM would stand for sugar maple. The
18 number again would indicate the diameter at breast
19 height and the D would denote that they were dead, not
20 living.

21 Q Were those three trees that were cut in
22 segment three?

23 A Those are three trees that I marked and
24 tallied and wrote in the work plan for the settlement

1 of the segment three portion of the trail.

2 Q And when you wrote in tally a tree to be cut,
3 is it more likely than not that it did eventually get
4 cut?

5 A During the work planning process, I would
6 have developed a preliminary tree tally. That tree
7 tally would have generally been chronological as I went
8 across the trail. If you look at the work plan, you'll
9 notice -- the collection work plans, there's a couple
10 of different methods in which they were displayed, but
11 generally we tallied in the order that we're removing.
12 Those trees would have been marked to be removed from
13 the trail corridor.

14 On subsequent visits, after the initial
15 work plan had started and the cutting commenced, there
16 were work plan modifications that may have shifted the
17 trail one side or another to a tree that was going to
18 be marked and denoted in the work plan modification,
19 but I did not keep track of removing from the work plan
20 tally any trees that we were not going to cut.

21 Q So basically you can't answer the question?

22 MS. SIMON: Objection. It's
23 argumentative.

24 THE COURT: Sustained.

1 Q What is SM 36 SIG? That's the next entry.

2 A The SM would stand for sugar maple. The
3 number would indicate the diameter and the SIG would
4 stand for significant stump. Again, that's a stump of
5 a size large enough that when we flatten that stump, it
6 could potentially appear that it was a tree.

7 Q And that was in segment three?

8 A Yes, sir.

9 Q And then in the last one on that list it says
10 YB 30 D. What is that referring to?

11 A YB would stand for yellow birch. The number
12 would indicate the diameter at breast height and the D
13 would indicate that it was dead, no longer living.

14 Q And that was a tree that you had tallied and
15 marked for cutting?

16 A That was a tree that was tallied and marked
17 and put into the work plan.

18 Q And that was in segment three?

19 A Yes, sir.

20 Q Following that on the list, on this
21 three-page document, there is a heading of brand new
22 trail and road construction. Is that just a list of
23 trails you have worked on, yes or no?

24 A Yes.

1 Q And likewise there's a section on major
2 reroutes and another one major bridge construction.
3 Are these all just things that you've worked on?

4 A Yes, sir.

5 MR. CAFFRY: Your Honor, I'd like to
6 return Mr. Connor's file to him.

7 THE COURT: Sure.

8 Q Mr. Connor, I've handed you what's been
9 previously admitted into evidence as Exhibits 151 and
10 155 to 158. Do you recall testifying about those when
11 you were last on the stand?

12 A I recall testifying on some of the pictures
13 in this but not all the pictures while I was on the
14 stand.

15 Q Could you clarify that, please?

16 A Plaintiff's Exhibit 158 I have not seen on
17 the stand. 157 and I don't recall if 151 was presented
18 to me.

19 Q You are correct about 157 and 158. My
20 recollection is 151 you did testify about. Do you
21 recall that your attorney had said these were photos
22 taken by Mr. Amadon but we later clarified they were
23 taken by Mr. Bauer?

24 A At the end of the day?

1 Q At the end of the day.

2 A That's what you guys talked about.

3 Q You recall that discussion?

4 A Yes, sir.

5 Q Looking first at number 155, is it correct
6 that this is a picture of a bridge that you and your
7 crew were working on on the Seventh Lake Mountain
8 Trail?

9 A Yes.

10 Q And that's you in the yellow shirt in the
11 middle?

12 A That is me in the yellow shirt, yes, sir.

13 Q And in the foreground of the picture, I see
14 the end of I believe your stringers, they look like
15 telephone poles. Do you see that?

16 A I see the foreground in the picture, the end
17 of the stringers, yes.

18 Q And what is it that they're -- there appears
19 to be an object that they're resting on. What is that?

20 A The footer of the bridge?

21 Q You tell me.

22 A Across the bottom of all the stringers in the
23 foreground of the picture is the footer or abutment for
24 the bridge. That's the foundation that holds the

1 bridge up on the banks.

2 Q And what is that made of?

3 A That's made of pressure-treated lumber.

4 Q And is that typical of all bridges that you
5 built on the Seventh Lake Mountain Trail?

6 A Yes.

7 Q Would you look at Exhibit 156 which I believe
8 you recall testifying about this previously?

9 A We spoke about this on Thursday.

10 Q Well, more correctly, didn't your attorney
11 ask you questions about it?

12 A Yes.

13 Q And do you recognize the ATV in the
14 upper-right corner of the picture?

15 A I do.

16 Q And was that something that was used in
17 building the Seventh Lake Mountain Trail?

18 A That ATV was used in support of building the
19 Seventh Lake Mountain Trail.

20 Q And what do you mean in support?

21 A Well, the ATV did not actually do any
22 construction or work. It just brought materials to the
23 bridge sites.

24 Q All by itself?

1 MS. SIMON: Objection, your Honor. It's
2 argumentative.

3 THE COURT: The objection is sustained.

4 Q Did one of your crew drive it to the site?

5 A Yes. The ATV is not autonomous. It would be
6 need to be driven.

7 Q So you and your crew would have driven it to
8 the site in this picture and parked it there?

9 A The ATV was driven by a human and parked at
10 that location for this picture. I can't testify to who
11 actually drove this that day.

12 Q Would it have been anybody other than you or
13 a member of one of your crews?

14 A No.

15 Q And yes or no: It's parked in the woods and
16 not within the nine-foot trail tread width?

17 A It is parked adjacent to the trail tread,
18 yes.

19 Q It's outside the trail tread?

20 A It is outside the trail tread.

21 Q Surrounded by trees on three sides?

22 A Surrounded by trees on three sides.

23 Q If you look at Exhibit 157, please. Do you
24 recognize the vehicles parked in the photograph?

1 A Yes.

2 Q Are those also ATVs and UTVs used in support
3 of the construction of the Seventh Lake Mountain Trail?

4 A I do not see any UTVs in this picture. It
5 appears that there are ATVs in the picture.

6 Q The item closest to us, it says Polaris.
7 What is that?

8 A That is a six-by-six ATV.

9 Q And do you recognize the scene where this
10 photograph was taken?

11 A Yes, I do.

12 Q And where is that?

13 A This is just south of Route 28 on the access
14 trail that we used to get to the Seventh Lake Mountain
15 Trail during construction across from the Seventh Lake
16 boat launch.

17 Q And do snowmobiles use this access road to
18 access the Seventh Lake Mountain Trail?

19 A I don't have firsthand knowledge of whether
20 or not snowmobiles are using this.

21 Q Is it intended for that purpose?

22 A I believe the intent of this section of trail
23 is to allow people to come off the Seventh Lake
24 Mountain Trail to access Seventh Lake.

1 Q On their snowmobiles?

2 A On their snowmobiles.

3 Q How many hours did you and your crews operate
4 ATVs and UTVs on the Seventh Lake Mountain Trail and
5 its access roads during the construction of the trail?

6 A I do not have a specific tally of hours.

7 Q Isn't there a DEC policy that requires you to
8 keep track of those numbers?

9 A The procedure that I am familiar with would
10 involve us recording the days of use and general hours
11 but not specifically two-and-a-half hours versus an
12 eight-hour day.

13 Q Is that commissioner policy CP-17 entitled
14 Recordkeeping and Recording of Administrative Use of
15 Motor Vehicles and Aircraft in the Forest Preserve?

16 A I believe it's housed in that CP-17.

17 Q And did you file all of the reports or other
18 notices that are required by this policy?

19 MS. SIMON: Objection, your Honor. Two
20 bases. Relevance and beyond the direct exam on
21 the hours recorded.

22 THE COURT: Overruled. You may answer.

23 A I did not personally write the CP-17 request
24 that covered the motorized actions on the Seventh Lake

1 Mountain Trail so I cannot speak to those
2 considerations.

3 Q Do you know who did?

4 A I do not.

5 Q Would it have been somebody -- was this
6 project in DEC Region 5?

7 A Yes, sir.

8 Q Would it have been somebody else in Region 5?

9 A It's possible that it could have been someone
10 else in Region 5 or someone else in DEC.

11 Q So is it your testimony that you don't know
12 who filed these requests and you don't know whether or
13 not in fact they were filed?

14 A I do not know who filed the requests.

15 Q Do you know if they were filed or not?

16 A I don't -- I don't recall.

17 Q Would you look now at Exhibit 151. Do you
18 recall testifying about this the last time you were on
19 the stand?

20 A I had mentioned earlier that I was fuzzy on
21 whether or not I had this picture on the stand Thursday
22 but I'm happy to answer any questions right now.

23 Q Do you see a white Bobcat excavator in the
24 middle of the picture?

1 A I see a white Bobcat mini excavator in the
2 middle of the picture.

3 Q And it's got the old DEC blue, green and
4 white logo on it, is that correct?

5 A Yes, it does.

6 Q And so this piece of equipment is or was the
7 property of DEC as of 2012?

8 A Yes.

9 Q And was this something that was used in
10 construction of the Seventh Lake Mountain Trail?

11 A Yes.

12 Q What does it weigh?

13 A I do not have the specific specs for this
14 excavator but I know for a fact that this excavator
15 weighs under 10,000 pounds.

16 Q And was it more than 5,000?

17 A I would have to see a spec sheet to know for
18 certain.

19 Q So you don't know what it weighs, you just
20 know it was under 10?

21 A Yes, sir.

22 Q What's the brown area in front of the
23 excavator in the picture?

24 A The brown area in front of the excavator is

1 the portion of the trail tread in the process of being
2 constructed.

3 Q And would it be safe to assume that this was
4 excavated using that excavator?

5 A Yes.

6 Q And do you see what appears to be a dead log
7 behind the excavator across the trail tread?

8 MS. SIMON: Your Honor, I didn't hear
9 what that question was. Could we have it
10 repeated?

11 THE COURT: Sure. Cindy if you would,
12 please.

13 (Last question read by the reporter.)

14 A Behind the excavator there appears to be a
15 rotten log on the forest floor.

16 Q Is that something that would have been
17 removed from the trail using the excavator?

18 A For the most part the woody debris that would
19 have been encountered in the trail contractor would
20 have been thrown off by trail workers working to clear
21 the corridor. If there was larger woody debris that
22 they cut up but was not -- or was kind of too big or
23 cumbersome for them to move out of the way, then
24 sometimes the machine would be used to move that off

1 the trail corridor.

2 Q Do you know that the trail crew actually cut
3 that tree down or does it appear that it might have
4 rotted and fallen on its own given that it's covered
5 with moss?

6 A Based on my years of experience and having
7 been at this scene, I can say that that tree has been
8 there for a period of time before we cut the trail so
9 they did not cut the tree down.

10 Q And does this excavator, I see it has a
11 shovel or bucket type attachment on the front. Does it
12 also have a blade type attachment on the other end?

13 A Yes. It has a backfill blade mounted on the
14 front of the undercarriage.

15 Q Is that similar to what a lay person might
16 think of as being like a bulldozer blade or a snowplow
17 blade?

18 A No.

19 Q What would you say it looks like, then?

20 A It is a fixed piece of metal on a very short
21 arm that's hydraulically controlled to go up and down
22 from the undercarriage.

23 Q Did you or your crews use any other
24 excavators on the Seventh Lake Mountain Trail?

1 A Yes.

2 Q Could you look at Exhibit 158, please. Do
3 you see the orange Kubota excavator in the middle of
4 the picture?

5 A I see the orange Kubota mini excavator in the
6 middle of the picture.

7 Q Did you use that on the Seventh Lake Mountain
8 Trail?

9 A I don't know. This picture wasn't taken on
10 the Seventh Lake Mountain Trail.

11 Q But I didn't ask about where the picture was
12 taken. Do you recognize that Kubota excavator?

13 A I don't recognize that specific Kubota
14 excavator.

15 Q Did you use any sort of Kubota excavator on
16 the Seventh Lake Mountain Trail?

17 A Yes, we used a Kubota excavator on the
18 Seventh Lake Mountain Trail that we rented from Abele
19 down here in the Albany area.

20 Q Did it look like the one in the picture?

21 A I can't see any markings to indicate the
22 model number but I'm guessing that they are probably
23 fairly similar.

24 Q And in that picture on the right side of the

1 machine, do you see a metal object protruding off the
2 front that's covered with dirt?

3 A Yes, I see the excavator's backfill blade.

4 Q And is that used to push dirt on a trail like
5 this?

6 A The purpose of that blade is for
7 stabilization while you're using the upper portion of
8 the excavator and also for moving bulk material back
9 into a hole that you've dug.

10 Q Bulk material meaning dirt?

11 A Dirt, stone, whatever the actual material
12 that the machine is being used for.

13 Q How many hours did you and your crews operate
14 excavators or mini excavators, as you call them, on the
15 Seventh Lake Mountain Trail during its construction?

16 A I did not keep a running tally on the hour
17 clock for the mini excavator, either of them.

18 Q Do you have any idea other than a running
19 tally?

20 A No.

21 Q Again, isn't that the type of thing that is
22 subject to commissioner's policy CP-17 that you
23 previously testified about?

24 A I would have the same answer as I mentioned

1 regarding the ATV access where it would have looked at
2 the days that we were operating and not specifically
3 the hours. So if we used the mini excavator for
4 two-and-a-half hours for the day, then it would have
5 just been that the mini excavator was used for a day.

6 Q Do you know whether or not the reports
7 required by commissioner's policy CP-17 on
8 recordkeeping and reporting were filed with regard to
9 the use of excavators on the Seventh Lake Mountain
10 Trail?

11 A I don't recall as that was almost five years
12 ago.

13 Q You didn't do it yourself, did you?

14 A I honestly don't remember.

15 Q Mr. Connor, I've just handed you Exhibits AF
16 and AG which are in evidence which I believe are
17 photographs you took of the trail, of the Seventh Lake
18 Mountain Trail, is that correct?

19 A Yes, sir.

20 Q I'd like to try and clarify something. In
21 your testimony you defined the term "trail tread" --
22 and I may be paraphrasing, I may not have the exact
23 wording so this is what I want to confirm first -- as
24 the durable surface defined within the trail for travel

1 on it. Is that correct or is that close enough?

2 A For your purposes of paraphrasing, I think
3 you grabbed the concept.

4 Q So in the photos of the Seventh Lake Mountain
5 Trail in Exhibits AF and AG, is it true, then, that
6 what you would consider to be the trail tread is the
7 entire cleared width of the trail because that's where
8 the snowmobiles will travel on it?

9 A No.

10 Q What is it?

11 A The trail tread varies throughout the length
12 of the Seventh Lake Mountain Trail. In places where we
13 perform bench cuts to create a sustainable trail tread
14 across a slope, those places are benched out to the
15 full nine-foot width.

16 Q Let me clarify the question.

17 THE COURT: Hang on, hang on. Let him
18 finish, then you can clarify away. Go ahead.

19 A In other places where we didn't incorporate
20 bench cutting, where the trail is laid out across a
21 flatter, gentler area, there wasn't full trail tread
22 development because you don't need to fully develop the
23 trail tread for a snowmobile trail. The reason for
24 developing the trail tread on a spot where you're not

1 bench cutting for a snowmobile trail would be for the
2 non-winter users of that trail.

3 Q So in an area where there's a bench cut such
4 as Exhibit AF on the second page -- do you see that?

5 A I do.

6 Q There's a bench cut on the left and then
7 there is a flat area with grass and straw on it in the
8 middle. Do you see that?

9 A No. The bench cut is the area with the grass
10 and the straw. The other to the left is the up-slope
11 area adjacent to the bench cut.

12 Q So the bench cut is, to you, the flat surface
13 on which the snowmobile will travel?

14 A The bench cut that I am speaking to is the
15 bench cut of the trail tread where the use will occur
16 on the trail tread. The overall concept of the
17 facility that you're putting in here is called bench
18 cutting that has an associated up-slope and sometimes a
19 down-slope area.

20 Q But so between the up-slope and the
21 down-slope, there's a flat area, correct?

22 A Correct.

23 Q And depending on whether or not it's a curve
24 or on a steep hill, it's anywhere from 9 to 12 feet

1 wide, correct?

2 A The trail tread, the flat area on the bench
3 cut you just mentioned, would be nine feet. If that
4 bench cut wound around a very steep or sharp curve,
5 then it would have the ability to be greater than
6 nine feet. You could be in a situation where you're
7 going down a steep slope and you have a bench cut that
8 is greater than 12 feet, but that would kind of defeat
9 the purpose of putting a bench cut in since that
10 assumes that you're going across the slope and not down
11 the fall line where a steep slope would occur.

12 Q So anywhere -- and I think I'm understanding
13 your terminology. Anywhere where there's a bench cut,
14 the 9-foot up to 12-foot wide trail width to you is
15 part of the trail tread?

16 A Yes. If you're doing a bench cut, you do a
17 full bench cut so that it is sustainable and won't
18 erode or slough off. And the sloughing off refers to
19 the technique of partial bench cuts where this is a cut
20 and associated fill, which is a standard practice in
21 road building, but that has the benefit of having
22 compaction equipment to make sure that the filled area
23 on the downhill side is stabilized and normally
24 involves additional support in terms of retainment

1 walls on the down-slope side of the bench cut. So in
2 trail construction the only sustainable choice is a
3 full bench cut.

4 Q Now, you testified earlier about the DEC
5 trail classification system which is appendix nine in
6 the Moose River Plains Wild Forest UMP. Do you recall
7 that?

8 A Yes, sir.

9 Q And I've just handed you Exhibit D. Is that
10 the Unit Management Plan?

11 A This is the Moose River Plains Wild Forest
12 UMP.

13 Q And it was adopted I believe in 2011, is that
14 correct?

15 A The date on the bottom right corner of the
16 cover is January 2011.

17 Q So when you were building the Seventh Lake
18 Mountain Trail, that was the Unit Management Plan that
19 controlled the building of the trail, is that correct?

20 A This is the UMP that covered the development
21 and building of the trail subsequent to any other at
22 the present time guidelines and policies.

23 Q But as a DEC employee, isn't it true that you
24 can't construct anything on the Forest Preserve that

1 isn't in compliance with an approved Unit Management
2 Plan?

3 A All structures and improvements on the Forest
4 Preserve that are not accepted in the DEC/APA MOU need
5 to fall under a Unit Management Plan.

6 Q Turning to pages 325 and 326 which is also
7 appendix nine, do you have that before you?

8 A Yes, sir.

9 Q And I believe it's your testimony that this
10 has not been adopted as a formal DEC policy like the
11 one about use of motor vehicles that you just testified
12 about but it was used in the High Peaks Unit Management
13 Plan in 1999 and it's been used in all or most other
14 UMPs for the Forest Preserve since then, is that
15 correct?

16 MS. SIMON: Objection. That's a
17 compound question.

18 THE COURT: Sustained.

19 Q I believe you testified that this was first
20 used in the High Peaks Wilderness Complex Unit
21 Management Plan in 1999, is that correct?

22 A To my knowledge, yes.

23 Q And that since then, it has been used in most
24 other if not all wild forest and wilderness Unit

1 Management Plans for the Forest Preserve in the
2 Adirondacks?

3 A All the UMPs that I've reviewed have this
4 document in it since 1999 but I have not reviewed all
5 the UMPs.

6 Q And your current assignment includes
7 overseeing the management of the High Peaks, correct?

8 A Yes. In addition to several other units.

9 Q So you're familiar with that UMP also?

10 A Yes, sir.

11 Q Is the one in appendix nine basically the
12 same as the equivalent classification system in the
13 High Peaks Unit Management Plan? I'm sorry. Appendix
14 nine.

15 A The bulk of this appendix nine in this UMP is
16 similar to the High Peaks UMPs table that has this
17 classification chart in it.

18 MR. CAFFRY: Your Honor, I'm going to be
19 asking the witness a number of questions about
20 this chart. Would you like a copy to look at?

21 THE COURT: If you have one, I'd
22 appreciate it. Thank you.

23 MR. CAFFRY: Your Honor, that has not
24 been marked as a separate exhibit. It's part of

1 Exhibit D.

2 THE COURT: No objection, Counsel?

3 MS. SIMON: He gave you the pages that
4 we're looking at? Yeah, no objection.

5 THE COURT: Go ahead.

6 BY MR. CAFFRY:

7 Q Mr. Connor, looking at appendix nine of
8 Exhibit D which is entitled Trail Classifications, yes
9 or no: The first six classes of trails are foot
10 trails, or hiking trails as you prefer to call them?

11 A Yes.

12 Q And yes or no: Class VII is horse trails?

13 A Yes.

14 Q And yes or no: Class VIII is ski trails?

15 A Yes.

16 Q Do people also cross country ski on foot
17 trails or hiking trails --

18 A Absolutely.

19 Q -- in the Forest Preserve?

20 A Yes.

21 Q And, again, Class IX, which is on the next
22 page, is mountain bike trails, is that correct?

23 A Yes.

24 Q And do you see on the right side of the

1 document a column labeled maintenance?

2 A I do.

3 Q And do you recognize where it uses the term
4 tread in most but not all of the trail classifications?

5 A Yes.

6 Q And what is the meaning of tread as it's used
7 in this table?

8 A To save the Court some time, is there a
9 definition in here I can look at to read or are you
10 just asking about the meaning of the width?

11 Q I have not seen a definition that I am going
12 to direct your attention to. If there is one, I'm not
13 aware of it. Even though, of course, I'm supposed to
14 ask you the questions, I'm glad to clarify my question
15 for you. So, no, I'm not aware of a definition that I
16 am going to direct your attention to so I'm asking you
17 what your understanding is.

18 A Tread is the surface of the trail where users
19 would be traveling.

20 Q And do you see also in most of those
21 descriptions under acceptable maintenance for various
22 trail classifications the word clear?

23 A Yes.

24 Q And what does that mean to you? Again, I am

1 not reading from any particular definition but just
2 what it means to you.

3 A Clear would represent the trail corridor
4 width. The area encompassing the trail tread and
5 adjacent area that's cleared of vegetation to allow
6 users to not be impacted by vegetation.

7 Q And are they maintained differently than the
8 tread in the clear area?

9 A Yes.

10 MS. SIMON: Objection. Clarification?

11 THE COURT: I didn't understand that.

12 Hang on. Hang on. I'm still speaking.

13 MR. CAFFRY: Sorry.

14 THE COURT: I know you were there
15 anyway, but let me finish. Maybe you could
16 rephrase the question for me. Thank you. Go
17 ahead.

18 BY MR. CAFFRY:

19 Q Are the tread and the clear area maintained
20 differently?

21 A Yes.

22 Q Could you explain that?

23 A When you maintain trail tread, the primary
24 function there is to deal with drainage and preventing

1 erosion or impacts from users that would veer off the
2 durable surface of the trail tread. When you maintain
3 the cleared width, you're looking at removing the
4 vegetation that is in the prescribed width that is for
5 the safety of the users.

6 Q And in many of these trail classes it also
7 has the word high preceded by a number, three feet,
8 eight feet, whatever. What is meant by that?

9 A That indicates the height of the cleared
10 width adjacent or as part of the trail corridor. So if
11 a trail corridor said three feet, then that would be
12 the three-foot width and generally three-foot height of
13 the vegetation management along that corridor.

14 Q I guess I'm still confused. You say the
15 three feet height of it. Does that mean it's kept
16 below three feet?

17 A The cleared width and the width referring to
18 high are the components that would make a box that I
19 had testified to, the vegetation box around the trail
20 corridor. So generally the cleared width is the area
21 on either side of the -- half of that either side of
22 the tread width or tread line is what you would clear
23 of vegetation. And then any height requirements, you
24 would clear that up to that height. That takes into

1 account brush that would grow in on the side of the
2 trail tread within the trail corridor or branches that
3 are coming from trees adjacent to the trail corridor
4 that are growing into the trail corridor. You remove
5 that vegetation that is within that box. Best
6 management practice would not be that you cut the
7 branch growing in from outside the box at the edge of
8 the box but that you do a proper pruning cut on the
9 tree stem, whatever that is.

10 Q So some of these clear widths are only
11 three feet high, meaning that if you're taller than
12 three feet high, you're still going to hit the branch?
13 I'm still confused by this.

14 A That's what the document says. And for the
15 narrower trails, the way the vegetation management
16 works out, that becomes just the way the vegetation
17 grows alongside it. If you're maintaining the width,
18 you don't run into as many issues with stuff hanging in
19 from the outside. But, yes, that's what the document
20 says about the height.

21 Q As a practical matter, is it often necessary,
22 though, to clear it above three feet in height?

23 A Practically speaking, a trail maintainer
24 would cut branches or other vegetation that is within

1 the area to which a user standing on the trail tread
2 would be impacted by that piece of vegetation growing
3 in or from the side or from above.

4 Q Looking at appendix nine again and the six
5 classifications of foot trails or hiking trails, yes or
6 no: The allowable tread width in the system ranges
7 from 14 inches to 26 inches?

8 A For the trail classification chart here, the
9 first six classes of trails the tread width does
10 indicate 14 inches to 26 inches.

11 Q Thank you. May I remind you of the judge's
12 instructions regarding answers to yes-or-no questions.

13 A My apologies if that was a yes or no. Sorry.

14 Q And yes or no: For hiking trails as
15 indicated on appendix nine, the allowable clear area in
16 the system ranges from three feet to six feet?

17 A Yes.

18 Q And you've testified that the trail tread of
19 a Class II community connector snowmobile trail can be
20 from 9 feet to 12 feet, correct?

21 A I testified that the trail development on a
22 bench cut would be out to the full nine-foot width. In
23 the case where you were going around a sharp curve and
24 you happen to be bench cutting, that it could be up to

1 12 feet but that not the entire length of a trail would
2 you develop the trail tread to that width.

3 Q Where it is developed, where the trail tread
4 is developed to that width, isn't that more than four
5 times the maximum of 26 inches allowed for a foot trail
6 in this classification system?

7 MS. SIMON: Objection. We've been over
8 this.

9 THE COURT: Sustained.

10 Q Yes or no: The 12-foot maximum width of the
11 trail tread as you defined it of a Class II community
12 connector is twice the maximum allowed clear area of
13 six feet for hiking trails in this classification
14 system?

15 MS. SIMON: Objection.

16 THE COURT: Sustained.

17 MR. CAFFRY: Could I ask the basis of
18 that, your Honor.

19 THE COURT: Ask your next question,
20 Mr. Caffry.

21 Q Looking now at Class VII of the
22 classification system in appendix nine. That's for
23 horse trails, is that correct?

24 A Yes.

1 Q Are there any hoarse trails in the Moose
2 River Plains Wild Forest?

3 A I do not know firsthand.

4 Q To your knowledge has DEC built any new horse
5 trails in the Forest Preserve in recent years?

6 MS. SIMON: Objection.

7 THE COURT: Overruled. You may answer.

8 A I'm not up to speed on what the current
9 status of horse trail development is on Forest Preserve
10 lands outside the areas I'm responsible for. I know
11 the Essex Chain parcel has some horse trail development
12 but I'm not familiar with that.

13 Q And isn't it true that for horse trails on
14 the trail classification system, the tread width is
15 limited to two- to four-feet wide and the clear area
16 eight-feet wide?

17 A Yes, the document states that.

18 Q And for ski trails on appendix nine -- are
19 there any designated ski trails in the Moose River
20 Plains Wild Forest to your knowledge?

21 A I'm not familiar with all the trails in the
22 Moose River Plains Wild Forest.

23 Q And isn't it true that the chart in appendix
24 nine limits the tread width or the clearing, it's a

1 little unclear, of tread and/or clearing to six feet
2 for ski trails?

3 MS. SIMON: Objection, your Honor. That
4 was a confusing question.

5 MR. CAFFRY: Well, it's a confusing
6 rule.

7 THE COURT: Hang on. The objection is
8 overruled.

9 THE WITNESS: Could you rephrase it?

10 MR. CAFFRY: Sure.

11 Q Isn't it true that for ski trails, Class
12 VIII, acceptable maintenance on this chart, it says
13 "tread determined by clearing six feet"?

14 A Yes, that's what it says. And then it says
15 that should be slightly wider at turns and steep
16 sections.

17 Q Turning to Class IX on appendix nine which is
18 on page 326, do you see these for mountain bike trails?

19 A Yes.

20 Q And do you see in a column under the heading
21 of tread, and the heading is on the prior page, it says
22 new trails to a maximum of four feet, tread width less
23 than 18 inches on a rolling grade? Do you see that?

24 A Yes.

1 Q Would it be your understanding that the
2 maximum of four feet refers to the cleared width?

3 A No. Because it's under the heading of tread.

4 Q So that would be a maximum tread width of
5 four feet?

6 A That's how I would read it.

7 Q And so the 18 inches is allowable depending
8 on circumstances but the maximum is still four feet?

9 A The way that I read this is that the maximum
10 tread development would be four feet staying under
11 18 inches for trails on grades. I would imagine,
12 though I'm not intimately familiar with IMBA, the
13 International Mountain Biking standards, I would
14 imagine that the smaller width is for their single
15 track classification.

16 Q And looking at the right-hand column of this
17 appendix, would it be fair to say that bridges on
18 hiking trails Classes I to VI are limited to being up
19 to four logs wide?

20 MS. SIMON: Objection. The document
21 speaks for itself. We're going through this
22 line-by-line.

23 MR. CAFFRY: Your Honor, I'm trying to
24 refer to something he testified to previously.

1 THE COURT: Say that again?

2 MR. CAFFRY: I intend to tie this into
3 something he testified to previously.

4 THE COURT: Okay. I'll allow it. You
5 may answer.

6 A Yes, it refers to four logs wide.

7 Q And you testified previously that I believe
8 within DEC it would be -- where it refers to one log
9 wide, that would be considered to be one foot, or two
10 logs wide, that would considered to be two feet, is
11 that correct?

12 A Yes, that would be a general assumption.

13 Q And so then under this classification, foot
14 trail bridges are limited to four-feet wide?

15 A No.

16 Q Can you tell me where it says foot trail
17 bridges can be wider than four logs?

18 A Well, the logs indicate the stringers that
19 support the bridge. It doesn't give any guidance on
20 the decking material that would be put over the bridge
21 stringers.

22 Q And so the decking may extend slightly over
23 the edges?

24 A Depending on the bridge design, yes.

1 Q And on some classifications they're limited
2 to just two logs wide, is that correct?

3 A Yes.

4 Q Mr. Connor, as an employee of the DEC is it
5 your responsibility to follow all approved DEC policies
6 that apply to your work?

7 A Yes.

8 Q Are you familiar with DEC policy CP-38 which
9 is entitled Forest Preserve Roads?

10 A I know that that policy exists. I'm not
11 familiar enough with it to answer anything without the
12 policy in front of me.

13 Q I've just handed you what's been marked
14 Exhibit 168. Is that a copy of that policy?

15 THE COURT: Exhibit what? I'm sorry.

16 MR. CAFFRY: 168.

17 THE COURT: Thank you.

18 A Yes.

19 Q And you're familiar with it?

20 A Again, I know this exists. I am not
21 intimately familiar with this document so -- but I have
22 read it in the past.

23 Q And does that appear to be an accurate copy
24 of it?

1 A This has a date issued of 3/31/2006. There
2 is a blank under the latest date revised so if we have
3 not renewed this since 2006, then I would imagine this
4 is an accurate document.

5 MR. CAFFRY: Your Honor, I move the
6 admission of Exhibit 168.

7 MS. SIMON: Objection, your Honor. He
8 testified he's not familiar with it.

9 THE COURT: The objection is sustained.

10 MR. CAFFRY: Your Honor, he testified
11 that he does -- he has read it in the past.

12 THE COURT: Mr. Caffry, I was listening
13 when he testified. I heard what he said. He
14 qualified it and said he was not fully familiar
15 with it and could not -- in fact did not even
16 adequately identify it. I would request, of
17 course, in this nonjury trial that counsel always
18 take a look at evidence and if they can stipulate
19 to the foundation of evidence, that they do so.
20 I'm sure Ms. Simon or Ms. Lee-Clark would be
21 willing to do that over the next break.

22 MR. CAFFRY: Your Honor, I just
23 discovered this document myself. I didn't really
24 have time to discuss it with them.

1 THE COURT: I assumed that that was the
2 case, and that being the case, of course I'm not
3 requesting a stipulation at this point but rather
4 that it be considered. Stipulations are always
5 voluntary on both parties' side. Nobody is
6 required to enter into a stipulation at any point.

7 Miss Simon, did you want to say
8 something?

9 MS. SIMON: I did, your Honor. This was
10 just handed to me this morning. It's not on the
11 exhibit list.

12 THE COURT: Understood.

13 MS. SIMON: I didn't know about it.

14 THE COURT: I do not mean to imply that
15 you were required to stipulate to it at this point
16 or even required to consider stipulating to it at
17 this point. Go ahead, Mr. Caffry.

18 MR. CAFFRY: Just a moment your Honor.

19 (Pause)

20 BY MR. CAFFRY:

21 Q Mr. Connor, could you look at Exhibit D, the
22 Moose River Plains Wild Forest Unit Management Plan,
23 page 69.

24 A I'm looking at page 69.

1 Q And do you see on there a heading that says,
2 B, Management Guidelines, and underneath that a
3 subheading one, Guiding Documents?

4 A Yes.

5 Q And then down below there's a list of 12
6 items. Do you see that?

7 A Yes.

8 Q Can you read the paragraph above that list?

9 MS. SIMON: Objection, your Honor. He's
10 reading from a document not in evidence -- oh, I'm
11 sorry. Withdrawn. Sorry.

12 THE COURT: No problem. Go ahead, Mr.
13 Connor.

14 A DEC policy has been developed for the public
15 use and administration of Forest Preserve lands.
16 Select policies relevant to the management of this unit
17 include colon.

18 Q And then can you read item 12 on that list?

19 A Forest Preserve roads parentheses CP-38 end
20 parentheses.

21 Q To your knowledge would that be the same
22 policy that I was previously asking you about?

23 MS. SIMON: Objection, your Honor.

24 THE COURT: Overruled.

1 MS. SIMON: He's already testified --

2 THE COURT: Overruled. If you know.

3 A That would probably be the same document that
4 you had referenced earlier.

5 Q And isn't it true that -- and I am
6 paraphrasing your testimony again from the other day so
7 correct me if I'm wrong, please -- isn't it true that
8 you testified previously that you consider a forest
9 road to be a, quote, uninterrupted way with no gaps in
10 its surface, crowned in the center, resurfaced
11 regularly, and it's usually 12-to-30-feet wide and
12 sometimes wider?

13 A Your paraphrasing of my statement generally
14 seems fairly familiar to me.

15 Q And is that definition, if you will, or
16 description of a forest road, to your knowledge is that
17 found in DEC policy CP-38, Forest Preserve Roads, which
18 is listed on page 69 of Exhibit D or is that your own
19 personal definition?

20 A As I indicated, I'm not intimately familiar
21 with CP-38 so that represents my professional
22 definition and operating understanding.

23 Q Mr. Connor, do you still have Exhibit AF
24 handy there?

1 A Yes.

2 Q And as I recall, this is five photographs of
3 the Seventh Lake Mountain Trail that you took at some
4 point in time in 2013, is that correct?

5 A Yes.

6 Q And at the point in time in 2013 when you
7 took these photos, all work on the trail tread and the
8 up-slopes and down-slopes and such adjoining it was
9 complete, isn't that correct?

10 A I believe I testified that all the major work
11 had been completed. I cannot recall whether or not
12 there was some drainage concerns that we addressed in
13 2013 but all the major tread and associated work was
14 completed on the trail.

15 Q So at that point, aside from what you just
16 described, you just had some bridges to finish,
17 correct?

18 A Yes.

19 Q And would it be fair to say in the first
20 three photos in this exhibit, the trail surface is
21 covered with a mix of grass, straw and bare dirt?

22 A There is green vegetation, I see fernage,
23 grasses, straw, leaf litter, rocks and some bare dirt.

24 Q And on page two, second photograph, what's

1 depicted on the left side of the trail beyond the
2 graded trail surface?

3 A Adjacent to the trail tread on the left-hand
4 side is what's referred to as the up-slope of a bench
5 cut. It's for the transition from the trail tread into
6 the natural forest. It's tapered to allow it to blend
7 in with the surroundings and also be at a point where
8 it can resist erosion and vegetation can grow on it.

9 Q And yes or no: On the right side of the
10 trail is an area where it's what's known as the
11 down-slope and dirt from the construction process was
12 placed there to help create the down-slope?

13 A Yes.

14 Q And yes or no: The dominant vegetation on
15 the bench cut or on the trail surface and the
16 down-slope is grass?

17 A It's green --

18 MR. CAFFRY: Objection, your Honor. It
19 was a yes-or-no question.

20 A My apologies. Yes.

21 Q Now, taking into account that the trail tread
22 itself is at least nine feet wide in this picture, as I
23 believe you've testified, how wide is it from the top
24 of the up-slope to the bottom of the down-slope in this

1 picture?

2 A I would say it varies at multiple points
3 along the course of this picture.

4 Q Can you give me the range?

5 A So close in the foreground of the picture
6 where we can fully see the top of the up-slope,
7 physically about halfway up the height of the photo,
8 the associated up-slope with the trail tread would
9 potentially be two to four feet perhaps and the
10 down-slope appears to be a foot, perhaps two feet. In
11 the middle of the picture on the left-hand side of the
12 trail there is a tree right near where the trail tread
13 is so that might be a foot or less on the up-slope
14 side, and then on the down-slope side, again, two to
15 four feet.

16 Q So at the widest point how wide is the
17 cleared area depicted in this picture?

18 A The cleared area, again going back to that
19 first point we talked about in the foreground with the
20 nine-foot trail tread, and if we had say four feet of
21 the up-slope, then that cleared area would be 13 feet.

22 Q And with the down-slope too?

23 A It doesn't appear that any vegetation was
24 removed on the down-slope.

1 Q How wide is the area where dirt was placed
2 and grass is growing on the down-slope?

3 A Again, that looks like it could vary from a
4 foot to three to four feet depending on how the
5 material was placed and blended in.

6 Q So potentially up to 17 feet wide the natural
7 surface of the forest floor has been disturbed either
8 by digging --

9 MS. SIMON: Objection.

10 Q -- cutting --

11 THE COURT: You may finish.

12 Q -- or placement of fill, yes or no?

13 THE COURT: What's the objection?

14 MS. SIMON: He's testifying. He's
15 testifying for Mr. Connor. He needs to let Mr.
16 Connor answer the question.

17 THE COURT: Overruled. You may answer.

18 A Yes.

19 Q Yes or no: On the up-slope of this bench
20 cut, there are areas of exposed dirt with no vegetation
21 or leaf litter on them?

22 A Yes.

23 Q It appears to me that the bench cut continues
24 off the left of the photo, would that be a fair

1 assumption?

2 A Meaning in the back of the photo off to the
3 left?

4 Q On the left side of the photo, the up-slope
5 is cut off by the edge of the photo, is that true?

6 A Yes.

7 Q But you're familiar with this location?

8 A Yes.

9 Q How long is this bench cut?

10 A I would have to speculate. Estimate probably
11 30 to 60 feet.

12 Q Is that typical of the bench cuts that you
13 built on the Seventh Lake Mountain Trail?

14 A It varied.

15 Q But if it varied, what was typical, or do you
16 have an estimate of an average?

17 A I've never analyzed the links of the bench
18 cuts but where they were built, they were developed out
19 to their length because that was what was appropriate
20 for putting in a sustainable trail.

21 Q But you have no idea how --

22 A I have no need to quantify or manipulate the
23 numbers to look at averages.

24 Q Looking at the third and fourth --

1 THE COURT: Mr. Caffry, we're going to
2 take a brief morning recess now. We're going to
3 end today at noon so we're going to take exactly
4 10 minutes, folks. We'll return at five minutes
5 after 11.

6 (Recess taken after which the
7 proceedings continued as follows.)

8 THE COURT: Mr. Connor, come on up, sir.
9 Go ahead, Mr. Caffry.

10 MR. CAFFRY: Thank you, your Honor.

11 BY MR. CAFFRY:

12 Q Mr. Connor, looking at Exhibit AF still, you
13 testified about the creation of a bench cut on the
14 up-slope and the down-slope depicted in this picture.
15 Do you know approximately how many cubic yards of soil
16 were removed in that process?

17 A Are we still on the second picture?

18 Q Yes.

19 A No.

20 Q Did you ever attempt to estimate that?

21 A No.

22 Q Is that something you would have attempted to
23 estimate on any bench cut?

24 A No.

1 Q Going back to photo number one in that set,
2 they're not numbered, but the first page of AF, is
3 there a bench cut depicted in that picture?

4 A Yes.

5 Q On the right side of the trail as we're
6 looking at it?

7 A Well, I see a bench cut in the left half of
8 the picture and the up-slope is on the right-hand side
9 of the trail.

10 Q And so how long is that bench cut?

11 A That might be 20 to 40 feet.

12 Q Looking at the third page of this set of
13 photographs, is there a bench cut on the right side of
14 the trail?

15 A The up-slope is on the right-hand side of the
16 trail in this third picture.

17 Q And approximately how far up the hillside
18 does the bench cut go -- I'm sorry, the up-slope?

19 A The up-slope varies. There's a kind of
20 center in the picture. Just to the right is a large
21 tree, so in that case there's not really any up-slope
22 adjacent to the trail because the trail winds around
23 the tree base and then it extends up. Again, not
24 having a scale, anything to use as a scale, three to

1 four feet, maybe five feet.

2 Q And you're familiar with this location?

3 A Yes.

4 Q And including any part of the bench cut or,
5 I'm sorry, the up-slope which may -- or the bench cut
6 as a whole that may not be depicted in this picture,
7 how long is the bench cut in this picture?

8 A This is a view of the same bench cut that's
9 pictured in picture two, just from the far angle
10 looking back. So I believe I had mentioned on that one
11 that's probably 30 to 50 feet long but I don't recall
12 my exact...

13 Q Looking at the fifth photo in this set,
14 Exhibit AF, I believe you testified previously there's
15 a bench cut in this picture with the up-slope on the
16 left side, is that correct?

17 A Just to clarify, we're talking about the
18 picture with the people walking on it?

19 Q Right. And what appears to be maybe a tire
20 in the lower left -- lower right.

21 A Lower right, that's the camera strap.

22 Q Camera strap, okay. So do you see a bench
23 cut in this picture?

24 A Very subtle one.

1 Q And including any part of it that is not
2 shown in the picture, how long is this bench cut?

3 A I would have to say in the 20- to 50-foot
4 range. The people in the furthest point from the
5 picture are obscuring the view.

6 Q Going back to the third and fourth
7 photograph, do you see sawed-off logs on the side of
8 the trail in each of those photographs?

9 A On the third photograph I see two chunks of
10 wood, maybe three, on the left-hand side, the
11 down-slope, and in the fourth picture there are some
12 chunks to the looker's right of the trail that I see.

13 Q And one of those chunks, as you've described
14 it, has something blue on it. Do you know what that
15 is?

16 A In the fourth picture I believe there's a
17 chunk of wood on the looker's right of the trail. It
18 appears to have some blue paint.

19 Q Would that be paint that you or someone under
20 your direction placed on that tree to mark it for
21 cutting?

22 A Someone from DEC put that paint on the tree.
23 From my recollection that paint was put on there prior
24 to me being involved with the Seventh Lake Mountain

1 Trail as part of the scouting development portion of
2 segment one.

3 Q And that tree was then subsequently cut as
4 part of the trail construction process?

5 A Yes, sir.

6 Q Are chunks of wood with sawed-off ends
7 something that one would typically find in an
8 undisturbed forest in the Adirondacks?

9 A Depending on how observant somebody is, they
10 could view remnants of old past logging cuts in the
11 forest.

12 Q I said in undisturbed forest. Could you
13 answer that question, please?

14 A If you truly had a chunk of the Forest
15 Preserve that was undisturbed, then you probably would
16 not find a piece of log with a completely flat,
17 sawed-off section.

18 Q Turning now to your Exhibit AG which consists
19 of five photographs and I believe you testified that
20 you took them in 2016. Do you recall that?

21 A Yes, I testified to that.

22 Q Do any of these photographs show a bench cut?

23 A The picture ending with 59 indicates a bench
24 cut.

1 Q And where on the picture is that?

2 A The bench cut is -- the trail tread is where
3 the humans that are pictured are hiking, so it's to the
4 looker's right of the picture.

5 Q And approximately how long is that bench cut?

6 A I believe this is a bench cut on segment one
7 on a portion of the old carriage road and this is a
8 section of bench cut that's probably about 40 feet
9 long.

10 Q Is there any bench cut shown in the photo
11 ending with 60?

12 A No.

13 Q Is there any bench cut in the photo ending
14 with 61?

15 A No.

16 Q Is there a bench cut in the photo ending with
17 62?

18 A Yes, a small one.

19 Q And would it be fair to say that's on the
20 left side of the photograph?

21 A Yes. The up-slope is on the left side of the
22 photograph.

23 Q And you're familiar with this location?

24 A Yes.

1 Q And how long is this bench cut including any
2 portion that's not depicted in the picture?

3 A I believe my best guess on the picture based
4 on the picture, obviously not with a tape measure,
5 you're probably looking at 20, 20 feet maybe, leading
6 up to and around the tree.

7 Q And looking at the picture that ends with
8 six -- the number ends with 63, does this depict a
9 bench cut?

10 A Technically, yes.

11 Q Could you describe what you mean by
12 technically?

13 A This is a bench cut in the bigger sense of
14 putting a bench cut for a travel surface but it is not
15 a bench cut that we built for the Seventh Lake Mountain
16 Trail. It is part of the old carriage road that at the
17 time of building the Seventh Lake Mountain snowmobile
18 trail, this was a portion of existing DEC snowmobile
19 trail that was routed on that old carriage road that we
20 used to get access to the junction of segment one and
21 segment two. So the old forest road that you're seeing
22 here is a very old bench cut because there is a
23 down-slope side to the looker's right, and as you can
24 see, there's some uphill ditching that's associated

1 with the old road. Again, I did not nor did DEC build
2 what you see here in this picture.

3 Q With regard to these photographs, as I
4 recall, you testified that some of them show that the
5 Seventh Lake Mountain Trail was revegetating or had
6 vegetation on it, is that correct?

7 A Yes, sir.

8 Q And looking at first the one that ends in 59,
9 what type of vegetation do you see growing within the
10 trail tread?

11 MS. SIMON: Objection, your Honor. This
12 is extremely repetitive. He on direct answered
13 questions about these trails and we've already
14 talked about the grass and the growth and the
15 vegetation.

16 THE COURT: Overruled.

17 A So I see some grass and shrub type vegetation
18 to the left, looker's left, along the edge of the
19 green. I see some broad leaf shrubs that I can't
20 identify.

21 Q Would it be fair to say it's mostly grass?

22 A Yeah.

23 Q Likewise, the one that ends in 62, do you see
24 that?

1 A I do.

2 Q And there is vegetation on the trail in that
3 picture, correct?

4 A Yes. I see grass, some broad leaf shrub, I
5 see some ferns.

6 Q And would it be fair to say that it's mostly
7 grass?

8 A This one I think you would be stretching it a
9 little, but unless we get an actual survey, but for the
10 visual part, it has green vegetation over most of it.

11 Q And yes or no: When the trail was built, DEC
12 planted grass on the trail?

13 A No.

14 Q DEC planted what it calls a conservation mix?

15 A Yes, that's what we planted.

16 Q And does that contain grass seed?

17 A I'm not familiar with the exact makeup of the
18 conservation mix but I do know it has variety of
19 nonwoody grass and shrub and vegetation species of seed
20 in it.

21 Q Looking at the one that ends in 59 in kind of
22 the left center of the picture, do you see what looks
23 to be a drainage ditch?

24 A I see the depression in the left center of

1 the picture.

2 Q And would that be in your opinion a feature
3 that would collect water and water would drain down the
4 hill in it?

5 A Yes. In this location that would serve for
6 that purpose. That is the old roadbed from the
7 carriage road that was heavily eroded.

8 Q And so it's your testimony that this
9 depressed area, or whatever you called it, was not
10 something constructed by DEC when it built the trail?

11 A Correct. I'm standing at the -- having been
12 the person to take the picture, I'm standing at the top
13 of a hill looking at a segment of what was the old
14 trail, which was again on an old carriage road, and
15 right behind me is a stream that had jumped its bank
16 and run down the road and heavily gullied and eroded
17 this section. So when we laid out the trail, we
18 shifted the trail over to the looker's right to allow
19 us to put in a bench cut so that we could drain water
20 off the trail tread so that if water came out of that
21 stream again and went down the slope, it would not
22 erode the trail tread.

23 Q And you testified earlier about a section of
24 old road where the regrowth of trees was very thick and

1 made it hard to see the ground when you were laying out
2 the trail. Is this that section of old growth?

3 A No. This was an existing department
4 snowmobile trail on an old carriage road.

5 Q In segment one?

6 A On segment one.

7 Q Where was that section that you testified
8 about that was too thick to see the ground?

9 A Portions of segment one not on the existing
10 snowmobile trail.

11 Q And looking again in the area to the left
12 side of the trail where you say water would run down,
13 do you see, right at the bottom photo, do you see an
14 area of bare sand and gravel, yes or no?

15 A No.

16 Q Yes or no: There are no erosion control
17 measures shown in the vicinity of that bare sand and
18 gravel?

19 A Can you repeat the question?

20 Q Yes or no: The picture does not depict any
21 erosion control measures in the vicinity of the exposed
22 sand and gravel?

23 A No.

24 Q Is it your testimony that there is an erosion

1 control measure depicted in the vicinity of the bare
2 sand and gravel?

3 A Yes. There is a series of rock, little check
4 dams that were put in this drainage. I believe what
5 we're seeing is sedimentation and the leaf litter had
6 been caught on the first one and filled up.

7 Q Mr. Connor, I've handed you what's been
8 admitted as Exhibit AJ. Those are seven photographs
9 that you took of other trails other than the Seventh
10 Lake Mountain Trail, is that correct?

11 A Yes, sir.

12 Q And looking at photo one, I believe you
13 testified this is the Hurricane Mountain Trail?

14 A Yes, sir.

15 Q And is that in a wilderness area?

16 A Yes.

17 Q And appears to be under construction still,
18 is that correct?

19 A Yes, sir.

20 Q And was this a new trail or a relocation?

21 A It was a relocation.

22 Q Of an existing hiking trail?

23 A Of an existing trail, yes.

24 Q And you supervised this project?

1 A Yes.

2 Q And was there a work plan for the project?

3 A Yes, sir.

4 Q And I believe you testified that this
5 photograph depicts a bench cut, is that correct?

6 A Yes.

7 Q And how tall is the up-slope on the bench cut
8 in this picture?

9 A Understanding that I have no scale in here,
10 two to three feet tall in vertical height.

11 Q And do you know the approximate angle of the
12 up-slope?

13 A It appears to be greater than 45-degree
14 angle.

15 Q And how wide is the disturbed area depicted
16 in this picture?

17 A Again, not having a specific scale, if you
18 went from the top of the up-slope to the right-hand
19 side where the material was placed on the down-slope,
20 you're probably looking at an area of six to eight feet
21 in width total.

22 Q And what classification is this trail under
23 the trail classification system you previously
24 testified about?

1 A I'd have to double check the work plan or the
2 UMP to be exactly sure, but I believe it's either Class
3 III or Class IV trail.

4 Q At the time this picture was taken, was the
5 work on this bench cut completed?

6 A No.

7 Q What remained to be done?

8 A They would have went through and cleaned this
9 up making sure that the material on the right side of
10 the tread, the downhill side, was tapered off so that
11 it wouldn't create a berm or a lip on the edge of the
12 trail tread which would prevent water from being shed
13 directly off the trail tread to the side. If you left
14 that lip there, then the water could run down the trail
15 tread and erode it.

16 Q And other than that, it's complete?

17 MS. SIMON: Objection, your Honor. It's
18 the third time he's asked him if it's complete.

19 THE COURT: Mr. Caffry, what's the
20 relevance of that question?

21 MR. CAFFRY: Withdrawn.

22 Q Turning to photos two and three, I believe
23 you testified those are the Pharaoh Lake Trail?

24 A Yes, sir.

1 Q And that's in the Pharaoh Lake Wilderness
2 Area?

3 A The Pharaoh Lake Wilderness Area.

4 Q And you, as I understand it, you testified
5 you previously supervised that unit?

6 A Yes.

7 Q And did you supervise the work depicted in
8 photos two and three?

9 A Yes.

10 Q And you referred to the trail as I believe an
11 old Jeep road, is that correct?

12 A Yes. Prior to state ownership, people were
13 able to drive into Pharaoh Lake, rent boats and enjoy
14 the place. Motor vehicle access was allowed into the
15 lake on this route.

16 Q So this trail as it's now called wasn't built
17 originally as a hiking trail, was it? Yes or no.

18 A No.

19 Q But now it's used for hiking and skiing?

20 A Hiking, skiing and horses.

21 Q And horses?

22 A Yes, sir.

23 Q And that was going to be my next question.

24 How long since the state closed it to motor vehicle

1 access?

2 MS. SIMON: Objection, your Honor.

3 Relevance.

4 THE COURT: Objection is overruled.

5 A I would have to consult the UMP or some other
6 stuff to indicate when motor vehicle access to Pharaoh
7 Lake was ceased.

8 Q Are you familiar with that?

9 A Yes.

10 Q Mr. Connor, I've handed you what's been
11 marked Exhibit 169. Do you have that?

12 A Yes.

13 Q Have you had a chance to look at it?

14 A Yes, sir.

15 Q Would it be fair to say that that is the
16 cover page and approximately five pages from the
17 Pharaoh Lake Wilderness Complex Unit Management Plan?

18 A Yes, sir.

19 Q And you're familiar with that document?

20 A Yes.

21 Q And would you agree that the pages I've given
22 you from that document are true and accurate copies of
23 those pages?

24 MS. SIMON: Your Honor, objection on

1 relevance to the 1992 Pharaoh Lake Wilderness
2 Complex UMP in this proceeding. We're talking
3 about construction trails in 2012.

4 MR. CAFFRY: May I be heard, your Honor?

5 THE COURT: Yes.

6 MR. CAFFRY: Mr. Connor, through his
7 testimony, two photographs of a trail in the
8 Pharaoh Lake Wilderness area were introduced into
9 evidence. He testified about them and just now he
10 said he could tell us when it was closed to human
11 use if he could look at the Unit Management Plan.
12 So I think it's relevant as to the question of the
13 prior use of what he called the Jeep road and to
14 when it was closed to motor vehicle use and
15 therefore I believe it's relevant.

16 THE COURT: Okay. Defendant's
17 Exhibit AJ, Miss Simon, photos two and three, they
18 were proffered as examples of foot trails with
19 erosion control measures made on them so that the
20 Court might compare those to the -- presumably,
21 you tell me -- so that the Court might compare
22 those to Class II community connector trails and
23 make a determination that they are --

24 MS. SIMON: That they have the same

1 features.

2 THE COURT: Same characteristics.

3 MS. SIMON: Same characteristics.

4 That's the purpose it was proffered.

5 THE COURT: So the objection is
6 overruled. You may look and respond to the
7 question if there was a question, otherwise just
8 take a look at it and Mr. Caffry can restate his
9 question.

10 MR. CAFFRY: Could you read back the
11 last question, please.

12 (Last question read by the reporter.)

13 A Yes. If you photocopied these from the UMP,
14 I would trust that you did not alter them and
15 they're --

16 MR. CAFFRY: Your Honor, I move that
17 Exhibit 169 be admitted.

18 MS. SIMON: Objection.

19 THE COURT: The objection is sustained.
20 For what it's worth, I would suggest rather than
21 go through all of 169, why don't you just ask him
22 if it refreshes his recollection to answer your
23 question. I understand your use of it but I don't
24 think we need all of 169 in evidence at this

1 point.

2 BY MR. CAFFRY:

3 Q Mr. Connor, looking at what's been marked as
4 Exhibit 169, does that refresh your recollection as to
5 when the Pharaoh Lake Trail was closed to motor vehicle
6 use? In particular if you could look at the bottom of
7 page 54, top of 55.

8 A With my memory refreshed, I would be able to
9 say that in the mid-'70s the DEC barricaded the access
10 to Pharaoh Lake at Mill Brook which is a location that
11 is about half the distance from the paved road to
12 Pharaoh Lake.

13 Q Would it be fair to say, Mr. Connor, that
14 this former road, now trail, is very heavily used?

15 THE COURT: We're talking about at the
16 current time?

17 MR. CAFFRY: Yes.

18 Q Since its closure as a road as depicted in
19 photos two and three, is it heavily used?

20 A I would say that that is the most popular
21 access to Pharaoh Lake, and trail head data, if it was
22 available, would probably back up that it has a
23 substantial amount of use.

24 Q And I believe you testified that photos two

1 and three depict a process known as turnpiking, is that
2 correct?

3 A Yes, sir.

4 Q And why was the turnpiking needed on this
5 trail in your opinion?

6 A The portions of this trail that are in the
7 worst condition are the result of this being --
8 historically being a motor vehicle use road, and past
9 practice was the removal of rocks from the road
10 corridor to remove obstacles; and as a result of both
11 the method that was used to construct the trail and the
12 rock removal, the road has become -- the old roadbed,
13 which is the official trail, became the low point in
14 the surrounding area so that drainage would flow into
15 the trail tread and this turnpiking was done to help
16 mitigate erosion.

17 Q When you say the past practice was to remove
18 rocks, who would have done that?

19 MS. SIMON: Objection.

20 THE COURT: Overruled. If you know,
21 sir.

22 A Whoever would have been maintaining the road
23 when it was a motor vehicle road.

24 Q And so if the department owned the land, it

1 would have been maintaining the road and it would have
2 removed the rocks?

3 A Prior to 1976 when the road was closed to
4 motor vehicle access?

5 Q Correct.

6 MS. SIMON: Objection, your Honor.

7 THE COURT: Sustained. Calls for
8 speculation. Don't answer.

9 Q How wide is the trail as depicted in photos
10 two and three?

11 A The trail tread's right around six feet. If
12 you went from the edge of the rocks to edge of the
13 rocks, it might be a little wider than that.

14 Q How wide is the -- does that include the
15 ditch on the right side?

16 A Regarding photo two, the ditch would be in
17 addition to what I just mentioned.

18 Q So the total would be at least eight feet?

19 A Eight feet.

20 Q And even though it was closed in the mid
21 '70s, this area never naturally revegetated?

22 MS. SIMON: Objection.

23 THE COURT: Overruled. You may answer.

24 You're not restricted to a yes or no.

1 A No. There were portions of this that had
2 revegetated. Prior to doing this project, we conducted
3 a reclamation of this entire trail length which had
4 been ill-maintained for years so in some places the
5 width was not much wider than a foot. So we cut the
6 vegetation back and this is the beginning -- well, this
7 was a multiphase process of dealing with tread and
8 drainage issues. This was one of those after the
9 vegetation was dealt with.

10 Q But in some areas is it true that the
11 vegetation had not grown back?

12 THE COURT: That the vegetation had not
13 grown back?

14 MR. CAFFRY: Had not grown back.

15 A There were sections where there was exposed
16 bedrock and areas where there was standing water that
17 there was no vegetation but the sides of the road had
18 grown in considerably. The only place where vegetation
19 aside from what I just mentioned was not growing was on
20 the portions of the trail tread where the users had
21 been walking.

22 Q And in photo four I believe you testified
23 that this was a ladder on the Orebed Trail on Gothics,
24 which is in the High Peaks?

1 A Yes, sir.

2 Q And yes or no: Ladders like this are not
3 built on snowmobile trails?

4 A No.

5 Q You're saying ladders like this are built on
6 snowmobile trails?

7 A No, they're not. Yes, they're not built.

8 Q And do you know the -- this is in the High
9 Peaks which you're currently responsible for, that's
10 correct?

11 A Yes, sir.

12 Q Do you know the classification of this trail?

13 A I would have to look at the UMP to see where
14 it falls in the classification trail.

15 Q Is this ladder new?

16 A I did not oversee the construction of it but
17 this was a replacement or -- sorry -- this was the
18 construction of -- new construction I believe at some
19 point after 2011 or before that. The timeline is a
20 little foggy in my mind.

21 Q But it was done before you took over the High
22 Peaks?

23 A Yes, sir.

24 Q And isn't it true, yes or no, that there is

1 no more than about nine or ten ladders like this on the
2 entire Adirondack Forest Preserve?

3 MS. SIMON: Objection. Relevance.

4 MR. CAFFRY: May I be heard, your Honor?

5 THE COURT: Briefly.

6 MR. CAFFRY: These photographs were
7 offered as examples of typical foot trails in the
8 Adirondacks. I'm just trying to get to that
9 question.

10 THE COURT: Objection is overruled. You
11 may answer.

12 THE WITNESS: Could you ask the question
13 again?

14 MR. CAFFRY: Could you read the question
15 back?

16 THE COURT: Mr. Caffry, just when you're
17 asking some of these yes-or-no questions, you're
18 asking them as negative questions so I'm going to
19 ask you, to avoid confusion both for yourself and
20 for me and for the transcript later on, when you
21 ask these yes-or-no questions, try to state them
22 in the affirmative even though that may not be
23 your personal style with respect to these, but I'm
24 going to ask you -- you don't have to but I'm

1 going to ask you to try to do that.

2 MR. CAFFRY: I'll do my best to avoid
3 double negatives.

4 THE COURT: Why don't you ask this
5 question over again rather than have it read back.

6 Q Yes or no: There's only about nine or ten at
7 most ladders like this in the entire Adirondack Forest
8 Preserve?

9 A No.

10 Q Do you know of more than that?

11 A Yes.

12 Q How many do you think there are?

13 MS. SIMON: Calls for speculation.

14 Objection.

15 THE COURT: Overruled. If you can
16 answer.

17 A In the multiples of 10s. In the High Peaks
18 alone I would say that there is the vast majority of
19 ladders like this. The Wilcox Lake Wild Forest has
20 ladders like this on Crane Mountain. Various other
21 mountains around the Forest Preserve have similar
22 ladders.

23 Q Is it true that under the trail
24 classification system that you previously testified

1 about, the ladders such as this are limited to very
2 steep sections of trail?

3 A Was that a yes-or-no question?

4 Q Is it true?

5 A These ladders would be employed whenever
6 appropriate to stop impacts to natural resource
7 degradation. Predominantly they are used in areas
8 where the trail is poorly routed directly at the fall
9 line of a very steep grade.

10 Q Could you look at Exhibit D, appendix nine,
11 page 325.

12 A I'm looking at Exhibit D, page 325, appendix
13 nine.

14 Q And under the heading of Acceptable
15 Maintenance for Class III trails, can you read what it
16 says about ladders?

17 A Under Class III trails, it says ladders only
18 to protect exceptionally steep sections.

19 Q And what does it say under Class IV trails?

20 MS. SIMON: Objection, your Honor. The
21 document speaks for itself. He's read from this
22 more than once already today.

23 MR. CAFFRY: He didn't read from this
24 section, your Honor, this subject.

1 THE COURT: The objection is overruled.

2 Go ahead.

3 A Ladders on exceptionally steep rock faces.

4 Q Would you agree that the photo number four
5 shows an exceptionally steep rock face?

6 A We would be in agreement, yes.

7 Q Looking at photo five, I believe you
8 testified that this was Avalanche Lake?

9 A Yes, sir.

10 Q And isn't this what is commonly known as the
11 Hitch-Up Matildas?

12 A No.

13 Q What is it commonly known as?

14 A Well --

15 Q What's on the picture?

16 A This is a ladder going up over a big boulder
17 on the lake. The Hitch-Ups that you are speaking of
18 are out of sight behind the boulder on the sheer rock
19 face where it goes down into the water.

20 Q But it's all part of a system, if you will,
21 to get people along the lake, correct?

22 A Yes. But what you're seeing here is not part
23 of the Hitch-Ups.

24 Q What's in the foreground of the picture?

1 A The foreground on the looker's right is a
2 wooden walkway leading to the base of a ladder that
3 goes up over a rock.

4 Q Looking at number six, photo six -- do you
5 have that in front of you?

6 A Yes, sir.

7 Q This is the Indian Pass Trail?

8 A Yes, it's Indian Pass Trail from the south.

9 Q And this is also in the High Peaks Wilderness
10 Area?

11 A Yes, sir.

12 Q And I believe you testified that this depicts
13 a form of turnpiking?

14 A Yes, sir.

15 Q And did you manage this project?

16 A I did.

17 Q And was this trail also formerly an old Jeep
18 road?

19 A No. It was an industrial land skid trail.

20 Q So built by a timber company for logging
21 trucks?

22 A They may have used this for a winter road but
23 mostly evidence indicates that it was a skid trail.

24 Q What do you mean by a skid trail?

1 A So a skid trail is traveled by a machine
2 that's designed to go off a developed road onto ground
3 to pull out trees and logs. So a skidder or bulldozer
4 or another machine for that purpose would travel on a
5 skid road.

6 Q And why was it necessary to put in the
7 turnpiking?

8 A The trail was severely wet. There was poor
9 drainage across the entire trail -- well, the entire
10 old roadbed for an extensive length of time.

11 Q And what was the purpose, then, of putting
12 the turnpiking in?

13 A The turnpiking was put --

14 MS. SIMON: Objection, your Honor. This
15 is repetitive.

16 THE COURT: It is my recollection that
17 it's so far been directly repetitive of the direct
18 examination of Mr. Connor. That doesn't
19 necessarily serve as grounds for an objection
20 unless it becomes repetitive of the examination by
21 Mr. Caffry of Mr. Connor. Is it your recollection
22 that Mr. Caffry already questioned Mr. Connor on
23 this?

24 MS. SIMON: On this trail?

1 THE COURT: Yes.

2 MS. SIMON: I thought the prior question
3 just referenced it.

4 THE COURT: Overruled. You may answer.
5 I assume that Mr. Caffry is going to something
6 non-repetitive and is laying the groundwork to do
7 so. You may answer.

8 A So we put this turnpiking in so that we could
9 deal with the erosion and drainage issues on the trail
10 by developing a raised tread that was higher than the
11 old width of the -- sorry -- the base of the road
12 width. We could have durable surface for hikers to
13 travel on and this would allow us to drain water that
14 was in the trail corridor area to the downhill side and
15 creating a dryer trail tread that would allow
16 concentrated use on that section so that the rest of
17 the open area can start to stabilize.

18 Q And it appears from the picture it's made
19 with rocks and sand and gravel, is that correct?

20 A Yes.

21 Q Where did those materials come from?

22 A The area that you see in the picture.
23 Materials were taken from -- rocks were picked off from
24 the old roadbed where the erosion and past use had

1 exposed them and they were lined up to create the
2 framework of the turnpiking, and then rocks were taken
3 and placed withinside that framework to create the
4 foundation for the turnpiking so that it could rise
5 above the adjacent soil and drainage patterns.

6 Q So yes or no: This was created entirely with
7 native materials found on the site?

8 A Yes.

9 Q Yes or no: There were no human-made
10 materials used in that construction?

11 THE COURT: I don't understand the
12 question. You'll rephrase for me?

13 MR. CAFFRY: Withdrawn.

14 Q Looking at photo seven --

15 THE COURT: Just to be clear,
16 Mr. Caffry, I have no problem with your question.
17 I hope you understand that. I didn't understand
18 it so I wanted to be clear so I knew what the
19 answer meant. So if you want to revisit that area
20 with Mr. Connor, you're more than welcome to.

21 MR. CAFFRY: No. I think actually the
22 first question covered that adequately so I'll
23 withdraw it.

24 THE COURT: Okay.

1 Q Mr. Connor, looking at your photo seven, I
2 believe you testified this is the Cascade Trail in the
3 High Peaks Wilderness Area?

4 A Yes, sir.

5 Q And that's within the area you're responsible
6 for managing?

7 A Yes.

8 Q And is this the trail that goes from Route 73
9 up Cascade Mountain?

10 A Yes.

11 Q And isn't it true that this is one of the
12 most heavily-used trails in the entire High Peaks?

13 A It is true that this is a heavily-used trail.
14 It's probably our most-visited mountains, but
15 technically, with your request to trail use, the
16 Van Hoevenberg Trail, because it serves multiple
17 different mountains, has higher trail traffic. But
18 this is the most heavily-used mountain in the High
19 Peaks.

20 Q And you said it was 20 feet wide in places?

21 A There are places that the impacts from use
22 have grown to 20 feet in width or more.

23 Q And under the DEC trail classification system
24 in the High Peaks Wilderness UMP, what class of trail

1 is this?

2 A In order to answer that with certainty, I'd
3 have to look at the classification chart given the fact
4 that I manage over 428 miles of public trails. I
5 apologize for not knowing each of those trails
6 specifically.

7 Q Would it be fair to say that no matter what
8 class it is, it's wider than the desired width for a
9 trail of that classification?

10 MS. SIMON: Objection.

11 THE COURT: Overruled. If you can
12 answer.

13 A On-the-ground conditions, given the
14 appearance of this trail, is wider than the
15 classification. It is important to remember that the
16 use that is creating this size does not reflect DEC's
17 management actions and attempts which would be to try
18 to concentrate and bring in the sides of the trail and
19 we do that predominantly by --

20 MR. CAFFRY: Objection, your Honor.

21 Going beyond the scope of the question.

22 THE COURT: Overruled. You may finish.

23 A -- by focusing on addressing drainage issues.
24 And by addressing drainage issues both with getting

1 water off the trail or creating a durable trail tread
2 that can shed water, we can focus the use and avoid
3 braided trails or people expanding off the intended
4 trail surface.

5 Q Is the drainage ditch, or whatever you called
6 it, depicted in this picture part of the effort to
7 address that problem that you just described?

8 A Yes, sir.

9 THE COURT: Mr. Caffry, if that's it for
10 your questions of Mr. Connor with regard to AJ,
11 we'll break for the day today unless you have just
12 one or two more questions to clear something up or
13 some area with him and we'll recommence tomorrow.
14 If you have one or two more, I can give you --

15 MR. CAFFRY: I may have a few more about
16 AJ and then I have a couple other areas to go
17 into. But I know you want to finish at noon so I
18 have no problem breaking now.

19 MS. SIMON: Your Honor, I have a
20 question. We spoke at the bench at the end of
21 last week. We have our expert and one of our
22 other DEC witnesses that are not available next
23 week for various reasons. I don't know if we can
24 have any idea of how much longer it's going to go

1 with Mr. Connor or whether we should resume
2 tomorrow. I'm concerned that these people are not
3 going to get in.

4 THE COURT: Why don't we go off the
5 record. We're broken. Off the record for the day
6 and, Counsel, you can approach.

7 (Proceedings adjourned at 11:59 a.m.)

8
9 C E R T I F I C A T I O N

10
11 I, Cindy Affinati, Official Court Reporter for
12 the Unified Court System, Third Judicial District of
13 the State of New York, do hereby certify that I
14 attended and reported the foregoing proceedings; that
15 it is a true and accurate transcript of the proceedings
16 had therein to the best of my knowledge and ability.

17
18 

19 Cindy Affinati
20 Official Court Reporter

21
22
23
24

