

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

In the Matter of Manual Code 3565.1 for the Approval
Authorizing the Department of Natural Resources to Grade
More Than 10,000 Square Feet on the Bank of North Lake,
Install a Boat Ramp Structure and Two Outpost Structures
on the Bed of North Lake, Install Four Culvert Crossings
Over Wetlands, Fill Up To .16 Acres of Wetlands for
Construction of a Public Boat Launch on North Lake and
Adjacent Property Located in the Town of
Merton, Waukesha County

Case Nos. IP-SE-2009-68-05745 through 05750

Jeffrey Boldt
Administrative Law Judge, Presiding

Hearing held September 21, 2011

Waukesha, Wisconsin

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- 1 APPEARANCES (Continued)
- 2 WISCONSIN WILDLIFE FEDERATION, by
- 3 George Meyer, Executive Director
- 4
- 5 WAUKESHA COUNTY CONSERVATION ALLIANCE, by
- 6 Ronald Gray, President

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1 ALJ BOLDT: Now we're on the record and
 2 today is Wednesday. I believe it's the 21st of
 3 September, 2011 and we're moved over to the
 4 Waukesha County Administration Building. We
 5 appreciate them letting us use it. And we're
 6 continuing on with Mr. Gallo's case. I'll just
 7 note for the record, the appearances are the
 8 same. Mr. Meyer indicated that he couldn't be
 9 here today and he is not with us.
 10 And I would also indicate for the record
 11 that last night we had a site inspection that
 12 lasted probably close to an hour out at the
 13 property and everybody had an opportunity to
 14 describe features. We had -- Mr. Gleisner
 15 brought his exhibit book and we had reference to
 16 Exhibit 2-002 as we were walking the property
 17 and everybody had an opportunity to show us
 18 features which we appreciate. Anything that was
 19 said there, obviously, is not evidence that we
 20 can consider. And does anybody want to say
 21 anything further with reference to the site
 22 inspection? Okay. Hearing none, then let's go
 23 ahead with Mr. Gallo's next witness.
 24 MR. GALLO: I'd like to call Don Reinbold.
 25 ALJ BOLDT: And also, it's a little warm in

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1 Q And can you describe for us your area of
 2 specialization with respect to civil engineering?
 3 A I'm a registered professional civil engineer in the
 4 State of Wisconsin. I have been since the '60s.
 5 I've been employed by the Wisconsin Department of
 6 Transportation for 45 years. I worked in the
 7 Milwaukee, Waukesha and Madison offices. I was
 8 involved -- during my tenure at the Department, I was
 9 involved in planning which included environmental
 10 assessment analysis. I was involved in design of
 11 projects, construction of projects, the materials
 12 used, maintenance of projects and project
 13 development. I also worked in the bridge section to
 14 rate the strength of bridges. I worked on interstate
 15 highways and freeways and expressways. I built local
 16 urban arterials, town roads, railroads, parking lots
 17 and sometimes long driveways into -- in areas that we
 18 had to rebuild because of a highway relocation. I
 19 did some really unique things over the years, worked
 20 with the DNR on a case to relocate a trout stream. I
 21 also worked with them to remove a 10-story chemical
 22 plant in downtown Milwaukee. I've received
 23 recognition for developing design templates for
 24 highways and storm sewer drainage facilities. I've
 25 received recognition from five governors over my

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1 here so feel free to make yourself comfortable
 2 as I've done.
 3 Do you swear to tell the truth, the whole
 4 truth and nothing but the truth, so help you
 5 God?
 6 MR. REINBOLD: I do.
 7 DIRECT EXAMINATION
 8 BY MR. GALLO:
 9 Q Mr. Reinbold, is it okay if I call you Don?
 10 A Yes, please.
 11 Q Thank you. Can you explain for us or education us on
 12 your post-high school education?
 13 A I have a bachelor's degree from Marquette University
 14 in civil engineering.
 15 Q And --
 16 A And then I had several courses in business and
 17 engineering post-graduate.
 18 Q Okay.
 19 ALJ BOLDT: And we better get his name and
 20 spelling of his name in the record and address
 21 and so forth.
 22 Q Can you state your name?
 23 A Name is Don Reinbold, R-E-I-N-B-O-L-D.
 24 Q And your address?
 25 A N73 W32385 River Road.

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1 career. I received recognition from five Secretaries
 2 of the Department of Transportation. I worked at
 3 SEWRPC on five different occasions. I developed a
 4 methodology used to oversee projects that were
 5 submitted to the Transportation Improvement Program
 6 and I developed the method for applying air quality
 7 standards to the Transportation Improvement Program
 8 and I co-authored a text that developed a new method
 9 to prioritize projects in the Improvement Program.
 10 My last ten years, I directed the most successful
 11 project in the Department of Transportation history.
 12 I developed consensus with adversaries through the EA
 13 and preliminary engineering process before we
 14 purchased real estate and then continued on in design
 15 and construction. The project was completed ahead of
 16 schedule, within the budget, with no deaths or
 17 serious injuries. We utilized DBE and MBE forces to
 18 maximize to way over 20 percent. I think we were at
 19 23 or 24 percent which was unheard of in the State of
 20 Wisconsin so, overall, it was extremely successful.
 21 I was an instructor in the Civil Engineering
 22 Technology Program at MATC for almost 20 years. I
 23 think it was nineteen-and-a-half years. I taught
 24 four different survey courses over that period of
 25 time and that's with my civil engineering experience.

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1 Q Have you ever testified as an expert witness for the
2 Department of Natural Resources?
3 A Yes, I have.
4 Q Have you worked on similar projects where you were
5 involved in construction of a roadway through the
6 Houghton muck or Roland muck-type of soils?
7 A Well, early -- early in our career we were always
8 building highways in bad soils because nobody wanted
9 farmlands to be disrupted. Later on, it was
10 determined that the wetlands had a much greater value
11 so then we started building them through farmland
12 after we learned the value of the wetlands.
13 Q Can you tell us about your personal experience with
14 respect to the North Lake water levels over the
15 years?
16 A I've been a visitor to North Lake since 1961 on
17 weekends. I moved out there permanently five years
18 ago. And as part of my being Commissioner of the
19 North Lake Management District, I am working on the
20 elevations of the lake so that we can determine when
21 the water rises to the elevation that we've posted
22 for no wake. That means all the speed boats must
23 slow down. And the reason why we do that is because
24 of shoreline erosion when it gets to be a certain
25 elevation. So we -- I monitor that. The water

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1 the property and my project was to build the airport
2 spur. And we started building our embankment up and
3 we probably filled in 12 feet, 15 feet, and as the
4 trucks were going over this fill it just started
5 moving. The whole fill just shook, the whole area,
6 and so we cut it out. We cut down probably a good
7 three feet and put in all the broken concrete from
8 South Howell Avenue to build it up and stabilize it.
9 The trucks went over it and it still moved. This was
10 scary and this was expensive. We ended up excavating
11 down at 12 to 15 feet, taking out all the fill we
12 placed, and got down into the muck that the previous
13 contractors buried when they removed some buildings.
14 And that's how important it is that the base you're
15 building on, you take care of it from the ground up.
16 You can't cover it up. It doesn't work.
17 Q Do you have any experience with the use of
18 geotextiles?
19 A Oh, yes, yes, we use those on our projects. I would
20 say we don't use a lot of it. It doesn't seem to be
21 as effective as we would like, but it has its
22 application. We even experimented with geotech
23 layers between layers of asphalt and that didn't pan
24 out to be so good, but we have used them to separate
25 between subgrade and in the crushed aggregate base

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1 elevation on North Lake fluctuates. Over the years,
2 I've seen it fluctuate three feet. Annually it
3 probably fluctuates two feet. This year it was a
4 little less than that, maybe a foot-and-a-half. It's
5 pretty dry this summer, but every spring the water is
6 up usually two feet.
7 Q Okay. Thank you. When you're working -- when you
8 were working with the Wisconsin Department of
9 Transportation did you have occasion to work with
10 geotechnical engineers and consultants?
11 A Yes, I utilized a geotech engineer in the Department,
12 both in the district office and the central office.
13 I also utilized geotech engineers from several
14 consulting firms that we hired.
15 Q How about land surveyors?
16 A Land surveyors. We used the Department staff or
17 consultant staff on projects and I oversaw their work
18 throughout my career.
19 Q Are you experienced or have you worked on projects
20 where there were roadway failures?
21 A Yes.
22 Q Can you elaborate on that?
23 A Probably the most severe one was when we built the
24 airport spur. I had -- the project, it was
25 probably -- they removed some buildings and things on

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1 course, yes.
2 Q And whenever I ask you for your opinion, I want you
3 to make those opinions based on your professional
4 experience and knowledge and to a reasonable degree
5 of scientific certainty.
6 A Yes, sir.
7 Q Can you tell us more about geotextile fabrics and
8 where they are effective and where they are not?
9 A Well, usually it's to spread the load over some
10 unstable soils that aren't really as stable as they
11 should be. It's to kind of control the differential
12 settlement of soils in a small area, but not really a
13 long area. It's to separate the crushed gravel from
14 going into some really soft soils, but it doesn't
15 slow down the settlement or anything like that. It's
16 just to keep this road gravel separate from being
17 pushed into the muck and then you lose everything you
18 have because you kind of keep a -- because your
19 pavement is a structure and it consists of asphalt or
20 concrete and different thicknesses of gravel and you
21 want to keep that in good condition. If it starts
22 getting rutted up and the muck comes up into the
23 gravel base, you weaken your whole pavement structure
24 and then you'll really have a failure so sometimes
25 you use it to separate.

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1 Q So if I'm understanding you correctly, you would use
2 it before you start building up your base?
3 A Yes.
4 Q Okay. How long have you been in -- you mentioned
5 that you were currently a Commissioner with the
6 North Lake Management District. How long have you
7 been involved with the DNR proposed project from a
8 standpoint of knowing about the project and reviewing
9 it?
10 A I think I started -- even before I built year round,
11 I would attend the annual meetings of North Lake
12 Management District where they would talk about
13 different issues and the boat launch issue came up as
14 one of the issues, along with the (inaudible) dam
15 removal. And I was interested in it so I used to
16 attend the hearings that took place early on, even
17 some right here in the County buildings. I can't
18 remember the year. It goes back a number of years.
19 Q And are you familiar and have you reviewed the design
20 drawings for the proposed project? That would be
21 Exhibit 3 -- the whole series of Kapur drawings.
22 A Which book is that in?
23 Q It would be in a white --
24 A Is that the plan that was dated 2010?
25 Q Yeah.

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1 Q It's in the black set of books, or I could --
2 MS. CORRELL: I apologize, I don't have a
3 copy of that and I keep forgetting which is your
4 copy of it, the 2 or the 3 dash something?
5 MR. GALLO: I'll certainly look, Counsel,
6 just give me a second.
7 A 129?
8 Q Right, it's the Mark Powers survey.
9 ALJ BOLDT: 2-008, right?
10 MS. CORRELL: I know that, but I only got
11 one copy and I don't have 129. 2-00 --
12 MR. GLEISNER: That one, Counsel.
13 MS. CORRELL: -- 8.
14 MR. GALLO: Thank you, Bill.
15 MR. GLEISNER: You're welcome.
16 MS. CORRELL: Thank you.
17 Q Don -- I'm sorry, I'll wait until you're ready. Don,
18 have you been to the DNR project site?
19 A Yes.
20 Q And were you present on September 2nd? I think I've
21 already asked you that.
22 A Yes and yes.
23 Q And during that meeting on site, did you walk the
24 proposed driveway route?
25 A Yes. I walked it in reverse though.

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1 A Which book is it in?
2 Q I think it'd be in a blue book. Is that the RRNA
3 book?
4 ALJ BOLDT: I think it's in the white book.
5 Q I'm sorry, the white book. It's Exhibit 2-007.
6 A Yes, yes, I saw the earlier proof and that was dated,
7 I think, 2008.
8 Q So you have reviewed both sets of plans, the 2008
9 plans and the 2010 plans. And are you familiar with
10 this exhibit, it's on the board, 2-007?
11 A Yes, I'm familiar with it.
12 Q And specifically the roadway, proposed roadway,
13 alignment in the navigable water area?
14 A Yes.
15 Q We're going to confine our discussion to the limits
16 of that access road within the proposed roadway
17 alignment.
18 A Uh-huh.
19 Q Were you present on site the day of the Lake Country
20 Engineering survey?
21 A Yes.
22 Q September 2nd, 2011?
23 A Yes, I was.
24 Q I'm going to refer to Exhibit 129.
25 A Is that in the same book?

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1 Q Okay. Did you observe Rob Davey and Mark Powers
2 from --
3 A Yes.
4 Q -- Lake Country doing the surveying?
5 A Yes.
6 Q And let's start from the lake end.
7 A Okay.
8 Q There were -- on this survey there were two channels
9 noted, a north channel and a mid channel --
10 A Yes.
11 Q -- and also an end pipe which I believe was
12 submerged in the water?
13 A Yes, half submerged.
14 Q Did you observe the placement of the rod --
15 A Yes.
16 Q -- in the --
17 A In fact, I was in there stomping on the grass with
18 you to find the locations of those channels because,
19 as you saw yesterday on the night visit, there's very
20 thick grass in there. It's hard to see where the
21 channels are. It took a little bit of determination
22 where it appeared to be the channel flow. And that's
23 where we had Mark Powers' assistant, I forgot his
24 name, to pull the rod.
25 Q I believe it was Rob Davey.

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1 A Okay.
 2 Q So is it your opinion, or an observation, that
 3 Rob Davey placed the rod in the north channel and mid
 4 channel at the highest point of the blockage between
 5 the unnamed stream and the lake?
 6 A He set the rod in the two channels that --
 7 MS. CORRELL: Objection, foundation. I'm a
 8 little unclear as to are we talking about one
 9 particular survey point?
 10 MR. GALLO: Yes, we can take them one at a
 11 time.
 12 MS. CORRELL: Well, you were just referring
 13 to something being located in a specific area
 14 and I don't know where that is.
 15 MR. GALLO: Okay. Let's back up and we'll
 16 lay some foundation.
 17 Q On Exhibit 129 there's an elevation 897.46 Channel,
 18 dash, N, the north channel. When you -- when
 19 Rob Davey placed the rod in that channel --
 20 A Uh-huh.
 21 Q -- was that at a representative location and at the
 22 highest point of that channel?
 23 A What we were looking to determine is where the water
 24 flowed over this dam at the shoreline which is formed
 25 by ice and/or by people placing fill there over the

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1 A They're labeled right here on the drawing. It gives
 2 an elevation. It says channel end, channel mid.
 3 MS. CORRELL: Okay.
 4 A As the water breaks going through there, because
 5 there's points in between the channels and adjacent
 6 to the channels that are actually a little bit
 7 higher, by definition we shot the low points of the
 8 channel where the water flowed.
 9 MS. CORRELL: North and mid. I see that
 10 with the magnifying glass here. Thank you.
 11 THE WITNESS: The bigger -- the bigger
 12 sheet you can read it.
 13 MS. CORRELL: Yep, got it.
 14 MR. GALLO: Okay. Are you satisfied with
 15 that?
 16 MS. CORRELL: Uh-huh.
 17 MR. GALLO: Okay. Thank you.
 18 Q As to the end pipe elevation, can you describe that?
 19 A Well, the end pipe was half full of sand and the
 20 other part -- and then there was some water flowing
 21 over it and then there was some area above the water
 22 to the top of the pipe, but you can see the end of
 23 the pipe is quite low and that's why it's half
 24 submerged in water. Actually, the water in the lake
 25 right now is quite low.

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1 culvert, we're not sure which. But there is kind of
 2 a dam there and, as everybody knows, ice pushes the
 3 soil up so there's kind of a dam there and there's a
 4 hump there and we wanted to see where the water
 5 flowed over that hump and these are the elevations of
 6 where the water flowed through that hump.
 7 Q So you're testifying as to your personal
 8 observation --
 9 A Yes --
 10 Q -- and your --
 11 A -- went in there, determined where the water flowed,
 12 and had Mark shoot the elevations of the hump there
 13 where the water flowed.
 14 Q And you're testifying as to the north channel and the
 15 mid channel?
 16 A That is correct. And actually went out and shot the
 17 pipe and I held the grass out of his way so he could
 18 shoot the elevation of the pipe.
 19 Q Okay.
 20 A The sand in the pipe.
 21 Q And --
 22 MS. CORRELL: Objection, I guess
 23 foundation. North channel, mid channel, could
 24 you clarify?
 25 Q Could you --

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1 MS. KAVANAUGH: I guess, is the pipe the
 2 culvert or a surveying pipe?
 3 THE WITNESS: Yeah, it's a culvert
 4 pipe -- culvert pipe.
 5 MS. KAVANAUGH: Okay. Thank you.
 6 Q With regard to moving up this unnamed stream or
 7 tributary, could you describe --
 8 MS. KAVANAUGH: And by up you mean west,
 9 right?
 10 MR. GALLO: I'm sorry, to the west.
 11 Q Could you describe this channel?
 12 A Well, as you walk from the lake west, it's pretty
 13 defined as it goes adjacent to the Peters property
 14 and the Krause property. It's been there as long as
 15 I can remember and I think this is the first time
 16 I've seen it dry, that you could walk it. Before
 17 that, it was always wet and if you got anywhere near
 18 it you'd get stuck in it. So it's a really defined
 19 channel and I think with previous testimony, in the
 20 previous two days, it was marked with blue lines and
 21 it really was a defined channel. As it goes west
 22 from the piers or driveway or Silver Spring Drive, it
 23 spreads out a little bit, but there's still kind of a
 24 depression or cradle in the ground that kind of
 25 follows the north side of the Krause driveway. And I

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1 think we observed that -- everybody observed that
2 last night on our visit, but you can walk right along
3 and there's kind of a depression which would -- you
4 would define as like a channel. It's the last area
5 of that wetland that would dry up because it seemed
6 to be the low point and then it would drain to the
7 lake.

8 MS. CORRELL: Objection, foundation.

9 I'm -- there aren't any reference points to the
10 landscape features that you referenced, the
11 roads and the Peters property, on Exhibit 129.

12 MR. HARBECK: I think he was just
13 describing the channel, Counsel. That's all he
14 was doing. He wasn't referencing --

15 MS. CORRELL: The north channel?

16 MR. HARBECK: The channel --

17 MS. CORRELL: The channel flowing from
18 North Lake west?

19 MR. HARBECK: Yeah, he was just talking
20 about -- he was just describing the channel. He
21 wasn't referencing (inaudible), he was just
22 describing the channel.

23 MR. GALLO: Yeah.

24 MS. CORRELL: But he did -- had specific
25 points that it flowed to and I would like to

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1 bit west of it. It's a real, real defined ditch.
2 Somebody came out and did contours. This wasn't
3 available earlier, but the other topographic
4 survey -- this must have been done much later and the
5 contours were added and it shows a real defined
6 drainage channel west of Silver Spring Drive or
7 thereabouts. But we also walked further west from
8 there along the Krause driveway and you can see the
9 depression in the wetland which kind of
10 defines -- you know, they use so many terms here, I'm
11 afraid to use a term because I didn't look it up in
12 the dictionary. You know, there's depressions,
13 swales, lower areas in the ground, which obviously is
14 where the water would collect and flow towards the
15 lake, but the channel really follows the -- just
16 about the Krause access road. It kind of bends right
17 around here, which this is the Krause driveway, and
18 it kind of follows it. Sometimes it's a little bit
19 further away from the driveway, sometimes it's a
20 little bit closer.

21 Q Don, there's --

22 MR. GLEISNER: Counsel, I'm a little
23 worried about the record, Your Honor. Let me
24 just make -- can you maybe have him note on
25 these exhibits what -- like he said it bends

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1 know what those are for the reference I can see
2 on the exhibit.

3 ALJ BOLDT: And I think you can do that on
4 cross if you would like to.

5 MR. GALLO: It might be helpful if we put
6 up the exhibit where the two blue lines are. I
7 think it was 16.

8 Q It would be Exhibit 16 in the white book if you want
9 to look at it, Don.

10 MR. GALLO: And there's a 16A which is a
11 clean copy. Can we pull that too?

12 A 16-001?

13 Q Yes.

14 A And 16-002?

15 Q 2 is not the clean copy.

16 MR. GALLO: Do we have a clean copy of
17 that? We marked it and it was admitted
18 yesterday.

19 ALJ BOLDT: That could be it. We could
20 have the wrong book here.

21 MR. GLEISNER: Is that the exhibit you
22 mean, Counsel?

23 A 16A as shown on the screen shows a portion of the
24 ditch or swale and this kind of -- this goes from the
25 lake west to about Silver Spring Drive or a little

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1 down toward the Krause site, etcetera?

2 MR. GALLO: I don't think we need to yet,
3 do you?

4 MR. GLEISNER: Okay.

5 ALJ BOLDT: Yeah, I think it's fine for
6 now.

7 MR. GLEISNER: Okay, Judge, good.

8 Q Don, when you were just describing this, you were
9 referring to which exhibit? It's RRNA 16?

10 A Yeah, RRNA 16-002.

11 Q Okay.

12 A And then I spoke -- going to the west of that exhibit
13 also. It has a swale -- a low area followed that
14 Krause driveway.

15 Q Thank you very much. In that area next to the
16 proposed access driveway -- or the existing access
17 driveway under the proposed access driveway, can you
18 describe a little bit more definitively this channel?
19 Was there -- you know, I'm looking for a description
20 as to the south --

21 MS. CORRELL: Objection, relevance and
22 probative value. It's outside the scope of this
23 witness' expertise. He can testify to his
24 personal knowledge --

25 MR. GALLO: Personal observation as a fact

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1 witness.
 2 MS. CORRELL: -- for that limited basis.
 3 I think we've had a lot of personal knowledge.
 4 MR. GALLO: That's fine.
 5 THE WITNESS: Well, am I supposed to answer
 6 this personally or as my professional opinion
 7 because under building highways for 45 years, we
 8 directed water every which way you can imagine.
 9 And we looked for water, we corrected drainage
 10 systems that worked and didn't work. Building
 11 highways is -- goes right along with moving
 12 water so how do I answer it?
 13 MS. CORRELL: You have to ask your counsel.
 14 THE WITNESS: Pardon me?
 15 MS. CORRELL: Ask your counsel what purpose
 16 he's asking you to conclude.
 17 Q Let's back up and elaborate on your personal
 18 experience -- professional experience with regard to
 19 waterways and storm water and surface water
 20 conveyance systems.
 21 A Well, in my career I've -- and I said earlier, I
 22 designed templates that we used in the design system
 23 for storm water systems in urban streets. In order
 24 to do that, you have to take an area of where the
 25 drainage is coming from, not just from the street but

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1 on an urban street, you know, collecting storm sewers
 2 or if you're on a rural highway, there's really
 3 unique features to drainage. Sometimes the highway
 4 is straight, but the ditches flow. Some areas -- the
 5 farms have a lot of drain tiles and they actually
 6 siphon water out of ditches so that the water doesn't
 7 go through their cropland. So there's just a lot of
 8 variances with where water goes. Generally, when we
 9 build a highway, you collect the water along the
 10 highway or pass it right under the highway, but you
 11 don't want to ever stop it and create floods because
 12 then you flood farm fields so there's a lot to
 13 consider.
 14 Q With respect to your last answer, you referred to
 15 highways. Do you have similar experience with regard
 16 to driveways, parking lots, other smaller projects?
 17 A Yes, every highway has many driveways on it. We look
 18 at the -- we size the culverts for those driveways.
 19 We build a lot of park and ride lots which have
 20 drainage issues, plus pavement issues, and soil
 21 issues.
 22 Q Thank you. With respect to the proposed project and
 23 our former discussion regarding the area that's noted
 24 as a channel on Exhibit 125, can you describe --
 25 MS. KAVANAUGH: And, Don, just for

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1 the surrounding land. You have to determine the
 2 slope of that land. You have to determine the
 3 rainfall on that land for a certain year storm. You
 4 have to look into the intensity of the storm, the
 5 duration of the storm and analyze how much water is
 6 coming in that direction, the quantity and the
 7 velocity, to determine the size of the structure of
 8 the culvert that would handle that water.
 9 Q Have you ever designed or been involved in the design
 10 and construction of open channel flow such as a
 11 stream or a river or a designed open channel?
 12 A Yes. Yes, generally, the open channel shapes. You
 13 can carry a lot more water in a rural ditch than you
 14 can in an urban pipe. You know, pipe is expensive
 15 and, generally, if you can use a ditch, you would use
 16 a ditch, but you have the cross-section of a ditch.
 17 It's much bigger. You have a much bigger
 18 cross-sectional area. Obviously, you can carry a lot
 19 more water, but that's also dependent upon the slope
 20 of the ditch.
 21 Q On your -- with regard to your work experience on
 22 several DOT projects, did you encounter waterway
 23 issues and design requirements on a fairly regular
 24 basis or an occasional basis?
 25 A Quite regularly. As I said, you know, whether you're

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1 clarification, you're talking about the areas
 2 that are marked in blue right now --
 3 MS. CORRELL: No, he's talking about
 4 Exhibit 125.
 5 MS. KAVANAUGH: Oh, I'm sorry.
 6 MS. CORRELL: Can I get --
 7 MR. GALLO: 129.
 8 MS. KAVANAUGH: 129.
 9 MS. CORRELL: Oh, you're still on -- okay.
 10 MS. KAVANAUGH: Okay. Are you just talking
 11 about the blue area now or are you talking about
 12 the areas to the left?
 13 MS. CORRELL: No, he's not on that, he's on
 14 this.
 15 MR. GALLO: Thank you, Edwina, let's clear
 16 some confusion.
 17 Q Don, with regard to the area adjacent to the access
 18 driveway, the current access driveway, in the
 19 area -- I'm referring to Exhibit 16. In the area
 20 that's not marked in blue --
 21 A Uh-huh.
 22 Q -- but to the west of the area marked in blue --
 23 A Uh-huh.
 24 Q -- can you describe, professionally --
 25 A Uh-huh.

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1 Q Can you give your professional opinion as to that
 2 channel?
 3 A As I said earlier, the channel --
 4 MR. GLEISNER: Wait a minute, I'm sorry,
 5 which one did --
 6 UNIDENTIFIED SPEAKER: We changed the
 7 drawing. We changed the drawing.
 8 MR. GALLO: The former one.
 9 MR. GLEISNER: Okay, I apologize.
 10 MS. CORRELL: Objection, could you clarify
 11 the question. I'm not sure I follow what he's
 12 concluding to.
 13 MR. GALLO: Sure, I'm happy to do that.
 14 MS. KAVANAUGH: And then the other thing is
 15 he said he observed the channel. Could he
 16 describe depth, width and all that?
 17 MR. GALLO: That's what we're trying to do.
 18 MR. GLEISNER: That one Counsel?
 19 MR. GALLO: Thank you very much. I'm going
 20 to point to this, if you don't mind so that
 21 we're clear.
 22 Q With regard to Exhibit 16-002 --
 23 MR. GALLO: Can everyone see?
 24 Q I'm asking you to describe the channel along the
 25 access -- existing access driveway --

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1 A Starting at the lake out to Silver Spring -- about
 2 Silver Spring Drive here, the end of the Peters
 3 property, this channel is very, very, very defined,
 4 very steep banks, and that's been identified by other
 5 speakers. As it gets to the west here, it goes into
 6 what's been called, I'm not sure of the right term
 7 here again, marsh, wetland, navigable areas. It
 8 spreads out a little bit, but as you follow -- this
 9 is the Krause driveway. Along this bank, there's a
 10 bank along the fill that he placed, on one side and
 11 then there's a depression and that's what I'm calling
 12 the channel and it varies in distance from here.
 13 Sometimes it's right adjacent to the bank, sometimes
 14 it's 10, 15 feet away. The channel varies in width,
 15 probably from 10 feet to 20 feet. This is that
 16 depression and that's what you look for as a
 17 watercourse because when we're out building any kind
 18 of highway, you're looking at where the water is
 19 going and where it's coming from. You talk to the
 20 farmers and neighbors to see what you have in
 21 addition to looking at the USGS maps and so forth and
 22 historical documents that our staff had acquired over
 23 years and keep records on, on all the highways going
 24 back to when they were first built in the early
 25 nineteen hundreds. But there is a watercourse along

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1 A Uh-huh.
 2 Q -- up until the culvert that goes under the existing
 3 access driveway. First of all, do you have personal
 4 knowledge of this channel?
 5 A Uh-huh.
 6 Q And you've walked this --
 7 ALJ BOLDT: I'm sorry, is that a yes?
 8 THE WITNESS: Yes, I'm sorry.
 9 ALJ BOLDT: Thank you.
 10 Q And did you walk this area --
 11 A Yes, I did.
 12 Q -- on September 2nd?
 13 A Yes, I did.
 14 Q So I'm asking you to do this in your professional
 15 opinion to a reasonable degree of scientific
 16 certainty.
 17 MS. CORRELL: Objection, outside the scope
 18 of his expertise.
 19 ALJ BOLDT: Overruled.
 20 MR. GALLO: Thank you.
 21 Q Can you describe the channel? And I realize that
 22 that channel is not uniform.
 23 A Right.
 24 Q So if you -- to the best of your ability, could you
 25 just kind of walk us from east to west?

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1 here, paralleling it, of variable widths and depths,
 2 and it goes all the way back to about Station 19
 3 which is where the 90 degree bend is. And water
 4 feeds into that ditch. There's two culverts under
 5 the Krause driveway that feed water into that lower
 6 area and this side actually has kind of a defined low
 7 point too and the water actually goes back and forth.
 8 I've seen it go both ways. When I was shooting
 9 elevations for NRC on their monitoring well here, the
 10 water on this side of the Krause access -- Krause
 11 driveway, sometimes it was higher than the north
 12 side, sometimes it was lower which shows that the
 13 water actually backs up into the south wetland
 14 navigable areas as previous speakers spoke to it in
 15 previous days.
 16 Q Don, you referred to shooting elevations. Can you
 17 elaborate on that?
 18 MS. CORRELL: Objection, outside the scope
 19 of jurisdiction. And I understand it's a
 20 standing objection, but this question
 21 specifically goes to a jurisdictional issue.
 22 ALJ BOLDT: Okay. Noted and -- go ahead.
 23 A Shooting elevations is kind of a quick term that
 24 surveyors use to determine the elevation above sea
 25 level of any ground area and there's different datums

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1 around the country they come from. In the Milwaukee
 2 area, you use the City of Milwaukee dam which is
 3 referred to. The national datum out here you use the
 4 SEWRPC datum which Dr. O'Reilly mentioned the other
 5 day.
 6 Q Don --
 7 A And, actually, there's a (inaudible) corner on the
 8 property with an elevation on it.
 9 Q Don, when you were shooting these elevations, you
 10 referred to the water levels so you were shooting the
 11 elevation or measuring the elevation of the water
 12 level in the south wetlands and the north wetlands?
 13 A That is correct.
 14 Q That is what you were referring to?
 15 A That is correct.
 16 Q Thank you.
 17 A We determined the top surface elevation of the water.
 18 Q Okay. Let's go back to road construction. Don, in
 19 your professional opinion and to a reasonable degree
 20 of scientific certainty, have you reviewed the GESTRA
 21 report? And we'll pull out the GESTRA report. It's
 22 RRNA 7 --
 23 A Yes.
 24 Q -- in the white book. And I believe you've stated
 25 that you have supervised geotechnical engineers and

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1 MR. GLEISNER: And what page?
 2 MR. GALLO: And Page 7-004.
 3 MR. GLEISNER: Okay.
 4 A Oh, here we go. Okay. All right, gotcha.
 5 MR. GALLO: Thank you, Bill.
 6 MR. GLEISNER: You're welcome.
 7 MR. GALLO: Bill, can you back to the 16th?
 8 MR. GLEISNER: Sure.
 9 MR. GALLO: We may flip back and forth
 10 here.
 11 MR. GLEISNER: Whatever you want.
 12 MR. GALLO: I think it was 16-002.
 13 MR. GLEISNER: Coming right up.
 14 Q Okay. Don, can you familiarize yourself with that
 15 figure and note on the exhibit itself, which would be
 16 16-002, the stationing for the Houghton muck and the
 17 Roland muck?
 18 A What number is 16-002?
 19 Q It's in this book here -- the white book.
 20 A Okay.
 21 ALJ BOLDT: Yeah, we just had that one.
 22 Q Okay. I'd like you to mark the stationing of the
 23 Houghton muck area and the Roland muck area and then
 24 put your initials next to it.
 25 A This doesn't go all the way back to Station 19. It

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1 consultants on projects?
 2 A Yes, they've worked for me. We use -- in project
 3 development in the Department of Transportation, we
 4 have a geotechnical engineer in the district office
 5 and we have a component in our central office in
 6 Madison with several in there and I've worked with
 7 both offices, depending upon the complexity of the
 8 soil conditions or problems that we encountered. On
 9 the market interchange, I had 35 (inaudible) staff
 10 working for me, along with 120 consultant staff. On
 11 there we had a DOT geological engineer that worked
 12 directly for me and a couple of support staff for him
 13 from a consultant.
 14 ALJ BOLDT: Sir, everybody thanks you for
 15 that project. That was a remarkable
 16 accomplishment all the way around.
 17 THE WITNESS: Thank you very much. I'm
 18 very proud to be part of it. It was exciting.
 19 Q Don, with regard to the GESTRA report, are you
 20 familiar with the documentation within this report
 21 that refers to the Houghton muck and the Roland muck?
 22 A Yes.
 23 MR. HARBECK: And, Don, what exhibit number
 24 are we talking about?
 25 MR. GALLO: I'm sorry, Exhibit RNA 7.

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1 doesn't show the whole wetland, it just shows the
 2 parking lot area.
 3 Q I'm sorry.
 4 A We need to go all the way back.
 5 ALJ BOLDT: Didn't we have somebody do that
 6 already?
 7 MR. GALLO: Yes, we did.
 8 ALJ BOLDT: Can we reference that same one
 9 and see if he agrees?
 10 MR. GALLO: That'd be fine.
 11 ALJ BOLDT: It was your witness. Do you
 12 recall what number that was?
 13 MR. GALLO: I think it might have been --
 14 ALJ BOLDT: Well, it's this one. It's up
 15 here isn't it?
 16 MR. GALLO: Yeah.
 17 MR. GLEISNER: Thank you, Judge, you're
 18 correct.
 19 MR. HARBECK: He didn't draw on that one
 20 though.
 21 Q You could draw on this, that'd be fine.
 22 A It shows the limits of the muck on the GESTRA report.
 23 I think that report actually has a drawing in there
 24 that shows --
 25 ALJ BOLDT: Yeah, that was Exhibit 7.

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1 MR. GALLO: Right. The witness is
 2 working -- or looking at Exhibit 7.
 3 THE WITNESS: 7-010. It's a drawing that's
 4 in the GESTRA report.
 5 Q And can you note for the record the limits?
 6 A For the muck?
 7 Q Yes, the Houghton muck and --
 8 A The Houghton muck goes from the bend in the road,
 9 which is about Station 19 -- oh, I can't read the
 10 stationings on that drawing. The Houghton muck is in
 11 this area here and the other is in this area here.
 12 ALJ BOLDT: Okay. We're referencing
 13 Exhibit 143 and where are you starting?
 14 THE WITNESS: I'm going from about
 15 Station 1975 or so up to about 21 and then you
 16 have an area where there's a different
 17 geological feature and then it picks up about
 18 2175 and goes up to 25 -- Station 25 plus 00.
 19 MS. KAVANAUGH: And the first one is
 20 Houghton and the second one is Roland?
 21 THE WITNESS: Yeah.
 22 MS. KAVANAUGH: Thanks.
 23 THE WITNESS: And that's as shown in the
 24 GESTRA report.
 25 MR. GLEISNER: For the record, for

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1 A Yes, but I did a lot of times review them with my
 2 soils engineer.
 3 Q Yes. Were you present during Paul Giese's testimony
 4 yesterday?
 5 A Yes, I was.
 6 Q And are you familiar with the descriptions of soil
 7 that are on Boring B4?
 8 A Yes, I am.
 9 Q And are you familiar with the concept of blow
 10 counts --
 11 A Yes.
 12 Q -- for measuring the strength of soils?
 13 A Yes, somewhat.
 14 Q Okay. And have you had any experience with soils
 15 that have a zero blow count?
 16 A Yes.
 17 Q In your professional opinion and to a degree of
 18 scientific certainty, can you explain what a zero
 19 blow count condition is like?
 20 A Well, there's really isn't any value to the soil.
 21 It's not going to support very much so you're looking
 22 at a higher blow count so you have the support for
 23 your road design. And, as shown in the plans, the
 24 pavement design has a certain amount of asphalt, and
 25 I don't know if it's three or four inches, and a

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1 clarification, if you go to 002-001, that is a
 2 clean copy of what is up there if that's helpful
 3 for marking purposes. Oops, wrong one.
 4 MR. GALLO: Did you say 2, Bill?
 5 ALJ BOLDT: I think that's not right.
 6 MR. GLEISNER: No, that's not right. I'm
 7 going to pull up the right one. My mistake. I
 8 apologize. Here we go. My apologies, Judge.
 9 Exhibit 3-018. Sorry, Judge.
 10 Q Can you just for the record note the markings by
 11 Paul Giese?
 12 A Yes, it's been marked in red for the Houghton muck
 13 from the stations that I just mentioned, about
 14 Station 20 to 21 something, and the Roland muck from
 15 there out to Station 25, and that he has marked in
 16 blue.
 17 Q Thank you. In the GESTRA report, can you turn to
 18 Boring B4 and I'm referring to the Exhibit 7-017. A
 19 lot of paper.
 20 MS. KAVANAUGH: And what page then?
 21 MR. GALLO: 7-017.
 22 MS. KAVANAUGH: Thank you.
 23 Q Don, are you familiar with reading soil boring logs?
 24 A Somewhat, yes sir.
 25 Q And have you done that on various projects?

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1 certain thickness of crushed gravel was eight or nine
 2 inches and if you remember yesterday talked about
 3 that's the cross-section of the pavement. The
 4 pavement is the asphalt and the crushed base course.
 5 The blow counts on the north-south road were really
 6 high -- 40's, 50's. Here, you don't have any so
 7 that's the extreme difference. So then when you have
 8 that thickness of pavement, asphalt and stone, on the
 9 north-south road where you had a high blow count,
 10 that's good. Now, you take that and put it over this
 11 muck, the same pavement design, well what you have to
 12 do is get all that subgrade, that muck area, up to
 13 the blow count like you had on the north-south road
 14 if you're going to use the same cross-section of
 15 pavement.
 16 Q Would the geotextile help in this situation?
 17 A It spreads out the differential settlement that you
 18 get and it does have some value in separating, you
 19 know, your crushed aggregate from migrating into the
 20 muck or having the muck migrate into the -- or come
 21 into the crushed gravel. It's kind of like if you
 22 have -- where you drive a concrete truck or an
 23 asphalt truck even onto a crushed gravel road that's
 24 been built in properly, the tires will sink in and
 25 the muck will squeeze up right through the crushed

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1 gravel up to the surface and then that's right where
 2 your pavement is. That's not good. You have totally
 3 weak pavement then. So you don't want to do that,
 4 you want to keep it separated. And a geotextile
 5 fabric would separate that.
 6 Q Okay. Would it -- in your experience and in your
 7 professional opinion and to a reasonable degree of
 8 scientific certainty, would a geotextile fabric
 9 lessen or change the total settlement?
 10 A No, you'll still get the same settlement. You're
 11 just separating it and you're helping to spread that
 12 out, but you still have the same load from your road
 13 fill and your vehicle loads that needs to be
 14 transferred from your pavement to an area of the
 15 ground that can support that. And what you do is as
 16 you go down deeper, you spread out that load square
 17 foot. Like right at the pavement, all that load is
 18 right in a small area where the tires -- the deeper
 19 you go through your pavement, it spreads out that
 20 load so you get to the -- get through the asphalt, it
 21 spreads it out onto the gravel. Then when you go
 22 through the gravel layer -- that's why you design the
 23 thickness of the gravel so you can spread out that
 24 load when it gets to the subgrade and your subgrade
 25 has to be able to have a bearing support factor that

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1 you're saying is that there may not be enough
 2 information to design the access road properly?
 3 A Not totally. You can design with what you have. You
 4 have to make some assumptions and then you make your
 5 design from those assumptions. If you make too many
 6 assumptions, then your chance of failure is greater.
 7 And, really, what you want to do is build it right
 8 the first time because if you don't build it right
 9 the first time it costs a lot of extra money, plus
 10 you have all these secondary impacts to properties
 11 adjacent to you. For example, if this soil -- if you
 12 don't know what's going to happen to the soil and it
 13 settles, you're not only pushing it down, it pushes
 14 sideways, and you can actually damage building
 15 foundations. In the market interchange, we built
 16 land bridges so that we wouldn't compress the soil
 17 and go side lateral sideways that would have -- I
 18 don't know the -- it wouldn't have tipped the
 19 building, but you could have damaged the foundations
 20 of these old buildings so we would build land bridges
 21 over the soft soil. Other areas, instead of putting
 22 a fill in, because the soft soils can't support a
 23 fill, we would build two MSE walls. Those are
 24 mechanically stabilized retaining walls and you've
 25 seen them along roads where they're kind of designed

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1 can support that load.
 2 Q Thank you very much. Referring back to Boring 4,
 3 Exhibit 7-017, there are several samples that were
 4 taken and as to the samples No. 2, 3, 4, 5 and 6, are
 5 those sufficient blow counts for construction of this
 6 proposed access road?
 7 A No, nowhere near, nowhere near.
 8 Q Your answer -- did you make your answer as your
 9 professional opinion to a reasonable --
 10 A Yes.
 11 Q -- degree of scientific certainty? Thank you.
 12 A I also have a problem -- and this was mentioned by
 13 Paul yesterday that, you know, when you come in you
 14 find a soft area, you might call it, where you want
 15 to build something. You do a little more effort to
 16 determine the limits of it, both horizontally and
 17 vertically. These borings didn't go down to
 18 substantial soil and I would have taken -- well, I
 19 wouldn't even have had to instruct my civil engineer,
 20 he would have taken more soil borings to determine
 21 the limits of what stationing you're going to. So
 22 there would have been more borings and they would
 23 have been deeper because you really can't design a
 24 subgrade unless you know how deep the soft soil are.
 25 Q So without this information, your -- I think what

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1 blocks. Well, they're all tied together and then we
 2 used a light weight fill inside of those so that we
 3 didn't put so much weight on this bad soil down there
 4 so it doesn't spread out and damage any building
 5 foundations. So there's a lot of things you can do,
 6 but you really need to know what's down there and if
 7 you don't totally know what's down there, you start
 8 making assumptions. Now, that's getting a little
 9 extreme, comparing the foundations downtown to
 10 something that you're building here, and I understand
 11 that.
 12 ALJ BOLDT: Is it likely that it would
 13 spread that wide that it could possibly damage
 14 anybody's foundation in this setting?
 15 THE WITNESS: Not here, no, no.
 16 ALJ BOLDT: It's too far away, isn't it?
 17 THE WITNESS: No, no, no.
 18 Q What kind of impact though would it have in terms of
 19 lateral movement? Would it create a bulge or in
 20 effect a fill laterally?
 21 A Well, it can do different things and that's what Paul
 22 mentioned yesterday. And I'm not -- I can't address
 23 all technical aspects of what in that analysis you
 24 make for the sideways movement, but it can move. And
 25 probably the best example, and those of you from

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1 Madison saw it driving here down today and yesterday,
 2 when you go through -- between the two lakes, the
 3 (inaudible) lakes. There was Highway 30 there that
 4 was built and then they added a second lane when they
 5 made it an interstate. And when they built the first
 6 fill and there's a real long fill with a real short
 7 bridge and next to it you notice there's a real long
 8 bridge. When they built that first fill through
 9 there, they put so much fill on there and that would
 10 settle down, but then it came up and that island,
 11 that grassy island, in lower (inaudible) lake was
 12 created when they build that highway. Now, that was
 13 built many years ago. You'd never allow that to
 14 happen today, but that shows you how far away that
 15 failure can come up because it created a -- it's a
 16 submerged island and it's got grass growing in the
 17 middle of the lake and that's how it got there. So
 18 when they added the second lane to the interstate,
 19 they put a land bridge over that whole area so you
 20 don't have that effect and that type of failure
 21 again.

22 ALJ BOLDT: But you're not recommending it?
 23 THE WITNESS: No.

24 ALJ BOLDT: It's your professional opinion
 25 that the land bridge --

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1 the lateral forces and you -- and this is where you
 2 would put some fill in here. That spreads -- this
 3 load from your pavement out over the soil, it does
 4 not have a support. You can take into account the
 5 settlement. We build roads and plan for settlement.
 6 We usually use asphalt so then it starts sinking and,
 7 as asphalt sinks, we put more on, more on. The
 8 interstate between Milwaukee and Madison had a couple
 9 sections like that for many years. Highway 45 near
 10 West Bend had it for quite a few years also. And
 11 when the settlement kind of stabilizes that's good,
 12 but then you don't know what's going on outside of
 13 it. You need to control -- at least in here, you
 14 don't want more impact on your defined wetland
 15 because you don't want a bulge in your wetland
 16 because then it won't be wet anymore, it'd be high.
 17 So that's kind of how we do it. We determine how
 18 much to go down and that was my line to go down. And
 19 then as you're excavating it, you need some kind of
 20 slope going back up because otherwise with the water
 21 and the soils it'll just all flush in and that's how
 22 that was determined. Some people may argue this
 23 slope could be a little bit steeper, some will say a
 24 little bit flatter. It's gone both ways, but
 25 generally we'll go with -- go one-to-one and use a

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1 THE WITNESS: Well, that would solve the
 2 problem here, but I --
 3 ALJ BOLDT: You wouldn't --
 4 THE WITNESS: No, there would be other
 5 solutions. You could find a less impact
 6 because, again, you don't know exactly how deep
 7 it is so you don't totally know how much the
 8 settlement is. I think Paul went through his
 9 calculations and gave that kind of information
 10 yesterday.
 11 Q Let's explore that a little bit, Don, and I'm going
 12 to refer to these figures -- or Exhibits 143 and 144.
 13 Let's start out with 144, if you don't mind. Did you
 14 direct these markings, not the blue which were put on
 15 there by Paul Giese, but the other base markings?
 16 A Yes, I did.
 17 Q And tell us what those markings --
 18 A I drew them in pencil and then they were colored up.
 19 Q Yeah. Can you -- can you tell us what those are?
 20 A Well, what we have here is where the new roadway is
 21 adjacent to the existing driveway. And when you look
 22 at building a support structure -- we go down at
 23 about a one-to-one slope. That means one foot down,
 24 one foot out. And you take out a sufficient amount
 25 of muck so you control the settlement and you control

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1 select fill in here underneath the crushed gravel.
 2 MS. CORRELL: Sir, can I ask a -- rather,
 3 Counsel, could I ask him a clarifying question?
 4 MR. GALLO: Yes.
 5 MS. CORRELL: I believe it will be just
 6 clarifying. You referred to the slope and I
 7 think yesterday Mr. Giese testified that it was
 8 a one-to-one and that's actually a two-to-one or
 9 it looks like one.
 10 THE WITNESS: That's actually --
 11 MS. CORRELL: But it shouldn't matter,
 12 right? I mean you're only -- as far as the
 13 lateral dimension, it's one foot out, am I
 14 correct?
 15 THE WITNESS: It's one foot down, one foot
 16 out. The drawing on here is two-and-a-half feet
 17 vertical, five feet horizontal, so that makes
 18 the drawing look a little bit different when you
 19 look at the scale. One inch horizontal is five
 20 feet, one inch vertically is two-and-a-half
 21 feet.
 22 MS. CORRELL: Okay. Because this
 23 (inaudible). Well, maybe it's not pink.
 24 Whatever this line is. It's kind of pink-ish.
 25 So you're saying this is actually one-to-one?

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1 THE WITNESS: Yes.
 2 MS. CORRELL: It looks like two-to-one to
 3 me, but --
 4 THE WITNESS: It could -- it could -- well,
 5 that's because you have to look at all of these
 6 to scale. Two-and-a-half this way, five feet
 7 this way. This is one inch equals five feet,
 8 one inch equals two-and-a-half feet.
 9 MS. CORRELL: Okay.
 10 THE WITNESS: And that's why this --
 11 MS. CORRELL: But it wouldn't matter in
 12 terms of impacts anyway so (inaudible).
 13 MS. KAVANAUGH: (Inaudible).
 14 THE WITNESS: Well, right, and that's not
 15 uncommon. You blow up the scale because if this
 16 was one inch equals five feet, where you draw
 17 your pavement (inaudible) or your crushed gravel
 18 would be the thickness of a line. So you really
 19 want to show some thickness of your gravel so
 20 that -- that's why you expand --
 21 MS. KAVANAUGH: So the scale is going up
 22 and down? It's bigger so that you can see the
 23 width of the gravel?
 24 THE WITNESS: That's correct.
 25 MS. KAVANAUGH: But otherwise you run out

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1 A The select fill. It's the select fill and it can
 2 be -- you know, by select fill you mean certain types
 3 of soil, but it could be crushed rock, it could be
 4 gravel, and it depends on what you put in there, what
 5 kind of slope you can put on it.
 6 Q But that material is generally compacted?
 7 A Uh-huh.
 8 Q And --
 9 ALJ BOLDT: I'm sorry, that's yes?
 10 THE WITNESS: Oh, yes.
 11 MR. GALLO: Thank you.
 12 Q And as a general rule is a steeper slope, is that
 13 correct?
 14 A Repeat that?
 15 MS. CORRELL: Is that a question?
 16 MR. GALLO: Oh, I'm sorry, I'm sorry. It
 17 was a bad question. I'll try to rephrase it.
 18 Q Okay. As to that slope angle, you used one --
 19 A One-to-one. That's standard with roads because of
 20 the type of material you put in a select value and
 21 the distribution of the load down from the pavement.
 22 Q And --
 23 A Remember my earlier discussion of the load going
 24 through the asphalt and going through the crushed
 25 stone?

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1 of paper --
 2 THE WITNESS: Oh, yes, you would.
 3 MS. KAVANAUGH: -- horizontally?
 4 THE WITNESS: And sometimes when you're on
 5 a real high fill you change the scale to -- this
 6 scale is to be -- you know, might stay
 7 two-and-a-half, but this scale might be ten feet
 8 or twenty feet because you get into some really
 9 big fills. You change the scale so it makes
 10 sense on a sheet of paper.
 11 MS. KAVANAUGH: Okay. That's makes sense,
 12 yeah. (Inaudible) but I understand (inaudible).
 13 Thank you for that.
 14 THE WITNESS: But what I said is some
 15 people will argue that this slope line can
 16 change. Some go a little bit steeper, some go a
 17 little bit flatter and it sometimes depends on
 18 what you're building.
 19 MS. CORRELL: You just always have to check
 20 the scale, correct?
 21 THE WITNESS: Correct.
 22 MS. CORRELL: Thanks, Professor.
 23 Q Don, I'd like to explore those slope angles a little
 24 bit. The slope angle that is coming from right to
 25 left is the slope angle of the fill material?

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1 Q Yep.
 2 A Okay.
 3 Q Thank you very much. Now, as to the slope angle from
 4 the excavation face, that would be in the Houghton
 5 muck --
 6 A Uh-huh.
 7 Q -- and that would be a little bit further to the
 8 left in this drawing? And I'm referring to
 9 Exhibit -- is it 140 --
 10 MR. GLEISNER: 4.
 11 MR. GALLO: 4. Thank you.
 12 Q We drew that at a one-to-one and at a two-to-one
 13 because of the type of material and the water
 14 involved in there. You're not quite sure how it's
 15 going to stand up when you excavate it. First of
 16 all, you have to put a certain kind of slope on it
 17 for OSHA requirements, if you have anybody working
 18 down there. Probably you would not have somebody
 19 working down there during the excavation. You would
 20 be using a backhoe or a drag line or something and
 21 you would be filling as you excavate which would
 22 minimize it. But it depends upon -- as you dig, it
 23 sloughs off and it would just -- it just comes right
 24 down in there, especially if it's full of water.
 25 Q And you're making these statements to a reasonable

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1 degree of -- or based upon your professional opinion
 2 and to a reasonable degree of scientific certainty,
 3 is that correct?
 4 A Uh-huh.
 5 Q And you're also --
 6 ALJ BOLDT: Yes, sorry?
 7 Q And you're also basing these statements on
 8 Boring 4 --
 9 A Uh-huh, yes.
 10 Q -- and the blow counts --
 11 A Yes.
 12 Q -- and Boring 4 with regard to the various samples
 13 that were taken? And there's no other information
 14 that you can utilize other than your experience?
 15 A Yes. And I think Paul described that yesterday in a
 16 little bit more technical terms than what I'm able to
 17 use. I mean he does the computations.
 18 Q Yes.
 19 A I work with the geotechnical engineers and I have the
 20 experience of being a victim of some failures.
 21 Q Thank you. Let's go to the next figure. It'd be
 22 Figure 1 -- or, excuse me, 143. And is it a fair
 23 statement to say that you made these calculations?
 24 A Yes. Yes, I did. I determined, using my
 25 calculations from here, how far out from the slope or

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1 well as expand it. Do you see problems with that or
 2 what is your opinion on that type of design?
 3 A Yeah, there's problems. What happens when you
 4 have -- when you're widening something like that,
 5 when -- this image here actually shows the existing
 6 road here and then the new road starts about in the
 7 middle and it extends to the north. You have some
 8 fill material in here, but you have all this soft
 9 soil underneath here and that really hasn't been
 10 compacted adequately. So really what you can do is
 11 you can go in here and step this down. You start
 12 backwards and you make steps in here. You don't want
 13 to excavate it on an angle because then you've got a
 14 failure and we had that on a project up north. They
 15 were widening one, they were stepping it in just the
 16 way they were supposed to, and they came back the
 17 next day and their whole fill was gone and they had
 18 an island in the lake and that cost them I think a
 19 million dollars to get the island out of the lake.
 20 So you really need to get rid of what's there so that
 21 you can treat the soft soils underneath there
 22 uniformly with what's being added on and widened to,
 23 otherwise you can get a failure in the middle here,
 24 and you really wouldn't want to do that.
 25 Q And this condition exists when the later stationing,

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1 the edge of the pavement you could expect to have
 2 impacts onto this, what do we call it, navigable --
 3 Q Waterway.
 4 A -- waterways, yes, thank you, because I would have
 5 probably just called it something else.
 6 Q Can you just quickly go through your calculations and
 7 your conclusion?
 8 A Well, we went through here and looked at, you know,
 9 where it might slough off to and that's where we drew
 10 these green areas in here and that matches the
 11 dimensions on here. So we took a width times the
 12 length to get a square foot area that this would
 13 impact and then we took it on here and that's how we
 14 determined the .28 acres of impact using the closer
 15 inline. And then if it would slough off further,
 16 which it could, you have a greater impact of .45
 17 acres. And, actually, this one -- if that would
 18 happen, it'd actually go beyond that dotted line
 19 which I think is the easement, but I think this is
 20 all -- if I understand it, that's all part of the DNR
 21 Krause property on the north side of that easement
 22 line. Yep, okay.
 23 Q Don, a question while you're standing there. With
 24 regard to the existing driveway, a portion of this
 25 road is designed to utilize the existing drive as

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1 stationing that merges into Station 25 where you're
 2 building the access road as it merges into the
 3 existing road, so you have a combination --
 4 A This goes -- yeah, this goes half-and-half over most
 5 of the area through the wetland navigable streambed
 6 area. There's one area for about 100 feet or so
 7 where it's totally on new alignment and that's shown
 8 right here. These are Stations 2150, 2222. You're
 9 totally next to the existing roadway. The rest of
 10 the several hundred feet you're kind of half-and-half
 11 which has unique problems that I just mentioned. You
 12 really have to be careful because otherwise you end
 13 up with half of your road is built right and half of
 14 it isn't and you're just asking for problems.
 15 Q Can that be cured with the geotextile?
 16 A No, not really because if just put geotextile here,
 17 you've got your other half of road where it's on and
 18 same old, same old.
 19 Q With regard to the existing driveway, is it your
 20 recommendation or your opinion, professional opinion,
 21 to a reasonable degree of scientific certainty, that
 22 you would have to do something with regard to the
 23 existing roadway?
 24 A Yeah, I'd just get it out of there.
 25 Q So are you saying --

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1 A Because I would maybe pull out the material I could
2 use and use it for some of the select fill because
3 based on the borings it is gravel. They probably
4 took it out of one of the banks in the neighborhood
5 and a lot of that's just gravel stones. So it's
6 probably pretty good stuff and you could reuse it.
7 As you dig along, you can push this out of the way
8 and then use it as your fill, but you really want
9 this core to be uniform.

10 Q When you do that, Don -- the existing roadway was
11 constructed on this Houghton muck and Roland muck, is
12 that your opinion?

13 A Yes. Based on that soil boring it looks like he put
14 a couple feet of fill in there and I know over the
15 years as I walked that path he's added to it
16 periodically. And it's always been rutted up, you
17 know, just driving his little truck or whatever he
18 drives down there. He left big ruts in it so it's
19 not -- you know, it's passable. During the summer
20 months it gets harder because the water is down and
21 it dries out a little bit and gets a little more
22 stability in it.

23 Q So it's your conclusion and professional opinion to a
24 reasonable degree of scientific certainty that the
25 existing roadway needs to be excavated?

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1 and design something where you would maybe
2 minimize the settlement because, actually, this
3 road could tolerate settlement. You know, it's
4 not a high speed anything so you can have some
5 settlement because you can fix it with just
6 resurfacing it with asphalt. The only thing you
7 want to be careful is that you don't have this
8 secondary effect over the years that you change
9 the elevations in this wetland because it's
10 moving.

11 Q When you excavate the additional Houghton muck and
12 Roland muck under the existing roadway, would you
13 have the same situation where you need to excavate
14 beyond the roadway, current roadway, existence, to
15 establish your base course?

16 A No, you would excavate -- you'd take the new roadway,
17 whatever it is, whether it's half on the existing
18 road or all by itself, and you can go with these
19 one-to-one slopes down from the pavement and that
20 would give you a uniform base. And I would recommend
21 that here instead of trying to just build onto it
22 because there isn't that much there and as the
23 (inaudible) in there you could just use it for a
24 select material. So why take a chance of having all
25 this differential activity going on, just -- you

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1 A Yes, I would just -- there isn't that much there. I
2 would just reuse it as part of my select fill.

3 MS. KAVANAUGH: You should be asking him
4 what his professional opinion is, not telling
5 him what it is.

6 MR. GALLO: Thank you.

7 MS. KAVANAUGH: I object to that.

8 Q Don, can you provide for us your professional opinion
9 to a reasonable degree of scientific certainty how
10 you -- what you recommend and how you would address
11 the existing roadway?

12 A Yes, I can. As I just stated, I would treat the
13 whole roadway and make it uniform and use the
14 material that's there as select fill as I would
15 construct through the wetland.

16 Q What would you do with regard to the Houghton muck
17 and the Roland muck under the existing driveway?

18 A Based on what Paul said yesterday, to remove a
19 certain portion of it and replace it with select
20 fill. And it's hard to determine exactly how much
21 because we don't have all the depths here.

22 ALJ BOLDT: So would you want to do
23 additional soil borings?

24 THE WITNESS: You would or you could look
25 at the numbers closer and make some assumptions

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1 can -- as you excavate one way, just spin around and
2 you use the fill -- you use it right away.

3 MS. KAVANAUGH: And just to clarify, when
4 you said differential do you mean the lateral?
5 I'm not sure what that means.

6 THE WITNESS: Differential settlement
7 is --

8 MS. KAVANAUGH: Oh, when one goes down?
9 Gotcha.

10 THE WITNESS: Yeah, one would go down
11 differently.

12 MS. KAVANAUGH: Thank you.

13 Q Don, let's use an example -- let's say, half of the
14 road is on new --

15 A Uh-huh.

16 Q -- in the waterway, navigable waterway, the other
17 half is on the existing driveway --

18 A Uh-huh.

19 Q -- what kind of depth would you recommend excavating
20 the Houghton or the Roland muck to?

21 A I would go back and rely on what Paul said yesterday.
22 I think he gave some numbers yesterday. I
23 don't -- because he's the geotech expert and he made
24 some assumptions in his calculation and his report
25 what to excavate down to.

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1 Q Let's look at Boring 4, if I can find it. There's
 2 a -- I can't seem to find my copy, but there is an
 3 elevation of boring that has a zero blow count?
 4 A Yes, it blows 1-1 and then 1-0-1 and 0-0-0-1-1-1-1
 5 and -- but, you know, looking at what this road is
 6 for, you want to minimize that excavation and that's
 7 where I would -- or, you know, we would probably get
 8 together with the soils engineer and, you know, get a
 9 real practical solution here because you don't want
 10 to excavate more than you need to because you don't
 11 want to just spend money, you know.
 12 Q Yes.
 13 A You're always trying to stay within a budget.
 14 Q Is it correct that you're trying to balance the
 15 initial roadway construction with the long-term?
 16 A Most definitely. And, you know, if I wasn't worried
 17 about the wetland --
 18 THE WITNESS: And, Jim, you didn't hear me
 19 say that because we always worry about the
 20 wetlands, right Jim? I used to work with Jim.
 21 He was a liaison with the DOT so we've had a few
 22 discussions.
 23 A You could just build this and let it settle, but the
 24 secondary impact is if there's any movement sideways,
 25 it affects the land on both sides. And in this case

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1 Q -- exists already on the drawing?
 2 A This is the edge, yes. They have an edge of slope
 3 which is the tallest slope of the road fill that's
 4 shown on the cross-sections of the plan.
 5 Q Now, in the transition area where the new road is
 6 partially in the navigable waterway and they're
 7 utilizing the existing road, do you see any impacts
 8 to the south of the existing road?
 9 A No, you'd have the same impacts going both
 10 directions. We only did this on one side, but you'd
 11 have a similar impact on the other. Now, I realize
 12 that there's an existing road there that was built,
 13 but it wasn't compacted adequately so you
 14 would -- the impacts would be a little bit different,
 15 but there would be impacts there.
 16 Q Okay.
 17 A And we didn't make a -- I didn't work with an
 18 estimate or anything to determine any additional
 19 impacts on that side.
 20 Q So you're stating --
 21 A Yeah, if you did -- if you said it would be the same,
 22 you would double these numbers, but I'm not going
 23 (inaudible) yet. You'd have to look at it a little
 24 bit further.
 25 Q But it's clear that there's no impacts, as part of

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1 it's this wetland, navigable and streambed that you
 2 don't want to impact so you want to minimize those
 3 impacts to the extent that it doesn't have adverse
 4 effects on it. And that's where we would sit down
 5 with the geotech engineer, maybe do some more
 6 borings, maybe do some other samples of this
 7 material, to get a more economical design. One of
 8 the things you can do, you could increase the gravel
 9 layer to spread out the (inaudible). There's
 10 different things you can do to do that and that's
 11 what you'd do if you need to get a little more
 12 information.
 13 Q Thank you. I'm going to ask you a question on one of
 14 these exhibits -- 143. Is it your understanding that
 15 the blue line next to the proposed roadway -- is it
 16 your understanding and interpretation that you've
 17 drawn in this blue line is the extent of current
 18 defined wetland impacts?
 19 A Yes, the blue line here along the edge, right. That
 20 goes along with the cross-sections where we
 21 determined it was into the wetland and the muck, yes.
 22 Q And that line is colored in blue, but the base of the
 23 map was prepared by Kapur and Associates and that
 24 line --
 25 A Yes.

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1 the design or the current project, that have been
 2 estimated on the south side of the existing driveway?
 3 A No, there were no impacts shown there and I'd have to
 4 go back and compare their cross-sections to what we
 5 have here to see what they're doing on that side.
 6 Q Let's just take one.
 7 A Okay.
 8 Q Take any cross-section you want and we'll look at it.
 9 A What page were those plan sheets?
 10 Q It's going to be Section 3. What station --
 11 MR. GLEISNER: 3-018 I think is what
 12 you're --
 13 Q What station would you like to look at?
 14 A Well, let me get in here and then I'll pull one out.
 15 Q On 3-018.
 16 A Well, we did figure some impacts down here on the
 17 south side. I forgot about that. Now that I see 19
 18 plus 50, they're putting some fill in here on the
 19 corner as they go around the corner. As you go
 20 further east, I believe it looks like their
 21 excavation and their fill -- well, they're
 22 going -- they're on the existing roadway. Here,
 23 they're into the wetland. 20 plus 50 they're into
 24 the wetland on the south side too with their
 25 (inaudible) slope. 21 they're moving to the north,

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1 north, north. No, it would be -- it would probably
 2 be rather minimal because, like I say, there's the
 3 existing road there. There is some compaction there
 4 so this one-to-one slope that I was talking about
 5 would start a little bit differently because you're
 6 starting in here and by the time you get out here
 7 you're not into the wetland area.
 8 Q Can you just give us -- in your professional opinion
 9 and to a reasonable degree of scientific certainty,
 10 quantify for us the kind of distance that it might be
 11 based on --
 12 A That there might be an impact over there?
 13 Q Correct, correct, and based upon --
 14 MS. CORRELL: Over there? Can --
 15 MS. KAVANAUGH: On the south side?
 16 ALJ BOLDT: Might be is not a standard.
 17 Probable is -- probable is -- what are the
 18 likely or probable is the legal standard for an
 19 expert opinion.
 20 MR. GALLO: Thank you.
 21 Q What's your -- base your opinion on
 22 probable -- probability.
 23 A There probably is some additional impact along the
 24 south side. The amount is pretty hard to determine
 25 just looking at it right now, you know, but there is

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1 Q Don, I think you'll be able to see it there.
 2 MR. GLEISNER: Okay, that's 001 and you
 3 want me to go 002?
 4 MR. GALLO: Yes. I'm sorry, I'm looking
 5 for the exhibit that has the blue roadway in it.
 6 MR. HARBECK: 002-007, I think.
 7 MR. GLEISNER: This one, Counsel?
 8 MR. GALLO: Thank you. Thank you very
 9 much.
 10 MR. GLEISNER: You're welcome.
 11 Q Don, you're looking at Exhibit 16-007.
 12 MR. GLEISNER: No, no, 2-007, Counsel.
 13 MR. GALLO: I'm sorry.
 14 Q Looking at this exhibit, will the roadway fill, the
 15 proposed access roadway fill, which is to the north,
 16 will that impact the channel that Lake Country
 17 surveyed on September 2nd?
 18 A Yes, the one that he surveyed that I walked with
 19 himself and with -- because you're out -- well, it's
 20 a variable distance, but you're out -- you're going
 21 to totally eliminate part of that low swale in some
 22 areas, other areas half of it, so you're changing
 23 that swale or drainage area.
 24 MS. CORRELL: Objection, he hasn't made an
 25 expert opinion.

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1 probable additional impact --
 2 Q Thank you.
 3 A -- that would not be -- I would not expect it to be
 4 as far out as on the north side because you're next
 5 to it, but -- now, if I understand, after walking
 6 that site yesterday, that's an easement and some of
 7 that land isn't the DNR land so now you've got a real
 8 estate issue. If you have impacts over there, you're
 9 off your property.
 10 Q So you would actually -- I think what you're saying
 11 is you may have to change the alignment?
 12 A Yes, if you didn't -- yeah, because of the impact to
 13 private property.
 14 Q And how would you change that alignment?
 15 A Well, you would just go parallel to what you have,
 16 but you'd move further north and that would have
 17 greater impacts then on the north side, you know.
 18 Q Greater impacts than what you've --
 19 A What I've calculated, that's correct. If you had to
 20 move over to protect the private property, that would
 21 create more of an impact on the north side.
 22 Q Thank you. One last question.
 23 MR. GALLO: Bill, could you put up 16-002,
 24 I think?
 25 MR. GLEISNER: Absolutely.

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1 A In my expert opinion --
 2 MS. CORRELL: He answered affirmatively to
 3 a leading question.
 4 MS. KAVANAUGH: And also he characterized
 5 it as a channel, but what he said, the testimony
 6 was that they shot low elevations. He didn't do
 7 a cross-section.
 8 MR. GALLO: I'll rephrase the question.
 9 ALJ BOLDT: Okay. All right.
 10 Q Don, with regard to the proposed access road, can you
 11 describe what impacts, in your professional opinion
 12 and to a reasonable degree of scientific certainty,
 13 this roadway will have on the navigable waterway?
 14 A As we've shown on this drawing and applied it to this
 15 drawing --
 16 ALJ BOLDT: I'm sorry, we're looking at
 17 144?
 18 THE WITNESS: 144 and 2-007.
 19 A The new roadway is relocated next to the north side
 20 of the existing Krause driveway. Some areas it's a
 21 new location, some areas it's a widening of the
 22 existing driveway. And as the fill goes to the
 23 north, even without the additional impacts from the
 24 wetland or removing the muck and building the
 25 cross-section of the new roadway, you're filling in

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1 part of the depression low area or streambed as
2 defined as a low area where the water flows to. Some
3 of it would be filled in completely, some of it would
4 be filled in partially, as that road moves north. As
5 you take into account any impacts from the removal of
6 the muck, any additional excavation you would impact
7 that drainage course even further.

8 Q Thank you.

9 MR. GALLO: Can I just have a minute? No
10 further questions.

11 ALJ BOLDT: Okay.

12 MR. GLEISNER: Five-minute break, Judge?

13 ALJ BOLDT: I just asked the witness. He's
14 good, but if anybody else wants one --

15 MR. GLEISNER: Oh, no, I'm -- it's up to
16 the Judge. It's the coffee.

17 ALJ BOLDT: Okay. Let's take a five-minute
18 break.

19 (Recess taken)

20 ALJ BOLDT: Okay. We're back on the
21 record. Counsel, did you want to move an
22 exhibit?

23 MR. GALLO: Yeah, thank you, Your Honor.

24 Exhibit 16-002 I'd like to move into the record.

25 ALJ BOLDT: Any objection there?

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1 should know that there's a stipulation in place
2 between counsel at this point that the area
3 surrounded in green on the north and the area
4 surrounded in green on the south is both wetlands and
5 navigable water?

6 A I understand that.

7 Q And there's a line or broken marks --

8 MR. GLEISNER: I'm going to move over here
9 so everyone can see I hope.

10 Q -- and written in that is gravel drive, do you see
11 that?

12 A Yes.

13 Q Do you know if that is the existing roadway or path
14 or lane or whatever it is?

15 A It appears to be, yes.

16 Q Based on the testimony you gave before earlier this
17 morning to a reasonable degree of professional
18 certainty, do you have an opinion as to whether or
19 not the type of road that they plan to put in at the
20 location they plan to put it in would impact north or
21 south of the two green lines?

22 A As we just stated based on our discussion on the
23 cross-sections and removing muck to a certain depth,
24 I think we talked about removing it to maybe 10, 12
25 or 15 feet as shown on this drawing or something to

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1 MS. CORRELL: I apologize. We're back on
2 the record?

3 ALJ BOLDT: Yes, I'm sorry. Any objection
4 to 16-002?

5 MS. CORRELL: I'm sorry that I can't
6 remember what all these exhibits are. I thought
7 that was already received, wasn't it?

8 ALJ BOLDT: I think we referenced it even
9 yesterday. It's just one of those 16's we've
10 been talking about.

11 MS. CORRELL: No objection.

12 ALJ BOLDT: So 16-002 is received. I think
13 we've marked it up even so -- yep. Okay. Sir?
14 Mr. Gleisner?

15 MR. GLEISNER: Yes sir, Judge.

16 CROSS-EXAMINATION

17 BY MR. GLEISNER:

18 Q In that white book in front of you -- first of all,
19 good morning, Mr. Reinbold.

20 A Good morning.

21 Q Will you please go to Exhibit 2-002? Do you have
22 that, sir?

23 A Yes.

24 Q I'm now going to direct your attention to the TV just
25 so that we can get a little definition on this. You

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1 be determined later, we show that there would be an
2 impact to the north. And on Exhibit 143 we showed
3 that impact on the drawing -- how much it would
4 impact it to the north. Following that discussion,
5 Counsel asked me about the impact to the south where
6 the road isn't totally on new alignment, where it's
7 partially on the existing roadway, and I suggested
8 removing the existing gravel fill and using it as a
9 subgrade fill and stabilizing and removing the muck
10 underneath parts of the existing road to whatever
11 depth to be determined. It has a great possibility
12 to have some effect to the south.

13 Q And, again, based on the stipulation that was made
14 between Counsel, the area to the north is both, I
15 think I'm stating the stipulation correct, navigable
16 water and a wetland?

17 A That's what I understood from yesterday's testimony.

18 Q You were here for that, were you not?

19 A Yes, I was.

20 Q And, Mr. Reinbold, so the impact to the north would
21 be in the form of an invasion or how would that work
22 mechanically?

23 MS. CORRELL: Objection, leading.

24 MR. GLEISNER: No, I'm asking -- okay,
25 Counsel.

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1 Q How, mechanically, would this additional impact
2 manifest itself?
3 A Well, to remove the existing roadway and courses of
4 the muck, you would use a large backhoe or drag line
5 to remove it and you would be out there whatever
6 distances we determined before on this cross-section.
7 You'd be in that wetland navigable stream -- that
8 area.
9 Q And if there were settlement in this roadway, to a
10 reasonable degree of professional certainty, would
11 that also cause an impact to the north of that green
12 line?
13 A That's what the soils engineer stated yesterday based
14 on his experience with this muck and not being able
15 to do any testing that he would normally do on it
16 because normally you would have more soil borings,
17 you would have deeper soil borings, and you would
18 maybe run some additional tests. But since you have,
19 kind of like I say, protected lands there. These are
20 kind of protected when you have a wetland and that
21 and when we build a highway they're kind of
22 protected. We have to minimize our impacts to them
23 so you want to build the road so that you don't
24 impact them. You know, we can tolerate settlement of
25 the road, but you can't tolerate it moving laterally

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1 Q Could you put Exhibit 143 back up for a moment? Are
2 there numbers on there that the civil engineer
3 placed?
4 A Yes, we did and I helped calculate these numbers.
5 Q Okay.
6 A In the office, I actually worked on this drawing, did
7 this drawing in pencil, and then it was colored --
8 Q This drawing is Exhibit 144. You just pointed to
9 that, correct?
10 A Yeah, I pointed to 144 which I prepared.
11 Q And now I'm going to ask you to --
12 A And I was involved in the preparation of 143.
13 Q I apologize for interrupting you. I'm now going to
14 ask you to reference Exhibit 143 and ask you if
15 there's a way of quantifying to a reasonable degree
16 of professional certainty how much that impact would
17 be?
18 A As we determined, based on how we would build this,
19 the impacts determined just to the north, there could
20 be some additional ones to the south, we said the
21 best case scenario, you know, the impact on these
22 areas here would be this first area which was
23 computed out to be .28 acres of additional impact.
24 If you take a worst case scenario, maybe not the
25 worst but another case scenario which would be a

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1 and then maybe bubbling up somewhere that you don't
2 have any idea, like the examples of the failures that
3 I stated earlier. So with that, you want to design
4 it right in the first place because if you test roll
5 and it doesn't work then you have to take out all the
6 work that you did and you have to redo it and your
7 costs go up exponentially and so you want to do it
8 right in the first place.
9 Q Do you have an opinion to a reasonable degree of
10 professional certainty exactly how much impact will
11 occur if they build the road as they have indicated
12 they plan to? Your efforts in Exhibit 143, is that
13 what you're reaching for?
14 A Yeah, I'm looking at both of them. Well, there will
15 be impacts and that's why we wouldn't build it this
16 way because then we would have to go in and remediate
17 the damage that we did in the wetland so you want to
18 build it right the first time. And that's kind
19 of -- another one of my careers at the Department was
20 I was a trainer for quality based leadership and I
21 trained the Department staff throughout the State and
22 the one goal is you build it right the first time.
23 It's just the most efficient way to do it, it's the
24 most cost effective way to do it, and you eliminate
25 the secondary impacts from doing it quickly.

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1 little down the line, you would end up with almost a
2 half acre of additional impacts on the north side.
3 Now, after Mr. Gallo, the Counsel, asked me about the
4 impacts to the south, we did not look at that because
5 if we remove the existing road and we do some
6 additional work in that muck, it could affect
7 something to the south and that would get into the
8 wetland, but it would also leave the DNR property.
9 Q Now, just let me be clear on this one point. That
10 impact of .28 acres or .25 acres to .45 acres, that
11 would be into the --
12 MR. HARBECK: It's .28 acres.
13 MR. GLEISNER: .28, I'm sorry. I've got
14 old eyes.
15 Q That impact would be into the north green circle on
16 Exhibit --
17 A 143.
18 Q No, no, on Exhibit 2-00 --
19 A Oh, yes, it'd be in the north green circle on 2-002.
20 Q Now, that would be based on the stipulation
21 yesterday, an impact of .28 acres to .45 acres into
22 both navigable water and the wetland, is that
23 correct?
24 A Yes, I stated that it'd be into the wetland navigable
25 water streambed area just to the north of the

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1 existing Krause driveway.
2 Q And the opinion that you've just expressed, have you
3 expressed that to a reasonable degree of professional
4 certainty?
5 A I have.
6 Q Okay. Let's -- are you familiar with this exhibit,
7 Counsel -- Mr. Reinbold? I'm tired.
8 A I got promoted.
9 Q Yes, you did get promoted.
10 ALJ BOLDT: Demoted.
11 MR. GLEISNER: Yeah, maybe you would
12 consider that a demotion, actually.
13 Q Okay. The estimated -- the additional acreage that
14 you have referenced there on Exhibit 143 would total
15 approximately three-quarters of an acre, am I
16 correct?
17 A Which numbers?
18 Q .28 acres and .45 acres.
19 A We don't add those together. The .28 acres is the
20 first impact. That was based on our first estimate
21 of impact going out and then the more worst case
22 scenario, it would be that so --
23 ALJ BOLDT: That's a range of potential
24 likely --
25 THE WITNESS: It's a range of potential

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1 MR. GLEISNER: What are you talking about?
2 MS. CORRELL: Mr. Gallo is going to confer
3 with you regarding the testimony.
4 MR. GLEISNER: Mr. -- Your Honor, if they
5 confer with me there's no objection to that, I
6 don't think.
7 MS. CORRELL: I think we have previously
8 asked for one counsel at a time.
9 ALJ BOLDT: One talking at a time per
10 witness.
11 MR. GLEISNER: That's very correct. Only
12 one of us can talk at a time, but I think we can
13 confer.
14 ALJ BOLDT: You can write notes to each
15 other and --
16 MS. CORRELL: Right.
17 MR. GLEISNER: And that would be hard for
18 us to get a note over here. We could fly a
19 paper airplane.
20 ALJ BOLDT: Maybe with all your high tech
21 equipment.
22 MS. CORRELL: All right. So noted.
23 Q And the worst case scenario would be that you would
24 add .45 acres to .16 acres and how much impact would
25 that result in?

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1 impact from .28 to .45.
2 Q Are you aware, sir, that the wetland delineation here
3 is .16 acres?
4 A Yes.
5 Q Would those numbers that you have referenced, .28 and
6 .45 acres, to a reasonable degree of professional
7 certainty, be in addition to that .16 acres?
8 A Yes, it is, most definitely. The .16 is at a
9 different location. It's out in the parking lot
10 area.
11 Q And so in the first instance, the best case scenario
12 that you mentioned, .28 acres would have to be added
13 to .16 acres?
14 A Yes, and that comes out to .44.
15 Q Acres?
16 A Right.
17 Q And that calculation was done yesterday by Mr. Giese,
18 is that correct?
19 A Yes, he added the numbers on. I did the calculation
20 with him to come up with the .28.
21 MS. CORRELL: Counsel, can -- one counselor
22 can handle the witness.
23 MR. GLEISNER: What was that? I'm sorry?
24 MS. CORRELL: I think one petitioner at a
25 time can handle the witness.

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1 A That comes up to .61 acres.
2 Q I now want to refer your attention for a moment, if I
3 may, to the -- I'm going to call up a general
4 exhibit. I don't believe this has been admitted, 00,
5 and I'm just going to ask you if you recognize
6 the -- on that exhibit, the Krause site?
7 A Yes, I do.
8 Q And would you please identify that for the record?
9 You don't have to --
10 A It's identified by the black line that is drawn
11 around it. It's not totally (inaudible) a DNR
12 easement along this north/south road.
13 Q Yes, sir. Now, let me just ask you this question
14 then to a reasonable degree -- no, first of all, let
15 me ask you, have you made a personal observation at
16 any time -- on the eastern edge at the point where
17 the Krause site intersects with North Lake, have you
18 made any observations concerning water flow?
19 A I visited the site, you know, often over the years
20 and I have noticed water flowing out of the drainage
21 ditch on the north side of the Krause property. I've
22 also noticed water going west and south. In fact,
23 when I determined elevations for the NRC, which is an
24 acronym for a consultant that we hired to monitor
25 water and determine wetlands, I determined elevations

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1 both north and south of the Krause driveway and, with
 2 those elevations, determined that the water was
 3 flowing south to north and sometimes flowing north to
 4 south. And, of course, that would mean it would flow
 5 east and flow west also.
 6 Q Thank you very much.
 7 MR. GLEISNER: Just a moment. Okay. Bear
 8 with me just a moment, please.
 9 Q I'm now going to make reference in the white book to
 10 Exhibit 008. It is also in the DNR book at 1092.
 11 MR. GLEISNER: And while you're getting to
 12 that point, I'll move the admission of
 13 Exhibit 00.
 14 ALJ BOLDT: Is this what's called Exhibit
 15 8?
 16 MR. GLEISNER: Yes, correct.
 17 ALJ BOLDT: Okay. Any objection to that
 18 overview map?
 19 MS. KAVANAUGH: Overview map. It's 00 and
 20 that's an --
 21 MS. CORRELL: Well, it is? Yeah, I don't
 22 know what the source is. No objection.
 23 ALJ BOLDT: Okay. 00 is received.
 24 MR. GLEISNER: So it's that one. You've
 25 got 8, don't you? You're talking about 00,

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1 MS. CORRELL: Attorney Gleisner, could you
 2 please wait a moment so that I can locate the
 3 exhibit?
 4 MR. GLEISNER: Oh, certainly. Counsel, I'm
 5 so sorry. I apologize.
 6 MS. CORRELL: I realize I'm slow at turning
 7 these pages, but if I do it faster I lose them
 8 all in the binder.
 9 MR. GLEISNER: No, you tell me when you're
 10 ready, Counsel. That happens to me too,
 11 Counsel.
 12 MS. CORRELL: There's quite a few. Okay.
 13 I'm there. Thank you.
 14 Q Now, Mr. Reinbold, you testified earlier that you
 15 taught quote, unquote surveying courses at MATC?
 16 A That is correct. I did it for almost 20 years. I
 17 taught four different courses in the civil technology
 18 program and two courses in the -- and two other
 19 courses in an apprenticeship program for carpenters,
 20 laborers, and masons.
 21 ALJ BOLDT: And that's the Milwaukee Area
 22 Technical College?
 23 THE WITNESS: Milwaukee Area Technical
 24 College.
 25 A But then the apprenticeship courses I taught at the

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1 right?
 2 MS. CORRELL: 00, yeah. No objection, I'm
 3 just -- I don't know where it came from, but I
 4 don't care, it's fine.
 5 MR. GLEISNER: It should be just before
 6 10A.
 7 ALJ BOLDT: Or she means the photographs.
 8 Is that an aerial photograph?
 9 MS. CORRELL: It's source. A lot of
 10 documents have like an inset saying who created
 11 them.
 12 MS. KAVANAUGH: This one doesn't.
 13 MR. GLEISNER: I'm sorry, it does not.
 14 MS. CORRELL: And I apologize if I missed
 15 and you went through it. I just -- no
 16 objection.
 17 MR. GLEISNER: Thank you, Counsel.
 18 Q I'm going to call up on the board now Exhibit 8 and
 19 do you have that in front of you --
 20 A Yes, I do.
 21 Q -- Mr. Reinbold?
 22 A Yes.
 23 Q Some foundational testimony is required at this
 24 point, Mr. Reinbold. You testified earlier that you
 25 taught --

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1 Waukesha Area Technical College.
 2 ALJ BOLDT: Okay. And just -- we had
 3 another acronym that I don't think has been
 4 defined is we had SEWRPC. Is that the Southeast
 5 Wisconsin Regional Planning Commission?
 6 THE WITNESS: Regional Planning Commission,
 7 that's correct.
 8 ALJ BOLDT: Okay.
 9 MR. GLEISNER: Thank you, Judge.
 10 Q Now --
 11 A And the course, you know, it's a surveying course
 12 that was in the civil technology program that was
 13 required by certain students, depending upon which
 14 curriculum they were following. I taught night
 15 school so most of my classes made up with young men
 16 that were working in the surveying field. They were
 17 on survey crews, they were leading survey crews, and
 18 they wanted to know more information on how to, not
 19 only use their instruments, but how to do the
 20 mathematical calculations that went with surveying
 21 and we taught them how to do property surveys. And
 22 these are people that are interested in using this
 23 knowledge to be taking the land surveying exam to
 24 become a registered land surveyor.
 25 Q Thank you very much. Now, that would be the type of

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1 surveying that Mr. Powers did, for example?
 2 A That is correct. And I don't remember what he said
 3 he took, but he would be the type of person or a
 4 person on his crew that would have actually been in
 5 my class or a person like him that works for another
 6 company. As I said, quite a few of my students work
 7 for survey companies. And we did surveys, we
 8 did -- and (inaudible) them mathematically. We did
 9 topographic surveys with the old style equipment and
 10 the new style equipment, determined elevations and
 11 topographic features on the map.
 12 Q Now, with that in mind, I'm going to turn
 13 back -- we'll come back to this exhibit in just a
 14 moment. I'm going to turn back to Exhibit 2-007 and
 15 I'm going to inform you that there has been testimony
 16 educed earlier, particularly by Mr. Powers, that that
 17 green area is a grove of trees. Are you familiar
 18 personally with that area?
 19 A Most definitely I'm familiar with the -- as what
 20 everybody has been referring to as the grove of
 21 trees. I'm very familiar with it.
 22 Q Have you been in it personally?
 23 A I have been in it.
 24 Q And --
 25 A And around it.

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1 MS. CORRELL: Just leave it.
 2 MR. GLEISNER: This is pretty clearly
 3 marked on that exhibit as where it is located.
 4 It's right next to the Hanson boundary and
 5 I -- the survey --
 6 MS. KAVANAUGH: But it doesn't show where
 7 the other grove of trees is so I'm just trying
 8 to verify. Is this the western-most one or the
 9 middle one?
 10 MS. CORRELL: I think he said the green
 11 area is what the question is so that's enough.
 12 MR. HARBECK: It's the famous grove of
 13 trees.
 14 MS. KAVANAUGH: I know, I've just never
 15 been real familiar with what it is.
 16 MS. CORRELL: It is famous now. You're
 17 referring to the green. I think we can go
 18 forward, right?
 19 MS. KAVANAUGH: That's fine.
 20 ALJ BOLDT: Okay. Sure.
 21 MR. GLEISNER: Thank you very much.
 22 Q So you've been in that grove?
 23 A Yes, I have.
 24 Q Okay. Now I'm going to go back to Exhibit, there it
 25 is, 8. Do you know who did this survey drawing?

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1 MS. CORRELL: Can I call for clarification
 2 on what everybody is referring to as the grove
 3 of trees? Is it the green area on that exhibit
 4 in front of me?
 5 MR. GLEISNER: That is correct, yes.
 6 Q And you walked through it yesterday or walked around
 7 it?
 8 MS. CORRELL: But, however, one of the
 9 witnesses also identified some other areas that
 10 were outside of that green area, is that
 11 correct?
 12 MR. GLEISNER: I believe that he identified
 13 another grove of trees on the property. That's
 14 my recollection. I am specifically referring to
 15 the grove of trees that is located on
 16 Exhibit 2-007 to the east of the -- in the
 17 eastern quadrant of that exhibit and it's in
 18 green and has been previously identified as a
 19 grove of trees. Just so we're clear, Your
 20 Honor.
 21 MS. KAVANAUGH: And, Bill, related to what
 22 we said, that's the grove of trees that's sort
 23 of in the middle? There's another grove of
 24 trees further west. There's two groves of trees
 25 out there.

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1 A It was received and it says topographic survey map
 2 provided by DNR 12-4-08.
 3 Q And would you look at that topographical map and tell
 4 me where the grove of trees is located on there? Is
 5 it identified on there?
 6 A It is not.
 7 Q To a reasonable degree of professional certainty,
 8 does that surprise you?
 9 A Very much so.
 10 Q Why?
 11 A Well, when you send a crew out to pick up data on a
 12 site, you pick up all the data for all the trees on
 13 the site, any other man-made features like the
 14 concrete slab that's shown there, and this grove of
 15 trees shows one tree, not the whole grove. They
 16 collected a lot of elevation points on the site, but
 17 there's no elevation points shown on this topographic
 18 map in the grove of trees. And when I looked at the
 19 aerial photo with the grove of trees and I looked
 20 at -- when I got this drawing, I couldn't believe it.
 21 It was the first thing that stuck out in my mind,
 22 that how did they miss it. Obviously, if this was
 23 one of my students, he'd be back out in the field
 24 again. If it was one of my crews on one of my
 25 projects, he'd be back out collecting the missing

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1 data.
 2 MS. CORRELL: I don't mean to interrupt,
 3 but there's an objection to the relevance of
 4 this document with respect to navigable waters
 5 and also that it's outside the jurisdictional
 6 scope. It is labeled at the top Figure 5, Soil
 7 Pit Locations and Depth to Water Table at
 8 US Army Corp of Engineers Meeting May 5, 2010.
 9 ALJ BOLDT: I'm sorry, where does it -- oh,
 10 okay, I see it. Okay.
 11 MR. GLEISNER: I'll read into the record
 12 what is written at the top left-hand of the
 13 Exhibit 8. Topographic -- the northwest,
 14 extreme northwest, corner. "Topographic Survey
 15 Map Provided by DNR 12-4-08." I will then read
 16 into the record what is located at the extreme
 17 northern perimeter of Exhibit 8. "Figure 5 Soil
 18 Pit Locations and Depth to Water Table at USAC
 19 Meeting May 5, 2010." And I will observe in
 20 answer to Counsel's objection, Judge, that the
 21 depth to water table is one of the issues that
 22 one would have to consider with respect to
 23 navigable water.
 24 MR. HARBECK: That would be my argument.
 25 MS. CORRELL: And this witness is not a

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1 it was put in there. It has a bore here and a
 2 bore somewhere else. There are two boring
 3 locations shown here.
 4 MS. CORRELL: Are those the red dots? I
 5 don't see a legend.
 6 THE WITNESS: There was no legend on it.
 7 It's just topographic information that was
 8 supplied by the DNR, assumed that it was taken
 9 by their consultant, Kapur and Associates, who
 10 did the survey on the site.
 11 MS. CORRELL: I can't link the connection
 12 and relevance to this document. I'm not sure
 13 what it was produced for. I mean there have
 14 been a lot of documents in this -- I mean if
 15 we're going to talk big picture, there are a lot
 16 of documents regarding the general boat launch
 17 and I just can't tell from this, other than it's
 18 labeled as created by the Army Corp, and I can't
 19 understand why it's relevant here. If you
 20 can --
 21 ALJ BOLDT: I think it was provided by DNR
 22 to the Army Corps is the way I would read that.
 23 MS. KAVANAUGH: It's not labeled as who
 24 created it.
 25 ALJ BOLDT: But, yeah --

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1 witness that can opine as to the location of
 2 navigable water. He is quite a renowned expert
 3 in other areas.
 4 MR. GLEISNER: Who is that?
 5 MS. CORRELL: Your witness.
 6 ALJ BOLDT: Mr. Reinbold.
 7 THE WITNESS: My kayak experience doesn't
 8 count?
 9 MS. CORRELL: Engineer Reinbold is very
 10 qualified to assess those engineering issues,
 11 but not location of navigable waters.
 12 MR. GLEISNER: Wait a minute, wait a
 13 minute. Counsel, he's just testified that he
 14 taught surveying for 20 years.
 15 MS. CORRELL: Correct. And this is soil
 16 data taken by the federal agency that regulates
 17 wetlands.
 18 THE WITNESS: Can I make a comment? The
 19 document that I received was different than this
 20 one. It did not have this note on Figure 5 Soil
 21 Pit Locations and Depth of Water. It had the
 22 handwritten note on the upper left-hand corner.
 23 MR. GALLO: It had the same --
 24 THE WITNESS: This drawing does show where
 25 the soil borings were taken and maybe that's why

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1 MS. KAVANAUGH: Or for what purpose. It
 2 doesn't have --
 3 MS. CORRELL: Oh, that's true. It could be
 4 part of the SEWRPC report or something. I don't
 5 know.
 6 ALJ BOLDT: I'm not sure what the point is
 7 to critique that drawing. Given its purpose on
 8 its face I don't think the critique is that
 9 relevant, frankly.
 10 MS. KAVANAUGH: It doesn't have contour
 11 lines so it's not really a topo map, is it?
 12 It's --
 13 MS. CORRELL: So I think he just overruled
 14 us so --
 15 THE WITNESS: It's data information used to
 16 develop a topo map. If you go to
 17 Exhibit 16-002, it's the same drawing with
 18 contour lines on it.
 19 MR. GLEISNER: Which is up on the board and
 20 may I ask the witness some questions about
 21 16-002 for the purposes of --
 22 ALJ BOLDT: Yeah, that one is already in
 23 the record.
 24 MR. GLEISNER: Thank you, Judge.
 25 Q With regard to 16-002, do you see on that survey the

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1 grove of trees?
 2 A No.
 3 Q Do you see elevations shot in the grove of trees?
 4 A No.

5 MR. GLEISNER: I would submit, Judge,
 6 that -- I don't want to belabor the point, the
 7 record speaks for itself, but they ignored the
 8 grove of trees.
 9 ALJ BOLDT: Well, that's --
 10 MS. KAVANAUGH: Let the record speak for
 11 itself.
 12 MS. CORRELL: I'm sorry, I didn't catch the
 13 last statement.
 14 MR. GLEISNER: The DNR ignored the grove of
 15 trees.
 16 MS. CORRELL: So you're making a conclusion
 17 or are you asking a question?
 18 ALJ BOLDT: In what context and which of
 19 your issues that we went through with Mr. Gallo,
 20 which of those are you arguing that this is
 21 relevant towards, that they ignored the grove of
 22 trees on this particular drawing?
 23 MR. GLEISNER: I'm arguing, Judge, that the
 24 fact is that they never took the grove of trees
 25 into account for the purposes of establishing

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1 Again, what's the relevance? What issue are we
 2 addressing.
 3 MS. KAVANAUGH: Don, you're an engineer,
 4 you know that a contour line means that it's all
 5 the same.
 6 MR. GALLO: I understand. I understand.
 7 And it's a good point -- it's a good point.
 8 MS. KAVANAUGH: Yeah, so if there's
 9 spots --
 10 MR. GALLO: But the relevancy goes to the
 11 identification of navigable waters.
 12 MS. KAVANAUGH: Okay. But what does the
 13 grove of trees have to do with navigable waters?
 14 MR. GALLO: I don't think -- that's just a
 15 physical description of an area on the property.
 16 MS. KAVANAUGH: So then why is it relevant
 17 that it's not shown on that map?
 18 MR. GALLO: You just said it is shown. The
 19 elevations are shown.
 20 MS. KAVANAUGH: No, Mr. Gleisner just said
 21 DNR ignored that map -- the grove of trees.
 22 MR. GALLO: I understand. I don't think
 23 the trees themselves make a difference, the
 24 elevations are important.
 25 MS. CORRELL: Should we go off the record

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1 anything.
 2 MS. KAVANAUGH: Well, if it's not on there,
 3 how do you know that?
 4 ALJ BOLDT: I asked you a specific
 5 question. The nexus between this and which of
 6 those issues that Mr. Gallo laid out are you
 7 saying that there's relevance?
 8 THE WITNESS: I think this goes to
 9 Mr. Gleisner's issue?
 10 MR. GALLO: I think --
 11 ALJ BOLDT: No --
 12 THE WITNESS: Oh, I'm sorry.
 13 ALJ BOLDT: -- those are the issues for
 14 the hearing.
 15 MR. GALLO: If I could be heard? I think
 16 this goes to the DNR's delineation or lack
 17 thereof of navigable waters.
 18 ALJ BOLDT: The grove of trees? You're
 19 saying the grove of trees?
 20 MR. GALLO: The elevations --
 21 MS. CORRELL: We have to delineate trees?
 22 MR. GALLO: The elevations in that grove of
 23 trees area. There's a bare spot in this topo
 24 map where there's no elevations.
 25 MS. CORRELL: There are contour lines.

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1 or --
 2 ALJ BOLDT: No, the objection is sustained.
 3 Let's move on.
 4 MR. GLEISNER: Thank you, Your Honor. No
 5 further questions, Your Honor.
 6 ALJ BOLDT: Okay. Where are we now?
 7 MS. CORRELL: So can I move to strike that
 8 line of questioning then?
 9 ALJ BOLDT: The objection is sustained. I
 10 won't rely on that and so --
 11 MS. CORRELL: Okay. Thank you.
 12 ALJ BOLDT: Any other questions of Mr.
 13 Reinbold?
 14 MS. CORRELL: Yes, I have a few questions,
 15 if it's my turn.
 16 CROSS-EXAMINATION
 17 BY MS. CORRELL:
 18 Q Thank you, Mr. Reinbold, for taking the time to
 19 attend this lengthy hearing process and also, as the
 20 Judge mentioned earlier, for some of your projects.
 21 You obviously have quite a bit of expertise and
 22 knowledge in engineering and have been awarded as
 23 such as well as being given responsibility for large
 24 projects that are complicated. You testified
 25 regarding various projects of which you had personal

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1 experience and I'm not positive, but I suspect you
 2 were probably in a supervisory capacity in each of
 3 those examples that you provided. And you referred
 4 to being a victim of failures at times and you gave a
 5 few specific examples, is that correct?
 6 A I believe so.
 7 Q And one of those failures had to do with an airport
 8 spur. Had you ever designed an airport project
 9 previously to that project?
 10 A I have not. When I said airport spur, that is the
 11 freeway that connects I-94 to Mitchell Field.
 12 Q So your expertise, obviously, for 45 years, I think
 13 you stated, is in primarily transportation --
 14 A Yes.
 15 Q -- as it connects to engineering and primarily
 16 working for the DOT you would take into consideration
 17 DOT standards in establishing what the criteria to
 18 build to, is that correct?
 19 A And other standards. It depends upon the location of
 20 the project, but generally it was DOT standards.
 21 Q What other standards might you rely upon?
 22 A Well, I haven't used other standards recently, but
 23 when you have a state highway there's certain
 24 standards, when you have a county highway there's
 25 certain standards, when there's a town road there's

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1 respect to a public boat launch or --
 2 A I did not do any work or design a boat launch on
 3 your -- I didn't look at the boat launch.
 4 Q So is your answer not that you're aware of?
 5 A I don't know the specifications for a boat launch.
 6 Q Okay. But would it be fair to say that one of the
 7 factors you would consider in your professional
 8 expertise would be the speed at which vehicles would
 9 be traveling on a road?
 10 A Speed has to do with the geometrics design, weight of
 11 the vehicles has to do with the capacity design.
 12 Q But wouldn't speed of 65, and perhaps some people
 13 speed a little bit, so an average speed for, say, a
 14 state highway or interstate, wouldn't those types of
 15 roads be designed such that they could sustain the
 16 vibration that would be greater at a larger speed?
 17 A The speed is affected by the geometry of the road.
 18 The geometry dictates the speed and the load carrying
 19 capacity of the pavement structure takes care of the
 20 load so you're kind of mixing the two things
 21 together.
 22 Q Right. I'm breaking them out into separate issues so
 23 my question -- if you could -- maybe you can explain
 24 to me what you mean by geometry of the road?
 25 A Turns, degree of the curvature, how much it goes

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1 certain standards, when there's a parking lot there's
 2 certain standards.
 3 Q Because I'm not as knowledgeable -- well, obviously,
 4 not as knowledgeable as you, possibly quite ignorant
 5 in the field of engineering, would you say that a
 6 town road standard would be a little more lenient
 7 than a Wisconsin DOT standard?
 8 A Most definitely. Most definitely. It's based on the
 9 types of traffic. That's how your road system is
 10 designed. The roads with more traffic are state
 11 roads, less traffic county roads, less traffic or
 12 local access are town roads or local streets.
 13 ALJ BOLDT: Would you say that the design
 14 of this project violates any standard that
 15 you're aware of? I mean for a project of this
 16 type?
 17 THE WITNESS: Well, basically, when you
 18 look at the width in the pavement design, it's
 19 fine. When you look at the subgrade and below
 20 yeah, it has to be talked about. There are
 21 problems.
 22 ALJ BOLDT: Okay.
 23 Q But I think the Judge's question is a good one and I
 24 was going to get to that eventually, but is there a
 25 particular standard that is required to be met with

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1 around. You've been on a highway where it says sharp
 2 curve ahead, slow down. That affects the speed.
 3 It's the geometry of the road that determines the
 4 speed. Sometimes it's the volume of traffic that
 5 determines the speed -- the number of vehicles.
 6 Q You've been here for the entire testimony?
 7 A Just about.
 8 Q And my understanding was, based on some of the
 9 testimony provided by Mr. Giese, was that you can
 10 have vibration based on travel down a road if it's
 11 not properly designed such that it may affect
 12 properties nearby. He talked about a nuisance issue?
 13 MR. HARBECK: I object to the form of the
 14 question, Your Honor. Giese didn't talk about
 15 traffic, he was talking about the construction
 16 of the road itself and the vibrations it would
 17 create in terms of the nuisance issue.
 18 MS. CORRELL: I may be mistaken.
 19 ALJ BOLDT: Yeah, that's a fair --
 20 MS. KAVANAUGH: I think that might be true.
 21 ALJ BOLDT: -- description of his
 22 testimony.
 23 Q Would you consider the weight of the typical vehicle
 24 in designing highways to DOT standards?
 25 A Well, there's a couple things that affect the design.

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1 It has to do with the weight of the vehicles on the
 2 road and it has to do with the freeze thaw. The
 3 number one problem with failures on the highways and
 4 roads in Wisconsin is the freeze thaw. The second
 5 most impact on our road is the weight of the
 6 vehicles.
 7 Q But about how many vehicles travel on the road?
 8 A Only one can be on that section of the road at a
 9 time.
 10 Q Correct. But if thousands of vehicles travel over
 11 that section in the course of two days, as opposed
 12 to, say, 100 vehicles, isn't there a difference?
 13 A Yes, that determines the design of the pavement
 14 structure and the pavement structure is the asphalt
 15 and the crushed stone below it.
 16 Q So let me see if I understand what you just stated.
 17 Does that mean that you might design a greater depth
 18 of concrete and stone for more vehicles?
 19 A For more vehicles, that is correct. That is correct.
 20 This is really a minimalist design. It's probably a
 21 parking lot design, you know, the thickness of the
 22 asphalt and the crushed stone. It's not a big
 23 highway design that's going in here. The
 24 pavement --
 25 Q Right.

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1 or the one that was done prior to being there?
 2 Q I can go through each one of them if you'd like me to
 3 do it separately.
 4 A Well, where I explained the failure on the airport
 5 spur, it was work that was done on a project before I
 6 was there. I don't know what standards the project
 7 was built to because I was not there, but because of
 8 what they did --
 9 Q Okay. And that's understood, your testimony on that.
 10 A That project, what we did on top of it, not knowing
 11 what was there because it was covered up, our project
 12 failed and we had to remove the earth fill, remove
 13 the poor material, and replace it with select
 14 (inaudible).
 15 Q Okay. So you had to correct a problem --
 16 A That was previous --
 17 Q -- but would the prior either consultants or -- I
 18 suspect it was probably consultants that had
 19 constructed the road?
 20 A I don't know if it was a consultant project, a
 21 DOT --
 22 Q Can I ask a question though?
 23 A I'm sorry.
 24 Q Would the original construction have to -- would the
 25 original construction have had to comply with DOT

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1 A -- and the asphalt is still only so thick so it's
 2 not designed as a highway.
 3 Q Well, certainly, based on your experience, this would
 4 be small potatoes, right sir?
 5 A No, we've done many projects over the years. I rated
 6 bridges on town roads. We used to -- in fact, the
 7 DOT used to design and build the roads for the DNR
 8 through the parks.
 9 Q So getting back to some of the examples that you
 10 alluded to, as I mentioned, you had testified that a
 11 couple of times failures did occur. On those
 12 projects would it be fair to say that you followed
 13 the reasonable professional customs and standards of
 14 professionals in your field?
 15 A Yes. The example I gave on the airport spur, the
 16 failure occurred because of what the previous project
 17 did in leaving unsuitable material below what they
 18 did and when we raised the grade and built on top of
 19 it, it failed. So what we did was correct what was
 20 done when the previous job failed, but we had to
 21 correct it and it was very costly and time consuming.
 22 Q So isn't it accurate to say that even following the
 23 best -- or, rather, following reasonable professional
 24 standards, failures can occur?
 25 A On which project are you referring to, the one I did

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1 standards?
 2 A That is correct and somebody did not comply with
 3 them. Whether they were disciplined or not, I'm not
 4 aware of.
 5 Q And you gave two examples, I believe, also regarding
 6 highways. You said a project up in the north where a
 7 highway resulted in some slumpage and failure of an
 8 island, I think you described it as, into the lake?
 9 Are you --
 10 A I remember that example.
 11 Q Can you describe that in a little more detail because
 12 I don't know how to refer to it other than island in
 13 the lake?
 14 A It was a fill roadway that was widened and they were
 15 doing it correctly, stepping it into the existing
 16 fill.
 17 Q Can you specify who they is? Is that your team?
 18 A The contractor was a contractor working for the
 19 Department of Transportation --
 20 Q Okay.
 21 A -- was following the procedures. And that example
 22 is given because even the best steps taken to widen
 23 an existing fill in an area where there's soft
 24 soils -- this was adjacent to some lakes. I was not
 25 on this project. This was a project that was

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1 presented at an engineering conference of engineers
 2 in the Department of Transportation as what not to do
 3 and in that case, they were following a practice.
 4 Because of some subsoil conditions, this whole new
 5 fill sloughed off, went down, and came up and formed
 6 an island in the lake. And it might even have been
 7 an example in the DNR office of a failure of what to
 8 look for when you're building in these types of
 9 conditions, but I don't know the depth of the soil or
 10 the height of the fill. It was a pretty large
 11 project. And they had a rain overnight and they came
 12 back in the morning and their new earth that they
 13 were filling in next to the existing fill slid down
 14 and came up in the lake.

15 Q And I thought you mentioned another example that had
 16 to do with an area that sort of also was slumpage
 17 that ended up being sort of a low-lying but grassy
 18 island in another highway project.

19 A That was I-94 between the upper and lower (inaudible)
 20 lakes.

21 Q Thank you for refreshing my recollection. And is
 22 that a project that you were involved in?

23 A No, that was -- I was working for the Department, but
 24 I was not involved in it.

25 Q But it was a Department project?

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1 soils that might not be best suited for roadways such
 2 as soft clays or other soft materials?

3 A Right. Most -- as I just said, most of the soils in
 4 southeastern Wisconsin are poor soils for roads
 5 unless you get into some of the Kettle Moraine areas
 6 where it's gravel and sand. Then you have some -- as
 7 you get up in the central part of the State, you have
 8 some good sand, but generally the silty clays are
 9 poor. They're very susceptible to frost heave and
 10 that's the number one enemy to roads.

11 Q And I think you testified that on the DNR access site
 12 you have concerns about the soils?

13 A Yes.

14 Q And you opined that there could be failure at the DNR
 15 access site, but you also opined that there may be
 16 other engineering solutions to address the load
 17 spread and shoring up of the base for the road, is
 18 that correct?

19 A I believe we were looking at doing deeper borings,
 20 more borings, to determine more information so that
 21 we could come up with the best solution at this
 22 location.

23 ALJ BOLDT: Did you have a specific --

24 Q I think they're two separate issues.

25 ALJ BOLDT: Can I ask on this --

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1 A It went on over different years. When they built the
 2 new highway going to Madison, they put in the fill
 3 with a short bridge and that's when it occurred.
 4 When we came back and made Highway -- I think it was
 5 30 still at the time being converted to I-94, that's
 6 when they made it a divided highway and the eastbound
 7 roadway was then built on a long land -- what we call
 8 a land bridge. It's over some water, but it's also
 9 over land because there's so much soft soils there
 10 between the two lakes and that's why they built the
 11 land bridge, because when they built the earlier
 12 bridge they had that failure. And that's something
 13 that the Department does is keep records on projects
 14 so when you come back and work in the same area, you
 15 have an idea of what exists and you move on and make
 16 things better.

17 Q Don't make the same mistake twice, right?

18 A Well, it's tricky and that's why, when you get
 19 into -- when you get into pushing things into soft
 20 soils you get into a little problem and Wisconsin
 21 does not have good soils. In fact, the whole
 22 southern part of the State has poor soils for
 23 highways.

24 Q And when you say it's fairly common to not
 25 necessarily run into wetland areas, but perhaps other

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1 MS. CORRELL: Yes.

2 ALJ BOLDT: -- because this case is a mess
 3 in terms of jurisdiction --

4 MS. CORRELL: Uh-huh.

5 ALJ BOLDT: -- but typically I have the
 6 right to consider conditions. So are you saying
 7 as a matter -- in your opinion as a professional
 8 engineer, that there should be more soil borings
 9 taken and, if so, how many and where? Because
 10 before I asked you that and you kind of said
 11 well, maybe you need to do that or maybe you
 12 could figure it out, just sort of reasoning out
 13 what the likely subsoil is basically.

14 THE WITNESS: I would agree with the soils
 15 engineer that spoke yesterday. Paul made a
 16 statement that there would be an additional, I
 17 believe -- I believe he said up to three or four
 18 more borings and they should go to the bottom of
 19 the soft soils. And I also agree with his
 20 recommendation that we would excavate down 10 to
 21 15 feet to remove the muck so you can control
 22 the settlement and control the lateral movement
 23 of the muck into the wetland. If it was a
 24 farmer's field next to us, there wouldn't be as
 25 much of a problem because it would be a more

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1 confined wetland. Some wetlands are just
 2 potholes. This one is just going right through
 3 the middle of a large wetland with a lot of muck
 4 so you could have soils being pushed out to the
 5 left or to the right. And what you'd want to do
 6 is minimize the settlement and minimize the
 7 lateral movement because you would not want to
 8 impact the wetland or the navigable water area
 9 or the streambed.

10 ALJ BOLDT: And is it -- am I right in
 11 understanding your testimony that another way to
 12 minimize the impacts laterally is your
 13 suggestion to take up the old roadway and use
 14 that as your select fill as you go along?

15 THE WITNESS: I would recommend that being
 16 as a select fill because there's muck underneath
 17 the existing road that's there and you really
 18 need to treat the entire new roadway as a unit.
 19 If you only build a half a road, you're going to
 20 end up with a half a road so you really need to
 21 do it all together. There is some consolidation
 22 of material under the existing road, but not
 23 enough to support and prevent movement of the
 24 soft material, further consolidation or lateral
 25 movement into the wetlands.

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1 blah, blah, I don't know exactly what authority
 2 I have and I think we're likely to have briefs
 3 on that, but what about minimizing potential
 4 impacts to water flow towards neighboring
 5 riparians or neighboring -- towards the
 6 neighbors generally. In particular, I think
 7 it's up on -- I forget their name.

8 MS. CORRELL: North is Peters.

9 ALJ BOLDT: Peters property. Is there
 10 anything in this design that you saw that gives
 11 you cause for concern about -- that the water is
 12 going to be redirected? I mean I understood
 13 your testimony to be that that is a concern up
 14 there in that one particular area. And I don't
 15 have the exhibits in front of me and I'm winging
 16 it here, but I think you know what I'm talking
 17 about. Is there any way -- or if that's not
 18 your area of expertise too, that's -- in terms
 19 of how to minimize that potential?

20 THE WITNESS: Well, I have to go back to
 21 what Mr. Gleisner was asking me about the survey
 22 data that was provided us from the DNR that had
 23 topographic data on it. To me, it was
 24 inadequate. It didn't even cover the entire DNR
 25 site. It was later re-surveyed. The re-survey,

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1 ALJ BOLDT: And is there anything else that
 2 you would recommend in terms of minimizing
 3 either the possibility of failure or lateral
 4 secondary impacts to wetlands and/or navigable
 5 wetlands?

6 THE WITNESS: I think what I recommended
 7 was the most cost effective. Obviously, the one
 8 that would -- you would totally minimize the
 9 impacts is just do a land bridge over it, but
 10 that's -- that would be foolish for
 11 the -- because of the cost here and the usage of
 12 the property.

13 ALJ BOLDT: Okay. As far as the cost, is
 14 taking up the existing roadway and using -- if
 15 you use that as fill, it's not a whole lot more
 16 expensive, is it?

17 THE WITNESS: No, moving that dirt around
 18 is not a big thing, but what you want to do is
 19 get at that soft material and remove a certain
 20 amount of it so that you can control your
 21 settlement and any movement of anything
 22 displacing anything in your wetland.

23 ALJ BOLDT: And just while we're on this
 24 conditions thing which is kind of my purview, or
 25 maybe not. Given that it's a Manual Code, blah,

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1 the ditch along the north property line, that
 2 was not done back in '08. They didn't do any
 3 survey on any of the adjoining properties to
 4 determine which way any of the drainage goes or
 5 water flows this way or that way. You don't
 6 really know the impacts to the surrounding
 7 properties because nobody collected the data.

8 MS. KAVANAUGH: And, Judge, I guess I would
 9 object because there's nothing that shows where
 10 you have even a procedural -- I mean a
 11 substantive standard in 30.12 or 299, anything,
 12 that requires us to do that.

13 ALJ BOLDT: No, I understand that and I
 14 just want to make sure that I've flushed this
 15 out and then we can decide oh, you have
 16 jurisdiction here and you don't have it there or
 17 you don't have the right to impose conditions.
 18 It's either up or down or I don't know exactly.

19 MS. KAVANAUGH: But I mean if this was
 20 30.12, you know, as Megan -- Counsel Correll has
 21 pointed out, you know, that's a common law
 22 remedy, you know, under --

23 ALJ BOLDT: Well, neighboring
 24 riparians -- I think there are cases that have
 25 impacts to neighboring riparians as part of the

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1 public interest.
 2 MS. KAVANAUGH: But 30.12 doesn't talk
 3 about that.
 4 ALJ BOLDT: I agree. It's not in the
 5 standard. I think it's in the case law in terms
 6 of public interest.
 7 MS. KAVANAUGH: Well, but riparian --
 8 MS. CORRELL: If you're obstructing their
 9 riparian zone or in what context?
 10 ALJ BOLDT: Yeah, I'm just trying to make
 11 sure that I have a full record here. And I
 12 understand that there are objections and I
 13 understand that there are limits to my
 14 jurisdiction, believe me, and some of them are
 15 welcome. But, on the other hand, you know, I
 16 just want to make sure -- is there anything, as
 17 a practical matter, that you, in all your
 18 experience, would see as being an addition to
 19 minimize that kind of concern? I mean, in
 20 theory I'm sure -- I mean the argument that I've
 21 heard is that this is a navigable waterway and
 22 that you're redirecting the flow of it so
 23 that's --
 24 MS. CORRELL: Doesn't storm water address
 25 that and there's currently no treatment on the

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1 to make sure the record is complete here.
 2 MR. GLEISNER: And, Judge, speaking in
 3 favor of the Judge's questioning, I think this
 4 is a classic issue that could be taken up on
 5 post-hearing briefs.
 6 ALJ BOLDT: No, I agree with that, but I
 7 want to make sure the record is here too.
 8 MR. GLEISNER: Yet bet.
 9 ALJ BOLDT: In case there's some condition
 10 that can address it and deal with it. So if you
 11 have in mind any intelligible question that I
 12 posed, go ahead and answer it.
 13 UNIDENTIFIED SPEAKER: Do I need to run it
 14 back?
 15 ALJ BOLDT: No.
 16 THE WITNESS: I think you're asking me
 17 about the information that I thought -- and I
 18 believe I answered that based on, you know, some
 19 additional soil investigations. And then the
 20 other thing was the lack of topographic
 21 information on the site and adjacent sites that
 22 really determined where it is. There
 23 wasn't -- at least we did not receive, even
 24 after the records request, data along the Krause
 25 access road in these two wetlands. There are

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1 site?
 2 ALJ BOLDT: Likely. Likely it does. Yeah,
 3 it likely does. And I assume that this
 4 project -- you know, and that's not been an
 5 issue that's granted, but it is -- it's arguably
 6 an issue because of the way this has been
 7 presented as a navigable waterway.
 8 MS. KAVANAUGH: And, Judge, I guess I just
 9 want to note for the record that, you know, the
 10 public -- detrimental to the public interest.
 11 The public interest includes the penalty of
 12 rights on the public trust. A riparian right is
 13 a right that's a property right, a private
 14 property right, that attaches to owning land
 15 adjacent to, and having water flow onto your
 16 property is not affecting a riparian right. You
 17 know, if you've got like a pier interfering with
 18 someone else so you're dredging in front of
 19 someone else's property, those are riparian
 20 rights.
 21 ALJ BOLDT: Understood. No, I -- in
 22 general, I agree with that unless you have
 23 sediment that goes out in front of their area
 24 that impacts their riparian zone and we've had
 25 cases like that over the years. So I just want

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1 some cross-sections from the design plan, but
 2 the lines go out straight which is a little
 3 suspect because the land isn't straight and so
 4 I'm a little bit nervous here. I would not want
 5 to build on here, not knowing a little bit more
 6 information on the adjoining properties because
 7 something that you would do here, whether you're
 8 building a road or a home or an office building
 9 or whatever it is, you have to know how it
 10 impacts your neighbors. And I don't know how
 11 that fits into this whole hearing, but --
 12 ALJ BOLDT: Very good.
 13 THE WITNESS: Or whose right to talk about
 14 it, I guess I don't know --
 15 ALJ BOLDT: I think it's a gray area for
 16 all of us, frankly, at this point. Okay. Back
 17 to you. I'm sorry for interrupting, but I just
 18 wanted to make sure I had what I needed in
 19 there.
 20 Q I think I was asking you about boring. No, maybe I
 21 wasn't.
 22 MS. KAVANAUGH: Concerns about soils. You
 23 were asking him about soils.
 24 Q I wanted to clarify -- what I was attempting to ask
 25 you, Mr. Reinbold, I think right before the

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1 additional discussion, I understood your testimony of
 2 a little while ago that you thought that other
 3 solutions could address the problem. And when I say
 4 the problem, I'm referring to the soft soils and
 5 their inability to carry load that you referred to.
 6 And by other solutions, I assumed you meant other
 7 engineering solutions, is that an accurate statement
 8 of your testimony?
 9 A Yeah, I believe I've mentioned a couple of them, but
 10 they get expensive. I mentioned just bridging it.
 11 There's land bridges that we do over wetlands. The
 12 (inaudible) interchange on I-8/94, there's wetlands
 13 all around that interchange. Instead of trying to
 14 excavate them out and put a road fill in there and
 15 build it, we bridged the whole thing. That isn't
 16 appropriate here because of cost.
 17 Q Right. We did look at that.
 18 A I mentioned putting in MSE walls on either side with
 19 a lightweight fill in between. That's not cost
 20 effective here either. So you get back to the
 21 solution of excavating a certain amount of the muck
 22 to control any movement into the wetlands and that's
 23 what we get into, is excavating the bad soil,
 24 building up a proper subgrade so that the pavement
 25 design that's shown here will work.

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1 A All right. I'm sorry, I misunderstood your question.
 2 Would you please repeat it?
 3 Q Okay. My question was, on the DNR access site that
 4 you've reviewed plans for, couldn't DNR's contractor
 5 conduct a proof roll test after designing to the
 6 standards included in their final design plans?
 7 A I think you have too many supposes in here. I don't
 8 know what the design is.
 9 Q Is it very common practice in DOT projects to conduct
 10 a proof roll test?
 11 A That is correct, yes.
 12 Q Could DNR also conduct a -- DNR or its agent also
 13 conduct a proof roll test after this road is
 14 designed?
 15 A Yes, and if it fails you end up removing the failure
 16 and the failure could go down many, many feet if you
 17 don't start with the right design going up.
 18 Q I understand that, but isn't that DNR's risk in terms
 19 of cost?
 20 A Well, when we build a road through a wetland we can't
 21 risk damaging the wetland on either side based on DNR
 22 requirements so now the DNR can absorb that risk
 23 because they can damage their wetlands?
 24 Q Incorrect, sir. What I asked you was, if we conduct
 25 a proof roll test and that would be a one-time

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1 Q And I think you testified as well that DNR could, if
 2 the road failed, remove and place -- and excavate
 3 further and place additional material? For example,
 4 if the road was constructed per design standards that
 5 Kapur required in their plans and the proof roll test
 6 was conducted and there was some infirmity in the
 7 road, couldn't DNR direct Kapur to design plans to
 8 change those specifications? It's a yes or no
 9 question. I understand you might want to think about
 10 it for a while.
 11 MR. HARBECK: Well, I'm going to object to
 12 the form of the question because I don't know
 13 what you mean by couldn't Kapur do this. Is
 14 that within the limits of the permit or the
 15 Manual Code approval or something else?
 16 MS. CORRELL: I'll break it down further
 17 for you, Counsel.
 18 Q On the DNR access site, it would be possible for a
 19 proof roll test to be conducted after the project was
 20 constructed as it's currently designed, correct?
 21 A As it's currently designed, if you look at the
 22 cross-sections, they don't even show removing any
 23 muck. You probably couldn't test --
 24 Q I didn't ask that question, sir. Could you answer
 25 the --

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1 drive-over and we saw any infirmity in the road due
 2 to the soils that you just described, couldn't we
 3 then pull up that road and add to the stability of
 4 the substructure -- the (inaudible)?
 5 MR. HARBECK: Again, I object to the form
 6 of the question, add to it within what context?
 7 MS. CORRELL: Okay. I'll break it down.
 8 MR. HARBECK: You've got a Manual Code
 9 approval that limits what you can do here in
 10 terms of impact on navigable waters so your
 11 question is very vague and broad.
 12 MS. KAVANAUGH: The impact isn't going
 13 to --
 14 MS. CORRELL: I don't think the question is
 15 broad. I'm not asking a regulatory question of
 16 this engineer witness right now.
 17 ALJ BOLDT: Okay. Yeah, I'll allow it as
 18 fair cross-examination.
 19 Q Have you ever designed a project that has required
 20 any alterations during the project construction?
 21 A Yes.
 22 Q Wouldn't it be fair to say that DNR could also alter
 23 its design criteria if evidence showed that in fact a
 24 problem occurred?
 25 A Could you restate that again, please?

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1 Q Couldn't DNR alter the designs as you've reviewed
2 them here today if in fact a problem appeared to be
3 imminent after the construction of that roadway?
4 A Constructed in which manner?
5 Q Per the design criteria that you've reviewed, as you
6 testified?
7 A Yes. I would not recommend it because, based on my
8 knowledge of what's here and would fail and then all
9 the work that you did building the road, you'd have
10 to remove that work, redo what's underneath it, put
11 that work back, so you're building the road three
12 times.
13 Q I agree and that's not sensible.
14 A And then you're still not taking care of the
15 secondary impacts.
16 Q DNR doesn't want to spend money necessarily.
17 MR. HARBECK: Let him finish his answer,
18 please.
19 MS. CORRELL: He did not answer my
20 question. I've tried to get him to answer a
21 single yes or no question three times and I wish
22 he would simply answer it.
23 MR. HARBECK: Again, is the overlay to your
24 question outside of the context of the
25 regulatory criteria?

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1 existing access road on the DNR site, would you?
2 A With my knowledge, I wouldn't drive a truck on that
3 road.
4 Q That's a good point. Could you turn to what's been
5 marked Exhibit 7? It should be in the Redland Road
6 binder. I think that is what you have in front of
7 you, sir.
8 A What exhibit?
9 Q 27. I've already gotten a good chuckle out of this
10 picture. Do you have any personal knowledge or could
11 you describe what Exhibit 27 depicts?
12 A Yeah, it's a soil boring where it got drove into the
13 marsh.
14 Q Did you see it drive into the marsh?
15 A No, I did not. I saw it after it was in the marsh on
16 its side.
17 Q But it is a soil boring truck?
18 A Yes, sir -- ma'am.
19 Q Yes, sir ma'am. That's okay. Either one is okay.
20 No objection. And do you have any idea what a soil
21 boring truck weighs?
22 A Not offhand, but they're pretty heavy. That's why
23 they have tracks on instead of tires.
24 Q Uh-huh.
25 A And it's made to go on soft soils to spread out the

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1 MS. CORRELL: Correct.
2 MS. KAVANAUGH: How about engineering
3 standards and protocols for building roads.
4 MS. CORRELL: Because engineering is
5 relevant --
6 ALJ BOLDT: Okay. Go ahead, pose it again
7 and ask for a yes or no and we'll pause, we'll
8 see if there's an objection, and we'll see if it
9 can be answered yes or no.
10 Q You testified a minute ago that it was standard to
11 conduct a proof roll test on a roadway, is that
12 correct?
13 A Yes.
14 Q If DNR conducts a proof roll test and that test is
15 not positive in its results, meaning there are
16 infirmities or failures, could DNR pull up the road,
17 as you suggest, and remove additional soils and
18 create sufficient stability for the access road?
19 A Yes.
20 Q It would cost DNR quite a bit of money, correct?
21 A Yes.
22 Q You wouldn't conduct a proof roll test in advance
23 of --
24 MS. CORRELL: Strike that.
25 Q You wouldn't conduct a proof roll test on the current

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1 load and there's different sized machines. You use
2 different soil boring rigs to go in different areas
3 of a project. Sometimes they're just mounted on a
4 regular truck because you're doing it on a road
5 because whenever you rebuild a road you actually core
6 the old road that's there to see what's underneath
7 it.
8 Q Uh-huh.
9 A Because a lot of old roads in Wisconsin, when they
10 dug the ditches, they threw the soil up in the middle
11 to make it higher. Then they put on gravel on it so
12 you've got a lot of junk sometimes underneath an
13 existing road.
14 Q That wouldn't surprise me. How wide would you say
15 this particular soil boring truck is?
16 A I don't have any idea.
17 Q No idea?
18 A I didn't look at it in that intent. I looked at it
19 from a distance.
20 Q Would you be surprised if I told you that this truck
21 sort of teetered off to one side of the existing
22 access road?
23 A Whatever you say. I don't have any knowledge how it
24 got over there. I said I viewed it after it was
25 there.

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1 Q And you said you also observed quite a bit of boring
2 sample collection in the field in your experience. I
3 can restate that. I can see --
4 A Well, I didn't get the question. That was a
5 statement.
6 Q Did you say that you've observed soil boring
7 frequently in your experience in supervising others?
8 A I have observed them, but not frequently.
9 Q Okay.
10 A I usually work with my soils engineer.
11 Q Do you think it would be an easy matter to get this
12 soil boring truck down into wetland complex Number 1,
13 meaning the northern portion of the wetland I think
14 you've referred to or navigable water?
15 A I've never operated a machine like that. I don't
16 know.
17 Q Okay. That's outside of your -- would it surprise
18 you if I were to say that DNR frowns on driving large
19 vehicles that would leave and kind of tear up wetland
20 vegetation --
21 A No, that wouldn't surprise me. No, that wouldn't
22 be -- that's not what you want running around in your
23 wetland.
24 Q So would it also surprise you if I were to also say
25 that trying to conduct additional soil borings in the

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1 A Uh-huh.
2 Q -- in this particular area?
3 A Uh-huh.
4 ALJ BOLDT: Is that yes, Mr. Reinbold?
5 THE WITNESS: I didn't know what the
6 question was. It sounded like a statement. I
7 guess I was just nodding.
8 Q I can rephrase every single one of them and I can
9 pick on Don's questions all day long if you want to
10 be here until midnight, but I'd like to go home.
11 MR. HARBECK: I was just commenting on the
12 Judge saying was that a yes or a no and you were
13 making a statement so --
14 Q Yes, I can rephrase it into a question, if you'd
15 like.
16 ALJ BOLDT: Fair point.
17 Q Would it surprise you if --
18 MS. CORRELL: which question did I not ask
19 in question form? I just asked five questions
20 and then you objected.
21 MR. HARBECK: No, no, I didn't object, I
22 was just saying the Judge was asking him was
23 that yes or no. You had made a statement at the
24 very end and I just said there wasn't a question
25 so he wasn't supposed to answer yes or no.

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1 triangle located just north of the access road might
2 be a difficult endeavor?
3 A No. It depends upon the equipment you use. I don't
4 think this might have been the right kind of
5 equipment. The other borings were done by hand in
6 the access road. There are machines that extend off
7 of a platform that could have reached out and done
8 the borings, so there's other ways you could do it.
9 Q Uh-huh.
10 A Why they chose this piece of equipment, I have no
11 idea. Why the borings were made by hand and not with
12 this piece of equipment, I have no idea.
13 Q Which borings are you referring to?
14 A The ones where the data is given.
15 Q Those were done with this equipment, is my
16 understanding.
17 A Oh, they were?
18 Q There was also --
19 A Then I don't understand why they only went down 20
20 feet.
21 Q There was also placement of rods by hand, I believe,
22 in the wetland.
23 A Yes, that's what I heard them say, yeah.
24 Q Because it would be difficult to drive such a large
25 vehicle that would damage the wetlands --

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1 That's all.
2 MS. CORRELL: I'll rephrase it if I need
3 to.
4 Q Would it surprise you if DNR would frown upon
5 bringing this type of equipment into a wetland
6 complex and potentially doing a great amount of
7 damage to the functional values of that wetland?
8 A It wouldn't surprise me, but the area that the new
9 road is being located will be disturbed eventually so
10 going in with some type of equipment would be
11 reasonable.
12 Q But the report did refer to additional hand method of
13 boring, is that correct?
14 A Pardon me? What report?
15 Q I'll be more specific. The GESTRA report at
16 Exhibit 7 also refers to hand placement of rods --
17 A Yeah, okay.
18 Q -- in various points, is that correct?
19 A Uh-huh.
20 ALJ BOLDT: Now, is that a yes, because
21 that was a question.
22 MR. GLEISNER: Very good, Judge. You're
23 much more alert than we are at this point,
24 Judge.
25 MS. KAVANAUGH: Just say yes or no, sir.

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1 THE WITNESS: I'm not sure anymore. Yes.
 2 ALJ BOLDT: Yes, okay.
 3 MS. KAVANAUGH: Yes, no or maybe as opposed
 4 to --
 5 MS. CORRELL: It's a common problem.
 6 ALJ BOLDT: It is. Everyone does it.
 7 Q Circling back to some of the examples that you
 8 identified earlier, wouldn't those types of failures
 9 be of the more catastrophic scale than any failure
 10 that might occur on the DNR property?
 11 A Yeah, they were larger. They're the ones that I
 12 remember. Some of the smaller ones I don't recollect
 13 maybe.
 14 Q Have you ever done any projects where your design
 15 included partial excavation methods?
 16 A Partial excavation of what?
 17 Q Of soft material. Not necessarily wetlands, but that
 18 could also include soft clays --
 19 A Oh, yes, yes.
 20 Q -- other soft materials?
 21 A Many times we'll excavate into the subgrade
 22 anywhere -- even up to three feet and put in crushed
 23 rock, breaker run, or select borrow (phonetic). And
 24 this is not -- this isn't even in areas of wetland
 25 navigable streambed, whatever that definition is of

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1 stopped and then there was an area here. And the
 2 farmer says yeah, that's muck in there, that's
 3 27 feet deep, it doesn't hold anything. We brought
 4 out our boring rig and we drove -- went down there,
 5 yep it was muck. It was 27 feet deep. So you
 6 talk -- you get a lot of information from property
 7 owners to determine what's out there. They've been
 8 there, they work the soils and that's a good source
 9 of information. The other thing I instruct the staff
 10 and we do regularly is if we're designing a project
 11 and it's raining, the guys are out there looking at
 12 that site during the rain because they learn a lot of
 13 what's happening during a rainfall.
 14 Q Do you know if it was raining on the September 2nd,
 15 2011 site visit?
 16 A I don't think so.
 17 Q Okay.
 18 A It rained last night though if you can count that
 19 little drip of rain.
 20 Q But wasn't the testimony that was offered in this
 21 proceeding that the survey that I think is at
 22 Exhibit 129 created by Lake County Engineers?
 23 A Yes, I'm familiar with it. It's right here. Do you
 24 want me to open it?
 25 Q Was done by just eyeballing what the centerline might

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1 this land.
 2 MS. KAVANAUGH: Let's not go there.
 3 THE WITNESS: You got me.
 4 Q Just say wet stuff.
 5 A Wet stuff.
 6 Q In your experience with Wisconsin Department -- can I
 7 just say Wis DOT?
 8 A Sure.
 9 Q Do you have experience defining a drainage channel or
 10 swale or stream?
 11 A Yes.
 12 Q And would you do so by establishing a series of
 13 cross-sections?
 14 A Sometimes we do office research first. We look at
 15 USGS maps. You can get a lot of good information
 16 there. You look at historic documents of where the
 17 roads were before, walking the site to determine
 18 water courses or where water had been is a good one.
 19 A lot of times, if we're on relocation in a rural
 20 area we'll talk to the farmers in the area. They're
 21 very, very knowledgeable of any activity on their
 22 property or near their property. I was building
 23 I-43 North and we had a marsh and you could
 24 tell -- you could just tell he had soft soils where
 25 the dandelions grew right down to this spot and

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1 be?
 2 A Yes.
 3 MR. HARBECK: Object to the form of the
 4 question. Whatever the testimony is, it is. I
 5 don't think they said exactly that.
 6 Q I think you -- in my previous question, I think you
 7 just testified as to methods that you would rely upon
 8 to define a channel of some kind, we won't get into
 9 the distinctions, and isn't it true that none of
 10 those methods included just locating low depressional
 11 areas?
 12 A Well, you locate where you suspect the water drainage
 13 is and then you follow-up with the survey and that's
 14 actually what we did with Mr. Powers' crew is we
 15 walked the swale, unnamed stream, whatever it's
 16 called, and by walking it, through my experience, you
 17 can kind of see where the ground is lower. And he
 18 determined the elevation with true surveying
 19 techniques and, with his modern equipment, he could
 20 not only determine the elevation of the ground in
 21 that area, he could locate that elevation on the
 22 ground and that's what he did on that drawing. And
 23 if you did it to the same scale as one of the other
 24 drawings, you could lay it over the other drawing and
 25 actually locate the center of that swale, ditch,

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1 unnamed stream, right along the other drawing. But
2 they'd have to be to the same scale because he did
3 locate those horizontally and determined the
4 elevation.

5 Q Would you refer to the plans you've seen for the DNR
6 boat access as final plans?

7 A No, I would hope not.

8 Q So you haven't reviewed the final plans,
9 specifications, notes?

10 A I reviewed what the DNR made available to us. If
11 they have final plans I have not seen them and they
12 have not made them available to us.

13 Q Isn't it true that final plans aren't usually
14 completed until a certain amount of time before a
15 public project is let out for bid?

16 A That's correct.

17 Q Okay.

18 MS. CORRELL: I don't think I have any
19 further questions. If you'll just give me a
20 moment to review my notes, please. That's all.
21 Thank you very much.

22 THE WITNESS: You're welcome.

23 ALJ BOLDT: Any redirect?

24 MR. GALLO: Yeah, thank you.

25 REDIRECT EXAMINATION

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1 you're currently making, you said that it wouldn't
2 change your opinion. Is that -- I'm just trying to
3 verify that includes your statements with regard to
4 the lateral impact into the navigable waters?

5 A Yes, along with what Mr. Giese testified yesterday.

6 Q Would your opinions, any of your opinions,
7 professional opinions, that you've stated today
8 change with regard to a more complete set of plans,
9 don't answer that yet, given the plan set that you
10 have now?

11 A I think I'm going to have to ask you to --

12 Q Sure. I'm sorry. Would -- you were asked a question
13 regarding whether this was a complete set of plans
14 and I believe your answer was that -- something to
15 the effect that you would hope not?

16 A No, there's a lot of information that a
17 contractor -- additional information a contractor
18 would need to do it, but normally in a preliminary
19 plan you do have a pavement design completed.

20 Q Now, these -- the plans that you did have an
21 opportunity to look at, I think the 2008 set and the
22 2010 set --

23 A Uh-huh.

24 Q -- are they in sufficient detail for you to perform
25 your -- are they in sufficient detail for you to be

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1 BY MR. GALLO:

2 Q Don, you made a number of opinion statements, your
3 professional opinion, today to a reasonable degree of
4 scientific certainty. Do you feel in your
5 professional opinion, again, to a reasonable degree
6 of scientific certainty, that this problem as
7 identified by the partial plans is foreseeable?

8 A Yes.

9 Q Do you have any doubt in your mind?

10 A No, there's definitely a problem here. Even with
11 preliminary plans -- and putting a pavement design on
12 a preliminary plan is typical. What's not typical is
13 the lack of some of the information that we stated.
14 And on the cross-sections you would normally see some
15 amount of excavation through the soft soils and that
16 would all be shown already. It is not, so --

17 Q And the opinion that you're currently expressing,
18 professional opinion, is that true also of your
19 estimates of degree of lateral impact?

20 A Yeah, I --

21 MS. CORRELL: Objection, foundation. I'm
22 not sure I understood the question.

23 MR. GALLO: Okay. I appreciate that. I'll
24 restate it.

25 Q The opinion that you're -- professional opinion that

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1 able to formulate your professional opinions to a
2 reasonable degree of scientific certainty that you've
3 expressed today?

4 A Yes.

5 Q Thank you.

6 MR. GALLO: No further.

7 ALJ BOLDT: Okay. Any other questions of
8 Mr. Reinhold? Okay. Thank you very much, sir.

9 THE WITNESS: You're welcome.

10 ALJ BOLDT: With that, let's go off the
11 record.

12 (Recess taken)

13 ALJ BOLDT: We're back on the record.

14 Mr. Gallo, are you ready to call your next
15 witness?

16 MR. GALLO: Yes, thank you, Your Honor.

17 Fritz Hanson.

18 ALJ BOLDT: Do you swear to tell the truth,
19 the whole truth and nothing but the truth, so
20 help you God?

21 MR. HANSON: Yes.

22 DIRECT EXAMINATION

23 BY MR. GALLO:

24 Q Fritz, for the -- do you mind if I call you Fritz?

25 A That'd be fine.

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1 Q Fritz, for the record can you state your full and
2 complete name?
3 A Frederick Hanson. My nickname is Fritz and I live
4 at --
5 ALJ BOLDT: Is it an S-O-N or an S-E-N?
6 THE WITNESS: S-O-N.
7 ALJ BOLDT: Okay.
8 Q And your address?
9 A 651 Patrick Lane, Hartford, Wisconsin 53027.
10 Q And how long have you lived at that location?
11 A Since 1990.
12 Q Okay. You've kind of thrown me with Patrick Lane. I
13 thought it was Redland Road. Can you clarify?
14 A Well, that's -- my primary residence is Hartford,
15 651 Patrick Lane. My secondary residence is
16 W322 -- or N322 W7574 Redland Road and that is
17 like -- that was my wife's -- or, you know, my wife's
18 mother's place so we call it grandma's house. And
19 I've been, you know, associated with that since 1968.
20 Q Okay. Thank you.
21 A That's not where I currently live.
22 Q I appreciate the clarification. So it's my
23 understanding that your part-time or recreational
24 home is adjacent to the DNR site?
25 A That's correct.

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1 referred to as the unnamed tributary on the north
2 side of the DNR property?
3 A I'm not sure if you mean -- I'm familiar with the
4 blue line which I call the little river.
5 Q Okay. The little river. Okay. That's exactly what
6 I'm referring to.
7 A Okay.
8 Q Okay. And are you familiar with the north and the
9 south wetlands?
10 A Yes.
11 Q That are identified on that figure? Can you point to
12 the north wetlands?
13 A Oh, absolutely. This is the navigable wetlands right
14 here. That's the north, this is the south. It goes
15 all the way down to Beck's (phonetic) Road, quite a
16 large area -- many acres.
17 Q Thank you.
18 ALJ BOLDT: And those are the green areas
19 on Exhibit 2-002?
20 THE WITNESS: Yes.
21 Q Okay. Fritz, have you been attending the hearing and
22 have you heard the other witnesses?
23 A Yes, I have.
24 Q Okay. Entirely?
25 A Well, sometimes I missed when I went out to the men's

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1 Q To the south?
2 A That's correct.
3 Q And in your experience have you observed the land
4 that's formerly the Krause property, but now the DNR
5 property, in terms of observed the property over the
6 years?
7 A Have I observed the property? Yes, I have, every
8 year.
9 MR. GALLO: Bill, can you put up that last
10 figure. I think it's 2.002.
11 A Except 1969, '70, '71 I was in Viet Nam so I didn't
12 observe it during those times.
13 Q Can you --
14 ALJ BOLDT: Thank you for your service too.
15 THE WITNESS: You're welcome.
16 MR. GALLO: Okay. I'm waiting for an
17 exhibit.
18 MR. GLEISNER: It's up.
19 MR. GALLO: Thank you.
20 MS. KAVANAUGH: Exhibit what?
21 MR. GLEISNER: 2-002.
22 MR. GALLO: Exhibit 2-002.
23 Q I'd like to ask you two questions, one at a time.
24 The first question -- I'm going to lay some
25 foundation first. Are you familiar with what's been

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1 room.
2 Q Okay. Thank you.
3 ALJ BOLDT: You probably didn't miss much.
4 MR. GALLO: We can all attest to that.
5 Q The question I have is that can you describe in your
6 own words, based upon your personal observations, the
7 flow in and out of the unnamed tributary from or to
8 North Lake and also with respect to how that flow
9 impacts the north wetland area and the south wetland
10 area?
11 A Okay. I'll point it out. I have observed during my
12 life the flow of water actually coming down off of
13 the farm fields, across this road that we were all on
14 yesterday. It would just come flooding across this
15 road and it would fill up this wetland navigable
16 waters.
17 ALJ BOLDT: That's the southern lobe, sort
18 of, of the wetland?
19 THE WITNESS: Correct.
20 A This is where we parked the cars down here and we
21 walked in. I observed it while it was raining.
22 Water would come this way, fill this up, fill this
23 up, and water would go out.
24 ALJ BOLDT: Okay. So you're saying filling
25 the southern lobe and the northern lobe of

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1 the --
 2 THE WITNESS: Yeah, the --
 3 ALJ BOLDT: -- the northern green area on
 4 Exhibit 2-002 and then go all the way to the
 5 blue -- what we've called the tributary or --
 6 THE WITNESS: Oh, the little -- the river
 7 that goes to the lake.
 8 ALJ BOLDT: Okay.
 9 A That's during, you know, heavy rainstorms and that.
 10 And then as the rain would stop, I've also seen it
 11 where, if the lake is higher, through this little
 12 river, it would reverse. It would come in and it
 13 would fill this one up and it would -- you know,
 14 they'd all seek the same level again.
 15 ALJ BOLDT: And by little river, where
 16 you're indicating on Exhibit --
 17 THE WITNESS: That's the blue line.
 18 ALJ BOLDT: Okay.
 19 MR. HARBECK: And just -- when you say fill
 20 this one up, you're talking first -- it would
 21 first fill in the north wetlands?
 22 THE WITNESS: The north wetlands.
 23 MR. HARBECK: And then that would then fill
 24 into the south wetlands?
 25 THE WITNESS: Correct.

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1 ALJ BOLDT: Okay. Mr. Gleisen?
 2 MR. GLEISNER: Gleisner.
 3 ALJ BOLDT: I'm sorry.
 4 MR. GLEISNER: We're all getting tired,
 5 Judge. That's okay.
 6 CROSS-EXAMINATION
 7 BY MR. GLEISNER:
 8 Q Mr. Hanson --
 9 A Yes.
 10 Q -- are you familiar with something that has been
 11 referred to -- and I'm going to call up a different
 12 exhibit. Exhibit 2-007 is now on the screen. Are
 13 you familiar with what has been referred to
 14 constantly throughout this hearing as the grove of
 15 trees?
 16 A Yes.
 17 Q Can you identify it on that Exhibit 2-007?
 18 A This is the grove of trees.
 19 Q And have you observed water in that grove of trees?
 20 A Yes.
 21 Q Now, you've pointed -- yes. For the record, you've
 22 just pointed to the green area, thank you, on
 23 Exhibit 2-007. Can you state for the Judge how deep
 24 you've seen it? What's the deepest you've seen it in
 25 that grove of trees?

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1 MR. HARBECK: Okay.
 2 THE WITNESS: And it would also fill all
 3 the yards.
 4 MR. HARBECK: Okay.
 5 THE WITNESS: Come right into here.
 6 Q And you're pointing to the red circle area?
 7 A Correct. Our backyard, DNR's, you know, backyard or
 8 where the parking lot is going to be, and into the
 9 tree -- that little green -- well, that's not shown
 10 here, but it would come up into the trees because
 11 that was a low area.
 12 Q Okay. And there's been some testimony with regard to
 13 the north side of the existing access road. Can you
 14 describe the flow regime or your observations with
 15 regard to flow in that limited area, right next to
 16 the access road?
 17 A Correct. I would -- I've observed flow on the north
 18 side of the existing access road out anywhere from
 19 three to eight feet and I've observed it flowing in
 20 either directions at times. Now, because of the
 21 lake, sometimes the runoffs from the farm fields that
 22 go into Oconomowoc River, the lake will come up
 23 higher later and then the thing will reverse.
 24 Q Okay.
 25 MR. GALLO: No further questions.

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1 A I've seen it probably 18 to 21 inches.
 2 Q And how often have you seen water in there, say, over
 3 a foot?
 4 A Probably -- over a foot. Every three years.
 5 Q And --
 6 A Or thereabouts.
 7 Q Okay. And when the water fills that grove of trees
 8 does it fill the area to the west of the grove of
 9 trees? And by that I mean does it fill the area that
 10 runs west along the purple boundary line between your
 11 property and the DNR property?
 12 A Yes, and that happens several times a year.
 13 Q And when that water fills, does it also --
 14 MR. GLEISNER: Strike that.
 15 Q Can you show -- and maybe we'll mark it on the
 16 exhibit, but first can you show for the Judge what
 17 area is filled several times a year to the west of
 18 the green area?
 19 A There's water -- the house is here so there's water
 20 that comes out about here, all the way down, back up
 21 into here and into the trees. Now, the deepest
 22 portion is here, but in the DNR land here and all in
 23 the back of our yard here, two or three times a year
 24 it's -- it could be five inches deep -- five, six
 25 inches. You could easily, you know, float a -- Page

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1 could float through there.
 2 Q And did your daughter, in fact, paddle through there?
 3 A Yes.
 4 Q Now, Mr. Hanson --
 5 ALJ BOLDT: And just so it's clear, Page
 6 Hanson is your daughter?
 7 THE WITNESS: Is my daughter.
 8 MR. GLEISNER: Oh, yes, I'm sorry for that.
 9 Q And --
 10 THE WITNESS: She got her looks from me.
 11 MR. GALLO: Strike that.
 12 MS. KAVANAUGH: Would your wife agree with
 13 that statement?
 14 Q I'm now going to call up what has been marked as
 15 Exhibit 36-001. Have you ever seen -- first of all,
 16 were you here for the testimony of Mr. Schwartzburg?
 17 A Yes.
 18 Q And have you ever seen the area between his house and
 19 your house that deep in water?
 20 MR. HARBECK: You mean Peters?
 21 A That's one and the same house.
 22 Q Peters, Peters. I'm very sorry, Peters.
 23 A Okay. Yes, I see this on a yearly basis.
 24 Q That deep?
 25 A Well, not quite that deep, but it's -- there's water

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1 A Oh, yes.
 2 Q And from 1971 on you spent a good deal of time around
 3 there between '71 and the time you married your wife,
 4 correct?
 5 A Uh-huh.
 6 MR. HARBECK: Is that a yes?
 7 Q Yes, please --
 8 A Yes, yes.
 9 Q So did you see that amount of water from 1971 to 1986
 10 on a regular basis?
 11 A A little less. There were days that I didn't go down
 12 there if it got high and stuff, but in this ball
 13 park, four to five inches deep.
 14 Q And from 1986 until the present date, how often have
 15 you seen -- to the best of your recollection, how
 16 often have you seen water that deep in that location?
 17 MS. KAVANAUGH: And have we specified how
 18 deep that water is in that picture.
 19 A I said in the center of that picture -- well, I don't
 20 know in this picture because I didn't walk in it, but
 21 there were similar areas that were flooded that I
 22 walked in there and it would be probably six, seven
 23 inches deep in there.
 24 ALJ BOLDT: Okay. And we're looking at 35-
 25 001. I think you said 36-001 when you first

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1 there every spring and several times up until the
 2 middle of summer.
 3 Q Have you walked out into that water?
 4 A Oh, yes.
 5 Q What is the deepest that you've encountered?
 6 A Since I've been there, it's been probably 16 inches
 7 deep. Twelve to sixteen I would say.
 8 Q And does that occur every year?
 9 A Not that deep.
 10 Q Okay.
 11 A Every year it occurs there's going to be, I would
 12 say, four -- roughly four, maybe five, inches.
 13 Q Now, Mr. Hanson, you have been a resident or had that
 14 house as your secondary residence since 1968, is that
 15 correct?
 16 A No, I -- I've been poking around there because Robin
 17 was there since '68.
 18 MS. CORRELL: No comment.
 19 ALJ BOLDT: The record speaks for itself.
 20 A I married her in 1986.
 21 Q Okay.
 22 A From that point on I was there every -- basically
 23 every day with grandma and that, you know.
 24 Q From 1971 on, did you have occasion to see water
 25 there of that depth on a regular basis?

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1 started, so just to get that clear.
 2 MR. GLEISNER: 35-001. Yes, Judge, I think
 3 I did too.
 4 ALJ BOLDT: Okay.
 5 Q And how deep was the water at its deepest, again,
 6 when you walked into that area?
 7 A I would say 14 to 16 inches.
 8 Q And how often did you see it that deep?
 9 A That I only see it that deep maybe every three
 10 to -- oh, every three years, maybe every three, four
 11 years.
 12 MR. GLEISNER: No further questions, Judge.
 13 ALJ BOLDT: Okay. Thank you. Ms. Correll?
 14 MS. CORRELL: Oh, I'm sorry. I have no
 15 questions for you. Thanks for staying for the
 16 entire proceeding.
 17 ALJ BOLDT: Okay. Thank you, sir.
 18 THE WITNESS: Okay.
 19 MR. GLEISNER: Thank you, Mr. Hanson.
 20 ALJ BOLDT: Another witness?
 21 MR. GALLO: No further witnesses.
 22 ALJ BOLDT: Okay. And do you rest then?
 23 MR. GALLO: Yes.
 24 ALJ BOLDT: And do you rest then?
 25 MR. GLEISNER: And we rest then, Your

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1 Honor.
 2 ALJ BOLDT: Okay. Good. All right. Is
 3 the DNR ready to call its first witness?
 4 MS. CORRELL: I guess we'd prefer probably
 5 to continue on another day because it's already
 6 1:30 and it's going to be pretty chopped up if
 7 we have to present evidence now --
 8 ALJ BOLDT: Do you have anybody we can
 9 get -- we can get in and finished like you'd
 10 suggested, like 4:00 or 4:30, something like
 11 that?
 12 MS. CORRELL: We could. I mean, for
 13 example, and we could also put on our
 14 jurisdictional witness and --
 15 ALJ BOLDT: Let's do that, yeah.
 16 MS. CORRELL: -- maybe have a bifurcated
 17 ruling on that issue?
 18 MR. GLEISNER: Objection, I think that we
 19 should have the record closed, Judge, before we
 20 have any --
 21 ALJ BOLDT: Yeah, and Chapter 227 requires
 22 a written decision so I am loath to rule orally
 23 so -- but, yeah, your jurisdictional witness
 24 seems like an appropriate thing to do right now.
 25 MS. CORRELL: Okay. Call Bob Wakeman.

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1 A Yes, I have. I've been very humbled by a couple of
 2 awards. I was nominated by the -- for the Brogan
 3 (phonetic) award in 1998 and I also received an
 4 outstanding environmental protector award from the
 5 Southeast Region in 1995, as well as an environmental
 6 quality achievement award in 1995 as well.
 7 Q I guess we already touched on this, but by whom are
 8 you employed?
 9 A The Wisconsin Department of Natural Resources since
 10 1985.
 11 Q What's your current position with the Department?
 12 A I'm currently the Aquatic Invasive Species
 13 Coordinator for the State of Wisconsin.
 14 Q And what does that position entail?
 15 A I'm responsible for the coordination of the Aquatic
 16 Invasive Species Partnership which is a program that
 17 has a variety of partners, including county staff,
 18 UWC grant, UW Extension staff, along with Department
 19 staff, to try to prevent the introduction, spread and
 20 impact of aquatic invasive species in the State of
 21 Wisconsin.
 22 Q Prior to that position, what was your position at the
 23 Department?
 24 A Prior to being the Aquatic Invasive Species
 25 Coordinator for the State, I was the Aquatic Habitat

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1 ALJ BOLDT: Do you swear to tell the truth,
 2 the whole truth and nothing but the truth, so
 3 help you God?
 4 MR. WAKEMAN: I do.
 5 DIRECT EXAMINATION
 6 BY MS. CORRELL:
 7 Q Would you state your full name and spell it, as well
 8 as your address, for the record please?
 9 A My name is Robert Scott Wakeman, W-A-K-E-M-A-N. I
 10 live at 1315 North 63rd Street in Wauwatosa,
 11 Wisconsin 53213.
 12 Q And what's your educational background?
 13 A I have a bachelor of science degree from the
 14 University of Wisconsin-Stevens Point in 1980. I
 15 graduated with a master's degree in biological
 16 sciences from the University of Wisconsin-Milwaukee
 17 in 1985.
 18 Q And do you have any training -- on-the-job training?
 19 A I've got lots of training.
 20 Q Could you specify?
 21 A I have other training that I've taken as a State
 22 employee for the Department of Natural Resources over
 23 several years.
 24 Q Have you received any awards for your work with the
 25 Department of Natural Resources?

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1 Coordinator for the Southeast Region.
 2 Q And could you explain what that position is and how
 3 long you held that position?
 4 A I held that position for approximately nine years. I
 5 was responsible for the coordination primarily of the
 6 water regulation and zoning program in the Southeast
 7 Region which encompasses eight counties, including
 8 Waukesha County. I was a technical advisor to staff,
 9 trainer, coordinator of efforts. I also had to
 10 provide liaison responsibilities to the central
 11 office in Madison and I was charged with the
 12 consistent implementation of the water regulation and
 13 zoning requirements or standards.
 14 Q And did you also supervise field staff in that
 15 capacity?
 16 A I didn't necessarily supervise them, that is, I
 17 didn't sign their timesheets and that sort of thing,
 18 but I worked very closely with the water management
 19 specialists in the region. I held staff meetings
 20 with them. I assisted their supervisors, which were
 21 referred to as basin leaders at that time, in
 22 managing their workload, making recommendations on
 23 assignments and ensuring the consistent
 24 implementation of the program.
 25 Q And did you see a fair amount of regulatory activity

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1 in Waukesha County?
 2 A Waukesha County was one of the highest workload
 3 counties in the State. On a per month basis, it
 4 ranked very high. It was probably higher if not
 5 equal to Dane County, for an example. It was covered
 6 by two, or at sometimes three, water management
 7 specialists to handle the workload and coordinating
 8 that effort and making sure people knew what areas
 9 that were covered was part of my responsibility.
 10 Q Could you describe your personal experience in
 11 reviewing and approving or denying Chapter 30 and
 12 water quality cert permits? I guess I should say
 13 wetland water quality cert permits.
 14 A Certainly. Not only was I involved in providing the
 15 technical and coordination responsibilities for the
 16 program, but at times I had to take on permit review
 17 responsibilities as well. In the situation where I
 18 was assigned a certain geographical area, there were
 19 times I'd be reviewing 20 to 30 applications in a
 20 month. Other times, when I was providing comments to
 21 staff or reviewing applications that others were
 22 working on, it might have been five or ten in a
 23 month's time. So it varied widely, both when I was
 24 Aquatic Habitat Coordinator in the region and as the
 25 Lake Specialist in the region as well.

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1 general permit application for a project that
 2 involved, let's say, a culvert installation and that
 3 culvert installation was on a stream, we don't
 4 necessarily -- we don't have authority under the
 5 water quality certification to authorize that
 6 culvert, but we do have Chapter 30 as it's a
 7 placement of a structure below an ordinary high water
 8 mark in a navigable stream. So in that situation, we
 9 would issue a Chapter 30 permit, but we would, if
 10 there were wetlands -- a wetland fringe, say, that
 11 would be impacted at that site, we would evaluate
 12 from a 103 standpoint what that impact would be, but
 13 we would authorize it under a Chapter 30 permit.
 14 Q So I think you've covered quite a bit of ground. I'm
 15 going to, just so that everyone understands and for
 16 the record, kind of walk you through different
 17 scenarios. You said you would look at the
 18 jurisdiction and you would look at the activity being
 19 conducted, is that accurate?
 20 A Yes.
 21 Q Would you look at any other factors in terms of --
 22 MS. CORRELL: Strike that. I'll just ask
 23 the detailed questions.
 24 Q Have you ever in your extensive experience run into a
 25 question of whether DNR would review navigable

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1 Q Now, over the course of nine years, that would be a
 2 pretty large number, wouldn't it?
 3 A I would say in the hundreds, yes.
 4 Q And the Southeast Region in general, did you have
 5 more complex projects?
 6 A We had a fair amount of dual jurisdictional-type of
 7 projects, things where wetlands were involved as well
 8 as navigable waters and working with staff to make
 9 sure that we took proper jurisdiction on those
 10 projects was a common issue in southeast Wisconsin.
 11 Q You mentioned dual jurisdictional review. Could you
 12 explain that a little bit more?
 13 A Sure. Dual jurisdiction, what I'm referring to
 14 there, is where we both have authority under the
 15 water quality cert, water quality certification
 16 program, which regulates the placement of fill
 17 material into wetlands, as well as Chapter 30
 18 authority, things like structures or piers or
 19 grading, dredging, those types of things.
 20 Q And how does DNR navigate through these complexities?
 21 And, yes, the pun was intended.
 22 A We would really look at where our authority came from
 23 and the activity that was being proposed. That
 24 typically determined what process we would follow.
 25 For example, if we received an individual or a

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1 wetlands as lakebed impacts?
 2 A If the impact you're referring to was a fill proposal
 3 it was always treated as a water quality
 4 certification.
 5 Q So you're not aware of DNR ever having a dispute in
 6 that regard?
 7 A No. Our authority for wetland fill is through the
 8 water quality cert program. That's how we implement
 9 that particular function or that activity. That's
 10 how we authorize that activity is through a water
 11 quality cert.
 12 Q And who draws the jurisdictional line in those cases?
 13 A The Department of Natural Resources is involved in
 14 setting the ordinary high water mark on public
 15 waterways. We also get involved in the
 16 identification of wetland locations, but the ordinary
 17 high water mark is something that we do.
 18 Q Are there any other entities that identify the
 19 delineation of wetlands?
 20 A Yes. In southeast Wisconsin the Department relies,
 21 or has traditionally relied on, the Southeast
 22 Wisconsin Regional Planning Commission for wetland
 23 identification, as well as private consultants. And
 24 we used to do it at some point as well, but due to
 25 time and workload, it's not (inaudible).

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1 Q Okay. So let's walk through some of the basic
2 regulatory framework. Based on your experience, how
3 has DNR consistently implemented Chapter 30
4 activities?
5 A Well, we receive an individual permit or a general
6 permit. We take a look at the activity and the type
7 of waterway that's being proposed. If it's below the
8 ordinary high water mark we know we've got
9 jurisdiction on the placement of structures and we
10 will evaluate the impact to the public interests.
11 Public interest can include navigation, water
12 quality, fish and wildlife, as well as natural scenic
13 beauty and if the project is consistent with the
14 protection of those public interests, we may approve
15 the project. If it doesn't, we sometimes or often
16 will work with the applicant to try to modify the
17 project so that we can approve it. If we can't get
18 modification, we may have to deny the application.
19 Q What are some of the activities regulated by
20 Chapter 30?
21 A There's lots of activities that are regulated by
22 Chapter 30. Everything from riprap, which is a
23 (inaudible) stabilization technique, boat ramps,
24 culverts, bridges, miscellaneous structures, anything
25 that's placed on the bed of a navigable waterway as

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1 function of that structure so it doesn't damage the
2 other public interests.
3 Q You described a basic Chapter 30 process with the
4 example of a culvert. How would that process be
5 different if wetlands were present at the site
6 location where the Chapter 30 regulated activity was
7 being proposed?
8 A There are -- if there are wetlands that are
9 associated and those wetlands are below the ordinary
10 high water mark, we still authorize that structure
11 through Chapter 30. The wetland impact is evaluated
12 and can be authorized through the Chapter 30. We may
13 not necessarily record the wetland impact because
14 it's usually very small, but we do track that from a
15 state-wide standpoint, as we are always conscious of
16 trying to reduce the loss of wetlands in Wisconsin.
17 Q But technically do we require two permits for that
18 activity?
19 A Not in that situation we don't. Our water quality
20 certification really just regulates the placement of
21 fill material.
22 Q But we do evaluate the wetland activity?
23 A Yeah, the Chapter --
24 Q Is that -- is my understanding correct?
25 A The Chapter 30 permit will acknowledge the 103 or the

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1 far as structure, grading, those types of activities,
2 ponds within a certain distance of a navigable
3 waterway, are all part of the Chapter 30.
4 Q Do Chapter 30 authorizations below the ordinary high
5 water mark allow alterations of the bed of the lake
6 or stream material?
7 A Yes, on a very limited basis. The example I'll use,
8 again, is a culvert example. In situations where a
9 new culvert needs to be placed, we like to see those
10 culverts buried in the substrate in the bottom of the
11 stream, for example and so the permit will authorize
12 disturbance of that bed material so that the culvert
13 can be buried in the sediment. So there is a certain
14 amount of very limited disturbance that is allowed as
15 part of the installation of a structure through
16 Chapter 30.
17 Q And do any Chapter 30 activities allow placement of a
18 deposit or fill below the ordinary high water mark?
19 A Things like riprap are permitted. A boat ramp
20 structure would be permitted under Chapter 30 below
21 the ordinary high water mark.
22 Q What about organic or granular fill material?
23 A In some cases yeah, again, a very small amount may be
24 permitted with the installation of, say, a pier
25 structure or some other structure to improve the

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1 NR103 process and the wetland regulations so it will
2 evaluate the impact or evaluate the functional values
3 impact to that wetland but, again, it's authorized
4 under a Chapter 30 permit.
5 Q Okay. So I'm just stepping through this
6 step-by-step. It may be more detailed than some
7 need, but just for the record, what about a proposal
8 to fill -- to place fill in a wetland for a driveway
9 or roadway?
10 A In that situation it would require a water quality
11 certification. If the practical alternatives
12 analysis showed no other alternative that was a
13 practicable one, we could authorize the fill
14 placement under a water quality cert.
15 Q How would that -- or, I'm sorry, what if the wetland
16 were a navigable wetland, meaning an ordinary high
17 water mark had been established in the wetland?
18 A Again, if it's a placement of fill, it would be a
19 water quality cert. If it's a placement of a
20 structure, we would treat it under a Chapter 30.12
21 permit.
22 MR. GLEISNER: I'm sorry, I apologize,
23 could he repeat that answer?
24 A If it's a fill, placement of fill material, we would
25 regulate it under a water quality cert, if it's a

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1 placement of a structure, like a culvert, a bridge,
 2 piling, or something like that, it would be
 3 authorized under Chapter 30.
 4 MR. GLEISNER: Thank you.
 5 MS. CORRELL: Let me rephrase the question.
 6 Q So keeping the activity the same as the previous
 7 question, we'd regulate -- how would we regulate the
 8 fill placed in a navigable wetland?
 9 A We'd regulate it under a water quality cert.
 10 Q And is that the consistent practice DNR has followed
 11 based on your years of experience working for the
 12 DNR?
 13 A Yes, it is.
 14 Q And was that the consistency that you referred to in
 15 terms of your role as an Aquatic Habitat Coordinator?
 16 A Yes. Consistent implementation of the codes or
 17 statutes was part of my responsibilities, both in
 18 training staff, in liaison with central office, and
 19 also with dealing with customers -- permit
 20 applications -- permit applicants.
 21 Q In your opinion, is a navigable wetland that's
 22 proposed to be filled in some parts an uncommon
 23 feature in the landscape based on your experience?
 24 A We do get requests for wetland fill projects.
 25 Fortunately, I think the public is sensitive to the

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1 rebuttal when this is their response to our
 2 petition is inappropriate and this is a
 3 surprise.
 4 MR. GLEISNER: It is a big surprise.
 5 MS. CORRELL: Dr. O'Reilly presented
 6 information regarding the jurisdiction of the
 7 DNR.
 8 MS. KAVANAUGH: Saying that we had it under
 9 both Chapter 30 --
 10 MS. CORRELL: I was waiting to see what
 11 evidence you would present.
 12 ALJ BOLDT: It's a -- I think it's a
 13 responsive -- responsive evidence to
 14 Dr. O'Reilly. Of what I'm understanding, I
 15 think technically you're right, Counsel. It's
 16 not rebuttal, but it is responsive to -- and, in
 17 fairness, Counsel right from the start has been
 18 making these jurisdictional objections. We
 19 allowed your expert to pursue your theory of the
 20 jurisdictional issues in light of, you know,
 21 interpreting the pleadings and so forth. I
 22 think it's only fair that Counsel be allowed to
 23 do it. Now, you can take a minute to look at
 24 it, talk it over. We'll take a break if you
 25 want to look it over with Dr. O'Reilly.

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1 fact that we're trying to protect wetlands. Their
 2 functional values are important for all of us. And
 3 so I think the requests that we receive are in
 4 recognition of not only authority, but the value of
 5 the wetlands so it's not necessarily uncommon, but
 6 the extent is not very large.
 7 Q Are you familiar with the project site that's at
 8 issue in this contested case hearing?
 9 A Yes, I am.
 10 MS. CORRELL: And if I could pass out a
 11 figure. I'd like to enter it into evidence as
 12 rebuttal information on the
 13 jurisdictional -- continuing jurisdictional, I
 14 guess --
 15 MR. GLEISNER: Is this an exhibit we've
 16 seen before, Counsel?
 17 MS. CORRELL: No. I can provide it to you
 18 right now. I was waiting for jurisdictional
 19 issues from you guys on rebuttal testimony, but
 20 you never had any.
 21 MR. HARBECK: Well, Your Honor, in terms of
 22 their characterizing this as rebuttal, typically
 23 in a case you have the petitioner and then you
 24 have the respondent and the petitioner offers
 25 rebuttal evidence so to characterize this as

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1 MR. GLEISNER: Yeah, let's take a break.
 2 MR. HARBECK: Your Honor, the only other
 3 thing I'd like to say is when Mr.
 4 O'Reilly -- when Dr. O'Reilly addressed this, he
 5 did this because of the hue and cry that the DNR
 6 did at the beginning of this hearing, of which
 7 was a complete surprise to us that they were
 8 going to take the position they did. We also
 9 deposed Mr. Wakeman and asked him everything
 10 that he was going to testify about. All of this
 11 is brand new so we --
 12 MS. KAVANAUGH: We didn't know he was going
 13 to testify --
 14 MR. HARBECK: Let me finish.
 15 MS. CORRELL: We didn't know he was going
 16 to bring everything into this hearing.
 17 MR. HARBECK: Can you please let me finish?
 18 I mean I'll let you speak. Let us get our
 19 sentence in so the court reporter can get it
 20 down. Again, it's a matter of common courtesy.
 21 We deposed Mr. Wakeman. We asked him everything
 22 that he was going to testify about and we got
 23 that. All of this is brand new. If they had
 24 issues about the jurisdiction they could have
 25 raised them before. So I want to put on the

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1 record we object to the testimony he's giving
2 now on this because it's brand new and a
3 surprise and that's why we deposed him, so we
4 wouldn't have, I'll say, a trial by ambush on
5 this jurisdictional issue which they raised for
6 the first time at the beginning of the hearing
7 before we had said a word. So that's our
8 objection, Your Honor. We think this is
9 inappropriate. It's not fair to have him come
10 up and all of a sudden start giving opinions
11 that we've never heard before when we asked him
12 everything that he was going to testify about in
13 his deposition and we can put that on the record
14 if we need to.

15 MS. KAVANAUGH: And I was at the deposition
16 and we -- it is what we thought he was going to
17 testify about because I thought that what we had
18 granted jurisdiction on was just this issue of
19 navigable waters, as I stated it. You guys have
20 expanded it. You're saying that you've
21 stipulated that it's not wetlands, but you're
22 getting around the same fill that is a wetland
23 fill being -- you're saying that it isn't
24 wetland because it's fill placed under
25 Chapter 30 -- under 30.12. So if you raise it,

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1 gray areas and, as a result, I think it's
2 appropriate to allow that deposition, a second
3 deposition, of Mr. Wakeman on those
4 discreet -- or that single discreet issue. And,
5 as I understand it, the parties are going to try
6 to do that October 4th, 5th or 12th, or
7 something --

8 MR. GLEISNER: 14th, Judge.

9 ALJ BOLDT: 14th? Okay. And then I will
10 send out an email indicating dates close to
11 there where we can have a conference call.
12 We're going to make every effort to get the
13 hearing back on within 30 days of today's date,
14 which I think is the 21st. So everybody try to
15 clear a day. It's probably going to take us a
16 full day, I would think, if we have a rebuttal
17 case as well and we won't -- the parties all
18 agree --

19 MS. CORRELL: And I think we should be
20 entitled to at least a day since each party --

21 ALJ BOLDT: Would you like a
22 day-and-a-half? I mean we can look at two-day
23 blocks.

24 MS. CORRELL: I would like to reserve at
25 least as much time.

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1 we have the right to respond to it.

2 ALJ BOLDT: No, well, in terms of your
3 concern about deposition -- let's go off the
4 record.

5 (Recess taken)

6 ALJ BOLDT: Okay. We're back on the
7 record. I'm trying to strike a balance here to
8 give everybody their due process -- give
9 everybody their fair right to hearing. And
10 understanding that we've been working really
11 hard these last three days, I am going to, as I
12 indicated off the record, allow a very limited,
13 very discreet, deposition. You're not going to
14 re-plow any old fields, you're going to go on
15 this new information that's coming in about the
16 interface essentially between Chapter 30 and
17 NR103 and the jurisdictional issues that have
18 come up fairly regularly since the start of the
19 hearing and only new areas in your deposition of
20 Mr. Wakeman, but I think that's fair. You took
21 the -- undertook the expense and the effort to
22 do a deposition and there is -- no one's at
23 fault here in terms of -- and I don't think
24 anybody's trying to be unfair or anybody's
25 hiding anything, I think it's just a series of

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1 ALJ BOLDT: Okay.

2 MS. CORRELL: We have two petitions to
3 respond to.

4 ALJ BOLDT: Okay. No, I think that's
5 appropriate.

6 MS. CORRELL: I don't know that we'll need
7 it, but I think we need to reserve that time.

8 ALJ BOLDT: I think that's a good idea.

9 MS. CORRELL: And we may also have
10 rebuttal --

11 MR. GLEISNER: And I think we should
12 reserve a half day for rebuttal.

13 ALJ BOLDT: I agree and Mr. Putland said
14 the same thing at lunchtime. So, yeah, two days
15 where we can get on and we'll get this thing
16 complete and we'll, you know, do our best to try
17 to balance and accommodate everybody's concerns
18 and give everybody their due process that
19 they're entitled to under the Constitution.

20 MR. GLEISNER: Thank you, Judge, very much.

21 MS. CORRELL: And, Judge, I also would say,
22 based on the surprise that we've been talking
23 about and hardship since the motion in limine,
24 that we would also reserve our right to call
25 rebuttal witnesses, including a witness that we

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1 didn't --
 2 ALJ BOLDT: Surrebuttal.
 3 MR. GLEISNER: They'll be surrebuttal now.
 4 ALJ BOLDT: And we've regularly done
 5 surrebuttal --
 6 MS. CORRELL: Rebuttal witnesses.
 7 ALJ BOLDT: -- in these hearings
 8 unfortunately for years so we've done
 9 surrebuttal.
 10 MS. CORRELL: Yeah, not surrebuttal
 11 necessarily. It could include a witness that we
 12 haven't previously called based on the testimony
 13 that was entered into the record that is
 14 entering into wetlands that we had a stipulation
 15 on.
 16 MR. GLEISNER: Well, that would raise an
 17 interesting question, Judge, and we may as well
 18 address it now. If they're going to name any
 19 new witnesses -- is that what they're suggesting
 20 to us?
 21 MS. CORRELL: We would like to reserve
 22 ourselves that time, yes.
 23 MR. GLEISNER: Well, Judge, that's going to
 24 throw a bit of a monkey wrench into things.
 25 ALJ BOLDT: A new witness that's not on

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1 of agreement that works for all, then fine,
 2 we'll proceed on that basis. If they can't,
 3 we'll go on the record and argue it either at
 4 the hearing, if somebody tries to bring in a new
 5 witness, or at the telephone conference call.
 6 And that's a likely event if there's still a
 7 dispute between Counsel on that date that we
 8 have the telephone conference call. Does
 9 anybody want to be heard further?
 10 MR. GLEISNER: Judge, just a very short
 11 statement. I think it would be helpful to all
 12 the parties if you issued a brief order in
 13 conformity with what you just said so that we're
 14 clear on that.
 15 ALJ BOLDT: An order?
 16 MR. GLEISNER: Well, a scheduling note?
 17 ALJ BOLDT: Well, I would prefer why don't
 18 you all tell me -- I will solicit dates for the
 19 telephone conference call and when you reply or,
 20 you know, when we pick the final date, why don't
 21 you tell me if I need to be prepared to go on
 22 the record during the phone conference call. If
 23 it's just scheduling, then we won't -- and I'll
 24 just have a digital recorder and we'll record
 25 the telephone motion hearing. I don't think

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1 your witness --
 2 MS. CORRELL: That we may call --
 3 MS. KAVANAUGH: Our rebuttal witness.
 4 MS. CORRELL: -- based on the testimony
 5 that was presented as to wetland impacts.
 6 MR. HARBECK: Your Honor --
 7 ALJ BOLDT: Now, that would be a new -- I
 8 don't think we've ever had a new surrebuttal
 9 witness. I mean that is an area -- and there is
 10 case law --
 11 MS. CORRELL: But there was a stipulation
 12 and they ceded bringing wetlands into the
 13 testimony.
 14 ALJ BOLDT: All right. So let's go back
 15 off the record.
 16 MS. CORRELL: Wetland fill.
 17 ALJ BOLDT: Let's go back off the record.
 18 This is something new. We didn't talk about
 19 this off the record.
 20 (Recess taken)
 21 ALJ BOLDT: Okay. We're back on the
 22 record. Folks are going to talk about the
 23 prospect of the DNR adding a surrebuttal
 24 witness. Everyone has left open how they're
 25 going to -- if the Counsel can come to some sort

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1 there's any order. I'm not really ordering
 2 anything so that seems to be a good way to deal
 3 with that problem. Anybody else want to be
 4 heard further, otherwise we're going to adjourn,
 5 and we'll look forward to completing the hearing
 6 at our earliest convenience. All right. Thank
 7 you all very much.
 8 (Hearing Adjourned)

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STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Manual Code 3565.1 for the Approval
Authorizing the Department of Natural Resources to Grade
More Than 10,000 Square Feet on the Bank of North Lake,
Install a Boat Ramp Structure and Two Outpost Structures
on the Bed of North Lake, Install Four Culvert Crossings
Over Wetlands, Fill Up To .16 Acres of Wetlands for
Construction of a Public Boat Launch on North Lake and
Adjacent Property Located in the Town of
Merton, Waukesha County

Case Nos. IP-SE-2009-68-05745 through 05750

I, KRISTINE K. McCARVILLE, do hereby certify that as
the duly-appointed transcriptionist, I transcribed the
proceedings held in the above-entitled matter on the 21st
day of September, 2011, and that the attached is a true
and correct transcription of the proceedings so taken.
Dated this 28th day of December, 2011.

Kristine K. McCarville
Notary Public, State of Wisconsin
My Commission Expires: 11/22/15

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