
Task Force Meeting

of

ASSEMBLY TASK FORCE TO STUDY THE FAIR HOUSING ACT AND STATE PLANNING ACT

*“Testimony from diverse groups, as well as citizens,
concerning the goals and actual implementation of the two acts”*

LOCATION: Committee Room 1
State House Annex
Trenton, New Jersey

DATE: April 10, 2001
10:00 a.m.

MEMBERS OF TASK FORCE PRESENT:

Assemblywoman Connie Myers, Chairwoman
Henry L. Kent-Smith, Esq.
Christine Marion, P.P.
Mayor Alfred W. Schweikert, Ph.D.



ALSO PRESENT:

Hannah Shostack
Joyce W. Murray
Office of Legislative Services

Deborah K. Smarth
*Assembly Majority
Task Force Aide*

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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Task Force Aides

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ASSEMBLYWOMAN CONNIE MYERS (Chairwoman): Good morning. Welcome to the first public meeting of the Assembly Task Force on the State Planning Act and the Fair Housing Act.

We are organized under an Assembly resolution, and I'd like to go over the provisions of that resolution, because the resolution, to a large degree, will determine the parameters of this discussion.

When you start talking about affordable housing and the State Plan, the discussion could go on for years. And this Task Force is required to report by, I believe, September. And in order to do that, we're going to have to limit our discussions in some way.

So let me read to you the pertinent provisions of the resolution first. It shall be the duty of the Task Force to review testimony and information received and prepare an assessment of both acts as they have been effectuated. The assessments shall attempt to determine the degree of success that has been realized in accomplishing the stated goal of each act, whether there have been intended or unintended impacts directly or indirectly caused by the implementation of the acts and some quantification of those impacts, whether the goals of the State Planning Act have been furthered or hindered by the Fair Housing Act as implemented and vice versa.

So that is our charge. And so our discussions are limited to our-- Let me put it this way: Our recommendations will be limited to recommended changes to these two statutes. We will not be-- We do not expect to be recommending changes to COAH's regulations, changes to the State Plan, things like that. We're going to focus on the language of the statute, maybe not today, but by the time we make recommendations.

I'd like to introduce the members of the Task Force who are here. Everyone appointed to this Task Force has had a strong interest and has had concerns about the way the State Plan and/or the Fair Housing Act have been implemented. It's a-- I'm very excited about the makeup of the group. I'm sorry that our two South Jersey representatives, Assemblyman LeFevre, from Atlantic County, and Mayor Pagliughi, from Cape May County, are not with us today, oh, and we expect Bill Dowd, from Monmouth County, a former assemblyman, to join us.

I'm going to start with Mayor Al Schweikert, Mayor of High Bridge in my home county of Hunterdon.

Al, would you like to introduce yourself and give us a brief view of your interest in this?

It should be red. (referring to PA microphone) If it's red then it's on.

MAYOR SCHWEIKERT: I can speak loud enough, so--

ASSEMBLYWOMAN MYERS: No, we're recording this, so the microphones have to work.

MAYOR SCHWEIKERT: There we go. Always a great start.

As Connie said, the reason I'm here is, I believe that the legislation for the Fair Housing Act and the State Plan have the greatest of intention, but implementation may have fallen short in some of our eyes. I'm not here to abolish COAH by any means, but would like to see some efficiencies created.

We haven't reviewed these acts, I guess, in, roughly, 15 years, since they were first put forward. And times change, economies change, and the flow of people, and the census has changed. And what I'd like to see is that we can

improve on what we have in the Act to make small-town mayors, such as myself, have better ability to show more housing -- affordable housing in the right areas, and also to stop fueling the sprawl that's occurring across our state.

Thank you.

ASSEMBLYWOMAN MYERS: Our next panelist is an attorney from Mercer County, Henry Kent-Smith.

MR. KENT-SMITH: I'm very honored to serve on this Task Force. *Mount Laurel* is the reason why I went to law school. When I was studying planning in 1975, my planning professor brought the *Mount Laurel I* decision to class one day and said, "Read this. It's the most important decision in planning in the last 50 years."

And this has been an abiding concern that I've had regarding New Jersey and how we can effectively plan to provide affordable housing. I think that the State Plan and the Office of State Planning have done an admirable job in preparing the State Plan. The Council on Affordable Housing has done a commendable job in overseeing the Fair Housing Act.

But I also think it's time that we take a good, hard look at the statutes and at COAH and the Office of State Planning to assure that the agencies are abiding by the legislative intent and, to the extent necessary the legislation needs amendment, to propose amendments that would better comport those statutes with the constitutional obligation with the *Mount Laurel* doctrine.

I'm very honored and pleased to serve.

Thank you.

ASSEMBLYWOMAN MYERS: Our next panelist is Christine Marion, and she is Deputy Director of the Planning Department for Morris County.

MS. MARION: Likewise, similar to both of these gentlemen, my career began, actually, looking at the Fair Housing Act. The *Mount Laurel II* decision has affected our county -- the numbers that were originally generated. As time moved on, we moved over to the State Planning Act. So I had the benefit of looking at both of these.

I'm also on the Assembly Task Force as a representative of the County Planners Association. I am President of the year, so I'm taking into account all of the concerns of that organization.

As many of you-- The State Planning Act had its origins in the Fair Housing Act, and it's-- Those two documents are very -- or those two laws are very close together.

Counties, increasingly, are looked at to implement and to help coordinate both of these acts and -- very interested in the implementation aspect of the State Planning Act and the Fair Housing Act.

Thank you.

ASSEMBLYWOMAN MYERS: Thank you.

And I am Assemblywoman Connie Myers. I guess I ran for the Legislature, largely, because of the impact of the State Plan and the Fair Housing Act on my very rural district in northwestern New Jersey. This is my sixth year in the Legislature and my sixth year in trying to grapple with these issues. And I think I've learned a lot over those six years.

The initial bills that I put forward several years ago were primarily focused on the problems in my district. And having been in the Legislature now for five and a half years, I'm much more aware of the need to craft legislation that takes into account the impacts on urban and suburban areas, as well as rural areas.

And I'm grateful to all the people who wrote to me when I did propose bills in the past and suggested a comprehensive look at this whole issue with the goal of addressing concerns across our diverse state.

I'd like to say that the Speaker has asked that we work with the Council on Affordable Housing and the State Planning Commission with the goal of coming up with recommendations that are going to be workable for everybody. And we've invited the Director of the Council and the Director of the Office of State Planning here today to listen to our concerns and to tell us where they are in their processes.

So, would you like to go first, or would you like to hear some testimony?

SHIRLEY M. BISHOP: Whatever you would prefer.

ASSEMBLYWOMAN MYERS: Okay. Well, why don't you come up and tell us where you are?

MS. BISHOP: Good morning.

I'm Shirley Bishop, Executive Director of the Council on Affordable Housing, known as COAH throughout the State of New Jersey.

Thank you very much for the invitation to come and address this very esteemed group of Task Force members reviewing the Fair Housing Act and the State Planning Act.

As we all know, the Fair Housing Act was passed by the Legislature in response to the builder remedy lawsuits going through the courts during that time. COAH was set up by the Legislature as the administrative alternative to the courts. By setting up COAH, the municipalities were also able to develop their own plans and come up with affordable housing options that would best suit the needs of the community.

But I think we're all aware that the builders' remedy lawsuits and the court settlements that occurred at that time were then transferred over to COAH. And COAH is really the repository of probably the anger against some of the builders' remedy lawsuits.

The municipalities that have voluntarily complied and developed their own plans -- there is no builders' remedy. The town selected particular options.

The Fair Housing Act will be 16 years old this July. And one of the directives that you have is the success of the Fair Housing Act. The Fair Housing Act requires that a municipality provide a realistic opportunity for affordable housing. And to date, I can give you some statistics that are a year old, because the monitoring forms have just gone out to bring us up to date with the activity through the year 2000. So the numbers I'm giving you are incredibly conservative numbers. And the numbers, also, do not reflect many of the core towns that are not under COAH's jurisdiction.

As of last year, there were 25,900 new affordable housing units built, got rehabed, or adaptively reused throughout the State of New Jersey. There was also an additional 14,200 housing units that were either zoned or had approvals in place. It is expected, when the new monitoring forms come in, that

those numbers will be transferred over into the actually built category. 10,400 deficient housing units occupied by low and moderate income families, primarily in the suburbs, have been rehabilitated. And there have been 7335 RCA units, for a total of \$143 million transferred into the primarily urban areas to help revitalize the urban housing stock, which was one of the goals of the Fair Housing Act.

As we all know, COAH is developing a third-round formula and methodology. The final components of the formula, as I say, are still under construction. However, in order to solicit major input from the citizens of New Jersey and the various interest groups, two years ago, COAH started focus groups. There are nine focus groups that reached out to give COAH direction on what a third-round formula and methodology should look like, also, to give COAH direction on various policy issues, the age restricted maximum -- really, the implementation for the plans.

Those focus groups met, gave COAH input. At that time, there was basically no formula components presented to COAH, but there were three descriptions -- descriptive words that everyone said, "COAH, please have a third-round formula that is fair, that is understandable, and that is predictable." And I can tell you that the COAH Task Force that has been working for two years to develop a new third-round formula has heard the voices of all of you and is trying to put together a formula that is fair, understandable, and predictable.

I'm laughing because simplicity is incredibly complex. And what everyone thinks should be so simple and straightforward becomes complicated.

And the complications then have to be reduced to simplicity so that each one of you can understand how a third-round number was generated.

I would like to say that the Council task force members have also had a dialogue with the Coalition for Affordable Housing in the Environment, have an ongoing dialogue with representatives from the League of Municipalities, and have also met with the New Jersey Builders Association.

COAH will not be acting in a vacuum. Once the components of a third-round formula are available for the public, COAH will reconvene all of the focus groups again, solicit input on the formula -- the proposed form of methodology, and also, go out with proposed policy issues -- how the Council is looking at the proposed policy issues, and solicit input. COAH will not go into proposed regs before there is time for public input. And, as always, even the proposed regs will have a comment period, and there will be public hearings.

The Council is very sensitive to soliciting as much public input as possible, because the Council realizes that public support and understanding is critical for municipalities to meet their affordable housing obligations.

The Council is moving forward on the components of the third-round formula, and the Council is also sensitive to the work of the Assembly Housing Task Force. We see us working on a parallel track. And we want the dialogue to be open and continuous. And we are here also to work with you.

Thank you.

ASSEMBLYWOMAN MYERS: Thank you very much.

I just have one question. Those statistics that you gave us-- Do you capture where those units have occurred?

MS. BISHOP: Yes.

ASSEMBLYWOMAN MYERS: And do we have that information--

MS. BISHOP: Yes.

ASSEMBLYWOMAN MYERS: --where they've occurred?

MS. BISHOP: Yes. I'll be happy to drop off some copies.

ASSEMBLYWOMAN MYERS: Okay.

MS. BISHOP: Would you like this? (indicating)

ASSEMBLYWOMAN MYERS: I think maybe I have that one, but I don't know if we have enough copies for the whole Task Force.

Questions for Shirley Bishop from members of the panel.

MAYOR SCHWEIKERT: Hi.

MS. BISHOP: Hello.

MAYOR SCHWEIKERT: Those numbers that you gave us-- What is the relationship of those numbers to how many affordable houses are necessary for the population right now?

MS. BISHOP: The cumulative 12-year obligation was set at approximately 117,000 new or rehabilitated units. If you look at the number of units, we have not reached 117,000.

The Legislature, in its wisdom, adopted the Fair Housing Act, but they omitted one small section, making the Fair Housing Act mandatory.

MAYOR SCHWEIKERT: Okay. When we look at 117,000 units and the numbers you gave us, 57,000 units--

MS. BISHOP: That is correct.

MAYOR SCHWEIKERT: So we're maybe at 50 percent or less of where we should be.

MS. BISHOP: I think it's actually more than 50 percent. The core towns are not included in the count that you have there, because we don't have up-to-date information. In addition, the numbers are a year old. The new monitoring numbers will be available in the summer. Especially since your Task Force will probably still be operational, we will get the new numbers to you and update it. And hopefully, in the economic climate that we've had, the numbers will increase.

MAYOR SCHWEIKERT: Okay. When does a municipality reach its fair share, or does it always have a fair share that it's require--

MS. BISHOP: We certify for a distinct period of time, and that certification is valid, right now, for a six-year period. And the town has met its obligation. The Council is developing third-round numbers. I don't know if the numbers will be zeroed -- if some towns will have zero, if some will have increasing numbers. What I do know is that there is an expectation of perhaps 90,000 new low and moderate income households expected to form over the next six to ten years and that they will be accommodated somewhere in New Jersey. And the formula will be representative of those particular new households expected to form.

MAYOR SCHWEIKERT: Okay. If a municipality, though, is, let's say, suburban, and it continues to meet its fair share, it has to stop at some point. And I would think that stopping point is when it's totally built out.

MS. BISHOP: Probably-- I think Morris County is probably a good indicator of what happens when you're built out and you've reached your number. During the first round-- Many of the Morris County towns were sued

for exclusionary zoning. And the courts gave the Morris County towns the numbers, which were higher than COAH's numbers when they came out.

As a result, the Morris County towns -- many of them have built affordable housing that is in excess of what COAH's number is, although there is a need for all the affordable housing that we have. But those municipalities are-- They do not have to provide any additional new affordable housing, because they have met and exceeded the number the COAH has generated.

MAYOR SCHWEIKERT: You talked about, in the start of your talk there, roughly, the amount of lawsuits that were occurring and builders' remedies--

MS. BISHOP: Yes.

MAYOR SCHWEIKERT: --that COAH has formed to prevent these types of lawsuits. What are we looking at now, in the year 2001, as far as lawsuits against COAH?

MS. BISHOP: It amazes me that this is 16 years later, there is an administrative alternative for the municipalities, and they're still being sued. It's a political decision. It is probably not the easiest decision to make for a planning board to select sites that are in residential areas. And some municipalities would much rather have the court decide where the housing is being built than make a decision. But the towns still are being sued.

MAYOR SCHWEIKERT: Would you say that the level of legal action has increased, decreased, or about the same?

MS. BISHOP: It's probably about the same. All you need is one developer before a planning board that is not getting the density that he or she

wants, and the first thing the developer will do is look to see if the town has a COAH certified plan.

MAYOR SCHWEIKERT: All right. Can a municipality with roughly 50 percent available affordable housing still have to pay a fair share?

MS. BISHOP: I don't know if I understand your question.

MAYOR SCHWEIKERT: If a municipality, let's say, is in a rural area, it has open space, but at the same time it has a housing stock that would be considered affordable housing, approximately up to 50 percent of its housing stock, is it still required to do fair shares?

MS. BISHOP: Based on the present formula, affordable housing need was allocated with three indicators: vacant and developable land, regional income, and nonresidential ratables. And that's how a municipality received a number. The level of affordability of housing in a municipality was not part of the second-round methodology.

MAYOR SCHWEIKERT: Okay.

ASSEMBLYWOMAN MYERS: Can I just follow that up before you ask your next--

MAYOR SCHWEIKERT: Sure.

ASSEMBLYWOMAN MYERS: --unless your next one is related to this.

MAYOR SCHWEIKERT: Go ahead.

ASSEMBLYWOMAN MYERS: I noticed, when I was reviewing the Fair Housing Act, and we do have copies of both statutes on the side table, that there is a section that limits the credits for low income units to units built or

rehabilitated between 1980 and 1986. And I think that's connected to the question that Al was getting at.

It's hard for us to understand, when we have communities that are pretty much low and moderate income to begin with, and then COAH seems to ignore those households.

So if you could explain why we got this amendment, which is a late amendment to the law, and how it's used--

MS. BISHOP: Yes. COAH's formula is based on the need from April 1st, 1980 up to 1999. That's the starting off point. The Fair Housing Act-- The original Fair Housing Act said that COAH shall credit one for one for each standard unit of low and moderate income housing.

Between 1980 and 1986, there was no Fair Housing Act. There were minimal Federal programs to provide for affordable housing, and the municipalities were not jumping in to take advantage of some of the Federal programs. As a result, it was really the private market that built affordable housing without any controls between 1980 and 1986.

The Fair Housing Act was amended, because there were two lawsuits. One was the Bernards lawsuit, where the Appellate Division said, "COAH, you're looking at this too strictly. There should be some regulation, or some way, to credit a municipality where the private market built affordable housing that's present and affordable from 1980 to 1986." And COAH adopted regulations that gave credit to municipalities that had housing built by the private market between April 1980 and December 1986 currently occupied by low and moderate income families and in sound condition.

COAH was sued on that regulation, and it was regarding Brick Township. And as a result of the lawsuit, the Fair Housing Act was amended to include the credits between 1980 and 1986, adding another test, that the housing had to be affordable according to today's levels.

The 1980 to 1986 are the uncontrolled, nondeed restricted units by the private market. But municipalities from '86 on received credit for all of the affordable housing that falls under the Fair Housing Act and under any of the Federal programs. There's four criteria: low or moderate income people occupying the housing, affordable rents and selling prices, affirmative marketing, and deed restrictions.

ASSEMBLYWOMAN MYERS: But why not before 1980? I mean, you have older towns in New Jersey where the homes might have been in 1880. If they're affordable and if low or moderate income people are living in them, why can't we count them? Why 1980?

MS. BISHOP: Because the need was generated from the starting point of 1980. And the need generates the number. If, in fact, COAH went back and said, "We will credit all of the affordable housing from 1970 to 1980," then the needs -- the need number would have to be increased so that there was a nexus between the need and the number of housing units. That's why.

ASSEMBLYWOMAN MYERS: Okay. Thank you.

You had more?

MAYOR SCHWEIKERT: One more.

Some of the critics of the Fair Housing Act have said that it leads to sprawl, particularly in rural neighborhoods, which increases property taxes,

because they don't have the school infrastructure to control the amount of children coming in for the number of houses that are being built. I was wondering if you could comment.

MS. BISHOP: Right. COAH offers municipalities options. Inclusionary zoning is really only one of the options that municipalities have. There's the RCA, the Regional Contribution Agreement transfer. There are group homes. There are accessory apartments. There are write-down/buy-down programs using existing housing and making it affordable and placing it in the affordable housing inventory.

COAH, in its second round-- Any new sites will only have inclusionary zoning if the site is in Planning Area 4 or 5, if it's in a center, or the focus of a favorable waiver.

When we were looking at the towns coming with new second-round plans, inclusionary zoning was not the option of choice, except for those municipalities that had court settlements or mediated agreements that had to keep the sites in the plan. Many of the municipalities were actively looking for group homes -- were also providing for age-restricted rental housing. I don't see age-restricted rental housing or group homes promoting sprawl.

COAH developments are tight developments. Our density is generally six to the acre. In the rural communities, other than court settlements -- and I understand-- I should say that High Bridge is under the jurisdiction of the Council on Affordable Housing, and the plan is moving forward. You do not really find the inclusionary zoning in the rural areas, because there is no public water or sewer.

MAYOR SCHWEIKERT: Thank you.

ASSEMBLYWOMAN MYERS: If I could just follow up on that one, as well.

I first met Henry Kent-Smith because he was defending one of my towns in the *Mount Laurel* suit. And we were laughing when he was appointed to the Task Force, because my oldest son just bought a house in the development that has occurred as a result of this settlement -- of that lawsuit. (laughter)

The problem is-- I mean, I'm very proud that my son is making more than my husband and I combined. It's very nice to have successful children, but the house he is purchasing is close to what I would call a mini mansion at this point. And taking a ride through this development-- There's no affordable housing there. It is, essentially, these mini mansions, which are taking over, at least, my area of the state.

So my question is, you said that in PA-4 and 5, which is this town was totally agricultural, no ratables, very rural town, affordable housing has to be in a center or the focus of a favorable waiver. And since there is no center in this development that I'm thinking of, then it must have been the focus of a favorable waiver, because it's my understanding that the town will be sending significant amounts of money into an urban area in order to provide the affordable component of that settlement.

I'm asking you to define focus of a favorable waiver.

MS. BISHOP: West Amwell sued for exclusionary zoning. I think all of the housing is market housing.

ASSEMBLYWOMAN MYERS: Right.

MS. BISHOP: So, in the court settlement, I understand, the RCA transfer was part of the court settlement.

West Amwell never petitioned to have a plan reviewed with COAH, and that's probably--

ASSEMBLYWOMAN MYERS: I understand that, but--

MS. BISHOP: Right.

ASSEMBLYWOMAN MYERS: I don't want to talk about that.

MS. BISHOP: I understand.

ASSEMBLYWOMAN MYERS: I'll just briefly, in its defense, say that I have 45 towns. And many of them, at least when I ran six years ago -- a lot's changed in six years already -- but had part-time clerks, no planners, three-member committees, people that really were not capable of dealing with the complexities of some of the laws that we pass down here in Trenton.

So, with that as a background, I guess, maybe, what you're telling me is that it's not applicable to COAH, because it was a court settlement. And I accept that. But I wonder what that focus of favorable waiver is, and whether this could occur under COAH. What occurred under this court settlement-, could it also occur under the way you do things now?

MS. BISHOP: No. There is a memorandum of understanding between the State Planning Commission and the Council on Affordable Housing. We have regulations at COAH that say if there is a new inclusionary site in Planning Areas 4 and 5, it must be in a center or the municipality may apply to COAH for a waiver from center designation.

Any such waiver requests are automatically forwarded to the Office of State Planning. And I should say that the Office of State Planning staff and

the COAH staff work together in a coordinated effort to make sure that both statutes are upheld -- the goals of the statutes.

If, in fact, a municipality requests a waiver, OSP reviews the waiver and will make a recommendation to COAH. If the recommendation is favorable, COAH will grant the waiver to center designation. If the recommendation is not favorable, COAH will not certify the site. And COAH has been consistent with that.

ASSEMBLYWOMAN MYERS: Well then, to prevent this kind of thing from happening-- I mean, I assume that they are subject to developments that aren't working with COAH at this point. Maybe we should ask that question. Are there?

MS. BISHOP: We have-- I believe there are 268 municipalities that are under the jurisdiction of the Council on Affordable Housing presently. We have another, probably, 55 municipalities that are under the jurisdiction of the court. We also have-- There's 55-- I think it's 55 or 59 eligible urban aid municipalities that do not have to provide housing elements for access to some of the State funding. I mean, if New Brunswick -- if Camden was sued for exclusionary zoning, they would probably say come and build. (laughter) So there is no threat of a lawsuit.

If you take all of the numbers and you add them between the towns that are under COAH's jurisdiction and the core towns and the eligible urban aid, you probably have the majority of the State that is providing some form of affordable housing. The balance of the municipalities have either no vacant land whatsoever -- feel no threat, have no infrastructure, public water and sewer, or if you go down to the southern part of New Jersey, your Cumberland and

Salem counties, where their market housing is affordable housing-- So it's a function of the market and the vulnerability of the municipality and the features -- the very specific land use and infrastructure features of a municipality that would make a decision as to what you should -- what a town should do.

We are still receiving new petitions, amazingly, because now, if a municipality petitions after June 6th of last year, they receive less than a six-year certification. And they're still coming in.

ASSEMBLYWOMAN MYERS: Okay. But if your rules, I guess, say that inclusionary developments have to be in a center -- a focus of a waiver with the Office of State Planning, and it's still happening, that means the courts don't pay attention to what you guys are saying? Is that--

MS. BISHOP: The courts--

ASSEMBLYWOMAN MYERS: Oh, it's because I have mine on.
(laughter) You can't have yours on. (referring to PA microphone)

MS. BISHOP: You know, I'm trying to figure out why.

Okay. I forget what you asked me. (laughter) I'm sorry.

ASSEMBLYWOMAN MYERS: I'm wondering if the statute needs to address this in order to send a message to the courts--

MS. BISHOP: To the courts.

ASSEMBLYWOMAN MYERS: --because it seems like your policy is reasonable, but the courts aren't -- are not ruling -- are not taking that into consideration.

MS. BISHOP: In general, the courts and the court masters follow COAH's rules and regulations, but, quite frankly, the court can do whatever it wants. And we had one situation of a rural municipality suit for exclusionary

zoning. And the court made the determination that no center designation was necessary.

ASSEMBLYWOMAN MYERS: But I'm not an attorney, and I don't think you are either. It would seem to me, if the statute clearly articulated this, the court could not do what it wanted. It would have to follow the parameters of the statute.

MS. BISHOP: I would defer to your legal counsel.

ASSEMBLYWOMAN MYERS: Okay.

Henry.

MR. KENT-SMITH: Thank you.

Shirley, I want to apologize. I was trying to get written questions out to you, but with the crush of just everything in general I wasn't able to. But I do plan to give you written questions so that we could have an opportunity to continue our dialogue beyond this meeting.

But for right now, I really just want to give you some of the highlights of the concerns that I bring to the Task Force. And let's go first to the 1993 memorandum of understanding between the Office of State Planning and COAH.

As a result of that memorandum of understanding, your second-cycle formula, Shirley, underwent a sea change, a paradigm shift, in that municipalities that were never given a prospective need obligation in the first cycle were all of a sudden saddled with prospective need obligations in the second cycle of an order of magnitude of a significant increase in their affordable housing obligations.

I guess the first question is, how do you reconcile COAH's determination to apply a prospective need to rural municipalities? And I say rural-- In those municipalities that did not have a prospective need obligation in the first cycle, how did you justify that in the second cycle?

MS. BISHOP: Well, as I mentioned before, there were three parts of the formula. For the vacant land part of the formula that would allocate affordable housing need, there was no allocation for any municipality in Planning Areas 4 and 5 based on the vacant and developable land. But income and nonresidential ratables caused many of the Hunterdon and the Warren County towns to receive new construction obligations that they didn't have before. Even though they were rural and they had no new construction obligation when the State Development Guide Plan was in effect, the towns were growing. I mean, there was building permit activity that was occurring. And again, the municipalities did not have to look at inclusionary zoning as the only option.

MR. KENT-SMITH: In terms of the statement as to municipalities growing, many municipalities -- the population has declined since 1950, and yet they were still given their prospective need obligation. Not only that, but household formation had declined, which, my understanding of the Act and COAH's formula is that is one of the critical keystones in your assessment of need is household formation. The more households form, the greater the need. The less households form, the less the need.

Did COAH undertake an analysis of the municipalities in rural areas in terms of household formation, one, and two, population growth?

MS. BISHOP: I believe what COAH did was take into account the need, meaning the new low and moderate income households expected to form during the six-year period through 1993 to 1999. They allocated that need based on the three subsets of the formula: vacant and developable land, income, and also nonresidential ratables. In the memorandum of understanding between the Council and the State Planning Commission, I believe it says that all municipalities can grow clearly there. The Council did take all of that into consideration, and that's how the second-round formula was generated, giving at allocating need, based on those three components.

I should also mention that the first-round formula was the subject of a lawsuit. And the methodology was upheld by the court. There was no lawsuit for the present methodology.

MR. KENT-SMITH: Well, not that there wasn't one contemplated. (laughter)

MS. BISHOP: Yes, is there one being filed.

MR. KENT-SMITH: Not only was it contemplated, it was briefed. (laughter)

MS. BISHOP: Oh, I wonder who was the attorney of record.

MR. KENT-SMITH: But for reasons that don't need to be stated, we didn't pursue that.

But let me do follow up, because this goes to the genesis -- what you just said.

And Herb, when you make your statement, I'll be asking the same question of you.

You're right. The first paragraph of the '93 memorandum of understanding says that since all municipalities can grow, they must provide a realistic opportunity for affordable housing. And that sort of becomes the linchpin for allocating a prospective need or regional need on rural municipalities.

Is it your experience, and this is really to both of you-- Is it your experience that the concept of a rural municipality can grow -- it is possible to grow -- that the allocation of a prospective need doesn't, in fact, trigger growth? What is your experience?

MS. BISHOP: I don't think so. I think, because there are options available to a municipality in developing a plan, that it would not be the trigger for the growth itself. The McMansions, as the chair said, are not triggered by affordable housing activities in many of the Hunterdon County municipalities. It's the market.

MR. KENT-SMITH: Well, let me just follow up. In the-- There's three different ways I want to go here, so let me just take a step back and decide which line of questioning I want to assume next.

There's a lot of talk about suburban sprawl. And that, we all recognize, is probably one of the most pressing planning problems that the State of New Jersey faces. When you have municipalities that are in Tiers 4 and 5, without center designation, how would you, Shirley, propose that that municipality meet its growth obligation? What would be some of the mechanisms that would be available?

MS. BISHOP: Rehabilitating existing deficient housing in the municipalities, considering the maximum 50 percent RCA transfer, looking at

the existing housing stock to see if it lends itself to accessory apartments, and actively pursuing group homes in the community, taking existing housing and having it rehabilitated.

It must have been four years ago, I looked at the numbers in Hunterdon and Warren County. If the towns did that, yes, it would cost money, but they would be able to meet an obligation without having to zone for inclusionary zoning.

MR. KENT-SMITH: Now, doesn't the Fair Housing Act, though, state categorically that no municipality shall be required to expend municipal funding in order to meet its *Mount Laurel* obligation?

MS. BISHOP: Absolutely. And then a town that doesn't want to expend its own resources does not have to participate in the COAH process.

MR. KENT-SMITH: But then they would be subject to a builder's remedy suit on the basis of prospective growth.

MS. BISHOP: Yes.

MR. KENT-SMITH: Now, with that said, how is a rural municipality, with a limited tax base, going to afford a regional contribution agreement?

MS. BISHOP: I think municipalities make planning decisions. Municipalities spend money to preserve open space, to preserve farmland. Providing for affordable housing would also be one of the policy issues that a municipality would be addressing.

As I said before, the participation is really voluntary on the part of the towns. I mean, most of the Hunterdon -- nearly all of the Hunterdon

County towns are under COAH's jurisdiction and many of the Warren County municipalities, also.

MR. KENT-SMITH: However, if the municipality does not participate, they would be subject to a builder's suit under the basis of the COAH generated formula saying, "This is your need." In other words, if COAH-- In the first round COAH's need for-- I had a list, and I couldn't find it when I was going through my rather massive file, but I know West Amwell had a six-unit obligation.

MS. BISHOP: Right.

MR. KENT-SMITH: And in the second cycle, it was a 30-unit obligation, of which 16 units were growth or prospective need obligation. That was the genesis for the lawsuit. No builder's going to sue over six units of affordable housing.

So I want to get back to constitutional basis now, under the Fair Housing Act that states, in Section 302, that what the Legislature is doing is adopting legislation in conformity with the constitutional obligation under *Mount Laurel I* and *Mount Laurel II*.

Where in *Mount Laurel I's* decision or *Mount Laurel II's* decision--

ASSEMBLYWOMAN MYERS: Can I interrupt, Henry, and just try to focus this a little bit?

As I said at the beginning of this discussion, we need to focus on the statute, because if we start talking about the provisions of the *Mount Laurel I* and *II* decisions, we're going to get too broad. And so I'm right with you, Henry, but I ask you to look at the beginning of the Fair Housing Act, where it

states “*Mount Laurel* has determined that every municipality in a growth area has--”

MR. KENT-SMITH: That’s exactly where I was going.

ASSEMBLYWOMAN MYERS: I know -- “has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for a fair share of its recent present prospective needs.”

So what-- The question that I think we need to get at, and I’m not sure we can do it today, because there are a lot of people who’ve come out to testify, and I’m beginning to think we did this wrong. We probably should have just Shirley and Herb at the first one, and then everybody else. So we may have to do this again, because it seems like there’s a lot to talk about.

But what I would like to look at, and I think what Henry was trying to get at is, somewhere along the way, that language, in a growth area, got changed to all municipalities are growing. And yeah, I’ll make the same mistake or I’ll break my own rules and go back to the court decision, as I recall it. The judges tried to say what a growth area meant. But they passed the buck to you or to us and didn’t finalize a clear definition of what a growth area was. But they did say some things about what a growth area was.

And it seems to me that COAH has -- COAH, in that memorandum, just decided in ’92, all areas can accept growth, therefore, that’s how we’re going to define it.

But one of the things I would like us to do is talk about whether the statute should clarify what does in a growth area mean. What is growth? Is it one house? Is it 10 houses? Is it a development, or is it-- Does there have to

be commercial industrial growth? Do there have to be jobs? I think that is a long-term, over the next couple of months, I'd like everyone to think about.

MR. KENT-SMITH: Thank you.

ASSEMBLYWOMAN MYERS: Thank you.

MR. KENT-SMITH: In fact, that's why you're an Assemblywoman and I'm a lawyer. I'm more long-winded, believe it or not, than a politician.

In fact, let me just do this. I would like to defer, and I will give you some written questions and an opportunity, then, to thoughtfully, not on the spur of the moment-- I know it's unfair.

So I'm just going to stop my questioning. But I do want one more question. And that has to do with the period of time that COAH uses in calculating both need and compliance. That's currently six years. Do you have any thoughts as to whether a 10-year period would be more appropriate or not?

MS. BISHOP: I am so happy that you raised that issue.

MR. KENT-SMITH: Well, I wanted to leave you with a smile on your face.

MS. BISHOP: I'm smiling.

The Council has gone to the Legislature and asked the Legislature to amend the Fair Housing Act to include a 10-year term of substantive certification. There is a structural inconsistency presently in the Fair Housing Act. COAH relies on the census data to really just lay the foundation for population -- for the population in place, for all of the housing deficiencies and the housing information. That information only comes out every 10 years, yet there is a six-year cycle for a snapshot in time of developing need.

Let me just lobby a little bit. (laughter) The Senate passed the 10-year amendment to the Fair Housing Act. It has not been posted for a vote in the Assembly. I strongly ask the esteemed members of the Assembly Task Force to consider 10 years gram of substantive certification.

Thank you.

MR. KENT-SMITH: And just one follow-up question, and that just is, do you see a problem between a 10-year substantive certification period and the municipal land use law's requirement of master plan reexamination at a six-year level? Is there a problem there?

MS. BISHOP: I don't think so. And the reason I don't think so is the municipalities, when they develop their housing element, it's based on the time when certification is about to expire. And they amend the master plan just for the housing element component. And they're all out of -- most of them are out of cycle. It is rare if we ever have a housing element as a complete -- as a portion -- as a part of a brand new master plan coinciding with sub-cert expiration.

MR. KENT-SMITH: Okay.

ASSEMBLYWOMAN MYERS: Okay. Well, I have to ask -- or raise this issue, which you and I had talked about, Shirley, to get it on the record.

I have had concerns about going to a 10-year cycle for a number of reasons. One of them is the language of the Fair Housing Act which states that initial determination of fair share is to be made by officials at the municipal level. And so I would like Shirley to tell us whether that's occurring, how that's occurring.

MS. BISHOP: Okay. I think the citation that you just mentioned has to be looked at in the context of the Fair Housing Act, which is Section 307, which outlines the duties of the Council on Affordable Housing, which are-- The duties are to determine the housing regions and estimate the present and prospective need for low and moderate income housing at the State and regional levels and then adopt criteria and guidelines.

And that is what COAH has done. COAH generates precredited numbers. They're the estimates of affordable housing for each municipality. Those numbers are the starting off point, because the municipality determines if it has credits that are eligible to reduce the number, if there is a vacant land analysis being done if a town falls under the 20 percent cap.

The Council believes that it is consistent with the Fair Housing Act in generating numbers for the municipalities that are truly the starting off points.

ASSEMBLYWOMAN MYERS: Why?

MS. BISHOP: Because of the duties that the Legislature gave to the Council on Affordable Housing in Section 307, which was to estimate present and prospective need.

ASSEMBLYWOMAN MYERS: But that's estimate. Estimate doesn't mean determine and assign. It means estimate.

MS. BISHOP: It's open to interpretation. The Council believes that it has followed the Legislative intent of the Fair Housing Act with the determination of numbers.

ASSEMBLYWOMAN MYERS: Okay.

MS. BISHOP: And there's also a section in the *Mount Laurel* decisions that talks about assigning numbers to municipalities that if left to their own devices, the towns would have no numbers.

ASSEMBLYWOMAN MYERS: But you agree that was in the court decision, not the statute.

I just want to get on the record that this is another area that I think needs clarification. I think there are people that are reading this in different ways. And where that is true, I think, we need to have the debate in and look at whether we need to clarify it one way or the other. I was an English teacher. And estimate means estimate, as far as I'm concerned. But I understand some others don't think as narrowly. But that's another thing I'd like to continue to talk about, and the main reason that I've opposed the tying it to the census without a thorough discussion of the issue.

And I also have concerns about the master plan being on a six-year cycle. And I have a bill in to change the State planning cycle from three years, because that's totally unrealistic. So hopefully, that will be one of the things we can all agree on by the end of this process.

Are you finished?

MR. KENT-SMITH: Yes. Thank you.

ASSEMBLYWOMAN MYERS: Okay.

Christine, did you--

MS. MARION: Yeah, I have two quick questions.

In the numbers that you gave, in terms of the new affordable units that were created, did those include units that were transferred as a result of the affordable housing court cases?

MS. BISHOP: No, the units-- The RCA numbers I gave you separately; they were not included in the units built.

MS. MARION: Okay. Thank you.

And I guess related to the discussion that both Assemblywoman Myers and my esteemed colleague to the left stated-- I'm a long-range planner. I like to look ahead. And I guess counties always look at how things are going to be implemented. This is more of a comment.

I'm looking at the shifts in income and employment growth in the state. It looks like things are still, at least in the northern part of the state, moving westward. If the methodology still fall -- use income and employment growth as a determination, you're probably going to see the majority affordable housing obligation to be in those western municipalities, whereas the State Planning Act seems to encourage growth to occur more to the east. There seems to be an inherent conflict there.

Can you address that issue?

MS. BISHOP: The inherent conflict would appear to be if the second-round methodology is carried over into the third round. And I think I can speak for the Council and say that the Council will have a new form of methodology that will take that into account and will also be consistent with the State Plan.

MS. MARION: Thank you.

MS. BISHOP: You're welcome.

ASSEMBLYWOMAN MYERS: Before you start, Herb, I want to follow up on Christine's comment by saying that I did go to your Web site and look at the population projections under the impact assessment that were done

by Rutgers University. And looking at the trend scenario versus plan scenario, what would happen without the plan and what happens with the plan.

Hunterdon County, which is my county, has a 47 percent increase in population, whether we have the State Plan or not. It gets a higher increase in population, by far, than any other county in the State. The urban counties like Bergen, Essex, and Hudson have zero percent growth. If the State Plan is about revitalizing urban areas and preserving rural areas, such as my county, although it's getting to be quite suburban, how do we justify these population projections?

You don't have to start by answering that question; I just wanted to link with Christine. (laughter) And please tell us where you are. And just if you could, address that at the end if you don't want to address it at the beginning.

HERBERT SIMMENS: Okay.

Thank you, Madam Chairman, and thank you to the members of the Task Force for the opportunity to be here.

We have-- As you know, when I say we -- the State Planning Commission, which is made up of 17 members: 10 public members, including 4 representatives of local government; 6 general public members, 6 representatives of State agencies; and the Governor's Office -- we have been up and down New Jersey for the past five years, engaging in the development of our second State Plan through a process that I'm sure you're all familiar with called cross acceptance. The State Plan was adopted on March 1st, so we now have an updated State Plan, which we're greatly excited and also highly relieved to be in that place at this time.

What I'd like to do is spend just a very few minutes going over some basics that many of you may already know, but just to provide a kind of playing field that will lead to further questions.

First is the jurisdiction of the State Planning Act. The statute is quite explicit that the State Planning Act covers the entire State, with the exception of the Hackensack Meadowlands area and the Pinelands area. And in those two areas, the Commission is required to rely upon the plans of those two areas in developing the State Development and Redevelopment Plan. And, in fact, we have executed a memorandum of understanding, similar to our memorandum with COAH, with the Pinelands Commission. And we'll be working on one with the Hackensack Meadowlands to ensure coordinated planning statewide with all these agencies, which is, I think, a goal that we all support, at least in theory. And, as always, sometimes the devil is in the details.

With regard to the authority of the State Planning Act, this is certainly a subject that is on most people's minds who follow the State Plan and has been discussed by most of the interest groups and newspapers and so forth as to whether there should be more or less authority and in what form.

Essentially, what the-- The statute is largely silent on the authority of the State Planning Act. I often hear people say that the State Plan is an advisory document. Well, I have yet to find the word advisory in the statute. That doesn't mean it's not advisory, but essentially, the drafters of the act were not explicit in enumerating all the powers, if you will, of the implementation of the State Plan. They're quite explicit about how the State Plan is to be developed and the standards and the process and so forth.

However, there are at least three areas where the statutes, either the State Planning Act or accompanying acts, are quite explicit as to how it should be used. And first, of course, particularly relevant to today's discussion, is the relationship with the Council on Affordable Housing, where, as was already mentioned, the Council is required to take into account the planning designations in the State Plan when it comes up with its various formula.

Secondly, and I think this is significant, that the State budgeting -- Capital Budgeting and Planning Commission-- The capital budget that is produced every year for review by the Legislature and the Governor must be or shall be consistent with the provisions and goals of the State Plan.

So, clearly, it seems to me, without putting a legal hat on, that the Legislature explicitly contemplated that State investments -- State capital expenditures would be, and should be, and must be, consistent with the State Plan.

Now, recognizing that the Commission on Capital Budgeting and Planning -- the Capital Improvement Program that they recommend is itself an advisory document, but given with that caveat, I think that's often overlooked by those who say that the State Plan should not be used to guide State investment decisions. My question, again, would be, but why is that provision in the law?

Thirdly -- has to do with the municipal level -- the municipal land use law. And there are two provisions there. One is that any site plan of over 150 acres, or 500 units, has to be sent to the Office of State Planning. Now, it's silent about what we're supposed to do with it. And we can presumably interpret that as we will. Certainly, there's no authority for us to reject or

modify any of those. But again, there was the contemplation that, at least, the large-scale developments -- that they should come to the Office of State Planning.

And lastly, the municipal land use law requires that when a municipality does its master plan, that it have a statement describing the relationship of its master plan to the State Plan. Again, there's no requirement that they are consistent in doing the master plan. They could say, totally, I would think, within the bounds of the law, that they have put together a master plan which is utterly and totally inconsistent with the State Plan, that that would probably satisfy the requirements of the Act. But there is a requirement that, at least, they be compared. So I think those are some of the key points with regard to the State Planning Act and the authority that it gives or doesn't give.

With regard to the actual development of the State Plan, I think there are three fairly unique, in fact, maybe totally unique provisions in the State Planning Act that are found in no other state in the development of a State Plan. And I think they were all put in by the Legislature for, I think, some fairly clear reasons.

The first is that the State Plan would be developed through this process with the ungainly term of cross acceptance. And, essentially, what that means, without going into all the details -- and I'll spare Christine, who, like I said, just completed that process-- Essentially, it means that it's developed in a collaborative way. It's not top down, it's not bottom up. It's collaborative in the sense that the Commission puts out a preliminary plan. There are then reports by each of the 21 counties on a voluntary basis. They can choose to

participate. All 21 counties did choose, both the first time and this time, to participate. They essentially compare the State Plan to local plans and make recommendations to the State Plan. And then we have a really, again, unprecedented series of public negotiations in front of closed doors in every county. We had at least two meetings, in some cases three or four meetings -- what time did we finish in Morris County? -- well after the support staff left, I think -- a couple of nights -- in discussing the issues there -- and attempt to reach agreement. And then the Commission revises its plan based upon those issues.

In fact, there were some 1000 -- approximately 1000 disagreements. You have to have a certain kind of ego to go into those meetings, because all you hear is disagreement, essentially. And there were 1000 disagreements that were put in writing by the counties and municipalities.

The Commission negotiated approximately three-quarters of those to the point where we could literally or figuratively have a handshake at the end of the meeting and incorporate -- either incorporate the changes that were recommended by the municipality or county, either in our map or in our policies, or otherwise persuade the municipality or the county that we already addressed their concerns.

So I think that's evidence of good faith on the Commission. But I'm not here to defend the Commission. I'm really here to talk about the Act. I think it's an indication that a goal of the Act of having a tremendous local participation and dialogue is largely being fulfilled, not that it couldn't be done even more so.

In fact, at our last round of public hearings, after cross acceptance, we had almost 1200 people attend in the 21 counties. So there were very vigorous discussions.

The second component, I think, that's noteworthy--

Let me make one other comment on cross acceptance that is often overlooked and, I think, is very relevant, because it's a part of the statute that has not been implemented in the way that we would like to see it implemented. And I'm not sure that many municipalities or counties or others are even aware of it. And that is-- And I just want to read one sentence from the State Planning Act in this section on cross acceptance, which is 52:18A-202. And the sentence says, "The process," and that refers to the cross acceptance process, "is designed to result in a written statement specifying areas of agreement or disagreement and areas," and I think this is the relevant portion, "requiring modification by parties to the cross acceptance," which we have always interpreted to mean that both sides negotiating -- the counties and the municipalities, as well as the State Planning Commission -- would make modifications based upon the agreements.

In fact, in both rounds of cross acceptance, it's largely been just the State Planning Commission that has made changes to the State Plan, in part because of logistical and time issues and procedural issues and so forth. But again, I just want to call that to your attention in that it really is supposed to be a two-way street as much as possible.

The next item is the map. And the map, of course, has engendered as much controversy as anything else about the State Plan. And the question is, why do we have a map? Well, we have a map because the legislation requires

the Commission to identify areas for growth, for limited growth, for conservation, and other categories. And it's difficult to identify those areas without putting them on the map. I guess in theory, the Commission could have chosen a decade or so ago to identify those areas through criteria by saying that any place that has farmland of high-quality soils is considered agricultural without mapping it. But instead, the Commission made the determination, and I think a reasonable one given the statute, to have a map, which most states do not have. And there have been many, many disputes, both over the nature of the criteria to be used in mapping, because the legislation is fairly broad in that regard, and of course, the very broad issue of how the map has been used and is being used. And again, that's an area where the State Planning Act, per se, is largely silent.

And the third is maybe a nice segue, or an appropriate segue to Assemblywoman Myers's question, and that is that the Legislature, after they adopted the State Planning Act, and it was signed by Governor Kean, I think, January 2nd, 1986, as a New Year's present to planners in New Jersey and others--

Several years later, after the Commission released a preliminary plan, there was a lot of concern about the content of that preliminary plan. And the Legislature went back and amended the State Planning Act substantially at that point, to require an impact assessment.

There was concern, as I understand, that the Plan would not be good for New Jersey, and the Legislature wanted to ensure that, as much as humanly possible, the Plan would be tested, if you will, or evaluated before

adoption by the Commission. And this was, I think, a very progressive move on the part of the Legislature. No other state had ever done that.

And as a result, once the amended Plan, with the input from local governments, is put together by the Commission -- it was called the Interim State Development and Redevelopment Plan at that time, one of the versions -- that we sort of take a pause, if you will, and hire an independent consultant -- in both cases, it was the Center for Urban Policy Research -- to evaluate the plan based upon criteria in the statute. And that happened both times with the result that, by and large, the impact assessment showed beneficial effects of implementing the State Plan, and I won't go through what they are. You certainly have them, or I can provide them to you.

At that point then, with these three unique processes -- cross acceptance, the development of a map, and an impact assessment -- we went to our final round of public hearings and meetings over the last eight months or so from last summer until March 1st or so. And we were literally taking comments up until three days before March 1st or so and making changes in the document, in which we were reflecting what was adopted March 1st.

Before I directly answer Assemblywoman Myers's question about the projections, let me just take two or three minutes on what's happened in terms of implementation, and that may or may not be of help to you as you consider possible changes to the Act.

Because there is no requirement for municipalities to participate, the State Planning Commission and Governor Florio and then Governor Whitman, now Governor DiFrancesco, have essentially created a system of incentives where State agencies that have discretionary money to spend on programs or

investments give higher priority to communities that go through what we call center designation process and which will now be shifted to what we're calling a plan endorsement process. But they're two processes that are roughly comparable in that it's an opportunity to create a dialogue between local governments and the State and ensure one of the fundamental provisions of the Act occur, which is consistency of plans. With consistency of plans at the municipal level, the county level, and at the State level, both vertically, if you will, and horizontally, that increases the predictability, it increases the efficiency, increases the likelihood that the eight major goals of the State Plan will, in fact, be achieved.

So the Commission has designated or endorsed some 87 municipalities thus far on a voluntary basis. We have about another 50 in the hopper that we will be working with over the next six to nine months or so. And I think, most significantly, in the last two years, the Legislature, and we thank you, Assemblywoman Myers, for your participation in that -- and that has appropriated \$3 million each year in Smart Growth Planning Grants.

And one of our goals in the State Plan has been to increase the level of regional planning that -- with 566 municipalities-- Even if each municipality had a great master plan within its own four borders or four walls, without ensuring a regional perspective, 566 good municipal master plans don't add up to a good State Plan.

And so we've been very heartened by the response, particularly of county governments. Eleven counties have now received Smart Growth awards to do regional planning efforts with their municipalities in cooperation, and ultimately to submit them to the State Planning Commission for endorsement,

and based upon the two models that have been successful -- one in Hudson County, and the other along the Route 130 corridor and the Delaware River in Burlington County. So we anticipate that with the completion of these plans in the next 18 months to three and a half years or so, that we will be able to have a dramatic increase in the number of communities and counties whose plans are consistent with the State Plan and who then -- we can have a much more effective planning -- outcomes with.

In terms of State agencies, they have implemented the Plan in a number of ways other than through the financial incentives that they're giving to local government. I think most fundamentally, State agencies have been reviewing since 1992 -- it's not something that's starting now -- they've been reviewing what we call their functional plans. And each agency, or most agencies, have some kind of planning requirements that have imposed either by the Federal government or by State statute or by administrative procedure to develop a plan to help guide how they invest their money and make their decisions.

So there is a water supply master plan, there is a long-range transportation plan, there is an outdoor recreation plan, etc., etc., etc. There are a dozen or so of these plans.

And the State Planning Act and the State Plan contemplates that a major means of implementing the State Plan is through these functional plans that the agencies prepare to incorporate the relevant provisions of the State Plan. And for example, the long-range transportation plan, prepared by DOT, interestingly and ironically, was submitted to the Legislature on March 1st, the same day we adopted our State Plan. And there is -- one of its major goals and

sections is coordination with the State Development and Redevelopment Plan, and it's through that mechanism of having constant plans.

And then most importantly, once the plans are consistent, that the agencies then base their investment decisions and other decisions on those plans so that they're not put on the shelf and forgotten when real-life decisions are made -- that we get the kind of coordinated and integrated planning that was contemplated in the State Planning Act.

In addition, there are at least two regulatory means by which the State Plan has been implemented. One is the New Jersey Highways Access Management Code prepared by the Department of Transportation. This has been in effect since shortly after adoption of the Plan. And it, in fact, regulates highway access in part based upon whether a community is in the center or a planning area.

And No. 2, and this was highly controversial when it was adopted, were the rules in the -- the CAFRA rules, which essentially revamped how coastal decision making is made so that DEP now looks at the State Plan map and bases its intensity of use at site coverage on, again, whether a community is in a center or in a particular planning area. And both of those-- CAFRA has been in effect, I guess, a little over a year, maybe a year and a half, the Highway Access Code somewhat longer. And as you know, the wastewater rules, which are now in abeyance, I guess -- being under review. Also, it had a role for the State Development and Redevelopment Plan.

Let me stop there, except to comment on one thing Shirley said and to respond to your question. First, with regard to the issue of waivers, this issue came about in large part because the memorandum of understanding between

COAH and the State Planning Commission-- And indeed, the State Plan calls for as much development as possible to occur in what we call centers in communities rather than in what we call the environs. And particularly for affordable housing, we found -- a commonsense perspective that affordable housing should be located near services -- near bus routes and near the library and schools and town halls and so forth, i.e. in centers, which is where those other facilities are supposed to be. So that's really been our collective intent over the years.

Now, in some cases, a plan was submitted to COAH that located affordable housing in a place that is a center, but in a community that had not chosen, for whatever reason, to go through a process. And I want to make the distinction between a center that's a place -- a real place -- as one of our Commissioners, Charlie Kuperus, calls it, a know-it-when-you-see-it kind of a place -- and a community that has been designated formally as having a kind of consistency with a boundary through a process that can take a while, quite frankly, given the degree that the local master plan is consistent with the State Plan.

And we all felt that it would be an unfair burden on a municipality that chose to locate housing in a center to hold up the certification of that plan and the construction or the opportunity for the construction of that housing, simply but for the fact that they did not go through a process with us.

So it was in those kinds of cases. And I think we've had eight or nine, or thereabout--

MS. BISHOP: Seven or eight. It's minimal.

MR. SIMMENS: --minimal -- whereby we created this process where -- if the Office of State Planning looks and sees-- I know in one community, there was a housing development that was right in the core of the community and right next to the rail station there in Planning Area 4 or 5. And we said, "This is perfect, essentially." I mean, this is exactly what we would like to see. There's no reason to require a center designation. We would encourage center designation. We don't want to discourage it, but in terms of meeting the affordable housing mandate--

So that, hopefully, explains a little bit about the intent of that process. And I think, by and large, as Shirley just indicated, it hasn't been used often. We hope it doesn't need to be used often. But it is a kind of safety valve there.

With regard to the projections, let me first say that the projections that you alluded to were prepared by Dr. Burchell and used as the basis for developing the impacts of the State Plan. So they're extremely important projections. And they are divided into two, if you will, trends; that is, what happens in the absence of a plan, and then what happens in the full implementation -- full implementation of the plan.

It's important to note, though, that those projections have not been and will not be adopted as official projections by the State Planning Commission. There's simply the projection through the interpretation of the plan by one researcher -- now, obviously, a very important researcher, because it was the person and the team that prepared the impact assessment.

We are about to start a process next month. We have been asked by the State agencies to develop -- and when I say we, I mean the Office of State

Planning and the State Planning Commission -- to develop a common -- what we call a unified demographic forecast, if you will, that can be used, and should be used, we believe, by all State agencies when they do their studies. Right now, what often happens is that agencies will use different projections depending upon their consultant or sometimes what they'd like to see the outcome of the study be.

And we all know that doing 20-year projections -- we can guarantee they'll be wrong. But we'd like to be consistently wrong with a common set of rejections and one that has the best professional expertise and advice with regard, particularly, to the the fact that Dr. Burchell essentially did what he would call control for -- or keep constant the population in each county, by and large, whether it was plan or trend. That's how he interpreted the State Plan. And the issue, then, had to do within each county -- locating growth in areas that were in the lower planning areas more -- in Planning Areas 1 and 2 -- the lower numbered, I should say -- or in centers, as opposed to areas outside of centers. Whether that, in fact, is a fair interpretation of the State Plan is, I think, another discussion. But that's the basis upon which he came up with those numbers.

ASSEMBLYWOMAN MYERS: Thank you.

How is your time? Do you have more time? Can you stick around for--

MR. SIMMENS: We have a budget hearing at 1:00.

ASSEMBLYWOMAN MYERS: Okay. The problem is, I have just a couple of people who have to leave by noon. And I was thinking if I let them speak, then they could be on their way, and maybe we can take questions and

be finished with you by, certainly, 12:15. Would that give you time to grab a sandwich before you have to go into the budget hearing?

MR. SIMMENS: More than enough time.

ASSEMBLYWOMAN MYERS: So if we could hold questions for Herb.

If there is anyone else who hasn't told us they have to leave by noon, now would be the time.

And then we'll go back and take questions from Herb, and then we'll decide if we have to break for 15 minutes to get a sandwich ourselves, or if we're going to just work on through.

Okay.

Shirley, thank you very much.

MS. BISHOP: Thank you.

ASSEMBLYWOMAN MYERS: Let's keep in touch.

MS. BISHOP: Yes.

ASSEMBLYWOMAN MYERS: And Terence Wall, I know, is anxious to give us some testimony and be on his way.

TERENCE WALL: A little bit, anyway.

ASSEMBLYWOMAN MYERS: If you could identify what your position is.

MR. WALL: Thank you.

I'm not sure if this is a meeting on COAH or a cure for insomnia.
(laughter)

My name is Terence Wall. I serve on the Holmdel Township Committee in Monmouth County, which is in the central part of New Jersey

and Watershed Management Area 12, for those of you who are environmentally conscious.

I serve as Co-Chairman on a committee called the *Mount Laurel* Subcommittee. My Co-Chair is former Mayor Peggy Lasky, who many may remember; she was on the Monmouth County Planning Board. She currently serves on the Monmouth County Improvement Authority, and was involved in *Mount Laurel* 10 years ago.

I'm a late entrant to this issue. I started serving in '99. But I am-- The more I learn about *Mount Laurel* and COAH, the more I'm flabbergasted that it exists.

I'd like to, first of all, thank the Task Force for putting this together. It clearly shows it's now on the radar.

And, Shirley Bishop, I think you do a wonderful job as Executive Director in trying to, in just my opinion, making an apple out of an orange. Sometimes you work with the script you have. And I'm not trying to be a wise guy, but I think you're doing a wonderful job with what you have.

Now, I'm going to go back to your points A, B, and C as best I can. There are so many different items and so many different things that were frustrating that I've already heard today, one of which is a reliance on Dr. Burchell. I think it's worthy of pointing out the irony that the individual who is allocating the numbers for the municipalities comes from the township of Essex Fells, which has ignored *Mount Laurel* -- the Round I, which has ignored Round II, and has ignored *Mount Laurel* in its requisite responsibility to the 40 units for the past 16 years. I think, frankly, he's conflicted out of any discussion of allocating numbers to municipalities such as Holmdel.

And specific to Holmdel, I do want to say we did meet Round I, we did meet Round II, and we do have a planning board, and we are trying to intelligently plan for round three. It's very difficult to plan when you do not have the numbers. So we're hamstrung in that regard.

I did speak to Sidna Mitchell, the Deputy Director, I believe, of COAH, sometime in October of last year. I was appointed to the Task Force of Open Space for *Mount Laurel*. I'm the Charter Chairman of Open Space Council in Holmdel and also the finance task force of COAH. I've yet to hear about any meeting upcoming. I don't know if there was one or not.

Under the findings of 52:27, it indicates *Mount Laurel* "has determined that every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity--" I would suggest the Task Force define realistic opportunity.

What does that mean? Does that mean you're near a bus station? Does that mean you're near a train line? Does that mean you're near an office park where you can work? What does that mean?

--for a fair share of the region's present and prospective needs for housing for low and moderate income families." The region's present and prospective needs--

I'd like to speak briefly about this 50 percent RCA. The 50 percent Regional Contribution Agreement is one where a municipality, given its allocation, can sell it off to a receiving municipality. The idea is that they're able to mitigate some of the count, so to speak.

Now, the question is, is 50 percent the right number? How is that number arrived at? Is that number still current 15 years later, or whenever that

was first derived? The reason I ask that is because a region under 304-- It says it meets the geographic area of not less than two, nor more than four, contiguous whole counties.

Now, a lot of people who have said you don't dare touch *Mount Laurel*-- That's sacrosanct. Don't go near it. And a lot of legislators-- I mean, let's be honest, they're afraid of dealing with *Mount Laurel* because there's a concern from urban areas, and, I think, frankly, an inappropriate concern that minorities are specifically affected. I don't think that's realistic -- that that -- that this is something that is an elitist argument.

Well, Red Bank, I can give you as a specific area that's a city that's considered one of the most desirable areas in the state. Frankly, many people are gravitating towards urban areas now more than ever. So the argument that this is a rural versus urban area concept, I think, is one that you should test.

So, specifically, 50 percent RCA-- Perhaps maybe it should be 100 percent RCA. I am on record as saying I think *Mount Laurel*, while a noble concept, should be repealed and replaced with something that works for the good of the entire state, because I believe it is a failed program that, by the way, has not been matched in any state in the country.

Now, it's been here for approximately 15 years or so. Would not one state in this entire United States of America have looked upon this program as reasonable and, perhaps, emulated it in some way?

So the question is, if it talks about regions, why does a municipality have to keep 50 percent of its allocation if we're talking about regions? The question, globally, I think you should consider is, what's the mission of COAH, what's the mission of *Mount Laurel* and all its related rules and regulations? Is

the mission to put a roof over the heads of those who can least afford it currently and how have you done in that regard, or is the mission to achieve some degree of social homogenization?

Former Governor Tom Kean is reported to have called these regulations communism. I'm inclined to agree, because over half the municipalities ignore this entirely, last time I checked. The counts that you're seeking to obtain, based on the projections by Dr. Burchell, as well, who is in Essex Fells, who has ignored *Mount Laurel* for 16 years, haven't met the objective.

I think that perhaps you might consider that-- One of the questions you said is, has it succeeded. Obviously, by my testimony already, you can tell I consider it an abject failure. But more to the point of the lost opportunity, the millions upon millions of dollars that were invested in lawsuits and legal fees and what have you that could have been redirected into a program that could have provided-- For example, Catholic Charities have written a letter not too long ago discussing vouchers and other programs that help to keep a roof over the heads of people that, perhaps, need some assistance. And there's nothing wrong with that.

I'll go onto a couple of specific items. There's a 4-to-1 ratio in COAH right now.

And correct me if I'm wrong, Shirley. I'm trying to be as exact as I can. A 4-to-1 ratio means that the builder could come in and build four market homes for every one affordable unit. It's been said today that that has not encouraged sprawl, and that has not encouraged -- perhaps, and I may be paraphrasing -- but secondary impacts -- fire, first aid, schools. I would suggest

that when you're able to build four market value homes for every affordable home, that absolutely has an impact.

Now, we had also talked about, in terms of what your allocation is, that if in your geographic area, the *Mount Laurel* values are similar to what the market values are, when does this-- Is there any test? I would suggest that you put a test to the 4-to-1 ratio. For example, in Holmdel, the land is particularly valuable, as it is in other suburban towns in-- I just speak to Monmouth County, Middletown, Marlboro, Colts Neck, Manalapan, where the land is more valuable.

Now, part of the reason I understand the 4-to-1 ratio is so that a builder can still extract a return on his investment, because he's being such a great guy to put some affordable housing together to help people.

Well, if that's the case, then shouldn't there be some kind of test where if you're able to get a certain return on your investment on those 4-to-1s should, perhaps -- where the land is more valuable, where the market value has a larger margin of return -- should that be adjusted 3 to 1, 2.25 to 1, etc.? It doesn't make sense. We're trying to put a square peg in a round hole. And that's the reason why a lot of people don't understand *Mount Laurel*, don't understand COAH. It's confusing. The cover for elected officials is COAH, getting through the maze. What does that say about the process? I mean, literally, let's think about this as objective, rational people and apply common sense to these issues.

A couple of other items that I think are worth pointing out-- Senior citizens are discriminated against. If people aren't aware of that, they should be aware of that, because there's only a certain percentage of senior housing you

can develop. The question is, why is that? We have 76-some-odd million baby boomers getting older every day, and we are limiting the amount of senior housing we can provide under COAH.

The very people who most likely need this type of program, due to perhaps medical infirmaries or whatever the case may be, maybe than anybody else, yet we're capping what we can provide for them.

This 10-year amendment, I'd like to speak briefly to it. And again, correct me if I'm wrong. But my understanding is, the 10-year amendment is something that-- That full 10 years is calculated from your last certification date. And if this is incorrect, please let me know.

But my understanding is, it's calculated from when your last--

MS. BISHOP: The date of the filing of the new petition.

MR. WALL: Okay. Because some of the questions that our attorney had brought up is that are you really getting the full 10 years, because, bear in mind, my understanding is, your allocation will be based on the 10-year allocation, so you're not going to get-- If you're familiar with getting a six-year count, so to speak, it's not going to be the same if the formula stayed the same, which, clearly, it's not going to stay exactly the same. But if the formula stayed the same, you're not going to get a six-year count stretched to 10 years, you're going to get a 10-year count. So I think it's just important to bear that in mind.

And maybe I'll finish. And if you have any questions -- because there's so many things involved here--

The State Development and Redevelopment Plan -- they do not reconcile. The reason I suggest they do not reconcile is because the State Development and Redevelopment Plan is a suggestion; *Mount Laurel* is a law.

You can have a memorandum of understanding between COAH and the Office of State Planning, or such as the case may be, but *Mount Laurel* is a power of law.

You had mentioned something that said that municipalities have a choice, because COAH is voluntary. That reminds me of a Far Side cartoon where the devil's poking the guy in the tail, and there's two doors, damned if you do and damned if you don't.

So the basic concept I'm trying to bring forward is, first of all, I appreciate the open dialogue. I think you should consider just applying the test of common sense. Does a 4-to-1 ratio make sense? Does a 50 percent RCA make sense? What is the mission of COAH? Is it to build houses, is it to provide affordable housing, or is it to integrate communities? If it is to integrate communities, let's say so, and let's see about doing that if that's the prevailing wisdom of the community.

But in towns such as Holmdel, the idea of having a reasonableness test-- If we take a \$200,000 condo or town home and reduce it to \$120,000, they can't afford it anyway. But in the meantime, the developer built four market value homes, we've had a tremendous impact of traffic, secondary impacts of police, fire, first aid, our schools are bursting at the seams, and yet the municipalities, be it Holmdel or any one of them-- I just come from a town that has certified. We have done what we're supposed to do. We've been a good and responsible town. Whether through litigation or otherwise, we're certified. We've done our job. So many towns don't.

And I'll just leave this one question. What about the towns that have? Essex Fells, Dr. Burchell's hometown, has ignored this for 16 years. And

as the open space inventories in Essex Fells have dwindled, according to the current zoning, then what happens in Year 17? “Oh, we’d love to build some affordable housing, we’ve got no more land.”

And then you have the towns, and there are many of them, that have complied and have done the right thing and done the best that they can and suffered the policy and tax and political impacts of burgeoning traffic in schools.

And what about us? Now we have Round III coming up and the other us’es that there may be in the room today. We have Round III coming up. Is there any level of parity? How about the towns that haven’t complied? Would you consider giving tolling or freezing the obligation from the towns that have complied while the others come up to their level of expectation under what Judge Wilentz promulgated many, many years ago?

Thank you very much for your time.

ASSEMBLYWOMAN MYERS: Thank you.

Any questions from the members? (no response)

Arnold Cohen.

UNIDENTIFIED SPEAKER FROM AUDIENCE: He had to leave.

ASSEMBLYWOMAN MYERS: Okay. John Hart.

JOHN HART: Thank you, Assemblywoman Myers.

John Hart-- I’m part of the longest election in New Jersey. I’m a former mayor of Hopewell Township right now. Right now, I’m out of office until we have a new election in the end of this month.

But when I talked to Assemblywoman Myers the other day, she told me she was going to see Shirley Bishop, and I had a couple of questions I wanted to ask Shirley about the COAH certification.

As you know, 1998 -- we had Merrill Lynch application in our town move in and now bring in approximately 6500 employees to the township.

I believe Hopewell Township is one of the most aggressive municipalities in the state as far as open space farmland acquisition goes. And as our buildable lands dwindle, I find it ironic that our -- with our COAH obligation, which I understand the criteria is the same as towns in Monmouth County -- if I'm not too sure-- That's what one of my questions was, if my criteria is the same as Monmouth County, because if it is, our municipality is much different than Monmouth County, being the topography of it, all the wetlands, the more aggressive open space that we have that's nondevelopable -- increases our development.

And I was wondering if our formulation can be changed, because as open space becomes available -- as developable land starts to dwindle, our prices on our land go up. And they don't build any moderate houses in Hopewell Township anymore. It's either McMansions or -- that's all there is. I haven't seen a ranch house or a Cape Cod built in that town in quite a few years now.

And my question is, is the formulation going to change for a town that's aggressive in open space acquisitions? I believe we're certified up to 2004. And if somebody knows that, I'd appreciate -- I'm still certified to 2004.

But with that Merrill Lynch coming in, I was wondering what the status was of our COAH obligations, being that land around us is so much different than the other towns that are in the same criteria.

ASSEMBLYWOMAN MYERS: Did you want to respond briefly?

MS. BISHOP: Very briefly.

MR. HART: Hi.

MS. BISHOP: Hopewell Township is certified by the Council on Affordable Housing. The Merrill Lynch facility did not impact Hopewell Township's number for the second round. It is questionable if nonresidential ratables will be included in the third round. All I can say is the third-round formula will be a new form of formula. And I don't know how a Merrill Lynch will play into the new form of formula.

Yes, you're certified. It's in place for the six years. While COAH is developing its third-round formula, any towns that have expiring certification -- there's a process for COAH to extend the certifications so the towns are all protected.

I can't give you any assurance or tell you what the third-round formula is now other than the Council is sensitive to available and vacant land. The Council is also sensitive to municipalities that have gone through the process. And I just want the Task Force to know that Essex Fells was sued for exclusionary zoning.

ASSEMBLYWOMAN MYERS: This year, right?

MS. BISHOP: Yes -- or I think a couple of months ago.

ASSEMBLYWOMAN MYERS: Yeah, really recently.

MS. BISHOP: Yes.

MR. HART: Well, that's my point now. We have zoning changes on the books right now that were under litigation for approximately 70 percent of what's left to develop in the town. And if that goes through, then we're going to six-acre lots, which is going to make our land more valuable. And I just wonder how that's going to affect where our COAH's there.

MS. BISHOP: I can't answer it, because I don't know what the components of the formula will be other than telling you that the present formula will not be carried over into the third round. It will be a new form of formula.

MR. HART: So, would you--

ASSEMBLYWOMAN MYERS: John, I think maybe if you just rephrase it to ask that they take into consideration these concerns in their third round, because that's what they're doing right now--

MR. HART: Yeah, that's what I like, just to take into consideration that if you take us out of that formula you're doing now and use a more -- a different formula for municipalities that preserve more open space and have natural restraints that a lot of your towns that we're in -- don't have that restraint.

MS. BISHOP: I will take your concerns to the Council.

MR. HART: Okay. That's all I ask.

Thank you.

ASSEMBLYWOMAN MYERS: And the only other comment I have is I think that the original *Mount Laurel* doctrine, and quite a bit of the language in the statute, relates to affordable housing near -- with access to jobs. And so I want everybody to consider that. There's quite a number of jobs being

created in Hopewell Township because of the location of Merrill Lynch, and to say that commercial industrial ratables may not have any role in the third round, to me, would require statutory change, because there was a definite connection in the court case. There is that-- Not everything from the court case was carried over into the statute, but there is a requirement, actually, that before RCAs are approved, the county planning board and COAH look at making sure that new affordable housing expenditures are made in relationship to jobs.

So that's something that -- another thing, I think, we need to continue to talk about, although I understand your point, as well. And I think Herb knows that there was also a proposal for a center at the location at Merrill Lynch, and the residents, as they do throughout my district, don't want centers. So it's my understanding that the proposal for a center was withdrawn. So we have a huge population job site without the other pieces of a center.

MS. BISHOP: I would just like to rephrase the part about employment and jobs. The formula components are really not in place. And I don't know what the final form will be. But employment opportunities and jobs are, by statute, part of the review for the RCA. And that is being done for every RCA.

ASSEMBLYWOMAN MYERS: Okay. On the table, also, I believe we have a list of pending legislation -- a list of bills that the members are looking at. And we've provided some copies for those of you.

We feel that we need to look at the concerns of other legislators who are not represented on the Task Force. And we feel that this is a good way to look at what their concerns are. And I'm also inviting the Council and the

State Planning Commission to seek changes in the law that might make the whole process more workable for them, as well.

MR. HART: One point I wanted to make-- They did discuss the town centers, and I think they did take it off the table for now. What concerns me when they discuss town center is, we have two boroughs inside of our municipality that are always struggling for businesses to come to their town. And we like to take care of our own towns first before we start looking into town centers. And that was my point a few years ago when they started discussing it. I said, "You know, we've got Pennington Borough here. Half the town's a ghost town, and you want to make another town center. Let's take care of the ones we have and try to keep the rest of the town rural." So that's my concern.

Thank you.

ASSEMBLYWOMAN MYERS: Thank you.

Professor Goertzel.

T E D G. G O E R T Z E L, Ed.D.:

(witness begins slide presentation)

I'm just going to be brief. I'm not sure that what I have to say is too relevant, because I'm mostly concerned with the State Plan and sprawl. And it seems clear that the primary focus is on the Fair Housing.

ASSEMBLYWOMAN MYERS: Excuse me. No, it's just that we ran out of time to question Herb, because some people had to leave. So I think there will be a balance over time.

Thank you.

DR. GOERTZEL: Well, I do think in terms of the fact that Fair Housing is actually a law, where the State Plan is largely an advisory or recommended document, is why people take it less seriously.

I've been looking, particularly, at southern New Jersey and the development of southern New Jersey over the year. I got into looking at the Plan. I just want to say that as I look at the Plan, I think it's based on a really outdated planning orthodox -- the idea that we ought to have old-fashioned towns surrounded by open spaces. I don't think that's going to happen in New Jersey. I think it's, as Assemblywoman Myers said, that what is really happening in New Jersey is people are spreading out into the open space areas. And I don't think that can be stopped. I think it's a matter of democracy that people actually like living in those areas, and that's where they want to build, and that's where they want to move. And there is not the political force to do what the State Plan would like them to do. So I sort of see it as an empty exercise -- creating these centers and environs and trying to divide places up into centers and environs. And really, it doesn't seem to fit the area.

I don't think it's really ethical either, if you could do it, to force development -- to go into the older communities that have been there a long time. They really don't want more development either. And that would view this gentrification -- and that our moving towards -- trying to become less densely populated themselves, particularly the city of Camden, which I know well. They're trying to move away from density and trying to keep more of a suburban lifestyle. And they have actually managed, out of the spare housing legislation, to get a lot of money to build middle-class subsidized housing in Camden. So it has had the effect, which was not the original intent. The

original intent was to provide housing for low income minorities -- people to move out of Camden. That's what Peter O'Connor and the *Mount Laurel* people wanted.

The actual consequences have been different. It has been to channel money and to build housing for them in Camden, which, I think, the fair housing in the suburbs is mostly for older people or for people who are just under the cutoff or young families starting out. It's probably a good thing. I'm not against that, but it's also used very much as a means of breaking down the antisprawl legislation, because you can go into a town and break their rules by saying you're going to build fair housing.

There's one way or another that those rules are going to get to be broken. So I thought that the State Plan would do better.

If I could go onto the next slide, I got, I think, there -- to take a different philosophy altogether -- to give up on the idea of trying to split things up into centers and environs where residences will be concentrated in compact communities.

This whole model you see on the left there is the planning orthodoxy. It really goes back to the idea of going back to the era before the automobile and that we ought to not be driving to our homes, we ought not to be driving to shopping centers, we ought to be using public transportation, we ought to be like we were before the 1950s, certainly, and to think of a different model altogether, which I took out of Frank Lloyd Wright's vision of the Broadacre City, which is residences disbursed throughout a region, really, to make, in effect, more attractive sprawl or more attractive disbursed development.

And I think there are some examples of that in South Jersey. I have a picture on there. I'm just moving through very quickly, because I know people are in a hurry.

But if you look at the village of Taunton Forge, which is a little shopping center that's in the town where I live of Medford, it's sort of hidden in the woods. You don't hardly see it. It's got a tiny little sign. And yet, you can drive there and you can park. And it's pleasant, and it's what people want -- was a place you can drive and park near a store. And I think that really the Planning Commission or the planners in the State should put more emphasis on trying to have an attractive development in a dispersed model rather than trying to go back to the idea of we're going to force everybody back into the cities and stop dispersion into these rural areas, because I don't believe that's going to happen.

I'm not sure it would be a good thing if it did. I know even the environmental organization, the National Wildlife Federation -- when they build a headquarters, they go out to the country, they get space, they get parking. That's what everybody really wants. And I don't think the State is actually going to stop it, although maybe the Planning Commission thinks that they will.

I think it also leads to a sort of negative image. And I've been working on the image of New Jersey, and South Jersey in particular. But the idea -- I'm going to put up my little map there at least -- that what's happening in New Jersey is bad. It's being destroyed by sprawl. And therefore, we should try to stop it, as opposed to trying to think of the positives and coming up with a positive image of a dispersed region. I think in South Jersey, we still have the

capability of doing that by highlighting our attractions, by highlighting the rural areas that we have, by allowing people to live in these areas, which is where they're going to live, but at least stopping some of the ugly drugstores that we're getting. We have the "Say No to Drugstores" movement in Medford because of the ugly Eckerd drugstores that just pop up. At least build things that fit the environment, that look nice, that are pleasant.

So my message-- I've got this -- very briefly-- This is all on a Web site. You can look it up and read about it, and there's references and statistics and all that. I'm not going to do that. I'm not a lawyer, nor am I a planner, either, so I'm not going to get into those sort of things.

But I think we need--

ASSEMBLYWOMAN MYERS: For the transcript, would you identify who you are?

DR. GOERTZEL: My name is Ted Goertzel, and I'm a Professor of Sociology at Rutgers Camden.

I think that the State Planning Commission is really locked into an outdated model of what planning should be that has really failed everywhere in the world. Even in London, it's failed. All the developments skipped over the greenbelt, and it's going out to the middle of nowhere, and there's traffic all over.

And we ought to realize that New Jersey is not going to be the vanguard of this. Even in Oregon, it's going to fail. But it's certainly going to fail in New Jersey. And we ought to try to make the best of what we have, which is dispersed development. And you really can't chop South Jersey up into centers and environs. It really just doesn't make sense. That's not the way

things are. That's not the way they're going to be. So we're, I think, imposing an unrealistic model.

I tried doing some surveys. What I found in this -- trying to get at whether people wanted one model or the other, what I found is people just don't want anything. People want to stop development in their own community. People don't want any new housing, they don't want any new stores, they don't want anything.

And the real political force you have is the NIMBY movement, the not in my backyard, which is keep it -- don't put it here. And the problem with that is, the population is growing. People have to go somewhere. If you really try to protect open space-- I know a lot of people think they're doing that as an environmental cause, but you're also protecting the wealthy, who've already bought out there and own a lot of land, at the expense of the people in the poor communities who are going to have to take the growth or the older communities. And they're not going to want it. Nobody's going to want this growth channel into their area.

Everybody's against sprawl, but they mean everybody go someplace else and not come to where I am. And I don't know where the someplace is going to be. Sometimes in the Pinelands they do -- they are able to force certain communities to take a lot more growth than they want. And I think the consequences are pretty severe, particularly since the State doesn't pay for the schools and so on. So if you take more growth, your expenses go up much more than any taxes you bring in.

I think it's not really ethically defensible either, as well as not being practical. And I know the State Planning Commission has been working on this for years, and they're hooked into it.

But that's sort of an answer to your question of why, despite what the Plan says, the trends are exactly the opposite. And I think we ought to accept that fact and try to make the best of it.

So I'll be very brief.

ASSEMBLYWOMAN MYERS: Thank you for your testimony.

Herb, so we can let you go grab some lunch--

Going back, I had a couple of questions, and then I'll let the -- see if the panel has anything.

You had talked about the statutory requirement to review the capital budgeting plan. And I just wondered, do you do that, do you do it informally, do you do it formally, do you not do it, especially with the transfer from Treasury to DCA, which -- you remember when it occurred I was concerned about the change there and taking the focus away from the influence on Capital Budgeting and Planning?

MR. SIMMENS: That's a good question. Actually, it's the responsibility of the Capital Budgeting and Planning Commission to ensure that their recommendations are consistent with the State Plan in most years. I don't know that I can say all years. I hope I could, but certainly in most years. We have commented on the proposals that the State agencies have put forward, but ultimately, we hope to get to a point where not just the Capital Budgeting and Planning Commission, but that all State agencies were kind of internalized -- the State Plan so that we can certainly be -- provide advice or assistance -- but that

the agencies will be able to have evaluative criteria that they can use on their own when they make recommendations or decisions. And that hasn't been affected by the move to DCA. We still talk to people in Treasury. In fact, we would talk a little more.

ASSEMBLYWOMAN MYERS: But do they change their plans, or do you think that they're making changes to their plans based on your comments, or are they just filing their comments?

MR. SIMMENS: I think it's varied from year to year. I mean, it is a Commission, as you may or may not know, that's made up both of public members and members of the administration and legislators, as well. So it has a level of independence in their recommendations.

ASSEMBLYWOMAN MYERS: Okay. And the other question I had-- You referenced Section 202. And at the very end of that section in the statute, it says that if a municipality doesn't agree with the outcome of the cross acceptance process, it can file its own report. And I just wondered, does anybody do that? And if they do, what does that mean, because I think the statute's quite foggy on what that would mean if they did it?

MR. SIMMENS: Well, in fact, in this round of cross acceptance, there were no municipalities, to the best of my knowledge, that filed their own report. And I guess one could reach the conclusion that that means that the counties more than adequately represented the municipalities' views, so no municipality felt they had to disagree with the county report. I guess there may be other interpretations of that, as well. But nonetheless, in the first round, there were a couple dozen municipalities, largely here in Mercer County, that

filed dissenting reports that the Commission considered and gave way to when they determined the map and other policies.

ASSEMBLYWOMAN MYERS: Al.

MAYOR SCHWEIKERT: You talked about a county being a region within the State Plan. I believe it's two counties to four counties. What is a region?

MR. SIMMENS: What is a region? That's one of those-- How many angels dance on the head of a pin? That's one of those questions we often debate. What is a region? And there is no statutory definition in our Act, unlike the Fair Housing Act, of what a region is. And we generally tend to equate counties with regions. But certainly, that term has an elasticity.

People often talk about the New York metropolitan region or the Philadelphia region. And that's an equally legitimate use of the term. So I think it really depends on the context. And we don't-- When we encourage regional planning, we essentially are encouraging regional planning, recognizing that regions will vary in scale and issues.

MAYOR SCHWEIKERT: Same question with regard to a center.

MR. SIMMENS: What is a center? Well, let's see now. We have about 200 pages on what are centers. A center, essentially, is a concentration of households and employments in what we call a compact, mixed use form, meaning that it has an intensity of use that's high enough to support efficient infrastructure to often, not always, support mass transit; to provide a diversity of housing, not just one housing type; to provide a diversity of employment. And it's also designed so that it's walkable, so that you can get from here to there without having to go through drainage ditches, which is often how a

suburban development occurs when you have a single parcel that's a school, and then it's separated by a four-lane road from something else -- from a housing development. So it's an integrated, compact, mixed use community.

There are literally hundreds of existing communities, and yours is a classic example of a center that developed organically over the last 200 years. And we're recommending that new communities, that new development, be organized using the similar principles of our older communities.

We believe, and I -- this is where I would disagree with the professor who spoke before me. We believe that, and the Commission believes that the way to achieve the goals of the State Plan, which is really the mission of the Commission-- There are eight goals. And that's what we need to be evaluated on. And the State needs to be evaluated -- is not through simply making sprawl more pretty, although we certainly have nothing against billboard controls and other things -- in fact, very supportive of that -- but rather through conserving land and providing this integrated land use.

And we think our traditional communities, our historic communities, are a good model, and that in many cases it's been a series of market distortions and zoning models that have led to this separation of land uses rather than simply consumer preference.

Now, we recognize there is some degree of consumer preference to separate, and the State Plan acknowledges that. But by and large we believe-- And it's starting to happen all over the country -- that more and more -- literally, dozens, if not hundreds of new developments and communities are being built, often called new urbanism, that embody some of the best features of our

traditional towns, but also provide modern, spacious homes, backyards for people, other amenities that people expect in today's society.

MAYOR SCHWEIKERT: You mentioned elasticity of centers and regions. Can a center just pop up somewhere and disappear 10 years later? I mean, how--

MR. SIMMENS: Well, hopefully it wouldn't disappear. I think we have to distinguish, as I talked about earlier, between -- maybe in some of the limestone areas it may disappear, but we hope not.

MAYOR SCHWEIKERT: There are people that are not happy with being a center. I've had some of my own constituents say, "How did we end up a center?" And other ones in other towns -- I'll take Hillsborough for an example, where all of a sudden it became a center. And there was some debate on how that happened, also.

MR. SIMMENS: Actually, I think it's important to distinguish, as I alluded to earlier in my comments, between a center as a place that has the characteristics that we talk about, such as your community -- and many other -- literally hundreds of towns -- both rural towns and suburban and urban towns are railroad suburbs, for example. And most of the rail lines grew up with -- in a center based form. And the actual process of designation, which is coming into the Commission and finding the plan for that community, is consistent with the State Plan.

So a center that's designated could be dedesignated by the Commission -- this has not happened -- if the obligations that they agreed to undertake as a result of this voluntary process were not fulfilled on their parts. But the actual place, hopefully, will still be there.

MAYOR SCHWEIKERT: You had mentioned financial incentives to municipalities. Could you elaborate on that a little bit?

MR. SIMMENS: We actually have a list in the State Plan, and on our Web site, of, roughly, about 15 State programs, such as the Balanced Housing Program and Green Acres Program and other housing transportation, Open Space, historic preservation programs that basically tilt, if you will -- give an extra couple of points or benefit to those communities when they're doing their scoring and ranking a proposal for funding.

Now, I might just say that in looking at the State Planning Act, we're often compared, particularly in the last two years, to Maryland, which has gotten the national reputation as the leader in smart growth. And without spending more than a minute or so on Maryland, essentially, it's a very simple -- much simpler approach they've taken in Maryland. And time will tell which approach is more effective.

And that is, essentially-- There, the Governor and the Legislature said that we will just look at a couple of basic criteria -- the existing or planned density and whether you have infrastructure, primarily sewers, planned and if you're in existing municipalities. Now, there, they have counties with unincorporated land. But if you're within those areas, they call them priority funding areas. And the State policy is, they simply will not fund any improvements outside those areas. They won't prohibit them. If a county or municipality wants to sprawl out and pay for that sprawl, pay for the roads, pay for the schools, pay for the sewers, and so forth, God bless you, but the State is not going to put its dollars in.

Now, in New Jersey, we've taken a different approach. We haven't had that kind of imaginary line where we say we won't support it. What we say is we'll give an extra incentive, but we won't exclude any municipality or county from applying for money if they're otherwise eligible. We would just give the extra benefit if you're a center.

MAYOR SCHWEIKERT: Okay, last question. If you were to distill the intent of the State Plan, would you say that we are trying to plan more in urban areas, save rural areas? And does that intent go to the same intent of COAH?

MR. SIMMENS: We often say that there's three, sort of, fundamental principles of the plan. And one is, let's take care of what we have, i.e., let's revitalize and maintain our existing places. And that's not just in Newarks and Trentons. Certainly, they're in the highest priority. But it's also our rural centers, the places we have infrastructure, where people already exist. Let's not-- The old-- We talked about -- people we mentioned earlier -- go west. If people choose to go west, let's make sure we don't continue to disinvest in the places they've left from so that people go because they want to go and not because they're forced to leave.

And the second basic principle is, when we build new, let's build in centers, let's build communities rather than isolated subdivisions.

And the third is that we should do everything we can to protect and preserve open space, farmland, and our scenic resources.

I don't see any incompatibility on its face with COAH's mission. Again, as always, the devil is in the details. And clearly, there have been some inclusionary housing developments that have had the unfortunate consequence

of promoting large-scale development. I won't necessarily even say sprawl, only because we all have a different definition of sprawl. In many cases, these large-scale inclusionary developments have been at or above the density that are recommended in the State Plan. So they may be fairly dense, but they may not be located-- They may be located in very environmentally sensitive lands or prime farmlands and induce other developments that aren't consistent with the State Plan. But I think a lot of that is a result not of conscious policy by COAH, but of courts and of communities that have attempted to struggle with how to meet their COAH obligations.

And I think, as Shirley Bishop said earlier, COAH has provided more and more options for communities so that there's less need to rely upon inclusionary development to satisfy affordable housing.

I do want to make one comment, though, that may not be directly on point for your committee, (*sic*) but it was sort of alluded to before, and that is -- and John Hart mentioned it-- What we're seeing, and I think anybody who looks at New Jersey is seeing this -- is that in many, many suburban and rural communities-- Let's take a community that meets its affordable housing obligation. There's very little middle income housing that's being zoned for and built. And so we have the McMansions on the one hand and a conscientious community providing group homes or RCAs or whatever on the other hand. But because of the calculus of school costs and traffic and other things, I think we're in real danger in New Jersey of losing the opportunities for middle income people to buy and live in affordable housing.

If you look at the development patterns in the '60s, '70s, and maybe even early '80s, the Levittowns and so many of our communities that we

may call sprawl-- But if you look at the densities of housing and the cost of housing when they were built, it was quite affordable. And the densities were reasonably high to support schools, to support walkable communities, and so forth. And we're seeing less and less of that.

And one positive by-product, in some cases, and I don't want to be misinterpreted here-- One positive by-product, in some cases, of inclusionary development is to be able to provide more middle income housing at a higher density with less land consumption. Now, again, that has to be looked at case by case, because if it's in the wrong place, and there's no infrastructure, or if it's prime farmland or environmentally sensitive, it shouldn't happen. But there are places in the state where it can and should happen. And it makes not just a contribution for affordable housing, but for middle income housing.

MAYOR SCHWEIKERT: Thank you.

ASSEMBLYWOMAN MYERS: Henry.

MR. KENT-SMITH: I'm actually going to just -- a couple of questions, but they're pretty global.

First, what would your thoughts be if the legislation were changed to make cross acceptance mandatory? And by that I mean, for a municipal master plan to be valid, it has to have a housing element, because it must address a housing need, whether affordable or not. But a master plan, to be valid, has to have a housing element.

What are your thoughts if the legislation were amended to say that the master plan has to be consistent or else undergo a consistency analysis with the State Plan?

MR. SIMMENS: Well, right now, the cross acceptance process does encourage that consistency review. And most municipalities did some level of consistency review.

Quite frankly, I don't think I'm in a position today to be making recommendations about changes in the State Planning Act, because this is not-- Questions like that, and I'm sure a whole lot of others, have not been discussed by the Commission I work for or the Commissioner that I work for. So I would ask to be able to defer, now-- If the Task Force has a series of -- wants a series of recommendations from the Commission -- State Planning Commission or Commissioner Kenny, certainly, I will take that request back. You may want to make it directly to them. And I'm sure they'd be happy to provide that with you. But they have not-- Because we've gone-- We've been in the middle of cross acceptance. We haven't stepped back yet to say what needs to be changed. I do think it's fair to say that there would be a fair amount of sentiment to make some changes. We don't believe-- I don't believe, and I don't think my Commission believes, that it's a perfect act or a perfect process, but I'm not prepared to get into that specific level today.

MR. KENT-SMITH: Assemblywoman Myers, I think that's really where I would like to see the Task Force direct some of the questions -- to the Commission to see what your thoughts are and the Commission's thoughts are on the success of this latest round of cross acceptance and where you see a need to modify the Act, to either give you greater authority or incentives to encourage municipal participation in the State Plan.

With that, I don't have any further questions.

ASSEMBLYWOMAN MYERS: Okay. If the members will get any further questions that they want the State Planning Commission to look at, such as that one, which, I think, is something that both Shirley and Herb should take back and look at, to Deb, then she will get them to Hannah Shostack, who will put together a letter for the Commission.

Thank you.

MR. SIMMENS: Okay.

ASSEMBLYWOMAN MYERS: Christine.

MS. MARION: My turn. (laughter)

I want to say Professor Goertzel probably had read Morris County's cross acceptance report in making some of his comments there. The same thing applies, at least, in Morris County's situation.

I think one thing Herbert agreed to, in terms of changes to the legislation, are probably some of the time frames in there, because I don't think, either through the first round or through the second round of cross acceptance, those time frames were met.

MR. SIMMENS: Yes, I think that that is a factual statement. I could disagree with the requirement that it be revised and readopted every three years when it's taken us three and a half to four years each time. It would have meant that we should have started on the third round of cross acceptance six months before we finished the second round. I don't think any of us had the emotional or physical ability to do that.

ASSEMBLYWOMAN MYERS: But do you think 10 years would be too long?

MR. SIMMENS: Well, that's something I'd really like to go back to the Commission--

I do think-- I will say I do think there is some merit -- a lot of merit in coordinating the planning timetables with COAH, with municipalities, and with census figures. And so that well may suggest some kind of longer time period with-- And I would only say-- Again, this is something-- I speak in a very preliminary way, now, but I think--

This is an important point to make. The advice that we have received from our Deputy Attorney General consistently over the years has been that the State Plan, but for the map, cannot be amended, except through cross acceptance -- that that's what the statute says. So, if we see something that's out of date or just plain wrong, we all have to live with it, unlike municipalities that can amend their master plans pretty much at any time. We do have a ruling, and we have been doing this, that the map is a living document, and so map amendments can occur pretty much at any time.

So to the degree to which this Task Force recommends a longer period between cross acceptances -- and if it's a substantially longer period like 10 years, then I think there should be some provision to allow an interim amendment with maybe some mini cross acceptance process yet to be defined so that the plan doesn't stay static for a decade.

I mean, when you think about it, a municipality doing a master plan every six years-- They're only required to do a reexamination. But even if they did a master plan every six years, and they took a year to do it, it would mean one-sixth of the time, in any given period, they're working on updating their plan, whereas, since we've been in existence, we've been working on the

plan update for about -- a plan update for about 80 percent of the time. And it's very difficult to be able to apply the plan, explain the plan, and so forth when you're always working on updating it.

MS. MARION: Okay. A specific question-- Looking at Section 52:18A-199, the first duties of the Commission-- "Prepare and adopt within 36 months after the enactment of this Act -- revise and readopt at least every three years thereafter, the State Development and Redevelopment Plan, which shall provide a coordinated, integrated, and comprehensive plan for the growth, development, renewal, and conservation of the State and its regions," -- which we don't define -- "and which shall identify areas for growth, agriculture, open space conservation, and other appropriate designations."

I guess, for the purpose of this Task Force, what, I guess, planning areas, or what areas do you define as growth within the State Plan?

MR. SIMMENS: Generally, the State Plan calls for promoting growth in Planning Areas 1 and 2, preferably in centers, but not necessarily required to be in centers, and what we call accommodating growth in centers in Planning Areas 3, 4, and 5. So that's essentially what you might say would be the one-sentence -- two-sentence summary of where the State Plan encourages growth to occur in New Jersey.

MS. MARION: Okay. But it's not explicitly, in terms of the Act itself, stating that these are the growth areas as defined by the legislation.

MR. SIMMENS: Well, I think that phrase at the end of that sentence that talks about -- on it and other appropriate areas or designations -- I don't have it right in front of me at this second -- I think was taken by the Commission to essentially-- And there were lots of debates about whether to

have it, as you may know -- and others -- an agricultural planning area, per se. And we called it rural because we wanted to make it more broad, but also to include -- have agriculture as its major component. So I believe we've certainly complied with both the spirit and the letter of the law, even if what we label on our map isn't equivalent in the exact words to that in the Act. I think that's the intent of the Act -- is to show where those areas should be. And we've done that.

Now, that's recognizing that we wanted to do that at a statewide scale. And so the Commission has been hesitant -- the staff to get into sort of micro reviews of what should happen to a particular parcel of land here or there. And that's where we see both the State agency functional plans and the local master plans and county plans taking the State planning concepts, as modified, to deal with local circumstance and applying them to smaller geographic areas.

MS. MARION: I guess this is called a statement and question together. Having gone through cross acceptance, I know Morris County's process differed a bit than, I don't know, some of the other counties did, where the counties were, I guess, originally suggested that they go review a municipal master plan, write a report with their consistency with the State Plan, and then the municipality would then, if they weren't happy with the county's report, file their own report and objection thereto.

Morris County, not wanting to put itself in that position, had each municipality file its own report. We felt this process worked better, because one, it got municipalities to read the draft plan, also encouraged their involvement much better. That, to me, would be a better recommendation, rather than have the counties "be the bad guy" and make a determination that

the municipalities themselves make that determination. I think it may save a step in the process.

MR. SIMMENS: Well, I think the Act is broad enough to accommodate either approach or some third or other approach. And each county did use a slightly different approach. Some broke up their counties by regions and had subregional meetings. Some met with each municipality, some took the lead in writing the report, others deferred it to the municipality.

My only comment was, to put it boldly, maybe is that we'd like to see that counties be bad guys more often. (laughter) I mean, we think that there is an important regional role to be played. As I said earlier, we don't see the State Plan as simply 566 fine municipal master plans. We think a regional perspective is needed. And we don't think that we have that capability. You know better than we do the regional context in Morris County. And that's not something we want to impose here from Trenton.

So, I mean, we see the critical need for this intermediate level of government to play an active role with their municipalities. Now, we recognize that counties have little authority, as well. I mean, we have little authority, and counties have little authority over municipalities. We also recognize the politics of county municipal relationships, just like we recognize the politics, with a small *p*, of State, county, and municipal relationships. So we're not surprised when counties almost universally have supported their municipalities -- whatever they've wanted, whatever planning area change they wanted. When we've asked a county, "Do you agree," they've almost always said, "Well, of course we agree."

But we would hope that there might be some way to have the counties play a more proactive role in seeing whether, in some case, what a municipality may be asking for is not compatible with a larger regional vision.

MS. MARION: Well, in most cases, again, because of that lack of land use authority and lack of ability to provide incentives at the county level, many of us are short staffed and otherwise. And when you're looking at 39 -- Bergen County -- 72 municipalities, it's very difficult to do in that time frame, especially.

MR. SIMMENS: Well, I think the point that you make, and this maybe follows up on the Assemblywoman's point earlier about looking at other legislation, is that while -- without trying to expand your mission, which is already a very broad one, in a very short period of time, ultimately, one shouldn't look at the State Planning Act in isolation from the whole planning process in New Jersey. And we've been very strong advocates of giving counties and municipalities more authority.

We don't see-- If I could just take a moment on this, we don't see that -- a kind of win-lose situation -- that if the State has more authority, that means the towns have less or the counties have more and the municipalities have less. We believe there are ways to structure the planning process in New Jersey so that there's more authority, essentially, at all levels of government, given the appropriate scale -- given the State -- looking at statewide issues, the county looking at regional issues, or a watershed group, if that's the unit, and municipalities looking at local street-by-street, block-by-block kinds of issues. But ultimately, I mean, tools to enable municipalities and counties to do that more effectively are sometimes not there. Transfer of development rights,

impact fees, timing and sequencing of growth, etc., etc., are important tools that have been discussed for some years in the Legislature. And we would hope that those, and maybe other tools, could be added to the toolbox for counties and municipalities. And that would help them implement their own plans, and also help them implement the vision of the State Plan, should they choose to.

MS. MARION: I guess, back to the implementation action of the State Plan and what towns are actually planning to do, I know, in our county, we've seen municipalities, in many of their master plans, in terms of the rural planning areas, Planning Area 5 and Planning Area 4 -- they're looking to down-zone -- go to 10-acre lots, maybe 20-acre lots as a means to protect those areas.

But one thing we haven't seen that much is how many towns or municipalities have increased densities to accommodate development that would have occurred otherwise in the environs.

MR. SIMMENS: And I think that's-- You're absolutely right. And we haven't seen it very much statewide. And it's many who have criticized the plan -- bring that up. I think it's a fair criticism, but I don't think it's a fair criticism of the State Plan.

In order for the State Plan to ultimately achieve its outcomes and its goals, it is necessary. For just the next 20 years, we have somewhere between 800,000 and a million more people and a million more jobs coming into the state, and that's not a whole lot different than we had the last 20 years. And I mean, they can live in a disbursed pattern of development, such as the professor recommended, which our impact assessment shows will consume well over 100,000 additional acres, will cost an additional \$2 billion, etc., etc.

I mean, if we continue with the trend way of doing things, the plan way is to protect certain areas and be more restrictive. And by restrictive, I don't necessarily mean in zoning, but it could well be in purchasing development rights, transferring development rights, creative forms of clustering, and so forth, and to be able to impose or allow higher intensity of development in Planning Areas 1 and 2 in centers, and so forth, both existing and planned centers.

And it is a real challenge. NIMBY is alive and well. The ratables chase is alive and well. The school funding issue is alive and well. The high level of traffic congestion in New Jersey is alive and well, if I can use that, and on and on. There are a lot of reasons to say no, and sometimes there are fewer reasons, except in some of our more distressed urban areas, to say yes. And I think that's a challenge for all of us in the Legislature and the towns and the State Planning Commission to figure out how to have that right balance.

It's interesting because some have criticized us for being too far in one direction -- for saying all we're doing is stopping growth. And we've heard people from the environmental community say all the State Plan does is encourage growth and doesn't stop growth. It's that elusive sweet spot, if you will, that elusive balance, which will vary from place to place, I think, is our essential challenge.

MS. MARION: Well, one thing that Dr. Burchell's report came out with was that developing in centers would be more cost effective. Is that true?

MR. SIMMENS: Yes.

MS. MARION: Okay. But yet, that has not yet been an incentive enough for Morris municipalities to accommodate that type of development.

Okay. What other incentives do you see as necessary in order for that type of growth to occur?

MR. SIMMENS: Well, let me just say that Acting Governor DiFrancesco had announced on March 1st, at the Plan adoption, that he was asking his Chief of Policy and Management, Connie Hughes, to meet with Secretary Hance to come up with a package of additional incentives. As I understand it, they are fairly close to coming up with that package. And hopefully, that will be announced in the reasonably foreseeable future. And that will build upon these 15 State agencies that already give financing incentives.

Let me mention one other thing that's, again, not directly related to the Act, but to its effective implementation, and that is streamlining the regulatory process without compromising the regulatory standards. And DEP has introduced something called a sector permit. They first applied it in Long Branch. It was mentioned by Governor Whitman in her State of the State -- or second inaugural, rather -- and a simple idea that took a while to get off the ground, which is that in places where there's both State and local regulation of the same resources, there ought to be one set of standards and one review process.

And that's what's happening in Long Branch right now. And that's being extended throughout the coast. And DEP now has a proposal that's on their Web site and available to extend it statewide so that those places encouraged for growth in local plans and the State Plan will -- developers and municipalities and other interested parties won't have to go through as many hoops without compromising the integrity of the environmental resources there.

And I think it's those kinds of really creative changes in our regulatory climate that are difficult to do but are essential to be, at least, part of the answer to your question, Christine.

MS. MARION: But as -- that sector permit, a municipality would have to do -- lay out quite a bit of funding to do comprehensive planning and to get the means by which to get that sector permit, as I understand it.

MR. SIMMENS: And that's one of the reasons we had the Smart Growth Grants. And we hope that we have the funds to be able to assist municipalities doing that, because you're right, it is-- Generally, I think it's fair to say that in many communities, planning is looked upon as a luxury. And I've always wanted to do a study to see the relationship between how much money is spent on planning and how much money is spent on legal fees. (laughter) And my guess is, the less planning, the more the money is spent on attorneys and vice versa. And if you do sound planning up front, it may not pay off for a couple of years, but ultimately, it should lead-- And I think COAH is a good example -- affordable housing is a good example of doing that planning up front rather than reacting to a builder coming in or anyone coming in.

It's a challenge, and it's a very understandable one, particularly in rural communities with, as the Assemblywoman said, part-time officials, with consultants who are on retainer who, every hour they put on is another chunk out of a municipality's budget. And I was a municipal manager in two municipalities and had to fight often to support a larger planning budget. And so I think that that's, again, in looking more broadly at the planning system in New Jersey, I think that planning resources have to be part of the equation that's looked at.

ASSEMBLYWOMAN MYERS: Okay. I'm going to stop you, because I promised Herb I'd give him enough time to get a sandwich, but we are going to be sending written questions. And we may ask to get together again. Maybe we'll come to the State Planning Commission or invite you to come back, because I think the question of how we do regional planning is critical. The *Mount Laurel* decision was really based on trying to promote regional planning, as I understood it, and yet it was rather foggy on how that gets done.

My opinion of the two statues is, they're a little foggy on how we get to regional planning. I have, in my files, a statue from 1948 where the Legislature created a division of state and regional planning due to the rapid urbanization and continuing growth and development of the State and its regions. And yet, we have very little regional planning. And I think that if we're going to make any recommendations at all, we need to ask why we don't have it and what measures should be looked at or recommended to make it happen. And if we can't do that, then let's stop talking about it, because it just is crazy to be talking about it -- well this is since 1948 and maybe earlier -- and here we are in a new century, and we really, except for the Hackensack Meadowlands and, I guess, the Pinelands -- it's just not happening on a voluntary basis.

So thank you very much, and I hope we've left you enough time to get a quick bite.

Deb, do you have to go to the DCA hearing, as well?

So could you come up just for five minutes?

Thank you.

MR. SIMMENS: Okay. I just want to thank the Task Force members. And I also want stress our Chairman, Joe Maraziti, from the State

Planning Commission -- I'm sure -- I've spoken to him -- will be happy to -- and looks forward to working with the Task Force in whatever way we can to help assist you.

Thanks.

ASSEMBLYWOMAN MYERS: Thank you.

Okay. This is Deb DeSantis, and she is--
Chair?

DEBORAH DeSANTIS: Executive Director.

ASSEMBLYWOMAN MYERS: Executive Director of the Housing and Mortgage Finance Agency, which, essentially, was maybe renamed or created in the Fair Housing Act, correct?

MS. DeSANTIS: There were two agencies, the Mortgage Agency and the Finance Agency, and at some point in history, they were merged to create the Mortgage Finance Agency.

ASSEMBLYWOMAN MYERS: And you-- Tell us really briefly what you do with respect to COAH and affordable housing.

MS. DeSANTIS: Sure. I just want to point out, as Executive Director of the Agency, I also serve as Vice Chair on COAH.

And there are two main areas that the Fair Housing Act directed the Agency's involvement with COAH. One would be the requirement of the Agency to develop affordability controls. At some point, I believe it was in 1987, the agency entered into a memorandum of understanding with the Department of Community Affairs, which the Agency is in, but not of -- entered into a memorandum of understanding with the Department, specifically the Division of Balanced Housing, and developed -- then would have been the

Affordable Housing Management Services. So the Agency delegated the responsibility for affordability controls to the Division of Housing within the Department of Community Affairs to administer affordability controls.

For your information, we're not at a point of revising the affordability controls for the three agencies, because what happened over time was that though that responsibility was delegated, still COAH had affordability controls, the Agency had affordability controls, and the Division of Housing had affordability controls. So we're not trying to make all the controls consistent. So we did go out for public comment with new regulations -- are in the process of reviewing those public comments. And at some point, we will adopt one set of affordability controls through the Agency, as directed by the Fair Housing Act. And we'll, again, have that be administered by what is now HAS, the Housing Affordability Services, at the Division of Housing in the Department of Community Affairs.

The other area that requires the Agency's involvement is with the regional contribution agreements. The Agency provides technical service for municipalities and also reviews the feasibility of the plans. We look at the architectural drawings, we review the market studies, we look at the funding sources, and we also look at the administrative capability of the receiving municipality. And then, if we do establish feasibility for a project, the Agency makes a recommendation to COAH that the RCA be accepted.

So those are really the two key areas that the Agency is involved to the Fair Housing Act.

ASSEMBLYWOMAN MYERS: Thank you.

In the Fair Housing Act, there is a requirement that I guess HMA keep a register of housing projects.

MS. DeSANTIS: Yeah, through the Fair Housing Act, the Commissioner of the Department of Community Affairs is supposed to keep a registry of affordable projects. And we do not do a formal registry process. This fits really more of an informal process, and I'll just explain why. The Commissioner of the Department of Community Affairs also serves as the Chair of the New Jersey Housing Mortgage Finance Agency. She also serves as Chair of the Council on Affordable Housing. So though we don't keep a list of projects where the Commissioner would actually sit and establish some sort of priority in her capacity as Chair of those two agencies, we don't take anything from the -- our Agency's perspective-- We don't take any project to the board for approval until the Commissioner has looked at that project and has made a determination from the Agency's perspective and also the Division of Housing's perspective -- that that is a priority project and that we should grant our financing for that project.

So that's a long-winded answer to say, no, we don't keep a list of projects. But there are many checks and balances by the mere fact that the Commissioner of DCA serves on the different boards.

ASSEMBLYWOMAN MYERS: One of the reasons we were interested in this section is because it said, "The Commissioner shall file, with the Governor and the Legislature, a copy of the register upon its compilation and thereafter promptly report to the Governor and the Legislature any additional projects to be included.

In other words, the Legislature-- This is one area where the Legislature was to be kept informed. This was an amendment to the original Fair Housing Act.

MS. DeSANTIS: Right.

ASSEMBLYWOMAN MYERS: Can you tell me why this amendment was made? I mean, one of the reasons we're here, and one of the reasons I've always thought that the two acts had problems being workable, is because the Legislature has been really out of the picture. There's no legislative representation on either the council -- I guess not on HMFA or the State Planning Commission.

So, when I see that the Act required information be given to the Legislature, I want to know-- Well, do we need that, and if we don't, then maybe we need to take that out of the statute. And if we need it, then maybe we should insist that we get it.

MS. DeSANTIS: I'm sorry. I can't speak to the intent of the Legislature at the time. I don't know.

MS. BISHOP: I really don't know. When I came to COAH six and a half years ago, this was in place. I don't know the genesis of the amendment of the Fair Housing Act.

I should tell you that the Department of Community Affairs has booklets that actually have the information that's there, but there's no formal register at all.

There's also a very sophisticated GIS mapping that's under way with information technology so that every municipality in New Jersey that receives any State funding -- you can put the-- Funding sources will be

superimposed on every municipality's mapping. This is all a very ambitious project that is currently under way.

But the Assemblywoman is correct. There is no formal registry in place at the moment.

ASSEMBLYWOMAN MYERS: Does or would this list of projects impact on the fair share numbers?

MS. BISHOP: Well, yes. Most of the housing that is constructed with State and Federal funding is eligible for credit against a municipality's fair share obligation.

ASSEMBLYWOMAN MYERS: There's a provision in the Fair Housing Act that COAH, from time to time, adjust the numbers, based on this kind of housing. In practice, is that done? How is that done?

MS. BISHOP: Yes, it is. It's every six years. It's the new round of numbers that come out.

ASSEMBLYWOMAN MYERS: Okay. But what I'm thinking of is suppose a municipality gets an obligation, and then the Federal or State -- some other program comes into that town, and 100 units are built, or something, as a result of funding, developer interests, whatever. Then isn't it possible that that municipality would then not have an obligation and not have to fulfil that?

MS. BISHOP: All of that housing would be credited towards the obligation.

ASSEMBLYWOMAN MYERS: Immediately?

MS. BISHOP: Yes. And in reality, the number would be reduced. And we have many towns that have affordable housing in excess of the numbers, and many of your Morris County municipalities do.

ASSEMBLYWOMAN MYERS: So that's what I'm getting at. So there is a communication process--

MS. BISHOP: Yes.

ASSEMBLYWOMAN MYERS: --that you know about all of the--

MS. BISHOP: Yes.

ASSEMBLYWOMAN MYERS: --affordable housing that's being supplied and where it's being supplied.

MS. BISHOP: Yes, we do.

ASSEMBLYWOMAN MYERS: Okay.

MS. BISHOP: HMFA has lists of all of the developments that have received the Federal low income tax credits. Balanced housing sends us monthly reports. The Neighborhood Preservation Program is used in small cities, is used for rehabilitation activity, and it's all in the monitoring forms.

ASSEMBLYWOMAN MYERS: Okay. All I would ask is that you ask the Commissioner -- or try to find out why this provision is in the law. Maybe OLS remembers. I don't know. Because I think if we can't meet the terms of the law, why do we have it. It makes the law rather meaningless.

MS. BISHOP: I believe it was 1992, and I really don't know why. We'll find out and let you know.

ASSEMBLYWOMAN MYERS: And besides that, it's really not as important to find out why, except finding out why might tell us whether we really should--

MS. BISHOP: Need it.

ASSEMBLYWOMAN MYERS: --try to get it or not. But I think this kind of information-- You say it's available in the other reports that DCA puts out.

MS. BISHOP: Yes.

ASSEMBLYWOMAN MYERS: So it is available to us. I think we need to reword that. So we'd like some feedback on that.

Does the panel have any questions for Deb DeSantis? (no response)

Thank you.

MS. DeSANTIS: Thank you, Chairwoman.

ASSEMBLYWOMAN MYERS: Okay. Thank you all for your patience.

Barbara Simpson has asked to testify, because she has another appointment.

BARBARA SIMPSON: Thank you.

I'm Barbara Simpson, the State Plan Project Director for the Association of New Jersey Environmental Commissions. ANJEC is a statewide nonprofit that provides training information, guidance, and policy analysis for the 2200 volunteers who serve on New Jersey's 350 environmental commissions, as well as for local and State officials and interested citizens.

Our mission is to promote the public interest and natural resource preservation and sustainable development, and to establish and strengthen environmental commissions in New Jersey's 566 municipalities and 21 counties.

ANJEC has been a longtime supporter of the State Plan, because we recognize the value of comprehensive planning for protecting our natural resources, and we believe natural resource preservation ultimately pays off in the long run, because we reduce air and water pollution while saving significant amounts of money in cleaning up contamination.

Additionally, ANJEC is a founding member and co-chairman of the Coalition for Affordable Housing and the environment. It's very important that we honor our constitutional obligation of providing affordable housing to all residents of the state, and we believe that affordable housing obligations can be met by good land use planning at the local level.

We have seen a significant increase in the number of towns that are contacting the State Planning Commission to find means of controlling growth in their communities. Only five years ago, only a handful of communities were recognized by the State Planning Commission for their planning efforts. But a significant number of towns are now working with the Office of State Planning to achieve consistency with the State Plan, because they realize that comprehensive planning is good for the future of their community.

Additionally, many towns and counties are applying for the Smart Growth money offered by the Department of Community Affairs.

In general, massive affordable housing projects only happen to towns that do not follow through with the necessary planning and are sued. There are other ways to meet affordable housing obligations. For instance, Washington Township, in Morris County, is a suburban-rural community who has met their obligation by various means, including group housing, senior housing, and levying a fee on new construction to pay for affordable units.

Where there is a will, there is a way to meet a community's affordable housing obligation, and it does not have to come through a builder's remedy.

There are a number of legal cases where the court has supported communities whose plans are consistent with the State Plan. Hillsborough, Bedminster, and Springfield successfully use the State Plan to influence land use at the local level and won a decision in the courts.

While only a voluntary program, the State Plan can provide added leverage to a community to defend their zoning. What we really need are the legislators to help municipalities implement the goals of the State Plan. For example, provide a TDR mechanism so that development rights could be readily transferred from more rural areas to centers where developments should be placed, requiring that local master plans be consistent with the State Plan so all levels of planning are moving towards a common goal of a sustainable state with better communities. A stable source of funding similar to the Garden State Trust Fund for open space preservation would go a long way to revitalize developed areas of the state and strengthen existing infrastructure systems.

There are a number of pieces of legislation already in your hopper that would give towns more tools to implement the State Plan. There needs to be more incentives so the towns will do the right thing.

This is something that the Legislature can work on to move the State Planning process forward and make it more of a reality in the next few years.

Thank you.

ASSEMBLYWOMAN MYERS: Questions from members?

MR. KENT-SMITH: Ms. Simpson, I was very intrigued by your suggestion regarding the transfer of development rights, because I've often felt that that's really the only tool that will balance the property owners' rights to the value -- or the fair market value you're going to -- the goal of preservation of open space, unless we buy those rights.

Do you have any models or any proposed legislation or any kind of anything that would help this Task Force to see what a TDR would look like -- how would that statute--

MS. SIMPSON: Well, I think there are pilot programs in Burlington County, like Chesterfield Township -- is trying the TDR, but there is a statewide initiative -- I think the Bagger Bill is out there. And we support that.

ASSEMBLYWOMAN MYERS: Is that it?

MR. KENT-SMITH: That's it.

MAYOR SCHWEIKERT: I find in most instances in Hunterdon County, where my town is, when there's very large developments coming in, say 900 to 1000 houses, the first reaction of the people in the area is to start to looking for turtles or Indiana bats or rare grasses.

With your comments regarding planning, how does this preservation that you talk about -- and planning meet with the needs of the people in that area that are looking for these types of things and believe that these housing developments are ecologically damaging to their areas?

MS. SIMPSON: I think at our resource center-- ANJEC has a resource center, which is open to environmental commissions, and we also get a lot of calls from concerned citizens on specific housing developments, which

is discouraging, because we encourage more comprehensive planning rather than be reactive to a particular development. It's usually a little bit too late at that point. It's better to be proactive and direct the development where you really want to see the development go and preserve what you want to see preserved.

By using different techniques-- Maybe you have a local open space tax adopted and some sort of funding to preserve your open space and your farmlands. So we encourage communities to be more proactive in planning rather than react to some development that all of a sudden comes on board, and they have to find ways of--

MAYOR SCHWEIKERT: Well, typically, it ends up in the judicial realm.

MS. SIMPSON: Yeah.

MAYOR SCHWEIKERT: And then a judge is sitting there, and he has the Fair Housing Act in front of him, and he says, "I have to make sure that there's affordable housing and that the Fair Housing Act is followed." And the environmental group is saying there is a rare bat in the tree. And when they come down to that decision, the environment is always going to suffer. It will always go to the -- meeting the Fair Housing Act and the affordable housing.

Do you think that's true -- along those lines?

MS. SIMPSON: We'd rather see it happen before it goes to the court, I guess. We'd rather see them develop plans like Washington Township. And there are a lot of examples of small towns that handle their obligation through appropriate planning and different techniques to meet it.

ASSEMBLYWOMAN MYERS: Christine.

MS. MARION: I guess concerning TDR, how many-- Have municipalities given you-- Have any municipalities given you an indication of their willingness to participate in a TDR program?

MS. SIMPSON: I would say yes. I think during the final round -- the public hearing on the State Plan -- the final hearing on the State Plan, there was a lot of concern over implementing the State Plan and coming up with tools and techniques that they can use. And that's just one that can be used to transfer the development rights from open spaces to more concentrated developments.

MS. MARION: Okay. Have any of those municipalities indicated their willingness to be a sending district or receiving district?

MS. SIMPSON: I haven't taken a survey on that.

MS. MARION: Thank you.

ASSEMBLYWOMAN MYERS: I'd just like to say that if you could go back to ANJEC-- You recognize that we have a number of bills pending that would provide tools, but if you could provide the Task Force with any--

We're really looking, as much as possible, for quantifiable impacts and scientifically based information so that we can provide a rationale to the Legislature for why they should look at some of these proposals.

MS. SIMPSON: Okay.

ASSEMBLYWOMAN MYERS: So if ANJEC could work on that and get that to us over the next couple of months, that would be very helpful.

MS. SIMPSON: Okay. We can do that. We'd be glad to be part of that process.

ASSEMBLYWOMAN MYERS: Thank you.

MS. SIMPSON: Thanks.

ASSEMBLYWOMAN MYERS: Next, Mr. Jacob Jones. He's indicated he's got another appointment. We're moving-- We're going to move as fast as we can.

I've told the panel members that they can go get lunch if they're hungry. We're going to take turns and try to keep two of us here. It's all being recorded, so we'll all be able to read the testimony at the end, anyway.

And if any of you are hungry, there is a cafeteria on the next floor down where you can get a sandwich. And we'll try to work through and take you as quickly as possible.

If you could introduce yourself.

J A C O B J O N E S: Good afternoon.

My name is Jacob Jones. I am the Director of Community and Economic Development for the City of Long Branch.

And I have to say, I sat and listened to most of your subjects and items that you've mentioned, and virtually everyone in Long Branch is somewhere, somehow involved with.

I'd like to give you just a little bit of background on Long Branch and just to explain how we interface with many of the State programs, how we've dovetail our planning efforts with those of the State. And I will be brief.

Long Branch, as you know, suffered a major fire back in 1987. We were basically considered a summer resort town. And I think with the destruction of that waterfront -- that pier, we lost that summer tourism. So we had to revamp and become a year-round community.

In 1992, efforts were started by the administration to do just this. We decided to hire a consultant group, the Thompson Design Group. They came in with plans. The sector permitting that Mr. Simmens referred to earlier was privately paid for, and then we had to come up with some local funds. So it took some investment.

We had a vision, and the city was committed to doing this. We decided to pursue center designation for a number of reasons. Initially, we thought it would open up certain State coffers or other funding that normally, without the designation, we would not be entitled to.

In addition to that, we did some other things. We decided to apply for other funding through State agencies. We received funding through DCA, the Neighborhood Preservation Program. My office administered that program. We applied for, and received, the UEZ designation, urban enterprise zone. We applied for, and received, UCC, which was the State initiative. We also engaged in several RCA programs. The vision was simply to be a catalyst, to create revitalization, not just for the oceanfront, which was the major redevelopment program, but to try to give some relief to our inner cities and inner communities so that we would have comprehensive development at the same time.

We were very successful in doing this. Many of these programs are currently working. And just to give you some idea of the numbers, Long Branch is just 5.1 square miles. So though these numbers are small, it seems, in reality to us, they impact our city.

We've got over 120 acres of oceanfront properties to redevelop. That designation will also extend up the Broadway Corridor, which is a major business district in Long Branch.

We received moneys to rehabilitate some 300 units. Most of our housing stock, over 70 percent, predates 1978. So we had a great deal of code violations to abate.

If anybody's wondering whether these RCA programs help the city, you can only ask the home owners and the property owners whose quality of life has been improved. We see a tremendous change. And this is not redevelopment, this is revitalization using available programs that are current right now in the city.

We also invested some \$6 million of rehab funds in these communities. We started to be proactive. We didn't wait to gain COAH certification or to meet our affordable housing mandate. We started a scattered site program through HMFA. And I think I heard somebody mention -- again, we're not building moderate income units. That's not true. In Long Branch, we are. We're building affordable units. The UHORP program allows the city to do a third affordable, a third moderate, and a third market rate. And so we think with this program, we've been able to.

In fact, we've just completed six units. We completed another 10 units of these homes. We've gotten-- The people in these homes have already sold. They are occupied currently. So it's working. And the construction of these projects have impacted our community such that they've completely changed whole neighborhoods and communities. So the proof is there in the pudding.

In addition to that, we will continue to build affordable units. We are under way with a 28 scattered site housing project, which will see some 80

affordable units done. We may piggyback our RCA funds with this project. However, the commitment is made to go forward with the affordable units.

We also, again, just to mention a little bit about the redevelopment-
- And again, this is trying to dovetail plans with the State Plan. We did get CAFRA permitting -- or the sector permitting on oceanfront projects, which we were just about to test now. We have two sectors that are under developer designation. We should be starting these projects within a few months. We will test that sector permitting, if you will, at this time.

We think, to date, the State's been great. We've got nothing but assistance. It's expedited many of these projects that for years have been very, very difficult to overcome.

In addition to that, we are an *Abbott* school district, so we are receiving some \$128 million of funds to rebuild schools. Virtually every school in Long Branch will be rebuilt or rehabilitated. We have major parks improvement projects, ground fill remediation projects ongoing. We have also received the Smart Growth planning grant. And on and on it goes.

If you were to visit Long Branch, and we certainly extend the invitation, you will see something going on in virtually every sector of the city. Revitalization is occurring. So we think that the RCA program does, in fact, work. The State Plan does, in fact, work. And we are just looking forward to getting all these projects completed.

ASSEMBLYWOMAN MYERS: Questions?

MAYOR SCHWEIKERT: Just a comment.

You have a lot going on for 5.1 square miles.

MR. JONES: Yes, absolutely.

ASSEMBLYWOMAN MYERS: What's the population?

MR. JONES: It's just under 30,000.

MR. KENT-SMITH: Well, Mr. Jones, having represented a redeveloper in the beachfront redevelopment zone in Long Branch, I have to tip my hat on an exceptional job the city has done. And in particular, I found the sector permitting, although we didn't actually secure the permit-- The process was very user-friendly. And I have to say, the city of Long Branch should be held up on a pedestal for other municipalities to view how to effectively plan for and implement redevelopment. I think you've done a marvelous job.

MR. JONES: Thank you.

And despite all the activity that's going on regarding construction and rehabilitation, we also value open space. We have submitted a grant to Green Acres. We're asking for -- I won't tell you how much money -- but we're looking to add to our open space inventory. So we're looking to add another 26 or so acres to our already existing 120 acres.

And again, in a small city like Long Branch, this impacts our city. So we're trying to be comprehensive in our approach.

Thank you.

ASSEMBLYWOMAN MYERS: You mentioned that one of the programs -- I think you said UHORP -- you're building a third affordable, a third middle income, and a third market rate.

MR. JONES: Yes.

ASSEMBLYWOMAN MYERS: And is that a requirement of UHORP?

MR. JONES: No, the developer can select assisted market rate or however--

The first project that we did -- we elected to go that way, because our administration was like most. They had to be sold on affordable housing. And we thought that to put one particular socioeconomic group in one area was the wrong way to do it. We thought that -- and I think historians will show that if you have a mix of income households, that's what works. So the third, the third, and the third certainly is working. All those units are occupied, and the people--

ASSEMBLYWOMAN MYERS: So it's not a requirement of a program, it's what you decided to do?

MR. JONES: It was part of a UHORP option that they allowed. Given the market rate -- the assisted market rate is a choice by a developer, but you can go a third, a third -- depending on what profit margin that developer is looking for.

ASSEMBLYWOMAN MYERS: But is the middle third -- is that moderate income housing or is it middle income housing, because it seems to me we have low and moderate, which is COAH housing, and then we have the starter palaces that they're building in a lot of our state -- maybe not in Long Branch, but they're certainly building them everywhere else, I think.

MR. JONES: I'd have to say it's moderate.

ASSEMBLYWOMAN MYERS: What we're talking about is middle income--

MR. JONES: Middle income -- however--

ASSEMBLYWOMAN MYERS: --which is between the COAH houses and the really--

MR. JONES: Okay. Again, the units -- the final third are sold at market rate. So those household are middle income folks.

ASSEMBLYWOMAN MYERS: They are. Okay. But you don't have starter palaces?

MR. JONES: I'm sorry?

ASSEMBLYWOMAN MYERS: You don't have starter palaces.

MR. JONES: No. Well, we do in Elberon, but not in other parts of the city. We have a little bit of everything in Long Branch. We've got the mini palaces and so forth.

ASSEMBLYWOMAN MYERS: Yeah, it's very impressive.

MR. JONES: So it's quite a city.

ASSEMBLYWOMAN MYERS: Very impressive.

And how much of the population is summer population?

MR. JONES: That population has been greatly reduced because of the decline of the oceanfront. However, the redevelopment is slated to impact that area, so we should see those numbers surge again.

However, there is some increase to about 1 to 5 percent during the summer because of Ocean Fest and many of the activities that we hold on the oceanfront.

ASSEMBLYWOMAN MYERS: Thank you very much.

MR. JONES: My pleasure.

ASSEMBLYWOMAN MYERS: Mr. Aldrich, finally.

Mr. Aldrich is a member of the League of Municipalities' Committee on Affordable Housing. And Bill Dressel, the Director of the League, has offered the assistance of that Committee, and we may be seeking a meeting with that Committee.

And we appreciate your being here today.

C L A R E N C E " B U D " A L D R I C H III: I'd like to thank you for inviting me.

I'm here as a member of three or four different committees with the League of Municipalities. I sit on the State Plan Committee, on the COAH Committee, on the CAFRA Committee.

But I'm here also as a seven-year township committeeman and two-term mayor of Dover Township in Ocean County, not to be confused with Sussex County, which we are constantly.

Dover Township is the seventh largest town in the State of New Jersey -- seventh largest municipality. We have over 100,000 people -- 44 square miles.

The affordable housing -- *Mount Laurel* decisions of affordable housing and COAH has been absolutely disastrous to us. We have the largest COAH obligation in the State of New Jersey, larger than most counties. I think, right now, we've got our obligation down to 1700 or 1800 units.

Basically, what it boils down to is, we're an affordable town now. We have about 70 percent, as near as we can figure, without going into a full-blown study -- affordable homes. The problem is that affordable homes and the COAH formulas do not start the municipalities out on a level playing field. And that level playing field is determined by the year 1981.

We have many of our homes, that were affordable homes, built prior to 1981 that are not included, and we can't claim them as affordable homes.

And I don't want to take a lot of time, but let me give you the basic-- The easiest way that I found to translate this is if you take a town that only can build 100 homes, and before 1981 they built 50 affordable homes, they're still going to have to build more affordable homes afterwards when you get through with the COAH formula. So you wind up with a town that could be 70 or 80 percent, and it really penalizes towns for good planning.

You take a township like Dover-- We've got 44 square miles. We have what I think is a very, very good master plan. We have a very, very good mix of housing, of commercial, of industrial. Although we don't fall into what the State Planning Commission calls the designated center, we have what we finally got them to design -- is what they call the node theory, which is -- we have commercial zones -- don't have one town, per se, center.

And all of these things come into play. There's a need for the State Planning Commission; there's a need for a State Plan; there's a need for COAH; there's a need for environmental regulations. And we all know that. The same way there's a need on the local level. But all of these things tie in. The State Plan ties into CAFRA, ties into COAH, ties into everything else.

The biggest argument I've had with the Office of State Planning for the last three years is that you come to us and you say, "Join the State Plan. Let's get a center designation. Let's do this. Let's do that. Tell me what your intentions are for your town for the next six years." And my standard answer is, "Tell me what the State plans to do with my town for the next six years, and I'll

tell you. Tell me how many affordable houses I'm going to have to build. Tell me where you're going to put highways and bridges and so on and so forth." That determines what I can do. Without that information, I can't give you anything.

So we did, finally -- and I commend the State, because we did finally get them to put a liaison between State agencies and boards to pull together so that everyone was aware of what the Office of State Planning was doing, what COAH is doing, and what DEP is doing. And it has been a big help.

I think there's still work to be done. The legislation is A-2657 that Assemblywoman Myers and Assemblyman Holzapfel have proposed. I think it's going to go a long way to putting us on the level playing field that we need to start.

Once you get that playing field, and you know what each municipality is, then take your regional amount that you have to come up with and divide it that way. You'd come up with a formula. I don't care whether it's an assessed value or what you have to use as a formula, but come up with it and divide it up that way. Your exclusionary towns are going to have to -- RCAs -- some of them. But that's okay. My taxpayers are blue-collar people that I don't think should have to pay for RCAs, because other towns are exclusionary and can't build affordable housing. I don't think that was the intent of the law to begin with.

So I think there's work to be done on this yet. Herb Simmens and Shirley Bishop have been absolutely great working with us -- with the League on all the various committees. Chris Carew just came in from the League. And

Chris can tell you, as I can tell you, in the past three years -- I don't even know how many meetings we've had with the various agencies and so on and so forth. They have all come back and have really worked hard to try to get these packages together.

I think we're close. And I think with a little more adjustment, these things will come together. And I think the State Plan will do its job, and I think COAH and CAFRA can do their jobs, along with the Pinelands Commission and everyone else.

So I think there's a little work to be done yet, but I think it can be done, and I think this bill is key to it.

Thank you.

ASSEMBLYWOMAN MYERS: Thank you.

The bill that he's referring to would move the date for counting the units back to 1948 or something.

MR. ALDRICH: 1948 -- '47 -- '48, I think it was.

ASSEMBLYWOMAN MYERS: Assemblyman Holzapfel's bill -- I'm co-prime sponsor. But when I was asked to co-prime it, I said, "Well, why do we have to -- why can't we go back to the beginning of time?" I don't even know why we're going back to 1948. But I was told half a loaf is better than none.

MR. ALDRICH: Well, I think that was part of the reason -- figured '48.

I have no idea. I said--

ASSEMBLYWOMAN MYERS: It would help you, but it's not going to help you, but it's not going to help some of my hundred-year-old towns. That's the problem.

MR. ALDRICH: I said the same thing you did. I said go back to the turn of the century. What difference does it make? Let's figure out where the town is to start with. That's what you need to know. And once you know that, then you can come up with a formula that's going to be fair to every town across the state, otherwise it's just not going to work.

ASSEMBLYWOMAN MYERS: Well, it's interesting, because I don't know if you've read the statute, but that is the way the statute is written. The statute requires municipal officials to do an assessment of their own town, submit it to COAH. That's how it was supposed to start. The municipalities were supposed to submit numbers to COAH, and COAH was then supposed to answer them and tell them whether they were coming up with fair numbers or not. Unfortunately, that was never done.

And I recently went over with the staff to look at the housing elements that were being submitted, and apparently the municipalities are not doing that. They're just feeding COAH back its own numbers. So we're definitely going to be looking at that portion of the law. I'm not so sure municipalities have the resources to do the assessments that would need to be done to take the place of COAH, but there's got to be a compromise in there between the intent of the law and what's actually happening.

MR. ALDRICH: And I think there's a lot of funding and a lot of money around that will help them do these things also.

But just to give you a quick example of what can happen, when we first had a center designation done by the Office of State Planning, it was done-- And don't ask me who did it or when they did it or how they did it. All I know is when it came back, they had virtually taken every piece of commercial and industrial piece of property we had out of play. There was -- because the limits of building -- the percentage of density you could get on a property outside of those center areas was so low you couldn't get commercial or industrial.

So all of our ratable money was going, and on top of that, we had COAH on the other side of the fence saying build 1800 affordable homes. Now, who pays for the services for those 1800 affordable homes and the schools and everything else if you've got no way to get ratables? So I went to war -- pretty close to war -- and said we will draw--

What my suggestion was-- Look, forget about this cross acceptance. It may be working in a lot of counties, but it's not working in a lot of other ones, because the counties don't want the responsibility, nor do they want to pay the bill to do it.

So I said, "Send representatives of the State Planning Commission or the DEP or whoever you want one day a month to Ocean County, which is our county. It's 30 municipalities. That will get you to each municipality. Sit down with the planners, the engineers, come up with a designated center area based on each municipality's significant defectors, the little idiosyncracies that each one of our towns has." Everybody knows this town needs this, this town needs-- And they did and immediately started to get these things to snap into place, because now they knew what the towns needed and what the towns were expecting.

So, all of a sudden, they redesigned our center based on coming down and spending three hours with our engineers, and it works perfectly for us. So it's the top-down process, as it was started, that turned to be a bottom-up process. And I think it's helped the whole system a lot.

And like I say, I commend the people at State Planning and COAH. I think they're doing the best with a bad situation. But I think we're close.

MAYOR SCHWEIKERT: Mr. Aldrich, with regard to Dover Township, has Dover Township ever taken out an RCA or used the concept of credits without controls?

MR. ALDRICH: Credit without controls, yes. No RCAs.

MAYOR SCHWEIKERT: No RCAs.

MR. ALDRICH: No, we had complied and were completely in the first round. The fact is, we're still working on the second round, because the second thousand homes were a little harder to come up with.

MAYOR SCHWEIKERT: Why did you go with credits without controls?

MR. ALDRICH: Why did we?

MAYOR SCHWEIKERT: Yes.

MR. ALDRICH: Well, we used everything. We would have used trailers riding through town at that point if we had to to get them on the list, because we have 38,000 homes. (laughter) And out of 38,000, I would bet money that 70 percent of them are affordable homes. But out of that 70 percent, our town was built out pretty much in the '70s -- '60s, '70s, and up into the early '80s. We had a boom in the '80s, but it wasn't that much of affordable stuff.

So we probably lost half to three-quarters of that 70 percent. So we had to take every credit we could get, houses, rehabs, we had group homes, you name it. And we got-- We met the obligation on the first round.

Now, this round, we're looking at, probably, an \$8 million to \$20 million for RCAs, even though we're going for every house that we can get. And we're going to wind up being an 80 percent affordable town. And I don't think that's what the intent of the whole thing was.

MAYOR SCHWEIKERT: Put on your League hat now.

MR. ALDRICH: Okay. I'll try.

MAYOR SCHWEIKERT: What I've seen from the League constituency has mainly been some surveys and questionnaires -- seen some meetings. There was a questionnaire that went back in -- May 8th, 2000, which came through Holmdel, and Peggy Lasky and Terence Wall. And there were a hundred responses from the League constituency. And I'm going to read three of them and tell you what the percentage was.

"Do you feel that *Mount Laurel* has improved the quality of life in your town?" Twenty-eight percent said yes, fifty-eight percent said no.

"Should the State help pay administration costs for the *Mount Laurel* program?" Eighty-nine percent said yes, eleven percent said no.

And the last one is, "Do you feel that *Mount Laurel* program is beneficial to your town?" Thirty percent said yes, sixty-three percent said no.

Based upon these surveys, how do you think the League will approach this Task Force with advice, based upon what their constituency feels?

MR. ALDRICH: I have to be perfectly honest with you, I haven't spoken to Bill Dressel or the League about what the testimony is going to be

before this board. I can speak for myself in saying that when you ask a question like, "Do you feel that the *Mount Laurel* has helped or hurt your municipality," I think that all goes back to and depends on what kind of condition your municipality was in to begin with.

We have our own complete planning staff, and we have a good engineer. And I think our municipality-- I don't think that the *Mount Laurel* decision or COAH has helped us at all, because I think we were in fine shape to begin with because we zoned for that. We zoned for affordable homes. Affordable homes -- this misconception a lot of people have-- Affordable homes-- We have police officers, nurses that need homes. And in some areas, you can't afford to buy homes. Now, those people need homes that are considered affordable homes. And I've got kids that are professionals that are in the same situation.

I think if you plan -- and a municipality plans up front for that and has good, solid planning, there's nobody that can help you. I mean, I think you're doing the best job you can. But no, I think we were doing fine. I think as an advisory or something like that, COAH may have been okay, but I don't think, in our case, that we needed it.

MAYOR SCHWEIKERT: Okay.

Thank you.

ASSEMBLYWOMAN MYERS: Nothing?

Thank you very much.

You're on the State Plan-- Oh, CAFRA is the other committee that you're a member of. And I know Assemblyman LeFevre will have some questions on CAFRA.

Christine went to get some lunch, but she is working on a questionnaire, which we will submit to the League that we hope to disseminate to the municipalities.

MR. ALDRICH: Well, anything-- I'd be more than happy to testify again if it's necessary or give whatever information I can give.

I appreciate the offer to come up today and testify. I think it's important that these hearings are held.

Thank you.

ASSEMBLYWOMAN MYERS: Thank you.

Steve, do you have trees to plant?

STEVEN JANY: Yeah.

ASSEMBLYWOMAN MYERS: We were out last night trying to get ours in before the rain. So I figured I'd better call you next.

MR. JANY: It's still too wet down that way.

I'm Steve Jany, President of the State Board of Agriculture, a 2000-acre grain farmer in Mercer and Middlesex counties, and we have Christmas trees, also.

The ag community has concerns with the State Plan, due mostly to the equity concern issue of it. There's an equity statement in the State Plan policy.

One of the concerns, and some of it's been alluded to today-- The State Plan is not in favor of, and does not promote, large lot zoning, but there are a lot of towns that are starting to down-zone in the name of the State Plan. And it's mostly just to limit growth.

Agriculture is in favor of clustering in-town centers. Large lot zoning just eats up too much ag land -- good ag land. But how do we take the rights from the farmlands that are there now and put it into PA 1 and 2 when towns have a no growth mentality?

I sit on the West Windsor planning board. And we were trying to preserve a corridor of open space. And we were going to down-zone, but every time -- and if you moved it off-site, increase it. Well, the public came out and just tore us apart on it -- that it was a planned unit involvement, it wasn't going to be all just housing. That mentality is out there now.

The water-sewer rules that were just implemented put teeth into the State Plan. DEP now can look at the proposals and deny them on environmental issues. But the rule doesn't promote cluster zoning and that type. There is no incentive into it for the developer to go and do that type of alternative wastewater treatment, etc.

Developers, with a limit of five houses, are exempted if they build developments that way, are going to take that path, because that's probably the path of least resistance, if they can get it through with very little environmental assessment onto it. And that just leads to the large lot.

We've been told by the Governor and DEP -- Governor Whitman at the time -- that it won't affect the value of the land, but we feel that devaluation will occur from it. And we're afraid that it could affect the participation in the farmland preservation program. If the value drops enough on that land, most owners will just take a wait and see action, as happened in the Pinelands. With a new evaluation formula for the Pinelands, we now have 100 applications for farmland preservation from the Pinelands area.

Farmers use the value of the land to secure capital and operating loans. They need that money and equity to operate their businesses. And I sat on a committee for farmland assessment. And part of the discussion that happened there was that as long as the land can appreciate, and people see that, it's not so much the return that's actually on the land, but along with appreciation is why they keep that land and keep farming it. Farmland preservation doesn't work for every farm family due to circumstances of family members. One farm, some don't, and things like that.

I think that, basically, we're on the same page with the State Plan, that we don't want to see large lot zoning. But we need to maintain the equity in our farms. And most farmers want to see the land open but not solely at our expense through down-zoning.

Thanks for the time.

Any questions or--

ASSEMBLYWOMAN MYERS: Do you have any?

MAYOR SCHWEIKERT: How are you reimbursed for down-zoning and loss of equity in the land?

MR. JANY: Through down-zoning there is none. The only thing possible that you might get is that -- but one building lot is a building lot, no matter whether it's one acre or twenty acres. Because of more acreage, that lot might be worth a tiny bit more, but not much more, not enough to make up for the disappearance of that right. We were fortunate in West Windsor. The voters passed an open space tax, and we were able to buy that corridor instead of down-zoning. But they're issues that we all need to look at and try to curtail, if we can.

Thank you for the opportunity.

MR. KENT-SMITH: Just one question, because I constantly, practicing in West Windsor and living in Plainsboro, I know exactly what you're talking about.

But I constantly hear, in defense of the large lot zoning, that this is agricultural preservation zoning. That's the argument that is constantly made -- that by zoning for 10-acre lots, I'm preserving agricultural viability, because I'm taking the development rights out of the mix so the property will be developed.

MR. JANY: Well, when you put one house on 10 acres, if you clustered it down, you reduce the yield by going to that 10 acres.

MR. KENT-SMITH: Right.

MR. JANY: But if each house is built on 10 acres, the viability of -- like my operation is gone, because we can't farm that small of a piece under most circumstances.

MR. KENT-SMITH: Right.

MR. JANY: You might get a little farmette where the owner might have a Wall Street job or whatever and then have a couple horses there or put some sheep or something. But for food production and for your farm markets and like that, the large lot zoning doesn't work, not without clustering. Going to the 10 acres or 20 reduces the yield. A viable TDR program, as in Burlington or like that -- and put it into the town centers. But even West Windsor has designated Princeton Junction as a town center, but yet, nobody wants to increase that density there to accept it.

MR. KENT-SMITH: I know that well. That's it.

MR. JANY: Okay.

ASSEMBLYWOMAN MYERS: Do you have anything?

MS. MARION: Hi.

Is there a minimum acreage that you would say would be viable for a farm operation to successfully continue as an industry?

MR. JANY: That can vary depending on greenhouses -- could survive on as little as seven or ten acres if that's the sole business. If it's a farm market, probably 20 to 30 acres -- could survive -- where you can produce enough produce on that ground. When you start talking about potato farming or grain farming, such as we are, then you're looking at large acreage. Most of the time, we've skipped five-acre parcels, unless they happen to be right across the street from something that we're already farming -- between animal damage and like that. It's just too-- There's too many edges that you just can't viably do it. But there is high intensity, your farm market type or greenhouses and like that, that can survive on small acreages.

MS. MARION: And just looking at the State Plan, would you say that the majority of agricultural lands are properly designated within, I guess, what they call the rural planning area, or are there other farm areas outside of that, as well?

Are you familiar with that?

MR. JANY: In our town, we have farmland in Planning Area 2 that's there. Most of it-- Some of it's owned by farmers. Most of it in Mercer County is -- and Middlesex is owned by speculators now that they're just sitting and waiting for the right offer to come along.

MS. MARION: And is that preserved farm, or just farms that are just current operations?

MR. JANY: That are in the Planning Area 2?

MS. MARION: Planning 2.

MR. JANY: Most of them are, at least, two operators, such as myself, that-- The owner is just-- They're waiting for the right development to come along.

MS. MARION: Thank you.

MR. JANY: Okay.

ASSEMBLYWOMAN MYERS: Just one question. We talk a lot about preserving large, contiguous tracks. Does the State Board have any data on whether-- When a certain amount of development comes into an agricultural area and that pretty much causes a continuing decline until agriculture dies there, has anybody kept track of that or looked at trends, or what do you feel, personally, about the need for contiguous blocks?

MR. JANY: Well, contiguous blocks are definitely better, because you isolate the residents away from-- My operation is minuscule, as far as the pesticides that we use. We come in, we're there once or twice a year, harvest, and go on. But if you have a fruit operation, where you have to spray weekly or -- depending on how IPM and like that -- determines the amount of spray. It used to be you would spray sweet corn every four days. With IPM, you don't have to do that now. But it's still an intensive operation.

And a good example is, Ronnie Lee is surrounded by development in Mercer County. He said if his neighbors accept him because of -- with the spraying and the produce and what he provides-- But if he didn't have

neighbors that would accept that-- One or two calling DEP every time he went out -- after a while-- I think they sit on 40-some acres, and they've got -- well, they had two families. I think Ruth and Dick are out of it now.

ASSEMBLYWOMAN MYERS: But that's an unusual case. I mean, the Lees have a very thriving, small farm in the midst of nothing but development.

MR. JANY: Right.

ASSEMBLYWOMAN MYERS: But there are still some agricultural areas in Warren County and Cumberland County. And in my lifetime, I've seen other counties that used to look like Warren or Cumberland that now look more like Essex or Union. So what I'm saying is, is there a point-- There's got to be something more besides neighbors objecting to spraying.

MR. JANY: The operations will either change, or else those people go out of farming, such as myself. If the land base becomes too small, then we'll either change into a nursery or some other type of farming so that you're condensed back down and grossing more dollars off of an acre. I can check with rural resources and have them get back to you if you want.

ASSEMBLYWOMAN MYERS: Great.

MR. JANY: Okay.

ASSEMBLYWOMAN MYERS: Thank you for coming.

MR. JANY: Thank you.

ASSEMBLYWOMAN MYERS: Okay. Tim Dillingham and then Paul Chrystie and Penny Pollock. Is she still here?

PENNY POLLOCK - BARNES: Right here.

ASSEMBLYWOMAN MYERS: Okay.

So that's the order. And if I-- And then I think I've got everybody that signed up.

No, I don't--

Is South Brunswick still here?

UNIDENTIFIED SPEAKER FROM AUDIENCE: She left.

ASSEMBLYWOMAN MYERS: We have Arlene DeSena and Jeremiah Avins.

Welcome.

TIM DILLINGHAM: Thank you.

Good afternoon.

Tim Dillingham, I'm with the New Jersey Conservation Foundation.

Thanks for the opportunity to testify this afternoon.

I guess a couple of things, just to let you know, for the members of the committee (*sic*) we haven't worked with in the past, the Conservation Foundation is one of the older conservational organizations in the state -- 40 years last year. We work in, primarily, natural resource, land conservation, farmland preservation -- work that's taken us into, in many cases, regional approaches to natural resource conservation. And we've worked in the Highlands, the Pinelands, the Delaware Bayshore, urban settings such as the Arthur Kill. We also do a fair amount of work on farmland policy, both looking at public programs aimed at farmland preservation and increasingly looking at private land incentives, taxation policy, that type of thing.

And we've worked with the State's regulatory programs -- CAFRA, the watershed rules, the water quality management planning approaches. And

Michelle Byers, who is the Executive Director of the organization, sits as the Vice Chairman of the State Planning Commission, so we have a fair amount of experience there.

I'll keep my comments very brief. I want to just thank you for the opportunity to join into this conversation at the onset. I imagine as it goes forward, we'll give you more detail -- suggestions as the dialogue continues.

From our perspective, the system for governing land use and, I think, most importantly, protecting the public's interest, as it's affected by land use decisions in New Jersey-- I don't think it's overstating to say it's broken. I've heard a lot of issues raised this morning that have gone on a far range. At the very least, I think you can characterize it as being dysfunctional.

It doesn't effectively direct development away from sensitive environmental areas. I think it's an open question of whether it can effectively preserve agriculture or the agricultural land base. It doesn't effectively preserve community character. It doesn't reduce or minimize the costs that are being borne by the taxpayers due to development. It doesn't adequately provide for affordable housing, and it doesn't really lead to the revitalization of urban and traditional communities in the state.

It's good to hear, as we had in testimony a couple of times, about the stellar examples where I think due to primarily a very creative and dedicated use of the laws and leadership in no small measure, people have been able to bring about good outcomes in developing -- on the preservation side or the revitalization side or providing affordable housing.

So I think that the consideration that the Task Force is giving to these issues is timely, because the responsibility -- many ways for the failure that

I described, ultimately, falls back to the Legislature. It's rooted in the public policy responses that grow from the statutes that you enact and how the Legislature either responds or fails to respond, is going to provide us prospective tools, I think, to change course -- and what we see happening on the landscape will continue on the present course of what I think the Conservation Foundation would see as costly, destructive sprawl-type development in the State.

I would echo-- I think Herb Simmens and I must have been on the same wavelength last night, because I would echo his recommendation that -- to really look at the issues that grow out of the State Planning Act or the Fair Housing Act for that matter. And I'll stay away from it, because I really know very little about that act.

I think the Task Force is going to have to extend its view, its considerations beyond a mere examination of just those two acts. Clearly, their success and their effectiveness are inextricably linked to other policies and laws regarding growth and land use in the state.

I think, in terms of the State Plan itself-- When the State Planning Commission formulated it, it avoided the development of a highly proscriptive plan. And it's been interesting to listen to some of the criticism leveled in the debate around the adoption of the Plan, particularly by the Builders' Association, in that the criticisms have more -- actually designated within the plans, and they weren't mandatory conformity and those types of things.

That was, obviously, a conscious choice, which grew out of the political dynamics surrounding the State Plan -- that sort of traditional relationships between the State and local government--

But I think that what the Plan does do is provide a policy framework for the achievement of the goals of the State Planning Act that you've set this task for yourself to address. And so while it's recognized that each municipality and county are different, and that the objectives and policies can be achieved in a variety of ways, the Plan itself emphasizes a need for coordination and consistency among the levels of government, as well as trying to set an overarching policy direction for State agencies.

So the framework of the Plan, I think, recognizes that and recognizes that those programs themselves, whether they're municipal land use decisions and all their variations, or State agency decisions, really serve very narrow purposes. There's wetlands laws, there are water quality laws, there are farmland preservation programs, etc., etc.

And the Plan, really, I think, has the potential to provide a much broader context and to bring that all together. And I think the root cause of a lot of the dysfunction I described earlier is, really, that lack of integration and that lack of comprehensiveness to how I approach those.

Clearly, the State Planning Commission and the State Planning Act doesn't have the ability to mandate the implementation of any of those ideas. The vision may be there, the policy framework might be there, but the extent to which the vision and the policy are effective in achieving the objectives of the act itself, I think, is wholly dependent on the quality of decision making by municipalities, by the counties, and by the State agencies. And maybe that's a truism, but I think it bears mentioning in the Task Force consideration.

The Act, as Herb says, is largely silent on how the Plan is to be implemented. However, I think, as I said, there are at least two clear challenges

addressing the inadequacy of coordination within and among the various levels of government in responding to the absence of the tools that are necessary to more efficiently and equitably promote the goals and policies of the plan.

I think the answers to how to solve those challenges are not hidden. There's an interesting report that was done by the State Planning Commission in 1992. It's a report on implementation issues. And it speaks to the implementation task or the permission itself -- for State agencies, for counties, for municipalities, and for the Legislature. And in going through this, it is very comprehensive. It touches on a lot of the ideas that were spoken about today -- the idea of TDRs, of addressing the equity concerns that are -- that certain land owners have, the cost of planning, planning assistance, the need to empower and make more sophisticated the plan that happens at the different levels of government, the need to coordinate it.

I unfortunately left my clean copy of this-- If you haven't got this in your record, I will give you--

ASSEMBLYWOMAN MYERS: Do we have it?

MR. DILLINGHAM: I think this really bears looking at, because it addresses a lot of the questions that you raised earlier. And I think that that really is--

ASSEMBLYWOMAN MYERS: So is that an attempt to recommend some things in order to implement, because I don't think I've seen that.

MR. DILLINGHAM: This is the unfortunate loss to the dead sea scrolls of the State Planning process. It was done at the conclusion of cross acceptance or the plan adoption in 1992. And in many ways, I think it's

unfortunate that the Commission didn't focus on this as opposed to the rewriting of the Plan that we've been engaged in for a long time now, because there's clearly a boatload of work to be done in this, but it's very specific, and I think it's very well tied together in dealing with the comprehensiveness of the need for the response.

So I think part of what we're obviously urging you is to look at this and take up those challenges about the need for the creation of new tools. I don't know that modification of the Act itself is really going to be, at the end of the day, the primary focus of what -- where the answers lie. I think that until those implementation issues are dealt with, though, it's going to be exceedingly difficult to really fairly evaluate the success of the Act and accomplishing these goals or what the intended impacts might be.

But I think that given the cost and the consequences of continuing the status quo and land use in the State right now, it really is a challenge that the Legislature can't avoid taking up.

So I will end there and take any questions that you might have.

MAYOR SCHWEIKERT: The exact role of the New Jersey Conservation -- or is one of your-- What is the exact role? And is one of your roles working as an arbitrator between, let's say, developers and municipalities and saving open space?

MR. DILLINGHAM: I don't know that we-- We don't arbitrate, necessarily. We do a lot of work in partnership with municipalities, in particular, in preserving land. We have historically been involved in instances where there were development proposals that municipalities did not want to see happen on places like Pyramid Mountain in Morris County. The Great Swamp

is where the Conservation Foundation got its start -- the whole battle of the saving of the swamp and the creation of the National Wildlife Refuge there.

MAYOR SCHWEIKERT: That was going to be an airport, I believe, right?

MR. DILLINGHAM: It was going to be an airport, exactly.

So the Conservation Foundation has three primary program areas. We have a land program, which actually does the deals, and everything from farmland to open spaces in urban areas and rural areas and suburban areas. We have a policy program, which I work and lead on, and we do both regional planning and State-level policy there. And then we have a newer program we called Conservation Assistance, in which we're trying to work in partnership both with members of the nonprofit community, but also with municipalities and others, trying to find some of these innovative tools.

For example, you all talked a little bit about TDR. We supported the creation of the writing of a book about how municipalities can utilize TDR, and we wrote that several years ago and published it and distributed it. Farmland policies and tax policies to preserve farmland -- that's some of the kind of work we do there.

MAYOR SCHWEIKERT: Okay. Thank you.

ASSEMBLYWOMAN MYERS: Do you have anything?

MS. MARION: Hi, Tim.

MR. DILLINGHAM: Hi, Chris.

MS. MARION: We know each other.

Tim is also, I believe, the Director of the Highlands Coalition.

MR. DILLINGHAM: That's one of my roles -- is as I serve as the Executive Director for the Highlands Coalition.

MS. MARION: We've met before.

In terms of, I guess, of the State Plan itself, do you have any comments on the actual, I guess -- in terms of the population projections themselves that came out of it and its concern regarding the (indiscernible) carrying capacity of the State and any projections as to if there should be a figure in terms of what would be a sustainable development for the State?

MR. DILLINGHAM: I don't know that-- I guess I would sort of turn that around a bit. I think that one of the things the State has to do -- and when I say the State, I mean, generally both municipalities and the State counties, is utilize this idea of carrying capacity as the starting point in our planning a regulation and whether that's for natural systems such as waterways or for highways. We are constantly in this catch-up game, and there's not a benchmark that anybody can establish or has established that is referenced to the acceptability of cost. For example, I'm involved now, and I'm sure Chris is, too, in the discussion about the expansion of Route 15. And there is very little discussion there about whether or not the vehicle miles traveled or the trips generated by local zoning that feeds into this highway should be adjusted in order to reduce the public cost that the taxpayers of New Jersey are going to have to pay to expand this highway.

So it gets into this loop where -- and I'm sure everybody's heard this -- DOT says, "Well, we simply respond to land use decisions that are made." And municipalities say, "Well, you guys keep driving highways through the

middle of rural communities, and that brings the growth out.” The Poconos is now a commutership for New York City.

So that idea of carrying capacity, I think, has to be established to the extent that the population projections are credible, and I know that when the license planners talk about them, they always talk about them with a grain of salt. I think that’s something that we can obviously use to anticipate what the demand is going to be and where that demand might occur.

And then I think that we ought to go back and adjust it based upon this idea of carrying capacity, where the capacity of existing systems is exceeded and where we made some decisions that a growth is appropriate to occur there. Then I think the challenge is going to be to figure out how to fund the increase of that capacity.

I think one of the tragedies in the way State funding works a lot is it is application driven, it’s not driven on the basis of a plan. So logical places -- logical centers of growth don’t necessarily have a fair opportunity to compete for State infrastructure dollars.

Ironically, the one place that does seem to work fairly well is in the Pinelands, but that’s because of the fact that it’s more centrally dictated and the fact that the infrastructure funding -- the bond that was passed to support the Pinelands Protection Act was consciously joined with the comprehensive planning process that happened there.

And I guess one of the unanswered questions in my mind is, if we planned better, if we planned from a capacity perspective so that we took the edge off of the impacts that normal citizens feel associated with, growth or less

traffic congestion or taxes or crowded schools, might we find more people who are more receptive to the -- in state development.

I mean, NIMBYism, I think, is -- it's a fine thing in that I think everybody ought to have the right to defend their backyard. If you're not allowed the right to defend your community in the future of your community and your quality of life there, then I'm not sure what the result of this -- worth fighting for.

We don't do planning very well. We don't do regulation of land use very well. And so what we have is a bad system, which creates bad outcomes and lots of angst.

MS. MARION: Now, I just want to come to the defense of counties, being a county planner myself. We're sort of on the same role of State Planning Commission and the Office of State Planning -- is that we're purely advisory. We can only encourage, advise. We have no land use authority in the state other than determining drainage -- who can egress or access a county road. That's unlimited. Our county's statutory authority goes back to the 1950s. So (indiscernible) are the counties need to do this-- Well, our county planning act is -- municipal land use law. And no one has really revisited that, and we're attempting to. So still full force of local land use decisions fall with the municipalities, not the counties.

MR. DILLINGHAM: I think if you applied the test that the gentleman from Holmdel -- I think that you would recognize that the pressures -- the growth pressures that are created in the state and that are out there, obviously, exceed municipal boundaries. There has to be some approach that we can get a handle on and manage that growth, which reflects how it occurs

and whether that's on an ecosystem basis or a watershed basis or a highway corridor. We have not made that commonsense conclusion that there are logical, regional connections between the forces -- the market forces and public decision making that are influencing how our communities are developing and growing.

MS. MARION: One of the problems that we had is that there are a lot of planning activities that are now occurring out there, and as Tim said, the watershed activities, and also transportation. But their regions that they're looking at may differ quite a bit. And how do you bring those together?

That's the question. I wish I had the answers.

ASSEMBLYWOMAN MYERS: Getting into very heavy questions as we get toward the end.

So the State Plan, as I read it, doesn't say where these centers should be located, except that they should -- if you're going to have development in PA 3, 4, and 5, it should be in centers, and pretty much, they're hoping that it will have to be in centers in 4 and 5.

But as I read it, it doesn't tell-- So any place in the way the State Plan is written-- Any place in PA 4 or 5 is okay for a center. That doesn't make much sense to me. It seems to me when you're talking about carrying capacity, when you're talking about an environmental consideration like watersheds, there ought to be places where centers are good and places where they aren't good.

MR. DILLINGHAM: I would agree with you. I think that that is an artifact of the way the planning areas are constructed. I think in order to avoid the idea that the State Planning Commission was dictating zoning to municipalities, they played a little finesse game with the language and said these

planning areas represent the policies, objectives, and goals, and here are some standards for what centers ought to have.

And then in the statewide policies, they talk about subregional planning or regional planning and county and municipality. So they set up a certain process.

Now, the problem comes that we don't really have any other infrastructure out there to facilitate that next level of planning. Chris and I were involved in a long discussion about the facilitating they have in the Highlands region and for a number of reasons -- natural resource areas.

So, yes, there needs to be an accepted-- The State Plan is a starting point, as opposed to an ending point, in terms of, there's this next set of responsibility in planning -- work that has to be done or to identify where the appropriate places are for those centers, and what are the appropriate mechanisms and incentives and regulatory policies in order to make them a reality.

ASSEMBLYWOMAN MYERS: And then-- We don't have to answer this question today, but I think we're going to try to meet with all the environmental groups. There were several others here. They had to leave. But I would like to take that question to the Fair Housing Act and say, if we're looking at capacities, then do we have COAH still generating numbers by counting deficient housing in the urban areas, which is what they do.

It's totally unrelated to anything that I've been able to test on a commonsense basis. It's just a way of deriving numbers from the census. So I think the challenge there would be, when you start looking at that, then how does that relate to COAH? Does it relate to COAH? And they may have their

own-- I know they've been working on their third round, and I think they have their own ideas about how to better arrive at fair numbers. But it's just something for another day, maybe.

MR. DILLINGHAM: As I said, I really have no familiarity with COAH -- with the formulas. I would just maybe make the idea that in the Task Force charge, you're talking about trying to quantify the impacts. I agree with your earlier statements, that the McMansions that are going up in farm fields are not affordable housing. They're not triggered by affordable housing needs directly.

So I think it would be a very good part of this process for the Task Force to try to quantify what the relative contributions are. I got an enormous education this morning listening to it. And my gut reaction to it is that there probably are some opportunities to tighten up, and obviously COAH, I think, acknowledged that and affected their changing allocation formulas.

I think you need to be very careful to not oversubscribe causes and pressures to certain parts that may not really be generating that, because that just takes us away from the real task at hand.

ASSEMBLYWOMAN MYERS: And on that note, I think Paul Chrystie would be happy to walk right into that.

Thank you, Tim.

MR. DILLINGHAM: Okay. Thank you very much.

ASSEMBLYWOMAN MYERS: And I think one more, and then we'll take--

You're from South Brunswick?

MS. POLLOCK-BARNES: Yes.

ASSEMBLYWOMAN MYERS: Okay. We'll take you next.

PAUL D. CHRYSTIE: Good afternoon.

Thank you for the opportunity.

Before I get to my prepared remarks, a couple of follow-up items from the discussion this morning.

The Mayor asked Ms. Bishop for -- what is the need number. And the number that she gave was 87,000, which is, in fact, their fair share number. The need, if you look at the planning study done by Dr. Burchell, the impact assessment is actually closer to 700,000, as of today, and projects that over the next 20 years, it will grow to somewhere between 1.1 and 1.3 million. So 87,000 may be what we can put on a paper without everybody freaking out, but it is, by any stretch of the imagination, the need.

ASSEMBLYWOMAN MYERS: You're going to tell us on what basis you're coming up with 700,000.

MR. CHRYSTIE: That is the cost burdened number of folks in the impact assessment. I think it's people who are paying more than one-third of their income for housing.

ASSEMBLYWOMAN MYERS: You think. Could you check on that and get--

MR. CHRYSTIE: I'd be happy to get you the--

ASSEMBLYWOMAN MYERS: --us some documentation on that?

MR. CHRYSTIE: Yeah, my State Plan file is about yea big, (indicating) so it doesn't fit in the briefcase, but I'll go through it and get you--

ASSEMBLYWOMAN MYERS: But that would be important to--

MR. CHRYSTIE: Yeah, I'd be happy to--

MAYOR SCHWEIKERT: Yeah, I know the number is somewhere around 900,000.

ASSEMBLYWOMAN MYERS: For the number of people that are paying more than 30 percent?

MAYOR SCHWEIKERT: Yes.

MS. MARION: That's all income ranges?

MAYOR SCHWEIKERT: All income ranges in terms of percentage.

ASSEMBLYWOMAN MYERS: So, if somebody's making \$600,000, and they're spending more than \$200,000 on housing, it would include them?

MR. CHRYSTIE: If someone making \$600,000 is paying whatever that works out to in a \$15,000 a month mortgage, yes, they would fit into that, but I doubt very much that there's much in that.

ASSEMBLYWOMAN MYERS: Who's generating these numbers? Can we get a breakdown?

MR. CHRYSTIE: Yeah, that -- Dr. Burchell or the Office of State Planning, for whom he developed those numbers, should have the specifics.

ASSEMBLYWOMAN MYERS: On this 700,000?

MR. CHRYSTIE: The 700,000 is taking the percentage that he identified as cost burden and multiplying it by the number of people in the state.

ASSEMBLYWOMAN MYERS: Okay.

Joyce, can we get a letter to Dr. Burchell and--

MR. CHRYSTIE: The second point was something that -- more of an implication of something that Ms. Marion mentioned about-- The

implication is that when it comes to accepting employment and income, that's all moving west. And the State Plan has nothing to do with that.

But when it comes to affordable housing-- Well, the State Plan says it should all go over here, and the State Plan should be sacrosanct. And I apologize if I'm misinterpreting that, Chris, but if we're going to have a set of rules, either you can't do this under the State Plan-- It's either one or the other.

MS. MARION: No, I was just mentioning that the two seem to be working. I was just making an observation.

MR. CHRYSTIE: Okay. And I wouldn't necessarily disagree with that observation.

But again, I appreciate the opportunity to speak with you today and to review the relationship between affordable housing and sprawl, which is none, and to consider the success of the State Plan, even though it has not been implemented.

Let's look at affordable housing. After reviewing the production of affordable housing and market rate development since *Mount Laurel II*, no reasonable person could conclude that affordable housing causes sprawl. Since 1983, approximately 25,000 new units of affordable housing have been built. Even if all of those units were the result of inclusionary zoning at a 4-to-1 ratio and they are not, those 25,000 units would be responsible for 125,000 total new units in New Jersey.

The only problem is, since 1983, about 600,000 units of new housing have been built in the state. So to conclude that affordable housing causes sprawl, you would have to believe that municipalities, despite judicial

precedent and State regulations, establishing a 4-to-1 ratio were somehow forced to use a 24-to-1 ratio to implement their affordable housing obligations.

Look at nonresidential development. Over the past five years alone, New Jersey towns have approved the development of more than 80 million square feet of office and retail development, the square foot equivalent of over 80 new malls. It would be hard, if not impossible, to conclude that 80 malls were needed solely to serve those 25,000 homes. It seems much more logical that the 80 malls have more to do with the 575,000 market rate homes than they do with the 25,000 affordable ones.

For a real-life example, and I understand that each example has its own quirks, but let's take Hillsborough, which is sometimes held up as the example of the Fair Housing Act run amok. Hillsborough's fair share for the period of 1987 to 1999 was 482. But after rehabbing some units, transferring some through RCAs, and taking advantage of the numerous credits offered by COAH to meet that 482 unit obligation, Hillsborough had to zone for only 227 new, if you want to call them, front doors, less than half of the original number.

Those 227 units, combined with 908 market rate units that would be part of inclusionary development, that 4-to-1 ratio, would result in 1135 housing units over that 12-year period. Yet, in the early '90s, Hillsborough approved a single project with 11,000. And let me repeat that -- that we've got the extra zero on there, 11,000 units. Even the scaled-down, 3000 unit plan, which I understand they're backing away from even as we speak, is still approximately three times what would be necessary for Hillsborough to meet its obligation.

Analyzing the impact of the State Plan is a little harder, given that it actually hasn't been implemented. Most towns don't follow it, most counties don't follow it, the State that developed it sure doesn't follow it, so frankly, I'm not sure how you figure out whether it's working.

Ultimately, the problem with the State Plan is not that it has too much influence, but that it has too little.

This Task Force has a choice. You can ignore the numbers and blame affordable housing that barely exists for sprawl that's on the present. You can ignore that the State Plan has not been implemented and find it responsible for any number of New Jersey's ills, or you could identify the real culprits behind sprawl.

You could correctly conclude that overreliance on property taxes leads municipalities to take any development they can get their hands on, whether it makes sense or not, and that rebates from the State are merely Band-Aids on a gaping wound.

You could correctly conclude that State investment decisions drive sprawl. Affordable housing isn't behind the development of Hunterdon County, Route 78 is, and Route 31 will be, and sewers are.

You could correctly conclude that as long as the State of New Jersey spends \$15 million to address the thousands of brownfields in our older cities and towns, while spending \$500 million to locate one company, Bloomberg, in one soon to be once rural town, New Jersey will continue to sprawl out of control.

I hope you make the right choice.

And I'd be happy to take any questions.

ASSEMBLYWOMAN MYERS: Al, do you have any questions?

(no response)

Do you, Henry?

MR. KENT-SMITH: Yeah.

What would the Coalition for Affordable Housing say with regard to the builders' remedy in terms of a tool that has been used, because I've used it, to force development into rural municipalities where they didn't want it? And I've, unfortunately, had the task of defending against, and unsuccessfully against, builders who have used that tool, the builders' remedy lawsuit, to force development into areas of municipalities that did not want it and never had it and never encountered any development pressure.

So what is the Coalition's position on the builders' remedy?

MR. CHRYSTIE: Well, let me sort of answer that in two ways.

One is, we get a number of calls from people who say, and I'll paraphrase, because they never actually start it this way, "Our municipality has ignored our *Mount Laurel* obligation for 25 years, and now we've been sued. What should we do?" And the answer is, "Well, you're out of luck. Your municipality made its bed, and you're forced to lie in it." And so long as the process is voluntary, there has to be some way of ensuring that the constitutional obligation is met. Is that the ideal way? Perhaps not.

The other thing that we hear, and we hear with some frequency, is that a developer comes to a town, says, "Give me what I want, or I'll sue you," the town caves in, and then, the ultimate development doesn't have any affordable housing in it, leaving the town in the same position it was before. So I don't see the builders' remedy as, in and of itself, a problem. And you need

some way to ultimately enforce this. And that's what the Legislature, 15 or 16 years ago, chose to do.

I think the way it's reacted to -- that that would be more of a problem from our perspective than the remedy itself.

MR. KENT-SMITH: This is really for the Task Force, as well as for you -- a question.

If the Task Force were to recommend an amendment to the Fair Housing Act, making the adoption of a housing element and its approval by COAH mandatory and at the same time amending the Fair Housing Act to say there shall be no builders' remedy, period, end of sentence, would that be something that affordable housing advocates would find an acceptable balance?

MR. CHRYSTIE: Well, I think to quote Herb Simmens, the devil's in the details. Our goal-- We have several goals, just so you understand where we're coming from: to (indiscernible) affordable housing, to protect natural resources, and to revitalize the state cities. Those are the goals of my Coalition.

If it were possible, and I won't speak for the entire affordable housing community-- But if it were possible to craft words that ensured that that constitution obligation was met in some way, we certainly wouldn't reject it out of hand. And if the way it worked out meant no builders' remedy but production of affordable-- Production of affordable housing is our bottom line, I guess, is the best way to answer that.

MR. KENT-SMITH: Okay.

MS. MARION: I guess I'm going to talk about a hypothetical, because this does occur in my county. I know it occurs in a number of counties.

But there are municipalities that are called the doughnut towns. They're the townships around the boroughs, they're the townships around the villages.

And let's say that they wanted to comply with the State Plan, take into account they're environmentally sensitive areas, most of them do -- are either considered within an environmentally sensitive area -- rural area, and they down-zone -- take into account those environmentally sensitive features--

However, in doing so, they could be viewed as being exclusionary zoning if they hadn't taken into account their affordable housing obligation, even if they had a small one, say a five to ten, because, again, they don't have sewer, they don't have the infrastructure, they kept their infrastructure out of their municipalities. What kind of position would those municipalities be in, and how could they address -- how do they resolve that inherent conflict between providing -- protecting the environment and providing affordable housing?

MR. CHRYSTIE: Well, see, we don't see that there's an inherent conflict. I think if you look at Washington Township, in Morris County, there's an excellent example, as Barbara Simpson mentioned earlier, of a municipality that has used a variety of strategies to both provide affordable housing and not end up with a 4-to-1 inclusionary zoning. So if whether it's through group homes, whether it's through RCAs, whether it's through rehabs, whether it's through buy downs, there are a number of ways of accomplishing that.

MS. MARION: Yeah, but in that municipality, they do have public water and some sewer service. So it's probably accommodating mostly in those areas, as that is a township within my county.

So they do-- That's one of those towns where they're fortunate enough to be adjacent to a regional center, where they do -- could provide some higher-density housing. And I'm familiar where that is, as well as take into account those other needs.

MR. CHRYSTIE: Yeah, once you begin using terms like down-zoning, you move quickly out of my area of expertise. But I would be happy to consult with our members on both sides, on the affordable housing and on the environmental side. And as I say, that's our basic premise, that the two goals are not mutually exclusive, and I'd be happy to get back to you on that particular hypothetical.

MS. MARION: All right, because I know there's cases where they've upheld that, but only in an event where they have taken care of their affordable housing situation, such as Bedminster, Colts Neck, and those areas. But they had to likewise significantly up-zone in an area, while down-zoning in another.

That's it.

ASSEMBLYWOMAN MYERS: Thank you.

I would like to ask you about your comments -- that you feel the overreliance on the property tax is a problem. And I'd like to know, do you have any data -- recent data showing that that is true?

MR. CHRYSTIE: I can -- and I don't have it with me, but I'd be happy to pull out the letter and send to you -- that we sent to Governor Whitman's Property Tax Commission a couple of years ago. If you look at things like the percentage of revenues that are raised locally as opposed to at State level, New Jersey is at the high end of the local end. If you look at--

ASSEMBLYWOMAN MYERS: Yeah, that's correct. I'm aware of those reports. I watched them very carefully. But my specific question is-- Your statement that the overreliance on property taxes, I acknowledge, but what I question is, you're stating that municipal officials seek ratables because of the overreliance on property taxes. Do you have any data to support that? You stated that the overreliance causes municipal officials to seek ratables, and therefore cause a lot of the--

MR. CHRYSTIE: I'll go back and see if, as we prepared our comments, we have that kind of data. I mean, that's something that I think when the only way to grow your revenue is to bring in more ratables, that--

ASSEMBLYWOMAN MYERS: But you agree it's probably an assumption.

MR. CHRYSTIE: At the moment -- on my part. I will have to go back through our files and get you that. I'd be happy to get you that data.

ASSEMBLYWOMAN MYERS: Because I represent 45 towns, and there may be one or two, out of hundreds of municipal officials, who would come anywhere near a statement that they're looking for any kind of growth. I mean, the antigrowth sentiment, at least in northwestern New Jersey, is very strong. And municipal officials are elected, just like we are, and they respond to the sentiments of the people.

So I have never-- I've always puzzled as to where that statement is coming from. And it might have been true 10 years ago or 15 years ago, but I'm not sure it is anymore. As a matter of fact, I see the property tax helping us to preserve land, because it's a disincentive to develop land to a degree.

Our municipal officials will prevent develop -- housing development, and this is mostly market rate housing development, if they can, because they don't want the increased expenditures on services that that development, particularly schools -- that that development will bring.

So the property tax, it seems to me, is providing a pressure on municipal officials to prevent development, not to encourage it. So I think before either of us make assumptions, we need staff to try to get some data or put that into our survey.

MR. CHRYSTIE: And the property tax is something that we've only worked to solve for 25 or 30 years, so I'm sure we'll be able to do it within the 60 days.

ASSEMBLYWOMAN MYERS: I'm not proposing to solve the property tax, only to nail down whether that statement is still true.

MR. CHRYSTIE: I know what you mean, and I'd be happy to try to get you some data on that.

ASSEMBLYWOMAN MYERS: Okay.

Thank you.

MAYOR SCHWEIKERT: May I jump in on this?

ASSEMBLYWOMAN MYERS: Oh, okay.

MAYOR SCHWEIKERT: I heard your comments about what your goals are. And it seems that we have the same goals. And I do believe that the number of needed units is much, much higher than was stated previously. And there are instances in the next state over, Pennsylvania, where they had a similar problem with meeting their fair housing act and providing enough affordable houses, which is one of the reasons I sit on this committee -- is because I don't

believe the amount of affordable housing has been serviced by the committees in the Fair Housing Act.

Do you have any comments, possibly, on what was done in Pennsylvania and why they just recently made a change, I guess, within the last two years on how they approach that system?

MR. CHRYSTIE: I'm not, frankly, that familiar with what goes on in Pennsylvania, but I'd be happy to check with the affordable housing advocates in our Coalition to see if I can get a sense of what that is. I think we clearly agree that for better or worse, the production of affordable housing in New Jersey has not kept pace with the need for affordable housing. And I suppose everybody probably has an opinion as to why that is, but we would be in agreement on that statement.

MAYOR SCHWEIKERT: Okay. Thank you.

ASSEMBLYWOMAN MYERS: Thank you.

MR. CHRYSTIE: Thank you very much.

ASSEMBLYWOMAN MYERS: Okay.

I promised-- When I said next, I had already announced before that these two would go, so I'm sorry.

You are next, after Penny Barnes.

Thank you for hanging in there.

MS. POLLOCK-BARNES: Thank you for this opportunity to discuss how we can better manage growth and provide affordable housing in New Jersey.

My name is Penny Pollock, and I represent New Jersey Future, a statewide nonprofit. Our mission is to promote a strong economy, a healthy,

natural environment, and a just society for ourselves and future generations. We have worked in support of the State Plan and affordable housing for the last 15 years.

The State Planning Act and the Fair Housing Act are landmark pieces of legislation that have been praised across the country. These exceptional laws have drawn the nation's attention to New Jersey, giving us an opportunity to set an example, showing how states can grow without compromising their future.

However, neither of these Acts has reached its full potential. In fact, they have hardly been used at all, or they have been used poorly. Sadly, the State Plan has not been adequately implemented, and the Affordable Housing Act has not been well coordinated with the State Plan.

These two Acts have not been successful in achieving their stated goals because of this lack of implementation. This is what my testimony focuses on today.

I go to a lot of meetings around the state where people talk about the State Plan and what it isn't doing. Most of these meetings end the same way, with people wishing we had a better way to grow our communities without making them like every other place in New Jersey, loaded with traffic and look-alike houses, overburdened with taxes for new roads and sewers and schools.

From 1986 to 1995, 18,000 acres were developed per year in New Jersey. During that same time period, New Jersey's population grew by 4.5 percent, while the number of developed acres increased by 14.1 percent, or 3.2 times as fast. At this rate, we will run out of developable land in 30 years.

If implemented, the State Plan could be our best sprawl fighting tool. However, few towns have adopted land use regulations that are consistent with the goals and policies of the State Plan. In addition, State agencies have just begun trying to coordinate their regulations and procedures with the Plan.

We know implementing the State Plan will save taxpayers money, \$2.3 billion over the next 20 years according to Rutgers University. We know that the State Plan will save open land and give towns with open land better tools and more choices for managing their own growth. We know the State Plan will rebuild New Jersey's cities and also its small towns and ailing older suburbs.

We need to provide incentives and regulations that will support State Plan implementation. The Office of State Planning has already started working on a process called Plan endorsement that could help spur the implementation efforts we are looking for. A simple and effective Plan endorsement process can take us a long way towards smart growth.

Furthermore, many local communities lack the financial and technical resources required for Plan implementation. While the State does provide a few municipalities with Smart Growth Grants, these have not been enough. The planning process could not work without resources. All municipalities should get the assistance they need before they can put the State Plan into action.

Moreover, the Fair Housing Act has failed us in two different ways. The Act does not provide enough affordable housing, and its execution has fueled sprawl.

New Jersey made a gallant effort to provide housing for all of its citizens when the Supreme Court handed down the *Mount Laurel* decision.

However, like the Planning Act, the Fair Housing Act has fallen short of its lofty goals because of inadequate implementation.

The number of affordable housing units built under the Act does not come anywhere near meeting the housing needs of New Jerseyans. COAH is responsible for 26,000 units of affordable housing since 1985. When that number is compared to the estimated 900,000 needed units estimated by the affordable housing network, it becomes clear that the current system is insufficient.

COAH has failed to fully coordinate its policies with the State Plan. We have seen the State Plan blamed for luxury housing sprouting up on farm fields under the guise of providing affordable housing. This is not a result of the Plan, but rather a result of COAH's failure to coordinate its regulations and procedures with the Plan.

What these two Acts have in common is poor implementation. Both Acts point New Jersey towards a better future, but only if we stop talking about how they failed us and put them to use.

Thank you.

MAYOR SCHWEIKERT: I opened my comments today saying that the Fair Housing Act fueled sprawl. The last speaker said that's not the case. You just said it is the case. Maybe you can help me with that.

MS. POLLOCK-BARNES: I think affordable housing--

I agree with Paul Chrystie, that affordable housing itself does not fuel sprawl. I think the problem is that to deal with these builders' remedy suits, the builders can say, "Well, we're giving--" They're building that development, and it has -- five percent of it's affordable, but the rest of it's these starter

palaces, McMansions, whatever you want to call them, and that's what is fueling sprawl. It's this low percentage that's affordable that's the problem.

Affordable housing -- we don't have much of it, so it's not the affordable housing itself that's causing the sprawl, it's the way the Affordable Housing Act has been implemented that's fueling the sprawl.

MAYOR SCHWEIKERT: If we look at a number like 900,000 needed units, where would we put them? Would we put them in the urban areas, would we move them out to farmland? What's the correct way to do that?

MS. POLLOCK-BARNES: I think we need to spread them out across the state rather than, like regional contribution agreements, push them into the urban areas where the poor already are. I think we need to build more affordable housing out in the suburbs, give poor people an opportunity to come out in the suburbs rather than be stuck in the urban areas.

I don't think-- I think there is some room in PA 1 and 2 and in centers for affordable housing, so I don't think they have to go on cornfields. So I would say, no, let's put them in centers where the growth is and have some way to make it so governing bodies in those areas make room for that growth to occur.

MAYOR SCHWEIKERT: Okay.

ASSEMBLYWOMAN MYERS: Where do you live?

MS. POLLOCK-BARNES: I live in Media, Pennsylvania, but I'm looking for a house in Cherry Hill -- looking at the house affordability.

ASSEMBLYWOMAN MYERS: If you can find an affordable one.
(laughter)

MS. POLLOCK-BARNES: Exactly. I was looking in Haddonfield, but talk about affordability.

ASSEMBLYWOMAN MYERS: So when we talk about PA 1 and 2 in centers, is this more of a -- something that's an academic thing for you? I mean, when you talk about centers, you picture -- you said not on farm fields. Well, where do you think centers would be created in PA 4 and 5?

MS. POLLOCK-BARNES: I think there needs to be some criteria set that establishes where those centers would be--

ASSEMBLYWOMAN MYERS: Oh.

MS. POLLOCK-BARNES: --so we make sure those centers aren't on cornfields, that they are in--

ASSEMBLYWOMAN MYERS: But they're-- I invite you to come out to my district -- call my office -- call-- And we'll set it up, and I'll take you out there. That's where they're going to be -- is on farm fields.

The town next to me-- Their planner told them that to fulfill their COAH obligation, they had to buy a farm and create a center. So this is what some of my municipal officials-- Most of them are sophisticated planners that will say, "You can rehab this, you can RCA this. And you know, there are things that you can do." But there are some that are saying, "You've got to create a center."

So I just want New Jersey Future to be sure that they understand there are still very few -- but there are still some rural areas. There were more 15 years ago. There are very few really rural areas now. But to say that those areas have centers where development would be more appropriate than cornfields is

really not the case. You're going to have to make the decision to build them on a cornfield. So you need to know what you're talking about.

And to say that the development, primarily, should go into the suburbs, most of the suburban towns that I know, and that's where I grew up, are pretty much built out. They may have a park or two, but pretty much, the suburbs in New Jersey are built out.

So I just encourage you, especially if you live in Pennsylvania, to take a tour of our state. It's very small. You can do it in a day. And make sure that you know what our towns look like.

MS. POLLOCK-BARNES: I've been around the state a lot. And I've seen some towns with some room for growth. So I think there is some room for growth if we really look.

ASSEMBLYWOMAN MYERS: And if you could quantify any of this-- Like you said, there's room in PA 1 and 2. Well, I'm not sure if the State Plan, anywhere in its voluminous pages, tells us how much room there is in PA 1 and 2 -- that sort of thing.

MS. POLLOCK-BARNES: Right.

ASSEMBLYWOMAN MYERS: If there's any way to quantify that-- If New Jersey Future could look at that, that would be very helpful if we do go forward with these ideas about how to look at carrying capacity, how to define need, how to define growth. These are pretty heavy-duty assignments, but I think we're going to make an attempt. So any way you could weigh in with numbers and facts, that would be very helpful.

MS. POLLOCK-BARNES: Right.

ASSEMBLYWOMAN MYERS: Thank you.

MS. POLLOCK-BARNES: Thank you.

ASSEMBLYWOMAN MYERS: South Brunswick, finally.

MS. MARION: I have a question.

ASSEMBLYWOMAN MYERS: Oh, I'm sorry. I missed Christine.

MS. MARION: That's all right.

It's interesting that you stated that you believed that-- And I'm not agreeing or disagreeing with this. I'm just going to reiterate what you had said regarding that people from urban areas should afford every opportunity to move out of those areas into other -- for more opportunities throughout the state, yet when -- I think it was Peter O'Connor, from the Fair Share Housing Corp., also kind of reiterated that -- Joe Maraziti pretty much did not agree with that statement, saying that the idea was to attract people back into the cities, not send them out of the cities. How do you feel about that?

MS. POLLOCK-BARNES: The suburbs are already there. What I'm saying is, let's draw them out to the suburbs -- the existing suburbs where they have more opportunities to afford those jobs for the better schools out in the suburbs. I'm not saying push them further out, I'm saying let's give them an opportunity to live where they don't have an opportunity to live now in existing places.

MS. MARION: Okay. If you look at the State Planning map, are you familiar with how much is zoned for suburban planning -- not zoned -- I shouldn't say that; that's a slip of the tongue -- how much is designated as the suburban planning area?

MS. POLLOCK-BARNES: The PA 2-- From what I can get from looking at the planning map, there is not as much 2 as there is 1, 3, 4, and 5, from what I understand.

MS. MARION: Yeah, there's very -- which is interesting in a state which is considered so suburban, there's very little Planning Area 2. And if you look at my own county, Morris County, it's either Planning Area 1, a little tiny little bit of Planning Area 3, small areas of -- very small areas of Planning Area 2, and a lot of Planning Area 5, which Morris County-- Everybody would be surprised, but based on the criteria, it just kind of fell under that. So, where is growth going to occur? Not in Planning Area 1, not in Planning Area 2, but in the Planning Area 5.

And one of the things that everybody's saying -- what drives development-- And as a planner, I just have to say, each municipality, and-- They're sort of being the bad guys today, they're forced -- they're required by law to zone every single parcel of land for something. And you cannot zone for open space, and you cannot zone for agriculture. So what are you left with, residential or nonresidential.

So I think the towns are doing the best that they can right at the present time with the tools that they have. And again, I have to agree with the property tax assertion. That's one of the points that our county makes, and I think a lot of other counties would agree with, is that when you look at zoning from that perspective-- Okay. Large lot zoning seems to make sense from an environmental perspective and also seems to make sense from the fiscal perspective. So, when that's all you're left to zone for, then that's what you're going to get.

ASSEMBLYWOMAN MYERS: Did I skip you, too?

MR. KENT-SMITH: No, I'm fine.

ASSEMBLYWOMAN MYERS: Thank you.

South Brunswick, last but not least.

ARLENE DeSENA: Do you mean it?

ASSEMBLYWOMAN MYERS: Yes, absolutely.

Is there anyone else that we missed that wanted to speak today?

Terry, did they tell you you had to stay for this whole thing?

MR. WALL: No, I'm kind of staying, because I don't want to miss anything. (laughter)

MS. DeSENA: Do I have to do anything with this mike? (referring to PA microphone)

UNIDENTIFIED SPEAKER FROM AUDIENCE: No, it's on.

MS. DeSENA: My name is Arlene DeSena. I am from the Township of South Brunswick. I'm the Housing Officer. I have been on the front lines of affordable housing for the last 15 years. I deal with the people who need affordable housing. Their concerns are not with the environment, with planning, with the costs; they're concerned with finding a decent place to live for their families. And that's what I have been confronted with for the last 15 years, people who need affordable housing. And my concern is that anything that will undermine this program is dangerous to these people.

No one speaks for the people who need affordable housing. Everybody that speaks here represents the different kind of an entity, but nobody has ever come forward for people who need affordable housing. Their concerns are my concerns, because I meet them every day.

South Brunswick has been certified by COAH. We have found working with COAH just fine. They're people. They're very reasonable. When we need adjustments, we work it out.

We were assigned 937 units. We have created 625. So through the years, I have placed almost 1000 people in affordable housing. Literally, we have changed their lives. I can even say we've saved lives. People who were in very dire circumstances have been placed in this affordable housing.

I think your focus on your Task Force is to measure the success of this program. Nobody has spoken to that. I wish to say that it is a huge success, particularly in our town. We're fortunate. We didn't get a lot of NIMBYs who objected. We were certified. We are rather quickly growing. We are 41 square miles, and about 32,000 people. I think that's a little more based on the new census.

We have been inundated with growth. We have utilized, for our plan, the builders' remedy, group homes, tax credits. I've worked with every agency that was here today. New Jersey Housing has financed some of our program. We have tax credits. We have special population. We have a unit we just created for 30 developmentally disabled people. We are in the process right now of finishing off 72 senior units financed by HUD and other sources -- balanced housing. I think what the towns need to do is search out all these programs. They are available. We have utilized them. We've had great success.

I have not a prepared statement. What I did was make some notes about response. I don't understand why some towns object to affordable housing. What do they expect their children to live in, unless they haven't had

any children, and I don't know anybody who hasn't? Where are these future citizens going to live? We want our children to remain in our town. They could not afford the houses in our town, so affordable housing has been able-- My own daughter lives in town because of affordable housing, otherwise, she would have had to live away.

We find homes for service people, people who provide economic success for our commercial enterprises. We have restaurants, supermarkets -- these people -- where are they going to live if they can't live in our community. The starting teachers for schools-- We have a very fine school system, a very expensive school system. We are constantly building new schools. But we do it.

The people that get served-- A lot of people keep referring to this as poor people. These are not poor people. Unfortunately, that's the one fault of this program. You do not address the issues of very poor people. You need to be in about 40 percent of median income in order to be eligible for this program. So who you are serving are the working poor, the people who have minimal jobs. And they need to be in your areas, in your community, otherwise, where are you going to get your service people. I think my only criticism is that the income guidelines should be lower.

And we face the same problems as everyone: growth, schools, traffic. They're putting roads through our town. We have not enough transportation. I always think someday we're going to get subways and high-rises. But that's how cities develop. And I think it's the 21st century. There is change. And I think a lot of people are fighting that.

We are planning now for our next round with COAH. We're looking into other alternatives to the builders' remedy. We're going in for senior complexes, special populations, group homes. And there are many ways to address those issues, and we're working on them now, even though we have to 2004.

We have shared in the responsibility of providing affordable housing. What we would like is that other towns -- the rest of New Jersey do the same thing that we have, whether they're urban, suburban, rural. The state is growing. We even have a Merrill Lynch right at our border in Plainsboro. So we, too, have a lot of people. I have placed people that work in another town in our affordable housing.

We have no centers. We're a very unique community. We're divided by Route 1. We have no center. We have five centers. But we still have affordable housing.

Let me see if there's any other points I want to make.

Oh, yes, I wish to tell you how we--

Ms. Myers.

ASSEMBLYWOMAN MYERS: Yes.

MS. DeSENA: I want to tell you how we solved the problem of the mini mansions.

ASSEMBLYWOMAN MYERS: Okay.

MS. DeSENA: We have a development that had \$250,000, \$300,000 homes. And what the developer did was-- We have 10 affordable units in this development. And what he did was he took one of those mini

mansions, made them back to back so they're two affordable units. Rather than \$250,000, they're \$125,000 each.

ASSEMBLYWOMAN MYERS: Yeah, my son actually lives in South Brunswick. He's moving from the South Brunswick town house out to the real mini mansion.

MS. DeSENA: Which one? Is it one of ours? What's it, a Deans Pond Crossing, South Ridge Woods, Summerfield? (laughter)

ASSEMBLYWOMAN MYERS: I come down Ridge Road, and there's a company on the left, and then they're the next one.

MS. DeSENA: Dow Jones.

ASSEMBLYWOMAN MYERS: Yeah, Dow Jones is there, and then his development is off on the left. I don't know the name of it.

MS. DeSENA: Which one-- I don't know which one you're referring to. But anyhow, we have a lot of them.

That's how we have addressed the mini mansion problem.

JEREMIAH AVINS: We used to call that Shooks Farm.

ASSEMBLYWOMAN MYERS: I know.

MS. DeSENA: Oh, and another thing, we have a housing trust fund, which we use to help nonprofits get off the ground, some of the financing for NOPRA, and the administrative costs of the Affordable Housing Agency.

We run a whole agency. We're very busy. We have resales -- over 600 units. So it's a full-time department. And we use the housing trust fund for part of the administrative course, which is one of the things COAH has to approve of.

ASSEMBLYWOMAN MYERS: Do you have any suggestions for the funding sources at the State level that are available to you to help you do all this?

MS. DeSENA: Nothing other than more. No, the ones we've used have been wonderful.

ASSEMBLYWOMAN MYERS: Okay. Do you have any specific comments on the different kinds of sources of funding for these initiatives? You don't have to tell me now, but if you could send something in for the Task Force to include in its assessment, that would be helpful.

MS. DeSENA: Okay. The ones that exist, even more.

ASSEMBLYWOMAN MYERS: Excuse me?

MS. DeSENA: The ones that are in existence now, we have utilized them all, and we're going to continue to utilize them all.

ASSEMBLYWOMAN MYERS: Okay. Well, if there's any written documentation of that--

MS. DeSENA: No, but I can easily make a list.

ASSEMBLYWOMAN MYERS: That might be helpful to have an example of -- over the next couple of months.

MS. DeSENA: Okay. I'd be glad to.

ASSEMBLYWOMAN MYERS: We have time.

MS. DeSENA: Again, all I want to say is let's not lose-- I mean, there's a lot of agencies here. Let's not lose sight of the people that need the affordable housing. They are the voting citizens, taxpaying citizens of the State of New Jersey. So please keep them in mind.

ASSEMBLYWOMAN MYERS: And your colleague is?

MS. DeSENA: He's a Board Member of our Affordable Housing Authority.

MR. AVINS: I'd like to say a few words, but I can't say many, as you can hear.

MS. DeSENA: He's got a cold.

MR. AVINS: My name is Jerry Avins.

ASSEMBLYWOMAN MYERS: It should be red. (referring to PA microphone)

MR. AVINS: It is red.

ASSEMBLYWOMAN MYERS: Okay.

MR. AVINS: My name is Jerry Avins, and I thank you for the opportunity to say a word or two.

I was our town's first representative to Stony Brook Regional Sewage Authority, and I served there for many years. I was the chairman of the construction committee while it was being built, so I got a lot of the communal politics, but it's all about regional planning. There are seven municipalities working together to solve this specific problem. And each of us wore two hats. We were collectively obligated to run this authority well, and individually obligated to make sure that our individual towns did not get submerged in the desires of others. And it worked. It worked because we were unpaid. So if you didn't like to do that kind of work, there was no reason to do it.

I mean, that's an important part-- I just wanted to throw that in. If you talk about regional planning, make it volunteer. You'll keep the flacks out. That could be important. Put in the expense report -- reimburse--

I understand the regional planning problem. I live between Route 27 and the Route 1 corridor. The Route 1 corridor really extends from New Brunswick to Trenton. And it runs through several of-- I can't even count all the municipalities. I could probably work them out on my fingers. But it's one unit. It really should be treated that way.

On Route 27, which it parallels, you have Middlesex County on one side, Somerset County on the other. And when you get down to the far end of the town of Kingston, there's Mercer County involved also. I mean that's three counties, really. And we need some kind of rational way to do this.

And the zoning is different on one side of 27 and on the other. We come to agreements about where to put roads and what town will build it, and the other one says, "I change my mind."

ASSEMBLYWOMAN MYERS: Well, Mr. Avins, I know that Diane Brake was here earlier, and she is the Director of the -- I'm not sure which -- of the regional planning group which includes Middlesex, Somerset, and Mercer. And I know they've been in existence for quite a while.

MR. AVINS: Yeah, but they don't do much.

ASSEMBLYWOMAN MYERS: Well, I don't-- We won't say any more since Diane had to leave, and she isn't here to defend herself.

MR. AVINS: The only cross municipal group there is in Stony Brook.

My late wife was a member of the South Brunswick Community Development, which runs some of the senior housing projects that we were talking about before. So I've been involved with that for a long time.

Now, I'm kind of -- Arlene's group to do a little of my own--

One thing I've noticed-- Those towns, which from the beginning embraced their obligations and said, "Okay. We may not like it, but it's really the right thing to do, and we will do it," they're okay, they're pretty well off. It's the ones who kept pushing it away and pushing it away and pushing it away, passing up opportunity after opportunity after opportunity, when, finally, it comes down and falls on them, they're the ones that really have something to complain about now. But they brought it on themselves.

In South Brunswick, we have embraced this in almost every conceivable way, not always with great joy, but certainly with great enthusiasm. And it's worked for us. And it's worked for other towns that have done the same thing.

That's all.

ASSEMBLYWOMAN MYERS: Any questions? (no response)

Thank you very much.

This concludes our first meeting.

(MEETING CONCLUDED)