
Public Hearing

before

SENATE ENVIRONMENT COMMITTEE

“Testimony regarding issues of smart growth”

LOCATION: Committee Room 10
State House Annex
Trenton, New Jersey

DATE: June 6, 2002
1:00 p.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Joseph Suliga, Co-Chair
Senator Henry P. McNamara, Co-Chair
Senator John H. Adler
Senator Andrew R. Ciesla
Senator Leonard Lance



ALSO PRESENT:

Judith L. Horowitz
Algis P. Matioska
Office of Legislative Services
Committee Aides

Kevil Duhon
Senate Democratic
Committee Aide

David Brogan
Senate Republican
Committee Aide

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SENATOR JOSEPH SULIGA (Co-Chair): I'd like to welcome everyone to this hearing on smart growth. I want to first thank Senator Adler for coming up with this idea. He thought that it would be appropriate for us to have this hearing and hear the many groups. I appreciate him coming up with this idea. I apologize to everyone for the lateness of the start. We were stuck in the Appropriations Committee meeting, meaning myself and Leonard Lance, so I guess we couldn't get a quorum.

However, Commissioner, again, we apologize to you for making you wait. However, we would be very happy right now to hear your testimony.

COMMISSIONER BRADLEY M. CAMPBELL: Thank you, Mr. Chairman, and good afternoon to members of the Committee. I'm delighted to be here on behalf of the McGreevey administration to have this discussion about smart growth and to discuss some of the challenges we face in government as we try to promote better growth in our communities. I think it's often lost, sort of, what the objectives are of smart growth are. What does it mean essentially? I think, centrally, the administration's effort, as captured under Governor McGreevey's Executive Order No. 4, is really about smart governments, making sure that every decision in government that effects the patterns of growth in our communities achieves three basic goals.

First, enhancing the quality of life in all of our communities; making sure that growth promoted or encouraged or funded by the government doesn't contribute to pollution, doesn't make the job of protecting clean air and clean water and protecting open space harder than it otherwise would be, and expanding individual choice, making sure that those that want to live in cities don't have to choose between good schools and city living. Those who want to

be in our older suburbs have the options of local parks and open space close to them, and that all, essentially, choices in terms of the communities we live in, the types of housing we want to choose are essentially liveable ones, marked by local open space, clean air, clean water, healthy communities.

I think it's important to keep those goals in sight as we look at the challenges we face in government. Certainly, those challenges have been addressed substantially by Governor McGreevey's Executive Order on smart growth, which really brings together all of the agencies of government to address this problem in a coherent and coordinated way, a recognition in his order that what we do at the Department of Environmental Protection is going to be a great deal easier or harder in terms of fighting pollution depending on what happens at the Department of Community Affairs, depending on what happens at the Department of Transportation, what roads or mass transit are funded, what happens at other departments of government, even, for example, in our Education Department harkening back to the tough issues of schools that have to be addressed in the governor's education initiatives.

That executive order really creates the framework, I believe, for better government, recognizing that sprawl is not going to be addressed by regulation alone and that it's really going to take a concerted effort by every government agency to look at these issues seriously and to make sure each other decisions are well-informed. I hope to give you some examples of how that might be achieved.

There's also a great deal of work, I think, that needs to be done on the home front within DEP itself. Just as we need to break down the silos between government agencies, there are similar silos even within departments

between different programs. I think the challenges of the Department, in terms of some of our programs, really fall into a couple of different categories.

First and foremost, I think, is the problem of tackling a second generation of brown fields. I think that we recognize that under the leadership of the prior administration, a great deal of progress was made working with this Committee to reform the laws and encourage brown fields reuse, cleanup, and redevelopment. Notably, we remain the only state that reimburses cleanup costs up to 75 percent for new developers. But I think we also have to recognize that we're facing a second generation of brown fields sites, a set of sites that have tougher cleanup challenges, a set of sites that are sometimes more remote from where economic activity is occurring, and a set of sites that we're looking to revitalize in a much tougher economy. I think those challenges require not nearly the continuation of existing programs, but new leadership on the brown fields front, in particular, looking at areas where we can bring even greater regulatory clarity to potential developers who are concerned about liability, expanding the concepts of reuse.

In many cases, I think the assumption has been that brown fields should be redeveloped into industrial sites. I think increasingly there's interest particularly among communities in addressing needs for parks, local open space through brown fields conversion, and certainly, we're very actively pursuing that. Even some of our environmental and conservation groups have expressed an interest in actually being conservators of formerly used sites that may have some ecological values or potential ecological values. So we need to expand our conception there.

We also need to do more to try to reconcile the time frames in which government agencies make decisions and the time frames that are needed for redevelopment decisions. I think that has to be a two-way street. I think that we need a better dialogue with the development community about the actual time it takes to make decisions that are adequately protective of human health in the environment. But we also need, on our side, to understand better how we can adjust our time frames and reform our programs to accommodate development decision making better. I think that's enormously important. And each of these, obviously, is interactive -- the time frames, the expanded conception of reuse, regulatory clarity.

Just by way of example, on the regulatory clarity front, there are literally thousands of unresolved natural resource damage claims that potentially effect future use of sites. It may be that not all of those should be pursued, but certainly we need to actively address them and resolve them to remove the cloud of uncertainty that often hangs over sites based on uncertainty about liability.

I know Senator McNamara and this Committee worked on that issue extensively. I look forward to continuing to work with you as we wrestle with how to address those sites and protect the State's interest in natural resources.

Our final issue and one that is really evolving is the issue of warehousing. There are many brown fields sites that essentially companies have made the decision that it's much cheaper to let them languish on their books than to actually go in and redevelop them. I think this has been a source of enormous frustration for some of our municipalities who want very actively to redevelop appealing areas in their urban centers but are hitting head winds in

terms of sites being warehoused by folks unwilling to do the cleanup. I think that's going to be a combination of working very closely with municipalities to identify those sites, being more aggressive in terms of enforcing cleanup requirements, and appropriate partnering with municipalities to give them the assurance they need if they are willing to actually come in and exercise powers of condemnation and perform the cleanup themselves. But it is a very, very challenging set of issues.

Outside of the brown fields context, I think there are fundamental challenges that we need to address in terms of basically making better use of the data we have among agencies and producing better regulatory products that conform to that data. We have -- and just to give you a flavor -- under Executive Order 4, we're very actively working with other agencies to understand the data and assumptions that inform their decisions.

So, for example, understanding from the Department of Transportation where they have underutilized transportation infrastructure, where we should be thinking about transit oriented development, understanding what DCA's funding plans are and how they map out; understanding where the Department of Agriculture is actively trying to preserve farmland, so that we're working from a common set of assumptions, and one department isn't working against another.

As I said, I think a lot of that spirit of integration can be translated in better regulatory products at the department itself. Right now, we have a situation in which, often, those seeking a permit go from program to program to program, I think, in the nightmarish conception of the permit applicant, they feel as though they can go from program to program and get kind of the

runaround and get a yes and yes and yes and a no. I think from the perspective of those in the environmental community, there's a concern that that system is gained the other way, that a permit applicant can go to sort of the easiest program first, get the yes. And then by the time that he gets to the hardest set of issues, well, it's, "Well, you've given me a yes all this way, so you have to simply go along." I think there is merit in both of those arguments.

We have to at least begin the exercise of seeing where there are opportunities to integrate the requirements of different programs into a single process. We can't do it all at once, but I think we need to begin the process. I think we need to look much more closely at indicating proactively to the regulated community where they're going to have an easier time and where they're going to have a harder time and why.

I think the governor's Earth Day announcement of the Category 1 initiative -- an issue on which Senator Lance has worked very closely over the years -- of actually indicating before projects arise where we're strengthening regulatory protection, where we need to raise the bar, in a sense, for new permits is a much better proactive transparent way to approach these issues than addressing those issues at the back end of the process, giving the business community and regulated and development community no indication of where the bar is going to be raised.

I think, in addition to raising the bar in areas that require special protection, we need to look at providing more expedited processes where we think growth should occur, even to the point of, perhaps, identifying specific areas where either greater use of general permits or more expedited time frames are appropriate. Again, this has to be based on the statutory criteria that the

Legislature has already given us to protect clean air, to protect clean water, to protect threatened and endangered species. But if we look at those criteria comprehensively and, in some sense, proactively make our decisions about where we can support growth and where new development is more problematic, we can send a much clearer signal to all communities, whether it's the environmental community or the development community about where we're scrutinizing more closely. It's not merely an environmental issue. It's also a management issue.

We need to move away from a one-size-fits-all process at the department to one we're adjusting the level of scrutiny we're giving permits to our sense of the significance of the environmental issues involved. I think there is -- this sounds unduly optimistic, perhaps, but I think in terms of trying to produce new regulatory approaches at the department, working with the governor's council on smart growth, we can actually have the best of both worlds. We can have a system that's much more predictable and rational for the regulated community and one that the environmental community can very clearly see is enhancing protection of the environment and natural resources.

Obviously, we don't get there by regulation alone or by regulatory products alone. An essential component of this, and one that needs to work off the same comprehensive look at the data that each agency has, is to retool some of our acquisition programs, like Green Acres and Farmland Preservation.

I applaud the work of the Senate in particular, Senator Smith and Suliga, for their work on reorienting Green Acres priorities to protect water resources. As I testified previously, we need essentially to look at water supplies as an essential criterion of growth. We will only be able to support growing

communities if we know we have the water supplies we need to support them. So I think moving all of our agencies to a common set of assumptions, sharing data so that programs and agencies aren't working at cross purposes, all of those can be achieved both through the framework that Governor McGreevey has established an executive order for and through a program by program look at how we can be smarter about how we regulate.

So, with that, I'm happy to answer any questions the community may have.

SENATOR SULIGA: Thank you, Commissioner.

I have a few questions. I totally agree with you that we in government have to coordinate the various agencies. I think that's probably one of the biggest frustrations that -- whether they're groups, companies, individuals have when, you know, getting involved with government agencies. The problem becomes, as we know-- I mean, each commissioner is their own -- in charge of their own department. Each have really, in essence, a different mission. Even though those missions may all be well intended, their main mission is different. How do you propose, as you'd indicated, you said we have to coordinate -- how do propose that coordination? Because you're all equal. In other words, when a conflict becomes between the DEP and the Department of Agriculture and the Department of Transportation -- this is like an age-old question -- how do we coordinate that? How do we decide what mechanism is used to, I guess, expedite the process and get through all the bureaucratic maze, other than the fact of having the commissioners work together and the departments working closely together? Unfortunately, a lot of time, it's not even at the commission level. At the Commission level, it could be a mid-level manager who feels their

mission is one in one department and another mid-level manager has another mission in another. How do we reconcile that?

COMMISSIONER CAMPBELL: Well, some of it has to do with the tone that's set at the leadership level, and some of it has to do with very early agreeing to a common set of assumptions. Let me give you an example. For example, I have a very close working relationship with Commissioner Fox. When problems arise, we are immediately on the phone, in part, because of the template set by Governor McGreevey's executive order. That's one level of leadership, but the other is not setting up a process in which all the transportation planning goes forward and then the environmental considerations come in as a wrench in the works at the end of the process. By working together before projects come to fruition, understanding how their needs can be addressed, and environmental issues can be incorporated into that, at the end of the process, our missions can be aligned.

By way of example, there's enormous investments in Light Rail going in the Department of Transportation, the South Jersey Light Rail in particular. If we can establish a process in which the regulatory system is appropriately indicating that the statutory criteria say we can support growth and development oriented to that transit asset, it's a win for the Department of Transportation's mission, and it's a win for my mission in trying to reduce automobile traffic and air pollution.

SENATOR SULIGA: That's the question. We know what the problem is, that if we can do that. I don't know if we're ever going to get there. I think probably from the more practical standpoint is your first assumption to have the departments work together. It just gets extremely difficult when you

have a government agency that, again, middle-level managers who have been there for 20, 25, 30 years, you try to change that mind-set is very difficult.

COMMISSIONER CAMPBELL: I agree. That's one reason why I think some of the regulatory approaches have to change as well. One of the things I've insisted on as we try to understand and grapple with what regulatory approach should we take in replacing the so-called septic rule, the subchapter 8 rule that was struck down by the courts recently and truly was a significant constraint on sprawl, but also had criticisms from the builders about it being a de facto moratorium on development.

One of the first things I asked for was I want -- whatever decisions we make on this, we look at a more play-spaced approach, if we look, perhaps, even at mapping areas in the rule where we might have a more expedited or tailored process. When I make those decisions, I want to see all of the underutilized transportation infrastructure in the state. That data is available, and I want to see all the species information. I want to see all the water supply information. I want to see all the, basically, water quality information.

Typically, what has happened is the program, within its stovepipe, has come up with an approach that meets its narrow, statutory mandate within its stovepipe and without consultation, within and among the department, let alone more broadly. That overstates the case slightly, because there is coordination within the department historically, but there hasn't been the insistence that we designed our approach in ways that incorporate as many programs as possible. It is an ideal. It is going to take, I think, some risk taking and some willingness to innovate among all departments. It is something I

think I'm going to want to consult closely with this Committee as we wrestle with it, but I remain optimistic that we can make those changes.

SENATOR SULIGA: Any other questions from the Committee?

SENATOR CIESLA: Thank you, Mr. Chairman.

Mine is, and I applaud the direction of coordination or direction of trying to have all of the programs going in the same -- with the same commonality. By way of example, and I'd just like to get your reaction to it, because we dealt with this at the last legislative session, and this has to do with the State Plan and the planning areas and the areas for growth throughout the state. I believe that we're going to have a State Plan and it's going to be workable. It needs to be defined, and we need to have a set of rules so that there is -- we all know what we have to play by. That's going to, from both a developmental point of view, I think, make it a little bit easier from a government point of view, also make it a little bit easier to try to administer.

I'm a little hesitant in saying that to Senator Gormley last week -- had a bill -- that we addressed in the Legislature that had to do with some of the regional growth areas where he was experiences considerable problems with in his district. As I understand it, the State Plan basically said there's going to be growth in certain areas, and these are the areas that there's going to be growth in after taking into consideration all the variables that we want to take into consideration. As a result of things that have occurred because of that, growth actually happening, instead of happening in the surrounding areas, the infrastructure, according to Senator Gormley, is not capable of handling it and effectively is proposing a moratorium on growth in the area where the State Planning Commission said that we should have growth.

To me, and I actually thought it was a moratorium, maybe it's not. It seemed it was couched under a time-growth scenario, but there weren't any limits in the bill that I could see. To me, that's going backwards because now we're adding other legislative type of fixes on top of a plan. My take on that, Commissioner, is that if we're going to move forward, there needs to be a plan that effectively eliminates these types of difficulties.

COMMISSIONER CAMPBELL: Well, let me answer your question in a couple different ways. One is that one of the great assets we have on the Smart Growth Council, established by Governor McGreevey under Executive Order 4, is that we have Secretary Kuperus, who is on the State Planning Commission, who understands both the sensitivities and the related issues in developing the plan and brings those to the table in all of our discussions. So I think that's enormously important.

The second is that I think the State Plan itself, not in terms of the principles but in terms of the mapping, could very much benefit by some of the information that's available from my department, from Transportation, from other agencies that hasn't been fully fed into the map and that, I think, has led to some of the criticisms that some centers are created in flood plains and some of the mapping needs updating. So that's a second concern.

On the specific point of Senator Gormley's bill, I have to say that I attended a public hearing, along with other members of the administration, where the concerns of Egg Harbor Township and Hamilton were presented in a very compelling way. Mayor Sonny McCullough in particular, was eloquent on these points. I think there are times when it's reasonable for a community that's receiving significant amounts of growth that needs additional time for

planning their infrastructure needs. I think it's reasonable to accommodate those concerns if we can do it in a way that's fair and reasonable.

I understand the arguments on the other side, but at a time when, because of the budget crisis and necessarily so, municipal aid is frozen and children are going to school in trailers and so forth in Egg Harbor Township, I think it's a concern we need to listen to.

SENATOR CIESLA: Just one final comment. I don't disagree with that. I'd just point out that it seems to be the process that been in place up to now somehow missed that point. You're certainly aware of the complications that are created by virtue of what could happen in southern Jersey, if, in fact, that there were no additional housing that could be built for the economic base that exists down there now. I think it would have a chilling effect on what would happen in southern Jersey. It's the process that we have now isn't right. Maybe this bill is necessary, perhaps, for some period of time in order to say we need to do something as a mandate. But the frustration that I'm hearing from some of the people that are my constituents seem to indicate that just when they thought they understood the rules, the rules changed.

I think that's the message that we want to try to avoid with smart growth.

COMMISSIONER CAMPBELL: I appreciate that. I think there is much more that-- Putting that particular set of issues aside on which my sympathies may lie more with Senator Gormley in terms of responding to the community, I think there is much more we can do, not only in the Pinelands construct but among other regulatory programs in setting forth very clearly in advance what the rules of the road are, so that we can have a system that's fair

and more transparent for the regulated community even as we strengthen environmental protection.

SENATOR CIESLA: Thank you.

SENATOR SULIGA: And I totally agree with Senator Ciesla on that issue, I mean, and the bill did come up. That's the frustration that I think individuals have. You have a set of rules. You planned for that area -- this specific plan, you have a plan -- and then you change it. It's very unpredictable, and I think that's why the bill didn't get out of the Senate. And that's what we shouldn't be doing. We shouldn't be constantly changing the rules of the game.

COMMISSIONER CAMPBELL: Well, with the Chair's indulgence, I appreciate the point, but I also believe that given the magnitude of the situation, I think it's not unreasonable to give the communities a little bit of time, not a lot of time, but a year or two to let their schools and infrastructure catch up with the really explosive pace of development that's occurring down there. I think we'll have a continuing discussion about that as we move forward.

SENATOR SULIGA: Senator Adler.

SENATOR ADLER: Well, he's a chairperson.

SENATOR SULIGA: No, I'm the chair in the meeting, Senator Adler. You're next.

SENATOR ADLER: Yes, but he's going to be Chair sooner or later. I'm going to defer to Senator McNamara. (laughter)

SENATOR SULIGA: Okay. You're deferring your time? (no response)

Okay, Senator McNamara.

SENATOR HENRY P. McNAMARA (Co-Chair): All that confusion, you made me forget what I was going to ask the Commissioner.

SENATOR SULIGA: I didn't want to chair the meeting today. He asked me to do it.

SENATOR McNAMARA: Obviously, that thought wasn't thought of until after the fact. But now if we give a community the time, are we talking about setting a point in time that the plan goes into effect after 24 months, what happens with that community because of the fact of its tax base being what it is, it's limited ability to get State aide, can't do anything to change the infrastructure. Which comes first, the chicken or the egg? You're right back to the same problem. Where is the money going to come from?

COMMISSIONER CAMPBELL: I guess it's as they presented it, it was more a matter of needing some breathing room, for want of a better term. I think those issues have to be thought out in advance, and it really has to be up to the individual community as to what they want. I also think that any kind of change has to make sure that the very development that's needed to build that infrastructure also isn't effected.

SENATOR McNAMARA: But that is the community's responsibility to do that.

COMMISSIONER CAMPBELL: I believe I agree with you.
(laughter)

SENATOR SULIGA: We have that on the record, you know, Commissioner?

Senator Adler.

SENATOR ADLER: I'm going to first chime in on the same issue that Senator Ciesla and both Chairpeople, current and the future chairperson, commented on. I think all of us are concerned with the idea of giving a community a moratorium power over building, particularly communities who could see development coming and wanted to anticipate that was part of how their community was going to evolve. I'm not saying shame on them for not having built the infrastructure themselves, but I think the Pinelands Commission did a good job in down zoning and lightening some of the burden on the communities involved, but I think there's a reason why that legislation by Senator Gormley failed so spectacularly several weeks ago was because there was a widespread bipartisan opposition, at least in the Senate Chamber. The notion being that there were a set of rules. They were changed once very clearly to the detriment of some of the developers, and that's fine. You can change the rules a couple of times, but this constant changing would include a moratorium or something that was, I think, profoundly troubling to people that wanted to see development in some places, not other places, and it looked like at least in Atlantic County, development wasn't going to be anywhere. And that was a troubling notion to folks who want to see development and want to see new jobs come in there and have housing for the people who get these new jobs.

I know that you tried to put that issue aside, and I respect that, and I will allow that issue that all four of us have ganged up on you to put that issue aside. (laughter)

You talked about different levels of processing, and expedited processing in some areas. I find that to be a very appealing concept. I'm wondering what sort of criteria you and maybe some of your fellow

commissioners as well are looking at to try and recognize that there are some areas in the state that need to get things done sooner in order to encourage develop in those areas.

COMMISSIONER CAMPBELL: Well, I think the basis is to really try to look in advance at what we know about water supply, water quality, species, needs for open space, and transportation infrastructures, other agencies concerns, and really try to overlay those on the same map and see where, from that perspective, we can confidently design for more expedited processes. Because we've looked in advance at what some of the statutory criteria are, and we know we can expedite and streamline the process without compromising environmental protection, without writing checks for water allocation that we know don't exist, and we can focus our scrutiny on the areas where there are more significant concerns. I think we can do both.

Right now, we have a reactive, one-size-fits-all process where essentially everything gets the same level of scrutiny. No one knows until the end of the process what concerns may arise. I think, as I said, you really can have a win win of having a more transparent and rational system, enhanced environmental protection, and also send a clear signal as to where the regulatory system is likely to give you a yes.

SENATOR ADLER: I listened to your dialogue with Senator Ciesla a few minutes ago about the State Plan, the various planning areas within the State Plan, and I think you both agreed that there were some flaws in the State Plan and some evolutions since 1985 or '86 of communities. With that in mind, what would you propose to do as Commissioner, or what would you propose to have the Legislature do to help modify the State Plan or codify the

State Plan to get it implemented in a way that it, for the last 17 years, has not been?

COMMISSIONER CAMPBELL: Well, I'm very sensitive to the principle that the plan was developed as -- not as an enforceable document and sensitive to the concerns of home rule that underlie the way it was developed and the way it's been applied. I do think that even in its current form it can be approved greatly by getting more of the data fed into the map and having better mapping that better corresponds to concerns of environmental protection.

I think the most profitable area to explore is whether there are occasions where we can use the fact that something is designated as a planning area 1 or 2 or designated as a center, to use that as a criterion in deciding whether that's an appropriate place for a more expedited process to see if there are ways we can without changes the substantive standards, without saying we're enforcing the State Plan as such to see if we can use that as a basis for deciding in some cases, and again, consulting with the effective municipalities deciding whether those are the appropriate places where we can give clear guidance as to what the regulatory system will demand.

SENATOR ADLER: Coupled with this notion of this expedited process thing, which I find very appealing, I'm wondering if your department intends also to take a similar approach using similar criteria with respect to any discretionary grants, assuming there's money available some day to do this, so that you can with money as well as with time encourage development in certain areas and show a lack of encouragement in certain other areas?

COMMISSIONER CAMPBELL: No, I think it has to effect both funding and regulatory decisions. What I'm hoping is we can come up with a

coherent platform for all of our decisions, not just regulatory decisions. So, if we do those overlays of those different factors from transportation to water quality, we can take those to the Environmental Infrastructure Trust, who you heard from earlier today and said -- make sure their decision is square against that, and if not, why not? The same with respect to Green Acres acquisition where we have explicit guidance from the Senate now in terms of increasing the priority of protecting water supplies, recognizing the need to move away from managing, from drought emergency to drought emergency.

So I think this development really is one of developing a common decision-making platform, rather than one that's merely regulatory.

SENATOR ADLER: Given that the State Plan has been out there in various forms for 16, 17 years, and understanding you've been now the Commissioner of DEP for three, four months, what's your time frame for developing this platform you described today, so that we legislatively can look at it and say, "That makes sense or that's crazy," so the regulated community can know what is expected from this point forward?

COMMISSIONER CAMPBELL: Well, I think that, again, I want to emphasize that what we need to do is better implement the statutory criteria the Legislature has given us. I think in the end doing that more rationally and effectively will reinforce the goals of the State Plan. It will be a process in which we can feed more of our data developed on an interagency basis into the plan maps so that we're working. We're all sending the same signals no matter what department we're from.

In terms of the opportunities to develop a different model, I think our decisions about how to replace the septic rule will be the first point at which

we can confront this challenge and consider whether this type of approach is doable in a way that's going to attract broad public support and that can be squared with the statutory mandates that we have from the Legislature.

SENATOR ADLER: I'm going to jump back to, I think, the first point you made -- one of the first points you made that I took notes on. You talked about the problem of warehousing brown fields sites. I'm wondering if there are any states that have found some clever way without undercutting the cleanup criteria for sites to incentivise an early cleanup reclamation of a site and somehow punish those sites financially that are being warehoused and are sitting fallow indefinitely?

COMMISSIONER CAMPBELL: Well, I think the answer is yes, and the key to that is a credible enforcement program.

SENATOR ADLER: No. My question was, are there other states that are already doing that, something like that?

COMMISSIONER CAMPBELL: There are states that are more aggressive. I think Maryland certainly has been historically. There are a few others. But I think it's mostly a matter -- I think it's a matter of having both the carrots and the sticks in place and also a structure where the cleanup program has greater discipline. There are sites that are literally called teenagers within the site remediation program because they have languished that long unattended. That's something that we have to move away from.

One possible way to help with that is to really make better use of -- and assuming we can do it with appropriate safeguards -- for some of the planning and analysis that needs to be done for these sites to make greater use of the private expertise that's available, particularly in this budget climate where

we won't have lots of additional resources to try to set up for -- particularly for low-risk sites, if you have appropriate safeguards and if DEP is in the role of selecting the consultant to move toward a system where you can actually make greater use of some of the private expertise that's out there.

SENATOR ADLER: Mr. Chairman, that's all I have.

SENATOR SULIGA: Any other questions for the Commissioner?

(no response)

Just welcome Senator Lance to the Democratic side of the Committee. We could have used you this morning, Senator.

SENATOR LANCE: You're welcome on the Republican side of the Appropriations Committee any time you wish to join us, Senator Suliga.

SENATOR SULIGA: I vote with you once in a while.

All right. Thank you, Commissioner, we appreciate your testimony. I know I look forward to working with you on some legislation that we're working on to try to streamline the process in your department. Hopefully, we'll have a bill by the next hearing, which I believe is the 20th. We're working on something now.

Thank you.

COMMISSIONER CAMPBELL: I look forward to working with you. Thank you again.

SENATOR SULIGA: And again, my apologies for the lateness.

Our other Commissioner, our new Commissioner of Agriculture (*sic*), Commissioner Kuperus. Did I say it right?

SECRETARY CHARLES M. KUPERUS: Yes.

SENATOR SULIGA: And again, I apologize to you also for the delay. I know how busy your time is, but unfortunately we just had meetings that ran right into each other. We look forward to hearing your testimony, Commissioner.

SECRETARY KUPERUS: Thank you, Mr. Chairman, and thank you for inviting me to speak here. I really felt at home when we talked about silos and stovepipes. Coming from Agriculture, I felt that was very fitting.

I just wanted to start by saying I was a member of the State Planning Commission for six years, and I Chair the Plan Development Process. We have -- I brought some executive summaries here that are on the table at our side, and I have a pretty good understanding about the process that was taken in order to get to that final document. That is a consensus document. And with respect to the State Plan, I'd ask you to consider looking at the text of the State Plan, which is where most of the work was centered, and we can work toward understanding that better because that is consensus. There were many many different perspectives at the table. That is the result of probably thousands and thousands of people testifying, as well as many different perspectives offering their input in shaping the final outcome.

I'm here to speak on behalf of agriculture and maybe explain a little bit about what we're doing in the Department of Agriculture because my colleague, Commissioner Campbell, already started by telling you about executive order and what we're doing on the Smart Growth Council. The Department of Agriculture is a member of the Smart Growth Council, and I represent the Department there along with our smart growth team leader.

We assembled a working group in the Department of Agriculture and a little bit of making sure that our Department sings from the same song sheet is what that effort is trying to accomplish. It's amazing how when you come to State government, and I'm a new commissioner, and we take a look at the different entities, the different divisions, and the in, but not ofs and how they work to get them to sing from the same song sheet is a substantial undertaking in itself. We've done that in the Department. We've assembled a working group with the SADC as part of the membership and a number of divisions that can participate in this work group effort.

I have to say it's been done very well, because with respect to smart growth, you need to fundamentally change the way you do business. In our Department, we needed to do that. We needed to take a hard look at how we relate to other departments, but how we relate to different divisions and the Farmland Preservation Program in the Department of Agriculture. We have a special emphasis on farmland preservation and retention, agricultural viability, understanding that we need to keep a viable agricultural industry, a prosperous agricultural industry. And as part of that identifying new emerging sectors of agriculture, whether it be organic farming, whether it be the wine industry, which is growing in this state. By the way, New Jersey wine growers only supply 1 percent of the market in New Jersey, and we have a long ways to go there.

But then developing a strategy for each individual commodity that we already have. For example, we could use a strategy to develop and better facilitate marketing for the fruit and vegetable industry. What can we do for the grain growers? There's a lot of things that we can do for grain growers with respect to preserving that industry, that sector of agriculture, but making sure it

stays viable, because it's a landscape. It's a working landscape that we all want to see. We want to preserve farmland, and the voters of this state have said that over and over again.

I think that as we talk about smart growth we want to understand, and I'm coming from agriculture, that agriculture is not rural only. We are dependent on suburban and urban New Jersey. Many of New Jersey's agricultural products are processed in suburban and urban New Jersey. New Jersey's farmers' markets are in urban New Jersey. New Jersey's market is the citizens of this region. We understand that we are in a very populated state, and we need a good, safe, local food supply. That's why I'm a strong advocate for Jersey fresh, of course, because we want to make sure that we're marketing to our citizens product that's grown by fellow citizens in this state.

And that goes to say, we need to make sure that we have a comprehensive look at agriculture. So agriculture is not only rural, we want to make sure that we've revitalized New Jersey's cities and towns -- goal number one in the State Plan, but we want to make sure that agriculture is part of that. And as we take on a dialogue and we look at the Smart Growth Council, the State Planning Commission, which we're members of as well, we need to take a hard look at making sure that we can sustain the agriculture industry, because it is the landscape that we want to keep in this state.

I just maybe want to stop, because I think you have plenty of questions, by saying in our view we want to look at smart growth in a way that enhances, improves the agriculture industry but fits in with the other parts of New Jersey. Transportation we work with very closely. DEP -- my colleague -- probably the closest with DEP, especially with the number of water resource

issues and other issues. The Federal Farm Bill was just passed. There's resources there that we can work together and make sure that we facilitate making sure that we keep our natural resources, that there's low impact on the environment from the agriculture community. It's just plain the way to grow.

So, thank you, Mr. Chairman, and I'd be happy to answer any questions.

SENATOR SULIGA: Thank you, Commissioner.

I have one question because-- First, in the beginning of your testimony, you mentioned that you must -- what you did when you went into the department is change the way you were doing business. What did you mean by that?

SECRETARY KUPERUS: Well, by assembling that work, specifically in the context of smart growth, by--

SENATOR SULIGA: That's what I meant.

SECRETARY KUPERUS: Right, exactly. There's a number of other issues that we're working on. But putting together a working group with representatives of these different entities, the different divisions of the Department of Agriculture and the Farmland Preservation Program or the SADC, pulling them together and making sure that we have a common vision with respect to smart growth. You know, it's one thing to preserve farmland. We want to make sure that we do it in the right places. The other is we want to promote economic development activities in the right places, placed-based economic development activities, so the two help. You can preserve the farmland, but if we don't preserve the industry, for example, what good have we done? We want to make sure that we keep the industry viable and that needs

to be connected together. So our economic development efforts have to work in conjunction with, and our advocacy efforts have to work in conjunction with a good farmland preservation program that maintains the base as the land.

So it's in many ways establishing a common vision for agriculture for the state. Our department needs to start with what they can do in our department, the Department of Agriculture.

SENATOR SULIGA: But in the entire scheme of things in the smart growth area, your area is probably the least impacted. I mean, you have basically a plan. What your plan for your department would be is farmland preservation, preserving the farm, the industry in the state of New Jersey. There seems to be a very clear plan in terms of acquiring these farms or the development rights and preserving this farmland. Correct?

SECRETARY KUPERUS: Correct, yes. But it's not only that, and I want to make sure that we take a look at--

SENATOR SULIGA: I'm trying to understand the connection to the smart growth and the farmland.

SECRETARY KUPERUS: Smart growth and farmland. Well, we want to make sure that we-- Smart growth is growing in the right places, making sure that growth is connected in ways of-- We talked about it just a moment ago with transit corridors and that, but yet at the end of the day we have a landscape that we want to preserve, too, rural open space. Part of that is preserving our watershed lands, making sure that we have adequate water for future generations. But at the same time, we have an agriculture industry that stays viable on the farmland that we purchase and so that has to be knit

together, making sure that we access those markets and making sure that we have the processing.

For example, let me just take you -- processing facilities used to be in urban Camden, for example, for New Jersey tomatoes. We've lost a lot of our processing capability in this state. We could bring a bit of that back to be quite frank. That could be part of our economic development strategy for the state. That would part of the urban redevelopment. It could be part of the urban redevelopment initiative for a specific location, but it would help the agriculture industry as well.

In Florence, there's a food preparing company, which I will be touring in the not to distant future -- RediPak -- which is on it's way to adding 300 new jobs, I understand -- is a way of getting a market in this state for New Jersey farmers, but it's an entity that's growing in a place that we'd like to see in New Jersey.

SENATOR SULIGA: Any questions?

SENATOR ADLER: Given the fact there's no money in the budget this year, even to do like little bits of nice things for the Rutgers Farm Program and an experimental station down in Cumberland, what can we do to help you achieve your mission of preserving farmland and farming in the state this year? What should we do legislatively in the next few months to help you?

SECRETARY KUPERUS: Wow, that's a nice question to have, huh? Yes. I think if there's one thing that we could really focus on is making sure-- We have the Farmland Preservation Program which is funded and it's moving along quite readily. We'll preserve 20,000 acres of land this year. We'll go beyond our goal of 100,000 acres-- I mean, we'll be beyond 100,000 of

farmland preserved in this state, which is very good. I think I want to be able to focus on making sure that we have an economically viable agriculture in this state. There are some initiatives that we're working on that may be very helpful that I think it needs just a little bit more time to flush out that we'll have future dialogue on. But as we work on that, we'd be happy to bring that back to this Committee or any other committee to make sure of it. Specifically, I'd be happy to work with you a little bit in the future.

SENATOR ADLER: I suspect, given the fact that both Chairpeople wanted this hearing on smart growth, I think we'd all appreciate hearing more about what we can do, because this is a very important component of our economy, but also of our balance of rural, suburban, and urban in our state. So, I think we'd like to have you come back. I can't speak for the Chair, but that's my guess.

SECRETARY KUPERUS: Absolutely. I'd welcome an invitation to come back.

SENATOR SULIGA: Senators?

Senator Lance.

SENATOR LANCE: Thank you, Chairman Suliga.

Secretary, you state that we have preserved how many acres under the Farmland Preservation Program?

SECRETARY KUPERUS: We're going to go beyond 100,000 acres in, I think it is, this month. We hope to have this done by this month -- 100,000, I said.

SENATOR LANCE: Thank you, Secretary. And this is year what of the 10-year program?

SECRETARY KUPERUS: Year what of the-- Someone needs to help me -- when farmland preservation started? Carol?

SENATOR LANCE: Are we in year three or year four?

SECRETARY KUPERUS: But farmland preservation has been going on since the '80s, the late '80s. I can't remember exactly.

SENATOR LANCE: Yes, well, I'm well aware of that being a sponsor of the Open Space constitutional amendment in talking about the dedication of a source of revenue.

SECRETARY KUPERUS: Three years.

SENATOR LANCE: We're in year three. And since the program began with the dedication of \$98 million in sales tax revenue, 6 million for historic preservation, and farmland receiving 40 percent of the remainder, how many acres have we preserved?

SECRETARY KUPERUS: Underneath that, I couldn't tell you, but I could get back to you with the answer.

SENATOR LANCE: Well, would your staff get back to me on that, please?

SECRETARY KUPERUS: Consider it done.

SENATOR LANCE: Now, the enabling legislation passed in the summer of 1999, based on my constitutional amendment, states that farmland is to have its development rights purchased at the value based upon zoning as of date of passage of the constitutional amendment. Is that accurate?

SECRETARY KUPERUS: Yes. If I remember correctly, that had a three-year window, if I remember correctly. Did I do that right? Four- or five-year window, thank you.

SENATOR LANCE: At some point, that legislation will be renewed or at least there will be a need to review the legislation. I am strongly of the view that we should not down zone in an attempt -- futile in my judgment -- to preserve more farmland than what otherwise be the case, because I believe farmers would be reluctant to enter the program if there is significant down zoning occurring locally between the time of the passage of the constitutional amendment and whatever date now or in the future exists when a farmer may be approached to enter the program. Do you have an opinion on that issue?

SECRETARY KUPERUS: The State Plan starts off with equity policy being number one. Down zoning is something that we at the state level don't control. This is a Home Rule state, and municipalities do that themselves. You are right when you say that the Garden State Trust and that legislation had a window of time where zoning couldn't be changed, but that is something we can work on. Smart growth is a way we can identify those areas and make sure that we don't impact the farmers negatively and those farmland preservation efforts stay and continue to stay and keep the same momentum we have now.

SENATOR LANCE: Well, we can control it at the State level as it effects the Farmland Preservation Program. We certainly can't control it for other purposes because of Home Rule, but we have the ability and, indeed, have controlled it at the State level with Speaker Collins enabling legislation in the summer of 1999. I hope, as we move forward with smart growth proposals of the administration, the Department of Agriculture will support in the future, as it has in the past, making sure that on this portion of the whole puzzle that your department continues to advocate strongly for the farming community.

Thank you, Mr. Chairman.

SENATOR SULIGA: Thank you, Senator.

Anyone else? (no response)

Well, thank you very much, Mr. Secretary.

SECRETARY KUPERUS: Thank you.

SENATOR SULIGA: We appreciate your coming by. I think we'll take up Senator Adler's suggestion and see you again.

SECRETARY KUPERUS: Thank you.

(bell sounds) Is school out? (laughter)

I see Mayor Ed McKenna, from Red Bank, is here. Mayor, very nice to have you. You're a nominee on the State Planning Commission. If you could do as good a job for us in the State, as you've done in Red Bank, we'll be doing pretty good.

M A Y O R E D W A R D M c K E N N A: Thank you very much, Mr. Chairman.

Good afternoon to everyone. It's a pleasure to be here with you. I'd like to speak from the municipal perspective as far as smart growth is concerned, because the Borough of Red Bank is a community that many of you may know has embraced the concept of smart growth. In fact, perhaps, I can give you a very, very brief history of what I was faced with when I entered my position as Mayor of Red Bank.

We were owed about \$3.5 million in back taxes. Our downtown had a 35 percent vacancy rate. We had two individuals who were commonly termed as slumlords who owned about 400 properties in town. Our population had declined about 33 percent, and we were facing some very significant issues in addition to those.

I like what the Commissioner said recently about changing the way we do business, because that's essentially what we decided to do in Red Bank. Shortly after I was elected, we took our master plan and essentially discarded it, and decided that what we needed to do was to recognize what our community could handle from an infrastructure standpoint, from a population standpoint, etc., and go out and try to attack those issues and bring the type of growth that we wanted into our town. In doing so, we undertook a number of steps, and not the least of which, coincidentally, was the formation of a group. I did this with one adjoining municipality.

We formed a group called the Two River Council of Mayors. We got 13 mayors together to meet on a monthly basis to discuss growth issues and the impact, not just on our community, but on the surrounding communities so that we had some coordination with regard to our various zoning ordinances, etc. What we've found was that in the long term it really had tremendous benefit to us in the area of global impact as far as certainly Monmouth County was concerned, by way of example.

There was a bridge that was being erected by the Department of Transportation between the Township of Middletown and the Borough of Red Bank. With all due respect to the Department of Transportation and the people that came up with the original design for the bridge, to call it vanilla would be a compliment compared to what was actually proposed. But we undertook with the adjoining municipality and the acknowledgment and consent of other municipalities in the area to address the Department of Transportation and suggest that they alter the design of the bridge significantly.

What we did was we got pedestrian corridors on both sides of the bridge, and we changed the design of the bridge to make it sort of classic, as far as its architecture was concerned. And what would have been a fairly ugly facility -- and I'll again use that term loosely -- became a beautiful gateway between the two municipalities and, in fact, has encouraged a tremendous increase in pedestrian traffic between the two municipalities where people actually walk to work from one municipality to the other.

That's just one of the many issues that we have dealt with. Recently, we had a major issue with the Department of Transportation concerning some rail rehabilitation that needed to be done, tremendous traffic impacts and tie-ups to the tune of 40,000 to 50,000 cars a day. We got together with four or five other municipalities, met with DOT, and not only did we agree on methods to handle the traffic bottle ups, but in addition to that what we were able to do is convince DOT of the benefit of adding some additional enhancements to the area that have substantially benefitted our three municipalities that are impacted by that, as far as road improvements are concerned.

So, essentially, I guess what I'm saying is that we believe that we should take a more global approach, as far as municipalities are concerned. There should be a much more extensive sharing of information between municipalities and consideration for your neighbor's view points, their concerns, their issues in their municipalities before we make decisions, number one. And number two, frankly, what we also did in Red Bank was we made a conscious effort to go out and reach out to the citizens of our municipality to listen to their concerns before we redrafted our master plan.

In fact, our old master plan was a classic one, probably about 250 pages that read -- oftentimes I thought I was reading Chinese when I was reading the document. I didn't understand one-third of the document when I got it. So that perspective developers and others who wanted to know what your community is about had no guidance. We actually shortened that document down to about 65 pages of text and about 15 pages of photographs and design guidelines, as far as what we wanted to say about our community.

We have received a number of awards for the plan and, in fact, we think it is a true image or reflection of what our community is all about. I might add, too, that as far as the State Plan is concerned, I, as an elected official, was very skeptical when the whole concept first was announced. And being some one who, of course, at times advocates Home Rule, I was again somewhat concerned about how the process would evolve. But I have to tell you that, frankly, I was very satisfied with the whole process. I thought the cross acceptance process was one that served communities well. Although the State Plan certainly isn't perfect conceptually, I think it's a great idea. The fact that there are systems in place, and I think and I hope, as a result of what you hear today and in the future, we will provide additional incentives under the auspices of legislation to help implement the concepts of the State Plan.

Our experience with the State Planning Commission has been very positive. They provided us with invaluable assistance as far as our planning process was concerned. We tried to walk lockstep with the State Plan whenever possible, so that when we made planning decisions, we as a regional center, as designated by the State Planning Commission, we tried to ensure that our zoning and planning decisions, again, walked lockstep with the State Plan.

I cited one example where, several years ago, I parked my automobile in one spot in Red Bank on St. Patrick's Day, of all days -- of course, with the name like McKenna -- and proceeded to an Irish pub to have a little refreshment for the evening, if you could believe that? (laughter)

SENATOR SULIGA: I love Red Bank.

MAYOR McKENNA: I then proceeded to a steak house, then went to the Count Basie Theater for a concert with Joe Cocker, then went to another Irish pub, then finished the night at a coffee house, never had to move my car once. And conceptually, again, it's all--

SENATOR LANCE: Could you have driven if you wanted to? (laughter)

MAYOR McKENNA: I know this isn't a criminal proceeding, but I do plead the fifth. (laughter)

But in any event, I will say that I have had a very positive experience again with the State Plan and the Office of State Planning. I look forward to serving as a member of the State Planning Commission. I do believe that we should give, under whatever auspices we do, a little bit more in the way of teeth, as far as our ability to implement the aspects of the State Plan that everyone agrees upon. There are financial incentives that Red Bank has been the beneficiary of. And when I say that, I mean, when we go to various state agencies and seek funding, we always cite the fact that we have complied with the State Plan and attempted to ensure that we are following the State Plan. And in doing that, I will tell you that we have been the beneficiary of a number of State grants. We've had over \$11 million in my 12 years as mayor.

I think that we need to ensure that municipalities receive not only incentives but, perhaps, at times disincentives or they're, in fact, penalized for not having some degree of adherence to the principles to the State Plan as it is constructed at the present time. So, I would say that from our perspective with the State Plan and smart growth have been issues we have embraced. I would like to believe that we've been the beneficiaries of taking that action. And in the future, certainly as a member of the State Planning Commission if I'm fortunate enough to serve on that Commission, but in addition I have been lucky enough as a result of Tuesday's primary to now be assured of the fact that I'll be mayor for another four years, because I am unopposed this year, thankfully.

In serving in both capacities, you may rest assured that Red Bank will continue to embrace the concept of smart growth and do everything we can to ensure that it is implemented in our town.

SENATOR SULIGA: Mayor, I appreciate the testimony, and I know some of the members may have questions, again, but I just want to compliment you. I mean, Red Bank -- you've done a fabulous job there since you've been the mayor.

MAYOR McKENNA: Thank you very much, Senator.

SENATOR SULIGA: It's a fabulous town. I frequent it. The downtown is just lovely. I mean that sincerely, that if you can bring to the State what you've brought to Red Bank, we'll be very successful.

MAYOR McKENNA: Well, thanks very much. I'm sure going to try, rest assured.

SENATOR SULIGA: Terrific.

Any questions?

SENATOR ADLER: Yes. I just have a follow-up comment.

I know you're getting an award next Monday night from New Jersey Future, one of many awards for Red Bank and for your own leadership for Red Bank, and it really speaks well of you and of the community's buying into your concept of a better vision for the community. So congratulations for that.

MAYOR McKENNA: Thank you very much, Senator. I appreciate it.

Any questions? (no response)

SENATOR SULIGA: Thank you, Mayor.

MAYOR McKENNA: All right. Thank you very much. I appreciate the opportunity to be here.

SENATOR SULIGA: We have Martin Bierbaum, Deputy Policy Director of Smart Growth Policy Council.

Okay, we're going to let this witness take the time they need, but after this, all the future witnesses will be limited to five minutes, and I do mean five minutes from your comments. After this, we have at least eight or nine, actually ten witnesses, so we're going to be limited to five minutes after you. You can take more time.

MARTIN BIERBAUM: Thank you, Mr. Chairman. Thank you for inviting me here today to testify on smart growth.

The members of the Governor's Cabinet have testified -- referred to themselves as silos. In my position, if I could mix my metaphors, excuse me, for that, I'm sort of the shepherd of the silos. It's become my job to work with members of the Cabinet to facilitate conversation and communication to make smart growth work.

As Brad Campbell has said, smart growth is really smart government. And I think as both Commissioners have said, smart growth is coordinated government. That's what we're trying to do through the Smart Growth Policy Council. The governor, during his campaign as candidate, talked about a lot of these issues. He talked about his support for the State Plan. He also pressed for the idea that it was time to begin to implement aspects of the State Plan. And on January 31, 2002, which was just two weeks into his administration, he signed an executive order, Executive Order No. 4, which is referred to here, which established the Smart Growth Policy Council within the Office of the Governor to take a very action-oriented approach to the State Plan. The time for planning is done and the time for implementation is now here.

In terms of the executive order, Executive Order No. 4, there are about a dozen provisions in that executive order. I won't take the time to go through all the provisions here, but there are generally three categories there.

Number one is a category that focuses on coordination of State agencies and State agency efforts so that government can work smarter. Number two: there are provisions in the executive order that really call for the empowerment of municipalities so that they can plan better. And number three: there's a provision in there about working closely with you, with the Legislature to strengthen the State Plan to give it some of the teeth through legislation that Mayor McKenna just referred to.

In terms of the Smart Growth Policy Council, just to give you a brief update of what we've been doing, the Council has met three times thus far. We started meeting on May 7. We met on May 21. We met this past Tuesday

on June 4. We'll meet again on June 18. We meet immediately after the Cabinet meetings. We've established a mission for ourselves, the Council mission, is to articulate a vision for smart growth, to share information across departments, to assist the governor in setting his priorities, to resolve conflicts among the State agencies, to convene State agency implementation work teams that are at the sub-Cabinet levels. One of the Senators raised a question previously about how it's important to have conversation and dialogue, not just at the Cabinet level, but down in the agencies. So we're engaged in doing that as well. And the Smart Growth Policy Council will also be monitoring and assessing progress as we move forward during this administration's term.

At the initial meetings of the Smart Growth Policy Council, the Council identified a number of priority areas to work on most immediately. Among these priority areas are urban revitalization and the specific charge was to try to identify a set of barriers that could be overcome in terms of urban revitalization, barriers that might be posed by State agency actions themselves.

Resource protection was a second priority area. A third priority area had to do with improving communications across departments. And then the fourth priority area was information based and trying to figure out exactly where we were in terms of information technology, what was the status of geographic information systems, and how could we deploy this systems to make smart growth a reality across the State agencies? Those are the four priorities that we decided on early in May, and those are the four that we've taken up over the course of the last few meetings.

To highlight the differences between what the Smart Growth Policy Council is doing and what has gone on before, I'd just like to focus on what I

think are seven major differences to give you a sense, an indication, of the emphasis that this administration is placing on smart growth.

First of all, there's a difference in placement as to where the Smart Growth Policy Council is as to where the State Planning Commission had been placed. It's in the Governor's Office, and I think that's a signal to you as to the importance that the governor places on the Smart Growth Policy Council and this general issue.

Number two: there's a difference, I think, in emphasis. The State Planning Commission went through an extensive process at writing the plan. Secretary Kuperus was very much involved in that process that took a number of years. The emphasis today, as I've already said, is on implementation. It's an action orientation. So there's a difference in emphasis.

There's a difference in terms of the reference to smart growth and not just the State Plan. That's a reflection of where New Jersey was over the course of the last 10 or 15 years and where we are today and where the rest of the world was and where the rest of the world is today. In many ways, New Jersey has been a leader in this field. And now that other states are doing it, they're applying different names to what we've been doing for the last 10 or 15 years in terms of thinking about growth management issues. It's been given a new appellation. That appellation is smart growth. So we're referring to smart growth and not just the State Plan because we want to draw on other state's experiences and all the progress that has been made in these regards and other places over the course of the last decade.

There's a difference in the focus of activities. Cross acceptance was directed at a dialogue with counties and municipalities. That will continue and

that will be largely the bailiwick of the State Planning Commission and the Office of Smart Growth. But the focus of the Smart Growth Policy Council is really where the governor feels he can be most effective and that is in managing these silos and dealing with his State agencies and dealing with his administration and making the State agencies effective in this regard.

There's a difference in composition. The State Planning Commission was previously criticized because--

SENATOR SULIGA: We have a question. Does the governor use that a lot in the Cabinet meetings -- silos?

SENATOR ADLER: Silos -- what's with that?

SENATOR SULIGA: Yes. (laughter)

SENATOR ADLER: Brad said the same thing. We looking at each other like what's this language they're using?

SENATOR SULIGA: This is war language.

MR. BIERBAUM: The silos are--

SENATOR ADLER: Is this special McGreevey talk we don't know? (laughter) I mean, we'll learn it if we have to, don't get me wrong. (laughter)

MR. BIERBAUM: It's the idea--

SENATOR ADLER: Bob, help me here?

SENATOR LANCE: The Republicans intend to use silos in the old-fashioned way, regardless. (laughter)

MR. BIERBAUM: Well, somebody referred to them, I think, as stovepipes. It's the idea that communication is often vertical but not horizontal.

SENATOR SULIGA: That is coming from McGreevey. It is coming from McGreevey then. That's coming from the Chairman of Merck.

MR. BIERBAUM: It actually comes from the private sector of the corporate sector.

SENATOR SULIGA: That what I said. You see, I know exactly where that's coming from.

MR. BIERBAUM: The State Planning Commission was at times criticized because of its limited composition, particularly in terms of the problems it faced in revitalizing urban areas. The critics of the State Planning Commission sometimes pointed out that in order to deal with some of these urban revitalization issues, we needed the Department of Education. We needed the Department of Human Services. We needed the Department of Labor.

What the Smart Growth Policy Council has attempted to do is to expand the composition so that it extends beyond just what is on the State Planning Commission. It's expanded to the Board of Public Utilities to the Department of Education, to the Economic Development Authority, to New Jersey Transit, and very importantly, the Authorities Unit within the governor's office is also attending and participating in these meetings.

There's a difference in terms of smart growth impact statements, which are now required of State agencies when they change policies and adopt rules, so that all other agencies and anybody who reads the New Jersey Register is put on notice as to what these changes mean in terms of smart growth principles. There's a difference in directing the attorney general to defend and intervene on behalf of municipalities, counties, or regional planning entities that

have adopted plans and have been endorsed by the State Planning Commission or are consistent with smart growth.

So what we really try to do here through the promulgation of the executive order, is we've tried to add on to all of those efforts that have gone on before us to try to say that this is a new age. That we are interested in action and implementation, and we've created or established these seven distinctions, which I think, kicks it all up a notch, takes us up a little higher in terms of implementing the principles of the State Plan and the principles of smart growth.

Thank you. I'd be more than happy to answer any questions you might have.

SENATOR SULIGA: Thank you very much.

Any questions?

SENATOR ADLER: Mr. Bierbaum, again, understand we don't have any money in the budget this year. Do you have staff to do this job? It sounds like a massive coordination effort. I'm afraid you might be alone or very very understaffed. What's the story with staffing and whether you can meet this mission that's a very significant mission?

MR. BIERBAUM: It's always nice to have more resources. We recognize that this is a tight budget year. These are tough budgetary times. A lot of what we're trying to do is shift focus and improve coordination of effort. I do have two people who support me full-time, but I'm not adding on in terms of creating a new agency. What I'm trying to do is work through the existing agencies. What I need more than anything else is strong leadership and the

cooperation of the Cabinet members. That's what I'm getting from the governor and his Cabinet.

SENATOR ADLER: Let me try to ask the same question the second time. Do you have enough staff to accomplish your mission?

MR. BIERBAUM: I think so for what we're doing right now. In the future, as this grows, we may need more.

SENATOR ADLER: Good luck.

SENATOR SULIGA: Senator Lance.

SENATOR LANCE: Thank you, Mr. Chairman.

I think your testimony was excellent, Mr. Bierbaum.

I think the proof of the pudding will be if after the end of a four-year term in office of this governor, there is significant increase of sprawl or not, and only time will tell. I hope in the multidepartmental deliberations that are now occurring that there is a greater connection than has existed in the past. This is certainly not Governor McGreevey's fault. He has a wonderful opportunity here as a new governor to coordinate the preservation of land on one hand with the demands of the Council on Affordable Housing on the other. From my perspective, there is a disconnect requiring largely rural municipalities under COAH to develop greater housing than would otherwise be the case based upon an artificial number developed by COAH that's based not only on indigenous need, but on prospective need. I am an opponent of the issuance of increased housing requirements based on a prospective need in a largely rural area. I believe that that has led to much greater development than what otherwise would be the case. I hope there will be greater coordination between

various agencies of State government in this administration. Would you care to comment on that in particular?

MR. BIERBAUM: Well, only that the relationship between COAH and the State Plan have been -- is an issue that has been flagged as one that the Smart Growth Policy Council certainly will be taking up and a position formulated on the part of the administration.

SENATOR LANCE: And I hope in those discussions another aspect of this whole issue, another piece of the puzzle, is the fact that we now operate in New Jersey under a builder's remedy. From my perspective, that is inappropriate. We should do a better job in that area as well. Do you believe there will be legislation suggested by the administration on this issue?

MR. BIERBAUM: I am not prepared to say at this point. I think in part this is a dialogue among the three coequal branches of government, and we're waiting to hear from the courts right now.

SENATOR LANCE: On the issue of COAH, yes.

MR. BIERBAUM: Right.

SENATOR LANCE: Are you housed in the Governor's Office?

MR. BIERBAUM: Yes. The Office of Policy within the Governor's Office.

SENATOR LANCE: Another piece of the puzzle from my perspective is revaluation of urban municipalities. Can you tell me when was the last time there was a reassessment in the City of Newark?

MR. BIERBAUM: I believe it was in the late 1950s or early 1960s.

SENATOR LANCE: Yes. Unlike Senator Torricelli, I can't claim that I remember that period. I was alive, however. (laughter)

It impresses me that any municipality that hasn't revalued in over 40 years is doing a disservice not only to itself, but to the State as a whole. I do not understand how fundamental tax policy can exist when in several urban centers there has not been revaluation in more than a generation, almost two generations. And that, of course, is violative of the law. I would hope that this administration, as a new administration -- and I'm certainly not pointing fingers at this administration because it has just taken office -- but I hope the administration would look to that issue as well.

I have in the past sponsored water quality legislation. The governor has just taken an initial step in that regard, a fine initial step. But I hope, in your coordinating effort, you look as well at strengthening the governor's initial executive order in this regard. It is a fine first step, but in my judgment, we need strengthening of that. I think that would be another way to skin the cat. Are you looking at that aspect of this whole problem?

MR. BIERBAUM: Well, frankly, Senator, in terms of resources -- the natural resource protection that the Smart Growth Policy Council identified in its first session, there was special focus on water resources and the situation with the drought was the way it was framed. So water resources are an important concern.

SENATOR LANCE: It goes well beyond the drought. It goes to no net deprecation of quality of water for development. I hope to work with the administration in that regard.

Since Mr. Fischer (phonetic spelling) has just entered the room, I hope to work with him personally in that regard.

Thank you, Mr. Chairman.

SENATOR SULIGA: Thank you very much, Mr. Bierbaum.

MR. BIERBAUM: Thank you.

SENATOR SULIGA: Jeff Tittel, five minutes.

J E F F T I T T E L: Thank you, Senator Suliga.

By the way, I thought when he said silo, there used to be a bar in the center of Phillipsburg called the Silo.

SENATOR LANCE: In Legislative District 23.

MR. TITTEL: Yes.

SENATOR ADLER: Four minutes left.

SENATOR SULIGA: Now, you're using all your time, Jeff.

MR. TITTEL: I'll be quick. New Jersey--

SENATOR SULIGA: Five minutes.

MR. TITTEL: --as you know -- I'll just call you at home and that will really drive you nuts. New Jersey, as you know, is denser per square mile than Japan or India. For many years, the only thing denser has been our political leaders who just don't get it -- that sprawl is effecting the state of New Jersey.

SENATOR SULIGA: Now we see why he's not an effective lobbyist.

MR. TITTEL: That's right.

But sprawl is effecting New Jersey in so many different ways, whether it's traffic, air pollution, high property taxes, it's impacting our

economy. It's impacting our quality of life. And unless we start taking some greater leadership in action in the long term, it could sink this state, both economically and environmentally. That's why it's such an important issue, and that's why I'm glad that I'm here to testify. We've had State Plans since 1935, and we've had some wonderful ones. They've sat on shelves, and they've done nothing. That's been one of the problems. Unless we go forward and actually implement a plan of some type, all the State Planning Commission is, is nothing more than a dance band on the *Titanic*, as New Jersey gets overwhelmed with sprawl.

I'm probably the only thing that's sprawling out quicker than the State of New Jersey, and we're losing open space at a rate higher than any time in our history. The Legislature can also do things. I can go on for an hour and say what's wrong with previous administrations and what the governor should be doing. I'll be talking to them, and I have been talking to them on it, but-- There are things that this legislative body could be doing right now. I think that's where I want to focus. We need to give more tools to municipalities to help deal with the issues of growth and to help manage growth better and also when and how to say no for development.

One of the things that have been kicking around for 25 years in the state is just something as simple as a piece of legislation, like S-505, which is transfer of development rights, to give towns the ability to try draw a growth boundary and try to have a receiving area for development, as well as trying to have a better preservation area. There's a bill kicking around on trying to do better coordination between towns when it comes to one town putting their bad

development on the border of another town. Senator Inverso has got a bill on dealing with border wars.

Impact fees -- another issue might be time growth, when appropriate, where you can hold back development in a section of your community as you get the infrastructure in place, not something that may be used more for a moratorium. Having towns do build out as part of their master plan, so they actually know what they'd zoned for and what they've planned for. Because many times when-- There's a bill, S-1104, that talks about build out. Many times a developer comes in and they realize, "Oh, my God, we zoned for this? Oh, we can't do this." And then they want to change the zoning and the developer gets mad and he sues. The town gets mad. Maybe if towns did better planning because they knew exactly what they were planning for going in, it might help them do better planning in the long term. Protection of steep slopes, S-630. Having buffers around streams and reservoirs, that's another bill that's been kicking around.

So those are some of the things that are out there right now that we could be working on. There's a whole bunch of other areas where we need to start focusing. The one that bothers me the most about the State Plan is that it talks a lot about urban areas, and it talks about rural areas, but it's those communities in between, those that are urban or older suburban, that actually have the capacity to grow where we're not investing in. Places like a Clifton or a Linden, which does have big open space-- Well, it does have lands that are underutilized that could be redeveloped at a higher density. But we have to invest in that infrastructure, and we need to look at ways of funding those infrastructure improvements whether it's mass transit and Light Rail.

I was on the Union County Transportation Committee 20 years ago and we talked about Light Rail in Union County. Twenty-five years ago, it's back again. It's the same line. We need to start investing in that so we can have the growth in places like a Roselle. We need to do something about brown fields to find other funding sources to cleanup brown fields and to get those places back into productive use, as well as looking at ways of changing some of the redevelopment laws dealing with how HMFA and our redevelopment agency and EDA do funding to coordinate things, so we invest in places like a Roselle or an East Orange or a Clifton instead of keeping investing for more sewers and more sprawls out in places that shouldn't get the growth. Because as we grow in some of these areas, it also impacts our air and water quality and it takes away the capacity for growth for urban areas. So it's really about changing our priorities and refocusing where we put our money, but also where we put the effort as this legislative body goes forward in trying to give towns--

SENATOR SULIGA: Okay. Thank you, Jeff.

MR. TITTEL: --tools-- I'm finishing up. Trying to give the towns the tools they need and the resources that they need to have better growth, better development.

Thank you.

SENATOR SULIGA: Thank you.

I see Mike Egerton is not here. I don't see him.

Carol Anne Giancarli from the Builders Association. (witness declines from audience) You're not scheduled to speak. Oh, okay. I have you on the list. All right. No problem. I don't know why you were down here.

Barbara Lawrence, New Jersey Future. Barbara.

BARBARA L. LAWRENCE: Thank you, Senator.

SENATOR SULIGA: You're welcome.

MS. LAWRENCE: I'm going to give you -- you must be tired of listening to us -- so I'm going to give you something to look at.

SENATOR SULIGA: Okay. That's fine. That's fair.

MS. LAWRENCE: I want you to look at these maps a little bit.

Thank you, gentlemen. What a pleasure it is to be here in a hearing like this, because as you know New Jersey Future has been around for 15 years, and this has been our reason for being. I believe this is the first time I have ever been called to the Legislature for a hearing on this topic.

SENATOR SULIGA: Thank Senator Adler, it was his idea.

MS. LAWRENCE: Well, thank you, Senator Adler, but thank you, Senator Suliga, for chairing and for agreeing to hold this hearing.

We have lived through a lot of administrations in the years that we've been doing this, and we've heard a lot of wonderful words and seen the State Plan be written and revised, but we have seen very little change on the ground. What I just wanted to show you, in my few minutes that I have here, is what it looks like in New Jersey. What these maps look like. I just want to call your attention to these four maps for a moment and point out a couple of things that for municipalities that are in the wave of sprawl, as it comes towards you right now. They have very few tools to stop that wave. And municipalities that are on the other end in the great wave of disinvestment that's going on in New Jersey, they have very few tools to revitalize their communities. Not every municipality is a Red Bank with a mayor that knows how to break the rules.

Because right now what smart growth takes in New Jersey is breaking the rules. It means throwing out your master plan and doing the old way of doing business. It means having the courage to hire planners and having the money to hire a staff that has new ideas. It means having the time and the energy available to come down to Trenton to beat on the Department of Transportation, to beat on the Department of Environmental Protection, and say, "No, we don't want the old way. We have a new vision."

So, if you look at these four maps that I have, one in terms of the change of property tax rates, this is a pretty startling map that shows you how much property taxes have been going up in New Jersey in--

SENATOR SULIGA: Excuse me, just so I understand. Is this by city?

MS. LAWRENCE: Yes. This is municipality.

SENATOR SULIGA: It's municipality. So each -- okay.

MS. LAWRENCE: Those little lines are municipalities, and your district is outlined on that map.

SENATOR SULIGA: Oh, very good.

MS. LAWRENCE: Yours and those of your colleagues. But, if you can see, that there are municipalities in this state, a number of municipalities -- anything that's in red, the property tax rates in the 1990s went up more than 40 percent in those municipalities.

Sprawl doesn't pay. It also doesn't pay -- it doesn't pay when you are on the receiving end and it doesn't pay when the investment is moving out of your municipality onto those other open lands.

If you look at the next map, the percent of open space that was developed. The darkest red are municipalities that developed 20 percent or more of their open land. This was between '86 and '95. We don't have current numbers on this. If you've looked around, you know that the kind of development that's taken place in the times since 1995, this map would be a lot darker and there would be a lot more places filled in with those colors. We are rapidly losing our open space at a rate unprecedented in this country.

Employment centers -- why do we have so much traffic. If you look at the places where employment used to be -- Newark, Elizabeth -- those places absolutely lost jobs in the 1990s. We moved all the jobs out into what Jim Hughes (phonetic spelling) at Rutgers likes to call the wealth belt. That's part of the paving over the land. And how do you get to those jobs? You can only get there in single-occupancy vehicles.

And finally, the last map really shows the change in per capita income in New Jersey. I think this is extraordinarily important to keep in mind when we're talking about smart growth and being in this kind of state that we're in. This is real per capita income in the '90s. It declined in many large municipalities in the state. There is that very wealthy section of central New Jersey, but we're not doing all that well under the current system.

So, in my brief time here, I just want to show you that when I give a PowerPoint presentation I frequently end with a quote from Moms Mabley that says, "If you keep on doin' what yer doing, your gonna keep on gettin' whatcha got." I'm afraid in New Jersey that if we keep on doing what we're doing, we are going to continue down this spiral of abandoning places and people who can't afford to move on and paving over the rest of the state.

There's an estimate from Rutgers that says that within the next 30 years we're going to build out all of the available land in New Jersey. We can't afford to do that.

I just finally want to end by echoing a couple of things that came out of Mayor McKenna's testimony for me that is very important for the Legislature to keep in mind, that it's not just where we grow, but it's how we grow.

Some of the issues that come up in the growth areas outside the Pinelands are more about how we've grown in those towns than it is where, and how we actually shape the development on the ground if roads intersect. They're very small little design details, the kinds of things that Mayor McKenna talked about that can make the real difference in the quality of life in New Jersey. Municipalities cannot do this on their own. They need your support.

I want to echo Jeff Tittel in saying we'd be delighted to all come here and urge you to move the transfer of development rights legislation that has been sitting around here for a very long time.

Thank you very much.

SENATOR SULIGA: Thank you, Barbara.

Barbara, can you get me larger copies of this?

MS. LAWRENCE: I can get you those. Let me show you one other thing.

SENATOR SULIGA: No. No. Don't show me anything else, just get me larger copies of this. (laughter)

MS. LAWRENCE: No. No. No. A year ago we published this book and it is, *Twenty Ways to Move New Jersey Toward Smarter Growth*. Those maps are in here. A lot of other ideas are--

SENATOR SULIGA: Okay. Just get me the larger copies.

MS. LAWRENCE: I will get you larger copies. I can get you copies. We can paper this room with maps.

SENATOR SULIGA: No. No.

MS. LAWRENCE: All right. All right.

SENATOR SULIGA: Any questions from the Committee?

MS. LAWRENCE: Do you like all of them, or do you have one you really like?

SENATOR SULIGA: No, I like them all.

MS. LAWRENCE: Okay. All right.

SENATOR ADLER: Just a follow-up question. You heard Jeff mention S-505, S-1104, S-630. He mentioned Senator Inverso's bill, but not by bill number. Are there other bills you think are already there that would help foster a rationale growth process in the state?

MS. LAWRENCE: I think that's a very good list that Jeff gave you. I don't have a list in front of me of the other bills that are pending right now. My highest priority would be the transfer of development rights legislation.

SENATOR ADLER: Is that 505 or is that the Inverso bill?

MS. LAWRENCE: That is Senator Martin and Senator Bagger and probably Senator Lance. I mean, it's a good bill.

SENATOR ADLER: He's so good.

MS. LAWRENCE: It's a good bill. It must have Senator Lance on it. It's a bipartisan bill, yes.

SENATOR ADLER: Is that 505?

MS. LAWRENCE: It's not a magic bullet. I think the one thing that I hear when I listen to all of this going on here today, there is no one magic bullet. I wish there were. This Committee and your colleague committees can be busy for a very long time. If you're worried about unemployment, you don't have to worry. You could move smart growth bills for a very number of years and deal with a number of these specific issues.

Any other questions?

SENATOR SULIGA: Thank you, Barbara.

SENATOR LANCE: No. I have a--

SENATOR SULIGA: Oh, I'm sorry. Senator Lance.

SENATOR LANCE: Yes.

MS. LAWRENCE: Well, now after I've said something nice about him, maybe he'll ask me an easy question.

SENATOR LANCE: Thank you.

SENATOR SULIGA: The first bill I ever had signed into law was the Lance/Suliga County College Ethics bill. So, he does have good legislation.

SENATOR LANCE: Thank you, Senator. We call it the Suliga/Lance bill. (laughter) Especially in this Committee. (laughter)

MS. LAWRENCE: Mr. Chairman, yes.

Mr. Lance, Senator Lance, your Honorable.

SENATOR LANCE: As I stated to the administration, I think the proof of the pudding will be if, in four years, the map changes in color, and I fear it will.

MS. LAWRENCE: This is not Democrat/Republican you understand? This red/blue here.

SENATOR LANCE: I understand. Do you think that I should consider, perhaps not this year, but in a slightly better economic time, another constitutional amendment to dedicate more revenues to open space?

MS. LAWRENCE: I would like to see a better connection made between the purchase of open space and the tools that we have for managing growth. The question that was directed to Secretary Kuperus about the role of agriculture and smart growth -- one of the things we're doing right now with our agricultural preservation program is it's very checkerboard. You can't maintain a viable agricultural industry that way. So that we need more tools that will bring together the money that we have to purchase land and the planning tools that will get us the kinds of municipalities, the kinds of centers in growth and modes of growth that we need. The consequences now is-- I think there is at the moment-- There's never going to be enough money, Senator Lance, to buy all the land that we need to do. So we need to supplement that with some additional tools that the State needs to have and that the municipalities need to have.

SENATOR LANCE: Thank you. Do you think we should address legislatively the tension that exists between that program and COAH, or should we just await interdepartmental--

MS. LAWRENCE: Well, I think the court is about to rule. We have suggested an alternative. Like you, we are not supportive of the current system of -- designated the number of units that each municipality has because--

SENATOR LANCE: Because of the perspective need?

MS. LAWRENCE: Well, no, because of the black box. I don't think really anyone really understands it. Suddenly, there is this complicated system that comes out. Because we would like to see every municipality have an obligation to provide affordable housing as they grow as a standard percentage. This is done in Montgomery County, Maryland, and it's been enormously effective. It's produced a good deal more affordable housing than we have without producing sprawl.

So, if you're going to build, you have an obligation. Everybody has the same obligation to provide a percentage of that development as affordable. It takes away the black box. It levels the playing field every municipality handles affordable housing and development in the same ways. It becomes part of the package. That's just the way you do it. It requires much less bureaucracy and this kind of system that we have now, which I think -- not only does it not provide enough affordable housing, but it also spurs sprawl.

SENATOR LANCE: Clearly.

Thank you.

Thank you, Mr. Chairman.

SENATOR SULIGA: Thank you.

Thank you very much.

Paul Chrystie, Council on Affordable Housing and the Environment. (*sic*)

PAUL CHRYSTIE: It's the Coalition For Affordable Housing and the Environment just so that -- Senator.

SENATOR SULIGA: Yes, it is. See, the problem is I think I need reading glasses. I apologize. Yes, it's coalition.

MR. CHRYSTIE: That's okay. Thank you for the opportunity to be here today.

There's no one key to smart growth. As you know, implementing a smart growth agenda requires that we do a myriad of things better than we do today. Jeff talked about tools for municipality, and we would echo S-505, the transfer of development rights, as one of those tools.

We also would suggest responsibilities of municipalities. And in that way, we would recommend that municipal master plans be consistent with the State Plan to promote that responsibility. Sustainable development requires a mix of housing options throughout the state and the Council on Affordable Housing's upcoming third round, fair share methodology, should ensure that mix. The coalition has recommended to COAH a growth share methodology, as Barbara explained, that bases a municipality's fair share obligation on its plans for growth rather than the black box out of Trenton. We think that such a methodology would be easier for municipalities to implement, would better integrate affordable housing into overall municipal planning, and would provide that a mix of housing needed for development to be sustainable be created.

The one digression to disagree with Senator Lance. Since Mt. Laurel II, New Jersey has developed Laurel Park 650,000 housing units and untold millions of square feet of nonresidential development and a little over 25,000 affordable units. To suggest that those 25,000 affordable units are

causing the construction of 650,000 market rate units, we don't think the argument that affordable housing causes sprawl adds up. The numbers just simply aren't there.

Sustainable development also requires that we revitalize cities and older suburbs. To do that, we must implement policy-based strategies, not just high-profile, big ticket items that we hope will magically transform the areas around them. Aquariums and art centers play a role in urban redevelopment, but if they are the entire strategy, that strategy will fail.

The State's spending and regulatory decisions need to combat sprawl, not promote it. For example, the Environmental Infrastructure Trust projects before you today, do they promote redevelopment or do they promote sprawl? My guess is that they were not analyzed that way. Someone from the trust once said to me, "We've never not funded a project that's ready to go." Well, that's hardly a screening process that lends itself to combating sprawl. And hopefully, Commissioner Campbell's suggestion that that will begin to be part of the screening as to whether those projects promote sprawl or not will mean a change in direction.

But if the State's truly interested in stopping sprawl, we need to review all of our spending -- our transportation spending, our environmental spending, our business incentive spending, other programs -- to see whether they're promoting sprawl or whether they're promoting redevelopment. Similarly around regulatory decisions, especially around water resources, we need to look at the impact on development patterns.

And finally, New Jersey must reduce its overreliance on property taxes. As long as the State maintains a tax system that promotes the ratables

chase, New Jersey is going to have sprawl. It sounds like a daunting challenge, but it's actually a series of very achievable tasks, and we look forward to working with you to achieve them.

SENATOR SULIGA: Thank you, Paul.

Any questions from the Committee?

SENATOR ADLER: I guess I do. I want to follow up on something Senator Lance has asked a couple of the previous witnesses. Is there a way to strike a balance between meeting the affordable housing obligation and avoiding the builders remedy that causes sprawl in a lot of our suburban and exurban communities?

MR. CHRYSTIE: We think that the way to do that is with a formula called growth share. And what that does is, it takes a portion of a municipality's projected residential and nonresidential growth and says that a certain percentage of that needs to be affordable. If a municipality decides to grow slowly, that's their choice, and they'll have a lower number. If a municipality decides to grow more quickly, they will have a higher number, but it's all based on local planning. And instead of the bifurcated process that we have today where we decide how much do we want to grow and then look at, oh, now I have to do affordable housing, you get a more integrated planning system in which how we're going to incorporate that affordable housing is part of the process from the start. So, not only do we think you'll end up with more affordable housing, more environmentally sensitive affordable housing, and less sprawl, we think the municipalities will have better control of their own futures instead of it coming out of a system that no one really understands how those numbers were created. You're never going to get away from the builder's remedy

because the Fair Housing Act envisions that as the enforcement mechanism. Because it's not mandatory, that's how we enforce the law, for better or worse.

But hopefully, we think if you adopted growth share, the builder's remedy would be rare.

SENATOR ADLER: Is what you're describing there, what Montgomery County, Maryland has committed, or it's similar to that, or is it a different concept?

MR. CHRYSTIE: There are differences in the details, but that's the general idea -- is if you're going to grow, you have to accommodate all sorts of growth. You can't pick and choose. You would go into the process knowing exactly how much affordable housing you were responsible for, creating opportunities for, based on what you envisioned your growth to be over, in this case, we're talking about a period of 10 years, a period of substantive certification.

SENATOR ADLER: Is any county or any state doing it better than Montgomery County, from your perspective? Is there any other model we should look at other than, but for the details of Montgomery County, Maryland?

MR. CHRYSTIE: I think that's probably the only other model out there.

SENATOR SULIGA: Is that all, Senator?

SENATOR ADLER: I'm exhausted.

SENATOR SULIGA: Okay. Thank you.

MR. CHRYSTIE: Thank you.

Michele Byers.

MICHELE S. BYERS: Good afternoon.

SENATOR SULIGA: Good afternoon.

MS. BYERS: I'll try to make this as quick as possible. I appreciate very much the opportunity to come speak to you today.

I did submit a written statement that you all have copies of, and I'll summarize it.

SENATOR SULIGA: Well, hold on. I don't think we do.

MS. BYERS: So I will summarize that as quickly as I can.

SENATOR SULIGA: Thank you.

MS. BYERS: I'm the Executive Director of New Jersey Conservation Foundation, a 42-year-old land conservancy and also for the past six years have been serving as the Vice-Chair of the State Planning Commission. I spent quite a bit of time in that role on the State Planning Commission working on cross acceptance and the rewriting of the first version of the State Plan, which was adopted in 1992.

I want to make a few recommendations as to what -- responding to your requests for this hearing as to what smart growth might mean and what we really need to do to implement a smart growth strategy in New Jersey. One of the distinctions I wanted to make is that we need four basic things, and they've been touched on by everyone who has spoken to you today. We need a plan. We need to have a regulatory program in place that supports the plan. We need to have a tax policy system in place with property taxes and other taxes that are supportive of the plan's outcomes. We need all of our spending, our financial

investments, our budgets, to be in line with the plan. Those are four elements.

I think historically you heard today that we've had a plan that goes back to the '30s. We adopted a very comprehensive plan in '92 that was updated just most recently in 2001. So New Jersey has been very good at planning. We have a very good State Plan. We do need to make some improvements to it in terms of the maps that you've heard about today. But what we haven't been good at in New Jersey is bringing in these other factors into alignment. Our permitting and regulatory programs are not in alignment with our State Plan. Our spending is not in alignment with the State Plan. If we really want the outcomes of rebuilding our cities and protecting our rural areas, our spending plans right now through our budgets and economic incentives, for instance, don't line up with the State Plan.

So that the premise is that all four of these need to be in alignment. In terms of planning, you've heard today -- I just wanted to emphasize again how important it is in New Jersey as a Home Rule state that we get good tools in the hands of local government. And also, through this planning process of bringing towns into an alignment with the State Plan, which we call plan endorsement, that there be incentives for towns to go through that process and that we have the capacity within the Department of Community Affairs to deal with those applications. And that is going to require an increase in capacity of staffing at the moment, through the Office of State Planning, which is now part of the smart growth office.

Things that the Legislature could do to help provide more support to local governments have been mentioned already, the transfer of development

right bill, Senate Bill No. 505, the time growth bill, Senate Bill No. 435. Both of those would be very helpful to give tools to local governments to do good planning. We need to support towns that are doing good planning and provide backup to them when they get sued. The smart growth executive order that was just sent out by Governor McGreevey is excellent in that regard and there are a lot of pieces if we implement that executive order that will pull together the comments that I'm making here.

I ask you to continue to support the smart growth planning grants that go through DCA, because I think those are ways that local governments that don't necessarily have the ability can get grants to do better planning. But those need to be tied into an outcome, that is, at the end of the planning grant, that town's master plan is consistent with the State Plan. It can't just be a grant to do smart growth in general. It needs a specific outcome.

In regulation, Commissioner Campbell spoke today about the importance of bringing into alignment some of the regulatory programs we have, especially for environmental protection. That would go a long way to helping implement the State Plan. Where sewers and other infrastructure goes is where development goes, and those kinds of decisions are what's driving sprawl.

Having good clear regulations that provide incentives for where growth should go and disincentives for where growths should not go are very important. If you look at the Pinelands as an example, those regulations are clear. I know changes happen. We've heard the discussion about that. But for the most part, it's very clear, very predictable to the development community in the Pinelands as to where they go to put their investment.

Tax policy -- we've all heard quite a bit about the ratables chase and how destructive that is for local governments and what the kind of results it's yielding to us in terms of sprawl. I just wanted to support the efforts of Senators Adler and Martin with Senate Bill No. 478 to create the constitutional convention. I think that kind of a bold initiative is needed to address one of the primary drivers of sprawl that no one wants to deal with. I mean, every commission I've been involved in, every discussion has always pointed to the property tax and, no, everybody wants to set it aside because it's too big, but it really has to be addressed.

Financial investments -- we really do need to take the mantra of fix it first to DOT and all of our agencies and rebuild. The real assets that we have in this state are cities. The final piece of financial investment is funding for open space and farmland preservation. That's our green infrastructure. New Jersey is not going to continue to be the kind of place we want to live in if we don't protect our current lands and keep acquiring and building parks and open spaces and preserve lands for the future. I would urge you to support Assembly Bill No. 2419 to restore the watershed moratorium on State aide to municipalities that have watershed lands that are key to protecting our water supplies, particularly in the highlands and also urge you to be a guardian and a gatekeeper to our open space money and make sure that it doesn't get diverted to other uses.

I know we're in a tight fiscal crisis right now, but at the moment, we did lose \$20 million under FY '02 that did go out of open space preservation. And at a time when we're losing so much in the way of natural resources, we simply can't afford to have that kind of loss of those moneys any further.

So that's it. I thank you very much.

SENATOR SULIGA: Okay. Thank you, Michele.

Any questions from any members of the Committee? (no response)

Seeing none, Dave Pringle, New Jersey Environmental Federation.

DAVID PRINGLE: Thank you, Mr. Chairman.

I will reduce my remarks because a lot of what I wanted to say has already been said by other members of the environmental community. I think I'll talk largely about the impacts of sprawl in terms of water, as that is my organization's number one priority, and some of the legislation regulations that have occurred in the last six months and evaluate that a bit, as well as talk about -- make some recommendations of some things this Committee and the Legislature more broadly should prioritize.

According to the DEP, every single waterway is threatened due to sprawl. Sprawl is killing lakes. It's increasing the expense of our tap water due to the increased treatment costs. Levels of sprawl-related contaminants, disinfectant byproducts, including chloroform that have been linked to cancer, miscarriages and birth defects in tap water are at levels of concern throughout this state from New Jersey American's intake down in South Jersey to Passaic Valley and United Water up in North Jersey, including smaller systems like Brick in Ocean County. All of this is directly related to sprawl.

At the same time these contaminants are at levels of concern, on some places they are significantly increasing, EPA is increasing the scientific knowledge about these types of contaminants and have repeatedly over the last few years lowered that standards. So the levels in our water are increasing at the

same time the acceptable standards are decreasing, and it's becoming an increasing problem.

Some of the far-reaching studies that have documented this problem have actually been done by the Center for Disease Control using about 50 towns in four north Jersey counties as a study linking trihalomethanes to birth defects and miscarriages in pregnant women.

With that said, let me talk about some of the steps that have occurred in the last six months, review some of those actions, and again, make some suggestions for some immediate priorities for the Legislature and the administration. The governor has taken several promising steps in the first six months of this year. The Assembly to a lesser degree has taken some positive steps. And unfortunately, I'm sad to say, the Senate has taken even fewer positive steps in the last six months. The governor's executive order earlier this year significantly raises the profile of smart growth, as well as the governor's accountability to it. One of the notable things is they encourage the attorney general to provide legal cover for towns that are being sued for employing a variety of smart growth tactics.

In addition, the governor's budget maintaining funding for the DEP's core of regulatory programs, given the current budget gap and given Governor Whitman's history of hitting DEP first not last, funding the core regulatory programs, I think, is clearly refreshing and heroic. The enforcement program has been strengthened, and so we're overall very pleased with the direction in the smart growth principles that the governor is employing. However, we are concerned with the \$40 million to \$50 million that has been either diverted or proposed to be diverted of Green Acres funding in the first six

months of this year, as well as the failure of DOT to appropriately prioritize State resources going to the fix it first program.

Third, and the most significant thing on the governor's front, has been his Earth Day announcement to increase protections of critical water resources. That initiative is a direct result of legislation sponsored by Senator Lance, Senator Adler, and Senator Matheussen last year. We are particularly pleased with that as a first step in the right direction. There's a number of other water regulations the administration is moving toward implementing that will be a significant step forward.

In terms of the Legislature, there's a number of bills that have gone through the process or going through the process or have been introduced but not have yet to be prioritized, and we suggest they should be. Most notably this Committee and Senator Smith, in particular, should be commended for sponsoring S-889, and we are looking forward to the Assembly passing that shortly.

There are two bills that are in this Committee from Senator Furnari -- S-692 and S-630 that would provide buffers around water supplies and promote smart growth along steep slopes so that we do a more effective job protecting our waters. There are several bills where, unfortunately, the Senate hasn't taken what we see is appropriate action while the Assembly has. S-1301 requiring DEP to implement the -- update the water supply management plan. There's Assembly language that was taken out that would require DEP to take into consideration ecological impacts, not just amount of water coming out of peoples' taps. We think that is something that is significant. It clearly falls within the category of smart growth.

SENATOR SULIGA: Dave, sum up.

MR. PRINGLE: Okay.

SENATOR SULIGA: We're over--

MR. PRINGLE: Fair enough.

A couple of other bills are moving through the process that are--

SENATOR SULIGA: Sum up. Don't go through any more bills.

Sum up.

MR. PRINGLE: I will submit written testimony, but I would just like to say that there are a series of bills that are moving where we think the Assembly is moving more in the right direction, and we encourage the Senate to work with us and the Assembly to make the appropriate corrections.

SENATOR SULIGA: Okay, thank you very much.

No questions? (no response)

We have Larry Parker, New Jersey Apartment Association.

L A R R Y P A R K E R: While you're getting my written materials there, Senator Suliga, Senator Adler, thank you very much for the idea of the hearings.

SENATOR SULIGA: Yes, we let everyone speak, but you are going to limit it to five minutes because you weren't an invited speaker, but the hearing is open to anyone that wishes to speak.

MR. PARKER: No, I will keep this very brief--

SENATOR SULIGA: Thank you.

MR. PARKER: --because you do have my written material. We certainly thank the Committee for hearing the New Jersey Apartment Association this afternoon. The green publication that you have there is a

publication by our chartering body, which is the National Apartment Association in Washington. It's entitled, "Growing Smarter With Apartments Toward More Liveable and Prosperous Communities." It provides a lot of statistical information.

Basically going with a number of the folks who've testified earlier about how we in the department industry feel like we can contribute to smart growth efforts, keeping in mind again, we in the apartment industry believe that smart growth does not mean no growth, that there's always going to be a need in a growing state such as New Jersey for more housing, especially more affordable housing.

I also list in our written testimony several examples, especially in each of your districts, of apartment communities that we feel like comport with the examples of smart growth. So I would encourage each of you as you tour your local districts, if you're not already familiar with those, to take a look. We're certainly proud of them at NJAA, and we really feel like they can make a positive -- they show the positive impact that the apartment industry in New Jersey can make in contributing to smarter growth.

I wanted to, in being very brief, mention four specific initiatives that are going on right now at the State level, one that we're very supportive of and three that the association has some concerns about on the smart growth issue. One, first of all, to just restate our strong support of the Department of Community Affairs rehabilitation subcode. That is an initiative that has poured millions of dollars in investment, not only residential as far as apartments, but as far as single-family homes and as far as commercial investment into the older

neighborhoods of our state. It's an initiative we support, and we hope that the Legislature and certainly the administration will continue to support.

There are a couple other initiatives that the association is concerned about, however, that we feel do have a smart growth impact. Number one is a rule-making procedure that's going on right now at the Department of Community Affairs that we believe may ultimately need a legislative remedy. And that is a rule making that would require elevators in apartment buildings of two stories or greater. This is a rule making that DCA is implementing under a contempt of court order from the Appellate Division of the Superior Court. DCA acknowledges in its own rule-making proposal "that building designs that are currently acceptable, i.e. two-story apartment buildings, could become cost prohibitive." To the NJAA, smart growth should not mean no growth, but to us that scenario could occur without legislative action to exempt two-story apartment buildings from this elevator requirement, as well as the grandfather as legal two-story apartment buildings now in the development pipelines that have been designed without elevators. So I would just bring that to not only the Committee, but the entire Senate's attention.

The next issue I just want to discuss very briefly is a very small part. And again, understanding as many of those who testified have mentioned that the State is in very dire fiscal crisis. As part of the proposed increase in the corporate business tax, there is one issue that we in the apartment industry are concerned about and that is the increase in the CBT on real estate investment trusts. Much of the new apartment development in the state and much of that is in-filled development in brown fields, and other development that certainly comports with smart growth principles.

I have included an article from a newspaper that is an example that has been financed by REITs. Certainly our -- Jim Arbury, who is we believe the apartment industry's leading tax expert, said, "The tax increase that the administration proposes could probably stop all or at least most REIT development in New Jersey." That's not only apartment development, obviously, but single-family development, commercial development as well. This is a provision that even the administration believes would garner no more than \$3 million for the State Treasury. So we believe it's something that you should -- in the enabling legislation that, of course, Senator Kenny is sponsoring that you should consider very carefully.

SENATOR SULIGA: Okay, Larry, sum up, please?

MR. PARKER: Absolutely. And actually, my last thing--

SENATOR SULIGA: No. Sum up.

MR. PARKER: Okay. The issue that Senator Gormley mentioned, there is an initiative from the American Planning Association that would encourage municipalities in the state to enact moratoria such as the one that Senator Gormley recently proposed, and we at the Apartment Association oppose that.

Thank you.

SENATOR SULIGA: Okay, thank you so much.

Did you ever get your replacement for your Executive Director?

MR. PARKER: I was about to mention actually. Our Executive Director, Nathan Slovin, is off to a brown field of his own. He's going to a new job in Arizona.

SENATOR SULIGA: Right.

MR. PARKER: And we do have an new executive director. He'll be coming in July 1. He's actually from the -- Mayor McKenna I think was here before -- he's actually from the Borough of Red Bank. He's an attorney.

SENATOR SULIGA: Thank you.

Senator Lance, do you have any questions? (no response)

Tim Dillingham.

TIM DILLINGHAM: Thank you, Mr. Chairman. I want to thank you and Senator Adler, Senator McNamara for holding the hearing today.

The testimony today shows that there are a lot of creative answers out there to the issues that are opposed by growth and ill-planned growth and finding ways to more creatively and then effectively address a lot of the concerns that are out there. So I think -- the sign, I hope, is -- signal is that we're going to get serious now and find some answers to these questions. And that is clearly the critical piece of this puzzle.

I would just touch on a few aspects of planning in that I think that what you heard from the Commissioner, which was very heartening, is that the authorities, the basic authorities to do a lot of what needs to be done are there already, that need to be applied in a different way and that the need for new tools, new legislation may deal primarily with the portion of this puzzle that is the focus of municipal attention.

I think in terms of planning we need to look to -- basically on the capacity of the landscape and the environment and as well as our communities to support it. The depth of the drought clearly shows us that there are water resource problems both in terms of how we distribute it, but also in terms of its fundamental availability.

The Littoral Society, Clean Ocean Action of St. Barnegat Bay have put together a report, which I will leave for the Committee to read, that documents a whole other series of danger signs about our overdevelopment of the state and the path we're on. We clearly need to use capacity as a touchstone. I think the other lesson I heard today is that our planning and regulatory programs need to be integrated and comprehensive. We can't pursue both preservation and redevelopment or development independently, and they need to touch on a whole series of issues. Not only do we need to set standards based upon a plan, but we need to provide the funding.

Just for the Committee's information, I think the issue in Atlantic City and Atlantic County in the growth areas was much more one of running out of money, and there was a bond act proposed in the early '90s to provide money to support the implementation of the plan which was not passed by the Legislature. So, clearly, those are pieces that need to be in place.

I think that as we go forward on smart growth elements we have to wrestle with the idea that they need to be required, both on the State agencies and the municipalities. We simply can't allow 567 municipalities and numerous State agencies to function independently, neither the predictability nor the outcomes we seek will be provided that way.

And then lastly, I would say that we need to do the planning on an appropriate scale. We need to pursue these programs on an appropriate scale. Home Rule to the extent that it is intended to convey a control of your own destiny is a myth. The pressures and the activities that are effecting land use throughout the state happen on a scale much greater than a single municipality. There need to be mechanisms of balance, the appropriate rights of self-

determination in municipalities and issues which are their own prerogatives with the broader considerations.

So I look forward to further discussion of -- clearly there are a whole series of changes that could be made in the way that the existing programs are implemented. I think the Commissioner is on the right path with a lot of the things he suggested today, and I think there's great promise in many of the pieces of legislation that were discussed. I think something akin to what Senator Adler proposed last year, a package of bills, to discuss this and to move forward is appropriate.

SENATOR SULIGA: Thank you very much.

MR. DILLINGHAM: Thank you.

SENATOR SULIGA: And finally we have Jim Miller, New Jersey Farm Bureau.

JAMES MILLER: Good afternoon.

My name is Jim Miller. I'm a licensed professional planner, and I have worked with the New Jersey Farm Bureau during the past decade on a variety of matters involving the State Plan.

SENATOR SULIGA: Okay. Excuse me. You are with the Farm Bureau or you are a planner that works for the Farm Bureau?

MR. MILLER: I'm a planner that works with the Bureau as a consultant.

SENATOR SULIGA: Okay, yes, because I didn't have that clear. I just want to make sure I know who you represent. Because it says here representing the New Jersey Farm Bureau, but you're not representing the New Jersey Farm Bureau?

MR. MILLER: I am today, yes.

SENATOR SULIGA: You are?

MR. MILLER: Yes.

SENATOR SULIGA: They've sent you?

MR. MILLER: Yes.

SENATOR SULIGA: Okay.

MR. MILLER: My comments today will address these issues in the context of smart growth policies for the State. The New Jersey Farm Bureau and the agricultural community that it represents have a long record of active participation in State land use planning. The farming community was an active and early supporter of such innovative planning practices as clustering, and the purchase of development rights as measures to preserve farmland and rural character.

We remain active proponents of careful, low-density rural development patterns using these techniques. We also welcome the opportunity to comment on the role of infrastructure in the implementation of these techniques and as a tool for attaining the smart growth policies of the State Development and Redevelopment Plan. The comments that follow will provide our recommendations for future state actions on these issues.

First, we continue to support the easement purchase program through the Garden State Preservation Trust and related funding sources. The purchase of development rights remains an ideal means of preserving agricultural land. It protects farmland on a permanent basis while providing a fair and equitable means of compensating the farm property owner for the development potential of the land. But the easement purchase program needs to be

supplemented by other planning tools that protect and enhance agriculture while providing for sound and stable rural communities.

These tools include the various density transfer systems that allow the development potential of large areas to be concentrated in compact communities advocated by the State Plan. In their study, “The Cost and Benefits of Alternative Growth Patterns: The Impact Assessment of the New Jersey State Plan,” the Bloustein School of Planning and Public Policy found that a shift from trend land use patterns to compact rural development patterns would reduce the rate of farmland conversion to suburban uses by 54 percent. To achieve these savings, the infrastructure needed to sustain the rural hamlets, villages, and centers proposed as alternatives by the State Plan must be supported and permitted by the State and its administrative agencies. Compact development requires small lots; small lots depend on wastewater and water supply infrastructure.

Wastewater management and planning rules need to be drafted that allow small flow and alternative treatment systems. The permitting process they create should provide for timely approvals and permit innovative technologies. There is a myth that infrastructure induces sprawl. The opposite is true. By sometimes limiting access to sewer water, the State has forced more and more development into large lot sprawl in our rural planning areas. Our analysis has shown that in excess of 75 percent of the farmland in a typical rural community may be preserved by applying these planning tools. This farmland could be preserved while creating stable communities with a wide range of housing choices.

The Rutgers study has shown that the same number of jobs and households will be created in the coming decades under both the trend and plan scenarios. Smart growth should use infrastructure planning to ensure that these households settle into compact and sustainable communities that are advocated by the State Plan.

The long-term preservation of our rural countryside also depends on the vigorous support of the agricultural economy. A farmer who is able to depend on a consistent annual income from the farm operation will be much less susceptible to development pressures and more likely to participate in the easement purchase program and other farmland preservation efforts. In recognition of this fact, the State should continue its support of right-to-farm regulations. It should also strengthen efforts to promote farm-based businesses and to expand the markets for New Jersey farm products, like the ethanol fuel production and selling New Jersey-grown produce directly to public institutions such as prisons, schools, and defense installations. The working farmer will always be the best steward of our rural lands.

Finally, the State should not succumb to the temptation of using smart growth regulations and process to override fairness and sound planning. Smart growth should not be used as a facade for no growth policies that would undercut the status of rural communities. Large lot zoning serves as an example of such an ill-advised policy. It limits access to suburban and exurban housing to the wealthy, erodes and undermines agricultural land values, accelerates the loss of productive farmland and leads to the sprawl development patterns that represent the antithesis of smart growth.

The New Jersey Farm Bureau and the farming community it represents will continue to advocate the alternatives -- equitable farmland preservation programs, limited compact rural development supported by appropriate infrastructure systems, and measures that protect and enhance the states agricultural economy.

Thank you.

SENATOR SULIGA: Thank you, Jim.

Any questions, Senator? (no response)

I'm going to excuse myself, because I've missed a meeting with the governor. I was supposed to be there 45 minutes ago. I didn't even know about it. So, if you could close the hearing for me.

SENATOR LANCE: Thank you. Thank you, Mr. Chairman.

SENATOR SULIGA: Thank you.

SENATOR LANCE: What would you characterize as large lot zoning?

MR. MILLER: There's a range of that that falls within -- but I would categorize minimum lot sizes in the three-, four-, five-, six-acre range as large lot zoning.

SENATOR LANCE: I represent more municipalities than any other senator in the Legislature, 46 of them. Municipalities are going to larger lots for sure. Sometimes 10 acres.

MR. MILLER: Yes.

SENATOR LANCE: I don't have a solution to that. It's permitted under Home Rule, isn't it?

MR. MILLER: I think there's some question as to whether it is permitted under Home Rule. I know that there are challenges going forward to various large-lot schemes throughout the state, and I'm not necessarily in agreement that it would be consistent with Home Rule.

SENATOR LANCE: Fair enough. Is the Farm Bureau currently involved in any of the litigation on that?

MR. MILLER: Yes, they are.

SENATOR LANCE: And where is that, in East Amwell Township?

MR. MILLER: Yes, it is.

SENATOR LANCE: And what was the down zoning there?

MR. MILLER: In East Amwell, there was actually a two-phased down zoning. Initially, it went from a minimum lot size of two acres to three acres, and then from three acres, it went to an underlying ten-acre minimum lot size with the ability under some rather arduous clustering schemes to go to as much as one unit per seven acres.

SENATOR LANCE: Thank you.

Are you an amicus or are you a party to the suit?

MR. MILLER: I was actually an expert witness on behalf of the Farm Bureau.

SENATOR LANCE: Is that in the trial level at the moment?

MR. MILLER: Yes, it is.

SENATOR LANCE: And we'll have a decision soon?

MR. MILLER: I hope.

SENATOR LANCE: I see. It's a very interesting issue, and I don't have a solution at the moment. We do have a statutory scheme in place that

protects farmers' equity at the moment on the open space constitutional amendment.

MR. MILLER: Yes.

SENATOR LANCE: At some point, the enabling legislation expires and there has to be a determination whether it will be renewed.

MR. MILLER: Yes.

SENATOR LANCE: Thank you.

Is there anyone else who would like to testify before the Committee? (no response)

Thank you for being with us this afternoon. This has been very interesting to all members of the Committee, and we appreciate your involvement. The Committee stands adjourned.

(MEETING CONCLUDED)