
Public Hearing

before

SENATE ENVIRONMENT AND ENERGY COMMITTEE

“The Committee will hear testimony from the public on the status of constitutionally dedicated open space funding and on the development of standards governing public access to the waterfront. The public access stakeholder group will also report on their proposals for changes to the public access requirements”

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

DATE: April 21, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Christopher “Kip” Bateman



ALSO PRESENT:

Judith L. Horowitz
Michael R. Molimock
Office of Legislative Services
Committee Aides

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Senate Majority
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Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey



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PUBLIC HEARING NOTICE

The Senate Environment and Energy Committee will hold a public hearing on Thursday, April 21, 2016, at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The committee will hear testimony from the public on the status of constitutionally dedicated open space funding and on the development of standards governing public access to the waterfront. The public access stakeholder group will also report on their proposals for changes to the public access requirements.

Persons wishing to testify should submit 15 copies of written testimony to the committee on the day of the hearing.

Issued 4/14/16

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TABLE OF CONTENTS

	<u>Page</u>
Deborah A. Mans Executive Director, and Baykeeper NY/NJ Baykeeper	3
Michael A. Egenton Executive Vice President Government Relations New Jersey Chamber of Commerce	3
Sara Bluhm Vice President Environment and Energy New Jersey Business and Industry Association	3
Tim Dillingham Executive Director American Littoral Society	10
Titus R. Pierce Private Citizen	18
Thomas R. Churchelow, Esq. Senior Director Government and Public Affairs New Jersey Utilities Association	19
Tony Russo Executive Vice President Government Affairs and Communications Commerce and Industry Association of New Jersey	21
Ed Waters Director Government Affairs Chemistry Council of New Jersey	21
John Weber Mid-Atlantic Regional Manager Surfrider Foundation	22

TABLE OF CONTENTS (continued)

	<u>Page</u>
Thomas Fote Chair Legislative Operations Manager Jersey Coast Anglers Association, and Representing New Jersey Outdoor Alliance, and New Jersey State Foundation of Sportsmen's Clubs	23
Jeff Tittel Director New Jersey Chapter Sierra Club	25
Anthony Pizzutillo Government Affairs Consultant Commercial Real Estate Development Association -- NAIOP	26
Captain Bill Sheehan Executive Director Hackensack Riverkeeper	27
Jeff Kolakowski Vice President Government Affairs New Jersey Builders Association	30
Steven M. Dalton, Esq. Representing New Jersey Builders Association	31
Ed Wengryn Research Associate New Jersey Farm Bureau	39
Michael F. Cerra Assistant Executive Director New Jersey State League of Municipalities	40

TABLE OF CONTENTS (continued)

	<u>Page</u>
Edward Potosnak Chair NJ Keep It Green Coalition	46
Kelly Mooij Vice President Government Relations New Jersey Audubon Society, and Coordinator NJ Keep It Green Coalition	53
Linda J. Mead President and CEO D & R Greenway Land Trust	60
William C. Rawlyk Mid-Atlantic Field Coordinator Open Space Institute	62
Geoff Richter Outreach Manager Pinelands Preservation Alliance	63
Barbara Sachau Private Citizen	64
Amy Hansen Policy Analyst New Jersey Conservation Foundation	65
William S. Kibler Director of Policy Raritan Headwaters Association	66
APPENDIX:	
Testimony submitted by Ed Waters	1x

TABLE OF CONTENTS (continued)

APPENDIX (continued)

	<u>Page</u>
Testimony submitted by Edward Potosnak	3x
Testimony submitted by Linda J. Mead	5x
Testimony submitted by William C. Rawlyk	7x
Testimony submitted by Amy Hansen	8x
Testimony submitted by William S. Kibler	9x
Memorandum, addressed to Public Access Task Force from Elizabeth George-Cheniara, Esq. Vice President Regulatory and Legal Affairs New Jersey Builders Association	11x
Testimony submitted by David J. Epstein President The Land Conservancy of New Jersey	21x
Annual Report, 2015 submitted by Monmouth Conservation Foundation	23x

SENATOR BOB SMITH (Chair): Our apologies to everyone.

The schedule today is -- there are three things going on simultaneously: Appropriations, Judiciary, and Environment. And in Judiciary today, we had -- we just completed the release of Senator Pete Barnes for a judicial position. And it was something Senator Bateman and I absolutely had to attend to say really fabulous things about the guy, because he's a really fabulous guy.

One of our prominent enviros in this room said they were going to put in a slip against him -- but only to keep him in the Senate, because he is such a good Senator.

In any case, he was released unanimously, which is wonderful. And now we're back to business.

But I do apologize to you. Nobody knew how that scheduling was going to work out, and we're sorry we tied you up.

So I think the overwhelming number of slips are with regard to Public Access, which is the only way in which I could figure out which order to do this. These are both very, very important issues; but let me try and do the Public Access issue first, and then we're going to do Open Space. And the good news/bad news on Open Space is, it's not about allocation of monies; we've had that discussion. It's about how do we get to the finish line with the Administration, so that the Open Space monies actually get used for the purposes intended and endorsed by the people as an amendment to the Constitution.

But let's do Public Access first.

And here's the story on Public Access, for anybody who's listening in for the first time. At the end of the last session, there was a

judicial decision that said that the Department of Environmental Protection doesn't have the authority that it thought it had with regard to the regulation of the New Jersey Coast. Everybody, no matter which side of the aisle or no matter which side of various issues you were on, said, "That doesn't work. We do need a regulator with authority to regulate what happens at the Jersey Shore."

So we put forward the appropriate legislation to ensure that the DEP had the appropriate authority. But also at that time, many parties came forward and said, "You know, we're not real happy with the way beach access is, or proposed to be, in the State of New Jersey. And we'd like the opportunity to address it." But everybody agreed that that was the wrong forum -- that we needed to reestablish that authority, which we did. And we also, at that meeting, asked people if they'd take responsibility to come back to the Committee with some really good ideas about beach access.

So we picked on four people who are very prominent in our discussions -- Sara Bluhm, Tim Dillingham, Mike Egerton, and Debbie Mans -- to be Co-Chairs of a citizen advisory committee, for lack of a better phrase, to put together ideas on beach access. We asked that they come back with two sets of recommendations -- the one set being the consensus recommendations and what we're going to do. Whatever the consensus recommendations, we're going to put that in a bill and get it up and get it out. And then come back with the nonconsensus recommendations -- what is it that needs to be argued about? And at some point, this Committee will take up which, in the nonconsensus recommendations, we want to push.

Now, before we ask anybody to say anything, I'd like to publicly thank Sara, Tim, Mike, and Debbie for giving of their time. This is absolutely not a paid position. And I deal with many constituents in the environment. To say that they don't agree about things is a real understatement. (laughter) So kudos to you for trying to put together meetings where people expressed their views, where everybody had a fair hearing, and then coming back with recommendations.

So why don't we do the four-- Why don't we bring all four Co-Chairs up; can we do that? That's the best way to do it. Just pull up two chairs next to the two that are there; just bring up two more. There's two there.

Good. So have you talked amongst yourselves as to who would like to go first, or whatever?

DEBORAH A. MANS: Yes.

MICHAEL A. EGENTON: Yes. I think Sara will go first, Chairman.

SARA BLUHM: I won the thumb wrestle.

SENATOR SMITH: All right; Sara Bluhm.

Sara, why don't you, first -- so the people listening to this understand what went on -- describe the process. And then maybe talk to us a little bit about what the recommendations are.

MS. BLUHM: Thank you, Chairman; and thank you for the opportunity for us to lead this group.

We've spent quite a bit of time together. And just to give an overview of the process -- after the January 25 Committee meeting, people

submitted their names who were interested, or their organizations. We had over 80 interested participants.

SENATOR SMITH: Wow.

MS. BLUHM: And so, yes, they were from all different types of groups, different locations within the state. And what we asked from that initial participant list was for everyone to send us what their top three issues related to Public Access were -- because there are many issues, but three seemed to be our common number. We had three months to work on it, so we were dealing with three issues. And from that we set a group meeting where everyone was invited to attend. We had in-person as well as on the phone. And we tried to develop buckets around which some of these issues fell into.

And at our first group meeting we gave each organization three dots and asked them to vote for what their top issue or issues were. So they could put all three dots on one issue; they could spread them around the room -- but from the list of issues that we received. Again, we were trying to cull this down so it was a little bit manageable. And the groups in the room voted. So anything that got dots was considered; and anything that did not get dots we looked at-- It wasn't as high on the list of priorities.

We also had items that we felt were out of the scope for the group. And so we recorded those, but put them to the side. And out of this voting and grouping of issues, we came up with three different subcommittees: There was a Policy Committee, a Thresholds and Exemptions Committee, and an Access Management. The Chairs, amongst ourselves, divided responsibilities; but with the exception of Access Management with Tim -- he got that all to himself; we all participated in

the groups, but Tim shepherded that group. Debbie and I led Thresholds and Exemptions, and Mike and Tim led Policy.

The subcommittees then met; and again, those were open to anyone who was interested in them. They had issues assigned to them to discuss and try to vet further through the group. Then we brought back the entire group and had the subcommittees report out on the different issues, and have that start to form our draft report.

Then, in April, we had everybody come back and again look at the draft report that we had created, and be able to start to go through and say, “Okay, here’s the consent position; here’s a nonconsent. What are some of the issues that fall under nonconsent?” Instead of doing majority/minority, we did pro and con because we didn’t want to have anyone feeling that their voice was not being heard. Everyone was on equal footing. So for nonconsent we had pro or con for what the nonconsent was; and we’ve asked organizations to identify if they are under the pro or con. So that will be easier for you, in the future, as well.

And because there is a lot of information and many different issues, the Co-Chairs then took that, and we are still in the process of finalizing everything. But today we’re going to go through and give you the highlights of where we’re at on this.

SENATOR SMITH: Great.

MS. BLUHM: I should also mention, too, that in terms of being transparent, we set up a Google drive, and we asked participants to upload any comments that they had there. So we will have that for you as well, Chairman, of any specific organizations, any materials that they may have shared. We gathered over 1,000 pages of data from groups; we have

court case information; we asked for comparisons on what's going on in other states related to Public Access as well, so we have a document on that. We have pictures -- there's a lot of material that was shared by the group.

That's also where we kept working drafts, notes from the subcommittees, sign-in sheets -- so that anyone could see this information, and it was transparent the whole time. And if you weren't able to participate, you could still go to the Google drive and see it.

We will be uploading the report once it's final there, so people will have access to that as well. But because the Co-Chairs are still working on it and making it look good, I kind of equate this to, like, our Capstone Project in grad school; so I'm waiting for our honorary doctorates. (laughter) But we are still putting the finishing touches on it before we are ready to share that with you. And I know we're all looking forward to the next set of timeframes as well, for working on that.

And with that, I'm going to start to turn it over to my Co-Chairs to delve into some of the issues that we covered.

SENATOR SMITH: Terrific.

MR. EGENTON: Chairman, Michael Egenton, New Jersey State Chamber of Commerce, one of the Co-Chairs.

And let me first also reiterate that the process of working with my other Co-Chairs was a good experience. We, as you know -- seeing us testify over the years -- we do have differing opinions. But I think the style in management, as Sara said, bringing us all together, and navigating, and getting all the input from the various stakeholders worked really well.

I thought I would kick things off, as far as some of the key issues. Probably one of the main issues that transcended and got a fair

amount of consent was protecting and maintaining the security of critical and sensitive infrastructure and facilities. Overall, as I said, there was consensus; and critical infrastructure we had all collectively believed should be exempt from onsite access, but needs to be specifically defined within statutory or regulatory citations -- which we will list throughout the report -- but some of them being the Chemical Facility Anti-Terrorism Standards; facilities that are regulated by the Nuclear Regulatory Commission; facilities that fall under the Water Sector-Specific Plan; facilities subject to the Bioterrorism Act of 2002. That will all be well detailed in the report.

We also felt that, under Hazardous Site Conditions and Court Activity, there was a recognition that there were some sites that the public should not have access to due to hazardous conditions, such as remediation or contamination, unsafe facilities. And as you know, whether it's a site that's ECRA, ISRA, Brownfields, LSRP -- whatever the activities going on there -- it's in the category of *access may be feasible, but not appropriate*. So there was a recognition of that.

That being said, I think there was a good discussion and conversation on, sort of, the changing landscape of New Jersey. Understanding that if a property does go through the remediation process and gets clean -- both protective of human health and the environment -- that may open up avenues to look at that area, so to speak, to see if there is, indeed, the ability to have that conversation of another new public access.

Obviously there are places, such as the Port Newark Elizabeth, that if one of those facilities changes hands, a new owner buys it -- obviously, that's pretty much well entrenched and there is a recognition that that landscape won't change. But to say throughout the state, as we

see these economic development projects going on, there may be avenues there.

The sort of nonconsent item within that realm was offsite mitigation; and that's -- the issue was critical infrastructure is exempt from onsite, but we differ in opinion, I think, collectively, on offsite mitigation. I know Debbie will add a little bit more. We didn't want to, as Co-Chairs, go into our specific positions on those issues. We wanted to hear from the stakeholders, Chairman; bring that all into the report, as Sara said; list it sort of on a pro and con list as to, "Define what your reason is," and then, of course, "define what your organization is and why you believe what you believe."

So with that, Chairman, I'll keep it short and sweet. I'll hand it over to Debbie, and she can expand upon that.

Thank you.

MS. MANS: As you can see, we got really close during this process. (laughter) I think it was really a bonding experience. (referring to the closeness of the chairs on the panel)

SENATOR SMITH: By the way, no matter what happens with Public Access, that's the best product of all -- that people are working together and talking to each other when you have differing points of view. That's fabulous.

MS. MANS: Well, so again, my name is Debbie Mans, and I am the Executive Director and Baykeeper for New York/New Jersey Baykeeper.

And I did want to emphasize, just one last time, that I think what was really missing from the last round of the Public Access discussion

and the rulemaking was transparent, robust, and civil conversation that the DEP should have been facilitating. So ours-- It can be done. I mean, we had people with all sorts of different opinions; a ton of lawyers around the table. And it was a helpful discussion because it resulted in a lot of back-and-forth. And specifically on the critical infrastructure that Mike brought up -- it was helpful to hear, and around the hazardous conditions, "What do you mean by that? What's hazardous on your site? And do you want the whole site off-limits, or just parts of it; and what part of it would be, and how would we define that, and how would you regulate that, and how would you implement that?"

And so you'll see that reflected in the report -- of a detailed list of what specifically people were talking about instead of kind of these blanket exemptions that we were seeing before. So I think that would be helpful, and you'll see some-- The key, I think, to any Public Access component is its clear standards. And having everyone in the room and facilitating that back-and-forth is why we were able to do that. And that's not what happened prior on the Administrative side.

As Mike indicated, the off-site mitigation -- it's always been debated, you know. We did not solve this issue for you, just to give you a head's up. (laughter) But obviously the waterkeepers here -- we have strong opinions about that, you know; the facilities are using Public Trust resources and it's appropriate to compensate the public. And we'll include in the report a recent report by the Harbor and Estuary Program that says only 37 percent of our waterfront in the New York/New Jersey harbor is accessible. So that is also reflected in the comments and opinions, as well as the other side of that.

One thing we want to recognize -- and I was talking to Mike earlier -- that the urban waterfront is transforming. And State regulations need to reflect increased demand for waterfront access throughout New Jersey's coast, and the legislation needs to reflect that as well.

And the last point is -- we all agree that all groups and individuals participating reserve their right to take any position they want, going forward. (laughter)

SENATOR SMITH: Right. Nobody is committed to anything.

MS. MANS: Right.

SENATOR SMITH: Right; we got it.

MS. MANS: Thanks.

MR. EGENTON: It's all you.

TIM DILLINGHAM: It's all me.

And now for something totally different. (laughter)

Mr. Chairman, thank you also for the opportunity. It was, I think, a good discussion.

I do think that the access battles are not over. As you see, there will be a lot of -- there are a lot of issues in which there was nonconsent. And I think the fact that we were able to, at least, explore the different perspectives around it and try to find some opportunities to move forward on some of them was very valuable.

I do think that some of the recommendations, as they play out in the future, will also create new opportunities to resolve some of these conflicts.

You know, clearly, from our perspective, the issues that the Task Force -- as we called ourselves -- discussed were ones that we've run up

against time and time again, and which are still playing out along the shore and urban waterfronts. You know, we still have towns which we're abandoning; street ends, which surfers and fisherman use to get down to the water. We have Green Acres properties being given over to development along the beaches and waterfronts that are fairly developed.

As Debbie just said, the urban waterfronts in the state are changing. But in many big stretches of them they're still walled off and inaccessible to the people who live next them, and people who often are unable to come down to the shore -- the Atlantic Ocean beaches -- to take advantage of what is their right: to be able to get next to the water and to utilize it.

I think that, overall, there was a very strong sentiment and consensus that the Legislature itself needed to set stronger policies around Public Access and how -- the public's rights to take advantage of the benefits of the Public Trust Doctrine; as well as a better balancing of some of the considerations about industry and safety concerns of homeland security. That the Legislature really needed to take that step, so that absolutely legislation is needed -- needed to provide guidance to the Department; needed to reflect the case law history in New Jersey, which is very strong in defense of the Public Trust Doctrine.

That the State itself needed to be a much more affirmative advocate for Public Access; that many of the issues we talked about revolved around questions of management. How do you create opportunities; how do you balance out the various uses; how do you design standards that might accommodate multiple uses, protect private property interests, protect people's privacy in situations where access to the water might be necessary

to be next to or inside of a housing development? All that takes a very affirmative role, and it would be much better served than from a one-size-fits-all, cookie-cutter approach to simply regulation.

And I think that that's what you'll see when you read the report -- that that idea plays out in a lot of the recommendations.

On the issue of the State -- of DEP's regulation itself, there was a consensus. I think there's a recognition that the regulatory powers of the State are critical and important tools to secure access, particularly in terms of the development that's regulated in our coastal laws. There was not consensus, though, about the scope of how that might be applied; how -- the level, the scale of activities that should trigger Public Access.

There was a debate about the amount of access in this location. We're going back to the *Matthews* decision about the balance between public and private rights. And the use of the dry sand areas is at least in part determined by the proximity of access in other places; or how do you build that into a regulatory process in which permits are coming into you, one by one?

And I think the answer to that -- which there was consensus around -- is that there needs to be a much stronger planning element around Public Access issues throughout the state -- at the State level, at a regional level, and at the local level. The process and the discussions were actually a very good education as to the diversity of our coastline, just like the diversity of our state; that the issues and the trends that are happening in the northern part of the state, and the change in the historical uses that are going on there, the movement of people back into the cities, the attraction back to the Hudson River and to the waters of the state could be

because of all the pollution control investment the public has made. It was contrasted in our conversations with people's desire to use the open beaches -- the oceans, beaches, and the bays -- and how we needed to really think through, in a very customized way, how we provide the best access, in the best places, at the right scale; ensure that it's supported, ensure that the right allocation of burden between the public and the private entities is made; and that a planning process would help us answer a lot of those questions.

You know, as you can imagine, there's always a conversation about money. And so the issue of the use of public monies along the shoreline in places that affect the public trust, the public's rights there. You'll see a recommendation that doesn't have consensus around it, but that where the State uses public money for beach nourishment, for Green Acres, for redevelopment, for economic assistance -- that if it touches upon the Public Trust areas, or it might affect the public's use, then that use should bring with it Public Access and supporting infrastructure, such as parking. As I said, there was not a consensus around that; but I think there was a very strong sentiment that that's a question that needs to be pursued more.

The issue of ensuring that folks who use the beaches, who use the shoreline at off hours -- the 24/7 idea that fishermen may be out there chasing striped bass late at night -- should not be subject to a ticket from the municipal police officer, was discussed. It's, again, not a consensus item; the concerns of the municipalities were raised. You'll see them in the report about liability, about the ability to have the resources to police that. But again, the Legislature needs to find the balance between the exercise of

people's rights to be there, as long as they're not drinking, smoking, running naked on the beach at all hours--

SENATOR SMITH: Whoa! Let's not be a train wreck.
(laughter)

ALL: Whoa! Whoa! Whoa! (laughter)

MR. DILLINGHAM: Okay. If you want to do that, you have to come to Sandy Hook. (laughter) And I will tell you how many people stop at my office in the summertime and ask me, "Which way to the nude beach?"

MR. EGENTON: By the way, Tim wanted us to go there
(indiscernible) (laughter)

MR. DILLINGHAM: I tried to organize a field trip for the Task Force, but--

Anyway, so that question is in there; and there are some suggestions about how various statutes might be amended to balance that out to ensure the public -- that the municipal exercise of their authorities also recognizes the public's rights to be there to pursue Trust activities, such as fishing and walking on the beach, without causing a ruckus or a problem.

The issues of perpendicular access -- again--

SENATOR SMITH: What is perpendicular access?

MR. DILLINGHAM: So perpendicular access is the ability to get from a common right-of-way -- a street, say -- across private property to the Public Trust area. And it also, I think, involves this idea of existing access and existing historic rights-of-ways, street ends. Again, not a consensus, and you'll see how folks lined up on these issues. But it was

recognized by the group as an important issue that needs to be further addressed.

Then the last two issues -- one was about enforcement. Lots of discussion about the State's ability to enforce permit conditions that they might have imposed to require Public Access issues; and stories about property owners on the Hudson River Walkway blocking access, not pursuing the access that they're required to. And the conversation turned to expanding the citizen's rights of enforcement. So there's a suggestion in there -- again, not a consensus item -- to expand the Environmental Rights Act to allow the public to pursue enforcement around Public Trust and Public Access issues.

SENATOR SMITH: Was that a consensus or nonconsensus.

MR. DILLINGHAM: Nonconsensus.

SENATOR SMITH: Okay.

MR. DILLINGHAM: And then lastly, there was a discussion about what we called *management* or *stewardship* and the idea of -- there was a very brief but spirited conversation about the use of beach fees and whether or not that is the best way to generate the revenues that are necessary to maintain and operate the beaches. There was a recognition that there's no such thing as a free beach, in that somebody has to bear the cost. In a highly developed and intensely used state like New Jersey, somebody has to bear that cost. But there were concerns about how those fees might impinge upon people's rights to get to the beach -- their ability to use it, as well as what types of activities they're being used for.

That conversation also sort of delved into whether or not those fees might be a source of funding to do other things, like take care of the

smaller access sites -- the streets ends where people complain about people leaving trash, but still provide a very necessary part of access to the shoreline.

So I think that the group really has teed up for you needed strategies to protect the public's rights to address municipal and industry concerns. I think the issues are laid there. Even though some of them did not come to consensus, I think that the work that everybody participated in-- And it was a tremendous effort; I say the quality of the conversation, and the fact that everybody sat at a table, and put their ideas out, and listened to others' ideas, was really commendable.

So I think when you see this report next week you'll see that there truly is an agenda for action on Public Access. And we look forward to, kind of, working through the next steps and making it a reality.

SENATOR SMITH: So the plan-- First of all, let me thank the four of you and the 80 stakeholders who participated. And hopefully, the promise that the Committee can make is that there will be a work product -- at least one work product, maybe two -- one being, hopefully, the consensus things that everybody can get behind; and then maybe some nonconsensus things where we think it's necessary to pick a side and decide what's right for the -- as public policy for the shore.

We're going to be looking forward to that report. Do you have any idea how long it's going to be?

MS. BLUHM: We're around 25 pages right now--

SENATOR SMITH: Around 25 pages. If you wouldn't mind sending copies--

MR. EGENTON: But there's--

MS. BLUHM: --and none are appendix.

MR. EGENTON: Yes, there are attachments that other groups wanted to add.

SENATOR SMITH: But they can also be -- they can be accessed by the website?

MR. EGENTON: Oh, yes, everything's transparent.

SENATOR SMITH: But on the 25 pages -- you wouldn't mind sending them to every member of the Committee and to staff so that we get a chance to look at it?

In terms of a timeframe-- You know, just when you describe even the consensus stuff, I don't see a bill being ready before June 30. But we can spend a significant -- we can ruin Judy's and Alison's summer by trying to work over the summer, at least on the consensus bill. (laughter) And hopefully, in the fall, this will be a fall project. I think that's a reasonable schedule.

But what I'm trying to say is, thank you for the work. You know, legislators aren't smart enough to figure all these things out. And when you have the work product of 84 people, who all care about the issue, I have to believe we're going to have some good recommendations there that we can go forward with.

So let me thank the four of you, and all 84, for participating.

Now, a lot of people signed slips. There's no bill in front of us, all right?

MS. BLUHM: They just want to say we did a good job.

MS. MANS: Yes. (laughter)

SENATOR SMITH: Well, I like that a lot. Brevity is the soul of wit -- Shakespeare. So, you know, if you want to make a point, make a quick point. But remember, bills are to follow; at which point there'll be real things to point at and say, "No, that's terrible," or, "That should be improved," okay?

MR. EGENTON: And Chairman, one last thing.

SENATOR SMITH: Yes, sir.

MR. EGENTON: We did say that to the stakeholders -- that this will be a continuing process--

SENATOR SMITH: Yes, yes, yes.

MR. EGENTON: --the way you conduct the forums of having other stakeholders come in to sort of expand upon their positions and such.

SENATOR SMITH: As soon as we have a bill, there's a lot to talk about.

TITUS R. PIERCE: (off mike) I'm a stakeholder; I want white sand in all 42 coastal communities. Take that one back with you.

I'm the next Governor of New Jersey, too. I'm Pierce.

We want white sand.

SENATOR SMITH: Okay; noted for the record.

MR. PIERCE: There you go.

SENATOR SMITH: So let me thank the four of you, and let me get the people who signed slips up to be -- briefly make a very brief point, because there's no specific bill in front of us.

Tom Churchelow, New Jersey Utilities Association.

And again, nobody should be plus or saying, "I'm in favor," or "I'm opposed," because there's nothing to be opposed to at this point.

Tom.

T H O M A S R. C H U R C H E L O W, Esq.: Mr. Chairman, neutral -- if that's appropriate.

My name is Tom Churchelow; I'm the Senior Director of Government and Public Affairs for the New Jersey Utilities Association.

I'd like to thank you for allowing me the opportunity to speak before the Committee; and also to take the opportunity to thank the Co-Chairs of the stakeholder group -- as you did at the outset of the meeting -- for their diligent efforts to coordinate the input of what was a large set of diverse viewpoints.

Just two quick points I'd like to make, and those are with respect to defining *critical infrastructure*, and also to establishing requirements with respect to offsite mitigation.

As a former counsel with OLS, and bill drafter, I understand the challenge of crafting a definition when there are numerous and important implications and potentially competing priorities. So at this stage I'd like only to advise that, in defining the term *critical infrastructure*, you consider the fact that there are utility facilities, which are subject to a number of plans and laws, some of which are cited in the report that will come before you when it's complete. Mr. Egerton noted some of those regulations and plans, including the National Infrastructure Protection Plan, the Department of Homeland Security's Water-Specific Plan. There are other various regulations under the U.S. Department of Transportation's Pipeline Hazardous Materials and Safety Administration; in the electric sector, the Federal Energy Regulatory Commission. The Energy Policy Act of 2005 was given the authority to oversee reliability of the electric grid. Recently

the Commission increased physical protection standards for the grid, and in doing so, requires operators to demonstrate that they've taken steps to address physical security risks that include identification of facilities in a bulk power system that are critical to the reliable operation of the electric grid.

SENATOR SMITH: You're not running into any resistance.

MR. CHURCHELOW: Okay. Yes, I think just--

SENATOR SMITH: We think energy facilities are critical infrastructure.

MR. CHURCHELOW: I appreciate that.

SENATOR SMITH: So you're not-- The horse is dead; stop beating it. (laughter)

MR. CHURCHELOW: To simplify the point -- and I think the group noted that the critical infrastructure needs to be specifically defined. And what I would call--

SENATOR SMITH: Do us a favor -- send us language.

MR. CHURCHELOW: Sure; okay.

SENATOR SMITH: Next point.

MR. CHURCHELOW: Okay. Offsite mitigation requirements associated with a Public Access plan. We'd recommend that utility infrastructure be exempted from those requirements. The ability of utility operators is restricted with respect -- to provide access is restricted under the Federal laws that have been cited in the report, or will be cited in the report, among others. And where utilities are subject -- and I think this is the point to be made here today -- where they are subject to offsite mitigation requirements, please consider the potential ratepayer impact of

those requirements, asking what happens to customer bills when there are changes in utility operating costs associated with those requirements.

SENATOR SMITH: Got it, Tom. Thank you for your two points.

Tony Russo, Commerce and Industry.

Tony.

TONY RUSSO: Thank you, Mr. Chairman. I will be brief.

I represent many of the same companies that BIA and the State Chamber represent.

First, I want to thank Mike and Sara for taking the lead on behalf of the business community.

But I think it's important to reinforce even what the previous speaker said about the critical infrastructure sites. But really the crux of the issue is this fund or money that has to be put up in escrow if they can't provide offsite access. And I think it's important that, when the bills are drafted, we could try to codify that in statute, as opposed to leaving it up to the DEP in the regulations, because they're subject to change.

So I just think it's important to cap it. And you've heard this before, Mr. Chairman -- it's about certainty and predictability. And so whatever we can put in statute, I think will be better.

So thank you very much.

SENATOR SMITH: We appreciate your comments.

Ed Waters, Chemistry Council of New Jersey.

Ed.

ED WATERS: Thank you, Mr. Chairman; and thank you for allowing us to participate in the stakeholder process. I want to thank the

four Chairs; they all did a wonderful job. It's a difficult process, but they did a great job of herding everyone together.

I just want to echo what everyone else is saying. We want to make sure that the critical infrastructure is exempted; we're glad that that was a consensus item. And we also share everyone's concern about having offsite mitigation costs, as it will impact investment for companies in New Jersey.

Thank you.

SENATOR SMITH: Thank you for your brevity.

John Weber, Surfrider Foundation.

John.

J O H N W E B E R: Thank you, Mr. Chairman.

The four Chairs did a good job. (laughter)

Tim covered it; he mentioned the beach fees, the beach access. But there's a little bit more to that.

Surfrider Foundation was really advocating for a group, put together to study how they do it in other states. You could make the case that beach fees, the way we apply them in New Jersey, are really fair because if you don't go to the beach, you don't get the fee. And the point was made, "Somebody has to pay for all this stuff."

But if it really is the best system, then we think they would be doing this everywhere -- and they're not. So let's put together a group. I don't know how these things work on the State level, but how do they do it in California, and Florida, and everywhere else and get this stuff paid for? If we can come back to the people of New Jersey and say either -- and then

justify our system or say, "Let's try something else." That would be terrific; we'd love to have that happen.

SENATOR SMITH: Yes, John, I don't know if you were watching -- was it last year, or the year before? -- we had an extensive--

MR. WEBER: Oh, I was there.

SENATOR SMITH: --discussion about beach fees.

MR. WEBER: I was the sole voice in favor of what you were trying to do.

SENATOR SMITH: Right; and every municipal official, every county official came in and said, "This is Communism. We don't want to talk about it; we're even offended that you're discussing it." But it certainly is a very good idea.

MR. WEBER: What was absent was, "This is how they're doing it in other states. Would you consider that?"

SENATOR SMITH: Okay.

MR. WEBER: Thank you.

SENATOR SMITH: Maybe it needs to be continued.

Tom Fote. And Tom has checked the box -- he's in favor of Public Access. (laughter)

T H O M A S F O T E: I just think about all the issues I've dealt with on Public Access since 1975 when I first got involved. I realize that a lot of people weren't even born who are sitting in this room right now, or were in grammar school at the time.

I couldn't be part of the process. John Toth did it for Jersey Coast, and a few others who are from the New Jersey Outdoor Alliance. I'm

here representing all three groups, because I'm back from being away. We will stay involved in the process.

But not only DEP, but we need the Department of Transportation at the table. One of the things that's in the Department of Transportation is, when they build new bridges they're supposed to have fishing access on those bridges, and that's supposed to be-- And it's not done. I mean, I've fought that battle before.

And let's give the example -- now there are two good examples in New York; one is when they repaved a lot of the bridges back in the 1970s, they actually put handicapped platforms at every one of the bridges where people get in and get by the water, park their cars, and are able to fish. It was very nicely done. What you don't want to do is what Robert Moses did -- was make sure that all the bridges on the Belt Parkway and the Southern State were not high enough to put buses through, because he didn't want us city people -- because I lived in Brooklyn -- out at his beaches out on Long Island. And that was purposely done.

So we need a compromise between looking at the two issues -- how do we get people to the beach. I grew up in Brooklyn; I basically could get on a bus and go to Coney Island and it didn't cost me anything. I could go to Sheepshead Bay; didn't cost me anything. I could go to Manhattan Beach; didn't cost me. Go to Rockaway; didn't cost me -- as long as I could get there by bike.

When we look at the Belt Parkway, the way it was built -- or the Southern State Parkway, as you're going out to Long Island -- you see that walkway out there. On a bicycle, on a skateboard -- you could get out

and fish, you could go out and swim, and you could run the whole length of that, almost from Fort Hamilton to all the way out to the Rockaways.

We need to do things like that. We need to have free public access where people can fish.

And we'll be involved in the process; since I'm back, I will be involved with the process.

SENATOR SMITH: Great.

MR. FOTE: Thank you very much.

SENATOR SMITH: Good to have you back.

Jeff Tittel, Sierra Club.

J E F F T I T T E L: Well, we did our job; now you have to do yours.

SENATOR SMITH: Thank you very much. (laughter)

MR. TITTEL: And the point that I'm trying to make is that it was a good process; there are a lot of ideas out there. There's also a lot of disagreement. You have to be the referee, and you have to be the ones who can craft the plan. Otherwise, we're going to have gridlock down the beach and we will not have the proper access that the people of New Jersey need and want.

The beaches and the waterfronts of New Jersey belong to all of us. But there's competition on how to get there and who can use them. Many communities want us to pay to fix their beaches and to replenish them, but don't want us to have access. Many areas in the more urbanized part of the state -- there are people who want to build on the waterfronts, but they don't want the public, who owns those waterfronts, to have access. Your job is to shift through all those different rights and all those different groups that have different opinions, and come out with a plan and a bill

that will ensure that the people of New Jersey have access to the waterways that they want.

And it's not just access; it's also being able to park, or being able to find bathrooms, or be able to have places to change -- because that's as critical too. What good is beach access when that beach goes underwater at high tide? You know, what good is it if no one can find a place to park, or it's too expensive?

And so I want to thank everybody who's worked on it; but it's really up to you to uphold the Public Trust Doctrine and uphold the access to the waterways that belong to all of us.

Thank you.

SENATOR SMITH: Thank you for your comments.

Tony Pizzutillo, NAIOP.

ANTHONY PIZZUTILLO: Thank you, Mr. Chairman. And I also commend the Task Force group for putting this together. It was a hard job bringing all the stakeholders together.

As you know, Mr. Chairman, NAIOP represents the commercial real estate industry. And for several decades, commercial real estate -- which has now morphed into mixed use -- certainly draws the development of waterfront access, which is an important ingredient in creating a successful project, especially in redevelopment. And we welcome that.

However, with regards to industrial development along the waterfront, we believe that access has to be determined on a case-by-case basis, and that there should not be an additional fee with regards to exactions in the event that there is a restriction on access. As you know --

and I think Tony Russo said it earlier -- what is very important is certainty and predictability. But another issue is important in New Jersey, and that's affordability. And no one knows better than you the exactions that are placed on industrial development, ranging from COAH to transactions that are above \$1 million. What we want to do is continue to create jobs, but not necessarily at additional fees.

And I have to say, though, finally, Mr. Chairman, that when you look at redevelopment in New Jersey, you're really not going to see a lot more, if any, industrial development along the waterfront. That is going to be reserved for mixed use residential. And it really should not be a big issue with this group.

Thank you very much.

SENATOR SMITH: Thank you for your comments.

Captain Bill Sheehan (indicating pronunciation). Is that right?

CAPTAIN BILL SHEEHAN: Sheehan.

SENATOR SMITH: Sheehan.

Captain.

CAPTAIN SHEEHAN: Thank you.

My name is Captain Bill Sheehan, and I am the Hackensack Riverkeeper -- as in, *Hackensack Riverkeeper v. New Jersey Department of Environmental Protection*.

The case that we brought was a Public Trust case. The Public Trust Doctrine has ruled over the waterfronts and the beaches of New Jersey since Colonial times; and it's been upheld continuously, through court cases, dating back to the early 1800s.

Every time this subject of Public Access to our aquatic resources has come before the courts, the courts have always ruled in favor of the public. And they did again when they threw out -- they invalidated the 2012 rule. The Administration has been going around telling people that the rule is still in existence; but once the court invalidated it, it was gone. And they also struck the regulations that supported that rule. So that was a complete victory for the Public Trust Doctrine -- a complete victory -- and it set us on the road that we're on now.

SENATOR SMITH: Yes.

CAPTAIN SHEEHAN: This was always my purpose, it was always my thought that I would want the Legislature to give clear and direct -- or clear direction, is what I meant--

SENATOR SMITH: Is that the New Jersey Legislature you're speaking of?

CAPTAIN SHEEHAN: Yes.

SENATOR SMITH: Okay; I'm sorry.

CAPTAIN SHEEHAN: I'm an optimist. (laughter)

SENATOR SMITH: Okay.

CAPTAIN SHEEHAN: But, yes -- clear direction to the New Jersey Department of Environmental Protection that they are supposed to be expanding Public Access, and not--

SENATOR SMITH: Contracting.

CAPTAIN SHEEHAN: --shrinking it down.

SENATOR SMITH: Right.

CAPTAIN SHEEHAN: In the area where the Hackensack Riverkeeper is -- the northern part of the state -- we have the Passaic River

next door; the Hudson River to the east; we have Newark Bay, the Kill Van Kull, the Arthur Kill, and the Greater New York Harbor. All of these waterways belong to the people. They don't belong to the industries, they don't belong to the-- You know, even the Port Authority -- it doesn't belong to them. It belongs to the people.

That's why we're very, very much in favor of the idea of offsite mitigation when-- For too many years and in too many ways, people have been denied access. One of the things that you have to bear in mind when you take this up -- when you start crafting a bill and take this up, is by opening up Public Access to our northern waterways, we are going to be able to create an economy that doesn't exist there now -- and that's a recreational economy. And do not discount the value of a recreational economy, because that's what keeps the Jersey Shore alive; that's what keeps the beaches alive, is that recreational economy.

SENATOR SMITH: The second-biggest industry in the state.

CAPTAIN SHEEHAN: You bet. And the northern waters, where we have very, very dense cities, people of various means who can't necessarily get down to the Jersey Shore, down to the beaches during the summertime -- they can get down to the Passaic River, they can get down to the Hackensack River, they can get to the local waterways that run through their hometowns. And yet, too often, over the years, there have been signs that say, "No trespassing," even though it's public property -- the water is public property; they can't get to it

SENATOR SMITH: Got it.

CAPTAIN SHEEHAN: We have to fix that, and we have to make sure that the Department of Environmental Protection understands

that they need to be inclusive, not exclusive; and that it has to also include the waters in northern New Jersey.

During the rulemaking process, they held one hearing in Hudson County where even the County Executive came out in favor of broad public access for the northern waterways. And the next time they went through a hearing process, they kind of forgot to come to the north part of the state; they held the hearings down the Shore, where it was very difficult for people from places like Jersey City and Newark to get to.

So when I say *inclusive*, I mean the whole process has to be inclusive, and then the final product has to be inclusive.

Thank you.

SENATOR SMITH: Captain, thank you for your comments.

Last witnesses -- Jeff Kolakowski and Steve Dalton, from the New Jersey Builders Association.

J E F F K O L A K O W S K I: Mr. Chairman, Senator Bateman, we appreciate the opportunity to address you today.

I'm Jeff Kolakowski with the New Jersey Builders Association. We are the leading trade association for the home building industry here in New Jersey.

I also want to join the chorus of those commending the Co-Chairs for their work; it was quite an undertaking to bring together such divergent viewpoints, and perspectives, and priorities.

We were an active participant in the Task Force, but we've also been a long-standing stakeholder in the overall Coastal Zone Management Rules. We certainly recognize and support the public's right to use and access the tidal waterways and shores under the Public Trust Doctrine; but

we think it's important to highlight other constitutional issues and other due process issues that should be considered.

Actually, I did not provide a copy -- but I will -- of our detailed comment letter we submitted to the Task Force which outlines our legal concerns. And I know that you asked people to be brief, but I felt compelled to bring with me, today, Steve Dalton -- he's our environmental attorney with our environmental counsel, Giordano, Halleran & Ciesla -- to highlight these constitutional provisions that we think should be reflected in any legislation that you ultimately developed.

SENATOR SMITH: Can he be brief? (laughter)

S T E V E N M. D A L T O N, Esq.: I will certainly try, Mr. Chairman; thank you.

MR. KOLAKOWSKI: It's three main cases, Senator.

SENATOR SMITH: Remember, we don't have a bill in front us. There's nothing--

MR. DALTON: Understood.

SENATOR SMITH: Okay.

MR. DALTON: So thank you for the opportunity to speak.

NJBIA, throughout the Task Force process, has been consistent in its position that any legislation regarding Public Access, and any related regulations, needs to reflect and be cognizant of the constitutional protections for private property that exist under the Takings Provisions of the State and Federal Constitutions; and also need to reflect the balancing of Public Access rights and private property rights that have been established by the court decisions that have created the Public Trust Doctrine.

And I won't go into detail in the cases; as Jeff mentioned, we have a submission about the cases. But I'll just mention three that we believe are critical to the shaping of any--

SENATOR SMITH: Cases?

MR. DALTON: Yes, sir.

SENATOR SMITH: We'll read it.

MR. DALTON: Absolutely.

SENATOR SMITH: You gave us the broad principle; broad principle number two.

MR. DALTON: And in that context, the principle is that what the Public Trust Doctrine stands for in the context of private property, is that there's not an absolute right to public access to tidally flowed -- to cross private property and use private property to gain access to tidally flowed lands.

SENATOR SMITH: Nonstarter.

MR. DALTON: Well, sir, respectfully--

SENATOR SMITH: That's not the Public Trust Doctrine.

MR. DALTON: Respectfully, we believe the *Matthews* decision establishes that there are limits on Public Trust rights to private property usage.

SENATOR SMITH: All right; we'll read it.

MR. DALTON: Thank you.

SENATOR SMITH: We disagree.

Next principle.

MR. DALTON: And from a constitutional perspective, the Takings Provisions require that any regulatory exactions for Public Access

be tailored and shaped to specifically provide for a nexus -- an essential nexus between the access and the goals the government is seeking to advance, and be roughly proportional to the development.

SENATOR SMITH: We're onboard with that; next.

MR. DALTON: And we do not believe that the current DEP regulations respect those principles. And we believe--

SENATOR SMITH: We agree with that, too. (laughter)

MR. DALTON: I'm glad we're in agreement on that point, because--

SENATOR SMITH: Really.

SENATOR BATEMAN: Two out of three is not bad. (laughter)

SENATOR SMITH: Yes, you're doing fine. (laughter)

MR. DALTON: We believe that any legislation to address Public Access should require case-by-case determinations of whether or not Public Access on private property -- whether it be dry beaches adjacent to tidal waters, or perpendicular access across -- need to be tailored and reasonable. And there should be case-by-case, individual determinations. DEP rules require--

SENATOR SMITH: You now have four -- you now have a third agreement out of four principles. That's also true.

MR. DALTON: DEP rules require a mandate for public access onsite or offsite with respect to most development applications along the coast without a fact-specific individualized determination of whether it's reasonable or necessary in connection with that property. And we believe

that's contrary to the Public Trust Doctrine, and should be addressed by the Legislature. And that is our hope and expectation for this process.

SENATOR SMITH: Great. And listen, I'm not trying to be a stinker in cutting you off. It's just that we don't have a bill in front of us to talk about.

MR. DALTON: Understood; understood.

SENATOR SMITH: So we heard your five principles; at least three of which, I think are pretty reasonable and consistent. The other two -- we're going to take a look at them. But we appreciate your participation in the process. And get yourself ready, because we're going to do this in the fall with some actual bills. And then you will be able to come in and be critical or supportive of the various provisions.

But I do appreciate you participating in the process. And we're in agreement on a lot of stuff. Okay?

MR. DALTON: Thank you for the opportunity, again, Mr. Chairman.

SENATOR SMITH: Thanks; thank you very much for coming in.

MR. KOLAKOWSKI: Thank you.

SENATOR SMITH: So that concludes the beach access thing. The plan is -- get your cards and letter in; we need that report so we can ruin the summers of Judy and Alison, and we can get some legislation started to try and deal with your work product.

And again, thanks to the four Chairs.

So now we get to Open Space.

We've already had hearings; I'm looking at the communications that came in: New Jersey Conservation Foundation saying yes, yes, yes, "We love it;" Open Space Institute, yes, yes, yes, "We love it;" D&R Greenway Land Trust, the same thing; Raritan Headwaters Association, yes, yes, yes, "We love it;" Ed Potosnak, Chair of the Keep It Green, "We love it."

Chemistry Council -- I'm not sure; I have to read this. What do they say?

MS. HOROWITZ (Committee Aide): (Indiscernible).

SENATOR SMITH: Oh, that's for Public Access.

And then--

MS. HOROWITZ: That's Public Access too.

SENATOR SMITH: And that's Public Access as well.

So listen, there's no question in this room -- we all love Open Space, Farmland Preservation, and Historic Preservation. That's not an issue. Let me tell you what the issue is, and what we would appreciate a few comments on. Doing a little history: At the end of the last session-- And Senator Bateman, this is you and me, right?

SENATOR BATEMAN: Absolutely.

SENATOR SMITH: After a lot of public hearings, and stakeholders, and whatever, we laid out an allocation plan for the constitutional amendment that was passed by the voters, 60-40.

SENATOR BATEMAN: Two years ago, we passed it.

SENATOR SMITH: Two years ago. And by the way, that's after at least an effort of about five years. We did the \$400 million bond issue; that was consumed. There hasn't been money for Open Space,

Farmland Preservation for about two years now. I think we convinced the leadership of the Legislature that we should try to have a stable source of Open Space funding. They were kind enough to allow our legislation to go forward. It requires a reallocation of Corporate Business Tax funds; some for programs that have been completed, some for others that may have to be funded in other ways.

But we have a good amendment. The amendment said that we're to use that 4 percent for those three purposes, and it also provided for a 2 percent increase in -- 2019 or 2020?

MS. HOROWITZ: Starting in 2020.

SENATOR BATEMAN: We're rapidly approaching--

SENATOR SMITH: Starting in 2020. So there should have been, last year, about \$70 million, \$77 million put into a lockbox for Open Space, Farmland, and Historic, waiting for the implementation bill. And that was the bill that we passed last year. And the implementation bill had funding formulas for the three categories; and it was contentious, you know? I mean--

SENATOR BATEMAN: Everybody wanted--

SENATOR SMITH: Look to the person to your right, and look to the person to your left, and they're going to disagree with you about what the allocation should be. But we had an allocation formula that made most people happy, most of the time -- not every environmental, or farm concern, or historic concern happy, because everybody believes that their program should have more funding. But we got, I think, a relative consensus on the allocation.

So we passed the bill; we passed the bill in lame duck, which is always -- I hate lame duck -- we passed the bill in lame duck. The Governor of this state -- flying in for a minute, then flying out -- did not do anything with it. And that is known in the parlance of the legislature as a *pocket veto*, all right?

In a normal legislative context, if you pass a bill, and if he's going to veto it, he has to give reasons why. So now, fast-forward to 2016. We introduce the same bill; get it out of the Senate, overwhelmingly. The Assembly, it's introduced; get it out of the Assembly, overwhelmingly. It now sits on the Governor's desk. It hasn't been vetoed yet--

SENATOR BATEMAN: The clock is ticking, though.

SENATOR SMITH: --but the clock is ticking. He has to take some action and he has to give his reasons.

All right. Now, there are a lot of concerns. First of all, my belief is that we'll probably get a veto -- maybe a conditional veto, but we get a veto. And several concerns: number one, how about the money? The money should be locked up-- I mean, I want it spent for Farmland, Open Space, and Historic; but I certainly don't want it spent--

SENATOR BATEMAN: In the General Budget.

SENATOR SMITH: --on other purposes. That's a disaster, it's unconstitutional, and may even be criminal, all right?

So I've now written to the State Treasurer twice -- once about four weeks ago, saying, "Just double-checking. You didn't spend that money, did you? It's in a lockbox somewhere, right?" No answer.

So last week, I wrote again. "I sent you a letter three weeks ago. I just want to confirm -- the money's in a lockbox, right?" Still no

answer. So that's concern number one -- that something may be happening with that money. And we are demanding answers from the Treasurer.

And by the way, the second thing that's out there is that the Office of Legislative Services issued an opinion saying that in last year's budget, the Governor grabbed \$20 million of the Open Space money to fund salaries in the DEP. And the Office of Legislative Services' memo says "unconstitutional." So we have a current budget in front of us; that memo has been given to the Appropriations Committees in both houses for questioning of Commissioner Martin when he comes in.

So we have some issues -- some serious issues about tearing out the voters' will in that public question. And the purpose of today's hearing is not to say, "Oh, the allocation formula is fine;" it's not to say, "We love Open Space, Farmland Preservation, and Historic Preservation." But maybe to get some ideas from you about how we get this over the finish line. You would think a constitutional amendment would be enough. What needs to be done to get to the finish line, all right? Nobody has to convince anybody about the value of these programs.

And he also has, in his proposed budget, using another \$20 million for salaries -- that's the budget that's currently being reviewed by the Legislature -- and also another \$14 million for Parks development. So he's about to take \$33 million of money that he shouldn't be taking, in my opinion, and in the opinion of the Office of Legislative Services.

Senator Bateman.

SENATOR BATEMAN: Mr. Chairman, if I may.

Obviously, I'm interested in hearing from the environmental folks. But I think that -- and you probably have more of a say than I do

with the Senate President -- but I think when they're sitting down at the end, when they're trying to figure out the budget -- you ask him to insist that he doesn't steal any more of this money. I mean, the voters of the State of New Jersey have approved this, overwhelmingly.

SENATOR SMITH: Absolutely.

SENATOR BATEMAN: And I think that, obviously, the Senate President would have some sway in determining that. Because as you know, at the last minute, it's always a give-and-take with the Speaker, and the Senate President, and the Governor.

SENATOR SMITH: So that's a great idea, and that's step number one. We want to do a letter to the Senate President saying that those two funds are not constitutional, and really should be taken out of the budget, okay?

All right, now -- other ideas.

Ed Wengryn, New Jersey Farm Bureau. Ed, I want to congratulate the Farm Bureau for speaking up in your Farm Bureau magazine, indicating that the Farm Bureau agrees with the original allocations and would like to see the money spent that way.

What can the Farm Bureau do to get the Governor off his *tokus* and do the right thing?

E D W E N G R Y N: So thank you for holding the Committee hearing today.

It is a real concern with us -- not just in the Farm Bureau, but also within the Department of Agriculture. The State Board of Agriculture has sent letters to the Governor -- they are part of the Administration --

saying they support the legislation that's been done. The Farm Bureau has also been supportive.

Just so everybody understands -- and this is where our next, sort of, outreach effort is -- the 2009 bond funds have pretty much been expended, so when you--

SENATOR SMITH: Done.

MR. WENGRYN: Every county that's able to receive Farmland Preservation dollars from the SADC has submitted a plan. And as part of doing that plan, you get an allocation from the State to spend -- to implement your plan. There are 18 plans that have been approved; so they've been giving 18 counties an equal allotment across the board to implement their plans.

Six of those counties have already spent all of their money; they are Somerset, Salem, Gloucester, Warren, and Morris County (*sic*). Morris, Warren, Salem, Gloucester are the largest ag counties in the state. So you can't -- there's no State match to go forward with new projects in those counties.

Right behind them, with less than \$100,000 in their balances, are Hunterdon-- Oh, Burlington is the other county that's out of money; I knew there was more. And then Hunterdon -- I have to look at my notes; I had them all down -- so it's--

SENATOR SMITH: (calls out) By the way, before you go-- Mr. Cerra.

MICHAEL F. CERRA: (off mike) Here I am.

SENATOR SMITH: I have to get you before you leave.

MR. WENGRYN: So it's Hunterdon--

SENATOR SMITH: Hold on, Ed, for one second.

MR. WENGRYN: Yes.

SENATOR SMITH: The League of Municipalities -- why aren't the mayors passing resolutions supporting the signing of the bill? There's Open Space money for municipalities all over the--

MR. CERRA: I mean, they are.

SENATOR SMITH: Okay. I'd like to see a real firestorm -- letters to the Governor, saying, "Sign the bill, obey the bill, and obey the Constitution," all right?

Thank you.

MR. CERRA: I'll circle back with you.

SENATOR SMITH: All right.

Ed.

MR. WENGRYN: So Hunterdon, Middlesex, and Salem are the ones with less than \$100,000 each. So--

SENATOR SMITH: All right, so the program is totally halted.

MR. WENGRYN: The program-- So you have nine counties of the 18 that have plans; over half of them--

SENATOR SMITH: So what are you going to do about it?

MR. WENGRYN: So we have been talking to all the program administrators; we've been reaching out to the Freeholder Boards and all of them; and we're doing the resolutions--

SENATOR SMITH: How about asking your farmers--

MR. WENGRYN: Our farmers are also--

SENATOR SMITH: --to write letters to the Governor--

MR. WENGRYN: They are.

SENATOR SMITH: --to say, "Sign the bill."

MR. WENGRYN: Our County Boards are sending letters and calling the office to sign the bill.

SENATOR SMITH: Yes, yes.

MR. WENGRYN: So that's what we've been up to.

SENATOR SMITH: Would you put it in your Farm Bureau newsletter?

MR. WENGRYN: Yes.

SENATOR SMITH: The Governor's address -- "Here's where you send the letter."

MR. WENGRYN: We can do that.

SENATOR SMITH: Okay. Ed, we appreciate it.

MR. WENGRYN: Thanks.

SENATOR SMITH: Okay, how about the Sierra Club? What are you doing?

MR. TITTEL: Well, I--

SENATOR SMITH: You remember, you just sat there and said, "Okay, we've done all the hard work; now it's your job."

MR. TITTEL: Okay.

SENATOR SMITH: Okay, we've done all the hard work; now it's your job.

MR. TITTEL: Okay. (laughter)

I want to also start off by saying that this is an important issue, and an important day to have it. Today is John Muir's birthday--

SENATOR SMITH: Right.

MR. TITTEL: --who founded the Sierra Club, and who came up with the idea of National Parks -- which are now going to be--

SENATOR SMITH: And took Teddy Roosevelt, I think, to Yosemite.

MR. TITTEL: Absorightly. (*sic*)

SENATOR SMITH: --and got Teddy Roosevelt hooked. And now we have a lot of good National Parks.

MR. TITTEL: And not only saved Yosemite; they got him to pass the Antiquities Act, which set aside millions and millions of acres of Open Space. And then, a hundred years ago this year -- and we should do something, maybe up in Delaware Water Gap during the summer -- will be the 100th anniversary of the National Park Service.

SENATOR SMITH: Terrific.

MR. TITTEL: And so we have a couple of issues here. And I think-- And I just want to just start off and say that the voters of New Jersey have voted to fund Open Space; they've done it overwhelmingly. You may have concerns about where the money is coming from, this and that, but it's been done. That is, it's in the Constitution--

SENATOR SMITH: It's in the Constitution.

MR. TITTEL: --the money's there, and it has to be spent.

My biggest concern was that the Governor decided to hijack \$20 million out of that fund to pay for salaries in the Division of Parks instead of it going to fix Parks, or buy Open Space, or build new playgrounds.

SENATOR SMITH: Right.

MR. TITTEL: When the Legislature, last year, stood up to him on it in the budget and came up with another funding source -- even though we weren't crazy about taking it out of the Clean Energy Fund -- he line-item--

SENATOR SMITH: Which is not being used for clean energy, anyway.

MR. TITTEL: Well, I know that, but you know what I mean.

SENATOR SMITH: Right.

MR. TITTEL: He decided to line-item that, and then line-item all the funding for Open Space. That was not only, I think, the most vindictive move this Governor made, it's also irresponsible and unconstitutional. We strongly will not only fight this Administration in public opinion -- and we had gone public with it; we've gone public, and we're going to have it in our next newspaper -- but we also believe that this abuse of power-- By the way, in New Jersey law, it is actually a reason for recall; it's called *arrogance*. You can be recalled for arrogance under New Jersey statute.

But what we were looking at is not only raising this issue and getting the public to turn out and to send e-mails; we're going to be doing alerts, and we're going to be doing actions, and doing press around it. But we are looking to litigate. We think--

SENATOR SMITH: So beyond looking, are you going to do it?

MR. TITTEL: Yes; I mean-- Yes.

SENATOR SMITH: Okay.

MR. TITTEL: It takes a little time, and we have to get resources. But for us, we believe that, in this state, Green Acres has been the most successful government program in history. But the public demands action on buying Open Space. And our biggest concern is that when the Farmland program runs out of money, then those farmers who want to sell their development rights may end up selling--

SENATOR SMITH: The farm.

MR. TITTEL: --to Toll Brothers, or someone else, because they have the money and the State doesn't.

SENATOR SMITH: Lost opportunities.

MR. TITTEL: Every day we hold up buying Open Space, the more properties we can lose to bulldozers. More importantly -- and this is a lesson I learned a long time ago -- we also sometimes buy those properties, 5 or 10 years later, for much higher prices.

SENATOR SMITH: Absolutely.

MR. TITTEL: And I've seen it happen.

SENATOR SMITH: No question.

MR. TITTEL: And so--

SENATOR SMITH: When are your lawyers filing?

MR. TITTEL: Well, we'll be doing the work now.

SENATOR SMITH: Okay.

MR. TITTEL: We're looking at it, and I've been pushing them, but it's also--

SENATOR SMITH: Good.

MR. TITTEL: But the point we also have to make is that the public needs to know, and put pressure on this Administration that they

cannot get away with diverting Open Space money; and they cannot get away with deliberately holding up the money that is set aside for Open Space. And quite frankly, I really think -- and maybe this is something for the Legislature when Bob Martin comes in, if he doesn't answer the question -- I think you need to subpoena the Treasurer and find out where that money is. Because if that money is being used for other purposes, that's also unconstitutional, and illegal, and immoral, and wrong.

SENATOR SMITH: Right. We appreciate the comments, but I would appreciate more that the Sierra Club is going to litigate.

MR. TITTEL: Absolutely; we want to, yes.

And I'll give you the names of restaurants later. (laughter)

SENATOR SMITH: Okay.

Bill Kastning, Monmouth Conservation Foundation.

MR. TITTEL: (off mike) He had to leave, Senator.

SENATOR SMITH: What's that?

MR. TITTEL: He had to leave.

SENATOR SMITH: All right; who's saying that? Would you please ask him to have his members send letters to the Governor to sign the bill?

Ed Potosnak, Keep It Green.

Ed, what are you going to do about this abomination?

E D W A R D P O T O S N A K: Thanks for the opportunity, Mr. Chairman, Senators.

We're already doing a lot of things. One thing I did want to just sort of correct -- voters overwhelmingly approved the 2014 Public Question 2 by 65 percent; you mentioned 60.

SENATOR SMITH: I'm sorry.

MR. POTOSNAK: So we'd like to--

SENATOR SMITH: I always try not to puff; but you're right.

MR. POTOSNAK: Nearly 60; I think it was 65 -- a little bit less.

SENATOR SMITH: Okay, sounds good.

MR. POTOSNAK: We've already launched a petition drive to the Governor to sign the bill. The most important thing right now before us is -- the Legislature has done a great job at moving this priority legislation to the Governor's desk. And we believe that the Governor should sign the bill and work in line with what the voter's approved -- which is a lockbox on these funds to ensure preservation continues in the most densely populated state.

And so we've launched a petition drive; we have over a thousand signatures, and growing every day. In addition, we've had a number of mayors send individual letters; as you know, local municipalities, counties, local government depend on these funds--

SENATOR SMITH: Good.

MR. POTOSNAK: --including the largest city in New Jersey in that mix. Also, counties are working on resolutions, and we have a ground effort to have them speak with a unified voice to support S-969, the Preserve New Jersey Act.

But in addition, I just want to talk a little bit about the urgency around this, particularly around the \$19 million.

SENATOR SMITH: Sure.

MR. POTOSNAK: Senator Barnes asked, when the Treasurer testified a few weeks ago, particularly about this issue. And the Treasurer did confirm that this money was spent on salaries at the DEP. And this had not been done before; salaries at the DEP were funded, as you know, by the General Fund. And you work very hard to protect those funds by removing the language the Governor proposed.

He then went on to say -- like we proposed this time, to do again. So I think it's incumbent upon the Legislature in the budget process to once again remove that language, because it is a travesty. And we are exploring every option to ensure it doesn't happen again; and also to rectify and get that money back towards the programs that it's supposed to fund -- that preserves the land, protects our drinking water, preserves our natural history and our produce, and really farmers who are working every day to provide food on our table for healthy families.

A couple of other things that I definitely want to highlight. There has been strong bipartisan support, as evidenced today by the members here on the Committee, for this legislation. I think why we see that overwhelming support, both in the Senate and the Assembly, is because their constituents support these efforts. And there is a mismatch, if the Governor doesn't sign this bill, with the will of the voters. Each time there has been a Green Acres or an Open Space movement like this to fund it, there has always been, with it, implementing legislation -- either passed concomitantly, or after the measure was passed. And this is just within that forum. Our hope is that the Governor will support what the people of New Jersey support -- and that is, releasing these funds.

I do have a couple of examples from folks who had to leave, which I think are of particular interest, that speak to the urgency. David Epstein from the Land Conservancy of New Jersey has two projects that can't go forward -- they're multiyear projects -- without this funding. "So one week from today," -- I'm reading from the testimony; I have copies of for the members -- "the Land Conservancy will complete the purchase of one of the largest privately owned properties remaining in Bergen County. This 46 acre-property in the Highlands is on the northern edge of more than 8,000 acres of County and State parkland. They're working with two other nonprofit organizations, private donors, Bergen County and, of course, the Green Acres program to purchase this property. Half of the \$1,045,000 purchase price will come from State funds. And adjacent to this acquisition are four additional critical properties that will have to be targeted for preservation to add to this new preserve. But unfortunately, they'll not be able to acquire these properties without additional funding--

SENATOR SMITH: Got it.

MR. POTOSNAK: --that's delineated in this bill."

And there's another one, in Oaklyn Borough, to purchase 12 flood-prone property homes in the Ramapo River. And these will remove residents and emergency responders from harm's way, and connect municipal parkland to the Ramapo River and create a new recreational opportunity for all the town's residents. They are providing private funding of \$186,250; and Green Acres funding would go towards helping with that. So it's extremely important that this funding happens.

And I know the Governor also is very focused on the flood-prone properties. And, you know, I think there is a great reason for us to believe that people support it, and that the Governor should too.

SENATOR SMITH: No question.

MR. POTOSNAK: And that's what we're going to be working each day to do through activating the voters who supported it; but also working with our legislators, and towns, and nonprofits that are really dependent on this funding.

So we appreciate your attention to this--

SENATOR SMITH: Thank you.

MR. POTOSNAK: --and, you know, keeping the fire going.

SENATOR SMITH: The pedal to the metal.

MR. POTOSNAK: Yes, thank you -- *pedal to the metal* is a good way to say it. And we stand with you, and any suggestions you might have to move this forward across the finish line and implement it into law.

SENATOR SMITH: We appreciate it.

MR. POTOSNAK: Yes.

SENATOR SMITH: And I'm going to take David Epstein's slip out, because you have spoken for him.

Tom Fote -- you marked the wrong box. You said you are opposed.

MR. FOTE: (off mike) No, I marked the right box.

SENATOR SMITH: What's that?

MR. FOTE: I said I marked the right box.

SENATOR SMITH: Really?

MR. FOTE: Yes.

SENATOR SMITH: Why are you opposed?

Come on up.

MR. FOTE: I'm here representing the Jersey Coast Anglers Association, New Jersey Outdoor Alliance, and the New Jersey State Foundation of Sportsmen's Clubs.

When this bill was going through, we had serious problems. That money that was being used -- that \$20 million, or a portion of that, was going for Parks, and it was also going to help Marine Fisheries and certain things.

There were promises made by certain groups -- in that we would work on those issues in the next two years, and it would basically show something. As of-- We have not-- As a matter of a fact, it's gotten worse in the Bureau of Marine Fisheries than it ever has been before because we did lose -- the money that was basically held up by the Governor went to Parks; none of it went back to Fish and Wildlife.

I'm looking at addressing the issues that we've been trying to address for many years. I didn't go to the Budget hearings this year because I figured I shouldn't waste my time anymore. After 20 years of basically testifying for the Budget Committee, saying we needed a line item for, at least, the Bureau of Marine Fisheries, it goes nowhere.

We still don't have a line item in the budget for the Bureau of Marine Fisheries, and it's a shame. We have an agency that works in buildings that should be condemned, down at Nacote Creek, because they are so out of date and they go back -- they were just buildings that were put up as a lab, and being used. I go to-- You know, as one of the hats I wear as Commissioner of Atlantic States -- representing Governors from Florio

through Christie -- I go to other states, and I look at the facilities they have for research and things like that; and we don't have it in this state. And I've been crying; I'm trying to get other groups-- All the Keep It Green people -- they came up and looked at a lot of self-interest: "How do we get historic money; how do we get money to, basically--" Lands that don't allow hunters and anglers on them -- on some of those lands, when they buy them with Green Acres funds.

So that was my problem. And we said we had concerns. And we did not come out against the bill, and educate the bill, when it was going through because we said we had promises made to us by other groups. Those promises have not been kept.

SENATOR SMITH: So Tom, the Corporate Business Tax--

MR. FOTE: Right.

SENATOR SMITH: Did that fund the program you're talking about?

MR. FOTE: Yes, it went for Parks-- Part of that money went for Parks, and part of it went to Fish and Wildlife for the Bureau of Marine Fisheries. And there were actually a couple of projects that were supposed to be done, that have now been, basically, cancelled because of that.

SENATOR SMITH: All right.

Kelly, come on up.

Stay, stay, stay. (referring to Mr. Fote)

MR. FOTE: Well, I'm just going to -- what I want to--

SENATOR SMITH: No, no, no, no, no -- I want to find out the truth.

K E L L Y M O O I J: Just a point of clarification -- one of the other things that you did leave in last year -- the Legislature did, and which continued forward, was the capital park improvement--

SENATOR SMITH: Right.

MS. MOOIJ: --which was the \$13.7, I think, million; which was split between both. We supported that, because it was consistent with your implementation language and we recognized that there needed to be money continuing for those projects. There are a lot of really important projects; I think this was--

SENATOR SMITH: That's in the implementation bill.

MS. MOOIJ: That was-- It's in the implementation bill, and it remained in the budget last year as well. That money was carried forward -- the money was included in it, and the \$20 million was raided for State Park salaries, which we believe was inappropriate. But also that \$13-point -- I think it's 7 or 9 million -- was included in last year's Budget and Appropriations bill. And we supported that because it was critical for those ongoing projects -- both happening within Fisheries, and Parks and Forestry.

MR. FOTE: But none of the money went to Fisheries.

SENATOR SMITH: Okay; and by the way, the \$13 million is still in there, but it's coming out of Open Space money again.

MS. MOOIJ: Well -- and I think that that's a problem; and I-- For all of our organizations -- a lot of which do land preservation -- we recognize that that is cutting back on the land preservation. But in your implementation language, it's critically important that the CBT money -- that had been going to capital park improvements and also to those projects

that were being used by both of the Division of Parks, and Forestry and Fish and Wildlife -- needs to be able to continue.

One of the issues with this legislation--

SENATOR SMITH: But it should be funded separately.

MS. MOOIJ: The State Parks staffing needs to be funded separately--

SENATOR SMITH: Right.

MS. MOOIJ: --through the General Fund, as it always has been funded.

SENATOR SMITH: Right.

MS. MOOIJ: Your implementation language appropriately designates money for those projects to continue within DEP, and also for capital parks improvements. So in 2006, that money was dedicated with CBT.

SENATOR SMITH: Right.

MS. MOOIJ: The monies being--

SENATOR SMITH: But we didn't do anything to take out Marine Fisheries.

MS. MOOIJ: No.

MR. FOTE: You did when you passed it, and basically put it into-- That money all went to Green Acres and for Parks; but didn't go to Fisheries, that was getting money out of there before, when it was basically being able to use the CBT money.

MS. MOOIJ: It's my understanding from the conversations that we've had from all of the legislative history and, indeed, from the information that is actually in the bill -- this is money that's going to DEP;

it's not going to Green Acres. It's money that will be able to be used for those projects. We, the Keep It Green Coalition, supported that, and continue to support that. We think it's vital that that money does go to the Division of Fish and Wildlife, and Parks and Forestry to do those projects.

SENATOR SMITH: But you're talking projects, you're talking capital. You're not talking salaries.

MS. MOOIJ: We're not talking salaries.

SENATOR SMITH: All right.

MS. MOOIJ: Routine maintenance--

SENATOR SMITH: Tom, are you talking salaries?

MR. FOTE: I'm talking about everything that we've been trying to do for 25 years. You know, we started off with a budget, in 1981, that was \$3.1 million. And now we're sitting here 41 years later, and the budget is one-half of that or even less than it was the last three years. That's ridiculous, and we're trying to manage--

SENATOR SMITH: I agree.

MR. FOTE: They pick the staff of people -- and I come and testify before the Legislature, I come and testify before the Governor and nothing gets done. And I've been doing it for 20 years. It gets a little frustrating.

And my people also looked at the fact that when those bills were passed, there's about a couple of hundred thousand acres that are basically managed by Fish and Wildlife -- which, basically, does allow for fishing and hunting on it, yet there was no money in that legislation to put in there to basically manage those fisheries--

SENATOR SMITH: The point was not salaries--

MR. FOTE: --to manage that land in the Green Acres program. So a lot of that land is not taken care of the way it should be taken care of because there is no money for it.

SENATOR SMITH: Your complaint is absolutely legitimate. But the Open Space money, the Farmland Preservation money, and the Historic Preservation money is not supposed to be used for salaries. It's supposed to be used for capital projects. The State of New Jersey should properly fund those efforts.

MR. FOTE: Right.

SENATOR SMITH: Alison, put in a budget resolution to increase Marine Fisheries. Tell the Senate-- Let's do a letter, why it's important, to the Senate President.

But the bottom line is, you're going to have to wait for a real Governor. I mean, this-- You haven't had any-- None of our projects and efforts have had any support for six-and-a-half years.

MR. FOTE: Yes, but the Parks-- The money that went to Parks is still going to Parks because of the implementation -- the way it was. The plans that were supposed to go to Marine Fisheries were cut, and that's where I get it.

MS. MOOIJ: May I?

SENATOR SMITH: Yes, please.

MS. MOOIJ: So we did testify in front of Budget this year, because we think it's critically important. And I understand the frustration. And one of the things that we always specifically talk about is the need for funding for staffing for DEP. That is an across-the-board -- we absolutely agree and have always said as much. The staffing at DEP used to be 4,000;

it's 2,800 now. That is not acceptable. However, staffing for routine obligations of the State of New Jersey needs to be paid for, as it always has been, through the General Fund.

SENATOR SMITH: Right.

MS. MOOIJ: This additional voter-dedicated, constitutionally protected money needs to go for what the voters intended it to.

SENATOR SMITH: Right.

MS. MOOIJ: The State of New Jersey does not invest enough in its fisheries management. We have one of the most vital and important fisheries and we are, per angler, spending -- which I don't need to say to Tom -- but per angler we are spending less than all the other states on the eastern seaboard.

SENATOR SMITH: Right.

MS. MOOIJ: That's not acceptable; it needs to be included. I know there's a tremendous amount of support. And we would support that as an organization -- individually, New Jersey Audubon, and also the Keep It Green Coalition.

SENATOR SMITH: Right. But it's not--

MR. FOTE: It's more than just anglers; when their basic responsibility in the Bureau of Marine Fisheries is marine mammals, turtles --

SENATOR SMITH: Yes, absolutely.

MR. FOTE: --everything else that goes on with it that has nothing to do with actually fishing.

SENATOR SMITH: Absolutely.

MR. FOTE: Whether it's sturgeon-- I mean, we were talking about access before. One of the first spots of access was the -- where Jersey Coast was started was Deal Lake -- the flume in Deal Lake so we could have herring. The herring is so bad it doesn't make any difference about access anymore; because of me, as a Commissioner, I've shut that whole herring fishery down in New Jersey, which is a crying shame. Why? Because we didn't have enough money to do the research to prove that the site docks were sustainable.

SENATOR SMITH: You're right.

MR. FOTE: My frustration has gotten to the point -- and so has the anglers and hunters. The groups said they would help us. Well, *help* means getting it done. In the last three years, we haven't gotten anything done as far as increasing the funding for the Bureau of Marine Fisheries. And that's what people look at -- men and women in the hunting and fishing--

SENATOR SMITH: I understand.

MR. FOTE: And so--

SENATOR SMITH: But it's not that the Open Space Public Question, passed by voters overwhelmingly, has hurt Marine Fisheries. The problem is that you have leadership in the Executive that's not properly funding a regular program.

MR. FOTE: Senator Bateman, before you leave--

SENATOR BATEMAN: Yes.

MR. FOTE: There's a beautiful research paper that's sitting here, that I looked at a couple of weeks ago. And I'll give it to anybody who wants (indiscernible). It talks about recreational fishing in New Jersey.

It basically goes to rowboats -- everything -- listed down here. It was the only document I could find on recreational fisheries. You know what the date is? 1955. It researches 1952, 1953, and 1954, because that's the last time we had money to do that.

If we tried to do it now, under the present-- It would take what has been spent in the budget for the last three years just to fund a study like this. So that's the frustration that we're feeling.

SENATOR SMITH: You should be frustrated, but not at this Public Question.

SENATOR BATEMAN: Yes, I don't blame you.

SENATOR SMITH: The Public Question hasn't hurt Marine Fisheries at all.

MR. FOTE: When we basically ask for some of -- and it was asked for when we did this, that Marine Fisheries would be included in that bill -- in the Green Acres bill -- we got pushed out. We basically-- When we testified for it -- I testified for it; I know, Kelly, you're shaking your head, but I testified and asked to basically be included in the bill. There were promises made at that point that they would help the Bureau of Marine Fisheries. There's no money; there's actually less money--

SENATOR SMITH: You mean, help get it funded in the budget, where it should be.

MR. FOTE: Yes.

SENATOR SMITH: By the way, there's no difference on that.

SENATOR BATEMAN: Right.

SENATOR SMITH: We would like to see that in the budget.

SENATOR BATEMAN: I agree with that; yes. It should be funded.

SENATOR SMITH: In fact, let's make that resolution a joint budget resolution.

SENATOR BATEMAN: Okay.

I have to go back to Judiciary, because one of my judges is coming up.

SENATOR SMITH: Okay; that sounds like a very important thing to do. (laughter)

Tom, listen, even though you're very frustrated, I understand your frustration, I am sympathetic with your frustration. We'll try to do something about it. But I think you're 18 months away from having any satisfaction. And I wish I could say differently, but I mark my calendar every day. (laughter)

MR. FOTE: There is no support in the community at this time to put our stuff -- to put time and effort in something-- If we're going to put anything in time and effort, it's to get funding for the Bureau of Marine Fisheries.

SENATOR SMITH: As you should.

MR. FOTE: Yes.

SENATOR SMITH: Okay, thank you very much.

Linda Mead, D&R Greenway Land Trust.

Linda, what are you going to do about getting the Governor to do the right thing?

L I N D A J. M E A D: Well, let's talk about that.

So Linda Mead, President of D&R Greenway Land Trust. We've been around since 1989; preserved 20,000 acres of land. We have a constituency that we send communications to on a regular basis. And we are members of the Keep It Green Coalition, so we continue to ask our supporters, our constituency, to contact the appropriate people to let them know. And I hear at this hearing that, at this point in time, it's time for as many letters to the Governor as we possibly can get.

We agree with everything that's been said. One thing I wanted to offer is -- you talked about what are the ways that we can push this forward. As I understand it, if the Governor had to come back with reasons why he is not signing this at this point in time-- There was a study that was done back in 2006, with the New Jersey Department of Environmental Protection, that took a look at the ecological economics of Open Space lands and farmlands. And it was based on 2004 dollars that showed that ecosystem's services, which includes things like flood control, and water quality, and clean air, add \$19.4 billion in value to the New Jersey economy every year. I'm sure these are things you know.

SENATOR SMITH: We're sold. You're singing to the choir.

MS. MEAD: No, and so it's not for you--

SENATOR SMITH: You're preaching to the choir.

MS. MEAD: --but in terms of how do you respond to the Governor if he has a list of reasons why not -- why he's not signing. It just strikes me that economics is one of the key reasons that we might be able to push back on. And that might be something that we ask our constituency to focus on in comments.

SENATOR SMITH: Absolutely.

MS. MEAD: Okay.

SENATOR SMITH: Thank you.

MS. MEAD: You're welcome; thank you.

SENATOR SMITH: William, from the Open Space Institute.

How do say your last name?

WILLIAM C. RAWLYK: Rawlyk (indicating pronunciation).

SENATOR SMITH: Rawlyk; okay.

MR. RAWLYK: Okay.

SENATOR SMITH: What are we going to do about this, William? What is the Open Space Institute going to do about getting the Governor to sign that bill?

MR. RAWLYK: Okay; I'm Bill Rawlyk, the Mid-Atlantic Field Coordinator of the Open Space Institute. And I appreciate the opportunity to speak.

I think we are interested in having the bill signed and its funding not diverted to purposes that it was not intended for. The Open Space Institute brings outside money to the state -- private and foundation money -- and without the money that the State public funding provides, our leveraging money can't increase the impact of Open Space preservation.

So we very much want this to go forward as it was intended.

SENATOR SMITH: Great.

MR. RAWLYK: Thank you.

SENATOR SMITH: So you're going to call and write your members to say, "Send in your cards and letters to the Governor"?

MR. RAWLYK: Very much.

SENATOR SMITH: Okay, thank you.

MR. RAWLYK: Thank you.

SENATOR SMITH: Geoff Richter, Pinelands Preservation Alliance.

Geoff.

G E O F F R I C H T E R: Thanks very much for the opportunity. I will also try to be brief.

We, along with the rest of Keep It Green -- we've been trying to reach out to the different counties to see if the Board of Freeholders will pass resolutions. So far, it looks like Cape May is willing to do that. So we're going to go back and look at the other six counties and try to make sure that they revisit the issue.

We've also gone to the Pinelands Municipal Council and asked that they advocate -- either within their counties, or just individually -- as municipalities. Personally, I was the one delivering that message; there was a little bit of opposition in some cases, and that may or may not be because of me being from PPA and there might be some relationship issues there. But a larger issue that, at least in the Pinelands, is a concern is property tax revenue. And they -- a lot of the municipalities are already -- they think, maybe, preserved out, if you will, and are really looking for property taxes.

So I mean, that's just me coming with a perspective. We probably have to try and work on something like that. But it seems like a few of the mayors are going to be working on a bill to see if conserved and preserved land might also be property taxable in the future.

SENATOR SMITH: Another issue, another day.

MR. RICHTER: Yes; just saying.

SENATOR SMITH: Anyway, get your membership to please -- cards and letters.

MR. RICHTER: We've been doing that.

SENATOR SMITH: Okay, thank you.

MR. RICHTER: Thank you.

SENATOR SMITH: Barbara Sachau.

BARBARA SACHAU: Hi; I'm a lifelong resident of the state, and I have some concerns about the way we're spending the money that we give to the DEP and the New Jersey Division of Fish and Wildlife.

And I do recommend that we take all the 121 Wildlife Management Areas out from the control of the New Jersey Division of Fish and Wildlife and give it over to Parks and see if they can do a better job.

I am outraged at the way the New Jersey Division of Fish and Wildlife wastes our tax dollars. They're just spending, right now, \$692,000 on a survey so that they can make everybody pay to use the Open Space we already saved. The purpose of the survey, for almost \$700,000, is to try to get everybody to pay more money to use the Open Space when they hike. I mean, that's the kind of thing they do.

In addition, this Division is composed -- the Council that manages it is composed of only wildlife killers. Now, if we're going to have our wildlife in New Jersey managed, it should not be managed solely by people who are murderers of wildlife; it should not be. That's the wrong way to set it up. Where are the environmentalists who care about wildlife on that Commission and in that Division? Why are they missing? Why did the Legislature set it up like that, and why isn't it time for change? This

is not 1945. We need to save and protect our wildlife that we have right now.

So I do want to make those points. And right now, I pay on three levels -- county, local, State -- to pay for Open Space. And we've got the Keep It Green and New Jersey Audubon -- who leads Keep It Green -- with logging proposals to log our Open Space. New Jersey Division of Fish and Wildlife is perfectly happy to work to log our Open Space. That's not why we pay tax dollars to save it. We pay the tax dollars to protect and preserve that land, not so that we could have plans to log it in all 121 Wildlife Management Areas.

The situation with what's going on is outrageous, absolutely outrageous. We're taxing ourselves to death to save Open Space, and we're turning it into a Division that is ruining it; absolutely ruining it. We need to protect and preserve trees too. They're vital.

So, I mean, there are no environmentalists in that Division, and we're turning over our Open Space to them. That's outrageous.

Thank you very much for listening.

SENATOR SMITH: Thank you for your comments.

And our last witness is Amy Hansen, New Jersey Conservation Foundation.

A M Y H A N S E N: Hello, Chairman. I am Amy Hansen, New Jersey Conservation Foundation. We've been working for over 50 years to preserve land in the state, as well as natural resources.

We want this funding to go forward. I talked to my colleagues in the Acquisition Department, and they're frequently frustrated about the lack of funding for many, many projects they have all over the state. And

we are putting out information in our newsletter, and on our website, and we will-- You know, I could -- I will talk about asking our Board members more to support this funding getting out.

SENATOR SMITH: And hopefully the membership too.

MS. HANSEN: Exactly.

SENATOR SMITH: Yes, yes. That would be very helpful.

MS. HANSEN: We're doing that. So thank you.

SENATOR SMITH: Okay; thank you so much.

Captain Bill, get-- Did I miss a slip?

W I L L I A M S. K I B L E R: (off mike) Yes, I submitted a slip, Senator.

SENATOR SMITH: All right; so you come up first; and then Captain Bill, who's an add-on.

MR. KIBLER: Thank you, Senator. Bill Kibler, Raritan Headwaters Association. We submitted written testimony, so I won't go through that again.

I just -- I had two issues that I wanted to touch on. The first is, our membership is calling and writing the Governor's Office. My members tell me the woman who answers the phone is very polite and very noncommittal. We'll keep going at it.

The Governor, as you know, lives in Mendham; Mendham is in my watershed. If you think it's advisable that I camp out on his front lawn, I'll be happy to do so. How many times have I heard the Governor--

SENATOR SMITH: We'll talk after the meeting. (laughter)

MR. KIBLER: How many times have I heard the Governor say, "Elections have consequences"? Maybe one of those consequences is me camped out on his front lawn.

I do have a serious suggestion, and it's this.

SENATOR SMITH: Go ahead.

MR. KIBLER: The Highlands Council just recently engaged in their first rulemaking. Their first rulemaking was to establish an Open Space funding program within the Highlands. They have approximately \$10 million available to help pay for Highlands development credits, as well as to preserve Open Space within the Highlands.

SENATOR SMITH: Terrific.

MR. KIBLER: Which is a terrific program; it's a wonderful idea. The one caveat -- well, one caveat to the program is that it's designed as a matching program, which is, I think, a wise decision. But what that means is that the Council will only provide funding for up to half the purchase price of any land deal.

SENATOR SMITH: Right.

MR. KIBLER: What that means is this Open Space funding is critically important for the Highlands Council's goal of finding a mechanism to help compensate willing sellers in the Highlands.

So my suggestion -- the primary driver behind this program was one of the Council members, Rob Walton, who is a Freeholder in Hunterdon County. Unfortunately, Senator Bateman had to leave; but I would suggest it might be helpful for Senator Bateman or someone else on the Committee to call Rob Walton, Republican-to-Republican, to have a

discussion with him about pressing the Governor's Office to get this bill signed, because there's a voice that I think--

SENATOR SMITH: So you get homework. Call Kip later today or tomorrow.

MR. KIBLER: I will do that.

SENATOR SMITH: It's a good suggestion.

MR. KIBLER: I will see Freeholder Walton this afternoon at the Highlands Council hearing. He is my Freeholder, and he's a friend of mine.

SENATOR SMITH: Okay.

MR. KIBLER: I will press him, and I'll commit to press the rest of the Council on the issue.

SENATOR SMITH: Good; excellent.

MR. KIBLER: But they've got a vested interest in this, and I think their voices should be heard.

That was it.

SENATOR SMITH: Thank you very much for your comments. Captain Bill, our last witness today.

CAPTAIN SHEEHAN: I really didn't mean to testify on this issue. I wasn't even aware that it was going to be on the agenda. I came down for the Public Access talk.

But listening to what's been said -- Hackensack Riverkeeper supported the constitutional amendment when it was being considered.

SENATOR SMITH: Right.

CAPTAIN SHEEHAN: We held press conferences throughout the Hackensack River Watershed, and we put articles into our newsletter,

which reaches 14,000 people up in the northern part of the state. And I'd like to think that we had a little bit of something to do with getting that passed.

SENATOR SMITH: I'm sure you did.

CAPTAIN SHEEHAN: It's a constitutional amendment, is the way it was explained to me.

SENATOR SMITH: It is.

CAPTAIN SHEEHAN: Now, when Governors and the directors of the various departments of the State of New Jersey take on their jobs, they're required to take an oath of office. And in the oath of office, it says that they have to support and uphold the Constitution--

SENATOR SMITH: Uphold the Constitution--

CAPTAIN SHEEHAN: --of the State of New Jersey. And if he's not upholding the Constitution of the State of New Jersey -- whether it's Bob Martin, or Governor Christie, or any other Administration official who took that oath -- they're in violation of that oath. So who has the authority to go in and prosecute for a violation of oath?

SENATOR SMITH: Well, the answer is -- you're more than welcome to also litigate. Jeff Tittel, Sierra Club, said they're going to. When you file an action to tell the king -- *prerogative writs*--

CAPTAIN SHEEHAN: We do that.

SENATOR SMITH: --to obey the law, when it's State government, it gets filed in Mercer County; the Assignment Judge in Mercer County is a lady named Mary Jacobson who, in the past, has shown herself to be a very independent judge. So I would hope that either you would

have a call with Jeff, or with whoever else, or do your own. You were very successful on the last bit of litigation. This one, I think, is more clear.

Could we make a note to send Captain Bill the OLS opinion -- that what they're doing is unconstitutional?

It would be helpful to your lawyers. We'd love you to get into the game.

CAPTAIN SHEEHAN: Thank you.

SENATOR SMITH: And by the way, if you don't obey the Constitution, that's an impeachable offense. Don't want to use the *I* word, but--

CAPTAIN SHEEHAN: Yes; I wasn't going to go there, but you did.

SENATOR SMITH: You know what? The voters voted.

CAPTAIN SHEEHAN: And that's what I was thinking in the back of my mind while I was bringing up the constitutional--

SENATOR SMITH: Yes. But we should first try persuasion--

CAPTAIN SHEEHAN: Right.

SENATOR SMITH: --then you raise it up to litigation; and then maybe you have to go to the last step.

CAPTAIN SHEEHAN: Yes.

SENATOR SMITH: Which is pretty radical, pretty crazy--

CAPTAIN SHEEHAN: By that time, the clock will run out.

SENATOR SMITH: What's that?

CAPTAIN SHEEHAN: The clock will run out by then.

SENATOR SMITH: Maybe; maybe not.

First of all, this is irrevocable harm; so you get a fast track in front of the Mercer County Court, because it's this year's budget. And I would hope you'd sue also for the \$20 million from last year, that was spent unconstitutionally, to make sure it's in a lockbox until this legislation is passed.

CAPTAIN SHEEHAN: Right.

SENATOR SMITH: Okay? And if you would have your membership also send their cards and letters to the Governor, that would also be appreciated.

CAPTAIN SHEEHAN: All right.

SENATOR SMITH: All right?

CAPTAIN SHEEHAN: We will.

SENATOR SMITH: Thank you.

CAPTAIN SHEEHAN: And I'll be looking forward to that information. You have my e-mail address; you have my contact information.

SENATOR SMITH: (speaks to staff) Do you have his e-mail address?

No, no, you have to give-- Bill, you have to give it--

CAPTAIN SHEEHAN: I'll give you a card.

SENATOR SMITH: Yes, okay.

CAPTAIN SHEEHAN: Thank you.

SENATOR SMITH: Last call. (no response)

All right. Let me thank everybody for coming down and putting forward their suggestions about getting the Governor to do the right thing.

And on that note, the meeting is adjourned.

(HEARING CONCLUDED)