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# *Committee Meeting*

of

## SENATE ENVIRONMENT AND ENERGY COMMITTEE

*“The Committee will hear testimony from the public  
on the implementation of Public Question 2”*

*The following bill will be considered:  
Senate Bill 570*

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

**DATE:** December 8, 2014  
10:00 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Bob Smith, Chair  
Senator Linda R. Greenstein, Vice Chair  
Senator Richard J. Codey  
Senator Christopher "Kip" Bateman  
Senator Samuel D. Thompson



**ALSO PRESENT:**

Assemblywoman L. Grace Spencer  
*District 29*

Judith L. Horowitz  
*Office of Legislative Services  
Committee Aide*

Kevil Duhon  
*Senate Majority  
Committee Aide*

Carlos Cruz  
*Senate Republican  
Committee Aide*

***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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BOB SMITH  
*Chairman*

LINDA R. GREENSTEIN  
*Vice-Chairwoman*

RICHARD J. CODEY  
CHRISTOPHER "KIP" BATEMAN  
SAMUEL D. THOMPSON

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## New Jersey State Legislature

### SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

REVISED

### COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - DECEMBER 8, 2014

*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.*

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**The Senate Environment and Energy Committee will meet on Monday, December 8, 2014 at 10:00 AM in Committee Room 10, 3rd Floor, State House Annex, Trenton, New Jersey.**

**The committee will hear testimony from the public on the implementation of Public Question 2. Those wishing to testify may contact the committee aide at (609) 847-3855 for a list of issues the committee would like to focus on.**

The following bill will be considered:

S-570 Smith, B/Cardinale	Concerns calculation of value for conveyance of certain State-owned lands.
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Issued 12/2/14

\*Revised 12/5/14 "Durand Tract" discussion cancelled.

For reasonable accommodation of a disability call the telephone number or fax number above, or TTY for persons with hearing loss 609-777-2744 (toll free in NJ) 800-257-7490. The provision of assistive listening devices requires 24 hours' notice. Real time reporter or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, call 800-792-8630 (toll-free in NJ) or 609-292-4840.

[First Reprint]

**SENATE, No. 570**

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**STATE OF NEW JERSEY**

**216th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator GERALD CARDINALE**

**District 39 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senator Greenstein**

**SYNOPSIS**

Concerns conveyances of certain State-owned lands.

**CURRENT VERSION OF TEXT**

As reported by the Senate Environment and Energy Committee on December 8, 2014, with amendments.



1 AN ACT concerning <sup>1</sup> **["the valuation of"]** conveyances <sup>1</sup> **["for"]** of<sup>1</sup>  
2 certain State-owned lands, and amending <sup>1</sup> **and supplementing**<sup>1</sup>  
3 P.L.1993, c.38.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 1 of P.L.1993, c.38 (C.13:1D-51) is amended to read  
9 as follows:

10 1. As used in **["sections 1 through 7 of this amendatory and**  
11 **supplementary act] P.L.1993, c.38 (C.13:1D-51 et seq.) :**

12 "Commissioner" means the Commissioner of the Department of  
13 Environmental Protection.

14 "Convey" means to sell, exchange, lease for a term of **[25] five**  
15 years or more, grant, or agree to sell, exchange, lease for a term of  
16 **[25] five** years or more, or grant, in an amount greater than one  
17 acre.

18 "Department" means the Department of Environmental  
19 Protection, or any agency, division, or office thereof.

20 "Green Acres funds" means any funds made available for the  
21 acquisition or development of lands by the State for recreation and  
22 conservation purposes pursuant to: P.L.1961, c.46; P.L.1971,  
23 c.165; P.L.1974, c.102; P.L.1978, c.118; P.L.1983, c.354; P.L.1987,  
24 c.265; **["and"]** P.L.1989, c.183; P.L.1992, c.88; P.L.1995, c.204;  
25 P.L.2007, c.119; P.L.2009, c.117; or any similar act for such  
26 purposes that may be enacted, or any such funds administered  
27 pursuant to P.L.1961, c.45 (C.13:8A-1 et seq.), P.L.1971, c.419  
28 (C.13:8A-19 et seq.), **["and"]** P.L.1975, c.155 (C.13:8A-35 et seq.),  
29 and P.L.1999, c.152 (C.13:8C-1 et seq.), or any similar act for such  
30 purposes that may be enacted.

31 "Land" or "lands" means real property, including improvements  
32 thereof or thereon, rights-of-way, water, riparian and other rights,  
33 easements, and privileges, and all other rights or interests of any  
34 kind or description in, relating to, or connected with real property.

35 "Minor conveyance" means a conveyance or proposed  
36 conveyance of lands acquired or developed by the State with Green  
37 Acres funds, or acquired or developed by the State in any other  
38 manner and administered by the department, which lands shall be  
39 greater than one acre but less than five acres in size and valued at  
40 less than \$50,000, and which conveyance or proposed conveyance  
41 under law requires the approval of the State House Commission  
42 established pursuant to R.S.52:20-1 et seq.  
43 (cf: P.L.1993, c.38, s.1)

**EXPLANATION** – Matter enclosed in bold-faced brackets **["thus"]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SEN committee amendments adopted December 8, 2014.

1       2. Section 6 of P.L.1993, c.38 (C.13:1D-56) is amended to read  
2 as follows:

3       6. a. For (1) Except as provided otherwise pursuant to  
4 paragraph (2) of this subsection, for the purpose of determining the  
5 amount of consideration to be paid or transferred to the State in  
6 exchange for conveying lands acquired or developed by the State  
7 with Green Acres funds, or acquired or developed by the State in  
8 any other manner and administered by the department, the value of  
9 such lands shall be based upon their intended use upon conveyance  
10 or upon their highest and best use, whichever shall provide to the  
11 State the greatest value in return. When determining the value of  
12 such lands based upon their intended use upon conveyance, the  
13 revenue generation potential of the land shall be taken into  
14 consideration and calculated as part of the value of the land, and  
15 this amount shall be the minimum value that may be accepted by  
16 the State in exchange for the conveyance of the lands.

17       (2) For any lands acquired or developed by the State with Green  
18 Acres funds or acquired or developed by the State in any other  
19 manner and administered by the department, which are to be  
20 conveyed by the State to a nonprofit organization whose purpose  
21 includes environmental protection or open space, farmland, or  
22 historic preservation, the value of the lands shall be based only  
23 upon fair market value or upon a value less than fair market value  
24 as may be determined by the State for good cause in furtherance of  
25 the public interest.

26       (3) A conveyance that is a lease of land from the State to a  
27 nonprofit organization, pursuant to paragraph (2) of this subsection,  
28 shall include a requirement that any sublease receive prior approval  
29 from the department.

30       b. If lands acquired or developed by the State with Green Acres  
31 funds, or acquired or developed by the State in any other manner  
32 and administered by the department, are conveyed, and within 25  
33 years after the date of the conveyance the governing body of the  
34 municipality wherein the lands are located proposes to amend or  
35 revise for any reason the zoning ordinance as it pertains to those  
36 lands, or the zoning board of adjustment or planning board of the  
37 municipality receives an application for a variance from the zoning  
38 regulations or requirements pertaining to those lands, the governing  
39 body, zoning board of adjustment, or planning board, as the case  
40 may be, shall notify the commissioner in writing at least 30 days  
41 prior to taking action on the proposed amendment or revision to the  
42 zoning ordinance or variance application, as the case may be,  
43 according to procedures to be developed therefor by the department  
44 pursuant to the "Administrative Procedure Act," P.L.1968, c.410  
45 (C.52:14B-1 et seq.).

46       c. (1) If the governing body of the municipality wherein the  
47 lands are located amends or revises for any reason the zoning

1 ordinance as it pertains to those lands, or the zoning board of  
2 adjustment or planning board of the municipality grants a variance  
3 from the zoning regulations or requirements pertaining to those  
4 lands, as the case may be, within 25 years after the date of  
5 conveyance of the lands by the State, and that amendment or  
6 revision of the zoning ordinance or grant of a variance results in an  
7 increase in the value of the lands, an amount of money equal to that  
8 increase in value measured as of the effective date of the  
9 amendment or revision of the zoning ordinance or grant of a  
10 variance, as the case may be, shall be paid to the department by the  
11 then current owner of the lands within 60 days after the date of the  
12 last public hearing required pursuant to paragraph (3) of this  
13 subsection, or if a court determination of the value is required  
14 pursuant to paragraph (2) of this subsection, within 60 days after the  
15 date of the court's judgment, for deposit and use by the department  
16 pursuant to section 7 of **[this amendatory and supplementary act]**  
17 P.L.1993, c.38 (C.13:1D-57) . In addition, the current owner of the  
18 lands on the effective date of the first amendment or revision of the  
19 zoning ordinance or first grant of a variance pertaining to those  
20 lands, as the case may be, shall dedicate 20% of the lands for use as  
21 public open space.

22 (2) If the department and the then current owner are unable to  
23 agree on the amount of the increased value resulting from an  
24 amendment or revision of the zoning ordinance or grant of a  
25 variance pertaining to the lands, as the case may be, the value shall  
26 be decided in a summary proceeding before the Superior Court.

27 (3) The department shall not agree to any determination of the  
28 amount of money equal to an increased value unless it has first  
29 conducted two additional public hearings and given appropriate  
30 notice of its intentions according to the procedures set forth in  
31 sections 2, 3, and 4 of **[this amendatory and supplementary act]**  
32 P.L.1993, c.38 (C.13:1D-52 through C.13:1D-54) .

33 (4) If the current owner of the lands on the effective date of any  
34 amendment or revision of the zoning ordinance or grant of a  
35 variance pertaining to those lands, as the case may be, is unable to  
36 pay an amount of money equal to the increase in value required  
37 pursuant to this subsection, the lands shall revert to the State and  
38 shall be managed by the department for the same purposes as they  
39 were immediately prior to the original conveyance by the State.

40 d. The department may accept land of equivalent or greater  
41 value in lieu of any payment required pursuant to subsection c. of  
42 this section, but prior to doing so, the department shall comply with  
43 the requirements of paragraph (3) of that subsection.

44 e. The terms of subsections b., c., and d. of this section shall be  
45 incorporated into any contract of sale, lease, or other similar  
46 instrument, as well as any deed or other instrument of conveyance,

1 involving the lands, and shall run with the land.  
2 (cf: P.L.1993, c.38, s.6)

3

4 <sup>1</sup>3. (New section) a. No lands acquired or developed by the  
5 State with Green Acres funds, or acquired or developed by the State  
6 in any other manner and administered by the Department of  
7 Environmental Protection, may be conveyed in fee simple unless  
8 the intended use upon conveyance is a public use.

9 b. Any lands 20 acres or more in size acquired or developed by  
10 the State with Green Acres funds, or acquired or developed by the  
11 State in any other manner and administered by the Department of  
12 Environmental Protection, that the State intends to convey in fee  
13 simple for a public use may only be approved for conveyance by a  
14 unanimous vote of the full membership of the State House  
15 Commission.

16 c. The sublease of any lands that are leased by the State to a  
17 lessee, which were acquired or developed by the State with Green  
18 Acres Funds or developed by the State in any other manner and  
19 administered by the Department of Environmental Protection, shall  
20 be subject to approval by the State House Commission.

21 The terms of this subsection shall be incorporated into any lease  
22 or other similar instrument involving the lands, and shall run with  
23 the land.<sup>1</sup>

24

25 <sup>1</sup>[3.] <sup>4.</sup> This act shall take effect immediately.

## TABLE OF CONTENTS

	<u>Page</u>
Senator Gerald Cardinale District 39	2
Jennifer Coffey Executive Director Association of New Jersey Environmental Commissions	6
Barbara Sachau Private Citizen	8
Bill Wolfe Director New Jersey Public Employees for Environmental Responsibility	9
Ed Wengryn Representing New Jersey Farm Bureau	12
Deborah Kim Gaddy Environmental Justice Organizer Clean Water Action	15
Eileen Swan Representing New Jersey Keep It Green Coalition, and Policy Manager New Jersey Conservation Foundation	15
Meme Omogbai Chair Board of Trustees New Jersey Historic Trust	17
Jeff Tittel Director New Jersey Chapter Sierra Club	18
Michael L. PISAURO Jr., Esq. Policy Director Stony Brook-Millstone Watershed Association	21



## TABLE OF CONTENTS (continued)

	<u>Page</u>
Ryck Suydam President New Jersey Farm Bureau	25
Kelly Mooij Vice President Government Relations New Jersey Audubon Society, and Coordinator New Jersey Keep It Green Coalition	29
Stacy McCormack Director Government Affairs American Littoral Society	34
Doug O'Malley Field Director Environment New Jersey	35
Roger R. Kumpel Private Citizen	40
Joseph J. Carney President Washington Crossing Park Association, Inc.	43
Robert Swanekamp Sr. Vice President New Jersey State Board of Agriculture	44
David Epstein President and Chief Executive Officer The Land Conservancy of New Jersey	51
John Hazen Director Legislative Affairs New Jersey Department of Environmental Protection	54

## TABLE OF CONTENTS (continued)

	<u>Page</u>
Patricia Butch Member Monmouth County Board of Agriculture, and Member Monmouth County Agriculture Development Board, and Administrator Millstone Township Open Space and Farmland Preservation Commission	60
Deborah A. Mans Executive Director, and Baykeeper NY/NJ Baykeeper	65
John Toth Representing New Jersey Outdoor Alliance	68
David Pringle Campaign Director New Jersey Environmental Federation	81
Fairfax Hutter Private Citizen	85
Pamela Griffin Executive Director New Jersey Recreation Park Association	88
<b>APPENDIX:</b>	
Testimony submitted by Eileen Swan	1x
Testimony submitted by Kelly Mooij	5x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony submitted by Joseph J. Carney	7x
Testimony submitted by David Epstein	9x
Testimony submitted by Deborah A. Mans	12x
Testimony submitted by Fairfax Hutter	14ax
Testimony submitted by Barbara T. Ross Vice President D & R Canal Watch	15x
Testimony submitted by Kathleen Crotty Private Citizen	17x
Testimony submitted by Sam Pesin President Friends of Liberty State Park	19x
Testimony submitted by The Lake Hopatcong Foundation	25x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<u>Page</u>
Testimony, addressed to Senate Environment and Energy Committee submitted by Estelle Anderson and Robert Jonas Private Citizens	27x
Testimony submitted by Anne Marie Price Naturalist Kateri Environmental Center, and Member Alliance of New Jersey Environmental Educators	28x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sallie Hadley Private Citizen	29x
Testimony, addressed to Senate Environment and Energy Committee submitted by Patricia Heaney Private Citizen	30x
<i>Township of Byram</i> <i>Resolution No. 189 – 2014</i> addressed to Senate Environment and Energy Committee submitted by Doris J. Flynn Municipal Clerk Byram Township	31x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Margaret McGarrity Secretary Environmental Commission Byram Township	34x
Testimony, addressed to Senate Environment and Energy Committee submitted by Michel Cuillerier Vice President FOLSP.org	39x
Testimony, addressed to Senate Environment and Energy Committee submitted by Linda J. Barth Executive Director League of Historical Societies of New Jersey	47x
Testimony, addressed to Senate Environment and Energy Committee submitted by Ruth Mitchell Private Citizen	50x
Testimony, addressed to Senate Environment and Energy Committee submitted by Lucian Fletcher Private Citizen	51x
Testimony, addressed to Senate Environment and Energy Committee submitted by Charles L. Viers Private Citizen	52x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Morton Goldfein Private Citizen	53x
Testimony, addressed to Senate Environment and Energy Committee submitted by Dennis Chrzanowski Private Citizen	54x
Testimony, addressed to Senate Environment and Energy Committee submitted by Harry Kafka Private Citizen	55x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jill Pustorino Private Citizen	56x
Testimony, addressed to Senate Environment and Energy Committee submitted by Beth Mueller Private Citizen	57x
Testimony, addressed to Senate Environment and Energy Committee submitted by Lynn Albin and Michael Puder Private Citizens	58x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Theta Pavis Private Citizen	59x
Testimony, addressed to Senate Environment and Energy Committee submitted by Manny Urquizo Private Citizen	60x
Testimony, addressed to Senate Environment and Energy Committee submitted by Elizabeth McKeown Private Citizen	61x
Testimony, addressed to Senate Environment and Energy Committee submitted by Daoud-David Williams Private Citizen	62x
Testimony, addressed to Senate Environment and Energy Committee submitted by Tom Dwyer Private Citizen	63x
Testimony, addressed to Senate Environment and Energy Committee submitted by Agnes deBethune Private Citizen	64x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Maura Thompson Private Citizen	66x
Testimony, addressed to Senate Environment and Energy Committee submitted by Kenneth H. Malkin Private Citizen	67x
Testimony, addressed to Senate Environment and Energy Committee submitted by Donna C. Coulson Private Citizen	68x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jason Renker Private Citizen	70x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	71x
Testimony, addressed to Senate Environment and Energy Committee submitted by Anna Kessler Private Citizen	73x



## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Megan Klim Private Citizen	74x
Testimony, addressed to Senate Environment and Energy Committee submitted by Karen Zavian Board Member Friends of Liberty State Park	75x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	78x
Testimony, addressed to Senate Environment and Energy Committee submitted by Bill Armbruster Private Citizen	79x
Testimony, addressed to Senate Environment and Energy Committee submitted by Margaret Meyers Private Citizen	81x
Testimony, addressed to Senate Environment and Energy Committee submitted by Steven Advensky Private Citizen	83x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Patricia Guida Private Citizen	85x
Testimony, addressed to Senate Environment and Energy Committee submitted by Whitney Bernard Private Citizen	86x
Testimony, addressed to Senate Environment and Energy Committee submitted by Anthony Cafiero Private Citizen	87x
Testimony, addressed to Senate Environment and Energy Committee submitted by Alex Schkrutz Private Citizen	88x
Testimony, addressed to Senate Environment and Energy Committee submitted by Laurie Ketzenberg Private Citizen	89x
Testimony, addressed to Senate Environment and Energy Committee submitted by Howard LaMell Private Citizen	91x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	93x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Douglas J. Fleisher, Esq. Private Citizen	94x
Testimony, addressed to Senate Environment and Energy Committee submitted by Yvonne and Charlie Balcer Private Citizen	96x
Testimony, addressed to Senate Environment and Energy Committee submitted by Maria Melian Private Citizen	101x
Testimony, addressed to Senate Environment and Energy Committee submitted by Thomas Heller Friends of Liberty State Park	103x
Testimony, addressed to Senate Environment and Energy Committee submitted by Milton Fong Private Citizen	105x
Testimony, addressed to Senate Environment and Energy Committee submitted by Miloni Mody Private Citizen	110x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Byron Walker Private Citizen	111x
Testimony, addressed to Senate Environment and Energy Committee submitted by Lisa Simms Private Citizen	112x
Testimony, addressed to Senate Environment and Energy Committee submitted by Seth Lubin Private Citizen	113x
Testimony, addressed to Senate Environment and Energy Committee submitted by Pam Russell Private Citizen	115x
Senate Environment and Energy Committee submitted by Donald Wenner Private Citizen	117x
Testimony, addressed to Senate Environment and Energy Committee submitted by Tammy Walters Private Citizen	119x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Melanie Long Private Citizen	121x
Testimony, addressed to Senate Environment and Energy Committee submitted by Peter Reed Private Citizen	122x
Testimony, addressed to Senate Environment and Energy Committee submitted by Tia Biasi Private Citizen	123x
Testimony, addressed to Senate Environment and Energy Committee submitted by Diane Nelson Private Citizen	125x
Testimony, addressed to Senate Environment and Energy Committee submitted by Marc J. Kornutik Private Citizen	126x
Testimony, addressed to Senate Environment and Energy Committee submitted by Maureen Haight Private Citizen	127x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Christina M. Brown Private Citizen	129x
Testimony, addressed to Senate Environment and Energy Committee submitted by Daniel Levin Private Citizen	130x
Testimony, addressed to Senate Environment and Energy Committee submitted by Paul Melia Private Citizen	131x
Testimony, addressed to Senate Environment and Energy Committee submitted by Juanita Bleecker Private Citizen	133x
Testimony, addressed to Senate Environment and Energy Committee submitted by Richard Bleecker Private Citizen	134x
Testimony, addressed to Senate Environment and Energy Committee submitted by Kris Reiss Private Citizen	135x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<u>Page</u>
Testimony, addressed to Senate Environment and Energy Committee submitted by Helen Weinberg Private Citizen	137x
Testimony, addressed to Senate Environment and Energy Committee submitted by Robb and Jill Kushner Private Citizens	139x
Testimony, addressed to Senate Environment and Energy Committee submitted by Gretchen Scheiman Private Citizen	140x
Testimony, addressed to Senate Environment and Energy Committee Una Ratmeyer Private Citizen	141x
Testimony, addressed to Senate Environment and Energy Committee submitted by Alessandra Rafferty Private Citizen	143x
Testimony, addressed to Senate Environment and Energy Committee submitted by Holly Carley Private Citizen	145x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Roland Millman Private Citizen	146x
Testimony, addressed to Senate Environment and Energy Committee submitted by Andrea Zuckerman Private Citizen	147x
Testimony, addressed to Senate Environment and Energy Committee submitted by Anthony Cafiero Private Citizen	149x
Testimony, addressed to Senate Environment and Energy Committee submitted by Leonard Waldman Private Citizen	150x
Testimony, addressed to Senate Environment and Energy Committee submitted by Darnelle L. Richardson Private Citizen	152x
Testimony, addressed to Senate Environment and Energy Committee submitted by Bill Armbruster Private Citizen	154x



## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Robin Shay Private Citizen	156x
Testimony, addressed to Senate Environment and Energy Committee submitted by Ruth Grauert Private Citizen	158x
Testimony, addressed to Senate Environment and Energy Committee submitted by Meghan Scheibal Shay Private Citizen	159x
Testimony, addressed to Senate Environment and Energy Committee submitted by Tom McGlynn Private Citizen	161x
Testimony, addressed to Senate Environment and Energy Committee submitted by William Price Private Citizen	163x
Testimony, addressed to Senate Environment and Energy Committee submitted by Randy Katy Private Citizen	165x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Paula Jensen Private Citizen	166x
Testimony, addressed to Senate Environment and Energy Committee submitted by Roger Heitmann Private Citizen	168x
Testimony, addressed to Senate Environment and Energy Committee submitted by Dr. Susan Eisen Private Citizen	170x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	171x
Testimony, addressed to Senate Environment and Energy Committee submitted by Bernadette McGreevy Private Citizen	172x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jim Whelan Private Citizen	173x
Testimony, addressed to Senate Environment and Energy Committee submitted by Rabbi Debra Hachen Private Citizen	175x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by S.J. Malecki Private Citizen	176x
Testimony, addressed to Senate Environment and Energy Committee submitted by James Certoma Private Citizen	180x
Testimony, addressed to Senate Environment and Energy Committee submitted by Mary J. Mills Private Citizen	182x
Testimony, addressed to Senate Environment and Energy Committee submitted by Shlomit Sheila Geisler Private Citizen	184x
Testimony, addressed to Senate Environment and Energy Committee submitted by Dr. Sally O’Driscoll Private Citizen	186x
Testimony, addressed to Senate Environment and Energy Committee submitted by Linda O. Sofer Private Citizen	187x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Paul Gelbman Private Citizen	189x
Testimony, addressed to Senate Environment and Energy Committee submitted by John Koeppe Private Citizen	190x
Testimony, addressed to Senate Environment and Energy Committee submitted by Judy Pesin Private Citizen	192x
Testimony, addressed to Senate Environment and Energy Committee submitted by Carolyn Castagna Private Citizen	194x
Testimony, addressed to Senate Environment and Energy Committee submitted by Lia Dudine Private Citizen	195x
Testimony, addressed to Senate Environment and Energy Committee submitted by Dana Lee Private Citizen	197x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Robert Salsbury Private Citizen	198x
Testimony, addressed to Senate Environment and Energy Committee submitted by Amy Bullis Private Citizen	200x
Testimony, addressed to Senate Environment and Energy Committee submitted by Mari OMahony Private Citizen	202x
Testimony, addressed to Senate Environment and Energy Committee submitted by Nancy Shanes Private Citizen	204x
Testimony, addressed to Senate Environment and Energy Committee submitted by Chris Santarpio Private Citizen	207x
Testimony, addressed to Senate Environment and Energy Committee submitted by Camille Gertsen Private Citizen	208x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Mary Qualls Private Citizen	209x
Testimony, addressed to Senate Environment and Energy Committee submitted by David Rosenberg Private Citizen	211x
Testimony, addressed to Senate Environment and Energy Committee submitted by Yasmin S. Meah, M.D. Private Citizen	214x
Testimony, addressed to Senate Environment and Energy Committee submitted by Carol J. Kobak Private Citizen	215x
Testimony, addressed to Senate Environment and Energy Committee submitted by Melissa Scagnelli Private Citizen	216x
Testimony, addressed to Senate Environment and Energy Committee submitted by James B. Kobak Jr. Private Citizen	219x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Steve Dworkin Private Citizen	222x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sabrina Valvo Private Citizen	223x
Testimony, addressed to Senate Environment and Energy Committee submitted by Chris Woods Private Citizen	225x
Testimony, addressed to Senate Environment and Energy Committee submitted by Stephanie Daniels Private Citizen	227x
Testimony, addressed to Senate Environment and Energy Committee submitted by Gina Davison Private Citizen	228x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jessie Rae Nikolis Private Citizen	230x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Dom J. Buccafusco Private Citizen	231x
Testimony, addressed to Senate Environment and Energy Committee submitted by Cheryl Star Private Citizen	232x
Testimony, addressed to Senate Environment and Energy Committee submitted by Joe Esposito Private Citizen	236x
Testimony, addressed to Senate Environment and Energy Committee submitted by Donna Dileo Private Citizen	237x
Testimony, addressed to Senate Environment and Energy Committee submitted by Patricia Hillard Private Citizen	238x
Testimony, addressed to Senate Environment and Energy Committee submitted by Karen Van de Castle Private Citizen	239x



## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Alma Malabanan-McGrath Private Citizen	242x
Testimony, addressed to Senate Environment and Energy Committee submitted by Richard Cordner Private Citizen	244x
Testimony, addressed to Senate Environment and Energy Committee submitted by Timothy Snyder Private Citizen	246x
Testimony, addressed to Senate Environment and Energy Committee submitted by Martha Jaramillo Private Citizen	248x
Testimony, addressed to Senate Environment and Energy Committee submitted by Bess Morrison Private Citizen	251x
Testimony, addressed to Senate Environment and Energy Committee submitted by Luba Timchinna Private Citizen	254x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Christine Bee Private Citizen	256x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sheila Kirven Private Citizen	258x
Testimony, addressed to Senate Environment and Energy Committee submitted by Reena R. Nawani Private Citizen	259x
Testimony, addressed to Senate Environment and Energy Committee submitted by Vincent J. Winters Private Citizen	260x
Testimony, addressed to Senate Environment and Energy Committee submitted by Kevin and Lisa Johnson Private Citizens	262x
Testimony, addressed to Senate Environment and Energy Committee submitted by Lissa Elisabeth Welles Private Citizen	265x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Joseph Springer Private Citizen	266x
Testimony, addressed to Senate Environment and Energy Committee submitted by Mia Scanga Private Citizen	267x
Testimony, addressed to Senate Environment and Energy Committee submitted by Steve Fusco Private Citizen	269x
Testimony, addressed to Senate Environment and Energy Committee submitted by John Finis Private Citizen	270x
Testimony, addressed to Senate Environment and Energy Committee submitted by Linda Steele-Hall Private Citizen	271x
Testimony, addressed to Senate Environment and Energy Committee submitted by Randall Blecher Private Citizen	272x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Kelly A. Hartford Private Citizen	273x
Testimony, addressed to Senate Environment and Energy Committee submitted by Alicia C. Batko Private Citizen	274x
Testimony, addressed to Senate Environment and Energy Committee submitted by Nina Krauss Private Citizen	275x
Testimony, addressed to Senate Environment and Energy Committee submitted by Terry Loboda Private Citizen	276x
Testimony, addressed to Senate Environment and Energy Committee submitted by Joseph Loboda Private Citizen	277x
Testimony, addressed to Senate Environment and Energy Committee submitted by Joe Allocco Private Citizen	278x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Lenore Holz Private Citizen	279x
Testimony, addressed to Senate Environment and Energy Committee submitted by Marcus Prince Private Citizen	281x
Testimony, addressed to Senate Environment and Energy Committee submitted by Michael Pushkin Private Citizen	282x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jill Koproski Private Citizen	283x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jennifer Meyer Private Citizen	284x
Testimony, addressed to Senate Environment and Energy Committee submitted by Robin Lall and Nayanika Misra Private Citizens	286x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Tine Pahl	288x
Testimony, addressed to Senate Environment and Energy Committee submitted by Michelle Rhodes	289x
Testimony, addressed to Senate Environment and Energy Committee submitted by E. Shaskan Bumas Private Citizen	290x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jedd Ehrmann Private Citizen	291x
Testimony, addressed to Senate Environment and Energy Committee submitted by Audrey Bernstein, Ph.D. Private Citizen	292x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jayne Freeman Private Citizen	293x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sharon White	294x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Sriram Parthasarathy Private Citizen	295x
Testimony, addressed to Senate Environment and Energy Committee submitted by Roger Sayre Private Citizen	296x
Testimony, addressed to Senate Environment and Energy Committee submitted by Catalina Aranguren Private Citizen	297x
Testimony, addressed to Senate Environment and Energy Committee submitted by Barbara Melfi Private Citizen	298x
Testimony, addressed to Senate Environment and Energy Committee submitted by Debra DeVenezia Private Citizen	299x
Testimony, addressed to Senate Environment and Energy Committee submitted by Frank Fiore Private Citizen	300x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Garrett Rafferty Private Citizen	301x
Testimony, addressed to Senate Environment and Energy Committee submitted by Laurence Borrione Private Citizen	302x
Testimony, addressed to Senate Environment and Energy Committee submitted by Lillian Ferrari Private Citizen	303x
Testimony, addressed to Senate Environment and Energy Committee submitted by Yahaira Castro Private Citizen	304x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sara Welch Private Citizen	305x
Testimony, addressed to Senate Environment and Energy Committee submitted by Svetlana Grutman Private Citizen	306x



## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Vishwanath Dookie Private Citizen	307x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sara Kawoczka Private Citizen	309x
Testimony, addressed to Senate Environment and Energy Committee submitted by Alessandra Dwyer Private Citizen	310x
Testimony, addressed to Senate Environment and Energy Committee submitted by Susan Sterman-Jones Private Citizen	311x
Testimony, addressed to Senate Environment and Energy Committee submitted by Peter Zirnig Private Citizen	312x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	314x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jesse Teeters Private Citizen	315x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Maureen Zeccola Trzepla Private Citizen	316x
Testimony, addressed to Senate Environment and Energy Committee submitted by Mark Echavez Private Citizen	317x
Testimony, addressed to Senate Environment and Energy Committee submitted by Mary Cartagena Private Citizen	318x
Testimony, addressed to Senate Environment and Energy Committee submitted by Kelly Cullen Private Citizen	319x
Testimony, addressed to Senate Environment and Energy Committee submitted by Vanessa Meer Private Citizen	320x
Testimony, addressed to Senate Environment and Energy Committee submitted by Deidre Rodriguez Private Citizen	321x

## TABLE OF CONTENTS (continued)

### APPENDIX (continued)

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Maureen Gallagher Private Citizen	322x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	323x
Testimony, addressed to Senate Environment and Energy Committee submitted by Elizabeth Ann Tokoly Private Citizen	324x
Testimony, addressed to Senate Environment and Energy Committee submitted by Jamie Wilson Private Citizen	325x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	326x
Testimony, addressed to Senate Environment and Energy Committee submitted by Karen Murphy Private Citizen	327x
Testimony, addressed to Senate Environment and Energy Committee submitted by Unidentified Private Citizen	328x

## **TABLE OF CONTENTS (continued)**

### **APPENDIX (continued)**

	<b><u>Page</u></b>
Testimony, addressed to Senate Environment and Energy Committee submitted by Leonard Franco Jr. Private Citizen	329x
Testimony, addressed to Senate Environment and Energy Committee submitted by Ellen Broudy Private Citizen	330x
Testimony, addressed to Senate Environment and Energy Committee submitted by Deirdre Kennedy Private Citizen	332x
Testimony, addressed to Senate Environment and Energy Committee submitted by Sharon Agnello Private Citizen	333x
Testimony, addressed to Senate Environment and Energy Committee submitted by Fatima Gordon Private Citizen	334x
Testimony, addressed to Senate Environment and Energy Committee submitted by Joanne Gucciardo Private Citizen	335x

**TABLE OF CONTENTS (continued)**

**APPENDIX (continued)**

Testimony, addressed to  
Senate Environment and Energy Committee  
submitted by  
James and Jill Scipione  
Private Citizens

**Page**

336x

pnf:1-89

**SENATOR BOB SMITH (Chairman):** Good morning, everyone.

Welcome to the most interesting Committee in the legislature. (laughter) We are joined today by Chairwoman Assemblywoman Grace Spencer, seated over here (gestures) -- which shows the degree of interest in our Open Space issues. Grace wanted to hear what everybody had to say on this side concerning our Open Space allocations.

The good news is we have the time to do this right. The public question passed; however, there is no money for about a year. So we have a chance to do this legislation in the right way; and we have a lot of very interesting, interested people here today.

But before we start that, we are also honored to have the presence of Senator Gerry Cardinale. We're going to talk about a bill concerning the valuation of space that goes through the State House Commission process -- that's S-570. But just to be 100 percent kosher, why don't we start with a roll call?

**MS. HOROWITZ (Committee Aide):** Senator Smith.

**SENATOR SMITH:** Present.

**MS. HOROWITZ:** Senator Greenstein was here, but stepped away.

Senator Thompson.

**SENATOR THOMPSON:** Here.

**SENATOR SMITH:** All right; and Senator Bateman is on his way, and we believe Senator Codey is on his way.

Senator Cardinale, would you give the Committee a little background on S-570?

**SENATOR GERALD CARDINALE:** Thank you, Mr. Chairman. And thank you for your co-prime sponsorship of the bill.

For the benefit of those who don't know how it came about, the history is interesting. Senator Smith and I serve on a Committee called the State House Commission, which deals with the disposal of State lands and has hearings, and hears from all sides and then makes decisions as to whether the proposals that are brought before us are appropriate or inappropriate.

In the course of that endeavor, the Senator and I became aware that there were formulas being used when State lands needed to be disposed of for one or another reason -- and primarily those dealt with pipelines going through State-owned facilities -- and these were the leasing of those lands. And the formulas being used to evaluate the commercial value of those leases -- where these things had to be done, and the State House Commission wanted to do them -- not that we would do anything that just came along -- but where we made the decision it appeared to both of us that, from an economic perspective, the State was getting the short end of the stick--

**SENATOR SMITH:** Big time.

**SENATOR CARDINALE:** --to put it mildly. And we did a couple of ad hoc things that ameliorated a couple of situations that were right before us, but they were ad hoc and certainly not something that we should base an ongoing policy on forever.

And so what this Bill attempts to do, in a very modest fashion, is to put some constraints on the Department of Environmental Protection - - primarily who holds these lands -- that when they are going to go along with leasing some State land -- and, perhaps, selling some State land, but that's not to happen very often -- that the formulas used to evaluate what should be the remuneration to the State have to be a lot better than they are today. I mean, we don't attempt, in the Bill, to set up the formulas, but we have demanded within the Bill that the formulas be set up on a reasonable business basis, essentially.

Now, I'm sure we're going to get into issues, which we get into all the time in the State House Commission, of whether we should ever do this, or under what basis we should do this other than the economics. But that's not what this bill deals with. This bill deals with the economic interests of the State when such things are done. And there are other processes that will deal with whether those things should be done or not.

And I will not presume -- I know that the Chairman is a very, very open-minded guy and a very fair guy. And I anticipate that this hearing could take days if it was allowed to wander into all of the issues surrounding these kinds of transactions. But I think those are better left for another time and another place.

And let me say that I do believe, just from my experience on the State House Commission, that some of these things have had an enormous -- forgetting about the economic value to the State of the particular piece of property -- they have had an enormous impact on my constituents who have seen -- over the past several years, because of fuels that have become available to heat their homes -- that there has been an



enormous benefit to all of the population from doing this, even if we got no money for the pipelines. But not everyone benefits in exactly the same way; not the whole population benefits in the same way. And since these lands belong to all of the people of New Jersey, to establish fairness the value of all of the people (*sic*) ought to go to all of the people; and the value that accrues because of a new facility that's available to only some, the marketplace will determine that.

But we need good formulas. And I don't want to beat that horse any longer, but I do think that that's what we have to address ourselves to, and that's what Senator Smith and I, with this bill, have attempted to bring to the fore.

SENATOR SMITH: Great; thank you, Senator.

The only thing I would add to your comments is a little further description of the historic background, which was-- You're absolutely right. When we had some matters before the State House Commission, we both fussed about what it was that the people of the State of New Jersey were receiving in compensation for these leases. And as a result, there was some adjustment upward, which didn't take an awful lot of arm twisting, quite frankly.

Then the DEP adopted new formulas which raised the reimbursement to the State of New Jersey. But even that raise is very inadequate in my view -- and I believe in your view -- because the potential commercial value to the entities that are using these lands is enormous. Hundreds of millions, maybe even billions of dollars, and our citizens should be properly compensated.

Not only that, the environment should be properly valued. I mean, when I see any of these transactions before the State House Commission, it always bothers me that some of our very pristine and gorgeous property is allowing some impediments on them. But they get literally pennies for the impact on the environment, and I don't think we're properly compensated. So this is a big step in the right direction, I think. And it would be a public process to set the proper valuation. But at least the commercial value to the entity receiving this right would be taken into consideration, and that has to be a better formula for the citizens.

And also, too, I'd go beyond the State border. Remember, some of these entities are serving customers in other states and, quite frankly, we hear the argument, "Well, this is going to raise rates," or whatever. Surrounding states are getting a benefit as well. And they should -- everybody should be chipping in to properly compensate the citizens of New Jersey.

So it's an interesting thing. We also have, I think, a couple of amendments that were-- Judy, would you just mention the amendments so everybody knows what we're talking about today?

MS. HOROWITZ: The proposed amendments would prohibit the sale in fee simple of lands acquired or developed by the State with Green Acres funds, or acquired or developed by the State in any other manner and administered by the DEP, unless the intended use upon conveyance is a public use. And the Committee amendments would require that for sales of such lands in fee simple, 20 acres or more in size, the sale may only be approved by unanimous vote of the full membership of the State House Commission.

SENATOR SMITH: Right. And Senator, you were okay with those amendments, correct?

SENATOR CARDINALE: I think that's fairly severe. But since it's limited to fee simple sales--

SENATOR SMITH: Right.

SENATOR CARDINALE: --I think that-- I don't envision us selling off Green Acres lands. I think it's nice to have that kind of protection with, perhaps, a little outlet in case something--

SENATOR SMITH: That's great.

All right; so those are the amendments.

We have Jennifer Coffey, the Association of New Jersey Environmental Commissions, in favor.

Ms. Coffey, did you want to testify?

JENNIFER COFFEY: (off mike) If you have the time.

SENATOR SMITH: Sure; we always want to hear from the experts.

MS. COFFEY: Thank you, Senator; excellent.

SENATOR SMITH: Senator Thompson.

SENATOR THOMPSON: I support the intent here and I think it's a good bill. I am a little concerned about just how you're going to get around to making some of the computations. Thus, in other words, you indicate that they need to take into consideration the revenue being generated by the project, etc. And you mentioned pipelines, in particular. Well, a pipeline might be 100 miles, and so on, and we may be talking about a fraction of a mile that we're looking at here. So while the revenue

to be generated is going to be tremendous, none of it will be generated without that fraction of a mile that we have.

SENATOR SMITH: Right.

SENATOR THOMPSON: But we can't say that that fraction of a mile is generating all this, so it's going to kind of complicate the calculations there.

And one other thing -- on one of the amendments that you were just saying there. You were proposing to require a unanimous vote on the Commission. That kind of scares me, when you need a unanimous vote. One person -- as opposed to, if you said, two-thirds or something like that -- one person can stand in the way of a lot. I think you might want to look at that a little closer.

SENATOR SMITH: I appreciate the comments.

Ms. Coffey.

MS. COFFEY: Great, thank you. Thank you, Senator; thank you, Senator, for introducing this bill.

I just wanted to register ANJEC -- the Association of New Jersey Environmental Commission's support for S-570, and reiterate the Senator's comments about increasing the bar for the State in terms of compensation.

With local land diversions there are much more rigorous processes. And it's much more difficult to divert land that has been preserved and maintained by counties, locals, and nonprofits. And in many cases, particularly with regard to pipelines -- and there are quite a number of pipelines that have been constructed in New Jersey and are being constructed -- it often becomes the path of least resistance to go through

State lands. And so having a higher bar and ensuring that the people of New Jersey are rightly compensated, and, quite frankly, that private companies think twice about better options for moving through with easements and construction for pipelines or anything else, is particularly important and just, I think, on the right track for the State of New Jersey.

So thank you.

SENATOR SMITH: Thank you very much.

Barbara Sachau, opposed.

Ms. Sachau.

**BARBARA SACHAU:** Yes, I wanted to mention that I was at some of the State House Commission meetings where you approved -- where you voted to approve that pipeline based on a 24-year lease so that they wouldn't have to have public comment. And I find that to be a real issue in any diversion of any Open Space lands, because the public seems to be not part of the process often enough.

What happened with that pipeline was that there was never a public hearing on it, because they went for 24 years instead of 25. So far too often the public is getting ripped off by some of these things, and we do need to make sure the public is part of the process.

I also see, in part of this bill, a reference to letting nonprofits have use of our lands. And so far I find, as an ordinary citizen of the State, that some of these nonprofits don't represent me at all and, in fact, some of them have become practically profitable businesses -- where they start selling things to make money so that they're not really-- You have to question the nonprofit status. So I think we need to worry about turning lands over to them as well. And all of that needs to be-- I think that they

have become a major lobbying organization. They've spent \$1 million on getting this last bill -- in lobbying fees -- on the ballot. And you know, once it goes on the ballot, if it says *Open Space* it will probably be passed.

But the public doesn't have the full information on what is happening to our Open Space. We pay for it on four levels: We pay for it on the local level, the county level, the State level, and the Federal level. And then when we try to save it for animals and plants, we find that nonprofits are advocating putting farms on it, agrabusineses on it; we find that they're advocating logging it. I mean, certainly no animal or bird can have a home if you're taking away their environment, and logging it and logging it.

So we're getting really misled on what's happening to our Open Space lands. If we're going to save it, let's save it for nature; let's save it for the plants and animals that should be living there -- not put farms on it, not have it logged for lumberyards. We're not saving it for lumberyards.

So I think we have to watch what we're doing with allocations of our Open Space lands. Because we certainly are being taxed on four levels to save it, and it's not being saved.

Thank you.

SENATOR SMITH: Thank you for your comments.

Noemi de la Puente, New Jersey Environmental Lobby, in favor; no need to testify.

Bill Wolfe, in favor with amendments.

Mr. Wolfe.

**B I L L W O L F E:** Thank you, Mr. Chairman. Bill Wolfe from Bordentown.

I support the bill; I think it's a very good bill. I want to drill down and talk more specifically on the methodology and the history a little bit.

The State House Commission meeting you're talking about occurred on July 2, 2010. You can check the transcript and note that there was one person who testified and spoke in detail about the methodology with respect to traditional real estate appraisal values versus the commercial use issue, and why that was a bad idea in terms of public interest, and why it was what economists call *creating a perverse incentive*. And Jennifer Coffey mentioned that -- the path of least resistance -- that the most environmentally sensitive lands have the least development potential and, therefore, are appraised at the least value. And that was the basis for the State compensation. And that individual is myself; thank you.

The other point, historically, I'd like to make is that there was a series of three OLS audits of the DEP Lease and Concession Program. And that's relevant to the requested amendment I have on the bill, which would be to apply it to existing leases.

A lease is a contract; all contracts can be renegotiated. I reviewed the OLS audits and I reviewed a series of leases that had been negotiated in one State Park -- (indiscernible) State Park, the D and R Canal State Park. And there are dozens of leases cutting that Park for utility purposes -- gas, electric, oil.

SENATOR SMITH: Bill, let me stop you for one second.

I don't think you're -- I could be wrong -- I don't think you're suggesting that leases that are already in effect should be somehow suspended and a new negotiation occur.

MR. WOLFE: Yes, I am.

SENATOR SMITH: Well, if this bill was passed, upon the end of the lease, when you renegotiate an extension of terms, you would be able to do that. But our contract does have an *ex post facto* provision: You can't change a contract, really, after you've entered into it. So I think you have a constitutional issue with what you're suggesting.

MR. WOLFE: Well, I would beg OLS counsel to review the leases in question, and the contract terms and provisions as to whether they are barred from renegotiation under contract law and constitutional law.

SENATOR SMITH: Okay. Well, we'll--

MR. WOLFE: I urge you to do that, because my understanding is that change in law can trigger lease renegotiation; change in conditions can trigger lease renegotiation; a whole set of contract law arises, and that's a very complicated issue, and I don't think we can have an informed discussion here without a thorough legal review.

So I wouldn't want to proceed from a premise that it was prohibited.

SENATOR SMITH: Okay.

MR. WOLFE: I think there's room to move, and there's always room to move if you find the will to move. And I don't think there's the will to move in State government right now. And you guys have to create the pressure to create that will. And the public interest, I think, demands it, because some of these leases go back 80 or 90 years. They're literally, like, a dollar a day. They were negotiated when the oil and gas companies had even more power than they have today. And that's part of the problem, and we have to bite that bullet.



And so if there is a way to amend the bill in the future -- pending some kind of OLS legal analysis as to whether it's prohibited or not -- I'd encourage you do that. But I think it's a great bill, and thank you for it.

SENATOR SMITH: Thank you very much.

I saw Assemblyman McKeon stick his head in. I don't know if he's gone-- Is he still there?

UNIDENTIFIED MEMBER OF AUDIENCE: He just went back down the hall. Do you want me to grab him?

SENATOR SMITH: Well, I wouldn't *grab* him. (laughter)

UNIDENTIFIED MEMBER OF AUDIENCE: Well, it's (indiscernible).

SENATOR SMITH: We have limits here, all right? But I know he's tuning in, as Chairwoman Spencer is tuning in on the Open Space issue.

Mr. Ed Wengryn, New Jersey Farm Bureau, with concerns.

**E D W E N G R Y N:** Mr. Chairman, members of the Committee.

We've been working with DEP -- particularly, the Division of Fish and Wildlife -- over the last few years about updating their lease program. Previously, most of their leasing of lands that were in agricultural use, that they wanted to keep in agricultural use to feed wildlife and those things, were done on a year-to-year basis; and it kept farmers from planning long term, making long-term inputs and improvements to the soil, particularly if you wanted to transition to organic and use organic practices. That takes time to do those things.

So we've been working on 5-year leases with them. The dropping from 25 to 5 years -- we're wondering how that's going to impact, one, the workload of the Committee -- if you're going to have to review every farmer lease that comes before the Committee, because they're 5 years, with 5-year renewals.

The other component is, if you're going to base it on a commercial use, and actually the value of the crops they produce as a rate of return, or a part of that function-- We had-- When we started the lease program, they put them out to competitive bid. And 5 years ago when they started, grain, and corn, and soybean prices were high; they were getting, like, \$15 a bushel. They're now down to around \$7 and \$6.50 bushel. So their profit margin has disappeared; they bid high and now they're paying the price because they've signed these 5-year leases.

The other component of it is there's also set-aside lands that they have to do maintenance on. So they're doing the yearly mowing of a meadow that they want to keep as grass and bird habitat, and those kinds of maintenance things.

So outside of the big commercial use of lands, there's a practical side to this. And we just want to make you aware of some of those issues and concerns.

(Senator Smith confers with staff and Committee members)

SENATOR SMITH: Okay. I think you raise a very interesting point.

One of our problems, the way our laws are written -- if you do a lease for 25 years or more it now gets reviewed. The Ogden-Rooney process--

MR. WENGRYN: Right; yes.

SENATOR SMITH: --where we have to have a hearing, and a whatever. You do a lease for 24 years and 6 months, and you avoid that process.

MR. WENGRYN: I thought there was language reducing the lease terms down to 5 years.

SENATOR SMITH: There is.

MR. WENGRYN: Okay.

SENATOR SMITH: There is in the bill.

MR. WENGRYN: Yes. And that's--

SENATOR SMITH: And maybe that should be different, or maybe there should be a separation of categories.

MR. WENGRYN: That's what I--

SENATOR SMITH: That's another possibility.

But the other side of it is, the way that the law is set up now there's an obvious loophole.

MR. WENGRYN: Right.

SENATOR SMITH: Which is, go under 25 years and you avoid public input, you avoid going through the process.

MR. WENGRYN: And we do have-- I know over at, like, Battlevue -- Battleground State Park -- there is a farmer who does peach trees and apple trees, and long-term-- And he has longer leases than the traditional 5-year -- because you're putting up a high value product on there and you're looking for that 25-year return. So I've known they may have reviewed some of those longer term contracts, but if you had to do that for

every 100-acre, 50-acre parcel that Fish and Wildlife wanted to rent -- that's all I was saying -- is that that could be a problem.

SENATOR SMITH: Right. We appreciate you bringing this to our attention.

MR. WENGRYN: Sorry to spring it on you. (laughter)

SENATOR SMITH: Okay.

MR. WENGRYN: Thanks.

SENATOR SMITH: Thank you.

Kim Gaddy, Clean Water Action, in favor.

Oh, I'm sorry. Kim Gaddy, Clean Water Action, in favor, no need to testify. Am I correct?

**DEBORAH KIM GADDY:** (off mike) Correct, correct.

SENATOR SMITH: Okay.

Eileen Swan, Keep It Green, New Jersey Conservation Foundation, in favor with amendments.

Eileen.

**EILEEN SWAN:** Thank you.

I brought copies of my testimony.

UNIDENTIFIED MEMBER OF COMMITTEE: Thank you so much.

MS. SWAN: Thank you very much.

Good morning, members of the Senate Environment and Energy Committee, and Assemblywoman Spencer. It's good to see you here today; and thank you.

I think, perhaps, some of these comments are getting into the kind of detail that Senator Cardinale said you were trying to avoid;

however, I would like to go on the record with some of the concerns on behalf of both New Jersey Conservation Foundation and the Keep It Green Coalition.

We understand that diversions are sometimes necessary; however, in principle, the lands that are preserved are in perpetuity. So it would be best if they were a rare exception, if ever necessary.

We do support S-570, and are very grateful to you and to Senator Cardinale for this, and recognize the focus on the economics of the issue.

A couple of things we would like to stress are that it be a compelling public need. Because, again, it's not to encourage it just because the finances are there, that it's the path of least of resistance. So like Bill Wolfe and Jennifer Coffey before me, I want to emphasize compelling public need.

The other thing is an alternative analysis. Because if there is another way to do these projects and not go through these preserved lands, we would prefer that that be done. So if an alternative analysis is done, perhaps that might be the case.

We are grateful for that public process. Like Barbara, we believe that the public should be involved; a scoping hearing, just as they do for local lands, can often bring out the different issues: setting forth that compelling need, talking about the efforts to avoid the diversion, and ascribing the alternatives.

Under the Ogden-Rooney Act, we're glad that that will apply now in these cases. But we are asking that determination is made that the proposed replacement lands have a geographical, hydrological, ecological,

and/or recreational nexus to the land proposed to be diverted -- that is in the case that there's replacement lands there -- and that it is of greater ecological value and/or recreational use to us.

Finally, under the analysis you've set forth, and the potential for a look at commercial values -- to perhaps consider setting a minimum threshold that they have to meet. And an example of that, that we discussed, was that the land proposed-- That the Green Acres funds -- that it's at least two times the market value or acquisition cost price of the land proposed for diversion, whichever is greater. That's just a minimum threshold you might consider establishing.

Those are our comments, in brief, and I thank you for the opportunity. And again, we are in support, and thank you.

SENATOR SMITH: Thank you very much.

Meme -- and Meme, I cannot say your last name: O-M-O-G-B-A-I. How do you say your name, Meme?

**M E M E O M O G B A I:** (off mike) Omogbai (indicating pronunciation). Meme Omogbai.

SENATOR SMITH: And you're from The Historic Trust.

MS. OMOGBAI: The Historic Trust.

SENATOR SMITH: Which Historic Trust?

MS. OMOGBAI: The New Jersey Historic Trust.

SENATOR SMITH: Okay. And you're-- You've checked the box that says "no need to testify," but you're not indicating whether you're in favor or opposed.

MS. OMOGBAI: No. I just wanted to say thank you for your leadership and the support for historic preservation. We very much appreciate it.

SENATOR SMITH: So you're in favor of the bill?

MS. OMOGBAI: Oh, yes. (laughter)

SENATOR SMITH: Okay; just double checking. If you don't check the box I can't be sure.

Jeff Tittel, New Jersey Sierra Club, in favor.

Mr. Tittel.

**J E F F T I T T E L:** Thank you. And as someone who I think started environmentally dealing with diversions when they wanted to put Route 78 right through the middle of the Watchung Reservation when I was in junior high, this is a long-standing issue for me.

SENATOR SMITH: Long.

**MR. TITTEL:** A long-- (laughter) And, you know, we go out and we buy land to preserve it in the public trust. And then we turn around and we stick all kinds of things on it. And it's not just power lines and gas lines; it's microwave towers; it's cell towers; it's, sometimes, pumping stations. And what we've seen happen over the years is that for many different entities it becomes cheaper to take that preserved land than to go out and buy other property, or to use other properties that they may even own. And we've seen it happen with towns, where they'll take the parkland for a pumping station versus a piece of property where they are going to try to redevelop or try to develop for something else, or even sell off; we've seen that happen in Princeton. We've also seen replacement lands getting built on illegally and then having to replace them. I mean, we have a full-time

volunteer who does nothing but deal with diversions -- because we have that many. And what's happened in this state is that we target Open Space for development. So once it's preserved, we're fighting all over again.

And I just wanted to give a couple of examples, because I think it's critical and why this is an important bill.

A friend of mine, Bob Wogisch -- I knew him when I was up in Ringwood on the Environmental Commission -- sold his land over by Monksville Reservoir to the State in 2009. And he sold it for \$46,000 an acre. He could have developed it; he didn't want to. He had a beautiful view of the Reservoir. Tennessee Gas comes in a couple of years later and it goes to the State House Commission -- and it's only \$4,000 an acre. Two years earlier, the State bought it for Open Space.

We bought land-- We worked up in Camp Todd to save that property -- it had preliminary approval -- up on top of the Ramapo ridge; \$106,000 an acre -- and it went for \$11,000.

What's happening is we're selling off our heritage, and we're allowing our open spaces to become targets for development because it's so much cheaper. You know, in fact, in the case of Tennessee Gas, they bought a piece of property up on the ridge from the county for \$86,000 an acre, and the property next to it, which was private -- excuse me, the county bought it for \$86,000 an acre -- they got it for \$8,000 an acre, and the property next to it they bought for \$35,000 an acre.

So what we're seeing happening is that we're not getting the value of even adjoining properties if they're privately owned. And so not only does this help, I think, compensate the public for lands that were bought in the public trust that are held in the public trust, but it may also



help encourage these infrastructure projects, these other diversions, to go somewhere else. If they have to pay fair market price, well then, maybe they're not going to just keep coming on that public land. And I think that's what's critical about this legislation.

I'll just use another one that I just testified on down in Millville. The Durand tract -- bought a year ago for Open Space. We spent about \$5,000 an acre for it. They want to now flip it and sell it for development for \$5,000 an acre. I looked, just online, on adjoining properties -- they were selling for \$15,000 an acre. We buy a piece of property that's supposed to be held in Open Space; it's not being diverted for a public use like a firehouse, or a school, or even a public utility, but for potentially private development -- and we're selling it for a third of the values of properties across the road from it? Something is wrong with the system, and that's why we need this legislation, and we need it to move forward.

A couple of points I wanted to make. I think we should have in here a trigger for subleases. One of the things that I found over the years -- and I'll use two examples. When Tennessee Gas pipeline put the right-of-way through Ringwood State Park many years ago -- they're paying the State a small amount -- they subleased it for more money than they are paying the State, for AT&T to put a fiber optic line on it; and the State doesn't get any of that money; they get it, even though it's State land.

There was a case at Six Mile Run -- and this is why you mentioned farmland -- at Six Mile Run a farmer leased land from the State for, I think, \$6 an acre and turned around and leased it to a hunting club

during the hunting season for \$1,200 an acre. So we should have a trigger for subleases.

SENATOR SMITH: You'd like to have an entrepreneurial State government.

MR. TITTEL: Yes. And that was a 5-year lease.

So the point is that we should make sure that we capture those subleases as well, because if people are going to making money off the State, we should definitely reopen.

We think that this is an important bill and, quite frankly, this will help, I think, protect the lands that we spent tax money to protect. And that's what this is really about. This is really stewardship; it's really about saving the lands we've saved.

And thank you for this.

SENATOR SMITH: Thank you, Mr. Tittel.

Lastly, Mike Pisauro, Stony Brook-Millstone Watershed Association, in favor.

**MICHAEL L. PISAURO Jr., Esq.:** Thank you very much.

My name is Mike Pisauro; I'm the Policy Director for the Stony Brook-Millstone Watershed Association.

And I want to thank the Senators for this bill. We support it, and whether it is this bill, or future discussions, a couple of things I wanted to touch base with.

One, this bill talks about public use, but I'm not sure that, in the GSPT program, public use is actually defined. And so if we're talking about pipelines or power lines, moving fossil fuels from one spot to the next, I'm not sure really that is, at least, a public use or any public interest

-- dealing with climate change, we're actually making it worse by facilitating moving this pollutant; also dealing with air pollution.

So, like you said, I took a quick look through the GSPT regs and I don't see that *public use* is actually defined. So maybe tightening that up so that it is actually public use and not a private entity using it for us.

I'd like to also echo what Eileen Swan said regarding replacement lands. They should be located within that watershed and located within that geographic area so we're actually still benefiting that area.

And lastly, what Jeff mentioned about subleases. I negotiated several leases with landowners with malls, and if there was a sublease provision-- And a lot of times, the landlord wanted to get a part of that increase that the tenant was getting in the rent from their subtenant. So it's not unheard of, it's not unusual. It's something that I've negotiated in private practice that the State should be able to do as well.

So again, thank you for your leadership, and I look forward to this moving forward and New Jersey truly being compensated for its lands.

SENATOR SMITH: Thank you for your comments.

(Senator Smith confers with staff and Committee members)

Okay. So two things that I've discussed with our co-prime sponsor, Senator Cardinale: one, the issue of subleases. We think, at this point, the right way to handle that is to amend the bill to say that if a lessee is going to do a sublease they have to come back to the State House Commission to get approval. And that way, the State is going to be sure that it gets its ounce of flesh, or pound of flesh -- whatever is appropriate. (laughter) And then the other issue is farm leases -- we think that may

require some different treatment, but we're not smart enough to figure that out today. So we're going to ask the Farm Bureau, Ed and Ryck, to come back at us with language that might be fair with regard to farm leases.

But I think we're, on that basis, probably ready to see it move, but it still is a work in progress. We're going to need some changes somewhere along the line. But as of today, it would be -- with the amendments we described, plus the one other amendment, which is the sublease, you have to go back to the State House Commission. And then we're going to wait to hear what the Farm Bureau might suggest to us on farm leases.

How does that work for everybody? (no response)

Okay, all right.

Senator Codey, can I have a motion to move the bill?

SENATOR CODEY: So moved, sir.

SENATOR SMITH: Okay, and I'll second it. And let's take a roll call vote with the bill, as amended.

MS. HOROWITZ: On Senate Bill 570, with Senate Committee amendments.

Senator Thompson.

SENATOR THOMPSON: Yes.

MS. HOROWITZ: Senator Codey.

SENATOR CODEY: Yes.

MS. HOROWITZ: Senator Greenstein left a yes vote.

And Senator Smith.

SENATOR SMITH: Yes; and we'll permit Senator Bateman to vote when he gets here.

Senator Cardinale, it's a pleasure working with you.

SENATOR CARDINALE: (off mike) Thanks; thank you.

SENATOR SMITH: All right. For the main event. As a result of Public Question 2, the Open Space public question, approved by the voters 65 percent to 35 percent -- which just goes to show you how smart our citizens are, and well informed -- we're going to conduct a hearing now on the appropriate allocation of those funds.

As I mentioned earlier in the meeting, the good news is that we have the time to do this right; there is no Open Space funding to appropriate for at least a year. I know Assemblywoman Spencer and Assemblyman McKeon are working hard on the other side to also get input and to do this right.

Do you have a list of the questions that we asked them to answer?

MS. HOROWITZ: Sure.

SENATOR SMITH: Okay, good.

On the Committee notice, we asked that any witnesses today address some specific questions, if they can: Number one, how should funds be distributed among Green Acres, Farmland Preservation, and Historic Preservation programs? Number two, should there be guaranteed funding for Blue Acres? Number three, what should be the Green Acres distribution between the State, local governments, and nonprofits? Number four, how should stewardship be defined? Should stewardship funding apply to Farmland Preservation, or just to Open Space preservation? How much of the dedicated money should go to stewardship? Number five, what should be the future role of the Garden State Preservation Trust? And number six,

are there any new priorities for Open Space acquisition or development that should be added to the law?

Now, it would be great if you would address some of those questions. Also, the record will be held open -- how long can we keep the record open on this?

MS. HOROWITZ: As long as you want.

SENATOR SMITH: As long as we want. We're going to keep the record open for 30 days so that if you have additional comments after hearing some of the people speak today, you get some new ideas or you want to refine your ideas, you're welcome to send anything in.

And where should they send it to, Judy?

MS. HOROWITZ: They can send it to me

SENATOR SMITH: Send it to Judy Horowitz at the-- If they just say, "Judy Horowitz, State House" it will get to you? (laughter)

MS. HOROWITZ: OLS.

SENATOR SMITH: Oh, Office of Legislative Services.

SENATOR SMITH: All right, so that being said, we have lots of witnesses.

Okay. All right, I think since we have the President of the Farm Bureau with us today, I think we're going to give people who keep a lot of New Jersey green -- the first spot on the witness list. Ryck Suydam, New Jersey Farm Bureau.

Ryck, we'd love to hear what you have to say.

**R Y C K S U Y D A M:** Thank you, Senator, members of the Committee.

I'm Ryck Suydam; I'm a farmer from Somerset County. I'm also the President of the New Jersey Farm Bureau.

We're just about 11,000 members; we're the largest -- the State's largest agricultural organization. And we represent farmers, farm families, and supporters of agriculture.

I'm going to address a number of the questions you just presented. Our primary interest, of course, is farmland preservation -- that component. The Farmland Preservation Program is just 30 years old, and we've preserved just about 200,000 acres -- a little more than 200,000 acres of farmland here in New Jersey. But there remains 520,000 of unpreserved farmland in New Jersey, and the Department of Agriculture here has determined that we need to preserve at least another 350,000 acres to keep agriculture sustainable here in the state.

And I will tell you, in our view, the Farmland Preservation is a smart move because you keep those farms on the tax rolls. They're still paying taxes. Yes, open space -- the farmland itself, the open fields -- is a lower tax rate than developed land; but houses, and barns, and greenhouses -- they all get taxed as an improvement.

So they continue to pay taxes and they get maintained, as opposed to some open space which-- I'm in favor of open space too, but farmland is being maintained by the farmer; he's taking care of those fields and keeping them mowed and productive, as opposed to a township or a county that has to pay employees to go out and maintain it. So Farmland Preservation is good on both ends.

So when we make that investment in farmland, we're also making an investment in the economy. Like my farm -- my farm is partially

preserved, and I have employees and they work and pay taxes. And local residents of the Senator's District come and purchase products directly from me. So Farmland Preservation is good for the economy, period.

And you mentioned about distribution of funds. The New Jersey Farm Bureau policy supports dedicating 60 percent of the funds for Farmland Preservation acquisitions. However, the reality of the long-standing funding formulation-- I understand that we have a historic precedent so, to work with that, at a bare minimum we should stay with that long-standing history of about 40 percent for Farmland Preservation.

Much of the allocated funding has been used in cost-share initiatives like the Planning Initiative Grant, which was used to preserve my farm and a lot of other farms; and it's a great way to spread the money. If you're not familiar, roughly 60 percent comes from the State funding, and then the county and the towns join in. So we extend the purchasing power of the funding. That's been used in 17 counties across the state -- the Planning Incentive Grants. So the continuation of that historic funding I think is essential to continue to do the cost-share acquisitions.

Stewardship -- you mentioned stewardship. The New Jersey Farm Bureau supports dedication of a portion of the funding towards stewardship, in particular -- and here's the numbers you asked for -- that at least \$700,000 annually for the first four years, and \$1 million in the years thereafter be used to reestablish the soil and water quality cost-share programs that are administered by the State Agricultural Development Committee, the SADC. This incentivizes farm owners to take measures to improve their soil and water health on their farms. Also, the 8-year preservation program -- this allowed landowners to access some of the



funds, and is a means of encouraging eventual enrollment in the permanent preservation.

Next on my list is creation of the Forest Easement Purchase Program. We would support language implementing legislation to give the SADC the discretion to use some of its funds for acquisitions to purchase easements on forested parcels in the Highlands and the Pinelands counties. The way it's been in the past is that good applications for preservation would come in, but because they had -- a large segment of it was forested land adjacent -- or adjoining, rather -- tillable land, it didn't get the attention that it should have. I think that if we could give the SADC the discretion to incorporate forest stewardship in the preservation, it would go a long way to preserving more of those lands.

Administration costs: Administration costs for both the SADC and Green Acres have been a 5 percent statutory allocation in the past. Now with a smaller funding source, that 5 percent is not going to be big enough to keep up with the costs of running those programs. So we propose that in Fiscal Year 2016 that it's equal to what it is now in Fiscal Year 2015 -- to keep the spending level for the coming year -- and then to put in a percentage increase in the coming years to handle the additional costs for taking care of the programs.

Nonprofits: The New Jersey Farm Bureau does not support a fixed percentage to go as an allocation for nonprofit cost-share projects. I'll tell you why: because, up to this point, there hasn't been an issue with the SADC dealing with not-for-profits. It's gone along almost seamlessly. So with that precedent, I think we leave it to the hands of the SADC, to their discretion, on how to do preservation with not-for-profits. I don't think we

need to set specific wording. The SADC is doing a good job with it; keep it the way it is.

And my last point is the Garden State Preservation Trust. The application process that involves the GSPT oversight has been working well. It's operated efficiently and without incident, and so we don't see any reason to change the GSPT edict. They're doing a good job. My grandmother taught me if the roof doesn't leak, don't fix it. (laughter) Let's keep it the way it is.

So with that, I am hopeful that our long-standing percentages will stay pretty much the way they are. And my comments will be available in writing, and I thank you for your time.

SENATOR SMITH: All right, thank you for coming in and expressing the view of our 11,000 farmers.

Kelly Mooij, New Jersey Audubon and Keep It Green.

Kelly.

**K E L L Y M O O I J:** Thank you, Chairman and members of the Committee.

Good morning. Thank you, Chairwoman Spencer, for joining us today, and for working on this with Assemblyman McKeon on the other side.

My name is Kelly Mooij; I'm the Coordinator of the New Jersey Keep It Green Coalition, and also the Vice President of Government Relations for New Jersey Audubon. The Coalition has over 185 membership organizations that strongly supported Public Question No. 2 to establish, finally, a stable funding source for preservation and for stewardship.

You're going to hear from a number of Keep It Green members, including the Farm Bureau, which you just heard from. And I've also provided you with written testimony with specific answers to the questions that this Committee has asked us to address today. We also really appreciate the opportunity to continue the dialogue, moving forward, to try to get everybody onto the same page and with as much consensus as we can -- and do this right, because I think it's important for the long term that we address all of these needs and concerns.

We are particularly grateful for the leadership of this Committee: for your leadership, Senator, and Senator Bateman as well; and for the Senator President in moving this legislation forward, and for the many, many hours of testimony that you've heard from us on this topic over the last several years.

The State continued to show, as you said, strong support for Open Space funding and for stewardship in November, with 65 percent supporting this; and that's a majority of voters in every single county in this State. And so we saw that there's real bipartisan support for this issue and for funding, moving forward. And it's incredibly important that we seek to address the remaining 71, and then 78 percent of the funding that needs some more specificity and more specific language in order to divvy it up and dole that money out.

We've worked within the Coalition, and also externally with partners, to try to develop consensus in these recommendations and, again, we look forward to working on this and/or refining it further, moving forward.

Generally, we believe that funds should be distributed in a manner relatively consistent with what they have been in the past. We believe that the programs have been very successful, and that the public has shown their strong support for the way that those programs are divided by continuing to support those measures time and time again.

We do have some slight modifications to that as well. In recognition of the continued need to address capital Parks improvements in both the Division of Fish and Wildlife and in Parks and Forestry, we recommend that 10 percent of that overall pool of the total funds be dedicated to capital improvements on State lands.

We recommend also that 5 percent of the money be used for stewardship of State preserved lands. We believe this should be divided equally among the divisions of Parks and Forestry, and Fish and Wildlife, as they have significant land rolls throughout the state; with a small portion, as Ryck mentioned, being dedicated for the first four years, and then going up slightly for the next remaining years for SADC -- specifically for soil and water conservation grants on permanently preserved farms.

We recommend that 5 percent of the funds be allocated to stewardship for county, local, and nonprofit parks and preserved lands through a competitive matching program, similar to what we've seen in the Green Acres Development and Park Program, so that that money would be able to go out to county, and local, and nonprofit projects on the ground to address stewardship needs throughout the State of New Jersey -- money that has not been sent out previously in the past.

The remaining preservation and stewardship funds should be allocated as follows: 4 percent going to Historic Preservation; 4 percent

dedicated to the Blue Acres Program. We believe that Blue Acres should have dedicated funding; and 4 percent is necessary given the Federal funds and the ability for local governments to use their Green Acres funds for Blue Acres projects.

We believe that 43 percent should go to the Green Acres Program, and that should be divided as follows: 34 percent for State acquisition; 54 percent for county/local acquisition and development; and 12 percent for nonprofit acquisition and development.

It's important to note that the 54 percent of that 43 percent that we recommend going to county/local acquisition and development is particularly important because of the optimal leveraging opportunities that you have there, and also because we need to start to increase the money that's available. We've seen that since there hasn't been consistent funding coming in, that county and local tax funds have reduced significantly. And by putting money back in, we will be incentivizing those county and local rolls to put more money back into the program.

Additionally, a significant portion of that money -- the money that's going to county and local -- is going to urban areas; specifically, since 2000 to 2012, under the GSPT, \$30 million went to Camden, \$50 million went to Hudson, and \$76 million went to Newark.

Additionally, we recommend 28 percent going to Farmland Preservation. And we do think that, although we understand that the Farm Bureau believes that it's been done well and that nonprofits are receiving funding through the SADC program the way it is, we think it's important that a specified amount, of 12 percent, go to nonprofits so we can continue, again, that leveraging. Nonprofits are able to bring nonprofit dollars to the

table -- corporate funding, major donors, and a lot of other money -- in order to make those deals happen, which aren't able to happen, by having them come to the table.

The Committee also asked that we provide a definition for *stewardship*. Our working definition is based upon S-577, which was the companion implementation language for the sales tax dedication bill. We define stewardship right now, as we're working through consensus, as an activity beyond routine maintenance and operations undertaken by the State, county, or local government, or qualifying tax exempt nonprofit organizations, to enhance, restore, or improve permanently preserved lands, including farmland or parks, for the purpose of enhancing or protecting natural, and recreational, and historic resources. I think it's important to note that this should be beyond routine operations and maintenance, and distinguished from development and capital improvement projects. And we also believe that farmland, as we mentioned before, and Blue Acres should be included in the stewardship.

Finally, I think it's really important to note that the Coalition as a whole, and since our inception just after the 2006 measure, has strongly supported continued funding for the Department -- particularly on the green side, Fish and Wildlife, and Parks and Forestry. This ballot measure established dedicated baseline funding for a number of critical preservation and environmental programs, and it should grow over time. However, we recognize that difficult choices had to be made and many programs won't be funded at sufficient levels, especially in the short run.

We look forward to working with the Committee and the rest of the Legislature to ensure that we address a lot of these concerns. And we

would be very interested in identifying other opportunities to more fully meet these needs, through the budget and other means.

Thank you for the opportunity to work with you through this, and I'm happy to answer any questions, if I can.

SENATOR SMITH: Kelly, thank you for your input.

Stacy McCormack, American Littoral Society.

**S T A C Y M c C O R M A C K:** Thank you, Mr. Chairman and members of the Committee, for this opportunity to discuss the implementation of Public Question 2, dedicating a sustainable source of funding for Open Space, and to congratulate everyone on this huge victory for the environment.

As you know, the American Littoral Society is a coastal conservation organization with offices in the Barnegat Bay, Sandy Hook, and Delaware Bayshore regions working to conserve land, restore natural ecosystems, improve water quality, and protect people and property from harm's way.

As a member of the Keep It Green Coalition -- and we support the testimony that Kelly has just given -- we realize that deciding how to spend this incredible source of funding will be difficult. So in addition to working within the Coalition, the American Littoral Society has additional comments specific to our areas of expertise -- the Blue Acres Program.

As we've learned in the wake of Superstorm Sandy, as well as other storms like Irene and Floyd, there is simply not enough money to move people and property from harm's way or -- as we now refer to it and well know it as -- the *unmet need*.

Blue Acres funding is exactly that -- it meets the unmet needs of the residents of this state, and why we supported a dedicated and robust Blue Acres Program separate and apart -- the second question that we talked about, or that you stated -- from the Green Acres Program as it is now. This money is critical since it would enable the leveraging of Federal dollars for greater reach of the program, possibly bringing relief to so many of our citizens. We need to start planning now to be hit again and again by storms at a higher rate, and higher frequency, higher intensity.

In addition to moving people from harm's way and protecting lives, we need to create more open space along the coast for greater public access. This money shouldn't just be spent on purchase of huge parcels of land, but for conservation -- purchasing small parcels of land, like pocket parks, to provide connectivity along the coastline; creating coastal parks, public access to our beaches and shores, as well as retreat zones for surges, and flooding, and habitat restoration -- restoring ecosystems.

As we move forward in the discussions about the allocations of these funds, we hope that you'll consider the above suggestions and keep Blue Acres funding separate and a high priority for the State.

Thank you.

SENATOR SMITH: Thank you, Stacy.

Doug O'Malley, Environment New Jersey.

**D O U G O ' M A L L E Y:** Mr. Chairman, I wanted to thank you for holding the Committee hearing this morning.

But most importantly, to thank you for your work over the course of the last eight years -- working to find a solution to funding Open Space in the state. And I think -- to think back to the hearing that we had



in the spring, you asked a very pertinent question, which was: We don't have a funding solution right now; what are the other options on the table? And opponents at the time-- You didn't have a good choice. That being said -- and you have been clear on this, and obviously other advocates have been clear -- from the environment community. There is guaranteed pain for the funding situation that we face right now, because there are too many environmental programs that need funding and there is not enough money to go around.

That being said, the best advantage of the ballot measure is that it does increase funding from CBT. But it does leave us with a period of years where the funding will not only be reduced, but force contentious tussle for the money. And I wanted to speak this morning as an organization that, this spring, did support your effort.

To speak specifically to parks funding, because that's something that clearly you've cared about a lot through the years -- as well as other members of this Committee and throughout the Legislature. And the Parks and Forestry Division represents a tremendous part of DEP; there are 8 million people who use the parks on a regular basis. Clearly we have a huge capital backlog of close to \$400 million. The current CBT funding is helping to chip away at that; although clearly, at \$60 million a year, it doesn't -- it was never going to solve it all in one swoop.

And I think we don't, obviously, have to look far for the need for this capital funding. You know, just over on West Hanover Street the D and R Canal Path and the pump house are not only in a state of disrepair, but have been closed and under construction for an indefinite amount of time. And when we look at, obviously, our State Parks, there is a

tremendous need. And this Governor clearly has not dealt with that need on, really, any environmental programs. He is the Governor who promised that he would come up with a permanent source of funding. Obviously that never came, and he actually lobbied against not only this ballot measure but other Open Space measures that you worked for. This Governor has raided over \$1 billion from Clean Energy funding; he's raided over \$100 million from Passaic River funding--

SENATOR SMITH: I don't want you to put a stick in Senator Thompson's eye. (laughter) Oh, he's not here; okay, go ahead. (laughter) It's okay; never mind.

SENATOR CODEY: You don't care about Christie's eyes. (laughter)

MR. O'MALLEY: Well--

MR. TITTEL: You'd have to go to Iowa. (laughter)

MR. O'MALLEY: So clearly there has been a-- This Governor has not shown any diligence to (indiscernible) the funding, which you know, Senator and other members of this Committee, you have over the years. And when we-- The point I'm also trying to make is that the Governor has worked to privatize some aspects of the State Park system, including the reservation system. You know, that's a very good example of the DEP trying to say, "Oh, we're doing better. Actually, let's raise rates for the average resident trying to get into a State Park," and, quite frankly, it's hard to get a reservation at a State Park because they are so popular.

And clearly, when we look at open space in the state, we need funding to preserve open space. If we do not, it will be paved over.

That being said, we also need to not reduce our funding for Parks, and we would request that we maintain, at a minimum, \$60 million for Parks funding to be focused on capital expenses -- for all of these reasons that I've listed below (*sic*).

The one other aspect, of course, to mention -- and DEP is very clear about this even on their website -- State Parks obviously represent areas for all members of the state to go to, but a lot of them aren't in urban areas. The only State Park in an urban area is in Jersey City, in a relatively remote part of that, in Liberty State Park. And the areas that I mentioned -- obviously, D and R stretches all throughout central Jersey including a component here in Trenton. There is the Capital State Park funding that Governor Corzine proposed. Obviously, that's something that's not going to happen immediately without funding. But at a minimum, we urge you, Mr. Chairman, to maintain Parks funding as it stands, and clearly we still need to preserve open space, and that's what this ballot measure was about. But we should be careful about reducing capital spending on Parks.

Thank you, Mr. Chairman.

SENATOR SMITH: Thank you, Doug.

Brian Wilson, Burlington County Ag Development Board, in favor of this discussion, no need to testify.

Jennifer Coffey, Association of New Jersey Environmental Commissions, in favor.

Jennifer.

MS. COFFEY: Thank you, Senator; and thank you, Assemblywoman for sitting in on this discussion and being such an active participant on the other side for this as well.

I just want to say this is a tremendous opportunity to be sitting here today and having this conversation about how to spend and support our open spaces, farmland, and historic preservation with this long-term stable funding source. So thank you for the years of hearings and support behind this fund.

The enabling legislation for this constitutional dedication is particularly important. And so I will keep this short because I'm sure this is the beginning of what will be another series of discussions.

In addition to saying thank you to Kelly Mooij as Coordinator for Keep It Green, and reiterating our support -- ANJEC's support for those numbers that she broke down, we'll be providing written testimony within the 30 days that this is kept open.

That said, I just want to focus on two particular points -- one, with regard to Blue Acres, and the impacts that our coastal state is suffering from 350 years of legacy development and the impervious cover that's associated with that -- compounded with the impacts of global warming, bringing us more frequent and intense flooding events. And so dedicated funding for Blue Acres is particularly important for our environmental health and for our public health and safety. So ANJEC feels strongly about having dedicated funds for Blue Acres, in addition to being able to use the Green Acres funding on a local level to acquire those properties to help residents.

And with regard to stewardship: The breakdown that Ms. Mooij provided is something that ANJEC does support. We support putting funding back into the State's -- to take care of our State Parks. We've always been in that position. We support having stewardship funds

for our State preserved lands. And, in addition, one of the things we feel particularly strong about is the funding for stewardship that would be pushed out into a competitive grant process, or a competitive process with counties, locals, and nonprofits. And this is particularly important to address stewardship of our forests, to address stewardship of our wetlands, our stream corridors, our flood areas, so that we can make real improvements in our water quality and address flooding events throughout the state.

So I want to thank you again for having this conversation. We'll be providing written testimony, and we look forward to continuing this conversation.

SENATOR SMITH: Thank you, Jennifer.

Roger Kumpel, a farmer from Southampton, New Jersey.

**R O G E R R. K U M P E L:** Thank you, Mr. Chair and Committee.

My name is Roger Kumpel; I'm from Burlington County. I am a farmer; and I serve on the State Board of Agriculture, and I also serve on my County Board of Agriculture.

I just want to tell you how important our preservation program and a lot of the aspects of it are to the agriculture community. If you all remember, in approximately the year 2000, the farmers who were within the Pinelands of the state were in an area that could not be preserved. They were regulated, but not preservable. And a formula was generated around that period, 2000, which farmers, the Farm Bureau, you legislators, and whatnot -- the SADC -- we all worked on to come up with -- and the Pinelands Commission -- we all worked on to come up with some way, some means to permanently preserve these farms. Well, I happened to have two

farms that were within the Pinelands -- which are now preserved, by the way. And that became to be, and in the year 2002 the first one of my farms was preserved; in 2004 we did the second one.

The County has done such a wonderful job. Just to give you a for instance: If you're driving 206 South on the 206 corridor and you come to the intersection of Route 38 -- the Vincentown Diner; it's a landmark, a lot of people know that. If you just turn kind of a little bit to your left and you gaze across, headed east and south, you'll notice there's a big farm just down the street, less than a tenth of a mile. That farm will have settlement next week; that will also be a preserved farm. And it is one of the historic and beautiful farms within our County, and it's been in limbo since 2002 because they couldn't figure out if it was -- worked on it or not. But anyhow, the County has stuck with it and the State has stuck with it to try to get these pieces put together. That whole block there represents approximately 2,600 acres; it's all contiguous farms. As of right now, they've either closed on, they're preserved, the PDCs were severed. Right now, there's one farm that will be talked about -- negotiated right after the first of the year. But the rest of them -- there are only two full parcels and a small parcel out of 2,600 acres that's not preserved. There's approximately 2,300 acres in that block now, and you can ride down that 206 corridor and look off to your left -- along with that beautiful farm -- and as far as you can see, to the outskirts of Pemberton and down to the next red light going south, that whole block is represented. That's the kind of job that's been done with our preservation program.

One other part too: The County has preserved a farm in Moorestown. It's kind of a little different situation. It's called our Ag

Center. At this center we have a tailgate market -- that happens there on Saturdays -- where farmers bring in pickup loads or truck loads of their produce and they sell to the residents from all Moorestown, and Cherry Hill, and all that come in there. There's also a six-acre, roughly, block of that ground that has been given, to use, to our Rutgers Cooperative Extension agents in Burlington County. They do test trials there on sweet corn, pumpkins, and various different crops, right in our backyard. And then, after they're all done doing their sweet corn harvest, they turn all that crop over to the food pantries and Farmers Against Hunger to be given back to the needy. So these are just some of the examples.

On my farm, just three years ago-- We talk about stewardship. I use hard hose irrigation, which is a high pressure system that pumps at about 100 psi at the gun, blasting water to irrigate my crops -- whether it's potatoes, soy beans, or field corn. We had the last money that was available in the program -- the cost share, which is a 50-50 for the stewardship program. We put in a pivot irrigation, which is a low pressure-- It works at 49 pounds of pressure at the gun, meaning that there are big drops that come to the ground instead of being all this vapor.

So we are really trying to be stewards to the land, taking care of the environment. We use a lot less water doing this, and get a lot more results just doing this.

And in order to have this stewardship program to keep on going, we need a minimum of the 40 percent that we did have. We would have liked to have had some more, but we know -- we know how it is.

I'd like to thank you for the opportunity to speak to you. Thank you all.

SENATOR SMITH: Thank you, Mr. Kumpel.

Joe Carney, Washington Crossing Park Association, Inc.

Joe.

**J O S E P H J. C A R N E Y:** Thank you, your honor, for having me here.

I'm glad I got a chance to hear everybody speak. I was very impressed with the comments from Keep It Green about preservation and perpetuity; and from the Sierra Club about selling off our heritage.

I'm specifically here for the Washington Crossing Park; I'm President of that Association. Preservation and perpetuity -- that's something that I think that the State has not done correctly with the historic structures that are part of Washington Crossing Park, and structures throughout the state.

I'm President of a group that's concerned about six structures spread out over the 3,500 acres that is the Park. They are in bad shape, and the monies that are coming into this particular bill I think should be directed towards taking care of these historic structures, as well as the other historic structures around the state, immediately. I understand that there were monies put aside, years ago, that were directed for the hurricane relief with the hope that FEMA would be paying those monies back. And that is now on the slate and I think those monies should be used upon receipt for the care of these houses.

In a year where we're celebrating our 350th anniversary we have to be looking towards the historic structures that were here 240, 260 years ago. Some of these structures I'm talking about are 1740, 1770, and should be addressed -- as well as the Visitor Center, which was built in 1976



and the roof beams are cracking in it as of the last winter. It needs to be addressed, and expanded, for the demonstration of the historical interests of the State.

Selling off our heritage, said by the Sierra Club -- we're ignoring our heritage in these and many other historical locations. And it's really a crime. Anybody can drive out the nine miles to Washington Crossing, park their car, walk up to these structures, and walk around them and see how bad of shape they're in.

I cannot speak to the correct percentage; I'm not prepared to do so -- that you're talking about when this bill kicks in this July. I know that Kelly from Keep It Green was mentioning exact percentages. Well, I cannot do that, but I am speaking to the monies that are due to come in from FEMA to the State, and it should be addressed towards the historical structures. That's what it was originally intended for. And then, from that point on, we can talk about proper percentages for Open Space, Farmland, and other historic structures in the state.

Thank you very much.

SENATOR SMITH: Thank you, Mr. Carney.

Robert Swanekamp, Swan-E-Camp (indicating pronunciation),  
State Board of Agriculture.

**R O B E R T S W A N E K A M P Sr.:** Thank you, Mr. Chairman.  
And Swan-E-Camp is correct; thank you.

I'm here today-- First off, I'm a farmer from Monmouth County, currently serving on the State Board of Agriculture as Vice President. So I'm here also representing that body, as well as farmers throughout the state.

First off, agriculture fully supported the ballot question, and we were all very pleased to see that that went through and the support that it did receive.

The environmental community was split on the question, with some question -- the need to move this money from other environmental programs into land preservation. And we now see press accounts in which some in the environmental community are demanding that the bulk of this money go to Open Space, parks, and other projects rather than the traditional split between Open Space and Farmland.

Why, when the farm community has worked hard for the passage of this ballot question, should it receive short shrift now?

The demand for farmland preservation remains strong, and some of the parts of the program have no State money left to allocate to new projects or match county projects. And in the Highlands, particularly in the preservation area where property values have plummeted due to the Highlands Act, the Farmland Preservation Program is practically the only equity compensation option available to landowners not interested in selling their land in fee for Open Space purposes.

A continuation of the Farmland Preservation Program, coupled with the passage of the dual appraisal extension bill, is as critical now as ever before.

New Jersey's agricultural and food complex is a critical \$105 billion-a-year industry -- the third-largest in the State of New Jersey. To survive into the future, as the esteemed Ryck Suydam had mentioned earlier, agriculture needs a minimum of 550,000 tillable acres so that the

critical support industries and the industrial agricultural feeds, into such as food processing, can remain viable in this state.

To date, the State Agricultural Development Committee has preserved 220,000-plus acres. More must be done, obviously, to reach the 550,000-acre goal.

When we preserve farmland, the ownership of it remains in private hands and is maintained by the farmer without additional public expense from the State or from the taxpayers. The farmer obviously continues to pay property taxes. And the management of preserved open space becomes the responsibility of the municipality or the county in which it's preserved, further stressing public finances.

New Jersey municipalities and counties -- there are 18 and 46, respectively; or actually, 46 and 18, respectively -- have developed comprehensive Farmland Preservation plans that target preserving more than 220,000 acres over the next decade. Those plans set out each county and town's goals for preservation, but they need the State money to carry out these plans.

In conclusion, there has been talk that we need to focus on urban areas with this funding. I want to point out that the ballot question was passed by every county in the state, and every county has a need for this funding. And it's a great thing that we have a long-term funding source, but we really don't have a long time to save our most vulnerable farmland from development.

Thank you. I appreciate the opportunity to speak today.

SENATOR SMITH: Thank you, Mr. Swanekamp, for coming in.

And I'm sure you are aware that last week the Senate passed the dual appraisal bill. So we're done on this side.

Eileen Swan, Keep It Green and New Jersey Conservation Foundation.

MS. SWAN: Thank you.

Good morning, again, Mr. Chairman and members of the Committee.

The voters of New Jersey responded and overwhelmingly supported Ballot (*sic*) Question No. 2. It's clear that they want clean water, preserved lands, parks, farmland, and historic sites.

Thank you again for the opportunity to testify before you this morning, and to start the work of ensuring that the votes of New Jersey residents are supported by detailed implementing legislation. This very public process is part of the commitment to those voters as we make every effort to fund all the programs that make New Jersey livable.

One thing has been clear in the last few months: We must all make do with less. All the programs discussed here, that you've heard about today, are necessary for New Jersey, and so we must meet the challenge of dividing the funds while recognizing the opportunities afforded by sustainable funding.

In the most densely populated state, there is a finite amount of undeveloped land left and it is critical that the most important resource lands are preserved. Over time, the balance will shift from acquisition to stewardship and capital investment.

Most of my comments are -- in fact, all of my comments are in concert with the Keep It Green Coalition position. And I think it's good to

remind you that, of those 185 groups, there are competing needs even within us. But recognizing that we all will get less, we worked together to come to a position of agreement that we bring before you today. But it's never without pain to each of the individual groups.

So I'm in concert with what Kelly spoke about, in terms of giving that 10 percent off the top to capital funding for State Parks, and Forests, and Fish and Game lands. We know that it's critical that those programs continue, and we support them; also supporting that 5 percent being allocated to stewardship of State preserved lands, with that cut amount for SADC for soil and water conservation grants.

I'd like to speak a little bit about the 5 percent to be allocated to stewardship of county, local, and nonprofit preserved lands through the matching grants proposal. In the case of New Jersey Conservation Foundation, we are an accredited Land Trust, and that accreditation requires stewardship of preserved lands. New Jersey Conservation Foundation manages more than 24,000 acres and provides training, technical assistance, advocacy, and support to the conservation community. We work to restore damaged habitats, monitor conservation easements, and promote public access to natural land.

The stewardship funds discussed here should be projects beyond routine operations and maintenance, and distinguished from development and capital improvements -- just as the type of work that New Jersey Conservation Foundation is doing for the benefit of the public.

We agree that the remaining funds should be allocated, again, as Kelly set forth. And I do want to point out that we're not taking more from the Farmland Preservation Program; we reduced both sides -- both the

Green Acres and the Farm Preservation side -- knowing that both of these are incredibly important; and all being members of the Keep It Green Coalition.

But I, again, wanted to focus a little bit on the Green Acres side -- the request for 12 percent for nonprofit acquisition and development, and also the increase for the county and local side of things. For the county and local side, that 54 percent is because of the things that Kelly mentioned: the opportunity to leverage the funds, and also the opportunity to encourage local and county to go back to their voters and maintain or increase local taxes so that they can better leverage those State funds.

In the case of the nonprofits, the 12 percent that were asking for amounts to \$3.8 million. It was \$1.5 million under the GSPT 1999-2007, and \$10.4 million under the 2007 bonds. Nonprofits raise their own staff and administration costs, so that brings added value to State funds. None of the State funds go to the staffing of these organizations.

Land Trusts and nonprofits also have relationships with landowners, fostered over years, and so can often bring critical resource lands into preservation. The nonprofits always seek to leverage State funds. New Jersey Conservation Foundation, for example, has assisted in preserving more than 130,000 acres statewide.

We are pleased to have an office in Camden, and are working on a great opportunity to give more Camden residents access to parks and programs. We recognize the need to support parks in urban areas so that these residents can have access to healthy places to recreate and relax. We support the Green Acres formula that provides additional funding to cities and older, densely developed suburban communities.

In the case of the SADC and the set-aside for those funding (*sic*), we recognize they've always maintained flexibility with their funding -- examining need and adjusting State and local funding to reflect that. We are, however, asking for that percentage increase in the nonprofit funding. Previously, nonprofits were getting \$7.5 million under GSPT 1999-2007, and \$7 million in the 2007 bonds. This percentage increase that we request would amount to \$2.5 million, shared amongst all the nonprofits.

New Jersey Conservation Foundation has been recognized by SADC as the State's leading nonprofit organization in number of farms preserved and total farmland acreage preserved. We lobby Congress for New Jersey's fair share of Federal Farmland Conservation funding. NJCF is New Jersey's leading nonprofit recipient of USDA Farm and Ranch Lands Protection Program funds.

In the last, about, 12 years we've brought in \$30 million -- our nonprofit alone -- from Federal funds to assist in State preservation. Just last month a 148-acre farm was preserved in Hamilton Township -- the ninth most populous municipality, with a population of 88,000 and a density of 2,240 people per square mile. That farm was preserved by, again, that relationship that New Jersey Conservation Foundation had with the owner. But I will compliment Mercer County that came in to assist with the funding for that. But again, it just shows the value of the nonprofits in these programs.

This sustainable funding plan for Green Acres and SADC together, as you said, Senator, with the extension of the dual appraisal process -- which you have done -- for landowners in the Highlands, keeps the promise of the Highlands Act.

But it is time that the Administration does due diligence in the Highlands and determines the number of affected lots still under 2004 ownership, determines interest in this landowner equity provision, and responds accordingly. That five-year extension should allow this to be done and to be completed so that every landowner has at least the opportunity to determine whether or not they want to go into this program.

We are in agreement that funds generated from leases should be used, first and foremost, on the affected properties, and then to fund preservation and stewardship activities within the host State agency. It is an approach that is fair.

In an ideal world, protection of the environment, upon which future generations will depend, would be guarded zealously and funds would be provided routinely in the budget. That is not the status quo; and so we have to divide the funds that you have fought for amongst programs that determine the future of the State and its economy. Every resident deserves to be able to rely on clean air, clean water, and a dependable food supply. It is a shame that these resources are threatened. You are our champions and you do the work in a transparent manner.

Thank you.

SENATOR SMITH: Thank you, Eileen.

David Epstein, The Land Conservancy of New Jersey.

**D A V I D E P S T E I N:** Thank you, Mr. Chairman, for holding this hearing.

I wanted to address four critical elements that we think are very important, going forward, for the CBT legislation to be successful and to preserve as much land as possible.



Number one is implementing legislation; it seems almost a no-brainer that we need that, and we've had that in all of the past GSPT and Green Acres bond acts. But there are people talking about not having implementing legislation and we are worried that these funds will not find their -- will not go to the programs that they should without this. So we support your hearings and your idea to keep this process moving forward in tangible legislation.

Number two, the Garden State Preservation Trust has played a critical role in oversight since 1999. And having them as a part of the process -- having them as the keepers of these funds -- they provide transparency to the public. And without them there we worry that the public is not going to continue to support these programs. So having them as part of this is really critical as well.

The third element I wanted to comment on is the Green Acres distribution levels. Back in the heyday of the Garden State Preservation Trust, two-thirds of the funds that came into New Jersey to spend as Open Space Preservation Funds came from local and county Open Space trust funds. Green Acres only provided one-third-- Green Acres, SADC, Historic only provided one-third of those funds. They have since all gone away; they've been diminished greatly. In Sussex County, which generated \$6.6 million as recently as 2008, they generated \$120,000 this year. Morris County, which generated \$46 million, is down to \$6 million. We need desperately to get those funds back in play by giving them incentives and raising the percentage that the SADC and Green Acres gives to grants to local nonprofits, and to county programs as well.

And the final point I wanted to make was about the Blue Acres program. We believe that it should be a separate line item. It's critical to keep this program going. It is not, of course, the only flood plain preservation program out there; Green Acres funds are available to use there. Our organization has a project in Pequannock Township; we purchased 66 homes using Green Acres Open Space funds. Local, county, FEMA -- we have yet to use a dollar of Blue Acres funds. So the Blue Acres funds are critical, but they are not the only funds out there for this purpose. But keeping them at about 4 percent, keeping them separate, is a really important element of this program.

I thank you again for holding this hearing. And we'd be happy to answer any questions you have.

SENATOR SMITH: David, thank you.

I don't have a question, but you stimulated a thought. And I see John Hazen is in the back from DEP. You know, we never received a comment from the DEP on the ballot question. And then I understand, at the--

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) I have a lot of e-mails--

SENATOR SMITH: No, no. The guy who is sitting next to you, all right? (laughter) Not to be worried, not to be worried. Our security people here are not aggressive. (laughter)

So in any case, John, we never got a comment from DEP on the ballot question, and then I heard at the end that DEP was not that thrilled with the ballot question. So would you go back to the Commissioner and say, "How about a letter on the implementing legislation?" We'd like to

know where DEP is on this stuff. Also, GSPT, you know -- if there's anybody in State government who has an opinion, it would be nice to hear about it before we let a bill out of Committee, all right?

**J O H N H A Z E N:** (off mike) Will do.

**SENATOR SMITH:** Will you take that message back?

David, thank you very much.

Jeff Tittel, Sierra Club

**MR. TITTEL:** Thank you.

And I appreciate this testimony, and (indiscernible) testimony. It is a critical issue. And I think that the work in implementation may be, in some ways, tougher than the ballot question.

**SENATOR SMITH:** Yes.

**MR. TITTEL:** And I want to start off and say that I-- Coming from the Sierra Club -- the nation's oldest and largest conservation group, the group that came up with the idea of State Parks -- we, in our bylaws-- By the way, it's in our constitution: We do not take any governmental money. We are an advocacy group. John, you purely believe that you're neither an advocacy group or a real estate group -- you can't be both. And our job is to look at this from our membership and from our long history in conservation.

And so I may be stepping on some toes here today, but that's part of my job, as you well know.

**SENATOR SMITH:** I've never seen you do that.

**MR. TITTEL:** No, I know. I'm so meek. (laughter)

The point I want to make-- And I'm going to start off, quite frankly-- This was not the perfect solution to get money, but it was the

only option there, and that's why Sierra Club supported it. We had a lot of problems with it, but we need this implementation period and program to help to try to correct some of those problems.

And I just want to start off and say, quite frankly, we firmly believe, since-- Sixteen million dollars a year -- and we worked on that dedication with you for State capital parks -- should stay. It was supposed to grow to \$32 million; we understand we can't necessarily do that because of the priorities. So Sierra Club's position is 20 percent -- 21 percent, actually -- should go to State Parks capital, which would keep it at \$16 million. And then in 2021 when it grows, it will go up to \$24 million or whatever.

We cannot support -- and we will oppose vehemently -- this concept of cutting State Park funding by 80 percent, which was what I heard earlier today. Because when you take it to 10 percent, you're taking it from \$16 million to \$7 million; but next year it's going from \$32 million down to \$7 million. And we feel that is unconscionable and that is wrong. It is wrong for the parks in this state, and it's wrong for the people. Plus fixing parks creates a lot of jobs and creates a lot of economic opportunity with tourism.

Secondly, for us, since most of the money, especially for the first four years, is coming from programs that directly affect urban areas, underground storage tanks, brownfields, site remediation, watershed planning -- we believe that we should now correct the historic inequities that have gone on in the Open Space program since 1998. Prior to 1998 -- and Dave Epstein mentioned this a little bit -- the local match program got more than 50 percent of the available funds from Green Acres. And that

formula was changed under Governor Whitman. We have, in a local match program right now, a \$500 million deficit between those towns and counties that have applied for funds and cannot receive them. That number would be much larger, but because so many towns-- Like, I know, Lambertville, where I'm from, gave up on it because they're so far down on the list they decided not to do the project. And what we've seen happen, because town after town has not gotten that match, they've decided because they can't buy a property -- and I'll use Lambertville, again. They wanted to buy a property up on the hill. They decided not to try to buy it, and so they actually cut their Open Space program. And we've seen that in town after town because they can't get that match. That match was a promise made by different Administrations and this Legislature to encourage more local funding to come in so we could buy projects (*sic*), because we need to put together multiple pots.

What we're really concerned about is that, in this State now, more than half the growth is happening in urban areas and we do not have the money to help keep up with that demand for parks, and open space, and recreation areas, and playgrounds.

We also-- And while were talking about capital, we have not opened a swimming area in the State of New Jersey since 1981. When you go to the State Parks, the swimming areas -- and people come from all over; one of the most diverse and wonderful places you can go -- they're closed by 10 a.m. And the last one to be opened was Wawayanda in 1981, and we haven't opened one since. There was supposed to be one built at Monksville; we never built it, and now we can't even build one because the rules have changed.

And so we think that has to be a priority, as is the urban parks -- because that's where the growth is and that's where the people are wanting to be. McMansions are blasé (*sic*); nobody wants them. People want to live in walkable communities and we need to make sure that they're livable by providing those funds for Open Space and recreational opportunities.

Also, we believe that the local match program needs to be extended and expanded because, with the foresight of this Legislature, you changed the law where you can use some of that money for Blue Acres. And many of these communities, you know, whether it's Lincoln Park, or Lyndhurst, or others are using that money -- Denville -- using that money from their local match to help buy out some of these flood-prone areas. So it's also critical there, and that's another reason why we're pushing for it.

We think there's something wrong when we hear 10 percent for stewardship and 10 percent for Parks. It makes no sense. In fact, we could be laying off people in site remediation to pay for nonprofit staff to do stewardship. That is absolutely objectionable.

We also see that the nonprofit match is getting more than Park capital under the Keep It Green proposal. That is also absolutely wrong. We think there should be a nonprofit program; we don't say it, but it should not be equal to Parks' capital -- greater than Parks' capital.

We believe, quite frankly, that in this Open Space implementation there are a lot of things that we need to do -- not just divvying up where the money should go. And, by the way, I think we should get rid of the Garden State Preservation Trust. We're not bonding

anymore; they're not there to look at the priority list -- the legislature looks at the priority list already. We can save some money there.

But we also need to figure out ways to help correct some of the problems that we have now created in our budget. And I'll give a couple of examples. We strongly believe that any money from leases that go out should go back to the Department. Right now, they're leasing pavilions at Liberty State Park under the Governor's privatization; \$800,000 from leases for different things are going into the General Fund, not going back to that Park for maintenance. We should put that money back in.

We have monies going out for consultants for all kinds of different things. We should stop it, and our (indiscernible) money should be money focused back into the Department to do site remediation and to help make up for some of the shortfalls.

We also need to look at-- And I support Farmland Preservation, but we can get there other ways. We also need to prioritize farmland. I think when we go forward with Farmland Preservation, we should be prioritizing family farms, local-grown produce, people who -- farmers who help dealing with the food deserts in our cities by having farmers' markets and things like that. We should change the system we have and make it more proactive. We can also get other funding for farmland. I've always believed in changing the rollback.

This \$71 million that we have to divvy up right now is a lot smaller than we've had in the past. We're still going to need to look at other places to get money, we're still going to look-- We believe in the Blue Acres Program, but we're going to need to look at other places to get money for Blue Acres as well -- as well as Open Space preservation.

We were using EIT money before for land acquisition. We should start looking at that again to help protect some of our watershed lands.

But we firmly believe that we cannot allow the money for an urban park to be sent up -- and you may disagree with this -- up into the woods to go take down trees. That money should go back to urban parks. We should not take money out of core programs and DEP staffing and use it for nonprofit salaries. We should not allow any administrative costs out of here except for DEP. We strongly believe that; in fact, we also need to figure out how we can help pay for DEP staff so they don't-- Because one of the concerns we have-- I mean, it's only \$71 million; and SADC, and Historic Preservation, and Green Acres all get salaries, that they've been doing in the past. That's 10 percent of your funds lost right there. So we need to either come up with other funding sources to help pay for staff, or we need to not allow administrative costs in here as well.

I mean, I think we still have a lot of work to do; this was an important step forward in having long-term funding for Open Space. But now comes the real work, and sometimes the real battle.

Thank you.

SENATOR SMITH: Okay.

Jeff, I heard a lot of things that you're unhappy about, but what I didn't hear is what allocation you'd like to see for the various programs.

MR. TITTEL: Okay; I'll do that right now.

SENATOR SMITH: I'd appreciate it if-- No, no, no. Put it in writing.

MR. TITTEL: Okay.



SENATOR SMITH: Sierra Club should send us a letter saying X percentage for this, X percentage for that. Here's how much -- either a dollar amount or percentages--

MR. TITTEL: Yes.

SENATOR SMITH: --so that we have a little bit of a lockdown on what it is that, as you say, one of the premier environmental groups in this country -- what your actual position is. Today you were fairly general. I'd appreciate it if you would lock it down with percentages and dollars of the money that we're going to have available. All right?

MR. TITTEL: Yes.

SENATOR SMITH: So send that in, if you will, in the next 30 days.

Patricia Butch, Monmouth County Board of Agriculture.

Patricia.

**PATRICIA BUTCH:** Yes; thank you very much.

I am a farmer from Monmouth County as well; and I participate on the County Agriculture Board, as well as the County Agriculture Development Board. And I also have been administering, as a volunteer, the Millstone Township Open Space and Farmland Preservation Commission since 2003. So we've been doing a lot of preservation of many, many farms and Open Space acres.

But I really came today with the purpose of telling you about farming. And you've heard from many other people that there is about a little over 200,000 acres preserved and that we need approximately another 300,000-plus acres of farmland preserved.

And it's really very, very important that this acquisition of this farmland is a major priority. Because farmland in our area -- as well as other places in the state -- is a premium for development. And if it's gone, it's gone forever; we don't get it back. This is something we need to prioritize and do right now, and get that land preserved for the future generations so that they will be able to buy production items that come from these farms. So I think that that is one of my main points.

We need to also realize that local produce that is purchased by all our residents all over the state comes from farm markets; and the Jersey Fresh program is very popular with our residents. And if we don't have this land, we don't have the local fresh products for our residents to purchase. And everyone knows local fresh food is much more nutritious than processed food. So we need the land. If we lose the land, we lose that source for all of our people in the State of New Jersey.

I also want to talk a little bit about stewardship on these properties. It is very important to have the stewardship component put back into the Farmland plan. To be able to cost-share at a 50-50 percent -- to make sure that water and soil conservation is done on these farms is critical. And here we have farmers helping to sustain that cost, so that it's not all on the government as it is with Open Space properties.

Then I also -- after listening today to a lot of different people speak and, actually, for the first time, heard some of the recommended breakdown of funding and sources that it would go to -- wanted to just talk a little bit about the allocation of Farmland. That piece, that used to be a 40 percent piece, is now looking like it's being, maybe, broken down into 28 percent SADC -- which also, you have to remember, is a part of the

municipal PIG program. And that municipal PIG program's value is the fact that the local people get to come up with prioritization of the farms in their area that they know are the most valuable farms to preserve. And that's what that program -- one of the purposes of that program

We also have, in our township-- We have a 6 percent dedicated Open Space tax. We provide 16 percent of all of the preservation of those farms that we do in our township. And then we also are able to go to our County and ask for another 24 percent from the county PIG program. So that's 40 percent of the costs of those farms that comes from other sources than the State money. And that is really important. And then it's also done at the county level in the reverse action. They decide which farms, countywide, they're going after, and then they come to us at the municipal level and say, "Can you put in 16 percent?" which we do. And so then there's another 40 percent of all of the County PIG preservation programs that comes from local and County sources -- not State. And I'm making a point of that because then, when I take a look and see that it's being recommended that 12 percent goes to nonprofits, that's going to severely reduce the amount of allocation that is going to be able to go to the municipal PIGs and the County PIGs. And I'm going to work up some numbers when I go home and submit those to you to show the impact that it's going to have on that local program and on that County program, because the State also has a direct program, and that's totally separate. And I know that if they take a significant hit -- the 12 percent going to the nonprofit organizations -- I think it's going to come out of the local and the County, more than likely, than the State allocation portion. And I think that it's important to keep money in the municipal hands so that the

municipal PIG can help direct the most valuable farms to preserve, going forward in the future.

And I thank you very much for your time.

SENATOR SMITH: Just FYI -- the acronym PIG is unfortunate. That's for the people--

MS. BUTCH: Planning Incentive Grant.

SENATOR SMITH: Planning Incentive Grants; perfect.  
(laughter)

MS. BUTCH: Yes.

SENATOR SMITH: Just for the readers who are not aware of the term.

Thanks so much.

MS. BUTCH: Thank you.

SENATOR SMITH: Mike Pisauo, Stony Brook-Millstone Watershed Association.

Mike.

MR. PISAURO: Thank you very much.

Again, my name is Mike Pisauo; I'm the Policy Director for Stony Brook-Millstone Watershed Association.

I'm going to take your suggestion and submit written comments. I may not be providing, today, exact numbers, but a couple of things I wanted to point out.

I think the Blue Acres Program should continue to be a dedicated source of funding for a couple of reasons. And I think the biggest is that land use failures of the State over the last several decades have placed these people into harm's way. We should have done a much better

job of maintaining our flood plains, keeping people away from our coastal areas, and maintaining our wetlands. So if we take away Blue Acres funding we take away a source of funds to address the problem -- not only from an equity point of view, getting people out of harm's way, but starting to restore those habitats to their natural abilities and to help provide buffers and water quality.

Water quality is the other-- It is part of acquisition and/or stewardship or both. I think it's vitally important that we address the water quality issues. Year, after year, after year -- or, actually, every two years the State of New Jersey issues the 303(d) list. Year after year our water quality is not improving. Less than 3 percent of our waters meet water quality standards, and a lot of that is from urban runoff.

So by stewardship, restoring streams, and restoring and repairing habitats we are creating buffers that will allow waters to filter and clean themselves through natural processes. It also helps with flooding so people downstream are not waking up in the morning and finding everything in their basement or first floor floating past them. So I think that is extremely important.

I support vibrant county and local matching and loan grants, because they leverage money; the same thing for the nonprofits. We are taking -- not we, but the nonprofits are taking money from the local programs -- from the State programs and taking their own money -- donor money and leveraging it. So that is a huge benefit.

Also, as we've seen, time and time again, DEP wants to divert lands. You don't see that as much with nonprofits, so you're actually protecting those lands in perpetuity.

So with that, I will continue to work on our formal comments. But thank you for this opportunity, and I look forward to the long road in moving actual implementation legislation forward.

Thank you.

SENATOR SMITH: Thank you, Mike.

Debbie Mans, New York/New Jersey Baykeeper.

And, in fact, I'm going to refer to her as the *New Jersey/New York Baykeeper*. (laughter) It's a little bit like the New York Giants. You want to put the right title first.

**DEBORAH A. MANS:** So I just turned over Friends of Liberty State Park -- Sam Pesin asked me to submit his written comments. He also e-mailed them to you. And we will -- Baykeeper will be following up with written comments within your 30-day period.

So as you know, we've been looking to protect, preserve, and restore the New York/New Jersey -- I'm sorry, New Jersey/New York harbor estuary for 25 years, and this includes portions of New Jersey's most densely populated and underserved communities in Bergen, Essex, Hudson, Union, Middlesex, and Monmouth counties. And we supported and worked hard for the passage of Public Question 2. And, right now, we need to have more equity in the funding distribution for densely populated communities that not only include cities like Jersey City and Newark, but the dozens of communities where populations of more than 5,000 people per square mile reside.

For decades, since the inception of the Green Acres Program, New Jersey has focused on preserving large swaths of land in rural and less-developed areas and has done a fine job of it. We have much to be proud

of in terms of preserving the Pinelands, areas of the Highlands, and agricultural land, and that should continue. However, this new Open Space funding should better reflect the needs of the time, and the most pressing needs are preserving Open Space where the bulk of the population lives.

For decades, residents in densely developed communities had limited access to the larger pot of Open Space, while those living in rural areas had access to all major categories of Open Space funding. So for example: Most notably, if you live in an area of the state where there are no farms -- like Hudson County -- 30 to 40 percent of the Garden State Preservation Trust is off the table through the Farmland funding. Historically, statewide funding has gone primarily to acquire land and improve our State Parks and natural areas which, understandably, are mostly rural.

Also, a large majority of the NGO funding goes to Land Trusts whose land acquisition portfolios are rural and suburban areas. So as an example, if you live in West Orange, you only have a fair shot at funding from one of the four primary programs through the Green Acres local municipal program, and a greatly diminished shot at NGO funding.

Finally, it is critical to keep in mind that a portion of our new source of Open Space revenue comes from diverting CBT funds that would otherwise go to site remediation and Brownfield redevelopment for predominantly urban programs.

There should be a larger State share for Blue Acres buyouts, which should include acquisition funds for undeveloped land that could be developed -- as the program initially intended -- and moving from just a reactive buyout approach to a more strategic buyout approach.

In sum, on the acquisition side, we believe that we need to level the playing field and devote more funds towards the local Green Acres program and Blue Acres, and that the agriculture program should be capped at no more than 15 percent of total funding.

Full funding and no cuts to the Division of Parks and Forestry and Fish and Wildlife: We need to restore the capital maintenance and improvement of State Parks, Forests, Recreation Areas, Historic Sites, and Wildlife Management Areas at no less than \$16 million a year. And we need to revisit the operating budget during the State Budget process and fund that in full -- and I know a lot of groups will be working on that.

The dedication of lease money: Liberty State Park -- and Sam's testimony describes this in more detail -- will now see its lease and concession revenue -- approximately \$700,000 to \$850,000 a year -- diverted into the larger Open Space pot instead of going back into the Park. Lease and concession monies must go back into the park unit they originate from.

Additionally, the revenue generated from Liberty State Park's parking lots must go back into the Park -- not into the General Fund. This is approximately \$500,000 a year.

So you can see, parks are not just an environmental engine; they're an economic value to the communities and to the urban areas.

We call for a revolving account for each park -- especially Liberty State Park -- where collected revenues are kept in the park.

Stewardship: In general, Baykeeper supports the stewardship position put forth by New Jersey Audubon and Keep It Green, with the



exception of going further for the full restoration of State Parks, and etc., money.

And we look forward to working with the Committees, and the members of the environmental and conservation communities.

Thanks.

SENATOR SMITH: Thank you.

John Toth, New Jersey Outdoor Alliance.

John.

**J O H N T O T H:** Thank you, Chairman.

John Toth, New Jersey Outdoor Alliance.

Fishing and hunting are sports that are also very big business for New Jersey. I have a document here from the ASA talking about the revenues that are coming into the State. For retail sales -- this is for tackle, rods, reels and everything else -- New Jersey gets -- the sales are \$865 million. Then you talk about the multiplier effect -- that's gas, food, and everything else. People come into our state -- and, by the way, there are a lot of people who come into our state from Pennsylvania and Maryland, so it's not just New Jersey anglers -- that's \$1.5 billion.

Then you have 13,570 jobs that are generated by this. New Jersey gets \$91 million in State and local tax revenues. So it's just not a sport; people go out and do this hunting and fishing.

Also I am led to understand that our Division of Fish and Wildlife gets roughly \$8 million for operating costs. And under this formula, it might be reduced, maybe about half -- \$5.5 million. Now, the Fish and Wildlife -- it's one of the lowest -- it gets revenues for State-- New Hampshire, Connecticut -- their Division of Fish and Wildlife get a lot more

money; it comes up to, roughly, between \$15 million and \$25 million. Our State has much lower, and this is giving us problems; because the Federal government -- National Fisheries Service -- mandates that our State has to respond to various programs -- fishing programs, for example blackfish. Our State has to -- the Federal government says you have to support the quota; you have to say that you can go out fishing for blackfish. About two years ago the whole fishing program -- blackfishing -- had to be shut down because our Fish and Wildlife couldn't support the plans from the Federal government.

Also, Debbie Mans was up here just talking a minute ago -- they have an oyster program. And that was in the paper not too -- yesterday -- that we can move forward with it because they get some kind of policing to it. The Division of Fish and Wildlife, Bureau of Marine Police, because of the lack of funding, couldn't monitor that program. So therefore, there was concern about poaching.

So there are problems that develop with this lack of funding. In fact, we brought this before the Outdoor Alliance Caucus. So that has to be really addressed down the road. Fish and Wildlife could talk about this a lot more than me, in regard to the problems.

However, New Jersey has really great saltwater fishing, and I hope you all help us to keep it that way.

Thank you.

SENATOR SMITH: I appreciate your comments, John.

Bill Wolfe -- as a citizen, not New Jersey PEER.

MR. WOLFE: Thank you, Mr. Chairman.

My name is Bill Wolfe; I'm from Bordentown, representing myself and, hopefully, the public interest today.

In contrast to all except one of the prior folks giving testimony, I won't see a penny of this money. I don't do Land Trusts, I don't do land acquisition, I have no financial stake in the outcome of the discussion. I think that's important, because I think your job is to look at the public interest -- the boarder public interest -- and not the, "Me, me, me; my program, my organization, my interests," that we've been hearing for the last hour. It's somewhat distasteful.

SENATOR SMITH: Bill, do you have-- Are you coming to the same conclusion that I'm coming to -- that no one is going to be happy at the end of this process?

MR. WOLFE: I probably agree with you on that. (laughter)

SENATOR SMITH: All right.

MR. WOLFE: But let me put some meat on the bones of some of the issues, because I think, at the outset, the conversation had some very serious misconceptions, and those misconceptions were amplified by a \$1 million public relations campaign conducted by the Keep It Green Coalition. And there were flat-out falsehoods-- I mean, I want to be very clear here. We're creating a record and, frankly, I'm shocked to hear some of the testimony of groups that purport to have a mission to protect water quality and, therefore, acquire land to protect water quality. And yet the specific program areas that they have diverted funds from are specifically done -- and I will be very precise -- Water Quality Monitoring and Assessment (*sic*) does the 303(d) list of the EPA that Mike Pisauero referred to.

Some of the streams and the riparian lands and the wetlands -- those are protected by regulatory programs and planning programs at the DEP that are specifically diverted from here. So I find-- Coming in now after the damage has been done and then talking about the need to protect those resources, when, frankly, the weakest tool -- the weakest policy tool in protecting those resources is land acquisition-- There's planning, and regulation, and private land and stewardship which are the other two legs on the stool that are completely ignored here. And as a planner who trained in the field of land use and environmental quality, to hear a conversation about land preservation and landscape -- whether its agricultural, or forest, or whatever particular resource -- and hear no discussion of the need to do planning and regulation, or municipal planning and zoning -- and hear it all compressed into, "Pay me; give me the money" is reprehensible to me. It's unprofessional and it can't stand.

So let's get to the details of the context -- the point that illustrates some of these things.

Based on the FY 2015 budget and the response to OLS questions on the budget, which were provided to the Legislature in March and April of last year -- or, excuse me, of this year, the CBT fund supports \$16 million to science and technical programs at DEP; \$103 million in FY 2015 (*sic*); \$53 million to Site Remediation and waste management; \$18.1 million to environmental regulation -- that's like Land Use, and wetlands, and stream encroachment, and coastal resource regulation, and those DEP regulatory programs that provide far more protection for those resources than the piecemeal, scattershot, shotgun acquisition of small parcels of land.

Those budgetary figures translate into people at the DEP who do the work that protect the resources. Site Remediation, 107 positions funded by the CBT revenues; Compliance and Enforcement and Underground Storage Tank, 10 positions; Water Quality Monitoring and Planning -- those are the people who protect our water resources -- 123 positions; Air Quality, 8 positions; Parks Management, 18. That's noncapital; those are operating staff funded positions, okay? They are all in search of a funding source as we speak today. That means, you know, people get paid, they understand how they get paid. They don't have a check coming in as of the end of the fiscal year. That money can be restored in two ways: It can be restored in the implementing legislation, or it can be restored in the budget process. And there needs to be a specific commitment from this Committee that those monies will be restored and the damage undone. And I heard partial commitment from the conservation community -- that they were willing to do that. And, frankly, I only heard the "green side" of the Department -- which is Parks and Forestry and Natural Resources -- that there was a willingness or appetite to support that as restorations.

A second point with respect to what I say are false statements with intent to deceive during the course of the public debate on this, which led to the public not being adequately informed -- and, frankly, not only not being adequately informed, but being actively misinformed -- were a series of statements that were either partially true, totally untrue, or misleading. And they ran from, "Let's talk about it," and we started in March of this year -- and you did talk about it; you did say there were tradeoffs. But then we seem to have lost that whole conversation throughout the public debate.

The second thing was denial -- that there were no cuts. And I got reporters calling me up and saying, "Bill, you're issuing press releases that are saying *A, B, C, D, and E*. These are harsh claims. All your colleagues -- Tittel included -- all your colleagues say you don't know what the hell you're talking about, that you're making stuff up."

Here we are now, today, we're dealing with the fallout: that the programs were mature or the programs sunset. That was a warped presentation of the diesel retrofit monies, where \$17 million of diesel retrofit monies were expired and on December 31, 2015, were going to be reallocated to Parks.

So we had Senator Bateman in a news story saying that there were mature programs that sunset, and that was the rebuttal to my claims that these were deep cuts -- unprecedented deep cuts that not even Governor Whitman, frankly, did at the DEP. That could not be defended, that was indefensible -- all right? -- that the increase from 4 percent to 6 percent was going to offset. Numerically, that's math challenged, because every year there's a recurrent diversion; in the first year of \$71 million; to the out years -- 2016 and beyond -- of \$117 million. That means if you increase the pot from \$100 million to \$150 million, you're chasing your tail because on a recurrent basis you're losing anywhere from \$71 million to \$117 million. So mathematically you can never get there unless the CBT revenues would double in the first year -- which is mathematically impossible.

So we have math challenge points made that were just false and misleading. And they came in the form of op-eds, public statements to the press -- that the public was misled.

The Parks capital funding: It was always said, “Oh, no, the Parks’ money is in there.” Now, you know the difference between a dedicated portion of money that goes to a specific purpose -- to this State Parks Service -- versus the Parks money now goes into this pot of competing uses for agriculture, and Open Space, and Blue Acres, and Farmland, and everything under the sun. That’s a fundamentally different scenario. And if it were-- My analogy was, “Okay, let me take your paycheck; let’s throw it into a pot with everybody’s paycheck on the block, and the Mayor’s in charge of distributing the proceeds.” Would you agree to do that? That’s what happened to the Parks Department, which led the Director of the State Parks Service to write -- and these are his words, not mine -- that this was the worst -- the passage of the Open Space question was “the worst day in his (*sic*) professional career” -- and that’s a quote -- and that it “did more damage to the State Parks system than Hurricane Sandy.” This is from the man who runs the State Parks Service, all right? This is what was done here, and it was done by the people in the room behind us, all right? And now they’ve come, and they have crocodile tears, and they’re wringing their hands over, “Oh, I support urban parks,” and yada yada. Where was that discussion, *a*) when the resolution was moving through the Legislature, and *b*) during the public debate, and *c*) why was it used to challenge my criticisms and undermine them? And *d*) your point to DEP. On November 8, Bob Martin sent a memo to the entire staff and the entire Department about what a bad thing you guys did over in the Legislature. And he didn’t send Hazen over here to tell you all the stuff that I just outlined -- about what the CBT was actually used for, and what the impact of the cuts would be.

Leading into what the money should be programmed for in the future, I want to talk just briefly about the history of the CBT; because there were three people, in 1996, who sat down, had a conversation, put together the strategy, and did the research on the CBT. The first time we constitutionally dedicated the money under CBT was in 1996. I was one of those three people, and I did all the research in backing up the diversions from the Florio Administration and the Whitman Administration of over \$500 million. And, at that point, it was the third year into the Whitman Administration's budget process, and they had cut the DEP budget by 30 percent.

So the CBT dedication was a tool for the Legislature to procedurally bypass the Governor -- who was a barrier like we have today -- and it was to supplement revenues that were allocated in the budget process to assure there was some money to run some programs. That was its whole point. And with that in mind, when the CBT passed, the ballot question was approved, we did implementation legislation. The first bill was the Watershed Management Act; I worked with Senator Bennett on that. At that time, the Chairman of the Committee was Hank McNamara. We did very specific things in there. We prevented the money from being for regulatory purposes by regulated entities. We disciplined nonprofits to prevent them from using monies -- for example, taking some CBT money, blending it with some mitigation money they might get from PSE&G, and pooling it into these, what I call, *scams*. I call it a *green Ponzi scheme*, where conservation groups are entrepreneurial and they seize multiple pots of money, and the net underlying purpose is not in the public interest. And Susquehanna-Roseland, through the Delaware Water Gap, was a \$60



million mitigation deal -- that the Highlands Council got \$18 million. Developers routinely do mitigation to offset and streamline permitting, so it's not something that's a tasteful thing to be involved in, from a conservation standpoint -- as opposed to opposing the development in the first place when it's inappropriate.

So this whole idea of saying, "Well, this is public money; it's going to be used in the public interest," and the nonprofit actors are not always acting in the public interest. They are, sometimes -- sometimes they are working with the regulated community, and that the regulated community and the nonprofit sector team up to do things that are not in the public interest. That was put into the Watershed Management Act -- in how the funds were allocated and restrictions on their use. For example, a permittee could not work with Mike Catania and do some riparian projects somewhere else in the Watershed, and get financial assistance to do that -- to get a permit -- a discharge permit or a TMDL. That was set up that way to prevent that abuse.

So I think we have to have the same kind of thinking going into this implementation legislation, which I'll talk about in just one moment.

And the last point is -- one of the other big straws in my craw, that was said publicly and is actually incorporated in the Senate Resolution that, ultimately, was passed -- was a prohibition on DEP site remediation using funds for staff. And there was an op-ed piece by Tom Gilbert of Keep It Green who chastised the DEP, implying that they had been abusing the funding by using it for staff -- the CBT monies. And I just told you the history of the CBT, why it was created. For 18 years now it's been used primarily for staff over in the DEP. To now, 20 years later, after the

Legislature approves every single budget with those monies in there, to now express Claude Rains', "I'm shocked" that the DEP is using this money for staff is either, *a*) incompetence, or *b*) dishonesty. And it could be both, but it can't be an honest effort in advocacy. It can't be an honest debate. And the public was duped by this.

So what I wrote yesterday -- in my particular corner of the world where I control the message and the content -- was that the public, who voted for Open Space, did not vote to attack clean water programs or attack the State Park Service. And that's what the result is, because I just laid out the numbers for you.

So with all that in mind, going forward, given the behavior of the nonprofits, given the scarcity of the resources and the unmet needs, given the competition for the resources, the first thing to do is put the Parks back and make them 100 percent whole as to what they were prior to diversions. I think everybody agrees on that, even the green side of the people -- I think I heard that. But it has to be far more than that. There either has to be a commitment in the implementing legislation -- and I'm not quite sure how to do this -- or in the budget, that the monies that were cut from those programs that I just outlined are restored fully. Because there was not an intent by the voters-- And even the interpretive statement and the ballot question statement didn't speak to this issue, honestly and directly, as to what the tradeoffs would be for funding this program.

So if there's no intent on the part of the public, who we all say amended the Constitution, democratically -- if there was never an intent-- Like, if you guys have constitutional power to interpret legislative intent, you have to have some historical record to demonstrate legislative intent.

Nobody said that we wanted to harm these programs that ultimately got harmed as collateral damage.

The urban parks and community gardens question: We hear the farmers talking about Jersey Fresh, how they do farmers' markets. Let's program that, let's put it in legislation; let's create it and let's allocate it, and see that that food goes to, what Tittel referred to as, *the food deserts*. I've been looking into this. USDA has food deserts mapped; Rutgers has done projects and has food deserts mapped. There are local nonprofits doing food desert analyses which show that urban areas have limited access to food; that that creates health issues and that those same areas also correspond geographically to areas that don't have access to Open Space and parks where you can recreate and get exercise. And the combination of lack of exercise and the dietary problems of lack of access to fresh food and vegetables leads to obesity -- particularly childhood obesity.

And those same communities also correspond with the-- The DEP did an analysis -- they called it an *Environmental Justice Report* -- where they correlated nine indicators of environmental health and health risks, and came up with very targeted communities that directly correlate to income and race. Now, if we could put all those three variables together and work with the agricultural community, and the Farm Bureau, and the Department of Agriculture, and we call it *Jersey Fresh 2* -- that's what we should-- You asked for new program needs; that certainly should be a priority.

The second area that I think has to be addressed is climate. And, again, the same urban areas that disproportionately have the impact, that have the lack of access are also going to be the areas suffering the most

heat island effect from 90 to 100-plus degree days that are forecasted under all the climate change models. So the one mitigating measure for that could be a huge -- and I mean huge -- urban forestry program, where we're actually planting trees and creating pocket parks in urban areas. This is doable, all right? And again, think back to 1997 when we did the Watershed Management Act; that was a new program at the time. It was completely outside the footprint of what the regulators were doing. It was designed to make the regulators do a better job. And the DEP opposed it because they opposed change.

So what I'm saying is we're now 20 years later; we know that these are severe problems. We can do it through the implementing legislation. And we can't have the status quo, if for only financial reasons with the scarcity of resources.

And last, in closing -- my last point -- is the scarcity of resources; again, the competing needs argue for cost control. There have to be cost control measures that deal with-- We can no longer buy land at \$150 -- \$100,000 an acre that's already protected in the Highlands while we're neglecting other communities. And it's a fairness issue, but it's also a financial issue. And the program-- Why should we have sewer lines and municipal zoning jacking up the price of land, and the State come in and pay a premium on the land?

So what I say is, there are ways to deal with that through either the appraisal process or through the eligibility process -- to the point of even saying, "No, we're not going to buy regulated lands." So the Highlands and the Pinelands might be out -- in the preservation area, anyway -- from purchase because we have to make-- As Tom Gilbert said, he's in the

newspaper saying we need to make hard choices -- hard choices. No stewardship money, no purchase of regulated lands, cost-containment measures. These guys created the problem; make them bite the bullet. Because you're biting the bullet; you're getting all this angst and criticism. Let's share the pain a little bit.

And when I hear the Keep It Green people say that sharing the pain means that the groups within their Coalition have competing needs, and the rest of the 8 million people in the state don't even get mentioned in the same sentence, then I know something's not right.

And I'd be glad to respond.

SENATOR SMITH: Why are you so ambivalent on this issue?

MR. WOLFE: Excuse me?

SENATOR SMITH: Why are you so ambivalent on this issue?

MR. WOLFE: Well, because I've been-- Senator, frankly, this has been-- This is more than a professional interest here. And, frankly, the fact that I did all the work that I did, and to see it all evaporate before my eyes over the course of my career is very, very disheartening. And then to get the abuse -- the personal abuse that I've gotten from members of the Keep It Green Coalition; and not one of them -- Tittel included -- not one of them was even here when that money was created. One hundred million dollars in CBT money in 1996 -- not one of these people was even on the stick. Dave Pringle was running the canvas out of New Brunswick for the Environmental Federation, all right?

So these are the hard truths. Tittel is worried about stepping on people's toes? I'm worried about bleeding people's noses on stuff like this.

SENATOR SMITH: This hearing is getting very violent.  
(laughter)

Thank you.

MR. WOLFE: Sergeant-at-Arms, throw the man out. (laughter)

**DAVID PRINGLE:** (off mike) Thank you, Bill.

SENATOR SMITH: Kim Gaddy -- Clean Water Action.

Kim.

MS. GADDY: (off mike) Can Dave come up with me too?

SENATOR SMITH: Sure.

Dave Pringle.

MR. PRINGLE: Thank you, Mr. Chairman, we'll be brief. It's been a long productive hearing.

I'd like to introduce Kim Gaddy. For those who don't know her, she's our long-time Environmental Justice Organizer. We first hired her because we weren't doing -- traditional environmental white groups weren't doing enough in cities. And she's been working with us for -- 12 years now?

MS. GADDY: Thirteen. And I'm a local resident. And I'm one of those individuals who actually voted no on Ballot (*sic*) Question No. 2. And it's not because I don't support Open Space; but it's the fact that I also support the funding for environmental programs that this ballot question cuts: diesel, watershed, toxic site cleanups. And we use that funding to pay for Open Space.

And urban communities -- we need help right now. We can't continue the funding and not support our communities. It's not fair.

One other point I do want to make -- because I'm sorry, I have to get home and pick up my son from school -- is that one of the strategies is to require at least 50 percent of all nonfarmland preservation funds -- Green Acres, Blue Acres, Parks capital, Historic Preservation, Stewardship -- to be set aside for urban communities -- cities and inner ring suburbs. This is very important and crucial. We have to begin to address the adverse and disproportionate impacts that we face in urban and low-income communities.

So we will submit our written testimony at a later date. But I do thank you for hearing that.

MR. PRINGLE: Thank you.

I want to join and fully support the testimony of Bill Wolfe and the Sierra Club. Bill was 100 percent accurate in his history. Clean Water Action, (indiscernible) New Jersey, and Environmental Federation worked with the Sierra Club and Senators McNamara and Bennett to get this all going back in 1996. And he's 100 percent on point.

We're obviously happy that there's more funding available for Open Space, but it is coming at a significant cost to urban centers, parks, water, Brownfields, diesel programs. They will all get cut unless we find alternative funding. All of those programs also disproportionately go to urban areas; so if we don't disproportionately refund the urban areas, they will be cut as a result of this.

So we're looking at-- I think there are three criteria we're looking at as this legislation is crafted. One, is we need to -- and we haven't done this in the past with these funds -- we need to maximize environmental public health and environmental justice protections. We

need to minimize the cuts to the core environmental programs that CBT has traditionally funded, and we need to ensure that New Jersey urban areas get their fair share.

Specifically, there are four or five points I want to cover. One is -- and shame on the Christie Administration for not coming forward at all during the debate, or as this legislation was moving last spring, and doing so -- and opposing it very surreptitiously on the ballot. I think you need to get from them how -- what really is happening with CBT and what their plans are, moving forward, before they go through the budget process.

Second, as Kim mentioned, we think that there should be an urban set-aside for 50 percent. Senator Codey had a bill in that passed the Senate, 33-3, in 2003 that required 15 percent of Green Acres funds to go to Urban Aid municipalities. We'd like to see a broader definition of *urban aid*; that's why we get to the 50 percent. But that passed 33-3; and that was when the Senate was split, 20-20. So there was bipartisan support at that time.

Third, we think Parks need to be kept whole. We think the \$16 million that was in for this year should go forward. We think it should go up to \$32 million, and if other programs have to cut as a result, so be it. Parks has historically been incredibly underfunded. The reason there was a specific set-aside was for that purpose, and we think it needs to be-- Well, it can't be in the Constitution right now; it should be in the enabling legislation.

Four, to maximize all the CBT funds -- matching funds, etc. -- there are a couple of things. We are very happy that you moved, today, your Bill S-570; that's an important revenue source and it's also just the



morally right thing to do. Second, we think we need to change the funding formula. Historically, Farmland and Green Acres have been a 60-40 split, roughly. We think it should go to 80-20 (*sic*). To help fund the things that really need to get funded, we have to make tough choices here and we think Farmland should be deprioritized.

On Stewardship, we don't think there should be any funding for Stewardship right now. I was amazed to hear somebody from the farming community suggest that we need to be paying farmers to conserve soil and water. I don't understand why the taxpayers need to fund them to do what they should be required to do, and if they are truly stewards of the land they'd be doing anyway. It would make common sense for them.

We think that there's a whole variety of revenue sources that-- You know, you did a piece of it in the constitutional amendment, but the NRD fees -- NRD funds fees, finds -- Passaic River lawsuits, the penalties -- all of that stuff needs to be driven into DEP coffers to help cover all of this.

And there are matching funds that will be lost at the Federal level if the traditional CBT programs aren't fully funded.

So with that in mind, thank you for getting this going.

MS. GADDY: And I just want to make one last remark.

I do want to acknowledge and recognize my Assemblywoman, Grace Spencer, and I fully support her and her effort to help us, and the City of Newark, and our urban communities.

Thank you.

ASSEMBLYWOMAN SPENCER: Thank you.

SENATOR SMITH: Thank you for your comments.

Fairfax Hutter.

Ms. Hutter.

**F A I R F A X H U T T E R:** (off mike) Yes, pardon me. I have very little voice and I might be doing a little bit of reading here.

I am representing myself, although I happen to be on the board of some local Audubon chapters. And I'm involved with the Canal Watch, and so forth.

I also have--

**SENATOR SMITH:** Great. Let me just mention, though -- because I do hear your voice being very strained -- the record will be open for 30 days, so if you want to give us some more formal thing in writing, you're more than welcome to do that.

**MS. HUTTER:** That's what I'd like to do. I would like to amplify and I may skip a couple of things that I was going to say.

**SENATOR SMITH:** Please; go ahead.

**MS. HUTTER:** My main concerns are the cuts to all the DEP programs. While I've been an advocate and a proponent for Open Space, when I realized what was happening to water resources, site remediation -- the fact that there would be no staff left -- so no oversight. And Parks -- 100 percent of Parks, until and unless they get a little back.

I was just absolutely horrified. You looked at the ballot -- that's not what it said. And everybody I talked to, I said, "Do you realize" -- they should have done the charts. They had no idea. That was not what they intended to vote on. Their intent was to support all of these -- not just Open Space -- but water resources and environmental protections.

So I feel it's really imperative that before you start allocating the "spoils," of this legislation, you commit yourselves to restoring the

monies to DEP that is the bedrock for them to function properly and effectively; and allow them to have regulatories, and power, and so forth that, in the long run, will save us all taxpayer money. Rather than having to clean up after the fact, staying on top of problems as they arise.

And with respect to Parks -- I'm advocating at least \$16 million of the, I think, \$71 million goes to Parks and, ultimately, \$32 million. It's just not fair. They had a \$400 million backlog. It's just not fair.

And particularly urban areas are taking a hit on this. And even though I love to be hiking out in the mountains and the like, there's a justice here, and the justice should go to the urban areas.

I also want to point out that not all Open Space is always pristine; there are contaminated sites. And a DEP employee -- and I've talked to a number of them who all agreed that cleanups are not being drawn down, they are not sunseting. They see the problems constantly. They have their hands full. They are understaffed, they are overwhelmed. And they are great workers -- you have some of the best people in the State working on these things. And here are two comments that I'm allowed to give from a DEP employee: one, "Yes, we all agree that we need to preserve Open Space. But that does not mean we need to let the rest be left to crud. Oh, and news flash: Not all Open Spaces that have been preserved or are destined for preservation are contaminant-free. Where does the money come from to remediate these areas? Sometimes I just take a step back and think they will mean well. They mean well (indiscernible), etc., but they do not have the benefit of seeing the whole picture that I have had the misfortune of seeing and experiencing, which, by the way, can leave one very fatigued at the end of the day."

And another comment: “This is a continuation of what I see as a very disturbing trend: the devaluation of the need to address existing contamination -- most recently demonstrated by Christie’s grab of a large portion of the Passaic River Settlement. For that maneuver, it took the corporate attorneys less than 24 hours to say, So the impact of the contamination is not as serious as you led us to believe, since the money will not all go towards remediation.” So when there are diversions here, it means the case doesn’t look as important and it could set bad precedence down the road.” And the last comment, “Best of luck to the DEP attorneys, in the future, presenting their case.”

And with respect to Stewardship. Because I’m very interested-- I’m a birder, and so forth -- and plants, and everything else. I noticed that stewardship and restoration is a work in progress. I’ve seen private grants -- quite a few of them -- get spent; quite a bit of money. And they’re learning along the way that they don’t always work. And if it’s going to private groups, we lose transparency. And I really think it’s important for all of us taxpayers -- and those of us who might be applying for and receiving the grants -- that you put in a method or some scheme for there to be accountability and transparency. But there is an understanding that not everything-- The restoration doesn’t always work -- not firsthand (*sic*); it’s a learning process.

Also because our public employees, who are looking out for all of us, cannot have any of their salaries funded by CBT revenues, it is not fair for nonprofit salaries to be funded by CBT revenues via the stewardship clause.

I believe that’s probably all I have to say.

SENATOR SMITH: Good luck with your voice. (laughter)

Pam Griffin, New Jersey Recreation Park Association.

**P A M E L A G R I F F I N:** Good afternoon.

My name is Pam Griffin; I'm with the New Jersey Recreation Parks Association. We are also a member of Keep It Green and would like to support Kelly's comments.

Enough people have commented regarding the decreased funding for State Parks -- and we would like to express that we are extremely concerned. There is critical need in the State Parks, and we would like to go on record that we're concerned about that and see the need for continuing funding, over time, and increases as more money comes available.

We'd also like to support stewardship, but I'd also like to say that as more land is preserved, we think that percentage for stewardship should be something that also increases, because there is increased need for stewardship with more lands on the rolls.

What I really wanted to address today, and that we are extremely concerned about, is the diversion of the lease and conveyance funding. Right now, our research is indicating that there is over \$3.5 million of money from leases and conveyances that is credited to the actual operating budgets of State Parks, Fish and Wildlife. And with that diversion, they're going to definitely have to see decreases in operating service, decreases in maintenance, and potential for park closings. So for example, if you take Liberty State Parks and Marinas -- somebody did mention that over \$700,000 goes to those -- crediting for those operating expenses. You would definitely, with the diversion of those funds, see

decreases in their maintenance, their services, and potential partial closings on days that they cannot remain open. So that is deeply concerning to us, and we would like to ask that there be recognition of this and that more funding or support of those State Parks be provided through the budget process, or in some manner, to make up for the diversion of that.

I appreciate being able to have this opportunity to comment, and we will be providing written comment within the 30 days.

SENATOR SMITH: Thank you, Ms. Griffin.

MS. GRIFFIN: Thank you.

SENATOR SMITH: Our last witness is Barbara Sachau.

SENATOR BATEMAN: I think she just left.

SENATOR SMITH: Barbara Sachau. (no response)

UNIDENTIFIED MEMBER OF AUDIENCE: I'll take a look.

SENATOR SMITH: Barbara? (no response)

Well, we have no other alternative but to close the hearing, and I'm sure we'll be talking about this some more in future.

And under the category that no good turn goes unpunished, everybody have a great day. (laughter)

**(MEETING CONCLUDED)**