
Committee Meeting

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

“The Committee will hear testimony on the proposed faculty housing development project by the Institute for Advanced Study on land adjacent to Princeton Battlefield State Park”

The following bill will be considered:

Assembly Bill 2687 (ACS)

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: December 21, 2015
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Christopher “Kip” Bateman
Senator Samuel D. Thompson



ALSO PRESENT:

Judith L. Horowitz
Office of Legislative Services
Committee Aide

Kevil Duhon
Senate Majority
Committee Aide

Brian Ahrens
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



BOB SMITH
Chairman

LINDA R. GREENSTEIN
Vice-Chairwoman

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

JUDITH L. HOROWITZ
Office of Legislative Services
Committee Aide
(609) 847-3855
(609) 292-0561 fax

MICHAEL MOLIMOCK
Office of Legislative Services
Committee Aide
(609) 847-3855
(609) 292-0561 fax

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 21, 2015

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

***The Senate Environment and Energy Committee will meet on Monday, December 21, 2015 at 10:00 AM in Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey.**

The Committee will hear testimony on the proposed faculty housing development project by the Institute for Advanced Study on land adjacent to Princeton Battlefield State Park.

The following bill will be considered:

A-2687 (ACS) DeAngelo/Pinkin	Provides for replacement of incandescent light bulbs in public school buildings with energy-efficient light bulbs.
---------------------------------	--

Issued 12/15/15

*Revised 12/18/15 – Note room change to Committee Room 4, First Floor.

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.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 2687

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED MARCH 16, 2015

Sponsored by:

Assemblyman **WAYNE P. DEANGELO**

District 14 (Mercer and Middlesex)

Assemblywoman **NANCY J. PINKIN**

District 18 (Middlesex)

SYNOPSIS

Provides for replacement of incandescent light bulbs in public school buildings with energy-efficient light bulbs.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Appropriations Committee.



1 AN ACT providing for the replacement of incandescent light bulbs
2 in public school buildings with energy-efficient light bulbs,
3 supplementing Title 18A of the New Jersey Statutes.

4

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

7

8 1. a. Commencing three years after the effective date of
9 P.L. , c. (C.) (pending before the Legislature as this bill),
10 notwithstanding the provisions of any other law to the contrary, a
11 board of education shall, whenever possible, replace all
12 incandescent light bulbs used in public school buildings with
13 energy-efficient light bulbs.

14 b. Commencing three years after the effective date of P.L. ,
15 c. (C.) (pending before the Legislature as this bill),
16 notwithstanding the provisions of any other law to the contrary, a
17 board of education shall purchase energy-efficient light bulbs for
18 use in public school buildings to the maximum extent practicable.

19 c. For purposes of this section:

20 "Energy-efficient light bulbs" means halogen incandescent light
21 bulbs, compact fluorescent light bulbs, light-emitting diode light
22 bulbs, or any other alternative light bulbs or lamps that have a
23 lifespan and electrical efficiency that is greater than the lifespan and
24 electrical efficiency of an incandescent light bulb.

25

26 2. This act shall take effect immediately.

TABLE OF CONTENTS

	<u>Page</u>
Assemblyman Reed Gusciora District 15	3
Bruce I. Afran, Esq. Representing The Princeton Battlefield Society	4
Amy S. Greene President Amy S. Greene Environmental Consultants	34
O. James Lighthizer President Civil War Trust	49
Jerald Hurwitz, Esq. President The Princeton Battlefield Society	54
Kip Cherry First Vice President The Princeton Battlefield Society	54
Thomas Pyle Private Citizen	55
Lisa Serieyssol Private Citizen	57
APPENDIX:	
Battlefield Photograph submitted by Assemblyman Reed Gusciora	1x
Documents, and maps, plus attachments submitted by Bruce I. Afran, Esq.	2x

TABLE OF CONTENTS (continued)

APPENDIX (continued)

	<u>Page</u>
Testimony, plus attachments submitted by Kip Cherry	188x
Testimony submitted by Thomas Pyle	203x
Testimony, plus attachments submitted by Richard Chenoweth Private Citizen	213x
pnf: 1-62	

SENATOR BOB SMITH (Chair): Good morning to the Senate Environment and Energy Committee -- in my humble opinion, the most interesting Committee in the Legislature.

Today we have a hearing on the Princeton Battlefield State Park, and one bill. The one bill we'll do at the end of the hearing.

I will tell you that the Princeton Battlefield State Park issue was brought to our attention by Senator Bateman and Assemblyman Gusciora

And that being said, let's take a roll call so that we can actually say we're present and accounted for.

MS. HOROWITZ (Committee Aide): Senator Smith.

SENATOR SMITH: Yes.

MS. HOROWITZ: Senator Greenstein.

SENATOR LINDA R. GREENSTEIN (Vice Chair): Here.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Here.

MS. HOROWITZ: Senator Thompson.

SENATOR THOMPSON: Here.

SENATOR SMITH: Okay. Senator Bateman, you were one of the two legislators that brought this issue to the Committee's attention. Maybe you can give us a little background information.

SENATOR BATEMAN: First of all, Senator, thank you very much for-- I know it's a busy time of year, and I appreciate you holding this hearing, because this is a very important issue. I want to thank the Assemblyman -- I know Reed is here -- Reed, for your efforts.

As you may know, right now they have started developing on a tract adjacent to the Princeton Battlefield. And as many people know, the

Princeton Battle was really the turning point in the American Revolution. It is so important historically that they have been trying to stop this development for some time; and a matter of fact, it's in litigation right now.

However, as of, like, last week, a number of trucks and bulldozers were taken to the property and they have started excavating. And this is terrible, terrible news. It's really a sin because once the damage is done, it's done forever. And so, you know, the Princeton Historical Battlefield Society has been working very closely with the Assemblyman and others over the years -- and I've gotten involved because now I represent Princeton, and, plus, it's so important -- to try to purchase the property. And unfortunately, we have not gotten very much cooperation from the Institute for Advanced Study. And they want to build condos on this property. And this really-- Where they want to build was the right flank of Washington's gallant effort, which really turned the tide, not only of this battle but, as I indicated, of the whole American Revolution.

So we've asked DEP to look at it; we've had some additional information. And I know that we have a number of distinguished speaker, who know a lot more about this than I do, who are going to speak this morning.

But we have found additional wetlands on the property, and we have brought that to the attention of Commissioner Martin and his team, and they have gone out there to look at it. And I think there's a discrepancy on whether they are new wetlands or they're not wetlands. So we haven't had much success with DEP. I have spoken to the Lieutenant Governor; she's made some inquiries.

It's just very important. And so I think that having this hearing to hear the information -- and I hope there are some people here; I don't know if there is anybody here from the Institute. I would suspect they are probably not going to attend. But on the issue of wetlands, it either is or isn't. I can't believe that there is a gray area. Either they're present on the property, or they're not. And so I think, obviously, if they're present, then that's a very significant development.

So I look forward to hearing from everyone, because I just think it's a very important issue that we have to fight to the very end -- because historically, and for generations to come, this land should be preserved.

So Mr. Chairman, thank you.

SENATOR SMITH: Thank you, Senator Bateman.

Assemblyman Gusciora is present. Assemblyman, would you like to give us a little more background?

A S S E M B L Y M A N R E E D G U S C I O R A: Thank you, Senators.

And I appreciate my brother Kip battling for the preservation.

If you talk to the Institute for Advanced Study, they'll say that this is an insignificant piece of land. Well, it's insignificant if you discount the fact that George Washington actually galloped over it; that this was the engagement of the first battalion of U.S. Marines; it was also the first engagement of African American troops. So there are so many historical aspects. And as Senator Bateman pointed out, this is where George Washington's right flank, led by General Cadwalader, came out of the woods and repelled the British troops. It's also the area where General Mercer died, and our County is named after him.

The land itself -- it sits beyond the tree line of the Battlefield Park. And if you go to the Battlefield Park, it's a serene area and has a tree line skyline. Unfortunately, on the left side will now be houses and clotheslines, rather than the tree line being in view. And we just feel that every time that we have an effort to preserve history-- And this is one of the 11 most endangered sites in the country for history; so much so that the Civil War Trust offered the Institute \$4.5 million for the land. So we hope that with this hearing, and also the deal with the issues of wetlands, that the Institute will do the right thing and not bulldoze our history.

I might want to add that -- another legislative idea is that the Planning Board felt their hands were tied, because historically significant sites are not an option to vote against a proposed project. So we may want to think about that in the future. This was the turning point of the Revolutionary War; it really should be preserved for future generations and we should do everything possible to save this sacred land.

Thank you Mr. Chair, and members of the Committee.

SENATOR SMITH: Thank you, Assemblyman Gusciora.

From the Princeton Battlefield Society, we have four individuals listed: Bruce Afran, Amy Greene, Jerry Hurwitz, and Kip Cherry. Would you like to come up as a panel?

B R U C E I. A F R A N, Esq.: Good morning, Mr. Chairman. I am Bruce Afran, and I am the attorney for the Battlefield Society. So I thought I would give a fairly lengthy discussion of where we are and what the issues are, then I would have Ms. Greene testify as to the hydraulic issues. Mr. Hurwitz and Ms. Cherry will testify on some of the concerns of the Battlefield Society directly, as they are officers.

SENATOR SMITH: That's fine. Go right ahead, Mr. Afran.

MR. AFRAN: Thank you, thank you.

Let me just take one moment to introduce who is here.

Next to me is Amy Greene, who is a very noted wetlands scientist in New Jersey. She is featured in literally hundreds and hundreds of planning applications, wetland reviews, and things of that nature. I know one of her clients, for example, is PSE&G, and she is very highly thought of throughout the state.

Jerry Hurwitz is a-- I will not identify his employer, but he is a corporate bank attorney with one of our larger financial institutions. He is an attorney of many years standing; he is the President of the Battlefield Society.

Kip Cherry is the Vice President of the Battlefield Society, and she is also a licensed professional planner of the State of New Jersey.

In addition, not directly in my client group, but associated, is James Lighthizer, who is of the Civil War Trust, and is both a historian and will speak about the Trust's attempts to purchase this site only recently. And I will address that, in general, as well.

SENATOR SMITH: Terrific. Go right ahead.

MR. AFRAN: Thank you very much.

I don't know the custom; may I be seated?

SENATOR SMITH: Yes, sir.

MR. AFRAN: Thank you. I'm used to standing in courtrooms.

(laughter)

I want to thank you, Senator Smith, for scheduling this, as you did, on rather short notice. And I especially want to acknowledge Senator

Bateman's efforts in this matter. He has been fully engaged in this process in a manner that I can only say shows the greatest commitment one can have in the Legislature. I know other members of the Committee I've spoken with are deeply interested; Senator Greenstein, for example. I have not had the privilege of speaking with other Committee members aside from the Chair, but I would also like to acknowledge Assemblyman Gusciora, who has been engaged in the same way as Senator Bateman and really has fulfilled every public commitment we could ask.

This issue has been in litigation for five years. My clients first began to oppose this project -- well, I'll say four-and-a-half years -- in 2011 when a site plan was submitted by the Institute for Advanced Study for 15 houses on a portion of the Princeton Battlefield. This dates back, actually, to 1990; and I think when I spoke with Senator Greenstein she suggested I give something of an outline or timeline. And I'll do that at the outset.

We have succeeded in defeating this plan twice in the Delaware and Raritan Canal Commission, which has review authority because it is in Review Zone B of the DRCC jurisdiction. One of the things that I will discuss today involves a revote that affected a reversal of the DRCC decision in January 2015. In January 2015, we defeated this for the second time in the DRCC when the matter failed to gain four required votes for approval. That was a final agency decision.

The abstaining member-- The vote was 3-2, in favor, and with one abstention. The abstaining member -- who I will identify shortly -- then moved in February, the next month, to reconsider the vote to change his

vote. No new evidence was offered; it was simply a matter under political pressure to change the vote and reverse the result.

It is only because of that reversal in February by the DRCC that this matter can proceed on the ground at all. That matter is on appeal; the legality of it is quite clear to me: no case has ever accepted an agency rehearing without new evidence or a change in the governing law. There was no evidence offered; the only basis was the abstaining member's failure to calculate correctly, as he said, the number of votes in support on the DRCC for the measure. I've never heard of that as a basis for new evidence or a change in the governing law, and the case law actually expressly bars an agency commissioner from seeking to change the prior result absent a change in fact or the governing law.

I am quite confident this matter will be reversed in the Appellate Division. Unfortunately, the Institute for Advanced Study has chosen to begin -- I'll use a polite planning term -- *staging* the ground at this stage, in the form of digging trenching for conduit piping and delivering, by our count, approximately 110 truckloads of sand, beginning last Wednesday, to dump on the site.

And that really is what prompts this particular hearing. Because that measure is intended to obscure and crush the wetlands that exist on the site.

I will begin with the DRCC matter, since I'd like that to be clearly stated at this time. In January 2015, the DRCC voted, as I said, 3-2 with one abstention to reject this plan. That was a final agency decision. That was the second DRCC rejection of this site plan. The prior year, the plan was rejected, based on our expert's evidence that constructing this will

choke the water supply to the wetlands and the stream corridor on the site. I will just rise to point to the exhibit on the board.

(Witness goes off-mike)

You see here the rectangular site of the property; this is Block 10501. You see, in the center, a site plan showing eight townhouses and seven single-family homes. That is the proposed plan. Along here is a stream that leads to the Stony Brook, which is also Lake Carnegie. Wetlands identified by DEP in pink here; DEP has chosen not to identify the other wetlands in green on the site here. What is in pink is indisputable; it is agreed by all sides. Presently, the contour lines direct natural water surface, in the direction of my pen, towards the stream in all directions. That water feeds these wetlands; it feeds the rest of the wetlands, but they're invisible to DEP at the present time.

The plan requires the creation of a 10-foot-high plateau along the entire five-and-a-one-half acre setting. That plateau will redirect the natural water supply from its present course to the opposite direction, towards this detention basin you see in the center. That's why the conduit piping is being installed now by the Institute.

That water will, in turn, be redirected by underground piping, which is part of that conduit, this way toward the outfall here. The water will then travel this way approximately 1,500 feet from the beginning of the wetlands here. The end result is that the water supply will be choked off to the natural wetlands for the duration of this distance.

These wetlands will then lose all of their surface water supply coming to this side of the stream.

The reason this is significant is that -- and DEP has this evidence, and it was brought to the DRCC -- underlying all of this is an impermeable clay barrier, approximately five to eight feet down in depth. That prevents groundwater from rising up to feed the stream in the wetlands. The only actual proven source of water for these wetlands is a surface water that currently moves across the site, which will be diverted and lost.

This evidence resulted in the DRCC's rejection of the site plan in 2014. Our experts conclusively demonstrated that the water supply would be lost, and DRCC refused waivers for the Institute to intrude into the stream corridor because of the injury to the wetlands.

In 2015, the Institute came back with a slightly modified plan which pulled out the roadbed and development from the stream corridor so they no longer needed waivers to intrude into the State-regulated stream corridor.

Let me just explain. There is a distinction between the stream corridor and wetlands. The stream corridor is the zone, approximately following this line, measured by a certain number of feet from the center of any stream. The wetlands do not necessarily reside within the corridor. They are outside as well.

In 2015, we offered the same evidence and said it does not matter that the (indiscernible) was pulled slightly out of the corridor. It will still essentially be the same, and it will still cut off the water supply in the same manner. As a result of that evidence, two DRCC Commissioners voted against the plan, stating on the record "because of the environmental damage."

Three did vote in favor of it, because they believed -- it might be erroneously -- that the DRCC only had jurisdiction if there was an intrusion in the stream corridor, and once there was no longer an intrusion they had no environmental authority. Aside from that legal quibble, the matter was defeated; they did not obtain four votes. Two members voted against it because of the environmental damage; Commissioner Mark Texel chose to abstain.

Now, Mr. Texel is the Director of the State Park Service. He is, to my knowledge, a decent and humane individual who cares deeply about the Park, the Delaware and Raritan Canal system, and the State Parks overall. To my knowledge, he is deeply committed to the protection of the State Park system, in all respects. And I think he fulfills, in New Jersey, a role similar to that of Henry Stern in New York City, who became the champion of the New York City Park System. He is an admirable individual, and voted to abstain because of his concern, as he stated on the record, of the injury to the historical site that adjoins Battlefield State Park.

The record is very clear, in January 2015, that he voted to abstain because of the concerns raised by the Battlefield Society, and he acknowledged that. As a result, the measure was defeated.

In February, the next month, Mr. Texel made a motion for reconsideration to reverse the DRCC vote. I'm going to quote his statement; my apologies.

On the record of the DRCC of February 18, 2015, he stated, "I hereby make a motion for reconsideration of proposal 143917B" -- that is the Institute for Advanced Study site plan. "After reviewing the proposal and hearing testimony from both the applicant and the objector on that

day, I was fully prepared to vote in favor of approving this proposal at our January 21, 2015 meeting. I believed on that day, as I still do today, that the project, as presented by the applicant, fully complies with our Commission's regulations.

“As you recall at last month's meeting, I abstained from voting, on the motion on floor at that time to approve the proposal.” This is the relevant language. “I did so based on comments by our commissioners prior to the roll call vote that there were already sufficient votes in support of the proposal for it to pass without my vote needed. Therefore, I chose to abstain from voting out of respect to the objector, the Battlefield Association, who has been a very strong and faithful nonprofit partner in the State Park Service.

“However, I believe the appropriate outcome is that this project be approved because it does comply with the D&R Canal Commission's regulations. Therefore, today, I respectfully request reconsideration of the proposal so that I may cast my vote in support of it.”

That comes from the transcript of February 18, 2015. That is the only evidence offered at the DRCC hearing to support a revote. As a result, the Commission allowed the revote; Mr. Texel voted in favor. An additional member, Phillip Lubitz, who had not been present in January, was permitted to participate. So there were five votes in favor, two opposed. The two opposing votes remained from the prior meeting.

The first thing I'll say is Mr. Texel's statement is not strictly correct. He actually indicated, on the record in the January hearing, that he was sympathetic to the concerns of the Battlefield Society. He never stated

he felt the matter complied with regulations, and he never expressed any support for the site plan application.

His February statement also omitted what he later told me; Carlos Rodriguez -- a professional planner and retained by my clients; and Russell Smith -- a professional engineer, also retained by my clients. On September 16, 2015, at a ceremony to expand the Battlefield Park -- which was accomplished by funds obtained by my clients at a different end of the Parks access -- Mr. Texel came up to me, Mr. Rodriguez, and Mr. Smith and he made the following statement. "I am very sorry for what happened; but when you receive a call from the Commissioner's office, you have to do what you must do." He said, "I sit as a delegate of the Commissioner, and I had no choice but to move to revote."

The DRCC is, by statute, an independent regulatory body. The Commissioner has no direct capacity to bind the vote of any member sitting on that body. Mr. Texel, to my knowledge, is the only State employee who sits on the DRCC, and he is uniquely subject to pressure, as a political appointee, in the State Park Service. His statement to us on September 16, 2015 is at odds with his statement on the record in February 2015. He acknowledged direct interference by the Commissioner of DEP's office in the DRCC vote on this matter.

Mr. Smith is prepared -- he's not here today, he could not be here -- but he is prepared to fully support the statement I have made. Mr. Rodriguez also is prepared to address the fact that he understood Mr. Texel was stating that he was coerced into proposing the revote.

As a result of the interference by the Commissioner's Office, a rejection of the site plan -- a rejection that would have fully protected this

site, which is the site of the Battle of Princeton -- has been reversed. And it is because of that interference by the Commissioner's Office that the Institute is presently enabled to begin staging and preparation of the ground -- which includes, number one, trenching across the site; two, excavation of significant portions of that five-and-a-half acre site; and the dumping of those, at least, 110 truckloads of sand on the site itself -- which has the effect, presently, of filling the wetlands.

So I would ask this Committee to consider very strongly that the Commissioner has interfered in the independent administrative process of the Delaware and Raritan Canal Commission. And I assume I am under oath when I make this testimony, Mr. Chairman; but if not, I offer that statement as an Officer of the Court and under oath. Mr. Smith, not here, is able to support that statement fully.

I would point out Mr. Texel made those statements fully on his own initiative, and did so by walking up deliberately to myself, Mr. Smith, and Mr. Rodriguez, who were standing a substantial distance away from the ceremony site. There is no question in my mind that he was coerced into the revote and changed his vote against his actual wishes and beliefs as to the merits of this plan.

With respect to the wetlands question, the history of this goes back to 1990. In 1990, the Institute was seeking to construct housing to the tune of 500 single-family residences on a large portion of its property. That property is on an area known as Area A, and appears in the binder at page PA 101. And for the record, this binder is prepared for potential court use, and the PA just refers to Plaintiff's Appendix. But page 101 shows the Institute's entire land area.

(Witness goes off-mike)

In the far right hand corner of the top is the Institute's campus areas. Where my pen is, the small rectangular area corresponds directly to this rectangular area on the exhibit board. This area here is where the Institute is presently to construct. Area A, as you can see, is approximately two-thirds of a mile away. That is where the Institute sought to build several hundred single-family homes in 1990.

In connection with that application, the Institute conducted a wetlands survey of its property. That survey was a survey of the entire Institute acreage, including its built lands; the lands where they wished to construct, Area A; other lands that were open; and the area that presently is at issue here today.

In connection with that, the Institute filed a wetlands map which appears as Exhibit No. 40 in the binder. That wetlands map -- and I'll hold up a blank copy -- contains in gray stipple -- and I use the phrase *stipple* to describe the kind of mottled gray area -- where wetlands were identified by the Institute. As you can see where Area A is, they identified no wetlands. And they submitted this to the relevant regulatory bodies in order to set forth that there are no wetlands where the proposal for housing was to be made. At the time, the Institute had no plans to construct in this area of the upper right hand corner. Now, on Exhibit 40, you see a red outlined area; that is the entire parcel. The blue outlined area in the interior is what you see on the exhibit board here -- the actual place of construction. And you can see on Exhibit 40 that directly within the blue area there is a stream line moving across to the right. On both sides, there is gray mottling. That is the wetlands that were identified on this parcel by

the Institute in 1990. That was not an issue, since they were seeking to build in Area A, here. That wetlands survey was conducted by Amy Greene, who is sitting to my left, in 1990 when she was retained by the Institute.

In 1997, the Institute abandoned the plan for Area A construction. It had sued the Township for the right to construct these houses, settled in 1992 for 276 units. In the course of that settlement, it endorsed the 1990 wetlands survey as accurate and following correct DEP methodology. And those endorsements appear in your binder at pages 41 through 44, where their attorney at the time, from the firm of Jamieson, Moore, Peskin and Spicer, endorsed the accuracy of the Institute's wetlands survey that appears on page 40. In addition, page 40 -- the wetlands plan was annexed to the Institute's General Development Plan that the Institute itself drafted and proposed. It endorsed, fully, the wetlands survey when it was seeking to use it to construct on Area A.

In 1997, the Institute, after litigating the issue, sold back the right to build on Area A to the Township for \$14 million -- which, at the time, was a great deal of money for the Institute. You may recall, that was just before the period when academic institutions began to take in vast sums in their endowments. In fact, Princeton University's endowment, I think, was down below \$3 billion at that time; and today is \$21 billion. The Institute today has an endowment of approximately \$900 million -- which sounds small compared to Princeton University. But when you consider the Institute has only 200 faculty and visiting scholars, no students, and approximately, to my knowledge, 100 employees, it actually makes it probably the wealthiest academic institution in the entire world.

Princeton's \$21 billion, by comparison, is large, but it must cover 6,000 student and 4,000 employees and faculty. So by comparison, the Institute is enormously wealthy, at this stage. Apparently, in 1997, it was not, and it angled to sell back the development rights in exchange for \$14 million. And as part of the agreement, it agreed to preserve these lands here, where it had formerly sought to build. The remaining lands -- and I'll just rise again to point to that here -- in this far corner are their developed areas; plus this small section next to Battlefield State Park, which was undeveloped.

It then turned its attention to the current parcel where it wished to construct 15 faculty houses -- 8 townhouses and 7 single-family units. In preparation for that, it needed to obtain wetlands clearance from DEP. So we begin in 1990 with the first survey; we go to 1992 when the Institute endorses Ms. Greene's survey, under oath; in 1997 it surrenders the right to construct those houses; in 1999, it prepares a new wetlands survey. The new wetlands survey was not prepared by Ms. Greene; Ms. Greene was not retained by the Institute in this second round. Now, that might surprise you. The problem is that Ms. Greene's 1990 survey, as you can see from page 40, found wetlands smack in the middle of where the Institute planned to build the 15 houses. It could not very well retain Ms. Greene to handle this matter, because Ms. Greene would have to identify her prior 1990 survey. Instead, it retained the engineering firm of Van Note-Harvey Associates, who conducted, through their own vendor, a new wetlands survey. That wetlands survey, not surprisingly, did not identify on this site the wetlands Ms. Greene had identified.

I will point something out, however, on the chart that is on the board.

(witness goes off-mike)

You see the green wetlands fields here. And you see the pink, filled-in areas along the stream and to the -- well, I'd say the right, but on the top of the stream bed. Those are wetlands that the Institute, in 1999, delineated. They did not delineate these wetlands here. Now, one can look at Amy Greene's other composites, and see -- in green mottling her, these small lines -- this entire field here. Those are 1990 findings transposed from the Exhibit 40 to this composite chart. And I will identify that page number in a moment. These represent what Ms. Greene identified in 1990: wetlands along the stream, wetlands to the right of the stream, and wetlands on the project site at the lower end of the stream.

If you look here, you can see that what Van Note-Harvey identified in 1999 comprises wetlands on the top of the screen -- just where Ms. Greene found it -- here and along both sides of the stream here and here. So Van Note-Harvey, when it did its survey, found the same substantive areas of wetlands; they differ a little bit, obviously in delineation -- they found the same substantive areas of wetlands that Ms. Greene identified in 1990 except, miraculously, where the Institute now sought to construct. Van Note-Harvey did not identify the wetlands here where Ms. Greene had identified them in 1990. And you can see the omission is very clear. These are what appeared here for Ms. Greene in 2011; this is from the 1990 survey here. Van Note-Harvey identifies only the survey in pink.

Now, I think it begs reality to believe that this green was absolutely accurate in 1990, as certified by the Institute; and was accurate in 1999, as to all the wetlands she identified then on this parcel -- except where the Institute now sought to build. It is undisputed that the Institute did not disclose the 1990 survey to DEP in 1999 and 2000 when it applied for a Letter for Interpretation, clearing this space for wetlands. The Van Note-Harvey survey did not identify the green (indiscernible) in the 1990 survey, and it limited its identification to the wetlands you see in pink.

DEP, when it reviewed the Institute's 2000 application -- or 1999 application for wetlands clearance, did not have the information that the Institute possessed from the 1990 survey. And its new surveyor -- I will say it's a sort of reverse Immaculate Conception -- it reports the absolute disappearance of the wetlands right where the Institute now seeks to build.

Such things don't happen in the real world. What we see here is a pattern of deception by this applicant that intentionally concealed from the State regulator the wetlands it had identified on the proposed project site.

We knew nothing of the DEP application in 2000, for the very simple reason there had been no site plan yet submitted; and no members of the Battlefield Society living directly within 200 feet of this parcel received notice of the Letter of Interpretation or LOI application.

In 2011, the Institute had submitted a site plan-- Well, let me go back. DEP approved the Letter of Interpretation application in 2000, which comprises a legal finding that there are no wetlands on the site of proposed construction. And that was procured through the omission of relevant information in the Institute's possession. DEP would say that its

regulations require that its inspectors not look just where the applicant reports wetlands, but on the whole site. However, the reality is that the inspector accompanies the applicant to the site and is directed by the applicant to the wetlands the applicant has identified.

These inspections were done in the winter, and obviously much of the visible flora and the hydrologic formations were not visible -- especially if the ground was hard. DEP did not observe wetlands on this site in 2000; it did not have the 1990 information; and it approved the application. Ten years later, the Institute filed its site plan application with then-Princeton Regional Planning Board -- it is now the Princeton Planning Board, as a result of consolidation.

During the review process, my clients retained Amy Greene in 2011 to conduct their own survey of this parcel. The parcel is an open area; the public has access to it. We did not know that Ms. Greene had been retained in 1990 by the Institute. When I began reviewing the file, and I saw a 1990's map prepared by Amy Greene, I became very curious. And it was then that I learned of the original survey in 1990 conducted by Ms. Greene that identified wetlands on this site.

Before I even became aware of the 1990 survey, Ms. Greene had conducted a wetlands survey. **(witness goes off-mike)** And the result of that appears on this board that is labeled *Environmental constraints added by Amy S. Greene, based on field work conducted October 2011*. What you see here in green solid fields are the wetlands that Ms. Greene identified in 2011 when she did a survey of the site with Kip Cherry and her associate, Doug Chabrak. The solid green fields represent delineated wetlands, or identified wetlands by Ms. Greene. What you see in green outline

approximately one inch from each wetland field is the Wetlands Transition Zone surrounding the wetland, within which no construction can take place without waivers.

So what Ms. Greene has identified is Wetlands -- all their Transition Zones that are in the same substantive location as had been identified in 1990. And you can see the comparison between the charts. We have this wetlands field intruding here; wetlands field intruding here -- virtually in the same location as the wetlands fields she identified in 1990. They differ slightly, but the same substantive wetlands that she found in 1990 were there in 2011.

As Assemblyman Gusciora noted, the Princeton Planning Board, when it approved the site plan, did not believe it had authority to examine the question of wetlands. It took the position that it is preempted because DEP has issued the LOI. That LOI was extended by the Permit Extension Act several times, and it will expire in June of this year. The Act, as you all know, expires in December, but there's a six-month carryover for certain permits. It is my belief that the Institute has begun its staging work, as I call it, in order to be grandfathered in under the LOI before it expires. And that's why they've been engaged in this mad rush to do the work that we've described.

Ms. Greene will testify as to her findings; however, we took this matter to DEP in May 2014. We made a formal application to have DEP reconsider its LOI. Under DEP rules, any person may seek such reconsideration. On May 29, 2014, we met with DEP, with John Gray and Ginger Kopkash, both at the-- Well, John was, at the time, an Assistant

Director; Ginger was an Assistant Commissioner. I think John is now, today, an Assistant Commissioner, if I'm correct.

We detailed all of this evidence, with extensive submissions. Ms. Greene was present and spoke directly to the meeting of these issues. In addition, a second area of omission has been made by the Institute. In 2012, the Institute -- and Ms. Greene will testify in detail to this -- in 2012 the Institute submitted an engineering plan to the Princeton Planning Board as part of its general Site Plan application. That engineering plan analyzed the soils on the site. And it did so because it had to demonstrate whether there was a need for recharge on the site -- whether the site would naturally recharge, or whether water could be drawn off without injuring the site. Recharge arises where there is no clay barrier underpinning the site, and the water can drop down and enter the water supply.

They wanted to divert the water, as I mentioned, (**witness goes off-mike**) from its natural directional flow into the opposite flow, into the detention basin, then out here. There is a reason why they had to do that. The entire thing is a wetland, and it's sitting on sopping soils, as it has for hundreds of years. Now, I've been to that site, and I literally sank repeatedly in six to eight inches of soaking marsh when I was on that site. And yet, DEP has been there twice and claims there is no evidence of wetlands.

Now, when they submitted the soils report to the Planning Board, they did so to show whether there were soils that were consistent with recharge -- meaning the water would drop straight down through the site into the water supply -- or whether the soils were consistent with a barrier that blocks recharge. That clay barrier underpins the entire site. If

there is no natural recharge -- in other words, if there is a clay barrier as it exists, they argued to the Planning Board they can move the water this way since it's not going to affect the water supply at that site. I hope that's somewhat clear. It doesn't go down into the water supply because there is a clay barrier there, what difference does it make if we move it this way and out? They weren't sensitive to the fact that we were observing their submissions. Those submissions, in order to prove the fact that there is no recharge on the site, naturally identified wetlands soils -- what are called *hydric soils*. And among what they did was a boring in Wetland field 4, which is in the upper left-hand corner, smack on top of the proposed construction. The boring taken there identified pure hydric soils -- and Ms. Greene will testify as to that.

That has been submitted by my clients and our expert team to DEP. The Melick-Tully report was with DEP in May 2014; it has been fully discussed at our reconsideration meeting. DEP has contended -- I won't identify the journalist -- but Bob Martin was speaking with a journalist last week and stated that no evidence of wetlands on the site has been presented to DEP. That statement is false. Not only was the 1990 survey presented; not only were the 2011 findings presented; but the Melick-Tully boring report for Wetland field 4 was presented to DEP, and it conclusively identifies wetlands soils on that site. All of this evidence has been in DEP's possession since May 2014.

DEP has refused to take action on this reconsideration application. It has not even issued a written statement denying the request. We received no notice of decision, and Commissioner Martin has quite falsely stated that there is no evidence on this site of wetlands.

Now, it would be my suggestion that he come here and explain that position; but I don't believe anyone from DEP has signed a slip today identifying that they wish to speak.

What we see is a repeated pattern of concealment, by the Institute, of wetlands on this site in order to procure authority to build this proposal. The 1990 survey was concealed; the Melick-Tully survey soils report was concealed -- both of which conclusively identify wetlands on this site. Why is this significant? It's significant because it is illegal in New Jersey and anywhere in the United States to construct on wetlands without a waiver or special permission. That process, as you would imagine, is extraordinarily difficult to obtain.

It's very interesting -- Senator Cardinale, in a conversation, said to me that he repeatedly butts heads with DEP over minor wetlands that really are completely artificial, that occur in someone's front lawn by accident; and DEP won't even allow a barbecue grill to be installed. Yet here, where probably -- forgive me -- the most noted wetlands scientists working in the state has identified twice the same area of wetlands; once when she worked for the Institute and once when she worked for my clients, and thus is a neutral, in effect -- DEP closes its eyes. And it closes its eyes to the very soils report that the applicant itself was in possession of.

Ms. Cherry identified the soils report in the Planning Board files. And it was because she found them there that we were able to report it to DEP.

DEP has refused to take action on this case. Now, this is, without question, probably the most endangered historic site in the United States. I forget whether it was Senator Bateman or Assemblyman Gusciora

who stated that the right flank of Washington's counterattack took place here; I think it was Senator Bateman, actually, in his introductory comments. James McPherson, who is the Battlefield Historian -- from Princeton University -- in the Civil War era, spoke at the Planning Board hearings. He was trotted out by the Institute because, after being taken on a sailing voyage in, I think, Narragansett Bay, and being given many lunches and dinners, he was persuaded that it was inevitable that the Institute would succeed in its plans, and agreed to recommend some screening to minimize the damage. That screening would consist of trees **(witness goes off-mike)** in this buffer zone here, which has never had trees in its historic qualities. If you know the story of the battle, it was one of the first Calvary charges in the history of military science. The Americans charged across the site and broke the British line. There were no trees here, or otherwise we would have had a lot of injured horses.

The buffer zone that Professor McPherson reluctantly agreed to recommend would do some screening, without question; at least once the trees were at a certain height. But it's a synthetic way of protecting the viewshed from the Park.

In the course of addressing this issue, I cross-examined Professor McPherson, who testified, "If I had my way, this would not be happening." And that is when he made the statement Senator Bateman made -- recounted, and quote, he stated, "David Hackett Fischer, the noted Revolutionary War historian, and I are both in agreement that the right flank of Washington's counterattack took place on this land," and he said, "and nowhere else." What the Institute seeks to destroy is, without

question, one of the most important historic sites in the United States. This small, postage stamp area of land--

(witness goes off-mike)

Thank you.

Mr. Hurwitz has shown the battle scene; and, actually, this is a very interesting exhibit. In green, here, is Battlefield State Park; in blue is the parcel of Block 10501; in lighter brown -- red -- is the actual site of construction. This information, actually, comes from the Institute's own historical survey that it commissioned by the Berger Group. The Berger Group reported British emplacements in red here; and American emplacements in blue here, here, here, and here. The Americans detected the British here because of the glint of sunlight on bayonets, and charged across the site here. Washington's charge was off this road and he personally charged across these lands to lead his troops. This counterattack broke the British lines.

Now, I didn't bring them in this parcel because I didn't want to overwhelm the Committee, but we can supply it. The Institute's archeological surveys identified clearly across this site, where my pen is flowing, lines of alternating American and British ordinance consisting of artillery and grapeshot. They are identifiable because the two sides used different calibers. And the Institute itself has identified the actual lines of movement of the American and British troops across the site. One can see the Americans moving forward and the British retreating. And if you understand military history, groups would fire in lines; artillery would drop pretty much at the same point. Troops would advance, artillery would fire again -- or muskets would fire. And we see the actual lines in the

archeological surveys, and I will supply that if the Committee wishes, Senator Smith, if it's of value to you.

It's almost as if you are seeing a motion picture of the battle and the movement of the troops. This is the Institute for Advanced Study's own archeological survey that identifies this information.

There is no dispute that half of the Battle of Princeton took place literally on this parcel that is today being smothered with 110 truckloads of sand, and is having conduit for drainage and sewage being built where men fought and died.

The Battle of Princeton -- and I believe Mr. Lighthizer can speak to this -- is probably the most important event in the Revolutionary War. We all know about the Battle of Trenton, and the Hessians being drunk (*sic*) on Christmas Eve and being defeated. But Washington retreated across the river right after that battle; his troops were exhausted. They had been battling ice all night. It was the Battle of Princeton that turned the war. The Battle of Princeton resulted in the breaking of the British lines; the British retreated to Monmouth County. They never again occupied central New Jersey. Enlistments began to come in at a high rate because of the American success, and the Americans controlled the center of the country for the duration of the war.

If you recall the Battle of Yorktown, the French were on the water and the British couldn't supply Cornwallis. They couldn't get to Cornwallis by land because the Americans occupied New Jersey. This battle literally changed the war, and literally changed the history of the world.

For better or worse, our country has done many things -- most for the good; and the world is a vastly different place because of the birth of

the United States. This battle is probably the seminal moment that turned the war and allowed for the independence of the United States. It is, without question, one of the most historic sites and important sites in the world for what happened there.

One will argue archeology can continue to be done; in the hedgerow that was removed archeology was never conducted. Ms. Cherry will identify that. But the archeology has already done its job. It's told us what happened on this site. In 2003, the Department of Environmental Protection reviewed this project and condemned this project and stated, specifically, through the Acting Director of the Park System, that the State wished to acquire the land to add to the Park. That letter is not in this packet, but I can supply it to the Committee. In the Planning Board, the Institute quite misleadingly pointed to a 1971 letter from the then-Commissioner of Environmental Protection, who said we understand you want to build faculty housing on this site; we understand your wishes in that regard. The Institute has pointed to this 1971 letter, and it's in the record of multiple agency proceedings as evidence that the State of New Jersey has agreed with its plans. To begin with, this shows that since 1971 the Institute has desired these 15 houses, demonstrating that since they took 40 years to even file a site plan there's no compelling need for it, and certainly no need to proceed before the Appellate Division has even heard the first of these appeals.

In addition, the 2003 letter came about after the site plan was submitted to DEP under wetlands considerations. DEP wrote back, through the Acting Commissioner of Parks, "We want to buy the land."

That is the most recent statement, in terms of acquisition of this land, by the State.

Presently, the land has a market value of \$3.3 million. The Civil War Trust offered \$3.3 million several months ago; the Institute politely rejected the offer. The Civil War Trust then -- frankly at my urging -- increased their offer to \$4.5 million. That offer is now on the table; to my knowledge, it has not yet been rejected. The Institute's published budget, which it submitted in court for this project, is approximately \$2.5 million to construct 15 houses. However, that requires the construction of the elevated roadbed I pointed to, and plateau, and the conduit system which normally is not needed when one constructs on lands that are not sopping with water. The actual cost of these 15 houses, in reality, is probably about \$1.2 million. The nearly \$5 million that the Institute has been offered by the Civil War Trust will allow 30 to 40 houses to be built, as opposed to the 15 that the Institute insists on putting on this historic land. My clients are not seeking to prevent the Institute from having housing; they've actually tried to facilitate a gift of nearly \$5 million to the Institute that will double the budget they have available and will probably triple the number of units they could build. This is not an effort to interfere with the academic exercise of the organization.

I also want to point out that in 2006 and 2007 -- and it is in your packet -- the State Historic Preservation Officer reviewed this project and she concluded that the project will destroy a portion of the Battle of Princeton. I just want to point out the relevant pages. Ms. Everson did an excellent job in noting these pages, but I haven't yet learned the location of each tab, so please forgive me for one moment.

SENATOR GREENSTEIN: Bruce, is it 134?

MR. AFRAN: Thank you, Senator Greenstein.

SENATOR GREENSTEIN: I only it know because she did--

MR. AFRAN: Ah, thank you. I did note that in my notes; thank you.

Ms. Guzzo was SHPO -- State Historic Preservation Officer -- and this really leads into the last point that I need to address. She reviewed this plan simply because it came to DEP. At the time, apparently she was unaware that DEP had issued the Letter of Interpretation. More directly, I believe the Letter of Interpretation was due to expire because it had only a five-year lifespan. It wasn't until the Permit Extension Act that they began to be extended. Because it would expire and had not been used, Ms. Guzzo conducted a historic site review. The reason she did that is because Section 106 of the National Historic Preservation Act, as well as several State regulations, requires review for historic impact of a new development where wetlands may exist.

If the LOI was to expire, there would no longer be a finding of wetlands and so SHPO's authority would be triggered. In her review, she concluded specifically that "the construction of housing on a portion of the Battlegrounds of the historic Battle of Princeton will have an adverse effect" -- and she puts adverse effect in bold in her memo -- "on the Princeton Battlefield/Stony Brook Village Historic District."

The report from the Berger Group -- the Institute's archeological and historical survey group -- "glosses over this effect. The only way to avoid the adverse effect would be to move the project to a different site." And that appears at page 136.

In addition, she states, “The construction of the proposed faculty housing at the above-referenced project site will have an adverse effect” -- again, in bold in her original -- “on both the Princeton Battlefield National Historic Landmark and the Princeton Battlefield/Stony Brook Historic District, which includes the IAS site.” And that appears at page 137. She makes similar remarks in her supplemental report at page 140 to 142.

SHPO, invested by State and Federal law with review authority over such projects, has concluded conclusively that this project will destroy a portion of the battlegrounds of the Battle of Princeton. There is no dispute as to this. There were six nights of hearings in the Planning Board; multiple witnesses testified, without contradiction by the Institute, that the Battle of Princeton took place on this site. SHPO made this same conclusion years before the Planning Board’s hearings even took place.

The LOI, as presently existing and as having been extended, interferes with SHPO’s mandatory Federal jurisdiction. If wetlands exist on this site, SHPO has mandatory review jurisdiction over the project, and before any wetlands permit can be issued by DEP, it must take into account SHPO’s opinion. And under our normal administrative appeal standards, if the Department grants a wetlands permit or waiver in a manner that does not explain why it disputes SHPO’s findings adequately, the courts will reverse the permit.

The existence of the LOI thus interferes with and bars SHPO’s mandatory Federal jurisdiction. That historic analysis was not taken into account by DEP, because DEP issued the LOI saying, “There are no wetlands present.”

(witness goes off-mike)

If, in fact, as I think is quite conclusive, these wetlands exist, as identified in 2011-- and by the way, Wetlands field No. 1 is also smack on top of proposed construction -- and as identified in the blue-screen stipple by Ms. Greene in 1990, then SHPO's mandatory Federal jurisdiction is true. By concealing the 1990 findings as it did, and by concealing the Melick-Tully boring report, the Institute interfered with DEP's jurisdictional powers and SHPO's jurisdictional powers. This amounts to a fraud upon the agency in the administrative review process; and it comprises perjury, in my view, as to the submissions by the Institute, which make no mention of the information actually in its possession.

Even if the Institute will contend it disagreed with Ms. Greene's findings in 1990 and thus determined to retain Van Note-Harvey, its own engineers, Melick-Tully, identified hydric soils in Field No. 4 on the site of construction, and the Institute concealed that information from DEP. It had a duty to provide new data in its possession. It certified the Melick-Tully report to the Planning Board and, by extension, to the Mercer County Planning Board. And I believe, if I'm correct, the same report was submitted to the DRCC as part of its recharge question analysis. Thus, the Institute has validated the Melick-Tully findings, and it has concealed that information from DEP -- which would require a reversal of the LOI. By doing so, it has not only interfered with the public's rights and my client's rights, but interfered with the administrative process.

If the LOI is invalid because wetlands exist, then the mandatory 106 jurisdiction is triggered, and it would be virtually impossible, quite

frankly, for DEP to issue any wetlands waivers because there would be no way to justify the destruction of the historic site.

Unlike wetlands which, in some cases, can be reconstructed elsewhere or restored, one can't restore an historic site. This site remains in the same position it has been since 1778. Berger itself concluded no development has taken place on this site; it remains the same farm field today as it did 238 years ago. It is an integral part of the historic site. When one goes to Battlefield State Park next door, one is looking at the entirety of the historic setting. As Senator Bateman said, this can't be put back; it is gone forever. It is as if we put a CVS on the site of Independence Hall.

What we are presenting to you today is evidence of clear and intentional omissions by the Institute; omissions that led to an incorrect finding by DEP; the intentional concealment of the boring report in 2012; the acceptance by DEP of extensions, though it was in possession of the boring data -- I'm sorry -- by the Institute of extension, though it possessed the contrary boring data; and DEP's complete refusal to review this matter.

I will identify one additional piece of information. An individual named Gerry Scharfenberger was an archeologist working for the Berger Group for the Institute. He, today, works in State government. He, quite properly, wanted to testify as to the actual archeological findings that he and others made while working for the Institute. He stated that -- and others have stated as well -- that the Berger report attempts to diminish the importance of the archeology. It does, to a degree; but it acknowledges, "Battle activity took place on the site." Even in its efforts to diminish it, the Berger Group did not depart fully from its standards.

Mr. Scharfenberger told me that he had sought clearance to testify from the Governor's Office, as he must -- he works in the Department of State -- but was told that he could not because it would create the appearance, potentially, that the State was taking a position. That is a very neutral sounding position from State government; Mr. Scharfenberger, quite properly, obeyed it. His testimony was not brought forth. It's my belief that this is the same pattern of interference in this process, coming from DEP, as we saw in the case of the DRCC revote.

There is no justification for telling an archeologist, who was retained by the applicant in 2003, that he cannot testify as to work he did before he even joined State government. There would be no justification for anyone to assume the State of New Jersey was taking a position when a qualified archeologist, who happens to work for the State today, says in 2003, "When I worked for this private entity, we determined the following conclusions." No one would reasonably believe the State was taking a position. It's my belief that the Governor's refusal to permit that testimony must be seen in the same context as the DEP Commissioner's interference in the DRCC's review process, through its course of conduct towards Mr. Texel.

So I believe in two instances the Administration has interfered in the availability of information about this historic site to the review agencies. And I think that should be considered by this Committee, and potentially, by the Legislature itself.

SENATOR SMITH: Mr. Afran, it's now 11:17.

MR. AFRAN: I actually addressed all the matters.

SENATOR SMITH: And this is a very, very important issue. But the problem is that, at noon, we are completed.

MR. AFRAN: Okay.

SENATOR SMITH: And we haven't heard from any of the other witnesses. You might want to put them forward so that we can hear what they have to say.

MR. AFRAN: I actually have completed mine, and I apologize for taking that much time--

SENATOR BATEMAN: It was very thorough.

MR. AFRAN: --but we have a long history.

Let me introduce Amy Greene, who will testify as to her findings.

I don't think you'll be that long, will you?

AMY S. GREENE: No.

May I go over by the maps?

SENATOR THOMPSON: I do have one question.

SENATOR SMITH: Sure, Senator.

SENATOR THOMPSON: You speak of political interference relative to the representative of DEP on the RBC (*sic*), right?

MR. AFRAN: The DRCC, yes.

SENATOR THOMPSON: Question: Does the statute say that the Commissioner is a member, or does it say that a representative is there? Thus, is the person a representative of the Commissioner, or is he actually -- does he need to be there?

MR. AFRAN: It works both ways. He can be there--

SENATOR THOMPSON: No, no, no. It only works one way. He is a representative of the Commissioner, or he is a member. Which is it?

MR. AFRAN: It says-- I, frankly, don't remember the exact wording. I know the Commissioner may appoint a representative; I believe it says the Commissioner--

SENATOR THOMPSON: The Commissioner appoints somebody to represent him. Is that correct?

MR. AFRAN: I think--

SENATOR THOMPSON: But wait, wait.

MR. AFRAN: I'm sorry.

SENATOR THOMPSON: Then let me give my argument.

If he is there as the Commissioner's representative, then the Commissioner has a right to tell him how he should represent him. That's not political interference--

MR. AFRAN: Actually, Senator--

SENATOR THOMPSON: --if you are there as a representative. That's just my position.

Thank you.

MR. AFRAN: Actually, Senator, he did not hear the evidence, and so he could not direct the delegate that he has appointed to sit in his seat to change his vote. In fact, the Appellate Division has ruled specifically that an agency commissioner may not seek to change a vote simply because he didn't want the result that came out of it. And it is said that unless there is new evidence offered, even an agency commissioner may not order a new hearing. So I must disagree with you, respectfully.

SENATOR THOMPSON: You may argue that he can't talk to him about changing his vote. But the Commissioner has a right, before the person casts his vote, to have a conversation with the person so that he can represent the Commissioner's views. Now, if the person chooses, subsequently, to change his vote, or so on, that's another question. But nonetheless, he is there as a representative of the Commissioner; therefore, his vote should represent the Commissioner's views, not necessarily his personal views.

MR. AFRAN: I would simply say--

SENATOR THOMPSON: I mean, if he was being designated to -- you give your opinion; you are the member, you have the right. If you are there representing somebody else's views, then you have to discuss with them and represent their views. And that is not considered -- that would not be political interference.

SENATOR SMITH: You know, it's not productive. We need to hear what the testimony is.

Mr. Afran, just one question before you put the screen on. When you called with this issue, you indicated that you were seeking a temporary restraining order on the placement of the fill that's being done today.

MR. AFRAN: No, no. We had-- Senator, I'm sorry, we had been hoping to gain one from DEP. DEP has had our specific request in for a TRO on the--

SENATOR SMITH: So there's no application before a court at this point?

MR. AFRAN: The application is being prepared; we were waiting, frankly, for Ms. Greene's final certification, which came in this morning.

SENATOR SMITH: Okay.

MR. AFRAN: So we expect to file in Federal court tomorrow.

SENATOR SMITH: Very good.

MR. AFRAN: Thank you.

SENATOR SMITH: Let's hear from Ms. Greene.

MR. AFRAN: Ms. Greene.

MS. GREENE: Good morning.

SENATOR BATEMAN: Good morning.

MS. GREENE: Thank you very much for your time.

SENATOR SMITH: Push the--

SENATOR BATEMAN: The red button.

SENATOR SMITH: The red button.

MS. GREENE: The red button; okay.

SENATOR BATEMAN: It probably knocked the other two off.

SENATOR SMITH: There you go.

SENATOR BATEMAN: Red is on.

MS. GREENE: Red is on; okay. All right.

You've heard some of the story; I'm going to give my role in it.

So as you heard, the DEP, based on submissions by Van Note-Harvey, the engineer for the Institute of Advanced Studies, issued an LOI -- actually, it was two LOIs, because of the makeup of the lots -- establishing the jurisdictional wetlands on the development property -- in 2001, actually, I believe it was.

(witness goes off-mike)

And that's the pink areas shown on this map. Just so, if you've been trying to interpret the maps, what might fool you a little bit I -- if I hold it like this, north is up. So this might help you orient yourself in the larger map.

The DEP also determined that the wetlands on the property had a 50-foot Wetland Transition Area. So it regulates activities in both wetlands and wetland transition areas.

We were engaged by the Princeton Battlefield Society -- my firm, Amy S. Greene Environmental Consultants, which was founded in 1986; we're going to have a birthday in February -- we were engaged in 2011 to investigate this site to see if the wetland delineation presented by Van Note-Harvey was accurate.

So I went out to the site with another one of my experienced staff-- I'm a professional wetlands scientist; I've been working in the field since 1974. I am very familiar with wetland delineation. So because the public had access to the site, we were able to walk the site.

SENATOR GREENSTEIN: Excuse me, could I ask you which map number is that in the packet? Because I would like to follow--

MS. GREENE: Can you find that out?

MR. AFRAN: Yes.

MS. GREENE: That would be helpful, yes.

SENATOR GREENSTEIN: Thanks. Or if you could tell me what it's called, I have this paper here.

MR. AFRAN: I'll have it quickly, I think.

That map is -- Ms. Greene is pointing to map No. 164.

SENATOR GREENSTEIN: Map No. 164.

MR. AFRAN: Yes.

SENATOR GREENSTEIN: Okay, thank you.

MR. AFRAN: With the addition of the pink coloration, which does not appear in your binder.

SENATOR GREENSTEIN: Right.

MS. GREENE: Right. We added in the color.

SENATOR GREENSTEIN: Okay.

(witness goes off-mike)

MS. GREENE: This was actually a map prepared by Van Note-Harvey, dated August 2010. They are showing construction of a large roadway on the property, and a cul-de-sac, some multiple unit houses, and some single-family houses; as well as a stormwater detention basin in the western part of the site.

So we preformed our investigation. And the DEP, under the Freshwater Wetland Protection Act regulations, requires that you apply the 1989 Federal Wetlands Delineation Manual. Areas are considered wetlands if they have wetland vegetation, (indiscernible) vegetation, hydric soils, and wetland hydrology. We found four additional areas when we went to the site that met the wetland criteria; and those are mapped in green on this map, and we labeled them 1, 2, 3, and 4. Wetland 1, actually, would entirely be filled by the development. Wetland 2 might technically be avoided by the grading, but the transition area of that wetland would be affected by the development. Wetland 3 is on the other side of the stream and it wouldn't be affected. Wetland 4 is proposed to be disturbed, as well as a large portion of its transition area.

So we applied the methodology as required and, in fact, Wetlands 2, 3 and 4 have what's called -- are dominated by what's called *obligate vegetation* -- vegetation that almost exclusively is found in wetlands. And according to the methodology, if you have that type of vegetation as dominant, you don't even have to consider wetland hydrology and soils; it's automatically a wetland.

SENATOR BATEMAN: Madam Chair, if I may.

SENATOR GREENSTEIN: Yes.

SENATOR BATEMAN: Through the Chair, may I just ask you-- Amy, the latest map that was provided to DEP -- which they indicate they didn't recognize any change -- is that the one represented in the green areas?

MS. GREENE: Okay.

SENATOR BATEMAN: That's the latest that DEP has had to review?

MR. AFRAN: Could I just address that?

SENATOR BATEMAN: Yes.

MR. AFRAN: This exhibit was given to DEP at the time of the May meetings, as well as the exhibit behind, which also contains the additional information of the 1990 findings. I believe that exhibit as well was provided to DEP.

MS. GREENE: There is a slight change here that the -- this was very slightly modified after the DRCC initial--

MR. AFRAN: Right; yes. Actually, you can see here the road that comes a little further down from the original here. That is because they lost to the DRCC on the stream waiver and had to pull it out of the

stream corridor. Otherwise, the project is the same; but both maps were provided to DEP.

MS. GREENE: But to answer your question -- this information was provided to DEP at the May 2014 meeting. And we followed up in June, laying everything out: photographs of the wetland, the additional wetlands--

SENATOR BATEMAN: But if I may, through the Chair again -- at our request, DEP has gone out there about a week or two ago and claimed that they stick to their original interpretation. Is it because of the time of year that they could not see the vegetation or the current wetlands? I mean, this issue, I would think, would be either black or white; it's not gray. Either the wetlands are there, or they're not. What I don't understand is how they can say, "We're sticking to our original--"

MR. AFRAN: Senator, I can actually answer that.

SENATOR BATEMAN: Okay.

MR. AFRAN: DEP asked us to give them evidence of wetlands that did not exist in 2000. Wetland No. 1 -- Ms. Greene can point to that -- may have been one that was created after that time. I believe DEP's latest view, a week or so ago, was only as to that -- and that has since been crushed by innumerable numbers of trucks and, essentially, probably, is not visible, though the soils are buried under pressure. So I believe that is what they limited their latest view to.

In addition, there has been substantial damage already because the Institute, last June, started to do some staging, and we stopped them.

So it may not be visible any longer; and since the trucks were there, the sand is now on top of it. But it is underneath.

SENATOR BATEMAN: Thank you.

SENATOR GREENSTEIN: Bruce, why-- You said DEP asked only for what was not visible in 2000. But if I'm understanding all of this correctly, they're not even accepting what was there in 2000. It seems like going all the way back, there is some disagreement -- not just recently. Is that correct?

MR. AFRAN: Well, the disagreement arises because they didn't have the data that the Institute was in possession of.

SENATOR GREENSTEIN: It was kept from them.

MR. AFRAN: The DEP apparently didn't do a thorough view in 2000. And we've said to them, "Look, we don't have any horse in this game; we simply want the wetlands identified. We're willing to give you credit for doing what's right today. We're not criticizing the inspector from 16 years ago." But, bureaucratically, DEP, I think, is digging its heels in; and with due respect to the Senator's comments, I think the Commissioner does have a view of this that has gone into it, because Mr. Texel actually said on the record in February that he had originally abstained because of a policy decision not to offend his agency's partner, my client.

So I think the Commissioner did actually have a policy view that he's now reversing for some reasons that are not known to us. But in any event, they don't want to acknowledge what would be an error. And I think that's pretty clear.

SENATOR GREENSTEIN: Okay. I want to let Ms. Greene get back.

MS. GREENE: (off mike) So we presented this information in 2014 to DEP. And when I received the copy of the soils report actually

prepared by the Institute's professional, Melick-Tully, I said, "Oh, they're doing a soils study" -- soils is one of the parameters you have to analyze to determine if something's wetlands. "Let me see what their findings were."

Now, their purpose was to determine what the recharge potential was at the site. But you take the same data as you would if you were doing a soil boring to determine if there were wetlands or hydric soils on a property. And the only soil boring that they, sort of randomly -- or made a grid on the site of where they're going to develop, and they did soil borings. And there was only one location which was in -- it ended up being in Wetland 4, where they documented soils in one of the additional wetland areas we had provided.

And this is in their packet as well?

MR. AFRAN: No, the Melick-Tully report was not available to me when the packet was produced. We have copies for the Committee.

MS. GREENE: I have copies I can distribute.

So handout No. 4 -- noted as HA-4 on the map provided in the Melick-Tully report -- is here in Wetland 4. And it has a description of the, sort of, layers of soil and their color; and what you do under the methodology is you look below the topsoil layer. And if you have a dominance of what we call *one chroma* or a *two chroma* soils -- in here, 10YR71 -- one is the chroma, along with contrasting mottles or speckles in the soil -- that's a hydric soil. And I looked at this (indiscernible), and I said, "Oh, that was nice; they did our work for us," and they verified our finding that there are wetlands outside of the area originally presented by Van Note-Harvey.

MR. AFRAN: Ms. Greene, in 1990, to what extent did you do borings?

MS. GREENE: This was quite a few years ago, 1990.

MR. AFRAN: Sorry.

MS. GREENE: And my firm actually examined the entire Institute property for wetlands. And we did do some soil borings, but it was a very large area. The thing is, we didn't hang flags at the time. So we sketched the approximate boundaries, as accurately as we could, of wetlands on the entire site -- this being a small piece of it. So what we did examine in here -- and that's this stippled area you see. And you see that the wetlands identified by Van Note-Harvey are located within that stippled area, as well as much of Wetlands 2, 3, and 4.

Now, I will say that Wetland 1 seemed to be an isolated wetland. When we went out there in 2011, it was quite wet. I got pretty wet going through that also; it had wetland vegetation. I wasn't able to do a study, but it's possible there was something wrong with the septic or drainage from this house. So it could be the origin of that wetland.

Regardless, DEP regulates existing conditions. It's a regulated wetland until it goes away. So if you are building a house on that wetland, you need a permit. If you're building a condo in the wetland portion and transition portion of Wetland 4, you need a permit; and that triggers the historical review by SHPO, the State Historic Preservation Office.

SENATOR GREENSTEIN: You know, I agree with the statement that Senator Bateman made; I just want to say it. You guys have terrific information here, and certainly it sounds like you have an excellent case. One wonders, though, at a certain point, when both sides are looking

at the same piece of land and coming up with different conclusions, what's your opinion-- If I understand you correctly, Bruce, what you are saying is that's happening because they're, in a sense, physically hiding the wetlands by sanding it down and all of that. Is that what you said they are doing? Could you physically hide a wetland?

MR. AFRAN: Well, number one, their plan calls to build the plateau across that delineated area of construction. They have no choice, because otherwise the professors will drown once they go to bed. And so they must build the plateau.

Their goal is to start that treatment of the ground now so they're grandfathered in under the Letter of Interpretation, which is going to expire shortly. So I think their strategy-- I doubt-- Their attorney said to me that he doubted they will build houses now; he's not sure of that. They've announced they intend to go forward with the project. So the attorney may not have the accurate information. They are acting as though they intend to build; they are building that plateau, and the first stage is to pour sand on top of the wetlands.

SENATOR GREENSTEIN: Ms. Greene, do you have a professional opinion as to what's going on here with DEP?

MS. GREENE: Well, I can't explain DEP. I don't know why -- we presented all this data to them, photographs, soil borings by the applicant, the maps -- I don't know why they didn't respond in writing, and I've been dealing with them my entire career -- or since their inception in 1988 (*sic*).

SENATOR GREENSTEIN: Right.

MS. GREENE: And I don't know why they didn't respond. There is no letter; they wouldn't produce any analysis.

From the-- And again, it's hard to-- Sometimes people ask me, "Well, why do you think this other firm made this mistake?" I can't explain other people's errors; it's difficult. The only thing I see in common with these wetlands that are missed is they are located in the hayfields -- in the meadows. They clearly meet the wetland criteria. I know some aggressive wetlands scientists who work for engineering firms -- they sort of try to not map wetlands that occur in fields hoping that when DEP goes out there they just won't notice them. They may not be as apparent as, let's say, the wetlands in the woods. So that's the only explanation I could come up with -- except for, perhaps, something very deliberate, but which I can't substantiate.

MR. AFRAN: I would add -- I should note for the record, Van Note-Harvey is not only a surveyor; it is the engineering firm that's building and designing the housing project. So Ms. Greene is only a hydrologist; she does not build or design anything. Van Note-Harvey has a dual role here, and clearly does have a conflict as a wetland surveyor.

If it found the wetlands, it loses the contract to design the housing project. So I think that may bear into why they've erred on the side of the Institute, so to speak.

SENATOR BATEMAN: If I may, through the Chair, Mr. Chairman.

Actually, I just texted the Assistant Commissioner; I said I was very disappointed no one from DEP is here, because this is so important.

I know we have a number of witnesses still to testify; I want to hear what they have to say. But knowing it's the 11th hour, and knowing that there have been a lot of wrongs committed throughout the process -- what, as a Legislature, as a Senator, can I do to stop this or to at least get us a stay? I mean, obviously, you're in Federal court tomorrow seeking an injunction, I would imagine.

MR. AFRAN: Well, what would help us enormously in this is -- if this Committee is persuaded by what we've said and will say -- to issue a report stating that it appears the factual basis for a stay, while DEP reconsiders this evidence, clearly exists as a matter of law. The Committee has immense legal expertise, and I think it has the legislative power to issue that sort of report.

In addition, the Legislature itself, I think, has, ultimately, the power of eminent domain -- at least, for the Governor's approval -- if it passed a bill recommending that. I'm not sure the procedure. But certainly I think the Committee has the power to issue a report stating that with no opposition from the Institute and no appearance by DEP, the record appears clear that there's a factual issue that wetlands exist and that a stay should be entered while DEP and/or the courts consider this matter. That sense--

SENATOR BATEMAN: I don't know if we could do that; the Chairman might be able to elaborate on that. But I think that, if nothing else, we can at least request another meeting, one-on-one, with Commissioner Martin.

MR. AFRAN: I think that would be immensely helpful.

SENATOR BATEMAN: And his experts and your experts, and maybe one or two of the legislators. Because to just shovel -- just to have them explain to us, face to face, why they're not acknowledging those wetlands. I think that would be a first step.

SENATOR SMITH: Senator Greenstein.

SENATOR GREENSTEIN: Well, I was just whispering to you, but I will say publicly: If you do something like that, I would like to be part of it. And I think it would be good if the Committee wrote a letter as well, as we have done on occasion. So that would be my request.

SENATOR SMITH: Let me check with the experts.

(The Chair confers with the Committee and staff off-mike)

So Senator Greenstein, Senator Bateman, and I have had a chance to confer, and there are some things we can do that might be helpful.

We believe that we have, as elected Senators in the State of New Jersey, the right to sign a letter about anything. And we can honestly say that the issues raised today, in our minds, raise significant issues about the project going forward without the wetlands issues being clarified and examined by a court. And that that clarification is needed before irreparable harm is done to the Battlefield.

And, of course, you need this for submitting tomorrow--

MR. AFRAN: It would be very helpful.

SENATOR SMITH: Yes, yes, yes. Well, we're going to try and get that letter done for you today.

SENATOR BATEMAN: And we're all going to sign it.

SENATOR SMITH: We're all going to sign it before we leave today. And we're also going to make a request to Commissioner Martin that he or a representative of his staff come over to give us their point of view on the wetlands issues, with regard to the Battlefield. Now, he doesn't have to come, all right?

MR. AFRAN: Right.

SENATOR SMITH: In fact, we get turned down quite a bit, (laughter) but we'll at least make that request in writing.

So I'm going to ask staff to start putting together a letter, with the assistance of the three Senators, and we'll see if we can get that done for you before we leave today.

MR. AFRAN: Senator, thank you. That would be immensely helpful. If the Committee should gain acceptance of its invitation to the Commissioner, I'd appreciate if we could be--

SENATOR SMITH: We won't hesitate to call and tell you the date and time.

MR. AFRAN: Thank you very much.

SENATOR BATEMAN: Yes, because we're going to need to have the experts there.

MR. AFRAN: Yes, thank you.

SENATOR SMITH: Okay. So is Ms. Greene finished, or not?

MR. AFRAN: That does conclude Ms. Greene's presentation. Yes, she is, I believe.

MS. GREENE: Yes, thank you.

SENATOR SMITH: All right. And I think you wanted to bring up Mr. Hurwitz.

MR. AFRAN: Actually, in the interest of time, Mr. Lighthizer from the Civil War Trust works with us, and I would like to call him next, if we could.

SENATOR SMITH: Okay, in the interest of time, we'd like to hear from him.

MR. AFRAN: Thank you.

O. JAMES LIGHTHIZER: Mr. Chairman, and lady and gentlemen of the Committee, my name is Jim Lighthizer. And it is my good fortune to be President of the Civil War Trust.

But they also say -- and I'm going to be brief, Mr. Chairman -- even though I am a recovering politician and I go to the meetings, everything's fine. I have no inclination to ever go back.

First let me thank you, Mr. Chairman and the members of the Committee, particularly Senator Bateman -- who I guess is no longer here -- for bringing this to the public's attention. I know -- I was in the state legislature in Maryland; I've been a county executive; I've been a secretary of transportation -- that you all are elected representatives and not kings, and there is only so much you can do. But I am very, very grateful to you for the efforts you're making to spotlight this, and I sincerely mean that, sir.

Just briefly: I run the Civil War Trust; it is an organization that, in a nutshell, we save the battlefields where America was created and defined -- Civil War, War of 1812, Revolutionary War. We buy the battlefields; we're an organization from the private sector. We have 50,000 members. In the last 16 years we've saved approximately 42,000 acres of battlefield land -- Civil War and Revolutionary War, although primarily Civil War because we just got into the Revolutionary War business in the

last year. We have raised and spent well north of a quarter-billion dollars in that 16 years, and most of that is from the private sector, from our members.

I say that not to brag; I say that because we're a substantial organization, and we have a proven record of success. And it is our considered opinion that the property at issue here -- Maxwell Field, the approximately 22 acres -- would be some of the most important ground that this organization has ever saved in its history. And by the way, the modern battlefield preservation world goes back about a quarter of a century, to 1987.

So I'm heart-attack serious when I say that this is extremely important land, in our opinion. We have never saved anything more important. As I said, we've saved over 42,000 acres and spent over a quarter-billion dollars doing it.

We have made two specific offers to the Institute: one for \$3.3 million, which was the appraised value; they rejected it within a week. We then upped the ante to \$4.5 million, which is roughly 40, 50 percent above the appraised value; and they rejected that in less than a week. We have been seeking, since June, to just get a meeting; we would just like to talk to them about it. We believe this is part of our American heritage. It just doesn't belong to the Institute; it belongs to the American people, and we're willing to pay a fair price for it. We're willing to pay a premium because of its history, which is something we generally don't do as a matter of policy, but we're willing to do it here.

All we would like is the opportunity to sit down and talk with them. They won't even give us that opportunity. We have sought, through

intermediaries, to get an opportunity to talk to them. We recognize that they believe they need housing; we recognize that they've spent some money -- a significant amount of money. We are more than willing to compensate them for that, and more. We're willing to work with them in any way possible to help them find an alternative.

I believe it was Judge Jacobson who said, with respect to Albert Einstein and the Institute, "He walked to work, and he did pretty well." Well, we think we can find a way to accommodate the Institute; we honestly believe that. And Mr. Chairman, lady and gentlemen of the Committee, we think there's an unbelievable irony here. Here you have an institution of higher learning which presumes to, I believe, prepare people for the future. And they presume to do that by destroying our past. There is no question -- no historian will disagree with what I'm going to say next. This is hallowed ground; this is serious American history; this is George Washington; this is a turning point in our country's history. And we're willing to pay fair market value, or more than that. But we'd like to be able to just sit down and talk with them, and we think it's unfortunate that they won't do that.

As I said, we're a substantial organization. We've done many transactions in this financial area, this zone -- which is to say, millions of dollars. So we're able to perform; we have performed. And by the way, the only thing we want out of it is to save this land and turn it over to the citizens of New Jersey and the citizens of the United States. We don't want any compensation for it; we just want to save the land because it's part of our heritage.

That's all I have to say. And by the way, I admire your fortitude for sitting through this hearing.

Any questions?

SENATOR SMITH: No.

SENATOR BATEMAN: Thank you.

SENATOR SMITH: We do appreciate your comments.

There are still a number of people who have signed up. I'd ask you to try to be very brief.

And Mr. Afran, I would ask you--

MR. AFRAN: Yes?

MR. LIGHTHIZER: Thank you for your forbearance, sir.

SENATOR SMITH: Thank you, sir.

--to come back here, sit with us, and see if we can talk about the wording on that letter.

MR. AFRAN: Certainly.

SENATOR SMITH: All right?

MR. AFRAN: When would--

SENATOR SMITH: When you get a chance.

MR. AFRAN: Would you like me to do that now?

SENATOR SMITH: Yes, if you wouldn't mind.

MR. AFRAN: Thank you.

SENATOR BATEMAN: We'll hear from the other witnesses. You can come back.

SENATOR SMITH: All right. And we still have one bill to do.

MR. AFRAN: Yes; from our organization, Mr. Chairman, Ms. Cherry wishes to speak briefly. I'm not sure if Mr. Hurwitz still does.

J E R A L D H U R W I T Z: No, go ahead.

MR. AFRAN: Ms. Cherry will do that, if that's agreeable to the Committee.

SENATOR SMITH: Okay.

K I P C H E R R Y: Good morning. I'm Kip Cherry; I'm the First Vice President of the Battlefield. I have numerous comments, and I'm going to give you all of them in writing.

I just want to point out two things. First of all, Ms. Guzzo, as SHPO -- as the SHPO Officer, requested that alternatives be analyzed. And she requested that the permit not be granted early on. So that is still out there -- that request from her.

Secondly, one of our roles as the official Friends organization of the Battlefield, is to protect properties -- not only in the Park, but outside the Park -- that are significant to the battle. And on that basis we facilitated the purchase of some property that just became part of the Park this past year called the D'Ambrisi property. And that property was put together and paid for by a consortium, that was led by the State, that included the County, the municipality of Princeton, Princeton Friends of Open Space, and the Civil War Trust.

And so we really want this acquisition to occur. The property was actually originally supposed to be part of the Park, and I can provide an original map to the Committee. Governor Edge, who created the Park, wanted this particular parcel from the very beginning and knew it was highly significant. So for some reason, it didn't happen; he did not conclude the purchase, and the Institute instead bought the property from Mr. Maxwell. We call it Maxwell Field for that reason.

So our role is to facilitate and to make things happen as best we can, and to do our duty to protect the Battlefield. And that's what we're trying to do.

Thank you so much for all of your consideration.

SENATOR SMITH: Thank you, Ms. Cherry.

Rochelle Stern indicated there is no need to testify, and she says "opposed" -- I believe that would mean opposed to the--

SENATOR BATEMAN: Development.

SENATOR SMITH: --development of the Park.

Tom -- is it Pyle; I'm not sure. I have a handwriting issue here, Tom. Did you want to say something?

T H O M A S P Y L E: Yes, thank you.

My name is Tom Pyle; I'm a resident of Princeton. I'm also a graduate of Princeton University with a degree in History; so I have a personal interest in what is before us today.

I salute my Senator -- I'm a constituent of Senator Bateman, and of Mr. Gusciora. I appreciate their efforts, as I do you, Mr. Chairman, bringing this together.

Also as a citizen -- as an average citizen, I very much want to compliment and commend the Princeton Battlefield Society for bringing this forward; Mr. Afran, for being so detailed; and also our guests from the Civil War Trust for all their support. This is an enormously important issue to me, personally, as a voter; as a resident of Princeton; and as a fan of the American Revolution.

I would simply say that we should understand that there is an enormous disparity here. This is the second battle of Princeton; a David

versus Goliath battle indeed. We have the Princeton Battlefield Society, which is a sincere band of average citizens, perhaps, like myself -- up against an esteemed, but nevertheless redoubtable foe, if you like: the Institute for Advanced Study, which is an enormous institution. It has an endowment of over three-quarters of a billion dollars; it's governed by powerful elites, including the President of the European Central Bank, who sits on their Board. It's run by highly paid administrators, each earning well over \$300,000 a year. It's populated by a very small set of eminent, indeed, scholars; but nevertheless, scholars mostly of European origin. And it's a major nonprofit in the United States with decidedly European sensibilities.

So at stake for me is that, on the one hand, we have the Institute's supposedly lawful, if lamentable, lust to build these luxury houses on their own land; on the other, our state's need to stem environmental encroachment and our proud nation's dream to preserve more of our unique heritage sites.

So I ask the Committee two things, please: First, by your oversight authority, to ensure that the Department of Environmental Protection in this case, particularly, scrupulously exercise the stewardship over all environmental matters that we have entrusted to it -- both ecological and historical -- and then quickly report back its determinations to us, the public. We don't understand what's going on and why there seems to be foot-dragging on this matter.

And second, if I may ask, by your moral authority as the Committee and the esteemed Senators here, to encourage the Institute, given its overwhelming advantages -- and publicly granted tax-free status -- to do more to help advance the Battlefield Society's noble cause; to, so to

speak, level the playing field more between itself and the rest of us -- preferably without leveling Maxwell Field -- so that more of our nation's hallowed ground under its current stewardship can be discovered, interpreted, and preserved for America's posterity.

So in closing, I'd like us all to ponder the ironic precondition of this second battle of Princeton. For Einstein to have come to Princeton, first Washington had to win at Princeton. So let us all keep that in mind and try to keep our national priorities in quite proper perspective.

I so appreciate the chance to offer my comments.

SENATOR SMITH: Thank you, Mr. Pyle.

Lisa Serieyssol -- I may be mispronouncing that terribly -- opposed. I assume that means opposed to the development of the Battlefield.

L I S A S E R I E Y S S O L: My name is Lisa Serieyssol; I live at 98 Olden Lane. I live in an area known as the *Institute neighborhood*, and I represent a series of residents of our neighborhood who, while respecting the Institute, do not understand why this project is underway, and are asking for it to be stopped.

We walk our dogs; our children ride their bikes in this neighborhood; and we know the housing area quite well. There are vacant or virtually uninhabited houses in our neighborhood that are owned by the Institute. So when they tell you, and they tell the press, that there are no alternatives than to tear up this field, I can't believe it. I can't give you specific addresses, but I can tell you these houses are on Battle Road; Battle Circle; Ober Road, right next to my house; and throughout the

neighborhood. So I beg you to reconsider what they are telling you -- that they have no options.

The second thing is that, as I said, we walk through the field, that is currently being torn up, ourselves and have all seen these wetland areas that Amy Greene has mapped out. I have pictures of them on my cell phone; neighbors have seen piping that seems to have come from a house that Amy Greene alluded to. So we all know exactly what she's talking about and fully believe that she is expressing what is actually there.

The most important thing I have to say to you today -- our son is a student at Johnson Park School. He saw how upset we became when the trucks of sand started parading down our streets to fill in this land. In 3rd grade, they all study the American Revolution and, specifically, Princeton's role. They visit the Battlefield, they visit Nassau Hall, they go up and down and they see all of the historic homes. They understand history; they're being taught civics -- government civics, now. And we're trying to teach them to respect the system, while the Institute for Advanced Study does not seem to respect it. And while litigation is ongoing, they are plowing down hedgerows and filling in fields with sand.

I have with me today a very briefly compiled petition -- over the course of 10 minutes, probably -- that my son, on his own initiative, gathered from his classmates at Johnson Park School to save our Battlefield.

Thank you.

SENATOR SMITH: Thank you.

Rachelle Feldman Hurwitz, marked as opposed -- which I believe means opposed to the development of the Park -- no need to testify.

And I think we had Mr. Jim Lighthizer already up, right? -- from the Civil War Trust. And for the record, Tony Granato, New Jersey Sierra Club, opposed, no need to testify. And that concludes the witnesses on this matter.

MR. AFRAN: Mr. Chairman, if I may?

SENATOR SMITH: Yes.

MR. AFRAN: Mr. Hurwitz, if there is a minute or two, did want to say a few words -- if we have one or two minutes left.

SENATOR SMITH: Go right ahead.

MR. AFRAN: Thank you.

Just to introduce him -- he is the President of the Battlefield Society.

SENATOR SMITH: Yes, sir.

MR. HURWITZ: Thank you.

I just wanted to add, I guess, the following. It's my understanding-- And yes, I am an attorney, but environmental law is not my specialty. However, I do note that in these United States only two states have jurisdiction over the enforcement of the Clean Water Act, and those are New Jersey and Michigan. And I'm just wondering if it might be reconsidered whether or not these responsibilities ought to go back to the EPA. Because if this is-- Either this is a matter of competence on the part of the enforcement of our environmental laws by the DEP, or it may be worse -- the political interference with the process. Neither which should be acceptable to the people of New Jersey.

And we have extraordinarily difficult environmental issues in this state. I know that public television -- public radio recently had a whole

series of stories on the deficiencies of the DEP in cleaning up hazardous waste that plagues this particular -- this state. And I would like, perhaps, the Committee to consider having the responsibilities for the enforcement of these environmental laws -- which originated with the EPA -- go back to the EPA.

And that's all I have to say in this.

SENATOR SMITH: Thank you very much.

For the record, Nancy Piwowar, who is a local historian, has indicated that she is also opposed to the development of the Battlefield, and there's no need to testify.

So don't go away; we did have a bill we wanted to look at today, which was A-2687, Assembly Committee Substitute, done by Assemblyman DeAngelo and Assemblywoman Pinkin. It provides for the replacement of incandescent lightbulbs in public school buildings with energy-efficient lightbulbs.

There is an amendment that takes out *fluorescent*, which we think is not going far enough. And there are two witnesses: Doug O'Malley, Environment New Jersey, in favor, no need to testify; and Tony Granato, New Jersey Sierra Club, in favor, no need to testify.

Members of the Committee, do we have any issues with that Bill, as amended?

SENATOR BATEMAN: I would move it, as amended.

SENATOR GREENSTEIN: Second.

SENATOR SMITH: And Senator Greenstein seconds it.

Let's take a roll call vote on the release of Assembly Bill 2687.

MS. HOROWITZ: On Assembly Bill 2687, with Senate Committee amendments, Senator Thompson left a “yes” vote.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Yes.

MS. HOROWITZ: Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes.

And the Bill is released, with three affirmative votes.

SENATOR GREENSTEIN: Four.

SENATOR BATEMAN: Four.

SENATOR SMITH: I’m sorry -- four affirmative votes. Senator Thompson was recorded in the affirmative before he left.

Hold on for a minute.

SENATOR BATEMAN: If I may, Mr. Chair, I just want to thank everybody for coming out on short notice for this hearing, because I think it’s very important.

SENATOR SMITH: It’s very, very important.

SENATOR BATEMAN: And we’re going to continue to fight the battle.

SENATOR SMITH: Is that a pun?

SENATOR BATEMAN: Yes. (laughter) Hopefully we can win a second battle.

SENATOR SMITH: Actually, third.

SENATOR BATEMAN: Third, right.

SENATOR SMITH: I heard about two battles at Princeton, and this will be the third battle at Princeton Battlefield.

(Committee works on letter off-mike with Mr. Afran)

The three Senators will be on it. I'm not asking -- I'm not going to try to chase Assemblyman Gusciora for his signature -- although I know he totally agrees -- for the reason being it's as a result of this hearing, so Senators should be signing it.

Senator Bateman, do you believe it's the correct thing to do?

SENATOR BATEMAN: I do, Mr. Chairman; and thank you again.

SENATOR SMITH: Senator Greenstein, do you believe it is the correct thing to do?

SENATOR GREENSTEIN: Yes.

SENATOR SMITH: I believe it's the correct thing to do.

Meeting adjourned. (applause)

(MEETING CONCLUDED)