

# Committee Meeting

of

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION NO. 121

(Determines that Department of Insurance  
proposed regulations concerning handling of  
automobile physical damage claims are not  
consistent with legislative intent)

and

"Department of Environmental Protection  
classification of property as wetlands"

LOCATION: State House  
Room 319  
Trenton, New Jersey

DATE: September 28, 1995  
10:00 a.m.

## MEMBERS OF COMMITTEE PRESENT:

Senator John P. Scott, Chairman  
Senator Andrew R. Ciesla, Vice-Chairman  
Senator John O. Bennett  
Senator Henry P. McNamara  
Senator Nicholas J. Sacco  
Senator Raymond J. Zane



## ALSO PRESENT:

Raymond E. Cantor  
Office of Legislative Services  
Aide, Senate Legislative Oversight Committee

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Hearing Unit, State House Annex, CN 068, Trenton, New Jersey 08625



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**New Jersey State Legislature**  
SENATE LEGISLATIVE OVERSIGHT COMMITTEE  
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**COMMITTEE NOTICE**

TO: MEMBERS OF THE SENATE LEGISLATIVE OVERSIGHT  
COMMITTEE

FROM: SENATOR JOHN P. SCOTT, CHAIRMAN

SUBJECT: COMMITTEE MEETING - September 28, 1995

*The public may address comments and questions to Mark Connelly or  
Raymond E. Cantor, Committee Aide, or make bill status and scheduling  
inquiries to Tondalaia T. Gist, secretary, at (609) 292-7676.*

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The Senate Legislative Oversight Committee will meet on Thursday,  
September 28, 1995 at 10:00 AM in State House, Room 319 Trenton, NJ.

The Committee will discuss:

1. ACR 121-the inconsistency with Legislative intent of regulations adopted by the Department of Insurance (N.J.A.C. 11:3-10.3, PRN 1995-89) encouraging automobile insurers to establish "HMOs" for auto body repairs by limiting the number of auto body repair shops that policy holders may bring their cars to for repair.
2. The inconsistency with Legislative intent of the process used by the Department of Environmental Protection in classifying property as wetlands and thus subjecting it to regulation under the "Freshwater Wetlands Protection Act."

Assistive listening devices available upon 24 hours prior notice  
to the committee aide(s) listed above

Issued 9/22/95

ASSEMBLY REGULATORY OVERSIGHT COMMITTEE

STATEMENT TO

ASSEMBLY CONCURRENT RESOLUTION No. 121

STATE OF NEW JERSEY

DATED: JUNE 8, 1995

The Assembly Regulatory Oversight Committee reports favorably Assembly Concurrent Resolution No. 121.

Assembly Concurrent Resolution No. 121 expresses the finding that the regulations proposed by the Department of Insurance concerning the manner in which automobile physical damage claims are handled (N.J.A.C.11:3-10.3, PRN 1995-89) are not consistent with legislative intent in that the proposed regulations violate the "New Jersey Regulatory Flexibility Act" P.L.1986, c.169 (C.52:14B-16 et seq.) requirements to "minimize any adverse impact of the proposed rule on small business..." by encouraging insurers to restrict the number of auto body repair shops they do business with, seriously endangering the existence of a large number of small businesses.

The Regulatory Flexibility Act requires the Department of Insurance to utilize approaches which will accomplish the objectives of applicable statutes while minimizing any adverse economic impact of the proposed regulation on small businesses of different types and of differing sizes. Under the act, the regulatory flexibility analysis shall contain: "a. a description of the types and an estimate of the number of small businesses to which the proposed rule will apply;... d. an indication of how the rule, as proposed for adoption, is designed to minimize any adverse economic impact of the proposed rule on small businesses." The regulatory flexibility analysis submitted by the Department of Insurance only addresses the effect on insurers as small businesses and not the effect the proposed regulation will have on auto body repair shops, which will be endangered by restricting the number of auto body repair shops insurers do business with.

The Department of Insurance shall have 30 days following transmittal of the resolution to amend or withdraw the proposed regulations or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the proposed regulations or prohibit those regulations from taking effect.

# ASSEMBLY CONCURRENT RESOLUTION No. 121

## STATE OF NEW JERSEY

INTRODUCED MAY 22, 1995

By Assemblyman WARSH

1 A **CONCURRENT RESOLUTION** concerning legislative review of  
2 Department of Insurance proposed regulations pursuant to  
3 Article V, Section IV, paragraph 6 of the Constitution of the  
4 State of New Jersey.

5  
6 BE IT RESOLVED *by the General Assembly of the State of*  
7 *New Jersey (the Senate concurring):*

8 1. Pursuant to Article V, Section IV, paragraph 6 of the  
9 Constitution of the State of New Jersey, the Legislature may  
10 review any rule or regulation of an administrative agency to  
11 determine if the rule or regulation is consistent with the intent of  
12 the Legislature.

13 2. The Legislature finds that the regulations proposed by the  
14 Department of Insurance concerning the manner in which  
15 automobile physical damage claims are handled (N.J.A.C.  
16 11:3-10.3, PRN 1995-89) are not consistent with legislative  
17 intent in that the proposed rules violate the "New Jersey  
18 Regulatory Flexibility Act," P.L.1986, c.169 (C.52:14B-16 et  
19 seq.), requirements to "minimize any adverse impact of the  
20 proposed rule on small business . . ." by encouraging insurers to  
21 restrict the number of auto body repair shops they do business  
22 with, seriously endangering the existence of a large number of  
23 small businesses. The department in conducting a regulatory  
24 flexibility analysis of the proposed rules as required by that act,  
25 considered only the effect of the proposed rules on those small  
26 businesses that are insurers, and not on those that are auto body  
27 repair shops.

28 3. The Clerk of the General Assembly and the Secretary of the  
29 Senate shall transmit a duly authenticated copy of this  
30 concurrent resolution to the Governor and the Commissioner of  
31 the Department of Insurance.

32 4. The Department of Insurance shall, pursuant to Article V,  
33 Section IV, paragraph 6 of the Constitution of the State of New  
34 Jersey, have 30 days following transmittal of this resolution to  
35 amend or withdraw the proposed regulations or the Legislature  
36 may, by passage of another concurrent resolution, exercise its  
37 authority under the Constitution to invalidate the proposed  
38 regulations or prohibit those regulations from taking effect.

### STATEMENT

41  
42 This concurrent resolution expresses the finding of the  
43 Legislature that regulations proposed by the Department of  
44 Insurance concerning the manner in which automobile physical  
45 damage claims are handled are not consistent with the legislative  
46 intent of the "New Jersey Regulatory Flexibility Act"  
47 requirements to "minimize any adverse impact of the proposed  
48 rule on small business . . ." by encouraging insurers to restrict the



1 number of auto body repair shops they do business with, seriously  
2 endangering the existence of a large number of such businesses.

3 The Department of Insurance shall have 30 days following  
4 transmittal of this resolution to amend or withdraw the proposed  
5 regulations or the Legislature may, by passage of another  
6 concurrent resolution, exercise its authority under the  
7 Constitution to invalidate the proposed regulations or prohibit  
8 those regulations from taking effect.

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10

11

12

13 Determines that Department of Insurance proposed regulations  
14 concerning handling of automobile physical damage claims are  
15 not consistent with legislative intent.

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eem: 1-86

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SENATOR JOHN P. SCOTT (Chairman): We do not have a quorum. We have people throughout the building, I guess, so we will start the hearing on, well, I guess the Wimmer case, and what I want to-- Why we're hearing this is we have documentation here that is very disturbing.

We have a piece of property basically that, and this I find unfortunately is typical -- that people own property and then try to develop it, build whatever they had originally in mind -- a house or whatever it may be -- only to find out that many tens of thousands of dollars later, many years later they're unable to build on their property, which primarily takes -- really comes into a takings.

It's well-documented in this from April 20, 1991, with the first soil log and two permeameter, all the way to July of 1995, going to the Administrative Law Court. It's just an incredible story for those who aren't familiar with it.

To me it's something that requires legislative help beyond what this Committee is going to do today, but I have questions to ask, and I don't know if anyone is here other than the -- I know the wetlands we have. I expected--

Is Mr. Wimmer here?

MR. CANTOR: (Committee Aide) (off mike) Yes.

SENATOR SCOTT: He didn't sign up. Okay.

MR. CANTOR: If you could, I would appreciate if you could get the hearing transcriber--

SENATOR SCOTT: Pardon.

MR. CANTOR: If they can fill that out, it would be useful to the hearing transcriber.

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SENATOR SCOTT: Yes, we would like you to fill this form out with the name and address, and so and so, so that the transcribers will not have any mistakes in the spelling of the names, and when they transcribe the record, we will have that. So I would appreciate anyone who is going to testify to fill one out.

This goes back to 1991, as I said, and it's continuing up to the present time.

But let's hear from Mr. Wimmer, and he can tell us firsthand. Mr. Wimmer, would you want to come up and testify? We don't really want to go through this whole book, but I'm sure you can give us an idea of what's been happening and where you are at the present time.

R O Y        A.        W I M M E R: Okay. First of all, let me apologize if I lose my voice, I've been living on tea.

SENATOR SCOTT: On what?

MR. WIMMER: On tea, honey, lemon juice, and in the evening, brandy trying to get rid of this stupid cold, but I've been unsuccessful.

SENATOR SCOTT: You have to speak into the microphone.

MR. WIMMER: Okay.

SENATOR SCOTT: Make sure it's on. I think -- is it on?

MR. WIMMER: Is it on?

SENATOR SCOTT: No.

MR. WIMMER: Is it on now? This one? Okay.

SENATOR SCOTT: Okay, Mr. Wimmer.

MR. WIMMER: Basically, I went in front of the Califon Planning Board around six years ago and told them I was going to

build my own house someplace on my 34-plus acres of property. I didn't know where. We had an application in to the gas company at that time because the deeded crossing I had was substandard and there was some question about it with the gas company. The county was going to take over the old railroad path, which is now a gas line, which cuts my property, you know, right in half -- well, more than in half. It cuts right through it. It's a 100-foot wide deeded piece of property that they own, and the county was purchasing that for a bike path.

So basically, we didn't know where we were with the right-of-way, etc., and we stalled for a while. We had a perk test done on various spots on the property deciding where we were going to build. When it seemed that the gas company went into Chapter 11, we decided to move to the front lot and build there, because it was just taking too long, and we figured it was going to be a long time before we can straighten out the right-of-way.

So we started the process per what we've given you here and went through it. Again, we had perked the property, it had passed. We had the people coming in -- the environmental people -- checking for the soil logs, etc., and they said you can make it.

The problem with the property was that the railroad comes down the property-- The other property I own comes down -- Judge Diane owns above me. The property comes down to the railroad track, hits a ditch, and on this particular lot and block, there are three 18-inch pipes underneath the railroad which take that water from that ditch out into underneath the street and out into the south branch of the Raritan River.



They're obviously drainage ditches, they dry up a good portion of the year. One of them, you might say, is streams coming down, but that's debatable. So we knew that, and we still worked around it, and they said, "Okay, this will pass." So we went ahead with it, and we submitted all the papers. The paperwork took a great deal of time. They kept on questioning-- I never spoke to any of these people. It was strictly through the engineer. They never contacted me or anything.

Lo and behold I get-- I also reperked the property per somebody's suggestion -- reperked it in another spot -- turned the house around. So I went to New York so they could redesign the house, reperked another spot of the property to get passed again, so the property could handle two different septic fields. I figured it would pump it over, and that would make everybody happy.

Then it kept on stalling and stalling. The next thing you know I get this denial. I get approval to put the road through, which I had all along -- my old logging road was there -- but to formalize the road, and that had to be moved because they were calling the logging road wetlands. It went round and around. So anyway I get this denial. So I talked it over with my partners, etc., and said, "Okay, where are we going to go from here?" We decided to go through the appeal process.

During the appeal process, somehow or other, you know, we hired another set of lawyers, and some people started to contact me. One of them being Bruce Siminoff. He asked me if he could walk the property with me, I said, "Sure." He's the first person that ever asked me if he could walk the property.

So I went over and met Bruce, and for the first time walked the property with him, and he asked me whether he could write a letter on it. So I gave him some documentation, and he wrote a letter. I believe one of them ended up in The Star-Ledger, and it seemed like all of hell broke loose, because all of sudden there were these letters coming back at him, including one from Bob Shinn.

SENATOR SCOTT: Keep going.

MR. WIMMER: Basically, I started reading these letters and no one contacts you or anything else. All of a sudden somebody calls you and says, "Hey, you know, your name is in the paper." So you go hunt up the paper, and you read the letter. Basically, I thought that the letters -- all the letters -- were factually untrue and had great exception with them. I then replied and they published that. So I don't know how many letters were written, but the basic facts were really off base.

One, that I had adjacent or contiguous lands. This lot is clearly separated by this underfoot line of railroad tracks. They don't know the lands, and it should have nothing to do with it. The truth of the matter was, with the county in that situation, I didn't really have a right-of-way anyway. I had two road front pieces of property. We evaluated both of them and decided to go with this one. So it wasn't contiguous.

The second thing was, okay, that I could buy other lands, and there is this one sliver of land that I could possibly buy, but there would be another pipe right there. So I would be losing more than what I would gain, because I'd be in the same problem having 50 foot, and I would certainly-- The

third pipe on my land is right on the border, so I would certainly gain total access to that pipe. That would be totally mine, it wouldn't be in debate anymore. I'd gain this fourth pipe. So that was ridiculous. There was no way we'd get around that.

So then Jersey Conservation Group -- I forget their name exactly, but they put in a bid. The first bid was \$5000 or \$6000, and they came back with a bid for \$15,000. The State said, "Well, that in effect is a fair value for the property." We had given them an appraisal we had done a couple of years earlier, and it was at \$75,200, I believe. They said \$15,000. What's wrong? So we decided we were going to appeal this on the basis of, "Hey, it isn't adjacent or contiguous, and \$15,000 is not a fair value for the property."

So meanwhile we start that process. Quite frankly, that process really should be looked at. When you go through it-- At this time, I was really dead set on documenting the whole thing. I was going to document this process and go through it from soup to nuts, because I had it with this. So I went through it, and we're still not totally through it, but the appeal process that gets the weight.

The first time we have a date-- I think I submitted that February, March. We got our first date for the end of January of the next year. The State's attorney couldn't make it -- she was on vacation -- so then it got pushed back to June. So now, all of a sudden, a year and a half later you're finally getting your hearing.

This is -- the whole process to me is extremely expensive that you go through, because you end up spending two

or three times what the State thinks is a fair value for your land, what they're offering you to begin with, just in the legal fees. Then it's just dragged out, dragged out, and dragged out.

But we did go through a discovery, which we subpoenaed certain people's records, and then we started to see what the true picture was by getting some of these records. It ends up that the conservation group, New Jersey Conservation Foundation, according to their notes, had a deal with Hunterdon County Parks Commission to turn around and sell the land right to them for the same price. They made this deal 90 days before the State ever denied my application. So we have that from their notes.

Later on we went to them, and we offered them the river banks, figuring that's what they're after, and ironically, I'm the only one on that whole river that allows people to park on the river banks and fish.

So we figured maybe that's what they want formally. They denied that and came back and offered, "Well, if you want to sell the whole 34 acres or whatever part of it let us know." That got us kind of suspicious: Who wants this land, and what's it going to be used for?

So we went further into it, and you could see the amount of -- what, shall we say, that these agencies and the State are certainly not at arm's length transaction from the correspondence. I mean, they're writing back to each other on a first name basis, little notes on faxes, etc. And these letters all contain the same mistake. At the time they were saying, adjacent properties, contiguous properties. They were also saying 12 x 12 other acres. Well, it isn't true. It's 34,

and in the Farmland Assessment, it squarely says 34 and a half acres, etc.

So you start wondering where are they getting the same information from, and you can actually track and see the correspondence, and I think I've given you some of that correspondence, where you can see them interfacing and actually having the State edit their letters going into the newspaper, etc. They're sending it in to be edited, and it's supposed to be this independent group writing a letter to the editor.

So that got me kind of furious, and then we went into it further. When we got the State's information-- Also, one of these letters you find it in, for instances, in the New Jersey Conservation's file, which is subpoenaed. But it's going from the State to them, and you don't find it in the State's file. So whatever happened to it I don't know. You subpoenaed both sets of the records, and you only get one document and both people are corresponding.

But then we got into, perhaps, the most -- one that I really disagreed with is-- Apparently, there was a meeting which was not documented between certain environmental groups and certain people within the DEP where they sat and met and decided that 20 percent, to make a long story short, was a-- If these conservation groups offer 20 percent, they would not fight that and consider it a fair value of the property. But they would not make this public, because they felt that the public would get together with the appraisers and inflate the price. Therefore, they would have to pay 20 percent more of the inflated price to get the property. That really infuriated me. I mean, having been a mayor and having gone through the Open

Public Meetings Act, etc., to find out that the State could have-- And we're going through this appeals process, of course, and we're bumping into, is this officially their policy? Or are they following their internal policy, which we don't even know about and it's purposely not given to the public?

So we haven't gotten that far, but I'm waiting to see if the State brings that up as their process or their documentation to document that 20 percent is a fair market value.

I mean, how can you go through this process when you don't know what the rules are? How many other secret-type rules do they have out there? You go through the process and you start out and everything is fine working with them according to the engineer. As soon as somebody expresses an interest in the property, it looks like the whole world has changed.

All of a sudden they get much more stringent. All of a sudden they start coming in doing more stuff. It's, like, no problem as you're going through it. Then all of a sudden there is a problem. It's almost like somebody decides, "Well, I want that particular piece of property. We can use it for something." To me it's very inconsistent the way they seem to be applying these rules. But basically that's the thrust of it.

Again, we have all sorts of-- I've got three feet of documentation on this thing.

SENATOR SCOTT: Where are you right now?

I know you have an attorney. You've hired an attorney. You've got some correspondence here, but where's the-- Has it finished in the courts?

MR. WIMMER: No, they're hung up on whether to use the testimony from our person, who did the appraisal several years ago, whether they'll have a new appraisal. Then, I think, the State is going to use a person from the New Jersey Conservation Group as their witness. I have been-- You go through this appeal process, and they subpoena you, which doesn't bother me too much, but I think it's kind of intimidating to the average person. You're appealing and you're the only one -- so far I'm the only one that has testified. I was subpoenaed by the State.

Now, obviously, I'm going to be there if I'm going through this appeal. There is no reason to go through this. (sic) But there are also, you know-- I've gotten a letter from one professional person, and they said, "Roy so-and-so is asking questions about you and your property." This type of crap is going on, too, which I think not only is it a costly process, it's unnecessary to delve that degree into your private rights, shall we say.

But I was -- I really-- Besides that, the whole appeal process becomes a joke when you look at Shinn writing a letter to The Star-Ledger way before I even had my court date. What he has in there is blatantly wrong. But what's he doing writing-- If he's supposed to have the ultimate decision on this whole thing, why is he writing to the State's, I guess, it's the largest paper with a letter to the editor before I even start the court process? I mean, I think that's very unethical.

SENATOR SCOTT: So you feel the four agencies -- five plus the county park system, and so on-- From what I read here, you're actually saying there has been collusion between the DEP and these agencies. That they've met--



MR. WIMMER: Well, there is certainly a lot of transmission of information going back. There is a lot of if -- at least what I would call "insider information," whether it's -- it could be collusion, certainly. I don't think it's -- if you're saying it for the intent of putting money in your pocket, I can't say that.

SENATOR SCOTT: Oh, yes.

MR. WIMMER: But if you're saying for the intent of getting land for what they think it should be used for rather than what you think it's used for, definitely.

SENATOR SCOTT: Okay, well, Mr. Wimmer, what we want to do this morning, we want to talk to some of the folks at DEP who are here, and maybe we'll get some answers as to what the process is, what it should be, and some other questions that I may have. So I really think, at this point, it might help you-- You've documented it very well. We do have some questions that, perhaps, will answer some of your questions, too.

Okay, so thank you very much.

MR. WIMMER: Thank you.

SENATOR SCOTT: Cathy Cowan. Do any of you want to come up with her?

Good morning.

C A T H E R I N E C O W A N: Good morning, Senator and members.

SENATOR SCOTT: You've heard some of the -- I guess -- I don't know -- accusations, whatever you want to call them.

MS. COWAN: I have.

SENATOR SCOTT: You know, I'd like to start-- I have some real-- Once again, I have some real serious questions as to what is going on.

First, why would we-- You want to make this here statement?

MS. COWAN: I would like to make a statement, if that is appropriate, Senator, because some of the statements -- I have a slight hearing problem, and I wasn't able to hear every word by Mr. Wimmer. I'd like to be sure that folks in the back can hear me.

I have some information that I believe lays out the process that we use--

SENATOR SCOTT: All right.

MS. COWAN: --and some of the questions that we received prior to today.

SENATOR SCOTT: Okay. Well, go ahead then, we'll wait for you.

MS. COWAN: Okay. I'll make this fairly short, and certainly you can stop me if you have questions during it.

Good morning. My name is Cathy Cowan, I'm Assistant Commissioner for Environmental Regulation at New Jersey DEP, and I brought with me today Ernest Hahn, who is the Administrator of the Land Use Regulation Program. I appreciate the opportunity to appear before you both to explain the processes by which we delineate and define wetlands and answer any questions that you have on other subjects regarding the Land Use Program.

The delineation and regulation of wetlands in the State and at the national level have been subject to considerable controversy and debate over the past few years. In

short, I understand that there is confusion, there are questions, and we hope at least to be very clear about what we're doing and when we're doing it and why.

In determining jurisdictional wetlands in New Jersey, the Freshwater Wetlands Protection Act -- I won't cite it -- directs the Department to use a three parameter approach. This "is enumerated" and this quotes from the law. The approach "is enumerated in the April 1, 1987 draft 'Wetlands Identification and Delineation Manual' developed by EPA," and then it goes on to say "in the State law we use that Federal manual along with any subsequent amendments thereto." The three parameters include vegetation, soils, and the hydrology, and we'll talk about those more specifically later.

When the Legislature was drafting the Freshwater Wetlands Protection Act, there were four different Federal methodologies available, one of each agency: EPA, the Army Corps, the Soil Conservation Service, and the Fish and Wildlife Service. The Legislature choose the 1987 manual from EPA, rather than the Corps manual, and we believe that was a deliberate intent to utilize the more environmentally conservative methodology.

In 1989, these four Federal agencies signed a Memorandum of Agreement adopting the "Joint Federal Manual for Identifying and Delineating Jurisdictional Wetlands." Determining that this was indeed an amendment, as required by the State law, the Department followed suit and immediately began using the 1989 manual.

The Attorney General's Office subsequently gave the Department a Legal Opinion -- this was in March of 1993 -- which

stated that it is consistent with the Legislature's intent to use the 1989 Federal manual until the others are formally amended.

In August of 1993, the Office of Legislative Services concurred with that opinion from the AG, and we continued to use the 1989 manual with the understanding that that met legislative intent as outlined.

This Committee has indicated recently to DEP that they were interested in determining whether this State was using different standards from the Federal government in order to delineate wetlands. Basically, the answer is yes, but the answer is a lot more complicated primarily because the Federal standards are in a major state of flux. So I'll provide you briefly with some background.

In 1991, the EPA proposed sweeping changes to the 1989 manual and began a rule amendment procedure by publishing amendments in the Federal Register. These amendments created all sorts of furor, and over 70,000 comments were filed on them. They overwhelmingly opposed the proposed amendment.

In the midst of this outcry, the EPA retrenched, referred the 1989 manual to the National Academy of Sciences, and asked them to review and evaluate both 1987 and 1989 manuals. This report was just released in May of 1995, so it took the National Academy several years to evaluate them. They came to the conclusion that "improvements in the scientific understanding of wetlands since 1987 and refinement of regulatory practice through experience over almost a decade of intensive wetland regulation suggest that a new Federal delineation manual should be prepared for common use by all

Federal agencies involved in the regulation of wetlands." I've provided an executive summary of this report to the Committee.

However, on January 4, 1993, an Assistant Administrator for Water at EPA signed a Memorandum of Agreement saying, "The Corps and EPA will adhere to the 'Corps of Engineers Wetlands Delineation Manual.'"

Well, this memorandum was only signed by EPA and the Corps. The U.S. Fish and Wildlife Service and the Soil Conservation Service, the other two agencies involved in the regulation of wetlands, have not publicly agreed to this change. As a result, this change was not done as part of a public process, and we did not believe that it could be deemed an official change to the manual, and for that reason, it has not been accepted as an acceptable amendment under New Jersey law.

In addition, the Department and other parties consider the 1987 Corps Manual to be an early refinement of the art of wetlands delineation. It is contradictory, it lacks specific direction in many areas, and generally is more ambiguous than the 1989 counterpart.

For all of these reasons, the Department continues to use the 1989 Unified Federal Manual for identifying jurisdictional wetlands and believes that this is consistent with legislative intent. It's premature for the Department to make a change, since the National Academy of Science recommendations are currently under consideration by EPA, and they have not yet adopted, formally, changes.

Now, Ernie is here with me to explain technical differences between the 1987 and 1989 manual, if you'd like. But before I close, I just would like to add one other item. We

recently polled a group of states to determine the process that they are using. Of 13 states who we know have wetlands programs, six of them are using the 1989 manual, six of them have rejected the use of the Federal manual and are using their own state manual, and only one has switched to the 1987 Corps manual.

So I hope that information, in terms of how the basis on which we delineate, answers some questions that we might have, and I'm open to any others.

SENATOR SCOTT: Okay.

Ernie, do you have a statement that you wanted to make on--

**E R N E R T P. H A H N:** No, I don't think so.

SENATOR SCOTT: Okay, I have a question. Are there only 13 states that have a wetlands program?

MS. COWAN: No, sir, to our knowledge -- and we had just a couple of days to prepare for this. Ernie made phone calls directly to states with whom he has had contact at a National Organization for Wetlands. So he made quick phone calls to those where he knew there were wetlands programs. So this is a poll that was a sample survey.

SENATOR SCOTT: All right. Could I ask that you contact the other 37 states to point out if they had-- That's not a big deal--

MS. COWAN: We probably -- we could do that, sure.

SENATOR SCOTT: --making 50 phone calls in a nation of 250 million, 260 million.

MS. COWAN: Right, as it was a matter of time and not of cost.

SENATOR SCOTT: Okay, then you'll have to kind of appreciate knowing what exactly they all do. We'll find out the large ones, the small ones, and so on. If you would also have it, so I would know what states have what, I'd appreciate that.

MS. COWAN: Surely.

SENATOR SCOTT: Because if we're going to take a look at all of this, we want to know what the other world is doing. I'd appreciate that.

I have a question, and I guess either one can answer this. When I first read this, we notified, I guess, five agencies, five conservation agencies: New Jersey Conservation, Green Acres, Natural Lands Trust, New Jersey Audubon, and The Trust for Public Land, the county park system, and the municipal park system. That is who we notify when there is a piece of property in contention. So why would we require a property owner to notify these people by certified letter of the availability of the land?

MS. COWAN: Well, let me take a shot at it, and if I miss something, Ernie can correct me. But under the regulations, we have identified the fact that the delineation is a very restrictive one, and we could go into detail as to what we look at to delineate wetlands. Recognizing that we would in many cases be preventing citizens from use of their property, we created in New Jersey this hardship waiver.

No?

MR. HAHN: Good. I'm sorry.

MS. COWAN: He didn't see where I was going. The hardship waiver, and in order to determine whether or not a



property owner is eligible for the waiver, we had to set up criteria for them to meet.

The alternatives, then, that are listed as criteria state, first, that we have to know whether or not they've owned the property in question from prior to the time that the law passed, pre-1987.

Secondly, we ask them to determine whether they can purchase adjacent properties to their lot in order to build. In other words, they have a lot here. Is there something in the neighborhood which they could expand, which would give them property on which they could build, that was not wetlands, uplands property?

Then, third, we asked them to offer their property to specific other neighbors, adjacent landowners, or to specific groups. I believe the list that you read is the list of groups. So that is the requirement in the law. The requirement, as you know, many times-- I heard Mr. Wimmer raise issues of with whom we met and when. Many times there are questions about the process of government, so we cover ourselves by certified letter.

SENATOR SCOTT: Well, yes. Because, you know, in condition number six, it says, they have to interest in public or private conservation organizations. Now, that's part of the criteria, the sixth criteria. That's the one part of them that-- Why would we have the owner of a property specifically tie into these organizations? What is the connection between DEP and these groups? Was there a--

MS. COWAN: Well, I want Ernie to answer that as to how we give them a list of groups.

MR. HAHN: Basically, the situation is set up in that the law sets up very specific language to grant a hardship waiver from the transition areas of the buffers.

SENATOR SCOTT: Well, that's a regulation established--

MR. HAHN: No, the law. Okay?

SENATOR SCOTT: And that's--

MR. HAHN: That's very important to realize here.

SENATOR SCOTT: I know, I want to make sure I have that right.

MR. HAHN: Right. The law sets it up.

SENATOR SCOTT: Okay.

MR. HAHN: Essentially, it sets up a task that's impossible to meet. It essentially says that you, as a landowner, are in a position that is so unique to your position, and there is nobody else in your area where you live in that position, that we should grant a hardship waiver.

Well, as we all know, there are many wetlands throughout New Jersey and associated buffers. They've set up an impossible test in the law. So what we did by regulation, not by law, is we went beyond legislative intent and opened it up so we could actually grant these waivers -- Okay? -- trying to avoid literally a takings, which is what you're here to talk about.

SENATOR SCOTT: Right.

MR. HAHN: In doing that, what we did is try to see a way where either the landowner gets to build on that particular parcel or gets some return on their investment. The idea is to approach the adjacent landowner, see if you could buy enough to

get up buildable parcel; offer to sell it to them -- some people want more open land next to them -- so you get a return on your land; or offer to the conservation organizations to see if they will make an offer so that you get some return on your property, and that is done by--

SENATOR SCOTT: At a fair value is determined in here at 20 percent -- would be fair -- according to what I read. That's been determined that that's a fair value -- a fair return on that property, is that right?

MS. COWAN: I don't know from what you're--

SENATOR SCOTT: In this particular property, the value was appraised--

MR. HAHN: On this? Absolutely.

SENATOR SCOTT: --at \$75,000, and they were offered \$15,000. That was determined to be a fair value as far as the DEP is concerned, that an offer of fair market value was offered and he refused it. Therefore, you did not grant that waiver. Am I right?

MS. COWAN: Well, I'm not in a position-- I'm not a lawyer, and I'm not in position to discuss this specific case, sir.

SENATOR SCOTT: No, no, I'm reading--

MS. COWAN: I'm happy to discuss our policy.

SENATOR SCOTT: There was an administrative hearing. Okay. But no, well, here is the thing. This is documented; this is nothing new, you know.

MS. COWAN: Well, but again, it's still in the courts.

SENATOR SCOTT: Ed Landers. Is there an Edward Landers? Who is he? I don't where he is, but he's probably the

attorney or something. But there was an administrative hearing, and from what I gather and it's in here that that's the value that was established and that was--

MR. HAHN: In this particular--

SENATOR SCOTT: The reason why-- There were two reasons why you refused the waiver. One, you said there was land available, contiguous land, even though it was a 100-foot wide railroad property. You said, "Well, he owns properties on both sides of that railroad bench," which is 100 feet, but by your definition that was contiguous, even though he can't possibly go that way. He couldn't build the house in the middle of that 100-foot piece. He doesn't own that property. That was one of the reasons why you said he cannot have the property. Can you talk to me about that? The definition of contiguous maybe?

MR. HAHN: Contiguous says "within."

MS. COWAN: Let us talk about the policy which has to do with the definition of contiguous. What I said earlier was that we ask them whether they could purchase adjacent properties. That has the same definition I believe if it's next door to it, if it's adjacent. In this case -- I don't want to discuss this case, because it's still in the courts -- but in a case of property that is adjacent, I think your question is, is it reasonable to insist that that property be buildable. If that's correct, I think your--

SENATOR SCOTT: That's one.

MS. COWAN: That's your question.

SENATOR SCOTT: That's one-- No, that was not the question, that's one part of it, yes. Why, first of all, I

wonder why I would have to buy more lots, more land when I already have land that, when I bought it, I could build on, and now somebody is telling me, "Well, buy 5, 10, 20" -- whatever it may be -- acres to fit into the new regulation." That doesn't make sense to me. But my question was on the contiguous part -- the definition of contiguous land. From what I read in here, this property is separated by this railroad right-of-way which is about 100 feet wide.

MS. COWAN: Well, let me just go back to our policy, Senator, which says that-- I think there is an assumption that in a development -- either there was an assumption when the reg was written -- that in a development" there are other properties which are adjacent to any given property. The assumption might be that if a person bought a piece of property without first evaluating whether or not it had wetlands on that property, because they weren't familiar with the various criteria for identifying wetlands--

SENATOR SCOTT: I don't think we even thought about that though, Ms. Cowan.

MS. COWAN: Well, but the assumption is--

SENATOR SCOTT: Because if I buy the property today, I know the land as wetlands, I know all the rules and regulations, I'm not going to be able to say then, "Gee, I want a waiver."

MS. COWAN: We're talking about people, in this case, for the hardship waiver, who purchase the property before the law passed.

SENATOR SCOTT: And he did that.

MS. COWAN: We're recognizing that they are in a hardship position. What we're trying to say in the regulations to address that was that if there is additional property available because somebody else wasn't able to build on a wetland that there may be enough upland property in those two lots to be buildable. So our regulation addresses the potential for someone who has purchased property to purchase adjacent property and expand the buildable upland area, because many people are not able to identify wetlands. There are specific criteria laid out in the law, and they wouldn't necessarily have recognized them before they bought the property.

SENATOR SCOTT: No. You know, what you just said I have a problem with, too. Let me just throw a theoretical, a hypothetical, whatever you want--

If the neighbor doesn't want to sell or because knowing my problem, knowing that I now have land that has no value whatsoever-- Now, if he were to sell me 5 acres -- all my land has a value at that point -- he may say, "Well, hey, I'm in the driver's seat." He could just ask for whatever he wants, forcing that guy -- saying, "Well, here's the deal, if you don't buy this, you have a piece of land there that you can't do a thing with. If you buy it, now you can build that beautiful home."

MS. COWAN: You're correct. That puts some burden on the person, that's why there is a third alternative. If their neighbors decide to charge them more than the original value of their properties, then they have a third alternative to offer it to other folks and to the conservation areas.

SENATOR SCOTT: Well, for what land?

MS. COWAN: Could we give you a couple of examples where this policy -- this waiver policy -- has worked and has allowed people who are given these alternatives to use their property for the purpose they wish to use it for.

SENATOR SCOTT: All right. Go ahead.

MS. COWAN: Okay. Ernie.

MR. HAHN: There is a number of properties that we can list where people have actually come in. There is a pair of brothers, the Nick brothers, who own property in Denville, in Morris County, and they were specifically encumbered by threatened endangered species habitat for their wetlands, they had intermediate wetlands up front. Therefore, they had 150-foot buffer.

Essentially, the entire property was taken up with regulated areas. They were granted a General Permit #6 to fill the intermediate wetlands that weren't connected up front, and they offered up for sale this property that they wanted to build two lots on to the adjacent neighbors. The adjacent neighbors were not interested, they had no land to buy, and the conservation organizations were not interested.

Therefore, we issued the hardship waiver, as well as the General Permit #6, and the Nick brothers did indeed get to build two houses on that particular parcel.

There is parcel down in Brick Township owned by the Schroeders. Again, they went through this process where there was no available land to purchase next door, they offered it to the conservation organizations, and they were again granted not only a transitional waiver for the hardship, but a CAFRA permit as well, and they built.



SENATOR SCOTT: All right. Let me ask you this, okay, I thought it was something specific. I'm sure that the Department has issued some waivers.

MR. HAHN: We've issued quite a few.

SENATOR SCOTT: You know, I heard a figure the last time we were here of 97 percent of the applicants--

MS. COWAN: But that was all of our permit requests for the Land Use, that wasn't--

SENATOR SCOTT: I heard 97 percent, and I said, "My God, something is wrong with the-- I must be hearing from that 3 percent, that vocal 3 percent--"

MS. COWAN: That's right, we talked about that.

SENATOR SCOTT: --"the thousands of them -- the tens of thousands of them." But in any event, I'm sure there are people who have been granted a waiver. I have no doubt about that. But I have a real problem with, first of all, the three things. One, the fact that in this particular case, out of six items, you found that he met specifically three out of and six which he did not comply with.

One, that adjacent properties couldn't be purchased and the contiguous -- you were talking about this railroad bed.

Secondly, that he has been offered a fair market value for his property. Now, of course, we know what fair market value you meant. You meant after you took it with a regulation by saying that you now need "X" number of lots, and so on, on land before you can use it.

Therefore, defining when he brought the property, and you agreed when he first bought the property in 1980 -- subdivided prior to 88. He owned the property since 1975. So,

when he bought it, he could have built a nice home on the river, and it would have been a beautiful, nice place for his children or grandchildren to come. You know, the way we used to do it a long time ago in this country. You'd build along a river and you'd enjoy it and you'd fish and all of that stuff.

But, of course, now that you've put this regulation in he no longer has that ability to do that. Now, you said, "Well, instead of putting an appraisal," which he got saying-- He had a licensed real estate appraiser, as required by law -- the guy is licensed in the State of New Jersey -- that said your property -- your lot would be worth \$75,000. Someone actually had the audacity to come in and offer \$15,000 -- I forget which group it was -- but it was a group that does this for a living, I guess. This is what they do, they go around looking for properties that they can confiscate.

Another concern I have here is, what are we doing as a State agency, what are we doing as a State. I have here this little -- I'm trying to think of who sent this. I have a ton of information, well documented, and I guess, when you're going to court, attorneys have a habit of getting pretty good information down and they document it, which is terrific for us.

"Additionally, there were several informal and undocumented telephone conversations," and I don't know these people, "between Jay Springer and Vincent Agovino, and Mr. Springer and Ronald Kennedy, who represented Roy Wimmer, and Mr. Springer and Michelle Byers of New Jersey Conservation Foundation regarding the organization's interest in the parcel. While not discussing the premises in question, the meeting was held between DEP personnel, Susan Lockwood and Ernest Hahn, and

representatives of various concerned conservation" -- I almost said conservative organization--

MS. COWAN: What a slip.

SENATOR SCOTT: "Conservation organizations in the late summer and fall of 1994 in response to those groups' complaints about DEP"... "Lockwood and Hahn advise the conservation organization, for the purpose of formulating offers in connection with hardship waivers, DEP did not expect the COs, conservation organizations, to pay properly calculated market value appraisals, assuming lots to be fully buildable. But instead, they did instruct the conservation organization to make an offer which would be the maximum price reflective of the current worth of the land taking into consideration the fact that DEP would now be looking at all waiver applications as potential inverse condemnation claims." Now, that is pretty serious.

They're saying that Mr. Hahn and a Susan Lockwood met with these folks from the conservation organizations, and I guess, I can find it somewhere here a list of them, saying that you had -- for them to make an offer, but not to make an offer on a fair market value, as the appraiser took, the real estate appraiser licensed by the State of New Jersey, but make an offer based on a predetermined number with the regulations now in place. It says, "While no fixed percentage was stated to the conservation organization, upon advice of the Attorney General's Office, DEP staff was advised orally, by Lockwood and Hahn, that the takings rule of thumb for agency use would be for safety sake roughly double the current legal standard for takings of the New Jersey law or approximately 20 percent."

Familiar with it at all?

MS. COWAN: Would you like us to address all the points or just--

SENATOR SCOTT: Well, yes, I'd like to hear something about that.

MS. COWAN: --the specifics?

Well, I'd like to start with the statement earlier that you made about taking people's property. Roughly 70 percent of the freshwater wetlands in New Jersey have already been built upon. You're right, for a number of years -- a couple 100 years -- people have been building wherever they pleased.

SENATOR SCOTT: Do you feel -- do you have a problem with that?

MS. COWAN: Oh, yes, as I discussed this--

SENATOR SCOTT: You have a problem with the fact that this -- there was a lot of blood shed in this State of New Jersey for the Revolution and Civil -- everything, all the wars and so many people that came here a couple few hundred years ago?

MS. COWAN: I'll tell you what my problem is, Senator. As an official of the Environmental Protection Agency, I'm aware of the value of wetlands to protect the water resources of the State and, in fact, of the region. It is our obligation to point out the very important environmental value of wetlands. They serve as a sponge to capture rainfall, they serve to prevent flooding, and they serve as a filter for toxics.

SENATOR SCOTT: All right, let me--

We understand that. Do you feel that is more important than people's private property rights?

MS. COWAN: Well, I'm saying to you that the Legislature -- the Assembly of this State recognized their value when it passed the Freshwater Wetlands law.

SENATOR SCOTT: I doubt that they had envisioned taking private property from individuals.

MS. COWAN: But they gave specific responsibility to the Department, and the Department, as I laid out for you, has taken seriously that responsibility by weighing the ways that we can implement it, by watching the changes -- looking for guidance from the Federal level, and continuing to measure legislative intent along the way.

The Legislature sets policy for this Department and the Department implements it. We have implemented it according to both legislative intent, to the best of our ability to interpret it, as well as the courts' direction. There have been a number of cases on this subject, and those cases have not given us direct and clear guidance in every aspect of the subject.

So again, as you read and everyone heard, some lawyers agreed on a certain percentage of value and others did not. So we're able to say, and I want Ernie to address this because you used his name in the information available, but the legislative intent, as we understand it, was 10 percent, and we have said that's too tight, too stringent. We have said, "Let's give ourselves a cushion and use 20 percent as a rule of thumb." Now, you may disagree with that. Reasonable people are entitled to disagree. That's the discussion that we should have, not

whether or not we need to protect wetlands, because that is a public policy position now, but how stringently we protect them.

SENATOR SCOTT: Well, Miss Cowan, I understand. You know, you keep saying legislative intent. That's what we're going to get to the bottom of, legislative intent, because I doubt very much that we intended to guide these groups with a bureaucratic agency telling them what they thought the best deal should be, what they should be offered. I have a real problem when we can put everything that you've mentioned over the rights of people to own property in this country, the United States of America.

We have a basic disagreement there. I guess we just look at the world entirely different. I just believe that we're entitled to own private property. That when we own land it's ours, and if the State wants it, they should pay for it. They should pay for it at fair market value, not a group getting together and determining what a better deal would be.

But okay.

Is Mr. Hahn going to address -- was at -- you were at a meeting?

MS. COWAN: Yes.

What is your question about the meeting? I'm not sure what you'd like to know about it.

SENATOR SCOTT: I would like to know-- Well, you weren't there, I guess.

MS. COWAN: No, that's right, I was probably not with the Department.

SENATOR SCOTT: But Mr. Hahn was. Did this meeting take place with you and Susan Lockwood? Did you in fact advise these people as I mentioned?

MR. HAHN: Yes, the meeting took place. As a matter of fact, there were other, more senior staff there than myself. What I'd like to point out first, respectively, is the Freshwater Wetlands Act in itself, in the preamble, says that the protection of wetlands may be important enough to overshadow private property rights. That is right in the Act itself. Unfortunately, I don't have the Act in front of me to quote to you. But evidently, the Legislature did indeed consider that when they passed that Act.

Second of all, when we talk about fair market value -- we went out to private appraisers and real estate people -- fair market value means that two people are entering into a contract knowing all restrictions that are placed on a piece of property. That means the current regulations. If I ask for a fair market value appraisal of a piece of property that has wetlands today, the appraiser should take into account that both the State and Federal law regulates wetlands and that is a restriction. The appraiser does not go back to a previous date before a statute did not exist.

SENATOR SCOTT: Well, I understand all about that. I've been in real estate for a number of years, and today, if I were to buy a piece of property, I would certainly want to know that.

Why would you meet with these particular groups?

MR. HAHN: They asked the Commissioner's office for a meeting on this particular topic.

SENATOR SCOTT: I have a problem with getting together with these groups and advising them. Because obviously, first of all, they're using money that -- donations and Federal money, State money, and so on. It's not their dollars that they're buying it for. I have a problem that we go in with these groups as a government and go work with them to buy this. I have a problem with that.

MS. COWAN: Well, as you're well aware, we're a public agency, we have a number of constituencies. We have--

SENATOR SCOTT: Why wouldn't we put it out to 100 groups.

MS. COWAN: They're all constituencies, as I understand the reg, and you can correct me if I'm wrong, Ernie. We are willing to consider any group who is willing to offer a purchase price. It's just--

SENATOR SCOTT: Have you notified all of these groups as -- the criteria for joining that list -- beyond that list.

MS. COWAN: Probably not, what probably has happened is that we stated in the regulation "conservation groups," and then, interested purchasers -- I mean, property owners would ask us, "Who do you think might be interested?" So as a result, in order to be responsive to our constituents, we developed a list and gave them a list.

MR. HAHN: As a matter of fact, that is how it did happen. We chose the major groups in New Jersey, as well as several members of that group are willing to contact the other conservation organizations that they know throughout. So we've tried to narrow it down to be at least a reasonable list for the



applicant to appeal to, and they reach out to all conservation groups.

SENATOR SCOTT: I wonder why the applicant has to send a certified letter to these people. Why would -- if you want that done, if you want them notified, why don't you notify them? Why is it the applicant's responsibility to certify mail to these particular groups? That's -- something is wrong with that.

MS. COWAN: Let me just refresh that what we did was attempt to make it possible for the applicant who owned this property, when the law was passed that restricted the use of the property, to use it. So we set up criteria for the applicant to pursue, and we said, you know, "Do these things." We can't do for them-- We can't first decide for them whether or not they want to sell their property. I don't see that that would be an appropriate role for the Department. What we have tried to do is make it as simple as possible for an applicant who wishes to use their property to find alternatives.

SENATOR SCOTT: All right. We follow that. Let's go back to the one thing in the original six criteria for receiving a waiver. Of the one where you -- I know you agree with the number six item, where the conservation groups, and so on -- that he received on the fair market value according to your information \$15,000. On the contiguous land, would that be contiguous if there was a railroad right-of-way? Why would -- if he can't possibly buy that? I don't follow that one at all.

MR. HAHN: Contiguous means any lands that the person owns within that particular area, Okay? What--

SENATOR SCOTT: Within a particular--

MR. HAHN: Yes. I'm giving you facts thirdhand, because we've been specifically advised by the Attorney General's Office that we shouldn't be discussing this specific case.

SENATOR SCOTT: Are they the ones that made the determination that contiguous means a general area?

MR. HAHN: Contiguous is in a published rule that went out for public comment -- for public comment -- several years ago.

MS. COWAN: No, but the answer is that our Regulatory Staff would have made that decision, perhaps in consultation with AG.

SENATOR SCOTT: All right.

MS. COWAN: But not-- The staff has a responsibility of making the decision.

SENATOR SCOTT: So, when I look in the dictionary and I find contiguous, my definition of contiguous really doesn't matter. I always thought -- I had it wrong -- I guessed that it was "tied into," that you could walk from one to the other. Step across the line and there it is. It's contiguous. I didn't think there would be a space in between. I thought that would not be contiguous. But I'll have to check the definition with Webster, he's wrong, but we'll find out from perhaps the AG, if they could give us a clarification. We'll write to "Encyclopedia Britannica" and everybody else. So that you're sticking to that definition of contiguous?

MS. COWAN: We're sticking to that interpretation of the meaning. What we were looking for was that we were offering an opportunity for that person to go either to purchase

additional next door -- adjacent property or contiguous property or to sell to adjacent owners.

SENATOR SCOTT: Okay, I see we've been joined by some of my colleagues. If anybody has any questions-- I know you're coming in the middle. I'm not sure if you can get caught up on it.

SENATOR McNAMARA: Yes, I'm trying to get the grasp of it, John. Thank you very, very much.

SENATOR SCOTT: It's all contained in this book, but we've gone a long way now. I know that someone else would like to testify, and I'm not sure who is the -- and somebody just--

All right. Obviously we're at a loggerheads again. It's a different view of the world, and we just have to see what we can do, whether we can do it with legislative intent, to find out where we differ. We're going to have to go back and dig into it, because I think you've gone beyond legislative intent in a lot of different ways, but we'll have to actually prove that.

MS. COWAN: Well, I certainly would like to work with you, Senator, and the members of the Committee in any investigations that you do. We have no intention of exceeding legislative intent. We have-- It is a very complex and difficult to define area. We are willing to discuss with you -- provide any information and discuss the issues with you further at any time.

SENATOR SCOTT: Ms. Cowan, I appreciate that. However, I disagree with your first statement that you don't intend to go beyond. You have gone beyond legislative intent constantly, and I don't think it concerns you until we get here.

But anyway thank you very much for testifying.

MR. HAHN: If you like, we do have the direct quote from the Act itself that says that the legislation has found that "with environmental interest that the public benefits arising from the natural functions of freshwater wetlands and from the public harm from freshwater wetlands losses are distinct from and may exceed the private value of wetland areas."

SENATOR SCOTT: Well, we're going to take a look beyond that as to who interpreted that law. See, once it's out of here, the Legislature or the Congress--

MR. HAHN: Yes, sir.

SENATOR SCOTT: --we have people that interpret what they meant. But we'll have to go into that.

Thank you very much.

We have Abigail Fair.

A B I G A I L F A I R: (off mike) I'm here, I'm prepared to testify to the value of wetlands, and I do have a copy of the law also. The law -- it's not the intent of the law that Mr. Hahn--

HEARING REPORTER: (off mike) Senator, could you direct the witness-- (indiscernible)

SENATOR SCOTT: All right. Wait. You can't testify from back there.

MS. FAIR: Okay.

SENATOR SCOTT: You'll have to-- Give your name please.

MS. FAIR: Yes, my name is Abigail Fair. I'm here to speak for the Association of New Jersey Environmental Commissions.

I didn't realize you would be discussing just one specific case, but I am prepared to provide you with information about the value of wetlands.

SENATOR SCOTT: No, no, we don't need that. We have all the books we ever--

MS. FAIR: Okay.

I'd also like to make a statement, however, which, in fact, goes to the law which was unanimously passed in 1987 by both houses of the Legislature. The law itself states that, in fact, the value of wetlands can exceed the private value of wetland areas. That is not intent, that is law.

SENATOR SCOTT: Let me say this, I didn't really want to start reading -- what is this, title what? Thirteen? I didn't really want to start reading this, but just -- let him have it, and they can copy it into the thing. But basically it says that the "public benefits arising." That's the key to it from the natural function of freshwater wetlands, and so on. That ends up in a "harm distinct from and may exceed the private value of wetlands."

MS. FAIR: That's correct.

SENATOR SCOTT: They're not saying take the land. It's quite a bit more complicated than that, but go ahead.

MS. FAIR: Well, the other thing I--

SENATOR SCOTT: One thing, we really don't want to quote the law, because we have it here. We have--

MS. FAIR: That's correct, and that's why -- I thought you were worried about the intent. This is not the intent, this is the law itself.

The other point about -- that the law does take into account is that it directs that property accessors are to take into account wetland properties when they are valuing the land. So that's another part of the law itself. Okay.

I'm a local elected official, as well as an environmental person, and we have a very serious charge as public officials. One of those is the public trust, and I think that's why we do keep on bringing up the value of wetlands is that it is a public trust for us to try to protect those resources that provide the general public, everybody, with very serious and important benefits. So I'd just like to remind us of that.

I think the other thing that would be important for you to know is that the more conservative we can be in protecting our resources, the more flexibility we provide for future generations. I think we're seeing that in the Passaic River base. In the old days we really didn't know the value of floodplains, and we built on them. The cost to repair that oversight, because we didn't know better in the centuries past is what was proposed by the Army Corps, a \$2 billion bill to try to take care of the flooding that was caused.

I think as public officials the other thing we have to look at is we don't want to pass problems from one person to another. We do have a public trust to protect those resources.

Finally, one point I would like to make is that if we are going to view property as a monetary investment, then we

should, perhaps, look at how we deal with the people who invest in stock. That also is an investment. But it does not mean that we can guarantee that investment.

SENATOR SCOTT: You're equating the purchase of a--

MS. FAIR: I'm not equating it. Some people view property as an investment, and if that is the case, it looks to me like there is a thought here that we should be guaranteeing people--

SENATOR SCOTT: Where does it say guarantee? Absolutely not.

MS. FAIR: You seem to be worried about property rights.

SENATOR SCOTT: Oh yeah.

MS. FAIR: We all are worried about property rights.

SENATOR SCOTT: We're not worried about the guarantee but the fair -- it's called "fair market value in the market place." That has nothing to do with a guarantee anywhere.

MS. FAIR: Well--

SENATOR SCOTT: Someone buying property 20 years ago for an investment, if that property turned out to be absolutely worthless today because of the market, so be it. He took a shot at it. On the other hand, when the government comes in and does something to eradicate any possible profit and make sure that he's going to lose money on it, that's a problem. That's what we're talking about. We're not going into the stock market. You go into the stock market, you know darn well tomorrow afternoon you could be broke. When we buy property for an investment, if the government stays out of it, that's a different story, and that's fine if the guy wins or losses. But

don't tell him 20 years later we changed the rules, and that's what we've done.

MS. FAIR: I think the unusual thing about the New Jersey Wetlands Act is it took several years, in fact, of a lot of negotiations to go through. It also provided for many exemptions, and recognizing your point about property rights, they tried to make sure that property owners would have the opportunity to be exempted up to a certain point.

SENATOR SCOTT: I think it's interesting that everybody that's for this has never been impacted with their own property.

MS. FAIR: Oh, yes. I'm sorry. A third of my property is wetlands.

SENATOR SCOTT: I would like to see somebody that losses their money on property that they can't use come up and say, "Gee, I'm happy that it happened." I guess there is some people that might -- there might actually be somebody that says they're very happy because they lost their property. I don't know but--

MS. FAIR: Senator Scott, I do have a third of my property is wetlands, and I am benefitted by the fact that the tax accessor takes that into account when I pay my taxes.

SENATOR SCOTT: No, I don't think so. I'd say, according to the way they do it, if you're-- Are you a local councilwoman?

MS. FAIR: Yes, I am. But this was done many years before I became an elected official. I have floodplain and wetlands.



SENATOR SCOTT: Now, are you paying the taxes on the full value?

MS. FAIR: I pay taxes on the accessed value.

SENATOR SCOTT: Okay.

They don't take into consideration the wetlands?

MS. FAIR: Of course, they do, they have to by law.

SENATOR SCOTT: Really? Okay. There is an awful lot of people who don't get that vacuum, believe me. They pay for it based on the value that the accessors thinks -- they never worried about the wetlands.

Thank you very much.

Jack Huggins.

JACK G. HUGGINS: I have some papers that I would like to pass out to--

SENATOR SCOTT: What you'll have to do is sit down in front of the microphone. You'll have to state your name, and then you'll have to get your statement out.

MR. HUGGINS: My name is Jack Huggins. I live in Winslow Township, Erlton, New Jersey, which is in the Pinelands, and I also own a piece of property in Shamong Township.

I have been dealing with the Pinelands Commission since 1981 on both of my properties. I would like to pass out a few papers to the Senators.

SENATOR SCOTT: Okay, Mr. Huggins, I know you testified in--

MR. HUGGINS: Yes, sir, I did.

SENATOR SCOTT: --Ocean City. If you could, because we are going to be running short of time -- we have someone else who would like to testify on this, we have another hearing -- if

you could make your statement. We have most of the information, I think, from you, or you can give it to Pat Tourpy and then we can--

MR. HUGGINS: All right. I would give him the papers and I would like-- I did not go into it fully, Senator, at the other place, because you were the only one that was there.

I would like for the rest of the panel to have heard it, but now I only have a couple-- I didn't sign up to speak until some of the other Senators came in.

SENATOR SCOTT: Well, that's not your--

MR. HUGGINS: And I'll have some excerpts--

SENATOR SCOTT: You have to speak when you're up here whether they're here or not. Senators can come and go as they--

MR. HUGGINS: All right, let me give you these. These are engineering tests that I went through with the Pinelands. It cost me in the neighborhood of \$4000. Three different borings on the same property, because they sent two people to the property that, to me, were not qualified, they were not engineers. Yet, they took their word over mine. They had my maps prior to their borings. They said they did not have them, they did have them.

I have documentation from the court, the judge, the Administrative Court of Law. I was trying to get restrictions removed from my property. I don't know if I brought this up the other night, but I was told if I would purchase a piece of property-- I was forced to purchase pieces of property. They were talking about purchasing property. I either had to purchase a piece of property, or I would not get a waiver. That was the final line with this staff.

The staff is arrogant, difficult to deal with. They're masters of the roadblock. If you do prove them wrong, which it cost me \$4000 to do it, and I finally had to end up getting backhoes and digging two 10 foot holes with two engineers, and that was the third digging to prove them wrong.

Then when I did prove them wrong to remove a restriction of putting those septic systems with three feet of fill buried in the front yard, it took them 54 days to answer my letter. To give me that -- to remove that one restriction. This process took 11 years out of my life. That is why I'm here.

SENATOR SCOTT: I understand.

MR. HUGGINS: The Pinelands staff is unconscionable. Terrence Moore usurped too much power. He is a judge, jury, and executioner. The reason I'm here is not for myself, it's for my kids, and the people who come after me. I'm 75 years old and have nothing to gain, not from the Pinelands or from anyone else, but I hate to sit by and see this dictatorial power over the people of the Pinelands continue and continue, and we had nowhere to turn. I had no one to go to. If you want to contest, you go back to the Pinelands, you go back to Terrence Moore and his arrogant staff.

I understand there are 18 new things that they came out with to change and make it easier. They're 15 years too late, and the man who executed all of this should be removed from office and that is Terrence Moore. When you get rid of cancer, you have to cut it out. You will never change the Pinelands bureaucracy and dictatorial powers until that man is removed along with his incompetent staff. I have everything

documented. I have folders like this on my trials that I had to go through.

I'm sick and tired of it. I lost 11 years. A lot of people lost 15 years. Some of them have passed away, some of them have moved away. It's too late for these people to pass rules after 15 years. The people who run it should be removed, period.

SENATOR SCOTT: Thank you very much. We will certainly take this into consideration.

We have Tom O'Neil.

T H O M A S V. O ' N E I L: Thank you, Senator Scott and members of the Committee.

My name is Tom O'Neil, I'm with the Marcus Group. We represent the National Association of Industrial Office Parks, basically the commercial and industrial real estate development sector in this State. We did represent them at the time the Freshwater Wetlands Act was passed. I think I can share with you some historical insights on that Act as you try to grapple with the question of legislative intent.

First, I want to tell you that our organization supported the Freshwater Wetlands Act that ultimately passed. We did because a gun was at our heads, as it was at the heads of the Legislature. The Governor had ordered a moratorium on all wetlands development. There wasn't a lot of time for careful deliberation. What I hear, the Legislature might have intended this particular manual or that particular manual.

Senators, it wasn't like that. There was a lot of pressure to move very quickly. What I think was the general legislative intent was that we would have a system of

delineation and classification where you'd have some wetlands that might technically be wetlands, but everyone would recognize they were of low quality and low value. You would have some of high quality and high value, and the vast majority of wetlands -- this would look like a bell curve -- would fall in this middle area where property owners would have some reasonable opportunity to use that property, to develop that property. There might be tradeoffs involved. There might be mitigation involved, but I think the legislative intent was for a more reasonable and rational system of qualification, not a 1987 manual of this versus that. I don't think that the Legislature focused so much on one particular document or another as much as it focused on a reasonable result.

I think that bill did end up as intending to be a pretty balanced compromise between environmental and development interest. I think what's happened over time is, instead of that bell curve, we've seen a classification process that pushes too much land into the nondevelopmental area at all.

I had hoped to have with me today Lloyd Tubman, an attorney for the organization, who participated in many of the legislative and executive negotiations sessions that were held. A lot of the action took place in the Senate. Then Senate Majority Leader Dan Dalton pulled many of us together. There were heated negotiations with the Department, with the Governor's office. She is unable to be here today, because of a court action, but what I would ask, Senator Scott, with your permission, if we might submit something to you and to the Committee in writing on this.

SENATOR SCOTT: Yes.

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MR. O'NEIL: I think it's an important issue. I applaud you for taking another look at it, because I think there are areas where the Department has strayed from what was the intent of many of us who negotiated that Act and many of you who voted upon and considered it.

SENATOR SCOTT: Tom, if you would, Ms. Lloyd, I'd like to meet with both of you.

MR. O'NEIL: We would be pleased to.

SENATOR SCOTT: If you can call my office and schedule it, we'll sit down and go over it. I'm very much interested in hearing what had happen, and so on.

MR. O'NEIL: Thank you very much.

SENATOR SCOTT: Does anybody have any questions?

Thank you very much, Tom.

This part of the hearing on the Wimmer case is concluded and now we'll--

All right. We'll begin the hearing. Where is the-- This is it here, ACR-121.

Why don't we start. I guess we're all set.

Assemblyman Warsh, did you want to testify?

A S S E M B L Y M A N J E F F W A R S H: Yes, please, Senator.

SENATOR SCOTT: Okay, please, you can start the hearing off.

ASSEMBLYMAN WARSH: Good morning, Senators, and thank you very much for scheduling this ACR-121 in as swift a manner as you have.

We have a major problem on our hands, colleagues, with respect to this issue, and I'll tell you why. Let me just get

out my regs here. Here we go. Now, as you know, I Chair your counterpart Committee in the Assembly, the Assembly Regulatory Oversight Committee. I personally, just by way of background, have had 10 years of experience now as an Administrative Law Attorney, having written regulations for the Department of Human Services and the Division of Alcoholic Beverage Control over a period of four years. I know the Administrative Procedures Act inside and out, something that I don't believe the Department of Insurance has demonstrated a respect for, colleagues.

When you look through with respect to this issue, this regulation, while well intentioned, has a dramatic impact not only on driver's safety in the State of New Jersey, but on a very viable and important industry in New Jersey, and that is the small body shop industry.

As we all know, the Regulatory Flexibility Act requires an administrative rule making agency to anticipate the impact of a regulation on small businesses in the State of New Jersey, and there was a reason why we did that, because, we, in the Legislature, are very cognizant of the fact that one of the major engines of growth in the State of New Jersey is small businesses. Small body shops are an important segment of the small business sector in New Jersey, and it is one that we have to with all of our might protect.

The Department of Insurance, when they first promulgated this regulation, chose to look at the regulatory flexibility analysis as to how it would impact a small insurance. Now, that is one of two things that is incompetent or it is disingenuous, and either way it is something that should be regretted wholesale by this Legislature, and it is

something that the Assembly has already acted on to release from my Assembly Regulatory Oversight in the full floor -- full House vote of the General Assembly.

It's laughable. When the Department of Insurance repromulgated the regulation, they did examine in a very cursory manner the economic impact on small body shop owners. "The auto repair industry" -- and I'm quoting from "Economic Impact" -- "The small auto body repair industry may experience a decrease in total revenue." They indicated that "as a result of choosing the optional network, physical damage coverage will represent a dollar for dollar reduction in the aggregate income to approximately 2300 auto body repair facilities presently licensed in New Jersey."

When former Commissioner Karpinski testified before my Assembly Regulatory Oversight Committee, he said, "The reason why we're doing this is that it worked well in Florida and it worked well in Pennsylvania." At that point, I questioned Commissioner Karpinski, or former Commissioner Karpinski, and I had stated, "Would you please present that information to this Committee." Because let's face it, there is no better information for us to have on hand than the experience in similarly situated states or at least other states. That information request has been before the Department of Insurance for six or seven months now. We have yet to see that. Yet, this Department has seen fit to move ahead with this regulation, and I find that to be bad government.

I consider that the reason why we have ACR-121 before you is that we need to proceed, and we need to send a message to this Department of Insurance that not only is this bad policy,



but that it is bad procedure, that the Administrative Procedures Act is not being respected, nor is the Regulatory Flexibility Act.

That's the procedural side of this. What I've just done and there's going to be a whole host of people behind me that you're going to hear from, but just off the top of my head and my experience, just as a driving consumer in New Jersey--

The collusion -- the potential for collusion that will exist between the insurance industry -- certainly, an industry known for it's collusive practices in the history of this country -- is enormous. Because, in this instance, a very competitive industry will suddenly become not as competitive. ABC Insurance Corporation and hypothetical will be sending all of its customers to shop number one. When they do that, where is the advocate for the consumer?

If God forbid, Senator, you were involved in an automobile accident and rolled your vehicle into or had it towed to an automobile body repair shop, when we are all out with it a couple of weeks later, it's shiny, it looks new, and it doesn't shimmy. Well, we feel good about that. We feel that we have a vehicle that has been repaired properly, that we could put ourselves into and our loved ones and have trust in the product.

But the reality is that is just simply not true and what you're going to hear from the industry is that the collusion that the insurance company will be able to produce on automobile repair shops is, "Don't repair the crumble zones, because it's too expensive to do, move on. Put an already used air bag into the driver side and the passenger side. Use

aftermarket parts." At every single critical juncture, the consumer will be unaware of the dangers that now lurk below that hood, because what do we know as consumers. It's shinny, it drives. These people are trained; they must do the right thing.

The one person who stands up for the consumers is the independent body shop owner who, and it's happened to me, will say to me, "Hey, Jeff, you're getting screwed here. Because what's happening is they're not repairing this, they're not repairing that. They're putting aftermarket parts in there. You have to get on the phone, you got to get a hold of your insurance broker, and you have to tell him that you're not going to stand for this. That you're paying \$2000 or \$2500 a year, and you want the parts changed, you want dealer parts, you want the crumple zones repaired, you want new airbags put back in there so that your family is properly protected." With this Department of Insurance regulation, from a policy prospective, that independent, objective viewpoint will no longer be injected into the process, and the one person that we, as legislators, are sworn to protect -- that's the citizens of the State of New Jersey, not insurance companies and, certainly, not Department of Insurance bureaucrats -- are the ones that are going to get most hurt in this process.

Senator, I know that you've been hearing testimony for an hour and a half now, and I can go on for another hour and half, but I will not out of respect for this great House.

I would appreciate, Senator, if I could sit at the table while the other people who are interested in testifying would speak.

SENATOR SCOTT: Absolutely. Anybody have any particular questions for the Assemblyman? (no response)

If not we'd welcome you to sit there--

Is there anyone here -- I don't have anything from the Department of Insurance. Are they here?

UNIDENTIFIED COMMITTEE MEMBER: I'd like to hear from them next.

SENATOR SCOTT: Marc, do you want to give us your names?

M A R C V. B U R O: Thank you, Mr. Chairman. Thank you, Mr. Chairman. My name is Marc Buro.

SENATOR SCOTT: All right, sit down and talk into the mike. We're going to record this for prosperity. Your great-grandchildren are going to listen to this, so they'll be able to read about it.

MR. BURO: My name is Marc Buro, I'm the Director of Legislative Affairs for the Insurance Department. To my left, is Deputy Insurance Commissioner Tom Grillo, and to my right, Regulatory Officer Dwayne Tolbert. I appreciate the opportunity to come before you and talk about this very important issue.

I guess, just a few opening comments, if I might, then we can get into the substance of the regulation and the Department's activities on this proposed rule as the Chair wishes.

The regulation and the concept of body shop networks was developed by the Department precisely to respond to a concern the consumers have been crying out for, which is some affordable choices on their auto insurance. This concept, if you will, if implemented, will allow consumers to choose a way

to save on their premiums immediately. An option that is totally at their discretion.

The Department envisions this not as a new mandate that would force any driver in the State of New Jersey to be required to obtain coverage through this particular arrangement. Quite the opposite, it is the ultimate in choice, from our prospective, in that the ultimate choice as to whether or not one selects this particular option lies with the consumers themselves.

If they're not interested in partaking in physical damage repairs through a particular network, they don't choose the option. If somebody is interested and they -- and the premium savings is attractive to them-- The cost of auto insurance, as we all know, is the highest in the nation here in New Jersey. If they're interested in saving, excuse me, some money, obtaining some relief from the cost, then they can go ahead and choose this particular option.

On the regulation now and perhaps more to the substance of the process that the Department has been following--

SENATOR SCOTT: Go ahead, Senator.

SENATOR McNAMARA: Just a question on that point. What you're stating is that they would not be obviously forced to choose this option. But they would be offered the option as a money saving. Will they also, at the time when they are told that their premium will drop, will they be told that they will not be using original equipment parts? Is that going to be part of the notice? Or is it going to be told, you know, "Don't worry there is no pain, this is easy, you're going to save some

money. Trust us and everything will be done according to Hoyle." I have a particular problem with that after 30 years of experience in a business. I didn't own my own body shop. I owned a dealership though.

Quite frankly, I would not use certain body shops that were suggested by certain major insurers in the State, because of the lack of quality, the standard was not as high as I would expect for my customers, and also the fact that they would not use original equipment parts for replacement parts.

SENATOR SCOTT: We want to continue with your testimony.

SENATOR McNAMARA: But I'd just like an answer to that question. Are they going to be noticed to that fact?

SENATOR SCOTT: You're going to answer that?

D W A Y N E T O L B E R T: The manner in which cars are repaired you're thinking the new regs change that process. There is a reg that's in place that talks about -- that requires that the car shall be repaired -- I mean, I'm sorry, "restored to the condition that it was in prior to the loss, at no additional cost to the insured and within a reasonable time, if the repair facility does not," you know -- that is part of a current reg N.J.A.C. 11:3-10.3. We didn't change that provision; that provision is still in effect. There is nothing in the new amendment that changes that provision.

SENATOR McNAMARA: But the fact that the shops that are going to then be part of this new process, are they in fact going to be required to replace with original equipment parts, or is that something that is not even addressed? So that the

person -- what I'm interested in is, the person who is buying the pig in the poke should know which pig they're buying.

The problem is when you offer to people-- I've had people who've contacted my office on health HMO's that have stated that what they bought isn't what they're getting, but they're locked in because they don't have an option.

My problem is, if somebody wants to save dollars by cutting their cost and sacrificing certain things, that's they're prerogative, but it shouldn't be that they're led into believing that "A" and "B" are identical.

MR. TOLBERT: If your question is whether or not aftermarket parts are accepted currently in repair facilities when they're repaired, the use of aftermarket parts is in the partial loss regulation. There is nothing that changes that now. This current reg does nothing to effect the standard that deviates from the current standard that -- is used now to repair automobile faci--

SENATOR SCOTT: So then your answer to the Senator is that they don't necessarily have to use the new parts, and so on, original equipment, and so on.

MR. TOLBERT: There's nothing that requires you to use new parts now.

SENATOR SCOTT: That's a real big problem that we're having with this whole idea. If someone, as Senator McNamara said, if I walk in the shop and say, "Look, I'm paying, I don't have collision -- I don't have collision insurance. Let's sit down and talk. Can we go buy second market or whatever -- aftermarket parts? I need to cut the cost." That's my deal, I'm making that deal on my own.

But if the insurance company, because I bought for \$20 bucks a year-- If I bought this reduction and the HMO -- whatever you want to call it -- in auto insurance, now I have to go by what they tell me. They're certainly going to tell -- the insurance companies are certainly going to tell any garage or agency that repairs cars, "If you repair under ours, here's what we're going to pay you and you better use these secondary market parts."

Let's keep going. I want to hear--

Yes.

MR. TOLBERT: Just in response to that, I'd like to say that currently the reg says in terms of adjustment of partial loss-- The provision is 11:3-10:3(g)2, and it says that it should "cause the damaged vehicle to be restored to the condition that it was in prior to the loss."

Once again, all I can tell you is that provision has not been changed. Nothing in the current regs that we adopted nor the proposed amendments changes that standard. That is the standard that we're operating under now, and that standard has not changed and does not change--

SENATOR ZANE: Senator Scott.

MR. TOLBERT: --as a result of these particular rules. These rules do nothing to change that standard.

**T H O M A S F. G R I L L O:** Senator, if I may respond.

SENATOR SCOTT: Senator Zane.

SENATOR ZANE: Have you given some thought that if in fact your regulations were adopted and approved and implemented that you ultimately would change those regulations that you just talked about. Has that been discussed?

MR. TOLBERT: In terms of changing the standard?

SENATOR ZANE: That's right.

MR. BURO: To lessen--

MR. TOLBERT: To lessen the standard?

SENATOR ZANE: That's right.

MR. BURO: No, there has been no thought to lessen the standard of a quality of repairs as a result of the regulation.

SENATOR ZANE: What is the average savings you anticipate per vehicle, per year?

MR. BURO: Depending upon the price of the level of value of the car--

SENATOR ZANE: I understand, that's why I said average.

MR. BURO: --between \$40 and \$70 savings to the consumer as a result of this option.

MR. GRILLO: Senator, if I just may address Senator McNamara's--

SENATOR ZANE: Well, go through the Chair.

MR. GRILLO: --response about the buying the pig in the poke. I conducted the public hearing, and I took the testimony regarding this regulation from all sides. One of the facts that came out in the testimony was that a consumer, even if he chooses this option and had an accident, he would still, if he was not satisfied with the shop or the type of shop that he had to take his car to, could rescind that option and take his vehicle to the shop of his choice. He would certainly--

SENATOR SCOTT: Even though he chose it and after the fact of having an accident and now he went to the shop recommended by the insurance company, he can say, "I don't like



it, I'm going to rescind and I want the other option. I will pay the extra \$40 to \$75 premium for a pro rata" -- whatever it may be at the time -- "and have my option to go with a different"-- Is that what you're saying?

MR. GRILLO: Yes, that was part of the testimony I heard during the public hearing.

MR. BURO: It's very--

SENATOR SCOTT: Senator Ciesla.

SENATOR CIESLA: Is that what you're saying, or are you saying that you would allow the individual to go out of network and pay the difference on what you allow on the actual repair to the car and what the repair to the car would be at the independent, not networked, body shop? Are you saying that you're going to allow the individual back in, pay the premium savings differential, and then he would be allowed to go as if he never selected the HMO type coverage in the beginning?

MR. BURO: I think the specific answer to the question, through the Chair, would be that it would depend upon the filing that a carrier who was interested in providing this option to its insurers would file and ultimately be approved by the Department. There could conceivably be arrangements such as the one you articulated. There could conceivably be arrangements which mirror the process that is currently in place with a health care PPO where, as you alluded to, there may be a differential between amount reimbursed to the body shop and an out-of-pocket cost by the consumer. None of those situations, however, could hit the street and become reality until the Commissioner of Insurance approved the overall rate filing. So

not to be funny with the answer, but I think your question alluded to two possible answers.

SENATOR CIESLA: But wouldn't you agree that the economic incentive for the individual to have an arrangement that you suggested that would allow the individual to only pay the premium differential would not be sufficient in order for them to be involved in the process?

MR. BURO: I think that question would be answered by each individual carrier. We've had comments from quite a number of insurance companies with respect to this program. Some companies are interested, others are not, because of primarily what you said. In their own corporate decision, they don't feel that giving up \$50 per vehicle on incoming premium is worth it to them. So again, there are certain situations where it would work and others where it wouldn't.

SENATOR CIESLA: Would there be a statement when the individual bought the coverage that would give them that particular option that would say, "Should you be dissatisfied with the type of coverage provided, you will have the option of paying premium differential which is calculated to be 'X,' which would allow you to have coverage at any body shop"?

MR. BURO: Clearly, the Department is absolutely committed to making sure that this option, as well as a number of other options that we are in the process of developing or recommending for enactment, would be reflected on the buyer's guide and the coverage form. So there would be in the policy form itself.

SENATOR CIESLA: But an insurance company could select, in their filing, to not comport with those guidelines.

MR. BURO: That would not be an optional -- an option of the insurance company. We regulate the buyer's guide.

SENATOR CIESLA: So then are you saying that in effect you will have that information available to the consumer at the time of purchase in a way that they'll be able to understand it?

MR. BURO: Absolutely. Absolutely.

SENATOR SCOTT: Let me ask you this before-- I want to make sure, because this is-- I can visualize everybody -- everybody -- every insurer taking that option, because they're going to save \$70 with revisal, then if they have an accident, in that year all they have to do is say, "Well, okay, I don't like the deal, so now I'm going to pay the \$70 and I'll take my other option."

Are you telling me the insurance carriers are going to abide by that? I can't see that for the life of me.

MR. BURO: With all respect, if I could reiterate my response before. That particular situation which you're talking about right now is one of a myriad of options that an insurance company could conceivably file with the Department for approval. I'm not suggesting that an opt out of the network at the time of loss would be as simple as paying back the premium savings you achieved.

SENATOR SCOTT: Okay. All right.

MR. BURO: It's one of a number of situations that the Department would have to review and approve.

SENATOR SCOTT: Okay. That's not an option now.

MR. BURO: Correct.

SENATOR SCOTT: I want to make very sure of that, because if that was true, then it would be our obligation as

legislators to tell all our constituents, "Hey, don't pay the \$70. If you don't have an accident, you're ahead of the game. When you do have one, pay the \$70."

I'm sorry, Senator Sacco.

SENATOR SACCO: I'm even more cynical. I see -- and I know that's hard to be. I see that people will be eventually paying more for choice, and those who supposedly get the discount will be paying what everybody else will be paying today. This is somehow going to jack the rates up. Choice will be, "Well, you're paying more because you have choice." Those people who are paying \$50 less, that \$50 will be in those premiums in a very short time. This is going to escalate the scale.

SENATOR SCOTT: Jeff, did you respond?

ASSEMBLYMAN WARSH: Just with respect to one point about assuring workmanlike quality work on the cars. The regulations as proposed N.J.A.C. 11:3-10A-3(b)3. It says, "Insurers shall ensure that the standards used to determine the quality of the workmanship and parts used are consistent with the requirements for the traditional market." What the hell does that mean?

SENATOR SCOTT: What does "traditional" mean?

ASSEMBLYMAN WARSH: How does that protect automobile drivers in the State of New Jersey? That I don't know. With respect to the earlier point made by the Department of Insurance that it would be restored to its earlier shape, a) How would a driver know that?; and b) It's got airbags when it came in here, it's got airbags when it's going out. I mean, that's the same thing when, in reality, it would be very easy for insurance

companies -- and they do it now to urge their network -- networks exist now, understand that -- for their network body shops to use used airbags. I think that is a real cause for concern. That should be a cause for concern. It seems like it is in this House as well as in ours.

SENATOR ZANE: Mr. Chairman.

SENATOR SCOTT: Senator.

SENATOR ZANE: You are Deputy Commissioner, is that correct?

MR. GRILLO: Yes, sir.

SENATOR ZANE: Did I not hear you say that when you conducted the public hearings, one of the provisions you were talking about was that people would have the opportunity, if in fact there was an accident and they were going to one of the designated companies, if in fact at that time they wanted to change that, they could at the time of an accident? Didn't you say that?

MR. GRILLO: Yes, yes, through the Chair. Yes, Senator--

SENATOR ZANE: Well, didn't the gentleman next--

MR. GRILLO: I did take testimony on that.

SENATOR ZANE: I'm sorry.

MR. GRILLO: There was testimony from witnesses who appeared before me who testified that that is part of the regulations and that option would be available.

SENATOR ZANE: Well, unless I misunderstood, the gentleman next to you disagreed with that. Did he not?

MR. GRILLO: No, he did not, Senator. Respectfully--

SENATOR ZANE: Now-- Well, what is it?

MR. GRILLO: I believe--

SENATOR ZANE: You can or you can't?

MR. GRILLO: I believe--

SENATOR ZANE: Let me give you a hypothetical. You just answer yes or no.

I have opted to save the \$40 to \$75. I have an accident, they tell me -- my carrier says you've got to go to XYZ body shop, and I say, "I know too much about them, I don't want to go there." Can I then go to my agent and hand him a prorated \$40 to \$75 and go wherever I want? Yes or no?

MR. GRILLO: I can't answer that questions with a yes or no, Senator.

SENATOR ZANE: I thought we just resolved that.

MR. GRILLO: I believe, Mr. Buro, testified -- I believe Mr. Buro testified that that question would ultimately be answered and responded to in the filing that an individual insurance company would make with respect to implementing--

SENATOR ZANE: Didn't this gentleman sitting next to you say, "We regulate, we tell them what they'll offer." Didn't you just say that?

MR. BURO: Let me state this again.

SENATOR ZANE: Just a second, would you answer my question? Didn't you say that?

MR. BURO: Absolutely, the Department regulates the filings--

SENATOR ZANE: Well, do you or don't you regulate them as to what they will or will not offer?

MR. BURO: The consideration for a consumer who opts out of a network at the point of loss is absolutely regulated by

the Department of Insurance. The carrier could have one of a multiple range of considerations, if you will: a return of premium; an agreement that the consumer would pay the differential between what the insurance company would pay an in-network body shop for that repair versus what an out of network shop would charge. It's very, very similar to what we've all experienced and what we've all dealt with on PPO--

SENATOR SCOTT: We're getting mixed--

SENATOR ZANE: Bullshit is what you're getting.

MR. BURO: --in health insurance. There is nothing new here. It's a very similar concept. Consideration is what a consumer would have to pay at the time of loss if they opted not to abide by the network. That consideration, again, could take form in many different ways.

SENATOR ZANE: Of course, that is not what you said.

MR. BURO: If I misspoke the first time, I apologize. But I believe I was consistent, and let this statement reflect what I intend to say.

SENATOR SCOTT: Is there anybody else confused?

SENATOR CIESLA: No, now I understand.

My concern with respect to what they're suggesting is that those alternatives that will be contained in the filing that will be approved by the Department are going to be somewhere buried, not very conspicuously, in a policy offering that frankly a consumer is not going to be able to prominently understand, I'm afraid. It won't be until the time of loss that they'll find out that to opt out of a network, it will be enormously expensive, perhaps, if the insurance company selects as their only alternative, which is approved, that they'll be a

return of premium. So they'll be left with the alternative of having a wrecked car, body shop XYZ, or here's your money back and have a nice day, your policy is cancelled.

SENATOR SCOTT: Does anybody have any more questions?

SENATOR ZANE: Mr. Chairman, I don't have any questions, but I have a meeting at 12:00. I would like to vote to release the bill. I'm going to leave you my vote. I'm voting to release.

SENATOR SCOTT: Thank you.

We can get on with the other -- there are people who would like to testify and we'll keep going.

Thank you very much.

Fortunately, we're having it taped, so we'll be able to try to read through what was just said. I'm sure you'll get a copy and you can find out what you said, too. Because some of the things kind of went back and forth.

MR. GRILLO: Thank you very much for the opportunity, Senator.

SENATOR SCOTT: Thank you.

I'd like to call, Mr. Lou Melango, President of New Jersey Auto Plan.

I would suggest, by the way, that if you have a statement, in the interest of time, that you make the statement and we'll go from there, because we are being pressed for time.

What is New Jersey Auto Plan? Would you -- well, when you sit down, you can give your name, and so on.

If you'll introduce yourself.

L O U I S M E L A N G O: Thank you, Senator. Good morning, for like five minutes.



My name is Louis Melango, I'm President of New Jersey Auto Plan, and we are a managed auto care company. I would like to thank you, first of all, for the opportunity to express our opinions regarding managed auto care and try to explain exactly what managed auto care is from the point of view of the consumer and the insurance industry and the body repair industry.

I think the simplest way to truly understand managed auto care is to understand how the collision claims are presently being settled. Assemblyman Warsh brought up a good point earlier when he said, "We should be looking into what is happening in other states with managed auto care." I'd like to carry that a step further, if I may, by saying let's look at what's happening in New Jersey under the present system regarding the settlement of automobile physical damage claims.

The two biggest consumer complaints regarding collision insurance are the high cost of premiums and the long delays before the claims are settled. These complaints have been significantly reduced with the implementation of direct repair programs.

A direct repair program is simply a contractual relationship between an insurance company and a repair shop that is designed to provide consumers with efficient, cost-effective claims services.

The recently adopted regulations regarding managed auto care simply clarify these plans and provide for a premium discount and operational guidelines.

To summarize, direct repair programs are ongoing and have been in the State of New Jersey. Managed auto care is the next natural step.

I'd like to compare the two a little further.

SENATOR SCOTT: May I ask one thing?

MR. MELANGO: Certainly.

SENATOR SCOTT: If your company -- you're probably an excellent company -- if you were cut out, if New Jersey Auto Plan was not on the approved list of most of the carriers, would you feel the same way?

MR. MELANGO: Yes, I would.

SENATOR SCOTT: Even though they put you out?

MR. MELANGO: Absolutely.

SENATOR SCOTT: Okay. You don't mind giving yourself a little road cut.

MR. MELANGO: Well, we're doing it now.

SENATOR SCOTT: No, I'm saying -- but that would be a different ball game.

MR. MELANGO: No, I feel strongly enough towards managed auto care as an honest approach to increase the level of service and reduce the premiums, as well as provide for a quality repair environment, that I would like to see it go forward whether or not we were part of the program. That's based on 30 years in the collision repair business and the last six study in automobile physical damage.

Going back to comparing these two programs as we perceive, I'd like to point--

SENATOR SCOTT: Mr. Melango, we have your statement, if you could summarize. I hate to do it to you, but you know, you've made a good point.

MR. MELANGO: I'll run right through it, Senator.

SENATOR SCOTT: I'd appreciate that.

MR. MELANGO: I'll cut it in half.

Right now, approximately 80 percent of the consumers involved in the collision repair asked to be directed to a repair shop by the insurance carrier, 80 percent. The overwhelming majority are satisfied with the outcome of the claim.

I'd like to just quickly compare these two plans. We're comparing direct repair programs, once again, which are established and accepted and ongoing in the State of New Jersey with managed auto care.

Here we go: Both plans rely on contractual relationships between the repair shops and the insurance companies. Both plans direct the insurer to preferred shops. Both plans provide for more efficient, cost effective claims handling. Both plans must follow established guidelines regarding repair quality and inferior parts usage. I need to expand on this just a bit. The aftermarket parts issue -- the poor quality of parts has been an issue. I've mentioned this many times before, and I think it's a hard point to comprehend, but I'll try again.

Under the current system, and I believe under the current guidelines, the insurance companies have the right in some instances to use aftermarket quality parts -- aftermarket repair parts -- as long as they meet certain standards. It's not going to be any different under managed care. None of the rules change. Managed care and direct repair programs are so similar it's difficult to separate.

There is a slight difference. Direct repair programs are offered at the time of the claim. In other words, if you

opt for a standard policy and you crash, that is the time the insurance company says, "Would you like to go to my repair shop." That's like needing your gallbladder removed and the doctor comes wheeling in and says, "Would you like us to do it here." I would much rather decide whether I want to pick my own medical practitioner prior to needing the service. Our plan allows that choice.

Secondly, the managed auto care-- I'm sorry, we'll offer that choice. The one difference in the plan is managed care offers a premium discount. We have 85 percent of the people opting to be directed to a repair shop in a plan that has proven to speed up claims and reduce cost somewhat, and the insurance companies that choose to partake in this plan are willing to provide some of the saving onto the consumer. We're doing nothing here but inhibiting a cost saving to be passed on to the insurer. I don't think that's what the intent of the lawmakers is. I just think they don't understand this plan.

SENATOR SCOTT: Well, with all due respect, I think we do understand it very well. We may have a difference of opinion on it, but we do understand it.

If you could sum up right now.

MR. MELANGO: Okay. That's it. The plans are very similar. The difference is our plan offers a premium discount and the timing of the choice is slightly different. Now, that plan is in front of the Committee now, obviously, and we sure hope-- There's a lot of research that went into this, on our behalf, on the Department of Insurance's behalf, and we've spoken to a lot of people that are interested in these types of plans. We'd like to see it move forward.

SENATOR SCOTT: Thank you very much.

MR. MELANGO: Thank you for your time and your consideration.

SENATOR SCOTT: Thank you.

Mr. Donald Scarry. I ask that-- I mean, I know you've us given enough reading here for at least a half an hour.

**D O N A L D M. S C A R R Y, Ph.D.:** Good afternoon, Senator. There is more than enough material for you to read and it's timely and it's got words like alagopsosomy (phonetic spelling) in it, and so on. You can forget the most of it.

SENATOR SCOTT: You use the KISS principle, I hope.

MR. SCARRY: Yes.

I also wanted to remind the Senator that I'm no longer on the Urban Enterprise Zone Authority. Therefore, I'm not here under subpoena. Therefore, I can recall all the details of this study. (laughter)

If you take a look at Table 4.1, which follows page 16 in the study, I'm going to take it through seven steps without explaining them, and I think you'll see what I'm doing.

If you assume that the premium reduction is \$50 per vehicle, and you assume that 50 percent of the vehicles in New Jersey go into the plan, premium reductions will be \$165 million. That will be \$165 million that will not flow into the auto body industry. That is step one.

Again, assuming that it is \$50 per vehicle and 50 percent participate, there will be some lower activity in the auto body sector. State, Federal, and local taxes will decline by \$43 million, and we can break out State and local and Federal, but I put them together for simplicity.

Again, assuming a \$50 reduction and 50 percent participation, workers' wages in the industry will decline by a net of taxes, of course, because I've taken care of those before, will decline by \$56 million.

If you go to Table 4.2, which is on the next page, and go with the same set of assumptions-- I have to explain one word "value added," that is a very simple concept, value added. If a body shop buys a headlight rim for \$10 and pays a worker \$10 to put it on and charges \$50 for the repair, the value added has been \$30. It is the source from which -- that profits come from and capital costs come from. It's essentially a source of wealth.

If you assume again a \$50 reduction for choosing the option and 50 percent choose it, 87.9, \$88 million value added losses in body shops alone. But remember that every industry in New Jersey has forward and backward linkages. In the body shop industry they are very easy to see. The body shop industry buys paint and glass and steel and plastics and rubber and other things, and the forward linkages are the butcher, baker, and candlestick maker. Value added losses in other than body shops under the same set of assumptions would be an excess of \$51 million.

What I did was I totaled those losses up without any double counting, and I said that the losses to society out of \$50 savings and 50 percent of the cars opting in would be \$237.9 million. For that we have saved \$165 million or immediately on the day that this happens a \$73 million loss to everyone.

Now, I'm not saying that that loss will stick around forever. That is the loss that occurs to society before the

market adjusts. But I want you to think about where the capital that is used in body shop industry has any utility in any other industry. I think that that will fall to zero. People who have invested human capital in body shop skills, the workers, will be on unemployment for a long period of time, may need heavy retraining money, or may permanently wind up in lower paid service sector jobs.

If there are any questions, I'd be happy to--

SENATOR SCOTT: Anybody have any questions? (no response)

Well, you know, this is terrific. I'm sure you put a lot of work into this. It looks like whatever we want to know about it, it should be contained in here.

MR. SCARRY: It has no industry data in it, Senator. It's all Department of Commerce data.

SENATOR SCOTT: There is no reference in here of the UED?

MR. SCARRY: No, sir.

SENATOR SCOTT: Okay.

MR. SCARRY: That's why I recall every page of it.

SENATOR SCOTT: Okay.

MR. SCARRY: Thank you.

SENATOR SCOTT: Thank you very much.

David Ward, Coalition for Quality Auto Repair.

Introduce yourself, please.

D A V I D B. W A R D, E S Q.: Senator Scott, thank you. David Ward representing the Coalition. With Assemblyman Warsh's permission, I will give you a copy of the legal analysis that I've done with respect to this issue.

SENATOR SCOTT: We'd appreciate it.

MR. WARD: I would make one very brief comment about it. There are two clear legislative intent issues that the Department of Insurance has really ignored. Assemblyman Warsh referred to the first one being the small business rule that requires the Department to take an approach which will minimize adverse and economic impact on the small business, and they have simply failed to do that. That's directly and contrary to legislative intent. It gives you cause and reason to seek to overturn that activity.

The second thing I will point out, which I don't think has been brought out today, is that what the Department is doing is reversing two fundamental rules which have been declared by the Legislature and by existing regulations as unfair claims practices. That is: the very fact of assigning an insurer -- assigning a required repair shop to be used by the insurer; secondly, a rule that prevents the insurer from sending the check in payment for those repairs directly to the repair shop.

Both of those things in existing law are unfair claims practices. The legislative intent is clear. That has been the law for 15 years. The Department wants to turn that upside down. There could be no clearer indication that they are violating legislative intent. That's why we're here. That's what's going on, and I think you should focus on that. The details of that are in my letter to Mr. Warsh which, with his permission, I'll give you a copy and you can look at that.

SENATOR SCOTT: Thank you, and we'll make sure everybody has a copy of it.

MR. WARD: Thank you.



SENATOR SCOTT: Thank you.

Donald Harvey, Englewood Volvo, Incorporated.

D O N A L D W. H A R V E Y: Thank you very much for allowing me to speak. My name is Donald Harvey, and I represent Englewood Volvo which is a dealership in Bergen County. I have been the body shop manager -- rather I have 25-years experience in automotive repair. I am certified with ASE, Automobile Service Excellence, and I-CAR, the Inter Industry Conference on Auto Collision Repair.

One of my many duties is to assist in the determining the actual cash value of a car at the end of its lease or at vehicle trade-in time. One of the things that has an awful lot to do with the actual cash value is, if the car had been involved in an accident, is that car repaired undetectably. If it's detectable either in an off color door panel or something that doesn't fit correctly or even residual frame damage, it dramatically reduces the value of that automobile.

I have a damage assessment sheet or rather a trade-in assessment sheet -- excuse me, I'm a little nervous -- here within my paperwork. I'd be more than happy to give it to whomever would like it -- where a customer, prior to my testifying at the meeting last week, came in the evening before with a 1991 Volvo -- rather a Saab 9000 series car. The wholesale value on that particular automobile should have been \$12,200. It had a few miles than -- a few more miles on it than it should have. With that figured in, it would have been worth about \$9000. Because of the fact that it had been repaired and not been repaired correctly, the value was dropped down to \$6500. The customer lost \$2500. When I asked the customer

where the car was repaired, he would not tell me, and I respected that and understood that. When I asked him if it was repaired by a shop that was recommended by his own insurance, his answer to that statement was yes.

When you're dealing with a shop that is getting a lot of business every month from the insurance company, the fact of using aftermarket parts comes into play very dramatically.

I have some reports here from Volvo on some tests that they have done with crash test data and corrosion tests that they have done. Volvo, as you know, has a reputation for safety development, and engineering is right up there.

Volvo introduced the three-point safety belt which is now being used in almost every automobile produced in the world.

In their lease agreement -- in Volvo Corporations' lease agreement, there is a statement, and I'll quote, "You agree to use genuine manufacturer's replacement parts when making repairs to the body of the vehicle such as fenders or doors and its major components." That speaks for itself. Any car that Volvo is going to get back at the end of a lease they want to make sure that its integrity and safety is as they produced it.

I can go on and on with many other things that that's my feeling as one of the crux of this right now. I have an estimate from All State, one of the major carriers in the State of New Jersey. There is an aftermarket disclaimer on the bottom of every estimate. That disclaimer is, "This estimate has been prepared based on the use of automotive parts not made by the original manufacturer. Parts used in the repair of your vehicle by other than the original manufacturer are required to be at

least equal in like, kind, and quality in terms of fit and performance and warranties to replacement parts available from the original manufacturer." Performance to me, is if they were crash tested.

To my knowledge, there is no data on aftermarket parts being crashed tested, and the fact that they do not hold up as the factory parts do is amplified by the paperwork I would like to present to you.

If you have any questions, I'd like to answer them, and I thank Jeff Warsh for bringing this ACR-121 into play.

SENATOR McNAMARA: Mr. Chairman, just for the record, and I appreciate the fact that Volvo-- But having been a Ford dealer for some 30 years, the quality and standards, I would suggest, are just as high as the American manufacturers. But I fully concur in what this gentleman is saying, because when we appraise cars on trade-in, the discoloration of a panel or any work that was not done up to standard severely impacted on the value of that car, and the newer the car was, the greater the impact.

MR. HARVEY: The important thing--

SENATOR McNAMARA: If it was a 10-year-old car, it's one thing, but when you're talking about 2-, 3-, 4-year-old automobiles, people can lose anywhere from \$2000 to \$6000.

MR. HARVEY: That is very important.

SENATOR SCOTT: What you're saying, Senator, in your leasing experience -- you mentioned the lease specifically says a Volvo you must have original parts by the manufacturer, is that what is general in the industry?

SENATOR McNAMARA: I'm really not -- I didn't do a lot of leasing, so I'm not that familiar with it. But I would expect so. But I can tell you that we appraised cars that came in off lease and when we did--

MR. HARVEY: They were worthless.

SENATOR McNAMARA: --they were worthless.

MR. HARVEY: Most certainly.

SENATOR McNAMARA: --if they weren't done up to standard. I can tell you that what he's suggesting that that party would not say what body shop that they were directed to go there that was like standard operating procedure.

MR. HARVEY: Absolutely.

SENATOR SCOTT: Thank you very much, and if you have something to leave, our staff aide will take that.

We have Paul Bontempo, Tom Elder, Charles Bryant, George Van Arsdall. Paul, if I can give a little advice: the KISS principal here, too, we could keep it short and simple.

**P A U L N. B O N T E M P O:** Thank you, Senator. We already know that Senator Zane recorded his vote in our favor, so we know we're one vote ahead. We certainly hope the trend continues.

SENATOR SCOTT: We certainly wouldn't want to stay long enough to start reversing--

MR. BONTEMPO: Going backwards.

SENATOR SCOTT: --reversing the procedure. That has happened, as you know.

MR. BONTEMPO: Well, we'll try to be brief, Senator. Thank you.

SENATOR SCOTT: Okay.

MR. BONTEMPO: First of all, Senator, thank you so much for hearing ACR-121 today. It's very timely. Time is incredibly of the essence, as you know, to try to make this happen in the remainder of the session. So we're very grateful to you for scheduling this and certainly grateful to the members of the Committee for hearing it.

As you know, this process started back in February when the Department of Insurance proposed this regulation. The Coalition for Quality Automotive Repairs, who is represented by the gentleman of this table, quickly was formed comprising of two different trade associations representing several hundred auto body shops in New Jersey to oppose the proposed regulation.

I will go on record, the Department of Insurance was gracious. They welcomed us into their office in a very short period of time. We made our points. We thought we made good points, but we didn't know if they struck home. We followed that with hundreds of letters from not only body shops owners and employees, but from auto dealers, their employees, from Ford Motors, from General Motors, from the National Federation of Independent Business, from the gasoline retailers, from New Jersey Car, Charles Walton's people, The Dealer's Association.

Despite that, despite hear -- getting a number of letters from legislators, including members of this Committee, despite the President Protem of the Senate meeting with Commissioner Karpinski to voice his objections and concerns -- despite all of those things, and by the way, we also respectfully requested a hearing -- a public hearing -- on the issue. We were respectfully declined in writing that request, and despite all that, and add to that despite ACR-121 being

overwhelmingly approved by the Assembly in June -- despite all those things, Commissioner Karpinski in August of this year adopted the regulation effective January 1. By the way, you heard about a public hearing, in which we appreciated having, but the public hearing was scheduled one month after the adoption of the regulation. Kind of closing the door after everybody is out of the barn.

We promised to be brief, that's it for me. These gentlemen, Tom Elder, Charlie Bryant, and George Van Arsdall would like to just comment on a few issues raised, but I've implored them to be brief, because I think so far we look like we know how to count.

SENATOR SCOTT: Okay.

MR. BONTEMPO: Thank you.

SENATOR SCOTT: Yes, make sure you introduce yourself as you speak.

**T O M   E L D E R:** My name is Tom Elder and I'm employed by Compact Cars Inc. It's a large body shop in Central New Jersey. I'm representing the body shop industry today.

Obviously, we believe that the formation of auto repair networks will do serious harm to the auto and collision industry. The research that Dr. Scarry presented to you I believe is just a mild version of what may actually occur.

Just to set the record straight, his research is based upon standard industrial classification numbers indicating body shops, and only 1100 body shops are in that research. There are 2237 body shops registered in the State of New Jersey. So if anybody could add, it's double -- the effect would probably be double. It's definitely a problem here when you take this

regulation and put it against free enterprise in New Jersey and it redistributes the amount of work in the marketplace. It takes it away from some shops and gives it to other shops without any fair competitive advantage. This is totally against what we see in New Jersey.

We are here in New Jersey to support small businesses. The Governor has said she's here to support small business. We want to grow these businesses without stifling regulations, and we feel that the collision repair industry has strong ties to the rest of the economy. We don't want to foul that up. Add that into a couple of other points that I'll drive home quickly.

The insurance industry has got one break after another break. For example: 1) The enforcement of DWI has seriously cut down on a number of accidents. 2) The insurance surcharges have completely or almost completely eliminated those claims from \$0 to \$2000. It's all been brought by your constituents to you.

I'm sure that the surcharges are horrible. They're anywhere from \$400 to \$600 per year for having an accident that is an at-fault accident, where you're 50 percent or more at fault. Most of the insurers opt not to turn those claims in. So the insurance companies have already gotten this major break. Have they reduced premiums because of this? Has anybody seen a drop in premium? I certainly haven't. Nobody that I know of has. Claims are literally gone in that area.

Consider also that many of the profits that insurance companies make are from property damage. That's the collision repair, the comprehension repair. Most of their losses

according to "Standards and Poors," come from bodily injury settlements.

What are we doing here trying to save insurance dollars in the wrong place? They're making a profit here. Are we going to make more profit for them?

Currently, many of our members have been contacted by major insurers interested in these programs looking for additional concessions. I'm here to tell you that I'm one of the closest cost-controlled persons in the State. I can tell you that body shops make between 0 and 5 percent of their total sales. Their net profit is 0 to 5 percent.

You want to ring the sponge out a little bit more, this is not the place. It's going to be rung out of the consumer. The consumer is going to see it in a lesser quality repair and lesser quality repair parts on their cars.

A recent talk with the Governor -- very short talk with the Governor said--

SENATOR SCOTT: I hope it's true.

MR. ELDER: What?

SENATOR SCOTT: I hope it's a very short conversation with the Governor because so far we're not doing too well.

MR. ELDER: Okay.

Let's move onto Mr. Bryant.

SENATOR SCOTT: Thank you.

**C H A R L E S   B R Y A N T:** Yes, my name is Charles Bryant. I'm an Automotive Insurance Claims Consultant. I assist consumers when they have a problem with a settlement of a claim, and I apply the Unfair Claim Practice Regulations that is -- the proposed changes in today. I also do consulting work for both



of the associations involved in C Car. I run hotlines for the two associations, and I hear the complaints in the industry everyday. I have filing cabinets, after filing cabinets, after filing cabinets of documentation.

I want to run through things quick. I had a prepared testimony. I have some documents that I would like to leave with you, but I'll hit on the high spots and be done with this.

First of all, this is being touted as the greatest thing that has ever happened in the insurance industry. That's not true. The Commissioner wants people to look to at him as he's the hero to the people of New Jersey by saving us money. That's not true.

SENATOR CIESLA: No longer.

MR. BRYANT: Exactly.

This will make the insurance industry in a position of power to apply undue influence on the auto body industry to make them do things that they would normally not do. It would result in the improper repairs to automobiles affecting the safety of the automobile and to a detriment to the insured, as well as to the auto body shops. It will result in a restriction of trade. It will result to aftermarket parts-- I'm going to leave you with a complete book on aftermarket parts that I've already prepared for the Garden State Automobile Federation, because the problem existing as things currently are. It will result in special deals that are made behind doors and these deals are currently made right now. I'm going to talk about them a little bit.

This will wind up in the insurance companies being the one to decide the level of quality. It will stop the insured

from the ability to withhold payment until they're satisfied with the repairs. It takes them out of the loop.

The insurance companies rate -- it will eventually wind up in allowing the insurance companies to ignore their fiduciary obligation and duty to the insurer to act in their best interest.

This whole thing is being done under a false pretense. I think the present system needs to be looked at. There has been things that happened in the past. Thirty years ago there was a suit to stop this. I guess, I'm done. (laughter)

SENATOR SCOTT: You know, what-- (laughter)

MR. BRYANT: I want to say one more thing.

SENATOR SCOTT: Go right ahead.

MR. BRYANT: I am very frustrated, and it's important that I say this. Everybody could be mad at me, and you know what, I'll go find a new trade if I need to, but I want to say this, because I've watched this for five years of my life and devoted my life to try and solve some these problems. I think people need to know about this.

The current regulations are disregarded by the insurance companies. There are regulations regarding the aftermarket parts. They are disregarded and put on these cars anyway or the people have to pay the difference on them. The pig in the poke that was mentioned before, finer words were never spoken.

This is not -- people are not being given an educated decision, and the recent opinion or the -- being able to rescind this option is an absolute joke.

They're not going to be able to get their \$40 or their \$70 back. They're going to have to pay the difference of the pressure that they're going to put on these shops that are not chosen to participate in these programs, which is a lower labor rate, aftermarket parts, a discount on the original parts -- the things that are currently going on in this industry that needs to be looked at.

As far as limiting the savings, I think why should anybody be able to save \$50 on a policy, and put a restriction of anywhere from \$500 to \$1500 on a claim, because it will happen. That is what it's going to cost a consumer.

Now, I'm done, and I apologize for being rude and not shutting up when I was told.

SENATOR SCOTT: Thank you.

I think Paul is trying to tell you something. He's been here enough that he understands what happens.

MR. BRYANT: I know and I'm new to this and you can tell that I'm very aggravated--

SENATOR SCOTT: I know you are.

MR. BRYANT: --because I live it everyday.

SENATOR SCOTT: And that is good, because it's sincere and we know that and we do appreciate it. We see the sincerity of it. So we do appreciate that. We're just trying to tell you that certain things we -- we all ready have heard from-- I think the first three people up here, the Insurance Department, after Assemblyman Warsh said an awful lot to us.

MR. ELDER: You know, Charlie Walton left then.

SENATOR SCOTT: Pardon.

MR. ELDER: Charlie Walton left after that testimony.

SENATOR SCOTT: Did he? Okay.

Yes, sir. You're the third gentleman.

G E O R G E        V a n   A R S D A L L: My name is George Van Arsdall. I'm employed by Prestige Auto Body in Union County, large, modern, full service collision repair facility. I also serve on the Board of Directors of the Automotive Service Association of New Jersey.

At the shop where I'm employed, over 90 percent of the repairs in our business involve an insurance claim. Many of our customers are either repeat customers or their relatives or friends of former customers who have selected our shop knowing the level of service and quality that they will receive. We're proud of the reputation we've built and the customers who return to us or send others when our services are needed.

If insurance companies established designated auto body repair facility networks and consumers are effectively denied their choice of repair facilities, our reputation will mean little or nothing, as consumers are instructed which shop to use.

In 1988, our facility had 20 employees. By 1992, we had nine. Our annual sales were also less than half of the 1988 level. We determined that a significant amount of the lost business was being directed by several insurance companies to their direct repair program shops, and we made a decision to actively pursue and attempt to join as many of those DRP programs as possible. Now, this was a decision based on survival.

Over 30 insurance companies were contacted by telephone, by mail, or both. Many were contacted a second,

third, or fourth time during the past three years. Some of those companies requested information about our facility stating they required certain equipment, certain services, or certain training. We were very pleased to supply the requested information since our facility easily meets or exceeds all published standards.

We're certified by I-CAR as "gold class." There are less than 100 shops in New Jersey that have that certification.

Some insurance companies didn't even reply or return our phone calls, some stated they didn't have a direct repair or referral program.

The most common reply, however, was we do not currently have a need for another shop in your area. We will keep your information on file and consider it when we have a need or those very similar words.

Now, it's been estimated that about 20 to 25 percent of the body shops currently are part of one or more of these direct repair networks. But it's not because the others haven't tried or because they're not qualified.

I wonder if it has anything to do with our reluctance to meet the concessions that the insurance companies ask for.

That's all I have.

SENATOR SCOTT: Thank you very much.

MR. BONTEMPO: Thank you for your indulgence, Senator and Committee members.

SENATOR McNAMARA: I'd like to move the resolution.

SENATOR CIESLA: I'll second it.

SENATOR SCOTT: --moved by Senator McNamara, seconded by Senator Ciesla.

MR. CANTOR: On the motion to release Assembly  
Concurrent Resolution No. 121.

Senator Scott.

SENATOR SCOTT: Yes.

MR. CANTOR: Senator Ciesla.

SENATOR CIESLA: Yes, sir.

MR. CANTOR: Senator Bennett has already indicated an  
affirmative vote.

Senator McNamara.

SENATOR McNAMARA: Yes.

MR. CANTOR: Senator Sacco.

SENATOR SACCO: Yes.

MR. CANTOR: Senator Zane has indicated an affirmative  
vote.

The motion is carried.

**(MEETING CONCLUDED)**

## APPENDIX

# THE WIMMER DOCUMENTS



# TABLE OF CONTENTS

1. Chronology of The Wimmer Documents.
2. New Jersey Conservation Foundation.
3. Soil Logs and Tests.
4. DEP Letters.
5. Legal and Discovery.
6. Newspaper and Public Statements.
7. Discovery Documents.
8. Appraisals.
9. Stipulation of Facts.

Wimmer Chronology  
Attached Documents are Grouped by  
Type and Date as Closely as Possible

April 20, 1991	Submitted soil log and tube permeameter test results to Ernest Scales, Soils Inspector for Borough of Califon.
July 27, 1992	Submitted application for a Letter of Interpretation, Statewide General Permits, and a Transition Area Waiver to the New Jersey Department of Environmental Protection.
October 20, 1992	Received denial on Letter of Interpretation from the NJDEPE.
January 20, 1993	Applied to the NJDEPE for resubmission of Letter of Interpretation Approval.
March 9, 1993	Second percolation completed. (Passed)
March 19, 1993	Received Hardship Waiver - PWW TA's list of agencies from NJDEPE's Jay Springer.
March 25, 1993	Mailed out notices for NJDEPE Freshwater Wetlands Transition Area Waiver.
April 5, 1993	Received acknowledgement from the NJDEPE of receipt of offering to sell certain lands.
April 6, 1993	Received letter from The Trust of Public Land stating that they would be interested in acquiring this 2-acre property.
April 12, 1993	Spoke with James Bresen of the NJDEPE Green Acres Program and explained that we had received a letter from The Trust of Public Land offering to purchase the property; however, Roy Wimmer did not wish to sell.
April 27, 1993	Received letter from the NJDEPE regarding the Green Acres Program. Enclosed was an application GDI completed in order to be considered for inclusion in the state's oper. space network.
May 6, 1993	Resubmitted application to the NJDEPE for Freshwater Wetlands Approvals.

May 7, 1993	Gladstone Design Inc. issued completed application received on April 27th and letter to the State Land Acquisition, NJDEPE, Green Acres Program explaining that Roy Wimmer does not wish to sell the land, he only offered the sale as a requirement of the Transition Area Waiver Application.
May 10, 1993	Received letter from the New Jersey Conservation Foundation requesting that GDI include a USGS indicating the property and an appraised value for the property assuming no wetlands waiver approval.
May 13, 1993	Submitted requested information to the New Jersey Conservation Foundation.
May 28, 1993	Applied to the NJDEPE for a Transition Area Waiver Reduction, FW-1 Application.
June 9, 1993	Received letter from the New Jersey Conservation Foundation requesting more information.
June 15, 1993	As per our conversation with Patrick Sheppard of the NJDEPE we sent a check in the amount of \$270.00 for an additional Transition Area Waiver.
June 30, 1993	Submitted questionnaire for the Water Quality Management Plan to the NJDEPE.
July 8, 1993	Received letter from the NJDEPE Green Acres Program declining to purchase the property.
July 21, 1993	Faxed letter GDI received on July 8th to Jay Springer of the NJDEPE.
August 9, 1993	Received offer from the New Jersey Conservation Foundation in the amount of \$6,000.00.
August 10, 1993	Faxed offer from the New Jersey Conservation Foundation to Jay Springer at the NJDEPE.
August 20, 1993	GDI submitted letter to the NJDEPE stating that we had received offer from the New Jersey Conservation Foundation for \$6,000.00 and that under no circumstances would the owner of the property accept this offer as the property was appraised at \$75,200.00.

September 21, 1993	Submitted a full copy of the Land Appraisal Report including certifications, comments, and back-up data to the NJDEPE at the request of Jay Springer.
September 27, 1993	Received letter from the New Jersey Conservation Foundation requesting a response and stating that the appraisal submitted was not for the subject property.
September 29, 1993	Received denial from the NJDEPE for a Transition Area Waiver.
October 12, 1993	GDI submitted a full copy of the land appraisal for the subject property and also stated that the owners do not actually wish to sell this property.
October 29, 1993	Received another offer from the New Jersey Conservation Foundation for \$15,000.00. They agreed that the appraisal we sent them was outdated and not warranted because of several other conditions.
January 26, 1994	From the NJDEPE GDI received the following: <ul style="list-style-type: none"> <li>- Approval for the Freshwater Wetlands Statewide General Permit and Water Quality Certification</li> <li>- Denial for the Transition Area Waiver</li> </ul>
January 27, 1994	Approval and denial received by Roy Wimmer.
March 10, 1994	Filed appeal with Administrative Law Court for Administrative Hearing request.
December 27, 1994	Interrogatories, Wimmer vs. DEP.
January 6, 1995	Notice to produce documents to Wimmer.
February 1, 1995	Hearing, Administrative Law Court.
May 19, 1995	Stipulation of facts by Wimmer submitted to state.
May 25, 1995	Subpeona to hearing in OAL on June 6, 1995.
June 6, 1995	Hearing ALC, Mercerville, NJ.
June 28, 1995	Submission by Meyer & Landis.
July 3, 1995	Final submission to ALJ.
July 13, 1995	Expected ALC decision date, not met - new date projected September 1995

# Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540

FAX 201-539-9439



May 5, 1993

Mr. Ronald A. Kennedy, P.E.  
265 Main Street  
P.O. Box 400  
Gladstone, New Jersey 07934

Re: Hunterdon County, Califon Borough Block 15, Lot 3

Dear Mr. Kennedy:

Thank you for your inquiry regarding the NJCF's interest in acquiring the above captioned property. As explained in the DEPE regulations, such offers should be accompanied by a USGS map with the property indicated and an appraised value for the property assuming no wetlands waiver approval. The DEPE has issued criteria for such an appraisal.

When we receive this information, we will evaluate it and share it with other interested conservation organizations which may be involved in nearby projects.

Wetlands and associated buffer areas are particularly significant ecologically and certainly worthy of preservation. We would like to work with you to achieve this goal.

Sincerely,

Alice Pulao  
Land Fund Assistant

cc:

*Rick Brown*  
~~Larry Roper~~  
NJDEP

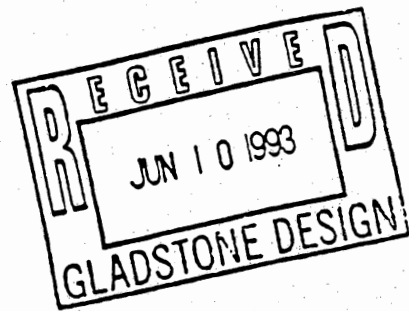
6X

# New Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540

FAX 201 539 9439



Mr. Ronald A. Kennedy, P.E.  
Gladstone Design, Inc.  
265 Main Street, P.O. Box 400  
Gladstone, New Jersey 07934

June 9, 1993

Re: Wimmer Property  
Block 15, lot 3, River Road  
Califon Borough, New Jersey

Dear Mr. Kennedy:

Thank you for the U.S.G.S. map and appraisal on the above captioned property. We are interested in exploring the possible acquisition of this property by The New Jersey Conservation Foundation.

As regards the appraisal, it assumes the granting of a wetlands waiver. Since this is not a foregone conclusion, a more accurate reflection of the present value of the land would be an appraisal as it exists today, without the wetlands waiver. This is the appraisal we requested in our letter of May 5, 1993, and the type of appraisal specified by the DEPE for the wetlands waiver process. The DEPE has issued criteria for such an appraisal.

It is my understanding that a property such as the Wimmer's, which is in a trout maintenance area, must allow a fifty foot setback from the wetlands boundary for the compensation area. Could you explain the twenty-five foot setback, please?

When we have received an appraisal reflecting current market value, we would like to meet with you and your client to discuss possibilities for preserving this significant wetland area.

Sincerely,

*Alice Puleo*

Alice Puleo  
Land Fund Assistant

cc: Rick Brown  
NJ DEPE

7X

# New Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540  
TAX 201 539 5439

July 26, 1993

Commissioner Joanne M. Fox  
Department of Environmental Protection and Energy  
CN 402  
Trenton, New Jersey 08625-00402

Re: Transition Area Waivers

Dear Commissioner Fox:

As recipients of many offers to sell properties affected by wetlands and wetlands waivers, the New Jersey Conservation Foundation has several comments and recommendations.

The instructions issued to applicants for transition area waivers by the Land Use Regulation Program require that offers to sell these properties are accompanied by fair market value appraisals and specific attachments. Unfortunately, we routinely receive offers of sale without appraisals, asking prices which reflect values of buildable properties, or offers with none of the accompanying documents.

The November 17, 1992 memo from Robert Tudor, regarding waiver requirements clearly states "The applicant's appraiser must take into consideration environmental constraints when assessing the fair market value of a property." The value estimates we receive at NJCF reflect market values for dry, buildable lots with no environmental constraints. Should we purchase any of these properties at the inflated, buildable, prices requested, we could neither build on the property, nor resell it as a buildable property. As soon as the deed changes hands, the value of a buildable asset for which we are being asked to pay a premium disappears. We understand that attorneys for several of the applicants we have heard from are requesting a review of the appraisal standards. We strongly recommend that the standards remain as written and firmly enforced by the DEPE. Assuming wetlands waiver approvals in the appraisals will successfully block conservation efforts to purchase and preserve wetlands

8x

properties by both private and public agencies, including the Green Acres program.

On an administrative level, we are frustrated by the many offers of sale we receive without the required supporting documentation. The Land Use Regulation Program memo of November 17, 1991 specifically requires the inclusion of USGS maps with the property indicated, tax maps, and appraisals. We receive letters with nothing more than the name of the municipality, the county, and block and lot numbers. The sellers consider the clock to be running based on a thirty day response time from the date of our receipt of the letter. Meanwhile, before we can assess the property, we must write back and request the information which, according to rules, should have been included with their first letter. We have been copying the appropriate DEPE staff in Trenton in all correspondence. Hopefully this stops the clock until all the necessary information is submitted.

For your information, we have requested appraisals from the applicants listed below:

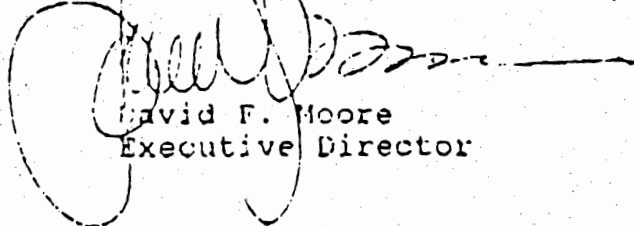
Chrysler, Morris County  
Miraglitta, Warren County

Wimmer, Hunterdon County  
Wolfe, Passaic County

We have requested USGS and tax maps, and appraisals from Hicks, Collins, Conklin and Camps in Morris County; and Smith and Zurbach in Passaic County.

We would appreciate assistance from your office in obtaining the required supporting documentation and in implementing a consistent and justifiable fair market value appraisal policy.

Sincerely,



David F. Moore  
Executive Director

DFM:js

9x



# New Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540  
FAX 201 539 9139

August 5, 1993



Mr. Ronald A. Kennedy, P.E.  
Gladstone Design Inc.  
265 Main Street, P.O. Box 400  
Gladstone, New Jersey 07934

RE: Wimmer Property  
Block 15, Lot 3, River Road, 2.6 acres  
Califon Borough

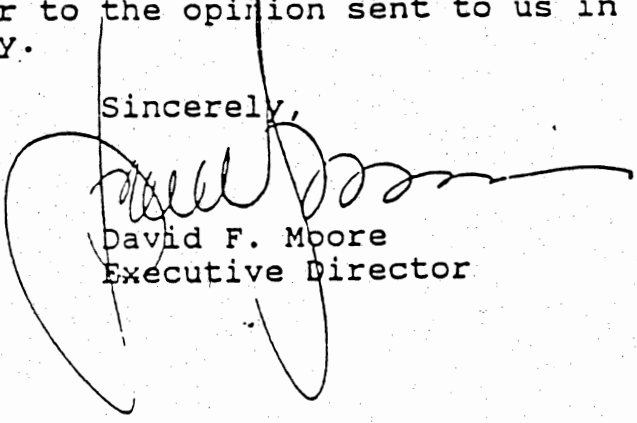
Dear Mr. Kennedy:

With respect to the subject property, based upon the facts presented to us, we are prepared to offer \$6,000 for its purchase.

Without an accurate current appraisal, and with only an unsubstantiated opinion of value furnished by the applicant, we cannot understand how either we, another conservation buyer, or the DEPE can determine a value for the property. In addition we note that the attached appraisal furnished to us by the applicant is for other properties owned by the applicant, NOT the above noted parcel.

We have based our offer on appraisal of comparable properties we have available to us as a result of other transactions, which we consider superior to the opinion sent to us in connection with the subject property.

Sincerely,



David F. Moore  
Executive Director

DFM:sc

CC: Rick Brown  
Jay Springer  
NJ DEPE

10X

# New Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540

FAX 201 539 9439

September 24, 1993



Mr. Ronald A. Kennedy, P.E.  
Gladstone Design, Inc.  
265 Main Street  
P.O. Box 400  
Gladstone, New Jersey 07934

Re: Wimmer Property  
Block 15, Lot 3, River Road, 2.6 acres  
Califon Borough

Dear Mr. Kennedy:

We wrote to you on August 5, 1993 with an offer to purchase the above-noted parcel. To date, we have not yet received a response.

In our letter we also noted that the appraisal submitted to us by your office was not for the property noted above. It is our understanding that your submission to us must include a current appraisal of the subject property.

Kindly forward a copy of a current appraisal for the above-noted property to my attention as soon as possible.

Thank you for your attention to this matter.

Sincerely yours,

Michele S. Byers  
Assistant Director

MSB:js

CC: Rick Brown  
Jay Springer

11X

October 22, 1993

Memo to File:

Wimmer Property, block 14, Lot 1.01, block 15, Lot 3  
River Road, Califon Borough, Hunterdon County, NJ

<sup>discussion</sup>  
At an informal, between Dave Moore, Michele Byers and me, we discussed the fair market value attributable to the subject property. It consists of two lots in Califon Borough in Hunterdon County. One lot borders the South Branch of the Raritan River and is long and narrow, unbuildable and fronts on River Rd. The second parcel, across River Rd. from the first is bordered on its back line by the now-abandoned former High Bridge Railroad Right of Way, which is slated to become a public access trail facility operated by the Hunterdon County Parks System. Wetland restrictions exist on both parcels, as well as size constraints on the riverside one. These render the lots essentially unbuildable without a variety of waivers and/or variances. The valuation was predicated upon the inability to build on either parcel, individually or both combined.

Part of the valuation discussion was a generalized review of the current market values for Wetlands properties in Morris and Hunterdon Counties as evidenced by either discussions with real estate brokers and/or appraisers, as well as recent purchasers of wetland tracts who tended to be public park orientated. Specific to the discussions were appraisals that the Foundation had received regarding our Wickecheoke Creek project, some properties of which are analogues to this one in so far as development capabilities due to wetland constraints. Since the site is undisturbed, wetlands mitigation is not a potential. The values that were discussed ranged from \$1,500 to \$3,000 an acre, generally around \$2,000. Most of those would have been to interested neighboring purchasers. The sales that were obviously directed by either mitigation and/or court order transaction were not considered. Block 14, Lot 1.01 is .0.46 acres, and Block 15, Lot 3 contains 2 acres for a 3.06 acre total. This analysis leads to a value figure of between \$4,500 and \$9,000 for both lots, with a general value of \$6,000.

A second approach based upon the properties utility as a fishing access site with tent camping potential was then discussed. The underlying premise was socratic in approach - how much would someone pay to own a strip along that river with an area that would be suitable for recreational camping? Ancillary to that was the question as to how much a group, perhaps comprised of family members, would be willing to

12X

share to give a special gift to a family member to commemorate a milestone in their life? In the first instance a value of between \$10,000 and \$15,000 was considered to be a fair amount for a fishing "get away". In the second example assuming a \$2,500 contribution each by six participants, a \$15,000 was realistic and appeared reasonably attainable.

The figures were then discussed on an informal basis with the Hunterdon Park Commission who confirmed that the per acre values paralleled their understanding of the current market along the South Branch of the Raritan.

Predicated upon the above, and giving the landholder the largest benefit of the doubt, \$15,000 was chosen as an offer for the purchase of both parcels.

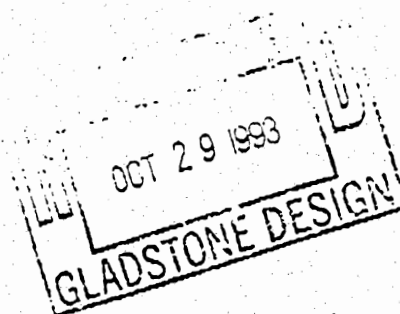
The rationale for NJCF purchase interest is not only to avoid a structure in an inappropriate area, but also to provide another river access point. Hunterdon County Parks is willing to acquire from us in turn should we receive title.

# New Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540

FAX 201 539 9439



October 25, 1993

Ronald A. Kennedy, P.E.  
Gladstone Design Inc.  
265 Main Street  
P.O. Box 400  
Gladstone, New Jersey 07934

RE: Wimmer Property  
Block 14, Lot 1.01, Block 15, Lot 3  
River Road, Califon Borough  
Hunterdon County, NJ

Dear Mr. Kennedy:

We have reviewed the land appraisal report we received from you on October 15, 1993, valuing the above captioned property. We have the following comments on the appraisal:

- The appraisal is dated April 23, 1991. It is two and a half years out of date.
- The appraisal is conditioned upon the assumption that the subject property is able to obtain all permits and pass necessary inspections to be utilized as a single family residential site. These conditions and assumptions are no longer valid.
- The appraisal values Block 14, Lot 1.01, and Block 15, Lot 3, as a single parcel with no value being assigned to either one independently.
- The appraiser determines that Block 14, Lot 1.01 has no independent utility and is to be considered a part of Block 15, Lot 3.
- No comment was contained in the appraisal on the environmental questionnaire which, most specifically addressed the proximity to underground pipelines, which exist on the former Railroad Right-of-Way contiguous to lot 3.
- In the discussion of wetlands the appraiser emphatically states that they are not qualified to determine wetlands boundaries, nor did they determine if there were any wetlands on the comparables used. The

14X

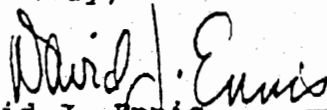
appraiser states they do not know what effect any wetlands may have on comparable sales.

Based upon the above items, we do not feel that a more in depth analysis of the comparables and/or adjustments is warranted. We do believe that an updated or new appraisal considering the current status of both regulations and market factors is appropriate.

We do however, realize the Wimmer's desire to resolve this situation, and, rather than insisting that we be supplied with a new appraisal, we are willing to make an offer to purchase the properties.

The New Jersey Conservation Foundation is interested in acquiring the parcels, and accordingly offers \$15,000 cash for the properties subject to free and clear title that is insurable without exemption at regular title insurance rates. We are willing to either enter into a satisfactory purchase contract, or move directly towards closing, subject to a title search. Please advise us as to how your client wishes to proceed.

Sincerely,



David J. Ennis  
Director, Land Fund

DJE:sc

CC: Jay Springer  
Tom Rosol

15X

# GLADSTONE DESIGN, INC.

Consulting Engineers  
Land Surveyors  
Landscape Architects

265 Main Street P.O. Box 40  
Gladstone, New Jersey 07934  
Telephone (201) 234-0309

Ronald A. Kennedy, P.E., President

April 20, 1991  
G31-01

Mr. Ernest Scales  
RR#5, Box 21  
Farmersville Road  
Califon, New Jersey 07830

RE: Wimmer Property Soil Tests  
Lots 17.1 & 15.3, River Road  
Califon, New Jersey

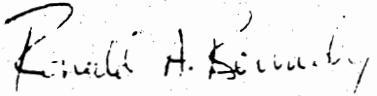
Dear Mr. Scales:

Enclosed are the soil log and tube permeameter test results for the above reference property. The testing indicates that mounded soil replacement systems will be required for the disposal fields of the two lots.

Should you have any questions or comments, please feel free to call.

Very Truly Yours;

GLADSTONE DESIGN, INC.

  
Ronald A. Kennedy, P.E.

cc: Roy Wimmer  
Dan Sandorff

16X

# GLADSTONE DESIGN, INC.

Consulting Engineers  
Land Surveyors  
Landscape Architects

265 Main Street P.O. Box  
Gladstone, New Jersey 07035  
Telephone (201) 234-0309

Ronald A. Kennedy, P.E., President

April 18, 1991  
G31-01

## SOIL LOG RESULTS

Project: Wimmer Property, Lots 17-1 & 15-3, River Road, Borough  
of Califon, Hunterdon Cty., New Jersey.

Date of Testing: April 4, 1991

Test Evaluator: Ronald A. Kennedy, P.E.

Excavator: Dan Sandorff  
Small rubber tire backhoe

### Lot 15-3, Soil Log 1

0" - 6"	Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, dry, friable, <2% gravel, surface stones.
6" - 30"	Yellowish brown (10YR 5/6), silty clay loam, subangular blocky, moist, friable, 2% gravel.
30" - 48"	Yellowish brown (10YR 5/6), clay loam, platy, moist friable, pale brown mottles (10YR 6/3, common, medium, faint), <2% gravel.
48" - 84"	Strong brown (7.5YR 4/6), sandy loam, granular, moist, loose, 40% gravel.
84" - 120"	Strong brown (7.5YR 4/6), sandy clay loam, granular, moist, loose, 10% gravel.

No groundwater observed. Seepage at 48".  
Limiting zone: clay loam (30"-48")  
Suitability class: IIWp



Soil Log Results  
Wimmer Property  
April 18, 1991  
Page 2

Lot 15.3, Soil Log 2

- 0" - 7" Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, moist, friable, <2% gravel, surface stones.
- 7" - 27" Light olive brown (2.5Y 5/6) silt loam, angular blocky, moist, friable, 5% gravel.
- 27" - 74" Strong brown (7.5YR 4/6), sandy clay loam, platy, moist, friable, grayish brown mottles (2.5Y 5/2, common, medium, distinct, 2% gravel.
- 74" - 108" Dark yellowish brown (10YR 4/6), sandy loam, granular, moist, loose, 40% gravel.
- 108" - 124" Dark yellowish brown (10YR 4/4) sandy clay loam, granular, moist, friable, 20% gravel.

No groundwater observed. Slight seepage at 30".  
Limiting zone: sandy clay loam (25" - 74")  
Suitability class: IIWp

Lot 17.1, Soil Log 1

- 0" - 7" Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, moist, friable, <2% gravel, surface stones.
- 7" - 29" Yellowish brown (10YR 5/6), silt loam, subangular blocky, moist, friable, 5% gravel.
- 29" - 70" Yellowish brown (10YR 5/6), clay loam, platy, moist, friable, light brownish gray mottles (10YR 6/2, many, coarse, prominent), 10% cobbles.
- 70" - 90" Strong brown (7.5YR 5/6), silt loam, granular, moist, friable, dark brown mottles (7.5YR 3/2, few, fine, faint, 30% cobbles.
- 90" - 121" Yellowish brown (10YR 5/6), silt loam, granular, moist, friable, light yellowish gray mottles (10YR 6/2) and dark reddish brown mottles (5YR 3/2), few, fine, faint, 30% cobbles.

Groundwater observed at 117" after 3 hours.  
Limiting zone: Clay loam (29" - 70")

18X

Suitability class: IIWr

Lot 17.1, Soil Log 2

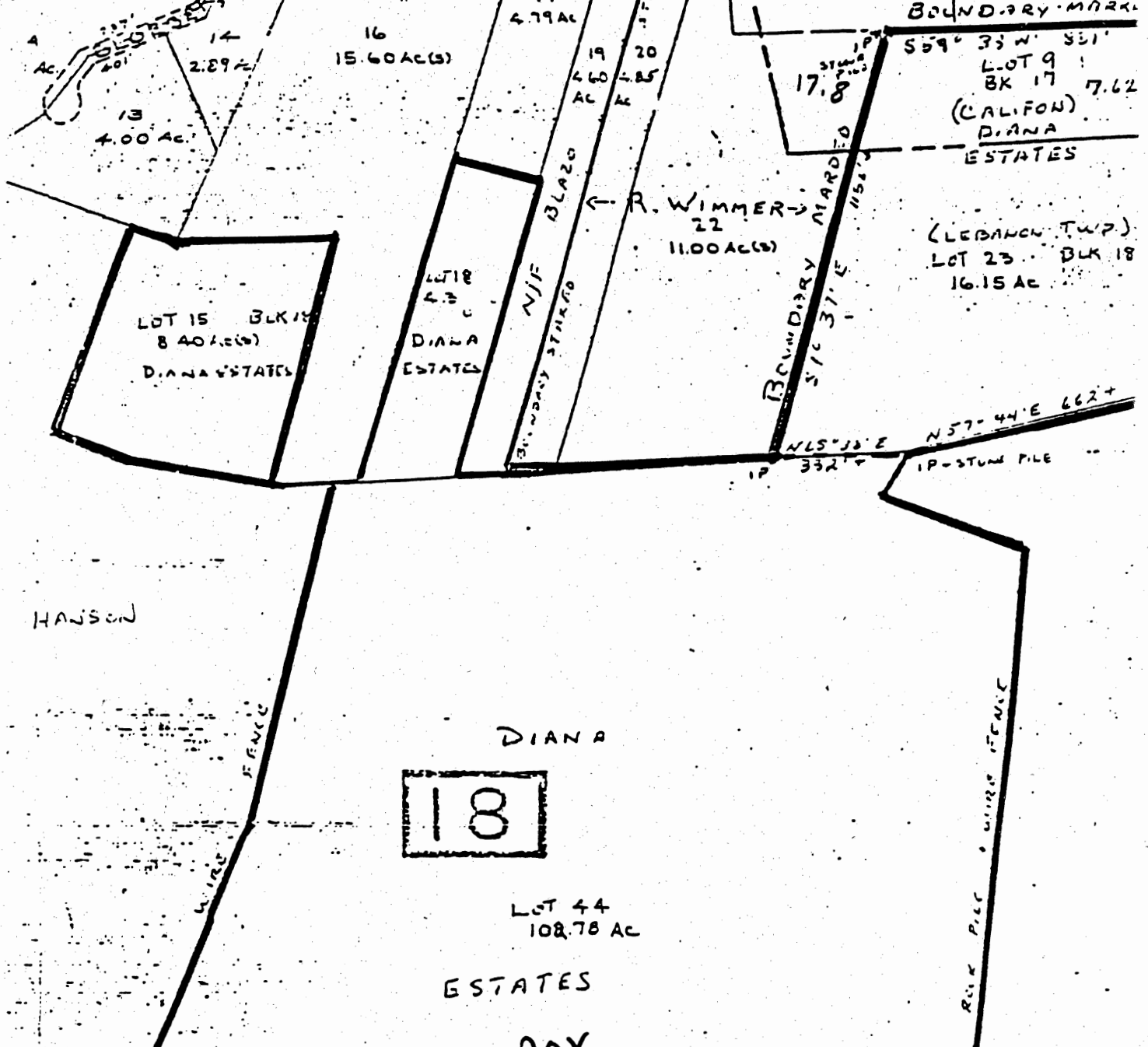
0" - 6"	Black (7.5YR 2/0) organic silt loam, subangular blocky, moist, loose, <2% gravel, surface stones.
6" - 34"	Yellowish brown (10YR 5/6), silty clay loam, subangular blocky, moist, friable, 5% gravel.
34" - 60"	Brown (7.5YR 4/4), silty clay loam, subangular blocky, moist, friable, light brownish gray mottles (10YR 6/2, common, medium, distinct), 20% cobbles.
60" - 120"	Brown (10YR 4/4), sandy clay loam, granular, moist, loose, 20% cobbles.

No groundwater observed, Seepage at 92".  
Limiting zone: Silty clay loam (34" - 60")  
Suitability class: IIWp

Respectfully Submitted,

*Ronald A. Kennedy*  
Ronald A. Kennedy, P.E.

4A NEW JERSEY - HIGH BRIDGE BRANCH



LOT 44  
102.78 AC

ESTATES

20X

# GLADSTONE DESIGN, INC.

Consulting Engineers  
Land Surveyors  
Landscape Architects

265 Main Street P.O. B.  
Gladstone, New Jersey  
Telephone (201) 234-1111

Ronald A. Kennedy, P.E., P.S.

April 18, 1991  
G31-01

## SOIL LOG RESULTS

Project: Wimmer Property, Lots 17-1 & 15-3, River Road, Borough  
of Califon, Hunterdon Cty., New Jersey.

Date of Testing: April 4, 1991

Test Evaluator: Ronald A. Kennedy, P.E.

Excavator: Dan Sandorff  
Small rubber tire backhoe

### Lot 15-3, Soil Log 1

0" - 6"	Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, dry, friable, <2% gravel, surface stones.
6" - 30"	Yellowish brown (10YR 5/6), silty clay loam, subangular blocky, moist, friable, 2% gravel.
30" - 48"	Yellowish brown (10YR 5/6), clay loam, platy, moist friable, pale brown mottles (10YR 6/3, common, medium, faint), <2% gravel.
48" - 84"	Strong brown (7.5YR 4/6), sandy loam, granular, moist, loose, 40% gravel.
84" - 120"	Strong brown (7.5YR 4/6), sandy clay loam, granular, moist, loose, 10% gravel.

No groundwater observed. Seepage at 48".  
Limiting zone: clay loam (30"-48")  
Suitability class: IIWp

21x

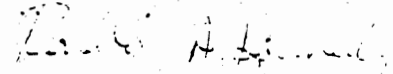
Suitability class: IIWr

Lot 17.1, Soil Log 2

- |            |   |
|------------|---|
| 0" - 6"    | Black (7.5YR 2/0) organic silt loam, subangular blocky, moist, loose, <2% gravel, surface stones.   |
| 6" - 34"   | Yellowish brown (10YR 5/6), silty clay loam, subangular blocky, moist, friable, 5% gravel.  |
| 34" - 60"  | Brown (7.5YR 4/4), silty clay loam, subangular blocky, moist, friable, light brownish gray mottles (10YR 6/2, common, medium, distinct), 20% cobbles. |
| 60" - 120" | Brown (10YR 4/4), sandy clay loam, granular, moist, loose, 20% cobbles.   |

No groundwater observed, Seepage at 92".  
Limiting zone: Silty clay loam (34" - 60")  
Suitability class: IIWp

Respectfully Submitted,

  
Ronald A. Kennedy, P.E.

Soil Log Results  
Wimmer Property  
April 18, 1991  
Page 2

Lot 15.3, Soil Log 2

- 0" - 7" Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, moist, friable, <2% gravel, surface stones.
- 7" - 27" Light olive brown (2.5Y 5/6) silt loam, angular blocky, moist, friable, 5% gravel.
- 27" - 74" Strong brown (7.5YR 4/6), sandy clay loam, platy, moist, friable, grayish brown mottles (2.5Y 5/2, common, medium, distinct, 2% gravel.
- 74" - 108" Dark yellowish brown (10YR 4/6), sandy loam, granular, moist, loose, 40% gravel.
- 108" - 124" Dark yellowish brown (10YR 4/4) sandy clay loam, granular, moist, friable, 20% gravel.

No groundwater observed. Slight seepage at 30".  
Limiting zone: sandy clay loam (25" - 74")  
Suitability class: IIWp

Lot 17.1, Soil Log 1

- 0" - 7" Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, moist, friable, <2% gravel, surface stones.
- 7" - 29" Yellowish brown (10YR 5/6), silt loam, subangular blocky, moist, friable, 5% gravel.
- 29" - 70" Yellowish brown (10YR 5/6), clay loam, platy, moist, friable, light brownish gray mottles (10YR 6/2, many, coarse, prominent), 10% cobbles.
- 70" - 90" Strong brown (7.5YR 5/6), silt loam, granular, moist, friable, dark brown mottles (7.5YR 3/2, few, fine, faint, 30% cobbles.
- 90" - 121" Yellowish brown (10YR 5/6), silt loam, granular, moist, friable, light yellowish gray mottles (10YR 6/2) and dark reddish brown mottles (5YR 3/2), few, fine, faint, 30% cobbles.

Groundwater observed at 117" after 3 hours.  
Limiting zone: Clay loam (29" - 70")

23 X

# GLADSTONE DESIGN, INC.

Consulting Engineers  
Land Surveyors  
Landscape Architects

265 Main Street P.O. Bo  
Gladstone, New Jersey 07  
Telephone (201) 234-030

Ronald A. Kennedy, P.E., Pres.

① FOOTNOTES

April 18, 1991  
G31-01

## SOIL LOG RESULTS

Project: Wimmer Property, Lots 17-1 & 15-3, River Road, Borough  
of Califon, Hunterdon Cty., New Jersey.

Date of Testing: April 4, 1991

Test Evaluator: Ronald A. Kennedy, P.E.

Excavator: Dan Sandorff  
Small rubber tire backhoe

### Lot 15-3, Soil Log 1

- |            |  |
|------------|--|
| 0" - 6"    | Very dark grayish brown (10YR 3/2), organic silt loam, subangular blocky, dry, friable, <2% gravel, surface stones.            |
| 6" - 30"   | Yellowish brown (10YR 5/6), silty clay loam, subangular blocky, moist, friable, 2% gravel.                                     |
| 30" - 48"  | Yellowish brown (10YR 5/6), clay loam, platy, moist friable, pale brown mottles (10YR 6/3, common, medium, faint), <2% gravel. |
| 48" - 84"  | Strong brown (7.5YR 4/6), sandy loam, granular, moist, loose, 40% gravel.  |
| 84" - 120" | Strong brown (7.5YR 4/6), sandy clay loam, granular, moist, loose, 10% gravel.   |

No groundwater observed. Seepage at 48".  
Limiting zone: clay loam (30"-48")  
Suitability class: IIWp

24x

Suitability class: IIWr

Lot 17.1, Soil Log 2

- |            |   |
|------------|---|
| 0" - 6"    | Black (7.5YR 2/0) organic silt loam, subangular blocky, moist, loose, <2% gravel, surface stones.   |
| 6" - 34"   | Yellowish brown (10YR 5/6), silty clay loam, subangular blocky, moist, friable, 5% gravel.  |
| 34" - 60"  | Brown (7.5YR 4/4), silty clay loam, subangular blocky, moist, friable, light brownish gray mottles (10YR 6/2, common, medium, distinct), 20% cobbles. |
| 60" - 120" | Brown (10YR 4/4), sandy clay loam, granular, moist, loose, 20% cobbles.   |

No groundwater observed, Seepage at 92".  
Limiting zone: Silty clay loam (34" - 60")  
Suitability class: IIWp

Respectfully Submitted,

*Ronald A. Kennedy*  
Ronald A. Kennedy, P.E.

25X





State of New Jersey  
Department of Environmental Protection and Energy  
Environmental Regulation  
Land Use Regulation Program

CN 401

Trenton, NJ 08625-0401

Tel# 609-984-3444

Fax# 609-292-8115

Scott A. Weiner  
Commissioner

Robert A.  
Admiral

July 8, 1992

TO: All Regulatory Staff  
FROM: Planning and Policy Unit *771*  
THROUGH: Robert Tudor *RA*

The following is a list of conservation entities to which a single residential lot may be offered to in order to establish hardship pursuant to N.J.A.C. 7:7A-7.2(f)2. This is a preliminary list to get you started and it will be expanded on in the future.

New Jersey Conservation Foundation  
300 Mendham Road  
Morristown, New Jersey 07960  
(201) 539-7540

Green Acres  
CN 412  
1230 Whitehorse Mercerville Road  
Trenton, New Jersey 08625  
(609) 588-3431

Natural Lands Trust  
Station Plaza 5  
501 East State Street  
Trenton New Jersey 08625  
(609) 984-1339

New Jersey Audubon Society  
Headquarters and Lorrimer Sanctuary  
PO Box 125, 790 Ewing Avenue  
Franklin Lakes, New Jersey 07417  
(201) 891-1211

DEP "Insider List"

26X

The Trust for Public Land  
Northeast Regional Office  
666 Broadway Avenue  
New York, New York 10012  
(212) 677-7171

County Park System

Municipal Park System (if one exists)

(disk #6 - conlist1.doc)

27X



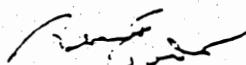
State of New Jersey  
Department of Environmental Protection and Energy  
Environmental Regulation  
Land Use Regulation Program  
CN 401

Scott A. Weiner  
Commissioner

Trenton, NJ 08625-0401  
Tel# 609-984-3444  
Fax# 609-292-8115

Robert A. Tudor  
Administrator

November 17, 1992

TO: All Regulatory Staff  
FROM: Planning and Policy Unit  
THROUGH: Robert Tudor   
RE: Transition Area Hardship Provisions

Several reviewers and the public have had inquiries about the portion of the hardship provisions which requires an applicant to offer his/her land for sale at fair market value to Conservation Organizations. As a result of these questions and after meeting with all of the organizations on our list and subsequently an appraiser, the following policy has been established.

1. The applicant will be asked to hire a State Licensed appraiser to determine the fair market value of his/her property.

2. All of the organizations on the attached amended list of Conservation organizations are to receive an offering of land by the applicant. The letters must be sent to the organizations via Certified Mail. The Certified Mail receipts can then be used by the applicant as proof of notice. It is not necessary to send applicants to any other organizations since those listed have agreed to coordinate with other groups of which they are aware. In addition, Green Acres is coordinating for all DEPE agencies.

3. The applicant's letter must include the following information:

- A. USGS map with the property indicated
- B. Tax map
- C. Block and lot numbers
- D. Municipality and County
- E. Appraised value of the property

4. The Conservation organizations have agreed to directly notify the Department either by letter and/or by phone of their interest or lack of interest in a property within 30 days of receiving the applicant's letter. Their letters will be sent to the Supervisor in charge of the appropriate county. In most cases, if there is interest, the Organization will also call the Department to be

applicant. This hardship reduction limits the standard transition area or buffer to 25 feet. The submitted plan shows a modification to this reduced transition area through the means of a transition area averaging plan.

The Department may grant a transition area reduction waiver based on hardship for single family residential lots which are unbuildable due to the presence of transition areas to minimum of 25 feet. Based upon a review of the submitted information and in accordance with Freshwater Wetlands Protection Act, N.J.A.C. 7:7A-1-1 et seq, and the analysis which follows, the Department has decided not to grant a transition area waiver based upon the need to avoid imposing an extraordinary hardship on the applicant. N.J.A.C. 7:7A-7.3(e)2 cites the following conditions which must be met for the Department to issue a transition area waiver based upon hardship for a single family residential lot:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

The applicant has owned the property since 1975. This condition has been met.

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

The applicant has never received a waiver from the Department based on hardship. This condition has been met.

iii. The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value;

The applicant has not provided any information to the Department that an effort was made to purchase adjacent properties at fair market value to create a buildable lot. However, the applicant does own several contiguous unimproved parcels surrounding the property in question which can be used to create a buildable lot. The applicant's agent states in the waiver application that the purchase of adjoining properties would not create sufficient upland for the proposed house and septic disposal system. However, no information has been submitted regarding the feasibility of using the adjacent properties owned by the applicant for development. The Department has determined that this condition has not been met.

29X

sure that the Department is aware of this interest.

5. If there is no interest among any of the notified organizations, the Department will begin reviewing the application using the applicable standards for hardship waivers. If any organization expresses interest, the Department will not review the application until such time that the applicant and the Organization inform the Department about the results of their discussions regarding the sale of the property.

6. The applicant's appraiser must take into consideration environmental constraints when assessing the fair market value of a property. In the event that an offer is made by an organization to an applicant that is less than the fair market value established by the applicant's appraisal, and the applicant rejects the offer, the Department will make the final determination of whether or not the lack of agreement on a price constitutes a hardship. If the offer is within 10% of the property's appraised value, the Department will deny a hardship waiver under this provision.

7. The amended list of conservation organizations to be contacted is as follows:

New Jersey Conservation Foundation  
300 Mendham Road  
Morristown, New Jersey 07960  
(201)539-7540

Green Acres  
CN 412,  
1230 Whitehorse-Mercerville Road  
Trenton, New Jersey 08625  
(609)588-3431

The Trust for Public Land  
55 Maple Avenue  
Morristown, NJ 07960  
(201)539-9191

The Nature Conservancy  
P.O. Box 181  
17 Fairmount Road  
Pottersville, NJ 07979

Municipal Environmental Commission

Municipal Park System (if one exists)

County Park System

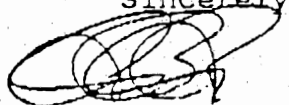
If you have any questions about this procedure, please talk to your Section Chief, Ernie Hahn or Susan Lockwood.

30X

Protection and Energy, CN 402, Trenton, New Jersey, 08625. The request must include the project number, the date the applicant received the decision, and details of how the decision aggrieves the appellant.

If you should have any questions regarding this letter please contact Jay Springer of my staff at the above address or at (609) 777-0454. Be sure to indicate the Land Use Regulation Program file number in any communication.

Sincerely,



Robert B. Piel, Manager  
Bureau of Inland Regulation

js

c: Califon Borough Clerk & Planning Board  
Hunterdon County Planning Board  
New Jersey Conservation Foundation  
Roy Wimmer, Applicant  
Jay Springer, Project Manager

31x



State of New Jersey  
Department of Environmental Protection and Energy  
Environmental Regulation  
Land Use Regulation Program  
CN 401  
Trenton, NJ 08625-0401  
Fax: # 609-292-8115

Jeanne M. Fox  
Acting Commissioner

Ernest P. Hahn  
Administrator  
JAN 19 1995

Ronald A. Kennedy  
Gladstone Design, Inc.  
P. O. Box 400, 265 Main Street  
Gladstone, New Jersey 07934

RE: Application for Transition Area Waiver-Denial  
File Nos. 1004-92-0003.3 & 1004-92-0003.5  
Applicant: Roy Wimmer  
Project: River Road Parcel  
Block: 15; Lot: 3  
Califon Borough, Hunterdon County  
Watershed: South Branch Raritan River  
Drainage Basin: Raritan River

Dear Mr. Kennedy:

This acknowledges receipt of your request dated July 29, 1992 for a transition area waiver averaging plan and your revised request of June 21, 1993 for a transition area waiver averaging plan and a transition area waiver reduction pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et. seq.) and implementing rules at N.J.A.C. 7:7A-7.

As documented in the Land Use Regulation Program file # 1004-92-0003.4, it has been determined that the freshwater wetlands present on or adjacent to the above referenced property are of intermediate resource value. Pursuant to N.J.A.C. 7:7A-6.1, a standard transition area of 50 feet is required adjacent to these wetlands. The applicant proposes to reduce this standard transition area through the means of a transition area waiver reduction based upon hardship, according to the submitted plan. In addition, the applicant proposes to modify the reduced buffer by means of a transition area waiver averaging plan.

Section 7:7A-7 of the Freshwater Wetlands Protection Act Rules establishes the framework under which the standard transition area may be reduced and/or modified if the Department determines that the reduction will result in minimal environmental impact and that the modified transition area will continue to feature the purposes and functions set forth in N.J.A.C. 7:7A-6.1(a) and (b). In addition, the Department may only grant a waiver for a transition area adjacent to an intermediate resource value wetland if it is determined that no substantial impact will result to the wetland or that the waiver is necessary to avoid imposing a substantial hardship on the

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1011 731

Transition Area Waiver - Denial

applicant. This hardship reduction limits the standard transition area or buffer to 25 feet. The submitted plan shows a modification to this reduced transition area through the means of a transition area averaging plan.

The Department may grant a transition area reduction waiver based on hardship for single family residential lots which are unbuildable due to the presence of transition areas to minimum of 25 feet. Based upon a review of the submitted information and in accordance with Freshwater Wetlands Protection Act, N.J.A.C. 7:7A-1-1 et seq, and the analysis which follows, the Department has decided not to grant a transition area waiver based upon the need to avoid imposing an extraordinary hardship on the applicant. N.J.A.C. 7:7A-7.3(e)2 cites the following conditions which must be met for the Department to issue a transition area waiver based upon hardship for a single family residential lot:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

The applicant has owned the property since 1975. This condition has been met.

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

The applicant has never received a waiver from the Department based on hardship. This condition has been met.

iii. The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value;

The applicant has not provided any information to the Department that an effort was made to purchase adjacent properties at fair market value to create a buildable lot. However, the applicant does own several contiguous unimproved parcels surrounding the property in question which can be used to create a buildable lot. The applicant's agent states in the waiver application that the purchase of adjoining properties would not create sufficient upland for the proposed house and septic disposal system. However, no information has been submitted regarding the feasibility of using the adjacent properties owned by the applicant for development. The Department has determined that this condition has not been met.

33X



iv. The applicant shall demonstrate the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

The property was offered for sale to adjacent land owners. None of the adjacent land owners expressed an interest in purchasing the property. This condition has been met.

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988;

The parcel is not contiguous with an adjacent improved parcel which was owned by the applicant prior to or on July 1, 1988. However, as discussed above, the applicant does own several contiguous unimproved parcels surrounding the property in question.

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

The applicant has demonstrated that the subject parcel was offered for sale at fair market value to interested public and private conservation organizations. An offer was made by the New Jersey Conservation Foundation on October 25, 1993 in the amount of \$ 15, 000.00 (attached). Therefore, the Department has determined that this condition has not been met and a hardship does not exist since a conservation organization is willing to buy the property.

As a result of the above analysis, the Department has determined that the requirements for a transition area waiver reduction based upon hardship have not been met. Since the Department has determined that the requirements for a transition area waiver reduction to 25 feet have not been met, then the Department cannot issue a transition area waiver averaging plan based upon a reduced transition area for this project.

Therefore, the Department denies your request for a transition area waiver reduction based upon hardship and a transition area waiver averaging plan as shown on the plan map entitled "LOT DEVELOPMENT PLAN", dated July 15, 1992, last revised May 6, 1993, and prepared by Gladstone Design, Inc. As a result, a transition area of 50 feet will be required adjacent to the wetlands on the above referenced property.

Appeal requests should be submitted to the following address: Office of Legal Affairs, Department of Environmental

34x

Page 4  
Transition Area Waiver - Denial

Protection and Energy, CN 402, Trenton, New Jersey, 08625. The request must include the project number, the date the applicant received the decision, and details of how the decision aggrieves the appellant.

If you should have any questions regarding this letter please contact Jay Springer of my staff at the above address or at (609) 777-0454. Be sure to indicate the Land Use Regulation Program file number in any communication.

Sincerely,



Robert B. Piel, Manager  
Bureau of Inland Regulation

js

c: Califon Borough Clerk & Planning Board  
Hunterdon County Planning Board  
New Jersey Conservation Foundation  
Roy Wimmer, Applicant  
Jay Springer, Project Manager

35X

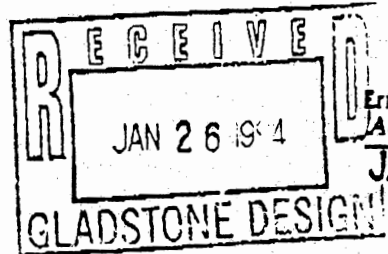


State of New Jersey  
Department of Environmental Protection and Energy

Environmental Regulation  
Land Use Regulation Program  
CN 401

Trenton, NJ 08625-0401  
Fax: # 609-292-8115

Jeanne M. Fox  
Acting Commissioner



Ernest P. Hahn  
Administrator  
JAN 19 1994

Ronald A. Kennedy  
Gladstone Design, Inc.  
P. O. Box 400, 265 Main Street  
Gladstone, New Jersey 07934

RE: Authorization for Freshwater Wetlands Statewide General Permit and Water Quality Certification

Applicant Name: Roy Wimmer  
File Nos.: #1004-92-0003.1 & 1004-92-0003.2  
General Permit Nos.: 2 and 10  
Statute: N.J.S.A. 13:9B-1 et seq.  
Effective date: JAN 19 1994 Expiration date: JAN 19 1999  
Califon Borough, Hunterdon County  
Block: 15; Lot: 3  
South Raritan Watershed; Raritan Drainage Basin

Dear Mr. Kennedy:

The Land Use Regulation Program has reviewed the referenced application for Freshwater Wetlands Statewide General Permit authorizations pursuant to the requirements of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. The proposed activities are authorized by Freshwater Wetlands Statewide General Permit # 2, which allows the discharge of material for backfill or bedding for utility lines, provided there is no change in preconstruction elevation and bottom contours, and Freshwater Wetlands Statewide General Permit # 10, which allows minor road crossing fills and expansion of existing road-crossing fills including attendant features, both temporary and permanent..

Limit of Authorized Disturbance

Based on plans entitled "LOT DEVELOPMENT PLAN", consisting of 1 sheet, dated July 15, 1992, last revised May 6, 1993, and prepared by Gladstone Design, Inc., the authorized activity involves the disturbance of 0.23 of an acre of wetlands for the construction of a stone driveway and the placement of a 3" PVC force main associated with a subsurface sewage disposal system. Any additional disturbance of freshwater wetlands or State open waters shall be considered a violation of the Freshwater Wetlands Protection Act unless the activity is exempt or a permit is obtained prior to the start of the disturbance from the Land Use Regulation Program.

Permit Conditions

The activities allowed by this authorization shall comply with the following conditions. Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et. seq.).

Special Conditions

1. The area above the excavation is replanted with native, indigenous species.
2. The activity is designed so as not to interfere with the natural hydraulic characteristics of the wetland and watershed.
3. The road crossing will be designed using best management practices including, but not limited to, stabilization of all disturbed areas in accordance with the Standards for Soil Erosion and Sediment Control and the use of suitable, clean, non-toxic fill material.
4. Any excavation is backfilled with the original soil material to the preexisting elevation.

In addition to the above conditions and the conditions noted at N.J.A.C. 7:7A 9.2 and 9.3, the following general conditions must be met for the activity authorized under this Statewide General Permit:

General conditions:

1. All fill and other earth work on the lands encompassed within this permit authorization shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" (obtainable from local Soil Conservation District Offices), or equal engineering specifications, to prevent eroded soil from entering adjacent waterways or wetlands at any time during and subsequent to construction.
2. This permit is revocable, or subject to modification or change at any time, when in the judgement of the Department of Environmental Protection and Energy of the State of New Jersey, such revocation, modification or change shall be necessary.
3. The issuance of this permit shall not be deemed to affect in any way other actions by the Department on any future application.

4. The activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
5. No change in plans or specifications shall be made except with the prior written permission of the Department.
6. The granting of this authorization shall not be construed to in any way affect the title or ownership of the property, and shall not make the Department or the State a party in any suit or question of ownership of the property.
7. This authorization is not valid and no work shall be undertaken until such time as all other required approvals and permits have been obtained.
8. A copy of this authorization shall be kept at the work site and shall be exhibited upon request of any person.

#### Waiver of Transition Area

The Land Use Regulation Program has determined that the wetlands affected by this permit authorization are of intermediate resource value and the standard transition area or buffer required adjacent to these wetlands is 50 feet. The resource value classification is the basis for determining the standard width of transition area required for the wetlands affected by this permit authorization. The authorization of activities under this Freshwater Wetlands Statewide General Permit includes a transition area waiver. This waiver allows encroachment only in that portion of the transition area that has been determined by the Program to be necessary to accomplish the authorized activities.

Any additional prohibited activities conducted within the standard transition area on-site shall require a separate transition area waiver from the Program. Prohibited activities within a transition area are defined at N.J.A.C. 7:7A-6.2(a). In addition, a Transition Area Waiver Reduction for Hardship and a Transition Area Waiver Averaging Plan for this project ( file #'s 1004-92-0003.3 & 1004-92-0003.5 ) have been denied by the Department under separate cover.

#### Water Quality Certificate

This letter of authorization to conduct a regulated activity in a wetland or open water includes the Program's approval of a Water Quality Certificate for these activities.

39X

Duration of Authorization/Notification of Work

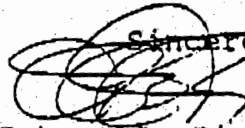
This authorization is valid for five years from the date in this letter. The permittee shall allow an authorized Project representative the right to inspect the construction site. The permittee will notify, in writing, Bureau of Land Use Enforcement at CN 401, 9 Ewing Street, Trenton, New Jersey 08625 7 days prior to commencement of work authorized by this letter.

Appeal of Decision

The applicant or other affected party, if aggrieved by this decision to authorize the activities specified in this correspondence, may request a hearing on this decision by submitting a written request for an administrative hearing to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection and Energy, CN 402, Trenton, New Jersey 08625-0402 within 30 days of the date of this decision.

If you have any questions regarding this authorization, please contact Jay Springer of our staff at (609) 777-0454. Please reference the permit number in any communication concerning this action.

Sincerely,



Robert B. Piel, Manager  
Bureau of Inland Regulation

js

c. U.S. Army Corps of Engineers, New York District  
Bureau of Enforcement, Trenton Office  
Califon Borough Clerk & Planning Board  
Hunterdon County Planning Board  
Jay Springer, Project Manager

ADMINISTRATIVE HEARING REQUEST CHECKLIST  
AND TRACKING FORM FOR PERMITS  
ATTACHMENT

A. The Date the Applicant Received the Denial of the Request for Transition Area Waiver

The agent for the Applicant, Ronald A. Kennedy, President of Gladstone Design, Inc., received the Denial for Transition Area Waiver in File Nos. 1004-92-0003.3 and 1004-92-0003.5 on January 26, 1994.

B. List of All Permit Conditions and Issues Contested

The Applicant sought a waiver of the transition area requirements on the basis of a hardship exception pursuant to N.J.A.C. 7:7A-7.3(e)2. The conditions which must be met to qualify for a hardship exception include:

- (1) The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time.
- (2) The applicant has not received a waiver for a reduction of the transition area based on this hardship criteria for the past five years.
- (3) The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value.
- (4) The applicant shall demonstrate that the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused.
- (5) The subject property is not contiguous with an adjacent improved parcel with was owned by the applicant on July 1, 1988.
- (6) The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and the offer was refused.

The Department found that the Applicant did not satisfy the criteria for a waiver. Specifically, the Department found that requirements three (3) and six (6) above for a transition area waiver were not met. The applicant contests the Department's findings and asserts that it has met every requirement for a waiver of the transition area based upon hardship.

C. The Legal and Factual Questions At Issue

- (1) Does the Applicant meet the criteria for granting of a transition area waiver based upon hardship?
- (2) Does the applicant own lots which are "contiguous" with the lot in question?
- (3) Can any of the lots which are contiguous to the subject lot be purchased for fair market value to create a buildable lot?
- (4) Was the applicant offered the fair market value of the subject lot by the New Jersey Conservation Foundation?
- (5) Does the strict application of the wetlands regulations deprive the applicant of the use of his property without just compensation.
- (6) Has the Department abused its discretion by failing to give the Applicant adequate notice as to what is required to obtain a transition area waiver.

D. A Statement Whether or Not the Permittee Raised Each Legal and Factual Question During the Public Comment Period on the Permit

This is not applicable since the Applicant is appealing the denial of his own application for transition area waiver.

E. Suggested Revised or Alternative Permit Conditions

The Applicant asserts that he has met the criteria for a transition area waiver and requests that the Department grant the waiver.

F. An Estimate of The Time Required For The Hearing

One day.

G. A Request, if Necessary, for a Barrier-Free Hearing Location for Physically Disabled Persons

Not applicable

H. A Clear Indication of Any Willingness to Negotiate a Settlement With Department Prior to the Department's Processing of the Hearing Request to Office of Administrative Law

The applicant sees no benefit in negotiation unless a settlement will result in allowing him to construct improvements within the transition area as contemplated by Applicant's request for the waiver.

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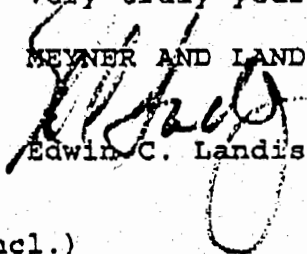


Mr. Robert B. Piel  
Mr. Richard J. McManus  
March 10, 1994  
Page 2

Please contact the undersigned if you have any questions regarding this matter.

Very truly yours,

MEYNER AND LANDIS

  
Edwin C. Landis, Jr.

encl

cc: Mr. Ronald Kennedy (w/encl.)  
Mr. Roy Wimmer (w/encl.)

43X

information upon which this boundary determination is based, has been made a part of this Program's public records.

In addition, under Federal regulations a Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States which include wetlands. Any proposal to perform such activities within the area of Federal jurisdiction will also require prior approval from the U.S. Army Corps of Engineers.

You are entitled to rely upon this boundary determination for a period of five years from the date of this letter pursuant to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

This determination does not affect your responsibility to obtain any local, State, or Federal permits which may be required.

The freshwater wetlands and waters boundary line(s), as determined in this letter, must be shown on any future site development plans. The line(s) should be labelled with the following note:

"Freshwater Wetlands/Waters Boundary Line as verified by NJDEPE, file # 1004-92-0003.4"

In addition, the Department has determined that the wetlands on the subject property are of intermediate resource value and the standard transition area or buffer required adjacent to these wetlands is 50 feet. This classification may affect the requirements for a Individual Wetlands Permit (see N.J.A.C. 7:7A-3), the types of Statewide General Permits available for the wetlands portion of this property (see N.J.A.C. 7:7A-9) and the modification available through a transition area waiver (see N.J.A.C. 7:7A-7). Please refer to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and implementing rules for additional information.

It should be noted that this determination of wetlands classification is based on the best information presently available to the Department. The classification is subject to change if this information is no longer accurate, or as additional information is made available to the Department, including, but not limited to, information supplied by the applicant.

44X

Page 3  
Letter of Interpretation

Please contact Jay Springer of our staff at (609) 777-0454 should you have any questions regarding this letter. Be sure to indicate the Program's file number in all communication.

Sincerely,

*For Catter, for*

Richard Brown  
Section Chief  
Bureau of Inland Regulation

js

c: U.S. Army Corps of Engineers, New York District  
Califon Borough Clerk  
Califon Borough Planning Board  
Hunterdon County Planning Board  
Jay Springer, Project Manager

45X



State of New Jersey  
Department of Environmental Protection and Energy  
Environmental Regulation  
Land Use Regulation Program  
CN 401  
Trenton, NJ 08625-0401  
Fax: # 609-292-8115

Jeanne M. Fox  
Acting Commissioner

Ernest P. Hahn  
Administrator  
JAN 19 1993

Ronald A. Kennedy  
Gladstone Design, Inc.  
P. O. Box 400, 265 Main Street  
Gladstone, New Jersey 07934

RE: Application for Transition Area Waiver-Denial  
File Nos. 1004-92-0003.3 & 1004-92-0003.5  
Applicant: Roy Wimmer  
Project: River Road Parcel  
Block: 15; Lot: 3  
Califon Borough, Hunterdon County  
Watershed: South Branch Raritan River  
Drainage Basin: Raritan River

Dear Mr. Kennedy:

This acknowledges receipt of your request dated July 29, 1992 for a transition area waiver averaging plan and your revised request of June 21, 1993 for a transition area waiver averaging plan and a transition area waiver reduction pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et. seq.) and implementing rules at N.J.A.C. 7:7A-7.

As documented in the Land Use Regulation Program file # 1004-92-0003.4, it has been determined that the freshwater wetlands present on or adjacent to the above referenced property are of intermediate resource value. Pursuant to N.J.A.C. 7:7A-6.1, a standard transition area of 50 feet is required adjacent to these wetlands. The applicant proposes to reduce this standard transition area through the means of a transition area waiver reduction based upon hardship, according to the submitted plan. In addition, the applicant proposes to modify the reduced buffer by means of a transition area waiver averaging plan.

Section 7:7A-7 of the Freshwater Wetlands Protection Act Rules establishes the framework under which the standard transition area may be reduced and/or modified if the Department determines that the reduction will result in minimal environmental impact and that the modified transition area will continue to feature the purposes and functions set forth in N.J.A.C. 7:7A-6.1(a) and (b). In addition, the Department may only grant a waiver for a transition area adjacent to an intermediate resource value wetland if it is determined that no substantial impact will result to the wetland or that the waiver is necessary to avoid imposing a substantial hardship on the

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Rec'd Dec 1993

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applicant. This hardship reduction limits the standard transition area or buffer to 25 feet. The submitted plan shows a modification to this reduced transition area through the means of a transition area averaging plan.

The Department may grant a transition area reduction waiver based on hardship for single family residential lots which are unbuildable due to the presence of transition areas to minimum of 25 feet. Based upon a review of the submitted information and in accordance with Freshwater Wetlands Protection Act, N.J.A.C. 7:7A-1-1 et seq, and the analysis which follows, the Department has decided not to grant a transition area waiver based upon the need to avoid imposing an extraordinary hardship on the applicant. N.J.A.C. 7:7A-7.3(e)2 cites the following conditions which must be met for the Department to issue a transition area waiver based upon hardship for a single family residential lot:

i. The lot was subdivided prior to July 1, 1988 and was owned by the applicant since that time;

The applicant has owned the property since 1975. This condition has been met.

ii. The applicant has not received a waiver for a reduction of a transition area based on this hardship criteria for the past five years;

The applicant has never received a waiver from the Department based on hardship. This condition has been met.

iii. The applicant shall demonstrate that adjacent properties cannot be purchased to create a buildable lot for fair market value;

The applicant has not provided any information to the Department that an effort was made to purchase adjacent properties at fair market value to create a buildable lot. However, the applicant does own several contiguous unimproved parcels surrounding the property in question which can be used to create a buildable lot. The applicant's agent states in the waiver application that the purchase of adjoining properties would not create sufficient upland for the proposed house and septic disposal system. However, no information has been submitted regarding the feasibility of using the adjacent properties owned by the applicant for development. The Department has determined that this condition has not been met.

47X

iv. The applicant shall demonstrate the subject property was offered for sale at fair market value to adjacent landowners and that the offer was refused;

The property was offered for sale to adjacent land owners. None of the adjacent land owners expressed an interest in purchasing the property. This condition has been met.

v. The subject parcel is not contiguous with an adjacent improved parcel which was owned by the applicant on July 1, 1988;

The parcel is not contiguous with an adjacent improved parcel which was owned by the applicant prior to or on July 1, 1988. However, as discussed above, the applicant does own several contiguous unimproved parcels surrounding the property in question.

vi. The applicant shall demonstrate that the subject property was offered for sale at fair market value to interested public or private conservation organizations and the offer was refused. The Department will provide applicants with a listing of conservation organizations upon request.

The applicant has demonstrated that the subject parcel was offered for sale at fair market value to interested public and private conservation organizations. An offer was made by the New Jersey Conservation Foundation on October 25, 1993 in the amount of \$ 15, 000.00 (attached). Therefore, the Department has determined that this condition has not been met and a hardship does not exist since a conservation organization is willing to buy the property.

As a result of the above analysis, the Department has determined that the requirements for a transition area waiver reduction based upon hardship have not been met. Since the Department has determined that the requirements for a transition area waiver reduction to 25 feet have not been met, then the Department cannot issue a transition area waiver averaging plan based upon a reduced transition area for this project.

Therefore, the Department denies your request for a transition area waiver reduction based upon hardship and a transition area waiver averaging plan as shown on the plan map entitled "LOT DEVELOPMENT PLAN", dated July 15, 1992, last revised May 6, 1993, and prepared by Gladstone Design, Inc. As a result, a transition area of 50 feet will be required adjacent to the wetlands on the above referenced property.

Appeal requests should be submitted to the following address: Office of Legal Affairs, Department of Environmental

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Protection and Energy, CN 402, Trenton, New Jersey, 08625. The request must include the project number, the date the applicant received the decision, and details of how the decision aggrieves the appellant.

If you should have any questions regarding this letter please contact Jay Springer of my staff at the above address or at (609) 777-0454. Be sure to indicate the Land Use Regulation Program file number in any communication.

Sincerely,

Robert B. Piel, Manager  
Bureau of Inland Regulation

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C: Califon Borough Clerk & Planning Board  
Hunterdon County Planning Board  
New Jersey Conservation Foundation  
Roy Wimmer, Applicant  
Jay Springer, Project Manager

49x

MEYNER AND LANDIS

ROBERT B. MEYNER

(1908-1990)

EDWIN C. LANDIS, JR.

JEFFREY L. REINER

JOHN N. MALYSKA

WILLIAM J. FIORE

ANTHONY F. SILIATO\*

FRANCIS R. PERKINS

THOMAS C. KELLY

GERALYN A. BOCCHER

HOWARD D. THOMPSON

COUNSELLORS AT LAW

ONE GATEWAY CENTER

SUITE 2500

NEWARK, N. J. 07102-5311

(201) 624-2800

FAX: (201) 624-0358

KATHRYN SCHATZ KOLES

UNDA TOWNLEY SNYDER

WILLIAM H. SCHMIDT, JR. \*\*

PETER L. AGOSTINI\*\*\*

SCOTT T. MCCLEARY

MAUREEN K. HIGGINS

RICHARD A. HAWS\*

MICHAEL J. PALUMBO\*

THEODORE E. LORENZ\*

\*MEMBER N.J. AND N.Y. BARS

\*\*MEMBER N.J. AND D.C. BARS

\*MEMBER N.J. AND PA. BARS

\*\*\*MEMBER N.J., PA. AND D.C. BARS

March 10, 1994

VIA FEDERAL EXPRESS

Mr. Robert B. Piel  
Manager, Bureau of Inland Regulation  
Department of Environmental Protection  
and Energy  
Land Use Regulation Program  
CN 401  
Trenton, New Jersey 08625-0401

VIA FEDERAL EXPRESS

Mr. Richard J. McManus  
Director, Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
Department of Environmental Protection  
and Energy  
CN 402  
Trenton, New Jersey 08625-0401

Re: Application for Transition Area Waiver-Denial  
File Nos. 1004-92-0003.3 and 1004-92-0003.5  
Applicant: Roy Wimmer  
Block 15, Lot 3  
Califon Borough, Hunterdon County, New Jersey

Gentleman:

Please be advised that we represent the applicant, Roy Wimmer, in connection with the above referenced matter. Pursuant to N.J.A.C. 7:7A-12.7 the applicant requests an administrative hearing of the Department's denial of his request for a transition area waiver.

Enclosed please find an Administrative Hearing Request Checklist and Tracking Form with an attachment which lists, among other things, the legal and factual issues which are contested.

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Permit Conditions

The activities allowed by this authorization shall comply with the following conditions. Failure to comply with these conditions shall constitute a violation of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

Special Conditions

1. The area above the excavation is replanted with native, indigenous species.
2. The activity is designed so as not to interfere with the natural hydraulic characteristics of the wetland and watershed.
3. The road crossing will be designed using best management practices including, but not limited to, stabilization of all disturbed areas in accordance with the Standards for Soil Erosion and Sediment Control and the use of suitable, clean, non-toxic fill material.
4. Any excavation is backfilled with the original soil material to the preexisting elevation.

In addition to the above conditions and the conditions noted at N.J.A.C. 7:7A 9.2 and 9.3, the following general conditions must be met for the activity authorized under this Statewide General Permit:

General conditions:

1. All fill and other earth work on the lands encompassed within this permit authorization shall be stabilized in accordance with "Standards for Soil Erosion and Sediment Control in New Jersey" (obtainable from local Soil Conservation District Offices), or equal engineering specifications, to prevent eroded soil from entering adjacent waterways or wetlands at any time during and subsequent to construction.
2. This permit is revocable, or subject to modification or change at any time, when in the judgement of the Department of Environmental Protection and Energy of the State of New Jersey, such revocation, modification or change shall be necessary.
3. The issuance of this permit shall not be deemed to affect in any way other actions by the Department on any future application.

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4. The activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
5. No change in plans or specifications shall be made except with the prior written permission of the Department.
6. The granting of this authorization shall not be construed to in any way affect the title or ownership of the property, and shall not make the Department or the State a party in any suit or question of ownership of the property.
7. This authorization is not valid and no work shall be undertaken until such time as all other required approvals and permits have been obtained.
8. A copy of this authorization shall be kept at the work site and shall be exhibited upon request of any person.

#### Waiver of Transition Area

The Land Use Regulation Program has determined that the wetlands affected by this permit authorization are of intermediate resource value and the standard transition area or buffer required adjacent to these wetlands is 50 feet. The resource value classification is the basis for determining the standard width of transition area required for the wetlands affected by this permit authorization. The authorization of activities under this Freshwater Wetlands Statewide General Permit includes a transition area waiver. This waiver allows encroachment only in that portion of the transition area that has been determined by the Program to be necessary to accomplish the authorized activities.

Any additional prohibited activities conducted within the standard transition area on-site shall require a separate transition area waiver from the Program. Prohibited activities within a transition area are defined at N.J.A.C. 7:7A-6.2(a). In addition, a Transition Area Waiver Reduction for Hardship and a Transition Area Waiver Averaging Plan for this project ( file #'s 1004-92-0003.3 & 1004-92-0003.5 ) have been denied by the Department under separate cover.

#### Water Quality Certificate

This letter of authorization to conduct a regulated activity in a wetland or open water includes the Program's approval of a Water Quality Certificate for these activities.

52X

Mr. Robert B. Piel  
Mr. Richard J. McManus  
March 10, 1994  
Page 2

Please contact the undersigned if you have any questions regarding this matter.

Very truly yours,

MEYNER AND LANDIS

Edwin C. Landis, Jr.

encl

cc: Mr. Ronald Kennedy (w/encl.)  
Mr. Roy Wimmer (w/encl.)

53X

TEL NO.

MEYNER AND LANDIS  
One Gateway Center, Suite 2500  
Newark, New Jersey 07102  
(201) 624-2800  
Attorneys for Roy Wimmer

OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO. ESA 7828-94

ROY WIMMER,

vs.

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
AND ENERGY.

CERTIFICATION OF  
WILLIAM R. NEIL

I, William R. Neil, of full age, hereby certify

1. I am the Assistant Director of Conservation of the New Jersey Audubon Society located at 11 Hardscrabble Road, Bernardsville, New Jersey.

2. My only connection to the above captioned matter ("this case") was responding to a letter written by Bruce Siminoff that appeared in the Star Ledger on October 26, 1994. Prior to October 26, 1994, I had no knowledge of this case, Mr. Wimmer's applications before the DEP or any facts relating to the property located at Lot 3, Block 15 in the Borough of Califon, Hunterdon County, New Jersey.

3. Prior to October 26, 1994, I never had a conversation with anyone employed by the New Jersey Department of Environmental Protection ("DEP"), the New Jersey Attorney General's Office ("AG's Office") or any other governmental authority regarding the disposition of this case or the merits of Mr. Wimmer's applications for wetlands approvals before the DEP.

4. I have not advised anyone at the DEP, the New Jersey AG's Office, any other governmental authority or any other public or private conservation organization and I have not been asked to advise anyone regarding issues relating to this case.

5. On or about October 31, 1994, I reviewed the DEP file relating to this case for the first time. I was told that the portions of the file I was given to review contained only documents available to any member of the public. Prior to October 31, 1994 I have not seen a document relating to this case

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except for the letter written by Mr. Siminoff that appeared in the Star Ledger. I have not seen any AG's Office file or reviewed any other public or non public files held by any governmental or private entity relating to this case.

6. I have not had any conversations with DEP personnel regarding the merits of this case. The only conversations I had with DEP personnel regarding this case related to access to the files at the DEP. I forwarded a copy of my letter to the case-worker, Jay Springer, to ensure that there were no factual errors. Mr. Springer only assured me of the factual correctness contained in my letter. Attached is a true and accurate copy of the letter that I sent to Mr. Springer for his review.

7. Prior to October 26, 1994 I had no knowledge of this case. I responded to Mr. Siminoff's letter in my capacity as the Assistant Director of Conservation for the New Jersey Audubon Society. In writing the letter, which appeared in the Star Ledger on November 26, 1994, I was only acting on behalf of the New Jersey Audubon Society.

8. On or about April 28, 1995, I wrote a letter to Judge Joseph Lavery regarding the subpoena requiring my appearance in this action. With that letter I enclosed the following described documents and no others:

a. The letter I sent to the Star Ledger for publication;

b. My letter, as it appeared in the Star Ledger on November 26, 1994;

c. Mr. Siminoff's letter as it appeared in the Star Ledger on October 26, 1994;

d. A fax letter I received from Mr. Wimmer; and

e. A copy of the subpoena that was served upon me in this case.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

William R. Neil  
William R. Neil

Dated: May \_\_, 1995

BRACH, EICHLER, ROSENBERG, SILVER, BERNSTEIN, HAMMER & GLADSTONE

A PROFESSIONAL CORPORATION

COUNSELLORS AT LAW

101 EISENHOWER PARKWAY  
ROSELAND, N.J. 07068-1067

(201) 228-5700

FAX (201) 228-7852

26 EAST 64TH STREET  
NEW YORK, N. Y. 10021  
(212) 935-9012

PLEASE RESPOND TO ROSELAND OFFICE

AN H. BERNSTEIN  
WILLIAM L. BRACH  
TODD C. BROWER  
RICHARD J. DRIVER  
BURTON L. EICHLER  
JOHN D. FANBURG  
WILLIAM J. FRIEDMAN  
STUART M. GLADSTONE  
CHARLES A. GORMALLY  
JOSEPH M. GORRELL

ALAN R. HAMMER  
BRUCE KLEINMAN  
BRIAN R. LENKER  
ALAN S. PRALGEVER  
DAVID J. RITTER  
PAUL F. ROSENBERG  
MICHAEL I. SCHNECK  
HARRIS R. SILVER  
ALEXANDER J. TAFRO

ALOIS V. HABJAN  
DAVID J. KLEIN  
STEPHEN L. FERSZT  
THOMAS M. BADENHAUSEN  
FRANK S. BALDINO  
DAVID S. BERNSTEIN  
GEORGETTE J. SIEGEL  
ROBERT C. MIGNELLA  
DEBORA LAURANO EISEN  
GARY W. HERSCHMAN  
JOSEPH M. DAVIS  
REGINA A. MCGUIRE  
KELLY A. WATERS  
JOHN P. INGLESINO  
DANIEL L. SCHMUTTER  
JILL DAITCH ROSENBERG  
KEVIN M. LASTORINO

MICHAEL A. WEISS  
HEIDI M. ZASLOW  
MELISSA E. FLAX  
VICKI SUE HULL  
LOUIS P. LAGIOS  
JOHN P. WYCISKALA  
MICHAEL S. ZICHERMAN  
JILL A. COHEN  
CARL J. SORANNO  
BRUCE J. SCHANZER  
HENRY J. ARATOW, JR.  
SIMONE HANDLER HUTCHINSON  
HELEN A. NAU  
DANIEL B. FRIER  
MICHAEL P. MARTIRANO  
DAVID M. NEUENHAUS

OF COUNSEL:  
LANCE A. POSNER  
GEORGE Y. SODOWICK  
STUART L. PACHMAN  
DOROTHY G. BLACK  
CHARLES S. ZUCKER

ALLAN H. KLINGER  
(1957-1992)

ALSO ADMITTED TO PRACTICE IN  
• NY • PA • DC • OTHER DISTRICTS  
A CERTIFIED CIVIL TRIAL ATTORNEY

May 23, 1995

Michael J. Palumbo, Esq.  
MEYNER & LANDIS  
One Gateway Center  
Suite 2500  
Newark, New Jersey 07102-5311

RE: Wimmer v. N.J.D.E.P.E.  
Docket No.: ESA-7828-84

Dear Mr. Palumbo:

Enclosed please find the signed Certification of William R. Neil. I will forward the original signature page as soon as I receive same.

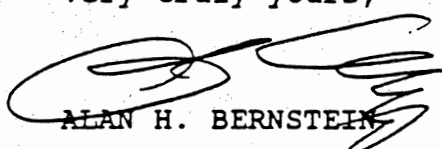
I also enclose the following:

1. Letter that Mr. Neil sent to Jay Springer, which is the exact letter that was sent to the Star Ledger.
2. Mr. Neil's handwritten notes.

In light of the Certification and the enclosed documents, kindly confirm in writing that the subpoena has been withdrawn and that there will be no further attempts to enforce same.

I look forward to your prompt response.

Very truly yours,

  
ALAN H. BERNSTEIN

AHB:a  
Enclosures  
DATA\TEMP\MEF210858.1  
cc: William Neil

60X



## Department of Conservation

11 Hardscrabble Road, P.O. Box 693, Bernardsville, NJ 07924 (908) 766-5787 / Fax: (908) 766-7775

### NEW JERSEY AUDUBON SOCIETY

November 14, 1994  
Mr. Bob Kolter  
Editor, Letters to the Editor  
Star Ledger

On October 26, 1994, the Star Ledger printed a letter from Bruce Siminoff of the Commerce and Industry Association which described the case of Roy Wimmer, an owner of 2.6 acres in Califon who was prevented from building a house because of the alleged "broad definitional powers that have been assumed by the New Jersey Department of Environmental Protection" (NJDEP), powers which Mr. Siminoff implies unfairly determined this parcel to be wetlands.

Mr. Siminoff went on to brand the hardship application process of the owner as "Orwellian," based on what he felt was another unfair practice, the appraisal of the land's value under its legal environmental constraints, which dropped the value from \$75,000 to \$15,000, rendering it, according to Mr. Siminoff, "worthless by bureaucratic fiat."

New Jersey Audubon Society is troubled by both the tone (his mocking, sarcastic reference to cattails) and the content of Mr. Siminoff's letter, especially his description of the process of deciding whether wetlands are present on a property. So we went to Trenton to review the Wimmer case folder to determine the facts for ourselves. He's what we found:

First, it is irrelevant that the Wimmer property was not listed on the U.S. Dept. of the Interior maps, because the NJDEP does not rely upon these maps, and only uses its own set of more detailed maps as a first step that must be verified by field visits. And in Mr. Wimmer's case, his own expert did field work in June of 1992 and found wetlands, and mapped them on property maps that were later clarified, without written protest from Mr. Wimmer's experts, by a subsequent field visit by NJDEP staff.

Mr. Wimmer's own wetlands delineator correctly stated in his June, 1992 written report that the wetlands determination is based, not on the rhetorical and very incomplete list of criteria presented in Mr. Siminoff's letter, but rather on a three part test of soil type, vegetation and hydrology as called for in the 1989 federal manual, all three of which factors must be present to establish that wetlands do indeed exist.

If Mr. Siminoff was correct that this parcel contained no wetlands, then why did the property owner's own consultants not establish this fact from their field work, document it, and make

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this issue the central one of their client's legal appeal?

Instead of making his case on this logical ground, apparently Mr. Wimmer decided to apply for a hardship waiver under the transition area (buffer zone) rules, which are complex, yet bend over backwards to offer property owners flexibility, a flexibility so detailed it takes 29 pages to describe. Is Mr. Siminoff saying these fairness provisions were written in a total vacuum, by "bureaucratic fiat," without the full scrutiny of and opportunity to review and comment - by development interests and experts? Would Mr. Siminoff care to put a finger on how many of the 152 pages of wetland regulations were developed in response to specific concerns and requests by landowners and building interests? We think the answer would be a very substantial number of pages.

Now it is very interesting to learn why Mr. Wimmer's request for a Transition Area Waiver was denied: because he failed to demonstrate that adjacent properties could not be purchased to create a buildable lot for fair market value. More specifically, the NJDEP case files reveal that far from having to buy additional land from other land owners, Mr. Wimmer already owns three lots adjacent to his unbuildable wetlands parcel, which total about 12 acres, and which he has not shown are unbuildable, facts Mr. Siminoff did not present in his letter.

As to Mr. Siminoff's attack on the alleged "Orwellian" nature of appraising the parcel in question under its legal environmental constraints - what would he have NJDEP do instead, evaluate the land as if the wetlands law was not in force, had never been passed by the legislature? That's great for the property owner, but unfair to the public and its sense that we all play fair under the law until the law is changed.

Based on all these corrections to Mr. Siminoff's letter, we wonder who really deserves the adjective "Orwellian" - the legal process administered by the public servants at NJDEP, who have acted in this case as they should have, carefully, under the law, or Mr. Siminoff himself, who has distorted the definition and process of wetland determination, and leaves crucial, relevant facts out, essentially re-writing the case record of this property owner's situation in an attempt to beat the anti-government, anti-regulatory drum ever more frantically? We predict that when those drumbeats are finished, the public will realize that what Mr. Siminoff is really driving at is the rollback of environmental laws which protect the broad majority of citizens, even as they certainly do, by intent, limit the inappropriate actions of some individuals.

William R. Neil  
Assist. Dir. of Conservation

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# State of New Jersey

## DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRISTINE TODD WHITMAN  
Governor

ROBERT C. SIMIN, JR.  
Commissioner

November 30, 1994

Bruce G. Siminoff, Chairman  
State Issues Committee  
Commerce and Industry Association of New Jersey  
P.O. Box 768  
Paramus, N.J. 07653

Dear Mr. Siminoff:

I am writing in response to your October 26 letter to The Star-Ledger questioning whether the Department of Environmental Protection is seriously reevaluating its programs to ensure that environmental laws are administered fairly.

Your letter suggests that the DEP unreasonably enforced regulations in the case of Roy Wimmer, a Califon property owner who wants to build a house and septic system in a wetlands area. Since the department is, in fact, firmly committed to ensuring that its regulations are enforced in a fair and consistent manner, and currently is conducting a comprehensive review to ensure that they are, I would like to set the record straight on the facts of this particular case.

Your letter gives the false impression that the DEP arbitrarily designated substantial portions of Mr. Wimmer's property as wetlands. In fact, Mr. Wimmer's own environmental consultant designated portions of the site as wetlands in June 1992. The wetlands are found around two small streams that flow through the lot and discharge into the Raritan River just upstream of Ken Lockwood Gorge, one of the finest and most scenic fishing spots in New Jersey.

The state Freshwater Wetlands Act, which recognizes that New Jersey's wetlands are vital in protecting the water quality of our rivers, lakes and streams, as well as drinking water, establishes rules for building in and around wetlands. These regulations require that development in such areas occur outside of specified setbacks or buffers. Mr. Wimmer was unable to

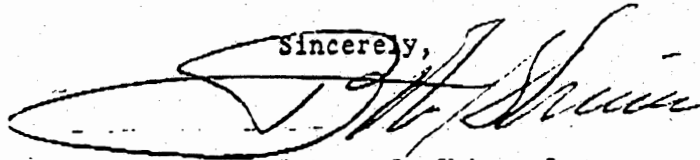
locate a home and septic system outside of the required setback on this particular parcel and therefore needed to apply for a hardship waiver.

As part of the hardship waiver application process, Mr. Wimmer was required to present an appraisal of the parcel and offer the property for sale to adjacent landowners and public and private conservation groups. You take issue with the fact that such an appraisal must take into consideration the environmental constraints of the property. The reality of today's real estate market, however, is that a professional land appraisal is a forecast of the value of a parcel based on all relevant market factors, including zoning, on-site conditions and environmental constraints. You also incorrectly describe a \$15,000 offer from a group on a DEP-provided list as an offer made by a DEP "affiliate." The offer, in fact, was made by the New Jersey Conservation Foundation, a private, nonprofit organization that is in no way affiliated with the department. The list provided by the DEP was developed through a public process to assist landowners in locating potential buyers. The groups on the list are not affiliated with the department, and landowners are free to solicit offers from other organizations.

I also would like to point out that Mr. Wimmer owns more than 12 acres adjacent to the parcel in question. In the course of reviewing his application for a hardship waiver, DEP staff offered to work with him to locate a more environmentally suitable location for a home and septic system on this other property. At no time did Mr. Wimmer or his representatives ever take up the department on its offer of assistance in investigating these other areas.

I assure you that the DEP is fully committed to ensuring that its wetlands regulations and other rules are enforced in a fair and consistent manner -- for the good of both our citizens and our environment.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. C. Shinn, Jr.", written over a horizontal line.

Robert C. Shinn, Jr.  
Commissioner

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Star Ledger  
Robert Kalter, Editor  
1 Star Ledger Plaza  
Newark, N.J., 07102-1200

Dear Mr. Kalter:

In a letter to the editor dated Oct. 26th, Bruce G. Siminoff questioned the broad definitional powers assumed by the N.J. Department of Environmental Protection, using my case by way of illustration.

In response, William R. Neil (Nov. 26) and Robert C. Shinn Jr. (Dec. 28) wrote back in defense of the DEP's position but included some erroneous statements and mis-information that clearly show they either are not cognizant of the true facts or are simply ignoring them in order to put the DEP in the best possible light.

I will not even attempt to address the fairness of the process which has kept my family in a state of flux for years. Instead I would like the opportunity to address and correct some of the incorrect facts written by Mr. Neil and Mr. Shinn.

Mr. Neil writes that my application for a Transition Area Waiver was denied "...because he failed to demonstrate that adjacent properties could not be purchased to create a buildable lot for fair market value." Incredibly, he goes on to state "...Mr. Wimmer already owns 3 lots adjacent to his unbuildable wetlands parcel... and which he has not shown are unbuildable"

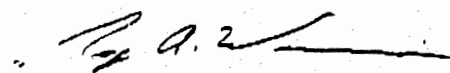
I do not own 3 lots adjacent to the lot in question (which the DEP has classified as unbuildable simply because it would seem that the DEP has the power to do so). The acreage I do own is separated from my lot by a broad (100 foot wide) strip of land once owned by a railroad and is now a major gas pipeline. I do not own this property nor do I have the required legal right-of-way to build on the land across it!

Mr. Shinn writes "...DEP staff offered to work with him to locate a more environmentally suitable location for a home and septic system on this other property". At no time did any member of the DEP contact me with such an offer ... probably because they knew that my land is not adjacent to the lot in question.

The land we wish to build on is well in excess of the 1 acre zoning requirement ( $\pm$  2 acres) and contains more than adequate acreage to situate a small one family home. This property has twice passed required percolation tests and can support septic systems at at least 2 different locations on the land.

We never believed that this property, as a whole, should be designated "wetlands" but applied for the waiver because we were advised that the DEP has the power, the money, the bureaucracy, and a very thick book of tests which can prove almost any piece of land is "wetlands" to hold us up forever on that issue! It seems that reasonableness may not prevail and so we have placed the issue in judicial hands and await the results.

Sincerely,



Roy A. Wimmer

72X

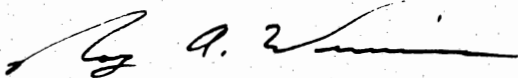
P.O. Box 268  
Califon, N.J., 07830  
December 30, 1994

Robert C. Shinn Jr., Commissioner  
N.J. Department of Environmental Protection  
Trenton, N.J.

Dear Sir:

Attached is the basic letter I will use to respond to the various letters where my name was used in reference to an ongoing case with the DEP. Since I have referred to you by name I feel it is only common courtesy to send you a copy. I would appreciate your returning the same courtesy should future correspondence become necessary.

Sincerely,

A handwritten signature in dark ink, appearing to read "Roy A. Wimmer", with a stylized flourish at the end.

Roy A. Wimmer

73X

MEYNER AND LANDIS  
One Gateway Center, Suite 2500  
Newark, New Jersey 07102  
(201) 624-2800  
Attorneys for Roy Wimmer

OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO. ESA 7828-94

ROY WIMMER,

vs.

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
AND ENERGY.

CERTIFICATION OF  
WILLIAM R. NEIL

I, William R. Neil, of full age, hereby certify

1. I am the Assistant Director of Conservation of the New Jersey Audubon Society located at 11 Hardscrabble Road, Bernardsville, New Jersey.

2. My only connection to the above captioned matter ("this case") was responding to a letter written by Bruce Siminoff that appeared in the Star Ledger on October 26, 1994. Prior to October 26, 1994, I had no knowledge of this case, Mr. Wimmer's applications before the DEP or any facts relating to the property located at Lot 3, Block 15 in the Borough of Califon, Hunterdon County, New Jersey.

3. Prior to October 26, 1994, I never had a conversation with anyone employed by the New Jersey Department of Environmental Protection ("DEP"), the New Jersey Attorney General's Office ("AG's Office") or any other governmental authority regarding the disposition of this case or the merits of Mr. Wimmer's applications for wetlands approvals before the DEP.

4. I have not advised anyone at the DEP, the New Jersey AG's Office, any other governmental authority or any other public or private conservation organization and I have not been asked to advise anyone regarding issues relating to this case.

5. On or about October 31, 1994, I reviewed the DEP file relating to this case for the first time. I was told that the portions of the file I was given to review contained only documents available to any member of the public. Prior to October 31, 1994 I have not seen a document relating to this case

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except for the letter written by Mr. Siminoff that appeared in the Star Ledger. I have not seen any AG's Office file or reviewed any other public or non public files held by any governmental or private entity relating to this case.

6. I have not had any conversations with DEP personnel regarding the merits of this case. The only conversations I had with DEP personnel regarding this case related to access to the files at the DEP. I forwarded a copy of my letter to the case-worker, Jay Springer, to ensure that there were no factual errors. Mr. Springer only assured me of the factual correctness contained in my letter. Attached is a true and accurate copy of the letter that I sent to Mr. Springer for his review.

7. Prior to October 26, 1994 I had no knowledge of this case. I responded to Mr. Siminoff's letter in my capacity as the Assistant Director of Conservation for the New Jersey Audubon Society. In writing the letter, which appeared in the Star Ledger on November 26, 1994, I was only acting on behalf of the New Jersey Audubon Society.

8. On or about April 28, 1995, I wrote a letter to Judge Joseph Levery regarding the subpoena requiring my appearance in this action. With that letter I enclosed the following described documents and no others:

a. The letter I sent to the Star Ledger for publication;

b. My letter, as it appeared in the Star Ledger on November 26, 1994;

c. Mr. Siminoff's letter as it appeared in the Star Ledger on October 26, 1994;

d. A fax letter I received from Mr. Wimmer; and

e. A copy of the subpoena that was served upon me in this case.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

William R. Neil  
William R. Neil

Dated: May \_\_, 1995

# New Jersey Conservation Foundation

300 Mendham Road  
Morristown NJ 07960

201-539-7540

FAX 201 539 9639

May 30, 1995

Edwin C. Landis, Jr., Esq.  
Meyner and Landis  
Gateway 1  
Nowark, New Jersey 07102

Re: Wimmer Property  
Block 14 lot 1.01, Block 15 lot 3.  
Califon Borough, Hunterdon County.

Dear Mr. Landis:

We do appreciate your arranging to meet at our office on May 22nd to discuss the Wimmers' desire to resolve the outstanding issues relative to their wetlands waiver hardship application on the above captioned property.

We have considered your proposal of NJCF withdrawing our offer to acquire the properties in return for the Wimmers' transferring title to us of Block 14, lot 1.01, the land between the river and River Road. Thus, some measure of protection could be afforded the South Branch of the Raritan River and its bank by virtue of title being vested in a conservation group, while Block 15, lot 3 might obtain the necessary hardship waiver since there would then be no purchasers for the parcel.

In reviewing your proposal, we examined the following factors:

1. The conservation benefits of owning the riverbank with a proposed adjoining homesite.
2. The 12 adjacent parcels owned by the Wimmers', 10 in Califon and 2 in Lebanon Township.
3. The lack of showing of consideration by the Wimmers' of alternate homesites in the area that are already in their ownership.
4. The consistency of our decision relative to both New Jersey's Freshwater Wetlands regulations and Federal Zero Wetland loss mandates.

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We are not interested in withdrawing our offer for both parcels in return for the riverbank lot. We are willing to honor our prior purchase offer of \$15,000 case for the two parcels. We also are willing to discuss the purchase at their fair value of additional parcels owned by the Wimmers' in the vicinity.

Should your clients wish to accept our offer, please let us know so we can expeditiously proceed towards closing. Should they wish us to consider other parcels, we'll gladly do so, either individually or in aggregate.

Thank you.

Sincerely,

David J. Ennis  
Director, Land Fund

DJE:sn

CC: J. Wyse, Esq.

77x



RD 3, Box 399

DAVID J. ENNIS  
Pittstown, NJ 08867 908.713.1679

fax 908.713.1689

**Career  
Summary**

Life-long real estate professional. Nationally recognized for expertise in initiating, effecting and managing real estate transactions to protect land for agricultural use, historic preservation, open space, greenways and natural area conservation by innovatively combining easements and fee ownerships, financing opportunities and tax advantages.

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**Professional  
Experience**

New Jersey Conservation Foundation, Morristown - 1976--  
Privately supported, 5,000-member non-profit land trust founded in 1959 to promote appropriate land use. Operating through its land fund, NJCF specializes in acquiring land for public and private open space and agricultural retention, ultimately transferring interest to the appropriate party for permanent stewardship.

*Director, Land Fund*

Responsible for building Foundation's land fund from \$500,000 to \$16 million. Manage fund, analyze potential for land acquisition, initiate purchases and structure transactions to maximize economic benefits for all parties. Address government meetings and hearings on legislation, regulation and regional land use plans. Promote appropriate land use through written material and public speaking to organizations, communities and individuals within the tri-state area. Coordinate land preservation initiatives statewide with a variety of land trusts. Make presentations nationwide to professional groups on conservation-related transactions, including appraisals, valuation techniques and salability of restricted properties. Responsible for ten-person Land Fund Team, including staff training in real estate procedures.

*Special Projects Director*

Established NJCF branch office at Whitesbogs Village, Burlington County, NJ. Active in securing the designation of New Jersey's 1.5 million-acre Pinelands as a National Reserve in 1978 and the passage of the NJ Pinelands Protection Act in 1979, the most advanced land-use control system in the nation. Coordinated open space, conservation and agricultural retention activities statewide.

*Regional Director*

Initially focused on conservation-related projects in northern New Jersey. Expanded responsibilities soon involved statewide activities as both participant and advisor. Responsible for a six-person project involving land preservation in New Jersey's Pinelands, coordinating with all levels of government.

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**Selected  
Professional  
Presentations  
(continued)**

**Society of Real Estate Appraisers, New Jersey; 1987**  
Primary presenter at seminar on farmland preservation, through identification, negotiation and acquisition to implementation  
Individual and panel presentations on wetland valuation techniques; 1989  
**New Jersey Conservation Foundation, Morristown; 1978--**  
Conduct numerous statewide seminars for land planners, builders and appraisers on the transfer of development rights and land conservation

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**Civic  
Memberships**

**Hunterdon County Agriculture Development Board; 1988--**  
Appointed At-Large Citizen Member for board that conducts countywide agricultural retention program, purchases development rights from farm land owners, and addresses public policy and funding issues  
**Hunterdon Art Center, Clinton, NJ; 1985-89**  
Board of Trustees; served as President, Vice President, Director of Building and Grounds during \$1.5 million rehabilitation of 1836 nationally registered historic landmark stone building  
**Alexandria Township, Hunterdon County, NJ; 1982-84**  
Member, Planning Board and Environmental Commission  
Founder, Agricultural Retention Committee

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**Education**

**Seton Hall University, School of Law, Newark, New Jersey**  
**Monmouth College, West Long Branch, New Jersey, B.S.**  
business/economics  
**The Peddle School, Hightstown, New Jersey**

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**Continuing  
Education**

**Land Trust Alliance, Washington, DC; 1984--**  
Numerous national seminars on land conservation since the organization's formation  
**Trust for Public Land, New York, New York; 1984--**  
Seminars on taxation and public policy  
**National Trust for Historic Preservation, Washington, DC; 1983**  
Three-day seminar in Baltimore, MD on tax incentives and valuation of historic and conservation easements  
**New Jersey Department of Agriculture; 1982--**  
On-going seminars on farmland preservation and valuation  
**Connecticut and Massachusetts Departments of Agriculture; 1979**  
Joint seminar on farmland valuation, preservation policy and implementation through legislative initiative

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Long Branch, New Jersey - 1974-76  
 Monmouth County's largest city; population 31,000

*Senior Planner*

Helped organize City's first Division of City Planning and personally coordinated development of a new municipal Master Plan. Formulated the city's first comprehensive five-year capital budget of \$30 million. Developed ordinances on hospital zoning that were adopted by the city and later used as national models. Improved the site plan review process and reduced time from application to approval from nine to two months. Served as liaison to the Planning Board.

Ennis Construction Company - 1970-74

Residential construction company in Monmouth County, New Jersey

*Owner*

Specialized in Victorian restorations.

Ennis-Vogel Realtors, Deal, New Jersey - 1960-76

Family firm established in Manhattan Borough, New York City, 1896

*Licensed Broker*

As fourth generation real estate professional, developed expertise in wide spectrum of real estate transactions, property management, appraisals, planning and zoning approvals.

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**Professional Memberships/  
Honors**

Appointee, State Technical Committee of the U.S. Department of Agriculture's Natural Resources Conservation Service Wetlands Reserve Program, 1995--  
 Member, Real Estate Advisory Committee, Monmouth University Graduate School of Business, West Long Branch, New Jersey, 1993--  
 Member, Advisory Committee, Walt Whitman Society, Camden, NJ  
 Dedicated to the preservation and perpetuation of Whitman's home, work and ideals, 1993--  
 Co-initiator of and Steering Committee Member, Delaware River Greenway Partners. Initially coordinated ten New Jersey and Pennsylvania county and state departments, commissions and planning boards; currently combines efforts of over 150 group partners. 1990--

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**Selected Professional Presentations**

Land Trust Alliance, Washington, DC  
 Selected to present interactive seminars in California (1995), Tennessee (1994) and Montana (1993) focusing on the realities of real estate transactions for international educational convocations of land trusts  
 Individual presentation on the sale of conservation real estate at National Rally; 1994  
 Group leader for seminars on Greenways in Pennsylvania, Virginia and Washington, DC, 1990

80X



*State of New Jersey*  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW

RICHARD J. HUGHES JUSTICE COMPLEX  
25 MARKET STREET  
CN 093  
TRENTON, NJ 08625-0093

DEBORAH T. PORITZ  
ATTORNEY GENERAL

JAYNEE LaVECCHIA  
ASSISTANT ATTORNEY GENERAL  
DIRECTOR

(609) 633-0918

June 1, 1995

**BY HAND DELIVERY**

Edwin Landis, Jr., Esq.  
MEYNER & LANDIS, P.C.  
One Gateway Center  
Suite 2500  
Newark, New Jersey 07102

Re: Wimmer v. DEP  
Docket No. ESA-7828-94

Dear Mr. Landis:

Pursuant to N.J.A.C. 1:1-10.4(e), enclosed please find certified responses on behalf of Respondent DEP to your client's Interrogatories and Request for Production of Documents.

Very truly yours,

DEBORAH T. PORITZ  
ATTORNEY GENERAL OF NEW JERSEY

By: \_\_\_\_\_

Barbara Conklin  
Deputy Attorney General

**LT-PS**

*New Jersey Is An Equal Opportunity Employer*

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CERTIFICATION

I hereby certify on behalf of the State of New Jersey, Department of Environmental Protection: that the foregoing answers to interrogatories have been assembled at my direction by employees of the State of New Jersey who are in possession of information relevant to this case; that said employees have advised me that the answers to these interrogatories are true to the best of their knowledge and belief and are based upon all the relevant information and records available to them and that the attached documents from State files are true copies. I further certify that these answers are true to the best of my knowledge and belief to the extent that I have any personal knowledge of the facts relevant to this case and that I have no reason to believe that the answers offered herein are stated knowing them to be false.

Susan D. Lockwood

Susan Lockwood

Dated: June 1, 1995

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WIMMER V. DEP  
OAL DOCKET NO. ESQ 7828-84  
DEP RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF  
DOCUMENTS PROPOUNDED BY PETITIONER

1. All persons with knowledge of some facts relating to this case:

- Jay Springer, Project Manager, Land Use Regulation Program (LURP) NJDEP: facts recited in Wimmer's application, tax records, location of wetlands and buffer areas on Block 15, Lot 3, existence of access from Block 15, Lot 3 to other Wimmer properties, location of other Wimmer properties in Lebanon and Califon and their zoning, applicable regulations governing Wimmer's proposed activities on Block 15, Lot 3 and DEP policies implementing these rules, correspondence between and on behalf of Wimmer and various persons and groups seeking a buyer for the land, Wimmer application for and DEP issuance of Letter of Interpretation and Statewide General Permits #10 and 7.
- Rick Brown, (former) Section Chief, LURP, NJDEP: facts recited in Wimmer's application, tax records, location of wetlands and buffer areas on Block 15, Lot 3, existence of access from Block 15, Lot 3 to other Wimmer properties, location of other Wimmer properties in Lebanon and Califon and their zoning, applicable regulations governing Wimmer's proposed activities on Block 15, Lot 3 and DEP policies implementing these rules, correspondence between and on behalf of Wimmer and various persons and groups seeking a buyer for the land, Wimmer application for and DEP issuance of Letter of Interpretation and Statewide General Permits #10 and 7.
- Rob Piel, Bureau Manager, LURP, NJDEP: regulations governing transition area waivers and DEP policies implementing these rules, application for and issuance of Letter of Interpretation and Statewide General Permits #10 and 7, familiar with basis and policy for waiver denial.
- Susan Lockwood, Supervising Environmental Specialist, LURP, NJDEP: oversees the writing and interpretation of freshwater and coastal wetland regulations and DEP policies implementing these rules, familiar with basis and policy for Wimmer waiver denial.
- Ernie Hahn, Administrator, LURP, NJDEP: regulations governing transition area waivers and DEP policies implementing these rules, Wimmer application for and DEP issuance of Letter of Interpretation and Statewide General Permits #10 and 7, familiar with basis and policy for Wimmer waiver denial.
- Robert Tudor, (former) Administrator, LURP, NJDEP: regulations governing transition area waivers and DEP policies implementing these rules.
- A. Vincent Agovino, Environmental Consultant, A-P Consulting: regulated activities proposed by Wimmer; location of wetlands and buffers on Block 15, Lot 3, application for and issuance of Letter of Interpretation and Statewide General Permits #10 and 7.
- Ron Kennedy, President, Gladstone Design, Inc.: regulated activities proposed by Wimmer on Block 15, lot 3; appraisal

of property value, offers to sell property and responses to same, application for and issuance of Letter of Interpretation and Statewide General Permits #10 and 7.

David Moore, Executive Director, NJ Conservation Foundation: negotiations for acquisition of Block 15, Lot 3.

David Ennis, Director, Land Fund, NJ Conservation Foundation: Current value of Block 15, Lot 3 and negotiations to acquire same, value of similarly situate freshwater wetland parcels, deficiencies in Wimmer property appraisal, preferred technique in the art of land appraisal, current use of Columbia Gas Pipeline property and transfer from Columbia ownership to Hunterdon County, current condition of Block 15, Lot 3 and its value preserved in its current condition.

Michele Byers, Assistant Director, NJ Conservation Foundation: Value of Block 15, Lot 3 and negotiations to acquire same, value of similar freshwater wetland parcels, deficiencies in Wimmer property appraisal.

Alice Puleo, NJ Conservation Foundation: Value of Block 15, Lot 3 and negotiations to acquire same, value of similar freshwater wetland parcels, deficiencies in Wimmer property appraisal.

Jim Wyse, Esq., attorney for NJ Conservation Foundation: client's negotiations to acquire Wimmer property.

Steve Brower, SDAG, Department of Law and Public Safety, Division of Law: regulations governing transition area waivers and DEP policies implementing these rules.

Jack VanDalen, SDAG, Department of Law and Public Safety, Division of Law: regulations governing transition area waivers and DEP policies implementing these rules.

Rachel Horowitz, DAG, Department of Law and Public Safety, Division of Law: regulations governing transition area waivers and DEP policies implementing these rules.

Kathe Mullaly, DAG, Department of Law and Public Safety, Division of Law: facts recited in Wimmer's application, tax records, location of wetlands and buffer areas on Block 15, Lot 3, existence of access from Block 15, Lot 3 to other Wimmer properties, location of other Wimmer properties in Lebanon and Califon and their zoning, applicable regulations governing Wimmer's proposed activities on Block 15, Lot 3 and DEP policies implementing these rules, correspondence between and on behalf of Wimmer and various persons and groups seeking a buyer for the land.

Barbara Conklin, DAG, Department of Law and Public Safety, Division of Law: facts recited in Wimmer's application, tax records, location of wetlands and buffer areas on Block 15, Lot 3, existence of access from Block 15, Lot 3 to other Wimmer properties, location of other Wimmer properties in Lebanon and Califon and their zoning, applicable regulations governing Wimmer's proposed activities on Block 15, Lot 3 and DEP policies implementing these rules, correspondence between and on behalf of Wimmer and various persons and groups seeking a buyer for the land.

Theresa Ducati, Paralegal, Department of Law and Public Safety, Division of Law: original contract price for purchase

of Block 15, Lot 3 and all other property owned by Wimmer in Califon and Lebanon, subdivision plans for land in Califon and Lebanon, last sale price and current assessed value for comparables cited by Carmisano.

Jack Shuart, Assistant Regional Forester, Department of Parks and Forestry: Wimmer's Forest Management of his property, activities and times.

George Pierson, Inspecting Forester, DEP Bureau of Forestry: last inspected Wimmer properties for compliance with Forest Management Plan.

Christina Hurd, Associate Forester, DEP Bureau of Forestry: Wimmer's Forest Management of his property, activities and times.

Richard D. Goodenough Associates, Inc.: drafted Wimmer's forest management plan.

Roy Wimmer, Applicant: facts surrounding his application, condition of land holdings, current and past, activities on same, current and past, location of other land holdings, correspondence between himself and others on his behalf seeking easements over abandoned railroad (a/k/a Columbia Gas Pipeline, now part of Hunterdon County Park System).

Howard Apgar, Esq., attorney for Hunterdon County Park Commission: Wimmer application for easements over Columbia Gas Pipeline (also shown as Central Rail Road on some maps)

Vincent Sharkey, Esq., attorney for Columbia Gas Transmission Corporation: Wimmer application for easements over Columbia Gas Pipeline (also shown as Central Rail Road on some maps)

Richard J. Carmisano: appraised Block 15, Lot 3.

Michael G. Morris (MGM Associates): Reviewed appraisal done by Carminsino.

2. Persons other than experts who may testify on behalf of DEP and the subject matter of their testimony:

Jay Springer, Project Manager, LURP, NJDEP: facts recited in Wimmer's application, tax records, location of wetlands and buffer areas on Block 15, Lot 3, existence of access from Block 15, Lot 3 to other Wimmer properties, location of other Wimmer properties in Lebanon and Califon and their zoning, applicable regulations governing Wimmer's proposed activities on Block 15, Lot 3 and DEP policies implementing these rules, correspondence between and on behalf of Wimmer and various persons and groups seeking a buyer for the land, Wimmer application for and DEP issuance of Letter of Interpretation and Statewide General Permits #10 and 7.

Susan Lockwood, LURP, NJDEP: Same as Springer, applicable regulations governing Wimmer's proposed activities on Block 15, Lot 3 and DEP policies implementing these rules.

Jack Shuart, Assistant Regional Forester, Department of Parks and Forestry: Wimmer's Forest Management of his property, activities and times, current regulations



George Pierson, Inspecting Forester, DEP Bureau of Forestry: last inspected Wimmer properties for compliance with Forest Management Plan.

3. Expert witnesses who may testify for DEP:

David Ennis, Director, Land Fund, NJ Conservation Foundation:

Current value of Block 15, Lot 3 and negotiations to acquire same, value of similarly situate freshwater wetland parcels, deficiencies in Wimmer property appraisal by Mr. Carmisino, preferred technique in appraising undeveloped land, current use of Columbia Gas Pipeline property and transfer from Columbia ownership to Hunterdon County, current condition of Block 15, Lot 3 and its value preserved in its current condition.

Mr. Ennis agreed to testify on behalf of DEP the week of May 8th as an expert in real estate appraisal, in particular, real estate encumbered by environmental restrictions. See attached resume for Mr. Ennis' qualifications. In addition to Mr. Ennis' experience in the acquisition of property for conservation purposes all over New Jersey including knowledge of other organization's acquisition prices for wetlands in South Jersey for as little as \$500 an acre, see attached property descriptions from which Mr. Ennis shall draw examples supporting the range in values which freshwater wetlands can command under certain circumstances. Although all land is unique and will command differing prices based upon its own features, it is Mr. Ennis' opinion that the highest and best use for Block 15, lot 3 in calculating fair market value is as a private recreational parcel, worth approximately \$3,000 an acre, enhanced, in this case by the presence of a trout stream which would be available to a purchaser for exclusive, private recreational use from the portion of the property known as Block 14, rendering the \$15,000 offer to Mr. Wimmer by the New Jersey Conservation Foundation a fair price which an informed, rational buyer not under duress would pay for the parcel with its current development restrictions. See also "memo to File" dated October 22, 1993, letter to Ronald Kennedy, P.E., October 25, 1993 and press release dated November 30, 1994 provided petitioner's attorney by James Wyse, Esq. on May 8, 1995. Mr. Ennis may also testify as to the preferred approach for evaluating undeveloped land with environmental constraints and why comparables which merely deduct a flat cost attributed to the replacement or construction cost of a house or its attendant

86X

improvements or infrastructure will not always yield the true value of the acreage upon which the house is located, particularly for purposes of extrapolating therefrom the value of undeveloped land located elsewhere. Mr. Ennis may also testify as to the current surface and underground use of the former Columbia Gas Pipeline which abuts the rear of the property, now owned by the Hunterdon Parks system.

4. Not applicable.

5-6. Statements and/or admissions which have been obtained that are relevant to this action:

Christina Hurd, Associate Forester, Richard D. Goodenough Associates, Inc.; A July 9, 1992 statement submitted with the permit application package states "Property owned by Roy Wimmer, including Block 15, Lot 3 in the Borough of Califon, has been managed under a forest management plan" and "Access roads were established and maintained for removal of wood products. Since 1986, the Wimmers have continued to maintain access for the purpose of removing forest products". See Attached. See also attached Forest Management Plans and Harvest reports along with applications for Farmland Assessments for various Wimmer properties, including Block 15, Lot 3 and adjacent lands.

See all "Notes" and information contained on Wimmer Lot Development Plan dated July 15, 1992 revised January 19, 1993 and May 6, 1993 prepared by Ronald Kennedy, P.E.

Roy Wimmer, Applicant; (a) In the permit application submitted July 29, 1992 Mr. Wimmer, through his agent, has documented himself as an owner of three lots within 200 feet of his property. See Attached. (b) In applications for farmland assessment and his Forest Management Plan, Mr. Wimmer admits ownership of Block 18, Lots 20, 21 and 22 in Lebanon Township, Block 14, Lot 1, 1.01, 2.04, Block 15, Lot 3, 4 and 4.4 and Block 17, Lot 1, 2 and 8 in Califon and harvests of various amounts of wood products from these lots by accessing same through Block 15, Lot 3. See attached for these and other statements. (c) In applications for easement to the Columbia Gas Pipeline "Statement of Present and Future Intentions for Easements" Mr. Wimmer states an intention to apply for two easements over Columbia Pipeline property, one from Block 15, Lot 4.4 to Block 17, Lot 2 in order to access Block 17, Lot 2 upon which he intends to build his personal residence and access his other properties, specifically, Block 17, Lot 1 and 8 and another, an existing logging road leading from Block 15, Lot 3 to Block 17, Lot 1, also allowing access to other properties, specifically, Block 18, Lot 20 and 22. See attached.

Robert Tudor, former Administrator of the Land Use Regulation Program; The November 17, 1992 policy memorandum regarding Transition Area Waiver Hardship Provisions. See Attached.

Letters from the New Jersey Conservation Foundation; May 5, 1993 from Alice Puleo indicating an interest in purchasing the property, June 9, 1993 from Alice Puleo again indicating an interest in purchasing the property, July 26, 1993 letter from Dave Moore, Executive Director, NJ Conservation Foundation (NJCF) to Acting Commissioner Jeanne Fox indicating NJCF interest in 4 properties in New Jersey which included Wimmer Parcel, August 5, 1993 letter from Dave Moore offering \$6,000 for the Wimmer parcel, September 24, 1993 letter from Michele Byers indicating problems with appraisal of property, and October 25, 1993 letter from David Ennis offering \$15,000 for the Wimmer parcel. See Attached.

7. Other relevant facts upon which DEP may rely in support of its denial of Roy Wimmer's request for a transition area waiver in addition to the above testimony and documents:

1992 TRW RDI tax records and municipal maps for Califon Borough and Lebanon Township, Hunterdon County. See Attached. See also The Appraisal of Real Estate, Appraisal Institute (Chicago) 10th Edition (1992) and the appraisal done by Mr. Carmisano submitted in support of petitioner's application.

8. Basis for statement "the applicant does own several contiguous unimproved parcels surrounding the property in question which can be used to create a buildable lot.":

See response to Interrogatory 5 and 1992 TRW RDI tax records and municipal tax maps for Califon Borough and Lebanon Township, Hunterdon County.

9. Basis for the assertion that \$15,000 offer by NJCF on October 25, 1993 is a "fair market value" offer:

See response to interrogatory #3 and attachments.

See definition of Fair Market Value contained in appraisal by Richard J. Carmisano.

10. List of times and dates of all meetings attended by DEP relating to the Premises, list of participants, formal and informal, telephone conversations:

No meetings were held relating to the Premises aside from informal communication among and/or between the following: Mr. Springer, Rick Brown, Robert Piel and Susan Lockwood as to general policies upon which a denial could be based and the reasons for the denial in this case which are reflected in the

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denial letter which is the subject of this hearing. No notes were made of these conversations and there are no memoranda or letters concerning these conversations.

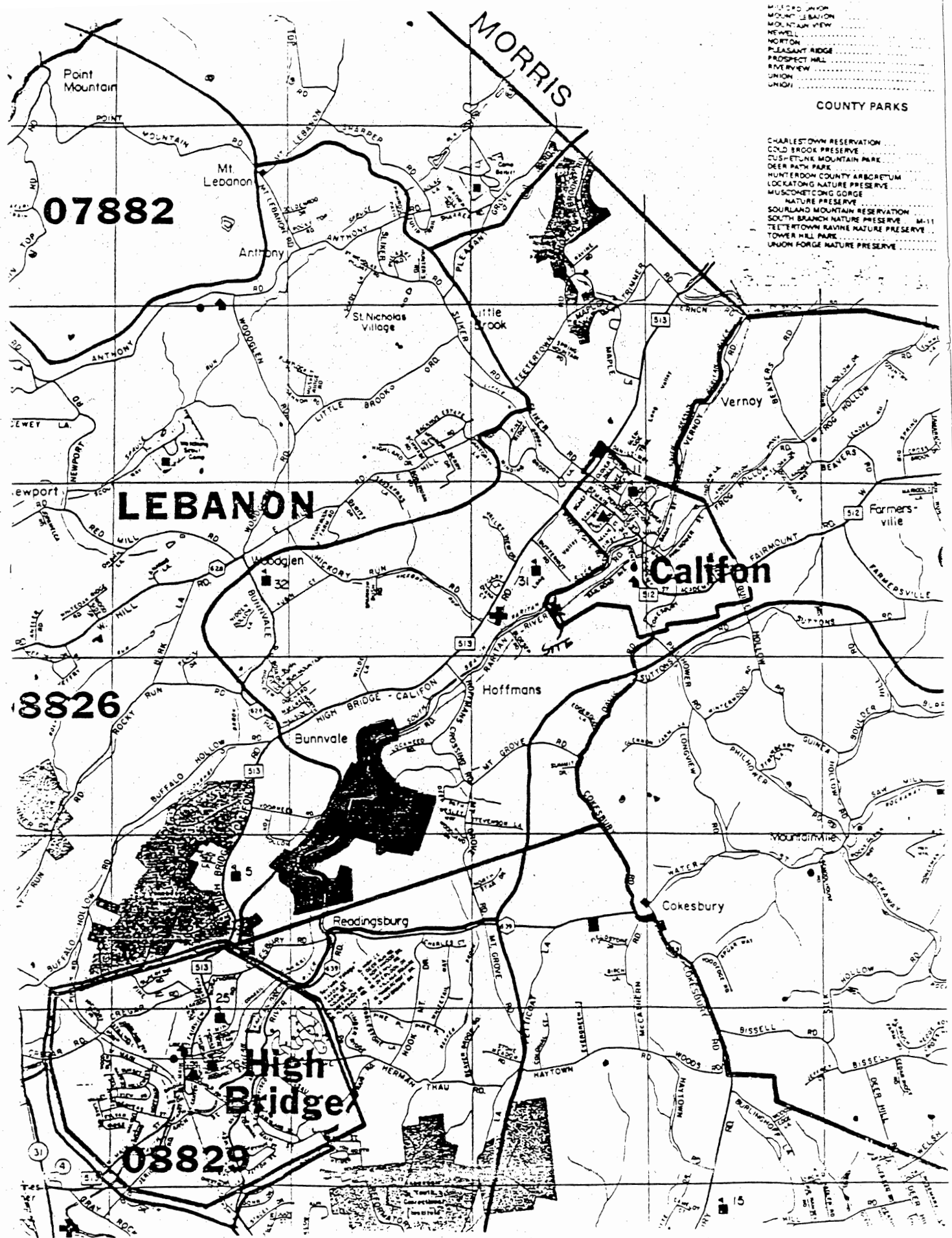
Additionally, there were several informal and undocumented telephone conversations between Jay Springer and Vincent Agovino, and Mr. Springer and Ronald Kennedy who represented Roy Wimmer and Mr. Springer and Michele Byers of the New Jersey Conservation Foundation regarding that organization's interest in the parcel in question and the value of the land.

While not discussing the Premises in question, a meeting was held between DEP personnel Susan Lockwood and Ernest Hahn and representatives of various conservation organizations (COs) in late summer/fall of 1994 in response to those groups' complaints to DEP about receipt of appraisals which did not take into account environmental constraints and thus, which did not comply with DEP's last policy memorandum dated November 17, 1992 (attached) nor reflect the true Fair Market Value (FMV) of wetland properties. DEP representatives acknowledged that applicants and their appraisers routinely disregarded the Tudor guidelines and that DEP did not have the resources to do its own appraisals. Lockwood and Hahn advised the conservation organizations that for the purpose of formulating offers in connection with hardship waivers, DEP did not expect the COs to pay properly-calculated FMVs assuming lots to be fully buildable but instead did instruct the COs to make an offer which would be the maximum price reflective of the current worth of the land taking into consideration the fact that DEP would now be looking at all waiver applications as potential inverse condemnation claims. While no fixed percentage was stated to the COs upon advice of the Attorney General's office, DEP staff was advised orally by Lockwood and Hahn that the "takings" rule of thumb for Agency use would be, for safety's sake, roughly double the current legal standard for takings under New Jersey law, or approximately 20% of the FMV suggested by the applicant's appraiser. However, staff were also advised that the takings considerations did not control waiver application decisions and staff were instructed to evaluate each property individually for waiver purposes to determine whether the offer made by a CO was documented so as to fairly reflect the FMV of that property with its environmental constraints. All waiver denials would be ultimately confirmed by Section Administrator Ernest Hahn before they were issued. This dual approach to waiver applications was not placed in writing on the theory that applicants would, if so advised, probably inflate FMVs beyond their already inflated "fully buildable" FMV estimates in order to coerce a higher "20%" figures from COs interested in bargaining for properties.

CHARLESTOWN UNION  
 MOUNT LEBANON  
 MOUNTAIN VIEW  
 NEWELL  
 NORTHON  
 PLEASANT HILL  
 PROSPECT HILL  
 RIVERVIEW  
 UNION

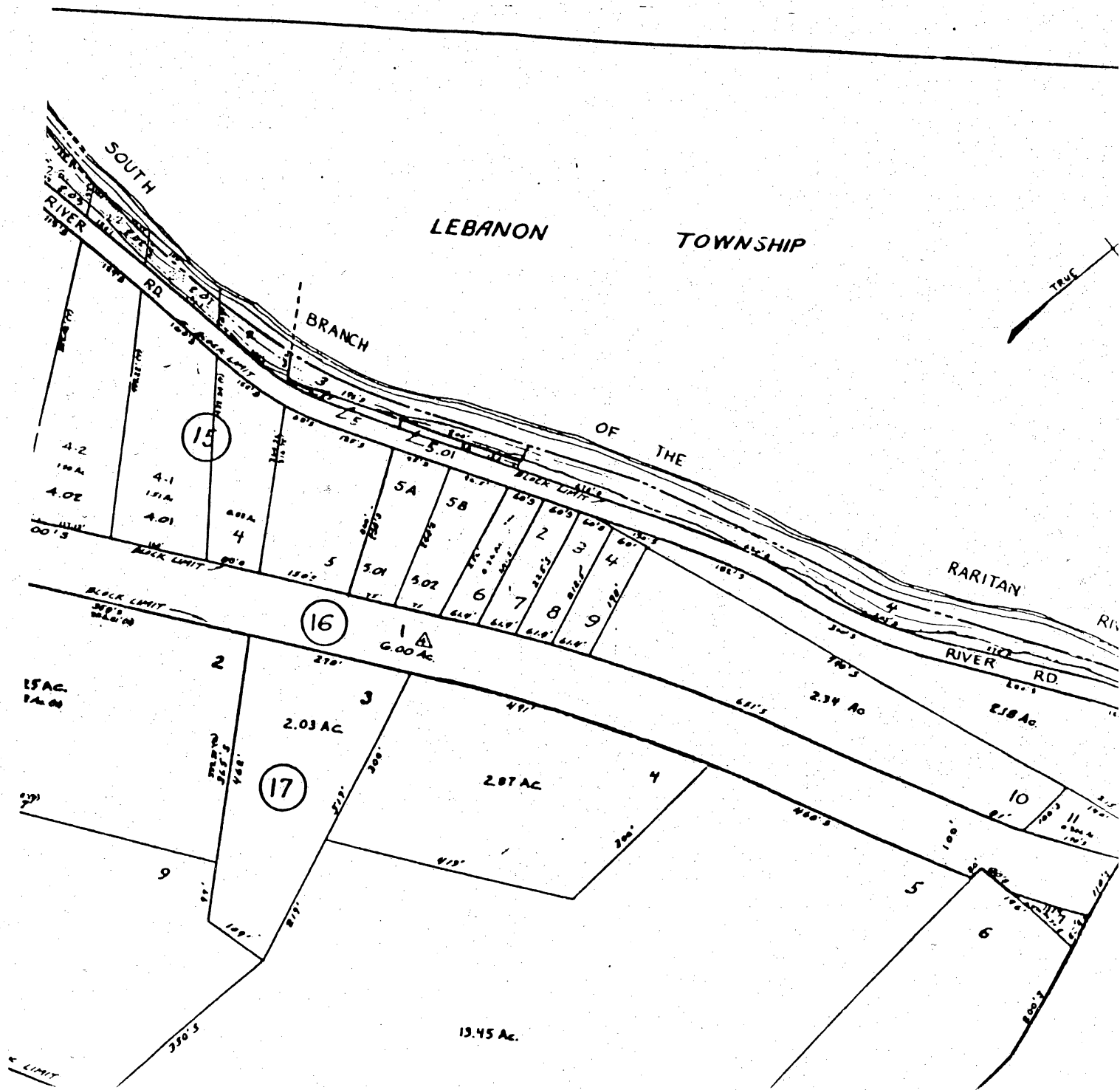
COUNTY PARKS

CHARLESTOWN RESERVATION  
 COLD BROOK PRESERVE  
 CUSHETOWN MOUNTAIN PARK  
 DEER PATH PARK  
 HUNTERDON COUNTY ARBORETUM  
 LOCUSTON NATURE PRESERVE  
 MUSKOGEE GORGE  
 NATURE PRESERVE  
 SOUTHLAND MOUNTAIN RESERVATION  
 SOUTH BRANCH NATURE PRESERVE  
 TETERTOWN RAVINE NATURE PRESERVE  
 TOWER HILL PARK  
 UNION FORGE NATURE PRESERVE



90X

92X



MEYNER AND LANDIS

ROBERT B. MEYNER

(1908-1990)

EDWIN C. LANDIS, JR.  
JEFFREY L. REINER  
JOHN N. MALYSKA  
WILLIAM J. FIORE  
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CYNTHIA BROOKS

\* MEMBER N.J. AND N.Y. BARS

\*\* MEMBER N.J. AND D.C. BARS

+ MEMBER N.J. AND PA. BARS

May 19, 1995

Barbara Conklin, Esquire  
Deputy Attorney General  
Hughes Justice Complex  
CN-093  
Trenton, NJ 08625

Re: Wimmer v. N.J.D.E.P.E  
Docket No. ESA-7828-84

Dear Ms. Conklin:

Enclosed is our draft stipulation of facts in this matter. Based upon our review of the files, these facts are not in dispute and no other facts are necessary to our case. We thus anticipate that a hearing will not be necessary and Judge Lavery can make his decision upon submission of briefs.

If there are facts that are necessary to the state's case beyond the draft stipulation, please advise as soon as possible.

If the stipulation is acceptable, please sign it and return it to us in the enclosed envelope. We will file it with Judge Lavery.

Very truly yours,

MEYNER AND LANDIS

  
Edwin C. Landis, Jr.

ECL:mm  
Enclosure

cc w/o enc: Honorable Joseph Lavery, ALJ

93X

MEYNER AND LANDIS  
One Gateway Center, Suite 2500  
Newark, New Jersey 07102  
(201) 624-2800  
Attorneys for Roy Wimmer

OFFICE OF ADMINISTRATIVE LAW  
OAL DOCKET NO. ESA 7828-94

---

ROY WIMMER,

vs.

NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
AND ENERGY.

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:  
:  
:  
:  
: STIPULATION  
:  
:  
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:

The parties hereby stipulate and agree as to the following facts:

1. Roy A. Wimmer, Ladislas F. Feher and Samuel L. Gilbert, Partners, are the record title owners of Lot 3, Block 15 in the Borough of Califon, Hunterdon County, New Jersey (the "Property") and have been since February 8, 1977.

2. In accordance with N.J.S.A. 13:9B-8, on July 27, 1992, Ronald A. Kennedy, P.E., of Gladstone Design, Inc., on behalf of Roy A. Wimmer ("Wimmer"), requested that the Department of Environmental Protection ("DEP") issue a Letter of Interpretation to verify the jurisdictional boundary of the freshwater wetlands on the Property.

3. On September 24, 1993, the DEP issued a Letter of Interpretation stating that "intermediate resource value" wetlands exist on the Property. A copy of the Letter of Interpretation is attached hereto as Exhibit A.

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4. The wetlands and water boundary line, as accepted by the DEP in issuing the September 24, 1993 Letter of Interpretation appear on the plan map entitled "Lot Development Plan", (the "Plan Map") dated July 15, 1992, last revised May 6, 1993, and prepared by Gladstone Design, Inc. A copy of the Plan Map is attached as Exhibit B.

5. On July 27, 1992, Ronald A. Kennedy, P.E. ("Kennedy"), president of Gladstone Design, Inc., on behalf of Wimmer, filed an application with the DEP asking for Statewide General Permits #2 and #10 to construct a stone driveway through certain wetlands on the Property.

6. On January 19, 1994, the DEP granted Wimmer Statewide General Permits #2 and #10 for the construction of a stone driveway, as shown on the Plan Map, which will disturb .23 acre of wetlands. A copy of the DEP's January 19, 1994 letter authorizing the construction of the driveway through the wetland property is attached as Exhibit C.

7. On July 27, 1992, Kennedy, on behalf of Wimmer, filed an application (later revised to June 21, 1993) to build a single family home, partly in a transition area on the Property. Wimmer sought a transition area waiver and submitted an averaging plan. The request for the waiver was submitted pursuant to N.J.A.C. 7:7A-7.3(e)2. The plan for the construction of the single family home and the averaging plan are set forth on the Plan Map attached as Exhibit B.

8. On January 19, 1994, the DEP denied Wimmer's

application for a transition area waiver. A copy of the DEP's denial of the transition area waiver is attached as Exhibit D.

9. The DEP denied the transition area waiver request on two grounds:

(a) Wimmer failed to demonstrate that adjacent properties could not be purchased for fair market value to create a buildable lot; and

(b) Wimmer failed to demonstrate that the Property was offered for sale at fair market value to interested public and private conservation organizations and that the offer was refused.

10. Wimmer does not own any properties that are contiguous to the Property which can be used to create a buildable lot. No adjoining lots could be purchased at fair market value to create a buildable lot since the two possible adjoining lots do not have sufficient upland for the proposed house and the septic disposal system.

11. On October 25, 1993, the New Jersey Conservation Foundation, a private conservation organization, offered Wimmer \$15,000 to purchase the Property and a related lot which abuts the South Branch of the Raritan River known as Block 14, Lot 1.01 in the Borough of Califon. A copy of the October 25, 1993 offer is attached as Exhibit E.

12. An April 23, 1991 appraisal of the Property and Block 14, Lot 1.01, prepared by Michael G. Morris Associates, estimated the fair market value of those properties to be \$75,200 as a

building lot. A copy of the appraisal is attached hereto as Exhibit F.

13. The New Jersey Conservation Foundation's October 25, 1993 offer of \$15,000 to purchase the property was less than 20% of the fair market value of the Property as a building lot for a single family residence in the Borough of Califon.

MEYNER AND LANDIS  
Attorneys for Roy Wimmer

By: 

EDWIN C. LANDIS, JR.

DEBORA T. PORITZ  
ATTORNEY GENERAL  
STATE OF NEW JERSEY

By: \_\_\_\_\_

BARARA CONKLIN, Esquire  
Deputy Attorney General

Dated: May \_\_, 1995

MEYNER AND LANDIS

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\*MEMBER N.J. AND N.Y. BARS

\*\*MEMBER N.J. AND D.C. BARS

\*MEMBER N.J. AND PA. BARS

June 28, 1995

BY TELECOPIER AND FEDERAL EXPRESS

The Honorable Joseph Lavery  
Office of Administrative Law  
9 Quakerbridge Plaza  
CN 049  
Trenton, New Jersey 08625

Re: Roy Wimmer v. DEPE  
OAL Docket No. ESA 7828-94

Dear Judge Lavery:

Please accept this letter reply brief in lieu of a more formal submission. For the reasons stated herein and in the Petitioner's moving papers and the oral argument on June 6, 1995, Petitioner respectfully requests the opportunity, at the hearing date to be set for the presentation of the State's witnesses, to present expert testimony as to the fair market value of Block 15, Lot 3, Borough of Califon, New Jersey (the "Property") on October 23, 1993.

I. INTRODUCTION

On June 6, 1995, the Petitioner was prepared to present his case based on the record before the DEPE when it denied the Petitioner's waiver request. The Carmosino appraisal, which values the Property as a building lot, was part of the record. The DEPE never questioned the validity or the basis for the Carmosino appraisal when it denied the application. In fact, the denial

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letter (P-4 in evidence) does not address the Carmosino appraisal. On the hearing date, Petitioner discovered that not only was the Carmosino appraisal not going to be viewed as credible evidence by this Court but its date of valuation was no longer useful.

The critical question, obviously, although not addressed theretofore, was whether this appeal should be considered upon the record before the agency or a de novo presentation of Petitioner's application and the State's rationale for denial. Petitioner assumed the hearing would be based upon the record with opportunity to supplement it. In that case the Carmosino appraisal would be given evidential weight as being a matter of record. If the waiver application is to be reviewed on a de novo basis, as the Court apparently decided on June 6, then Petitioner should have the opportunity to offer expert proofs on the valuation of the Property as a building lot. In a de novo hearing, the ability of Mr. Carmosino to testify or the validity of his appraisal are irrelevant and it is the Petitioner's choice as to what proofs he will offer to satisfy his burden.

Thus, as of the hearing date, the Petitioner was unaware that the Carmosino appraisal, on its face, would not be considered as the sole evidence of the fair market value of the Property as a building lot. The Petitioner knew only that it was a matter of record before the agency below and that the agency had not proffered its own appraisal to supplement that record.

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Hon. Joseph Lavery  
June 28, 1995  
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In fact, the crux of this case is the valuation of the Property in the context of the Freshwater Wetlands regulation of waivers. An applicant can build a single family home in an intermediate wetland transition area if six criteria are met. See N.J.A.C. 7:7A-7.4(e)(2). The DEPE denied the Petitioner's application to build a single family dwelling in an intermediate transition area on January 19, 1994. (P-4 in evidence). The denial was based on two grounds: 1) That an offer was made to purchase the Property by a private conservation organization; and 2) that the Petitioner owns lots that are "contiguous" to the lot in question that can be used to "create a buildable lot". (P-4 in evidence at page 2).

The second basis for denial is totally specious. To justify that rationale for denial, the State attempts to show that Petitioner owns lots that are "contiguous" to the one in question by creating a new definition of "contiguous lands", (N.J.A.C. 7:7A-1.4) not found in any dictionary. The Petitioner owns no lands that are physically contiguous to the lot in question. The closest lot owned by the Petitioner is separated by a former railroad bed (owned by Hunterdon County) that is apparently going to be used as a bike path. There is thus no basis in fact or law for the State's position that the Petitioner owns any lots that are contiguous to the Property or that other land is available which can be combined with the lot in question to create a larger building lot.

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Therefore, it is nakedly apparent why the State is willing to go to the lengths of diatribe contained in its brief to deny Petitioner the right to present evidence as to fair market value. The State knows that fair market value is that value the lot had without the State's regulation. The State also knows that the New Jersey Conservation Foundation offer is well below any possible fair market value. Under N.J.A.C. 7A:7.3(e)(2)(iv), the Property must be valued, for purposes of the hardship test, as a building lot, a permitted use when the Petitioner purchased the lot in February 7, 1977 prior to the adoption of the Freshwater Wetlands Act. The concept of "hardship" is turned on its head if the Property is valued in its current unbuildable state, fully encumbered by the Wetlands regulations. -

The Petitioner requests that this Court provide him the opportunity to present expert evidence of the valuation of his Property as a building lot. To deny the Petitioner this opportunity will leave the Court well short of the best evidence available to it on the issue. Such a denial is of constitutional significance since the denial of the waiver will result in a substantial loss of the potential use of the Property. See, e.g., Lucas v. South Carolina Coastal Council, 505 U.S.\_\_\_\_\_, 112 S. Ct. 2886, 120 L.Ed.2d 798 (1992); Loveladies Harbor, Inc. v. United States, 28 F.3d 1117 (Fed. Cir. 1994); Schiavone Constr. Co. v. Hackensack Meadowlands Dev. Comm., 98 N.J. 258 (1985).

The State, on the other hand, wishes to show that the Property should be valued as a lot encumbered by wetlands and transition areas. Whether the State's argument can be successful is a legal question, not a factual one, and the Court should have all the facts available before it when it decides the legal issue. If the State chooses not to offer testimony of value under its legal theory, that is not a reason to deny Petitioner the right to present further proof of value as he sees it.

II. REPLY TO RESPONDENT'S PROCEDURAL HISTORY AND  
STATEMENT OF FACTS<sup>1</sup>

As asserted hereinabove, the Petitioner's other land holdings in Califon and Lebanon Townships are of no relevance to this action. (Rb at 3). The waiver criterion's only concern with an applicant's other land holdings is where they are contiguous. See N.J.A.C. 7:7A-7.3(e). Since the Petitioner owns no lots which are physically contiguous with the one in question and could be used by Petitioner as part of the lot in question for local building permit purposes, the State's denial of the permit on this basis is groundless. The State's recital of Petitioner's other land holdings and tortured exaggeration of the very occasional use of the properties to make it seem that they can be contiguous in some non-dictionary sense when they are not physically contiguous is so nonsensical as to be only offered to confuse the issue and divert

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<sup>1</sup> The State, throughout its rambling brief, uses insults and personal assaults in an effort to persuade this Court to deny Petitioner's application. Petitioner will not dignify these arguments with rebuttal.



Hon. Joseph Lavery  
June 28, 1995  
Page 6

this Court's attention from the plain meaning of the waiver regulations.

The Petitioner moved for a continuance of the hearing of its proofs to obtain an expert report as to the fair market value of the Property as a building lot to contradict the New Jersey Conservation Foundation's Offer of \$15,000 for the Property as being the fair market value. See Rb at 5. The only evidence in the record below as to the value of the Property is the Carmosino appraisal. Since the State, days before the hearing, refused to stipulate to the valuation stated in the Carmosino appraisal as a building lot (the only evidence before it when it took the action appealed from), Petitioner seeks the opportunity to provide expert testimony as to the valuation of the Property as a building lot. See Landis Certification at ¶8.

III. THE OFFER OF A NEW VALUATION EXPERT DOES NOT  
INCONVENIENCE THE STATE SINCE IT WILL HAVE AN  
OPPORTUNITY TO REVIEW THE REPORT AND  
CROSS-EXAMINE THE WITNESS

The Petitioner only learned that the State was contesting the underlying basis of the Carmosino appraisal days before the hearing; in negotiations over a stipulation of facts. Petitioner did not seek the continuance to gain the benefit of surprise, as the State asserts. (Rb at 6-7). Once the Petitioner learned that appraisal testimony was necessary, immediate steps were taken to expedite a new appraisal, before June 6. The Respondent's citation of Catando v. Sheraton Poste Inn, 249 N.J. Super. 253 (App. Div.),

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cert. denied 127 N.J. 550 (1991), is not instructive. In Catando the expert and the report were proffered on the first day of trial. The court rejected such evidence based upon surprise, among other factors. In this case, Counsel for Petitioner, before the hearing, in discussion with Judge Lavery and counsel for the State, noted that a new appraisal of the Property had been commissioned and would be expedited in light of the State's obstinate and continuing refusal to stipulate to the Carmosino appraisal value. Time was requested to obtain the report and share it with the State. No surprise was intended nor did the State suffer any prejudice by the request; nor will it if the continuance is granted, since it very pointedly asked for a similar continuance to put on its own case.

The Petitioner did not seek the services of an expert until just prior to June 6, 1995 because he was unaware of the State's position on the Carmosino appraisal of the Property as a building lot. The State never rejected that appraisal in its denial or in any other way. The State has made it clear both in its denial and to this Court that it wants to stand on the legal argument that the regulation refers to "fair market value" of the Property under the regulation's restrictions, not based on its usefulness without the restrictions. That position, as noted above, simply denudes the concept of "hardship" of any meaning whatsoever. The Respondent's characterization of Petitioner "shopping" for another expert on the day of hearing is misleading and false. Since the Petitioner first learned of the potential need for appraisal testimony for this

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Hon. Joseph Lavery  
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proceeding just prior to the hearing, the question was then considered and the new appraisal was later given a new date (October 23, 1993) and expedited for presentation to the Court.

Since a new appraisal must be obtained to satisfy the Court's request for an appraisal as of October 25, 1993, the choice of appraisers for Petitioner's case belongs to Petitioner, not the State. The State can't have it both ways; ignoring Carmosino's appraisal and also demanding that Petitioner present only his testimony.

If this motion is granted, the State will have a full opportunity to review Petitioner's expert's report and ultimately cross-examine the expert at a hearing. No prejudice or inconvenience will be suffered by the State. The Petitioner's constitutional property rights are at issue here and those rights far outweigh any alleged inconvenience to the State.

IV. THE DEPE'S DENIAL OF THE APPLICATION WAS NOT  
AN APPARENT REJECTION OF THE CARMOSINO  
APPRAISAL OF THE PROPERTY AS A BUILDING LOT

The New Jersey Conservation Foundation's offer of \$15,000 was far below the fair market value of the Property as a building lot when it was made. The Petitioner testified to this fact at the hearing. The State's full argument on the valuation of Petitioner's lot (Rb at 8-9) was obviously not made evident in its denial of the permit and, thus, the state rejection of the Carmosino appraisal is not apparent from the denial letter (P-4 in evidence). The DEPE made no comment on the fair market value of

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Hon. Joseph Lavery  
June 28, 1995  
Page 9

the Property. It simply said that the New Jersey Conservation Foundation was willing to purchase the Property and that the Petitioner thus had not met the relevant criteria for a waiver.

Thus, the DEPE's ambiguous ruling did not provide the Petitioner with a rational explanation for the DEPE decision. Furthermore, as first noted above, the Petitioner had no basis to determine that the appeal would entail a full do novo proceeding rather than a review of the DEPE's decision based on the record, including the Carmosino appraisal. The State, days before the hearing, first notified Petitioner that it took the position that the record below could not be used on this appeal. When the Court, on June 6, agreed and specified a new valuation date, the Petitioner had his first opportunity to confront the need for a new appraisal to support his argument as to the inadequacy of the New Jersey Conservation Foundation's offer. The Petitioner, now that the de novo nature of this proceeding has been stated by the Court, should be permitted to supplement his own opinion as to the fair market value of the Property by expert testimony.

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Hon. Joseph Lavery  
June 28, 1995  
Page 10

V. CONCLUSION

For the reasons set forth herein, the Brief and Certification heretofore submitted in support of this motion and the oral argument on June 6, 1995, the Petitioner respectfully requests that, on the date set for presentation of the State's witnesses, he be granted the right to present further evidence as to the fair market value of the Property.

Respectfully,

MEYNER AND LANDIS

  
Edwin C. Landis, Jr.

ECL:mm

cc: Barbara Conklin, Esquire

107X

Testimony for Catherine Cowan

before the Senate Legislative Oversight Committee

September 28, 1995

Good morning, I am Catherine Cowan, Assistant Commissioner for Environmental Regulation. With me today is Ernest Hahn, Administrator of the Land Use Regulation Program. I appreciate the opportunity to appear before you to explain the process by which New Jersey delineates and defines wetlands.

The definition and regulation of wetlands in the State and at the national level has been subject to a lot of controversy and debate over the past few years. In short, I understand the confusion you may have regarding the process and I hope I can clear up some of that confusion today.

In determining jurisdictional wetlands in New Jersey, the Freshwater Wetlands Protection Act at N.J.S.A. 13:9A-3 directs the Department to use the three parameter approach "enumerated in the April 1, 1987 interim-final draft "Wetlands Identification and Delineation Manual" developed by the United States Environmental Protection Agency, and any subsequent amendments thereto." This involves the use of vegetation, soils and hydrology in making wetlands delineations.

When the legislature was drafting the Freshwater Wetlands Protection Act, there were four different federal methodologies - one by each of the agencies involved in wetlands regulation: EPA, the Army Corps, Soil Conservation Service and the Fish and Wildlife Service - for delineating wetlands available for the legislature to choose from. The legislative decision to select the 1987 EPA manual, rather than the 1987 Corps Manual, evidences a deliberate intent to utilize the more environmentally conservative EPA methodology.

In 1989, these four federal agencies signed a Memorandum of Agreement adopting the Joint Federal Manual for Identifying and Delineating Jurisdictional Wetlands. Determining that this was indeed an amendment as required in the State law, the Department followed suit and immediately began using the 1989 Manual.

The Attorney General's Office subsequently provided the Department with a Legal Opinion dated March 25, 1993 indicating that it is entirely consistent with the Legislature's intent to continue to use the 1989 Joint Federal Manual until such time as the Manual is formally amended.

In August, 1993, the Office of Legislative Services concurred with the opinion of the Attorney General's office that the use of the 1989 Manual is consistent with legislative intent.

This committee had indicated that they were interested in determining whether the State was using different standards from the Federal government to delineate wetlands. Basically, the answer is yes but the answer is a lot more complicated primarily because the federal standards are in such a state of flux. Let me briefly provide you with the background.

In 1991 the EPA proposed sweeping changes to the 1989 Manual and began a rule amendment procedure by publishing the amendments in the Federal Register. The amendments drew sharp criticism and approximately 70,000 comments were filed. These comments were overwhelmingly against the proposed amendment.

In the midst of the public outcry, the EPA withdrew these amendments and instead referred the 1989 Manual to the National Academy of Sciences for their scientific evaluation. The Academy was required to evaluate both the 1987 and 1989 Manuals. They released their report in May, 1995. They concluded that, "improvements in the scientific understanding of wetlands since 1987 and refinement of regulatory practice through experience over almost a decade of intensive wetland regulation suggest that a new federal delineation manual should be prepared for common use by all federal agencies involved in the regulation of wetlands." I have provided a copy of the Executive Summary to the Committee.

However, on January 4, 1993, her last day in office, LuJuana Wilcher, Assistant Administrator for Water, signed an amendment to that Memorandum of Agreement which states that "In making their determinations, the Corps and EPA will adhere to the "Corps of Engineers Wetlands Delineation Manual"...."

This Memorandum is signed only by the EPA and the Corps. The U.S. Fish and Wildlife Service and the Soil Conservation Service, the other two agencies involved with the regulation of wetlands, have not publicly agreed to this change. As a result of these agencies not signing on to the change and also the fact that this change was not done as part of a public process, this switch back to the 1987 Corps Manual has not been deemed an official change to the manual. As such, it can not be considered an acceptable amendment under New Jersey law.

In addition, the Department and other parties consider the 1987 Corps Manual to be an early stage of refinement of the

art of wetlands delineation. It is contradictory, lacks specific direction in many areas and is generally more ambiguous than its 1989 counterpart. Use of the 1987 Corps Manual will lead to a greater number of contentious delineations since determinations will become more subjective.

For all of these reasons, the Department continues to use the 1989 Unified Federal Manual for identifying jurisdictional wetlands and believes that it is consistent with this legislative intent. It would be premature for the Department to make a change at this time since the NAS recommendations are currently under consideration by EPA and no changes have yet been undertaken at the federal level.

I would now like to turn the microphone over to Ernest Hahn for him to explain some of the technical provisions of the 1989 Manual. Before I close, I would like to note that we recently polled a group of other States to determine the process they are using. Of 13 states contacted who have wetland programs, six continue to use the 1989 Manual, six have rejected the use of any federal manual and will continue to use their own state manual and only one has switched to the 1987 Corps Manual.

Thank you.





# The Pinelands Commission

P.O. Box 7, New Lisbon, N.J. 08064 (609) 894-9342

June 10, 1987

## MEMORANDUM

TO: William F. Harrison  
FROM: Donna McBride *DM*  
RE: Jack G. Huggins, Application #83-5778  
Block 8, Lots 18-21, Shamong Township

This application is for a single family dwelling on a 10.24 acre parcel located on Grassy Lake Road.

Several site inspections were conducted on this site by myself and Dr. Andrew Jaworski of our staff. A site inspection conducted in June 1983 was a general inspection indicating environmental problems onsite with wetlands, wetland buffers and possible seasonal high water table. Vegetation survey was used with the Burlington County Soil Survey. I conducted a second site inspection on October 6, 1983 during which a soil boring was performed. For location see Appendix A, soil boring #1. The estimated seasonal high water table was 3.5 feet. Two more site inspections were conducted by Dr. Andrew Jaworski June 20, 1985 and July 26, 1985. Two more borings were performed on this parcel noted as boring #2 and 3 on Appendix A. Boring #2 estimated seasonal high water table at 3 feet. Boring #3 had an estimated seasonal high water table of 0.5 feet.

Karen Young and myself conducted the most recent site inspection on June 4, 1987 and performed 6 more soil borings labeled 4-9 on Appendix A. Soil boring #4 was performed at the same location as the applicants boring location on plans dated October 31, 1986 by Maser Associates, Inc.,. A soil descriptive log is listed in Appendix B. Estimated seasonal high water table is 39 inches. Boring #5 indicated an estimated seasonal high water table at 28 inches. Soil Boring #6, 8, and 9 had estimated seasonal high water table of 12 inches or less. Soil boring #7 has an estimated seasonal high water table of 16 inches. Borings #3, 6-9 all indicate soils of poorly drained conditions and are classified as freshwater wetlands under Section 6-103 of the Comprehensive Management Plan.

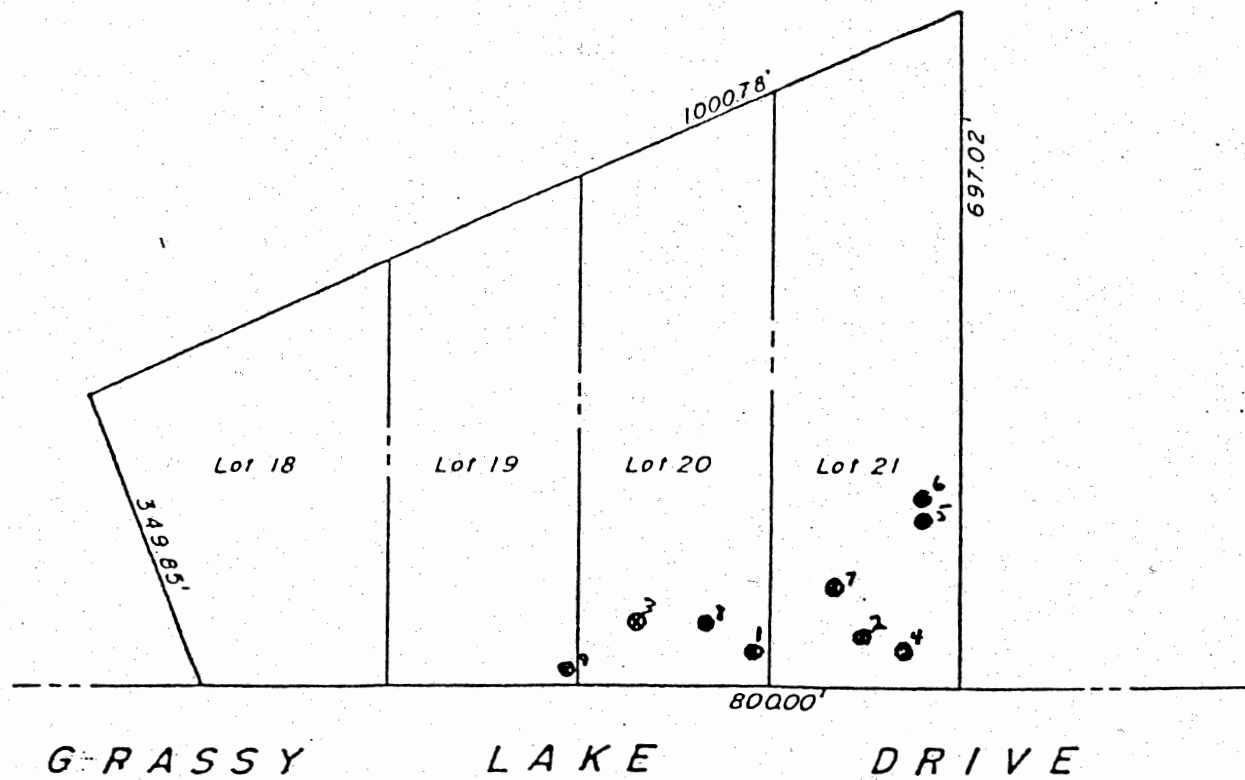
New Jersey State Library

The Pinelands - Our Country's First National Reserve

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APPENDIX "A"

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OUTBOUND DETAIL

Scale 1" = 200'  
● - Soil Boring Locations



## NEW JERSEY AUTO PLAN

ROUTE 35 & BOSTON ROAD  
NEPTUNE CITY • N J • 07753  
TELEPHONE • (908) 988 • 4800  
FACSIMILE • (908) 988 • 4994

September 28, 1995

Senator John P. Scott  
Chairman  
Senate Legislative Oversight Committee  
Trenton, NJ 08625-0098

Dear Senator Scott:

New Jersey Auto Plan is a NJ "Managed Auto Care" company whose staff has 25 years experience in the insurance and collision repair industries. Our research revealed the two biggest consumer complaints regarding collision insurance are the high cost of premiums and the long delays before completion of repairs.

These complaints are significantly reduced with the implementation of "Direct Repair Programs." These long established programs are contractual relationships between insurance companies and repair shops; designed to provide consumers with efficient cost effective claims service. The recently adopted regulatory amendments regarding the settlement of automobile physical damage claims, referred to as "Managed Auto Care," simply mandate a premium reduction, and operational guidelines for these programs.

As we approach the twenty first century the consumers demand for reform becomes increasingly obvious. They place higher levels of value on their time, and are constantly seeking ways to reduce expenses. Auto insurance rates in New Jersey are placed high on their reform list.

The residents of New Jersey deserve the cooperation of our insurance regulators and lawmakers in the interest of sensible insurance reform.

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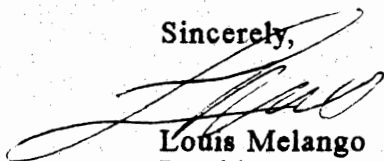
Senate Legislative Oversight Committee

September 28, 1995

Page 2 of 2

New Jersey Auto Plan strongly urges the committee to permit the industry to offer safe, quality auto repairs at a reduced premium.

Sincerely,



Louis Melango  
President

LM \ lm

Enclosure: [1]

cc: Paul Anzano Esq.  
Paige Berry Esq.  
All Committee Members

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# NEW JERSEY AUTO PLAN

## Overview:

New Jersey Auto Plan is a NJ managed auto care company whose staff has 25 years experience in insurance and collision repair. Our research revealed the two biggest consumer complaints regarding collision insurance are the high cost of premiums and the long delays before completion of repairs. These complaints are significantly reduced with the implementation of "Direct Repair Programs." These long established programs are contractual relationships between insurance companies and repair shops; designed to provide consumers with efficient cost effective claims service. The recently adopted regulations regarding Managed Auto Care simply mandate a premium reduction, and operational guidelines for these programs.

## "Managed Auto Care".....The Facts:

**"Eighty percent of all claimants currently ask the insurer to refer them to a repair shop under a similar "Direct Repair Program".**

- "Direct Repair Programs" offer freedom from the lengthy waiting periods often experienced under the current system. However, these programs do not provide the consumer with a premium discount.
- "Managed Auto Care" offers the same freedom plus an immediate premium discount. The discount is clearly defined in the recently proposed managed auto care guidelines issued by the Department of Insurance. This was a key issue when the regulation was proposed.
- "Managed Auto Care" plans must follow the same regulations regarding repair quality and inferior parts usage imposed under the standard policy. This was another key issue also addressed under the Department's guidelines..
- An essential feature of "Managed Auto Care" is its choice-based design. The availability of the standard policy is unaffected.
- Currently, there are **2.2 million** private passenger auto physical damage policyholders in NJ.....paying the highest auto insurance rates in the nation. Consumer choice is forbidden under the current system.
- Opponents of the regulations believe the consumer cannot be trusted with additional rights to make the choice the optional policy offers.

If the legislators are really concerned with the public interest to lower insurance rates, they will not prevent the Department of Insurance from defining and regulating this more efficient, cost effective method of settling auto physical damage claims.

New Jersey consumers are sending a clear message.....**few issues are more important than auto insurance rates.** Don't ignore their concerns for the benefit of special interest groups.

**Economic Comments on the Implementation of  
A Preferred Provider Plan for the Auto Collision Industry**

**PROPOSED NEW RULES: N.J.A.C. 11:3-10A**

Testimony of:  
Donald M. Scarry, Ph.D.,  
Principal Economist  
New Jersey Economics  
12B, The Ellipse, Suite 297  
4201 Church Road  
Mt. Laurel, NJ 08054

Testimony before:  
Senate and Legislative Oversight Committee

Trenton, NJ

September 28, 1995

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Good morning. My name is Donald M. Scarry; I am a Principal Economist at New Jersey Economics, a Mount Laurel based economic policy consulting firm. We have been retained by The Coalition for Quality Automotive Repairs, made up of the Automotive Service Association of New Jersey, the Garden State Automotive Federation, and N.J. CAR, to review the proposed rule N.J.A.C. 11:3-10A and provide economic comment on the proposed new rule.

Beyond the comments we will provide you today, our initial study entitled *New Jersey's Collision Repair Industry: Economics of a Preferred Provider Rule* has been provided to each of you. We have attempted to assess the economic impact of what we've referred to as a preferred provider plan. We have undertaken this assessment through what we hope is a series of clearly stated assumptions and by use of standard United States government data and data from several departments of New Jersey State government.

I would like to summarize the results of our study first and then take you into whatever level of detail you want. Our study results in three observations on the auto collision repair industry. They are as follows.

**SECTION ONE: The proposed rule will reduce the gross dollar volume of the collision repair industry in New Jersey.**

The keynote of New Jersey's collision repair industry is smallness and flexibility. It is an industry almost entirely made up of micro-businesses, the smallest of the small. In addition, the industry is characterized by low barriers to entry: capital equipment is nominal compared to other industries, workers are available, no firm is dominant, there is no need to overcome brand identification. Last, the numbers of buyers and sellers of collision services are large at the present moment. It is close to what economists call a competitive market.

When demand expands, the industry has responded in two ways - by increases in the number of firms and by increases in average employment. When demand slackens, the industry seems to respond by exit of marginal firms. This flexibility insures that the industry can adjust upward or downward to swiftly account for changes in demand. As the dollar volume of premiums is reduced, the industry will shrink. The survivors will be slightly larger, somewhat more capital intense, and will handle a larger number of cars.

These comments are based on Section One of our report.

**SECTION TWO: The decreased dollar volume in the industry will cause unemployment, lost tax revenues, and higher government costs for unemployment insurance payments and retraining programs.**

Assessing the impact of a change in gross revenues flowing to the collision repair industry requires an examination not only of that industry, but all industries with which it has forward and backward linkages. To measure these interindustry linkages, we've used an input/output model at the Department of Commerce.

The model shows that a \$100 million reduction in demand for body shop services would be associated with a loss of more than 1730 jobs, directly and indirectly. State revenue losses would be about \$5,300,000. Local government revenue losses would be almost \$4,800,000. Federal government losses, of general and Social Security revenues, would approach \$1,600,000.

While government revenues are declining, job losses would simultaneously require increased government expenditures, for unemployment payments, training programs, etc. These financial costs would diminish as laid off workers secured other jobs, but, given New Jersey's history of movement into the service sector, government revenues might never fully recover.

These observations are based on Section Two of our report.

**SECTION THREE: Implementation costs, while quite hard to predict, may be very high at first and may last quite some time.**

If premium reductions from the preferred provider option range from \$60 to \$10 and if participation rates never exceeds 80 percent of autos in New Jersey nor falls below 20 percent

- The direct job loss in the collision repair industry will fall between 2,930 and 650.
- Total job losses in the economy, direct plus indirect jobs, will range from 4,570 to 1,030.



The preferred provider option will fundamentally change the economic nature of the collision repair industry. We estimate there will be fewer sellers of auto collision services and the rule, by its nature, will work to reduce the number of buyers. In fact, the gist of the rule is to reduce the number of buyers sufficiently so that buyers have bargaining power and can effect market price. The economic effect of the proposed rule will be to lower the force of competition, increase capital intensity, raise barriers to entry, and reduce the number of both buyers and sellers of body shop services.

The rule implicitly assumes that, in a third-party payer market for collision services, a reduction in competitive forces and an increase in the power of buyers, will result in lower prices. In economic jargon, this represents a move away from what has to be viewed as a competitive market structure toward one with strong, perhaps even excessive power, being placed in the hands of buyers by government rule making - from competition to oligopsony.

The Department is correct in viewing the proposed rule as lowering collision repair prices. Increasing the power of buyers, sophisticated buyers at that, may reduce average price in the industry. However, they will not achieve this reduction without societal cost.

One effect of the proposed rule will be to reduce the number of collision repair facilities, squeeze out marginal firms, squeeze out a number of direct and indirect workers, and, perhaps, lower repair prices. The rule will do nothing to effect cost directly.

The workers, entrepreneurs, and capital squeezed out of the industry may move to other, less regulated and more profitable sectors but the adjustment will not be instantaneous. Before workers and entrepreneurs move to other businesses, *net* losses (premium savings minus social costs) from the program will range from \$175 million to a low of \$3 million.

In estimating these losses, we assumed all premium reductions will be shifted forward to insureds and lower the revenue stream to the collision repair industry. If insurers keep any of the premium reduction, the situation will be even harsher - the same number of autos must be repaired with even less money. The squeeze on the industry will be greater; social costs before adjustments will increase.

These social losses will be mitigated as entrepreneurs and employees move onto other sectors, but will not be eliminated unless both workers and entrepreneurs move into industries with similar or even stronger forward and backward linkages.

These observations are based on Section Three of our report.

## **HOW WE REACHED THESE CONCLUSIONS - A BRIEF OVERVIEW**

The essential facts in our report rely on the input/output modeling done for the State of New Jersey by the New Jersey Department of Commerce. The salient elements of the output of the model are presented in Table 2, "New Jersey Economic Impact: SIC 7352 Auto Collision Repair Shops," immediately following page seven of our report.

At the bottom of the table, the effects of a million-dollar withdrawal from the collision repair industry are clearly laid out, only the "value added" concept may need highlighting. Value added by an industry is the dollar value of its gross shipments minus the cost of inputs. Adding value to substances is the essence of the wealth generating aspect of any manufacturing or service industry. Losing value added is a real cost to society.

Table 3 "Estimating Direct and Indirect Job Losses," is appended to these comments and is in our report immediately following page 12. Table 3 attempts to reduce the range of options and responses to a reasonable one and estimate the direct and indirect job losses in the relevant range using the coefficients and relationships outlined in Table 2. The shaded blocks in parts two and three of Table Two show job losses associated with premium reductions based on this plan.

Premium savings are calculated in the first block in a very simple manner. If the insurers offer a \$50 reduction in the premium for the preferred provider panel and 50 percent of the autos are put in that plan, total savings in premiums would be \$165 million. This would also represent a reduction in gross revenues to the collision repair industry. According to the input/output model, this would destroy 2,855 direct and indirect jobs.

Tables 4.1 and 4.2, which are appended to this testimony and are to be found in our report immediately following page 16, show the application of other

elements of the input/output model.

At a participation rate of 50 percent and a premium reduction of \$50:

- Local, state, and federal tax losses would be \$43 million.
- Wage losses, direct and indirect, would be \$56 million.
- Value added losses from collision repair shops would be \$88 million.
- Value added losses in other sectors of New Jersey's economy would be \$51 million.

With a premium reduction of \$50 and 50 percent of autos in the plan, total losses to society would be \$238 million. Offsetting these losses, premium reductions would be \$165 million. Net losses before the economy adjusts would be \$73 million. The chart entitled "Net Losses from Rule Implementation: Before Market Adjusts," attached to this testimony and in our report immediately following page 15, relates all net losses to all reasonable participation rates and premium reductions.

#### **HOW PERMANENT ARE THESE LOSSES?**

In a perfect world, with instant adjustments and perfectly homogenous labor and capital, these losses would be quite temporary. We do not claim that these losses would be permanent social costs. Over some period, excess collision workers, entrepreneurs, and specialized capital may find other uses and places in the economy of New Jersey. There are some reasons to believe the social costs of the preferred provider panel move would impose long-term social costs.

- First, the market will not adjust instantaneously. Even if all workers, entrepreneurs, and capital could move to other sectors, there could be very heavy, temporary costs.
- Second, the human capital investment of auto collision workers is specialized and not immediately applicable to other sections of the economy. Significant retraining, at public expense, may be necessary to help in adjustment. This may stretch out the timing of adjustment and increase the total social cost bill.
- Last, the recent history of New Jersey's economic growth emphasizes

the service sector over basic industries. While auto collision repair is a service industry, it is much more akin to manufacturing than most other parts of the service sector. The typical experience of manufacturing workers caught up in mass layoffs and plant shutdowns has been an extended duration of employment and, for some, reemployment in lower paying service jobs.

### **WON'T THE PREMIUM SAVINGS STIMULATE THE ECONOMY?**

The answer is "probably." Premium reductions will stimulate some economy - but which economy and to what extent? One cannot assume all premium reductions passed on to consumers will be spent in New Jersey or even on products with significant value added from New Jersey. Assuming this would be to impose a restriction so rigid as to be unrealistic. If all the premium reductions are not spent in New Jersey or on products with an equal amount of New Jersey-based value added, gross state product will decline; the stimulative effect of the reduced premiums may be very mild.

Second, one cannot assume that all saved premiums will be spent at all. New Jerseyans, like most other people, have a propensity to save - some premium savings may never be spent. There is no apparent reason to assume the insurance companies will fully shift their collision savings to consumers; if that were required, there would be no reason for the insurance companies to be interested in this rule making. Both effects would dampen the stimulative effects of premium reduction.

I'd be delighted to answer any questions you may have or take you through particular sections of our report.

Professional Credentials of New Jersey Economics

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*New Jersey Economics* is an economic policy consulting firm providing long- and short-term research and economic guidance to trade associations, businesses, state governments and others. Its primary focus is developing policy options for public action, assessing the economic impact of legislation, and providing planning services.

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**NJ Petroleum Council.** *New Jersey's Future in Alternative Fuels: An Analysis of Potential Revenue Losses.* An assessment of impacts on motor fuel revenues from removing the Motor Fuel Tax on alternative fuels.

**Matrix Development Group.** *Economic Impacts of Construction of an Alternate Extension from the NJ Turnpike.* Analysis of the impacts of an extension of the New Jersey Turnpike to Route 1 in Mercer County. The Turnpike Authority approved the sought after extension.

**Merrill Lynch.** *Future Developments in Office and Corporate Headquarters Development in Central Jersey.* Study to be used in Merrill Lynch's corporate planning in central New Jersey.

**Matrix Realty, Inc.** *The New Jersey Food Distribution Center: Market Potential & Supporting Industries.* A survey of the food distribution industry in support of the Burlington County Board of Chosen Freeholders. The study was used to establish a Food Distribution Authority and a food-oriented industrial park in Burlington County.

**Herbert Sand Co.** Business planning on a \$10 million recreational water facility to be located in Middlesex County. Projections of sand extraction related to nonresidential construction cycle, present values analyses of various royalty and trust funds.

**NAIOP - N.J. Chapter.** *Nonresidential Construction in New Jersey: The Struggle to Regain a Foothold.* A survey based economic analysis of nonresidential construction projects that would be affected by the lapsing of New Jersey's Permit Extension Act. The Legislature enacted the extension of the Permit Extension Act.

**First Fidelity.** Consulting on "South Brunswick Center," a proposed 7.5 million square foot commercial development in South Brunswick, NJ. Issues of timing of construction and testimony re Planning Board Approvals. The South Brunswick Planning Board granted a 20 year site approval.

**Beneficial Corporation.** *New Jersey as a Location for Corporate Headquarters.* A study of the determinants of corporate headquarters locations and the role New Jersey plays as a host state to the nation's major corporations.

**Ford Motor Co.** *The Decline of Manufacturing in New Jersey: Death Throes of an Industrial Giant.* A review of New Jersey's manufacturing to assess technical, political, and other causes of decline. Included policy recommendations to rejuvenate the state's manufacturing base.

**Air Products.** Consulting on the use of "double weighting" in the New Jersey Corporation Business Tax multistate tax allocation formula. Double weighting is now part of the New Jersey tax code.

**New Jersey Boat Builders/Viking Yacht.** *Reviving New Jersey's "Big Boat" Industry -The Case for Public Intervention.* An examination of the economic potentials of boat building in New Jersey. The goal of the study is to provide a rationale to support public sector intervention to rescue the boat building industry.

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**Atlantic Electric Co. Outlook '95: Business Conditions Survey.** Annual survey to assess business conditions and outlook for Atlantic Electric's south Jersey service territory.

**Rowan Foundation. The Rowan Forum.** Creation of a strategic plan for economic development in south Jersey. Coordination of statewide seminars on selected economic development issues.

**New Jersey Casino Association. Video Lottery Terminals: Revenue Implications for the State.** A review of the fiscal interactions of video lotteries, casino gaming, race tracks, and the State's lottery.

**Public Service Electric and Gas Co. A Workbook for a Preliminary Review of Regional Manufacturing Patterns, 1972-1991.** Detailed the comparative decline of manufacturing in states in the Northeast while defining the competitive region.

**New Jersey Association of Realtors. New Jersey at the Crossroads: An Evaluation of the Impact Assessment of the Interim State Development and Redevelopment Plan; 1992.** An evaluation of the economic impact of the State Development and Redevelopment Plan.

**HEAL Coalition. Alternate Financing Mechanisms to Fund Uncompensated Care in New Jersey.** Reviewed tax and revenue plans for funding uncompensated care. The objective was to describe an equitable approach to funding hospital charity care and bad debt expenses.

**NJ Coalition to Save Jobs. Minimum Wages in New Jersey: Their Impact on Low Wage Workers and Business; 1991.** An assessment of the impact of changes in minimum wages on low value added service sector employment.

**Waste Management, Inc. Consulting on the Department of Environmental Protection's plans to deregulate the solid waste collection industry in New Jersey.**

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*Donald M. Scarry, J.D., Ph. D.*

**New Jersey Council of Economic Advisors:** The Council is a statutory organization set up to advise the Governor and the Legislature on economic policy. The council advises on: economic trends; policy alternatives; and studies special economic issues relevant to the State of New Jersey.

**Delaware River Port Authority, Director of Economic Development: 1990 - 1992**

**New Jersey Business & Industry Association, Chief Economist and Director of Legal Affairs: 1982 - 1990.**

**NJ Department of Commerce, Director of Economic Research: 1981**

*Education:*

Ph.D., Economics, Rutgers University. Thesis: The Effects of Property Taxes on the Level of Local Expenditures.

J.D., Rutgers School of Law Camden, NJ.

B.A., Economics, Rutgers University. Degree granted *cum laude*.

*Other Professional Activities:*

**Columnist:** *Business for Central Jersey*; *New Jersey Business-Post*; *NJCM - The Official Publication of the Conference of Mayors*, 1992 to present. *The Princeton Packet*, 1988-1989, *The Burlington County Times*, 1989-1994.

**New Jersey Urban Enterprise Zone Authority,** Governor Florio's appointment.

**Small Business Administration, Advisory Council, Region II,** 1991 to 1993.

**New Jersey Hospital Enterprise Zone Commission,** Governor Kean's appointment, 1990.