

## APPENDIX



150 West State Street · Trenton, NJ 08608 · 609.392.4214 · 609.392.4816 (fax) · [www.chemistrycouncilnj.org](http://www.chemistrycouncilnj.org)

The Chemistry Council of New Jersey (CCNJ) greatly appreciates the opportunity to participate in the Public Access Work Group and provide written comments to Senate Environment and Energy Chair Bob Smith.

CCNJ, along with other interested parties, worked with the New Jersey Department of Environmental Protection (NJDEP) to develop the 2012 Coastal Zone Management Rules as they relate to public access (N.J.A.C. 7:7E-8.11), and the NJDEP saw fit to appropriately exempt industrial facilities that are considered critical infrastructure from on-site public access requirements.

CCNJ, and our members, strongly believe that new and existing critical infrastructure should not be required to provide on-site or off-site public access, due to their designation as critical infrastructure. For public access purposes, CCNJ defines "critical infrastructure" as follows:

- Facilities designated as such by the New Jersey Domestic Security Preparedness Act;
- Facilities regulated by the NJDEP Toxic Catastrophe Prevention Act (TCPA);
- Facilities regulated by the NJDEP Discharge Prevention Program (DPCC);
- Facilities regulated by the U.S. Department of Homeland Security (USDHS) Chemical Facility Anti-Terrorism Standards (CFATS); or
- Facilities regulated by the USDHS Maritime Transportation Security Act (MTSA).

If a facility were subject to the Waterfront Development Act (N.J.S.A. 12:5-3), Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19), and/or Coastal Wetlands Act of 1970 (N.J.S.A. 13:9A), they would be obligated to provide public access to tidal waters as required by the applicable permit(s). However, for industrial facilities, on-site public access is more likely to not be practicable due to health and safety concerns, the threat of terroristic activities, and/or physical obstructions that cannot be modified. In addition, the cost and resources involved in retrofitting a fully developed industrial facility to allow for public access is prohibitive compared to the benefit the public would receive by having access to the site. Furthermore, if a developed area requires a coastal zone permit to conduct repair and/or minor modification activities to an existing structure, the property owner should not be required to retrofit the entire site to allow public access to that small area.

There are significant security concerns associated with providing public access to industrial facilities that must be recognized and will be difficult, if not impossible, to address. USDHS and New Jersey's Office of Homeland Security and Preparedness developed guidelines for chemical facilities and similar critical infrastructure that mandate strict physical security systems to protect the public and power-generating assets from terrorist attacks or other safety hazards. These best practices prohibit public entry onto these sites, as well as public congregation in proximate areas. This presents industrial facilities with significant legal limitations on their abilities to satisfy public access requirements and would put public safety at risk.

Moreover, in the event an industrial facility is unable to satisfy an on-site public access requirement, CCNJ does not believe it is suitable public policy to then require an off-site public access alternative. In the spirit of Governor Christie's Executive Order No. 2, New Jersey should strive to lessen the regulatory burden on the industrial facilities, which will in turn encourage new investment and growth in the State. Though not the same as offering a place to swim or fish, our members' facilities employ thousands of people, pay millions of dollars in taxes, and produce needed consumer products and intermediates, providing no less of a public benefit. It is inappropriate to demand that these facilities provide off-site public access to tidal waters just so they are allowed to continue providing public benefits to their host communities and the State.

CCNJ strongly recommends that a stand-alone exemption from the public access rules be included for all new and existing critical infrastructure, as defined above, regardless of what regulated activities they perform and regardless of whether a municipality has an approved public access plan or not.



There are also sites that are not considered "critical infrastructure" but have hazardous, unsafe conditions, which are not in the public's best interests to access. CCNJ, and our members, believe that all sites undergoing activities directly related to the remediation of a contaminated media should be exempt from requiring any kind of public access. This is a matter of public health; allowing the public to access these sites and, therefore, be exposed to contaminants, should not be encouraged.

Testimony for Public Hearing  
Senate Environment and Energy Committee  
April 21<sup>st</sup>, 2016

Ed Potosnak, New Jersey LCV  
P.O. Box 1237  
Trenton, NJ 08607

Chairman Smith and the Senate Environment and Energy Committee,

I am submitting this testimony to you today as Chair of the Keep It Green Coalition, which represents 180 statewide, local, and regional organizations committed to land conservation, agriculture, historic preservation, environmental protection, urban parks, and outdoor recreation. This Coalition led the fight to pass the 2014 open space ballot measure and represents the groups that would be actively working on-the-ground to support preservation, park development, and restoration in the State. The coalition thanks you for holding this hearing on S969, the Preserve New Jersey Act, and all the legislators who supported the bill in the Senate and Assembly. We call upon Governor Christie to follow the legislature's lead and sign this bi-partisan bill.

S969 provides a clear and open process for distributing voter-approved funds to state programs, counties, municipalities, and nonprofits to preserve lands that protect our drinking water, grow Jersey Fresh produce, honor our state and national history, and serve as community parks and wildlife habitats. The measure provides reduced, but stable annual funding for the depleted Green Acres, farmland, and historic preservation programs, as well as programs to improve water quality, remove and clean up underground storage tanks, remediate brownfields, and clean-up polluted sites. This funding to preserve these lands is especially vital given that New Jersey is the nation's most densely populated state and has very little remaining open space.

In addition to protecting local plant and animal species and improving air quality, land preservation has many less obvious environmental benefits such as water purification. Land serves as a natural filter for our drinking water. At a time when drinking water contamination is receiving increased scrutiny across the country, one of the best steps we can take to protecting water quality is to preserve land that filters water consumed by millions of New Jerseyans.

The benefits of land conservation, however, are not purely environmental, preserving land leads to many economic benefits as well. Open space stabilizes property taxes, supports local economies like the Jersey Shore, and enhances land values. In fact, the average home value increases over 15% when located within 1,500 feet of undeveloped areas. On a larger scale, open areas enable outdoor recreational activities that contribute significantly to our state's economy. For instance, hunting, fishing, and wildlife watching contribute about \$1.7 billion annually to New Jersey's economy. Additionally, more jobs are created for every million dollars spent restoring historic nonresidential buildings than are created for every million dollars spent on new construction.

Although these figures are impressive, perhaps the most significant of all these benefits is the fact that preserved land more than pays for itself. According to a study by our friends at the Trust for Public Land, conserved land returns \$10 in ecosystem services for every \$1 that is invested.



Currently, many preservation programs are not receiving funding, and the Governor's signature on S969, the Preserve New Jersey Act, is necessary to apportion the CBT funds dedicated by the voters for the next three years. The Legislature will then be able to evaluate the programs as well as the existing needs and establish continued implementation guidance. When voters approved Public Question 2 in November 2014 by an overwhelming majority, 65 percent, they sent a clear message that preservation and stewardship of Open Space, Farmland, and Historic lands were important statewide priorities.

Despite this constitutionally established fund, communities have yet to see benefit, because the Governor has yet to sign implementing legislation, even though the legislature has now twice put this bill on his desk. Consequently, funds for parks, open space, farmland and historic preservation are being collected but are not being released to counties, municipalities and non-profits throughout the state as the voters intended. Even worse, without implementing language, the accumulating funds have already become an enticing source of unallocated money, and the governor has already used \$19.9 million to pay for park staff and management, even though the legislature explicitly found another funding source because this body wisely determined that the suggested use of CBT funds was inconsistent with the intent of voters. Usage of funds in this manner last year is unacceptable and we are exploring all options on how to remedy the situation.

Once again this year, the Governor has proposed using dedicated CBT funds for this same purpose, and we strongly believe that enacting this implementation bill is the only way to prevent improper use of fund both this year and in the future.

Finally, the programs funded through the dedicated funds should not be subject to the year to year appropriations process. Having longer term, reliable funding allows for programs to make strategic investments and complete multi-year projects.

**Recommendation:**

In order to both begin and ensure continued funding for vital programs, the New Jersey Keep it Green Coalition and New Jersey LCV call upon Governor Christie to sign S969.

With each passing day that the funds are not distributed, the lands our families and businesses count on to provide clean drinking water, recreation, and produce are being developed and our historic sites are falling further into disrepair.

Thank you again for your leadership on this issue, providing us a platform to publically petition the governor, and for your thoughtful consideration of our testimony.

With highest regards,

Edward Potosnak,  
Chair, Keep It Green Coalition



Linda J. Mead  
President & CEO  
D&R Greenway Land Trust  
One Preservation Place  
Princeton, New Jersey 08540  
[www.drgreenway.org](http://www.drgreenway.org)

Good morning Chairman Smith and Members of the Committee:

My name is Linda Mead and I am President & CEO of D&R Greenway Land Trust, a nonprofit organization that partners with the NJ Green Acres Program and the State Agricultural Development Committee to preserve farms and conservation lands in central and south Jersey. Together, we have permanently preserved nearly 20,000 acres of NJ's remarkable landscape since 1989. The protection of these 287 different properties was accomplished with Green Acres and GSPT funding, leveraged with local open space dollars and private funding.

We are members of the NJ Keep It Green Coalition and strongly support the implementing legislation that is on the Governor's desk. Thank you for taking testimony today.

As one of New Jersey's land trusts that depend on this funding to preserve land and create parks and public open space in New Jersey--- we are anxious for this legislation to get approved and for the funding to become available.

The State open space funding primes the pump for just about all of our transactions. Since the Nonprofit Program began in 1995, D&R Greenway has received over \$11 million in State funding. That funding has served to leverage many of the lands we have preserved which total nearly \$400 Million in value.

Nonprofits like ours and the many local governments that utilize this funding need to be able to plan our projects and make commitments to preservation sellers.

And please know that the lands we preserve are more than recreation lands and critical habitat projects. The lands we preserve provide valuable ecosystem services in our State.

Just recently, we had a report prepared to estimate in dollars, the economic value of the ecosystem services provided by the lands we have preserved. Using current scholarly work on ecological economics matched with our preservation data, this report estimated that the 20,000 acres protected by D&R Greenway Land Trust provide *\$60 million in value each year*. This value includes clean water quality and flood protection, filtering of clean air, carbon sinks to regulate our atmosphere and habitat value for pollinators and wildlife. It includes contributions to the economy through recreational uses. This is *in addition to* the value of agricultural products from our preserved farmland.

We believe that this implementing legislation is a fair and equitable way to distribute the open space funding. Mr. Chairman, all of our Programs can use more funding than is currently approved through the "Preserve New Jersey Act"; but this bill is a way to at least get the Programs working again.

One thing is certain--- if we don't get a bill passed to prescribe the allocations that we all voted for... none of our worthy projects will get accomplished. Our membership urges the Governor to sign this important legislation.



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## OPEN SPACE INSTITUTE

Contact: Bill Rawlyk  
908.628.4299  
[brawlyk@osiny.org](mailto:brawlyk@osiny.org)

### **Open Space Institute Supports the New Jersey Open Space Implementation Bill**

On behalf of the Open Space Institute I appreciate the opportunity to provide testimony in support of the Open Space Implementation Bill, S 969. My name is Bill Rawlyk and I am the Mid-Atlantic Field Coordinator for the Open Space Institute's Conservation Capital program. The Open Space Institute is a land conservation organization that has helped protect over 2.2 million acres in North America from Alabama to southeastern Canada. One of the ways we preserve land is through our conservation capital program, which administers grant funding to projects that safeguard water resources, enhance recreational access, preserve habitat for rare and endangered species, and support sustainably managed lands.

In New Jersey, with the generous support of the Geraldine R. Dodge and William Penn Foundations, we have awarded \$8.2 million in loans to land trusts to conserve 10,730 acres of land with a total real estate value of \$51.4 million, and \$3 million in grants to conserve 8,000 acres of land with a total real estate value of \$23.8 million. The grants we award are always a piece of the funding pie and our program has been successful in New Jersey due to the state's long history of stable and reliable open space funding. For example, of the \$23 million needed to protect the 8,000 acres I just mentioned, about \$6 million came from the State of New Jersey – funding that was often the magnet for other public and private funds, enabling many of the projects to be completed that might not have been otherwise.

The public clearly support continuing conservation funding. Sixty-four percent of New Jersey voters approved the 2014 open space ballot measure. The implementation bill will ensure that year after year there is a predictable source of funding that can leverage additional funding such as the grants we oversee.

The Open Space Institute's grant program cannot function independently and without state funding we are beginning to encounter instances where land trusts in New Jersey are deciding not to apply for an Open Space Institute grant since state matching funds have dwindled.

Examples like these run counter to the intentions of voters who overwhelmingly supported the open space measure. The implementation bill will provide transparent, predictable and reliable funding that provides opportunities to leverage non-state funding and keep New Jersey's community parks, forests and farms, green.

Thank you for the opportunity to speak before the committee and for your support of the open space implementation bill.



# **New Jersey Conservation**

## **F O U N D A T I O N**

April 21, 2016

Senate Energy and Environment Committee

Testimony of Amy Hansen, Policy Analyst, New Jersey Conservation Foundation

Good morning Mr. Chairman and committee members. Thank you for the opportunity to comment on A780/S969 which will allow appropriation of the 4% of the Corporate Business Tax that the voters approved in 2014 to fund open space, farmland and historic preservation. New Jersey Conservation Foundation has worked for over 50 years to preserve lands and natural resources across the state but our efforts have been hampered by the current lack of funding.

As I speak with my colleagues in the Acquisition Department within my organization, I keep hearing the same thing. They have potential projects, from the Delaware Bayshore protecting farmland, to the Highlands, to urban areas needing more parks, all desperately waiting on preservation money to move forward. There are parks and open space, historic farmland and other sites in many other places throughout New Jersey that deserve permanent protection but the preservation programs have run out of money, leaving County and municipal open space funds sitting waiting for matching dollars.

We have waited a long time for this funding – the time is overdue to move it into good projects that will allow current and future generations a clean drinking water supply, healthy food, recreation opportunities and a high quality of life in this state, the most densely populated of our nation's fifty.

Please do everything you can to appropriate these funds now. Thank you.



Raritan Headwaters is a proud member of the Keep It Green (KIG) coalition. With our partners at KIG we are working to create long-term, dedicated funding for open space preservation in the Garden State.

Raritan Headwaters is a watershed association. We are not a land trust. We protect clean water in our 470 square mile watershed in Hunterdon, Morris, and Somerset Counties.

Why does a watershed association care about open space? The single best indicator of water quality is land use; the more intense the land use, the more water quality is adversely affected. That is, as development density goes up, water quality goes down.

Protecting open space is a keystone to protecting water quality. We are blessed to have many state parks and natural areas in our watershed, including gems like Fairview Farm, Voorhees State Park, the Ken Lockwood Gorge Wildlife Management Area, and Round Valley and Spruce Run State Parks, but many critical areas remain to be preserved.

The New Jersey Highlands Council (the Council) recently implemented a program to help preserve open space in the Highlands, a vital source of drinking water for 5.5 million people. The Council has approximately \$10 million available to buy Highlands Development Credits and to preserve open space. The funds for the Highlands program come not from the State budget, but from mitigation funds from PSE&G's expansion of its Susquehanna-Roseland utility easement. One of the conditions in the Highlands program is that the money provided by the Highlands Council must be matched; the Council will fund no more than 50% of each open space project. Green Acres funds from S969/A870 will provide critical matching funds for projects in the Highlands that



are absolutely essential to protecting safe drinking water for the majority of New Jersey's families now and for the future.

Raritan Headwaters works with a variety of partners to preserve open space in our watershed, including private landowners, the DEP Green Acres office, the New Jersey Water Supply Authority, local and county governments, and local land trusts and other non-profit conservation organizations. We helped preserve more than 6,300 acres of natural areas over the last 25 years. If you're wondering how Raritan Headwaters spent the open space funds it received in the past, every dollar of open space funding that we take in goes right back out the door to buy land that protects water quality. In other words, we cover our own overhead. 100 percent of the taxpayers' open space funds went to a willing seller. State open space funding gets leveraged on every project.

Open space is essential to the health of our communities. High-quality natural areas provide opportunities for recreation, education, and economic development. They build community and protect public health by protecting clean air and clean water. In addition, they safeguard wildlife habitat and boost local economies by stabilizing local property taxes, spurring revitalization, supporting area businesses, and providing a better quality of life. Open space is good for you!

Preserving open space helps protect your drinking water. Investing in open space is an investment in the future of New Jersey.

Respectfully submitted,

William S. Kibler  
Director of Policy  
[bkibler@raritanheadwaters.org](mailto:bkibler@raritanheadwaters.org)

Winner 2015 Governor's Environmental Excellence Award



## MEMORANDUM

**TO:** Public Access Task Force  
Sara Bluhm - NJ Business and Industry Association  
Tim Dillingham- American Littoral Society  
Michael Egenton - NJ Chamber of Commerce  
Debbie Mans - NY/NJ Baykeeper

**FROM:** Elizabeth George-Cheniara, Esq., Vice President of Regulatory & Legal Affairs

**COPY:** Senator Bob Smith, Chair, Senate Environment and Energy Committee  
Michael J. Gross, Esq., (Giordano, Halleran & Ciesla, P.C.)  
Steven Dalton, Esq., (Giordano, Halleran & Ciesla, P.C.)  
Rick Ricciardi, P.P. (Marathon Engineering)  
Carol Ann Short, Esq., CEO, NJBA  
Jeff Kolakowski, Vice President of Government Affairs, NJBA

**RE:** NJBA's Response Paper to "Draft Issue Area Discussion"

**DATE:** March 21, 2016

The New Jersey Builders Association (NJBA) appreciates the opportunity to participate in the Task Force and provide comments on the "Draft Issue Area Discussion" (Draft Proposal). NJBA recognizes the public's right to access and use tidal waterways and shores under the common law principle known as the "Public Trust Doctrine", a principle recognized in New Jersey and throughout the United States, with origins that date back to English common law and Roman civil law. But that doctrine is not the only principle to be considered in the context of a legislative effort to codify public access principles of the Public Trust Doctrine to act as authority for regulations to implement such principles. Another fundamental principle under the State and federal constitutions is the sanctity of private property. Indeed, private property rights likewise predate the founding of this country and are grounded in historic legal authority such as the Magna Carta. Accordingly, any public access statute and regulations must be consistent not only with the principles of the Public Trust Doctrine as developed through the common law over the course of years, but must also reflect and be in compliance with the New Jersey and United States Constitutional requirements.

The Supreme Court of New Jersey has been most judicious in striking the balance between the public's right of access to tidal waters under the Public Trust Doctrine on the one hand, and the rights of private property owners, the character of coastal neighborhoods, and the interests of the residents of these communities, on the other hand. Any legislative effort to now codify the

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200 American Metro Boulevard • Suite 123 • Hamilton, NJ 08619 • P: 609.587.5577 • F: 609.587.0044



Public Trust Doctrine should adhere to Court's careful balancing of these competing interests by requiring case-by-case, individualized determinations and balancing of the public's rights under the Public Trust Doctrine and private property rights.

The framework for such individualized determinations is established in the Supreme Court's decisions of Matthews vs. Bay Head Improvement Association, 95 N.J. 306 (1984) and discussed in Raleigh Ave. v. Beach Ass'n v. Atlantis Beach Club, Inc., 185 N.J. 40 (2005), which address the public's right to use in limited circumstances dry sand beach areas and limited rights to perpendicular access to such lands. In those cases, the Court established the public's rights are satisfied as long as reasonable access to water areas exist and that public rights of access in the context of private property are not absolute, but rather, at times it is appropriate for private property owners to exclude the public. The Matthews Court, recognizing that private land owners have an interest in upland dry sand that differs from municipal beaches and that the public's right of access is thus more limited, established factors to review on a case-by-case basis to make the determination of whether reasonable access to water areas exist and whether upland private property owners may or may not be required to provide for public access to accommodate use of tidally flowed waters. The Matthews factors include examination of:

- Geographical proximity of the dry sand to the wet sand areas.
- Availability of publicly owned upland sand area.
- The nature and extent of public demand.
- Usage of the upland by private owner.

The Raleigh Court, applying these same factors, also considered the nature and extent of surrounding development and convenience to pedestrians, and historical public usage of privately owned upland beach areas.

State and federal Constitutional taking considerations also must be addressed in any legislative process to ensure taking principles are respected in the context of governmental decisions imposing public access requirements. Both the State and federal constitutions prohibit the government from taking private property without paying just compensation. New Jersey Constitution, Art. I ¶20; United States Constitution 5<sup>th</sup> and 14<sup>th</sup> Amendments. Under Taking principles, an "essential nexus" must exist between public access requirements and the interest the government seeks to protect, and any public access exaction must be "roughly proportional" to the proposed development. Essentially, public access must be determined on a case-by-case basis to ensure State and federal constitutional principles are respected.

In recognition of the established federal and State case law, the Draft Proposal states on the first page: "There is a need for legislative expressions to direct the Department of Environmental Protection to articulate policy with respect to public access to guide its actions, and to ensure that its policy is consistent with the Public Trust Doctrine and relevant case precedent." However, the subsequent pages and recommendations for legislative construction are overly broad and would apply a "one-size-fits-all" approach to determining whether public access would be required. The Draft Proposal, therefore, does not adhere to the underlying principles and criteria implementing the Public Trust Doctrine, nor does it recognize private property rights. NJBA strongly recommends that the proposal should apply a case-by-case analysis of the particular circumstances (i.e. nature and character of residential neighborhoods, need for public access, and the legitimate interests of its residents, etc.) in order to balance private property rights with the public's right to use tidally flowed lands under the Public Trust Doctrine.

The following provides a more detailed underlying legal analysis and highlights NJBA's specific concerns and positions on aspects of the Draft Proposal, including where revision is necessary.

#### **Public Trust Doctrine Legal Framework**

NJBA reiterates its recognition of the public's right to access and use tidal waterways and shores under the "Public Trust Doctrine," which has long been recognized in New Jersey and the United States. However, it is equally important to recognize and incorporate the well-established private property principles, which are also fundamental under the State and federal constitutions, in the context of any public access framework.

The Supreme Court of New Jersey has judiciously struck the balance between the public's right to beach access under the Public Trust Doctrine on the one hand, and the rights of private property owners, the character of coastal neighborhoods, and the interests of the residents of these communities, on the other hand. See Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., 185 N.J. 40 (2005) and Matthews v. Bayhead Improvement Association, 95 N.J. 306 (1984), and other cases such as National Association of Home Builders v. Dept. of Environmental Protection, 64 F. Supp. 2d. 354 (D.N.J. 1999).

In Matthews, the Supreme Court noted that the question of the public's right to privately-owned dry sand beaches arises in two contexts: (1) perpendicular access ("the right to cross privately owned dry sand beaches in order to gain access to the foreshore"), and (2) access "of the sort enjoined by the public in municipal beaches ... namely, the right to sunbathe and generally enjoy recreational activities". 95 N.J. at 322-23. The Court determined that "the public interest is satisfied so long as there is *reasonable access* to the sea," and that "private land owners may not *in all instances* prevent the public from exercising its rights under the public trust doctrine." Id at 326. Yet the Court also determined that "the public's rights in private beaches are not co

extensive with the rights enjoyed in municipal beaches." Thus, the Court mandated that the extent of public access must be determined on a case by case basis: "the particular circumstances must be considered and examined before arriving at a solution that will accommodate the public's right and the private interests involved." *Id.* at 324.

The Supreme Court recognized that private land owners have an interest in upland dry sand that differs from that of a municipality, and hence the public's right of access is more limited. As stated by the Court:

"Precisely what privately-owned upland sandy area will be available and required to satisfy the public's rights under the public trust doctrine *will depend on the circumstances*. Location of the dry sand area in relation to the foreshore, extent and availability of publicly-owned upland sand area, nature and extent of the public demand, and usage of the upland sand by the owner are all factors to be weighed and considered in fixing the contours of the usage of the upper sand." [*Id.* at 326]. See, *NAHB v. DEP*, 64 F.Supp.2d. at 360 (requiring an examination of the site-specific reasonableness factors under *Matthews* to determine the extent of privately-owned land required to satisfy the public's rights under the Public Trust Doctrine.)

Both the State and federal constitutions prohibit the government from taking private property without paying just compensation. New Jersey Constitution, Art. I ¶20; United States Constitution 5<sup>th</sup> and 14<sup>th</sup> Amendments. The protections afforded under both constitutions are coextensive. *Littman v. Gimello*, 115 N.J. 154, 161, *cert. den.*, 493 U.S. 934, (1989).

A taking of private property without just compensation may occur either as a physical occupation of property by the government or another, or through governmental regulatory taking. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427-28, 102 S.Ct. 3164, 3171-72, 73 L.Ed.2d 868 (1982) (requiring landlords to allow television cable companies to place cable facilities in their buildings effected a taking even though the facilities occupied only one and one-half cubic feet of space); *Lucas v. S. Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (holding that State regulation barring all construction on barrier island residential lots constitutes taking requiring compensation unless common-law principles would have prohibited all habitable or productive improvements on lots); *United States v. Causby*, 328 U.S. 256, 66 S.Ct. 1062, 90 L.Ed. 1206 (1946) (noise from airplane glide path projecting onto land is in the nature of an easement, requiring compensation under Fifth Amendment); *Gulf Power Co. v. U.S.*, 998 F. Supp. 1386, 1394-95 (N.D. Dist. Fla. 1998), *aff'd*, 187 F.3d 1324 (11<sup>th</sup> Cir. 1999) (where the government forced utilities to grant cable companies access to their power lines); *Kaiser Aetna v. United States*, 444 U.S. 164, 100 S.Ct. 383, 62

L.Ed.2d 332 (1979) (holding that government's requirement of public access to marina joined to bay due to private development of inland lagoon constituted exercise of eminent-domain power, requiring payment of compensation); Nollan v. California Coastal Comm'n, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) (holding that condition of permit to construct residence requiring grant of public easement across beach-front section of private property constituted taking).

It is well established in cases involving government regulatory dedication exactions that to survive judicial scrutiny under the Takings Clause, the dedication exaction must substantially advance a legitimate state interest. Agins v. City of Tiburon, 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.Ed.2d 106, 112 (1980). In order to do so, there must be an "essential nexus" between the required dedication and the interest the government seeks to protect. Nollan v. California Coastal Comm'n, 483 U.S. 825, 837, 107 S.Ct. 3141, 3148-3149, 97 L.Ed.2d 677, 689 (1987). Additionally, where an "essential nexus" exists, the Takings Clause requires that there be "rough proportionality" between the exaction and the proposed development. Specifically, the government "must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." Dolan v. City of Tigard, 512 U.S. 374, 391, 114 S.Ct. 2309, 2319-20, 129 L.Ed.2d 304 (1994).

The New Jersey Supreme Court repeated its mandate "for a case-by-case consideration in respect of the appropriate level of accommodation" in Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc., *supra*, 185 N.J. at 55. After quoting extensively from its earlier decision in Matthews, the Court then "turn[ed] . . . to an application of the Matthews factors to the circumstances of [the] case" before it in order to make a "case-by-case" determination. The Raleigh court looked at the following Matthews factors:

- *"Location of the dry sand area in relation to the foreshore."*
- *"[E]xtent and availability of publicly-owned upland sand area. Here the court looked at proximity of available public beaches and the public's access thereto".*
- *"[N]ature and extent of the public demand"*
- *"[U]sage of the upland sand land by the owner".*

In examining the location of the dry sand area in relation to the foreshore, the Court considered the nature and extent of development in the area and convenience to pedestrians. The Court paid most attention to the usage of the upland sand by the land owner. In Raleigh, the beach had historically been open to the public, and had been readily available for perpendicular access as well as for unlimited use of the dry sand beach. The Court found it unreasonable to deny access "after years of public access and use".

In sum, the Public Trust Doctrine clearly requires an individualized, case-by-case determination of the specific circumstances of each case to appropriately balance the public's rights under the Public Trust Doctrine with other considerations such as private property rights. The Court mandated consideration of the demand for public access in a particular area; the character and nature of the development in the area; the nature and extent of access traditionally afforded in the area; the availability of public beaches and their adequacy to meet demand.

### **Comments Specific to the Draft Proposal**

NJBA disagrees with some statutory recommendations provided in the "Legislative and regulatory statement of findings and policy" section. Specifically, the proposal suggests that Public access findings and policy guidance should include language that establishes that:

"It is further the policy of the state and Department to reasonably require the regulated community to provide onsite public access or offsite public access in lieu of, in a manner consistent with the Public Trust Doctrine." (Page 2.)

While NJBA appreciates that the DEP should be "reasonable" in its requirements for public access when reviewing development applications, it remains inappropriate to require the regulated community to provide either onsite or offsite public access across the board. The language should be revised to require consideration of the particular circumstances of the subject parcel, such as proximity to the public beaches or public access points, proximity to existing public access points, the nature and extent of surrounding development, and historical public usage of privately owned upland beach areas, rather than mandating on or off-site public access. Raleigh and Matthews require case-by-case, circumstance specific determinations that consider in all cases the use, type of access, whether it would be reasonable, feasible or practicable to provide public access at the particular site in question.

Moreover, NJBA is opposed to efforts to legislate for requirements of visual access, which are beyond the scope of the Public Trust Doctrine.

In terms of requiring "offsite public access in lieu of" on-site public access, NJBA's position is that under Federal case law, the State cannot mandate any alternative public access where on-site public access is not feasible or practicable.

Similarly, the proposal suggests the 2012 Coastal Management Rules' goals relating to public access should be "translated and incorporated into legislative findings and policy guidance within statute". For the reasons discussed above, NJBA strongly disagrees with the inclusion, "translation" or "incorporation" of the following prior goal:

"New development shall provide opportunity for public access to tidal waterways and their shores on or offsite;" (Page 2.)

In NJBA's view, the goals listed in the current Coastal Zone Management Rules are appropriately worded in that they balance the various interests affected by the public access requirements, and therefore should be retained:

Additionally, public access goal no. 4 (Page 2) is overly broad in the context of public access on or across upland private property. Private property owners should not be required to provide for public amenities to accommodate fishing or other uses of tidal waters. NJBA's position is that such public amenities are governmental, not private landowner, obligations.

"The New Jersey Coastal Management Program goals and supplemental policies are:

...

3. Meaningful public access to and use of tidal waterways and their shores.
  - i. Preserve public trust rights to tidal waterways and their shores;
  - ii. Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities;
  - iii. Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;
  - iv. Enhance public access by promoting adequate affordable public facilities and services;
  - v. Balance diverse uses of tidal waterways and their shores; and
  - vi. Protect, enhance and promote waterfront parks;" (N.J.A.C. 7:7E-1.1(c)).

It is unclear why the following Policy Recommendations would be needed, given the Public Trust Doctrine is the underlying premise and basis for DEP's previously promulgated public access rules:

"The DEP should have a general legislative grant of authority to make rules and regulations to maintain and promote public access through, and beyond the permitting context;"

"Statute should use the public's PTD rights (as defined by bill) as trigger for DEP public access requirements, not necessarily development permits." (Page 3.)

NJBA remains concerned that these recommendations would empower the DEP to implement the Public Trust Doctrine in too broad a spectrum, whereas the permitting context allows applicants to have a discourse with the Department on the particular circumstances underlying the site or project. Further, the Coastal Zone Management Rules at N.J.A.C. 7:7-1.5 "Definitions"

define the "Public Trust Doctrine" and highlight the relevance and authority for the Department to ensure public access:

"Public Trust Doctrine" means a common law principle that recognizes that the public has particular inalienable rights to certain natural resources. These resources include, but are not limited to, tidal waterways, the underlying submerged lands and the shore waterward of the mean high water line, whether owned by a public, quasi-public or private entity. In the absence of a grant from the State, submerged lands under tidal waterways and the shore of tidal waterways waterward of the mean high water line are owned by the State. Regardless of the ownership of these resources, under the Public Trust Doctrine, **the public has rights of access to and use of these resources, as well as a reasonable area of shoreline landward of the mean high water line.** Under the Public Trust Doctrine, the State is the trustee of these publicly owned resources and public rights for the common benefit and use of all people without discrimination. As trustee, the State has a fiduciary obligation to ensure that its ownership, regulation and protection of these properties and rights will safeguard them for the enjoyment of present and future generations. The public rights to use these resources extend both to traditional activities such as navigation and fishing, but also to recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. The specific rights recognized under the Public Trust Doctrine, a common law principle, continue to develop through individual court decisions. See, for example, *Arnold v. Mundy*, 6 N.J.L. 1 (1821), *Borough of Neptune v. Borough of Avon-by-the-Sea*, 61 N.J. 296 (1972), *Hyland v. Borough of Allenhurst*, 78 N.J. 190 (1978); *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984); *Slocum v. Borough of Belmar*, 238 N.J. Super. 179 (Law Div. 1989); *National Ass'n of Homebuilders v. State, Dept. of Env't'l* 64 F.Supp.2d 354 (D.N.J. 1999); *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40 (2005); *Illinois Central R.R. v. Illinois*, 146 U.S. 387 (1892); *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988); *Karam v. NJDEP*, 308 N.J. Super. 225, 240 (App. Div. 1998), *aff'd*, 157 N.J. 187 (1999), *cert. denied*, 528 U.S. 814 (1999). (Emphasis added.)

NJBA disagrees with all Policy Recommendations and all other provisions of the Draft Proposal that speak to an absolute requirement for public access on projects or development applications. Such a legislative mandate would contravene the Public Trust Doctrine for the reasons detailed at length above.

NJBA disagrees with the following Policy Recommendation: "There should be no delegation of state authority to municipalities or counties ..." (Page 3). NJBA remains supportive of the Department's rulemaking to encourage municipalities to develop Municipal Public Access Plans. See N.J.A.C. 7:7E-16.9(d). It is our view that the municipality is in the best position to identify and determine public access points that are suitable for the particular needs of their community.

However, NJBA recommends that any impediments to the development of the Plans be identified. For example, there needs to be more financial sources for municipalities to help offset the high costs involved for the comprehensive preparation necessary for the Plans. We have encouraged the Department to ensure state funding be made available. The regulatory process to prepare a Plan should be more streamlined in that the municipalities could use existing resources and information available at hand (i.e. existing tax maps, zoning maps, and aerials) to identify public accessways. Further, NJBA has encouraged that the development of the Plans should be coordinated with the municipal master planning process. There are well-established and familiar processes in place at the local level to identify the best suited locations for meaningful public access in the municipality.

It is unclear as to what "standards" are contemplated in the following Policy Recommendation: "Statute should establish standards concerning the sufficiency of proposed public access, particularly as it relates to access required to be provided through the state's regulatory processes." (Page 4). To the extent the intent of this statement is to reflect that any legislative codification of the Public Trust Doctrine should be a broadly based restatement of the established principles of the Public Trust Doctrine, NJBA agrees. However, again, NJBA reiterates that the factors and approach contemplated by Raleigh and Matthews should be followed. If the intent is to call for legislation that imposes specific standards, criteria and requirements for public access, we strongly disagree. Such action would be in direct contravention of the Public Trust Doctrine's requirement for individualized, case-by-case determinations of whether public access is required, and is better suited to a regulatory process.

The Draft Proposal discusses parking in relation to public access:

- "Parking is a necessary component of public access, and should be ... and accounted for in the permitting context affecting new development, redevelopment or substantial changes to existing uses"
- "Statute should require the development of a parking formula, but ultimately such a formula should be developed through DEP regulations" (Page 4).

Similar to the public access discussion above, NJBA objects to the imposition, particularly in legislation, of directing DEP to undertake specific parking requirements, including federal "public use" parking requirements, or defining a "formula" across the board. Instead, Raleigh and Matthews criteria should be followed in that case-by-case, site specific determinations must be undertaken to evaluate parking in relation to the proposed development, i.e. whether there is even any need or demand for on or off-street parking, or whether the existing parking facilities can accommodate the need or demand. Further, NJBA emphasizes that imposing parking



requirements would clearly deter development and redevelopment activities in those communities.

NJBA is opposed to a legislative mandate prohibiting abandonment or extinguishment of public access easements or public rights across private property. Such legislative action would be an infringement on bargained for property rights in that public access easements may expressly provide for extinguishment based on changed conditions or other circumstances, and such action would negatively affect the balance of public access rights and private property rights implemented by the courts under the Public Trust Doctrine, and would implicate State and federal constitutional takings principles. Moreover, such legislation would be inappropriate under the Public Trust Doctrine line of cases, as changed conditions over time may justify extinguishment of public access easements or public rights across private property.

NJBA strongly objects to the recommendation to "allow the public to have 24/7 access to waterfront areas for appropriate uses" (Page 6), as it would result in significant problems and concerns for private property owners and developers, municipalities and local law enforcement. This proposal raises a host of concerns and issues, including nuisance and noise issues, potential liability and safety concerns, and directly affects private property rights. Moreover, NJBA points out that the proposal has been addressed by the courts (See Avalon v. NJDEP, 403 N.J. Super. 590 (App. Div. 2008) cert. den. 199 N.J. 133 (2009) (holding that the Public Trust Doctrine does not provide any basis for a DEP rule that preempts the statutory authority of municipalities to regulated municipally-owned beaches, including deciding when they shall be open to the public), and has been previously vetted and extensively discussed, including with the DEP, thus it is unclear why this proposal is being contemplated again. While we question, in light of this history, whether such a condition would be appropriate in certain instances in the context of municipally owned lands, a legislative mandate for 24/7 access on and across private property clearly would be an overly broad, inappropriate extension of the Public Trust Doctrine.

NJBA looks forward to further discussing the above concerns with the Task Force.

**David J. Epstein Legislation Testimony**  
**In Support of S.969**  
**April 21, 2016**

My name is David J. Epstein, I am the President of The Land Conservancy of New Jersey. We have helped to preserve more than 22,000 acres of land in New Jersey and, as a member of the Keep It Green coalition, I am here in support of S.969 - the Preserve New Jersey Act.

It has been nearly a year and a half since New Jersey residents voted overwhelmingly to approve the referendum to dedicate portions of the Corporate Business Tax for Green Acres, farmland and historic preservation funding. In that time, not one penny of this money has been spent to preserve more of New Jersey's disappearing open space lands. And yet the need for these funds has only grown since the referendum was approved.

Failure to implement S.969 would have terrible consequences for our beautiful state. In addition to leaving virtually no state funding available for land preservation, the funds that are collected will continue to be subject to diversion for purposes that the voters did not intend. When voters approved the referendum they agreed to funding levels that were reduced from previous years in exchange for stable annual funding into the foreseeable future. They did not agree to zero funding.

One week from today, The Land Conservancy will complete the purchase of one of the largest privately owned properties remaining in Bergen County. This 46 acre property in the Highlands is on the northern edge of more than 8,000 acres of county and state parkland. We are working with two other nonprofit organizations, private donors, Bergen County and, of course, Green Acres, to purchase this property. Half of the \$1,045,000 purchase price will come from state funds. Adjacent to this acquisition are four additional critical properties that we have targeted for preservation to add to this new Preserve. But, unfortunately, we will not be able to acquire these without additional state funding from S.969.

The Land Conservancy is also partnering with Oakland Borough to purchase 12 flood prone homes along the Ramapo River. These purchases will not only remove residents and emergency responders from harm's way, but will connect a municipal park with the Ramapo River and create great new recreational opportunities for all town residents. The Land Conservancy has provided \$186,250 from our Green Acres funding toward the first four closings while the Borough has contributed \$174,500 from their Green Acres funding. We will not be able to complete this extremely important project without additional state funding from S.969. The health and safety of our residents is at stake if we do not have the funding necessary to purchase these high risk properties.

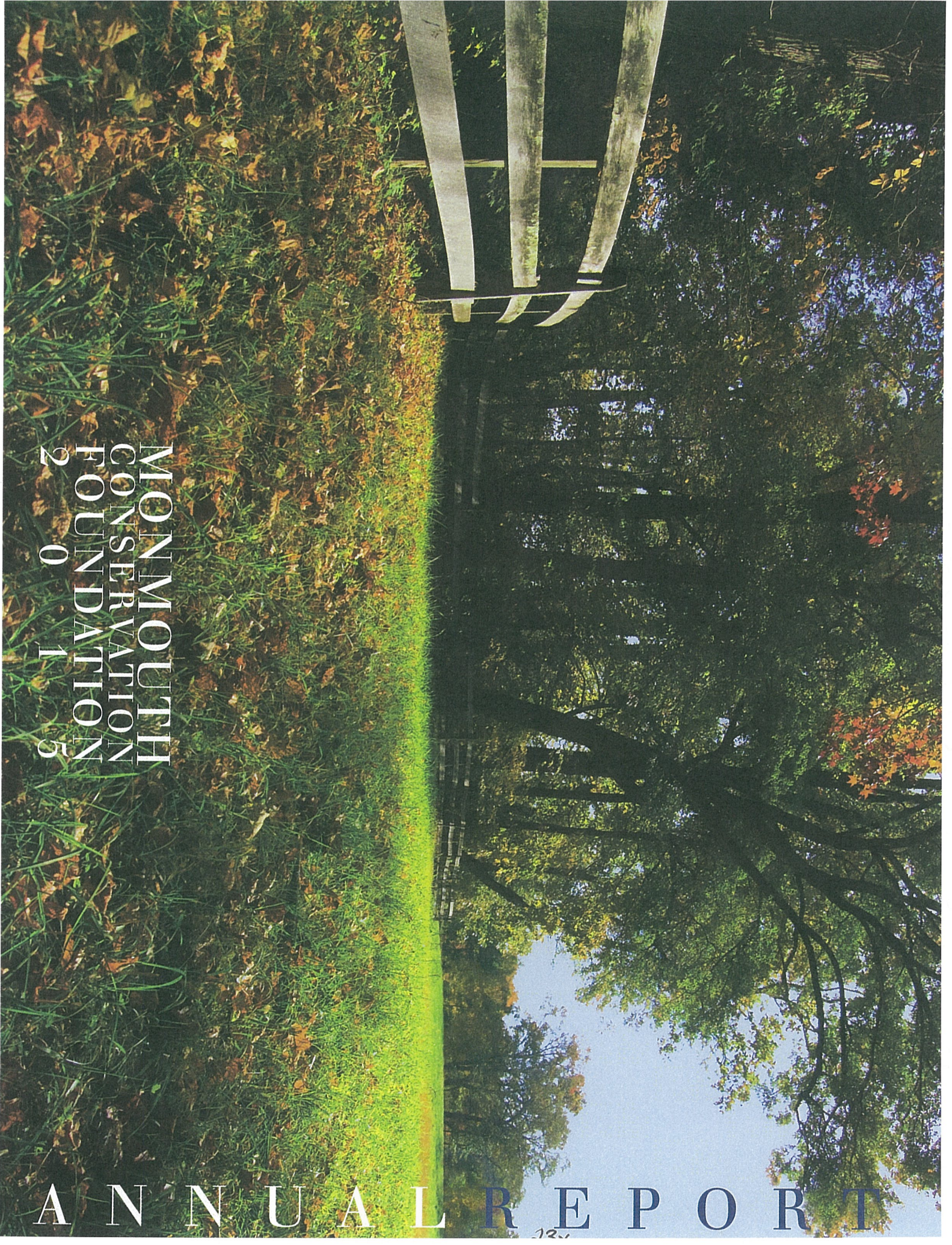
For more than half a century New Jersey has played a leadership role in conserving its natural and agricultural lands and historic sites. After each of the thirteen state open space funding referendums passed between 1961 and 2009, legislation was adopted to dedicate the funds to the purposes that the voters approved. We are here before you today to support the implementing legislation you have approved to accomplish this same purpose for the 2014 open space referendum.

I thank you for the opportunity to testify about this critical program. We urge the Committee to work with the Governor to ensure that he signs this legislation and let us all get back to work preserving the important lands that make New Jersey such a great state to live.

Thank you.

David J. Epstein  
President  
The Land Conservancy of New Jersey  
19 Boonton Avenue  
Boonton, NJ 07005  
(973) 541-1010





MONMOUTH  
CONSERVATION  
FOUNDATION  
2015

ANNUAL REPORT



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## MCF MONMOUTH CONSERVATION FOUNDATION



## MESSAGE FROM THE PRESIDENT & EXECUTIVE DIRECTOR

### Friends of the Monmouth Conservation Foundation,

Swimming River Park on the boundary of Middletown and Red Bank, 14 acres providing direct access to the river in this town-suburban environment.

Freneau Woods Park in Aberdeen and Marlboro Townships, adding 119 historically and environmentally significant acres to this new regional park.

Springwood Avenue Park in Asbury Park, providing 1.3 acres that include a playground and passive features combining much needed recreation with relaxation in the redevelopment of the city's West Side.

Clayton Park Activity Center in Upper Freehold, 4 acres that includes the former Imlaystown School and provide this rural area with an activity center.

Yes, 2015 was a great year for Monmouth Conservation Foundation acquisitions. Not only because of the open space preserved, but the diversity of it. Town-suburban, suburban, rural, and urban.

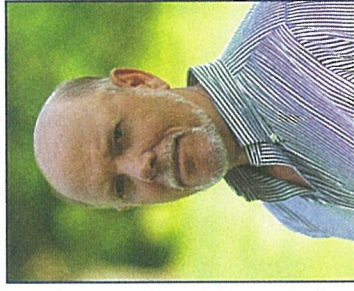
Last year was a year defining what we do best at MCF since we started our stewardship task in 1977 under Judith Stanley Coleman and Michael Huber. Now our work continues – not only for our benefit, but for the benefit of future generations.

Open space is finite. The time to acquire it is always today, if not yesterday. Tomorrow may be too late. Of course, that takes money – of which we never have enough.

It also takes people – inspired by our founders Judy and Mike – to continue the work and make sure the job gets done. What our broadening of land purchases does, besides providing open space in diverse areas, is spread the word of MCF to a diversity of future stewards who will help advance our mission.

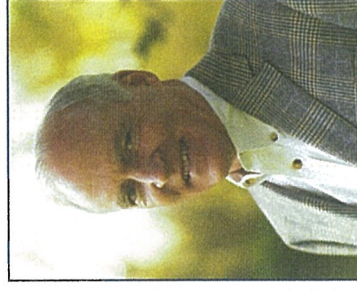
As recorded in Dutch explorer Henry Hudson's log of September 2, 1609, "This is a very good land to fall in with and a pleasant land to see." Words still true more than 400 years later. Monmouth County has an extraordinary environment of ocean, bay, river and smaller waterway, farm and field, forest of hardwoods and Pine Barrens, flatland and hill.

We look forward to another important year in 2016 – hopefully with many more new faces helping to protect the same beautiful land Hudson talked about more than 400 years ago. We anticipate preservation well into the future.



*Richard O. Venino, Jr.*


**Richard O. Venino, Jr.**  
President



*William D. Kastning*  
**William D. Kastning**  
AICP, Executive Director

FRONT COVER:  
PHOTO BY JENA COSIMO  
BACK COVER:  
PHOTO BY TEJA ANDERSON





It was 39 years ago in 1977 when Monmouth Conservation Foundation was established by land preservation visionaries Michael Huber and Judith Stanley Coleman, and a handful of others as a nonprofit 501(c) 3 land trust.

Our land-preservation projects take place throughout Monmouth County and range in size from seven-tenths of an acre to 1,200 acres. The commonality is that with each project, we work with countless partners such as the Monmouth County Park System, the Monmouth County Agriculture Development Board, the NJ DEP Green Acres Program, the State Agriculture Development Committee, various municipalities and numerous local non-profits to preserve the land and protect the environment.

The other critical link is how Monmouth Conservation Foundation's steadfast mission to save land and open space, create parks, protect wildlife and their natural habitat, and safeguard waterways and their fragile ecosystems is truly universal — it serves all.

Whether it's the staunch land preservationists and faithful canines on their daily walk in Huber Woods, the weekend warriors running the trails in Hartshorne Woods, the playground regulars cooling off in Dorbrook Park's "sprayground" in the summer, or families building snowmen in Thompson Park in the winter, the equestrians and their handsome steeds on an early morning gallop through the fields of Clayton Park, the kayak and boating enthusiasts on Monmouth County's stunning Navesink and Shrewsbury rivers, the history buffs exploring Historic Walnford, or families making their annual trip to Conover's Christmas Tree Farm to choose their Christmas tree, Monmouth Conservation offers a myriad of experiences for millions of individuals.

The land we are saving, the parks we are creating, the wildlife we are protecting and the waterways we are safeguarding benefit absolutely everyone regardless of age, ability, income, interests, political persuasion, ethnicity, or nationality.

**Our work is universal.**

**Today. Tomorrow. Forever.**



# ACQUISITION COMMITTEE PROJECTS

Chair: Howard P. Aronson

Thanks to the members who served on this committee:

Teja Anderson, Paul Brown, Michael Canavan, Dan Crabbe,  
John Duffy, Larry Fink, Mark Gilbertson, Ronald Gumbaz,  
Ron Klein, Bob Sickles, James Truncer and Cory Wingerter.

TWO THOUSAND AND FIFTEEN WAS TRULY  
A LANDMARK YEAR FOR **MONMOUTH  
CONSERVATION FOUNDATION.**  
IT IS A RARE AND DIFFICULT OCCURRENCE  
FOR LAND TRANSACTIONS TO COME TO  
FRUITION WITHIN A SHORT TIME SPAN.  
MORE OFTEN THAN NOT, PRESERVATION  
PROJECTS ARE EXTREMELY COMPLEX AND  
TAKE YEARS TO COMPLETE, IN SOME CASES  
OVER A DECADE. IN 2015, THE FOUNDATION  
SIMULTANEOUSLY DEMONSTRATED ITS  
TENACITY TO REMAIN STEADFAST ON  
CHALLENGING PROJECTS AND ITS AGILITY  
TO MOVE QUICKLY ON PROJECTS THAT ARE  
AT RISK OF BEING LOST.

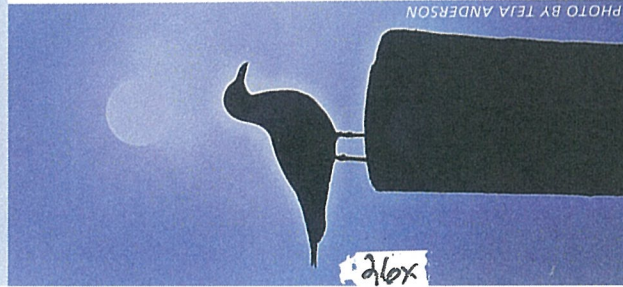


PHOTO BY TEJA ANDERSON



PHOTO BY MARIBETH GARDNER,  
MONMOUTH COUNTY PARK SYSTEM



PHOTO BY TEJA ANDERSON



PHOTO BY MATTHEW HOCK



PHOTO BY MARIBETH GARDNER,  
MONMOUTH COUNTY PARK SYSTEM



PHOTO BY MARIBETH GARDNER,  
MONMOUTH COUNTY PARK SYSTEM

## SWIMMING RIVER PARK 14 acres, Middletown Township

The long awaited acquisition of Chris' River Plaza Marina in Middletown was a truly significant milestone for the Foundation. After more than a decade of negotiations, and plagued by numerous hurdles, the Foundation was able to assist the County in securing the environmentally sensitive property renamed Swimming River Park. The site not only provides for public river access but also provides a sanctuary for endangered and native species. Portions of the property are classified as emergent wetlands, suitable for threatened and endangered species and is designated as bald eagle foraging grounds.

The site is undergoing environmental clean-up and restoration. Once completed, the property will be open to the public as a passive park offering waterfront recreational opportunities serving as a place also for passive recreation and scenic views for the local community.



### CLAYTON PARK ACTIVITY CENTER **4 acres, Upper Freehold**

At risk of going up for auction, a game-changing addition to the Park System's 438-acre Clayton Park was expedited by the Foundation in a record breaking three months' time. The site, formerly known as Imlaystown School, came complete with a newly renovated 7,200 square foot building which will be used to hold a variety of recreational and civic programs to meet the needs of the public in this area of the County.

### CONOVER'S CHRISTMAS TREE FARM **14 acres, Wall Township**

The pending Agricultural Easement acquisition on this family owned Christmas Tree Farm, neighboring a 35-acre preserved farm, helps protect the quality of life in Monmouth County and sustains the environmental integrity of the area. The land with its fertile soil and rich history will remain in perpetuity as a haven to the past, present and future. The Township's farming heritage will be preserved and the land will be designated to agriculture use, in perpetuity.

### FRENEAU WOODS PARK

#### **119 acres, Marlboro & Aberdeen Townships**

Formerly known as Fariello Phase II and Aberdeen Wilson Associates, these two properties were acquired as additions to the newly created regional Monmouth County Park - Freneau Woods Park. Located at the headwaters of Matawan Creek, including Lake Lefferts, the land is rich in both environmental and historical importance. Local non-profits and government officials have long touted the importance of protecting the land that surrounds this unique coastal wetland that also provides a habitat for a diverse set of local species. Keeping the headwaters safe from development is vital to future water quality. Freneau Woods Park will bring passive recreational opportunities to a densely populated area of the county that is in need of a park. The Foundation continues to work with the Monmouth County Park System to secure additional acreage to enlarge the park.

27x

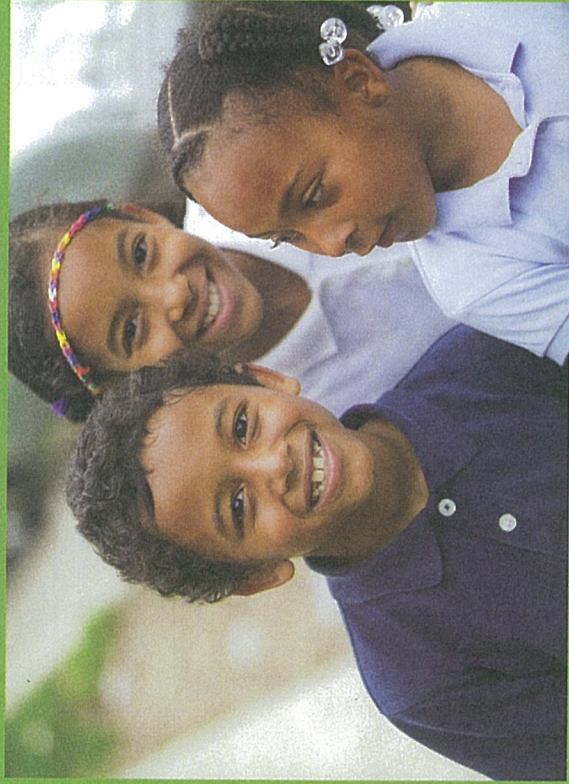


PHOTO BY FIREFLY IMAGEWORKS, COURTESY OF THE LAND TRUST ALLIANCE

### SPRINGWOOD AVENUE PARK **1.3 acres, City of Asbury Park**

The groundbreaking for the first City-owned and City-maintained park established on the West Side in Asbury Park's long history commenced in 2015. In addition to a playground area, the community can expect to enjoy other landscape features designed to serve as a place for both recreation and relaxation in the midst of an urban setting. This park will support the redevelopment of the remaining vacant parcels within the Springwood Avenue Redevelopment Area, which, when combined with the park, will lead to an impactful improvement to this West Side neighborhood.



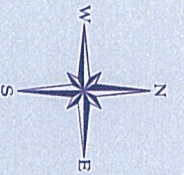
PHOTO BY JENA COSIMO

PHOTO BY JENA COSIMO

The Foundation continues to work tirelessly to bring preservation projects throughout the County to fruition. We are currently assisting with the facilitation of land transactions and park development in Keyport, Atlantic Highlands, Howell, Sea Bright, Marlboro and Middletown. We also continue to work diligently to expand existing preserved parks and natural areas.

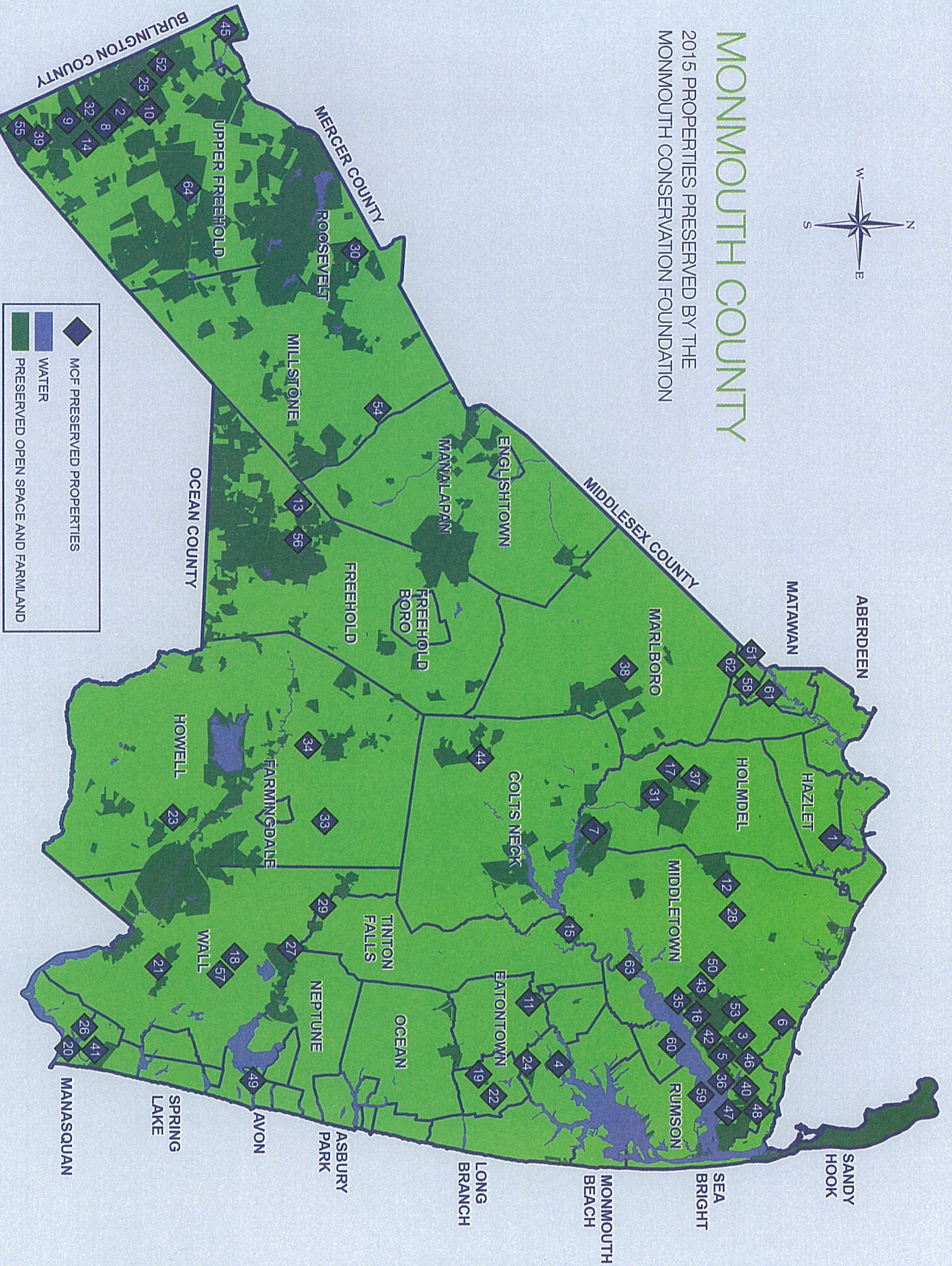
Together with our partners - the Monmouth County Park System, the Monmouth County Agriculture Development Board, the NJ DEP Green Acres Program, the State Agriculture Development Committee, various municipalities and various non-profits - we form integral partnerships to further the continued preservation of our beautiful, diverse County and ensure its beautiful landscapes, spaces, wildlife and natural habitat will be available for future generations to access and appreciate.





# MONMOUTH COUNTY

2015 PROPERTIES PRESERVED BY THE  
MONMOUTH CONSERVATION FOUNDATION





- 1 NATCO LAKE, Hazlet Twp. - Completed 1980, 73.5 acres
- 2 WALNFORD PARK, Upper Freehold Twp. - Completed 1980, 41 acres
- 3 SCUDDER EASEMENTS, Middletown Twp. - Completed 1983-1999, 91 acres
- 4 OLD WHARF PARK, Borough of Oceanport - Completed 1983, .50 acres
- 5 HUBER WOODS PARK, Middletown Twp. - Completed 1985, 255 acres
- 6 BOWNE HOUSE EASEMENT, Middletown Twp. - Completed 1987, .34 acres
- 7 MARLU-TWITCHELL TRACT, Holmdel/Middletown Twp.  
Completed 1987, 456 acres
- 8 GOWER FARM, Upper Freehold Twp. - Completed 1989, 82 acres
- 9 GRAY FARM, Upper Freehold Twp. - Completed 1989, 167 acres
- 10 TINDALL FARM, Upper Freehold Twp. - Completed 1989, 122 acres
- 11 WAMPUM LAKE, Borough of Eatontown - Completed 1989, 9 acres
- 12 KEELAN ESTATE, Middletown Twp. - Completed 1990, 12 acres
- 13 LANGEVELD DUTCH BULB COMPANY TRACT, Freehold Twp.  
Completed 1990, 375 acres
- 14 SEARCH & LAMB FARMS, Upper Freehold Twp.  
Completed 1990, 141 acres
- 15 WENY TRACT, Borough of Tinton Falls - Completed 1991, 5.8 acres
- 16 HUNT'S CROSSING EASEMENT, Middletown Twp.  
Completed 1992, 84 acres
- 17 SPELLMAN ESTATE, Holmdel Twp. - Completed 1993, 3 acres
- 18 HURLEY POND, Wall Twp. - Completed 1994, 25 acres
- 19 OWEN NATURE PRESERVE EASEMENT, Borough of West Long Branch  
Completed 1994, 7+ acres
- 20 FISHERMAN'S COVE, Borough of Manasquan - Completed 1995, 65 acres
- 21 HALIFAX PIECE, Wall Twp. - Completed 1995, 119 acres
- 22 GIAMBRONE FARM, Borough of West Long Branch  
Completed 1996, 10 acres
- 23 MURRAY FARM, Howell Twp. - Completed 1997, 76 acres
- 24 WOLF HILL FARM, Borough of Oceanport - Completed 1997, 95 acres
- 25 PRINCETON NURSERIES, Upper Freehold Twp.  
Completed 1998, 33 acres
- 26 ROBERTS SWAMP BROOK, Boroughs of Manasquan & Brielle  
Completed 1998, 3 acres
- 27 BATES PROPERTY, Wall Twp. - Completed 1999, .5 acres
- 28 MADSEN PROPERTY, Middletown Twp. - Completed 1999, 10.5 acres
- 29 BAUM PROPERTY, Borough of Tinton Falls - Completed 2000, 10+ acres
- 30 NURKO & CUZZOLINO FARMS, Borough of Roosevelt  
Completed 2000, 300+ acres
- 31 CHASE TRACT, Holmdel Twp. - Completed 2001, 416 acres

- 32 DEY PROPERTIES, Upper Freehold Twp. - Completed 2001, 15+ acres
- 33 HAIN PROPERTIES, Howell Twp. - Completed 2001, 11 small lots
- 34 MERRICK FARM, Howell Twp. - Completed 2001, 66 acres
- 35 STANLEY COLEMAN EASEMENT, Middletown Twp.  
Completed 2001, 8 acres
- 36 MAHON EASEMENT, Middletown Twp. - Completed 2002, 6 acres
- 37 SCHUMAKER EASEMENT, Holmdel Twp. - Completed 2002, 5 acres
- 38 WENZEL PROPERTY, Borough of Marlboro - Completed 2002, 3 acres
- 39 THOROUGHbred BREEDERS  
Upper Freehold Twp. - Completed 2003, 58 acres
- 40 FISHER-STERN, Middletown Twp. - Completed 2005, 40 acres
- 41 SEA WATCH, Borough of Manasquan - Completed 2005, 1.6 acres
- 42 TIMOLAT FARM, Middletown Twp. - Completed 2006, 99 acres
- 43 ELLIS FARM EASEMENT, Middletown Twp. - Completed 2007, 40 acres
- 44 DITTMAR EASEMENT, Colts Neck Twp. - Completed 2007, 1.5 acres
- 45 BREZA ROAD, Upper Freehold Twp. & Borough of Allentown  
Completed 2008, 101 acres
- 46 HOLLY CREST FARM EASEMENT, Middletown Twp.  
Completed 2008, 37 acres
- 47 SEITZ EASEMENT, Middletown Twp. - Completed 2008, 4.7 acres
- 48 SCHEUING, Middletown Twp. - Completed 2009, 2.27 acres
- 49 RIVERFRONT PARK AND MARINA, Borough of Avon  
Completed 2009, .37 acres
- 50 COE PROPERTY, Middletown Twp. - Completed 2011, 25 acres
- 51 HAUSER FARM, Aberdeen Twp. - Completed 2012, 22 acres
- 52 FLEMER ENTITIES, Upper Freehold Twp. - Completed 2012, 1,200 acres
- 53 GIMBEL FARM EASEMENTS, Middletown Twp. - Completed 2012, 44 acres
- 54 BAIRD HOUSE, Millstone Twp. - Completed 2012, 7.5 acres
- 55 SACCO TRUST, Upper Freehold Twp. - Completed 2012, 55 acres
- 56 TURKEY SWAMP INHOLDING, Freehold Twp. - Completed Feb. 2014, 14 acres
- 57 CONOVER FARM, Wall Twp. - Completed March 2014, 35 acres
- 58 FARIELLO, Aberdeen Twp. - Completed 2014, 33 Acres
- 59 MILLMAN, Middletown Twp. - Completed 2014, 3.5 Acres
- 60 DENORMANDIE, Borough of Fair Haven - Completed 2014, 7 Acres
- 61 ABERDEEN/WILSON ASSOCIATES, Aberdeen Twp. - Completed 2015, 89 acres
- 62 FARIELLO 2, Aberdeen/Marlboro Twp. - Completed 2015, 30 acres
- 63 CHRIS' RIVER PLAZA MARINA, Middletown Twp. - Completed 2015, 14 acres
- 64 IMLAYSTOWN SCHOOL, Upper Freehold Twp. - Completed 2015, 4 acres

29x



PHOTO BY TEJA ANDERSON

## COMMITTEE ON TRUSTEES REPORT

**Co-Chairs:** Gloria Nilson and John Caroli

2015 was a robust year for the Committee on Trustees fulfilling the role of better engaging current Trustees and identifying new Trustees for the Board. Trustees participated in a Strategic Planning session in the spring of 2015 to identify the direction and goals of the Foundation for the next five years.

In 2015, we welcomed Meredyth Armitage, Paul Brown and Bob Sickles to the Board of Trustees. COT members also recommended a slate of officers to the board and a slate of committee members and chairs for the President's appointment.

Although the COT's ongoing effort is to build a diverse and talented board, there is a singular purpose which every board member shares: the mission of the Foundation – protecting open space, preserving farms, creating parks and saving wildlife habitat.

**Thanks to the members who served on this**

**Committee:**

Marti Huber,

Michael Canavan

and Frank Schuer.





PHOTO BY JENA COSIMO

## DEVELOPMENT COMMITTEE REPORT

**Chair: Holly Boylan-Flego**

2015 proved to be a strong year for the Foundation and our fundraising efforts. The Run for the Hills/Indian Hills Footrace, the Annual Dinner Dance, the Holiday Style Luncheon and Annual Appeal each continues to be a vital stream of revenue for MCF.

In addition to these fundraising events, critical additional funding was garnered through grant funders and corporate sponsorships, all of which support the various Foundation programs and preservation projects underway. Similarly, revenue resulting from our expanded outreach work through traditional means and social media increased the number of smaller donations and these donors' workplace giving.

Plans are well underway for the 39th Annual Dinner Dance on Saturday, September 24th, which will be followed by the Holiday Style Luncheon on Thursday, December 1.

The most important stream of funding is from our individual donors whose contributions continued to be our single most significant source of income.

**Thanks to the members who served on this Committee:**  
Teja Anderson, Meredyth Armitage, Michael Canavan,  
Mark Gilbertson, Marti Huber, John Caroli and Elizabeth Rechnitz.

## GOVERNMENT AND PUBLIC RELATIONS COMMITTEE REPORT

**Co-Chairs: John Dunigan and Cory Wingerter**

The mission of the Committee is two-fold: ensuring a consistent communication with the public about our mission and accomplishments and careful monitoring of external policy initiatives that impact our work.

Ensuring our voice is heard with elected officials has been more important than ever in 2015, with challenges faced in Trenton to implement the voter dedicated restricted preservation funding that was approved in November 2014. Governor Christie pocket vetoed the implementation bill in December 2015, resulting in continued efforts in seeing voter wishes carried out. Countless letters and phone calls to our local officials confirm that the Foundation's mission of preserving and protecting land in Monmouth County remains a top of mind issue.

2015 marked the acquisition of many new acres that will be transformed into parks for Monmouth County residents and the Committee oversaw the Foundation's reporting of these accomplishments through public outreach. Accomplishments were highlighted through numerous press releases, letters to editors, and editorial spotlights in local newspapers. The Foundation's educational program, Kids for Conservation, continues to raise awareness about nature among young children and their families.

**Thanks to the members who served on this Committee:**  
William Marraccini, Elizabeth Rechnitz, John Ryan, James Truncer and George Whitelaw.



PHOTO BY JENA COSIMO



# FINANCE COMMITTEE REPORT

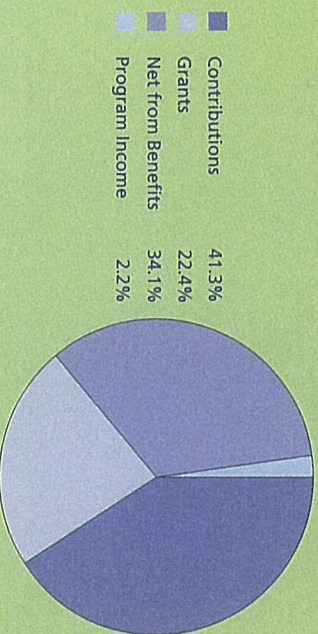
The 2015 organization support and revenue amounted to an anticipated \$613,877. This resulted in a decrease of \$480,448 from our 2014 numbers, which was an outstanding year for the Foundation. We continue to maintain a very balanced and conservative portfolio strategy; however the financial markets have created a challenging environment. Although we have benefited significantly in the past, the majority of those results was primarily from underperforming investments due to market conditions. Given the volatility of the market, we have also seen a reduction in contributions, grants and net from benefits. We have seen an offset to this with an increase in annual appeal revenue of \$26,827. Our continued growth should only further increase these contributions.

Total 2015 organizational expenses were \$1,103,794. This was only a slight increase of \$40,210 (4%) over 2014. Our cost containment programs continue to be a very effective control over expenses. Increases were primarily due to salaries, wages and investment losses.

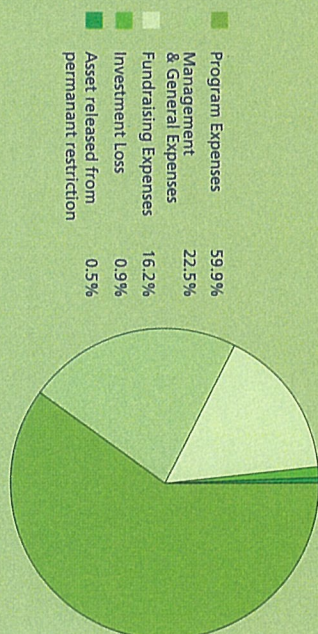
In 2015 there was a slight decline in program expenses to \$661,515 (5%).

The decrease in net assets for 2015 was \$489,917, driven in large part by three major acquisitions.

Organization Support & Revenue	
Contributions	\$ 253,773
Grants	\$ 137,544
Net from Benefits	\$ 209,381
Program Income	\$ 13,179
<b>Total Organization Support &amp; Revenue</b>	<b>\$ 613,877</b>



Organization Expenses	
Program Expenses	\$ 661,515
Management & General Expenses	\$ 248,127
Fundraising Expenses	\$ 178,677
Investment Loss	\$ 10,475
Asset released from permanent restriction	\$ 5,000
<b>Total Organization Expenses</b>	<b>\$ 1,103,794</b>
<b>Decrease In Net Assets</b>	<b>\$ (489,917)</b>



**Chair and Treasurer:**  
**Mary Tassini**

Thanks to members who served on this committee:  
**Howard Aronson, John Duffy, Tom Gimbel, Ron Klein, Bill Marracini, Andrew Safran and Frank Schauer.**

## 2015 ANNUAL REPORT DONOR LISTING

Thank you to the individuals, corporations, organizations and foundations for their generous support to Monmouth Conservation Foundation in 2015.

### LEADERSHIP CIRCLE

**\$30,000 or Greater**

Lillian and Peter Ream Kemmerer

### FOUNDING PRESERVATION SPONSOR

**\$20,000 to \$29,000**

Joan and Robert Rechnitz

Anne and Sheldon Vogel

### STEWARDS OF THE LAND

**\$10,000 to \$19,999**

Barbara and Karl Brand

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Linda and Andrew Safran

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Joan Fishman and Paul R. Brown

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### BENEFACTOR OF PRESERVATION

**\$2,500 to \$4,999**

The Komar Family

Lisa and Quincy McKean III

Alexandra and Thomas Skove

Mary Tassini

Geraldine and Richard O. Venino, Jr.

Carol and Cory G. Wingerter

### 2015 PUBLIC AGENCY FUNDING PARTNERS

Monmouth County Board of Chosen Freeholders  
New Jersey DEP Green Acres Program

32x



## SPONSOR OF PRESERVATION

**\$1,000 to \$2,499**

Meredith Armitage  
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Elizabeth and Robert Wilson  
Melina and Andrew Wimpfheimer  
Lynn and Ronald J. Worobel

## SAVE THE FARM FRIEND

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Anonymous  
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**\$125 to \$249**

Christa and Richard L. Ahrens  
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Stella and Anthony Buffalano  
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Gere Ricker  
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Margaret and Jean Paul Elard  
Ingrid Eldridge  
Laurence E. Elera  
Shobha and Ashok Erramilli  
Michael Falcone

# LEAVING A LEGACY

Over the years, **Monmouth Conservation Foundation** has received donations through **Planned Giving Strategies** – a way of leaving a remarkable legacy impacting countless. Forever.

There are several ways to arrange to make such a gift in support of Monmouth Conservation Foundation's steadfast mission of saving land and creating parks, protecting wildlife and the surrounding natural habitat and preserving scenic waterways and fragile ecosystems through:

- A gift of a specific amount or percentage as specified through your will or charitable trust.
- A gift of property to your heirs, while arranging for an easement with MCF as the holder, to include an endowment for the expenses of annual monitoring of the land.
- A gift designated through IRAs, qualified retirement plans, insurance or donor advised funds.
- A gift of conservation easements, cash, securities or real estate can all be used to fund charitable bequests.
- A gift of the remainder, or residue, of your estate—after all other bequests are satisfied.

There is no limit on amounts deductible from federal gift and estate taxes for charitable gifts made by will or trust, therefore no tax will be due on assets given in this manner. Charitable gifts are normally exempt from estate taxes as well. To plan a charitable bequest, please discuss your plans with your attorney, tax advisor or financial planner, who will advise you on the federal and state tax considerations and the best form for your gift.

**If you would like to discuss how your gift will impact**

**and ensure an ongoing, far-reaching legacy please contact**

**Lisa McKean, Managing Director Marketing & Development, 732.671.7000 or [lmckean@monmouthconservation.org](mailto:lmckean@monmouthconservation.org).**

Should you decide to include a gift in your estate plans, our legal name is **Monmouth Conservation Foundation, PO Box 4150 Middletown, New Jersey 07748**. The Foundation tax identification number is 22-2185314.





## GIFTS IN TRIBUTE

**In Honor of  
Adele Keller:**

Michael Parent

**In Memory of  
Granville Michael Magee:**

Jane G. Megitt

**In Honor of Cecile McCaffery:**

Cathy Jo and Charles E. Marking

**In Honor of Gloria Nilson:**

Anne Nosnitsky

**In Honor of Anneliese Scherfen:**

Marilyn C. and Michael E. Scherfen

**In Memory of Frank C. Scheuer, Sr.:**

Howard P. Aronson

Sarah and Douglas Fleming

**In Memory of Lars Wilkman:**

Audrey Wilkman and William Johnson



## FRIEND

### Under \$125 continued

Maryellen and Brian Feder  
Leslie Feingold  
Leslie E. Freeman, Jr.  
Ellen and Michael D. Friedman  
Kathleen Gasienica  
Mary and Andrew G. Gauld  
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Julienne Goldfine  
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Susan Rickman and William Grant  
Rose Greco  
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Thomas Boylan Memorial Fund  
Two River Community Bank  
United Way of Passaic County  
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Monmouth Health Care Foundation  
Nature Conservancy in New Jersey  
New Jersey Conservation Foundation  
Pianko Law Group LLC

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Garden Club of Fair Haven  
Garden State Veterinary Specialists  
Geraldine R. Dodge Foundation, Inc.  
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## IN KIND GIFTS

Ama Ristorante  
Howard P. Aronson  
The Atlantic Club  
Blue Bay Inn  
Brush and Bone Portraits – Laurie Bruckmann  
The China Closet  
Contemporary Motor Cars  
Danny's Restaurant  
Dogs and Cats on the Farm  
Down to Basics  
Eastern Mountain Sports  
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MCF Dinner Dance Decorating Committee  
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Roseann and John Paone  
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Rumson Personal Fitness  
Salt Creek Grille  
Sickles Market LLC  
Shore Point Distributing Company  
Virginia Peanuts  
Cory Wingerter



Member of  
**EarthShare**  
New Jersey



We make every effort to be as accurate as possible in compiling our list of donors. If your name has been listed incorrectly, please contact the MCF office and accept our sincere apologies.



## SAVE THESE DATES

### MONMOUTH CONSERVATION FOUNDATION'S

#### UPCOMING 2016 EVENTS:

#### Sunday - April 3rd

Run for the Hills  
25th Indian Trails Footrace  
Title Sponsor: J.M. Huber Corp.

#### Friday - April 22nd

KFC/Project Pollinator!  
Earth Day Promotion  
at Sickles Market

#### Sunday - May 1st

Pizza and Pasta for a Purpose  
at Talula's

#### Tuesday - May 17th

Hortulus Farm Garden Tour

#### Sunday - June 5th

Kids For Conservation Family Day  
at Huber Woods Park

#### Saturday - September 24th

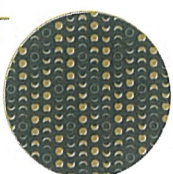
39th Annual Dinner Dance

#### Thursday - December 1st

Holiday Style Luncheon

FOR ADDITIONAL INFORMATION AND/OR  
TO DISCUSS SPONSORSHIP OPPORTUNITIES  
PLEASE CONTACT: Kathleen Kenney 732.671.7000  
OR EMAIL kkenney@monmouthconservation.org





# THE HARVEST MOON BALL

## 38TH ANNUAL DINNER DANCE

### H O N O R I N G

FRANK SCHEUER



SENATOR JOE KYRILLOS  
SUSAN DOCTORIAN KYRILLOS  
*Honorary Co-Chairs*



TRACY AND BOB BOYLE  
*Honorary Co-Chairs*

The Harvest Moon Ball was held at  
Fairway Farm in Middletown.  
The 40-acre property was  
preserved by MCF in 2007.



- 1 DAN WHALEN, LUCY KALIAN,  
SKIP & PENN BRANNIN, MAZ KALIAN
- 2 QUINN MCKEAN, TRACY AND BOB BOYLE
- 3 COLIN BRADLEY, SARAH BRADLEY,  
KATHY AND STEVE COTTRELL
- 4 TOM FRENCH
- 5 KEVIN BOYLE AND QUINN MCKEAN
- 6 BRUCE AND LAURIE BRUCKMANN
- 7 CHRIS AND VERONICA MEAGHER
- 8 CHARLES AND FRANK SCHEUER, LEIGH ROYER
- 9 ALEX BOYLE AND TRAVIS CONLEY
- 10 KATHLEEN MCCONNELL, MONICA RYAN,  
BUD MCCONNELL
- 11 TOM AND PATTI GILMOUR
- 12 SARAH AND COLIN BRADLEY
- 13 FRANK AND VALERIE MONTECALVO,  
SENATOR JOE KYRILLOS
- 14 TOM FRENCH, MIKE HOLCOMB,  
RENEE FRENCH, BRIAN HENKE
- 15 PAUL GASSERT, LILLIAN BURY,  
HELEN FIORE, DON BURY
- 16 BREE BELMONTE, GEORGIA TILDESLEY,  
KEVIN BOYLE, TRAVIS CONLEY, ALEX BOYLE,  
AMANDA MCKEAN, LILY SARRAN,  
TAYLOR BROWN, QUINN MCKEAN





# HOLIDAY STYLE LUNCHEON & SHOPPING SPREE

FEATURING GUEST SPEAKER  
**RENNY REYNOLDS**  
FOUNDER OF RENNY & REED  
AND HORTULUS FARM NURSERY

THANK YOU TO

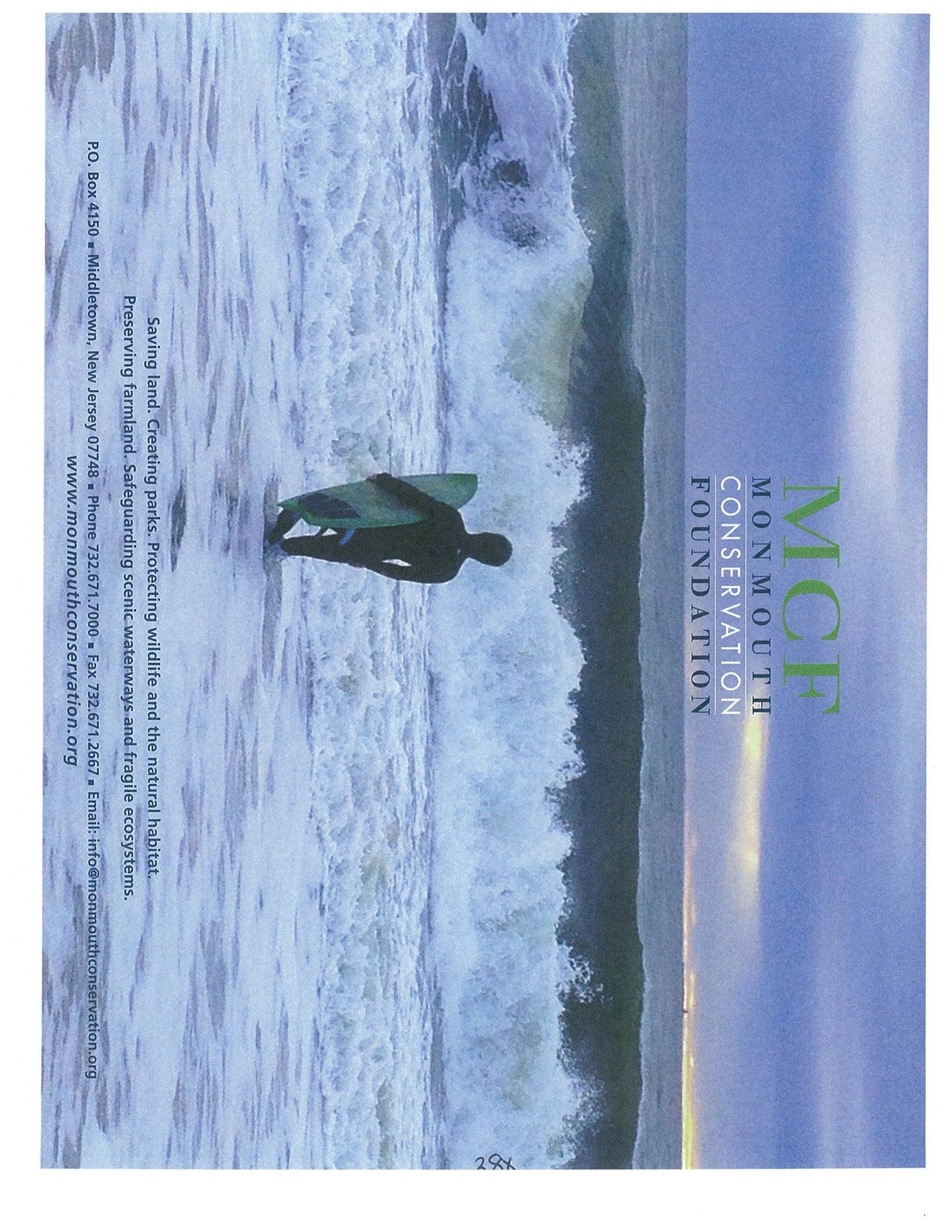


LEAD SPONSOR

- 1 SICKLES MARKET HOLIDAY ORCHID
- 2 STANDING: ASHLEY BOYD, KATHRYN LIGUORI  
SITTING: TARA KELLY, ROBIN EMBREY
- 3 RENNY REYNOLDS
- 4 HOWARD ARONSON
- 5 BARBARA GOLDFARB, ADELE KELLER,  
CINDY ZIPF, MARY-BETH THOMPSON,  
ANNE VOGEL
- 6 HOWARD ARONSON, MARIA STEINBERG,  
MICHELLE COSIMO AND MARTI HUBER
- 7 MARY VADEN
- 8 CECI SHIFTAN, JOYCE GULDEN, GENIE FLINN
- 9 MARTI HUBER
- 10 LUNCHEON PRESENTATION
- 11 GUESTS
- 12 HOLIDAY SHOPPER
- 13 BEVERLY ANNARELLA  
AND HOLLY BOYLAN-FLEGO
- 14 SHERIFF SHAUN GOLDEN,  
JAMIE FERLANTI, BILL KASTNING,  
FREEHOLDER THOMAS ARNONE,  
TEJA ANDERSON
- 15 AMANDA MCKEAN AND SARA ROBINSON





A person in a black wetsuit stands on a sandy beach, holding a green surfboard. The ocean waves are breaking in the background under a sunset sky with a bright orange glow on the horizon.

# MCMCF

MONMOUTH  
CONSERVATION  
FOUNDATION

Saving land. Creating parks. Protecting wildlife and the natural habitat.  
Preserving farmland. Safeguarding scenic waterways and fragile ecosystems.

P.O. Box 4150 ■ Middletown, New Jersey 07748 ■ Phone 732.671.7000 ■ Fax 732.671.2667 ■ Email: [info@monmouthconservation.org](mailto:info@monmouthconservation.org)  
[www.monmouthconservation.org](http://www.monmouthconservation.org)