

# *Committee Meeting*

of

## SENATE ENVIRONMENT AND ENERGY COMMITTEE ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

*"Discussion of the implementation of the Highlands Water Protection and Planning Act, and review of the functions and operations of the Delaware and Raritan Canal Commission"*

**LOCATION:** Committee Room 6  
State House Annex  
Trenton, New Jersey

**DATE:** April 28, 2011  
10:00 a.m.

### **MEMBERS OF COMMITTEES PRESENT:**

Senator Bob Smith, Chair  
Senator Robert M. Gordon, Vice Chair  
Senator Linda R. Greenstein  
Senator Christopher "Kip" Bateman  
Senator Jennifer Beck

Assemblyman John F. McKeon, Chair  
Assemblyman Reed Gusciora, Vice Chair  
Assemblyman Daniel R. Benson  
Assemblyman Charles Mainor  
Assemblywoman Denise M. Coyle



### **ALSO PRESENT:**

Judith L. Horowitz  
Amy Denholtz  
Carrie Anne Calvo-Hahn  
*Office of Legislative Services*  
*Committee Aides*

Kevil Duhon  
*Senate Majority*  
Mishael Azam  
*Assembly Majority*  
*Committee Aides*

Christina Gordillo  
*Senate Republican*  
Thea M. Sheridan  
*Assembly Republican*  
*Committee Aides*

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

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**SENATOR BOB SMITH (Co-Chair):** Good morning, everyone. You're at one of the two most dynamic events of every year, and they are the joint meetings of the Senate Environment and Assembly Environment Committees. We try to do one always in April in honor of Earth Day, and we try to do one during the summer when we usually examine shore issues. And this is our April meeting.

Chairman McKeon and I -- when we talked about the possible topics for this meeting, we agreed that probably two topics were appropriate, one being-- It's now seven years since the enactment of the Highlands Act. It's time to do a little legislative oversight and see how well it's performing, especially when there is a discussion in the public about the role of the Highlands Commission and how well the Act has been performing. And then secondly, a discussion of the Delaware Canal control (*sic*) Commission, because there has been this whole discussion about terminating its functions. And many people in this state -- Chairman McKeon and myself among them -- believe that the Canal control (*sic*) Commission performs a very, very worthy function. And that's -- by way of a little introduction to what we're doing.

Chairman McKeon, would you like to say a few words?

**ASSEMBLYMAN JOHN F. McKEON (Co-Chair):** No, other than, Senator Smith, it's always a pleasure and a privilege to work with you and your fine Committee. I know I thank my members, who are called to many, many special meetings throughout the year, for giving up their time today. And I look forward to the presentation.

Just logistically, anybody who has signed up is certainly welcome to testify, but because of the Senate schedule today, we're going to

try to break off at noon. So once we get through the first hour, relative to the first topic, we're going to be starting the Highlands at 11:00 promptly so we have at least an hour for each.

SENATOR SMITH: Great.

And that being said, why don't we take the roll? That's a good starting point.

MS. HOROWITZ (Committee Aide): Senator Smith.

SENATOR SMITH: Present.

MS. HOROWITZ: Senator Gordon.

SENATOR GORDON: Here.

MS. HOROWITZ: Senator -- Assemblyman McKeon.

ASSEMBLYMAN McKEON: Was that a demotion? (laughter)  
Present.

MS. HOROWITZ: Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: Present.

MS. HOROWITZ: Assemblyman Benson.

ASSEMBLYMAN BENSON: Here.

MS. HOROWITZ: Assemblyman Mainor. (no response)  
Assemblywoman Coyle.

ASSEMBLYWOMAN COYLE: Here.

ASSEMBLYMAN McKEON: I know Assemblyman Mainor is  
on his way.

With nothing formal further, I'd like to call upon Ernest Hahn,  
with the Canal Commission.

SENATOR SMITH: I understand that Alison Mitchell from the Delaware Canal control (*sic*) Commission wants to come up as well with Ernie, John Loos, and David Knights. They wanted to do it as a package.

ASSEMBLYMAN McKEON: We'll take them as a package.

DAVID H. KNIGHTS: I am Ernie Hahn. (laughter)

ASSEMBLYMAN McKEON: It's like "To Tell the Truth."  
(laughter)

MR. KNIGHTS: I couldn't think of the TV show.

ASSEMBLYMAN McKEON: You'd have to be at least our age to know. A lot of people here are like, "What? What's that?"

ERNEST P. HAHN: Senator Smith, Assemblyman McKeon, Committee members, thank you very much for the invitation to come here to present you information on the D&R Canal Commission. And thank you very much for letting us go first.

One of the reasons we're here is that presently I have no staff back at the office. So in order for me to process our permits and approvals, I need to be back there doing that. So I appreciate it.

I'm going to give you just some very, very brief background information on the Canal Commission to kind of bring you all up to speed at one point. The D&R Canal Commission was established by statute and charged with creating a master plan for the development of the Delaware and Raritan Canal State Park, and to implement a regulatory program to ensure government and private projects are designed to comply with the master plan.

The Canal Commission protects the canal as a State Park, a State and national historic district, and a source of drinking water for

approximately 1.5 million people in New Jersey. The adopted regulations established a regulatory review zone that is based on watersheds. It consists of almost 448 square miles, or 6 percent of New Jersey. The Commission members consist of the Commissioner of DEP or his representative and 8 public members. To me it is very important to note that the public members of the Commission -- three of which are represented here -- are not compensated in any fashion. It's strictly voluntary.

The Commission staff normally exists -- consists of the Executive Director, one technical staff, one administrative person, and two -- and the services of two part-time engineers who work one day a week.

The budget for the D&R Canal Commission: Two years ago, the Legislature amended this statute -- quite frankly, the sponsors are here -- to enable the Commission to collect fees for permit review and also enable us to adopt general permits. As of that time, we are now self-funded and revenue neutral. It costs the State nothing to run this Commission. In addition, the adoption of those general permits have allowed us to even significantly reduce our new timeframes for minor projects.

Speaking of which, our review times, adopted by regulation-- We review project applications within 30 days of submission. By statute, we make a decision on a complete application within 45 days. Within the 30 years this Commission has been in place, to my knowledge we have missed only 10 deadlines. And in most cases, our review timeframes are much smaller than that, because the Commissioners come in and I present the projects to them once a month, which means that that timeframe is often much shorter than 45 days.

The one thing that I really would like to point out: In the proposal to abolish the Commission, it was suggested that we are, in fact, an overlap with the rules and regulations of DEP. In reality, we are more stringent; we are more protective of water supply, of the historic district, and stream corridor buffers than any of the regulations that are presently in place at DEP. There is one small area of overlap within our regulations, and that's for stormwater reviews. And by looking at my permits, I can tell you that that's less than 5 percent of the time. And for those less than 5 percent, we actually suggested to Commissioner Martin that he could delegate those reviews to a sister State agency and, in fact, alleviate some of the burden on DEP's landuse staff.

So to give you the last bit of history, in September, Governor Christie announced in a press release that Commissioner Martin recommended the Canal Commission be abolished. In November, DEP offered lateral transfers to my two full-time staff. We are not protected by civil service positions. We can be fired at will. Those two staff members left in December. I've been working in that position by myself. Just recently I hired a temp for four hours a day to help me answer the phones. But we still are meeting our deadlines.

Thank you very much.

SENATOR SMITH: One or two questions, Ernie.

First of all, you're retiring.

MR. HAHN: I am.

SENATOR SMITH: Okay. And when is your last day?

MR. HAHN: May 25.

SENATOR SMITH: Okay. And just for the record, I think you've rendered exemplary service to the people of New Jersey. We're going to miss you.

MR. HAHN: Thank you.

SENATOR SMITH: I understand it must be hard to do a job without any staff.

Do you believe that the Commissioner is going to go forward with the termination plan, or has there been any discussion of a continuing role for the Delaware Canal control (*sic*) Commission?

MR. HAHN: There have been discussions. They have indicated that they are not pursuing the abolishment of the Commission at this time.

SENATOR SMITH: Good, great.

MR. HAHN: But nothing definitive has been decided.

SENATOR SMITH: Okay. I think you were kind enough to provide us with some basic information about some of what you consider to be the achievements of the Commission. And of course the one that you've reemphasized is the fact that you actually, for a State agency, are pretty expeditious. You get the job done, you review things, and you get them out. But I also noticed in some of the background information that the Commission has been responsible for some major improvements to the park. Could you talk about that a little bit?

MR. HAHN: Absolutely. Part of the charge of the statute was to develop a development plan for the entire park. Since that time, there have been many, many additions to the park, expanding it in size. Currently, you can begin on a recreational path in Frenchtown, New Jersey;

travel all the way through Trenton; and end up at Landing Lane Bridge. Over 70 miles of trail is open to the public, and it's now continuous at this point.

The other thing the Commission does in our review of projects is, we not only protect water quality, but many times we're given the opportunity, and we succeed, to improve water quality. One of the differences that I'd like to point out between DEP's regulations and ours is DEP, when they look at a redevelopment project and the area is all paved, they don't require any water quality when they redevelop that site. When we look at the site, if that site is draining into the Canal, and we have an opportunity, we ask the applicant to include water quality treatment when they're rebuilding. And that, in fact, improves it.

SENATOR SMITH: Okay. And I think in the background information you indicated that an excess of \$20 million of direct improvements has occurred.

MR. HAHN: Yes, sir.

SENATOR SMITH: Just describe them a little bit, if you don't mind.

MR. HAHN: New pedestrian bridges; obviously the increase-- For the longest time, we were at a stalemate. And there was a missing link of 2.3 miles within Trenton. We managed to get that gap closed and have that put in place. Also, there are mitigation funds. Often, when we look and regulate development impacts on the Canal Commission -- on the Canal, we look at the park as a whole. We look at it as a water supply, a recreation area, and a historic district. And so when we come in and view a project -- for example Peddie -- private Peddie School -- prep -- the

preparatory school came in-- They needed to add buildings onto their campus to expand. While these didn't meet the exact letter of our law, we allowed them to go forward. They designed them so that they were within the design context that we allow. And in addition what they did is, they had a non-functioning water detention basin -- a stormwater detention basin as mitigation for their impacts -- for the visual impacts. We allowed them to upgrade that basin, and therefore they increased the water quality going into the Canal. So we look at it as very holistic.

SENATOR SMITH: Right. And the Canal is actually a source of drinking water for central New Jersey, is it not?

MR. HAHN: It is. It is, in reality, quite an impressive area. Where it goes into the system it goes into four different counties. And so that entire area can be served by the D&R Canal water.

SENATOR SMITH: Right. But I think you actually have a water intake structure for -- is it Middlesex Water Company?

MR. HAHN: Middlesex Water Company is one of the major purveyors, and American Water.

SENATOR SMITH: So literally in addition to not costing the State any money and getting \$20 million -- in excess of \$20 million for improvements, you're also protecting the water supply for the people of central New Jersey.

MR. HAHN: Yes, sir.

SENATOR SMITH: Good.

I don't have any other questions for Ernie.

Does anybody else have any?

ASSEMBLYMAN McKEON: Just briefly, again, from 30,000 feet -- as we'll talk about the Highlands a little bit later, we'll deal with half of the water supply for the entire state. Can you put it into the context of the water supply being protected, as far as just numbers?

MR. HAHN: Oh, as far as numbers go, diverted out of the Delaware River is 100 million gallons per day -- that's per day -- that flows into the system. That system goes all the way into Middlesex County where the major purveyors take it out. It's part of the Raritan system. And we're talking approximately 1.5 million who drink that water.

I think one of the things I would like to add is, one of my biggest concerns with my retirement, and at this moment lack of staff, is the regulated public -- land owners and lenders -- are going to be thrown into no-man's land, essentially.

SENATOR SMITH: Why?

MR. HAHN: Every day I'm still taking in permits and applications. If there is no one there to process those, and the law and the regulations are still in place, I don't know where that leaves the regulated public.

**JOHN S. LOOS:** John Loos, one of the Commissioners.

I'd just like to jump in on this, because ultimately the responsibility for staffing this falls on the Commission.

ASSEMBLYMAN McKEON: I do want an answer to the question. But just to follow up on that point -- my math isn't that great -- but give or take, we're talking about 20 percent of the drinking water for the entire State of New Jersey.

MR. HAHN: Yes, sir.

ASSEMBLYMAN McKEON: Okay. Putting it into context.

MR. LOOS: Concerning this staffing issue-- He has another 20 days to work. He's agreed to work up until his last day of -- before he retires. We're going to have to close the doors. We had been-- We've known that Ernie was retiring for several months now. He lost his support staff back at the end of last year. We've been trying to get the authority to hire three people: to hire him -- his replacement, to hire an engineer for our second position, and office support staff. We've been trying to do this for months, and we're getting no place on this at all. And it's really-- You know, you talk about government that works, here is a group that's run by volunteers, staffed through regulatory fees. It doesn't cost the State of New Jersey one penny. And we're in a situation where we're going to lock the doors, and we're going to say to this Administration that is holding us up, "This is an example of government that doesn't work."

ASSEMBLYMAN McKEON: I want to better understand who stops you from hiring.

MR. LOOS: It's an interesting question. The enabling legislation says that we have the authority to hire and fire. But traditionally, we have worked closely with the DEP Commissioner in order to do that. Our Chairman, a couple -- a week ago met with the Commissioner who said we could hire somebody to replace him. It would have to be someone who wants to leave DEP to come to an agency that may or may not exist in the future. But that's what we've been told. But we've got nothing on hiring a replacement. And somebody needs to train. You don't walk into a tiny little agency like this on June 1 and suddenly take

over. There should be cross-training. We should have had somebody in place a month ago.

ASSEMBLYMAN McKEON: I just want to be clear. Even though, theoretically, you're autonomous and can hire, out of respect you go through the Administration. And meetings have taken place with the Commissioner.

And I'm sorry that the Commissioner isn't here. He was invited, frankly, at the last minute and so blame us for that. But Mr. Hazen is here who might have something to say in a bit. But the Commissioner has indicated you're not to hire someone from the outside, and it would have to be someone internally from DEP willing to come over.

MR. LOOS: Correct.

ASSEMBLYMAN McKEON: Have they posted that job? Is that how it works?

MR. LOOS: It takes a while.

ASSEMBLYMAN McKEON: Just call me dumb. I could put-- The posting should come immediately.

MR. KNIGHTS: David Knights, a Commissioner.

What we've done-- The three of us met with Commissioner Martin in December. We've been bounced back and forth between the Governor's Office and the Commissioner with unbelievable frequency. I feel like a ping pong ball with nobody making any-- And I'm part of the regulated community. I'm a developer. And so I come at this with a very different angle. But it's very sad to see the bouncing back and forth with nobody-- This is an easy decision, revenue neutral. We don't make a lot of money as Commissioners, and have about three staff.

The development community wants this Commission to exist. I can tell you that. I have my testimony.

But to answer your question, we've just been bounced between the two.

ASSEMBLYMAN McKEON: Commissioner, who have you met with directly in the Administration?

MR. KNIGHTS: Well, Ernie, John, and I met with Commissioner Martin, Irene Kropp, and Cindy Randazzo. I shared my letters. I've been writing a lot of letters since last September. The first one was to -- I shared with the Senators. I wrote to the five Senators on the Committee with all of my background letters. We met with-- Well, it was January that we met with-- Alison and I have met with the head of Green Acres. We've gone hard on this. Private-- The three of us have other jobs. We didn't need to-- We all stand the risk of not being appointed to the Commission. I can go on and give you other things.

And with the Governor's Office, it's been--

ALISON MITCHELL: I've had conversations with--

ASSEMBLYMAN McKEON: That's what I was trying to tease out. Who outside of DEP?

MS. MITCHELL: --with Wayne Hasenbalg. And he's the one who referred me back to DEP. And so we have-- I would agree, we've just been bounced back and forth.

And part of it is that there is a hiring freeze. So that was part of our complication with rehiring. We felt like we really needed authority to go ahead.

MR. KNIGHTS: We've been extremely respectful. We have-- That's the most harsh you've heard me say in the whole time. Because we're at crunch time. And it's sad to be a New Jersey resident, to be a developer, and watch something that works get killed by inaction.

ASSEMBLYMAN McKEON: Again -- maybe, Ernie, you would know. What's the trick in posting? Why can't something happen on an expedited basis? When did Commissioner Martin make this commitment?

MR. HAHN: Tuesday a week ago.

ASSEMBLYMAN McKEON: Tuesday a week ago.

MR. HAHN: But I've heard nothing since.

MR. KNIGHTS: It was a limited commitment that it was-- We had to take his choice.

MS. MITCHELL: So we're waiting for some more feedback on possible candidates, basically.

MR. HAHN: And it takes nothing to post. It's electronically if they decide to do it that way.

SENATOR SMITH: Senator Greenstein.

SENATOR GREENSTEIN: Thank you.

Two things: I first learned about this from Mr. Knights -- we met in a restaurant one day -- and I saw you, and you told me about it.

MR. KNIGHTS: Main Street. I was a little revved up.

SENATOR GREENSTEIN: And I didn't know about it before then.

But I just want you to know that I did speak to the Commissioner. I'm on the Budget Committee, and the Commissioner

called all of us to talk about issues before he appeared, and this was one of the ones I spoke to him about.

My sense -- of course, I don't have it in writing -- but my sense was he was not unsupportive of you. I mean, I didn't hear anything that suggested that he wasn't supportive. But I'm still confused, like my colleagues. I did come in, in the middle of your speech, so maybe I missed this; but I get the impression, if you wanted to, you could handle this autonomously. You're not doing it because of tradition, but you could. And maybe that's the approach. I don't know.

MS. MITCHELL: Let me try to answer that.

I'm sorry, I'm Alison Mitchell. I'm usually before you as the Policy Director of the New Jersey Conservation Foundation, but I also live in the area regulated by the Canal Commission, and I've been serving on the Commission for the last five years.

And I want to note that my daughter Frederica is in the audience skipping part of Kindergarten because of Take Your Child to Work Day. (laughter)

But basically, our funds -- the permit fees that fund staff, which are dedicated for the Commission -- but they flow through Treasury. So we don't feel like we're in a position to say to the Governor's Office, "Well, we're going ahead, even though we're getting mixed messages about whether we can hire somebody." Because we need the funds to flow out of the Administration to pay the staff.

MR. HAHN: It actually comes down to paperwork. When the Commission was created 30 years ago, it didn't make sense to have a personnel person and somebody to track all of that, so we worked through

DEP. And up until this point it's worked very well. But, again, if you hire somebody, you have to go through the paperwork. It would be me trying to figure out how to do that.

I think one other thing I'd like to add is, since this came to light, the advocacy groups have gone out to the surrounding municipalities. The Canal travels through 19 municipalities. Fifteen, who we regulate, passed supporting resolutions, as well as Mercer County. These are people we regulate, and they think it's important that the Commission stay in place.

SENATOR SMITH: Now, right now the -- in order to perfect the landuse approval for property that's in the Canal Commission's jurisdiction, it's require that there's an approval, correct?

MR. HAHN: Correct.

SENATOR SMITH: If the Commission doesn't function, and there is no approval, where does that leave the private property developer?

MR. LOOS: It's an automatic approval. If we don't--

MR. HAHN: It's actually not.

MR. KNIGHTS: No, the answer to that -- as a developer--

SENATOR SMITH: Whoever wants to take it.

MR. KNIGHTS: It's like if Plainsboro, in South Brunswick, where I operate -- municipal resolution says, "You need to produce all of these items for resolution compliance." We would need a certificate of authority -- certificate of approval from the Canal Commission before Plainsboro would issue a--

SENATOR SMITH: A building permit.

MR. KNIGHTS: Yes.

MS. MITCHELL: Right. The State is still obligated to do the permitting program.

SENATOR SMITH: So am I misportraying this, that if your goal is to see rational development and protect the environment, that any projects in this area theoretically would be unable to get a building permit or, if somebody challenged the approval, that the approval would be overturned? So if you're for-business, if you want to see some development, destroying the Canal control (*sic*) Commission is not in the best interest of the State -- forgetting the environment for a minute, which I think is a higher priority, but-- But if you're interested in doing business, this is not good for business either.

MS. MITCHELL: Yes, I think--

MR. LOOS: Senator--

MS. MITCHELL: I'm sorry, I just want to follow up on that. Since last year, when the Governor did the press release and announced the proposal to abolish a variety of commissions and their bodies, and included the Canal Commission on there, I feel like we've been sort of the subject of like a case of mistaken identity. Because the whole idea behind that list of entities that would be eliminated was because there was duplication, and inefficiency, and that we wanted to move toward a more efficient system, tighter system. And I remember at the time everyone -- including municipalities and developers -- saying, "Well, this is actually a model of efficiency," and even some of the DEP staff saying, "How do you guys turn things around so quickly? Let's learn a little more from you."

And then, more recently, when the Governor proposed the Shadow Government Reform act, that I think is primarily aimed at sewage

authorities and some other entities where there is abuse happening as far as meeting minutes and the claim, at least-- I'm not very familiar with those entities, but public--

SENATOR SMITH: You mean, you people aren't stealing benefits? (laughter)

MR. KNIGHTS: We're not.

SENATOR SMITH: You have no family members on the payroll?

MS. MITCHELL: Yes, exactly.

SENATOR SMITH: What's wrong with you people? (laughter)

MS. MITCHELL: So basically we were included on that list again.

MR. KNIGHTS: That was an encouraging sign.

MS. MITCHELL: It was encouraging because it seemed like maybe we'd survive because we were going to be regulated.

But I have to say that even in that case, because none of the other abuses that that bill is aimed at curbing relate to the Canal Commission, the only actual effect that including us in that legislation has been to give the Governor veto power over our minutes, which he has not enjoyed before. And that's not something, actually, that really -- I don't think any of the Commissioners mind the Governor having.

SENATOR SMITH: Have a party.

MS. MITCHELL: But the only practical effect is that it makes every single person who applies for a permit wait at least three or four more weeks than they do now, and potentially even longer depending on how they decide to deal with the minutes.

SENATOR SMITH: Are you trying to say that delaying permits is a bad thing? (laughter)

MS. MITCHELL: I'm not saying it's a bad thing.

MR. KNIGHTS: Yes, she is.

SENATOR SMITH: Bad for business.

MS. MITCHELL: I'm saying it could be perceived as less efficient.

MR. KNIGHTS: If I may, because what I've prepared goes right to every question you've asked.

I've been in New Jersey for 25 years as a developer. And in that entire time I have had -- I have needed Delaware and Raritan Canal Commission approvals. A major one was denied in 2000, so I've been on the-- It was denied in May through a lot of efforts. We had an approval in August for the same project. There are many people here to testify who I worked with through that entire time. Some are still unhappy, but there is no way in the world that with any other State agency you would have taken a denial to an approval in three months.

I live in Hopewell Borough. I began to be publically involved on the planning board. I'm now the Borough Council President. Three years after the denial of the application, I was appointed to the Commission, so I've been on since 2004.

I'd like to start in New Brunswick and run down things I've seen as applications, things I've applied to -- as just a sense of who is affected by this, who has been improved by-- And Ernie said Peddie. I thought Rutgers Prep -- Rutgers Prep is -- Rich Goldman was their attorney. It was one of the most contentious applications in my time -- right on the

banks of the Canal. Environmental benefits -- the school is very happy. Rich Goldman just resigned as President of the D&R Greenway. Using the D&R Canal-- You have numerous housing projects -- Franklin, Somerset -- a lot of them use *canal* in their name. It's an asset for the residential developers. You move into South Brunswick and Plainsboro with Princeton Forrestal Center. We have over 1,000 units of housing -- Princeton Landing; Windrows is an age-restricted community; Barclay Square is 220 luxury apartments. Princeton Forrestal Center and the Canal Commission started together in the '70s -- same year, '74. We have operated under a certificate of approval from the Canal Commission since 1980. It was upgraded. You used the words *regional planning*, *rational planning*. It's what Princeton Forrestal Center is about, it's what the Canal has been about. It's a rarity also.

In South Brunswick -- you asked about the \$20 million in improvements. There is then private-sector improvements -- most pronounced, selfishly; 214 acres of land given to the State and South Brunswick by Princeton University -- the creation of Mapleton Preserve. One hundred of those 214 are right along the Canal -- some of the most beautiful land in the State.

DEP was going to ask that every building of the old Princeton Nurseries be torn down. A large group of people didn't like that. Today, the park is based in the old Princeton Nurseries' headquarters. It's a tremendous asset -- beautiful building that represents an industrial part of New Jersey in the sense of the largest nursery on the East Coast. And Parks has their office in that building -- renovated 100 percent with private dollars.

Plainsboro-- Again, some of these towns -- all of them have sent in resolutions. South Brunswick actually was late. The best phone call I've ever had in my life was December 24, from Mayor Cantu of Plainsboro. I had not ever touched this issue with him. And he called and said, "What's up with the Canal Commission?" I said, "Well, what do you want to know?" His resolution of support came in January 13. He was a little offended by West Windsor because they had already done one and he wanted to catch up to West Windsor. (laughter) In West Windsor, a solar field for Princeton University, Carnegie Center, Nassau Park -- massive housing projects. Another great example -- the Princeton Theological Seminary housing -- new housing being built today to replace 1940s housing; trees coming down, things that generally don't happen. It's not good that trees come down, but stormwater quality improved -- tremendous project for a very important institution in this state.

You move through Lawrence, Trenton, Ewing. Trenton did a certificate for us, Ewing did a certificate for us. Coming back up: you move through Hopewell Township -- Bank of America, what was Merrill Lynch, Capital Health System, Janssen. All have had to apply to the Commission, all have gotten approvals.

And it-- One of my concerns is that if there isn't this overriding agency, one town along the chain will break at some stage and will make a decision for some reason that goes against the 30 years of record. And then, in a sense, you've ruined all-- You always have the drinking water issue behind you as a positive. And then the Canal is a linear park of 70 miles. And the first town that breaks it damages the integrity.

Thank you.

SENATOR SMITH: Are there any questions from members?

ASSEMBLYWOMAN COYLE: Yes.

SENATOR SMITH: Assemblywoman.

ASSEMBLYWOMAN COYLE: A number of your comments have indicated the work that you've done along the Canal and the amount of usage of the Canal. Who will be responsible for the maintenance of the Canal?

MR. HAHN: The Canal is actually maintained by the New Jersey Water Supply Authority, so that will continue to happen. The park itself is maintained by the New Jersey Division of Parks and Forestry.

ASSEMBLYWOMAN COYLE: All right. So then, in your opinion, the daily maintenance, the upkeep of that important hiking, biking, waterway for us will be maintained.

MR. HAHN: That will be maintained. But keep in mind that a number of times we've used mitigation funds to help out Parks because, let's face it, you all know that Parks is pretty much perennially broke.

ASSEMBLYWOMAN COYLE: Right.

MR. HAHN: So there will be that gap in funding that we do help provide.

ASSEMBLYWOMAN COYLE: And what kind of-- What are we looking at, dollar-wise, when you say that gap of funding?

MR. HAHN: It depends on the size of the project, but we've had projects that have donated as much as \$275,000; some less, some more. Some, in mitigation for water -- for stormwater impacts, we've come up, working with the Water Supply Authority, with new, innovative ways to treat existing stormwater; so we're improving that as well.

ASSEMBLYWOMAN COYLE: Yes, but wouldn't the DEP be able to receive that same type of mitigation funding, especially stormwater and things of that nature?

MR. HAHN: Not without-- They need to either do a reorganization plan or, at a minimum, readopt our rules and direct that toward DEP, because that's not how our rules are set up at this moment.

ASSEMBLYWOMAN COYLE: Thank you.

MR. LOOS: The other comment I would make in that regard, Assemblywoman, is that part of what we do is we regulate viewshed. A long, linear park is very different than a big, wide park, because you can recreate in the center, and the park itself protects your viewshed. But when you have a long, linear park like the Canal, it's important the viewshed outside the park be protected. So in the town I live in, in Franklin Township, it's like walking, canoeing, kayaking, horseback riding through the 19th century along that Canal. And it's not because we've prohibited development, it's because we've properly regulated development. If you go on Canal Walks' website, the opening sentence says -- and this is a housing development for thousands of homes out there -- says, "Located adjacent to the historic and beautiful D&R Canal." It's an economic generator, this Canal. It's not something that costs New Jersey something. It's something that, in the long run, is generating income.

ASSEMBLYWOMAN COYLE: Thank you.

Yes, I think there is-- I'm glad to see that the maintenance will be kept up, because I think the viewshed of the Canal is very important, and I think it adds not only a historical aspect, but it adds great beauty to the State and a lot of accessibility for recreation.

MR. LOOS: And handicapped accessible, as well.

We've also secured over 4,700 acres of easements, so we've preserved open space at no cost to the citizens of New Jersey. These have all been donations.

And, Ernie, you can correct me if I'm wrong.

But these are not easements that DEP would have gotten.

MR. HAHN: They are not.

MS. MITCHELL: I just wanted to add one thing to clarify. If the Canal Commission, though, is not regulating, if it's no longer in existence -- and I don't know why mine is not working; I talk too much, probably (referring to PA microphone) -- but even though the park itself will be maintained, the integrity of the viewshed will not be, because the DEP does not have the jurisdiction, it doesn't have the authority right now to regulate that. Could it get that? It could. It's a longer process it would have to go through. But I would also argue that it's not appropriate for the DEP to assume the Canal Commission's functions, because the Canal Commission, when it was set up, was specifically set up as a separate entity, because the DEP is one of the regulated entities. So the DEP, if it proposes to do something in the review zone, has to come before the Commission -- just like the DOT would or any other State agency, or any private individual -- and get permission, because the Canal Commission is looking at the integrity of the overall park and the water supply. It's a regional planning and regulatory entity. So if the DEP assumes those functions, which it would need to do through a reorganization plan -- and the Legislature would have input into that -- it's going to be one of those sort of

fox-guarding-the-hen-house cases where the DEP would be signing off on its own projects.

MR. KNIGHTS: I'd have to go to four separate -- this has been a point of contention between Commissioner Martin and the regulated community. We'd have to go to four different places to get what we now get with a certificate of approval, and the prospects of that are very scary.

ASSEMBLYMAN McKEON: Assemblyman Gusciora had some questions.

ASSEMBLYMAN GUSCIORA: Is there a discussion with the DEP about contingency plans after you retire that -- who is going to take up the permit review?

MR. HAHN: We've informed them all along, as soon as I decided I was leaving, and no contingency plans have been put in place even though I pointed out these issues from day one.

ASSEMBLYMAN GUSCIORA: Is that in writing as well?

MR. HAHN: They're in my e-mails to the Chief of Staff.

ASSEMBLYMAN GUSCIORA: If we could get copies of them, that would be great.

MR. HAHN: Yes, sir.

SENATOR SMITH: Senator Bateman.

SENATOR BATEMAN: Mr. Chairman, thank you very much.

Let me apologize. At times, in Trenton, it's frustrating. We don't meet for weeks or months on end, and then they schedule two meetings at the same time. Both you gentlemen scheduled your meeting first, but there were several important individuals up in Senate Judiciary.

But I left there because I wanted to come over here to convey my thoughts on how important it is to preserve the D&R Canal Commission. And I have lobbied the Commissioner, I've lobbied the Administration to not do away with this Commission and to keep the staff positions. Because this is a real gem to New Jersey for a lot of reasons. And I've had the benefit of running on it and biking on it. But it's so important. And it's actually the most utilized park in the State of New Jersey by far. And the benefits of preserving it and the water-- And I respect DEP, but I respectfully disagree with them on this, because I think they're wrong. And I'm going to do all my efforts to continue to lobby the Administration. Because as of June 1, we're going to lose some very qualified individuals. We need to keep those staff positions, because this is an asset we should be proud of in New Jersey. My dad actually sponsored the original legislation preserving it. So it's very dear to my heart, and I'm going to do whatever I can.

I thank you both for having this hearing, because I think it's very important. I've met with some very active groups in my towns. And now I happen to have four of the counties that surround the Delaware and Raritan Canal. So I'm going to be an advocate.

I thank you all for coming down. We're going to continue the good fight.

MR. KNIGHTS: Thank you.

MR. LOOS: One final comment I'd make on staffing is that -- and I expressed this to the Commissioners -- that I personally am not happy that we're forced to hire somebody who the Commissioner is going to send over to us. We have someone in mind. Quite honestly, I think we could

probably hire them for less than what the person we're likely to get-- Certainly the Commission hasn't discussed this as a Commission, but if we can hold down our costs -- which I think we are -- I think we might be in a position at some time in the future to actually lower our fees. And that's kind of unheard of in New Jersey government -- where you actually become more efficient. But by being forced to take the people the Commissioner is going to be sending over to us, it's going to--

SENATOR SMITH: Hopefully.

MR. LOOS: Hopefully, yes.

ASSEMBLYMAN McKEON: The greatest of thanks to -- assuming there are no further questions at this point -- the greatest of thanks--

SENATOR GREENSTEIN: I just--

ASSEMBLYMAN McKEON: Linda, go ahead.

Oh, Senator.

SENATOR GREENSTEIN: Thank you.

For old times sake.

ASSEMBLYMAN McKEON: Yes.

SENATOR GREENSTEIN: Anyway, I'm sure you can hear me.  
(referring to PA microphone)

I just wanted to find out, what would be the next step? If you could have your druthers, what would happen now? What would be the very next thing to happen?

MR. HAHN: Immediately hire staff so that I could train them before I leave.

SENATOR GREENSTEIN: You're definitely leaving.

MR. HAHN: June 1.

SENATOR GREENSTEIN: Okay.

MR. KNIGHTS: And to John's point, it would be to hire staff that we could choose ourselves versus having that list come from Commissioner Martin.

SENATOR SMITH: Hopefully.

MR. KNIGHTS: Hopefully, right.

SENATOR GREENSTEIN: Thank you.

ASSEMBLYMAN McKEON: Assemblyman Benson had a question.

ASSEMBLYMAN BENSON: As a freeholder, prior--

Actually, Mr. Knights, you came before us, and we actually passed one of the resolutions in support of it, mainly because of our planning department, working with the Commission, has seen the favorable effects.

The question I have is: It seems from both sides of the aisle, and from everyone I've talked with, this is something everyone seems to be interested in keeping preserved. Forgive my ignorance, but who put you guys on the list for dissolution? What purpose-- Was there any background information, any statement for why? And has since then -- since you're -- have there been any public statements or any written statements about arguing in favor of not staffing or dissolution?

MR. HAHN: It was in Commissioner Martin's EO15 report. There was a brief statement saying that we were duplicative and DEP could take over this function. We've since met with the Commissioner, explained

that we are not duplicative. And I don't believe that there has been any public statement from the Commissioner on this since.

ASSEMBLYMAN BENSON: And from anybody other than the Commissioner -- there have not been any statements?

MR. HAHN: In public.

MR. KNIGHTS: Nothing other than positive. There hasn't been one negative on this. And, again, not feeling a lot of agreement that there are too many-- It's my impression -- there's a rumor that there is one other group-- Alison, to be fair, has another area that she would not like to see eliminated. But in my impression, we are the only one on that list that caused a stir. And you asked a very hard question. There has been no answer or comment as to-- Because it would be real easy -- just take us off the list.

ASSEMBLYMAN BENSON: Okay. Thank you.

ASSEMBLYMAN McKEON: Seeing no further questions at this point--

Why don't you guys just stay for a moment, if you wouldn't mind?

There are a great number of persons who have signed up to testify, and I think it's apropos to a lot of what's come forward that not one of them are here to take a position contrary to the Commission continuing to operate. For the record, I am going to note everyone who has signed up. And on behalf of the Senator, and I, and the entire Committee here, we apologize that we're not going to have the time to hear from you today. That includes Jeff Tittel of the Sierra Club; Teresa Stimpfel of the Sierra Club; Robert Barth, Delaware and Raritan Canal Commission (*sic*); Mike

Kruimer, East Coast Greenway Alliance; Jeffrey (*sic*) Coffey, Stony Brook-Millstone Watershed Association; Robert von Zumbusch, just in general as a citizen; Kip Cherry, of the D&R Canal Commission (*sic*); Ted Settle, D&R Canal Commission (*sic*); Barbara Ross; and Kelly Mooij of the New Jersey Audubon. A lot of you in this group have submitted written testimony. We'll take that as part of the record today.

There is one other person we'd like to hear from just to see if they have or are in a position to speak as to DEP's official position at this point. And then I think Senator Smith has a proposal.

I can say, looking to my right and left, this is about as bipartisan as it gets as it relates to all of us appearing to be of like mind on this topic.

John Hazen.

And if you'd like, you guys could--

MS. MITCHELL: Thank you.

MR. HAHN: Thank you.

ASSEMBLYMAN McKEON: Ernie, just so you know, the resolution is going to be you can't retire. (laughter)

John Hazen, with the DEP.

John, staff had whispered that you might be in a position to let us know what DEP's official position is with all of this, in the absence of Commissioner Martin. And, again, we just really didn't ask him to come until yesterday. So it's understandable that he's not here.

**J O H N   H A Z E N:** Yes, he sends his regrets that he was unable to do it, just because of scheduling.

But as noted as part of the Governor's EO15 directive to all State agencies, we did a comprehensive review of boards, commissions, councils, you name it that are under us to look at any redundancies and possible things that could be eliminated or consolidated. And we came up with a list of over 60 boards that were on the recommendation, with the kind of thought that a lot of the functions could be handled by our Parks Division, by our Historic Preservation Office, by Land Use. But no action has been taken at this time. It was part of our recommendation that was sent over to the Governor's Office. As I mentioned, there have been subsequent discussions with numerous folks in the Legislature and the Commission.

ASSEMBLYMAN McKEON: John, I want to put you on the spot. Let's get to the bottom line.

MR. HAZEN: Yes.

ASSEMBLYMAN McKEON: Is the Commissioner -- is DEP going to be hiring a replacement for Mr. Hahn and then staffing the D&R Canal Commission?

MR. HAZEN: Yes, that's what-- We will be working with the Commission to hire a person. In terms of the exact details, I'm going to have to get back to you on that.

SENATOR SMITH: A person or persons?

SENATOR BATEMAN: Through the Chair, I hope it's sooner than later, because the clock is ticking.

ASSEMBLYMAN McKEON: We have May 25 when Mr. Hahn is going on to a well-deserved retirement. I mean, that's three weeks, if it was today, for someone to start to train.

MR. HAZEN: Yes, I will bring that word back. Like I said, I wasn't made privy to the exact -- the personnel moves that were being implemented. But I have been advised that we will be looking to replace Ernie as soon as possible.

ASSEMBLYMAN MAINOR: What about the other personnel?

MR. HAZEN: That's not on the -- being considered at this time.

ASSEMBLYMAN McKEON: Just so-- If you don't-- I don't get you. We're putting you on the spot. So in other words, you're going to replace the Director but have no other staffing? What good does that do?

MR. HAZEN: That's the direction we're going right now. But like I said, I've been listening to everything that's being said here. I will go back and raise this with the Commissioner and discuss it with him.

SENATOR SMITH: A suggestion I have for -- and it's a suggestion I talked to Chairman McKeon about -- was the possibility of doing a joint letter from the two committees to the Governor and the Commissioner indicating our support for the Delaware Canal control (*sic*) Commission, indicating that we think it should be properly staffed and that the staffing should probably be an open process as opposed to you're going to take these people-- And that they continue their good work. I mean, the \$20 million of improvements, the no cost to the taxpayers, protection of the park and the viewshed. I mean, I think that stuff is a great asset to New Jersey. So Chairman McKeon and I are going to draft a letter to the Governor and the Commissioner urging them to reconsider their decision, and we're going to ask -- we'll send it to everybody's office. And if you'd like to sign on to the letter, we'd love to have you on the letter.

MR. HAZEN: I'm sure the Commissioner will welcome your input and advice.

SENATOR SMITH: Input, absolutely.

Thank you for your input today.

Chairman McKeon, if it's appropriate, we'll go to topic two.

ASSEMBLYMAN McKEON: It's appropriate, sir.

SENATOR SMITH: All right, the Highlands, Highlands, Highlands.

You know, we should make a-- I don't know if you remember when the bill was first being considered there was an article, I think, in the *Star-Ledger* by a reporter who said that the preamble to the Highlands legislation was poetic. It was not like any other bill that had ever been written in the sense that it was talking about these beautiful spaces, and vistas, etc.

We now have a number of years of experience. And Chairman McKeon and I thought it was a good time, especially in April, to review the operations of the Highlands. And we have, I think, as our starting witnesses Eileen Swan and Mayor James Oscovitch, from Byram Township.

Would you come forward?

ASSEMBLYMAN McKEON: Recent award winner, Mayor.

Congratulations.

**MAYOR JAMES OSCOVITCH:** We're very proud of that. Thank you.

ASSEMBLYMAN McKEON: Just a real quick opening: Of all things to think about, look at gasoline prices and how is that going to equate to the Highlands. Think of if we could, in a very efficient way,

legislate a manner in which to keep gasoline prices affordable; and to the extent, really, that water can be juxtaposed relative to the cost and projected value of clean water to the state. New Jersey has a lot of economic disadvantages, if you will, for a lot of reasons -- relative to the age of the state, the dense population, and the like. But one advantage that we have is a very affordable, clean water source. And if we don't protect that, the cost alone over the next 20 to 30 years could add \$30 billion to \$40 billion to our respective budget, really taking a big chunk out of the ability for us to be economically competitive. So think about the fact that we, through a piece of legislation and a minoratively (*sic*) -- minor investment are able to really assure the economic vitality of this state on a going-forward basis. So take out the environment for a moment -- as Bob said before, that is the most important thing in our minds -- but remove that and think of this just from a pure economic perspective and understand its importance.

SENATOR SMITH: Take it away.

EILEEN SWAN: Good morning, Chairman Smith and members of the Senate Environment and Energy Committee, and Chairman McKeon and members of the Assembly Environment and Solid Waste Committee. It's a pleasure to be with you this morning.

I would like to ask the Mayor to make his comments first. And as we are talking today about implementation of the Highlands Act, I think it's really important to hear from a mayor whose municipality is impacted by this legislation. I'll be pleased to tell you the kind of relationships we've built with the communities of the Highlands. But as much as I say it, I think it's better that you hear it from the Mayor.

So, Mayor James Oscovitch from Byram Township.

MAYOR OSCOVITCH: Thank you very much.

I'm honored to be here today. This is my first time actually speaking in front of any type of group like this. So if I am a little nervous, it's because I am.

I do want to say -- not that I'm looking for any pat on the back or anything, but I did rearrange my work schedule. I was supposed to be at the New Jersey Conference of Mayors this week, but I felt it important enough to be here to support the -- and talk in a positive way for the Highlands and what it's done for Byram Township.

ASSEMBLYMAN McKEON: We appreciate it very much, Mayor. Thank you.

MAYOR OSCOVITCH: And thank you for the kind words about our New Jersey Future award. We're very proud of that.

ASSEMBLYMAN McKEON: You're Mayor of a great community too.

MAYOR OSCOVITCH: Thank you.

So I'm just going to read a little bit about some of -- where I've come from, Byram's overview, and the Highlands process that we've gone through over the years.

I was elected Mayor in 2009, however I was elected Councilman in 1997 for three terms. And back in 1997, there was no Highlands. You never heard of the Highlands. So I served three terms as a member of the Byram Township Council; and I've also served on the Byram Township Planning Board, as I sit on the Planning Board presently as well.

Byram is a collection of a half-dozen or so small communities, most of which are clustered around the Highlands. We have a lot of lake communities, so we're very broken up when it comes to a township. And we prefer to keep our rural character. I mean, I guess in the year 2000, we went out for referendum for an open space tax, which the residents passed with a very high margin of votes. So we kind of-- Even back then we kind of realized the potential we have to protect our environment. And I think even prior to the Highlands this is kind of what we envisioned, even way back then.

Some of the lakes we have: Cranberry Lake, Lake Mohawk; a big part of our township is also the Allamuchy Mountain State Park; and Waterloo Village which, on a side note, I'm just going to say we're having a big event there May 14 and 15. We have a group that is trying to restore that village. So if you're in the area May 14 and 15, we have a big concert there. We'd be happy to see you.

The history of the relationship of the Highlands Council and our decision to conform for planning area-- We voted initially not to conform, with the unanimous -- with a unanimous vote. So we kind of started off on a little bit of a rocky relationship with the Highlands. But I think in life everything is about timing, and I think Byram is at the right place at the right time. So as a result of the Highlands Council approval, we were the first petition for plan conformance to be approved and the first Highlands center to be designated. That's important in a few ways, because we really took a piece of property in our planning area, which was borderline usable, and we took this property and probably made it the most sought-after piece of property in Sussex County. And all of that came

through our work with the Highlands Council. I mean, we got to a point where we both just sat down, looked at each other, and said, "What really do we want to do with this area?" And from there I think things started moving, and we ended up getting what we wanted: a nice mix -- a mixed-use property. Still -- and we're still able to preserve our critical areas on that -- in that area. So, I mean, it was a very good process.

Many years of hard work went in by our Planning Board, our Environmental Commissioner, our Smart Growth Task Force, our Master Plan Review Committee. Everything -- all groups -- we worked very well together. But really the main cog in all this was how well the Highlands Council worked for our township. I mean, the depth of the data available through the Highlands Council regional master plan gave us a much more detailed look at the Township's resources and infrastructure. And even more important was the fact that we didn't have to pay for it, which is always a good thing.

And one thing I want to touch on too -- and you're going to have to excuse me if I get a little bit emotional here -- but halfway through this process our Township Manager Chris Hellwig passed away from a -- he had a brain tumor. And the compassion that the Highlands Council, and especially Eileen, showed to us at that time was nothing short of amazing. So I thanked her and her staff enough about that. But I thought that -- very important to have a State agency get down to that local level where they actually feel the pain that you feel in a situation like that. So we'll always be grateful for that.

So as I mentioned, we probably have a piece of property, that is on the Route 206 corridor, that has probably become the most sought after piece of property in Sussex County; so we're very excited about that.

So really, what the end result is, is a perfect example of a municipal government and a State agency working hand-in-hand to achieve a mutual goal: to protect our extensive natural resources and simultaneously reinvigorate our Route 206 corridor. So I believe we have shown the Highlands planned performance process works, and I think some other people have realized that and some other municipalities realize that since we went through that process. And hopefully we've set an example for other municipalities.

ASSEMBLYMAN McKEON: Mayor, take a moment and tell us about the award.

MAYOR OSCOVITCH: Well, actually, the award comes from New Jersey Future. And what it is, is it's a smart growth and economic development award. And we are-- And, again, with the Highlands staff -- they helped us put that application together. And we just found out the other day that we did receive the award, and it's for our new town center planning. And also being recognized on that award is Hyer Gruel and Associates, as well as with the Highlands Council as well. So a lot of people worked on this, and we're very proud of it, and I think it's going to -- it puts Byram Township on the map as far as who we are and kind of what we're all about as a town. So it was very exciting news.

ASSEMBLYMAN McKEON: Congratulations. We really, really appreciate you being here.

Does anyone have any specific questions for the Mayor? (no response)

MAYOR OSCOVITCH: And if I could just add a couple of things-- You know, I was fortunate enough to be at some of these -- the New Jersey DEP stakeholder meetings. And I think it's very important. I haven't seen any written minutes or any correspondence back from those. I believe I was at three of them. But the fact is, I think you'd be hard-pressed to find any negative comments about the Highlands staff; maybe about the Act itself -- maybe. I understand that. It worked well for Byram. And I understand each town is different -- has different needs, different makeup. But you'd be hard-pressed to find one negative comment about the Highlands staff, and I think that's very important to be said.

And, again, to have a State agency contact you on the weekend when you have e-mails, and call you at your home-- I mean, that's happened on more than one occasion. So we have our local legislators also who you send an e-mail to with an important question, and you get an auto reply back. And that does not happen with the Highlands staff. I've been -- I've heard the Commissioner speak a couple of times -- Commissioner Martin speak a couple of times about how he wanted to hear all the stories, all the horror stories about the DEP. He says, "Now I'm tired of the horror stories. I want to start hearing the good stories." Well, we have one right here in the Highlands Council. So that's-- I always try to tell him that whenever I see him -- "Here's your positive story."

So thank you for allowing me to speak.

ASSEMBLYMAN McKEON: Well, Director Swan, it's good that you tried to act humble throughout those nice comments. (laughter)

Hey, you know, I only mention this for the reason -- I don't think any of these issues should be partisan by nature -- but your political affiliation -- you're a Republican Mayor, correct?

MAYOR OSCOVITCH: I'm actually nonpartisan.

ASSEMBLYMAN McKEON: Nonpartisan.

MAYOR OSCOVITCH: Yes, in Byram Township.

ASSEMBLYMAN McKEON: Okay.

MAYOR OSCOVITCH: But we're in a very Republican county.

ASSEMBLYMAN McKEON: Bipartisan is good.

MS. SWAN: Thank you.

And I thank the Mayor for his kind comments.

And I think what is important in all of that is to note that we started at opposite sides of the table. The first few meetings with Byram Township were -- I think I could best describe them as extremely uncomfortable. But as you can see, we developed a relationship, and that's what we do in our job. We partner with municipalities. I was a mayor in one of my past lives -- actually in this current life. But I think that has taught me a lot, and it helped me understand how to work with municipalities.

I'm here today, at your request, to talk about how the Act is being implemented. I am the Executive Director of the Highlands Council. And with me today is Tom Borden, who is the Deputy Executive Director and our Chief Counsel. We basically work as partners to steer the ship under the direction of our Council. So I am staff to the Highlands Council. I am, of course, a New Jersey State worker. And today I believe I work for

you and I'm reporting to you on how we are implementing your Act. All of those sections were signed off in that Act by you. It was your action. So it is my duty to report to you today and tell you how your Act is being implemented.

So I will start off with-- Section 14 of the Act required that within 9 to 15 months of the effective date of the regional master plan, plan conformance would commence. Plan conformances where municipalities give conforming petitions to the Highlands Council, and conform their master plans and ordinances to the regional master plan. Conformance is mandatory in the preservation area, so we had to receive petitions by December 9 of 2009 to be consistent with the Act. In the planning area, which is approximately half the area -- it's about 52 percent -- that is voluntary. They can come in at any time.

I'm happy to report out to you that all but one of the preservation area municipalities did submit their petition in time. We still have one municipality that we're working with who has yet to submit.

We actually have 60 municipalities that have submitted, even though only 52 had to. Of 47 that have lands in both preservation and planning area, to date 23 of those have already chosen to submit for their planning area. Nine municipalities in the planning area have already -- that are entirely in the planning area -- have also submitted petitions. Examples of those are Alpha, Phillipsburg, High Bridge, Lebanon Borough; and two of those, High Bridge and Lebanon Borough, have already been approved.

I think nothing speaks more to the successful implementation of the Act than the fact that we are getting municipalities who do not have to conform, conforming for those lands. The trend we are seeing is that

more municipalities that have submitted just for their preservation area lands are asking us to amend their petitions and add in the planning area lands. Two examples would be Hackettstown and Oxford. And we have two other municipalities that just in the past weeks have told us that they are now contemplating putting in their planning area lands as well.

So what that equates to is 97 percent conformance from a land-based perspective in the preservation area, and nearly one-third of the planning area to date. Remembering that this is all very, very recent, I think that we're telling you that implementation is really on the way. That's 63 percent conformance in the entire Highlands region.

As to the review of petitions, Sections 14 and 15 of the Highlands Act require that we hold public hearings to review those petitions. Twenty-one municipalities, to date -- their petitions have been deemed consistent; 17 have been approved by the Council, and 4 more are on the May 19 agenda. If you look at the map -- the one to the left over here (indicating) -- the blue and the green show you all the municipalities within the region that have submitted petitions -- those 60 municipalities. The blue shows you the ones that have been approved, and that includes the four that are on the agenda for the May 19 meeting. So I think that gives you a good picture -- the visual -- of conformance.

Section 10 of the Highlands Act required that -- a primary goal of the regional master plan would be to protect and enhance the significant values of the resources of the Highlands; also to protect the state's drinking water supplies and natural resources through municipal conformance. And as Assemblyman McKeon mentioned earlier, we provide water for over half

the population of the State of New Jersey. Some 5.4 million residents rely on the Highlands.

Section 10 also -- and this gets to the Byram testimony today -- requires appropriate patterns of development, redevelopment, and economic growth in, according to the statute, areas in or adjacent to areas already utilized for those purposes. And Section 11 requires a resource assessment to determine the amount of development that the area can sustain while protecting the environment.

To that end, the Highlands Council did a net assessment of the entire region and designated three zones. The Protection Zone is the area where the most natural resources are present and undisturbed, and that is about 55 percent of the area. It's mostly your forested and steep-sloped types of land. The Conservation Zone is about 22 percent of the area, and it is your open lands where you have agricultural lands where we are required to support agriculture and retain agriculture. And finally there is the Existing Community Zone. This is an area where that development has occurred, so that is where we would promote development in or adjacent to those areas. That comprises 23 percent of the region. So when you hear there is going to be no development in the area, that's wrong. We are implementing the Act as you intended and have designated that area, providing the capacity exists to support that. So we look at-- Again, the Act determined that we should look at carrying capacity. So we make sure that the infrastructure is there to support any new development.

Section 11 also requires that we do center-based development and redevelopment. Byram is the first municipality to avail of that and the first approved Highlands Center. We, since then -- and following on their

very good example -- have had additional municipalities that are now seeking Highlands Center designation. They include Phillipsburg, Hackettstown, Oxford, and Washington Township in Morris. And Washington Township, Morris, is going to come before the Council at our next meeting in May. So you can see, again, implementation of the Act, just as you designed, is occurring.

An issue that you hear brought up regularly is the issue of landowner equity. So I would like to deal with the provisions in the Act and, again, speak to you about how those are being implemented. Section 30 of the Act includes 17 exemptions from the Act, and 3 waivers under Section 35. Those exemptions are examples such as if you have a lot of record at the time of the passage of the Act, and it's a vacant lot, you have an exemption so you can build a single-family residence and you are exempt from the Act, the plan conformance, any ordinances, any master plans. You are exempt. That's very critical. Likewise, there's another exemption for additions to homes that were in existence at the time of the passage of the Act. So there are 17 of those exemptions, and then the waivers. One of the waivers is public health and safety. Another, for example, is redevelopment. Those exemptions and waivers are being used regularly throughout the region. That is a landowner equity provision. It is being implemented as you intended in the Act.

Sections 53 and 54 of the Highlands Act established a dual appraisal method for landowners who wish to preserve their lands through the Green Acres Program or through the Farm Preservation Program under SADC. That dual appraisal method did sunset, and many people complained because it took longer than intended for the Highlands regional

master plan to be drafted. However, the Legislature lived up to the commitment and extended that process. And I think it's important to note that the Senate vote was 39 to zero and the Assembly vote was 78 to zero which passed that amendment, and was signed off by the Governor. Again, you lived up to your commitment, and implementation is occurring.

We have issued a Highlands land preservation report, and the second map over here shows you the status of preservation to date. And that's being updated as we work with municipalities, because there is no single place where you can find data on preserved lands. We've done the best we can working with our partners in Green Acres and DEP, and in the Department of Ag and SADC; and with nonprofits, and municipalities, and counties. But as we work with municipalities, we keep adding to it. But the green on that map shows you lands that are already preserved. Importantly, more than one third of the entire Highlands region is preserved. That's about 290,000 acres. About 255,000 acres are in the Open Space program, and about 35,000 are under Farmland Preservation. Using today's average per-acre cost, that's about a \$3 billion investment by the State of New Jersey in the Highlands region. I think it's important to continue to protect that investment and protect the water supplies for the rest of the state.

So the question then arises: Well, what's happened since the passage of the Act in 2004? So we wanted to have a look and see: Is preservation continuing? Well, you all know that preservation takes -- can take maybe two to three years to preserve lands. So we didn't want to look at data since 2004. We took 2008 as a good point to start, because that's when the regional master plan became effective, and it's a good time after the passage of the Act. So those properties that had started closure

procedures would have been closed at that point. We can see that during this time, since 2008 out, 7,690 further acres in the region have been protected using that dual appraisal method. And the average price for the purchase of development rights per acre -- so the landowner continues to own the land and farm the land -- is about \$9,816 per acre. And under the Green Acres Program for fee simple, many of these lands are very constrained. The average per-acre price is \$10,265. Those are averages in the preservation area, not the planning area. The planning area averages are actually higher.

So, again, the commitment was lived up to, and I know that Commissioner Martin recently testified to the fact that the funds are there. And in fact, in the FY '11 budgeting, Green Acres has set aside \$15 million just for the -- out of \$57 million -- for the Highlands region. So the opportunities to use the dual appraisal method and go for preservation to attain that landowner equity are available.

Section 13 of the Act required the establishment of a transfer of development rights program. This was to be, as we term it, the *third leg of the stool*. What happens if you can't get preservation through the other programs? Is there another opportunity? The Highlands Council Program is up and running. Now, these programs, to really function as TDR, to have receiving and sending areas, take a great deal of time to get into place. And, in fact, in the Pinelands, which did create a successful program, it took approximately 15 years. We are at the early stages, however we were given \$10 million as leverage funding to start the program; and the Council and the Highlands Development Credit Bank determined that it was

appropriate to address those issues where landowners have extenuating financial circumstances, so really needed an expedited program.

We're currently in the second round of that program, and during these first two rounds, the Highlands Bank has offered \$2.6 million to nine landowners to acquire development rights on over 300 acres. The average per-acre price: \$8,967. That is for the development rights, not a fee simple purchase. So, again, it's in the range of the Farmland Preservation Program. We're currently in the third round of the TDR program -- transfer of development rights -- and we have received 43 applications from landowners covering over 1,700 acres. We did extensive outreach to landowners to help them avail of this program, and have opened up the program now to the highest resource value lands and highest ag lands. If they can show that they've submitted to a program for preservation and not been accepted, we open the program to them. So we're looking forward then to having closures on that as well.

The Legislature, in the Highlands Act, allowed for receiving areas to be in the seven counties of the Highlands region. But again, living up to your commitment to offer the best potential for success, you have extended that opportunity such that there can be receiving areas anywhere, statewide. We look forward to an upturn in the economy so that we can start taking advantage of that. To date, we have 11 municipalities that are looking at establishing receiving areas. And Governor Christie signed off on that extension as well.

The benefits of working with the Highlands Council: Section 18 requires that the Council provides municipalities and counties with grants to pay for the reasonable costs associated with plan conformance.

And Section 21 established the nonlapsing Highlands Protection Fund. We have done our best to stretch those funds, and so what we have done is we have developed model documents -- model ordinance documents, model master plan documents -- and shared them with the municipalities such that they can then give us any changes that they require. They go through a very public process, but it cuts down on the costs so that they use the funding to adopt those master plans and ordinances. We also provide funding -- very important grant funding for future planning. And once a municipality achieves conformance, such as Byram, they get grants to do future planning. And we work with them to make sure that they have the kind of funding that suits their type of municipality. Some of the kinds of grants are water use and conservation management planning, required for every municipality in the Highlands that works with us for obvious reasons; habitat conservation and management planning; wastewater management planning. We have now taken on the work of doing wastewater plans for municipalities that conform for 100 percent of the municipality. We do the work ourselves. We then work with the municipality to verify the information, we then send it to the Department of Environmental Protection. We are looking forward to the potential that Byram may have the first adopted wastewater management plan under the new rules.

We also have plans -- money for plans such as sustainable economic planning, center-based planning. So we do, again -- consistent with the requirements of the Act -- we look at the development side, redevelopment, as well as the protection and preservation side of it. It would be remiss of me not to mention agricultural retention planning, as

well, and historic preservation plan elements. So we cover the full gamut as you intended in the Act.

We partner with municipalities. We provide a wealth of information to them in terms of data, in terms of GIS. We put it all on our website. We are a very transparent agency. If you go to our website ever and have a look, you'll pretty much quickly ascertain that those are the facts. We put up our agendas, we have the audio of our meetings if you wish to punish yourselves and listen, we do have interactive website mapping available at a block and lot level. Our information is such that we have provided to every town every piece of information that we have at a block and lot level -- as to whether they have sewer, whether they have water, whether they have a well, whether they have development, whether they're preserved. And they verify that information. That's why this is a partnership. And then we post everything on our website, as much as possible, to avoid OPRA. Because we say, "You shouldn't have to OPRA us. If we can, we'll put it on our website."

The Highlands Council also -- and this is coming on the heels of listening to Ernie Hahn speaking about the process that they go through. We track ourselves, we track our own performance, and we put it on the website. If you have a petition pending before us, go to the website and see where it is in the process. You can click on any town and find out, you can click on any redevelopment project and find out what we're doing. So when you hear, "Oh, the Highlands is holding us up," it's not us. It's not the Highlands Council staff. We track ourselves, and we're on the web, and we're very responsible and responsive to our municipalities.

So in closing, I'd like to say that I'm really grateful for this opportunity; because it's all good news, from our perspective, in the sense that we've taken every single provision of the Highlands Act and made sure it was reflected appropriately in the regional master plan, and that every single provision is being implemented to date. We can continue to do this work, we hope to do that work with more municipalities, building on the trust and the partnership, the sharing of information, being reasonable and flexible with municipalities consistent with the Act and the regional master plan. And it is a pleasure to give you this good news today.

Thank you.

SENATOR SMITH: One quick question: Is there a need for any changes to the law?

MS. SWAN: I don't know if I think there is any need for any changes. I think perhaps one could look at how it's working now in terms of -- for example, the exemption process, just to make things run more fluidly. It's not necessarily a need to change the Act though in that case. So, for example, currently in the preservation area municipalities go to the Department of Environmental Protection -- applicants and municipalities -- for those exemptions. In the regional master plan, what we set forth was, if a municipality is a conforming municipality, then they should be able to take over certain of those exemptions. It's consistent with home rule, it's better for the residents, it should be done more efficiently and cost less. So we would encourage that kind of support.

The planning area exemptions are done by the Highlands Council, and we intend to, again, hand over some of those authorities to the

municipalities we're working with. So I think there could be changes such as those, but they won't require legislative change.

ASSEMBLYMAN McKEON: Chairman, are you good?

I have a question or two while the Chairman is--

SENATOR BECK: Actually, Chair, would you mind if I just interrupted for a second?

SENATOR SMITH: Senator Beck.

SENATOR BECK: I think as my fellow Senator mentioned, we're kind of in an unusual situation in that we both have Judiciary, and we have this Committee meeting, and of course caucus and all of it -- and you too. So we're sort of running back and forth. And I do feel badly, because this is a critical topic in my mind and an important topic. But we're also dealing with appointments to the Highlands in the other room. So I'm trying to divide my time. I'm sort of reading through things and listening at the same time. And I just don't want you to think we're not giving this proper importance in our minds.

MS. SWAN: Thank you, Senator. We're very aware of the Senate Judiciary Committee meeting. (laughter)

ASSEMBLYMAN McKEON: Can I--

SENATOR SMITH: Yes, sir, Chairman.

ASSEMBLYMAN McKEON: Just out of deference, either of the Senators, do you have questions before you have to absent yourselves, and I will defer to you?

SENATOR BATEMAN: I don't, Mr. Chairman. Thank you.

I've been following very closely. We've had several hearings on the Highlands, and I have a member from my district who is on there and who keeps me apprised of what's going on. So we're big supporters.

ASSEMBLYMAN McKEON: Senator.

SENATOR GORDON: Thank you, Mr. Chairman.

Having been part of the original deliberations in 2004, I can recall a great deal of conversation about the need to compensate property owners for the loss of development rights. And in the ensuing years, we've certainly heard a lot of criticism about how the State has taken these development rights without any kind of compensation. You had indicated that Green Acres money and Farmland Preservation money is being used for this and this dual appraisal system. Can you just comment on these just general criticisms that Highlands took land without any kind of compensation for the loss of development rights?

MS. SWAN: Certainly I've heard this issue raised many times, and I think there are a couple of things that have to be taken into consideration. First of all, municipal landuse law gives the power of zoning to municipalities. So what occurred with the Highlands Act is similar to what occurs when any municipality does its master planning. It has the potential to look at goals for that particular municipality and, in fact, sometimes to look at the ability to develop more because development must be sustainable.

The Pinelands Act was a very similar act and a regional planning entity to the Highlands, and similar complaints were heard. And, in fact, I looked at newspaper cuttings from the time of the early implementation of the Pinelands. If you take out the word *Pinelands* and

put in the word *Highlands*, it's the exact same debate. I will tell you that there were commitments made in the Highlands Act. And in preparation for today, I went through the Highlands Act, section by section, to look at what those commitments were and to see if they have been lived up to. And what I would do is, I would urge every landowner who has an issue or a concern to seek out the equity provisions that are laid out in the Act, to avail themselves of an exemption, of a waiver, or to avail themselves of those programs that are out there. We've been aggressive in the TDR program to reach out. But I believe that the provisions that were set forth in this Act are there. And for as long as the money is there, and frankly it is there right now, the members of the -- the residents of New Jersey have supported, yet again, another bond referendum. So I believe that the commitments of the Act are available to those who wish to avail of them. So I believe you have lived up to your commitment.

SENATOR SMITH: As of the last DEP Commissioner, I have heard from both Lisa Jackson and the Interim Commissioner that there have been no requests for an open space purchase in the Highlands that was sitting on the table -- that people had asked that their development rights would be purchased or that the land be purchased in fee simple, and there was nothing out there in the way of an issue.

That being said, every couple of months I get a letter from a farmer named Klumpp who says, "I've been mistreated." But you're absolutely right. Number one, the constitutionality of the law has been upheld three times -- maybe more, but I know of at least three times. And we did -- the voters of this state did pass the \$400 million bond issue for open space acquisition. So there is money there. And if there is any

property owner in the Highlands who feels aggrieved, they can make an application to the DEP and ask that their property be looked at.

The law doesn't say that every piece of property will be purchased. It says that if you have an exceptional resource value, it would be considered for purchase. And I would, as Eileen suggested, urge that any property owner who feels aggrieved makes that application. But as far as I know, we're meeting all of the commitments that we -- that both the Assembly Environment Committee and the Senate Environment Committee made when we were formulating the Act.

MS. SWAN: And Mr. Klumpp, who you spoke of, actually comes to our meetings very regularly. And we did send an offer letter to Mr. Klumpp to engage in the TDR program. We also have advised him about farm preservation.

SENATOR SMITH: Great.

MAYOR OSCOVITCH: And I know that issue has not been an issue in Byram as well.

ASSEMBLYMAN McKEON: Thank you for that, Mayor Jim.

I have just a couple of questions relative to staffing. And between the Mayor's poignant comments -- and frankly by virtue of the extraordinary things that you've done -- you and the Council have done over the last several years -- first and foremost, congratulations.

But secondly, I just want to figure out how you're doing it. Going back to 2004, there was -- OLS did a study, as I recall, relative to-- There was an appropriation to this bill relative to what staffing needs would be. Can you recall for the Committee what the projections were?

MS. SWAN: Yes, I can. The projections at the time were that the Highlands Council would be similar to the Pinelands in terms of their need for funding and for staffing; and, in fact, might need more because of the transfer of development rights program, because we staff that program as well.

ASSEMBLYMAN McKEON: And what-- Can you contrast the Pinelands staff, using that as a baseline, to what your staffing is?

MS. SWAN: At that time, the Pinelands was between 50 and 60 in their staffing. That was their number.

ASSEMBLYMAN McKEON: What's your staff currently?

MS. SWAN: Well, currently, we have 23 FTEs, full-time equivalents. That's what we're allowed. But actually at the moment we only have 21 staff.

ASSEMBLYMAN McKEON: So you're doing everything you're doing at about a third of what it was projected that you would need to implement.

MS. SWAN: Around that, yes. And likewise, our funding, which was projected to be around \$3 million to \$4 million, is also down to about \$2.3 million annually.

ASSEMBLYMAN McKEON: You know, at some point you get to the diminishing returns. And notwithstanding the extraordinary progress, as you continue to lose people you're not going to be able to implement the remaining components or the additional conformance, and it becomes a self-fulfilling prophecy.

MS. SWAN: The planning actually gets even more difficult and more time consuming when the town goes through the conformance

process, because we stay engaged with them. So, for example, just doing the wastewater management planning, I have one part-time staff member dedicated to wastewater management planning. And the towns are clamoring for that now. So you are correct. Even at 23-- That's why we work nights and weekends to get the job done, which we're pleased to do. But you are correct. At a certain point, we can't maintain it. But we certainly do our best with the current staffing.

ASSEMBLYMAN McKEON: Well, how about Fiscal 2012? Are you in a position to be able to fulfill the mandates based on the current projected operating budget?

MS. SWAN: The operating budget will allow us to maintain a staff of 23, so long as we have permission to hire. I just want to make that clear.

ASSEMBLYMAN McKEON: We're back to the permission to hire again, as we saw with Mr. Hahn and the other Commission. So you have vacancies now -- they're budgeted positions, yet you're not being allowed to hire.

MS. SWAN: Currently we have two vacancies, and we did get the authority to hire for one of those vacancies. The other one has been vacant, I think, for nearly a year at this stage.

ASSEMBLYMAN McKEON: Just so I know, what area position is that?

MS. SWAN: It's one of our planners. We have-- We should have five planners, we currently have four.

ASSEMBLYMAN McKEON: And I would imagine -- everybody is important to the team, but of all categories, planners -- professional planners are probably most significant.

MS. SWAN: I would say that all of our units are--

ASSEMBLYMAN McKEON: Absent you.

MS. SWAN: Thank you so much.

I believe all the units are critical. We have to have a strong legal unit, we have to have a strong GIS unit. They're all linked. And there isn't a staff member there that's not performing an absolutely critical position. But I will say that in our hiring practices, what we've tried to do is hire to make sure we cover all the different areas of expertise that are necessary. So, for example, one planning staff person has an expertise in transportation; another one has expertise in -- actually a municipal planner, and thus understands the needs of municipalities; another one has done a lot of affordable housing planning. When we lost the planner about a year ago, that particular person had expertise in agriculture and in historical preservation. So we're missing those elements. We do the best we can, but with a small staff you really try to cover all your bases.

ASSEMBLYMAN McKEON: Chairman, I might, going along with the protocol with the Delaware and Raritan Canal, perhaps have us author a letter asking the Administration to fill the open positions now, and see if any other Committee members would like to join us as co-signators.

SENATOR SMITH: That would be great.

ASSEMBLYMAN McKEON: Okay.

Let me ask just a few more questions -- get to the TDR program. And again, congratulations. With the equity issue being the one

you hear the most, kind of, volleyed around there, that's something that, in a way, deals with allowing those within the district to draw their equity. And you've gone through two successful rounds. You gave those statistics before. Do you have a third round that is currently planned?

MS. SWAN: Yes, we're in the middle of the third round, and we have -- we actually sent out a lot of letters to landowners to advise them of the opportunity. We also posted it on our website. Rounds one and two were about \$2.5 million in costs. Remember we had that \$10 million. Round three -- at this moment in time, we're going through the eligibility to see which of those landowners are eligible. And at the moment, we're -- assess it will be between \$3.8 million to \$4 million in cost, and that will leave us, if the Highlands Development Credit makes offers on those properties, with approximately \$3 million.

ASSEMBLYMAN McKEON: Okay. Can you project approximately the timing of the closings, if you will, of round three?

MS. SWAN: Right. We actually did a closing on round two yesterday morning, and those always -- it's a good moment to be there and to be with the landowner, particularly when -- if it's an extenuating financial circumstance. You're very pleased to be doing the right thing. We project to close on the current ones -- six to eight months in round three.

ASSEMBLYMAN McKEON: Okay. And that will draw on about another \$3 million of the current assets of the \$10 million seed money.

MS. SWAN: Correct.

ASSEMBLYMAN McKEON: Okay. And just can you approximate? I know it's not done yet, but about how much, by virtue of

not dollars but in land, will that result in preserving -- again, not in fee simple, but by removing the development rights and knowing that they'll remain that way, similar to Farmland Preservation?

MS. SWAN: So you're looking for how many acres?

ASSEMBLYMAN McKEON: In this projected third round approximately.

MS. SWAN: Approximately 300.

ASSEMBLYMAN McKEON: And how many individuals will that allow to be compensated, approximately?

MS. SWAN: Approximately--

ASSEMBLYMAN McKEON: Again, I use the word *compensation*; *equity* is a better word.

MS. SWAN: Twenty-six people, approximately. That's if they're eligible -- 26 not even approximately.

ASSEMBLYMAN McKEON: And then knowing this process-- So we're good for at least a couple of years with the TDR to the extent -- then you still need to get into -- you still have about \$3 million that will be left to get into the fourth round, if you will.

MS. SWAN: Well, what we've done is we've basically opened the door for applications for an allocation of: How many credits would I get if I were to use the TDR program? But then we've only opened it slowly to actual sales. Because what we wanted to do was be the relief valve for landowners. So what we did was, we said, "If you have extenuating financial circumstances, then show it to us." Because then they can't wait around. And we received those applications in the first and second round. But they appear to be waning. So we then opened it a little wider by saying

the highest resource value lands and the highest ag lands within a certain acreage, where we felt they had the greatest need because they weren't perhaps the ones who owned 300 acres or weren't the ones who had maybe up to 25 acres where -- those exemptions are real opportunities. So we opened the door to those, and that's the third round. So slowly we're opening it a little wider to capture them. But it is interesting that we're not seeing as many of the financial extenuating circumstances any more.

ASSEMBLYMAN McKEON: But at least from your view of it -- and nobody is in a better place than you -- as it relates to those seeking to draw on equity based upon the Act, those numbers are not extraordinary.

MS. SWAN: No. And I'll be honest and tell you, when we first opened the door, so to speak, and said, "Send us your applications for an allocation," we were concerned that we would be-- We have one staff person who is dedicated to this program. And, in fact, I shouldn't say *dedicated*. It's a staff attorney who does a ton of other work for us as well. We all wear many hats in our office. But we were not inundated to the extent that we thought we would be. And we advertised it, we contacted the Department of Ag, and we also spoke with the Farm Bureau to make sure that people were aware and could at least seek an allocation.

ASSEMBLYMAN McKEON: As it relates to, on a-- Going out to a fee simple exchange, are you familiar with any applications, if you will, through the Garden State Preservation Trust recently -- now that that's been recollateralized to the tune of \$400 million -- where those resources are being drawn upon relative to those within the Highlands region that want to avail themselves of that?

MS. SWAN: Well, we know that the Department of Environmental Protection -- they have a program, the Green Acres Program, who do wonderful work, obviously, in preservation -- have set aside the funding for the Highlands region. So they set aside for Fiscal Year '11 that \$15 million, and we have seen some very successful preservation projects moving through -- one only recently in Tewksbury, which is in the Highlands region, which was a collaboration between Green Acres and the New Jersey Conservation Foundation. And they're actually going to do part of that parcel through the preservation of farmland as well. So it's moving. But if a landowner wants to avail of the provisions, those are the provisions. So the landowner has to step up and put in an application to Green Acres or Farm Preservation.

ASSEMBLYMAN McKEON: You know, I don't want to get into specific names -- we mentioned the one letter we all seemed to get from that one individual. But beyond that, whether it's the call-the-Governor show, all the clips I read from the various newspapers, it seems to be the same people who continue to say, "Hey, you're taking my equity." And the money is there. If they want to have their equity converted to cash, at this juncture, the resources are really in place. And I don't-- Maybe we can call upon the Administration, for the Green Acres Program or the Garden State Preservation program itself -- whatever appendage would apply -- to be aggressive. I don't know -- maintain a list and call these people, see if they're really just making trouble or -- versus really wanting to draw their equity.

MS. SWAN: Well, we'd certainly be willing to work, and we do work, with Green Acres and SADC to share information. We actually--

Again, one of the terms of the Act was to give them confidential lists -- that's what the Act said -- of highest priority lands to preserve. We share that information. But we'd be glad to work with our partners in Green Acres and SADC to do an outreach to landowners to make sure they're aware of the opportunities. But I think a lot of work has been done in that regard.

ASSEMBLYMAN McKEON: So at this juncture, between Garden State Preservation Trust money and the TDR money that's earmarked and in place, those who do want to be in a position to pull their equity, as the Act talked about, can. The resources are there.

MS. SWAN: The resources are there, and the opportunity is there, and the implementation is occurring.

ASSEMBLYMAN McKEON: Okay. I have no further questions at this time.

Any questions for the Mayor or the Director?

ASSEMBLYWOMAN COYLE: Yes, Assemblyman, I do have a couple of questions.

First, thank you for testifying today.

And, Mayor, congratulations on your New Jersey Future -- it's a great award.

MAYOR OSCOVITCH: Thank you.

ASSEMBLYWOMAN COYLE: It's terrific that you're able to do that. I think it shows how regional planning can be very effective in what was or still is considered to be a controversial issue.

And to Ms. Swan-- We served together on the Highlands Task Force. And I have to commend you, because I think in large part the ability

to develop the relationships that have helped a very controversial Act succeed have been due to you and your staff's work. So I commend you on that, because I don't know how, seven years ago when we were doing the Task Force -- I'm not sure we would have ever gotten to that map. (laughter)

But I am concerned about a couple things. First, my question really is going off of Assemblyman McKeon's. Are the resources in place, especially for the larger landowners? I really do believe the resources are in place for a single lot, for the smaller landowner. But could you address the issue of whether the resources are in place for a larger landowner?

MS. SWAN: I think you can only test them to the maximum if the property owners step up and request preservation. And it's similar to-- When I was involved in my municipality as the mayor and I did the open space coordination, I set forth an open space plan. The plan was way bigger than the town could ever afford, because you know that everybody isn't going to step up and say, "Hey, I want to be preserved." So we can only test this judging the applications that come in. And certainly while there is still money available, and the applications haven't overwhelmed it, to date the money is there and farmers and landowners can step up and get involved in these programs.

Would we like, into the future, to see a dedicated source of funding? Absolutely. Would we like to say -- and I'm going to say the forbidden -- *water user fee*? Absolutely. But that's for the future.

But for today, and in terms of implementation, I came today convinced that I could say to you that we see nothing that isn't -- none of

those provisions that were committed to in the Act, today, that are not implementable today.

ASSEMBLYWOMAN COYLE: Well, how many larger landowners are there still -- people who have more than one or two lots? Maybe you can start with that. And then: Why aren't they stepping up? What is their concern?

MS. SWAN: We have looked at this, and in the land preservation report -- which I did put into all of your packets -- we actually did an analysis of the size of the lots and how many lots are over the -- and it's on Page 15 of this report. And it talks about how many acres are between 5 and just under 15 in planning, and preservation, and split; how many between 15 and just under 25; 25 and just under 50; 50 and just under 100; 100 acres or greater. So looking at the 100 acres or greater, we have a parcel count of -- 300 of those kinds of parcels in the planning area; and remember, then, it's voluntary to conform in the planning area. And in the preservation area, 157.

So when we were, again, looking at the data and looking at land ownership, some of these would be, for example, hunting clubs. Some of them have been this size and maintained for years by landowners who've never expressed an interest in any of the programs. So we've done that type of analysis as best we can, and we've reached out and tried to find out who are the landowners who want to come in and preserve. And, to date, we don't have evidence of people who are coming in and not having that opportunity afforded to them.

ASSEMBLYWOMAN COYLE: So why aren't they coming in? What is your feeling on that?

In fact, I'd like to ask the Mayor that, because you're really kind of on the ground in a preservation community.

MAYOR OSCOVITCH: I think a lot of it is people own big land to own big land. I mean, I think it's that simple. I think at least the majority of the large landowners in Byram are family owned, and they want it to be that way forever. And I know in Byram's case, we have had some large landowners come to you already to talk about TDRs as well. But I just think large landowners are in that business just for that reason: to own land.

ASSEMBLYWOMAN COYLE: What kind of-- I mean, are-- What kind of feedback are you getting? In my district we have a very small piece in the preservation area that wanted to be there. But what kind of feedback are you getting from your landowners at this point? I mean, when we read articles in the paper, we see that there is a lot of concern, especially by the larger landowners, that they have lost value in their land and they have not been made whole. And the TDR program-- I mean, I've always loved Montgomery County, Columbia County, Maryland's TDR program. I thought it was a terrific example. But we have not set up-- Have we set up receiving areas here for TDRs?

MS. SWAN: We have 11 municipalities that are studying it. But as I said earlier, it takes years to get--

ASSEMBLYWOMAN COYLE: Years. And so we don't have-- It's hard to sell your land in a TDR format if there is not a receiving area. You have to have sellers and buyers. I mean, it's just the reality.

So, I mean, what are you hearing?

MAYOR OSCOVITCH: First of all, I've been to a lot of those meetings where certain landowners have come out and screamed that their property has been taking a -- there's been a taking. But at least in our immediate area up in Sussex County, it really hasn't been an issue. I really haven't, at least-- Especially in Byram, we haven't had any landowners who have actually ever felt like their property has been devalued because of this.

ASSEMBLYWOMAN COYLE: Well, that's interesting because you keep hearing that landowners feel that property is being devalued.

MAYOR OSCOVITCH: In my town I have not.

MS. SWAN: I would like to add as well that one of the reasons why some of these lands don't (indiscernible) for preservation is because they are extremely constrained. Much of the land is steep slopes.

ASSEMBLYWOMAN COYLE: I can see the steep slopes and (indiscernible)--

MS. SWAN: Yes, so you have to take out a lot of these large lots. Why are they large lots, and why have they never been developed? Well, when we go out to municipalities -- and we did that -- the zones that I talked about earlier -- sort of mapping existing conditions on the ground -- we see an awful lot of the area is really not available to development by the very nature of the particular topography of the land. So you can take out a lot of those parcels and say that the development capacity is so limited that they wouldn't be interested anyway, and they own it for the reasons that the Mayor spoke to.

I will say that there are always going to be a number of landowners who will have issues and concerns, just as there were with the Pinelands and the-- All I can say is that the Act set forth provisions for

those landowners. And if it's your commitment, then your commitment is being fulfilled. And as long as every provision is available, you've lived up to that commitment.

But will you satisfy everybody? I don't think so, Assemblywoman.

ASSEMBLYWOMAN COYLE: Isn't that unfortunate?  
(laughter)

MS. SWAN: Yes.

ASSEMBLYWOMAN COYLE: We always try.

And then could you just take a few minutes to talk about the TDR program, about the sending and receiving areas, and what the status of the program is, what kind of timeframes we're looking at?

MS. SWAN: Well, the truth is, as you say, that a good-functioning TDR program has both receiving -- sending areas and receiving areas. Sending areas are those areas designated by the Council where you should be protecting the land and not developing the land. So you purchase the development rights, and the goal is to have receiving areas elsewhere which are basically growth areas which will take on new, dense development willingly. And the developer will purchase the development rights from the sending area in order to have that new development potential in the receiving area.

As I said, in the Pinelands it took 15 years for a successful program, but they succeeded in approximately -- and I know Candy Ashmun is here -- about 60,000 acres of preserved land through that program.

ASSEMBLYWOMAN COYLE: I did see her.

MS. SWAN: I think she's nodding.

ASSEMBLYWOMAN COYLE: She's here.

MS. SWAN: But it did take all those years. And remember a couple of things: The Pinelands had, in their legislation, designated growth areas. So, ergo, it's easy to have a receiving area. The Highlands didn't, so that made it a little more difficult for us. And with the addition of the ability to have receiving areas anywhere in the state, that's certainly a benefit.

But a couple of ideas -- and when the Senator asked me about amendments to the legislation-- TDR needs to have more incentives on the receiving end. If municipalities are going to take on that increased development, then-- There are benefits already in the Highlands Act, and there is planning area -- there's planning grants, and there are impact fees that you can assess. But an example of something you might consider would be if an area in the State of New Jersey receives its water from the Highlands and seeks to increase the density of their zoning, they should be required to purchase development rights from the area that sends the water. So I'm not saying that any development that occurs today would be subjected to that, but if they increase their zoning why would they not pay to protect the area that sends the water? That would allow us to have a more successful program. So there are tools.

But I know you're asking about it today. Today, with the \$10 million leverage we have -- that's the funding we received -- we are -- the bank is purchasing the credits. So we're not developing (indiscernible) with them. But it is important. And that money-- For the landowners that we've worked with to date, that has been something critical for them. They

have reasons why they need that money now, and they're not going to wait for an effective program.

ASSEMBLYWOMAN COYLE: Right.

MS. SWAN: So we are glad to have that opportunity to work with these landowners. And believe me, they're thrilled to have this opportunity as well.

So the \$10 million, as I-- When we first started it, we thought it would be gone in the first round. After the second round, we're talking about still under \$3 million.

ASSEMBLYWOMAN COYLE: Really?

MS. SWAN: Yes. And we did-- I mean, we did contact the Farm Bureau and the Department of Ag as well to try to get the word out. So now in our third round, we're looking at potentially having spent about \$7 million. And this has been-- We've been doing this now for about a year-and-a-half, going on two years. So I think that really speaks to the need out there. And I think that if you hear from landowners who say that they have an issue, but they don't want to avail themselves of the opportunities that are afforded to them in the Act, what would you intend to do?

I don't think I get to ask you questions. I apologize. (laughter)

ASSEMBLYWOMAN COYLE: Well, you can, but I might not answer them. (laughter)

ASSEMBLYMAN McKEON: You're out of order. (laughter)

SENATOR SMITH: That is the disconnect -- the disconnect being that a landowner says, "My property is worth *gazillions*," but either they did or they didn't have zoning for it in 2004. This is their impression

of what they would have gotten if it had been rezoned. You can't do land values based on speculation. It had to be something--

ASSEMBLYWOMAN COYLE: I absolutely agree with you, Senator.

Thank you.

MS. SWAN: Thank you, Assemblywoman.

SENATOR SMITH: We're really against the clock, and there were a number of witnesses who wanted to -- and I know that we're not going to get through the list. But there was one--

Is there a Mr. Cali out there? (affirmative response)

Would you stick around? I would like to talk to you with Ms. Swan, if you'd stick around as well, after this is over.

ASSEMBLYMAN McKEON: (indiscernible) be part of that meeting too. We've read what you had submitted.

We're going to wrap it up in this way: We have three-- I'm going to call two people.

Thank you, both, very, very much.

Ed and Frank from the Farm Bureau; as well as Julia, New Jersey Highlands Coalition. If the three of you can come up and literally--

Is Julia not here?

Give us--

SENATOR SMITH: The shortened version.

ASSEMBLYMAN McKEON: Jeff Tittel, I would have called you, but Julia is in my new legislative district. (laughter)

ED WENGRYN: You can go first.

JULIA SOMERS: Oh, thank you.

ASSEMBLYMAN McKEON: And I'm really going to ask you guys to--

MS. SOMERS: To be quick.

ASSEMBLYMAN McKEON: Please.

MS. SOMERS: I wrote it, and I will read it fast.

Thank you for the opportunity to testify. I'll move on past all that. You know that we thank you.

I'm Julia Somers from the New Jersey Highlands Coalition. As you've probably guessed from our name, the mission of the Coalition is to protect, restore, and enhance the water and other natural and cultural resources of New Jersey's Highlands now and for the future. We're a Coalition of more than 50 organizations and 330 individual members, all of whom care deeply about this extraordinary region -- our home and water supply to 800,000 in 88 towns, but source of water to 4.6 million more. Two hundred forty-four municipalities in New Jersey, spread across 16 of the state's 21 counties, receive some or all of their water from the Highlands. In fact, most of your districts' towns and most of your constituents are dependent on the Highlands for clean, plentiful, and cheap water. A small fact maybe you are unaware of: Highlands water is free. All New Jersey residents pay for is the infrastructure and management to move water around and store it. They pay nothing for the water itself. The Highlands provide a huge service at no cost to the state and also enhance the quality of life for millions of its residents.

In 2008, the New Jersey Highlands Regional Master Plan was adopted, and we all thought a tremendous milestone had been reached. Well, after four years of very hard work, it had. But then the next phase of

effort began, and that has been no easier. Today, we have a capacity-based regional plan that tells us exactly how much water is available from the region, what we have to do to protect it, and the data to support those conclusions. The Regional Master Plan probably has more scientific data than almost anywhere else in the world. And extraordinarily, all of it is available to the public at the click of a mouse, on a lot and block basis no less. I think that is an amazing feat.

But the plan means nothing if conformance isn't widespread. Half the Highlands is in the preservation area, which must conform to the plan, and half is in the planning area, where conformance is voluntary. Forty-seven of the 88 towns are split between the two areas -- in other words, they have partially preservation and partially planning, in different proportions. The Council has been very effective in explaining to municipalities why it is in their interest to conform to the Plan. Seventeen have already completed basic conformance to date, with four more expected to do so on May 19. And most have conformed the entirety of their town. Sixty towns have either completed conformance or are in the process. Two towns entirely in the planning area have also conformed to the plan, and they didn't have to do that.

Let me read to you a short letter sent to the editors of various newspapers by six Highlands mayors.

"Dear Editor, we represent some of the first towns who have received or will soon receive approval from the Highlands Council for conformance to the Highlands Regional Master Plan. We believe it would be helpful to other Highlands communities and the public at large to consider our experiences.

“Conformance to the Highlands plan is a process of planning for sustainable growth while protecting Highlands resources. For example, Byram Township, in Sussex County, worked with the Council to reinvigorate its Route 206 corridor, including a concept for a town center with a mix of residential and commercial development, an amenity that Byram lacked, while simultaneously preserving Byram’s extensive natural resources.

“Working with the Highlands Council and its staff has given our municipalities access to expert planning and technical guidance not otherwise easily available to us. No other State agency has been as responsive to our concerns and as committed to maintaining the individual character of our communities as the Highlands Council.

“Initially, many of us approached conformance with suspicion. We wanted to hear what the Council had to offer, but we weren’t quite ready to buy. In the end, however, we are all pleased with how plans for our individual communities moved forward. We encourage our neighboring Highlands communities to keep an open mind and consider the many benefits and opportunities that conformance provides. We also invite township officials to contact us with any of their questions.”

And this was signed by Bettina Bieri, Mayor of the Township of West Milford, which is entirely in the preservation area; by Charles Daniel, the Mayor of the Borough of Califon; by John Graefe, who is now the Mayor of the Township of Bethlehem; James Oscovitch, who is the Mayor of Byram Township and you heard from today; Mark Paradis, who was the Mayor of the Borough of Lebanon at the time of this letter; Kristine Peterson, who is the Mayor of the Borough of Hampton.

Well, you might think -- you might have the impression from this that all is hunky dory in the Highlands.

ASSEMBLYMAN McKEON: Julia, I'm so sorry, but we really have to move on.

MS. SOMERS: I wanted to just particularly talk about the importance of the DEP using Highlands data for making their decisions, because the data and the planning is available in the Highlands, and the DEP has seemed to be very reluctant to do that. A perfect example of that is in Tewksbury Township, a particular case where something is in the preservation area. Absolutely everybody has -- including a finding of inconsistency from the Council -- but the DEP is still allowing that project to go forward, and it's entirely inappropriate. The DEP can't justify why they're doing that. But this relationship the DEP -- frankly showing the respect to the data and planning that is available to them from the Highlands Council is a really serious problem.

Ed.

MR. WENGRYN: Thank you again, everybody, for this important hearing.

I would agree, and the Farm Bureau -- and particularly the agricultural community found the Council easy and open to work with. They have been there. There are issues with their authority with DEP that seems to be the problem. That's sort of who is missing from today's sort of presentation -- is the DEP side, which has half of the -- has all of the authority to regulate the environment within the Highlands region. The Council can only do what DEP agrees to, and that's been one of the problems with doing some of the regional planning and some of the growth

side of the planning that would happen. Getting all their systems approved for, you know, the density transfer areas, for a TDR program is in the hands of the DEP, and that's been problematic.

The Council, like I said, has been great to work with. They've been open, they've held landowner outreach meetings and done what they can, and we've partnered with them in those opportunities. But for -- when farmers talk about or landowners talk about the long-term equity-- We're on stop-gap funding for preservation. In a year-and-a-half they spent \$7 million of the \$10 million of TDR money. Where is the next batch of TDR money once that last \$3 million goes? They can spend it in six months easily. Where is the long-term plan for those things? Where is the market for real TRD -- private-sector TDR, not government-funded TDR -- to happen? You've got 11 plans -- towns looking at it, but it's voluntary. They don't have to do it. There is no hammer to make it happen. We can incentivize it as much as we want, but eventually somebody has to say, "This is the appropriate area for growth, and growth should happen here, and it should happen in a growth-share measure where these people receive payment because they can't build, and we build where we should build." And that's going to have to iron itself out.

When we talk about the waiver provisions and things like that, yes, those equity protection things are there. We went through the whole debate, when the bill was being passed, on right of first refusal and the need to -- before you can sell or do anything with your land, you had to offer to DEP. And you guys walked away from that as the Legislature saying, "No, that's a little too far. We're not going to do that." But what DEP has done -- has said, "If you want your waiver, you're going to have to put a

conservation easement on the rest of your property.” Well, isn’t that like a taking? You’re not going to be able to use the rest of your property to your enjoyment. You’re going to have to put a conservation easement on it. And then whether those restrictions-- And that’s been the problematic thing for a lot of the people going through this process.

The plus side--

SENATOR SMITH: Ed, do you know what would be good? If you could send us, in writing, some examples.

MR. WENGRYN: We will.

SENATOR SMITH: Some examples -- the name, the property, what happens -- so that we can take a look at it. And the problem with the generalities is that nothing applies across the board, and there may have been specific reasons.

MR. WENGRYN: And we will--

SENATOR SMITH: Do that.

MR. WENGRYN: We will do that.

The only other sort of key thing-- It seems to be the -- and we were getting to it -- is the bifurcated powers between the regulatory side of DEP and the planning authority of the Council now need to kind of come together and look at each other holistically, and balance the region a little differently where it’s not cut and paste, but there are opportunities for growth, for economic development, and those things that need to happen. And in some cases, the DEP rules need to get out of the way and let those things happen.

Another place is where the Council has determined that this is really not the best place for that activity, and even though it’s permitted

DEP should maybe be backing off. And the plan needs to start flowing together a little bit more on the regulatory side of things.

The plus side in all of this was, we did get hit by an economic downturn -- a stop in development across the thing. So that pressure to constantly build, to constantly develop was relieved. And so the time for the plan to happen happened. I think now as the pressures -- economic recovery starts and the opportunities to build, I think there needs to be a clearer path and a better way for that to happen so then landowners, particularly if they're going to avail themselves of TDR, will see the private market working with the plan and not just government doing the hand-out side of things.

Thank you.

MS. SOMERS: I'd like to tell you a little story, to close this up, about a landowner who you have been hearing from regularly, Mr. Klumpp. Right next door to him, a 300-acre parcel entirely in the preservation area -- so it's a large piece -- a 300-acre parcel is in the process of being purchased. Now, it's in a wonderful place. It's a very desirable part of the Highlands, so not everybody in the Highlands would see this happen. But the average price per acre for this farm is \$40,000. And it is being purchased in the preservation area.

SENATOR SMITH: Who is buying it?

MS. SOMERS: The State-- Well, it's a partnership of nonprofits, SADC, and Green Acres.

SENATOR SMITH: Great.

MR. WENGRYN: And this is where we hear -- how the equity problem is. When somebody hears the \$40,000 an acre, and then you see

the TDR credit averaging out at \$8,000 an acre-- You can understand why people would feel--

MS. SOMERS: Mr. Klumpp is almost next door to this property except -- and this is where people who have anything to do with property know it's not so simple. Mr. Klumpp has steep slopes, he has exceptional value wetlands, he has all kinds of issues on his property.

SENATOR SMITH: We want to thank everybody who came today to give us a little bit of a progress report on the Highlands; and also the people who came on the Delaware Canal control (*sic*) Commission, where I think, hopefully, our letter will make a difference. And we're also going to send a letter about staffing at the Highlands.

If you have other issues, send in your cards and letters. Anything anybody has submitted we will review.

Thanks to all for participating today.

**(MEETING CONCLUDED)**