
Public Hearing

before

SENATE ENVIRONMENT COMMITTEE
and
SENATE ECONOMIC GROWTH,
AGRICULTURE AND TOURISM COMMITTEE

SENATE BILL No. 9

(The "Garden State Preservation Trust Act")

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

DATE: May 27, 1999
11:00 a.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Henry P. McNamara, Chairman
Senator Diane B. Allen, Vice-Chairman
Senator Andrew R. Ciesla
Senator John H. Adler
Senator Joseph F. Vitale

Senator Martha W. Bark, Chairwoman
Senator William E. Schluter, Vice-Chair
Senator Bernard F. Kenny Jr.



ALSO PRESENT:

Jeffrey T. Climpson
Leonard J. Colner
*Office of Legislative Services
Committee Aides*

David Brogan
Josie DiRienzo
*Senate Majority
Committee Aides*

George J. LeBlanc
*Senate Democratic
Committee Aide*

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SENATOR HENRY P. McNAMARA (Chairman, Environment Committee): Good morning.

Roll call.

MR. CLIMPSON (Committee Aide): For the Senate Environment Committee:

Senator Adler.

SENATOR ADLER: Here.

MR. CLIMPSON: Senator Vitale. (no response)

Senator Ciesla.

SENATOR CIESLA: Here.

MR. CLIMPSON: Senator Allen. (no response)

Senator McNamara.

SENATOR McNAMARA: Here.

MR. CLIMPSON: Roll call for the Senate Economic Growth, Agriculture and Tourism Committee:

Senator Bark.

SENATOR MARTHA W. BARK (Chairwoman, Economic Growth, Agriculture and Tourism Committee): Here.

SENATOR McNAMARA: I would like to begin the joint hearing by thanking everyone for coming, especially those who had to change their schedules to do so.

Today we will be discussing S-9 sponsored by the Senate President, Don DiFrancesco, myself, and a number of other colleagues.

This legislation would implement the constitutional amendment passed last November. The implementation of a stable source of funding for

open space preservation, farmland preservation, historic preservation, and park development will not only benefit this generation of New Jerseyans, but will also benefit future generations.

As Chairman of the Senate Environment Committee, it is an honor to be a cosponsor. Throughout the ongoing legislative process, we hope the bill support for this measure-- As we have seen in recent newspaper articles, many are not particularly satisfied. But rather than posturing and letter writing, I feel we need to work together to arrive at a bipartisan consensus.

This hearing is a first step in the process which allows for input. This is your opportunity to express yourself, discuss modifications to the bill; after which the Committee can deal with these recommendations in the context of amendments as we see fit. Your input is invaluable and will allow all parties involved to hear the different viewpoints. I appreciate your time and effort towards this purpose.

In an effort to hear testimony from everyone, I would ask that you keep your statements as brief as possible. In fairness to the Commissioner and legislators, I will not restrict their time, but I would suggest that they be as concise as possible. I would ask all others to limit their remarks to approximately four minutes. If someone has proposed a similar viewpoint as yours, rather than being repetitive, I would ask that you state your position and submit your written testimony. By doing so, everyone will be able to voice their opinion in a timely fashion.

With that, I would like to call this joint hearing to order and ask my colleagues if they would like to offer any opening remarks.

SENATOR BARK: Thank you, Mr. Chairman.

I am delighted to be able to have an opportunity to have this joint hearing for open space and farmland. I am thrilled that we finally have the potential for a permanent funding source to expand on Farmland Preservation. Farmland Preservation is a Program that I have certainly long been an advocate of having served for 12 years as a freeholder in Burlington County and been active in their Program. The major issue was always permanent funding sources.

I'm delighted to be here and look forward to all the comments that we will hear today.

Thank you.

SENATOR McNAMARA: Anyone else?

Senator Adler.

SENATOR ADLER: Thank you, Mr. Chairman.

I hope that we can come away from this public hearing with a genuine commitment to make New Jersey a more livable and greener place in every portion of our state. I hope it's our goal that everyone who supported the Bond Act last year feels we've done our best effort to implement what the people voted for back in November.

SENATOR McNAMARA: Thank you, Senator.

Anyone else? (no response)

I'd like to hear from our first witness, Bob Shinn, DEP Commissioner.

COMMISSIONER ROBERT C. SHINN JR.: Thank you, Mr. Chairman.

I'd like to thank the Joint Committee Chairs and the Joint Committee itself for coming together this morning and hearing this bill. I can't tell you what an -- how enthusiastic I am to come before you today and endorse what you're doing. This, I think, is the most important piece of legislation that's been passed in my tenure. It's going to have the most far-reaching effect on our residents and, I think, will make New Jersey a place that not only we'll be proud of, but our children and our children's children will be proud to call their home.

As you know, in January of 1998, the Governor called upon New Jersey voters to support an ambitious new goal of adding 1 million or more acres of protected open space to the 854,000 acres that we already preserved in this state, and the voters responded enthusiastically, by a two-to-one majority, to support the 1 million-acre goal by constitutionally dedicating funds for open space.

Open space preservation helps to protect New Jersey's rich natural, historic, and cultural heritage. It ensures that animal and plant habitats are protected and that areas of scenic beauty and agricultural importance are preserved and goes a long way to help in things like traffic control and sprawl as well. This safeguards streams, water bodies, and provides opportunities to enjoy the outdoors. Open space preservation lies at the core of quality of life for New Jersey communities, from the most urbanized cities to the most remote rural areas of this state. Half of the 1 million acres, or 500,000 acres, will be farmland. The other 500,000 acres will include land preserved as open space for ecological recreation, watershed protection, and historic purposes.

Partnerships have been a key to our recent, more aggressive progress in the Green Acres for open space acquisition. And as you know, we have 92 municipalities and 16 counties that have open space taxes for open -- preservation of open space. And those partnerships bring together roughly \$100 million as a partner to the table, and that is a pretty exciting opportunity.

The other opportunity that we've taken advantage of is our private, nonprofit groups that contribute so much to our open space activities and are able to use different strategies in acquiring land. And they certainly add a great deal to the equation of open space preservation. And I guess in working with municipalities and counties in the private, nonprofits-- What we're going to do differently is wrap up that relationship and partnership and try to do more with the new opportunities we have in funding, particularly at the State, county, and local level. Having the bonding ability to get the most done when the opportunity's there is another great benefit that this bill carries with it.

I'd like to thank you for the opportunity to testify today. And I'd also like to mention the activity that we have in our urban areas. Green Acres has been very active in urban areas, funding both local and State development of recreation facilities such as swimming areas, playgrounds, battlefields, waterfront walkways, nature centers, and parks. This has been a critical urban center program, in particular where acquisition opportunities are not easily available.

I can also tell you that we're working with other departments in the State, the Department of Transportation and Corrections to name a couple. We're looking for opportunities where we both have land holdings that

we can contribute to open space in urban areas. We anticipate that a new, stable source of funding will significantly enhance our efforts to improve the environment and quality of life in urban areas, and we're getting a significant amount of interest from urban areas to build park systems and open space in their new-found urban redevelopment strategies. So it is a pretty exciting opportunity in New Jersey to couple the Brownfield activity we have in redeveloping sites with open space and really bringing some planning together in urban areas. It's a pretty exciting part of what's going on in the State of New Jersey today.

So I guess I can't say too much more about how excited I am about the opportunity of having this bill passed into law, and I look forward to working with all the legislators in bringing the goal within our sights within a short a period of time as we can. And as you know, we've got a lot of applicants in our program, so we're very anxious to get started.

Thank you very much for the opportunity to testify.

SENATOR McNAMARA: Thank you, Commissioner.

Any questions of the Commissioner?

Senator Adler.

SENATOR ADLER: Commissioner, good morning.

COMMISSIONER SHINN: Good morning.

SENATOR ADLER: To what extent do you think the allocation of some money is to the Pinelands issue -- takes money away from open space acquisition elsewhere in the state? Can you comment generally on the Pinelands' aspect of the proposal as it is currently drafted?

COMMISSIONER SHINN: I was the first acquisition subcommittee chairman of the Pinelands Commission and really laid out a pretty good program when we started back in 1979 -- with the Pinelands effort. There is a lot of area in the Pinelands that is still on our agenda that are priority acquisition areas. And there's still work to be done in the Pinelands and certainly the in lieu of tax payment program that is contained in this bill, I think, is one that has been needed. But some of those towns, not only in the Pinelands, but in other areas of the state, have significant percentages of open space acquisition and need dollars to keep their schools funded in an adequate level and local services. So I think this bill brings with it some new benefits to municipalities that have large percentages of open space already acquired both at the Federal level and State level.

So I think including the Pinelands is an appropriate inclusion, and time will tell how all of that works out. But I think there are some people that think that the job in the Pinelands is finished, and I can tell you that it's not. There are still priority areas to acquire in the Pinelands. There are some critical stream corridors in the Pinelands that still need protection. We're still working on the corridor between Wharton and Lebanon along the east pines area. So I think there's-- And there's a significant amount of stream corridors beyond the preservation area that-- There is, certainly, on our stream as far as protecting that area as well--

SENATOR ADLER: The last Green Acres Bond Act had a set-aside program for urban areas. Do you have any concerns about the absence of any specific language for suburban or urban set-aside in this proposal?

COMMISSIONER SHINN: I really don't. I think the bill can work as it is drafted, and I enthusiastically support it. I think any areas that are unique I think we can work out some of the details relative to fine-tuning some of the aspects as we work through the process. I don't think we need to labor over any particular areas of the bill. I think the main issue before us is try to get on with the process and start to satisfy this need for open space in New Jersey.

SENATOR ADLER: Commissioner, I can understand your enthusiasm for the bill, and it was reflected in the vote last November by the people of New Jersey on the bond act -- the bond issue. Can you tell me what you would do to make this bill better without delaying the process unnecessarily -- what you would do to improve this legislation and make it even better to achieve the various purposes from the bottom up?

COMMISSIONER SHINN: I don't think there's-- This is a pretty good bill. It carries with it a serious challenge for our Department. As you know, we've been between 10,000 and 31,000 of acquired open space per year. This ramps us up to the 100,000 acre area, and that's a real challenge. So our challenge is within our Department more than it's within the confines of these bills. I think the bill carries with it an interesting opportunity to challenge our Department in meeting the goals of the bill. And we're committed to do that, but we're also relying on our partners at the county and municipal level and our partners in the nonprofit agencies to really carry a part of this load. And so we've got a lot of strategies that we're already working on to meet that goal, and I know the Department of Agriculture is as well.

So I think we're more challenged than we are looking for refinements in the bill. I think the bill looks pretty good to me, and I think it will be a great tool to really get our programs together and coordinated. And I'd just like to mention that the cooperation level we have with the Department of Agriculture -- it's virtually a seamless relationship.

And people talk about the percentage in the bill. If there was no percentage in bill, it would work just fine. So we're very satisfied with the relationship with Agriculture, and there just aren't any issues there for us.

SENATOR ADLER: Thank you.

SENATOR McNAMARA: Senator Schluter.

SENATOR SCHLUTER: Thank you, Mr. Chairman.

Commissioner Shinn, the report of New Jersey Outdoors preceded the bond issue and sort of laid out the framework for the total extent of the bonds and for some of the programs it was going to build. Is that your understanding, and am I correct in that assumption?

COMMISSIONER SHINN: I believe you are.

SENATOR SCHLUTER: Picking up on what Senator Adler said, did not the report of the Council on the Outdoors have a \$10 million urban set-aside for Green Acres and for preservation?

COMMISSIONER SHINN: It is my understanding that it did.

SENATOR SCHLUTER: And I'm not, in any way, contesting the 60/40 Farmland Preservation and Green Acres, which I think is a good balance, but it seems to me-- I've heard a lot about the urban \$10 million set-aside. The fact that the urban counties voted for the bond issue to the same extent that all counties did-- And it was in the report of the Outdoors.

Would you care to comment about my obvious inclination toward considering that?

COMMISSIONER SHINN: I think, just looking back-- I think we've had seven Green Acres bond issues without set-asides and two with set-asides. And I think, from a practical standpoint, it hasn't made any difference in the way we've operated. And I think the demand from urban areas for park space and open space and development has increased with urban redevelopment. I think we're seeing a stronger effort out of our urban areas now than we've ever seen for open space and park development. And I think we've done a good job at satisfying that demand and certainly encouraging it.

So as I said, even between Agriculture and DEP, if there were no percentages in the bill, I would see that as important. And quite frankly, we're going to be working hard in urban areas, and maybe if we set a percentage that might be a limit rather than a goal-- It's pretty hard to set percentage goals of what you set aside, whether you're talking about urban areas or Blue Acres or what have you. So quite frankly, I'm content personally and have enough confidence in our program and Department that I know those urban areas are going to be satisfied because we've basically have historically done a good job with nonbond issues with urban areas. And I know we're going to do a good job with this one.

SENATOR SCHLUTER: I have one more issue here which I'd like to get your comments on.

Commissioner, the legislation which sets up the Garden State Preservation Trust, which also has certain people appointed to it -- and it designates how they are to be appointed and who they represent, but it also

gives them power in the selection of projects-- There has been some comment that this is adding another layer to the selection process. Why isn't it sufficient to have the present mechanism make the selection, the Legislature through its appropriations, rather than having this other level-- And in your opinion, does this, perhaps, delay the process? Does it have a negative effect on politicizing any of these selections? Could you comment on that?

COMMISSIONER SHINN: Well, all I can say is that the current process has worked very well, as you know. I think the process that we have for ranking sites and satisfying demands from various parts of the state has worked very well. And I would see that process continuing with the recommendation to the new board. If they determine to amend that -- I guess they could, but I would think that if it isn't broke, don't fix it -- is my motto -- and keep the same process in State -- with recommendation to this board. And of course, it would be their prerogative, the way the legislation is written, to make amendments to that recommendation, but I would see that same process that is built into the Green Acres system continue.

SENATOR SCHLUTER: If I may, through you--

SENATOR McNAMARA: You're pushing your luck but go on.

SENATOR SCHLUTER: You did comment that if it isn't broke, don't fix it. Do I take it to mean that you could live just as well without the Garden State Preservation Trust having that power?

COMMISSIONER SHINN: As I said before, I endorse the legislation the way it is structured. I think we can continue our process in whatever structure we have. And I-- What I really don't want to see is a long delay in the legislation by having it go back and forth between Houses. And

I think we suffer more by the delay than the actual process in the bill itself, whether it is this way or another way. I think we could probably debate that for a long time. And I think there is so much enthusiasm, as you know-- I've been to several events in your county for open space. I think coming to conclusion with these various detail areas of the bill and moving forward is really my first goal. And however the Legislature deems that appropriate, I'm on board.

SENATOR SCHLUTER: Thank you.

SENATOR McNAMARA: Senator, I might also add that I think there is no problem because the Trust could -- in the legislation could delay a project for one given year, but if the Legislature so decided that they wanted that project and put it back into another bill, the Trust has to accept it. So I don't -- I really don't see that as a problem with the language in the bill as it is. I think it helps to generate a very cooperative spirit.

Senator Kenny, did you have a question?

SENATOR KENNY: Yes, I did. Thank you, Mr. Chairman.

Good morning, Commissioner.

COMMISSIONER SHINN: Good morning.

SENATOR KENNY: You stated at the beginning of your testimony how this was one of the most important, if not the most important, piece of legislation that you've been involved with, and certainly that goes for many of us. And then you said how the urban areas and their applications for open space have been received well by this administration, prior administrations, and there is no reason why that should not continue. Yet, I recall a number of legislators asked the administration officials last fall, prior

to this going on the ballot, about a dedication for -- and an allocation for the urban areas. And we were given an affirmative response to that question repeatedly. I was personally given that response that there would be an allocation -- a dedication; although, I wasn't given a specific number. We were given an affirmative response. Here we have a proposal that does not give an affirmative allocation to urban New Jersey, which is a reputation of repeated representations made by the administration less than a year ago. Could you explain that?

COMMISSIONER SHINN: Well, I obviously can't talk for the administration. The only thing I can talk from is the history of what we've done in the Department and how much attention our urban areas have gotten historically and are getting today. Again as I say-- As I've said before, percentages in a bill, even a split between AG and DEP, are difficult to bring exact percentages into play in the final analysis. And I don't think it's that important. If we started with percentages, there may not be an end, and you may end up with having one percentage deny another program some funding in the final analysis. And I guess if you get too many percentages set, you could go through the whole litney of various breakdowns in DEP with several demands that we have.

But I think the overriding issue is the amount of dollars beyond anything we've had before. And the demands on the Department to do more sort of overwhelm the issue of a percentage in my mind, at least when I think of doing-- When we had 31,000 acres a year, we were doing almost three times what we've done historically in acquisition. Now we're talking about ramping that up three times.

I just can't see an urban area being denied a project that it has on its screen with an application. It's just the sure volume of the funding over what we're used to in both the Agriculture and Environmental Programs--

SENATOR KENNY: It was a--

COMMISSIONER SHINN: I think would satisfy that need.

SENATOR KENNY: Excuse me.

It was a specific issue that had been raised by many members of this Legislature. The Governor herself, during the fall campaign, represented that the urban areas would, in fact, get an allocation. And if it wasn't that important, why did so administration officials represent to urban New Jersey, when they needed our votes to get this passed, that we were going to have an allocation? And this is a very serious breach. These representations were made repeatedly by the Governor herself on the campaign trail. And to sit here as one of the people who asked that question and to be faced with a document that does not have an allocation for urban New Jersey and when the Governor's Council on the New Jersey Outdoors recommend it and all its recommendations were followed but the one to have urban New Jersey being given a specific allocation-- This is virtually the only recommendation from the Governor's Council that's not in the bill.

So this is a very significant omission. And again it's a breach of a representation made by the Governor and her administration in the fall when they wanted our votes.

SENATOR McNAMARA: Senator, I really don't know if the Commissioner is in a position to answer a question that you may be, indirectly, directing to the Governor. I can assure you, as a prime cosponsor of this bill,

and anybody that has served on my Committee in past over the last several years-- On any significant legislation, we have public hearings. The purpose of the public hearing is to hear all of those items that are of particular interest to the members of this Committee or the Joint Committee and/or the public. And prior to-- This is not-- We are not releasing the bill today.

In my introductory remarks, I specifically addressed that area. Unfortunately, you were delayed. But I can assure you that it is something that I, as a prime cosponsor, am going to take a look at. Now, that doesn't guarantee you anything either, and I don't mean to imply that, but I think you've made an appropriate point. I take it and accept it as well stated, and Senator Adler has the same and Senator Vitale has the same. But I also had asked, when we started this meeting, if we could move along in a timely fashion after a point was made and, if it was repetitive, if we could keep it -- you know, try to keep it on focus in deference to all those people that have sacrificed what is probably the nicest day that we've had this year, and they all want to get away on their long weekends.

So I accept the point as very well taken, Senator. I think you stated it very well, and I can't believe anybody in the room doesn't get the message.

SENATOR KENNY: Okay. I mean I have never served on your Committee. I never had the privilege of serving on your Committee, but I've served with Senator Bark and Senator Littell, and I think they would vouch for the fact that I very rarely make statements with the type of message that I've tried to make today on this issue because we're going to have to live with this, literally, for the rest of our lives and our children's lives. So I usually do not

try to be confrontational, and I'm not certainly being confrontational personally.

But maybe the reason why urban areas have gotten good allocations in the past is because they have been dedicated in the prior Green Acres bills because that dedication has been in the law. And now to say that because we've gotten it in the past we are going to get it in the future when it's not so dedicated is inconsistent. So I accept the fact--

SENATOR McNAMARA: It's inconsistent if you're accepting that this bill is in the final draft.

SENATOR KENNY: I understand.

SENATOR McNAMARA: And I'm saying to you that it is not. And I'm saying that you've made a point. I accept the point. I think you articulated it very well. And I didn't even think you were confrontational because, when I'm confrontational, nobody even has a doubt.

SENATOR KENNY: I used to be confrontational years ago when the Governor first came out with her income tax cuts. But I--

SENATOR McNAMARA: And you learned that she made the wise choice, right?

SENATOR KENNY: The economy got very good, and who knows what happened there.

SENATOR McNAMARA: Maybe that was a factor.

SENATOR KENNY: Maybe it was.

SENATOR McNAMARA: I'm sure if the economy went bad, we would blame it on that factor. So you might as well attribute that the boom in the economy -- she must get the benefit. We all know that being in the right

place at the right time is terrific. It is a good thing that you're here this morning because you made your point.

I would like to move on with the witnesses.

SENATOR KENNY: Okay. I appreciate being allowed to make the point, and I thank the Commissioner for receiving it.

COMMISSIONER SHINN: Thank you.

SENATOR McNAMARA: Thank you very much, Senator.

Any other questions?

Senator Vitale.

SENATOR VITALE: Good morning, Commissioner.

I just want to talk just for a moment about what I'm concerned about in terms of what I think is an inconsistency, the way in which we approach the development in urban areas and even suburban areas. My district is largely suburban, and it's really small. And while it's not (indiscernible)-- I think to the perception of many-- You know, we have rural areas, farmland, and open space, and our urban areas are (indiscernible) developed with high-rises and traffic everywhere. Suburban districts like mine, which (indiscernible) -- how do you consider urban -- certainly not rural -- are somewhere in between and are becoming every day.

The State Plan says that it will encourage development in areas where there is a (indiscernible) infrastructure, where development is taking place over the years, and even in redevelopment -- particular parcels of property, factories, and other pieces of land (indiscernible) will serve to meet the goals of the State Plan and try to avoid development in the open spaces and rural areas of the state.

How do you deal with -- or how can this bill, which is-- (remainder of comment indiscernible) If we encourage development in areas like mine, urban areas, how is it that we balance the needs of those communities so that they don't become completely developed where we have 100 percent occupancy of nearly every parcel of property in those communities while we try to maintain open space in communities that are currently (indiscernible)?

COMMISSIONER SHINN: I think it brings up some interesting issues that are working with each other for a change -- that the Brownsfields-Greenfields conflict if you will-- Historically, we've had sort of urban flight from the urban areas into Greenfields. And that's sort of happened unimpeded. And I think since the advent of all the Brownfield effort, we've seen that sort of stimulate a part of a new urban revitalization coupled with the economy. But it's been a nice combination of people considering returning to urban areas, and I'm talking about the industrial building manufacturers -- are essentially supporting the State planning efforts, are looking seriously at returning to urban areas. I visited a Brownfield site in Edison the other day that removed Brownfield existing building and put up a Home Depot and a number of other stores that were a--

It's a significant issue in an area that hasn't seen that kind of redevelopment historically. So I think there is some real good things. The Hudson County walkway has been a catalyst for redevelopment. So I think we're starting options to going out the Greenfields, and the open space program is going to further limit those Greenfield options. You picture 2 million acres out there, and we're going to ultimately purchase 1 million acres; that's going to be 1 million acres off the table for Greenfield development, and

we're actually pushing that development back into, for the most part, I think our urban areas and our centers that were designated for development.

So I think there is a set of dynamics wrapped up in this bill that are really interesting, and it really sort of acts as a catalyst on urban revitalization. So I think it's a combination of a good economy, a lot of Brownfield activities. Some of our dredging activities have coupled with some nice site closures and redevelopment. There's just a lot of exciting things happening in the state, and I know Bernie can add to this because a lot of it's happening in his district.

But there are some new dynamics going on that I think is really exciting, and I think we're in a good position to capitalize this -- capitalize on this with our set-asides in our budget and our bonding capability. And if we do it right, I think we'll have a product at the end of this process that will look pretty good. And I think we'll see a lot more attention in our urban areas. Certainly, Trenton is a great example of that; that's really starting to get some attention. There are a lot of discussions on the hotel, the success of the baseball stadium, the hockey arena construction -- that's really going to be a reality in a short period of time. I sort of watch that on a day-to-day basis.

There are some pretty exciting things happening in our urban areas, whether you're talking about Newark or New Brunswick or Trenton or Jersey City. There's just a lot of dynamics that are contributing to urban revitalization and seriously having investors return to urban areas in a pretty substantial way. I think that's what we were all working on for a lot of years here, and now it's sort of coming together. And I think this is the perfect bill at the perfect time, and I think it will really help us get this accomplished. So

I'm, as you can tell, pretty enthusiastic about the dynamics. And it is a pretty exciting time to be Commissioner, quite frankly, because the Legislature has provided me a lot of tools, corporate business pacts, as the Chairman's very familiar with. That set-aside has really set a new dynamics in place for site remediation, and we're breaking all the records that have been there.

But the way it's happening, I think, is particularly good. And what's happening on those sites is particularly exciting, and the technology that that's bringing to bear-- You get me started, I won't end.

I just think there's a good set of dynamics going on in New Jersey right now that I think this helps catalyze.

SENATOR McNAMARA: Commissioner, remember when I started off, I said concise. I suggest when you go back to your office check the dictionary.

SENATOR VITALE: Thank you, Commissioner.

SENATOR McNAMARA: Any other questions?

SENATOR ADLER: This is \$1 billion, Chairman.

SENATOR McNAMARA: I understand that, Senator. Please make as brief as possible your questions.

And, Commissioner, with all due respect, please make your answer as concise as possible.

SENATOR ADLER: Thank you, Chairman.

Commissioner, one provision of this bill would set a date in November of 1998 as the date where appraisers would look at zoning for purposes of figuring out the value of properties to be acquired. Generally, it is my understanding that properties are acquired based on the zoning in effect

of the time of acquisition. Which approach do you favor, given the fact that New Jersey is trying to maximize the acquisition to get the best bang for the buck with this \$1 billion?

COMMISSIONER SHINN: Obviously, you're going to do an acquisition-- We get two appraisals on that acquisition, in most cases, and proceed with the fair market value. We're still looking at some of the issues wrapped up in the appraisal date relative to our process and the potential of Federal monies as well. So I haven't really got a clear answer for you on that. And I think I understand what the intent is of that provision, but I'm not quite sure of all the legal ramifications of how that affects our program. But I think-- However it affects it, I think we can work through those issues, and I wouldn't want it to be an issue that would hold up the bill. I think it's one that we can work through, and I understand what is behind the issue, and hopefully we can satisfy that demand.

SENATOR ADLER: Well, maybe you could help me. What do you think is behind that issue? I'm a little unclear on that.

COMMISSIONER SHINN: I think there's a concern that areas might be down zoned in some way, but there's also another side to that issue that areas could be -- either increase in value or be up zoned, and you'd be in a position where you might not be paying market value for a property with a predetermined market value. So there are a lot of issues wrapped up into the appraisal date that we're still looking at with the Attorney General.

Again I think it's an issue that is more problems in time. It may not be an issue for the next couple of years; it may be an issue in 2005. So it's not something we haven't got time to work on. And I'd like to see the bill

move forward in its present state and work through some of these issues as we get into a time frame of where they're problematic.

SENATOR ADLER: Just one more follow-up because I'm a little unclear.

You would agree that it's better for the people of New Jersey to acquire -- its down-zoned condition rather than in a up-zoned condition with less restriction because you can get it cheaper and therefore acquire more land throughout the State of New Jersey. So you would agree that down zoning is preferable from a State point of view from the people in the New Jersey.

COMMISSIONER SHINN: Well, I think we've always tried to, for the most part, buy from willing sellers. We've worked with nonprofits in many cases. We've tried to maximize tax advantages and, working with municipalities and counties, leverage our dollars between us. But fair market value has always been the driving force behind our appraisals, and I think that will continue to be the driving force. And constitutionally, I guess, is what I need some legal guidance on in our review of it that is ongoing now.

But again I think it's a bigger problem in time than it is over the next three or four years when we can be making a lot of progress. As you know, we've got a pretty serious backlog program currently in our program. And we're trying to satisfy some of that need as soon as we can. So I'd not like to make this a bigger issue than it really is, particularly in time.

SENATOR ADLER: So your answer is that you want this bill to go forward?

COMMISSIONER SHINN: I'm sorry.

SENATOR ADLER: So your answer is that you want this bill to go forward as is without any changes?

SENATOR McNAMARA: That may be his prerogative or his wish, but I'm not so certain that it falls within his capacity.

SENATOR ADLER: I'm just trying to get a sense of what he believes is best for the State of New Jersey in his capacity as Commissioner of the Department.

SENATOR McNAMARA: On the issue of a date, time, and zoning, I have a particular interest in it myself. What you're indicating is that towns could then, arbitrarily, down grade properties that are zoned for a developer so that they can take it for less than what real market value was the day before the bill was passed.

If we talk about this passing in the State of New Jersey and we are interested in helping the urban areas in dedicating some funds-- If the people in this state knew that there was a move to advocate to confiscate people's property without proper payment of (indiscernible), I don't think this constitutional amendment would have even come close to that.

SENATOR ADLER: Respectfully, Chairman, we could never do that. There is a Federal constitutional amendment that prevents the taking of property without just compensations.

SENATOR McNAMARA: Well--

SENATOR ADLER: So the State of New Jersey doesn't have the power to do what you're suggesting.

SENATOR McNAMARA: I suggest that--

SENATOR ADLER: What we're trying to do is get the maximum.

SENATOR McNAMARA: I suggest to you that if towns are encouraged to down zone properties so that they can acquire them for less than present market value, I have a real problem with that myself.

So in all due respect to what you're saying, Commissioner, we may be at different ends of the table.

SENATOR ADLER: Well, I think he's at your end of the table, Senator.

Thank you, Chairman.

SENATOR McNAMARA: Thank you.

Thank you, Commissioner.

COMMISSIONER SHINN: Thank you, Mr. Chairman.

SENATOR McNAMARA: Secretary of Agriculture, Art Brown.

SECRETARY ARTHUR R. BROWN JR.: Good morning, Senator Bark and Senator McNamara, and also other Committee members. Certainly, I appreciate the opportunity to offer comments concerning S-9, which will provide a stable source of funds for farmland, open space, and historic preservation.

The resounding approval voters gave to Governor Whitman's open space initiative last November leaves no doubt that New Jerseyans feel strongly about saving farmland, recreational space, and historic treasures.

The Garden State's Preservation Trust Fund will help to maintain a thriving agriculture industry and provide for groundwater recharging, wildlife habitat, ecological diversity, and much more. And preserving these important benefits will also be maintained in the quality of life we all enjoy here in the Garden State.

We are very much in support of Governor Whitman's goal of preserving 1 million acres of open space and farmland over the next 10 years. Senate Bill No. 9 will provide the stable source of funds that is critical to reaching that goal.

As you know, all available funds have been committed to preservation projects that will bring our total preserve acreage to almost 75,000 acres statewide. Despite our record-breaking progress in the last two fiscal years, we still have a long way to go. We know there is a backlog of 100,000 acres, and that only includes those farmland owners who applied for admission to the program. The counties tell us that there are tens of thousands of additional acres whose owners are just waiting until a stable funding source is established to apply for the program. Reserving 500,000 acres of farmland as recommended by the report of the Governor's Council on the Outdoors will provide the critical mass of land needed to support a thriving agricultural industry. The importance of this critical mass of farmland cannot be overstated. It is needed to ensure continuation of agricultural support and services such as farm equipment, feed, seed, and fertilizer distributors.

In addition, a critical mass of farms minimizes conflicts with suburban neighbors making farming more economically viable. This stable source of funds is critical to reaching these goals. Stable funding will allow us to accomplish necessary long-range planning for the preservation of farmland and open space. It will also give us the ability to leverage available local and Federal funds for preservation projects.

There is one more point I would like to mention to you today. In previous testimony on this issue before the other legislative committees, I have

recommended that nonprofit organizations be allowed to participate directly in the Farmland Preservation Program. These nonprofit organizations are important partners for the Farmland Preservation Program, especially as we move ahead with a dramatically accelerated pace of preservation.

So on behalf of the agricultural community and its future, I urge you to support S-9, and I want to thank you for the opportunity to come before you today.

I will be leaving after my testimony, but Gregg Romano, who is the Executive Director of the Farmland Preservation Program, will be here for the endurance of the testimony that is given. And if there are any questions regarding the Program, he will gladly speak to those. But I will gladly answer any questions at this time.

SENATOR McNAMARA: Any questions?

Senator Schluter.

SENATOR SCHLUTER: Thank you.

Secretary Brown, in your judgement, do you believe that there will be sufficient applications for farmland preservation with the new amounts of money available to fill up the pipeline and accommodate all of the money that's available in the 40 percent and the 500,000 acres?

SECRETARY BROWN: Absolutely. I believe there is going to be enough land. It's certainly a challenge, of course, and it is a voluntary program, but we feel that there is going to be a lot of interest out there to get involved in the Program. We'll push the 40 percent, and hopefully we are going to utilize all of that money for farmland preservation.

SENATOR SCHLUTER: The second question, which I would have asked Commissioner Shinn, but it got too long and drawn out, and I don't want to abuse the privilege here: With respect to the appraisal date of November 3, 1998-- I have heard that this might be a problem with qualifying for certain Federal funding. Could you comment on that if you have knowledge of that?

And I'm also raising the issue for anybody else who will testify to see if there is any substance to that particular position.

SECRETARY BROWN: Senator, I don't know of any opposition at this time. I don't know--

SENATOR SCHLUTER: I mean legal problems with qualifying.

SECRETARY BROWN: No, I don't know.

SENATOR SCHLUTER: Thank you.

SENATOR McNAMARA: Any other questions? (no response)

Thank you.

SECRETARY BROWN: That was brief enough, wasn't it?

SENATOR McNAMARA: You're invited back to my Committee at any time.

Jim Treffinger, Essex County Executive.

JAMES W. TREFFINGER: Thank you, Mr. Chairman.

I'd like to thank the Joint Chairs and the members of this Joint Committee for allowing me to speak before you this morning.

As the Chairman indicated, my name is James Treffinger. I'm the Essex County Executive. And on behalf of the 750,000 citizens of Essex County, I am here to comment on the Garden State Preservation Trust Act

which presents, I believe, the unique opportunity to save pristine land and preserve natural resources and historic sites for the use and enjoyment of current and future generations of New Jerseyans.

The preservation of 1 million acres of land is, indeed, a most laudable goal. I applaud the superb efforts of the Governor herself, the Senate and Assembly sponsors of this bill, and the Governor's staff for crafting legislation, particularly Senators McNamara and DiFrancesco who have sponsored the bill before us, S-9. That is a bill that will ensure preservation of natural and historic resources.

The constitutional amendment dedicating \$98 million per year provides stable funding for open space preservation, farmland preservation, recreation and park development, and historic preservation. This stable source of funding and the authorization of up to \$1 billion in revenue bonds based upon the constitutionally dedicated funds will permit our State to make down payments on land and pay the remainder in installments. The ability to make down payments and installments on property under this Trust Act is distinguished from the Green Acres Program, which, as you know, required the entire purchase price at the time of land acquisition.

As County Executive of the most densely populated county in the State of New Jersey, I feel compelled to address the issue of preservation and parkland development of open space in urban areas and to respectfully request an amendment to this excellent legislation which will improve this legislation. Plentiful open space and the preservation and development of natural resources are critical to the economic vitality of urban centers and densely populated suburban counties like the one that I represent. Real estate values

increase as a direct result of adjacent open space. In Essex County, the county tax base has recently increased in part because of an excellent park system and improvements in that system, some with the aid of the Department of Environmental Protection of the State of New Jersey. The intangible aesthetic value of open space also, obviously, cannot be underestimated.

The preservation of open space and natural resources in urban areas can be greatly enhanced by designating a minimum of 10 percent of the \$98 million in trust funds dedicated on an annual basis for acquisition of recreation and conservation lands in urban areas and densely populated counties. Approximately \$10 million per year, for a total of \$100 million during the lifetime of this Act, should be allocated, I believe, to the urban centers in our state.

The 10 percent allocation for urban centers could be drawn from the 60 percent of funds earmarked for the Green Acres Preservation Trust Fund. This legislation already allocates \$6 million per year for historic preservation and 40 percent of the remaining funds for farmland preservation. And I would not seek to undo that balance.

The provision for urban aid communities to get a more substantial match, 50 percent or 75 percent in special cases, for open space projects than rural or suburban municipalities is, I believe, a commendable step in the right direction. But I respectfully suggest that it does not go far enough. There are not adequate assurances that urban open space projects will be funded by virtue of the competitive selection process, and the list of urban aid municipalities is relatively short.

There is ample precedent for urban centers receiving specific allocations to preserve open space. In 1995, former Assemblywoman Maureen Ogden, of Essex County, sponsored the Green Acres bond issue, which contained a \$20 million allocation for acquisition and parkland development by the State of recreation and conservation lands in highly populated counties. The formula used in that bond issue was population densities in excess of 1000 people per square mile. This applied to nine out of our state's twenty-one counties.

The concept of a specific allocation for urban centers has been endorsed by a united group of bipartisan county and local officials. It has also been supported by Chairperson Maureen Ogden and the Governor's Council on New Jersey Outdoors and by a broad coalition of environmental groups. Recently, the Executive Director of the New Jersey Farm Bureau testified that "we do not object to firming up an urban park set-aside within the 60 percent Green Acres allocation if it is needed to clarify the Trust Fund's use in urban areas." I believe that such a set-aside is indeed needed.

Voters in Essex County approved the open space ballot referendum by a two-to-one margin last November. The open space ballot question was supported just as strongly by urban voters as it was by voters living outside of metropolitan areas.

I believe that the principles of fairness and equity suggest that urban voters be assured the opportunity to acquire and develop open space. The final version of this legislation should reflect the sentiment of both urban and suburban and rural voters.

Let me personally state that I have the greatest confidence in the Whitman administration, and in particularly in Commissioner Shinn's excellent stewardship of the DEP and his administration -- this administration's commitment to our urban areas is well known by us in Essex County. But this legislation will far outlast this administration. And how can we be assured that future administrations will have the same commitment to urban environmental concerns as this present administration?

At this point I would like to, if I may, also add another point to support a measure being put forward by the New Jersey Association of Counties, which requests that provisions be included in this bill to provide that payment in lieu of taxes work for counties, as well as for municipalities, for land acquired by the State for recreation and conservation purposes, Sections 28 and 29. These measures are a way to protect property taxpayers from the negative impact of smaller tax bases that sometimes will result.

Finally, let me again commend the Governor and the members of the Legislature, and particularly you, Mr. Chairman, along with Senator DiFrancesco, for drafting legislation that I believe creates a legacy of saved invaluable resources, picturesque landscapes, and priceless historic sites. I fully support passage of a final version of this legislation, but I respectfully and fervently request that it include an amendment to preserve open urban space. That improvement will make the Garden State Preservation Trust Act a true piece of landmark legislation that will profoundly enhance all of our citizens' enjoyment of their natural environment and give us the assurance we need that it will apply not only to this administration, but to administrations in the future.

Thank you.

SENATOR McNAMARA: Thank you.

Any questions? (no response)

I might also note that Robert Prunetti, the County Executive of Mercer County, couldn't attend this morning, but he submitted written testimony, which will also become part of the record.

Thank you very much.

MR. TREFFINGER: Thank you, Mr. Chairman.

SENATOR McNAMARA: Donald Sanderson, New Jersey Historic Trust Chairman.

D O N A L D S A N D E R S O N: Good morning. I am Donald Sanderson, from Bernardsville, in Somerset County, Chairman of the Volunteer Board of the New Jersey Historic Trust, an agency in but not of the Department of State.

To help me answer your questions, I have with me the Historic Trust's Executive Director, Harriette Hawkins, and as another brief speaker, Mary Krugman. We thank you for your past approvals for projects and for including the Historic Trust in stable funding.

The Historic Trust Board has no quarrel with the basic concepts of this bill; however, it is significantly concerned about the Garden State Trust's veto power over our decisions. We believe that this reflects badly on our process and creates a layer of bureaucracy between the Historic Trust and the Legislature, a layer which now does not exist.

As a result of the Legislature's forward-looking commitment to historic preservation, our matching grants program in urban, suburban, and

rural districts is the most significant bricks and mortar initiative for history in the nation. We are the model of envy of all other states.

Now a brief outline of what we do and how we do it. Our program has received 576 applications and has committed more than \$52.3 million to 182 projects statewide in six grant rounds, which you funded under three bond referendums. Under stable funding, we expect \$60 million over 10 years.

We feel that the Historic Trust has operated efficiently and fairly in choosing which applications merit bricks-and-mortar matching grants. Just as an aside, I believe that we have given grants to organizations in every county in the state.

In explanation of our methods-- As stewards of State money, first we use expert, impartial evaluators to review thoroughly the applications in a given round. They determine which applications best represent relative historical significance, organizational, and financial integrity and quality in proposed preservation work. Next, our grants committee assures that there is geographical diversity, social diversity, and public benefit. Once the full board approves the list proposed, we then submit it to the Legislature with a request for appropriations. To date, without change, the Legislature has funded every request.

With this background, perhaps you see why our board members who hail from all over the state, and by statute must have demonstrated experience in historic preservation to achieve Senate confirmation, are very much disturbed about the Garden State Preservation Trust as it applies to our programs and public perception of your and our performance. The basics of the Historic Trust's time-tested process, which I've just given to you, have been

incorporated and combined in the bill before you, but there is a new veto wrinkle.

Under the bill before you, the Garden State Preservation Trust can delete the choices made in this highly competitive and comprehensive process and recommend additions before you in the Legislature have a chance to see our proposals.

Respectfully, the New Jersey Historic Trust Board urges you to change the language of this bill to eliminate the Garden State Preservation Trust's potential deletion and recommendation rights over the seriously time-sensitive New Jersey Historic Trust decisions.

Thank you.

Mary Krugman.

SENATOR McNAMARA: Excuse me for one second.

Mr. Sanderson, they can't delete-- They can hold it up for one funding round, but they can't delete something that you recommended. And I hear what you're saying, and don't think the message goes-- We're here to listen, but also that sympathy goes across the board. Even the Department's not happy with the new process.

I just want to let you know-- It seems that your understanding was that they could actually delete it, but they really can't delete it. They can hold the funding up for a year.

MR. SANDERSON: Well, the problem, sir, for us is that our projects are time sensitive, and if they can delete if for one round, even though it's postponed for another one, all the estimates and the other things that the grantee has relied on and that we've relied on in evaluating it will probably go

by the board. So to us, even though I think you're correct in saying it's merely postponed, to us it appears as a deletion because we're afraid that we'll actually lose those grantees.

SENATOR McNAMARA: That's a point. I'll take another look at it. There are no guarantees, but I will take another look at it.

MR. SANDERSON: Thank you, sir.

SENATOR McNAMARA: Would you please identify yourself for the reporter?

MARY KRUGMAN: Yes, my name is Mary Krugman. I'm a resident of Montclair, Essex County, New Jersey. I have been active in statewide and local historic preservation efforts for approximately 10 years, both in nonprofit and for-profit sectors. I have served on the Board of the Advocates for New Jersey History, the Preservation Committee of the League of Historical Societies, and as executive director of Preservation New Jersey, as well as the chair of the local preservation commission in Montclair. I am currently a preservation consultant and President of Heritage Marketplace, Inc., a New Jersey corporation that promotes on-line marketing of historic properties. I'm also here sitting next to the Chair of New Jersey Historic Trust because I'm a member of two Montclair nonprofits that have been the beneficiaries of preservation bond grants from the New Jersey Historic Trust. And I have been actively involved with the grant process for those organizations.

First, I want to express my overwhelming support of this legislation. Stable funding for open space and historic preservation is something that will greatly benefit the residents of this state by promoting

smart growth here rather than the undisciplined growth that threatens to overrun our state.

I do have three issues of concern in the bill as currently drafted. First, the allocation for historic preservation should be increased -- \$6 million allocated under this bill. This amount represents only 3 percent of the allowable \$200 million bond funds per year and falls far short of the \$15 million for such projects recommended by the Governor's own Task Force on New Jersey History. While open space acquisition works to slow growth, historic preservation efforts enhance economic growth.

Data generated by the Rutgers Center for Urban Policy Research in 1997 estimates that the \$60 million in bond monies spent on preservation projects will generate \$403 million in cumulative rehabilitation activity, over six times the original investment. It is a loaves-and-fishes strategy that multiplies the economic benefits of this bond legislation throughout our state's economy.

The two kinds of expenditures, open space acquisition and funding for preservation projects, should go hand in hand. What we, as a State, expend to preserve farmlands can then be balanced against the enormous return on investment, job creation, and revenue generation achieved by preservation projects. An increase in these funds would serve our state in many ways, and coming from a very densely populated Essex County, I know that part of our environment, our amenities of those areas are our historic buildings and our open spaces, as Mr. Treffinger pointed out.

My second concern is that oversight by the Garden State Preservation Trust will create a new layer of bureaucracy that is unnecessary and will cause delay that will be harmful to our historic buildings.

As a consumer of preservation bond funds, I have been most impressed by the efficiency and integrity of the past grant award process. The application and compliance process is already extremely demanding, and I fear that adding an additional level of oversight will make the process more onerous. The New Jersey History Trust is highly respected in the preservation community as a result of its intense and objective evaluation process and for its administration of funded projects. The proposed changes will delay the flow of dollars to historic buildings, resulting in their further deterioration from leaking roofs and disintegrating mortar.

In addition, the proposed option to allow the Garden State Preservation Trust to postpone projects from the list for one year may, in fact, reduce even the inadequate \$6 million per year for preservation projects from that allocation for that year. The fear of the affects of political influence over the grant award process is high in the minds of those concerned with these projects and also in the preservation field, generally.

Third, there should be an interrelationship between Green Acres funding and preserving historic buildings located within those areas. The open spaces and parks preserved under Green Acres and Farmland grants are governed by a conservation easement. This historic buildings within those spaces, however, remain unprotected and have been left to deteriorate or have been demolished. Easements on lands should also include preservation easements on historic structures found within them.

I would like to see some process by which the lands preserved by open space funding is surveyed for the presence of structures that may be found eligible or potentially eligible for the New Jersey Register of Historic Places and then protected by easements that address those structures as well as the land itself.

State funds given to private owner should not come without a price, the public purposes of this Act and the State Master Plan would best be served by making open space and historic preservation provisions work in tandem.

Thank you very much for the opportunity.

SENATOR McNAMARA: Thank you.

MR. SANDERSON: We're ready for questions, Mr. Chairman.

SENATOR McNAMARA: Any questions? (no response)

Thank you very much.

Michael Catania, Nature Conservancy.

MICHAEL CATANIA: Thank you very much, Mr. Chairman. I'm Michael Catania, the Executive Director of the Nature Conservancy. I had the privilege this past fall as serving as the Cochairman of the Coalition to Preserve Natural Resources, a group that consisted of more than 314 organizations that supported Public Question No. 1.

I'm delighted to be here today before both Committees to tell you that I strongly endorse the legislation. I think it's an excellent way of implementing the voters' wishes last fall. And in particular, I really like the fact that it allows us to continue three existing excellent programs, the Green

Acres Program, the Farmland Preservation Program, and the Historic Preservation Program.

I also support the allocation in the bill, and I believe that's consistent with what we were talking about when we took this case to the voters last fall. I also would note that in addition to continuing the Programs in their current state, there are a couple of new features, which I think are very noteworthy. Some of the earlier speakers have eluded to them.

We have new incentive grants of up to 50 percent in the Green Acres Program for towns that have their own local dedicated taxes. And as you know, more and more of our counties and municipalities are doing that. Up to 75 percent grants for urban aid towns-- And I'm also pleased that the legislation includes both local development funds for park restoration as well as State development funds. And one of the things I heard most often last fall was that people were very concerned how we were going to maintain our open space once we purchased it, and people were concerned about the state of our parks. So I'm delighted that both of those had been addressed.

There's also new nonprofit grants which I expect will be used for urban areas -- development grants so that nonprofits like the Trust for Public Land will use for development of playgrounds or recreation areas in our cities, which I believe is a nice component. And we worked hard to get another piece in here, another payment in lieu of tax structure, which was in the Governor's Council on the Outdoors' report.

As a conservationist, I believe strongly that open space is a very good rateable and a good value for a community. But we acknowledge that some of our rural communities have so much land owned either by DEP or by

nonprofits that it becomes a burden for them to provide even basic services. I think the payment in lieu structure in this bill will help address that, and I strongly endorse it.

On a personal level, I'm also pleased and I support the compromised language that was worked out in this bill in terms of how you can value Pinelands Development Credits. There was some earlier suggestions of picking a specific number and putting it in the legislation and allocating a certain amount for the purchase of credits. The compromised language would allow the State Agricultural Development Committee and the Green Acres Program to use a formula that's in this legislation to set a value on those credits.

I think that's the right way to do it. I have confidence in both of those programs to use that language to pick a good value, and I believe that that will allow both Green Acres and the SADC, and well as nonprofits and local governments, to purchase Pinelands Development Credits and encourage farmers in the Pinelands area to come into the Farmland Preservation Program.

I do have several very brief suggestions for how we can make this excellent bill even better, and some of them you've heard before. The Assembly Committee has already amended the Assembly version of this bill to include nonprofit matching grants from the Farmland Preservations funds. I would urge that you do the same with the Senate version. I believe that nonprofits can make a substantial contribution toward our very ambitious farmland goals. We stand ready to do that. I think bringing them inside the scope of the Program will also make sure that everybody is conducting

farmland preservation in the same way and that the State is certifying the values that are paid. So I would urge you to do that.

We've heard a lot of discussion about the urban set-aside. I believe that given the conversations I had with lots of people throughout the state that it would be the right thing to do and the gracious thing to do to have an urban set-aside. We have had urban set-asides in the last three Green Acres Bond Acts. I think that if you want to talk about preserving open spaces in New Jersey, it's really the flipside of the same coin as promoting the redevelopment of our cities, and you really cannot separate the two issues. I would personally urge you to consider including an urban set-aside. The amount that's been talked about a lot has been the \$10 million a year. And although we have incentives for urban areas that are in the bill already, I think that would be the right thing to do to go the next step and to include the urban set-aside as well.

In addition, in terms of a technical change, I think it would be important to include a date in Section 17-A of the bill. Earlier, preintroductory drafts of this bill had the State Treasurer transferring the \$98 million that the voters dedicated each year for the next 30 years on July 1. That date was taken out, so there is no date in the fiscal year when that transfer has to be made. And I think in order to comply with the spirit of the constitutional amendment, which provided that the interest income go into this dedicated fund and to jump start these programs, all of which are out of money, we really need to have that transfer made early in the fiscal year.

I think the State collects sales tax revenues in August -- something like the middle of August is the date when the first collections are made in the

fiscal year. So I would urge you to include a September 1 date in Section 17-A so that that first \$98 million will be transferred by September 1, and we can start addressing the backlog in both the Green Acres Program and the Farmland Preservation Programs.

Lastly, I share the concerns from some other speakers about using the date of November 3, 1998 and using that zoning to determine value. And I think that would likely cause problems over the next 10 years.

To begin with, I think it's wrong to assume that municipalities will improperly use their zoning powers to devalue land before they try and buy it. The courts are certainly very alert to cases of spot zoning and have shown a willingness to strike down zoning changes that are poorly motivated. So I think we can have some faith that our municipalities will do the right thing. I also think that if you include this language, it will lead to some unlikely consequences and some undesired consequences. Picture a scenario where four or five years from now this language is in place, a local master plan has been revised, as every municipality is supposed to do, and the zoning that is currently in place on my property we're not allowed to use because we have to go back to November 3, 1998. That's really not going to be fair in that instance to that landowner. It also may preclude us from being able to acquire a key piece because we can't take the current zoning into account and pay fair market value.

And last but not least, there may be some problems. A lot of us are working hard to get new Federal funds that used to be available under the Land and Water Conservation Act as grants to the State. I believe that this language could be a problem in terms of qualifying for Federal aid if we are

locked into using the zoning that was in place on November 3, 1998. The Federal government, I believe, will require that we use a current fair market value appraisal which does not look at old zoning from -- it could be up to 10 years old by the time this bill would be fully implemented. So I would urge you to consider that before you adopt that language.

And why don't I stop there now. I know lots of other people want to speak today. I'd be happy to answer any questions you have.

Thank you again for this opportunity to support this excellent piece of legislation.

SENATOR McNAMARA: Thank you.

Any questions? (no response)

Moving right along.

MR. CATANIA: Thank you, Senator.

SENATOR McNAMARA: Bill Neil, New Jersey Audubon Society.

WILLIAM R. NEIL: Good morning, Mr. Chairman, Senators. Thanks for giving us the chance to testify. I'll read our testimony -- our major points quickly. It's brief, and then I want to elaborate on several because the discussion started this morning, and some of the dialog left me feeling incomplete and dissatisfied, so I'll try to cover those points.

First, we believe that the legislation should indicate in Section 4-B that the five public members need to be drawn from citizens who have a background in open space preservation efforts and/or organizations as well as comparable farmland and historic preservation experience. If and when, and we hope it will be the case, the legislation is amended to include recognition of urban needs, then an urban representative with relevant experience should

be included. And of course, is that not the tradition in the Legislature and legislations of this type to name public members with experience in the direction and findings of the bill?

Second, we believe the Trust should be structured to have the minimal powers necessary to carry out its duties, remaining as close as possible to the existing interaction between the Green Acres, Farmland, and Historic Trust procedures and the Legislature. Therefore, we oppose the ability of the Preservation Trust, as indicated in Section 23, to have the power to delete recommendations or delay -- and I agree with the Committee Chairman's interpretation -- from the three nominating entities, since that power already exists in the Legislature, and the Legislature plays a strong role in appointments to the Trust. The only possible effect of this redundant power would be to create a delay loop in the process against the wishes of citizens who testified before the Governor's Council and repeatedly stressed the time-driven urgency of protecting more land. We are up against the clock in New Jersey, there is no question about it. We don't have 20 years to do it right. We have maybe 3 to 5 years. The Trust also needs to make sure it operates in fully public meetings properly noticed. There was a positive amendment in that direction in the Assembly Ag Committee.

Third, we strongly oppose the language in Sections 26-C and 38-W which addresses the issue of purchase of Pinelands Development Credits. The intent looks to us like an effort to raise the price of the credits well over their current market price, which I believe is \$12,600. We don't believe that either the Legislature or the voters intended money from the legislation to be interjected to solve landowner unhappiness due to the protective regulations

of the Comprehensive Management Plan. If the current price of the PDCs is too low, the reasons need to be aired and fully addressed in front of the Pinelands Commission, which we understand has already embarked on a review of the problem. New Jersey Audubon Society believes there are ways to solve this problem that will keep the Pinelands zoning protections intact while making the market mechanism, which ought to set the price for the PDCs, function as it should to make this transfer of development rights system work. Then, and even if Pinelands were never specifically addressed in this bill, which is appropriate, there would be nothing to prevent the PDCs from being retired and the connected land saved by the traditional statewide system continued by this legislation. Pinelands landowners are not the only ones who have had their values affected by appropriate and necessary environmental land-use regulations, and we don't believe that bailouts could be limited to, over time, just their situation.

Fourth, we are adamantly opposed to the language in Section 26-D, which limits appraisals for lands to be purchased with these constitutionally dedicated monies to the zoning in effect on November 3, 1998. The Legislature apparently fears the possibility of down zoning in some municipalities and a possible lowering of land prices. We note the willingness to intervene for this cause but never to contemplate intervening to protect those lands in Planning Areas 4 and 5 that the State Plan urges everyone to protect but which municipalities rarely do. The courts of this state have dealt swiftly and decisively to parties of any persuasion who have attempted spot zoning either to reduce or increase densities for capricious reasons. So we don't see any reason for a date to link zoning and appraisals.

Fifth, we support an urban aid allocation of \$10 million per year for acquisition and development, cumulatively for \$100 million, to honor the pledge we heard given by Assemblyman Lance on the day of the bill's passage, as well as by the Governor during the fall campaign. I remember that day quite clearly. It was a very historic day. Revitalizing our urban areas should be at the top of our State priorities. It is connected to the issue of suburban sprawl and the loss of New Jersey's rural lands.

Sixth, the Legislature needs to add language in Section 37 to allow nonprofit organizations to participate in the Farmland Preservation Program.

We would also like to raise two additional issues. The first concerns the term beaches, and I have a full paragraph on this, but let me just compress it and say simply, if you read the definitions by introducing the term beaches and you read the interlocking definitions of reasons for projects and the definitions, it would not exclude the possibility of the monies in this -- being appropriated being used for beach replenishment. So it was amended on the Assembly side, and it was a good amendment. I don't think the voters intended that, and I don't think the Legislature did either, but the language -- the existing language doesn't rule it out.

And finally--

SENATOR McNAMARA: I believe the amendment in the Assembly--

MR. NEIL: Pardon me?

SENATOR McNAMARA: I believe the amendment that was added to the Assembly bill rules it out.

MR. NEIL: Rules it out, yes, and we like that language.

And finally, we think the time is right for the Legislature to revisit the Ogden-Rooney reforms of 1993, Chapter 38, on the conveyances of public lands. Over the past year, citizens have seen a number of alarming proposals for the improper use of surplus State land, and we are about to dramatically increase our inventory of State conservation and recreation lands. We believe New Jersey citizens deserve a thorough accounting of the inventory of all State lands and their status and a thorough airing out of existing leases and their terms and rationales. A-1,000,000 has a good feature in Section 25-F where it calls for a list of any surplus real property owned by the State that may be utilized for recreation and conservation purposes or farmland purposes, but we would have to know that it was starting from a complete inventory and also who would make the determination about what kind of land could be utilized before saying it was fully adequate. We think reforms are in order when State Fish and Game lands can be leased out for commercial electronic towers at terms of 24 years so as to avoid the existing conveyance thresholds for review -- 25 years, as in the Weldon Brook State Wildlife Management Area, in Sparta Township. We don't want this legislation held up to work out all the details of such a review and reform program, but perhaps it could initiate the process by calling for public hearings to air the issue.

Senator, I do have one comment on the Pinelands Credit. That was mechanism-- The price was set by appraisals, and some say it was deliberately set high to get the compensation off on a good foot, but the system was supposed to function by market demand. Now, you realize that the number of credits allocated in the Pinelands are finite, they've been assigned. So the pool of credits is not growing. And I think from basic economics, if you

have a finite product and the price is not growing and it hasn't grown so the market mechanism is not working, then the fault is on the demand side.

I think it's pretty clear that some people wish the Pinelands system to go away entirely, so they're not going to play in this artificial currency market. And the other problem is that in the growth zones, not all construction is required to utilize the PDCs -- only if you want the extra density. So it seems to me that there is a pretty obvious direction to move in if you just look at market forces. Keep the current supply of PDCs. Increase demand by requiring more people -- more property owners who are going to build in the growth zone to have to purchase those credits. And I think the implication of that is, slice the credits in smaller slices so that smaller property developers will have to buy them, and you would raise demand. And I think something along those lines is the way to keep the current system with its protections and reform a market mechanism that is working properly. And that is the homework of the Commission.

We also brought with us an essay. It is not part of our testimony. I'll leave you copies. Because I've heard several allusions-- The essay makes a distinction-- It's a review of what Oregon has done and what I don't think we've done to make the distinction between this legislation which is open space legislation and a system that would really grapple with sprawl. There are a number of distinctions that have to be made at your leisure. We'll leave you copies with this follow-up essay.

SENATOR McNAMARA: Thank you.

Any questions? (no response)

MR. NEIL: Thank you.

SENATOR McNAMARA: David Pringle.

DAVID PRINGLE: Thank you, Mr. Chairman.

Good morning. I'll be brief. I have submitted written comments, and a lot of what I have to say colleagues before and after me will state. So let it be said that we share virtually all the concerns of my fellow environmental colleagues.

I'm here today on behalf of the Environmental Federation. We have 85,000 individual members in New Jersey and an additional 85 member groups. I'd like to thank the Legislature for giving us the ability to even debate this legislation. The constitutional amendment is a tremendous victory for New Jersey. As ecstatic as we are that we now have this amendment and a stable source of funding; however, we are very concerned that this victory will be hollow, in that the legislation in its current form fails to ensure that the most environmentally sensitive, most threatened open spaces are prioritized.

It's very troubling to the environmental community that has been fighting for 16 years for a stable source of open space funding that we can't support the legislation at this time in its current form. And although there are a number of good provisions in the bill -- I was especially pleased to see the in lieu of taxes provisions in there -- we also support the Assembly Agriculture Committee amendments that are a step in the right direction.

However, I take all of those good things for granted. We set the bar very high here. We have been told about our concerns that you can't get everything you want, that this is better than nothing, but those don't apply here for three reasons. While we recognize we can't get everything we want,

we can and should get a lot more than what is in this current legislation for three reasons.

First, this is not optional legislation. It's enabling legislation for a constitutional amendment. And unless the Legislature wants to cede its authority to the executive branch, which I'm going to venture a guess you're not, you have to act. This is not optional legislation.

Second, you have to act within the constraints of the constitutional amendment, specifically open space preservation. That's why the environmental community has been so concerned about the Pine Barrens provisions that are in the legislation and the urban set-aside, which is not, because the city issue was legislative intent, was voter intent, and the Pinelands provision was not.

And, third, you have an overwhelming public mandate in support of open space preservation as represented by the referendum this fall. While much of our concerns, some would argue, are quibbling over details, the devil is in the details. Our goal here is to preserve a million acres. It's going to be extremely difficult to do that even if we spend every single penny the best possible way. And unfortunately the current legislation does not spend every single penny as best as possible.

We concur specifically the following amendments that have been talked about, but concerned that the name and legislation doesn't follow all of the Governor's Council's recommendations, that the cities are not included. We are also concerned about the down zoning Pinelands and Garden State Trust veto ability. I'd like to highlight three issues in particular, and then I will end my comments.

First, the down zoning. We are not suggesting that municipalities should be able to down zone, so they can buy open space at a cheaper price. These are two totally separate processes. If a municipality down zones for the purpose of preserving environmentally sensitive property or developing it more carefully, and then in an entirely separate process at a later date decides they want another layer of protection to divide that open space outright, they shouldn't have to pay for it at artificially high prices.

Second, on the Pinelands provision. We are not saying the Pinelands is fully protected and it doesn't deserve funding within this bill. What we are saying is it doesn't deserve special treatment, which the current bill does provide.

Finally, I'd like to talk about one area that -- and I don't think will get nearly enough attention today -- and that is the willing seller provisions of the legislation. I have been told that I shouldn't even talk about this provision because it isn't going to change. I think it is important enough that even if that is the case, it deserves being said, and if it is indeed the case, it makes all of our other concerns that much more important. Because this legislation makes it difficult, if not impossible, for State funding to go towards purchasing of open spaces from unwilling sellers. And if that is the case, we are going to be writing off large tracts that are some of the most environmentally sensitive and the most threatened in the state.

Further, by automatically eliminating that ability, you are weakening the State's bargaining power because, if it is not hanging over the head that the State can always employ eminent domain, then the seller is going to be able to hold out for a lot more.

SENATOR McNAMARA: Excuse me one second. Just a point. My understanding is in the entire history of this program, prior to it being any language of a willing seller, that the State has never exercised eminent domain. Can you give me an example of what your major concern seems to be and yet historically there is no basis?

MR. PRINGLE: It's twofold. One, I would say it is disturbing that the State has never used eminent domain. A perfect example is down in Barnegat Bay, a massive high-density project has just been signed off on that would have been disallowed had the CAFR regulations ever been implemented that may have been consistent with the State Plan. In some instances there are-- Clearly that has threatened because a housing development is now going in. It's in some of the most environmentally sensitive land in the state, and at some point you need to pay fair market value. But the State should employ eminent domain. So it's disturbing that they have never done it in the first place.

Second, by making it virtually impossible to ever do it, even if they have never done it, you are weakening the State's bargaining power with a threat of that hanging over a perspective seller's cart.

I'll just leave it at that.

SENATOR McNAMARA: Well, I guess don't have an example is what I asked for.

MR. PRINGLE: No, I do not know of any time--

SENATOR McNAMARA: That was my question. I just--

MR. PRINGLE: That is-- I would say that brings home my point that we are not preserving the most-- There are going to be times where you

can get a better price on the open market than you can from the State. And at some point the State needs to give a competitive price, but if-- The hypothetical example: a water company wants to sell some of their watershed land, and they have somebody who is willing to purchase it. The State makes a bid. It's a fair price, but the private buyer is willing to pay more. At some point -- as long as it's a fair price -- the State should, at some point, employ eminent domain if it's critically environmentally sensitive land.

SENATOR ADLER: I'm going to refer to Mr. Pringle's point to go back to the issue of the timing of zoning for purposes of appraisal. I think David's comments established a fact that we are only dealing with willing purchasers. In that context--

SENATOR McNAMARA: Only in State acquisition, right.

SENATOR ADLER: And all acquisition farmland purposes, I think. I think that's the way the bill reads.

SENATOR McNAMARA: Yes, farmland is willing as--

SENATOR ADLER: Right, so I think they should give us some comfort in suggesting that the date of appraisal should be the date of acquisition, which is traditionally the way it's done as opposed to the provision in the bill which would set it back to November of last year to avoid this danger of forcing people to sell--

SENATOR McNAMARA: It cuts both ways.

SENATOR ADLER: --during a down zoning.

SENATOR McNAMARA: It costs both ways.

SENATOR ADLER: Potentially it could, but I think by and large we are avoiding the concern that the Chairman expressed moments ago that

people will be forced to sell when, in fact, the language of the legislation is very clear that you are not forcing anyone to sell. It's only willing sellers -- particularly the farmland context under whoever is the purchaser, whether it's the State, a nonprofit, if we amend that portion of the bill -- or municipal government.

I just wanted to go back to that point because I don't think we should get away too far from the timing issue in terms of zoning for--

SENATOR McNAMARA: No, I--

SENATOR ADLER: I know it's a different point than you were making, David, but I'm real concerned about that particular point going forward.

I'm sorry to interrupt.

Thank you.

SENATOR McNAMARA: By the way, the locals still have eminent domain in this legislation. They have eminent domain. It's only State's acquisitions, and you're not purchasing the farmland. What you are doing is purchasing the development rights. But when it comes to the condemnation of property, the locals have eminent domain in this bill. It's strictly the State funds -- State acquisition that it's willing.

SENATOR ADLER: Well, they have it already. Locals have it already.

SENATOR McNAMARA: Yes, and we are not taking it away.

SENATOR ADLER: It's unchanged. We are not augmenting it either. It's just the way it is.

SENATOR McNAMARA: Yes.

MR. PRINGLE: Just two final sentences, if I may. The point that the State has never employed eminent domain begs the point, if it's never been used, why do we need to codify it? And finally, assuming the willing seller provision stays in the legislation, we are writing off major portions of our environmentally sensitive, threatened open spaces in the state so that makes the remaining concerns of the environmental community and particular the lack of following the Governor's Council's report, the down zoning Pinelands and city provision, that much more important.

Thank you.

SENATOR McNAMARA: Thank you.

Any questions? (no response)

John Rigolizzo, New Jersey Farm Bureau.

J O H N R I G O L I Z Z O J R.: Good afternoon, members of the Committees, Mr. Chairman.

I'm John Rigolizzo. I am a farmer in from Camden County. I'm President of New Jersey Bureau, and I am also a member of the Board of Directors of the American Farm Bureau Federation. With me today is Peter Furey, my Executive Director. I have a short written statement and a few comments. And I think Peter would like to add one or two, also.

Once again, we are pleased to speak in favor of the legislation which establishes a funding source for open space preservation. This legislation attaches the trust fund to the ongoing and highly successful Green Acres and Farmland Preservation Programs. It is in fact an exciting opportunity for a significant expansion of these land conservation projects, and it will propel New Jersey to the forefront of the nation in this regard.

The Governor's call for a \$1 million-acre goal was an ambitious plan, but we have already made a great start. The farming leadership in the state, back in 1981, helped create the Easement Purchase Program. Before any of these trust funds are spent, there will be some 75,000 acres of deed-restricted farmland throughout the state.

Forty percent of the trust fund will be allocated to farmland preservation, which will be needed to reach the Governor's plan of 500,000 acres of farmland easements in 10 years. This is consistent with the Council on the Outdoors recommendation and the understanding reached during last year's legislative process. Some in our community thought farmland should have a 50-50 split with Green Acres, but the approximate \$50 million yielded from the 40 percent allocation is still the appropriate amount for farmland preservation.

We endorse moving the funding mechanism into place promptly because there are a backlog of applications, and current funding expires July the first. We like the feature that will incorporate easement purchase on farms in the Pinelands through the financial incentives of Pinelands Credits. We take the position that there is no real preservation unless the property is deed restricted, and much of that farmland in the region is zoned for 10- or 39-acre lots under current zoning. The acquisition of that easement should reflect the principle of fair market value compensation like the other participants in Green Acres and farmland preservation. The money for these credit Pineland easements purchases will come from the farmland share of the Trust and will count toward the 500,000-acre farmland goal.

Another feature in the bill that appraises the farmland assessment values as of the date of the referendum last November is simply a matter of fair play. Municipalities ought not to artificially reduce land values by down zoning open space land they intend to acquire. It is already illegal under certain uses of condemnation proceedings. The Legislature has its own discretion in establishing what constitutes fair market value, and it should do so in this instance.

Otherwise, we do not object to firming up an urban park set-aside within the 60 percent free acres allocation if it is needed to clarify the trust fund's use in urban areas. Also, we do not object to allowing statewide nonprofit organizations a role in the Farmland Easement Program, provided that they comply with the rules established by the State SADC and do not undermine or conflict with operations of the mainstream Program.

Mr. Chairman, that is my written statement. I have just a couple of comments, and then I will defer to Peter or answer any questions if you have them. I've been in Farm Bureau for 20 years. I can remember even the discussions about blue print commission back when I was a young kid. The farmers for the last 20 years have always supported a stable funding source for farmland preservation, and I think this is just a culmination of a long, long effort.

Senator Bill Haines, many of you remember and I knew him well personally -- I think he would be thrilled with this legislation. This is something that he looked for, for a long, long time, and I know he would be very pleased. And I think he would be pleased to be part of that legacy that this legislation represents.

As to the Pinelands, I live in the Pinelands; I know what it is like to live in the farm of the Pinelands. I know what it's like to try to go borrow money because I live in the Pinelands. This issue with the Pinelands, at least as I see it, in the short is it's not compensation of the wealthy landowners. It's just a way of allowing fair play to everybody that's in the Pinelands. The fact that we've only had one person, one farm, in the 20 years of the Pinelands that could participate in the Farmland Preservation Program that we have now is evidence that we need to do something. There are mechanisms here that will help provide that and allow equality for everybody.

Lastly, the November dateline of the referendum. I personally think if nothing else it's a line of demarcation for consistency and equality for all the applicants. There has to be a line somewhere, some basis for equality, or all the things to go. There is some interesting conversations, but I think that in the long-run we would do better with it than without it.

Those are my comments.

SENATOR BARK: Thank you.

MR. RIGOLIZZO: Thank you.

SENATOR BARK: Peter, did you want to speak?

PETER FUREY: Yes.

We are big proponents that have been active in the funding source question for two years with the administration and with the Coalition for Preservation and Natural Resources. And we are anxious to get the show on the road with the bill.

Just a comment about the dating of the easements on November of '98. There are two precedents -- legal precedents -- for this. The first is in

the Pinelands itself, which was the largest, most precedent-setting case of zoning and acquisition. And in that program the Attorney General supported and has a legal opinion that dates the valuation of appraisals as of the date of the former Governor's executive order. And that legal opinion is available for the review of the Committee if necessary.

Secondly, there was a Supreme Court decision which struck down a zoning ordinance in 1988 where a zoning was changed for the purpose of depressing the market value prior to acquisition under condemnation. And we think it's an analogous situation to that provision here. Now, we've heard a comment about the disqualification from Federal funding. We believe the concept is valid, and we defer to the Committee to work it through, but we are in support of that concept as well.

Thank you.

SENATOR BARK: Thank you.

Are there any questions on the part of Committee members? (no response)

Thank you very much.

MR. RIGOLIZZO: Thank you.

SENATOR BARK: Bill Harrison.

WILLIAM HARRISON: Thank you.

Bill Harrison, Assistant Director, New Jersey Pinelands Commission. I want to thank you for this opportunity to testify. This is very important legislation. I believe you have all been sent the resolution adopted by the Pinelands Commission endorsing this legislation. The Commission sees this legislation as something that will help implement both the Pinelands

Protection Act and the Comprehensive Management Plan, and I want to go through some specific points and then address some of the comments that were made earlier on the Pinelands language and the legislation.

Acquisition of land in the Pinelands was always part of both the enabling legislation and the Commission's regulations. The Commission was charged with a lot of diverse goals in the Pinelands Protection Act. That included encouraging development in certain areas, encouraging agriculture in other areas, adopting strict land-use controls in other areas, and having an acquisition component. The Federal legislation that led to the Pinelands Protection Act included monies for acquisition. The Comprehensive Management Plan, when it was adopted in 1980, established a goal of acquiring 100,000 acres by 1985. To date, due to limited monies, only 75,000 of those acres have been purchased.

We desire to meet the long ago goal of getting the remaining \$25,000 acquired, and this legislation will enable that to be possible. In fact, there is still \$9 million in Federal monies that have been authorized, which once there is a 15 percent State match available it will be made available for and we believe will complete that acquisition.

In addition, since 1980, the Commission has identified other lands that are important to be acquired in the Pinelands. The farmland preservation component of this is also very important. As I indicated, under the Pinelands Protection Act, the Commission was charged with both promoting the continuation and expansion of agricultural uses in the Pinelands area. To do that we have adopted very restrictive zoning requirements in the agriculture production areas and have been implementing those.

And just to give you some sense of magnitude, while the Commission has approved over 33,000 dwelling units in the Pinelands since it was formed in 1981, 95 percent of those have been located in those portions of the Pinelands designated for growth. And in the over 40 percent of the Pinelands, over 400,000 acres that are either a preservation area district or in agriculture production areas, less than 500 units have been approved.

But the Farmland Preservation legislation, which was adopted after the Pinelands Protection Act, was something that was supported by the Pinelands Commission as being a compliment to what the Commission had done through a regulatory approach to preserve farmland in the Pinelands. And that legislation had specific language added to it that provided that its provisions would apply in the Pinelands because there were arguments then, as there are now, that this isn't necessary in the Pinelands. And there was specific language added to make sure that that Farmland Preservation Program would be fully applicable in the Pinelands.

However, unfortunately, that did not occur. And there is a whole series of events that occurred in-- I don't want to spend a half an hour describing how we got here, but as was just testified, there have only been a handful of farms in the Pinelands that have entered the Farmland Preservation Program, only one of those in an agricultural production area.

Several years ago the Commission agreed this was a major problem, has been meeting with representatives of the agriculture community and the Department of Agriculture to try and come up with a way to address this problem. As a result of those efforts, Assemblyman Gibson has introduced, for the past couple of session in the Legislature, bills to address --

make changes in the Farmland Preservation legislation so that it would work in the Pinelands. There have been different approaches since that bill has gone through the legislative process to try and do this.

The Commission has deferred to the Department of Agriculture and the agriculture community as to what approach works best for them because there are a lot of conflicting interests. Lands just outside the Pinelands in Burlington County entering the Farmland Preservation Program have a relatively high value described to their lands just outside the Pinelands. In Cumberland County they are relatively low value, and how the Pinelands farm should fit into that is something we felt should be more appropriately addressed by those in the agricultural community. But the goal of the various versions of Assemblyman Gibson's bill and the language that is in this legislation the Commission fully supports.

I think, and I need to go on a-- What we are, I guess, puzzled by the opposition to this language that has risen because bills introduced by Assemblyman Gibson accomplishing the exact same result -- there has not been this testimony against those bills, and we are not quite sure what traumatically changed by this language.

Sending this to the-- The idea that the Commission should address this through changes to the Pinelands Development Program are misplaced. The Commission is in absolute agreement and is currently looking at improvements that can be made to the Pinelands Development Credit Program, but that is a program that is working.

Last year there were more credits utilized, more credits severed than ever before. There have been a total of 18,000 acres, including 6700

acres in agriculture, protected through this Program, but the deed restriction that is imposed on property through the Pinelands Development Credit Program is not as restrictive as the restriction that is imposed for farms entering the Farmland Preservation Program.

That difference in restriction should be reflected in a difference in value that is being paid to the farmer for entering the Program. It is important that-- And the Legislature recognized, when it passed the Farmland Preservation legislation, that the Pinelands farmers should be able to participate in the Farmland Preservation Program. This legislation is not-- In terms of the Farmland Preservation Program, it is saying look at the value of credits and then look at four other things in addition to the value of credits to come up for the value that the development should be paid for the development easements. It is not saying increase the value of credits beyond what they are otherwise worth. It is saying look at these other factors. It is important to ensure that long-term preservation of farmland in the Pinelands that farmers in the Pinelands feel able to participate in the Program and feel they will get an equitable return when they enter that Program. Otherwise, as is now, they will not participate. And this has included times when Pinelands Development Credits had a very high value. In 1990, Credit Bank had an auction and Credit sold for \$22,600, but even at that height of the economy at that time farmers were not entering the Program.

One last thing, and maybe the most important in terms of the Pinelands and the legislation, is the sliding scale that is included in that where towns with large percentages of land in State ownership could receive up to \$20 per acre after the declining scale under the Green Acres acquisition runs

out. This will be a tremendous benefit to several towns in the Pinelands, one of which has nearly 90 percent of its land in public ownership, but you do not have the opportunity to make up tax revenues when additional land is acquired and in some of these towns a proposed acquisition because of impact on their tax base. This is a change that was actually recommended in the Comprehensive Management Plan in 1980, and the Commission is very pleased that that recommendation is finally being acted on.

If you have any questions, I am more than willing to answer.

SENATOR BARK: Any Committee members have any questions regarding this? (no response)

I want to thank you, Mr. Harrison, for being here, as well as the resolution in support of this legislation from the Commission. I do appreciate that very much. I am very well aware of the farmers in the Pinelands and many of the reasons why they have not participated in this Program, and I do believe this legislation addresses that issue.

I thank you very much.

Next, Marie Curtis.

M A R I E C U R T I S: Good afternoon, Senators.

I believe you have copies of my comments up there, so I am not going to read it all verbatim, since I'm sure you can read it at you leisure.

I would point out I'm Marie Curtis, Director of the New Jersey Environmental Lobby, and we represent some 100 small, regional, and statewide environmental and conservation groups here in New Jersey as well as about 1000 individual members.

And the first point I would like to make would be to thank all the members of the Legislature for giving our citizens the right to express their desires on this issue at the polls last November. Overwhelmingly, as you know, the voters endorsed the need for preserving open space, farmland, and parks.

The bill before us today has many good features. Certainly establishing the Office of Green Acres in DEP statutorily is something that we think is long overdue. Providing for the reinvestment of loan returns and further open space acquisition is another very good point, as is the payment from the General Fund for in lieu of tax payments. We think that that also is another laudable point. But we have some concerns.

First and foremost is our concern about the urban residents of this state. While providing for a higher percentage of support to urban aid communities is laudable, there is no proviso that such urban aid must be forthcoming. There are specific references to annual amounts for historic preservation, but no equivalent reference for our most densely populated urban centers. Urban voters supported this initiative. They were assured by the sponsor in the Assembly, as well as the Governor, that they, as well as the rest of us, deserved parks, recreation areas, and green ways, and that they, too, would be included in this.

We would recommend that some specific language be added to assure a minimum amount be dedicated annually to those urban purposes. And the language suggested earlier today by the Essex County Executive seems to us to be a reasonable way to go and worthy of consideration.

Our next concern is with the Garden State Preservation Trust. And we have no problem establishing a trust body to handle the financial

aspects of this effort, but it becomes another layer of bureaucracy when it has the power to review and delete projects from an approved list, even if that deletion is for one year, and then there is a process and we go on again. Nevertheless, this power is granted to a body that consists almost entirely of political appointees. We approve of cabinet officers being on this body, but none of the political appointees is required to be knowledgeable in soils, in environmental matters, in historical values. And yet they have the authority to override those who do.

The three programs establishing the project lists are all qualified personnel with establish criteria for the selection of these awards. To give, in essence, even temporally, veto power to a political body not elected and not answerable to the public seems to us an unwise delegation of authority. That authority belongs with you, the Legislature.

The public, in fact, appears to be omitted from the process. There is no requirement for public participation or public input at any point in the selection process. The one point where they can be heard is when the Garden State Preservation Trust wishes to alter the allocation of funds. One public hearing is required then; after which they may do as they choose.

We applaud the Assembly amendments that specifically made this body subject to the Open Public Meetings Act. We hope that the Senate will at least do the same.

In addition, you have heard from others we concur that the freezing of property values by using the zoning in place at the time of the November vote is unprecedented. This is not fair market value as we have known it. In some cases, the owners will be discouraged from becoming the

willing sellers required by the law, and in others the citizens would be at a disadvantage and the funding might not go as far. We believe the current practices establishing fair market value worked well and see no need to change.

Finally, the mention of Pinelands Development Credits. We applaud the intent of retiring these credits permanently. But the fact remains the credits are a result of Pinelands Commission actions, and it seems to us more appropriate to let the commission who developed them decide what action should be taken in their regard.

As I said when I began this, we thank you for this opportunity to appear here today. We thank you for going to the voters and letting them have their say in November. And for more than 10 years I would point out that my organization has been advocating a stable source of funding for these purposes. You are providing it; your efforts are appreciated, and we thank you.

SENATOR BARK: Thank you.

Yes, Senator Allen.

SENATOR ALLEN: Thank you, Madam Chair.

You speak about a minimum amount for urban areas.

MS. CURTIS: Yes.

SENATOR ALLEN: If you had your way, what would that number be?

MS. CURTIS: I believe the County Executive from Essex was here earlier, and he mentioned perhaps setting aside \$10 million per year for each of the 10 years that the Trust will be in effect. And that would seem to us to be a minimal amount certainly, but I think it would be reassuring to the urban areas who did strongly support this effort along with the rest of us.

SENATOR ALLEN: Thank you.

MS. CURTIS: You're welcome.

SENATOR BARK: Are there any other questions? (no response)

If not, thank you very much.

MS. CURTIS: Thank you.

SENATOR BARK: Bill Dressel.

WILLIAM G. DRESSEL JR.: Thank you, Madam Chair. You have a copy of my statement before you, and I will be as brief as I possibly can.

My name is Bill Dressel, Executive Director of the State League of Municipalities. The League Legislative Committee supports in concept S-9. We believe that this legislation will go a long way in addressing the wishes of the citizens who overwhelmingly approved last November's Open Space Referendum. However, we are offering the following changes which we believe will strengthen the bill.

First of all and foremost, different twists to the allocation. We believe that the bill should contain an allocation of \$100 million over the 10-year funding period for urban municipalities. An aggregate allocation, rather than a specific year allocation, will offer greater flexibility and planning in development projects.

As I sat here and heard the testimony with regard to the urban aid discussion and the set-aside for urban communities, I noted a little contradiction here going on -- is that in the bill as it presently exists, there are already set-asides. There are specific allocations to farmland, the State, local, and nonprofit acquisitions. And it seems me as an organization that represents 566 municipalities we either do it one way or we do it the other. You either

have allocations, specific allocations, set-asides if you will, or you don't. I think you may want to keep that in mind. And I think a third-- We came up with a third is about \$350 million over the 10-year period, and we came up with \$100 million figure. But again it's not for a specific year, it's in the aggregate, and we think that that would be the better way of allocating the monies.

We believe that the November 1998 zoning date in Section 26 -- we think it's an arbitrary date -- for value violates the well-established principle that public lands have to be purchased at fair market value. Our land-use attorneys advise us that this artificial date will not sustain a court challenge, but think about that. Think about the delay that it is going to cause when you are contesting that date in court, and think about the lost opportunity that is going to result from that and that you are going to lose land that you would have normally had. So we would strongly urge that November date be stricken.

We also support the -- I won't get into a lot of details, since it was made by previous speakers. But the bill should be amended to require the Garden State Preservation Trust to operate under all the provisions of the Open Public Meetings law, the Sunshine law, just as other bodies that have the power to spend public money.

The provision allowing the Garden State Preservation Trust to delete projects from the list provided by the Department of Environmental Protection, the State Ag. Development Committee, and the New Jersey Historic Trust should be eliminated. The Legislature traditionally has had that ability, and the State agencies are the professionals. They use their knowledge

and expertise to develop project lists based on priority systems. Allowing the Trust to delete projects takes it beyond its proper financial role and injects them to programming determinations.

Lastly, I heard Commissioner Shinn mention it and I support it. What he said wasn't as adamant as I am, but the bill should be amended to allow nonprofit organizations to obtain funds for farmland preservation in Section 37. The goal of acquiring \$500,000 acres of farmland over the next 10 years is ambitious and reflects a significant increase over current preservation acreage, and we'll have a much better chance of reaching that goal if every agency is part of that process.

Again, thank you for your time, and if you have any questions I will be glad to address them.

SENATOR BARK: Thank you.

Is there anyone who has any questions?

Senator Schluter.

SENATOR SCHLUTER: Thank you.

Mr. Dressel, you object to the November 3rd, 1998 date for the evaluation date, and you talked about members of the League of Municipalities -- your planning people, a number of them whom are very, very distinguished as attorneys in land-use law. Are you saying that it is their considered opinion that this would not stand legal challenge, that this would be constitutional defective as an appraisal mechanism?

MR. DRESSEL: That--

SENATOR SCHLUTER: Or are you saying that there would be challenges as to the amount of the appraisal?

MR. DRESSEL: I guess the date specific as determining the value that they say -- that they have advised me in our review yesterday of this particular bill that they do not think that that would hold up under a court challenge. They think that a fair market value would be the predominate determinate. And they indicated to me that is troubling.

SENATOR SCHLUTER: Thank you.

SENATOR BARK: Thank you.

Anyone else? (no response)

If not, thank you very much, Mr. Dressel.

Jeff Tittel from the New Jersey Sierra Club.

JEFF TITTEL: Thank you, Madam Chair. I will be brief because many people in the environmental community has addressed a lot of the issues that we are concerned about.

The New Jersey Sierra Club, being part of the nation's oldest and largest conservation organization, you know, has greatly supported the constitutional amendment for open space. And now we are into the implementation, we are greatly concerned. There is a memo that I passed out, and hopefully you can just take look at that, and I won't go into that much detail.

But there are six areas-- In a 60-page bill, it's not that bad, but the six areas we feel really demean and diminish the importance of this legislation and take away from the voters' mandates. We are very much concerned about the freezing of the zoning not only because we think it is arbitrary and takes away from fair market value. If a town does proper planning and does its master plan and as a result of that there is new zoning that protects

environmentally sensitive features, they should not -- or the state shouldn't be penalized when the land comes up for acquisition.

On the other side, if a town has also changed its zoning from residential to commercial or has up zoned a piece of property from two acres to one acres or what have you, it will make acquiring that property almost impossible because under State law you buy land based on the appraised value, and you can't really go above that appraisal, but now if the zoning has changed and it has raised the fair market value higher than the appraised value, why would that property owner sell unless he's going to-- It would make no sense. It's sort of a form we've taken, and we are really concerned about that.

We support the Governor's Council on the Outdoors and everything in that report. We are concerned that there has been a shift of monies away from an urban program and an urban set-aside. If you look at the formulas that were set up in the Governor's Council on the Outdoors, it compared to this legislation. There was a shift of about \$100 million away from municipalities towards farmland, and we are concerned about that. We are also concerned that the lack of an urban set-aside because those are the types of monies that can be used for that.

Getting into the issues of the Pinelands Credits, we just feel it doesn't belong in this bill. Assemblyman Gibson has a bill that we would support. The whole issue of the Pinelands Credits was never part of the Governor's Council report, it was never part of a campaign last fall, and it's really come out of the blue in the last few weeks. And we don't believe it belongs here.

We support buying land in the Pinelands. To go out and acquire land there is no problem that this money should be accessed. But to put money into the Pinelands credit system, as well as to use a formula to artificially raise the value of Pineland Credits, we don't believe belongs in this legislation.

We are also concerned that under how this legislation is set up that the monies for Pinelands Credits can also be accessed from open space. When listening to the testimony from those who support it, it talks about a farmland program to buy the credits. But yet it also-- You can access it from Green Acres, and we feel that it may take money away from other areas of the state and other programs. I know that lands should be acquired. I think the overlying concern is that if we have mechanisms within this legislation that overvalues properties or takes money from one to the other, it takes away money from where it should be going. And how can you explain to someone in the city that the money for their playground went somewhere else or to a town that says the money that you need to buy that track of land went somewhere else?

And the whole purpose of this legislation is trying to maximize the return of the taxpayers on buying farmland and protecting open space in the State of New Jersey. And that's what the bill should be about, and that should be the charge of the Legislature, to maximize the taxpayers' return, because we are talking about a lot of money here. We don't want to see one nickel wasted, and that's really a concern that we have.

We are concerned about the set up of the Trust. We think that the ability to hold back projects will send a bad message to the agencies, and

they won't come back with those projects if they are held up one year. We are also concerned about it not being under the Open Public Meetings Act or the Assembly version that dealt with that, and hopefully you will also do that. And we are also concerned that -- who will be appointed to this trust. We don't want to-- We want to see people on there who have skills and knowledge of preserving land and open space in the State of New Jersey and not just appointments for whatever sake or reason they might be.

And in closing real briefly, we would like to see this legislation go forward, but we also need to see changes in the bill to fully get behind it and support it because we are concerned that it will take away from the importance of this legislation. It's not just for now, but it's for future generations. And you have to look at this in a five-, ten-, and thirty-year history, and we want to try and save as much land as we can, and we don't see any monies wasted.

Thank you.

SENATOR BARK: Thank you.

Are there are questions? (no response)

If not, thank you very much, Mr. Tittel.

David Ferrucci.

MAYOR DAVID FERRUCCI: Good afternoon.

SENATOR BARK: Good afternoon.

MAYOR FERRUCCI: Thank you for giving me the opportunity to speak with you today on this very important issue. My name is David Ferrucci. I'm a third-generation farmer from Franklin Township in Gloucester County. My father and I own Ferrucci Nurseries, a 250-acre grower of ornamental plants. I also currently serve as Mayor of my community. I live

in a county that is being overrun with suburban sprawl, that is way behind the preservation efforts that I've seen in other counties like Burlington, for example. But I'm here today in a role as an advocate for controlling growth and as a farmer.

Pinelands farmers have been effectively shut out of the opportunity to participate in the Farmland Preservation Program. Including Pinelands land in the mainstream of farmland preservation is critical. I can tell you Pinelands farmers are not wealthy land speculators, as has been alleged by some. To the contrary, they've been stewards of the lands for generations. They're farmers, nurserymen, orchardists, and dairymen, not speculators.

In my 56-square-mile community, about one-third of the land is in the Pinelands. We're a semirural town with few rateables. We cannot afford to protect all the open space that needs to be protected, and I do fear municipal down zoning as an acquisition tool. I can see that happening in other communities. I don't believe it's fair to artificially lower the value before pursuing acquisition, and that won't happen in our community, but I could see it happening elsewhere.

As a local elected official, I'm very close to my constituents, and they've told me that they agree down zoning prior to acquisition is fundamentally unfair. We could argue whether down zoning is a taking constitutionally. We can debate whether or not the November date is going to pass legal muster. But there is no question that down zoning before an acquisition is ethically and morally bankrupt.

The most important thing I can tell you and I'd like to leave you with today is that in our town -- the Pinelands portion of town is developing

just as quickly as the non-Pinelands portion of town, and it needs and deserves a permanent stable funding source to protect it for perpetuity.

Thank you.

SENATOR BARK: Thank you.

Are there any questions from anyone? (no response)

Thank you very much. I appreciate your being here.

Michele Byers and David Moore from the New Jersey Conservation Foundation.

MICHELE S. BYERS: Good afternoon. Thank you very much for having us. I'm Michele Byers, New Jersey Conservation Foundation Executive Director; and with me is David Moore, who is the Senior Advisor. We did submit written comments which you have, and I won't go through those, but I will summarize as briefly as possible our position.

I want to let you know that we do fully support the legislation and thank you very much for this really great opportunity for the future of New Jersey to have this kind of program in place. We truly are leading the rest of the country. I just want to let you know and thank you. I also want to thank Secretary Brown for his earlier comments supporting the nonprofit participation of the Farmland Preservation Program.

We at New Jersey Conservation Foundation have a 40-year history of working in land conservation in New Jersey, and one of our specialties and one of our major commitments is to farmland preservation. We look forward to being a full player in the next 10 years in saving farmland in New Jersey, and this will be a really great opportunity for the nonprofits to do that. And

I urge you to make sure that the Senate version of Senate Bill No. 9 includes that provision.

We do have a couple of concerns about the bill, and I'll run through fairly quickly. One is to reiterate the past comments we've heard today of just how important it is to have an urban set-aside in the bill. Preserving open space in New Jersey goes hand in hand with urban revitalization. There's no question about it. Making urban places in New Jersey and suburban places a nice place to live means having open space, means having good, functioning parks, beautiful places to walk, and recreational open spaces.

There was recently a poll conducted by the National Trust for Historic Preservation that indicated across the country one of the reasons people are leaving urban spaces in addition to concerns about crime and school education is also to get closer to environmental and open space resources. And of course, when that outflow into the environment, of course, destroys the very resource that people want to get close to, so the more that we can make sure New Jersey that we provide those kind of amenities, open space amenities and urban places, more will go to the heart of saving our cities and our towns.

So this set-aside is something that was in the Governor's Council report. There's a lot of support for it around the state. We do have an historical precedent for it in past Green Acres bills, and we strongly urge you to put that in the legislation.

The issue that everyone's been talking about today in terms of basing value on November 3, 1998 zoning is one that is of great concern. And there are three reasons for that, some of which have been already discussed.

One is the possible constitutionality or legality of it, and we urge you to take a good, hard look at that. I think the Attorney General's Office may have been asked to look into, I'm not sure, but we urge you to do that.

The other problem with it is the practical effect. What will it actually look like on the ground and/or play out? How will it play out for landowners? How will it play out for government agencies? We have a very big concern about that. Municipalities in New Jersey have the ability to come up with good, sound land-use planning based on the Municipal Land-Use law. We are a strong home rule state. Municipalities go through a constant and required review of their master plans every six years and have to take into account changing circumstances, changing needs of their communities. It may very well be that towns decide to increase density or make changes in their zoning that would have the effect of adding value to lands over and above what the zoning might have dictated in November of 1998.

Lots of towns now are looking at residential use as a hindrance, and they're looking at the cost of providing schools and educating children, and they're looking at other rateables -- industrial, retail, office, commercial -- so that it may not be unlikely for municipalities in the coming years to go from residential zoning into an industrial park zoning or a commercial zoning. And there is a huge difference in value between both of those zoning, and that could have the impact of really hurting values and in hurting the ability of public and nonprofits to work with landowners on fair systems. How that plays out could be very problematic.

The workability is the third concern. We have, right now, a program of appraisals for the Farmland Preservation Program and the Green

Acres Preservation Program that is a time-consuming process. For anyone who's worked in those Programs, you know what it's like to go through the appraisal process. Adding in a provision to link back those appraisals to an artificial date in the past is going to add another whole problem in terms of workability of the Program. How will the comps be found to come up with any sort of a value based on the past?

I think the appraisal of a community ought to be asked to take a look at that. I think that it could end up being a very expensive and very unworkable issue for the Programs to go forward. And finally, it's just in terms of equity. I think our concern is that it may not really provide the kind of equity that the Program does now, which are using fair market value appraisals based upon current conditions. It's a level playing field right now, and adding something like this throws that level of playing field out of whack.

The other concern we have is with the Garden State Preservation Trust having ability to delete projects. I think right now we have a process that works fairly well. It does get political from time to time, but that level of political disruption has been fairly minimal. Adding the ability of the Garden State Preservation Trust to delete and then have the effect of actually delaying projects could further politicize the process, and that's something that we don't think is a good idea. And in addition to that, you heard already about how the delay of a project could hurt an historic preservation application based upon all the work that they put into getting costs and all their estimates at a certain date. The same thing applies with land, except maybe in a slightly different way. Lots of time land is threatened, and the only way to get a piece of land protected is through acquisition. It is a time factor, a very important time

factor, and a delay of a year, or even a month in some instances, could make the reason for the loss of that land to be acquired. So we would urge you to take that provision out and not have that kind of an ability to delete projects.

Lastly, the Pinelands Development Credits. The concern that we have there is not with the ability to buy Pinelands Development Credits in the Pinelands. That, I think, is something that can happen now, and it should be able to continue. There is a problem with the ability for Pinelands farmers to participate in farmland preservation. There's no question about it. I think our concern with the language that's in the bill right now is not clear. Again it gets to: how is that going to play out? Is that really going to solve the problem?

There are ongoing efforts outside of this bill through Gibson's bill and through discussions, and I think that that is a better place to deal with this issue rather than have it in the bill. So we urge you not to include it in the bill.

SENATOR BARK: Thank you.

Mr. Moore did you have any additional comments? And if so, I'd ask you, please, don't go over the same issues that Michele discussed, but to address other issues. I think she explained them well and certainly gave us enough information on those particular issues, but if there are other things you would like to address, fine.

DAVID F. MOORE: Thank you very much. She certainly did, and I agree with you.

Only one or two minor additions to what she said. And that is that with the provision, the 1998 date provision, one thing bad, and that is it has the potential of delaying or killing the Program in the long run simply through not having enough money to pay for increased value. So there's the

chance for these provisions to be arbitrary and inappropriate, and I would urge your consideration on that.

Other than that, we thank you very much.

SENATOR BARK: Thank you.

Are there any--

Yes, Senator Schluter.

SENATOR SCHLUTER: Thank you.

With regard to the appraisal date of November 3, 1998, it was testified to before by the League of Municipalities and the attorneys representing the planning groups with municipalities that might be unconstitutional. It was also testified that that would not really be a problem because of the laws against spot zoning. So the question of whether it's necessary has been raised.

But, Ms. Byers, you raised a concern. It's my understanding that the value would be for property, which might be acquired, would be November 3, 1998, and you raised the situation -- raised the conditions where that property might be higher in value and might have a greater value than several years hence then November 3, 1998. It is my understanding that it would have to be purchased at the November 3, 1998 price. Is that correct?

MS. BYERS: That is my understanding.

SENATOR SCHLUTER: That is what I understand. Now, would that not discourage the acquisition of some parcels because the owners would say, "This is worth a lot more. I'm not going into the Program"?

MS. BYERS: Well, exactly. I think that's one of the major concerns that we have is that it would discourage or could discourage

landowners from participating because they wouldn't get as much money as they would under current zoning at that point.

SENATOR SCHLUTER: Thank you.

SENATOR BARK: If there are no other questions-- (no response)

Thank you very much.

Jon Holt.

Before Mr. Holt addresses us, we seem to have several common themes that everybody is talking about, certainly the November 3 date and some other -- the 10 percent. And I think that basically you can just say, yes, you're in favor of them or, no, you're not. We've heard an awful lot of arguments, and maybe we can really get to everybody in a more expeditious fashion if we could kind of curtail our remarks if you would, please.

J O N H O L T: Thank you.

We do have a couple of issues that pertain to utilities that may be a little different from what you've heard earlier.

SENATOR BARK: Yes.

MR. HOLT: My name is Jon Holt, and I represent the New Jersey Chapter of the National Association of Water Companies, and I have with me Adele Jones (phonetic spelling), from New Jersey American Water, and John Cavello (phonetic spelling), from United Water Company. We will make our statement brief. We did hand out copies, and we did send to your legislative offices copies of our comments.

SENATOR BARK: Thank you.

MR. HOLT: We do have a couple of issues particular to the utilities. One is land donation access. Water companies have a lot of reservoir

property, watershed property. It is our understanding that under Green Acres, public access is required. However, sometimes public access doesn't really do well with watershed properties, especially with drinking water supplies, and we would like to have the ability of the Commissioner to be able to make a decision as to whether public access should be deeded in those cases on watershed property, and we suggested some language for that.

On utility easement approvals, right now, as we go through the process of having to, perhaps, repair or replace water pipes and conveyances, we must go through the easement process which ends up going to the municipality getting their approval if this is dealing with properties that have been purchased under State funds under Green Acres or Farmland Preservation. And then we need to go through the process of going to the municipality, getting their approval to go to the Green Acres, and then go to the State House Commission for final approval. And it's a very long process involving a lot of delays, especially for routine utility business. Many times these easements are just temporary easements because we need to have an access way for construction equipment, and we need to temporarily have an easement. And then after the pipe is repaired or replaced, we put back the property to its original state.

So we would like to find some way in the Green Acres and Farmland Preservation Programs to address this issue so that there could be a routine process for approving utility easements and, perhaps, amending the convey/conveyance language to exclude public utilities under the Public Utility Act. Again, it's to streamline the process through this legislation, which we wholly support, and we support the open space. As a matter of fact, one of the

presidents of our member companies was on the Governor's Council for the Outdoors.

By putting a million acres into this open space, we're just going to run into more and more issues where we're going to be going on property that has been funded with these open space funds and will require all these easements to go through the State House Commission process. And since they meet quarterly, it really does delay that.

The other is the pilot program, the local payment in lieu of taxes. We have a particular issue in some cases where we have a public-private partnership, and we would like to have that included in the pilot program. And also, it's an issue that--

Senator McNamara, I know you just introduced legislation, S-1960, related to this issue of in lieu of taxes. We would like to have some amended language to address the public-private partnership parcels.

We also do have some recommendations on eminent domain. We'd like to see that at the local and county level as well on the prohibition. And then on the zoning status, the November 3 date, we have some language on that, but I know you've talked about that already, so we won't go into all that issue.

SENATOR BARK: Thank you.

Did either one of you wish to speak? (referring to other people sitting at witness table; no response) You're just here to show support. Thank you.

Is there anyone on the Committee who would like to ask any questions? (no response)

I am aware that in current deed-restricted farmlands at this point it is difficult because you have to go through that process. And I think that farmlands, if I remember correctly, it actually takes a decision by the Governor's Office.

MR. HOLT: Right.

SENATOR BARK: By the Governor, I believe it says to utilize any deed-restricted farmlands. And I think that's a good issue, and I'm glad you brought it to the attention of this Committee.

Thank you very much.

MR. HOLT: I would just like to add to that that what's added to that frustration in that process, perhaps, could be that the AG's Office just came out with an opinion where it's not quite certain who has the power even to grant the deed restrictions, and that should be clarified through this process, hopefully.

Thank you.

SENATOR BARK: Thank you.

Carleton Montgomery.

C A R L E T O N M O N T G O M E R Y: Hello. I am Carleton Montgomery. I am the Executive Director of the Pinelands Preservation Alliance, or PPA. We are a nonprofit membership organization devoted to preserving the natural and cultural resources of the New Jersey Pine Barrens.

The members and the trustees of PPA are very pleased that the Legislature is moving forward with this bill, and we're very supportive of the bill, but there are a few points that we'd like to take up where we have concerns.

We are uniquely fortunate in the Pinelands because we have a regional planning system that has planned for growth and economic prosperity while simultaneously protecting our most important natural areas and our rural communities. But as others have said, and I hope it is now universally understood, it is important that farmers and other property owners in the Pinelands be able to participate and be incentivised to participate in the Green Acres and Farmland Preservation Programs because only these Programs bring permanent protection for land and for farming.

The Pinelands Development Credit Program was designed in order to help, as one means, to protect land permanently by allowing those in the most protected portions of the Pinelands to sell development capability to those who want to build in the regional growth areas. There is broad consensus that the Program is not working as well as hoped because of two things, particularly in the farmland area. First is that the price has not been as high lately as had been hoped, and the second is that the Farmland Preservation Program is using the price of PDCs as a method to value farmland for the Farmland Preservation Program.

Putting those two things together, farmers have not had sufficient incentive to participate in the Program. The goal of improving those incentives is very important, and it's very laudable, and we support it strongly. However, we have a number of concerns about the particular mechanism that's currently built into the bill. Under this bill, the value -- the nonmarket value that the Farmland Preservation Program will put on PDCs for their own valuation purposes is we think inevitably going to effect the price of PDCs for all buyers

and all sellers whether they participate in this particular Program or not. It's going to set a benchmark.

In this way, it's going to interfere in a very important program based on market mechanisms that is part of the Pinelands Comprehensive Management Plan. That issue is complex, and we think it should be addressed through a more deliberative process with the Pinelands Commission, which has expertise in the area. I think one possible, one partial solution to this situation and to sum up the objections -- I won't say all, but some of the objections that have been raised to these provisions -- is simply to eliminate reference to PDCs in the bill, provisions on the Pinelands, and instead to direct the Department of Agriculture in particular to look at the factors that the bill lists in valuing farms in the Pinelands for Farmland Preservation purposes. This would have the virtue of applying the farms that were never allocated PDCs because they weren't in a particular management area of the Pinelands; and it would have the virtue of not using PDCs for a purpose that they were not designed to serve. They were not designed to serve as a measure of the value of the owner's own land. That's obvious because they're a commodity having the same price everywhere no matter where your land is.

So this is one suggestion that I think might alleviate, if not eliminate, some of the concerns that have been raised and, yet, achieve the purpose of giving the Department sufficient flexibility to meet farmers' demands for price in the Pinelands.

We're concerned about any rule which is going to disassociate, and explicitly disassociate, the price of land for public acquisition from fair market value, some measure of fair market value. We think that linking the

acquisitions to PDC prices does that. It disassociates from fair market value. We also think that the November 3, 1998 date disassociates acquisitions from fair market value, and we see that as a dangerous precedent that creates all kinds of largely unintended consequences down the road.

And finally, I'd just like to join with other conservation groups in urging the Legislature to put the allocation for urban open space from the Governor's Council back into the bill. We do think that's important for acknowledging the broad support that the referendum received. And we also would like to urge the Legislature to require that the Garden State Preservation Trust operated under the Open Public Meetings Act and remove the Trust, admittedly limited, veto powers that are currently in the bill. All of these measures we think are important for bringing broad support and trust in this bill.

I did submit somewhat more detailed comments, but I think that summarizes what our principal points are.

SENATOR BARK: I appreciate the summarization.

Are there any questions of Mr. Montgomery?

Yes.

SENATOR ADLER: I'm trying to understand what PPA is suggesting and how to reconcile that with the Farm Bureau's very legitimate testimony earlier about making sure the Pinelands farmers get compensated in some way, as clearly the market or the mechanism that was implemented over the years has failed. It just isn't really getting to those people. So I guess I'd like you to go over it one more time so I get it. I want to get back to what Mr. Furey and the other gentlemen were talking about and try to mesh your

legitimate goals with the legitimate interest of the landowners that have this essentially valueless PDC -- to make it work for them but to preserve that land not by statute, but by acquisition the way that would make it permanent.

MR. MONTGOMERY: I think we do share the same objective, and we share that objective with the Pinelands Commission, in light of Bill Harrison's comments, that the difficulty seems to arise from the Farmland Preservation Program using a measure of value -- the price of the given farmer's PDCs in the valuation of that farmer's land. That tends to lock the valuation of a particular piece of land into the price of a commodity on the market, which is the same whoever owns it. It happens to be that that price is relatively low lately. It's still real, but it's lower than people hoped.

Even if it were higher, as Mr. Harrison pointed out, that's not necessarily going to solve the problem because 10 years ago the price was much higher and still Pinelands farmers were not participating. The key seems to be to unlock what the Farmland Preservation Program can do in valuing Pinelands lands from the market price of PDCs or other constraints that are limiting what they feel they can provide to farmers and, instead, to give them the ability or direct them to consider the factors necessary to meet the farmers' economic needs to enter the Program.

My only suggestion is if you-- You might keep the factors that are in the bill but simply say it has nothing to do with PDCs because there's really no reason the PDCs should be setting the price for a particular piece of land or the development rights under it.

Have I made that at all clear?

SENATOR BARK: Did you get your answer?

SENATOR ADLER: I think--

SENATOR BARK: I think you have to maybe put this side by side not only with Peter Furey's testimony, but also the Pinelands Commission testimony as well, and maybe look at it in that fashion because PDCs are the development credits, which if you go outside the Pinelands, you're also dealing with development credits. They're not Pineland Development Credits, but they are, in fact, development credits. And I'm not sure how you totally divorce PDCs from the entire Program. I think what is proposed and I think the fact that Bill Harrison's testimony indicated that the Pinelands Commission could work with what is in the bill to appropriately deal with that issue is what I'm looking at.

SENATOR ADLER: So I guess, Mr. Montgomery, knowing where the Pinelands Commission is going, what could you suggest we do to make it viable to accomplish your legitimate preservation goal and legitimate compensation goal of the Farm Bureau and the Pinelands farm owners?

MR. MONTGOMERY: Well, I do think the approach I'm suggesting will do that almost entirely. One piece that's in the bill now that is very important is that it says, when the Farmland Preservation or Green Acres Programs acquire land or easements from people that have PDCs, the PDCs will be permanently retired, meaning that they will no longer be on the market. It's a way to reduce the potential supply and, thereby, hope that over time it will by normal market forces increase the price. That's an important measure. That should definitely stay there regardless of my suggestion.

Thank you very much.

SENATOR BARK: Anyone else? (no response)

Thank you very much.

Russell Franceschini, and I hope I have pronounced that correctly.

RUSSELL FRANCESCHINI: Thank you, Madam Chairperson, and Committee members, and you did get my name very -- almost perfect, and that seldom happens.

I'm a farmer from Atlantic County with my two sons. I am also Chairman of the County Ag Development Board, and I appreciate the opportunity I have to speak to you this afternoon. I would like to say we have a little over 2500 members in our County Board of Agriculture, which most of our land that is farmland in our county is in the Pinelands -- probably over 90 percent. I appreciate this opportunity because we support this bill completely. We specifically support the bill because we finally have gotten mention pertaining to the farmlands because we felt this issue has never been addressed before, and our concern is equity. But mainly, I think our concern is the fact that most of our farms in the Pinelands are not permanently preserved now. It's just down zoned which is causing sprawl development in our areas, and we're losing valuable farmland because we're getting -- our zonings are 10 acres to one house to 39 acres to one house. We're losing vast amounts of farmland because of that down zoning and plus the fact that we could not fairly participate in the Preservation Program because of the setup of the PDCs that you have heard about earlier, and I won't go into that.

But with this bill, it has addressed these issues. We feel that we can now participate in this preservation program. We can take farms in the Pinelands and have them permanently preserved. That has not happened in the past. In Atlantic County, we have one farm that has been preserved in the

Pinelands. We were very concerned about that, and we watch many farms in our area that have been developed in this sprawl fashion. And with the completion of this 10-year program with a million acres being preserved would -- most of it be preserved outside of the Pinelands. And we are only down zoning, and we are not preserved. Farmers can then sell their land to be developed, and that's what we're concerned about. We don't see any possibility of preserving our land with the system that is in place to this date. But with this bill, we appreciate this opportunity and the wisdom shown by the people who are sponsoring this bill and the people who wrote this bill to understand equity is always an issue. But as a lifetime farmer, and I have two sons in the farm, we want land to be preserved as farmland around us because we cannot farm land with housing developments wrapped around four sides of us, and that's our fear.

I thank you for the opportunity to speak to you.

SENATOR BARK: Thank you.

Anyone -- any questions? (no response)

If not, thank you very much, sir.

I would like to announce that the Coalition for Affordable Housing had signed up to testify. They were unable to stay, but they have left testimony.

Andrew Bondarowicz. I don't know how I did on that one, but I hope I didn't do too badly. (referring to pronunciation)

ANDREW BONDAROWICZ: Good afternoon. I would like to thank the Committee for giving us the opportunity to speak before you today.

My name is Andrew Bondarowicz. I'm the Legislative Director for the New Jersey Association of Counties.

Senator Bark, I think you do better than most people on last names, so I commend you on that.

SENATOR BARK: Thank you.

MR. BONDAROWICZ: The Association of Counties is in support of S-9, but there are a few concerns that we would like to see addressed in the bill. First, the urban set-aside, I think, was addressed in depth by a number of speakers including one of our members, Essex County Executive Jim Treffinger. We would like to see that included, as well as a provision to allow for indoor, as well as outdoor, recreational purposes as well.

One of our chief concerns, though, is the payment in lieu of taxes provision. There's a provision made for municipalities, but we're concerned to the extent that many counties will also be impacted by this, and there are no provisions in the bill that address this. In certain counties where numerous municipalities would be receiving funds from the Trust, the cumulative effect in these counties can be rather substantial. And as the bill states to the extent that municipalities would not suffer the loss of taxes, this would have a negative impact on the county property tax base, while the municipalities would be protected by the in lieu of taxes provisions. We would like to see some measure to address that. Those provisions would be contained in Sections 29 and 30. I think in our statement which we distributed before, I think it says 28 and 29.

Also, in Section 23, we would like to see some changes to provide for advance appropriations of allocated monies, not only reimbursement. This

allows counties and other local units to also be proactive in preserving lands and not necessarily awaiting funds to be distributed after action has already been taken in that this allows us to be more proactive to that regard.

As I have stated, NJAC is in full support of this bill. We would like to see some of these issues addressed, and I'm open to any questions.

SENATOR BARK: Thank you.

Anyone have any questions? (no response)

If not, I thank you very, very much.

MR. BONDAROWICZ: Okay. Thank you.

SENATOR BARK: Sally Dudley.

SALLY DUDLEY: Good afternoon.

SENATOR BARK: Good afternoon.

MS. DUDLEY: I'm Sally Dudley, and I'm the Director of the Association of New Jersey Environmental Commissions. You have my written statement which I will try to summarize. I applaud your strength in staying here this long on this very important topic. I am here to represent New Jersey's 350 environmental commissions. Our 2100 members applaud the support that you, the Governor, and the voters have shown for open space.

We have been working with environmental commissions actively to get a stable source of funding in place for more than 10 years, and commissions have led many of the efforts to establish open space taxes in the 92 municipalities that now have them. ANJEC and many of our commissions worked hard on the campaign to get the referendum in place last fall.

We support this bill, but we believe that it can be strengthened, and all of my comments echo those that you have heard before, but I just

would like to go on record, so you know where we stand. First of all, there are two amendments that were made by the Assembly that we support. One is to allow nonprofits to participate in the Farmland Preservation Program, and the other is to require the Garden State Preservation Trust to operate under the provisions of the Open Public Meetings Act.

There are three other concerns that we have. One is that we believe there should be a specific allocation for urban aid municipalities of \$100 million over the 10 years of the bill. Second, the issue of the appraisal date. You've heard many arguments why November '98 is -- setting the appraisal date there is not a good idea. We agree that it is not a good idea, and I just want to reflect something. There seems to be a belief that municipalities will down zone properties for preservation.

I was at a meeting of municipal officials yesterday. I also serve on my own town council. This was officials from around the state, and there was one there who felt very strongly that municipalities would up zone in order to make land more valuable for the mayor's friends so that they could get more money out of Green Acres. So I think there is two sides to that issue, and I urge you to look very carefully at it.

And finally, we oppose the provision allowing the Garden State Preservation Trust to delete projects, delay their implementation for a year. I think we'd lose too many, especially in the land acquisition business if the money is put off for a year. Chances are, you're not going to get it, and that would really harm our ability to reach that million-acre goal.

I thank you very much for your consideration.

SENATOR BARK: Thank you very much.

Is there anyone who has any questions? (no response)

If not, thank you. I appreciate the summary.

Philip Correll.

PHILIP G. CORRELL: Thank you. I'm Philip Correll, a resident of Salem County and a Trustee of the Salem County Historical Society. Although I come to you today as a private citizen concerned about the protection of the State's historic resources, in principle I fully support the concept and intention of the proposed legislation. And, in fact, you and the citizens of New Jersey should be applauded for your leadership and vision in the effort to preserve open space.

The legislation confirms that the citizens of New Jersey support both the preservation of open space and the protection of the State's historic resources. Unfortunately, and this is where I have a problem, both the legislations has written, "and the current practice of open space preservation have the unintended consequence of sometimes threatening the State's legacy of historic resources." In Salem County where I live and in other counties as well, open space is often being preserved not in parallel with historic resources, but at the expense of historic resources. This threat to historic resources is already serious and real but would be increased exponentially under the State's plan to protect an additional 1 million acres of open space.

Let me explain the problem. The State through the Green Acres Program seeks to purchase land for its open space, wildlife habitat, or recreational values. Much of the land consists of farms, and many of those farms include historic houses, barns, and other structures from the 18th and 19th century similar to the view you see in the painting in back of this room.

Most of these structures are not on the State or National Register of Historic Places because they have never been evaluated or submitted for consideration. Thus, they have no automatic review or protection from actions of the State. The property in these purchases is often being evaluated primarily for the value of the land. In many instances, the presence and value of buildings is considered inconsequential.

I can cite several examples in Salem County of properties that have been purchased through Green Acres in which there was no awareness by the State that houses or other structures were historic in nature. By the time the local community becomes alerted to the situation, it is often too late. Suddenly there is an historic house now on State land that can no longer be subdivided out easily. It becomes subject to neglect and inadequate maintenance by the State. It sits empty and is vandalized, and it may ultimately be lost in passive neglect.

Even more distressing are situations where landowners are asked to sign demolition escrows that require the owners to demolish and remove buildings as part of the sales agreement with the State. This demolition can occur with no evaluation of the structures by the staffs of the New Jersey Historic Preservation Office or New Jersey Historic Trust.

It is not the intent of the citizens of New Jersey to have the State's legacy of historic resources sacrificed in the effort to preserve open space. The current situation and the proposed legislation, as it stands, lead to confrontation and opposition between those in the natural resource community working to protect the land and those in the historic community working to protect historic resources. This conflict is unnecessary,

counterproductive, and ultimately destructive in a process where both types of resources deserve balanced consideration and where both communities agree philosophically on the purpose of open space conservation and historic preservation.

The solution is relatively simple but requires you to amend the proposed legislation and the process being used to evaluate open space acquisition. As confirmed earlier today by the representatives from the New Jersey Historic Trust, currently there is no formal involvement by either the Trust or the New Jersey Historic Preservation Office in the evaluation of potential historic resources on land being considered for acquisition through the Green Acres Program.

This should be a no-brainer. Just as natural resource specialists are involved in evaluating the land under consideration, so, too, should historic resource specialists within the State's existing offices be involved at the same time in seeing if there are historic resources that may need special consideration. If it is determined that such resources are present, they can be subdivided out to remain in private ownership or could be acquired temporarily through the New Jersey Historic Trust that already has the authority in its legislative mandate to buy and sell property. If of sufficient merit, these resources could be added to the State's Division of Parks and Forestry as new historic sites.

I realize that not all historic resources can be preserved just as not all open space and wildlife habitat can be saved. In instances where historic resources are identified with the consensus of both the natural resource specialists and historic preservation specialists -- is it a structure cannot be

saved, then the legislation should require that the structure be formally documented to preserve at least an historic record for the future. The current situation is resulting in the loss of historic resources and is creating conflict between the history and natural resource communities.

I ask you to strengthen the proposed legislation to include formal involvement of the New Jersey Historic Preservation Office and New Jersey Historic Trust in the evaluation of property acquired so that the intent of the citizens of New Jersey to protect both is fulfilled as a win/win situation for everyone today and for future generations of New Jersey citizens.

Thank you again for your leadership in shaping and protecting the future of New Jersey. Thank you.

SENATOR BARK: Thank you.

Any questions? (no response)

If not, thank you very much, sir.

Edmund Stiles. Is Mr. Stiles still here? (no response)

Well, I'm sorry we didn't get to him. However, as the hour draws late, it's okay.

Andy Strauss is the last-- Is Andy Strauss still here? (no response)

He also left.

Well, at that point, this concludes all of those people who have, in fact, had a desire to speak to us.

I would also like to indicate that I had spoken to Maureen Ogden. She was not able to be here because she is in Florida helping her 98-year-old mother celebrate her birthday. She did, in fact, however, forward some testimony which will become a part of the record.

I thank all of you for participating in this public hearing. I'm certain that your comments will be reviewed.

It's been a pleasure to Cochair this meeting with Senator McNamara, and I would ask you if you have any closing statement, sir?

SENATOR McNAMARA: I just want to thank everybody for the fact that they gave up one of the most gorgeous days of the year which shows that you have an absolute commitment to the environment because otherwise you wouldn't be here.

It was a great pleasure serving as a Cochairman with my colleague, Senator Bark.

Thank you.

SENATOR BARK: Senator Adler, would you like to make a closing statement? (no response)

Senator Schluter, would you like to make a closing statement?

SENATOR SCHLUTER: Yes. I thank the Chairs for running a very tight meeting and a good meeting. And I am very much impressed by the consistency of the message that we're getting from out there from various sources. The four, five, or six principles are carried forward by every group that really has testified, and I think it has made an impact.

Thank you.

SENATOR BARK: Thank you.

Hearing is closed.

(HEARING CONCLUDED)