P U B L I C H E A R I N G

before

ASSEMBLY COMMITTEE ON CONSERVATION, NATURAL RESOURCES AND ENERGY

To explore additional steps the State can pursue to preserve open lands and provide recreational opportunities

April 11, 1988
State House Annex
Room 334
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Maureen Ogden, Chairman
Assemblyman Joseph M. Kyrillos, Jr.
Assemblyman David C. Kronick
Assemblyman Gerard S. Naples

ALSO PRESENT:

Raymond E. Cantor
Office of Legislative Services
Aide, Assembly Committee on Conservation,
Natural Resources and Energy

Leonard J. Colner
Office of Legislative Services
Aide, Assembly Committee on Conservation,
Natural Resources and Energy

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Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

New Jersey State Legislature
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C. KRONICK
RD C. NAPLES

March 30, 1988

NOTICE OF A PUBLIC HEARING

As previously announced, **The Assembly Committee on Conservation, Natural Resources and Energy** will hold a series of public hearings during the month of April. Unlike the previous announcement, this notice includes specific information regarding the hearing on **April 20th.** The complete schedule for the hearings is as follows:

Monday, April 11, 1988, 10:00 a.m. - State House Annex, room 334, Trenton, New Jersey.

Wednesday, April 13, 1988, 10:00 a.m. - the old Cape May County Court House, Cape May Court House, New Jersey.

Wednesday, April 20, 1988, 10:00 a.m. - Tatum Park, Special Service Center, Middletown, New Jersey.

Thursday, April 21, 1988, 10:00 a.m. - Somerset County Environmental Education Center, Basking Ridge, New Jersey.

The purpose of these hearings is to explore additional steps that the State can pursue to preserve open lands and provide recreational opportunities. The committee is interested in receiving testimony on a broad range of potential land use techniques, legislation, or other approaches to preserve open land.

Due to time constraints oral testimony may be limited to 10 minutes. Written statements and other documents, to be included in the public record, are welcome and encouraged.

Anyone wishing to testify at any of these public hearings should contact Raymond Cantor or Leonard Colner, committee aides, at (609) 292-7676.

(OVER)

DIRECTIONS

Cape May County Court House - Take the Parkway south to Exit 10 (the second light). Make a right off the exit. Go to the first light and make a left onto Route 9. Go about 2 to 3 blocks. The old court house will be on the left hand side. It is a white and gold building. (609) 889-6500.

Tatum Park, Special Service Center - From the north, take the Garden State Parkway south to Exit 114. At traffic signal off the ramp make a left onto Red Hill Road. Continue to second traffic signal and turn left onto Van Skhoick Road. At the next traffic signal, make a right onto Holland Road. The entrance to the Special Service Center is on the right approximately one mile down the road. From the south; take the GSP north to Exit 114. At traffic signal off the ramp make a right onto Red Hill Road. At first signal, make left onto Van Skhoick Road. Proceed as above. (201) 671-2670.

Somerset County Environmental Center - Take Route 206 north to the Somerville Circle and then onto Route 287 north. Exit at the Mount Airy/Liberty Corner exit. Take the first left onto Lake Road. Follow Lake Road to its end, approximately 2 miles. Make a left onto South Finley Ave. Take first right, about 200 yards, onto Collyer Lane. Continue to bottom of hill and than make a right onto South Maple Ave. Go past Lord Stirling Stables and make a left onto Lord Stirling Road. The Center will be on the left hand side about one mile down the road. (201) 766-2489.

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ASSEMBLYWOMAN MAUREEN OGDEN (Chairperson): I'd like at this time to call the meeting of the Committee on Conservation, Natural Resources and Energy to order. As many of you who are in the audience are aware, this is the first of four statewide public hearings that we will be holding on the subject of open space.

Before we call members of the public to testify -- and we'll be specifically starting with the Department of Environmental Protection, Natural Resources Section -- I want to make a few comments myself as to why we're holding these hearings, and also to give the two other members of the Committee, who are Assemblyman Joseph Kyrillos and Assemblyman Dave Kronick an opportunity to make any comments that they'd like to make before we begin with the testimony.

To begin with, I'd like to thank everyone for being here. As we all know, public hearings are held for a variety of purposes, some because the law states that they have to hold public hearings; others because there is a particularly critically issue on which you want input from the public -- something is coming up before the Legislature; others, to give the members of the public a forum in which legislators want their particular project supported. But these four hearings are really a different kind. They're not, obviously, to debate controversial or pet legislation, and there's no statute asking that we hold these hearings.

We also have consciously invited a very wide spectrum of people to come and testify this morning. It ranges all the way from the builders and the Realtors through the chambers of commerce, business and industry, the sportsmen, and most ardent environmental organizations, as well as, of course, the departments that are involved; the Department of Agriculture, and various other levels of government. This morning, we'll probably see State government, and at our subsequent three hearings, we'll undoubtedly have members from county government and local government.

What we're seeking this morning is testimony from those of you who are here today, and throughout the State who are really experts, on the basis of either academic credentials, past training experience in dealing with land use, and either changes of land use or in protecting open space. We're obviously seeking methods for handling possible inadequacies, innovative tools that are not now being employed in the State of New Jersey, and techniques that have either been implemented or discussed at other levels of government or private organizations, or else in other states.

I'd like to, at this time, welcome the fourth member of this Committee, Assemblyman Naples.

ASSEMBLYMAN NAPLES: I didn't do this on purpose. I'm honestly late -- despite what The Trenton Times says about my ego.

ASSEMBLYWOMAN OGDEN: Since according to our clock up there, Gerry, it's only 17 minutes past 9:00 -- we're still on standard time here -- you could say that we're early.

ASSEMBLYMAN NAPLES: I'm sorry.

ASSEMBLYWOMAN OGDEN: As we start, I believe that there are several givens. Open space is disappearing in our State. Adequate resources are not readily available to reverse that trend. Development does produce necessary job producing industry and business and housing for people. Some existing programs do not work adequately or efficiently. Private owners of land do have the right to seek the highest and best use of their assets. We are the nation's most densely populated state, and as a result, we experience pressure for development far greater than other states do. There is an absence of uniformity in local zoning and land use ordinances, and our inordinately high dependence on the property tax to fund local and county governments does contribute to the ratable chase and in turn, to disappearing open space.

Now, I know with all of you who are here in the room

this morning, there are wide differences as to what should be done in connection with this issue of preservation of open space, and we're hopeful -- the members of the Committee and I -- that the differences will be presented this morning here at the hearing, and that we will be able to find some consensus on how we should go forward. Specifically, we're looking for recommendations on how to change existing programs, as I said, that aren't working as well as they should be, or to enact into legislation tools that the State is not currently using, but could be used in a very fruitful manner to preserve open space.

Now according to the Department of Environmental Protection, we have 698,365 acres of Federal, State, county, and local protected open space. And when you add to that private and nonprofit groups, such as the Nature Conservancy and the Audubon Society, with the space that they also protect, we're probably just slightly over 700,000 acres.

We have had several reports in the past year from the New Jersey Council on Outdoors calling for an additional 373,000 acres of open space -- and they've called for a bond issue of $800 million to fund it -- from the Regional Plan Association that reviews our open space needs and our lack of resources to meet these needs, and last year the President's Commission underscored the need for investment in open space.

I believe that we're confronted today as we make our decisions with the reality that we need to consider the needs of tomorrow today, because to consider them tomorrow would be too late. And in my judgment, a wonderful, and I think attainable goal for New Jersey would be to set aside and protect a million acres of open space to go from the slightly over 700,000 that we're currently at and to protect, either through outright purchase or leasing or easements, or some other ways that you all may suggest here and at subsequent hearings, the additional roughly 300,000 acres.

Now is that a competent and realistic goal, and how do we get there? How do we stretch available dollars? Is the

Green Acres Program possible or only a partial solution? Can it be modified to increase its favorable impact? Should we explore the use of expanded conservation easements or land lease programs for the prospects of mortgage type or installment payments to avoid the often impossible payment of the fee simple up-front all at once? Should we consider more favorable tax treatment or outright taxation incentives? Should there be financial penalties for those who hold open space spectulatively or until the price is right? Should we expand the funding role of the State as we did so successfully in Public Question No.4 last year to bring many more farmers to come forward and want to sell their development rights?

As you are aware, we changed the 50:50 to a 80:20 with the State funding being 80% and the counties being 20%. Should we explore in lieu tax payments to local and county governments where open space is preserved? What are the other options open to us? What seems to work elsewhere? What do our experts and our activists think?

In conclusion, we are the Garden State, but some call us the City of New Jersey. There is a persistent and growing concern for our environment and all its facets; and it's a major issue on the minds of all New Jerseyans. In my view, open space must become everyone's issue as well. Now I hope that all of you who are here today, and of course at subsequent hearings, will freely share your thoughts. There's obviously no such thing as a bad idea. The only bad idea is to do nothing. So, I thank you all for being here.

At this point before we hear testimony from the DEP, I'd like to ask my fellow members if they'd like to say a few words.

ASSEMBLYMAN KYRILLOS: Thank you, Madame Chairman. Just very briefly, I'd like to say that we've all heard about the loss of open space and the loss of farmland, and the so-called, "quiet crisis." Assemblywoman Maureen Ogden has

done her best to change that and to elevate the political temperature. She along with others -- Helen Fenske and others -- are doing what they can so that it's no longer quiet -- so that we all realize, wherever we live, whether it's in the city, the suburbs, or rural communities, that we do have a crisis.

Every statewide poll that I've seen or read, certainly those that are from my county and my legislative district in Monmouth and Middlesex Counties points to the fact that the things that concern most New Jerseyans is the loss of open space and the threatening of our quality of life. Many people came to my area of the State from the cities and from other more urban parts of our State for a better quality of life. And they see some of the problems that they escaped, coming and rejoining them, so to speak.

So, this is the first of a few hearings we'll have in my legislative district next week. I'm looking forward to hearing some of your ideas and some of your solutions. As I look through the audience I see conservationists and planners and people representing Realtors and builders, and I know you all have something to say. I look forward to hearing it. Thank you, Madame Chairman for setting this series of hearings up -- appreciate it.

ASSEMBLYWOMAN OGDEN: Thank you, Joe. Dave?

ASSEMBLYMAN KRONICK: Madame Chairlady, I just want to say as a resident of Hudson County, I can well appreciate, perhaps better than many of you, the need, the critical need for open space. We have a population density in Hudson County that ranges from 10,000 to 12,000 people per square mile. I have to chuckle when I see down in some counties of the State where they're talking about 500 or 700 people and they have all of the acreage, all the farmland, all of the parkland; and we in Hudson County desperately -- and I say that seriously -- desperately need it.

I'm looking forward to introducing a bill, 2268, that will endeavor to protect the Palisades. I feel that the Palisades, to the State of New Jersey, not Hudson County-- This is our Grand Canyon, if you will; this is our Niagara Falls, this is one of the wonders of the State. And yet, we have already seen development on the Palisades. What I would like to see is protection of the Palisades, that there would be no building on the top face and 50 feet from the base, to put it very simplistically.

That piece of land, and there's not that much left, is threatened by many for development. Now, right now we have a number of developments along what they call the Gold Coast. These range in heights of five stories up to 17 stories, and in Jersey City, going up to 20 to 30 stories, and some plans for even higher levels. I would like to see in Hudson County the continuation and expansion of what the Federal government and the State of New Jersey envision as greenways. We have the potential to put that into place.

And of course, we come down to the basics of dollars and cents. I know that when you talk about an acre of land in Hudson County, versus what an acre of land costs elsewhere, it's a hard case to sell. But it becomes much more important to have that open space in Hudson County than in many other areas of the State. We're already experiencing in Hudson County the ills, if you will, of intensive development; the problems such as gridlock, problems of air pollution, lack of parks and recreation areas, and of course, as I mentioned, the need for greenways and open space.

So, I hope we will hear from many of you with some very good ideas as to how we can have a healthy balance that will be good for all the people in the State, people that live in the area, the developers, the planners, the environmentalists, the conservationists. So, I look forward to hearing your input. Thank you.

ASSEMBLYWOMAN OGDEN: Gerry.

ASSEMBLYMAN NAPLES: Thank you, Madame Chairperson. First your statement was brilliant. It was very fine. I liked some of your phraseology and you spelled it out well, and so did Joe and Dave.

About a year ago, I was with a friend of mine in East Windsor Township. (inaudible) was going out with them. We walked through a park there with their little girl, and it was very, very serene, and idyllic; and that night we went out to eat and we ran into one of the political figures there, a former member of the governing body. He talked about the need to contain the tax rate. And one of the ways tax rates are contained is by adding ratables -- absent more State aid, of course.

And then I thought, can you have it both ways? What is the quality of life? Is the quality of life the open spaces in which the three of us enjoyed that afternoon, or would the quality of life be more jobs for people and development of that land? I don't know. It's a vexing question. It is very, very difficult to strike a balance.

Going back to the late 1940s when Governor Driscoll created -- the Legislature created at the request of Governor Driscoll a Department of Conservation and Economic Development to strike that balance. And to this day, as recently as the Wetlands question, we still see two seemingly disparate forces at odds with each other. We in the Legislature must wrestle and make a valued judgment; we must weight each particular issue. And it is difficult. Dave, I have West Windsor Township in my district and Trenton. I can drive eight or nine miles, and go from tremendous density to beautiful farmland. I'm here to listen, and to help strike that balance.

Remember this, our population is increasing. We need services, we need quality of life. We may find, we may find that we face a well nigh impossible situation. But if we don't and there is an answer, I hope that those hearings will provide

that answer. I'm open minded. I'm aware of the need for open spaces in this State and this nation. But I'm also aware of the need for services, which also are a part of the quality of life.

I don't think that the two conflict. I think the two must complement each other. As to how that is going to be done, I don't have the answers, and I hope that you can provide some of them.

ASSEMBLYWOMAN OGDEN: Thank you very much, Gerry. I had intended to call the Department of Environmental Protection first, but I see the Secretary of Agriculture is here. Art, while we had scheduled you for 11:00 instead of 10:30, if your schedule has changed and you'd like to go first, I'd be glad for you to go first.

S E C R E T A R Y A R T H U R R. B R O W N, J R.: No. I don't want to interfere with your schedule. I just got to the meeting early.

ASSEMBLYWOMAN OGDEN: Oh, okay. Well, at this time we'd like to begin with a panel of four individuals who are directors of their different departments: George Howard, who is Director of Fish, Game and Wildlife in the DEP; Gregory Marshall, Director of Parks, Forest, and Historic Sites; Thomas Hampton, who's director of the Office of Natural Lands Management, and Bonnie Hammerstedt, Director of Green Acres.

As we said when we sent out the notice, if we had a lot of people who wished to testify, we're going to limit the testimony to ten minutes each, because the Committee does want to have an opportunity to ask questions. And I would encourage everyone who has a written statement to supply the Committee, because it's always a significant time lag between when we hold these hearings and we receive the transcript. So, for those of you who have lengthy statements, if you could, please summarize them, and then also give us a copy of your statement.

G E O R G E P. H O W A R D: I'm George Howard. I'm Director of the Division of Fish, Game and Wildlife. I

appreciate the opportunity to be here this morning to discuss and testify on the Wildlife Habitat Open Space and Wildlife Resource needs and opportunities in our State. I have made copies of my testimony available to the staff and I'd like to take a few minutes to summarize that testimony.

Although one of the smallest and most densely populated states, New Jersey has some of the most productive wildlife habitat to be found anywhere. Our State's ability to annually produce and sustain tremendous numbers of ducks, doves, bluefish, geese, clams, songbirds, and other wildlife is testimony to the quality of the wildlife habitat in which these animals exist.

In spite of the residential and industrial development which has taken place throughout our State in recent years, New Jersey still has thousands of acres of both fresh and salt water wetlands, which are about the highest quality wildlife areas to be found anywhere in the world. The quality of our remaining agricultural soil is directly responsible, not only for the agricultural crops produced by our farmers each year, but also for the wildlife populations which coexist with agriculture on our farmland areas.

Our upland areas -- over 50% are still in forest -- annually produce large numbers of dear, turkeys, small game, Raptores, and songbirds. It is no accident that little New Jersey winters most of the black ducks in the Atlantic flyway. It is the temporary home to millions of shore birds, waterfowl, and songbirds during their annual migration.

While there are extensive economic, recreational, and biological values directly related to New Jersey wildlife, the resource's contribution to the quality of life of our citizens far outweights the other values involved. While contemplating today's wildlife successes and the value of our wildlife resource to our citizens, we shouldn't become too complacent, as there are many problems associated with our wildlife and its

habitat, which must be solved in the immediate future if we are to maintain the resource and expand the resource by our citizens.

Most important is the need to halt or modify the extent of habitat destruction which is presently taking place through our State at an ever increasing rate. Rampant, residential, and industrial development is rapidly destroying the wildlife values of much of our State. New Jersey's system of wildlife management areas, which presently totaled 190,000 acres from the Kittatinnies to Cape May must be expanded at once, if we are to preserve the minimal acreage necessary to meet our wildlife and open space needs for now and in the future.

It does well to remember that this system which had its beginning in 1932 with the purchase of 387 acres of wildlife habitat in Walpack, Sussex County was initially acquired utilizing monies generated from the sale of hunting and fishing licenses to the sportsmen of the State. These license monies were responsible for the purchase of some 100,000 acres of wildlife habitat statewide from 1932 to 1960. Since 1961, Green Acres bond issues have been responsible for practically all State land acquisition initiatives.

The wildlife management system, which today represents almost 30% of New Jersey's open space resource, consists of 70 wildlife management areas ranging in size from the 1.5 acre Old Wharf Fishing Access in Trenton to the 24,000 acre Greenwood Forest Tract in Burlington and Ocean Counties.

In order to meet future needs for wildlife resource protection, recreation, and utilization, the Division estimates that a minimum of 120,000 additional acres must be added to the wildlife management area system. This in order to meet our mandate of protecting endangered species, providing for the recreational and economic uses of the resources by our citizens, and protecting the wildlife habitat necessary to

aintain viable populations of such diverse species as wild turkeys, black ducks, shore birds, and bald eagles. This acquisition should take place as soon as possible. Each year of delay we'll see more and more of these areas lost to development while escalating land values make the remaining acreage more costly and more difficult to acquire.

The access to the resource by our citizens, in particular those resources directly related to water, is becoming more difficult and restricted with each passing year. Fishing, our most popular outdoor recreational activity next to swimming, produced over 19 million personal days of recreation for our citizens, and over a billion dollars in expenditures to our economy in 1985.

Once taken for granted, public access to the State's waters is a growing problem in many areas of our State. On the coast, boat ramps and marinas are giving way to condominiums and other private waterfront developments. Inland, an ever increasing amount of over 400 miles of trout stocked streams and lakes are annually posted against public use. Ever increasing public access problems are compounded by a rapidly increasing demand for all types of water oriented recreation. New Jersey's registered recreational fleet has grown by 28% since 1979, while sales of fresh water fishing licenses has increased by 34% in the last 10 years.

In order to meet this demand now and in the future, the Division of Fish, Game and Wildlife has recommended the development of 27 new boat launching facilities, the construction of 29 fishing piers, and the acquisition of 22 high priority stream corridors. Funding for the operation and maintenance of the wildlife management area system is becoming a greater problem with each passing year. Although over 50% of the use of the system is not directly related to the wildlife resources, the system today is totally operated and maintained without any general fund monies.

The dedicated Hunters' and Anglers' Fund, which is derived primarily from licensed monies and fees directly related to hunting and fishing, is the only source of funding presently available to operate this system. Rapid expansion of the system in the past two decades together with increasing demands on the Hunters' and Anglers' Fund from other sources, have severely taxed the ability of the Division to operate and maintain these areas.

Since 1970, the amount of land administered by the Division has increased by 50%, while the operation and maintenance staff has remained stable. A holding action is currently being fought to maintain facilities in their current condition. Major repairs are put off indefinitely while badly needed new facilities are slow to be developed, if at all.

Illegal dumping is a growing concern, yet increased law enforcement patrols are difficult to sustain with the funding available. While $1.5 million of dedicated funds is expended yearly for wildlife management area operations and maintenance, it's estimated that a stable funding base of at least twice that amount is required to merely halt the deterioration of the system and to meet the growing demand for recreational programs.

In summary, in order to meet ever increasing needs related to open space, wildlife, habitat, and water access, as outlined by the Governor's Council of New Jersey Outdoors, it will be necessary to make a major commitment to adequate acquisition, development, and maintenance programs for the wildlife management area system. To do less will allow the destruction forever of much of our wildlife heritage, and commit future generations to a quality of life much diminished to what we presently enjoy today. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Why don't we take everyone's testimony from the DEP and then we'll ask questions from the whole panel?

ASSEMBLYMAN NAPLES: Wouldn't it be better, if I may, to do it by Department, because we may have several agricultural questions we'd like to ask of Agriculture--

ASSEMBLYWOMAN OGDEN: This is the Department.

ASSEMBLYMAN NAPLES: I though this was Agriculture. I'm sorry. Excuse me.

ASSEMBLYWOMAN OGDEN: No. This is the--

ASSEMBLYMAN NAPLES: I've got my wrong file in front of me. Excuse me.

ASSEMBLYWOMAN OGDEN: This is the directors of the four different divisions, correct--

ASSEMBLYMAN NAPLES: I was thinking of Agriculture in my mind. Excuse me.

ASSEMBLYWOMAN OGDEN: --in the DEP, dealing with open space. Greg.

G R E G O R Y A. M A R S H A L L: Assemblywoman Ogden and members of the Committee, I appreciate the opportunity to participate in your public hearings concerning the preservation of our State's natural and cultural resources, and the provisions of additional recreational opportunities.

As I trust you are aware, the Division of Parks and Forestry has a significant role and perhaps the largest role of any private or public agency in the stewardship of our State's natural and historic resources.

We are responsible for over 9 million visitors to our parks, forest, marinas, golf courses, recreational areas, and historic sites. With over 300,000 acres of land under our care, we have the privilege of being the largest land holding agency with areas that range from over 109,000 acres at Wharton State Forest to 0.4 acres at Boxwood Hall in Elizabeth.

Without a lot of fanfare, our Parks and Forestry staff is out there 365 days a year providing quality leisure experiences, protecting and managing our open spaces, natural areas, and forest resources as well as preserving our State's

culture and history. While we continue to fulfill our traditional roles and responsibilities, there are constantly new challenges and demands being placed on us as managers of these resources.

The mainstays of our service delivery system; camping, hiking, and swimming, for example, are under constant pressure, not only from overuse, but from the consistent degradation from external forces that impact the landscape as the State continues to change. Daily, we address the planning and management issues impacting the State park system from a preservation and protection philosophy, but we must also manage the visitors to our system -- in essence, to protect the park from the people.

As a result of the of the practically insatiable demand for facilities and services, we must constantly balance the need for preserving our pristine natural resources, rivers, streams, lakes, shore areas, wetlands, open space, and forest resources with the demands that we encounter for new and expanded recreational facilities.

ASSEMBLYWOMAN OGDEN: Excuse me, Greg. Since I see you statement is 10 pages, is it possible for you to summarize it? I know that everything is critical to you, but we have so many people here this morning.

MR. MARSHALL: Okay. I think what I'll try to do then, Assemblywoman, is to try to hit some of the more pertinent points, and leave out the poetry, if you'd like.

ASSEMBLYWOMAN OGDEN: Yes, that would be helpful.

MR. MARSHALL: I think in essence I would concur with Division Director Howard's assessment that you have to recognize the way of a continuous demand and pressure on our resources. I think the other thing that we'd like to point to is that this demand is documented and that there shouldn't be any question as to the pressures that are being put on our systems.

The other thing that we did want to touch on briefly was the role of public/private partnerships which is a significant initiative that is under current scrutiny. I think the point that I wanted to make in my testimony was such that the Division of Parks and Forestry has been in the business of providing public/private partnerships, though be it not in a traditional role with organizations like Trump's Castle Associates that is now going to manage and operate and develop Farley State Marina in Atlantic City to the tune of a $60 million investment.

But we have other private partnerships with everybody from the villages of Allaire and Waterloo to nonprofit organizations that are operating Cape May Point State Lighthouse, the Proprietary House in Perth Amboy, and so forth. So, we have had some experience in those public/private partnerships, although they were nonprofit organizations.

The Trump Organization and the major development of the Liberty State Park are a new venture that have had mixed results, I think as far as the Division is concerned. The Trump experience is one which is going to be quite excellent. The one at Liberty State Park is obviously a lot more complicated and complex, time consuming, and a little more controversial. I think the bottom line on Liberty State Park and other things that we ventured into, is that there will be success stories when we get finished with them. But it's been a lot of hoops to jump through in order to get to that point.

The target figure, for example, on the development of Liberty State Park, if all State dollars were used, is to the tune of $300 million to do everything that's on the Master Plan of Liberty State Park -- just to put that in perspective for you. On the opposite side of things, the Mid-Atlantic Council of the Arts that's operating Cape May Point State Lighthouse for us; they need $50,000 to do what they think they should do down there. So, there's a wide discrepancy in the amount of

funding that's needed, and also the focus of those public/private partnerships.

The other pertinent point that I probably would like to hit on is the facility needs. Again, going back to what Director Howard spoke on, not only are we rapidly growing in terms of visitation -- the visitation numbers are stipulated in my testimony, we think we'll be at the 14 million -- 14 million people when we hit 1995, and we're currently 9.5 million as we just finished 1987.

Behind the scenes facility needs that I was asked to speak to I would think could be capsulized in two different areas; one of which is the obvious demand that we have for ongoing renovation and rehabilitation of our existing facilities, bathhouses, restrooms, visitor centers, maintenance complexes -- all those things that we have to do for various reasons, everything from code compliances to health issues to employee safety and so forth.

The other that I'm greatly concerned about and I know that Director Howard is as well, the other side of those things is the behind the scenes part of what we do which we call infrastructure. The amount of money that we need to spend on roads, electrical systems, telephones, sewage treatment plants, water systems, and all those things. It's a phenomenal amount of money. And we have to do everything in the same context as I related in my testimony, as doing the same things as running a small town. We have to address all the issues of everything a small town has to deal with, from operations and enforcement to infrastructure, roads, and water systems. And I think that needs to be recognized as part of the funding issues, if you would. It's more than just developing pretty buildings for people to go through. There's a lot more behind the scenes things that have to be done in order to do those things properly.

I gave you a specific example of my testimony about how much money we are spending to do those things, one of which is a specific example of Parvin State Park where for health and safety reasons we were required to renovate the bathhouse down there. The estimate that the firm provided for the prescribed work, which was budgeted for us, was $443,000. The bids that just came in ranged between $698,000 to $1 million to do that work. And it's been an ongoing pattern that we dealt with.

I think, Madame Chairwoman, I probably summarized the key points. I talk a lot quicker than I read.

ASSEMBLYWOMAN OGDEN: Thank you very much.

ASSEMBLYMAN NAPLES: My suggestion is we ask questions of each department as they conclude. Do you want to entertain that or would you rather have everybody testify?

ASSEMBLYWOMAN OGDEN: Well, if you think that the questions you have--

ASSEMBLYMAN NAPLES: Well, I may have a question. The first part of the flap and the mixing up of my papers-- But I have some questions that pertain to different departments as we go along. Let's throw that to the other members. I don't want to throw everybody else off, because--

ASSEMBLYWOMAN OGDEN: Well, this is all one department but different divisions; so however anyone feels--

ASSEMBLYMAN KYRILLOS: I think, from my part -- everyone from the DEP and then ask questions, and then everyone from Agriculture, ask questions.

ASSEMBLYMAN NAPLES: Okay, fine. That's a good suggestion, Joe.

ASSEMBLYMAN KYRILLOS: I think they're different divisions with a similar focus.

ASSEMBLYMAN NAPLES: Okay, fine.

ASSEMBLYWOMAN OGDEN: Tom.

T H O M A S F. H A M P T O N: Thank you. My name is Tom Hampton. I'm the Administrator of the Office of Natural Lands

Management, Division of Parks and Forestry. I thank the Committee for taking the initiative to hold these hearings and for the chance to share some of my experiences and ideas. And I say that because I've learned that successful ventures are often a combination of new initiatives and existing programs used in a creative way.

In 1968, the Legislature created the New Jersey Natural Lands Trust, an independent corporation within the State government. The Trust is a combination of the best of both the private and public sectors. Decisions and policy are established by a board of 11 trustees, five government officials, and six private citizens, appointed by the Governor from a nominating list submitted by conservation organizations. The salaried staff is small, but is assisted by the Division of Parks and Forestry with staff of the Trust working out of the Office of Natural Lands Management.

The Trust staff has solicited lands which may be available at a little or no cost. Prior to revisions of the Federal tax laws, there were monetary advantages to the donation of land, in addition to the intrinsic value of protecting open space. With the change in tax laws, the Trust can no longer rely on monetary incentives alone to induce donations. We continue to solicit protection of open space through a variety of means depending on the needs of the donor and the type of habitat.

We have turned our attention to working with governmental agencies that deal with mitigation. One of the most significant projects is the Shore Bird Program for acquisition and management of migratory bird habitats along the Delaware Bay. This program was funded by $1 million from a major utility as part of mitigation. Subsequent to creation of 3.5 acres of wetlands, the Trust, on behalf of the Department of Environmental Protection, is acquiring and protecting through agreements, over six miles of critical sand/beach

habitat. The funds are also being used for public education, research, and surveys of bird and human use along the bay.

One of the more creative methods for protection of critical areas is the non-binding agreement. Through an agreement, a private property owner, with the help of the Trust, becomes the knowledgeable steward of a critical area. The agreements gain the understanding and participation of the landowner and provide time to negotiate a more permanent form of protection, if warranted. Almost 200 acres of open spaces has been protected by private property owners within the last year through agreements with the Trust.

Over 2600 acres of land has been protected by the Trust in cooperation with the Department, other organizations, and individuals. Most of this land has been acquired at little or no cost, other than the time invested by staff. The types of conservation measures undertaken by the Trust in the future are limited only by creativity and funding for staff and operations. The Trust looks forward to working with this Committee towards implementing programs which may be recommended for the future.

The Trust as well as many other State and Federal agencies and private developers have come to rely on another function in the Office of Natural Lands Management, and that's the Natural Heritage Program. The Natural Heritage Program is identifying the State's most significant natural areas through a comprehensive, ongoing statewide inventory of rare plants, animal, and natural communities. Established in 1984 as a cooperative agreement with the Nature Conservancy, New Jersey is part of a national network of more than 40 state heritage programs.

The Natural Heritage data base is composed of both mapped and computerized information organized around elements of natural diversity, rather than property lines in order to rank and compare similar sites. The elements that are

inventoried first are the rarest of species and communities based on rankings conducted by experts at the State and national level.

Until recently, funding for this program came from private contributions to the Nature Conservancy and from the State parks' operating budget. Thanks to you, Assemblywoman Ogden, we are coming closer to achieving official recognition and funding through Assembly Bill 1366. This bill has been approved by the Assembly and released by committee in the Senate. The importance of this legislation and the program in general has strong implications for the work of this Committee.

Future acquisitions for the State should include programs to protect elements of natural diversity. In the past, such purchases have been for the acquisition of endangered species habitat and natural areas based on available species information or ease of acquisition. The Natural Heritage Program will allow for efficient planning and ranking of sites for protection efforts by bringing all information together into a single data base. Not only will we be able to target the most important areas, but we will be able to work with the property owner to achieve some form of protection through an agreement. In many instances, this may be all that is necessary, and limited funds for acquisition can be used elsewhere.

Efforts for protection of natural diversity are not just being undertaken by the State government. As you know, critical roles are being planned by many private organizations, interest groups, and individuals working towards the same group of protecting open space. We need to tap that resource, not for the purpose of benefiting our programs but to achieve the goal of these organizations and to preserve open space. The Nature Conservancy has invested in the New Jersey Natural Heritage Program as a foundation for future expenditure of monies for preservation of important habitats. The

Conservancy's Critical Areas campaign is intended to raise individual and corporate donations for protection of natural diversity. All future efforts by the Conservancy will be based mainly on the data and advice from the Natural Heritage Program.

I would urge the Committee to consider the possibility of some legislation which would not only work hand in hand with these types of efforts, but actually stimulate the private sector to become more involved. In 1926, the U.S. Congress approved legislation to establish the 75-mile long Shenandoah National Park in Virginia. The statute passed by Congress stipulated that no Federal funds could be used for the acquisition. So, the Virginia Legislature appropriated $1.2 million to buy property, provided matching funds came from private donations. Over the next nine years during the height of the Depression, a "Buy an Acre" campaign saw 24,000 individuals contribute a minimum of six dollars an acre for the park. Virginians to this day treasure the "Buy an Acre" donor certificates. Perhaps this type of campaign in coordination with private conservation groups, such as the Nature Conservancy, can launch a similar campaign, backed by an appropriation to, "Preserve our Natural Heritage."

In summary, I ask the Committee to consider he following:

Provide a stable and adequate source of funding for programs such as the Natural Lands Trust, where creative methods can be combined with existing programs to preserve open space.

Require the Natural Heritage Program to play a major role in the identification of habitat for rare species and natural communities when public funds will be expended for acquisition or protection.

And to provide dedicated funding for the acquisition of habitat for rare species and natural communities, and consider a requirement to have this funding matched by the private sector. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Bonnie.

B O N N I E G. H A M M E R S T E D T: Madame Chair, I've been asked by the Department to not only recap what has gone before me, but as the Green Acres Administrator, explain to you the open space legacy that we've developed here in New Jersey.

Our generation's open space legacy should be greenways with threads of protected lands that could weave together our open space resources to form the fabric of New Jersey's quality of life. We currently bequeath much less than we inherit. Sadly, financial reality negates large acquisitions.

There's a method by which we could still preserve the best of what is left. That method -- greenways. As protected land corridors along waterways, shore lines, scenic roads, and trail routes, greenways link urban and rural spaces, protect water resources, wildlife habitat, and other natural resources. They enhance the landscape pattern by creating green breaks in the monotony of development. They offer walking and bicycling and other recreational opportunities. Greenways even benefit economical growth and development by protecting the natural resources that are vital to growth.

Pleasant living areas and working environments are maintained which then attract new growth investments. We must not discount our State tourism industry which is largely based on the desirability of the State's natural resources and the importance of a healthy, attractive environment. Greenways are countrysides with protected natural rural historic corridors. Greenways are trails for walking, hiking, bicycling, horseback riding, jogging, and other forms of passive and active recreation. They may have protected adjacent corridors, railroads, and utility rights-of-way, historic travel routes, like the Cannonball Trail along the Ramapo Ridge, and streets of an historical district where the architectual integrity has been preserved, and affords a stepbback in time.

Streams and rivers, with protective corridors, are an example of trails for public use. The benefits derived by New Jersey citizens and visitors may come from the views of treelined waterways either from boats or canoes, from protected wildlife habitat, protected shorelines which can be viewed at a distance, and bay shoreline, which entice people to walk along them. Using these protected areas, the public can gain access to the water for swimming, fishing, or boating and recreation areas may be linear greenways conducive to the public having multiple purposes and opportunities.

The linkages have to be planned to serve the population. They may be along river corridors, whose shorelines are preserved in basically their natural condition to allow public use in the form of trails and paths; trail corridors established on railroad rights-of-way and along historic routes of travel would also be considered recreation.

In an historic district, the historic structure, the streets, and the sidewalks would be considered as serving as an historic recreation greenway. A greenway corridor may include all of these. Conservation areas are corridors protected essentially to preserve natural scenic beauty and the environmental values. For example, you might think of a mountain ridge, or a connector park which maintain natural diversity of the State protecting water quality and quantity.

Waterway conservation corridors may be enjoyed by boaters, canoers, and by individuals at selected viewing points. Various linkages can serve the public's recreation needs and allow for the preservation of our State's open space. Greenways is not a new term. The acquisition principle that it embodies connect open space areas.

I'll go on and tell you that there are a couple of handouts attached to the presentation. The comments are for general information, really. There is a chart attached to that. It gives the history on the Green Acres Program. One

very important thing I'd like to touch on though is the Green Trust. The Green Trust is a revolving fund that provides low interest loans for municipal and county projects. This was capitalized at $83 million. That was back in 1983 and it was the fifth of a series of bond issues. The balance, $52 million was reserved for the continuation of State acquisition and development.

The Green Trust, by the way, is the first of its kind in the country to be used as an incentive for local governments to participate in open space preservation. Although the Green Trust in theory is a fiscally sound program, the original under-capitalization has only permitted an average funding level of $25 million. We have not been able to fund 50% of the funding requests at any one time. In fact, though we've approved $37 million for projects for the last, still pending, appropriations of the 1983 bond issue, we actually funded only 40% of the $90 million in funding requests.

For the information of this Committee, Assemblyman Kyrillos is the sponsor on this side for our appropriations bill. It did pass your floor and is now sitting over in the Senate waiting to be posted. And I might just interject here that we desperately need that bill to be posted and passed. I have local towns and mayors and all sorts of council people calling, as well as local citizens wondering where their money is.

Using the additional $35 million which was made available during the last Green Trust bond issue back in November, we'll be able to fund nearly $40 million in projects next year. That includes interest that we have been collecting on our Green Trust loans. The following year, using only the interest loan paybacks, our funding level will drop to $5 million.

Now, I've gone on to list different accomplishments that are linked to the Green Acres Program, and I won't bother

reading them, since you have them in front of you. But I did want to just talk about the greenways initiative. This is an initiative that we need the efforts of all levels of government and the private sector. The scenic roads, rivers, and street corridors, shorelines, and the trail routes that already exist are and should be considered potential greenways, as the Assemblyman was just talking about just a few minutes ago, about your area that you're trying to save up along the Palisades; that's a potential greenway corridor. It should be looked at very seriously for protection.

I don't want to hold up the Committee any longer, except that I would like to point out that we have developed what we call a greenways initiative map. (referring to map) Without going into much detail, I will tell you that it is based on a 50 acre or more area. The dark green that you see is State and Federal open space. The red are linear scenic roads that are just connecting corridors. And then you can go on to see that the light blue pertains to the recreation waterways.

The most important thing, however, on that map is what you see in orange. That is what we are currently negotiating now for preservation. The base map will be used for us as a working map. And eventually we hope to have connectors throughout the entire State. One day those orange spaces will turn into green. The Green Acres tree that you see there on the top of the second overlay are areas that have been desinated for potential preservation.

ASSEMBLYWOMAN OGDEN: Are you finished, Bonnie?

MS. HAMMERSTEDT: Yes.

ASSEMBLYWOMAN OGDEN: Thank you. Questions or comments by members of the Committee? Gerry, maybe we'll start with you, since you're anxious to ask questions.

ASSEMBLYMAN NAPLES: Thank you. A lot of land in this State is underdevelopable because of physical characteristics

-- tremendous costs associated there. I'm new to this Committee, correct me if I'm wrong; I'm here to learn too. But isn't there a lot of land which cannot be developed despite the fact that physically it could be, owing to State regulation either at the local or State level -- by State, I mean the government. In other words, how much land in this State could be developed? It is physically capable to being developed, but is not, because of governmental regulations, either at the county, municipal, or State level. I think it's important to ask whether the State is competing with itself? You're smiling here--

MS. HAMMERSTEDT: Well, for one thing it's virtually impossible to give you an accurate account of the acreage that could be developed but isn't because of regulation.

ASSEMBLYMAN NAPLES: A lot?

MS. HAMMERSTEDT: A lot, yes.

ASSEMBLYMAN NAPLES: All right.

MS. HAMMERSTEDT: The Council on Outdoors is asking for another 361,000 acres, that's after we have already acquired 11,000 acres since the initial output of their presentation. You're talking anywhere from $1500 an acre to $16,000 and in some places even more than that. So, it's almost impossible to put either a dollar amount or an accurate acreage amount on that question.

ASSEMBLYMAN NAPLES: The reason I'm asking, I thought back to a meeting I had with Senator McManimon and Mayor Sigmund of Princeton about development of certain parts of Route 1 and Alternate Route 1, and someone posed a question along those lines and was talking about the State Planning Commission becoming involved and its role. And I'm just thinking that if we approach these things in a vacuum that's contrasted with coordinating, we're never really going to get to first base, either with respect to preservation of open spaces or development. And this is why--

MS. HAMMERSTEDT: We work very closely with the local governments and their master plans which, as you, I'm sure, are aware, they are updating them currently.

ASSEMBLYMAN NAPLES: What I'm thinking of specifically is the section between -- I wish I had brought that map along with me -- between Route 1 and 287. There's a certain amount of buffer in there, and everybody seems to be rushing to get a piece of it and it just sort of piqued my curiosity while you were talking. I guess I'm making a statement too. I'm saying that we cannot operate in a vacuum here. We're open to things like this. And Senator Rand is being talked to by Senator McManimon. Who knows a bill may be dropped in the hopper and then two years down the road you may find that this bill is passed, which in fact is what you did? I just wanted to throw that out. Would you say that there are several thousands of acres?

MS. HAMMERSTEDT: That are restricted because of local regulations?

ASSEMBLYMAN NAPLES: Local, State, or county. Yes.

MS. HAMMERSTEDT: Yeah, I would say several thousands.

ASSEMBLYMAN NAPLES: So, you're talking maybe as much as a total of three or four square miles then?

MS. HAMMERSTEDT: Again, I can't give you an accurate figure. Perhaps someone else could.

ASSEMBLYMAN NAPLES: That's a lot.

MR. HOWARD: (inaudible; speaks away from mike) This land is probably regulated rather than protected. It really isn't protected. There are regulations -- local municipal regulations -- that possibly is protected today, but it's merely just regulated. And we're really looking sort of long-range on some of these today and down the road. So, even though it is protected today, it doesn't say that it's protected tomorrow.

ASSEMBLYMAN NAPLES: All right. But it could be a play on words here. I'm not saying that you're engaging in a play on words. But if it is protected, there is still a regulation, okay, owing to that protection against development. Correct?

MR. HOWARD: I think it depends on the local ordinance on whether you have three acre zoning or whatever. Although that protects it for now, it's merely regulating it. And I think in the larger context, it really isn't protected land.

ASSEMBLYMAN NAPLES: Okay.

MR. HOWARD: I do think we take this into consideration.

MS. HAMMERSTEDT: And one of the problems that our local--

ASSEMBLYMAN NAPLES: It's not an easy question.

MS. HAMMERSTEDT: No, it's very difficult because one of the major problems that we're dealing with now is the open space inventory of your local towns. Many of those inventory list are not accurate. They choose them not to be accurate.

ASSEMBLYMAN NAPLES: I agree with you.

MS. HAMMERSTEDT: I hate to say that, but it's the truth. Sometimes they are overlooked. And what might be on that list and is essentially protected, is not. And it becomes developed upon.

ASSEMBLYMAN NAPLES: I'm thinking -- and I don't want to mention it because it may not come out right -- there's one municipality that DCA is really after for that. Thank you very much.

ASSEMBLYWOMAN OGDEN: Dave.

ASSEMBLYMAN KRONICK: Yes. I would like to know whether -- and this is for all the directors -- when you take a whole look at the State of New Jersey, do you have some kind of prioritization? In other words, I speak of Hudson County with probably one of the greatest needs for open space, greenways, etc. Bonnie, you agreed?

MS. HAMMERSTEDT: Yes. And we discussed--

ASSEMBLYMAN KRONICK: And yet, I know one of the problems is cost. And I know when we talk about an acre in Hudson County versus an acre in Burlington or Sussex, you can get a lot more acres. But in your scheme of things, in your prioritization, that one acre that you might be able to buy in Hudson will mean so much more to so many more people -- it's much more important in that you view it in that context, I hope.

MS. HAMMERSTEDT: And we do. We take that into serious consideration. However, we've been almost held up these last few years, because our focus had to be on an acquisition rather than development; especially with our last two drawdowns. We were limited to what we were allowed -- what we were really permitted by funding to develop. So, if that helps you any--

ASSEMBLYMAN KRONICK: I would like to see more orange on that map.

ASSEMBLYMAN NAPLES: That's what I say.

ASSEMBLYMAN KRONICK: There's a void there of color. And I think what would be a good overlay is somehow to reflect density of population, then you can relate the two. It becomes paramount.

MS. HAMMERSTEDT: Yeah. We have slides that are being produced on just that issue.

ASSEMBLYMAN KRONICK: That would be great.

ASSEMBLYMAN NAPLES: I was looking for a solution to the Route 287/Route 1 problem, but I couldn't find it up there.

MS. HAMMERSTEDT: You're not the only one.

ASSEMBLYWOMAN OGDEN: George, did you have anything to add?

MR. HOWARD: I think when we look at the recreational use of these open spaces, we do take into consideration who is using the areas. It's kind of interesting that in our involvement that, for example, our Hunterdon County areas, the

greatest use is by citizens of Middlesex County. It's much greater than the local use. So, we do look at who's using these areas. And again, we'd like to see more of this too.

ASSEMBLYMAN NAPLES: I have a question for Director Marshall. The Liberty State Park-- This is one of your programs with private/public funding partnership, if you will. Do you view that as a problem mainly of scope, the size of the -- I think it has to do with the marina, probably, where the problem is hung up now-- Is it because of the size of the marina and that if there was, perhaps some reduction in that, you might be able to move on?

MR. MARSHALL: I think the main problem that Liberty State Park and any other private/public partnership is, the part that I skipped over and that I didn't recall to speak about-- There's a public perception that we're shirking our responsibilities as public stewards of our facilities when we get involved with public/private partnerships. I personally don't think it's necessarily the size or the scope when you deal with a $46 million Sci-Tech Center that's going into Liberty State Park. That obviously has a size to it and scope to it. There's not just concern about how big the facility is or how many people are going there? I think that's the main concern that some citizens have -- the misconception that we're shirking our responsibilities as public officials; that we are not fulfilling that requirement, you know, in terms of providing public monies, to provide public facilities. And I think basically the problem with that is mostly misconceptions.

The other part that I skipped over also, is that I'm sure Director Howard again would speak to the issue of not only providing open spaces in places like Hudson County that are very congested, but providing recreational opportunities by increased fishing, and so forth at Cape May Point Pier and Liberty State Park. I think the State park system also has an

increased role to play of introducing other portions of the State to our urban residents. It's not just a matter of providing physical open space and some facilities like the Liberty State Park and fishing opportunity enhancement. I think we have a greater role, if you could, to educate the urban residents of this State to our natural resources throughout the rest of the State. I wanted to make that point as well as something else that was skipped over.

ASSEMBLYWOMAN OGDEN: Joe.

ASSEMBLYMAN KYRILLOS: Thank you, Madam Chair. Just to comment to Bonnie, following up on her comments about the Green Acres appropriations bill. She said it did pass our house, and I understand from the Senate sponsor, that it will be posted a week from today. I know I'm getting a lot of calls in my office as you must be as well.

MS. HAMMERSTEDT: We are inundated with them. No one can seem to understand why a bill that was so simplified and is just virtually the last drawdown on a bond issue that the voters approved six years ago could be held up this long. It's never ever been this way before.

ASSEMBLYMAN KYRILLOS: Hopefully, it will be taken care of before long. The greenways initiative is very exciting. And if you got into this during your testimony and I missed it-- Is there any financing strategy that you all are looking at?

MS. HAMMERSTEDT: Looking at?

ASSEMBLYMAN KYRILLOS: Looking at. Is it going to take another big massive Green Acre bond issue?

MS. HAMMERSTEDT: Well, as you can see by my last statement to you, I'm asking you to not only support the stable source of funding, but also that we are now permitted to talk about a new bond issue for '89. I understand that the Governor has permitted us to discuss this, and the Commissioner has made it public that he is looking for a $200 million bond issue.

That's not going to be enough, quite frankly. But at least it will help us with beginning to develop this continuous greenway concept.

ASSEMBLYMAN KYRILLOS: I just have one other question. Reading over some of my material, I see that the Boy Scouts are a major landholder in New Jersey and described as a player in this process. DOes anyone know how much land they have? I understand they've changed their land policies to some extent. How does that affect things?

MR. MARSHALL: I don't think we have a number, again, on how many acres they're holding. I know there's been recent information disclosed about them dissolving holdings. In certain places the Green Acres Program, for example, has purchased a conservation easement on Allamuchy State Park, an adjoining Boy Scout camp there. And I know we've passed along that information to the people that are doing the overall planning, land acquisition priorities, if you will, to the Green Acres office to make sure that they're looking at those -- that if there are opportunities for those; again, depending on the operation of maintenance money-- You're looking at turnkey operations for the most part. So, I think that list of things was passed along to Bonnie's office to look at, whether or not there were additional opportunities there.

ASSEMBLYMAN KRONICK: I'd like to make another comment. I feel that in Hudson County, I'm sorry I'm partial, the DEP really has an extraordinary opportunity to shine brightly because what's going on with the population, you know-- There's a very big working class, now you're getting a very well-to-do class, if you will, with marinas on the waterfront. So, the need for a diverse kind of environment, the greenways program, certainly is ideal. You've got some waterfront opportunities. And I hope you'll take advantage to become a shooting star in Hudson County. We need your help.

MS. HAMMERSTEDT: Since our first conversation with

you, Assemblyman, I can assure you our look into Hudson County has been a little bit more careful.

ASSEMBLYMAN KRONICK: I appreciate it, thank you. Thank you, Madame Chairman.

ASSEMBLYWOMAN OGDEN: I just wanted to ask one question of Tom Hampton in connection with the private non-binding agreements to provide stewardship for critical areas. I wondered how long they ran for? What sort of tax relief do they receive? And is it basically a holding operation until there's Green Acres money, or the Nature Conservancy picks it up?

MR. HAMPTON: In fact, the Nature Conservancy uses this same concept to protect critical areas: Non-binding agreements without any specific duration of time which can be dissolved by both parties. So, there is no permanency assured by a non-binding agreement. What it does do is: 1) it does provide time for perhaps consideration of donation of easements in the future, for protection of natural heritage elements, or perhaps not even so much that, but getting the private property owner involved in protecting this critical part of our natural heritage. And that can be probably one of the most cost-effective ways of protecting certain areas. We're not talking about areas that would be used for public recreation. We're talking mainly about areas that harbor rare species, or natural communities that should be protected simply because they are part of our natural heritage.

ASSEMBLYWOMAN OGDEN: So, there's nothing formal like a conservation easement?

MR. HAMPTON: No. There is nothing new. No tax incentives.

ASSEMBLYWOMAN OGDEN: What about tax treatments? Anything there?

MR. HAMPTON: No. There is no tax incentive whatsoever.

ASSEMBLYWOMAN OGDEN: And what's the incentive for the private property owner to do this?

MR. HAMPTON: The incentive is a matter of pride. Realizing that perhaps that they have a parcel of land that contains the last species of this variety in the State and they wish to protect it. They wish to be something special and part of the natural heritage of their State. It's a coopting or ownership of the natural heritage.

ASSEMBLYWOMAN OGDEN: But if they want to break the non-binding agreement, they could just send you a letter and say that's it?

MR. HAMPTON: Yes.

ASSEMBLYWOMAN OGDEN: No period of time or anything?

MR. HAMPTON: It's usually 30 days that's thrown into the contract. The other stipulation is in some instances, I know the Nature Conservancy does use it quite a bit, is a right of first refusal to purchase the land, should the property owner wish to sell it. We don't undertake that, because of a lack of funds through the Natural Lands Trust for acquisition.

MS. HAMMERSTEDT: On January 1, we settled on 7000 acres of partially donated land all over the State, as well as a piece that we acquired in Cumberland County, better known as Cumberland Pond. And the Nature Conservancy assisted us in 700 acres that we were unable to feed into our budget. And they work very well with us.

ASSEMBLYWOMAN OGDEN: If there are no further comments or questions by members of the Committee, thank you very much.

MS. HAMMERSTEDT: You're welcome. Thank you.

ASSEMBLYWOMAN OGDEN: I'd like to call next the Secretary of Agriculture, Arthur Brown, and Sharon Ainsworth and Don Applegate.

SECRETARY BROWN: Thank you. Good morning.

ASSEMBLYWOMAN OGDEN: Good morning.

SECRETARY BROWN: I'm glad to be here to present our views before you this morning. Sharon Ainsworth is my Executive Assistant who works very closely with all the legislative activities in the Department, and Don Applegate is the Executive Director of the State Agriculture Development Committee.

So, this morning, Assemblywoman Ogden and Committee members, I just want to welcome the opportunity to be here and speak with you on the approaches of saving open land in New Jersey. One of the most pressing issues I face as Secretary of Agriculture is the retention of our farmland base. Competition for this land and other uses led to the loss of over 40,000 acres last year alone.

The erosion of our farmland base was identified as a problem over 20 years ago and led to "The Grassroots Report" on agriculture. After many years of struggling, a bond issue was placed on the ballot in 1981, and the voters approved $50 million to preserve this land. Two years later, legislation was enacted which established the organization to implement the Farmland Preservation Program and the State Agriculture Development Committee.

The Farmland Preservation Program, as with most new initiatives, has required some refinement. In November, 1986, I established a review committee to take a hard look at the program and offer recommendations for improvements. A copy of their findings has been provided to you. I hope you all have copies of that.

One of the first problems identified by the review committee was the need to increase the State's share of the development easement costs. Thanks to the leadership of Assemblywoman Ogden and Senator Zane, the issue was on the ballot last November. The voters approved the change to the original bond fund; and last month the legislation to implement this new directive was enacted.

I'm happy to report to you that as the result of the increase in the State cost share, applications for the development easement program have literally skyrocketed. Applications for almost 15,000 acres statewide have now been submitted for permanent preservation and over 12,000 have won preliminary approval to date. Just as encouraging is the geographic diversity of applications. At last month's meeting, submissions were approved in Burlington, Gloucester, Hunterdon, Monmouth, Somerset, and Warren Counties. Sorry, no Hudson. A summary of this information has been provided in your information packet.

Another important program shift approved by the voters was the ability of the SADC to purchase the land in fee simple. The rules and regulations needed to implement fee simple are now being drafted and will soon be submitted for public review. This added tool will be particularly useful in the more rural counties where easement values are generally too low to stimulate strong landowner interest in selling the easements alone.

Some concern has been raised over the sale of tax-exempt bond funds for fee simple purchase. A proposed solution is the sale of taxable bonds instead. Another alternative way may be an appropriation from the general fund earmarked for fee simple purchase. Other state programs, Maryland for example, provide annual appropriations from the general fund as part of their Farmland Preservation Program.

Now that the farmland retention program has increased flexibility, the next challenge is to look at short and long term funding options. The SADC anticipates the depletion of the first $50 million bond issue by early 1990. For the short term, bond funds are a viable alternative for the permanent preservation of farmland. At least $100 million in new bonds will be needed by 1990 to keep the program running smoothly. Due to input from the farm community at a recent public

meetings we held, the State Board of Agriculture went on record requesting $250 million in added bond funds.

However, long-term, more stable sources of funding should also be considered. Legislation recently released from this Committee would establish a renewable funding source for other types of natural resource preservation through an increase in the Realty Transfer Tax. Similar funding sources may be needed for the farmland retention program.

There are other pending legislative proposals that the Department has also been reviewing. These include a bill requiring the dedication of farmland assessment rollback taxes to open lands acquisition. Another bill would increase the tax penalty when farmland is converted to other uses. Discussions are ongoing on these various proposals to determine the appropriate alternative for long-term funding.

Options that reduce or eliminate public funds to meet the goals of permanent open land are also being considered. The mandatory clustering of development while permanently deed restricting certain acreages of open land may be a viable alternative in some municipalities.

Another proposal that has continued to evolve is the concept of Transfer of Development Rights, commonly referred to as TDR. Legislation is pending which would amend the Municipal Land Use Law to permit TDR as a land use management tool. While New Jersey farmers recognize the pressing need to preserve undeveloped land in our State they nevertheless continue to express concern for just compensation if and when their properties serve this public need.

Under the current bill, the concerns of private landowners have been considerably alleviated by two key features. First, the establishment of a mandatory bank by the municipality to provide an interim market for a portion of the transfer credits generated. Second, is a limit on the number of municipalities that may enact such an ordinance. The

Department will continue to work with the Legislature on this additional land use tool.

In closing, I would like to point out that the farmland retention program is continuing to evolve and mature. In the Department's recent response to the draft State Development and Redevelopment Plan, the State Planning Commission was asked to recognize the role of the SADC and the county agriculture development boards in identifying agricultural areas. I anticipate the responsibilities of this program will continue to expand as increasing pressure is placed on the State's limited land resources.

That's all I have at this time, Assemblywoman. But I would like, if I could at this time, to call on Donald Applegate who could fill you in on more specifics of the Farmland Preservation Program. So, Donald Applegate.

D O N A L D D. A P P L E G A T E: I, too, welcome and appreciate the opportunity to appear before you on behalf the State Agricultural Development Committee. My focus will really be on a couple of ideas, in particular, that may be used to expand the program.

One of the recommendations of the review committee report that Secretary Brown referred to was to expand the program to include the ability of the State Agriculture Development Committee and county agriculture development boards to enter into a limited term easement purchase agreement. Under this technique, a landowner would be paid some fractional part of the current development in exchange for the placement of a deed restriction prohibiting non agricultural development for perhaps a 15 to 25 year period. Pennsylvania is toying with 25 years, for instance.

At the end of that time, the SADC or the CADB should have the right of first refusal to purchase the remainding value of the easement to protect the land in perpetuity. This approach would be useful in those instances where either the

landowner or the SADC or CADB feels that it is best to secure the land for agriculture for a moderate period of time and to assess at a later date if long-term agriculture still seems feasible on that particular farm.

Although the recent legislation to allow for the SADC to purchase farmland in fee simple for resale with agricultural deed restrictions will be particularly helpful in those counties with relatively less development pressure, it is limited to those landowners who are ready and willing to sell their farms, and conversely is of no interest to anyone who wants to be assured of continuing to own and farm the land. We have also learned from our recent experience that this latter group of farmland owners, those who wish to retain control of their land, are not generally receptive to selling their development easements until they have hit some type of threshold value which is often higher than the current market value of the easement.

Thus, the many applications to sell easements we have received from landowners tend to be from areas under moderate to severe development pressure which also drives the value of the easement and cost upward. While both the SADC and CADBs in those developing counties will probably have the ability to retain a significant amount of that land, it is frustrating not to have an equally attractive incentive for farmland owners from our southernmost counties which still have huge blocks of contiguous farms with minimal non agricultural development and incursion.

Therefore a minimum easement value program could achieve that objective. If the minimum offer to landowners was at or somewhat above the target area threshold value, there should be enough applications to sell easements to allow the SADC, the CADBs, and the municipalities to be selective and to amass the groups of farms almost untainted by other conflicting land uses. The real public benefit derived from capitalizing

on the opportunity to retain those farms for the future will far exceed today's cost of the easement, even though they may be at a greater than currently appraised value.

Without going into detail, and other suggestions and very good suggestions for the program include the uncoupling of easement purchase from the eight-year programs, the ability to exercise the right of first refusal for easement purchase -- which Assemblywoman Ogden has been instrumental in promoting -- the conferring of additional benefits to lands under agricultural easements, the providing of additional incentives for landowner donation of easement, and I might also add another area would be for mandatory mitigation of the loss of certain critical farmlands, should they be lost if they must be replaced.

In 1979, the Legislature charged the Departments of Agriculture and Environmental Protection to undertake a study which is known as "The Grassroots Report" to retain farmland which incorporated a multifaceted approach. The wisdom of that direction is evident from the increased landowner and local participation generated in part by the recent legislative expansion of this program. But because New Jersey's agriculture is so diversified and is affected by many non agricultural social pressures, we must continue to look for and incorporate even more tools to keep agriculture viable for future generations.

The SADC sincerely appreciates your legislative support for the farmland retention program and we continue to work with you to make it even more effective.

ASSEMBLYWOMAN OGDEN: Thank you very much Secretary Brown and Don Applegate. We appreciate your comments. I think the idea of the limited term easement is a very timely one in connection with preserving the best in the areas that aren't being impacted now by development. Are there questions or comments by members of the Committee? Dave?

ASSEMBLYMAN KRONICK: I just wondered when you commented, Secretary, about Hudson County? Does it actually have to do with the cost of land that there was no possibility-- I mean there is no great farming areas in Hudson County, but of course Secaucus at one time was quite a farm area, and there must be some parcels still available.

SECRETARY BROWN: There are very few. As a matter of fact, Hudson didn't even put together a county ag development board to look into the situation. I guess the land is so high priced. But I agree with you. We have a lot of small niches in the State that I'd like to save as farmlands. They are very expensive. But, you know, what's expensive today is going to be out of this world in 10 or 20 years from now. If you want future generations to enjoy what you've enjoyed as a citizen of this State, you're going to have to do something.

It's going to be costly, but I think when you spread it out over seven and half million people who figures it as unbearable as you might think it would be-- But you have to get the people behind and they've got to understand the program.

But agriculture in the State of New Jersey is becoming more and more of a niche type agriculture, because we've lost tremendous-- We lost 90,000 acres of land in the last two years to development. At that rate it doesn't take long before you lose the gardens in the Garden State.

ASSEMBLYMAN KRONICK: Where has most of that been?

SECRETARY BROWN: I'd say probably in Hunterdon, in the northwest of Mercer County, Warren, Monmouth, Burlington -- in those areas. The open land in Bergen, Passaic, and Hudson is about gone.

ASSEMBLYMAN KRONICK: It's a good program. I hope it's successful.

SECRETARY BROWN: It's moving along very well. And as we've said many times before, the citizens of the State, when it comes up to a vote, we've always passed it overwhelmingly.

They wanted to see farms continue in this State. And it just makes it a nice place to live. It adds to the quality of life, plus it's productive open space -- taxpaying open space. It's just one of the things that we just would have to bite the bullet and put some funding up. It's expensive, but land is not going to get any cheaper. If you're dedicated to keeping agriculture open -- productive agriculture open -- productive agriculture, we're just going to have to come up with some mechanism of funding it, whatever it be. I mean, we're not suddenly sure at this time what it's all going to be.

But, we're going to need an interim source of funding for sure when this bond issue runs out. We can't have a gap in our program. Otherwise it shoots the credibility of the program. We have applications in now, potentially, that are worth beyond the asking price. It would be somewhere in the vicinity of $110 million. And so, we're certainly going to need a stopgap measure. We have spoken to the Governor about a possible bond issue in '89, as Bonnie had referred to.

So, we'd be looking at a bond issue as an interim type of funding. But we would also like an ongoing source of funding; something that you can rely on -- money that's available for the retention program on a yearly basis.

ASSEMBLYWOMAN OGDEN: What seems to me to be rather natural, Art, is when you link up the problem with the goal, that it's the conversion of farmland into development that's creating the loss of farmland, that somehow to place a higher cost on the conversion. Now, I hate, frankly to penalize farmers and those who have been farming for generations, on the other hand for those who are speculators and are just holding it until the price is right. I'd appreciate hearing your comments about whether we could treat those two different groups-- How you feel now after about 25 years of the farmland assessment program; whether it actually is working, or is slowing down the conversion; whether it should be longer? I think other states are quite a bit longer than three years.

SECRETARY BROWN: Well, I think there's some room for talk there. I mean, you have to remember, we were one of the initial states to come into a farmland assessment act. Forty-seven states don't have it as part of their legislative--

ASSEMBLYWOMAN OGDEN: And some go up to 10 years, don't they, or more?

SECRETARY BROWN: Oh, yeah. That's what I'm saying. We were one of the initial ones. We didn't know really what we should be asking for at that time. And I think we are looking at it within ourselves, and I know SLERP is looking at it. But to do away with it would be just a death blow to agriculture.

ASSEMBLYWOMAN OGDEN: I'm not asking to do away with it. I'm asking to strengthen it.

SECRETARY BROWN: Right. Well, strengthen it as far as a throwback or some other penalty if you are a speculator.

ASSEMBLYWOMAN OGDEN: Do, you think that would be feasible, something like a surtax on those who--

SECRETARY BROWN: I think we've looked at the conversion tax that Senator Dumont has, and Senator Ewing has it on rollback now. I think it's something that we're going to have to be looking at, certainly. But that still is not going to replace the need for a large amount of money to keep up this Farmland Preservation Program.

ASSEMBLYWOMAN OGDEN: Oh, I realize that, but I was just thinking of some ongoing source of money, even though it's not all that you need.

SECRETARY BROWN: We certainly would be looking at it.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Joe?

ASSEMBLYMAN KYRILLOS: Yeah. In spite the fact that Hudson County hasn't submitted an application, it's encouraging and exciting to see that a bunch of counties have, and wondering how that will affect the rate in which your current money will be expended? I think maybe you've answered that question, because you seem to indicate by 1989 or 1990 we're going to need a new pot of money.

SECRETARY BROWN: Yeah. You know, Monmouth has done an enormous job there. They're working -- as a matter of fact their board of freeholders was just almost giving an open checkbook to the program. You just say how much do you need, and they'll finance it on whatever it is, as far as matching money.

But, you know, I'm not picking on Hudson at all, but it's a good example of some of the-- The ground is very high priced, even if you get into Passaic or Bergen County. And Monmouth -- the land is not cheap down there. It's getting to the point where the price per acre of land is getting so high, that for us to support it with State funds is pretty nil. You just can't put that much money of State funds into that.

But we're looking more and more now to the municipality. If they feel there's a need to save that piece of property, we can have State funding, we can have county funding, and we can have municipal funding. Because this is happening in some areas. In Burlington County there's one particular municipality in this last go around. By the way, they raised somewhere in the vicinity of $17 million in bond issues at the municipal level in Burlington County alone last November.

And in one particular municipality, they sent around an educational brochure about what this was going to mean to you as a taxpayer in that municipality. And in one particular rural municipality, they were going to need $250 per household for the life of that bond, and it still passed. So, that goes to show you that the people out there are very very interested. Even though they know it's going to cost them money, they are interested in preserving that land, because they know it just makes it a nice place to live. There's a lot of other pluses and we don't want to get into that. But the groundwater recharge; and it makes the other land more valuable around it too.

ASSEMBLYMAN KRONICK: I would just like to ask you, if there was no serious program in the State, do you think that the serious farmers -- we're, you know, tomato farmers. I don't know if we're number one in the country, but we're certainly a factor and some of the other products-- But do you think that when the price is right, they would sell out to the developments?

SECRETARY BROWN: If there wasn't a program? We have that situation existing right now, where the developer would come in and they've sold out -- sold their farm out, and moved into Delaware, Pennsylvania, Illinois, and into New York. And so we've got to be in a position where we can compete with the developer on a pricier ground. It's got to be, or otherwise you lose it. And it's very expensive. That's another thing about farmland assessment. A lot of people criticize farmland assessment and they say it's been abused. I don't really feel that it has. I don't support any abuse of the program, whatsoever. Never have.

But I think we ought to look at the other side of it. In about 50% of the land in the State of New Jersey, farmland is owned by non-farmers. These are not all speculative; I mean, there's a lot of people who own land who just want it as a place to live and they lease it out to farmers. And a farmer, just like any other businessman, he cannot afford to own all the land that he farms. It's just like a supermarket. They don't own all the stores. They need some operating capital. They can't put it all into land or into physical property.

So, you know, the example of some of these large corporations that have five or six thousand acres, I feel personally that if they have leased it out to a farmer, and he's operating with acceptable agricultural management practices, then it's not an abuse to the system. You've got to remember that the cost to the municipality of that land staying

open is one heck of a lot of less than if you go and develop it. If you take that away from them, or get to a position where you put such a charge on rollback, or whatever it is, he's going to say, well let it go and let him develop it. But then you're going to think fire, the police, the schools, everything that goes with it. And when you start figuring it out, it's to be very, very expensive, plus you've lost another part of open land.

ASSEMBLYMAN KRONICK: I think the State has to look at this to see where we want to go as a State in planning. You know this is where it really starts from. What are our long-term goals? If we want to stay in the business of being farmland too, then maybe we have to put a stop to it through other means.

SECRETARY BROWN: We've all enjoyed it in the past, and we'd like to continue to in the future.

ASSEMBLYWOMAN OGDEN: I think the other side of the coin, there Art, is that possibly this group, the 50%, might be encouraged to hold the farmland open until the price increases so much, that it would compensate him in spite of a higher conversion charge or whatever it would be and continue to lease it. I think it could go both ways.

SECRETARY BROWN: Because some of these people who are non-farmers are people who are getting into the Farmland Preservation Program. They're non-farmers, but they still love the land and they don't want to see it go into development and they're putting an end to the farmland retention program. Therefore it makes land available to the farm community to continue on leasing the restrictiveness.

ASSEMBLYWOMAN OGDEN: Thank you very much.

SECRETARY BROWN: Okay. Thank you very much.

ASSEMBLYWOMAN OGDEN: We'll go back to the list of those who contacted Legislative Services, Ray Cantor, and asked to be heard today. The first person who signed up was Mary Tanner.

M A R Y C. T A N N E R: Good morning. I'm Mary Tanner representing the Lawrence Township Conservation Foundation and the Lawrence Heritage Association. The purposes of which are respectively, the preservation of open space and historic sites.

Thank you for the opportunity to enable so many of us to express our views as to what measures the State can take to preserve our dwindling natural resources and open space. Throughout central New Jersey, including Lawrence Township, people are concerned over the rapid loss of open space and the gain in traffic congestion. Within the last few years, the conversion of land for the construction of acres of houses, malls, and office parks, has been and continues to be dramatic and fierce.

Municipalities like Lawrence find themselves under siege, forced to spend amounts of money on lawsuits, not to mention the rising costs of garbage disposal, insurance, and the additional burden of other municipal services. The loss of so much of the State's farmland is a particular concern. When the Blue Print Commission's Report for the Preservation of Farmland was issued, I think in the early '70s, the goal was to preserve one million acres. By 1980, this had been reduced to 800,000. And now it is 500,000. As Mrs. Ogden stated recently, a reduction below this amount would mean the virtual death of agriculture in New Jersey.

The State Legislature has taken some important measures to protect farmland, notably the Farm Preservation Act and the recently approved law implementing the amendments to it. According to figures supplied by Donald Applegate, easements had been purchased on 1400 acres of land in five counties with another 1500 acres under final review at the end of 1987. By January 31 of this year, applications had been submitted to county agriculture development boards for approximately 15,000 additional acres with the expectation of many more to come.

With the greatly increased interest in the program, it is expected that according to the Mercer County Agriculture Board meeting that I attended last week, they expect that by the end of this year the entire $50 million issue providing for the State matching funds to purchase development rights to farmland will have been committed. Obviously, more needs to be done. The Legislature should enact the transfer development bill sponsored by Assemblyman Shinn. Municipalities could then enact ordinances permitting the transfer of development growth from farmland, historic or scenic areas to those sites more suitable for a building. I think it is disgraceful that this reasonable legislation to help control the fire breathing dragon of overdevelopment and misplaced development has been before the Legislature for the past 10 years.

One more, this bill is before this Committee which approved it last year, only to have it turned down on the floor. I urge that this proposal be enacted quickly. Time is a luxury we do not have. While legislatures hover over this bill and circle around and around it, farms, historic sites, and woodlands are lost forever. Some of the best farmland in the world is under New Jersey asphalt.

Assembly Bill 1361 establishing the State's right of first refusal prior to the sale of certain farmland has passed the lower house and is ready for a Senate vote. It should be enacted quickly. The enactment of A-1765, Mrs. Ogden's bill, would be very helpful to municipalities which lack the funds to acquire land for conservation and recreation. This permissive legislation, modeled on a very successful program in Nantucket, would allow municipalities and counties to impose a fee on the transfer of real property not to exceed one percent of the purchase price.

Revenues secured under this bill, provide municipalities with funds to buy open lands, promote modern low and moderate income housing efforts, and purchase, preserve, or

rehabilitate, historic property. The implementation of this legislation would undoubtedly encourage and enhance the efforts of local private conservation and historic associations. Officials and residents of municipalities know their communities. They can act quickly to protect areas that should be preserved for future generations. I also think that sometimes a statewide program is likely to overlook a small, but precious tract of land in a highly urbanized area, like Mercer County. And consequently, a tract that is productive and very precious is sometimes overlooked.

The State should have an adequate and stable source of funding for the acquisition and protection of natural resources. Legislation providing for the Natural Resources Preservation and Restoration Fund through a property transfer tax should be enacted in the near future. And again, I emphasize that this bill, I think has been around for three years, and consequently, I think that's time enough to have studied it.

If agriculture is to survive so that we have some balance in our economy, if we are to preserve and enhance our heritage from the past, if we are to continue to enjoy the scenic beauties of our woods, streams, coastal areas; if we are going to retain the capacity of the land to renew itself; if we are going to retain some productive capacity of the land, the Legislature should follow up on initiatives already begun.

Why not another Green Acres bond issue? Why not use some of the rainy day surplus for farmland open space acquisition? I think it's important to prevent future rainy days. Why not expand the program of matching grants for the acquisition and preservation of the historic sites? Another area that could be explored is the donations of easements by corporations owning large tracts of land. And I think basic to this whole problem is a restructure of the State's tax system.

Finally, New Jersey has many associations devoted to the protection of open space, while accommodating reasonable development. MSM, the New Jersey Conservation Foundation, the Delaware-Raritan Canal Commission, the Stony Brook-Millstone Watershed Association, the Greenway Project are all regional organizations with which I am familiar. There are of course many others. They have and continue to make excellent recommendations. Do take advantage of this information, their expertise, their knowledge, and their concern for the welfare of the people and the resources of the Garden State now and in the future.

And I would like to thank Mrs. Ogden for her initiatives which have already been accomplished. Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you. Are there any questions?

ASSEMBLYMAN KRONICK: I can only say I wish we had more people like you, Ms. Tanner, in Hudson County speaking out. It would make a heck of a difference.

MS. TANNER: Well, thank you.

ASSEMBLYMAN KRONICK: Thank you. Your comments were really well deserve.

MS. TANNER: Thank you. I have copies of this.

ASSEMBLYWOMAN OGDEN: Yes, if we can have copies, it would be helpful. Is William Neil here of the American Littoral Society?

W I L L I A M R. N E I L: Good morning. I'm William Neil, New Jersey Coordinator for the American Littoral Society, a national coastal conservation group with over 3200 New Jersey members.

My comments will be addressed to what the Littoral Society feels is an inadequate amount of open space in the coastal regions of New Jersey, including the tidal Delaware and Hudson Rivers, and places to look for money to acquire more.

But first I would like to make a few observations to serve as background.

This is a crucial time for the purchase of more open space in New Jersey's coastal regions. It is unlikely that the present unique combination of a large budget surplus, a robust state economy, and favorable public attitudes towards open space will occur again. The disturbing ocean events of last summer have focused public attention on the quality of life at the Jersey Shore. Eagleton Institute Poll results published in March of this year reveal that State residents feel the preservation of farmland and open space is more important than economic growth, by a margin of 62% to 26%.

While it may be obvious to many observers that there's a shortage of open space along our increasingly congested coastal zone, we want to emphasize the following points that document the current situation: Under the category of protected land of barrier islands, compared to other New England and Mid-Atlantic coastal states, New Jersey ranks next to the last in terms of the percent of land protected on its coastal barrier islands. Protected land here means land set aside in parks, wildlife preserves, and conservation areas.

Under the category of new natural areas, since the Department of Environment Protection's Green Acres Program listed 38 State-owned areas to be preserved and managed as natural environments in July of 1978, 10 of which were in the coastal zone, only the parcel called Bear Swamp East in Cumberland County has been added to the list of lands in the coastal zone. Under the category of estuarine or marine sanctuaries, the latest edition of the Division of Coastal Resources' "Rules on Coastal Resources and Development," which was February of '86, indicates that policy under section 3.14, estuarine or marine sanctuaries, was deleted because no estuarine or marine sanctuaries presently occur in New Jersey and none are contemplated.

This is unfortunate for two reasons. First because a considerable amount of time has been spent studying certain estuarine areas for possible nomination, and second, because there may still be Federal monies available under the Natural Research Reserve Program, section 315 administered by the National Oceanic and Atmospheric Administration, also know as NOAA.

Under the category of erosion hazard areas, the first recommendation listed at the conclusion of the Division of Coastal Resources' handbook, "Coastal Storm Hazard Mitigation" from 1985 calls for residents and officials to think now about specific hazard mitigation plans, "in order for rational post storm recovery and redevelopment to take place." Land acquisition is one part of this strategy that could accomplish a couple of worthwhile objectives at the same time: Increasing the land available for public access and use and reducing the risk to life and property. In more dramatic terms most of the areas that were heavily damaged by the great Northeaster of March, 1962, have been built upon again. Under the category of the Hudson River waterfront area, this is a shameful lack of public open space in the proposed development areas along the Hudson River from the George Washington Bridge south to Jersey City.

As far as we know, neither New Jersey DEP nor the local communities have plans to purchase a pier or other waterfront property for public uses. Residents of that area and all citizens of New Jersey deserve better. The American Littoral Society does not want to minimize the problems that go along with purchasing open space at the expense of the real estate world that is the coastal zone. We therefore, make the following suggestions about funding for future acquisitions.

New Jersey citizens and officials must not be lulled into a false sense of security by our long stretch of good luck since the great Northeaster of March, 1962. Future storms,

like sea level rise, are inevitable facts of life. We should be planning now by developing an inventory of high hazard erosion areas to be purchased after the next major storm hits. Sound planning also means having our congressional delegation along with those of other eastern coastal states work to adequately fund section 1362 of the National Flood Insurance Act administered by the Federal Emergency Management Agency, also know as FEMA.

By definition, the areas most likely to be purchased, such as lands adjacent to the southern shore of our barrier island inlets are constantly subject to erosion. Therefore, it may not be reasonable to purchase these lands with Green Acres money. Instead, taxes on such items like real estate transfers, and motel and cottage rentals should be earmarked for purchase of our most dangerous barrier island areas.

We would also like to see that the revenue that originates largely in the coastal zone is put to use in that region to purchase open space. We have in mind the money generated by the sale of State riparian lands. A process reviewed by the Tidelands Resource Council-- Tradition and statute have it that these monies go directly into the State public school fund. However, we feel both logic and public sentiment would now favor channeling at least some of this money for use a bit closer to home in the shore area.

The American Littoral Society claims no special expertise in the highly fine art of raising public revenues. We have a belief, however, that the solution to the 300,000 acre public open space deficit noted in the 1986 annual report from the Environmental Protection Agency shouldn't wait upon the discovery of some new technical revenue tool. We think, rather, that the solution lies directly in the deciding what lands need to be purchased, and putting their price tag before the public now, while the public's mood is favorable and the State's surplus bulges. And we think the sums put before

should be adequate to cover not just the next couple of years' purchases, but should be scaled to meet the projected needs for several decades to come.

ASSEMBLYWOMAN OGDEN: Thank you very much. Hudson County is included in that. Do you have any questions?

ASSEMBLYMAN KYRILLOS: Yeah. I just have one question. The Governor's Coastal Commission initiative is not something that will come before our Committee here. But I see it as an initiative that may address some of the concerns that you outlined. I was wondering if the Littoral Society had taken a position on the Governor's proposal?

MR. NEIL: We have an important meeting this week to formulate a position.

ASSEMBLYMAN KYRILLOS: Okay.

MR. NEIL: I guess, if I may give a comment, I guess the thrust of my remarks are that I'm not sure whether, speaking generally, we're going to find a magic new formula to easily raise money whether for the coastal zones or for other areas. But the timing, the sense of the public mood, and the state of the economy are so crucial now whereas the Green Acres has come forward in kind of small parcels year by year. This may be the time to press for larger slots, to look 20 years down the road while the mood and the finances fit the situation. We've never been turned down for purchases.

And I would also suggest that you work closely with the Department of Environmental Protection in which the different divisions on coastal resources can come up with inventories of places that really need to be purchased and that those list of inventory can go forward and be put on the list for acquisition. We're especially concerned with the coastal areas that we know are going to be hit hard by the next storm, and it may sound a bit macabre to say, but you want develop a list now of the properties that we have. We know what was hit in 1962. When the next one hits and places are wiped out --

which did happen without exaggeration in '62 -- property values dropped. So, it makes sense to plan now for what is likely to be damaged, for possible purchase afterward to prevent long-run economic hardship to the State. It makes sense to think about buying some of these properties.

ASSEMBLYMAN KRONICK: Is your interest primarily with the coastal land?

MR. NEIL: Yes, it is. Of course we have a general public interest in open space, but that's primarily coastal land, including the tidal areas along the Delaware, and Hudson County. I've been on a tour from the George Washington Bridge down to Jersey City, so I know firsthand where the problems are there. Okay?

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. NEIL: You're welcome.

ASSEMBLYWOMAN OGDEN: Next we have Anthony Giancarli of the Central New Jersey Builders Association.

A N T H O N Y G I A N C A R L I: Good morning Chairwoman Ogden and members of this Committee. My name is Anthony Giancarli. I'm here today representing the New Jersey Builders Association. Also here with me is Michael G. McGuinness who is the Director of Governmental Affairs of the Association. We have passed out testimony so that you can follow along.

I think it is apparent, and everyone should agree here, that the State faces a serious housing shortage. This is due to a number of reasons; one of which is the rising cost of land and the other is the increase in the delays of the approval process. These factors all push up the cost of housing in this State out of reach of the middle income families. I think this crisis is also obvious when we look at and we examine the growing number of the homeless in the State as well. So, as you consider ways to preserve open space and recreational opportunities, we ask that you consider options and examine options that will not place any additional pressures on the cost of housing.

We recognize that the protection of vital natural resources is a legitimate public function. But we also recognize that people need a place to live and a place to work in this State. So, it is the task of this Committee to balance these sometimes competing objectives. And it is in this context that I ask that you consider our following comments.

Let me first begin with the 1987 report by the Governor's Council on New Jersey Outdoors, which recommends a substantial increase in the amount of land that has been set aside for open space. We must focus on the utilization of this land. What I mean by that is that this open space and recreational area must be readily available to population centers, so that everyone may benefit.

As I noted earlier, this issue must be considered within the context of the competing social priorities. Question: Can New Jersey allocate more of it financial resources for open space preservation? We feel that in answering this question, we must evaluate what the priorities are, then we must evaluate the impacts of preservation policies, on these priorities -- namely affordable housing.

We strongly recommend that in allocating of the State's fiscal resources, that the Legislature first ensure that there is adequate funding for needed infrastructure to provide for housing for all of its citizens. And again, I stress affordable housing.

Now having made this point, we suggest that the State endorse state-of-the-art land use and planning techniques that are known to minimize adverse impacts on the environment. In order to do this, it would be necessary to encourage flexibility and cooperation at all levels; local, State, and county; by means of innovative zoning. By innovative zoning, we mean the promotion of clustering, the promotion of tax abatements, public funding, and specific performance standards.

We would recommend the clustering concept be defined and standard in order to encourage developers to use this technique. Such a cluster option would then set aside, as is the objective, a certain percentage of land for open space and provide for recreational facilities. However, the problem is that many municipalities vary widely as to whether and how clustering should be used and is used. And in terms of incentives-- In many cases municipalities do not allow environmentally sensitive areas to be calculated in the density calculations. We would recommend that gross area be required as a constant factor in calculating density.

To facilitate this concept in non sewered areas, it will be necessary to support the use of centralized on site wastewater treatment systems. What is needed here is a simplification of the approvals and permanent process that is now currently administered by the DEP. But setting aside streamlining of the NJPDES and treatment water approval program, we urge that the Committee support efforts to modify the Code Permit E requirements.

As everyone is aware at this time, only municipalities and governmental entities are allowed to act as co-permittees. And the problem is that most municipalities are not interested in taking on this additional burden. Well, we suggest the expansion into the private sector entities that can serve as these co-permittees. By identifying the criteria and having them satisfy the criteria, they can be made eligible.

In cases where land development is not proposed and the priority and objective is open space preservation, funding will be needed to purchase and secure this land. What we recommend is that the Committee develop a broad based source of funding. Examples might be sales tax, user fees, general revenues, and bonds.

We feel that broad based funding is important to ensure fairness to everyone. There are strategies proposed by

some that rely on taxing only specific groups. This, we feel is unfair since all citizens benefit from these open spaces. An example might be the Realty Transfer Fee, where home buyers and more specifically first-time home buyers are unfairly taxed.

So, what we're saying is that to the extent possible, low cost preservation techniques should be and must be encouraged. An example might be easement purchases, landowner agreements, and private property donations. However, in all cases, when private land is rendered undeveloped, compensation should and must be made at fair market value.

The Committee may also want to create a legislative study commission to study the TDR concept and if this concept can work in New Jersey? The program has been tried in the Pinelands and elsewhere in the country, but it has been unsuccessful. Before the Legislature promotes this concept, we feel that we need an in-depth analysis as to why this failed and ways that we can design a more successful program.

As I indicated earlier, open space and preservation opportunities are probably the concerns of public policy. But, the decisions regarding these objectives cannot be made in a vacuum. As you proceed to consider policy options, I hope that you will consider the ideas that are set forth today.

I thank you for this opportunity to speak to the Committee and I have additional testimony if anyone would like a copy of it. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Also, we appreciate you summarizing your remarks. It's helpful to those who are still waiting. Dave, do you have any questions?

ASSEMBLYMAN KRONICK: Yes. I'd like to ask you, you mentioned about the need in New Jersey for housing, and you're right. In Hudson County we have a lot of people who will perhaps be out of their home. But these are not people who can afford a condo or townhouse for a quarter to a half million dollars. So, that solution of more housing of the type we're

talking about will not resolve the problem. And it's not only in Hudson County. We have it in other sections. But it's a very serious problem. We need -- what do you call it? -- low rent type of housing to accommodate these people.

One other comment I'll make. When you go into an area and you develop, such as the extensive development going on in Hudson County, you can reach a point where the condos and high-rises that now sell for a quarter to half a million -- and Port Liberte -- over a million dollars-- And that's lovely and it's beautiful. But not every one of these apartments or homes will have a magnificent panoramic view of New Jersey, the Statue of Liberty, and the river. Some people will be facing the other direction. And from the point of view of the developer I think they should keep in mind, that to sell these expensive domiciles, that people would want to have a beautiful view, open space, because that's very important when you're going to command that kind of a price on an apartment or a home.

And I hope that this will enter into the thinking of the developers, so that this intensive high-rise, massive development we're seeing in other parts of the State also will play a part in their long-range philosophy. Because I hate to think what could happen down the road when no more people want to pay those prices and it could just be a reverse situation. It is conceivable.

MR. GIANCARLI: I think you're right, but when you talk about land prices, land prices are a pertinent-- It has a lot of value to do-- When you talk about the cost of housing, the biggest factor is land costs, and when we take away land or underdevelop land that can not be developed on, the supply diminishes and costs have to rise. It's just the simple rule of economics -- on supply and demand; as supply goes down, demand goes up, the prices have to go up. So, I think you're right.

ASSEMBLYWOMAN OGDEN: I'm interested in your recommendation that clustering be standardized. I know when I recommended clustering to my home town about 15 years ago, there were so many fears and questions that they were never willing to adopt it. And I doubt that they still would be today. Dealing with such issues as, you know, is it inperpetuity if you transfer the density, how do they know that it's going to be kept forever, who's going to keep it up, who has access to it? Are these the sort of things that you're talking about?

MR. GIANCARLI: Yes, it is.

ASSEMBLYWOMAN OGDEN: As an amendment to the Municipal Land Use Law?

M I C H A E L G. M c G U I N N E S S: Yes. Chairwoman Ogden, if I could address that. I think there are legal ways to satisfy those concerns with the municipality. I'm not sure what they are, but you could record it in the deed. There would be some way you could have the property owners or the homeowners association be responsible for the upkeep of the areas. There are ways to do that and I believe it's done all the time.

ASSEMBLYWOMAN OGDEN: But in standardize-- What you're specifically thinking of is an amendment to the Municipal Land Use Law so that all municipalities would operate a clustering area in the same fashion.

MR. McGUINNESS: Exactly. Right. In other words, have a group of experts convene to decide what's needed in a cluster option. There are planners and experts out there who would have some knowledge of this. For instance, you might set aside 30% of open space. Or you might have to set aside some type of recreational facility for say infants or toddlers, or something. There are different options that you could include in a cluster option, I think, that would satisfy all the towns. And have that standardized so that builders come into a

town and if the town adopts that cluster ordinance, then they would have to agree with certain provisions.

ASSEMBLYWOMAN OGDEN: So everyone would know what the rules are before they start?

MR. McGUINNESS: Exactly.

ASSEMBLYWOMAN OGDEN: Do you have any questions, Joe?

ASSEMBLYMAN KYRILLOS: Yes. Thank you for your testimony and for being here. I appreciated what you had to say about affordable housing, and growth. We need more to keep growing economically the way we are and to keep pace with the kind of progress that we need to have. But at what point does that progress move from being quality progress to just quantity progress? I'm just curious, as representatives from your industry. In order for it to continue to be viable and profitable and productive, how much open space do we need in New Jersey -- do you think, for your own interests?

MR. GIANCARLI: I can't tell you a specific number, but I just can say that we definitely need a balance. I mean, New Jersey is thriving, and it's thriving because of the building industries and companies coming in from all the states that are bordering New Jersey. Well, we need a balance. People now can't afford housing. I'm a developer myself, and I have problems finding land where I can build affordable housing. We just have to have a balance where we can't keep taking land off the buildable rolls where it's going to reduce the supply of land and increase the costs of housing, Assemblyman.

ASSEMBLYMAN KYRILLOS: I'm not sure if you've read this part of your testimony or not, but looking at the written transcript, a couple of us sat here and did some quick math. You point to the fact that the Governor's Council on New Jersey Outdoors says that we've got about 700,000 acres of open space designated as such, statewide. And this works out to be nearly 10 acres per person. That wouldn't be all that bad, but I

think if our math is correct -- and we didn't have the benefit of a calculator -- that's about one-tenth of an acre per person, which is really not enough space for this Assemblyman, really, to run around in. I don't know about the rest of the crowd up here, but--

MR. GIANCARLI: That's fine. But all we're saying is that we need a balance. And I think you should agree with that. And no one, I don't think, would argue with that.

ASSEMBLYMAN KYRILLOS: I do. I did wanted to point the discrepancy as I saw it.

MR. GIANCARLI: Yeah. I thank you for the correction there. Thank you.

ASSEMBLYMAN KYRILLOS: Thank you.

ASSEMBLYMAN KRONICK: I'd like to pick up on that point, if I may. I wasn't able to calculate what 10 acres per person works out to when you talk about density per square mile, but with 10,000 to 12,000 people in Hudson County per square mile, it's nowhere near this. So, your concept of strategic placement -- to me, that makes a lot of sense. So, we need the infrastructure -- perhaps light rail, train -- to tie the State up north, south, east, and west so that we'll develop down in the south and that 500 people per square mile -- we'll bring that up to 1000; but that 10,000 to 12,000, we don't have enough open space. That's what I'm saying -- a little better balance throughout the State.

MR. GIANCARLI: I agree. Just like we said that the State should provide the funding to increase the infrastructure that we need in this State to provide for the housing and for industry.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. GIANCARLI: Thank you.

ASSEMBLYWOMAN OGDEN: Next, I'd like to call Hooper Brooks, of the Regional Open Space Program, Regional Plan Association.

H O O P E R L. B R O O K S: I just walked in the door.

ASSEMBLYWOMAN OGDEN: Pardon?

MR. BROOKS: I just walked in the door, so I'm not sure of the procedure.

ASSEMBLYWOMAN OGDEN: Oh, I see. You mean you aren't one of the ones who's been waiting all along? We could call on someone else. (laughter)

MR. BROOKS: Trains, cabs, and various things were delayed.

ASSEMBLYWOMAN OGDEN: We are asking those who have written statements, if they would summarize them in order to give the rest of the people who are waiting to make a statement time. I think your organization received a letter in terms of what the purpose of the hearing is.

MR. BROOKS: Yes. Well, I have a very brief statement. So, I'll just-- As I think you are aware, the Regional Plan Association is in the implementation phase of its third major open space plan in the last 60 years. For those unfamiliar with RPA, it's a nonprofit organization which based on research and the plan, promotes orderly growth in the 13,000 square mile tristate: New York, New Jersey, Connecticut region; and we deal with many other subjects in addition to open space, such as transportation.

We've had previous open space plans. Our 1920s plan stimulated a doubling of open space. And our 1960s race for open space engendered a similar doubling. We're once again facing a surge of land development which suggests that we identify and protect that which is most important for the health of the region.

I think many of you have probably seen the initial two reports of our current effort: "Green Space, and Greenways," and "Where the Pavement Ends," which are part of a series that we'll call "The Space Imperative." They've just been released, and they've stimulated a really strong positive response from

the media all over the tristate region. In New Jersey, they show that the supply of open space land in the 14 northern New Jersey counties has decreased over the past two decades. From 1962 to 1984, for example, the amount of farmland dropped by 124,000 acres, or about 20%. The amount of developed land has increased by 260,000 acres between 1963 and 1985; so that 25% of all the land in this sector is now developed compared to 16% in 1963. By 2005, we project that it would be possible that given current trends, a thousand square miles of additional land could be developed in the whole region, and not in the New Jersey sector, but roughly that would average approximately a 25% increase.

Our reports describe recommendations for regional network for green spaces and greenways. That would combine local, county, State, and regional efforts; and the greenways would have benefits such as protecting natural wildlife habitats and bring open space near everyone. You've probably heard a lot about greenways already, so I don't need to go into all of the potential benefits.

But, let me just summarize the recommendations. We said the Governor, should firmly set a policy calling for these, and that State planners should provide ideas of where to work for them, and the State Legislature should establish a fund or encourage funding to stimulate local planning and public/private partnerships for greenways. The U.S. Congress should also ensure a solid Federal partnership in this funding. And most important, there does have to be civic local leadership. Without that, it won't work.

There are really many more detailed recommendations that are going to follow our efforts dealing with specific targets of opportunity, funding, alternative preservation techniques, management, and demand. Our preliminary fundings for New Jersey, for example, demand a document -- a strong demand -- for more open space land. And we're also working on

several specific efforts in New Jersey, which cover the full breadth of open space types, from urban to rural. One is Sterling Forest where important recreation needs are served by 18,000 acres of bistate wilderness land, now of private ownership, much of which should be protected as development pressures mount. And this is a need which extends to several major land areas from the Delaware to the Hudson, along the New York, New Jersey border. Another is along the urbanized lower Palisades where our research has identified important acquisition and management needs, if those cliffs are to be protected as part of the enormous increase and development that is coming there.

And we've been asked for help on many other projects in almost every single other northern county in our region. We can answer all of that. But each one seems as deserving of attention as the next. If we are to achieve a green space or greenway vision, or any other open space vision in New Jersey and all the needs of stewardship and management that are related to that, there is a lot left to be done.

As we develop our more developed detailed recommendations, it's clear that there is an enormous and urgent agenda for legislative action; ranging from the need to provide stable and adequate funding for full and lasting acquisition such as for easement and legislation to better empower local and county action for innovative techniques; for example Transferable Development Rights. In this case, we urge something which would allow TDRs to used universally in urban, suburban, and rural settings, and between municipalities. And also perhaps most important: increase funding for planning at all levels of government. And there's a lot more, such as scenic landscape designation; things which don't cost money, things which don't necessarily say that there's got to be either open space or development, but that the two could work together.

And not everything needs to be accomplished with State dollars, although the State does have to come to the table with a strong partner to facilitate the most efficient use of public and private funds. And it also has to provide necessary support to better mobilize the vast array of alternative preservation techniques that we're always hearing about. But they just don't happen spontaneously.

So, in summary, from the Federal level where the Udall Chase American Heritage Trust Bill is being proposed, to locally driven efforts, such as the Delaware Raritan greenway project, now really is the time to forge this powerful partnership. It's a moment of great opportunity, which may not come again.

ASSEMBLYWOMAN OGDEN: Thank you. We certainly agree and appreciate you making the effort to come from New York to testify today. Questions or comments?

ASSEMBLYMAN KRONICK: I'm under the impression that right now I think that Ella Krause from the Trust Republic Land and the Regional Plan are engaging or just about concluding a study having to do with the Hudson County Palisades area. Is that correct? And this is under the aegis of the DEP?

MR. BROOKS: Yeah, but the whole lower Palisades area. It's not under the aegis. It's funded in part by DEP. It also got a foundation share from the Fund for New Jersey.

ASSEMBLYMAN KRONICK: So, that they would be making recommendation to the DEP?

MR. BROOKS: Yes.

ASSEMBLYMAN KRONICK: Very good. I look forward to seeing that.

MR. BROOKS: It's a difficult area, because obviously real estate values are high, so what we're looking for there, is perhaps what you're looking for today; is how do you do things without necessarily spending all that money. You can't always avoid it.

ASSEMBLYWOMAN OGDEN: As a tristate group, you really have a unique perspective. Are there things that are being done in New York today or in Connecticut that we should pass legislation to set up the necessary means to do it here in New Jersey?

MR. BROOKS: It's sort of difficult to know where to start. Let me just touch on a couple of interesting things. I thought you might ask that question. One thing is a county effort on Long
sland that may bear some research. First of all, Suffolk County has already passed the bond act enabling $60 million of expenditures. And in fact, within a year or so since that passed, they're already two-thirds of the way towards spending it. But in addition, several of the localities out there have had their own major funding. This is mainly to protect the aquifer there.

But the current thing of interest is that they have taken an existing sales tax -- a quarter of a cent sales tax on the dollar -- and rolled it over for another few years to produce a projected income. I think the total is around $600 million. But in any event, $300 million is earmarked for acquisition of land in the Pine Barrens area which is the most important aquifer protection area. That would--

ASSEMBLYWOMAN OGDEN: That's New Jersey.

MR. BROOKS: Yeah. I'm sorry. In Long Island -- Suffolk County, Long Island.

ASSEMBLYWOMAN OGDEN: So, just from one county, having a quarter of a cent sales tax, they're going to--

MR. BROOKS: They're projected by the year of 2000, just for open space, $300 million more dollars. Of course, real estate dollars are very high there.

ASSEMBLYMAN NAPLES: I guess they are.

MR. BROOKS: But I thought that would be something just to show at an local level, with a little determination, a lot is being done. Of course it's an island. There's nowhere

they could go. They have to deal with what they've got. But maybe that's, I think, a harbinger of things to come.

ASSEMBLYWOMAN OGDEN: How did the county -- need authorization from the Legislature to do this? It's different--

MR. BROOKS: What's now happened is it's passed by the -- Sales tax was approved by referendum and it's awaiting legislative approval in Albany. So, yes it does.

ASSEMBLYWOMAN OGDEN: Oh, I see. So, the county initiated this?

MR. BROOKS: Yes. That's one example. I'm trying to think if there are some others that are actually in place. Well, it's a little different. Each state has its own. New York State has a major bond act that just passed a year and a half ago. I'm sure you're familiar with that. Connecticut is, in fact, pursuing a great deal of increase in its funding. And there's some interesting details to the way their current funding package works, including the partnership with nonprofit organizations that are possible -- and you have to talk to them directly -- but things that really give nonprofits a little bit of a boost in their role.

ASSEMBLYWOMAN OGDEN: Well, we look forward to receiving your complete recommendations when, I guess, the next booklet comes out.

MR. BROOKS: Yeah. I might finish by saying one of the things that seems to have floated to the surface all over the northeast is the tremendous concern about landscape; protecting the scenic qualities which really make this a place people want to come to. And there's a lot of thinking going on, I think in all three states, and all over the northeast, about what steps you can take to protect this kind of thing. With the Hudson River Valley Greenway project that Governor Cuomo just announced may, in fact be very little acquisition, but may deal with the--

ASSEMBLYWOMAN OGDEN: Scenic easements.

MR. BROOKS: scenic easements and also just protecting the elements of an historic landscape that makes the landscape feel the way it does. That doesn't tie up land. It may protect buildings, it may protect stone walls, it may protect some of those things.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. BROOKS: Thank you.

ASSEMBLYMAN NAPLES: I just wanted Assemblyman Kronick to know that one of the reasons that I was late was that I was putting the finishing touches on a letter to Mayor Cucci. So, I was thanking Hudson County for an evening (inaudible).

ASSEMBLYMAN KRONICK: Thank you. Did you give him the money?

ASSEMBLYWOMAN OGDEN: Phyllis Elston of the New Jersey Environmental Lobby.

P H Y L L I S R. E L S T O N: Last minute alterations so that you have the new correct address and phone number. Thank you Madame Chairman and members of the Committee for the opportunity to come before you and once again sound like a broken record today. I think that by now I can say SSF to you all and you know what I mean. That's what we've come to call it at the Environmental Lobby and within the National Resources Preservation Coalition. And of course I'm referring SSF to the "stable source of funding" that we're working so hard to win for the Natural Resources Division of New Jersey DEP.

I've reduced my testimony today into a fact sheet for you. I come before you not only representing the New Jersey Environmental Lobby for whom I am Executive Director, but also on behalf of the Natural Resources Preservation Coalition which was formed six months ago, right after passage of the Wetlands legislation. And I'd like to point out for the record that the Natural Reservation Coalition is made up of well over 100 groups. The steering committee is made of the following: ANJEC, the Association of New Jersey Environmental Commissions,

the Freshwater Wetlands Campaign, the New Jersey Audubon Society, the New Jersey Conservation Foundation, the Passiac River Coalition, the Rockaway Township Environmental Commission, the Sierra Club of New Jersey, the Stony Brook Millstone Watershed Association, the Watershed Association of the Delaware River, and New Jersey Recreation and Parks Association. That is the steering committee of the Coalition.

The Coalition has presented in this fact sheet just a summarization of open space deficits as abstracted from the outdoor recreation plan of New Jersey. That's one side of the sheet that I gave you. The other side deals with the facts that you've already heard time and again this morning, and that is the need that comes out of the Governor's Council on the Great Outdoors with regard to natural resources, preservation, the need for the famous 399,000 acres of recreational land, the need for county and local acquisition programs, highlighting the fact that the $83 million which was left -- and this was compiled six months ago -- from the '83 bond issue is indeed spent.I if all programs on the board six months ago were taken care of, that money, in effect, would not have been enough.

And State maintenance and acquisition of open space lands-- I'd like to reiterate what Greg Marshall said earlier and focus on the fact that attendance at State parks, just in the past four years has gone from 3 million to 9 million. And let me interject a personal note here from my own firsthand experience, having spent ten years in municipal government in Hunterdon County, and still being active in planning work in Hunterdon County right now.

Back in the '70s many people gave up their lands, farmlands in many instances, so that the State could establish two recreational reservoir facilities. I'm speaking of Spruce Run and Round Valley. Both of these are beautiful facilities that offer recreational use and camping use. Spruce Run is also used for drinking water use -- excuse me, Round Valley is often used for drinking water use.

The situation is such today, and has been for about the past seven years, that we are so understaffed because of under funding, because of lack of stable funding for these facilities, that when one is open, the other must be closed. There's not enough money to pay people to keep both of these facilities that washed over people's homes to be created, open. It's just like Sandy Hook needing to close on any given summer weekend by 11:00 of the morning. If you're not there by then, you're not in. And many of those people who want to get in are people who most need this type of recreational facility. I'm speaking of people from urban areas with limited access to recreational lands.

And I compliment Assemblyman Kronick very highly as a leader in recognizing what too few people recognize, that urban areas are vitally connected with and must have as a major concern the acquisition of open space. It's needed there just as much as it's needed in rural counties if not more.

I'd like to spend a little bit of my time reiterating the basic legislative need for whatever initiative it shall be that will fly with bipartisan support through both houses to establish the Natural Resources Preservation Trust Fund for which we have been waiting for three years. You know the initiatives that have been before both houses as well as we at the Lobby and on the Coalition know. And frankly, I sometimes don't phrase it this bluntly. But I think this is the time to be blunt. We don't care where the money comes from, so long as the funding comes. We think that the Realty Transfer tax proposal is an excellent one because it's land use related.

When new housing is built, it impacts on our natural resources. When people are buying existing homes, or homes of new construction, when people are putting up new office buildings, etc., they're impacting our natural resources. And part of the cost of that which the builders will internalize as part of their cost of doing business is embraced by the already

in place Realty Transfer Tax. And we're speaking of only a small increase in that tax, if indeed this is what it is. The other most talked about option, the hotel motel tax, we feel again, is well related to the impact on natural resources. And not only does it catch those of us who belong as residents of the State of New Jersey, when we engage a motel room, but it catches those passing through, who impact our natural resources, and then keep right on going to wherever it is that they live or do business.

We're talking of-- The proposal there was one percent. That's 69 cents on the average motel room of $69. It hardly hurts. And the irony in the situation is that the people of New Jersey keep on demonstrating that they are willing to bear these kinds of costs. They're not given the chance to do it, because we can't get this or the other legislative initiative or anything for that matter through in the past three years. It's an idea whose time is way past coming. It's an idea that has to be implemented and become a reality now.

And we're not talking about shore protection legislation. Believe it or not, some people still consider this legislation, shore protection legislation. There had been a major thrust when this idea started out some years back, but what we're talking about is the current legislative initiative which would give stables fundings to natural resources. A section of DEP involved the Green Acres and Green Trust programs, the Fish and Game program, the State parks program, nonstructural flood control programs, Clean Lakes programs, and shore protection. So, we're not just talking about that one particular entity which this legislation is couched in those terms much too often. We're talking about the need for all of those that I just mentioned.

To do anything less than create the stable source of funding that is needed, is to allow the Department or to force

the Department to operate at some less than top efficiency. Helen Fenske -- Assistant Commissioner Fenske -- of the Natural Resource Division in DEP oftentimes refers to her Department as a stepchild. I'd like to liken it to a family without a breadwinner, a salesman working on commission without a stable salary; because as long as the Department has to operate in the hand-to-mouth fashion in which it is forced to operate without stable funding, then we are seeing less than the top efficiency in the use of the taxpayers' dollars.

There can be no long-term planning, within that huge entity which is the Natural Resources Section of DEP without what amounts to a stable salary coming. Yes, we still need bond issues. We need them badly and we'll continue to need them. And yes, we still need money out of the general revenue that the legislative houses will apportion out year to year as they measure the needs of that part of DEP against the needs of all the other entities within the State government. But, my word, there's no stable base under that entire Department, to allow it to engage in long-term planning. So, we are not getting the best out of our tax dollar when it comes to that part of DEP.

What kind of incentives-- In order to abbreviate my remarks, I'll just talk about what we think about some of the incentives that have been mentioned here this morning. Tax incentives, do work. Obviously, the farmland retention program is one thing that proves that in spades. It has for many years.

Several years back, in my municipality in Hunterdon County, when we were first going through the mandatory revamping of our master plan that a local governing body must do under the Municipal Land Use Act, we involved the entire community through the use of a questionnaire. And I asked our planning people at the time to include a question on that survey which asked people if they would be willing to assume additional costs on their municipal tax bill in order to aid

the farmers there in our municipality in Hunterdon County; and I was roundly laughed at. Everybody said that nobody is going to pay so that Farmer Brown down the road can repair his barn. They're not going to assume those kind of costs. We insisted that that question be put on that survey and 90 some percent of the people in the municipality answered yes. And I knew they would. They are willing to bear costs within their own personal pocketbooks to help agriculture stay in business. So those kinds of incentives do work.

Another example of how tax incentives do work is through the previously existing Federal legislation that dealt with rehabilitation of existing structures as opposed to the building of new structures and in particular, rehabilitation of historic structures. That Federal legislation, unfortunately, has been phased out, those kind of tax breaks aren't around any more. But in my former employment with the County Cultural and Heritage Commission, I can tell you that barely a day went by when I didn't have a developer at the door wanting information on those Federal regulations that allowed developers to march on into places like the Paterson waterfront, and your waterfront areas, and redo what already was sitting in a state of ruins, and by so doing, gain very attractive tax benefits. Now that that Federal legislation is defunct, that's not happening any more.

It's not always so easy to go into those antiquated mills and buildings and farm structures, and so forth, and turn them into affordable housing; and turn them into shopping centers, and turn them into office complexes; and use what we have already standing on land, already occupied instead of gobbling up more of the land which is open.

So, we'd like to see those, you know, considerations to those kinds of tax incentives. The opposite side of that coin, is penalties which were mentioned earlier -- tax penalties -- when land is obviously held for strict speculation

and turned over in rapid order. I mean, there's still money to be made in doing that, and nobody wants to infringe on any developer's right to do that, but perhaps a little money should go into the pot when that is the mode of business, you know when one is operating under. Once again, it gets built into the cost.

Municipal breaks and help for municipalities trying to engage in open space programs have to be considered. Cluster was mentioned and yes we think the Municipal Land Use Law should be amended to include a standard cluster provision.

Local planning boards are very confused by cluster. I tried to sell cluster to my township for 10 years and only about two months ago, did it become clear to me that over all those years, people thought I was talking about townhouses. When you're up to your neck in the land use business and you know that you're saying clustering development, meaning let's take the housing of whatever type it is and put it on a limited area and guarantee that the rest of that tract will be left open. That's what I was talking about. But the people I was talking to, thought I was talking about townhouses. That's what cluster development meant to them. A 10-year dialogue that was a one-way dialogue. So, there's confusion on the local level, and there needs to be help for that.

And lastly I would like to say that we at the Lobby, and within the Natural Resources and Preservation Coalition would also like meaningful TDR legislation to finally become a reality. Unlike Secretary Brown, we would like to see that land use option open to every municipality in the State. We would like a strong TDR bill because Transfer of Development Rights are not only applicable to agricultural land; they are just as applicable in urban districts, in suburban districts. Wherever the developer would want to avail himself of a TDR option, they should be allowed to do that. So, we'd like to see it open to every municipality in the State.

With that, I've given you a fact sheet which I hope will be handy for you, which we hope will allow you to have at your fingertips all of these open space needs. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you. Questions? No? (negative response) You answered them all, Phyllis. Next, we have Todd Bryan, who's Executive Director of this Stony Brook-Millstone Watershed Association.

T O D D A. B R Y A N: I hate to follow Phyllis Elston, because she always says what I'm going to say. My name is Todd Bryant. I'm the Executive Director of the Stony Brook-Millstone Watershed Association. I have a very short statement of which I will have to send you a copy of, because I don't have other copies.

Henry Thoreau expressed it best in "Walden" when he wrote, "Our village life would stagnate, if it were not for the unexplored forest and meadows which surrounded it." Yet, recreational and economically sensitive open space areas are disappearing at an alarming rate in New Jersey. Rapid growth in the Route 1 Corridor, for example, and a spillover effect throughout the region threaten the region's environmental quality and character.

Quite apart from other regions in northern New Jersey, the landscape in the central region remains relatively rural. Evidence shows, however, that the landscape is rapidly changing. The central corridor between Trenton and New Brunswick is one of the fastest growing areas in the country, and may approach the population of Dallas and Fort Worth in the next five to ten years, according to the New Jersey Department of Transportation.

In spite of this trend, however, public opinion, strongly supports Thoreau's sentiment. The Eagleton Institute study was just mentioned. In addition, a survey by the New Jersey Public Service Electric & Gas Company found that the environment is the most important locational consideration of high-technology companies.

Moreover on a national scale, the President's Commission on Americans Outdoors, found that 81% of survey respondents strongly agree that natural areas should be preserved for future generations. In the Mid-Atlantic states, this figure is even higher. Yet, as more people come to the area attracted by its natural amenities, the qualities that bring them here are diminishing. This paradox represents Garrett Hardin's classic lament in "The Tragedy of the Commons." Each new development by itself has little effect. Taken together, however, they result in significant uncontrolled environmental degradation and the lost of real character.

The result of unmanaged growth and the subsequent loss of open space is the loss of biological integrity, irreplaceable resources, valuable farmland, and diverse recreational opportunities. The consequences of these changes are not always apparent, however. Most often, environmental degradation from random growth is only measurable through the accumulation of untraceable incremental impacts. Only over a period of time does impact become apparent. Flooding is more frequent and damaging, erosion and sedimentation clogs streams and ponds, nuisance algae blooms choke water courses, road salts and chemicals enter lawn systems, in species composition, gradually changes from greater diversity to more simple ecosystems made up of abundant supplies of a very few common species. By the time these impacts are discovered, they usually cannot be controlled.

The pace of development in the centeral corridor of New Jersey has far exceeded efforts to maintain valuable open space. A recent study by the Mercer/Somerset/Middlesex Regional Council in their regional forum concluded that at least 40% of the region's land should remain in public or private open space, including farmland. Currently, only about seven percent of the region is publically owned or permanently

restricted, anyway. This figure is far lower than the State as a whole.

Although strong support exists for open space protection, the region is falling behind for several reasons. Environmental regulatory programs and other State efforts, for example, have not kept up with the surge of economic growth. In addition, land acquisition like Green Acres and the Farmland Purchase of Development Rights programs have focused on regions where land values are lower, thereby netting more land per dollar.

Moreover, State officials and county executives are reluctant to compete in the region's real estate market when land prices are so high. As a result, farmland and open spaces are being lost in population centers where its preservation is most critical to public health and welfare.

Open space preservation is further complicated by the fact that land use decisions are made primarily at the municipal level. Since major open space do not follow municipal boundaries, regional needs are often ignored. Further municipal officials are reluctant to exercise full regulator authority under the State's Municipal Land Use Law for fear of lawsuits against the municipality and against them personally.

Finally, many officials, because they are volunteers have limited knowledge of their own authority and even less knowledge of Federal, State, and regional regulations and policies. Too often officials' knowledge of land use policies is obtained from the developers that come before them for municipal review. Many municipal governments, unfortunately, are allowing developers to decide the future of our landscapes and our open space patterns.

And I have 10 very brief recommendations that I would like to make to the Committee. I would like to list several land conservation techniques and legislative proposals that I

feel will greatly strengthen our efforts in New Jersey. They are not listed in any particular order or priority. I believe they are all necessary.

ASSEMBLYWOMAN OGDEN: You're going to send us a copy of this?

MR. BRYAN: Yes, I will.

As Phyllis mentioned and several other people, we need a permanent and stable source of funding for natural resource protection at the State level. This source of funding should raise at least $50 million per year and be tied to a funding source such as a Real Estate Transfer Tax that will rise with inflation. A tax on the transfer real estate, if considered, should not exempt new construction -- except possibly for low income housing -- as new construction is almost single handedly responsible for the loss of open space.

Second, we need a permanent and stable source of funding for open space acquisition at the county or local level. A tax should be imposed at this level to raise money to purchase land. Currently, the State's efforts to protect farmlands in central New Jersey through their Farmland Preservation Program are foiled because county and municipal governments cannot raise the necessary matching money. This is particularly evident in counties like Mercer and Middlesex where land values are very high. Many municipal governments cannot protect recreation and open space and farmlands through direct acquisition because of limited funds.

Number three: Money raised through these mechanisms and others should be made available to qualifying nonprofit land conservation organizations for land preservation projects. I take this example from Massachusetts. In cases where a nonprofit private organization land conservation organization is in a better position than the government body to own and manage publicly accessible conservation and recreation land or farmland, funds should be appropriated directly to such an organization.

The Stony Brook-Millstone Watershed, for example, owns and manages almost 600 acres of open space in Hopewell Township. We've been trying to get Hopewell to purchase more open space land for a long time and they've been rather reluctant to do it. Our land is accessible and we would like additional opportunities to do this, but obviously it is difficult for us to raise money. So, I think this would give organizations like ours and many other organizations in the State the ability to use this money to preserve open space.

Number four: The Transfer Development Rights legislation should be immediately enacted and implemented. Such legislation is vitally necessary if owners of private conservation land and farmland are to be paid due compensation for the preservation of that land.

Number five: Development restrictions in tier five of the State Development Guide Plan need to be strengthened so that open space and farmland can be adequately preserved. Presently guidelines for open space and farmlands in tier five are too vague.

Number six: Regulations are necessary to provide permanent protection for critical areas and habitat for threatened and endangered plants and animals. Critical areas protection should include specific development restrictions on aquiferous charged areas, unique habitat types, usually productive or diverse ecosystems, highly erodable soils and excessively steep slopes.

Seven: Enabling legislation should be passed which would give government automatic right of first refusal to purchase private land for conservation and recreation uses. And this is another example that I've taken from Massachusetts.

In addition, government bodies should under such legislation be able to pass the power of automatic first refusal to a nonprofit land conservation organization, and this is being done quite successfully in Massachusetts, I

understand. In Massachusetts, for example, municipal governments have the right of first refusal power for 120 days to purchases land for open space. The power can be passed on to a private nonprofit land conservation organization.

Number eight: Legislation should be enacted to allow preferential tax assessment for critical areas. Such as those described above should be treated like farmland for tax assessment purposes.

Number nine: The State Department of Agriculture is proposing a $16,000 per acre cap on the State's portion on the Farmland Preservation Purchase of Development Rights matching program. The $16,000 would cover 80% of the purchase price of an acre of farmland whose development rights have been appraised at $20,000. While most farmland in the State is selling for much less than $20,000 per acre, in much of the central section of New Jersey, including Mercer, Middlesex, and Somerset Counties, development rights have already exceeded $20,000 per acre in some areas. If this policy is adopted, the central region of the State must find new ways to protect farmland. I'm sure that applies to some other areas as well.

And finally number ten: The focus of open space protection should be directed towards the concept of linking existing open spaces throughout the State through a system of greenways. Greenways should be preserved by a combination of public and private land conservation techniques. Some of these techniques are available now, others have been listed above and still others have been described by other people in the room. That's the extent of my comments tonight. As I said, I will send you a copy. Thank you.

ASSEMBLYWOMAN OGDEN: Thank you very much. Any comments or questions from the members of the Committee? (negative response) Thank you, Todd. Let me say at this time, we have four more people are signed up: Sue Covais of the National (sic) Association of Realtors, Peter Furey of the Farm

Bureau, John Brennan, and Sam Hamill. I haven't seen him here. I don't know whether someone else is here from the Middlesex/Somerset/Mercer Regional Council. We could go through the last three people. I know Sue is here. Would everyone like to do that as opposed to coming back again? (positive response). All right. I assume then that there is no one else here who wishes to speak. Okay, Sue, would you like to come forward? In the interest of eveyone having lunch, I really do ask that the last four people to please summarize.

S U E C O V A I S: Thank you, Madame Chairperson. My name is Sue Covais. I represent the 47,000 members of New Jersey Association of Realtors. I have a very brief statement, and I'll just get to the point. What I passed out to you attached to my statement is a number of articles dealing with some of the points I'm going to raise in my statement and for your information. Some of the articles are from the Los Angeles Times and some papers out in California, and some are from The Star-Ledger.

I'd like to thank the Committee for this opportunity to present NJAR's comments on the issue of preserving open space and providing recreational opportunities. There are many good ideas for preserving open space in New Jersey and we certainly heard a number of them today. However, NJAR believes none of these techniques will work effectively unless they address both the issues of just compensation for property owners and the provision of an equitable and adequate funding source. I'd like to emphasize equitable. That's been one of our main points these past couple of years on a lot of this preservation technique legislation.

The government has the right to protect its citizens and their environment and to provide open spaces for recreation, agriculture, and natural resource protection. But it does not have the right to deny private property owners their rights. The ownership of real property consists of a

bundle of rights, such as the right to prohibit trespassing, the right to build, and the sell and bequeath property.

The Fifth Amendment of the U.S. Constitution further states, or these rights include that, "No person shall be deprived of their property without due process of law, nor shall private property be taken for public use without just compensation." NJAR feels preservation programs that do not justly compensate property owners will eventually fail. State and local governments will continually find themselves in court justifying their preservation policies, and instead of land preservation New Jersey will find land litigation. I think the earlier speakers mentioned that point about costly court battles over this very same issue.

More and more courts are ruling in favor of property owners. Cases such as Nolan vs. California Coastal Commission, and the First Evangelical Church vs. the County of Los Angeles, we feel are indicative of the Supreme Court's concern about government land use regulations that violate the Fifth Amendment. While these cases don't necessarily resolve the issue of taking unjust compensation, these cases have been seen as a victory landowners and will most likely encourage more litigation.

NJAR's argument has always been that if the citizens of New Jersey want to preserve open spaces, then they should pay for it. It seems that the courts are beginning to agree with us. Not compensating landowners for the limitations on their rights to develop their property, in effect, makes that particular landowner pay for a program that benefits not only his/her neighbors, but all the citizens of the State.

For this reason, NJAR suggest sthat the Legislature study the possibility of increasing one of the statewide taxes to provide a dedicated source of revenue to fund present and future programs for open space preservation. This would generate much more money than any of the proposals that we have

seen so far and some of the proposals that have been discussed today. We believe this is the most equitable way to fund such programs, because all citizens of New Jersey and visitors of the State will pay for something that benefits everyone. And that's the conclusion of my comments.

ASSEMBLYWOMAN OGDEN: Thank you very much, Sue. Are there any questions or comments? (negative response) Thank you. John Brennan.

J O H N F. B R E N N A N: Thank you very much. Good afternoon. My name is John Brennan, I'm supervising planner in Atlantic County Department of Regional Planning and Development. I'm here on behalf of the County Executive, Richard Squires. I will be directing my comments this morning in support of the following critical open space issues:

One, we need stable long-term acquisitions and development.

Second, we need funding support for municipalities, and counties for open space master plans.

Third, we need to establish a statewide conference to set the priorities for open space and recreational needs.

And third (sic), we need to set and establish a solid do-able strategy for urban parks.

In Atlantic County -- and I'm basically on the front line for our acquisition and our development programs -- the need for stable funding is absolutely paramount. Over the past four years, we've spent over $4 million acquiring land along the Great Egg Harbor River, which is currently under study by the U.S. for U.S. Wildlife and Scenic status.

Our recent acquisition includes over 1800 acres of the Lake Lenape Tract in Hamilton Township and over 500 acres in the river bend in Egg Harbor Township. The county's long-range goal is to establish a Great Egg Harbor linear park or greenway system along this magnificent southern New Jersey river.

The key to the county's continuing success in

establishing a greenway or linear park system along the river, or for that matter, acquiring other critical open space parcels, is stable long-term State funding. The county supports and needs the Natural Resource Preservation Act. And I think enough has been said on that today. And I want to move on to the next topic.

The second special need is to establish a grant program directed to our municipalities and counties in order to develop open space and recreation master plans Many of our fast growing municipalities need that extra push -- that extra incentive, to reorganize local open space issues into a master plan. These local master plans should identify short- and long-term open space goals and recreation objectives. They need to target areas for acquisition. They need to identify other methods of open space preservation besides direct acquisition. They need to key interstate and county open space programs, then they need to identify recreation needs and assets.

Grant funds are needed at local governments to produce open space master plans, because this type of planning is often an afterthought or something which is developed in a rush, to fulfill a grant obligation. We must do a better job in assisting municipalities and counties in addressing open space planning now and into the turn of the century.

The third critical need we in Alantic County are calling for, is a formation of a statewide summit to establish the priorities for the future in open space preservation and recreational opportunities. We in New Jersey must develop a form of action, an outline of our needs, a list of recommendations for the future which has broad support from State, local park agencies, public officials, park planners, and interested citizens. It is time to exchange and get on with the master program. We need to do strategic planning, set out a course that we can all work with. We often work at cross purposes.

It is time to exchange ideas and get on with a master program to protect our existing State parks, county facilities, and set a course of action for the next 20 years. We do it for sewers; we do it for roads. Why can't we do it for open space? It's time that we do it.

Last but not least, there is a need to develop a solid strategy, complete with planning and funding for our urban park areas. It's time that we, in New Jersey, recognize that our greatest recreational needs are in our urban areas, close to the people. We must strengthen and support parks in our older cities and we must look for new approaches to provide green spaces in our urban areas. We are not doing enough. Many combinations must be tried.

New York, Pennsylvania -- they're trying new approaches. They are supporting a new concept. A concept called the Urban Cultural Park Program. An urban cultural park can link historic, and recreation, and economic revitalization into a multidiminsional force to bring life back to our cities. Others are trying school park programs which allow multiple use of community resources for public benefit.

We have to rethink the urban park concept and utilize these greenways as vital tools in the revitalization of our cities, not as an afterthought to urban renewal. We need a solid strategy for urban parks which sets the tone and the direction for reclaiming and recreating urban greenways; for without funding and planning, our urban parks will die. Let's put the garden back in the Garden State. Thank you very much.

ASSEMBLYWOMAN OGDEN: Thank you very much. I was curious in terms of the two acquisitions that are recent: the 1800 acres Lake Lenape and the 500 acre river bend. Now, did that come from Green Acres funds, or did it come from referendum by the county? Where did the money come from?

MR. BRENNAN: It came from three sources: county money, Green Acres funds, and Federal Land and Conservation

funds. It's the largest purchase in our county's history and includes the purchase of a lake and the surrounding lands for $3.2 million, which is a bargain.

ASSEMBLYWOMAN OGDEN: We really appreciate you calling for the summit and making all of this planning -- particularly the planning is a key ingredient.

MR. BRENNAN: Yes. If we are thinking of putting together a two hundred or an eight hundred million dollar bond issue or some number in the future for acquisition and Green Acres funding, we have to prepare these municipalities -- giving them the correct tools prior to letting those grants. I just know it from my personal experience, before we purchased Lake Lenape we did a master plan which included not necessarily identifying Lake Lenape, but a large regional county park was needed in the growth area of our county, and many other factors. Each of the freeholders in the legislative body and the town officials got to see that plan. And they were able to see where we wanted to go. And it gave us a much easier time, and we started to talk about three, four, and five million, and a mortgage payment for that money coming out of tax money. So, it was a very, very important element.

And I strongly urge that both a summit be created in which all these various interests, and you've seen some of them today and you'll see more during the week, all have various issues that they want to bring forward, and I think that summit can do an excellent job of coordinating and bring out of that meeting, priorities that we can all work with.

ASSEMBLYWOMAN OGDEN: Thank you very much.

MR. BRENNAN: Okay. Thank you.

ASSEMBLYWOMAN OGDEN: Last -- sorry that you are last here -- Peter Furey, who is secretary and administrator of the New Jersey Farm Bureau.

P E T E R J. F U R E Y: (speaks from audience) In the interest of time, I'd be happy to reschedule it for any of the

field hearings. I'll come to a field hearing, if you'd like.

ASSEMBLYWOMAN OGDEN: Wednesday? Well, I don't know if you would want to travel to Cape May.

MR. FUREY: But the following Wednesday, you will be in Basking Ridge?

ASSEMBLYWOMAN OGDEN: If you'd like to come there or else to Monmouth County--

MR. FUREY: Either one -- in the interest of time.

ASSEMBLYWOMAN OGDEN: Monmouth would be a good place then, Peter.

MR. FUREY: We have a lot of meetings. We have a fixed rule -- two hours, so--

ASSEMBLYWOMAN OGDEN: Okay. I'll tell you-- We'll put you at the very beginning in Monmouth.

MR. FUREY: That would very kind.

ASSEMBLYWOMAN OGDEN: Thank you. Thank you everyone, for coming in and sitting through this hearing.

(HEARING CONCLUDED)

APPENDIX

to preserve the integrity of the canal as an historic place while providing accessible recreation opportunities, wildlife habitat and scenic beauty.

Private non-profit conservation groups can further the State's preservation goals by mobilizing local interest and initiative, and by working directly with local landowners. The Delaware and Raritan Greenway Committee recommends several ways for the State to stimulate the activities of the private conservation groups in open space protection and to make use of the unique talents and abilities of the non-profit sector:

1. Establish a Green Acres loan and grant program for non-profit acquisition of open space. Make low interest loans and matching grants available through the Green Trust as a way to encourage creative acquisition of significant environmental lands. Utilize the land trusts' negotiating skills by providing them financial incentives to engage in low-cost acquisitions by bargain sale (a method of acquiring land at a price below market value while providing a tax deduction for the seller of the difference between market value and bargain sale price.) The matching grant program, if offered to qualified non-profits, would capitalize on their fundraising abilities by providing challenge grant moneys.

2. Direct the mitigation acquisition of "like habitat" to areas that have environmental significance and will be a part of a network of open space. Acquisition of like habitat would be a much more effective mitigation tool if the site selections and purchase of like habitat were directed toward significant environmental lands - lands that buffer a valued resource like the Delaware and Raritan Canal, that support threatened and endangered species, that help to protect an aquifer recharge area, or lands that are linked to other open space. The private sector conservation groups can suggest such acquisition areas.

3. Provide non-profits with the fees and penalties from regulatory violations and with the responsibility to carry out land purchase as mitigation for a broad spectrum of regulatory violations. Consider open space acquisition as a first choice mitigation solution for a range of regulatory violations. Provide fees and penalty dollars to the non-profit land trust community in order to maximize the amount of open space that could be purchased by utilizing their non-profits' negotiating abilities. The State of New Jersey Natural Lands Trust is experiencing great success in applying this concept to a water resources floodplain mitigation project. A developer, required to purchase 8 acres of floodplain within a certain watershed or pay $80,000 as mitigation for another project, was having difficulty finding appropriate land. He suggested sites for acquisition that had little environ-

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mental significance, were outside the area of concern, were isolated and would soon be completely surrounded by his development. The Trust suggested, and the developer agreed, to allow the Trust to use the $80,000 to bargain sale a much larger property that was identified by the New Jersey Naturil Heritage Program as being an outstanding natural community within the watershed of concern. The Trust is currently in negotiation for this land. This type of success could be experienced throughout the state by involving the non-profit sector in such mitigation projects.

We thank you for the opportunity to submit these comments, commend you for your effort to draw together new ideas on conservation and look forward to the positive changes to New Jersey's open space dilemma that can be brought about by you and your committee.

Sincerely,

Maude M. Backes

Maude M. Backes
Program Director
Delaware and Raritan Greenway Project

MMB/nle

3x

SOMERSET COUNTY PLANNING BOARD

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Arthur L. Reuben
Planning Director

STATEMENT OF
ANTHONY V. MC CRACKEN, ADMINISTRATIVE PLANNER
SOMERSET COUNTY PLANNING BOARD
PUBLIC HEARING CONCERNING METHODS TO PRESERVE OPEN SPACE
ASSEMBLY COMMITTEE ON CONSERVATION, NATURAL RESOURCES
AND ENERGY

I have been directed by Patricia McKiernan, Chairman of the Somerset County Planning Board, to respond to the Committee's request for statements concerning the preservation of open space/natural and recreational resources.

Today, Somerset County has yet nearly one-half of its land area uncommitted to urbanization, this in agriculture, wooded areas, and vacant parcels. However, between 1969 and 1985, about one-fifth of the County's total land area was developed. This averages around 2,400 acres of land being developed each year.

We are at a point where without a strong concerted effort to preserve open space for natural resources, agriculture, and recreation, we in Somerset County may lose much of the amenity that makes Somerset County so attractive for those who wish to live and work here.

To this end, there are three items which I wish to bring to the attention of the Committee that I feel are necessary to begin addressing this issue.

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1. The development of a stable funding source for the continuing efforts under the State's Green Acres Programs. The voters of this State have over the years overwhelmingly supported the "Green Acres" Bond referendum presented to them. Currently I understand there is an effort legislatively to create a Natural Lands Trust in New Jersey. While I am sure there is disagreement as to the funding source for this program, I feel the creation of such a trust is essential.

2. Continual legislative support for the State and County Agriculture Development Board Programs. Somerset County has an ever increasing interest among its farmland owners to participate in these programs. The 1981 Farmland Preservation Bond Act allocated $50 million towards establishing this effort. Though slow to start, the program is now becoming very competitive Statewide. Applications currently being reviewed more than deplete these funds.

   It would be a shame to see this program stall at a time when it is just getting off the ground and interest is so high.

3. The concept of Transfer of Development Rights has been around for some time, however, State and local planners are unable to make effective use of this planning concept due to the lack of State enabling legislation. I understand that there have been legislative efforts over the years to establish techniques for such opportunities, however, to no avail.

In closing, I wish to take this opportunity to thank the Committee and Chairperson Ogden for setting this forum to express our views.

4/88

MIDDLESEX COUNTY PLANNING BOARD

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April 21, 1988

Assemblywoman Maureen Ogden
Chairperson. Assembly Committee on Conservation.
Natural Resources and Energy
New Jersey State Legislature
State House Annex, CN 068
Trenton. NJ 08625

Re: April Public Hearings on Preserving Open Lands and Providing Recreational Opportunities

Dear Assemblywoman Ogden:

I regret that I or any member of the Middlesex County Planning Board Staff was able to attend any one of the scheduled hearings in April. Because of the importance of this subject matter to Middlesex County, I feel it is appropriate to submit our comments for entry into the records at this time.

The need for preserving open space lands and conservation areas is essential in already developed areas like Middlesex County. As lands are utilized for various uses, the need to preserve flood plains, wetlands. aquifer recharge areas and farm areas is essential. The need to create park land for recreation purposes is very important to serve growing residential areas which is part of the pattern in expanding counties.

Middlesex County currently manages approximately 4,900 acres of open space. Based upon our population and the critical environmental resources that remain, we should have at least an additional 4,000 acres of land permanently preserved for recreation and environmental protection. Numerous forums and symposiums have been held on this very important topic. Your committee's hearing certainly can be added as part of this.

Under Middlesex County's land use goals and policies which were cross accepted in 1979 with the former Tri-State Regional Planning Commission, the New Jersey Department of Community Affairs, and with Middlesex County municipalities, the need for parks and recreational areas are clearly enumerated. The major concern for recreation in Middlesex County was, and still is today, the land deficits which are quite evident as development in the County has continued and land values rise. Purchasing adequate amounts of land for recreational purposes has become more difficult and less affordable. This requires both a

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careful prioritizing of county and local park land investments and the need to make these investments accomplish multi-use objectives by using them to protect critical natural resource lands. The Middlesex County Planning Board also notes that water related areas in Middlesex County as elsewhere are enormously popular as recreational resources. Middlesex County presently has considerable river and bay front areas, but these areas have historically attracted non-residential development. In the past deteriorated water quality in Raritan Bay and the Raritan River inhibited recreational uses. Today as their water quality improves as a result of major public and private expenditure for waste water treatment these water bodies and their major tributaries have great potential for providing needed recreational opportunities. Middlesex County also has significant historic structures and sites. As mentioned previously, their existance and integrity also is threatened by the march of development and re-development.

In attempting to maintain all these areas for the public use and good, much needed cooperation and coordination among the Federal, State, county and local levels of government is required. In addition the assistance of the private sector is needed as land is developed in residential, commercial and industrial uses. Land developers should be dedicating appropriate amounts of open space to local governments. As noted above, because of the pressures for land and its subsequent high value, counties which serve as a key regional agency for managing our open lands must now turn to the State and Federal Governments for monies. The recent bond issue by the State of New Jersey was literally a "drop in the bucket" in relationship to the needs of all of the counties and municipalities for open space. As one of the Middlesex County legislators recently put very simply, we must now think in terms of "billions of dollars" to be placed under a Green Acres Program that will permit the purchase of key areas in high value, developed regions of the State. The State of New Jersey must also seek approval of additional funds to acquire and manage open space for both recreational and environmental resource protection. New Jersey should be aggressively seeking funding assistance from the Federal Government.

Preservation of open space is a critical issue facing New Jersey. We support whatever actions the New Jersey Legislature can take to help preserve our environment and to insure that New Jersey maintains adequate natural and recreation amenities as economic and population growth continues.

Again, I thank you and the Assembly Committee for your consideration of Middlesex County's concerns and for permitting us to place our comments into the records. I look forward to participating in future forums and in sharing our experiences and concerns regarding this very timely subject.

Sincerely yours,

MIDDLESEX COUNTY PLANNING BOARD

George M. Ververides

George M. Ververides
Director of County Planning

GMV:jl
cc: Mr. Hyman Center
Mr. John Reiser
Mr. William J. Kruse

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ASSEMBLY COMMITTEE ON CONSERVATION,
NATURAL RESOURCES AND ENERGY

HEARING ON LAND USE OPTIONS

APRIL 11, 1988

BY

ARTHUR R. BROWN, JR.
SECRETARY OF AGRICULTURE

8x

Good Morning, Assemblywoman Ogden and committee members. I welcome the opportunity to speak with you today on approaches to save open land in New Jersey. One of the most pressing issues I face as Secretary of Agriculture is the retention of our farmland base . Competition for this land for other uses led to the loss of over 40,000 Acres last year alone.

The erosion of our farmland base was identified as a problem over twenty years ago and led to the "Grassroots Report on Agriculture." After many years of struggling, a bond issue was placed on the ballot in 1981 , and the voters approved 50 Million dollars to preserve this land. Two years later, legislation was enacted which established the organization to implement the Farmland Retention program ,the State Agriculture Development Committee.

The Farmland Preservation program, as with most new iniatives, has required some refinement. In November 1986 I established a review committee to take a hard look at the program and offer recommendations for improvements. A copy of their findings has been provided to you.

One of the first problems identified by the review committee was the need to increase the state's share of the development easement cost. Thanks to the leadership of Assemblywoman Ogden and Senator Zane, the issue was on the ballot last November. The voters approved the changes to the original bond fund and last month the legislation to implement this new directive was enacted.

I am happy to report to you that as the result of the increase in the state cost share, applications for the development easement program have literally skyrocketed. Applications for almost 15,000 acres statewide have now been submitted for permanent preservation, and over 12,000 have won preliminary approval to date. Just as encouraging is the geographic diversity of applications. At last month's meeting, submissions were approved in Burlington, Gloucester, Hunterdon, Monmouth , Somerset and Warren Counties.. A summary of this information has been provided in your information packet.

Another important program shift approved by the voters was the ability of the SADC to purchase farmland in fee simple. The rules and regulations needed to implement fee simple are now being drafted and will soon be submitted for public review . This added tool will be particularl useful in the more rural counties where easement values are generally too low to stimulate strong landowner interest in selling the easements alone.

Some concern has been raised over the sale of tax-exempt bond funds for fee simple purchase. A proposed solution is the sale of taxable bonds instead. Another alternative may be an appropriation from the general fund earmarked for fee simple purchase.

Other state programs -- Maryland for example -- provide annual appropriations from the general fund as part of their farmland preservation program.

Now that the farmland retention program has increased flexibility, the next challenge is to look at short and long term funding options. The SADC anticipates the depletion of the first fifty million dollars by early 1990.

For the short term , bond funds are a viable alternative for the permanent preservation of farmland. At least 100 million dollars in new bonds will be needed by 1990 to keep the program running smoothly. Due to input from the farm community at a recent public meeting, the State Board of Agriculture went on record requesting 250 million dollars in added bond funds.

However, long term, more stable sources of funding should also be considered. Legislation recently released from this committee would establish a renewable funding source for other types of natural resource preservation through an increase in the realty transfer tax. Similiar funding sources may be needed for the farmland retention program.

There are other pending legislative proposals that the Department has been also reviewing. These include a bill requiring the dedication of farmland assessment rollback taxes to open lands acquisition. Another bill would increase the tax penalty when farmland is converted to other uses. Discussions are ongoing on these various proposals to determine the appropriate alternative for long term funding.

Options that reduce or eliminate public funds to meet the goals of permanent open land are also being considered. The mandatory clustering of development while permanently deed restricting certain acreages of open land may be a viable alternative in some municipalities.

Another proposal that has continued to evolve is the concept of transfer of development rights. Legislation is pending which would amend the Municipal Land Use Law to permit TDR as a land use management tool. While New Jersey farmers recognize the pressing need to preserve undeveloped land in our state, they nevertheless continue to express concern for just compensation if and when their properties serve this public need.

Under the current bill, the concerns of private landowners have been considerably alleviated by two key features. First the establishment of a mandatory bank by the municipality to provide an interim market for a portion of the transfer credits generated. Second is a limit on the number of municipalities that may enact such an ordinance. The Department will continue to work with the legislature on this additional land use tool.

In closing, I would like to point out that the farmland retention program is continuing to evolve and mature. In the Department's recent response to the draft State Development and Redevelopment Plan, the State Planning Commission was asked to recognize the role of the SADC and the County Agriculture Development Boards in identifying agricultural areas. I anticipate the responsibilities of this program will continue to expand as increasing pressure is placed on the state's limited land resources.

Now, Donald Applegate, Executive Director of the SADC , will provide some additional thoughts on open space retention.

FARMLAND PRESERVATION REVIEW COMMITTEE REPORT

Prepared by staff of the
State Agriculture Development Committee

Revised April 1988

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FARMLAND PRESERVATION REVIEW COMMITTEE REPORT
Revised April 1988

I. INTRODUCTION

A. FARMLAND PRESERVATION: BACKGROUND

New Jersey's Farmland Preservation program (also called the Agriculture Retention and Development program) is at the forefront of state efforts to preserve the state's agricultural land base and ensure a healthy future for Garden State agriculture. With annual production worth $600 million, agriculture ranks as one of New Jersey's top industries.

As the nation's most densely populated state, however, New Jersey sets a challenging stage for agriculture. The same economic, environmental and social benefits which agriculture provides also attract urbanization. Such highly competitive land use creates the potential for depletion of the farmland base essential to the future of the agricultural industry.

The Farmland Preservation program was created to address this situation. Fueled by local, county and state cooperation, Farmland Preservation ensures the protection of agricultural land by offering benefits or compensation in return for a landowner's agreement to accept agricultural deed restrictions prohibiting non-farm development. In this way, Farmland Preservation preserves productive, tax-paying, open space for New Jersey.

Farmland Preservation focuses on enrolling prime agricultural land in areas where agriculture is the preferred land use. This voluntary program has two thrusts: "*eight-year programs*" and "*development easement purchase.*"

Landowners who agree to *eight-year* agricultural deed restrictions receive benefits such as eligibility for cost-sharing on soil and water conservation projects, certain protection from eminent domain takings, and additional "right to farm" protection in situations involving non-farm neighbors unfamiliar with necessary farm practices.

A landowner's agreement to accept permanent agricultural deed restrictions in return for compensation is known as "*sale of development easements.*" Landowners retain ownership of (and may even choose to sell) eased land, with the new deed restriction ensuring that the land will not undergo non-farm development. County and state share easement purchase costs, which represent the difference between a property's farm (or deed-restricted) value and its full market value. All values are determined by appraisal.

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Farmland Preservation is administered by the State Agriculture Development Committee (SADC), chaired by New Jersey Agriculture Secretary Arthur R. Brown Jr., and implemented at the local level by County Agriculture Development Boards (CADBs).

The program rests on three pieces of legislation: the $50 million Farmland Preservation Bond Fund, the 1983 Right to Farm Act and the 1983 Agriculture Retention and Development Act. But New Jersey's rapid rate of urban development made this original foundation too limited to address the changing needs of farmland owners, curbing program participation and -- eventually -- leading to new vitality for Farmland Preservation.

B. FARMLAND PRESERVATION REVIEW COMMITTEE

Secretary Brown appointed the Farmland Preservation Review Committee in November, 1986, in response to his concerns about the rate at which the Farmland Preservation program was progressing. Those concerns centered on "red tape" and time required to enter eight-year programs or sell development easements.

The Committee was structured to include organizations and individuals with an intimate, working knowledge of the program. The following individuals were appointed as members on the Farmland Preservation Review Committee:

Chairman: Arthur R. Brown, Jr. (or his designee)

State Agriculture Development Committee (SADC):
David W. Buchholz
Samuel Hamill

County Agriculture Development Board (CADB):
John Kellogg (Hunterdon)
J. Peter Vermeulen (Somerset)

State Board of Agriculture: Herman Panacek
NJ Farm Bureau: Walter Ellis
NJ Conservation Foundation: David Moore
Appraiser: Allen Black

The Committee's mandate was to review all aspects of the current Farmland Preservation program and make recommendations to the SADC concerning any legislative, regulatory or policy changes needed to enhance the program's overall performance. When the Committee was first created, it was expected to make its first major report to the SADC by mid-March, 1987. Due to the introduction of other legislative proposals which impacted the program, the Committee's final recommendations were delayed until April 1987.

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II. PROBLEM AREAS IDENTIFIED

The committee identified the easement purchase portion of the program as the primary problem area. While the program emphasizes easement purchase over 8-year program enrollment as the key to permanent preservation of an agricultural land base, the bulk of program participation centered on 8-year programs. (As of March 1988, 21,000 acres were enrolled in 8-year programs, with 1,400 acres permanently deed-restricted.)

The committee recognized that "red tape" and time delays curbed the program's effectiveness. Several key problem areas were isolated, as follows:

A. **SCOPE.** The current easement purchase program was too limited in the kinds of methods and incentives needed to achieve the desired degree of farmland enrollment within a relatively short time span. It lacked breadth and flexibility. In particular, the original cost share proportions for development easement purchases (50% county-50% state) reduced or precluded program participation by some key agricultural counties with limited tax bases. Many counties could not afford the 50% share. *

B. **ADMINISTRATIVE PROCESS.** The general administrative process involves many layers of reviews and approvals and is too cumbersome and complex.

C. **LANDOWNER PARTICIPATION.** Landowners have generally been reluctant to apply to sell their easements, due to a basic lack of clear understanding of what easement sale means: whether payment was made, what deed restrictions accrued, what was actually being sold, etc.

D. **APPRAISALS.** The process is cumbersome, too lengthy and may produce values that do not reflect current market conditions.

E. **SURVEYS.** The time it takes to conduct the required property surveys may significantly delay the "closing" of an easement sale.

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* Passage of a November 1987 referendum has since increased the flexibility of the $50 million Farmland Preservation Bond Fund. The state may now pay up to 80 percent of easement purchase costs generally, and 100 percent under emergency conditions involving prime agricultural land. The state is also permitted to purchase farmland in fee simple, retain the easement through deed restriction, and resell the land for its agricultural value.

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F. STAFF. Both state and county staff is limited. County staff is often only part-time and is subject to rapid turnover. State staff is also limited, making it difficult to adequately address a variety of program needs.

III. FINDINGS

A. SCOPE

1. **The original cost share proportions for development easement purchase (50% state--50% county) prevented some important program enrollments** (see footnote, p. 2). The 50% county share reduced or precluded program participation by some key agricultural counties with limited tax bases. This meant that the counties with the largest percentage of their land and economic bases tied to agriculture were least able to afford the easement purchase aspects of the program.

2. **The original program contained no mechanism for the quick stabilization of critical farmland under immediate threat of conversion to non-agricultural use** (see footnote, p.2). Even in emergency situations, where no local funding was available, the State was limited to a 50 percent cost share.

3. **The original program did not address the needs of landowners interested only in selling their land in fee simple** (see footnote, p. 2). Many such landowners are supportive of seeing their land remain in agricultural production, but are unwilling or unable to take the considerable time and effort to first sell development easements.

There are no techniques or incentives available to specifically address the interests of areas under relatively little development pressure. It is in these areas where the largest contiguous masses of farmland are typically found. However, due to relatively low easement value (compared to parts of the state under greater development pressure), landowners are more reluctant to sell easements because their value falls below the threshold of landowner expectation.

4. **Many landowners support the program and the easement sale concept, but are reluctant to permanently deed-restrict their land at the outset.** The program lacks an <u>interim</u> or <u>limited term easement</u> option (as opposed to a permanent easement sale) to meet the needs of this sizable group of landowners.

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In reality, developers' contracts often involve contingencies which seriously effect the attractiveness of the developer's offer. Landowners, however, are often unaware of these contingencies, automatically assuming such contracts to be simpler, quicker and more profitable than selling easements. Landowners are therefore often attracted to the developer's apparent offer of a quick deal and money up front.

Landowners commonly overlook the fact that easement purchase is a "cash on the barrelhead" program, and may fail to accurately reckon this against developers' future, conditional values. Often, they do not see that easement purchase offers current values, while the developer's offer generally represents a future value contingent upon preliminary development approval, zoning changes, provisions for water and sewage, etc. Also, landowners often fail to recognize that the time elapsed before final settlement with a developer may actually be longer than that of the easement purchase program.

D. APPRAISALS

1. **Securing qualified, timely appraisal services which meet program needs poses an ongoing difficulty.** Although the SADC has taken considerable effort to develop a pool of "approved appraisers" for the program, many of them are not sufficiently familiar with SADC Handbook guidelines for appraising before-and-after deed-restricted values. Some counties have also encountered problems finding a sufficient pool of approved appraisers willing to work in their region.

It is also frequently difficult to obtain appraisal services in a timely fashion because of a highly competitive private market. The current strong real estate market has created heavy demands for appraisals, and appraisers are more inclined to accept "simpler," non-governmental assignments. County procedures for hiring appraisers are also often complex and may take several months before a contract is awarded.

2. **Landowner applicants often do not feel they have sufficient input to the appraisal process.** Landowners do not see the appraisal reports until an offer is made; they need more assurance that what they consider cogent facts about their property and even values of comparable properties are taken into account by the appraisers.

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3. **There is a perception that the process of two locally commissioned appraisals plus the state review appraisal may be redundant.** If the review appraiser must do extensive field work to confirm the findings of the local appraisers, then essentially three appraisals are done.

4. **Appraisals often take longer than anticipated, in part because appraisers do not receive sufficient information from CADBs at the outset.** The more up-front information (such as property descriptions) which the appraiser gets from the CADB, the more efficient the appraisal process. (On the average, the total appraisal process consumes 40 to 60 percent of the time from landowner application to closing.) Delays in the appraisal process are also often a function of the appraiser's workload. Providing local appraisers with more of the basic data originally may stimulate faster completion. Experience of another state (Maryland) with penalty clauses proved counterproductive.

5. **The limited availability of comparable sales data for deed-restricted land makes determination of easement values difficult.** The data base for deed-restricted values is still very limited, making it difficult to arrive at comparable sales values. This means that appraisers have essentially two data sources when attempting to determine "comps": they may either utilize the few known resales of deed-restricted farmland, or seek full market values in areas where development pressure is minimal -- often in other counties. The more distant the "comps" are from the subject property, the less confidence the county and landowners have in the data. Comparison sales data used by local appraisers is also typically weeks or months old when it is available to them. It further ages during the review appraisal period.

6. **In determining final easement value, the review appraiser is basically limited to the range of values established by the two local appraisers.** The SADC has been informally advised that the review appraisal value may not exceed the higher of the two values determined by the two local appraisals. This prevents the review appraisal from reflecting any changes in land values which may have occurred after the local appraisals. This problem is seriously exacerbated where land values are in a state of considerable flux.

7. **The current SADC reliance on outside agency review appraisers adds lag time in the appraisal process.** Outside review appraisers' commitments to their own programs understandably take precedence over their cooperation with the Farmland Preservation Program.

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E. SURVEYS

1. **The difficulty of securing the timely services of surveyors often substantially delays easement sale closings.** As with hiring local appraisers, it is difficult for counties to compete with private market demands for surveys, particularly in the current climate of a strong real estate market. Also, because farmland is more difficult to survey (landmarks from old deeds are often missing, foliage blocks lines of sight, etc.), surveyors may tend to pre-empt farmland surveys for easier assignments. They also tend to do farms in fall, winter or early spring when foliage is reduced but when adverse weather is more of an obstacle. These external factors all tend to delay final closing for easement sales.

2. **Landowners feel that payment -- at least partial payment -- for easement purchase should not hinge on completion of a survey which determines the exact total amount to be paid.** One to two months may typically be added to the process when such surveys are required. Such a delay in payment leads to landowner frustration, thereby also affecting future program participation.

F. STAFF

1. **Local limitations on CADB staffing affect the Farmland Preservation Program's effectiveness.** CADB staffing is usually part-time. This makes it difficult to establish and maintain contact between staff and interested landowners. CADB staff also tends to have a high turnover rate. This limits the ability to maintain in-depth knowledge of the technical aspects of the program locally. County funding for CADB staff support is also often limited. Typically, work is assigned to an existing staffer who may already have a full workload, creating conflicting priorities.

2. **Limited SADC staff size impacts on the program's effectiveness.** SADC staff support to CADBs has been limited to attendance at monthly meetings and mail/telephone communication throughout the rest of the month. More direct field support to CADB staff to assist with landowner contacts is needed. Other staff needs are the addition of an in-house review appraiser* and staff support for the development of a comprehensive educational outreach effort. Also, staff needs may grow as the program continues to increase row in scope and popularity.

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* now authorized and in process of hiring

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IV. RECOMMENDATIONS

A. SCOPE

1. **Raise the state's cost share cap on easement purchases from 50 percent to 80 percent** (now effective following passage of a November 1987 general election referendum -- see footnote, p. 2). This change permits some of the state's key agricultural counties to participate, despite their more limited financial resources. Due to this increased flexibility, roughly 15,000 acres were submitted for development easement purchase between the time surrounding the election and February 1988.

2. **Permit the state to pay 100 percent of easement purchase costs in emergency situations involving prime agricultural land** (now effective following passage of a November 1987 general election referendum -- see footnote, p. 2). This gives the state the ability to act quickly to protect agricultural land under immediate threat of conversion.

3. **Permit the state to purchase farmland in "fee simple," place the program deed restrictions on the land and then resell the land back to the private sector** (now effective following passage of a November 1987 general election referendum -- see footnote, p. 2). This new mechanism gives landowners in every county a new option in program participation. Fee simple purchase will also be particularly useful in the more rural counties where easement values are generally too low to stimulate strong landowner interest in selling easements alone.

A special case of fee simple purchase is addressed in proposed "Right of First Refusal" legislation, which would apply to lands enrolled in 8-year preservation programs. This would allow the SADC a limited time to match a proposed offer on the land by someone who proposes to develop it for non-agricultural uses after the deed restriction expires. If acquired by the SADC, the land would be resold with Farmland Preservation deed restrictions. That provision would provide the SADC and CADBs greater ability to permanently protect critical parcels of farmland.

4. **Give the SADC the ability to purchase limited term easements with a right of first refusal at their terminations.** Landowners would be paid a percentage of current development easement value in exchange for placing a limited term easement on the property for 10, 15, 25 or more years. At the end of the term, the SADC would have the right of first refusal to: a) purchase another limited term easement,

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b) purchase the remainder of the permanent easement, or c) sever interest in the land and allow the private market to prevail. Perhaps this technique would be better described and structured as a "long term contract" to keep the land in agricultural production.

5. **In the unlikely event that eased program lands are taken for another public purpose, there must be mandatory mitigation to permanently preserve farmland of equivalent value.**

B. ADMINISTRATIVE PROCESS

1. **The time between receipt of completed application and payment to the landowner should not normally exceed 9 to 12 months.** The committee felt that this objective would be competitive with the private market, and both fair and realistic for the landowner.

2. **Eliminate the preliminary SADC review of an application.** This could be achieved by developing a list of minimum SADC criteria against which both the landowner and CADB could apply potential applications prior to submission. SADC criteria might include physical characteristics of the land (size and soil types), social impacts (local infrastructure) and even cost limitations. That change would save at least one month for every application. It would require an amendment to the Agriculture Retention and Development Act.

3. **Tighten the focus when identifying the most desirable farmland to target for program enrollment.** Narrower criteria at the outset should produce fewer unsuccessful landowner applications, clearer local and county understanding of the program's intent and a more efficient administrative process throughout.

4. **Uncouple development easement purchase from 8-year programs.** Current statutes require that easements can be purchased only from lands so enrolled. An "option" approach must be used for landowners unwilling to enter 8-year programs without assurance of easement purchase. This approach would require the landowner to simultaneously apply for both 8-year program enrollment and easement sale. If an agreement to purchase the easement is reached, the 8-year program enrollment must first be completed, after which a closing to acquire the easements can occur. This change would eliminate much "red tape" and time. It would require an amendment to Agriculture Retention and Development Act.

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5. Educational efforts should address those instances where administrative delays or complications lie outside the program's purview. Such instances arise primarily with respect to local, county and state regulations which affect real estate transactions and the expenditure of public funds. In such cases, these delaying factors must be recognized as unavoidable necessities.

C. LANDOWNER PARTICIPATION

1. **Increase the reach and impact of the program's educational efforts.** Educational efforts should address the misinformation and lack of information among potential applicants, the general public and local, county and state decision-making bodies whose actions impact the Farmland Preservation program. Clear, accessible information about the program will also make it more competitive as a viable alternative to urban development. The educational need also becomes more essential as legislative and technical changes, along with increased landowner participation, continually reshape the program's profile.

2. **Confer the "benefits" of municipally approved farmland preservation programs to eased land.** This would: eliminate the need of the landowner to subsequently re-enroll in 8 year programs; provide an incentive to sell easements; alleviate the administrative time for multiple program enrollments; and facilitate landowner and municipal officials' understanding of the process.

D. APPRAISALS

1. **Appraisals should be provided or coordinated by the SADC.** The SADC should keep a core of appraisers on retainer or otherwise available to accept assignments for the local appraisals. The counties should also be given the opportunity to independently hire one or both appraisers from the approved list.

2. **Allow landowners to submit an independent appraisal or other written documentation which they feel contributes to the proper valuation of an easement on their property.** The information, contributed prior to or at the time of local appraisal, could be made available to both the local appraisers and the review appraiser. This should not be construed to mean that the landowner would have the ability to, in effect, become the "review appraiser".

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3. **Continue the current practice of using two local appraisals followed by a state review appraisal to determine easement values.** While the two values established locally are often close, experience has shown that there are enough exceptions to warrant the current process of having two local appraisals plus the state review in order to arrive at the most accurate final value.

4. **Provide local appraisers with basic information about the property being appraised.** A packet containing details of property location, tax maps, soils information, any known liens or rights of way, landowner plans to except a portion of the property, etc., should be provided by CADB/SADC staff. Helpful information might also include listings of recent local real estate sales and sales of deed-restricted land statewide.

An in-house review appraiser (see item 2 under Staff) could also be available to conduct training and update seminars for local appraisers, to provide them with routine guidance and to recommend changes to the list of approved appraisers. Providing local appraisers with basic information and centralized guidance should help streamline the appraisal process.

5. **The time between local appraisals and the final offer to the landowner must be reduced.** This will help address the problem of change in land values during the time lag between completion of local appraisals and final offer to the landowner (see following item also).

6. **The review appraiser's determination of development easement value should not be restricted by the values of the local reports.** The review appraiser should be able to utilize a combination of findings from the two local reports instead of an either/or situation. In addition, the review appraiser should be allowed to exceed the highest or lowest local values if conditions warrant. This would allow final easement values to reflect any changes in land values which may have occurred since local appraisals were completed.

7. **The review appraiser should be on the SADC staff and not located outside of the agency.** This would eliminate the potential for lag time caused by relying on an outside agency for review appraisals. The in-house review appraiser could also be responsible for training local appraisers, providing them with the basic background information necessary to complete the review more efficiently, and recommending changes to the approved appraisers list.

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E. SURVEYS

1. Many factors which complicate or stretch out the survey process are outside the program's purview. These external circumstances -- such as competition for surveyors' services and the difficulties of surveying farmland -- may all delay final closing. However, the need for a certified survey of the property is necessary to both determine the acres acquired for landowner compensation and to protect the public interest. Recommendations were therefore not made to modify the survey process. It should be emphasized, however, that both the state and counties need to explore ways of expediting surveys as an ongoing matter.

2. When closing is delayed pending a survey, partial payment to the landowner should occur before the survey is complete. The balance should be payable after survey completion, when adjustments for any acreage changes can be made. This would address landowner concerns about the delay in payment often caused in such cases.

F. STAFF

1. Alleviate CADB staffing problems (part-time availability, high turnover, limited funding, conflicting priorities) through increased centralized staff support from the SADC. Many of these concerns (part-time availability, high turnover, limited funding, conflicting priorities) are outside the SADC's direct control. However, increased SADC staff support will address this problem. It will provide the most efficient means of program improvement, with a minimal drain of the Farmland Preservation Bond Fund.

2. The SADC staff should be augmented to include an in-house review appraiser, to address the need for increased educational efforts, and to permit increased direct contact with landowners. This increased SADC capability will allow greater direct field support to CADB staff to: help with training; assist with landowner contacts, applications and educational efforts; and provide for continuity when a CADB staffer vacates a position. Increased SADC staff will also address the need to educate potential applicants, the public and key decision-makers. The addition of an in-house review appraiser will also reduce lag time in the appraisal process by eliminating reliance on an outside agency and by helping to coordinate CADB appraisal activity. In addition, it remains essential that staff size keep up with program growth in order to effectively monitor and enforce deed restrictions on enrolled lands.

III. CONCLUSIONS

The Committee identified three general areas of concern when evaluating the current easement purchase program. Those points are:

1) the need for attracting a broader spectrum of landowner and county/municipal participation (flexibility),

2) increasing the efficiency of the administrative process, and

3) improving the educational aspects of the program, particularly direct contacts with farmland owners.

The increased state cost share allowance for easement purchase, as approved by voters November 3, will permit the participation of counties with more limited financial resources. The state will also be permitted to purchase farmland in fee simple for resale with agricultural deed restrictions. These changes significantly expand the pool of potential program applicants.

A concept of great interest to the committee was that of "limited term" easement purchase. For a fraction of the full value of the development easement, a landowner could elect to deed restrict the land for 10, 15, 25 or more years. It was suggested that the SADC should have a "right of first refusal" at the end of the term. Such a mechanism would appeal to landowners who support the easement purchase concept but are reluctant to commit to a permanent restriction.

The streamlining of the administrative process could be enhanced by attacking four general problem areas: the current linkage of easement purchase with 8-year programs, the appraisal process, multiple layers of governmental review and the delay of settlement due to completion of surveys.

An "uncoupling" of the application to sell development easements from the more limited 8-year farmland preservation programs would significantly reduce paperwork as well as review and approval time, and would be less confusing to landowners. That proposal would require amendments to the Agriculture Retention and Development Act.

The committee recognized that the most time consuming portion of easement purchase is the appraisal process. It was also agreed that the SADC must play a more direct and extensive role in the appraisals. Although the SADC is in the process of hiring its own review appraiser, it was felt that the SADC should have the ability to arrange for the two local appraisals when it could be done more quickly.

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Landowners should be allowed to submit independent appraisals to the review appraiser for consideration. The review appraiser should be given more latitude to arrive at a final value other than those submitted by the local appraisers. This would allow for last minute adjustments to compensate for rapidly changing market conditions.

It was recommended that the SADC develop a review and approval system for applications that would maximize parallel actions among the SADC, CADBs and municipalities to reduce time. The committee also felt the preliminary SADC review of applications should be eliminated and replaced by use of SADC criteria during CADB review. This would significantly reduce the time from application to closing, shaving at least a month off the process. The SADC is now developing criteria to address this.

A final, fundamental set of recommendations dealt with the necessity of improving the educational efforts. The imminent addition of more field staff was seen as absolutely critical to a successful program. This increased SADC staff capability was identified as essential to maintaining county staff's technical expertise and to educating potential applicants about the program.

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TESTIMONY BEFORE THE ASSEMBLY COMMITTEE ON CONSERVATION, NATURAL RESOURCES AND ENERGY BY THE DIVISION OF FISH, GAME AND WILDLIFE COVERING OPEN SPACE AND RECREATIONAL NEEDS RELATIVE TO NEW JERSEY'S FISH AND WILDLIFE RESOURCES

I. Introduction

New Jersey's system of Wildlife Management Areas had its beginning with the purchase of the 387 acre Walpack Tract in Sussex County in 1932. This land was purchased as a "Public Shooting and Fishing Ground" by the Board of Fish and Game Commissioners, the forerunner of today's Division of Fish, Game and Wildlife.

From this modest beginning, the present 190,000 acre system was developed representing 27 percent of New Jersey's public open space resource. Currently, there are 70 Wildlife Management Areas throughout the state ranging in size from the 1.5 acre Old Wharf fishing access site in Trenton to the 24,000 acre Greenwood Forest Tract in Burlington and Ocean Counties. These areas preserve a diversity of wildlife habitats from coastal marshes to Kittitinny mountain ridge tops and provide a wide variety of outdoor recreational opportunities for the people of the state.

Initially, the purchase of lands for the Wildlife Management Area system was funded entirely with sportsmen's dollars generated by the sale of hunting and fishing licenses. In 1961, the first of five successive Green Acres bond issues was approved enabling the general public to participate in the development of the system. Approximately 37 percent of the present system was purchased through the Green Acres bond issues. Routine maintenance and development is funded entirely by the sportsmen of the state. Capital projects such as boat ramps, dams and paved roads, are usually funded through combinations of federal aid (excise taxes on sporting equipment), Green Acres and General Fund capital appropriations.

II. Problems and Needs

1. Land Acquisition - Open Space for Wildlife and People

It is the mission of the Division of Fish, Game and Wildlife to protect and manage New Jersey's fish and wildlife resources. One of our legislatively mandated missions is to maintain the rich variety of fish and

wildlife species currently inhabiting our state. This cannot be accomplished without the preservation of significant amounts of open space. In addition to its many recreational functions and its role in protecting the quality of the water we drink, open land provides living space for a wide variety of fish and wildlife species. Some species like the raccoon, cardinal and grey squirrel adapt well in man-created environments. Many other species such as the black bear, bald eagle and wild turkey require significant blocks of open space if they are to continue to be a part of New Jersey's environment. The development of our state has already eliminated many fish and wildlife species. Among these are the longnose gar, heath hen and the grey wolf. Many other species, 57 at the present time, are on the brink of elimination from New Jersey. The list of endangered and threatened species grows each year. To stem this loss of diversity, open space preservation programs must be accelerated. The Division of Fish, Game and Wildlife has identified over 85,000 acres of additions to existing Wildlife Management Areas and 35,000 acres of new Wildlife Management Areas which should be acquired as part of New Jersey's open space preservation program. With each day we delay, more and more of these areas are permanently lost to development while escalating land values make the remaining acreage more difficult to acquire.

2. Water Access - A Growing Problem for Fishermen and Boaters

The waters of New Jersey--its rivers, streams, lakes, bays and ocean--represent a natural resource base which supports much of our largest industry--tourism. Many of the state's most popular recreational activities--boating, swimming, fishing--are dependent upon our outstanding water resources. Tourism in New Jersey's Atlantic coastal area generated $4.9 billion in revenues in 1982. Fishing alone generated over $1 billion in expenditures in New Jersey in 1985 and provided over 19 million man-days of recreation.

Public access to New Jersey's waterways is a prerequisite to deriving most of the recreational and economic benefits these natural resources provide. Once taken for granted, public access to the state's waters is a growing problem in many parts of the state. On the coast, boat ramps and marinas are giving way to condominiums and other private

waterfront development. Recent surveys conducted by the New Jersey Sea Grant Extension Service have shown that, over the past six years, the supply of publicly available dockage space and boat launching facilities has been declining. The Division of Fish, Game and Wildlife has documented numerous water access deficiencies affecting saltwater anglers. Inland, an ever-increasing amount of our 400 miles of trout-stocked streams is being posted against public use.

Increasing public access problems are coupled with a rapidly rising demand for all types of water-oriented recreation as indicated by the 1984 Outdoor Recreation Plan of New Jersey and the recent report of the Governor's Council on New Jersey Outdoors. Since 1979, New Jersey's registered recreational fleet has grown by 28 percent while the number of fishing licenses sold has increased by 34 percent. A recent Gallup Poll showed fishing to be the second most popular leisure time activity in the nation. As New Jersey's population grows, the demand for places to fish and fishing-related access facilities will continue to grow.

The Division of Fish, Game and Wildlife has recommended the development of 27 new boat launching facilities, the construction or renovation of 29 fishing piers and the acquisition of 22 high priority stream corridors.

Once again, we must act quickly to address the problems of waterway access. Land acquisition, which must be a prominent part of any access program, is becoming increasingly expensive and with each passing year, more potential and existing access sites are lost to development.

3. Wildlife Management Area Operation and Maintenance - Hunter's and Angler's Holding Action

Forty-two percent of New Jersey's state-owned open space, the Wildlife Management Area system, is operated and maintained without General Fund input. Up to half the recreational use of these areas is not oriented toward fish and wildlife. Although the recreation provided on Wildlife Management Areas is largely resource intensive, the maintenance of facilities including roads, parking areas, dikes, spillways, boat ramps, buildings and signs, the enhancement of fish and wildlife habitat, administrative support, and the routine patrol of the areas by law enforcement personnel require a substantial expenditure of funds.

Traditionally, the Hunter's and Angler's Fund has been the only source of funding to operate and maintain the system. Rapid expansion of the system in the last two decades, along with increasing demands on the Hunter's and Angler's Fund from other sources, have severely taxed the ability of the Division to operate and maintain the areas. Since 1970, the amount of land administered by the Division has increased by 50 percent, from 127,000 acres to the present 190,000 acres, while the operation and maintenance staff has remained essentially level. A holding action is currently being fought to maintain facilities in their current condition. Major repairs are put off indefinitely while badly needed new facilities are slow to be developed if at all. Illegal dumping is a growing problem yet increased law enforcement patrols are difficult to sustain. Just removing illegally deposited litter consumes 10 percent of the operation and maintenance budget. Increased law enforcement would not only result in cleaner Wildlife Management Areas, but free up monies now devoted to addressing a problem that could have been prevented.

In many cases, putting off expensive repairs has made situations worse. In some cases, such as at April Bogs in Cape May County, water control structures have washed out due to their weakened condition causing the loss of heavily utilized fishing ponds. This results in a repair project escalating into a reconstruction. In other cases, like the Tuckahoe impoundments in Atlantic County, fishing areas have been lost due to siltation and the lack of funds for dredging. Lack of maintenance has rendered some boat ramps, such as at Dennis Creek, unusable.

New programs, such as the addition of new parking areas, the development of trails and wildlife observation blinds, which would maximize the recreational benefits derived from the Wildlife Management Area system are essentially beyond the current system of funding.

Approximately $1.5 million is expended annually by the sportsmen of the state on the operation and maintenance of the Wildlife Management Area system. We feel that this budget must be supplemented each year through a general funding mechanism, if the deterioration of the system is to be stemmed and wildlife recreational programs expanded to meet the growing demand.

III. Conclusion

The recent report of the Governor's Council on New Jersey Outdoors has documented the urgent need to expand our open space and water access resources and to provide for their operation and maintenance. Significant monies need to be invested into acquisition and development of the Wildlife Management Area system if we are to leave New Jersey with the legacy of a clean and enjoyable environment. Additionally, a stable source of funding needs to be developed which will provide for operation and maintenance to augment the existing monies of the Hunters' and Anglers' Fund.

Respectfully submitted,

George P. Howard, Director
Division of Fish, Game and Wildlife
April 11, 1988

New Jersey Division of Parks & Forestry

ASSEMBLY COMMITTEE
ON
CONSERVATION, NATURAL RESOURCES AND ENERGY

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April 11, 1988

Testimony of
Gregory A. Marshall, Director
Division of Parks and Forestry
Department of Environmental Protection

Assemblywoman Ogden and members of the Committee:
I appreciate the opportunity to participate in your public hearings concerning the preservation of our State's natural and cultural resources and the provision of additional recreational opportunities.

As I trust you are aware, the Division of Parks and Forestry has a significant role and perhaps the largest role of any private or public agency in the stewardship of our State's natural and historic resources.

We are responsible for over 9.5 million visitors to our parks, forests, marinas, golf course, recreational areas and historic sites. With over 300,000 acres of land under our care, we have the privilege of being the largest land holding state agency with areas that range from over 109,000 acres at Wharton State Forest to 0.4 acres at Boxwood Hall in Elizabeth.

Without a lot of fanfare, our Parks and Forestry staff is out there 365 days a year providing quality leisure experiences, protecting and managing our open spaces, natural areas and forest resources, as well as preserving our State's culture and history.

While we continue to fulfill our traditional roles and responsibilities, there are constantly new challenges and demands being placed on us as managers of these resources.

The mainstays of our service delivery system: camping, hiking and swimming, for example, are under constant pressure, not only from overuse, but from the consistent degradation from external forces that impact the landscape as the State continues to change. Daily, we address the planning and management issues impacting the State Park System from a preservation and protection philosophy, but we must also manage the visitors to our system - in essence - "protect the park from the people".

As a result of the practically insatiable demand for facilities and services, we must constantly balance the need for preserving our pristine natural resources, rivers, streams, lakes, shore areas, wetlands, open space, and forest resources with the demands that we encounter for new and expanded recreation facilities.

As an example, our visitation figures which, I might add, are very conservative, were 5.2 million in 1979, grew to 9.5 million in 1987 and will expand to over 14 million visitors by 1995. Most of our lake recreation areas and ocean facilities are closed down consistently on Saturdays, Sundays and holidays by 9:00 a.m. Our waiting list at marinas is astounding. There are over 656 persons on the waiting list for Leonardo Marina in Monmouth County which has only 185 slips available for public use. It should be no surprise that over twenty-four percent of our State residents are boaters.

Continuing trends are also evident to us in terms of expanded year round use, especially in winter recreational activities like skating and cross country skiing and the ongoing popularity of "non traditional" leisure pursuits like hang gliding, spelunking, rock climbing and off road vehicle uses.

The demands for our facilities and services are influenced by a number of different factors that are consistent with other development patterns and demographic trends. The ever expanding leisure ethic, the health/fitness movement, the continued growth of commercial recreation alternatives, the increasing advocacy for facilities and services for the disabled citizens of our State, the focus on tourism, increasing disposable income, redefinition of the typical family, and a significant element, the aged population explosion, are all facets of an ever changing constituency.

In assessing demands on our resources and services, we must also consider the context and viability of federal, county and local park and recreation systems.

The role of the National Park Service in the State has been somewhat minimal in comparison to other states. The Delaware Water Gap Recreation Area, the Gateway-Sandy Hook facility, a number of modest historical opportunities and federal wildlife refuges are the extent of federal opportunities in the State.

We work very closely, through our planning initiatives and the Green Acres Program, to coordinate county and local land acquisition and recreational development. This initiative is especially critical in prioritizing and protecting critical resources and to connect recreational resources through our Greenways initiative. Protecting stream corridors, the head waters of our lakes and rivers as well as watershed protection are all significant planning issues that must be coordinated with other public agencies.

One of the other significant demands, far from being resolved, is our presence and service to our urban citizens. Not withstanding a hand full of significant historic sites in populated areas, our only major urban initiative in the State park system is Liberty State Park in Jersey City. There is much to be done in terms of urban forestry, historic preservation and State park presence in our rapidly urbanizing state. The goal here is not only to provide state park resources in urban areas along waterways. It is important for us to implement programs and services that facilitate and encourage urban residents to explore their historical, natural and park resources. It is is especially critical to educate our children through this initiative about the State's environment, cultural and natural resources, and the impact these resources have on the quality of their lives.

Other urban issues affecting the Division are the loss of federal funding for historic preservation and its impact on lost historic resources in a redeveloping urban setting, and the need to enhance our urban areas through urban forestry initiatives.

Prior to commenting on what I see as the future needs and issues of the Division of Parks and Forestry, I want to take a moment to reflect on the matter of the private sector's role in the provision of park and recreation services.

For a number of years now, the Division has become involved with the implementation of a modest number of public/private partnerships. We have focused on a few specific areas where private entities were invited to join with us to improve our existing facilities in need of renovation or to start from scratch to implement new facilities.

For many years we have had what could be called public/private partnerships through the practice of leasing facilities to third parties (mostly non profit organizations) and having them operate and service the public on our behalf. Examples include Waterloo and Allaire Villages, Absecon Lighthouse, Cape May Lighthouse, The Proprietary House and Fortesque Marina. These are not private sector partners in the way that we commonly define these partnerships today.

They do, however, represent organizations that have taken on the provision of facilities and services in the State Park System.

We do not see public/private partnerships as the panacea to our inadequate funding resources. Our experience to date with a $16 million partnership with the Trump Organization for the renovation and operation of Farley Marina in Atlantic City has been excellent. The prognosis for this major project looks very good.

A more comprehensive public/private partnership with the Liberty State Park Development Corporation for major facilities at Liberty State Park has certainly been time consuming and complicated. We are confident however that despite initial delays and complications, the initiative will persevere. The concern that has been expressed with respect to our public/private partnerships is the perception that we are shirking our responsibilities as guardians of the public trust.

Now for the "fun" part - trying to articulate an accurate picture of what our long term open space and facility needs are for the Division of Parks and Forestry.

The first critical area is a timely and comprehensive land acquisition program for the Division.

At this time, we have identified the need to acquire over 26,000 acres of land. The addition of other lands to our current system would begin to implement our Greenways initiative, to resolve long-standing inholdings and logically "round out" our existing parks and forests.

New aspects of our land/resource protection program need to be funded, however, including an urban component; as I discussed earlier, new major ventures that protect and buffer wetlands, preserve our forest resources, and generally provide inland water and ocean access for recreational purposes. I hasten to add here that as our resource base expands, so does our need to deal with the demands and pressures to "develop" these lands and to provide the operating budget to maintain and operate areas under our stewardship.

On the "facility" needs side, there are a number of major areas of what might be called "facility" needs.

The first facility needs that <u>should</u> be addressed are the facilities that enhance the public's enjoyment of our areas. These recreational facility needs range from bathhouses and interpretive centers to historic preservation projects.

As the demands for our services escalate, there is a corresponding need to fund improvements that properly service the public without degrading the very resources we are trying to enhance and preserve.

The second major area under the heading of "facility" needs is what we term the "non-sexy" requirements, which are in many ways just as critical as the parks visitor center or bathhouse. These needs relate to what is commonly termed infrastructure.

In many respects our parks have the same concerns as your town. We have to deal with roads, bridges, dams, parking areas, water systems, electrical needs, telephones and communications, natural gas systems, storm water drainage and sewage treatment facilities. From our management, operations and enforcement perspective, these elements of the Division's lands are as equally critical a funding need as bathhouses at Island Beach or trails along the D&R Canal.

In order to assist in your comprehension of the scope of our Division and our facility and funding needs, we should return to the subject of what is situated on the 300,000 acres of land I referred to at the beginning of my comments. This will hopefully provide you with some definition of facility needs.

Among our thirty-six parks, eleven forests, thirteen natural areas, five recreation areas, twenty-four historic sites, three burial grounds, four marinas, one forest nursery and one golf course, we have 400 miles of roads, 100 miles of water, sewer and electric lines and over 1,635 structures from restroom facilities to historic monuments.

When you think about these statistics and relate them to facility needs, I trust you can understand our concerns for not only adequate funding levels for acquisition, capital improvements and maintenance, but funding that we can rely on from one year to the next.

A current real life example of a facility need is our proposed renovation of the bathhouse at Parvin State Park. The renovations were necessitated for code compliance and public safety reasons. The firm estimate for the prescribed work was $443,011. We recently took bids on this project and they ranged from $698,055 to $1,029,800.

We strongly recommend a viable, stable source of funding for our land acquisition, development and restoration programs. Without the reliability of stable funding, we not only experience interruptions of public service delivery, we cannot properly plan for our facility needs and it most assuredly have a severe detrimental impact on our operation resources. To be precise on the subject of facility and funding needs, our analysis reflects that our actual needs in our Capital Improvement Program is $60,000,000. Our current, proposed FY'89 Capital Improvement Program is only $4,000,000 approximately 6.6% of that documented need.

In closing, I hope to leave you with the thought that the State of New Jersey can be proud of the staff and natural and historic resources that comprise the Division of Parks and Forestry family. We have excellent employees that are committed to serving the public and protecting and enhancing some of this State's most treasured resources.

While we can be proud of what we have, we certainly know we can and must improve and enhance the resources under our stewardship. We need your help and public support to make our Division of Parks and Forestry the best it can be.

Thanks for your time and attention.

Testimony to the
Assembly Committee on Conservation, Natural
Resources and Energy
April 11, 1988

Presented by Thomas F. Hampton, Administrator
Office of Natural Lands Management
Division of Parks and Forestry

I congratulate the Committee on taking the initiative to hold these hearings to explore new avenues for conserving open space and providing recreational opportunities. I would also like to thank you for the chance to share some of my experiences and ideas in hope that they may generate thoughts on other approaches to protecting these positive attributes of New Jersey's environment.

As you hold these hearings throughout the State, there will be many individuals and organizations providing recommendations for new programs to achieve the goal of protecting open space. No doubt you will also hear about a number of existing programs that have contributed to this conservation effort. Some of these may be quite familiar to you while others of lesser notoriety may only be a name you have heard in the past. From my own experiences, I have learned that successful ventures are often a combination of new initiatives and existing programs used in a creative way.

In 1968 the legislature created the New Jersey Natural Lands Trust, an independent corporation within state government. At that time this type of organization was quite different, but today there are many of these agencies with different missions and authorities - Pinelands Commission, Hackensack Meadowlands Development Commission, Palisades Interstate Park Commission - just to name a few.

The Trust is a combination of the best of both the private and public sectors. Decisions and policy are established by a board of eleven trustees; five government officials, and six private citizens appointed by the Governor from a nominating list submitted by conservation organizations. The salaried staff is small but is supported by the staff of the DEP and, in particular, the Division of Parks and Forestry. Staff of the Trust work out of the Office of Natural Lands Management and, in my capacity as Administrator of the Office, I serve as the Executive Director.

The primary reason for creating the Trust in 1968 was to establish a conservation organization which could hold land as open space and not be subject to real estate tax. Today many private non-profit groups are able to hold land as open space and receive tax exempt status under a program administered by the Green Acres Administration. During the 1970's, prior to a salaried staff or operating budget, the Trust acquired over 700 acres of open space through donation. Often, these lands did not fit the criteria of other conservation organizations and the Trust became the agency of "last resort" for the preservation of open space - again filling a niche that

private groups did not. In 1983, the role of the Trust changed. It changed in an attempt to not only fill that role as agency of "last resort", but to contribute to conservation of open space by soliciting land donations. It was an attempt to use an existing program in a creative new way.

The Trust began by establishing various categories for land acquisition for the preservation of natural diversity. Trust Preserves have been established for protection of endangered species habitat, as unusual ecosystems, and significant representative habitats. In an effort to maintain additional open space the Board of Trustees established its "Land Preservation Bank". These are lands which potentially have significance purely as open space and which may not fit within the general Preserve categories. They are generally larger than one acre in size, have no structures, and pose no serious health threats. Management guidelines have also been established, with a general theme of limited development for public use - maintain areas in their natural state for the enjoyment of the public. Management plans are prepared for each of the Preserves to govern how the habitat is to be managed and what uses the public might make of the area.

With this foundation, the Trust staff has solicited lands which may be available at little or no cost. Prior to revision of the Federal tax laws there were monetary advantages to donation of land, in addition to the intrinsic value of protecting open space. At least two major Preserves, totaling over 500 acres, were donated, partially because of the fiscal advantages as compared to the sale of the property. With the change in tax laws, the Trust can no longer rely on monetary incentives alone to induce donation. We continue to solicit protection of open space through a variety of means depending on the needs of the donor and the type of habitat.

We have turned our attention to working with governmental agencies, particularly those that are regulatory and may require mitigation as part of their decision making process. One of the most significant mitigation projects is the Shorebird Program for acquisition and management of migratory bird habitat along the Delaware Bay. As a result of a permit issued to the Public Service Electric & Gas Co., one million dollars was set aside to create wetlands and purchase shorebird habitat as mitigation. Subsequent to creation of 3.5 acres of wetlands, the Trust, on behalf of the DEP, is protecting through acquisition or agreement, over six miles of critical sand beach habitat. In addition to protection of habitat, funds are being used for public education, research and surveys of bird and human use along the Bay. The Trust is serving as fiduciary for the invested funds and overseeing the program for the Department.

The Trust has used these and other methods of open space protection including donation of conservation easements. Easements have been used to ensure perpetual open space and require the Trust to participate in management decisions. One of the more creative methods used for protection of critical areas is the non-binding agreement. Through an agreement, a private property owner, with the help of the Trust, becomes the knowledgeable steward of a critical area. This type of an arrangement is used as a temporary measure to

ensure protection until more formal plans are made. The agreements gain the understanding and participation of the landowner and provide time to negotiate a more permanent form of protection if warranted. Almost 200 acres of open space has been protected by private property owners through agreements with the Trust.

Over 2600 acres of land has been protected by the Trust in cooperation with the Department, other organizations and individuals. Most of this land has been acquired at little or no cost, other than the time invested by staff. The types of conservation measures undertaken by the Trust in the future are limited only by creativity and funding for staff and operations. The Trust looks forward to working with this Committee towards implementing programs which may be recommended for the future.

The Trust, as well as many other state and federal agencies and private developers, have come to rely on another function in the Office of Natural Lands Management - the Natural Heritage Program. The Natural Heritage Program is identifying the State's most significant natural areas through a comprehensive ongoing statewide inventory of rare plants, animals and natural communities. Established in 1984 as a cooperative agreement between The Nature Conservancy, a private nonprofit conservation organization, and the Department, New Jersey is part of a national network of more than 40 state heritage programs. The data is used to set acquisition priorities for the Natural Lands Trust, and private conservation organizations such as the Nature Conservancy.

The Natural Heritage Program also contributes to the Department's land acquisition and capital construction program, and listing of sites on the State Register of Natural Areas. The program provides information for management, land use planning and environmental review by regulatory agencies and private environmental consultants. Hopefully, the database will become an important element for use in the future to contribute to determination of buffer zones around freshwater wetland areas.

The Natural Heritage database is composed of both mapped and computerized information organized around elements of natural diversity, rather than property lines, in order to compare similar sites. The elements that are inventoried first are the rarest of species and communities based on rankings conducted by experts at the state and national level. The inventory of elements are taken from historic records, many dating back to the 1800's, current site information and field work by heritage staff. Often, new species are discovered or located where they were once thought to be lost from the State or, conversely, found not to be quite as rare.

Until recently, funding for this program came from private contributions to The Nature Conservancy and from the State Park operating budget. There has been no formal funding mechanism nor official recognition of the Natural Heritage Program as an important component for protection of our State's natural diversity. Thanks to you, Assemblywoman Ogden, we are coming closer to achieving that official recognition and funding through Assembly Bill 1366. This bill

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has been approved by the Assembly, 75 to 0, and has been released by committee in the Senate. The importance of this legislation and the Program in general has strong implications for the work of this Committee.

Future acquisitions for the State should include programs to protect rare elements of natural diversity. In the past, such purchases have been for the acquisition of endangered species habitat and Natural Areas based on available species information or ease of acquisition. The Natural Heritage Program will allow for efficient planning and ranking of sites for protection efforts by bringing all available information together into a single database. Not only will we be able to target the most important areas for acquisition, but we will be able to react to offers of sale as they become available. Further, by identifying areas before plans are made for development, we may be able to work with the property owner to achieve some form of protection through an agreement. In many instances, this may be all that is necessary and limited funds for acquisition can be used elsewhere.

Efforts for protection of natural diversity are not just being undertaken by the State Government. As you know, critical roles are being played by many private nonprofit organizations, interest groups and individuals, working towards the same goal of protecting open space. We need to tap that resource, not for the purpose of benefiting our programs but for the purpose of achieving the goals of these organizations and individuals. The Nature Conservancy has invested in the New Jersey Natural Heritage Program as a foundation for future expenditure of monies for preservation of important habitats. The Conservancy's Critical Areas Campaign is intended to raise individual and corporate donations for protection of natural diversity through a number of methods including agreements and purchases. Governor Kean serves as Honorary Chairman of this worthwhile endeavor. All future efforts by the Conservancy will be based mainly on the data and advise from the Natural Heritage Program.

I would urge the Committee to consider the possibility of some legislation which would not only work hand and hand with these types of efforts but actually stimulate the private sector to become more involved. In 1926, the U.S. Congress approved legislation to establish the 75 mile long Shenandoah National Park in Virginia. The statute stipulated that no federal funds could be used for the acquisition. So the Virginia legislature appropriated $1.2 million to buy property provided matching funds came from private donations. Over the next nine years, during the height of the Depression, a "Buy An Acre" campaign saw 24,000 individuals contribute a minimum of $6 an acre for the Park. Virginians to this day treasure the "Buy An Acre" donor certificates. Perhaps this type of campaign, in coordination with private conservation groups, such as The Nature Conservancy, can launch a similar campaign, backed by an appropriation, to "Preserve Our Natural Heritage".

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In summary, I ask the Committee to consider the following:

* Provide a stable and adequate source of funding for programs, such as the Natural Lands Trust, where creative methods can be combined with existing programs to preserve open space.

* Require the Natural Heritage Program to play a major role in the identification of habitat for rare species and natural communities when public funds will be expended for acquisition or protection.

* Provide dedicated funding for the acquisition of habitat for rare species and natural communities. Consider a requirement to have this funding matched by the private sector.

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NEW JERSEY'S OPEN SPACE LEGACY

NJ DEPARTMENT OF ENVIRONMENTAL PROTECTION
Richard T. Dewling
Commissioner

Helen C. Fenske
Assistant Commissioner for
Natural and Historic Resources

Bonnie G. Hammerstedt
Administrator, Green Acres Program

(609) 588-3450
If dialing from a State number, dial 6 and
the last four numbers

33x

Governor's Council on New Jersey Outdoors
Funding Needs Update

Governor's Report Recommendations

* $400 million for state projects

  - $300 million for open space acquisition
  - $100 million for recreation facility development

* $400 million for Green Trust assistance for municipal and county projects

  - $250 million for capitalizing the Green Trust for low-interest loans
  - $150 million for incentive grants (in combination loans)

Update of Funding Needs and Recommended Source

* $400 million for state projects

  - $300 million in Bond Funds for open space acquisition and access programs (see attached).
  - $100 million for recreation facility development to be funded at $18 million annually from the proposed Natural Resources Preservation and Restoration Fund.

* $400 million for Green Trust assistance for municipal and county projects

  - $165 million in Bond Funds to provide for the $250 million need for capitalizing the Green Trust for low-interest loans, less the $35 million provided under the 87 Bond, and $50 million to be provided from $10 million annually under the proposed Natural Resources Preservation and Restoration Fund.

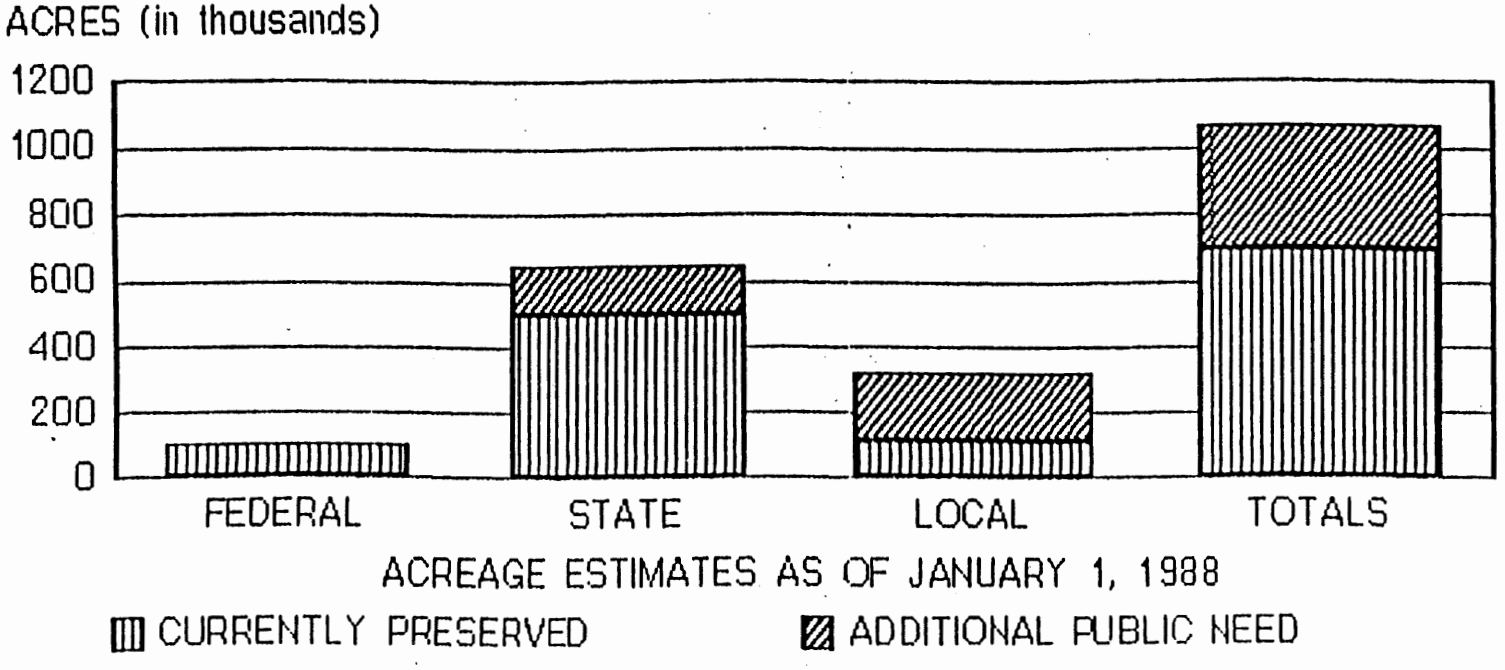
  - $150 million in Bond funds for incentive grants (in combination loans).

Summary of Total Funding Needs

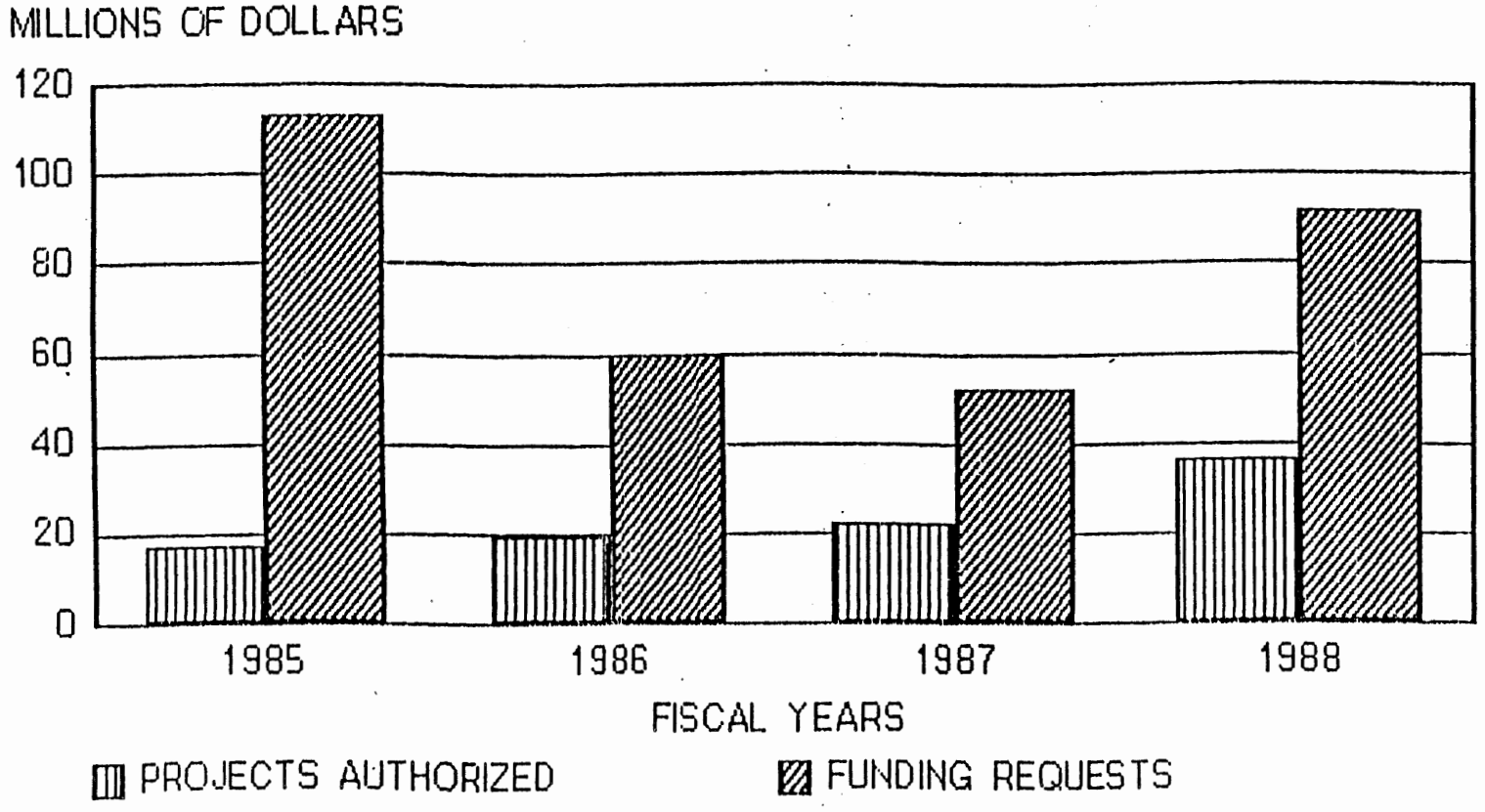
$615 million in Bond funds
$ 28 million provided annually from the proposed Natural Resources Preservation and Restoration Fund.

PUBLIC RECREATION OPEN SPACE SUPPLY AND NEED

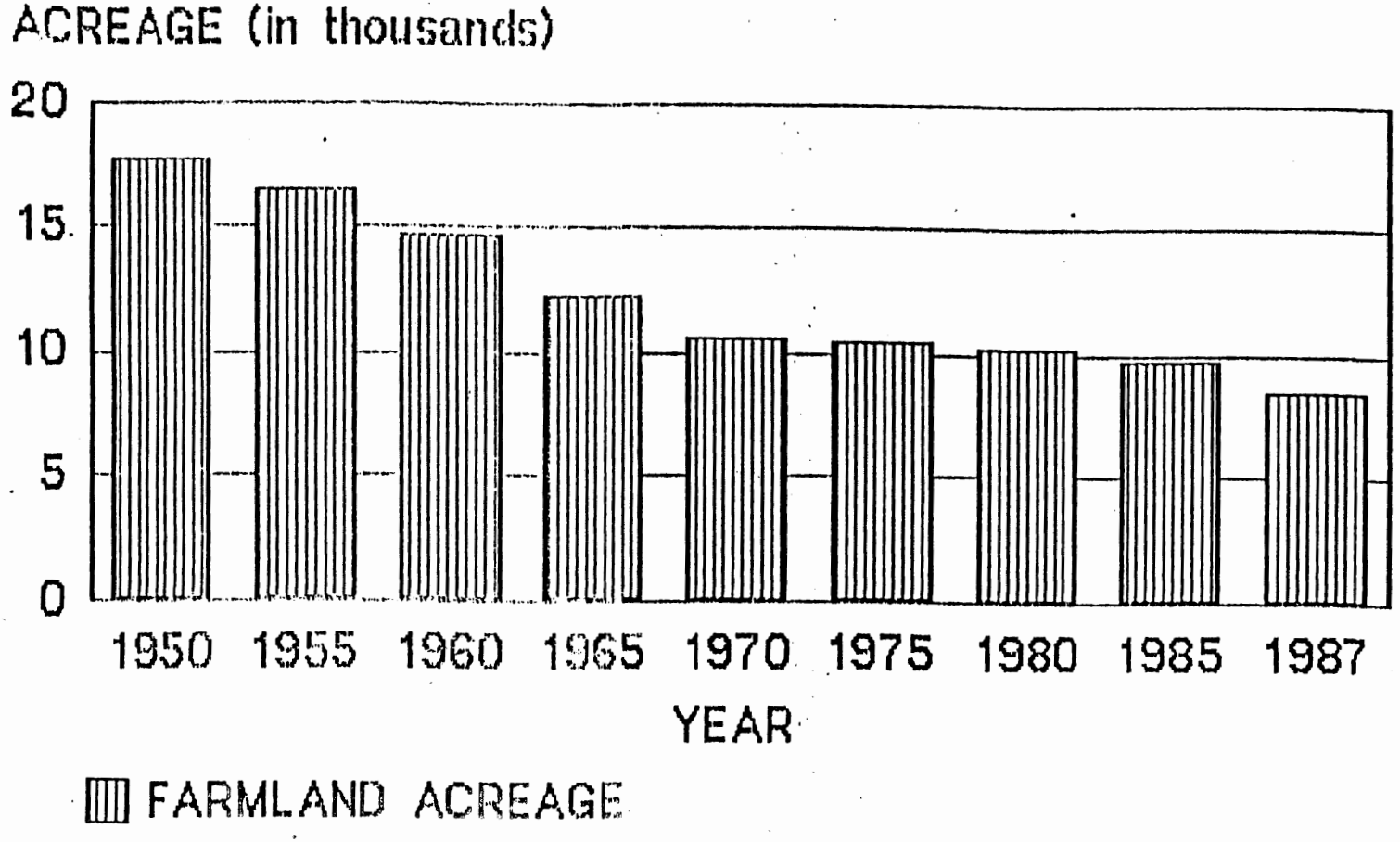
CURRENT TOTAL OPEN SPACE DEFICIT
361,852 ACRES



LOCAL GREEN TRUST
GRANT AND LOAN PROGRAM

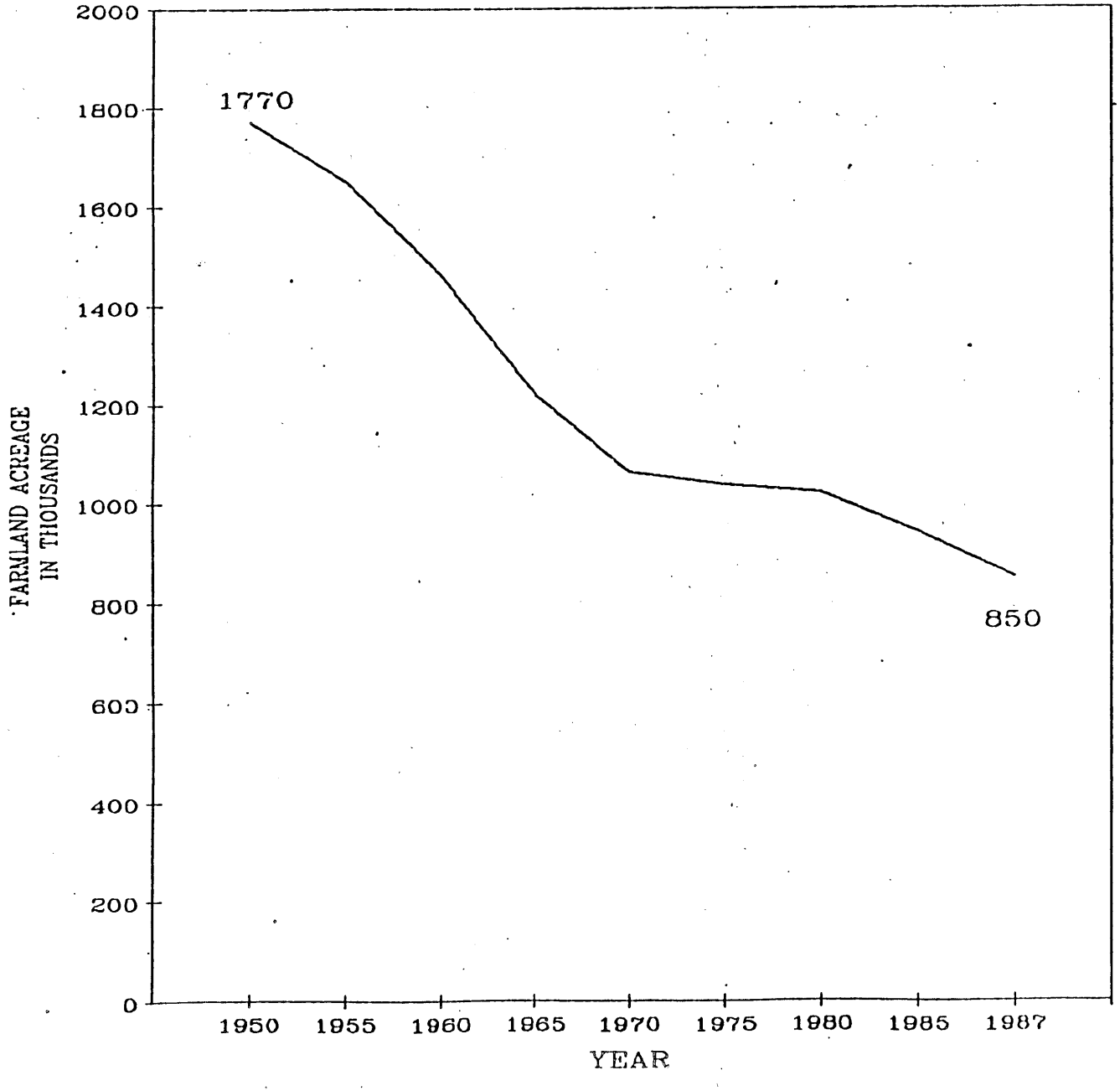


DECLINE IN NEW JERSEY'S FARMLAND



DECLINE IN NEW JERSEY'S FARMLAND

1950 - 1987



LEGEND

——— FARMLAND ACREAGE

LOSS OF 950 THOUSAND NEW JERSEY FARMLAND ACRES FROM 1950 -1987

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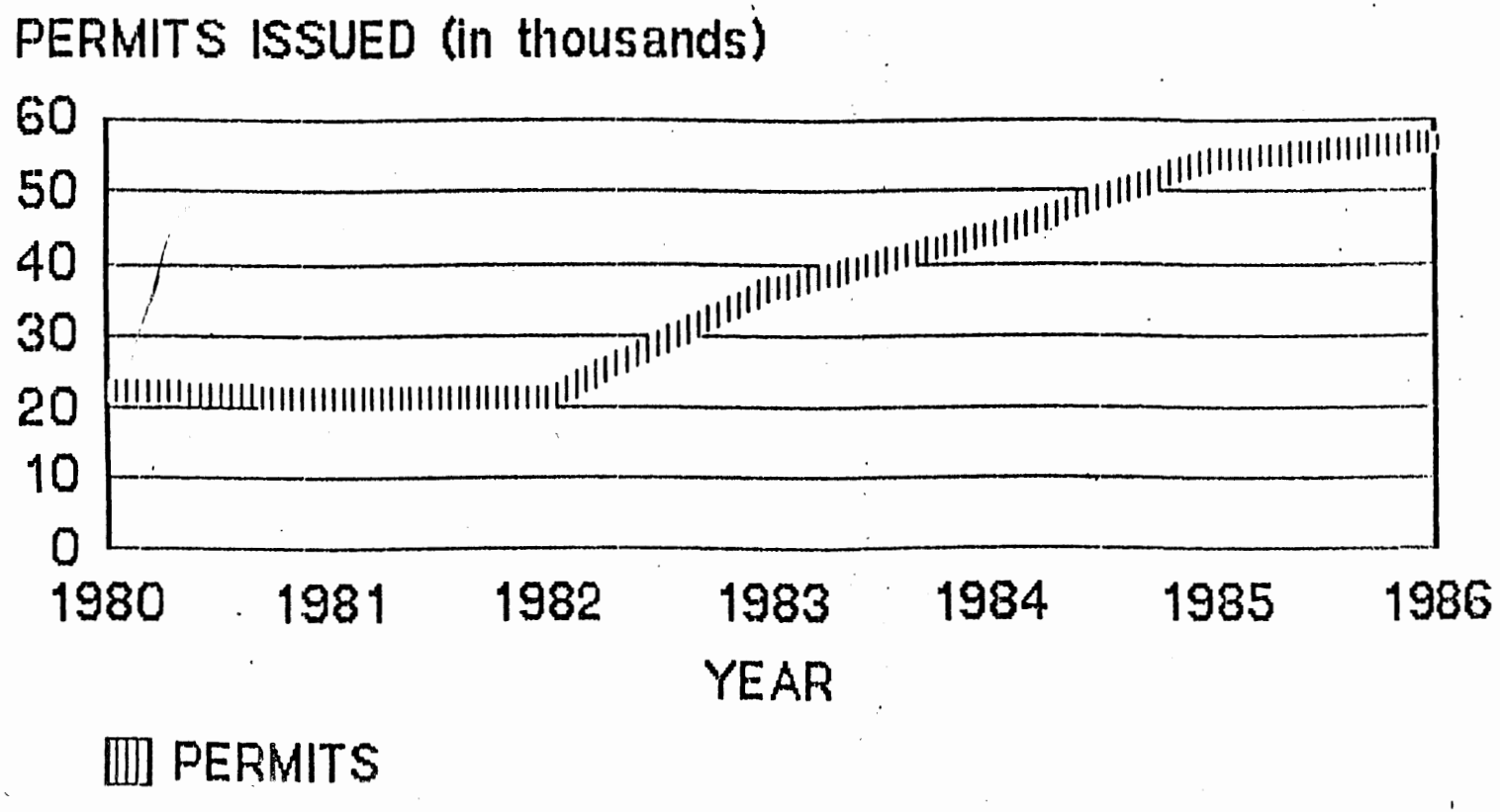
NJ BUILDING PERMITS

NEW RESIDENTIAL CONSTRUCTION



STATE OPEN SPACE ACQUISITION PROGRAM

Fiscal Year 1989 Proposed Program*

Pinelands	$10,000,000
Freshwater Wetlands Areas	4,000,000
Marine and Freshwater Access	4,000,000
Coastal Beaches and Dunes	10,000,000
Bear Swamp (Sussex County)	5,000,000
Skylands	3,000,000
Delaware Bay Shoreline	1,250,000
Greenways	5,500,000
Special Natural Resource Areas	500,000
Additions and Interior Exceptions	1,000,000
Opportunities, Contingencies and Condemnation Awards	5,750,000
TOTAL	$50,000,000

* Program deleted at the recommendation of the Commission on Capital Budget and Planning from the FY 89 budget package currently under consideration by the legislature.

State Open Space Potential Acquisition Projects
Currently Under DEP Review

Division of Parks and Forestry

Parks, Forests and Recreation Areas — 22,629 ac.

Includes additions to 33 existing areas, extension of trail corridors and connectors of existing public lands, and stream corridors and water access sites.

Natural Areas — 74,514 ac.

Includes additions to 17 existing areas, and establishment of 66 new areas to protect significant natural features including habitats for rare and endangered plant and wildlife species.

Historic Sites and Areas — 1,696 ac.

Includes the Delaware and Raritan Canal State Park Acquisition Plan and 13 other projects.

Division of Fish, Game and Wildlife — 120,007 ac.

Includes 40 projects to add 85,380 acres to existing wildlife management areas to expand and diversify protected blocks of wildlife habitat, increase recreational potential and improve administrative efficiency.

Includes 8 new wildlife management areas totaling 34,627 acres to protect outstanding wildlife habitats, especially for endangered species and to supply recreation open space in regions where deficient.

Open Space Needs as of January 1, 1988

Supply

	Prior to 1987 (acres)	Added in 1987 (acres)	Total (acres)	Goals[1] (acres)	Deficit (acres)
Federal	94,000	N/A	94,000	744,319	155,833
State	485,000	9,486	494,486		
County	63,626	878	64,504	221,129	156,625
Municipal	44,119	1,256	45,375	94,769	49,394
Total	686,745	11,620	698,365	1,060,217	361,852

[1] Open space goals adopted by the Governor's Council on New Jersey Outdoors in its March 1987 report. These goals are based on Balanced Land Use Guidelines.

Green Acres Assisted Open Space Acquisition

	Prior to 1987 (acres)	1987 (acres)	Total (acres)
State	187,719[1]	9,456	197,175
County	35,485	661	36,146
Municipal	20,438	1,256	21,694
Total	243,642	11,373	255,015

[1] Includes donation of 1,947 acres as part of an entire acquisition project.

	Open Space Needs (acres)	Estimated Cost
Municipal	49,394	$ 790,304,000.
County	156,625	2,506,000,000.
State and Federal		
Pinelands	64,000	64,000,000.
Outside of Pinelands	91,833	910,833,000.
TOTAL	361,852	$4,271,137,000.

HISTORY OF GREEN ACRES

YEAR	AMOUNT	PROGRAM AREA	THRUST
1961	$ 60 million	Acquisition Only $40 million-State acquisition $20 million-County and Municipal matching acquisition grants	First Bond Issue State - Acquired over 90,000 acres, including 10,556 acres of Wawayanda State Park and 4,973 acres for the Assunpink WMA. Local - Acquired over 16,000 acres, including 2,800 acre Mercer County Central Park, and Essex County's Roseland Park (146 acres).
1971	$ 80 million	Acquisition Only $40 million-State acquisition $40 million-County and Municipal matching acquisition grants	Continuation and Establishment of New Jersey's Open Space System State - Acquired over 30,000 acres, including major additions to Wawayanda State Park (2,876 acres) and Winslow WMA. Local - Acquired over 16,000 acres, including Bergen County's Ramapo County Park (624 acres), Atlantic County's first park, Estell Manor Park (1,672 acres) and Hunterdon County's first park, South Branch Park (784 acres).
1974	$200 million	Acquisition and Development $100 million-Acquisition - $ 50 million-State - $ 50 million-Local $100 million-Development - $ 50 million-State - $ 50 million-Local	First Time For Development State - Acquired 2,453 acres to protect the Appalachian Trail Corridor, 2,292 acre Ramapo Mountain State Forest, and 8,083 acre West Plains Pigmy Forest in the Pinelands. Funded major development, including Spruce Run and Round Valley Recreation Areas and upgraded campground restrooms and shower buildings throughout the state. Local - Assisted in the development of such key parks as Camden County's Wiggins, Essex County's Branch Brook and Bayonne's Kill von Kull Parks, and acquisition of Middlesex County's Ambrose and Doty's Brook Park.

YEAR	AMOUNT	PROGRAM AREA	THRUST
1978	$200 million	Acquisition and Development $100 million for state and local urban acquisition and development projects $100 million for non-urban state and local acquisition and development projects	Urban Emphasis - Waterfront Parks State - Acquired 680 acres at Liberty Park and 14,191 acres in the Pineland's Cedar Creek Watershed and funded development at Liberty State Park and the Pequest Fish Hatchery. Local - Assisted Bridgeton City's development of Cohansey Riverfront Park, and Monmouth County's Seven Presidents Park development, and funded West New York's purchase of Waterfront Park, and East and West Windsor acquisitions along the Millstone River Corridor.
1983	$135 million	Acquisition and Development $83 for initiation of Green Trust low interest loan program for local projects $52 million for state projects - $28 million for acquisition - $24 million for development	Green Trust Initiated State - Major acquisitions in the Pinelands, including Makepeace Lake (6,877 acres), Upper Wading River (3,037 acres), and Manumuskin River (3,765 acres). Development at Liberty State Park as well as other state areas funded. Local - Through the Green Trust low interest loans and 25% grants, acquisition projects and urban projects emphasized. Acquisitions include Atlantic County's 2,393 acre Great Egg Harbor River Park and Hunterdon County's 100 acre Uplands Reservation. Development projects included Pennsauken's Fish House Cove Park, Elizabeth's Arthur Kill Park and Burlington County's Smithville Park.
1987	$ 35 million	Local Acquisition and Development $35 million for Green Trust	Open Space Legacy Projects for the full $35 million will be approved by the end of this year.

Open Space Legacy for New Jersey

Our generation's open space legacy should be greenways - the green threads of protected land that can weave together our open space resources to form the fabric of New Jersey's future quality of life. "We currently bequeath much less then we inherit." Sadly, financial reality negates large acquisitions. There is a method by which we can still preserve the best of what is left. That method? Greenways.

As protected land corridors along waterways, shorelines, scenic roads and trail routes, greenways link urban and rural spaces, protect water resources, wildlife habitat and other natural resources. They enhance the landscape pattern by creating green breaks in the monotony of development. They offer walking, and bicycling and other recreation opportunities. Greenways even benefit economic growth and development by protecting the natural resources that are vital to support growth. Pleasant living areas and working environments are maintained which then attract new growth investments. We must not discount our state's tourism industry which is largely based on the desirability of the state's natural resources and the importance of a healthy, attractive environment.

Types of Greenways:

Greenways are: Countrysides with protected natural, rural and historic corridors. Greenways are trails for walking, hiking, bicycling, horseback riding, jogging, and other forms of passive and active recreation. They may have protected adjacent corridors, railroad and utility rights-of-way, historic travel routes like the Cannonball trail along the Ramapo Ridge and streets of an historic district where the architectural integrity has been preserved and affords a step back in time. Streams and rivers with protected corridors - are an example of trails for public use. The benefits derived by New Jersey's citizens and visitors may come from the views of the tree lined waterways, either from boats or canoes; from protected wildlife habitat; protected shorelines which can be viewed at a distance and bay shorelines which entice people to walk along them. Using these protected areas the public can gain access to the water for swimming, fishing or boating.

Recreation areas - may be Linear greenways conducive to the public having multiple purposes and opportunities. The linkages have to be planned to serve the population. They may be along river corridors, whose shorelines are preserved in basically their natural condition to allow public use in the form of trails and paths. Trail corridors established on railroad

rights-of-way and along historic routes of travel would also be considered recreation. In an historic district, the historic structures, the streets and sidewalks would be considered as serving as an historic recreation greenway. A greenway corridor may include all these.

Conservation areas - are Corridors protected essentially to preserve natural scenic beauty and the environmental values (e.g. mountain ridges, connector parks, wildlife habitat [which maintain natural diversity of the state protecting water quality and quantity]). Waterway conservation corridors may be enjoyed by boaters and canoeists and by individuals at selected viewing points (e.g. road segments and crossings, public waterfront parks). Various linkages can serve the public's recreation needs and allow for the preservation of our state's open space.

Green Acres History

Greenways is not a new term. The acquisition principles that it embodies connect open space areas, protect and provide access to water resources, and are key components of New Jersey's Green Acres Program. Launched by the Regional Plan Association's publication of its report - Race for Open Space in 1960, the Green Acres Program has been financed by six voter approved bond issues over the past 27 years.

In November 1961 New Jersey's voters approved the first Green Acres Bond issue. $40 million of this first initiative was designated for the acquisition of state parks, forests, natural areas, and fish and game lands. $20 million was set aside as state matching grants for county and municipal acquisitions.

By 1971 the voters realized the importance of the first issue and elected to bond $40 million dollars for additional state acquisition of parkland, forests and fish and game areas and $40 million for matching grants for local acquisition---totaling $80 million.

I have attached to my written comments, for your general information, a chart which outlines the history of the Green Acres program. You will notice the program took on considerable changes incorporating development funding and later an urban emphasis. By 1983 the fifth in the series of Green Acres bond issues was voter approved.

The Green Trust - a revolving fund that provides low interest loans for municipal and county projects - was capitalized at $83M. The balance ($52M) was reserved for the continuation of state acquisition and development. The Green Trust, by the way, is the first of its kind in this country to be used as an incentive for local governments to participate in open space preservation.

Although the Green Trust in theory is a fiscally sound program, the original under-capitalization has only permitted an average funding level of $25M. We have not been able to fund 50% of the funding request at any one time. In fact, though we've approved $37 million of projects for the last, still pending appropriation of the 1983 bond issue, we actually funded only 40% of the $90 million in funding requests.

Using the additional $35 million made available last November for the Green Trust, and interest and loan paybacks from the 1983 loans, we'll be able to fund nearly $40 million in projects next year. The following year using just the interest and loan paybacks, the funding level will drop to under $5 million.

Some of our Green Acres accomplishments to date are listed on your comment sheets.

- $710 million in state bond funds approved to date by the voters.
- Coupled with federal and local funds, over $1 billion has been invested in New Jersey's open space and recreation resources.
- Over 57,000 acres of county and municipal parkland has been acquired and over 197,000 acres of state parks, forest, wildlife management areas, natural areas, historic sites and recreation areas have been purchased. A total of 255,000 acres of public open space has been preserved and made available for public use and enjoyment.
- Over 700 state and local recreation facility development projects have been funded.
- Protected and developed trail corridors - Appalachian Trail and Patriots Path.
- Contributed to the economic revitalization of urban areas - Liberty State Park, Wiggins Park in Camden.

Where Should We Be Headed?

Time is short; funds are limited.

Through the Greenways Initiative, the efforts of all levels of government and the private sector can be focused toward a common open space and recreation goal of linking together our protected open space areas to form an effective environmental and recreation system.

Scenic roads, river and stream corridors, shorelines and trail routes already exist or are potential greenways. The key is to ensure permanent continuity of the resources. Acquisition in fee simple is only one available technique. Scenic easement purchase, effective use of state environmental regulation authorities including Freshwater Wetlands, CAFRA and municipal land use planning and zoning controls are other techniques. We continue to work with the Nature Conservancy and the New Jersey Conservation Foundation in acquiring areas that become available. In some instances, immediate action may be imperative but state funds may not be available. Cooperation with Land Trusts is essential. The appropriate technique depends on the potential effectiveness of that technique which protects the resource values. In most cases, fee simple acquisition is the only means of providing for public access.

Coordination opportunities exist at all levels of government and across state agencies. We should be working more closely with the Department of Transportation and the Department of Agriculture exercising a concerted effort to preserve whatever open space becomes available. We should also be investigating the potential use or access to our greenways and blueways through properties owned by other public institutions. Retention of the scenic road offers the opportunity for a cooperative effort involving DOT, DEP and Department of Agricultural, and local governments. Initially we're looking toward the Agricultural Preservation Program's purchase of development easements within designated districts as an important tool in preserving the rural countryside along certain roads. At the same time, we're working with the Agricultural Program in acquiring active farmlands in fee simple and then leasing the land for farming operations.

Stream corridors are being preserved through a variety of techniques - local zoning and sub-division review in some municipalities, fee simple and easement purchases in others. With the expected support of the State Development and Redevelopment Guide Plan, we hope to see stream corridor preservation programs adopted by all communities within the State. IN some instances, parkland acquisition will also be required to allow for public access to the water for direct boating and fishing. Abandoned Railroad rights-of-way, utility rights-of-way and stream corridors are all excellent resources for trail corridors.

There are problems and obstacles that we can expect to encounter.

Linear connectors, particularly public use trails, are difficult to operate and maintain. The Division of Parks and Forestry with its problematic Andover-Netcong right-of-way has enlisted the assistance of volunteer groups with a great deal of success. Land has been cleaned up along the right-of-way and, because of an increased willingness of people to report violations, dumping trash or other improper uses are being more closely monitored.

The Governor's Council on New Jersey Outdoors projected a recreation open space land deficit of 373,472 acres in March 1987. This deficit has been reduced over the past year by 11,620 acres, leaving an unmet need of 361,852 acres. An average cost for our state land acquisition program ranges from $1,000 per acre in the Pinelands to $10,000 per acre outside the Pinelands. County and municipal costs for parklands acquisition are approximately $16,000 per acre. This figure was realized during 1987.

The beauties of the past are the gifts of the future. New Jersey's Open Space legacy lies in the continued protection and development of the environment. Without the financial resources to continue preserving these gifts, the legacy will die. Human beings are responsible for their environment. We are responsible for our endowment. Please help us protect it!---perhaps your influence in the legislature to encourage a stable source of funding for the Natural Resource Program will help.

State Agriculture Development Committee

Quick Facts -- March 25, 1988

PROGRAM INVOLVEMENT

I. COUNTY AGRICULTURE DEVELOPMENT BOARDS — 16 CADBs

II. AGRICULTURAL DEVELOPMENT AREAS (ADAs)

All 16 CADBs have had ADA criteria certified by the SADC.

Over 6,600 acres in three counties have been enrolled in Voluntary ADAs, with substantially greater acreage in 16 counties meeting ADA criteria certified by the SADC.

III. EIGHT-YEAR PROGRAMS	202 farms;	22,459 ac.
IV. EASEMENT PURCHASE		
A. Easements Purchased	14 farms;	1,397 ac.
B. Pending Applications		
1. Being Appraised	84 farms;	10,830 ac.
2. Under Review by State Appraiser	6 farms;	337 ac.
3. Under CADB/Landowner Negotiation	2 farms;	492 ac.
4. Closing Pending	3 farms;	365 ac.
Total Pending Applications	95 farms;	12,024 ac.
C. Rejected Easement Offer	6 farms;	913 ac.
Total Applications to Date	115 farms;	14,334 ac.
V. SOIL and WATER COST-SHARE FUNDING		
A. Obligations Approved by SADC	129 farms	
B. Cost-Share Payments Made	81 farms	

(Note: The above figures indicate the number of farms for which obligations were approved or payments made during the indicated time period, and not the total number of separate obligations or payments made by the SADC. A farm may actually have had more than one obligation approved or received more than one payment, and be counted above only once.

Prepared March 28, 1988.

EXPENDITURES to date

March 25, 1988

VI. ADMINISTRATIVE EXPENDITURES (Salaries, Office Supplies, Equipment, etc.)	$1,269,209
VII. BOND FUND EXPENDITURES	
A. Easement Purchase	
State Cost-Share on (14) Farms:	$1,987,259
Average state cost per acre:	$2,884
95 Applications Pending ($110,819,532)*	
B. Soil and Water	
Funds Obligated: ($2,101,906)	
Payments Made:	$823,272
C. Program Development Grants (PDG) (Administrative Assistance to CADBs) (Includes all 1987 PDG requests)	$177,888
VIII. TOTAL PROGRAM EXPENDITURES	
A. Program Expenditures to Date (Actual: Includes Admin. for FY88, Soil & Water Payments, Easement Purchase, and PDGs to date)	$4,257,628
B. Potential Program Expenditures (Projected Easement Purchase* and Remaining Soil & Water Obligated Funds)	$112,098,166
C. Expended Funds and Potential Expenditures (NOTE: Soil & Water Payments not counted twice)	$116,355,794

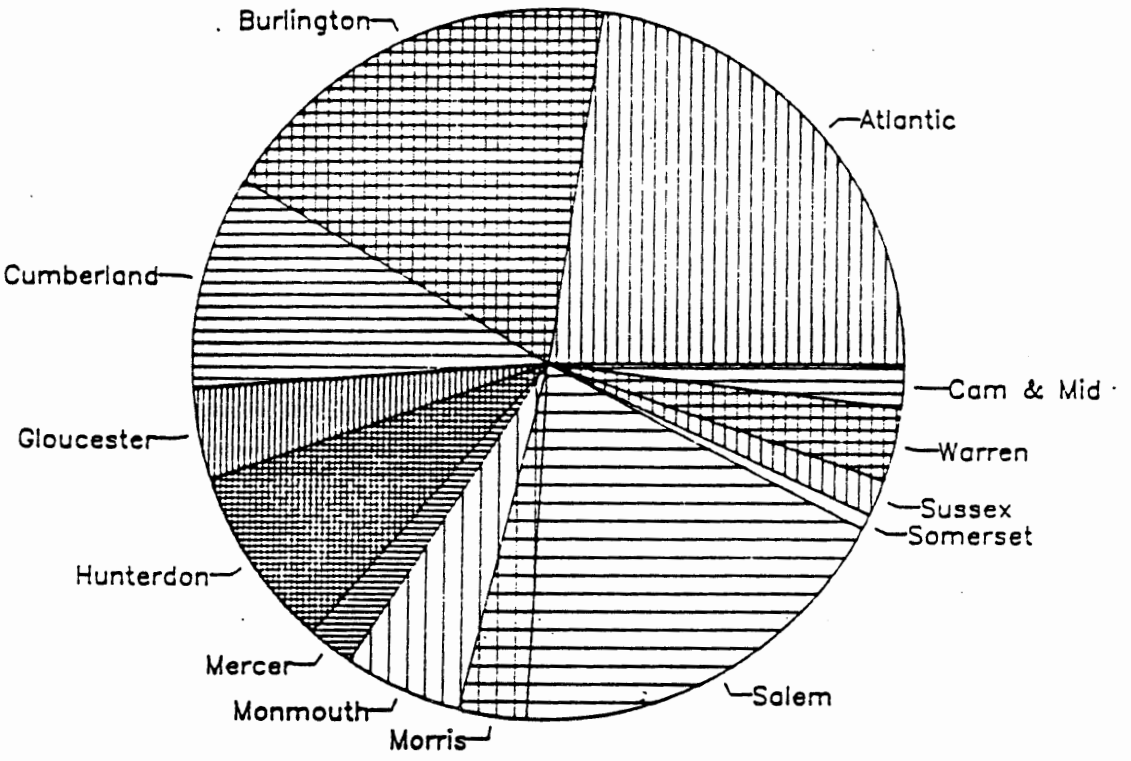
*Note: The anticipated cost of easements for pending applications has been calculated according to landowners' asking prices and the following cost-share rates -- 50% for applications given preliminary approval prior to November 3, 1987; 80% for applications approved after that date. The actual final cost of the development rights will be subject to (1) appraised values, and (2) state, county and landowner acceptance of the certified easement value.

Prepared March 28, 1988.

50%

Total Program Involvement

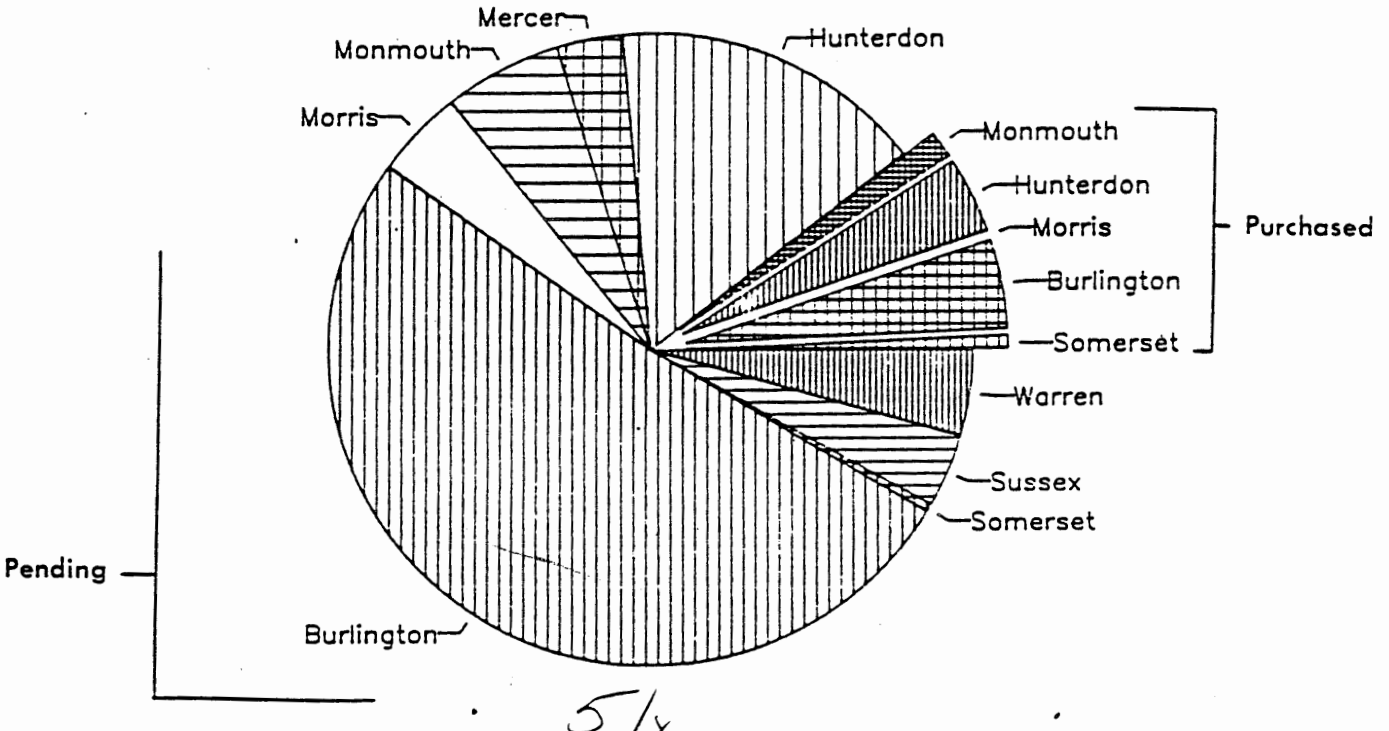
Eight Year Programs and Easement Purchase



Total: 22,459 acres

Easements -- Purchased and Pending

by County



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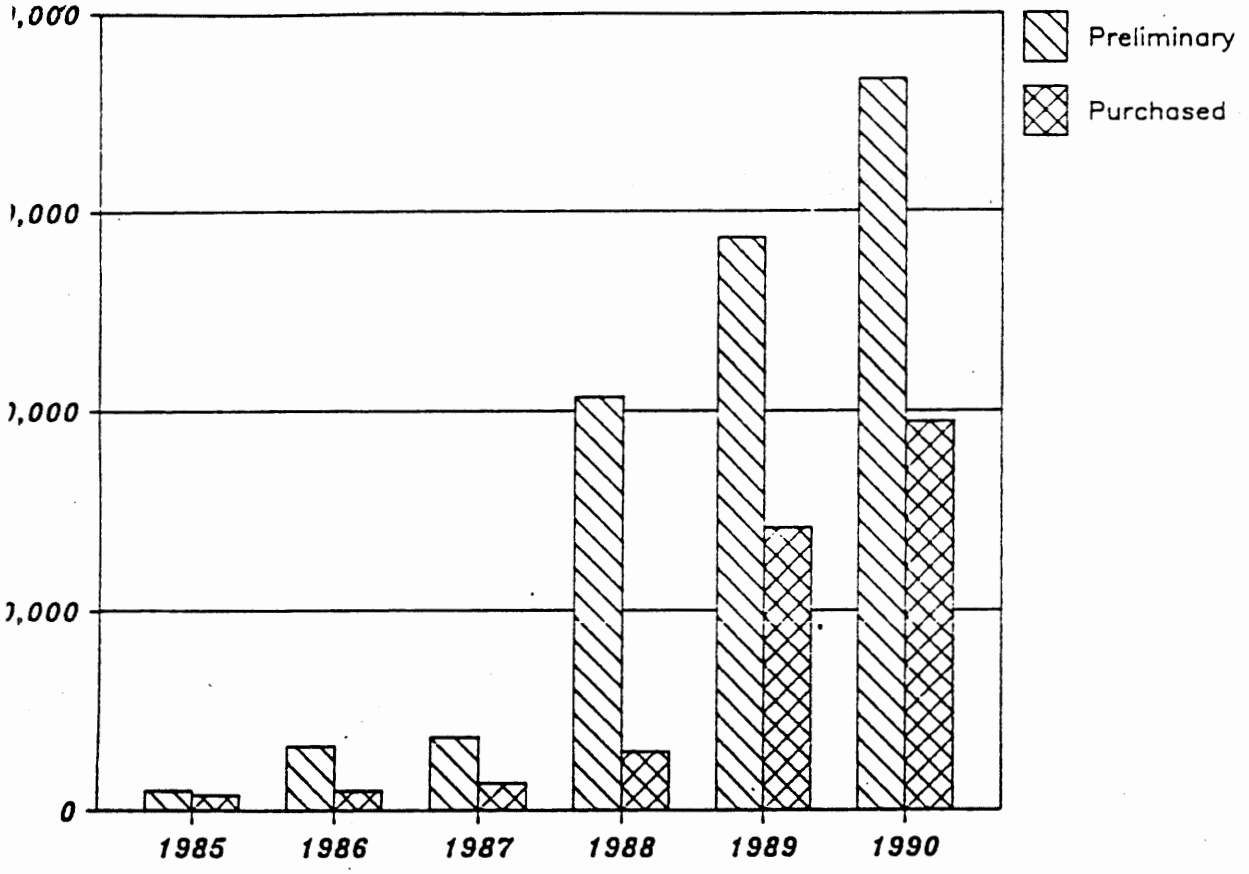
Total: 13,421 acres

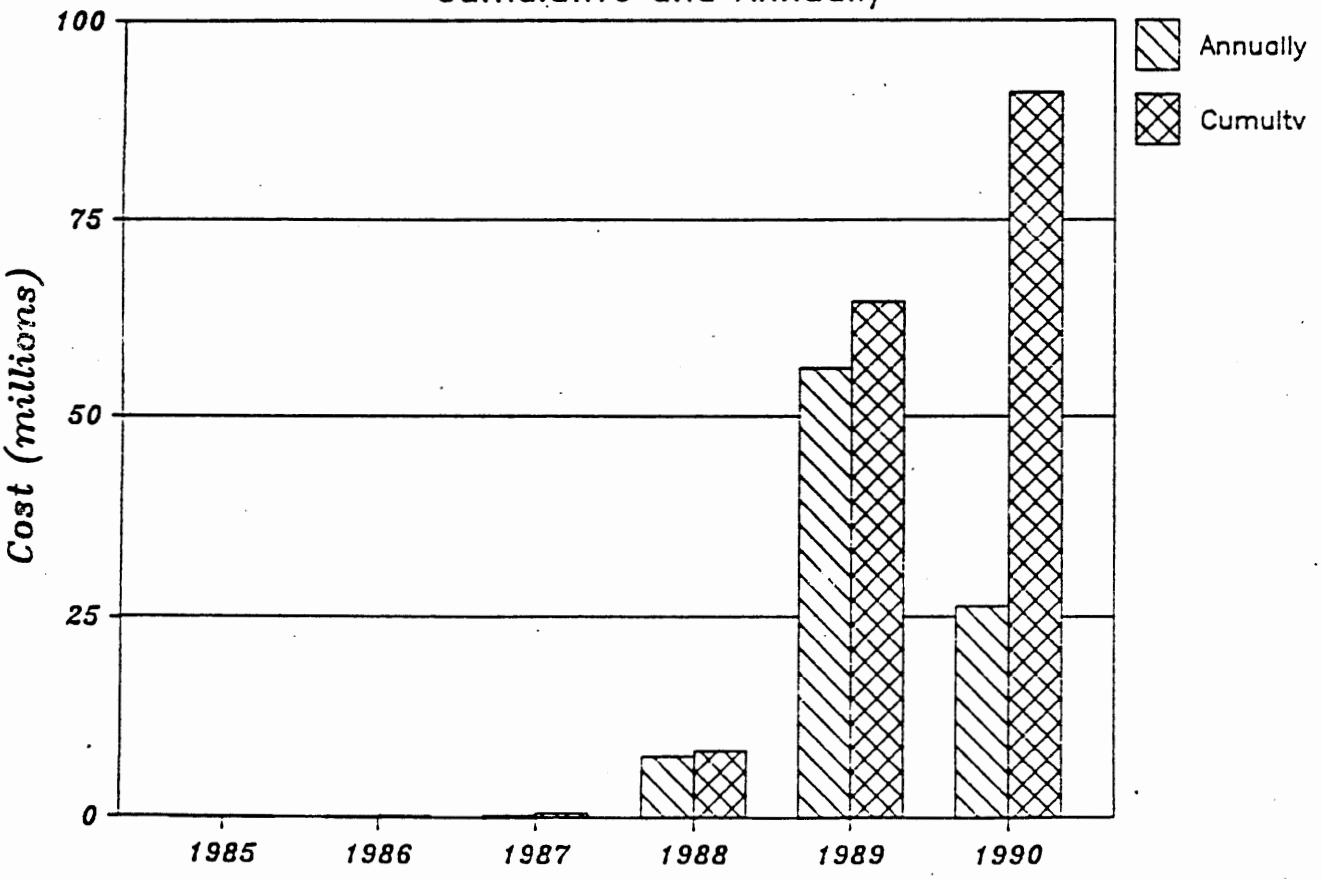
Easement Purchase Applications

Cumulative Acres



Funds Expended for Easement Purchase

Cumulative and Annually



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as of March 25, 1988

	ADA Criteria Certified*	8-yr Pgm's Certified by SADC*	SOIL & WATER GRANTS*** (1,000s) Projects Approved	Projects Completed	DEVELOPMENT EASEMENTS* With Preliminary Approval	Purchase Completed
ATLANTIC		69/ 5,080	63/$1,133.7	42/ $477.3		
BURLINGTON		20/ 4,200	15/ $309.1	5/ $50.1	47/ 6,785	5/ 608
CAMDEN		3/ 362	3/ $25.8	3/ $24.6		
CAPE MAY						
CUMBERLAND	29/ 2,477**	26/ 2,190	16/ $195.7	10/ $80.8		
GLOUCESTER		11/ 947	6/ $88.9	6/ $72.6	1/ 171	
HUNTERDON		21/ 1,860	1/ $11.1		17/ 2,097	5/ 501
MERCER		2/ 498	1/ $1.6		6/ 445	
MIDDLESEX	3/ 197**	1/ 93	1/ $23.2			
MONMOUTH		8/ 1,197	1/ $25.9	1/ $4.9	7/ 799	2/ 188
MORRIS		12/ 681	3/ $47.9	1/ $14.3	11/ 579	1/ 14
OCEAN						
SALEM		16/ 4,080	11/ $143.5	10/ $81.2		
SOMERSET		3/ 172	2/ $7.9	1/ $2.0	2/ 69	1/ 86
SUSSEX	25/ 4,010**	3/ 376	3/ $59.1	1/ $14.7	2/ 491	
WARREN		7/ 730	3/ $28.4	1/ $0.9	2/ 698	
STATE TOTAL	57/ 6,684**	202/22,459	129/$2,101.9	81/ $823.3	95/12,024	14/ 1,397
					Estimated State Share $110,819,532	State Share $1,987,259

* Number of Landowners/Total Acres.
** Acres Voluntarily Entered into ADAs (Cumberland, Middlesex & Sussex only).
*** Number of Landowners/State Cost-Share Dollars (in thousands).

NOTE: Estimated state share of the cost of development easements is based on landowners' asking price and 80% state cost share for applications given preliminary approval after Nov. 3, 1987.

Prepared by the SADC, March 25, 1988.

TESTIMONY GIVEN AT THE PUBLIC HEARING

before the

ASSEMBLY COMMITTEE ON CONSERVATION, ENERGY, AND NATURAL RESOURCES

April 11,1988

I am Mary C. Tanner, representing the Lawrence Township Conservation Foundation and the Lawrence Heritage Association, the purposes of which are, respectively, the preservation of open space and historic sites.

Thank you for this opportunity to enable so many of us to express our views as to what measures the State can take to preserve our dwindling natural resources and open space.

Throughout central New Jersey, including Lawrence Township, people are concerned over the rapid loss of open space and the gain in traffic congestion. Within the last few years the conversion of land for the construction of acres of houses, malls, and office parks has been and continues to be dramatic - and fearsome. Municipalities like Lawrence find themseves under siege, forced to spend excessive amounts of money on lawsuits, not to mention the rising costs of garbage disposal, insurance, and the additional burden of other municipal services.

The loss of so much of the State's farmland is of particular concern. When the Blueprint Commission's Report for the preservation of farmland was issued (in the early 1970s, I think,) the goal was to preserve one million acres. By 1980 this had been reduced to 800,000, and now it is 500,000. As Mrs. Ogden stated recently, a reduction below this amount would mean the virtual death of agriculture in New Jersey.

The State Legislature has taken some important measures to protect farmland, notably the Farmland Preservation Act and the recently approved law implementing the amendments to it. According to figures supplied by Donald Applegate, Executive Director of the State Agriculture Development Committee, easements had been purchased on 1400 acres of land in five counties with another 1500 acres under final review at the end of 1987. By January 31 of this year, applications had been submitted to county agriculture development boards for approximately 15,000 additional acres with the expectation of many more to come. With the increased interest in the program, it is expected that by the end of this year the entire $50 million bond issue providing for state matching funds to purchase development rights to farmland will have been committed.

Obviously, more needs to be done. The Legislature should enact the Transfer of Development Rights bill sponsored by Assemblyman Shinn. Municipalities could then enact ordinances permitting the transfer of development growth from farmland, historic, or scenic areas to those sites more suitable for building.

I think it is disgraceful that this reasonable legislation to help control this fire-breathing dragon of over-development has been before the Legislature for over 10 years. Once more this bill is before this committee, which approved it last year, only to have it turned down on the floor. I urge that this proposal be enacted quickly. Time is a luxury we do not have. While legislators hover over this bill, farms, historic sites, and woodlands are lost - forever.

Assembly bill A-1361 establishing the State's right of first refusal prior to the sale of certain farmland has passed the lower house and is now ready for a Senate vote. It should be enacted quickly.

The enactment of A-1765 (Ogden) would be very helpful to municipalities which lack the funds to acquire lands for conservation and recreation. This permissive legislation, modeled on a very successful program in Nantucket, would allow municipalities and counties to impose a fee on the transfer of real property, not to exceed one per cent of the purchase price, Revenues secured under this bill provide municipalities and counties with funds to buy open lands, promote low and moderate income housing efforts, and purchase, preserve, or rehabilitate historic property.

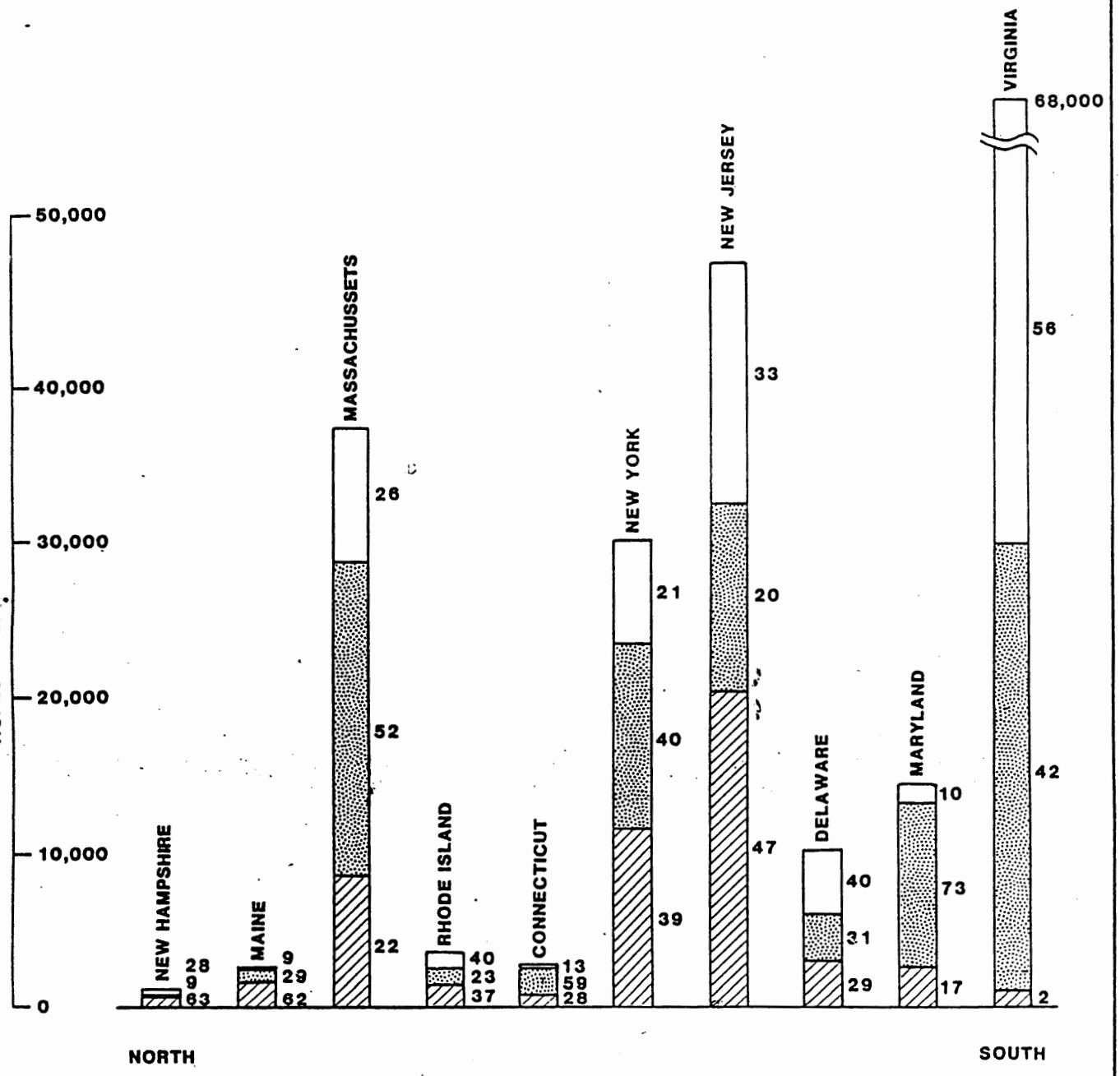
The implementation of this legislation would undoubtedly encourage and enhance the effortsof local private conservation and historic associations. Officials and residents of municipalities know their communities and can act quickly to protect areasthat should be preserved for future generations.

The State should have an adequate and stable source of funding for the acquisition and protection of natural resources. Legislation providing for the Natural Resources Preservation and Restoration Fund through a property transfer tax should be enacted. This should be accomplished in the very near future.

If agriculture is to survive so that we have some balance in our economy - if we are to preserve and enhance our heritage from the past - if we are to continue to enjoy the scenic beauties of our woods, streams, and coastal areas, the Legislature should follow up on initiatives already begun.

Why not another Green Acres bond issue? Why not use some of the "rainy day" surplus for farmland/open space acquisition? Why not expand the program of matching grants for acquisition and preservation of historic sites?

Finally, New Jersey has many associations devoted to the protection of open space while accommodating reasonable development. MSM, the New Jersey Conservation Foundation, Delaware and Raritan Canal Commission, Stony Brook-Millstone Watershed Association, and the Greenway Project are regional organizations with which I am familiar. There are of course others. They have made and continue to make excellent recommendations. Do take advantage of their information, expertise, knowledge, and concern for the welfare of the people and resources of the Garden State now and in the future.



KEY:

- DEVELOPED
- PROTECTED (PARKS, PRESERVES, ETC.)
- UNPROTECTED/ UNDEVELOPED
- 52 % OF TOTAL STATE ACREAGE

EAST AND GULF COAST AVERAGES

46% DEVELOPED
39% PROTECTED
15% UNPROTECTED/UNDEVELOPED

EXTENT OF DEVELOPMENT ON NEW ENGLAND AND MID-ATLANTIC COAST BARRIER ISLANDS

REFERENCE: DATA FROM HCRS, 1980.

DAMES & MOORE

FIGURE I.C-27

from: N.J. Shore Protection Master Plan; Vol. I, Oct. '81 58

TESTIMONY

OF THE

NEW JERSEY BUILDERS ASSOCIATION

ON

PRESERVING OPEN LANDS

AND

PROVIDING RECREATIONAL OPPORTUNITIES

PRESENTED BEFORE THE

ASSEMBLY COMMITTEE ON

CONSERVATION, NATURAL RESOURCES AND ENERGY

STATE HOUSE ANNEX

TRENTON, NEW JERSEY

APRIL 11, 1988

59x

Good Morning Assemblywoman Ogden and members of the Committee, my name is Anthony Giancarli and I am here today representing The New Jersey Builders Association, whose 3100 members provide New Jersey's citizens with places to live and work. I am also chairman of the Legislative Committee for the Central Jersey Builders Association. It is increasingly apparent that our State faces a housing shortage of crisis dimensions. As the cost of land rises and as delays in the approval process lengthen, housing prices are pushed upward, out of the reach of most middle income families. The crisis is most obvious in the alarming rise in homelessness in New Jersey. As you consider ways to preserve open space and promote recreational opportunities, we ask that you look for options that will not place additional pressure on the costs of housing.

Let me begin by saying that we recognize that protection of vital natural resources is a legitimate public function. We all must recognize, however, that people need places to live and work. The task before your Committee, and government generally, is to balance these sometimes competing objectives. It is in this context that I ask you to consider our comments.

The March 1987 report by the Governor's Council on New Jersey Outdoors reports that New Jersey has approximately 700,000 acres statewide that are already designated as public open space. This works out to be nearly 10 acres per person. While the report recommends substantial increases in the amount of land set aside, it implicitly raises a more basic issue: the accessibility and utility of open space. Rather than focusing on the quantity of open space, the ignored dimension in the discussion, is the <u>strategic</u> <u>placement</u> of

the open space parcels so that they fulfill their function. Simply put: the parks and parcels set aside for social and recreational purposes must be readily accessible to population centers. It is interesting to note that, all to often, the spaces that are to be set aside to benefit the population are accessible only to those privileged enough already to reside there. On the other hand, truly valuable open space--Central Park is a prime example and its value as open space is perhaps unequalled anywhere in the world--is not being created or apparently, even considered.

As I noted above, the issue before you today must be considered within the broader context of competing social priorities. Accordingly, in assessing whether New Jersey can allocate more of its financial resources to open space preservation, we must also evaluate its priorities, and the impact of a preservation policy on the supply and affordability of housing. We, therefore, strongly recommend that in allocating our state's fiscal resources -- both the revenues and bonding authorities -- that the Legislature first assure that there is adequate financing for needed infrastructure and adequate housing for all its citizens. Only when we have addressed these subsistence items, can we shift scarce resources to recreational activities.

Having made this point, I will now suggest various ways in which New Jersey can see to the housing needs of the citizens, while addressing concerns about open lands and recreational opportunities.

First, we suggest that the State endorse "state-of-the-art" land use and planning techniques that are known to minimize adverse impacts on the environment. To do this, it will be necessary to encourage flexibility at the local, county and state levels by means of

innovative zoning. This is essential if builders are to meet the challenges of protecting the environment, providing affordable housing and minimizing the steep increases in property taxes. Whereas conventional zoning allows flexibility only through difficult to obtain variances, innovative zoning promotes open space through the use of clustered developments, tax abatements, public funds and specific performance standards.

Along these lines, we would recommend that a method of clustering be standardized to encourage developers to use this technique. One way to do this would be to amend the Municipal Land Use Law to require municipalities to incorporate within their zoning and planning ordinances a standardized cluster option that would set aside a certain percentage of land for open space and provide recreational facilities but require density to be calculated on gross acreage. Presently within the State, municipalities vary widely as to whether and how clustering is used. In many cases, municipalities do not allow "environmentally sensitive areas" to be counted in density calculations, which leads to legal battles to establish developable areas. We would, therefore, further recommend that the Committee consider proposals to require that density be based on gross acreage.

To facilitate the use of clustered developments in non-sewered areas, it will also be necessary to support the use of centralized on-site wastewater treatment systems. What is needed here is the simplification of the approval and permit process that is administered by the New Jersey Department of Environmental Protection (DEP) for the construction and operation of these systems. Aside from streamlining the NJPDES and Treatment Works Approval permit programs, we urge that

the Committee support efforts to modify the co-permittee requirements that are now enforced by the DEP. Simply put, they require that a municipal government agency such as a sewerage or utility authority assume responsibility for the long-term operation of these wastewater treatment systems. We suggest an expansion of those agencies that can serve as a co-permittee by identifying the criteria, i.e., financial assurance, etc., that if satisfied, will make an agency eligible. Currently, only governmental entities are allowed to act as co-permittees and most municipalities are not interested in taking on this added responsibility.

In those cases where a land development project is not proposed, and the priority objective is open space preservation, funds will be needed to purchase these areas. For this purpose, we recommend that the Committee develop as broad-based a source of funding as possible. Included here would be a supplemental sales tax, user fees and general revenues. As noted earlier, these funds must be allocated on a priority basis giving consideration to other pressing needs such as housing and infrastructure. Broad-based funding is important to ensure fairness to the populus. Strategies that rely on taxing specific groups (e.g., realty transfer fees that tax home buyers only) are unfair since all citizens benefit from these open space parcels.

To the extent possible, low-cost land preservation techniques should be encouraged. Included here are easement purchases, land owner agreements and private property donations. In all cases, however, when private land is rendered undevelopable, compensation must be provided at fair market value.

We also urge the Committee to support efforts to provide access to open space. As stated earlier, the most valued open space recreational parcels are those that are readily accessible to the public. As such, priority should be given to seeking ways to provide public access to open space areas by means of some funding mechanism.

The Committee may also want to create a legislative study commission to review the transfer of development rights (TDR) concept to determine whether it can work in New Jersey. TDR programs have been tried in New Jersey and elsewhere in the country, but have almost invariably proven to be unsuccessful. Before the Legislature promotes this concept, we need an analysis of why it has failed and ways to design the program to avoid failure in the future.

As I indicated at the outset, open space and recreation opportunities are properly the concern of public policy; but decisions regarding these objectives can not be made in a vacuum. As you proceed to consider policy options in this area, I hope you will consider the ideas we have put forward.

Once again, thank you for this opportunity to testify and I will be happy to answer any of your questions.

NEW JERSEY
ENVIRONMENTAL LOBBY

375 West State St.
Trenton, NJ 08618
(609) 396-[illegible]

TESTIMONY OF PHYLLIS R. ELSTON before the
Assembly Natural Resources, Energy & Energy Committee

April 11, 1988

My name is Phyllis R. Elston; I am Executive Director of the New Jersey Environmental Lobby with offices at 375 West State St., in Trenton. I am also testifying on behalf of the Natural Resources Preservation Coalition, (NRPC) a coalition of more than one-hundred environmental groups.

I'd like to take this opportunity to draw attention to the following facts compiled by the NRPC:

STEERING COMMITTEE
N.J. Environ. Commissions
Save Wetlands Campaign
N.J. Conservation Voters
Audubon Society
Conservation Foundation
Environmental Lobby
Delaware River Coalition
Hopewell Twp. Environ. Commiss.
Sierra Club of New Jersey
Stony Brook/Millstone Watershed Assoc.
Upper Delaware Assoc. of Delaware River

NATURAL RESOURCES PRESERVATION COALITION
"TO PRESERVE OUR OPEN SPACE"
c/o N.J.Environmental Lobby, 46 Bayard St., New Brunswick, NJ 08901 201-246-6832

NEW JERSEY'S NATURAL RESOURCE NEEDS

The Natural Resources section of the New Jersey Department of Environmental Protection needs assured funding to provide protection for critical & unique lands, greenways, trails, water access points, historic sites, and scenic lands.

SOME SPECIFIC NEEDS:

The Governor's Council on New Jersey Outdoors estimated that New Jersey needs to acquire 399,000 acres of land to provide for recreational demands by the year 2000.

County and Local Land Acquisition
Currently the state has $83 million from the 1983 bond issue; however, existing local and county applications would consume that.

State Maintenance and Acquisition
Attendance at state parks has gone from 3 million in 1984 to 9 million in 1987, yet no new park has been created in 15 years. Existing facilities are in need of basic maintenance and increased staff - 1987 saw ever more early park closings.

FUNDING IS NEEDED

63x

OVER, please . . .

COMMITTEE
nviron Commissions
tlands Campaign
ervation Voters
ociety
on Foundation
ntal Lobby
oalition
Environ. Commiss.
iew Jersey
llstone Watershed Assoc.
oc. of Delaware River

NATURAL RESOURCES PRESERVATION COALITION

"TO PRESERVE OUR OPEN SPACE"

c/o N.J.Environmental Lobby, ~~46 Bayard St., New Brunswick, NJ 08901 201-246-6832~~

OPEN SPACE DEFICITS

TY	Municipal Deficit (Acres)	County Deficit (Acres)	TOTAL Deficit (Acres)	STATE TOTAL DEFICIT (ACRES)
ANTIC	7,100	18,169	25,269	
EN	816	4,210	5,026	
INGTON	9,640	28,290	37,720	
DEN	1,323	6,036	7,359	
MAY	2,590	5,638	8,228	
BERLAND	5,107	16,837	21,944	
K**	628	(110)	518	
ICESTER	4,646	13,134	17,780	
ON	134	1,168	1,302	
ERDON	6,470	13,847	20,317	
ER	1,066	5,280	6,346	
DLESEX	1,567	8,581	10,148	
MOUTH	4,211	14,865	19,036	
RIS	1,149	6,187	7,336	
N	7,308	20,361	27,669	
AIC	534	2,997	3,531	
M	5,234	12,378	17,612	
ERSET	2,759	6,583	9,342	
EX	2,643	10,166	12,809	
N**	742	(1,158)	(416)	
REN	3,661	9,308	12,969	
OTAL	69,328	202,517	271,845	
E TOTAL				399,035

here surpluses of local open space are shown there is still a need for county open e acquisition.

CE: "Outdoor Recreation Plan of New Jersey, N. J. Department of ronmental Protection, 1984

ONY BROOK
LESTONE
VATER
HED
SOCIATION

Testimony
of
Todd A. Bryan
Executive Director
Stony Brook-Millstone Watershed Association
before
The Assembly Committee
on Conservation, Natural Resources and Energy

April 11, 1988

Approaches to Preserve Open Land

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us Mill Road
n n i n g t o n
J. 0 8 5 3 4
9-737-3735

Henry Thoreau expressed it best in Walden when he wrote:

"Our village life would stagnate if it were not for the unexplored forests and meadows which surround it."

Yet, recreation and ecologically sensitive open space areas are disappearing at an alarming rate in New Jersey. Rapid growth in the Route 1 corridor, for example, and the spill-over effects throughout the region threaten the region's environmental quality and character.

Quite apart from other regions in northern New Jersey, the landscape in the Central region remains relatively rural. Evidence shows, however, that the landscape is rapidly changing. The central corridor between Trenton and New Brunswick is one of the fastest growing areas of the country, and may approach the population of Dallas and Fort Worth in the next five to ten years according to the New Jersey Department of Transportation.

In spite of this trend, however, public opinion strongly supports Thoreau's sentiment. The Eagleton Institute study has been mentioned earlier today. In addition, a survey by New Jersey Public Service Electric and Gas Company found that the "environment" is the most important locational consideration of high technology companies. Moreover, on a national scale, the President's Commission on American's Outdoors found that 81% of survey respondents "strongly agree" that "natural areas should be preserved...for future generations." In the mid-Atlantic states this figure is even higher. Yet, as more peoplehcome to the area, attracted by its natural amenities, the qualities that bring them here are diminishing. This paradox represents Garrett Hardin's classic lament in "The Tragedy of the Commons" -- each new development, by itself, has little effect. Taken together, however, they result in significant uncontrolled environmental degradation and the loss of rural character.

The result of unmanaged growth, and the subsequent loss of open space, is the loss of biological integrity, irreplaceable natural resources, valuable farmland and diverse recreational opportunities. The consequences of these changes are not always apparent, however. Most often environmental degradation from random growth is only measurable through the accumulation of incremental impacts. Only over a period of time do these impacts become apparent: flooding is more frequent and damaging, erosion and sedimentation cloud streams and ponds, nuisance algae blooms choke water courses, road salts and chemical enter well systems, and species composition gradually changes from greater diversity to a more simple ecosystem made up of an abundant supply of a few very common species. By the time these impacts are discovered, they usually cannot be controlled.

The pace of development in the central corridor has far exceeded efforts to maintain valuable open space land. A recent

study by Middlesex-Somerset-Mercer Regional Council for the Regional Forum concluded that at least 40% of the region's land should remain in public or privately held open space -- including farmland. Currently, only 7% of the region is publicly owned or permanently restricted in any way. This figure is far lower than the state as a whole.

Although strong support exists for open space protection, the region has fallen behind for several reasons. State programs are usually poorly staffed and funded. Environmental regulatory programs and other state efforts, for example, have not kept up with the surge of economic growth that has occurred throughout New Jersey, and especially in the Route 1 Corridor. In addition, land acquisition programs like Green Acres and the farmland purchase-of-development-rights program have focused on regions where land values are lower, thereby netting more land per dollar. Moreover, state officials and county executives are reluctant to "compete" in the regions real estate market when land prices are so high. As a result, farmland and open space is being lost in population centers where its preservation is most critical to public health and welfare.

Open space preservation is further complicated by the fact that land use decisions are made primarily at the municipal level. Since major open space patterns do not follow municipal boundaries, regional needs are often ignored. Further, municipal officials are reluctant to exercise full regulatory authority under the State's Municipal Land Use Law for fear of law suits against the municipality and against them personally. Finally, many officials, because they are volunteers, have limited knowledge of their own authority, and even less knowledge of federal, state and regional regulations and policies. Too often, officials knowledge of land use policies is obtained from the developers that come before them for municipal review. Many municipal governments, unfortunately, are allowing developers to decide the future of our landscapes.

I would like now to list ten land conservation techniques and legislative proposals that I feel would greatly strengthen our efforts in New Jersey. They are not listed in any particular order or priority. I believe they are all necessary.

1. We need a permanent and stable source of funding for natural resource protection at the state level. This source of funding should raise at least $50 million per year and be tied to a funding source, such as a real estate transfer tax, that will rise with inflation. A tax on the transfer of real estate, if considered, should not exempt new construction, except possibly for low income housing, as new construction is almost single-handedly responsible for the loss of open space.

2. We need a permanent and stable source of funding for open space acquisition at the <u>county</u> and/or <u>local</u> level. A tax such as the one described above, should be imposed at this level to raise

money to purchase openspace and farmland. Currently, the state's efforts to protect farmland in central New Jersey through its farmland preservation program are foiled because County and municipal governments cannot raise the necessary matching money. Many municipal governments cannot protect recreation and open space land through direct acquisition because of limited funds.

3. Money raised through these mechanisms and others should be made available to qualifying non-profit land conservation organizations for land preservation projects. In cases where a private non-profit land conservation organization is in a better position than a government body to own and manage publicly accessible conservation and recreation land or farmland, funds should be appropriated directly to such an organization. The Stony Brook-Millstone Watershed Association, for example, owns and manages almost 600 acres of open space in Hopewell Township and, with the exception of the state, is the largest holder of publicly accessible conservation land in the Township. The Watershed Association is in a key position in the region to hold and manage conservation land. Many other organizations are in such positions as well.

4. Transfer of Development Rights legislation should be immediately enacted and implemented. Such legislation is vitally necessary if owners of private conservation land are to be paid due compensation for the preservation of that land. TDR legislation is also infinitely more equitable because it distributes the burden of land preservation to the private market ultimately responsible for its demise.

5. Development restrictions in Tier 5 of the State Development Guide Plan need to be strengthened so that open space and farmland can be adequately preserved. Presently guidelines for open space and farmland preservation in Tier 5 are too vague.

6. Regulations are necessary to provide permanent protection for critical areas and habitat for threatened and endangered plants and animals. Critical area protection should include specific development restrictions on aquifer recharge areas, unique habitat types, endangered or threatened plants and animals, unusually productive or diverse ecosystems, highly erodible soils and excessively steep slopes.

7. Legislation should be enacted to allow preferential tax assessment for critical areas. Critical areas such as those described above should be treated like farmland for tax assessment purposes.

8. Enabling legislation should be passed which would give government bodies automatic right of first refusal to purchase preferentially assessed land for conservation or recreational uses. In addition, government bodies should, under such legislation, be able to pass the power of automatic right of first refusal to a non-profit land conservation organization. In Massachusetts, for example, municipal governments have right of first refusal power

for 120 days to purchase preferentially assessed land for open space. This power can be passed on to a private non-profit conservation organization.

9. The State Department of Agriculture is proposing a $16,000 per acre cap on the State's proportion of the farmland preservation purchase of development rights matching program. $16,000 would cover 80% of the purchase price of an acre of farmland whose development rights have been appraised at $20,000. While most farmland in the state is selling for much less than $20,000 per acre, in much of the Central Section of New Jersey, including Mercer, Middlesex and Somerset counties, development rights have already exceeded $20,000 per acre. If this policy is adopted, the central region must find new ways to protect farmland.

10. The focus of open space protection should be directed towards the concept of linking existing open spaces throughout the state through a system of Greenways. Greenways should be preserved by a combination of public and private land conservation techniques. Some of these techniques are now available. Others have been listed above. And still others have been described by other people in this room.

Thank you. I look forward to working with you on this important effort.

PRESIDENT'S COMM. ON AMERICANS OUTDOORS

STATES/REGIONS			FEDERAL**					STATE***					LOCAL***				
			LAND AREA			PER CAPITA		LAND AREA			PER CAPITA		LAND AREA			PER CAPITA	
NORTHEAST	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
CONNECTICUT	3,107,576	3,118,080	11,000	0.353%	50	0.00	50*	198,921	6.380%	11	0.06	43*	40,012	1.283%	7	0.01	34*
MAINE	1,124,660	19,836,800	137,000	0.691%	47	0.12	38	428,128	2.158%	27	0.38	15	21,000	0.106%	35	0.02	21*
MASSACHUSETTS	5,737,037	5,007,360	82,000	1.638%	40	0.01	47*	589,055	11.764%	6	0.10	35*	543,153	10.847%	1	0.09	6*
NEW HAMPSHIRE	920,610	5,755,520	717,000	12.458%	14	0.78	17	274,812	4.775%	14	0.30	20*	35,500	0.617%	15	0.04	11*
NEW JERSEY	7,364,823	4,779,520	93,000	1.946%	38	0.01	47*	468,994	9.813%	8	0.06	43*	137,445	2.876%	3	0.02	21*
NEW YORK	17,558,072	30,321,280	140,000	0.462%	49	0.01	47*	5,234,263	17.263%	2	0.30	20*	231,535	0.764%	11	0.01	34*
PENNSYVANIA	11,863,895	28,729,320	727,000	2.531%	37	0.06	40*	3,648,026	12.698%	3	0.31	19	180,080	0.627%	14	0.02	21*
RHODE ISLAND	947,154	675,200	1,000	0.148%	51	0.00	50*	57,548	8.523%	9	0.06	43*	14,917	2.209%	4	0.02	21*
VERMONT	511,456	5,934,720	312,000	5.257%	26	0.61	19	252,200	4.250%	15	0.49	9	2,000	0.034%	44	0.00	48*
	49,135,283	104,156,800	2,220,000	2.131%		0.05		11,151,949	10.707%		0.23		1,205,642	1.158%		0.02	

STATES/REGIONS			TOTAL				
			LAND AREA			PER CAPITA	
NORTHEAST	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
CONNECTICUT	3,107,576	3,118,080	249,933	8.016%	35	0.08	49*
MAINE	1,124,660	19,836,800	586,128	2.955%	47	0.52	32*
MASSACHUSETTS	5,737,037	5,007,360	1,214,208	24.248%	14	0.21	41
NEW HAMPSHIRE	920,610	5,755,520	1,027,312	17.849%	20	1.12	18*
NEW JERSEY	7,364,823	4,779,520	699,439	14.634%	23	0.09	48
NEW YORK	17,558,072	30,321,280	5,605,868	18.488%	19	0.32	39
PENNSYVANIA	11,863,895	28,729,320	4,555,106	15.856%	21	0.38	38
RHODE ISLAND	947,154	675,200	73,465	10.880%	27	0.08	49*
VERMONT	511,456	5,934,720	566,200	9.540%	29	1.11	20*
	49,135,283	104,156,800	14,577,591	13.996%		0.30	

70*

STATES/REGIONS						PER CAPITA					PER CAPITA				PER CAPITA	
SOUTH	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP	NATIONAL RANK
ALABAMA	3,893,399	32,470,080	970,000	2.9051	36	0.25	34	1,269,096	3.9061	18	0.33	18	76,032	0.2361	26	0.02	218
ARKANSAS	2,236,435	33,329,920	3,300,000	9.9011	16	1.44	15	784,420	2.3541	24	0.34	17	31,133	0.0931	36	0.01	348
DELAWARE	594,339	1,236,480	37,000	2.9921	35	0.06	408	51,799	4.1891	16	0.09	37	7,570	0.6121	16	0.01	348
DIST. OF COLUMBIA	638,333	40,320	9,000	22.3211	13	0.01	478	600	1.6871	32	0.00	51	0	0.0001	51	0.00	428
FLORIDA	9,746,324	34,657,920	2,640,000	7.6171	19	0.27	33	3,939,338	11.3661	7	0.40	14	138,069	0.3981	19	0.01	348
GEORGIA	5,463,105	37,155,840	1,762,000	4.7421	30	0.32	30	1,185,800	3.1911	22	0.22	298	295,806	0.7961	17	0.04	188
KENTUCKY	3,660,777	25,399,160	1,142,000	4.4981	31	0.31	31	144,001	0.5681	45	0.04	438	485,719	1.9141	6	0.13	4
LOUISIANA	4,205,900	28,493,440	1,019,000	3.5761	33	0.24	35	1,094,539	3.8411	20	0.26	24	26,000	0.0911	37	0.01	348
MARYLAND	4,216,975	6,275,680	100,000	1.5081	41	0.02	45	321,310	5.1201	13	0.08	398	136,272	2.1651	5	0.03	178
MISSISSIPPI	2,520,638	30,229,120	1,745,000	5.7731	25	0.69	18	1,035,891	3.4271	21	0.41	128	12,502	0.0411	43	0.00	438
NORTH CAROLINA	5,881,766	31,259,520	1,988,000	6.3601	24	0.34	29	2,483,505	7.9451	10	0.42	11	39,172	0.1251	34	0.01	348
OKLAHOMA	3,025,290	43,929,200	1,410,000	3.2091	34	0.47	22	823,088	1.8731	31	0.27	23	147,180	0.3351	22	0.05	98
SOUTH CAROLINA	3,121,820	19,329,920	859,030	4.4441	32	0.28	32	754,121	3.9011	19	0.24	258	16,600	0.0861	39	0.01	348
TENNESSEE	4,591,120	26,339,200	1,809,000	6.8681	21	0.39	258	442,498	1.6801	33	0.10	358	43,900	0.1861	30	0.01	348
TEXAS	14,229,191	167,629,890	3,077,000	1.8351	39	0.22	37	531,216	0.3171	50	0.04	408	233,497	0.1391	32	0.02	218
VIRGINIA	5,346,818	25,410,560	2,178,000	8.5711	18	0.41	24	416,635	1.6401	34	0.08	388	319,304	1.2571	8	0.06	8
WEST VIRGINIA	1,949,644	15,436,160	1,170,000	7.5801	20	0.60	20	352,604	2.2841	26	0.18	33	21,099	0.1371	33	0.01	348
	75,372,362	559,723,200	25,215,000	4.5131		0.33		15,630,621	2.7981		0.21		1,945,855	0.3491		0.03	

TOTAL

STATES/REGIONS			PER CAPITA				
SOUTH	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
ALABAMA	3,893,399	32,470,080	2,315,928	7.1281	39	0.59	278
ARKANSAS	2,236,435	33,329,920	4,115,553	12.3481	25	1.80	16
DELAWARE	594,339	1,236,480	96,369	7.7941	36	0.16	438
DIST. OF COLUMBIA	638,333	40,320	9,680	24.0081	15	0.02	51
FLORIDA	9,746,324	34,657,920	6,717,407	19.3821	18	0.69	26
GEORGIA	5,463,105	37,155,840	3,153,606	8.4881	33	0.58	298
KENTUCKY	3,660,777	25,399,160	1,772,000	6.9801	40	0.48	36
LOUISIANA	4,205,900	28,493,440	2,139,539	7.5091	37	0.51	34
MARYLAND	4,216,975	6,275,680	557,582	8.8871	31	0.13	45
MISSISSIPPI	2,520,638	30,229,120	2,793,393	9.2411	30	1.11	208
NORTH CAROLINA	5,881,766	31,259,520	4,510,677	14.4301	24	0.77	25
OKLAHOMA	3,025,290	43,939,200	2,380,268	5.4171	43	0.79	238
SOUTH CAROLINA	3,121,820	19,329,920	1,629,721	8.4311	34	0.52	328
TENNESSEE	4,591,120	26,339,200	2,300,398	8.7341	32	0.50	35
TEXAS	14,229,191	167,629,890	3,841,713	2.2711	48	0.27	40
VIRGINIA	5,346,818	25,410,560	2,913,939	11.4671	26	0.54	31
WEST VIRGINIA	1,949,644	15,436,160	1,543,703	10.0011	28	0.79	238
	75,372,362	559,723,200	42,791,474	7.6591		0.57	

STATES/REGIONS			FEDERAL**					STATE					LOCAL				
						PER CAPITA					PER CAPITA					PER CAPITA	
NORTH CENTRAL	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
ILLINOIS	11,426,518	35,612,800	552,000	1.550%	42	0.05	43	354,213	0.995%	39	0.03	50	250,946	0.705%	12	0.02	21*
INDIANA	5,490,224	22,976,400	327,000	1.422%	43	0.06	40*	450,667	1.960%	30	0.08	30*	84,520	0.368%	20	0.02	21*
IOWA	2,913,808	35,817,600	207,000	0.578%	48	0.07	39	217,303	0.607%	43	0.07	41*	115,453	0.322%	23	0.04	11*
KANSAS	2,363,679	52,337,920	570,000	1.089%	46	0.24	35	437,689	0.836%	41	0.19	32	100,595	0.192%	29	0.04	11*
MICHIGAN	9,262,078	36,450,560	3,507,000	9.841%	17	0.39	25*	4,344,600	11.919%	5	0.47	10	113,500	0.311%	24	0.01	34*
MINNESOTA	4,075,970	50,910,720	3,435,000	6.747%	22	0.84	16	6,177,333	12.134%	4	1.52	3	419,648	0.824%	10	0.10	5
MISSOURI	4,916,686	44,124,800	2,120,000	4.805%	29	0.43	23	582,051	1.319%	37	0.12	34	130,908	0.297%	25	0.03	17*
NEBRASKA	1,569,825	49,052,160	594,000	1.211%	45	0.38	28	309,118	0.630%	42	0.20	31	27,891	0.057%	41	0.02	21*
NORTH DAKOTA	652,717	44,352,000	2,312,000	5.213%	28	3.54	12	605,971	1.366%	36	0.93	5	30,900	0.070%	40	0.05	9*
OHIO	10,797,630	26,242,560	333,000	1.269%	44	0.03	44	524,226	1.998%	28	0.05	47	234,009	0.892%	9	0.02	21*
SOUTH DAKOTA	690,768	49,609,280	3,221,000	6.626%	23	4.66	11	240,131	0.494%	47	0.35	16	14,316	0.029%	47*	0.02	21*
WISCONSIN	4,705,767	34,832,640	1,824,000	5.236%	27	0.39	25*	1,088,564	3.125%	23	0.23	27*	2,369,084	6.801%	2	0.50	1
	58,865,670	481,339,520	19,082,000	3.964%		0.32		15,331,946	3.185%		0.26		3,891,850	0.809%		0.07	

TOTAL

STATES/REGIONS			PER CAPITA:				
NORTH CENTRAL	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
ILLINOIS	11,426,518	35,612,800	1,157,159	3.249%	46	0.10	46*
INDIANA	5,490,224	22,976,400	862,187	3.749%	45	0.16	43*
IOWA	2,913,808	35,817,600	539,836	1.507%	51	0.19	42
KANSAS	2,363,679	52,337,920	1,108,284	2.118%	49	0.47	37
MICHIGAN	9,262,078	36,450,560	8,045,100	22.071%	16	0.87	22
MINNESOTA	4,075,970	50,910,720	10,031,981	19.705%	17	2.46	14
MISSOURI	4,916,686	44,124,800	2,833,039	6.421%	42	0.58	29*
NEBRASKA	1,569,825	49,052,160	931,009	1.898%	50	0.59	27*
NORTH DAKOTA	652,717	44,352,000	2,948,871	6.649%	41	4.52	12
OHIO	10,797,630	26,242,560	1,091,235	4.158%	44	0.10	46*
SOUTH DAKOTA	690,768	48,609,280	3,475,447	7.150%	38	5.03	11
WISCONSIN	4,705,767	34,832,640	5,281,648	15.163%	22	1.12	18*
	58,865,670	481,339,520	38,305,796	7.958%		0.65	

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STATES/REGIONS			FEDERAL** LAND AREA			PER CAPITA		STATE*** LAND AREA			PER CAPITA		LOCAL*** LAND AREA			PER CAPITA	
WEST	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
ALASKA	401,851	365,333,120	316,991,000	86.768%	1	788.83	1	7,228,031	1.978%	29	17.99	1	136,528	0.037%	45	0.34	2
ARIZONA	2,718,215	72,645,120	28,287,000	38.939%	8	10.41	9	2,849,666	3.923%	17	1.05	4	253,650	0.349%	21	0.09	6#
CALIFORNIA	23,667,902	100,031,360	43,613,000	43.599%	7	1.84	14	1,421,031	1.421%	35	0.06	43#	666,727	0.667%	13	0.03	17#
COLORADO	2,889,964	66,300,800	23,667,000	35.696%	9	8.19	10	783,622	1.182%	38	0.27	22	107,705	0.162%	31	0.04	11#
HAWAII	964,691	4,112,000	495,000	12.038%	15	0.51	21	856,723	20.835%	1	0.89	6	8,374	0.204%	27	0.01	34#
IDAHO	943,935	52,743,680	32,899,000	62.375%	3	34.85	5	3,362,655	6.375%	12	3.56	2	12,100	0.023%	47#	0.01	34#
MONTANA	786,690	93,048,320	27,436,000	29.486%	10	34.88	43	534,600	0.575%	44	0.68	8	2,600	0.003%	50	0.00	48#
NEVADA	800,493	70,332,160	56,576,000	80.441%	2	70.68	2	328,639	0.467%	48	0.41	12#	8,267	0.012%	49	0.01	34#
NEW MEXICO	1,302,894	77,654,400	22,745,000	29.290%	11	17.46	7	280,832	0.362%	49	0.22	29#	33,500	0.043%	42	0.03	17#
OREGON	2,633,105	61,557,760	32,205,000	52.317%	5	12.23	8	599,995	0.975%	40	0.23	27#	50,300	0.082%	39	0.02	21#
UTAH	1,461,037	52,526,720	32,668,000	62.193%	4	22.36	6	97,108	0.185%	51	0.07	41#	230,393	0.439%	18	0.16	3
WASHINGTON	4,132,156	42,567,040	11,628,000	27.317%	12	2.81	13	989,190	2.324%	25	0.24	25#	85,000	0.200%	28	0.02	21#
WYOMING	469,557	62,072,960	30,685,000	49.434%	6	65.35	3	340383	0.548%	46	0.72	7	17230	0.028%	46	0.04	11#
	43,172,490	1,120,925,440	659,895,000	58.871%		15.29		19,672,475	1.755%		0.46		1,612,374	0.144%		0.04	

STATES/REGIONS			TOTAL LAND AREA			PER CAPITA	
WEST	1980 CENSUS	SIZE (ACRES)	RECREATION ACRES	PERCENT OF AREA	NATIONAL RANK	ACRES PER 1000 POP.	NATIONAL RANK
ALASKA	401,851	365,333,120	324,355,559	88.784%	1	807.15	1
ARIZONA	2,718,215	72,645,120	31,390,316	43.210%	8	11.55	9
CALIFORNIA	23,667,902	100,031,360	45,700,758	45.686%	7	1.93	15
COLORADO	2,889,964	66,300,800	24,558,327	37.041%	9	8.50	10
HAWAII	964,691	4,112,000	1,360,097	33.076%	10	1.41	17
IDAHO	943,935	52,743,680	36,273,755	68.774%	3	38.43	4
MONTANA	786,670	93,048,320	27,973,200	30.063%	11	35.56	5
NEVADA	800,493	70,332,160	56,912,906	80.920%	2	71.10	2
NEW MEXICO	1,302,894	77,654,400	23,059,332	29.695%	13	17.70	7
OREGON	2,633,105	61,557,760	32,855,295	53.379%	5	12.48	8
UTAH	1,461,037	52,526,720	32,995,501	62.817%	4	22.58	6
WASHINGTON	4,132,156	42,567,040	12,702,190	29.840%	13	3.07	13
WYOMING	469,557	62,072,960	31,042,613	50.010%	6	66.11	3
	43,172,490	1,120,925,440	681,179,849	60.769%		15.78	

DUPLICATE RANK.

** INCLUDES LANDS OWNED BY THE FOLLOWING FEDERAL AGENCIES: NATIONAL PARK SERVICE, FISH AND WILDIFE SERVICE, FOREST SERVICE, BUREAU OF RECLAMATION, TENNESSEE VALLEY AUTHORITY, CORPS OF ENGINEERS AND BUREAU OF LAND MANAGEMENT. INFORMATION,DATED 1984,SUPPLIED BY THE PRESIDENT'S COMMISSION ON AMERICANS OUTDOORS. FIGURES PROVIDED WERE IN THOUSANDS.

*** STATE AND LOCAL RECREATION LAND FIGURES FROM THE NATIONAL ASSOCIATION OF STATE LIAISON OFICERS' 1986 NATIONAL RECREATION / RESOURCE INVENTORY.

NEW JERSEY ASSOCIATION OF REALTORS®

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STATEMENT TO THE MEMBERS OF THE ASSEMBLY COMMITTEE ON

CONSERVATION, NATURAL RESOURCES AND ENERGY

APRIL 11, 1988

Susan Covais, Director of Government Affairs

On behalf of the 47,000 member New Jersey Association of REALTORS®, I would like to thank Chairperson Maureen Ogden and the other members of the committee for this opportunity to present NJAR's comments on the issue of preserving open spaces and providing recreational opportunities.

There are many good ideas for preserving open space in New Jersey. However, NJAR believes none of these techniques will work effectively unless they address both the issues of just compensation for property owners and the provision of an equitable and adequate funding source.

Government has the right to protect its citizens and their environment and to provide open spaces for recreation, agriculture and natural resource protection. But, it does not have the right to deny private property owner's their rights.

The ownership of real property consists of a "bundle" of rights, such as the right to prohibit trespassing, the right to build and the right to sell and bequeath property. The Fifth Amendment to the U.S. Constitution further states these rights to include that no person shall be deprived of their property without due process, "...nor shall private property be taken for public use without just compensation."

NJAR feels preservation programs that do not justly compensate property owners will eventually fail. State and

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local governments will continually find themselves in court justifying their preservation policies. And, instead of land preservation, New Jersey will have land litigation.

More and more the courts are ruling in favor of property owners. Cases such as "Nollan vs. California Coastal Commission" and "First Evangelical Church vs. Los Angeles" are indicative of the Supreme Court's concern about government land use regulations that violate the Fifth Amendment. While not resolving the issue of a "taking" and "just compensation", these cases have been seen as a victory for landowners and will most likely encourage more litigation.

NJAR's argument has always been that if the citizens of New Jersey want to preserve open spaces, then they should pay for it. It seems that the courts are beginning to agree with us.

Not compensating landowners for the limitations on their rights to develop their property, in effect, makes that particular landowner pay for a program that benefits not only his/her neighbors, but all the citizens of the state.

For this reason, NJAR suggests the Legislature study the possibility of increasing one of the state-wide taxes to provide a dedicated source of revenue to fund present and future programs for open space preservation. This would generate more money than any proposals we have seen so far. We believe this is the most equitable way to fund such programs because all citizens of New Jersey and visitors to the state will pay for something that benefits everyone.

/sc

cc:NJAR Officers

Property Ruling May Have Profound Impact on Development

Dan Walters is a political columnist for The Sacramento Bee.

By DAN WALTERS

The Fifth Amendment to the U.S. Constitution is best known for protecting Americans against being compelled to testify against themselves — one being given a healthy workout in official Washington these days.

But the Fifth Amendment goes beyond self-incrimination and its last phrase says: "...not shall private property be taken for public use without just compensation..."

The writers of the Bill of Rights inserted that provision as another of their guarantees against the coercive power of the state, and especially those practiced in the monarchies of England and other European countries, where seizure of property by the crown without compensation was common.

In practice, the provision has meant that when governments have wanted land or other private property for public uses such as highways or reservoirs, they have had the right to take it, but have been required to pay, even if it required the courts to fix the value.

More recently, as government at all levels has exercised more regulatory authority over the private economy, a new theory has evolved: "inverse condemnation."

If government imposes land use restrictions through its zoning or planning powers, declares development moratoriums, requires access rights or otherwise limits a landowner's ability to use his property for maximum economic benefit, so goes this theory, it is a form of "taking" for public use even though title to the property does not change hands and, therefore, should fall under the same constitutional protections.

Although the inverse condemnation argument is often raised, especially by land developers facing governmentally imposed restrictions, it is rarely successful.

The prevailing concept has been that government does have a right to impose restrictions on land use in the name of greater public benefit and land use battles have become perhaps the overriding local political events, especially in areas, such as California, where pressure for development is heaviest.

State and local governments in California have erected an elaborate structure of land use controls ranging from coastal land development restrictions to simple zoning.

That may have changed Tuesday.

The U.S. Supreme Court, acting on a case from Los Angeles County, ruled that land use restrictions, even temporary ones, do, in fact, comprise inverse condemnation and property owners must be compensated.

"Temporary takings which ... deny a landowner all use of his property are not different in kind from permanent takings, for which the Constitution clearly requires compensation," Chief Justice William Rehnquist wrote in the majority opinion.

The inverse condemnation issue had been placed before the court before, but the justices had always backed away from facing it — cognizant, perhaps, of its impact on long-established land use controls.

Tuesday's 6-3 vote is nothing short of revolutionary, perhaps the most striking example to date of the more conservative tilt of the court with its majority of Ronald Reagan appointees.

Its impact was implied in the dissent written by Justice John Paul Stevens.

"Cautious local officials and land-use planners may avoid taking any action that might later be challenged and thus give rise to a damage action," Stevens said. "Much important regulation will never be enacted, even perhaps in the health and safety area."

"The loose cannon the court fires today is not only unattached to the Constitution but it also takes aim at a long line of precedents in the regulatory takings area," Stevens continued.

The case before the court involved a church camp that was destroyed in a flood. Los Angeles County officials denied a permit to rebuild the camp because it was subject to flooding and the church sued.

Rehnquist says that governments will retain their regulatory powers, but will be forced to buy property whose use is prohibited. That will have particular impact on local governments in California which have lost much of their financial flexibility in the past decade and simply don't have money to pay for abandoned church camps or other property whose development is barred.

At any given moment, there are hundreds, perhaps thousands, of land use decisions pending before planning commissions, city councils, boards of supervisors and other governmental bodies in California.

Suddenly, the dynamics of all of them have been changed and the landowners may have achieved the upper hand.

#Land Use Laws Can Be 'Taking' Of Private Land

High Costs Seen For Local Agencies In U.S. Ruling

California Case

6-16-87

By RICHARD C. REUBEN

L.A. Daily Nat

After ducking the issue four times in the last six years, the U.S. Supreme Court Tuesday ruled that property owners must be compensated when new land use restrictions, even temporary ones, bar them from using their land.

By a 6-3 vote in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 85-1199, the justices ruled that the "just compensation" required by the Constitution's Fifth Amendment for any "taking" of private property for public use applies to zoning laws or other regulations that impose new limits on an owner's use of land.

The U.S. Supreme Court has overridden an attempt by California courts to block the extradition of a San Bernardino public defender accused in Louisiana of kidnapping his own children. See story, Page 6.

"Temporary takings which ... deny a landowner all use of his property are not different in kind from permanent takings, for which the Constitution clearly requires compensation," Chief Justice William H. Rehnquist wrote for the court.

Some attorneys called the court's Tuesday opinion as the most significant development in the area of land-use law in the last half century. But they and others said the ruling raises troubling federalism questions, and predicted it would bring in a new tide of litigation over what constitutes a "taking."

Temporary L.A. Ordinance

The case arose in 1977, when summer brushfires burned off the vegetation on a 21-acre mountain camp, called "Lutherglen," owned by the Glendale church. Heavy rains in 1978 led to flooding which leveled the camp's buildings. In response to the flood, Los Angeles County enacted an interim ordinance prohibiting construction or reconstruction in the area that included the land on which Lutherglen stood.

The church challenged the regulation in state court as an unconstitutional taking of property without just compensation under the Fifth Amendment to the U.S. Constitution. But the court dismissed the suit, relying on a prior California Supreme Court decision, *Agins v. Tiburon*, 24 Cal.3d 266, in which the state's highest court held that a landowner may not maintain an inverse condemnation action based upon a "regulatory" taking.

A California appeals court affirmed the trial court's ruling, and the state Supreme Court denied further state review.

But the high court Tuesday reversed the state appeal court decision, holding that the church may be entitled to fair compensation under the Fifth Amendment as a remedy for the temporary regulatory taking, if the church was deprived of all use of the land.

"Where this burden results from governmental action that amounts to a taking, the Just Compensation Clause of the Fifth Amendment requires that the government pay the landowner for the value of the use of the land during this period," Rehnquist said, in an opinion joined by Justices William Brennan, Byron R. White, Thurgood Marshall, Lewis F. Powell, and Antonin Scalia.

Rehnquist said, "We must assume (without deciding) that the Los Angeles County ordinances have denied (the church) all use of its property for a considerable period of years.

'Insufficient Remedy'

"We hold that invalidation of the ordinance without payment of fair value for use of the property during this period of time would be a constitutionally insufficient remedy," he added.

The six-justice majority rejected arguments by Los Angeles County that the church's claims were speculative because the church never applied for permission to build on the property, and that the regulations did not deprive the church of all use of the property.

But Justice John Paul Stevens, in a dissent joined in part by Justices Harry A. Blackmun and Sandra Day O'Connor, warned that the majority's landmark decision would ultimately open a floodgate of litigation and have a chilling effect on local government planners.

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"Cautious local officials and land-use planners may avoid taking any action that might later be challenged and thus give rise to a damage action," Stevens said. "Much important regulation will never be enacted, even perhaps in the health and safety area.

"The loose cannon the court fires today," he added, "is not only unattached to the Constitution but it also takes aim at a long line of precedents in the regulatory takings area.

"It would be the better part of valor simply to decide the case at hand instead of igniting the kind of litigation explosion that this decision will undoubtedly touch off," Stevens said.

The court's historic opinion left land-use law practitioners, municipal authorities, and legal scholars both startled and concerned.

"This is clearly a landmark case," said University of Arkansas/Little Rock law professor Robert R. Wright III, one of the nation's foremost authorities on land-use law, "because the court has provided an alternate remedy that had not been previously available in most state courts, or in many federal courts."

"If a developer applies for rezoning, and doesn't get it, for example," he said, "he now can just shotgun it by going for damages and for invalidating the ordinance."

But Stanford Law School land-planning specialist Robert Elickson praised the court's decision. "The court has correctly noted that it wants to provide a serious remedy for these types of constitutional violations, and that this remedy is proper one," he said.

While at opposite ends of the academic spectrum, both Wright and Elickson expressed concern over the possibility of the court "federalizing" the law of land use.

"Land use regulation and the law that constrains it has for the most part been developed by state courts," Elickson said, "and, as a matter of federalism, it is highly desirable that this remain in the state courts."

But, he said, "the Supreme Court can take care of (those concerns) by giving signals in subsequent cases that it doesn't want federal courts to get involved."

Wright also predicted that courts can be expected to tighten up on what is actually a taking. "Under the legislation test for zoning, which is the majority rule in the United States, the burden is on the challenger that city acted in an unreasonable, arbitrary and capricious manner," he said, "and the courts may tend to take advantage of that strong burden."

Ruling Said Limited

At any rate, said San Francisco attorney Daniel J. Curtin Jr., author of the popular handbook "California Land-Use and Planning Law," the "bottom line is that if there is a complete taking, then you will have to pay money, even for interim damages."

But the court's decision was limited, he said, because "the court did not say anything about true down-zoning," where property values are reduced as a result of zoning, a question the court may resolve in another California property case currently awaiting a decision by the justices, *Nollan v. California Coastal Commission*, 86-133.

Notwithstanding the academics, Santa Monica attorney Michael M. Berger, who argued the church's case before the high court on Jan. 14, said the court's ruling provides a "real remedy" for private citizens against "overzealous" state and local land-use regulators. "Up until today," he said, ". . . we've had regulators roaming around like loose cannons, with nothing to put the brakes on them other than invalidating the regulation." Now, he said, "states won't be able to push around its citizens any more."

As for the dissenters' concern that the majority's decision would open the floodgates of litigation, Berger noted that the floodgate has been open for years because the court has not provided guidance on the issues. But if the court's decision, and subsequent rulings interpreting its meaning, provide that guidance, Berger predicted that "we may be able to cut down on litigation."

Los Angeles attorney Jack White, who argued the county's case before the court, declined to comment on the court's ruling without having reviewed the opinion.

The court remanded the case to the Los Angeles Superior Court to decide whether there was any regulatory taking of the church's land.

Los Angeles Times

Ruling May Weaken No-Growth Movements

6-10-87

By WILLIAM TROMBLE
Times Staff Writer

The Supreme Court's ruling in a Glendale land-use case significantly weakens the burgeoning "no-growth" and "limited-growth" movements in California, several attorneys who handle such cases said Tuesday.

"This is a definite slow-down for 'no-growth,'" said Douglas Ring, a Century City lawyer who represents developers in land-use cases. "This is clear handwriting on the wall that the Supreme Court is going to take a hard look at 'no-growth' movements."

Ring and other analysts said that the decision does not rule out "down-zoning" and other planning measures taken to control growth and attendant congestion but that it does place a burden on city and county planners and politicians to make sure their zoning actions do not cause unreasonable financial suffering for property owners.

Increasing Interest

"The real significance of the case is that we can expect a little more self-discipline on the part of the regulators," said Robert K. Best, deputy director of the Pacific Legal Foundation, a conservative-oriented public interest law firm in Sacramento that filed a friend of the court brief in the Glendale case.

The decision occurs at a time when actions to curtail or moderate growth have been taken throughout California. In Los Angeles, Proposition U, a limited-growth measure, was approved by voters by a more than 2-1 ratio last November. In last week's Los Angeles City Council elections, the defeat of President Pat Russell by challenger Ruth Galanter was widely interpreted as a sign of increasing voter interest in limiting growth.

The federal decision reverses a 1979 California Supreme Court ruling that the "inverse condemnation" legal doctrine does not apply in this state. This legal theory holds that property owners are entitled to compensation when the value of their property has been reduced drastically by government action.

In the 1979 case, the court ruled that Donald W. Agins, a Marin County dentist, and his wife, Bonnie, were not entitled to compensation when authorities in the San Francisco suburb of Tiburon refused to allow them to develop a five-acre parcel.

Tuesday's Supreme Court ruling in the Glendale Lutheran Church case "basically overturns the Agins case and changes California law," said Judith B. Herzberg, counsel for the California Assn. of Realtors.

Bonnie Agins, reached by telephone at her San Anselmo home, said, "I hope this means we'll finally be able to do something with our land." She said she and her husband have spent more than $500,000 in improvements ordered by Tiburon authorities but have been prevented from building anything.

More Suits Expected

Ring said the Supreme Court decision "opens the door to lawsuits against local governments when they impose moratoriums or other regulatory actions that limit the property owner's use of his property."

But another Century City attorney, Kenneth B. Bley, who filed a friend of the court brief on behalf of the National Assn. of Home Builders, said he does not expect a rash of huge financial awards because the Supreme Court made it clear that local governments retain authority to pass zoning laws and other reasonable measures.

"Cities still have the power to govern," Bley said, "and part of that is the zoning power."

Bley said local governments still can "down-zone" to relieve traffic congestion or improve air quality or for other purposes but that if they deprive a property owner of "all reasonable use and value" of his land as a result, they will have to pay the owner.

For example, Bley said, if residential land were rezoned for open space or parks, the owner would have to be compensated.

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Justices Find For Landowners In Zoning Case

Local Governments Liable For Damages if Statutes Bar All Use of Property

6-10-87

By Stephen Wermiel

Staff Reporter of The Wall Street Journal

WASHINGTON—The Supreme Court, in a decision with major impact on fights between land-use planners and developers, ruled that local governments must pay damages to landowners who are deprived even temporarily of all use of their land by zoning regulations.

By a 6-3 vote, the high court ruled that the Fifth Amendment, which bars the taking of property "without just compensation," requires that landowners be reimbursed not only when the government seizes property through eminent domain, but also when it thwarts the use of property by land-use regulations.

The decision, hailed by developers, is a heavy blow to state and local land-use planners and exposes their actions for the first time to lawsuits for damages. Written by Chief Justice William Rehnquist, the ruling will spur lawsuits nationwide by individual landowners and large developers dissatisfied with local zoning policies.

The court emphasized that its ruling involves only cases in which all use of land is blocked, and doesn't apply to "the quite different questions that would arise in the case of normal delays in obtaining building permits, changes in zoning ordinances, variances and the like."

But even in the more limited circumstances of total interference with land use, Chief Justice Rehnquist said the ruling "will undoubtedly lessen to some extent the freedom and flexibility of land-use planners . . . when enacting land-use regulations."

The court ruled that a government's decision to change or abandon a challenged zoning regulation doesn't end the dispute. The court said that even a temporary taking requires compensation.

In a strongly worded dissent, Justice John Stevens said the court had fired a "loose cannon" that will ignite a "litigation explosion." He said local officials might avoid actions "that might later be challenged and thus give rise to a damage action." Justices Harry Blackmun and Sandra O'Connor also dissented.

The decision was a long time in coming. Since 1979, the justices have on four other occasions agreed to decide a nearly identical issue. Each time, some procedural problem has prevented the court from resolving the question, although it strongly signaled its views on at least one occasion. Meanwhile, the frequency and intensity of land-use disputes has continued escalating in state and federal courts around the country.

"It's very significant," said Gus Bauman, counsel to the National Association of Home Builders. "They have established the rule that land-use regulation can be called a taking, requiring just compensation."

The ruling would apply to cases in which the zoning regulations are imposed on those who already own the land.

But the decision didn't answer all the questions in this volatile field. The court didn't say whether regulating use of property, short of total deprivation, may constitute a taking, or how long the regulation must last in order to amount to a taking.

"Courts must still determine in each case whether the property interest is so large and whether enough time has gone by to raise the taking issue," Mr. Bauman said.

Gideon Kanner, a Loyola University of Los Angeles Law School professor who welcomed the decision, nevertheless noted "a procedural muddle that remains" in such cases. He said there are unresolved questions about how far a landowner must go in seeking development permits, in applying to state administrative agencies for compensation and in filing suit in state courts, all as prerequisites for going to federal court.

The high court ruling came in an appeal by First English Evangelical Lutheran Church of Glendale, Calif. Since 1979, the church has been challenging a Los Angeles County regulation, adopted as a public safety measure, that bars the construction of buildings in a flood zone. The church owns property in the flood area, and its buildings were destroyed by flooding in 1978.

The California courts, relying on the state Supreme Court's approach to zoning disputes, said that the only recourse to the church was to have the regulation invalidated, and that damages couldn't be awarded in such disputes.

Yesterday, the Supreme Court sent the case back to the California courts to decide whether the county has other defenses to the lawsuit or to determine the amount of the compensation.

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Latest Decisions in the U.S. Supreme Court, U.S. Circuit Court of Appeals, California Supreme Court, and state Courts of Appeal

Real Property

Government Must Compensate for 'Temporary Taking' of Property

The *U.S. Supreme Court* has held that a county is required to compensate a landowner for a "temporary governmental taking" of property.

In 1957, First English Evangelical Lutheran Church of Glendale bought 21 acres of flatlands in a canyon which was a natural drainage channel in the Angeles National Forest. The church used the acreage as a campground and built several structures on it. In 1977 a forest fire denuded the hills upstream, and in 1978 a flood swept away all the structures. A year later, Los Angeles County passed an ordinance effective for a limited time which prohibited rebuilding in an "interim flood protection area" that included where the campground was. The Lutheran church sued the county in a California trial court, alleging that the ordinance denied the church all use of the campground and seeking damages for the governmental "taking" during the time the ordinance was in effect. The county moved to strike the "taking" allegation on the ground that it was irrelevant under *Agins v. Tiburon*. In *Agins* the California Supreme Court held that a landowner's remedy for a temporary regulatory "taking"—those takings ultimately invalidated by courts—was limited to non-monetary relief prior to the regulation being declared invalid. The trial court granted the motion to strike the "taking" allegation, a state appellate court affirmed, and the California Supreme Court denied review of the case.

The *U.S. Supreme Court* reversed and remanded. The U.S. Constitution's Fifth Amendment provides that private property may not be taken for public use without just compensation. While property can be regulated to a certain extent, if regulation goes too far it will be recognized as a governmental taking of property. While the *Agins* Court may not have actually disavowed this general rule, it abridged the rule by limiting damages that occurred before the ultimate invalidation of a challenged regulation. Temporary takings which deny a landowner all use of property are not different from permanent takings which clearly require compensation. The Glendale church had sued within a month when the county ordinancy was enacted, yet the state Supreme Court denied review of the case. The federal government has been required to compensate for property interests of temporary duration. "Invalidation of the ordinance . . ., though converting the taking into a 'temporary' one, is not a sufficient remedy to meet the demands" of the Fifth Amendment's just compensation clause.

First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, U.S. Supreme Court, No. 85-1199, June 9, 1987, by Rehnquist, C.J.; Stevens, J. dissenting, joined by Blackmun and O'Connor, JJ.

The full text of this case appears in the Daily Appellate Report on page 3974.

Land-use ruling to bring relief or flood of lawsuits?

The Sacramento Bee • Wednesday, June 10, 1987 A13

By Jim Mayer
Bee Staff Writer 6-10-87

The U.S. Supreme Court's decision on land-use planning will cause local governments to back away from managing growth and prompt angry landowners to file big-figure lawsuits against City Hall, critics said Tuesday.

But people who supported the decision said the little guy will no longer have to "buckle under" to local lawmakers, who will have to be more reasonable when treading on private-property rights.

Ruling on a previously avoided issue, the court said property owners are entitled to compensation when local governments deprive them of using their own land, known as a "taking," even when those actions are only temporary.

The Los Angeles County case overturned a 1979 California Supreme Court ruling that in extreme cases regulations can be as limiting as if the government had physically taken the land. But in those few cases, the court said the owner was entitled to a lifting of restrictions, not compensation.

University of California, Davis, law professor Edward Rabin, said the ruling "will have a chilling effect upon innovative land-use measures since the city will be afraid it may incur very substantial penalties if the innovative measure is ruled to be so harsh as to be a taking.

"On the other hand," he added, "it will protect the property rights of landowners from arbitrary and unreasonable governmental actions."

The case dealt with a mountain camp owned by the First English Evangelical Lutheran Church of Glendale. The church sued the county because it would not allow the camp to be rebuilt after a flood destroyed it.

The court has considered four similar cases in the past six years, including one between a developer and Yolo County, but each time stopped short of deciding whether property owners are entitled to anything if they are deprived of the right to build.

Deputy Attorney General Rick Frank, who wrote an argument defending the position of Los Angeles County, said the ruling puts local governments "between the devil and the dark blue sea."

Frank said the court has not clearly defined when regulations are so strict they constitute a taking, but now governments face a "retroactive fine" when a court rules a law went too far.

"Now the price of guessing wrong is substantial," said Frank, who believes the ruling will discourage cities and counties from assertively protecting natural resources.

Frank agreed with dissenting Justice John Paul Stevens, who predicted an explosion of lawsuits. Even if governments prevail in court, Frank said they will have to pay for the legal fallout of defending their actions.

Robert Best, an attorney for the Pacific Legal Foundation who filed arguments with the court on behalf of the church, characterized the ruling as a victory for owners of small parcels, who in the past had nothing to win by fighting city hall.

"Realistically, the result is not going to be much of an added burden on local treasuries," Best said. "But hopefully, this will mean more reasonable and disciplined land-use regulations."

Best said governments that have been even-handed have nothing to worry about. But during the past decade, he said, some officials have arrogantly restricted land.

"We have people who feel they have been abused," he said. "There may be a reaction by people to rush to the courthouse and seek relief."

But the court did not make it any easier to prove land has been taken, he said, as "an explosion of lawsuits does not necessarily mean an explosion of successful lawsuits."

Sacramento city and county officials had not reviewed the decision, so they could not say Tuesday what specific ramifications they see in the case. Deputy Attorney General Frank said the case will not have a direct effect on growth limits in the Tahoe basin because courts already have upheld the standards in place there.

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Land-use limits require compensation, justices rule

□ The Supreme Court's ruling is "nothing short of revolutionary," writes columnist Dan Walters. Page A3.

6-10-87

By Ricardo Pimentel
Los Washington Bureau

WASHINGTON — Landowners must be compensated when public officials impose restrictions on the use of their lands, even if the loss is only temporary, the Supreme Court ruled Tuesday. The decision is likely to have a chilling effect on local land-use decisions.

The court's ruling may also pose a serious strain on public treasuries as emboldened landowners argue in court that land-use restrictions are tantamount to a government "taking" of their lands. Such "taking" triggers the Fifth Amendment's guarantee of "just compensation."

That argument swayed the court, 6-3, in a case that pitted the First English Evangelical Lutheran Church of Glendale against Los Angeles County. The immediate effect of the ruling is to send the case back to lower court, which will have to determine if a "taking" occurred. But by imposing a constitutional guarantee of compensation into the argument, the court's action is likely to have a far broader effect.

Said a spokesman for the National Association of Counties, "There are 39,000 general-purpose governments in the country, with 200,000 to 250,000 in (land-use) cases in court yearly.... Now imagine each one of those with a price tag."

The church's attorney, Michael Berger, said, however: "It's a wonderful, magnificent affirmation of the constitutional rights of landowners. It is another bicentennial event from the land-use lawyer's standpoint. It is the ruling we have all been waiting for."

The court tackled head-on an issue it has sidestepped in the past. In a Yolo County case last year, the court ruled that developers — who argued that they were entitled to compensation because the county refused to allow their 44-acre residential development — had not exhausted all their remedies. In effect, the court said developers MacDonald, Sommer & Frates had not proved they could not build on the land or that a "taking" had occurred.

In the Los Angeles instance, however, the court found the case to settle the issue. Unlike the previous cases, Chief Justice William Rehnquist wrote that the court could assume a "taking" had occurred.

"Temporary regulatory takings which ... deny a landowner all use of his property are not different in kind from permanent takings for which the Constitution clearly requires compensation," wrote Rehnquist for the court.

After a fire burned ground cover upstream from the church's Lutheran campground and retreat center, floods swept through the area, killing 10 people and destroying buildings on the site. The county enacted an ordinance prohibiting any construction in an interim flood-protection area that included Lutheran.

The ordinance prevented the church from rebuilding at the campground in the Los Angeles National Forest, about 23 miles from Glendale. The church sued the county, contending that the ordinance denied the church the use of all its campground property and demanding compensation. A Los Angeles Superior Court and the California Court of Appeals ruled against the church. The state Supreme Court refused to review the decisions.

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The U.S. Supreme Court — while leaving a decision on what constitutes a "taking" to lower courts — insisted, however, that the California courts had seriously erred. Unlike the state courts, which in effect said that the Los Angeles ordinance must first be ruled unconstitutional before the church could collect damages, the Supreme Court simply cites the Fifth Amendment: "Private property shall not be taken for public use without just compensation."

Quoting from a previous case, Rehnquist wrote: "It is axiomatic that the Fifth Amendment's just-compensation provision is designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

The U.S. solicitor-general, representing a federal government that makes timber and agricultural land-use decisions regularly, argued that a strict Fifth Amendment ruling would force the government to either condemn the land — and buy it — or impose no restrictions at all.

"We realize that even our present holding will undoubtedly lessen to some extent the freedom and flexibility of land-use planners and governing bodies of municipal

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corporations when enacting land-use regulations," Rehnquist wrote. "But such consequences necessarily flow from any decision upholding a claim of constitutional right."

Justices John Paul Stevens, Sandra Day O'Connor and Harry A. Blackmun dissented.

Berger said that the point isn't whether government may impose reasonable health and safety restriction but whether, having done that, it must compensate landowners for the loss of property. Under Berger's reading, every land-use decision that decreases the economic value of property will trigger compensation.

Lee Ruck, general counsel of the National Association of Counties, said the ruling will affect virtually every type of governmental land-use decision, from sewer hookups to zoning ordinances.

Melissa Scanlon, who represents Los Angeles County in Washington, D.C., said the county thought it had the ideal case: a flood kills 10 people, prompting a moratorium on building in the flood area.

The ruling, she said, presents another potential legal dilemma.

"If we rescind the ordinance, and they rebuild and are wiped out again, can they sue us?" she asked.

In another case, the Supreme Court Tuesday upheld the right of laid-off Caterpillar Tractor Co. workers in San Leandro to sue under state labor law rather than federal.

The management workers were first demoted so that a collective bargaining agreement would apply to them, and much later, laid off when the plant closed. The workers said the company made individual agreements with them that in case of a plant closing, other jobs would be found for them. The company argued that the collective bargaining agreement governed their dismissal and that any suit must then be tried in federal court.

City, County Officials Differ on Effect of Land-Use Rule

6-11-87

By VICTOR MERINA, *Times Staff Writer*

In the aftermath of a Supreme Court decision revamping the power of government officials to control land-use, Los Angeles city and county officials differed Wednesday on the effect the ruling will have on local planning and on a burgeoning slow-growth movement.

For the most part, they predicted little change in the future of local land-use decisions.

"I don't think it's going to have any effect here at all," said Gary Netser, head of the city attorney's land-use division.

A few blocks away at the county Hall of Administration, Supervisor Deane Dana said he thought that the decision—stemming from a lawsuit against Los Angeles County—helps the case of residents of his district who are battling the California Coastal Commission over land-use issues. But he argued that the county's own planning process could withstand legal challenges even after the Supreme Court ruling.

"This case will not have an immediate impact on county zoning ordinances or procedures," added Charles Moore, principal deputy county counsel. He said the court's ruling merely allows a property owner to sue for damages if a government "has unreasonably restricted the use of property." Moore said the Supreme Court did not rule on the validity of the lawsuit brought against Los Angeles County.

'Have an Impact'

But another view came from Dan Garcia, president of the Los Angeles City Planning Commission, who contended that the decision would "clearly have an impact," especially when the city seeks to impose interim controls on land-use, such as establishing a construction moratorium.

"All of those regulations may be susceptible to challenge," Garcia said. "I think it's going to force us to be more careful to the extent in which we engage in overregulation."

The Supreme Court ruled Tuesday that property owners may sue for compensation if zoning boards or other agencies impose restrictions that bar them from developing their land. By a 6-3 vote, the court overturned a California Supreme Court ruling that had largely protected local governments from suits for compensation by unhappy land owners and developers.

The decision upheld the power of state and local governments to impose zoning restrictions and place heavy burdens of proof on property owners who challenge such curbs. But the court also made it clear that if government officials go too far they may find themselves compelled to pay compensation to property owners.

The actual court case began after a 1978 flash flood washed away several buildings on a camp owned by the First English Evangelical Lutheran Church of Glendale. When county supervisors declared the area a flood zone and banned the church from rebuilding there, the church sued, alleging that its property effectively had been taken from it.

Garcia said Wednesday that the ruling could jeopardize government regulations, including those mandating open-space development or precluding property owners from building on lots deemed by the city to be substandard. But Netser, a senior assistant city attorney, said he is confident that such city ordinances "would pass constitutional muster."

Developers and property owners had hailed the decision and had predicted that it would retard a slow-growth movement that has gained impetus—especially in the City of Los Angeles.

But Councilmen Marvin Braude and Zev Yaroslavsky, the authors of Proposition U—an initiative that halves the allowable size of new developments adjacent to residential neighborhoods—insisted that the decision does not hinder the slow-growth cause.

"It is very, very clear that the U.S. Supreme Court decision does not affect any of the ordinances that we have approved in this city. It does not affect Proposition U," Yaroslavsky said. "It does not affect the direction in which the slow-growth movement is going in this city."

To press the point, both Braude and Yaroslavsky appeared at a City Hall news conference to unveil their long-anticipated follow-up to Proposition U. Their three-pronged effort to further restrict large-scale development in the city calls for an environmental review of all major commercial and residential projects that are proposed in the city.

Under the plan, conditional-use permits would be required for projects that are at least 40,000 square feet, as well as residential properties that involve 25 units or more. It also would apply to projects generating 500 or more additional daily automobile trips than what had been previously generated at the same site.

About 300 projects would be affected by the proposal, Braude said, and he warned that if the council does not act on the measure by the end of summer, he and Yaroslavsky will launch another initiative drive to qualify a measure enacting those changes for the June, 1988, ballot.

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Payment Ordered in Land-Use Curbs

High Court Upholds Zoning but Makes Governments Liable for Compensation

By DAVID G. SAVAGE, *Times Staff Writer* 6-10-87

WASHINGTON—The Supreme Court, in a decision that may profoundly alter the power of government officials to control land use, ruled Tuesday that property owners must be paid compensation if zoning boards or other agencies impose rules that prevent or drastically restrict them from developing their land.

The 6-3 vote, on a lawsuit filed by a Glendale church against Los Angeles County, overturned a California Supreme Court ruling that had largely protected local governments from suits for compensation by disgruntled land owners and developers.

Although upholding the power of state and local governments to impose zoning restrictions and placing heavy burdens of proof on property owners who challenge such curbs, the high court served notice that if government officials go too far they may find themselves compelled to pay compensation to property owners.

New Legal Controversies

As a result, the decision is likely not only to spawn extensive new legal controversies but to force a reevaluation of government actions in such areas as coastal management, flood plain restrictions, open space development and the common practice of requiring real estate developers to donate land for parks or other public uses.

"This is the biggest land-use decision from the Supreme Court since 1926," when the court issued the landmark ruling that upheld the concept of zoning, said a jubilant Gus Bauman, counsel for the National Assn. of Home Builders.

"It clearly will raise the stakes and the costs of government regulation," said Benna Ruth Solomon, counsel for the National League of Cities, the National Assn. of Counties and other government groups.

"Even if a local government proceeds carefully and regulates in good faith, it now may be second guessed by a court and found liable for damages," she said.

The decision was issued at a time when tensions between builders and local officials have been steadily increasing, especially in California. Government agencies are under increasing political pressure to slow the pace and scope of private development. In response, attorneys for builders have increasingly turned to the courts to challenge land-use restrictions.

The legal challenges have focused on a provision in the Fifth Amendment to the Constitution that says in part that "private property [shall not] be taken for public use, without just compensation."

Ruling may weaken "no-growth" movements. Page 3.

Tuesday's ruling was grounded in that provision.

Forging a coalition of some of the court's most liberal and conservative members, Chief Justice William H. Rehnquist declared in the majority opinion that "government action that works a taking of property rights necessarily implicates the constitutional obligation to pay just compensation."

The Fifth Amendment, he added, "is designed to bar government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."

Voting with Rehnquist were Justices William J. Brennan Jr., Byron R. White, Thurgood Marshall, Lewis F. Powell Jr. and Antonin Scalia.

Even if a municipality later revokes a restrictive ordinance, the property owner deserves payment for a "temporary taking" of his property, the high court said.

Rehnquist stressed that property owners still must prove in court that a land-use regulation took away the use of their property. The chief justice noted also that compensation is not required "in the case of normal delays" in gaining building permits or zoning changes.

Justices John Paul Stevens, Harry A. Blackmun and Sandra Day O'Connor dissented. Stevens said that the majority had "fired a loose cannon" that calls into question all varieties of zoning regulations and one that will spawn "a great deal of . . . unproductive litigation."

Further litigation is likely in part because the line between reasonable government restrictions and unconstitutional taking of property remains unclear, lawyers said after reading the decision. The ultimate impact of Tuesday's decision will depend on how that line is defined in future cases.

The court is expected to decide this month, for example, whether the California Coastal Commission may require homeowners to open up their beachfronts to the public as a condition of getting a building permit.

At least potentially, however, the decision appears to have altered substantially the potential penalties and rewards for government officials, on the one hand, and land developers on the other.

In 1979, the California Supreme

Please see COURT, Page 9

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Court under then-Chief Justice Rose Bird said that a property owner who felt he had been denied the right to develop his land could go to court to seek invalidation of the zoning regulation. This would preserve "a degree of freedom in land-use planning" and remove the threat of suits seeking money damages, the state court said.

Critics and supporters of Tuesday's decision (First Lutheran Church vs. Los Angeles County, 85-1199), although differing on the desirability of the ruling, agreed that the possibility of having to pay substantial compensation is likely to have a substantial impact on the deliberations of officials dealing with land-use issues.

Alan Beals, executive director of the National League of Cities, said that the "chilling prospect of a large and retroactive damage claim . . . will surely intimidate" local officials. Moreover, because the court did not define clearly what constitutes a "taking" of property, Beals said, officials will be forced "into an unfair and costly game of Russian roulette in which we never know what will make the gun go off."

On the other hand, Michael Berger, the winning attorney in the Los Angeles case, said: "I think this will make planning agencies take seriously the rights of property owners."

Potentially sweeping as the decision was, the high court did not settle the case before it.

In February, 1978, a flash flood in the Angeles National Forest washed away several buildings on a 21-acre camp owned by the First English Evangelical Lutheran Church of Glendale. Soon after, the Los Angeles County Board of Supervisors declared the area a flood zone and prohibited the church from rebuilding there.

The church filed suit, alleging that the property effectively had been taken from it. Without a hearing, a trial court in Los Angeles dismissed the suit, saying that the only remedy for the church was to seek an invalidation of the flood control ordinance. The state Supreme Court eventually upheld this decision.

In 1986, without a day of court hearings, the case went to the Supreme Court, which Tuesday sent it back to the Los Angeles courts for trial.

"I thrilled that . . . we have finally won the right to go to trial," Berger, who represented the church, said. "I think it should be clear to a court that the church has no use of their land. If the county wanted a flood control channel here, they should buy it and pay for it."

Jack R. White, a Los Angeles lawyer representing the county, said that officials acted in 1979 because of the threat of a future flood, which could wash buildings downstream. Had the county not acted, he noted, it could have been found liable for damages in areas below the canyons.

Rehnquist held out some hope for the county in his opinion, noting that it could seek to prove that its ordinance was justified as a "safety" regulation.

Land Use: Instant Pall

LAT 6-11-87

Until Tuesday the United States had two rock-ribbed legal traditions regarding property rights. One, going back nearly 200 years, was that if a government took a person's property—for a highway, for instance—the government had to compensate the owner at a fair price. The second was that government could use its police powers to restrict property use in certain ways for the public benefit without having to compensate the owner for potential economic losses.

For example, cities routinely prohibit citizens from raising livestock in their backyards or from running businesses in residential areas. The U.S. Supreme Court has ruled that it may be appropriate for a city to zone property so that a developer can build only one house for every acre, or two acres or five acres. What of the developer who bought the land with the idea of building 10 houses and discovered that the zoners were saying he could build only one? Too bad. The developer could go to court to try to have the zoning law overturned, but, short of total deprivation of use of the property, he could not get compensation for the potential loss of income from the other nine houses even if he ultimately won the case.

Now, however, there is a somewhat different standard. In a case arising in Glendale, the U.S. Supreme Court said Tuesday that, in certain egregious instances, landowners could seek damages from government for compensation for land-use restrictions that produced an undue burden on the owner's use of his property. In legal lingo this would amount to a "taking" of the property similar to condemnation. The problem is that the court did not define just what constitutes an "undue burden."

The 6-3 decision seems to have cast an instant pall over state and local land-use controls at a time when such controls are critical to the orderly development and protection of the environment. In fact, the effect may not be as extreme as some fear. It is important, however, that the ruling be more clearly defined soon. Otherwise, planning agencies may be paralyzed by the fear of facing huge monetary judgments for enacting zoning regulations that are both reasonable and necessary.

Vol. 70 - No. 112 • Los Angeles, California Since 1917

Owners of property under land-use curbs must be compensated

Wednesday Evening, June 10, 1987 • 25¢ Per Copy

By Richard C. Reuben
The Los Angeles Daily Journal

After ducking the issue four times in the last six years, the U.S. Supreme Court Tuesday ruled that property owners must be compensated when new land-use restrictions, even temporary ones, bar them from using their land.

Related stories that appear on pages 6 and 7 include:

- *Reactions from the church that brought the landmark suit.*
- *What land-use attorneys think about the decision.*
- *Excerpts from the Supreme Court's ruling and the dissent.*

By a 6-3 vote in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, the justices ruled that the "just compensation" required by the Constitution's Fifth Amendment for any "taking" of private property for public use applies to zoning laws or other regulations that impose new limits on an owner's use of land.

"Temporary takings which . . . deny a landowner all use of his property are not different in kind from permanent takings, for which the Constitution clearly requires compensation," Chief Justice William H. Rehnquist wrote for the court.

Some attorneys called the court's opinion the most significant development in the area of land-use law in the last half-century. But they and others said the ruling raises troubling federalism questions, and predicted it would bring in a new tide of litigation over what constitutes a "taking."

The case arose in 1977, when summer brush fires burned off the vegetation on a 21-acre mountain camp, called "Lutherglen," owned by the Glendale church. Heavy rains in 1978 led to flooding, which leveled the camp's buildings. In response to the flood, Los Angeles County enacted an interim ordinance prohibiting construction or reconstruction in the area that included the land on which Lutherglen stood.

The church challenged the regulation in state court as an unconstitutional taking of property without just compensation under the Fifth Amendment to the U.S. Constitution. But the court dismissed the suit, relying on a prior California Supreme Court decision, *Agins v. Tiburon*, in which the state's highest court held that a landowner may not maintain an inverse condemnation action based upon a "regulatory" taking.

A California appeal court affirmed the trial court's ruling, and the state Supreme Court denied further state review.

But the high court Tuesday reversed the state appeal-court decision, holding that the church may be entitled to fair compensation under the Fifth Amendment as a remedy for the temporary regulatory taking, if the church was deprived of all use of the land.

"Where this burden results from governmental action that amounts to a taking, the Just Compensation Clause of the Fifth Amendment requires that the government pay the landowner for the value of the use of the land during this period," Rehnquist wrote, in an opinion joined by Justices William Brennan, Byron R. White, Thurgood Marshall, Lewis F. Powell and Antonin Scalia.

Rehnquist also wrote, "We must assume (without deciding) that the Los Angeles County ordinances have denied (the church) all use of its property for a considerable period of years.

"We hold that invalidation of the ordinance without payment of fair value fc use of the property during this period c time would be a constitutionally insuff- cient remedy," he added.

The six-justice majority rejected argt ments by Los Angeles County that th church's claims were speculative becaus the church never applied for permissio to build on the property, and that th regulations did not deprive the church c all use of the property.

But Justice John Paul Stevens, in dissent joined in part by Justices Harr A. Blackmun and Sandra Day O'Cor nor, warned that the majority's lanc mark decision would ultimately open floodgate of litigation and have a chillin effect on local government planners.

"Cautious local officials and land-us planners may avoid taking any actio that might later be challenged and thu give rise to a damage action," Steven wrote. "Much important regulation wi never be enacted, even perhaps in th health and safety area.

"The loose cannon the court fires tc day," he added, "is not only unattache to the Constitution but it also takes aii at a long line of precedents in the regul: tory takings area.

"It would be the better part of valc simply to decide the case at hand instea of igniting the kind of litigation explc sion that this decision will undoubtedl touch off," Stevens wrote.

The court's historic opinion left lanc use law practitioners, municipal autho ties and legal scholars both startled ai concerned.

"This is clearly a landmark case," sa University of Arkansas/Little Rock L: Professor Robert R. Wright III, one the nation's foremost authorities land-use law, "because the court has pr vided an alternate remedy that had r been previously available in most sta courts, or in many federal courts.

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"If a developer applies for rezoning, and doesn't get it, for example," he said, "he now can just shotgun it by going for damages and for invalidating the ordinance."

But Stanford Law School land-planning specialist Robert Elickson praised the decision. "The court has correctly noted that it wants to provide a serious remedy for these types of constitutional violations, and that this remedy is the proper one," he said.

While at opposite ends of the academic spectrum, both Wright and Elickson expressed concern over the possibility of the court "federalizing" the law of land use.

"Land-use regulation and the law that constrains it has for the most part been developed by state courts," Elickson said, "and, as a matter of federalism, it is highly desirable that this remain in the state courts."

But, he said, "The Supreme Court can take care of (those concerns) by giving signals in subsequent cases that it doesn't want federal courts to get involved."

Wright also predicted that courts can be expected to tighten up on what is actually a taking. "Under the legislation test for zoning, which is the majority rule in the United States, the burden is on the challenger that the city acted in an unreasonable, arbitrary and capricious manner," he said, "and the courts may tend to take advantage of that strong burden."

At any rate, said San Francisco attorney Daniel J. Curtin Jr., author of the popular handbook "California Land-Use and Planning Law," the "bottom line is that if there is a complete taking, then you will have to pay money, even for interim damages."

But the court's decision was limited, he said, because "the court did not say anything about true down-zoning," where property values are reduced as a result of zoning, a question the court may resolve in another California property case currently awaiting a decision by the justices, *Nollan v. California Coastal Commission*.

Notwithstanding the academics, Santa Monica attorney Michael M. Berger, who argued the church's case before the high court on Jan. 14, said the court's ruling provides a "real remedy" for private citizens against "overzealous" state and local land-use regulators. "Up until today," he said, " . . . we've had regulators roaming around like loose cannons, with nothing to put the brakes on them other than invalidating the regulation." Now, he said, "states won't be able to push around its citizens any more."

So. Cal. developers jubilant over ruling on compensation

By DAVID SILVER
Daily Commerce Staff Writer

Southland developers are hailing a U.S. Supreme Court ruling that requires property owners to be compensated for restrictions placed on the use of their land, saying the pendulum has swung back to their side.

"What this does is stop municipalities from holding a gun to a developer's head," said Michael Sondermann, vice president and partner of Lincoln Property Co. in Van Nuys.

The Dallas-based company has done more than $4 billion in development throughout the country. Sondermann said the ruling makes cities pay for any downzoning of a developer's property.

While the decision represented a clear victory for developers and the real estate industry, it marked a major setback for local zoning officials.

"We were briefed by the city attorney this morning and he said there would be no immediate impact," said Darryl Fisher, a zoning administrator with the city's zoning department. "But as additional cases come through the court system, it could further interpret the decision."

The 6-3 Supreme Court ruling Tuesday is expected to have a tremendous impact in California and especially Los Angeles, where a strong slow-growth movement has sprung up among voters, said Donn Morey, chairman of Morey-Seymour & Associates, a land-use planning firm in West Los Angeles.

"It will be harder for the slow-growth community to make an impact on city planning," he said.

Last November, Proposition U, a slow-growth measure, passed by a 2-1 margin, and last week's Los Angeles City Council election defeat of Council President Pat Russell by challenger Ruth Galanter, despite the small turnout, was also a strong citizen message for limited growth.

By addressing the important property rights issue for the first time, "It is a recognition by our nation's highest court that under the Constitution, landowners are entitled to compensation when their land is made useless by zoning, planning, environmental and other land-use restrictions," said James Fisher, president of the National Association of Home Builders.

The ruling is the most significant land-use decision handed down by the Supreme Court since it first declared the right of zoning in 1926. It overturned a 1979 California Supreme Court ruling that had protected municipalities from lawsuits for compensation by developers whose properties had lost value from government action.

"It significantly reduces the ability of local government to use moratoriums to limit the number of building permits to be issued without compensation," said Douglas R. Ring, an attorney with the Century City office of the New York-based law firm of Shea & Gould, who often represents developers in land-use cases.

Ramon Sealy, executive director of the Los Angeles chapter of the Building Industry Association, said the ruling should have a positive affect on property owners' rights.

He said it stresses the Constitution's Fifth Amendment right of just compensation because it is simple fairness. "If they take our property away or downzone it and therefore (it) loses value, we should be compensated."

At issue was the definition of "taking" and how much compensation should be required. A key question was whether a local government's decision to "downzone," such as changing zones from commercial to residential, amounts to "taking."

"It's going to have a big impact for developers, because it will require local jurisdictions and any city planner to be very careful now," Morey said.

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Explosion of lawsuits predicted

By Jim Mayer
McClatchy News Service

SACRAMENTO — The U.S. Supreme Court's decision on land-use planning will cause local governments to back away from managing growth and prompt angry landowners to file big-figure lawsuits against city hall, critics said Tuesday.

But people who supported the decision said the little guy no longer will have to "buckle under" to local lawmakers, who will have to be more reasonable when treading on private property rights.

Ruling on a previously avoided issue, the court said property owners are entitled to compensation when local governments deprive them of using their own land, known as a "taking," even when those actions are only temporary.

The Los Angeles County case overturned a 1979 California Supreme Court ruling that in extreme cases regulations can be as limiting as if the government had physically taken the land. But in those few cases, the court said the owner was entitled to a lifting of restrictions, not compensation.

UC Davis Professor Edward Rabin said the ruling "will have a chilling effect upon innovative land-use measures, since the city will be afraid it may incur very substantial penalties if the innovative measure is ruled to be so harsh as to be a taking.

"On the other hand," he added, "it not allow the camp to be rebuilt after a flood destroyed it.

Deputy Attorney General Rick Frank, who wrote an argument defending the position of Los Angeles County, said the ruling puts local governments "between the devil and the dark blue sea."

Frank said the court has not clearly defined when regulations are so strict they constitute a taking, but now governments face a "retroactive fine" when a court rules a law went too far.

Frank agreed with dissenting Justice John Paul Stevens, who predicted an explosion of lawsuits. Even if governments prevail in court, Frank said they will have to pay for the legal fallout of defending their actions.

Robert Best, an attorney for the Pacific Legal Foundation who filed arguments with the court on behalf of the church, characterized the ruling as a victory for owners of small parcels, who in the past had nothing to win by fighting city hall.

> will protect the property rights of landowners from arbitrary and unreasonable governmental actions."
>
> The case dealt with a mountain camp owned by the First English Evangelical Lutheran Church of Glendale. The church sued the county because it would

> "Realistically, the result is not going to be much of an added burden on local treasuries," Best said. "But hopefully, this will mean more reasonable and disciplined land-use regulations."

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Increase in 'just-compensation' litigation said likely to increase

By Kacy Sackett
The Los Angeles Daily Journal

Reaction by lawyers to the U.S. Supreme Court's "taking" decision Tuesday ranged from cautious and subdued to highly concerned. But all agreed that the decision will engender further just-compensation litigation.

What the case means, said Senior Assistant Los Angeles City Attorney Gary Netzer, is "if a regulation that affects private property is a taking, the remedy for the property owner is not to set aside the regulation but to pay damages for it."

Netzer, who said he had not yet read the full opinion, added that "I don't see the Supreme Court as saying that a city can't downzone or regulate growth." But he does foresee an increase in litigation, "until the courts decide how much a city can regulate, and how much of a use can be taken away" before compensation is required. "The court didn't say what level of regulation constitutes a taking," he noted.

Lee Ruck, general counsel for the Washington-based National Association of Counties, was more critical of the court's ruling.

"It is the most pro-development decision in the history of land-use law," he charged, "because it changes the rules of the game." Before Tuesday's opinion, he explained, the only remedy for any party involved in land-use litigation was equitable, such as an injunction.

"But the court has thrown something new into the equation," he said. "Now a developer can go into court and get an order *and* monetary damages," he said, while "all a private plaintiff can do is get equitable relief."

The net effect, he warned, is that "there is a substantial likelihood that local governments will look more favorably on commercial development than the balance would previously have warranted."

In Orange County, where expanses of undeveloped property have spawned much development and increasing regulation on both local and county levels, Deputy County Counsel Ben DeMayo said he had not yet seen the decision, but said the county would be looking at the case closely before enacting any further land-use regulation.

According to Irvine City Attorney Roger Grable, the decision "could have a dramatic effect in California land-use regulation." Grable said the city of Irvine has been interested in creating as much open space as possible. "The decision will have an effect on the city's ability to create open space, and may impact on interim restrictions such as moratoriums" that Irvine currently has in place, he said.

And a spokesman for the Building Industry Association of Orange County pointed out that the ruling could have implications for building-limit initiatives placed on ballots by citizens. "We feel, based on a preliminary read of the decision, that the case will have equal applicability to the initiative process," said John Erskin.

In Los Angeles, which currently has 11 moratoriums in certain areas of the city, Netzer said he was "a little concerned about the decision's language as it relates to our moratoriums, but I don't think they rise to the level of a taking due to their short duration and the hardship clauses we require that they contain."

In light of the decision, however, Netzer said the city attorney's office will focus on the issue of takings in connection with future city land-use regulation.

Professor George Lefcoe of the University of Southern California Law Center, who retired last September from the Los Angeles County Planning Commission after eight years on that board, called the decision important, but not as important as it could have been. "It's the first Supreme Court judgment that says

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there can be monetary compensation for a taking through land-use regulation. But it's not quite the same as a judgment of damages for that taking."

"It's not entirely clear that the church will recover any money," Lefcoe said. The decision is that the church "might have a claim," Lefcoe said.

Lefcoe said he was amazed at the lengths the court went to validate an opinion he said Justice William Brennan had enunciated years ago when he was on the New Jersey Supreme Court: that a temporary taking should be compensated. "Just injunctive relief after the fact wasn't much compensation, and doesn't create a disincentive to local governments to be arbitrary. Under the old rules, an aggrieved owner only got an injunction or declaratory relief. Now the court has signaled that damages will be available," he said.

Lefcoe said he found it ironic that Los Angeles County was the defendant in the case. "Los Angeles County can't be characterized by any stretch of the imagination to be a county against development," he said.

Lefcoe noted that "the case hadn't told us whether there could be justification or a legitimate basis for a total taking without compensation." He said there may be situations where environmental concerns are so compelling that highly restrictive land-use regulations are justified.

Until that issue is decided, Lefcoe said planning jurisdictions will find themselves in a Catch-22 situation, with potential liability to property owners if they regulate too much, and liability to subsequent purchasers whose property is destroyed in some natural disaster if they don't regulate sufficiently.

Now, "jurisdictions will have to bring legal counsel in much earlier in the planning process and develop the quality of evidence that will be persuasive in either liability case," Lefcoe said.

To date, Lefcoe said, most just-compensation cases have been filed by larger corporate clients who could afford the costs of litigation in seeking injunctions against the land-use restrictions. With damages now available, he said he believes there will be more suits for compensation by smaller clients. "Now even a small client could possibly win a money judgment which could justify the attorney's fees," he said.

"The chilling prospect of a large and retroactive damage claim after costly and drawn out legal proceedings will surely intimidate local governments in many ways, thus diluting the vitality and strength of home rule in some of the most fundamental activities of local government," said Alan Beals, executive director of the National League of Cities, which had filed a friend-of-the-court brief supporting Los Angeles County. "This kind of intervention and second-guessing without a clear definition of the rules to be followed is forcing our cities and towns into a costly and unfair game of Russian roulette, in which we never know what will make the gun go off."

County must pay Glendale church in dispute over zoning restrictions

By The Associated Press

GLENDALE — "We are really thrilled," the pastor of a Lutheran church said Tuesday shortly after winning a property-rights fight in the U.S. Supreme Court.

It was also a big day for the church's attorney, Mike Berger of Los Angeles. The decision in the landmark case came in his first appearance before the nation's high court.

"This has been an exhilarating experience," Berger said. "I'd like to figure out a way to spend more time back there."

The high court, in a 6-3 decision, sided with the First English Evangelical Lutheran Church in its demand that it be compensated by Los Angeles County, which refused to let the church rebuild a mountain camp that was destroyed by a flood in 1978.

The court held the "just compensation" required by the Constitution's Fifth Amendment for any "taking" of private property for public use applies to zoning laws or other regulations that impose new limits on an owner's use of land.

Every year, thousands of church members, their relatives and friends used the 21-acre camp, called Lutherglen, for outings and religious retreats, the pastor said.

She said the facilities were used virtually every weekend and all summer.

The church, now known as First Lutheran of Glendale, has 700 members in its congregation.

The pastor said that whether the church rebuilds the camp depends on whether Los Angeles County changes zoning for the area.

Regardless, under the U.S. Supreme Court ruling, the county must pay the church compensation for the years that it was unable to use the property as a camp.

Neither the pastor nor Berger was willing to put a value on the compensation the church feels it is owed.

"It was never intended as an income-producing property," Berger said. "But the inability to rebuild the camp cramped the church's ability to perform the functions its members wanted."

Technically, the high court ruling allows the church to go to trial on the question of whether its property was improperly "taken" by the county and whether it should receive compensation.

Berger said no decision has been made on whether to go to trial or to attempt to settle the matter through negotiation with the county.

But, he added, "We are always willing to talk to people rather than to fight."

The deputy county counsel assigned to the case, Charles J. Moore, was out of the office and couldn't immediately be reached for comment, a secretary said.

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Excerpts from high court's ruling

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on 'just-compensation'

By The Associated Press

WASHINGTON — The following are excerpts from the U.S. Supreme Court's decision Tuesday that landowners must be compensated when government regulations bar them, even temporarily, from using their property.

From Chief Justice William H. Rehnquist's majority opinion:

In this case, the California Court of Appeals held that a landowner who claims that his property has been "taken" by a land-use regulation may not recover damages for the time before it is finally determined that the regulation constitutes a "taking" of his property. We disagree, and conclude that in these circumstances the Fifth and 14th Amendments to the U.S. Constitution would require compensation for that period.

Consideration of the compensation question must begin with direct reference to the language of the Fifth Amendment, which provides in relevant parts that "private property (shall not) be taken for public use without just compensation." As its language indicates, and as the court has frequently noted, this provision does not prohibit the taking of private property, but instead places a condition on the exercise of that power.

This basic understanding of the amendment makes clear that it is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise proper interference amounting to a taking. Thus, government action that works a taking of property rights necessarily implicates the "constitutional obligation" to pay just compensation.

In the present case, the interim ordinance was adopted by the County of Los Angeles in January 1979 and became effective immediately. Appellant (the church) filed suit within a month after the effective date of the ordinance, and yet when the Supreme Court of California denied a hearing in the case on Oct. 17, 1985, the merits of appellant's claim had yet to be determined.

Once a court determines that a taking has occurred, the government retains the whole range of options already available. . . . We merely hold that where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective.

We limit our holding to the facts presented, and of course do not deal with the quite different questions that would arise in the case of normal delays in obtaining building permits, changes in zoning ordinances, variances and the like, which are not before us. . . .

• • •

From Justice John Paul Stevens dissenting opinion.

This court's precedents demonstrate that the type of regulatory program at issue here cannot constitute a taking. In order to protect the health and safety of the community, government may condemn unsafe structures, may close unlawful business operations, may destroy infected trees, and surely may restrict access to hazardous areas — for example, land on which radioactive materials have been discharged, land in the path of a lava flow from an erupting volcano, or land in the path of a potentially life-threatening flood.

When a governmental entity imposes these types of health and safety regulations, it may not be burdened with the condition that it must compensate such individual owners for pecuniary losses they may sustain, by reason of their not being permitted by a noxious use of their property to inflict injury on the community.

As far as the U.S. Constitution is concerned, the claim that the ordinance was a taking of Lutherglen should be summarily rejected on its merits.

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The policy implications of (Tuesday's) decision are obvious and, I fear, far reaching. Cautious local officials and land-use planners may avoid taking any action that might later be challenged and thus give rise to a damage action. Much important regulation will never be enacted, even perhaps in the health and safety area.

The loose cannon the court fires today is not only unattached to the Constitution, but it also takes aim at a long line of precedents in the regulatory takings area. It would be the better part of valor simply to decide the case at hand instead of igniting the kind of litigation explosion that this decision will undoubtedly touch off.

Analysis

Landowners score major victory

Wednesday, June 10, 1987

over 'just compensation'

By Dan Walters

SACRAMENTO — The Fifth Amendment to the U.S. Constitution is best known for protecting Americans against being compelled to testify against themselves — one being given a healthy workout in official Washington these days.

But the Fifth Amendment goes beyond self-incrimination and its last phrase says: " . . . nor shall private property be taken for public use without just compensation. . . ."

The authors of the Bill of Rights inserted that provision as another of their guarantees against the coercive power of the state, and especially those practiced in the monarchies of England and other European countries, where seizure of property by the crown without compensation was common.

In practice, the provision has meant that when governments have wanted land or other private property for public uses such as highways or reservoirs, they have had the right to take it, but have been required to pay, even if it required the courts to fix the value.

More recently, as government at all levels has exercised more regulatory authority over the private economy, a new theory has evolved: "inverse condemnation."

If government imposes land-use restrictions through its zoning or planning powers, declares development moratoriums, requires access rights or otherwise limits a landowner's ability to use his property for maximum economic benefit, so goes this theory, it is a form of "taking" for public use even though title to the property does not change hands. Therefore, this action should fall under the same constitutional protections.

Although the inverse-condemnation argument is often raised, especially by land developers facing governmentally imposed restrictions, it is rarely successful.

The prevailing concept has been that government does have a right to impose restrictions on land use in the name of greater public benefit, and land-use battles have become perhaps the overriding local political events, especially in areas, such as California, where pressure for development is heaviest.

State and local governments in California have erected an elaborate structure of land-use controls ranging from coastal land development restrictions to simple zoning.

That may have changed Tuesday.

The U.S. Supreme Court, acting on a case from Los Angeles County, ruled that land-use restrictions, even temporary ones, do, in fact, involve inverse condemnation and property owners must be compensated.

"Temporary takings which . . . deny a landowner all use of his property are not different in kind from permanent takings, for which the Constitution clearly requires compensation," Chief Justice William Rehnquist wrote in the majority opinion.

The inverse-condemnation issue had been placed before the court before, but the justices had always backed away from facing it — cognizant, perhaps, of its impact on long-established land-use controls.

Tuesday's 6-3 vote is nothing short of revolutionary, perhaps the most striking example to date of the more conservative tilt of the court with its majority of Ronald Reagan appointees.

Its impact was implied in the dissent written by Justice John Paul Stevens.

"Cautious local officials and land-use planners may avoid taking any action that might later be challenged and thus give rise to a damage action," Stevens wrote. "Much important regulation will never be enacted, even perhaps in the health and safety area."

"The loose cannon the court fires today is not only unattached to the Constitution but it also takes aim at a long line of precedents in the regulatory takings area," Stevens continued.

The case before the court involved a church camp that was destroyed in a flood. Los Angeles County officials denied a permit to rebuild the camp because it was subject to flooding, so the church sued.

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Rehnquist wrote that governments will retain their regulatory powers, but will be forced to buy property whose use is prohibited. That will have particular impact on local governments in California, which have lost much of their financial flexibility in the past decade and simply don't have money to pay for abandoned church camps or other property whose development is barred.

At any given moment, there are hundreds, perhaps thousands, of land-use decisions pending before planning commissions, city councils, boards of supervisors and other governmental bodies in California.

Suddenly, the dynamics of all of them have been changed and the landowners may have achieved the upper hand.

Dan Walters writes a column on state politics for the McClatchy News Service.

3/24/88

Justices void town's rezoning aimed at depressing tract price

By KATHY BARRETT CARTER

A municipality cannot rezone land for the sole purpose of driving down the fair market value so the town can purchase it for a cheaper price, the state Supreme Court ruled yesterday in a case involving property in Long Beach Township.

The state's highest court declared an ordinance adopted by the township unconstitutional on the grounds that it was passed solely to allow the municipality to get a tract of real estate owned by Charles and Virginia Riggs for less than the 1980 fair market value of $408,000.

Speaking for the unanimous court, Justice Stewart Pollock said the ordinance is invalid because, "As the objective facts make clear, the unswerving purpose of the municipality from beginning to end has been to acquire the property ... without paying a fair price."

Moreover, the justices said, although the property was rezoned under the master plan purportedly to create more open space, in fact, it was not rezoned as open space but for a more restrictive residential use.

The court, however, limited the impact of the ruling saying, "Our holding that the challenged ordinance is invalid need not preclude other municipalities from zoning other property more restrictively on a different set of facts. Here, however, the municipality simultaneously planned for open space and zoned for residential use."

The court said that since December 1977, when the Riggses submitted an application to subdivide the property into four lots, the township expressed an interest in acquiring the land.

At that time the township attorney told the couple that the township would not grant their request to subdivide the property, though permitted under the existing zoning laws, because the town wanted to buy the property, the court decision said.

The attorney told the Riggses the town would contact them in 30 days. Months later, in September 1978 the town had the property appraised at $234,500 but neither offered to purchase the land nor started condemnations proceedings, the court decision stated.

Justice Stewart Pollock
Sees 'a red herring'

Instead, that year the planning board adopted a master plan designating as public open space a five-block area consisting of 11 lots, including the Riggs property, the court said.

In 1979 and 1980, the township entered into negotiations with the Riggses at which time officials offered to buy the property at the 1978 appraised price of $234,500. But the owners had the property appraised again in 1980 by the same appraiser who said it was then worth $400,000. Both appraisals reflected the highest use of the propery which would be to subdivide into four lots, the court decision said.

The best offer the township would make was to purchase the property for $400,000 provided they gave the township an immediate donation of $160,000, the court decision said. That arrangement apparently was not satisfactory to the Riggses and negotiations fell through.

Unable to reach an agreement on the selling price, the township committee approved an amendment to rezone the 11-lot tract, which would permit lots with a minimum width and depth of 75 feet. The effect would be to reduce the number of building lots on the Riggs property from four to two, the court decision said.

"The township's attempt to link the reduction of lots to the designation of open space in the master plan is nothing more than a red herring to divert attention from the true purpose of the ordinance," Pollock said.

The justices concluded that the ordinance was invalid because it is not rationally related to a valid zone purpose and is unreasonable and arbitrary.

"Contrary to the testimony of the township's land use expert, the ordinance did not create or preserve open space; it merely reduced the number of buildable lots from four to two as a means of reducing the fair market value of the Riggs property," Pollock added.

The court said a municipality could pass a zoning ordinance that is inconsistent with the master plan but is required to record in the minutes when adopting such an ordinance the reasons for diverting from the master plan.

In this case, the court said, the governing body "never attempted to comply with that requirement."

The case was sent back to the trial court where proceedings are under way to get the property through condemnation. The court said the ordinance should be considered void in those proceedings, which means the town would have to pay a fair market value based on a four-lot subdivision of the property.

Richard A. Grossman represented the Riggses. Granville D. Magee represented the township.

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THE ENVIRONMENT | Bob Narus

New York Times 11/8/87

HOW FAR can the State Planning Commission go in limiting growth before it must compensate landowners for destroying the value of their property?

That question promises to be a nagging one as the state attempts to manage growth, and it was the primary topic of discussion during the commission's recent meeting.

Charles Siemon, an attorney for the commission, offered a quick course in "compensable taking," the legal term for governmental actions that deprive people of the use of their property.

The courts have been very lenient with government regulations restricting growth, he said, even if it substantially diminishes land values.

Several members of the audience also commented, including two people representing landowners in the pinelands. They maintain that the Pinelands Comprehensive Management Plan has left them with property they can neither develop nor sell.

The Fifth Amendment to the Constitution bars the taking of private property "for public use, without just compensation," and since the 1920's the United States Supreme Court has held that taking can mean not only physical seizure, but also regulatory actions that destroy the value of property, Mr. Siemon said.

Governmental bodies are free to set restrictions on development, however, and the Court has never drawn a clear line between legitimate restrictions and "taking," he noted.

The issue dominated legal headlines earlier this year, when the Court ruled on three cases challenging government regulations.

Although the governmental bodies being sued lost two of the three cases, all three decisions recognized a broad public interest in restricting development in certain cases.

In one of the cases that a governmental body lost, *Nollan v. California Coastal Commission*, the Court held that the state could not require public beach access as a condition for approval of a building that would block the view of the coast.

The majority decision said the state might require a viewing spot on the property, since that would make up for what the public lost from the development, according to Mr. Siemon.

Mr. Siemon said that decisions on what constituted a taking had to be made on a case-by-case basis and that the courts generally considered the type of land being restricted, as well as the economic effects of the regulation.

The courts, he said, appear to grant greater leeway to governmental bodies when they are acting under coherent, comprehensive policies than when they make decisions affecting only single pieces of property.

A discussion draft of the State Development and Redevelopment Plan, released in April, limited development in many areas to an average of one unit for every 20 acres, a provision the commission's opponents contended would deny many people the right to develop their land.

Mr. Siemon noted cases in Illinois and California where courts had upheld agricultural zoning requiring 60- and even 160-acre lots.

Several speakers at the Oct. 30 public-comment session challenged the idea that the commission should limit the use of land so severely.

Robert W. Schenck, president of the Pinelands Landowners Society, said he agreed with the need for what he called reasonable planning, "but when I say reasonable, I mean buildable."

It is unfair to impose 20-acre zoning in areas where the lots are already smaller than that, he said because no one will be able to build.

Mr. Schenck owns a five-acre lot in Bass River Township, within the Pinelands Preservation Area. He argued that the Pinelands Commission had taken his land, even though the commission said the land could still be used for agriculture.

"When you tell people that all they can do is raise bees, that's wrong," Mr. Schenck said.

He warned that the State Planning Commission would do the same thing to landowners elsewhere in the state.

"What I've read indicates that a lot of what you're doing is going to be similar to the Pinelands plan," he said.

Piping Plovers

One of the more challenging tasks facing the state's Endangered and Nongame Species Program is protecting the piping plover, a small shore bird whose numbers are declining nationally.

According to David Jenkins, a zoologist for the Department of Environmental Protection, plovers nest in small depressions in the sand lined with shell fragments, and the eggs are sandy-colored.

"The bird relies on being camouflaged," Mr. Jenkins said, adding that what fools predators often fools beachcombers, too; many a nest has been carelessly trampled.

Human activity also scares the birds off their nests, leaving the eggs vulnerable to the hot sun, as well as to

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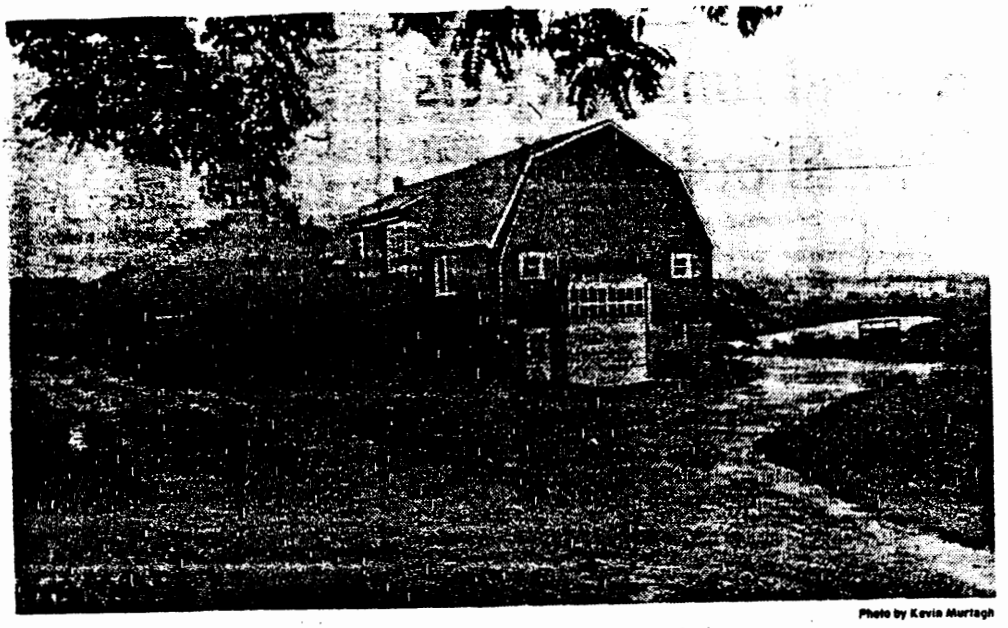

Photo by Kevin Murtagh

The Borinski Farm on Route 202 in Lincoln Park

Lincoln Park farm family cries foul as rezoning blocks land sale deals

By BILL GANNON

The Borinski family for 61 years took their pride from the fertile soil of their 83-acre vegetable farm in Lincoln Park.

Business was so good at one point the farm supported four families and employed as many as 14 farmhands, growing from a door-to-door horse-drawn peddling cart into a regional produce supply operation with deliveries to the Paterson, Newark and New York markets.

That was all before the fields of North Jersey gave way to people and parking lots, and before the interstate highway delivered neighbors who complained of the smell of manure in planting season and the grind of tractors at harvest.

But mostly, it was before the three Borinski brothers reached their 60s and 70s, and before their children began careers away from farming.

Now, the Borinskis want only to get out with their pride intact, to have some rich developer swoop down and buy the land bought over the years by their immigrant Polish parents so they can just walk away.

If only they could.

"Everytime we get close to selling, the town decides to rezone our property, they clamp down on us somehow and things get stalled. They've taken our rights away from us is what they've done," said Steve Borinski, 68, almost shouting as he spoke in the family's barn.

With the exception of a 15-acre tract on Boonton Turnpike that they sold to a real estate developer in 1985—the 124-unit Hilltop Farms condominiums was built there—the efforts of Steve Borinski and his two brothers to sell the remaining 68 acres of their farm across the turnpike have been thwarted, they contend, by a series of zoning decisions made by the borough's planning board and council.

"We're tired of getting pushed around. Lets face it, we're all on Social Security and want to retire. That's what we worked so hard for," Borinski explained.

His parents, Andrew and Catherine Borinski, bought the first 17 acres of farm property along Boonton Turnpike in 1921, 10 years after they arrived from Poland. With another 66 acres bought in 1937, the family's business flourished until 1982, when Steve's older brother George died at the age of 69 and virtually all farm operations ceased. They continue to farm five acres for tax purposes.

Borough officials repeatedly said they are concerned about the possible negative effect that developing the tract might have on the Morris County municipality of 9,000 residents.

A key factor affecting their view of the property, borough officials said, is that the tract is located in a U.S. Army Corps of Engineers' 100-year flood plain.

Lincoln Park officials cited flooding concerns as the primary reason for their actions regarding the tract, one of the last of its size in the rapidly developing municipality.

According to Steve Borinski, the family's attempts to sell the farm began in the late 1960s, when the Chrysler Motors Corp. considered building a distribution plant on their property. Those plans were abandoned, he said, after opposition to that site was voiced by local officials.

It was not until the death of his older brother, George, however, that Steve, along with his other brothers, John, 70, and Andrew, 65, decided to sell out.

Despite some attractive real estate offers, it has not been an easy chore, Borinski noted, mainly because of zoning decisions made by the planning board and council.

As recently as December, the Lincoln Park Planning Board voted 3-3 in a bitter meeting to reject a Wayne developer's plan to build an 84-unit apartment complex on a dozen acres owned by the Borinskis.

The same month, the council voted to introduce an ordinance to rezone 52 Borinski-owned acres east of the apartment project site for office space. The ordinance effectively prevented the construction of three, light-industrial buildings previously proposed by an Upper Saddle River developer, the Frassetto Group.

Denounced by some council members as unfair spot zoning, the ordinance was tabled Dec. 29 after Councilman Christopher Elias said he would vote against it. The Borinskis, meanwhile, threatened to sue the borough if the ordinance ever is adopted.

The tabled measure resurfaced at a council meeting last month, with members saying they expected further discussion on it at next Tuesday's session.

Planning Board Chairwoman Dorothy Loehr disagreed with Steve Borinski's assessment of her board's actions regarding the property.

"It's a very environmentally sensitive property. By being in the flood plain, there are certain (state) restrictions that must be observed. Besides, he's done pretty well with what he has there now," said Loehr.

Mayor Michael J. Harrigan declined to comment on the controversy surrounding the Borinski property, except to say the first consideration of the council and planning board was "the betterment of the entire community, not just one family."

"We're not looking for anything special. All we want now is to be able to sell, to get out. It's our right. If the town wants our land so bad, why don't they buy it," Steve Borinski said bitterly.

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State faces thorny issue of paying for land frozen from development

By GORDON BISHOP

The State Planning Commission, in attempting to restrict development in certain conservation areas of New Jersey, has admitted it has not yet faced the issue of compensating landowners whose properties will be affected by limits on growth.

The thorny issue came up again at the commission's monthly meeting Friday in the Hyatt Regency in New Brunswick.

John Leary of Long Beach Township, who said he owns property in the Pinelands, asked the 17-member planning commission "if the state is prepared to pay for (private) land" that cannot be developed.

John Epling, executive director of the State Planning Office, said the issue of "taking" will be on the commission's agenda at the next meeting, the last Friday of October.

Commission Chairman James G. Gilbert, vice president of Merrill Lynch in Morristown, defined the issue as one of "density," in which the state will limit the number of structures on particular tracts designated for preservation. In some conservation areas, the density will be limited to one dwelling unit per 10 acres.

Leary complained that he and many other property owners would be denied their constitutional rights if the state is going to "take" their land without "just compensation."

Donald B. Edwards, vice president of development and public affairs for Rutgers University, said the "taking" issue has "not yet been resolved" in New Jersey's fastest growing region—the Route 1 corridor from Trenton to New Brunswick.

Rutgers is one of the key players in the preparation of a balanced regional land-use strategy being spearheaded by the Middlesex-Somerset-Mercer Regional Council (MSM), headquartered on Route 1 in Princeton.

> *No one's ever said this is going to be an easy task. It's really in everyone's best interest to get involved. . .*
>
> — John Epling

Planning commissioners receive demands for 'just compensation'

The goal of MSM is the retention of about 40 percent of the region's 523 square miles in farmland, woodland and "greenways" along stream corridors and wetlands. About 60 percent of the tri-county region in the heart of Central Jersey is now undeveloped.

The MSM plan would allow 70,000 acres within the region to be utilized by higher density "mixed uses" in and around transportation and "regional employment" hubs.

The Trenton-Princeton-New Brunswick corridor has been developing at an incremental rate of 30 percent a year over the past decade, Edwards reported.

"If the present development rate continues, the entire region will be developed by 2030," Edwards estimated.

By establishing "town centers" with a "sense of place" and a "sense of community," MSM expects to manage growth instead of responding to it after the fact, Edwards explained.

The regional council is planning for an additional 340 million square feet of office and industrial space over the next 20 years. At that rate of development there will be 3.6 times more jobs than housing units needed for the additional workers.

Samuel Hamill, MSM executive director, disagreed with Leary and those demanding "compensation" for land that has greatly appreciated in value over the past 10 years.

"Government has no obligation to compensate property owners for their speculative expectations," Hamill asserted. "All that does is drive up the cost of housing and government's need to acquire land for roads and other public facilities."

Hamill said there should be a "cap put on speculative value," adding that he disagreed with Leary's interpretation of the Constitution that government has to pay the highest value for land needed for public purposes.

Leary countered that the value of developable land was "not speculative," but rather the "market value."

Property owners in the Pinelands, particularly farmers, are challenging the state's role in limiting the density of development in that million-acre preserve.

The State Planning Commission hopes to avoid such confrontations with property owners by inviting all citizens, special-interest organizations, businesses and public officials at all levels of government to participate in the drafting of the state's first mandatory land-use master plan.

The commission has been going around the state during the past year, asking the public to present its views, as well as what any interested party would like their community, region and state to look like in terms of "quality of life," including jobs, housing, transportation, recreation and other natural and cultural amenities.

The refining of the final master plan, will begin when the preliminary draft is approved by the commission sometime after the November elections.

State planners, through a procedure called the "cross-acceptance process," will go directly to county and municipal officials and regional planning entities to "fine tune" a land-use strategy acceptable to the majority of participants.

The success of the final plan will hinge on the consistency and compatibility of the local and regional master plans with the new state plan, according to Epling, former regional planning director for northern Virginia.

"No one's ever said this is going to be an easy task," Epling commented. "It's really in everyone's best interest to get involved in this planning process because it is their community, their home, their state, their future, that's at stake. All we're trying to do is make it work for them."

Farmers' right to sell land vs. state right to preserve it divides planners

By GORDON BISHOP

Just how far government can go in "taking" private property for the protection of the environment or the public's health and safety was the subject of a heated exchange at the state Planning Commission's meeting Friday in New Brunswick.

Charles L. Siemon, a Chicago attorney and consultant to the planning commission, cited three U.S. Supreme Court rulings this year and other state cases in which the public interest in land and its resources is being balanced with the private interests' use of those resources. The issue is becoming a complicated one for the state Planning Commission in its efforts to restrict the use of certain lands for the overall benefit of society.

One of those issues is farmland preservation. Siemon informed the 17-member commission that the Illinois courts have ruled that limiting development to one unit per 160 acres is acceptable in economically viable agricultural districts.

The state plan being drafted would limit the number of dwelling units to one per 20 acres in various rural areas facing heavy development pressures.

Under the Fifth and Fourteenth amendments to the U.S. Constitution, land cannot be taken by government without just compensation.

Siemon said restricting density in urban areas would not stand up in the courts.

The courts, he added, will uphold government regulations or conditions on the use of land if they are done as part of an overall comprehensive planning program. He suggested New Jersey was taking the proper approach in drafting a statewide plan involving all 567 municipalities and 21 counties.

The three U.S. Supreme Court decisions handed down this year concerned coal mining, beach access and flood plains.

In the Keystone Bituminous Coal Co. decision, the high court ruled the company could not remove 27 million tons of coal from a particular mine configuration because it would create a potential hazard. The company was not compensated for the loss by the state of Pennsylvania, which stopped the mining under its Bituminous Mine Subsidence and Land Conservation Act. The supporting "coal columns" in that mine represented 4 percent of the total volume of the resource.

In the First English Evangelical Lutheran Church decision, the high court ruled that Los Angeles County had to compensate only for damages when flooding had destroyed a summer camp. The court noted there were safety reasons to be considered by prohibiting development in floodplains.

In the California Coastal Commission decision, the Supreme Court made a property owner provide a "viewshed" to the public when a building was erected on the oceanfront. One of the conditions in the building permit was that the property owner provide access to the waterfront.

The court, for the first time, spelled out what could be done to resolve a conflict between the private and public interests, Siemon said.

Questioning the court's resolution, Siemon said he would have preferred to have the public access across the ocean front of the property, rather than a viewing place near the beach house that was "more intrusive."

The New Jersey Supreme Court has in the last decade upheld beach access along the Shore in several cases, including Neptune, Deal and Bay Head.

Siemon said planners and developers today must consider the "character of the land" in preparing site plans.

"You don't have the inherent right to change the character of the land," Siemon opined. "You have to use swamp land as swamp land and Newark land as urban land."

Public infrastructure—roads, water, sewers will define the use of land, Siemon pointed out. His position is that the individual should not get the enhanced value of his land as a result of public investment. In determining value, he called for "fairness and justice."

Warren County Freeholder John Polhemus challenged the government's "taking without just compensation." He charged that the first draft of the state plan "sacrifices" rural areas for urban redevelopment.

"This is confiscatory!" Polhemus declared. "The prospect of limiting density to one unit per 20 acres is totally unrealistic, an unfair burden on the farmer."

He advised the state to allow farmers to continue to convert their land to uses consistent with municipal master plans.

Today's master plans do not set aside agricultural land for permanent farmland use. Farmers can sell their land to the highest bidder for either residential, commercial or industrial development, depending on for what the agricultural land is zoned.

"The state is confiscating the value of that property which the farmer worked so hard to maintain," Polhemus asserted.

An Atlantic County farmer who experienced restrictions under the controversial Pinelands Master Plan, proclaimed that "property owners have a right to be hysterical. Some farmers in northern New Jersey are sitting on very valuable properties."

The Pinelands Landowners Society lambasted the planning commission for taking away the farmers' investments, their savings, their pensions.

Robert W. Schenck, society president, presented the commission with a four-page paper on "Protecting our Property Rights Under the 5th and 14th Amendments to the Constitution."

Schenck complained that "not one word was mentioned about the property rights of the landowners who would be most affected by a statewide plan."

He said the closest thing he found was a reference indicating the state plan would follow the lead set in the Coastal Area Facilities Review Act (CAFRA), the Hackensack Meadowlands master plan and the Pinelands master plan.

Poll finds 95 percent of Jerseyans behind state blueprint for land use

By GORDON BISHOP

A poll by New Jersey Future ind that 95 percent of those ques- ned favored a state planning strate- dealing with land use, transportation l open space preservation.

New Jersey Future, a planning or- ization in Trenton, also found that percent of the respondents in its poll reed that local governments could t handle land-use preservation by mselves.

The highlights of the poll were an- nced yesterday by Christie Van rn, the group's executive director, at meeting of the State Planning Com- ission in New Brunswick.

The New Jersey Future poll rein- rced findings in other recent polls by e Gallup organization in Princeton d The Star-Ledger/Eagleton Poll at utgers University.

All of the polls have revealed a owing public concern over the quality f life in New Jersey and the ability of be state and local governments to deal with the pressures of development and related traffic congestion and pollution, according to John Epling, executive director of the State Planning Office.

Other state officials and regional planners also voiced their concern over the growth management dilemma and how best to deal with it.

State Sen. Gerald Cardinale (R-Bergen) told the 17-member planning commission that the people concerned about "overdevelopment" have not yet descended on the commission during the preparation of its state master plan.

The commission is drafting New Jersey's first land-use strategy that strikes a balance between development and open space preservation, including farmland.

The first draft of the plan is expected to be completed by December or January, with a final plan to be ready by the end of next year.

Cardinale predicted that the people will descend on the commission when they become aware of the impact of the state plan on the designated "development corridors."

Planning commission told results show little faith in local officials

One of the features of the preliminary draft is directing growth along developing transportation centers and corridors, rather than allowing suburban sprawl to continue to cover the countryside unchecked.

"Please don't impact places like Bergen County," Cardinale implored the commissioners.

The impact the plan has on already developed areas will determine whether it will be accepted by the people, Cardinale commented

Chester P. Mattson, Bergen County's director of planning and economic development, buttressed the senator's statement by saying "Bergen's mostly gone," meaning most of it has been heavily developed over the past 40 years.

Mattson made a distinction between "real estate development and economic development." He cited his current residence in Carlstadt, where single-family homes are being demolished and replaced by double-family homes selling for considerably more money.

Mattson said "the value of the land under the building becomes worth more than the building," driving up the real estate market.

Mattson, former environmental specialist for the Hackensack Meadowlands Development Commission, was the co-author of the 1970 Land-Use Plan for that planning district embracing 14 municipalities in Bergen and Hudson counties.

George M. Ververides, director of planning for the Middlesex County Planning Board, told the commission there are some 400 environmental organizations at the grass-roots level ready to work to preserve a decent quality of life in New Jersey.

Ververides noted that the New Jersey Builders Association has raised a $1 million "war chest" to fight the new plan which is still in draft form.

Keith Wheelock, a Montgomery Township official, said that 95 percent of the candidates running for legislative office this fall are speaking out on the growth management issue. Wheelock wondered why Gov. Thomas Kean, who appointed all of the members to the planning commission, has been "so quiet" during the recent attacks by builders on the commission's planning efforts.

Harry S. Pozycki Jr., who chaired the committee that drafted the document that led to the State Planning Act and the commission, urged the state departments of Transportation (DOT), Environmental Protection (DEP) and Treasury to start implementing the infrastructure component of the state plan. All three Cabinet officers sit on the planning body.

Pozycki said the goals of the state plan are simply to bring about a "more livable New Jersey."

ansportation Commissioner Hazel Gluck said she would like the state to acquire all of the abandoned railroad rights-of-way so they can be considered for future transit corridors or as open space preserves for hiking and recreation. The DEP has been purchasing abandoned rail corridors with its limited Green Acres funds.

Maryjude Haddock-Weiler, public information officer for the commission, announced that anyone can now call the commission on a toll-free number to find out when meetings will be held on the plan. The number is 1-800-522-0129.