

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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January 31, 2012

Start: 1:48 pm

Recess: 4:13 pm

HELD AT: Committee Room
250 Broadway, 16th Floor

B E F O R E:
JAMES F. GENNARO
Chairperson

COUNCIL MEMBERS:
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Elizabeth S. Crowley
G. Oliver Koppell
Peter F. Vallone, Jr.
Brad S. Lander
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Senior Policy Advisor
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Bill Tai
Principal Environmental Planner
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Director of Office of Ecological Services
NYC Department of Environmental Protection

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Co-founder
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CHAIRPERSON GENNARO: I think we're ready. Thank you, Sergeant. Good morning. I think my first order of business should be to apologize to my colleagues and the people in attendance today and the witnesses for not having a prompt start to this hearing. I won't belabor the start of the hearing by going into the reasons. That would just further delay things and I don't wish to do that, but I wish to offer my apologies.

Let me state my name for the record. I'm Councilman Jim Gennaro, Chair of the Committee on Environmental Protection. Today, we have a two-part hearing. I know most people are here for the wetlands component of the hearing. If we could just close the door, Mr. Sergeant, so we could have some quiet.

There is another component of the hearing. We are going to be hearing a Preconsidered Council Resolution authorizing the Council to submit an amicus brief at each stage of the litigation captioned State of New York versus the U.S. Army Corps of Engineers, et. al., currently pending in the Eastern District of New

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2 York, in support of the New York State Attorney
3 General's lawsuit against the Delaware River Basin
4 Commission for issuing regulation on gas drilling-
5 -that would be hydrofracking--without complying
6 with proper environmental review procedures,
7 include the preparation of an environmental impact
8 statement, as require by the National
9 Environmental Policy Act.

10 As many in this room know, the
11 National Environmental Policy Act, a little bit of
12 a history lesson here, was signed into law by
13 President Nixon in 1970, with the intent to
14 balance environmental concerns with the social,
15 economic and other requirements of present and
16 future generations.

17 In order to accomplish this, NEPA
18 as it is know, as NEPA, National Environmental
19 Policy Act, requires that all agencies of the
20 federal government include in every recommendation
21 or report on proposal for legislations--let me
22 just kind of skip over this--but we are contending
23 that the Delaware River Basin--that the New York
24 State Attorney General in contending through a
25 lawsuit and we're actually fortune on this

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2 committee to have a former attorney general of the
3 State of New York, Council Member Koppell. Is it
4 the contention, through this lawsuit of the New
5 York State AG, that the Delaware River Basin
6 Commission issuing these regulations is making a
7 federal act, that the federal act would require
8 full compliance with NEPA. It is the contention
9 of the AG that that has not happened. The purpose
10 to this resolution of the Council would be to
11 authorize the Council to submit an amicus brief.

12 So I've used the two
13 pronunciations. I used amicus, I used amicus, I
14 don't know which one is correct. I'm sure the
15 former attorney general could advise me on the
16 pronunciation, but I'm a geologist, not a lawyer.

17 Do you have something to add to
18 that, Madame Counsel?

19 SAMARA SWANSTON: No, you're fine.

20 CHAIRPERSON GENNARO: Madame
21 Counsel?

22 SAMARA SWANSTON: You're fine.

23 CHAIRPERSON GENNARO: We should
24 resolve that along with tomato and tomato. We'll
25 do both at once, you know we'll figure out tomato

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2 versus tomato and amicus versus amicus. But, you
3 know what I'm saying. So the purpose of this
4 resolution, anyone that wants to give testimony on
5 whether or not the Council should submit such a
6 brief or a series of briefs to support the
7 Attorney General in the lawsuit, that's one part
8 of the hearing. There was some intrigue
9 surrounding that this morning and there you have
10 it. Legal things are very complicated.

11 With regard to the wetlands thing,
12 this is not complicated and we're going to get
13 into the second part of my statement which has to
14 do with the wetlands oversight which is what I
15 think the first panel is here to speak to.
16 Welcome to today's hearing, again a two-part
17 hearing. This part is on the city's oversight
18 hearing on the city's various efforts to protect,
19 preserve and restore wetlands. Okay, here's the
20 statement. Here it comes.

21 If you take a long view, you will
22 see that we as a city have not done a very good
23 job protecting our wetlands--this is the people
24 who were in government before us--having lost the
25 overwhelming majority of freshwater wetlands and

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2 tidal wetlands over the last 100 years. We have
3 literally paid the price for those losses.

4 To give you an example, we've had
5 to build and continue to add to, at great and
6 mounting expense, a vast gray infrastructure to
7 capture and dispose of stormwater that falls in
8 the city. There was a time when our wetlands did
9 that for us, free of charge. When it rains a
10 little too much, the vast infrastructure is fairly
11 quickly overwhelmed and that stormwater combines
12 with sewage and gets washed out into our surround
13 water bodies. That's a bad thing.

14 As everyone here today knows,
15 capturing and filtering stormwater is but one of
16 the many services provided by healthy wetland
17 ecosystems. They, meaning wetlands, also play
18 home to a huge array of plant and animal species,
19 prevent erosions, buffer coastlines from storms,
20 play a critical role in supporting the fish and
21 shellfish that we catch, you know, for fun or for
22 food, and so on. In other words, they're critical
23 to the health of the natural world and our own
24 happiness. That's that it says right here in the
25 statement. As people who live near and recreate

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2 in wetlands and the systems they support. Here in
3 the city, they are mostly gone.

4 We're here today not just to mourn
5 these losses, we're here to talk about the future
6 and how we can protect what we have left and
7 rebuild some of what we've lost and really to look
8 at some of the great strides that Bloomberg and
9 the Council have taken over the last couple of
10 years to speak to this issue.

11 This has been a long concern of
12 mine, and in recent years the Council, in
13 partnership with the Administration and the
14 Department of Parks and Recreation as well as with
15 the advocates and scientists, who play such a big
16 role on this issue, have developed a number of
17 initiatives, often through legislation, to help
18 protect and restore the city's wetlands.

19 As one example, the city passed
20 Local Law 71 of 2005, a bill aimed at protecting
21 one of the greatest and most endangered of our
22 remaining natural systems, the wetlands of Jamaica
23 Bay. This bill called upon the city to develop a
24 comprehensive plan utilizing every tool in its kit
25 to protect the resource that was rapidly

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2 dwindling, for reasons that were not entirely
3 clear. To assist in the development of this plan,
4 the bill also set up an advisory committee that
5 along with the Department of Parks and Recreation
6 has put a tremendous amount of effort into
7 protecting the bay.

8 Today, we'll hear more about how
9 that plan, as updated, is being implemented, how
10 well it is working and what else may need to be
11 done. So that's one bill that we did that we're
12 going to talk about.

13 As a second example, we passed
14 Local Law 85, also of 2005. This bill called upon
15 the city to take a look at our remaining wetlands
16 that are owned by the city and decide which of
17 them needed to be transferred to the Department of
18 Parks and Recreation, thereby making them
19 parkland, which would afford them long-term
20 protection. I'm kind of paraphrasing here.

21 We, meaning the Council, also set
22 up a public/private task force to assist in the
23 development of this analysis and set of
24 recommendations. The task force reviewed over
25 2,000 acres of wetlands in the city, that is those

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2 that were owned by the city, and based on that
3 analysis recommended transferring over 80 wetlands
4 to the Parks Department, another 76 to DEP Staten
5 Island Blue Belt program and performed a so-called
6 special review of another 111 sites, most of which
7 would then be transferred to the Parks Department.

8 Although some of these properties
9 have been transferred, and that is a great
10 success, many others have undergone some
11 additional review. You know, naturally there were
12 some obstacles to some transfers that have
13 happened. So today, we'll review these efforts
14 and talk about the next step for protecting these
15 wetlands. So that's the second law we're going to
16 take a look at and see how that's doing.

17 The third law is Local Law 31 of
18 2009, which was passed by the Council, I was the
19 prime sponsor of that, which required the city to
20 develop a comprehensive wetland protection plan
21 intended to play the critical role of protecting
22 wetlands that were not covered by state or federal
23 laws and regs, the so-called regulatory gaps that
24 do exist. It's my recollection that the
25 inspiration for that really was from a document

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2 from the Bloomberg Administration that talked
3 about these regulatory gaps. Then we took a look
4 at that and said we should fill these regulatory
5 gaps. So that's what Local Law 31 is all about.

6 On January 18th of this year, the
7 city released the draft plan that was sort of
8 called for by the law, which is currently taking
9 comments through February 18th, and then the final
10 plan will come out sometime after that. I'm sure
11 the witnesses will speak to that.

12 The draft plan contains, among
13 other things, four broad strategic areas: wetland
14 protection, mitigation, restoration and
15 assessment. Collectively, these four strategic
16 areas contain 12 sub-initiatives for managing the
17 wetlands moving forward. These 12 initiatives,
18 some of which are ongoing and some of which are
19 new, range from acquiring new private wetlands to
20 establishing mitigation banking to creating a
21 natural area conservancy, which would be a
22 public/private entity designed to protect and
23 enhance natural systems and to approve wetland
24 mapping.

25 Finally, as an example, I would

1
2 also like to mention another law, the fourth law
3 we're taking a look at, Local Law 21 of 2009,
4 which was sponsored by Council Member Vann. That
5 law established an important structure whereby the
6 Department of Buildings would better coordinate
7 with other agencies when making decisions about
8 developments proposed for the city's sensitive
9 coastal wetland zones.

10 So, as I've said, I look forward to
11 hearing from the Administration and from wetland
12 advocates and scientists on these and other things
13 that still may need to be done, as well as any and
14 all other city efforts, any other efforts that the
15 city has undertaken to protect our wetlands. By
16 that, of course, I'm speaking about PlaNYC, which
17 does have a very good wetlands section. We're
18 thankful for the existence of PlaNYC, not only for
19 what it speaks to regarding wetlands but also all
20 of the other visionary things that it talks about
21 regarding to making us a beacon of urban
22 environmental sustainability.

23 None of that was just written down
24 what I just said. I'm that good. I just made
25 that up. That sounded pretty good. It should

2 have been written down. I think Vinny is laughing
3 at that. He knows my sense of humor and we know
4 each other a long time.

5 Once again, I thank the
6 Administration and everyone else for being here.
7 Sorry for being late. This is a great opportunity
8 to look at all the things we've done regarding
9 wetlands and make sure that we can make the best
10 possible progress on this very important matter.

11 We're joined by Council Member
12 Koppell. Once again, former attorney general of
13 the State of New York and former chair of the New
14 York State Assembly Encon I think is the state
15 buzz word that they use to describe that committee
16 for many years.

17 COUNCIL MEMBER KOPPELL: That's
18 right. And prime sponsor of the Freshwater
19 Wetlands Act in the 1970s.

20 CHAIRPERSON GENNARO: Yes, yes. He
21 really is like the wetlands ringer in the room.
22 I'm like the new guy. But before me in my little
23 small town on the Hudson that I worked for, there
24 was Oliver doing this for the state. We thank him
25 for his dedicated service to wetlands.

2 So we have Oliver, we have Council
3 Members Levin, Lander and Vallone. Is Pete here?
4 I guess Pete was here. I'd like to thank Dan and
5 Samara and all the staff that made this hearing
6 possible. I think it's time for me to stop
7 talking. We'd like to get the benefit of the
8 folks from the Administration who are here. Where
9 are the slips for the Administration panel?

10 Aaron Koch or is it Aaron Koch, how
11 do you pronounce it?

12 AARON KOCH: I pronounce it Koch.

13 CHAIRPERSON GENNARO: Koch, okay.

14 AARON KOCH: Working for the Mayor
15 of New York, I answer to Koch and anything else.

16 [Laughter]

17 CHAIRPERSON GENNARO: Okay. I will
18 certainly defer to your pronunciation. So, Mr.
19 Koch, Bill Tai for the Parks Department, who was
20 so critical with the wetlands transfer and all of
21 that, that's great. Joseph Ackroyd from the
22 Department of Buildings, John McLaughlin from DEP.
23 So there are four witnesses? Are you sitting at
24 the table, sir, to testify? So, if you could,
25 kind of come close to the table and be part of the

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panel that would be great.

It is our practice, as many people know, in this committee, to put our witnesses under oath. I'll ask the Counsel to the Committee to do that. Once that is done, I'll ask whoever is going to speak on behalf of the Administration to state his name for the record, introduce the other members of the panel and proceed with your good testimony. Thank you for being here. I'll call upon counsel to do that and then we can proceed?

SAMARA SWANSTON: Gentlemen, would you please your right hand. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth today?

AARON KOCH: I do.

BILL TAI: I do.

JOSEPH ACKROYD: I do.

JOHN MCLAUGHLIN: I do.

CHAIRPERSON GENNARO: Thank you. Welcome. Mr. Koch, please proceed with your statement.

AARON KOCH: Great, thank you. Good afternoon, Chairman Gennaro and committee

2 members. My name is Aaron Koch, and I am a Senior
3 Policy Advisor in the Mayor's Office of Long-Term
4 Planning and Sustainability. On behalf of the
5 Administration, I will address the important
6 wetlands issues that are the subject of this
7 hearing.

8 I'm joined today by John
9 McLaughlin, the Director of the Office of
10 Ecological Services at the Department of
11 Environmental Protection, Bill Tai, Principal
12 Environmental Planner and former Director of
13 Natural Resources at the Department of Parks and
14 Recreation, and Joseph Ackroyd, Acting Director of
15 Engineering and Technical Affairs at the
16 Department of Buildings.

17 At the outset, I want to recognize
18 the work of this Committee and especially your
19 leadership, Chairman Gennaro, whose efforts have
20 greatly contributed to strengthening wetlands
21 protection and restoration efforts and improving
22 the environmental quality of Jamaica Bay.

23 We also appreciate your willingness
24 to provide us with extra time to complete the
25 draft wetlands strategy and prepare for this

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2 hearing. We welcome the opportunity to work with
3 the Council on wetlands issues, as we have so
4 effectively in the past, and we look forward to an
5 ongoing dialogue about the protection and
6 restoration of the city's wetlands.

7 Since 2002, the Bloomberg
8 Administration has made the largest commitment to
9 improving our waterways and waterfront of any
10 administration in New York City's history. We
11 have invested \$8.9 billion, and counting, to
12 reduce discharges and to improve harbor water
13 quality, and the water in New York Harbor is
14 cleaner now than at any time in the last century.
15 This investment in water quality infrastructure
16 has set the stage for ecological recovery,
17 including wetlands, which control flooding, buffer
18 storm surge, and provide important habitat for
19 wildlife and fish.

20 Wetlands are an important component
21 of PlaNYC's strategy for a greener, greater New
22 York. That is why the Bloomberg Administration
23 has worked with our state and federal partners to
24 invest over \$74 million to restore or to create
25 175 acres of wetlands since 2002.

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2 Much of the city's natural
3 waterfront consists of wetlands. Despite the
4 significant loss of historical wetlands, New York
5 City is still home to many critical natural areas
6 in Jamaica Bay, Staten Island, and along Long
7 Island Sound. The total area of the city's
8 wetlands is not well known, but existing maps
9 indicate that the range is between approximately
10 5,600 acres to a little over 10,000 acres.
11 Although many of the city's wetlands have been
12 fragmented or degraded, many continue to provide
13 important ecological, economic, and social
14 benefits.

15 In my testimony today, I will
16 address the four laws related to wetlands that the
17 City Council has passed since 2005. These include
18 Local Law 31 of 2009, Local Law 21 of 2009, Local
19 Law 71 of 2005, and Local Law 83 of 2005.

20 Local Law 31 of 2009 requires the
21 completion of a wetlands strategy for New York
22 City. The City released a draft of the wetlands
23 strategy for public comment on January 18th, and
24 we will accept comments on the draft until
25 February 18th. We will edit the draft strategy to

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2 incorporate public comments as appropriate before
3 releasing a final wetlands strategy. We look
4 forward to receiving comments from you as well as
5 others in the audience today.

6 CHAIRPERSON GENNARO: Thank you.

7 AARON KOCH: The draft strategy
8 builds on several other planning and policy
9 efforts undertaken in recent years by the City,
10 many of which were formed in partnership with the
11 Council. These include the Jamaica Bay Watershed
12 Protection Plan, in 2007; the report of the
13 Wetlands Transfer Task Force, also in 2007; the
14 New York City Green Infrastructure Plan, released
15 in 2010; Vision 2020: New York City Comprehensive
16 Waterfront Plan and the Waterfront Action Agenda,
17 both released last March; and the update to
18 PlaNYC, which was released last April. We thank
19 the Council for your leadership on these critical
20 issues.

21 The draft wetland strategy that we
22 released in January recognizes the important role
23 of our state and federal partners and seeks to
24 advance efforts already underway in collaboration
25 with multiple agencies, including the New York

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2 State Department of Environmental Conservation,
3 also known as DEC, the Army Corps of Engineers,
4 the Port Authority, the National Park Service, and
5 the U.S. Environmental Protection Agency, EPA. We
6 are also grateful for the valuable work of many
7 nonprofit organizations and community groups who
8 also pursue efforts to protect, monitor, and
9 restore wetlands.

10 The draft wetlands strategy
11 establishes a goal to achieve no net loss of
12 wetlands. But the City also recognizes that
13 addressing the quantity of wetlands in New York
14 City does not provide a clear enough picture. The
15 strategy also establishes the goal to improve the
16 quality of the city's remaining wetlands and
17 maximize their ecological functions to the
18 greatest extent possible.

19 To achieve our goals, the draft
20 strategy establishes a framework to address four
21 key areas: protection, mitigation, restoration,
22 and assessment.

23 First, we will strengthen wetlands
24 protection efforts. The draft wetlands strategy
25 lays out several initiatives to improve the public

1
2 management of wetlands parcels, which includes
3 further transfer of City-owned parcels to the
4 Parks Department as recommended by the Wetlands
5 Transfer Task Force. I will speak more about this
6 when I address Local Law 83 of 2005.

7 We will also seek to acquire
8 vulnerable privately-owned wetland sites. In the
9 last ten years, the Parks Department has acquired
10 almost 300 acres of wetlands. DEP has also
11 acquired 325 acres of significant wetlands and
12 adjacent areas for the Staten Island Bluebelt and
13 is planning to acquire an additional 195 acres
14 over the next 30 years.

15 The City will work with local,
16 state, and federal partners to evaluate
17 opportunities for additional wetlands
18 acquisitions. Specific attention will be given to
19 the privately-owned small freshwater wetlands
20 parcels that are not protected by state or federal
21 regulations.

22 Also to increase protection, the
23 Department of City Planning is currently
24 undertaking a process to revise the Waterfront
25 Revitalization Program, last updated in 2002. The

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2 WRP is the City's regulatory program for balancing
3 potentially competing interests such as economic
4 development, natural resources protection, and
5 public access on the shoreline. As we update the
6 WRP in the coming year, we will designate
7 additional sites of ecological importance,
8 offering greater protection to these resources.
9 The process to update the WRP will be underway
10 throughout 2012 and proposed revisions to the WRP
11 will go through public review and approval.

12 Second, we will improve wetlands
13 mitigation by partnering with state and federal
14 agencies. When the filling or development of
15 wetlands is permitted, applicants in New York
16 State are typically required to mitigate those
17 impacts through the restoration or creation of
18 wetlands at the site of the disturbance or at a
19 nearby location.

20 In an urban setting, it can be
21 difficult to achieve the goals of development and
22 environmental restoration on a single parcel due
23 to a lack of available space for onsite
24 mitigation. This system usually leads to sub-
25 optimal outcomes as it often encourages

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2 restoration projects that are small, expensive,
3 and of lesser habitat value.

4 The City has already formed a
5 working group with Department of Environmental
6 Conservation and the State and other key
7 stakeholders to evaluate changes to mitigation
8 policy and create clear, transparent, and
9 scientifically-backed guidance. The City will
10 also develop a mitigation banking or in-lieu fee
11 mechanism for public projects.

12 These are strategies for
13 undertaking restoration projects that can then
14 provide credits to multiple projects that require
15 mitigation, at one or more locations carefully
16 chosen and approved in advance by regulators.
17 Both mechanisms provide numerous benefits over the
18 current system by consolidating funding into
19 larger projects that produce economies and
20 ecologies of scale.

21 Third, we will continue our efforts
22 to restore wetlands in New York City. In the next
23 three years, the City will work with our state and
24 federal partners to invest over \$54 million at 17
25 sites to restore and enhance over 58 acres of

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2 wetlands and adjacent habitat. This includes
3 projects at Meadow Lake in Queens; in Brooklyn at
4 Paerdegat Basin and in Marine Park; salt marsh
5 island restoration in Jamaica Bay; in Staten
6 Island at Freshkills Park; and in the Bronx at
7 Pugsley Creek, Soundview Park, and further
8 upstream along the Bronx River.

9 We will also partner with the Army
10 Corps, the Port Authority, EPA, DEC, and other
11 regional partners to complete the Hudson-Raritan
12 Estuary Comprehensive Restoration Plan and then
13 seek federal funding for implementation.

14 Finally, we will assess the city's
15 wetlands to fill critical knowledge and data gaps.
16 Pursuant to the requirements of Local Law 31 of
17 2009, the City produced preliminary wetlands maps
18 as well as a technical paper explaining the
19 methodology used to develop these maps in
20 September 2010. After further refinement of these
21 preliminary maps and field verification, we will
22 work with DEC to explore opportunities to update
23 their wetlands regulatory maps. We will also
24 develop a wetlands research agenda, evaluate the
25 conditions and ecological functions of existing

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2 wetlands, and study the impacts of climate change
3 and sea level rise.

4 In addition to the important
5 commitments made in these four areas, this draft
6 wetlands strategy also advances the City's
7 understanding of the quantity and ownership of
8 small, unprotected freshwater wetlands. A policy
9 paper released by the Administration in 2009,
10 titled "New York City Wetlands: Regulatory Gaps
11 and Other Threats," found that while existing
12 federal and state regulations protect New York
13 City's tidal wetlands and its large freshwater
14 wetlands from threats related to development,
15 freshwater wetlands smaller than 12.4 acres are
16 not protected by state law.

17 According to the National Wetlands
18 Inventory, which is the best existing source for
19 wetlands quantity data, there are approximately
20 635 acres of freshwater wetlands in New York City
21 that are not mapped and regulated by the State
22 DEC. Of these properties, approximately 457 acres
23 are owned by public agencies and 106 acres are
24 privately owned.

25 These 106 acres of privately-owned

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2 wetlands represent less than 2 percent of all
3 wetlands in New York City. This is knowledge that
4 we did not have when we were writing the Wetlands
5 Gaps regulatory paper.

6 Therefore, since 98 percent of the
7 city's wetlands are protected by State or Federal
8 regulations or are under public ownership, we
9 believe that the City's time and resources are
10 best spent improving public management of
11 wetlands, transferring additional wetlands
12 recommended by the Wetlands Transfer Task Force,
13 improving coordination with the State on
14 protection efforts, and working with our partners
15 to restore valuable wetlands.

16 We have determined that the
17 benefits of creating a new local wetland
18 protection ordinance or a local permitting scheme
19 to protect what is a relatively small number of
20 wetlands would not outweigh the costs of
21 establishing and enforcing a new regulatory
22 regime.

23 Next, I'm going to speak to--

24 CHAIRPERSON GENNARO: [interposing]
25 Mr. Koch, I'm just going to ask you to pause for a

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2 second. I just want to have a little side bar
3 conversation with counsel regarding another
4 matter. Just hold that for one moment while I
5 have that discussion, if I could talk to Samara
6 and Laura for a second.

7 [Pause]

8 CHAIRPERSON GENNARO: Sorry about
9 that. Yes, please continue.

10 AARON KOCH: Thank you. Next, I'm
11 going to speak about Local Law 21 of 2009. Local
12 Law 21 requires coordination between the
13 Department of Buildings and the State DEC before
14 the approval of construction documents for
15 development on land comprising DEC regulated
16 wetlands or coastal erosion hazard areas. This
17 law ensures that environmental review takes place
18 and helps to protect against the loss of wetlands.

19 In July 2009, Department of
20 Buildings issued a Buildings Bulletin to the
21 public establishing the process and guidelines for
22 meeting these new requirements. As part of this
23 process, DOB flagged over 59,000 Building
24 Identification Numbers, or properties, that
25 contain DEC-regulated wetlands or coastal hazard

1 areas within their Building Information System.

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3 Applicants seeking a permit from
4 the Department of Buildings within a DEC-regulated
5 wetland or coastal hazard area must verify whether
6 their new construction or alteration impacts such
7 regulated areas. Where construction will not
8 impact a wetland or coastal hazard area, a
9 registered design professional or a licensed land
10 surveyor must certify that the proposed work is
11 outside of the regulated area prior to approval.
12 Or the applicant may submit to DOB a
13 jurisdictional determination issued by DEC that
14 states that the project is outside of the
15 regulated area prior to approval.

16 If the applicant's new construction
17 or alteration is a category of work that requires
18 compliance with Local Law 21 of 2009 and is in a
19 regulated area, the applicant must submit the
20 applicable DEC permit to DOB prior to approval.

21 A Department of Buildings plan
22 examiner will mandate required items such as a
23 wetlands map certification, a DEC jurisdictional
24 determination, or a DEC permit when the flagged
25 Building Information Number shows up in DOB's

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2 Buildings Information System. Failure to self-
3 report by the applicant on a flagged property
4 should not allow an application to receive a
5 permit without providing the necessary required
6 items.

7 Now, I'll move on to Local Law 83
8 of 2005. Local Law 83 of 2005 established the
9 Wetlands Transfer Task Force and charged this
10 group with inventorying City-owned, non-parkland
11 properties that contain wetlands and determining
12 the technical, legal, environmental, and economic
13 feasibility of transferring additional wetlands to
14 the jurisdiction of the City's Parks Department
15 for additional protection.

16 The Wetlands Transfer Task Force
17 completed their work by issuing a report in
18 October 2007. More than 1,000 City-owned
19 properties totaling approximately 700 acres were
20 assessed; many of which contained only remnant or
21 historic wetlands. The Task Force recommended the
22 transfer of 82 City-owned wetlands properties to
23 the Parks Department and the study of an
24 additional 111 special review properties for
25 transfer.

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2 As of December 2011, the Parks
3 Department had assessed all of the special review
4 properties. Nine properties, for a total of 96
5 acres, have already been transferred to the Parks
6 Department. Parks has also initiated requests to
7 transfer 11 additional properties, for a total of
8 98 acres. When these additional transfers are
9 complete, a total of 194 acres out of 628 acres,
10 or 31 percent of the parcels recommended for
11 transfer to Parks or designated as special review
12 will be protected as City parkland.

13 The remaining parcels recommended
14 for transfer to the Parks Department require
15 further action, such as boundary surveys, signing
16 and securing property, removing existing debris,
17 and performing other cleanup work at the sites,
18 which are still currently managed by other City
19 agencies. The City has placed a hold so that no
20 City-owned wetlands properties can be transferred
21 to a private entity without the knowledge of the
22 Parks Department.

23 The feasibility and timing of
24 future transfers will depend on a variety of
25 legal, regulatory, and resource availability

1
2 constraints. The City will continue to evaluate
3 opportunities to complete the necessary
4 improvements that are required for future
5 transfers to Parks to occur.

6 The Wetlands Transfer Task Force
7 also recommended that 76 of the City-owned
8 freshwater wetlands parcels on Staten Island,
9 totaling about 12 acres, be transferred to the DEP
10 Bluebelt Program. Sixty-two of those properties,
11 or about 80 percent, were officially transferred
12 in October 2011. Of the remaining 14 properties,
13 DEP will seek jurisdiction for nine of them.

14 Of special note are three
15 properties at Arlington Marsh on Staten Island.
16 The Administration remains eager to complete these
17 partial transfers; however, as indicated in the
18 recommendations of the Task Force, the project to
19 expand the New York Container Terminal calls for
20 related work to occur that will affect the
21 adjacent properties. The City has recently
22 reaffirmed its intent to complete the transfer of
23 Arlington Marsh to the Parks Department in both
24 the Waterfront Action Agenda and the Working West
25 Shore 2030 plan, both released in 2011.

2 Finally, I will discuss Local Law
3 71 of 2005. Local Law 71 required the creation of
4 a comprehensive plan to improve the quality of
5 Jamaica Bay. The City released the Jamaica Bay
6 Watershed Protection Plan in 2007 and issued
7 updates in 2008 and 2010.

8 We have made great progress
9 implementing the Jamaica Bay Watershed Protection
10 Plan. In February 2010, we reached an agreement
11 with DEC, the Natural Resources Defense Council,
12 and other environmental groups under which we will
13 dedicate \$100 million to install new nitrogen
14 control technologies at certain wastewater
15 treatment plants in Jamaica Bay and another \$15
16 million for marshland restoration projects. These
17 investments, made in concert with \$95 million the
18 City had already committed for nitrogen upgrades
19 in Jamaica Bay, will reduce the amount of nitrogen
20 entering the Bay by approximately 50 percent.

21 In May 2011, the City officially
22 turned on the new \$404 million Paerdegat Basin
23 Combined Sewer Overflow Facility in Brooklyn. The
24 retention facility will prevent up to 50 million
25 gallons of CSOs during heavy rain from being

1
2 discharged into Paerdegat Basin, which is a 1.25
3 mile channel that is connected to Jamaica Bay.

4 But grey infrastructure projects
5 are only part of the solution. We are also making
6 a transformative \$1.5 billion investment in green
7 infrastructure that captures or detains stormwater
8 before it can enter and overwhelm the sewer
9 system. We will design, build, and maintain
10 stormwater source controls, or small installations
11 that control stormwater where it meets impervious
12 surfaces. These investments, paired with targeted
13 cost effective grey infrastructure, will reduce
14 combined sewer overflows by 40 percent citywide by
15 2030.

16 The City is also undertaking many
17 wetlands restoration efforts in Jamaica Bay.
18 Using \$15 million in Federal stimulus funds, we
19 are restoring 38 acres of wetlands and grasslands
20 near the DEP CSO facility in Paerdegat Basin. In
21 Marine Park in Brooklyn, we are restoring White
22 Island through shoreline stabilization, invasive
23 species removal, and planting of marsh grasses.
24 These projects are in addition to recently
25 completed restorations at the Elders Point salt

marsh islands and Gerritsen Creek at Marine Park.

Since 2002, the City has invested \$37.4 million to reclaim more than 440 acres of environmentally-sensitive land adjoining Jamaica Bay and plans to restore nearly 100 additional acres. As part of the nitrogen reduction agreement, the City will invest \$15 million for salt marsh restoration projects in the interior of Jamaica Bay.

The City will leverage this investment in the bay's wetlands by applying it as a local match to programs paid for with Federal funds, which could net an additional \$30 million in funding for Jamaica Bay marshland preservation projects.

In 2012, we will work with our partners to restore 30 acres of salt marsh at Yellow Bar, which is one of the marsh islands in Jamaica Bay. In addition, the City and State will be the 100 percent funding sponsors for the sand placement on two additional salt marsh islands, Black Wall and Rulers Bar.

In addition to these significant investments in water quality improvements and salt

1
2 marsh restoration, the City has also accomplished
3 many other milestones in the Jamaica Bay Watershed
4 Protection Plan.

5 The City has completed ecological
6 restoration projects, pilot projects that evaluate
7 the feasibility of using oysters, ribbed mussels,
8 and eelgrass as natural filters in the Bay.

9 At the request of the City and DEC,
10 in October the EPA designated the majority of
11 Jamaica Bay as a "No Discharge Zone," which bans
12 boats from discharging sewage into the bay.

13 The City is also adding seven new
14 monitoring stations to the Harbor Survey Program,
15 increasing the total from 65 to 72 citywide. Of
16 the four new Jamaica Bay sites, there are two at
17 Fresh Creek and two at Bergen Basin, and there
18 will now be 24 testing locations in Jamaica Bay,
19 which is up from 13 in 2010.

20 Finally, the City has continued to
21 collaborate with our regional partners to better
22 understand the science of the Bay and in October
23 held the second Jamaica Bay, State of the Bay:
24 Past, Present and Future symposium at Brooklyn
25 College.

1
2 Thank you for the opportunity to
3 share information about the Administration's
4 efforts to protect and restore New York City's
5 wetlands. We would be happy to answer your
6 questions.

7 CHAIRPERSON GENNARO: Thank you,
8 Mr. Koch. I want to thank the other panelists.
9 We're going to be posing questions to you in a
10 moment. We're going to take the opportunity,
11 however, just to do another order of business with
12 regard to voting on the Preconsidered Resolution
13 that I spoke on at the outset of the hearing that
14 would authorize the Council to file either one or
15 a series of amicus briefs at each stage of the
16 litigation. We're going to take the opportunity
17 to do that now. We do have a quorum of members in
18 the room.

19 As I said at the outset of the
20 hearing, I think it's important for the Council to
21 make its voice known. This is potentially our
22 watershed areas, our New York City drinking water
23 supply watershed areas that would be impacted by
24 these rules that are developed by the Delaware
25 River Basin Commission.

2 No matter what folks may feel about
3 fracking, I think it's certainly important that
4 any entity that seeks to promulgate rules
5 regarding the regulation of this activity, I think
6 any entity whether it's the state or anyone else
7 that seeks to do that, they should follow the
8 proper environmental process.

9 The State of New York is doing that
10 with regard to the preparation of the EIS which
11 many people know about and many people are
12 certainly participating in that process. The
13 State is following the appropriate environmental
14 review process.

15 The AG for New York State has made
16 a finding that he believes the NEPA is not being
17 followed by the federal action being contemplated
18 by the Delaware River Basin Commission. It is the
19 opinion of the attorney general, through the
20 lawsuit, that he wants the federal government to
21 follow the law in doing an appropriate
22 environmental statement.

23 I agree with this. So for this
24 reason, I've put this forward, in cooperation with
25 the Speaker's Office. I think it's important that

1
2 anyone that seeks to regulate fracking, you know
3 basically follow the law and do an appropriate
4 environmental review. That has not happened by
5 the DRBC. It should. This is the opinion of the
6 attorney general.

7 This is an important suit. I wish
8 to support him in that. I would ask my colleagues
9 to vote to authorize the Council, through the
10 General Counsel's Office of the City Council to
11 file these briefs. That's basically what this
12 Preconsidered Resolution is all about. I would
13 urge the members of the committee to vote to
14 authorize that the Council do this. With that
15 said, I urge a yes vote; I would ask the clerk to
16 call the roll on the Preconsidered Resolution.

17 WILLIAM MARTIN: William Martin,
18 Committee Clerk, roll call vote the Committee on
19 Environmental Protection. Council Member Gennaro?

20 CHAIRPERSON GENNARO: Yes.

21 WILLIAM MARTIN: Koppell?

22 COUNCIL MEMBER KOPPELL: Yes.

23 WILLIAM MARTIN: Lander?

24 COUNCIL MEMBER LANDER: Aye.

25 WILLIAM MARTIN: Levin?

2 COUNCIL MEMBER LEVIN: Aye.

3 WILLIAM MARTIN: By a vote of four
4 in the affirmative, zero in the negative and no
5 abstentions, item is adopted.

6 CHAIRPERSON GENNARO: Thank you,
7 Billy. I thank the members for the yes votes. I
8 would ask that the record be left open for the
9 three other members of the committee to come and
10 cast their votes.

11 I know that Council Member Vallone
12 has been here. Perhaps someone can reach out to
13 Council Member Vallone to indicate to him that
14 this vote has been made and if he wants to cast
15 his vote, he can do that. The other two members
16 of the committee should be made aware of the fact
17 that we have cast this vote and it would be great
18 for them to come and cast their vote as well. I
19 would ask that staff to do that.

20 With that order of business out of
21 the way, I thank this panel for its patience. Let
22 me just ask something of the counsel to the
23 committee.

24 [Pause]

25 CHAIRPERSON GENNARO: I would like

1
2 to take this opportunity to see if there are other
3 members of the committee that have questions for
4 the panel. If they wish to do so before I do
5 that. I took my time in getting here, due to
6 certain circumstances and I know sometimes when I
7 start to question witnesses it could go on for a
8 while.

9 I want to give the other good
10 members of the committee if they wish to pose
11 questions, I would yield to them and go last
12 rather than first. It's kind of like the least I
13 can do. Council Member Levin has indicated that
14 he wishes to pose a question, so I am happy to
15 recognize Council Member Levin for questions.

16 COUNCIL MEMBER LEVIN: Thank you
17 very much, Mr. Chairman. Thank you, Mr. Koch and
18 your colleagues. Just a quick question and I
19 might come back after Jim asks some if I get some
20 other ideas. I want to ask just a little bit
21 about, and I know the draft wetland strategy, in
22 our legislation is limited in its definition, but
23 I was curious, are you guys looking as well at
24 areas along the Brooklyn waterfront? I think
25 particularly a couple of areas, one that's in the

1
2 district that I represent, which is a small area,
3 the Bushwick inlet section, up by the New Town
4 Creek, and also Bayridge Flats and kind of around
5 Red Hook and Sunset Park in terms of their ability
6 to sustain environments and ecological
7 environments and the like.

8 Are you looking at ways to bolster
9 that, to sustain that, to recapture some of the
10 former wetlands? Certainly Bushwick inlet was at
11 one point a wetland. How are you guys approaching
12 those areas?

13 AARON KOCH: Sure. I'll tell you,
14 it's a great question. Many of these waterfront
15 parks, certainly in your district as well as
16 throughout the city, have impacts to ecologically
17 sensitive areas when they're built and developed,
18 whether it's repairing piles or piers.

19 So for many of these new parks
20 there have been conscious efforts to design
21 restorations as part of those projects. Brooklyn
22 Bridge Park is one specific example I'm aware of
23 in your district where the shoreline has been
24 designed in a way to be a softer shoreline to
25 allow more sensitive areas.

1
2 There is restoration for wetlands
3 taking place at Bush Terminals Park in Sunset
4 Park. I'm not as familiar with Bushwick Inlet
5 Park. I'll let my colleagues answer if they have
6 anything further to add. But that is something
7 that we are evaluating as we move forward.

8 It also relates to some of our
9 other initiatives, not just specifically looking
10 at wetlands but also looking at how resilient our
11 shorelines are to climate change, which was the
12 topic of the hearing at last month's meeting of
13 this committee.

14 So we're looking at those design
15 standards that we use on the Parks Department as
16 well as other city agencies that are building
17 waterfront parks infrastructure and looking for
18 opportunities to incorporate softer shorelines
19 with more ecologically sensitive areas.

20 COUNCIL MEMBER LEVIN: I know that
21 a friend of mine has done some work with regard to
22 reestablishing some of the oyster fishery type
23 ideas along Bayridge Flats and he's also been
24 involved I think with, I think it's ospreys off of
25 Red Hook. Are you looking at any types of pilot

1
2 programs like that? Obviously small bore stuff
3 that potentially could provide a good model.

4 AARON KOCH: Yeah. You may
5 consider it small bore but we think that the
6 smaller pilots are actually quite important. What
7 I know you're speaking of, one of the efforts it
8 to reintroduce oysters. The city has had to pilot
9 beds in Jamaica Bay. We're also part of a
10 consortium, the Oyster Research Restoration
11 Project with our partners that we've been a
12 participant of and supporter of, which has four
13 other sites in the city, one of them being in
14 Bayridge Flats.

15 So we are working with them.
16 There's a working group through the Harbor Estuary
17 Program that we are a part of. We attend those
18 meetings, myself and my colleague John McLaughlin
19 from DEP, who has led the projects to restore, to
20 pilot the restoration of oysters in Jamaica Bay.
21 So we are looking at those technologies and
22 participating with all the different various
23 environmental groups and state and federal
24 agencies that also are concerned about this.

25 COUNCIL MEMBER LEVIN: Great. Just

1
2 about Bushwick Inlet, I would love to work with
3 you guys to look into--just to give you a brief
4 history--it's not a park yet. It was part of the
5 2005 rezoning where the city kind of promised to
6 make a very large capital investment that has not
7 quite materialized at this point, particularly in
8 the area that was indeed the swampy wetlands area.

9 In looking at some of the old maps,
10 that inlet used to go close to probably a mile
11 inland. There's a small vestige of it left. But
12 maintaining that or reintroducing some of the
13 wildlife there, some of the ecology would be a
14 wonderful addition and very welcome by the
15 constituents that I represent. Thank you, Mr.
16 Chairman. Thank you.

17 AARON KOCH: Thank you.

18 CHAIRPERSON GENNARO: Thank you,
19 Council Member Levin. Before I recognize Council
20 Member Lander, which I'm going to do in a moment,
21 I just want to put on the record that regarding
22 the passage of the Preconsidered Resolution, we
23 did indeed receive a statement from the New York
24 State Attorney General in support of the Council's
25 action to file this brief. I just want to put on

1
2 the record that we did get the support of the AG
3 in the action that we're taking. I think that
4 bears mentioning. Now it's mentioned; it's on the
5 record.

6 So we'll go back to wetlands and
7 I'm happy to recognize Council Member Lander for
8 questions.

9 COUNCIL MEMBER LANDER: Thank you,
10 Mr. Chairman. In that spirit, I want to recognize
11 the work of Lemuel Srolovic, who is the Chief of
12 the Environmental Bureau for the Attorney General
13 and who's leading the way on this suit and is a
14 good friend of the Council and who's work I'm
15 delighted that we're supporting as well as the
16 attorney general himself.

17 The question I want to ask actually
18 is far from--well not that far from Brooklyn, just
19 across the water, a borough over. I want to ask
20 about the north shore of Staten Island. I chair
21 the Land Use Subcommittee that includes maritime
22 uses. So we've been keeping an eye on the plans
23 for Staten Island, which I know the economy being
24 what it is, they're going slower than they might
25 have, but are still moving along, you know

1
2 involved thinking about wetlands restoration and
3 some possible mitigation there.

4 So I just wonder if you could kind
5 of give us an update on what wetlands work you're
6 doing on the north shore and to the extent that
7 there continues to be some thinking about
8 balancing north shore wetlands restoration and
9 potential future development at Berth 4 or what
10 the status is.

11 AARON KOCH: Sure, I can speak
12 about Berth 4 specifically and then I'll invite my
13 colleagues to talk about other balancing efforts.
14 As I understand the issue, the expansion of the
15 container terminal would be looking to fill some
16 existing wetlands. Part of that, if permitted,
17 the mitigation for that loss of wetlands would be
18 used to mitigate Arlington Marsh, which is a
19 parcel we've talked about and identified, which
20 has levels of contamination that need to be
21 addressed and would present liability concerns to
22 the city if we took it on as public parkland.

23 As I understand that issue right
24 now, the City's Economic Development Corporation
25 is still partnering with Container Terminal on the

2 EIS and trying to move that forward. I understand
3 that the project, because of the toll increase, is
4 sort of stalled at the moment. We continue to
5 monitor that very closely. We have maintained our
6 commitment to transfer Arlington Marsh to the
7 City's Parks Department, but in order for that to
8 happen, we need to address those underlying
9 liability concerns within contamination and other
10 issues before we are willing to really do that and
11 make it available as public parkland.

12 So we're monitoring that situation.
13 Our Economic Development Corporation is in
14 constant communication with the Port Authority and
15 the Container Terminal. I understand that there
16 are a lot of discussions taking place between that
17 level and the State Governor's Office and the Port
18 Authority on that.

19 COUNCIL MEMBER LANDER: Thank you.
20 I look forward to hearing more as that process
21 moves forward.

22 Another thing that we've talked
23 about in both this committee and in the
24 subcommittee and that relates to this question of
25 sort of working with the state goes to the

1
2 permitting issues. I know there's some new
3 leadership at Region 2 and I know that we've
4 talked in the past about the challenges. We all
5 want to get the balance right. We want to restore
6 wetlands. We want to protect the harbor. We want
7 to continue to improve water quality.

8 In some cases, projects that I
9 believe would have had a direct and will have a
10 direct environmental benefit, took a long time to
11 get permitted. In other cases, something that
12 might have been thought of as more as an economic
13 development or transportation project, this
14 process was sort of being able to work through
15 those issues and come to a good resolution were
16 taking a very long time with DEC.

17 I wonder, just with some new
18 leadership there if you could give us an update as
19 all this work moves forward on where the City and
20 the State DEC's relationship is.

21 AARON KOCH: Sure. I mean, we've
22 shared the concerns that you've raised and that
23 many other people have raised about the time it
24 takes for permitting to take place by the state.

25 We have improved our relationship

1
2 with the state since the new administration has
3 come in; the new leadership in Region 2 has been
4 much more receptive to talking with us and working
5 with us. We actually have a very good strong
6 relationship with them moving forward, where we
7 are collaborating with them to try to improve
8 permitting times.

9 One of the things I mentioned in
10 mitigation, banking is one way that we think we
11 could unlock some of this opportunity. That if we
12 had larger restoration projects which could then
13 generate credits for these smaller sites, which
14 tend to be very small mitigation sites, which tend
15 to hold up a lot of these economic development
16 projects, we think that would be one of the ways
17 that we could not only promote larger wetland
18 restoration opportunities but also speed up the
19 amount of time it takes to receive environmental
20 permits from the state.

21 I'm happy to report that DEC has
22 been a good partner in speaking with us. I was on
23 the phone with them twice last week, trading
24 emails last night in advance of the hearing. So
25 we're very much tied in with them and working

2 through the issues with them to try to both
3 improve environmental quality as well as speed up
4 permitting times without harming the environment.

5 COUNCIL MEMBER LANDER: Thank you.
6 Thank you, Mr. Chairman.

7 CHAIRPERSON GENNARO: Thank you,
8 Council Member Lander. Thanks for your
9 involvement in these issues and your sitting on
10 this board and doing great stuff. Thank you.
11 That's great.

12 I just want to kind of return to
13 the colloquy you were having about Arlington
14 Marsh. I missed some of that. I was talking to
15 the counsel to the committee and doing my chairman
16 stuff and I missed some of that.

17 My recollection was when this
18 process first played out that the Arlington Marsh,
19 which we called like Arlington Marsh Cove back
20 then. Are they different? It seemed like it was
21 called Arlington Marsh Cove. I'm going back. Let
22 me just kind of finish what I'm saying here.

23 This was something that was not
24 going to be included. Then we worked with Deputy
25 Mayor Dan Doctoroff who was like the PlaNYC guy

1
2 back then. Myself and the environmental analysts
3 that worked for me at the time, we really tried to
4 get that included. We offered to take Deputy
5 Mayor Doctoroff out there on a boat, which we did.
6 We went out there in a fire boat. Were you there
7 Bill, that day we did? Yeah.

8 We did the boat, went out there,
9 and walked around. Then many, many months later,
10 it had this special review status and we were
11 fighting for it. Then we got the word that it was
12 going to be part of the whole transfer package or
13 whatever.

14 Now what you're saying, Mr. Koch,
15 is that there are like these legal problems with
16 some kind of contamination. But the city owns it
17 now; it's owned by EDC. Then it was like okay, we
18 need this land for the expansion of the port
19 maybe. But then, even the port said that we don't
20 need it. Then that seemed to pave the way for it
21 to be included in the transfer process.

22 So the first impediment was that
23 the port needed it for expansion until the Port
24 said: no, we don't. Now there's some kind of
25 contamination issue. I know you just went over

1
2 this a little bit with Brad. I need to kind of
3 understand what's going on a little bit better,
4 not withstanding the fact that you just
5 articulated this. So, sorry about that, but where
6 are we again?

7 AARON KOCH: Mr. Chair, I'll take a
8 stab at refreshing your memory. There are
9 actually three parcels in the Arlington Marsh area
10 that were considered by the Transfer Task Force as
11 the primary consideration for transfer. You're
12 absolutely right; the cove parcel was probably
13 considered the most important.

14 CHAIRPERSON GENNARO: Right.

15 AARON KOCH: It's also the one that
16 directly adjoins the expansion of the Container
17 Terminal. So there's a common boundary there and
18 therein lies one of the continuing issues, too, of
19 where that boundary physically lies with the
20 expansion project. Since the expansion project is
21 still ongoing, that's been one of the delays to
22 moving forward to set where that line is. The
23 other two--

24 CHAIRPERSON GENNARO: [interposing]
25 So the line is not known in that we don't know

1
2 what the expansion is going to--like we don't know
3 where the end of the expansion is going to be?

4 AARON KOCH: You've certainly seen
5 it on a map and people have talked about it, too,
6 but the project itself isn't under final design.
7 It was in environmental review. So, again, the
8 final dedicated property boundary isn't set yet.

9 CHAIRPERSON GENNARO: So we know
10 the boundary but we don't know it kind of?
11 Meaning, like we know it but it could change?

12 AARON KOCH: Yes.

13 CHAIRPERSON GENNARO: Again, I
14 don't want to belabor it, I just want to
15 understand. We know the boundary but it could be
16 subject to change pending the final design of the
17 expansion, is that a fair way to say it?

18 AARON KOCH: Actually, you put it
19 exactly right, yes.

20 CHAIRPERSON GENNARO: And then once
21 that is known, so we have to know that before we
22 can do the transfer, right? Because we have to
23 know where the line is?

24 AARON KOCH: Ideally, yes.

25 CHAIRPERSON GENNARO: Then there

1 was some issue with some kind of contamination.

2 What's that about and what--

3
4 AARON KOCH: [interposing] The
5 other thing you may not remember, too, is the
6 industrial manufacturing history of the area. So
7 even though Arlington Marsh Cove is the last and
8 largest remnant wetland on the north shore, it
9 actually was an industrial site. So, again, there
10 are relics of that past to not only the cove
11 parcel but the two other parcels that are part of
12 the transfer--

13 CHAIRPERSON GENNARO: [interposing]
14 Right.

15 AARON KOCH: --what are called the
16 peninsula parcel and the Bridge Creek parcel too.
17 They're all part of steel making and ship building
18 at the turn of the century.

19 CHAIRPERSON GENNARO: So the issue
20 there is that this is a parcel that's currently
21 owned by the EDC, right? And in transferring that
22 to the Parks Department, but the Parks Department
23 doesn't want to get stuck with the bill for the
24 remediation of it? Is that the issue? I'm just
25 trying to understand. I don't want to take issue

1
2 with it, I just want to get it.

3 AARON KOCH: That is something
4 we're evaluating. There are potential liability
5 concerns of incorporating it into the city's
6 public parkland portfolio. So that is a concern
7 that the city has. One of the hopes is that
8 through the expansion of the Container Terminal
9 that the sites that you mentioned would be
10 mitigated as part of the development, and that
11 that would allow for a revenue source and an
12 opportunity for cleanup to happen, which would
13 then help eliminate some of that underlying
14 liability for the site before it's transferred to
15 parkland.

16 CHAIRPERSON GENNARO: So who are
17 the players here? The players are the Parks
18 Department, the EDC, the entity that's expanding
19 the port and DEC? Again, Brad, you're like a big
20 guy on this whole thing, so I just feel like I
21 want to, perhaps beyond this hearing, be brought
22 up to speed with some of the issues that are
23 manifest here. But you're all up to speed on
24 this, you--

25 COUNCIL MEMBER LANDER:

1
2 [interposing] No, no, no. I mean I was asking
3 because I hadn't checked in on it in a while. And
4 I think it might be worth our while, I don't know
5 in what combination of Economic Development,
6 Waterfronts, Environmental Protection, and in
7 consultation with Council Member Rose to either do
8 an oversight hearing on sort of where things are
9 or at least sit down and talk about it. I mean--

10 CHAIRPERSON GENNARO: [interposing]

11 Or just have a meeting, to just have a meeting--

12 COUNCIL MEMBER LANDER:

13 [interposing] Right, we can just sit down. And
14 this is what happens, it's an understandable
15 challenge.

16 CHAIRPERSON GENNARO: Right.

17 COUNCIL MEMBER LANDER: The idea
18 was to produce this environmental remediation and
19 open space benefit as a mitigation, in part funded
20 by and in part as an environmental mitigation with
21 DEC for the expansion of Berth 4. That all
22 sounded good. This expansion of Berth 4 has gone
23 slower than I think we might have hoped. Some of
24 that's the economy, some of that's some broader
25 toll issues. We need to sit down and understand,

1
2 you know are we still on a good, if slower, path.
3 Anyway, so it sounds like we need to learn some
4 more. And we could do that either--

5 CHAIRPERSON GENNARO: [interposing]

6 Sure. I will direct staff to work with Council
7 Member Lander and Council Member Rose and if Mike
8 Nelson as the Waterfront guy, he's the chairman of
9 that committee, fine, I just think I just want to
10 know what's going on. I have invested a lot in--
11 this is part of the reason why we have these
12 hearings. We did this law, this law, this law,
13 this law. We've got to go back and take a look at
14 how it's all going. So this committee does that.
15 We pass laws and then we go back and we take a
16 look.

17 So this is something I think I just
18 want to be more facile with and what may be ways
19 that we can help or if not, at least fully
20 understand what's going on. I'm sure there are
21 people in the preservation community--so we just
22 want to take a look at that, so Bill if you could
23 work with all the people I just mentioned to set
24 up some sort of meeting that we could get a better
25 sense of what's going on, that would be great.

2 AARON KOCH: Thank you, Chairman.

3 We're happy to meet with you and provide you
4 whatever information you need and try to--

5 CHAIRPERSON GENNARO: [interposing]

6 You guys are the good guys and I certainly
7 appreciate that. So the boat ride kind of got Dan
8 on board.

9 COUNCIL MEMBER LANDER: I'm

10 enthusiastic both about the restoration and the
11 wetlands preservation opportunities and the open
12 space opportunities and about the economic
13 development at Berth 4, so let's talk about what
14 we're going to do move those things along.

15 BILL TAI: Councilman, I just might
16 add too--

17 CHAIRPERSON GENNARO: [interposing]

18 Yes, please Bill.

19 BILL TAI: One of the other

20 legacies of the wetland initiatives moving along
21 that might underscore what Aaron had already
22 mentioned is the fact that DCAS has now put all
23 these wetland parcels on hold. So, again, that's
24 an added measure of protection that wasn't there
25 last time around, too. So for other uses besides

1
2 the expansion of the terminal, those would be an
3 advanced heads-up to the Parks Department.

4 CHAIRPERSON GENNARO: I see.

5 Right, right, right.

6 BILL TAI: So we're talking about
7 one use and the sustained project that we were
8 talking about before, not other projects.

9 CHAIRPERSON GENNARO: Right.

10 BILL TAI: So that threat has been
11 much reduced.

12 CHAIRPERSON GENNARO: Okay.

13 BILL TAI: Appreciate that.

14 CHAIRPERSON GENNARO: This is all
15 good. Thank you, Council Member Lander. Let me
16 go back to some of the notes that I made in the
17 testimony. I'll just go in the same order.

18 So the first thing you spoke about
19 was Local Law 31. Part of your statement, Mr.
20 Koch, regarding Local Law 31, bottom of page two,
21 was about seeking to acquire vulnerable privately-
22 owned sites. It talked about the Parks Department
23 acquired almost 300 acres, DEP, 325. Those were
24 privately-owned sites, those acreages that are
25 listed in that part of your statement?

2 AARON KOCH: I believe so. I would
3 have to verify with the Parks Department but I
4 believe that is the case, yes.

5 CHAIRPERSON GENNARO: I'm just kind
6 of--

7 AARON KOCH: [interposing] That
8 does not include the transfers of city-owned
9 property from the Wetlands Transfer Task Force to
10 the Parks Department. So it's separate than that.

11 CHAIRPERSON GENNARO: Separate. My
12 question is how--and it's a good thing--how the
13 Parks Department got to acquire 300 acres of
14 privately-owned sites and DEP got 325 acres. I
15 guess DEP, I know as chairman of that committee,
16 had like an acquisition process in Staten Island,
17 just like they do in the upstate in drinking water
18 supply watersheds. So I'm figuring that's how DEP
19 got the 325 acres of the wetlands for the Staten
20 Island Bluebelt, you know they bought them. But
21 I'm just curious how the Parks Department got 300
22 acres of previously privately-owned wetlands.
23 Anybody know how that happened?

24 BILL TAI: Mr. Chair, I don't know
25 the exact breakdown. But what I was mentioned to

2 Aaron is our figure is probably a mixed bag of
3 acquired private property and properties that were
4 transferred.

5 CHAIRPERSON GENNARO: So the 300
6 acres for Parks, that's a combination of transfer
7 properties, which would be publicly-owned with
8 city-owned that were transferred to Parks through
9 the wetlands transfer and other acres, did the
10 Parks Department buy them?

11 BILL TAI: With our meager
12 acquisition budget, yes, we still continue to try
13 and acquire private parcels too.

14 CHAIRPERSON GENNARO: I see. I was
15 just curious about that.

16 AARON KOCH: If I may add, some of
17 those are in partnership with other agencies. So
18 Trust for Public Land, for example, has been a
19 good partner of ours in some of those
20 acquisitions.

21 CHAIRPERSON GENNARO: Right. I was
22 just curious about how this sort of came about.

23 AARON KOCH: It's a mix of funding
24 sources, some from the public agencies, some in
25 partnership, and some through other funding. We

1
2 remain interested in further evaluating
3 opportunities to do acquisitions and to look at
4 those more vulnerable sites and evaluate whether
5 there are additional acquisitions we can make.

6 CHAIRPERSON GENNARO: Right.
7 That's certainly good to hear that that has
8 happened. There was a part of your testimony
9 regarding Local Law 31 that while we thought that
10 one of the main thrusts of Local Law 31 might be
11 to do a regulatory program to protect parcels that
12 were not protected by the state or by the federal
13 government, it looks like your analysis revealed
14 that most of these parcels are kind of owned by
15 the government anyway. There's just a small
16 percentage that aren't. Perhaps the creation of
17 some kind of regulatory paradigm wouldn't be
18 necessary and instead we should focus on those
19 public properties and how to protect them. Is
20 that--

21 AARON KOCH: [interposing] Yes.

22 CHAIRPERSON GENNARO: I'd like you
23 to expand upon a little bit.

24 AARON KOCH: Sure. So, as I
25 mentioned, 98 percent of the city's wetlands are

1
2 either regulated by the state, regulated by the
3 federal government or in public ownership. Only
4 two percent are not. Of those 2 percent, we can
5 provide more figures for those.

6 CHAIRPERSON GENNARO: Right.

7 AARON KOCH: But the vast majority
8 of them reside on about a thousand tax lots and
9 they're very, very small wetlands parcels and not
10 even mapped by the state, because the state's
11 mapping doesn't go that small. We just have
12 determined that--

13 CHAIRPERSON GENNARO: [interposing]
14 And these would fall into that like less than 12.4
15 acre sort of catchments, right?

16 AARON KOCH: Yeah. There are very
17 few parcels bigger than one acre that are
18 unprotected. Most of those are literally
19 hundreds, if not a thousand parcels that add up to
20 about 2 percent of our wetlands.

21 CHAIRPERSON GENNARO: Right.

22 AARON KOCH: So we've determined
23 that creating a new permitting scheme which would
24 require a whole range of analysis and work and
25 legal work and your work is not the best way that

1
2 we want to spend our time. We think focusing on
3 that 98 percent that we can do a better job of
4 finishing wetlands transfers recommended by the
5 task force, partnering with our state and federal
6 partners and nonprofit groups to do better
7 restoration efforts, improve our collaboration
8 with the state on regulatory efforts.

9 CHAIRPERSON GENNARO: Right.

10 AARON KOCH: There are a lot of
11 things that we think is a better use of our time
12 and efforts to ultimately result in better
13 protection, better restoration and overall better
14 environmental quality for the city. So it's a
15 matter of being strategic about where we want to
16 focus. Our determination is that we want to focus
17 on that 98 percent that we control versus the 2
18 percent.

19 CHAIRPERSON GENNARO: Let me follow
20 that up with a question. Everyone knows that the
21 Bloomberg Administration are champions of
22 environmental protection and long-term
23 environmental sustainability. There's no real
24 debate about that. We're more than happy and very
25 confident that the Bloomberg Administration will

1
2 do whatever it can in order to move that forward.

3 But kind of thinking down the road
4 to subsequent administrations that may or may not
5 have the same environmental focus, I'm wondering,
6 and not having read the report yet that was
7 produced last month, or I guess this month,
8 whether or not there is a legislative
9 recommendation that could be or should be
10 implemented in order to make sure that subsequent
11 administrations continue the focus of trying to do
12 the best for these unprotected parcels. Do we
13 need that? Is there a legislative recommendation?

14 This is also part of my focus in
15 our less than two year and counting time clock
16 that we have here, you know when I leave and when
17 the Bloomberg Administration leaves to make sure
18 that the good environmental efforts that we've
19 done for the last ten years and one month continue
20 to go on. This is a focus of mine to make sure
21 that we crystallize many of these good initiatives
22 as possible into law so that subsequent City
23 Councils and subsequent Mayors will have to follow
24 through on these good efforts.

25 So is there a legislative

1
2 recommendation that needs to be put forward or
3 could be put forward to help this? What do you
4 think about that?

5 AARON KOCH: Well, we don't
6 recommend one in the draft strategy that's before
7 you. We remain open to talking about if there are
8 ideas that you have. I think, more than anything,
9 we've had all these really great bills over the
10 recent years and our task right now is to
11 implement.

12 CHAIRPERSON GENNARO: Right.

13 AARON KOCH: We've done the
14 analysis. We've done the research to a large
15 degree. What we want to focus on is actually
16 implementing all of these different plans,
17 strategies, task force recommendations that have
18 been put forward. So we don't recommend a new
19 local legislative effort, but we always remain
20 open to talking to you if you feel that there's
21 more that we could or should be doing.

22 CHAIRPERSON GENNARO: Okay. Thank
23 you for mentioning Meadow Lake, which is in my
24 district. I've given a couple of iterations of
25 capital funding for the restoration of Meadow

1
2 Lake. I know that that's in the works. That's
3 great.

4 You mentioned also in your
5 statement the Hudson Raritan Estuary comprehensive
6 restoration plan. I don't know really anything
7 about that effort. Just take a minute to kind of
8 bring me up to speed on what that is.

9 AARON KOCH: Sure. What that is,
10 it's a plan that's being developed, primarily by
11 the Army Corps of Engineers, through sponsorship,
12 local match of the Port Authority. It's bringing
13 together a whole range of public agencies as well
14 as nonprofit groups, a whole range of stakeholders
15 to evaluate the opportunities to do, as it says,
16 comprehensive restoration of the whole estuary.
17 So it's not just New York City sites but also many
18 sites in New Jersey.

19 They released as draft of this
20 plan, I believe it's 2009. The City continues to
21 work with all of these partners to finalize that
22 plan. The idea behind the plan, basically, is
23 that once we finish it, it can provide a framework
24 upon which the federal government can allocate,
25 appropriate funding for the restoration under the

2 Army Corps and congressional provisions now
3 pending Congress and the ability to act.

4 CHAIRPERSON GENNARO: Sure.

5 AARON KOCH: Of course. So it's a
6 large regional plan. So far evaluated, I believe,
7 500 or so restoration sites. There are many
8 different working groups looking at everything
9 from wetlands restoration to oysters and other
10 ecological restoration, looking at public access,
11 looking at shoreline restoration.

12 So it's a very broad comprehensive
13 plan in its geography as well as well as in what
14 it's trying to accomplish, not just wetlands,
15 certainly. It's something that we've been a
16 partner to and look forward to continuing to work
17 with the Army Corps, Port Authority and other
18 stakeholders to try to complete and then
19 ultimately advocate for funding on this plan from
20 the federal level.

21 CHAIRPERSON GENNARO: Thank you for
22 that knowledge. Going to Local Law 83 of 2005,
23 the wetlands transfer. I was following along when
24 you were reading your statement, but if you or
25 Bill could sort of go over for me quickly about we

2 did this and the original target was to transfer x
3 amount of parcels or acres and how many so far
4 have been done and how many are sort of in
5 process? I know this is kind of like--

6 AARON KOCH: [interposing] Yes.

7 CHAIRPERSON GENNARO: --but it was
8 hard for me to absorb.

9 AARON KOCH: No, I'm happy to
10 continue to explain this. So, as I mentioned,
11 we've transferred so far 96 acres. Those are
12 complete, already in Parks' possession. There's
13 another 98 acres--

14 CHAIRPERSON GENNARO: [interposing]
15 Again, I'm speaking as a scientist and not a
16 lawyer, but anytime it goes from one agency to
17 another there's all kinds of legal work, there's
18 all kinds of stuff and it's all kinds of people
19 signing papers, right?

20 AARON KOCH: Yes.

21 CHAIRPERSON GENNARO: It's a whole
22 big deal, right?

23 AARON KOCH: Yes.

24 CHAIRPERSON GENNARO: So once all
25 the papers are signed, it's parkland then. Like

1
2 period at the end, no one can touch it, you know
3 it's an act of the State Legislature, it's got to
4 be alienated and all that. So that's what we're
5 doing here, right? These become sort of full-
6 fledged Parks properties and that was the whole
7 idea behind doing that.

8 So a total of 96 acres, which
9 probably represents some number of parcels,
10 whatever, have been fully transferred, signed,
11 sealed, delivered, done. So how many are in
12 process? But before you get there, so the 96
13 acres represents like what number of parcels?

14 AARON KOCH: One second please.
15 It's nine parcels, which some of those nine
16 parcels--so there were 82 that were recommended
17 for transfer to Parks. Then there were another
18 111 that were recommended for special review.

19 CHAIRPERSON GENNARO: Right.

20 AARON KOCH: A total of 193. Of
21 those 193, 9 have been transferred so far, and
22 then an additional 11 are pending. The first nine
23 that were already transferred represents about 96
24 acres. The next 11 that Parks is currently
25 working to transfer represents 98 acres. So that,

1
2 overall, is about 194 acres. That represents
3 about a third of the total 193 parcels together.
4 So that's that.

5 Just the 82 that were outright
6 recommended--

7 CHAIRPERSON GENNARO: [interposing]
8 Outright recommended, not the special review?

9 AARON KOCH: Yeah.

10 CHAIRPERSON GENNARO: Right.

11 AARON KOCH: Was about 220 acres.
12 So once this total set is completed, we will have
13 achieved close to 194 out of 220. So based on
14 what the task force said they would do, we're
15 getting close to that amount. In addition to
16 those Parks properties, we've also transferred
17 about 80 percent of the parcels that were
18 recommended for transfer to DEP for the Bluebelt
19 system. So we've made great progress on that as
20 well, and those are being incorporated into the
21 Bluebelt system and will be, as that is further
22 developed--

23 CHAIRPERSON GENNARO: [interposing]
24 Right. And those parcels belong to various
25 agencies but now they're part of the DEP Bluebelt.

2 AARON KOCH: Yes. Correct.

3 CHAIRPERSON GENNARO: It's almost
4 like a curiosity, but rather than transfer to
5 Parks, they're transferred to DEP, but it's not
6 like money changed hands in the budget. It's not
7 like DEP, through their land acquisition program
8 paid money to another agency for any of those
9 parcels. That was just used for getting private
10 parcels, right? Does anybody know that?

11 AARON KOCH: I believe that's the
12 case. I would have to confirm. Now, even though
13 the transfer may not--

14 CHAIRPERSON GENNARO: [interposing]
15 Does Mr. McLaughlin know that? Okay.

16 AARON KOCH: Now, but there still
17 are obligations once those parcels have been
18 transferred. So, for the example of the parcels
19 that have been transferred to DEP, they assume
20 additional responsibilities to incorporate those
21 in the Bluebelt system and ultimately do maintain
22 and upkeep those. Similarly with the Parks
23 Department, when they accept parcels into their
24 parklands portfolio, that raises their obligation
25 to maintain and manage these parcels which is

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obviously an added cost.

CHAIRPERSON GENNARO: Sure. That was a kind of curiosity. So the fate of the parcels that were outright recommended for transfer, there was that, and then there was 111 parcels that were special review. What is the potential fate of a parcel that's in that special review bucket? It could either get put into a formal recommendation to actually transfer, because they're under special review, so that review, it begins and it ends. Each of those parcels ultimately gets like a final determination. Of those 111 that were under special review, how many of those 111, has there been a final recommendation made and how many are yet to be finally recommended? I didn't put that in a very artful way.

While you're thinking about the answer to that question, we're going to give Council Member Crowley an opportunity to vote on the Preconsidered Resolution. We thank Liz for being here. I would ask the clerk to give Council Member Crowley an opportunity to vote on the Preconsidered Resolution.

2 WILLIAM MARTIN: Preconsidered
3 Resolution, Council Member Crowley?

4 COUNCIL MEMBER CROWLEY: I vote
5 aye. Thank you, Mr. Chairman.

6 CHAIRPERSON GENNARO: Sure. You
7 but, thank you for your vote.

8 COUNCIL MEMBER CROWLEY: I'm sorry.
9 I have a--

10 CHAIRPERSON GENNARO: [interposing]
11 No, it's quite all right. Thank you for voting,
12 let's say, my way on this, which is always nice.
13 Council Member Levin wants to get my attention.

14 [Pause]

15 CHAIRPERSON GENNARO: Council
16 Member Levin wants to put a coda, so to speak, on
17 my question. I'm happy to have Council Member
18 Levin add another layer to my question.

19 COUNCIL MEMBER LEVIN: Thank you,
20 Mr. Chairman. I just wanted to know if you could
21 disclose where those 11 parcels are--

22 CHAIRPERSON GENNARO: [interposing]
23 111 of the special review.

24 COUNCIL MEMBER LEVIN: 111?

25 CHAIRPERSON GENNARO: Yes, 111.

2 COUNCIL MEMBER LEVIN: Where
3 they're located?

4 AARON KOCH: We're happy to
5 disclose all of it. Certainly, the 111 that were
6 recommended for special review is published in the
7 wetlands transfer task force. I'm happy to work
8 with your staff to get you those numbers. The
9 ones that have already been transferred are
10 certainly public record. We're happy to provide
11 that to you, and as well as the ones we're
12 preparing to transfer, also we're happy to share
13 with you. I have a list, I'm happy to--

14 CHAIRPERSON GENNARO: [interposing]
15 Sure. You know what we'll do--

16 AARON KOCH: [interposing] In the
17 interest of time--

18 COUNCIL MEMBER LEVIN:
19 [interposing] We'll follow up later. We'll follow
20 up after.

21 CHAIRPERSON GENNARO: What I think
22 makes sense, if I can ask Bill Murray, my staff
23 but also works here with the committee, to kind of
24 get like a full scorecard on where we are on the
25 parcels that we recommended for transfer and the

1
2 111 that are still--well I mean not all of them
3 are still under special review. Some of those
4 111, there's been a final determination made; it's
5 just that there were 111 that were originally put
6 into that category. Now, presumably there are
7 still not 111 in that category, right?

8 AARON KOCH: We've completed
9 special review of the 111. Now, we have not made
10 final determinations on those parcels. We would
11 like to transfer parcels into the City's Parks
12 Department as recommended. However, in order to
13 do so, there are a lot of liability concerns and
14 challenges with accepting a lot of these parcels
15 into the city's parklands.

16 To put it into simple terms, our
17 ability to transfer additional parcels is going to
18 come down to how much funding we have available to
19 resolve some of these liability concerns and do
20 necessary work, whether it's remove contamination,
21 whether it's to improve siting and safety and
22 security of these sites. That's something that we
23 are evaluating. We are currently working, the
24 Parks Department, with other partners to evaluate
25 the cost, potential cost to do further work that

1
2 would be necessary for the Parks Department to
3 accept these transfers to happen.

4 We also think that there may be
5 other opportunities in some of the other things
6 I've talked about with restoration and mitigation
7 banking that some of these parcels, that some of
8 those other funding sources, whether it's through
9 mitigation or through restoration funds may be
10 able to be applied to do the necessary work to
11 allow the transfers to happen.

12 CHAIRPERSON GENNARO: Right.

13 AARON KOCH: So we're working
14 through further evaluating the cost and the
15 feasibility of increasing the number of parcels
16 that have been transferred. We'll continue to do
17 that. We're happy to share that information and
18 explain it in a greater level of detail with you.
19 We haven't made final determinations as far as a
20 number of parcels that we will not accept. At the
21 end of the day, I think it really comes down to
22 cost and our ability to take them on and have them
23 be safe, productive parts of the city's park
24 system.

25 CHAIRPERSON GENNARO: Right. The

1
2 Wetlands Transfer Task Force that was put
3 together, that was comprised of representatives of
4 the Bloomberg Administration and the Council made
5 appointments to that as well. That group as an
6 entity is really no longer in existence, other
7 than the members of the Bloomberg Administration
8 that were part of it. That had its job to figure
9 out which parcels were going to be recommended for
10 transfer and then it kind of went out of
11 existence, right? It's really for the
12 Administration to sort of carry the work forward?

13 I get confused, because we had the
14 Jamaica Bay Task Force and then we had the
15 Wetlands Transfer Task force. I think it was the
16 Wetlands Transfer Task Force where the
17 appointments of the Administration were people
18 from the Administration and for Jamaica Bay it was
19 people outside the Administration that I think
20 were appointed by the Administration to do that.

21 So the work now is being carried on
22 by the Administration and not the Wetlands Task
23 Force as some entity, right?

24 AARON KOCH: Yes, that's correct.
25 The Wetlands Transfer Task Force is no longer in

1
2 existence. It had not met for many years.

3 CHAIRPERSON GENNARO: Right.

4 AARON KOCH: However, we have not
5 forgotten about the work of that task force.

6 CHAIRPERSON GENNARO: Sure.

7 AARON KOCH: And then the work
8 happened and we certainly are carrying on and
9 evaluating opportunities to further transfer
10 parcels. So the task force no longer exists but
11 the work is not forgotten.

12 CHAIRPERSON GENNARO: Certainly we
13 look forward to getting more of a breakdown as to
14 the parcels that have been transferred, the
15 parcels that were recommended for transfer but are
16 having some issues and working through issues and
17 making that happen and those that are under
18 special review and funding concerns and any other
19 kind of issues that are sort of holding these up.
20 I would like to continue to play a constructive
21 role and maybe lobby for funding to make some of
22 this happen. I think it's appropriate that I do
23 that, and this is one of the reasons why I wanted
24 to have this hearing, you know.

25 AARON KOCH: Thank you. We

1 appreciate that.

2
3 CHAIRPERSON GENNARO: I made
4 trouble in 2005 with this law and I'm still making
5 trouble. I just don't do a lot of the work; you
6 guys do all the work. I just make the trouble. I
7 thank you for your good work in that.

8 We talked about Arlington Marsh.
9 We did that. With regard to the Jamaica Bay
10 Watershed Protection Plan, we're going to be
11 hearing from Mr. Pirani, who was part of that task
12 force, so I look forward to hearing from him.

13 With regard to the nitrogen removal
14 and those investments that have been made, is that
15 primarily the ARP project with is like this
16 ammonia reduction project? It's my understanding
17 that DEP had kind of found this technology, sort
18 of like a low-capital intensive technology to do a
19 lot of very significant nitrogen removal. Was
20 that the main nitrogen reduction technology that
21 was part of what you mentioned here in your
22 statement regard the nitrogen control
23 technologies? Is that the ARP project or am I
24 getting a little too detailed for my own good
25 here?

1
2 AARON KOCH: The ARP project is a
3 piece of the overall strategy to reduce nitrogen.

4 CHAIRPERSON GENNARO: Okay.

5 AARON KOCH: The commitments that I
6 mentioned, about \$195 million to reduce nitrogen
7 into Jamaica Bay by half is a series of upgrades
8 at the wastewater treatment plants feeding into
9 Jamaica Bay. The ARP, for those of you who aren't
10 familiar, is a newer technology that we think has
11 a lot of promise to remove nitrogen, at least from
12 the plants, is one component to that.

13 CHAIRPERSON GENNARO: Right.

14 AARON KOCH: But the other upgrades
15 are beyond that.

16 CHAIRPERSON GENNARO: I will point
17 out that one of the things that's going on with
18 regard to the Jamaica Bay Watershed Protection
19 Plan, you talk about the city's undertaking a
20 bunch of steps, including the removal of invasive
21 species. I just want to let folks know that we
22 have a bill that we're trying to move forward in
23 order to deal with invasive species in New York
24 City. We just had meetings with that and we look
25 forward to that going forward. I don't really

1
2 need for you to comment on that, but it came up
3 here.

4 I guess my last question will be
5 with regard to all of the wetlands-related efforts
6 that we've put forward by way of these local laws
7 and then other things that are not contemplated to
8 be under local law for the time being anyway, like
9 the various plants that are part of PlaNYC, is
10 there any further legislative action that the
11 Administration at least at this point thinks needs
12 to be done in any of these realms?

13 You had previously mentioned that
14 we've done a bunch of law and we have to figure
15 out how to work through the legalities and all of
16 the hurdles in trying to get these fully
17 implemented. I would ask you to have in your
18 minds that to the extent that we need any more
19 laws to really make future administrations pay
20 serious attention regarding wetlands that we're
21 more than happy to oblige.

22 I think that's part of what I'm
23 going to be doing between now and 23 months from
24 now is work with the folks at the Office of Long-
25 Term Planning and Sustainability and the Bloomberg

1
2 Administration about what further laws do we need
3 to make sure that when we're all out of here that
4 the vision of PlaNYC is fully realized.

5 I think that's a good way to make
6 sure that it's fully realized because a subsequent
7 administration and a subsequent council may not
8 have quite the green focus of your good
9 administration and this good council and this good
10 chairman. I'm just going to just say it. I was
11 kind of implying it but I felt I would just go
12 ahead and say it, green shirt and everything.

13 AARON KOCH: I noticed that.

14 CHAIRPERSON GENNARO: Yeah, it's
15 not my favorite shirt but my wife likes it. She
16 goes, you're chairing Environmental, put on the
17 green shirt. It's like, fine, okay, green shirt.

18 That's what I would ask. This is
19 what we do here. We make law, we make
20 environmental law. You folks make environmental
21 policy. We're both good at what we do but we're
22 worried about our legacy and making sure that
23 other people take our work seriously and actually
24 do it. I think this is something that I will be
25 talking a lot between now and when we go.

2 Anything that you could conceive of that you need
3 from us in the way of a local law to continue this
4 good work, we stand at the ready to do that.

5 AARON KOCH: Thank you. We do
6 greatly appreciate that. As I mentioned, we
7 really appreciate your leadership and I think a
8 lot of this work wouldn't have happened without
9 you. So it's certainly been a driver to all the
10 things I've talked about today. We look forward
11 to continuing to talk to you and your colleagues
12 about how we can partner together and ensure that
13 700 days from now we have--

14 CHAIRPERSON GENNARO: [interposing]
15 Right.

16 AARON KOCH: --like 700 days.

17 CHAIRPERSON GENNARO: Is that what
18 it is?

19 AARON KOCH: Yeah.

20 CHAIRPERSON GENNARO: Like 7-0-0?

21 AARON KOCH: Correct.

22 CHAIRPERSON GENNARO: Wow. So is
23 that counting today? Oh, we have 700 days to go?

24 AARON KOCH: That's a trick
25 question. You're asking me trick questions now.

2 CHAIRPERSON GENNARO: Yeah, to go.

3 AARON KOCH: Seven hundred days to
4 go.

5 CHAIRPERSON GENNARO: Wow.

6 AARON KOCH: So we look forward to
7 continuing to collaborate with you and partner
8 with you and see how we can make progress.

9 CHAIRPERSON GENNARO: I think I'm
10 going to do a little--I've never played one of
11 these games where you go and you buy the ticket
12 and you punch the numbers. I've never done it.
13 Do they have one that has three numbers? Okay.
14 Oh no, I just gave the idea. Everyone is going to
15 do it now. So if 700 hits, we're all going to be
16 winners and I'm going to share it 18 ways rather
17 than just having it all myself. Yeah, we should
18 do that, we should play 700 the number.

19 Grateful for the opportunity to
20 work with this great Administration and how green
21 you guys are. When the Mayor first put forward
22 the whole notion of creating the Office of Long-
23 Term Planning and Sustainability and doing a
24 PlaNYC and people wanted to know is was threatened
25 by that. I'm like, absolutely not. They've got

1
2 terrific resources at their disposal and that are
3 coming from a good place.

4 We don't have these kinds of staff
5 resources at the Council, and just to be able to
6 work with the Administration that has built a
7 whole environmental think tank and all this
8 environmental knowledge that now resides in the
9 Office of Long-Term Planning and Sustainability,
10 it's really been a great partnership that I look
11 forward to the next 700 days to get as many good
12 things as we can.

13 Even with this hearing, I'm happy
14 to work with your folks a little bit to push back
15 a little bit to give you time to put together the
16 great presentation that you made today. Is there
17 anyone here from the Office of City Legislative
18 Affairs? They played a role in kind of getting us
19 to this. Is there anyone here from City
20 Legislative Affairs?

21 AARON KOCH: Eric Munson was here
22 but he left shortly ago.

23 CHAIRPERSON GENNARO: Who?

24 AARON KOCH: Eric Munson. He
25 staffs waterfront typically.

2 CHAIRPERSON GENNARO: Oh, fine.

3 Okay. I just want to give a nod to them because
4 we worked out how this should be moved back a
5 little bit so that we could get a really robust
6 presentation. You were in the midst of working on
7 this document and looking at all of these other
8 things. So I was happy to make those
9 accommodations.

10 Happy to have you here. Thanks for
11 being here and we look forward to partnering with
12 you over the next 700 days to make sure that all
13 this good stuff gets done. We'll just take a
14 deputy mayor out on a boat to Arlington Marsh
15 again. That was a lot of fun, Bill, and we
16 appreciate doing that. Thank you all very much, I
17 appreciate it.

18 Just to recap, in terms of our
19 checklist, Bill is going to work with you guys to
20 find out the wetlands transfer. I should know the
21 number of the bill, but Local Law 83 of 2005, sort
22 of like the big tote board on where we are on all
23 of that.

24 Then we're going to work regarding
25 I guess very specifically regarding Arlington

1
2 Marsh. We're going to do a meeting with Council
3 Member Lander, myself, Council Member Rose, who's
4 a local member, maybe Council Member Nelson as the
5 Waterfront guy, and all the various players that
6 have anything to say about Arlington Marsh.

7 So I think that's our checklist,
8 right, that's what we did. Okay, with that said,
9 I want to thank this panel very much and for your
10 great work.

11 I'll call the next. We're going to
12 hear from Rob Pirani, who I'm sure is going to
13 talk about the wetlands part of our hearing. And
14 then our last witness will be Buck Moorhead, who
15 will no doubt talk about the Preconsidered
16 Resolution that the Committee just passed. So
17 Buck, you'll come up after we finish with Rob. So
18 we're going to do Rob Pirani of the Regional Plan
19 Association and then Buck Moorhead will be the
20 next panel, speaking on behalf of NYH20.

21 The counsel to the committee had to
22 leave, so we don't have a lawyer in our midst to
23 formally administer an oath, so we're going to not
24 do that. So we're not going to swear in the next
25 two witnesses. That's fine. We want to make sure

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I have Rob's testimony here.

I want to thank you, Rob, for your years and years of dedicated service to wetlands protection and many other things. We appreciate your service on the Jamaica Bay task force, right? No, okay, the wetlands transfer. I can never get that straight. That's why I have to have these hearings to make sure I get it all squared away. That's right, the wetlands transfer. Rob, we thank you for your long service and for being here today. We welcome you. We just ask that when you start speaking that you state your name for the record and proceed with your good statement.

ROB PIRANI: Well, thank you very much, Mr. Chairman. Obviously, we at the Regional Plan Association really appreciate your leadership and the other Council Members here and your excellent staff for continuing to pursue this issue.

My name is Rob Pirani, I'm the Vice President for Environmental Programs at Regional Plan Association. I think, as you noted, this process has been going on for many years at this point. We're all started to get a little grayer--

2 CHAIRPERSON GENNARO: [interposing]

3 Yes.

4 ROB PIRANI: --more handsome and
5 all those good things as time goes on.

6 CHAIRPERSON GENNARO: Right.

7 ROB PIRANI: But we certainly
8 appreciate your steadfastness in pursuing this. I
9 think as Aaron and his colleagues testified, it
10 takes a long time to accomplish these things and
11 obviously your work is ongoing.

12 CHAIRPERSON GENNARO: But certainly
13 it is very important to let everyone know that we
14 passed these laws, but we still watch.

15 ROB PIRANI: Exactly, exactly.

16 CHAIRPERSON GENNARO: We want to
17 see what's going on. But please, I interrupted.

18 ROB PIRANI: I just want to say I
19 think that just highlights the brunt of my
20 testimony. I think we're very encouraged by the
21 fact that the city, in response to the laws that
22 were indicated, has made a great deal of steady,
23 you know sometimes slow progress towards those
24 goals. We certainly understand that these things
25 take time.

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2 I think it's notable that for the
3 first time in its history, the city really has
4 moved towards adopting a comprehensive approach
5 towards the wetlands that makeup up New York's
6 harbor estuary and the freshwater wetlands that
7 feed into that. I think that's a notable
8 accomplishment.

9 I think the set of initiatives that
10 are included under the draft strategy of
11 protection, mitigation, restoration and assessment
12 all contain a number of important steps and over
13 the next few weeks we'll be reviewing that
14 document in a little more detail and submitting
15 our comments to the city on that.

16 I did want to highlight a couple of
17 things that came up in earlier testimony.

18 CHAIRPERSON GENNARO: Yes, please.

19 ROB PIRANI: So, first of all, I
20 think it's obviously worth noting, as you did, the
21 loss of privately held wetlands is greater on
22 private than on city-owned lots. The fact that
23 the city, in its strategy is feeling that that's
24 not a small number of wetlands and not worth
25 creating a separate regulatory regime to cover

1
2 those I think is particularly noteworthy.

3 I want to think about it a little
4 bit more, but it feels like it is a small amount
5 of property. It is going to cost a lot to
6 initiate that regulatory regime. But it's worth
7 noting that, you know, if you think about those
8 106 acres that they've identified and the cost of
9 what it would take to restore wetlands if they
10 didn't exist today, you could sort of think about
11 the replacement costs of those wetlands as being
12 about \$120 million. So it's small but it's
13 noteworthy.

14 We would encourage the city, if the
15 regulatory regime is not, you know, creating a new
16 regulation is not really worth it--which again, I
17 think we're tending towards agreeing with them on
18 that--that they really look strongly at other
19 means of protecting those privately-held wetlands.

20 That could include working with the
21 State Department of Environmental Conservation to
22 ensure that those wetlands are included under
23 state regulations. My understanding is if those
24 wetlands are adjoining or hydrologically connected
25 to state wetlands they could move to petition to

1
2 have those wetlands be covered under state
3 regulations. They could certainly work with those
4 private land owners directly to think about
5 donations of conservation easements. They could
6 think about, obviously, acquisition of those
7 properties if it's worthwhile. They could think
8 about just landowner education and working with
9 those landowners to let them know that those
10 wetlands are important to the city and think about
11 other voluntary means.

12 So if regulations are
13 inappropriate, they really should be thinking
14 about a range of strategies.

15 CHAIRPERSON GENNARO: Rob, and
16 again normally I wait until you finish your
17 statement--

18 ROB PIRANI: [interposing] No,
19 that's okay.

20 CHAIRPERSON GENNARO: --but I'm
21 afraid I'll lose my thought. Whatever you would
22 recommend, I mean this could certainly help to
23 inform my comments on this. I would like to have
24 the benefit of your views on that so Bill would
25 work with Rob or whatever. I don't know if we'll

1
2 get a chance to see your comments before they're
3 submitted.

4 ROB PIRANI: I'm happy to forward
5 them to Bill and to the Council as a whole as
6 well. Again, I think it comes down to the fact is
7 there are a small amount of privately held
8 wetlands. It does cost money to have regulations.
9 It sort of depends on where those wetlands are and
10 what they look like. You know, are they already
11 degraded, are they contaminated, are they
12 functioning hydrologically, to make that sort of
13 determination of whether it's worth it to create a
14 new permitting structure.

15 I think the city certainly at a
16 minimum, in terms of their location, you know that
17 information wasn't in the strategy and sort of
18 think about where those wetlands are located,
19 thinking about how close they are to DEC wetlands,
20 thinking about how close they are to Parks
21 Department I think will make a big difference.
22 Perhaps that something that Aaron and the rest of
23 the city team could review with the Council in
24 thinking about that.

25 CHAIRPERSON GENNARO: That'd be

1
2 fine. We certainly look forward to getting your
3 sort of detailed brainwaves on that. That can
4 help inform our comments on that.

5 ROB PIRANI: Then I guess the other
6 two points, or three points. One is obviously
7 it's great that that special review properties
8 that were created under the Wetlands Transfer Task
9 Force have been assessed by the Department of
10 Parks and Recreation. Obviously, again, great
11 stuff, we'd love it if it'd move faster.

12 Certainly understand the staffing constraints that
13 city agencies operate under.

14 Certainly we feel that the city
15 should move forward expeditiously on the Parks
16 Department requests to transfer 11 parcels totally
17 98 acres as well as the logistic work required for
18 the remaining 72 special parcels. In particular
19 we understand that the parcels in Jamaica Bay that
20 in particular would be appropriate to transfer and
21 moving forward on that makes a great deal of
22 sense.

23 The city in the strategy discussed
24 creating a natural area conservancy that would aid
25 city staff in working through these problems.

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2 Certainly, identifying the means of preparing the
3 remaining parcels for transfer should be a
4 priority for that conservancy moving forward.

5 CHAIRPERSON GENNARO: Rob, the
6 first part of your statement you're talking about
7 this local document, the local authority one of
8 2009, we certainly want to get the benefit of your
9 views before you do that.

10 Now we're talking more about local
11 law whatever it was in 2005. You'd think I would
12 know the local law after getting ready for this
13 hearing. The wetlands transfer was that Local Law
14 83? Is that what it is?

15 ROB PIRANI: I think it was 83.
16 Now you're taxing my memory as well.

17 CHAIRPERSON GENNARO: Anything you
18 think I should be advocating for with regard to
19 sort of closing out and moving forward that
20 process, I certainly want to know.

21 ROB PIRANI: Well, I think, again,
22 the city has done a great job of including all of
23 these items in a single document. I think that's
24 something that'll be easier to track. I know in
25 thinking about how the strategy--

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CHAIRPERSON GENNARO: [interposing]

For the wetlands transfer you mean?

ROB PIRANI: For the wetlands transfer, for the regulations, for the whole, you know, creating this conservancy. You know, in some ways it's all kind of integrated because I think in some ways the steps the city is proposing, like the conservancy, like the assessments will help move the work of the task force onward. I think it's all part of one thing.

CHAIRPERSON GENNARO: I see.

ROB PIRANI: I do think, and this goes to, again, the broader point is one thing, you know, the strategy has a great number of initiatives. But it doesn't include a timeline. I think that's something that in its next draft or in its final draft I'm sure the city would include a timeline.

CHAIRPERSON GENNARO: For this.

ROB PIRANI: Yes, exactly. That would include a timeline for when the transfers could happen. Certainly, I think as you noted, we all have the idea of two years being a significant milestone.

2 CHAIRPERSON GENNARO: Right.

3 ROB PIRANI: So, having a timeline
4 by which the remaining transfers that were
5 recommended by the task force and that the Parks
6 Department is prepared to accept; have that
7 paperwork accomplished. Within two years would
8 certainly be, I think, a pretty obvious goal.

9 CHAIRPERSON GENNARO: Right.

10 ROB PIRANI: I think, in
11 particular, and you highlighted this and I
12 appreciate that, the future of Arlington Marsh as
13 being in some ways the sort of flagship of all
14 those transfers.

15 CHAIRPERSON GENNARO: Right.

16 ROB PIRANI: You know,
17 understanding the relationship with Berth 4 and
18 the need to provide money to remediate the site so
19 that it's open to the public. We certainly don't
20 want that transfer and that commitment to parkland
21 at Arlington Marsh be held hostage to the future
22 of Berth 4.

23 CHAIRPERSON GENNARO: Which is why
24 I wanted to commence some sort of hearing because--
25 --might as well say this on the record--I don't

1
2 know what Berth 4 is. So, that's one of the
3 reasons I have these hearings. Berth 4 sounds
4 like a big deal, whatever it is.

5 ROB PIRANI: It's the creation of a
6 terminal at Howland Hook, the expansion.

7 CHAIRPERSON GENNARO: I kind of
8 figured that.

9 ROB PIRANI: It's something that
10 Region Plan Association certainly supports. You
11 know, we want to have our cake and eat it too. We
12 want to have additional cargo capacity in a place
13 where the city has invested a lot of money. We
14 also want to have that wetlands restored and made
15 available to the public. We think both of those
16 goals can be accomplished. I think it will take
17 some diligence on the part of the city. Not
18 everybody is going to get everything they want.

19 In particular, if you remember the-
20 -obviously what we'll do is send your staff and
21 you a map of the parcels, but there's a portion of
22 what's being proposed for Berth 4 that adjoins
23 Arlington Marsh directly. There's about six acres
24 of the marsh that the port operator is proposing
25 to fill. Our recommendation is that that property

1
2 doesn't need to go to the Parks Department because
3 it will be within the port confines.

4 CHAIRPERSON GENNARO: Right.

5 ROB PIRANI: From a security point
6 of view maybe not accessible to the public. But
7 we'd certainly like to see those wetlands continue
8 to exist, because they're part of the marsh.

9 Because that area, putting up a hard wall
10 adjoining the marsh will increase the energy
11 within the cove and the wave action and may
12 actually lead to erosion of the marsh that we're
13 all working hard to protect. So we're hopeful
14 that that process will continue to move forward.
15 But again, I think the city, and I'm sure the
16 Mayor made a commitment to protect the marsh,
17 wants to follow through on that before his term of
18 office is up.

19 CHAIRPERSON GENNARO: Sure.

20 ROB PIRANI: Who knows what will
21 happen.

22 CHAIRPERSON GENNARO: We were
23 really very gratified that when we--

24 ROB PIRANI: [interposing] Yes,
25 absolutely.

2 CHAIRPERSON GENNARO: Because I
3 just, you know for a while, didn't think we were
4 going to get that, and then the boat ride.

5 ROB PIRANI: Well I think your work
6 had a lot to do with that.

7 CHAIRPERSON GENNARO: I just really
8 wanted that because I just didn't think we were
9 going to get it. I was really delighted. But,
10 again, my father, a blessed memory, he had a two
11 word motto, which was "finish it". That was his
12 whole thing: finish it. That was my father's
13 motto. Just like once it's finish, take your bow
14 or whatever, but finish it. So that's what we
15 want to do over here. We certainly would be
16 willing to get all of your views on that.

17 ROB PIRANI: Well I appreciate
18 that.

19 CHAIRPERSON GENNARO: In terms of
20 the meeting we're having, Bill, on the Arlington
21 Marsh, we should have Rob be a part of that too,
22 right?

23 ROB PIRANI: Well, I'd be happy to
24 attend, obviously.

25 CHAIRPERSON GENNARO: I keep

1
2 interrupting you. Shame on me.

3 ROB PIRANI: That's okay. Listen,
4 I'm happy for the conversation. So the last point
5 I'm going to make in terms of the testimony is
6 really on the city proposes, rightly so, moving
7 forward on working on the mitigation process that
8 now exists and making that more efficient and more
9 effective. We would sort of commend the city for
10 thinking about the creation of a mitigation bank.
11 Having it on public property is certainly the way
12 to go to ensure sort of long-term success and
13 monitoring of any sort of mitigation bank that's
14 created or property that's created to help provide
15 a place for mitigation to occur. We would
16 certainly encourage the idea of not just public
17 action--

18 CHAIRPERSON GENNARO: [interposing]
19 Is this like the credits thing; is that what
20 you're talking about?

21 ROB PIRANI: Yeah, exactly. It's a
22 credits model whereby, you know my understanding
23 is that whereby a designated area within the city
24 would be allowed to accept funding or direct
25 construction or credits by which when permits are

1
2 granted the mitigation wouldn't necessarily be
3 sort of onsite. The mitigation could move to
4 another more appropriate site and it would enable
5 the city and the state to sort of consolidate
6 credits.

7 CHAIRPERSON GENNARO: Right.

8 ROB PIRANI: So if it's a very
9 small action, whether it's on public or private
10 property--

11 CHAIRPERSON GENNARO: [interposing]
12 That's all part of this, right?

13 ROB PIRANI: Exactly. So that's
14 something that, again, the city is doing a great
15 job moving that process forward and we just wanted
16 to offer our support for that as well.

17 CHAIRPERSON GENNARO: Right. It
18 would be the city as an entity that would create
19 this whole like legal structure paradigm thing.

20 ROB PIRANI: I think it could take
21 place under a number of different sort of legal
22 structures. Certainly, I think the idea of it
23 being on public property. In other words, the
24 improvement would go on public property, as
25 opposed to in some. In New Jersey, for example,

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2 there are mitigation banks that are wholly
3 privately owned and operated.

4 CHAIRPERSON GENNARO: Oh, okay.

5 ROB PIRANI: And a private entity
6 is responsible for the improvements and for the
7 long-term monitoring of the site. I think having
8 it on public property would make a great deal of
9 sense. Certainly, the city, whether it's
10 properties identified by the Wetlands Transfer
11 Task Force, existing Parks property now, there is
12 a lot of public property that can be profitably
13 restored. So getting help from appropriate
14 projects where they do have to fill in wetlands
15 would be helpful.

16 CHAIRPERSON GENNARO: Okay. Again,
17 I'm always looking at something that we can
18 legislate or mandate or whatever. That's, like,
19 what we do here. I don't know if there's a role
20 for me.

21 ROB PIRANI: You know, there may
22 very well be a legislative role in terms of
23 creating the bank. I'm not sure exactly, but
24 there may very well be. Again, I know the city is
25 developing sort of the proposal for doing that and

1
2 could speak to it more directly.

3 CHAIRPERSON GENNARO: Again, I come
4 at this not as an environmental attorney but as an
5 environmental scientist, because I'm not an
6 attorney, I'm a scientist. So I don't have the
7 greatest grasp of all this legal process and who
8 does what. That's why I have legal staff. I'm
9 just looking for where we as a committee and we as
10 the Council can bring some more value added to
11 this process. We've brought a lot but we're not
12 done yet.

13 That could be part of the
14 conversation, too, Rob. Anytime you think we can
15 play some sort of constructive legislative role,
16 whether it's doing this credits thing or creating
17 this like wetlands conservancy. Tell me a little
18 bit about that, that concept.

19 ROB PIRANI: Well, I think the
20 city's proposal really builds on the number of
21 public/private--I'm sorry; private nonprofit
22 entities that have been created around the city to
23 help improve public spaces. You know, from the
24 Central Park Conservancy to the Brooklyn Greenway
25 Initiative, there are any number of private

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2 entities that through philanthropic dollars and
3 through their own efforts are working to improve
4 public property. I think the city is seeking to
5 create a similar entity that could help be
6 responsible for wetlands and achieve some
7 efficiencies in terms of--

8 CHAIRPERSON GENNARO: [interposing]

9 Is that, like, sexy enough? I mean Central Park
10 is like the ultimate, like, sexy piece of real
11 estate. But this disparate sort of like
12 Micronesia of wetlands, are people going to--you
13 know what I mean?

14 ROB PIRANI: I think that's a
15 really good point. And in particular, I don't
16 think an entity like that is going to be able to
17 rely on philanthropic dollars alone. I think its
18 real value will be to work across jurisdictional
19 boundaries and perhaps be a recipient of other
20 public funding that the city might have a
21 difficult time accepting.

22 CHAIRPERSON GENNARO: Right.

23 ROB PIRANI: Or private funding
24 that the city might have a difficult time
25 accepting or spending efficiently. I think you're

1
2 right that while certainly philanthropic dollars
3 might be available, it'll be a challenge to make
4 that the only source of funding.

5 CHAIRPERSON GENNARO: Right. Sure.
6 Well it's certainly some very good food for
7 thought. We just really appreciate you just
8 staying committed to the whole process, you and
9 everyone at RPA. We very much want to get the
10 benefit of your views before we sort of take the
11 plunge on comments on Local Law 31. It'd be great
12 to have you at the table when we have the
13 Arlington Marsh thing.

14 ROB PIRANI: I'm happy to
15 participate if it's appropriate. I'm really
16 happy--

17 CHAIRPERSON GENNARO: [interposing]
18 Yeah, I mean, again, we'll have to figure that out
19 and make sure that's cool or whatever. Who's a
20 bigger troublemaker than me, and they're going to
21 have me there, you know what I mean. But yeah,
22 we'll have to figure out the appropriateness of
23 all of that. Your ongoing advocacy on behalf of
24 the wetlands stuff is really great and we
25 appreciate that.

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2 ROB PIRANI: Likewise. Like I
3 said, I really appreciate your continued
4 leadership and "finish it" I think is exactly the
5 right motto to have.

6 CHAIRPERSON GENNARO: Got to do it;
7 got to finish it. Dad, okay, I'm going to finish
8 it. Well he had two mottos, my father, actually.
9 One was "finish it," and the other one-word motto
10 which was "system". Like, if you don't have a
11 system, it's not going to work. That got to,
12 like, how you do thing. You know, just whatever
13 you do, you have to have a system for doing it.
14 If you don't have a system for doing, it's just,
15 like, not going to work. So his one-word motto:
16 system. If you don't have a system, you're
17 finished. He was not a man for long mottos, you
18 know what I mean? He had two mottos, for like a
19 total of three words. So that was my dad, though.

20 ROB PIRANI: I think the good news
21 is, I think with Aaron and the city's efforts on
22 the strategy, I think there is now a system. And
23 I think that's something, again, to your leader
24 and to the city's hard work and all the various--

25 CHAIRPERSON GENNARO: [interposing]

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2 Yeah, the city is--

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ROB PIRANI: --parts now where
4 there is a system now and a place to look for
5 these actions. Now we've got to take up your dad
6 on the rest of the slogan.

7

CHAIRPERSON GENNARO: Yep, yep.
8 We'll go from the one-word slogan to the two-word
9 slogan. Thanks, Rob, I appreciate it.

10

ROB PIRANI: Thank you.

11

CHAIRPERSON GENNARO: You bet. I
12 think it bears mentioning on the record that Mr.
13 Koch is still here listening to the testimony. We
14 certainly do appreciate that. To close the show:
15 the insufferable Buck Moorhead. Is that a good
16 word, insufferable? That's a good one, right?
17 What am I thinking of? No, it's some word out
18 there, not insufferable. It's kind of like
19 relentless. How about the indefatigable?

20

BUCK MOORHEAD: I'll take that one.

21

CHAIRPERSON GENNARO: That's what
22 we're going with. We're going with indefatigable.
23 The word "insufferable" means someone you don't to
24 put up with? Is that what that means?

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BUCK MOORHEAD: That would be my

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understanding.

CHAIRPERSON GENNARO: Okay, sorry about that. I meant the indefatigable, which is good.

BUCK MOORHEAD: That's--

CHAIRPERSON GENNARO: [interposing] Sorry about that.

BUCK MOORHEAD: No, thank you.

CHAIRPERSON GENNARO: My mother, also of blessed memory, was an English teacher and had she still been alive, I'm sure I would have gotten those words straight. She always made a point of--

BUCK MOORHEAD: [interposing] You did get them straight though.

CHAIRPERSON GENNARO: Ultimately, I arrived. So Buck we did this Reso, but talk to me.

BUCK MOORHEAD: I thank you very much for that.

CHAIRPERSON GENNARO: But just you've got to state your name for the record and do all of that.

BUCK MOORHEAD: Buck Moorhead with

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2 NYH20. We actually thought this was starting at
3 3:00. I apologize. I'm here; I'm thinking I'm
4 right on time and I walk in and I'm not sure I'm
5 in the right room. Then I saw you and I said it
6 must be the right room.

7 CHAIRPERSON GENNARO: Sure.

8 BUCK MOORHEAD: Anyway, but that's
9 terrific. I am here to speak on behalf of NYH20
10 and Damascus citizens on Resolution 4231. What I
11 handed was a statement from Jeff Zimmerman, who is
12 the counsel represent Damascus Citizens and NYH20
13 in the action. He's supporting the State Attorney
14 General's Office in the Delaware River Basin
15 Commission litigation.

16 CHAIRPERSON GENNARO: I'm sorry.
17 Just say that again.

18 BUCK MOORHEAD: Jeff Zimmerman.

19 CHAIRPERSON GENNARO: Okay.

20 BUCK MOORHEAD: Jeff Zimmerman is
21 counsel. He's representing citizens groups that
22 are working with the New York State Attorney
23 General's Office on this NEPA action.

24 CHAIRPERSON GENNARO: Okay.

25 BUCK MOORHEAD: So we are extremely

1
2 thankful. I'm going to read; Jeff wrote a
3 statement which he had sent.

4 CHAIRPERSON GENNARO: Fine.

5 BUCK MOORHEAD: He thought it was
6 3:00 too. Something got emailed earlier, which
7 you may not have seen, but this is a copy of it.
8 I'll just read this.

9 CHAIRPERSON GENNARO: Sure.

10 BUCK MOORHEAD: It's very short.
11 I'll read it into the record on all our behalf.

12 CHAIRPERSON GENNARO: Please.

13 BUCK MOORHEAD: Dear Councilman
14 Gennaro, on behalf of my clients, Damascus
15 Citizens for Sustainability and NYH2O, I am
16 writing to express our appreciation for your
17 sponsorship of Resolution T2012-4231, and our
18 strong support for this legislation.

19 It is imperative for all New
20 Yorkers and this great city that the City Council
21 provide strong support for the National
22 Environmental Policy Act, NEPA, lawsuits filed by
23 the New York State Attorney General, my clients
24 and several other environmental groups, seeking to
25 compel the Delaware River Basin Commission, the

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2 U.S. Army Corps of Engineers and several other
3 federal agencies to prepare a comprehensive
4 environmental impact statement under NEPA before
5 the DRBC decides to allow natural gas development
6 in the Delaware River Basin.

7 At a status conference hearing last
8 December, in the NEPA case, the presiding judge
9 asked the Corporation Counsel's representative in
10 attendance, at the request of the court, if the
11 city planned on filing an amicus brief in support
12 of the AG and environmental groups consolidated
13 cases.

14 The Corporation Counsel's
15 representative indicated that they did not plan at
16 that time on filing an amicus brief, but would
17 provide to the court a copy of the comments they
18 were planning to submit on the revised draft
19 supplemental general environmental statement that
20 the New York State DEC had published for comments.

21 With respect for the Corporation
22 Counsel, the City's comments on the SGEIS are
23 irrelevant to the questions before the federal
24 court in the NEPA cases. The SGEIS is prepared to
25 comply with a state statute, the New York State

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2 Environmental Quality Review Act, SEQRA, in
3 connection with decisions by New York State DEC
4 about gas development regulations that would be
5 applicable across New York.

6 Compliance by the State of New York
7 with SEQRA has nothing to do with compliance with
8 a federal statute, NEPA, by the DRBC, the Corps of
9 Engineers and other federal agencies in connection
10 with regulation of gas development in the Delaware
11 River Basin.

12 It is important for the City of New
13 York to advocate for compliance with NEPA by the
14 agencies involved with the Delaware River Basin.
15 Maintenance of the highest water quality for
16 waters in the Delaware River Basin is of paramount
17 importance to the water supply system for New York
18 City.

19 But protection of the high water
20 quality of drinking water in the City is not the
21 only public health issue that must be fully
22 examined in the EIS prepared under NEPA. The
23 natural gas that will be produced from the
24 Marcellus shale in the Delaware River Basin will
25 contain elevated levels of radioactive radon gas.

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2 Under current transportation plans,
3 this radioactive natural gas will be delivered to
4 the gas distribution system in the City before the
5 radioactive radon can decay to a level that is
6 comparable to current low radon levels in gas now
7 distributed to homes and apartments across the
8 City.

9 Radon levels up to 100 times
10 current exposure levels may be reached in kitchens
11 with gas stoves throughout the City. The gas can
12 be treated to reduce the radon to safer levels,
13 but unless this is done, and there are no current
14 plans to do so, there could be tens of thousands
15 of additional cancer deaths per year from
16 Marcellus gas radon exposure.

17 NEPA is specifically directed at
18 major federal actions "significantly affecting the
19 quality of the human environment." The public
20 health risk from such elevated radon exposures to
21 millions of New Yorkers is without question
22 something that will significantly affect the
23 quality of the human environment.

24 New York City has a tremendous
25 stake in whether and how natural gas development

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2 takes place in every area, including the Delaware
3 River Basin, where this activity will have
4 environmental consequences for the City. Full
5 compliance with NEPA will ensure that these and
6 other critical environmental issues receive the
7 hard look that NEPA requires before actions
8 affecting our environment are taken.

9 Mr. Gennaro, we strongly support
10 your proposed legislation on this important matter
11 and urge your colleagues on the committee and in
12 the full council to vote in favor of its
13 enactment. Sincerely, Jeff Zimmerman.

14 CHAIRPERSON GENNARO: Thank you.
15 That's very good to hear. What I kind of learned
16 from that also is that at a court proceeding the
17 judge asked--when you said the Corporation Counsel
18 and by that you mean the New York City Corporation
19 Counsel.

20 BUCK MOORHEAD: Yes, the New York
21 City Corporation Counsel.

22 CHAIRPERSON GENNARO: So someone
23 was representing the New York City Law Department,
24 the Corp Counsel, Law Department, the same thing.

25 BUCK MOORHEAD: Right.

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2 CHAIRPERSON GENNARO: This person
3 was asked whether or not the city was going to
4 formally support the suit being brought by the AG.

5 BUCK MOORHEAD: Yes.

6 CHAIRPERSON GENNARO: That's when
7 it was indicated that they would be submitting the
8 comments that they made to the state. Mr.
9 Zimmerman is of the belief that they're just not
10 relevant to the conversation at all.

11 BUCK MOORHEAD: Exactly, very
12 significant.

13 CHAIRPERSON GENNARO: Right.

14 BUCK MOORHEAD: I just learned it
15 in this myself. It's very significant.

16 CHAIRPERSON GENNARO: While I don't
17 speak for the Bloomberg Administration, we've
18 passed the Reso out of the committee. So far the
19 vote stands at 5:0, so it has been voted out of
20 committee. Then once it passes the Council, it
21 doesn't have to go to the Administration; it'll be
22 a resolution of the Council. So the city will be
23 on the record, or at least the City Council will
24 be on the record in strong support of the AG. We
25 just thought it was appropriate to do that.

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2 We're hopeful to the folks that
3 will be deciding this, you know certainly they do
4 it on the merits, but I think to the extent that
5 we can help make the case that needs to be made
6 through the brief or a series of briefs that we'll
7 be submitting will help carry the day with regard
8 to I guess the judge that has to do this, or will
9 be hearing this.

10 We're happy to partner with the
11 good citizen advocates like yourself. It's going
12 to take everybody. It's going to take the
13 attorney, it's going to take you, it's going to
14 take me, it's going to take my colleagues in the
15 Council. Again, I'm not speaking as an attorney
16 because I'm not, certainly, but this seems to me,
17 you know, to be a clear federal action. You've
18 got to follow the law. Even the federal
19 government has to follow the law and hopefully
20 they will.

21 I mean the state is following the
22 law. I don't agree with where they're coming down
23 on some of the things, but let's let that process
24 go forward and we'll continue to try to get a good
25 outcome from that process.

2 But to be denied an environmental
3 process doesn't make any sense whatsoever.

4 BUCK MOORHEAD: Well, I could add
5 that the state is following its process, which is
6 good, but the impacts of this and the value of
7 this action, of the NEPA action in the Delaware
8 River Basin is that it affects what Pennsylvania
9 does, affects New York City and whatever the state
10 does on a state level doesn't protect New York
11 City from Pennsylvania's actions in the Delaware
12 River Basin. There are air impacts and this
13 radioactive issue.

14 CHAIRPERSON GENNARO: Right.

15 BUCK MOORHEAD: So the
16 environmental impacts of this in the Delaware
17 River Basin, outside of New York State, on the
18 Pennsylvania side of the river have a distinct
19 impact on New York City. That's the value, that's
20 the reason I believe that New York City should be
21 participating in this aggressively.

22 CHAIRPERSON GENNARO: Right. I
23 was--

24 BUCK MOORHEAD: [interposing] Well,
25 the resolution is supporting that.

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2 CHAIRPERSON GENNARO: Yes. I was
3 happy to work with people that I know, and the
4 Office of the AG, and was very gratified that this
5 initiative was embraced by the leadership of the
6 Council. In meeting with the Speaker of the
7 Council, without her fully embracing this, this is
8 not something that this committee would be voting
9 on today. We're glad that that has happened. It
10 has the support of the leadership of the Council
11 and I think it's appropriate that I thank her and
12 her legal team, when I brought this to them, for
13 fully embracing it and making this proceed.

14 BUCK MOORHEAD: Well, we all
15 appreciate your help and the president's help. We
16 appreciate it very much.

17 CHAIRPERSON GENNARO: I mean,
18 again, I feel like I had a bit of a bad week with
19 the State of the Union, with the president seeming
20 to characterize the development of shale gas as
21 not only one of the pillars of his
22 administration's energy policy but also of his
23 economic revitalization policy.

24 So my next piece of business, now
25 that this has been proclaimed as like the

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2 foundation of what he wants to do for the economy
3 and for energy that this should be regulated from
4 on high by the federal government. I mean, at a
5 bare minimum, I mean now that it has been
6 proclaimed from the presidential State of the
7 Union pulpit. I mean that's about as big a pulpit
8 that ever happens. So he has made this like the
9 policy of the country. So this is something that
10 should be studied and regulated, which the federal
11 government is now preclude from doing. So that'll
12 be the next thing that I will call for.

13 I think some of the exhibits that I
14 will sort of put forward to the president, should
15 he read the mail he gets from me, or maybe he has
16 people do that for him, would be all of the
17 testimony that I've gotten from the people that
18 work for him at the USGS, a scientific agency, not
19 a regulatory agency, who have proclaimed time and
20 again at my committee their high level of
21 discomfort with all that is unknown about this
22 activity.

23 They have made the case time and
24 again. The last I looked, those guys were getting
25 federal paychecks. So it is the president's own

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2 people in the scientific realm who have put
3 forward I think the most compelling testimony.
4 These guys are scientists. They're not people
5 that are trying to change our energy independence
6 or work on the economic or whatever. They're just
7 looking at the rough science of it. They have
8 looked at this whole process with great pause. So
9 now that it has been proclaimed from on high, it
10 should be regulated from on high as well.

11 Buck, we shall go forward. We will
12 pass this. We'll use this as an occasion to kind
13 of make hay and call attention to this. We'll
14 hope that people are watching.

15 BUCK MOORHEAD: Thank you.

16 CHAIRPERSON GENNARO: Sure.

17 BUCK MOORHEAD: Do you know when
18 this would be before the full City Council then?

19 CHAIRPERSON GENNARO: Hang on.

20 [Pause]

21 CHAIRPERSON GENNARO: Again, I
22 don't want to speak for the leadership of the
23 Council, it is usually the protocol that once
24 something is passed out of committee, it would be
25 passed at the next meeting of the full Council,

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which is tomorrow.

BUCK MOORHEAD: Oh, it's tomorrow.

CHAIRPERSON GENNARO: Right, it's tomorrow? Yes, tomorrow. Yes, wise the Councilman who knows when the next full meeting of the Council is, which I had to ask my staff.

BUCK MOORHEAD: Is there a public comment period for that or that's just a meeting?

CHAIRPERSON GENNARO: No, it'll be voted at the end of the meeting when we do the resolutions. The first thing to be voted on in any sort of full meeting of the Council would be the Land Use items. Then we have our general order calendar, which would be the Local Laws, things that carry the force of law. Then at the end of the meeting, we have a period of the meeting where we vote on resolutions. These are things that convey the sense of the council but don't carry the force of law.

BUCK MOORHEAD: And this is in that category?

CHAIRPERSON GENNARO: Right. Again, I don't want to speak as an attorney, but this actually has sort of more power than like

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2 most resolutions. Like most of the resolutions of
3 the Council would be the Council calling on some
4 level of government other than itself to do
5 something. So the Council could pass a resolution
6 calling upon the state to do X, Y, z; calling upon
7 the federal government to do A, B, C, and this
8 local government has no legal authority to compel
9 the state government or the federal government to
10 do anything.

11 This resolution actually carries
12 some might in that it formally authorizes the
13 Council to do this brief or series of briefs. By
14 taking this act, we are thereby empowering
15 ourselves to take this action and participate in
16 this proceeding. So I would say it has sort of
17 more real actual effect than most resolutions that
18 we pass.

19 BUCK MOORHEAD: Fantastic.

20 CHAIRPERSON GENNARO: So this is an
21 action that will formally authorize this body to
22 be an official amicus briefer in this process.
23 There you have it.

24 BUCK MOORHEAD: That sounds
25 excellent.

CHAIRPERSON GENNARO: So one day at a time, Buck. So we do that.

BUCK MOORHEAD: Yes. We'll get to President Obama eventually.

CHAIRPERSON GENNARO: Yeah, he's on my--

BUCK MOORHEAD: [interposing] There are people working on that, by the way.

CHAIRPERSON GENNARO: I know. Little did I know back in 2008 when I started this tilting at windmills that I'm doing on fracking that I would hear the words sort of like "shale gas" at a State of the Union. It's two steps forward, one step back. We're going to be at this, Buck.

BUCK MOORHEAD: His in-house scientists are catching up, by the way, with the EPA. That's helpful.

CHAIRPERSON GENNARO: Good.

BUCK MOORHEAD: That study in Pavillion, Wyoming where they--

CHAIRPERSON GENNARO: [interposing] This is all good. Let me kind of put forward a hypothetical. It is conceivable that a president

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2 could put forward what he thought at the time was
3 a good sounding notion, but then once he becomes
4 fully informed of all of the ricochets on this, I
5 think he not only has the right but he has the
6 obligation to conform his vision with scientific
7 reality in the best interests of the country.
8 That's what I hope is going to happen. I think my
9 comments will be in that vein, you know.

10 BUCK MOORHEAD: Yeah, you have to
11 take those State of the Unions with a grain of
12 salt.

13 CHAIRPERSON GENNARO: Well, it is a
14 pageant. Pageants lend themselves to rhetoric
15 that is kind of theatrical. Okay. It's certainly
16 good for the scientists to do what they have to do
17 and to properly inform some of these policy
18 decisions that sound good but when you look at all
19 the detail, they lose their luster, you know. So
20 there you have it.

21 I'm going to be bringing this
22 hearing to a close, but before I do that, on the
23 record I just want to make a personal note that I
24 conduct this hearing today in memory of my cousin
25 Robert Zingone [phonetic]. He passed away last

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2 week. He was my first cousin. He was 59 years
3 old. He suffered from a very terrible disease.
4 He was like the oldest of the cousins and there
5 were a lot of cousins in my family. He was kind,
6 he was generous, he was large of frame and large
7 of heart and he will be dearly missed by our
8 family. I'm thinking of him now and I dedicate
9 that I'm conducting this proceeding today in his
10 memory; may he rest in peace. With that said,
11 this hearing is adjourned.

C E R T I F I C A T E

I, Donna Hintze certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date February 27, 2012