

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 22, 2009

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HELD AT: Council Chambers  
City Hall

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

COUNCIL MEMBERS:  
Bill de Blasio  
G. Oliver Koppell  
Domenic M. Recchia, Jr.  
Peter F. Vallone, Jr.  
Melissa Mark-Viverito  
Thomas White, Jr.  
Mathieu Eugene  
Elizabeth Crowley

## A P P E A R A N C E S (CONTINUED)

Rohit T. Aggarwala  
Director  
Mayor's Office of Long-Term Planning and  
Sustainability

James Colgate  
Acting Assistant Commissioner for Technical Affairs  
and Code Development  
Department of Buildings

Robert Pirani  
Director of Environmental Programs  
Regional Plan Association

Paul Mankiewicz  
Executive Director  
Gaia Institute

Matthew Klinman  
On behalf of Roland Lewis  
Metropolitan Waterfront Alliance

Eugenia Flatow  
Chair  
NYC Soil And Water Conservation

Glenn Phillips  
Executive Director  
New York City Audubon

Joel Kupferman  
Environmental Law And Justice Project

1  
2 CHAIRPERSON GENNARO: Is it warm  
3 everywhere or just up here? Just up here? Okay.  
4 Yeah, we're going to--this is like a jackets  
5 optional hearing. [Pause]

6 Good afternoon, I'm New York City  
7 Councilman Jim Gennaro, Chair of the Committee on  
8 Environmental Protection, welcome to our hearing  
9 today.

10 I guess first and foremost we are  
11 having a happy occasion today, we're joined by a  
12 brand-new member of the Council, Liz Crowley, this  
13 is her first hearing of the Committee on  
14 Environmental Protection and we're happy to have  
15 her, we look forward to working with her in the  
16 months and years to come. Welcome, welcome, Liz.

17 Also joined by Council Member White  
18 and Council Member Eugene. I just saw Council  
19 Member Koppell, who had to jump across the street  
20 to drop into another hearing. I see Council  
21 Member Vallone. We'll be joined by other Council  
22 Members throughout the afternoon.

23 And as I was about to say, we're  
24 holding a hearing on Intro 506-A, a bill to  
25 develop a comprehensive wetlands protection

1  
2 policy. And we have one more bill, a Pre-  
3 considered bill that would ensure coordination in  
4 wetlands matters where other parts of the  
5 government have jurisdiction.

6 Talking about wetlands now, New  
7 York City once contained 224,000 acres of  
8 freshwater wetlands. This ecosystem was able to  
9 slow down erosion, prevent flooding by retaining  
10 storm waters, filter and decompose pollutants, and  
11 would have been able to slow global warming by  
12 changing CO2 with oxygen at a great rate.  
13 However, in the past 200 years, most of this land,  
14 that is the freshwater wetlands have been filled  
15 for construction, development, or dredged and only  
16 2,000 acres of freshwater wetland, or less than 1%  
17 of what we once had, remain in the city today and  
18 many species that once called these wetlands home  
19 have been lost forever.

20 And then jumping to coastal  
21 wetlands, once upon a time covered about 100,000  
22 acres but the numbers that I have here before me  
23 indicate that about 75% of the coastal wetlands in  
24 New York City, including all salt tidal marshes  
25 have also been lost. I've seen numbers that have

1  
2 gone up to as much as 85%, I don't know what the  
3 precise number is, but certainly a great majority  
4 of our tidal wetlands and [pause] wetlands have  
5 been lost. And, as a result, we've lost a species  
6 that once lived there, but it's not only the loss  
7 of a species diversity, but loss of ecosystem  
8 diversity, which is troubling.

9 [Pause]

10 Did I lose my mic? Oh, it's back.

11 Development presents a great threat  
12 to those remaining wetlands, but an even greater  
13 threat is posed by sea level rise. The U.S. EPA  
14 and other government agencies has indicated that  
15 the rate of sea level rise is growing and a great  
16 concentrations of greenhouse gases from humans are  
17 warming the atmosphere and oceans sea levels will  
18 rise and result in the certain loss of at least  
19 some of New York City's wetlands, and so we want  
20 to do what we can to institute protections.

21 Wetlands protection in New York  
22 City is accomplished primarily through the use of  
23 four laws: the Freshwater Wetlands Act, the Tidal  
24 Wetlands Act, the Coastal Zone Management Act,  
25 through the Waterfront Revitalization Program, and

1  
2 the Coastal Erosion Hazard Areas Act. However,  
3 these laws have not prevented a great loss of  
4 wetlands in New York City and certainly do not  
5 speak to sea level rise and so it's - - this  
6 committee that without a bold and innovative  
7 process to balance the burdens placed on coastal  
8 areas by development with the obvious economic  
9 benefits of preserving our wetlands over time and  
10 to the future of New York City--I lost my place--  
11 Intro 506 calls for the development of a realistic  
12 and visionary plan that acknowledges all the  
13 threats to human health and the environment from  
14 the current and future wetlands loss and proposes  
15 informed and careful reactions to that.

16           The Pre-considered Intro  
17 acknowledges that the efforts to regulate wetlands  
18 management must be coordinated among the multiple  
19 agencies that have jurisdiction over wetlands and  
20 underwater lands and provides a straightforward  
21 approach to coordination between the agencies.

22           I'd like to point out that this  
23 builds on some of the previous work that this  
24 committee and the Bloomberg Administration have  
25 done on our wetlands. We've been very successful

1  
2 in recent years with the Wetlands Transfer law,  
3 which many people here would be familiar with and  
4 which we created a mechanism by which wetlands  
5 owned by the city of New York but not protected by  
6 the Parks Department would be transferred to the  
7 Parks Department for permanent protection. I  
8 think it's fair to say that that law's been very  
9 successful and the bill before that, or right  
10 around the same time of that, would be the Jamaica  
11 Bay Management Plan law, which we're still working  
12 with, but certainly that will be an ultimate  
13 success also.

14 But I think it's key that the point  
15 of these bills today would be to fill regulatory  
16 gaps that would exist whereby there are federal  
17 protections, there are state protections for  
18 certain classifications of wetlands, but, to the  
19 extent that there are regulatory gaps that are not  
20 covered by the state and federal government, it  
21 would be wise, we think, for the local government  
22 here in New York to have our own sort of vision of  
23 how our wetlands should be managed. This is  
24 certainly consistent with PlaNYC that talks about  
25 protecting wetlands and so we see this as

1 completely consistent with the vision of PLaNYC.  
2 We've received a statement from the state DEC,  
3 who's not here today, but they indicated that they  
4 want to have a partnership with us, with the city  
5 and DEC welcomes and supports New York City's  
6 effort to regulate and protect freshwater and  
7 tidal wetlands through its own local laws.  
8

9 So, with that said, before I call  
10 upon the panel, we'll thank the staff of the  
11 committee that helped us get to this day today.  
12 We have the Counsel of the committee, Samara  
13 Swanston, thank you, Samara, for your work;  
14 Siobhan Watson, Policy Analyst for the committee;  
15 my own legislative aide, Costa Constantinides, who  
16 was here; and all the staff that helped us to get  
17 here today.

18 So, with that, we'll call the first  
19 panel, which is the Bloomberg Administration and  
20 we have Rohit Aggarwala, and we'll call upon Rohit  
21 to identify the members of the panel--some are  
22 known to me, of course.

23 But before we do that, we'll have  
24 the Counsel of the committee swear in the panel.  
25 And I would ask that after being sworn, that the

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panel proceed with its good testimony.

I just want to thank Rohit for all the work that he's done on behalf of the environment in New York City and planning-- charting a court [phonetic] for the long term environmental sustainability of our city and many people of the--I know the other people on the panel have worked closely with him and closely with the Administration and I thank them for their good service.

So we will swear in the panel and then we will commence.

MS. SAMARA SWANSTON: Gentlemen, please raise your right hand. Do you swear or affirm to tell the truth, the whole truth, and nothing but the--

[Pause]

CHAIRPERSON GENNARO: Okay. So with that said, do I have a copy of the testimony from the Administration? Do we have prepared testimony for the Administration?

MALE VOICE: It's right here.

[Pause]

CHAIRPERSON GENNARO: Okay. We have

1  
2 the testimony from the Department of Buildings,  
3 but here's the other stuff. Okay, we're good.

4 If I could just ask the Sergeant a  
5 little bit to dim the lights just a little bit,  
6 I'm already sort of taking my sweater off, I don't  
7 really want to go any further. So if we could  
8 just dim the lights a little bit and make it a  
9 little cooler up here, that would be great. Okay.

10 MR. ROHIT T. AGGARWALA: Great.

11 Thank you and good afternoon, Chairman Gennaro,  
12 other members of the Committee. My name is Rohit  
13 T. Aggarwala, and I am the Director of the Mayor's  
14 Office of Long-Term Planning and Sustainability.  
15 I'm joined today by James Colgate, the Acting  
16 Assistant Commissioner for Technical Affairs And  
17 Code Development at the Department of Buildings,  
18 and Steve Kramer, Senior Counsel to the Department  
19 of Buildings, as well as Carter Strickland from my  
20 office, and Bill Tai from the Parks Department,  
21 who together have done so much of the  
22 Administration's recent work on wetlands. We are  
23 grateful for the opportunity to speak to you today  
24 about Intro 506-A and the Pre-considered Intro.

25 We support the concept of a bill

1  
2 focused on construction permits in coastal zones  
3 and the Department of Buildings will raise  
4 specific concerns we have with the bill as  
5 currently drafted, but which we believe can be  
6 addressed through negotiation.

7           However, despite our respect for  
8 this committee's leadership on wetlands protection  
9 and the intention of 506-A to protect wetlands, we  
10 oppose the passage of Intro 506-A because we  
11 believe that there are better approaches to  
12 protecting and improving wetlands in New York  
13 City.

14           PlaNYC contains several initiatives  
15 to improve water quality, preserve natural areas,  
16 and protect the city from the projected impacts of  
17 climate change. Wetlands are an important part of  
18 several of these initiatives. When highly  
19 functioning, wetlands trap and absorb nutrients,  
20 some silt, and other pollutants from storm water  
21 runoff; harbor important and numerous species of  
22 wildlife; and provide flood protection, carbon  
23 sequestration, and public recreational  
24 opportunities.

25           The city owns and manages thousands

1 of acres of wetlands that are under Parks  
2 Department protection or that are part of the  
3 DEP's Bluebelt system, which uses wetlands as an  
4 extremely valuable and cost-effective substitute  
5 for conventional storm sewers. Just last year,  
6 working closely with you, Council Member Gennaro  
7 and Council Member McMahon, and other members of  
8 the Wetlands Transfer Task Force, the  
9 Administration identified 76 wetlands parcels  
10 under city control that we agreed should be  
11 transferred to DEP for use in the Bluebelt system,  
12 and 78 parcels that should be transferred to  
13 Parks. Most importantly, we determined that over  
14 70 acres of salt marshes in the Arlington Marsh  
15 complex on Staten Island, were of such unique and  
16 significant ecological value that they should also  
17 be transferred--and I'd like to recognize Chairman  
18 Gennaro's leadership in the conception and the  
19 deliberations of the Task Force.  
20

21 The Task Force is far from the only  
22 wetlands-related effort currently underway. DEP's  
23 Bluebelt acquisition and management program  
24 represents a state-of-the-art approach to  
25 protecting and restoring wetlands in ways that

1  
2 enhance their natural functions and provide direct  
3 returns to taxpayer investments in them through  
4 storm water management. The DEP and Parks  
5 Department have restored many wetland areas and  
6 most recently the parks department recently  
7 acquired South Brother Island, which includes  
8 significant wetlands and bird habitats. DEP's  
9 land holdings in the upstate watershed include  
10 extensive freshwater wetlands that are protected  
11 and managed. The city's policies are summed up in  
12 both the Waterfront Revitalization Program and the  
13 City Tactical Review--or Technical Manual, which  
14 endorse the goal of no net loss of wetlands in the  
15 city.

16 One of PlaNYC's initiatives was to  
17 assess whether and how existing federal and state  
18 laws fall short of protecting New York City's  
19 remaining wetlands--an initiative developed in  
20 collaboration with Council Member Gennaro's staff  
21 in his role as a member of the Mayor's  
22 Sustainability Advisory Board. Next week, my  
23 office will publish that report, New York City  
24 Wetlands: Regulatory Gaps and Other Threats,  
25 covering the adequacy of existing regulations and

1  
2 on policy options for wetlands management that was  
3 prepared by an interagency working group and  
4 reviewed by outside experts. I note that we  
5 shared the report's major findings in draft form  
6 with Council staff several months ago.

7           The report concludes that, in  
8 general, existing federal and state protections  
9 are sufficient to protect New York City's tidal  
10 wetlands and its large freshwater wetlands. It  
11 notes several gaps that may threaten wetlands.  
12 The most important is that small freshwater  
13 wetlands, less than 12.4 acres, and unmapped  
14 wetlands are not protected by state law, and the  
15 scope of federal jurisdiction has been blurred in  
16 recent court rulings. The extent and location of  
17 these smaller freshwater wetlands is not  
18 accurately known, and therefore we cannot  
19 determine the appropriate policy prescriptions to  
20 fill in the regulatory gap. Acting on the early  
21 findings of the report, the city sought and  
22 obtained funding from the state to collect  
23 satellite and aerial images and to develop  
24 detailed electronic maps shortly thereafter. We  
25 expect to undertake the imaging this spring and

1  
2 have initial maps by the end of this year. The  
3 scope of resources appropriately dedicated to a  
4 local policy or other potential solutions will be  
5 better known after the city completes the map.

6 In short, this is an Administration  
7 that cares a lot about wetland issues. We agree  
8 with Intro 506-A's goal of healthy wetlands. We  
9 do, however, believe that it is not the best  
10 approach to wetland policy.

11 First, the bill would require the  
12 Administration to complete a detailed planning  
13 process on an aggressive timetable, to include the  
14 analysis of detailed considerations, to prepare  
15 draft and final reports and policies, and to  
16 coordinate these efforts with an outside advisory  
17 panel. We believe this process would be an unwise  
18 investment of public resources at this time of  
19 budget cuts. Its level of specificity would  
20 inevitably require the retention of consultants,  
21 which we believe could be comparable to the \$2  
22 million the city spent on consulting fees for the  
23 Jamaica Bay Watershed Protection Plan. It would  
24 also overlap with several other ongoing studies or  
25 plans: the Protection Plan itself; PlaNYC's

1  
2 Sustainable Storm Water Plan, released last month,  
3 which was a PlaNYC initiative and then also  
4 mandated by a local law from this committee;  
5 PlaNYC's ongoing climate change adaptation task  
6 force, which is focused on responsive policies to  
7 protect wetlands and other critical  
8 infrastructure, which has a report due at the end  
9 of this year; and the Department of City  
10 Planning's update of the comprehensive waterfront  
11 plan, which will be performed in 2010 at the  
12 request of the Council. In addition, as I  
13 mentioned, we're about to release the wetlands  
14 regulatory gaps report. We do not believe that  
15 layering on another detailed, legally mandated  
16 study on an aggressive timetable would  
17 sufficiently advance our understanding of  
18 strategic wetlands management policy to justify  
19 the resources required to make it.

20           Second, we believe that the  
21 imposition of an immediate moratorium on any  
22 project that would affect certain maps of wetlands  
23 is excessively broad, ambiguous, and ill-timed.  
24 The moratorium would apply to any project on  
25 wetlands that are defined pursuant to a 1989

1  
2 policy that has been withdrawn or delineated on  
3 certain maps, including what's referred to as the  
4 1995 DEC wetland maps, which we think are  
5 referring to the state's official regulatory maps,  
6 but not so named, and the national wetlands  
7 inventory maps. Since the proposed moratorium is  
8 so broad, we also do not understand how the bill  
9 would affect much-needed projects, including the  
10 maintenance and expansion of the Bluebelt program  
11 itself. Further, as Mayor Bloomberg described in  
12 the State of the City address last Thursday, the  
13 Administration is working on several initiatives  
14 to increase jobs while maintaining our focus on a  
15 sustainable city. This includes using any funds  
16 from the potential federal stimulus legislation,  
17 which will require the start of construction  
18 within a few months. As mentioned earlier in my  
19 testimony, our interagency study of regulatory  
20 gaps found that we do not know the exact location  
21 of all wetlands in the city. Therefore, the risk  
22 of misidentification and unnecessary delay to job  
23 producing projects is great. The city should not  
24 undermine these efforts and possibly deny itself  
25 access to external sources of funding that will

1  
2 not be replaced or come around again.

3           Third, there are several technical  
4 concerns we have with the bill as written. Intro  
5 506-A would hamper creative solutions to bridging  
6 the funding shortfall for wetlands. At several  
7 points, the bill demonstrates hostility to the  
8 concept of mitigation or mitigation banking at all  
9 by requiring a plan to assess no loss of any  
10 wetlands, instead of the more common no net loss  
11 and by limiting its goal to the preservation of  
12 all wetlands. If the Intro 506-A planning process  
13 prevents the meaningful and practical  
14 consideration of mitigation, then it would create  
15 an inflexible program, a higher probability of  
16 successful takings claims, greater resistance from  
17 homeowners and developers, and conflict with  
18 federal and state wetlands programs, which do  
19 allow for mitigation. In a world of limited  
20 resources, the city will have to consider whether  
21 it makes sense to allow some development of small,  
22 isolated, or degraded wetlands with marginal  
23 ecological value when the ensuing mitigation could  
24 contribute to efforts to restore wetlands of  
25 significant size that are highly functioning and

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2 that provide more significant benefits to our  
3 urban watershed or local neighborhoods. While  
4 mitigation banking has produced mixed results in  
5 some applications, especially when it is not  
6 monitored and enforced, we do not believe it  
7 should be dismissed out of hand.

8           The bill would also deny  
9 opportunities to restore wetlands where  
10 degradation has taken place if the direct  
11 beneficiary areas of restoration activities had a  
12 role in filling wetlands or wetlands degradation.  
13 It is unclear what this would mean for the city,  
14 whose activities indeed have, over time, filled  
15 and degraded wetlands. In the past, the city has  
16 engaged in significant restoration efforts,  
17 including restorations to the Pennsylvania and  
18 Fountain Avenue landfills. It would be unwise for  
19 the city to deprive itself of restoration projects  
20 on city land run by city personnel.

21           Finally, it establishes a wetlands  
22 protection policy advisory committee consisting of  
23 Council and mayoral appointees who serve for a  
24 term. The committee is authorized to make  
25 recommendations to the DEP Commissioner regarding

1  
2 wetlands protection policy. The Commissioner is  
3 required either to include the recommendations in  
4 the final policy document or explain why the  
5 recommendations were not included. These  
6 provisions insert Council appointees into a  
7 mayoral policymaking process and thus constitute a  
8 curtailment of the Mayor's powers.

9 In short, this administration  
10 remains committed to improving wetlands and other  
11 aspects of our natural environment across the  
12 city. This year, we plan to continue efforts on  
13 Bluebelts and Jamaica Bay; to nearly complete the  
14 mapping efforts laid out in the report that will  
15 be issued next week; to continue our work on the  
16 climate change adaptation planning currently  
17 underway, which will lead to a comprehensive  
18 adaptation policy that includes wetlands by the  
19 end of the year; continue work towards the  
20 transfer of the wetlands identified by the task  
21 force; and explore a mitigation banking concept  
22 that could help fund projects like the Bluebelt  
23 and the efforts to help Jamaica Bay. While we  
24 endorse the intent to protect wetlands that  
25 underlies this Intro, we do not believe that it

1  
2 would be a positive addition to the significant  
3 to-do list.

4 Thank you for the opportunity to  
5 testify about this bill and to share the  
6 Administration's planned next steps to protect our  
7 wetlands. I would be happy to answer any  
8 questions. Thank you.

9 CHAIRPERSON GENNARO: Thank you,  
10 thank you, Rohit. And I know that we're going to  
11 hear the testimony of Mr. Colgate on the Pre-  
12 considered Intro before we proceed to questions.

13 Speaking of questions, let me just  
14 make sure that I have them and another  
15 housekeeping--okay, so we turned the lights down,  
16 but did we open windows too? We opened windows  
17 too? I think doing - - the lights and the windows  
18 is like too much, we should like--I'm starting to  
19 get like cold. So I tell you what, why don't we  
20 do like the energy conscious thing? Why don't we  
21 like close some of the windows? Yeah. That way  
22 we save the heat and the electricity for the  
23 lights. I'm just showing off for Rohit, that's  
24 all, that's all I'm doing here.

25 Mr. Colgate, thank you.

1  
2 MR. JAMES COLGATE: Good afternoon,  
3 Chairman Gennaro and Committee members. I'm James  
4 Colgate, Acting Assistant Commissioner for  
5 Technical Affairs and Code Development of the  
6 Department of Buildings. I'm here today with  
7 Steve Kramer, Senior Counsel to the Commissioner.  
8 Thank you for giving us the opportunity to discuss  
9 the Pre-considered Intro regulating permit  
10 issuance in wetlands and coastal erosion areas.

11 The Pre-considered Intro has  
12 laudable goals: to ensure that applicants for  
13 construction permits in New York City demonstrate  
14 compliance with New York State laws that regulate  
15 construction in wetlands and coastal zones,  
16 including coastal erosion hazard areas. As Rohit  
17 Aggarwala testified earlier, the Administration is  
18 strongly committed to protecting wetlands and  
19 ensuring that construction complies with other  
20 environmental regulations. These sensitive areas  
21 constitute an important part of the city's  
22 ecology, and improving coordination among the  
23 applicable government agencies is surely a useful  
24 means towards protecting this important resource.  
25 Moreover, developing procedures to ensure through

1  
2 but efficient coordination among agencies with  
3 different regulatory requirements will avoid  
4 burdening applicants with unnecessary red tape. A  
5 property owner should not learn in the middle of  
6 building a house or other construction project  
7 that a sign-off from another agency is required  
8 before construction can legally be completed. The  
9 property owner should be alerted up front to all  
10 regulatory requirements before substantial sums  
11 are committed to project development and  
12 construction, and before wetlands are disturbed or  
13 construction takes place in areas prone to coastal  
14 erosion.

15                   Notwithstanding the bill's highly  
16 worthy goals, on reviewing the text of the bill,  
17 we believe that it needs substantial amendment to  
18 achieve its purposes, and we would like to make  
19 some suggestions as to how it could be amended to  
20 be more workable and more comprehensive. First,  
21 as proposed, the bill uses proximity to natural  
22 protective features such as shore areas, beaches,  
23 and primary and secondary dunes as triggers that  
24 would require New York State DEC and other  
25 applicable agency approvals before building

1  
2 permits are issued. We believe that the trigger  
3 for requiring these projects to obtain clearance  
4 from other governmental agencies should be  
5 grounded in legally enforceable maps, such as the  
6 inland wetland maps, tidal wetland maps, coastal  
7 erosion hazard area maps that are published and  
8 maintained by state DEC, as well as flood maps  
9 that are published by FEMA, the Federal Emergency  
10 Management Agency. The natural feature triggers  
11 that are referenced in the bill are neither well  
12 enough defined, nor sufficiently objective to  
13 permit as criteria for the application of an  
14 additional legal requirement before permit  
15 issuance and would be very, very difficult for the  
16 Department to administer.

17 Accordingly, to the extent the bill  
18 can be amended to require coordination by a  
19 reference to objective parameters with clear  
20 delineations of applicable law, the more likely  
21 the goals of the bill will be achieved.

22 Second, we would like to see the  
23 bill amended to include all activities that are  
24 subject to state law requirements in coastal areas  
25 and inland wetland areas. Ground-disturbing

1  
2 activities, such as excavations and paving for  
3 parking lots, sidewalks, and the like, are not  
4 covered in the bill, but they can have significant  
5 impacts on wetlands and coastal erosion areas.  
6 Since New York State DEC mandates that these types  
7 of activities be approved before construction  
8 begins, the bill should be amended to make sure  
9 that it parallels the applicable state  
10 regulations.

11 Third, the bill as drafted requires  
12 not only a letter from New York State Department  
13 of Environmental Conservation for permits in the  
14 covered areas, but also a letter from other  
15 appropriate agencies. It is unclear from which  
16 agencies applicants would be required to get  
17 approval letters before the Department issued its  
18 construction permits. We recommend that the  
19 triggers requiring permit coordination be tied to  
20 permits for properties that are found on specific  
21 maps issued by specified agencies. In this way,  
22 the appropriate agencies whose approvals are  
23 needed would become finite and clear to the  
24 applicants for construction projects.

25 Finally, there are a number of

1  
2 technical and language issues in the bill that  
3 need to be clarified. For example, the bill  
4 contains reference to the Waterfront  
5 Revitalization Plan, and that Plan applies only to  
6 discretionary actions such as zoning changes,  
7 special permits, variances, and other actions that  
8 are subject to CEQR, the City's Environmental  
9 Quality Review procedures. The waterfront  
10 revitalization plan does not apply to ministerial  
11 actions such as the issuance of building permits.

12 Finally, we would like to see the  
13 bill amended so that the Department could  
14 integrate the coordination into our permit  
15 application and review processes. These types of  
16 technical issues, could, we believe, be fairly  
17 easily resolved and we would be glad to work with  
18 your staff to do so.

19 Thank you for the opportunity to  
20 testify, I will be glad to answer any questions  
21 you may have.

22 CHAIRPERSON GENNARO: Thank you, Mr.  
23 Colgate. We certainly appreciate the Building  
24 Department's [pause] consideration of the Pre-  
25 considered Intro, which I neglected to mention is

1  
2 sponsored by Council Member Al Vann of Brooklyn, I  
3 should put that on the record. And this is what  
4 we welcome in testimony--concrete proposals and  
5 revisions and concerns that are put forward that  
6 lay out a roadmap for how we can kind of get to  
7 yes on this, and so I certainly do appreciate  
8 that.

9                   And I [pause]--mic seems to be  
10 going kind of in and out--and I'm not a sponsor of  
11 the bill myself yet, I did read the bill, I read  
12 your comments, it looks like there is some common  
13 ground here and I would encourage both the Council  
14 staff and representatives of the Buildings  
15 Department and the Administration to move forward  
16 on those areas of common ground and work out some  
17 of the differences that we have to get to what we  
18 both believe is a good bill. So there you have  
19 it, so that was--thank you. Thank you.

20                   Regarding 506, it's like, oh my  
21 god, how did we get here? I mean, it's just I  
22 thought we were closer than we were and it's just  
23 hard for me to kind of grasp how we both want to  
24 do good things for our wetlands, we both have  
25 these goals, we both know that there are precious

1  
2 few remaining freshwater wetlands out there.

3           You, appropriately, point out some  
4 of the regulatory gaps about the unmapped wetlands  
5 and the freshwater wetlands, less than 12.4 acres,  
6 and it seems that the bill doesn't--although it  
7 does a fair amount of things like the broad view  
8 is that there ought to be a policy for like the  
9 ongoing protection of wetlands that may be  
10 vulnerable due to the regulatory gaps and we don't  
11 prescribe what that policy should be, just that  
12 there should be one. And I would think that with  
13 the mapping going on and the planning and the  
14 various endeavors that your office in concert with  
15 PlaNYC and the members of the Sustainability  
16 Committee, including me, and even my own former  
17 Chief of Staff, Peter Washburn, some of the things  
18 that we kind of put in place, it seems like those  
19 actions would work hand in glove and at the end of  
20 all that, there would be a policy initiative that  
21 would ensure greater protection for wetlands. And  
22 we can quibble about like the details about no net  
23 loss or no loss or mitigation versus no  
24 mitigation, all or nothing, but for there to be  
25 kind of no roadmap at this point to a bill that we

1  
2 could put forward to crystallize some of the good  
3 works that are going on in terms of ultimate long-  
4 term protections for our wetlands, it just--I just  
5 wasn't expecting that kind of response.

6 I think we should be able to agree  
7 that at the end of this process, there should be  
8 greater protections for currently unprotected  
9 wetlands and it should be this bill in whatever  
10 form we can agree upon. I just wasn't expecting  
11 like no, we're not doing this and so that's what  
12 we have and so it's not good, it's not a good use  
13 of our time, there are the things we want to do  
14 first. And I get it I mean, it could have been--  
15 your testimony just could've been two letters, it  
16 could've been no, you know what I mean? And so  
17 [pause] I guess the threshold question of [pause]  
18 is there anything we can do right now to move  
19 forward with a bill that will call for the  
20 ultimate development of a policy to protect  
21 currently unprotected wetlands in New York City?  
22 Kind of like yes or no.

23 MR. AGGARWALA: Yes, I think there  
24 is.

25 CHAIRPERSON GENNARO: Okay.

1  
2 MR. AGGARWALA: And I think we do  
3 not disagree with your call for ultimately there  
4 to be an overall vision and overall policy. I  
5 think our concerns is, as I laid them out in our  
6 testimony, have to do with the fact that this  
7 intro goes much beyond that. Right? It lays out  
8 a very detailed list of things that must be  
9 assessed and considered.

10 CHAIRPERSON GENNARO: Right, but you  
11 could have done like Mr. Colgate and said like  
12 well this could be different, this could be  
13 different, we got to talk about this. Let's sit  
14 down, let's have a cup of coffee, let's work it  
15 through--

16 MR. AGGARWALA: Always happy to have  
17 a cup of [crosstalk]--

18 CHAIRPERSON GENNARO: --you know.

19 MR. AGGARWALA: I think there's room  
20 for us definitely to talk about what the next  
21 steps are and how we can work together. I think  
22 fundamentally, I don't believe that in anything  
23 like the timeframe that's laid out here with the  
24 detailed level of specificity or with the  
25 moratorium that's envisioned here that this bill

1  
2 makes sense now. But I think this report that  
3 we've been working on for some time indicates to  
4 us several areas where we should be focusing and  
5 there may be an opportunity, whether it's through  
6 a legislatively--excuse me--mandated process or  
7 through oversight hearings or just staff level  
8 conversations, more than happy to do that. But as  
9 the report lays out, the first question is, we've  
10 identified these gaps and there's actually one  
11 more gap that I didn't mention that's about the  
12 upland areas for tidal, which is where the  
13 wetlands might migrate and sea level rise.  
14 Thereto, we don't really know exactly what remains  
15 because many of the bordering areas are, of  
16 course, hardened concrete at this point due to the  
17 way--

18 CHAIRPERSON GENNARO: Right.

19 MR. AGGARWALA: --the city has  
20 developed.

21 The mapping will let us know what  
22 world we're in, whether the unprotected areas are  
23 significant or whether they're not. In fact, the  
24 Sierra Club a couple of years ago did a report  
25 looking at the quality of New York state's

1  
2 wetlands maps, concluded that there are probably a  
3 lot of unmapped small wetlands up state, but they  
4 actually concluded themselves that there probably  
5 aren't any left on Staten Island anyway because  
6 the small ones have probably been filled in.

7 I think the second question that  
8 the report--and by the way I do want to give--  
9 Carter really was the prime mover behind the  
10 report--the second area that it points out to us,  
11 and something that you said in your opening  
12 statement, is that even areas that are already  
13 protected are shrinking. And we see that most  
14 dramatically in Jamaica Bay. And so the question  
15 then becomes what are the other things that go  
16 beyond just legal protections that we can and  
17 should be doing to protect, not just the area so  
18 nothing gets built, but so that the wetland is  
19 actually there as the healthy ecology and habitat  
20 that we want it to be.

21 And that's actually one of the  
22 reasons that we so strongly believe that we can't  
23 dismiss mitigation out of hand because, as you  
24 know, I mean, the Bluebelt program is state-of-  
25 the-art, recognized nationally as a great approach

1  
2 where you wind up with something that kind of  
3 kills two birds with one stone, not that any good  
4 naturalist wants to do that, but where by  
5 restoring the wetlands you're also providing sewer  
6 services and--

7 CHAIRPERSON GENNARO: Right.

8 MR. AGGARWALA: --you kind of have a  
9 world of benefit there, and yet we all know that  
10 that is [pause] city doesn't have enough money, we  
11 have a tough economy, we have water rates that are  
12 already rising at a significant rate, we have lots  
13 of mandated projects in the DEP budget, and we'd  
14 love to have a lot more money to be able to do  
15 more of the Bluebelt program.

16 Similarly in Jamaica Bay, and one  
17 of the things that 506-A calls for is a plan for  
18 the restoration of Jamaica Bay, and I think that  
19 obviously there is already the task force, but  
20 ultimately we're all going to continue to hit up  
21 against the question of where do we find the  
22 resources to do anything like the long-term fixes  
23 that would actually be required to stabilize  
24 Jamaica Bay.

25 And then the final thing is that we

1  
2 do believe that a lot of our climate change  
3 adaptation work that's currently going on is going  
4 to cover some of the things that I think are  
5 inspiring some of the clauses in this Intro. We  
6 have ongoing the New York panel on climate change,  
7 which is going to come out, we should actually  
8 have our draft report released to the public in a  
9 matter of weeks with the first ever official  
10 projections of what climate change will mean for  
11 New York City, or in fact for any municipality in  
12 the United States, nobody's really done this in  
13 the way we're doing it. We have a climate change  
14 adaptation task force that's looking at the  
15 impacts, and we've got draft numbers, but as soon  
16 as we have the real numbers and everybody will  
17 plug those into their models.

18 And then the final piece to that  
19 puzzle as was laid out in PlaNYC, once those two  
20 processes are underway is then we'll step back and  
21 actually do a comprehensive citywide climate  
22 change adaptation plan, which could go into the  
23 extent to which strategically we need more tidal  
24 wetlands as storm surge buffers or even some of  
25 those ideas about do we need a storm surge barrier

1  
2 or what have you, all right. So it's all going to  
3 be a part of that and I think what I would welcome  
4 very much is some partnership on tackling these  
5 immediate problems that we know are the actual  
6 next steps, which are getting the mapping done,  
7 figuring out whether we can make a mitigation  
8 banking program work in the city and then doing  
9 the kinds of things that I think the Pre-  
10 considered Intro does, which is making sure that  
11 the existing rules are actually followed because  
12 that to such a great extent is our problem where  
13 we pass laws that provide protections, but either  
14 the details of them or the enforcement ability or  
15 what have you are insufficient and if we can work  
16 together on those things, we would be very eager.

17 [Pause]

18 CHAIRPERSON GENNARO: - - How about  
19 this, you've given me a good explanation of the  
20 good things that you folks are trying to do in  
21 your shop to plan for, to map, to identify various  
22 issues that need to be looked at on the climate  
23 change adaptation, it could go here, it could go  
24 there, and I understand the things that you're  
25 trying to do and the structure that you're working

1  
2 in, and that's good, and the executive side should  
3 plan for and take actions that are in the best  
4 interests of the city's like long-term  
5 sustainability.

6 But we're the legislature and we  
7 got sort of like our own ideas too and we're  
8 focused on this particular thing that we see as  
9 like our next step in the wetlands thing. We did  
10 the transfer, we did the Jamaica Bay, we think  
11 that there is sort of innate a benefit from trying  
12 to protect the remaining 1% of the remaining  
13 freshwater wetlands that we think are still out  
14 there. Nor have we given up on the notion of  
15 additional protections perhaps for those that are  
16 already protected by the state, like the tidal  
17 wetlands or whatever.

18 So this is like where we're focused  
19 now and what we're asking for is engagement with  
20 us on something that we're interested in right  
21 now. I mean it would be worse from your  
22 perspective if I came forward and said for the  
23 remaining 1% of the wetlands of the freshwater  
24 wetlands, this is what we want you specifically--  
25 this is what the plan should be and we're going to

1  
2 prescribe the whole thing. We're just saying that  
3 there should be something and we'll leave it up to  
4 the Administration and this entity to essentially  
5 figure out like what that should be, but you have  
6 us, we're engaged, and to the extent that there  
7 can be common ground to get us a bill that will  
8 put us on that trajectory, we should endeavor to  
9 do that. And so would this be a bill that you and  
10 your folks would have drafted if left alone in a  
11 room for a month or whatever? Probably not,  
12 obviously not, but it's something that we're  
13 interested in and we want to get done. Yes, it  
14 has attributes that may not interact perfectly  
15 with what some of the good things that you're  
16 trying to do over there, you may have a different  
17 idea, but I think we should be able to figure out  
18 a way to get like something done, like we're  
19 interested in this, we have a history of trying to  
20 do something on wetlands in this committee and in  
21 this Council. We think that it's something that  
22 we should be able to get that's not going to like  
23 screw up everything that you're trying to do over  
24 there, and to kind of just be told like, no, we're  
25 not really--no, no, nice try, but don't think so.

1  
2 It rubs us the wrong way, we love you, but I mean,  
3 it's not the kind of partnership that we're kind  
4 of looking for.

5 So Council's interested in this, we  
6 want to get something done on wetlands, let's  
7 figure out a way that we can write something that  
8 won't louse up what you guys are trying to do, you  
9 can add your own goodies into it. You know what I  
10 mean? Let's just figure out a way to do something  
11 here, but for the city of New York, to say well we  
12 can't really do this now because we got this,  
13 this, and that, we got to do this first and we  
14 don't know what's out there--there are ways to  
15 kind of account for that and there are ways to--  
16 we've done bills that were like harder than this,  
17 you know? And I know everything's resources and  
18 everything's time, but you see what I'm saying  
19 here? It's just that you've got your own view of  
20 the world of what you're trying to do and your  
21 natural inclination is to see how this bill sort  
22 of fits into your overall strategic plan for how  
23 you want to move forward on a bunch of things, and  
24 you know what I'm saying, if you were in one, the  
25 executive branch and the legislative branch

1  
2 together I would say that you're entitled to have  
3 that view, you know? But it's like we're over  
4 here, and we got our own ideas about what we want  
5 to do, and this is what we're kind of looking for  
6 it. I mean 'cause not everything that we do is  
7 going to dovetail perfectly with what you're  
8 trying to plan for and get done. It just would be  
9 a miracle if that were to always be the case.

10 But we're interested in this, we  
11 got a track record on it, we want to figure out a  
12 way to get something done here, and that's...

13 So in light of that, what do you  
14 think we could sort of reasonably and  
15 collaboratively agree to pursue in terms of  
16 something that we can get done that would speak to  
17 the issue of filling the regulatory gaps out there  
18 and to have that process like happen now?

19 MR. AGGARWALA: [Pause] Well as I  
20 say, I think certainly there's a real opportunity  
21 for us to work together on what our report  
22 identifies as the immediate steps. And I think if  
23 we can develop a collaborative approach to getting  
24 those done, I think that would be something we  
25 would welcome.

1  
2 I read into this Intro that on the  
3 Council's behalf there's a certain skepticism  
4 about mitigation or mitigation banking that leads  
5 to the no loss provision as opposed to our prefer  
6 of no net loss and I think exploring and resolving  
7 some of those concerns, which are legitimate  
8 concerns, mitigation banking has not worked by any  
9 stretch in some of the instances where it's been  
10 attempted. Working that through together, because  
11 the Council would be necessary for us to create  
12 any sort of mitigation banking set up, of course,  
13 that would--I don't know for sure 100%, but I  
14 would imagine that that would require either a  
15 city legislative motion or it would require  
16 something to be done on the state level that would  
17 almost certainly require a home rule. So the  
18 Council would have to be a partner in adopting  
19 that, so we might as well eagerly work together on  
20 crafting it and deciding whether it makes sense to  
21 move forward.

22 I would be willing to explore with  
23 you a roadmap or a timetable to get to an ultimate  
24 kind of comprehensive wetlands policy, but as I  
25 say, I think I am highly concerned about the level

1  
2 of specificity that's outlined in here. And so  
3 the--

4 CHAIRPERSON GENNARO: [Interposing]

5 Let me just kind of respond to that for a second.

6 While I recognize Council Member  
7 Recchia who was here, thank you, Domenic, for  
8 coming.

9 And I think we've been pretty good  
10 in the past with respect to the wetlands transfer  
11 and as respect to Jamaica Bay that we were not  
12 overly prescriptive of what the final plan--storm  
13 water the same way, right. And it just seems to  
14 me that we should be able to--

15 [Sneeze]

16 CHAIRPERSON GENNARO: God bless you,  
17 Costa, okay. Okay. I've officially blessed you,  
18 you can stop sneezing now, it's okay, fine. Just  
19 that he can't say anything, he works me, what's he  
20 going to say, you know, so..?

21 You can keep sneezing, it's okay.

22 But I think that it would--there's  
23 got to be some kind of way that we could put  
24 something together where we didn't sort of ordain  
25 the outcome or whatever, or place limits on

1  
2 ourselves that just didn't make any sense. I  
3 mean, I think there is a way to leave it  
4 sufficiently--have it legislated. And so there is  
5 going to be a product that we can all  
6 conceptualize of what it would do. but not  
7 necessarily how it would get there, and I would  
8 just like to figure out a way to sort of tie that  
9 up. I'd like to figure out a way to sort of tie  
10 that up into some kind of bow and put it in a bill  
11 that would like officially sort of, not just  
12 launch the initiative because it's already  
13 launched, but crystallize it in law. There's no  
14 reason why we couldn't figure out a way to do  
15 something like that, that wouldn't tie anybody's  
16 hands, that would be sensible, and a law that says  
17 that pretty much what we're doing, you could give  
18 it a legal mandate to do the things that we're  
19 trying to do anyway. There's just got to be a way  
20 to get that done.

21 So forgive me for interjecting, and  
22 I said that in response to your comment that the  
23 bill was restrictive and had like a lot of details  
24 in it that you didn't think were prudent. But  
25 continue.

1  
2 MR. AGGARWALA: Well, I think to  
3 your point, certainly, as I say, I think we can  
4 certainly work together to figure out what a  
5 timeline that makes sense is, what a set of  
6 parameters or set of steps is that could then be  
7 put into some sort of legislation, I don't think  
8 that's infeasible. I think one of the things that  
9 we should probably talk further about perhaps on  
10 the staff level or perhaps directly--not in such a  
11 warm, hot room--is exactly what those milestones  
12 might be and what some of the uncertainties are.  
13 And then also to make sure that the planning  
14 that's prescribed or the focus of our joint  
15 attention is as much focused as possible on what  
16 the real hard issues are. and it's one of the  
17 reasons I keep coming back to funding.

18 You know, yet another example of  
19 how funding consistently is the issue, the  
20 Wetlands Transfer Task Force has done so much  
21 wonderful work, we've got all of these parcels  
22 protected, most of them still haven't been  
23 transferred because we're still figuring out how  
24 to pay for some of the cleanups that are necessary  
25 to keep these things really the way they ought to

1  
2 be, and to protect from illegal dumping and all of  
3 those kinds of things. And, to whatever extent we  
4 can, focusing our share and attention on actually  
5 solving those problems so we can put points on the  
6 board, that's something I think we can work with  
7 you and your staff on and map out a way.

8 CHAIRPERSON GENNARO: And certainly  
9 there's different ways to kind of put points up on  
10 the board so to speak, and one is to figure out  
11 the way to actually get those things transferred,  
12 deal with certain issues, but another way and the  
13 way that legislators sometimes who think a lot  
14 about what we want up on our scoreboard is that we  
15 did a bill, it is done, and, irrespective of  
16 anything that happens to me or this committee or  
17 this administration or whatever, this bill is now  
18 alive, it's going to happen by virtue of the fact  
19 that it now has to happen because we wrote a law  
20 saying it has to happen. And so that also is a  
21 very concrete step that we like to take as  
22 legislators, that's what we do. So once we get it  
23 crystallized and into some legally enforceable  
24 mandated set of vowels and consonants that we sit  
25 around and like the Mayor signs it, then, okay,

1  
2 like we did that, like that's now going to happen.  
3 And, not that we don't want to plan, not that we  
4 want to do--and all of the wonderful things that  
5 your office is trying to do are still very much in  
6 the realm of things that we would like to do. But  
7 to the extent that we get some of these laws done,  
8 they're now in the category of things that have to  
9 happen. And this is just something we just want  
10 to move it to that column, right?

11 And so why don't we do the  
12 following? It's middle of January or towards--the  
13 22nd or whatever it is, would it be possible by,  
14 let's say, the end of February to have some  
15 paradigm or outline of what we could move forward  
16 with as a bill on this? I mean, we would like to  
17 do that. I wouldn't want it to be that we're just  
18 going to go like--one alternative is that we just  
19 go and do it anyway, we don't really want to do  
20 that. And so why don't we take between now and  
21 the end of February to figure out a way to get to  
22 yes on at least something we can do in this regard  
23 to crystallize the joint intention of this Council  
24 and this Administration to--and overall wetlands  
25 protection policy that we could go forward on?

1  
2 Let's just like at least put like the clay on the  
3 wheel by like the end of February. And then at  
4 the end of the February, we'll like shape it into  
5 a pot, and then we will drink the nectar from the  
6 pot. So I'm such a poet here. You can't--this  
7 is--

8 MR. AGGARWALA: Can't say no to  
9 that.

10 CHAIRPERSON GENNARO: --you can't  
11 say no to that.

12 MR. AGGARWALA: Yeah, that's true.

13 CHAIRPERSON GENNARO: Yeah. Once  
14 you invoke nectar, it's just like the whole  
15 angels, clouds, and the whole, yeah...

16 MR. AGGARWALA: Look, I think the  
17 end of February might be feasible. I think we  
18 should as quickly as we can start having some of  
19 the conversations and see kind of exactly how  
20 quickly we can move to yes, as you say.

21 CHAIRPERSON GENNARO: Okay. So  
22 that's a commitment, so--

23 MR. AGGARWALA: [Interposing] It's a  
24 commitment to work with you, no question.

25 CHAIRPERSON GENNARO: Right, 'cause

1  
2 we really want to do something, we really want to  
3 do something, and we don't want to do it all by  
4 our lonesome, you know? We need your good team.  
5 We want to do something, but we want to do  
6 something really good, that makes sense, and so we  
7 really want to do this, and so we ask for that.

8 I'm sorry that there wasn't this  
9 level of colloquy or whatever before, I was of the  
10 understanding early on that we were closer than we  
11 actually obviously were. But that would be great,  
12 something we very much want to do, I'm sure we'll  
13 hear very supportive testimony from other people  
14 who are here today, who would like to see this  
15 happen as well and so [pause], okay.

16 I've just consulted with staff and  
17 they said it's fine for me to just like declare  
18 victory now and so and--

19 MR. AGGARWALA: I'd have to check  
20 with my boss on that one.

21 CHAIRPERSON GENNARO: Okay. We want  
22 to do this, we want to go forward, we don't want  
23 to go it alone, we just really want to get  
24 something done here, and there's just got to be a  
25 way to put what you folks want to do and what we

1  
2 want to do in terms of our vision for how we want  
3 to protect wetlands and fill in regulatory gaps.  
4 Or if you want to make it even grander than that,  
5 okay, but it should be something that we can  
6 crystallize, put down on a piece of paper. That  
7 doesn't mean it has to be everything, there's  
8 still other things that you're going to want to  
9 pursue outside that that may go here or there or  
10 whatever and that's fine, we're just trying to get  
11 as much as we can in the books earlier rather than  
12 later, that makes sense for us to do that. So we  
13 just want to--you know, we've been doing this for  
14 a while and we just want to get stuff on paper and  
15 get some bills done. So this is what we want to  
16 do.

17 Thank you for your gracious  
18 commitment to put some clay on the wheel, but by  
19 the end of February and then--but we would like to  
20 get it done like soon thereafter.

21 MR. AGGARWALA: Thank you.

22 CHAIRPERSON GENNARO: Okay. Thank  
23 you.

24 And so we greatly appreciate your  
25 panel for being here today and look forward to

1  
2 working with you on this and many other things  
3 that we've been talking about, and biofuels and  
4 gas drilling and all kinds of other things that we  
5 need to do.

6 And I always--anytime a word gets  
7 said on the record for the first time in the  
8 committee, I like to make note of it, I think  
9 that's the first time the word nectar has been  
10 used in this committee, and so that is a first.  
11 And I'm glad it happened with you guys, I'm really  
12 glad it happened with you guys. Okay.

13 Thanks very much. All the best.

14 Our next panel, this is a panel?  
15 This is a panel? - - panel? Robert Pirani of the  
16 Regional Plan Association, Paul Mankiewicz of the  
17 Gaia Institute, Matthew--it looks like Klinman, am  
18 I saying that right?

19 MR. MATTHEW KLINMAN: Yeah.

20 CHAIRPERSON GENNARO: Okay. Fine,  
21 Matthew Klinman of the Metropolitan Waterfront  
22 Alliance.

23 [Pause]

24 Okay, okay, thank you all for being  
25 here, and I'm grateful that you're here to share

1  
2 the benefits of your views with us. The Counsel  
3 to the Committee will swear in the panel and then  
4 I'll call you in turn to deliver your testimony,  
5 then once all the testimonies been received, the  
6 panel will have questions or comments. So,  
7 Samara.

8 MS. SWANSTON: Gentlemen, would you  
9 please raise your right hands? Do you swear or  
10 affirm to tell the truth, the whole truth, and  
11 nothing but the truth today?

12 [Pause]

13 CHAIRPERSON GENNARO: Okay.  
14 Starting from my right, Rob Pirani, Rob it's been  
15 a pleasure to work with you on many occasions, and  
16 certainly it comes to mind the great work on the  
17 Wetlands Transfer Task Force. You were co-chair  
18 of that task force, right?

19 MR. ROBERT PIRANI: That's right--

20 CHAIRPERSON GENNARO: Okay

21 [crosstalk]--

22 MR. PIRANI: --that's right,  
23 Councilman.

24 CHAIRPERSON GENNARO: And so do I  
25 have written testimony from you, Rob?

2 MR. PIRANI: Yeah, I did--

3 CHAIRPERSON GENNARO: Okay, fine,  
4 fine.

5 MR. PIRANI: --I submitted some  
6 written testimony and--

7 CHAIRPERSON GENNARO: All right. I  
8 got you, okay. Fire at will, okay.

9 MR. PIRANI: Let me start by  
10 thanking you for your leadership on this and so  
11 many other issues dealing with the city's natural  
12 resources. This Committee has been truly  
13 inspirational and I think a catalyst for a lot of  
14 good things happening, both legislatively and in  
15 the city administration, so thank you.

16 My name is Robert Pirani, I'm the  
17 Director of Environmental Programs for Regional  
18 Plan Association. As the Councilman noted, I was  
19 also the co-chair of the Wetlands Transfer Task  
20 Force created by Local Law 83, legislation  
21 authored by Chairman Gennaro.

22 I note that I'm thrilled to be here  
23 with Dr. Mankiewicz and my colleague from  
24 Metropolitan Waterfront Alliance, both experts on  
25 this as well.

1  
2 We completed a map a few years ago  
3 of the wetlands in New York Harbor, both those  
4 currently - - and historic and it's on the back of  
5 the testimony that we handed out today. Of the  
6 hundred square miles of coastal wetlands that once  
7 fringed the edges of the harbor, only 14 square  
8 miles currently remain. Similarly, hundreds of  
9 acres of freshwater wetlands have also been filled  
10 or replaced by culverts and pipes.

11 Of course, we can't replace those  
12 lost wetlands, but, as you've noted, we can do a  
13 lot to ensure that the wetlands that remain are  
14 protected and that some of the functions, whether  
15 they be habitat, hydrologic, open space, etc., can  
16 be restored or recreated throughout the city and,  
17 again, I applaud your leadership in seeking to do  
18 that.

19 Let me summarize my testimony,  
20 given the conversation that preceded this. First  
21 of all, let me just state that we really strongly  
22 support the broad goals and the purpose of Intro  
23 506. It's, I think, the purpose of the  
24 legislation is exactly right. We within the  
25 Wetlands Transfer Task Force spent a long time

1  
2 deliberating, not just over the fate of the city-  
3 owned wetlands that were our charge, but also--and  
4 I'll recognize Eugenia Flatow and Glenn Phillips,  
5 two of my colleagues from the task force, we spent  
6 a lot of time talking about all the other wetlands  
7 in the city that weren't under the purview of the  
8 task force and that in fact there was a lack of a  
9 overall overarching policy to address those and so  
10 it's terrific to see you working on this.

11 I'd also note that we're also very  
12 glad to see you working together with the city and  
13 the commitment that I heard from the city  
14 administration to work with you on crafting both  
15 legislation and then moving forward on their good  
16 work.

17 As they indicated, they have made  
18 this a priority in the 2030 plan, I believe the  
19 staff there has been hard at work trying to  
20 deliver both maps that identify where wetlands are  
21 really are left in the city, as well as  
22 identifying some of the policy alternatives that  
23 could be the subject of any legislation. And  
24 we're obviously--we'd like to see that policy be  
25 completed in a timely way, and I think maybe the

1  
2 discussions that you're going to have will help  
3 ensure that. We also want to make sure that the  
4 creation of that policy is done in a transparent  
5 way and, again, having legislation ensures that,  
6 as you noted, that this work is done both in an  
7 open way and in a way that gets completed and sort  
8 of stands--doesn't depend on any individual, but  
9 in fact depends on the law. So we're very happy  
10 to see that happen.

11           Having noted the need for swift  
12 action, I also note that in the legislation,  
13 completing a proposed inventory by July 1st may  
14 not be realistic. The city is hoping to have its  
15 inventory done, I believe, by the end of 2009, and  
16 perhaps as those discussions move forward, this  
17 partnership should recognize the need to complete  
18 that in order to address certain aspects of  
19 policy, but that perhaps policy discussions on  
20 other aspects that were discussed before, whether  
21 they be mitigation strategies, whether they be  
22 current gaps in the regulatory structure, whether  
23 they be issues of management of smaller wetlands,  
24 whether they be issue the funding that's currently  
25 available to either the Department of Parks or the

1  
2 DEP to manage wetlands. I think those are all  
3 things that we can start talking about now and  
4 don't necessarily need to wait for the inventory  
5 to be completed, although certainly the completion  
6 of the inventory will certainly help with the, in  
7 particular on the privately held wetlands and  
8 what's appropriate policy.

9                   Let me make a few other specific  
10 comments that might help you as you go forward.  
11 In addition to the Department of Environmental  
12 Protection, we believe creation of a citywide  
13 policy should also include the Department of City  
14 Planning by including, but not limited, to its  
15 coastal program, the Mayor's Office of  
16 Environmental Coordination responsible for the  
17 CEQR manual, and, of course, New York City Parks  
18 Department in their natural resources group, which  
19 have extensive experience in management of urban  
20 wetlands here in New York City, which I don't  
21 think can be underestimated.

22                   We'd also say that part of the  
23 policy should be a identification of an  
24 appropriate definition of wetlands in New York  
25 City, because a number of the sites with fill or

1  
2 other disturbed soils, definitions that might work  
3 nationally that rely solely on vegetation or  
4 hydrology may not cover the range of conditions of  
5 city wetlands, in particular areas suitable for  
6 restoration of wetlands, areas where we might  
7 think about wetlands retreat, you know, again, it  
8 may not fall under traditional definitions of  
9 wetlands.

10                   And then finally, we believe that  
11 the policy should specifically address the ways  
12 and means of managing smaller wetlands properties  
13 in the city. Many of these smaller isolated  
14 properties are difficult and costly to manage by  
15 the Parks Department. Circuit rider programs,  
16 community stewardship options could provide a  
17 means of ensuring appropriate management of these  
18 parcels in a cost effective community-based way  
19 given adequate funding in the New York City  
20 Department of Natural Resources group and DEP's  
21 Bluebelt program could provide important expertise  
22 and experience towards that.

23                   So, again, thank you very much for  
24 your interest in this and the opportunity to  
25 testify.

CHAIRPERSON GENNARO: Rob, thank  
you.

Before we go forward, I just want  
to recognize Councilman Bill de Blasio is here, an  
honor to have you here, Bill, thank you for all  
your great work in support of this Committee and,  
yeah, thank you, thank you.

Paul, Paul, you're up.

[Pause]

MR. PAUL MANKIEWICZ: Good  
afternoon. My name is Paul Mankiewicz, I have a  
doctorate in biology, ecology, biophysics. I am  
the Executive Director of the Gaia Institute and  
board member of the New York City Soil and Water  
Conservation District and good to be here again.

This is a magnificent effort. I  
have to say I appreciate the fact that you have  
tried to write large with the ecological  
opportunities in New York City and I think this is  
a step in that direction, and I hope you don't  
take it as damning criticism to look to writing a  
little larger here.

As I think a no net loss problem  
approach has been a problem because that approach,

1  
2 as they pointed out in the wetlands book by Bill  
3 Nearing [phonetic] and others, we'll never get  
4 there from here, and the problem is we've lost so  
5 many wetlands--45,000 acres of fill over tidal  
6 marsh, 70 square miles in New York City at the  
7 edge of the landscape alone, something like the  
8 same amount in the interior space. So I believe  
9 we may need to focus on a net gain altogether.  
10 Building on the kind of things the Mayor's done  
11 with the million trees idea. The million trees,  
12 if each one of them is 35 feet in diameter would  
13 be about a 10th of the city in area. It's the  
14 right way to think, it would literally change the  
15 climate of this landscape altogether.

16 So the Friends of Teddy Roosevelt  
17 who built the Bronx had the right idea, Pelham Bay  
18 Park by Pelham Parkway is connected to the zoo and  
19 the Botanical Garden, Bronx Park is connected by  
20 Mosholu Parkway to Van Cortland Park is connected  
21 by, again, Mosholu and the Henry Hudson Parkway,  
22 all the way over to the river, and the issue for  
23 all of the millions of pass rain [phonetic] birds  
24 that come through here is connectivity.

25 So in the report we wrote for the

1  
2 NYC 2012 application, which got some distance  
3 environmentally, we were looking actually to  
4 create a connection across the whole marine, your  
5 district in Queens, all the way across. So  
6 literally the pass rains, which increased the  
7 productivity of the northern woodlands by about a  
8 factor of a third that increased the carbon  
9 storage, we have to make literally space for them  
10 and wetlands are critical, absolutely critical.

11 So tripling, probably better yet,  
12 quadrupling the number of wetlands without getting  
13 into a particular size determination, cutting down  
14 by a factor of half, say the distance between  
15 every wetland we have in place now and then doing  
16 things like they do in Europe, looking at, not  
17 simply the tidal wetland we have, but, as I've  
18 said here before, the length of tidal wetland, as  
19 we have so much sheet piling and riprap, there's a  
20 zero length. In many areas, we could actually  
21 change that, so there's a place for wetlands to  
22 move with changes in sea level rise and the rest.

23 So we have also opportunities,  
24 whether it's dredged material, whether it's the  
25 2,000 tons of waste glass we make each day in the

1  
2 city of New York, whether it's about five times  
3 that amount of waste concrete and the rest, we  
4 have materials at hand where we could make fens,  
5 we could make literally the kinds of wetlands that  
6 were here originally on inwood marble and other  
7 natural native substances, but they would have to  
8 be built in part, and partly we could do them with  
9 waters that we have available. The MTA needs to  
10 pump millions of gallons out of the sewers each  
11 day, out of the subways each day. Those, they  
12 have to do on a regular basis, that could be  
13 either an oscillating wetland or a wetland we  
14 could maintain the hydrology of simply because we  
15 have this waste material we need to get rid of.  
16 It could be an economic incentive to create green  
17 infrastructure in the process of actually making  
18 habitat at the same time.

19 My wonderful late colleague, Steve  
20 Clemons [phonetic], 35 years I've known him  
21 actually, just died a while ago, he has put  
22 together the habitat studies of plants in the  
23 city, they've been done since the 1830s. We know  
24 what plants are here and we know to a substantial  
25 degree, the kind of biota [phonetic] they support.

1  
2 We need to basically use that as a kind of  
3 hypothesis-driven wetland restoration framework to  
4 re-create landscapes that literally make it  
5 possible for the richness of this temperate biota  
6 to come back and to enhance it altogether.

7           So, I believe I'm speaking to the  
8 right person here.

9           The other side of the waste we have  
10 an opportunity of, you've seen in Queens, whether  
11 it's Flushing our Eastern Queens or the Guanas  
12 [phonetic], all of them have high water level,  
13 high water table problems, pump them out, create  
14 wetland environments, basically support businesses  
15 with tax breaks and the other things we're doing  
16 these kinds of things, but make stable habitat  
17 that can make for a green continuity across the  
18 city north and south, east and west to basically  
19 incorporate the kinds of habitat into the kinds of  
20 urban landscape that--I left it in my bag but in  
21 this today's Science there's a picture of Charles  
22 Darwin, we can't raise those kinds of people,  
23 females and males, without having the kinds of  
24 natural environments where they can lose  
25 themselves, and we're going to have to build some

1  
2 and let them learn how to do it in the process.

3 CHAIRPERSON GENNARO: Thank you,  
4 Paul, I appreciate it, always, always good to have  
5 you here, always good to have your inspirations  
6 and we'll just sit tight.

7 We'll hear from Matthew and then  
8 we'll have questions and comments.

9 Matthew Klinman.

10 MR. MATTHEW KLINMAN: Good  
11 afternoon. And thank you for the opportunity to  
12 submit this written testimony. My name is Matt  
13 Klinman, I'm here on behalf of the Metropolitan  
14 Waterfront Alliance and it's an honor for me to be  
15 here, this is my first time in City Hall and--

16 CHAIRPERSON GENNARO: Welcome.

17 MR. KLINMAN: Thanks. I am here  
18 testifying on behalf of Roland Lewis, President  
19 and CEO of the Metropolitan Waterfront Alliance, a  
20 coalition of over 370 organizations working  
21 together to transform the New York Harbor and its  
22 waterways into a world-class resource for work,  
23 transit, and education.

24 MWA's interest in comprehensive  
25 wetlands policy for New York City is strong

1  
2 indeed. Wetlands are the buffers, filters, and  
3 cleansers of our waterfront. They protect  
4 property from storm surge and sea level rise, they  
5 help maintain the health and quality of water in  
6 the harbor and the harbor estuary, and they  
7 provide critical habitat for birds, fish, animals,  
8 and other marine, and coastal life. The  
9 identification, protection, and restoration of  
10 wetlands is thus critical to both the urban and  
11 natural environments. I don't think I'm saying  
12 anything new here.

13 A world-class environment, a  
14 waterfront envisioned by the coalition of 370  
15 organizations that MWA represents is one that  
16 includes healthy wetlands, wetlands that function  
17 and support multiple ecological and environmental  
18 services, as well as urban and infrastructure  
19 related services.

20 MWA would like to express its  
21 strong support for this proposed legislation. We  
22 also would like to take this opportunity to  
23 suggest important additions to this legislation to  
24 better address the importance of community, civic,  
25 and non-governmental involvement in the

1 identification, evaluation, monitoring, and  
2 restoration of the city's wetlands. According to  
3 the U.S. EPA Office of Water, Wetlands, Oceans,  
4 and Watersheds--and I'm quoting--government  
5 regulations and zoning restrictions are not enough  
6 to protect wetlands. Citizens must also become  
7 involved. Volunteers that demonstrate concern and  
8 devote time to protecting wetlands can make a big  
9 difference. Local citizens not only provide the  
10 extra work force necessary to assess the health of  
11 and threats to our wetlands, but also serve as  
12 some of the most powerful advocates for protecting  
13 wetland habitat. When volunteers work to protect  
14 local wetlands, they greatly improve the chances  
15 that those wetlands will be valued by the  
16 community. Volunteer monitors often make critical  
17 observations and measurements that help assess the  
18 health of the wetland. Monitoring wetland  
19 characteristics, such as plants, soil, hydrology,  
20 and water, and wildlife helps us to better  
21 understand wetland functions and track changes in  
22 wetland ecosystems. Volunteers increase awareness  
23 of the importance of wetlands and create a  
24 foundation for active restoration of previously  
25

1  
2 degraded wetlands.

3           By actively involving communities,  
4 citizens, civic organizations, and nongovernmental  
5 organizations, New York City can reinforce the  
6 importance of wetland restoration and ensure that  
7 restoration projects get local support and are  
8 successful for many years to come. For example,  
9 the 370 alliance partners of the MWA represent  
10 thousands, if not tens of thousands, of  
11 enthusiastic and ready volunteers who are able to  
12 provide services that help implement the  
13 comprehensive wetlands policy.

14           Specifically, MWA suggests the  
15 following changes: under section 2(d), MWA asks  
16 that the comprehensive wetlands protection policy  
17 include an evaluation of and recommendations for  
18 the improvement of the volunteer and third-party  
19 resources available to the city for the  
20 utilization of volunteer programs to identify,  
21 evaluate, monitor, and restore the city's  
22 wetlands. MWA asks that the policy require the  
23 city to seek input from local and regional  
24 nongovernmental and civic organizations on ways to  
25 fulfill citizen involvement opportunities and how

1  
2 to link these opportunities to the implementation  
3 of the comprehensive wetlands protection policy.

4 MWA asks under section 2(d)7, which  
5 describes how the commissioner assesses the  
6 feasibility of including measures to improve  
7 implementation through reporting, monitoring,  
8 enforcement, that the assessment includes  
9 opportunities to employ comprehensive citizen  
10 volunteer programs to improve implementation.

11 Lastly, the MWA asks that this  
12 legislation incorporate the need for the city's  
13 active involvement in connecting potential  
14 volunteers to volunteer wetland opportunities and  
15 projects. New York City has a wealth of willing  
16 volunteers ready to do natural resource projects.  
17 However, there is a lack of hands-on, outdoor,  
18 natural resources volunteer opportunities  
19 available to, and known to, large pools of  
20 potential volunteers at all levels--nonprofit,  
21 corporate, school, and civic organization-based  
22 volunteers. This legislation can help bring about  
23 a greater interest, awareness, and participation  
24 in the critical and effective work that can be  
25 accomplished by matching goodwill with

1  
2 opportunities.

3 Thank you for the opportunity to  
4 testify today and I'm happy to answer any  
5 questions you might have.

6 CHAIRPERSON GENNARO: Thank you, Mr.  
7 Klinman, for being here. Okay.

8 Back to Rob [pause], you saw how  
9 the Administration really didn't want to do this  
10 and so I put something forward that I thought,  
11 okay, let's just figure out what we can agree upon  
12 and kind of move forward. I mean, if you or  
13 anyone on the panel thinks that--well I mean,  
14 obviously, you want us to move forward with the  
15 best thing we possibly can get done now.

16 [Pause]

17 I think you should let the  
18 Administration know that like Rohit came forward  
19 and made a commitment that he wants to see what we  
20 can reduce to writing and let him know and like  
21 let the Mayor know that it's important to get  
22 something done.

23 I know that you, Rob, were talking  
24 about how they're doing this survey study or  
25 whatever it is, but you don't necessarily think

1  
2 that we have to wait until that's all done before  
3 we can conceive of something that we can put down  
4 on paper now and pass now, right?

5 [Pause]

6 MR. PIRANI: There we go. I guess  
7 there's a couple of questions, let me do the  
8 easier one of first. My understanding in terms of  
9 the inventory, my understanding is that it's being  
10 done now or it's soon to start and will be  
11 completed by the end of the year and I guess I  
12 defer to Carter Strickland and Aaron Koch on  
13 exactly where they are in their process, but I  
14 think the discussion, a finalization of some sort  
15 of how many private wetlands are out there and the  
16 best way of regulating them I think should wait  
17 until we really know where they are and how many  
18 there are. Starting the conversation could  
19 certainly [crosstalk] that--

20 CHAIRPERSON GENNARO: [Interposing]  
21 You're killing me here, you're killing me, I was  
22 counting on the other answer.

23 MR. PIRANI: Yeah, well no, I think  
24 in fairness to them, I mean I think it's important  
25 to know kind of what we're talking about and are

1  
2 we talking about--because the strategies might be  
3 different. If at the end of the day we're talking  
4 about hundreds of wetlands or hundreds of acres,  
5 as opposed to thousands of acres, you know, maybe  
6 the solutions just buy them, you know, as opposed  
7 to--its a lot easier, a lot faster if you get them  
8 into the Bluebelt program, maybe that's a more  
9 secure way to sort of ensure that those wetlands  
10 remain and are protected in perpetuity.

11 If we're talking about thousands of  
12 individual properties, well then purchase is  
13 prohibitive and we do need to think about  
14 regulation.

15 So I think it's important to get a  
16 sense of that. Now, again, I just want to be  
17 clear, talking about the alternatives and having  
18 some open conversations about what those are can  
19 certainly precede the inventory being completed,  
20 that doesn't need to wait.

21 So in terms of your, as I  
22 understand the intent of the legislation--

23 CHAIRPERSON GENNARO: Right.

24 MR. PIRANI: --it's really to create  
25 a task force process if you will to start the

1  
2 dialogue and that doesn't have to wait for all the  
3 information. Certainly the Wetlands Transfer Task  
4 Force, you know, we--

5 CHAIRPERSON GENNARO: Correct.

6 MR. PIRANI: --got going well before  
7 the inventory was completed--

8 CHAIRPERSON GENNARO: Right.

9 MR. PIRANI: --solved a lot of  
10 issues before we actually were able to zero in on  
11 the specific properties.

12 I mean, as to what's the right  
13 solution, I mean I think it's, far be it for me to  
14 kind of get between the City Hall and the Council  
15 on ensuring what the right mechanisms are. We  
16 only ask that it be sort of an open process--

17 CHAIRPERSON GENNARO: Right.

18 MR. PIRANI: --that it be like,  
19 let's say the storm water process, you know, it  
20 involved a lot of community meetings, a lot of  
21 public input, something, and I thought they did a  
22 good job in terms of running those meetings.

23 CHAIRPERSON GENNARO: Right.

24 MR. PIRANI: Something like that  
25 would work in order to ensure that, it could be a

1  
2 smaller group of folks, but, again, an open and  
3 transparent process, you know, it's been I think a  
4 couple of years since the original legislation was  
5 introduced and since the 2030 plan--

6 CHAIRPERSON GENNARO: Right.

7 MR. PIRANI: --[crosstalk] this  
8 commitment obviously were, you know, we understand  
9 that it takes time to do things, but we'd like to  
10 see it, make sure it happens. So I think having  
11 that sort of--again, and securing a commitment on  
12 the part of the city, whether through legislation  
13 or other means is important. And again, I think  
14 ultimately the policy is going to have to include  
15 legislation so, you know--

16 CHAIRPERSON GENNARO: Right.

17 MR. PIRANI: --so we think there's  
18 certainly a room there for it.

19 CHAIRPERSON GENNARO: Okay, okay,  
20 good, I'd just like to note for the record that  
21 Carter is still here, so it's to the credit of the  
22 Office of Long Term Planning that they're having  
23 Carter here to listen to all of this good  
24 testimony and we certainly recognize that and  
25 appreciate that.

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Thank you, thank you, Rob.

And, Paul, as always, your wonderful, inspirational ideas for green infrastructure and figuring out some of the good things that they're doing in other parts of the world should certainly be part of what we consider here and what the Office of Long-Term Planning and Sustainability considers as part of what we should do and I would ask you to keep both the staff to the committee and Rohit's staff sort of updated with any value - - that you think some of these strategies can have for us.

And we know you're feelings on no loss versus no net loss and we understand and appreciate that, we actually put it in the bill. So to the extent that you can continue to be a voice for no loss, we would appreciate that.

And thank you for always coming forward with things that nobody else brings forward, so thank you for that. Paul, if you have something to add, I'd be happy to...

MR. MANKIEWICZ: I don't know any piece of legislature anywhere that really [pause] is a voice for the connectivity, the biogeographic

1  
2 conductivity that Darwin discovered that basically  
3 was part of what founded the evolutionary biology  
4 that our science depends on and we could do it  
5 here. Obviously, the Mayor's million trees moves  
6 in that direction, the HAP habitat process is gone  
7 in that route, but to actually have a piece of  
8 legislature that looks at the biogeographic  
9 connection between the Cunningham Parks, the  
10 forest parks, the wetlands, and the environments  
11 that actually support the biota of this city and  
12 this country really this is a major migration  
13 nexus would be a good thing to have. Not to say  
14 that we need to hold peoples--a gun to people's  
15 head, but just to see that as a concept.

16 Organisms--there's immigration and extinction. Ed  
17 Wilson pointed that out long ago--Island  
18 Biogeography, 1967--but to see it now actually in  
19 a legislative framework and just to start that  
20 argument would be a way to really have the kind of  
21 tools for conservation and enhancement that are  
22 not at work in other places.

23 CHAIRPERSON GENNARO: Thank you.

24 And no need to take a trip on the Beagle  
25 [phonetic], you can just do it right here and so

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thank you, thank you as always, Paul.

Mr. Klinman, thank you for putting forward some specific recommendations for the bill. We always like when people do that and we're grateful to MWA and President Lewis and all of your member organizations for being the great force that you are on everything that relates to waterfronts. We appreciate the work you put into this, and we'll give it all due consideration, you know, make sure Carter and his people have a copy of that as well.

Thank you, thank you very much to the panel, and we appreciate all of your good work.

[Pause]

Okay. And Mr. Phillips, thank you, thank you for past work on the wetlands task force.

So Glenn Phillips from New York City Audubon; Genie Flatow, Genie, good to see you as always; and Joel Kupferman, New York Environmental--it says New York Environmental Law, but it's like, New York Environmental Law and Justice Project or whatever, yeah.

2 So thank you.

3 [Pause]

4 And, gentlemen, I think we're going  
5 to do a little lady's first here, but first we'll  
6 have Samara swear in the panel, and I'll get her  
7 the microphone to do that, there you go.

8 MS. SWANSTON: Gentlemen, and Ms.  
9 Flatow, would you please raise your right hands.  
10 Do you swear or affirm to tell the truth, the  
11 whole truth, and nothing but the truth today?

12 [Pause]

13 CHAIRPERSON GENNARO: Thank you. I  
14 want to make sure that I have the testimony before  
15 me, okay.

16 MS. EUGENIA FLATOW: I didn't get a  
17 chance, because of the--

18 CHAIRPERSON GENNARO: Okay.

19 MS. FLATOW: --weather to get it  
20 together, I have it and I will send it to you.

21 CHAIRPERSON GENNARO: Eugenia, you  
22 have carte blanche with us as you know, as you  
23 know--

24 MS. FLATOW: [Interposing] Well I  
25 think it's interesting that I was on the Committee

1  
2 thanks to you people that did the original work on  
3 wetlands, I'm on the board of MWA.

4 CHAIRPERSON GENNARO: You know,  
5 Eugenia, how about we just start? You just state  
6 your name for the record and proceed with your  
7 testimony.

8 MS. FLATOW: I'm Eugenia Flatow, I  
9 am Chair of the New York City Soil and Water  
10 Conservation District and I've been at the city to  
11 become more and more environmental for the last  
12 50, 60 years, and I'm delighted to be here and I  
13 thank you for the opportunity.

14 CHAIRPERSON GENNARO: Sure.

15 MS. FLATOW: I came down to really  
16 tell you that I think it was wonderful what you  
17 did.

18 What I would like to say is that  
19 the Mayor has gotten people very interested in  
20 what we may be facing in terms of an increase in  
21 population and what we're going to do about it.  
22 And, unfortunately, it's always the water side--  
23 can't do it. There is no place to be sure that  
24 you have a place in the city to build anything,  
25 you either have to knock something down or you

1  
2 have to go where it shouldn't be, it shouldn't  
3 take place.

4           If you have promised that you will  
5 do this--and I hope you will by the end of  
6 February--there is a large number of people who  
7 will be happy to be a part of it, to go out and do  
8 all the work that has to be done, to go and do the  
9 mapping, go out to do the information as  
10 necessary. Do you think we would have had this  
11 story on the plane if there hadn't been all those  
12 people out there to come with the boat or what  
13 they did to save every single one on that plane?  
14 Think of that. When it happened in Washington,  
15 DC, they didn't, they weren't as fortunate. But  
16 this is happening through MWA and many others.  
17 They are very, very fond of our waterfront and our  
18 wetlands.

19           When we worked on the committee, we  
20 were able to do the big wetlands and to effectuate  
21 some agreement among the agencies on what should  
22 be done, but we didn't have time to do the small  
23 wetlands and to really say, who owns them, how do  
24 they feel about it, what can we do about it. That  
25 has to be done. And if I can help, I'll be glad

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to do so.

CHAIRPERSON GENNARO: Thank you, Eugenia, I really do appreciate that.

And we'll hear from the rest of the panel, and then we'll have some back and forth. And, Mr. Phillips, if you could grace us with your testimony, I'd be happy to have that.

MR. GLENN PHILLIPS: Thank you. My name is Glenn Phillips, I'm the Executive Director of New York City Audubon, founded nearly 30 years ago. NYC Audubon is a grassroots conservation organization dedicated to protecting wild birds in their habitat within the city.

And in the interest of brevity, I will--I won't actually read verbatim my testimony, I just a few points, everything else has really been said.

I think the one key fact is that New York state is the only state in the Northeast that fails to protect the small wetlands, so that this legislation is really critically important because we're the odd man out.

CHAIRPERSON GENNARO: You only say it in the Northeast, that doesn't have their

1  
2 own...

3 MR. PHILLIPS: All other states in  
4 the Northeast protect even smaller wetlands and  
5 even in the region, most Westchester towns have  
6 their own wetland protection plans.

7 CHAIRPERSON GENNARO: Right.

8 MR. PHILLIPS: So we're out there  
9 and not doing what other people in our region are  
10 doing. And we need to move this forward.

11 That said, the legislation isn't  
12 perfect and we heard the Mayor's office and  
13 understand that some of their concerns and support  
14 the idea of taking another look at the legislation  
15 to make sure that it's a reasonably doable project  
16 for the people to be charged with making it  
17 happen.

18 We also are really concerned about  
19 the institutional sustainability of wetland  
20 management, that there's a lot of work that needs  
21 to be done to keep our wetlands healthy and we're  
22 not sure how we're paying for it, and we think  
23 that that issue does need to be addressed.

24 In our work, we've been batting  
25 around the idea of a storm water utility fee as a

1  
2 way to provide dedicated funding for all of this  
3 and there are over 2,000 municipalities that are  
4 doing that, I don't know if it would work in New  
5 York City, but I think it's worth exploring.

6 'Cause right now, all the work of the Wetland  
7 Transfer Task Force is sitting there pending the  
8 funding of the cleanup and fencing of the  
9 properties for transfer and that seems like a  
10 waste of everyone's time.

11 We also, the Pre-considered  
12 Introduction, we were thrilled to see that. We  
13 think that there is a need to not just require the  
14 applicant to be liable, but also the filing  
15 architects and engineers. Building applicants are  
16 usually single - - entities and have traditionally  
17 had no calls about admitting that kind of data  
18 from their proposal and say it needs to be  
19 positioned more broadly so that it will be  
20 actually effective.

21 And on behalf of our 10,000  
22 members, we urge that both of these proposals move  
23 quickly towards approval.

24 Thank you for considering these  
25 issues.

CHAIRPERSON GENNARO: Thank you,  
thank you, Mr. Phillips, I'm just making a note.

[Pause]

Okay. Joel, it looks like you have  
the last word. Joel Kupferman, if you state your  
name for the record, proceed with your testimony,  
we'll be happy to hear it.

MR. JOEL KUPFERMAN: Joel Kupferman-

-

CHAIRPERSON GENNARO: Want to make  
sure your microphone is on, so now the light has  
to be on--

MR. KUPFERMAN: There we go.

CHAIRPERSON GENNARO: --it used to  
be the light had to be off, now it has to be on.

MR. KUPFERMAN: Joel Kupferman, New  
York Environmental Law And Justice Project, the  
National Lawyers Guild Environmental Justice  
Committee, and I want to commend the speakers that  
spoke before me. Not the first panel, the second  
panel.

And also I have some technical  
critique of the bill and I came here, I think  
primarily to criticize, but after hearing the

1  
2 testimony the first panel and after hearing you  
3 speak, Mr. Chairman, I'm here to commend your  
4 strong stand and offer support for the City  
5 Council's position to.

6 I've been--

7 CHAIRPERSON GENNARO: Thank you.

8 MR. KUPFERMAN: I've been doing  
9 environmental law for the last 10, 12 years, and  
10 the first 3, 4 cases happened to be wetland cases.  
11 And I think the problem is a question of the city  
12 really living up to its word and also putting more  
13 teeth into this bill and also making the city  
14 really stick to their commitment.

15 Part of the problem that we've had  
16 in the last 5, 6 years with the city is that  
17 wetlands and non-wetland cases--and a lot of this  
18 information comes from people who work for the  
19 city that call me at night--I have many, many  
20 whistleblowers that call me and I think it's  
21 important for the Environmental Committee from  
22 here on to listen to, not just the commissioners  
23 and the higher staff, but the people who work for  
24 the different departments that made a lifelong  
25 commitment to working there, but have been muffled

1  
2 and letting their views known. And fortunately  
3 some of them have come forward to do that--and  
4 just a side note, I think it's important for the  
5 city to put a stronger whistleblower law in so  
6 that those people are protected and you could hear  
7 their voices.

8           What I've been hearing is that, and  
9 I've been seeing, is the city doesn't want to  
10 monitor and they don't want to map, they don't  
11 want to know. And the Mayor's office told us that  
12 there's some uncertainty out there and in the face  
13 of uncertainty, that's where the bill shouldn't  
14 let stand the idea that there could be a  
15 moratorium, I think the wording should be there  
16 shall be a moratorium. Until we know what's  
17 there, we should not let them to do anything else  
18 to infringe upon those wetlands.

19           And part of the problem is that--  
20 I'm doing a few cases right now and the defendant  
21 happens to be the City of New York and it's  
22 interesting they told us that your proposal can't  
23 work because they don't have money and yet we're  
24 in Ridgewood, New York, where the DEP gave land  
25 over to the Department of Parks. It's called the

1  
2 Ridgewood Reservoir and it's unbelievable pristine  
3 wetlands and the city wants to put in artificial  
4 turf and knock down one of the basins. I can't  
5 understand, and my background is economics, is  
6 that they could tell you that maybe technically  
7 that they don't have the money to do enforcement,  
8 to do the mapping on this, but they could build  
9 that facility there in artificial turf.

10 [Pause]

11 We also have problems with several  
12 other parks. We're fighting a waste transfer  
13 station--

14 CHAIRPERSON GENNARO: [Interposing]

15 We need you to kind of focus to the extent  
16 possible on like the legislative initiative, you  
17 know, 506 and the Pre-considered bill that's  
18 before us and how we could--

19 MR. KUPFERMAN: Sure, okay.

20 [Crosstalk] points--

21 CHAIRPERSON GENNARO: --the comments  
22 are well taken, but there's maybe like in a  
23 context of sort of like an oversight hearing on  
24 those topics where more want to focus on the  
25 legislation, yeah.

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MR. KUPFERMAN: Okay, here we go.

You mentioned freshwater and tidal wetlands covered, we should clarify what wetlands are included. You should also clarify which wetlands other than public are covered by this bill. When I think there's a lot of private wetlands that could be covered by this, when the city subsidizes or give permits or goes into partnership with development with private developers, that the city's jurisdiction is a lot more than just the city land that they own.

CHAIRPERSON GENNARO: [Interposing]

Oh yes, of course, yeah, this is--

MR. KUPFERMAN: [Interposing] But I

think that should be spelled out because it's--I mean--

CHAIRPERSON GENNARO: Okay.

MR. KUPFERMAN: --my reading of it

is a little nebulous and it should be stronger because the first thing they're going to do in the court case is to go in and try to fund--to knockout the city on those weaknesses.

And also any study that it's made should be definitely put out to the public right

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2 away on the website.

3           And also, as I said before, there  
4 should be a moratorium on drainage and fill to  
5 continue until this study--a policy is completed.  
6 It's a little scary that we have, you know, may, I  
7 think it's important for you, especially after the  
8 testimony in the beginning, is to make sure that  
9 the moratorium exists for at least another six  
10 months or 12 months 'til that nothing could be  
11 done.

12           And also we want to reiterate that  
13 the Department of Planning and Office of  
14 Environmental Management should be involved as  
15 consulting.

16           And also in values, we should  
17 include historic, archaeological, recreational,  
18 including bethnic [phonetic] and marine organisms  
19 to be protected, a protected habitat. I think  
20 it's important to widen the view of what values  
21 should be protected.

22           And also we should add conserve to  
23 the word preserve, in the aims of the specifically  
24 no net loss. And also we question the use of just  
25 the 1995 maps, we're concerned about there should

1  
2 be the maps that were wetlands from the 1960s and  
3 70s maps to show where wetlands were and what  
4 areas might be missed by those 1995 mapping which  
5 a lot of people admit is not conclusive.

6           And also we're concerned about  
7 enforcement of this bill. Without some type of  
8 citizen supervision, besides--well the volunteers  
9 mapping or whatever, we need some type of belief  
10 for the citizens to participates when the city  
11 does not come through and follow this law. It's  
12 the federal government, when they pass the Clean  
13 Water Act and the Clean Air Act and all these  
14 acts, knew in the 70s that sometimes executive  
15 department, the president, might not follow  
16 through and they put a citizen supervision in most  
17 of the laws enabling all these environmental  
18 organizations, including the Law Project, to  
19 basically go and give notice to the city or to the  
20 state in saying there's a problem here and if you  
21 don't act, we're going to go to court. And I  
22 think that's the important and it's only those  
23 laws that have citizen supervisions really, really  
24 work and let the private and nonprofit community  
25 come in and help the city.

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[Pause]

And I think that's one of the most important things. And also, the city keeps on talking about the lack of money for this area enforcement and they couldn't come up with \$2 million. I just want to make note for the Council that there's a new administration that came out of Washington, I think two or three days ago and one of the things that Obama said in his speech was-- inaugural speech, to the people of poor nations, we pledge to work alongside you to make your farms flourish and let clean waters flow; to nourish starved bodies and feed hungry minds. I think we have a different administration in Washington and the different people who are controlling the money that's going to the cities and I think the policy has changed that they want to protect the wetlands and that's where the money is. And it's very scary when the city keeps on holding the so-called money - - over us that only development could bring us money and not environmental conservation, and I think there's a whole new game out there and I think it really is important for the city, including the City Council, to try to get as much

1  
2 federal funds for environmental protection. Thank  
3 you.

4 CHAIRPERSON GENNARO: Thank you.

5 Thank you, Joel, and, to the extent that you wish  
6 to crystallize some of your suggestions, to e-mail  
7 to staff or whatever, you can see Samara or  
8 Siobhan and get that to them, happy to consider  
9 some of the subtleties of what you were saying.

10 And I just want to [pause] thank  
11 Mr. Phillips for reminding us that there's more  
12 work that has to be done on the whole transfer  
13 thing with the fencing and all that. Rohit made  
14 mention of that.

15 Also just a note to Council staff,  
16 we should look at kind of where that is and see  
17 what we may be able to do to help in that regard,  
18 we did this good work and everybody wants it to  
19 move forward, we should try to figure out a way to  
20 do that. So Samara and Siobhan and Costa, so we  
21 should talk about that.

22 And, Mr. Phillips, this whole thing  
23 you had regarding the fee for the storm water or  
24 whatever, do we have that proposal? Do we have  
25 the three [phonetic] of you made that public

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or...?

MR. PHILLIPS: No, we haven't current--we haven't written anything up yet.

CHAIRPERSON GENNARO: Okay. I mean--

MR. PHILLIPS: But we have been exploring it as a concept [crosstalk]--

CHAIRPERSON GENNARO: [Interposing]  
To the extent that you have some brain waves on that, that you want to share with staff, we'd be happy to have you do that.

And, Genie, I want to thank you for being the inspirational high priestess of New York City environmental watchfulness and care and concern. Truly, you are the matriarch of New York City's environment and we are richer because of that and I look forward to working with you for many, many years to come. And thank you for everything that you do.

And with no one else wishing to be heard--I also just wanted to recognize once again that Carter is still here from the Office of Long-Term Planning and Sustainability, I want to recognize that he stayed for the whole hearing to

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2 hear this good testimony, I want to recognize  
3 again and appreciate that.

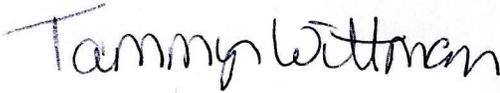
4           Also put on the record that we  
5 received written testimony from New York, New  
6 Jersey Baykeeper, they strongly support the  
7 legislative initiatives that were put forward  
8 today.

9           Any other testimony we got in  
10 writing? We already made reference to the fact  
11 that state DEC submitted written testimony in  
12 which they support the--I don't want to put words  
13 in their mouth--they supported our efforts to move  
14 these bills forward, they had their own  
15 recommendations regarding how we can make the  
16 bills better. I want to note that we're grateful  
17 for their comments as well.

18           And with no one else wishing to be  
19 heard, a belated Happy New Year to everyone, this  
20 is the first hearing of the new year, right? The  
21 first hearing of the year? And, with that, this  
22 hearing is adjourned. Thank you.

C E R T I F I C A T E

I, Tammy Wittman, 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 4, 2009