STATE OF DELAWARE

DELAWARE AGRICULTURAL

LANDS PRESERVATION FOUNDATION

IN RE: PROPOSED REGULATIONS:

Public Comment Session Hearing taken pursuant to notice at the Department of Agriculture, 2320 S. DuPont Highway, Dover, Delaware, beginning at 10:00 a.m., on Wednesday, September 23, 2015, before Gloria M. D'Amore, Registered Professional Reporter and Notary Public.

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ORIGINAL

1 APPEARANCES:

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On behalf of Parkowski,
3 Guerke & Swayze, P.A.
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4 116 W. Water Street
Dover, Delaware 19904
5 Hearing Officer

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On behalf of the Delaware Agricultural
7 Lands Preservation Foundation:
ROBERT GAREY, CHAIR
8 BILL VANVERWENDE, BOARD MEMBER
PETER MARTIN, BOARD MEMBER
9 AUSTIN SHORT, DEPUTY SECRETARY & MANAGER

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1 HEARING OFFICER DENMAN: Good
2 morning, everybody. My name is William
3 Denman. I'm The Hearing Officer in this case.
4 The Delaware Agricultural
5 Foundation is holding this Public Comment
6 Session today to provide all of you who are
7 present here today an opportunity to submit
8 comments on the proposed regulations relating
9 to the administration of the program.
10 Notice of this hearing was
11 published in The Delaware State News and The
12 News Journal on August 18, 2015, and it was
13 also published in the Delaware Registrar on
14 September 1, 2015.
15 Pursuant to its statutory
16 authority, the Foundation is proposing for
17 adoption a comprehensive set of guidelines and
18 regulations to be used for the administration
19 of what you all know as The Farmlands
20 Preservation Program. These regulations would
21 replace the existing regulations.
22 I would note that the
23 regulations would not change any of the
24 regulations relating to the separate Forest

1 Lands Preservation Program.
2 Anyone who wishes to submit
3 written comments after this Public Comment
4 Session is able to do so.
5 The record will be closed on
6 October 1, 2015.
7 So, if you want to submit
8 additional written comments, please make sure
9 you do that by the deadline set forth therein.
10 The address to where the public
11 written comments would be sent to me, and
12 that's available in the prior notice to these
13 proceedings.
14 Anyone who wishes to make a
15 comment today, I've asked the court reporter
16 to circulate a sign-in sheet.
17 So, is there anyone here that
18 would like to make a public comment that
19 hasn't signed the sign-in sheet?
20 UNIDENTIFIED SPEAKER: I would
21 like to sign in.
22 Ma'am, I'll hand you the sign-in
23 sheet.
24 While we're adding to the

1 sign-in sheet, just so that there is no
2 misunderstanding as to what this Public
3 Comment Session is all about, this is not an
4 evidentiary hearing that you typically see in
5 an adversary situation where people cross exam
6 each other and try to rebut testimony or what
7 have you.
8 The purpose of this is just to
9 provide the public with an opportunity to let
10 me know what your comments are on the proposed
11 regulations.
12 As I noted, the record will
13 remain open until October 1, 2015.
14 There is a court reporter here
15 taking down everything that is said today.
16 So, when you submit your comments, I'm going
17 to ask you to come up to the front of the room
18 in this chair right here, the chair that's
19 open, and speak clearly so that the court
20 reporter can hear you.
21 I will not be asking you any
22 questions, but it's important for you to speak
23 in a way that the court reporter can
24 understand you.

1 The other thing I would ask you
2 to do, if you haven't already done so, please
3 put your Cell phones on mute or turn them off.
4 I turned my off because sometimes I push the
5 wrong mute button. So, if your phone rings, I
6 won't take it personal, but it would be
7 helpful if everyone did silence their Cell
8 phones.
9 So, is the sign-in sheet
10 available?
11 I should also note while we are
12 waiting on the sign-in sheet is that if anyone
13 wants to obtain a copy of the proposed
14 regulations, if you have not already done so,
15 you can get a copy from the Agricultural
16 Foundation.
17 One more point, in the interest
18 of fairness, once I get the Public Comment
19 Sheet, I'm going to entertain comments in
20 alphabetical order of your last name. So, if
21 anyone's last name begins with an A, get
22 ready.
23 Thank you very much. We have a
24 list of, it looks like, 10 or 15 plus. The

1 notice indicated that this Public Comment
2 Session was going to be held between the hours
3 of ten and twelve. There is no reason why we
4 should not be able to do it in that time
5 frame.
6 However, if we have to go
7 longer, we will. Take as much time as you
8 want in submitting your public comments, but
9 keep the time frame that we're hoping to get
10 this accomplished in mind and try to limit
11 your comments as best as you can.
12 Again, I'm not going to cut
13 anyone off. We're very interested in what you
14 have to say here today.
15 Just to put the Public Comment
16 Session in context, I'm going to depart from
17 the rule that I just told you alphabetical
18 order. We're going to hear first from Austin
19 Short who is the Deputy Secretary and Manager
20 of the Aglands Program. And he's just going
21 to provide you with a brief summary of why
22 we're here and what these public proposed
23 regulations are all about.
24 And then, from that point on,

1 we're going to proceed with the public
2 comments.
3 I also note that there are some
4 Members of the Foundation Board present. And
5 if they could just introduce themselves now
6 for the record.
7 Mr. Garey, please introduce
8 yourself. Board Members.
9 MR. GAREY: Most of you know me
10 as Bob Garey. My official name is Robert
11 Garey. I've been chairing this program for a
12 long time, and I'm very interested in it.
13 MR. VANVERWENDE: I'm Bill
14 Vanverwende. I'm a Member of the Foundation,
15 too.
16 MR. MARTIN: Peter Martin. I'm
17 a Member of the Foundation.
18 HEARING OFFICER DENMAN: Let's
19 get started. We'll now proceed with hearing a
20 brief statement from Austin Short.
21 MR. SHORT: Good morning,
22 everyone.
23 As Bill alluded to, I just want
24 to give a summary of the history of the

1 program, sort of where we are now, and go into
2 why we have proposed some amended regulations.
3 So, it will be a few minutes,
4 but I will try to keep it moving as quickly as
5 possible.
6 First, the history of the
7 program. It was established in 1991. The law
8 included the establishment of the Aglands
9 Preservation Foundation Board, which is
10 appointed by the Governor, as well as County
11 Aglands Advisory Boards that are appointed by
12 the county legislative bodies.
13 The first regulations were
14 adopted in 1995 in anticipation of an
15 allocation of funding. They include two
16 options for purchasing easements.
17 One was a ranking system based
18 on several criteria.
19 Two was the selection system
20 based on landowner discount from appraised
21 values.
22 The first funding was received
23 in 1995. And I would note it did include a
24 provision in the budget language that

1 landlords must provide a minimum 20 percent
2 donation or discount in order to utilize the
3 state funds. And again, that was 1995.
4 The law was modified in 1998 to
5 include the following language. It shall be a
6 priority to create agricultural preservation
7 districts and purchase development rights in
8 those areas located near and adjacent to
9 designated growth zones.
10 The most recent update to the
11 regulations occurred in 1999.
12 The law was last modified in
13 2004 to modify the residential allowance
14 requirements.
15 Specifically, it eliminated the
16 requirement that all houses had to be for
17 family or farm help. And stated up to three
18 dwelling units were permissible with no
19 restrictions on who lived in those homes.
20 This change also included clarification on
21 certain uses that were allowed on Aglands
22 properties, such as bed and breakfast.
23 That is a brief history of the
24 law itself and overview of the program. It is

1 a two-step process.
2 The first phase is the creation
3 of an agricultural district, which is a
4 ten-year temporary easement.
5 The landowner agrees to maintain
6 the farm as it is for ten years. They receive
7 some benefits, such as right to farm
8 protection, but no payments.
9 . The second phase is purchase of
10 development rights, also called PDRs for
11 short, where the landowner sells the
12 development rights to The Foundation and the
13 district agreement is replaced by a permanent
14 easement.
15 Owners are eligible to apply to
16 sell their development rights the year after
17 they enroll in the ten-year district
18 agreement.
19 I would also note, this is a
20 voluntary program. Landowners voluntarily
21 enroll into an agricultural district and they
22 voluntarily apply to sell their development
23 rights.
24 Minimum requirements. Property

1 must be zoned for agriculture and not subject
2 to any major subdivision plan.
3 Property must meet what we call
4 the minimum LESA score, minimum score of 170.
5 LESA is L-E-S-A. It stands for Land
6 Evaluation and Site Assessment. And it is a
7 process that attempts to estimate the
8 long-term viability of a farm based on soil
9 type, that's the land evaluation portion, and
10 the land use and the agricultural
11 infrastructure on and around the farm. That
12 is the site assessment portion.
13 Scores range from 0 to 300, and
14 again 170 is the minimum score to meet
15 Farmland Preservation requirements.
16 The property also has to meet
17 the requirements of the State's Farmland
18 Assessment Act, which states in summary, Ten
19 acres or more of property must generate at
20 least $1,000 a year on average in agriculture
21 sales.
22 Farms under ten acres must
23 generate at least $10,000 on average per year
24 in agricultural sales.

1 Farms over 200 acres -- 200
2 acres or more constitute an agricultural
3 district on their own.
4 Farms under 200 acres can enter
5 the program if they are within three miles of
6 an existing agricultural district.
7 The current easement selection
8 process.
9 To date, The Foundation has
10 selected the easements for purchase based
11 solely on the percentage discount offered by
12 the landowner.
13 So, for example, if a farm has
14 an appraised development rights value of
15 $100,000, and the owner is willing to sell
16 those rights for $40,000, that is a 60 percent
17 discount, or $60,000 out of $100,000 is
18 donated.
19 From 1998 to present, properties
20 near and adjacent to growth zones prioritized
21 through the appraisal process, whereby higher
22 appraisal values near and adjacent to growth
23 zones provide additional financial incentive
24 to landowners to sell their development

1 rights.
2 The appraisal process utilizes
3 the following methodology.
4 Full market value. Full market
5 value appraisal of the farm is determined
6 based on comparable sales of similar farms in
7 the same county. Farm sales that are closer
8 to towns or growth areas are typically higher
9 due to development pressure. Thus, those
10 farms have a higher full market appraisal than
11 those farms located several miles from town.
12 Agricultural-only value,
13 sometimes called the after-easement value, is
14 based on capitalization of agricultural land
15 rent for that county.
16 This value is determined by
17 taking the five-year rolling average of land
18 rents for the county based on USDA annual
19 surveys and dividing that by the five-year
20 year rolling average of the yield on 30-year
21 treasury bonds. The agricultural-only value
22 remains constant across the county, regardless
23 of where it's located near or far away from
24 developing areas.

1 So, for example, again, for Kent
2 County, the most recent five-year average of
3 cropland rental rates was $84.44 an acre.
4 The 30-year rolling average for
5 T-bills is 3.57 percent. So, you divide
6 $84.44 by .0357 yields an after value or
7 ag-only value of $2,365 an acre for Kent
8 County.
9 The development rights value of
10 the farm is the appraised full market value
11 less agricultural-only value. Therefore,
12 since the agricultural-only value is constant
13 throughout the county while the full market
14 value increases with the proximity to towns of
15 developing areas, then the farms' development
16 rights increase the closer they are to growth
17 areas.
18 For example, again, using Kent
19 County, the appraised development rights in
20 2015 have ranged from $8,000 an acre in near
21 towns and developing areas to as low as $3,000
22 an acre in rural areas.
23 Accomplishments to date. We
24 have 1,088 districts totalling 171,000 acres.

1 Of those districts, 808 have sold their
2 development rights totalling 116,000 acres.
3 24 percent of Delaware's farmland.
4 Total cost $208 million
5 dollars. Average landlord district is
6 56 percent, which represents over $265 million
7 dollars.
8 The average cost is $1,793 an
9 acre statewide. $1,499 an acre in Kent.
10 $2,546 an acre in New Castle County. $1,986
11 an acre in Sussex.
12 Funding. The State provided
13 $144 million dollars.
14 USDA federal funds, $50 million
15 dollars.
16 County funds eleven-and-a-half
17 million dollars.
18 Summary to date. 404 farms in
19 Kent. 61,300 acres. $92 million dollars
20 expended. 35 percent of the farms in Kent.
21 In New Castle, 90 farms
22 totalling 13,300 acres. $34 million dollars.
23 20 percent of the farms in New Castle.
24 Sussex. 314 farms. 41,600

1 acres. $83 million dollars expended.
2 15 percent of the farms in Sussex.
3 Why for this regulation
4 proposal. As mentioned, the most recent
5 update to the Aglands regulations was 1999. A
6 considerable amount of the regulations are no
7 longer applicable or are outdated.
8 Secondly, as mentioned, The
9 Foundation has used the appraisal process to
10 address the 1998 prioritization requirement.
11 However, based on recent
12 discussions with farmers and other
13 individuals, the Board and Staff believe it
14 was worthwhile to include additional measures
15 that specifically address prioritization
16 language.
17 So, what is the proposed change
18 and how do we go about coming to it?
19 The Foundation Staff contacted
20 each county in December of 2014. The counties
21 provided their designated growth areas using
22 maps.
23 Aglands staff took those maps
24 and proposed adding a half mile priority area

1 outside of the growth areas designating for
2 outside of the County designated growth zones
3 and municipal boundaries.
4 Any farms located partially or
5 entirely within that half mile priority area
6 would receive an additional five percent bonus
7 to their easement bid.
8 So, for instance, again, using
9 the $100,000 example we used before.
10 Development rights value is
11 $100,000. The landowners discount bid is
12 60 percent, which means, if selected, they
13 would receive 40 percent or $40,000. If their
14 farm is within the half mile priority area,
15 then for ranking purposes they would be listed
16 at 65 percent, not 60.
17 If they are chosen, they would
18 still receive the $40,000, not $35,000.
19 The Aglands Foundation is
20 required by law to provide any proposed
21 regulation changes to the County Aglands
22 Advisory Boards for their review and comment
23 prior to the Public Comment period.
24 Staff contacted each County

1 Legislative President on December 2, 2014 to
2 determine the current membership for each
3 County Aglands Advisory Board.
4 A subsequent letter was sent on
5 March 11th to each County President requesting
6 this information again.
7 Kent County provided their
8 County Advisory Board membership on
9 March 23rd. The staff distributed the
10 proposed regulations to the Kent County
11 Aglands Advisory Board on April 17th and New
12 Castle and Sussex County Council Presidents on
13 that same date.
14 On May 5th, Sussex County
15 provided their board's membership.
16 On June 17th, a second letter
17 and another copy of the proposed regulations
18 was sent to the Sussex County and Kent County
19 Advisory Board Members and the New Castle
20 County President requesting comments by
21 June 30th.
22 Additionally, staff corresponded
23 via E-mail with a staff person from New Castle
24 County in December, March, April and June

1 regarding New Castle County Advisory Board
2 membership. However, no list was provided.
3 One comment was received from
4 the Kent County Advisory Board Member within
5 the 60-day comment period.
6 So, to give you a quick analysis
7 of what is currently preserved within these
8 proposed half mile priority areas.
9 In Kent, there are 57 farms,
10 10,500 acres. Expense of $18.4 million
11 dollars. That represents 14 percent of the
12 farms preserved to date in Kent, 17 percent of
13 the land and 20 percent of the funding
14 expended.
15 In New Castle, 14 farms
16 totalling 3,130 acres at a cost of
17 $9.3 million dollars have been preserved
18 within this proposed half mile area to date.
19 That represents 16 percent of the farms, 24
20 percent of the land and 27 percent of the
21 funds expended to date in New Castle.
22 For Sussex, within the proposed
23 half mile priority area, 84 farms totalling
24 14,125 acres at a cost of $28.9 million

1 dollars have been preserved. That represents
2 27 percent of the farms, 34 percent of the
3 land and 35 percent of monies expended.
4 In summary, the Aglands
5 Preservation Board and Staff have proposed
6 these amended regulations to eliminate
7 sections that are no longer relevant or
8 outdated. Provide specific process to further
9 address the language within the law that
10 directs priority of the farms near and
11 adjacent to growth zones.
12 The Aglands staff recommends
13 these regulations as presented for adoption.
14 Thank you.
15 HEARING OFFICER DENMAN: Thank
16 you, Mr. Short.
17 Going down the list in
18 alphabetical order.
19 David Carter.
20 Mr. Carter, why don't you
21 introduce yourself and tell us where you're
22 from and who you represent, and then we will
23 listen to your comments.
24 Thank you.

1 MR. CARTER: My name is David
2 Carter. I am currently speaking here today,
3 actually, in two capacities, both approved by
4 the Board of Directors of the Delaware Audubon
5 Society.
6 I am the President of the
7 Delaware Audubon Society. The comments here
8 are representative of our membership which is
9 about 2,200 members statewide.
10 I am also a landowner who has
11 gone through the Aglands Preservation Program
12 actually within the growth zone. So, I have
13 some intimate knowledge of that, and Audubon
14 thought that need be, I should share that
15 perspective as well because it is pertinent to
16 the regulations.
17 What I would like to do is go
18 through the official comments that I will
19 submit. I may add some more later, and then
20 give you some perspective on what's happening.
21 And I thank you for this opportunity.
22 Delaware Audubon Society would
23 like to express our strong support for the
24 regulations as proposed relating to the

1 administrative changes of the Delaware
2 Agricultural Preservation Program pursuant to
3 3 Del. Code Section 901.
4 The minor administrative changes
5 are necessary to clarify some outdated
6 sections and to ensure the program continues
7 in an efficient and effective manner.
8 We also support the one
9 significant change to provide the additional
10 five percent incentive. It may really not be
11 necessary, but it's not something that is
12 overly damaging in any way or unfair to
13 others, overly burdensome and unfair to other
14 landowners. So, I think it is an unacceptable
15 inclusion of compromise.
16 By increasing this offer of five
17 percent, I think we may have an elevated
18 interest, an ability to protect a few more
19 farms around the growth zones. Although, the
20 data does show you have already prioritized
21 those. The percentage of land protected in
22 that five percent buffer is slightly higher
23 than the County averages, so it tells me that
24 the prioritization process in place by market

1 forces is already working well within the
2 confines of the law and very effectively.
3 Simultaneously, the regulations
4 do ensure the cost effective approach to land
5 protection as retained in a manner that's
6 transparent, fair and equitable to all
7 landowners of the State. And that is an
8 absolute essential component that we are very
9 happy you are retaining.
10 We believe the changes will
11 provide a chance to build these greenbelts.
12 It may enhance a little bit, and that's good.
13 We're also very happy that the
14 additional benefits of the program,
15 particularly for birds, many of the properties
16 that are protected include important habitat
17 for birds and stewardship for private
18 landowners is very valuable to us.
19 Audubon is also very aware of
20 the select group of landowners. Actually, I
21 live in Southern New Castle County. But for
22 my area, some elected officials and some
23 special interests in New Castle County have
24 made some erroneous claims about the

1 implementation of the program, falsely
2 claiming that it is not effective in New
3 Castle County.
4 The claim is based on inaccurate
5 assumptions that the current program places
6 New Castle County farms at a disadvantage due
7 to a discounting method.
8 We would like to provide a more
9 accurate basis for clarifying the
10 misinformation for the public record.
11 Since 1995, Delaware State
12 Farmland Preservation Program has been highly
13 successful. To date, 34 percent of the
14 available farmland in Delaware is enrolled in
15 the program. 24 percent of it is protected by
16 preservation easements that prohibits
17 development. And under the State program,
18 20 percent of the available farmland in New
19 Castle County is covered by preservation
20 easement, significantly higher than 15 percent
21 that we have protected in Sussex County,
22 clearly showing that the program is being
23 effective in New Castle County as long as you
24 accurately do the analysis based on available

1 farmland.
2 I think it is unreasonable,
3 inaccurate and somewhat disingenuous to claim
4 that you are supposed to protect that
5 extensive development that took place prior to
6 this program in New Castle County. That is
7 just an unreasonable way to approach the data
8 and it is unfair.
9 As written, the regulations
10 maintain a critical component of the approach
11 to agricultural preservation in Delaware. It
12 remains competitive and voluntary on the part
13 of the landowners. The properties included in
14 the program must go through a transparent
15 screening process and all compete against each
16 other and are then selected based on a single
17 criteria of a discount that is offered.
18 This has provided landowner
19 confidence and trust in the program concerning
20 its integrity and fairness of land protection
21 decisions.
22 It eliminates gaming of the
23 process by special interests or influential
24 landowners that have political connections.

1 Delaware's government is now
2 facing unprecedented fiscal challenges that
3 will impact funding decisions.
4 As a result, programs proven to
5 be cost effective, fair and transparent are
6 those that are most deserving of this funding
7 as elected officials are forced to make really
8 difficult decisions. Maintaining these
9 exemplary characteristics in the program are
10 absolutely imperative to ensuring funding is
11 allocated to protect our diminishing farmland.
12 These regulations as proposed
13 accomplish that, and you should be commended
14 to stay the course with them.
15 One of the important positive
16 side benefits of the Delaware Agricultural
17 Lands Preservation Program is that it selects
18 those farmers and landowners most devoted to
19 the future of agriculture and our land
20 resources.
21 Each has made a deep commitment
22 rooted in difficult choices impacting the land
23 they love, the family they care for and the
24 agricultural business so important to our

1 state.
2 As such, they represent the best
3 Delaware has to offer for the future of
4 working lands and the continuation of our
5 agricultural heritage.
6 The program should continue to
7 support these leaders in our agricultural
8 community. Their commitment holds the
9 greatest potential for a strong and viable
10 future for agriculture in Delaware.
11 We urge you to adopt these
12 regulations as proposed, and in doing so,
13 preserve the integrity of our national
14 recognized Delaware Preservation Program,
15 future of agriculture in Delaware, and the
16 future of our bird population is to depend on
17 the habitat stewardship that is so often
18 associated with the private lands managed on
19 these farms.
20 Thank you for your
21 consideration.
22 As I said, I am a landowner who
23 over a decade ago went through the process. I
24 did give a bid. I gave a 48 percent discount.

1 It did get accepted.
2 I was in a very high pressure
3 development zone in Southern New Castle County
4 after they had expanded the growth zone to
5 include an area south of Fieldsboro Road for a
6 very controversial development known as Odessa
7 National. That expansion was done because Mr.
8 Capano, similar to what happened to Mr. Warren
9 in Port Penn area after we had reviewed many
10 of our maps and plans to the changes to the
11 code, without going back out to the public,
12 had made those changes to the maps and changed
13 the growth zone forcing me that close to a
14 zone.
15 The side effect of that was, my
16 property values increased by 300 percent.
17 That gave me an incredible advantage to be
18 able to bid because the amount of money that I
19 was able to get at a discount rate was much
20 higher.
21 And I think those market forces
22 are very real, very strong, built in and
23 integral to the program that you have now.
24 The five percent may give an

1 advantage. But there is a big advantage and a
2 big selection of pressure due to the market
3 forces in place for land and the fact that if
4 you're in the growth zone, you have higher
5 competitive comparative sales to go to.
6 I think you've done a great job
7 with it. I know the process as built does
8 prioritize areas adjacent and near landowners.
9 I know that from first-hand experience. And I
10 want to compliment you on a good set of
11 regulatory changes in your proposal.
12 HEARING OFFICER DENMAN: Next
13 speaker, it has been a while since I was in
14 grade school, it looks like Maria Evans.
15 Delaware Association of Realtors.
16 MS. EVANS: I signed up by
17 mistake. I thought it was an attendance
18 sheet. I have nothing to say.
19 HEARING OFFICER DENMAN: Thank
20 you, Maria.
21 Next one is Bob Garey, our
22 Chair.
23 Do you wish to make any
24 comments?

1 MR. GAREY: What I would like to
2 say is that this program has had incredible
3 support from people such as our farmers and
4 landowners. There is a lot of people in the
5 program we know of already. And I hear very
6 little complaints about ever being a part of
7 the program. They are always happy and glad
8 that they are in the program.
9 And the Trustees that have sat
10 around our table that have endured long hours
11 many times supporting the program and working
12 with the public to make sure that the program
13 was presented in the way that it is actually
14 being presented.
15 The Legislators have been
16 generous in funding the program over the last
17 20 years. Times get pretty tough. And
18 funding is not real long at this time. So, we
19 have to compete up at Legislative Hall for
20 funding. But hopefully the people that have
21 already supported this program for so long
22 will continue to put in a good word for us
23 when it is.
24 The conservationist, which you

1 just heard, makes my heart feel warm because
2 they have been a big part of the program
3 helping us secure funding and everything for
4 years.
5 The National Resources helping
6 us get funds from Federal Government to
7 support the program, which up until this
8 point, has been a big part of it. I don't
9 know what the future holds. But it has been a
10 big part of it.
11 I think the program is
12 equitable. I think it's fair.
13 And as Austin told you how we
14 have progressed through the last 20 years,
15 we've made minor adjustments to accommodate
16 whatever small issues that we've had. And we
17 will continue to do that.
18 Hopefully, this hearing we are
19 having now and any changes that we make to the
20 program will make it a better program.
21 We have been consistent ever
22 since the program came down. Sometimes it is
23 awful hard for me to sit up there as Chair
24 when somebody has a good idea, but it is not

1 consistent and it is not within the
2 guidelines. And that is why I say we can't go
3 there.
4 Every rule that is laid out,
5 every foul line that's laid down there, I have
6 done my level best and the Board has done
7 their level best to see the program was run
8 the way it is supposed to be run.
9 Thank you.
10 HEARING OFFICER DENMAN: To err
11 is to be human. John Flaherty. Did I
12 pronounce that right? F comes before G.
13 MR. FLAHERTY: John Flaherty. I
14 have no formal comments. I'm trying to learn
15 about this program.
16 I see that the bylaw mentions an
17 annual report and audit. I can't find it on
18 their website.
19 Is that on their website, the
20 annual report and the annual audit for the
21 organization?
22 HEARING OFFICER DENMAN: You can
23 make your request. I'm sure I would contact
24 Austin Short right after the Public Comment

1 Session. He can answer specific questions.
2 MR. FLAHERTY: Is there a
3 website?
4 COURT REPORTER: Sir, could you
5 spell your last name?
6 MR. FLAHERTY: F-L-A-H-E-R-T-Y.
7 HEARING OFFICER DENMAN: Thank
8 you for spelling your name.
9 UNIDENTIFIED SPEAKER: John, do
10 you have any formal comment?
11 MR. FLAHERTY: I would like to
12 read about the annual reports and the audit.
13 I'm not able to find them on the Department of
14 Agriculture's webpage.
15 HEARING OFFICER DENMAN: I think
16 if you contact Mr. Short at the conclusion of
17 this Public Comment Session, he can provide
18 you with that information.
19 MR. FLAHERTY: Who is Mr. Short?
20 HEARING OFFICER DENMAN: He is
21 sitting right here. He is the one that gave
22 the initial presentation.
23 Thank you very much.
24 Back to G. Brenna Goggin from

1 the Delaware Nature Society.
2 MS. GOGGIN: Good morning. My
3 name is Brenna Goggin. I am representing the
4 Delaware Nature Society this morning.
5 The Delaware Nature Society has
6 had a long history of supporting the Farmland
7 Preservation Program. And when we state in
8 all of our statements that the Department of
9 Agriculture runs a first rate
10 precedent-setting program for the rest of the
11 country, we mean every word.
12 Delaware Nature Society enrolled
13 our own property, 356 acre covered up farmland
14 preserve into the program, which was the first
15 of Aglands preservation district north of the
16 canal.
17 We support the updates as
18 proposed. We recognize there is some
19 frustration amongst the community regarding
20 how the extremely limited funds have been
21 allocated.
22 The conservation community
23 shares that frustration, but would encourage
24 both parties to express their frustration

1 where it rightly belongs which is with the
2 current administration and the General
3 Assembly which has failed to fully fund this
4 program and, therefore, it has put certain
5 landowners at a disadvantage.
6 Thank you very much for the
7 opportunity to comment.
8 HEARING OFFICER DENMAN: Thank
9 you very much. We are up to H.
10 Kate Hackett from Delaware Wild
11 Lands.
12 MS. HACKETT: Good morning. My
13 name is Kate Hackett. I'm the Executive
14 Director of the Delaware Wild Lands.
15 Delaware Wild Lands is the
16 largest nonprofit non-government landowner in
17 the State of Delaware. We have been in
18 existence for about 50 years. We had a hand
19 in protecting 30,000 acres of land, 20,000 of
20 of which we now own.
21 We have a commitment to
22 traditional uses of the land, including
23 farming and forestry, and we actually have a
24 number of active farming and forestry programs

1 on our properties. But we have not
2 participated in the Ag Preservation program.
3 However, the amount of land we
4 own we feel gives us a particularly unique and
5 relevant perspective on land protection and
6 land management throughout Delaware and the
7 proposed regulations that are currently under
8 consideration.
9 We strongly support the Delaware
10 Aglands Protection Program, Aglands
11 Preservation Foundation and the proposed
12 guidelines and regulations.
13 The Delaware Aglands
14 Preservation Program is more successful than
15 other land protection programs throughout this
16 State and the region. And it does so
17 protecting land that has substantially lower
18 cost than other land protection program.
19 The success of this program is
20 very easily measurable using a number of
21 different metrics, including the exceptional
22 number of acres that have been protected
23 throughout this State.
24 The amount of State funding

1 needed for each acre of land purchased. And
2 the amount of matching funds that have been
3 leveraged for each dollar of State funding
4 spent on the program.
5 The program has protected
6 24 percent of the available farmland in the
7 State and more acres of agricultural land per
8 capita than any other state in the country.
9 And it is important to note that
10 the success of this program is distributed
11 throughout the State. Twenty percent of the
12 available farmland in New Castle County has
13 been protected and 15 percent of the available
14 farmland in Sussex County all protected
15 through the merits of this program.
16 This truly is an accomplishment
17 that should be lauded throughout the State,
18 the region and the country.
19 And as further testament to the
20 success, this program is a voluntary program
21 that has protected land at a cost on average
22 less than $2,000 per acre.
23 The program has also garnered
24 the attention of numerous public and private

1 partners, many of whom have contributed
2 related funding from Federal, State and local
3 resources. And those organizations are the
4 North American Wetlands Conservation Program,
5 the USDA Natural Resources Conservation
6 Service, the Nature Conservancy, Ducks
7 Unlimited, Delaware Wild Lands, Longwood
8 Foundation, private landowners in the State
9 and many, many more.
10 Every dollar of State funding
11 invested in this program yields an additional
12 investment of $3 dollars from supplemental and
13 non-state sources.
14 During this time of fiscal
15 austerity and the need to maintain safe and
16 secure food supplies, there is not a more
17 effective and efficient land program in the
18 State or in the region or likely within the
19 country.
20 The State of Delaware must
21 continue to support this program to ensure the
22 long-term viability and vitality of the
23 Delaware agricultural industry and community
24 and the tremendous ability of this program to

1 leverage non-state sources of funding for the
2 long-term protection of one of Delaware's
3 largest and most important industries.
4 Delaware Wild Lands strongly
5 supports the proposed regulations and
6 guidelines and believes that they meet the
7 goals as I have stated.
8 And I have a copy of my comments
9 that I will leave.
10 HEARING OFFICER DENMAN: Thank
11 you very much.
12 I believe we are now on M. Andy
13 Manus.
14 MR. MANUS: My name is Andrew
15 Manus. I am a citizen of Clayton, Delaware.
16 I live on Holgate Bay Woods Farms, by way of
17 full disclosure. My wife and sister who are
18 owners of Holgate Farms have been successful
19 in the Ag Preservation program. They were
20 successful bidders under the program.
21 I, on the other hand, who am
22 primarily responsible for Baywood Farms, I
23 take responsibility for being a two-time loser
24 in the bidding process.

1 So, you may expect sour grapes
2 from this point forward.
3 But let me assure you that I am
4 retired after 38 years working in
5 conservation. And I will echo Ms. Hackett's
6 comments about the effectiveness and
7 efficiency of this program.
8 During my 38-year career in
9 conservation, I was involved with over half a
10 billion acres being preserved in North
11 America. And I can tell you that this is one
12 of the most effective and efficient programs I
13 have ever come into contact with.
14 I want to thank you for the
15 opportunity to review and present comments on
16 the proposed regulations. I found the
17 proposed regulations reasonable and
18 responsible.
19 The proposed regulations are an
20 improvement in the existing guidelines under
21 which the Aglands Preservation Program is
22 currently administered.
23 I recognize the challenges that
24 The Foundation faces in administering a

1 statewide program of this magnitude.
2 The proposed regulations outline
3 what I find to be an easily understandable and
4 transparent process for district eligibility
5 and application procedures for farms to be
6 included in the program, specifically Sections
7 1.0 through 4.0.
8 Additionally, the regulations
9 provide clarity concerning the restriction any
10 landowner must accept if he or she so chooses
11 to participate in the program.
12 Section 5.01. I believe that
13 the proposed regulations will assist The
14 Foundation in helping Delaware remain a
15 national leader in preserving farmland.
16 Since the program's inception,
17 we've heard that well over 168,000 acres of
18 farmland have been permanently preserved at an
19 average cost of $1,700 per acre.
20 The proposed regulation, Section
21 13 are designed in a way to build upon the
22 past success of the program in a way that is
23 transparent and understandable to the public
24 landowners and conservation partners.

1 The regulations provide for a
2 mechanism to attract and leverage both Federal
3 and County public funding, as well as
4 conservation funding to achieve a greater
5 program impact.
6 The proposed regulations,
7 specifically Section 18, provide for a bidding
8 process to be used by The Foundation as part
9 of the procurement process.
10 The bidding process has served
11 The Foundation and taxpayers very well.
12 Data from the last several
13 rounds of farm selections reveal farm
14 preservation easements were acquired at
15 approximately 70 percent discount to appraised
16 value. A tremendous land preservation bargain
17 to say the least.
18 It is important to note that
19 demand for participation from willing
20 potential sellers still remains very high for
21 this program.
22 Section 18.2 is new to the
23 program. It is an incentive-based opportunity
24 for landowners looking to protect their farms

1 within half mile of a County growth zone. I
2 find this a laudable proposal and ask that The
3 Foundation track in subsequent rounds the
4 efficacy of this incentive in attracting new
5 participants into the program.
6 Delaware farms continue to shape
7 our landscape and our economy.
8 In a University of Delaware
9 report titled, The Impact of Agriculture on
10 Delaware's Economy, it was noted that the
11 economic contribution of agriculture was
12 $7.95 billion and the industry supported over
13 30,000 jobs.
14 The State Agricultural Land
15 Preservation Program is responsible for a
16 proactive effort that protects productive
17 farmland that is a key ingredient to
18 maintaining a healthy agricultural business
19 sector.
20 In closing, I commend The
21 Foundation and staff for their continued
22 efforts to improve the agricultural land
23 preservation program.
24 I believe the proposed

1 regulations will continue to be efficient and
2 effective administration and operation of the
3 program.
4 Thank you.
5 HEARING OFFICER DENMAN: We are
6 up to P.
7 Bill Powers. Good morning, Mr.
8 Powers.
9 MR. POWERS: Good morning. I'm
10 really here today as a farmer.
11 Going just back to kind of what
12 Austin Short had said. And I just found out
13 today that it was sent to the County Council
14 President three or four times. I'm a County
15 Councilman for New Castle County.
16 HEARING OFFICER DENMAN: Speak
17 up a little bit.
18 MR. POWERS: Yes. When I first
19 got on Council, the County Executive at the
20 time was Chris Coons and the County Council
21 President was Paul Clark. I was appointed as
22 chairman for that committee. And as the State
23 law says, I am chairman until I am pulled off
24 of there as chairman. So, it was never sent

1 to me any of these changes. How I found about
2 out about it was reading it in The Delaware
3 State News.
4 But on the committee, we are
5 working on getting a committee together to
6 make sure that it hits the representation of
7 New Castle County.
8 By going through -- and you did
9 not cross out anything -- I had to go through
10 and cross out everything that you are
11 eliminating out of your laws and go through
12 what you were adding. And then I had to go
13 through and work through Title 3. I just
14 would like for you to be consistent with the
15 State law.
16 In some of these, especially on
17 these changes, are changing away from the
18 State law. And if you do pass this, you will
19 have to change the State law. Thank you.
20 That's all I have to say.
21 HEARING OFFICER DENMAN: Thank
22 you, Mr. Powers.
23 I think we are up to R.
24 Stewart Ramsey.

1 MR. RAMSEY: Here's a copy of
2 what I have written. I've actually added a
3 little with the dialogue this morning.
4 I am a farmer in New Castle
5 County, probably the extreme northern part of
6 New Castle County. Half of my farm is
7 actually in Chadds Ford, Pennsylvania, so that
8 is how far north I am.
9 I am also the New Castle County
10 Farm Bureau President. I do kind of act in
11 that capacity as well.
12 The specifics of the proposed
13 changes, basically, came out after we had had
14 a chance as a County Board to consider them.
15 So, what I have done with my
16 written comments and with the other comments I
17 am going to make is try to stay in the spirit
18 of what our Board has talked about, again,
19 that is New Castle County Farm Bureau Board,
20 in the spirit of what we've talked about and
21 react to what I've seen recently with the
22 proposed changes.
23 Rather than read my specific
24 comments, I will really just kind of

1 paraphrase.
2 It is our opinion generally in
3 New Castle County, at least the Farm Bureau,
4 that the law and the guidance for The
5 Foundation are fairly well aligned right now.
6 And they present fairly clearly how things are
7 supposed to be prioritized, how money is
8 supposed to be spent, particularly with
9 respect to growth zones and highly threatened
10 areas of development.
11 It is largely our opinion that
12 we have not been nearly as successful at
13 preserving those areas and to put New Castle
14 County as one homogenous block is probably not
15 right. I would say we're not as convinced
16 that New Castle County has really done that
17 well, especially in later rounds of the
18 program in terms of preserving farmland.
19 In my written comments,
20 basically, we don't support the changes. We,
21 basically, are saying the guidance that is
22 there is consistent with the law. And if you
23 feel that it is that flawed, then you probably
24 need to change the law and then you can make

1 your guidance consistent with the new law.
2 But I think it lines up fairly well.
3 Specific comment about the five
4 percent proposed addition to go after priority
5 areas. My opinion is that that will be
6 woefully too small. It is a drop in the pond
7 when you are talking about trying to preserve
8 ground that is truly threatened. And the
9 amount of money that a farmer would have to
10 give back with the types of discounts that
11 have been in most recent rounds is huge if
12 your ground is truly threatened.
13 A comment was made that some
14 landowners are in a position where they've
15 seen huge appreciation in their land values
16 and maybe they can afford that.
17 I would ask you to think about
18 farmers that have either bought land more
19 recently are not in that position to give that
20 kind of money back. So, young farmers,
21 farmers that have bought their ground more
22 recently and have not held it nearly as long,
23 they don't have that capital appreciation.
24 So, a 70 percent number,

1 60 percent number is something they cannot do.
2 And I think that needs to be taken into
3 consideration.
4 A statistic has been quoted this
5 morning and previously that 20 percent of New
6 Castle County's farmland is preserved. And I
7 would ask you consider how that statistic is
8 developed.
9 Basically, that is the preserved
10 farmland in New Castle County divided by the
11 available farmland basically today or more
12 recently.
13 The way I calculate that
14 statistic would be to look at the preserved
15 farmland relative to the farmland that was
16 available at the beginning of the program.
17 And you will find out that that 20 percent
18 change is dramatic, and it makes New Castle
19 County fare much worse.
20 Said differently, if you look at
21 the loss of farmland as a percent of the
22 beginning farmland base since the program was
23 enacted in 1991, New Castle County has lost a
24 dramatically larger percentage of its farmland

1 than any of the other counties.
2 I think that is the way you
3 should look at the numbers, not 20 percent of
4 what is available now.
5 If we were to build on all of
6 the farms that are left in New Castle County,
7 the 20 percent becomes one hundred percent.
8 Would we call that a success? I can't see
9 how. So, that is a concern that I have.
10 Those are the comments that I
11 wanted to make to the group. Thank you.
12 HEARING OFFICER DENMAN: Just a
13 follow-up.
14 You said you submitted some
15 written comments?
16 MR. RAMSEY: I gave them and I
17 can E-mail them as well.
18 HEARING OFFICER DENMAN: Thank
19 you very much. We are up to S now. Peggy
20 Schultz.
21 MS. SCHULTZ: Peggy Schultz.
22 HEARING OFFICER DENMAN: Good
23 morning, Ms. Schultz.
24 MS. SCHULTZ: I am happy to be

1 here representing the League of Women Voters
2 of Delaware. We are happy to support the
3 Agricultural Lands Preservation Program.
4 As you know, agricultural in
5 Delaware is a $7.95 billion industry. And in
6 2008, it supported 30,000 jobs.
7 So, this Agricultural Lands
8 Foundation is geared and designed to support
9 that incredibly important part of our state
10 economy.
11 And nationally -- I am going to
12 skip that one.
13 In 2009, Delaware received
14 commendation from the American Farmland Trust
15 as the sixth out of 21 states in the number of
16 farm acres protected. And when you see how
17 little Delaware is, we're sixth. Little
18 Delaware has the sixth greatest number of
19 acres protected, which is, to me, seems
20 phenomenal. And so, we've already heard about
21 the discounting program. And as you know,
22 56 percent discount is the average over the
23 life of the whole program. And then within
24 the last five-year period, it has just been

1 65 percent, not just, I mean, it increased,
2 65 percent discount. And you know that the
3 farms with the highest discount offer are the
4 ones that are put first on the list of farms
5 that will be included.
6 And so, you add to this bargain
7 the fact that 80 percent of the funds received
8 in exchange for the development rights of
9 farms in this State remain in the State.
10 University of Delaware study
11 shows that farmers use that 80 percent to buy
12 more farmland or to buy farm equipment. So,
13 what starts in Delaware stays in Delaware.
14 The major regulations change is
15 one which the League heartily supports, giving
16 five percent bonus to farmers who live within
17 a half a mile of a growth zone would not only
18 help to preserve farmland, but would also help
19 in our perennial fight against sprawl. A
20 person receiving this five percent bonus would
21 then be bumped up in the line of farmers
22 requesting inclusion in the program. So,
23 farms are much cheaper to support in terms of
24 community services than homes in residential

1 development.

2 American Farmland Trust research

3 shows that community services for agricultural

4 land costs the community 35 cents for every

5 tax dollar, which farmers pay to the

6 community.

7 Community services for

8 residences cost $1.16 for every tax dollar

9 which homeowners pay to the community. So,

10 you see, it's really a loss to the community

11 in terms of their income. It looks good at

12 the beginning because we get transfer tax, but

13 then, the tax dollars come year after year

14 after year and they wipe out the advantage of

15 the realty transfer tax.

16 In addition to all of the

17 bucolic loveliness a farm offers, we get a

18 green space that is much cheaper to support in

19 terms of community services provided than if

20 were developed and at a greatly discounted

21 rate, plus the support and help in

22 preservation of the largest industry in

23 Delaware. And added bonus is that most of the

24 money spent by the State on farmland

1 preservation is in turn spent by the farmers
2 in Delaware.
3 Thank you.
4 HEARING OFFICER DENMAN: We have
5 Fred Stites.
6 MR. STITES: My name is Fred
7 Stites, Junior. S-T-I-T-E-S. I farm in New
8 Castle County.
9 First I will start out with, I
10 have a couple of disappointments. One was the
11 announcement that was in The Delaware State
12 News referring to these as housekeeping
13 measures. I don't believe that comes anywhere
14 close to housekeeping measures.
15 The second disappointment is the
16 timing. Most of the farm community is out
17 right now working. I should be. And yet, we
18 have these hearings at the height of harvest
19 in the middle of the day.
20 I guess I should add to that, I
21 mean, the Farmland Preservation Program is, I
22 don't want to say any hurry, but could not
23 wait a month or two to get this thing.
24 My third disappointment is, we

1 requested changes from the Farmland
2 Preservation Foundation so we could review
3 them before the public comment time. And they
4 refused to send us a copy of the proposed
5 amendments to their foundation regulations.
6 The last thing and more direct
7 to the public comments here, I don't believe
8 the changes that they are about to make, and I
9 am not aware of all of them, but the five
10 percent does not comply with the state law as
11 was passed in 1991, specifically with a
12 comment that up to 25 percent of the Farmland
13 Preservation funds are allowed to be spent in
14 non-priority areas. I don't see how the
15 changes in these regulations are going to
16 bring their regulations in compliance with the
17 state law.
18 New Castle County -- we've been
19 under severe development pressure since this
20 program began. I don't believe that we've
21 done the best we could have done to preserve
22 some of the best farmland in the State.
23 That concludes my comments.
24 HEARING OFFICER DENMAN: Thank

1 you very much.
2 Just for the record, could you
3 just state for the record who at the
4 Foundation you asked for a copy of these
5 proposed regulations and when, because I find
6 that kind of disturbing and I want to make
7 sure we look into that.
8 MR. RAMSEY: I could send you
9 the E-mail. I sent an E-mail directly to
10 comment Rebecca Vaughn and asked for a
11 strike-through document. They said it was
12 impractical to send a strike-through document
13 back.
14 HEARING OFFICER DENMAN: So,
15 again, as I said in the beginning, this is not
16 a hearing where there is cross examination.
17 But I think what you are saying
18 is, you had asked, or someone had asked for a
19 red line copy of the proposed regulations and
20 you were not provided with a copy of the red
21 line.
22 MR. STITES: I mean, she
23 provided a copy of the original law. The
24 amendments were provided to the County Levy

1 Court and the County Council. It did not have
2 to be a strike through document. It could be
3 a copy of the proposed amendment.
4 HEARING OFFICER DENMAN: Well, I
5 will request that someone look into that.
6 MR. STITES: I am making
7 comments without having seen anything.
8 HEARING OFFICER DENMAN: Well,
9 thank you very much. Tom Unruh.
10 MR. UHRUH: I'm probably the
11 problem of all of this. I'm the one that
12 originated this law and helped to pioneer all
13 of this.
14 I think Bill Powers helped, too.
15 He instigated this whole Farmland Preservation
16 thing.
17 Now, Fred, you talked about
18 1991. Our law did not have that in 1991.
19 This was changed later. Bill would know that.
20 Right? Bill would not know that.
21 I am for Farmland Preservation.
22 I preserved my land. Probably the biggest
23 district in New Castle County -- Will
24 Passmore. And Fred is my neighbor. So, all

1 of these guys are that I am talking today are
2 probably going to holler at me.
3 I want to say this one thing.
4 This program has been a success. There are
5 probably some things -- we don't have enough
6 money. That is probably the biggest problem.
7 And second, I wanted to say, I
8 can show you a very good example of how this
9 has been a success.
10 One, my neighbor up there was
11 name Claude Hammond. A developer came to his
12 property and offered a million and a half. It
13 was one hundred and some acres. He turned it
14 down. He wanted to go in Farmland
15 Preservation. He sold his development rights.
16 And now, Claude sold it to the guy that worked
17 for him. And he still has that farm farming
18 today. And that wouldn't be. That is right
19 up against Odessa. It is a high growth area.
20 And then Claude Hammond and John Holt wanted
21 to leave his property as it was. And he sold
22 his development rights.
23 Don't say it doesn't work in New
24 Castle County because it does.

1 Now, I know we don't have enough
2 money. That's the biggest problem. And I
3 don't know exactly how you could -- I mean,
4 discounting like Freddy Stites says,
5 discounting, if you had to go 50 percent,
6 that's giving away $5,000.
7 You got to remember, like he
8 said, if you want to do it, you do it. If you
9 don't want to do it, you don't do it. It's
10 voluntary. Nobody tells any of these guys
11 they have to do it, or I had to do it.
12 I probably gave mine away too
13 cheap. I sit in the middle of New Castle
14 County in a high-developed area. Will
15 Passmore is, probably, worth $30,000, like
16 Gary Warrens up the road.
17 I'm for this five percent
18 increase. I'm like Stewart. It should
19 probably be a little bit more. I don't think
20 five is quite enough for some of these guys in
21 this real growth area.
22 But the problem is, you got the
23 State giving $3 million. That is like David
24 Carter said, that's not enough. And that's

1 all I want to say.
2 I am really supportive of
3 Farmland Preservation. I started in the 1991.
4 It was The Grange. Bill Powers was part of
5 it. You got to give Bill credit. He is for
6 Farmland Preservation. We may butt heads now
7 and then, but we are definitely for the same
8 thing.
9 David Carter is on the other
10 side. He is the greatest environmentalist
11 that you can find. But some of the farmers
12 don't always think that way.
13 So, I just want to say to
14 everybody, this is actually a really good
15 program. And I know Freddy doesn't disagree
16 with me because he tills land that is already
17 preserved. Larry Jester tills big farm up
18 there, land already preserved. I till almost
19 90 percent. My neighbors have preserved
20 around me that is in Farmland Preservation.
21 It is close to 1,000 acres there that is going
22 to be farmed the rest of its life.
23 I think the reason I wanted to
24 keep mine was, my grandfather on the level

1 sold my great grandfather's farm in 1949.
2 I'll never forget this. He wouldn't give it
3 to my father, and he sold it. And he sold it
4 for $25,000. I'll never forget this. And he
5 died broke. So, I decided I'm never going to
6 sell my land.
7 HEARING OFFICER DENMAN: We are
8 down to the last name, Christine Whitehead.
9 MS. WHITEHEAD: My name is
10 Christine Whitehead. I don't represent
11 anyone. This is all my personal opinion.
12 But I do want to give my
13 credentials because other people have been
14 mentioning how long they've been involved with
15 this.
16 I was appointed to the New
17 Castle County Planning Board in the early
18 '90's.
19 While on the Planning Board, I
20 was lobbied by Bill Powers and most of the
21 farmers in Southern New Castle County because
22 we got into TDRs and the UDC. And they taught
23 me a lot about farming, primarily about the
24 financial side of it, which I really did not

1 know that much about.
2 Over the years, I became a
3 member of the Preservation Council as a
4 delegate for Civic League for New Castle
5 County. At the time we were lobbying for more
6 funding for this program.
7 I was also a Member of the Green
8 Infrastructure Committee of Liveable Delaware.
9 And I am a former member of the American
10 Planning Association.
11 So, I have been thinking about
12 all of this for a very, very long time. Let
13 me start with the most important point, the
14 five percent addition to the percentage
15 discount.
16 I believe it's too little. I
17 think there are farms that it is incredibly
18 important to try to save in environmentally
19 vital areas.
20 I don't think the Federal
21 Government would pour $39 million dollars into
22 saving the wetlands on the Delaware River if
23 this were not some of the most precious area
24 in the country to preserve. And the farmers

1 make a big contribution to feeding, migrating
2 birds and ducks and so forth.
3 So, I am very much in favor of
4 this program. But I do think there are times
5 when it has not been as well run as it could
6 have been. And, in fact, somewhat defies the
7 mandates of the General Assembly.
8 I am happy to see it moving
9 closer to what the General Assembly asked it
10 to do, but it is awfully late for New Castle
11 County.
12 Mr. Stites spoke of some changes
13 that were actually made around 1999 when the
14 General Assembly asked to have 20 percent
15 added to the discount and several other things
16 that The Foundation held hearings about and
17 decided not to do. They wanted 75 percent of
18 the money to go to threatened farmlands and
19 the wording was changed to up to 75 percent,
20 that kind of tinkering with what the General
21 Assembly was trying to get done.
22 As a member of the Planning
23 Board, I understood the extreme importance of
24 trying to build a barrier between the

1 developers and the most sensitive lands that
2 we wanted to protect.
3 I have learned for some time
4 about the fact that these discounts have gone
5 from a relatively useful 20 or 30 percent
6 discount all the way up to 60 percent.
7 I have a couple of concerns
8 about it. One is, some of the farmers may be
9 underestimating their capital needs over a
10 period of time and they actually wind up not
11 being able to stay in farming because they've
12 underestimated what their needs are.
13 And the other is simply that I
14 think this is really unfair because these
15 days, the only farmers that can really afford
16 to give a discount that large have to be
17 farmers that have wealth even from the fact
18 that they inherited their lands or something
19 they have been doing making an awful lot of
20 money.
21 You cannot give back that much
22 without having some basis. As someone said,
23 young farmers don't stand a chance in
24 preserving under these circumstances.

1 I realize how often the farms
2 and the lands are used to put in crops. It is
3 not like the old days when you had your own
4 seeds and you could manage it. When you have
5 to go out and buy seeds to put in anything, it
6 really becomes difficult.
7 Also, the environmental
8 regulations are much greater that the farmers
9 have to follow. I think we can expect in the
10 future they are going to be even worse. I am
11 sure it is expensive for the farmers to cope
12 with that, particularly people in poultry
13 production. But coming from North Carolina, I
14 know what the consequences are if poultry
15 production wastes are not controlled.
16 So, there are a couple of other
17 things I wanted to mention was, I compared the
18 law with the current regulations and the
19 proposed regulations. I see no mention in the
20 proposed regulations of the annual audit.
21 I have in years past read audits
22 of this program and was surprised to learn
23 that they did not always, or the auditors did
24 not always have access to the complete

1 financial records of the program.
2 I would think one of the
3 fiduciary duties of the members of the board
4 would be to see a thorough and complete audit
5 is done every year. You handle a great deal
6 of money.
7 Another thing I wanted to ask a
8 question about is the language that says, Any
9 entity that makes a contribution fund may be
10 allowed to select the properties in which the
11 funding is used.
12 Now, this is something that has
13 startlingly -- I can't get it out --
14 startlingly new, I think. I'm curious about
15 whether or not that has been put in to try and
16 avoid New Castle County starting its own
17 program.
18 Believe me, we have gone over
19 the figures for New Castle County, and we are
20 not as happy as some people are with the
21 results. A lot of the money that should have
22 come back to New Castle County wound up in
23 Kent County.
24 Sussex pretty much balances what

1 they contribute with what they get. That is
2 not true in New Castle County. And yet, we've
3 had some of the most threatened lands and we
4 are in great need.
5 So, if the Board really means
6 that particular paragraph, it should be
7 clarified because there is no mention of
8 whether or not the selections would be limited
9 to choosing from several properties that have
10 already been vetted to go into their own, or
11 whether they would accept the matching funds
12 and let the entity pick out any farm that was
13 eligible for the program.
14 Another point with regard to
15 appraisers, one thing I think is incredibly
16 important when a farm in New Castle County is
17 being appraised, that the appraiser be
18 familiar with the Unified Development Code and
19 all of the complications that are involved in
20 what makes a piece of property worth more than
21 another piece of property in New Castle
22 County.
23 There is an environmental
24 formula in the UDC that must be followed for

1 the developer to determine how many units he
2 is entitled to get from the land.
3 Such things as the amount of
4 water resource protection area under the
5 property, the amount of forest growing on the
6 property, things like that, five or six of
7 them are involved in the formula.
8 When a developer can get a great
9 many more units on a large parcel without
10 having to remove anything, without having to
11 do anything unusual, without having to clean
12 it up, that makes the land considerably more
13 valuable than property on which, say, tree
14 farms exist or a great deal of forest or lands
15 or wetlands exist.
16 So, I think you should put
17 definitely in the regulations that an
18 appraiser must be familiar with the laws, land
19 use laws of the local jurisdiction in which he
20 is doing an appraisal.
21 That's about it.
22 HEARING OFFICER DENMAN: Thank
23 you very much. I appreciate it.
24 We've finished hearing from

1 everyone that has indicated they would like an
2 opportunity to speak.
3 I would just note after anything
4 you heard here today, you still have an
5 opportunity to submit further comments in
6 writing, as long as you do so by October 1st.
7 The address to whom you send it to is listed
8 in the public notice.
9 After October 1st, the record
10 will be closed, and then we will proceed with
11 evaluating the comments and seeing what The
12 Foundation wants to do.
13 MR. CARTER: Can I have one
14 clarifying comment before you close?
15 HEARING OFFICER DENMAN: I don't
16 want to open up the floor to that. And if you
17 have a clarifying comment, you can include
18 that in the written comments.
19 I am trying to be fair at this
20 Public Comment Session. I tried to be as fair
21 as I could alphabetically.
22 If I open up the door to make
23 additional comments, I will have to do it for
24 everything else. I'm not trying to be rude.

1 I look forward to seeing your additional
2 comment in the form of a written comment by
3 October 1st.
4 MS. EVANS: I have a timeline
5 question. October 1st is when the record
6 closes?
7 HEARING OFFICER DENMAN: Yes.
8 MS. EVANS: When do you
9 anticipate posting your final regulations?
10 When are they going to be approved? When are
11 they going to be posted? When are they going
12 to be finalized?
13 HEARING OFFICER DENMAN: Here is
14 the way the process will work.
15 After the written comment
16 deadline, October 1st, I, as The Hearing
17 Officer, will review them. I will put
18 together my findings and recommendations based
19 upon my review of the comments. Those will
20 then be presented to The Foundation's Board
21 and the Board will then decide what they want
22 to do.
23 To give you an example. If the
24 Board was to adopt these proposed regulations

1 in light of all of the comments after making
2 an independent decision, the earliest that
3 would happen would be at the next Foundation
4 Board, which, I believe, is in late October.
5 MR. SHORT: October 14th.
6 HEARING OFFICER DENMAN: If that
7 happens, and that is a pretty fast track, the
8 regulations would be published in the Delaware
9 Registrar on November 1st. But they would not
10 take effect until ten days after that, I
11 believe that's how it runs.
12 We are on a tight timeline. I
13 am not saying that is the timeline we are
14 going to follow. It may take longer.
15 So, basically, close the record.
16 I'll issue my findings and recommendations.
17 The Board decides what they want to do about
18 it, whatever they decide. The final
19 regulations would be published in the Delaware
20 Registrar.
21 Of course, if the Board makes
22 any significant substantive changes in light
23 of what was discussed here, then the Board
24 would provide an additional opportunity for

1 folks to comment on those changes. If the
2 regs -- the wording is tweaked for stylistic
3 purposes or maybe some clarifying purposes and
4 it is not really substantive, that would not
5 delay the process.
6 Any other questions?
7 MR. BOWMAN: Jim Bowman. Is
8 Round 20 then put on hold until this is
9 finalized?
10 HEARING OFFICER DENMAN: I don't
11 have the answer to that question.
12 Does that answer your question?
13 MR. SHORT: Our plan is not to
14 proceed with Round 20 until these are all
15 finalized, however long that takes. That's
16 our plan.
17 HEARING OFFICER DENMAN: Thank
18 you all for coming. I really appreciate your
19 comments and appreciate hearing from you in
20 any additional written comments you want to
21 submit.
22 (The Public Comment Session was
23 concluded at, approximately, 11:30 a.m.)
24

1 State of Delaware:
2 New Castle County:
3
4 CERTIFICATE OF REPORTER
5
6 I, Gloria M. D'Amore, Registered
7 Professional Reporter and Notary Public, do
8 hereby certify that the foregoing record,
9 Pages 1 to 74 inclusive, is a true and
10 accurate transcript of my stenographic notes
11 taken on Wednesday, September 23, 2015, in the
12 above-captioned matter.
13 IN WITNESS WHEREOF, I have hereunto set
14 my hand and seal this 28th day of September,
15 2015, at Wilmington.
16
17
18
19
20 GLORIA M. D'AMORE, RPR
21
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$1,000 (1) 12:20
$1,499 (1) 16:9
$1,700 (1) 42:19
$1,793 (1) 16:8
$1,986 (1) 16:10
$1.16 (1) 54:8
$10,000 (1) 12:23
$100,000 (4) 13:15,17 18:9,11
$144 (1) 16:13
$18.4 (1) 20:10
$2,000 (1) 38:22
$2,365 (1) 15:7
$2,546 (1) 16:10
$208 (1) 16:4
$25,000 (1) 62:4
$265 (1) 16:6
$28.9 (1) 20:24
$3 (2) 39:12 60:23
$3,000 (1) 15:21
$30,000 (1) 60:15
$34 (1) 16:22
$35,000 (1) 18:18
$39 (1) 63:21
$40,000 (3) 13:16 18:13, 18
$5,000 (1) 60:6
$50 (1) 16:14
$60,000 (1) 13:17
$7.95 (2) 44:12 52:5
$8,000 (1) 15:20
$83 (1) 17:1
$84.44 (2) 15:3,6
$9.3 (1) 20:17
$92 (1) 16:19

A

ability (2) 23:18 39:24
able (6) 4:4 7:4 29:18,19 34:13 65:11
above-captioned (1) 74:12
absolute (1) 24:8
absolutely (1) 27:10
accept (2) 42:10 68:11
accepted (1) 29:1
access (1) 66:24
accommodate (1) 32:15
accomplish (1) 27:13
accomplished (1) 7:10
accomplishment (1) 38:16
Accomplishments (1) 15:23
accurate (2) 25:9 74:10
accurately (1) 25:24
achieve (1) 43:4
acquired (1) 43:14
acre (12) 15:3,7, 20,22 16:9,9, 10,11 35:13 38:1,22 42:19
acres (22) 12:19, 22 13:1,2,4 15:24 16:2,19, 22 17:1 20:10, 16,24 36:19 37:22 38:7 41:10 42:17 52:16,19 59:13 61:21
across (1) 14:22
Act (2) 12:18 47:10
active (1) 36:24
actually (10) 22:3, 12 24:20 31:13 36:23 47:2,7 61:14 64:13 65:10
add (3) 22:19 53:6 55:20
added (3) 47:2 54:23 64:15
adding (3) 4:24 17:24 46:12
addition (3) 49:4 54:16 63:14
additional (11) 4:8 13:23 17:14 18:6 23:9 24:14 39:11 70:23 71:1 72:24 73:20
Additionally (2) 19:22 42:8
address (5) 4:10 17:10,15 21:9 70:7
adjacent (5) 10:8 13:20,22 21:11 30:8
adjustments (1) 32:15
administered (1) 41:22
administering (1) 41:24
administration (4) 3:9,18 36:2 45:2
administrative (2) 23:1,4
adopt (2) 28:11 71:24
adopted (1) 9:14
adoption (2) 3:17 21:13
advantage (4) 29:17 30:1,1 54:14
adversary (1) 5:5
Advisory (8) 9:11 18:22 19:3,8, 11,19 20:1,4
afford (2) 49:16 65:15
after (16) 4:3 11:16 15:6 29:4,9 33:24 41:4 47:13 49:4 54:13,14 70:3,9 71:15 72:1,10
after-easement (1) 14:13
Ag (2) 37:2 40:19
Again (9) 7:12 10:3 12:14 15:1,18 18:8 19:6 47:18 57:15
against (3) 26:15 53:19 59:19
Aglands (18) 7:20 9:8,11 10:21 17:5,23 18:19,21 19:3, 11 21:4,12 22:11 35:15 37:10,10,13 41:21
ago (1) 28:23
ag-only (1) 15:7
agreement (2) 11:13,18
agrees (1) 11:5
Agricultural (25) 3:4 6:15 10:6 11:3,21 12:10, 24 13:2,6 14:14 23:2 26:11 27:16, 24 28:5,7 38:7 39:23 44:14,18,22 52:3,4,7 54:3
Agricultural-only (4) 14:12,21 15:11,12
agriculture (8) 12:1,20 27:19 28:10, 15 35:9 44:9, 11
Agriculture's (1) 34:14
aligned (1) 48:5
all (24) 3:6,19 5:3 7:23 10:16 24:6 26:15 35:8 38:14 46:20 51:5 54:16 56:9 58:11,12, 24 61:1 62:11 63:12 65:6 68:19 72:1 73:14,18
allocated (2) 27:11 35:21
allocation (1) 9:15
allowance (1) 10:13
allowed (3) 10:21 56:13 67:10
alluded (1) 8:23
almost (1) 61:18
alphabetical (3) 6:20 7:17 21:18
alphabetically (1) 70:21
already (10) 6:2, 14 23:20 24:1 31:5,21 52:20 61:16,18 68:10
also (16) 3:13 6:11 8:3 10:20 11:10, 19 12:16 22:10 23:8 24:13,19 38:23 47:9 53:18 63:7 66:7
Although (1) 23:19
always (4) 31:7

61:12 66:23,24
amended (2) 9:2 21:6
amendment (1) 58:3
amendments (2) 56:5 57:24
America (1) 41:11
American (4) 39:4 52:14 54:2 63:9
amongst (1) 35:19
amount (8) 17:6 29:18 37:3,24 38:2 49:9 69:3,5
analysis (2) 20:6 25:24
Andrew (1) 40:14
Andy (1) 40:12
announcement (1) 55:11
annual (6) 14:18 33:17,20,20 34:12 66:20
another (4) 19:17 67:7 68:14,21
answer (3) 34:1 73:11,12
anticipate (1) 71:9
anticipation (1) 9:14
Anyone (6) 4:2, 14,17 6:12 7:13 62:11
anything (6) 46:9 58:7 66:5 69:10,11 70:3
anywhere (1) 55:13
applicable (1) 17:7
application (1) 42:5
apply (2) 11:15, 22
appointed (4) 9:10,11 45:21 62:16
appraisal (7) 13:21,22 14:2,5,10 17:9 69:20
appraised (6) 9:20 13:14 15:10,19 43:15 68:17
appraiser (2) 68:17 69:18
appraisers (1) 68:15
appreciate (3) 69:23 73:18, 19
appreciation (2) 49:15,23
approach (3) 24:4 26:7,10
approved (2) 22:3 71:10
approximately (2) 43:15 73:23
April (2) 19:11, 24
area (13) 17:24 18:5,14 20:18, 23 24:22 29:5, 9 59:19 60:14, 21 63:23 69:4
areas (16) 10:8 14:8,24 15:15, 17,21,22 17:21 18:1 20:8 30:8 48:10,13 49:5 56:14 63:19
around (5) 12:11 23:19 31:10 61:20 64:13
ask (6) 5:17 6:1 44:2 49:17 50:7 67:7
asked (7) 4:15 57:4,10,18,18 64:9,14
asking (1) 5:21
Assembly (5) 36:3 64:7,9, 14,21
Assessment (3) 12:6,12,18
assist (1) 42:13
associated (1) 28:18
Association (2) 30:15 63:10
assumptions (1) 25:5
assure (1) 41:3
attempts (1) 12:7
attendance (1) 30:17
attention (1) 38:24
attract (1) 43:2
attracting (1) 44:4
audit (5) 33:17, 20 34:12 66:20 67:4
auditors (1) 66:23
audits (1) 66:21
Audubon (5) 22:4, 7,13,22 24:19
August (1) 3:12
austerity (1) 39:15
Austin (5) 7:18 8:20 32:13 33:24 45:12
authority (1) 3:16
available (11) 4:12 6:10 25:14,18,24 38:6,12,13 50:11,16 51:4
average (11) 12:20,23 14:17,20 15:2, 4 16:5,8 38:21 42:19 52:22
averages (1) 23:23
avoid (1) 67:16
aware (2) 24:19 56:9
away (4) 14:23 46:17 60:6,12
awful (2) 32:23 65:19
awfully (1) 64:10

B

back (8) 29:11 34:24 45:11 49:10,20 57:13 65:21 67:22
balances (1) 67:24
bargain (2) 43:16 53:6
barrier (1) 64:24
base (1) 50:22
based (12) 9:17, 20 12:8 13:10 14:6,14,18 17:11 25:4,24 26:16 71:18
basically (6) 47:13 48:20, 21 50:9,11 72:15
basis (2) 25:9 65:22
Bay (1) 40:16
Baywood (1) 40:22
became (1) 63:2
becomes (2) 51:7 66:6
bed (1) 10:22
before (4) 18:9 33:12 56:3 70:14
began (1) 56:20
beginning (4) 50:16,22 54:12 57:15
begins (1) 6:21
being (7) 25:22 31:6,14 40:23 41:10 65:11 68:17
believe (12) 17:13 24:10 40:12 42:12 44:24 55:13 56:7,20 63:16 67:18 72:4,11
believes (1) 40:6
belongs (1) 36:1
benefits (3) 11:7 24:14 27:16
best (6) 7:11 28:2 33:6,7 56:21,22
better (1) 32:20
between (2) 7:2 64:24
bid (4) 18:7,11 28:24 29:18
bidders (1) 40:20
bidding (3) 40:24 43:7,10
big (7) 30:1,2 32:2,8,10 61:17 64:1
biggest (3) 58:22 59:6 60:2
Bill (9) 8:13,23 45:7 58:14,19, 20 61:4,5 62:20
billion (3) 41:10 44:12 52:5
bird (1) 28:16
birds (3) 24:15, 17 64:2
bit (3) 24:12 45:17 60:19
block (1) 48:14
Board (28) 8:4,8 9:9 17:13 19:3,8,11,19 20:1,4 21:5 22:4 33:6 47:14,18,19

62:17,19 64:23 67:3 68:5 71:20,21, 24 72:4,17,21, 23
Boards (2) 9:11 18:22
board's (1) 19:15
Bob (2) 8:10 30:21
bodies (1) 9:12
bonds (1) 14:21
bonus (4) 18:6 53:16,20 54:23
both (3) 22:3 35:24 43:2
bought (2) 49:18, 21
boundaries (1) 18:3
Bowman (2) 73:7, 7
breakfast (1) 10:22
Brenna (2) 34:24 35:3
brief (3) 7:21 8:20 10:23
bring (1) 56:16
broke (1) 62:5
bucolic (1) 54:17
budget (1) 9:24
buffer (1) 23:22
build (4) 24:11 42:21 51:5 64:24
built (2) 29:22 30:7
bumped (1) 53:21
burdensome (1) 23:13
Bureau (3) 47:10, 19 48:3
business (2) 27:24 44:18
butt (1) 61:6
button (1) 6:5
buy (3) 53:11, 12 66:5
bylaw (1) 33:16

C

calculate (1) 50:13
call (2) 12:3 51:8
called (2) 11:10 14:13
came (3) 32:22 47:13 59:11
canal (1) 35:16
cannot (2) 50:1 65:21
capacities (1) 22:3
capacity (1) 47:11
Capano (1) 29:8
capita (1) 38:8
capital (2) 49:23 65:9
capitalization (1) 14:14
care (1) 27:23
career (1) 41:8
Carolina (1) 66:13
Carter (7) 21:19, 20 22:1,2 60:24 61:9 70:13
case (1) 3:3
Castle (48) 16:10,21,23 19:12,19,23 20:1,15,21 24:21,23 25:3, 6,19,23 26:6 29:3 38:12 45:15 46:7 47:4,6,9,19 48:3,13,16 50:6,10,18,23 51:6 55:8 56:18 58:23 59:24 60:13 62:17,21 63:4 64:10 67:16, 19,22 68:2,16, 21 74:2
Cell (2) 6:3,7
cents (1) 54:4
certain (2) 10:21 36:4
CERTIFICATE (1) 74:4
certify (1) 74:8
Chadds (1) 47:7
chair (4) 5:18,18 30:22 32:23
chairing (1) 8:11
chairman (3) 45:22,23,24
challenges (2) 27:2 41:23
chance (3) 24:11 47:14 65:23
change (8) 3:23 10:20 17:17 23:9 46:19 48:24 50:18 53:14
changed (3) 29:12 58:19 64:19
changes (19) 18:21 23:1,4 24:10 29:10, 12 30:11 32:19 46:1,17 47:13,22 48:20 56:1,8, 15 64:12 72:22 73:1
changing (1) 46:17
characteristics (1) 27:9
cheap (1) 60:13
cheaper (2) 53:23 54:18
choices (1) 27:22
chooses (1) 42:10
choosing (1) 68:9
chosen (1) 18:17
Chris (1) 45:20
Christine (2) 62:8, 10
circulate (1) 4:16
circumstances (1) 65:24
citizen (1) 40:15
Civic (1) 63:4
claim (2) 25:4 26:3
claiming (1) 25:2
claims (1) 24:24
clarification (1) 10:20
clarified (1) 68:7
clarify (1) 23:5
clarifying (4) 25:9 70:14,17 73:3
clarity (1) 42:9
Clark (1) 45:21
Claude (3) 59:11, 16,20
Clayton (1) 40:15
clean (1) 69:11
clearly (3) 5:19 25:22 48:6
close (5) 29:13 55:14 61:21 70:14 72:15
closed (2) 4:5 70:10
closer (3) 14:7 15:16 64:9
closes (1) 71:6
closing (1) 44:20
Code (3) 23:3 29:11 68:18
come (4) 5:17 41:13 54:13 67:22
comes (2) 33:12 55:13
coming (3) 17:18 66:13 73:18
commend (1) 44:20
commendation (1) 52:14
commended (1) 27:13
Comment (29) 3:5 4:3,15,18 5:3 6:18 7:1, 15 18:22,23 20:3,5 33:24 34:10,17 36:7 49:3,13 56:3, 12 57:10 70:14,17,20 71:2,2,15 73:1,22
comments (36) 3:8 4:3,8,11 5:10,16 6:19 7:8,11 8:2 19:20 21:23 22:7,18 30:24 33:14 40:8 41:6,15 47:16, 16,24 48:19 51:10,15 56:7, 23 58:7 70:5, 11,18,23 71:19 72:1 73:19,20
commitment (3) 27:21 28:8 36:21
committee (4) 45:22 46:4,5 63:8
community (13) 28:8 35:19, 22 39:23 53:24 54:3,4, 6,7,9,10,19 55:16
comparable (1) 14:6
comparative (1) 30:5
compared (1) 66:17
compete (2) 26:15 31:19
competitive (2)

26:12 30:5
complaints (1) 31:6
complete (2) 66:24 67:4
compliance (1) 56:16
complications (1) 68:19
compliment (1) 30:10
comply (1) 56:10
component (2) 24:8 26:10
comprehensive (1) 3:17
compromise (1) 23:15
concern (1) 51:9
concerning (2) 26:19 42:9
concerns (1) 65:7
concluded (1) 73:23
concludes (1) 56:23
conclusion (1) 34:16
confidence (1) 26:19
confines (1) 24:2
connections (1) 26:24
consequences (1) 66:14
Conservancy (1) 39:6
conservation (7) 35:22 39:4,5 41:5,9 42:24 43:4
conservationist (1) 31:24
consider (2) 47:14 50:7
considerable (1) 17:6
considerably (1) 69:12
consideration (3) 28:21 37:8 50:3
consistent (5) 32:21 33:1 46:14 48:22 49:1
constant (2) 14:22 15:12
constitute (1) 13:2
contact (3) 33:23 34:16 41:13
contacted (2) 17:19 18:24
context (1) 7:16
continuation (1) 28:4
continue (6) 28:6 31:22 32:17 39:21 44:6 45:1
continued (1) 44:21
continues (1) 23:6
contribute (1) 68:1
contributed (1) 39:1
contribution (3) 44:11 64:1 67:9
controlled (1) 66:15
controversial (1) 29:6
convinced (1) 48:15
Coons (1) 45:20
cope (1) 66:11
copy (11) 6:13, 15 19:17 40:8 47:1 56:4 57:4,19,20,23 58:3
corresponded (1) 19:22
cost (10) 16:4,8 20:16,24 24:4 27:5 37:18 38:21 42:19 54:8
costs (1) 54:4
could (12) 8:5 34:4 55:22 56:2,21 57:2, 8 58:2 60:3 64:5 66:4 70:21
Council (6) 19:12 45:13, 19,20 58:1 63:3
Councilman (1) 45:15
counties (2) 17:20 51:1
country (5) 35:11 38:8,18 39:19 63:24
County (80) 9:10, 12 14:7,15,18, 22 15:2,8,13, 19 16:10,16 17:20 18:2,21, 24 19:3,5,7,8, 10,12,14,18, 18,20,24 20:1, 4 23:23 24:21, 23 25:3,6,19, 21,23 26:6 29:3 38:12,14 43:3 44:1 45:13,14,15, 19,20 46:7 47:5,6,9,14, 19 48:3,14,16 50:10,19,23 51:6 55:8 56:18 57:24 58:1,23 59:24 60:14 62:17, 21 63:5 64:11 67:16,19,22, 23 68:2,16,22 74:2
County's (1) 50:6
couple (3) 55:10 65:7 66:16
course (2) 27:14 72:21
court (6) 4:15 5:14,19,23 34:4 58:1
covered (2) 25:19 35:13
create (1) 10:6
creation (1) 11:2
credentials (1) 62:13
credit (1) 61:5
criteria (2) 9:18 26:17
critical (1) 26:10
cropland (1) 15:3
crops (1) 66:2
cross (4) 5:5 46:9,10 57:16
curious (1) 67:14
current (5) 13:7 19:2 25:5 36:2 66:18
currently (4) 20:7 22:2 37:7 41:22
cut (1) 7:12

D

damaging (1) 23:12
D'Amore (2) 74:6, 20
data (3) 23:20 26:7 43:12
date (8) 13:9 15:23 16:18 19:13 20:12, 18,21 25:13
David (4) 21:19 22:1 60:23 61:9
day (2) 55:19 74:14
days (3) 65:15 66:3 72:10
deadline (2) 4:9 71:16
deal (2) 67:5 69:14
decade (1) 28:23
December (3) 17:20 19:1,24
decide (2) 71:21 72:18
decided (2) 62:5 64:17
decides (1) 72:17
decision (1) 72:2
decisions (3) 26:21 27:3,8
deep (1) 27:21
defies (1) 64:6
definitely (2) 61:7 69:17
Del (1) 23:3
Delaware (52) 3:4,11,13 22:4,7,22 23:1 25:11,14 26:11 27:16 28:3,10,14,15 30:15 35:1,4, 5,12 36:10,14, 15,17 37:6,9, 13 39:7,20,23 40:4,15 42:14 44:6,8 46:2 52:2,5,13,17, 18 53:10,13, 13 54:23 55:2, 11 63:8,22 72:8,19 74:1
Delaware's (4) 16:3 27:1 40:2 44:10
delay (1) 73:5
delegate (1) 63:4
demand (1) 43:19
DENMAN (32) 3:1,3 8:18 21:15 30:12, 19 33:10,22

34:7,15,20 36:8 40:10 45:5,16 46:21 51:12,18,22 55:4 56:24 57:14 58:4,8 62:7 69:22 70:15 71:7,13 72:6 73:10,17
depart (1) 7:16
Department (2) 34:13 35:8
depend (1) 28:16
Deputy (1) 7:19
deserving (1) 27:6
designated (3) 10:9 17:21 18:2
designating (1) 18:1
designed (2) 42:21 52:8
determine (2) 19:2 69:1
determined (2) 14:5,16
developed (2) 50:8 54:20
developer (3) 59:11 69:1,8
developers (1) 65:1
developing (3) 14:24 15:15, 21
development (24) 10:7 11:10, 12,16,22 13:14,24 14:9 15:9,15,19 16:2 18:10 25:17 26:5 29:3,6 48:10 53:8 54:1 56:19 59:15, 22 68:18
devoted (1) 27:18
dialogue (1) 47:3
died (1) 62:5
different (1) 37:21
differently (1) 50:20
difficult (3) 27:8, 22 66:6
diminishing (1) 27:11
direct (1) 56:6
directly (1) 57:9
Director (1) 36:14
Directors (1) 22:4
directs (1) 21:10
disadvantage (2) 25:6 36:5
disagree (1) 61:15
disappointment (2) 55:15,24
disappointments (1) 55:10
disclosure (1) 40:17
discount (16) 9:20 10:2 13:11,17 18:11 26:17 28:24 29:19 43:15 52:22 53:2,3 63:15 64:15 65:6,16
discounted (1) 54:20
discounting (4) 25:7 52:21 60:4,5
discounts (2) 49:10 65:4
discussed (1) 72:23
discussions (1) 17:12
disingenuous (1) 26:3
distributed (2) 19:9 38:10
district (10) 11:3, 13,17,21 13:3, 6 16:5 35:15 42:4 58:23
districts (3) 10:7 15:24 16:1
disturbing (1) 57:6
divide (1) 15:5
divided (1) 50:10
dividing (1) 14:19
document (3) 57:11,12 58:2
dollar (4) 38:3 39:10 54:5,8
dollars (14) 16:5, 7,13,15,17,19, 22 17:1 20:11, 17 21:1 39:12 54:13 63:21
donated (1) 13:18
donation (1) 10:2
done (12) 6:2,14 29:7 30:6 33:6,6 47:15 48:16 56:21, 21 64:21 67:5
door (1) 70:22
down (6) 5:15 21:17 32:22 33:5 59:14 62:8
dramatic (1) 50:18
dramatically (1) 50:24
drop (1) 49:6
Ducks (2) 39:6 64:2
due (3) 14:9 25:6 30:2
During (2) 39:14 41:8
duties (1) 67:3
dwelling (1) 10:18

E

each (9) 5:6 17:20 18:24 19:2,5 26:15 27:21 38:1,3
earliest (1) 72:2
early (1) 62:17
easement (5) 11:4,14 13:7 18:7 25:20
easements (4) 9:16 13:10 25:16 43:14
easily (2) 37:20 42:3
echo (1) 41:5
economic (1) 44:11
economy (3) 44:7, 10 52:10
effect (2) 29:15 72:10
effective (8) 23:7 24:4 25:2,23 27:5 39:17 41:12 45:2
effectively (1) 24:2
effectiveness (1) 41:6
efficacy (1) 44:4
efficiency (1) 41:7
efficient (4) 23:7 39:17 41:12 45:1
effort (1) 44:16
efforts (1) 44:22
either (1) 49:18
elected (2) 24:22 27:7
elevated (1) 23:17
eleven-and-a-half (1) 16:16
eligibility (1) 42:4
eligible (2) 11:15 68:13
eliminate (1) 21:6
eliminated (1) 10:15
eliminates (1) 26:22
eliminating (1) 46:11
else (1) 70:24
E-mail (4) 19:23 51:17 57:9,9
enacted (1) 50:23
encourage (1) 35:23
endured (1) 31:10
enhance (1) 24:12
enough (4) 59:5 60:1,20,24
enroll (2) 11:17, 21
enrolled (2) 25:14 35:12
ensure (3) 23:6 24:4 39:21
ensuring (1) 27:10
enter (1) 13:4
entertain (1) 6:19
entirely (1) 18:5
entitled (1) 69:2
entity (2) 67:9 68:12
environmental (2) 66:7 68:23
environmentalist (1) 61:10
environmentally (1) 63:18
equipment (1) 53:12
equitable (2) 24:6 32:12
err (1) 33:10
erroneous (1) 24:24
especially (2) 46:16 48:17
essential (1) 24:8
established (1) 9:7
establishment (1) 9:8
estimate (1) 12:7
evaluating (1) 70:11

Evaluation (2) 12:6,9
Evans (4) 30:14, 16 71:4,8
even (2) 65:17 66:10
ever (3) 31:6 32:21 41:13
Every (7) 33:4,5 35:11 39:10 54:4,8 67:5
everybody (2) 3:2 61:14
everyone (3) 6:7 8:22 70:1
everything (4) 5:15 32:3 46:10 70:24
evidentiary (1) 5:4
exactly (1) 60:3
exam (1) 5:5
examination (1) 57:16
example (6) 13:13 15:1, 18 18:9 59:8 71:23
exceptional (1) 37:21
exchange (1) 53:8
Executive (2) 36:13 45:19
exemplary (1) 27:9
exist (2) 69:14, 15
existence (1) 36:18
existing (3) 3:21 13:6 41:20
expanded (1) 29:4
expansion (1) 29:7
expect (2) 41:1 66:9
expended (5) 16:20 17:1 20:14,21 21:3
Expense (1) 20:10
expensive (1) 66:11
experience (1) 30:9
express (2) 22:23 35:24
extensive (1) 26:5
extreme (2) 47:5 64:23
extremely (1) 35:20

F

faces (1) 41:24
facing (1) 27:2
fact (5) 30:3 53:7 64:6 65:4,17
failed (1) 36:3
fair (5) 24:6 27:5 32:12 70:19,20
fairly (3) 48:5,6 49:2
fairness (2) 6:18 26:20
falsely (1) 25:1
familiar (2) 68:18 69:18
family (2) 10:17 27:23
far (2) 14:23 47:8
fare (1) 50:19
farm (26) 10:17 11:6,7 12:8, 11 13:13 14:5, 7 15:10 18:14 43:13,13 47:6, 10,19 48:3 52:16 53:12 54:17 55:7,16 59:17 61:17 62:1 68:12,16
farmed (1) 61:22
farmer (3) 45:10 47:4 49:9
farmers (20) 17:12 27:18 31:3 49:18,20, 21 53:11,16, 21 54:5 55:1 61:11 62:21 63:24 65:8,15, 17,23 66:8,11
farming (5) 36:23, 24 59:17 62:23 65:11
Farmland (40) 12:15,17 16:3 25:12,14, 18 26:1 27:11 35:6,13 38:6, 12,14 42:15, 18 44:17 48:18 50:6,10, 11,15,15,21, 22,24 52:14 53:12,18 54:2, 24 55:21 56:1, 12,22 58:15, 21 59:14 61:3, 6,20
Farmlands (2) 3:19 64:18
Farms (37) 12:22 13:1,4 14:6,10,11 16:18,20,21, 23,24 17:2 18:4 20:9,12, 15,19,23 21:2, 10 23:19 25:6 28:19 40:16, 18,22 42:5 43:24 44:6 51:6 53:3,4,9, 23 63:17 66:1 69:14
farms' (1) 15:15
fast (1) 72:7
father (1) 62:3
favor (1) 64:3
federal (5) 16:14 32:6 39:2 43:2 63:20
feeding (1) 64:1
feel (3) 32:1 37:4 48:23
few (2) 9:3 23:18
fiduciary (1) 67:3
Fieldsboro (1) 29:5
fight (1) 53:19
figures (1) 67:19
final (2) 71:9 72:18
finalized (3) 71:12 73:9,15
financial (3) 13:23 62:24 67:1
find (7) 33:17 34:13 42:3 44:2 50:17 57:5 61:11
findings (2) 71:18 72:16
finished (1) 69:24
first (10) 7:18 9:6,13,22 11:2 35:9,14 45:18 53:4 55:9
first-hand (1) 30:9
fiscal (2) 27:2 39:14
five (13) 18:6 23:10,16,22 29:24 49:3 53:16,20 56:9 60:17,20 63:14 69:6
five-year (4) 14:17,19 15:2 52:24
Flaherty (7) 33:11,13,13 34:2,6,11,19
F-L-A-H-E-R-T-Y (1) 34:6
flawed (1) 48:23
floor (1) 70:16
folks (1) 73:1
follow (2) 66:9 72:14
followed (1) 68:24
following (2) 10:5 14:3
follow-up (1) 51:13
food (1) 39:16
forced (1) 27:7
forces (3) 24:1 29:21 30:3
forcing (1) 29:13
Ford (1) 47:7
foregoing (1) 74:8
Forest (3) 3:24 69:5,14
forestry (2) 36:23, 24
forget (2) 62:2,4
form (1) 71:2
formal (2) 33:14 34:10
former (1) 63:9
formula (2) 68:24 69:7
forth (2) 4:9 64:2
forward (2) 41:2 71:1
foul (1) 33:5
found (3) 41:16 45:12 46:1
Foundation (28) 3:5,16 6:16 8:4,14,17 9:9 11:12 13:9 17:9,19 18:19 37:11 39:8 41:24 42:14 43:8,11 44:3, 21 48:5 52:8 56:2,5 57:4 64:16 70:12 72:3
Foundation's (1)

71:20
four (1) 45:14
frame (2) 7:5,9
Fred (4) 55:5,6 58:17,24
Freddy (2) 60:4 61:15
front (1) 5:17
frustration (3) 35:19,23,24
Full (6) 14:4,4, 10 15:10,13 40:17
fully (1) 36:3
fund (2) 36:3 67:9
funding (20) 9:15, 22 16:12 20:13 27:3,6, 10 31:16,18, 20 32:3 37:24 38:3 39:2,10 40:1 43:3,4 63:6 67:11
funds (10) 10:3 16:14,16 20:21 32:6 35:20 38:2 53:7 56:13 68:11
further (3) 21:8 38:19 70:5
future (7) 27:19 28:3,10,15,16 32:9 66:10

G

gaming (1) 26:22
Garey (6) 8:7,9, 10,11 30:21 31:1
garnered (1) 38:23
Gary (1) 60:16
gave (5) 28:24 29:17 34:21 51:16 60:12
geared (1) 52:8
General (5) 36:2 64:7,9,14,20
generally (1) 48:2
generate (2) 12:19,23
generous (1) 31:16
get (17) 6:15,18, 21 7:9 8:19 29:1,19 31:17 32:6 54:12,17 55:23 64:21 67:13 68:1 69:2,8
getting (1) 46:5
give (13) 8:24 20:6 22:20 28:24 29:24 49:10,19 61:5 62:2,12 65:16, 21 71:23
gives (1) 37:4
giving (3) 53:15 60:6,23
glad (1) 31:7
Gloria (2) 74:6, 20
go (16) 7:6 9:1 17:18 22:17 26:14 30:5 33:2 46:9,11, 12 49:4 59:14 60:5 64:18 66:5 68:10
goals (1) 40:7
Goggin (3) 34:24 35:2,3
going (23) 5:16 6:19 7:2,12, 16,18,20 8:1 21:17 29:11 45:11 46:8 47:17 52:11 56:15 59:2 61:21 62:5 66:10 71:10, 11,11 72:14
gone (3) 22:11 65:4 67:18
Good (14) 3:1 8:21 24:12 30:10 31:22 32:24 35:2 36:12 45:7,9 51:22 54:11 59:8 61:14
got (5) 45:19 60:7,22 61:5 62:22
government (3) 27:1 32:6 63:21
Governor (1) 9:10
grade (1) 30:14
grandfather (1) 61:24
grandfather's (1) 62:1
Grange (1) 61:4
grapes (1) 41:1
great (6) 30:6 62:1 67:5 68:4 69:8,14
greater (2) 43:4 66:8
greatest (3) 28:9 52:18 61:10
greatly (1) 54:20
green (2) 54:18 63:7
greenbelts (1) 24:11
ground (3) 49:8, 12,21
group (2) 24:20 51:11
growing (1) 69:5
growth (19) 10:9 13:20,22 14:8 15:16 17:21 18:1,2 21:11 22:12 23:19 29:4,13 30:4 44:1 48:9 53:17 59:19 60:21
guess (1) 55:20
guidance (3) 48:4,21 49:1
guidelines (5) 3:17 33:2 37:12 40:6 41:20
guy (1) 59:16
guys (3) 59:1 60:10,20

H

habitat (2) 24:16 28:17
Hackett (3) 36:10, 12,13
Hackett's (1) 41:5
half (11) 17:24 18:5,14 20:8, 18,23 41:9 44:1 47:6 53:17 59:12
Hall (1) 31:19
Hammond (2) 59:11,20
hand (4) 4:22 36:18 40:21 74:14
handle (1) 67:5
happen (1) 72:3
happened (1) 29:8
happening (1) 22:20
happens (1) 72:7
happy (7) 24:9, 13 31:7 51:24 52:2 64:8 67:20
hard (1) 32:23
harvest (1) 55:18
He (21) 34:1,17, 20,21 42:10 58:15 59:13, 14,15,17,21 60:7 61:5,10, 16 62:2,3,3,4 69:1,19
heads (1) 61:6
healthy (1) 44:18
hear (3) 5:20 7:18 31:5
heard (4) 32:1 42:17 52:20 70:4
HEARING (40) 3:1,3,10 5:4 8:18,19 21:15 30:12,19 32:18 33:10, 22 34:7,15,20 36:8 40:10 45:5,16 46:21 51:12,18,22 55:4 56:24 57:14,16 58:4, 8 62:7 69:22, 24 70:15 71:7, 13,16 72:6 73:10,17,19
hearings (2) 55:18 64:16
heart (1) 32:1
heartily (1) 53:15
height (1) 55:18
held (3) 7:2 49:22 64:16
help (4) 10:17 53:18,18 54:21
helped (2) 58:12, 14
helpful (1) 6:7
helping (3) 32:3, 5 42:14
here (15) 3:7 4:17 5:14,18 7:14,22 22:2, 7 34:21 45:10 52:1 56:7 70:4 71:13 72:23
hereby (1) 74:8
Here's (1) 47:1
hereunto (1)

74:13
heritage (1) 28:5
high (3) 29:2 43:20 59:19
high-developed (1) 60:14
higher (7) 13:21 14:8,10 23:22 25:20 29:20 30:4
highest (1) 53:3
highly (2) 25:12 48:9
him (1) 59:17
his (4) 59:11,15, 21,22
history (4) 8:24 9:6 10:23 35:6
hits (1) 46:6
hold (1) 73:8
holding (1) 3:5
holds (2) 28:8 32:9
Holgate (2) 40:16,18
holler (1) 59:2
Holt (1) 59:20
homeowners (1) 54:9
homes (2) 10:19 53:24
homogenous (1) 48:14
hopefully (2) 31:20 32:18
hoping (1) 7:9
hours (2) 7:2 31:10
housekeeping (2) 55:12,14
houses (1) 10:16
how (17) 17:18 32:13 35:20 46:1 47:8 48:6,7 50:7 51:9 52:16 56:14 59:8 60:3 62:14 66:1 69:1 72:11
However (5) 7:6 17:11 20:2 37:3 73:15
huge (2) 49:11, 15
human (1) 33:11
hundred (2) 51:7 59:13
hurry (1) 55:22

I

idea (1) 32:24
impact (3) 27:3 43:5 44:9
impacting (1) 27:22
imperative (1) 27:10
implementation (1) 25:1
importance (1) 64:23
important (11) 5:22 24:16 27:15,24 38:9 40:3 43:18 52:9 63:13,18 68:16
impractical (1) 57:12
improve (1) 44:22
improvement (1) 41:20
inaccurate (2) 25:4 26:3
incentive (3) 13:23 23:10 44:4
incentive-based (1) 43:23
inception (1) 42:16
include (7) 9:15, 23 10:5 17:14 24:16 29:5 70:17
included (5) 9:8 10:20 26:13 42:6 53:5
including (2) 36:22 37:21
inclusion (2) 23:15 53:22
inclusive (1) 74:9
income (1) 54:11
increase (2) 15:16 60:18
increased (2) 29:16 53:1
increases (1) 15:14
increasing (1) 23:16
incredible (2) 29:17 31:2
incredibly (3) 52:9 63:17 68:15
independent (1) 72:2
indicated (2) 7:1 70:1
individuals (1) 17:13
industries (1) 40:3
industry (4) 39:23 44:12 52:5 54:22
influential (1) 26:23
information (2) 19:6 34:18
infrastructure (2) 12:11 63:8
ingredient (1) 44:17
inherited (1) 65:18
initial (1) 34:22
instance (1) 18:8
instigated (1) 58:15
integral (1) 29:23
integrity (2) 26:20 28:13
interest (2) 6:17 23:18
interested (2) 7:13 8:12
interests (2) 24:23 26:23
intimate (1) 22:13
introduce (3) 8:5, 7 21:21
invested (1) 39:11
investment (1) 39:12
involved (4) 41:9 62:14 68:19 69:7
issue (1) 72:16
issues (1) 32:16
itself (1) 10:24

J

Jester (1) 61:17
Jim (1) 73:7
job (1) 30:6
jobs (2) 44:13 52:6
John (4) 33:11, 13 34:9 59:20
Journal (1) 3:12
June (3) 19:16, 21,24
Junior (1) 55:7
jurisdiction (1) 69:19

K

Kate (2) 36:10, 13
keep (3) 7:9 9:4 61:24
Kent (13) 15:1,7, 18 16:9,19,20 19:7,10,18 20:4,9,12 67:23
key (1) 44:17
kind (6) 45:11 47:10,24 49:20 57:6 64:20
knowledge (1) 22:13
known (1) 29:6

L

laid (2) 33:4,5
Land (39) 12:5,9, 10 14:14,17 20:13,20 21:3 23:21 24:4 26:20 27:19, 22 30:3 36:19, 22 37:3,5,6, 15,17,18 38:1, 7,21 39:17 43:16 44:14, 22 49:15,18 54:4 58:22 61:16,18 62:6 69:2,12,18
landlord (1) 16:5
landlords (1) 10:1
landowner (9) 9:20 11:5,11 13:12 22:10 26:18 28:22 36:16 42:10
Landowners (17) 11:20 13:24 18:11 23:14 24:7,18,20 26:13,24 27:18 30:8 31:4 36:5 39:8 42:24 43:24 49:14
Lands (16) 4:1 27:17 28:4,18 36:11,14,15 39:7 40:4 52:3,7 65:1, 18 66:2 68:3

69:14
landscape (1) 44:7
language (5) 9:24 10:5 17:16 21:9 67:8
large (2) 65:16 69:9
largely (1) 48:11
larger (1) 50:24
largest (3) 36:16 40:3 54:22
Larry (1) 61:17
last (10) 6:20,21 10:12 31:16 32:14 34:5 43:12 52:24 56:6 62:8
late (2) 64:10 72:4
later (3) 22:19 48:17 58:19
laudable (1) 44:2
lauded (1) 38:17
law (21) 9:7 10:4,12,24 18:20 21:9 24:2 45:23 46:15,18,19 48:4,22,24 49:1 56:10,17 57:23 58:12, 18 66:18
laws (3) 46:11 69:18,19
leader (1) 42:15
leaders (1) 28:7
League (3) 52:1 53:15 63:4
learn (2) 33:14 66:22
learned (1) 65:3
least (4) 12:20, 23 43:17 48:3
leave (2) 40:9 59:21
left (1) 51:6
legislative (3) 9:12 19:1 31:19
Legislators (1) 31:15
LESA (2) 12:4,5
L-E-S-A (1) 12:5
less (2) 15:11 38:22
letter (2) 19:4,16
level (3) 33:6,7 61:24
leverage (2) 40:1 43:2
leveraged (1) 38:3
Levy (1) 57:24
life (2) 52:23 61:22
light (2) 72:1,22
like (18) 4:18,21 6:24 22:17,23 25:8 30:14 31:1 34:11 46:14 60:4,7, 15,18,23 66:3 69:6 70:1
likely (1) 39:18
limit (1) 7:10
limited (2) 35:20 68:8
line (4) 33:5 53:21 57:19,21
lines (1) 49:2
list (4) 6:24 20:2 21:17 53:4
listed (2) 18:15 70:7
listen (1) 21:23
little (8) 24:12 31:6 45:17 47:3 52:17,17 60:19 63:16
live (3) 24:21 40:16 53:16
Liveable (1) 63:8
lived (1) 10:19
lobbied (1) 62:20
lobbying (1) 63:5
local (2) 39:2 69:19
located (4) 10:8 14:11,23 18:4
long (11) 8:12 25:23 31:10, 18,21 35:6 49:22 62:14 63:12 70:6 73:15
longer (4) 7:7 17:7 21:7 72:14
long-term (3) 12:8 39:22 40:2
Longwood (1) 39:7
look (6) 50:14, 20 51:3 57:7 58:5 71:1
looking (1) 43:24
looks (3) 6:24 30:14 54:11
loser (1) 40:23
loss (2) 50:21 54:10
lost (1) 50:23
lot (4) 31:4 62:23 65:19 67:21
love (1) 27:23
loveliness (1) 54:17
low (1) 15:21
lower (1) 37:17

M

Ma'am (1) 4:22
made (6) 24:24 27:21 29:12 32:15 49:13 64:13
magnitude (1) 42:1
maintain (3) 11:5 26:10 39:15
Maintaining (2) 27:8 44:18
major (2) 12:2 53:14
make (17) 4:8, 14,18 27:7 30:23 31:12 32:19,20 33:23 46:6 47:17 48:24 51:11 56:8 57:6 64:1 70:22
makes (6) 32:1 50:18 67:9 68:20 69:12 72:21
making (3) 58:6 65:19 72:1
manage (1) 66:4
managed (1) 28:18
management (1) 37:6
Manager (1) 7:19
mandates (1) 64:7
manner (2) 23:7 24:5
Manus (3) 40:13, 14,15
many (8) 24:15 29:9 31:11 39:1,9,9 69:1, 9
maps (4) 17:22, 23 29:10,12
March (3) 19:5,9, 24
Maria (2) 30:14, 20
market (8) 14:4, 4,10 15:10,13 23:24 29:21 30:2
Martin (2) 8:16, 16
matching (2) 38:2 68:11
matter (1) 74:12
May (11) 19:14 22:19 23:10, 17 24:12 29:24 41:1 61:6 65:8 67:9 72:14
maybe (2) 49:16 73:3
mean (5) 35:11 53:1 55:21 57:22 60:3
means (2) 18:12 68:5
measurable (1) 37:20
measures (3) 17:14 55:13, 14
mechanism (1) 43:2
meet (4) 12:3,14, 16 40:6
Member (7) 8:14, 17 20:4 63:3, 7,9 64:22
Members (5) 8:4, 8 19:19 22:9 67:3
membership (5) 19:2,8,15 20:2 22:8
mention (3) 66:17,19 68:7
mentioned (2) 17:4,8
mentioning (1) 62:14
mentions (1) 33:16
merits (1) 38:15
method (1) 25:7
methodology (1) 14:3
metrics (1) 37:21
middle (2) 55:19 60:13

migrating (1) 64:1
mile (8) 17:24 18:5,14 20:8, 18,23 44:1 53:17
miles (2) 13:5 14:11
million (14) 16:4, 6,13,14,17,19, 22 17:1 20:10, 17,24 59:12 60:23 63:21
mind (1) 7:10
mine (2) 60:12 61:24
minimum (5) 10:1 11:24 12:4,4, 14
minor (2) 23:4 32:15
minutes (1) 9:3
misinformation (1) 25:10
mistake (1) 30:17
misunderstanding (1) 5:2
modified (2) 10:4, 12
modify (1) 10:13
money (11) 29:18 48:7 49:9,20 54:24 59:6 60:2 64:18 65:20 67:6,21
monies (1) 21:3
month (1) 55:23
more (20) 6:17 12:19 13:2 22:19 23:18 25:8 37:14 38:7 39:9,16 49:18,21 50:11 53:12 56:6 60:19 63:5 68:20 69:9,12
morning (10) 3:2 8:21 35:2,4 36:12 45:7,9 47:3 50:5 51:23
Most (16) 8:9 10:10 15:2 17:4 27:6,18 40:3 41:12 49:11 54:23 55:16 62:20 63:13,23 65:1 68:3
moving (2) 9:4 64:8
much (19) 6:23 7:7 29:19 34:23 36:6,9 40:11 50:19 51:19 53:23 54:18 57:1 58:9 63:1 64:3 65:21 66:8 67:24 69:23
municipal (1) 18:3
must (10) 10:1 12:1,3,19,22 26:14 39:20 42:10 68:24 69:18
mute (2) 6:3,5
My (38) 3:2 6:4 8:10 22:1 24:22 29:15 32:1 33:6 35:2 36:12 40:8,14,17 41:8 47:6,15, 23 48:19 49:5 55:6,24 56:23 58:22,24 59:10 61:19, 24 62:1,3,6,9, 11,12 71:18, 19 72:16 74:10,14

N

name (14) 3:2 6:20,21 8:10 22:1 34:5,8 35:3 36:13 40:14 55:6 59:11 62:8,9
national (4) 28:13 29:7 32:5 42:15
nationally (1) 52:11
Natural (1) 39:5
Nature (5) 35:1, 4,5,12 39:6
near (7) 10:8 13:20,22 14:23 15:20 21:10 30:8
nearly (2) 48:12 49:22
necessary (2) 23:5,11
need (4) 22:14 39:15 48:24 68:4
needed (1) 38:1
needs (3) 50:2 65:9,12
neighbor (2) 58:24 59:10
neighbors (1) 61:19
never (4) 45:24 62:2,4,5
New (52) 16:10, 21,23 19:11, 19,23 20:1,15, 21 24:21,23 25:2,6,18,23 26:6 29:3 38:12 43:22 44:4 45:15 46:7 47:4,6,9, 19 48:3,13,16 49:1 50:5,10, 18,23 51:6 55:7 56:18 58:23 59:23 60:13 62:16, 21 63:4 64:10 67:14,16,19, 22 68:2,16,21 74:2
News (4) 3:11, 12 46:3 55:12
Next (3) 30:12, 21 72:3
Nobody (1) 60:10
non-government (1) 36:16
non-priority (1) 56:14
nonprofit (1) 36:16
non-state (2) 39:13 40:1
north (5) 35:15 39:4 41:10 47:8 66:13
northern (1) 47:5
Notary (1) 74:7
note (8) 3:22 6:11 8:3 9:23 11:19 38:9 43:18 70:3
noted (2) 5:12 44:10
notes (1) 74:10
nothing (1) 30:18
Notice (4) 3:10 4:12 7:1 70:8
November (1) 72:9
now (17) 8:5,19 9:1 27:1 29:23 32:19 36:20 40:12 48:5 51:4,19 55:17 58:17 59:16 60:1 61:6 67:12
number (7) 36:24 37:20, 22 49:24 50:1 52:15,18
numbers (1) 51:3
numerous (1) 38:24

O

obtain (1) 6:13
occurred (1) 10:11
October (9) 4:6 5:13 70:6,9 71:3,5,16 72:4,5
Odessa (2) 29:6 59:19
off (4) 6:3,4 7:13 45:23
offer (3) 23:16 28:3 53:3
offered (3) 13:11 26:17 59:12
offers (1) 54:17
OFFICER (33) 3:1,3 8:18 21:15 30:12, 19 33:10,22 34:7,15,20 36:8 40:10 45:5,16 46:21 51:12,18,22 55:4 56:24 57:14 58:4,8 62:7 69:22 70:15 71:7,13, 17 72:6 73:10, 17
official (2) 8:10 22:18
officials (2) 24:22 27:7
often (2) 28:17 66:1
old (1) 66:3
once (1) 6:18
One (22) 6:17 9:17 20:3

23:8 27:15 30:21 34:21 40:2 41:11 48:14 51:7 52:12 53:15 55:10 58:11 59:3,10,13 65:8 67:2 68:15 70:13
ones (1) 53:4
only (2) 53:17 65:15
open (4) 5:13, 19 70:16,22
operation (1) 45:2
opinion (4) 48:2, 11 49:5 62:11
opportunity (9) 3:7 5:9 22:21 36:7 41:15 43:23 70:2,5 72:24
options (1) 9:16
order (4) 6:20 7:18 10:2 21:18
organization (1) 33:21
organizations (1) 39:3
original (1) 57:23
originated (1) 58:12
other (17) 5:6 6:1 17:12 23:13 26:16 37:15,18 38:8 40:21 47:16 51:1 61:9 62:13 64:15 65:13 66:16 73:6
others (1) 23:13
our (26) 22:8,23 27:11,19,24 28:4,7,13,16 29:10 30:21 31:3,10 35:8, 13 37:1 44:7, 7 47:18 48:2, 11 52:9 53:19 58:18 73:13,16
out (17) 13:17 29:11 33:4 45:12 46:2,9, 10,11 47:13 50:17 52:15 54:14 55:9,16 66:5 67:13 68:12
outdated (3) 17:7 21:8 23:5
outline (1) 42:2
outside (2) 18:1,2
over (11) 13:1 16:6 28:23 31:16 41:9 42:17 44:12 52:22 63:2 65:9 67:18
overly (2) 23:12, 13
overview (1) 10:24
own (7) 13:3 35:13 36:20 37:4 66:3 67:16 68:10
owner (1) 13:15
Owners (2) 11:15 40:18

P

Pages (1) 74:9
paragraph (1) 68:6
paraphrase (1) 48:1
parcel (1) 69:9
part (9) 26:12 31:6 32:2,8, 10 43:8 47:5 52:9 61:4
partially (1) 18:4
participants (1) 44:5
participate (1) 42:11
participated (1) 37:2
participation (1) 43:19
particular (1) 68:6
particularly (4) 24:15 37:4 48:8 66:12
parties (1) 35:24
partners (2) 39:1 42:24
pass (1) 46:18
passed (1) 56:11
Passmore (2) 58:24 60:15
past (2) 42:22 66:21
Paul (1) 45:21
pay (2) 54:5,9
payments (1) 11:8
PDRs (1) 11:10
Peggy (2) 51:19, 21
Penn (1) 29:9
Pennsylvania (1) 47:7
people (7) 5:5 31:3,4,20 62:13 66:12 67:20
per (4) 12:23 38:7,22 42:19
percent (62) 10:1 13:16 15:5 16:3,6,20,23 17:2 18:6,12, 13,16 20:11, 12,13,19,20, 20 21:2,2,3 23:10,17,22 25:13,15,18, 20 28:24 29:16,24 38:6, 11,13 43:15 49:4,24 50:1, 5,17,21 51:3, 7,7 52:22 53:1,2,7,11, 16,20 56:10, 12 60:5,17 61:19 63:14 64:14,17,19 65:5,6
percentage (4) 13:11 23:21 50:24 63:14
perennial (1) 53:19
period (4) 18:23 20:5 52:24 65:10
permanent (1) 11:13
permanently (1) 42:18
permissible (1) 10:18
person (2) 19:23 53:20
personal (2) 6:6 62:11
perspective (3) 22:15,20 37:5
pertinent (1) 22:15
Peter (1) 8:16
phase (2) 11:2,9
phenomenal (1) 52:20
phone (1) 6:5
phones (2) 6:3,8
pick (1) 68:12
piece (2) 68:20, 21
pioneer (1) 58:12
place (3) 23:24 26:5 30:3
places (1) 25:5
plan (3) 12:2 73:13,16
Planning (4) 62:17,19 63:10 64:22
plans (1) 29:10
please (3) 4:8 6:2 8:7
plus (2) 6:24 54:21
point (6) 6:17 7:24 32:8 41:2 63:13 68:14
political (1) 26:24
pond (1) 49:6
population (1) 28:16
Port (1) 29:9
portion (2) 12:9, 12
position (2) 49:14,19
positive (1) 27:15
possible (1) 9:5
posted (1) 71:11
posting (1) 71:9
potential (2) 28:9 43:20
poultry (2) 66:12, 14
pour (1) 63:21
Powers (8) 45:7, 8,9,18 46:22 58:14 61:4 62:20
precedent-setting (1) 35:10
precious (1) 63:23
present (5) 3:7 8:4 13:19 41:15 48:6
presentation (1) 34:22
presented (4) 21:13 31:13, 14 71:20
Preservation (38) 3:20 4:1 9:9 10:6 12:15 21:5 22:11 23:2 25:12,16,

19 26:11 27:17 28:14 35:7,15 37:2, 11,14 40:19 41:21 43:14, 16 44:15,23 52:3 54:22 55:1,21 56:2, 13 58:15,21 59:15 61:3,6, 20 63:3
preserve (6) 28:13 35:14 49:7 53:18 56:21 63:24
preserved (13) 20:7,12,17 21:1 41:10 42:18 50:6,9, 14 58:22 61:17,18,19
preserving (4) 42:15 48:13, 18 65:24
President (7) 19:1,5,20 22:6 45:14,21 47:10
Presidents (1) 19:12
pressure (4) 14:9 29:2 30:2 56:19
pretty (3) 31:17 67:24 72:7
previously (1) 50:5
primarily (2) 40:22 62:23
prior (3) 4:12 18:23 26:5
prioritization (3) 17:10,15 23:24
prioritize (1) 30:8
prioritized (3) 13:20 23:20 48:7
priority (8) 10:6 17:24 18:5,14 20:8,23 21:10 49:4
private (4) 24:17 28:18 38:24 39:8
proactive (1) 44:16
probably (11) 47:5 48:14, 23 58:10,22 59:2,5,6 60:12,15,19
problem (4) 58:11 59:6 60:2,22
procedures (1) 42:5
proceed (4) 8:1, 19 70:10 73:14
proceedings (1) 4:13
process (19) 11:1 12:7 13:8,21 14:2 17:9 21:8 23:24 26:15,23 28:23 30:7 40:24 42:4 43:8,9,10 71:14 73:5
procurement (1) 43:9
production (2) 66:13,15
productive (1) 44:16
Professional (1) 74:7
program (97) 3:9, 20 4:1 7:20 8:11 9:1,7 10:24 11:20 13:5 22:11 23:2,6 24:14 25:1,5,12,15, 17,22 26:6,14, 19 27:9,17 28:6,14 29:23 31:2,5,7,8,11, 12,16,21 32:2, 7,11,20,20,22 33:7,15 35:7, 10,14 36:4 37:2,10,14,18, 19 38:4,5,10, 15,20,20,23 39:4,11,17,21, 24 40:19,20 41:7,21 42:1, 6,11,22 43:5, 21,23 44:5,15, 23 45:3 48:18 50:16,22 52:3, 21,23 53:22 55:21 56:20 59:4 61:15 63:6 64:4 66:22 67:1,17 68:13
programs (4) 27:4 36:24 37:15 41:12
program's (1) 42:16
progressed (1) 32:14
prohibits (1) 25:16
pronounce (1) 33:12
properties (7) 10:22 13:19 24:15 26:13 37:1 67:10 68:9
Property (13) 11:24 12:3, 16,19 29:16 35:13 59:12, 21 68:20,21 69:5,6,13
proposal (3) 17:4 30:11 44:2
proposed (39) 3:8 5:10 6:13 7:22 9:2 17:17,24 18:20 19:10, 17 20:8,18,22 21:5 22:24 27:12 28:12 35:18 37:7,11 40:5 41:16,17, 19 42:2,13,20 43:6 44:24 47:12,22 49:4 56:4 57:5,19 58:3 66:19,20 71:24
proposing (1) 3:16
protect (5) 23:18 26:4 27:11 43:24 65:2
protected (11) 23:21 24:16 25:15,21 37:22 38:5,13, 14,21 52:16,19
protecting (2) 36:19 37:17
protection (9) 11:8 24:5 26:20 37:5,10, 15,18 40:2 69:4
protects (1) 44:16
proven (1) 27:4
provide (15) 3:6 5:9 7:21 10:1 13:23 18:20 21:8 23:9 24:11 25:8 34:17 42:9 43:1,7 72:24
provided (10) 16:12 17:21 19:7,15 20:2 26:18 54:19 57:20,23,24
provision (1) 9:24
proximity (1) 15:14
Public (27) 3:5 4:3,10,18 5:2, 9 6:18 7:1,8, 15,22 8:1 18:23 25:10 29:11 31:12 33:24 34:17 38:24 42:23 43:3 56:3,7 70:8,20 73:22 74:7
published (4) 3:11,13 72:8, 19
pulled (1) 45:23
purchase (3) 10:7 11:9 13:10
purchased (1) 38:1
purchasing (1) 9:16
purpose (1) 5:8
purposes (3) 18:15 73:3,3
Pursuant (2) 3:15 23:2
push (1) 6:4
put (12) 6:3 7:15 31:22 36:4 48:13 53:4 66:2,5 67:15 69:16 71:17 73:8

Q

question (4) 67:8 71:5 73:11,12
questions (3) 5:22 34:1 73:6
quick (1) 20:6
quickly (1) 9:4
quite (1) 60:20
quoted (1) 50:4

R

Ramsey (4) 46:24 47:1 51:16 57:8
range (1) 12:13
ranged (1) 15:20
ranking (2) 9:17 18:15
rate (3) 29:19 35:9 54:21
rates (1) 15:3
Rather (1) 47:23
react (1) 47:21
read (3) 34:12 47:23 66:21
reading (1) 46:2
ready (1) 6:22
real (3) 29:22 31:18 60:21
realize (1) 66:1
really (15) 23:10 27:7 45:10 47:24 48:16 54:10 61:2,14 62:24 65:14, 15 66:6 68:5 73:4,18
Realtors (1) 30:15
realty (1) 54:15
reason (2) 7:3 61:23
reasonable (1) 41:17
Rebecca (1) 57:10
rebut (1) 5:6
receive (4) 11:6 18:6,13,18
received (4) 9:22 20:3 52:13 53:7
receiving (1) 53:20
recent (5) 10:10 15:2 17:4,11 49:11
recently (4) 47:21 49:19, 22 50:12
recognize (2) 35:18 41:23
recognized (1) 28:14
recommendations (2) 71:18 72:16
recommends (1) 21:12
record (10) 4:5 5:12 8:6 25:10 57:2,3 70:9 71:5 72:15 74:8
records (1) 67:1
red (2) 57:19,20
referring (1) 55:12
refused (1) 56:4
regard (1) 68:14
regarding (2) 20:1 35:19
regardless (1) 14:22
region (3) 37:16 38:18 39:18
Registered (1) 74:6
Registrar (3) 3:13 72:9,20
regs (1) 73:2
regulation (3) 17:3 18:21 42:20
regulations (51) 3:8,18,20,21, 23,24 5:11 6:14 7:23 9:2, 13 10:11 17:5, 6 19:10,17 21:6,13 22:16, 24 24:3 26:9 27:12 28:12 37:7,12 40:5 41:16,17,19 42:2,8,13 43:1,6 45:1 53:14 56:5,15, 16 57:5,19 66:8,18,19,20 69:17 71:9,24 72:8,19
regulatory (1) 30:11
related (1) 39:2
relating (3) 3:8, 24 22:24
relative (1) 50:15
relatively (1) 65:5
relevant (2) 21:7 37:5
remain (3) 5:13 42:14 53:9
remains (3) 14:22 26:12 43:20
remember (1) 60:7
remove (1) 69:10
rent (1) 14:15
rental (1) 15:3
rents (1) 14:18
replace (1) 3:21
replaced (1) 11:13
report (3) 33:17, 20 44:9
reporter (7) 4:15 5:14,20,23 34:4 74:4,7
reports (1) 34:12
represent (3) 21:22 28:2 62:10
representation (1) 46:6
representative (1) 22:8
representing (2) 35:3 52:1
represents (4) 16:6 20:11, 19 21:1
request (2) 33:23 58:5
requested (1) 56:1
requesting (3) 19:5,20 53:22
required (1) 18:20
requirement (2) 10:16 17:10
requirements (4) 10:14 11:24 12:15,17
research (1) 54:2
residences (1) 54:8
residential (2) 10:13 53:24
resource (1) 69:4
resources (4) 27:20 32:5 39:3,5
respect (1) 48:9
responsibility (1) 40:23
responsible (3) 40:22 41:18 44:15
rest (2) 35:10 61:22
restriction (1) 42:9
restrictions (1) 10:19
result (1) 27:4
results (1) 67:21
retained (1) 24:5
retaining (1) 24:9
retired (1) 41:4
reveal (1) 43:13
review (5) 18:22 41:15 56:2 71:17,19
reviewed (1) 29:9
right (10) 5:18 11:7 33:12,24 34:21 48:5,15 55:17 58:20 59:18
rightly (1) 36:1
rights (16) 10:7 11:10,12,16, 23 13:14,16 14:1 15:9,16, 19 16:2 18:10 53:8 59:15,22
rings (1) 6:5
River (1) 63:22
Road (2) 29:5 60:16
Robert (1) 8:10
rolling (3) 14:17, 20 15:4
room (1) 5:17
rooted (1) 27:22
Round (2) 73:8, 14
rounds (4) 43:13 44:3 48:17 49:11
RPR (1) 74:20
rude (1) 70:24
rule (2) 7:17 33:4
run (3) 33:7,8 64:5
runs (2) 35:9 72:11
rural (1) 15:22

S

safe (1) 39:15
said (10) 5:15 28:22 45:12 50:20 51:14 57:11,15 60:8, 24 65:22
sales (5) 12:21, 24 14:6,7 30:5
same (3) 14:7 19:13 61:7
sat (1) 31:9
save (1) 63:18
saving (1) 63:22
saying (3) 48:21 57:17 72:13
school (1) 30:14
Schultz (5) 51:20, 21,21,23,24
score (3) 12:4,4,

14
Scores (1) 12:13
screening (1) 26:15
seal (1) 74:14
second (4) 11:9 19:16 55:15 59:7
Secondly (1) 17:8
Secretary (1) 7:19
Section (5) 23:3 42:12,20 43:7, 22
sections (3) 21:7 23:6 42:6
sector (1) 44:19
secure (2) 32:3 39:16
see (10) 5:4 33:7,16 51:8 52:16 54:10 56:14 64:8 66:19 67:4
seeds (2) 66:4,5
seeing (2) 70:11 71:1
seems (1) 52:19
seen (3) 47:21 49:15 58:7
select (2) 24:20 67:10
selected (3) 13:10 18:12 26:16
selection (3) 9:19 13:7 30:2
selections (2) 43:13 68:8
selects (1) 27:17
sell (5) 11:16, 22 13:15,24 62:6
sellers (1) 43:20
sells (1) 11:11
send (4) 56:4 57:8,12 70:7
sensitive (1) 65:1
sent (6) 4:11 19:4,18 45:13, 24 57:9
separate (1) 3:24
September (3) 3:14 74:11,14
served (1) 43:10
Service (1) 39:6
services (4) 53:24 54:3,7, 19
Session (9) 3:6 4:4 5:3 7:2,16 34:1,17 70:20 73:22
set (4) 3:17 4:9 30:10 74:13
several (5) 9:18 14:11 43:12 64:15 68:9
severe (1) 56:19
shall (1) 10:5
shape (1) 44:6
share (1) 22:14
shares (1) 35:23
she (2) 42:10 57:22
sheet (8) 4:16, 19,23 5:1 6:9, 12,19 30:18
Short (11) 7:19 8:20,21 11:11 21:16 33:24 34:16,19 45:12 72:5 73:13
should (13) 6:11 7:4 22:14 27:13 28:6 38:17 51:3 55:17,20 60:18 67:21 68:6 69:16
show (2) 23:20 59:8
showing (1) 25:22
shows (2) 53:11 54:3
side (4) 27:16 29:15 61:10 62:24
sign (1) 4:21
signed (2) 4:19 30:16
significant (2) 23:9 72:22
significantly (1) 25:20
sign-in (6) 4:16, 19,22 5:1 6:9, 12
silence (1) 6:7
similar (2) 14:6 29:8
simply (1) 65:13
Simultaneously (1) 24:3
since (7) 15:12 25:11 30:13 32:22 42:16 50:22 56:19
single (1) 26:16
sister (1) 40:17
sit (2) 32:23 60:13
Site (2) 12:6,12
sitting (1) 34:21
situation (1) 5:5
six (1) 69:6
sixth (3) 52:15, 17,18
skip (1) 52:12
slightly (1) 23:22
small (2) 32:16 49:6
Society (7) 22:5, 7,22 35:1,4,5, 12
soil (1) 12:8
sold (7) 16:1 59:15,16,21 62:1,3,3
solely (1) 13:11
some (27) 8:3 9:2 11:7 22:13,19,20 23:5 24:22,22, 24 35:18 46:16 49:13 51:14 56:22 59:5,13 60:20 61:11 63:23 64:12 65:3,8, 22 67:20 68:3 73:3
somebody (1) 32:24
someone (3) 57:18 58:5 65:22
something (4) 23:11 50:1 65:18 67:12
sometimes (3) 6:4 14:13 32:22
somewhat (2) 26:3 64:6
sort (1) 9:1
sour (1) 41:1
sources (2) 39:13 40:1
south (1) 29:5
Southern (3) 24:21 29:3 62:21
space (1) 54:18
speak (4) 5:19, 22 45:16 70:2
SPEAKER (3) 4:20 30:13 34:9
speaking (1) 22:2
special (2) 24:23 26:23
specific (4) 21:8 34:1 47:23 49:3
Specifically (5) 10:15 17:15 42:6 43:7 56:11
specifics (1) 47:12
spell (1) 34:5
spelling (1) 34:8
spent (5) 38:4 48:8 54:24 55:1 56:13
spirit (2) 47:17, 20
spoke (1) 64:12
sprawl (1) 53:19
Staff (10) 17:13, 19,23 18:24 19:9,22,23 21:5,12 44:21
stand (1) 65:23
stands (1) 12:5
start (2) 55:9 63:13
started (2) 8:19 61:3
starting (1) 67:16
startlingly (2) 67:13,14
starts (1) 53:13
State (39) 3:11 10:3 16:12 24:7 25:11,17 28:1 35:7 36:17 37:16, 23,24 38:3,7, 8,11,17 39:2, 8,10,18,20 44:14 45:22 46:3,15,18,19 52:9 53:9,9 54:24 55:11 56:10,17,22 57:3 60:23 74:1
stated (2) 10:17 40:7
statement (1) 8:20
statements (1) 35:8
states (2) 12:18 52:15
State's (1) 12:17
statewide (3) 16:9 22:9 42:1
statistic (3) 50:4,

7,14
statutory (1) 3:15
stay (3) 27:14 47:17 65:11
stays (1) 53:13
stenographic (1) 74:10
stewardship (2) 24:17 28:17
Stewart (2) 46:24 60:18
still (4) 18:18 43:20 59:17 70:4
Stites (7) 55:5,6, 7 57:22 58:6 60:4 64:12
S-T-I-T-E-S (1) 55:7
strike (1) 58:2
strike-through (2) 57:11,12
strong (3) 22:23 28:9 29:22
strongly (2) 37:9 40:4
study (1) 53:10
stylistic (1) 73:2
subdivision (1) 12:2
subject (1) 12:1
submit (7) 3:7 4:2,7 5:16 22:19 70:5 73:21
submitted (1) 51:14
submitting (1) 7:8
subsequent (2) 19:4 44:3
substantially (1) 37:17
substantive (2) 72:22 73:4
success (7) 37:19 38:10, 20 42:22 51:8 59:4,9
successful (5) 25:13 37:14 40:18,20 48:12
summary (5) 7:21 8:24 12:18 16:18 21:4
supplemental (1) 39:12
supplies (1) 39:16
support (14) 22:23 23:8 28:7 31:3 32:7 35:17 37:9 39:21 48:20 52:2,8 53:23 54:18,21
supported (3) 31:21 44:12 52:6
supporting (2) 31:11 35:6
supportive (1) 61:2
supports (2) 40:5 53:15
supposed (4) 26:4 33:8 48:7,8
sure (6) 4:8 31:12 33:23 46:6 57:7 66:11
surprised (1) 66:22
surveys (1) 14:19
Sussex (10) 16:11,24 17:2 19:12,14, 18 20:22 25:21 38:14 67:24
system (2) 9:17, 19

T

table (1) 31:10
take (5) 6:6 7:7 40:23 72:10,14
taken (2) 50:2 74:11
takes (1) 73:15
taking (2) 5:15 14:17
talked (3) 47:18, 20 58:17
talking (2) 49:7 59:1
taught (1) 62:22
tax (5) 54:5,8, 12,13,15
taxpayers (1) 43:11
T-bills (1) 15:5
TDRs (1) 62:22
tells (2) 23:23 60:10
temporary (1) 11:4
ten (5) 7:3 11:6 12:18,22 72:10
ten-year (2) 11:4, 17
terms (4) 48:18 53:23 54:11,19
testament (1) 38:19
testimony (1) 5:6
than (13) 14:10 23:23 25:20 37:14,18 38:8, 22 47:23 51:1 53:24 54:19 68:20 69:13
Thank (24) 6:23 21:14,15,24 22:21 28:20 30:19 33:9 34:7,23 36:6, 8 40:10 41:14 45:4 46:19,21 51:11,18 55:3 56:24 58:9 69:22 73:17
their (28) 6:7 11:16,22 13:3, 24 16:1 17:21 18:7,13,22 19:7,15 28:8 33:7,18,19 35:24 43:24 44:21 49:15, 21 54:11 56:5, 16 65:9,12,18 68:10
them (10) 6:3 27:14 34:13 47:14 51:16, 17 56:3,9 69:7 71:17
themselves (1) 8:5
there (26) 4:17 5:1,14 7:3 8:3 20:9 30:1 31:4 32:23 33:3,5 34:2 35:18 39:16 45:24 48:22 57:16 59:4,10 61:18,21 63:17 64:4 66:16 68:7,23
Therefore (2) 15:11 36:4
therein (1) 4:9
they (47) 8:5 9:15 11:6,17, 21 13:5 15:16 18:12,15,17, 17 27:23,23 28:2 29:4 31:7,8 32:2 40:6,19 48:6 49:16,23 50:1 54:14 56:3,8 57:11 60:11 62:22 64:17 65:10,18,19 66:10,23 68:1, 1,11 70:1 71:10,11,11, 21 72:9,17,18
thing (8) 6:1 55:23 56:6 58:16 59:3 61:8 67:7 68:15
things (6) 48:6 59:5 64:15 66:17 69:3,6
think (27) 23:14, 17 26:2 29:21 30:6 32:11,12 34:15 46:23 49:2,17 50:2 51:2 57:17 58:14 60:19 61:12,23 63:17,20 64:4 65:14 66:9 67:2,14 68:15 69:16
thinking (1) 63:11
third (1) 55:24
thorough (1) 67:4
thought (2) 22:14 30:17
threatened (5) 48:9 49:8,12 64:18 68:3
three (3) 10:17 13:5 45:14
throughout (6) 15:13 37:6, 15,23 38:11,17
Thus (1) 14:9
tight (1) 72:12
till (1) 61:18
tills (2) 61:16,17
time (12) 7:4,7,9 8:12 31:18 39:14 45:20 56:3 63:5,12 65:3,10
timeline (3) 71:4 72:12,13
times (4) 31:11, 17 45:14 64:4
timing (1) 55:16
tinkering (1) 64:20
Title (1) 46:13
titled (1) 44:9

today (12) 3:6,7 4:15 5:15 7:14 22:2 45:10,13 50:11 59:1,18 70:4
together (2) 46:5 71:18
told (2) 7:17 32:13
Tom (1) 58:9
took (2) 17:23 26:5
Total (1) 16:4
totalling (5) 15:24 16:2, 22 20:16,23
tough (1) 31:17
town (1) 14:11
towns (3) 14:8 15:14,21
track (2) 44:3 72:7
traditional (1) 36:22
transcript (1) 74:10
transfer (2) 54:12, 15
transparent (5) 24:6 26:14 27:5 42:4,23
treasury (1) 14:21
tree (1) 69:13
tremendous (2) 39:24 43:16
tried (1) 70:20
true (2) 68:2 74:9
truly (3) 38:16 49:8,12
trust (3) 26:19 52:14 54:2
Trustees (1) 31:9
try (6) 5:6 7:10 9:4 47:17 63:18 67:15
trying (6) 33:14 49:7 64:21,24 70:19,24
turn (2) 6:3 55:1
turned (2) 6:4 59:13
tweaked (1) 73:2
twelve (1) 7:3
Twenty (1) 38:11
two (4) 9:15,19 22:3 55:23
two-step (1) 11:1
two-time (1) 40:23
type (1) 12:9
types (1) 49:10
typically (2) 5:4 14:8

U

UDC (2) 62:22 68:24
UHRUH (1) 58:10
unacceptable (1) 23:14
under (9) 12:22 13:4 25:17 37:7 40:20 41:20 56:19 65:24 69:4
underestimated (1) 65:12
underestimating (1) 65:9
understand (1) 5:24
understandable (2) 42:3,23
understood (1) 64:23
unfair (4) 23:12, 13 26:8 65:14
UNIDENTIFIED (2) 4:20 34:9
Unified (1) 68:18
unique (1) 37:4
units (3) 10:18 69:1,9
University (2) 44:8 53:10
Unlimited (1) 39:7
unprecedented (1) 27:2
unreasonable (2) 26:2,7
Unruh (1) 58:9
until (6) 5:13 32:7 45:23 72:10 73:8,14
unusual (1) 69:11
up (26) 5:17 10:17 30:16 31:19 32:7,23 35:13 36:9 45:6,17 46:23 49:2 51:19 53:21 56:12 59:10,19 60:16 61:17 64:19 65:6,10 67:22 69:12 70:16,22
update (2) 10:10 17:5
updates (1) 35:17
upon (2) 42:21 71:19
urge (1) 28:11
us (7) 21:21 24:18 31:22 32:3,6 37:4 56:4
USDA (3) 14:18 16:14 39:5
use (3) 12:10 53:11 69:19
used (6) 3:18 17:9 18:9 43:8 66:2 67:11
useful (1) 65:5
uses (2) 10:21 36:22
using (4) 15:18 17:21 18:8 37:20
utilize (1) 10:2
utilizes (1) 14:2

V

valuable (2) 24:18 69:13
value (16) 13:14 14:4,5,12,13, 16,21 15:6,7, 9,10,11,12,14 18:10 43:16
values (4) 9:21 13:22 29:16 49:15
VANVERWENDE (2) 8:13,14
Vaughn (1) 57:10
vetted (1) 68:10
via (1) 19:23
viability (2) 12:8 39:22
viable (1) 28:9
vital (1) 63:19
vitality (1) 39:22
voluntarily (2) 11:20,22
voluntary (4) 11:20 26:12 38:20 60:10
Voters (1) 52:1

W

wait (1) 55:23
waiting (1) 6:12
want (17) 4:7 7:8 8:23 30:10 41:14 55:22 57:6 59:3 60:8,9 61:1,13 62:12 70:16 71:21 72:17 73:20
wanted (9) 51:11 59:7,14,20 61:23 64:17 65:2 66:17 67:7
wants (2) 6:13 70:12
warm (1) 32:1
Warren (1) 29:8
Warrens (1) 60:16
wastes (1) 66:15
water (1) 69:4
way (13) 5:23 23:12 26:7 31:13 33:8 40:16 42:21, 22 50:13 51:2 61:12 65:6 71:14
we (77) 6:11,23 7:3,6,7 9:1,2 12:3 15:23 17:18 18:9 21:22 23:8,17 24:8,10 25:8, 21 28:11 29:9 31:5,18 32:13, 16,18,19,21 33:2 35:7,11, 17,18 36:9,17, 18,20,21,23 37:1,3,4,9 40:12 45:5 46:4,23 47:13 48:12,20,20 51:5,8,19 52:2 54:12,17 55:4,17,24 56:2,21 57:7 59:5 60:1 61:6,7 62:7, 22 63:5 65:2 66:9 67:18,19 68:3 70:10 72:12,13
wealth (1) 65:17
webpage (1) 34:14
website (3) 33:18,19 34:3
Wednesday (1) 74:11

went (1) 28:23
Wetlands (3) 39:4 63:22 69:15
whatever (2) 32:16 72:18
what's (1) 22:20
whereby (1) 13:21
WHEREOF (1) 74:13
Whitehead (3) 62:8,9,10
whole (2) 52:23 58:15
wife (1) 40:17
Wild (5) 36:10, 14,15 39:7 40:4
William (1) 3:2
willing (2) 13:15 43:19
Wilmington (1) 74:15
wind (1) 65:10
wipe (1) 54:14
wish (1) 30:23
wishes (2) 4:2,14
within (15) 13:5 18:5,14 20:4, 7,18,22 21:9 22:12 24:1 33:1 39:18 44:1 52:23 53:16
without (6) 29:11 58:7 65:22 69:9,10,11
WITNESS (1) 74:13
woefully (1) 49:6
Women (1) 52:1
Woods (1) 40:16
word (2) 31:22 35:11
wording (2) 64:19 73:2
work (3) 46:13 59:23 71:14
worked (1) 59:16
working (6) 24:1 28:4 31:11 41:4 46:5 55:17
worse (2) 50:19 66:10
worth (2) 60:15 68:20
worthwhile (1) 17:14
wound (1) 67:22
writing (1) 70:6
written (12) 4:3,8, 11 26:9 47:2, 16 48:19 51:15 70:18 71:2,15 73:20
wrong (1) 6:5

Y

year (8) 11:16 12:20,23 14:20 54:13, 13,14 67:5
years (8) 11:6 31:17 32:4,14 36:18 41:4 63:2 66:21
yield (1) 14:20
yields (2) 15:6 39:11
young (2) 49:20 65:23
yourself (2) 8:8 21:21

Z

zone (8) 22:12 29:3,4,13,14 30:4 44:1 53:17
zoned (1) 12:1
zones (7) 10:9 13:20,23 18:2 21:11 23:19 48:9

0

0 (1) 12:13
0357 (1) 15:6

1

1 (4) 3:14 4:6 5:13 74:9
1,000 (1) 61:21
1,088 (1) 15:24
1.0 (1) 42:7
10 (1) 6:24
10,500 (1) 20:10
11:30 (1) 73:23
116,000 (1) 16:2
11th (1) 19:5
13 (1) 42:21
13,300 (1) 16:22
14 (2) 20:11,15
14,125 (1) 20:24
14th (1) 72:5
15 (4) 6:24 17:2 25:20 38:13
16 (1) 20:19
168,000 (1) 42:17
17 (1) 20:12
170 (2) 12:4,14
171,000 (1) 15:24
17th (2) 19:11, 16
18 (2) 3:12 43:7
18.2 (1) 43:22
1949 (1) 62:1
1991 (6) 9:7 50:23 56:11 58:18,18 61:3
1995 (4) 9:14, 23 10:3 25:11
1998 (3) 10:4 13:19 17:10
1999 (3) 10:11 17:5 64:13
1st (6) 70:6,9 71:3,5,16 72:9

2

2 (1) 19:1
2,200 (1) 22:9
20 (14) 10:1 16:23 20:13 25:18 31:17 32:14 50:5,17 51:3,7 64:14 65:5 73:8,14
20,000 (1) 36:19
200 (3) 13:1,1,4
2004 (1) 10:13
2008 (1) 52:6
2009 (1) 52:13
2014 (2) 17:20 19:1
2015 (7) 3:12, 14 4:6 5:13 15:20 74:11,15
21 (1) 52:15
23 (1) 74:11
23rd (1) 19:9
24 (4) 16:3 20:19 25:15 38:6
25 (1) 56:12
27 (2) 20:20 21:2
28th (1) 74:14

3

3 (2) 23:3 46:13
3,130 (1) 20:16
3.57 (1) 15:5
30 (1) 65:5
30,000 (3) 36:19 44:13 52:6
300 (2) 12:13 29:16
30th (1) 19:21
30-year (2) 14:20 15:4
314 (1) 16:24
34 (2) 21:2 25:13
35 (3) 16:20 21:3 54:4
356 (1) 35:13
38 (1) 41:4
38-year (1) 41:8

4

4.0 (1) 42:7
40 (1) 18:13
404 (1) 16:18
41,600 (1) 16:24
48 (1) 28:24

5

5.01 (1) 42:12
50 (2) 36:18 60:5
56 (2) 16:6 52:22
57 (1) 20:9
5th (1) 19:14

6

60 (5) 13:16 18:12,16 50:1 65:6
60-day (1) 20:5
61,300 (1) 16:19
65 (3) 18:16 53:1,2

7

70 (2) 43:15 49:24
74 (1) 74:9
75 (2) 64:17,19

8

80 (2) 53:7,11
808 (1) 16:1
84 (1) 20:23

9

90 (2) 16:21
61:19
901 (1) 23:3
90's (1) 62:18

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