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ALBANY PINE BUSH PRESERVE COMMISSION

PUBLIC HEARING

PUBLIC COMMENT on the PROPOSED
UPDATED ALBANY PINE BUSH PRESERVE MANAGEMENT PLAN
and DRAFT ENVIRONMENTAL IMPACT STATEMENT

DATE: April 15, 2010
TIME: 7:03 p.m. to 7:59 p.m.
LOCATION: 195 New Karner Road
Albany, New York

1 Pine Bush Preserve EIS - 4-15-2010

2 APPEARANCES:

3

4 HEARING OFFICER:

5

6 William Clarke, NYS DEC

7

8 SPEAKERS:

9

10 Chris Haweer

11 Neil Gifford

12 Grace Nichols

13 Susan Potts

14 Paul Ruzit

15 Shelly Lupe

16 Don Snell

17 Lynn Jackson

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2 MR. CLARK: Good evening, ladies
3 and gentlemen. I am William Clark. By -- my day
4 job is I work for the Department of Environmental
5 Conservation as a Permit Administrator, but
6 tonight, I'm serving as the hearing officer on this
7 public hearing to take public comment on the
8 proposed updated Albany Pine Bush Preserve
9 Management Plan and Draft Environmental Impact
10 Statement.

11 Copies of this Plan and E.I.S.
12 have been and remain available at local public
13 libraries. They're also available at the municipal
14 offices for Guilderland, Colonie, and Albany.
15 They're available at the D.E.C. office, and they're
16 also available online as well at Albany -- let's
17 see -- AlbanyPineBush.org. You can view it online
18 there.

19 The updated Plan and D.E.I.S. was
20 released on March 24th of this year. Tonight,
21 we're taking public comment, but the comment period
22 remains open until May 5th. So you have until then
23 to submit additional comments, should you give a
24 statement tonight or not wish to give a statement

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2 tonight.

3 Basically, your comments can be
4 submitted online, again, AlbanyPineBush.org, or you
5 can send them here at 195 Karner Road. I believe
6 that's 12205, Albany, New York.

7 We have a court reporter here to take public
8 comments, so we will record all of your words.

9 It's extremely important that when people speak
10 that everybody show the utmost courtesy and respect
11 for the speakers and for each other. So we can't
12 really have -- we can't have any interruptions. We
13 would appreciate it that if you do have a lengthy
14 statement, to simply summarize your main points and
15 you can submit your written comments either
16 tonight, or if you still want to work on them, you
17 can submit them, again, to this office or online by
18 May 5th.

19 What we're going to be doing is
20 we're going to be -- I'll be calling on people. We
21 do ask that you simply print your name on a sheet
22 up there so that the court reporter can get the
23 spelling right, and we'll ask you to come up to the
24 dais here and -- and give your statement, and then

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2 we'll move on to the next speaker.

3 The first speaker that wishes to
4 speak tonight is Chris Hawver, who is the Executive
5 Director of the Pine Bush Commission. Chris?

6 MR. HAWVER: Thank you, Bill. I
7 just wanted to briefly say thank you for you folks
8 coming out -- taking the time this evening to come
9 and participate in this hearing -- give your
10 comments. It's obviously something that's very
11 important to us as the Pine Bush Commission to make
12 sure that the public comments on this Plan for us.
13 So I just wanted to say thank you for taking the
14 time.

15 And just official business, if
16 there is an emergency -- I have to do this for
17 every meeting -- there's emergency exits through
18 either one of these doors. And go back out those
19 front doors that you came in, and assemble in the
20 parking lot. So -- and that was it. Thank you,
21 Bill.

22 MR. CLARK: Great. Thank you,
23 Chris. The next person who wishes to make a
24 statement is Neil Gifford, the Conservation

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2 Director for the Commission.

3 MR. GIFFORD: Thank you, Bill.

4 Thank you, Bill, and thank you all for coming this
5 evening. I just want to take about a few minutes
6 to give you a brief overview of the Management Plan
7 and Draft Environmental Impact Statement, and then
8 we'll open it up to the floor. And again, the
9 website that -- that Mr. Clark mentioned is there
10 on the screen, and you'll see it again at the end
11 of this brief presentation.

12 What is the Management Plan and
13 the Draft Environmental Impact Statement? It's
14 really the master plan describing how the
15 Commission will meet its obligations under
16 Environmental Conservation Law, Article 46, for
17 creating and managing a viable Albany Pine Bush
18 Preserve. Additionally, the D.E.I.S. satisfies the
19 State Environmental Quality Review Act
20 requirements.

21 Why update the Plan? First and
22 foremost, because the Environmental Conservation
23 Law says that the Commission needed to create a
24 plan. The initial Plan was in 1993, amended in

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2 '96, updated again in 2002. And that E.C.L. 46
3 also says that every five years, the Commission
4 shall review that Management Plan, and if there's
5 new information -- new and relevant information,
6 update that Plan as appropriate. The last Plan was
7 2002, so we began this process in 2007 of reviewing
8 the Plan.

9 Additionally, new information
10 from both the Commission and from external academic
11 partners has been incorporated into the draft plan,
12 and -- and the illustration you see on the -- on
13 the slide there, although all of those red lands
14 are lands that have been managed by the Preserve --
15 by the Commission since 1991, a little over fifteen
16 hundred acres.

17 What remains the same? The
18 Commission's goals and objectives largely remain
19 the same, both our -- our ecological goals and our
20 programmatic goals. We're looking to protect and
21 manage a viable pitch pine/scrub oak barrens,
22 create and manage viable linkages, adequate buffers
23 for protected lands, and protect and manage
24 significant cultural and environmental resources,

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2 be those endangered species locations,
3 archeological sites, or other environmental
4 resources like wetlands and streams.

5 Additionally, we're looking to
6 maintain and enhance public access to the
7 Preserve -- very important, and enhance and expand
8 our educational opportunities and outreach efforts
9 here at the Preserve. The techniques for -- for
10 creating and managing the Preserve remain largely
11 the same, and the environmental impacts have not
12 changed substantially since the 2002 Plan.
13 Specifically, though, what -- to summarize the --
14 the updates in this Plan, what's changed in this
15 Plan, really, it falls under four categories.
16 Protection: the Commission is looking at, and the
17 draft Plan proposes, a slightly larger study area
18 of approximately thirteen thousand acres, and a
19 slightly larger preserve is envisioned in that --
20 in the draft Management Plan. We've also refined
21 our ecological objectives and techniques based on
22 new -- again, new information from within -- within
23 the Commission based on our own experience as well
24 as academic external peer literature and research

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2 that's happened within the preserve and within the
3 scientific community at large.

4 Additionally, and importantly,
5 the draft Plan includes a Recreation Plan: the
6 vision for resource protection and visitor
7 experience. And that is an appendix to this plan
8 that really provides one holistic analysis of the
9 recreational infrastructures and opportunities in
10 the Preserve as well prescribes a conceptual
11 desired condition for recreation in the Preserve.
12 And additionally, there are a number of new
13 appendices to the Plan, and several appendices that
14 were in the 2002 Plan have been upgraded.

15 Building the Preserve: this is the -- that's the
16 2002 vision map that you're likely familiar with
17 from the 2002 Management Plan. One of the first
18 things that the Commission did was utilizing the
19 same set of criteria that were used in '96 and
20 again in 2002 -- evaluated undeveloped lots of open
21 space within the existing study area, and as a
22 result of open space protection in the city of
23 Schenectady and important -- the discovery of a new
24 Karner blue butterfly site and realization of

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2 important wetland and pine barrens resources, we
3 evaluated a -- an -- an -- an expansion of the
4 study area of about four hundred and fifty acres
5 between the existing study area on Cordell Road to
6 the Schenectady County line.

7 The evaluation resulted in
8 eighteen new protection areas totaling
9 approximately five hundred twenty-six acres,
10 seventeen of which are recommended for full
11 protection -- to receive a full-protection
12 recommendation, and one of those new areas is
13 recommended to receive an open-space
14 recommendation. Of the pre-existing protection
15 areas from the 2002 Plan, four -- four of those
16 areas were changed, three areas were elevated to
17 full protection, and one area was reduced to
18 partial protection.

19 And additionally, four
20 pre-existing protection areas were eliminated --
21 were removed. And that was two full-protection
22 areas and two partial-protection areas were removed
23 as a -- as a result of circumstances on the ground.
24 And what we ended up with, and as a recommendation

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2 in the -- in the -- in the current -- in the draft
3 Management Plan is a revised vision map. Again,
4 the darkest green areas are preserved lands. That
5 lime green color are lands that are recommended to
6 be -- recommended to receive a full-protection
7 recommendation.

8 You can also see the green -- the
9 dark green areas with yellow lines through it are
10 lands that have been protected since 2002, and it
11 results in an expanded study area out to the
12 Schenectady County line, again to protect the
13 important environmental resources and also build
14 important recreational and ecological linkages to
15 protected open space at the Woodlawn Preserve in
16 Schenectady County.

17 We've refined our ecological
18 restoration and management goals, and I really want
19 to point out the two slices of this pie that are
20 pulled out, the three fifty eight point two nine,
21 and at the lower right, the six twenty-six.
22 Basically, only about a third of the existing
23 Preserve is high-quality pitch pine/scrub oak
24 barrens, meaning that we have a -- a great deal of

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2 restoration work to continue to do. And that's
3 going to entail converting non-native, and in some
4 cases, restoring some native forest habitat to
5 pitch pine/scrub oak barrens to achieve that goal
6 of at least two thousand acres of high-quality
7 viable pitch pine/scrub oak barrens.

8 Additionally, we want to make
9 sure that the ratio of early successional or open
10 barrens that can support Karner blue butterflies
11 and forty-five other species of greatest
12 conservation need is available. So we're looking
13 at an increase in the open pitch pine/scrub oak
14 barrens and a slight decrease in the forested
15 variant of pitch pine/scrub oak barrens.
16 And really all -- another -- another part of the
17 Plan that's new is that there are a number of
18 new -- new plans beyond the Commission and beyond
19 the Albany Pine Bush that were important to
20 consider, not the least of which is the New York
21 State Wildlife Action Plan that was adopted by
22 D.E.C. in 2006.

23 Additionally, in 2003, the U.S.
24 Fish and Wildlife Service adopted their Federal

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2 Karner Blue Butterfly Recovery Plan. There is a
3 draft State Recovery Plan for the Karner blue
4 butterfly. There is a -- a recovery plan for the
5 Karner blue specific to the Albany Pine Bush that's
6 an appendix to the Management Plan. And
7 additionally, rules and regulations related to game
8 species helped -- helped dictate our species
9 management in the Preserve. And specifically
10 related to Karner blues, we're looking at restoring
11 between three hundred and twenty and six hundred
12 and forty acres of habitat that can support seven
13 to thirteen thousand butterflies in a typical year.
14 The Recreation Plan that is an appendix to the
15 Draft Management Plan really focuses on fulfilling
16 a -- a requirement of the 2002 Plan. The 2002 Plan
17 said that we would build or we would draft and
18 create a comprehensive public use and recreation
19 plan that both provides and enhances access to the
20 Preserve, while at the same time ensuring
21 protection of an -- of the important environmental
22 resources.

23 The analysis resulted in showing
24 us that we had eighteen point three miles of

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2 existing trails at nine trail heads currently that
3 provides multi-user access to twenty-four unique
4 recreational and resource opportunities.

5 Additionally, there are at least fourteen miles of
6 illegal trails in the Preserve. And when we look
7 at the most conservative measure of a zone of
8 influence from those trails, seventy-five meters
9 from -- from that trail, currently about -- about
10 half of the Preserve is affected by recreational
11 use.

12 And in particular, the analysis
13 revealed that the highest trail density is in some
14 of the best quality pitch pine/scrub oak barrens.
15 So the recommendations of that Recreation Plan
16 really look at both improving recreational access
17 by actually maintaining multiple uses, facilitating
18 through hiking, which you can't do currently. The
19 rec plan proposes a route north and south of the
20 thruway for through hiking from one end of the
21 Preserve to the other by -- by establishing new
22 trail heads and increasing the official Preserve
23 trails to about twenty-one miles of trails.
24 And we would do that by engaging private

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2 landowners, both through acquisitions where we have
3 willing landowners, as well as hopefully some
4 agreements for potentially easements. And that
5 some trail changes would be phased in over time
6 throughout the Preserve and that throughout that
7 process of changing the trail system, we would be
8 engaging the public.

9 Additionally, we're looking at
10 improving resource protection by reducing
11 fragmentation and the associated impacts,
12 increasing the size of unaffected core habitat, and
13 reducing those overlapping zones of influence where
14 we have trails that are so close to each other that
15 there is no open space that's not affected. And
16 all those details are in the Recreation Plan in the
17 draft update.

18 And lastly, what's new in this
19 Plan. There are four new appendices to the Plan:
20 the Pine Barrens Viability Assessment that really
21 gets into the details of how to -- how to restore a
22 viable pine barrens. There's the Karner Blue
23 Recovery Plan specific to the Albany Pine Bush
24 Preserve, an Education and Outreach Plan, and the

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2 vision for resource protection and visitor
3 experience, and that's the Recreation Plan.
4 Additionally, we updated the Fire Management Plan,
5 the Invasive Species Management Plan, and the
6 Research Inventory and Monitoring Plan.
7 By way of process, as Mr. Clark commented on
8 earlier, the comment period opened on March 24th
9 and runs through May 5th. The address -- the
10 e-mail address for -- for receiving comments is
11 there on the screen,
12 ManagementPlan@AlbanyPineBush.org, and we
13 anticipate reviewing and responding to comments as
14 we prepare the Final Environmental Impact
15 Statement, and that the Commission would consider
16 that F.E.I.S. sometime this fall.

17 And again, the -- the web address
18 where you can find a single PDF containing the
19 entire Management Plan and all of the appendices is
20 on -- is on our website at AlbanyPineBush.org.
21 Thank you.

22 MR. CLARK: Thank you. Who would
23 like to make a statement tonight? Yes. If you
24 could come up to the lectern, please. Just --

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2 actually, bring that sheet up closer. We just need
3 your last -- for you to print out your last name so
4 we get the spelling right. Okay. Why don't you
5 come up and give your statement then?

6 MS. NICHOLS: Hi, my name's Grace
7 Nichols. I'm a resident of Albany. I want to just
8 really appreciate the Albany Pine Bush Commission
9 for the science, for the education, and for holding
10 the meeting in the evening where working people can
11 come and give our pieces of the puzzle, our
12 concerns for a resource that belongs to all of us
13 and impacts a phenomenal number of species, many of
14 which are extremely vulnerable.

15 So I just want to encourage the
16 Commission to hold board meetings and other
17 meetings at night so the ongoing conversation with
18 the community can happen, and we can be educated
19 and our concerns can be heard.

20 I wanted to address one aspect of
21 the Plan, and it's an aspect that I've been looking
22 at for a while. So I would just like to add the
23 things that I've learned. And that is that the
24 Pine Bush Commission -- it's a concern I have is

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2 the Pine Bush Commission has been using increasing
3 numbers of pesticides -- increasing quantities of
4 pesticides, and they've been spraying and spraying
5 and also -- also longer periods during the year.

6 Am I too loud or too soft? Okay.

7 And so I wanted to talk about that. There's a
8 number of concerns in the proposed mitigation for
9 the landfill itself, which has, obviously, a lot of
10 impacts on the Pine Bush.

11 There's a appendix that talks
12 about all of the pesticides that are permitted
13 under this Plan, and it's quite alarming -- even
14 way more alarming than the herbicide use that's
15 currently being used. And so I wanted to share
16 some of our concerns -- environmental concerns.
17 And the first pesticide I want to talk about was
18 Zinc Phosphide. It's an E.P.A. Toxicity Category
19 I. It's permitted by the mitigation plan. In
20 fact, it's encouraged to use to control wood --
21 woodchuck -- I'm sorry, muskrats. Sorry, muskrats,
22 which are a native species. And our concerns about
23 it is it uniformly wipes out mammals and birds. It
24 actually is a compound. It's a very simple one

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2 that in -- under conditions of low pesticides turns
3 into phosphine gas, which is nerve gas. So in any
4 animal's stomach, it's going to become nerve gas
5 and poison the animal. And this is why all
6 throughout the Midwest and in the west, Zinc
7 Phosphide has been abandoned for use because it
8 wiped out so many non-target species.

9 And so our concern is, as we're looking at -- for a
10 good integrated pest management plan, that we
11 abandon the use of Zinc Phosphide. It's just bad
12 news. Some of the herbicides that are approved
13 include Glyphosate, which is currently being used.
14 So the second one is Glyphosate, E.P.A. Toxicity
15 Category II. And some forms of Glyphosate are
16 already being used. And one of our concerns about
17 Glyphosate is that it is -- it has environmental
18 effects. And so there's -- there's an article
19 published that says that it has affected and
20 reduced our concerns like fifty percent the
21 survival of juvenile spadefoot toads in a different
22 section of this country. It's actually in the High
23 Plains, and they're a related species to our own
24 spadefoot toads.

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2 So our concern is some -- some
3 forms of Glyphosate are worse than others. So --
4 and I have a scientific article here, but our
5 concern is that we want to really look carefully at
6 the environmental effects of the Glyphosate.
7 Another article I have talks about how Glyphosate
8 is used to wipe out lupine in the Yukon, Alaska.
9 And so again, it's a very close species to our own
10 lupine which the butterflies depend on.
11 Because Glyphosate is a systemic herbicide, it
12 attacks the root systems of the plant. And so what
13 this says is, of all of these plants, lupine are
14 the ones that will die with just one application.
15 It takes five applications to kill most plants.
16 But lupine are so sensitive because of their --
17 their -- to a systemic herbicide -- they're just
18 vulnerable. So we want to be thinking about that
19 as we're using Glyphosate to attack invasive
20 species. We wanted to look very carefully at
21 alternatives, and I'll get to that in -- in a
22 minute.

23 We wanted to look at Aquatic
24 Approved Glyphosate, which is a Category II;

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2 Imazapyr, Category III; Two Four-D, Category I for
3 eye exposure, hazardous to honeybees, fish and
4 birds; Triclopyr, Toxicity Category II, often mixed
5 with more toxic ingredients; Aquatic Approved
6 Triclopyr; Sethoxydim, extremely dangerous to
7 butterflies. That actually reduced the population
8 of rare butterflies in Europe by thirty percent by
9 spraying Sethoxydim out there.

10 And so again, they didn't know
11 that till they did it. They were -- they were
12 actually hoping to improve the butterfly habitat,
13 because invasive species -- there were not
14 appropriate nectar plants or not great for
15 butterflies that need the food. But when we're
16 doing that, we might want to look at different ways
17 to do it than spreading poisons that are hazardous
18 to butterflies. And then the last one is
19 Metsulfuron Methyl.

20 So all of these are used -- are
21 promoted by the Restoration Plan, paradoxically
22 enough. And we want to really encourage the
23 Commission to amend that part of the Plan.
24 Zinc Phosphide should just never be used.

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2 Sethoxydim, we should think about not using that.
3 Glyphosate, we need to look into effects. We could
4 be adding to the science of what these effects
5 really are. And we should be doing those things.
6 We want to point out that in Wisconsin, where
7 Karner blue -- you know, a similar habitat, but
8 also quite different, you know? When you're doing
9 environmental science, it's tough because there are
10 so many factors. But in Wisconsin, the management
11 people actually worked with power companies to
12 reduce their pesticide use and to restrict it to
13 certain times of year and to substitute mowing.
14 And when they did that, I mean, they're -- they
15 increased their -- that's one of their major ways
16 that they worked with the Karner blue, and they
17 were able to increase populations by eight hundred
18 and fifteen percent.

19 Here in Albany, we have a
20 different situation in terms of who the neighbors
21 of the Pine Bush are. And we're down to a
22 thousand -- maybe between one thousand and two
23 thousand butterflies, which is far away from our
24 target. We always seek seven thousand to twelve

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2 thousand. And so when we're in that situation, we
3 want to look very closely at any impacts on the
4 butterfly, whether that be air pollution, water
5 pollution, pesticide use by the Commission, but
6 also by the neighbors of the Commission: Crossgates
7 Mall, you know, Time Warner.

8 All the neighbors of the Pine
9 Bush should be seriously encouraged and given
10 incentives -- little certificates, "We're
11 pesticide-free," to safeguard the species of the
12 Pine Bush Preserve. You know, there's --
13 pesticides know no boundaries. You know, Butterfly
14 Hill is right next to Crossgates. We want to look
15 at that and say, "Hey, Crossgates, be a good
16 neighbor." So those are some things that we'd like
17 to see as part of any restoration plan.
18 And lastly, I wanted to point out that the -- the
19 alternatives that we do have, that -- like locust
20 makes good fence posts. It's extremely durable.
21 You know, yeah, you need a Cat to pull it up, but,
22 you know, Spotted Map Weed comes right out. All
23 you got to do is this.

24 And we have a lot of youth in

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2 Albany that are unemployed, don't have tremendous
3 amounts of skills, but they can do this. They can
4 connect to nature. They want to do it, and we'd
5 like to see them here doing mechanical invasive
6 species control. It's a better place to put our
7 money than to put it into buying the pesticides and
8 paying the people who really do have those kinds of
9 licenses and can do that.

10 So we want to really encourage
11 the Pine Bush. You know, we saw this amazing
12 program, and it was actually up at Wilton, but it
13 was amazing program where high school students came
14 in from New York City and they did amazing work
15 trying -- just mechanically go out there and
16 restore -- you know, do -- do hands-on work,
17 environmental work.

18 And when we saw that we said
19 "Albany High School." There's just so many
20 students here in Albany who would benefit from
21 those experiences. So we just wanted to encourage
22 that, as we're looking at management, that we're
23 also looking at as most sustainable as possible,
24 and also the type of management that really will

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2 create local jobs for -- for young people.
3 So I think that's enough, but I wanted to share
4 those things with you and ask that we -- we look at
5 the issue of pesticides quite seriously, and at the
6 same time as we look at investing in our local
7 youth as we're looking at management. And I
8 welcome the -- the opportunity to have this
9 conversation, and I hope we have more opportunities
10 to speak together. Thank you.

11 MR. CLARK: Okay. Thank you.
12 Who wishes to make a statement tonight? Yes.
13 Just -- just print your last name on the list.
14 Thank you.

15 MS. PERRY-POTTS: Good evening.
16 My name is Suzanne Perry-Potts, and I live in the
17 Pine Bush area of Colonie, and I also operate a
18 construction business from that location. I have
19 several comments concerning the proposed 2010
20 Management Plan.

21 First of all, I entirely disagree
22 with your idea of creating new Pine Bush land by
23 cutting down and burning forest land and replanting
24 what you call native Pine Bush species. I believe

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2 that the Albany Pine Bush Preserve Law states that
3 the land in the three municipalities of Colonie,
4 Guilderland, and Albany, characterized by the
5 growth of the pitch pine and scrub oak pine
6 barrens, vernal ponds, and/or the presence of sand
7 dunes -- sand dunes, which have been dedicated
8 should be maintained and protected. Lands which
9 lack these vegetative characteristics may be
10 dedicated as a protective or a buffer zone.
11 If I understand this Plan correctly, you want to
12 take these buffer zones of forest land and
13 transform them into your idea of Pine Bush land.
14 You want to use the taxpayers' money to create an
15 ecosystem how you want it. Every five years, you
16 expand your boundaries of where you think this
17 Preserve should be.

18 Personally, I feel you should
19 concentrate your charitable donations and your
20 endowment money on the property that you already
21 have acquired. I feel that the Preserve should get
22 no more money from the taxpayers to acquire land
23 and to restore land to an ecosystem that existed
24 twenty thousand years ago.

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2 As for your map titled "Division
3 of the Albany Pine Bush Preserve," and for your
4 review guidelines that you first started to
5 implement in the 1996 Management Plan, I find the
6 whole concept absolutely anti-American. I am
7 outraged that because of a lawsuit initiated from
8 Litigator Lynn Jackson of Save the Pine Bush
9 against the Preserve Commission, the neighbors
10 surrounding the Preserve who were not parties to
11 this suit became the court settlement.

12 Your organization agreed to spy
13 on all property owners in your so-called study area
14 so Litigator Lynn would drop her lawsuit. I don't
15 recall giving up my fourteenth amendment rights of
16 freedom from undue government control and
17 interference in order for you to avoid a lawsuit.

18 The property owners in your study
19 area have had their fourteenth amendment rights
20 violated severely, and still do every time you get
21 a report from one of these municipalities.
22 Apparently, your organization feels that what these
23 people don't know won't hurt them. Because I am
24 almost certain that almost all of these property

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2 owners are not aware that you demand that these
3 three municipalities report all and any type of
4 applications before the Building and Planning
5 Department to the Preserve Commission.

6 Usually, when there's a lawsuit and there's a
7 settlement between parties, one might be required,
8 for example, you know, to be told to follow certain
9 OSHA laws or institute a handbook outlining
10 employee rights. For you to agree to spy on your
11 immediate neighbors as a settlement is downright
12 unconstitutional.

13 You also violated these property
14 owners' equal protection rights. You have unjustly
15 subjected these people to your review guidelines
16 for the sole reason that they have property near
17 the existing or potential Preserve lands whose
18 boundaries and protection status change with every
19 new Management Plan. You have violated the ENCON
20 Law, Article 46 0107, Paragraph Five, which
21 basically states that the Commission shall have no
22 authority to control land that is not dedicated.
23 A definition of control is to exercise influence
24 over someone else. Your organization certainly

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2 controlled the fact that no soccer or Little League
3 fields were built on Town of Colonie land back in
4 '96 because Mary Brizzell stated that project was
5 put on hold because -- because of opposition -- the
6 Preserve Commission. Your review guidelines are
7 designed to attempt to influence these three
8 municipalities by giving these private properties a
9 protection recommendation and assigning an overall
10 score. This does not belong in your Management
11 Plan.

12 The Management Plan shall cover
13 management of all dedicated property, not your
14 Christmas wish list. I looked at a -- I looked at
15 a couple of the properties on that map and at their
16 score, noting that you had -- that you liked the
17 high scores in pitch pine/scrub oak barren
18 communities, and you liked high scores in linkages
19 and communities of Karner blues. They were most
20 important. Area Seventeen-C, which in 2002 had no
21 protection recommendations, now is recommended for
22 full protection with a linkage score of twenty.
23 That means it -- it is linking existing or
24 potential preserve with no development between the

1 Pine Bush Preserve EIS - 4-15-2010
2 parcels. All of those parcels have houses on them,
3 and they also have the offices of Callanan, Regents
4 Communications, and Allied Craftsmen, so I don't
5 know how you could put that underneath the twenty.
6 Area Forty-three, which is right up the road, in
7 2002 had a full protection rating, and now -- and
8 now has a linkage score of twelve, which is less,
9 which means that it is linking existing or
10 protected preserve with a high level of development
11 to the parcels. This parcel is located across the
12 road from B.B.L.'s yard. It's twice the size of
13 the previously-mentioned parcel. It has no
14 businesses on it and less than half of the number
15 of houses of the previously-mentioned parcel, and
16 it has Preserve property on two sides of it, yet it
17 has a lower linkage score.

18 Area Forty-four-A, which is right
19 across the road, which had a full protection
20 rating, now has a linkage score of sixteen, which
21 is higher. That means it has moderate to low level
22 of development or disturbance. It's located across
23 from Forty-three. It contains B.B.L.'s yard and
24 the auto auction yard. It's almost twice the size

1 Pine Bush Preserve EIS - 4-15-2010
2 of the Area Forty-three, but at least forty percent
3 of it is developed or disturbed. Google it; take a
4 look. You would think this area would have a lower
5 linkage score than the property across the road,
6 which is practically vacant land, except for a few
7 houses.

8 Area Fifty-two-D, which in 2002
9 had a partial protection rating, is now recommended
10 for full protection and has a linkage score of
11 twenty, meaning no development. That property has
12 my house and my construction business on it and the
13 neighbor's house. So you -- you guys have a
14 problem with your rating systems.

15 Area Forty-four-B, which I also
16 own, has a linkage score of sixteen, which is less.
17 There are no buildings on that and hardly any
18 blacktop or gravel. It appears to me that you are
19 rating these business properties that are very
20 disturbed with a higher linkage rating than less
21 disturbed areas so as to influence the town that
22 they are more valuable to the Preserve and should
23 not be further developed.

24 Let's look at two more locations.

1 Pine Bush Preserve EIS - 4-15-2010
2 Area Thirty-five-A through Thirty-five-G are
3 located on the west side of Albany Street and they
4 total approximately three hundred and fifty acres.
5 Most of the street frontage is developed with
6 houses, and a lot of land is landlocked and can't
7 be developed without a road. They have a full
8 protection rating and a zero linkage score, even
9 though those properties all back up to existing or
10 potential Preserve lands. They also have a high
11 rating for their pitch pine community area.
12 To compare that to Area Fifty-nine, which is
13 recommended as partial protection, this area has a
14 linkage score of sixteen, which means moderate to
15 low levels of disturbance, and it also has zero
16 pitch pine communities. It consists of thirty-five
17 acres. It's located north of Morris Road above
18 these areas that has zero linkage that are backed
19 up to Preserve lands.

20 This Area Fifty-nine that backs
21 up to land that has zero linkage is given a sixteen
22 linkage rating. That doesn't make sense unless you
23 want to influence the town not to develop this
24 area. Because, for the last ten years, the owner

1 Pine Bush Preserve EIS - 4-15-2010
2 has been attempting to get approval for about two
3 dozen homes. It appears to me that your ratings
4 are inaccurate and biased and designed to influence
5 the towns not to allow development.

6 You had no right to make an
7 agreement with Litigator Lynn of Save the Pine Bush
8 and sacrifice our right to live and work without
9 undue government control and interference. I'm
10 sure many homeowners would agree with us when they
11 find out that Litigator Lynn doesn't want them here
12 also. I'm sure they would be interested to hear
13 how the Preserve affects their taxes. I'm sure the
14 Tea Party Movement would support these property
15 owners also.

16 I suggest that you remove these
17 review guidelines from your Management Plan and
18 stop forcing these municipalities to report to you.
19 If you -- if not, you may find yourself faced with
20 litigation of violation of our constitutional
21 rights. If we have to sue you to remove these
22 review requirements, then I may as well sue you for
23 conspiring against the property owners in Colonie
24 and defrauding them out of their property values,

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2 because your two directors were members of a Pine
3 Bush Committee organized by Mary Brizzell, the
4 former Supervisor of Colonie.

5 These committee members agreed to
6 do whatever they could to rezone our land. They
7 committed fraud, they violated our rights, they
8 made inaccurate statements, all to rezone our land
9 to make our businesses nonconforming and lower the
10 value of our property so the Preserve could benefit
11 by acquiring them one by one as they became
12 worthless.

13 One of the contributions of the
14 Preserve directors to this conspiracy was
15 following: the Preserve director failed to comment
16 during this rezoning on the Forty-two Seventy
17 Albany Street area rezoning that is in your Pine
18 Bush study area. That became more intensive, and
19 town board member Aldred Boysabert (phonetic
20 spelling) owned that land -- part of it. So that
21 makes one wonder if the Preserve directors didn't
22 turn an eye to allow this property that was owned
23 by the town board member to be zoned to industrial
24 in exchange to down-zone the rest of the Pine Bush.

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2 Furthermore, we will be asking for punitive damages
3 because of the fraud and bad faith of Supervisor
4 Brizzell and other town employees, the ill will of
5 the Romanos and Litigator Lynn, and the directors'
6 attempt to injure our financial interests to
7 benefit the Preserve. Punitive damages can be
8 awarded when the fraud is aimed at the public in
9 general, which it was, and -- and involves high
10 moral culpability, which it did. I certainly hope
11 I give you people something to think about.

12 MR. CLARK: Okay. The next
13 person who wishes to make a statement. On this
14 side over here, does somebody wish to make a
15 statement? Okay. Just need to print your last
16 name on the sheet, please.

17 MR. RUTH: I'm not as quite as
18 eloquent as Suze is here. She has pretty much said
19 everything I can say because she's done a lot more
20 research than I have.

21 MR. CLARK: Could you state your
22 name for the record, please?

23 MR. RUTH: Well, my name is Paul
24 Ruth. I bought some property on Kings Road

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2 approximately twenty-five years ago as an
3 investment. I pay my taxes on it to the Town of
4 Colonie. It was zoned industrial when I bought it.
5 This is going to be part of my retirement. And a
6 few years ago, Sue brought to my attention that its
7 zoning was changed on it. I never received a
8 notice from the Town of Colonie. They said it was
9 in the town -- Spotlight newspaper. And for twenty
10 some odd years they had sent me my tax form, get me
11 my taxes, but they never sent me a notice that this
12 was going to be up for a hearing or anything.

13 Just my -- my -- my biggest complaint is like Sue
14 said: everything was done without a real public
15 hearing on this, and I've been in business here --
16 I have a business right down the street from you
17 guys. I've lived here all my life. I don't want
18 anything bad to happen, but I made an investment.
19 If anybody here made an investment in stocks or put
20 money into anything and it was turned into nothing,
21 I think you guys would be a little upset, too. So
22 that's my -- basically, my point is -- is that I've
23 made an investment. I feel my rights have been
24 violated, because I wasn't notified or anything.

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2 And this is all in the Town of Colonie.

3 And like I said, I don't know all
4 the particulars like Sue does. She's done a lot of
5 research on this, and I'm -- I'm glad she did
6 because I'm for the environment and everything
7 else, but I think that there should have been a
8 more clearer hearing process on this before it's --
9 it got to as far as it did with Mary Brizzell and
10 stuff. Had I known that was going on at the time,
11 believe me, I would have said a lot more at that
12 time. Thank you. That's all I'm going to say.

13 MR. CLARK: Thank you. Who else
14 wishes to make a statement this evening? Yes,
15 please. Just put your last name on the sheet
16 there.

17 MS. LUPE: I'm Shelly Lupe from
18 the Wade Lupe Companies. We own 130 Cordell Road,
19 132, 99 Cordell Road, 120 Cordell Road, and 100
20 Cordell Road. We have warehouses and some vacant
21 land and a construction company. We've owned these
22 buildings since my grandparents bought the land and
23 built the buildings in the early '60s. We have
24 been in business since that time, and I am a

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2 grandchild, okay? I inherited this business, and I

3 have worked here, and this has been my livelihood,

4 my parents' livelihood, my grandparents', okay?

5 I understand there is the importance of the

6 environmental conservation issues. I -- I get

7 that. But we worked our whole lives on this land

8 and these properties, and they have a value to us.

9 And in all this planning and the developing and the

10 recreation and the public benefit, I don't see,

11 except for one brief word passing, I don't see

12 anybody saying how they're going to compensate

13 those of us who are being branded with full

14 protection of our property so that we basically

15 can't use it anymore, basically can't sell it,

16 can't improve upon it, can't do anything.

17 In fact, when I went to put tenants in my existing

18 building that was built in the '60s, it took me --

19 it took a year and a half to get the approvals --

20 cost me almost fifteen thousand dollars to put a

21 tenant in. I don't even get fifteen thousand

22 dollars a year in rent, okay? This is absurd.

23 This is a violation of our rights.

24 We have the right to conduct our

1 Pine Bush Preserve EIS - 4-15-2010
2 business there. We've been lawful since the '60s.
3 They rezoned us. We're not lawful anymore. You
4 know, the buildings are there, okay? You know, we
5 haven't done anything to disturb our neighbors. In
6 fact, we're surrounded by residences. We've never
7 had a complaint from any of our residences, you
8 know? So to rezone us, to put us in the overlay
9 and now to make us fully protected without any
10 compensation ever discussed, maybe acquisition,
11 maybe they'll cooperate, you've got to be kidding.
12 Would any of you take your home and donate it?
13 Donate it, okay? You've lived there your whole
14 life. You paid your taxes. You paid your
15 mortgage. You paid it off, you know? It's at the
16 end of your life. Here's your whole equity. Oh, I
17 got an idea: give it away. You don't get anything
18 for it, okay? Move out of your house. You get
19 nothing. Just -- you know, and you're not working
20 anymore. You're retired. I mean, it -- it's
21 unlawful, it's unfair, okay?

22 You want the public to enjoy and
23 be educated and to benefit from this, then the
24 public needs to pay for it, okay? And that means

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2 we should be compensated. If you want our land,
3 our buildings, our properties, you come and you
4 deal with us like men, you know? Face to face,
5 fair on fair. That's the way you do it, and if we
6 don't want to, we don't have to. That's our right.

7 MR. CLARK: Okay. Thank you.
8 Next person who wishes to make a statement this
9 evening. Anybody on this side? Yes. Just print
10 your last name on the sheet.

11 MR. SNELL: Hello. My name is
12 Don Snell. I'm on the Schenectady County
13 Environmental Advisory Commission and also on the
14 New York State Regional Open Space Advisory
15 Committee for Region Four. The Schenectady
16 organization is identified as SCEAC most of the
17 time. For SCEAC, I want to state that SCEAC
18 supports the proposed expansion of the Pine Bush
19 study area west to the Schenectady County border to
20 enhance connectivity with the Woodlawn Preserve.
21 Regarding the 2009 New York State Open Space
22 Conservation Plan, I want to know that the Plan
23 identifies two priority projects relative to the
24 Pine Bush habitat. First, under the heading of

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2 Albany Pine Bush, it states the Region Four
3 Advisory Committee supports the work of the Albany
4 Pine Bush Preserve Commission towards meeting its
5 goals and encourages conservation efforts directed
6 at areas of existing and restorable pine bush
7 habitat not included within -- not included within
8 the area designated by the Commission.
9 Second, under the heading Woodlawn Pine Barrens
10 Wetland Complex, the Plan states this area of
11 Schenectady County is situated immediately
12 northwest of the Albany Pine Bush Preserve and
13 includes several remnant features of the pine bush,
14 including sand plain and dune formations, pine --
15 pitch pine/scrub oak barrens, and historic Karner
16 blue butterfly habitat, which while currently
17 unoccupied, may be restored as a future
18 re-interaction site.

19 The area also supports several
20 important wetlands forming a unique complex of pine
21 barrens and wetland habitats. Although this area
22 is outside the protection area designated by the
23 Albany Pine Bush Commission, its attributes have
24 been recognized by the Commission as complementary

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2 to the Pine Bush Preserve and protection-worthy.
3 Owners of public lands in this area are encouraged
4 to cooperate with State and other agencies to
5 protect this habitat.

6 MR. CLARK: Okay. Thank you.
7 Next person who wishes to make a statement?
8 Anybody? Yes.

9 MS. JACKSON: Good evening. Can
10 you hear me? Okay. My name is Lynn Jackson. I'm
11 a volunteer with Save the Pine Bush. I've been
12 volunteering with Save the Pine Bush for thirty-two
13 years. I just want to say a couple of things about
14 the Plan.

15 First, we'll get the easy stuff
16 out of the way. I think that the Commission needs
17 to look at making the Discovery Center and the Pine
18 Bush a little more bike friendly. I found the
19 first time I bicycled out here that I didn't
20 realize that you have a very fancy bike rack in the
21 back, but there was no sign.

22 I also believe that the Pine Bush
23 should become more transit friendly. It's an
24 urban -- the Pine Bush is an urban preserve, and so

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2 we need more transit -- public transit out here.

3 It's also better on the environment.

4 Save the Pine Bush is quite
5 pleased that the Pine Bush Commission is finally
6 beginning to follow our lead in having a larger
7 area that should be preserved, and we're very
8 pleased about that. I don't think it's large
9 enough yet, but it's larger. Certainly, we need to
10 add the Woodlawn area to the study area and, of
11 course the Preserve, because Woodlawn is a very
12 important part of the Pine Bush. The only reason
13 it is not included in the Pine Bush, I believe, is
14 because of a -- of a boundary line in between
15 Albany and Schenectady as opposed to any other --
16 any science. There's no science behind why
17 Woodlawn should not be part of the Pine Bush.
18 We're very pleased that -- that the Commission has
19 expanded the goals of high-quality Pine Bush
20 ecosystem and, of course, for the Karner blue
21 butterfly.

22 I'd like to make another
23 statement. In that, the Capital District is really
24 fortunate in having the Pine Bush within its

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2 boundaries. The Pine Bush is an extremely rare and
3 beautiful ecosystem. It is an absolutely gorgeous
4 place. It is very rare, they say. The Pine Bush
5 Commission says that there are perhaps twenty
6 inland pine barrens ecosystems left in the world,
7 of which this is the best example.

8 And so here we are at the
9 crossroads of when, say the Pine Bush started,
10 nobody knew about the Pine Bush. Nobody cared
11 about it. They called it a wasteland. People did
12 not appreciate it. But now, of course, little kids
13 these days learn all about the Pine Bush ecosystem.
14 You know, we don't have here in Albany elephants or
15 tigers or lions or penguins or rare -- or those
16 kinds of what we consider rare and exotic animals.
17 But we have our own unique and beautiful area,
18 which perhaps we do not appreciate enough because
19 we live here and we drive through it everyday. And
20 that area is called the Pine Bush.

21 There has been a tremendous
22 amount of litigation over Pine Bush ecosystem -- an
23 absolutely incredible amount. Of course, I do have
24 to say I don't remember settling one about -- you'd

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2 have to remind me exactly which lawsuit it was
3 settled that said that the Commission -- that
4 the -- the municipalities would be told about
5 various building permits or whatnot in the Pine
6 Bush.

7 I think it is important to
8 remember that this is a beautiful and rare area,
9 and that what the Commission is attempting to do
10 with this Plan is to take science -- they're
11 looking at science. Like, what is the science of
12 this area? And the science is that if we want the
13 Pine Bush to survive as an ecosystem, it needs to
14 be bigger, because there has been -- so much of the
15 Pine Bush has been cut up.

16 Some members of Save the Pine
17 Bush believe that we're really looking at -- at two
18 or perhaps four different actual ecosystems,
19 because when you -- when the Thruway was built
20 through the center of the Pine Bush, it really cuts
21 the Pine Bush in half. And then if you have 155,
22 that cuts the Pine Bush into quarters. And that
23 the animals, the species that live there -- you
24 know, Karner blue butterflies can't cross the

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2 Thruway. There's no way that little butterfly can
3 cross the Thruway. And so we have to look at --
4 you know, how do we deal with this ecosystem when
5 large contiguous areas of the ecosystem have been
6 cut up?

7 Scientists -- actually, there is
8 a scientist I know that studies how -- how small a
9 path will not allow the animal to cross. So he
10 studies things like walking paths, you know? And
11 some animals or little insects will not cross a
12 dirt walking path that is, you know, two feet wide.
13 And then, of course, it continues from there.
14 Like, how big -- you know, how much of the area's
15 cut up. And so that is one of the biggest
16 challenges. Well, how are we going to save our
17 ecosystem if we don't have large contiguous
18 non-disrupted areas?

19 I also look at this -- this is
20 not a -- the -- the destruction of Pine Bush has
21 been relatively recent, I mean, in terms of -- of
22 the length of time. The Pine Bush, people believe,
23 was created about ten thousand years ago when Lake
24 Albany receded and the sand dunes were formed. But

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2 it's only been in like the last sixty or seventy
3 years that so much of the Pine Bush has been
4 destroyed by suburbanization. So I believe what
5 the Commission is attempting to do with this Plan
6 is to expand this area and to look into the future.
7 I don't expect that they're going to be able to
8 achieve their goals of -- of making a viable
9 preserve with even -- within my lifetime. But this
10 is a good direction to go in.

11 You know, I understand that
12 people who bought land in the Pine Bush and they
13 believe that their investment should -- should
14 produce something, and I certainly understand about
15 investments and buying property. But of course,
16 you always take a risk with the investment, and you
17 don't know. Maybe your investment -- maybe your
18 land is wetlands. Maybe it becomes something else.
19 And of course, the risk here is it's in the Pine
20 Bush.

21 And in terms of the global, we
22 always think -- you know, you work locally, you
23 think globally, and the issue of should we build
24 more houses in the Pine Bush -- should there be

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2 more houses built in the Pine Bush? I believe that
3 in terms of global warming -- and we're looking at
4 a -- a time of global climate change -- global
5 climate change. And part of that is driven by the
6 way we transport ourselves around. And that when
7 we suburbanize, when we spread out, this
8 contributes to global warming.

9 And I think that preserving the
10 Pine Bush will actually help address the issue of
11 global warming, because we would have -- you know,
12 I believe that with good design, people should be
13 concentrating on the cities. That we should
14 concentrate as much as possible in the cities, and
15 that -- so we don't have to use cars to drive
16 everywhere. I mean, it's impossible to get out
17 here by a bus. I tried, but it's almost impossible
18 to get here by -- by public transit, and that we
19 need to look at all the global issues. So I
20 believe that this Plan contributes to addressing
21 the issue of global climate change.

22 So my hope is that the Commission
23 will do more, because I think more needs to be
24 done. I hope that the Commission will look at --

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2 very carefully at the Restoration Plan that's
3 included in the landfill that Albany's included,
4 because I think it is an obscene amount of money
5 for the City of Albany to spend eighteen million to
6 bring a landfill back to Pine Bush ecosystem, which
7 I'm not sure is possible. I mean, I have heard
8 people talk about restoring landfill to Pine Bush
9 ecosystem or landfills to other kinds of
10 ecosystems. I'm not one hundred percent sure that
11 can be done. And I think the Commission really
12 needs to look at Albany's plan in terms of the
13 landfill, because I think it's way too much money
14 to spend on something like that.

15 So I hope that the -- the -- I do
16 appreciate that in the last Management Plan that
17 the Commission did acknowledge the role of citizens
18 in the creation of the Pine Bush Preserve
19 Commission, because clearly had Save the Pine Bush
20 not spent all those years suing the City of Albany
21 and other municipalities about proposed development
22 to the Pine Bush, the -- the Commission never would
23 have been formed. E.C.L. 46 never would have been
24 passed.

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2 So I do -- I am pleased that that
3 is in the -- in the Plan, that they do talk about
4 where the Plan came from, but I think that we need
5 to do more, because we have to look at the science
6 and what is the science? And to ignore the
7 boundary lines because we simply need to review
8 what is the science and how do we -- how do we save
9 our beautiful and special place? I mean, we have a
10 very beautiful and special place here. And I -- I
11 don't want to see it paved over, and I think the
12 Commission's Plan is a step in that direction.
13 Thank you very much.

14 MR. CLARK: Okay. Thank you.
15 Next person who wishes to make a statement this
16 evening? Anybody on this side? This side? Going
17 once, twice. Okay.

18 There being no further statements
19 this evening, we're going to close the hearing.
20 Again, the comment period remains open until May
21 5th. You can submit them to AlbanyPineBush.org
22 electronically or you may submit them by mail here
23 to the Commission. This is 195 Karner Road,
24 Albany, New York, 12205.

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Certainly after the hearing is over, I believe staff is here from the Pine Bush Commission, Chris and -- and Neil. So if you have any questions, you know, feel free to mingle. Thank you very much. I really appreciate it.

(Off the record)

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I, Howard Hubbard, do hereby certify that the foregoing was reported by me, in the cause, at the time and place, that the foregoing typewritten transcription, consisting of pages number 1 through 51, inclusive, is a true record of all proceedings had at the hearing.

IN WITNESS WHEREOF, I have

hereunto subscribed my name, this the 30th day of April, 2010.

Howard Hubbard, Reporter

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