



**anjec**

REPORT

WINTER 2003

## In This Issue:

- 3 What's Ailing Us? The Sprawl-Health Connection
- 5 Smart Growth Updates
- 6 Local Environmental Achievements
- 8 The New Faces of the State Plan
- 10 The Taking Issue: Redux
- 13 Environmental Protection Law - Top Ten for 2002
- 14 ANJEC in the City
- 15 Resource Center
- 16 Book Reviews
- 17 ANJEC Report Index



# Director's Report

## Opportunity to Improve Water Quality

The stormwater permitting and management regulations proposed by the NJ Department of Environmental Protection this January aim to reduce pollution in our waterways by requiring the involvement of the state's municipalities. Known as Phase II Stormwater Regulations, the new rules implement the federal Clean Water Act by requiring municipalities to get New Jersey Pollution Discharge Elimination Systems (NJPDES) permits for their storm sewer systems.

Under these permits, municipalities must take steps to lessen the impacts of stormwater on our surface and ground water supplies. The US Environmental Protection Agency has found that nonpoint pollution from stormwater is the greatest threat to our nation's waterways. Water from rain or melting snow runs off the land, carrying contaminants, that pollute streams, rivers, lakes, reservoirs and aquifers. The pollution can make water unhealthy for swimming, cause lakes to bloom with weeds and contaminate drinking water. As we pave over the land, stormwater runoff travels at increased velocity, causing greater erosion and less infiltration of the water into the soil.

As part of their NJPDES permits, municipalities will have to adopt stormwater plans and ordinances to limit stormwater impacts from new development. To address stormwater from existing development, they will need to have programs for local public education, and institute best management practices (BMPs) for town operations.

Because some local governments may consider the permit requirements overwhelming, environmental commissions can be an invaluable source of assistance to their municipalities in developing stormwater management plans, ordinances and programs. ANJEC's resource paper, "Municipal Options for Stormwater Management" gives details on stormwater plans and best management practices. You can find it on our website at [www.anjec.org](http://www.anjec.org) or you can call ANJEC at 973-539-7547 for a paper copy. ANJEC also has examples of many commissions' stormwater projects that can serve as models for the Phase II permits.

Environmental commissions can also help with the public education and outreach for residents about nonpoint source pollution. Topics could include reducing the use of fertilizers and pesticides, shade tree protection and planting, water conservation, recycling, composting and avoiding improper disposal of wastes. Many environmental commissions have already done educational programs on these are topics. The Green Township (Sussex) Environmental Commission

**Cover Photo:** A once thriving farm succumbs to suburban sprawl with a crop of multiple houses.

developed a brochure and display about nonpoint source pollution for residents and school children. ANJEC has sample brochures and other information to help you help your town implement an education program.

As part of the NJPDES permit, local governments will have to map stormwater outfalls and establish a schedule for regular inspection of the pipes to detect illicit discharges, such as domestic sewage, industrial waste, or leaks from the sanitary sewer system. The Moorestown (Burlington) Environmental Advisory Committee has already done this mapping using GPS (global positioning system) to pinpoint the location of all outfall pipes. Other commissions may be able to borrow GPS equipment from nonprofit organizations or county planning departments.

Environmental commissions also have helped their local department of public works in reducing nonpoint source pollution. The Mountain Lakes (Morris) Commission worked with its DPW to implement good housekeeping practices at the public works yard and on municipal streets. These include covering road salt and sanding materials, regular street sweeping, periodic and regular cleanout of stormwater facilities and scheduled maintenance of stormwater catch basins and conveyance structures.

ANJEC is ready to help you help your town implement its Phase II permit; give us a call.

*Sandy Batty*  
Executive Director

*After public hearings and a 60-day comment period, NJDEP is expected to adopt new Stormwater Management regulations this spring. To review the full text, look in the rule proposal section of NJDEP's web site at [www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).*

<b>anjec</b>	Library Subscription \$15.00
<b>REPORT</b>	ISSN 1538-0742
Vol. 23 / No. 1	WINTER 2003
<b>566 MUNICIPALITIES ..... ONE ENVIRONMENT</b>	
Executive Director .....	Sandy Batty
Editor .....	Sally Dudley
Advertising Coordinator .....	Margaret Davey
The Association of New Jersey Environmental Commissions is a private, non-profit educational organization serving environmental commission and open space committee members, concerned individuals, non-profits, and local officials. ANJEC's programs aim to promote the public interest in natural resource preservation, sustainable development and reclamation and support environmental commissions and open space committees working with citizens and other non-profit organizations.	
The REPORT welcomes articles and photographs but is not responsible for loss or damage. Opinions expressed by guest authors do not necessarily reflect ANJEC policy. Articles may be reprinted with permission and credit. Please address correspondence to ANJEC REPORT, PO Box 157, Mendham, NJ 07945; tel: 973-539-7547; toll-free number for members: 888-55ANJEC (888-552-6532); fax: 973-539-7713. E-mail <a href="mailto:info@ANJEC.org">info@ANJEC.org</a> . Website: <a href="http://www.anjec.org">www.anjec.org</a> .	



# What's Ailing Us? The Sprawl-Health Connection

*Dr. Andrew L. Dannenberg, MPH, the Associate Director for Science, Division of Emergency and Environmental Health Services at the federal Centers for Disease Control and Prevention in Atlanta was the keynote speaker at ANJEC's 29<sup>th</sup> New Jersey Environmental Congress. As a member of CDC's livability workgroup, he is helping develop a scientific research agenda on the impacts of community design and land use on public health.*

*ANJEC Resource Center volunteer Pam Kuhn put together the following summary of Dr. Dannenberg's speech, "The Impact of the Built Environment on Public Health: The Sprawl - Health Connection."*

Is there a link between how our communities are designed and our health? Dr. Dannenberg presented some compelling arguments about why this is true, and what we might do to insure that health impacts are considered in community planning.

It's nearly impossible to watch a news program or read a newsmagazine today without learning something about factors that influence our health. We've been informed about the risks of the food we eat, the water we drink and a host of other contaminants in our air, soil or in products that we come into contact on a daily basis. However the concept that the very design of our communities, not just cities with old and crumbling infrastructure, but new and growing suburbs, can and does affect our health deserves our attention.

Dr. Dannenberg had three major messages:

- Community design and land use choices affect our health.
- Most decisions leading to urban sprawl are made locally.
- As local environmental leaders, we can make a difference in the health of our community by being actively involved in land use decisions.

To demonstrate what sprawl looks like, Dr. Dannenberg showed aerial photos of highway cloverleaves, six lane highways clogged with vehicles, and houses, condominium units, and

malls spreading out over landscapes as far as the eye can see. Sprawl is development that is land-extensive but low density, involves extensive road construction and results in economic and racial homogeneity. We need to develop new housing and commercial space as our population grows, but the land area being developed in many of our major urban regions is growing at a pace that far exceeds the population growth in those areas.

#### **What is Health?**

"A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

— World Health Organization

#### **Health and Social Effects of Sprawl**

The links between sprawl and health are related to automobile dependency, land use and the resulting social processes. Automobile dependency and increased driving mileage cause increased air pollution, lead to a higher number of car crashes and more pedestrian injuries. In the U.S. there are 3.4 million injuries involving 24 million vehicles and 42,000 deaths from car crashes per year, the equivalent of the crash of a jetliner every other day. Automob-



*Environmental Congress Keynote Speaker  
Dr. Andrew Dannenberg*

biles are also major contributors to the increase in ozone, which exacerbates respiratory symptoms and disease especially in asthmatics, children, the elderly and minority populations.

Poor land use decisions negatively impact physical activity. For instance, the net results of sprawl's decrease in population density are more and longer trips in motor vehicles and significant reductions in walking and biking. Lack of physical activity leads to overweight and obesity. Dr. Dannenberg presented some startling statistics about what happens when our physical activity decreases.

- A sedentary lifestyle increases the risk of overall mortality two to three fold, cardiovascular disease three to five fold.
- The effect of low physical fitness is comparable to that of hypertension, high cholesterol, diabetes, and even smoking.

Obesity among US adults is growing in an alarming trend. In 1994 there were no states where more than 20% of the adults were obese under a standard definition. Just six years later, rates had exploded: more than 20% of the adults in 22 states were obese. With increased weight comes increased risk of mortality, diabetes, hypertension and gall bladder disease.

Sprawl impacts the physical activity and health of our children too. More than six million kids are severely overweight today. More than 50% of parents responding to a 1999 US Healthstyles Survey found that

---

**What can be done about the problems of sprawl? One of the proposed solutions is support for smart growth.**

---

distance to school was a significant barrier to their children walking or biking to school. Dr. Dannenberg cited a new suburban development where the creation of a pathway between the development and a nearby school would have enabled children to walk to school. Instead, parents “solved” the problem by seeking busing for the kids.

Sprawl also affects our social capital, which Dr. Dannenberg defined as social networking, civic engagement, trust and reciprocity. Since sprawl leads to more driving time, it also results in less time with family, friends and civic organizations. And this ultimately can affect our mental health and damage our sense of community. Sprawl also leads to the need for elders to change neighborhoods for both space and income, if they live in communities that have little variety of housing choice. Sprawl is also leading to communities with low diversity of income. Many new developments are

monocultures where all of the housing necessitates a specific income level. This aggravates income inequality, for example presenting barriers to seniors on fixed incomes.

### **Smart Growth not No Growth**

What can be done about the problems of sprawl? One of the proposed solutions is support for smart growth. Dr. Dannenberg defined smart growth as a pattern of regional development that:

- Protects and improves the quality of life for all citizens.
- Permits and promotes healthy behaviors.
- Minimizes or eliminates hazards to people.
- Protects, preserves, and restores the natural environment.

Smart growth is not about no growth. It is about more transportation choices and less traffic, not anti-car. It is about vibrant cities, suburbs and towns, not anti-suburban. It is about providing a wider variety of choices in well-planned communities, not telling people where or how to live.

Smart growth includes preserving the environment and creating accessible parks. Parks can help improve physical activity for adults and children, water quality, air pollution and mental health. Dr. Dannenberg believes that if we build parks, the people will come. Surveys have indicated that adults are more likely to exercise if walking trails, parks and gyms are accessible, sidewalks present and scenery enjoyable.

Smart growth for cities and towns may include:

- Higher density, more contiguous development with walkable neighborhoods.
- Preserved green spaces and other environmental amenities.
- Mixed land uses.
- Balanced transportation alternatives (roads, pedestrian, bicycles, mass transit).
- Economic and racial heterogeneity.
- Development and capital investment balanced between central city and periphery.
- Effective, coordinated regional planning.

To achieve the goals of smart growth, municipalities and counties need to work together on regional



*Held on the 30<sup>th</sup> anniversary of the Clean Water Act, the 2002 Environmental Congress featured NJ Department of Environmental Protection Commissioner Bradley Campbell. He offered an encouraging vision for the DEP, emphasizing the importance of smart growth and water quality protection through predictable and clear standards. He also reminded the audience of the extraordinary vision and importance of the Clean Water Act.*

planning and coordinate their land use plans so they build strong healthy communities with less impact to the environment. This is not an easy task. Health departments and environmental commissions need to work with urban planners, transportation engineers, landscape architects, developers, lenders and neighborhood activists and many others to change detrimental land use patterns.

We can and should measure how we are doing with smart growth initiatives. Just as environmentalists measure the health of a stream by counting numbers and types of fish in a waterway, we should keep a report card on smart growth by using indicators such as the number of children walking to school or the users of a park or trail. Environmental commissions can help improve public health by raising health issues as part of their involvement in land use and community design. 🌱



## State Government Pushing for Smart Growth

Over the last several months, Governor McGreevey has been actively pushing a number of smart growth initiatives. In his January State of the State message Governor McGreevey pointed to uncontrolled development as the greatest threat to our quality of life. "We must find the will to stop the development that costs more than it saves, takes more than it gives, diminishes our lives and degrades our surroundings," he said. To encourage development in the right places, he offered help on regulatory approvals and infrastructure for projects that are consistent with smart growth.

Governor McGreevey also put forth some specific ideas to advance land preservation. Noting that NJ is losing 50 acres every day to uncontrolled, thoughtless development, he proposed empowering towns with legal and zoning tools like one-year building moratoriums and impact fees. He also called for stronger regional mechanisms and land preservation in the Highlands, for farmland, state and local parks.

Not long after, the Department of Environmental Protection, along with the Departments of Community Affairs, Transportation and Agriculture, presented "The Big Map," which they plan to use to align state regulations and funding programs with the State Plan. You can view the Map and additional information on the administration's anti-sprawl agenda on the DEP's anti-sprawl web page ([www.state.nj.us/dep/anti-sprawl/](http://www.state.nj.us/dep/anti-sprawl/).)

Developed by overlaying and integrating GIS data for natural resources, existing development, infrastructure availability and state planning areas, the Map sets up green, yellow and red regulatory

categories. The state will encourage development in green areas, apply strict regulatory standards in red areas and take a cautious approach in yellow areas. The red areas include dedicated open space and farmland preservation lands, endangered and threatened species habitat, Category One (C1) waters and other environmentally sensitive areas.

The state plans to have a series of county meetings with municipal officials and planners and to propose formal regulations implementing the Map this spring. In the meantime, DEP is hosting an online Anti-Sprawl Discussion Forum on ([www.state.nj.us/dep/antisprawl/](http://www.state.nj.us/dep/antisprawl/)) for individuals and groups to view the Map and offer comments.

Over the last several months the Governor and his cabinet members have proposed a number of programs to promote smart growth.

- Supporting Transfer of Development Rights, impact fees and timed-growth legislation;
- Reducing transportation spending on new roads to 4%, down from a 10-year average of 20%;
- Increased funding for brownfields cleanup to support for urban revitalization;
- Revising Department of Environmental Protection regulations to increase predictability, facilitate smart growth, strengthen public health, safety and environmental resource protection, in coordination with other agencies.

DEP Commissioner Campbell has announced new brownfields policies, a bonding program that increases the Garden State Preservation Trust's annual funding by \$100 million, stormwater management rules that require groundwater recharge outside

urban and older suburban areas, and municipal control plans for runoff from existing and new development.

### **New and Improved Open Space Taxes**

Last November, citizens in 24 municipalities and two counties voted to establish or increase the rate for open space trust funds through local property taxes, generally with a two to one margin. With these votes, 20 of NJ's 21 counties and 186 of the state's 566 municipalities have dedicated a portion of their property taxes to open space protection. Bravo!

### **New Conservation Loans Available**

The Open Space Institute recently inaugurated a Conservation Loan Program of bridge loans for non-profits and public/private partnerships to help land protection projects that lack funds to meet specific deadlines. Focused on the Highlands, Pinelands and Delaware Bayshore (with some possibility in other areas) the loans will be for at least \$200,000 at 3% annual interest generally for up to three years. Started with a \$2.5 million Program Related Investment from the Geraldine R. Dodge Foundation, the NJ Conservation Loan Program should be a very helpful tool for local land trusts, open space committees and environmental commissions. For additional information contact Peter Szabo, 212-280-2536/ [psszabo@osiny.org](mailto:psszabo@osiny.org). or Jodie Mitchell, 212-629-3981/ [jmitchell@osiny.org](mailto:jmitchell@osiny.org). 

# ANJEC Recognizes Local Environmental Achievements

by Kerry Miller, ANJEC Assistant Director

For the 17<sup>th</sup> consecutive year, ANJEC opened its annual Environmental Congress with the presentation of Environmental Achievement Awards. They recognize the hard work, creative and successful efforts of environmental commissions, non-profits and other local groups in conserving natural resources, protecting health and preserving open space in their communities. By highlighting the wonderful work done by commissions and citizen activists, the Awards inspire other commissions to forge ahead. They also energize ANJEC staff to continue doing everything possible to keep our members vital and informed.

The time set aside to spotlight the successful work of our state's local environmentalists is always well worth the effort. The pride with which the recipients speak of their work is uplifting, and sets a positive tone for the day. Each year, the awards presentation reminds us how much a small group of dedicated individuals can accomplish.

This year, ANJEC honored environmental commissions from Deptford (Gloucester), East Brunswick (Middlesex), Highland Park (Middlesex), Weymouth (Atlantic), and Bordentown Township (Burlington), as well as one local and two regional non-profits, an open space committee and a middle school. Their projects included a streambank restoration, a photographic inventory of natural resources, nature trail guides, creation of a butterfly park and development of two comprehensive environmental websites.

This year's winning projects had strong outreach components, from traditional newspaper coverage to speaking engagements, public events and electronic broadcasting. The winning commissions understand the connections between doing good works

and using those good works to educate the community about nature and the environment and about the environmental commission itself.

## Environmental Commission Awards

Three commissions funded their projects through Department of Environmental Protection Environmental Services matching grants.

The *Bordentown Township Environmental Commission* (Burlington) planned and carried out streamside vegetation restoration in a local park. Commission members noted a serious erosion problem along a steep bank of the Thorntown Creek where a wind-storm had destroyed trees and vegetation in 1996. With the help of the township planner and the Department of Public Works, the commission selected and planted native species of trees and groundcover to stabilize and shade the banks and provide habitat for small wildlife. The commission publicized its project with a ribbon-cutting ceremony attended by the mayor and local press.

The *Deptford Environmental Commission* (Gloucester) created trail guides for natural areas at Big Timber Creek Park and Old Pine Farm. Both had unmarked trail systems traversing many different types of ecosystems. The commission worked with a local land trust, a naturalist and a professional photographer to design two illustrated, 20-page brochures with black and white photographs of the

many species of flora and fauna that hikers will see along the trails. (Recently, numbered posts were installed along the trails to help visitors identify the locations described in the guidebooks.) Each booklet has a trail map, information about what residents can do to protect sensitive environmental areas, and information about the importance of open space. The commission distributes the guides at Township events and at the municipal building and library.

The *Weymouth Township Environmental Commission* (Atlantic) prepared a comprehensive, 1,080-slide library of the lakes, streams, wetlands, flora and fauna of the township portion of the Great Egg Harbor Watershed to document plant and animal species and their locations, erosion, invasive species and other problems, over four seasons. The commission also created a 55-slide presentation with descriptive text, made public presentations and donated copies to area schools, the county library, and environmental organizations. During the creation of the photo inventory, the commission learned a great deal about the watershed and its problems, and is



East Brunswick's Environmental Commission members with their Environmental Achievement Award

now better prepared to develop mechanisms to ensure the proper maintenance and protection of these areas.

Two commissions in Middlesex County were able to attract support from local government and citizen volunteers to put their projects in place.

The **East Brunswick Environmental Commission** (Middlesex) is proud to have established what they believe is the first

municipal park in New Jersey (and perhaps in the country) dedicated to the conservation and appreciation of butterflies! In early 2001, the commission lobbied hard to convince the town council to turn 11 acres of a municipally owned, overgrown field into a butterfly meadow. Commission members researched and selected butterfly-attracting plant species, including milkweed for migrating monarchs, and designed the layout of a 1,500-foot cinder path, benches and interpretive signage. The municipal public works department, Boy Scouts and other volunteers provided much of the labor and materials for this ongoing project, keeping costs to a minimum.

The habitat in the new meadow will support as many as 50 species of butterflies. It also gives residents an opportunity to observe and learn about nature in action. The commission solicited extensive newspaper coverage throughout all phases of the park's planning and creation, and provided interviews and feature articles to educate the community about butterflies and biodiversity.

The **Highland Park Environmental Commission** (Middlesex) joined forces with the Shade Tree Advisory Committee to create a website that would enable them to reach out to town residents. With pro bono assistance from a local webmaster, the two groups created [www.leoraw.com/hpenv](http://www.leoraw.com/hpenv). The website allows the commission to disseminate information about its activities and also makes available, at the touch of a button, important documents such as the borough's Open Space Inventory.



*Award-winning Highland Park Environmental Commission members*

The site features news items and illustrations, event announcements, virtual tour maps of natural areas around the borough, wildlife sighting information, links to other environmental websites, interactive educational games, and an e-mail connection for comments and questions.

### **Awards to Other Groups**

The **Voorhees Environmental and Recreational Alliance (VERA)** (Camden) is a local non-profit dedicated to environmental protection, education and advocacy. When outreach activities like ads in newspapers and mass mailings became expensive and cumbersome, VERA's members developed a comprehensive website, <http://members.tripod.com/veravoorhees/index.htm> which allows the organization to broadcast information beyond its mailing list, attract new members, receive e-mail, alert citizens on current "hot topics," post election information and township meeting agendas, and make available important documents such as the Voorhees Master Plan. VERA marketed the site through its monthly column in a local paper, a feature article in the *Philadelphia Inquirer*, fliers, paid ads, baseball caps, and links on other websites. The site brings together people with common environmental concerns, and empowers them to become involved.


In just two years, the seven-member **Marlboro Farmland, Historic and Open Space Preservation Committee** has accomplished an impressive array of planning, preservation and public education goals. It has produced a comprehensive Open Space and Recre-

ation Plan with digital base parcel maps showing ownership, natural features and other information; acquired more than \$1.1 million in Green Acres grants; created a color brochure to educate the community about the benefits of open space; and more than doubled the township's preserved open space from 500 acres to 1,182 acres.

The **Great Swamp Watershed Association's** "Blue Green Technologies" video and handbook present a range of alternative, nonstructural approaches to stormwater management available to developers, planners, individuals and municipalities.

The **Ten Towns Great Swamp Watershed Management Committee's Water Quality Standards for the Great Swamp Watershed**, provide an innovative set of guidelines for evaluating the health of the region's five subwatersheds. The Committee anticipates that these standards will serve as a guide for other watershed groups in New Jersey.

Students and teachers from the **Township of Ocean Intermediate School (Class of 2007/2008)** planted 1,000 tree seedlings as part of the Schoolyard Bio-Habitat Project, a hands-on outdoor laboratory and classroom under construction by the township's environmental commission. Students maintain the trees and monitor their growth.

We know that there are many wonderful, unsung environmental efforts in process right now in New Jersey's municipalities. We encourage commissions to begin thinking of the October 2003 Congress, and to look for an Achievement Award application form in the spring issue of the *ANJEC Report!* (and online at [www.anjec.org](http://www.anjec.org)) 

At the Environmental Congress, ANJEC awarded its bi-annual \$1,000 Lechner Scholarship to Lauren Musto, of Clark, who is studying Environmental Policy, Institutions and Behavior at Douglass College, Rutgers University. She maintained a high grade point average while working on a number of environmental projects including a campaign to educate the public on the potential health and environmental effects of genetically engineered foods.



# The New Faces of the State Plan

To get a better idea of the McGreevey administration's vision for the State Plan, ANJEC staff talked with Department of Community Affairs (DCA) Commissioner Susan Bass Levin, the new State Planning Commission Chair Timothy Touhey, and Adam Zellner, DCA's Director of the Office of Smart Growth (OSG), which now administers the State Plan.

Each brings valuable experience to the table, Commissioner Bass Levin as Mayor of suburban Cherry Hill in suburban Camden County for 14 years, Chairman Touhey, directs Fannie Mae's NJ Partnership Office. Director Zellner was chief of staff for Congressman Steve Rothman.

## Chairman Touhey's Responses

**Why did you decide to chair the State Planning Commission (SPC)?** It seemed like a natural fit with my background on financing urban redevelopment projects and commitment to public service. I headed NJ Housing and Mortgage Finance Agency for a number of years working on housing strategies for urban areas and home ownership. I am a result-oriented individual and enjoy seeing outcomes as a result of beneficial public policies.

**What will the focus of the SPC be during your term of office?** To implement the vision of the 2001 State Plan. I am interested in developing strategies that will encourage strong investment from both the private and public sectors and growth and revitalization of urban centers.

**What is the State doing to make certain that state funding goes to projects that are consistent with the State Plan and endorsed municipal plans?** Governor McGreevey's Executive Order No. 4, issued in January 2002, ensures that state grants and

funds be consistent with the principles of smart growth and the State Plan. It also establishes a Smart Growth Council of cabinet members to discuss state agency programs and ensure that state agency functional plans, programs and projects are consistent with the State Plan. Additionally, the Commission is creating a committee to look at public investment strategies to give some teeth and incentives to the State Planning process. Our cities are great resources and we need to make them better places to live. State agencies have the knowledge base to make this happen.

**What kind of new legislation is needed to implement the State Plan?** Creating legislation could take one or two years whereas incentives through appropriate financing are more immediate. One approach is to create financing strategies for developers and municipalities to entice development in growth areas. We are in a unique time where there is state funding to revitalize schools in urban areas. Low mortgage rates will also provide redevelopment opportunities.

**In the past, NJ's Smart Growth Planning Grant recipients did not appear to be required to implement the State Plan. Will the future Smart Growth grants be used as an incentive to achieve endorsement of local and regional plans?** We are currently looking over the Smart Growth Planning Grant program to ensure that future projects will focus on implementation. There needs to be a level of accountability so that state money is spent effectively and we

achieve the goals of the State Plan.

## Responses from Commissioner Bass Levin and Executive Director Zellner

**What is the top priority of the Office of Smart Growth for the next year?**

The State Plan has now been adopted and the big challenge we face is to see it implemented. Governor McGreevey and Commissioner Levin have made it clear that the OSG will work with municipalities and counties to implement smart growth planning principles.

**The Office of State Planning has been changed to the Office**

**of Smart Growth. Is this just a name change or will the function of the office also change?** It is much more than a name change. Previously, the Office of State Planning focused on writing the plan and was very reactive, dealing with day-to-day requests for map changes and municipal and county designations. The OSG adds two new elements, Implementation and Outreach, which will work with the Planning unit to aggressively market the principles of smart growth. We will take Governor McGreevey's message of smart growth directly to the people of New Jersey who are affected by this every day. We will also work to bring new incentives and tools, including additional planning resources, geographic information systems (GIS), inter-governmental affairs, local land use legal advice, and much more, to our counties and municipalities throughout the state.





## A Second Smart Growth Executive Order

In October, Governor McGreevey signed Executive Order 38, which sets out a multitude of coordinated state initiatives to encourage smart growth by focusing on redevelopment, pushing for “smarter” regulations, and stopping funding that subsidizes sprawl.

For areas designated for smart growth, the order calls for specific financial incentives, programs to expedite the permit process and more coordination among state agencies. The financial incentives include a self-sufficient program for aid to first time homebuyers, short-term loans for predevelopment brownfields costs, and prioritized “super incentives” from existing state resources for specific projects. The Departments of Environmental Protection, Community Affairs and Transportation are to coordinate their permit reviews to expedite approvals. And the Office of Administrative Law and relevant state agencies are to prioritize applications and appeals in areas designated for smart growth.

Executive Order 38 also recognizes the importance of comprehensive transportation planning, directing the NJ Department of Transportation to prepare a master capital plan for all kinds of transportation infrastructure including park-and-ride lots. To review the complete executive order, go to [www.state.nj.us/infobank/circular/eom38.htm](http://www.state.nj.us/infobank/circular/eom38.htm)

**How is the Office of Smart Growth organized to assist municipal planning efforts?** The OSG’s five units are set up to interface with county and municipal governments and planning offices. These teams are broken up geographically and led by a Planning Unit that works directly with local governments to implement smart growth strategies. In addition, the Implementation Team is set up to bring a wide variety of resources directly to a town or county govern-

ment. Governor McGreevey and Commissioner Levin have made it clear that we need to assist towns and local property tax-payers by providing resources to help a locality devise a comprehensive plan at little to no cost to them. Finally, the OSG has a variety of financial resources aimed at assisting local and county governments, including our Smart Growth Grant Program, which provides direct payments for smart growth plans, and the Brownfield Recovery program, which helps to reuse former industrial properties. These incentives, combined with the benefits that Plan Endorsement bring to a municipality or county help make the planning process much easier on local governments and the property tax paying public.


**Where should a town, new to the State Planning process, begin?** With the Office of Smart Growth. As I mentioned before, the OSG is structured to work with local governments in the State Planning process. A town need only call OSG (609-292-7156) and we will set up an initial meeting to begin the process of Plan Endorsement.

**How will future DCA Smart Growth Planning Grants be used as a tool to implement the State Plan?** Governor McGreevey and Commissioner Levin both understand as former mayors that municipal budgets are very tight and that any expense that can be reduced or


### Plan Endorsement

A major revision in the 2001 State Plan is the replacement of Center Designation by the Endorsed Plan process. To achieve Plan Endorsement, the local government must submit land use plans for the entire municipality, rather than just the town centers. Too often center-based development has led to downtown revitalization but done little to protect the lands outside the growth boundary from inappropriate development. An Endorsed Plan is a comprehensive plan for the entire municipality. The voluntary process offers State Planning Commission certified communities planning and financial benefits from the State.

eliminated can translate into property tax savings. This is why they have made the Smart Growth Planning Grants a priority, to provide municipalities and counties with funds to help plan for their future at little to no cost to local property tax payers.

Under Commissioner Levin’s leadership, the process has been dramatically improved. Counties and municipalities are asked to submit a basic project description that they can do in house at little or no cost to them. After the OSG staff determines that a proposal meets smart growth criteria, it will set up a meeting to discuss the details of the proposal and provide the town with a list of pre-qualified consultants. This way, towns and counties have a funding commitment before they incur any expenses and we help to guarantee the quality of the work by only allowing pre-qualified vendors to be selected. This is a win-win for all. 

## A Reminder and An Opportunity

It’s annual report time for Environmental Commissions. The enabling state legislation sets out the responsibility very clearly: “An environmental commission shall...make an annual report to the governing body of the municipality “ (N.J.S.A. 40:56A-4). Circulating the report among local officials and newspapers offers a great opportunity to publicize your commission’s accomplishments and goals. It’s a good idea to send copies to members of the governing body, planning and zoning boards, and the reporters who cover your municipality. And if your town or commission has a web site, post it there. Last but not least, please send a copy to ANJEC (email to [info@anjec.org](mailto:info@anjec.org), or send to ANJEC, PO Box 157, Mendham, NJ 07945). These reports are a great help to us, providing success stories to share with other commissions and guiding us to areas where we could better serve commissions with training, information and guidance. 

# The Taking Issue: Redux

by Charles L. Siemon, Esq.

*The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.*

— Supreme Court Justice Oliver Wendell Holmes

ANJEC regularly receives calls requesting information and advice to deal with claims that certain actions, ordinances or regulations constitute an unconstitutional taking of private property and therefore should not take place. To help our readers gain a better understanding of the issue, nationally recognized land use expert Charles Siemon explains the current state of takings law, with summaries of the major cases, including a 2002 Supreme Court decision which has some interesting implications. A partner in Siemon & Larsen, a land planning and planning law firm based in Boca Raton, Florida, Mr. Siemon has been active in New Jersey for more than 20 years. He wrote the Pinelands Comprehensive Management Plan and played an essential role in developing the original 1992 NJ State Development and Redevelopment Plan.

The so-called “taking issue” dominated the law of resource planning and management in the last half of the 20<sup>th</sup> century. As Charles Haar notes in his classic text on land use, the taking issue is “the most haunting jurisprudential problem in the field of contemporary land-use law...one that may be the lawyer’s equivalent of the physicist’s hunt for the quark.” In the 1960s, the tension between public and private expectations about the use of property was strained by the increase in the scope and reach of planning and environ-

**Note:** Quotes are from the relevant U.S. Supreme Court decisions. For a copy with annotated references, check out ANJEC’s Smart Growth Survival Kit at [www.anjec.org](http://www.anjec.org) or contact us at 973-539-7547.

mental regulations. How far could the government go to protect the public health, safety and welfare? And if the government went too far, what relief would be available?

Contemporary takings jurisprudence first came to a head in *Penn Central Transportation Co. v. City of New York* in 1978. In our 1985 book, *The Zoning Game Revisited*, attorney Richard Babcock and I analyzed the issues that the Supreme Court dealt with in this landmark case. *Penn Central* involved the denial of permission to construct a skyscraper above the Grand Central Station terminal, based on a finding that the tower would “overwhelm the Terminal by its sheer mass,” making the landmark an “aesthetic joke.”

*Penn Central* presented the Supreme Court with the issue of whether historic landmark restrictions were unconstitutional. Although many observers questioned whether development restrictions on particular structures for aesthetic considerations would survive constitutional

---

The crux of the takings inquiry is “the character of the action and...the nature and extent of the interference with rights in the parcel as a whole.”

---

scrutiny, the Supreme Court had little trouble upholding the regulations – and in finding that no taking had occurred. Whether a restriction would “be rendered invalid by the Government’s failure to pay for any losses proximately caused by it depends largely upon the particular

circumstances [of the] case.” In that context, there is no “‘set formula’ for determining when ‘justice and fairness’ require that economic injuries caused by public action be compensated by the Government, rather than remain disproportionately concentrated on a few persons.” Nevertheless, the “economic impacts of the regulation on the claimant and ...the extent to which the regulation has interfered with distinct investment backed expectations,” are “relevant considerations” in the “essentially *ad hoc*, factual inquiries” involved in regulatory takings cases.

The Court rejected the argument that the airspace over the terminal should be independently considered, and held that the crux of the takings inquiry is “the character of the action and...the nature and extent of the interference with rights in the parcel as a whole.” The regulation under review contemplated the continuation of the existing use, and moreover, since the “appellants have not sought approval for the construction of a smaller structure, we do not know that appellants will be denied the use of any portion of the airspace....”

## TDR’s Can Help Mitigate Takings

*Penn Central* also addressed what was a novel concept at that time – transferrable development rights (TDR’s). These rights, which were “made transferrable to [other] parcels ...may well have not constituted ‘just compensation’ if a ‘taking’ had occurred,” yet they “mitigate whatever financial burdens the law has imposed on appellants and...are to be taken into account in considering the impact of regulation.”

The Supreme Court's opinion in *Penn Central* did little to settle the "taking issue" debate. Property rights advocates viewed the opinion as confirming that a regulation that goes too far actually effects a taking – the legal equivalent of occupation. Police power hawks found comfort in the ambiguity of the Court's formulations, and in the recognition that transferable rights were at least relevant – if not important – to a takings inquiry.

The latter group was encouraged by the Court's decision in *Andrus v. Allard*. In this case, the Supreme Court rejected a takings claim arising out of the application of a federal law to prohibit the sale of ancient Native American artifacts made from long-dead but now-protected birds.

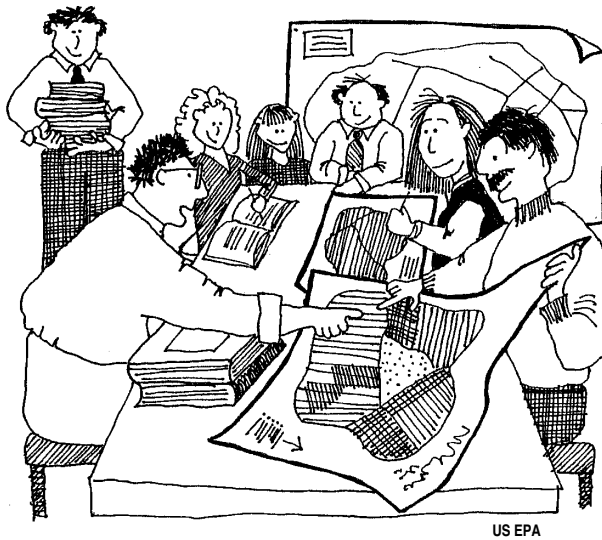
[T]he denial of one traditional property right [- here, to sell property -] does not always amount to a taking. At least where a property owner possesses a full "bundle" of property rights, the destruction of one "strand" of the bundle is not a taking, because the aggregate must be viewed in its entirety.

The opinion concluded, noting, "It is true that appellees must bear the costs of these regulations. But, within limits, that is a burden borne to secure 'the advantage of living and doing business in a civilized community.'"

### More questions than answers

The Supreme Court accepted takings cases for review in 1980, 1981, 1985, and 1986, but for varying reasons found itself unable to reach the takings issue. It made up for lost time in a 1987 "trilogy" of takings cases.

On its facts, the first case, *Keystone*, was the "son" of the Supreme Court's 1922 decision in *Pennsylvania Coal v. Mahon* in 1922, which held that a state law restricting coal mining was a taking of the company's property. Yet it had a different outcome – no taking – a result which puzzled many commentators. The second, *First English*, involved an outright, unqualified moratorium on the private use of private property, which the



Court held was a compensable taking. The third, *Nollan*, involved development exactions, which the Court held must bear a sufficient nexus to an identified adverse impact to avoid being a taking. To most commentators, the 1987 "takings trilogy" provided more questions than answers.

In the early 1990's, the Court recognized that a regulation that destroyed all economic value of property effected a taking, unless the only use for the property would have been a nuisance at common law. (*Lucas v. South Carolina Coastal Council*) The Court also expanded on *Nollan*, holding that exactions must be "roughly proportional" to the impacts which justify them. (*Dolan v. City of Tigard*) Taken together three decisions between 1997 and 2001, (*Suitum v. Tahoe Regional Planning Agency*, *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, and *Palazzolo v. Rhode Island*) suggested a further, subtle shift in favor of private property rights. For example, *Palazzolo* acknowledged criticism of the *Penn Central* "parcel as a whole" rule, with which "we have at times expressed discomfort" – but left it for another day.

### The role of land use planning

In the 2002 *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* case, two groups of property owners who were affected by two separate moratoria claimed (among other things) that the moratoria effected a temporary taking of

all economical use of their lots – equal to the categorical taking in *Lucas*. The Supreme Court granted *certiorari*, limited to "whether a moratorium on development imposed during the process of devising a comprehensive land-use plan constitutes a *per se* taking of property requiring compensation...."

*Tahoe-Sierra* distinguishes the "straightforward application of *per se* rules" governing physical occupations from the "essentially, *ad hoc*, factual inquiries" involving "careful examination and weighing of all the relevant circumstances," which guide regulatory takings analysis. It also provides a modest ode to the importance of public resource planning and management: "Land-use regulations are ubiquitous...treating them all as *per se* takings would transform government regulation into a luxury few governments could afford."

*Tahoe-Sierra* reaffirms the "parcel as a whole" theory, or as the Court restated the principle, "'the aggregate must be viewed in its entirety.'" After noting that "[a]nything less than a 'complete elimination of value'...would require the kind of analysis applied in *Penn Central*," the Court focused in on the question presented, observing that the District Court erred when it "disaggregated petitioners' property into temporal segments...and then analyzed whether [they] were deprived of all economically viable use during each period."

---

**The "starting point" for the takings analysis should be the entire parcel.**

---

Accordingly, the "starting point" for the takings analysis should be the entire parcel. "An interest in real property," the Court said, "is defined by metes and bounds [(geographic references)]..." and the temporal character ("term of years...of the owner's interest."). In a regulatory takings analysis, "[b]oth dimensions must be considered if the interest is to be viewed in its entirety."

Hence, a permanent deprivation of the owner's use of the entire area is a taking of "the parcel as a whole," whereas a temporary restriction that merely causes a diminution in value is not.


The Court extensively considered the "justice and fairness" of the challenged moratoria, and although noting that skepticism is appropriate for moratoria of greater than one year, the facts did not support a finding that "justice and fairness" required payment of just compensation for enduring the economic burdens of these moratoria.

### The current state of takings law

So what does it all mean? First, it is clear that in the exceptional circumstance where a regulation permanently deprives a property owner of all use or value of his or her property, the regulation has effected a taking. Second, where the property owner is left with any use or value, when

### A regulation can effect a taking, but only in very limited and exceptional circumstances.

analyzed in the context of the "parcel of a whole," a regulation will not be a taking unless the diminution exceeds reason - on the order of 75% to 95%. Third, temporary interruption in the use of property does not constitute a taking, so long as the property retains some economic value in the context of the time-value of money.

Despite the furor of the taking issue discussion, the risk of a court finding a taking has been much exaggerated, and the circumstances where a good faith regulatory action will actually effect a taking are few and far between and only involve "exceptional" circumstances - total destruction of value or use, or egregious, unjustifiable regulatory action directed at a limited number of property owners. In other words, the taking issue is now all but resolved - a regulation can effect a taking, but only in very limited and exceptional circumstances. 



#### Trustees

##### President

Robert Dobbs, Voorhees

##### Vice-President for Operations

Chris Allyn, Harding

##### Vice President for Development

Nelson Dittmar, Cranford

##### Secretary

Geoffrey Gollin, Holmdel

##### Treasurer

Nancy Tindall, Washington (Mercer)

##### Immediate Past President

Gary Szalc P.P., Fanwood

Cynthia Berchtold, Cherry Hill

Tina Bologna, Byram

John Capozucca, Bloomingdale

Julie Gandy, Evesham

Joy Grafton Esq., Edison

Merwin Kinkade, Montclair

Kevin Moore, Somerset

Sandy Siegel, Paramus

Mimi Upmeyer, Delaware

G. Wayne Winner, Upper

#### Advisory Committee

Ron Bond, Delaware

Monica Dubler Coffee, Absecon

Al DuBois, Clifton

Alan Esenlohr, Green

Leslie Ficaglia, Maurice River

Blanche Hoffman, Old Bridge

Cynthia Jacobson, Bridgewater

Peter Kroll, Haddon

#### ANJEC Staff 2003

Executive Director ..... Sandy Batty

Assistant Director ..... Kerry Miller

Financial

Manager ..... Karen Buchanan

Development

Director ..... Margaret Davey

Resource Center

Director ..... Michele Gaynor

Office Manager .. Christine Johnson

Executive Assistant . Elizabeth Ritter

Executive Assistant .. Dawn Domans

Intern ..... Gillian Columbus

#### Project Directors

Affordable Housing .... Sally Dudley

Coastal Planning ..... Jody Carrara

Delaware Bayshore ... Patricia Burns

Highlands, GIS ..... Kim Ball Kaiser

Smart Growth/State

Plan ..... Pam McIntosh

Urban Environmental

Assistance ..... Mike Hunninghake

Watershed Resources .... Abigail Fair

#### Project Consultants

Environmental

Summit ..... Candy Ashmun

High Ground ..... Kathleen Caccavale

and Margaret McGarrity

#### Thanks to

Coster Gerard and our 20 Trustees for adding \$7,000 to the S.H. Dudley Endowment Fund through a very successful 2002 Trustee Challenge. We are especially grateful to Coster Gerard for making Challenge Donations over the last four years. And thanks to our Board. Every single member contributed. We also greatly appreciate the contributions of six members of the ANJEC Advisory Board.

The people who made three of our wishes come true:

- Nelson Dittmar for a computer monitor
- Gary Szalc for a microwave oven for our Trenton office
- Tom Waldron for helping us with our mailings

Elaine H. Vellekamp for her donation in memory of Ronald Vellekamp, member of the Tenafly Environmental Commission.





# Environmental Protection Law — Top Ten for 2002

By Lewis Goldshore, Esq.

**D**uring 2002 there were a number of very significant environmental developments. The Top 10 cover a range of issues.

**10 Need for Experts.** The NJ Supreme Court ruled in favor of a zoning board applicant who presented expert testimony disputing the objectors' visual impact claims while the objectors failed to present any expert testimony on the project's detrimental effects on property values.

**9 Substantial Change to Proposed Rules Requires New Notice.** The Appellate Division found that the Department of Environmental Protection could not adopt substantial changes to the Water Quality and Watershed Management Rules without providing a new notice and an opportunity for public comment.

**8 Insurance Coverage in Landfill Cases.** The NJ Supreme Court ruled that liability insurance coverage under policies issued prior to the mid 1980s starts with the initial depositing of toxic waste in a landfill.

**7 Extension of Sewerage Services.** The NJ Supreme Court held that a developer could not use a proposed contribution to an affordable housing fund to obtain a connection to sewers in an adjacent municipality. Under the facts of this case, this would have only increased the developer's profit. While the Court refused to depart from the general rule that a municipality was not obligated to provide extraterritorial service, an exception would be recognized in the future in

cases that "substantially and directly service important regional and environmental interests."

**6 Builders' Remedy Upheld.** In *Toll Brothers, Inc. v. Twp. of West Windsor*, the NJ Supreme Court limited its decision to certain technical issues and upheld the lower courts' award of a builders' remedy to the developer.

**5 Right to Farm Act.** The NJ Supreme Court found that the Right to Farm Act preempted local land use controls respecting commercial farms and cautioned that County Agricultural Boards and the State Agricultural Committee must decide right to farm disputes on a case-by-case basis and balance the competing interests that are involved.

**4 Environmental Justice.** The U.S. Court of Appeals, Third Circuit, issued a ruling that had the effect of closing the federal courthouse doors for most claims involving the discriminatory siting, operation or abandonment of polluting facilities in, or disproportionately affecting minority communities. The DEP is working on new state rules, having withdrawn a previous proposal.

**3 Private Well Testing.** The Private Well Testing Act (PwTA) will have significant impacts in less developed areas where properties are served by private wells. PwTA requires that, prior to sale, private well test results be provided to the DEP and local health authorities. If there is a well failure, the local health agency may issue a public notice to property owners in the vicinity and recommend testing of nearby wells. The DEP's website, [www.state.nj.us/dep/pwta](http://www.state.nj.us/dep/pwta), spotlights the new law and the implementing rules.

**2 The Drought.** On March 4, 2002, Governor McGreevey invoked his emergency powers and issued an Executive Order to address worsening drought conditions. A series of DEP Administrative Orders imposed water use restrictions and conservation measures, implemented strategies for the use of alternate water supplies and established priorities for the distribution of water supplies. (The Governor rescinded the drought emergency in January 2003.)

**1 Smart Growth.** On January 31, 2002, Governor McGreevey signed an Executive Order creating a Smart Growth Policy Council of several cabinet members and other high-ranking state officials to promote smart growth and the implementation of the State Plan. The Executive Order also directs the Attorney General to defend and/or intervene in cases to support local plans that have been endorsed by the State Planning Commission or are consistent with smart growth objectives. This issue was the focus of attention at the Governor's Smart Growth Summit, held in October where the Governor directed his cabinet to coordinate its efforts to prevent sprawl. 🌱

**Author's Note:** A partner in the Lawrenceville firm of Szaferman, Lakind, Blumstein, Blader, Lehmann & Goldshore, P.C., Lewis Goldshore has worked as an environmental lawyer with municipalities, corporations and individuals since 1968. He and Marsha Wolf are co-authors of *NJ Environmental Law* and the *NJ Environmental Newsletter*, available at [www.szaferman.com/environment/index.html](http://www.szaferman.com/environment/index.html).



# ANJEC in the City

By Karen Lowrie, Michael Greenberg and Daniel Knee,  
National Center for Neighborhood and Brownfields Redevelopment (NCNBR),  
Rutgers University, Bloustein School of Planning and Public Policy

## Developing and Maintaining Healthy Urban Parks

Condensed from *New Jersey Municipalities*, cover story, 6/2002

Although New Jersey has experienced tremendous economic growth since 1992, major urban areas have been losing middle-income people, well-paying jobs, and ratables for decades. What remains in some distressed neighborhoods are relatively poor people, deteriorating housing, limited shopping opportunities, and symbolic of our industrial past, abandoned properties and rusting buildings, commonly called "brownfields." In most cities, the only neighborhood redevelopment option is cleaning up these brownfield eyesores.

While turning brownfields into job fields has generally succeeded in New Jersey, many remaining are too small, oddly shaped, not well located, heavily contaminated, and otherwise not appealing to profit-making organizations. A recent National Center for Neighborhood and Brownfields Redevelopment study found that about half of over 100 brownfields sites in distressed urban areas had no near-term commercial use. If a redevelopment goal is to upgrade the quality of distressed neighborhoods, open space is one of the logical alternatives.

### Open Space and Parks

Many urban neighborhoods that suffer from an abundance of vacant, blighted properties are the same places where parks, playgrounds and recreational opportunities are scarce. Smaller contaminated properties present an opportunity for redevelopment into neighborhood parks, especially since these sites can be difficult to redevelop for commercial or industrial uses because project benefits are outweighed by remediation and redevelopment costs. People who live near old brownfield sites want open

space in their neighborhoods. In an area of Perth Amboy with many brownfields, 90% of those surveyed preferred play areas and parks and less than 35% warehouses and factories.

Parks and open space provide no less than 75 different economic, public health, community improvement and environmental benefits to their communities. But these benefits are not completely convincing to local officials since they are not normally quantified and are generally intertwined with other actions. For example, is a decrease in juvenile crime due to a remodeled park, or to more police patrols and efforts to provide activities for youth?

Studies have shown that parks enhance the real estate value of nearby sites. In Spartanburg, South Carolina, for example, researchers found that over ten years, park revitalization helped increase central business district property values by 325 percent and double rents and retail sales.

### What New Jersey Parks Officials Have to Say

In 2000, NCNBR interviewed park officials from 31 New Jersey cities. Three-quarters reported that they were working on parks planning and redevelopment projects. Of 27 recently completed projects, 11 were brownfields conversions. For example, Thomas Hanaratti Fields in Elizabeth opened in 1997 on the site of an abandoned plastics factory, with two little league baseball fields, a clubhouse, and a playground, with funding from Green Acres and a Community Development Block Grant.


Our respondents put "community building" at the top of the list of benefits of urban parks. One official

said, "Whenever you redo a park, the neighborhood feels better and feels appreciated," suggesting that the redevelopment then sparks further community investment. East Orange actively capitalizes on these benefits, with officials stating that they "Use parks to market the city."

### Dollars and Sense

Despite significant Federal, state and private funding of urban parks in redevelopment cities, there was almost none when it came to maintenance. Only four of the 25 projects obtained some outside maintenance support.

Because we were unable to find many examples of parks built on brownfields, the study was not able to support any strong findings with regard to developing contaminated properties for parks. Public health and environmental risks posed by contaminated properties are certainly important and cannot be overlooked.

Perhaps the primary obstacle is the lack of maintenance funds and policies that focus resources on existing parks. Involving private organizations in support of parks can be a win-win situation. Creative approaches like corporate sponsorship, for example could bring in employee services. Businesses, hospitals, universities, and other not-for-profits can play a crucial role by providing some funds and help make the difference between a land transformation that contributes to rekindling redevelopment versus one that converts one type of eyesore into another. 

### Acknowledgements

Thanks to Diana Downton, Tyler Miller and Darien Simon for their research assistance and to NCNBR members Michael Frisch, Jan Wells and Hank Mayer for their advice and counsel.

# Resource Center



By Pam McIntosh, ANJEC Resource Center Director

## New Jersey's Open Public Records Act: What It Could Mean for Your Commission

In July 2002, the Open Public Records Act (OPRA), P.L. 2001 c.404, a major revision of New Jersey's public records law previously referred to as "Right to Know," went into effect. OPRA ensures increased public access to government information and receipt of that information in a timely manner. The law also establishes the Government Records Council to oversee compliance, offer advice, information and free dispute resolution services.

### Who and What OPRA Covers

The law applies to all state departments and agencies, the state legislature (although most constituent correspondence and materials prepared for individual legislators are exempt), and all counties, municipalities, school districts, and fire districts. It does not apply to the state and municipal courts, which have their own rules. OPRA presumes that all records are open to the public unless they fall within a specific legal exemption.

OPRA broadly defines "record" to include a wide variety of media (including printed and handwritten documents, electronically maintained information, sound recordings, maps, photographs, and plans) that have been maintained, kept on file or received in the course of official business.

### Exemptions

OPRA also provides a number of exemptions to protect citizens' privacy and address public safety concerns. Such information includes personal data, trade secrets and information that could threaten public safety. To allow public agencies to engage in open discussion as they develop new programs and policies, OPRA also exempts these internal documents from public

view. OPRA allows each state department to propose specific exemptions. The Department of Environmental Protection (DEP)'s final exemptions include:

- Records that reveal the identity of a complainant in non-criminal matters (OPRA already exempts the identity of plaintiffs in criminal cases);
- Information regarding Green Acres and Natural Lands Trust land acquisitions, program offerings, and active projects until 48 hours before formal action is to be taken (unless the land preservation is still under negotiation, has no executed binding contract, or could be jeopardized by disclosure);
- Confidential enforcement information provided by Federal agencies; and
- Records that could impair the State's ability to protect against sabotage or terrorism.

### How OPRA works

First, one designated records custodian at each agency is responsible for responding to requests within a specified timeframe. At the local level, municipal clerk is the custodian.

Second, OPRA requires public agencies to provide the information in the medium or format requested by the applicant. It allows them to charge cost-based fees.

Third, the public agency must handle requests within 7 days. If a record is in storage, the agency must let the applicant know within 7 days when the record will be available. Agencies must provide *immediate* access to certain documents including "budgets, bills, vouchers, and contracts."

Requests for government records must be made in writing on the relevant agency's form, which generally

must include the applicant's name, address, and phone number. The written form provides a way to track the request, which can be important if the agency denies it or takes more than 7 days to respond.

If a public agency denies a request, the applicant can appeal to the Government Records Council or file suit in Superior Court. The burden is on the public agency to demonstrate why the record should not be made available. If the Court or Council rules in favor of the applicant, the agency has to release

### Another Step Forward for Public Access


The Open Public Meetings Act, or Sunshine Law, (N.J.S.A. 4-6 et seq) originally passed in 1975, sets up standards to insure that citizens can witness government meetings. It gives governing bodies complete control over whether to "permit, prohibit or regulate active participation of the public at any meeting." (N.J.S.A. 10:4-12)

As a result of this power, a number of governing bodies regularly restrict public comment agenda. These restrictions have generated considerable frustration among activists who are trying to get their elected officials to deal with issues they'd rather avoid. In 2002, the NJ Legislature amended the Sunshine Law to require municipal governing bodies to set aside a portion (length to be determined by governing body) of *every* meeting for public comment on any governmental issue that a citizen feels "may be of concern" to local residents.

the document and pay the applicant's attorney fees.

Before going to court to appeal an agency's decision, the Council invites applicants to contact its office for advice and help in resolving the issue.


The passage of OPRA is a strong gain for the public's right to access government records. It can be useful to use to obtain information otherwise not forthcoming from local officials. For example, a number of environmental commissions have trouble obtaining site plans and supporting documents from municipal staff and planning boards. Using OPRA is one possibility. But it is often wiser and more effective to put in the time and effort to develop good working relations with planning board members and staff, to insure that a free flow of information is the norm. Otherwise a commission could find itself in constant battle with the people who have the power to make the decisions.

Through its standards and requirements OPRA should help insure that government agencies respond promptly and fully to requests for public records. 

For additional information on OPRA, contact the Government Records Council, at [www.nj.gov/grc](http://www.nj.gov/grc), or 866-850-0511.

## Culbertson Emergency Fund

Ten years ago, thanks to a generous donation from the F.M. Kirby Foundation, ANJEC established the Culbertson Emergency Services Fund to help commissions respond to issues of regional or statewide importance where they were unable to obtain local financial support with grants of up to \$2,500. The Fund honors ANJEC's first president, John Culbertson, who helped establish the organization and its basic programs, including the Commissioners' Course and the Environmental Congress; both are still important elements of our offerings.

For a copy of the criteria and application guidelines, go to the "About Us" section of ANJEC's web page ([www.anjec.org](http://www.anjec.org)) or contact Liz Ritter at 973-539-7547. 

## Book Reviews



### Two Studies Explore Ways to Fight Sprawl

**Green Infrastructure: Smart Conservation for the 21<sup>st</sup> Century**, By Mark A. Benedict and Edward T. McMahon, Conservation Fund, Sprawl Watch Clearinghouse Monograph Series, Washington, D.C., 32 pages, \$5.00

As a Huntsville, Alabama resident in 1990, I enjoyed trekking through the pines of Monte Sano State Park. Huntsville has since purchased 547 additional acres on the mountain for \$3.3 million. This purchase is highlighted as an example of the cost-effectiveness of open space versus residential development. Maintaining the land costs the taxpayers only \$75 per acre each year. Homes on the site would have cost 33 times as much.

The monograph defines Green Infrastructure and offers a framework for action. *"It is our nation's life support system - an interconnected network of waterways, wetlands, woodlands, wildlife habitats...working farms, ranches and forests; and wilderness...that support native species, maintain natural ecological processes, sustain air and water resources and contribute to the health and quality of life for America's communities and people."*

The Monte Sano purchase enlarged, an important habitat and water resource protection area, improving the community's sustainability. The burgeoning population of Huntsville got more land to enjoy.

Green Infrastructure should be the framework for conservation and development, to assure wildlife populations are not isolated in parks that cannot sustain them. Communities should incorporate protection of riparian areas, groundwater recharge, stormwater control and other environmental values in their master plans and development regulations.

The green space network should function as an integrated whole - linking parks, wetlands and riparian areas, involving as many jurisdictions and stakeholders as necessary. Sound

science and land use practices are key. Green Infrastructure must be seen as a critical public investment in resource protection that saves money, protects necessary public values (like water supply) and reduces the potential for flood, fire and other natural disasters.

— Lisa Voyce  
ANJEC Project Director

### **Solving Sprawl: Models of Smart Growth in Communities Across America**

by F. Kaid Benfield, Jutka Terris and Nancy Vorsanger. Natural Resources Defense Council, New York, 2001, 200 pages, \$20.00.

*Lively, diverse, intense cities contain the seeds of their own regeneration, with energy enough to carry over for problems and needs outside themselves.*

— Jane Jacobs, *The Death and Life of Great American Cities*

Jane Jacobs had a point. By re-directing growth into cities and making neighborhoods more friendly and inviting, natural resources (land, air, and water) outside of cities can be protected from over development.

Two sprawl statistics stand out.

- Between 1960 and 1990 the amount of developed land in metropolitan areas more than doubled while population grew by less than half.
- Vehicle use tripled between 1960 and 1995 to 2.4 trillion miles per year.

This book presents 35 on-the-ground solutions to sprawl and open space encroachment. Models include communities like Boulder, Colorado and Reston, Virginia and less well-known places like Suisun City, California or Mashpee, Massachusetts. There are no New Jersey models.

Smart growth development is not an easy task. These model communities have sustained their own long-range vision, blended community input with developer goals, gained



federal, state and local agency cooperation, secured financing and met zoning requirements. They have worked for mixed use developments that combine residential, office and commercial uses, compact neighborhoods that encourage walking and biking, easy access to mass transit, preservation of open space and community involvement in development planning.

For example, in Portland, Oregon, Adidas redeveloped a former hospital site into a corporate urban headquarters rather than build its offices on the edge of the city where mass transit was not available. Adidas also donated 280 tons of leftover hospital equipment to developing countries rather than sending it to a landfill.

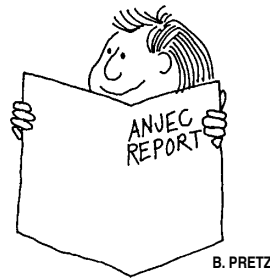
Retrofitting suburbs with planned town centers, reclaimed shopping centers and main streets, and transportation choices also has to be part of the solution.

Fringe development often threatens historic sites, greenways, farmlands, and waterways because land adjacent to these cherished parcels is more valuable. After the National Trust for Historic Preservation identified the Antietam National Battlefield in Sharpsburg, Maryland as one of the most endangered historic sites in the country because housing subdivisions were popping up all around it, innovative federal funding preserved 4,000 acres on the park's perimeter as rural landscape.

This book inspires insight and inspiration whether read cover to cover or sampled through the use of an excellent table of contents.

— Barbara Simpson,  
ANJEC Project Director  
and Pam Kuhn,  
ANJEC Resource Center Volunteer

# ANJEC Report Index 2002



## Affordable Housing

NJ Supreme Court COAH decisions .....	F10
Time to Rethink Housing Policies .....	Sp10

## ANJEC

Donors .....	Sp16
Environmental Achievement Awards .....	W5, Sp19
Environmental Congress .....	W3, W9
Trustees .....	W19
Staff .....	W19, Sum10

## Book Reviews

The Great Remembering: Further Thoughts on Land, Soul and Society .....	Sum13
Our Land Ourselves: Readings on People and Place .....	Sp11
In the Presence of Fear: Three Essays for a Changed World .....	Sum13
Well-Grounded: Using Local Land Use Authority to Achieve Smart Growth .....	Sp11

## Environmental Commissions

Atlantic Highlands .....	Sum14
Belvidere .....	W5
Berkeley Heights .....	W6
Bridgeton .....	Sum11
Byram .....	Sum11
Cape May City .....	Sp13
Cape May Point .....	F13
Chatham T. ....	W14
Dennis .....	Sp3
East Greenwich .....	Sum11
East Hanover .....	F13
Eatontown .....	Sum5
Franklin T. (GL) .....	Sum11
Green .....	Sp13
Greenwich T. ....	Sum11
Hamburg .....	Sum11
Haworth .....	W5
Harding .....	W6, Sum 10
Lebanon .....	Sum11
Leonia .....	W14
Madison .....	W14
Maurice River .....	F13
Mendham Township .....	Sum10
Middletown .....	W5
Montgomery .....	F13
Monroe (GL) .....	Sp14
Morristown .....	F13
Mountain Lakes .....	Sp12
Mount Olive .....	F3
Peapack Gladstone .....	W14
Pemberton T. ....	F13
Plumsted .....	Sum11
Pohatcong .....	Sum11
Roxbury .....	Sp6, F2
Secaucus .....	W12
Teaneck .....	F16
Vineland .....	W12
Wenonah .....	W6, Sum10
West Milford .....	Sum11
Winslow .....	Sum11

## Environmental Commission Operations and Tools

Acting Locally .....	Sum2
Environmental Law 2001 .....	W11
Grants and Loans .....	Sp13, Sum17
NJDEP Landscape Project .....	W13
Public and private partners .....	W14
Septic and oil tanks .....	So13
Smart Growth Planning Grants .....	W2
Wildlife Habitat .....	Sp13
Working with your DPW .....	Sp12

## Open Space

Delaware Valley .....	Sp7
Funding .....	Sum9
Highlands .....	Sum12, F3
Land Donation Benefits .....	W13
Recreation and Open Space Inventories (ROSI) ..	Sum9
Stewardship .....	Sum9

## People

Caffee, Valorie .....	Sum15
Carluccio, Tracy .....	W9
Chrystie, Paul .....	Sp10
Dallessio, Tom .....	F10
Goldshore, Lewis .....	W11
Kissileff, Dr. Harry .....	F11
Linn, Chris .....	Sp7
Mann, John .....	F11
Metterhouse, Bill .....	Sum4
Nelessen, Anton .....	W3
Shure, Jon .....	Sum 3, F11

## Pollution Prevention

Encouraging Recycling .....	F14
Energy efficiency .....	W15
Environmentally Friendly Lawns .....	Sum14
Integrated Pest Management .....	F8
Reducing Road Glare .....	Sum5
Working with Your DPW .....	Sp12

## State Plan and Smart Growth

Carrying Capacity of Natural Systems .....	W7
Executive Order 4 .....	Sp9
For Our Future .....	Sp9
Master Plan Vision Statement .....	Sum6
Smart Growth Planning Grants .....	W2, Sum11
Taming Growth to Save NJ .....	W3
Tax Reform .....	Sum3, F11

## Urban Environment

Benefits of City Trees .....	W12
Environmental Justice .....	Sum 15
Waterfronts .....	Sp15

## Water Resources

Conserving Water .....	Sp14
Drought Wake-Up Call .....	Sp5
Educational brochure .....	Sp13
EPA Stormwater Regulations .....	F6
Protecting Water Quality .....	F3
Public Trust Doctrine .....	Sp15, F2
Restoring a Riparian Forest .....	Sp3
Septic and Oil Tanks .....	Sp13
Supply .....	Sp6, F2
Water Allocation/NJ Water Supply .....	W9
Watershed Effort: Promise and Problems .....	Sp2
Well Testing Requirements .....	F17
On the Waterfront .....	Sp15
Wetlands Mitigation .....	Sum11

**Note:** You can locate articles going back to Winter 2000, by using the search capability for our web site at [www.anjec.org](http://www.anjec.org).

ANJEC depends on advertisers to help pay for the cost of printing the ANJEC Report. Please let them know that you saw their ad here. Remember, however, that ANJEC does not necessarily endorse any of these firms.



## F. X. Browne, Inc.

Engineers • Planners • Scientists

Water Quality Studies  
Wastewater  
Stormwater  
Bioengineering  
Watershed Management  
Wetlands

www.fxbrown.com

1-800-220-2022



Specializing in Real Estate  
Assessment and Site Investigation  
Testing of Air • Soil • Water

Norton Conservation Company, Inc.

#223 Johnsonburg Rd., PO Box 185, Allamuchy, NJ 07820

**Joe Norton, Environmental Specialist**

email: norcon@goes.com voice: (888) 852-6046 fax: (908) 852-9775

## GARDEN STATE ENVIRONET

### EnviroNews

Free NJ News Delivered Daily to Your E-Mailbox

To subscribe, send a blank e-mail message to:

*subscribe-environews-html@gselist.org.*



### Free E-Mail List Hosting

For NJ Environmental Groups

Write *mailbox@gset.net.org* or call

(973) 394-1313 for details.

www.gset.net.org

*"News You can Use  
to Keep the Garden State Green"*

### Amy S. Greene Environmental Consultants, Inc.

- |                                   |                               |
|-----------------------------------|-------------------------------|
| ✓ Wetland Delineations            | ✓ Permit Coordination         |
| ✓ Environmental Impact Statements | ✓ Expert Testimony            |
| ✓ Pond & Stream Restoration       | ✓ Vegetation/Wildlife Surveys |
| ✓ Natural Resource Inventories    | ✓ Wetland Mitigation Plans    |
| ✓ Greenways Plans                 | ✓ Forest Management Plans     |
| ✓ CAD/GIS Mapping                 | ✓ Ecological Evaluations      |

18 Commerce Street Plaza, Flemington, NJ 08822

☎908-788-9676 ☏Fax 908-788-6788 ✉Email: mail@amygreene.com  
web address: www.amygreene.com



### Lewis Goldshore, Esq.

REPRESENTING GOVERNMENT BODIES IN  
ENVIRONMENTAL MATTERS SINCE 1980

www.environews.com

101 GROVERS MILL ROAD  
LAWRENCEVILLE, NJ 08648  
(609) 275-0400 PHONE  
(609) 275-4511 FAX

SZAFERMAN, LAKIND, BLUMSTEIN,  
BLADER, LEHMANN & GOLDSHORE, P.C.

## ECO SYSTEMS

Environmental Consultants  
**Thomas D'Angelo**  
17 Indian Terrace  
Lafayette, NJ 07848  
973-875-8585  
Fax: 973-875-8080  
Environmental Impacts • Resource Inventories • Grants • Wetlands

## Killam

a Division of Hatch Mott MacDonald

infrastructure + environment | 800.832.3272  
headquarters— Millburn, NJ

ENVIRONMENTAL  
COMPLIANCE & PERMITTING

HAZARDOUS WASTE  
MANAGEMENT

GEOTECHNICAL  
ENGINEERING

SOIL & GROUNDWATER  
REMEDIATION

GIS/GPS/DATA  
MANAGEMENT

ECOLOGICAL/WETLANDS  
ASSESSMENTS

www.urscorp.com

# URS

Innovative Solutions to Your  
Environmental & Engineering  
Challenges

For additional information, contact:

Constantine Tsentas, P.G.  
Operations Manager

URS Corporation  
12 Commerce Drive  
Cranford, New Jersey 07016  
Tel: 908.272.8300  
Fax: 908.272.3940

### CHECK with the experts

Environmental professionals  
serving government, commercial  
and industrial clients since 1980.

**Environmental  
Compliance, Inc.**  
101 Mt. Bethel Road, Warren, NJ 07099

PROFESSIONAL  
SCIENTISTS  
AND ENGINEERS

For a free consultation contact  
John Jimenez or Joseph Torrucci

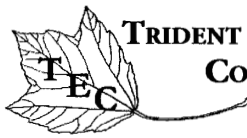
**(908) 754-1700**

web site <http://www.eci-nj.com>  
e-mail: [jjimenez@eci-nj.com](mailto:jjimenez@eci-nj.com)

- ✓ Contamination Assessments
- ✓ Brownfields Remediation
- ✓ Underground Tank Closure
- ✓ Hazardous Waste Management
- ✓ Regulatory Compliance Audits
- ✓ Asbestos and Lead Surveys
- ✓ Geological Assessments
- ✓ Groundwater Investigations
- ✓ Open Space Planning
- ✓ Ecological Evaluations

*Call ECI!*

ANJEC depends on advertisers to help pay for the cost of printing the *ANJEC Report*. Please let them know that you saw their ad here. Remember, however, that ANJEC does not necessarily endorse any of these firms.



**TRIDENT ENVIRONMENTAL  
CONSULTANTS**

BIOLOGISTS • SCIENTISTS  
LANDSCAPE ARCHITECTS • PLANNERS

1658 Route 9  
Toms River, NJ 08755

(732) 818-8699  
Fax (732) 797-3223



- Since 1894 -  
**van note - harvey**

Corporate Headquarters  
777 Alexander Road  
Princeton, NJ 08540  
(609) 987-2323

Visit us at: [www.vannoteharvey.com](http://www.vannoteharvey.com)

- Wetland Consulting
- Soils/Groundwater Remediation
- Municipal Engineering
- Environmental Assessments
- Water/Wastewater Engineering
- UST Site Management
- Professional Land Use Planning
- Surveying and GPS

Offices in: New Jersey • Pennsylvania • New York  
ENGINEERS • ENVIRONMENTAL CONSULTANTS • SURVEYORS

- Endangered Species Surveys
- Wildlife Inventories/Studies
- Habitat Mitigation Proposals



**Biostar Associates, Inc.**

ENVIRONMENTAL CONSULTANTS

884 Old Chester Rd., Far Hills, N.J. 07931  
(908) 234-0870

- Wetland/Surface Water Analyses
- Ecological Impact Assessments
- Photography • Expert Testimony

Raymond J. Stein, Pres.

**LEGGETTE, BRASHEARS & GRAHAM, INC.**

PROFESSIONAL GROUND-WATER AND ENVIRONMENTAL ENGINEERING SERVICES

**FRANK J. GETCHELL, P.G.**

GROUND-WATER RESOURCE & KARST EVALUATIONS  
GIS/ENVIRONMENTAL RESOURCE ASSESSMENTS  
WETLAND/SURFACE WATER IMPACT ASSESSMENTS

OFFICE (800) 818-8LBG  
FAX (201) 818-0505  
[www.lbgweb.com](http://www.lbgweb.com)

Mt. Holly, NJ 08060  
Ramsey, NJ 07446  
E-mail [lbg@lbgnj.com](mailto:lbg@lbgnj.com)



**Lewis S. Goodfriend & Associates**

CONSULTING ENGINEERS IN ACOUSTICS

760 ROUTE 10 WEST  
WHIPPANY, NJ 07981-1159  
voice 973-560-0090  
fax 973-560-1270

e-mail: [info@lsga.com](mailto:info@lsga.com)

[www.lsga.com](http://www.lsga.com)



**RTP**

Environmental Associates, Inc.

AIR • WATER • SOIL • SOLID WASTE  
CONSULTANTS

239 US Hwy 22 East  
Green Brook,  
New Jersey 08812

Donald F. Elias  
A. Roger Greenway  
Sunil P. Hangal

(732) 968-9600  
Fax: (732) 968-5279  
[www.rtpenv.com](http://www.rtpenv.com)



PROFESSIONAL ENGINEERING

- Hydrology & Hydraulic Studies
- Site Plans & Subdivisions
- Expert Testimony

ENVIRONMENTAL CONSULTING

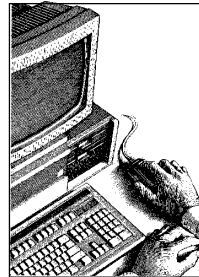
- Environmental Impact Statements
- Wetland Studies
- Flood Plain Studies
- Natural Resource Inventories
- Site Evaluation Studies
- Permits
- Phase I Audits
- Expert Testimony

PROFESSIONAL LAND USE PLANNING

- Community Master Plans
- Zoning and Land Development Ordinances
- Environmental Ordinances
- Expert Testimony
- Environmental Land Use Mapping

**John A. Thonet, PE, PP, President**

14 South Orange Avenue • South Orange, NJ 07079  
973-762-5900 • Fax: 973-762-7169  
[www.thonetassociates.com](http://www.thonetassociates.com)



[www.anjec.org](http://www.anjec.org)  
We are always adding to it!

So you think advertising here doesn't work...  
then why are you reading this?

**anjec**  
ASSOCIATION OF NEW JERSEY  
ENVIRONMENTAL COMMISSIONS

Call 973-539-7547 to reserve your ad space in the  
*ANJEC Report* today. Think what you've been missing!

# ANJEC Courses


## **Environmental Commission Training Course in Natural Resource Protection**

Morristown, Saturday March 1, 9:00 am -12:30 pm

Vineland, Monday March 10, 6 pm - 9:30 pm

Bordentown, Saturday March 15, 9:00 am - 12:30 pm

This leadership training seminar serves as an introduction or refresher on effective environmental commission operations and activities. Participants will learn about their duties and powers under state law, the municipal planning process including site plan review, master plan and ordinances and ideas for projects and sources of funding. ANJEC will also offer information and guidance on meeting the requirements of the new state stormwater regulations.

For further details, contact ANJEC at 973-539-7547, email [resourcecenter@anjec.org](mailto:resourcecenter@anjec.org), or look on our website at [www.anjec.org](http://www.anjec.org) 

## WISH LIST

Volunteer to help with mailings

Digital camera

Office space - 2,000 square feet, wired for high tech use, conference room, kitchen and reasonable rent

Photographs for the *ANJEC Report* - including photographs of people


TV with video or DVD player for presentations

# Road Shows

Has your environmental commission considered having Road Show? These offer a great opportunity for training on local issues, with presentations by ANJEC staff and other experts. Designed to help commission members become more effective leaders in natural resource protection, ANJEC tailors these three-hour workshops to the needs of individual commissions. You chose the date (any month but July, August or December), location and topic, and we take care of the rest! The cost is just \$180 and can be shared with other groups or towns. You may invite local officials, boards, commissions and residents.

## **Potential topics include**

- Any subject of your choice
- How to make your commission more effective
- Protecting your municipality's water supply
- Smart growth planning
- Site plan review
- Open space preservation
- Using Geographic Information Systems (GIS) maps
- Preparing an Environmental Resource Inventory (ERI).

Schedule your ANJEC Road Show now! Reservations are on a first come, first-served basis. Call (973) 539-7547 or email [resourcecenter@anjec.org](mailto:resourcecenter@anjec.org) for more information. 

## **CORPORATE DONORS**

*ANJEC Gold Members - \$7,500 and Up*  
**Bristol-Myers Squibb Company**  
**PSEG**



**ASSOCIATION OF NEW JERSEY  
ENVIRONMENTAL COMMISSIONS**

P.O. Box 157  
Mendham, NJ 07945

Non Profit Org.  
U.S. Postage  
**PAID**  
East Hanover, NJ  
Permit No. 5