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DIRECTOR

February 13, 2007

Honorable John Campbell, Chairman
New Jersey Commission on Civil Rights
140 East Front Street, 6th Floor
Trenton, New Jersey 08625

Re: Final Report on Operation NJ-PAASS
(New Jersey Polling Accessibility for All Sites in our State)

Dear Chairman Campbell:

In 2004, the Commission on Civil Rights, in conjunction with the Attorney General, requested that the Division on Civil Rights engage in a widespread and thorough initiative to inspect New Jersey's polling sites.

The purpose of this initiative was to assure that all of New Jersey's polling sites are accessible to persons with mobility impairments by making sure that elections are held in locations free of barriers to persons who use wheelchairs, walkers, canes, crutches, or otherwise cannot negotiate stairs and steep inclines and may require ramps, accessible parking, and other reasonable accommodations. From this, Operation NJ-PAASS (which stands for New Jersey Polling Accessibility for All Sites in our State) was born.

Attached hereto is a report of our findings and recommendations resulting from our review of seven major elections conducted in 2004, 2005 and 2006. This report was written with the major assistance and work of James Sincaglia, Chief of Operation NJ-PAASS, and Ralph Menendez, Coordinator of Operation NJ-PAASS. Their leadership combined with the collaboration of many partners and all DCR staff makes this the Division's broadest investigation-serve as a model for how our agency can work on a large, statewide scale to improve access for persons with disabilities.



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Operation NJ-PAASS sought to avoid the expenses associated with enforcement actions such as lawsuits. Instead, we encouraged election officials to expend limited government resources on improving accessibility rather than on litigation costs. Through this effort, very significant improvements were made by election officials to the accessibility of polling sites; not only because it is required by law, but because it is expected by New Jersey's citizens when exercising their constitutional right to vote.

As you will see in the following pages, our inspections, Over 1700 in all, already resulted in dramatic improvement of accessibility to our State's polling sites. As a result, this report will officially close Operation NJ-PAASS. There is much work to be done, but this report demonstrates that we truly can make all New Jersey polling sites accessible.

Thank you for making Operation NJ-PAASS a top priority of the Commission.

Respectfully submitted,



J. Frank Vespa-Papaleo
Director, NJ Division on Civil Rights

CC: New Jersey Commission on Civil Rights Commissioners
Attorney General Stuart Rabner
First Assistant Attorney General Anne Milgram
Division of Elections Deputy Director Maria Del Valle Koch

**State of New Jersey
Department of Law & Public Safety
Division on Civil Rights**



Final Report to the NJ Commission on Civil Rights
Operation NJ-PAASS
New Jersey Polling Accessibility for All Sites in our State

By J. Frank Vespa-Papaleo, *Director*
NJ Division on Civil Rights

James Sincaglia, *Chief*
Operation NJ-PAASS

Ralph Menendez, *Coordinator*
Operation NJ-PAASS

February 13, 2007



**Making New Jersey's Polling Sites Accessible to
Persons with Mobility Impairments Through Operation NJ-PAASS**

The New Jersey Law Against Discrimination (LAD), enacted in 1945 as the first state civil rights statute in the nation, has been instrumental in protecting the rights of New Jersey's residents in employment, housing, and the use of places of public accommodation. One of the nation's most progressive laws, known for its breadth and progressive protections of residents, since 1972 the LAD has required that places of public accommodation be accessible to persons with disabilities. For 18 years before enactment of the federal Americans with Disabilities Act, the LAD provided this important civil rights protection for persons in New Jersey.

Since outlawing discrimination against persons with disabilities, New Jersey has established legal protections for millions of people, ensuring that they are provided barrier-free access to some of the State's most important institutions-our courthouses, our schools, and our government buildings and services. But perhaps there is no greater place of public accommodation requiring access for our citizenry than the sites of our elections, where adult citizens, regardless of their race, religion, sex, age, national origin, sexual orientation, or disability, show up on election days to exercise their Constitutional right to vote. For too long, however, some individuals with mobility disabilities have been physically unable to reach certain polling sites. These polling places lack barrier-free paths of travel, accessible parking, visible signage directing the voter to barrier-free entrances and exits, and voting areas that are entirely accessible to a voting citizen who uses a wheelchair, crutches, a walker, cane, or otherwise requires barrier-free access to the polling sites.

For these reasons, in 2004, the New Jersey Division on Civil Rights (DCR) began to review the issue, collect necessary information, collaborate with stakeholders, and develop a strategy to make all New Jersey polling sites accessible to persons with mobility impairments. Consequently, in 2004 the DCR established the State of New Jersey's first-ever polling site accessibility initiative, called "***Operation NJ-PAASS***," for Polling Accessibility for All Sites in our State. This initiative continued through the three state-wide elections held in 2005 and concluded with the general elections held in November 2006, and it is believed to be the only statewide initiative of its kind in the nation instituted by a statewide civil rights enforcement agency.

Operation NJ-PAASS operates to help ensure that all voters can safely pass along the voting route and exercise their constitutional right to vote. As the former Attorney publicly assured our residents, in 2004, “There is [a] crucial element [to elections] that we cannot—and will not—overlook: we must ensure that every person who wants to vote can physically gain access to his or her designated polling site.”¹ It is clear that no eligible voter should be denied the constitutional right to vote at his or her polling site on election day because of a disability. No New Jersey citizen should be treated as “separate but equal” by being forced to use some alternative voting mechanism, such as an absentee ballot, when the law requires that elections be held in accessible polling places. To that end, we have taken great strides through *Operation NJ-PAASS* to evaluate where we are as a State and where we need to be to achieve 100 % accessibility and as the report will demonstrate, through *Operation NJ-PAASS*, New Jersey has made extremely significant progress in making polling place accessibility a reality. For those sites that still require modification, however, they will be handled on a case-by-case basis, since failure to provide access to polling sites for persons with mobility disabilities may violate not only the LAD, but also the federal Help America Vote Act (HAVA).² Consequently, it is imperative to finally achieve 100% accessibility; the ultimate purpose of *Operation NJ-PAASS*.

Operation NJ-PAASS focused on making all of New Jersey’s polling sites accessible for persons with mobility impairments or weaknesses that require barrier-free access. *Operation NJ-PAASS* stands as the DCR’s largest and most substantial initiative in its over 60 year history and perhaps one of the largest initiatives in the nation by a civil rights enforcement agency to improve accessibility to polling sites.

Operation NJ-PAASS had 5 major components:

- (1) to identify and engage inter-agency and intra-agency collaboration between State, County, Municipal, and advocacy stakeholders concerned with making our elections free from discrimination against persons with mobility disabilities;
- (2) to train, educate and share information on enhancing polling site accessibility with said stakeholders and agencies;
- (3) to investigate, gather, and share data on polling site accessibility for persons with mobility impairments who are voters in New Jersey elections;
- (4) to use information obtained through inspections to reduce the number of

- inaccessible polling sites; and
- (5) to make recommendations for making all of New Jersey's polling sites accessible to persons with mobility impairments.

Identification & Engagement of Stakeholders

Over the past several years, New Jersey has seen unprecedented attention paid to the issue of polling site accessibility. During this time, with the collaboration of DCR, the New Jersey Division of Elections has been the principal state-wide agency responsible for working directly with election officials in all 21 counties to bring attention to the issue of polling site accessibility. With the Division of Elections, the DCR has successfully worked to identify and engage inter-agency and intra-agency stakeholders in New Jersey elections to help collaborate on issues of improving accessibility to persons with mobility impairments. Through this process, we have engaged as collaborators experts from the New Jersey Department of Law & Public Safety, the Department of Community Affairs, and the Department of Treasury, election officials in all 21 counties, municipal clerks, New Jersey Protection & Advocacy, the New Jersey Council on Developmental Disabilities, Division of Disability Services and others. This inter-agency and intra-agency collaboration is unprecedented in focusing on the issue of improving accessibility state-wide. By identifying stakeholders, we have been able to collaborate to identify problem areas and provide solutions to these problems.

Training, Education, and Information Sharing

Through the identification of stakeholders, the DCR and the NJ Division of Elections have been able to engage in unprecedented collaboration to help make all of New Jersey's polling sites accessible. Working with the Division of Elections, as well as other agencies and organizations, we have been able to provide critical training resources to decision-makers and stakeholders. The Division of Elections has hosted numerous, free Polling Place Accessibility Workshops for election officials and others. The DCR also attended dozens of meetings and gatherings with county election officials and advocacy groups to discuss the results of our inspections, to identify methods to improve accessibility and to share our collective knowledge and

legal resources. Municipal and county election officials have been instrumental in helping to share training resources, as have numerous advocacy organizations. Polling site accessibility has required a collaborative process, and has involved every county election official, municipal clerk, attorneys for government agencies, advocates for persons with disabilities, advocates for election officials, experts in access issues, trainers, investigators, and countless others who worked together in a collaborative venture, all with the same goal—to make all of New Jersey’s polling sites accessible to persons with mobility impairments. Today, polling accessibility is a priority concern for officials responsible for conducting elections.

Part of the information sharing required that the DCR collect field data during the past three years to assess accessibility of New Jersey’s polling sites. The Division shared these data with all stakeholders thereby identifying those polling sites that had deficiencies in polling site access and developing strategies to address them. This final report provides findings of *Operation NJ-PAASS* for the 2004, 2005 and 2006 elections and demonstrates how this collaborative effort resulted in markedly improving polling site access to mobility impaired inhabitants of New Jersey.

Polling Site Inspection Methodology

Operation NJ-PAASS has been the most comprehensive inspection and investigation endeavor in the history of the DCR. The goal of *Operation NJ-PAASS* was to inspect as many single polling sites in New Jersey as feasible, given the limited resources available, in order to assess the access to the polling site for persons with mobility disabilities or who otherwise need barrier-free access to their polling site. There are over 3,000 polling sites statewide and during this initiative the DCR inspected over 1700 polling sites throughout the State, more than 50% of all polling sites in New Jersey.

During *Operation NJ-PAASS*, the Division on Civil Rights performed an assessment of polling places throughout the State of New Jersey to ensure that these sites are accessible to persons with mobility disabilities. Polling site inspection teams included personnel principally from the DCR, but also from the NJ Division of Consumer Affairs and the Office of the Attorney General. The inspection teams were trained and provided with sets of specially designed accessibility survey tools and instruments. These tools are used for measuring the adequacy of parking spaces, the incline of slopes leading to polling places, the required clearances of access routes and doorways at

the polling locations, and the amount of force required to open interior doors. The polling site inspection teams used survey forms that included a comprehensive checklist detailing accessibility requirements in several areas, which included:

- Parking
- Accessible Routes
- Ramps and Curb Cuts
- Entrances and Elevators
- Accessible Interior Routes
- Signs to Accessible Routes
- Accessible Voting Equipment

To be clear, *Operation NJ-PAASS* dealt exclusively with the issue of accessibility to persons with *mobility* impairments. It did not deal with the actual voting machines or other voting systems for persons with other disabilities, such as persons who are blind, visually impaired, deaf, or hard of hearing. The acquisition and use of new voting systems in all New Jersey counties, however, are expected to address many of the issues pertaining to access for persons with those disabilities. Election officials will be required to operate elections with high tech voting systems that are accessible to persons with vision or hearing loss, and other disabilities. Therefore, *Operation NJ-PAASS* does not address access to polling places except as it applies to persons who are wheelchair or scooter users, use a cane or walker, or otherwise need barrier-free access to the polling site due to mobility impairment.

In 2004 and 2005, *Operation NJ-PAASS* was conducted on six separate election days: the May 11, 2004 and May 10, 2005 Non-partisan Municipal Elections, the June 8, 2004 and June 7, 2005 Primary Elections, and the November 2, 2004 and November 8, 2005 General Elections. In 2006, inspections were conducted during the November 7th General Election. When necessary, the DCR closed all of its offices in order to have sufficient personnel for inspection teams to conduct the field inspections in all parts of the State of New Jersey. In total, these teams visited polling sites in each of 197 municipalities in all 21 counties.

Inspection Results & Reducing Inaccessible Sites

Inspection teams recorded information detailing deficiencies that could preclude a voter with a mobility disability from exercising his or her right to enter the polling site to vote. Subsequent to each election's inspections, the DCR sent to the appropriate election officials, a "Notice of Non-Compliance," detailing the specific site that failed inspection, the basis for the failure, and specific observations of deficiencies resulting in the polling site's inaccessibility.

Local election officials promptly corrected access issues at many "non-compliant" polling sites reported to them by the DCR. "Non-compliant" sites were randomly re-inspected in later elections to determine whether the election officials had addressed prior accessibility issues. Many of the re-inspected sites properly addressed issues raised by the DCR and the sites were subsequently repaired or otherwise made accessible upon re-inspection. What was made clear by these inspections, notices of non-compliance, and re-inspections, was that the many of the problems discovered at "non-compliant" sites were, in fact, corrected in subsequent elections and many remedies to non-compliant sites were free or of minimal expense. *Operation NJ-PAASS* provided a mechanism to conduct inspections, identify the problems, and provide the counties with information regarding specific polling site deficiencies requiring correction. Most election officials worked collaboratively with the DCR when they received the notices of non-compliance and a significant proportion of the deficient sites have been brought into compliance.

Specifically, on May 11, 2004, 33 inspection teams surveyed a total of 162 polling sites. Of the total 162 inspected sites, 109 exhibited deficiencies in access for persons with mobility disabilities. Notices of Non-Compliance were sent to election officials responsible for each deficient site, comprising 67% of the sites inspected.

On June 8, 2004, a total of 38 inspection teams surveyed 382 polling sites. Deficiencies were discovered at 219 of these sites or 57%. Notices of Non-Compliance were sent to election officials responsible for each deficient site. The Inspection Notices included detailed information regarding the specific deficiencies found at each deficient polling location.

On November 2, 2004, *Operation NJ-PAASS* deployed 38 inspection teams which surveyed 329 polling sites, 93 of which exhibited deficiencies in accessibility for persons with

mobility disabilities, exhibiting a 28% non-compliance rate. At the General Election, the *Operation NJ-PAASS* inspection teams conducted 80 re-inspections of sites that previously had failed. Two-thirds of the re-inspected sites were found to have corrected the previously observed accessibility deficiencies. As had been done with the two prior inspections, Notices of Non-Compliance and inspection reports were sent to the county boards responsible for the deficient polling places.³

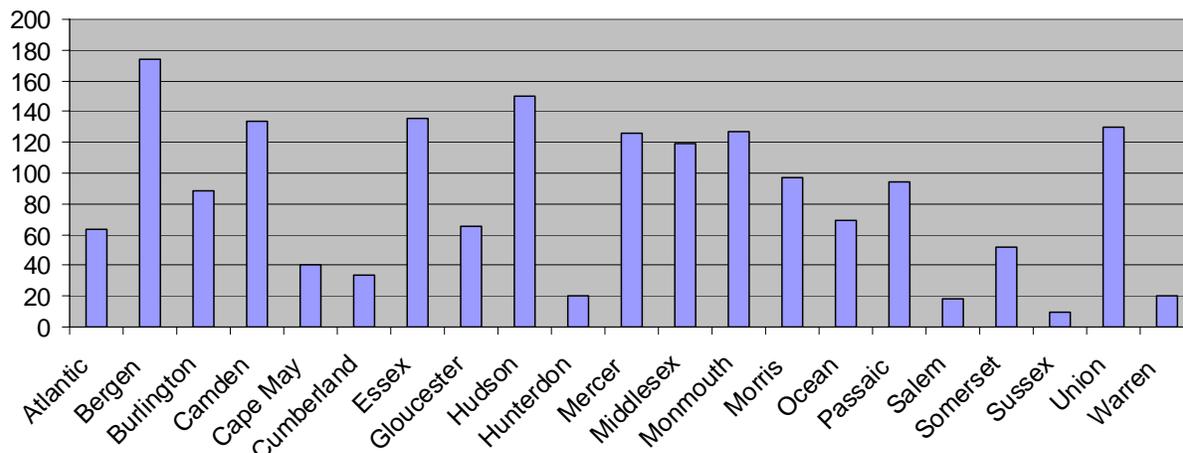
On May 10, 2005, 27 inspection teams surveyed a total of 228 polling sites. Of the 228 inspections that were conducted, 118 of them were re-inspections of sites that had previously failed. Of the 110 new inspections, 25 exhibited deficiencies in access for persons with mobility disabilities, a rate of 23%. One hundred one or 86% of the re-inspected sites were also found to still contain deficiencies. The Notices of Non-Compliance were, again, sent to election officials responsible for each deficient site.

On June 7, 2005, 37 inspection teams surveyed 371 polling sites. Of the 371 inspections that were conducted, 154 of them were re-inspections of sites that had previously failed. Of the 217 new inspections, 31 (14%) exhibited deficiencies in access for persons with mobility disabilities. Eighty-five (55%) of the re-inspected sites were also found to still contain deficiencies. As before, the Notices of Non-Compliance were sent to election officials responsible for each deficient site.

Rounding out 2005, on November 8th, *Operation NJ-PAASS* sent out 24 inspection teams which surveyed 214 polling sites, all of which had previously failed. At this General Election, of the sites that were inspected, 89 (42%) failed and the appropriate election officials were notified.

Finally, on November 7, 2006, the DCR teams conducted 21 inspections of sites that had continued to be in non-compliance since this initiative began in 2004. Each of these 21 sites had failed three prior inspections. Of these 21 sites, this fourth inspection revealed 17 (81%) continued to contain barriers that interfered with mobility impaired voters' ability to access their polling sites.

Site Inspections



Distribution of Polling Sites Inspected by County

Atlantic 63 Site Inspections

Absecon, Atlantic City, Galloway Township, Hamilton Township, Linwood, Margate City, Pleasantville, Ventnor City

Bergen 174 Site Inspections

Bergenfield, East Rutherford, Elmwood Park, Englewood, Fair Lawn, Fort Lee, Garfield, Hackensack, Lodi, Lyndhurst, Mahwah, Paramus, Ridgefield Park, Ridgewood, River Edge, Rutherford, Teaneck

Burlington 88 Site Inspections

Burlington City, Burlington Township, Cinnaminson Township, Delran, Delran Township, Evesham Township, Medford Lakes, Mt. Holly Township, Westampton Township, Willingboro Township

Camden 134 Site Inspections

Audubon, Camden, Collingswood, Gloucester Township, Haddonfield, Pennsauken

Cape May 40 Site Inspections

Avalon, Cape May, Lower Township North Wildwood, Ocean City, Sea Isle City,
Stone Harbor, West Cape May, West Wildwood, Wildwood, Wildwood Crest

Cumberland 34 Site Inspections

Millville, Vineland

Essex 136 Site Inspections

Belleville, Caldwell, Cedar Grove, East Orange, Irvington, Maplewood, Millburn,
Montclair, Nutley, South Orange, Verona, West Caldwell, West Orange

Gloucester 65 Sites Inspected

Colonial Manor, West Deptford, Deptford, Elk, Franklin, Glassboro, Greenfields,
Hillsborough, Pitman, Thorofare, Verga, Woodbury

Hudson 150 Site Inspections

Bayonne, Hoboken, Jersey City, Kearny, West New York

Hunterdon 20 Sites Inspected

Clinton Township, Flemington, Lambertville City, Lebanon, Raritan, Readington

Mercer 126 Site Inspections

East Windsor Township, Ewing Township, Hamilton Township, Hightstown,
Hopewell, Hopewell Township, Lawrence Township, Pennington, Princeton Boro,
Princeton Township, Titusville, Trenton, Washington Township, West Windsor
Township

Middlesex 119 Site Inspections

Dayton, East Brunswick, Edison, Hopelawn, Iselin, Keasbey, Kendall Park, Kingston,
Monmouth Junction, Monroe, North Brunswick, Old Bridge, Parlin, Perth Amboy,
Piscataway, Sayreville, Sewaren, South Amboy, South Brunswick, Spotswood,

Woodbridge

Monmouth 127 Site Inspections

Allenhurst, Asbury Park City, Bradley Beach, Deal, Freehold, Freehold Township, Hazlet Township, Howell Township, Keansburg, Long Branch City, Manalpan Township, Marlboro Township, Monmouth Beach Borough, Morganville, Tinton Falls Borough

Morris 97 Site Inspections

Chatham, Denville, East Hanover, Florham Park, Hanover Township, Jefferson Township, Kinnelon, Montville Township, Morris Township, Morristown, Parsippany-Troy Hills Township, Pequannock Township, Riverdale

Ocean 69 Site Inspections

Barnegat Township, Bayville, Beach Haven Terrace, Berkeley, Brant Beach, Brick, Dover, Howell Township, Island Heights, Jackson, Lakewood, Loveladies, Manchester, Normandy, Seaside Park, Toms River, Tuckerton, Whiting

Passaic 94 Site Inspections

Clifton, Haledon, Hawthorne, Little Falls, Passaic, Paterson, Totowa, Wayne

Salem 18 Site Inspections

Carneys Point, Pedrickton, Penns Grove, Pennsville

Somerset 52 Site Inspections

Basking Ridge, Bedminster, Bridgewater, Franklin Township, Hillsborough

Sussex 10 Site Inspections

Andover Borough, Sparta

Union 130 Site Inspections

Berkeley Heights, Cranford, Elizabeth, Hillside, Linden, Plainfield, Rahway, Roselle,
Union

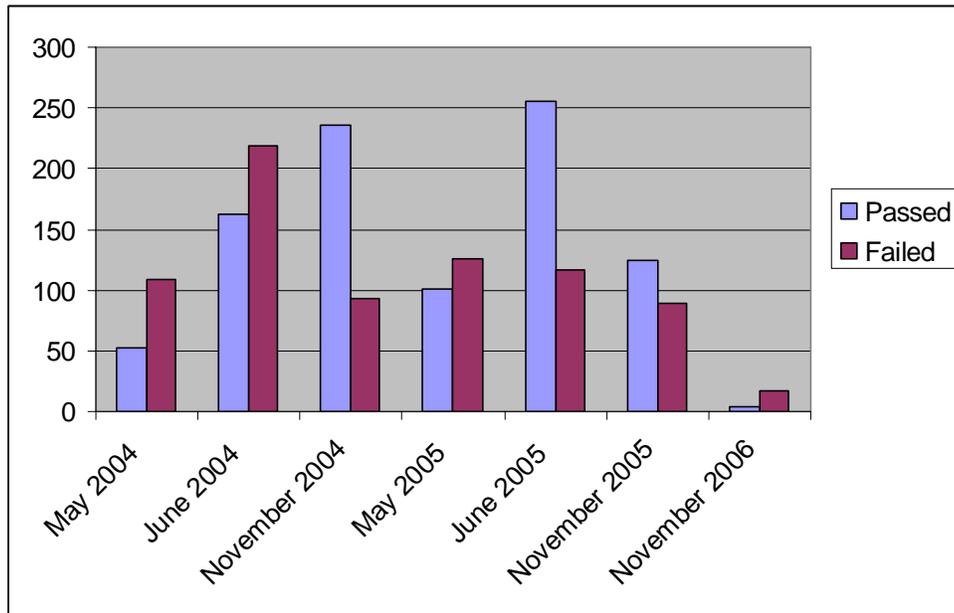
Warren 20 Site Inspections
Great Meadows, Hackettstown, Phillipsburg

Using Inspections & Data Collection to Reduce Inaccessible Sites

The results of *Operation NJ-PAASS*' 1,766 inspections uncovered significant problems in several areas. Among the most common deficiencies identified were a *lack of adequate accessible parking* and a *lack of appropriate signage directing voters to accessible routes and entrances to the polling sites*. These and other deficiencies caused a meaningful number of sites to remain inaccessible to persons with mobility impairments. All election officials overseeing elections held at sites that were deemed to be deficient were advised of the nature of the deficiencies and advised to make the appropriate modifications to the specific polling sites. Many of these sites were found to be difficult and costly to modify and should be relocated to accessible buildings. There were a substantial number of others, however, that could have been easily brought into compliance. Many of the modifications consisted of simple, inexpensive, and obvious actions, such as unlocking the doors adjacent to wheelchair ramps, placing the voting machines in a room with an accessible route, posting accessibility signs on election day so that voters with disabilities would know which entrance to use, unlocking the gates to the wheelchair lifts, or installing temporary ramps. County officials responsible for these non-compliant sites never provided explanations for failing to make these simple corrections.

It is abundantly clear that the *Operation NJ-PAASS* inspections significantly increased the number of polling sites accessible to persons with mobility disabilities. A review of the results of the re-inspections reveals that there was substantial improvement in repairing sites that were previously designated as “non-compliant” by the inspectors.

Operation NJ-PAASS Results



As the above graph illustrates, there were significant improvements in the accessibility of polling sites surveyed during the 2004 and 2005 election cycles. These improvements can be attributed to two factors. The first is the continued commitment of the Department of Law & Public Safety to ensuring that polling places are made accessible to all citizens of this State. This commitment manifested itself in authorizing this Division to enter into a cooperative initiative with the Division of Elections, and numerous state, county, and local agencies, to aggressively direct its resources to assess the accessibility of polling sites through inspections, outreach and education. These activities served to place county and local election officials on notice of the importance of providing accessible polling sites. Secondly, county and local election officials enthusiastically accepted the intent of this initiative and made significant efforts to achieve as high a degree of voter accessibility. This was accomplished by working with other state agencies and disability advocacy groups to improve accessibility of designated polling locations. Without the collaboration of the election officials, such substantial improvement in access could not have been achieved.

Final Recommendations

After the inspections conducted under the *Operation NJ-PAASS* initiative in 2004, the Division on Civil Rights made a series of recommendations designed to ensure that all of New Jersey's election sites would be accessible to persons with disabilities, specifically those with mobility impairments. In that regard, and based upon the additional inspections conducted in 2005 and 2006, the Division's initial recommendations, for the most part, continue to apply to achieving the goal of 100% accessibility for the mobility impaired. These recommendations are:

1. Continue to identify and engage State, County, Municipal and advocacy stakeholders concerned with making our elections free from discrimination against persons with mobility disabilities;
2. Continue to train, educate and share information on enhancing polling site accessibility with said stakeholders and agencies;
3. Continue to use the information obtained through the previous inspections to reduce the number of inaccessible polling sites;
4. Meet with county and local election officials where inaccessible sites still exists and make specific recommendations in an effort to bring all of New Jersey's polling sites into compliance with accessibility requirements for persons with mobility impairments;
5. Study the use of election day "waivers;"
6. Assess and improve the polling-site designation process to ensure that only accessible sites are certified for elections;
7. Explore legislative and regulatory options for increasing access to voting for persons with disabilities; and
8. Continue to issue public assessment reports about the status of accessibility to

- polling sites.
9. Consider creative locations for conducting elections, including shopping malls and accessible voting machine trailers.
 10. Create an independent statewide, fully-funded Election Accessibility Unit to provide technical assistance to election officials, distribute educational materials to voters, and oversee and implement corrective action plans by election officials.

¹ *Outreach: NJ Division on Civil Rights Newsletter*, “Ensuring Disabled Access to Polling Sites is Vital to Genuine Democracy,” Summer 2004, pp 2,4.

² According to the US Department of Justice in a letter dated March 4, 2005 to the Assistant Secretary of State for Elections in Mississippi, “[a]s we have expressed, logically, persons with disabilities must be able to gain access to the polling place in order to be able to use the accessible voting system [which is required under HAVA as of January 2006]. Having an accessible voting system does little good if voters cannot enter the polling place to use it. Hence, not only must the voting system be accessible to persons with disabilities but also the polling place where the voting system is located.” See letter dated March 4, 2005 from Hans A. von Spakovsky, Counsel to the Assistant Attorney General, to John W. Eads, Esq., Assistant Secretary of State for Elections, Office of the Secretary of State, Mississippi at: <http://www.usdoj/crt/voting/hava/msdisability.pdf> .

³ In addition to notifying County Boards of Election, in writing, of the problems encountered at the polling sites, these findings were shared with election officials, advocacy groups and State officials at the Post-Election Forums held in 2004 and 2005.